

1 frame for payment. The Court denied Plaintiff's motion and
2 ordered Plaintiff to:

3 submit a proposed bond that unequivocally binds the
4 surety to pay any amount that may be awarded to
5 Defendant, up to \$311,018.19, unless within seven days
6 of the Court of Appeals' decision affirming or modifying
7 the judgment or dismissing the appeal, Plaintiff
8 satisfies the judgment in full, including any additional
9 costs or interest awarded.

10 Docket No. 2271 at 2. In addition, the Court noted that its grant
11 of Plaintiff's request to stay the collection of costs pending
12 appeal was premised on the posting of a supersedeas bond.

13 On February 13, 2013, Plaintiff filed its Second Motion for
14 Approval of Supersedeas Bond. In that motion, Plaintiff
15 indicated, "The terms of the bond adhere to this Court's January
16 29, 2013 order regarding supersedeas bond, and on February 7,
17 2013, [Defendant's] counsel notified the undersigned by e-mail
18 that the bond terms are acceptable." Plaintiff did not submit a
19 declaration attaching the referenced email. On February 25, 2013,
20 Defendant filed an opposition to Plaintiff's Second Motion for
21 Approval of Supersedeas Bond. In its opposition, Defendant
22 objects both to the terms of the bond and Plaintiff's proposed
23 order. Defendant does not address Plaintiff's contention that its
24 counsel notified Plaintiff that the terms of the bond acceptable.
25 Plaintiff has filed a reply brief attaching emails between
26 Plaintiff's and Defendant's counsel as exhibits. Plaintiff has
27 not filed a sworn declaration attaching the emails as exhibits.

28 DISCUSSION

The Court's January 29 Order required Plaintiff to submit a
bond that unequivocally binds the surety to pay, "unless within

1 seven days of the Court of Appeals' decision affirming or
2 modifying the judgment or dismissing the appeal, Plaintiff
3 satisfies the judgment in full, including any additional costs or
4 interest awarded." Docket No, 2271 at 2. Plaintiff has submitted
5 a proposed bond that binds the surety to pay if Plaintiff "fails
6 **to promptly pay** all sums." Emphasis added. The Court finds that
7 Plaintiff's proposed bond does not comply with the Court's January
8 29 Order.

9 Defendant also objects to Plaintiff's proposed order. The
10 Court will not enter Plaintiff's proposed order at this time.
11 Accordingly, Defendant's objection is overruled. If Plaintiff
12 includes this language in a future proposed order, Defendant may
13 renew its objection.

14 In addition to these objections, Defendant suggests other
15 modifications to the bond it believes should be made. The Court
16 declines to order compliance with these suggestions.

17 CONCLUSION


18 The Court DENIES Plaintiff's Second Motion for Approval of
19 Supersedeas Bond. Docket No. 2273. Within fourteen days of the
20 date of this order, Plaintiff shall submit a proposed bond.
21 Consistent with this order and the Court's January 29, 2013 order,
22 Plaintiff shall modify the language of subparagraph c of the
23 Promise to Pay to state:

24 Kalitta Air, L.L.C. fails to pay within seven days all
25 sums awarded against it in or following the appeal in
26 this action, including the full \$622,036.38 as ordered
27 by the court along with any additional costs or interest
28 that the Court of Appeals may award.

1 Plaintiff shall not modify any other language in the bond unless
2 the parties reach agreement and file a sworn declaration
3 memorializing that agreement.

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5 IT IS SO ORDERED.

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7 Dated: 4/1/2013

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9 CLAUDIA WILKEN
10 United States District Judge
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