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16 IN THE FAMILY DIVISION
 17 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 18 IN AND FOR THE COUNTY OF WASHOE

19 ANDREW FURER,

20 Plaintiff,

Case No. DV04-01626

Dept. No. 11

21 vs.

22 ELOISA FURER,

23 Defendant.

24 **MOTION FOR PARTIAL STAY OF ENFORCEMENT OF JUDGMENT**
 25 **PENDING APPEAL**

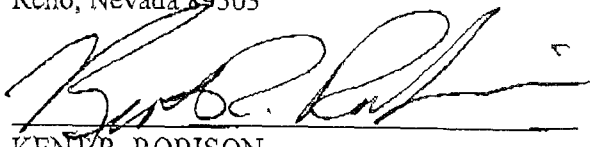
26 Pursuant to Nev. R. Civ. Proc. 62(d), Plaintiff Andrew Furer ("Mr. Furer") hereby moves
 27 this Honorable Court for an Order partially staying enforcement of its Findings of Fact,
 28 Conclusions of Law, and Decree of Divorce ("Judgment"), to the extent that it requires Mr. Furer
 to transfer shares of Washington Mutual stock to Defendant Eloisa Furer ("Ms. Furer") within

1 30 days of the date of the Judgment, pending Mr. Furer's anticipated appeal.

2 This Motion is made pursuant to Nev. R. Civ. Proc. 62(d) as a condition precedent to
3 Nev. R. App. Proc. 8(a) and is based upon the attached Memorandum of Points and Authorities,
4 the pleadings and papers on file herein, and such other information as this Court may wish to
5 consider.
6

7 DATED this 25th day of March, 2008.

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18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. Standard for Granting Motion to Stay**

20 An application for a stay of a judgment entered by a district court pending appeal, or an
21 application for approval of a supersedeas bond, must ordinarily first be made to the district court.
22 Nev. R. App. Proc. 8(a). An application for a stay made to the district court is governed by Nev.
23 R. Civ. Proc. 62(d), which provides that:
24

25 [w]hen an appeal is taken the appellant by giving a supersedeas
26 bond may obtain a stay subject to the exceptions contained in
27 subdivision (a) of this rule. The bond may be given at or after the
28 time of filing the notice of appeal. The stay is effective when the
supersedeas bond is filed.

1 Although the rule includes the term "may," the courts have interpreted this rule in
2 accordance with its federal counterpart to allow an appellant to obtain a stay as a matter of right
3 upon the posting of a supersedeas bond for the full amount of the judgment. *See Nelson v. Heer*,
4 121 Nev. 832, 834 (overruling *State ex rel. PSC v. First Jud. Dist. Court*, 94 Nev. 42, 547 P.2d
5 272 (1978) to the extent it held that rule was permissive and the right to a stay within the court's
6 discretion). The Court does, however, have the discretion to issue a stay in the absence of a full
7 bond. *See id.*

9 **II. The Court Should Stay Enforcement of the Judgment to the Extent it Requires Mr.
10 Furer to Transfer the 245,000 Shares of Washington Mutual Stock That Represent
11 the Difference Between Ms. Furer's Entitlement Under the PNA and the MSA.**

12 As part of its Judgment, the Court ordered Mr. Furer to make certain payments and
13 offsets on behalf of Ms. Furer. Mr. Furer was ordered to make these payments and offsets out of
14 the dividends and interest thereon arising out of the 570,000 shares of Washington Mutual stock
15 awarded to Ms. Furer under the MSA and, if the dividends and interest were insufficient, to sell
16 the stock on the 21st day following the Judgment to the extent necessary to cover these costs. The
17 Court further ordered Mr. Furer to transfer the remaining shares of stock to Ms. Furer on the 30th
18 day following the Judgment.

19
20 On February 28, 2008, Mr. Furer filed a Notice of Appeal of the Judgment. Thereafter, on
21 March 6, 2008, Ms. Furer filed her Motion to Amend, wherein she requests that the Court
22 recharacterize the interim support payments she received throughout the litigation as distributions
23 of her dividends. Ms. Furer also requests that the Court alter the time period for which Ms. Furer
24 is entitled to accrued dividends and recalculate the amount of dividends to which she is entitled.

25
26 Ms. Furer's Motion to Amend rendered Mr. Furer's previously filed Notice of Appeal
27 premature. Ms. Furer's Motion to Amend coupled with the timeline that the Court has imposed
28 on Mr. Furer - 21 days to sell the stock necessary to complete the offsets and 30 days to transfer

1 the remaining shares to Ms. Furer - has made it impossible for Mr. Furer to wait until he has filed
 2 his Notice of Appeal before moving for a stay. So long as Ms. Furer's Motion to Amend is
 3 pending, Mr. Furer cannot appeal the Judgment; however, as was demonstrated in his previous
 4 Notice of Appeal, he anticipates appealing the Judgment on several points, including the Court's
 5 decision to enforce the MSA rather than the PNA.
 6

7 Under the MSA, Ms. Furer is entitled to 570,000 shares of Washington Mutual stock as
 8 her separate property. Under the PNA, however, Ms. Furer is entitled to only 325,000 shares of
 9 Washington Mutual stock. This is a difference of 245,000 shares in which, if Mr. Furer prevails
 10 on appeal, Ms. Furer will have no rights or interest. Therefore, Mr. Furer requests that the Court
 11 stay the enforcement of the Judgment to the limited extent that it requires him to transfer the full
 12 570,000 shares of Washington Mutual stock¹ to Ms. Furer. Rather, Mr. Furer requests that he be
 13 permitted to place the 245,000 shares that will be the subject of his appeal in a secure account.
 14 Mr. Furer will transfer the remaining shares to Ms. Furer pursuant to the Court's Judgment.²
 15

16 **III. THE COURT SHOULD NOT REQUIRE MR. FURER TO POST ANY BOND OR**
 17 **SECURITY OTHER THAN THE 245,000 SHARES OF STOCK.**

18 Nev. R. Civ. Proc. 62(d) contemplates that an appellant seeking a stay will post a
 19 supersedeas bond. Normally, the court orders the party seeking a stay to post a bond in the
 20 amount of the judgment. *See McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983).
 21 However, in *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2006), the Nevada Supreme Court
 22 clarified the law regarding when a court may waive the requirement for a full supersedeas bond
 23 or substitute alternate security for a stay.
 24

26 ¹ The Court actually ordered Mr. Furer to transfer to Ms. Furer 570,000 shares less
 27 the number of shares sold to satisfy Ms. Furer's obligations to her attorneys and Mr. Furer.

28 ² Mr. Furer has already completed the sale of the stock necessary to satisfy Ms.
 Furer's obligations, as ordered by the Court.

1 The *Nelson* Court held that “the focus is properly on what security will maintain the
 2 status quo and protect the judgment creditors pending [the stay], no how ‘unusual’ the
 3 circumstances of a given case may be.” 121 Nev. at 835-36, 122 P.3d at 1253-54. The *Nelson*
 4 Court then adopted a five factor test to be used when determining whether or not the Court
 5 should reduce or waive the bond requirement:
 6

7 (1) the complexity of the collection process; (2) the amount of time
 8 required to obtain a judgment after it is affirmed on appeal; (3) the
 9 degree of confidence that the district court has in the availability of
 10 funds to pay the judgment; (4) whether the defendant’s ability to
 11 pay the judgment is so plain that the cost of a bond would be a
 12 waste of money; and (5) whether the defendant is in such a
 precarious financial situation that the requirement to post a bond
 would place other creditors of the defendant in an insecure
 position.

13 121 Nev. at 836, 122 P.3d at 1254.

14 Applying these five factors to this case:

15 1. The collection process would be made less complex by issuing a stay and waiting
 16 to make the appropriate transfer until after any appeals of the Judgment are decided. This is
 17 particularly true in light of Ms. Furer’s history and propensity for gambling large sums of money
 18 and the possibility that the stock would be squandered by her by the time Mr. Furer was able to
 19 recollect it.
 20

21 2. Once the appeals are decided, the transfer can be completed in short order, as the
 22 shares will be maintained in a secure account.

23 3. Mr. Furer has demonstrated throughout this case that he has sufficient funds to
 24 pay any damages that Ms. Furer might suffer as a result of the stay requested. Moreover, the
 25 stock itself will serve as sufficient security for the limited stay of its conveyance. *See, e.g., Ries*
 26 *v. Olympia, Inc.*, 103 Nev. 709, 747 P.2d 910 (1987) (in which the Court held that the collateral
 27 subject to the appeal was sufficient security because it exceeded the amount of the judgment
 28

1 being appealed).

2 4. Mr. Furer's ability to pay these damages is so plain that posting a bond in addition
3 to securing the 245,000 shares of stock would, undoubtedly, be a waste of money.

4 5. Mr. Furer's financial situation is by no means precarious. This factor is really
5 irrelevant to this case.
6

7 **IV. CONCLUSION**

8 Mr. Furer will file a Notice of Appeal regarding the ownership of 245,000 of the 570,000
9 shares of Washington Mutual stock awarded to Ms. Furer by the Court once Ms. Furer's Motion
10 to Amend is resolved. Until then, he is precluded from appealing the Judgment. The Court,
11 however, has imposed a 30 day deadline for Mr. Furer to transfer the 570,000 shares (less that
12 amount sold to pay Ms. Furer's obligations) to Ms. Furer. It is likely that Ms. Furer's Motion to
13 Amend will not be disposed of before the deadline for Mr. Furer to transfer the shares to Ms.
14 Furer.
15

16 For the foregoing reasons, Mr. Furer respectfully requests that this Court stay
17 enforcement of its Judgment to the extent it Orders Mr. Furer to transfer to Ms. Furer all 570,000
18 shares awarded to Ms. Furer under the MSA. Mr. Furer requests that the Court stay the transfer
19 of 245,000 of those shares pending Mr. Furer's anticipated appeal of the Court's decision
20 upholding the MSA rather than the PNA. Mr. Furer should not be required to post any bond or
21 other security as a condition of the stay, as the 245,000 shares will be placed in a secure account
22 and served as adequate security, and Mr. Furer has adequate funds to pay Ms. Furer for any other
23 damages that could result from the stay.
24
25

26 **AFFIRMATION**

27 **Pursuant to NRS 239B.030**

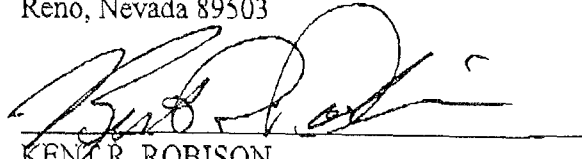
28 The undersigned does hereby affirm that this document does not contain the social

1 security number of any person.

2 DATED this 25th day of March, 2008.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, Attorneys at Law, a professional corporation, and that on this date a true copy of the attached MOTION FOR PARTIAL STAY OF ENFORCEMENT OF JUDGMENT PENDING APPEAL was deposited in the United States Mail, postage prepaid, addressed to the following and/or transmitted via facsimile transmission to the following:

FACSIMILE AND U.S. MAIL

SHAWN B. MEADOR, ESQ.
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
P.O. Box 2311
Reno, NV 89505
Facsimile Transmission No.: (775) 688-3088

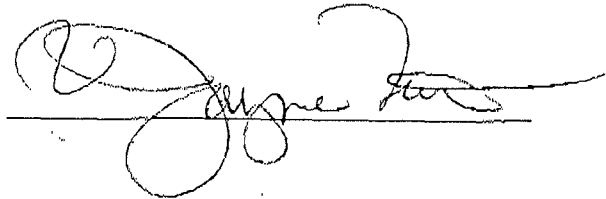
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JARIEN L. CHO, ESQ.
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DATED: This 25th day of March, 2008.



IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

ANDREW FURER,
Plaintiff,
vs.

ELIESA FURER,
Defendant

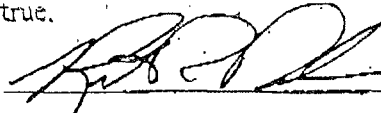
FAMILY COURT MOTION/OPOSITION NOTICE (REQUIRED)	
CASE NO.	DV04-01626
DEPT. NO.	11

NOTICE: THIS MOTION/OPOSITION NOTICE MUST BE ATTACHED AS THE LAST PAGE to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X.	YES	NO
	1. Has a final decree or custody order been entered in this case? If <u>yes</u> , then continue to Question 2. If <u>no</u> , you do not need to answer any other questions.	X	
	2. Is this a motion or an opposition to a motion filed to change a final order? If <u>yes</u> , then continue to Question 3. If <u>no</u> , you do not need to answer any other questions.		X
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?		
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial <u>and</u> the motion was filed within 10 days of the Judge's Order?		
	If the answer to Question 4 is YES, write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: March 25, 2008

Signature: 

Print Name: KENT R. ROBISON

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Reno, NV 89503

Telephone Number: (775) 329-3151