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10 for Namco Capital Group, Inc.

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13 **UNITED STATES BANKRUPTCY COURT**
14
15 **CENTRAL DISTRICT OF CALIFORNIA**
16
17 **LOS ANGELES DIVISION**

18 In re:

19 NAMCO CAPITAL GROUP, INC., a California
20 corporation,

21 Debtor.

Case Number.: 2:08-bk-32333-BR

Chapter 11

**OPPOSITION OF CHAPTER 11 TRUSTEE
OF NAMCO CAPITAL GROUP, INC. TO
EX PARTE MOTION OF THEODORE
KOHAN, ARIZONA TEMPE TOWN LAKE,
LLC AND BUSINESS TO BUSINESS
MARKETS, INC. FOR CONTINUANCE OF
HEARING ON TRUSTEE'S MOTION FOR
AN ORDER: (1) APPROVING
SETTLEMENT AGREEMENT WITH
ROYA BOUCHERIAN; (2) AUTHORIZING
TRANSFER OF INTERESTS IN
PROMISSORY NOTES AND DEEDS OF
TRUST FREE AND CLEAR OR ALL
LIENS, CLAIMS, ENCUMBRANCES AND
INTERESTS PURSUANT TO
BANKRUPTCY CODE § 363; AND (3)
APPROVING AND AUTHORIZING
COMPROMISE OF CONTROVERSY**

Hearing:

Date: November 24, 2009

Time: 10:00 a.m.

Judge: Courtroom 1668
255 East Temple Street
Los Angeles, CA 90012

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Jeffery Mangels
Butler & Marmaro LLP
JMBM

1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,**
2 **AND INTERESTED PARTIES:**

3 Bradley D. Sharp, the duly qualified and acting chapter 11 trustee (the "Namco Trustee") for
4 the bankruptcy estate of Namco Capital Group, Inc. (the "Debtor" or "Namco"), hereby files his
5 opposition to the *Ex Parte Motion* ("Ex Parte Motion") of *Theodore Kohan, Arizona Tempe Town*
6 *Lakes, LLC and Business to Business Markets, Inc. (the "Kohan Parties") for Continuance of*
7 *Hearing on Motion of Bradley D. Sharp, Chapter 11 Trustee for the Estate of Namco Capital*
8 *Group, Inc. for an Order: (1) Approving that certain Agreement Regarding Conveyance of*
9 *Collaterally Assigned Notes and Collaterally Assigned Deeds of Trust, Purchase and Sale of Real*
10 *Property, Funding of New Loan, Modification and Affirmation of Existing Loans, Granting of*
11 *Option to Purchase Real Property, and Settlement and Release of Certain Claims (the "Boucherian*
12 *Agreement"); (2) Authorizing Transfer of Interests in Promissory Notes and Deeds of Trust Free*
13 *and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to § 363 of the Bankruptcy*
14 *Code; and (3) Approving and Authorizing a Compromise of Controversies with Roya Boucherian*
15 *("Boucherian" or "Lender") (the "Motion").*¹ For the reasons set forth herein and in the Motion
16 itself, the Ex Parte Motion should be denied and the Trustee's Motion should be approved in its
17 entirety at this time.

18 1. In point of fact, the Ex Parte Motion is nothing more than a "Sur-Reply" to the
19 replies filed by the Trustee and Boucherian. The Kohan Parties argued for a continuance in their
20 opposition to the Motion filed on November 10, 2009, which request was previously opposed and
21 responded to in the replies filed by the Trustee and Boucherian. The Kohan Parties intentionally
22 waited until after the replies were filed to file the Ex Parte Motion to get another "bite at the apple"
23 and to argue the merits of the Motion. For this reason alone, the Ex Parte Motion should be denied.

24 2. The request to continue the hearing on the Motion to April 2010 is patently absurd.
25 The Kohan Parties have not even established that they have standing to be heard on this matter, let

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27 ¹ Capitalized terms used in this Reply and not defined herein shall have the meaning
28 ascribed to such terms in the Motion or the Boucherian Agreement.

1 alone continue the hearing for five months to suit their convenience. Interest continues to accrue
2 and go unpaid concerning the underlying properties. Further delay is detrimental to the Namco
3 bankruptcy estate. If the relief requested by the Motion is approved, the Trustee can monetize the
4 underlying asset in the near term. If the Motion is not approved in the near term, the Trustee will be
5 left only with the litigation option, which may well result in a complete loss of this asset.

6 3. Kohan commenced his first litigation in April 2008. The Namwest bankruptcy cases
7 were filed in September 2008. The Namwest litigation was filed in December 2008. The Namco
8 and Namvar bankruptcy cases were commenced in December 2008. Kohan has had more than
9 enough time to conduct discovery in this matter. The hearing on the Motion should not be
10 continued to allow Kohan to delay things further.

11 4. The Ex Parte Motion provides no evidence or even argument by which the Court
12 could conclude that Kohan will be prejudiced if the Motion is granted. The simple fact is - Kohan
13 has no recognizable position concerning the underlying properties or the Collaterally Assigned
14 Notes and Deeds of Trust now - and he will continue to have the same position (whatever that might
15 be) if the Motion is granted. Approval of the Motion does not validate the claims and interests
16 asserted by Boucherian against the underlying properties and the Kohan Parties arguments to the
17 contrary are simply wrong.

18 5. The parties that have a legitimate interest in the relief requested by the Motion, NTL,
19 Namwest, the Namvar Trustee, the Namco Committee and Beshmada have not asserted objections
20 to the Motion. Namwest, the Namvar Trustee and Beshmada specifically consent to the Motion.
21 Kohan wants to delay the Motion or have the Motion denied to leverage his position in collateral
22 litigation, nothing more. For all of the foregoing reasons, the Ex Parte Motion should be denied.

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1 For the reasons set forth in the Motion, the replies filed by the Trustee and Boucherian, this
2 Opposition and the opposition to the Ex Parte Motion filed by Boucherian, and any other argument
3 or evidence that may be submitted to the Court in support of the Motion, the Trustee prays for the
4 entry of orders denying the Ex Parte Motion and approving the Motion without delay, and for such
5 other and further relief as the Court may deem just and proper.

6 Respectfully submitted,

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8 Dated: November 23, 2009

JEFFER, MANGELS, BUTLER & MARMARO LLP

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10 By: /s/ David M. Poitras
11 DAVID M. POITRAS P.C.
12 Counsel for Bradley D. Sharp,
13 Chapter 11 Trustee for Namco Capital Group, Inc.
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Jeffer Mangels
Butler & Marmaro LLP

In re: NAMCO CAPITAL GROUP, INC., a California corporation	Debtor.	CHAPTER 11 CASE NUMBER 2:08-BK-32333-BR
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NOTE: When using this form to indicate service of a proposed order, DO NOT list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067

The foregoing document described as **OPPOSITION OF CHAPTER 11 TRUSTEE OF NAMCO CAPITAL GROUP, INC. TO EX PARTE MOTION OF THEODORE KOHAN, ARIZONA TEMPE TOWN LAKE, LLC AND BUSINESS TO BUSINESS MARKETS, INC. FOR CONTINUANCE OF HEARING ON TRUSTEE'S MOTION FOR AN ORDER: (1) APPROVING SETTLEMENT AGREEMENT WITH ROYA BOUCHERIAN; (2) AUTHORIZING TRANSFER OF INTERESTS IN PROMISSORY NOTES AND DEEDS OF TRUST FREE AND CLEAR OR ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS PURSUANT TO BANKRUPTCY CODE § 363; AND (3) APPROVING AND AUTHORIZING COMPROMISE OF CONTROVERSY;** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On November 23, 2009, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):
On November 23, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

BY MESSENGER

The Honorable Barry Russell
U.S. Bankruptcy Court
Roybal Federal Building
255 East Temple St., Suite 1660
Los Angeles, CA 90012-3332

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.*

Service information continued on attached page

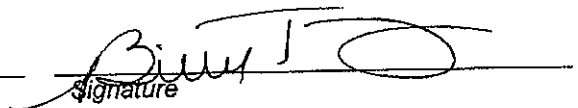
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

November 23, 2009

Billie Terry

Date

Type Name


Signature