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

13 IN RE:
14 GHOLAM REZA JAZI ZANDIAN,
15
16 Debtor in Foreign
Proceeding.

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

Chapter 15

**AMENDED MOTION TO DISMISS CHAPTER
15 CASE**

Hearing Date: October 1, 2019
Hearing Time: 2:00 PM
Estimated Time for hearing: 1 hour

19 Jed Margolin (“Mr. Margolin”), by and through his attorneys Brownstein Hyatt Farber
20 Schreck, LLP hereby files the following Amended Motion to Dismiss Chapter 15 Case. As
21 grounds, Mr. Margolin asserts as follows:

22 **I. INTRODUCTION**

23 Pursuant to Section 1515(a) of the Bankruptcy Code, Patrick Canet (“Canet”) filed a
24 Petition for Recognition of a Foreign Proceeding on May 19, 2016. ECF No. 1. A Verified
25 Petition for Recognition and Chapter 15 Relief was subsequently submitted on May 26, 2016
26 alleging that Canet was appointed in 1993 as a representative and judicial liquidator for the
27 benefit of creditors in a French Action involving a debtor entity named “COMPUTER WORLD.”
28

1 ECF No. 5. The Verified Petition alleged that Iranian citizen Jazi Gholamreza Zandian
2 (“Zandian”) was the chairman and general manager of COMPUTER WORLD and in 1998, a
3 judgment was entered against him in Paris, France in the amount of (up to) 20,000,000 francs.
4 ECF No. 5, ¶¶ 2-3. The Verified Petition does not identify Zandian as the debtor in the French
5 Action involving Computer World. *Id.* Rather, Mr. Zandian is identified as someone the French
6 Courts are pursuing sanctions against due to his numerous illegal acts: such sanction being to pay
7 Computer World’s liabilities from Zandian’s own personal assets (not assets of the debtor
8 Computer World).¹ ECF No. 5, p. 11, ¶¶ 5-7.

9 The Verified Petition also alleged that a French Court allegedly established that Zandian
10 was insolvent as of October 3, 1996, and that Canet was seeking recognition of the alleged French
11 Action to protect Zandian and his assets against “any and all enforcement actions against Zandian
12 and any of his assets in the United States.” ECF No. 5, ¶¶ 2-3.

13 Interestingly, Canet’s Verified Petition was filed shortly after Mr. Margolin filed a Motion
14 to Void Deeds, Assigned Property, for Writ of Execution and to Convey in the underlying Nevada
15 State Court case on May 3, 2016, which sought to set aside fraudulent deeds filed for the benefit
16 of Zandian and his insiders, and brought to the Court’s attention Zandian’s attempt to bribe Mr.
17 Margolin’s counsel. *See* ECF No. 13, Ex. B.

18 On June 16, 2016, Mr. Margolin, who had and has a judgment against Zandian for an
19 amount in excess of \$2,044,694, filed an Objection to Petition for Recognition and Chapter 15
20 Relief, objecting to recognition on numerous grounds including: (A) the Petition is inconsistent
21 with the purposes of Chapter 15; (B) the Petition does not satisfy the requirements of Section
22 1515; (C) the timing of the filing of the Petition was (and is) extremely suspicious in light of the
23 fact that after 18 years, someone purporting to be the liquidator for a defunct company was trying
24 to protect Zandian and his assets after Mr. Margolin was closing in on those fraudulently
25 conveyed assets; and (D) the Petition failed to meet the requirements of Bankruptcy Rule
26 1007(a)(4). *See* ECF No. 13.

27 _____
28 ¹ By submitting this Motion, Mr. Margolin does not concede that Mr. Zandian is a proper debtor in the French Action
or this proceeding.

1 On August 3, 2016, Mr. Hartman filed a Status Report and Reply regarding the French
2 Action. ECF No. 18.

3 A Hearing on the Verified Petition for Recognition and Chapter 15 Relief took place on
4 September 6, 2016. At this hearing, Canet's counsel represented to the Court that he was going to
5 proceed with either a proceeding against Zandian under Sections 303 or 301 and seek to have a
6 trustee appointed. July 31, 2019 declaration of Matthew D. Francis, Exhibit A. Canet's counsel
7 specifically represented that "if the Court is to - - Court determines to grant our petition for
8 foreign recognition, then under Section 1511 we would commence either an involuntary
9 proceeding against Mr. Zandian under Section 303; or if he were to consent to being a debtor
10 under Chapter 7, then we would proceed under Section 301. In either case, we would seek to
11 have a trustee appointed to administer the assets that are located in the state of Nevada." *Id.* at
12 6:4-11.

13 Canet's/Zandian's counsel has done neither of these things, and has taken no action –
14 none – for more than 2.5 years even though the Court relied on Canet's counsel's representations
15 and anticipated that a Chapter 7 (voluntary or involuntary) proceeding where Mr. Zandian is an
16 actual debtor would be commenced and a Chapter 7 trustee would be appointed shortly after the
17 September 6, 2016 hearing.² As such, this proceeding should be dismissed. In addition to this
18 failure to prosecute, the facts show that at the time Canet filed his Petition, the center of
19 Zandian's main interests (if Mr. Zandian is a proper debtor in the foreign proceeding) was not
20 France, Canet is attempting to obtain double recovery, and this proceeding should be dismissed
21 pursuant to Section 1517(d) of the Code.

22 II. ARGUMENT

23 A bankruptcy court can either suspend or dismiss a recognized Chapter 15 case if the
24 purposes of Chapter 15 would be fulfilled by such dismissal or suspension. 11 U.S.C. §
25 305(a)(2),(b). LR 7041 provides that "[a]ny proceeding that has been pending in this court for
26

27 ² "I'm inclined to go ahead and recognize the cross-border insolvency which will result the appointment of a Chapter
28 7 trustee *in the near term*. . ." ECF No. 29 at 15:16-18. "I'm going to recognize the insolvency proceeding, and Mr.
Hartman can go forward and get a Chapter 7 filed and get a trustee appointed." Transcript of Application Verified
Petition for Recognition and Chapter 15 Relief, 16:5-7.

1 more than one (1) year without any activity of record may, after notice, be dismissed for want of
 2 prosecution on motion by any party, or by the court. In addition, in appropriate circumstances, the
 3 court may issue an order to show cause why a proceeding should not be dismissed regardless of
 4 how long it has been pending.”

5 Additionally, Section 1517(d) of the Bankruptcy Code specifies that the court may modify
 6 or terminate recognition if the grounds for granting it were fully or partially lacking or have
 7 ceased to exist.

8 As discussed below, this proceeding should be dismissed for failure to prosecute and also
 9 pursuant to Section 1517(d) of the Code.

10 **A. THIS PROCEEDING SHOULD BE DISMISSED FOR FAILURE TO**
 11 **PROSECUTE**

12 “Dismissal for lack of prosecution must be supported by a showing of unreasonable
 13 delay.” *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). When determining whether
 14 to dismiss a case for lack of prosecution, the court must weigh several factors: “(1) the public’s
 15 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the
 16 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
 17 merits; and (5) the availability of less drastic sanctions.” *In re Roessler-Lobert* 567 B.R. 560
 18 (2017) (citing *Henderson*, 779 F.2d at 1423). A showing of bad faith is not required under the
 19 court’s inherent power to dismiss for lack of prosecution under Fed. R. Civ. P. 41(b). *Id.* These
 20 factors warrant dismissal of this Chapter 15 proceeding.

21 **1. Public Interest**

22 The public has an interest in the prompt resolution of litigation. Thus, this factor
 23 ordinarily weighs in favor of dismissal. *In re Roessler-Lobert*, 567 B.R. 560, 568 (9th Cir. 2017)
 24 (citing *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). In *Henderson*, the Court
 25 found that despite a “seemingly short delay,” a pattern of dilatory actions existed that warranted
 26 dismissal. 779 F.2d at 1424. The court must find unreasonable delay. *Id.* at 1423. Here, nothing
 27 has happened in this proceeding since September 6, 2016, over 2.5 years ago, despite Canet’s
 28 counsel representations to this Court that either a Chapter 303 or 301 proceeding would be

1 immediately instituted to bring Mr. Zandian to this Court in the capacity as a debtor and that a
2 Chapter 7 trustee would be appointed. There is absolutely no rational or reasonable basis for this
3 delay, and the first factor weighs in favor of dismissal.

4 **2. The Court's Docket-Management Needs**

5 “[J]udges are best situated to decide when delay in a particular case interferes with docket
6 management and the public interest.” *Yourish*, 191 F.3d at 990. In the present case, the Court
7 relied on Canet’s counsel’s representations that Mr. Zandian would be hauled into this Court as a
8 Chapter 7 debtor and that a Chapter 7 trustee would be appointed shortly after the September 6,
9 2016 hearing, but those representations were false. Mr. Margolin submits that Canet’s counsel’s
10 representations and failure to act have interfered with the Court’s docket management and the
11 public interest of resolving cases in a just and speedy manner.

12 **3. Risk of Prejudice to Defendants**

13 For this element, courts consider “whether the plaintiff’s actions impair the defendant’s
14 ability to go to trial or threaten to interfere with the rightful decision of the case.” *In re Eisen*, 31
15 F.3d at 1453. Here, Canet convinced this Court to recognize an alleged French Action that was
16 allegedly filed in the early 1990’s based on a judgment allegedly entered against Computer World
17 on April 3, 1998. This Court’s action was based solely on a *presumption* that a few vague
18 documents presented to this Court supported recognizing a foreign proceeding under Section
19 1516. No other evidence of the status of that alleged proceeding has been introduced by Canet
20 and Canet has not personally appeared in this case. Mr. Margolin has a judgment against Zandian
21 in an amount in excess of \$2,044,694, and has been waiting for over 2.5 years for action to be
22 taken on this proceeding. The only explanation for the filing of this proceeding was to delay Mr.
23 Margolin’s ability to collect on his judgment from Zandian, who has engaged in attempted
24 bribery, still has a warrant for his arrest, and has already been adjudicated guilty of acts causing
25 the French Courts to demand he pay the liabilities of Computer World. Simply put,
26 Canet/Zandian has achieved his stated goal of protecting Zandian and his assets against “any and
27 all enforcement actions against Zandian and any of his assets in the United States” by doing
28 nothing. The bottom line is that Mr. Margolin has been prejudiced and will continue to be

1 prejudiced based on Canet/Zandian's dilatory actions and failure to prosecute this proceeding.

2 **4. Public Policy**

3 Mr. Margolin acknowledges that public policy normally favors disposition of the case on
4 the merits and therefore generally weighs against dismissal. *In re Roessler-Lobert*, 567 B.R. at
5 570 (internal citations omitted). However, this factor lends little support to a party whose
6 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
7 progress in that direction. *In re Phenylpropanolamine(PPA) Prods. Liab. Litig.*, 460 F.3d 1217,
8 1228 (9th Cir. 2006). The latter is the case here. Canet has done *nothing* to make Mr. Zandian a
9 debtor in this action and has done nothing to advance this case for over 2.5 years. This factor
10 weighs in favor of dismissal.

11 **5. Less Drastic Sanctions**

12 Although a court generally considers whether less drastic sanctions exist before
13 dismissing a case, "[t]he court need not exhaust every sanction short of dismissal before finally
14 dismissing a case." *Henderson*, 779 F.2d at 1424. An explicit discussion of alternatives is not
15 mandatory. *In re Eisen*, 31 F.3d at 1454-55. Canet's 2.5 year delay is simply inexplicable and
16 inexcusable. Mr. Margolin submits that the only reason for the delay is simply to delay having to
17 provide concrete evidence of the alleged French Action, delay having Mr. Zandian actually
18 hauled before this Court as a debtor, and to prevent Mr. Margolin from recovering the millions of
19 dollars he is owed by Zandian.

20 After weighing all of the relevant factors, the court should dismiss this proceeding for
21 failure to prosecute for the past 2.5 years, and also dismiss Adversary Proceeding No. 17-05016-
22 BTB (the "Adversary Proceeding") and the September 20, 2018 Order entered therein. *See Adv.*
23 *No. 61*; 11 U.S.C. §349(b).

24 **B. THIS PROCEEDING SHOULD BE DISMISSED PURSUANT TO SECTION**
25 **1517(d) OF THE BANKRUPTCY CODE**

26 In the event the Court is not inclined to dismiss this proceeding based on Canet's failure to
27 prosecute – which it should – this proceeding should be dismissed pursuant to Section 1517(d) of
28 the Code because: (1) Zandian's center of main interests (if Zandian is the debtor in the French

1 Action) was not France at the time Canet's Petition for Recognition was filed; (2), Canet is
 2 attempting to violate Bankruptcy Code § 1532; and (3), Canet has produced no evidence that
 3 Zandian is currently insolvent, and has failed to file an involuntary petition for or have Zandian
 4 consent to a Chapter 7 proceeding in this Court.

5 **1. Canet's Center of Main Interests ("COMI") Was Not France at the Time**
 6 **Canet Filed His Petition for Recognition**

7 Bankruptcy Code § 1517(b)(1) states in pertinent part:

8 (b) Such foreign proceeding shall be recognized—

9 (1) as a foreign main proceeding if it is pending in the country where the debtor has the
 10 center of its main interests

11 The District of Nevada has acknowledged that COMI must be analyzed on the date the
 12 petition for recognition is filed. *See* 2 Collier Bankruptcy Practice Guide P 19.32 (2019), citing
 13 *In re Betcorp Ltd.*, 400 B.R. 266, 292 (Bankr. D. Nev. 2009). Factors to consider when
 14 determining COMI include the debtor's location and the location of debtor's primary assets,
 15 among others. *In re Betcorp*, 400 B.R. at 287-288, quoting *In re Bear Stearns High-Grade*
 16 *Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 336 (S.D.N.Y. 2008).

17 On May 19, 2016, Canet filed a Petition for Recognition of a Foreign Proceeding, and
 18 listed the proceeding as a foreign main proceeding. ECF No. 1. However, on April 12, 2016,
 19 Zandian informed Margolin's counsel (whom he tried to bribe), that he was living in Iran.
 20 Francis Decl., Exhibit B. Specifically, Zandian states in part:

21 **I am currently living in Iran** and wish to keep this conversation absolutely
 22 confidential and as you confirmed earlier I have no attorney to represent me
 23 The vacant land in Nevada that I got as sweat equity has not value and I am
 24 planning to pay you out of other resources. *Id.* (emphasis added).

25 This admission shows that Canet was not living in France at the time Canet's filing. What
 26 it does show is that Zandian was in Iran, Zandian's assets were located in Nevada, and that
 27 Zandian was not insolvent. Again, the location of the debtor as well has his or her assets are
 28 crucial considerations for a COMI determination. *In re Betcorp*, 400 B.R. at 287-288.³

³ Again, it should be noted that the French Action does not identify Mr. Zanidan as a debtor and Canet has admitted
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1 With regard to assets, when Canet filed the list of Zandian's assets it was clear that all of
 2 Zandian's assets are in Nevada. *See* Adversary Proceeding, ECF No. 55. While Iran (or Nevada)
 3 may have been Zandian's COMI at the time Canet filed his Petition, it was certainly not France.

4 Because France was not Zandian's COMI at the time the Petition was filed, Canet's
 5 Chapter 15 Petition does not meet the requirement of Bankruptcy Code § 1517(b)(1), and this
 6 proceeding must be dismissed with prejudice.

7 **2. Canet Has Already Collected Enough Money From Zandian to Pay the**
 8 **Approved Creditors From the 1998 French Action and Double Dipping is**
 9 **Prohibited by Bankruptcy Code § 1532**

10 Canet stated in his Verified Petition For Recognition and Chapter 15 Relief filed May 16,
 11 2016 that in the 1998 French bankruptcy of Zandian's company Zandian was ordered by the
 12 French Court to personally pay the debts of the company of 20M francs. ECF No. 5, p. 2, ¶ 3
 13 (emphasis added). However, the French Court ordered Zandian to pay "up to the amount of
 14 20,000,000 francs." ECF No. 5, Exhibit 3 (emphasis added). Canet left out the "up to" verbiage
 15 and misled this Court into believing that there was a judgment against Zandian in the amount of
 16 20M francs instead of "up to" 20M francs with the actual amount to be determined at a later time.
 17 Canet still has not provided evidence of the exact alleged debt. As the Court is previously aware,
 18 during discovery in the Adversary Proceeding, Canet refused to respond to discovery requests, let
 19 alone provide any documents regarding the status of the debt in the French Action and the money
 20 he had already received from Zandian in the French Action. Adversary Proceeding ECF No. 26,
 21 Exhibit D, Request Nos. 23 and 26; *see also* Adversary Proceeding ECF No. 34, p. 12 (Canet
 22 admits - "Hartman acknowledges that he did not respond to the First Set of Interrogatories and
 23 Request for Production of Documents propounded by Margolin").

24 While Canet refused to provide any documentation relating to the French action or
 25 otherwise comply with the Federal Rules of Civil Procedure, Margolin obtained and produced
 26 documents from the French Court showing that Canet has recovered more than what he is entitled
 27 to from Zandian. Specifically, documents from the French Court show that of the potential debt

28 that Mr. Zandian is not a debtor in this proceeding unless an involuntary Chapter 7 were initiated, or Mr. Zandian
 consented to a Chapter 7. Francis Decl., Exhibit A at 6:4-11.

1 of 20M francs (3,048,980.34 euros), 19M francs (2,896,531.32 euros) was claimed by Bank Melli
 2 of Iran. Francis Decl., Exhibit C. This left 1M francs (152,449.02 euros) owed to other creditors.
 3 Although Canet refused to answer Margolin's interrogatories and requests for production during
 4 the Adversary Proceeding, he responded to Margolin's requests for admissions, in which he
 5 admitted that Bank Melli not an approved creditor. Francis Decl., Exhibit D, p. 4, Request No.
 6 2.⁴ Therefore, the debt owed to all approved creditors in the French Action is only approximately
 7 1M francs (152,449.02 euros).

8 Zandian's debt was not the 20M francs as Canet asserted when he filed his Chapter 15
 9 Petition, only 1M francs (152,449.02 euros). Canet admitted that he has collected at least
 10 150,000 euros from Zandian. Francis Decl., Exhibit D, p. 4, Request No. 3. However,
 11 information from the French Court in a document dated November 28, 2011 appears to show that
 12 Canet has collected at least 300,000 euros from Zandian and may have collected as much as
 13 450,000 euros from him. (Canet appears to have sold a Zandian property for 300,000 euros and
 14 Zandian deposited 150,000 euros in a CARPA account.) Francis Decl., Exhibit E.

15 Because it appears that Canet has collected more than the 1M francs available to approved
 16 creditors in the French Action, Canet and the alleged creditors in the French Action have been
 17 made whole and Canet is now attempting to obtain more money/assets in this proceeding than he
 18 is entitled to. Again, the Bank Melli debt is unrecognized or approved and payment of money to
 19 Bank Melli/Iran would violate federal law. The bottom line is that Canet is attempting to "double
 20 dip" in this proceeding to obtain more money than what he is entitled to in violation of
 21 Bankruptcy Code § 1532, and for this reason, this proceeding should be dismissed with prejudice.

22 **3. Canet Has Not Produced Any Evidence that Zandian is Insolvent**

23 During the Adversary Proceeding, Margolin asked Canet in a request for admission to
 24 admit that he had not produced any evidence that Zandian was or is insolvent. Francis Decl.,
 25 Exhibit D, p. 7, Request No. 16. Canet evasively responded to this request by referring back to

26 ⁴ If any part of the amount Canet is currently claiming is for the benefit of Bank Melli, he would be committing a
 27 criminal act under 31 CFR § 560 and Executive Order 13599. It is a criminal act under 31 CFR § 560 and Executive
 28 Order 13599 to send money to the Government of Iran, which owns and operates Bank Melli. *See Bennett v. Islamic*
Rep (In re Estate of Bennett), 825 F.3d 949 (9th Cir. 2016); *see also* Francis Decl., Exhibits F-G.

1 the 1998 French Action. *Id.* Canet also refused to provide information and documents in
2 discovery and provide a list of the approved creditors and amounts owed arising from the 1998
3 French Action even when he was asked for it during discovery. Adversary Proceeding ECF No.
4 26, Exhibit D, Request Nos. 23 and 26.

5 Canet should be compelled to provide detailed accounting statements for the period from
6 the 1998 French Action to the present time to determine insolvency. If Canet cannot produce
7 evidence of insolvency, then this action should be dismissed based on that ground as well.⁵

8 **III. CONCLUSION**

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

11 DATED: This 31st day of July, 2019.

12
13 BROWNSTEIN HYATT FARBER SCHRECK, LLP

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26 _____
27 ⁵ If Zandian is not insolvent then this case does not belong in U.S. Bankruptcy Court. While Canet could have
28 attempted to assert his April 3, 2013 foreign-money judgment against Zandian under the Nevada Recognition of
Foreign-Country Money Judgments Act NRS 17.700 - 17.790, such an action would have been barred under the 15
year limitation period under NRS 17.800.

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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 31st day of July, 2019, I served the document entitled **AMENDED MOTION TO DISMISS CHAPTER 15 CASE** 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