

1 DAVID R. ZARO (BAR NO. 124334)
JOSHUA A. DEL CASTILLO (BAR NO. 239015)
2 NORMAN M. ASPIS (BAR NO. 313466)
ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP
865 South Figueroa Street, Suite 2800
4 Los Angeles, California 90017-2543
Phone: (213) 622-5555
5 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
6 jdelcastillo@allenmatkins.com
naspis@allenmatkins.com

7 Attorneys for Receiver
8 GEOFF WINKLER

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
FIFTH 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
[January 1, 2020 - March 31, 2020]

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

Date: October 22, 2020
Time: 10:00 a.m.
Ctrm: 6D
Judge Hon. Fernando M. Olguin

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

- I. INTRODUCTION3
- II. RELEVANT FACTUAL BACKGROUND4
- III. ARGUMENT5
 - A. The Fee Application Is Reasonable And Appropriate, And Payment Should Be Authorized5
 - 1. The Fees and Expenses Requested in the Fee Application Are Reasonable6
 - 2. The Fees and Expenses Requested in the Fee Application Have Been Submitted to the Commission, Without Objection7
 - B. The Receiver Should Be Authorized To Pay Allowed Fees And Expenses From Cash On-Hand8
 - 1. An Interim Payment is Appropriate.....8
- IV. CONCLUSION9

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3 **Cases**

4 CFPB v. Pension Funding, LLC,
 2016 U.S. Dist. LEXIS 187607, at *4 (C.D. Cal. July 7, 2016) 8

5

6 Finn v. Childs Co.,
 181 F.2d 431 (2d Cir. 1950) 7

7 Gaskill v. Gordon,
 27 F.3d 248 (7th Cir. 1994) 5

8

9 In re Mansfield Tire & Rubber Co.,
 19 B.R. 125 (Bankr. N.D. Ohio 1981) 9

10 In re Phila. & Reading Coal & Iron Co.,
 61 F. Supp. 120 (E.D. Pa. 1945) 7, 8

11

12 In re Rose Way, Inc.,
 1990 Bankr. LEXIS 3028, at *9 (Bankr. S.D. Iowa Mar. 1, 1990) 9

13 In re San Vicente Med. Partners Ltd.,
 962 F.2d 1402 (9th Cir. 1992) 6

14

15 Quilling v. Trade Partners, Inc.,
 572 F.3d 293 (6th Cir. 2009) 6

16 SEC v. Elliot,
 953 F.2d 1560 (11th Cir. 1992)
 (rev'd in part on other grounds, 998 F.2d 922 (11th Cir. 1993) 6

17

18 SEC v. Fifth Ave. Coach Lines, Inc.,
 364 F. Supp. 1220 (S.D.N.Y. 1973) 6, 7

19

20 Sw. Media, Inc. v. Rau, 708 F.2d 419
 (9th Cir. 1983)
 (superseded on other grounds by statute as stated in In re
 21 Hokulani Square, Inc., 460 B.R. 763 (9th Cir. BAP 2011) 6

22

23

24

25

26

27

28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Pursuant to this Court's December 21, 2018 Order Regarding Preliminary Injunction and Appointment of a Permanent Receiver (the "Appointment Order") (ECF No. 66), its February 1, 2019 Order in Aid of Receivership (the "Order in Aid") (ECF No. 69), and its September 9, 2019 Order Regarding Permanent Injunction (the "Permanent Injunction") (ECF No. 113), Geoff Winkler (the "Receiver"), the Court-appointed permanent receiver for Defendant Essex Capital Corporation ("Essex") and its subsidiaries and affiliates (collectively, the "Receivership Entities" or "Entities"), and his counsel of record, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"), hereby submit this Memorandum of Points and Authorities in support of the concurrently submitted Fifth 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 (the "Fee Application").

By way of the Fee Application, the Receiver and Allen Matkins seek Court approval of 100% of their fees and expenses incurred during the period from January 1, 2020 through March 31, 2020 (the "Application Period") and payment, on an interim basis, of 80% of their fees and 100% of their expenses incurred during the Application Period. The chart below indicates the requests of the Receiver and Allen Matkins by way of the Fee Application:

<u>Applicant</u>	<u>Current Fees Submitted for Approval</u>	<u>Current Expenses Submitted for Approval</u>	<u>Interim Payment Requested (Fees)</u>	<u>Interim Payment Requested (Expenses)</u>
Receiver	\$131,848.20	\$752.96	\$105,478.56	\$752.96
Allen Matkins	\$141,294.15	\$3,970.07	\$113,035.32	\$3,970.07
TOTAL:	\$273,142.35	\$4,723.03	\$218,513.88	\$4,723.03

The Fee Application sets forth the services rendered by the Receiver and Allen Matkins during the Application Period, which serve as the bases for the fee

1 and expense requests contained therein, and are more particularly described in
2 **Exhibit A** and **Exhibit B** thereto, which contain schedules itemizing the Receiver's
3 and Allen Matkins' fees and expenses incurred during the Application Period,
4 respectively.

5 As discussed below, the Receiver believes that the fees and expenses incurred
6 during the Application Period in connection with the Receiver's pursuit of his duties
7 under the Appointment Order, Order in Aid, and Permanent Injunction are
8 appropriate, and have benefited the estate of the Receivership Entities. On this
9 basis, the Receiver and Allen Matkins respectfully request that the Court
10 approve 100% of their respective fees and expenses, and authorize, on an interim
11 basis, payment of 80% of their fees and 100% of their expenses.

12 **II. RELEVANT FACTUAL BACKGROUND.**

13 A full recitation of the procedural history of the above-captioned action is
14 unnecessary for the purposes of the Fee Application, particularly given the
15 Receiver's recently submitted Fifth Interim Report and Petition for Further
16 Instructions (the "Interim Report") (ECF No. 174), which addresses the efforts of
17 the Receiver and Allen Matkins during the Application Period. That said, the facts
18 relevant to the Fee Application are as follows:

19 The above-captioned action was commenced on June 5, 2018. (See ECF
20 No. 1.) The Plaintiff Securities and Exchange Commission's (the "Commission")
21 Complaint alleged that Defendant Ralph Iannelli, by and through certain entities
22 under his control, committed a number of fraudulent violations of the federal
23 securities laws, in furtherance of a Ponzi-like investment scheme. (Id.) The Court
24 entered the Appointment Order on December 21, 2018, granting the Commission's
25 request for the appointment of a permanent receiver, and imposing certain injunctive
26 relief against Mr. Iannelli, the Receivership Entities, and anyone acting in concert
27 with them. (See ECF No. 66.) The Appointment Order vested the Receiver with
28 exclusive authority and control over the Receivership Entities, and assigned him

1 certain duties, including marshaling and preserving the assets of the Entities
2 ("Receivership Assets" or "Assets"), and preparing and presenting an accounting to
3 the Court. (Id.) On motion of the Receiver, the Court entered the Order in Aid on
4 February 1, 2019 (see ECF No. 69), which approved and authorized the Receiver's
5 engagement of Allen Matkins and provided additional guidance and instructions
6 regarding the administration of the instant receivership. On June 5, 2019 and
7 September 9, 2019, Defendants Iannelli and Essex, respectively, consented to the
8 entry of judgment against them. (See ECF Nos. 93 and 110.) The Court then
9 entered its Permanent Injunction on September 9, 2019, pursuant to which it
10 retained jurisdiction over Defendants Iannelli and Essex and the subject matter of
11 the instant receivership. (See ECF No. 113.)

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

21 **III. ARGUMENT.**

22 **A. The Fee Application Is Reasonable And Appropriate, And**
23 **Payment Should Be Authorized.**

24 "As a general rule, the expenses and fees of a receivership are a charge upon
25 the property administered." Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994).
26 These expenses include the fees and expenses of the Receiver and Allen Matkins.
27 Decisions regarding the timing and amount of an award of fees and expenses to the
28 Receiver and Allen Matkins are committed to the sound discretion of the Court. See

1 SEC v. Elliot, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on other grounds,
2 998 F.2d 922 (11th Cir. 1993)). Further, "the district court has wide discretion in
3 distributing receivership assets." Quilling v. Trade Partners, Inc., 572 F.3d 293, 301
4 (6th Cir. 2009).

5 1. The Fees and Expenses Requested in the Fee Application Are
6 Reasonable.

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

18 Here, the Fee Application describes the nature of the services that have been
19 rendered and, where appropriate, the identity and billing rate of the individual(s)
20 performing each task. The Receiver and Allen Matkins have endeavored to staff
21 matters as efficiently as possible in light of the level of experience required and the
22 complexity of the issues presented. In general, the Fee Application reflects the
23 Receiver's and Allen Matkins' customary billing rates and the rates charged for
24 comparable services in other matters, less all agreed-upon discounts and any
25 reductions specifically identified in the Fee Application.

26 The Receiver has reviewed the Fee Application, and believes the fee and
27 expense requests to be fair and reasonable, and an accurate representation of the
28 work performed. (See concurrently submitted Declaration of Geoff Winkler

1 ("Winkler Decl.") ¶ 2.) The Receiver likewise believes that the estate has benefited
2 from the services identified. (Id.)

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

5 Courts give great weight to the judgment and experience of the Commission
6 relating to receiver compensation. "[I]t is proper to [keep] in mind that the
7 [Commission] is about the only wholly disinterested party in [this] proceeding and
8 that . . . its experience has made it thoroughly familiar with the general attitude of
9 the Courts and the amounts of allowances made in scores of comparable
10 proceedings." In re Phila. & Reading Coal & Iron Co., 61 F. Supp. 120, 124 (E.D.
11 Pa. 1945). Indeed, the Commission's perspectives are not "mere casual conjectures,
12 but are recommendations based on closer study than a district judge could ordinarily
13 give to such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d Cir. 1950) (internal
14 quotation marks omitted). In fact, "recommendations as to fees of the
15 [Commission] may be the only solution to the 'very undesirable subjectivity with
16 variations according to the particular judge under particular circumstances' which
17 has made the fixing of fees seem often to be 'upon nothing more than an ipse dixit
18 basis." Id. Thus, the Commission's perspective on the matter should indeed be
19 given "great weight," as observed by the court in Fifth Ave. Coach Lines, Inc., 364
20 F. Supp. at 1222.

21 In order to ensure that the fees and expenses requested in the Fee Application
22 are appropriate, the Receiver and Allen Matkins submitted their invoices to the
23 Commission for review. The Commission has not objected to the requested fees and
24 expenses, and has indicated that it does not object to the fee and expense requests
25 reflected in the Fee Application. The Commission's satisfaction with the subject
26 invoices therefore merits significant deference. As the In re Phila. & Reading Coal
27 & Iron Co. court observed, the Commission is "thoroughly familiar with . . . the
28 amounts of allowances made in scores of comparable proceedings." 61 F. Supp.

1 at 124. Indeed, the Commission is likely in the best position to measure the fees and
2 expenses requested in the instant receivership against those incurred in other, similar
3 proceedings, and cases of similar complexity. The Receiver and Allen Matkins thus
4 respectfully request that the Court approve all requested fees and expenses reflected
5 in the Fee Application.

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

8 As of the end of the Application Period, the Receiver held approximately
9 \$2,315,630.97 in cash, on-hand. (See Winkler Decl. ¶ 3.) As reflected in the Fee
10 Application, the Receiver respectfully requests that the Court approve his fees in the
11 amount of \$131,848.20 and his expenses in the amount of \$752.96, and that the
12 Court authorize an interim payment of 80% of his fees, or \$105,478.56, and 100%
13 of his expenses, or \$752.96. Likewise, Allen Matkins respectfully requests that the
14 Court approve its fees in the amount of \$141,294.15 and its expenses in the amount
15 of \$3,970.07, and that the Court authorize an interim payment of 80% of its fees, or
16 \$113,035.32, and 100% of its expenses, or \$3,970.07.

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

21 1. An Interim Payment is Appropriate.

22 Where, as here, the fees requested are reasonable and "where both the
23 magnitude and the protracted nature of a case impose economic hardships on
24 professionals rendering services to the estate," an interim award of fees is
25 appropriate. CFPB v. Pension Funding, LLC, 2016 U.S. Dist. LEXIS 187607, at *4
26 (C.D. Cal. July 7, 2016). Interim allowances are necessary "to relieve counsel and
27 others from the burden of financing lengthy and complex . . . proceedings." In re
28

1 Rose Way, Inc., 1990 Bankr. LEXIS 3028, at *9 (Bankr. S.D. Iowa Mar. 1, 1990)
2 (citing In re Mansfield Tire & Rubber Co., 19 B.R. 125 (Bankr. N.D. Ohio 1981)).

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

10 **IV. CONCLUSION.**

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

- 13 1. Granting the Fee Application, in its entirety;
- 14 2. Approving the Receiver's fees, in the amount of \$131,848.20, and
15 expenses, in the amount of \$752.96;
- 16 3. Authorizing the Receiver to make an interim payment to himself in the
17 amount of 80% of his fees, or \$105,478.56, and 100% of his expenses, in the
18 amount of \$752.96, from the funds he presently holds for the administration and
19 benefit of the Receivership Entities;
- 20 4. Approving Allen Matkins' fees, in the amount of \$141,294.15, and
21 expenses, in the amount of \$3,970.07; and
- 22 5. Authorizing the Receiver to make an interim payment to Allen Matkins
23 in the amount of 80% of its fees, or \$113,035.32, and 100% of its expenses, in the
24 amount of \$3,970.07, from the funds he presently holds for the administration and
25 benefit of the Receivership Entities.

26
27
28

1 Dated: September 18, 2020

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

4 By: /s/ Norman M. Aspis

5 NORMAN M. ASPIS
6 Attorneys for Receiver
7 GEOFF WINKLER

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 **September 18, 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 FIFTH 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**

- 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 **August 12, 2020** at Los Angeles, California.

/s/ Martha Diaz
Martha Diaz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Mark Riera, Esq.
Jeffer Mangels Butler & Mitchell LLPP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-4308