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7  
8 **IN THE UNITED STATES BANKRUPTCY COURT**  
9 **FOR THE DISTRICT OF NEVADA**

10 In Re JAZI GHOLAMREZA ZANDIAN,  
11 Debtor.

BK-N-16-50644-BTB  
Chapter 15

Adversary Proceeding: 17-05016-BTB

12 \_\_\_\_\_/  
13 FRED SADRI, AS TRUSTEE FOR THE  
14 STAR LIVING TRUST, DATED APRIL  
15 14, 1997; RAY KOROGHLI AND  
16 SATHSOWI T. KOROGHLI, AS  
MANAGING TRUSTEES FOR  
KOROGHLI MANAGEMENT TRUST,

**CROSS-DEFENDANT JED MARGOLIN'S**  
**MOTION FOR SUMMARY JUDGMENT**  
**AGAINST CROSS-CLAIMANT PATRICK**  
**CANET**

**Hearing Date: May 24, 2018**  
**Hearing Time: 10 a.m.**

17 Plaintiffs,

18 v.

19 JED MARGOLIN; JAZI GHOLAM REZA  
20 ZANDIAN; and all other parties claiming  
an interest in real properties described in  
this action,

21 Defendants.

22 \_\_\_\_\_/  
23 PATRICK CANET,

24 Counterclaimant,

25 v.

26 FRED SADRI, INDIVIDUALLY AND AS  
27 TRUSTEE FOR THE STAR LIVING  
TRUST; RAY KOROGHLI,  
28 INDIVIDUALLY; RAY KOROGHLI  
AND SATHSOWI T. KOROGHLI, AS  
MANAGING TRUSTEES FOR

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775.324.4100

1 KOROGHLI MANAGEMENT TRUST,  
2 Counter-Defendants.

3 \_\_\_\_\_/  
4 PATRICK CANET,  
5 Cross-Claimant,

6 v.

7 JED MARGOLIN,  
8 Cross-Defendant.

9  
10 Cross-Defendant Jed Margolin (“Mr. Margolin”), by and through undersigned counsel,  
11 hereby moves for summary judgment on the Cross Claims of Cross-Claimant Patrick Canet  
12 (“Canet”) pursuant to Fed. R. Bnkr. P. 7056, Fed. R. Civ. P. 56(a) and LR 7056. Summary  
13 judgment should be granted in Mr. Margolin’s favor because no genuine issue of material fact  
14 exists, and Mr. Margolin is entitled to judgment as a matter of law.<sup>1</sup> As discussed below, Canet’s  
15 Cross Claims are without merit and Canet has not presented and cannot present evidence to  
16 support his Cross Claims because he failed to comply with Federal Rules of Civil Procedure 26(a)  
17 and (e), as adopted by Federal Rule of Bankruptcy 7026. *See* Fed. R. Civ. P. 37(c); Fed. R. Bnkr.  
18 P. 7037.

19  
20 **I. ARGUMENT**

21 **A. Legal Standards for Motions for Summary Judgment**

22 Federal Rule of Civil Procedure 56(a) as adopted by Federal Rule of Bankruptcy  
23 Procedure 7056, provides that:

24 A party may move for summary judgment, identifying each claim or defense - or  
25 the part of each claim or defense - on which summary judgment is sought. The  
26 court shall grant summary judgment if the movant shows that there is no genuine  
dispute as to any material fact and the movant is entitled to judgment as a matter of

27 <sup>1</sup> Mr. Margolin incorporates by reference his Statement of Undisputed Facts in Support of Defendant Jed Margolin’s  
28 Motion for Summary Judgment Against Cross Claimant Patrick Canet (“SUF”), filed concurrently herewith. These  
undisputed facts are mainly established by admissions in the pleadings, specifically Canet’s Cross Claims (ECF No.  
15), and Mr. Margolin’s Answer thereto (ECF No. 16).

1 law. The court should state on the record the reasons for granting or denying the  
2 motion.

3 A principal purpose of summary judgment is “to isolate and dispose of factually  
4 unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). When a  
5 nonmoving party bears the burden of proving a claim or defense, the party moving for summary  
6 judgment can satisfy its summary judgment burden in two ways: (1) by presenting evidence to  
7 negate an essential element of the nonmoving party’s case; or (2) by demonstrating that the  
8 nonmoving party failed to make a showing sufficient to establish an element essential to that  
9 party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S.  
10 at 323–24. If the moving party fails to meet its initial burden, summary judgment must be denied  
11 and the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress &*  
12 *Co.*, 398 U.S. 144, 159–60 (1970).

13 If the moving party satisfies its initial burden, the burden then shifts to the opposing party  
14 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*  
15 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the  
16 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient  
17 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’  
18 differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809  
19 F.2d 626, 631 (9th Cir. 1987). The nonmoving party cannot avoid summary judgment by relying  
20 solely on conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d  
21 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations  
22 of the pleadings and set forth specific facts by producing competent evidence that shows a  
23 genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

24 At summary judgment, a court's function is not to weigh the evidence and determine the  
25 truth but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby,*  
26 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all  
27 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the  
28 nonmoving party is merely colorable or is not significantly probative, summary judgment may be

1 granted. *See id.* at 249–50.

2 Mr. Margolin can show that there is no genuine dispute as to any material fact and he is  
3 entitled to judgment as a matter of law. As discussed below, Mr. Margolin has presented  
4 evidence to negate an essential element of Canet’s Cross Claims. Further, Mr. Margolin can  
5 demonstrate that Canet has failed to make a showing sufficient to establish an element essential to  
6 his Cross Claims for which he has the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at  
7 323–24; *see infra*.

8 **B. Mr. Margolin Has Presented Evidence to Negate an Essential Element of Canet’s**  
9 **Cross Claims**

10 **1. Canet’s First Cross Claim Should be Dismissed as a Matter of Law**

11 In his First Cross Claim, Canet alleges the following:

12 67. The recording of deeds on September 8, 2016, as identified in ¶¶ 58, 60, 62  
13 and 64, were transfers (“Transfers”), of property in which Zandian held an interest.

14 68. The recording of deeds on September 8, 2016, as identified in ¶¶ 58, 60, 62  
15 and 64 were Transfers to the detriment of creditors in the Zandian main proceeding  
pending in Paris, France.

16 69. The recording of deeds on September 8, 2016, as identified in ¶¶ 58, 60, 62  
17 and 64 were Transfers which should be avoided by this Court.

18 ECF No. 15 at p. 9.

19 In his prayer for relief, Canet seeks to avoid the alleged “transfers” of properties bearing  
20 assessor parcel numbers (“APN”): 084-130-07, 079-150-10, 084-040-02, and 079-150-12 located  
21 in Washoe County, Nevada and expunge the Sheriff’s Deeds recorded regarding those parcels on  
22 September 8, 2016. ECF No. 15 at p. 9. Canet’s First Cross Claim should be dismissed because  
23 the alleged “transfers” to the aforementioned properties took place on April 3, 2015, long before  
24 Canet’s Chapter 15 Petition was filed.

25 In bankruptcy proceedings, state law determines when a transfer is deemed to have  
26 occurred. *In re Grant*, 303 B.R. 205, 208 (Bkrtcy. D. Nevada 2003). In *In re Grant*, the court  
27 found that a foreclosure sale is completed when there is an acceptance of a bid at auction. *Id.*,  
28 303 B.R. at 209-10 (citation omitted). A sale is legally completed when the purchaser actually

1 pays the amount bid. *Id.*, 303 B.R. at 210. According to Nevada law, “title is deemed to have  
 2 vested from the day the bid for the property was made.” *Id.*, citing *In re Smith*, 4 Nev. 254,  
 3 (1868) and *Dazet v. Landry*, 21 Nev. 291, 297, 30 P. 1064 (1892); also citing *In re Kleitz*, 6 B.R.  
 4 214 (Bkrcty. D. Nevada 1980).

5 This case involves an execution sale of the Washoe County properties, which took place  
 6 on April 3, 2015. On April 3, 2015, the four Washoe County properties that Canet identifies in  
 7 his First Cross Claim (APN 084-130-07, 079-150-10, 084-040-02, and 079-150-12) were sold to  
 8 Mr. Margolin, who was the highest bidder. *See* SUF 15, 17, 19, 21. Mr. Margolin purchased and  
 9 paid for the Washoe County properties on April 3, 2015, and Certificates of Sale were executed  
 10 and provided to Mr. Margolin on April 3, 2015. *Id.*

11 NRS 21.190 provides:

12 Upon a sale of real property, the purchaser shall be substituted to and acquire all  
 13 the right, title, interest and claim of the judgment debtor thereto ... The officer  
 shall give to the purchaser a certificate of the sale containing:

- 14 1. A particular description of the real property sold.
- 15 2. The price bid for each distinct lot or parcel.
- 16 3. The whole price paid.

17 *Id.*; *see also Nesbitt v. De Lamar’s Nevada Gold-Min. Co.*, 24 Nev. 273, 53 P. 178 (1898)  
 18 (holding that “the purchaser of real estate under execution sale acquires all the title of the  
 19 judgment debtor, and requiring a certificate of sale to be given, the certificate shows color of title  
 20 in the purchaser”).

21 Based on the foregoing facts, the “transfers” of the Washoe County properties (APN 084-  
 22 130-07, 079-150-10, 084-040-02, and 079-150-12) took place on April 3, 2015, not on the date  
 23 that the ministerial act of recording the deeds to the Properties took place – September 8, 2016.  
 24 Zandian’s interests were therefore extinguished on April 3, 2015, the date of the Sheriff’s sale for  
 25 the Washoe County Properties.

26 While Canet’s First Cross Claim does not state what statute he relies on to set aside the  
 27 alleged “transfers,” and Canet failed to respond to Mr. Margolin’s Interrogatories on Canet’s First  
 28

1 Cross Claim (SUF 27, Interrogatory Nos. 16-19). Under 11 U.S.C. § 547(b)(4)(A), a trustee may  
 2 avoid any transfer of an interest of the debtor in property made on or within 90 days before the  
 3 date of the filing of the petition. *Id.* Here, Canet’s Chapter 15 Petition was filed on May 19,  
 4 2016, over 13 months after the April 3, 2015 Sheriff’s sale of the aforementioned Washoe  
 5 County properties. *See* SUF 15, 17, 19, 21. Since the transfers of the Washoe County Properties  
 6 took place well over 90 days before the Chapter 15 Petition was filed, the “transfers” cannot be  
 7 set aside. As such, Canet’s First Cross Claim should be dismissed with prejudice.

8 **2. Canet’s Second Cross Claim Should be Dismissed as a Matter of Law**

9 In his Second Cross Claim, Canet alleges the following: “The recording of the deed on  
 10 October 9, 2016, as identified in ¶ 65 was a Transfer of property in which Zandian held an  
 11 interest in violation of the automatic stay of § 362(a).” ECF No. 15, ¶ 71. As to his Second  
 12 Cross Claim, Canet asks the Court to void the transfer of APN 071-02-000-005 in Clark County,  
 13 Nevada on October 9, 2016 alleging it violated the automatic stay, and to expunge the Sheriff’s  
 14 Deed as to APN 071-02-000-005. ECF No. 15, p. 10.

15 The sale of APN 071-02-000-005 took place on December 9, 2014. SUF 23. On that day,  
 16 Mr. Margolin was the highest bidder and credit bid \$8,000 for that property. *Id.* A Sheriff’s  
 17 Certificate of Sale of Real Property was issued on December 30, 2014. *Id.*

18 The law is clear that the recording of deed post-petition where sale took place prepetition  
 19 is a ministerial act that does not violate the automatic stay in 11 U.S.C. § 362. *Tracht Gut, LLC v.*  
 20 *County of L.A. (In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (9th Cir. BAP 2014). Because the  
 21 ministerial act of recording the deed to APN 071-02-000-005 is not a violation of the automatic  
 22 stay, Canet’s second Cross Claim should be dismissed with prejudice.

23 **C. Mr. Margolin Can Demonstrate that Canet has Failed to Make a Showing**  
 24 **Sufficient to Establish an Element Essential to his Cross Claims for Which he has**  
 25 **the Burden of Proof at Trial**

26 It is undisputed that Canet has failed to serve initial disclosures or supplemental  
 27 disclosures pursuant to the Amended Standard Discovery Plan (ECF No. 19), Federal Rules of  
 28 Civil Procedure 26(a) and 26(e). SUF 26; Fed. Bnkr. R. 7026. In light of these failures, Canet

1 cannot produce any evidence to support his claims in opposition to a motion for summary  
2 judgment, at a hearing, or at trial. Fed. R. Civ. P. 37(c); Fed. Bnkr. R. 7037.

3 **1. Fed. R. Civ. P. 26(a) and 26(e) Mandatory Disclosure Requirements**

4 Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure requires parties to make initial  
5 disclosures “without awaiting a discovery request.” *Id.*; *Risinger v. SOC, LLC*, 306 F.R.D. 655,  
6 661 (D. Nev. 2015). Rule 26(a)(1)(A)(i) requires the parties to disclose the names of witnesses,  
7 and if known the address and telephone number of each individual likely to have discoverable  
8 information about a party’s claims or defenses. *Id.*; *Risinger*, 306 F.R.D. at 661. It also requires  
9 a description of the subjects on which the witness may testify. *Risinger*, 306 F.R.D. at 661. Rule  
10 26(a)(1)(A)(ii) requires disclosure by category and location of documents, including  
11 electronically stored information in a party’s care, custody and control that may be used to  
12 support a party’s claims or defenses, “unless the use would be solely for impeachment”. *Id.*;  
13 *Risinger*, 306 F.R.D. at 661. These requirements are “the functional equivalent of a standing  
14 Request for Production under Rule 34.” *Risinger*, 306 F.R.D. at 661, quoting Fed. R. Civ. P. 26  
15 advisory committee’s note to 1993 Amendment.

16 Rule 26(e)(1) requires a party making initial disclosures to “supplement or correct its  
17 disclosures or responses ... in a timely manner if the party learns that in some material respect the  
18 disclosure or response is incomplete or incorrect, and that the additional or corrective information  
19 has not otherwise been known to the other parties during the discovery process or in writing.”  
20 *Id.*; *Risinger*, 306 F.R.D. at 661. The advisory committee’s note to the 1993 Amendment indicate  
21 that “a major purpose” of the Rule 26(a) initial disclosure requirement “is to accelerate the  
22 exchange of basic information about the case and to eliminate the paperwork involved in  
23 requesting such information.” *Id.*

24 **2. Fed. R. Civ. P. 16(f) Imposition of Sanctions**

25 Federal Rule of Bankruptcy Procedure 7016 incorporates Federal Rule of Civil Procedure  
26 16. Rule 16(f) of the Federal Rules of Civil Procedure authorizes the court to impose sanctions  
27 on a party’s motion or on its own motion, including any sanction authorized by Rule  
28 37(b)(2)(A)(ii-vii), if a party or its attorney fails to obey a scheduling order or other pretrial order.

1 *Id.*; *Risinger*, 306 F.R.D. at 661; Fed. Bnkr. R. 7016. Sanctions for failure to obey a discovery  
 2 order include, among other things, striking a party’s pleadings in whole or in part or rendering a  
 3 default judgment against the disobedient party. *Risinger*, 306 F.R.D. at 661, citing Fed. R. Civ. P.  
 4 37(b)(2)(A)(iii), (vi).

### 5 3. Fed. R. Civ. P. 37(c) Sanctions

6 Federal Rule of Bankruptcy Procedure 7037 incorporates Federal Rule of Civil Procedure  
 7 37. Federal Rules of Civil Procedure 37(c) is titled “Failure to Disclose, to Supplement an Earlier  
 8 Response, or to Admit” and provides as follows:

9 (1) Failure to Disclose or Supplement. *If a party fails to provide information or*  
 10 *identify a witness as required by Rule 26(a) or (e), the party is not allowed to use*  
 11 *that information or witness to supply evidence on a motion, at a hearing, or at a*  
 12 *trial, unless the failure was substantially justified or is harmless. In addition to or*  
 13 *instead of this sanction, the court, on motion and after giving an opportunity to be*  
 14 *heard:*

15 (A) may order payment of the reasonable expenses, including attorney's fees,  
 16 caused by the failure;

17 (B) may inform the jury of the party's failure; and

18 (C) may impose other appropriate sanctions, including any of the orders listed in  
 19 Rule 37(b)(2)(A)(i)—(vi) (emphasis added).

20 The sanctions available under Rule 37(b)(2)(A)(i)—(vi) include the following:

21 (i) directing that the matters embraced in the order or other designated facts be  
 22 taken as established for purposes of the action, as the prevailing party claims;

23 (ii) prohibiting the disobedient party from supporting or opposing designated  
 24 claims or defenses, or from introducing designated matters in evidence;

25 (iii) striking pleadings in whole or in part;

26 (iv) staying further proceedings until the order is obeyed;

27 (v) dismissing the action or proceeding in whole or in part;

28 (vi) rendering a default judgment against the disobedient party ....

29 *Id.*

30 Rule 37 “gives teeth” to the disclosure requirements of Rule 26 by forbidding the use at  
 31 trial of any information that is not properly disclosed. *Risinger*, 306 F.R.D. at 662, citing  
 32 *Goodman v. Staples The Office Superstore*, 644 F.3d 817, 827 (9th Cir.2011). Additionally, a  
 33 party who fails to comply with Rule 26(a) or (e) “is not allowed to use that information or witness  
 34 to supply evidence on a motion” or at a hearing. Rule 37(c)(1); 8B Charles A. Wright, Arthur R.

1 Miller, Federal Practice and Procedure, § 2289.1 (3d ed. 2017) (holding that a Rule 37(c) sanction  
 2 “applies not only at trial, but also with respect to any motion, such as a motion for summary  
 3 judgment, or at a hearing”) (citations omitted). Rule 37(c)(1) is a “self-executing, automatic”  
 4 sanction designed to provide a strong inducement for disclosure. *Id.* There is no meet and confer  
 5 requirement for Rule 37(c) sanctions. *Fulmore v. Home Depot, U.S.A., Inc.*, 423 F. Supp.2d 861,  
 6 871–72 (S.D. Ind. 2006) (“The Advisory Committee Notes to both the 1993 and 2000  
 7 Amendments to Rule 37 make clear that Rule 37(c) operates independent of any motion required  
 8 by Rule 37(a). Rule 37(c) simply does not require conferral”). The 1993 amendments to Rule 37  
 9 were “a recognized broadening of the sanctioning power.” *Yeti by Molly, Ltd. v. Deckers*  
 10 *Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001). Rule 37(a)(3) explicitly provides that an  
 11 evasive or incomplete disclosure, answer, or response to a discovery obligation “is to be treated as  
 12 a failure to disclose, answer, or respond.” *Id.*

13 It is undisputed that Canet has failed to serve Rule 26(a) initial disclosures or Rule 26(e)  
 14 supplemental disclosures.<sup>2</sup> SUF 26. As such Canet is prohibited from using any information,  
 15 documents, or witnesses in opposition to this Motion, at any hearing, or at trial. *See supra.* As  
 16 such, Mr. Margolin can and has demonstrated that Canet cannot make a showing sufficient to  
 17 support his Cross Claims. And therefore, on this alternative basis, Canet’s Cross Claims should  
 18 be dismissed with prejudice.

19 ///

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24 \_\_\_\_\_  
 25 <sup>2</sup> Canet also failed to respond to Mr. Margolin’s First Sets of Interrogatories or Requests for Production, or produce  
 26 documents in response thereto. SUF 27. Canet therefore has waived any and all objections to those discovery  
 27 requests. *Wan v. Pulte Mortgage*, 2013 WL 6692744, \* 1 (D. Nev. 2013), citing *Davis v. Fendler*, 650 F.2d 1154,  
 28 1160 (9th Cir. 1981); 8A Charles A. Wright, Arthur R. Miller, Federal Practice and Procedure (“Wright and Miller”),  
 § 2173 (3d ed. 2017), citing *Safeco Ins. Co. v. Rawstrom*, 183 F.R.D. 668, 670 (C.D. Cal. 1998)(citations omitted);  
*Pulsecard, Inc. v. Discovery Card Services, Inc.*, 168 F.R.D. 295, 303 (D. Kan. 1996); *Perry v. Golub*, 74 F.R.D.  
 360, 363 (N.D. Ala. 1976); 8B Wright and Miller, § 2213 (3d ed. 2017); *see generally Burlington Northern & Santa*  
*Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005).

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**II. CONCLUSION**

For all of the foregoing reasons, summary judgment should be granted in Mr. Margolin’s favor and Canet’s Cross Claims should be dismissed with prejudice.

DATED: This 21<sup>st</sup> day of March, 2018.

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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 21<sup>st</sup> day of March, 2018, I served the document entitled **CROSS-DEFENDANT JED MARGOLIN’S MOTION FOR SUMMARY JUDGMENT AGAINST CROSS-CLAIMANT PATRICK CANET** on the parties listed below via the following:

**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 as follows:

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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 ECF system which served the following parties electronically:

/s/ Nancy R. Lindsley  
Employee of Brownstein Hyatt Farber  
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