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

Date: January 18, 2024
Time: 10:00 a.m.
Ctrm: 6D
Judge Hon. Fernando M. Olguin

21 Geoff Winkler (the "Receiver"), the Court-appointed permanent receiver for
22 defendant Essex Capital Corporation and its subsidiaries and affiliates (collectively,
23 the "Receivership Entities" or "Entities"), and his counsel of record, Allen Matkins
24 Leck Gamble Mallory & Natsis LLP ("Allen Matkins," and together, with the
25 Receiver, the "Applicants"), hereby submit this memorandum of points and
26 authorities in support of their concurrently and jointly submitted eighteenth 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 eighteenth interim fee application submitted in the
 5 above-referenced matter and covers the Receiver's and Allen Matkins' fees and
 6 expenses incurred during the period from July 1, 2023, through September 30, 2023
 7 (the "Application Period").

8 By way of the Fee Application, the Applicants request the Court's approval of
 9 100% of their fees and expenses incurred during the Application Period and further
 10 request the interim payment of 80% of such fees and 100% of such expenses, to be
 11 paid from the funds of the receivership estate of the Receivership Entities (the
 12 "Receivership Estate" or "Estate"). Specifically, the amounts of the Applicants' fees
 13 and expenses sought to be approved and paid under this Fee Application are as
 14 follows:

Applicant	Fees (Inclusive of Discounts, if any)	Interim Fee Payment Requested	Expenses	Interim Expense Payment Requested
Receiver	\$48,423.50	\$38,738.80	\$1,268.89	\$1,268.89
Allen Matkins	\$160,134.57 ¹	\$128,107.66	\$17,990.76	\$17,990.76
	\$208,558.07	\$166,846.46	\$19,259.65	\$19,259.65

21 The Fee Application sets forth the services rendered by the Applicants during
 22 the Application Period, which serve as the bases for the fees and expenses requested
 23 therein and are more particularly described in the invoices attached as **Exhibits 1**
 24 **and 2** to the Fee Application, containing the billing entries that detail the tasks
 25

26
 27 ¹ This amount includes Allen Matkins' application of a line-item discount of 10%
 28 to all of its fees incurred during the Application period, over and above any other
 discounts or write-offs applied during the Application Period. As reflected in
 prior applications, Allen Matkins will apply such a 10% line-item discount to its
 fees for the duration of this receivership.

1 performed by the Receiver (and his staff), and Allen Matkins, respectively, during
2 the Application Period.

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

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

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

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

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

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

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

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

21 **III. ARGUMENT**

22 **A. Receivership Fees and Expenses.**

23 "As a general rule, the expenses and fees of a receivership are a charge upon
24 the property administered." *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994);
25 *accord Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 374 (1908). The fees and expenses
26 of a receivership include the fees and expenses reasonably incurred by the receiver
27 in administering his or her duties, as well as the fees and expenses reasonably
28 incurred by the receiver's professionals in rendering services to the receiver. *See*

1 *Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). Decisions
2 regarding the amount and timing of an award of receivership fees and expenses are
3 committed to the sound discretion of the district court. *See SEC v. Elliott*, 953 F.2d
4 1560, 1577 (11th Cir. 1992). Furthermore, "the district court has "broad powers and
5 wide discretion in crafting relief," including in "distributing receivership assets."
6 *Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 301 (6th Cir. 2009).

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

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

13 The fees of a receiver and his professionals must be reasonable. *See San*
14 *Vicente Med. Partners, Ltd. v. Orr (In re San Vicente Med. Partners, Ltd.)*, 962 F.2d
15 1402, 1409 (9th Cir. 1992). In determining the reasonableness of the fees and
16 expenses requested in connection with a receivership, a court should consider the
17 time records presented, the quality of the work performed, the complexity of the
18 problems faced, and the benefit of the services rendered to the receivership estate.
19 *See SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).
20 In a practical sense, once it has identified the hourly rate charged by the applicant
21 for comparable services in other matters and determined that the applicant's services
22 were reasonable, the court should multiply the number of hours expended by that
23 hourly rate. *Cf. Sw. Media, Inc. v. Rau*, 708 F.2d 419, 427 (9th Cir. 1983)
24 (Bankruptcy Act case), *superseded in part by statute*, Bankruptcy Reform Act of
25 1978, Pub. L. No. 95-598, 92 Stat. 2549, *as recognized in U.S. Tr. v. Tamm (In re*
26 *Hokulani Square, Inc.)*, 460 B.R. 763 (B.A.P. 9th Cir. 2011).

27 Here, the Fee Application describes the nature of the services that have been
28 rendered by the Applicants and, where appropriate, the identity and hourly billing

1 rate of the individual performing each specific task. The Applicants have
2 endeavored to staff matters as efficiently as possible in light of the level of
3 experience required and the complexity of the issues presented. In general, the Fee
4 Application reflects the Applicants' customary billing rates and the rates charged for
5 comparable services in other matters, less agreed-upon discounts and other
6 reductions specifically identified in the Fee Application.

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

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

14 Courts give great weight to the judgment and experience of the SEC with
15 respect to compensation requests. As one court has noted, "[I]t is proper to [keep] in
16 mind that the [SEC] is about the only wholly disinterested party in [this] proceeding
17 and that . . . its experience has made it thoroughly familiar with the general attitude
18 of the Courts and the amounts of allowances made in scores of comparable
19 proceedings." *In re Phila. & Reading Coal & Iron Co.*, 61 F. Supp. 120, 124 (E.D.
20 Pa. 1945) (Bankruptcy Act case). Indeed, the SEC's positions are not "mere casual
21 conjectures, but are recommendations based on closer study than a district judge
22 could ordinarily give to such matters." *Finn v. Childs Co.*, 181 F.2d 431, 438 (2d
23 Cir. 1950) (citation omitted) (internal quotation marks omitted) (Bankruptcy Act
24 case). And such "recommendations as to fees of the S.E.C. may be the only solution
25 to the very undesirable subjectivity with variations according to the particular judge
26 under particular circumstances which has made the fixing of fees seem often to be
27 upon nothing more than an ipse dixit basis." *Id.* (citation omitted) (internal
28

1 quotation marks omitted). Thus, the Commission's position on a fee request should
2 be "given great weight." *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222.

3 Here, in order to ensure that the fees and expenses requested in the Fee
4 Application are appropriate, and as they have done in connection with every prior
5 fee application filed in this matter, the Applicants submitted their invoices to the
6 SEC for review prior to filing. The SEC has not objected to such requested fees and
7 expenses and has not otherwise indicated that it intends to object to the Fee
8 Application. The SEC is likely in the best position to measure the fees and expenses
9 requested in the instant receivership against those incurred in other, similar
10 proceedings and cases of similar complexity, *see Phila. & Reading Coal & Iron Co.*,
11 61 F. Supp. at 124, and any decision on its part not to object to the Fee Application
12 merits significant deference. Accordingly, the Applicants respectfully request that
13 the Court approve the fees and expenses requested in the Fee Application.

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

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

17 As reflected in the Fee Application, the Receiver has further requested that
18 the Court authorize an interim payment of 80% of his requested fees (\$38,738.80)
19 and 100% of his requested expenses (\$1,268.89) for a total proposed payment of
20 \$40,007.69. Likewise, Allen Matkins has requested that the Court authorize an
21 interim payment of 80% of its requested fees (\$128,107.66) and 100% of its
22 requested expenses (\$17,990.76) for a total proposed payment of \$146,098.42.
23 Overall, if the Fee Application is granted in its entirety, the aggregate amount of the
24 fees and expenses to be paid on account thereof to the Applicants would be
25 \$186,106.11. As of the end of the Application Period, the Receiver held
26 approximately \$3.8 million in cash on hand on behalf of the Estate. *See Winkler*
27 Decl. ¶ 3.

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

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

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

15 In addition, the Applicants, as is customary in federal receivership matters,
16 have performed services for the benefit of the Receivership Estate ahead of time and
17 may not be compensated until months later. In order to ensure that compensation
18 requests—and their attendant payments—stay relatively current with the services
19 actually performed, the Applicants requested, and the Court agreed per the Order in
20 Aid, that they be permitted to submit fee applications approximately every three
21 months. With the Receiver and Allen Matkins having filed their last fee application
22 on September 21, 2023, *see* ECF No. 270, an interim payment is further warranted
23 in this case.

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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 during the Application Period and authorize the payment, on an interim basis, of
5 80% of such fees and 100% of such expenses from the funds of the Receivership
6 Estate held by the Receiver.

7
8 Dated: December 21, 2023

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