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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 v.

22 RALPH T. IANNELLI and ESSEX
23 CAPITAL CORP.,

24 Defendants.

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

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
FOURTH INTERIM APPLICATION OF
RECEIVER, GEOFF WINKLER, AND
HIS PROFESSIONALS FOR
PAYMENT OF FEES AND
REIMBURSEMENT OF EXPENSES
[October 1, 2019 - December 31, 2019]

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

Date: April 9, 2020
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), its February 1, 2019 Order in Aid of Receivership (the "Order in
6 Aid") (ECF No. 69), and its September 9, 2019 Order Regarding Permanent
7 Injunction (the "Permanent Injunction") (ECF No. 113), Geoff Winkler (the
8 "Receiver"), the Court-appointed permanent receiver for Defendant Essex Capital
9 Corporation ("Essex") and its subsidiaries and affiliates (collectively, the
10 "Receivership Entities" or "Entities"), along with his counsel of record, Allen
11 Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"), and his special
12 litigation counsel for the action styled Essex Capital Corp. v. Garipalli, et al.,
13 S.D.N.Y. Case No. 17-cv-06347 (the "Garipalli Action"), the Teitelbaum Law
14 Group, LLC ("Teitelbaum") (Allen Matkins and Teitelbaum are collectively referred
15 to herein as the "Professionals") hereby submit this Memorandum of Points and
16 Authorities in support of the concurrently submitted Fourth Interim Application of
17 Receiver, Geoff Winkler, and His Professionals for Payment of Fees and
18 Reimbursement of Expenses (the "Fee Application").

19 As discussed below, the Receiver believes that the fees and expenses incurred
20 during the period from October 1, 2019 through December 31, 2019 (the
21 "Application Period") in connection with the Receiver's pursuit of his duties under
22 the Appointment Order, Order in Aid, and Permanent Injunction are appropriate,
23 and have benefited the estate of the Receivership Entities. On this basis, the
24 Receiver and his Professionals respectfully request that the Court approve 100% of
25 their respective fees and expenses, and authorize, on an interim basis, payment of
26 80% of their fees and 100% of their expenses.

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1 **II. RELEVANT FACTUAL BACKGROUND.**

2 A full recitation of the procedural history of the above-captioned action is
3 unnecessary for the purposes of the Fee Application, particularly given the
4 Receiver's recently submitted Fourth Interim Report and Petition for Further
5 Instructions (the "Interim Report") (ECF No. 149), which addresses the efforts of
6 the Receiver and his Professionals during the Application Period. That said, the
7 facts relevant to the Fee Application are as follows:

8 The above-captioned action was commenced on June 5, 2018. (See ECF
9 No. 1.) The Plaintiff Securities and Exchange Commission's (the "Commission")
10 Complaint alleged that Defendant Ralph Iannelli, by and through certain entities
11 under his control, committed a number of fraudulent violations of the federal
12 securities laws, in furtherance of a Ponzi-like investment scheme. (Id.) The Court
13 entered the Appointment Order on December 21, 2018, granting the Commission's
14 request for the appointment of a permanent receiver, and imposing certain injunctive
15 relief against Mr. Iannelli, the Receivership Entities, and anyone acting in concert
16 with them. (See ECF No. 66.) The Appointment Order vested the Receiver with
17 exclusive authority and control over the Receivership Entities, and assigned him
18 certain duties, including marshaling and preserving the assets of the Entities
19 ("Receivership Assets" or "Assets") and preparing and presenting an accounting to
20 the Court. (Id.) On motion of the Receiver, the Court entered the Order in Aid on
21 February 1, 2019 (see ECF No. 69), which approved and authorized the Receiver's
22 engagement of Allen Matkins and provided additional guidance and instructions
23 regarding the administration of the instant receivership. On June 5, 2019 and
24 September 9, 2019, Defendants Iannelli and Essex, respectively, consented to the
25 entry of judgment against them. (See ECF Nos. 93 and 110.) The Court then
26 entered its Permanent Injunction on September 9, 2019, pursuant to which it
27 retained jurisdiction over Defendants Iannelli and Essex and the subject matter of
28 the instant receivership. (See ECF No. 113.)

1 As reflected in the Fee Application and the Interim Report, the Receiver
2 continued to perform the duties required to protect and preserve the value of the
3 Entities and their Assets, as provided for in the Appointment Order and Permanent
4 Injunction, and operated the viable portion of the Entities' business as a going
5 concern, during the Application Period. Having diligently pursued and facilitated
6 the Receiver's duties, the Receiver and his Professionals now request that the Court
7 authorize the payment of their respective fees and reimbursement of their respective
8 expenses incurred during the Application Period from the Receivership Assets, as
9 detailed herein and in the Fee Application.

10 **III. ARGUMENT.**

11 **A. The Fee Application Is Reasonable And Appropriate, And**
12 **Payment Should Be Authorized.**

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

22 1. The Fees and Expenses Requested in the Fee Application Are
23 Reasonable.

24 A receiver's fees must be reasonable. See In re San Vicente Med. Partners
25 Ltd., 962 F.2d 1402, 1409 (9th Cir. 1992). In determining the reasonableness of
26 fees and expenses requested in this context, the Court should consider the time
27 records presented, the quality of the work performed, the complexity of the
28 problems faced, and the benefit of the services rendered to the estate. SEC v. Fifth

1 Ave. Coach Lines, Inc., 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973). In a practical
2 sense, the Court should begin by multiplying the number of hours expended by the
3 identified hourly rates charged for comparable services in other matters. Sw. Media,
4 Inc. v. Rau, 708 F.2d 419, 427 (9th Cir. 1983) (superseded on other grounds by
5 statute as stated in In re Hokulani Square, Inc., 460 B.R. 763, 768 (9th Cir. BAP
6 2011)).

7 Here, the Fee Application describes the nature of the services that have been
8 rendered and, where appropriate, the identity and billing rate of the individual(s)
9 performing each task. The Receiver and his Professionals have endeavored to staff
10 matters as efficiently as possible in light of the level of experience required and the
11 complexity of the issues presented. In general, the Fee Application reflects the
12 Receiver's and his Professionals' customary billing rates and the rates charged for
13 comparable services in other matters, less all agreed-upon discounts and any
14 reductions specifically identified in the Fee Application.

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

20 2. The Fees and Expenses Requested in the Fee Application Have
21 Been Submitted to the Commission, Without Objection.

22 Courts give great weight to the judgment and experience of the Commission
23 relating to receiver compensation. "[I]t is proper to [keep] in mind that the
24 [Commission] is about the only wholly disinterested party in [this] proceeding and
25 that . . . its experience has made it thoroughly familiar with the general attitude of
26 the Courts and the amounts of allowances made in scores of comparable
27 proceedings." In re Phila. & Reading Coal & Iron Co., 61 F. Supp. 120, 124 (E.D.
28 Pa. 1945). Indeed, the Commission's perspectives are not "mere casual conjectures,

1 but are recommendations based on closer study than a district judge could ordinarily
2 give to such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d Cir. 1950) (internal
3 quotation marks omitted). In fact, "recommendations as to fees of the
4 [Commission] may be the only solution to the 'very undesirable subjectivity with
5 variations according to the particular judge under particular circumstances' which
6 has made the fixing of fees seem often to be 'upon nothing more than an ipse dixit
7 basis.'" Id. Thus, the Commission's perspective on the matter should indeed be
8 given "great weight," as observed by the court in Fifth Ave. Coach Lines, Inc., 364
9 F. Supp. at 1222.

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

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

25 As of the end of the Application Period, the Receiver held approximately
26 \$2,440,441.57 in cash, on-hand. (See Winkler Decl. ¶ 3.) As reflected in the Fee
27 Application, the Receiver respectfully requests that the Court approve his fees in the
28 amount of \$112,286.30 and his expenses in the amount of \$5,142.35, and that the

1 Court authorize an interim payment of 80% of his fees, or \$89,829.04, and 100% of
2 his expenses, or \$5,142.35. Likewise, Allen Matkins respectfully requests that the
3 Court approve its fees in the amount of \$155,288.70 and its expenses in the amount
4 of \$2,819.10, and that the Court authorize an interim payment of 80% of its fees, or
5 \$124,230.96 and 100% of its expenses, or \$2,819.10. Similarly, Teitelbaum
6 respectfully requests that the Court approve its fees in the amount of \$24,200.00,
7 and that the Court authorize an interim payment of 80% of its fees, or \$19,360.00.

8 In the aggregate, the Receiver holds funds in excess of those requested in the
9 Fee Application, and the Receiver respectfully requests the Court's permission to
10 pay the requested fees and expenses from this cash on-hand and available from the
11 accounts of the Receivership Entities.

12 1. An Interim Payment is Appropriate.

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

21 Here, as is customary in federal receivership matters, the Receiver, Allen
22 Matkins, and Teitelbaum performed services for the benefit of the estate of the
23 Receivership Entities ahead of time, and may not be compensated until months later.
24 In order to ensure that fee and expense requests – and their attendant payments –
25 stay relatively current with services actually performed, the Receiver and Allen
26 Matkins requested (and the Court agreed, in the Order in Aid) to submit applications
27 for payment of fees and reimbursement of expenses approximately every three
28 months.

1 **IV. CONCLUSION.**

2 For the foregoing reasons, the Receiver and his Professionals therefore
3 respectfully request that this Court enter an order:

4 1. Granting the Fee Application, in its entirety;

5 2. Approving the Receiver's fees, in the amount of \$112,286.30, and
6 expenses, in the amount of \$5,142.35;

7 3. Authorizing the Receiver to make an interim payment to himself in the
8 amount of 80% of his fees, or \$89,829.04, and 100% of his expenses, in the amount
9 of \$5,142.35, from the funds he presently holds for the administration and benefit of
10 the Receivership Entities;

11 4. Approving Allen Matkins' fees, in the amount of \$155,288.70, and
12 expenses, in the amount of \$2,819.10;

13 5. Authorizing the Receiver to make an interim payment to Allen Matkins
14 in the amount of 80% of its fees, or \$124,230.96, and 100% of its expenses, in the
15 amount of \$2,819.10, from the funds he presently holds for the administration and
16 benefit of the Receivership Entities;

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1 6. Approving Teitelbaum's fees, in the amount of \$24,200.00; and

2 7. Authorizing the Receiver to make an interim payment to Teitelbaum in
3 the amount of 80% of its fees, or \$19,360.00, from the funds he presently holds for
4 the administration and benefit of the Receivership Entities.

5
6 Dated: March 4, 2020

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9 By: /s/ David R. Zaro

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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 **March 4, 2020**, I caused to be served on all the parties to this action addressed as stated on the attached service list the document entitled: **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FOURTH INTERIM APPLICATION OF RECEIVER, GEOFF WINKLER, AND HIS PROFESSIONALS FOR PAYMENT OF FEES AND REIMBURSEMENT OF EXPENSES [October 1, 2019 – December 31, 2019]**.

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 **March 4, 2020** 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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