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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE: GHOLAM REZA JAZI ZANDIAN, Debtor in Foreign Proceeding.	Case No. BK-N-16-50644-BTB Chapter 15 **REPLY TO LIMITED OPPOSITION TO AMENDED MOTION TO DISMISS CHAPTER 15 CASE** Hearing Date: October 1, 2019 Hearing Time: 2:00 PM Estimated Time for hearing: 1 hour

Jed Margolin ("Mr. Margolin"), by and through his attorneys Brownstein Hyatt Farber Schreck, LLP, hereby files the following Reply to Limited Opposition to Amended Motion to Dismiss Chapter 15 Case, by Fred Sadri as Trustee for The Star Living Trust, dated April 14, 1997; Ray Koroghli and Sathsowi T. Koroghli as Managing Trustees for Koroghli Management Trust ("Sadri and Koroghli"). To the extent the Sadri and Koroghli have standing to object to Mr. Margolin's Motion to Dismiss, their Opposition arguments are without merit as stated below.

I. REPLY ARGUMENTS

As a threshold matter, Sadri and Koroghli do not oppose or dispute the fact that Canet has failed to prosecute this Case, or that this proceeding should be dismissed pursuant to Section

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1517(d) of the Bankruptcy Code because: (1) Zandian's Center of Main Interests ("COMI") was not France at the time Canet filed his Petition for Recognition: (2) Canet has already collected enough money from Zandian to pay the approved creditors from the 1998 French Action and double dipping is prohibited by Bankruptcy Code § 1532; and (3) Canet has not produced any evidence that Zandian is insolvent. Instead, Sadri and Koroghli argue that Margolin failed to cite evidence in support of his motion, that they were not to blame for failing to prosecute this case and 11 U.S.C. § 349(b) does not support vacating the Court's September 20, 2018 interlocutory and partial summary judgment Order ("Summary Judgment Order"). Sadri's and Koroghli's arguments do not come close to proving why the requests contained in Mr. Margolin's Motion should be denied.

A. MR. MARGOLIN'S MOTION IS FULLY SUPPORTED BY ARGUMENT AND EVIDENCE SUPPORTING WHY THE COURT'S NON-FINAL, INTERLOCUTORY SUMMARY JUDGMENT ORDER SHOULD BE VACATED

Sadri and Koroghli complain that Mr. Margolin's Motion should be denied because it is devoid of facts showing any wrongdoing by Sadri and Koroghli and that Mr. Margolin did not cite any legal authority to support his Motion, aside from the admitted citation to 11 U.S.C. § 349(b). Even the most cursory glance at Mr. Margolin's Motion shows that it is well supported by facts and legal authority showing why the underlying Chapter 15 Bankruptcy should be dismissed and why the Court's Summary Judgment Order should be dismissed. *See* Doc. 58. Mr. Margolin's Motion was not focused on Sadri's and Koroghli's conduct in this Chapter 15 Bankruptcy, but is focused on Canet's conduct and the fact that Canet and his counsel have failed to prosecute and support their Chapter 15 Bankruptcy, which forms the basis of the Adversary Proceeding. Without the Chapter 15 Bankruptcy, there would be no Adversary Proceeding or Interlocutory Order. As discussed below, nothing in 11 U.S.C. § 349(b) requires Mr. Margolin to prove wrongdoing on the part of Sadri and Koroghli to have the non-final, interlocutory Summary Judgment Order vacated.

With regard to settlement discussions, undersigned counsel admits that they had oral and written settlement discussions with Counsel Yanxiong Li to try and resolve this action. These

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settlement negotiations occurred between December of 2017 and April of 2018, and based on Mr. Li's representations, undersigned counsel believed that an agreement had been reached. As such, undersigned counsel spent time, effort, and money preparing a written settlement agreement containing the terms of a proposed settlement and sent it to Mr. Li. However, on April 12, 2018, Mr. Li notified undersigned counsel that his clients would rather litigate instead of settle. Sadri's and Koroghli's LR 9014(C)(1) arguments are meritless and should be rejected out of hand.

B. SECTION 349(b)(3) APPLIES TO PLACE THE PARTIES BACK IN THE POSITION THEY WERE IN PRIOR TO THE FILING OF THE CHAPTER 15 BANKRUPTCY PETITION

Sadri and Koroghli allege that § 349 does not allow for vacating the Court's non-final, interlocutory Summary Judgment Order if the underlying Chapter 15 case is dismissed. Specifically, Sadri and Koroghli claim that § 349(b) does not afford legal support for "Margolin's request to set aside judgment voiding lien based on violation of NRS 17.150(4)." Doc. 42, p. 3. However, Sadri's and Koroghli's argument is fundamentally flawed because it is based entirely on 11 U.S.C. § 349(b)(1), which addresses liens,[1] when the proper portion of the statute is 11

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[1] Sadri's and Koroghli's reliance upon *United States v. Standard State Bank*, 905 F.2d 185, 186 (8th Cir. 1990) is fatally misplaced. *Standard State Bank* involved the priority of a tax *lien* on inventory and accounts receivable that was collateral secured by Standard State Bank. *See, United States v. Standard State Bank*, 91 B.R. 874 (W.D. Mo. 1988). Again the issue was a *lien*, not title to property that was vested in another entity prior to the commencement of the bankruptcy. The lower court specifically rejected application of Section 349(b)(3) in that case, stating: "349(b)(3) does not in wording appear to relate to security interests, and the specific reference to reinstatement of lien rights in the other subsection makes it unlikely that Congress meant to deal with lien rights in the cited section." *Standard State Bank*, 91 B.R. at 878-79.

In affirming, the Eighth Circuit noted also that in the confirmed plan, "the Government surrendered {its} tax lien rights for anticipated favorable treatment as an unsecured creditor." *Standard State Bank*, 905 F.2d at 186, quoting *Standard State Bank*, 91 B.R. 874, 876 (W.D. Mo. 1988). The Eighth Circuit further noted:

> Although the bankruptcy court's order is not a model of clarity, we nonetheless construe the order to give full effect to the purpose the court intended it to accomplish. *See Anderson v. Stephens*, 875 F.2d 76, 80 (4th Cir. 1989) (per curiam). Four factors shed light on the bankruptcy court's intent: First, the court retained jurisdiction "for all purposes" in the Debtor's chapter eleven proceeding; second, the court was committed to resolving the question of lien priority disputed by the Government and the Bank; third, the court unquestionably understood that granting the Bank's motion to lift the automatic stay would allow the Bank alone to assert a lien against the Debtor's inventory and accounts receivable; and finally, the court dismissed the chapter eleven proceeding only after releasing all of the Debtor's assets to the Bank's control and after both the Government and the Bank agreed to the dismissal. In light of these factors, we conclude the bankruptcy court's dismissal order was an order for cause under section 349(b) precluding reinstatement of the Government's tax lien against the Debtor's inventory and accounts receivable and "overrid [ing] any contrary statutory presumptions regarding the effects of a [section 349(b) (3)] dismissal." *Standard State Bank*, 91 B.R. at 877.

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U.S.C. § 349(b)(3), because Mr. Margolin had fee title to the real property in question prior to the filing of the proceeding. Sadri and Koroghli conveniently omit any discussion of 11 U.S.C. § 349(b)(3) from their Opposition, and § 349(b)(3) is not mentioned once in their brief, even though it controls the analysis.

11 U.S.C. § 349(b)(3) provides:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—
>
> (3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

Again, Mr. Margolin did not have a mere lien against the property in question at the time the Chapter 15 Petition was filed. Instead, he owned deeds in the parcels at issue. Title to the relevant real property was vested in Mr. Margolin immediately before the commencement of the Chapter 15. Sadri and Koroghli admit this in their Motion for Partial Summary Judgment. Adv. No. 39. Specifically, on page 3 of Sadri's and Koroghli's Motion, they state: "Margolin claims he acquired fee title to all of the parcels by a judgment execution sale against Zandian. **As a matter of law, Margolin acquired no more than what Zandian held, and therefore, Margolin simply has a tenancy-in-common interest with the Plaintiffs**…." *Id.* (emphasis added). "Public records show only that **Margolin obtained *an* interest in Parcels 2, 4, 8 of the Property** by the following instruments recorded in the official records of Washoe County, Nevada" (citing Default Judgment and Sherriff's Certificates of Sale and Deeds for APN 079-150-10, 084-040-02, 084-130-07). Adv. No. 39, pp. 4-5 (emphasis added).

The law is clear that the purpose of § 349(b) "is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case." H.R. Rep. No. 595, 95th Cong., 1st Sess., 337-38 (1977). *Lawson v. Tilem (In re Lawson)*, 156 B.R. 43, 45, 1993 Bankr. LEXIS 1047, *6, 29 Collier Bankr. Cas. 2d (MB) 438, 24 Bankr. Ct. Dec. 790, 93 Cal. Daily Op. Service 5689, 93 Daily Journal DAR 9647.

> The case law interpreting the effect of a dismissal is consistent with a plain reading of the statute and its legislative history. Since rights that the debtor acquires as a result of bankruptcy are usually an extension of the debtor's ability to abide by

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> terms of the Bankruptcy Code, the debtor who is unwilling or unable to comply with the Code generally should not receive the benefits of bankruptcy once the case is dismissed. *See In re Derrick*, 190 B.R. 346 (Bankr. W.D. Wis. 1995). When a bankruptcy case is dismissed without the debtor having obtained a discharge, the consequences of the bankruptcy petition are negated, and the parties are restored to their rights and positions as they existed prior to the filing of the bankruptcy case. *See In re Irons*, 173 B.R. 910 (Bankr. E.D. Ark. 1994). Unless the court indicates otherwise, the general effect of an order of dismissal is to restore the status quo ante; it is as though the bankruptcy case had never been brought. *See In re Lewis & Coulter, Inc.*, 159 B.R. 188 (Bankr. W.D. Pa. 1993). Dismissal of a bankruptcy case operates to reinstate the status of interests of debtor **and his creditors** to their status quo ante. *See In re Lawson*, 156 B.R. 43 (B.A.P. 9th Cir. 1993). To the extent possible, dismissal of bankruptcy petition reverses what has transpired during bankruptcy. *See In re Newton*, 64 B.R. 790 (Bankr. C.D. Ill. 1986) (emphasis added).

Christie v. First State Bank of Stratford (In re Keener), 268 B.R. 912, 920 (Bankr. N.D. TX 2001).

The Ninth Circuit has made clear that dismissals "**undo the bankruptcy case, as far as practicable, and [ ] restore all property rights to the position in which they were found at the commencement of the case**." *In re Nash*, 765 F.2d 1410, 1414 (9th Cir. 1985) (internal citations omitted) (emphasis added).

> Subsection 349(b)(3) provides that a bankruptcy dismissal revests the property of the bankruptcy estate in the entity in which it was vested immediately before commencement of the case. The question arises as to whether this applies only to property remaining in the bankruptcy estate at the time of dismissal, or whether it also applies to property that has been distributed to creditors prior to dismissal. The few cases that mention subsection 349(b)(3) refer to its applicability only in the context of property or property [***34] rights that have not passed out of the bankruptcy estate. These cases suggest that the "property of the estate" that revests in its prior owners after dismissal includes only the property left in the estate at the time of dismissal. This view is reinforced by the legislative history of subsection 349(b). In a brief discussion of 349(b)'s impact on property that has passed out of the estate prior to dismissal, the legislative history states, "where there is a question over the scope of the subsection, the court will make the appropriate order to protect rights acquired in reliance on the bankruptcy case."
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> Id. at 270 (citations omitted).

Ali v. CIT Tech. Fin. Servs., 188 Md. App. 269, 291, 981 A.2d 759, 772, 2009 Md. App. LEXIS 150, *33-34.

Because the property in question was vested in Mr. Margolin and he did not just merely have a lien on it, upon dismissal of the Chapter 15 Case, 11 U.S.C. § 349(b)(3) mandates that the

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non-final, interlocutory Summary Judgment Order be vacated and that the parties be placed back into the position in which they were found at the commencement of the case.

Vacation of the Summary Judgment Order would not create a "windfall" for Mr. Margolin as Sadri and Koroghli claim, and Sadri and Koroghli could bring a state court cause of action in the First Judicial District Court of Nevada to try and set aside Mr. Margolin's ownership interest in the relevant properties if they chose to do so. However, contrary to Sadri's and Koroghli's arguments no good "cause" exists that is sufficient to avoid the effects of 11 U.S.C. § 349(b)(3), and maintaining the Summary Judgment Order after the dismissal of the underlying bankruptcy would violate the tenets of 11 U.S.C. § 349(b)(3) and would simply create a "windfall" for Sadri and Koroghli.

Sadri and Koroghli do not support their argument for an exception to the mandate of Section 349(b)(3) other than stating the order should not be vacated. The "cause" they refer to exists in each and every case where an order affecting title to property is entered prior to dismissal of a bankruptcy. If this Court were to accept the putative "cause" offered by Sadri and Koroghli, then the mandate of Section 349(b)(3) would be meaningless. Congress has stated that dismissal of a bankruptcy should cause all property to vest in the entity that held that property prior to the bankruptcy, Congress does not view the plain language of the Code to constitute a windfall, but rather, sound public policy.

II. CONCLUSION

For all of the foregoing reasons, Mr. Margolin's Amended Motion to Dismiss Chapter 15 Case should be granted in the manner requested.

DATED: This 24th day of September, 2019. BROWNSTEIN HYATT FARBER SCHRECK, LLP

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and on this 24th day of September, 2019, I served the document entitled **REPLY TO LIMITED OPPOSITION TO AMENDED MOTION TO DISMISS CHAPTER 15 CASE** on the parties listed below via the following:

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☐ **BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

☐ **VIA COURIER:** by delivering a copy of the document to a courier service for over-night delivery to the foregoing parties.

☒ **VIA ELECTRONIC SERVICE:** by electronically filing the document with the Clerk of the Court using the CM/ECF system which served the foregoing parties electronically.

/s/ Jeff Tillison
Employee of Brownstein Hyatt Farber Schreck, LLP