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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MARIO B. QUINONES and MARIO I.  
11 QUINONES,

12 Plaintiffs,

13 v.

14 CHASE BANK USA, N.A.,

15 Defendant.  
16

Civil No. 09cv2748-AJB(BGS)

**ORDER DENYING  
DEFENDANT'S *EX PARTE* MOTION  
TO CONFIRM STATUTORY STAY OF  
EXECUTION WITHOUT POSTING  
BOND**

(Doc. No. 155.)

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18 On April 19, 2012, Defendant filed an *ex parte* application to confirm statutory stay of execution  
19 without posting a bond. On April 23, 2012, Plaintiff filed a response and a supplemental response.  
20 (Dkt. Nos. 156-167.) After a review of the briefing and applicable law, the Court DENIES Defendant's  
21 *ex parte* motion to confirm statutory stay of execution without the requirement of posting bond.

22 **Background**

23 On November 8, 2010, Plaintiff Mario B. accepted a Rule 68 offer of judgment which was filed  
24 with the Court. (Dkt. No. 61.) On November 10, 2010, the Clerk of Court entered judgment "in favor  
25 of plaintiff Mario B. Quinones against defendant Chase Bank USA, N.A. in the amount of \$1,001.00,  
26 plus reasonable attorney fees and costs." (Dkt. No. 62.) As to attorney's fees, the Rule 68 offer of  
27 judgment states, "... plus reasonable attorney fees and costs incurred solely as to Mario Senior's claim  
28 for violation of the California Fair Debt Collection Practices Act (Cal. Civ. Code § 1788, et seq.)

1 through and including the day of the making of this offer as determined by the Court, on noticed  
2 motion.” (Dkt. No. 61) (emphasis in original).

3 On December 16, 2011, the Court granted in part and denied in part Plaintiff Mario B.’s motion  
4 for attorney’s fees. (Dkt. No. 143.) On January 3, 2012, Plaintiff Mario B. filed an application for writ  
5 of execution. (Dkt. No. 137.) Defendant filed an opposition on January 6, 2012. (Dkt. No. 140.)  
6 Plaintiff filed a reply on January 9, 2012. (Dkt. No. 141.) On January 6, 2012, Defendant moved the  
7 Court to reconsider its order. (Dkt. No. 139.) On January 10, 2012, the Court stayed the application  
8 for writ of execution until ruling on Defendant’s motion for reconsideration. (Dkt. No. 142.) On April  
9 13, 2012, the Court issued an order denying Defendant’s motion for reconsideration of its order granting  
10 in part and denying in part Plaintiff Mario B.’s motion for attorney’s fees. (Dkt. No. 153.)

### 11 Discussion

12 Defendant seeks a confirmation of an automatic statutory stay, under 12 U.S.C. § 91, of the  
13 Court’s order granting in part and denying in part Mario B.’s motion for attorney’s fees and costs  
14 without posting a bond until the judgment is final which includes the conclusion of any appeals.  
15 Plaintiff opposes and argues that there is no automatic stay under 12 U.S.C. § 91 pending final  
16 resolution on appeal.

17 12 U.S.C. § 91<sup>1</sup> provides,

18 All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing  
19 to any national banking association, or of deposits to its credit; all assignments of  
20 mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits  
21 of money, bullion, or other valuable thing for its use, or for the use of any of its  
22 shareholders or creditors; and all payments of money to either, made after the  
23 commission of an act of insolvency, or in contemplation thereof, made with a view  
24 to prevent the application of its assets in the manner prescribed by chapter 4 of title  
62 of the Revised Statutes, or with a view to the preference of one creditor to  
another, except in payment of its circulating notes, shall be utterly null and void; **and  
no attachment, injunction, or execution, shall be issued against such association  
or its property before final judgment in any suit, action, or proceeding, in any  
State, county, or municipal court.**

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25 <sup>1</sup>The parties dispute whether Defendant Chase Bank USA, N.A., is a national bank subject to 12  
26 U.S.C. § 91. Defendant requests judicial notice under Federal Rule of Evidence 201(b)(2) of the fact  
27 that Chase is a national banking association and provides a copy of the “List of National Banks and  
28 Federal Branches and Agencies active as of 3/31/2012” from the Office of the Comptroller. (Dkt. No.  
155-1, Krog Decl., Ex. D.) Plaintiff presents evidentiary objections to Exhibit D to Krog’s declaration.  
The Court overrules Plaintiff’s evidentiary objections and pursuant to Federal Rule of Evidence  
201(b)(2), grants Defendant’s request for judicial notice that it is a national banking association.

1 12 U.S.C. § 91 (emphasis added). Section 91 was enacted in 1873 to “prevent national banks from  
2 giving preferential treatment to creditors and to assure the orderly and fair liquidation of insolvent  
3 banks.” State Bank & Trust Co. of Golden Meadow v. D.J. Griffin Boat, 926 F.2d 449, 451 (5th Cir.  
4 1991). It prohibits liens against a bank’s property prior to “final judgment.” Id.

5 The parties dispute the meaning of “final judgment” in the statute and the cases are divided on  
6 this issue. Defendant argues that “final judgment” includes the time to file an appeal or disposition on  
7 appeal and cites to United States v. LeMaire, 826 F.2d 387, 390 (5th Cir. 1987) (holding that “final  
8 judgment” means “a judgment on the merits which is no longer subject to examination on appeal, either  
9 because of disposition on appeal and conclusion of the appellate process, or because of the passage,  
10 without action, of the time for seeking appellate review”). Defendant also cites to a district court case  
11 that relied on LeMaire in its ruling that final judgment means a judgment on which all appeals have been  
12 concluded. See In re Richmond Produce Co., Inc., 195 B.R. 455, 466 (N.D. Cal. 1996).

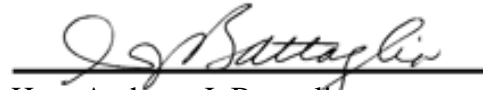
13 In his supplemental opposition, Plaintiff cites to a district court case that denied the bank’s  
14 motion to stay the monetary judgment pending appeal without the posting of a supersedeas bond.  
15 Gutierrez v. Wells Fargo Bank, N.A., 2010 WL 4688989, \*2 (N.D. Cal. 2010). The court rejected the  
16 holding in LeMaire as not precedent and because LeMaire contradicts a clear directive of the Supreme  
17 Court in Third Nat’l Bank in Nashville v. Impac Limited, Inc., 432 U.S. 312 (1977), regarding the  
18 interpretation of a final judgment when applying Section 91. Id. at 1. In Third Nat’l Bank, the United  
19 States Supreme Court, after reviewing the three Supreme Court cases that have ever addressed 12 U.S.C.  
20 § 91, concluded that the “statute merely prevents prejudgment seizure of bank property by creditors of  
21 the bank.” Third Nat’l Bank in Nashville, 432 U.S. at 324. Therefore, the district court held that “final  
22 judgment” applies to writs issued prior to the entry of final judgment. Gutierrez, 2010 WL 4688989 at  
23 2. In addition, the district court in Gutierrez also cited to the United States Supreme Court case in  
24 Melkonyan v. Sullivan, 501 U.S. 89, 95 (1991) which held that a “final judgment is one that is final and  
25 appealable” Id. at 95.

26 The cases that have addressed the definition of “final judgment” under 12 U.S.C. § 91 are not  
27 settled. Based on a review on the cases that have addressed this issue, the Court adopts Plaintiff’s  
28 analysis of “final judgment” under 12 U.S.C. § 91 as it is based on more recent cases and Third Nat’l

1 Bank specifically references that section 91 applies to prejudgment writs. See Third Nat'l Bank, 432  
2 U.S. at 324. Accordingly, the Court DENIES Defendant's *ex parte* application to confirm statutory stay  
3 of execution under 12 U.S.C. § 91 without the requirement of posting security.

4 IT IS SO ORDERED.

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6 DATED: April 24, 2012

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8 Hon. Anthony J. Battaglia  
9 U.S. District Judge  
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