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MICHAEL A. GRASSMEUCK

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 SETTLEMENT  
WITH GROVE, MUELLER &  
SWANK, P.C. AND FOR ENTRY OF  
CLAIMS BAR ORDER**

MICHAEL A. GRASSMUECK,  
Receiver,

Plaintiff

vs.

GROVE, MUELLER & SWANK, P.C.

Defendant

Case No. 09-CV-0650-HO

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 Grove, Mueller & Swank, P.C. ("GMS").

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 GMS on behalf of Sunwest investors and the Receivership Entities, in *Grassmuck v. Grove, Mueller & Swank, P.C.*, Case No. 09-CV-0650-HO (the "GMS Case"). In my capacity as Receiver, I received an assignments of claims, asserted or unasserted,

against GMS 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 (the "Assignment Order").

5. Pursuant to the claims process established under the Distribution Plan and related court orders, GMS filed proofs of claim in the Receivership. The Receivership objected to these claims as part of the claims administration process.

6. GMS denies, and continues to deny, the claims against it, and asserted, and continues to assert, the validity of its claims against the Receivership.

7. My counsel, including special mediation counsel, and I engaged in various settlement discussions and mediation sessions with GMS, 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 payment of \$1,350,000 to the Receiver. The Settlement Agreement also calls for GMS to release any claims GMS may have against the Receivership Entities, with the exception of an administrative claim in the amount of \$228,381.26, which would be approved. 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 GMS. GMS has asserted that it 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 GMS and collecting a judgment (such as appeals or bankruptcy) are significant; the additional cost to the Receivership Estate of pursuing claims against GMS would be substantial; compromising GMS's claims and obtaining releases of claims 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. GMS denies the claims against it and has displayed an intention to defend all actions vigorously. GMS also asserts the validity of its claims against the Receivership. Pursuing litigation 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 GMS's claims would be substantial. The claims against GMS cover, in many instances, significant periods of time and many transactions. The litigation would consume significant judicial resources and the resources of the parties.

12. Absent the settlement, difficulties are likely to be encountered in collecting judgment that might be obtained on claims against GMS 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 or bankruptcy. 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 GMS. 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 18th day of August, 2011.

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