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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,

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.

Case No. \_\_\_\_\_

DECLARATION OF MICHAEL E.  
LIFTIK IN SUPPORT OF PLAINTIFF  
SECURITIES AND EXCHANGE  
COMMISSION'S EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER  
TO SHOW CAUSE RE PRELIMINARY  
INJUNCTION

**VOLUME II**

I, Michael E. Liftik, declare as follows:

I am an attorney duly admitted to practice in the State of California and the Commonwealth of Massachusetts. I have personal knowledge of the facts set forth below, and if called as a witness, I could and would competently testify as follows:

1. I am a staff attorney in the San Francisco Regional Office of the Securities and Exchange Commission ("Commission"). I am one of the attorneys with primary responsibility for the Commission's investigation in the above-entitled matter before the Commission filed its complaint. I have custody of the Commission's investigation file concerning this matter, including the documents described below.

2. On February 10, 19, and 24, 2009, pursuant to a subpoena issued by the Commission's staff, Defendant Jon M. Harder, the former President and CEO of Defendant Sunwest Management, Inc. ("Sunwest") provided sworn testimony in the staff's investigation. Attached as **Exhibit 1** to this Declaration is a true and correct copy of the transcript of that testimony. In testimony, Mr. Harder admitted that the practice of commingling proceeds from facilities managed by Sunwest was an "integral" part of the business. He also admitted that the Sunwest relied on extra cash provided by refinancing and loans that he secured personally to meet Sunwest's cash needs.

3. On or about October 21, 2008, pursuant to a request from the Commission's staff, Defendant Canyon Creek Development (CCD) provided background information explaining the structure of the tenant-in-common ("TIC") interests it offered to investors. Attached as **Exhibit 2** to this Declaration is a true and correct copy of a Powerpoint presentation that outlines the entities involved and the structure of the offerings. The Powerpoint contains a slide at page 6 that diagrams the relationships between the entities.

seeking additional documents. Sunwest and CCD made numerous productions in response to the Commission's subpoenas and requests. CCD produced offering materials that were distributed to investors. Included in that production were private placement memoranda (PPMs) and executive summaries of securities offerings distributed by Canyon Creek Financial LLC (CCF). Attached as **Exhibit 3** to this Declaration is a true and correct copy of the PPM for the Highlands Senior Living Property LLC offering, which includes the accompanying agreements and exhibits produced by CCD. Attached as **Exhibit 4** to this Declaration is a true and correct copy of the Executive Summary of the Highlands Senior Living Property LLC offering produced by CCD. Attached as **Exhibit 5** to this Declaration is a true and correct copy of the PPM for the ML-2 Senior Living Properties offering, excluding the accompanying agreements and exhibits, produced by CCD. Attached at **Exhibit 6** to this Declaration is a true and correct copy of the PPM for the Kansas City Senior Living Property LLC offering, excluding the accompanying agreements and exhibits, produced by CCD.

5. During the course of its investigation, the Commission staff spoke with many investors in Sunwest-managed facilities. On February 3, 2009, pursuant to a subpoena issued by Commission staff, Linda and Gerry Wiseman provided sworn testimony in the staff's investigation. Attached as **Exhibit 7** to this Declaration is a true and correct copy of the transcript of that testimony. In testimony, the Wisemans recounted many material misstatement that Harder made to them in person to solicit their investment.

6. On January 22, 2009, pursuant to a subpoena issued by Commission staff, Michael Deines, the president of CCD provided sworn testimony in the staff's investigation. Attached as **Exhibit 8** to this Declaration is a true and correct copy of the transcript of that testimony. Deines invoked his Fifth Amendment Privilege against self-incrimination and declined to answer substantive questions concerning CCD.

7. On February 9 and 19, 2009, pursuant to a subpoena issued by the Commission staff, Jon Harder produced email correspondence. Attached as **Exhibit 9** are true and correct copies of three emails produced by Harder bearing Bates labels JMHSEC013651-52, JMHSEC009494, and JMHSEC003764. These emails between Harder and CCD staff indicate that Harder received and was asked to comment on excerpts from draft PPMs.

8. Attached as **Exhibit 10** to this Declaration is a true and correct copy of the Second Amended Complaint filed in Harder v. Wells Fargo (Bk. Case No. 08-37225; Adv. Proc. No. 08-03265) on December 31, 2008.

9. Pursuant to the subpoena issued to Sunwest and Harder, they produced email correspondence. Attached at **Exhibit 11** are true and correct copies of eight emails bearing the Bates labels SMISEC0093334, SMISEC0112945, SMISEC0202171, SMISEC0001856, SMISEC0012386, SMISEC0008120, SMISEC0028354, SMISEC0019508 produced by Sunwest and one email bearing the Bates label JMHSEC000329 produced by Harder. These emails demonstrate that Sunwest finance personnel moved cash between facilities on a nearly constant basis to meet the operational needs of the enterprise. They also show that Harder was involved in the decisions about how funds would be transferred between entities and the key role that the Harder business account played in facilitating those transfers.

10. Pursuant to the subpoena and requests made to Sunwest, it produced financial records of Sunwest business accounts. Attached at **Exhibit 12** to this Declaration is a true and accurate copy of the document Bates labeled SMISEC0208730-40. This document shows monthly expenses that needed to be paid out of the Jon Harder business account including personal expenses such as his mortgage and housekeepers, and business expenses including interest on loans that Harder secured to infuse cash into the enterprise.

11. Pursuant to requests to by the Commission staff to Sunwest and CCD, they produced a chart showing which Sunwest facilities had stopped making investor payments starting in July 2008. Attached at **Exhibit 13** to this Declaration is a true and correct copy of that chart. As stated on the chart, an "X" indicates those properties whose investors did receive a payment in the given month. Payments stopped in July 2008 for many homes and each subsequent month, fewer payments were made.

12. On September 10-12, 2008, the Commission's Office of Compliance Examinations conducted a regulatory exam of CCF. Pursuant to requests made by Commission staff, CCF produced documents including email correspondence. Attached as **Exhibit 14** to this Declaration is a true and correct copy of an email produced by the CCF pursuant to the exam bearing Bates label

DTP024737-38, and an email produced by Sunwest pursuant to subpoena bearing Bates label SMISEC0009606-07. The emails are correspondence by David Thurber, CCF's vice president for sales to potential investors. In the emails he describes how Sunwest has never missed a payment.

13. Attached as **Exhibit 15** is a true and correct copy of a spreadsheet produced by CCF summarizing the offerings it made to investors by date and amount invested.

14. Pursuant to requests or subpoenas from the Commission staff, Sunwest and CCD produced a table listing how much TIC money has invested with Sunwest since 2004. Attached as **Exhibit 16** to this Declarations is a true and correct copy of that table.

15. Attached as **Exhibit 17** to this Declaration is a true and correct copy of an email bearing Bates label SMISEC0038186-87 produced by Sunwest. The email states that 90% of investors "roll" into new investment with Sunwest when an older investment is bought out through refinancing.

16. Pursuant to a subpoena issued by the Commission staff, on or about January 14, 2009, Michael Deines produced documents related to his employment at CCD. Attached as **Exhibit 18** is a true and correct copy of a document bearing Bates label DEINES0000268 produced by Deines. It is a signed and certified statement of Jon and Kristen Harder's net worth dated December 31, 2007.

17. Attached as **Exhibit 19** to this Declaration is a true and correct copy of emails bearing Bates label SMISEC0019720 and SMISEC0003547 produced by Sunwest. They show that in December 2007, Sunwest personnel including Harder knew there was risk of default on loans held by GE HealthCare Financial and that by March 2008, Sunwest was in technical default on those loans.

18. Pursuant to a request from the Commission's staff, CCD provided background information explaining the structure of the preferred membership interests it offered to investors. Attached as **Exhibit 20** to this Declaration is a true and correct copy of a Powerpoint presentation that outlines the entities involved and the structure of those offerings. The Powerpoint contains a slide at page 2 that diagrams the structure.

19. Attached as **Exhibit 21** to this Declaration is a true and correct copy of the "trade blotter" for the offering of preferred membership interests in Hobbs Senior Living LLC, produced by CCD and Sunwest. The trade blotter lists each investor in the offering, how much money they

invested, when they committed to the investment, and when CCD closed that purchase. This document shows that the Hobbs offering closed on or around January 31, 2008.

20. Attached as **Exhibit 22** to this Declaration is a true and correct copy of the Executive Summary describing the Hobbs Senior Living preferred membership interests offering, produced by CCD.

21. Attached as **Exhibit 23** to this Declaration is a true and correct copy of the Executive Summary describing the Paragon Gardens Senior Living preferred membership interests offering, produced by CCD.

22. Attached as **Exhibit 24** to this Declaration is a true and correct copy of the "trade blotter" for the offering of preferred membership interests in Paragon Gardens Senior Living LLC, produced by CCD and Sunwest. The trade blotter shows that the Paragon Gardens offering had multiple closings between February and May 2008.

23. Attached as **Exhibit 25** to this Declaration is a true and correct copy of documents bearing Bates labels SMISEC0526276, SMISEC0120943, SMISEC0120945, and SMISEC121143-44 produced by Sunwest. These documents are four settlement statements from First American Title, the escrow company that CCD used for most of its offerings. The settlement statements show that offerings of the Paragon Gardens preferred membership interests closed multiple times as investor money was raised.

24. Attached as **Exhibit 26** to this Declaration is a true and correct copy of excerpts from the PPM for the Hawthorne Gardens (Portland Senior Living LLC) TIC offering produced by CCD.

25. Attached as **Exhibit 27** to this Declaration is a true and correct copy of the "trade blotter" for the offering of preferred membership interests in Hawthorne Gardens Senior Living LLC, produced by CCD and Sunwest. The trade blotter shows that the Hawthorne Gardens offering closed on June 9, 2008.

26. Attached as **Exhibit 28** to this Declaration is a true and correct copy of Hawthorne Garden's voluntary petition for Chapter 11 bankruptcy, dated December 1, 2008, downloaded from the PACER service of the United States Bankruptcy Court for the District of Oregon.

27. Attached as **Exhibit 29** to this Declaration is a true and correct copy of Jon Harder's voluntary petition for Chapter 11 bankruptcy dated December 31, 2008, downloaded from the PACER service of the United States Bankruptcy Court for the District of Oregon.

28. Attached as **Exhibit 30** to this Declaration is a true and correct copy of the Chief Restructuring Officer Agreement, produced by Sunwest. The Chief Restructuring Officer Agreement was entered into between Harder and other Sunwest personnel and Clyde Hamstreet on November 22, 2008.

29. On January 9, 2009, pursuant to a subpoena issued by the Commission staff, relief defendant Darryl Fisher provided sworn testimony in the staff's investigation. Attached at **Exhibit 31** is a true and correct copy of excerpts from the transcript of that testimony. In testimony, Fisher stated that he was aware that proceeds from refinancing activity was used to support ongoing operations at Sunwest.

30. On February 6, 2009, pursuant to a subpoena issued by the Commission staff, Shain Pearse, Sunwest's Treasurer and Assistant Controller provided sworn testimony in the staff's investigation. Attached at **Exhibit 32** is a true and correct copy of excerpts from the transcript of that testimony. In testimony, Pearse explains how the inter-facility transfers worked and explains Harder's role in them.

31. Attached as **Exhibit 33** to this Declaration is a true and correct copy of emails bearing Bates label SMISEC0095689 and SMISEC0202861 produced by Sunwest. They reference the movement of cash through the Harder business account.

32. Attached as **Exhibit 34** to this Declaration is a true and correct copy of an email bearing Bates label SMISEC0083622 produced by Sunwest. It shows movement of cash between Sunwest's business accounts and Fisher.

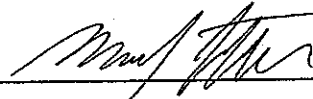
33. Attached as **Exhibit 35** to this Declaration is a true and correct copy of emails bearing Bates label JMHSEC000318 produced by Jon Harder. It shows Harder suggesting that one of the representatives selling CCD securities back off because the investor is unlikely to get answers to the questions he has asked.

34. On February 27, 2009, the Commission staff notified attorneys representing Defendants and Relief Defendants that the staff intended to file a Complaint and seek an Ex Parte Application for a Temporary Restraining Order in the United States District Court in Eugene, Oregon on Monday, March 2, 2009. Notice was acknowledged by telephone and email communication by counsel for all parties.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on February 28, 2009 in San Francisco, California.



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Michael E. Liftik