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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.

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MICHAEL GRASSMUECK, Receiver,  
Plaintiff

SANDI BALADA; BRYON CROSBY;  
HASMIG DERDERIAN; RICH GIGLIO;  
TOBBE HENBY; 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;  
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.,  
Defendants

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Case No. 09-6056-HO

NOTICE OF:

(1) MOTION FOR APPROVAL OF  
SETTLEMENTS WITH CERTAIN  
BROKERS AND DEALERS

(2) PROPOSED FINAL CLAIM BAR  
ORDER

(3) HEARING DATE

Case No. 10-6076-HO

**THIS IS A LEGAL NOTICE THAT MAY AFFECT YOUR RIGHTS**

Michael A. Grassmueck, the duly appointed receiver ("Receiver") in the above-captioned action entitled *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 (collectively, "the Receivership Entities"), hereby gives **NOTICE** of the following:

**I. MOTION FOR APPROVAL OF SETTLEMENT**

The Receiver is bringing a motion ("Settlement Approval Motion") requesting an order from the District Court (1) approving a settlement and settlement agreement<sup>1</sup> (the "Settlement" and "Settlement Agreement") entered into between the Receiver, on the one hand, and certain settling brokers and dealers ("Settling Brokers") as identified in Exhibit A to the Settlement Agreement and attached hereto, and (2) entering a Final Claims Bar Order with respect thereto.

The Receiver has asserted claims against the Settling Brokers on behalf of Sunwest investors and the Receivership Entities in *Grassmueck v. Balada*, et al., Case No. 10-cv-6076-HO, (the "Broker Case"). The Receiver has also received 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 (and as may be amended) (the "Assignment Order"). This Motion also asks the Court to augment the Assignment Order to

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<sup>1</sup> The Settlement Agreement has certain defined terms, including certain terms used herein. A copy of the Settlement Agreement is part of the Settlement Approval Motion and may be obtained as below.

include any and all parties reflected on Exhibit A to the Settlement Agreement. Particular Third Party Claims, now assigned to the Receiver, 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.

The Settlement would resolve claims in the Broker Case, the Third Party Claims, and claims in the Collateral Proceedings as to the Settling Brokers. The Receiver and the Settling Brokers intend through the Settlement Agreement to fully and finally resolve any and all claims against the Settling Brokers relating to the common core of operative facts addressed in the SEC Action and enter into mutual releases. In consideration for the mutual releases and other consideration, the Settlement Agreement calls for payment to the Receiver of approximately \$2,220,000 and reductions in claims asserted against the Receivership Estate by the Settling Brokers.

Copies of the Settlement Approval Motion papers are available at the Receiver's website at [www.grassmueckgroup.com/sunwest.php](http://www.grassmueckgroup.com/sunwest.php); through the District Court's Pacer/ECF/CM website (registration and fee required); or, by requesting a copy from the Receiver at (866) 674-6791 or (503) -294-9928.

## **II. FINAL CLAIM BAR ORDER**

The Settlement calls for, and the Settlement Approval Motion seeks, a "**Final Claim Bar Order**" which would bar any further claims by certain persons including third parties against Settling Brokers for damages arising from their conduct related to the activities of Sunwest Management, Inc., the Receivership Entities, and principals including claims arising from the sale, purchase, or solicitation of Sunwest investments.

The Final Claims Bar Order will be binding on the Receiver; the CRO; the Debtor; all Sunwest investors, creditors, and claimants, known and unknown; all parties in any pending federal or state court litigation involving the Settling Brokers; all parties in any arbitrations involving Sunwest investments; the Receivership Entities; Sunwest Entities; the HFG Parties; all other professionals who provided services to the Receivership Entities, Sunwest Entities, and the HFG Parties; any other interested parties who may have Sunwest-related claims, and all other parties who received notice.

The claims barred include any and all claims against the Settling Brokers for damages arising from their conduct related to the activities of Sunwest Management, Inc., the Receivership Entities and principals including claims arising from the sale, purchase, or solicitation of Sunwest investments. These claims include, but are not limited to, claims on guarantees, claims made under Section 10 of the 1934 Act and Rule 10b-5 (including, but not limited to, any claims for unsuitability, fraud, misrepresentation, or negligence), violation of the 1933 Act, violations of any other applicable securities laws (both federal and state for both primary and secondary liability), breach of contract, misrepresentation, conversion, vicarious/control person liability, negligence (including failure to supervise), violations of FINRA, SEC, or state regulatory rules, compensatory damage claims, punitive damage claims, and all claims related thereto and thereafter, including, but not by way of limitation, any claims for fraud, deceit, breach of fiduciary duty, suitability, churning, compensatory damages, punitive damages, attorney fees and costs, and vicarious liability for such claims, and any other claims arising from the sale, purchase, or solicitation of Sunwest investments, or the common core of operative facts addressed in the Sunwest Proceedings and the Collateral Proceedings.

### **III. HEARING DATE ON MOTION FOR SETTLEMENT APPROVAL AND CLAIMS BAR ORDER**

On September 20, 2011, at 1:30 p.m. the District Court will conduct a hearing on the Receiver's Settlement Approval Motion, including the entry of Final Claim Bar Order. The District Court is located at 405 East Eighth Avenue, Suite 2100, Eugene, Oregon 97401-2712. The Court may also establish a telephone conference line for the hearing; if you intend to appear by telephone, please inform Receiver's counsel at the address above.

Depending on developments, it is possible that the hearing date may be continued to a later date. You are welcome to attend the hearing, but you are not required to do so.

If you wish to oppose the Settlement Approval Motion, you must file your opposition with the District Court at United States District Court, District of Oregon, Eugene Division, 405 East Eighth Avenue, Suite 2100, Eugene, Oregon 97401-2712 and serve it on counsel for the Receiver at Allen Matkins Leck Gamble Mallory & Natsis LLP, Attn: Francis N. Scollan, 515 S. Figueroa St. 9<sup>th</sup> Floor, Los Angeles, California 90071.

## Exhibit A: Settling Parties

Balada, Sandra G.C.
Bennett, Yang, Caplan & Amerine, CPAs, including all employees and agents acting in their capacity as such
Canyon Creek Financial, LLC, including all employees, agents, and individuals who were at any time registered representatives of Canyon Creek Financial, LLC acting in their capacity as such
Capital Development Corp., including all employees and agents acting in their capacity as such
CapWest Securities, Inc, including all employees, agents and individuals who were at anytime registered representatives of CapWest Securities, Inc acting in their capacity as such
Cederberg, Jeffrey
Coldwell Banker Commercial Mountain West Real Estate, LLC, including all employees and agents acting in their capacity as such
Crosby, Byron
Culp, Ed
Eyserbeck, Tom
Ghirardo CPA, including all employees and agents acting in their capacity as such
Ghirardo, Steven
Hennby, Tobbe
Heshelow, Kathy
Innovative Properties, Inc., dba Ghirardo Real Estate Group, including all employees and agents acting in their capacity as such
James Brown & Associates, Inc. including all employees and agents acting in their capacity as such including but not limited to James Brown
JJL and Associates, dba Real Estate Executives, including all employees and agents acting in their capacity as such
Jones, Tiffanv
Meuer, Eric
Nettland, Paul
Pollack, Alan
Pope, Randall

Re/Max Equity Group, including all employees and agents acting in their capacity as such, and ReMax International, Inc. as franchisor of the ReMax brand (and not as a broker)
Rhoten, D. Alex. Jr.
Rhoten, Kirsten
Robert H. Zink Company, including all employees and agents acting in their capacity as such
Ross, Ronald E.
Ross, Ronald E., P.C.
Sanner, Tamara M.
Schumacher, Jeff
Seckerson, John and John Seckerson, PC
Smith, R. Tom
Stangier, Dirk G.
Templeton, Forrest Darvl
Thurber, David
Travess, Trina
Tweed, Robert
Tyler, John
Waters, Melonie J.
Wulf, Paul
Yang & Waters Financial Services, Inc., including all employees and agents acting in their capacity as such
Yang, Julie
Zink Equities, LLC, including all employees and agents acting in their capacity as such
Zink Realty Advisors, including all employees and agents acting in their capacity as such
Zink, Inc., including all employees and agents
Zink, Robert H. aka Bob Zink