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Attorney for G. Grant Lyon, Interim Chapter 11 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

**In re:**

**ARA MACAO HOLDING, L.P.,**

**Debtor.**

**(Chapter 11 Case)**

**No. 3:18-bk-03615-PS**

**INTERIM CHAPTER 11 TRUSTEE'S  
SECOND OMNIBUS OBJECTION TO  
CLAIMS<sup>1</sup>**

**Time: TBD**

**Date: TBD**

**Location: 230 N. First Avenue  
Phoenix, AZ 85016  
Courtroom No. 601**

G. Grant Lyon, Interim Chapter 11 Trustee (“**Trustee**”) by and through his undersigned counsel herein respectfully submits his *Second Omnibus Objection to Claims* (“**Objection**”). The claimants’ claims set forth on **Exhibit A**, which is attached hereto and incorporated herein by this reference, arise from the purchase or sale of a security (collectively “**Claimants**”). Therefore, the Claimants’ claims must be subordinated pursuant to 11 U.S.C. § 510(b) and Fed.R.Bankr.P. 3007. For his Objection, Trustee respectfully submits the following Memorandum of Points and Authorities and the entire record of this administrative case.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. FACTUAL BACKGROUND.**

1. This case was initiated as an involuntary proceeding filed on April 6, 2018 (the “**Petition Date**”) by KB Partners I, L.P., Christopher de Sibert, Daniel Dorgan, Gary Nitsche, Richard Umbach and

<sup>1</sup> Pursuant to Local Rule 3007-1, an Omnibus Objection must include the name of the Claimant and Claim Number in the caption; however, this Objection includes the Claimants, which are identified on **Exhibit A** attached hereto and incorporated herein by this reference.

1 Edgewater Resources, LLC (“**Petitioning Creditors**”) under chapter 11 of Title 11 of the United States  
2 Code.

3 2. Ara Macao Holding, L.P. (“**Debtor**”) filed a *Motion to Convert Proceeding to Voluntary*  
4 *Action Under Chapter 11*, which the Court granted on May 8, 2018 [Dkt. No. 68].

5 3. On June 21, 2018, the Court granted an Order Approving the *Appointment of Trustee (G.*  
6 *Grant Lyon)* [Dkt. No. 112] as the Chapter 11 Trustee.

7 4. Upon information and belief, on or about April 30, 2004, the “initial” Limited Partnership  
8 Agreement (“**Agreement**”) of the Debtor was executed. Upon further information and belief, the  
9 Agreement was amended on or about March 5, 2007 and sometime in February 2014.

10 5. Initially, a party could acquire an equity interest in the Debtor by the following manner:  
11 acquire a “Partnership Unit” (each unit was \$100,000 and treated as a capital contribution to the Debtor)  
12 or remit a deposit for the purchase of a condo (these ranged from \$150,000, \$75,000 or 25% of the total  
13 condo purchase price).

14 6. The Schedules indicate the Claimants’ claims arise from a “deposit on real estate” and  
15 upon information and belief the Claimants were/are Limited Partners. *Compare* Exhibit “A”, Dkt. Nos.  
16 92 and 95.

17 7. Upon information and belief, the February 2014 amendment to the Agreement permitted  
18 Limited Partners to “exchange” their investment units as credit for down payment on a condo unit.

19 8. Upon information and belief, the scheduled amount of each of the Claimants’ claims  
20 directly relates to the percentage of Limited Partnership ownership. Therefore, the claims are *not* related  
21 to a “real property deposit”, to the contrary, the claims directly arise from the equity ownership interest.

22 **B. LEGAL AUTHORITY.**

23 **1. Jurisdiction and Venue.**

24 This Court has jurisdiction over Debtor’s Chapter 11 case under 28 U.S.C. § 1334. Proceedings  
25 with respect to the Objection are core proceedings that the Court may hear and decide. *See* 28 U.S.C. §  
26 157(b)(1) and (b)(2)(B). Moreover, venue is appropriate pursuant to 28 U.S.C. § 1408(1).

1                                   **2.       Omnibus Objection to Claims.**

2                   The objections to the Claimants’ claims are based on the similarity in the source for the claim and  
3                   nexus between the amount of the purported Claim and equity ownership of the Debtor.

4                   [O]bjections to more than one claim may be joined in an omnibus objection if all the  
5                   claims were filed by the same entity, or the objections are based solely on the grounds  
6                   that the claims should be disallowed, in whole or in part, because:

7                   ...  
8                   (7) they are interests, rather than claims....

9                   See Fed.R.Bankr.P. 3007(d). Therefore, this omnibus objection is proper based on all the Claimants’  
10                  claims arising from their equity interest in the Debtor.

11                                   **3.       Subordination of Claims Related to Equity Interest.**

12                  Upon information and belief, all of the Claimants detailed on Exhibit “A” acquired Partnership  
13                  Units to become a limited partner of the Debtor. The Partnership Units acquired are “security” as  
14                  defined in 11 U.S.C. § 101(49)(xiii).

15                  For the purpose of distribution under this title, a claim arising from rescission of a  
16                  purchase or **sale of a security of the debtor** or of an affiliate of the debtor, for damages  
17                  arising **from the purchase or sale of such a security, or for reimbursement or**  
18                  **contribution allowed** under section 502 on account of such a claim, shall be  
19                  subordinated to all claims or interests that are senior to or equal the claim or interest  
20                  represented by such security, except that if such security is common stock, such claim  
21                  has the same priority as common stock (bold emphasized).

22                  See, 11 U.S.C. § 510(b). Section 510(b) automatically subordinates the claims arising from rescission  
23                  of a purchase or sale of a security of the debtor.

24                  Upon information and belief, the entire amount of the Claims detailed on Exhibit “A” arose from  
25                  the purchase of a Partnership Unit. Therefore, Section 510(b) mandates that these Claimant’s Claim(s)  
26                  are subordinated in their entirety. “The critical question for purposes of § 510(b), ... is not whether the  
27                  claim is debt or equity *at the time of the petition*, but rather whether the claim *arises from* the purchase or  
28                  sale of a security. The claim must be subordinated if there is a sufficient ‘nexus or causal relationship  
                  between the claim and the purchase’”. See, *In re Tristar Esperanza Properties, LLC*, 782 F.3d 492, 497  
                  (9th Cir. 2015) (*Citation omitted*). To the extent any of the Claims were converted (or “exchanged”) for  
                  credit toward the purchase of a condo, there is a nexus between the claim and the purchase of the  
                  Partnership Unit.

1 Therefore, sufficient cause exists to subordinate each of the above Claimants' claims based on the  
2 relationship (or purchase) of the Partnership Units giving rise to the basis for the alleged claims.

3 **WHEREFORE**, Chapter 11 Trustee respectfully requests that the Court enter an Order as  
4 follows:

5 A. Subordinating each of the Claim(s) detailed on Exhibit "A" to all creditors or  
6 interests as set forth in 11 U.S.C. § 510(b); and,

7 B. For such other and further relief as this Court deems just and proper.

8 **RESPECTFULLY SUBMITTED** this 27th day of July, 2018.

9 **LANE & NACH, P.C.**

10 By: /s/ Adam B. Nach - 013622  
11 Adam B. Nach  
12 *Attorney for Chapter 11 Trustee*

**EXHIBIT A**  
List of Claimants pursuant to Local Rule 3007-1

POC / Schedule No.	Claimant	Claim Amount
3.6	Carlton Harms	\$ 64,771.00
3.9	Donald Duncan	\$ 246,229.00
3.11	Edward Pike	\$ 235,604.00
3.12	Eugene Ingles	\$ 262,875.00
3.22	Hamza Sundos	\$ 221,500.00
3.27	Jerome Adler	\$ 236,042.00
3.29	John & Mary Steiger	\$ 235,792.00
3.31	John Mills	\$ 235,271.00
3.33	Joseph Camaioni	\$ 218,219.00
3.35	Joshua Kirley	\$ 228,271.00
3.41	Keith Wexler	\$ 123,542.00
3.42	Kenneth Rumph	\$ 249,875.00
3.49	Marsha Pruitt	\$ 432,840.00
3.53	Michael Romito	\$ 236,042.00
3.54	Mike Hayek	\$ 235,500.00
3.55	Paul Landauer	\$ 197,841.00
3.56	Paul Landesman	\$ 193,795.00
3.62	Richard Desalvo	\$ 60,139.00
3.68	Robert & Debra Tronrud	\$ 213,597.00
3.73	Scott Lamers	\$ 131,025.00
3.74	Scott, Todd & Eric Shamion	\$ 230,292.00

**CERTIFICATE OF MAILING**

**COPY** delivered via first class mail as follows:

Carlton Harms  
23651 W Milton Rd  
Wauconda, IL 60084

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Pike Family Trust  
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Marsha Pruitt  
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2 notification to:

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11 By /s/ Terie Flowers Turner