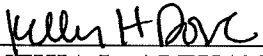




1 herein and any oral argument the Court may entertain.

2 DATED this 25<sup>th</sup> day of May, 2011.

3 SNELL & WILMER, L.L.P.

4  
5   
6 CYNTHIA L. ALEXANDER  
7 Nevada Bar No. 6718  
8 KELLY H. DOVE  
9 Nevada Bar No. 10569  
10 3883 Howard Hughes Parkway, Suite 1100  
11 Las Vegas, NV 89169

12 *Attorneys for Respondent/Appellant*  
13 *Wells Fargo Bank*

14 **I. INTRODUCTION AND PROCEDURAL BACKGROUND**

15 Wells Fargo moves for a stay of execution of the judgment pending appeal of this Court's  
16 order imposing, *inter alia*, a loan modification and sanctions against Wells Fargo based on events  
17 surrounding a foreclosure mediation.

18 Petitioners, Duke and Tina Renslow ("Petitioners" or the "Renslows"), initiated the  
19 underlying suit on or about November 9, 2010, by filing a Petition for Judicial Review of the  
20 foreclosure mediation between Petitioners and Wells Fargo. This Court issued an Order on  
21 March 29, 2011, sanctioning Wells Fargo \$30,000.00, and ordering Wells Fargo to pay  
22 Petitioners' costs and fees, to cease and desist any attempts to collect late fees and penalties, and  
23 to modify the loan to reduce the interest rate and re-amortize the principal. Wells Fargo filed a  
24 timely notice of appeal on April 26, 2011. In light of the pending appeal, Wells Fargo moves for  
25 a stay of execution of the judgment without need for a bond.

26 **II. LEGAL ARGUMENT**

27 **A. This Court Should Stay Enforcement of the Court's Ruling Pending Appeal.**

28 **1. The Law Supports a Stay.**

Respondent-Appellant, Wells Fargo, is currently seeking relief from the Nevada Supreme Court regarding this Court's Order. In the meantime, Wells Fargo requests that this Court issue a stay of execution of the judgment pending appeal. The Nevada Supreme Court has held that "it is

1 sound policy for the district court to first consider applications for stays.” *State ex rel. Public*  
2 *Serv. Comm’n v. First Judicial Dist. Ct.*, 94 Nev. 42, 44 n.1, 574 P.2d 272 (1978).<sup>1</sup> Accordingly,  
3 this Court has the authority and jurisdiction to rule on Wells Fargo’s Motion to Stay. Moreover,  
4 stays are granted as a matter of course; they only issue is whether Wells Fargo must post a bond,  
5 as is addressed *infra*. See NRCP 62(d); *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005)  
6 (clarifying that an appellant is entitled to a stay pending appeal as of right when a supersedeas  
7 bond is posted, but that it is within the district court’s discretion to provide for a lesser bond or no  
8 bond at all when circumstances warrant).

9 **2. Other Considerations Support a Stay in Wells Fargo’s Favor.**

10 At least two other considerations also support a stay in Wells Fargo’s favor. First, the  
11 main object of the stay is not an award for compensatory damages Petitioners suffered, but rather  
12 sanctions against Wells Fargo. Thus, Petitioners will not be waiting to be “made whole” pending  
13 appeal, because a sanction over a mandatory mediation is not what they sued over in the first  
14 place. Instead, Petitioners will only be waiting to recover something punitive that they did not  
15 expect to recover when filing suit or before this Court issued the judgment. Thus, staying the  
16 judgment pending appeal does not harm Petitioners.

17 Second, as discussed in greater detail below, should Wells Fargo not succeed on appeal,  
18 collecting the judgment from Wells Fargo will not present any issue or difficulty for Petitioners.  
19 Wells Fargo represents that it will pay the judgment. Further, Wells Fargo is a corporation with  
20 more than adequate funds to fulfill Petitioners’ judgment—now or months from now. In contrast,  
21 should Wells Fargo be forced to pay the judgment now, and then seek to recover it from  
22 Petitioners if they succeed on appeal, Wells Fargo’s efforts to recover that \$30,000.00 could be  
23 substantially more difficult. Respectfully, Petitioners’ mortgage is in default and their house was  
24

25 <sup>1</sup> Stay must ordinarily be sought in the first instance in district court; motion for stay in Supreme  
26 Court. Application for a stay of the judgment or order of a district court pending appeal, or for  
27 approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an  
28 injunction during the pendency of an appeal must ordinarily be made in the first instance in the  
district court. NRAP 8(a).

1 in foreclosure proceedings, so if the Court does not grant the stay, that may functionally make this  
2 Court's award of sanctions, while reviewable on a legal basis, unreviewable as a practical matter.

3 **B. There Is No Reason To Require Bond Because Wells Fargo Is Clearly Able to Satisfy**  
4 **the Judgment.**

5 Nevada Rule of Civil Procedure 62(d) provides, "When an appeal is taken the appellant by  
6 giving a supersedeas bond may obtain a stay. The bond may be given at or after the time of filing  
7 the notice of appeal. The stay is effective when the supersedeas bond is filed." However, a bond  
8 is not always required.

9 The Nevada Supreme Court has adopted the Seventh Circuit's five factor approach in  
10 determining whether and to what extent a bond is required when issuing a stay of execution. *See*  
11 *Nelson vs. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005). These factors the Court should weigh  
12 when determining when a bond may be waived and/or alternate security substituted are:

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

18 *Dillon v. City of Chicago*, 866 F.2d 902, 904-05 (7th Cir. 1988).

19 Moreover, courts have often allowed parties to stay an execution pending appeal without  
20 bond because of a party's clear ability to satisfy the judgment. *See, e.g., Fed. Prescription Serv.,*  
21 *Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 758 (D.C. Cir. 1980) (**no** bond required where judgment  
22 was \$102,000, debtor's net worth was \$4.8 million or 47 times value of judgment, and debtor was  
23 long-time resident of the District of Columbia with no intention of fleeing jurisdiction); *Dillon*,  
24 866 F.2d at 904-05 (**no** bond required to stay \$165,000 judgment where payment would come  
25 from city fund within thirty days and where fund in previous year had total of \$484 million  
26 dollars (almost 3,000 times the amount of the judgment)).

27 Each of the five factors favors Wells Fargo's request for waiver of a bond, primarily  
28 because Wells Fargo's ability to pay the judgment is clear. First, no complex collection process

1 exists here, and if affirmed on appeal, no delay in obtaining a judgment is foreseeable. The third  
2 through fifth factors, which are all related to Wells Fargo's financial health, likewise favor the  
3 issuance of a stay without a bond. This Court should have the utmost confidence in Wells  
4 Fargo's ability to pay the judgment. Its assets, as of March 31, 2011, were reported at \$1.2  
5 trillion.<sup>2</sup> Hence, the judgment entered against Wells Fargo is over 1,000,000 times smaller than  
6 its total assets. Additionally, Wells Fargo represents that it is fully financially capable of paying  
7 the judgment if it is legally required to do so. For these same reasons, Wells Fargo's ability to  
8 pay the judgment is so plain that that the cost of a bond would be a waste of money. Finally,  
9 Wells Fargo is not in any precarious financial position that would negatively affect its other  
10 creditors, and indeed is not in a precarious financial position at all.

11 **C. It Is Fair, Reasonable, and Nonburdensome To Stay the Order To Modifying the**  
12 **Loan, But To Require Payment of \$1,145 Per Month in the Meantime, Without**  
13 **Prejudice To Wells Fargo's Rights To Reinstate the Mortgage If Its Appeal**  
14 **Succeeds.**

---

15 One key aspect of the Court's Order was to modify Petitioners' loan. Wells Fargo asks  
16 this Court to "stay" this aspect of its Order by: (1) declaring the modification not to be final  
17 pending appellate review; while (2) ordering Petitioners continue to pay the modified mortgage  
18 amount—\$1145.00—to Wells Fargo, or into an escrow or court account, during the pendency of  
19 the appellate proceedings; and (3) specifying that Wells Fargo reserves its rights to recover the  
20 payments originally due under the mortgage with interest if the judgment is reversed and the  
21 original mortgage reinstated. Wells Fargo does not believe that Petitioners have any objection to  
22 making payments as outlined above, based on recent correspondence from Petitioners' counsel.

23 Such an arrangement in no way prejudices Petitioners. Were no stay in place, Petitioners  
24 would be making these payments anyway. Further, the payments Wells Fargo suggests are in the  
25 amount this Court ordered—not the original amount of their mortgage payment. Wells Fargo  
26 simply seeks to clarify its rights to recover the balance owed if the ruling is reversed on appeal,

---

27 <sup>2</sup> See Wells Fargo Bank, N.A., Wells Fargo Today,  
28 <https://www.wellsfargo.com/downloads/pdf/about/wellsfargotoday.pdf> (last visited May 16,  
2011).

1  
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

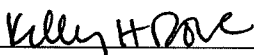
which would be the practical effect of such reversal anyway. Accordingly, Petitioners' maintaining these payments is a reasonable component of any order this Court may issue regarding the requested stay.

**III. CONCLUSION**

Based on the foregoing, Wells Fargo respectfully requests that this Court grant its Motion to Stay Execution of the Judgment Pending Appeal without the necessity of a bond.

DATED this 25<sup>th</sup> day of May, 2011.

SNELL & WILMER, L.L.P.

  
\_\_\_\_\_  
CYNTHIA L. ALEXANDER  
Nevada Bar No. 6718  
KELLY H. DOVE  
Nevada Bar No. 10569  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

*Attorneys for Respondent/Appellant  
Wells Fargo Bank*

1  
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

**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding **MOTION TO STAY EXECUTION OF JUDGMENT PENDING APPEAL** filed in the Second Judicial District Court:

Does not contain the social security number of any person.

**- OR -**

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

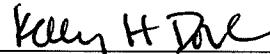
\_\_\_\_\_  
(State specific law)

**- OR -**

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 25<sup>th</sup> day of May, 2011.

SNELL & WILMER, L.L.P.



\_\_\_\_\_  
CYNTHIA L. ALEXANDER

Nevada Bar No. 6718

KELLY H. DOVE

Nevada Bar No. 10569

3883 Howard Hughes Parkway, Suite 1100

Las Vegas, NV 89169

*Attorneys for Respondent/Appellant*

*Wells Fargo Bank*

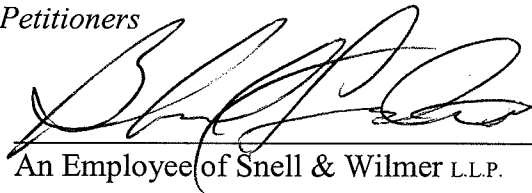
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

As an employee of Snell & Wilmer L.L.P., and I certify that I served a copy of the foregoing **MOTION TO STAY EXECUTION OF JUDGMENT PENDING APPEAL** on the 25<sup>th</sup> day of May, 2011, via electronic service through the Second Judicial District Court's ECF System upon each party in the case who is registered as an electronic case filing user and via U.S. First Class Mail, as follows:

Carole M. Pope, Esq.  
The Law Offices of Carole M. Pope  
301 Flint Street  
Reno, NV 89501

*Attorneys for Petitioners*



---

An Employee of Snell & Wilmer L.L.P.