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11 Counsel for Bradley D. Sharp, Chapter 11 Trustee
12 for Namco Capital Group, Inc.

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

16 In re:

17 NAMCO CAPITAL GROUP, INC., a
18 California corporation,

19 Debtor.

CASE NO.: 2:08-bk-32333-BR

Chapter 11

**EVIDENTIARY OBJECTIONS TO
DECLARATION OF MICHAEL C. MCKAY
IN OPPOSITION TO "MOTION OF
BRADLEY D. SHARP, CHAPTER 11
TRUSTEE OF NAMCO CAPITAL GROUP,
INC., FOR AN ORDER: (1) APPROVING
SETTLEMENT AGREEMENT WITH
ROYA BOUCHERIAN, ETC."**

Date: November 24, 2009

Time: 10:00 a.m.

Place: Courtroom 1668

255 East Temple Street
Los Angeles, CA 90012

26 Bradley D. Sharp, the duly appointed, qualified and acting chapter 11 trustee (the "Trustee")
27 of Namco Capital Group, Inc. ("Namco") hereby submits the following Evidentiary Objections to
28 the Declaration of Michael C. McKay in Opposition to "Motion Of Bradley D. Sharp, Chapter 11

1 Trustee Of Namco Capital Group, Inc., For An Order: (1) Approving Settlement Agreement With
2 Roya Boucherian, Etc.," (the "McKay Declaration"). A copy of the McKay Declaration is attached
3 hereto as Exhibit A.

4 **I. INTRODUCTION AND SUMMARY OF OBJECTIONS**

5 The McKay Declaration is fraught with unreliable, misleading, and unsupported statements,
6 and with legal opinions and conclusions that constitute improper argument instead of the proper
7 presentation of admissible evidence.

8 In addition, Mr. McKay testifies at length about matters asserted in a bankruptcy case in the
9 District of Arizona involving, among others, Theodore Kohan and debtors Namwest, LLC and
10 Namwest-Town Lakes II, LLC ("NTL II"). Mr. Kohan's claims in adversary proceedings in the
11 Namwest bankruptcy that he is entitled to equity positions in NTL II and in another entity, which
12 own two parcels of real property securing liens in favor of Namco and Roya Boucherian, are
13 entirely irrelevant to whether the settlement proposed by the Trustee should be approved by this
14 Court.

15 Namco has articulated its specific objections to the McKay Declaration in Part II below, and
16 requests that the Court sustain those specific objections and strike the purported evidence to which
17 they refer.

18 **II. SPECIFIC EVIDENTIARY OBJECTIONS TO THE MCKAY DECLARATION**

19 1. Page 2, Paragraph 3: "Kohan is currently embroiled in an adversary
20 proceeding that squarely challenges the legitimacy of the notes and deeds of trust that are the
21 subject of the Trustee's Motion: Namwest, LLC, et al. v. Namwest-Town Lakes, LLC, et al.
22 (Adversary No. 2:08-ap-00860-CGC) ('the Namwest Adversary'). Exhibit '2' to the Trustee's
23 Motion is a true and correct copy of the 'Application for Temporary Restraining Order and Motion
24 for Preliminary Injunction' that Kohan recently filed in the Namwest Adversary ('the TRO
25 Request'). A hearing on the TRO Request is scheduled for November 17, 2009. The discovery
26 cutoff date in the Namwest Adversary is February 15, 2010, and it is anticipated that the trial in the
27 Namwest Adversary will be in June or July 2010."

1 **OBJECTION: Irrelevant (FRE 401, 402); lack of foundation (FRE 602);**
2 **improper opinion/legal conclusion (FRE 701, 702, 704).**

3 2. Page 2, Paragraph 4: "Kohan has outstanding discovery requests in the
4 Namwest Adversary. I expect that the responses to this discovery will show that the notes and
5 deeds of trust at issue have been fully paid, or represent no actual exchange of consideration, and
6 are therefore worthless. In addition, Kohan has issued two similar third-party subpoenas to the
7 Trustee of Namco Capital Funding Group, Inc. ("Namco"). A true and correct copy of the
8 outstanding subpoena is attached hereto as Exhibit '1.' To date, Namco has refused to indicate
9 whether it will comply with that subpoena."

10 **OBJECTION: Irrelevant (FRE 401, 402); lack of personal knowledge**
11 **(FRE 602); improper opinion/legal conclusion (FRE 701, 702, 704).**

12 3. Page 2, Paragraph 5: "Additionally, Kohan has repeatedly sought discovery
13 from Roya Boucherian ('Boucherian'), but Boucherian has steadfastly refused to provide the
14 discovery. Moreover, Boucherian's not even cooperating in good faith. By way of example,
15 Boucherian's lawyer has refused to accept service of discovery requests on Boucherian and instead
16 insists that Kohan personally serve discovery requests on Boucherian, who resides in Germany."

17 **OBJECTION: Irrelevant (FRE 401, 402).**

18 4. Page 2, Paragraph 6: "That adversary proceeding also squarely challenges
19 the notes and deeds of trust at issue in the Trustee's Motion alleging in a verified complaint that the
20 deeds of trust assigned by Namco to Boucherian are all worthless, not supported by any
21 consideration, and avoidable as fraudulent transfers."

22 **OBJECTION: Irrelevant (FRE 401, 402); lack of foundation (FRE 602);**
23 **inadmissible hearsay (FRE 801); best evidence rule (FRE 1004).**

24 5. Page 3 Paragraph 7: "In that deposition, Hooshang Namvar testified that the
25 Notice of Default recorded by the Namco Trustee is invalid because the \$2.78 million trust deed
26 note has been paid in full. "

27 **OBJECTION: Irrelevant (FRE 401, 402); improper opinion/legal**
28 **conclusion (FRE 701, 702, 704); inadmissible hearsay (FRE 801).**

1 6. Page 3, Paragraph 8: "It appears that the proposed settlement agreement is an
2 end run around the fair resolution of the issues in Namwest Adversary."

3 OBJECTION: Irrelevant (FRE 401, 402); lack of personal knowledge
4 (FRE 602); improper opinion/legal conclusion (FRE 701, 702, 704).

5 7. Page 3, Paragraph 9: "The Motion contains several inaccurate facts and
6 material omissions."

7 OBJECTION: Improper opinion/legal conclusion (FRE 701, 702, 704).

8 8. Page 3, Paragraph 10: "On Page 7, lines 21-22, the Motion states, "No
9 payments have been made on the \$2,780,000 Note and Deed of Trust and accordingly that
10 obligation is in default." This statement is false. As noted above, Hooshang Namvar testified under
11 oath that the \$2.78 million Note was paid in full. Additionally, the verified complaint filed in
12 Adversary No. 2:08-ap-00926-CGC, which was filed under penalty of perjury by Namwest's
13 President and Chief Operating Officer, Michael B. McBride, also states that Namwest does not have
14 any obligation to pay Namco (or any of its assigns) any of the claimed \$2,780,000."

15 OBJECTION: Irrelevant (FRE 401, 402); improper opinion/legal
16 conclusion (FRE 701, 702, 704); inadmissible hearsay (FRE 801).

17 9. Page 3, Paragraph 11: "On Page 7, lines 25-26, the Motion claims that
18 Kohan violated the automatic stay imposed in the Namco bankruptcy case by filing an application
19 for temporary restraining order against the Namco Trustee in connection with the Trustee's attempt
20 to foreclose on the NTL Property. In reality, it was the Namco Trustee who violated the automatic
21 stay in the Namwest bankruptcy by attempting to foreclose on the NTL Property. The NTL
22 Property is and always has been an essential asset of the Namwest bankruptcy. The Honorable
23 Judge Charles Case (who presides over the Namwest Chapter 11 case) has already entered a
24 restraining order that prevents Roya Boucherian from foreclosing on the NTL Property. The
25 Trustee's attempt to foreclose on the NTL Property, and then give it to Boucherian via a settlement,
26 is simply an improper end-run around Judge Case's restraining order."

27 OBJECTION: Irrelevant (FRE 401, 402); improper opinion/legal
28 conclusion (FRE 701, 702, 704); best evidence rule (FRE 1004).

1 10. Page 4, Paragraph 12: "Moreover, on October 28, 2009 a status conference
2 was held before Judge Case in the Namwest bankruptcy. At the status conference Boucherian
3 requested Judge Case to lift a temporary restraining order from the NTL Property that prohibits
4 Boucherian from foreclosing on notes and deeds of trust that she allegedly obtained from Namco on
5 the NTL Property. Kohan opposed the request. Judge Case noted Kohan's opposition and refused
6 to lift the restraining order. Further, Judge Case ruled that if Boucherian wants to lift the temporary
7 restraining order, she must file a motion and properly brief the issue. Instead of complying with
8 Judge Case's order, Boucherian cut a deal with the Namco Trustee whereby the Namco Trustee
9 forecloses on the same notes and deeds of trust that Judge Case prohibited Boucherian from
10 foreclosing on, and then assigns the notes and deeds of trust to Boucherian. The proposed
11 settlement agreement should be rejected because it is a transparent attempt by Boucherian to obtain
12 from this Court what she could not obtain in Judge Case's court."

13 **OBJECTION: Irrelevant (FRE 401, 402); inadmissible hearsay (FRE**
14 **801); lack of personal knowledge (FRE 602); improper opinion/legal conclusion (FRE 701,**
15 **702, 704); best evidence rule (FRE 1004).**

16 11. Page 4, Paragraph 13: "On Page 11, lines 17-18, the Motion states that the
17 Trustee does not know of any facts or authority upon which the assignments of the \$6,000,000 Note
18 or the \$13,000,000 Note to Boucherian can be avoided by the Namco estate. This statement is also
19 demonstrably false. The Trustee is aware of the ongoing litigation in the Namwest case that
20 squarely challenges the legitimacy of Boucherian's alleged interest in these notes. As noted above,
21 there was enough evidence with respect to the dubious nature of these notes that a restraining order
22 was entered in the Namwest Bankruptcy that prevents Boucherian from foreclosing on the notes."

23 **OBJECTION: Irrelevant (FRE 401, 402); improper opinion/legal**
24 **conclusion (FRE 701, 702, 704).**

25 12. Page 4, Paragraph 14: "Upon information and belief, the proposed
26 settlement, if approved, could result in conflicting judgments between this Court and between Judge
27 Case's Court in Arizona. In just a few short months, Judge Case will decide whether the Boucherian
28 notes are valid, and what if anything is owed on them. These questions should be decided before

1 the proposed settlement is approved. The Namco Trustee need not expend estate assets litigating, as
2 the litigation is framed and will be tried in the Arizona Bankruptcy Court without any requirement
3 for the Namco Trustee to participate."

4 **OBJECTION: Irrelevant (FRE 401, 402); lack of foundation and lack of**
5 **personal knowledge (FRE 602); improper opinion/legal conclusion (FRE 701, 702, 704).**

6 Namco will, and hereby does, request that, at the hearing on the Trustee's motion for an
7 order approving the settlement agreement with Roya Boucherian, the Court sustain the foregoing
8 objections and strike the evidence referred to above.

9
10 Dated: November 16, 2009

JEFFER, MANGELS, BUTLER & MARMARO LLP

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12

By: /s/ David M. Poitras

DAVID M. POITRAS P.C.

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Attorneys for Bradley D. Sharp, Chapter 11 Trustee for
Namco Capital Group, Inc.

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EXHIBIT A

1 MARK T. YOUNG (Bar No. 89951)
2 SAMUEL R.W. PRICE (Bar No. 255611)
3 DONAHOE & YOUNG LLP
4 25152 Springfield Court, Suite 345
5 Valencia, California 91355-1096
6 Telephone: 661.259.9000 / Facsimile: 661.554.7088
7 E-mail: myoung@donahoeyoung.com

8 Counsel for Objecting Creditors
9 ARIZONA TEMPE TOWN LAKE,
10 LLC, and BUSINESS TO
11 BUSINESS MARKETS, INC.

12 UNITED STATES BANKRUPTCY COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 LOS ANGELES DIVISION

15 In re:
16 NAMCO CAPITAL GROUP, INC., etc.,
17 Debtor.

Case No. 2:08-bk-32333-BR
[Chapter 11]

DECLARATION OF MICHAEL C. MCKAY IN SUPPORT OF OPPOSITION TO "MOTION OF BRADLEY D. SHARP, CHAPTER 11 TRUSTEE OF NAMCO CAPITAL GROUP, INC., FOR AN ORDER: (1) APPROVING SETTLEMENT AGREEMENT WITH ROYA BOUCHERIAN, ETC."

Hearing:

Date: November 24, 2009

Time: 10:00 a.m.

Courtroom: 1668

Location: 16th Floor, Roybal Federal Building
255 E. Temple St., Los Angeles, CA 90012

DONAHOE & YOUNG LLP
25152 SPRINGFIELD COURT, SUITE 345
VALENCIA, CALIFORNIA 91355-1096
TELEPHONE (661) 259-9000

22 I, MICHAEL C. McKAY, declare as follows:

23 1. I am an attorney duly admitted to practice in the State of Arizona, and before the
24 United States District Court, District of Arizona. I have personal knowledge of the facts stated
25 herein and, if called as a witness, I could and would competently testify thereto.

26 2. I am an attorney of record for Theodore Kohan, Arizona Tempe Town Lake, LLC,
27 and Business to Business Markets, Inc. (collectively "Kohan") in the Chapter 11 proceeding of
28 Namwest, LLC ("Namwest") pending in the United States Bankruptcy Court for the District of

1 Arizona (*In the Matter of Namwest, LLC*, Case No. 2:08-bk-13935-CGC) and in related adversary
2 proceedings.

3 3. Kohan is currently embroiled in an adversary proceeding that squarely challenges
4 the legitimacy of the notes and deeds of trust that are the subject of the Trustee's Motion:
5 Namwest, LLC, et al. v. Namwest-Town Lakes, LLC, et al. (Adversary No. 2:08-ap-00860-CGC)
6 ("the Namwest Adversary"). Exhibit "2" to the Trustee's Motion is a true and correct copy of the
7 "Application for Temporary Restraining Order and Motion for Preliminary Injunction" that Kohan
8 recently filed in the Namwest Adversary ("the TRO Request"). A hearing on the TRO Request is
9 scheduled for November 17, 2009. The discovery cutoff date in the Namwest Adversary is
10 February 15, 2010, and it is anticipated that the trial in the Namwest Adversary will be in June or
11 July 2010.

12 4. Kohan has outstanding discovery requests in the Namwest Adversary. I expect that
13 the responses to this discovery will show that the notes and deeds of trust at issue have been fully
14 paid, or represent no actual exchange of consideration, and are therefore worthless. In addition,
15 Kohan has issued two similar third-party subpoenas to the Trustee of Namco Capital Funding
16 Group, Inc. ("Namco"). A true and correct copy of the outstanding subpoena is attached hereto as
17 Exhibit "1." To date, Namco has refused to indicate whether it will comply with that subpoena.

18 5. Additionally, Kohan has repeatedly sought discovery from Roya Boucherian
19 ("Boucherian"), but Boucherian has steadfastly refused to provide the discovery. Moreover,
20 Boucherian's not even cooperating in good faith. By way of example, Boucherian's lawyer has
21 refused to accept service of discovery requests on Boucherian and instead insists that Kohan
22 personally serve discovery requests on Boucherian, who resides in Germany.

23 6. Namwest also initiated its own adversary proceeding against Boucherian and
24 Namco (Adversary No. 2:08-ap-00926-CGC). That adversary proceeding also squarely challenges
25 the notes and deeds of trust at issue in the Trustee's Motion alleging in a verified complaint that
26 the deeds of trust assigned by Namco to Boucherian are all worthless, not supported by any
27 consideration, and avoidable as fraudulent transfers.

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1 7. Hooshang Namvar is Ezri Namvar's brother and the manager of Woodman Partners
2 LLC, the sole member of Namwest-Town Lake L.L.C., which holds title to the underlying
3 property. On October 22, 2009, I took Hooshang Namvar's deposition in the Namwest Adversary.
4 In that deposition, Hooshang Namvar testified that the Notice of Default recorded by the Namco
5 Trustee is invalid because the \$2.78 million trust deed note has been paid in full. Attached hereto
6 as Exhibit "2" is a true and correct copy of excerpts from the transcript of that deposition; the
7 relevant citations are page 28, line 12 to page 29, line 16, and page 52, lines 20-25.

8 8. It appears that the proposed settlement agreement is an end run around the fair
9 resolution of the issues in Namwest Adversary.

10 9. The Motion contains several inaccurate facts and material omissions.

11 10. On Page 7, lines 21-22, the Motion states, "No payments have been made on the
12 \$2,780,000 Note and Deed of Trust and accordingly that obligation is in default." This statement
13 is false. As noted above, Hooshang Namvar testified under oath that the \$2.78 million Note was
14 paid in full. Additionally, the verified complaint filed in Adversary No. 2:08-ap-00926-CGC,
15 which was filed under penalty of perjury by Namwest's President and Chief Operating Officer,
16 Michael B. McBride, also states that Namwest does not have any obligation to pay Namco (or any
17 of its assigns) any of the claimed \$2,780,000. See Verified Complaint, December 10, 2008 at 5
18 and 6.

19 11. On Page 7, lines 25-26, the Motion claims that Kohan violated the automatic stay
20 imposed in the Namco bankruptcy case by filing an application for temporary restraining order
21 against the Namco Trustee in connection with the Trustee's attempt to foreclose on the NTL
22 Property. In reality, it was the Namco Trustee who violated the automatic stay in the Namwest
23 bankruptcy by attempting to foreclose on the NTL Property. The NTL Property is and always has
24 been an essential asset of the Namwest bankruptcy. The Honorable Judge Charles Case (who
25 presides over the Namwest Chapter 11 case) has already entered a restraining order that prevents
26 Roya Boucherian from foreclosing on the NTL Property. The Trustee's attempt to foreclose on
27 the NTL Property, and then give it to Boucherian via a settlement, is simply an improper end-run
28 around Judge Case's restraining order.

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1 12. Moreover, on October 28, 2009 a status conference was held before Judge Case in
2 the Namwest bankruptcy. At the status conference Boucherian requested Judge Case to lift a
3 temporary restraining order from the NTL Property that prohibits Boucherian from foreclosing on
4 notes and deeds of trust that she allegedly obtained from Namco on the NTL Property. Kohan
5 opposed the request. Judge Case noted Kohan's opposition and refused to lift the restraining
6 order. Further, Judge Case ruled that if Boucherian wants to lift the temporary restraining order,
7 she must file a motion and properly brief the issue. Instead of complying with Judge Case's
8 order, Boucherian cut a deal with the Namco Trustee whereby the Namco Trustee forecloses on
9 the same notes and deeds of trust that Judge Case prohibited Boucherian from foreclosing on, and
10 then assigns the notes and deeds of trust to Boucherian. The proposed settlement agreement
11 should be rejected because it is a transparent attempt by Boucherian to obtain from this Court
12 what she could not obtain in Judge Case's court.

13 13. On Page 11, lines 17-18, the Motion states that the Trustee does not know of any
14 facts or authority upon which the assignments of the \$6,000,000 Note or the \$13,000,000 Note to
15 Boucherian can be avoided by the Namco estate. This statement is also demonstrably false. The
16 Trustee is aware of the ongoing litigation in the Namwest case that squarely challenges the
17 legitimacy of Boucherian's alleged interest in these notes. As noted above, there was enough
18 evidence with respect to the dubious nature of these notes that a restraining order was entered in
19 the Namwest Bankruptcy that prevents Boucherian from foreclosing on the notes.

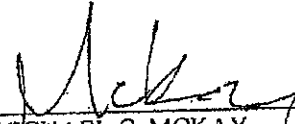
20 14. Upon information and belief, the proposed settlement, if approved, could result in
21 conflicting judgments between this Court and between Judge Case's Court in Arizona. In just a
22 few short months, Judge Case will decide whether the Boucherian notes are valid, and what if
23 anything is owed on them. These questions should be decided before the proposed settlement is
24 approved. The Namco Trustee need not expend estate assets litigating, as the litigation is framed
25 and will be tried in the Arizona Bankruptcy Court without any requirement for the Namco Trustee
26 to participate.

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Executed on November 10th 2009 at Scottsdale, Arizona.

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


MICHAEL C. MCKAY

DONAHOE & YOUNG LLP
25152 SPRINGFIELD COURT, SUITE 345
VALENCIA, CALIFORNIA 91355-1096

Case 2:08-bk-32333-BR Doc 587 Filed 11/17/09 Entered 11/17/09 11:07:49 Desc
Main Document Page 13 of 29

Case 2:08-bk-32333-BR Doc 566 Filed 11/10/09 Entered 11/10/09 21:00:52 Desc
Main Document Page 6 of 20

EXHIBIT 1

AO 83A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the Central District of California

Namwest, LLC, et al Plaintiff v. Namwest-Town Lakes, LLC et al Defendant Civil Action No. Adversary No. 2:08-ap-00860 (If the action is pending in another district, state where: District of Arizona)

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: Namco Capital Group, Inc. 12121 Wilshire Blvd., Suite 1400, Los Angeles, CA 90025

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Exhibit A.

Table with 2 columns: Place and Date and Time. Place: 9454 Wilshire Boulevard, 6th Floor Beverly Hills, California 90212. Date and Time: 11/27/2009 9:30 am

The deposition will be recorded by this method: video and stenographic means.

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Exhibit A.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/29/2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Theodore Kohan Michael McKay at Schneider Wallace Cottrell Brayton Konecky, who issues or requests this subpoena, are: 7702 East Doubletree Ranch Road, Suite 300, Scottsdale, AZ 85258 mmckay@schneiderwallace.com (480) 607-4367

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action (Page 2)

Civil Action No. Adversary No. 2:08-ap-00860

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because _____ ; or

Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____ *Server's signature*

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A

I Deposition Topics

1. The formation of Namwest Town Lakes, LLC and Namwest Town Lakes II, LLC.
2. The membership interests in Namwest Town Lakes, LLC and Namwest Town Lakes II, LLC.
3. The financing of assets owned by Namwest Town Lakes, LLC and Namwest Town Lakes II, LLC.
4. The payment of expenses owed by Namwest Town Lakes, LLC and Namwest Town Lakes II, LLC.
5. The development of the real property owned by Namwest Town Lakes, LLC and Namwest Town Lakes II, LLC.
6. The management of Namwest Town Lakes, LLC and Namwest Town Lakes II, LLC.
7. The bankruptcy of Namwest Town Lakes II, LLC.
8. Activities relating to the purchase or sale property owned by Namwest Town Lakes, LLC and Namwest Town Lakes II, LLC.

II Document Requests

1. Produce all emails between Ezri Namvar, Hooshang Namvar, Michael McBride, James Henrie, Steven Skarphol, David Shein, Theodore Koban and/or David Norouzi during the time period of January 1, 2004 through the present that relate in any way to real property located in Arizona known as the Club Rio Property, the Wilde Property, or the Town Lakes Property.
2. Produce all emails between Ezri Namvar, Hooshang Namvar, Michael McBride, James Henrie, Steven Skarphol, David Shein, Theodore Koban and/or David Norouzi during the time period of January 1, 2004 through the present that relate in any way to Namwest Town Lakes, LLC or Namwest Town Lakes II, LLC.
3. Produce all correspondence, including emails that relate to operating agreements for Namwest Town Lakes, LLC or Namwest Town Lakes II, LLC.
4. Produce all agreements between Namco and Namwest Town Lakes, LLC or Namwest Town Lakes II, LLC.
5. Produce budgets, profit and loss statements, financial projections, and all other similar documents relating to Namwest Town Lakes, LLC or Namwest Town Lakes II, LLC.
6. Produce documents sufficient to identify all promissory notes that Namco possesses, which are secured by deeds of trust on the property located in Arizona known as the Club Rio Property, the Wilde Property, or the Town Lakes Property.

7. Produce documents sufficient to identify all promissory notes that Namco possessed, but no longer possess, which are secured by deeds of trust on the property located in Arizona known as the Club Rio Property, the Wilde Property, or the Town Lakes Property.

8. Produce all documents that evidence the promissory notes identified in response to request numbers 6 and 7 were negotiated in good faith and supported by valid consideration.

9. Produce documents sufficient to identify all payments made on any promissory notes identified in response to request number 6 and 7.

10. Produce documents sufficient to identify all payments that Namco made to third party vendors on behalf of Namwest, LLC, Namwest Town Lakes, LLC, or Namwest Town Lakes II, LLC.

11. Produce all documents that relate to real property located in Arizona known as the Club Rio Property, the Wilde Property, or the Town Lakes Property.

12. Produce all documents that relate to Namwest Town Lakes, LLC or Namwest Town Lakes II, LLC.

Case 2:08-bk-32333-BR Doc 587 Filed 11/17/09 Entered 11/17/09 11:07:49 Desc
Main Document Page 19 of 29

Case 2:08-bk-32333-BR Doc 566 Filed 11/10/09 Entered 11/10/09 21:00:52 Desc
Main Document Page 12 of 20

EXHIBIT 2

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN THE MATTER OF:

NAMWEST, LLC, et al.,

Debtors,

No.
2:08-bk-13935-
CGC

vs.

NAMWEST LLC, et al.,

Plaintiffs,

Adversary No.
2:08-ap-00860-
CGC

vs.

NAMWEST-TOWN LAKES, LLC,
et al.,

Defendants.

DEPOSITION OF
HOOSHANG NAMVAR

October 22, 2009
2:10 p.m.

2121 Avenue of the Stars, Suite 950
Los Angeles, California

"Dee Dee" Dorene Gound, CSR No. 12260

APPEARANCES OF COUNSEL

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JENNINGS, STROUSS & SALMON .
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201 East Washington Street, 11th Floor
Phoenix, AZ 5004

Also Present:
Ted Kohan

1 But the money, I think all of the money, the
2 3.619 all came from Woodman. And that can be proven.
3 Easy to show that with the documents from the exchange
4 company.

5 Q Were you involved with any communications with
6 Arizona Namwest members in connection with this closing
7 statement?

8 A No.

9 Q Did you communicate with any attorneys for
10 Namwest in connection with this closing statement?

11 A No.

12 Q Are you aware the Namco trustee has filed --

13 A An NOD, notice of default?

14 Q Yes.

15 A Yes.

16 Q On the 2678?

17 A I'm very aware. Two million seven eight is no
18 longer paid to Namco because it's been paid off through
19 a series of loan repayments through Namco, which they
20 failed to note. And we're in the midst of negotiation
21 and getting the paperwork to show them that his money
22 has been paid off, or that they should have shown it in
23 the book that it was paid off.

24 Q When was the last communication you had with a
25 Namco trustee about this first deed of trust that

1 should be paid off?

2 A A week ago.

3 Q Do you have any idea whether he intends to
4 revoke the NOD?

5 A I have no idea, but you know how trustees are.

6 Q What did you tell him a week ago?

7 A I told him this has been paid off. It was
8 supposed to be paid off. In our books, this balance
9 doesn't show in our books. And we have paid this
10 series of loan repayments to Namco from Woodman.

11 Q Woodman paid off Namco?

12 A Yes.

13 Q Your conversation was with the Namco trustee;
14 is that right?

15 A David appoint truss is the representative of
16 Namco, I believe.

17 Q I want to see if I understand a little better
18 the agreement that you had with Ezri in connection with
19 Ezri's intention to buy this piece of property back
20 from you.

21 A Mm-hmm.

22 Q Okay. You talked about an option and a master
23 lease.

24 A Right.

25 Q I want to try to get to the bottom of what it

1 properties?

2 A Past month.

3 Q We can do it quick or we can play these kind
4 of games. I'm just trying to figure out what everybody
5 wants to do with these pieces of property.

6 A Sure.

7 Q I know you're holding onto it and it may
8 become very valuable to you. I know Ted wants an
9 interest in it. The Namwest guys want an interest in
10 it. I'm trying to figure out what Naroosi wants.

11 Do you know what Naroosi wants?

12 A Why don't you ask him?

13 Q I will soon enough.

14 A I don't know what Naroosi wants. I think we
15 are different sides of the fence. He's trying to
16 foreclose. The trustee's trying to foreclose because
17 he has a note on it, which I need to examine it. I
18 can't tell you what my plans are now because I first
19 have to deal with the foreclosure.

20 Q Do you have any plans on how you're going to
21 deal with the foreclosure?

22 A Yes.

23 Q What are those plans?

24 A I'm going to show the trustee that the loan
25 has been paid off.

In re: NAMCO CAPITAL GROUP, INC., a California corporation Debtor(s).	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 a 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:
25152 Springfield Court, Suite 345, Valencia, California 91355-1096

A true and correct copy of the foregoing document described as Declaration of Michael C. McKay In Support of Opposition to "Motion of Bradley D. Sharp, Chapter 11 Trustee of Namco Capital Group, Inc., for an Order, etc." 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 11/10/09 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 addressed 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 _____ 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 follow. 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.

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 11/10/09 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 mailing to the judge will be completed no later than 24 hours after the document is filed.
Honorable Barry Russell
United States Bankruptcy Court

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 10, 2009	Sherril L. Young	<u>/s/ Sherril L. Young</u>
Date	Type Name	Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: NAMCO CAPITAL GROUP, INC., a California corporation	CHAPTER: 11
Debtor(s).	CASE NUMBER: 2:08-bk-32333-BR

I. To be served by Court via NEF

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F 9013-3.1

January 2009

Exhibit A - 25

In re: NAMCO CAPITAL GROUP, INC., a California corporation Debtor(s).	CHAPTER: 11 CASE NUMBER: 2:08-bk-32333-BR
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III. SERVED BY EMAIL

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I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

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