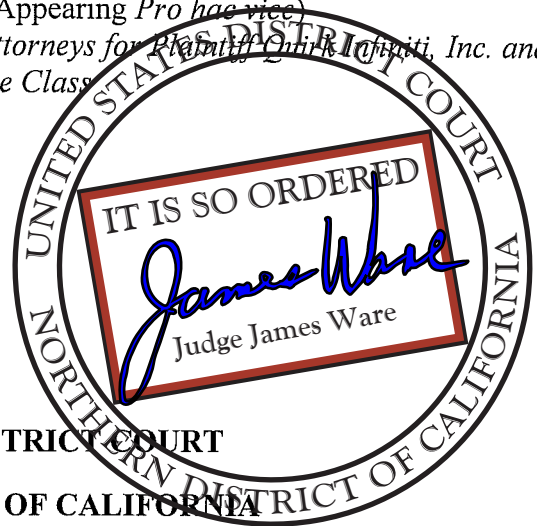


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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

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

21 MDL No. 2078

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

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

Case No. 07-cv-2795 JW

ORDER GRANTING
PRELIMINARY APPROVAL OF THE
WAVE I SETTLEMENT AGREEMENTS

Assigned to Hon. James Ware

25 WHEREAS, Plaintiffs, on behalf of themselves and the Settlement Class, have agreed to
26 enter into the Wave I Settlement Agreements comprised of the following: (i) the Class/Trustee
27 Agreement; (ii) the Schedule "A" Settlement Agreements; and (iii) the Wachovia Settlement
28 Agreement.

1 WHEREAS, the Class/Trustee Agreement was reached by and between Plaintiffs, on
 2 behalf of themselves and all others similarly situated (the "Settlement Class") and Gerard A.
 3 McHale, Jr. as Chapter 11 Trustee (the "Trustee") for the estates (the "Estates") of the 1031 Tax
 4 Group, LLC, *et al.* (collectively, the "1031 Debtors").¹ The Class/Trustee Agreement is intended
 5 to resolve disputes and the potential for litigation between the Settlement Class and the Trustee,
 6 to streamline the efficient prosecution of the respective Class Action and Bankruptcy Cases, and
 7 to maximize recoveries on behalf of Class and creditors of the Estates.

8 WHEREAS, the Schedule "A" Settlement Agreements are intended to settle and release
 9 the claims that the Settlement Class and the Trustee have against the Schedule "A" Settling
 10 Parties, specifically the following: (1) the law firm Kluger, Peretz, Kaplan & Berlin, P.L.
 11 ("KPKB"); (2) certain underwriters at Lloyds of London (the "E&O Carriers"); (3) Continental
 12 Casualty Company ("CNA"); (4) Federal Insurance Company ("Federal"); (5) Twin City Fire
 13 Insurance Company ("Twin City"); (6) Sellers of Investment Exchange Group, LLC, including
 14 but not limited to Daniel McCabe, Shirley McCabe, Andrew McCabe, Chad Greenberg, Peter
 15 McCann (collectively the "McCabe Parties"); (7) Sellers of National Exchange Services QI,
 16 Ltd., including but not limited to William D. Bennett; (8) Sellers of Atlantic Exchange Co.,
 17 LLC, including but not limited to J. Patrick Dowdall and William A. Hazel; (9) Sellers of Real
 18 Estate Exchange Services, Inc., including but not limited to Marga Shefman and David Shefman
 19 (the "Shefmans"); (10) Sellers of 1031 Advance Inc., including but not limited to Janet Dashiell
 20 and Steven Allred; and (11) Michael Rosen.

21 WHEREAS, the Wachovia Settlement Agreement was reached by and between the
 22 Trustee, on behalf of the Estates, and Plaintiffs, on behalf of themselves and the Settlement
 23 Class, on one hand, and Wachovia Bank, N.A. and certain of its affiliates (collectively,
 24 "Wachovia") on the other hand, and it is intended to settle and release the claims that the
 25

26 ¹ The 1031 Debtors in the related bankruptcy proceedings pending in the United States Bankruptcy Court for the
 27 Southern District of New York, styled *In Re: The 1031 Tax Group*, Case No. 07-11448 (MG) are: The 1031 Tax
 28 Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak Harbor LLC; Atlantic Exchange
 Company, Inc.; Atlantic Exchange Company LLC; Investment 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 Settlement Class and the Trustee have against Wachovia. The Class/Trustee Agreement, the
2 Schedule "A" Settlement Agreements, and the Wachovia Settlement Agreement are collectively
3 referred to herein as the "Wave I Settlements".

4 WHEREAS, the Wave I Settlements are subject to review under Rule 23 of the
5 Federal Rules of Civil Procedure;

6 WHEREAS, the parties to the Wave I Settlements have consented to the entry of this
7 Order; and

8 WHEREAS, the Court having read and considered the Wave I Settlements, the
9 Memorandum in support of the Motion for Preliminary Approval and the supporting
10 Declaration,

11 NOW, THEREFORE, IT IS HEREBY ORDERED, that:

12 1. Plaintiffs' Motion for Preliminary Approval is GRANTED. Pursuant to Rules
13 23(a) and (b) of the Federal Rules of Civil Procedure, and for the purposes of the Wave I
14 Settlements only, this action is hereby certified as a class action with class members consisting
15 of the Settlement Class, defined as follows:

16 All persons who were customers of 1031 Advance 132 LLC, 1031 Advance, Inc., 1031
17 TG Oak Harbor, LLC, AEC Exchange Company, LLC, Atlantic Exchange Company,
18 Inc., Atlantic Exchange Company, LLC, Investment Exchange Group, LLC, National
19 Exchange 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, and/or The 1031 Tax Group, LLC,
22 including any subsidiaries or affiliates of any of those entities engaged in business as
23 Qualified Intermediaries pursuant to 26 U.S.C. § 1031, and who suffered loss or
24 damages or allegedly suffered loss or damages in any way, directly or indirectly, related
25 to or arising out of (a) the failure of any of the entities listed above, including their
26 subsidiaries or affiliates, (b) any of the events, acts or conduct alleged in the First
27 Amended Complaint in the Action entitled Anita Hunter, et al. v. Edward Okun, et al.,
28 United States District Court for the Northern District of California, Case No. C 07-
02795 JW, (c) any of the events, acts or conduct alleged in the Complaint in the Action
entitled Quirk Infiniti, Inc. v. Wachovia Bank, N.A., United States District Court for the
District of Massachusetts, Case No. 1:08-12060; or (d) any of the events, acts or conduct
alleged in the Complaint in the Action entitled Anita Hunter, et al. v. Citibank, N.A., et
al., United States District Court for the Northern District of California, Case No. C 09-
02079 JW.

2. The Court finds, for the purposes of the Wave I Settlements only, that the
prerequisites of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been

1 satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all
2 members thereof is impracticable; (b) there are questions of law and fact common to the
3 Settlement Class; (c) the claims of the named representatives are typical of the claims of the
4 Settlement Class they seek to represent; (d) the class representatives will fairly and adequately
5 represent the interests of the Settlement Class; (e) questions of law and fact common to the
6 Settlement Class Members predominate over any questions affecting only individual Settlement
7 Class Members; and (f) a class action is superior to other available methods for the fair and
8 efficient adjudication of the controversy.

9 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the
10 purposes of the Settlements only, Anita Hunter, Cell Tex Site Services, Ltd., Grande
11 Investment, LLC, Johnna Bozzo, Robert J. Buono, 409 Sherman Ave., LLC, and Quirk Infiniti,
12 Inc. are certified as class representatives.

13 4. A hearing (the “Wave I Final Fairness Hearing”) pursuant to Rule 23(e) of the
14 Federal Rules of Civil Procedure is hereby scheduled to be held before the Court
15 on **October 7, 2009 at 8 a.m.** for the following purposes:

16 (a) to finally determine whether this action satisfies the applicable
17 prerequisites for class action treatment for settlement purposes only under Rules 23(a) and (b)
18 of the Federal Rules of Civil Procedure;

19 (b) to determine whether the Wave I Settlements are fair, reasonable, and
20 adequate, and should be approved by the Court;

21 (c) to determine whether Final Judgments should be entered, dismissing the
22 action as against the Wave I Settling Defendants who are to be released by Plaintiffs and the
23 Trustee pursuant to the terms of the Settlements, on the merits and with prejudice;

24 (d) to determine whether the Bar Order should be issued in favor of the
25 Settling Defendants who are released by the Plaintiffs and the Trustee pursuant to the terms of
26 the settlements; and

27 (e) to rule upon such other matters as the Court may deem appropriate.
28

1 5. The Court reserves the right to approve the Wave I Settlements with or without
2 further notice of any kind and, subject to the consent of the parties to the Settlements, with or
3 without modification.

4 6. The Court further reserves the right to enter Judgments and dismiss the action as
5 against the Settling Defendants who are to be released by Plaintiffs and the Trustee pursuant to
6 the terms of the settlements, on the merits and with prejudice regardless of whether it has
7 approved any distribution of the Wave I Settlement funds to Class Members or applications for
8 attorneys' fees and expenses.

9 7. The Court approves as sufficient notice to Class Members pursuant to Rule 23 of
10 the Federal Rules of Civil Procedure and due process: the Summary Notice of pendency of
11 Class Action and Proposed Wave I Settlements ("Wave I Notice") attached hereto as Exhibit 1
12 and this Order (collectively, the "Notice Documents").

13 8. The Notice Documents shall be mailed to the addresses of the Settlement Class
14 Members which are known or reasonably ascertainable and shall be mailed or served via the
15 CM/ECF system to all counsel of record in the related actions.

16 9. The Court deems the Wave I Settlements to have been "filed", within the
17 meaning of 28 U.S.C. § 1715(b), on the date of this Order.

18 10. The Court sets the following schedule:

19 (a) The deadline for mailing the Notice Documents and any notices required
20 to be given pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d) *et seq.*, shall
21 be ten (10) days from the date of this Order, or **July 2, 2009**.

22 (b) The deadline for requesting exclusion from the Settlement Class and the
23 deadline for filing objections to the Wave I Settlements, including any objections to the
24 proposed bar orders in favor of Settling Defendants, shall be **August 3, 2009** (30
25 days after the deadline for mailing in paragraph 10(a) above). Settlement Class Members shall
26 be bound by the Wave I Settlements unless such persons request exclusion from the Settlement
27 Class by that date. Requests for exclusion and objections to the Settlements must be served
28

1 upon counsel for Plaintiffs at the addresses set forth in the Wave I Notice Documents.

2 Objections to the Settlements shall also be filed with the Court.

3 (c) The Wave I Final Fairness Hearing shall be on **October 7, 2009 at 8 a.m.**

4 (at least 90 days after the deadline for mailing in paragraph 10(a) above) or such later
5 date as the Court may order.

6 11. Pending final determination of whether the Settlements should be approved,
7 persons releasing claims pursuant to the Settlements, including Settlement Class Members who
8 have not requested exclusion from the Settlement Class, and each of them, and anyone who acts
9 or purports to act on their behalf, shall not institute, commence or prosecute any of the claims to
10 be released against any of the parties to be released.

11 12. If, pursuant to the Settlement terms, any Settlement is terminated, then this Order
12 shall be null and void and of no further force or effect with respect to the terminated Settlement,
13 and may not be introduced as evidence or referred to in any actions or proceedings (including
14 the related actions) by any person or entity, and each party to the terminated Settlement shall be
15 restored to his, her or its respective position as existed prior to execution of the terminated
16 Settlement.

17 DATED: June 22, 2009

18 
19 HONORABLE JAMES WARE
20 UNITED STATES DISTRICT JUDGE