

STEPHEN S. WALTERS (BAR NO. 54746)  
DAVID R. ZARO (BAR NO. 124334)  
FRANCIS N. SCOLLAN (BAR NO. 186262)  
ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
Three Embarcadero Center, 12th Floor  
San Francisco, CA 94111-4074  
Phone: (415) 837-1515  
Fax: (415) 837-1516  
E-Mail: swalters@allenmatkins.com  
dzaro@allenmatkins.com  
fscollan@allenmatkins.com

Attorneys for Receiver  
MICHAEL A. GRASSMUECK

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 JOHN M. HARDER,

Defendants,

DARRYL E. FISHER, ET AL.,

Relief Defendants.

---

MICHAEL GRASSMUECK, Receiver,

Plaintiff

SANDI BALADA; BRYON CROSBY;  
HASMIG DERDERIAN; RICH  
GIGLIO; TOBBE HENNBY; KATHY  
HESHELOW; ERIC HILDEBRAND;  
ERIC MEURER; LARRY MILLER;  
ALAN POLLACK; RANDALL POPE;  
ALEX RHOTEN; RON ROSS;  
TAMARA SANNER; R. TOM SMITH;  
DIRK STANGIER; JIM STOCK;

Case No. 09-6056-HO

**DECLARATION OF RECEIVER  
MICHAEL A. GRASSMUECK IN  
SUPPORT OF MOTION FOR  
APPROVAL OF SETTLEMENT  
WITH CERTAIN SETTLING  
BROKERS AND DEALERS AND FOR  
ENTRY OF CLAIMS BAR ORDER**

Case No. 10-6076-HO

DARYL TEMPLETON; TRINA TRAVESS; RUSTY TWEED; MELONIE WATERS; WILLIAM WHITE; RICHARD WIELDE; ROBERT ZINK; CAPWEST SECURITIES, INC.; DIRECT CAPITAL SECURITIES, INC.; AND K-ONE INVESTMENT COMPANY, INC.,

Defendant

I, MICHAEL A. GRASSMUECK, declare:

1. Pursuant to orders entered by this Court on March 10, 2009, May 27, 2009, and August 28, 2009 ("Receivership Orders") in *SEC v. Sunwest Management, Inc.*, Case No. 09-6056-HO (the "SEC Action"), I am the duly appointed and acting receiver for Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC, Fuse Advertising, Inc., KDA Construction, Inc., and other entities named in the Receivership Orders (the "Receivership Entities"). I make this declaration regarding approval of a settlement and written Settlement Agreement between the Receiver and certain settling brokers and dealers, as identified in Exhibit A to the Settlement Agreement (the "Settling Brokers").

2. I have personal knowledge of the facts stated in this declaration and could and would competently testify thereto if called upon to do so. My knowledge is based upon my work and the work of my staff and professionals in carrying out the duties and obligations of the Receiver under the orders appointing me and under the Distribution Plan, including participation in the litigation and mediation proceedings described herein. My knowledge and views of the litigation and settlement are also informed by my 25 years of experience serving as a trustee in bankruptcy and as a receiver.

3. On October 2, 2009 the Court entered an order approving and establishing a Distribution Plan in the SEC Action. Among other things, the Receivership Orders and the Distribution Plan authorized me, as Receiver, to pursue claims of the Receivership Entities against third parties for the benefit of investors and creditors of the Receivership Entities. The Distribution Plan created a Litigation Trust for amounts recovered on any such claims.

4. In my capacity as Receiver, I asserted claims against certain brokers and dealers related to the alleged sale of securities and receipt of commissions on behalf of Sunwest investors and the Receivership Entities in *Grassmueck v. Balada*, et al., Case No. 10-cv-6076-HO, (the "Broker Case"). In my capacity as Receiver, I received an assignments of claims, asserted or unasserted, against the Settling Brokers from Sunwest investors, creditors, and claimants (the "Third Party Claims"), pursuant to the Plan of Distribution approved on October 2, 2009, in the SEC Case; the Receiver's, CRO's and Debtor's Second Amended Joint Plan of Reorganization (May 27, 2010), filed in the Bankruptcy Case; and the Order Re Assignment of All Sunwest Investors' and Claimants' Rights and Claims Against Certain Third Parties to Receiver dated April 7, 2011, as may be amended in conjunction with the current motion (the "Assignment Order"). These include claims that are the subject of separate federal court, state court, and arbitration proceedings that have been initiated by Sunwest investors, creditors, or claimants individually against the Settling Brokers (the "Collateral Proceedings"). The Collateral Proceedings that the parties are aware of are listed on Exhibit C of the Settlement Agreement.

5. Pursuant to the claims process established under the Distribution Plan and related court orders, certain of the Settling Brokers filed proofs of claim in the Receivership. A list of such proofs of claim is set forth in Exhibit B of the Settlement Agreement. The Receivership objected to many of these claims, in

whole or in part, as part of the claims administration process, and a determination of the claims was excluded from the omnibus order determining claims.

6. The Settling Brokers denied, and continue to deny, the material allegations in the Broker Case and the other claims and proceedings against them, and asserted, and continue to assert, the validity of their claims against the Receivership.

7. My counsel, including special mediation counsel, and I engaged in various settlement discussions and mediation sessions with the Settling Brokers and their insurers, also represented by experienced counsel. The mediation sessions were conducted by experienced mediators. The parties eventually reached terms on a resolution of the disputes. The terms were subsequently put into a written Settlement Agreement. A copy of the proposed Settlement Agreement has been submitted as Exhibit 1 to the Memorandum of Points & Authorities filed concurrently herewith.

8. The Settlement calls for certain insurers to make payments totaling \$2.22 million as identified on Exhibit F to the proposed Settlement Agreement to the Receiver. The Settling Brokers will also assign their respective rights and interests, including any claims against policies, to the Receiver. The Receiver will allow certain claims made by the Settling Brokers against the Receivership Estate, identified as "allowed" on Exhibit B to proposed Settlement Agreement, and the Settling Brokers will release the other claims identified therein. The Settlement Agreement also calls for mutual releases.

9. The Settlement also calls for the Receiver to seek a Claims Bar Order in the SEC Action. The Claims Bar Order would bar or enjoin enumerated persons from asserting certain claims against each of the Settling Brokers. The Settling Brokers have asserted that they would not enter into the settlement without such provisions.

10. As Receiver, I believe that the settlement and Settlement Agreement are in the best interests of the investors and creditors of the Receivership Entities. The factors that lead me to this conclusion include: The time and risks associated with pursuing claims against the Settling Brokers and collecting a judgment (such as appeals and bankruptcy filings) are significant; the additional cost to the Receivership Estate of pursuing claims against each Settling Broker would be substantial; compromising the Broker Claims and obtaining releases of claims and interests reduces the exposure of the Receivership Estate; and the certainty of receiving substantial funds for the Litigation Trust under the Distribution Plan is of great benefit to investors and creditors.

11. The Settling Brokers deny the material allegations in the Broker Case and the other claims and proceedings against them and have displayed an intention to defend all pending actions vigorously. They also assert the validity of their claims against the Receivership. Pursuing litigation including the Broker Case and other proceedings against the Settling Brokers would consume substantial time and resources of the Receivership and carries with it various risks, as neither side can be certain of a particular outcome. Had the claims not been settled, the cost to prosecute claims and related litigation and address Broker Claims would be substantial. The claims against the Settling Brokers cover, in many instances, significant periods of time and many transactions. There are also a significant number of Settling Brokers with multiple claims against the Receivership Estate, which would also require additional resources if contested. The litigation would consume significant judicial resources, in both this Court and the state courts, and the resources of the parties.

12. Absent the settlement, difficulties are likely to be encountered in collecting judgments that might be obtained on claims against the Settling Brokers. Collection of a judgment against the Settling Brokers is problematic and could involve an extended process yielding uncertain results. For example, the collection

of a substantial judgment could be delayed or even defeated by appeals and bankruptcy filings. The settlement provides a significant actual recovery. The value to the Receivership estate in the certainty of having funds paid as provided in the Settlement Agreement rather than after years of litigation is a positive factor which supports the settlement.

13. The paramount interest of investors and creditors is best served by the settlement. The settlement provides for a significant recovery for the Litigation Trust and a certainty of payment. The settlement resolves and reduces the expense and exposure of the Receivership Estate on claims by the Settling Brokers. The settlement reduces the costs and risks associated with continuing litigation.

14. In sum, I have balanced the risks of recovery and costs and concluded that the settlement is reasonable and appropriate in light of the factors and that it is in the best interests of the investors and creditors.

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

Executed this 17th day of August, 2011.

/s/ Michael A. Grassmueck  
MICHAEL A. GRASSMUECK, Receiver