

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION**

Robert T. DeVaney, et al.

Plaintiffs,

v.

Davis Wright Tremaine LLP, a Washington  
limited liability partnership,

Defendant.

Civil No. 10-CV-6134-HO

[PROPOSED] ORDER APPROVING  
CLASS ACTION SETTLEMENT  
AND JUDGMENT

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,

Defendant.

Case No. 10-cv-6321-HO

WHEREAS, Plaintiffs and Defendants, by and through their respective counsel, have executed and filed the parties' Settlement Agreements ("Agreements") with the Court;

WHEREAS, the Court entered a Preliminary Approval Order on October 8, 2010, directing that Notice be provided to the Settlement Class; scheduling a Fairness Hearing to determine whether to finally approve the Settlements, to finally certify the Settlement Class, and to award Attorneys' Fees and Expenses; and to consider any objections properly and timely presented;

WHEREAS, the Court held a Fairness Hearing on February 9, 2011, at which all interested persons were given the opportunity to be heard; the Court having heard and considered all submissions in connection with the proposed Settlements and the files and records herein, as well as the arguments of counsel;

NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, DECREED, AND ADJUDGED:

1. The Court has jurisdiction over the subject matter of these actions and all parties to the actions, including all Settlement Class Members.

2. The Court finds that, for purposes of approving and effectuating the Settlements embodied in the Agreements, the prerequisites for certifying these actions as a single, consolidated class action under Federal Rule of Civil Procedure 23(a) and (b)(3) have been met. The Court certifies these actions as a single, consolidated class action brought by the Class Representatives on behalf of the Settlement Class as defined as follows:

(a) all individuals and entities that purchased investments in the Sunwest Enterprise<sup>1</sup> 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.

3. Excluded from the Settlement Class are those persons who would otherwise have qualified for inclusion in the Settlement Class but have filed valid

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<sup>1</sup> 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.

Requests for Exclusion (“Opt-Outs”). A list of those persons is attached as Exhibit A. The Opt-Outs are not bound by the Settlement and may pursue their own individual remedies against Defendants to the extent that any such remedies are available.

4. The Class Representatives appointed in this Court’s Preliminary Approval Order have fairly and adequately represented the Settlement Class throughout the proceedings and are hereby finally confirmed and appointed as Class Representatives.

5. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court finds that Class Counsel have fairly and adequately represented the Settlement Class throughout the proceedings, and thus hereby appoints Cohen Milstein Sellers & Toll PLLC and Esler Stephens and Buckley as Class Counsel to represent the Settlement Class.

6. The Court hereby finds that the Notice distributed to the Class provided the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein to all persons and entities entitled to such notice, and the Notice fully satisfied the requirements of Federal rule of Civil Procedure 23, Due Process, and any other applicable law. A full opportunity has been provided to the Settlement Class Members to object to the proposed Settlements and to participate in the hearing thereon. Thus, it is hereby determined that all Settlement Class Members who did not timely elect to exclude themselves by written communication are bound by this Order and Judgment.

7. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds that the Settlements proposed by the parties are fair, reasonable, and adequate as to the Settlement Class Members. The Plan of Allocation is approved as fair and reasonable.

All objections to the Settlements are overruled. Plaintiffs and Defendants are directed to consummate the Agreements in accordance with their terms and provisions, the terms of this Court's Preliminary Approval Order, and the terms of the Amended Distribution Plan.

8. The Court has determined that the amount of the Settlement Fund that shall be allocated to resolve claims on behalf of the Receivership shall be \$\_\_\_\_\_.

9. A separate order shall be entered to approve Class Counsel's application for fees and reimbursement of costs and expenses for Class Counsel and other counsel who have represented Sunwest investors in actions against Davis Wright Tremaine LLP, as allowed by the Court. The finality of this Order and Judgment shall not be affected, in any manner, by rulings that the Court may make on Counsel's application for fees and reimbursement of costs and expenses.

10. The parties to be released under the terms of the Agreements are hereby forever released and discharged from any and all of the released claims. The releasing parties are hereby forever barred and enjoined from asserting, instituting, or prosecuting, directly or indirectly, any released claim in any court or other forum against any of the released parties.

11. None of the provisions of the Agreements, this Order and Judgment, or the fact of the Settlements constitutes any admission by any of the Parties of any liability, wrongdoing or violation of law, damages or lack thereof, or of the validity or invalidity of any claim or defense asserted in the actions. None of the provisions of the Agreements, this Order and Judgment, the fact of the Settlements, the proceedings related to the Settlements, the Parties' negotiations or any documents related thereto may be

offered or received in evidence, or construed as an admission, concession, presumption or inference against any Party in any proceeding, except insofar as may be necessary to effectuate or enforce the terms of the Agreements and this Order and Judgment.

12. The Court retains jurisdiction over the Parties and the Settlement Class Members for all matters relating to the actions, including the administration, interpretation, and enforcement of the Agreements, and this Order and Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Settlement Class Members.

13. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreements.

14. In the event that a Settlement does not become effective in accordance with the respective Agreement, then this Order and Judgment shall be rendered null and void as to that particular Settlement, and only that particular Settlement, to the extent provided by and in accordance with the respective Agreement, and shall be vacated and, in such event, all orders entered and released delivered in connection herewith shall be null and void to the extent provided by and in accordance with the respective Agreement.

15. The Court, finding that no reason exists for delay, hereby directs the Clerk to enter this Order and Judgment forthwith.

Dated: \_\_\_\_\_, 2011

IT IS SO ORDERED

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Hon. Michael R. Hogan  
United States District Judge

SUBMITTED BY:

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