

UNITED STATES DISTRICT COURT — NORTHERN DISTRICT OF CALIFORNIA

Tuttle v. Sky Bell Asset Management, LLC et al., Case No. 10-cv-3588 WHA**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,
AND FAIRNESS HEARING**

*A federal court has required this notice to you. Please read it carefully.
This is not a solicitation from a lawyer.*

PLEASE TAKE NOTICE THAT if you hold or have previously held a limited partnership interest in Agile Sky Alliance Fund, LP; Night Watch Partners, LP; and/or PipeLine Investors, LP your rights will be affected by a pending class action lawsuit.

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1. YOUR LEGAL RIGHTS AND OPTIONS PURSUANT TO THIS NOTICE.

- Do Nothing:** If you do nothing, you will be bound by the result of the class action litigation which is described in Section 3 below. You will receive a check in the approximate amount appended hereto if the overall settlement is finally approved at the hearing described below. In this event, you will forever relinquish your claims against the auditing and accounting firm Rothstein Kass & Company, PC, relating to the above partnerships.
- Exclude Yourself:** If you do not want to be a part of this class action litigation or be bound by the Court's final judgment, you must follow the directions in Section 6 below and send a request to exclude yourself from the class to the Court, postmarked on or before **12:01 A.M. ON JULY 14, 2012.**
- Object:** If you wish to stay in the class but object to any part of the proposed settlement described herein, you must follow the directions in Section 7 below and send your objection to the Court, postmarked on or before **12:01 A.M. ON JULY 14, 2012.**

These legal rights and options — **and the deadlines to exercise them** — are explained in this notice. Your legal rights are affected whether you act or do not act. Read this notice carefully.

2. PURPOSE OF THIS NOTICE.

The purpose of this notice is to make you aware that the Court has certified three classes of limited partners in Agile Sky Alliance Fund, LP, Night Watch Partners, LP, and PipeLine Investors, LP, to bring claims for negligence, aiding and abetting breaches of fiduciary duty, an accounting, and unjust enrichment against defendant Rothstein Kass & Company, PC. You are also put on notice that following class certification, plaintiffs and defendant Rothstein Kass reached a proposed settlement agreement to settle these class claims.

Control of any and all claims that class members individually and collectively have against Rothstein Kass have been transferred to the class representatives and their counsel, except for class members who opt out by the deadline. This means that if you elect to remain in the class and the settlement is approved, you will be bound by the settlement and cannot sue Rothstein Kass again as to the claims alleged relating to the above partnerships. Therefore, you should think carefully whether you wish control of your claim(s) against Rothstein Kass to be controlled by the respective class representatives and

class counsel, as opposed to controlling the claim(s) yourself. If you stay in the class (by failing to opt out timely) then you will be limited to receiving a check in the approximate amount appended to this notice.

3. BACKGROUND.

In July 2010, certain holders of limited partnership interests in the Sky Bell Partnerships filed a class action lawsuit in the San Francisco Superior Court on behalf of all investors in, among other partnerships, Agile Sky, Night Watch, and PipeLine. The case was removed to federal court by the defendants. The Honorable William Alsup is presiding over this action in San Francisco federal court.

The judge has entered numerous orders such that at this time Rothstein Kass, an independent public accounting firm, is the only defendant in the case as to whom classes have been certified. Plaintiffs generally allege that Rothstein Kass is liable to class members based on negligently conducted audits of Agile Sky's, Night Watch's, and PipeLine's financial statements, and are seeking damages and an accounting from Rothstein Kass. The claims against Rothstein Kass are for negligence, aiding and abetting breaches of fiduciary duty, unjust enrichment, and for an accounting. Rothstein Kass denies all liability to class members and has asserted defenses, including that its audits complied with all applicable professional standards.

Named plaintiffs Edgar W. Tuttle, Eric Braun, and The Braun Family Trust by its co-trustee Eric Braun, have been certified as class representatives. Plaintiff Tuttle holds an interest in Night Watch, and plaintiffs Eric Braun and the Braun Family Trust hold interests in PipeLine and Agile Sky. Plaintiff Tuttle is the class representative for the Night Watch class. Plaintiff Braun is the class representative for the PipeLine class. Plaintiff Braun, as co-trustee of the Braun Family Trust, is the class representative for the Agile Sky class.

Plaintiffs and Rothstein Kass have engaged in discovery, including production and review of documents, two depositions of auditors, and consultation with expert witnesses. Plaintiffs and Rothstein Kass submitted their dispute to a private mediator. The mediator issued a proposal for settlement of this class action. The parties have accepted the mediator's proposal for settlement, but it is up to the Court, after hearing your views, to determine whether to approve the proposed settlement and to make it binding on you.

4. PROPOSED SETTLEMENT.

The Court has issued an order allowing this notice to be sent to you. The Court has not approved the settlement in any way.

The approximate total amount invested in the three partnerships at issue was \$150 million. Of the \$150 million that was invested, the partnerships have represented that their records reflect the following net loss in value: Agile Sky: \$54,004,412; Night Watch: \$31,518,182; and PipeLine: \$7,619,173. Plaintiffs' damages expert has opined that the maximum recoverable damages for class members from Rothstein Kass if they prevailed on all of their claims after trial and appeal is \$19.7 million. *The amount of the proposed settlement is \$1.4 million* in total for all three classes. The estimated average recovery for each class member before fees and costs are deducted will be as follows: Agile Sky: \$15,690; Night Watch: \$6,528; and PipeLine: \$1,280. After deduction for fees and costs, the estimated average recovery for each class member will be as follows: Agile Sky: \$10,642; Night Watch: \$4,427; and PipeLine: \$895.

Class counsel will seek attorney's fees and expenses of at least \$450,474 from the settlement fund. This will reduce your recovery in the settlement. It is up to the Court to decide how much to award but all such amounts will come out of the class settlement and reduce your recovery.

Class counsel has indicated that the classes have the following number of class members: PipeLine: 35; Night Watch: 80; and Agile Sky: 53.

Class counsel have proposed that the settlement fund, after deduction of any court-awarded

attorney's fees and expenses, be allocated among class members based on their percentage interest in Agile Sky, Night Watch, and PipeLine as measured by invested net capital divided by the total capital contributed to the foregoing partnerships by all participating class members. Appended hereto is a statement of what counsel and their expert believe is your investment percentage in each of the three partnerships and what your estimated recovery would be based on a class net recovery of one million dollars (that is, after deduction for fees and expenses; please note that the amount of awardable fees and costs have not yet been determined).

As stated below, a fairness hearing will be held at **3:00 P.M. ON AUGUST 9, 2012**. The point of the hearing will be to determine whether the settlement should be allowed, in which case, if you remain in the class, all of your potential claims against Rothstein Kass related to these investments would be eliminated forever in favor of your share of the class settlement. You have the right to be heard on whether this settlement should be rejected and the case prosecuted further. It is the view of class counsel that the settlement is adequate and reasonable in view of the risks of litigation. If the case were prosecuted further, there is no guarantee of any recovery at all, and if there were a larger recovery after trial, then class counsel would seek fees and expenses from that as well. The Court has made no determination whether this case has merit and has not blessed this settlement in any way.

If the settlement is approved after the hearing, then all of your rights to sue Rothstein Kass in connection with these investments will be released forever, if you remain part of the class.

If more than a specified percentage of class interests opt out of the settlement, the defendant has the right to cancel the settlement.

5. THE CLASSES.

The Court has certified the following three classes to pursue claims for an accounting, unjust enrichment, aiding and abetting breaches of fiduciary duty, and negligence against Rothstein Kass & Company, PC:

1. All persons or entities that held a limited partnership interest in Night Watch Partners, LP, during the time period Rothstein Kass & Company, PC, provided accounting services or conducted audits of Night Watch Partners, LP's financial statements, including anyone who has acquired claims against Rothstein Kass & Company, PC, arising out of such accounting and auditing services during said period.
2. All persons or entities that held a limited partnership interest in PipeLine Investors, LP, during the time period Rothstein Kass & Company, PC, provided accounting services or conducted audits of PipeLine Investors, LP's financial statements, including anyone who has acquired claims against Rothstein Kass & Company, PC, arising out of such accounting and auditing services during said period.
3. All persons or entities that held a limited partnership interest in Agile Sky Alliance Fund, LP, during the time period Rothstein Kass & Company, PC, provided accounting services or conducted audits of Agile Sky Alliance Fund, LP's financial statements, including anyone who has acquired claims against Rothstein Kass & Company, PC, arising out of such accounting and auditing services during said period.

Excluded from the classes are defendants, the officers, directors, and agents of the defendants, as well as members of their families, heirs, successors or assigns, and any entity in which defendants have or had a controlling interest, and any class members who timely opt out.

6. HOW TO EXCLUDE YOURSELF FROM THIS LITIGATION.

Class members will be bound by the settlement, if approved, and all rulings and judgments unless they affirmatively exclude themselves from the class by filling out and sending the form appended hereto, to the Court and requesting exclusion. If you elect to exclude yourself from the class, you will not be bound by any rulings in this case, you will not be paid anything if the settlement is approved, and you will retain any individual claims you may have against Rothstein Kass. You may pursue any such claims at your own expense.

If you want to exclude yourself, fill out the request to opt out form appended hereto with your name, address, phone number, list the partnership(s) you invested in and approximate date of investment(s), sign and date the form, and send it the Court at the following address:

Honorable William Alsup
U.S. District Court for the Northern District of California
In re Rothstein Kass Litigation, 10-3588 WHA
Attn: Dawn Toland, Courtroom Deputy Clerk
450 Golden Gate Avenue
San Francisco, CA 94102

A request to exclude yourself will not be deemed timely and you will not be excluded from the class unless it is postmarked on or before **12:01 A.M. ON JULY 14, 2012.**

7. OBJECTING TO THE SETTLEMENT.

If you remain a class member, you can object to the settlement if you do not like any part of it. You can tell the Court that you do not agree with the settlement or some part of it, or/and that you object to the plan for allocating the settlement fund, or/and that you object to the award of attorney's fees and expenses. You can give reasons why you think the Court should not approve it, and the Court will consider your views. You can also challenge the determination of your percentage interest, as listed in the chart appended hereto.

To object, you must fill out and send the form appended hereto, to the Court and state your reasons for objecting. State your name, address, phone number, list the partnership(s) you invested in and approximate date of investment(s), and sign and date the form. Send your objection to Court at the address above. To be considered timely, the objection must be postmarked on or before **12:01 A.M. ON JULY 14, 2012.**

8. ATTORNEY'S FEES.

Class counsel are Gold Bennett Cera & Sidener LLP of San Francisco and Cohen Milstein Sellers and Toll, PLLC of Washington, DC. They have indicated they will request an award in the amount of \$450,474 for attorney's fees and expenses. The Court will award attorney's fees and expenses in an amount based on a number of factors. The exact amount of fees and expenses requested by class counsel will be set forth in their motion for attorney's fees and costs to be filed with the Court on or before **NOON ON JUNE 27, 2012.** The motion will be available for review online and at the Office of the Clerk of Court for the Northern District of California.

9. FAIRNESS HEARING.

The Court will hold a hearing to decide whether to approve the settlement and how much to award counsel from the settlement for fees and costs. You may attend and you may ask to speak, but you are not required to do so. You may appear in person or by an attorney of your choosing.

The hearing will be a fairness hearing at **3:00 P.M. ON AUGUST 9, 2012** at the United States District Court, Courtroom 8, 19th Floor, 450 Golden Gate Avenue, San Francisco, California 94102. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are

objections, the Court will consider them. The Court will listen to class members who wish to speak at the hearing. At or after the hearing, the Court will make its decision as to whether to approve the settlement and how much to award counsel from the settlement for fees and costs.

You do not have to attend the fairness hearing. But you are welcome to come at your own expense. If you send an objection, you do not have to come to court to talk about it, but you are, of course, welcome to do so. As long as you mailed your written objection on time, the Court will consider it. You may attend (with or without a lawyer), but it is not required.

10. ADDITIONAL INFORMATION.

You have the right to inspect the complete settlement documents, papers, and pleadings filed in this litigation. You may obtain these documents from the Office of the Clerk of Court for the Northern District of California.

11. WHAT HAPPENS IF YOU DO NOTHING AT ALL.

If you do nothing and the Court approves the settlement, you will be bound by the terms of the settlement. A payment based on the formula set forth herein will be mailed to you to the same address as this notice and you will be unable to sue Rothstein Kass again as to the claims alleged.

12. COUNSEL FOR PLAINTIFFS ARE:

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DATE: _____, 2012.