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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL A. GRASSMUECK, Receiver

Plaintiff,

v.

GROVE, MUELLER & SWANK, P.C., an
Oregon Professional Corporation,

Defendant.

Case No. Cv 09-650-ST

COMPLAINT

(Accounting Malpractice/Aiding and
Abetting Breach of Fiduciary Duty)

Jury Trial Demanded

NATURE OF ACTION

1. This is an action for professional negligence and aiding and abetting breaches of fiduciary duty. Plaintiff Michael A. Grassmueck is the Court-appointed Receiver for 39 senior assisted-living facilities. Defendant Grove, Mueller & Swank, P.C. is a public accounting firm that reported on the financial statements for those entities. Plaintiff alleges that defendant violated applicable standards of care in auditing and reporting on the financial statements, and aided and abetted breaches of fiduciary duty by the principals of the entities. Plaintiff seeks damages in excess of \$20 million. This Court has ancillary and supplemental jurisdiction over plaintiff's Complaint.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1367, in that this case arises out of and is related to the matters at issue in *SEC v. Sunwest Management, Inc., et al.*, Case No. 09-CV-6056-HO, which is now pending in this Court.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391, as defendant is a resident of this District and a substantial part of the events and omissions that give rise to this action occurred here.

PARTIES

4. Pursuant to Orders entered by this Court on March 10, 2009, and May 27, 2009, in *SEC v. Sunwest Management, Inc., et al.*, Case No. 09-CV-6056-HO, plaintiff Michael A. Grassmueck was appointed and is acting as the Receiver for Sunwest Management, Inc. and a number of its affiliates, including the entities listed on Exhibit A. Each of these entities is a senior care or assisted living facility managed by Sunwest. They are collectively referred to in this Complaint as the "ALFs."

5. Defendant Grove, Mueller & Swank P.C. (“Grove Mueller”) is an Oregon professional corporation with its principal place of business in Salem, Oregon. Grove Mueller is licensed as a public accounting firm by the State of Oregon . Among other things, Grove Mueller provides accounting services and prepares and issues reports on financial statements for its clients.

FACTS

6. Each of the ALFs engaged and retained Grove Mueller to provide accounting services and reports to and on its behalf. In particular, Grove Mueller prepared and issued audited financial statement reports for each of the ALFs for the years 2004, 2005, 2006, and 2007.

7. The ALFs provided Grove Mueller with accurate and complete financial information in connection with their operations and relied on Grove Mueller to properly report upon audited financial statements prepared in accordance with Generally Accepted Accounting Principles (“GAAPs”)

8. Each of the ALFs relied on Grove Mueller to issue a report expressing Grove Mueller’s independent opinion as certified public accountants as to whether the financial statements fairly presented the financial condition and result of operations of the ALFs and whether the financial statements were free from material misstatements.

9. In each instance in which Grove Mueller prepared and issued a financial statement audit report, Grove Mueller concluded that, based on its audit procedures, the financial statements of the ALF were free of material misstatements and presented in accordance with GAAP.

10. Under the applicable standards of care, Grove Mueller was required to review, analyze, and perform audit procedures on information regarding the third-party borrowings of each of the ALFs.

11. Grove Mueller was also required to review any and all loan documentation, and in particular was required to review any loan covenants set out in the loan documentation for the specific ALF.

12. Under the applicable standard of care, Grove Mueller was required to ascertain the collectability of related-party receivables shown on the financial statements of each of the ALFs.

13. Some or all of the ALFs were in default of express loan covenants as a result of having incurred additional debt through related-party borrowings. None of the financial statements or opinions and reports prepared and issued by Grove Muller disclosed this fact with regard to any of the ALFs.

14. A number of the ALFs – which were performing well financially in that they were generating positive annual cash flow – transferred a significant portion of their income and cash flow to other entities that were not performing as well or were cash-flow negative. None of the financial statements or reports and opinions prepared and issued by Grove Mueller disclosed these facts.

15. The financial statements of a number of the ALFs showed significant accounts receivable from related-party entities. This was a result of a significant amount of cash being transferred from the more successful Sunwest-managed entities to the entities that, on information and belief, did not have the ability to repay and to those that were prohibited from borrowing. The actual value of the related-party receivables was significantly less than the amounts reported on the financial statements of certain ALFs. Nevertheless, the financial

statements and reports and opinions prepared and issued by Grove Mueller did not contain any information regarding the impairment of related party receivables.

16. In a number of instances, the entity receiving the transfer of cash (the borrowing company) was in violation of its third-party loan covenants. None of the financial statements or reports and opinions prepared and issued by Grove Mueller disclosed this fact, or accounted for the impairment of receivables on the financial statements of the company that had transferred cash.

17. According to the standard of care applicable to accountants and auditors, Grove Mueller should have insisted that these loan covenant violations be disclosed in the financial statements, or its own reports and opinions should have been modified to indicate as much. As a result of Grove Mueller's actions and omissions, the financial statements contained material misrepresentations of facts with respect to whether certain related-party receivables were impaired or uncollectable.

18. Under the applicable standard of care, Grove Mueller should have conferred with management in connection with the irregularities, errors, and omissions described above, insisted that the ALFs disclose this information in their financial statements, and ascertained the level of management involved in the transactions and reported its findings to a level above those persons – which in many instances would have included reporting directly to the owners of the ALFs.

19. Had Grove Mueller acted in accordance with the standard of care applicable to accountants and auditors, the ALFs would have taken appropriate action to reduce or eliminate any damages and would have avoided additional damages.

20. Grove Mueller's failure to act in accordance with the applicable standards of care caused economic damages to the ALFs in amount that plaintiff is informed and believes, and on that basis alleges, exceeds \$20 million.

FIRST CLAIM FOR RELIEF**(Accounting Malpractice)**

21. Plaintiff realleges paragraphs 1 through 20.

22. As set forth above, Grove Mueller failed to act in accordance with the standard of care applicable to accountants and auditors and was negligent in its conduct.

23. As a result of Grove Mueller's negligence, the ALFs sustained damages in an amount to be proven at trial, but no less than \$20 million.

SECOND CLAIM FOR RELIEF**(Aiding and Abetting Fiduciary Duty)**

24. Plaintiff realleges paragraphs 1 through 23.

25. The persons or entities controlling the activities of the ALFs had a fiduciary duty to act in the best interest of each of the entities separately considered. Further, the fiduciary duty of full disclosure was owed by the persons and entities controlling the ALFs.

26. Grove Mueller had actual knowledge of one or more breaches of fiduciary duties by the persons or entities controlling the ALFs, and Grove Mueller provided substantial assistance to those persons or entities with respect to their breaches of duty.

27. In the alternative, Grove Mueller owed a separate duty to each of the ALFs, which separate duty was breached in the particulars set forth above, and the breach of this duty provided substantial assistance to the persons or entities controlling the ALFs in connection with their breaches of fiduciary duty to the ALFs.

28. As a result of the foregoing, Grove Mueller is jointly and severally liable with the persons or entities breaching fiduciary duties owed to the ALFs in an amount to be proven at trial, but no less than \$20 million.

WHEREFORE, plaintiffs pray for judgment as follows.

1. For damages in an amount to be proved at trial, but no less than \$20 million
2. For plaintiff's costs incurred in this action; and
3. For such further legal or equitable relief as the Court deems just and proper.
4. Plaintiff demands trial by jury.

DATED this 11th day of June, 2009.

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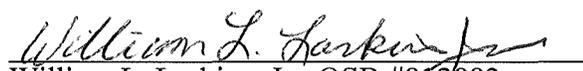

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Exhibit A

St. George Senior Living, LLC
Hendersonville Senior Living, LLC
Crystal Terrace Retirement Community, LLC
Champlin, LLC
W-E Specialized Care, LLC
Greensboro Oakdale Property, LLC
St. Peters Senior Living Property, LLC
Mt. Pleasant Oakdale II Property, LLC
Legacy Georgia Senior Living Property, LLC
Charlotte Oakdale Senior Living Property, LLC
Riverside at Belfair Assisted Living, LLC
Osprey Court Senior Living, LLC
Sanddollar Village Assisted Living, LLC
Lawrenceville Senior Living, LLC
Bedford Gardens, LP
Mt. Pleasant Oakdale I Property, LLC
Legacy Gardens Assisted Living, LLC
Fox River Assisted Living and Memory Care, LLC
Minot Senior Living, LLC
Buford Retirement Cottages, LLC
Harlingen Senior Living, LP
Sweetwater Springs Assisted Living & Memory Care, LLC
Woodstock Oaks Senior Living Property, LLC
Stone Mountain Senior Living, LLC
Eagle Meadows Assisted Living Community, LLC
Charlotte Oakdale Senior Living, LLC
Court at Greece, LLC
Village at Greece, LLC
Buford Brookside Senior Living Property, LLC
Memphis Senior Living, LLC
Pinehurst Oakdale Senior Living, LLC
Sanddollar Court Memory Care, LLC
Marietta Senior Living, LLC
Hartwell Senior Living, LLC
St. Peters Senior Living, LLC
Mt. Pleasant Oakdale II ALZ, LLC
Buford Senior Living, LLC
Mt. Pleasant Oakdale H ALF, LLC
Stayton SW Assisted Living, LLC