

1 Robert L. Brace, Esq., SBN 122240  
2 Email:  
3 Peter L. Candy, Esq., SBN 149976  
4 Email: pcandy@hbsb.com  
5 Michael P. Denver, Esq., SBN 199279  
6 Email: mpdenver@hbsb.com  
7 **HOLLISTER & BRACE**  
8 P.O. Box 630  
9 Santa Barbara, CA 93102  
10 Telephone: 805.963.6711  
11 Facsimile: 805.965.0329

12 Thomas G. Foley, Jr., Esq., SBN 65812  
13 Email: tfoley@foleybezek.com  
14 **FOLEY, BEZEK, BEHLE**  
15 **& CURTIS, LLP**  
16 15 W. Carrillo Street  
17 Santa Barbara, CA 93101  
18 Telephone: 805.962.9495  
19 Facsimile: 805.962.0722  
20 *Attorneys for the Hunter Plaintiffs and the Class*

Anthony R. Zelle, Esq., Mass. SBN 548141  
Email:  
Brian McDonough, Esq., Mass. SBN 637999  
Email:  
Thomas Evans, Esq., SBN 552820  
Email: tevans@zelmcd.com  
**ZELLE MCDONOUGH & COHEN LLP**  
101 Federal Street, 14th Floor  
Boston, MA 02110  
Telephone: 617.742.6520 x219  
Facsimile: 617.742.1393  
(Appearing *Pro hac vice*)  
*Attorneys for Plaintiff Quirk Infiniti, Inc. and  
the Class*

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN JOSE DIVISION**

18 **IN RE: EDWARD H. OKUN INTERNAL**  
19 **REVENUE SERVICE § 1031 TAX**  
20 **DEFERRED EXCHANGE LITIGATION**

21 MDL No. 2028

22 Anita Hunter, et al. v. Edward H. Okun, et al.  
23 N.D., California, C.A. No. 5:07-2795-JW

24 Quirk Infiniti, Inc. v. Wachovia Bank, N.A.  
25 D. Massachusetts, C.A. No. 1:08-12060

Case No. 07-cv-2795 JW

Assigned to Hon. James Ware

**STIPULATION AND ORDER RE:  
WAVE I PROCESSING FEE**

26 WHEREAS, the Class and the Bankruptcy Trustee entered into the "Class/Trustee  
27 Agreement" which was approved by this Court and by the Bankruptcy Court in the Bankruptcy  
28

1 case on October 7, 2009. (Docket No. 304).<sup>1</sup> A copy of the Class/Trustee Agreement is attached  
2 hereto as Exhibit 1.

3 WHEREAS, the Court approved terms of the Class/Trustee Agreement provide as  
4 follows: (i) the agreement sets forth the manner by which recovered funds are to be allocated  
5 between the Class and the Estates (*e.g.* ¶3d); (ii) Class Counsel may not base, or seek to justify  
6 any request for fees on recoveries allocated to the Estates (¶9b); (iii) Class Counsel’s fee request  
7 on recovered funds allocated to the Class shall be limited to the lesser between 25% of such  
8 funds, or 1.7 times Class Counsel’s hourly rates (¶9c); (iv) funds recovered from certain parties  
9 referred to as the “Schedule A Parties” are to be allocated to the Estates (¶4e); (v) while Class  
10 Counsel may not seek a contingency fee respecting Schedule A recoveries, Class Counsel and  
11 counsel to the Bankruptcy Trustee may jointly determine to allocate a portion of the proceeds of  
12 settlements with Schedule A Parties to the class to pay fees incurred on an hourly basis to  
13 process settlements with Schedule A Parties in this Class Action to obtain Court approval of  
14 them (¶4e); and (vi) the fee Class Counsel is to be paid to process Schedule A Settlements will  
15 be based upon Class Counsel’s regular hourly rates, not to exceed \$650 per hour (¶¶9d&e).

16 WHEREAS, the Wave I Settlements approved by this Court and by Judge Glenn in the  
17 Bankruptcy Proceedings on October 7, 2009, which total \$88,247,500, include Schedule A  
18 Settlements totaling \$43,247,500 (Docket No. 304).

19 WHEREAS, in accord with the Class/Trustee Agreement, Class Counsel’s request for a  
20 contingency fee, which this Court granted, was limited to funds recovered and allocated to the  
21 Class (Docket No.312). The fee application stated that, in addition to the requested contingency  
22 fee, and in accord with the Class/Trustee Agreement, Class Counsel would present the  
23 Bankruptcy Trustee with an hourly-rate bill for processing the Schedule A Settlements. That bill  
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25

26  
27 <sup>1</sup> The “Bankruptcy Proceedings” pending before Judge Glenn in the Southern District of New  
28 York are styled *In re The 1031 Tax Group, LLC, et al.*, Case Number 07-11448 (MG). The  
Bankruptcy Trustee is Gerard A. McHale, Jr.

1 totals \$230,459.12, which amount includes fees of \$224,525 and expenses of \$5,934.12. (See  
2 Docket No.312-1, ¶16). A copy of the bill is attached hereto as Exhibit 2. The fees and costs  
3 identified in Exhibit 2 were not included among the fees and costs previously presented to the  
4 Court in conjunction with Class Counsels' application for a Wave I contingency fee because,  
5 pursuant to the Class/Trustee Agreement, as explained above, these fees and costs in the amount  
6 of \$230,459.12 will be paid by the Trust;

7 WHEREAS, on October 7, 2009, the Bankruptcy Court entered an order in the  
8 Bankruptcy Case confirming the Second Amended Chapter 11 Plan (the "Plan") of  
9 Reorganization of Gerard A. McHale, Jr., as Chapter 11 Trustee; and


10 WHEREAS, the Plan became effective on December 2, 2009 (the "Effective Date"); and

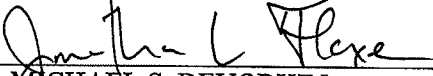
11 WHEREAS, pursuant to the Plan, all of the 1031 Debtors' assets, including causes of  
12 action, were transferred to the 1031 Debtors Liquidation Trust (the "Trust") on the Effective  
13 Date and Gerard A. McHale, Jr., P.A. was appointed trustee of the Trust (the "Liquidation  
14 Trustee"); and

15 WHEREAS, the Liquidation Trustee has reviewed the detailed bill presented by Class  
16 Counsel for processing the Schedule A Settlements and agrees that: (i) the requested processing  
17 fee is provided for under the terms of the Class/Trustee Agreement; (ii) the amount of the bill is  
18 reasonable in relation to the services rendered; and (iii) the Trust is willing to and shall pay it.

19 NOW THEREFORE, based upon the foregoing, the Class and the Liquidation Trustee,  
20 by and through their respective counsel, hereby AGREE and STIPULATE that, under and in  
21 accordance with the Class/Trustee Agreement, the Trust shall pay Class Counsel's bill for  
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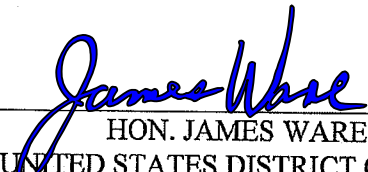
1 processing the Schedule A Settlements totaling \$230,459.12 within 10 days of the Court's Order  
2 approving this Stipulation.

3 \_\_\_\_\_  
4 DATED: April 8, 2010 By:   
5 ROBERT L. BRACE  
6 MICHAEL P. DENVER  
7 *Attorneys for Hunter Plaintiffs and the Class*

8 \_\_\_\_\_  
9 GOLENBOCK EISEMAN  
10 ASSOR BELL & PESKOE, LLP  
11 DATED: April 8, 2010 By:   
12 MICHAEL S. DEVORKIN  
13 JONATHAN L. FLAXER  
14 *Counsel for the Liquidation Trustee of the  
1031 Debtors Liquidation Trust in Chapter  
11 matter, In Re: 1031 Tax Group LLC, U.S.  
Bankr. Court for the South. Dist. of N.Y.,  
Case No. 08-11448-MG*

15 **IT IS SO ORDERED.**

16 \_\_\_\_\_  
17 Dated:     May 4, 2010 \_\_\_\_\_

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19   
20 HON. JAMES WARE  
21 UNITED STATES DISTRICT COURT  
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