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

U.S. BANK NATIONAL ASSOCIATION,		
		Plaintiff,
v.		
GARY N. WAYMAN,		
		Defendant.

Case No. 13-cv-02203-BAS(BLM)
**ORDER DENYING MOTION
FOR STAY OF EXECUTION OF
JUDGMENT PENDING APPEAL**
[ECF No. 59]

I. INTRODUCTION

The Court granted summary judgment in this action in favor of Plaintiff and against Defendant Gary N. Wayman. (ECF No. 45.) On March 17, 2016, the Clerk of the Court entered judgment against Wayman in the amount of \$159,666.75, plus interest and costs as allowed by law. (ECF No. 55.) Wayman filed a notice of appeal, and he now moves for a stay of the execution of the judgment pending resolution of his appeal. (ECF No. 59.) Plaintiff opposes. (ECF No. 63.)

The Court found this motion suitable for determination on the papers submitted and without oral argument. *See* Civ. L.R. 7.1(d). For the following reasons, the Court **DENIES** Wayman’s Motion for Stay of Execution of Judgment Pending Appeal.

1 **II. DISCUSSION**

2 With a few specified exceptions, Federal Rule of Civil Procedure 62(a)
3 automatically stays the execution or enforcement of a judgment for fourteen days
4 after entry of the judgment. A party who files an appeal may obtain a stay beyond
5 this period by filing a supersedeas bond. Fed. R. Civ. P. 62 (d).

6 The purpose of a supersedeas bond is to shield an appellee from a loss that
7 could result from the stay. *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505 n.1
8 (9th Cir. 1987); *N.L.R.B. v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988). A judgment
9 debtor who wishes to appeal may also choose to use a supersedeas bond “to avoid
10 the risk of satisfying the judgment only to find that restitution is impossible after
11 reversal on appeal.” *Planting & Ref. Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189,
12 1191 (5th Cir. 1979). The judgment debtor may provide the bond “upon or after filing
13 the notice of appeal.” Fed. R. Civ. P. 62 (d). “The stay takes effect when the court
14 approves the bond.” *Id.*

15 In the alternative, a district court has the discretion to “waive the bond
16 requirement or allow the judgment debtor to use some alternative type of security.”
17 *Brooktree Corp. v. Advanced Micro Devices, Inc.*, 757 F. Supp. 1101, 1104 (S.D.
18 Cal. 1990); *accord Fed. Prescription Serv. v. Am. Pharmaceutical Ass’n*, 636 F.2d
19 755, 759–61 (D.C.Cir.1980) (noting Rule 62 “in no way necessarily implies that
20 filing a bond is the only way to obtain a stay”); *N. Ind. Pub. Serv. Co. v. Carbon*
21 *Cnty. Coal Co.*, 799 F.2d 265, 281 (7th Cir.1986) (holding district court has
22 discretion to waive \$2 million appeal bond). In determining whether to waive the
23 bond requirement, the court may consider factors including:

24 (1) the complexity of the collection process; (2) the amount of time
25 required to obtain a judgment after it is affirmed on appeal; (3) the
26 degree of confidence that the district court has in the availability of
27 funds to pay the judgment; (4) whether the defendant’s ability to pay the
28 judgment is so plain that the cost of a bond would be a waste of money;
and (5) whether the defendant is in such a precarious financial position
that the requirement to post a bond would place other creditors of the
defendant in an insecure position.

1 *Dillon v. Chicago*, 866 F.2d 902, 904–905 (7th Cir.1988).

2 Here, Wayman submits that he is currently discussing settlement options with
3 Plaintiff and is contemporaneously pursuing a supersedeas bond to stay the action.
4 (Mot. 2:17–22, ECF No. 59.) He requests the Court issue a stay “without the bond
5 requirement” or, in the alternative, “issue a temporary stay of enforcement” until after
6 the parties are able to further discuss settlement. (*Id.* at 3:19–4:3.)

7 Having considered Wayman’s motion and supporting declaration, the Court
8 finds that staying the execution of the judgment is not warranted. Wayman has not
9 demonstrated that waiving the bond requirement temporarily or altogether is
10 appropriate. For instance, there is no indication here that the bond requirement would
11 place other creditors in an insecure position or that a bond would be an unnecessary
12 waste. Accordingly, given that Plaintiff has the right to execute on the judgment, the
13 Court finds Wayman must post a supersedeas bond if he wishes to stay the execution
14 of the judgment pending resolution of his appeal.

15
16 **III. CONCLUSION**

17 For the foregoing reasons, the Court **DENIES** Defendant Gary N. Wayman’s
18 Motion for Stay of Execution of Judgment Pending Appeal (ECF No. 59).

19 **IT IS SO ORDERED.**

20
21 **DATED: May 25, 2016**


Hon. Cynthia Bashant
United States District Judge