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Attorneys for Receiver

Michael Grassmueck

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants,

Case No. 09-CV-6056-

DECLARATION OF GREGORY A.
GADAWSKI IN SUPPORT OF MOTION
FOR APPROVAL OF DISTRIBUTION PLAN
OF RECEIVER AND CHIEF
RESTRUCTURING OFFICER FOR THE
SUNWEST ENTERPRISE

DARRYL E. FISHER, J. WALLACE
GUTZLER, KRISTIN HARDER, ENCORE
INDEMNITY MANAGEMENT, LLC,
SENET LEASING COMPANY, FUSE
ADVERTISING, INC. KDA CONSTRUCTION,
INC., CLYDE HAMSTREET, and CLYDE A.
HAMSTREET & ASSOCIATES, LLC,

Relief Defendants.

I, Gregory A. Gadawski, declare:

1. I am a partner at Financial Forensics, a forensic accounting firm retained by the Receiver in this matter. I submit this declaration with regard to the Distribution Plan ("Distribution Plan" or "Proposed Distribution Plan") proposed jointly by the Receiver and the Chief Restructuring Officer, Clyde Hamstreet ("CRO").

2. By order dated March 10, 2009 (the "March 10 Order"), Michael A. Grassmueck was appointed Receiver for Sunwest Management, Inc., Canyon Creek Development, Inc. ("CCD"), Canyon Creek Financial, LLC ("CCF"), Fuse Advertising, Inc., KDA Construction, Inc. and all other entities identified in Exhibit A to the March 10 Order. Mr. Grassmueck was subsequently appointed as Receiver over additional entities (collectively, the "Receivership Entities"). Pursuant to the March 10 Order, the Receiver retained Financial Forensics to serve as forensic accountants to the Receiver. The employment of Financial Forensics was approved by order dated April 29, 2009.

3. Darrell Dorrell and I are leading the Financial Forensics team on this matter. Our respective biographies are attached as Exhibit A to this Declaration. I am a Certified Public Accountant (CPA), Accredited in Business Valuation (ABV), Certified Valuation Analyst (CVA) and Certified Fraud Examiner (CFE). I have also completed the training courses and passed the respective exams for the Certified Insolvency and Restructuring Advisor (CIRA) certification. I am a member of the Oregon Society of Certified Public Accountants (OSCPA), the American Institute of Certified Public Accountants (AICPA), the National Association of

Certified Valuation Analysts (NACVA), the Association of Certified Fraud Examiners (ACFE), and the Association of Insolvency and Restructuring Advisors (AIRA).

4. I have served as forensic accountant to receivers in multiple receiverships. As forensic accountant to the receivers, I have provided transaction analysis, asset tracing, identification and investigation of targets for third party litigation, solvency analysis, testimony in civil and criminal matters and other services for the benefit of the receivership estate.

5. Following entry of the March 10 Order, the Receiver and our team began researching and investigating the financial condition and operations of the Receivership Entities. Financial Forensics assisted the Receiver with informational interviews of key employees for the Receivership Entities, external accountants, and personnel of Clyde A. Hamstreet & Associates, LLC. The purpose of the interviews was to gain an understanding of Sunwest's operations and structure, roles of key personnel, and assess the controls currently in place.

6. With regard to operations, Sunwest was managing approximately 183 assisted living facilities, 85 non-assisted living facilities and other investments (collectively, the "Facilities"). CCD had been engaged in locating and acquiring properties for potential investment. In the last few years, CCF handled the in-house and third party brokers and dealers to obtain investment through tenant-in-common offerings, as well as some preferred membership offerings. We also discussed with the interviewed parties the nature of "OpCo," "PropCo" and "OmniCo" as the entities created to own and operate the investment properties.

7. Pursuant to these interviews, selected reports and data were requested for further review. Financial Forensics reviewed the data to assist the Receiver with his preliminary analysis of the Receivership Entities' financial position, operations, cash flows, accounting records and cash controls.

8. Through the early analyses and meetings, it was determined that a significant forensic accounting investigation would need to be undertaken to determine the amount and source of investments, lending and borrowing between entities and Defendants and the effect on the entities. Financial Forensics undertook substantial effort with regard to such investigation

and made significant progress in our forensic analysis, although our work in that regard was suspended by the Court before its completion.

9. I and the investigation team have had access to books and records of Sunwest, CCD, CCF, and other Receivership Entities. We have also had ongoing access to some of the key personnel at Sunwest, CCF and CCD for purposes of obtaining financial information about the Receivership Entities. Our work has included reviewing books and records, financial statements, general ledgers, journal entries, bank statements and other financial data regarding the Receivership Entities. Our work included reviewing the initial TIC and preferred membership investment in Receivership Entities and included noting if funds were disbursed to entities other than intended. We also examined the entries identified as Notes Payable or Notes Receivable between Receivership Entities.

10. The financial information examined showed that inter-entity transfers of funds were common and widespread. Transferred funds were used, among other things, to pay operating expenses, mortgages and lease payments. Based on our review, loans and other funds transfers were made from cash-positive facilities to facilities in need of cash, and also from facilities in serious financial distress to those that are now profitable facilities. The Sunwest records reflect a variety of descriptions for transfers into and out of Receivership Entity accounts and into and out of Defendant Harder's account. Some of the transfers were identified in the books and records as Notes Payable and Notes Receivable. Properties under third party management also had inter-entity Notes Payable and Notes Receivable.

11. Based on our review of financial records and interviews, Sunwest would draw cash from any available source to satisfy cash shortfalls at other facilities. By mid to late 2008, funds were being utilized and paid on almost a pure "availability" and "cash flow needs basis."

12. The Arbrook Senior Living Limited Partnership ("Arbrook") provides an example. On numerous occasions funds were transferred to/from the accounts of Arbrook from/to accounts of other Sunwest-managed facilities and certain Sunwest control parties. In June and July of 2006, Arbrook received \$4,000,000 cash from Tenants-In-Common (or

"TICS"). This amount was insufficient to close on the real property and Arbrook borrowed the shortfall from other Sunwest entities. Arbrook experienced a Net Operating Loss in virtually every month from July 2006 through September 2008. As such, Arbrook often borrowed funds from other Sunwest-managed facilities and Sunwest executives to pay operating expenses, mortgage payments and lease payments to TICS. Conversely, Arbrook also made loans to other Sunwest-managed facilities. These loans were made despite the fact that the Arbrook facility was not profitable. Arbrook received \$500,000 of additional TIC monies subsequent to the acquisition of real property. Rather than save these funds for future operating needs or utilize the funds to relieve some of the debt burden already incurred, the new monies were primarily loaned to other Sunwest-managed facilities. Spanning the period of July 2006 through September 2008 the following occurred:

- June/July 2006 - Received \$4,000,000 from TICS
- Arbrook received \$1,039,000 from 35 other Sunwest-managed facilities
- Arbrook received \$786,485 from Canyon Creek Development
- Arbrook received \$891,427 from Jon Harder
- Arbrook sent \$635,600 to 24 other Sunwest-managed facilities
- Arbrook made lease payments totaling \$536,067 to TICS.

13. In October 2006, Sunwest established the Sunwest Disbursement Account (or "SDA"). The sole purpose of this account was to centralize and facilitate lease payments to all TICS for the Sunwest-managed facilities. The SDA was to disburse lease payments to the TICS and the facilities would fund the SDA for their respective share. However, some facilities would underfund the SDA and other facilities would overfund the SDA.

14. While, with enough time and resources, one could trace a portion of inter-entity transfers, Sunwest's practices render it virtually impossible to trace the ultimate source and use of all funds. Further, actually recreating how properties and investments would have performed if there had been no inter-entity lending or sharing of funds is exceedingly difficult and complex, if

not impossible, due to the number of factors and considerations beyond the mere amount and timing of transfers.

15. Our further independent forensic accounting investigation and analysis, following the Receiver's First Interim Report of April 24, 2009 until the date our work was stayed, further confirmed the tentative conclusions reported in the Receiver's First Interim Report. Our investigation revealed that the commingling of funds within the Sunwest enterprise was common and widespread. Attempting to unwinding the transfers to re-create a hypothetical result for a particular entity or investor is, in our view, impractical if not impossible, and would be subject to widely differing interpretation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of August, 2009, at Lake Oswego Oregon.


GREGORY A. GADAWSKI

EXHIBIT A



Gregory A. Gadawski

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Greg Gadawski is a partner of *financialforensics®*. He is a Certified Public Accountant (CPA), Accredited in Business Valuation (ABV), Certified Valuation Analyst (CVA) and Certified Fraud Examiner (CFE). He has also completed the training courses and passed the respective exams for the Certified Insolvency and Restructuring Advisor (CIRA) certification. He is a member of the Oregon Society of Certified Public Accountants (OSCPA), the American Institute of Certified Public Accountants (AICPA), the National Association of Certified Valuation Analysts (NACVA), the Association of Certified Fraud Examiners (ACFE), and the Association of Insolvency and Restructuring Advisors (AIRA).

Mr. Gadawski has conducted a myriad of complex fraud investigations on behalf of both victims and suspects. These investigations have ranged from small employee thefts to multi-million dollar frauds. In addition to conducting the investigations, Mr. Gadawski has assisted the victims with identification of assets and recovery of losses from fraud.

He has also served as forensic accountant to the receiver in multiple receiverships. These receiverships are typically the result of some type of securities fraud and/or ponzi scheme. As forensic accountant to the receiver, Mr. Gadawski has provided transaction analysis, asset tracing, identification and investigation of targets for third party litigation, solvency analysis, testimony in civil and criminal matters and other services for the benefit of the receivership estate.

Mr. Gadawski has served as an expert witness/consultant in a variety of complex litigation matters including; breach of contract, bankruptcy, business valuation, alter ego, lost profits, marital dissolution, personal injury, wrongful death, intellectual property infringement, fraudulent conveyance, solvency, and others. His expertise encompasses a wide scope of industries including; professional service organizations, brokerages, financial services, construction, retail, timber, utilities, municipalities, not-for-profits, manufacturing and others.

He has authored and co-authored several forensic accounting and litigation consulting related articles. He has presented continuing education courses (both CPE and CLE) on forensic accounting, financial statement analysis, fraud investigation and litigation related topics.



Darrell Dorrell

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Darrell Dorrell is a founding partner of **financialforensics®**, a boutique forensic accounting practice in Lake Oswego, OR. He practices in civil and criminal matters throughout the US and has served as an expert witness/consultant in 500+ matters; additional assignments exceed 1,000. They include alter ego, anti-trust, bankruptcy, breach of contract, estate/gift taxes, family law, fraud, fraudulent conveyance/transfer intellectual property, lost profits, patent, solvency/insolvency, trademark, trade dress, and trade secrets.

A nationally recognized speaker and author, Darrell has delivered more than 100 presentations on forensic accounting-related topics during the last 5 years. He has provided training to the Federal Bureau of Investigation (FBI), United States Department of Justice (USDOJ), Bankruptcy Bar Association, Oregon Bar Association, Washington Bar Association, National Litigation Support Services Association (NLSSA), American Institute of Certified Public Accountants (AICPA), National Association of Certified Valuation Analysts (NACVA), PriceWaterhouse Coopers, Institute of Management Accountants, SEAK, CPAA International, Inc., AGN, Inc., Turnaround Management Association, and the California, New York, Oklahoma, Oregon, Pennsylvania and Washington Society of CPAs, among others.

Darrell has published more than 60 articles in the *American Journal of Family Law*, *Business Appraisal Practice*, *CPA Journal*, *Litigation Counselor*, *National Litigation Consultants Review*, *Valuation Examiner*, RIA's *Valuation Strategies*, and the *United States Attorneys' Bulletin*. Additionally, he has been cited in *Bloomberg Wealth Manager*, *Business Week*, *IR Magazine*, the *Portland Oregonian* and the *Practical Accountant*.

His forensic accounting, damages, valuation, fraud, and related expertise is extensive. Most significantly, he co-authored for the United States Department of Justice (USDOJ) the March 2005, Vol. 53 No. 2 issue, i.e. Financial Forensics I - **Counterterrorism: Conventional Tools for Unconventional Warfare**, and the May 2005 Vol. 53 No. 3 issue Financial Forensics II - **Forensic Accounting: Counterterrorism Tactical Weaponry**. Both issues are available via the public site: http://www.usdoj.gov/usao/eousa/foia_reading_room/foiamanuals.html. August 2008