

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 Tonkon Torp, LLP (“Tonkon”) (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 May 31, 2018, subject to the approval of the Court.<sup>1</sup>

**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 Tonkon and various other parties;

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

c) Tonkon is willing to pay the Settlement Amount to the Class only if a court also approves a settlement between Tonkon and the Receivership Entity in the SEC Civil Action,

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings assigned to them in Section I(1) of this Stipulation.

including an injunction in a form acceptable to Tonkon barring claims against Tonkon by persons other than members of the Class;

d) the Class believes that their claims against Tonkon have substantial merit and have agreed to settle the Ciuffitelli Class Action with respect to Tonkon only because they believe that a settlement now will maximize the recovery to the Class from Tonkon due to Tonkon's limited assets and the wasting nature of Tonkon's excess insurance policy;

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

g) Tonkon 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 Tonkon 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 23.
- b) "Aequitas Securities" shall refer to any security issued or sold by any Receivership Entity.
- c) "Ciuffitelli Class Action" is the lawsuit titled *Ciuffitelli v. Deloitte & Touche LLP*, No. 3:16-cv-00580-AC, currently pending in U.S. District Court for the District of Oregon.
- d) "Class" means a settlement class consisting of all members of the proposed Class as defined in the Second Amended Complaint in the Ciuffitelli Class Action, except that "Class" shall not include any of the Individual Plaintiffs in any of the Individual Actions. "Class" shall not include any persons excluded, whether by name or by category, from the definition of the Class in paragraph 203 of the Second Amended Complaint (Dkt. 257) in the Ciuffitelli Class Action. For the avoidance of doubt, Jeanette Lao, as trustee of the Jeanette Lao Rollover IRA, Claire Lin, as trustee of Claire Yan Lin Roth IRA, and Calmar Optcom, Inc. are members of the Class.
- 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.
- 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 whatsoever either by Tonkon or by the person asserting the claim in the sale or solicitation of Aequitas Securities, or arising from the aid or participation by either Tonkon or the person asserting the claim in the sale or solicitation of Aequitas Securities;
- 2) any involvement whatsoever by Tonkon or by the person asserting the claim in the purchase, issuance, sale, or solicitation of the sale of any Aequitas Securities; or
- 3) any legal services Tonkon performed for any entity within the Receivership Entity.
  - 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 35, *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 Tonkon 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, except that Jeanette Lao, as trustee of the Jeanette Lao Rollover IRA, Claire Lin, as trustee of Claire Yan Lin Roth IRA, and Calmar Optcom, Inc. shall not be included in the definition of “Individual Plaintiffs.”
- 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 Tonkon in the Ciuffitelli Class Action and/or the publication of such notice as ordered by the District Court.

t) “Opt-Out Threshold” means a certain minimum dollar amount of investments in Aequitas Securities specified in a supplemental agreement (“the Supplemental Agreement”).

u) “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.

v) “Receivership Entity” is, individually and collectively, Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., Aequitas Investment Management, LLC, and each of their 43 subsidiaries and/or majority owned affiliates, all of whom are now under the control of a duly-appointed receiver in the SEC Civil Action (the “Receiver”). For the avoidance of doubt, “Receivership Entity” as used herein shall have the same meaning as “Receivership Entity” as used in the SEC Civil Action and shall refer to all entities comprising the Receivership Entity, both individually and collectively.

w) The “Release” shall have the meaning assigned to it in paragraph 18.

x) The “Released Claims” shall have the meaning assigned to it in paragraph 18.

y) “Remaining Policy Limits” means, at any given date, the amount equal to \$1,850,000 less the total fees and costs Tonkon and/or its insurers have incurred (whether invoiced or accrued but unbilled) for all the legal work performed by K&L Gates (or by another firm, if applicable) in connection with the any of the Ciuffitelli Class Action, the Individual Actions, and the SEC Civil Action, as of such date. In no event shall Remaining Policy Limits be less than \$0.

z) "SEC Civil Action" is the lawsuit titled *SEC v. Aequitas Management, LLC, et al*, No. 3:16-cv-00438-PK, currently pending in U.S. District Court for the District of Oregon.

aa) "Settlement Amount" means the amount of \$12,913,000, to be paid into escrow by Tonkon 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.

bb) "Tonkon" means Tonkon Torp, LLP, an Oregon Limited Liability Partnership.

cc) "Tonkon Released Parties" shall include Tonkon, all of its current attorneys (whether employees or partners); all attorneys who were either employed by, or partners in, Tonkon from January 1, 2006 to the present but who are no longer employed by Tonkon or partners in Tonkon; any of the foregoing attorneys who may have acted through professional corporations and those professional corporations; any contract attorneys who contracted with Tonkon during the period from January 1, 2006 to the present; all of Tonkon's employees; the agents or heirs of any of the foregoing individuals; Tonkon's successors and assigns; and Tonkon's insurers.

## II. THE SETTLEMENT AMOUNT

2. The Settlement Amount of \$12,913,000 is the result of an agreement to allocate \$18.5 million between the Ciuffitelli Class Action at 69.8% (\$12,913,000) and the Individual Actions in the aggregate at 30.2% (\$5,587,000). This allocation between the Ciuffitelli Class Action and the Individual Actions applies only to this settlement with Tonkon. Neither the percentage allocation nor the methodology upon which the allocation is based shall have any application to any future settlements that the Class Counsel may reach with any other defendants in the Ciuffitelli Class Action.

3. The Parties agree that the allocation of \$12,913,000 to settlement of the Ciuffitelli Class Action and \$5,587,000 to the settlement of the Individual Actions will not change even if a member of the Class wishes to join one of the Individual Actions or vice-versa.

### III. THE SETTLEMENT FUND

4. 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), Tonkon shall cause its insurers to pay the Settlement Amount into the Escrow Account.

5. In addition, within five business days of the Effective Date of the Settlement, Tonkon shall cause to be paid, at the direction of Class Counsel, the Remaining Policy Limits, if any, into the Escrow Account. Tonkon and its insurers make no representation or warranty, express or implied, that Remaining Policy Limits will be greater than \$0, and under no circumstances shall the absence of any Remaining Policy Limits be a breach of this Stipulation or otherwise create any liability for Tonkon or its insurers.

6. 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."

7. 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.

8. 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 Tonkon.

9. 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.

10. 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.

11. 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 Tonkon or 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.

12. After the Settlement Amount has been paid into the Escrow Account in accordance with paragraphs 4 and 5, *supra*, 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.

13. 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 10, *supra*.

14. 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, the Tonkon Released Parties 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 any of the Tonkon Released Parties on any interest earned on the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Escrow Account.

15. 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.

#### **IV. TONKON'S COOPERATION IN CONTINUING LITIGATION**

16. In addition to the Settlement Amount, Tonkon 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 Tonkon, nor a waiver of Tonkon's right to object to any such subpoena); (b) making potential witnesses within Tonkon's control available for interviews of reasonable duration; and (c) making potential witnesses within Tonkon's control available for depositions at mutually agreeable times and upon reasonable notice without the need for a subpoena.

## V. RELEASES

17. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Ciuffitelli Class Action and any and all Released Claims as against all Tonkon Released Parties and any and all Released Claims as against all Class Representatives and the Class.

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

- a) All claims which any member of the Class and the Tonkon 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 Actions, 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; or
  - (iii) relates to or arises out of any legal services Tonkon performed for any entity within the Receivership Entity;

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 18-a) or 18-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."

19. Notwithstanding the foregoing paragraph 18, the Release shall not apply to:

- a) Any claims that arise out of any breaches of the obligations of this Stipulation;
- b) Any claim(s) arising out of legal services provided by Tonkon to any Class member that was an express client of Tonkon (but not an alleged third-party beneficiary of any services Tonkon provided); or
- c) Any Class member's claims unrelated to any services Tonkon performed for any Aequitas entity and otherwise unrelated to any involvement by Tonkon in any Aequitas Securities; or
- d) 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 Tonkon Released Parties, specifically including claims against the remaining defendants in the Ciuffitelli Class Action.

20. The Release shall apply and inure to the benefit of the Class Representatives and the Class and to the Tonkon 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 18 herein, but that it is their intention to fully, finally, and forever settle and release the claims in paragraph 18, 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.**

21. 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.

## **VI. ADMINISTRATION OF THE SETTLEMENT**

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

23. 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.

24. 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 Tonkon if the Settlement does not become final.

25. Tonkon 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.

## **VII. COURT APPROVAL OF SETTLEMENT**

26. 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 29 and the Effective Date of Settlement's having occurred.

**A. Preliminary Approval**

27. 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 Tonkon shall cooperate with Class Counsel as is reasonably necessary in connection with the Motion for Preliminary Approval. The Motion for Preliminary Approval shall include (i) a proposed scheduling order for a hearing for final approval, and the various deadlines preceding same; (ii) a form and distribution plan of proposed notice to the Class; and (iii) a proposed form of Final Judgment.

**B. Final Approval of Settlement and Final Judgment**

28. 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.

29. 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.

30. 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 Tonkon is with prejudice;
- b) An injunction barring each and every member of the Class from asserting any of the Released Claims against the Tonkon Released Parties;

- c) An injunction barring each and every other defendant in the Ciuffitelli Class Action from asserting any Contribution Claims against the Tonkon 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 Tonkon against any judgment that may be entered in the Ciuffitelli Class Action; and
- d) Each Party shall bear its own costs and attorneys' fees.

31. If the District Court does not approve an injunction (in a form acceptable to Tonkon) barring Contribution Claims against Tonkon 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, Tonkon without liability to any Party.

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

33. In conjunction with the motion for final approval, Class Counsel will apply for an attorney fee award of 20% of the Settlement Fund. Tonkon 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.

#### **C. Court Approval in SEC Civil Action**

34. The Settlement is also expressly contingent on Tonkon entering into a settlement agreement with the Receivership Entity in a form acceptable to Tonkon and that includes a broad release by the Receivership Entity of the Tonkon Released Parties; and Court approval in the SEC Civil Action of that settlement agreement between Tonkon and the Receivership Entity

(including the entry of an immediately appealable limited judgment in a form acceptable to Tonkon consistent with the settlement agreement).

#### **VIII. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

35. 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;
- d) Court approval has been granted of the settlement in the SEC Civil Action, and such approval 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; and
- e) 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).

36. 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 35.

37. The Parties acknowledge that Class Members have the right and ability to exclude themselves from the Class prior to the Settlement Hearing. Class Counsel, in conjunction with the Claims Administrator, shall cause copies of requests for exclusion from the Class to be provided to Tonkon's counsel as they are received. No later than ten (10) calendar days after the final date for mailing requests for exclusion, Class Counsel shall provide Tonkon's counsel with a complete and final list of all known Class Members that have excluded themselves from the Settlement and with all other known information sufficient for Tonkon to determine the amounts invested in Aequitas Securities for each.

38. Tonkon shall have the option to terminate the Settlement if Class members with more than a certain aggregate amount of investments validly request exclusion from the Class. The Opt-Out Threshold, which, if met, triggers Tonkon's right to terminate the Settlement, is identified in a Supplemental Agreement between the Parties. The Supplemental Agreement shall not be filed with the District Court. The contents of the Supplemental Agreement may be brought to the attention of the District Court, in camera, if so requested by the District Court, or if a dispute arises among the Parties concerning the Supplemental Agreement's interpretation or application. The Parties will keep the terms of the Supplemental Agreement confidential, except if compelled by judicial process to disclose the Supplemental Agreement. Tonkon must notify Class Counsel of its intention to terminate the Settlement pursuant to this provision no later than 10 business days, with time being of the essence, after receipt from Class Counsel, pursuant to paragraph 37, of the final list of all known Class Members that have excluded themselves from the Settlement. Any investment amounts by the Individual Plaintiffs shall be excluded from the

calculation of whether the Opt-Out Threshold has been met. In the event that Tonkon terminates the Settlement pursuant to this provision, this Stipulation shall become null and void and of no further force and effect, and all money in escrow shall be promptly returned to Tonkon's insurers without liability to Tonkon or its insurers.

39. 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 Tonkon'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 Tonkon or its insurers.

#### **IX. COOPERATION IN IMPLEMENTATION OF STIPULATION**

40. 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.

41. 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.

42. 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.

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

#### **X. MISCELLANEOUS PROVISIONS**

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

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

46. 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.

47. 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 Tonkon or of any of the other Tonkon Released Parties, all of whom deny any and all liability.

48. Entire Agreement. This Stipulation sets forth the full and complete agreement of the Class Representatives, the Class and Tonkon 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 Tonkon.

49. 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.

50. 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.

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

52. Parties to Bear Own Fees and Costs. The Class Representatives, the Class and Tonkon 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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 Tonkon to any person not covered by this Stipulation.

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PAGE 25 – STIPULATION AND AGREEMENT OF  
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