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8 GEOFF WINKLER

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 vs.

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  
FOURTEENTH INTERIM  
APPLICATION OF RECEIVER,  
GEOFF WINKLER, AND HIS  
PROFESSIONALS FOR PAYMENT  
OF FEES AND REIMBURSEMENT  
OF EXPENSES**

Date: January 19, 2023  
Time: 10:00 a.m.  
Ctrm: 6D  
Judge: Hon. Fernando M. Olguin

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1 Geoff Winkler (the "Receiver"), the Court-appointed permanent receiver for  
 2 defendant Essex Capital Corporation and its subsidiaries and affiliates (collectively,  
 3 the "Receivership Entities" or "Entities"), and his counsel of record, Allen Matkins  
 4 Leck Gamble Mallory & Natsis LLP ("Allen Matkins," and together, with the  
 5 Receiver, the "Applicants"), hereby submit this memorandum of points and  
 6 authorities in support of their concurrently and jointly submitted fourteenth interim  
 7 application for the payment of fees and the reimbursement of expenses (the "Fee  
 8 Application").

9 In addition to this memorandum, the Fee Application is supported by the  
 10 concurrently filed declaration of Geoff Winkler (the "Winkler Declaration").

11 **I. INTRODUCTION**

12 The Fee Application is the fourteenth interim fee application submitted in the  
 13 above-referenced matter and covers the Applicants' fees and expenses incurred  
 14 during the period from July 1, 2022, through September 30, 2022 (the "Application  
 15 Period").

16 By way of the Fee Application, the Applicants request the Court's approval of  
 17 100% of their fees and expenses incurred during the Application Period and further  
 18 request the interim payment of 80% of such fees and 100% of such expenses, to be  
 19 paid from the funds of the receivership estate of the Receivership Entities (the  
 20 "Receivership Estate" or "Estate"). Specifically, the amounts of the Applicants' fees  
 21 and expenses sought to be approved and paid under this Fee Application are as  
 22 follows:

Applicant	Fees	Interim Payment of Fees	Expenses	Interim Payment of Expenses
Receiver	\$68,966.60	\$55,173.28	\$6,609.30	\$6,609.30
Allen Matkins	\$223,695.45	\$178,956.36	\$7,671.84	\$7,671.84
	<b>\$292,662.05</b>	<b>\$234,129.64</b>	<b>\$14,281.14</b>	<b>\$14,281.14</b>

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1 The Fee Application sets forth the services rendered by the Applicants during  
2 the Application Period, which serve as the bases for the fees and expenses requested  
3 therein and are more particularly described in the invoices attached as **Exhibits 1**  
4 **and 2** to the Fee Application, containing the billing entries that detail the tasks  
5 performed by the Receiver (and his staff) and Allen Matkins, respectively, during  
6 the Application Period.

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

13 **II. FACTUAL AND PROCEDURAL BACKGROUND**

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

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

24 On December 21, 2018, the Court entered the *Order Regarding Preliminary*  
25 *Injunction and Appointment of a Permanent Receiver* (the "Appointment Order"),  
26 by which it appointed the Receiver as the permanent receiver for the Receivership  
27 Entities and imposed certain injunctive relief against Iannelli, the Receivership  
28 Entities, and anyone acting in concert with them. *See* ECF No. 66. The

1 Appointment Order vested the Receiver with exclusive authority and control over  
2 the Entities and assigned him certain duties, including marshaling and preserving the  
3 assets of the Entities (collectively, the "Receivership Assets" or "Assets") and  
4 preparing and presenting an accounting to the Court. *See id.*

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

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

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

### 25 **III. ARGUMENT**

#### 26 **A. Receivership Fees and Expenses.**

27 "As a general rule, the expenses and fees of a receivership are a charge upon  
28 the property administered." *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994);

1 *accord Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 374 (1908). The fees and expenses  
2 of a receivership include the fees and expenses reasonably incurred by the receiver  
3 in administering his or her duties, as well as the fees and expenses reasonably  
4 incurred by the receiver's professionals in rendering services to the receiver. *See*  
5 *Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). Decisions  
6 regarding the amount and timing of an award of receivership fees and expenses are  
7 committed to the sound discretion of the district court. *See SEC v. Elliott*, 953 F.2d  
8 1560, 1577 (11th Cir. 1992). Furthermore, "the district court has "broad powers and  
9 wide discretion in crafting relief," including in "distributing receivership assets."  
10 *Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 301 (6th Cir. 2009).

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

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

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

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  
14 likewise believes that the Receivership Estate has benefited from the services  
15 identified in the Fee Application. *Id.*

16 **C. The Invoices of the Requested Fees and Expenses Have Been**  
17 **Submitted to the SEC For Review And Comment.**

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  
4 quotation marks omitted). Thus, the Commission's position on a fee request should  
5 be "given 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, and as they have done in connection with every prior  
8 fee application filed in this matter, the Applicants submitted their invoices to the  
9 SEC for review prior to filing. The SEC has not objected to such requested fees and  
10 expenses and has not otherwise indicated that it intends to object to the Fee  
11 Application. The SEC is likely in the best position to measure the fees and expenses  
12 requested in the instant receivership against those incurred in other, similar  
13 proceedings and cases of similar complexity, *see Phila. & Reading Coal & Iron Co.*,  
14 61 F. Supp. at 124, and any decision on its part not to object to the Fee Application  
15 merits significant deference. Accordingly, the Applicants respectfully request that  
16 the Court approve the fees and expenses requested in the Fee Application.

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

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

20 As reflected in the Fee Application, the Receiver has further requested that  
21 the Court authorize an interim payment of 80% of his requested fees (\$55,173.28)  
22 and 100% of his requested expenses (\$6,609.30) for a total proposed payment of  
23 \$61,782.58. Likewise, Allen Matkins has requested that the Court authorize an  
24 interim payment of 80% of its requested fees (\$178,956.36) and 100% of its  
25 requested expenses (\$7,671.84) for a total proposed payment of \$186,628.20.  
26 Overall, if the Fee Application is granted in its entirety, the aggregate amount of the  
27 fees and expenses to be paid on account thereof to the Applicants would be  
28 \$248,410.78. As of the end of the Application Period, the Receiver held

1 approximately \$1,976,832.93 in cash on hand on behalf of the Estate. *See* Winkler  
2 Decl. ¶ 3.

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

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

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

17 In addition, the Applicants, as is customary in federal receivership matters,  
18 have performed services for the benefit of the Receivership Estate ahead of time and  
19 may not be compensated until months later. In order to ensure that compensation  
20 requests—and their attendant payments—stay relatively current with the services  
21 actually performed, the Applicants requested, and the Court agreed per the Order in  
22 Aid, that they be permitted to submit fee applications approximately every three  
23 months. With the Receiver and Allen Matkins having filed their last fee application  
24 on September 15, 2022, *see* ECF No. 245, an interim payment is further warranted  
25 in this case.

26 **IV. CONCLUSION**

27 For the foregoing reasons, the Applicants respectfully request that the Court  
28 grant the Fee Application, approve 100% of the fees and expenses incurred by the



1 Applicants during the Application Period and authorize the payment, on an interim  
2 basis, of 80% of such fees and 100% of such expenses from the funds of the  
3 Receivership Estate held by the Receiver.

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Dated: December 21, 2022

ALLEN MATKINS LECK GAMBLE  
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