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EAST WEST BANK
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8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 In re
12 THE THEATRE CLUB OF LOS
ANGELES, LLC, a California
13 limited liability company,
14 Debtor.

Case No. 2:11-bk-21918-BB

Chapter 11

**OBJECTIONS TO APPROVAL OF
DEBTOR'S FIRST AMENDED
DISCLOSURE STATEMENT
CONCERNING DEBTOR'S FIRST
AMENDED CHAPTER 11 PLAN**

Date: December 21, 2011
Time: 2:00 p.m.
Place: Courtroom 1475

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20 East West Bank ("Bank"), hereby submits the following objections to the
21 approval of the Debtor's First Amended Disclosure Statement Concerning Debtor's
22 First Amended Chapter 11 Plan ("Amended Disclosure Statement").

23 **INTRODUCTION**

24 Section 1125 of Title 11 requires a proposed disclosure statement to contain
25 "adequate information" concerning the plan, a term defined by statute to mean
26 "information of a kind, and in sufficient detail, as far as is reasonably practicable in
27 light of the nature and history of the debtor . . . that would enable . . . a hypothetical
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1 investor of the relevant class to make an informed judgment about the plan.” At a
2 hearing conducted on November 22, 2011, the Court addressed the inadequacies of
3 the Debtor’s initial proposed Disclosure Statement, with the Court finding that the
4 objections to the Disclosure Statement filed by the Bank were well-taken and with
5 the Court providing the Debtor detailed comments on additional deficiencies and
6 changes that needed to be made to the Disclosure Statement to make it adequate.

7 The Debtor’s Amended Disclosure Statement fails to address a number of the
8 defects identified at the prior hearing, which will be summarized below. However,
9 fundamentally the Amended Disclosure Statement describes a plan of
10 reorganization that is a sham. Perhaps more clearly than ever, the Amended
11 Disclosure Statement only further demonstrates that despite fourteen months
12 without paying debt service to the Bank and having nine months of protection
13 under Chapter 11, the Debtor has no effective means of rehabilitating its financial
14 affairs, no effective liquidation of its assets is available since its assets are all fully
15 encumbered or overencumbered, and no reorganization is in prospect. Under these
16 circumstances, continued revision of the Debtor’s Disclosure Statement serves no
17 purpose because the Disclosure Statement will not describe a plan that has any
18 realistic ability to be confirmed. In fact, given the lack of reorganization in
19 prospect, the Debtor has every incentive to prepare inadequate disclosure
20 statements to delay moving forward with confirmation of what it knows will be an
21 unconfirmable plan.

22 By an overwhelming margin, the Bank is the primary creditor of the Debtor.
23 No other creditors have appeared or commented on the Disclosure Statement. The
24 Bank will argue at the upcoming hearing on the Amended Disclosure Statement and
25 the Bank’s motion for relief from stay that the Debtor admittedly has no equity in
26 the Bank’s collateral and that the **Debtor cannot effectively reorganize within a**
27 **reasonable time**, warranting immediate termination of the automatic stay. Further,
28 the Amended Disclosure Statement should not be approved because it describes a

1 plan that cannot be confirmed on its face, and no amount of revision can change
2 that fundamental and fatal flaw.

3 If the Court does not determine that the automatic stay should be terminated
4 as to the Bank forthwith, then the Bank contends the Debtor's Amended Plan
5 should be revised immediately as to Objection No. 4 below and, once amended,
6 approved without a further hearing on the disclosure statement and scheduled for a
7 confirmation hearing without further delay. In such event, the relief from stay
8 motion should be continued to that date so that the case can be brought to a
9 conclusion. While there are still many deficiencies in the Amended Disclosure
10 Statement, which fails to correct problems noted previously and raises new
11 objections in its current form as well, the Bank also believes that the Amended
12 Disclosure Statement, once revised as to Objection No. 4, is sufficient to move
13 forward to a confirmation hearing because it contains enough information for the
14 creditor body, which is primarily comprised of the Bank, to make an informed
15 judgment about the plan.

16 Objection No. 1:

17 The Debtor has failed to correct a number of defects noted by the Court and
18 the Bank in the initial Disclosure Statement despite the Debtor's assurances it
19 would do so. The objections not addressed in the Amended Disclosure Statement
20 include the following:

21 (a) Failure to separately classify real property secured tax claims,
22 notwithstanding that the Debtor now proposes to pay those claims in full on the
23 Effective Date through "capital contributions by the principals of Debtor" (Am.
24 Discl. Stmt., p. 13, ll. 10-11). This needs to be corrected in the Amended Plan and
25 Amended Disclosure Statement;

26 b) Fails to set forth the basis for the valuations of the Debtor's principal
27 asset, the real property located at 940 Figueroa Street, Los Angeles, California

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1 known as the Variety Arts Theatre (“Property”), or of the 8 lots on Brilliant Way
2 (“8 Lots”), other than to refer to the values as the “Debtor’s Estimate”;

3 (c) Continued retention of alternative, uncertain and unsupported
4 provisions regarding the funding of the plan through leases, or proceeds from the
5 sale of the 8 Lots, or now, “additional capital contributions by the principals of
6 Debtor” (Am. Discl. Stmt., p. 19, ll. 19-22). Since the Debtor even more clearly in
7 the Amended Disclosure Statement admits there is no equity in the Property or in
8 the 8 Lots to provide a means of funding the plan, the continued reference to these
9 alternatives without specific details as to the anticipated implementation of leases or
10 a sale to fund the plan are nonsensical;

11 (d) Failure to explain how the Debtor intends to fund litigation against the
12 Bank, particularly when the Debtor has never sought or obtained approval to
13 engage litigation counsel post-petition under 11 U.S.C. section 327.

14 Objection No. 2:

15 The Debtor has no tenants prepared to lease the Property as illustrated by
16 Exhibits G and H to the Amended Disclosure Statement. The LOI by Islas
17 Productions, LLC (“Islas”) has long ago expired. The fact that the Debtor has been
18 discussing the Property with Islas since 2010, based on the reference to a prior LOI
19 in the version attached to the Amended Disclosure Statement, along with the fact
20 the September 2011 LOI expired, demonstrates there is no lease with Islas in
21 prospect.

22 The Del Friscos restaurant lease proposal is a proposal by the Debtor. There
23 is no lease or lease in prospect. The Del Friscos proposal contemplates \$2 million
24 in tenant improvements for the ground floor alone, and the Debtor’s proposal is for
25 monthly lease payments (\$68,000) for Del Friscos for the bottom floor alone that
26 are \$15,000 **higher** than the monthly lease payments (\$53,000) contemplated in the
27 Islas LOI covering the entire building.

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1 The Amended Disclosure Statement refers to a possible lease with the USC
2 Game Lab, but the Debtor acknowledges that there has been no approval for such a
3 transaction by USC. That transaction is so uncertain the Debtor has not attached
4 any documentation.

5 On their face, these prospective “leases” make no sense given that the
6 building admittedly needs millions of dollars in renovations and that the entire
7 building is presently only worth \$5.6 million based on the Bank’s appraisal. **The**
8 **Debtor has no means of funding the plan.**

9 Objection No. 3:

10 The Debtor failed to attach historical income and expense information but
11 provided counsel for the Bank “Exhibit J” to the Amended Disclosure Statement
12 which the Debtor states was inadvertently omitted from the filed version of the
13 Amended Disclosure Statement. A copy of Exhibit J provided to the Bank’s
14 counsel is attached hereto. The information is unenlightening, provides no details
15 of the sources of “income” and nature of the “expenses” and may well improperly
16 characterize the “income” from an accounting standpoint (including proceeds from
17 an insurance policy for fire damage as “income” for example). The Debtor also
18 states that expenses of the Debtor post-petition have been paid by the Debtor’s
19 principals, but in fact, the monthly operating reports recently filed by the Debtor
20 show that in violation of 11 U.S.C. section 363 and the Bank’s demand, starting in
21 September 2011 the Debtor used approximately \$7,500 in cash collateral from its
22 miniscule lease revenue for the parking lot from L&R Auto Park to pay expenses
23 without Court approval or the Bank’s consent.

24 Objection No. 4:

25 The Amended Disclosure Statement and Amended Plan contain terms
26 regarding the treatment of the Bank’s claim that improperly seek to alter the terms
27 and legal rights and claims of the Bank against the principals of the Debtor’s
28 members under their continuing guaranties which is the subject of pending

1 litigation in the state court. The Debtor purports to declare that the effect of
2 confirmation of the plan will be to cure the defaults under the Bank's loan and
3 reform the loan, and "this curing and reforming would render the guarantor action
4 by East West moot, as no default would be present under which to pursue the
5 guarantors." See Am. Discl. Stmt., p. 16, ll. 8-12; Am. Plan, p. 8, ll. 16-20. These
6 statements are an inaccurate statement as to the effect of confirmation of a plan on
7 the **independent** contractual obligations of a guarantor under his continuing
8 guaranty and applicable bankruptcy law regarding the effect of confirmation of a
9 Chapter 11 plan and the discharge of the debtor that results from confirmation. 11
10 U.S.C. section 524(e) ("discharge of a debt of the debtor does not affect the liability
11 of any other entity on, or the property of any other entity for, such debt"); *Bloom v.*
12 *Bender*, 48 Cal.2d 793, 804-805, 313 P.2d 568 (1957) (surety remains bound even
13 though liability of principal is discharged in composition under former bankruptcy
14 statutes where surety contract provides for such continuing liability). The
15 provisions also inaccurately state that the Debtor's defaults are being "cured" under
16 the plan; the plan does not "cure" the Debtor's defaults but rather the Debtor is
17 using the provisions of the Bankruptcy Code to create a coerced loan with terms
18 dictated by the Debtor over the Bank's objection. These statements in the Debtor'
19 Amended Disclosure Statement and Amended Plan may also be interpreted as an
20 attempt to obtain release or modification of the rights and claims between the Bank
21 and its guarantors, who are not parties to the bankruptcy and over which the Court
22 lacks jurisdiction. *In re Lowenschuss (Resorts International, Inc. v. Lowenschuss)*,
23 67 F.3d 1394, 1401 (9th Cir. 1995) (confirmation of Chapter 11 plan releases debtor
24 from personal liability on debts but discharge provisions do not provide for release
25 of third parties and "the bankruptcy courts are precluded from discharging the
26 liabilities of non-debtors").

27 These improper provisions of the Amended Disclosure Statement and
28 Amended Plan should be ordered stricken.

1 Objection No. 5:

2 The Debtor's Amended Disclosure Statement and Amended Plan make
3 several references to funding of payments by the "capital contributions by the
4 principals of Debtor." Am. Discl. Stmt., p. 4, l. 18; p. 13, l. 2; p. 13, ll. 10-11; p.
5 19, ll. 21-22; Am. Plan, p. 3, l. 19; p. 5, l. 11; p. 5, ll. 22-23; p. 11, ll. 25-26. The
6 "principals" are not identified, and their ability to fund any such capital
7 contributions is highly suspect. **The Bank has a pre-judgment attachment**
8 **against each of the two principals of the members of the Debtor, Mr. Houk and**
9 **Mr. Abassi, in an amount approaching \$8 million.** The Amended Plan provides
10 for these "principals" to contribute roughly \$125,000 in cash on the effective date
11 of the plan, and indicates they may make additional capital contributions to fund the
12 plan post-confirmation. No information concerning the financial ability of the
13 undisclosed "principals" is provided or the limit of their ability or intent to make
14 contributions to the Debtor. If the principals are willing to fund expenses of the
15 Debtor, they certainly have not made any funds available to pay the Bank's debt in
16 14 months even in the face of attachment proceedings against them.

17 **CONCLUSION**

18 The Bank urges the Court to deny approval of the Amended Disclosure
19 Statement because the Debtor has no ability to effectively reorganize in a
20 reasonable time and relief from stay should be granted to the Bank. Alternatively,
21 the Court should direct the Debtor to amend the Amended Disclosure Statement by
22 striking the improper provisions of the Amended Disclosure Statement and

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1 Amended Plan as set forth in Objection No. 4 and set the Debtor's Amended Plan
2 for a confirmation hearing at the earliest date available.

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4 Dated: December 12, 2011

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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By: /s/Gary Owen Caris
Gary Owen Caris
Attorneys for Secured Creditor,
EAST WEST BANK

PROOF OF SERVICE OF DOCUMENT

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I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 300 South Grand Avenue, 14th Floor, Los Angeles, CA 90071.

A true and correct copy of the foregoing document described as OBJECTIONS TO APPROVAL OF DEBTOR’S FIRST AMENDED DISCLOSURE STATEMENT CONCERNING DEBTOR’S FIRST AMENDED CHAPTER 11 PLAN 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 December 12, 2011, 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:

- Stephen F. Biegenzahn – efile@sfblaw.com
- Russell Clementson – russell.clementson@usdoj.gov
- United States Trustee (LA) – ustpregion16.law.ecf@usdoj.gov
- Gary O. Caris – gcaris@mckennalong.com, pcoates@mckennalong.com
- Lesley Anne Hawes – lhawes@mckennalong.com, pcoates@mckennalong.com
- Hatty K. Yip – hatty.yip@usdoj.gov

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served): On December 12, 2011, 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.

Aamir Raza
655 North Central Avenue, #1700
Glendale, CA 91203

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 December 12, 2011, 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.

The Honorable Sheri Bluebond (via attorney service)
United States District Court
255 East Temple Street
Los Angeles, CA 90012-3300

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

December 12, 2011	Pamela A. Coates	/s/ Pamela A. Coates
<i>Date</i>	<i>Type Name</i>	<i>Signature</i>