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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GULAMNABI VAHORA,

Plaintiff,

v.

VALLEY DIAGNOSTICS LABORATORY,
INC., et al.,

Defendants.

Case No. 1:16-cv-01624-SKO

**ORDER DENYING WITHOUT
PREJUDICE DEFENDANT VALLEY
DIAGNOSTICS LABORATORY, INC.'S
MOTION TO STAY PROCEEDINGS TO
ENFORCE THE JUDGMENT AND
APPROVE BOND**

(Doc. 175)

I. INTRODUCTION

On August 30, 2019, Defendant Valley Diagnostics Laboratory, Inc. (“VDL”) filed a “Motion for a Stay of Proceedings to Enforce the Judgment/Approve Bond” pursuant to Rule 62 of the Federal Rules of Civil Procedure. (Doc. 175.)

In the motion, VDL represents that it has secured a supersedeas bond in the amount of \$197,720, equivalent to approximately 125% of the judgment entered against VDL, and that VDL has deposited that amount in cash with a surety corporation. (*Id.* at 3.) The motion states Qarni’s relatives provided the money to Qarni to deposit on behalf of VDL. (*See id.*) VDL requests that the Court stay proceedings to enforce the judgment against it during the pendency of any appeal of the judgment, and accept the supersedeas bond as security under Rule 62. (*See generally id.*)

Plaintiff filed an opposition on September 18, 2019, and VDL filed a reply on September 25, 2019. (Docs. 177, 178.)

1 Local Rule 151 also provides that “[e]very security, bond, undertaking, or deposit
2 instrument shall state the conditions of the obligation and shall contain a provision expressly
3 subjecting it to all applicable federal law,” and “[n]o security, bond, or undertaking with
4 corporate surety shall be accepted unless the corporate surety is in compliance with the
5 provisions of 31 U.S.C. §§ 9304–06[.]” E.D. Cal. L.R. 151(e), (f).

6 III. DISCUSSION

7 VDL seeks to stay proceedings to enforce the judgment during the pendency of an appeal
8 of the judgment¹ by posting a supersedeas bond with the Court in the amount of \$197,720—
9 which represents approximately 125% of the \$158,175 judgment against VDL. (Doc. 175.)
10 Plaintiff objects to the form of the bond, contending that the bond is not in compliance with
11 Local Rule 151, because it does not (1) contain a provision expressly subjecting the bond to “all
12 applicable federal law” or (2) establish that the corporate surety is in compliance with 31 U.S.C.
13 §§ 9304–06. (Doc. 177 at 16.) Plaintiff also contends the Court should apply a four-factor test
14 to determine whether entry of the stay is appropriate, and notes that Defendants have not yet
15 filed a notice of appeal of the judgment—since the judgment is not yet final. (*See id.*)
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18 A “party taking an appeal from the District Court is entitled to a stay of a money judgment
19 as a matter of right if he posts a bond in accordance with Fed. R. Civ. P. 62(d).” *American Mfrs.*
20 *Mut. Ins. Co. v. American Broadcasting-Paramount Theatres, Inc.*, 87 S. Ct. 1, 3 (1966). “Under
21 Fed. R. Civ. P. 62(d), an appellant may obtain a stay as a matter of right by posting a supersedeas
22 bond acceptable to the court.” *Matter of Combined Metals Reduction Co.*, 557 F.2d 179, 193
23 (9th Cir. 1977). Rule 62(b) states that “[a]t any time after judgment is entered, a party may
24 obtain a stay by providing a bond or other security.” Fed. R. Civ. P. 62(b).
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27 ¹ The specific relief requested by VDL is an order “[s]taying all proceedings to enforce the Judgment pending final
28 adjudication of VDL’s appeal.” (Doc. 175 at 2.) However, to the extent VDL requests a stay of proceedings to
enforce the judgment during the pendency of the post-trial motions, that request is denied as moot since the Court
has addressed the post-trial motions in an Order, (*see* Doc. 180), filed contemporaneously herewith. *See Guidance
Electronics LLC v. Dentsply Inter., Inc.*, 791 F. Supp. 2d 1023, 1026 (D.N.M. May 10, 2011).

1 In contending that the Court should apply a four-factor test to determine whether entry of
2 the stay is appropriate, Plaintiff cites *AngioScore, Inc. v. TriReme Med., Inc.*, No. 12-cv-03393-
3 YGR, 2015 WL 13387576 (N.D. Cal. Oct. 23, 2015). (Doc. 177 at 14–15.) However, the court
4 in that case applied the test to determine whether the bond requirement should be *waived*, and a
5 stay should be entered under a different subsection of Rule 62. *See Angioscore*, 2015 WL
6 13387576, at *1–2. As stated by the court in *Angioscore*, that test does not apply where the
7 appellant posts a supersedeas bond. *See id.* at *1 (“[T]he prevailing party may execute upon the
8 judgment absent imposition of a formal stay pending appeal, which an appellant is entitled to
9 obtain from the trial court by posting an adequate supersedeas bond pursuant to Rule 62(d).”).

11 VDL is entitled to a stay of proceedings to enforce the judgment pending appeal upon the
12 posting of a supersedeas bond deemed acceptable by the Court. *See Matter of Combined Metals*
13 *Reduction Co.*, 557 F.2d at 193. Rule 62 provides that a party may obtain a stay “[a]t any time
14 after judgment is entered.” *See Fed. R. Civ. P. 62(b)*. The stay becomes effective upon the
15 Court’s approval of the supersedeas bond and will expire upon the termination of any appeal, or
16 if VDL fails to file a notice of appeal within the time prescribed in the Federal Rules of Civil
17 Procedure. *See Fed. R. Civ. P. 62*.

19 As to the amount of the bond, the Court finds that \$197,720 is an acceptable amount as it
20 complies with Local Rule 151 and is equivalent to approximately 125% of the judgment amount.
21 Regarding the form of the bond, VDL has sufficiently established that the corporate surety,
22 United States Fire Insurance Company, complies with 31 U.S.C. §§ 9304–06. *See Doc. 178*.
23 The bond must, however, include an explicit statement that the corporate surety complies with
24 those sections. *See Flagship West, LLC v. Excel Realty Partners, L.P.*, Case No. CV F 02-5200
25 LJO DLB, 2011 WL 13301319, at *2 (E.D. Cal. Oct. 28, 2011). The bond must also state
26 explicitly that it is “subject to all applicable federal law,” E.D. Cal. L.R. 151(e), and must also
27 set forth the duration of the stay requested, *see Fed. R. Civ. P. 62(b)*. Thus, VDL’s amended
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1 proposed bond must state that the bond is posted to secure a stay of enforcement of the judgment
2 against VDL until determination of any appeal filed by VDL, or if VDL does not appeal the
3 judgment once it becomes final, until after the time for filing a notice of appeal expires. *See id.*;
4 *Flagship West*, 2011 WL 13301319, at *2.

5 Accordingly, the Court denies without prejudice VDL's motion, and directs VDL to file on
6 the docket an amended proposed bond in accordance with this Order by November 25, 2019.
7 The Court ORDERS Plaintiff not to execute on the judgment until further order of the Court.
8 *See Flagship West*, 2011 WL 13301319, at *2. The Court will enter a separate order approving
9 or rejecting the bond, and setting forth the terms of the stay if the bond is approved, upon the
10 filing of the amended proposed bond.

12 IV. CONCLUSION AND ORDER

13 Based on the foregoing, IT IS HEREBY ORDERED that Defendant VDL's Motion for a
14 Stay of Proceedings to Enforce the Judgment/Approve Bond, (Doc. 175), is DENIED
15 WITHOUT PREJUDICE.

16 The Court ORDERS Defendant VDL to file on the docket an amended proposed bond in
17 accordance with this Order by no later than November 25, 2019. The Court further ORDERS
18 Plaintiff not to execute on the judgment until further order of the Court.

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21 IT IS SO ORDERED.

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23 Dated: November 13, 2019

24 /s/ Sheila K. Oberto
25 UNITED STATES MAGISTRATE JUDGE
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