

**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>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Bankruptcy Court Case No. 08-36637-tmb11 (Reference Withdrawn)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>

**NOTICE OF (I) COURT APPROVAL OF DISTRIBUTION PLAN**  
**FOR SUNWEST ENTERPRISE IN SEC RECEIVERSHIP CASE; (II)**  
**CHAPTER 11 BANKRUPTCY CASE; AND (III) CLAIMS BAR DATE FOR**  
**SEC RECEIVERSHIP CASE AND CHAPTER 11 CASE**

PLEASE TAKE NOTICE of all of the following:

**I. Approval of Distribution Plan and Bankruptcy Reorganization Process**

On October 2, 2009, in *SEC v. Sunwest Management, Inc., et al.*, U.S. District Court Case No. 09-cv-6056-HO (“SEC Receivership Case”), the United States District Court, District of Oregon, by the Honorable Michael Hogan, entered an Order and Findings of Fact and Conclusions of Law recognizing that the Sunwest Enterprise was and is managed as a unitary enterprise. The Sunwest Enterprise did not respect the separateness of the various affiliates and related entities nor the restricted purposes of invested funds that were intended to be limited for

use of specific facilities. The Court concluded that the commingling of funds was so extensive and pervasive, and the impact of commingling so significant, that in order to make an equitable distribution to and reduce losses of investors and creditors, the related entities must be considered a unitary enterprise for the purposes set forth in the Distribution Plan and reorganized through the Bankruptcy Case.

## **II. Chapter 11 Bankruptcy Case and Automatic Stay**

As provided in the Distribution Plan and for the purposes set forth therein, all assets and liabilities of the Sunwest Enterprise have been consolidated in the chapter 11 bankruptcy case of *In re Stayton SW Assisted Living, LLC* (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), U.S. District Court Case No. 09-cv-6082-HO ("Bankruptcy Case"). Consolidated schedules of assets and liabilities and a consolidated statement of financial affairs have been filed in the Bankruptcy Case.

Chapter 11 allows a debtor to reorganize pursuant to a plan. The Chapter 11 Plan in this case is part of the Distribution Plan approved in the SEC Receivership Case. The Bankruptcy Plan will not become effective unless confirmed by the bankruptcy court. You may follow the progress of the Bankruptcy Court at the following websites:

<http://www.grassmueckgroup.com/sunwest.php>

<http://www.bmcgroup.com/sunwest>

<http://www.hamstreetandassociates.com>

After reviewing the enclosures and the information on the above website, if you have remaining questions about the SEC Receivership Case or the Bankruptcy Case, you may call (866) 674-6791. Please be advised that representatives responding to such inquiries cannot give you any legal advice or tax advice. PARTIES CONCERNED WITH HOW THE SEC

RECEIVERSHIP CASE OR THE BANKRUPTCY CASE MAY AFFECT THEIR LEGAL RIGHTS OR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.

The bankruptcy imposes an automatic stay prohibiting creditors from taking certain actions against a debtor or property of the bankruptcy estate. Prohibited actions are set forth in 11 U.S.C. § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.

### **III. Joint Claims Administration and Claims Bar Date**

The list of creditors, investors, and other parties in interest is the same in both the SEC Receivership Case and the Bankruptcy Case. The Court has authorized joint administration of the claims process in the two cases and has set the claims bar date as **January 15, 2010**, for both cases. A single proof of claim form and a single filing location shall be employed in both cases for all creditors and parties in interest. All claims against Receivership Entities, claims against any employee or a Receivership Entity arising from or related to their actions taken in the scope and course of their employment, claims to any asset of any Receivership Entity, and all Sunwest-related claims against Mr. Harder, Mr. Fisher, and Mr. Gutzler will be treated and resolved pursuant to the Distribution Plan. A listing of the entities comprising the Sunwest Enterprise whose assets and liabilities are now part of the Bankruptcy Case is included with the Proof of Claim Form.

Michael A. Grassmueck is the Court-appointed Receiver and 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. All of the forms you will need are enclosed with this notice.

### **Proof of Claim Form**

If you believe you are owed money from any of the Sunwest-related entities, or any of their employees or any of the Defendants or Relief Defendants for obligations related to the Sunwest enterprise, you **must complete a Proof of Claim Form in the form enclosed** in order to receive consideration of your Claim. *For each Sunwest-related entity, employee, or the Defendants or Relief Defendants that owes you an obligation, 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 efficiently the Proof of Claim Form can be reviewed. Examples of Proof of Claim forms from investors and unsecured creditors may be reviewed on the following website: <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 your Proof of Claim Form and provide any additional information requested in the Proof of Claim Form that was not previously included.

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 BMC Group at:

**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. 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.** If there are questions about or objections to your Proof of Claim Form, you will be contacted by the Receiver. *Do not file your Proof of Claim Form with the Court.*

**Notice of Election Forms**

If you are an Investor and wish to exercise any of the Investor Elections provided for under the Distribution Plan (PM and LLC Election, TIC Election and Bare Land Investor Election), you must submit to the Receiver a completed Notice of Election Form in the form enclosed by the Claims Bar Date of **January 15, 2010**. If you made a TIC Election and wish to cancel that election, you must submit to the Receiver by **November 30, 2010**, a Notice of TIC Election Cancellation in the form enclosed.

Dated: November 4, 2009

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: */s/ A. Kenneth Hennesay, Jr.*

---

David L. Osias  
A. Kenneth Hennesay, Jr.  
Attorneys for Receiver, Michael  
Grassmueck

Dated: November 4, 2009

TONKON TORP LLP

By: */s/ Albert N. Kennedy*

---

Albert N. Kennedy, OSB No. 821429  
Timothy J. Conway, OSB No. 851752  
Attorneys for Debtor