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11 UNITED STATES BANKRUPTCY COURT
 12 DISTRICT OF NEVADA

13 In re: BK-17-10247-btb
 14 CHRISTELLE ROUSSEAU CHAPTER 15
 15 aka CHRISTELLE PIGEAT
 16 OLIVIER BOYD, MNP LTEE
 17 Debtor(s)

18 FOREIGN DEBTOR'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF ORDER
 19 RECOGNIZING FOREIGN PROCEEDING NUNC PRO TUNC AND GRANTING
 20 STAY ON AN ORDER SHORTENING TIME

21 Olivier Boyd, MNP Ltee., foreign representative of the above-captioned debtor,
 22 Christelle Pigeat, (the "Foreign Debtor"), by and through United States counsel, Johnson &
 23 Gubler, P.C., files this Reply to Bartech's System International, Inc.'s Opposition to Debtor's
 24 Motion.


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1 This Reply is made and based upon the following points and authorities, and all the
 2 papers and pleadings on the file herein.

3 DATED this February 10, 2017.

4 JOHNSON & GUBLER, P.C.

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1 I. LEGAL ARGUMENT

2 a. Ms. Pigeat does qualify as a foreign debtor under 11 USC § 109.

3 In its Opposition, Bartech argues that Ms. Pigeat cannot meet the threshold
 4 requirements of qualifying as a foreign debtor and therefore, it not entitled to the protections
 5 afforded under Chapter 15. See Opposition at 4. To support its argument, Bartech emphasizes
 6 that Ms. Pigeat has no residency, no place of business, or no assets in the United States.

7 However, Ms. Pigeat does qualify the requirements of § 109 because as of the filing
 8 date, she had assets in the United States in the form of her retainer to her U.S. counsel
 9 specifically hired to represent her in this bankruptcy proceeding. Bankruptcy courts have found
 10 that a foreign debtor's retainer to U.S. counsel is sufficient to meet § 109. The Court in *In re*
 11 *Octavir Admtn. Pty Ltd.*, found that a company incorporated in Queensland, Australia met the
 12 requirements of § 109 because it had paid a retainer to legal counsel based in the United States
 13 to aid in litigation based in the U.S. (2014, BC SD NY) 511 BR 361, 59 BCD 175. The Court
 14 stressed that the policy and purposes of Chapter 15 would be undermined if it was to rule
 15 otherwise. The Court in *In re Berau Capital Res. PTE Ltd.*, issued a very similar decision. The
 16 foreign debtor did not have a place of business in the United States and filed bankruptcy in
 17 Singapore. (2015, BC SD NY) 540 BR 80, 61 BCD 198. The United States bankruptcy court
 18 found that the foreign debtor's retainer to counsel based in New York was sufficient to meet §
 19 109.

20 Hence, Ms. Pigeat clearly meets the threshold requirements of § 109, as she should,
 21 based on the policies and purposes of Chapter 15. To allow a party to pursue relentless and
 22 aggressive litigation across international borders despite a debtor's foreign bankruptcy would
 23 be unconscionable in light of the intended protections Chapter 15 grants to foreign debtors.

24 b. Bartech is engaging in abuse of process by pursuing civil litigation in this forum.

25 In its Opposition, Bartech acknowledges that Ms. Pigeat does not reside in the United
 26 States, has no business operations in the United States, or possesses any assets in the United
 27 States. Bartech's assertion raises serious jurisdictional issues and admits that Ms. Pigeat has
 28 consistently contested jurisdiction throughout the civil matter.

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1 Bartech's assertion that Ms. Pigeat does not qualify as a foreign debtor because she has
 2 no connection to the United States, while simultaneously insisting in District Court that there
 3 exists jurisdiction over Ms. Pigeat in the civil matter in Nevada, is completely contradictory. If
 4 Bartech is insistent in pursuing Ms. Pigeat, it should file suit in the Canadian bankruptcy court.
 5 Further, Bartech makes their argument for abuse of process by asserting blanket conclusory
 6 statements unsupported by any evidence whatsoever.

7 c. The Chapter 15 Petition does comply with 11 USC § 1515.

8 Bartech argues that Ms. Pigeat's filing does not comply with § 1515 because the
 9 evidence attached to her Motion was not issued by a foreign court. § 1515 requires the
 10 following:

- 11 (a) A foreign representative applies to the court for recognition of a foreign
 12 proceeding in which the foreign representative has been appointed by filing a
 13 petition for recognition.
 14 (b) A petition for recognition shall be accompanied by—
 15 (1) a certified copy of the decision commencing such foreign proceeding and
 16 appointing the foreign representative;
 17 (2) a certificate from the foreign court affirming the existence of such foreign
 18 proceeding and of the appointment of the foreign representative; or
 19 (3) *in the absence of evidence referred to in paragraphs (1) and (2), any other*
 20 *evidence acceptable to the court of the existence of such foreign proceeding and*
 21 *of the appointment of the foreign representative.*
 22 (c) A petition for recognition shall also be accompanied by a statement
 23 identifying all foreign proceedings with respect to the debtor that are known to
 24 the foreign representative.

25 11 U.S.C. § 1515. (Emphasis added).

26 Bartech also cites to this language in its Opposition, but very conveniently omits
 27 key language from subparagraph (b)(3): "*in the absence of evidence referred to in*
 28 *paragraphs (1) and (2)...*" *Id.* This language clearly permits the Court to consider any
 evidence of a foreign bankruptcy that the foreign debtor has the ability to provide. The
 language *does not* solely require evidence of a proceeding issued by a foreign court, as
 Bartech falsely suggests. The documents are issued by the Office of Superintendent of
 Bankruptcy, a Canadian government department. Thus, these documents are not to be
 taken as light evidence. Further, even if the Court is not satisfied that these documents

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1 carry the same weight as those issued by a Canadian court, the Court can still consider it
2 as weighty evidence pursuant to 11. U.S.C. § 1515(b)(3).

3 At this point, it seems that Bartech is desperately attempting to poke holes in Ms.
4 Pigeat's Chapter 15 Petition and stretch any imagined deficiencies to the point of
5 advocating for its denial so that it may continue to pursue a Canadian citizen in Nevada
6 in violation of the Canadian Bankruptcy Court's stay.

7 *d. The Bankruptcy Court has wide discretion in granting any relief it deems
8 necessary, including nunc pro tunc orders.*

9 A bankruptcy court has broad power under 11 U.S. Code § 1519 and § 1521 to
10 grant a foreign debtor "any appropriate relief" in a Chapter 15 matter. *See In re Grant
11 Forest Prods. (2010, BC DC Del) 440 BR 616, 53 BCD 281; CHH Bank L Rptr P 81910,
12 2010-2 USRC P 50742, 106 AFTR 2d 7137.* Just because there is no bankruptcy code
13 language explicitly allowing for retroactive relief does not mean that the Bankruptcy
14 Court is without power to do so. Here, this Court should issue a stay in recognition of
15 the Canadian Bankruptcy and stay further prosecution of Ms. Pigeat in Nevada, just as a
16 Canadian Court would do if the roles were reversed and a Plaintiff in a Canadian court
17 were attempting to sue a person in Canada who had filed a bankruptcy in Nevada.

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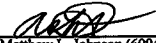
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1 **II. CONCLUSION**

2 Accordingly, the Debtor respectfully requests that this motion be granted, and that an
3 order be entered (1) recognizing foreign bankruptcy proceeding nunc pro tunc so as to
4 invalidate any district court order that was issued after Plaintiff filed her Petition and Notice on
5 January 19, 2017 and (2) granting stay relief under §§§§ 362, 1519, 1520, and 1521. Further,
6 the Debtor respectfully requests that this Motion be granted and relief be provided retroactively
7 to avoid Debtor being held liable for attorney's fees, which was entered after the District Court
8 had notice of her foreign bankruptcy proceeding.

9 DATED this February 10, 2017.

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