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

ANTHONY JOHNSON,
Plaintiff and Counter-Defendant,
v.
STORIX, INC., a California Corporation,
Defendant and Counter-Claimant.

Case No.: 3:14-cv-1873-H-BLM

**ORDER DENYING PLAINTIFF'S
MOTION TO QUASH THE WRIT
OF EXECUTION AND DENYING
MOTION TO STAY POST-
JUDGMENT DISCOVERY AND
ENFORCEMENT OF THE
JUDGMENT**

[Doc. No. 268]

On November 16, 2016, the Court entered a final amended judgment, which included an award for attorneys' fees in the amount of \$555,118.64, in favor of Defendant and Counter-Claimant Storix, Inc. and against Plaintiff and Counter-Defendant Anthony Johnson. (Doc. No. 246.) On November 28, 2016, Johnson filed a motion to stay

1 enforcement of the judgment pending appeal. (Doc. No. 251.) Storix filed an opposition,
2 and the Court held telephonic status conferences on November 17, November 29, and
3 December 13, 2016. (Doc. Nos. 248, 252, 254, 255.) In a written order, the Court granted
4 the motion to stay enforcement of the judgment pending appeal on the condition that
5 Johnson must post a supersedeas bond in the amount of the full judgment. (Doc. No. 256.)
6 The Court ordered Johnson to file notice of the supersedeas bond with the Court by
7 December 20, 2016. (Id. at 4.)

8 On December 20, 2016, Johnson filed a motion to stay execution of the judgment
9 with the Ninth Circuit. (See Doc. No. 258 at 3.) On December 23, 2016, Johnson filed an
10 ex parte motion in this Court to continue the stay until the Ninth Circuit could rule on the
11 motion filed with that court. (Doc. No. 258.) This Court granted the motion, extending the
12 stay of enforcement for 30 days from December 27, 2016. (Doc. No. 259.) The Ninth
13 Circuit denied Johnson's motion to stay on January 13, 2017. (Doc. No. 260.)

14 Johnson did not file a notice of a supersedeas bond with this Court. On January 27,
15 2017, the Clerk of Court issued an abstract of judgment and a writ of execution. (Doc. Nos.
16 263-64.) On April 28, 2017, Storix served Johnson with post-judgment written discovery.
17 (Doc. No. 268-2 at 3, ¶ 9.) On May 30, 2017, Johnson responded to each discovery request
18 with the following objection:

19 Objection. As set forth in plaintiff's concurrently filed motion, post-judgment
20 discovery and other proceedings to enforce the judgment should be stayed
21 pending the outcome on appeal in accordance with Rule 69(a) of the Federal
Rules of Civil Procedure and California law.

22 (Doc. No. 269-1.) In addition to this objection, Johnson asserted various forms of
23 privilege in response to some of the discovery requests. (Id.) On May 31, 2017, Johnson
24 filed a motion for (1) an order quashing Defendant's writ of execution, (2) a protective
25 order staying post-judgment discovery, and (3) an order staying enforcement of the
26 judgment. (Doc. No. 268.) Storix filed an opposition on June 19, 2017, and Johnson filed
27 a reply on June 26, 2017. (Doc. Nos. 269, 270.)
28

1 Pursuant to its discretion under Local Rule 7.1(d)(1), the Court determines that the
2 motion is fit for resolution without oral argument. Accordingly, the Court submits the
3 motion on the parties' papers and vacates the scheduled hearing. For the reasons that
4 follow, the Court denies Johnson's motion and overrules his objections to post-judgment
5 discovery.

6 Discussion

7 **I. Johnson is not entitled to a stay of enforcement pending appeal**

8 Johnson began this action on August 8, 2014 by filing a complaint against Storix for
9 copyright infringement of a software program. (Doc. No. 1.) Storix filed a counterclaim
10 seeking a declaratory judgment that it did not infringe any copyright and that it owned all
11 copyrights in the software. (Doc. No. 5.) On December 15, 2015, a jury returned a verdict
12 in favor of Storix and against Johnson. (Doc. No. 160.) On January 4, 2016, Storix filed a
13 motion pursuant to 17 U.S.C. § 505 seeking costs not taxable under 28 U.S.C. § 1920 as
14 well as attorneys' fees. (Doc. No. 165.) The parties briefed the issue and attended mediation
15 sessions. (Doc. Nos. 180, 184, 202, 204.)

16 On June 16, 2016, the Supreme Court issued an opinion in Kirtsaeng v. John Wiley
17 & Sons, Inc., 136 S. Ct. 1979 (2016). At the Court's request, each party briefed the Court
18 on how that decision should impact the Court's analysis of Storix's motion for costs and
19 fees on July 18, 2016. (Doc. Nos. 217-18, 223-24.) On November 16, 2016, the Court
20 entered a final amended judgment in favor of Storix, which included an award for
21 attorneys' fees. (Doc. No. 246.) Storix now seeks to enforce that judgment, but Johnson
22 argues that enforcement must be stayed pending appeal.

23 Johnson argues that under the Federal Rules of Civil Procedure, post-judgment
24 enforcement must follow California law. (Doc. No. 268-1 at 3-4.) California law
25 purportedly prohibits enforcement of costs-only judgments pending appeal. (Id. at 4-5.)
26 Johnson argues that the award of attorney's fees is a costs-only judgment. Therefore,
27 according to Johnson, he is not required to post a supersedeas bond while his case is on
28 appeal. In support of his position, Johnson cites Rule 69(a), which provides:

1 A money judgment is enforced by a writ of execution, unless the court directs
2 otherwise. The procedure on execution—and in proceedings supplementary
3 to and in aid of judgment or execution—must accord with the procedure of
4 the state where the court is located, but a federal statute governs to the extent
it applies.

5 FED. R. CIV. P. 69(a)(1).

6 Johnson misapplies the Federal Rules. “Although it is true that under California law,
7 an appellant may obtain a stay of execution of a costs-only judgment without posting bond,
8 the Federal Rules reflect no such policy.” Aldasoro v. Kennerson, 915 F. Supp. 188, 192-
9 93 (S.D. Cal. 1995) (internal citation omitted). Under Rule 69(a), state law provides the
10 “procedure” on execution of a judgment. FED. R. CIV. P. 69(a)(1). In other words, it
11 addresses the manner of executing a judgment—it does not address when a judgment may
12 be stayed or whether a supersedeas bond is required pending appeal. Those issues are
13 governed by federal law, which establishes when a judgment becomes final and when a
14 judgment may be stayed. See FED. R. CIV. P. 54, 62; see also Lamon v. City of Shawnee,
15 Kan., 758 F. Supp. 654, 656 (D. Kan. 1991) (“[T]he court finds that Rule 69(a) merely
16 addresses the manner of execution of a judgment; it does not address whether the posting
17 of a supersedeas bond pending an appeal is required.”). Federal law also completely
18 governs attorney’s fee awards in copyright cases. See 17 U.S.C. § 505; Kirtsaeng v. John
19 Wiley & Sons, Inc., 136 S. Ct. 1979 (2016). As relevant here, federal law specifically sets
20 forth the conditions by which a stay may be had pending appeal, providing that when “an
21 appeal is taken, the appellant may obtain a stay by supersedeas bond.” FED. R. CIV. P. 62(d).

22 The Court entered the amended judgment on November 16, 2016. (Doc. No. 246.)
23 On December 13, 2016, the Court granted a stay of execution on the condition that Johnson
24 would post a supersedeas bond. (Doc. No. 256.) The Court extended the stay of execution
25 for 30 days from December 27, 2016, again directing Johnson to post a bond. (Doc. No.
26 259.) On January 13, 2017, the Ninth Circuit denied Johnson’s motion to stay execution
27 pending Johnson’s appeal with that court. (Doc. No. 260.) Now, seven months after the
28 Court entered its amended judgment, Johnson is again seeking a stay of execution without

1 obtaining a supersedeas bond. Under to Rule 62, the “posting of a bond protects the
2 prevailing [party] from the risk of a later uncollectible judgment and compensates him for
3 delay in the entry of the final judgment.” N.L.R.B. v. Westphal, 859 F.2d 818, 819 (9th
4 Cir. 1988). Pursuant to Rule 62(d) and the orders issued by this Court and the Ninth Circuit,
5 Johnson must post a supersedeas bond in order to obtain a stay of execution.

6 Even if the word “procedure” in Rule 69(a) could be construed to encompass
7 whether a bond can be required pending appeal, state law would still be inapplicable to this
8 case. State law does not govern the procedure on execution where there is an applicable
9 federal statute. Office Depot Inc. v. Zuccarini, 596 F.3d 696, 700-701 (9th Cir. 2010); FED.
10 R. CIV. P. 69(a)(1). The Federal Rules have the “force and effect of federal statutes.”
11 Zuccarini, 596 F.3d, at 701 (quoting Schneider v. Nat’l R.R. Passenger Corp., 72 F.3d 17,
12 19 (2d Cir.1995)). Rule 62 expressly provides the conditions under which a federal
13 judgment may be stayed. FED. R. CIV. P. 62. “Accordingly, California law, whatever its
14 precise content on this point, will not be applied.” Ribbens Int’l, S.A. de C.V. v. Transp.
15 Int’l Pool, Inc., 40 F. Supp. 2d 1141, 1143 (C.D. Cal. 1999) (under Rules 62 and 69, federal
16 law governs supersedeas bond approval and the effect thereof); see also Leuzinger v. Cty.
17 of Lake, 253 F.R.D. 469, 476 (N.D. Cal. 2008) (holding that the state law cited by Johnson,
18 § 917.1 of the California Code of Civil Procedure, must yield to Rule 62 as a matter of
19 federal supremacy and also under the express language of Rule 69(a)(1)). Because
20 California law does not apply, the Court denies Johnson’s motion.

21 In the alternative, Johnson asks the Court to reconsider its order requiring a
22 supersedeas bond. (Doc. No. 268-1 at 7-8.) Johnson’s request for reconsideration is
23 premised on a recent decision by a state court in California. (Id.) But because state law
24 does not govern here, the state court case does not provide grounds for reconsideration.
25 Accordingly, the Court declines to reconsider its order requiring a supersedeas bond.

1 **II. The Court overrules Johnson’s objections to post-judgment discovery**

2 Storix served Johnson with post-judgment interrogatories and document requests,
3 and Johnson responded to each discovery request with the following objection:

4 Objection. As set forth in plaintiff’s concurrently filed motion, post-judgment
5 discovery and other proceedings to enforce the judgment should be stayed
6 pending the outcome on appeal in accordance with Rule 69(a) of the Federal
Rules of Civil Procedure and California law.

7 (Doc. No. 269-1.) In addition to this objection, Johnson asserted various forms of privilege
8 in response to some of the discovery requests. (Id.) Storix asks the Court to issue an order
9 overruling Johnson’s objections.

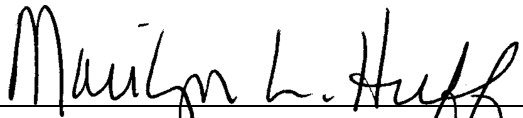
10 Johnson is not entitled to a stay pending appeal. Accordingly, the Court overrules
11 Johnson’s objections to post-judgment discovery. Johnson must comply with the post-
12 judgment discovery requests to the extent that such production would not violate attorney-
13 client privilege. If Johnson asserts attorney-client privilege in response to any request for
14 production, he is ordered to state the grounds for privilege with specificity. The magistrate
15 judge will then rule on the asserted privilege.

16 **Conclusion**

17 For the foregoing reasons, the Court denies Johnson’s motion and overrules his
18 objections to post-judgment discovery. Johnson must comply with the post-judgment
19 discovery requests to the extent that such production would not violate the attorney-client
20 privilege. If Johnson asserts attorney-client privilege in response to any request for
21 production, he is ordered to state the grounds for privilege with specificity. The magistrate
22 judge will then rule on the asserted privilege.

23 **IT IS SO ORDERED.**

24 DATED: June 27, 2017

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26 _____
27 MARILYN L. HUFF, District Judge
28 UNITED STATES DISTRICT COURT