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Attorneys for Receiver Thomas F. Lennon  
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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
11

12 SECURITIES AND EXCHANGE  
COMMISSION,  
13

Plaintiff,  
14

v.  
15

TUCO TRADING, LLC and  
16 DOUGLAS G. FREDERICK,  
17

Defendants.  
18

Case No. 08-CV-00400 DMS (BLM)

**EX PARTE APPLICATION FOR ORDER  
APPROVING STIPULATION BETWEEN  
THE RECEIVER AND T3 CAPITAL, LLC**

19 Thomas F. Lennon ("Receiver"), Court-appointed permanent receiver for Tuco Trading,  
20 LLC ("Tuco") applies for an order approving a stipulation ("Stipulation") between the Receiver  
21 and T3 Capital, LLC ("T3"). The Stipulation, which provides that the claim submitted to the  
22 Receiver by T3 is allowed in the amount of \$1,864,850.66, is attached hereto as Exhibit A.

23 **I. INTRODUCTION**

24 T3 was a class B member ("Member") of Tuco. Pursuant to the Court-approved claims  
25 procedures, the Receiver issued a notice to T3 stating the Receiver's proposed allowed amount of  
26 T3's claim ("Receiver Notice"). The amount stated in the Receiver Notice, \$1,849,850.66, is the  
27 ending account balance for the T3 account reflected in the Tuco back office accounting system.  
28

1 T3 submitted a claim to the Receiver in the amount of \$2,029,345.56 ("T3 Claim"). The variance  
2 between the Receiver Notice and the T3 Claim, therefore, is \$179,494.90.

3 With the assistance of counsel and William H. Ling, CPA, the Receiver had several  
4 discussions with T3 and its counsel regarding the variance. T3 disputed certain fees and charges  
5 deducted from its account, and claimed that it did not receive other amounts owed to it. The  
6 Receiver investigated these contentions. Although the parties were able to narrow the variance to  
7 approximately \$102,000, this amount remained in dispute.

8 The parties agreed that the Receiver would increase his proposed allowed amount for the  
9 T3 Claim by \$15,000, to \$1,864,850.66, and executed a stipulation to that effect ("Stipulation").  
10 The Stipulation is subject to Court approval, which the Receiver now requests.

11 The Receiver notified the Securities and Exchange Commission and Douglas Frederick  
12 that he had reached an agreement with T3, subject to Court approval, and of the terms of the  
13 agreement. Both indicated they have no objection.

## 14 **II. ARGUMENT**

15 Federal courts of equity often look to bankruptcy law for guidance as to the factors the  
16 court should consider in determining the appropriateness of a proposed settlement. S.E.C. v.  
17 American Capital Investments, Inc., 98 F.3d 1133 (9th Cir. 1996). Bankruptcy courts may  
18 approve a compromise if it is "fair and equitable." Woodson v. Fireman's Fund Insurance Co. (In  
19 re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

20 The Stipulation is fair and equitable and in the best interests of the Tuco receivership estate  
21 in that it avoids the costs and delay associated with litigating the T3 Claim, and eliminates the  
22 possibility that the T3 Claim could be allowed in an amount greater than \$1,864,850.66.

## 23 **III. CONCLUSION**

24 For the foregoing reasons, the Receiver requests an order approving the Stipulation.

25 Dated: June 24, 2009

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

27 By: /s/ Jeffrey R. Patterson

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Attorneys for Receiver Thomas F. Lennon

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9 UNITED STATES DISTRICT COURT  
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12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 TUCO TRADING, LLC and  
16 DOUGLAS G. FREDERICK,

17 Defendants.  
18

Case No. 08-CV-00400 DMS (BLM)

**STIPULATION AND RELEASE RE  
CLAIM AMOUNT OF T3 CAPITAL, LLC**

19 Thomas F. Lennon ("Receiver") was appointed permanent receiver for Tuco Trading, LLC  
20 ("Tuco") by the United States District Court for the Southern District of California ("District  
21 Court") in the case entitled Securities and Exchange Commission v. Tuco Trading, LLC and  
22 Douglas G. Frederick, Case No. 08-CV-00400 (DMS) BLM.

23 T3 Capital, LLC ("T3") was a class B member of Tuco.

24 Pursuant to the District Court-approved claims procedures, the Receiver issued a notice to  
25 T3 stating the Receiver's proposed allowed amount of T3's claim ("Receiver Notice"). The  
26 amount stated in the Receiver Notice, \$1,849,850.66, is the ending account balance for the T3  
27 account reflected in the Tuco back office accounting system. T3 submitted a claim to the Receiver  
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1 in the amount of \$2,029,345.56 ("T3 Claim"). The variance between the Receiver Notice and the  
2 T3 Claim, therefore, is \$179,494.90.

3 With the assistance of counsel and William H. Ling, CPA, the Receiver had several  
4 discussions with T3 and its counsel regarding the variance. T3 disputed certain fees and charges  
5 deducted from its account, and claimed that it never received other amounts owed to it. The  
6 Receiver investigated these contentions. Although the parties were able to narrow the variance to  
7 approximately \$102,000, this amount remained in dispute.

8 In light of the foregoing, the Receiver and T3 hereby stipulate and agree as follows:

- 9 1) Subject to District Court approval, the T3 Claim is allowed in the amount of  
10 \$1,864,850.66.
- 11 2) If for any reason this stipulation is not approved by the District Court, the Receiver and  
12 T3 retain all rights and arguments regarding the T3 Claim.
- 13 3) In consideration of the foregoing and except as provided herein, the Receiver,  
14 individually and on behalf of Tuco and the Tuco receivership estate, on the one hand, and T3 as  
15 defined in the settlement agreement between the Receiver and T3 approved by the Court on  
16 September 26, 2008, on the other hand, hereby release, waive, acquit and discharge one another  
17 from any and all claims, actions, suits, debts, accounts, covenants, obligations, promises,  
18 liabilities, demands, damages, costs, losses, expenses, compensation of any kind and nature, and  
19 all direct and indirect damages, known or unknown, contingent, liquidated or unliquidated, any of  
20 them may have had, may now have, or may hereafter have against one another.

21 FRIER LEVITT, LLC

22  
23 Dated: June 18, 2009

By: 

JONATHAN E. LEVITT  
Attorneys for T3 Capital, LLC

24  
25 ALLEN MATKINS LECK GAMBLE MALLORY  
26 & NATSIS LLP

27 Dated: June 22, 2009

By: 

JEFFREY R. PATTERSON  
Attorneys for Thomas F. Lennon, Receiver