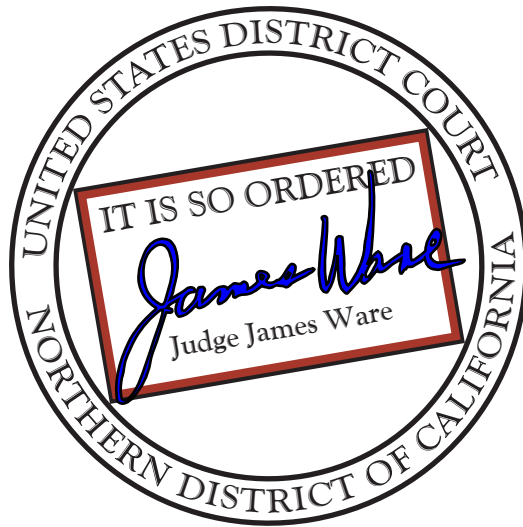


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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

MDL No. 2028

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

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

Case No. 07-CV-2795-JW

James Ware
[REVISED PROPOSED]
FINAL APPROVAL ORDER AND
JUDGMENT OF DISMISSAL RE: WAVE
II SETTLEMENT WITH LOCKTON

Assigned to Hon. James Ware

1 Before the Court is the Plaintiffs' Motion for Final Approval of the \$12,000,000 "Wave
2 II Lockton Settlement", between the Plaintiffs, on behalf of themselves and all others similarly
3 situated (the "Settlement Class", described more fully below), and, Gerard A. McHale, Jr., PA,
4 Liquidation Trustee (the "Trustee") for the 1031 Debtors Liquidation Trust pursuant to the plan
5 (the Plan)¹ of reorganization confirmed in the chapter 11 bankruptcy cases for the 1031 Tax
6 Group, LLC, *et al.* (collectively, the "1031 Debtors"),² on the one hand, and Defendant San
7 Francisco Series of Lockton Companies, LLC ("Lockton" or "the Settling Defendant"), on the
8 other (the "Wave II Lockton Settlement") and Judgment of Dismissal as to Lockton.

9 A copy of the Wave II Lockton Settlement is in the Court file. (See Docket No. 326).
10 The Wave II Lockton Settlement was preliminarily approved on May 13, 2010. (Docket No.
11 347). The Court approved Wave II Notice Documents were distributed to potential Class
12 Members as required before May 24, 2010. There are no opt-outs from the Settlement Class
13 and there are no objections to the Wave II Lockton Settlement.

14 On the 30th day of August, 2010, a hearing was held before this Court to determine the
15 following: (1) whether the Wave II Lockton Settlement should be approved pursuant to Federal
16 Rule of Civil Procedure 23(e) as fair, reasonable and adequate; (2) whether the terms and
17 conditions of the Wave II Lockton Settlement constitute a good faith settlement within the
18 meaning of California Code of Civil Procedure §§ 877 and 877.6 which is fair, reasonable and
19 adequate for the settlement of all claims released therein by all releasing persons against all
20 released persons and should be approved; (3) whether a Judgment should be entered dismissing
21 the above entitled action on the merits with prejudice and entering bar orders in favor of the
22

23 _____
¹ The Plan became effective on December 2, 2009.

24 _____
² The 1031 Debtors in the related bankruptcy proceedings pending in the United States Bankruptcy
25 Court for the Southern District of New York, styled *In Re: The 1031 Tax Group*, Case No. 07-11448
26 (MG) are: The 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak
27 Harbor LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange Company LLC; Investment
28 Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.;
NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031
Services, LLC; Shamrock Holdings Group, LLC; and AEC Exchange Company LLC.

1 Settling Defendant; (4) whether the Settlement Class members' share of the settlement funds
2 should be deposited into the Qualified Settlement Fund which was created in conjunction with
3 the Court's final approval of the Wave I Settlements; and (5) whether class counsel should be
4 re-appointed. The Wave II Lockton Settlement Agreement is incorporated herein by reference.

5 The Court considered all matters submitted to it at the hearing and otherwise, and
6 determined that a notice of the hearing substantially in the form approved by the Court was
7 timely mailed to all members of the Settlement Class.

8 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED**
9 **THAT:**

10 1. The Court has jurisdiction over the subject matter of this dispute, all members of
11 the Settlement Class, and the Settling Defendant.

12 2. The Court finds that for purposes of settlement only the prerequisites for a class
13 action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied and hereby
14 certifies the Settlement Class as follows:³

15 "All Exchangers who were customers of, or entrusted money or property to, The
16 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG
17 Oak Harbor, LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange
18 Company, LLC; Investment Exchange Group, LLC; National Exchange
19 Accommodators, LLC; National Exchange Services QI, Ltd.; NRC 1031, LLC;
20 Real Estate Exchange Services, Inc.; Rutherford Investment, LLC; Security 1031
21 Services, LLC; Shamrock Holdings Group, LLC; or AEC Exchange Company,
22 LLC, including any parents, subsidiaries or affiliates of any of those entities
23 engaged in business as Qualified Intermediaries pursuant to 26 U.S.C. § 1031,
24 and who suffered loss or damages or allegedly suffered loss or damages in any
25 way, directly or indirectly, related to or arising out of (a) the business failure of
26 any of the entities listed above, or any of those entities' failure to complete any
27 section 1031 exchange, including their parents, subsidiaries or affiliates, (b) any
28 of the events, acts, omissions or conduct alleged in the First Amended Complaint
in the action entitled *Anita Hunter, et al. v. Edward Okun, et al.*, United States
District Court for the Northern District of California, Case No. 5:07-cv-02795-
JW, (c) any of the events, acts, omissions or conduct alleged in the Complaint in
the action entitled *Quirk Infiniti, Inc. v. Wachovia, N.A.*, United States District
Court for the District of Massachusetts, Case No. 1:08-cv-12060-JLT, or (d) any
of the events, acts, omissions or conduct alleged in the Amended Complaint in

³ Capitalized terms in the Settlement Class definition and elsewhere in this Order and Judgment have the same meanings as those terms have in the Wave II Lockton Settlement, unless specifically defined herein.

1 the action entitled *Anita Hunter, et al. v. Citibank, N.A., et al.*, United States
2 District Court for the Northern District of California, Case No.5 :09-cv-02079-
3 JW, and all Entities who are or claim to be an assignee, transferee or beneficiary
4 of an encumbrance on any Claim of any of the foregoing Exchangers arising out
of or relating to any of the matters described in (a) through (d).” (The
“Settlement Class”).

5 3. Notice of the Wave II Lockton Settlement was given in a timely manner to all
6 members of the Settlement Class who could be identified with reasonable effort. The form and
7 method of notifying the members of the Settlement Class of the terms and conditions of the
8 Wave II Lockton Settlement met the requirements of Rule 23 of the Federal Rules of Civil
9 Procedure, due process, and any other applicable law, constituted the best notice practicable
10 under the circumstances, and constituted due and sufficient notice to all persons and entities
11 entitled thereto.

12 4. The Wave II Lockton Settlement is the product of serious, informed, non-
13 collusive and non-fraudulent negotiations conducted at arms length by the settling parties. The
14 Court has considered the extent of the claimed damages, the Settling Defendant’s potential
15 liability, the settlement amount, the financial condition of the Settling Defendant, potential
16 insurance coverage limits, if any, and the benefits of settlement proceeds to the Plaintiffs.
17 Accordingly, in lieu of trial, the Court concludes that resolution of this case for the Settling
18 Defendant by way of settlement is proper, and the Wave II Lockton Settlement was entered into
19 in good faith within the meaning of California Code of Civil Procedure §§ 877 and 877.6 and
20 *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38 Cal. 3d 488, 499-500 (Cal. 1985).

21 5. The Wave II Lockton Settlement is approved as fair, reasonable, and adequate,
22 and the members of the Settlement Class and the Settling Defendant are directed to consummate
23 the Wave II Lockton Settlement in accordance with its terms and provisions.

24 6. The above entitled action is hereby dismissed with prejudice as against the above
25 identified Settling Defendant. Each party shall bear its/his/her own fees and costs.

26 7. All Exchangers and other members of the Settlement Class, all Entities who have
27 otherwise agreed to be bound by the Agreement, and all Entities claiming to be an assignee,
28 transferee or beneficiary of an encumbrance on any Claim once held by an Exchanger or other

1 member of the Settlement Class, are permanently barred, enjoined and restrained from
2 commencing, prosecuting or asserting any direct, indirect or derivative Claim against Lockton,
3 the other Lockton Released Parties or the Lockton Insurers, arising out of or relating to (i) Any
4 Evidence of Insurance issued to any of the 1031 Debtors, regardless of whether that Evidence of
5 Insurance was or was not transmitted to, described to, seen by or relied on by any of the Class
6 Representatives or other members of the Settlement Class; (ii) Any insurance policy issued to
7 any of the 1031 Debtors by any insurance company, including any fidelity bond or commercial
8 crime insurance policy, whether primary or excess; (iii) The business failure of any of the 1031
9 Debtors, including their parents, subsidiaries or affiliates, or any of those entities' failure to
10 complete any section 1031 exchange; (iv) The operation or business of the 1031 Debtors, or
11 their parents, subsidiaries or affiliates, or any Entities owned or controlled, directly or indirectly;
12 by Edward H. Okun; (v) Edward H. Okun; (vi) The actual or alleged theft of money or property
13 from any of the 1031 Debtors by anyone, including Edward H. Okun, Lara D. Coleman, Richard
14 Simring and Robert D. Field; (vii) The investigation, consideration, handling or adjustment of
15 claims made by or on behalf of any of the 1031 Debtors or their Estates or any Exchanger who
16 deposited funds or other property with any of the 1031 Debtors to any insurance company or
17 insurance broker in connection with the actual or alleged theft of property or money from any of
18 the 1031 Debtors; (viii) The Class Litigation, any of the events, acts, omissions or conduct
19 alleged therein, and any matters that could have been alleged therein; (ix) Any Claims that could
20 have been alleged against Lockton or any of the other Lockton Released Parties by the Trustee,
21 any of the 1031 Debtors or their Estates, the Liquidation Trust and/or the Liquidation Trustee;
22 (x) Any adversary proceeding filed by the Trustee the Liquidation Trust and/or the Liquidation
23 Trustee in the Bankruptcy Case, any of the events, acts, omissions or conduct alleged therein,
24 and any matters that could have been alleged therein; and (xi) The putative class action styled
25 "*Hunter, et al. v. Citibank, NA., et al.*", Case No. 09-cv-02079-JW (United States District Court
26 for the Northern District of California) ("*Hunter v. Citibank*"), any of the events, acts, omissions
27 or conduct alleged therein, and any matters that could have been alleged therein. The foregoing
28 Claims include without limitation Claims based on a theory of constructive trust, equitable lien

1 or fraudulent conveyance, whether arising under state, Federal or foreign law as claims,
2 crossclaims, counterclaims, or third-party claims, in this Court, in any Federal or state court, or
3 in any other court, arbitration proceeding, administrative agency, or other forum in the United
4 States, or (to the fullest extent permitted by law) Canada or elsewhere. The foregoing Claims are
5 hereby irrevocably compromised, settled, released, discharged and dismissed as against
6 Lockton, the other Lockton Released Parties and the Lockton Insurers on the merits and with
7 prejudice by virtue of the proceedings herein.

8 8. To the fullest extent permitted by law, no Person, whether or not a party to the
9 Class Litigation, a creditor of the 1031 Debtors, a party to the Bankruptcy Case, or a party to
10 any adversary proceeding brought by the Trustee, shall be permitted to bring a Claim and each
11 such Person is hereby permanently barred, enjoined and restrained from instituting,
12 commencing, prosecuting or asserting any Claim (“Barred Person”) for indemnity or
13 contribution, whether or not delineated as a claim for indemnity or contribution, against
14 Lockton, any of the other Lockton Released Parties or the Lockton Insurers, which relates to or
15 arises out of any Claims asserted by the plaintiffs including, but not limited to (a) the failure of
16 1031 Advance 132 LLC, 1031 Advance, Inc., 1031 TG Oak Harbor, LLC, AEC Exchange
17 Company, LLC, Atlantic Exchange Company, Inc., Atlantic Exchange Company, LLC,
18 Investment Exchange Group, LLC, National Exchange Accommodators LLC, National
19 Exchange Services QI, Ltd., NRC 1031 LLC, Real Estate Exchange Services, Inc., Rutherford
20 Investment, LLC, Security 1031 Services, LLC, Shamrock Holdings Group, LLC, and/or The
21 1031 Tax Group, LLC, including any subsidiaries or affiliates of any of those entities engaged
22 in business as Qualified Intermediaries pursuant to 26 U.S.C. § 1031, (b) any of the events, acts,
23 omissions or conduct alleged in the Action entitled *Anita Hunter, et al. v. Edward Okun, et al.*,
24 United States District Court for the Northern District of California, Case No. 07-cv-02795-JW,
25 (c) any of the events, acts, omissions or conduct alleged in the Complaint in the Action entitled
26 *Quirk Infiniti, Inc. v. Wachovia Bank, N.A.*, United States District Court for the District of
27 Massachusetts, Case No. 1:08-12060, (d) any of the events, acts, omissions or conduct alleged
28 in the Action entitled *Anita Hunter, et al. v. Citibank, N.A., et al.*, United States District Court

1 for the Northern District of California, Case No. 09-cv-02079-JW, (e) any Evidence of
2 Insurance issued to any of the 1031 Debtors, regardless of whether that Evidence of Insurance
3 was or was not transmitted to, described to, seen by or relied on by any of the Class
4 Representatives or other members of the Settlement Class, (f) any insurance policy issued to any
5 of the 1031 Debtors by any insurance company, including any fidelity bond or commercial
6 crime insurance policy, whether primary or excess, (g) the actual or alleged theft of money or
7 property from any of the 1031 Debtors by anyone, including Edward H. Okun, Lara D.
8 Coleman, Richard Simring and Robert D. Field, and (h) any of the events, acts, omissions or
9 conduct alleged in any adversary proceeding filed by the Trustee, the Liquidation Trust or the
10 Liquidation Trustee in the Bankruptcy Case, whether such Claim arises under state, federal or
11 foreign law as a claim, cross-claim, counterclaim or third-party claim and whether in the Class
12 Litigation, the Bankruptcy Court, any other federal court, any state or other court, or in any
13 arbitration proceeding, administrative agency, or other forum in the United States or elsewhere
14 (collectively, the “Barred Claims”).

15 Barred Claims shall include any claim against Lockton, any of the other Lockton
16 Released Parties or any of the Lockton Insurers where the injury to the Barred Person is the
17 Barred Person’s liability to the Plaintiff, or costs and fees in connection with the Barred
18 Person’s asserted liability to the Plaintiff, relating to or arising out of any of the matters
19 described in (a) through (h), above. The term Plaintiff includes the named plaintiffs in the Class
20 Litigation, the members of the putative classes in the Class Litigation, the Trustee, the
21 Liquidation Trust or the Liquidation Trustee in the Bankruptcy case.

22 9. To the fullest extent permitted by law, Lockton and the other Lockton Released
23 Parties are hereby permanently barred, enjoined, and restrained from commencing, prosecuting
24 or asserting any claim for indemnity or contribution, whether or not delineated as a claim for
25 indemnity or contribution, against any Person arising out of the claims or allegations by the
26 Plaintiff against Lockton or any of the other Lockton Released Parties, whether arising under
27 state, federal or foreign law and whether arising as claims, cross-claims, counterclaims, or third-
28 party claims, in the Class Litigation, in the Bankruptcy Court, in any other federal court, in any

1 state or other court, or in any arbitration proceeding, administrative agency, or other forum in
2 the United States, Canada or elsewhere, except that to the extent that Edward H. Okun asserts
3 any Claim against Lockton or any of the other Lockton Released Parties (all of which Claims
4 the Trustee has resolved in the Settlement Agreement), it may respond with any defenses,
5 offsets, recoupments, cross-claims, third-party claims or counterclaims against Okun.

6 10. The recovery, if any, by any Plaintiff on its asserted or assertable claims against
7 any Barred Person relating to or arising out of any of the matters described in (a) through (h) in
8 paragraph 8, above, shall be reduced by the amount of the Lockton Released Parties' equitable
9 and proportionate share of any joint and several liability, or such greater amount, if any, as may
10 be required by applicable law, as will be determined later by the court in the allocation of
11 recoverable costs and damages incurred by that Plaintiff.

12 11. THIS COURT FINDS that, there is no just reason for delay in entering this Final
13 Order and Judgment and hereby enters this Final and Order and Judgment as a final judgment
14 pursuant to Federal Rule of Civil Procedure 54(b).

15 12. The funds allocable to the Class from the settlement (\$7,200,000 of the
16 \$12,000,000 to be paid by Lockton) shall be deposited into the qualified settlement fund
17 ("QSF") established in conjunction with the Court's prior approval of the Wave I Settlements
18 pursuant to 26 C.F.R. § 1.468B et. seq. Gerard A. McHale, the Trustee in the Bankruptcy
19 proceedings, is hereby re-appointed as the Trustee of the QSF ("QSF Trustee"). The QSF
20 Trustee shall distribute the funds recovered in this class action and deposited into the QSF. The
21 QSF and the QSF Trustee shall remain under the jurisdiction of this Court in connection with
22 the matters described in this paragraph. The QSF Trustee shall have no liability in connection
23 with his services as QSF Trustee except for gross negligence or willful misconduct. Upon
24 further orders of the Court, the QSF Trustee shall pay approved fees, costs and other expenses,
25 if any, and distribute the remaining Wave II funds to Settlement Class members on a pro rata
26 basis, with each Settlement Class member's pro rata share calculated as follows: (i) Each

1 Settlement Class member's approved lost Exchange Amount⁴ plus Exchange Agreement
2 Contractual Interest,⁵ if any, shall be divided by the total of all Settlement Class members' lost
3 Exchange Amounts plus Exchange Agreement Contractual Interest; and (ii) the resulting
4 percentage shall be multiplied with the total amount to be distributed to the Settlement Class to
5 determine each Settlement Class member's pro rata share.

6 13. Hollister & Brace, Foley, Bezek, Behle & Curtis, and Zelle, McDonough and
7 Cohen are hereby re-appointed as Class Counsel.

8 14. Without affecting the finality of this Judgment, this Court retains jurisdiction
9 over the above-referenced action, the Wave II Settling Defendant, and the other parties and
10 persons involved in the action or the Wave II Lockton Settlement, for purposes of supervising,
11 administering, implementing, enforcing and interpreting this Order and Judgment, the claims
12 process to be established and the distribution of funds to Settlement Class members, if any, and
13 over any other matters relating to the Wave II Lockton Settlement, including any application for
14 fees and expenses from the Settlement proceeds by Plaintiffs' counsel for securing the
15 Settlement on behalf of members of the Settlement Class and in connection with administering
16 and distributing the Settlement proceeds to the members of the Settlement Class.

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19 DATED: September 3, 2010


HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

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25 ⁴ Each Settlement Class member's "Exchange Amount" means the principal amount deposited by the Settlement
26 Class member with the applicable 1031 Debtor under the applicable Exchange Agreement which was lost due to
the insolvency of the applicable 1031 Debtor.

27 ⁵ "Exchange Agreement Contractual Interest" means such stated interest, if any, as shall have accrued pursuant to
28 the terms of the applicable Exchange Agreement up to the Bankruptcy Petition date of May 14, 2007.