

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

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Robert T. DeVaney, et al.

Plaintiffs,

v.

Davis Wright Tremaine LLP, a Washington limited liability partnership,

Defendant.

Case No. 10-CV-6134-HO

ORDER APPROVING
CLASS ACTION
SETTLEMENTS

Ken and Patricia Houghmaster, et al,

Plaintiffs,

v.

K&L Gates LLP, a Delaware limited liability partnership; and Thompson & Knight LLP, a Texas limited liability partnership,

Defendants.

Case No. 10-CV-6321-HO

WHEREAS, Plaintiffs and Defendants in the above-captioned litigation (the "Actions") have entered into Settlement Agreements ("Agreements") after extensive, arms-length settlement negotiations;

WHEREAS, the Parties have made an application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlements of these Actions as reflected in the Agreements ("Settlements") upon the terms and conditions set forth in the Agreements; and

WHEREAS, the Court has reviewed and considered the Agreements and accompanying Exhibits, and the Parties' application for such an order and found good cause for the same;

NOW, THEREFORE, IT IS HEREBY ORDERED:

A. Settlement Class

1. The Court preliminarily finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been met. Pursuant to Federal Rule of Civil Procedure 23(c)(1) and for purposes of settlement only, the Court hereby conditionally certifies these Actions as a single, consolidated class action on behalf of the following Settlement Class:

(a) all individuals and entities that purchased investments in the Sunwest Enterprise¹ on or after January 1, 2002, and (b) Plaintiff Receiver as assignee of the claims or interests of any such individuals or entities. The investments were in the form of investor, noncommercial notes, tenancy-in-common ("TIC") interests, membership interests, preferred membership interests, or limited partnership interests in one or more properties managed by or affiliated with Sunwest Management, Inc.

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby appoints the named Plaintiffs in the Complaints filed in these Actions as Class Representatives of the Settlement Class.

3. Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil Procedure, and having found Class Counsel to be adequate, the Court hereby appoints Esler Stephens & Buckley and Cohen Milstein Sellers & Toll PLLC as Class Counsel to represent the Settlement Class.

¹ The "Sunwest Enterprise" included Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC, and numerous other affiliated, single-purpose entities that were created by entities owned or controlled by Sunwest Management, Inc., Jon M. Harder, and/or Darryl E. Fisher for the purpose of owning and operating senior living facilities and other real estate developments.

4. The Court, having conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Agreements, hereby finds that the Settlements fall within the range of reasonableness meriting further proceedings and possible final approval. The Court hereby preliminarily approves the Agreements, and the terms and conditions of the Settlements set forth therein, subject to further consideration in the Fairness Hearing described below.

B. Fairness Hearing

5. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court will hold a Fairness Hearing not less than ninety days from the date of this Order. The Court will hold the Fairness Hearing on February 4, 2011 at 10:00 a.m., for the purposes of:

(a) Finally determining whether the Settlement Class meets all applicable requirements of Federal Rule of Civil Procedure 23 and, thus, whether the Actions should be certified as a consolidated class action for purposes of effectuating the Settlements;

(b) Determining whether the Settlements on the terms and conditions set forth in the Agreements, are fair, just, reasonable, and adequate to the Settlement Class and should be approved by the Court;

(c) Considering the application for an award of attorneys' fees and reimbursement of expenses, as provided for in the Agreements;

(d) Considering whether the Court should enter the [Proposed] Order Approving Class Action Settlements and Judgment; and

(e) Ruling upon such other matters as the Court may deem necessary and appropriate.

6. The Parties may modify the Agreements prior to the Fairness Hearing, so long as such modifications do not materially change the terms of the Settlements provided there under. The Court may approve the Agreements with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

7. Any Settlement Class Member who desires to object to the Settlements or the application for Attorneys' Fees and Expenses must both file with the Clerk of this Court and serve on the Parties' counsel by hand or first-class mail a notice of the objection(s) and the grounds for such objections, together with all papers that the Settlement Class Member desires to submit to the Court at the Fairness Hearing. The Court will consider such objection(s) and papers only if such papers are received on or before twenty-eight (28) days prior to the Fairness Hearing (the "Objection Date"), which shall be set forth in the Class Notices, by the Clerk of the Court and by each of the Parties' counsel. Such papers must be sent to each of the following Persons:

Clerk of Court
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Eugene, Oregon 97401

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Attorneys for Defendants

All objections must include a reference to *Robert T. DeVaney et al. v. Davis Wright Tremaine, LLP*, Case No. 10-CV-6134-HO, and *Ken and Patricia Houghmaster, et a. v K&L Gates LLP and Thompson & Knight LLP*, Case No. 10-CV-6321-HO, the name, address, and telephone number of the person submitting the objection, the reasons for objecting to the Settlements, the submitting person's signature. Each person submitting an objection must state whether he or she (or his or her representative) intends to appear at the Fairness Hearing.

8. Any response to timely, completed objections must be filed with the Court and served no later than seven (7) days prior to the Fairness Hearing

9. Attendance at the hearing is not necessary; however, any person wishing to be heard orally with respect to approval of the Settlements or the application for attorneys' fees and expenses are required to provide written notice of their intention to appear at the Fairness Hearing no later than the deadline as set forth in the Class Notices. Persons who do not intend to oppose the Settlements or attorneys' fees and expenses need

not take any action to indicate their approval. A person's failure to submit a written objection in accordance with the Objection Date and the procedure set forth in the Class Notices waives any right the person may have to object to the Settlements or attorneys' fees and expenses or to appeal or seek other review of the Order Approving Class Action Settlements and Judgment.

10. Any Member of the Settlement Class may enter an appearance in the Action at his or her own expense, individually or through counsel. All Settlement Class Members who do not enter an appearance will be represented by Class Counsel.

11. All memoranda in support of the Settlements and any application for an award of attorneys' fees and expenses and/or incentive awards must be filed with the Court and served at least forty-five (45) days prior to the Fairness Hearing.

C. The Court Approves the Form and Method of Class Notice

12. The Court approves, as to form and content, the proposed Class Notice, which is Exhibit C and the proposed Summary Notice, which is Exhibit D accompanying the Unopposed Motion For Preliminary Approval of Class Action Settlement ("Unopposed Motion") filed in the *Houghmaster, et al. v K&L Gates LLP* case referenced above. These notices encompass the proposed Settlements in both Actions and supersede the proposed class notices filed in the *DeVaney et al. v. Davis Wright Tremaine LLP* case.

13. The Court finds that the mailing and distribution of the Class Notice and publication of the Summary Notice substantially in the manner and form set forth in the Unopposed Motion, meet the requirements of Federal Rule of Civil Procedure 23 and due

process, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

14. The Court approves the designation of Michael Grassmueck to serve as the Court-appointed Claims Administrator for the Settlements. The Claims Administrator shall disseminate the Class Notice, supervise and carry out the processing of Claims and other administrative functions, and respond to Settlement Class Member inquiries, as set forth in the Settlements and this Order, under the direction and supervision of the Court.

(a) The Court directs the Claims Administrator to establish a settlement website, making available copies of this Order, the Class Notice, a Release and Assignment Form that may be downloaded, the Agreements and all other Exhibits to the Unopposed Motion, a toll-free hotline, and such other information as may be of assistance to Settlement Class Members or required under the Settlements.

(b) The Claims Administrator is ordered to provide Notice no later than thirty (30) days after the date of this Order (the "Notice Date").

(c) The Claims Administrator shall file with the Court proof of compliance with the Notice Program no later than seven (7) business days prior to the Fairness Hearing.

15. The costs to provide notice, including processing of Claims, creating and maintaining the website, and all other reasonable and appropriate Claims Administrator expenses, shall be paid from the Litigation Trust as defined in the Agreements.

16. Recipients of the Class Notice that purchased securities from the Sunwest Enterprise for the beneficial interest of another person or organization other than

themselves, shall, within ten days after receipt of the Class Notice, either (1) send a copy of the Class Notice by first class mail to all such persons or organizations, or (2) provide a list of the name and addresses of such persons or entities to the Claims Administrator, as discussed further in the Class Notice.

D. Procedure for Settlement Class Members to Participate in the Settlements

17. All Settlement Class Members shall be bound by all determinations and judgments in these Actions concerning the Settlements, whether favorable or unfavorable to the Settlement Class.

18. The Court approves the proposed Release and Assignment Form, which is Exhibit E to the Unopposed Motion in the *Houghmaster, et al. v K&L Gates LLP* case and which supersedes the similar form filed in the *DeVaney et al. v. Davis Wright Tremaine LLP* case. Any Settlement Class Member who wishes to participate in the Settlements shall complete an appropriate Release and Assignment Form and submit it to the Claims Administrator within sixty (60) days of the postmark stating the date such form was mailed to the Settlement Class Member.

19. The Claims Administrator shall have the authority to determine Claim eligibility and calculate payment amount in accordance with the terms and conditions of the Settlements and the Amended Distribution Plan. Any dispute related to such determinations shall be resolved by the Court after a good-faith effort by the Parties to resolve such disputes informally. The Claims Administrator shall have the right to contact Settlement Class Members for the purpose of validating information relating to Claims. The Claims Administrator shall maintain records of all Claims and the disposition thereof until ninety (90) days after the date on which all Claims have been

finally resolved, and such records will be made available, upon request, to Class Counsel and Defendants' counsel.

20. Each person who does not exclude himself or herself from the Settlement Class shall be deemed to have submitted to the jurisdiction of the Court and shall be bound by all of the terms of the Settlements, including the terms of the Order Approving Class Action Settlements and Judgment and the releases provided for in the Agreements.

21. All proceedings with respect to the administration, processing, and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

E. Procedure for Requesting Exclusion from the Settlement Class

22. Any person falling within the definition of the Settlement Class may, upon his or her request, be excluded from the Settlement Class. Any such person must submit a completed Request for Exclusion, signed by the person, to the Claims Administrator post-marked on the date no later than the Opt-Out Deadline (*i.e.*, thirty (30) days prior to the Fairness Hearing), as set forth in the Class Notice. Requests for Exclusion purportedly filed on behalf of groups of persons are prohibited and will be deemed to be void.

23. Any Settlement Class Member who does not send a completed, signed Request for Exclusion to the Claims Administrator post-marked on or before the Opt-Out Deadline will be deemed to be a Member of the Settlement Class for all purposes and will be bound by all further orders of the Court in this Action and by the terms of the Settlements, if finally approved by the Court.

24. The Claims Administrator shall provide Class Counsel and counsel for Defendants with a list of all timely Requests for Exclusion within five (5) business days after the Opt-Out Deadline.

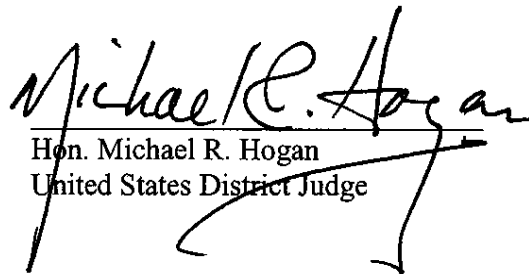
F. Miscellaneous Provisions

25. Pending final determination of whether the Settlements should be approved, all discovery and all proceedings in the Action unrelated to the approval of the Settlements, the Application for Attorneys' Fees and Expenses, and the Application for Plaintiffs' Incentive Awards are stayed.

26. The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlements.

Dated: B Oct., 2010

IT IS SO ORDERED


Hon. Michael R. Hogan
United States District Judge

SUBMITTED BY:

/s/ Michael J. Esler

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