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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

ORDER (1) APPROVING  
SETTLEMENT WITH GROVE,  
MUELLER & SWANK, P.C. and  
(2) ENTERING FINAL CLAIMS BAR  
ORDER AND INJUNCTION

MICHAEL A. GRASSMUECK,  
Receiver,

Plaintiff

vs.

GROVE, MUELLER & SWANK, P.C.

Defendant

Case No. 09-CV-0650-HO

This matter came before the Court on the Motion For Approval of Settlement with Grove, Mueller & Swank, P.C. ("GMS") filed by Michael A. Grassmueck as the duly appointed receiver ("Receiver") in *SEC v. Sunwest Mgmt., Inc.*, Case No. 09-CV-6056-HO (the "SEC Action") (the "Settlement Approval Motion")(SEC Action Docket No. \_\_\_). The Settlement Approval Motion was also filed *Grassmueck v. Grove Mueller & Swank P.C.*, United States District Court for the District of Oregon, Case No. 09-CV-0650 –HO (the "GMS Case").

Having read and considered the Settlement Agreement<sup>1</sup> between GMS, on the one hand, and the Receiver in his capacity as Receiver for the Receivership Entities, on the other hand, 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:

A. Pursuant to the orders entered by this Court 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 against third parties for the benefit of investors and creditors of the Receivership Entities. The

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<sup>1</sup> Defined terms not otherwise defined herein are as defined in the Settlement Agreement.

Receiver is also the assignee or transferee of claims of investors and claimants pursuant to the Plan of Distribution in the SEC Action [Docket #875], the Second Amended Joint Plan of Reorganization (May 27, 2010) filed in the bankruptcy proceedings in Case No. 09-CV-6082-HO, and the Order Re Assignment of All Sunwest Investors' and Claimants' Rights and Claims Against Certain Third Parties to Receiver [Docket # 1985].

B. The Receiver filed an action against GMS asserting claims arising from services to and receipt of funds from various Receivership Entities in the GMS Case. GMS has denied, and continues to deny, all material allegations of the complaint in the GMS Case.

C. The Court has jurisdiction over the SEC Action pursuant to Section 20(b), 20(d) and 22(a) of the Securities Act of 1933 and Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934. The Court has jurisdiction over the GMS Case pursuant to 28 U.S.C. §§ 1345 and 1367.

D. The Receiver was authorized to, and did, participate in mediations with GMS in his capacity as Receiver and as assignee or transferee of claims related to the Receivership Entities. Following extensive negotiations in good faith, the mediations resulted in agreement on basic terms of a binding settlement agreement. The parties then prepared a more detailed written settlement agreement containing the terms and conditions of the settlement. The Settlement Agreement is attached to the Settlement Approval Motion.

E. The terms of the Settlement require the parties to seek Court approval of the Settlement in the SEC Action and to seek a final claims bar order to protect GMS from further claims.

F. The Receiver, on behalf of the Receivership Entities placed under his control, and GMS, for themselves and for all persons identified in the releases, intend through the Settlement Agreement to fully and finally resolve any and all claims against GMS relating to the common core of operative facts addressed in

the SEC Action, to dismiss the GMS Case, and enter into mutual releases. In consideration for the mutual releases and other consideration, the Settlement Agreement calls for payment to the Receiver of certain consideration. In consideration for the settlement payments and other consideration, GMS and its insurers have required entry of a final claims bar order.

G. Entering into the Settlement 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.

H. GMS continues to dispute the claims or potential claims asserted against it by the Receiver and by third parties, and the Receiver has objected to claims filed by GMS in the Receivership. Without the Settlement, both the Receiver and GMS would incur substantial additional time and expense pursuing the various claims, defenses and objections. The outcome and the ability to collect on a judgment are uncertain and entail risk for both sides. The Settlement, however, provides a significant and certain recovery. In addition, continuing to litigate the claims would consume substantial judicial resources. The Settlement occurred after extensive mediation with experienced mediators and is recommended by experienced counsel. Accordingly, the Court finds that the Settlement and the form of 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.

I. 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, 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 afforded due process to all persons and entities. The "Notice of Motion for Approval of Settlement with Grove Mueller & Swank, P.C. and Proposed Claim Bar Order" 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 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 Settlement, the resolution of claims therein, the amount of the settlement proceeds, and the terms of the Settlement Agreement 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 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 Claims Bar Order and Injunction:
  - (a) 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 GMS; 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, 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 GMS and its past, present and future partners, owners, members, managers, directors,

officers, control persons, employees, registered representatives, agents, successors, assigns, attorneys, insurers, heirs, and estates.

(b) The claims barred by Paragraph 4(a) include all claims against GMS for damages or other remedies arising from or related to their conduct related to the activities of Sunwest Entities, including Sunwest Management, Inc., and their principals, including claims arising from the sale, purchase, or solicitation of Sunwest investments and all claims for contribution or indemnity made by any person or entity arising from the same or related common core of operative facts addressed in the SEC Case or the Barred Claims. 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 malpractice, negligence, breach of fiduciary duty, 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, aiding and abetting liability, professional negligence, breach of fiduciary duty, negligence, compensatory damage claims, punitive damage claims, attorneys fees claims, and all claims related thereto and thereafter, 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.

(c) This Final Claim Bar shall be null and void if the settlement is terminated or fails to become effective for any reason.

5. The GMS Case and any actions and proceedings identified in the Settlement Agreement are stayed pending the Final Claim Bar Order and Injunction becoming fully and finally effective or until notice from the Receiver that the Settlement Agreement has terminated or failed to become effective as to parties thereto. If the Settlement Agreement is terminated or fails to become effective as to certain parties, the parties shall be deemed to have preserved their

litigation positions, and such parties may proceed as if no settlement had been reached.

6. 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 and any Settlement Agreements.

7. 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.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Michael Hogan  
UNITED STATES DISTRICT JUDGE