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FILED
ALAMEDA COUNTY

NOV 01 2012

CLERK OF THE SUPERIOR COURT

By: *[Signature]* Deputy

7 Attorneys for Plaintiff
8 JANE DOE

SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

10 JANE DOE,

11 Plaintiff,

12 v.

13 THE WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, Inc., a corporation, et al.,

14 Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT
MCGUINNESS, DEPARTMENT 22

MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION TO SUBSTITUTE OR
REDUCE BOND ON APPEAL

Date: 11/8/12
Time: 3:00 p.m.
Dept.: 22

BY FAX

INTRODUCTION

17 Defendants Watchtower Bible and Tract Society of New York, Inc. and Fremont California
18 Congregation of Jehovah's Witnesses, North Unit, (hereinafter "Church Defendants") have applied to
19 the Court to substitute certain out-of-state real property for the existing Travelers surety bond as their
20 mandated undertaking. In the alternative they petition to reduce the value of the Travelers surety
21 bond during pendency of their appeal. Both requests are prohibited by the applicable statutes and
22 outside the court's discretion to grant.

23 The Church Defendants have further courteously notified counsel for Plaintiff of their intention
24 to present oral testimony in support of their Motion at the time of hearing. Since there is no authority
25 to grant the requested relief, there is no point in taking oral testimony, and the request should be
26 denied as well.

1 I. THERE IS NO STATUTORY AUTHORITY TO SUBSTITUTE OUT-OF-STATE REAL PROPERTY AS THE
2 CHURCH DEFENDANTS' UNDERTAKING STAYING ENFORCEMENT OF JUDGMENT DURING
3 APPEAL.

4 In order to stay enforcement of Plaintiff's judgment against them during the pendency of their
5 appeal, the Church Defendants caused a surety bond to be filed with the court to meet the
6 requirement of an undertaking established by C.C.P. section 917.1. The Church Defendants seek to
7 substitute certain property in Patterson, New York, in lieu of the current Bond issued by Travelers
8 Surety Company. The Church Defendants argue they should be permitted such a substitution to
9 protect Plaintiff from financial exposure to the costs of their surety bond when she loses this appeal.
10 (Church MPA 2:26-3:6.)

11 Although the concern of the Church Defendants for Ms. Conti is heartwarming, if somewhat
12 belated, their request is specifically prohibited by statute. C.C.P. section 995.710 permits, in lieu of a
13 bond, deposit with the Clerk of the Court any of six specific forms of financial security: Money,
14 Government Bonds, Certificates of Deposit insured by the FDIC, Savings Account insured by the FDIC,
15 Investment Certificates insured by the FDIC, or Credit Union Certificates guaranteed by the National
16 Credit Union Administration or other agency. (C.C.P. §995.710(a)(1-6).) The statute does not
17 authorize the court to consider or allow any other form of financial security, and does not authorize
18 any form of non-liquid assets such as real property or out of state assets of any kind in lieu of bond.

19 The Church Defendants recognize that the controlling statutes "do not specifically mention
20 the use of real property as collateral for a deposit in lieu of a bond" (Church MPA 5:5-6.)
21 However, the argument continues, the statutes "do not expressly forbid its use, either" (*ibid.*) The
22 Church Defendants' argument ignores the well-established principle of statutory construction, fondly
23 known as "*expressio unius est exclusio alterius.*" Simply put, where exceptions to a general rule are
24 specified by a statute, other exceptions are not to be implied or presumed. (*Mutual Life Insurance*
25 *Company v. City of Los Angeles* (1990) 50 Cal.3d 402, 410.) Section 995.710(a) states that "[t]he
26 principal may, instead of giving a bond, deposit with the officer any of the following:" and then lists
27 the six specific enumerated cash or fully liquid and insured financial instruments allowable as a
28

1 guarantee. The statute does not state that any other asset is permitted, nor does it give the Court
2 discretion to consider other forms of assets.

3 In reviewing the types of financial instruments which may satisfy the "in lieu of bond"
4 requirement, it is significant that each of the six are liquid, cash or cash value instruments, readily
5 liquidated to satisfy the judgment. All six are deposited with an Officer in California and subject to the
6 immediate jurisdiction of California courts. The Church Defendants' proposal of substituting out-of-
7 state real property, over which California Courts have no jurisdiction, and which may not be quickly
8 liquidated for satisfaction of the judgment at the conclusion of the appellate process, is totally
9 inconsistent with the types of instruments specifically enumerated. The Church Defendants cite no
10 precedent whatsoever that has ever permitted real estate, much less out-of-state real estate to be
11 considered permissible in lieu of a bond.

12 The purpose of the bond requirement of C.C.P. section 917.1 is to permit the plaintiff to
13 promptly recover a judgment once the appeal is exhausted. One court stated it as follows:

14 The statute is clearly designed to protect the judgment won in the trial court from
15 becoming uncollectible while the judgment is subjected to appellate review.
16 [Citation.] A successful litigant will have an assured source of funds to meet the
17 amount of the money judgment, costs and postjudgment interest after postponing
18 enjoyment of a trial court victory.

19 (*Grant v. Superior Court* (1990) 225 Cal.App.3d 929, 934.) This statutory purpose would hardly be
20 served by allowing a defendant to post out-of-state real property, rather than cash or bond, to secure
21 the judgment pending appeal. The cumbersome method of liquidation, the out-of-state jurisdiction
22 issue, and the fluctuating market values and demands of real property all would defeat the statutory
23 purpose of the bond or undertaking. That is why the Legislature did not permit or recognize the type
24 of proposal advanced by the Church Defendants in this Motion.

25 The current Motion is quite different than the temporary, short-term agreement reached with
26 Ms. Conti in the brief time between the court's ruling on the Motion for New Trial and the filing of the
27 Travelers Surety bond that was represented to be "in the works" and to be filed at the time of the
28 imminent Notice of Appeal. Plaintiff's courtesy in that instance was solely to allow the Church
29 Defendants to close some isolated out of state escrows, and was certainly not meant to be a long-

1 term waiver of her rights to guarantee her ability to collect the Judgment once the Church Defendants
2 have exhausted the appellate process.

3 **II. THE COURT HAS NO AUTHORITY TO REDUCE THE AMOUNT OF THE BOND.**

4 The explicit statutory language of C.C.P. section 917.1(b) states as follows:

5 The undertaking shall be for double the amount of the judgment or order unless given
6 by an admitted surety insurer in which event it shall be for one and one half times the
amount of the judgment or order. (Emphasis added.)

7 The statute does not provide any discretion to the Court to reduce the bond or undertaking
8 below the statutory requirement. The Church Defendants claim that the Court has authority to reduce
9 the amount of the undertaking by virtue of C.C.P. sections 996.110 and 996.120. (Church MPA 7:13-
10 15). However, nothing in those statutes authorizes the Court to violate section 917.1(b). On the
11 contrary, section 996.120 permits the Court to substitute one surety for another only if the
12 substitution "would not reduce the amount of the bond or the number of sureties below the minimum
13 required by the statute providing for the bond . . ." (C.C.P. § 996.120.) The language referred to by
14 the Church Defendants regarding a court determination "that no injury would result from substitution
15 of the surety" only refers to the petition to substitute one surety for another, which is not the Motion
16 brought in this case. The Church Defendants' assertion that "bonding on the compensatory damages
17 award alone - at the amount of \$4,200,000.00 - more than adequately securitizes the plaintiff's
18 interests in the Amended Judgment," where the Amended Judgment is for over three times that
19 amount, is mathematically incorrect. A \$4.2 million bond falls over \$8 million short of full security for
20 Plaintiff's interests in an \$11.4 million judgment that is accruing post-judgment interest at nearly
21 \$100,000 a month. The Church Defendants' Motion unfairly requests the Court to far exceed its
22 authority solely to financially benefit the losing parties in a lawsuit.

23
24 **CONCLUSION**

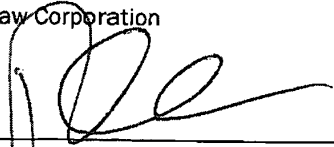
25 Neither the request to substitute out-of-state real property for a surety bond, nor the request
26 to reduce the bond beyond the statutory mandated minimum, is supported by any law or authority.
27 Both requests must be denied, and no evidentiary hearing is warranted.

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Dated: November 1, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation



By _____
RICHARD J. SIMONS
Attorneys for Plaintiff
JANE DOE



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 12 JANE DOE

13 SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

14 JANE DOE,

15 Plaintiff,

16 v.

17 THE WATCHTOWER BIBLE AND TRACT SOCIETY
 18 OF NEW YORK, INC., a corporation, et al.,

19 Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT
 McGUINNESS, DEPARTMENT 22

[PROPOSED] ORDER DENYING DEFENDANTS'
 MOTION TO SUBSTITUTE OR REDUCE BOND ON
 APPEAL

Date: 11/8/2012
 Time: 3:00 p.m.
 Dept: 22

BY FAX

20 The Motion of Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. and
 21 FREMONT CALIFORNIA CONGREGATION OF JEHOVAH'S WITNESSES, NORTH UNIT, having regularly
 22 come before the Court on November 8, 2012, at 3:00 p.m. in Department 22, notice having been duly
 23 given, the matter having been briefed, argued, and submitted,

24 IT IS HEREBY ORDERED that Defendants' Motion to Substitute Bond on Appeal is DENIED.

25 IT IS FURTHER ORDERED that Defendants' Motion to Reduce Bond on Appeal is DENIED.

26 Dated: _____

27 _____
 28 THE HONORABLE ROBERT McGUINNESS
 Judge of the Superior Court



FILED
ALAMEDA COUNTY

NOV. 01 2012

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

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SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

11 JANE DOE,
12 Plaintiff,
13 v.

14 THE WATCHTOWER BIBLE AND TRACT SOCIETY
15 OF NEW YORK, INC., a corporation, et al.,
16 Defendants.

No. HG11558324
ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT
McGUINNESS, DEPARTMENT 22
PROOF OF SERVICE OF MEMORANDUM OF
POINTS AND AUTHORITIES IN OPPOSITION TO
MOTION TO SUBSTITUTE OR REDUCE BOND ON
APPEAL and PROPOSED ORDER

Date: 11/8/12
Time: 3:00 p.m.
Dept.: 22

BY FAX

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1 PROOF OF SERVICE (C.C.P. 1013a 2015.5)

2 STATE OF CALIFORNIA ss.
3 COUNTY OF ALAMEDA

4 I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years
5 and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California
6 94541.

7 On November 1, 2012, I served the within MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
8 TO MOTION TO SUBSTITUTE OR REDUCE BOND ON APPEAL and PROPOSED ORDER DENYING on interested parties
9 in said action by the following means:

10 By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with
11 postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for
12 deposit in the United States mail in Hayward, California, addressed as shown below:

13 By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered
14 by hand to the address(es) shown below:

15 By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be
16 delivered by hand to the address(es) shown below:

17 By Facsimile Transmission - By transmitting a true copy thereof by facsimile transmission from
18 facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown
19 below. The facsimile transmission was reported as complete and without error.

20 By Email By transmitting a true copy thereof to the email address(es) shown below:

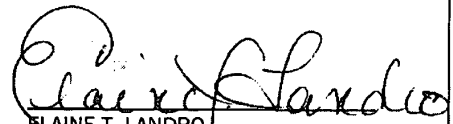
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 1, 2012, at Hayward, California.


ELAINE T. LANDRO