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9 GEOFF WINKLER

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

13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

16 RALPH T. IANNELLI and ESSEX
17 CAPITAL CORP.,

18 Defendants.

Case No. 2:18-cv-05008-FMO-AJRx

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

Date: February 6, 2025
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 Twenty-Second
 7 Interim Application for the Payment of Fees and Reimbursement of Expenses (the
 8 "Fee Application").

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

11 **I. INTRODUCTION**

12 The Fee Application is the twenty-second interim fee application submitted in
 13 the above-referenced matter and covers the Receiver's and Allen Matkins' fees and
 14 expenses incurred during the period from July 1, 2024 through September 30, 2024
 15 (the "Application 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 (Inclusive of Discounts, if any)	Interim Fee Payment Requested	Expenses	Interim Expense Payment Requested
Receiver	\$32,892.10	\$26,313.68	\$1,357.69	\$1,357.69
Allen Matkins	\$31,988.52	\$25,590.82	\$2,201.20	\$2,201.20
	\$64,880.62	\$51,904.50	\$3,558.89	\$3,558.89

1 The Fee Application sets forth the services rendered by the Applicants during
2 the Application Period, which form the basis for the fees and expenses requested
3 therein and are more particularly described in the invoices and statements included
4 in **Exhibits 1 and 2** to the Winkler Declaration, containing the billing entries that
5 detail the tasks performed by the Receiver (and his staff), and Allen Matkins,
6 respectively, during 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 (defined below) are appropriate and have benefited the Estate. On that
11 basis, the Applicants respectfully request that the Court approve and authorize the
12 payment of 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 "Assets") and preparing and presenting an
4 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 Allen Matkins is a reasonable and
13 appropriate request made to the Court, and for the reasons discussed below, the
14 Court should exercise that discretion and authorize the interim payment of those fees
15 and 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 *superseded in part by statute*, Bankruptcy Reform Act of 1978, Pub. L. No. 95-598,

1 92 Stat. 2549, as recognized in *U.S. Tr. v. Tamm (In re Hokulani Square, Inc.)*, 460
2 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, in his business judgment, that the Receivership Estate has
15 benefited from the services performed during the Application Period. *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). Indeed, the SEC's positions are not "mere casual conjectures, but are
25 recommendations based on closer study than a district judge could ordinarily give to
26 such matters." *Finn v. Childs Co.*, 181 F.2d 431, 438 (2d Cir. 1950) (citation
27 omitted) (internal quotation marks omitted). And such "recommendations as to fees
28 of the S.E.C. may be the only solution to the very undesirable subjectivity with

1 variations according to the particular judge under particular circumstances which
2 has made the fixing of fees seem often to be upon nothing more than an ipse dixit
3 basis." *Id.* (citation omitted) (internal quotation marks omitted). Thus, the
4 Commission's position on a fee request should be "given great weight." *Fifth Ave.*
5 *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 indicated that it does not intend to
10 object to the Fee Application. The SEC is likely in the best position to measure the
11 fees and expenses requested in the instant receivership against those incurred in
12 other, similar proceedings and cases of similar complexity, *see Phila. & Reading*
13 *Coal & Iron Co.*, 61 F. Supp. at 124, and any decision on its part not to object to the
14 Fee Application merits significant deference. Accordingly, the Applicants
15 respectfully request that the Court approve the fees and expenses requested in the
16 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 (\$26,313.68)
22 and 100% of his requested expenses (\$1,357.69) for a total proposed payment of
23 \$27,671.37. Likewise, Allen Matkins has requested that the Court authorize an
24 interim payment of 80% of its requested fees (\$25,590.82) and 100% of its
25 requested expenses (\$2,201.20) for a total proposed payment of \$27,792.02.

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 \$55,463.39. As of the end of the Application Period, the Receiver held

1 approximately \$2.5 million in cash on hand on behalf of the Estate, in addition to
2 certain non-cash assets, which may have an aggregate value over \$2 million. *See*
3 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)). Thus, an interim
17 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 Receiver and Allen Matkins having filed their last fee application
25 on October 14, 2024 (*see* ECF No. 302), an interim payment is further warranted in
26 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 Applicants during the Application Period and authorize the payment, on an interim
5 basis, of 80% of such fees and 100% of such expenses from the funds of the
6 Receivership Estate held by the Receiver.

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8 Dated: December 27, 2024

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