

MARC J. FAGEL (Cal. Bar No. 154425)
MARK P. FICKES (Cal. Bar No. 178570)
fickesm@sec.gov
SUSAN F. LAMARCA (Cal. Bar No. 215231)
lamarcas@sec.gov
MICHAEL E. LIFTIK (Cal. Bar No. 232430)
liftikm@sec.gov
KASHYA K. SHEI (Cal. Bar No. 173125)
sheik@sec.gov

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2600
San Francisco, California 94104
Telephone: (415) 705-2500
Facsimile: (415) 705-2501

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SECURITIES AND EXCHANGE COMMISSION,

Case No. _____

Plaintiff,

vs.

[PROPOSED] TEMPORARY
RESTRAINING ORDER

SUNWEST MANAGEMENT, INC., CANYON
CREEK DEVELOPMENT, INC., CANYON CREEK
FINANCIAL, LLC, and JON M. HARDER,

Defendants,

and

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 & ASSOCIATES, LLC,

Relief Defendants.

This matter came before the Court on the *ex parte* application of plaintiff Securities and Exchange Commission (“Commission”) for a temporary restraining order. The Court has received and considered the Commission’s complaint, application, memorandum of points and authorities and the declarations of Michael E. Liftik and Michael A. Fortunato, and all exhibits attached to those declarations, and all other submissions, written or oral, at or before the hearing. Good cause appearing, the Court finds:

1. This Court has jurisdiction over the parties and the subject matter of this action, pursuant to Sections 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), and Sections 21(d)(3), 21(e), and 27 of the of the Securities Exchange Act of 1934 (“Exchange Act”). 15 U.S.C. §§ 77t(d)(1), 77v(a), 78u(d), and 78u(e).

2. This District is an appropriate venue for this action pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act. 15 U.S.C. §§ 77v(a) and 78aa.

3. The Commission has demonstrated a likelihood of success on the merits of its action and that the balance of hardships weighs in its favor. With respect to the balance of hardships, the public interest weighs strongly in favor of issuance of injunctive relief.

4. Good cause exists to believe that defendants Sunwest Management, Inc. (“Sunwest”), Canyon Creek Development, Inc. (“CCD”), Canyon Creek Financial, LLC. (“CCF”), and Jon M. Harder (“Harder”), (collectively, “Defendants”), have engaged in, are engaging in, and are about to engage in transactions, acts, practices and courses of business which constitute and will constitute violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78(j), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5.

5. Good cause exists to believe that defendants will continue to engage in such acts and practices and in such violations of the statutes and rules set forth above to the immediate and irreparable loss and damage to investors and to the general public unless restrained and enjoined by order of this Court.

6. Good cause exists to believe that relief defendants Darryl E. Fisher (“Fisher”), J. Wallace Gutzler (“Gutzler”), Kristin Harder (“Mrs. Harder”), Encore Indemnity Management LLC (“Encore”), Senenet Leasing Company (“Senenet”), Fuse Advertising, Inc. (“Fuse”), KDA

Construction, Inc. (“KDA”), Clyde Hamstreet (“Hamstreet”), and Clyde A. Hamstreet & Associates, LLC (“H&A”), (collectively, “Relief Defendants”) received funds belonging to other persons to which they do not have a superior legal right or claim.

7. Good cause exists to believe that immediate and irreparable injury will occur with respect to the Defendants’ and Relief Defendants’ assets, including those held by each individually and those they hold jointly, which would adversely affect the ability of the Court to grant final effective relief in equity and at law, unless the Defendants and Relief Defendants are immediately restrained and enjoined from controlling those assets, and required to account to the Court for those assets.

8. Good cause exists to believe that Defendants and Relief Defendants may attempt to dissipate, deplete, or transfer from the jurisdiction of this Court, funds, property and other assets that could be subject to an order of disgorgement or an order imposing civil penalties.

9. Good cause exists to believe that an order freezing the Defendants’ assets, as specified herein, is necessary to preserve the *status quo*, to protect investors and clients of the Defendants and Relief Defendants from further transfers of funds and misappropriation, to protect this Court’s ability to award equitable relief in the form of disgorgement of illegal profits from fraud and civil penalties, and to preserve the Court’s ability to approve a fair distribution for victims of the fraud.

10. Good cause exists to believe that an order requiring each of the Defendants and Relief Defendants to provide a verified accounting of their assets, money and property held directly or indirectly by the Defendants and Relief Defendants, or by others for the direct and indirect beneficial interest of the Defendants and Relief Defendants, is necessary to effectuate and ensure compliance with the freeze imposed on the Defendants’ and Relief Defendants’ assets.

11. Good cause exists to believe that there is an immediate and irreparable risk of injury to or loss of Defendants’ and Relief Defendants’ records, unless Defendants and Relief Defendants are immediately restrained and enjoined from destroying them.

12. Good cause exists to believe that the appointment of a receiver for Defendants Sunwest, CCD, CCF, and their affiliates, and all entities they control or in which they have an ownership interest is necessary to: (i) preserve the *status quo*; (ii) ascertain the extent of

commingling of funds among the Defendants, Relief Defendants and all entities they control or in which they have an ownership interest; (iii) ascertain the true financial condition of the Defendants and all entities they control or in which they have an ownership interest and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the Defendants and all entities they control or in which they have an ownership interest in; (v) prevent the encumbrance or disposal of property or assets of the Defendants, all entities they control or in which they have an ownership interest, and the investors; (vi) preserve the books, records and documents of the Defendants and all entities they control or in which they have an ownership interest; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; (ix) determine whether the Defendants and all entities they control or in which they have an ownership interest should undertake bankruptcy filings.

13. Good cause exists to believe that the appointment of a receiver for all entities Harder controls or in which he has an ownership interest is necessary to: (i) preserve the *status quo*; (ii) ascertain the extent of commingling of funds among the Defendants, Relief Defendants and all entities they control or in which they have an ownership interest in; (iii) ascertain the true financial condition of the Defendants and all entities they control or in which they have an ownership interest and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the Defendants and all entities they control or in which they have an ownership interest in; (v) prevent the encumbrance or disposal of property or assets of the Defendants, all entities they control or in which they have an ownership interest, and the investors; (vi) preserve the books, records and documents of the Defendants and all entities they control or in which they have an ownership interest; (vii) be available to respond to investor inquiries; (viii) protect investors' assets; (ix) determine whether the Defendants and all entities they control or in which they have an ownership interest should undertake bankruptcy filings.

THEREFORE,

I.

IT IS ORDERED THAT Defendants Sunwest, CCD, CCF, and Harder, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation

with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are temporarily restrained and enjoined from, directly or indirectly, in connection with the offer or sale of any securities, by the use of any means or instrumentality of interstate commerce, or of the mails:

- A. employing any device, scheme, or artifices to defraud;
- B. obtaining money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading; or
- C. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any purchaser;

in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

II.

IT IS FURTHER ORDERED THAT Defendants Sunwest, CCD, CCF, and Harder, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are temporarily restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any securities, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- A. employing any device, scheme or artifice to defraud;
- B. making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- C. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

III.

IT IS FURTHER ORDERED THAT Defendants Sunwest, CCD, CCF, and Harder, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants, including, but not limited to, entities owned or controlled by, related to, or associated or affiliated with the Defendants and the limited liability companies they control or have an ownership interest in, including but not limited to, those entities listed on **Exhibit A**, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts; and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of the Defendants to hold or retain within its or his control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties, as well as each real estate parcel owned directly or indirectly by the Defendants and the limited liability companies they control or have an ownership interest in, including but not limited to, those entities listed on **Exhibit A**.

IV.

IT IS FURTHER ORDERED THAT Relief Defendants Fisher, Gutzler, Mrs. Harder, Encore, Senenet, Fuse, KDA, Hamstreet, and H&A, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Relief Defendants, including,

but not limited to, entities owned or controlled by, related to, or associated or affiliated with the Relief Defendants, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of the Relief Defendants to hold or retain within its or his control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties, as well as each real estate parcel owned directly or indirectly by the Relief Defendants to the extent that any such assets described herein are related to the misconduct alleged in the Commission's complaint.

V.

IT IS FURTHER ORDERED that _____ (the "Receiver"), pending further order of this Court, is appointed to act as receiver for Defendants Sunwest, CCD, and CCF, and all affiliates, and all entities they control or have an ownership interest in including but not limited to, those entities listed on **Exhibit A**, and is appointed to act as a receiver for all entities that Defendant Harder controls or in which he has an ownership interest, in including but not limited to, those entities listed on **Exhibit A** to (1) preserve the *status quo*; (2) ascertain the true financial condition of the Defendants Sunwest, CCD, CCF, and all entities they control or in which they have an ownership interest and the disposition of investor funds; (3) ascertain the true financial condition of all entities that Defendant Harder controls or on which he has an ownership interest and the disposition of investor funds; (4) determine the extent of commingling of funds between the Defendants, Relief Defendants and all entities the Defendants control or have an ownership interest in; (5) prevent further dissipation of the property and assets of the Defendants and all entities they control or in which they have an ownership interest in; (6) prevent the encumbrance or disposal of property or assets of the Defendants and all entities they control or in which they have an ownership interest; (7) preserve the books, records and documents of the Defendants and all entities they control or in which they have an ownership interest; (8) be available to respond to investor inquiries; (9) determine if Defendants Sunwest, CCD, and CCF, and all entities they control or in which they have an ownership interest in should undertake a bankruptcy filing; and (10) determine if any entities that

Defendant Harder controls or in which he has an ownership interest in should undertake a bankruptcy filing.

VI.

To effectuate the foregoing, the Receiver is hereby empowered to:

- (a) Take and retain immediate possession and control of all of and manage the entities, assets and property of Defendants Sunwest, CCD and CCF, and their affiliates, and all entities they control or in which they have an ownership interest in including but not limited to, those entities listed on **Exhibit A**, and all books, records and documents of Defendants Sunwest, CCD and CCF, and their affiliates, and all entities they control or in which they have an ownership interest;
- (b) Take and retain immediate possession and control of and manage all of the entities, assets and property of all entities that Defendant Harder controls or in which he has an ownership interest in including but not limited to, those entities listed on **Exhibit A**, and all books, records and documents of those entities;
- (c) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of Defendants Sunwest, CCD and CCF, and their affiliates, and all entities they control or in which they have an ownership interest including but not limited to, those entities listed on **Exhibit A**;
- (d) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of all entities that Defendant Harder controls or in which he has an ownership interest including but not limited to, those entities listed on **Exhibit A**;
- (e) Succeed to all rights to manage all properties owned or controlled, directly or indirectly, by the Defendants, including, but not limited to, those entities listed on **Exhibit A**, pursuant to the LLC and operating agreement relating to each entity;
- (f) Establish a bank account or use existing bank accounts to pay expenses and otherwise administer the business enterprise and the receivership as provided herein;
- (g) Pay from available funds necessary business expenses required to preserve the assets and property of Defendants Sunwest, CCD and CCF, and their affiliates, and all entities they control

or in which they have an ownership interest, notwithstanding the asset freeze imposed by Paragraph III, above;

(h) Pay from available funds necessary business expenses required to preserve the assets and property all entities that Defendant Harder controls or in which he has an ownership interest, notwithstanding the asset freeze imposed by Paragraph III, above;

(i) Take preliminary steps to locate assets that may have been conveyed to third parties or otherwise concealed;

(j) Take preliminary steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued the Defendants and the entities they control;

(k) Engage and employ persons, including accountants, attorneys and experts, to assist in the carrying out of the receiver's duties and responsibilities hereunder;

(l) Have access to and authority to divert all mail and email of the Defendants and all affiliates and entities they control or in which they have an ownership interest, in order to review and use such mail which he or she deems relates to their business and the discharging of the Receiver's duties;

(m) Take preliminary steps to investigate claims and causes of action which may now or hereafter exist as a result of the activities of the receivership entities, and their past and present employees, agents, subsidiaries and affiliates;

(n) Have immediate access to and image all laptops, computers, PDAs, smart phones and related electronic storage devices of the Defendants, employees and all affiliates and entities they control or in which they have an ownership interest, including the passwords and logon information related to the same; and

(o) Take such further action as the Court shall deem equitable, just and appropriate under the circumstances upon proper application of the Receiver.

VII.

IT IS FURTHER ORDERED that, effective immediately upon notification of this Order by letter from Plaintiff, delivered by any means including facsimile transmission, any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, money market or

mutual fund, title company, commodity trading company, common carrier, storage company, trustee, or any other person, partnership, corporation, legal or business entity, or person that holds, controls or maintains custody of any account or asset belonging to, or titled in the name of any named Defendant or belonging to, or titled in the name of, any corporation, partnership or other entity directly or indirectly owned, managed or controlled by, in whole or in part, any named Defendant, or to which they are a signatory, or which is held on behalf of, or for the benefit of, any named Defendant, individually or jointly, or that has held, controlled or maintained custody of any such account or asset at any time since 2001, shall:

(a) Prohibit named Defendants and their agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control, or in common control with them, from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such account or asset except as directed by the Receiver or his designated professionals.

(b) Maintain the status quo of any such account or asset and not withdraw, remove, assign, transfer, pledge, encumber, disburse, dissipate, convert, sell, or otherwise dispose of any such account or asset except as designated by the Receiver or his designated professionals.

(c) Deny named Defendants and their agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control, or in common control with them, unless accompanied by counsel for the Receiver, access to any safe deposit box that is:

- (1) Titled in the name of any named Defendant or their affiliates or subsidiaries, either individually or jointly; or
- (2) Otherwise subject to access by any named Defendant or their affiliates or subsidiaries;

(d) Provide counsel for the Receiver, within five business days of receiving a copy of this Order, a sworn statement setting forth:

- (1) The identification number of each such account or asset belonging to or titled in the name of any named Defendant or to which any named Defendant or to which any named Defendants, their affiliates or the entities listed on **Exhibit A** is a signatory, or which is held on behalf of, or for the benefit of, any named Defendant;
- (2) The balance of each such account, or a description of the nature and value of such asset as of the time this Order is served, and, if any asset has been removed or transferred within the last 90 days, the date removed or transferred, the total funds removed or transferred, and the name of the person or entity to whom such account or other asset was remitted; and
- (3) The identification of any safe deposit box that is titled in the name, individually or jointly, of any named Defendant or is otherwise subject to access by any Defendant.

VIII.

IT IS FURTHER ORDERED that no person or entity, including any creditor or claimant against any of the Defendants, or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the taking control, possession, or management of the assets, including, but not limited to the filing of any lawsuits, liens or encumbrances or bankruptcy cases to impact the property and assets subject to this order.

IX.

IT IS FURTHER ORDERED THAT except for an act of gross negligence, the temporary receiver, and the professionals retained by him, shall not be liable for any loss or damage incurred by any of the Defendants, their officers, agents, servants, employees and attorneys, investors, vendors, or

any other person, by reason of any act performed or omitted to be performed by the Receiver, and the professionals retained by him, in connection with the discharge of his or her duties and responsibilities. No bond shall be required in connection with the appointment of the Receiver.

X.

IT IS FURTHER ORDERED THAT Defendants and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, including the other entities in receivership, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are temporarily restrained and enjoined from, directly or indirectly: destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, any documents, which includes all books, records, computer programs, computer files, computer printouts, contracts, correspondence, memoranda, brochures, or any other documents of any kind in their possession, custody or control, however created, produced, or stored (manually, mechanically, electronically, or otherwise), pertaining in any manner to defendants and their subsidiaries and affiliates.

XI.

IT IS FURTHER ORDERED that the Defendants shall pay the reasonable costs, fees and expenses of the Receiver and the professionals hired by the Receiver, including counsel to the Receiver and accountants, incurred in connection with the performance of his duties described herein. The Receiver and professionals shall file with the Court and serve on the named parties statements on a monthly basis, which shall include a description of all services provided and expenses incurred, with the first such statement filed no later than 45 days after the date of this Order. If no objection to the fees and expenses in the statements is filed with the Court by a named party within 14 days of service of the statements, then the Receiver shall be authorized to pay such statements on an interim basis at 80% of the requested amounts. The Receiver and professionals shall file a bi-annual fee application with the Court seeking approval of the Court as to the fees paid to date and payment of the withheld balance. The fee application shall be posted on the Receiver's website and served on the parties to this action and those requesting special notice. Final approval of all fee applications will be

reserved until the closing of the case. The Receiver and professionals shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XII.

IT IS FURTHER ORDERED THAT Defendants and Relief Defendants shall file with this Court and serve upon the Commission, within twenty-five (25) court days of this Order, a sworn accounting of:

- (a) All securities, funds, real estate, and other assets held in Defendants' name, or in which Defendants have had any direct or indirect beneficial interest, stating the location of each of the assets;
- (b) Each account with any financial institution or brokerage firm maintained in the name of Defendants, or in which any such persons or entities have or had any direct or indirect beneficial interest;
- (c) Every transaction in which any funds or other assets of any kind were transferred to or from the brokerage firm or financial institution account of any person to or from the Defendants, or any entities they control or in which they have an ownership interest;

DATED: March __, 2009

United States District Judge