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10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 IN RE:

13 GHOLAM REZA JAZI ZANDIAN,

14 Debtor in Foreign
15 Proceeding.

Case No. BK-N-16-50644-BTB

Chapter 15

**REPLY TO CANET’S OPPOSITION TO
MOTION TO DISMISS**

Hearing Date: October 1, 2019

Hearing Time: 2:00 PM

Estimated Time for hearing: 1 hour

16 Jed Margolin (“Mr. Margolin”), by and through his attorneys Brownstein Hyatt Farber
17 Schreck, LLP, hereby files the following Reply to Patrick Canet’s (“Canet”) Opposition to
18 Motion to Dismiss. As discussed below, Canet’s Opposition arguments are without merit.

19 **I. REPLY ARGUMENTS**

20 As a threshold matter, Canet does not address or oppose Mr. Margolin’s arguments that
21 this proceeding should be dismissed pursuant to Section 1517(d) of the Bankruptcy Code
22 because: (1) Zandian’s Center of Main Interests (“COMI”) was not France at the time Canet filed
23 his Petition for Recognition; (2) Canet has already collected enough money from Zandian to pay
24 the approved creditors from the 1998 French Action and double dipping is prohibited by
25 Bankruptcy Code § 1532; and (3), Canet has not produced any evidence that Zandian is insolvent.
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1 Instead, Canet argues that this proceeding should not be dismissed because: (A) his counsel's
 2 failure to prosecute this action for three (3) years was due to Mr. Hartman's "inadvertence"; (B)
 3 he has been in settlement discussions with Fred Sadri as Trustee for The Star Living Trust, dated
 4 April 14, 1997 and Ray Koroghli and Sathsowi T. Koroghli as Managing Trustees for Koroghli
 5 Management Trust ("Sadri and Koroghli"); and (C), Mr. Margolin has not filed a claim against
 6 the purported French Proceeding. None of these arguments come close to providing a basis why
 7 this proceeding should not be dismissed.

8 **A. CANET'S "INADVERTANCE" ARGUMENTS ARE NOT SUPPORTED BY THE**
 9 **RECORD AND ARE NOT CREDIBLE**

10 As stated in Mr. Margolin's Motion, Canet's counsel represented to this Court on
 11 September 6, 2016 that he was going to proceed with either a proceeding against Zandian under
 12 Sections 303 or 301 and seek to have a trustee appointed. Adv. No. 35-1, July 30, 2019
 13 Declaration of Matthew D. Francis, Exhibit A. Canet's counsel specifically represented that "if
 14 the Court is to - - Court determines to grant our petition for foreign recognition, then under
 15 Section 1511 we would commence either an involuntary proceeding against Mr. Zandian under
 16 Section 303; or if he were to consent to being a debtor under Chapter 7, then we would proceed
 17 under Section 301. In either case, we would seek to have a trustee appointed to administer the
 18 assets that are located in the state of Nevada." *Id.* at 6:4-11. Canet's/Zandian's counsel has done
 19 neither of these things, and has taken no action – none – for more than 3 years even though the
 20 Court relied on Canet's counsel's representations and anticipated that a Chapter 7 (voluntary or
 21 involuntary) proceeding where Mr. Zandian is an actual debtor would be commenced and a
 22 Chapter 7 trustee would be appointed shortly after the September 6, 2016 hearing.

23 In Canet's Opposition, Canet's counsel initially blames the fact that he has not taken any
 24 action for over three (3) years on his own inadvertence in not filing a draft Order that was
 25 approved as to form only by Mr. Margolin's counsel. *See* Adv. No. 49, 49-1, 49-2. First of all,
 26 Canet is deemed to have withdrawn the petition for recognition. Local Rule 9021(a)(5) ("Unless
 27 otherwise ordered, if no proposed Order is submitted within thirty-five (35) days of a hearing, the
 28 motion or other matter may be deemed withdrawn, without prejudice, subject to a motion under

1 Fed. R. Bankr. P. 9024.”). Second, this Order only purported to recognize Canet as the Foreign
 2 Representative in the French Proceeding as a foreign main proceeding. As stated in the proposed
 3 Order, Mr. Margolin objected to, and continues to object to, recognition of Canet as a Foreign
 4 Representative and the French Proceeding as a foreign main proceeding. Third, nothing in the
 5 proposed Order served or serves as any type of waiver of any argument belonging to Mr.
 6 Margolin, but only to approve as to form the Order that contains the Order of this Court. Local
 7 Rule 9021(b)(3) (“Approval indicates only that the proposed Order accurately reflects the ruling
 8 of the court and does not constitute agreement with the ruling or waive any rights of appeal”).¹
 9 Fourth, Canet’s counsel’s claims of inadvertence, i.e. that he forgot to file an Order three (3)
 10 years ago are not credible since he was reminded of his failure to prosecute during the Adversary
 11 Proceeding on multiple occasions.

12 First, in paragraph 56 of Mr. Margolin’s August 18, 2017, ANSWER AND
 13 AFFIRMATIVE DEFENSES OF JED MARGOLIN TO THE CROSS CLAIMS OF PATRICK
 14 CANET, Mr. Margolin stated:

15 56. Margolin admits that this Court granted Canet’s request for recognition of the
 16 foreign proceeding in September 2016, but the hearing where Canet’s Chapter 15
 17 Petition was granted was held on September 6, 2016. **Margolin notes that it was**
 18 **at the same hearing where Canet promised the Court that if Canet’s Chapter**
 19 **15 Petition were granted, he would file a Chapter 7 bankruptcy for Zandian.**
 20 **This has not been done.** (Emphasis added).

21 Second, Canet’s counsel was reminded of his failure to take any action in this proceeding
 22 again during discovery in the Adversary case, when he admitted that he had not taken any action:

23 REQUEST NO. 10: Admit that at the September 6, 2016 hearing in U.S.
 24 Bankruptcy Court your counsel promised the Court that if your Chapter 15 Petition
 25 were granted, then under Section 1511 your counsel would commence either an
 26 involuntary proceeding against ZANDIAN under Section 303; or if he were to
 27 consent to being a debtor under Chapter 7, then your counsel would proceed under
 28 Section 301.

¹ Contrary to Mr. Hartman’s arguments, the draft order that was sent to Mr. Margolin’s counsel Steve Abelman was not an “Order Granting Petition For Recognition And **Chapter 11 Relief.**” To the contrary, it was a proposed “Order Granting Petition For Recognition and **Chapter 15 Relief.**” See Adv. No. 49, 49-1.

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1 RESPONSE: Admit. CANET relied on counsel with respect to the
2 Chapter 15 Petition.

3 REQUEST NO. 11: Admit that it has been more than 12 months since your
4 counsel has made the above promise to the Court and your counsel has failed to
commence either of the above actions.

5 RESPONSE: Admit. CANET relied on counsel with respect to the Chapter 15
6 Petition.

7 September 25, 2019 declaration of Matthew D. Francis, Exhibit A.

8 There is no excusable explanation for Canet’s and his counsel’s failure to prosecute this
9 proceeding or respond to Mr. Margolin’s COMI and other arguments contained in his Motion.

10 Mr. Margolin’s Motion as it pertains to Canet’s failure to prosecute should be granted.

11 **B. CANET’S ALLEGED “RECENT” SETTLEMENT DISCUSSIONS WITH**
12 **JUDGMENT CREDITORS DOES NOT EXCUSE HIS FAILURE TO**
13 **PROSECUTE THIS CASE**

14 Canet argues that since he has been in settlement discussions “recently” (whatever that
15 means) in the Adversary Proceeding with Sadri and Koroghli that his failure to prosecute this case
16 should be excused. Even if Canet has been in settlement discussions with Sadri and Koroghli,
17 Canet offers zero authority for the proposition that settlement discussions should suspend action
on an underlying bankruptcy.

18 Furthermore, while it is true that the Court entered a non-final, interlocutory partial
19 summary judgment order on September 20, 2018 in the Adversary Proceeding (“Summary
20 Judgment Order”), that is not a basis for Canet’s three (3) year delay. Canet cites no authority to
21 support this position either.

22 Finally, Canet’s claim that he intends to file more adversary proceedings, file more
23 motions and engage in discovery is highly questionable given his track record of inaction and is
24 more importantly not an excuse that supports inaction on this bankruptcy proceeding. Canet cites
25 no authority to support his vague position and it must be rejected out of hand.

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1 **C. MR. MARGOLIN’S FAILURE TO FILE A CLAIM IN THE FRENCH**
2 **PROCEEDING DOES NOT EXCUSE CANET’S AND HIS COUNSEL’S**
3 **INACTION, AND MR. MARGOLIN NEVER CONSENTED TO THE**
4 **LEGITIMACY OF THIS PROCEEDING**

5 Canet claims that someone with the name of Jean-Marie Hyst has submitted an
6 inadmissible hearsay statement in the form of a letter that states that Mr. Margolin has not filed a
7 claim against Zandian in the French Proceeding, that Mr. Margolin’s Motion should be denied.
8 The Hyst letter is inadmissible and does not comply with 28 U.S.C. § 1746(1).

9 Even if the Hyst letter was considered – which it should not be – it does not provide any
10 basis why Mr. Margolin’s Motion should be denied. Whether Mr. Margolin filed a claim in the
11 French Proceeding has nothing to do with Canet and his counsel’s failure to prosecute this action,
12 whether Zandian’s Center of Main Interests (“COMI”) was France at the time Canet filed his
13 Petition for Recognition (it was not), whether Canet has already collected enough money from
14 Zandian to pay the approved creditors from the 1998 French Action (he has), and whether
15 Zandian is insolvent (he is not). Canet fails to rebut any of the evidence or arguments presented
16 by Mr. Margolin regarding these arguments and Canet’s “failure to file claim in France”
17 argument is irrelevant. There is no requirement whatsoever for Mr. Margolin to file anything in
18 the French matter related to Mr. Margolin’s interests in real property in the United States, nor
19 with regard to his judgment against Mr. Zandian properly issued by a court in the United States.
20 Furthermore, because Mr. Canet has not initiated a voluntary or involuntary bankruptcy with
21 Zandian as a debtor in this Court pursuant to Code Section 1520(c), there is no procedure for or
22 requirement for Mr. Margolin to file a proof of claim in the instant proceedings, and Canet has
23 cited no such procedure or requirement.

24 “Chapter 15 was added to the Bankruptcy Code by title VIII of the Bankruptcy Abuse
25 Prevention and Consumer Protection Act of 2005 (the ‘2005 Act’) to encourage cooperation
26 between the United States and foreign countries with respect to transnational insolvency cases.
27 Chapter 15 incorporates the Model Law on Cross-Border Insolvency promulgated in 1997 by the
28 United Nations Commission on International Trade Law (‘UNCITRAL’).” 8 Collier on
Bankruptcy P 1501.01 (16th 2019). Code Sections 1525-1527 provide the ability of this Court

1 and the French court to communicate *directly* or through a trustee for the purpose of coordinating
2 the foreign proceeding in accord with the United Nations Commission on International Trade
3 Law, as adopted in the 2005 BAPCPA. “Under section 1525(a) of the Bankruptcy Code, courts
4 must ‘cooperate to the maximum extent possible’ with foreign courts and foreign representatives
5 and may do so either directly or through the trustee.” 8 Collier on Bankruptcy P 1525.01 (16th
6 2019). “Section 1525(b) entitles courts to ‘communicate directly with, or to request information
7 or assistance directly from, a foreign court or a foreign representative.’ Although communication
8 with other courts worldwide is of paramount importance, such rights must be exercised with due
9 regard to the rights of the parties.” *Id.*; *see also* Bankruptcy Court Rule 2002(q)(2). However,
10 there have been *no such communications* or any effort to coordinate the foreign proceeding at all.
11 Mr. Canet has done nothing in this Court with respect to the foreign proceeding. He has only
12 filed the petition to provide Mr. Zandian the ability to frustrate Mr. Margolin’s efforts to collect
13 his valid judgment against Mr. Zandian.

14 Finally, Mr. Canet’s argument that Mr. Margolin has somehow waived all arguments
15 relating to the legitimacy of this proceeding because his counsel agreed to the form of the
16 proposed Order that was never entered after the contested September 6, 2016 hearing on Mr.
17 Canet’s Verified Petition for Recognition and Chapter 15 Relief is specious. *See* Local Rule
18 9021(a)(5); Local Rule 9021(b)(3). Again, the proposed Order itself states that Mr. Margolin
19 objected to the Verified Petition. Adv. No. 49-1.

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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 25th day of September, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/Matthew D. Francis

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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 25th day of September, 2019, I served the document entitled **REPLY TO CANET’S OPPOSITION TO MOTION TO DISMISS** on the parties listed below via the following:

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VIA FIRST CLASS U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada, addressed to the foregoing parties.

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