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9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 SPEX TECHNOLOGIES, INC.,

14
15 Plaintiff,

16 v.

17 WESTERN DIGITAL
18 CORPORATION, WESTERN
19 DIGITAL TECHNOLOGIES, INC.,
20 HGST, INC.,

21 Defendants.

Case No. 8:16-CV-01799-JVS-AGR

**SPEX TECHNOLOGIES, INC.’S
OPPOSITION TO WESTERN
DIGITAL’S *EX PARTE*
APPLICATION FOR STAY OF
EXECUTION OF JUDGMENT
UNDER FED. R. CIV. P. 62**

No Hearing Noticed
Judge: Hon. James V. Selna

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1 The Court entered judgment against WD, awarding SPEX \$552,727,428.00
2 in compensatory damages and pre-judgment interest from and against WD. D.I. 611.
3 That Court-ordered obligation is completely unsecured. But the law protects
4 judgment holders, like SPEX, from risk of default by the debtor by requiring that
5 WD provide security or prove to the Court that no security is necessary. WD has
6 done neither. It has posted no bond. It has offered no other security. And it has
7 offered **no proof** that there is no risk to SPEX. Its only “offer” is an unsworn attorney
8 assertion that WD “has the ability to pay the judgment.” D.I. 630 at 6. That statement
9 is worthless. And it is especially insignificant in light of the fact that WD faces
10 another judgment of similar magnitude, has announced a restructuring that will
11 divest certain operations and financials, stated in a January 30, 2025, SEC filing that
12 it is declining to accept any accounting liability for the SPEX judgment, and has
13 provided no verifiable assurances that it in fact has the ability to pay the judgment.

14 While it is true that SPEX previously considered waiving a bond, no
15 stipulation was ever filed and SPEX ultimately reconsidered. WD argues that change
16 necessitates its request for emergency relief. But SPEX is not seeking to immediately
17 enforce judgment, and told WD it would provide advance notice before taking such
18 action. At this time, SPEX seeks only some assurance that WD will be able to satisfy
19 its obligations, **which WD has never offered to provide or even offered to discuss.**
20 Whether that means a bond, some other security, or something else satisfactory is a
21 discussion that SPEX invites and should be entitled to. But the current status quo, of
22 leaving SPEX completely unprotected and uninsured, is untenable, and an improper
23 attempt to shift the risk from the judgment debtor to the judgment holder.

24 Unexpected things happen. Whole neighborhoods and businesses can
25 disappear in an instant. WD’s refusal to minimize risk, and to instead place it all on
26 SPEX is improper. WD’s *ex parte* application should be denied.

27 **I. THE COURT SHOULD NOT ORDER AN UNSECURED STAY**

28 Rule 62(a) automatically stays execution of a judgment for 30 days after entry

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1 of the judgment. Any further stay of execution may be accomplished by the
2 judgment debtor obtaining a “bond or other security.” FED. R. CIV. P. 62(b). WD
3 feels it need not obtain a “bond or other security” but should receive a stay of
4 execution nonetheless under the Court’s discretion.

5 There is no evidence that WD has taken any steps to ensure it can satisfy the
6 judgment. During trial, WD represented to the Court that the damages sought by
7 SPEX were “in a very expensive zone for a public company,” suggesting that the
8 damages would have a serious impact on WD’s bottom line. Wang Decl. Ex. 1 at
9 9:17-19. Despite the damages being “in a very expensive zone,” WD appears to have
10 done nothing to ensure that it can satisfy the judgment. To the contrary, WD’s recent
11 10-Q informed its shareholders that it “**has not** accrued a liability as a result of the
12 jury verdict.” Wang Decl. Ex. 2 at 38 (emphasis added). Further adding uncertainty
13 to WD’s ability to satisfy the judgment is the fact that it is in the middle of substantial
14 corporate reorganization that could severely impact its balance sheet. In particular,
15 WD is seeking to split the company into two separate companies (one for “HDD”
16 products and one for “Flash” products). *E.g.*, Wang Decl. Ex. 3
17 ([https://finance.yahoo.com/news/western-digital-announces-company-separation-
18 133000081.html](https://finance.yahoo.com/news/western-digital-announces-company-separation-133000081.html)). SPEX has no visibility into WD’s reorganization, including when
19 it will actually occur, which new company will be responsible for satisfying the
20 judgment or whether it will be split between the new companies, or whether the new
21 company (or companies) would be sufficiently capitalized to cover the judgment.
22 Adding yet further to SPEX’s uncertainty is the currently-pending \$389 million
23 judgment in the MR Tech litigation against WD. Wang Decl. Ex. 2 at 38.¹

24 These concerns, as well as general instability in both the US and international

25 _____
26 ¹ WD has recognized an “aggregate liability for [MR Tech.] of \$384 million with
27 \$291 million.” It is not clear why WD has recognized liability for the MR Tech
28 judgment but has not done so for the SPEX judgment. The disparity, however,
further supports SPEX’s concerns about WD’s ability to pay the judgment when it
is enforced.

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1 markets, led SPEX to seek assurances from WD that it would in fact be able to satisfy
2 the judgment. But even now, in this application, WD provides no such assurances or
3 any other evidence to support its ability to pay. According to WD, SPEX should
4 simply trust that it will be able to satisfy any judgment because the “risk of non-
5 performance by WD” is “nonexistent.” D.I. 630 at 7 (“nor did Western Digital have
6 any reason to believe it should affirmatively give assurance, because, in addition to
7 there being no serious doubt about Western Digital’s capability”). Its refusal to
8 provide the assurances sought by SPEX, its representations to its shareholders, and
9 its current unknown stability all suggest that SPEX’s concerns need to be addressed.

10 The majority of WD’s application discusses SPEX’s original tentative
11 agreement to stay execution pending resolution of the post-trial briefing. No final
12 agreement was ever reached, however. And as detailed above, SPEX had good
13 reason to reconsider after reviewing WD’s January 30, 2025 SEC filing disclosing
14 its intent to not accept liability for the judgment. *See* Wang Decl. Ex. 2 at 38.

15 Substantively, WD argues that the *Dillion* factors “tip strongly in favor of a
16 discretionary stay without security.” D.I. 630 at 6. But WD provides nothing but
17 unsupported attorney argument even though it bears the burden to support its
18 requested relief. WD’s argument is that it is a “well-established, publicly traded
19 company” and is therefore entitled to an unsecured stay has no merit. *Id.* Even a
20 more well-established company, Google, has been denied a waiver of the bond
21 requirement and for an amount more than twenty-times smaller than that at issue
22 here (\$20,000,000). *Ecofactor, Inc. v. Google, LLC*, C.A. 6:20-cv-00075 (ADA),
23 D.I. 287 (W.D. Tex. Dec. 5, 2022).

24 WD acknowledges that it should have included evidence to support its
25 argument but, instead of gathering the evidence, it excuses its failure by arguing that
26 it “had no time to prepare a declaration” in its rush to the Court. WD’s strategic
27 choice to rush to Court, which was unjustified as addressed below, is not an excuse
28 for failing to gather evidence to support its own argument.

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1 WD is also not correct in its attorney assertion that the *Dillion* factors “tip
2 strongly” in favor of a stay. The first factor, the complexity of the collection process,
3 favors the need for a secured stay. WD is in the process of splitting up, and SPEX
4 has no visibility into which entity will be responsible for satisfying the judgment and
5 what the assets of the entity will be. WD could split liability between the two entities,
6 which would greatly increase the complexity of collection. The third and fourth
7 factors, which addresses confidence in WD’s ability to pay, also favors security for
8 the reasons addressed above. There are significant questions about WD’s new
9 entities, and WD’s refusal to submit any evidence of viability raises further concerns
10 about WD’s ability to satisfy the judgment. WD has failed to show that the *Dillion*
11 factors support an unsecured stay.

12 WD also cites to *Kaneka Corp. v. SKC Kolon PI, Inc.*, No. 11-cv-3397, 2017
13 WL 11643347, at *3 (C.D. Cal. June 30, 2017) to argue “there is no risk or prejudice
14 to SPEX” from a stay. D.I. 630 at 5-6. **Kaneka acknowledges that “[t]ypically, an
15 unsecured stay is disfavored.”** 2017 WL 11643347, at *2 (emphasis added). The
16 court then analyzed the *Dillion* factors to find that an unsecured stay was appropriate
17 in that case because the defendant had presented evidence that its “assets are close
18 to 20 times the amount of the monetary award” and there was “no evidence or
19 argument that casts doubt on [defendant’s] ability to pay the Judgment.” *Id.* at *2-3.
20 Here, WD has come forward with no such evidence, let alone a showing of assets
21 amounting to 20 times the judgment.

22 **II. SPEX HAS NOT DEMANDED THAT WD OBTAIN A BOND**

23 Rule 62 allows for WD to obtain a “bond or other security” for a stay to be
24 provided. SPEX has never demanded that WD obtain a bond or incur the costs
25 associated with a bond. SPEX is amenable to considering other forms of security,
26 which could be cheaper or easier to obtain. To date, as far as SPEX is aware, WD
27 has declined to consider any alternatives. As WD appears to represent in its
28 application, it has only considered the time and expense associated with a bond. WD

1 does not explain why it has not considered other types of securities.

2 **III. WD’S “ALTERNATIVE” REQUEST FOR AN UNSECURED 90-**
3 **DAY STAY SHOULD ALSO BE DENIED**

4 WD alternatively requests that, if its unsecured stay is denied, that WD be
5 given 90 days to obtain a bond. D.I. 630 at 6. WD again provides no reason why the
6 Court should do so. 90 days is triple the amount of time of the automatic stay under
7 Rule 62, well more than should be necessary to obtain a “bond or other security” if
8 WD’s financial state is as solid as its attorney representations suggest. The Court
9 should decline WD’s alternative relief for the same reasons as its primary relief.

10 **IV. WD SHOULD HAVE FILED ITS APPLICATION AS A**
11 **REGULAR MOTION**

12 “Ex Parte applications are for extraordinary relief only.”
13 <https://www.cacd.uscourts.gov/honorable-james-v-selna> at ¶ 6. In order to justify
14 such an application, WD must demonstrate that it addresses an emergency requiring
15 immediate action. *E.g., MR Tech., GMBH v. Western Digital Tech., Inc.*, 8:22-cv-
16 01599-JVS, D.I. 61 at *1, April 7, 2023 (internal quotations and alterations omitted).
17 Contrary to the argument in the application, SPEX never suggested to WD that it
18 intended to enforce the judgment immediately after the automatic stay expired. To
19 the contrary, SPEX informed WD that it had no plans to immediately enforce the
20 judgment and agreed to provide “advance notice before seeking to enforce
21 judgment.” Rosenberg Decl. Ex. F at pg. 37. Rather than acknowledge SPEX’s
22 agreement, WD counterfactually argues that it needed to “ensure SPEX does not
23 commence enforcement proceedings as soon as February 8,” a Saturday. D.I. 630 at
24 6. WD’s argument is simply pretext, and does not justify emergency relief.

25 WD’s improper use of the *ex parte* application process is another reason to
26 deny WD’s application.

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DATED: February 7, 2025

Respectfully submitted,
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/s/ Benjamin T. Wang
Benjamin T. Wang

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing document contains 1,759 words, which complies with the word limit of L.R. 11-6.1.

By: /s/ Benjamin T. Wang
Benjamin T. Wang

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on February 7, 2025. As such, this document was served on all counsel who have consented to electronic service.

/s/ Benjamin T. Wang
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