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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 JOHN M. HARDER,

Defendants,

DARRYL E. FISHER, ET AL.,

Relief Defendants.

Case No. 09-6056-HO

**DECLARATION OF RECEIVER
MICHAEL A. GRASSMUECK IN
SUPPORT OF MOTION FOR
APPROVAL OF SETTLEMENTS
WITH SETTLING EMPLOYEES AND
FOR ENTRY OF CLAIMS BAR
ORDER**

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 settlements and form of written Settlement Agreement between the Receiver and certain settling employees, as identified in Exhibit 1 to the Memorandum of Points & Authorities filed concurrently herewith ("Settling Employees").

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. The Distribution Plan provides for the filing of claims against the Receivership in a claims process and provides for the treatment of such claims. The Court also entered certain orders establishing a claims process.

4. Under the claims process established under the Distribution Plan and related court orders, the Settling Employees filed proofs of claim in the Receivership proceedings. A list of each Settling Employees' proofs of claim is attached to such Settling Employee's Settlement Agreement and are referred to as the "Employee Claims" in the Settlement Agreement. The Receivership asserted objections, in whole or in part, to certain Employee Claims as part of the claims administration process, and the Employee Claims were excluded from

determination in the Receiver's Motion for Order Establishing Allowed Amounts of Claims.

5. The Receivership Orders and Distribution Plan also authorized me, in my capacity as Receiver, to pursue claims of the Receivership Entities against third parties for the benefit of investors and creditors of the Receivership Entities. I, in my capacity as Receiver, also received an assignment of claims, asserted or unasserted, against the Settling Employees from Sunwest investors, creditors, and claimants (the "Third Party Claims"), pursuant to the Distribution Plan and the Second Amended Joint Plan of Reorganization, filed in the bankruptcy proceedings. My counsel and I evaluated potential claims against the Settling Employees.

6. My counsel, including special mediation counsel, and I engaged in various settlement discussions and mediation sessions with the Settling Employees and their counsel. The discussions and mediations were conducted by experienced mediators. The parties eventually reached terms on a resolution of the disputes. The terms were subsequently put into a form of written Settlement Agreement which was then customized for each Settling Employee through exhibits to the agreement.

7. Under the settlements, each Settling Employee will withdraw their Employee Claims and be considered to have filed a new claim in an agreed settlement amount (referred to as the "Settlement Claim"). A statement of the Settlement Claim is attached to each Settlement Agreement as "Exhibit B."

8. For most Settling Employees, the Settlement Claim was determined by (a) applying a percentage reduction to the Settling Employee's claims for interests in Blackstone sale properties; (b) applying a percentage reduction to the Settling Employee's claims for interests in Trustco-related entities; (c) determining the allowed MIMO Tranche A claims; and (d) applying a Lonestar Sale distribution offset if applicable under the terms of the Lonestar Settlement:

(a) The Settling Employee receives a reduced percentage of the cash and equity in Rollover Member that the Settling Employee would otherwise have been entitled to under the LLC Member Settlement Agreement.

(b) The Settling Employee transfers all of that Settling Employee's ownership interest in Trustco-related entities to the Receiver and receives a cash payment equal to a reduced percentage of the Settling Employee's ownership interest in the equity of such Trustco Properties.

(c) The Settling Employee, in most instances, receives full MIMO claim treatment, as would any other claimants.

(d) If the terms of the Lonestar Settlement (found in Exhibit 12 to the Motion for Order Establishing Allowed Amounts of Claims) apply, then the cash or cash and equity that a Settling Employee would otherwise have been allowed in their claim (based on their reduced percentages above) would be further reduced by offsetting certain Lonestar sale distributions in accordance with the Lonestar Settlement Terms (equal to any amounts distributed after March 2, 2009 and 8% of amounts distributed prior to March 2, 2009).

9. The applicable percentage reduction applied to Blackstone and Trustco interests varied among 75%, 50% or, in certain cases, no reduction. For a few Settling Employees, a Settlement Claim was individually negotiated instead of using the general settlement formula.

10. In addition to resolving the Employee Claims, another purpose of the settlement is to settle all claims against the Settling Employees involving the common core of operative facts addressed in the SEC Case, including any Third Party Claims. Where the claims asserted against the Settling Employees involve allegations of wrongdoing by the Settling Employees, the Settling Employees deny that there is any merit to such claims. The settlement provides for mutual releases.

11. 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 Employees. The Settling Employees have asserted that they would not enter into the settlement without such provisions.

12. As Receiver, I believe that the settlements are in the best interests of the investors and creditors of the Receivership Entities. The factors that led me to this conclusion include the significant risks associated with pursuing claims against the Settling Employees and collecting a judgment (such as appeals and bankruptcy filings); the additional substantial cost to the Receivership Estate of pursuing claims against each Settling Employee; and the reduction in exposure of the Receivership Estate by compromising the Employee Claims.

13. The Settling Employees continue to assert the validity of their Employee Claims and to dispute the Receivership's objections to those claims, and to dispute claims against them including Third Party Claims. Litigation of claims against the Settling Employees would entail substantial costs and risks, and neither side can be certain of a particular outcome.

14. Absent settlement, difficulties are likely to be encountered in collecting judgments that might be obtained on affirmative claims against the Settling Employees. Collection of a judgment against the Settling Employees 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.

15. Had the claims not been settled, the cost to prosecute claims and related litigation and to address Employee Claims would be substantial. There are a significant number of Settling Employees with multiple Employee Claims against the Receivership Estate, and with asserted interests in various Receivership

Entities. The claims by and against the Settling Employees cover, in many instances, significant periods of time.

16. The paramount interest of investors and creditors is best served by the settlements, which resolve and reduce the expense and exposure of the Receivership Estate on the Employee Claims and obtains a release of claims.

17. In sum, I have balanced the risks of recovery and costs and concluded that the settlements are reasonable and appropriate in light of the factors and that they are 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 19th day of August, 2011.

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