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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

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14 **SECURITIES AND EXCHANGE**
COMMISSION,

15 **Plaintiff,**

16 **vs.**

17
18 **RALPH T. IANNELLI and ESSEX**
CAPITAL CORPORATION,

19 **Defendants.**

Case No.

COMPLAINT

20
21
22 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

23 **JURISDICTION AND VENUE**

24 1. The Court has jurisdiction over this action pursuant to Sections 20(b),
25 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
26 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the
27 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
28 78u(d)(3)(A), 78u(e) & 78aa(a).

1 equipment leasing income during that same time period. And according to its own
2 financial statements, Essex sustained a staggering \$32 million in operating losses
3 from 2014 to 2016 (the company has not completed its 2017 financials). This was
4 due, in part, to Essex using the bulk of its revenues to pay back investors and banks
5 instead of using it to purchase income generating equipment. Between 2014 and
6 2016, Essex used approximately \$65 million of its revenues to pay back investors and
7 banks and only approximately \$39.4 million of its revenues to purchase equipment.
8 Nevertheless, Essex has taken several steps to create the illusion that its business
9 model works, allowing it to be exceedingly successful at raising money from
10 investors and bank lenders despite being unprofitable since at least 2014.

11 6. To maintain Essex's veneer of financial success, stay current on its
12 obligations to its promissory note investors, and continue to raise new investor funds,
13 defendants: (i) resorted to a pattern and practice of making Ponzi-like payments (*i.e.*,
14 paying interest and principal owed to investors using other investors' funds) for a
15 total amount of at least \$15 million since 2014; (ii) materially misrepresented Essex's
16 financial condition to a registered investment adviser whose clients eventually
17 invested more than \$8 million in Essex's promissory notes; (iii) lied to another
18 registered investment adviser about the basic structure of its clients' eventual \$23
19 million investment in Essex; and (iv) extended over \$60 million in personal
20 guarantees on investor notes that Iannelli, given his actual net assets, had no hope of
21 being able to honor. Rather than promptly alerting investors to Essex's steep
22 financial losses, Iannelli protected only his own financial interests, by siphoning
23 millions of dollars out the company in the form of discretionary bonuses and no-
24 interest/no-maturity date personal loans to himself from 2014 to the present.

25 7. By engaging in this conduct, Iannelli and Essex have violated the
26 antifraud provisions of Sections 17(a) of the Securities Act of 1933 ("Securities
27 Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and
28 Rule 10b-5 thereunder.

1 8. The SEC seeks a preliminary injunction against Iannelli and Essex
2 prohibiting them from committing future violations. The SEC further seeks against
3 Iannelli and Essex an order requiring an accounting, imposing an asset freeze, and
4 appointing a permanent receiver over Essex and all its assets.

5 **THE DEFENDANTS**

6 9. **Ralph T. Iannelli** resides in Santa Barbara, California and is the
7 president and founder of Essex Capital Corporation. In or about August 1974, the
8 SEC filed a complaint against Iannelli, alleging that he violated the antifraud
9 provisions of federal securities laws, namely Section 17(a) of the Securities Act and
10 Section 10(b) of the Exchange Act, by purchasing over 100,000 shares of stock for
11 clients without their consent in order to manipulate the price of the stock. *SEC v.*
12 *Iannelli et al.*, Case No. 74-cv-3417, 1975 WL 348 (S.D.N.Y. 1975). Iannelli
13 consented to the entry of a permanent injunction and later to an order permanently
14 barring him from association with any broker, dealer, investment company or
15 investment adviser. *Id.* On March 31, 1976, Iannelli was convicted of criminal
16 contempt for violating the 1974 permanent injunction to which he consented.

17 10. **Essex Capital Corporation** is a California company founded by Iannelli
18 in 1993 with its principal place of business in Santa Barbara, California. Essex
19 operates as a lease financing business and is wholly owned by Iannelli. Essex is not
20 registered with the Commission in any capacity.

21 **RELEVANT ENTITIES**

22 11. **Investment Advisor A** registered as an investment adviser firm in 2003
23 and is located in Santa Barbara, California. As of December 31, 2017, Investment
24 Advisor A had approximately 30 clients who are high net worth individuals and over
25 \$270,000,000 in assets under management. Investment Advisor A has no disciplinary
26 history with the SEC.

27 12. **Investment Advisor B** registered as an investment adviser firm in 2014
28 and is located in New York City, New York. As of December 31, 2017, Investment

1 Advisor B had approximately 16 clients who are high net worth individuals and over
2 \$720,000,000 in assets under management. Investment Advisor B has no disciplinary
3 history with the SEC.

4 **THE FRAUDULENT SCHEME**

5 **A. Essex's Purported Business Model**

6 13. Iannelli has been Essex's sole shareholder and president and chief
7 executive officer since approximately 1996. Iannelli claims that he has over 35-years
8 of experience in the equipment leasing industry and has focused Essex's business on
9 providing late stage startup companies with access to capital equipment.

10 14. The equipment that Essex claims to lease to startup companies is
11 specialized business essential equipment, including durable medical equipment such
12 as wheelchairs and hospital beds.

13 15. Iannelli has raised capital for Essex by soliciting his friends and
14 members of his community, who are high net worth individuals in and around Santa
15 Barbara, California, to invest in Essex. Some of these friends and community
16 members referred other investors to Essex. Iannelli typically offered investors
17 promissory notes as the investment vehicle, where the interest rate and other terms of
18 their investments were set forth. The promissory notes that Iannelli offered investors
19 between 2014 and 2017 typically promised investors interest of approximately 8.5
20 percent interest, but occasionally as high as 10 percent interest, and in or around
21 2011, occasionally as low as 3 percent interest. Essex's promissory notes were
22 securities in the form of investment contracts involving the note holders' investment
23 of money, in a common enterprise, with the expectation that returns on the notes
24 would be derived from the efforts of Iannelli and Essex. Iannelli also raised capital
25 for Essex by borrowing money from a local bank in Santa Barbara and at least one
26 other financial institution and has, on at least two occasions, raised capital through
27 soliciting registered investment advisers looking for higher yield investments for their
28 clients.

1 16. In one of its marketing materials, Essex claimed that 100 percent of
2 investor funds would be used towards the purchase of equipment and investors would
3 be paid back over 36 months, including their principal plus 8 percent interest. Essex
4 claimed it would do this by structuring the equipment lease payments so that its
5 customers pay back the cost of the equipment over the 36 months at a fixed interest
6 rate that can generate a total return of up to 11 percent.

7 17. Essex has offered some of its investors what it referred to as “residual”
8 payments. According to Essex, these are the lease payments that it receives after the
9 original lease term has expired or the payments it receives as a result of selling the
10 equipment, which it says it typically sells for 10 to 20 percent of the original
11 acquisition cost.

12 18. Although the promissory notes generally specify a maturity date when
13 investors can redeem their investments, Iannelli has amended several notes to add
14 language that requires investors to provide a 90 day-notice of their intent to redeem or
15 else their investments would automatically be “rolled over” and they would continue
16 to receive their monthly payment amounts.

17 **B. The Misappropriation of Investor Funds**

18 19. By 2014, Essex was raising substantially more funds from its promissory
19 note investors and its limited partnership investors than it was using to purchase
20 equipment. In 2014, Essex raised over \$20 million from its promissory note investors
21 and limited partnership investors, and borrowed an additional \$6 million from banks,
22 yet it only spent approximately \$2.3 million – less than 9% – of its incoming funds to
23 purchase equipment. That same year, Essex spent more than \$25 million of its
24 incoming funds paying back investors and banks, and because of addition operating
25 expenses ended up with a net operating loss of over \$2 million.

26 20. This trend continued in 2015 and 2016. In 2015, Essex raised over \$30
27 million from its promissory note investors and limited partnership investors, and
28 borrowed an additional \$13 million from banks, yet it only spent approximately \$14.3

1 million – roughly 30% of its revenue - to purchase equipment. That same year, Essex
2 spent more than more than \$26 million of its incoming funds paying back investors
3 and banks, and because of additional operating expenses ended up with a net
4 operating loss of over \$7 million.

5 21. In 2016, Essex again raised over \$30 million from its promissory note
6 investors and limited partnership investors, and borrowed an additional \$2.8 million
7 from banks, yet it only spent approximately \$22.7 million to purchase equipment.
8 That same year, Essex spent more than \$13 million of its incoming funds paying back
9 investors and banks, and because of additional operating expenses ended up with a
10 net operating loss of over \$22.8 million.

11 22. Between 2014 and early 2017, based on bank statement analysis, Essex’s
12 main source of cash flow was the money that it received from investor-funded
13 promissory notes and investor-funded LLCs, not the money that it received from
14 leasing equipment.

15 23. For example, in 2014, only 18 percent of Essex’s cash flow
16 (approximately \$6,517,936) came from leasing income, while 65 percent of its cash
17 flow for that same year (approximately \$24,026,838) came from bank loans and
18 investor-funded promissory notes and partnerships.

19 24. In 2015, only 16 percent of Essex’s cash flow (approximately
20 \$9,243,319) came from leasing income, while 79 percent of its cash flow for that
21 same year (approximately \$44,899,377) came from bank loans and investor-funded
22 promissory notes.

23 25. In 2016, only 25 percent of Essex’s cash flow (approximately
24 \$17,615,342) came from leasing income, while 63 percent of its cash flow for that
25 same year (approximately \$45,165,276) came from bank loans and investor-funded
26 promissory notes and partnerships.

27 26. With leasing revenue making up such a small percentage of Essex’s cash
28 flow year-after-year, Essex could not cover the principal and interest payments that it

1 owed to its banks and investors using just the lease payments. Instead, Essex
2 engaged in a pattern of Ponzi-like payments.

3 27. According to Essex's financial records, including its QuickBooks
4 records, between 2014 through 2017, Essex made approximately 89 different
5 payments to existing investors using funds that it had received from its new investors
6 in an aggregate amount of about \$15.6 million:

7 Year	8 # of Ponzi-Like Payments	9 Total Amount of Ponzi-Like Payments
10 2014	11 21 payments	12 \$5.8 million
13 2015	14 44 payments	15 \$6.0 million
16 2016	17 11 payments	18 \$2.4 million
19 2017	20 13 payments	21 \$1.4 million
22 TOTAL	23 89 payments	24 \$15.6 million

25 28. That Iannelli and Essex were engaging in a pattern and practice of
26 Ponzi-like payments in order to stay current on Essex's obligations to promissory
27 note investors – which was never disclosed by defendants to its investors – would
28 have been important to a reasonable investor when making the decision to invest in
Essex's promissory note instruments.

29 C. Essex's False Financial Statements

30 29. In or about June 2013, one of the banks that loaned money to Essex
31 requested Iannelli to provide the bank with Essex's financial statements. Iannelli
32 retained an outside accounting firm to prepare Essex's financial statements.

33 30. On or about January 2, 2014, Iannelli provided the outside accountant
34 with several documents that he knew the outside account would rely on in preparing
35 Essex's financial statements, including a Form S-1 Registration Statement for filing

1 with the SEC that erroneously indicated that Essex owned approximately 1.4 million
2 shares of a startup company that Essex had leased equipment to since 2013 (“Startup
3 Company”).

4 31. Iannelli knew, or was reckless or negligent in not knowing, that the
5 Form S-1 he provided to Essex’s outside accountant vastly overstated the amount of
6 shares Essex owned in Startup Company.

7 32. On at least three separate occasions, Iannelli received information
8 showing that Essex’s shares in Startup Company were a fraction of what he had
9 reported to the outside accountant.

10 33. On or about January 22, 2014, three weeks after he had sent the Form S-
11 1 containing erroneous information regarding Essex’s ownership interest in Startup
12 Company, Iannelli received an email from Startup Company containing its
13 capitalization table, showing that Essex owned only 111,673 shares of Startup
14 Company.

15 34. On or about February 12, 2014, at Iannelli’s request, Startup Company
16 emailed Iannelli a second and updated capitalization table, showing that Essex owned
17 only 145,501 shares of Startup Company and saying that a final share calculation
18 would be sent to Iannelli within a few weeks.

19 35. On or about March 19, 2014, Iannelli emailed a statement that he had
20 received from Startup Company’s transfer agent to a brokerage firm that Essex was
21 using at the time. The statement made it clear that Essex only owned 113,329 shares
22 of Startup Company.

23 36. Iannelli did not furnish any of this information – the capitalization tables
24 or the transfer agent email – to the outside accountant he retained to compile Essex’s
25 financial statements, and instead allowed the outside accountant to continue to rely on
26 the erroneous Form S-1 to determine the value of Essex’s total assets when preparing
27 its 2014 and 2015 compiled financial statements.

28 37. On or about February 24, 2015, the outside accountant emailed Iannelli a

1 table to review, itemizing the 2014 valuation of Essex's holdings in Startup
2 Company. The table Iannelli received from the outside accountant listed 1,394,737
3 shares of Startup Company as being "held directly" by Essex and valued them at
4 approximately \$26,950,157, and listed 95,737 shares of Startup Company held in
5 Essex's brokerage accounts and valued them at approximately \$1,859,596.

6 38. Iannelli knew, or was reckless or negligent in not knowing, that neither
7 he nor Essex held any of Startup Company's shares "directly" and that Essex's only
8 shares in Startup Company at that point were those shares in Essex's brokerage
9 account.

10 39. Iannelli did not correct the inaccuracy in the table that he received from
11 the outside accountant and instead wrote back, "Thanks and then we have [Startup
12 Company's] warrants." Nor did Iannelli correct this false information when it
13 appeared in Essex's 2014 and 2015 compiled financial statements.

14 40. Iannelli never discussed this inaccuracy in Essex's 2014 and 2015
15 compiled financial statements ("the false financial statements") with Essex's outside
16 accountant until 2017, well after April 2016 when Iannelli "had a firm belief" that the
17 information he had provided to the outside accountant regarding the number of shares
18 Essex owned in Startup Company was "wrong."

19 **D. Misrepresentations to Investment Advisor A**

20 41. The Manager of Investment Advisor A was primarily responsible for
21 advising the clients of Investment Advisor A on their investment decisions. Since
22 approximately 2002, the Manager of Investment Advisor A has been recommending
23 Essex as an investment to clients who wanted higher yield investments, because
24 Essex offered a return of between eight and eleven percent to its investors.

25 42. Between February 2015 and March 2017, more than 20 clients of
26 Investment Advisor A invested approximately \$8.1 million in Essex promissory
27 notes. A material factor in the Manager of Investment Advisor A's decision to
28 recommend Essex as an investment to clients were the false financial statements

1 prepared by Essex's outside accountant for Essex for 2014 and 2015.

2 43. As set forth above, the false financial statements that the Manager of
3 Investment Advisor A relied on in recommending Essex to clients was based on the
4 erroneous information that Essex owned approximately 1,394,737 shares of Startup
5 Company that were allegedly worth approximately \$26,950,157.

6 44. On or about January 22, 2015, Iannelli directed Essex's outside
7 accountant to provide the Manager of Investment Advisor A with the false financial
8 statements, as of December 31, 2013.

9 45. Specifically, the December 31, 2013 false financial statements that the
10 Manager of Investment Advisor A received from Essex's outside accountant falsely
11 stated, among other things, that Essex's private equity holdings had an estimated fair
12 value of \$56,669,907, including shares in Startup Company worth approximately
13 \$31,569,000, and a subsequent event note that falsely stated that Essex had a
14 \$37,174,000 ownership interest in Startup Company. These false statements in the
15 December 31, 2013 financial statements were material to the Manager of Investment
16 Advisor A's decision to recommend, and continue to recommend, Essex as an
17 investment to clients.

18 46. The December 31, 2013 false financial statements also incorrectly stated,
19 among other things, that Essex's assets totaled approximately \$97,893,703 and that
20 its liabilities totaled approximately \$82,294,959. This was also material to the
21 Manager of Investment Advisor A's decision to recommend, and continue to
22 recommend, Essex as an investment to clients.

23 47. As the Manager of Investment Advisor A continued to recommend
24 Essex as an investment to clients, Iannelli continued to provide, and have Essex's
25 outside accountant provide, the Manager of Investment Advisor A with the false
26 financial statements for Essex.

27 48. On or about March 9, 2015, Iannelli directed Essex's outside accountant
28 to provide the Manager of Investment Advisor A with the false compiled financial

1 statements for Essex, as of September 30, 2014.

2 49. The September 30, 2014 false financial statements provided to the
3 Manager of Investment Advisor A incorrectly stated, among other things, that
4 Essex's assets totaled approximately \$97,365,555 and that its liabilities totaled
5 approximately \$83,666,499. This was material to the Manager of Investment Advisor
6 A's decision to recommend, and continue to recommend, Essex as an investment to
7 clients.

8 50. Unbeknownst to the Manager of Investment Advisor A, as of December
9 31, 2014, Essex's assets only totaled approximately \$67,466,124 and its liabilities
10 totaled approximately \$72,785,820.

11 51. Had the Manager of Investment Advisor A known this, it would have
12 caused the Manager of Investment Advisor A to scrutinize Essex more closely before
13 recommending it as an investment to clients and would have impacted the Manager
14 of Investment Advisor A's decision to recommend, and continue recommending,
15 Essex as an investment to clients.

16 52. In 2016, Iannelli provided, or directed Essex's outside accountant to
17 provide, the Manager of Investment Advisor A with the false financial statements for
18 Essex, as of September 30, 2015.

19 53. The September 30, 2015 false financial statements that the Manager of
20 Investment Advisor A received incorrectly stated, among other things, that Essex's
21 assets totaled approximately \$123,742,107 and its liabilities totaled approximately
22 \$107,472,624. This was material to the Manager of Investment Advisor A's decision
23 to recommend, and continue to recommend, Essex as an investment to clients.

24 54. Unbeknownst to the Manager of Investment Advisor A, as of December
25 31, 2015, Essex's assets only totaled approximately \$82,652,514 and its liabilities
26 totaled approximately \$95,014,423.

27 55. Had the Manager of Investment Advisor A known this, it would have
28 caused the Manager of Investment Advisor A to scrutinize Essex more closely before

1 recommending it as an investment to clients and would have impacted the Manager
2 of Investment Advisor A's decision to recommend, and continue to recommend,
3 Essex as an investment to clients.

4 56. Throughout this time period, Iannelli led the Manager of Investment
5 Advisor A to believe that the false financial statements he received for Essex were, in
6 fact, accurate.

7 **E. Misrepresentations to Investment Advisor B**

8 57. The General Manager of Investment Advisor B was primarily
9 responsible for advising clients of Investment Advisor B on investment decisions.
10 Between 2015 and 2016, approximately 15 clients of Investment Advisor B invested
11 in Essex and their combined investments totaled approximately \$23 million.

12 58. The clients of Investment Advisor B invested in Essex through
13 convertible promissory notes that were supposed to be converted into ownership
14 interests in two limited liability companies (LLC's).

15 59. In or about October 2015, the General Manager of Investment Advisor B
16 began recommending Essex as an investment to clients who wanted a higher yield on
17 their investments. Iannelli made several material false and misleading statements to
18 the General Manager of Investment Advisor B and others acting on behalf of
19 Investment Advisor B when describing how the investments would be structured and
20 how investor funds would be spent.

21 60. Back in June 2015, Iannelli had met with the General Manager and
22 others at Investment Advisor B in New York and told them that Essex would match
23 "one-to-one" the investments that its clients made in Essex. According to Iannelli,
24 the clients of Investment Advisor B would invest in Essex through convertible
25 promissory notes, which they would assign to one of the LLC's and, in exchange,
26 receive a 50 percent membership interest in that LLC. At the same time, Iannelli
27 would assign to the LLC's any leases that Essex obtained using the funds the clients
28 invested, which would make the LLC's entitled to the lease payments. When the

1 lease payments were received, Essex would receive approximately 20 percent of the
2 payments and the clients of Investment Advisor B would receive approximately 80
3 percent. The clients of Investment Advisor B would also receive all or a portion of
4 the warrants and securities issued to Essex by the lessees, and all or a portion of the
5 residual value of the leased equipment at the end of the lease term.

6 61. After the clients of Investment Advisor B began investing in Essex,
7 Iannelli took steps to make it appear as though he and Essex were carrying out the
8 promises and representations they had made. On or about October 30, 2015, Iannelli
9 sent the Managing Member of Investment Advisor B an email stating, “The first 4
10 million was attributed to [four companies that leased equipment from Essex]” and
11 “the next two million will be for [two more companies that leased equipment from
12 Essex].”

13 62. On or about December 21, 2015, Iannelli executed an “Assignment of
14 Equipment Leases” on behalf of Essex in which he purported to assign to one of the
15 LLC’s “all right, title, and interest of [Essex] in the Equipment Lease Agreements
16 referenced on Schedule A.”

17 63. On or about April 26, 2016, after its clients had begun investing in
18 Essex, the Managing Member of Investment Advisor B sent Iannelli an email asking
19 Iannelli to confirm that Essex would still be investing “1:1 alongside us.” Iannelli
20 wrote back saying, “As always we are 50/50 on each transaction.”

21 64. On or about January 14, 2017, when the General Manager of Investment
22 Advisor B asked Iannelli to send marketing materials for Essex to one of its clients,
23 Iannelli sent the General Manager of Investment Advisor B materials that stated,
24 among other things, Essex would invest “side-by-side” with its investors.

25 65. All of these representations that Iannelli made to the General Manager
26 and others at Investment Advisor B were materially false and misleading. Iannelli
27 and Essex never matched any of the money that the clients of Investment Advisor B
28 invested in Essex. Iannelli knew, or was reckless or negligent in not knowing, that

1 Essex could not match those investments because Essex did not have sufficient funds
2 to do so.

3 66. Iannelli never assigned the equipment leases to the two LLC's as he
4 promised. Iannelli knew, or was reckless or negligent in not knowing, that neither he
5 nor Essex could assign the equipment leases identified in his October 30, 2015 email
6 to the LLC's, because Iannelli himself had already pledged those leases as the
7 security for loans Essex had with banks. And for those leases that he had not already
8 pledged, instead of assigning them to the LLC's as represented, Iannelli used them as
9 collateral for still more bank loans.

10 67. Defendants' misrepresentations about two key aspects of Investment
11 Advisor B's clients' investment – that Essex would match their investment dollar for
12 dollar as well as assign the equipment leases financed by their investment to an LLC
13 vehicle jointly-owned by those investors – were material because they concerned
14 facts that a reasonable investor would consider important when deciding to invest.
15 Indeed, had Investment Advisor B known that leases were not going to be assigned to
16 the LLC vehicles, it never would have invested its clients in Essex.

17 **F. Misrepresentations to Investment Advisors A and B, and Other Investors**

18 68. Another misrepresentation that Iannelli made to the Manager and
19 General Manager of Investment Advisors A and B, respectively, as well as to his
20 other investors, was that Iannelli would personally guarantee their investments.

21 69. For example, between 2015 and 2017, Iannelli led the Manager of
22 Investment Advisor A to believe that he had only given this personal guarantee to a
23 few investors. Iannelli provided, or instructed Essex's outside accountant to provide,
24 the Manager of Investment Advisor A with Essex's September 30, 2015 compiled
25 financial statements, which falsely stated, among other things, that Iannelli had only
26 personally guaranteed recourse notes totaling \$11,514,525, as of September 30, 2015.
27 Iannelli's representation that he would personally guarantee the investments and
28 Essex's compiled financial statements were material to the Manager of Investment

1 Advisor A’s decision to recommend, and continue to recommend, Essex as an
2 investment to clients.

3 70. Unbeknownst to the Manager and General Manager of Investment
4 Advisors A and B, respectively, Iannelli personally guaranteed more than \$60 million
5 in promissory notes and debt between 2014 and 2017. This was nearly five times
6 greater than the value of Iannelli’s personal assets at the time.

7 71. Iannelli has admitted, under oath, that he “knew” he could not back up
8 the personal guarantee he gave to the clients of Investment Advisor A and other
9 investors, even though his investors “felt better knowing that [he] was personally
10 guaranteeing the note.”

11 72. Iannelli’s failure to disclose that his personal guarantee was practically
12 meaningless, given the extent to which he had guaranteed Essex’s promissory note
13 obligations, was material because it concerned facts that a reasonable investor would
14 consider important when deciding to invest. Indeed, had the Manager of Investment
15 Advisor A and General Manager of Investment Advisor B known that Iannelli could
16 not stand behind his personal guarantee, they would not have recommended, or
17 continue to recommend, Essex as an investment to clients.

18 **G. Iannelli Profited From the Fraud**

19 73. Although equipment leasing – the purported core of Essex’s business –
20 had stopped being the primary source of its revenue between 2014 and 2017, Iannelli
21 continued to siphon millions of dollars out of the company in the form of
22 discretionary bonuses and interest-free personal loans to himself:

23 Year	Description	Payment
24 2014	Discretionary Bonus	\$500,000
25 2014	Loan from Essex to Iannelli	\$2.1 million
26 2015	Discretionary Bonus	\$500,000
27		
28		

2015	Loan from Essex to Iannelli	\$1.8 million
2016	Discretionary Bonus	\$700,000
2016	Loan from Essex to Iannelli	\$2 million
TOTAL		\$7.6 million

H. Iannelli Acted with Scienter and Negligently

74. As set forth above, Iannelli knew, or was reckless or negligent in not knowing, that the representations he made to the Manager and General Manager of Investment Advisors A and B, as well as to other investors, regarding their investments in Essex were materially false and misleading.

75. Iannelli knew, or was reckless or negligent in not knowing, that the Form S-1 he provided to Essex's outside accountant was false and misleading, because shortly after he provided it he received multiple emails containing capitalization tables, showing that Essex's shares in the startup company were substantially less than 1.4 million shares reflected in its Form S-1. Iannelli also received Essex's brokerage account statements and an email from Essex's transfer agent showing that the Form S-1 he provided to Essex's outside accountant was false and inaccurate, and admitted under oath that by April 2016 he had a "firm belief" that the information he had provided to the outside accountant regarding the number of shares Essex owned in the startup company was "wrong."

76. Iannelli knew, or was reckless or negligent in not knowing, that the compiled financial statements he provided, or directed Essex's outside accountant to provide, the Manager of Investment Advisor A were false and misleading, because he had received an email from Essex's outside accountant showing that at least one of the compiled financial statements was based on the false Form S-1 Iannelli had provided, and that it falsely listed Essex's total assets as including approximately 1.4

1 million shares in Startup Company worth approximately \$31,569,000. Iannelli did
2 not correct this inaccuracy in the compiled financial statements even though Essex's
3 outside accountant asked Iannelli to review the compiled financial statements and
4 Iannelli had information showing that it was false.

5 77. Iannelli knew, or was reckless or negligent in not knowing, that Essex
6 could not match "one-to-one" the investments that Investment Advisor B's clients
7 made in Essex, because, as Iannelli later admitted under oath, Essex did not have
8 sufficient funds to match the \$23 million invested by Investment Advisor B's clients.

9 78. Iannelli knew, or was reckless or negligent in not knowing, that Essex
10 could not assign the LLC's the equipment leases identified in his October 30, 2015
11 email to the Managing Member of Investment Advisor B, because Iannelli had
12 already pledged many of those leases as security for loans he had previously taken
13 out with banks.

14 79. Iannelli knew, or was reckless or negligent in not knowing, that he could
15 not fulfill his promise to personally guarantee the investments made by the clients of
16 Investment Advisors A and B, and the investments made by Essex's other investors,
17 because, in total, Iannelli had personally guaranteed more than \$60 million in
18 promissory notes and debts between 2014 and 2017, an amount nearly five times
19 greater than the value of Iannelli's personal assets.

20 **I. Essex Is on the Verge of Collapse and Investor Funds are at Risk of**
21 **Dissipation**

22 80. As set forth above, Essex's ability to pay back its current investors
23 depends almost entirely on its ability to obtain loans from banks or raise additional
24 funds from investors, which have been threatened by Essex's true financial condition
25 beginning to come to light in or about March 2017. This has left Essex on the verge
26 of collapse.

27 81. In or about May 2017, after learning of the SEC's investigation, Iannelli
28 provided Essex's outside accountant with the accurate information regarding the

1 actual number of shares it owned in Startup Company, which ultimately led the
2 outside accountant to restate Essex's financial statements for 2014 and 2015.

3 82. According to Essex's restated financial statements, in 2014, Essex
4 operated at a net loss of \$2,142,469 in 2014 and at a net loss of \$7,042,213 in 2015.
5 Essex's outside accountant also expressed "substantial doubt" about Essex's ability to
6 continue as a going concern. Essex's 2016 financial statements report a net loss of
7 \$22.8 million.

8 83. According to Essex financial records from January 1, 2014 through
9 March 30, 2018, Essex's debt obligation for 2017 in principal and interest owed to
10 investors and banks totaled \$40,289,130, while its revenue from lease income in 2017
11 was just \$17,969,759.

12 84. According to those same financial records, Essex currently owes one of
13 its commercial lenders \$8 million, its investor-funded partnership entities \$20
14 million, and its investor-funded promissory notes \$50 million. However, Essex only
15 has \$5.9 million in unencumbered assets in its brokerage account.

16 85. According to schedules produced by Essex during the SEC's
17 investigation, Essex currently owes its promissory note investors approximately \$28
18 million, and that only represents the promissory notes that have matured, which Essex
19 would have to repay in the near term if those investors exercised their right of
20 redemption.

21 86. In addition to being insolvent, Essex's remaining assets are at risk of
22 being spent in a manner that gives preferential treatment to certain investors and
23 leaves others empty-handed. On or about November 15, 2017, Iannelli admitted that
24 one of the ways he has been meeting Essex's obligations is by singlehandedly
25 liquidating some of Essex's marketable securities and by using Essex's margin
26 account collateralized by its marketable securities.

27 87. Unlike the clients of Investment Advisors A and B, many of Essex's
28 other investors are Iannelli's friends and their referrals, and Iannelli has already

1 begun using Essex's remaining assets to offer preferential payouts to those friends
2 and referrals to the detriment of Investment Advisors A and B's clients.

3 **FIRST CLAIM FOR RELIEF**

4 **Fraud in the Connection with the Purchase and Sale of Securities**

5 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

6 **(against All Defendants)**

7 88. The SEC realleges and incorporates by reference paragraphs 1 through
8 87 above.

9 89. Defendants Iannelli and Essex each defrauded investors by making false
10 and misleading statements about Essex's and Iannelli's financial condition and by
11 claiming that investor funds would be used to purchase equipment Essex was going
12 to leasing to its customers when, in fact, they knew, or were reckless or negligent in
13 not knowing, that Essex's and Iannelli's liabilities far exceeded their assets and they
14 were misappropriating and misusing investor funds to make Ponzi-like payments to
15 existing investors and for the personal benefit of Iannelli.

16 90. By engaging in the conduct described above, defendants Iannelli and
17 Essex, and each of them, directly or indirectly, in connection with the purchase or
18 sale of a security, by the use of means or instrumentalities of interstate commerce, of
19 the mails, or of the facilities of a national securities exchange: (a) employed devices,
20 schemes, or artifices to defraud; (b) made untrue statements of a material fact or
21 omitted to state a material fact necessary in order to make the statements made, in the
22 light of the circumstances under which they were made, not misleading; and (c)
23 engaged in acts, practices, or courses of business which operated or would operate as
24 a fraud or deceit upon other persons.

25 91. By engaging in the conduct described above, defendants Iannelli and
26 Essex violated, and unless restrained and enjoined will continue to violate, Section
27 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a), 10b-5(b), and
28 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a), 240.10b-5(b) & 240.10b-5(c).

1 **SECOND CLAIM FOR RELIEF**

2 **Fraud in the Offer or Sale of Securities**

3 **Violations of Section 17(a) of the Securities Act**

4 **(against All Defendants)**

5 92. The SEC realleges and incorporates by reference paragraphs 1 through
6 87 above.

7 93. Defendants Iannelli and Essex each defrauded investors through false
8 and misleading statements about Essex’s and Iannelli’s financial condition and by
9 claiming that investor funds would be used to purchase equipment Essex was going
10 to leasing to its customers when, in fact, they knew, or were reckless or negligent in
11 not knowing, that Essex’s and Iannelli’s liabilities far exceeded their assets and they
12 were misappropriating and misusing investor funds to make Ponzi-like payments to
13 existing investors and for the personal benefit of Iannelli.

14 94. By engaging in the conduct described above, defendants Iannelli and
15 Essex, and each of them, directly or indirectly, in the offer or sale of securities, and
16 by the use of means or instruments of transportation or communication in interstate
17 commerce or by use of the mails directly or indirectly: (a) employed devices,
18 schemes, or artifices to defraud; (b) obtained money or property by means of untrue
19 statements of a material fact or by omitting to state a material fact necessary in order
20 to make the statements made, in light of the circumstances under which they were
21 made, not misleading; and (c) engaged in transactions, practices, or courses of
22 business which operated or would operate as a fraud or deceit upon the purchaser.

23 95. By engaging in the conduct described above, defendants Iannelli and
24 Essex violated, and unless restrained and enjoined will continue to violate, Sections
25 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1),
26 77q(a)(2), & 77q(a)(3).

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that defendants Iannelli and Essex (“defendants”) committed the alleged violations.

II.

Issue orders, in a form consistent with Fed. R. Civ. P. 65(d), preliminarily enjoining defendants, and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining defendants, and their agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

IV.

Issue, in a form consistent with Fed. R. Civ. P. 65, an order freezing the assets of defendants; ordering an accounting by defendants; and appointing a permanent receiver over Essex.

V.

Order defendants to disgorge all funds received from their illegal conduct, together with prejudgment interest thereon.

1 **VI.**

2 Order defendants to pay civil penalties under Section 20(d) of the Securities
3 Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §
4 78u(d)(3)].

5 **VII.**

6 Retain jurisdiction of this action in accordance with the principles of equity and
7 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
8 all orders and decrees that may be entered, or to entertain any suitable application or
9 motion for additional relief within the jurisdiction of this Court.

10 **VIII.**

11 Grant such other and further relief as this Court may determine to be just and
12 necessary.

13 Dated: June 5, 2018

14 */s/ Douglas M. Miller*

15 GARY Y. LEUNG

16 DOUGLAS M. MILLER

17 YOLANDA OCHOA

18 Attorneys for Plaintiff

19 Securities and Exchange Commission