

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

Date: July 13, 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"), his counsel of record, Allen Matkins Leck
4 Gamble Mallory & Natsis LLP ("Allen Matkins"), his tax accountant, Miller Kaplan
5 Arase LLP ("Miller Kaplan"), and his counsel of record, Allen Matkins Leck
6 Gamble Mallory & Natsis LLP ("Allen Matkins," and together, with the Receiver
7 and Miller Kaplan, the "Applicants"), hereby submit this memorandum of points
8 and authorities in support of their concurrently and jointly submitted sixteenth
9 interim application for the payment of fees and the reimbursement of expenses (the
10 "Fee Application").

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

13 **I. INTRODUCTION**

14 The Fee Application is the fifteenth interim fee application submitted in the
15 above-referenced matter and covers the Receiver's and Allen Matkins' fees and
16 expenses incurred during the period from January 1, 2023, through March 31, 2023,
17 (the "Application Period"), and Miller Kaplan's fees and expenses incurred during
18 the period from May 1, 2022, through March 31, 2023 (the "MK Application
19 Period").

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

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Applicant	Fees	Interim Payment of Fees	Expenses	Interim Payment of Expenses
Receiver	\$47,669.80	\$38,135.84	\$1,338.45	\$1,338.45
Allen Matkins	\$148,559.27	\$118,847.41	\$7,302.18	\$7,302.18
Miller Kaplan	\$23,252.00	\$18,601.60	\$0.00	\$0.00
	\$219,481.07	\$175,584.85	\$8,640.63	\$8,640.63

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

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

II. FACTUAL AND PROCEDURAL BACKGROUND

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

On June 5, 2018, plaintiff the Securities and Exchange Commission (the "SEC") filed a complaint against defendants Ralph Iannelli ("Iannelli") and Essex Capital Corporation ("Essex," and together, with Iannelli, the "Defendants") in this Court, commencing the above-captioned civil action. *See* ECF No. 1. The SEC's

1 complaint alleged that Iannelli, by and through certain entities under his control,
2 committed a number of fraudulent violations of federal securities laws, in
3 furtherance of a Ponzi-like investment scheme. *See id.*

4 On December 21, 2018, the Court entered the *Order Regarding Preliminary*
5 *Injunction and Appointment of a Permanent Receiver* (the "Appointment Order"),
6 by which it appointed the Receiver as the permanent receiver for the Receivership
7 Entities and imposed certain injunctive relief against Iannelli, the Receivership
8 Entities, and anyone acting in concert with them. *See* ECF No. 66. The
9 Appointment Order vested the Receiver with exclusive authority and control over
10 the Entities and assigned him certain duties, including marshaling and preserving the
11 assets of the Entities (collectively, the "Receivership Assets" or "Assets") and
12 preparing and presenting an accounting to the Court. *See id.*

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

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

24 As reflected in the Fee Application, the Receiver continued performing the
25 duties required of him to protect and preserve the value of the Receivership Entities
26 and their Assets, as provided for in the Appointment Order and Permanent
27 Injunction, and operating the viable portion of the Entities' business as a going
28 concern, throughout the Application Period. Having diligently pursued and

1 facilitated the Receiver's duties, the Applicants now request that the Court approve
2 their respective fees and expenses incurred during the Application Period and
3 authorize the payment of such fees and reimbursement of such expenses from the
4 funds of the Receivership Estate, as detailed herein and in the Fee Application.

5 **III. ARGUMENT**

6 **A. Receivership Fees and Expenses.**

7 "As a general rule, the expenses and fees of a receivership are a charge upon
8 the property administered." *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994);
9 accord *Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 374 (1908). The fees and expenses
10 of a receivership include the fees and expenses reasonably incurred by the receiver
11 in administering his or her duties, as well as the fees and expenses reasonably
12 incurred by the receiver's professionals in rendering services to the receiver. *See*
13 *Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). Decisions
14 regarding the amount and timing of an award of receivership fees and expenses are
15 committed to the sound discretion of the district court. *See SEC v. Elliott*, 953 F.2d
16 1560, 1577 (11th Cir. 1992). Furthermore, "the district court has "broad powers and
17 wide discretion in crafting relief," including in "distributing receivership assets."
18 *Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 301 (6th Cir. 2009).

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

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

25 The fees of a receiver and his professionals must be reasonable. *See San*
26 *Vicente Med. Partners, Ltd. v. Orr (In re San Vicente Med. Partners, Ltd.)*, 962 F.2d
27 1402, 1409 (9th Cir. 1992). In determining the reasonableness of the fees and
28 expenses requested in connection with a receivership, a court should consider the

1 time records presented, the quality of the work performed, the complexity of the
2 problems faced, and the benefit of the services rendered to the receivership estate.
3 *See SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).
4 In a practical sense, once it has identified the hourly rate charged by the applicant
5 for comparable services in other matters and determined that the applicant's services
6 were reasonable, the court should multiply the number of hours expended by that
7 hourly rate. *Cf. Sw. Media, Inc. v. Rau*, 708 F.2d 419, 427 (9th Cir. 1983)
8 (Bankruptcy Act case), *superseded in part by statute*, Bankruptcy Reform Act of
9 1978, Pub. L. No. 95-598, 92 Stat. 2549, *as recognized in U.S. Tr. v. Tamm (In re*
10 *Hokulani Square, Inc.)*, 460 B.R. 763 (B.A.P. 9th Cir. 2011).

11 Here, the Fee Application describes the nature of the services that have been
12 rendered by the Applicants and, where appropriate, the identity and hourly billing
13 rate of the individual performing each specific task. The Applicants have
14 endeavored to staff matters as efficiently as possible in light of the level of
15 experience required and the complexity of the issues presented. In general, the Fee
16 Application reflects the Applicants' customary billing rates and the rates charged for
17 comparable services in other matters, less agreed-upon discounts and other
18 reductions specifically identified in the Fee Application.

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

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

26 Courts give great weight to the judgment and experience of the SEC with
27 respect to compensation requests. As one court has noted, "[I]t is proper to [keep] in
28 mind that the [SEC] is about the only wholly disinterested party in [this] proceeding

1 and that . . . its experience has made it thoroughly familiar with the general attitude
2 of the Courts and the amounts of allowances made in scores of comparable
3 proceedings." *In re Phila. & Reading Coal & Iron Co.*, 61 F. Supp. 120, 124 (E.D.
4 Pa. 1945) (Bankruptcy Act case). Indeed, the SEC's positions are not "mere casual
5 conjectures, but are recommendations based on closer study than a district judge
6 could ordinarily give to such matters." *Finn v. Childs Co.*, 181 F.2d 431, 438 (2d
7 Cir. 1950) (citation omitted) (internal quotation marks omitted) (Bankruptcy Act
8 case). And such "recommendations as to fees of the S.E.C. may be the only solution
9 to the very undesirable subjectivity with variations according to the particular judge
10 under particular circumstances which has made the fixing of fees seem often to be
11 upon nothing more than an ipse dixit basis." *Id.* (citation omitted) (internal
12 quotation marks omitted). Thus, the Commission's position on a fee request should
13 be "given great weight." *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222.

14 Here, in order to ensure that the fees and expenses requested in the Fee
15 Application are appropriate, and as they have done in connection with every prior
16 fee application filed in this matter, the Applicants submitted their invoices to the
17 SEC for review prior to filing. The SEC has not objected to such requested fees and
18 expenses and has not otherwise indicated that it intends to object to the Fee
19 Application. The SEC is likely in the best position to measure the fees and expenses
20 requested in the instant receivership against those incurred in other, similar
21 proceedings and cases of similar complexity, *see Phila. & Reading Coal & Iron Co.*,
22 61 F. Supp. at 124, and any decision on its part not to object to the Fee Application
23 merits significant deference. Accordingly, the Applicants respectfully request that
24 the Court approve the fees and expenses requested in the Fee Application.

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

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

4 As reflected in the Fee Application, the Receiver has further requested that
5 the Court authorize an interim payment of 80% of his requested fees (\$38,135.84)
6 and 100% of his requested expenses (\$1,338.45) for a total proposed payment of
7 \$39,474.29. Likewise, Allen Matkins has requested that the Court authorize an
8 interim payment of 80% of its requested fees (\$118,847.41) and 100% of its
9 requested expenses (\$7,302.18) for a total proposed payment of \$139,354.86. Miller
10 Kaplan has requested that the Court authorize an interim payment of 80% of its
11 requested fees (\$18,601.60) and 100% of its requested expenses (\$0.00) for a total
12 proposed payment of \$18,601.60. Overall, if the Fee Application is granted in its
13 entirety, the aggregate amount of the fees and expenses to be paid on account
14 thereof to the Applicants would be \$197,430.75. As of the end of the Application
15 Period, the Receiver held approximately \$2 million in cash on hand on behalf of the
16 Estate. *See* Winkler Decl. ¶ 3.

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

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

21 Where, as here, the fees requested are reasonable and "both the magnitude
22 and the protracted nature of a case impose economic hardships on professionals
23 rendering services to the estate," an interim award of fees is appropriate. *CFPB v.*
24 *Pension Funding, LLC*, Case No. SACV 15-1329-JLS (JCGx), 2016 U.S. Dist.
25 LEXIS 187607, at *4 (C.D. Cal. July 7, 2016). Indeed, interim payments are
26 necessary "to relieve counsel and others from the burden of financing lengthy and
27 complex . . . proceedings." *In re Rose Way, Inc.*, Case No. 89-1273-C H, 1990
28 Bankr. LEXIS 3028, at *9 (Bankr. S.D. Iowa Mar. 1, 1990) (citing *In re Mansfield*

1 *Tire & Rubber Co.*, 19 B.R. 125 (Bankr. N.D. Ohio 1981)) (bankruptcy case). Thus,
2 an interim payment of the Applicants' requested fees and expenses is appropriate.

3 In addition, the Applicants, as is customary in federal receivership matters,
4 have performed services for the benefit of the Receivership Estate ahead of time and
5 may not be compensated until months later. In order to ensure that compensation
6 requests—and their attendant payments—stay relatively current with the services
7 actually performed, the Applicants requested, and the Court agreed per the Order in
8 Aid, that they be permitted to submit fee applications approximately every three
9 months. With the Receiver and Allen Matkins having filed their last fee application
10 on March 8, 2023, *see* ECF No. 25, and Miller Kaplan having files its last fee
11 application on September 9, 2022, *see* ECF No. 245, an interim payment is further
12 warranted in this case.

13 **IV. CONCLUSION**

14 For the foregoing reasons, the Applicants respectfully request that the Court
15 grant the Fee Application, approve 100% of the fees and expenses incurred by the
16 Applicants during the Application Period and authorize the payment, on an interim
17 basis, of 80% of such fees and 100% of such expenses from the funds of the
18 Receivership Estate held by the Receiver.

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21 Dated: June 13, 2023

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

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24 By: /s/ Matthew D. Pham

MATTHEW D. PHAM
Attorneys for Receiver
GEOFF WINKLER