

1 DAVID R. ZARO (BAR NO. 124334)
JOSHUA A. DEL CASTILLO (BAR NO. 239015)
2 MATTHEW D. PHAM (BAR NO. 287704)
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
mpham@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
TENTH INTERIM APPLICATION OF
RECEIVER, GEOFF WINKLER, AND
HIS PROFESSIONALS FOR
PAYMENT OF FEES AND
REIMBURSEMENT OF EXPENSES

Date: January 13, 2022
Time: 10:00 a.m.
Ctrm: 6D
Judge Hon. Fernando M. Olguin

20 Geoff Winkler (the “Receiver”), the Court-appointed permanent receiver for
21 defendant Essex Capital Corporation and its subsidiaries and affiliates (collectively,
22 the “Receivership Entities” or “Entities”), his counsel of record, Allen Matkins Leck
23 Gamble Mallory & Natsis LLP (“Allen Matkins”), and his tax accountant, Miller
24 Kaplan Arase LLP (“Miller Kaplan,” and collectively, with the Receiver and Allen
25 Matkins, the “Applicants”), hereby submit this memorandum of points and
26 authorities in support of their concurrently and jointly submitted tenth interim
27 application for the payment of fees and the reimbursement of expenses (the “Fee
28 Application”).

1 In addition to this memorandum, the Fee Application is supported by the
 2 concurrently filed declaration of Geoff Winkler (the “Winkler Declaration”).

3 **I. INTRODUCTION.**

4 The Fee Application is the tenth interim fee application submitted in the
 5 above-referenced matter. With respect to the Receiver and Allen Matkins, the Fee
 6 Application covers their fees and expenses incurred during the period from
 7 July 1, 2021, through September 30, 2021 (the “Application Period”), and with
 8 respect to Miller Kaplan, the Fee Application covers its fees and expenses incurred
 9 during the period from February 1, 2021, through September 30, 2021 (the “MK
 10 Application Period”).

11 By way of the Fee Application, the Applicants request the Court’s approval of
 12 100% of their fees and expenses incurred during the Application Period or the MK
 13 Application Period, as applicable, and they further request the interim payment of
 14 80% of such fees and 100% of such expenses, to be paid from the funds of the
 15 receivership estate of the Receivership Entities (the “Receivership Estate” or
 16 “Estate”). Specifically, the amounts of the Applicants’ fees and expenses sought to
 17 be approved and paid under this Fee Application are as follows:

19 Applicant	20 Fees	21 Interim Payment of Fees	22 Expenses	23 Interim Payment of Expenses
Receiver	\$75,550.95	\$60,440.76	\$43.97	\$43.97
Allen Matkins	\$409,864.95	\$327,891.96	\$6,578.93	\$6,578.93
Miller Kaplan	\$9,667.50	\$7,734.00	\$0.00	\$0.00
	\$495,083.40	\$396,066.72	\$6,622.90	\$6,622.90

24
 25 The Fee Application sets forth the services rendered by the Applicants during
 26 the Application Period or MK Application Period, as applicable, which serve as the
 27 bases for the fees and expenses requested therein and are more particularly
 28 described in the invoices attached as **Exhibit A**, **Exhibit B**, and **Exhibit D** to the

1 Fee Application, containing the billing entries that detail the tasks performed by the
2 Receiver and his staff, Allen Matkins, and Miller Kaplan, respectively, during the
3 applicable period.

4 As discussed below, the Receiver believes that the fees and expenses incurred
5 by the Applicants during the applicable period in connection with the Receiver's
6 pursuit of his duties under the Appointment Order, Order in Aid, and Permanent
7 Injunction are appropriate and have benefited the Estate. On that basis, the
8 Applicants respectfully request that the Court approve and authorize the payment of
9 the fees and expenses sought under the Fee Application.

10 **II. FACTUAL AND PROCEDURAL BACKGROUND.**

11 A full recitation of the procedural history of the above-captioned action is
12 unnecessary for the purposes of the Fee Application. That said, the facts relevant to
13 the Fee Application are as follows:

14 On June 5, 2018, plaintiff the Securities and Exchange Commission (the
15 "SEC") filed a complaint against defendants Ralph Iannelli ("Iannelli") and Essex
16 Capital Corporation ("Essex," and together, with Iannelli, the "Defendants") in this
17 Court, commencing the above-captioned civil action. *See* ECF No. 1. The SEC's
18 complaint alleged that Iannelli, by and through certain entities under his control,
19 committed a number of fraudulent violations of federal securities laws, in
20 furtherance of a Ponzi-like investment scheme. *See id.*

21 On December 21, 2018, the Court entered the *Order Regarding Preliminary*
22 *Injunction and Appointment of a Permanent Receiver* (the "Appointment Order"),
23 by which it appointed the Receiver as the permanent receiver for the Receivership
24 Entities and imposed certain injunctive relief against Iannelli, the Receivership
25 Entities, and anyone acting in concert with them. *See* ECF No. 66. The Appointment
26 Order vested the Receiver with exclusive authority and control over the Entities and
27 assigned him certain duties, including marshaling and preserving the assets of the
28

1 Entities (collectively, the “Receivership Assets” or “Assets”) and preparing and
2 presenting an accounting to the Court. *See id.*

3 On the Receiver’s motion, *see* ECF No. 67, the Court entered the *Order in*
4 *Aid of Receivership* (the “Order in Aid”) on February 1, 2019, *see* ECF No. 69. By
5 the Order in Aid, the Court approved and authorized the Receiver’s engagement of
6 Allen Matkins as his lead receivership counsel and provided additional guidance and
7 instructions regarding the administration of the instant receivership. *See id.*

8 Iannelli and Essex subsequently consented to the Court’s entry of judgment
9 against each of them on June 5, 2019, and September 9, 2019, respectively. *See* ECF
10 Nos. 93, 110. The Court also entered the *Order Regarding Permanent Injunction*
11 (the “Permanent Injunction”) on September 9, 2019, by which it retained
12 jurisdiction over the Defendants and the subject matter of the receivership. *See* ECF
13 No. 113.

14 As reflected in the Fee Application, the Receiver continued performing the
15 duties required of him to protect and preserve the value of the Receivership Entities
16 and their Assets, as provided for in the Appointment Order and Permanent
17 Injunction, and operating the viable portion of the Entities’ business as a going
18 concern, throughout the Application Period. Having diligently pursued and
19 facilitated the Receiver’s duties, the Applicants now request that the Court approve
20 their respective fees and expenses incurred during the Application Period or MK
21 Application Period, as applicable, and authorize the payment of such fees and
22 reimbursement of such expenses from the funds of the Receivership Estate, as
23 detailed herein and in the Fee Application.

24 **III. ARGUMENT.**

25 **A. Receivership Fees and Expenses.**

26 “As a general rule, the expenses and fees of a receivership are a charge upon
27 the property administered.” *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994);
28 *accord Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 374 (1908). The fees and expenses of

1 a receivership include the fees and expenses reasonably incurred by the receiver in
2 administering his or her duties, as well as the fees and expenses reasonably incurred
3 by the receiver’s professionals in rendering services to the receiver. *See Drilling &*
4 *Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). Decisions regarding the
5 amount and timing of an award of receivership fees and expenses are committed to
6 the sound discretion of the district court. *See SEC v. Elliott*, 953 F.2d 1560, 1577
7 (11th Cir. 1992). Furthermore, “the district court has “broad powers and wide
8 discretion in crafting relief,” including in “distributing receivership assets.” *Quilling*
9 *v. Trade Partners, Inc.*, 572 F.3d 293, 301 (6th Cir. 2009).

10 Here, the Fee Application’s request for approval and payment of the fees and
11 expenses incurred by the Receiver and his professionals is a reasonable and
12 appropriate request made to the Court, and for the reasons discussed below, the
13 Court should exercise that discretion and authorize the interim payment of those fees
14 and expenses from the funds of the Receivership Estate.

15 **B. The Requested Fees and Expenses Are Reasonable.**

16 The fees of a receiver and his professionals must be reasonable. *See San*
17 *Vicente Med. Partners, Ltd. v. Orr (In re San Vicente Med. Partners, Ltd.)*, 962 F.2d
18 1402, 1409 (9th Cir. 1992). In determining the reasonableness of the fees and
19 expenses requested in connection with a receivership, a court should consider the
20 time records presented, the quality of the work performed, the complexity of the
21 problems faced, and the benefit of the services rendered to the receivership estate.
22 *See SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).
23 In a practical sense, once it has identified the hourly rate charged by the applicant
24 for comparable services in other matters and determined that the applicant’s services
25 were reasonable, the court should multiply the number of hours expended by that
26 hourly rate. *Cf. Sw. Media, Inc. v. Rau*, 708 F.2d 419, 427 (9th Cir. 1983)
27 (Bankruptcy Act case), *superseded in part by statute*, Bankruptcy Reform Act of
28

1 1978, Pub. L. No. 95-598, 92 Stat. 2549, as recognized in *U.S. Tr. V. Tamm (In re*
2 *Hokulani Square, Inc.)*, 460 B.R. 763 (B.A.P. 9th Cir. 2011).

3 Here, the Fee Application describes the nature of the services that have been
4 rendered by the Applicants and, where appropriate, the identity and hourly billing
5 rate of the individual performing each specific task. The Applicants have
6 endeavored to staff matters as efficiently as possible in light of the level of
7 experience required and the complexity of the issues presented. In general, the Fee
8 Application reflects the Applicants' customary billing rates and the rates charged for
9 comparable services in other matters, less agreed-upon discounts and other
10 reductions specifically identified in the Fee Application.

11 The Receiver has reviewed the Fee Application and believes the fees and
12 expenses requested by the Applicants to be fair and reasonable and an accurate
13 representation of the work performed. *See* Winkler Decl. ¶ 2. The Receiver likewise
14 believes that the Receivership Estate has benefited from the services identified in the
15 Fee Application. *Id.*

16 **C. The Invoices of the Requested Fees and Expenses Have Been**
17 **Submitted to the SEC, Without Objection.**

18 Courts give great weight to the judgment and experience of the SEC with
19 respect to compensation requests. As one court has noted, “[I]t is proper to [keep] in
20 mind that the [SEC] is about the only wholly disinterested party in [this] proceeding
21 and that . . . its experience has made it thoroughly familiar with the general attitude
22 of the Courts and the amounts of allowances made in scores of comparable
23 proceedings.” *In re Phila. & Reading Coal & Iron Co.*, 61 F. Supp. 120, 124 (E.D.
24 Pa. 1945) (Bankruptcy Act case). Indeed, the SEC’s positions are not “mere casual
25 conjectures, but are recommendations based on closer study than a district judge
26 could ordinarily give to such matters.” *Finn v. Childs Co.*, 181 F.2d 431, 438 (2d
27 Cir. 1950) (citation omitted) (internal quotation marks omitted) (Bankruptcy Act
28 case). And such “recommendations as to fees of the S.E.C. may be the only solution

1 to the very undesirable subjectivity with variations according to the particular judge
2 under particular circumstances which has made the fixing of fees seem often to be
3 upon nothing more than an ipse dixit basis.” *Id.* (citation omitted) (internal quotation
4 marks omitted). Thus, the Commission’s position on a fee request should be “given
5 great weight.” *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222.

6 Here, in order to ensure that the fees and expenses requested in the Fee
7 Application are appropriate, the Applicants submitted their invoices to the SEC for
8 review. The SEC has not objected to such requested fees and expenses and has not
9 otherwise indicated that it intends to object to the Fee Application. Given that the
10 SEC is likely in the best position to measure the fees and expenses requested in the
11 instant receivership against those incurred in other, similar proceedings and cases of
12 similar complexity, see *Phila. & Reading Coal & Iron Co.*, 61 F. Supp. at 124, the
13 SEC’s lack of an objection to the Applicants’ invoices should merit significant
14 deference. The Court should accordingly approve the fees and expenses requested in
15 the Fee Application.

16 **D. The Receiver Should Be Authorized to Pay the Approved Fees and**
17 **Expenses from Cash on Hand.**

18 **1. The Receiver Is Holding Sufficient Funds.**

19 As reflected in the Fee Application, the Receiver has further requested that
20 the Court authorize an interim payment of 80% of his requested fees (\$60,440.76)
21 and 100% of his requested expenses (\$43.97) for a total proposed payment of
22 \$60,484.73. Likewise, Allen Matkins has requested that the Court authorize an
23 interim payment of 80% of its requested fees (\$327,891.96) and 100% of its
24 requested expenses (\$6,578.93) for a total proposed payment of \$334,470.89. And
25 Miller Kaplan has similarly requested that the Court authorize an interim payment of
26 80% of its requested fees (\$7,734) and 100% of its requested expenses (\$0) for a
27 total proposed payment of \$7,734. Overall, if the Fee Application is granted in its
28 entirety, the aggregate amount of the fees and expenses to be paid on account

1 thereof to the Applicants would be \$402,689.62. And as of the end of the
2 Application Period, the Receiver held approximately \$4,522,135.41 in cash on hand
3 on behalf of the Estate. *See* Winkler Decl. ¶ 3.

4 As the Receiver holds funds of the Receivership Estate in excess of the
5 aggregate amount of the compensation sought to be paid in the Fee Application, it is
6 appropriate for the Court to authorize the interim payment of such payment.

7 **2. An Interim Payment Is Appropriate.**

8 Where, as here, the fees requested are reasonable and “both the magnitude
9 and the protracted nature of a case impose economic hardships on professionals
10 rendering services to the estate,” an interim award of fees is appropriate. *CFPB v.*
11 *Pension Funding, LLC*, Case No. SACV 15-1329-JLS (JCGx), 2016 U.S. Dist.
12 LEXIS 187607, at *4 (C.D. Cal. July 7, 2016). Indeed, interim payments are
13 necessary “to relieve counsel and others from the burden of financing lengthy and
14 complex . . . proceedings.” *In re Rose Way, Inc.*, Case No. 89-1273-C H, 1990
15 Bankr. LEXIS 3028, at *9 (Bankr. S.D. Iowa Mar. 1, 1990) (citing *In re Mansfield*
16 *Tire & Rubber Co.*, 19 B.R. 125 (Bankr. N.D. Ohio 1981)) (bankruptcy case). Thus,
17 an interim payment of the Applicants’ requested fees and expenses is appropriate.

18 In addition, the Applicants, as is customary in federal receivership matters,
19 have performed services for the benefit of the Receivership Estate ahead of time and
20 may not be compensated until months later. In order to ensure that compensation
21 requests—and their attendant payments—stay relatively current with the services
22 actually performed, the Applicants requested, and the Court agreed per the Order in
23 Aid, that they be permitted to submit fee applications approximately every three
24 months. With the Fee Application being Miller Kaplan’s first fee application and the
25 Receiver and Allen Matkins’s last fee application filed on August 24, 2021, i.e.,
26 more than three months ago, *see* ECF No. 213, an interim payment is further
27 warranted in this case.

28

1 **IV. CONCLUSION.**

2 For the foregoing reasons, the Applicants respectfully request that the Court
3 grant the Fee Application, approve 100% of the fees and expenses incurred by the
4 Applicants during the Application Period or MK Application Period, as applicable,
5 and authorize the payment, on an interim basis, of 80% of such fees and 100% of
6 such expenses from the funds of the Receivership Estate held by the Receiver.

7
8 Dated: December 3, 2021

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
MATTHEW D. PHAM

9
10
11 By: /s/ Matthew D. Pham

MATTHEW D. PHAM
Attorneys for Receiver
GEOFF WINKLER

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 **December 3, 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 TENTH INTERIM APPLICATION OF RECEIVER, GEOFF WINKLER, AND HIS PROFESSIONALS 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.

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 **December 3, 2021** at Los Angeles, California.

/s/ Martha Diaz
Martha Diaz