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

13 IN RE:

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

14 GHOLAM REZA JAZI ZANDIAN,

Chapter 15

15 Debtor in Foreign
16 Proceeding.

SUPPLEMENT TO MOTION TO DISMISS
CHAPTER 15 CASE

Hearing Date: January 2, 2020
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 Supplement to Amended Motion to Dismiss Chapter 15
21 Case.

22 Mr. Margolin has engaged counsel in Paris, France to explain the status of the alleged
23 French proceedings. Attached hereto as Exhibit 1 is the declaration of Isabelle Victoria
24 Carbuccia, attorney to the Appeal Court of Paris, dated November 12, 2019, and accompanying
25 records filed in the French Courts. (“Carbuccia Decl.”).¹
26

27 ¹ Fed. R. Civ. P. 44.1 (“The court, in determining foreign law, may consider any relevant material or source,
28 including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence.”);

1 **I. THE FRENCH JUDGMENT AGAINST ZANDIAN EXPIRED APRIL 3, 2008**

2 The Chapter 15 petition relies exclusively upon the April 3, 1998 judgment (“Judgment”).
 3 ECF 1 at 7. That Judgment against Mr. Zandian expired on April 3, 2008 and cannot be
 4 enforced. *Carbuccia Decl.*, § 2 (“L 111-4 of the Code of civil enforcement procedures”); *see*
 5 *also*, [https://e-justice.europa.eu/content_procedures_for_enforcing_a_judgment-52-fr-](https://e-justice.europa.eu/content_procedures_for_enforcing_a_judgment-52-fr-en.do?member=1)
 6 [en.do?member=1](https://e-justice.europa.eu/content_procedures_for_enforcing_a_judgment-52-fr-en.do?member=1) (Official Website of the European Union – Procedures for Enforcing a
 7 Judgment – France); *see also declaration of Arthur A. Zorio* attached hereto as Exhibit 2 at Ex. A:

8 **4.3 What is the validity of such measures?**

9 Enforceable titles may, in principle, be enforced within a period of 10 years
 10 (Article L. 111-4 of the Civil Enforcement Proceedings Code). That period begins when a
 compulsory enforcement measure is initiated on the basis of that title.

11 **6 Are there any limitations on enforcement, in particular related to debtor protection
 12 or time limits?**

13 Enforceable titles may, in principle, be enforced within a period of 10 years (Article L.
 14 111-4 of the Civil Enforcement Proceedings Code). That period begins when a
 compulsory enforcement measure is initiated on the basis of that title.

15 *Id.*

16 Since the Judgment expired on April 3, 2008, the Judgment was therefore not enforceable
 17 at the time that the Chapter 15 petition was filed in this matter in 2016. It expired eight (8) years
 18 prior.

19 Furthermore, the Judgment against Mr. Zandian entered on April 3, 1998 is merely a
 20 Judgment, not a bankruptcy proceeding for which Chapter 15 applies to assist in administering.
 21 *Carbuccia Decl.*, §§ 1, 3 (“The purpose of the personal bankruptcy proceedings” is to collect
 22 money from Mr. Zandian “it does not require ... Maitre Canet ... to prove the assets or absence of
 23 assets of [Mr. Zandian].”).²

24 *Universe Sales Co. v. Silver Castle, Ltd.*, 182 F.3d 1036, 1038 (9th Cir. 1999) (“Because the Kamiya declaration
 stands as an un rebutted presentation and interpretation of Japanese law, the district court erred in granting summary
 judgment to Universe”).

25 ² See 11 U.S.C. § 1501(a). “Chapter 15 was added to the Bankruptcy Code by title VIII of the Bankruptcy Abuse
 26 Prevention and Consumer Protection Act of 2005 (the ‘2005 Act’) to encourage cooperation between the United
 States and foreign countries with respect to transnational insolvency cases. Chapter 15 incorporates the Model Law
 27 on Cross-Border Insolvency promulgated in 1997 by the 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
 28 this Court and the French court to communicate directly or through a trustee for the purpose of coordinating the

1 The Judgment collection case against Mr. Zandian is complete. The role of the
2 “liquidator” to collect the Judgment against Mr. Zandian is limited to:

- 3 • Make[] an inventory of assets and debts —per creditors statements
- 4 • Verif[y], upon the debtor's observations, whether the claims declared are
5 certain (undisputed), liquid (fixed amount), and payable
- 6 • Determine[] the rank of creditors —some are said privileged according to
7 the law 5tax administration, employees..)
- 8 • Sell[] the assets to pay the debts
- 9 • Allocate the funds according to the rank of each
- 10 • Draft a report to the Commerce Court about the above

11 *Carbuccia Decl.*, § 4. The Zandian “liquidator” issued a report, filed October 31, 2018 stating
12 that:

13 a total of 545 176,87 € has been collected, that the privileged creditors will be paid in full,
14 and the non-privileged will get something, although not their entire owed amount, since
15 the total amount collected is insufficient to pay the total amount owed....

16 The report states « Les recouvrements sont realises» which means that **collection**
17 **has been done and is over.**

18 *Carbuccia Decl.*, § 4 (emphasis added); *Id.*, Exhibits A (French) – B (English).

19 **II. STATUS OF FRENCH BANKRUPTCY RE: DEBTOR COMPUTER WORLD**

20 The COMPUTER WORLD bankruptcy was CLOSED on November 16, 2018 “for
21 insufficient assets.” *Carbuccia Decl.*, § 5. This was after the instant proceedings were initiated
22 in 2016. This is also before Mr. Canet filed a putative Complaint For Order Authorizing Sale of
23 Real Property, ECF 57 (Case No. BK-N-16-50644-BTB) on September 30, 2019.

24 It is notable that Mr. Canet’s French law firm (SCP Canet-Morand) petitioned the French
25 Court on October 10, 2018 to close the COMPUTER WORLD bankruptcy estate. Declaration of
26 Isabelle Victoria Carbuccia, dated December 5, 2019 attached hereto as Exhibit 3 at Ex. A
27 (French) & Ex. B (English) (“By application dated October 10, 2018, SCP CANET as Authorized
28

foreign proceeding in accord with the United Nations Commission on International Trade Law, as adopted in the
2005 BAPCPA. “Under section 1525(a) of the Bankruptcy Code, courts must ‘cooperate to the maximum extent
possible’ with foreign courts and foreign representatives and may do so either directly or through the trustee.” 8
Collier on Bankruptcy P 1525.01 (16th 2019).

1 liquidator of COMPUTER WORLD LTD * EUROPEAN AUTOMOTIVE PARTS COMPANY
2 and SCI LA HAIE NORMANDE requests the Court to order the closure for insufficient assets of
3 the debtor, in judicial liquidation by judgment of June 11, 1993 and May 23, 1997”). Mr. Canet
4 never informed this Court of the fact that the foreign bankruptcy with COMPUTER WORLD as
5 the debtor was closed.

6 Ms. Carbuccia notes that by closing the bankruptcy, Mr. Canet “ceased to represent the
7 company,” and that there are no ongoing proceedings to the knowledge of the French Court.

8 *Carbuccia Decl.*, § 6.

9 Ms. Carbuccia reports that there is nothing of record in the French Courts that indicates
10 Mr. “Maitre Canet filed a Chapter 15 Petition in U.S. Bankruptcy Court in May 2016.”

11 *Carbuccia Decl.*, § 4. Hence, there is not only zero coordination with the French Courts pursuant
12 to Chapter 15 or UNCITRAL, there does not appear to be any indication that Mr. Canet was ever
13 acting with any authority whatsoever at any time.

14 Again, there have been no such communications to coordinate the foreign proceeding at
15 all. Canet has done nothing with the French Courts or in this Court with respect to any foreign
16 proceeding in accord with Chapter 15 of the Code.

17 **III. THE CHAPTER 15 MUST BE DISMISSED**

18 Mr. Margolin explained to this Court on June 16, 2016, that the Petition relying upon the
19 April 1998 Judgment was inconstant with Chapter 15. *Objection to Petition*, ECF 13. Mr.
20 Margolin explained that Petitioner failed to satisfy the requirements of Section 1515. *Id.* At the
21 same time, Mr. Margolin provided evidence of Mr. Zandian’s nefarious behavior. *Id.*

22 On July 30, 2019, Mr. Margolin filed a Motion to Dismiss the Chapter 15. ECF 35. An
23 Amended Motion to Dismiss was filed on August 1, 2019. ECF 38. Petitioner, Mr. Canet, has
24 completely failed to present any evidence to this Court that there is either a foreign insolvency
25 proceeding for which a Chapter 15 applies, or that he has authority of a French Court to initiate or
26 maintain the instant Chapter 15. It is clear that there is no, and has never been any basis to
27 maintain a Chapter 15 proceeding.

28 It is clear from the Declaration of Ms. Carbuccia, and the accompanying French Court

1 documents as well as Article L. 111-4 of the Civil Enforcement Proceedings Code that the instant
2 proceedings before this Court relying solely upon the long expired April 3, 1998 Judgment were
3 never authorized by a French Court; are not part of any French bankruptcy proceeding; and were
4 initiated by fraud.

5 As discussed in the prior hearing in this matter, by failing to satisfy any requirement of
6 Chapter 15, this Court lacks subject matter jurisdiction over the instant petition as well as any
7 ancillary adversary proceedings.³ The Chapter 15 must be dismissed and the orders entered in the
8 adversary proceedings vacated pursuant to Section 349(b)(3) or declared void *ab initio* for failure
9 to have jurisdiction over the subject matter.

10 DATED: This 6th day of December, 2019.

11 BROWNSTEIN HYATT FARBER SCHRECK, LLP

12 By: /s/ Arthur A. Zorio
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22
23
24 ³ Bankruptcy jurisdiction is "grounded in, and limited by, statute." *Battle Ground Plaza, LLC v. Ray (In re Ray)*,
25 624 F.3d 1124, 1130 (9th Cir. 2010) (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995)). Pursuant to 28
26 U.S.C. § 1334(b) federal district courts have "original but not exclusive jurisdiction" over "all civil proceedings
27 arising under title 11, or arising in or related to cases under title 11." Section 157 of Title 28, United States Code
28 provides the means by which the district courts share bankruptcy jurisdiction with bankruptcy courts. In this District
of Nevada, such matters are referred to the bankruptcy courts. It is axiomatic to say that if there is no basis in this
case for a Chapter 15 ever to have been initiated or maintained, then there is nothing which can be deemed to have be
"arising under title 11." Thus, this Court lacks, and has lacked, subject matter jurisdiction over these entire
proceedings.

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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 6th day of December, 2019, I served the document entitled **SUPPLEMENT TO 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