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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN WAINE-GOLSTON and
ANDRE CORBIN, individually and on
behalf of other members of the general
public similarly situated,

Plaintiffs,

vs.

TIME WARNER
ENTERTAINMENT-
ADVANCE/NEW HOUSE
PARTNERSHIP, a New York general
partnership and DOES 1 through 10,
inclusive,,

Defendants.

CASE NO. 11cv1057-GPC(RBB)

**ORDER GRANTING
DEFENDANT’S MOTION TO
ENFORCE EXECUTION OF
BILL OF COSTS**

[Dkt. No. 123.]

Before the Court is Defendant’s motion to enforce execution of bill of costs. (Dkt. No. 123.) Plaintiffs filed an opposition on August 2, 2013. (Dkt. No. 125.) Defendant filed a reply on August 16, 2013. (Dkt. No. 126.) Based on the reasoning below, the Court GRANTS Defendant’s motion to enforce execution of bill of costs.

Background

On March 27, 2013, the Court granted Defendant’s motion for summary judgment. (Dkt. No. 105.) Subsequently, on April 4, 2013, Defendant filed its bill of costs. (Dkt. No. 107.) On April 16, 2013, Plaintiffs filed a notice of appeal. (Dkt. No.

1 109.) On April 30, 2013, Plaintiffs filed an *ex parte* motion to stay enforcement of
2 Defendant’s bill of costs pending appeal. (Dkt. No. 115.) On May 7, 2013, the Court
3 granted in part and denied in part Plaintiffs’ *ex parte* request. Specifically, the Court
4 denied Plaintiffs’ request to stay a ruling on Defendant’s bill of costs but granted their
5 request “to stay execution of the bill of costs conditioned upon Plaintiffs posting a
6 supersedeas bond for the full amount of costs taxed by the Clerk of Court.” (Dkt. No.
7 118 at 4.) Pursuant to the Court’s order, Plaintiffs were required to “post a supersedeas
8 bond within 14 days of the date that the bill of costs are taxed,” and “[i]f no bond is
9 posted, there shall be no stay of enforcement and the bill of costs taxed by the Clerk of
10 Court shall be subject to enforcement.” (*Id.* at 4-5.) On May 24, 2013, the Clerk of
11 Court issued an Order Taxing Costs and awarded Defendants costs in the amount of
12 \$3,039.30. (Dkt. No. 122.)

13 On June 26, 2013, defense counsel sent an email to Plaintiffs’ counsel reminding
14 him that Plaintiffs had been required to post a supersedeas bond in the amount of
15 \$3,039.30 on or before June 7, 2013. (Dkt. No. 123-2, Sankey Decl. ¶ 4.) She also
16 stated that if Plaintiffs did not post a bond by June 28, 2013, Defendant would move
17 for full execution of the judgment. (*Id.*, Ex. 1.) Plaintiffs’ counsel responded a few
18 hours later informing that Plaintiffs would “promptly attend to the costs matter.” (*Id.*,
19 Ex. 2.) Since, then, Plaintiffs have not posted bond or otherwise contacted Defendant
20 about their failure to do so. (*Id.* ¶ 6.) Thus, on July 9, 2013, Defendant filed a motion
21 to enforce execution of bill of costs.

22 Discussion

23 Defendant seeks the Court to enforce execution of bill of costs for Plaintiffs’
24 failure to comply with the Court’s order to post a supersedeas bond within 14 days of
25 date that the bill of costs were taxed. In opposition, Plaintiffs request that the Court
26 exercise its discretion and decline to enforce the bill of costs on the grounds that
27 Plaintiffs have limited resources and enforcing the bill of costs may render them
28 indigent. The issue is whether the Court should enforce execution of the bill of costs

1 for Plaintiffs’ failure to comply with the Court’s order requiring them to file a
2 supersedeas bond in order to stay execution of the bill of costs.

3 Federal Rule of Civil Procedure (“Rule”) 62 allows a party to stay execution of
4 a judgment while a case is on appeal by posting a supersedeas bond. See Fed. R. Civ.
5 P. 62(d). A full bond generally is required under Rule 62(d) because the purpose of the
6 bond “is to secure the appellees from a loss resulting from the stay of execution.”
7 Rachel v. Banana Republic, Inc., 831 F.2d 1503, 1505 n. 1 (9th Cir.1987). A party is
8 entitled to a waiver of a bond and a discretionary stay in “extraordinary cases.” Poplar
9 Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-91
10 (5th Cir. 1979). A district court may either waive the bond requirement or allow the
11 judgment debtor to use some alternative type of security. Brooktree Corp. v. Advanced
12 Micro Devices, Inc., 757 F. Supp. 1101, 1104 (S.D. Cal. 1990). The party seeking the
13 waiver bears the burden showing the relief from the bond requirement is justified.
14 Jardin v. DATAlegro, Inc., 08cv1462-IEG(WVG), 2011 WL 4835742, at *10 (S.D.
15 Cal. Oct. 12, 2011).

16 A bond may not be necessary “(i) when the judgment debtor can currently easily
17 meet the judgment and demonstrates that it will maintain the same level of solvency
18 during appeal, [or] (ii) when ‘the judgment debtor’s present financial condition is such
19 that the posting of a full bond would impose an undue financial burden.’” Alexander
20 v. Chesapeake, Potomac and Tidewater Books, Inc., 190 F.R.D. 190, 193 (E.D. Va.
21 1999) (citing Poplar Grove, 600 F.2d at 1191). Where the “‘judgment debtor’s present
22 financial condition is such that the posting of a full bond would impose an undue
23 financial burden, the court . . . is free to exercise its discretion to fashion some other
24 arrangement for substitute security through an appropriate restraint on the judgment
25 debtor’s financial dealings, which would equal protection to the judgment creditor.’”
26 In re Wymer, 5 B.R. 802, 806 (B.A.P. 9th Cir.1980) (citing Poplar Grove Planting., 600
27 F.2d 1191); see also Sibia Neurosciences, Inc. v. Cadus Pharm. Corp., 96-1231-
28 IEG(POR), 1999 WL 33554683, at *4 (S.D. Cal. 1999) (“court has discretion to allow

1 other forms of judgment guarantee”); Townsend v. Holman Consulting Corp., 929 F.2d
2 1358, 1367 (9th Cir. 1991) (“[W]e have held that the district court may permit security
3 other than a bond.”). Plaintiffs bear the burden of formulating an alternative plan and
4 the court will not imagine one of its own. See id. at 807; Bolt v. Merrimack Pharms,
5 Inc., No. S-04-893-WBS DAD, 2005 WL 2298423, at *4 (E.D. Cal. Sept. 20, 2005).

6 In the opposition, Plaintiff Waive-Golston states that he is unemployed and
7 searching for employment. (Dkt. No. 125-1, Waive-Golston Decl. ¶ 3.) His disability
8 benefits were discontinued which was his only source of income. (Id. ¶ 4.) Since he
9 has no source of income, he is having a hard time covering his basic costs of living and
10 does not have enough to pay all or half of the bill of costs totaling \$3,039.30. (Id. ¶ 5.)
11 Plaintiff Corbin states that he found some work since working at Time Warner but has
12 been through some periods of unemployment. (Dkt. No. 125-2, Corbin Decl. ¶ 3.) He
13 does not have a full time job but is currently working as a “temp” on a contract basis.
14 (Id.) Since he only makes a modest income from his temp job, he has a hard time
15 covering basic costs of living and does not have enough money to pay all or even half
16 of the bill of costs totaling \$3.039.30. (Id. ¶¶ 4, 5.)

17 While both Plaintiffs’ declarations assert that they are unable to pay all or even
18 half of the \$3,039.30, they have not stated whether they can afford a supersedeas bond
19 in the amount of \$3,039.30. See Poplar Grove, 600 F.2d at 1191. Moreover, if they
20 are unable to afford the cost of a bond, they have not provided alternative forms of
21 security. Plaintiffs again have not demonstrated that they are entitled to a waiver of a
22 bond.¹ Furthermore, the Court has concerns about Plaintiffs’ failure to comply with the
23 Court’s order. Subsequent to the Court’s order granting in part and denying in part
24 Plaintiffs’ *ex parte* motion, Plaintiffs sought no further relief from the Court. Instead
25 they waited until Defendants filed a motion to enforce execution of bill of costs to file
26 their response. Based on these reasons, the Court grants Defendant’s motion to enforce

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28 ¹In Plaintiffs’ prior *ex parte* motion to stay enforcement of Defendant’s bill of costs, the Court concluded that Plaintiffs did not demonstrate they were entitled to a waiver of a bond. (Dkt. No. 118 at 3.)

1 execution of bill of costs.

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Conclusion

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DATED: September 18, 2013

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HON. GONZALO P. CURIEL
United States District Judge

²On May 7, 2013, the Court ordered that “Plaintiff shall post a supersedeas bond within 14 days of the date that the bill of costs are taxed. Once a bond has been posted, a stay shall remain in effect until the appeal before the Ninth Circuit, No. 13-55622 is fully resolved. If no bond is posted, there shall be no stay of enforcement and the bill of costs taxed by the Clerk of Court shall be subject to enforcement.” (Dkt. No. 118 at 4.)