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Attorneys For Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

LAWRENCE P. CIUFFITELLI, for himself and as Trustee of CIUFFITELLI REVOCABLE TRUST; GREG and ANGELA JULIEN; JAMES and SUSAN MACDONALD, as Co-Trustees of the MACDONALD FAMILY TRUST; R.F. MACDONALD CO.; ANDREW NOWAK, for himself and as Trustee of the ANDREW NOWAK REVOCABLE LIVING TRUST U/A 2/20/2002; WILLIAM RAMSTEIN; and

Case No. 3:16-cv-00580-AC

DECLARATION OF TIMOTHY S. DEJONG IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PARTIAL SETTLEMENT AND MEMORANDUM IN SUPPORT (INTEGRITY BANK)

GREG WARRICK, for himself and, with SUSAN WARRICK, as Co-Trustees of the WARRICK FAMILY TRUST, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

DELOITTE & TOUCHE LLP; EISNERAMPER LLP; SIDLEY AUSTIN LLP; TONKON TORP LLP; TD AMERITRADE, INC.; INTEGRITY BANK & TRUST; and DUFF & PHELPS, LLC,

Defendants.

I, Timothy S. DeJong, declare under penalty of perjury that the following statements are true and correct.

1. I am a shareholder of Stoll Stoll Berne Lokting & Shlachter P.C. ("Stoll Berne"), and I represent Plaintiffs in this matter. I have personal knowledge of the facts set forth herein, and if called as a witness, could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the fully executed Stipulation and Agreement of Compromise, Settlement, and Release dated April 24, 2019.

3. Attached hereto as Exhibit B is a true and correct copy of the proposed Plan of Allocation of the Net Settlement Proceeds from this Settlement. The Plan of Allocation is identical to the description in the Notice.

4. On September 29, 2016, Plaintiffs served requests for production of documents on Integrity. To date, Integrity has produced more than 420,000 pages of documents in response to Requests for Production.

5. To date, Class Counsel have reviewed more than 2.6 million pages of documents collectively produced by Integrity, other parties to this Action, and Aequitas.

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6. Attached hereto as Exhibit C is a true and correct copy of the February 28, 2018, written Opinion and Order Re: Motions to Dismiss issued by Judge Dailey in the related state court Individual Actions.

7. Plaintiffs, Integrity, the Aequitas Receiver, and other Aequitas investors who filed related actions against Integrity in state and federal court retained the services of mediator Louis D. Peterson for a "global" mediation of all Aequitas investors' pending claims against Integrity. Mr. Peterson conducted pre-mediation telephone calls with all participating parties in early June 2018 and an all-day mediation on June 12, 2018. All parties—including Integrity's insurers—attended the mediation in person. Although substantial progress was made during the June 12 mediation, substantial additional mediation, in the form of telephone calls and emails, was required. Ultimately, all parties reached a settlement in principle on July 19, 2018. Integrity and its insurers agreed collectively to pay $3.4 million to settle all pending lawsuits by Aequitas investors, including the Class. Integrity's insurers will pay $3.3 million, and Integrity will pay $100,000.

8. Although the parties reached a settlement in principle in July 2018, Plaintiffs and Integrity agreed to postpone documentation and submission of the Settlement for approval by the Court until the legal issue of whether a *pro tanto* judgment reduction is available under Oregon Securities Law was resolved by the Court in connection with the Tonkon settlement.

9. Stoll Berne has extensive experience handling large-scale, financial fraud and class action litigation. A copy of our current firm resume detailing our experience in these areas is attached hereto as Exhibit D.

10. In light of the obstacles the Class faces in obtaining a judgment at trial, as well as the possibility of collecting any such judgment, I believe the proposed Settlement to be fair, reasonable, adequate and in the best interests of the Settlement Class members. I also believe the

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settlement was the product of serious, informed, non-collusive negotiations. Accordingly, I recommend the proposed Settlement to Class Members.

11. I personally discussed the Settlement with each of the Class Representatives and obtained their approval to accept the terms of this Settlement and present this motion to the Court for approval of the Settlement.

12. Integrity has made its insurance policy and confidential financial information available to us. Based upon our review of this information, the proposed settlement equals or exceeds any recovery the Class might have obtained if no settlement were reached and Plaintiffs prevailed at trial and on appeal.

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 6th day of May, 2019.

s/Timothy S. DeJong
Timothy S. DeJong, OSB No. 940662
Email: tdejong@stollberne.com

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

LAWRENCE P. CIUFFITELLI, for himself and as Trustee of CIUFFITELLI REVOCABLE TRUST, *et al.*, Plaintiffs, v. DELOITTE & TOUCHE LLP; EISNERAMPER LLP; SIDLEY AUSTIN LLP; TONKON TORP LLP; TD AMERITRADE, INC.; INTEGRITY BANK & TRUST; and DUFF & PHELPS, LLC, Defendants.	Case No. 3:16-cv-00580-AC STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT, AND RELEASE

The Class Representatives in the above-captioned Ciuffitelli Class Action and defendant Integrity Bank & Trust ("Integrity") (each a "Party" and collectively, the "Parties"), by and through their respective attorneys, enter into this Stipulation and Agreement of Compromise, Settlement, and Release (the "Stipulation") dated as of April 24, 2019, subject to the approval of the Court.[1]

WHEREAS:

a) On April 4, 2016, the Ciuffitelli Class Action was filed in the United States District Court for the District of Oregon by the Class Representatives, as representative parties for a proposed class of investors in Aequitas Securities, alleging claims under Section 59.115(3) of the Oregon Revised Statutes against Integrity and various other parties;

b) Integrity and the Class Representatives wish to settle all claims that have been brought or could have been brought against Integrity in the Ciuffitelli Class Action;

[1] Capitalized terms not otherwise defined herein shall have the meanings assigned to them in Section I(1) of this Stipulation.

c) Integrity is willing to pay the Settlement Amount to the Class only if a court also approves an injunction in a form acceptable to Integrity barring contribution claims against Integrity by persons other than members of the Class;

d) The Class believes that their claims against Integrity have substantial merit and have agreed to settle the Ciuffitelli Class Action with respect to Integrity only because they believe that a settlement now will maximize the recovery to the Class from Integrity due to Integrity's limited assets and the wasting nature of Integrity's insurance policy. Integrity represented and provided financial statements and other documents supporting that its assets are limited, subject to federal and state capital requirements, and that the Class claims, if successful, would likely force Integrity into receivership. At the time of mediation, Integrity had remaining available insurance policy limits of less than $3.4 million;

e) The Class Representatives and Class Counsel believe that the Settlement Amount is fair, adequate, and in the best interests of the Class, and that it is reasonable to pursue court approval of the Stipulation based upon the terms and procedures outlined herein;

f) Integrity denies, and continues to deny, that it has committed any wrongdoing or that it is liable to the Class under ORS 59.115(3) or any other law;

g) Integrity is entering into this Stipulation solely to avoid the burden, expense, distraction, and uncertainties inherent in further litigation; and

h) There has been no admission or finding of facts or liability by or against any of the Parties, and nothing herein should be construed as such.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, subject to the approval of the United States District Court for the District of Oregon under FRCP 23(e) and in consideration of the mutual promises and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, that the

Ciuffitelli Class Action shall be compromised, settled, released, and dismissed with prejudice as to Integrity only, upon and subject to the following terms and conditions:

I. DEFINITIONS

1. The following defined terms are incorporated into this Stipulation:

a) "Administration of the Settlement" shall have the meaning assigned to it in paragraph 19.

b) "Aequitas Securities" shall refer to securities issued by Aequitas Commercial Finance, LLC; Aequitas Income Opportunity Fund, LLC; Aequitas Income Opportunity Fund II, LLC; Aequitas Capital Opportunities Fund, LP; Aequitas Income Protection Fund, LLC; Aequitas Enhanced Income Fund, LLC; Aequitas Private Client Fund; Aequitas ETC Founders Fund, LLC; and MotoLease Financial.

c) "Ciuffitelli Class Action" is the lawsuit titled *Ciuffitelli v. Deloitte & Touche LLP*, No. 3:16-cv-00580-AC, currently pending in United States District Court for the District of Oregon.

d) "Class" means a settlement class consisting of all purchasers of Aequitas Securities on or after June 9, 2010 and that had an account balance as of March 31, 2016; except that the Class does not include Defendants; the past and present officers and directors of the Aequitas affiliated companies, including without limitation Robert Jesenik, Brian Oliver, Craig Froude, Scott Gillis, Andrew MacRitchie, Olaf Janke, Brian Rice, William Ruh, Steve Hedberg, Brett Brown, Tom Goila, Patricia Brown, Bill Malloy, and Thomas Szabo, and their respective families and affiliates; the past and present members of the Aequitas Advisory Board, including without limitation William McCormick, L. Martin Brantley, Patrick Terrell, Edmund Jensen, Donna Miles, William Glasgow, Keith Barnes, Bob Zukis, and their respective families and affiliates; registered investment advisors and investment advisor representatives; any investor

who received finder's fees or other consideration from Aequitas in connection with referring investors to Aequitas; and any of the Individual Plaintiffs in any of the Individual Actions.

e) "Class Counsel" are counsel of record for the plaintiffs in the Ciuffitelli Class Action. "Lead Class Counsel" are Hagens Berman Sobol Shapiro LLP ("Hagens Berman") and Stoll Stoll Berne Lokting & Shlachter P.C. ("Stoll Berne").

f) The "Class Representatives" are each of the named plaintiffs in the Second Amended Complaint in the Ciuffitelli Class Action, except Andrew Nowak, for himself and as Trustee of the Andrew Nowak Revocable Living Trust U/A 2/20/2002.

g) The "Claims Administrator" means the Garden City Group, LLC, designated by Lead Class Counsel to administer the Settlement, subject to the approval of the District Court.

h) "Contribution Claim(s)" shall mean any contribution claim arising under ORS 59.115(3), and/or any other claim seeking recovery, reimbursement, or indemnity, in whole or in part, for damages or other losses (including attorneys fees), suffered by the person asserting the claim (other than damages or losses due to the diminution in value of any Aequitas Securities purchased by the person asserting the claim) arising from:

1) any involvement either by Integrity or by the person asserting the claim in the sale or solicitation of Aequitas Securities, or arising from the aid or participation by either Integrity or the person asserting the claim in the sale or solicitation of Aequitas Securities; or

2) any involvement by Integrity or by the person asserting the claim in the purchase, issuance, sale, or solicitation of the sale of any Aequitas Securities.

i) The "District Court" or the "Court" means the United States District Court for the District of Oregon.

j) "Effective Date of Settlement" or "Effective Date" means the date upon which the Settlement in the Action shall become effective and final, as set forth in paragraph 30, *infra*.

k) "Escrow Account" means the separate interest-bearing escrow account(s) at a federally insured banking institution designated by Lead Class Counsel into which the Settlement Amount is to be deposited for the benefit of the Class in this Action. Except as set forth elsewhere in this Stipulation, the Escrow Account shall be controlled solely by Lead Class Counsel.

l) "Escrow Agent" means Huntington National Bank.

m) "Fee and Expense Application" means an application filed by Class Counsel for attorneys' fees and reimbursement of expenses.

n) "Final Judgment" means a final judgment entered against Integrity by the District Court.

o) "Gross Settlement Fund" means the sum of the Settlement Amount and all interest earned on the Settlement Amount.

p) The "Individual Actions" consist of the following court cases:

- *Wurster et al. v. Deloitte & Touche, LLP*, Case No. 16CV25920, Multnomah County Circuit Court;
- *Pommier et al. v. Deloitte & Touche et al.*, Case No. 16CV36439, Multnomah County Circuit Court;
- *Ramsdell et al. v. Deloitte & Touche et al.*, Case No. 16CV40659, Multnomah County Circuit Court;
- *Albers et al. v. Deloitte & Touche et al.*, Case No. 2:16CV02239 (USDC D. Or.); and,
- *Layton et al. v. Deloitte & Touche et al.*, Case No. 16CV36439, Multnomah County Circuit Court.
- *Cavanagh et al. v. Deloitte & Touche LLP, et al.*, Case No. 18CV09052, Multnomah County Circuit Court

q) "Individual Plaintiffs" are, individually and collectively, each and all of the named plaintiffs in the Individual Actions.

r) "Net Settlement Fund" means the balance of the Gross Settlement Fund available to be distributed to the Class after subtracting the dollar amounts paid or owing in connection with the Settlement as set forth in this Stipulation, including reasonable costs of Administration of the Settlement and the payment of any applicable taxes.

s) "Notice" or "Class Notice" refers to a notice of pendency and proposed settlement of the Class' claims against Integrity in the Ciuffitelli Class Action and/or the publication of such notice as ordered by the District Court.

t) "Plan of Allocation" means the plan to distribute the portion of the Net Settlement Fund to each participating Class Member, as approved by the District Court.

u) The "Release" shall have the meaning assigned to it in paragraph 14.

v) The "Released Claims" shall have the meaning assigned to it in paragraph 14.

w) "Settlement Amount" means the amount of $1,700,000, to be paid into escrow by Integrity and/or its insurers subject to the terms, conditions, and contingencies specified herein, and to be released from escrow subject to the terms, conditions, and contingencies specified herein and according to mutually agreeable escrow instructions.

x) "Integrity" means Integrity Bank & Trust Company, Inc. and Integrity Trust Company, LLC.

y) "Integrity Released Parties" shall include Integrity, together with its directors, officers, employees and shareholders; and Integrity's insurers.

II. THE SETTLEMENT AMOUNT

1. Within twenty-one days following the entry of an Order by a U.S. District Judge granting the Motion for Preliminary Approval (or seven days following the expiration of the

time period pursuant to FRCP 72(b) for objecting to an Order preliminary approving the Settlement issued by a Magistrate Judge), Integrity shall pay $100,000 and shall cause its insurers to pay $1,600,000 into the Escrow Account.

2. The Escrow Agent shall maintain the Escrow Account under the control of Lead Class Counsel, subject to the oversight of the District Court. The Escrow Agent shall invest the Settlement Amount in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market funds invested solely in such investments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments. The Settlement Amount, combined with any interest or other income therefrom, shall constitute the "Gross Settlement Fund."

3. All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the District Court, and shall remain subject to the exclusive jurisdiction of the District Court, until such time as such funds shall be distributed pursuant to this Stipulation and/or further order(s) of the District Court.

4. The Escrow Agent shall not disburse any of the Gross Settlement Fund except as provided in this Stipulation, by an Order of the Court, or by the written authorization of both Class Counsel and Integrity.

5. The Gross Settlement Fund shall be used only for the following purposes: (i) to compensate the Class as approved by the District Court; (ii) to pay any and all taxes due to state or governmental authorities as a result of the establishment or distribution of the Gross Settlement Fund; (iii) to pay the reasonable costs of administration, as approved by the District Court; and (iv) to reimburse Class Counsel for reasonable costs and expenses paid in connection with this litigation, as approved by the District Court.

6. No money may be paid out of the Gross Settlement Fund before the Effective Date of the Settlement, except as follows: (i) Taxes may be paid out of the Gross Settlement Fund, as they come due and owing; and (ii) the reasonable costs of Administration of the Settlement may be paid out of the Gross Settlement Fund, as they come due and owing and as approved by the District Court.

7. The Gross Settlement Fund, less only disbursements actually made or incurred for Taxes and other reasonable costs of Administration of the Settlement, shall be repaid to Integrity and its insurers if Court approval of the Stipulation is denied, vacated or reversed by the Court, or on appeal, or if the Settlement is properly terminated by either Party pursuant to the terms of this Stipulation.

8. After the Settlement Amount has been paid into the Escrow Account, the Parties agree to treat the Escrow Account as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, Class Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Class Counsel to timely and properly prepare and deliver, or cause to be prepared and delivered, the necessary documentation for signature by all necessary parties, and thereafter take all such actions as may be necessary or appropriate to cause the appropriate filing to occur.

9. For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the "administrator" shall be Class Counsel or its successor, which shall timely and properly file, or cause to be filed, all informational and other tax returns necessary or advisable with respect to the interest earned on

the funds deposited in the Escrow Account (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described above) shall be consistent with this subparagraph and in all events shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned on the funds deposited in the Escrow Account shall be paid out of such funds as provided in paragraph 6, *supra*.

10. Taxes on the income of the Settlement Amount and expenses and costs incurred in connection with the taxation of the Settlement Amount (including, without limitation, interest, penalties, and the expenses of tax attorneys and accountants) (collectively "Taxes") shall be paid solely out of the Escrow Account. In all events, Integrity shall have no liability or responsibility whatsoever for the Taxes or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. In the event any Taxes are owed by Integrity on any interest earned on the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Escrow Account.

11. Taxes shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by Class Counsel out of the Escrow Account without prior order from the District Court, and Class Counsel shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

III. INTEGRITY'S COOPERATION IN CONTINUING LITIGATION

12. In addition to the Settlement Amount, Integrity agrees to provide voluntary cooperation with Class Counsel in the Class' continuing litigation against the remaining parties

in the Ciuffitelli Class Action by (a) voluntarily providing documents in response to targeted requests without the need for a subpoena (though this provision shall not constitute a waiver of the Class to subpoena further documents from Integrity, nor a waiver of Integrity's right to object to any such subpoena); (b) making potential witnesses within Integrity's control available for interviews of reasonable duration; and (c) making potential witnesses within Integrity's control available for depositions at mutually agreeable times and upon reasonable notice without the need for a subpoena.

IV. RELEASES

13. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of any and all Released Claims.

14. Upon the Effective Date, and without any further action, the Class Representatives and each member of the Class releases the Integrity Released Parties, and Integrity releases the Class Representatives and each member of the Class, from:

a) All claims which any member of the Class and the Integrity Released Parties had, has, or may in the future have against one another, regardless of whether any such claim is direct or indirect, known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, now existing or hereafter arising, provided that any such claim:

(i) arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the pleadings, including future pleadings, in the Ciuffitelli Class Action, including such claims that have been asserted or could have been asserted, as well as claims that might be able to be asserted in the future; or

(ii) relates in any other way to the purchase, issuance, sale, or solicitation of the sale of any Aequitas Securities;

b) Contribution Claims, whether now existing or hereafter arising, even if arising after the effective date of this Stipulation, and even if arising after final court approval(s) thereof;

and including, but not limited to:

c) With respect to any claims under 14-a) or 14-b), any claim regardless of the form of relief sought, including, but not limited to, claims for damages, attorneys' fees, costs, interest, and any other sums of money whatsoever, restitution, accounting, and also for any other form of legal or equitable relief.

The foregoing mutual release is referred to as the "Release," and the claims released thereby are referred to, individually and collectively, as the "Released Claims."

15. Notwithstanding the foregoing paragraph 14, the Release shall not apply to:

a) Any claims that arise out of any breaches of the obligations of this Stipulation;

b) Any Class member's claims unrelated to any services Integrity performed for any Class member or for any Aequitas entity and otherwise unrelated to any involvement by Integrity in any Aequitas Securities; or

c) For the avoidance of doubt, any claims that any members of the Class have or may in the future have against any person other than any of the Integrity Released Parties, specifically including claims against the remaining defendants in the Ciuffitelli Class Action.

16. The Release shall apply and inure to the benefit of the Class Representatives and the Class and to the Integrity Released Parties, as well as to their respective marital communities, successors, subrogees, transferees, and assigns to the maximum extent allowable

by law. The Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the claims that they have released pursuant to paragraph 14 herein, but that it is their intention to fully, finally, and forever settle and release the claims in paragraph 14, whether known or unknown, suspected or unsuspected, and without regard to the subsequent discovery or existence of such additional or different facts concerning the subject matter of the claims that have been released. Moreover, the inclusion of such claims in the Release was expressly bargained for and was a key element of this Stipulation and was relied upon by each and all of the Parties in entering into this Stipulation. Accordingly, the Release of this Stipulation shall extend to claims that the Parties do not know or suspect to exist in their favor at the time that they execute this Stipulation, which if known, might have affected their decision to enter into the release and this Stipulation. The Parties shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of the United States, any state or territory of the United States, any foreign law, or any principle of common law that may have the effect of limiting the releases above, including, but not limited to, those that are similar, comparable or equivalent to California Civil Code Section 1542, which provides:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

17. The Release shall not become effective until the Effective Date of Settlement has occurred and the Settlement Amount has been paid from escrow under the conditions set forth herein and in mutually agreeable escrow instructions.

V. ADMINISTRATION OF THE SETTLEMENT

18. The Claims Administrator shall administer the Settlement under Class Counsel's supervision and subject to the exclusive jurisdiction of the District Court. Integrity shall have no role in or responsibility for administering the Settlement.

19. The "Administration of the Settlement" is defined as providing adequate notice of the proposed Settlement to the Class; the allocation and distribution of the Net Settlement Fund and may include the investment of such funds; the determination, calculation, processing, or payment of claims; the review and approval or rejection of Proofs of Claim; processing the Plan of Allocation; and the determination, payment, or withholding of Taxes or any loss incurred in connection therewith.

20. Except as otherwise provided herein, all reasonable costs of notice and administration, including without limitation the fees and expenses of the Claims Administrator, shall be paid from the Gross Settlement Fund. Any amounts paid for notice and administration (including contracting for outside vendors for this work) will not be reimbursed to Integrity if the Settlement does not become final.

21. Integrity will not have any responsibility for, involvement in, or liability for the payment of any monies from the Gross Settlement Fund in connection with the administration of the Settlement.

VI. COURT APPROVAL OF SETTLEMENT

22. Payment of the Settlement Amount is expressly contingent on court approval of the Stipulation, including the Release herein, and on the entry of a mutually agreeable limited judgment of dismissal with prejudice satisfying the conditions of paragraph 25 and the Effective Date of Settlement having occurred.

A. Preliminary Approval

23. Within twenty-one days following execution of this Stipulation, Class Counsel shall file a motion for preliminary approval of the Stipulation in the Ciuffitelli Class Action (the "Motion for Preliminary Approval"). Counsel for Integrity shall provide to Class Counsel declarations and appropriate financial information to establish that a *pro tanto* contribution credit is appropriate and otherwise cooperate with Class Counsel as is reasonably necessary in connection with the Motion for Preliminary Approval.

B. Final Approval of Settlement and Final Judgment

24. Class counsel shall file a motion for final approval of the Stipulation (the "Motion for Final Approval") in compliance with the temporal limits set forth in the Preliminary Approval Order. The Motion for Final Approval shall seek District Court approval of the Settlement as fair and reasonable; approval of the Plan of Allocation; and approval of the proposed form of the Final Judgment.

25. The Settlement is expressly conditioned upon the entry by the Court of a Final Judgment in the form set forth in Exhibit A to this Stipulation, or in a mutually acceptable form should the proposed order set forth in Exhibit A not be approved by the Court.

26. In the event that the Order attached hereto as Exhibit A is not entered by the Court for any reason, the Final Judgment that is entered by the Court must contain the following provisions:

a) That the dismissal of Integrity is with prejudice;

b) An injunction barring each and every member of the Class from asserting any of the Released Claims against the Integrity Released Parties;

c) An injunction barring each and every other defendant in the Ciuffitelli Class Action from asserting any Contribution Claims against the Integrity Released Parties in

exchange for a *pro tanto* credit to the other defendants in the Ciuffitelli Class Action, in the total amount of settlement funds received from Integrity, against any judgment that may be entered in the Ciuffitelli Class Action; and

d) Each Party shall bear its own costs and attorneys' fees.

27. If the District Court does not approve an injunction (in a form acceptable to Integrity) barring Contribution Claims against Integrity by any defendant in the Ciuffitelli Class Action, then this Stipulation will become voidable at the sole option of, and in the sole discretion of, Integrity without liability to any Party.

28. If the District Court approves an injunction barring Contribution Claims against Integrity but does not approve a *pro tanto* credit, in the total amount of settlement funds received from Integrity, in favor of the remaining defendants in the Ciuffitelli Class against any judgment that may be entered against them, this Stipulation will become voidable at the sole option of, and in the sole discretion of, the Class without any liability to any Party.

29. In conjunction with the motion for final approval, Class Counsel will apply for an attorney fee award of 20% of the Settlement Fund. Integrity shall take no position with respect to this application, except that any attorneys' fees and expenses awarded by the District Court shall be paid from the Settlement Fund.

VII. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

30. The Effective Date of Settlement shall be the date when all the following shall have occurred:

a) the District Court has entered the Preliminary Approval Order in the Ciuffitelli Class Action;

b) the Settlement Amount has been deposited into the Escrow Account;

c) the District Court has finally approved the Settlement in the Ciuffitelli Class Action as fair, reasonable, and adequate; and

d) the District Court has entered Final Judgment in the Ciuffitelli Class Action and the Final Judgment has been upheld through the resolution of all appeals and writs of certiorari, and through the expiration of all time to appeal and file writs of certiorari (except that the Effective Date shall not be delayed by any modification of or appeal from those parts of the Final Judgment in the Action that pertain to: (i) the Plan of Allocation; or (ii) any award or allocation of attorneys' fees or expenses).

31. The Parties shall have the right to terminate the Settlement and the Stipulation by providing written notice of their election to do so to all other Parties to the Stipulation within thirty (30) calendar days of (i) the District Court's decision not to enter the Preliminary Approval Order; (ii) the District Court's refusal to approve this Stipulation in whole or in any material part; (iii) the District Court's decision not to enter the Final Judgment in whole or in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the United States Court of Appeals or the United States Supreme Court; or (v) the failure of any or all of the events described in paragraph 30.

32. If the Effective Date does not occur, or if the Settlement is terminated or modified in any material respect or fails to become effective for any reason, then:

a) the Parties shall be deemed to have reverted to their respective status in the Ciuffitelli Class Action as of the date and time immediately prior to the execution of this Stipulation and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered; and

b) within fourteen (14) calendar days from Class Counsel's receipt of notice from Integrity's Counsel of termination or failure of the Effective Date to occur, Lead Class Counsel

shall direct the Escrow Agent to return the Gross Settlement Fund (less only any notice and administration costs actually incurred and paid or owing and any Taxes paid or owing) to Integrity or its insurers.

VIII. COOPERATION IN IMPLEMENTATION OF STIPULATION

33. The Parties agree that implementation of this Stipulation will require the execution of additional, mutually-agreed upon documents, including documents to be filed and/or entered in the Ciuffitelli Class Action and the SEC Civil Action. Moreover, as reflected herein, the Stipulation itself contains contingencies, including court approvals, that must be met before any money is paid to the Class and before any releases become effective. The Parties agree to work together and use reasonable efforts to attempt to execute the documents necessary to implement this Stipulation and satisfy the contingencies contained in this Stipulation within a reasonable time frame.

34. Counsel for both Parties agree to recommend approval of the Stipulation by the District Court and to undertake their best efforts and cooperate fully with one another in seeking District Court approval of the Preliminary Approval Order, the Stipulation, and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the District Court of the Settlement and the entry of the Final Judgment. Both Parties agree to take all reasonable actions necessary to effectuate the performance of, and uphold the validity and enforceability of, this Stipulation. Each of the Parties also agrees to cooperate in connection with any discovery and oppositions regarding said motions, with each Party bearing its own costs and attorneys' fees.

35. Each party shall bear its own costs and attorneys' fees in connection with implementing this Stipulation, including in connection with obtaining the necessary court approvals.

36. To the extent permitted by the Court, Class Counsel agrees to take reasonable steps to prevent Integrity from having to incur incremental litigation expenses.

IX. MISCELLANEOUS PROVISIONS

37. Recitals. The recitals set forth above in Section I are incorporated herein by reference.

38. Third-Party Beneficiaries. With the exception of any released persons or entities, this Stipulation shall not have any third-party beneficiaries

39. Confidentiality. Until a Motion for a Preliminary Approval is filed with the District Court, the Parties shall maintain this Stipulation and the Settlement in confidence, except for the disclosure to the Claims Administrator, consultants assisting with the Plan of Allocation, the District Court, or as required by law or otherwise consented to by all Parties.

40. No Admission of Liability. The Parties expressly enter into this Stipulation for the purpose of avoiding the expense and risk of further litigation. This Stipulation is not, and may not be construed as, an admission or acknowledgment of liability or wrongdoing on the part of Integrity or of any of the other Integrity Released Parties, all of whom deny any and all liability.

41. Entire Agreement. This Stipulation sets forth the full and complete agreement of the Class Representatives, the Class and Integrity respect to its subject matter, and there is no mistake of law or fact with respect to this Stipulation. This Stipulation supersedes and replaces any earlier representations, inducements, promises, settlements, compromises, agreements, or understandings, written (including the all previous executed Term Sheets) or oral, between the Class Representatives, the Class, and Integrity.

42. No Oral Modification. This Stipulation may not be amended, modified, or revoked except by means of a supplemental writing that is signed by the Party against whom the amendment, modification, or revocation is to be enforced.

43. No Waiver. Nothing in this Stipulation or in the negotiation or proceedings related hereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint-defense privilege, or work product immunity. Any failure by any party to insist upon the strict performance by any other party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other party. No waiver, express or implied, by any party of any breach or default in the performance by the other party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

44. Binding on Successors. This Stipulation is binding on the Parties and their respective successors and legal representatives, including executors, administrators, and heirs.

45. Parties to Bear Own Fees and Costs. The Class Representatives, the Class and Integrity shall assume responsibility for the payment of their own attorneys' fees, costs, and expenses in this matter, including the negotiation of this Stipulation and the legal work required by this Stipulation.

46. Governing Law and Venue. This Stipulation has been executed under and shall be construed in accordance with the laws of the State of Oregon and federal statutory and common law regarding class actions. If there is any litigation or other proceeding to enforce

or interpret any provision of this Stipulation, jurisdiction and venue shall be exclusively in the United States District Court for the District of Oregon.

47. Attorneys' Fees and Costs. In the event of any suit, action, or arbitration to interpret or enforce the provisions of this Stipulation, the prevailing Party, as defined in ORS 20.077, shall be entitled to an award of its reasonable attorneys' fees, costs, and expenses incurred in such action or arbitration and in any appeal therefrom, in addition to all other remedies afforded the prevailing Party.

48. Construction. The rule of construction that an agreement is to be construed against the drafting Party is not to be applied in interpreting this Stipulation. The Parties acknowledge that they have each read this Stipulation, that they understand its meaning and intent, and that this Stipulation has been executed voluntarily.

49. Severability. The invalidity of all or any part of any section of this Stipulation shall not render invalid the remainder of this Stipulation to the extent it represents the intent of the Parties in all material respects if interpreted without the invalid provision.

50. Counterparts. This Stipulation may be executed in one or more counterparts, each of which is to be deemed an original. All counterparts may be consolidated into one agreement, binding on all the Parties.

51. Representation Regarding Authority to Execute Stipulation. This Stipulation is being executed by counsel of record for the Parties in the Ciuffitelli Class Action, each of whom represents and warrants that he or she has the authority from his or her clients to enter into this Stipulation, which has full force and effect as a binding obligation of such clients. Class Counsel represents and warrants that no Class Representative or, to Class Counsel's knowledge, any member of the Class, has assigned his/her/its claim(s) against Integrity to any person not covered by this Stipulation.

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

LAWRENCE P. CIUFFITELLI, for himself and as Trustee of CIUFFITELLI REVOCABLE TRUST, *et al.*, Plaintiffs, v. DELOITTE & TOUCHE LLP; EISNERAMPER LLP; SIDLEY AUSTIN LLP; TONKON TORP LLP; TD AMERITRADE, INC.; INTEGRITY BANK & TRUST; and DUFF & PHELPS, LLC, Defendants.	Case No. 3:16-cv-00580-AC **[PROPOSED] PLAN OF ALLOCATION**

The Claims Administrator will issue a check to each Class Member based upon losses on Covered Aequitas Securities purchased during the Class Period. The Claims Administrator will determine the amount of each Class Member's loss based upon the amount of Covered Aequitas Securities purchased during the Class Period, minus any dividends or interest received on those Covered Aequitas Securities. That amount will be the Class Member's "Net Loss." Based upon information available to the Claims Administrator from Aequitas records, each Class Member will receive notice of his, her, or its Net Loss from the Claims Administrator. If the Class Member agrees with that number, the Class Member does not need to take any further action to receive the payment. If the Class Member believes there was an error in calculating the Net Loss, then the Class Member may write to the Claims Administrator enclosing copies of documents showing the amount of his, her, or its purchases of Covered Aequitas Securities during the Class Period, and, if applicable, the amount of each distribution the Class Member

received on those investments and the Claims Administrator will review the submission and make any necessary adjustment.

The Claims Administrator will pay each Class Member on a proportional basis calculated by determining each Class Member's Net Loss as a percentage of all Class Member Net Losses.

The calculation of a Net Loss is not intended to be an estimate of, nor does it indicate, the amount that a Class Member might have been able to recover after a trial. Nor is the calculation of a Net Loss an estimate of the amount that will be paid to a Class Member from the Net Settlement Fund. The Plan of Allocation provides a formula for proportionately allocating the Net Settlement Fund to Class Members. That computation is only a method to weigh Class Members' claims against one another. Each Class Member will receive a *pro rata* share of the Net Settlement Fund based on his, her, or its Net Loss.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Class Members. No person shall have any claim against the Class Representatives, Class Counsel, any claims administrator or other person designated by Class Counsel or Tonkon and/or the other released parties and/or their counsel based on distributions made substantially in accordance with the Settlement, the Plan of Allocation, or further orders of the Court. The Plan of Allocation is separate from the Settlement and any decision by the Court regarding the Plan of Allocation will not affect the finality of approval of the Settlement.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

WALTER WURSTER, individually; et al., Plaintiffs, v. DELOITTE & TOUCHE, LLP, a Delaware limited liability partnership, et al., Defendants.	)	Case No: 16CV25920 OPINION AND ORDER RE: MOTIONS TO DISMISS

Defendants Deloitte & Touche, LLP ("Deloitte"), EisnerAmper, LLP ("EisnerAmper"), Duff & Phelps, LLC ("Duff & Phelps"), Tonkon Torp, LLP ("Tonkon"),[1] and TD Ameritrade, Inc.'s ("TD Ameritrade") Motions to Dismiss came before the Honorable Kathleen M. Dailey, Circuit Court Judge, on December 1, 2017. Plaintiffs appeared by and through their attorneys, Bruce Campbell and Ian M. Christy. Defendant Deloitte appeared by and through its attorneys, Gavin Masuda and Peter Wald. Defendant EisnerAmper appeared by and through its attorney Linda Coberly. Defendant Duff & Phelps appeared by and through its attorneys Stephen D'Amore and Sharon Rudnick. Defendant TD Ameritrade appeared by and through its attorneys Nicholas Christakos and Bruce Bettigole.

The Court took the parties' motions, briefing, and oral argument under advisement, and for the reasons set forth below GRANTS IN PART and DENIES IN PART Defendants' Motions to Dismiss.

OPINION:

ORCP 18 requires that pleadings contain "a plain and concise statement of the ultimate facts constituting a claim for relief." Defendants move to dismiss Plaintiffs' Complaint on the grounds that Plaintiffs have failed to state ultimate facts sufficient to constitute a claim under ORCP 21 A(8). In reviewing such a motion, the Court must "accept as true all well-pleaded allegations and all reasonable inferences that may be drawn therefrom…but disregard any allegations that are conclusions of law." *Huang v. Claussen*, 147 Or App 330, 332 (1997) (citations omitted). In other words, "[a]n ultimate fact is a fact from which legal conclusions are drawn. A conclusion of law, by contrast, is merely a judgment about a particular set of circumstances and assumes facts that may or may not have been pleaded." *Fearing v. Bucher*, 328 Or 367, 375 n 5 (1999) (internal citation omitted).

[1] Tonkon was not initially joined in the motions to dismiss because the action against it was stayed pending arbitration. As a result of settlement discussions, Plaintiffs sent a letter to the Court, dated February 1, 2018, indicating that Tonkon had agreed to waive its rights to arbitration and rejoin the action before this Court. The Court signed a stipulated order, dated February 2, 2018 deeming Tonkon joined in Defendants' Joint Motion to Dismiss.

This case involves the interpretation of Oregon Securities Law, which "is to be liberally construed to afford the greatest possible protection to the public." *Adamson v. Lang*, 236 Or 511, 516 (1964). Plaintiffs seek to hold Defendants liable under ORS 59.115(3), which imposes joint and several liability on "every person who participates or materially aids in the sale" of a security sold in violation of Oregon Securities Law. In order to state a claim, Plaintiffs must first establish that the securities at issue in this case were in fact sold in violation of Oregon Securities Law (i.e. must establish primary liability on the part of the Aequitas entities). Second, Plaintiffs must establish that each Defendant "participate[d] or materially aid[ed] in the sale."

Defendants have jointly moved to dismiss the case against them because they contend that Plaintiffs pleaded inadequate ultimate facts to establish primary liability under Oregon Securities Law. Second, each Defendant has filed individual motions to dismiss on the basis that Plaintiffs have failed to plead ultimate facts to establish secondary liability under Oregon Securities Law.

I. Primary Liability Under Oregon Securities Law

Defendants have moved to dismiss (A) all ORS 59.115(1)(b) claims based on the sale of securities "by means of" misleading statements because Defendants argue Plaintiffs have each failed to allege the requisite connection between any misleading statements or omissions and particular sales of individual securities; (B) all claims under ORS 59.135(1) and ORS 59.135(3) because Plaintiffs have failed to plead any facts to support these claims that are separate from the facts pleaded to support Plaintiffs' ORS 59.115(1)(b) claims; and (C) all claims under ORS 59.135(1) and ORS 59.135(3) because Plaintiffs have failed to allege scienter. In addition, Defendants contend that (D) all claims based on sales made prior to August 11, 2013 must be dismissed as untimely.

A. Whether Plaintiffs have adequately pleaded that the securities at issue were sold to Plaintiffs "by means of" misleading statements

Defendants jointly move to dismiss all Plaintiffs' claims based on the sale of securities "by means of" misleading statements under ORS 59.115(1)(b) and ORS 59.135(2). Defendants argue that Plaintiffs fail to allege ultimate facts because the Complaint does not adequately allege the connection between any misleading statements made and the individual securities purchased by Plaintiffs. Specifically, Defendants argue that the "by means of" language in the statute requires each Plaintiff "to identify, on a security-by-security basis, the allegedly misleading documents or promotional materials 'by means of' which their particular securities were sold to them." Def Reply ISO Motion to Dismiss Allegations of Primary Liability at 4. Defendants point to language from the findings and recommendations in the related federal case, *Cuiffitelli v. Delloitte & Touche LLP et al.*: "ORS § 59.115(1)(b) requires Plaintiffs to plead actionable misrepresentations and omissions *connected to* a sale or group of sales of a security." No. 3:16-CV-580-AC, 2017 WL 2927481, at *22 (D. Or. Apr. 10, 2017), *report and recommendation adopted sub nom. Ciuffitelli v. Deloitte & Touche LLP*, No. 3:16-CV-00580-AC, 2017 WL 2927150 (D. Or. July 5, 2017) (emphasis added). According to Defendants, this means Plaintiffs must identify and link the individual securities to specific misleading statements (i.e. the individual PPMs by means of which each of the securities at issue in the case were sold). Because Plaintiffs' Complaint fails to do so, Defendants argue that these claims should be dismissed.

Plaintiffs must plead that each purchased security in this case was sold "by means of an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading." ORS 59.115(1). Adopting Defendants' interpretation of the "by means of" language would impose an implicit reliance or receipt requirement which is not required under the statute. *See Everts v. Holtmann*, 64 Or App 145, 152 (1983) ("ORS 59.115(1)(b) imposes liability without regard to whether the buyer relies on the omission or misrepresentation."); *See also Sanders v. John Nuveen & Co.*, 619 F2d 1222, 1225–26 (7th Cir. 1980) ("To require a plaintiff to have received a commercial paper report before purchasing, as defendants would have us do, would tend toward erroneously imposing a reliance requirement").

Under the plain language of the statute, it is not enough to generally allege, as Plaintiffs suggest, a false illusion of financial security without tying that illusion to a particular "statement" that is either untrue or misleading as a result of an omission. Such an interpretation would read the words "by means of" completely out of the statute; "by means of" implies *some* nexus between a false or misleading statement and a subsequent purchase. Plaintiffs must allege some connection, short of receipt or reliance, between their purchases and a specific misleading statement. Thus, the Court holds that for Plaintiffs to adequately plead that securities are sold "by means of" a false or misleading statement, each Plaintiff in this case must allege (1) which fund they purchased from, and (2) that a false or misleading statement relating to that fund existed at the time of each Plaintiff's purchase.

Applying the above requirements to the facts Plaintiffs have alleged here, Plaintiffs' Complaint contains adequate facts to allege that the securities at issue were sold "by means of" misleading statements for most but not all of the purchases. Plaintiffs' Complaint identifies ACF PPMs from June 6, 2010; December 1, 2011, February 15, 2012; November 30 2012; and November 30, 2013. *See* Fourth Am. Compl. at ¶ 38-61. In addition, Plaintiffs' Complaint identifies PPMs from AIOF issued March 23, 2010 (*Id.* at ¶ 148, 150),[2] from ACOF issued February 2014 (*Id.* at ¶ 62-75), and from APCF issued July 31, 2015 (*Id.* at ¶ 86-93).

Plaintiffs have adequately pleaded that each of the PPMs contained an "omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." ORS 59.115. Here, each PPM is alleged by Plaintiffs to be an affirmative statement that "Aequitas entities had a track record of success, strong oversight, low risk, and reliably positive investment outcomes." Fourth Am. Compl. at ¶ 149. The bulk of the Complaint contains numerous allegations of fact regarding the Aequitas entities' insolvency, comingling of funds, and high risk investments that, because those facts were not in the PPMs, made the PPMs misleading.

These PPMs and the misleading statements or omissions identified in them are therefore sufficient to meet the "by means of" requirement of the statute for all Plaintiffs who purchased from ACF, AIOF, and APCF, since all purchases identified by Plaintiffs' Exhibit 1 of the Fourth Amended Complaint from those funds post-date at least one of the allegedly misleading PPMs from those funds. In addition, all but one of the purchases from ACOF (Adam Zuffinetti's 12/30/2013 purchase) post-dates the February 2014 PPM. However, Plaintiffs failed to identify misleading PPMs relating to the ETC Founders Fund. Thus, the claims related to investments in

[2] Plaintiffs' Complaint also identifies PPMs from AIOF-II dated Octover 1, 2014. *Id.* at ¶ 76-85. However, apparently no Plaintiff invested in AIOF-II. *See* Fourth Am. Compl., Ex. 1.

the ETC Founders Fund, as well as the 12/30/2013 purchase of Mr. Zuffinetti from ACOF are dismissed with leave to amend because Plaintiffs have not adequately pleaded that those securities were sold to Plaintiffs "by means of" misleading statements.

B. Whether Plaintiffs have adequately pleaded a "fraudulent scheme" under ORS 59.135(1) and ORS 59.135(3)

Defendants also move to dismiss all claims under ORS 59.135(1) and ORS 59.135(3) alleging a "scheme" to defraud for failure to state a claim. Specifically, Defendants contend that Plaintiffs' fraudulent scheme claims improperly rely on the same facts as alleged to support their ORS 59.115(1)(b) claims, without alleging any additional facts.

In support of their position that Plaintiffs must plead separate and additional facts between the two claims, Defendants cite to a Ninth Circuit case, *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.* 655 F3d 1039 (9th Cir 2011). In that case, Plaintiffs sued under federal securities provisions similar to those at issue here. The Ninth Circuit dismissed the fraudulent scheme claim after finding that Plaintiffs had not alleged "any facts that are separate from those already alleged in their…omission claims." *Id.* at 1058.

The facts of this case are clearly distinguishable from those in *WPP Luxembourg.* In that case, the "scheme" alleged was that Defendants failed to disclose that they were selling off their shares in large quantities. *Id.* at 1057. In essence, the Court found that Plaintiffs' fraudulent scheme claim in that case was "fundamentally…an omission claim." *See id.* at 1058. Unlike in *WPP Luxembourg*, Plaintiffs' fraudulent scheme claim herein is more than a misrepresentation or omission claim. Plaintiffs Complaint details numerous acts by the various entities, beyond mere misrepresentation or omission, that support a claim for a scheme to defraud separate and distinct from Plaintiffs' ORS 59.115(1)(b) claims.

Because Plaintiffs pleaded ultimate facts sufficient to support their fraudulent scheme claims as distinct from their misrepresentation or omission claims, Defendants' motion to dismiss the ORS 59.135(1) and ORS 59.135(3) claims on this ground is denied.

C. Whether Plaintiffs Adequately Pleaded Scienter

Defendants also move to dismiss all claims under ORS 59.135(1) and ORS 59.135(3) because Plaintiffs have failed to plead that each issuing entity acted with scienter. Oregon Courts have held that claims under ORS 59.135 require proof that the seller "acted with a guilty state of mind." *Cox v. Holcomb Family Ltd. P'Ship*, slip op. at 13, No. 1308-12201 (Or Cir Ct Dec 14, 2010) *State Treasurer v. Marsh & McLennan Companies, Inc.*, 269 Or App 31, 33 (2015). In this case, Defendants argue that the Complaint does not contain any factual allegations to support this element.

This Court finds, as Judge Acosta did in the related federal case, that Plaintiffs need only allege facts "supporting a plausible inference of scienter as to the Aequitas entities." *Ciuffitelli*, No. 3:16-CV-580-AC, 2017 WL 2927481, at *24. Plaintiffs' claims that Aequitas generally "deceived investors, maintained a façade of financial stability, and repaid prior investors with newly invested funds to conceal insolvency" were sufficient for scienter. *Id.* Here, Plaintiffs' detailed allegations regarding the Aequitas entities' course of conduct is sufficient to allow a plausible inference of scienter. Accordingly, Defendants' Motion to Dismiss Plaintiffs' ORS 59.135(1) and ORS 59.135(3) claims on this ground is denied.

D. Whether Plaintiffs Claims on Sales Made Before August 11, 2013 are Barred by ORS 59.115(6)

Defendants also move to dismiss all claims based on sales made prior to August 11, 2013 as time barred. The statute of limitation on claims under ORS 59.115 is three years. ORS 59.115(6). However, the statute also permits a two-year discovery rule which allows a plaintiff to bring an action within "two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later." *Id.* Defendants argue that Plaintiffs may not invoke the discovery rule in this case because "Plaintiffs have failed to 'specifically and precisely plead the facts' showing their entitlement to relief under this rule." Def. Mot. to Dismiss at 17, quoting *Heise v. Pilot Rock Lumber Co.*, 222 Or 78, 92 (1960).

The Oregon Court of Appeals has recently clarified that "it is defendants' responsibility to plead or assert an affirmative defense of limitations…and that, ordinarily when stating a claim, [plaintiff's] complaint does not have to show that the action *is* timely." *Kastle v. Salem Hospital*, 284 Or App 342, 353 (2017). In *Kastle*, the court explained that "to resist a motion to dismiss, it is enough if [the] complaint does not show itself to be untimely." *Id.* As applied to the discovery rule, so long as the complaint does *not* show that the plaintiff discovered or reasonably should have discovered the facts on which the action is based, the complaint will survive a motion to dismiss. *Id.*

Here, the Complaint does not show on its face that the action is untimely. And, as the *Kastle* court pointed out, "[t]he debate about when [plaintiff] should reasonably have discovered the claim represented a fact question that could not be resolved as a matter of law on a motion to dismiss under ORCP 21 A(9)." *Id.* at 352. Thus, Defendants' Motion to Dismiss all claims based on sales made prior to August 11, 2013 as time barred is denied.

II. Secondary Liability Under Oregon Securities Law

Duff & Phelps, EisnerAmper, Deloitte & Touche, and TD Ameritrade have each also filed separate motions to dismiss for Plaintiffs' failure to adequately plead secondary liability. Under Oregon Securities Law, "every person who participates or materially aids in the sale is also liable jointly and severally with and to the same extent as the seller, unless the nonseller sustains the burden of proof that the nonseller did not know, and, in the exercise of reasonable care, could not have known, of the existence of facts on which the liability is based." ORS 59.115(3). The issue here is whether Plaintiffs have alleged ultimate facts sufficient to constitute a claim for relief as to each Defendant's secondary liability (i.e. that each Defendant "participat[ed] or materially aid[ed] in the sale").

Interpreting ORS 59.115(3), the Oregon Supreme Court has explained that "participate" and "materially aid[]" are "separate concepts, not synonyms," and that "[w]hether one's assistance in the sale is "material"… depends on the importance of one's personal contribution to the transaction." *Prince v. Brydon*, 307 Or. 146, 149 (1988). In *Prince*, the plaintiff sought to hold a lawyer secondarily liable because the lawyer had prepared legal documents and performed other legal services for the seller. *Id.* at 148. In defining what makes aid "material," the court distinguished between "[t]yping, reproducing, and delivering sales documents [which] may all be essential to a sale, but they could be performed by anyone…[and actions which reflect] knowledge, judgment, and assertions." *Id.* at 149. Because the legal work performed by the lawyer in *Prince* could not have been performed by anyone and reflected the lawyer's "knowledge, judgment, and assertions," his aid was material. *Id.*

A number of courts have addressed what kind of actions will suffice to establish material aid under ORS 59.113(3). Material aid can include a range of activities, including preparing the offering memorandum and assisting a subscriber in financing a subscription, *Ainslie v. Spolyar* (*Ainslie I*), 144 Or App 134, 138 (1996); handling funds held in escrow in connection with a securities offering by making offsetting debits and credits in order to bring the balance up to the amount required for disbursement, *Ainslie v. First Interstate Bank of Oregon, N.A.* (*Ainslie II*), 148 Or App 162, 170 (1997); preparing and executing a contract for purchase, *Fakhrdai v. Mason*, 72 Or App 681 (1985); and assisting a door-to-door salesman by opining to prospective purchasers on the value of the investment, *Gonia v. E.I. Hagen*, 251 Or 1 (1968).

As is most relevant here, a defendant can materially aid a seller by "establishing a salesperson's credibility and helping that salesperson obtain a customer base." *Galbraith v. MML Investor Services, Inc.*, Case No 09-437, 2009 WL 4955617 at *5 (D Or Dec 11, 2009), citing *Gonia v. E.I. Hagen Co.*, 251 Or 1 (1968). In *Galbraith*, plaintiff sought to hold defendant MML Investor services liable for the actions of its employee who defrauded investors by engaging in a Ponzi scheme. *Id.* at *1. On a motion to dismiss, the court explained that plaintiff's allegation that "he would not have invested [if the employee] had not been affiliated with [defendant]," that defendant had recruited clients for the employee, and that the employee had used defendant's letterhead were sufficient allegations to support a "material aid" claim under ORS 59.115(3). *Id.* at *5. Most recently, in *Cox v. Holcomb Family P'ship,* No. 1308-12201, slip op (Or Cir Ct Dec 14, 2010), the court held that Umpqua Bank's loans to seller Berjac "creat[ed] the illusion of stability and credibility," which enabled Berjac to make the sales. *Id.* at 7-8. Thus, plaintiffs need not allege direct involvement in a sale to state a claim for secondary liability under ORS 59.115(3); allegations that a defendant lent credibility, stability, or otherwise gave the seller access to a customer base are sufficient allegations of material aid to state a claim.

In addition to materiality, courts interpreting ORS 59.115(3) have emphasized the requisite connection between the "material aid" and "the sale" itself. Specifically, a defendant is secondarily liable under ORS 59.115(3) when the sale "would and could not have been completed or consummated" without the material aid of the defendant. *Adams v. Am. W. Sec., Inc.*, 265 Or 514, 529 (1973); *See also Fakhrdai v. Mason*, 72 Or App 681, 686 (1985) (holding a contract drafter liable because the sale "could not have been completed or consummated" without the contract). For example, certain changes in the relationship between the seller and the defendant can break the causal link. *Galbraith*, 2009 WL 4955617 at *5. In *Galbraith*, the court explained that the defendant could not be liable for materially aiding the seller after the seller's employment was terminated because the seller no longer used defendant's letterhead and defendant no longer promoted or recruited clients for the seller. In summary, allegations of general "material aid" to the seller is not enough, plaintiffs must plead that "the sale" that is the basis for the claim could not have been completed or consummated without the defendant.

Thus, to state a claim for relief based on secondary liability under ORS 59.115(3), Plaintiffs must plead that each Defendant aided the sale in a way that by "extent and importance" of Defendant's involvement was material. *See Ainslie II*, 144 Or App 145. This pleading requires both an allegation of materiality as well as an allegation of causality (that each Defendant aided "*the sale*"). With this framework in mind, the Court will address each Defendant's Motions to Dismiss in turn:

A. Duff & Phelps' Motions to Dismiss

Duff and Phelps has filed several different motions regarding the sufficiency of Plaintiffs' pleading. The first four motions all relate to whether Plaintiffs have adequately pleaded "material aid," and the scope of that pleading in light of the fact that this is not a class action and each Plaintiff must state an individual claim. The fifth and sixth motions relate to whether Plaintiffs have adequately pleaded harm and whether Plaintiffs must make their allegations of harm more definite and certain. Finally, Defendants move the Court for an order dismissing the claims of all Plaintiffs who are not Oregon residents (or who did not purchase securities in Oregon) for lack of personal jurisdiction.

1. Motion 1: Motion to Dismiss for failure to state a claim that Duff & Phelps participated or materially aided the sales.

Duff & Phelps first moves to dismiss the entire case against it for failure of Plaintiffs to allege that Duff and Phelps participated or materially aided any sale of a security to Plaintiffs. Specifically, Duff & Phelps argues that its role in providing valuations related to a single Aequitas fund was "limited and attenuated," and that its lack of "affirmative involvement" in any offering or sales goes far beyond what previous courts have found to constitute material aid. Duff & Phelps Am. Mot. To Dismiss at 7.

While some cases use language regarding "defendant's involvement" in the sale, *Ainslie II*, 148 Or App at 184, or defendant's "personal contribution to the transaction," *Prince*, 307 Or at 149, the facts of the cases make clear that material aid can in fact be attenuated from the sale itself. For example, in *Ainslie II*, the defendant escrow agent played a role in manipulating the balance of escrow accounts for the purpose of allowing disbursements to be made. 148 Or App at 129-130. While defendant in that case was not directly involved in the sale or offering itself, the court held it liable because defendant's role in handling the funds held in escrow prevented "foreclosure that would at least have seriously impeded the offering." *Id*, quoting *Ainslie I*, 144 Or App at 145. Likewise, in *Cox v. Holcomb*, the Defendant banks were not directly involved in the sale, but the loans they provided to the seller "created the illusion" that the seller was solvent. No. 1308-12201, slip op at 7. Thus, the case law makes clear that a defendant's involvement in the sale need not be direct; as explained above, *supra* pp. 5-7, the question is whether Defendant's extent and importance of involvement in the sale (whether direct or indirect) constituted material aid without which the sale would and could not have been completed or consummated.

Here, Plaintiffs have alleged that Duff & Phelps provided valuation services with respect to several income streams associated with the ACOF offering. Just as in *Ainslie II* and *Cox*, Defendant was not directly involved in the sale, but Plaintiffs have alleged that Defendant's conduct enabled the sales to occur by granting the seller the illusion of solvency. Fourth Am. Compl. at ¶¶ 216-220. Under these facts as alleged by Plaintiffs, and drawing all reasonable inferences from them, Plaintiffs have alleged that at least some of the sales could not and would not have been consummated without Duff & Phelps' providing valuation services relating to ACOF that supported the illusion of solvency. *Id.* This is all Plaintiffs need allege to survive

Duff & Phelps Motion 1 to Dismiss Plaintiffs' claims in their entirety.[3] Duff and Phelps Motion 1 is therefore denied.

2. Motion 2: Motion to Dismiss claims based on the sales of securities before February 2014.

Because Plaintiffs' secondary liability claims against Duff & Phelps are based on valuation services provided in February 2014, Duff & Phelps has moved to dismiss all claims based on sales made before that time. Plaintiffs concede that Duff & Phelps cannot be liable for sales made prior to February 2014. Pl. Consolidated Opp. at 43. Accordingly, Duff & Phelps' Motion to Dismiss claims based on sales based on sales of securities before February 2014 is granted, and all such claims are dismissed.

3. Motions 3 and 4: Motions to Dismiss all claims of Plaintiffs who did not purchase an interest in ACOF, or in the alternative did not purchase an interest in ACOF or ACF.

Duff & Phelps' Motion 3 asks the Court to dismiss all the claims of Plaintiffs that did not purchase from ACOF, since Duff & Phelps' valuation services related only to assets associated with that fund. In the alternative, Duff & Phelps' Motion 4 asks the Court to dismiss the claims of Plaintiffs who did not purchase from ACOF or ACF. Specifically, Duff & Phelps argues that because it only provided valuation services for assets associated with ACOF, it cannot have materially aided sales associated with the other funds. The issues are (1) whether Plaintiffs have alleged sufficient ultimate facts to state a claim against Duff & Phelps as to investments in ACF in addition to ACOF, and (2) whether Plaintiffs have alleged sufficient ultimate facts to state a claim against Duff & Phelps as to investments in funds other than ACOF or ACF.

With respect to ACF, Plaintiffs' Complaint contains detailed allegations regarding the role of Duff & Phelps' valuations of ACOF income streams in enabling ACF sales to occur. *See* Fourth Am. Compl. at ¶¶ 216 – 220. Assuming all these facts to be true and drawing all reasonable inferences in Plaintiffs' favor, Plaintiffs' allegations sufficiently state a claim against Duff & Phelps for investments in both ACOF and ACF. As discussed above with respect to Duff & Phelps' Motion 1, Duff & Phelps' involvement in the sale need not be direct, so long as Plaintiffs allege that Duff & Phelps' role constituted material aid without which the sale could not have been completed or consummated. Plaintiffs' allegations detailing the importance of Duff & Phelps' valuations in giving ACF the illusion of prosperity and solvency are sufficient to allege Duff & Phelps' material aid in these sales under that standard. Thus, Duff & Phelps' Motion 3 is denied.

As to the other funds, Plaintiffs' allegations are much less detailed. Plaintiffs allege that "the ACOF offering, with Duff & Phelps' assistance, propped up Aequitas's Ponzi scheme and assisted its ongoing unlawful securities business." Fourth Am. Compl. at ¶ 219. While pleadings may survive a motion to dismiss "even if vague," *Erickson v. Christenson*, 99 Or App 104, 106 (1989), the allegation still must meet the standard set out by the case law interpreting "material aid" under ORS 59.115(3). Here, unlike for ACF, Plaintiffs have not alleged any facts regarding

[3] Because Motion 1 asked the Court to dismiss all claims against Duff & Phelps based on the theory that Duff & Phelps' provision of valuation services of certain ACOF assets could not amount to material aid as to *any* Plaintiff, the Court reserves its discussion of the scope of that material aid for its opinion on Motions 3 and 4. However, the Court recognizes that this is not a class action, and Plaintiffs are required to plead material aid as to each sale that is the basis of each claim.

the specific role of the Duff & Phelps' valuations in the sales of non ACOF or ACF offerings. The only allegations Plaintiffs have made regarding Duff & Phelps' aid vis-à-vis the other offerings neither allege that the sale "would and could not have been completed or consummated" without the material aid of the Duff & Phelps, *Adams v. Am. W. Sec., Inc.*, 265 Or 514, 529 (1973), nor allege facts from which the Court could conclude that standard is met. Consequently, Duff & Phelps' Motion 4 is granted and claims against Duff & Phelps for investments in funds other than ACOF or ACF are dismissed with leave to amend.

4. *Motions 5 and 6: Motion to Dismiss all claims for failure to allege damages against each individual Plaintiff or in the alternative Motion to Make More Definite and Certain*

Duff & Phelps' next two motions both relate to Plaintiffs' failure to allege the damages claimed by each individual Plaintiff in this case.

ORCP 18 B requires pleadings to contain "a demand of the relief which the party claims," and specifically requires that when a party demands money damages "the amount therof shall be stated." In addition, ORCP 21 D allows the court to require a party to make a pleading more definite and certain when "the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge…is not apparent."

Here, Plaintiffs have pleaded only the aggregate amount sought by all Plaintiffs for all investments. Fourth Am. Compl. at ¶ 4. This is not a sufficient allegation to put Defendant Duff & Phelps on notice of the amount of damages sought against it, particularly since Plaintiffs are not seeking to hold Duff & Phelps liable for all of the investments. Because this is not a class action, each Plaintiff is required to state each of their claims including, under ORCP 18 B, the amount of damages sought for each investment. Because the Complaint does not do that, Duff & Phelps' alternative Motion to Make More Definite and Certain (Motion 6) is granted and Plaintiffs must amend the Complaint to state the amount of damages sought as a result of each investment, thus making moot Defendant's Motion 5 to dismiss.

5. *Motion 7: Motion to Dismiss for lack of personal jurisdiction*

Finally, Duff & Phelps has moved to dismiss the claims of Plaintiffs who are not residents of Oregon or who did not purchase a security in Oregon based on a lack of personal jurisdiction. Under federal law, for a court to exercise specific jurisdiction over a claim, "there must be an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.'" *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S Ct 1773, 1776 (2017), citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 US 915, 919 (2011). This Court earlier denied a motion by Duff & Phelps to dismiss for lack of personal jurisdiction. However, Duff & Phelps argues that the Supreme Court's recent opinion in *Bristol-Myers* compels a different result.

Bristol-Myers involved a products liability claim against a Delaware-incorporated, New York-headquartered pharmaceutical company for alleged health effects in California State Court. Because most of the Plaintiffs were not California residents, the defendant argued that the Court did not have specific jurisdiction over nonresident Plaintiffs' claims. The Supreme Court agreed, stating that the California Court's finding of specific jurisdiction was incorrect because it could not identify "any adequate link between the State and the nonresidents' claims." Specifically, the Court noted that "nonresidents were not prescribed [the drug] in California, did not purchase [the

drug] in California, did not ingest [the drug] in California, and were not injured by [the drug] in California." *Id* at 1773.

This case is not like *Bristol-Myers* because nonresident Plaintiffs have a connection to Oregon beyond the "mere fact that *other* plaintiffs [have connections to the forum state]." *Id.* Specifically, the Aequitas company from whom all Plaintiffs purchased securities is headquartered in Oregon, and the securities issued were investments in Oregon companies, *See* Fourth Am. Compl. at ¶ 23, 34. Although the *Bristol-Myers* Court noted that "a defendant's relationship with a ... third party, standing alone, is an insufficient basis for jurisdiction," 137 S Ct at 1781, the facts in *Bristol-Myers* are also distinguishable on that point. In that case, the third parties were the other Plaintiffs who, as California residents, had a connection to the forum state. In other words, the only connection nonresident Plaintiffs had to the forum state was the fact that there happened to be other Plaintiffs affected who were residents of the forum state. Here, the third party is the Aequitas company, an Oregon-based entity (or group of entities) with whom *all* Plaintiffs (resident and nonresident) had a connection to as purchasers of Aequitas securities.

Thus, unlike in *Bristol-Myers,* there is a clear connection between all Plaintiffs and the forum state. Accordingly, the Court denies Duff & Phelps' Motion 7.

B. Deloitte & Touche

Defendant Deloitte & Touche moves to dismiss all of Plaintiffs' secondary liability claims against it on the basis that Plaintiffs have failed to adequately plead participation or material aid by Deloitte under ORS 59.115(3). Plaintiffs allege that Deloitte materially aided all sales after November 2013 (when its name first appeared in promotional materials) because the use of Deloitte's name lent credibility to the Aequitas entities and enabled the sales to occur. Deloitte argues that Plaintiffs have failed to allege (1) conduct by Deloitte supporting the secondary liability claims and (2) a causal relationship between Deloitte's alleged conduct and Plaintiffs' individual purchases.[4]

1. Whether Plaintiffs adequately pleaded "material aid" by Deloitte

First, Deloitte argues that the fact that Aequitas identified Deloitte in Aequitas' PPMs is insufficient to constitute material aid under ORS 59.115(3) as a matter of law. As stated earlier in this opinion, the Oregon Supreme Court decided in *Prince* that material aid depends on "the importance of one's personal contribution to the sale." 307 Or at 149. In deciding whether a lawyer's preparation of documents was material aid, the Court noted that "[t]yping, reproducing, and delivering sales documents may all be essential to a sale, but they could be performed by anyone; it is a drafter's knowledge, judgment, and assertions reflected in the contents of the documents that are 'material' to the sale." *Id.* Under *Prince*, Deloitte argues that because the PPMs at issue here do not reflect Deloitte's knowledge, judgment, or assertions, Deloitte cannot have materially aided in the sales.

However, "knowledge, judgment, and assertions," are not the only way a plaintiff can allege material aid by a defendant. The *Prince* court's discussion of "knowledge, judgment, and assertions" as material aid was related to how the Court distinguished between drafters of sales documents that exercise some discretion regarding the document and drafters who are merely

[4] Deloitte and Touche also filed a Request for Judicial Notice and Recognition of Documents Incorporated by Reference. Plaintiffs did not object to this request, and the Court therefore takes judicial notice of Defendant's exhibits 1-3 and recognizes that exhibits 4-12 have been incorporated by reference to the Complaint.

typing or reproducing those documents. *Id.* Here, Plaintiffs' theory is not based on Deloitte as a drafter of offering documents, but rather on the "illusion of credibility" created by the use of Deloitte's name in Aequitas promotional materials. *See* Fourth Am. Compl. at 187. As explained above, *see supra* pp. 5-7, material aid may be established under Oregon Law by "establishing a salesperson's credibility and helping that salesperson obtain a customer base." *Galbraith,* Case No 09-437, 2009 WL 4955617 at *5, citing *Gonia v. E.I. Hagen Co.,* 251 Or 1 (1968).

At the same time, the Court is mindful of the fact that Plaintiffs have cited no case law in which an auditor has been held liable under ORS 59.115(3). The *Prince* Court made clear that "the professional role of the person who renders material aid" is no defense against ORS 59.115(3)'s strict liability, 307 Or 146 at 151. Typically, auditors, unlike lenders (such as the banks in *Cox*) or valuators (like Duff & Phelps here), have a largely passive role in connection with sales or with the solvency of a company. The allegations of "material aid" against the banks in *Cox* and Duff & Phelps here relate to specific conduct on behalf of the aider: it is the acts of lending and valuating themselves that are the basis of the "material aid" allegations. The word "aid" is a verb, and requires conduct on the part of the aider. This plain language reading of the statute is also consistent with case law, as each case in which a court has held a person secondarily liable under ORS 59.115(3) involved conduct on the part of the defendant that materially aided the sale. *See, e.g., supra* pp. 5-7 (summarizing "material aid" cases under ORS 59.115(3)). Thus, a plaintiff's allegation of "material aid" must be based on some conduct on the part of the defendant.

Here, the "material aid" alleged by Plaintiffs goes beyond the work of Deloitte as the auditor,[5] but rather is based on the use of Deloitte's name and audited financial information in promotional materials. Unless Plaintiffs allege that Deloitte played a role in the use of its name or work product by Aequitas in the promotional materials, it cannot have materially aided the sale. In this case, Plaintiffs have sufficiently pleaded aid on the part of Deloitte related to the use of its name and audited financial information in promotional materials. Plaintiffs allege that Deloitte's engagement letter required Aequitas, prior to using Deloitte's name or work product in any document, to provide Deloitte with draft documents for Deloitte's "approval." Fourth Am. Compl. at ¶191. This approval is a sufficient allegation of conduct on the part of Deloitte to state a claim for "material aid" due to the use of its name in promotional materials.

2. Whether Plaintiffs adequately pleaded a causal relationship between Deloitte and their purchases

In addition to challenging the sufficiency of Plaintiffs' "material aid" allegations, Deloitte also argues Plaintiffs have pleaded an insufficient connection between that aid and the sales themselves. Deloitte argues that Plaintiffs must allege that each PPM by means of which each security was sold must identify Deloitte in order to state a claim for material aid. *See* Deloitte's Mot. to Dismiss at 12. This argument fails for the same reason as Defendant's overly narrow primary liability argument; Plaintiffs need not plead reliance under Oregon Securities Law. *See supra* at 3. It is sufficient that Plaintiffs allege that Deloitte's name appeared in promotional materials prior to each sale.

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[5] It is for the reason that, although the Court took judicial notice of the Generally Accepted Auditing Standards ("GAAS") after the concession of Plaintiffs, the Court does not find the GAAS relevant to determining whether Plaintiffs have alleged Deloitte's "material aid."

Here, Plaintiffs allege that Deloitte's name first appeared in promotional materials in November of 2013. *See* Fourth Am. Compl. at ¶¶ 187-205. Accordingly, Plaintiffs have sufficiently pleaded the causal connection between Deloitte's alleged material aid and the sales which occurred after November 2013. Plaintiffs concede that Deloitte cannot be liable for sales made before Deloitte's involvement. Pl. Consolidated Opp. At 30-31. Accordingly, the claims based on sales made before November 2013 are dismissed without prejudice.

C. EisnerAmper LLP

EisnerAmper moves to dismiss all claims against it for failure of Plaintiffs to state ultimate facts constituting a claim for secondary liability of EisnerAmper under ORS 59.115(3). In the alternative, EisnerAmper moves the Court for an order requiring a more definite statement pursuant to ORCP 21 D.[6]

1. Motion to Dismiss

First, EisnerAmper moves to dismiss all claims against it because it argues that Plaintiffs have failed to plead ultimate facts sufficient to state a claim based on EisnerAmper's material aid. EisnerAmper argues that its role in auditing year-end financial statements between 2010 and 2013 is not sufficient as a matter of law to support Plaintiffs' secondary liability claim against EisnerAmper. Specifically, EisnerAmper contends that to state a claim for secondary liability, plaintiffs must plead that defendants undertook some kind of affirmative action, and that the action must be directed towards the particular sale that is the basis of the claim.

As explained above with respect to Deloitte's similar motion, the plain language of the statute and the interpreting case law make clear that a defendant's material aid must involve some conduct on the part of the defendant. *See* supra p. 10. Like with Deloitte, it was not EisnerAmper's auditing itself that granted Aequitas the illusion of credibility, but rather Aequitas' use of EisnerAmper's name and the ability to say in promotional materials that the financials had been audited. Fourth Am. Compl. at ¶¶ 177-186.

The Complaint contains allegations of EisnerAmper's role vis-à-vis the use of its name in Aequitas promotional materials. Plaintiffs allege that EisnerAmper "[r]ather than revoking its endorsement of Aequitas securities…offered its stamp of approval, thereby assisting Aequitas with its ongoing sale of unlawful securities to plaintiffs and others." Fourth Am. Compl. at ¶ 183. This allegation ascribes conduct (failure to revoke endorsement and offer of EisnerAmper's "stamp of approval") to EisnerAmper that is sufficient to state a claim for material aid.

EisnerAmper also contends that, even if it can be secondarily liable for some claims, it cannot be liable for sales made after 2013, when EisnerAmper was replaced by Deloitte. The end of a defendant's involvement with the seller does not necessarily limit the defendant's liability. For example, the bank in *Ainslie II* was held liable for sales which occurred after its handling of the escrow funds (i.e. its material aid). 148 Or App at 185-186. However, the type of material aid alleged against EisnerAmper here is significantly different from that alleged against the bank in *Ainslie II*. In *Ainslie II*, the bank's actions in handling the escrow funds created the illusion of solvency that allowed the downstream transactions to occur. Here, the "material aid" alleged is

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[6] EisnerAmper's individual Motion to Dismiss briefing also restates its Motion to Dismiss for lack of primary liability, and moves to dismiss based on ORS 59.115(6)'s statute of limitations. The Court has already addressed the primary liability and statute of limitations arguments in sections I and I.D. of this opinion.

not that EisnerAmper directly propped up Aequitas's finances, but rather that the use of EisnerAmper's name in promotional materials made the company appear credible to buyers.

The analysis here is thus more similar to that in *Galbraith*, where the court held that the defendant company could not be liable after its seller-employee was no longer employed by the company and no longer used the company's letterhead. 2009 WL 4955617 at *5. Once EisnerAmper's relationship with Aequitas was terminated and its name no longer appeared in Aequitas promotional materials, EisnerAmper cannot be liable. Because EisnerAmper's name no longer appeared in promotional materials after 2013, *see* Fourth Am. Compl. at ¶¶ 42, 71, 72, 91 (post-2013 PPMs listed Deloitte as auditor), Plaintiffs have not alleged facts constituting a material aid claim against EisnerAmper for sales after 2013. Those claims are therefore dismissed.

2. Motion to Make More Definite and Certain

EisnerAmper alternatively moves for an order requiring a more definite and certain statement pursuant to ORCP 21 D. That rule allows the court to require a party to make a pleading more definite and certain when "the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge…is not apparent." Here, EisnerAmper contends that the current allegations are not sufficient to put it on notice of the "precise nature" of Plaintiffs claims. While Plaintiffs' allegations regarding EisnerAmper's conduct constituting material aid are sufficient to state a claim, the Court agrees that the precise nature of the charge is not clear. Thus, the Court grants EisnerAmper's Alternative Motion to Make More Definite and Certain. Specifically, the Plaintiffs must amend their Complaint to identify and date all promotional materials in which EisnerAmper's name was used or which contained EisnerAmper's work product.[7]

D. TD Ameritrade, Inc.

TD Ameritrade makes the following three motions to dismiss: (1) Motion to Dismiss claims of all non-customer Plaintiffs because Plaintiffs fail to allege a connection between TD Ameritrade and any sale of a security, (2) Motion to Dismiss claims of all non-customer Plaintiffs because, as a custodian, TD Ameritrade's liability arises only under ORS 59.115(4), and (3) Motion to Dismiss because Plaintiffs fail to plead "identifying and transactional information necessary to an evaluation of other legal impediments that Plaintiffs may not be able to overcome." *See* TD Ameritrade Mot. to Dismiss at 2-3.

1. Motion 1: Motion to Dismiss claims of non-customer Plaintiffs

TD Ameritrade first moves to dismiss the claims of non-customer Plaintiffs because such Plaintiffs have failed to plead ultimate facts that constitute a secondary liability claim against TD Ameritrade under either ORS 59.115(3) or ORS 59.115(4).[8] Specifically, TD Ameritrade contends that Plaintiffs' allegations regarding its secondary liability are insufficient as a matter of law because TD Ameritrade's involvement was "attenuated or inconsequential" rather than

[7] Although EisnerAmper's Motion to Make More Definite and Certain requested that the Court order Plaintiffs to identify which materials Plaintiffs "were given," the Court finds that Plaintiffs need not make such specific allegations.

[8] TD Ameritrade's argument that the secondary liability case against it, if any, should fall under ORS 59.115(4) instead of ORS 59.115(3) is addressed below. *See Infra* p. 23

"substantial," and that its conduct was not directed towards or connected with the sales at issue in this case. TD Ameritrade's Mot. to Dismiss at 8.

TD Ameritrade's first argument that Plaintiffs' allegations of material aid against it are too "attenuated or inconsequential" is similar to Duff & Phelps' argument, addressed above. *See supra* p. 7. Here, Plaintiffs have alleged that TD Ameritrade lent its "reputation and credibility in support of Aequitas's public perception," and that "Aequitas was counting heavily on TD Ameritrade" to generate consistent new funds to "meet anticipated redemptions—the hallmark of a Ponzi-like scheme." *See* Fourth Am. Compl. at ¶ 221. It does not matter that the aid is "attenuated" from the sales themselves, the facts alleged here are similar to those alleged against Duff & Phelps and the Court finds them sufficient for the same reason as to Duff & Phelps: Plaintiffs have sufficiently alleged that TD Ameritrade's actions enabled the sales to occur by granting Aequitas the illusion of credibility and solvency. Accepting these allegations as true and drawing all reasonable inferences in Plaintiffs' favor, Plaintiffs have adequately pleaded that the sales "would and could not have been completed or consummated" without the material aid of TD Ameritrade. *See Adams v. Am. W. Sec., Inc.*, 265 Or at 529.

In addition to arguing that its aid was too attenuated and inconsequential to be material, TD Ameritrade also claims that it cannot be liable for sales to individuals who were not customers of TD Ameritrade. Relying on *Galbraith v. MML Investor Services, Inc*, TD Ameritrade contends that non-customers cannot hold it secondarily liable as a matter of law. In *Galbraith*, the seller was an employee of the defendant company which Plaintiff sought to hold secondarily liable. No. CV 09-437-MO, 2009 WL 4955617, at *1. The court held that the defendant could not be liable after its employment of the seller had ended because there was no allegation of aid outside of the employment context. *Id* at *5. In other words, that case depended on the employer-employee relationship between the seller and the defendant, not, as is the case here, on the relationship between the defendant and the purchasers. In fact, none of the cases this Court has reviewed discuss any required relationship between the defendant and the plaintiff; rather, the focus in on the relationship between the defendant and the sale. So long as a plaintiff pleads that the actions of a defendant materially aided the sale that is the basis of the claim, it is immaterial whether the plaintiff is a customer of defendant. As explained above, Plaintiffs allege that TD Ameritrade aided all sales by infusing the scheme with new investors and funds, thus granting Aequitas the illusion of credibility and solvency. This allegation is sufficient to survive TD Ameritrade's Motion to Dismiss.

2. *Motion 2: Motion to Dismiss based on TD Ameritrade's role as a custodian under ORS 59.115(4):*

TD Ameritrade's second motion argues that because the claims of Plaintiffs fall under ORS 59.115(4) rather than ORS 59.115(3), the claims must be dismissed because Plaintiffs fail to plead that TD Ameritrade "knew of the existence of facts on which liability is based." ORS 59.115(4) applies only to "a person whose sole function in connection with the sale of a security is to provide ministerial functions of escrow, custody or deposit services." When it applies, ORS 59.115(4) requires the purchaser of a security to prove that the defendant knew or should have known (but for "recklessness or gross negligence") of the facts on which the primary liability is based. Because Plaintiffs did not plead this knowledge on the part of TD Ameritrade, the issue on this motion is whether TD Ameritrade's "sole function" was that of a custodian, and thus whether the knowledge requirement applies.

Plaintiffs' Complaint alleges conduct by TD Ameritrade that goes beyond the role of a mere custodian. The Complaint alleges that TD Ameritrade "actively developed a market for Aequitas securities," "encouraged investors to purchase Aequitas securities and provided assurances to investors about Aequitas," met with investors to promote securities, and "referred investors to registered investment advisors to facilitate purchases of Aequitas's promissory notes," among other allegations. Fourth Am. Compl. at ¶¶ 221-226. This Court finds that these allegations sufficiently plead that TD Ameritrade's role was beyond that of a custodian. Because TD Ameritrade's role as custodian was not its "sole function," claims against it fall under ORS 59.115(3) rather than ORS 59.115(4), and Plaintiffs are not required to plead knowledge by TD Ameritrade. Accordingly, TD Ameritrade's Motion 2 is denied.

3. Motion 3: Motion to Dismiss for failure to plead adequate "identifying and transactional information"

Finally, TD Ameritrade moves to dismiss all of Plaintiffs' claims against it because Plaintiffs have failed to provide "necessary information…about the Plaintiffs themselves and their alleged purchases of Aequitas securities." TD Ameritrade Mot. to Dismiss at 18. Specifically, TD Ameritrade argues that this information is necessary "for the Court to evaluate whether Plaintiffs' claims are precluded by other legal impediments" such as jurisdictional questions, choice of law, or dormant Commerce Clause *Id.* However, the Court does not have specific other motions before it, and TD Ameritrade has cited no authority to support that Plaintiffs must plead that information in order to state a claim. Accordingly, TD Ameritrade's Motion to Dismiss on this basis is denied.

III. Liability of Deloitte & Touche and EisnerAmper Under Oregon's Elder Abuse Statute (ORS 124.100):

Plaintiffs 65 years of age and older also seek to hold Defendants Deloitte and EisnerAmper liable under Oregon's Elder Abuse Statute. Under that statute, a "vulnerable person" —which includes "elderly persons" 65 years of age or older—may bring an action "against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse." ORS 124.100(1), (5). In order to state a claim under the Elder Abuse Statute, Plaintiffs in this case must allege (1) that Aequitas engaged in financial abuse of a vulnerable person, and (2) that Deloitte and EisnerAmper permitted that abuse to occur.

First, Plaintiffs have adequately pleaded Aequitas engaged in financial abuse of vulnerable persons because they have alleged wrongful conduct on the part of Aequitas. Under Oregon's Elder Abuse Statute, financial abuse occurs "when a person wrongfully takes or appropriates money or property of a vulnerable person." ORS 124.110(1)(a). A defendant's conduct "may be wrongful by reason of a statute…." *Gibson v. Bankofier*, 275, Or App 257, 269 (2015). Thus, Plaintiffs have adequately alleged that Aequitas' appropriation of the elderly Plaintiffs' money was "wrongful" to the same extent that they have sufficiently pleaded Aequitas' violation of Oregon Securities Law. *See supra* Section I.

However, Plaintiffs have not adequately pleaded that Deloitte and EisnerAmper permitted Aequitas' financial abuse of Plaintiffs to occur. A person "permits" financial abuse of elderly persons "if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse." ORS 124.100(5). The

Oregon Supreme Court has explained that the statute includes two mental states: actual knowledge of Defendant of its own act or failure to act, and constructive knowledge of "circumstances in which a reasonable person should have known of the same or similar abuse of a vulnerable person." *Wyers v. American Medical Response Northwest, Inc.*, 360 Or 211, 229-230 . Here, although Plaintiffs have pleaded facts establishing Deloitte and EisnerAmper's knowledge of Aequitas' precarious financial situation, Plaintiffs have not pleaded any facts establishing that Defendants had any particular reason to believe that Aequitas had or would abuse vulnerable persons such as the elderly Plaintiffs here. Accordingly, Deloitte & Touche's and EisnerAmper's Motions to Dismiss for failure of Plaintiffs to state a claim under Oregon's Elder Abuse Statute is granted with leave to amend.

ORDER:

A Request for Judicial Notice and Recognition of Documents Incorporated by Reference.

Defendant Deloitte & Touche's Request for Judicial Notice and Recognition of Documents Incorporated by Reference is GRANTED, Plaintiffs having stated at oral argument that they did not object to this request. Accordingly, the Court takes judicial notice of Deloitte's exhibits 1-3 and recognizes that exhibits 4-12 are incorporated by reference in the Complaint.

B Primary Liability:

Defendants' Joint Motion to Dismiss for lack of primary liability is GRANTED as to all claims related to investments in the ETC Founders Fund, as well as to the 12/30/2013 purchase of Mr. Adam Zuffinetti from ACOF, otherwise the motion is DENIED. The Court also GRANTS Plaintiffs leave to amend the Complaint for all dismissed claims.

C Secondary Liability

1. Duff & Phelps

i. **Motion 1** to dismiss Plaintiffs' claims against Duff & Phelps in their entirety is DENIED.

ii. **Motion 2** to dismiss Plaintiffs' claims based on the sales of securities made before February 2014 is GRANTED, as Plaintiffs have conceded this motion. Claims against Duff & Phelps based on sales made prior to February 2014 are therefore dismissed without prejudice.

iii. **Motion 3** to dismiss all claims of Plaintiffs who did not purchase an interest in ACOF is DENIED.

iv. **Motion 4** to dismiss all claims of Plaintiffs who did not purchase an interest in ACOF or ACF is GRANTED. Claims against Duff & Phelps based on ETC Founders Fund, ACL, or APCF investments are therefore DISMISSED with leave to amend.

v. **Motion 5** to dismiss all claims for failure to allege damages against each individual Plaintiff is MOOT because the Court instead grants Duff & Phelps' alternative motion 6.

vi. **Motion 6** to make more definite and certain the damages to each Plaintiff is GRANTED. Plaintiffs are ordered to amend their complaint to include the individual damages sought by each Plaintiff as a result of each investment.

vii. **Motion 7** to dismiss the claims of Plaintiffs who are not residents of Oregon or who did not purchase a security in Oregon is DENIED.

2. Deloitte & Touche

Deloitte & Touche's Motion to Dismiss Plaintiffs' Fourth Amended Complaint is GRANTED as to claims based on sales before Deloitte's name was first used in PPMs and promotional materials. Otherwise, Deloitte's Motion to Dismiss is DENIED. Accordingly, claims against Deloitte based on sales made before November 2013 are dismissed without prejudice.

3. EisnerAmper

i. **Motion to Dismiss:** EisnerAmper's Motion to Dismiss all claims against it for failure of Plaintiffs to state ultimate facts sufficient to constitute a claim for secondary liability is GRANTED as to claims based on sales after November 2013, otherwise EisnerAmper's Motion to Dismiss is DENIED. Claims of Plaintiffs against EisnerAmper based on the sales after November 2013 are dismissed without prejudice.

ii. **Motion to Make More Definite and Certain:** EisnerAmper's Alternative Motion to Make More Definite and Certain is GRANTED IN PART. Plaintiffs are ordered to amend their Complaint to identify and date all Aequitas promotional materials in which EisnerAmper's name was used or which contained EisnerAmper's work product.

4. TD Ameritrade

i. **Motion 1**: Motion to Dismiss because "Claims by the noncustomer Plaintiffs should be dismissed because there cannot be, and Plaintiffs do not allege, a connection between TD Ameritrade and any actual sale of a security sufficient as a matter of law to constitute participation or material aid" is DENIED.

ii. **Motion 2**: Motion to Dismiss because "Claims by the non-customer Plaintiffs are based on TD Ameritrade's role as custodian and therefore arise solely, if they arise at all, under ORS 59.115(4), and should be dismissed, in the alternative, because Plaintiffs fail to make the statutorily required allegations" is DENIED.

iii. **Motion 3**: Motion to Dismiss because "Plaintiffs fail to plead identifying transactional information necessary to an evaluation of other legal impediments that Plaintiffs may not be able to overcome" is DENIED.

D Elder Abuse Claims Against Deloitte & Touche and EisnerAmper

Deloitte & Touche and EisnerAmper's Motions to Dismiss the claims brought against them under Oregon's Elder Abuse Statute are GRANTED. The ORS 124.110 claims of the elderly Plaintiffs against EisnerAmper and Deloitte & Touche are dismissed with leave to amend.

Dated this 22 day of February, 2018

Kathleen M. Dailey
Circuit Court Judge

Stoll Berne

ABOUT STOLL BERNE

Since its inception in 1978, Stoll Berne has achieved extraordinary results for its clients in class actions and other types of investor, consumer and business litigation. The firm regularly represents clients in federal and state courts and has earned a reputation as a leading plaintiffs' class action firm in Oregon and elsewhere. The firm has represented investors in numerous securities fraud class actions, consumers in consumer protection class actions and antitrust cases, and employees in class actions involving wage and hour claims. The firm also has represented clients in class actions involving environmental claims and health care issues.

The firm also has represented clients, in most cases serving as lead or co-lead counsel, in many class action securities cases including:

- *In re CenturyLink Sales Practices & Securities Litigation* (W.D. La. 2017) (M.D.L. D. Minn.) (ongoing)
- *In re JPMorgan Chase & Co. Securities Litigation* (S.D.N.Y. 2012)
- *Louisiana Municipal Employees' Retirement System v. Bank of New York Mellon Corp.* (S.D.N.Y. 2011)
- *Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund v. Vestas Wind Systems A/S* (D. Or. 2011)
- *Zucco Partners, LLC v. Digimarc Corp.* (D. Or. 2004)
- *Central Laborers Pension Fund v. Merix Corp.* (D. Or. 2004)
- *In re Southern Pacific Funding Corp. Securities Litigation* (D. Or. 2001)
- *In re Assisted Living Concepts, Inc. Securities Litigation* (D. Or. 1999)
- *In re Louisiana-Pacific Corp. Securities Litigation* (D. Or. 1995)
- *In re Flir Systems, Inc. Securities Litigation* (D. Or. 1995)
- *Flecker v. Hollywood Entertainment Corp.* (D. Or. 1995)
- *Gordon v. Floating Point Systems, Inc.* (D. Or. 1989)

In securities class actions, Stoll Berne won an $88 million jury verdict against an investment banking firm in *In re Melridge, Inc. Securities Litigation,* 87-1426-FR (D. Or. 1988) and a $7.2 million jury verdict against one of the Big Four accounting firms in *Barlean v. Black & Co*., 9012-07865 (Mult. Co. Cir. Ct. 1992).

In addition to its trial successes, securities class action cases where the firm was lead or co-lead counsel resulted in substantial settlements in *In re JPMorgan Chase & Co. Securities Litigation* -- $150 million; *Louisiana Municipal Employees' Retirement System v. Bank of New York Mellon Corp.* -- $180 million; *In re Southern Pacific Funding Corp. Securities Litigation* -- $19.5 million; *In re Assisted Living Concepts, Inc. Securities Litigation* -- $43.5 million; *In re Louisiana-Pacific Corp. Securities Litigation* -- $65.1 million; and *Flecker v. Hollywood Entertainment Corp.* -- $15 million.

Stoll Berne has represented plaintiffs in many other types of class actions as well, including *Reynolds v. Hartford*, 01-1529-BR (D. Or.) (obtained an $85 million settlement as lead counsel in a nationwide Fair Credit Reporting Act class action); *Razilov v. Nationwide Mut. Ins. Co.*, 01-1466-BR (D. Or.) (obtained a $19 million settlement as lead counsel in another Fair Credit Reporting Act); *Craig v. Rite Aid,* 4:08-CV-02317 (M.D. Pa.) (represented Oregon class members in $20.9 million national settlement of overtime claims by Assistant Managers); *In Re: Farmers Insurance Exchange Claims Representatives' Overtime Pay Litig.*, MDL Docket Nos. 1439 A & (B) (D. Or.) (FLSA multi-district class action, member of Steering Committee and co-trial counsel in liability phase of 1439 A cases)*; Chehalem Physical Therapy, Inc. v. Coventry Health Care, Inc.*, 3:09-CV-320-HU (D. Or.) (obtained an $11.3 million settlement as lead counsel on behalf of healthcare providers in a breach of contract class action against the largest PPO in the country).

Lawyers at the firm are active in the community and have held leadership positions with the Federal Bar Association, Oregon Trial Lawyers Association, Multnomah Bar Association, and Oregon State Bar. The firm donates a fixed percentage of its gross revenues each year to charitable organizations and is one of the largest contributors to the Campaign for Equal Justice, which provides funding for legal services to low-income Oregonians. The firm's lawyers coach high school mock trial teams, donate their time to pro bono legal activities, including representing seniors, abused spouses, indigent clients and migrant workers, and are involved with community organizations such as Self Enhancement, Inc., Cycle Oregon, Stand for Children, CASA, Hands On Portland, and Oregon Food Bank. Stoll Berne attorneys have been consistently recognized by their peers in numerous professional listings, including *Chambers USA: America's Leading Lawyers*, the *Best Lawyers in America*, *Benchmark Litigation Guide*, and *Oregon Super Lawyers.*

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LAWYERS

Lydia Anderson-Dana: Lydia is an associate in the litigation group. She received her law degree from the University of California, Berkeley, School of Law, where she was Senior Executive Editor of the California Law Review. Before joining Stoll Berne, Lydia clerked for the Ninth Circuit and the District of Oregon.

Steven C. Berman: Steven's practice emphasizes business, employment and securities litigation. He has authored articles on employment litigation, competition and trade-secret matters, and also authored the chapter on Elections Law and Government Ethics in the Oregon State Bar's *2009 Oregon Legislation Highlights*.

Gary Berne: Gary represents clients in all types of business cases in federal and state courts. Many of his cases involve securities, shareholder, partnership, antitrust, consumer and employment claims, and class actions. Along with his trial practice, he represents members of the securities industry in regulatory and compliance matters before the Securities and Exchange Commission (S.E.C.), Financial Industry Regulatory Authority (FINRA), and state agencies. Gary has been recognized as a leading business litigation lawyer in Oregon by *Chambers USA: America's Leading Lawyers for Business, Best Lawyers in America* and other publications.

Nadia Dahab: Nadia is an associate in the litigation group. She received her Bachelor's degree in civil engineering from the University of Nebraska-Lincoln and graduated Order of the Coif from the University of Oregon, School of Law. Before joining Stoll Berne, Nadia clerked for the Honorable Rives Kistler on the Oregon Supreme Court, and both the Honorable Mary H. Murguia and the Honorable Susan P. Graber, on the U.S. Court of Appeals for the Ninth Circuit.

Andrew Davis: Andy concentrates his practice in the areas of commercial real estate including development, investment and finance. He advises clients in a wide range of commercial real estate transactions and matters, including the purchase and sale, development, investment, leasing, financing, management and ownership of commercial properties. Andy has made a number of presentations about real estate issues to both legal and real estate professional groups and has authored various publications for the Oregon State Bar.

Timothy DeJong: Tim is a litigator emphasizing complex business, securities and intellectual property disputes. Tim has experience in litigation matters involving patent infringement, class actions, violations of state and federal securities statutes, construction defect, insurance coverage and employment-related disputes. Tim has been recognized by *Best Lawyers in America* and *Oregon Super Lawyers* (Top 50 list), and *The Portland Business Journal* recognized him as among the "Best of the Bar" in the field of intellectual property. Before joining Stoll Berne, Tim clerked for the Honorable Robert E. Jones (District of Oregon).

Keith Dubanevich: Keith concentrates his practice in complex dispute resolution and has represented a wide variety of companies in arbitration and in litigation in more than a dozen different jurisdictions. He has extensive experience handling multi-state antitrust cases, consumer litigation and securities disputes. He was recently Associate Attorney General and Chief of Staff at the Oregon Department of Justice where he managed securities litigation on behalf of the state employee's pension fund, and supervised antitrust investigations and prosecutions.

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Keith Ketterling: Keith, one of the firm's managing shareholders, represents institutional and individual investors and brokerages in securities and financial fraud litigation and regulatory matters. He also handles matters involving trade secret and noncompetition litigation, and other complex business litigation. Keith brings a unique perspective to his cases, representing financial fraud victims, and in other instances, defending selected clients facing allegations of financial or securities fraud. Keith regularly arbitrates and mediates FINRA and other securities matters. Keith has been recognized in *Oregon Super Lawyers* and *Best Lawyers in America*.

Steve Larson: Steve is a trial lawyer who handles cases in state and federal courts, as well as before arbitration panels, emphasizing all types of complex business litigation. Steve has experience in class actions, securities litigation, corporate disputes, intellectual property disputes, unfair competition claims, and employment matters. He has appeared before the US Supreme Court, Ninth Circuit Court of Appeals, and the Oregon Court of Appeals.

Benjamin Leedy: Benjamin is a business and real estate attorney. His practice focuses on the areas of commercial real estate acquisitions and dispositions, real estate finance, leasing and real estate development.

David Lokting: David heads the firm's extensive business law and real estate practices. David represents clients in a wide range of business and real estate transactions, including forming business organizations (corporations, partnerships and limited liability companies), buying and selling businesses, equity buy-ins and buy-outs (including business "divorces"), development, acquisition, sale and financing of all types of commercial and investment real estate, structuring and completing forward and reverse Section 1031 exchanges, and representing developers and lenders in affordable housing projects.

Keil Mueller: Keil Mueller is a trial lawyer who represents corporate and individual clients in state and federal court, as well as in arbitration proceedings. Keil's practice focuses on complex business, securities and financial fraud litigation. He received his law degree, *cum laude,* from the New York University School of Law in 2005.

Yoona Park: Yoona Park is a litigation attorney who concentrates on complex business litigation, securities law, employment class actions, and employment litigation. She received her law degree, *cum laude,* from Lewis & Clark Law School in 2007.

Joshua Ross: Josh is one of the firm's managing shareholders. He concentrates on litigation, including complex business and securities issues. Josh received his law degree, *cum laude*, from Northwestern School of Law at Lewis and Clark in 2003. He joined the firm in 2005 after clerking for Hon. Rick Haselton of the Oregon Court of Appeals.

Rob Shlachter: Rob is a trial lawyer who handles cases in state and federal courts, as well as before arbitration panels, emphasizing all types of complex business litigation. Rob concentrates in intellectual property, unfair competition and commercial litigation. Recently, *The National Law Journal* selected Rob as one of the top ten litigators in Oregon, and *Chambers USA: America's Leading Lawyers* lists Rob as one of the top litigators.

Jennifer Wagner: Jen is a litigation attorney who practices in the areas of complex business, employment, securities, and class action litigation. She graduated first in her class, *magna cum laude*, in 2002 from Northwestern School of Law at Lewis and Clark College.