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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
SECOND 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
[April 1, 2019 - June 30, 2019]

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

Date: September 19, 2019
Time: 10:00 a.m.
Ctrm: 6D
Judge Hon. Fernando M. Olguin

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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 (ECF No. 66) and its February 1, 2019 Order in Aid of Receivership (the "Order in
6 Aid") (ECF 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" or "Professionals"), hereby submits this Memorandum of
11 Points and Authorities in support of the concurrently submitted Second Interim
12 Application of Receiver, Geoff Winkler, and Allen Matkins Leck Gamble Mallory
13 & Natsis LLP, General Counsel to the Receiver, for Payment of Fees and
14 Reimbursement of Expenses (the "Fee Application"). As discussed below, the
15 Receiver believes that the fees and expenses incurred in the period from April 1,
16 2019 through June 30, 2019 (the "Application Period") in connection with the
17 Receiver's pursuit of his duties under the Appointment Order and Order in Aid are
18 appropriate, and have benefited the estate of the Receivership Entities. On this
19 basis, the Receiver and Allen Matkins respectfully request that the Court approve
20 100% of their respective fees and expenses, and approve, on an interim basis,
21 payment of 80% of their fees and 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 Second Interim Report and Petition for
26 Further Instructions (the "Interim Report"), which addresses the efforts of the
27 Receiver and Allen Matkins during the Application Period. That said, the facts
28 relevant to the Fee Application are as follows:

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

17 As reflected in the Fee Application and the Interim Report, the Receiver
18 continued to perform the duties required to protect and preserve the value of the
19 Entities and their Assets, as provided for in the Appointment Order, and to operate
20 the viable portion of the Entities' business as a going concern, during the
21 Application Period. Having diligently pursued and facilitated the Receiver's duties,
22 the Receiver and Allen Matkins now request that the Court authorize the payment of
23 their respective fees and reimbursement of their respective expenses incurred during
24 the Application Period from the Receivership Assets, as detailed herein and in the
25 Fee Application.

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1 **III. ARGUMENT.**

2 **A. The Fee Application Is Reasonable And Appropriate, And**
3 **Payment Should Be Authorized.**

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

13 1. The Fees and Expenses Requested in the Fee Application are
14 Reasonable.

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

26 Here, the Fee Application describes the nature of the services that have been
27 rendered, and, where appropriate, the identity and billing rate of the individual(s)
28 performing each task. The Receiver and Allen Matkins have endeavored to staff

1 matters as efficiently as possible in light of the level of experience required and the
2 complexity of the issues presented. In general, the Fee Application reflects the
3 Receiver's and Allen Matkins' customary billing rates and the rates charged for
4 comparable services in other matters, less all agreed-upon discounts and any
5 reductions specifically identified in the Fee Application. The weighted-average
6 billing rates of the Receiver and Allen Matkins are as noted in the Fee Application.

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

12 2. The Fees and Expenses Requested in the Fee Application have
13 been Submitted to the Commission, Without Objection.

14 Courts give great weight to the judgment and experience of the Commission
15 relating to receiver compensation. "[I]t is proper to [keep] in mind that the
16 [Commission] is about the only wholly disinterested party in [this] proceeding and
17 that ... its experience has made it thoroughly familiar with the general attitude of the
18 Courts and the amounts of allowances made in scores of comparable proceedings."
19 In re Philadelphia & Reading Coal & Iron Co., 61 F. Supp. 120, 124 (E.D. Pa.
20 1945). Indeed, the Commission's perspectives are not "mere casual conjectures, but
21 are recommendations based on closer study than a district judge could ordinarily
22 give to such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d Cir. 1950) (internal
23 quotation marks omitted). In fact, "recommendations as to fees of the
24 [Commission] may be the only solution to the 'very undesirable subjectivity with
25 variations according to the particular judge under particular circumstances' which
26 has made the fixing of fees seem often to be 'upon nothing more than an ipse dixit
27 basis.'" Id. Thus, the Commission's perspective on the matter should indeed be

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1 given "great weight," as observed by the court in Fifth Ave. Coach Lines, Inc., 364
2 F. Supp. at 1222.

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

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

18 As of the date of the Fee Application, the Receiver has recovered
19 approximately \$2,211,780.02 in the course of his administration of the Receivership
20 Entities, largely consisting of funds recovered from bank accounts and paid over in
21 connection with the Entities' remaining equipment leases. (Winkler Decl. ¶ 3.) As
22 reflected in the Fee Application, the Receiver requests that the Court approve his
23 fees in the amount of \$177,830.75 and his expenses in the amount of \$2,094.12, and
24 that the Court authorize an interim payment of 80% of his fees, or \$142,264.60 and
25 100% of his expenses, or \$2,094.12. Likewise, Allen Matkins requests that the
26 Court approve its fees in the amount of \$130,994.55 and its expenses in the amount
27 of \$1,713.92, and that the Court authorize an interim payment of 80% of its fees, or
28 \$104,795.64 and 100% of its expenses, or \$1,713.92. In the aggregate, the Receiver

1 holds funds in excess of those requested in the Fee Application, and the Receiver
2 respectfully requests the Court's permission to pay requested fees and expenses from
3 this cash on-hand and available from the accounts of the Receivership Entities.

4 1. An Interim Payment is Appropriate.

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

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

20 **IV. CONCLUSION.**

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

- 23 1. Granting the Fee Application, in its entirety;
- 24 2. Approving the Receiver's fees, in the amount of \$177,830.75, and
25 expenses, in the amount of \$2,094.12;
- 26 3. Authorizing the Receiver to make an interim payment to himself in the
27 amount of 80% of his fees, or \$142,264.60 and 100% of his expenses, in the amount
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1 of \$2,094.12, from the funds he presently holds for the administration and benefit of
2 the Receivership Entities;

3 4. Approving Allen Matkins' fees, in the amount of \$130,994.55, and
4 expenses, in the amount of \$1,713.92; and

5 5. Authorizing the Receiver to make an interim payment to Allen Matkins
6 in the amount of 80% of its fees, or \$104,795.64 and 100% of its expenses, in the
7 amount of \$1,713.92, from the funds he presently holds for the administration and
8 benefit of the Receivership Entities.

9
10 Dated: August 14, 2019

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