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8 *Attorney for G. Grant Lyon, Interim Chapter 11 Trustee*

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

11 In re:

(Chapter 11 Case)

12 ARA MACAO HOLDING, L.P.,

No. 3:18-bk-03615-PS

13 Debtor.

14 **INTERIM CHAPTER 11 TRUSTEE'S THIRD**
15 **OMNIBUS OBJECTION TO CLAIMS**

16 **Related Claims:**

- 17 1) **Edgewater Resources, LLC [Claim No. 5]**
- 18 2) **ioVest Development, LLC**

19 **Time: TBD**

20 **Date: TBD**

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

24 G. Grant Lyon, Interim Chapter 11 Trustee ("**Trustee**") by and through his undersigned counsel
25 herein respectfully submits his *Third Omnibus Objection to Claims* ("**Objection**"). The following
26 Claimant's claims are "insiders" of Ara Macao Holding, L.P. ("**Debtor**") and should not be allowed to
27 vote. For his Objection, Trustee respectfully submits the following Memorandum of Points and
28 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 Edgewater Resources, LLC ("**Petitioning Creditors**") under chapter 11 of Title 11 of the United States Code.

1 2. The Debtor filed a *Motion to Convert Proceeding to Voluntary Action Under Chapter 11*,
2 which the Court granted on May 8, 2018 [Dkt. No. 68].

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

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

8 5. Upon information and belief, ioVest Development, LLC (“**ID**”) was the general partner of
9 the Debtor from the date of the initial Agreement through and including the amendment on or about
10 February 2014.

11 6. Ara Macao Management Company, LLC (“**AMA**”) was selected as the sole General
12 Partner of the Debtor in the February 2014 amendment to the Agreement. AMA is a Michigan limited
13 liability company. Upon information and belief, presently, ID holds ninety-five (95%) percent
14 membership interest of AMA, and, Edgewater Resources, LLC (“**ER**”) holds the remaining five (5%)
15 percent membership interest. Upon further information and belief, ID is the manager of AMA.

16 7. ID is listed in the Debtor’s Schedules as creditor that is owed \$4,200,000.00 based on
17 deferred compensation and fees. *See* Dkt. No. 95 at P. 4 of 13. Upon information and belief, the
18 Agreement (and amendments thereto) provide that the General Partner of the Debtor was entitled to
19 compensation for certain responsibilities to the Debtor.

20 8. ER is *not* listed in the Debtor’s Schedules as a creditor; however, ER filed a Proof of
21 Claim [Claim No. 5] asserting that it is owed \$321,605.49 for “services performed”.

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).

27 **2. Omnibus Objection to Claims.**

1 The objections to the above referenced claims are joined together based on the similarity of the
2 Claimants as “insiders”.

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

6 ...
7 (7) they are interests, rather than claims....

8 See Fed.R.Bankr.P. 3007(d). Therefore, this Omnibus Objection is proper because the Claimants are
9 Insiders of the Debtor.

10 **3. “Insider” Claimants are not Entitled to Vote.**

11 To the extent that the Court determines that the requested trustee election may be conducted, or,
12 the Office of United States Trustee holds the disputed election, those Claimants that are eligible to vote
13 are delineated in 11 U.S.C. § 1104(b)(1) incorporating 11 U.S.C. § 702(a)(1). The above named
14 Claimants are “insiders” as defined by 11 U.S.C. § 101(31). Pursuant to 11 U.S.C. § 702(a)(3),
15 “insiders” are not eligible to vote in the requested election of a Trustee.

16 The Trustee does not take a position, at this time, as to the validity of the amount or basis of
17 either ID’s or ER’s Claim(s); however, sufficient cause exists to exclude these Claimants for purposes of
18 voting in the requested election.

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

- 20 A. Affirming that both ioVest Development, LLC and Edgewater Resources, LLC are
21 “insiders” as defined by 11 U.S.C. § 101(31);
22 B. Affirming that ioVest Development, LLC may *not* vote in any requested or
23 conducted election of a trustee pursuant to 11 U.S.C. §§ 1104(b)(1)
24 C. Affirming that Edgewater Resources, LLC may *not* vote in any requested or
25 conducted election of a trustee pursuant to 11 U.S.C. §§ 1104(b)(1); and,
26 D. For such other and further relief as this Court deems just and proper.

27 RESPECTFULLY SUBMITTED this 1st day of August, 2018.

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

By: /s/ Adam B. Nach - 013622

Adam B. Nach

Attorney for Chapter 11 Trustee

CERTIFICATE OF MAILING

A COPY delivered via first class mail as follows:

ioVest Development, LLC
191 Lynx Dr.
Sedona, AZ 86336

Edgewater Resources, LLC
c/o Ronald E. Schults, P.E.
518 Broad Street, Ste. 200
St Joseph, MI 49085

WITH A COPY delivered via electronic notification to:

Alan A. Meda
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By: /s/ Debbie McKernan