

United States District Court, District of Oregon

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<p>SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. SUNWEST MANAGEMENT, INC., CANYON CREEK DEVELOPMENT, INC., CANYON CREEK FINANCIAL, LLC. and JOHN M. HARDER, Defendants</p> <p>DARRYL E. FISHER, J. WALLACE GUTZLER, KRISTIN HARDER, ENCORE INDEMNITY MANAGEMENT, LLC, SENENET LEASING COMPANY, FUSE ADVERTISING, INC. KDA CONSTRUCTION, INC., CLYDE HAMSTREET, and CLYDE A. HAMSTREET &amp; ASSOCIATES, LLC, Relief Defendants.</p>	<p>Case No. 09-cv-6056-HO</p> <p><b>PROOF OF CLAIM FORM</b></p>
<p>In re: STAYTON SW ASSISTED LIVING, L.L.C., (Constituting the Sunwest Unitary Enterprise as determined by the Order Entered on October 2, 2009 in U.S. District Court Case No. 09-cv-6056-HO), Debtor.</p>	<p>USDC Case No. 09-cv-6082-HO</p> <p>Bankruptcy Court Case No. 08-36637-tmb11 (Reference Withdrawn)</p>

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4 INSTRUCTIONS

Michael A. Grassmueck is the Court-appointed Receiver<sup>1</sup> in the above-captioned case SEC Receivership Case. He is responsible for reviewing Proof of Claim Forms, and when appropriate, objecting to Proofs of Claim, and making distributions on account of Allowed Claims. **The purpose of the Proof of Claim Form is to help the Receiver learn who you are, how much you are owed, the reason(s) you have a claim, and how the Receiver can contact you.**

If you believe you are owed money from any of the Sunwest-related entities, Defendants, or Relief Defendants related to the Sunwest enterprise, you must complete a Proof of Claim Form in order to receive a distribution on your Claim. *For each separate obligation owed to you by a Sunwest-related entity or the Defendants or Relief Defendants, please complete a separate Proof of Claim Form.* You may attach them to each other into a single document. The more information you provide, the more quickly and cheaply the Proof of Claim Form can be reviewed. An example of a complete Proof of Claim form may be reviewed on the following website: [www.bmcgroup.com/sunwest](http://www.bmcgroup.com/sunwest).

If you previously filed a Bankruptcy Proof of Claim in the Jon Harder chapter 11 bankruptcy case or in any other bankruptcy case related to the Sunwest Unitary Enterprise, please attach a copy of it to this Proof of Claim Form and provide any additional information requested below that was not included.

<sup>1</sup> Capitalized terms have the same meaning as in the Proposed Distribution Plan on file with the U.S. District Court, and is available for review at the Receiver's website at [www.grassmueckgroup.com/sunwest.php](http://www.grassmueckgroup.com/sunwest.php).

Your completed Proof of Claim Form and supporting documentation (*do not send originals of supporting documentation*) may be submitted to BMC Group, Inc. by completing the form online at <http://www.bmcgroup.com/sunwest>, or by mailing paper copies to:

**By regular US mail:**

Sunwest Management, Inc.  
c/o BMC Group Inc.  
PO Box 3020  
Chanhassen, MN 55317-3020

**By messenger or overnight courier:**

Sunwest Management, Inc.  
c/o BMC Group Inc.  
18750 Lake Drive East  
Chanhassen, MN 55317

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Your completed form must be received **no later than January 15, 2010, in order to be considered timely. Failure to submit a timely Proof of Claim Form may result in you being denied the right to share in distributions under the Distribution Plan and through the bankruptcy case involving the Sunwest Unitary Enterprise.** If the Receiver has questions about or objections to your Proof of Claim Form, you will be contacted by the Receiver.

## PROOF OF CLAIM

7 { Claimant name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone number: \_\_\_\_\_

8 { Contact name (including counsel): \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone number: \_\_\_\_\_

9 — [ ] *Check this box if you agree that communications and any objection to your Proof of Claim may be transmitted by the Receiver to you via email at the Contact name above.*

10 — Account No. (if any) or other identifying Sunwest number: \_\_\_\_\_

11 { If a legal action is pending relating to your Claim, please state the date it was commenced, the Court, where it is pending, the Case No., and attach a copy of the complaint:  
\_\_\_\_\_  
If a Judgment has been obtained, please state the Date of the Judgment and attach a copy: \_\_\_\_\_

12 — Amount Claimed: \$ \_\_\_\_\_  
(total as of the date of submittal of the Proof of Claim Form).

13 — Amount received since January 1, 2006 (for any reason): \_\_\_\_\_

14 — ***Please check all boxes that apply to you and provide the requested information at the end of this Proof of Claim Form or attach separate sheets:***

1. [ ] **Administrative Claim.** *(For example, new funds paid during the Harder Bankruptcy Case or Receivership Case to pay for debt service, property taxes, operations, or repairs of a Holdco, Divestco or Trustco Property.)* Please provide amounts, dates, and any documents that evidence the payments and purpose. Attach additional sheets if necessary.

2. **Investor Claims.**

A. [ ] **Tenant In Common.** *(For example, payment of money or providing of other value in order to obtain a Tenant in Common interest in a Sunwest-affiliated real estate asset).* Please provide the amount of payment or other description of value provided, the date, the name of the Sunwest facility or other related asset, the date and amount of the last payment on account of the Tenant In Common interest, what you assert you are owed, including for example, for

rent or other payments not received, interest, attorney's fees, etc., and any documents that evidence the same.

- B.  **Preferred Members.** *(For example, payment of money or providing of other value in order to obtain a Preferred Membership Interest in a Sunwest-affiliated limited liability company).* Please provide amount of payment or other description of value provided, the date, the name of the Sunwest facility or other related asset, the date and amount of the last payment on account of the Preferred Membership Interest, what you assert you are owed, including for example, for investment returns or other payments not received, interest, attorney's fees, etc., and any documents that evidence the same.
- C.  **LLC Members or Partners.** *(For example, payment of money or providing of other value in order to obtain a Limited Liability Membership Interest, other than a Preferred Membership Interest, in a Sunwest-affiliated limited liability company.)* Please provide the amount of payment or other description of value provided, the date, the name of the Sunwest facility or other related asset, the date of the last payment on account of the Limited Liability Membership Interest, what you assert you are owed, including for example, for investment returns or other payments not received, interest, attorney's fees, etc., , and any documents that evidence the same.
- D.  **Unsecured Note Holder/Non-Institutional.** *(For example, payment of money or providing of other value in exchange for an unsecured promissory note, or for the purchase of a promissory note, in favor of a person or entity not generally in the business of making loans, where the obligor is a Sunwest-affiliated entity or is Harder, Fisher or Gutzler and the loan was in connection with the Sunwest enterprise).* Please provide the amount of payment or other description of the value provided, the date, the name of the obligor on the note, the name of any related Sunwest facility or asset, the date of the last payment on account of the note, and any documents that evidence the same.
- E.  **Trade Creditor.** *(For example, an obligation owed to a service or product provider for a Sunwest-related entity on account of unpaid invoices.)* Please provide a description of the services or product provided, the date, the name of Sunwest facility or entity that received the service or product, the date of the last payment on account of the invoice, and any documents that evidence the same.
- F.  **Employee.** *(For example, an obligation to an employee of a Sunwest-related entity for unpaid employee services in accordance with the terms of employment.)* Please provide a job title or description, the employer name, the amount owed, the date of the obligation, the date of the last payment on account of employment, and any documents that evidence the same.
- G.  **Lender Deficiency Claim.** *(For example, amount owed on a loan to a secured lender in excess of the value of the collateral for the secured loan.)* Please provide the amount of the loan, a description of the collateral, the value of the collateral, the date of the loan, the date and the amount of the last payment on the loan, the date of foreclosure, the foreclosure sale price, and any documents that evidence the same.
- H.  **Creditor of Harder, Fisher or Gutzler.** *(For example, an obligation of Harder, Fisher or Gutzler to any person or entity related to the Sunwest enterprise.)* Please provide the amount of the obligation and a description of why it is owed, the date of the obligation, why the obligation is related to the Sunwest enterprise, the name of the Sunwest facility or other asset related to the obligation, the amount and date of the last payment, and any documents that evidence the same.

I.  **Nonconsensual Creditor.** (For example, an obligation of a Sunwest-related entity, or of Harder, Fisher or Gutzler related to the Sunwest enterprise, that does not arise from a contractual obligation.) Please describe the facts giving rise to the obligation, the amount of the obligation, the date the obligation arose, and any documents that evidence the same.

J.  **Other.** (For example, any obligation of any Sunwest-related entity, or of Harder, Fisher, or Gutzler related to the Sunwest enterprise not otherwise categorized above.) Please explain the nature of the obligation, the facts giving rise to the obligation, the amount owed, the date the obligation arose, and provide any documents evidencing the same.

K.  **Secured Creditors.** (For example, an obligation of any Sunwest-related entities, or of Harder, Fisher or Gutzler related to the Sunwest enterprise, secured by collateral.) Please provide the amount owed, the date of the obligation, a description of the collateral, and all documents evidencing the same.

15 — Please provide the information requested in the space below or attach separate sheets:

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16 —  Check box if additional pages are attached.

DATE:

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\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

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The person filing this Claim must sign it. Sign and print name and title, if any, of the Claimant or other person authorized to file this Proof of Claim and state address and telephone number if different from the address above. Attach copy of Power of Attorney, if any.

20 — **NOTE: SUBMITTAL OF A KNOWINGLY FALSE CLAIM MAY SUBJECT YOU TO PROSECUTION FOR A CRIME.**

**THIS IS NOT PART OF THE PROOF OF CLAIM FORM  
SUBMIT THIS FORM IN ORDER TO FILE A NOTICE OF ELECTION ONLY**

**United States District Court, District of Oregon**

<p>SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. SUNWEST MANAGEMENT, INC., CANYON CREEK DEVELOPMENT, INC., CANYON CREEK FINANCIAL, LLC. and JOHN M. HARDER, Defendants</p> <p>DARRYL E. FISHER, J. WALLACE GUTZLER, KRISTIN HARDER, ENCORE INDEMNITY MANAGEMENT, LLC, SENENET LEASING COMPANY, FUSE ADVERTISING, INC. KDA CONSTRUCTION, INC., CLYDE HAMSTREET, and CLYDE A. HAMSTREET &amp; ASSOCIATES, LLC, Relief Defendants.</p>	<p>Case No. 09-cv-6056-HO</p> <p><b>NOTICE OF ELECTION FORM</b></p> <p>21</p>
<p>In re: STAYTON SW ASSISTED LIVING, L.L.C., (Constituting the Sunwest Unitary Enterprise as determined by the Order Entered on October 2, 2009 in U.S. District Court Case No. 09-cv-6056-HO), Debtor.</p>	<p>USDC Case No. 09-cv-6082-HO</p> <p>Bankruptcy Court Case No. 08- 36637-tmb11 (Reference Withdrawn)</p>

**22 — INSTRUCTIONS**

Pursuant to the approved Distribution Plan filed by Michael A. Grassmueck, Receiver, and Clyde Hamstreet, the Chief Restructuring Officer for the Sunwest Enterprise, PM and LLC Members and Partners, TIC Investors, and Bare Land Investors are to use this form to make elections allowed by the Distribution Plan.

Your completed Notice of Election Form may be submitted to to BMC Group, Inc. by completing the form online at <http://www.bmcgroup.com/sunwest>, or by mailing paper copies to BMC Group at:

**23** **By regular US mail:**  
Sunwest Management, Inc.  
c/o BMC Group Inc.  
PO Box 3020  
Chanhassen, MN 55317-3020

**By messenger or overnight courier:**  
Sunwest Management, Inc.  
c/o BMC Group Inc.  
18750 Lake Drive East  
Chanhassen, MN 55317

Your completed form must be received **no later than ~~January 15, 2010~~, in order to be considered timely.** If the Receiver has questions, you will be contacted by the Receiver.

**25** { Investor name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone number: \_\_\_\_\_

26 { Contact name (including counsel): \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone number: \_\_\_\_\_

27 {  Check this box if you agree that communications may be transmitted by the Receiver to you via email at the Contact name above.

*Please check all boxes for which you are making an election:*

- 1.  **Electing PM and LLC Members and Partners.** Identify the property and limited liability company or membership to which the election is applicable.

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- 2.  **Electing TIC Investors.** Identify the property to which the election applies.

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- 3.  **Electing Bare Land Investors.** Identify the property to which the election applies.

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29  *Check box if additional pages are attached.*

DATE:

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature



## **Proof of Claim Form**

### **1. Plaintiff and Defendants**

This portion of the claim form indicates the Plaintiff (Securities and Exchange Commission) and Defendants (Sunwest Management, Inc. ("Sunwest") and its affiliates) in this case. A Claimant should not expect to see their name in this box, as they are not a defendant or plaintiff in this case.

### **2. Stayton SW Assisted Living**

The Sunwest entities have been declared a Unitary Enterprise. The entities of Sunwest and other entities in which were invested, have been rolled into the Chapter 11 Bankruptcy of Stayton SW Assisted Living to facilitate the reorganization of the enterprise.

### **3. Case Numbers**

The inclusion of the Bankruptcy as well as the SEC Receivership case numbers indicates that this Proof of Claim form should be used for filing a Proof of Claim in both matters. The court approved one claims process in which to file claims for both cases, therefore claims do not need to be filed separately in each case.

### **4. Instructions**

These instructions should be read and followed thoroughly. If the Claimant has any questions about this form, or the claims process, please call the Receiver's office at 866-674-6791.

### **5. BMC**

BMC is the court-appointed Noticing Agent in this case. Submission of a Proof of Claim to BMC constitutes submission of a Proof of Claim to the Receiver. For claims noticing and processing questions or confirmation, please contact BMC at 888-909-0100.

### **6. Claims Bar Date**

The claims bar date has been extended, by court order, to MARCH 31, 2010. Proof of Claim forms must be RECEIVED by BMC on or before the claims bar date.

### **7. Claimant Name/Address/Email**

Complete this section by providing the name and contact information of the Claimant to whom the Receivership Entity/Bankruptcy Estate owes money. Ultimately, the name on this line is the name the Claimant should expect a distribution check to be made out to in the future.

INVESTORS ONLY: If the investment was made through your LLC, please include both your name and your LLC name.

### **8. Contact Name (including counsel)**

This section is intended to provide the contact information of the Claimant, and/or their representative in this matter. If there is an additional address the Claimant wishes to be included in claims communication it should be

entered on this line. If this information is identical to that provided in the section above, it is acceptable to enter "SAME AS ABOVE" on this line.

#### **9. E-mail communication option**

This box should be checked if the Claimant wishes to authorize the Receiver and BMC to communicate with you via e-mail regarding claim clarification, claims objections or other matters. This option allows for more timely and cost efficient communication and will expedite the auditing process. The Receiver encourages investors to choose this option.

#### **10. Account No.**

If the Claimant's account or relationship with Sunwest has been assigned an identifying number, please include it here. An explanation of the knowledge of this number's purpose, or in what capacity it was assigned, would be helpful as an attached item but is not required. If the Claimant is unaware of such number, IT IS NOT REQUIRED TO INCLUDE AN ACCOUNT NUMBER ON THE PROOF OF CLAIM FORM. This identifying account number does NOT refer to the Creditor ID printed on the envelope or claim form received in the mail.

#### **11. Legal Action/Judgment**

Pending legal action and/or obtained judgments only apply to certain Sunwest entities and their investors. If the Claimant is aware of or involved in an action, please include the applicable information here. If the Claimant is unaware of such proceedings, INCLUDING LEGAL ACTION OR JUDGMENT INFORMATION WITH YOUR CLAIM IS NOT REQUIRED.

#### **12. Amount Claimed**

This amount constitutes the total amount the Claimant feels they are owed by Sunwest and all related entities. Please include ANY amounts the Claimant feels they are owed. An explanation of how this number is calculated will be helpful in the auditing process, and may be attached to the Proof of Claim form as additional information. If the Receiver objects to any portion of the claimed amount, this does not mean that the claim will be objected to entirely. It is possible that a claim may be partially allowed, and partially disallowed based, for example, on claims for amounts that are either unsubstantiated or not allowed under the distribution plan. Regardless, there will be opportunity for Claimants to reconcile disputes regarding their claim during the claims audit process.

#### **13. Amount Received since January 1, 2006**

The number entered in this section is the TOTAL amount of disbursements (cash, securities, interests or otherwise) received since January 1, 2006. Breakdowns of individual distributions received are helpful.

#### **14. Please check all boxes that apply to you...**

This section is intended to categorize each filed claim. It is possible that more than one category will apply to a claim. While it is necessary to file separate claims for each debt owed by different receivership entities, it is not necessary to file a separate claim for each category of claim owed from one single entity, or a single investment. If the Claimant is unsure of which box to check, selecting the "Other" category is sufficient. During the auditing process, the Receiver may administratively re-classify a claim if it is clear an incorrect category was selected on

the Proof of Claim form. This will likely have no impact on the amount of an allowed claim. In either event, you will receive notice if your claim is reclassified.

**15. Please provide the information requested in the space below or attach separate sheets:**

The Proof of Claim form requests that the Claimant submit information and documentation to support their claim. A clear explanation of the claim, including sufficient documentation to support the claim, will allow for a timely and cost efficient auditing process. The Claimant should attach any information that helps explain and substantiates the claim.

**16. Check box if additional pages are attached**

This box should be checked if ANY additional information was attached to the Proof of Claim form.

**17. Date**

Enter the date on which the Proof of Claim form was signed.

**18. Name and Signature**

The Claimant, or party with the authority to do so, must sign and print their name(s).

**19. Signature Disclaimer**

This section describes when a non-claimant may complete a proof of claim on a claimant's behalf and what authorities they must provide in order to do so. If a proof of claim form is submitted on behalf of someone else, these requirements must be complied with.

**20. NOTE**

Submitting claims for amounts in a Proof of Claim that may be objected to does not constitute knowingly submitting a false claim. The information on a Proof of Claim form is to be accurate according to the best knowledge of the Claimant.

**Notice of Election Form**

**21. Notice of Election Form**

An election under the Distribution Plan is not required to file a Proof of Claim. The Notice of Election is not part of the Proof of Claim, and may be left blank if the Claimant does not intend to submit a Notice of Election. Please thoroughly review the Distribution Plan in order to determine if a Claimant wishes to submit a Notice of Election. A copy of the Distribution Plan can be found on our website, at <http://www.grassmueckgroup.com/sunwest.php>. Details about making an election begin on Page 21 of the approved Distribution Plan.

**22. Instructions**

These instructions should be read and followed thoroughly. If the Claimant has any questions about this form, or the claims process, please call the Receiver's office at 866-674-6791.

### **23. BMC**

BMC is the court-appointed Noticing Agent in this case. Submission of a Notice of Election to BMC constitutes submission of a Notice of Election to the Receiver. For noticing and processing questions or confirmation, please contact BMC at 888-909-0100.

### **24. Filing Deadline**

The deadline to file a Notice of Election has been extended, by court order, to MARCH 31, 2010. Notices of Election must be RECEIVED by BMC on or before this date, and should be submitted concurrently with your Proof of Claim form. If a Claimant wishes to cancel an election, be sure to submit a Notice of Election Cancellation form by November 30, 2010.

### **25. Contact Information**

Complete this section by providing the name and contact information of the Claimant who wishes to submit a Notice of Election.

### **26. Contact Name (including counsel):**

This section is intended to provide the contact information of the Claimant, and/or their representative in this matter. If there is an additional address the Claimant wishes to be included in election communication it should be entered on this line. If this information is identical to that provided in the section above, it is acceptable to enter "SAME AS ABOVE" on this line.

### **27. E-mail communication option**

This box should be checked if the Claimant wishes to authorize the direction of communication regarding an election to an e-mail address. This option allows for more timely and cost efficient communication.

### **28. Please check all boxes for which you are making an election...**

The claimant should select the category that most accurately applies to their election.

### **29. Additional Pages**

This box should be checked if ANY additional information was attached to the Notice of Election form.

### **30. Date and Signature**

The Claimant, or party with the authority to do so, must date, sign and print their name(s) in this section.