

1 RICHARD J. SIMONS, ESQ. State Bar No. 72676  
 2 KELLY KRAETSCH, ESQ. State Bar No. 281688  
 3 FURTADO, JASPOVICE & SIMONS  
 4 A Law Corporation  
 5 22274 Main Street  
 6 Hayward, CA 94541  
 7 510/582-1080 Telephones  
 8 510/582-8254 Facsimile  
 9 Rick@fjlaw.com  
 10 KellyK@fjlaw.com  
 11  
 12 Attorneys for Plaintiff  
 13 JANE DOE

FILED  
 ALAMEDA COUNTY

NOV 01 2012  
 CLERK OF THE SUPERIOR COURT  
 By Connie Johnson  
 Deputy

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

9	No. HG11558324	
10	JANE DOE,	ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT
11	Plaintiff,	McGUINESS, DEPARTMENT 22
12	v.	MEMORANDUM OF POINTS AND AUTHORITIES IN
13	THE WATCHTOWER BIBLE AND TRACT SOCIETY	OPPOSITION TO MOTION TO SUBSTITUTE OR
14	OF NEW YORK, Inc., a corporation, et al.,	REDUCE BOND ON APPEAL
15	Defendants.	Date: 11/8/12
		Time: 3:00 p.m.
		Dept.: 22

BY FAX

16 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.

27

28

1       1. 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  
                 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  
7 amount of the judgment or order. (Emphasis added.)

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

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.

28 ///

1                   Dated: November 1, 2012

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

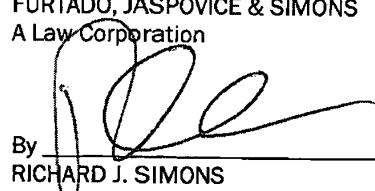
25

26

27

28

FURTADO, JASPOVICE & SIMONS  
A Law Corporation

By   
RICHARD J. SIMONS  
Attorneys for Plaintiff  
JANE DOE

1 RICHARD J. SIMONS, ESQ. State Bar No. 72676  
2 KELLY KRAETSCH, ESQ. State Bar No. 281688  
2 FURTADO, JASPOVICE & SIMONS  
3 A Law Corporation  
3 22274 Main Street  
4 Hayward, CA 94541  
4 510/582-1080 Telephones  
5 510/582-8254 Facsimile  
5 Rick@fislaw.com  
6 KellyK@fislaw.com

6  
7 Attorneys for Plaintiff  
7 JANE DOE

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

9  
10 JANE DOE, No. HG11558324  
11 Plaintiff, ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT  
12 v. McGuiness, Department 22  
13 THE WATCHTOWER BIBLE AND TRACT SOCIETY [PROPOSED] ORDER DENYING DEFENDANTS'  
14 OF NEW YORK, INC., a corporation, et al., MOTION TO SUBSTITUTE OR REDUCE BOND ON  
15 Defendants. APPEAL  
Date: 11/8/2012  
Time: 3:00 p.m.  
Dept: 22 BY FAX

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

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

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

22 Dated: \_\_\_\_\_

23  
24 THE HONORABLE ROBERT McGUINESS  
25 Judge of the Superior Court  
26  
27  
28

1 RICHARD J. SIMONS, ESQ. State Bar No. 72676  
2 KELLY KRAETSCH, ESQ. State Bar No. 281688  
2 FURTADO, JASPOVICE & SIMONS  
A Law Corporation  
3 22274 Main Street  
Hayward, CA 94541  
4 510/582-1080 Telephones  
510/582-8254 Facsimile  
5 Rick@fjslaw.com  
KellyK@fjslaw.com  
6

7 Attorneys for Plaintiff  
JANE DOE

**FILED**  
ALAMEDA COUNTY

NOV. 01 2012

CLERK OF THE SUPERIOR COURT  
By Connie Johnson  
Deputy

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

9  
10  
11 JANE DOE,  
12 Plaintiff,  
13 v.  
14 THE WATCHTOWER BIBLE AND TRACT SOCIETY  
OF NEW YORK, INC., a corporation, et al.,  
15 Defendants.  
16

No. HG11558324  
ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT  
McGUINESS, 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**

17 ///  
18 ///  
19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

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:

21 James M. McCabe, Esq.  
22 The McCabe Law Firm  
23 4817 Santa Monica Avenue  
24 San Diego, CA 92107  
25 619/224-2848 Telephones  
26 619/224-0089 Facsimile  
27 [jim@mccabelaw.net](mailto:jim@mccabelaw.net)  
28 Attorneys for Defendants  
CHURCH DEFENDANTS

Robert J. Schnack, Esq.  
Jackson Lewis LLP  
801 K Street, Suite 2300  
Sacramento, CA 95814  
916/341-0404 Telephones  
916/341-0141 Facsimile  
[SchnackR@jacksonlewis.com](mailto:SchnackR@jacksonlewis.com)  
[egbertd@jacksonlewis.com](mailto:egbertd@jacksonlewis.com)  
Attorney for Defendant  
WATCHTOWER BIBLE AND TRACT SOCIETY  
OF NEW YORK, INC.

29 Jonathan Kendrick, In Pro Per  
30 200 Honey Lane  
31 Oakley, CA 94561  
32 925/679-0411 Telephone

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

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

  
ELAINE T. LANDRO