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4 **UNITED STATES DISTRICT COURT**  
5 **EASTERN DISTRICT OF CALIFORNIA**  
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7 SU JUNG SHIN and HYUN JU SHIN,

8 Plaintiffs,

9 v.

10 ROBERT YOUNG YOON, et al.,

11 Defendants.

CASE NO. 1:17-CV-01371-AWI-SKO

**ORDER DENYING MOTION FOR  
DELAYED PERFORMANCE**

(Doc. No. 83)

12  
13 BOB YOUNG YOON, et al.,

14 Counter-Claimants,

15 v.

16 HYUN JU SHIN,

17 Counter-Defendants.  
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19

20 Plaintiff Su Jung Shin (“Plaintiff”) brought this action against Robert Young Yoon (Yoon),  
21 Y&Y Property Management, Inc. (“YYPM”), Yoon & Yoon Investments, LLC (“Yoon & Yoon”),  
22 Kyoung Mee Yoon, Kyoung Sup Yoon, Blackstone Seattle, LLC (“Blackstone”) and The Victus  
23 Group, Inc. (together “Defendants”) to recover funds she provided for investment in a hotel  
24 property. The case settled and in September 2019, the Court ordered entry of a stipulated judgment  
25 (the “Stipulated Judgment”) against Yoon and YYPM (the “Judgment Debtors”), while otherwise  
26 staying the case. In the motion at bar, Judgment Debtors seek an order delaying their payment  
27 obligations under the Stipulated Judgment for one year without interest or penalties. For the  
28 reasons set forth below, the Court will deny the motion in its entirety.

1 **BACKGROUND**<sup>1</sup>

2 As alleged in the Complaint, Shin furnished more than \$1,500,000 in investment capital to  
3 Yoon in 2013 for the purchase of a Holiday Inn Express & Suites in Clovis, California (the  
4 “Holiday Inn Property”) in exchange for a 49% ownership stake in the property and a promissory  
5 note (the “Note”). Doc. No. 1 ¶¶ 27-29. Yoon made several partial payments but failed to pay off  
6 the Note in its entirety. Id. ¶¶ 30-37. Further, Yoon and other Defendants mismanaged the Holiday  
7 Inn Property, while depriving Shin of operating profits and capital gains to which she was entitled  
8 as part owner. See id. ¶¶ 39-75. Shin sued Defendants in this Court in 2017, alleging breach of  
9 contract, breach of fiduciary duty, conversion, intentional misrepresentation and related claims.  
10 See id.

11 On August 28, 2019, the Parties filed a notice of settlement, Doc. No. 51, and on  
12 September 10 and 11, 2019, the Court issued stipulated orders: (i) sanctioning settlement under  
13 Sections 877 and 877.6 of the California Code of Civil Procedure, Doc. No. 55; (ii) directing entry  
14 of the Stipulated Judgment, requiring Yoon and YYPM to pay Shin \$200,000 in four installments  
15 over a period of approximately one year, Doc. No. 56; and otherwise staying the action until  
16 October 30, 2020. Doc. No. 57.

17 The payment schedule in the Stipulated Judgment calls for a payment of \$50,000 within 60  
18 days of entry of judgment; a second payment of \$50,000 within 180 days of entry of judgment; a  
19 third payment of \$50,000 within 270 days of entry of judgment; and a fourth and final payment of  
20 \$50,000—“plus any outstanding amount owed, including accrued interest”—by October 30, 2020.  
21 Doc. No. 56 at 3. Further, the Stipulated Judgment provides for interest at a rate of 10% per  
22 annum on payments due but not made up to October 30, 2020, and states that the Judgment  
23 Debtors must pay Shin (in lieu of interest) \$15,000 per month for every month from October 30,  
24 2020 forward in which any portion of the monies due under the Stipulated Judgment remain  
25 unpaid. Id.

26 Judgment Debtors made the first two payments in full and on time, but did not make the

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28 <sup>1</sup> Shin raises evidentiary objections to declarations submitted in support of the instant motion. Doc. Nos. 85-1, 85-2  
and 85-3. The Court did not rely on the portions of the declarations at issue in deciding the motion and therefore  
overrules Shin’s objections as moot.

1 third payment (which was due on June 8, 2020) “due to economic hardship” and state that they are  
2 also unable to make the payment due on October 30, 2020.<sup>2</sup> See Doc. No. 83-2 ¶¶ 3-4.

### 3 **JUDGMENT DEBTORS’ MOTION**

#### 4 Judgment Debtors’ Argument

5 Judgment Debtors seek an order providing a one-year extension on remaining payments  
6 under the Stipulated Judgment, without interest or penalties. They argue that performance of their  
7 payment obligations under the Stipulated Judgment is currently impossible because the COVID-19  
8 pandemic thwarted the sale of a Best Western Village Inn owned by YYPM (the “Best Western  
9 Property”) and that other assets— including a Tides Inn, a Quality Inn and Yoon’s personal  
10 residence—cannot be sold at a price sufficient to cover payments required under the Stipulated  
11 Judgment. Doc. No. 83-1, Part II.C. According to Judgment Debtors, “all parties anticipated and  
12 agreed that the sale of [the Best Western Property] would fund a significant portion” of the  
13 Stipulated Judgment in this case (as well as the stipulated judgment in *Su Jung Shin and Hyun Ju*  
14 *Shin v. Robert Yoon et al.*, Case No. 1:18-cv-00381-AWI-SKO (the “Best Western Case”). Id. at  
15 6:28–7:9.

16 Judgment Debtors further contend that “the COVID-19 Pandemic of 2020 and subsequent  
17 lockdowns are each undeniably force majeure,” Doc. No. 83-1 at 12:28-13:2, and that performance is  
18 therefore excused under Section 1511 of the California Civil Code, which excuses contractual  
19 obligations where performance is “prevented or delayed by an irresistible, superhuman cause ... unless  
20 the parties have expressly agreed to the contrary.” Id. at 13:21-14:2. Further, Judgment Debtors argue  
21 that the sale of the Best Western Property is a condition precedent to the payment obligations set forth  
22 in the Stipulated Judgment and that Section 1441 of the California Civil Code “voids a condition  
23 precedent when its fulfillment is impossible” or excessively onerous. Id. at 14:15-21.

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25 <sup>2</sup> Defendants filed a parallel motion for deferred performance in a companion case captioned *Su Jung Shin and Hyun*  
26 *Ju Shin v. Robert Yoon et al.*, Case No. 1:18-cv-00381-AWI-SKO (“Best Western Case”), seeking relief from a  
27 stipulated judgment calling for payment of \$1.7 million in four installments. The papers filed by Defendants in  
28 connection with this motion generally lump payment obligations under the stipulated judgment in the Best Western  
Case together with payment obligations under the Stipulated Judgment in this case because the two stipulated  
judgments arose from the same settlement. Thus, payment amounts referenced in this order, which are specific to the  
Stipulated Judgment in this case, do not always tie to payment amounts referenced in Defendants’ filings. This order  
speaks only to Judgment Debtors’ request for relief from the Stipulated Judgment in this case. The request for relief  
from the stipulated judgment in the Best Western Case is addressed through a separate order in the Best Western Case.



1 Procedure,<sup>4</sup> while Judgment Creditors take the position that contract defenses do not apply to the  
2 Stipulated Judgment and that the Court “lacks jurisdiction” to grant relief under the Federal Rules  
3 of Civil Procedure.

4 *Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338 (9th Cir. 1981) was  
5 similar, in pertinent respects, to the case at bar. There, appellant sought reversal of \$40,000 in  
6 damages awarded by the district court under the liquidated damages provision in a “Judgment  
7 Pursuant to Stipulation” enjoining the appellant from the distribution of certain copyrighted films.  
8 *Id.* at 1339-40. Appellant argued that “because the judgment was entered by consent of the parties  
9 it should have the effect of a contract rather than a judgment” and that “the damages provision  
10 [wa]s an unenforceable penalty under California law.” *Id.* at 1340 (also referencing appellant’s  
11 contention that “[a]s a contract,” “the validity of [the judgment’s] terms would be evaluated under  
12 California law”) *Id.* In rejecting that argument, the Ninth Circuit stated as follows:

13 We need not determine the validity of the damages provision under  
14 California law because we do not agree with [appellant’s]  
15 interpretation of the effect of a judgment pursuant to the stipulation  
16 of the parties. Instead, we follow the mandate of *United States v.*  
17 *Swift & Co.*, 286 U.S. 106, 115 [] (1932), by “reject(ing) the  
18 argument ... that a decree entered upon consent is to be treated as a  
19 contract and not as a judicial act.” Relief from any provision of the  
20 original judgment thus must be considered under Rule 60 of the  
21 Federal Rules of Civil Procedure rather than under a contract law  
22 analysis.

23 *Id.*

24 Judgment Debtors cite several cases for the proposition that a stipulated judgment must be  
25 “construed as any contract” because it is the product of negotiation among parties. Doc. No. 86,  
26 Part III. Those cases, however, go solely to the question of how to interpret the terms of a  
27 stipulated judgment. They do not address the validity or enforcement of terms in a stipulated  
28 judgment or, more specifically, the question of whether contract defenses can excuse obligations  
under a stipulated judgment as those obligations are construed by a court. In *Rappenecker v. Sea-*  
*Land Serv., Inc.*, 93 Cal. App. 3d 256 (1979), for example, the California Court of Appeal merely

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<sup>4</sup> Judgment Debtors do not assert that Rule 59(e) is applicable to their request for relief and, thus, the Court does not address Rule 59(3), notwithstanding argument relating Rule 59(e) in Shin’s opposition.

1 held that a stipulated judgment that was silent on costs could not be read to preclude recovery of  
2 costs by statute. Id. at 263. And in *Kinzli v. City of Santa Cruz*, 539 F. Supp. 887 (N.D. Cal. 1982),  
3 similarly, the court merely held that contract principles could be used to furnish missing terms  
4 (like the amount of time allowed for performance) and that extrinsic evidence is admissible to  
5 resolve ambiguity as to obligations under a stipulated judgment. Id. at 900-01.

6 Thus, while the Court agrees with Judgment Debtors that contract principles apply in  
7 determining what the Stipulated Judgment says, the Court finds—consistent with Ninth Circuit  
8 precedent—that the Stipulated Judgment is a judicial act and that, accordingly, “[r]elief from any  
9 provision” of the Stipulated Judgment “must be considered under Rule 60 of the Federal Rules of  
10 Civil Procedure rather than under a contract law analysis.” See Dunnahoo, 637 F.2d at 1340  
11 (emphasis added). Merely proving a contract defense such as impossibility of performance, in  
12 other words, is not enough. See Rizzolo v. Henry, 2014 WL 6772950, at \*1 (D. Nev. Dec. 2,  
13 2014) (declining to entertain contract defenses to a settlement agreement after the settlement  
14 agreement had been reduced to judgment). Judgment Debtors must satisfy applicable Rule 60  
15 standards for relief. Cf. Fleming v. Huebsch Laundry Corp., 159 F.2d 581, 585 (7th Cir. 1947)  
16 (applying Rule 60 to a consent judgment).

17 Finally, the Court expressly retained jurisdiction over motions relating to the Stipulated  
18 Judgment, Doc. No. 56 at 10:3-6, and this motion was brought in a timely fashion—less than one  
19 year after entry of the Stipulated Judgment and as the economic hardship that putatively precludes  
20 performance of Judgment Debtors’ obligations under the Stipulated Judgment arose. See  
21 Fed.R.Civ.P. 60(c)(1). The Court, therefore, can properly decide whether the relief sought by  
22 Judgment Debtors is warranted and will do so here. See VISA Int’l Serv. Ass’n v. Bankcard  
23 Holder of Am., 784 F.2d 1472, 1474-75 (9th Cir. 1986).

## 24 **DISCUSSION**

25 In the interest of thoroughness, the Court will first consider whether relief is proper under  
26 Rule 60(b) and then look at the question of whether the contract defenses asserted by Judgment  
27 Debtors could provide relief if they were applicable.

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1 **I. Federal Rule of Civil Procedure 60(b)**

2 Federal Rule of Civil Procedure 60(b) provides that a court may relieve a party from a final  
3 judgment, order, or proceeding based on: (1) mistake, inadvertence, surprise, or excusable neglect;  
4 (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged  
5 judgment; or (6) “any other reason that justifies relief.” Fed. R. Civ. Pro. 60(b). Neither side  
6 disputes that the bases for relief set forth in Rules 60(b)(1)-(5) are obviously inapplicable here, and  
7 consequently, the determination as to whether Judgment Debtors are entitled to relief from the  
8 payment schedule, interest payments and penalties in the Stipulated Judgment must be analyzed  
9 under the “so-called catch-all” provision, Rule 60(b)(6). See Harvest v. Castro, 531 F.3d 737, 749  
10 (9th Cir. 2008); see also, Dunnahoo, 637 F.2d at 1340–41 (analyzing motion for relief from  
11 damages provision in stipulated judgment under Rule 60(b)(6) on a finding that no other Rule  
12 60(b) provisions applied).

13 “Judgments are not often set aside under Rule 60(b)(6).” Latshaw v. Trainer Wortham &  
14 Co., 452 F.3d 1097, 1103 (9th Cir. 2006). Rather, Rule 60(b)(6) “has been used sparingly as an  
15 equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary  
16 circumstances prevented a party from taking timely action to prevent or correct an erroneous  
17 judgment.” Fantasyland Video, Inc. v. Cty. of San Diego, 505 F.3d 996, 1005 (9th Cir. 2007)  
18 (quoting United States v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir.1993))  
19 (internal quotation marks omitted). “Accordingly, a party who moves for such relief ‘must  
20 demonstrate both injury and circumstances beyond his control that prevented him from proceeding  
21 with ... the action in a proper fashion.’ ” Latshaw, 452 F.3d at 1103 (quoting Community Dental  
22 Services v. Tani, 282 F.3d 1164, 1168 (9th Cir. 2002)).

23 Here, Judgment Debtors argue solely that the payment schedule in the Stipulated Judgment  
24 should be modified and that they should be relieved of provisions relating to penalties and interest  
25 because conditions arising subsequent to entry of the Stipulated Judgment—namely COVID-19  
26 and the corresponding economic shut-down—have reduced the value and liquidity of their assets  
27 and, thus, rendered Judgment Debtors incapable of making the remaining payments due under the  
28 Stipulated Judgment on time. This simply has nothing to do with improprieties in the proceedings

1 that culminated in the Stipulated Judgment or defects in the Stipulated Judgment itself. See  
2 Fantasyland Video, 505 F.3d at 1005. Indeed, the proceedings were resolved through voluntary  
3 settlement—not contest—and the terms of the Stipulated Judgment were furnished *verbatim* by  
4 the Parties (including the Judgment Debtors) themselves. See Hoffman v. Celebrezze, 405 F.2d  
5 833, 836 (8th Cir. 1969) (finding that “[p]arties are generally bound by their agreements made in  
6 court” and that “the fact that the judgment was entered by consent” provided “[a]n additional  
7 reason” why modification of the judgment under Rule 60(b)(6) to remove an interest provision  
8 was “inappropriate”).

9       Moreover, even under an elastic application of Rule 60(b)(6), the Court does not see an  
10 “injury” here sufficient to merit the extraordinary relief Judgment Debtors are seeking. In the  
11 settlement underlying the Stipulated Judgment, the Parties expressly contemplated the possibility  
12 that Judgment Debtors would fail to make payments on time and agreed, in anticipation of that  
13 eventuality, that Shin would be entitled to interest at a rate of 10% per annum on amounts due but  
14 not paid up to October 30, 2020 and a payment of \$15,000 for each month from October 30, 2020  
15 forward in which amounts due under the settlement remained unpaid.<sup>5</sup> Stripping Shin of such  
16 protections after she settled this action in reliance on them would arguably constitute “manifest  
17 injustice,” but requiring Judgment Debtors to honor obligations they agreed to—apparently in  
18 exchange for concessions as to the amount and timing of payments<sup>6</sup>—plainly does not. See  
19 Dunnahoo, 637 F.2d at 1341 (noting, in denying Rule 60(b)(6) relief, that the damages provision  
20 in question was “intentionally and deliberately included in the order [at issue] with the knowledge,  
21 consent and approval of all the parties,” including appellant) (quoting Hoffman, 405 F.2d at 837).

22       The Court therefore finds that Judgment Debtors are not entitled under Rule 60(b)(6) to the  
23 relief they are seeking.

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25 <sup>5</sup> Judgment Debtors assert that, absent the relief sought in this motion, they will be forced to liquidate assets “for a  
26 fraction of their worth.” Doc. No. 86 at 4:14-21. The Stipulated Judgment, however, does not mandate the sale of  
assets at this juncture. It merely imposes interest and penalties—in amounts agreed to *a priori* by Judgment Debtors—  
for late payment.

27 <sup>6</sup> See Doc. No. 56 at 5:14-20 (“It is the position of [Shin] that defendants caused [Shin] damages substantially greater  
28 than the amounts that the Judgment Debtors are obligated to pay under the Judgment. That being said, [Shin] is  
willing to accept the lower sum set forth in the Judgment in consideration for the full and timely compliance of all  
obligations of the Judgment Debtors set forth in the [Stipulated] Judgment.”)

1 **II. Contract Defenses**

2 As to contract defenses, the Court agrees with Shin that Judgment Debtors have not shown  
3 impossibility of performance or failure of a condition precedent, and that relief therefore would  
4 not be available on either of those theories even if contract defenses applied to the Stipulated  
5 Judgment.

6 As defined in Section 1436 of the California Civil Code, “[a] condition precedent is a  
7 condition to be performed before a right dependent on it accrues or an act dependent on it is to be  
8 performed.” Cal. Civ. Code § 1436. The Stipulated Judgment states, in pertinent part, that “the  
9 Judgment Debtors represent that they will fund a significant portion of [their] payments” from the  
10 sale of the Best Western Property, while further stating what expenses can be deducted from gross  
11 sale proceeds; that “net sale proceeds [will] be disbursed directly from escrow to [Shin] to the  
12 extent the [Stipulated Judgment] has not been satisfied in full”; and that Shin will “act in good  
13 faith and cooperate with the Defendants to effectuate sale ....” Doc. No. 56, Section 1.5. On their  
14 faces, these terms merely govern the manner in which pertinent aspects of the sale of the Best  
15 Western Property are to be handled, and the Court sees nothing in the Stipulated Judgment that  
16 could be read—particularly through the skeptical lens of California law—to mean that Judgment  
17 Debtors have no obligation to make payments at all until the sale of the Best Western Property has  
18 been consummated. See Colaco v. Cavotec SA, 25 Cal. App. 5th 1172, 1183, (2018)  
19 (“[c]onditions precedent are not favored in the law [citations], and courts shall not construe a term  
20 of the contract so as to establish a condition precedent absent plain and unambiguous contract  
21 language to that effect” (citation and internal quotation marks omitted)). Indeed, Judgment  
22 Debtors made two of the four payments required under the Stipulated Judgment despite the fact  
23 that the Best Western Property has not yet been sold and expressly state that they have explored  
24 selling other assets—including the Tide Inn, the Quality Inn and Yoon’s personal residence—to  
25 satisfy the Stipulated Judgment. Thus, Judgment Debtors’ condition precedent theory is without  
26 merit and Judgment Debtors’ payment obligations could not be excused on that basis even if  
27 contract defenses applied to the Stipulated Judgment.

28 As to impossibility of performance, it is settled law that “[t]he duty of a promisor is never

1 discharged ... by the mere fact that supervening events deprive him of the ability to perform, if  
2 they are not such as to deprive other persons, likewise, of ability to render such a performance.”  
3 United States v. Grayson, 879 F.2d 620, 624 (9th Cir. 1989) (quoting 6 A. Corbin, Corbin on  
4 Contracts § 1332 at 361 (2d ed. 1962)); see also, Ashker v. Sayre, 2010 WL 476634, at \*3 (N.D.  
5 Cal. Feb. 4, 2010) (finding that “subjective impossibility” specific to the promising party “does  
6 not excuse non-performance of a contract”) (citation omitted). The motion states that “[t]he  
7 Pandemic has caused it [to be] either impossible or almost impossible for the Judgment Debtors to  
8 timely pay the remainder of the Judgment installments,” Doc. No. 83-1 at 15:7-8, and that “as a  
9 result of the Pandemic, [Yoon] cannot sell any of his hotels for a sufficient price to pay off the  
10 loans and pay” the Stipulated Judgment. Doc. No. 86 at 7:10-13. The fact that Judgment Debtors  
11 are currently unable to raise the funds necessary to make the two \$50,000 payments still due under  
12 the Stipulated Judgment, however, obviously does not mean that COVID-19 has “likewise”  
13 deprived “other persons” of the ability to make \$50,000 payments. Judgment Debtors have not  
14 made—and cannot make—such a showing and thus fail to establish an impossibility defense. See  
15 Grayson, 879 F.2d at 624 (finding that the impossibility of performance defense did not apply  
16 where guarantors “were unable to discharge their duty under [a] guaranty agreement,” because  
17 guarantors had not shown that “payment [] of the amounts due was objectively impossible”).

18 The Court therefore finds that, even if contract defenses were applicable to the Stipulated  
19 Judgment, Judgment Debtors have failed to show that they are excused from their obligations.

### 20 **CONCLUSION**

21 In sum, Judgment Debtors are not excused from performance of their payment obligations  
22 under either Rule 60(b) of the Federal Rules of Civil Procedure or under the contract defenses they  
23 have asserted. The Court will, therefore, deny the motion.

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**ORDER**

Accordingly, IT IS HEREBY ORDERED that Judgment Debtors' motion for an order delaying performance of the Stipulated Judgment (Doc. No. 83) is DENIED with prejudice.

IT IS SO ORDERED.

Dated: October 13, 2020

  
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SENIOR DISTRICT JUDGE

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