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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SUNWEST MANAGEMENT, INC.,
CANYON CREEK DEVELOPMENT,
INC., CANYON CREEK FINANCIAL,
LLC, AND JOHN M. HARDER,

Defendants,

DARRYL E. FISHER, ET AL.,

Relief Defendants.

MICHAEL GRASSMUECK, Receiver,

Plaintiff

SANDI BALADA; BRYON CROSBY;
HASMIG DERDERIAN; RICH
GIGLIO; TOBBE HENNBY; KATHY
HESHELOW; ERIC HILDEBRAND;
ERIC MEURER; LARRY MILLER;
ALAN POLLACK; RANDALL POPE;
ALEX RHOTEN; RON ROSS;
TAMARA SANNER; R. TOM SMITH;
DIRK STANGIER; JIM STOCK;

Case No. 09-6056-HO

**RECEIVER MICHAEL A.
GRASSMUECK'S MOTION
FOR APPROVAL OF SETTLEMENT
WITH CERTAIN SETTLING
BROKERS AND DEALERS AND FOR
ENTRY OF CLAIMS BAR ORDER**

Case No. 10-6076-HO

DARYL TEMPLETON; TRINA TRAVESS; RUSTY TWEED; MELONIE WATERS; WILLIAM WHITE; RICHARD WIELDE; ROBERT ZINK; CAPWEST SECURITIES, INC.; DIRECT CAPITAL SECURITIES, INC.; AND K-ONE INVESTMENT COMPANY, INC.,

Defendants

MOTION

Please take notice that on September 20, 2011 at 1:30 p.m. or as soon as the matter may be heard in the above-captioned actions, in the Courtroom of the Honorable Michael Hogan at the Wayne L. Morse United States Courthouse, 405 East Eighth Avenue, Eugene, Oregon 97401, Michael A. Grassmueck, the duly appointed receiver ("Receiver") pursuant to orders in *SEC v. Sunwest Mgmt., Inc.*, Case No. 09-CV-6056-HO (the "SEC Action") for Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC, Fuse Advertising, Inc., KDA Construction, Inc., and other entities (collectively, "the Receivership Entities"), will, and hereby does, move the Court for an order approving the settlement and settlement agreement (the "Settlement" and "Settlement Agreement") entered into between the Receiver¹ on the one hand, and certain settling brokers and dealers ("Settling Brokers") as identified in Exhibit A to the Settlement Agreement, augment the Assignment Order (defined below), and entering a Final Claims Bar Order with respect thereto. A true and correct copy of the Settlement Agreement is attached to the Memorandum of Points & Authorities as Exhibit 1.

The Receiver has asserted claims against the Settling Brokers on behalf of Sunwest investors and the Receivership Entities in *Grassmueck v. Balada*, et al., Case No. 10-cv-6076-HO, (the "Broker Case"). The Receiver has also received

¹ Terms not otherwise defined herein are as defined in the Settlement Agreement.

assignments of claims, asserted or unasserted, against the Settling Brokers from Sunwest investors, creditors, and claimants (the "Third Party Claims"), pursuant to the Plan of Distribution approved on October 2, 2009, in the SEC Case; the Receiver's, CRO's and Debtor's Second Amended Joint Plan of Reorganization (May 27, 2010), filed in the Bankruptcy Case; and the Order Re Assignment of All Sunwest Investors' and Claimants' Rights and Claims Against Certain Third Parties to Receiver dated April 7, 2011 (the "Assignment Order"). This Motion also asks the Court to augment the Assignment Order to include any and all parties reflected on Exhibit A to the Settlement Agreement. Particular Third Party Claims, now assigned to the Receiver, are the subject of separate federal court, state court, and arbitration proceedings that have been initiated by Sunwest investors, creditors, or claimants individually against the Settling Brokers (the "Collateral Proceedings"). The Collateral Proceedings that the parties are aware of are listed on Exhibit C of the Settlement Agreement.

The Settlement resolves claims in the Broker Case, the Assigned Claims, and claims in the Collateral Proceedings as to the Settling Brokers, as well as claims by the Settling Brokers against the Receivership Entities, and will represent a significant recovery by the Receiver for the Litigation Trust established pursuant to the Distribution Plan in the SEC Action. One of the major issues with regard to the Settlement is the ability of the Receiver and others to provide a full release of "Claims" (as defined in the Settlement Agreement) to the Settling Brokers, including a release with regard to Claims that might be asserted by third parties. To resolve this issue and others, the Settlement calls for entry of an order which would bar any further "Claims" by certain groups including third parties against Settling Brokers for damages arising from their conduct related to the activities of Sunwest Management, Inc., its principals, and the Receivership Entities, including claims arising from the sale, purchase, or solicitation of Sunwest investments.

