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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 RALPH T. IANNELLI and ESSEX  
16 CAPITAL CORP.,

17 Defendants.

Case No. 2:18-cv-05008-FMO-AFM

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
FIRST INTERIM APPLICATION OF  
RECEIVER, GEOFF WINKLER, AND  
ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP, GENERAL  
COUNSEL TO THE RECEIVER, FOR  
PAYMENT OF FEES AND  
REIMBURSEMENT OF EXPENSES  
[December 21, 2018 - March 31, 2019]

[Notice of Application; First Interim  
Application; Declaration of Geoff  
Winkler; and [Proposed] Order submitted  
concurrently herewith]

Date: May 30, 2019  
Time: 10:00 a.m.  
Ctrm: 6D  
Judge Hon. Fernando M. Olguin

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Pursuant to this Court's December 21, 2018 Order Regarding Preliminary  
4 Injunction and Appointment of a Permanent Receiver (the "Appointment Order")  
5 (Dkt. No. 66) and its February 1, 2019 Order in Aid of Receivership (the "Order in  
6 Aid") (Dkt. No. 69), Geoff Winkler (the "Receiver"), the Court-appointed  
7 permanent receiver for Defendant Essex Capital Corporation ("Essex") and its  
8 subsidiaries and affiliates (collectively, the "Receivership Entities" or "Entities"),  
9 along with his counsel of record, Allen Matkins Leck Gamble Mallory & Natsis  
10 LLP ("Allen Matkins"), hereby submits this Memorandum of Points and Authorities  
11 in support of the concurrently submitted First Interim Application of Receiver,  
12 Geoff Winkler, and Allen Matkins Leck Gamble Mallory & Natsis LLP, General  
13 Counsel to the Receiver, for Payment of Fees and Reimbursement of Expenses (the  
14 "Fee Application"). As discussed below, the Receiver believes that the fees and  
15 expenses incurred in the period from December 21, 2018 through March 31, 2019  
16 (the "Application Period") in connection with the Receiver's pursuit of his duties  
17 under the Appointment Order and Order in Aid are appropriate, and have benefited  
18 the estate of the Receivership Entities. On this basis, the Receiver and Allen  
19 Matkins respectfully request that the Court approve 100% of their respective fees  
20 and expenses, and approve, on an interim basis, payment of 80% of their fees and  
21 100% of their expenses.

22 **II. RELEVANT FACTUAL BACKGROUND.**

23 A full recitation of the procedural history of the above-captioned receivership  
24 matter is unnecessary for the purposes of the Fee Application, particularly given the  
25 Receiver's contemporaneously submitted First Interim Report and Petition for  
26 Further Instructions (the "Interim Report"), which addresses the efforts of the  
27  
28

1 Receiver and his Professionals<sup>1</sup> during the Application Period. That said, the facts  
2 relevant to the Fee Application are as follows:

3       The above-captioned action was commenced on June 5, 2018. (See Dkt.  
4 No. 1.) The Plaintiff Securities and Exchange Commission's (the "Commission")  
5 Complaint alleged that Defendant Ralph Iannelli, by and through certain entities  
6 under his control, committed a number of fraudulent violations of the federal  
7 securities laws, in furtherance of a Ponzi-like investment scheme. (Id.) The Court  
8 entered the Appointment Order on December 21, 2018, granting the Commission's  
9 request for the appointment of a permanent receiver, and imposing certain injunctive  
10 relief against Mr. Iannelli, the Receivership Entities, and anyone acting in concert  
11 with them. (See Dkt. No. 66.) The Appointment Order vested the Receiver with  
12 exclusive authority and control over the Receivership Entities, and assigned him  
13 certain duties, including marshaling and preserving the assets of the Entities  
14 ("Receivership Assets") and preparing and presenting an accounting to the Court.  
15 (Id.) On motion of the Receiver, the Court entered the Order in Aid on February 1,  
16 2019 (see Dkt. No. 69), which approved and authorized the Receiver's engagement  
17 of Allen Matkins and provided additional guidance and instructions regarding the  
18 administration of the instant receivership.

19       As reflected in the Fee Application and the Interim Report, since his  
20 appointment, the Receiver has assumed control over the Receivership Entities and  
21 their estate (the "Estate") and has commenced significant efforts to identify,  
22 marshal, and preserve Receivership Assets, and to understand and document the  
23 business and financial activities of the Receivership Entities. Having diligently  
24 pursued and facilitated the Receiver's duties, as established in the Appointment  
25 Order, the Receiver and his Professionals now request that the Court authorize the  
26 payment of their respective fees and reimbursement of their respective expenses  
27

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28 <sup>1</sup> For the purposes of this Application, the only "Professionals" seeking  
compensation are Allen Matkins.

1 incurred during the Application Period from the Receivership Assets, as detailed  
2 herein and in the Fee Application.

3 **III. ARGUMENT.**

4 **A. The Application Is Reasonable And Appropriate, And Payment**  
5 **Should Be Authorized.**

6 "As a general rule, the expenses and fees of a receivership are a charge upon  
7 the property administered." Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994).  
8 These expenses include the fees and expenses of the Receiver and his Professionals.  
9 Decisions regarding the timing and amount of an award of fees and expenses to the  
10 Receiver and his Professionals are committed to the sound discretion of the Court.  
11 See SEC v. Elliot, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on other  
12 grounds, 998 F.2d 922 (11th Cir. 1993)). Further, "the district court has wide  
13 discretion in distributing receivership assets." Quilling v. Trade Partners, Inc., 572  
14 F.3d 293, 301 (6th Cir. 2009).

15 1. The Fees and Expenses Requested in the Application are  
16 Reasonable.

17 A receiver's fees must be reasonable. See In re San Vicente Med. Partners  
18 Ltd., 962 F.2d 1402, 1409 (9th Cir. 1992). In determining the reasonableness of  
19 fees and expenses requested in this context, the Court should consider the time  
20 records presented, the quality of the work performed, the complexity of the  
21 problems faced, and the benefit of the services rendered to the Estate. SEC v. Fifth  
22 Ave. Coach Lines, Inc., 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973). In a practical  
23 sense, the Court should begin by multiplying the number of hours expended by the  
24 identified hourly rates charged for comparable services in other matters. Sw. Media,  
25 Inc. v. Rau, 708 F.2d 419, 427 (9th Cir. 1983) (superseded on other grounds by  
26 statute as stated in In re Hokulani Square, Inc., 460 B.R. 763, 768 (9th Cir. BAP  
27 2011)).  
28

1 Here, the Fee Application describes the nature of the services that have been  
2 rendered, and, where appropriate, the identity and billing rate of the individual(s)  
3 performing each task. The Receiver and Allen Matkins have endeavored to staff  
4 matters as efficiently as possible in light of the level of experience required and the  
5 complexity of the issues presented. In general, the Fee Application reflects the  
6 Receiver's and Allen Matkins' customary billing rates and the rates charged for  
7 comparable services in other matters, less all agreed-upon discounts and any  
8 reductions specifically identified in the Fee Application. The weighted-average  
9 billing rates of the Receiver and Allen Matkins are as noted in the Fee Application.

10 The Receiver has reviewed the Fee Application, and believes the fee and  
11 expense requests to be fair and reasonable, and an accurate representation of the  
12 work performed. (See concurrently submitted Declaration of Geoff Winkler  
13 ("Winkler Decl.") ¶ 2.) The Receiver likewise believes that the Estate has benefited  
14 from the services identified. (*Id.*)

15 2. The Fees and Expenses Requested in the Application have been  
16 Submitted to the Commission, Without Objection.

17 Courts give great weight to the judgment and experience of the Commission  
18 relating to receiver compensation. "[I]t is proper to [keep] in mind that the  
19 [Commission] is about the only wholly disinterested party in [this] proceeding and  
20 that ... its experience has made it thoroughly familiar with the general attitude of the  
21 Courts and the amounts of allowances made in scores of comparable proceedings."  
22 In re Philadelphia & Reading Coal & Iron Co., 61 F. Supp. 120, 124 (E.D. Pa.  
23 1945). Indeed, the Commission's perspectives are not "mere casual conjectures, but  
24 are recommendations based on closer study than a district judge could ordinarily  
25 give to such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d Cir. 1950) (internal  
26 quotation marks omitted). In fact, "recommendations as to fees of the  
27 [Commission] may be the only solution to the 'very undesirable subjectivity with  
28 variations according to the particular judge under particular circumstances' which

1 has made the fixing of fees seem often to be 'upon nothing more than an ipse dixit  
2 basis.'" Id. Thus, the Commission's perspective on the matter should indeed be  
3 given "great weight," as observed by the court in Fifth Ave. Coach Lines, Inc., 364  
4 F. Supp. at 1222.

5 In order to ensure that the fees and expenses requested in the Application are  
6 appropriate, the Receiver and Allen Matkins submitted their respective invoices to  
7 the Commission for review. The Commission has not objected to the requested fees  
8 and expenses, and has indicated that it does not object to the fee and cost requests  
9 reflected in the Application. The Commission's satisfaction with the subject  
10 invoices therefore merits significant deference. As the Philadelphia & Reading Coal  
11 & Iron Co. court observed, the Commission is "thoroughly familiar with ... the  
12 amounts of allowances made in scores of comparable proceedings." 61 F. Supp. at  
13 124. Indeed, the Commission is likely in the best position to measure the fees and  
14 expenses requested in the instant receivership against those incurred in other, similar  
15 proceedings, and cases of similar complexity. The Receiver and Allen Matkins thus  
16 respectfully request that the Court approve all requested fees and expenses reflected  
17 in the Application.

18 **B. The Receiver Should Be Authorized To Pay Allowed Fees And**  
19 **Expenses From Cash On-Hand.**

20 As of the date of the Fee Application, the Receiver has recovered  
21 approximately \$1,453,183.83 in the course of his administration of the Receivership  
22 Entities, largely consisting of funds recovered from bank accounts and paid over in  
23 connection with the Entities' remaining equipment leases. (Winkler Decl. ¶ 3.) As  
24 reflected in the Fee Application, the Receiver requests that the Court approve his  
25 fees in the amount of \$363,747.70 and his expenses in the amount of \$10,445.10,  
26 and that the Court authorize an interim payment of 80% of his fees, or \$290,998.16  
27 and 100% of his expenses, or \$10,445.10. Likewise, Allen Matkins requests that the  
28 Court approve its fees in the amount of \$155,166.75 and its expenses in the amount

1 of \$3,882.63, and that the Court authorize an interim payment of 80% of his fees, or  
2 \$124,133.40 and 100% of its expenses, or \$3,882.63. In the aggregate, the Receiver  
3 holds funds in excess of those requested in the Application, and the Receiver  
4 respectfully requests the Court's permission to pay requested fees and expenses from  
5 this cash on-hand and available from the accounts of the Receivership Entities.

6 1. An Interim Payment is Appropriate.

7 Where, as here, the fees requested are reasonable and "where both the  
8 magnitude and the protracted nature of a case impose economic hardships on  
9 professionals rendering services to the estate[,]" an interim award of fees is  
10 appropriate. CFPB v. Pension Funding, LLC, 2016 U.S. Dist. LEXIS 187607, at \*4  
11 (C.D. Cal. July 7, 2016). Interim allowances are necessary "to relieve counsel and  
12 others from the burden of financing lengthy and complex [] proceedings." In re  
13 Rose Way, Inc., 1990 Bankr. LEXIS 3028, at \*9 (Bankr. S.D. Iowa Mar. 1, 1990)  
14 (citing In re Mansfield Tire & Rubber Co., 19 B.R. 125 (Bankr. N.D. Ohio 1981)).

15 Here, as is customary in federal receivership matters, the Receiver and his  
16 Professionals perform services for the benefit of the Estate ahead of time, and may  
17 not be compensated until months later. In order to ensure that fee and expense  
18 requests – and their attendant payments – stay relatively current with services  
19 actually performed, the Receiver and Allen Matkins requested (and the Court  
20 agreed, in the Order in Aid) to submit applications for payment of fees and  
21 reimbursement of expenses approximately every three months.

22 **IV. CONCLUSION.**

23 For the foregoing reasons, the Receiver and Allen Matkins therefore  
24 respectfully request that this Court enter an order:

- 25 1. Granting the Fee Application, in its entirety;
- 26 2. Approving the Receiver's fees, in the amount of \$363,747.70, and  
27 expenses, in the amount of \$10,445.10;

28

1           3.       Authorizing the Receiver to make an interim payment to himself in the  
2 amount of 80% of his fees, or \$290,998.16 and 100% of his expenses, in the amount  
3 of \$10,445.10, from the funds he presently holds for the administration and benefit  
4 of the Receivership Entities;

5           4.       Approving Allen Matkins' fees, in the amount of \$155,166.75, and  
6 expenses, in the amount of \$3,882.63; and

7           5.       Authorizing the Receiver to make an interim payment to Allen Matkins  
8 in the amount of 80% of its fees, or \$124,133.40 and 100% of his expenses, in the  
9 amount of \$3,882.63, from the funds he presently holds for the administration and  
10 benefit of the Receivership Entities.

11  
12 Dated: April 30, 2019

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
JOSHUA A. DEL CASTILLO  
NORMAN M. ASPIS

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14  
15 By:           /s/          Joshua A. del Castillo          

JOSHUA A. DEL CASTILLO  
Attorneys for Receiver  
GEOFF WINKLER

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**PROOF OF SERVICE**

*Securities and Exchange Commission v. Ralph T. Iannelli and Essex Capital Corporation*  
USDC, Central District of California – Case No. 2:18-cv-05008-FMO-AFM

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

On **April 30, 2019**, I caused to be served the document entitled: **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FIRST INTERIM APPLICATION OF RECEIVER, GEOFF WINKLER, AND ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP, GENERAL COUNSEL TO THE RECEIVER, FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES** on all the parties to this action addressed as stated on the attached service list.

- OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.
- OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelope(s) or package(s) designed by the express service carrier, addressed as indicated on the attached service list, with fees for overnight delivery paid or provided for.
- HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.
- ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.
- E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.
- FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **April 30, 2019** at Los Angeles, California.

/s/ Martha Diaz  
Martha Diaz

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**SERVICE LIST**

*Securities and Exchange Commission v. Ralph T. Iannelli and Essex Capital Corporation*  
USDC, Central District of California – Case No. 2:18-cv-05008-FMO-AFM

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