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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92077524
Party	Defendant Arash Khorsandi
Correspondence Address	RYAN D. KASHFIAN KASHFIAN & KASHFIAN LLP 1875 CENTURY PARK EAST STE 1340 LOS ANGELES, CA 90067 UNITED STATES Primary Email: ryan@kashfianlaw.com Secondary Email(s): acyrilin@kashfianlaw.com, filings@kashfianlaw.com, robert@kashfianlaw.com 310-751-7578
Submission	Motion to Strike Pleading/Affirmative Defense
Filer's Name	Robert A. Kashfian, Esq.
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Signature	/Robert A. Kashfian/
Date	09/22/2021
Attachments	92077524-MTN-STRIKE.pdf(347445 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARASH HOMAMPOUR,

Petitioner,

v.

ARASH KHORSANDI,

Registrant/Respondent.

Cancellation No. 92077524

Registration No. 6/407,070

Mark: ARASH LAW

Registration Date: July 6, 2021

Registration No. 6/407,071



Mark:

(AK ARASH LAW stylized wording and design)

Registration Date: July 6, 2021

REGISTRANT ARASH KHORSANDI'S MOTION TO STRIKE AND OBJECTION TO
PETITIONER ARASH HOMAMPOUR'S AMENDED PETITION FOR CANCELLATION,
DECLARATION OF ROBERT A. KASHFIAN IN SUPPORT THEREOF, AND EXHIBIT 1

Please take notice that Registrant Arash Khorsandi (“Khorsandi” or “Registrant”) hereby requests that the Trademark Trial and Appeal Board (the “Board”) strike and/or disregard the Amended Petition for Cancellation (the “Amended Petition”) of Petitioner Arash Homampour (“Homampour” or “Petitioner”), because Registrant never consented extending the time for filing an amendment to the Petition, and, thus, the Amended Petition is untimely under Federal Rule of Civil Procedure¹ 15(a). *See*, 37 C.F.R. § 2.115; TBMP, §§ 315, 503.03, 507.01.

Pleadings in a cancellation proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court. 37 C.F.R. § 2.115; TBMP, §§ 315, 503.03, 507.01. "Rule 15 governs amendments to pleadings generally." *Bylin v. Billings*, 568 F.3d 1224, 1231 (10th Cir. 2009). Under Rule 15(a), "a party may amend its pleading once as a matter of course within . . . 21 days after serving it, or . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2); *see* 6 Fed. Prac. & Proc. Civ. § 1480 (3d ed.) ("[A] party may amend a pleading once without the permission of the court or the consent of any of the other parties to the action if the party does so either within 21 days after serving the pleading or within 21 days after service of a responsive pleading or after the service of a motion under Rule 12(b), (e), or (f), whichever is earlier. When this time period expires . . . this provision no longer applies and an amendment falls under Rule 15(a)(2), which requires leave of court or the written consent of the opposing party"). "Generally speaking, an amendment that has been filed or served without leave of court or consent of the defendants is without legal effect." *Murray v. Archambo*, 132 F.3d 609, 612 (10th Cir. 1998).

¹ All references to “Rule” shall be to the Federal Rules of Civil Procedure, unless otherwise noted.

“Because such an amendment is of no legal effect, and since the purpose of a motion to strike under Rule 12(f) generally is to remove impertinent and/or immaterial matter from a party's pleadings, courts ... have properly stricken amended pleadings not filed in conformance with Rule 15(a)(1).” *Larry O. Crother, Inc. v. Lexington Ins. Co.*, No. 2:11-cv-00138-MCE-GGH, 2011 U.S. Dist. LEXIS 35774, at *4 (E.D. Cal. Mar. 18, 2011). For example, in *Hay v. Bank of Am.*, No. 1:12-CV-01596-RWS, 2013 U.S. Dist. LEXIS 49052 (N.D. Ga. Mar. 29, 2013), “Defendants served their Motion to Dismiss on August 15, 2012,” and “Plaintiff did not file his Amended Complaint until 41 days later.” *Id.* at *5. As such, the Court granted Defendants' Motion to Strike the Amended Complaint as untimely, because “Plaintiff did not obtain leave of Court or written consent from the opposing parties before filing his Amended Complaint.” *Id.*

Similarly, in *Fagorala v. Nationstar Mortg., LLC*, No. C 10-1528 PJH, 2010 U.S. Dist. LEXIS 55712, (N.D. Cal. June 7, 2010), “Plaintiff failed to file any written opposition to defendant’s motion. Instead, after the filing of defendant's motion, plaintiff unilaterally filed a first amended complaint, seeking to add additional causes of action.” *Id.* at *1-2. Accordingly, the Court struck the filing of plaintiff's first amended complaint, reasoning:

[W]hile plaintiff was permitted to file an amended pleading after service of defendant's motion to dismiss, [Rule] 15(a)(1)(B) provided plaintiff only 21 days from the filing of defendant's motion -- i.e., until May 7, 2010 -- in order to do so. Plaintiff's first amended complaint -- which was filed on May 25, 2010 -- is therefore untimely, as it was filed more than two weeks past the deadline established in [Rule] 15(a)(1)(B).

Fagorala, 2010 U.S. Dist. LEXIS 55712, at *2.

Likewise, *Farrow v. Securian Fin. Grp.*, No. 1:19-cv-04298-WMR, 2020 U.S. Dist. LEXIS 143061 (N.D. Ga. Feb. 26, 2020) is also on point. There,

Truist and McGriff filed their initial Motion to Dismiss on October 11, 2019. (Doc. 5.) Under Rule 15(a)(1), the Farrows had 21 days (or until November 1, 2019) to file an amended pleading as a matter of right. But the Farrows unilaterally filed their Amended Complaint on November 7, six days after the deadline expired. As the Farrows did not request leave to amend their complaint as required by Rule 15(a)(2), the Amended Complaint [Doc. 14] is improperly filed and is a nullity. *Hoover v. Blue Cross and Blue Shield of Ala.*, 855 F.2d 1538, 1544 (11th Cir. 1988); *Jensen v. Defenders Security Co.*, No.

1:17-CV-03693-TWT-AJB, 2018 U.S. Dist. LEXIS 138995, 2018 WL 3910851, at *2 (N.D. Ga. July 25, 2018). Therefore, the Amended Complaint is stricken.

Farrow, 2020 U.S. Dist. LEXIS 143061, at *12-13.

Comparably here, Plaintiff was not entitled to amend his Petition for Cancellation as a matter of right under Rule 15(a), and, thus, it should be stricken or disregarded. Respondent's motion to dismiss, under Rule 12(b), was filed August 11, 2021, 5 TTABVUE, meaning that, under Rule 15(a), Petitioner had until September 1, 2021, to file an amendment to the Petition for Cancellation, as a matter of right. However, Petitioner did not file the Amended Petition until September 21, 2021. 11 TTABVUE. Petitioner did not seek the consent of Registrant to file an amendment to or seek leave to amend the Petition for Cancellation, as required by Rule 15(a)(2). *See*, Attached Declaration of Attorney Robert A. Kashfian ("Kashfian Dec."), ¶¶ 3-7 & Exh. 1. Instead, Petitioner specifically requested an extension to oppose Respondent's motion to dismiss:

It's a pleasure meeting you and I look forward to working with you to resolve this matter. As you are aware, we were recently engaged and will need additional time to review the records and evidence to determine if we can continue settlement discussions and, if necessary, oppose the motion to dismiss. Please advise whether you will consent to our motion to extend time by 21 days to oppose the motion to dismiss.

Kashfian Dec. ¶ 3 & Exh. 1 (August 30, 2021 at 9:30 AM Email).

And, in response, Respondent consented to extend time to oppose the motion to dismiss by 21 days. Kashfian Dec. ¶ 4. Petitioner did not seek the consent of Registrant to file an amendment to the Petition for Cancellation. Kashfian Dec. ¶ 5. Had Petitioner requested consent to extend the time, under Rule 15, to amend the Petition for Cancellation, Respondent would not have consented. Kashfian Dec. ¶ 6. Respondent only consented to Petitioner's request "to extend time by 21 days to oppose the motion to dismiss." Kashfian Dec. ¶ 7. Thus, the Amended Petition is untimely and should be stricken and/or disregarded.

Allen v. Vintage Pharm. LLC, No. 5:18-cv-00329-TES, 2019 U.S. Dist. LEXIS 21495 (M.D. Ga. Feb. 11, 2019) is on point. There, the Court struck the plaintiff's amended complaint as untimely, under Rule

15(a)(1), because plaintiff filed its amended complaint 24 days after defendant filed its motion to dismiss. *Id.* at *6-8. Notably, the Court explained that the request and receipt of an extension to file responses to Defendant's motion to dismiss did not make a difference:

On December 3, 2018, Plaintiff requested and received a 14-day extension of time to file responses to Defendants' motions to dismiss pursuant to Local Rule 6.2. [Doc. 14]. The extension applied only to Plaintiff's briefs in response to the motions to dismiss and not to any time to amend as a matter of right. LR 6.2, MDGa ("In civil cases, the clerk of the court and his deputies are authorized to permit extensions of time to a date not to exceed fourteen (14) days for the filing of *briefs*.") (emphasis added).

Allen, 2019 U.S. Dist. LEXIS 21495, at *13.

The purported Amended Petition should also be stricken and/or disregarded, because it violates this Board's August 21, 2021 order suspending the proceedings. 6 TTABVUE. In this Board's order, the parties were expressly advised that any paper filed during the suspension not germane to the Registrant's motion to dismiss "will be given no consideration." *Id.* Since the Amended Petition is not germane to Registrant's motion to dismiss, it should be stricken or disregarded because it violates this Board's order. Further, Petitioner never filed a motion for leave from the Board's August 21, 2021 order and did not file a motion for leave to amend the Petition. If the Petitioner had filed such motions, Registrant would have opposed them. For these additional reasons, the purported Amended Petition should also be stricken and/or disregarded.

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Thus, the Board is respectfully requested to strike and/or disregard the Amended Petition and also grant Respondent's unopposed motion to dismiss, under Rule 12(b), with prejudice. *See*, 37 C.F.R. § 2.127(a) ("When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded.").

Dated: September 22, 2021

Respectfully submitted,

By: /Ryan D. Kashfian/
Ryan D. Kashfian, Esq.
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Email: acyrlin@kashfianlaw.com

Attorneys for Registrant/Respondent,
ARASH KHORSANDI

DECLARATION OF ROBERT A. KASHFIAN

I, ROBERT A. KASHFIAN, pursuant to 28 U.S.C. § 1746, declare as follows:

(1) I am over the age of twenty-one and have never been convicted of a felony. I make this declaration based on my own personal knowledge. If called as a witness, I could and would testify competently to the matters set forth herein.

(2) I am an attorney at law duly authorized to practice law before all courts in the State of California. I am a Senior Partner at Kashfian & Kashfian, LLP, attorneys of record for Registrant/Respondent Arash Khorsandi (“Khorsandi” or “Registrant”), in the above-captioned cancellation proceeding (No. 92077524).

(3) Attached hereto as **EXHIBIT 1** is a true and accurate copy of Attorney Milord Keshishian’s August 30, 2021 9:31 a.m., email requesting an extension for Petitioner Arash Homampour’s (“Homampour” or “Petitioner”) to oppose Registrant’s motion to dismiss:

Hi Robert:

It’s a pleasure meeting you and I look forward to working with you to resolve this matter. As you are aware, we were recently engaged and will need additional time to review the records and evidence to determine if we can continue settlement discussions and, if necessary, oppose the motion to dismiss. Please advise whether you will consent to our motion to extend time by 21 days to oppose the motion to dismiss.

Sincerely,

Milord A. Keshishian

Milord & Associates, PC
Patent, Trademark & Copyright Law
10517 West Pico Blvd.
Los Angeles, CA 90064
Tel (310) 226-7878
Fax (310) 226-7879
www.milordlaw.com

(4) In response, I on behalf of Respondent consented to extend time by 21 days to oppose the motion to dismiss.

(5) Petitioner did not seek the consent of Registrant to file an amendment to the Petition

for Cancellation.

(6) Had Petitioner requested consent to extend the time, under Federal Rule Civil Procedure 15, to amend the Petition for Cancellation, Respondent would not have consented.

(7) Respondent only consented to Petitioner's request "to extend time by 21 days to oppose the motion to dismiss."

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 22, 2021, at Century City, California.

/Robert A. Kashfian/
Robert A. Kashfian

EXHIBIT 1

Robert A. Kashfian

From: Milord Keshishian <milord@milordlaw.com>
Sent: Monday, August 30, 2021 9:31 AM
To: Kia Kamran, Esq.; robert@kashfianlaw.com
Cc: Desiree Torres (Kia Kamran PC); Stephanie Trice; Marlen Millan-Osuna; ryan@kashfianlaw.com; acyrlin@kashfianlaw.com
Subject: RE: Khorsandi - Homampour // 247001
Importance: High

Hi Robert:

It's a pleasure meeting you and I look forward to working with you to resolve this matter. As you are aware, we were recently engaged and will need additional time to review the records and evidence to determine if we can continue settlement discussions and, if necessary, oppose the motion to dismiss. Please advise whether you will consent to our motion to extend time by 21 days to oppose the motion to dismiss.

Sincerely,

Milord A. Keshishian

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CERTIFICATE OF TRANSMITTAL

I certify that a copy of the REGISTRANT ARASH KHORSANDI'S MOTION TO STRIKE AND OBJECTION TO PETITIONER ARASH HOMAMPOUR'S AMENDED PETITION FOR CANCELLATION, DECLARATION OF ROBERT A. KASHFIAN IN SUPPORT THEREOF, AND EXHIBIT 1 is being filed electronically with the Trademark Trial and Appeal Board via ESTTA on September 22, 2021.

KASHFIAN & KASHFIAN LLP

/Robert A. Kashfian/

Robert A. Kashfian, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2021, a true and correct copy of the foregoing REGISTRANT ARASH KHORSANDI'S MOTION TO STRIKE AND OBJECTION TO PETITIONER ARASH HOMAMPOUR'S AMENDED PETITION FOR CANCELLATION, DECLARATION OF ROBERT A. KASHFIAN IN SUPPORT THEREOF, AND EXHIBIT 1 was served on Petitioner's Attorney of Record by electronic mail as follows:

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