

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-AJRx

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
NINETEENTH INTERIM  
APPLICATION OF RECEIVER,  
GEOFF WINKLER, AND HIS  
PROFESSIONALS FOR PAYMENT  
OF FEES AND REIMBURSEMENT  
OF EXPENSES**

Date: April 25, 2024  
Time: 10:00 a.m.  
Ctrm: 6D  
Judge Hon. Fernando M. Olguin

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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 nineteenth 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 nineteenth 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 October 1, 2023, through December 31,  
7 2023 (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	\$39,497.50	\$31,598.00	\$768.33	\$768.33
Allen Matkins	\$84,602.07	\$67,681.66	\$6,905.20	\$6,905.20
	<b>\$124,099.57</b>	<b>\$99,279.66</b>	<b>\$7,673.53</b>	<b>\$7,673.53</b>

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

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

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

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

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

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

27 On the Receiver's motion, *see* ECF No. 67, the Court entered the *Order in Aid*  
28 *of Receivership* (the "Order in Aid") on February 1, 2019, *see* ECF No. 69. By the

1 Order in Aid, the Court approved and authorized the Receiver's engagement of  
2 Allen Matkins as his lead receivership counsel and provided additional guidance and  
3 instructions regarding the administration of the instant receivership. *See id.*

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

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

19 **III. ARGUMENT**

20 **A. Receivership Fees and Expenses.**

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 *accord Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 374 (1908). The fees and expenses  
24 of a receivership include the fees and expenses reasonably incurred by the receiver  
25 in administering his or her duties, as well as the fees and expenses reasonably  
26 incurred by the receiver's professionals in rendering services to the receiver. *See*  
27 *Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). Decisions  
28 regarding the amount and timing of an award of receivership fees and expenses are

1 committed to the sound discretion of the district court. *See SEC v. Elliott*, 953 F.2d  
2 1560, 1577 (11th Cir. 1992). Furthermore, "the district court has "broad powers and  
3 wide discretion in crafting relief," including in "distributing receivership assets."  
4 *Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 301 (6th Cir. 2009).

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

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

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

25 Here, the Fee Application describes the nature of the services that have been  
26 rendered by the Applicants and, where appropriate, the identity and hourly billing  
27 rate of the individual performing each specific task. The Applicants have  
28 endeavored to staff matters as efficiently as possible in light of the level of

1 experience required and the complexity of the issues presented. In general, the Fee  
2 Application reflects the Applicants' customary billing rates and the rates charged for  
3 comparable services in other matters, less agreed-upon discounts and other  
4 reductions specifically identified in the Fee Application.

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

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

12 Courts give great weight to the judgment and experience of the SEC with  
13 respect to compensation requests. As one court has noted, "[I]t is proper to [keep] in  
14 mind that the [SEC] is about the only wholly disinterested party in [this] proceeding  
15 and that . . . its experience has made it thoroughly familiar with the general attitude  
16 of the Courts and the amounts of allowances made in scores of comparable  
17 proceedings." *In re Phila. & Reading Coal & Iron Co.*, 61 F. Supp. 120, 124 (E.D.  
18 Pa. 1945) (Bankruptcy Act case). Indeed, the SEC's positions are not "mere casual  
19 conjectures, but are recommendations based on closer study than a district judge  
20 could ordinarily give to such matters." *Finn v. Childs Co.*, 181 F.2d 431, 438 (2d  
21 Cir. 1950) (citation omitted) (internal quotation marks omitted) (Bankruptcy Act  
22 case). And such "recommendations as to fees of the S.E.C. may be the only solution  
23 to the very undesirable subjectivity with variations according to the particular judge  
24 under particular circumstances which has made the fixing of fees seem often to be  
25 upon nothing more than an ipse dixit basis." *Id.* (citation omitted) (internal  
26 quotation marks omitted). Thus, the Commission's position on a fee request should  
27 be "given great weight." *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222.

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

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

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

15 As reflected in the Fee Application, the Receiver has further requested that  
16 the Court authorize an interim payment of 80% of his requested fees (\$38,738.80)  
17 and 100% of his requested expenses (\$1,268.89) for a total proposed payment of  
18 \$40,007.69. Likewise, Allen Matkins has requested that the Court authorize an  
19 interim payment of 80% of its requested fees (\$128,107.66) and 100% of its  
20 requested expenses (\$17,990.76) for a total proposed payment of \$146,098.42.  
21 Overall, if the Fee Application is granted in its entirety, the aggregate amount of the  
22 fees and expenses to be paid on account thereof to the Applicants would be  
23 \$186,106.11. As of the end of the Application Period, the Receiver held  
24 approximately \$2.3 million in cash on hand on behalf of the Estate. *See Winkler*  
25 *Decl.* ¶ 3.

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





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: March 26, 2024

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

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11 By:           /s/ Matthew D. Pham          

MATTHEW D. PHAM  
Attorneys for Receiver  
GEOFF WINKLER

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