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9 LA JOLLA BANK

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

12 LA JOLLA BANK, FSB, a Federally
13 Chartered Savings Bank,

14 Plaintiff,

15 v.

16 DANNY TARKANIAN, an individual;
17 AMY M. TARKANIAN, an individual;
18 JERRY TARKANIAN, an individual;
19 LOIS TARKANIAN, an individual;
20 GEORGE TARKANIAN, an individual;
21 ZAFRIR DIAMANT, an individual;
22 JOSEPHINE DIAMANT, an individual;
23 DOUGLAS R. JOHNSON, an individual;
24 DEBRA JOHNSON, an individual; and
25 DOES 1 through 100, inclusive,

26 Defendants.

27 **AND RELATED CROSS ACTION.**
28

Case No.: 10-cv-0980-WQH (KSC)

**REPLY TO UNTIMELY
OPPOSITION TO MOTION TO
REGISTER JUDGMENT IN
FOREIGN DISTRICTS AND FOR
CERTIFIED JUDGMENT**

DATE: October 22, 2012
TIME: 11:00 a.m.
LOCATION: Dept. 4

***NO ORAL ARGUMENT – UNLESS
REQUESTED BY THE COURT***

1 The Federal Deposit Insurance Corporation (“FDIC-R”), as Receiver for La
2 Jolla Bank, FSB (“LJB”) hereby submits the following Reply to Defendants’ *Untimely*
3 Opposition to the Motion to Register the Judgment in Foreign Districts and for
4 certified copies of the Judgment.

5 **I.**

6 **DEFENDANTS’ OPPOSITION IS UNTIMELY AND SHOULD BE STRICKEN**

7 As detailed in FDIC-R’s Notice of Non-Opposition (Document No. 145),
8 Defendants failed to timely oppose the instant motion. The Opposition was due
9 October 8, 2012, and no extension of time was requested. As a courtesy, FDIC-R
10 waited until October 10, 2012 at 9:31 a.m. to file the Notice of Non-Opposition.
11 Defendants’ Opposition was not filed until 2:45 p.m. on October 10th, and the brief
12 made no mention of timeliness. Compounding the problem, Defendants filed an
13 “Addendum” at 5:41 p.m., which included an omitted argument header. Again, there
14 was no response to FDIC-R’s contention that the Opposition was untimely. The
15 Opposition should therefore be stricken and the motion should be granted as
16 unopposed.

17 **II.**

18 **DEFENDANTS CANNOT RE-ARGUE THE MERITS**

19 The “Pertinent Facts” section of the Opposition regurgitates the statement of
20 facts from the Counterclaim. There is no evidence supporting this 7.5 page recitation,
21 and it should be given no weight. Defendants’ opportunity to argue the merits, and to
22 present their evidence of fraud, was during the pendency of the litigation and in
23 opposition to the FDIC’s Motion for Summary Judgment. This case is now in a post-
24 judgment setting. The FDIC-R’s Motion for Summary Judgment refuted the fraud
25 allegations as a matter of law, establishing how Danny Tarkanian knew or should have
26 known all material facts concerning the subject transactions. Further, the FDIC
27 established as a matter of law, the fraud allegations were non-actionable under 12
28 U.S.C. § 1823(e). Defendants’ allegations have already been adjudicated, and have no

1 bearing on whether good cause exists to register Judgment outside the Southern
2 District of California. This motion is not a forum for Defendants to re-argue the
3 merits of the case.

4 III.

5 DEFENDANTS' SUPERSEDEAS BOND ANALYSIS IS MISPLACED

6 Defendants claim the Judgment cannot be registered in a foreign district
7 because the Judgment is not yet “final” and Defendants argue they should be excused
8 from filing a supersedeas bond. Defendants provide no legal or factual basis to
9 support this position. Defendants’ analysis is misplaced because 28 U.S.C. § 1963
10 provides, in part:

11 A judgment in an action for the recovery of money or
12 property entered in any ... district court ... may be
13 registered by filing a certified copy of the judgment in any
14 other district ... when the judgment has become final by
15 appeal or expiration of the time for appeal or when ordered
16 by the court that entered the judgment for good cause
17 shown. [Emphasis added.]

18 The statute is in the disjunctive. A plaintiff may register a judgment when it
19 becomes final *or* by order of the Court upon a showing of good cause. The instant
20 motion is based on “good cause.” Pursuant to § 1963, good cause exists when there is
21 no supersedeas bond and there are insufficient assets in the forum jurisdiction to
22 satisfy the judgment. *See, e.g., Columbia Pictures Television, Inc. v. Krypton Broad.*
23 *Of Birmingham, Inc.*, 259 F.3d 1186, 1197-1198 (9th Cir. 2001); *Chicago Downs*
24 *Ass’n, Inc. v. Chase*, 944 F.2d 366, 372 (7th Cir. 1991). Here, it is undisputed that no
25 bond has or will be filed, and the motion provided evidence that Defendants’ assets
26 are primarily located in the Eastern District of California and the District of Nevada.

27 Defendants did not contest FDIC-R’s evidentiary showing. The motion is
28 substantively unopposed. Instead, Defendants argue there is no “final” judgment
because of the pending appeal. This misses the point as § 1963 allows the plaintiff to

1 register the judgment, notwithstanding the pendency of an appeal, upon a showing of
2 “good cause.” Defendants are selectively reading the statute.

3 The Opposition proceeds to argue, without any factual support, that Defendants
4 should be excused from filing a bond. A litigant cannot obtain affirmative relief
5 without the filing of a proper motion.

6 Defendants cite *Rachel*¹ at 11:10-11 for the quotation, in **bold**, that courts have
7 discretion to waive a bond requirement. The cited footnote in *Rachel* is worth quoting
8 in full:

9 Rachel complains that the district court set an excessive
10 bond requirement for this appeal. District courts have
11 inherent discretionary authority in setting supersedeas
12 bonds; review is for an abuse of discretion. [Citation.] The
13 purpose of a supersedeas bond is to secure the appellees
14 from a loss resulting from the stay of execution and a full
15 supersedeas bond should therefore be required. [Citation.]
16 We find no abuse of discretion. Furthermore, the issue is
17 moot since Rachel never paid the bond.

18 *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505, n. 1 (9th Cir. 1987).

19 Defendants have an adverse Judgment of \$17 million, which must be registered
20 in the jurisdictions where assets exist. *Townsend* is also cited at p. 11 of the
21 Opposition that the court has broad discretion to waive the bond requirement, but the
22 facts of the case are omitted from the Opposition. In *Townsend*, the court waived the
23 bond requirement because the appellant was an attorney appealing a sanction award.
24 An attorney is an officer of the court and failure to pay a court ordered sanction could
25 subject him to collateral sanctions, such as bar discipline, not available against other
26 litigants, therefore a bond was unnecessary. *Townsend v. Holman Consulting Corp.*,
27 881 F.2d 788, 796-797 (9th Cir. 1989). While Danny Tarkanian is a Nevada attorney,
28

¹ It is uncertain from the brief whether this quote is attributed to *Rachel* or *Int'l Telemeter*, but neither case discusses waiving the bond requirement.

1 he is appealing a damage award, not sanctions. There is no basis on the record to
2 justify waiving the bond requirement here.

3 Defendants also argue requiring a bond will place other creditors in an insecure
4 position. There is no evidence on the record about other creditors, either their
5 identities or amounts owed. Even if such evidence existed, FDIC-R's \$17 million
6 Judgment takes priority over any other unsecured creditors.

7 IV.

8 **DEFENDANTS' FULL FAITH AND CREDIT ANALYSIS IS MISPLACED**

9 Defendants contend the Full Faith and Credit Clause of the U.S. Constitution
10 prevents foreign registration of the Judgment while the appeal is pending.
11 Defendants' authorities do not remotely support this position.

12 "The Full Faith and Credit Act requires federal courts to give *state court*
13 *judgments* the same effect they would have in the state in which they were entered. 28
14 U.S.C. § 1738. A federal court may not refuse to enforce a *valid state judgment* on
15 the ground that enforcement would violate some unarticulated federal public policy."
16 *Valley Nat'l Bank v. A.E. Rouse & Co.*, 121 F.3d 1332, 1335 (9th Cir. 1997) (emphasis
17 added). The Judgment here was rendered by the Southern District of California,
18 which is not a "state court judgment." Defendants' Full Faith and Credit citations,
19 *Valley Nat'l Bank* and *Baker*, do not discuss 28 U.S.C. § 1963. Section 1963 allows a
20 plaintiff to register a federal judgment in a foreign jurisdiction, even when an appeal is
21 pending, upon a showing of good cause. The Full Faith and Credit Clause is a
22 mechanism for enforcement of state court judgments in foreign jurisdictions. Section
23 1963 is a mechanism for enforcement of federal court judgments in foreign
24 jurisdictions. Defendants' Full Faith and Credit analysis is misplaced.

25 In *W.S. Frey Co., Inc. v. Precipitation Associates of America, Inc.*, 899 F.Supp.
26 1527 (W.D.Va. 1995), a petitioner sought to register a state court judgment in federal
27 court, with the ostensible purpose of then registering the federal judgment in the
28 district where the debtor had property, in an effort to sidestep state law procedures.

1 It is clearly established that this court is to give the
2 judgments and orders of a state court full faith and credit.
3 [Citations.] However, giving a state's judgment full faith and
4 credit, that is, preclusive effect in any proceeding before the
5 court, is a far cry from making a judgment of a state court a
6 federal judgment, which is what registration is all about.
7 Registration makes the judgment of another court one of the
8 registering court. Thus, if this court were to register
9 petitioner's judgment, it would be crediting it with more than
10 preclusive effect; it would be transforming it into a judgment
11 of the United States District Court for the Western District
12 of Virginia. By such bootstrapping, the judgment then could
13 be registered in a federal district wherein the judgment
debtor has property. Execution could issue out of that other
federal court, thus bypassing the process by which state
court judgments otherwise are registered in another forum in
order to obtain execution there.

14 *Id.* at 1528.

15 The instant case is the exact opposite of *W.S. Frey*. FDIC-R seeks to register its
16 federal Judgment in other federal jurisdictions. Pursuant to federal law, Defendants'
17 analysis of Nevada's foreign judgment enforcement procedure in the UEFJA is
18 inapplicable. Section 1963 is controlling. Nevada and California State law are
19 inapplicable here.

20 Defendants cite authority that defenses such as lack of jurisdiction, intrinsic
21 fraud and lack of due process are grounds to preclude registration of a foreign
22 judgment. However, Defendants do not identify the existence of these grounds here.
23 Instead, Defendants engage in unintelligible speculation that Defendants might prevail
24 on appeal, rendering the Judgment void, and this would be a "travesty." (Opposition,
25 p. 14.) The Opposition then continues to complain about the lack of a "final order,"
26 but this ignores the disjunctive structure of § 1963. Judgments can be registered when
27 appeals are exhausted *or* when there is good cause. Good cause exists when there is
28 no bond and insufficient assets in the forum jurisdiction. FDIC-R made a showing of

1 good cause, and that showing is uncontested. Defendants are only arguing lack of
2 finality of the Judgment, while ignoring the good cause prong, which is the basis of
3 the motion.

4 The Opposition makes the confounding argument that “there is no mechanism
5 to advise the Nevada court system that the judgment, now a Nevada judgment, is
6 under appeal...” (Opposition, 14:15-16.) This statement is without authority, makes
7 no sense, and is irrelevant. The law is clear that if Defendants seek to avoid
8 collections, they must file a bond. A bond will effectively halt all collections, and it
9 will protect FDIC-R from delay associated with the appeal. In the absence of a bond,
10 FDIC-R should be free to collect, notwithstanding the appeal.

11 Lastly, Defendants cite the California Code of Civil Procedure and a California
12 case about stay of enforcement when an appeal from a sister state judgment is
13 pending. Just as Nevada state law is inapplicable to registration of a federal judgment
14 in another federal district, so too is California state law. Section 1963 is controlling,
15 and none of Defendants’ authorities interpret this statute.

16 V.

17 CONCLUSION

18 FDIC-R has made the requisite showing of good cause to permit registration of
19 the Judgment, notwithstanding the pendency of the appeal. Defendants failed to
20 timely oppose the motion, and the Opposition should be disregarded. If the Court is
21 inclined to entertain the Opposition, it utterly fails to engage with the merits of the
22 motion, and argues tangential, irrelevant issues. The Opposition also improperly
23 argues the merits of the case, which have already been adjudicated. Defendants refuse
24 to analyze § 1963 and its case law.

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1 For the foregoing reasons, FDIC-R respectfully requests two certified copies of
2 the Judgment, and for leave to register the Judgment with the Eastern District of
3 California and the District of Nevada.

4
5
6 Dated: October 15, 2012

OLIVA & ASSOCIATES, ALC

7 By: /s/ Joseph L. Oliva

8 /s/ Thomas E. Ladegaard

9 Joseph L. Oliva, Esq.

10 Thomas E. Ladegaard, Esq.

11 Attorneys for Plaintiff, FDIC-R
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CERTIFICATE OF SERVICE

La Jolla Bank, FSB v. Danny Tarkanian, et al.
U.S.D.C. of California, Southern District, Case No. 10-cv-0980-WQH (KSC)

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 11770 Bernardo Plaza Court, Suite 350, San Diego, California, 92128.

On October 15, 2012, I caused the following document(s) described as:

**REPLY TO UNTIMELY OPPOSITION TO MOTION TO REGISTER
JUDGMENT IN FOREIGN DISTRICTS AND FOR CERTIFIED JUDGMENT**

to be served on the interested parties in this action as follows:

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In Pro Per
BY U.S. MAIL ONLY
(Not Registered CM/ECF Users)

BY CM/ECF: I caused such document(s) to be served electronically pursuant to the U.S. District Court's Electronic Case Filing Program to be delivered electronically to those parties who have registered to become an E-Filer.

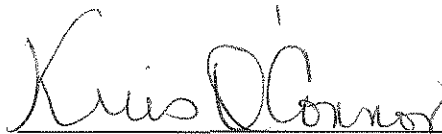
BY U.S. MAIL: I caused such envelope to be deposited in the mail at San Diego, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

1 BY OVERNIGHT DELIVERY: The documents were placed in sealed, addressed
2 packaging for overnight delivery on this date in the ordinary course of business, with all
3 charges to be paid by my employer, to be deposited in a facility regularly maintained by the
4 overnight delivery carrier, or delivered to a courier or driver authorized by the overnight
5 delivery carrier to receive such packages to the person(s) at the address(es) set forth below.

6 I declare under penalty of perjury under the laws of the United States of America that
7 the foregoing is true and correct and that I am employed in the office of a member of the bar
8 of this Court at whose direction the service was made.

9 Executed on October 15, 2012, at San Diego, California.

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11 Kris O'Connor
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