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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SUNWEST MANAGEMENT, INC.,
CANYON CREEK DEVELOPMENT, INC.,
CANYON CREEK FINANCIAL, LLC, AND
JON M. HARDER,

Defendants,

DARRYL E. FISHER, ET AL.,

Relief Defendants.

MICHAEL A. GRASSMUECK, Receiver,

Plaintiff,

v.

DAVIS WRIGHT TREMAINE, LLP, a
Washington limited liability partnership,
Defendant.

Case No. 09-cv-6056-HO

**ORDER (1) APPROVING SETTLEMENT
AND (2) ENTERING FINAL CLAIM
BAR ORDER AND INJUNCTION**

Case No. 09-cv-0651-HO

MICHAEL A. GRASSMUECK, Receiver, Plaintiff, v. K&L GATES LLP, a Delaware limited liability partnership.
MICHAEL A. GRASSMUECK, Receiver, Plaintiff, v. THOMPSON & KNIGHT LLP, a Texas limited liability partnership, Defendant.

Case No. 09-cv-6202-HO

Case No. 09-cv-6199-HO

THIS MATTER came before the Court on the Motion for Approval of Settlements with Davis Wright Tremaine LLP (“DWT”), K&L Gates LLP (“KLG”), and Thompson & Knight LLP (“T&K”) (collectively, the “Settling Defendants”) filed by Michael A. Grassmueck, the duly appointed receiver (“Receiver”) in *SEC v. Sunwest Mgmt., Inc.*, Case No. 09-CV-6056-HO (the “SEC Action”) for Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC, Fuse Advertising, Inc., KDA Construction, Inc., and other entities (the “Settlement Approval Motion”) (SEC Action Dkt No. 1591).

The Court previously entered its Procedures Orders for Motion for Approval of Settlement (SEC Action Dkt No. 1548, 1549) in which the Court approved the form of notice for the Settlement Approval Motion including notice of the hearing and opposition deadline. Pursuant to such Procedures Orders and the notices thereunder, a hearing on the Settlement Approval Motion was held on February 9, 2011 before the Honorable Michael R. Hogan, United

States District Court Judge for the District of Oregon, in the above-captioned actions.

Appearances were noted on the record.

Having read and considered the settlement agreements between the Settling Defendants, on the one hand, and the Receiver and certain Investor Claimants¹, on the other hand (Dkt No. 1591, Exs. A-C) (collectively, the "Settlement Agreements"), the Settlement Approval Motion, all papers filed in support of and in opposition to the Settlement Approval Motion, and all relevant pleadings; and having heard and considered the statements, argument, evidence and representations of counsel presented at the hearing, and having considered also all appropriate offers of proof and matters properly judicially noticed, the matter having been submitted for determination by the Court, and good cause appearing therefor, the Court finds as follows:

1. Pursuant to the orders entered by this Court on March 10, 2009, May 27, 2009, and August 28, 2009 ("Receivership Orders") in the SEC Action, Michael Grassmueck is the duly appointed and acting receiver for the Receivership Entities including Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC, Fuse Advertising, Inc., KDA Construction, Inc., and numerous other entities as further set forth in the Receivership Orders. On October 2, 2009 the Court entered an order approving and establishing the Distribution Plan in the SEC Action. Pursuant to the Receivership Orders and the Distribution Plan, the Receiver was authorized to pursue claims of the Receivership Entities against third parties for the benefit of investors and creditors of the Receivership Entities. The Receiver also was or will be the assignee or transferee of claims of individuals or entities who made investments related to one or more Sunwest Affiliates.

¹ Unless otherwise noted, all capitalized terms shall have the same definitions as those set forth the Settlement Agreements.

2. The Receiver filed the following actions against the Settling Defendants asserting claims arising from alleged services that the Settling Defendants provided to the Receivership Entities: *Michael Grassmueck, Receiver v. Davis Wright Tremaine LLP*, United States District Court for the District of Oregon, Eugene Division, Case No. 09-cv-0651-HO; *Michael Grassmueck, Receiver, v. K&L Gates LLP*, United States District Court for the District of Oregon, Eugene Division, Case No. 09-cv-6202-HO; and *Michael Grassmueck, Receiver, v. Thompson & Knight LLP*, United States District Court for the District of Oregon, Eugene Division, Case No. 09-cv-6199-HO (collectively, the “Law Firm Actions”). The Settling Defendants have denied, and continue to deny, all material allegations of the Complaints filed in those actions. There are also certain pending state court actions filed by other claimants against Settling Defendants, as identified in the Settlement Agreements.

3. The Court has jurisdiction over the SEC Action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. The Court has jurisdiction over the Law Firm Actions pursuant to 28 U.S.C. §§ 1345, 1367.

4. The Receiver was authorized to, and did, participate in mediations with the Settling Defendants in his capacity as Receiver and as an assignee or transferee of Claims related to Sunwest Affiliates. Other represented investors participated in the mediation through counsel. Following extensive document discovery, numerous witness interviews, and negotiations in good faith, the mediations resulted in agreements on basic terms of binding settlement agreements between the Receiver, certain represented Investor Claimants, and a putative class of Investor Claimants, on the one hand, and DWT, KLG, and T&K, on the other hand. The settlement terms

were read into the record confidentially before the Court. The parties then prepared more detailed written settlement agreements containing the terms and conditions of settlements. The Settlement Agreements (with certain exhibits redacted) are attached to the Settlement Approval Motion, and unredacted versions of the Settlement Agreements and exhibits were submitted to the Court under seal.

5. The terms of the Settlement Agreements require the parties to seek Court approval of the settlements in the SEC Action. The Settlement Agreements also required the Receiver and representatives of the Investor Claimants to initiate a proposed class action in federal court in which the Receiver and Investor Claimants are seeking approval of the Settlement Agreements and certification of a settlement class for the purpose of obtaining a binding judgment that precludes Claims against the Settling Defendants by the members of the settlement class, including investors in Sunwest and the Receiver as assignee or transferee of the claims of Sunwest investors, arising from or relating to the legal services provided by the Settling Defendants and any other conduct of Settling Defendants in connection with one or more Sunwest Affiliates. The Settlement Agreements also call for the Receiver or representatives of Investor Claimants to seek a Final Claim Bar Order to protect the Settling Defendants from any and all Claims arising from or relating to the legal services they provided to, and any other conduct in connection with, one or more of the Sunwest Affiliates.

6. The Receiver, on behalf of the Sunwest Affiliates placed under his control and on behalf of Investor Claimants to the extent their Claims have been or will be assigned to him, and the Settling Defendants, for themselves and with respect to all persons identified in the releases, intend through the Settlement Agreements to fully and finally resolve any and all Claims, to dismiss the Law Firm Actions with prejudice, and to enter into mutual releases. In consideration

for the mutual releases and other consideration, the Law Firms will pay certain consideration to the Litigation Trust established under the terms of the Distribution Plan in the SEC Action, as stated in the Settlement Approval Motion. In consideration for its settlement payment, each firm has required entry of a final claim bar order, as further described in Paragraph 4 of this Order. Each of the law firms has confirmed that it would not enter into the Settlements without such provisions.

7. Entering into the Settlement Agreements is reasonable and within the Receiver's sound business discretion, and in the best interests of the Receivership estate, the creditors and investors, and all parties in interest. The Court finds that the Receiver has the right, power and authority to enter into and perform the Settlement Agreement, subject only to the approval of this Court.

8. Each of DWT, KLG and T&K continues to dispute the claims asserted against it by the Receiver and, without the Settlements, both the Receiver and each of the law firms would incur substantial additional time and expense pursuing the Litigation through trial and possible appeals. The outcome and the ability to collect on a judgment are uncertain and entail risk for both sides. The Settlements, however, provide a significant and certain recovery for the Litigation Trust under the Distribution Plan. In addition, continuing to litigate the claims would consume substantial judicial resources. The Settlements occurred after extensive informal discovery and are recommended by experienced counsel. Accordingly, the Court finds that each Settlement and each Settlement Agreement is fair, reasonable, adequate, and does not unduly prejudice the rights of any of the parties or the investors and creditors of the Receivership Entities. The paramount interest of the Receivership Entities' investors and creditors is served by the Settlement Agreements which provide a substantial recovery for the Litigation Trust.

9. As evidenced by, among other things, the certificates of service submitted in connection herewith and the notices given in accordance with the Procedures Orders, the Court finds that proper, timely, adequate, and sufficient notice of the Settlement Approval Motion, the hearing held thereon, and the proposed Final Claim Bar Order was given to all interested parties individually and/or by publication, that all such parties had a reasonable opportunity to object and be heard regarding the relief requested in the Settlement Approval Motion, and that the notice of the Settlement Approval Motion and the Final Claim Bar Order afforded due process to all interested persons and entities. The “Notice of: (1) Motions for Approval of Settlements with (A) Davis Wright Tremaine LLP and Timothy M. Dozois, (B) K&L Gates LLP; and (C) Thompson & Knight LLP; (2) Proposed Final Claim Bar Order; and (3) Hearing Date and Deadline for Opposition to Motions” was adequate, under all the circumstances, to provide, and did in fact provide, notice to fully and fairly inform all interested parties of the opportunity to object to the Settlement Agreements and the Final Claim Bar Order.

ACCORDINGLY, IT IS THEREFORE ORDERED THAT

1. The Settlement Approval Motion is hereby granted.
2. The Court finds, concludes, and orders that the settlements, the amount of the settlement proceeds, and the terms of the Settlement Agreements are approved and that they are fair, adequate, reasonable, equitable and prudent as to each of the interested parties.
3. The Court finds, concludes, and orders that the notice of the Settlement Approval Motion and the Final Claim Bar Order was adequate, was the best notice practicable, and afforded due process to all interested persons or entities.
4. Based on the foregoing, the Court enters the following Final Claim Bar Order and Injunction:

a. The Receiver, all Investor Claimants, all Sunwest Affiliates, all members or other persons who have an ownership interest in one or more Sunwest Affiliates, all investors and creditors of Sunwest Affiliates, all other professionals who provided services to Sunwest Affiliates, all plaintiffs named in the Litigation², all defendants named in the Litigation, all potential defendants and/or third-party defendants who may be named in the Litigation, and all other interested parties, including without limitation broker-dealers who were involved in the sale of securities on behalf of the Sunwest Affiliates, lenders who were involved in financing related to one or more Sunwest Affiliates, and all other parties who received notice whether individually or by publication are permanently barred, enjoined and restrained from commencing, prosecuting, or asserting any and all claims (as further explained in Paragraph 4.b below) in any court, arbitration forum, or other forum of this or any other jurisdiction, either directly or derivatively, against DWT, KLG and T&K, their respective past or present partners, subsidiaries, parents, officers and directors, shareholders, agents, employees, attorneys, insurers, auditors, spouses and the respective legal representatives, heirs, predecessors and successors in interest of DWT, KLG or T&K, Timothy Dozois, R.

² For purposes of Paragraph 4 of this Order, "Litigation" shall include the following actions: the SEC Action; *Michael Grassmueck, Receiver, v. Davis Wright Tremaine LLP*, United States District Court for the District of Oregon, Eugene Division, Case No. 09-cv-0651-HO; *Michael Grassmueck, Receiver, v. K&L Gates LLP*, United States District Court for the District of Oregon, Eugene Division, Case No. 09-cv-6202-HO; *Michael Grassmueck, Receiver, v. Thompson & Knight LLP*, United States District Court for the District of Oregon, Eugene Division, Case No. 09-cv-6199-HO; *DeVaney et al. v. Davis Wright Tremaine*, United States District Court for the District of Oregon, Eugene Division, Case No. 10-CV-6134-HO (the *Devaney* Action); *Houghmaster et al. v. K&L Gates LLP, et al.*, United States District Court for the District of Oregon, Eugene Division, Case No. 10-CV-06321 (the *Houghmaster* Action); all lawsuits not otherwise mentioned but embraced by the definition sections or recitals of the Settlement Agreements; and any other lawsuit that has been or may be filed in any jurisdiction regarding or including any claims that arise out of or relate directly or indirectly to the services provided by the Settling Defendants to Sunwest or any officer, director, manager or member of a Sunwest Affiliate.

Gibson Masters, and Kevin Thomason, or any of them, where the claim arises out of or in any way relates directly or indirectly to the legal services provided by the Settling Defendants or any of them to one or more Sunwest Affiliates, or any other conduct of Settling Defendants or any of them in connection with one or more Sunwest Affiliates or in connection with any officer, director, manager or member of a Sunwest Affiliate.

b. The claims barred by Paragraph 4.a include any and all claims, causes of action, liabilities, suits, debts, liens, contracts, agreements, promises, damages, demands, disputes, controversies, costs, expenses, attorneys' fees, and losses whatsoever, whether in law or equity, known or unknown, fixed or contingent, foreseen or unforeseen, matured or unmatured, accrued or not accrued, arising under state, federal or common law, however styled, that any person identified in Paragraph 4.a of this Order now has or subsequently may have, including any unknown claims that the Receiver or the Investor Claimants do not know or suspect to exist in their favor at any time on or before the date that the releases in the Settlement Agreements become effective and that, if known by them, might have affected their settlement with or grant of a release to any of the Settling Defendants. The claims barred by this paragraph include, without limitation, any claim for indemnification or contribution or however denominated, including, without limitation, claims for breach of contract, negligence, professional liability, breach of fiduciary duty, misrepresentation, conspiracy, unjust enrichment, or aiding and abetting, and any claim in which a person or entity seeks to recover from the Settling Defendants or any of them (i) any amounts such person or entity is liable, or may become liable, to pay to the plaintiff(s); and/or (ii) any costs, expenses, or attorneys' fees from defending any claim(s). The claims that are barred by this Paragraph include, without limitation,

any claim, cross-claim or third party claim that is asserted in, based upon, arises out of, or relates to the conduct, transactions, and occurrences set forth in the Litigation.

5. The Law Firm Actions are stayed pending the Final Claim Bar Order and Injunction becoming fully and finally effective or until notice to the Court from the Receiver that the Settlement Agreements have terminated or failed to become effective. In the event that one or more of the Settlement Agreements are terminated or fail to become effective, the parties to that Settlement Agreement are deemed to have preserved their litigation positions as of January 1, 2010 with respect to DWT, and September 22, 2010 with respect to KLG and T&K, including any tolling agreements, and the parties to the terminated Settlement Agreement(s) may proceed as if no settlement had been entered.

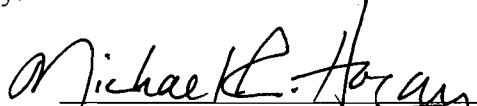
6. The Receiver is authorized to require each Investor Claimant, as a condition to the Investor Claimant receiving any distribution of funds from the Litigation Trust, to sign a document in which the Investor Claimant agrees that all claims held by the Investor Claimant against DWT, KLG, and T&K and the persons identified in the releases of the Settlement Agreements are assigned to the Receiver.

7. Nothing in this Order shall be construed to prohibit the Receiver from pursuing claims against other third parties, including any other professionals.

8. The United States District Court for the District of Oregon hereby retains exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance, validity, interpretation, administration, enforcement or enforceability of this Order or the Settlement Agreements.

9. There being no just cause for delay, this Order is, and is intended to be, a final decision of the Court, within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure and is intended to be appealable upon its entry.

DATED: 9 FEB. 2011



The Honorable Michael R. Hogan
United States District Court
District of Oregon

Presented by:

/s/

Stephen S. Walters (OSB No. 80120)
Attorney for Receiver Michael A. Grassmueck