DAVID R. ZARO (BAR NO. 124334)
JOSHUA A. DEL CASTILLO (BAR NO. 239015)
MATTHEW D. PHAM (BAR NO. 287704)
ALPHAMORLAI L. KEBEH (BAR NO. 336798)
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
Phone: (213) 622-5555
Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
jdelcastillo@allenmatkins.com
mpham@allenmatkins.com
mkebeh@allenmatkins.com

Attorneys for Receiver
GEOFF WINKLER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. RALPH T. IANNELLI and ESSEX CAPITAL CORP., Defendants.	Case No. 2:18-cv-05008-FMO-AJRx **OPPOSITION OF RECEIVER TO MOTION TO CLARIFY, MODIFY, OR GRANT RELIEF FROM RECEIVERSHIP INJUNCTION; AND, TO INTERVENE OF PROPOSED INTERVENOR, JIM GALLY** [Declaration of Geoff Winkler; and Declaration of Joshua A. del Castillo submitted concurrently herewith] Date: July 24, 2025 Time: 10:00 a.m. Ctrm: 6D Judge Hon. Fernando M. Olguin

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TO THIS HONORABLE COURT AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that Geoff Winkler (the "Receiver"), the Court-appointed receiver for defendant Essex Capital Corporation ("Essex") and its subsidiaries and affiliates (collectively, with Essex, the "Receivership Entities") in the above-referenced action, hereby opposes the *Motion to Clarify, Modify or Grant Relief from Receivership Injunction; and, to Intervene* (the "Motion") [ECF Nos. 314, *et seq.*] of proposed intervenor, Jim Gally, because, as detailed further below: (1) the claim for damages upon which his Motion relies has been conclusively adjudicated in this Court and is therefore barred by the doctrine of *res judicata*; (2) he has failed to and cannot satisfy the procedural elements required in order to intervene in the above-entitled action; and (3) he has no valid claims against 915 Elm Avenue, CVL, LLC, the entity he proposes to sue. In addition, the plaintiff Securities and Exchange Commission has informed the Receiver that it joins in this Opposition.

I. INTRODUCTION.

Mr. Gally is a pre-receivership creditor of Essex whose claim has already been adjudicated by this Court. In 2016, Essex signed a $1.5 million seller-carryback promissory note (the "Essex Note") payable to Mr. Gally in connection with his sale of a lumberyard to 915 Elm Avenue CVL, LLC ("CVL"), an entity whose assets are subject to a freeze pursuant to this Court's December 21, 2018 *Order Regarding Preliminary Injunction and Appointment of a Permanent Receiver* (the "Appointment Order") [ECF No. 66]. The Receiver holds an interest in CVL for the benefit of the receivership estate (the "Estate"). Essex committed to pay Mr. Gally $1.5 million, but only partially repaid the debt. In November 2020, Mr. Gally submitted a resultant claim for damages against the Estate, which the Receiver recommended for allowance, and which this Court allowed in 2022, in the amount of $1,046,316.44.

Having consented to the jurisdiction of this Court by submitting a claim, and having had his claim conclusively adjudicated by the Court, in his favor – and after receiving more than $175,000 in distributions from the Receiver on his allowed claim, with at least one more distribution to come – Mr. Gally has apparently determined that this is not good enough. Notwithstanding the conclusive adjudication of his claim, which arose exclusively from Essex's failure to repay the Essex Note, Mr. Gally now asserts that he should be entitled to commence litigation against CVL, an entity that had no obligation to Mr. Gally whatsoever. In so doing, Mr. Gally threatens to interfere with the Receiver's asset recovery efforts, particularly including his recently successful efforts to sell the Estate's interest in CVL for the benefit of all stakeholders. Mr. Gally's Motion therefore reflects an impermissible and procedurally defective effort to relitigate his allowed claim, based on mischaracterizations, demonstrably false assertions, and a dubious legal theory, in order to obtain a proverbial "second bite at the apple" and in the hopes of unilaterally improving his recovery, to the detriment of all other holders of allowed claims against the Estate.

The Receiver respectfully submits that, again, Mr. Gally's Motion should be denied because (1) his claim for damages has been conclusively adjudicated in this Court and is therefore barred by the doctrine of *res judicata*; (2) he has failed to and cannot satisfy the procedural elements required to intervene in the above-entitled action; and (3) he has no valid claims against CVL. Because Mr. Gally's claim has already been conclusively adjudicated by this Court, and because he has no valid claim against CVL, his request for relief from the asset freeze and stay imposed by the Appointment Order should likewise be denied.

II. RELEVANT FACTUAL BACKGROUND.

A. The Sale Of The Lumber Yard.

On December 7, 2015, well before the commencement of the receivership in the above-entitled action, Mr. Gally and two entities under his control entered into an Asset Purchase Agreement with CVL – an LLC owned and controlled by defendant Ralph Iannelli and non-party William Reyner – pursuant to which they sold to CVL a lumber, hardware, and garden supplies business and its associated assets (collectively, the "Lumber Yard"). (*See* Motion at 11:17-22; *Declaration of Jim Gally* ["Gally Decl.", ECF No. 314-1] at ¶ 3, Ex. 1.) Pursuant to the terms of the Asset Purchase Agreement, as amended, the total consideration paid to Mr. Gally and his entities consisted of: (a) $4.175 million for the Lumber Yard, not including its inventory; and (b) just over $900,000 for its associated inventory. (*Id.*)

The $4.175 million for the Lumber Yard was to be paid in two separate ways: (a) $2.675 million paid by CVL, in cash; and (B) a repayment obligation memorialized by a promissory note (again, the "Essex Note") incurred exclusively by Essex – which was not a party to the Asset Purchase Agreement – to Mr. Gally, personally, in the amount of $1.5 million.[1] (*Id.*; *see also* concurrently submitted *Declaration of Geoff Winkler* ["Winkler Decl."] at ¶¶ 4, 5, Ex. A.) CVL made the required cash payment of $2.675 million. (Gally Decl. ¶ 3.) Essex, on the other hand, did not completely satisfy its repayment obligation to Mr. Gally. Despite Mr. Gally's contention that the "$1,500,000, which was to come from Essex, was never paid[,]" Essex paid Mr. Gally approximately $454,000 in partial satisfaction of the Essex Note prior to the commencement of the above-entitled action and the entry of the Appointment Order. (Winkler Decl. ¶ 6.)

In other words, there were actually two contracts subject to performance in connection with CVL's purchase of the Lumber Yard: (1) the Asset Purchase Agreement between Mr. Gally, his entities, and CVL; and (2) the Essex Note, to which only Mr. Gally and Essex were parties, not CVL, the entity Mr. Gally now proposes to sue for damages arising from the breach of that promissory note. CVL satisfied al of its obligations under the Asset Purchase Agreement, as acknowledged

[1] The Essex Note is conspicuously absent from the exhibits submitted by Mr. Gally in support of his Motion.

by Mr. Gally in his Motion, by making payment in the amount of $2.765 million, in cash. (Gally Decl. ¶ 3.) Essex, on the order hand, only partially satisfied its obligations under the Essex Note, leaving slightly more than $1 million due and owing to Mr. Gally on the debt memorialized by the note. (Winkler Decl. ¶ 6.) Accordingly, Mr. Gally incurred total damages in the face value amount of $1,046,316.44. All of Mr. Gally's damages therefore arose exclusively from Essex's failure to make complete repayment to him in accordance with the terms of the Essex Note. (*Id.*)

B. The Assignment Of The Iannelli Interests To The Receiver.

As previously reported to the Court, after reviewing relevant financial records, the Receiver determined that interests in CVL owned by defendant Iannelli and his son had been paid for with funds unlawfully diverted from the Receivership Entities, and were therefore subject to turnover to the Receiver as Estate assets in accordance with the terms of the Appointment Order. On July 28, 2020 and October 13, 2022, Mr. Iannelli and his son assigned their interests in CVL to the Receiver. (Winkler Decl. ¶ 7, Exs. B, C.)

C. Mr. Gally's Registration For Notice Of Receivership Filings.

As the Court may recall, the Receiver administers a website for the instant receivership, through which interested parties can access documents and filings related to the case, as well as contact the Receiver's personnel. (Winkler Decl. ¶ 8.) The website also permits interested parties to register for notice and, upon registration, registrants are provided with timely notice and copies of documents filed by the Receiver in this action. (*Id.*) Mr. Gally registered for notice on the Receiver's website on January 7, 2019 and, since then, has had timely access to the materials filed by the Receiver, including all materials filed in connection with claims against the Receivership Entities and their Estate. (*Id.*)

D. The Receivership Claims Process And The Adjudication And Payment Of Mr. Gally's Claim.

On April 20, 2020, the Receiver entered into a stipulation with the plaintiff Securities and Exchange Commission, establishing the procedure by which holders of claims against the Receivership Entities could submit their claims to the Receiver for review and evaluation, and establishing a bar date by which claims were to be submitted. (*See* ECF No. 168.) Later, the Court entered an order approving the Receiver's proposed claims procedures. (*See* ECF No. 179.) Thereafter, the Receiver transmitted claims "packets" to all known and suspected claims holders, including Mr. Gally. (Winkler Decl. ¶ 9, Ex. D.) These "packets" included claim forms, instructions regarding the submission of claim forms, and – where the amount of a prospective claimant's claim had already been preliminarily determined by the Receiver – a form by which a claimant could agree to or dispute the Receiver's determination of his or her claim amount. (*Id.*) The instructions specifically stated that "[i]n submitting a Proof of Claim, you agree to be bound by the actions of the District Court, including the District Court's approval of limiting or denying your claim, if any" and "you further agree that your participation in any distribution of the receivership estate may exclude or prevent you from pursuing any other remedies." (*Id.*)

Mr. Gally submitted his signed claim form to the Receiver in or around November 2020. (Winkler Decl. ¶ 10, Ex. E.) On or around April 28, 2021, Mr. Gally signed and returned an amended claim determination letter, acknowledging and accepting the Receiver's determination of his claim for damages in the amount of $1,046,316.44 – reflecting the difference between the face value owed by Essex to Mr. Gally on the Essex Note and the amount Essex had paid to him on the note in the pre-receivership period. (Winkler Decl. ¶ 11, Ex. F.)

Thereafter, on December 21, 2021, the Receiver filed his *Motion for Order: (1) Approving Proposed Distribution Plan; (2) Approving Recommended Treatment* *of Claims; and (3) Allowing Distributions on Allowed Claims* (the "Claims Allowance Motion") in which he reported his recommendations regarding the treatment of all claims submitted against the Receivership Entities and requested permission to commence making distributions on allowed claims in accordance with his recommended plan for distribution of available Estate assets. (*See* ECF No. 220, *et seq.*) Mr. Gally's claim for $1,046,316.44 was recommended for allowance, in full. (Winkler Decl. ¶ 12.) Moreover, Mr. Gally was one of only two non-investor creditors whose claims were recommended for allowance as priority claims, on the same level as investor claims. (*Id.*) As reflected in the Claims Allowance Motion, the Receiver reasoned that Mr. Gally's damages from Essex's incomplete payment of the Essex Note were akin to those suffered by Receivership Entity investors, who likewise were issued notes memorializing their investments which were not completely repaid. (*Id.*)

On April 19, 2022, the Court entered its order granting the Claims Allowance Motion and adjudicating the claims at issue therein, including Mr. Gally's claim, and accepting the Receiver's recommended treatment of claims. (*See* ECF No. 234.) Thereafter, the Receiver commenced making distributions to holders of allowed claims from funds then on-hand, recovered through litigation settlements and the monetization of other Estate assets. (Winkler Decl. ¶ 13.) As of the date of this Opposition, Mr. Gally has received two distributions on his allowed claim in the respective amounts of $44,735.48 and $131,970.33, totaling $176,705.81. (*Id.*) The Receiver anticipates making at least one more distribution to holders of allowed claims, including Mr. Gally, contemporaneously with the wind-down of the instant receivership. (*Id.*)

In other words, Mr. Gally's inexplicable contention that the Receiver is endeavoring to use Estate assets "to pay himself and to … pay net loser investors in the Essex Ponzi scheme, which does not include Gally" (*see* Motion at 3:15-18; emphasis added) is demonstrably false. The Receiver has sought throughout the entirety of this case to maximize returns to all injured stakeholders, including Mr. Gally, who has, to-date, been received over $175,000 in distributions as a direct result of those efforts, and of the Receiver's recommendation that Mr. Gally's "claim be treated as a priority investor claim" and allowed in the amount of the full "unpaid balance of the [Essex] Note." (*See* ECF No. 220 at 11:5-19.)

E. The Receiver's Efforts To Sell The Estate's Interest In CVL.

Since at least mid-2024, the Receiver has consistently reported to this Court his intention to market and sell the interest in CVL that he holds for the benefit of the Estate, in order to generate additional funds for distribution to holders of allowed claims. (*See*, *e.g.*, 295-1, 301-1, 305-1, and 309-1; Winkler Decl. ¶ 14.) This court has consistently accepted and approved the Receiver's sale recommendations. (*See*, *e.g.*, ECF Nos. 307, 311.) In mid-June 2025, the Receiver's efforts bore fruit; the Receiver reached a tentative agreement to sell the CVL interest for over $700,000, an amount that, in combination with other CVL-related settlement payments to the Receiver, would result in virtually a complete reimbursement to the Estate of all Receivership Entity cash unlawfully diverted in connection with the purchase and administration of the Lumber Yard. (Winkler Decl. ¶ 14.) However, the Receiver's prospective sale of the CVL interest is expressly conditioned on a bar order preventing the relitigation of claims arising from CVL's purchase of the Lumber Yard. (*Id.*) Mr. Gally's Motion, and the baseless claims he proposes to litigate against CVL, put this prospective sale directly at risk, to the detriment of all holders of allowed claims, including himself. (*Id.*) In a nutshell, Mr. Gally's proposed litigation will do nothing but further deplete the resources of the very receivership estate from which his already adjudicated claim is being paid, as does his Motion.

F. Outreach From Mr. Gally And Communications With Mr. Gally's Attorneys.

Over the course of the pending receivership, Mr. Gally has periodically reached out to the Receiver's counsel for updates on case administration matters, often relating to the timing of distribution payments. (*See* concurrently submitted *Declaration of Joshua A. del Castillo* ["del Castillo Decl."] ¶ 2.) While the Receiver's counsel has consistently endeavored to provide Mr. Gally with updates, it has also observed a policy of alerting Mr. Gally that neither the Receiver nor his counsel can provide him with legal advice. (*Id.*) Notably, Mr. Gally's direct outreach to the Receiver's counsel continued even after he engaged attorney Patrick C. Bageant as his counsel, in December 2023. (*Id.*) The Receiver's counsel consistently responded to such outreach by advising that it could not speak with Mr. Gally directly absent permission from counsel, and requesting that all communications be directed through his counsel. (*Id.*)

On December 1, 2023, the Receiver's counsel received written correspondence from attorney Bageant, presenting the same claim asserted in the Motion (that Essex did not make payment on the Essex Note) and requesting to meet and confer in connection with Mr. Gally's stated intention of seeking relief from the asset freeze in order to commence litigation. (*Id.* at ¶ 3, Ex. A.) Thereafter, counsel for the Receiver met and conferred with attorney Bageant, provided him with an overview of the completed claims process, the order on the Claims Allowance Motion, and the adjudication and payment of Mr. Gally's claim. (*Id* at ¶ 4.) As noted in the *Declaration of Patrick C. Bageant* ("Bageant Decl.") [ECF No. 316], the Receiver's counsel also communicated the Receiver's position – which remains his position today – that Mr. Gally's threatened litigation would frustrate the Receiver's efforts to monetize Estate assets for the benefit of all holders of allowed claims, including Mr. Gally. (*Id.*) Contrary to the suggestions in attorney Bageant's and Mr. Gally's declarations (*see*, *e.g.*, Bageant Decl. ¶¶ 5-7; Gally Decl. ¶ 6-9), aside from pointing out this Court's orders, counsel for the Receiver did not (and could not) direct Mr. Gally to take or refrain from taking any action, nor did counsel engage at that time in a merits discussion of any causes of action to be litigated in Mr. Gally's threatened lawsuit. (*Id.*)

On March 7, 2025, the Receiver's counsel received written correspondence from Mr. Gally's current counsel of record, attorney Michael P. Denver. (*Id.* at ¶ 5, Ex. B.) Unlike the earlier correspondence from attorney Bageant, attorney Denver's correspondence not only advised of Mr. Gally's intent to intervene in this action in order to pursue claims against CVL, it also included a detailed recitation of the factual and legal grounds upon which Mr. Gally's threatened course of action relied. (*Id.*) Unfortunately, attorney Denver's correspondence was replete with misplaced accusations, inaccurate statements of fact and law, and completely ignored the fact that Mr. Gally's claim for damages arose exclusively from Essex's breach of the Essex Note, and that the claim had been conclusively adjudicated by this Court three years earlier. (*Id.*)

The Receiver's counsel responded to attorney Denver on April 10, 2025, endeavoring to correct the record and addressing in greater detail the factual basis for Mr. Gally's claim, the procedural history of its submission and conclusive adjudication by this Court, and the distributions made to Mr. Gally in accordance with this Court's order on the Claims Allowance Motion. (*Id.* at ¶ 6, Ex. C.) Counsel also subsequently provided attorney Denver with a copy of the Receiver's claims "packet" instructions, and Mr. Gally's signed claim determination letter. (*Id.*, Exs. D, E.)

In sum, each time Mr. Gally's various attorneys expressed Mr. Gally's intent to intervene in this action and seek relief from the asset freeze, the Receiver's counsel simply reiterated the Receiver's position regarding Mr. Gally's assertions, including via-a-vis his adjudicated claim, and the Receiver's view regarding the potentially adverse effect that could result from Mr. Gally's threatened course of action. Mr. Gally would have this Court believe that the Receiver's statements were somehow prejudicial to his efforts to intervene.[2] This suggestion is absurd. As

[2] The testimonial evidence provided by attorney Bageant and Mr. Gally regarding the alleged content of discussions with the Receiver's counsel is inadmissible hearsay. Fed. R. Evid.

detailed herein, Mr. Gally's Motion is not subject to denial because it was filed in June 2025 as opposed to December 2023; it is subject to denial because he submitted a claim for damages to the Receiver in 2020, consented to the Receiver's determination in 2021, and the claim was conclusively adjudicated by this Court in 2022, over a year before attorney Bageant's initial meet and confer correspondence.

III. ARGUMENT.

Mr. Gally's request to intervene in this action in order to pursue factually and legally unsupportable claims against CVL must fail because: (1) he has not obtained the written consent of the Commission to intervene; (2) his claim, which is derived exclusively from Essex's failure to make full payment on the Essex Note, was adjudicated in connection with the Claims Allowance Motion; and (3) he cannot satisfy the procedural requirements for intervention in this action.

In addition, because Mr. Gally's already adjudicated claim for damages arises exclusively from Essex's failure to make full payment on the Essex Note, there is no basis for disturbing an asset freeze put in place by this Court (including as to CVL) which has to-date successfully protected Estate assets from the very diminution Mr. Gally seeks to impose here, to his unilateral benefit. Mr. Gally's Motion should therefore be denied, in its entirety.

A. Mr. Gally Has Not Obtained The Commission's Consent To Intervention.

Intervention in an enforcement action brought by the Commission is generally absent written agreement for the Commission. *See*, *e.g.*, 15 U.S.C. § 78u(g) ("no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of

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801(c)(2). Even if their statements were not hearsay, they cannot be used to justify Mr. Gally's actions or inaction. It is a well-settled rule that a "party may not justifiably rely on an opposing attorney's statements … in an adversarial setting." *U.S. Bank, N.A. v. Lamell*, 2021 WL 954848, *8 (S.D. Tex. Jan. 18, 2021) (internal citations omitted).

fact, unless such consolidation is consented to by the Commission"); *SEC v. Egan*, 821 F. Supp. 1274, 1275-76 (N.D. Ill. 1993) (denying petition to intervene where the "SEC has expressly refused to consent to the proposed third-party compliant on the ground that it 'would complicate the issues, delay th[e] … action and significantly interfere with the Commission's … responsibilities'"); *SEC v. Homa*, 2000 WL 1468726, *2 (N.D. Ill. Sept. 29, 2000) (finding the bar to intervention to be "plain and unambiguous" and citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331-32 N. 17 (1979), in which the Supreme Court acknowledged that consolidation of a private action with one brought by the Commission is prohibited by statute); *SEC v. Qualified Pensions*, 1998 WL 29496, *3 (D.D.C. Jan. 16, 1998) (applying similar standard and further finding that proposed intervenors had failed to make a showing of a right to intervene).

Mr. Gally's Motion is devoid of any suggestion that the Commission has consented to intervention. Indeed, to the contrary, the supporting *Declaration of Michael F. Denver*, submitted in support of the Motion[3], reflects that Mr. Gally's counsel of record "met and conferred with the … SEC in June 2025" and that "[n]o one consented to the relief sought herein." (*See* ECF No. 341-2 at ¶ 3.) The Receiver understands that the Commission raised with Mr. Gally's counsel (1) his prior submission of a claim; and (2) the Receiver's making distributions on his allowed claim as preventing him from pursuing other remedies, and weighing against his intervention request, and that the Motion was filed anyway, making it clear that, like the Receiver, the Commission found intervention in this instance to be unwarranted. (Winkler Decl. ¶ 15.) The Receiver respectfully submits that, Mr. Gally having failed to secure the Commission's requisite consent to intervention, his Motion should be denied.

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[3] While Mr. Denver's declaration attests non-specifically to his meet and confer efforts, the Motion itself is devoid of the recitation required by this Court's Local Rule 7-3.

B. Relitigation Of Mr. Gally's Claim Is Precluded By The Doctrine of *Res Judicata*.

In the Ninth Circuit, it is well-settled that a creditor whose proof of claim for damages has been allowed is barred from bringing another, related claim by the doctrine of *res judicata* because the allowed claim reflects a final judgment on the merits on the claim. *Siegel v. Federal Home Loan Mortg. Corp.*, 143 F.3d 525, 530 (9th Cir. 1998). Application of this principle is particularly appropriate here.

Local Rule 66-8 of this Court provides that a receivership is to be administered as nearly as possible in accordance with the practice in the administration of estates in bankruptcy. Relying on the doctrine of *res judicata*, bankruptcy courts routinely bar creditors with allowed proofs of claim from relitigating those claims, or pursuing subsequent claims against third parties in an effort to recover the uncollected portions of their allowed claims. *See*, *e.g.*, *In re Ayers Bath (U.S.A.) Co., Ltd.*, 2021 WL 4317321 (Bankr. C.D. Cal. Sept. 22, 2021); *see also Rein v. Providian Financial Corp.*, 270 F.3d 895, 900-901 (9th Cir. 2001) (reasserting *Siegel* holding that allowed proof of claims are *res judicata* as to subsequent claims); *Los Gatos Lodge Inc. v. Alleghany Props.*, 278 F.3d 890, 894 (9th Cir. 2002) (holding that an allowance or disallowance of a proof of claim is *res judicata* as to subsequent claims by the same party for the same damages). In *Ayers*, the bankruptcy court was confronted with a creditor who had filed a proof of claim in the bankruptcy relating to a tortious injury committed by the debtor. *Ayers*, 2021 WL 4317321 at *1. That creditor was partially paid on its allowed claim, but sought to collect on the entirety of its claim amount by initiating litigation against a non-debtor third party, based on an alter ego theory. *Id.* at *1, 3. The *Ayers* court properly concluded that all claims brought in the litigation against the third party had merged with the judgment (by way of the claim's initial adjudication) in the bankruptcy action, and that the claimant plaintiff could not "thereafter maintain an action on the original claim or any part thereof" and was therefore barred from "relitigat[ing] the claims that [we]re the basis of the" allowed proof of claim. *Id.* at *12 (internal citations omitted).

Mr. Gally's Motion seeks exactly the outcome that the *Ayers* court forbade. He submitted a claim in the above-entitled receivership action, which was allowed by the Court. Having not been paid in full on that claim, he now seeks to recover the uncollected portion of his claim[4] against third parties, including CVL and potentially its members. The outcome here should be the same as in *Ayers*: Mr. Gally is barred under the doctrine of *res judicata* from pursuing any action against third parties for recovery of claimed damages arising from the sale of the Lumber Yard, based on any theory, because his claim for damages was submitted to the Receiver and has been adjudicated by this Court.

Moreover, Mr. Gally is barred even from attempting to characterize his proposed third-party claims as distinct from his claim against Essex. Courts apply a four-factor test to determine whether a new cause of action presents the same issue as an earlier claim. They examine: (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence would be presented in the two actions; (3) whether the two actions involve infringement of the same right; and (4) whether the two actions arise out of the same transactional nucleus of facts. *Siegel*, 143 F.3d at 529 (applying the test to find that a later action based on the same nucleus of facts involving similar underlying evidence, with the same interests at stake, was barred by *res judicata* after the allowance of a, earlier proof of claim). Whatever claims Mr. Gally proposes to allege against third parties necessarily overlap with his claim for damages in this action. That claim was allowed in full, by order this Court, because it arose in its entirety from the incomplete payment of the Essex Note.[5]

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[4] As noted above, the Receiver has not completed his distributions on allowed claims. It is therefore impossible for Mr. Gally to state with precision what amount of his allowed claim, if any, will ultimately go unpaid.

[5] Again, the instructions for the claim form for which Mr. Gally submitted his claim in this

As such, it is clear the claims that Mr. Gally seeks to pursue by way of his intervention are inextricably linked to, and seek to recover the same damages arising from, the breach of the Essex Note. Accordingly, however characterized, such claims are barred by the doctrine of *res judicata*, and his Motion should be denied.

C. Mr. Gally Has Not Satisfied, And Cannot Satisfy, The Procedural Requirements For Intervention.

In the Ninth Circuit, a proposed intervenor must satisfy four requirements for intervention as of right pursuant to Fed. R. Civ. P. 24(a)(2). A proposed intervenor must: (1) timely file an application; (2) possess a 'significantly protectable' interest relating to the property or transaction that is the subject of the action; (3) be situated such that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) be inadequately represented by the parties to the action. *California ex rel. Lockyer v. U.S.*, 450 F.3d 436, 441 (9th Cir. 2006) (citing *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993)). Failure to satisfy any one of the requirements is fatal to a motion to intervene. *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

Moreover, an interested party's concerns or preferences regarding a receiver's administration of an estate do not give rise to an affirmative right to intervene. *See, e.g.*, *SEC v. Am. Pension Servs., Inc.*, 2015 WL 136322, *2 (D. Utah Jan. 20, 2015) (finding a movant's interests were not impaired or impeded solely because he disagreed with the receiver's administration plans and was, as here, "similarly situated" to other creditors); *SEC v. Nadel*, 2009 WL 3126266, *1 (M.D. Fl. Sept. 24, 2009) (finding that permitting intervention in SEC receivership action "would

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action also provided that "[i]f you submit a Proof of Claim form in this case, you consent to the jurisdiction of the United States District Court for the Central District of California … for all purposes, agreed to be bound by its decisions, including a determination, among other things, as to the validity and amount of your claim against the Company, affiliates, subsidiaries or other persons or entities[.]" (Winkler Decl. ¶ 9, Ex. D.) Again, Mr. Gally's claim, as submitted to the Receiver, attached a copy of the Essex Note, the breach of which precipitated his damages. (*Id.* at ¶ 10, Ex. E.)

undermine the efficient administration of th[e] receivership and divert resources and the Receiver's efforts from activities intended to benefit the entire Receivership Estate") (internal quotation marks omitted). As the *Am. Pension Servs.* court noted, estate creditors are not entitled to the "absolute satisfaction" that Mr. Gally is pursuing by way of his Motion, and their dissatisfaction with the existence of a receivership – including apparent regret that their submission to a Court-administered process has not yielded a desired result – does not give rise to a right to intervene. 2015 WL 136322 at *4.

Here, at a minimum, Mr. Gally cannot satisfy the timeliness and adequate representation prongs of the Ninth Circuit's intervention test. In addition, the fact that his Motion is predicated upon his dissatisfaction with the results of a claims process to which he consented, and upon his desire to pursue alternative relief even in the face of injury to the Estate, strongly militates against intervention.

1. Mr. Gally's Motion is untimely and prejudicial to the administration of the Estate.

Timeliness is a threshold question for the purposes of a request to intervene as a matter of right. *See*, *e.g.*, *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990) (affirming denial of motion to intervene on, among other things, timeliness grounds). In order to determine whether an intervention request is timely, courts consider: (1) the stage of the proceeding at which intervention is sought; (2) the risk of prejudice to other parties; and (3) the reason for and length of a movant's delay. *Id.* As the Ninth Circuit emphasized in *CFTC v. Forex Liquidity LLC*, 384 Fed. Appx. 645, 646-47 (9th Cir. 2010), it is wholly inappropriate for a creditor to seek intervention well into a receiver's appointment and after the Receiver has engaged in longstanding, effective efforts to carry out his duties. *See also SEC v. Beasley*, 2024 WL 1133587 (9th Cir. Mar. 15, 2024) (denying receivership estate creditor motion to intervene to pursue alternative, unilateral relief as untimely when filed fewer than four months after the commencement of receivership). The facts here strongly militate against intervention.

Here, Mr. Gally has been on notice of the pendency of the receivership since very nearly its inception, more than six years ago, and has been registered for and received notices of all of the Receiver's filings in the above-entitled action since early 2019. He has been an active participant and beneficiary in the Receiver's Court-approved claims process and distribution plan since late 2020. In that time, the Receiver has, as reflected in interim and supplemental reports too numerous to detail, undertaken and completed a detailed forensic accounting analysis, commenced and settled multiple asset recovery litigation matters, clawed Receivership Entity funds back from alleged fraudulent transferees, and made approximately $5 million in distributions to holders of allowed claims, including Mr. Gally. Even if Mr. Gally had filed an intervention motion in December 2023, that motion would have been filed years too late, and over a year after Mr. Gally's claim for damages had already been, with Mr. Gally's affirmative consent, conclusively adjudicated by this Court.

Moreover, intervention at this stage in the receivership – particularly where it is directed, by Mr. Gally's own admission (*see* Motion at 4:17-20) at undermining the Receiver's ability to sell the Estate's interest in CVL for the benefit of all stakeholders – would be profoundly prejudicial to the receivership. At a minimum, it would significantly reduce the amount available for distribution to allowed claimants, by hundreds of thousands of dollars.

There can therefore be no question that the Motion is untimely now, and would be profoundly prejudicial to the administration of the receivership. The Motion should be denied.

2. The Receiver adequately represents the interests of all stakeholders, including Mr. Gally.

In order to establish a lack of adequate representation, a proposed intervenor must address: (1) whether the interest of a party is such that it will undoubtedly make the intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether the intervenor would offer any necessary elements to the proceedings that the other parties would neglect. *See People of California v. Tahoe Regul. Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986). "The most important factor in determining the adequacy of representation is how the interests compare with the interests of existing parties." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). Critically, where "one of the duties of the existing parties is to represent the interest of the intervenor, intervention will not be allowed unless a compelling showing of inadequate representation is made." *In re Christina Thompson*, 965 F.2d 1136, 1143 (1st Cir. 1992). Mere speculation by a proposed intervenor regarding inadequacy of representation is insufficient and "the putative intervenor must assert concrete facts which demonstrate that (1) the existing representation of the putative intervenor's interest is inhibited by the personal interest of the existing representative, (2) the existing representative and opposing party are engaged in collusive activities, or (3) the existing representative has failed or refused to fulfill the fiduciary duty to protect the interests asserted by the putative intervenor." *Id.*

Here, while Mr. Gally complains that the Receiver's efforts to sell the Estate's interest in CVL will result in harm, he does not provide anything more than mere speculation as to how, alleging that should he be permitted to intervene and the asset freeze lifted, he could recover against CVL and others on claims for the damages he suffered from Essex's failure to pay the Essex Note. As detailed above, this position is entirely at odds with the facts and the law: Mr. Gally's damages arose exclusively from Essex's breach of its obligations on the Essex and that claim has already been conclusively adjudicated by this Court.

Moreover, Mr. Gally cannot reasonably claim that the Receiver has not zealously advocated for his benefit. Mr. Gally is one of only two non-investor creditors of the Receivership Entities whose claims the Receiver recommended for allowance as priority claims, on par with those of investors. All other claims were subordinated. In other words, the Receiver has been consistent in his support of Mr. Gally's ability to recover on his claim – as he has for all injured stakeholders – throughout the entirety of the receivership. Likewise, the Receiver's plans to sell the Estate's interest in CVL are not at odds with Mr. Gally's interests as the holder of an allowed claim; they are specifically intended to increase the value of the very receivership estate from which Mr. Gally's allowed claim is being paid.

The Receiver therefor respectfully submits that Mr. Gally cannot demonstrate that his interests are not adequately represented in the receivership, and his Motion should be denied.

3. <u>Mr. Gally has not established a basis for permissive intervention.</u>

This Court may permit intervention by an interested party who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Of course, permissive intervention is entirely discretionary, and subject exclusively to a court's discretion. *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). In determining whether to exercise its discretion, a court may consider, among other things, whether the proposed intervenor's interests are adequately represented by other parties, whether intervention will prolong or unduly delay litigation, and whether intervenor will significantly contribute to full development of the underlying factual issues. *Id.* A party seeking permissive intervention has the burden of establishing the basis for intervening. *Citizens For Balanced Use v. Montana Wilderness Assoc.*, 647 F.3d 893, 897 (9th Cir. 2011). The Receiver respectfully submits that Mr. Gally has not demonstrated that permissive intervention is appropriate here and, indeed, the equities strongly militate against his intervention.

As detailed above: (1) Mr. Gally's proposed intervention would he highly prejudicial to the administration of the receivership, particularly the Receiver's effort to monetize the CVL interest for the benefit of all stakeholders; and (2) Mr. Gally cannot reasonably establish that his interests as a holder of an allowed claim are not adequately represented by the very Receiver who recommended that allowance, and the subsequent payment of more than $175,000 (and counting) on that claim.

Accordingly, the Receiver respectfully submits that Mr. Gally has not provided this Court with an appropriate basis for permissive intervention. His Motion should be denied.

D. Mr. Gally's Damages Arise Exclusively From The Essex Note And There Is Therefore No Basis For Lifting The Asset Freeze.

As detailed extensively, above, Mr. Gally's claim for damages, by his own admission, is derived exclusively from Essex's breach of the Essex Note. Having had a claim for those damages adjudicated, in his favor, by this Court, Mr. Gally is barred from seeking to pursue any related claims against third parties, including CVL, an entity in which the Estate still claims an interest. This is especially true given Mr. Gally's apparent intent to prosecute barred claims in a deliberate effort to undermine the Receiver's ability to sell the Estate's interest in CVL and thereby increase the value of the very estate from which allowed claims are being paid. As such, there is simply no basis for granting Mr. Gally relief from the asset freeze imposed pursuant to the Appointment Order and his Motion should be denied.

E. Mr. Gally's Motion Reflects A Deliberate Effort To Interfere With The Receiver's Administration Of The Estate.

The Appointment Order imposes specific asset freeze over certain real and personal property of CVL. (*See* ECF No. 66 §§ V, VI.) In addition, it grants the Receiver exclusive authority and control over assets of the Receivership Entities (*Id.*

at § XI) and affirmatively bars third parties from engaging in self-help (including litigation) against the Receivership Entities or receivership assets, and from "doing any act … whatsoever to interfere with … management by the Receiver … of the property and assets" of the Estate. (*Id.* at § XIV.) The Estate's interest in CVL is a receivership asset. By his own admission, Mr. Gally seeks to commence litigation against CVL in order to circumvent the Receiver's "intent to liquidate his partial interest in CVL" – which he falsely claims will benefit every holder of an allowed claim but him. Yet the claims that he seeks to pursue are both barred by the doctrine of *res judicata* and factually and legally unsupportable given that his damages arose exclusively from the Essex Note. As such, they cannot be prosecuted in good faith and the Receiver respectfully submits that Mr. Gally's Motion – which has imposed additional expenses upon the Estate to oppose – reflects a deliberate effort to interfere with the Receiver's administration of the Estate. Should the Court desire, the Receiver is prepared to submit supplemental briefing on the question of whether Mr. Gally should be ordered to reimburse him for attorneys' fees or similar relied under these circumstances.

IV. CONCLUSION.

For the foregoing reasons, the Receiver respectfully requests that the Court enter an order denying Mr. Gally's Motion, in its entirety and with prejudice.

Dated: July 3, 2025

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
MATTHEW D. PHAM
ALPHAMORLAI L. KEBEH

By: /s/ *David R. Zaro*
DAVID R. ZARO
Attorneys for Receiver
GEOFF WINKLER