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14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA
 16 SOUTHERN DIVISION

17 SPEX TECHNOLOGIES, INC.,
 18 Plaintiff,
 19 v.
 20 WESTERN DIGITAL
 21 TECHNOLOGIES, INC.,
 22 Defendant.

CASE NO. 8:16-cv-01799-JVS-AGR
**WESTERN DIGITAL'S NOTICE
 AND EX PARTE APPLICATION
 FOR STAY OF EXECUTION OF
 JUDGMENT UNDER FED. R. CIV.
 P. 62**

No Hearing Noticed

Judge: Hon. James V. Selna

NOTICE AND EX PARTE APPLICATION

TO THE COURT AND ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to Local Rules 7-19 and 7-19.1, Defendant Western Digital Technologies, Inc. (“Western Digital”) hereby submits this *Ex Parte* Application for Stay of Execution of Judgment Under Federal Rule of Civil Procedure 62 (the “Application”). Western Digital respectfully requests a stay of execution of judgment under Federal Rule of Civil Procedure 62, without security, pending the Court’s decisions on Western Digital’s Rule 50(b) and Rule 59 motions. A proposed order is attached.

WD’s *ex parte* request is based on this Application, the Memorandum of Points and Authorities, the Declaration of Stuart Rosenberg in Support of WD’s *Ex Parte* Application, all records and files in this action, any argument requested or permitted by the Court, and any other matters that the Court deems just and proper.

On February 5, 2025, pursuant to Local Rule 7-19.1, Western Digital’s counsel emailed counsel for Plaintiff SPEX Technologies, Inc. (“SPEX”) to ask whether SPEX would oppose this Application. Declaration of Stuart Rosenberg (“Rosenberg Decl.”) ¶ 16; Exhibit F at 37. SPEX’s counsel responded without answering that question explicitly, but did not agree to stay execution of the judgment. Rosenberg Decl. ¶ 17; Exhibit F at 37.

Pursuant to the Court’s Procedures, Western Digital hereby notifies SPEX that any opposition must be filed not later than 24 hours after service of this Application.

SPEX’s counsel includes:

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 By this Application, Western Digital respectfully moves for a stay of execution
3 of judgment under Rule 62, without security, pending the Court’s decisions on Western
4 Digital’s Rule 50(b) and Rule 59 motions. Western Digital requests such an order to
5 enforce the agreement the parties agreed to weeks ago and reaffirmed just last week, and
6 for which they were in the latter stages of preparing a formal stipulation, until SPEX
7 reneged yesterday. *Ex parte* relief is necessary because the automatic 30-day stay of
8 execution of judgment under Rule 62(a) expires at the end of day tomorrow, February
9 7, 2025.

10 **I. EX PARTE RELIEF IS NECESSARY**

11 SPEX reneged on its agreement to stay enforcement of the judgment two days
12 before the automatic stay expires, thus necessitating this Application.

13 SPEX agreed to stay enforcement without security until after the Court’s decisions
14 on post-trial motions. As detailed in the concurrently filed Rosenberg Declaration,
15 SPEX’s counsel unambiguously stated on January 14, 2025, that SPEX “*agree[s]* to stay
16 enforcement of the judgment until after the post-trial motions are resolved.” Rosenberg
17 Decl. ¶ 9; Ex. A at 5 (emphasis added).¹ The parties proceeded to exchange draft
18 stipulations, during which process SPEX returned to Western Digital a redlined draft
19 stipulation stating that a stay of execution of judgment would last “until the Court has
20 disposed of both of Western Digital’s Post-Trial Motions.” Rosenberg Decl. ¶ 11; Ex.
21 E. The parties continued to negotiate regarding the number of business days the stay
22 would remain in place after rulings on Western Digital’s post-trial motions (to allow
23 Western Digital to then finalize the necessary arrangements for an appellate bond). On
24 January 31, 2025, SPEX’s counsel stated that SPEX would agree to extend the stay two
25 business days after the Court’s decision on post-trial motions. Rosenberg Decl. ¶ 12.

26 _____
27 ¹ That agreement was consistent with, and confirmed, what SPEX had represented to
28 Western Digital since at least December 1, 2024. Rosenberg Decl. ¶ 5; Ex. A at 9
(SPEX’s counsel stating SPEX was “leaning towards agreeing to staying the bond until
the ruling on 50/59 motions”).

1 Yesterday, on February 5, 2025, Western Digital accepted SPEX’s two-business-day
2 offer by email. Rosenberg Decl. ¶ 13; Ex. F at 38–39; Ex. G.

3 Only after (and in response to) Western Digital’s communication of its acceptance
4 of SPEX’s timing proposal (at which point the parties had reached full agreement) did
5 SPEX’s counsel reverse course and seek to disclaim the agreement. Specifically, on
6 February 5, 2025—*after* the parties agreed on all related terms—SPEX’s counsel (Mr.
7 Wang) stated that SPEX had “reconsidered” and would “not agree to stay enforcement
8 of the judgment pending the 50/59 motions.” Rosenberg Decl. ¶ 14; Ex. F at 38.
9 Western Digital’s counsel responded to inquire as to SPEX’s purported explanation for
10 the last minute reversal of course, and to ask SPEX to confirm that SPEX would not take
11 any effort to enforce the judgment until the Court rules on a motion by Western Digital
12 to stay enforcement. Rosenberg Decl. ¶ 15; Exhibit F at 38. SPEX’s counsel did not
13 extend even that courtesy, electing not to respond, so Western Digital’s counsel then
14 informed SPEX that Western Digital would file this *ex parte* Application, and asked
15 SPEX if it opposes. Rosenberg Decl. ¶ 16; Exhibit F at 37. SPEX’s counsel did not
16 explicitly state whether SPEX opposes this Application, but SPEX’s refusal to agree to
17 stay execution of the judgment effectively amounts to opposition, necessitating this
18 Application. Rosenberg Decl. ¶ 17; Exhibit F at 37.

19 Since SPEX reneged on the parties’ agreement just yesterday, and the automatic
20 30-day stay of execution of judgment under Rule 62(a) expires at the end of the day
21 tomorrow, February 7, 2025, Western Digital requires *ex parte* relief to ensure SPEX
22 does not commence enforcement proceedings as soon as February 8.

23 **II. THE COURT SHOULD STAY EXECUTION OF THE JUDGMENT**
24 **PENDING ITS RULINGS ON WESTERN DIGITAL’S RULE 50(b) AND RULE**
25 **59 MOTIONS**

26 The Court has discretion to enter a stay of execution pending its rulings on
27 Western Digital’s post-trial motions. When “a posttrial motion is made,” including a
28 motion for judgment as a matter of law under Rule 50(b) and a new-trial motion under

1 Rule 59, “the court is given discretion” to “stay execution or enforcement of the
2 judgment pending disposition of the motion.” Wright & Miller, 11 Fed. Prac. & Proc.
3 Civ. § 2903 (3d ed.); *see also* Fed. R. Civ. P. 62(a) (“[E]xecution on a judgment and
4 proceedings to enforce it are stayed for 30 days after its entry, *unless the court orders*
5 *otherwise.*” (emphasis added)); *Mendez v. Baca*, No. 11-cv-4771, 2013 WL 12162127,
6 at *2 (C.D. Cal. Sept. 16, 2013) (granting *ex parte* application to “STAY[] the execution
7 of the judgment until thirty days after either (1) the Court rules on a timely-filed post-
8 trial motion; or (2) the expiration of time to file such a motion, if no motion is filed”).

9 A stay is warranted here to enforce the parties’ agreement to stay execution of
10 judgment through at least the Court’s rulings on Western Digital’s post-trial motions.
11 Western Digital should have the right to rely on representations made by opposing
12 counsel, and it reasonably relied on SPEX’s representations that SPEX would agree to a
13 stay. Western Digital cannot obtain a bond for over \$500 million in a matter of 24 hours.
14 Although Western Digital has commenced the process of preparing a supersedeas bond,
15 it would be enormously and unduly prejudiced by efforts by SPEX to enforce the
16 judgment soon after the automatic stay ends, particularly in light of SPEX’s counsel’s
17 prior agreement.

18 A stay is also warranted here because Western Digital’s post-trial motions raise
19 serious and substantial issues regarding the jury’s verdict and the judgment entered on
20 that verdict, and thus the judgment may be reversed or vacated when Western Digital’s
21 motions are decided. Permitting SPEX to enforce the judgment now would nullify
22 Western Digital’s motions before they are heard. Further, denial of a stay of judgment
23 would unduly harm Western Digital, not only because of the unfair circumstances right
24 now arising from SPEX’s last-second change in position, but also because of the
25 difficulties, including collateral litigation, that would ensue in undoing enforcement of
26 the judgment if the judgment is enforced before being vacated or reversed.

27 Western Digital is prepared to post a supersedeas bond within two business days
28 of the Court’s decisions on post-trial motions, and thus there is no risk or prejudice to

1 SPEX from the stay requested herein. *Kaneka Corp. v. SKC Kolon PI, Inc.*, No. 11-cv-
2 3397, 2017 WL 11643347, at *3 (C.D. Cal. June 30, 2017) (“[T]he risk to Kaneka’s
3 interest in the Judgment in this context—the period during which the Court considers
4 and disposes of Defendants’ two post-trial motions—is limited.”). If the Court declines
5 to stay enforcement of the judgment until that time, then Western Digital respectfully
6 asks the Court to stay enforcement of the judgment for 90 days from its order on this
7 Application, in order for Western Digital to post a supersedeas bond within that time.

8 A stay pending resolution of Western Digital’s post-trial motions is also warranted
9 under the factors enumerated in *Dillon v. City of Chicago*, 866 F.2d 902, 904–05 (7th
10 Cir. 1988), which tip strongly in favor of a discretionary stay without security. Western
11 Digital is a well-established, publicly traded company, which has the “ability to pay the
12 judgment” such that “the cost of a bond would be a waste of money.” *Id.* The Court
13 accordingly can have a high “degree of confidence” that Western Digital has sufficient
14 “availability of funds to pay the judgment” in a reasonable “amount of time.” *Id.* SPEX
15 cannot seriously argue (and has never claimed) that there is any reason to believe
16 Western Digital could not satisfy the judgment. The only question is whether SPEX
17 should be able to satisfy that judgment now, before the Court resolves Western Digital’s
18 post-trial motions.

19 Of course, since SPEX reneged on the parties’ agreement just yesterday, and the
20 automatic 30-day stay of execution of judgment under Rule 62(a) expires at the end of
21 tomorrow, February 7, 2025, Western Digital needed to file today for *ex parte* relief to
22 ensure SPEX does not commence enforcement proceedings as soon as February 8, and
23 thus had no time to prepare a declaration further demonstrating that the *Dillon* factors
24 are satisfied. To the extent that the Court believes such a declaration to be necessary,
25 Western Digital requests that the Court grant it leave to file a noticed motion for a Rule
26 62(b) stay supported by a Western Digital declarant within 28 days, and stay execution
27 of the judgment pending resolution of that motion.

28 Finally, SPEX’s “explanation” for its about-face—after the parties had reached a

1 full agreement on the stay and on related terms—is baffling and falls apart under the
 2 lightest of scrutiny. SPEX’s counsel stated that it has “never received any assurance that
 3 WD will be able to fulfill its obligations,” and it has “never . . . been given any reasons
 4 for why SPEX should bear the risk of non-performance by WD.” Ex. F at 37. But SPEX
 5 never asked for any “assurance,” nor did Western Digital have any reason to believe it
 6 should affirmatively give assurance, because, in addition to there being no serious doubt
 7 about Western Digital’s capability, prior to yesterday SPEX had already agreed to stay
 8 enforcement. And the “risk of non-performance by WD” (which is nonexistent) has not
 9 increased since SPEX agreed to the stay. Lastly, SPEX’s counsel stated that SPEX
 10 “[doesn’t] feel it’s appropriate to impose on SPEX a stay of enforcement for some
 11 indeterminate period of time.” Ex. F at 37. But the parties agreed to stay enforcement
 12 until the Court decides Western Digital’s post-trial motions—hardly an “indeterminate
 13 period of time.” See *Mendez*, 2013 WL 12162127, at *1 (in granting stay of execution
 14 pending disposition of post-trial motions, the court is “not granting an open-ended stay
 15 of execution”).

16 Accordingly, for the foregoing reasons, Western Digital respectfully requests a
 17 stay of execution of judgment under Federal Rule of Civil Procedure 62, without
 18 security, pending the Court’s decisions on Western Digital’s Rule 50(b) and Rule 59
 19 motions.

20 DATED: February 6, 2025

21 Respectfully submitted,
 22 GIBSON, DUNN & CRUTCHER LLP

23 By: /s/ Stuart Rosenberg
 24 Stuart Rosenberg

25 Attorneys for WESTERN DIGITAL
 26 TECHNOLOGIES, INC.

CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing document contains 1695 words, which complies with the word limit of L.R. 11-6.1.

/s/ Stuart Rosenberg

Stuart Rosenberg

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