

FILED *09 NOV 03 14:24 USDC-ORE

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 & ASSOCIATES, LLC, Relief Defendants.</p>	Case No. 09-cv-6056-HO
<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Bankruptcy Court Case No. 08-36637-tmb11 (Reference Withdrawn) -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>

ORDER GRANTING: (1) RECEIVER'S MOTION**FOR ORDER APPROVING CLAIMS PROCEDURES, ESTABLISHING****CLAIMS BAR DATE, AND APPROVING OTHER RELATED RELIEF;****AND (2) DEBTOR IN POSSESSION'S MOTION TO ESTABLISH****COORDINATED CLAIMS AND NOTICING PROCEDURES**

Michael A. Grassmueck, the Court-appointed Receiver in the above-referenced SEC Receivership Case, filed his Motion For Order Approving Claims Procedures, Establishing Claims Bar Date, And Approving Other Related Relief on August 25, 2009 in the above-referenced SEC Receivership Case, and the debtor in possession filed its Motion to Establish Coordinated Claims and Noticing Procedures on October 6, 2009 in the above-referenced chapter 11 case (together, the "Claims Motions"). The Receiver's Motion was originally set for hearing on September 23, 2009, at 9:30 a.m., concurrently with the Motion For Approval of Distribution Plan of Receiver and Chief Restructuring Officer for Sunwest Enterprise (the

"Distribution Plan Motion"). The Court granted the Distribution Plan Motion and approved the Distribution Plan as set forth in its order entered on October 2, 2009. The Court took the Claims Motions under submission. The Court, having considered the Claims Motions, hereby orders as follows:

1. The Claims Motions are granted as set forth herein.
2. The deadline to submit claims under the Distribution Plan is January 15, 2010, for purposes of both the SEC Receivership Case and the Reorganization Case referenced above.
3. The form of 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 (the "Notice"), in the form attached hereto as Exhibit A, is hereby approved.
4. The form of Proof of Claim, in the form attached hereto as Exhibit B, is hereby approved.
5. The form of Notice of Election, in the form attached hereto as Exhibit C, is hereby approved.
6. The method of service of the Notice, Proof of Claim, and Notice of Election, and the method of publication set forth in the Claims Motions is hereby approved. The Notice, Proof of Claim, and Notice of Election shall be served no later than November 9, 2009.
7. The Claims Process described in the Claims Motions, including the use of summary proceedings for the determination of objections to Claims, as described in the Claims Motions, is approved.

DATED: 3 Nov., 2009

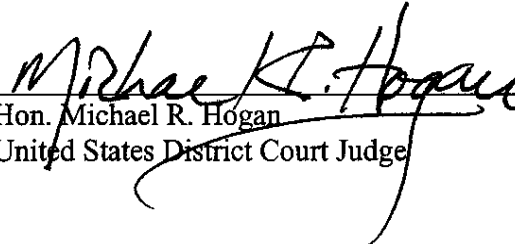

Hon. Michael R. Hogan
United States District Court Judge

EXHIBIT "A"

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 & 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: _____, 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: _____, 2009

TONKON TORP LLP

By: */s/ Albert N. Kennedy*

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

EXHIBIT "B"

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 & ASSOCIATES, LLC, Relief Defendants.</p>	<p>Case No. 09-cv-6056-HO</p> <p>(Proposed) PROOF OF CLAIM FORM</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>

INSTRUCTIONS

Michael A. Grassmueck is the Court-appointed Receiver¹ 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.

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.

¹ 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.

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

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

Claimant name: _____

Address: _____

Email: _____

Telephone number: _____

Contact name (including counsel): _____

Address: _____

Email: _____

Telephone number: _____

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.

Account No. (if any) or other identifying Sunwest number: _____

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: _____

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

Amount received since January 1, 2006 (for any reason): _____

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.

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

Check box if additional pages are attached.

DATE:

Name (print)

Signature

Name (print)

Signature

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.

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

EXHIBIT "C"

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 & ASSOCIATES, LLC, Relief Defendants.</p>	<p>Case No. 09-cv-6056-HO</p> <p>(Proposed) NOTICE OF ELECTION FORM</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>

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:

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.

Investor name: _____

Address: _____

Email: _____

Telephone number: _____

Contact name (including counsel): _____

Address: _____

Email: _____

Telephone number: _____

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.

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

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

Check box if additional pages are attached.

DATE:

Name (print)

Signature

Name (print)

Signature