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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
NINTH 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, 2021 - June 30, 2021]

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

Date: September 23, 2021
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. INTRODUCTION 1
- II. RELEVANT FACTUAL BACKGROUND 2
- III. ARGUMENT 3
 - A. The Fee Application Is Reasonable And Appropriate, And Payment Should Be Authorized 3
 - 1. The Fees and Expenses Requested in the Fee Application Are Reasonable 4
 - 2. The Fees and Expenses Requested in the Fee Application Have Been Submitted to the Commission, Without Objection 5
 - B. The Receiver Should Be Authorized To Pay Allowed Fees And Expenses From Cash On-Hand 6
 - 1. An Interim Payment is Appropriate 6
- IV. CONCLUSION 7

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 CFPB v. Pension Funding, LLC,
2016 U.S. Dist. LEXIS 187607, at *4 (C.D. Cal. July 7, 2016) 6

5

6 Finn v. Childs Co.,
181 F.2d 431 (2d Cir. 1950)..... 5

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

8

9 In re Mansfield Tire & Rubber Co.,
19 B.R. 125 (Bankr. N.D. Ohio 1981) 6

10 In re Phila. & Reading Coal & Iron Co.,
61 F. Supp. 120 (E.D. Pa. 1945) 5

11

12 In re Rose Way, Inc.,
1990 Bankr. LEXIS 3028, at *9 (Bankr. S.D. Iowa Mar. 1, 1990) 6

13 In re San Vicente Med. Partners Ltd.,
962 F.2d 1402 (9th Cir. 1992)..... 4

14

15 Quilling v. Trade Partners, Inc.,
572 F.3d 293 (6th Cir. 2009)..... 4

16 SEC v. Elliot,
953 F.2d 1560 (11th Cir. 1992)
17 (rev'd in part on other grounds, 998 F.2d 922 (11th Cir. 1993)..... 3

18 SEC v. Fifth Ave. Coach Lines, Inc.,
364 F. Supp. 1220 (S.D.N.Y. 1973)..... 4, 5

19

20 Sw. Media, Inc. v. Rau, 708 F.2d 419
(9th Cir. 1983)
21 (superseded on other grounds by statute as stated in In re
Hokulani Square, Inc., 460 B.R. 763 (9th Cir. BAP 2011)..... 4

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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 Ninth 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 April 1, 2021 through June 30, 2021 (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	\$225,706.20	\$75.00	\$180,564.96	\$75.00
Allen Matkins	\$240,301.80	\$5,664.17	\$192,241.44	\$5,664.17
TOTAL:	\$466,008.00	\$5,739.17	\$372,806.40	\$5,739.17

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. That said, the facts relevant to
15 the Fee Application are as follows:

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

1 February 1, 2019 (see ECF No. 69), which approved and authorized the Receiver's
2 engagement of Allen Matkins and provided additional guidance and instructions
3 regarding the administration of the instant receivership. On June 5, 2019 and
4 September 9, 2019, Defendants Iannelli and Essex, respectively, consented to the
5 entry of judgment against them. (See ECF Nos. 93 and 110.) The Court then
6 entered its Permanent Injunction on September 9, 2019, pursuant to which it
7 retained jurisdiction over Defendants Iannelli and Essex and the subject matter of
8 the instant receivership. (See ECF No. 113.)

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

18 **III. ARGUMENT.**

19 **A. The Fee Application Is Reasonable And Appropriate, And**
20 **Payment Should Be Authorized.**

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

3 1. The Fees and Expenses Requested in the Fee Application Are
4 Reasonable.

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

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

24 The Receiver has reviewed the Fee Application, and believes the fee and
25 expense requests to be fair and reasonable, and an accurate representation of the
26 work performed. (See concurrently submitted Declaration of Geoff Winkler
27 ["Winkler Decl."] ¶ 2.) The Receiver likewise believes that the estate has benefited
28 from the services identified. (Id.)

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

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

In order to ensure that the fees and expenses requested in the Fee Application are appropriate, the Receiver and Allen Matkins submitted their invoices to the Commission for review. The Commission has not objected to the requested fees and expenses, and has indicated that it does not object to the fee and expense requests reflected in the Fee Application. The Commission's satisfaction with the subject invoices therefore merits significant deference. As the In re Phila. & Reading Coal & Iron Co. court observed, the Commission is "thoroughly familiar with . . . the amounts of allowances made in scores of comparable proceedings." 61 F. Supp. at 124. Indeed, the Commission is likely in the best position to measure the fees and expenses requested in the instant receivership against those incurred in other, similar

1 proceedings, and cases of similar complexity. The Receiver and Allen Matkins thus
2 respectfully request that the Court approve all requested fees and expenses reflected
3 in the Fee Application.

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

6 As of the end of the Application Period, the Receiver held approximately
7 \$4,524,402.51 in cash, on-hand. (See Winkler Decl. ¶ 3.) As reflected in the Fee
8 Application, the Receiver respectfully requests that the Court approve his fees in the
9 amount of \$225,706.20 and his expenses in the amount of \$75.00, and that the Court
10 authorize an interim payment of 80% of his fees, or \$180,564.96, and 100% of his
11 expenses, or \$75.00. Likewise, Allen Matkins respectfully requests that the Court
12 approve its fees in the amount of \$240,301.80 and its expenses in the amount of
13 \$5,664.17, and that the Court authorize an interim payment of 80% of its fees, or
14 \$192,241.44, and 100% of its expenses, or \$5,664.17.

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

19 1. An Interim Payment is Appropriate.

20 Where, as here, the fees requested are reasonable and "where both the
21 magnitude and the protracted nature of a case impose economic hardships on
22 professionals rendering services to the estate," an interim award of fees is
23 appropriate. CFPB v. Pension Funding, LLC, 2016 U.S. Dist. LEXIS 187607, at *4
24 (C.D. Cal. July 7, 2016). Interim allowances are necessary "to relieve counsel and
25 others from the burden of financing lengthy and complex . . . proceedings." In re
26 Rose Way, Inc., 1990 Bankr. LEXIS 3028, at *9 (Bankr. S.D. Iowa Mar. 1, 1990)
27 (citing In re Mansfield Tire & Rubber Co., 19 B.R. 125 (Bankr. N.D. Ohio 1981)).
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1 Here, as is customary in federal receivership matters, the Receiver and Allen
2 Matkins performed services for the benefit of the estate of the Receivership Entities
3 ahead of time, and may not be compensated until months later. In order to ensure
4 that fee and expense requests – and their attendant payments – stay relatively current
5 with services actually performed, the Receiver and Allen Matkins requested (and the
6 Court agreed, in the Order in Aid) to submit applications for payment of fees and
7 reimbursement of expenses approximately every three months.

8 **IV. CONCLUSION.**

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

- 11 1. Granting the Fee Application, in its entirety;
- 12 2. Approving the Receiver's fees, in the amount of \$225,706.20, and
13 expenses, in the amount of \$75.00;
- 14 3. Authorizing the Receiver to make an interim payment to himself in the
15 amount of 80% of his fees, or \$180,564.96, and 100% of his expenses, in the
16 amount of \$75.00, from the funds he presently holds for the administration and
17 benefit of the Receivership Entities;
- 18 4. Approving Allen Matkins' fees, in the amount of \$240,301.80, and
19 expenses, in the amount of \$5,664.17; and

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1 5. Authorizing the Receiver to make an interim payment to Allen Matkins
2 in the amount of 80% of its fees, or \$192,241.44, and 100% of its expenses, in the
3 amount of \$5,664.17, from the funds he presently holds for the administration and
4 benefit of the Receivership Entities.

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6 Dated: August 24, 2021

ALLEN MATKINS LECK GAMBLE
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JOSHUA A. DEL CASTILLO
NORMAN M. ASPIS

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9 By: /s/ Norman M. Aspis

10 NORMAN M. ASPIS
11 Attorneys for Receiver
12 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 **August 24, 2021**, 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 NINTH 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, 2021 – June 30, 2021]**

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.

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 24, 2021** at Los Angeles, California.

/s/ Martha Diaz
Martha Diaz