

U.S. Court of Appeals Docket Number:  
Lower Court Docket Number: CV 2:12-cv-01057 GMN

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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IN RE FF MAGNAT LIMITED,

*Petitioner,*

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
NEVADA,

*Respondent,*

LIBERTY MEDIA HOLDINGS, LLC,

*Real Party in Interest.*

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***EMERGENCY MOTION UNDER CIRCUIT RULE 27-3***

**PETITION FOR WRIT OF MANDAMUS**

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## CIRCUIT RULE 27-3 CERTIFICATE

Pursuant to Circuit Rule 27-3, and on behalf of Petitioner FF Magnat Limited (“Oron”), the undersigned hereby certifies that this motion is properly deemed an “Emergency Motion” in that relief is needed in less than 21 days in order to avoid irreparable harm to Oron. In addition, the undersigned provides the following additional information as required by Circuit Rule 27-3.

1. The counsel for the parties to the district court action are:

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2. Existence and Nature of Emergency

Petitioner Oron brings this Petition for a Writ of Mandamus as an emergency motion because if the district court’s orders freezing Oron’s assets are not vacated immediately, Oron will be deprived of its ability to





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## **INTRODUCTION**

As a result of a series of orders issued by the United States District Court for the District of Nevada, the worldwide assets of petitioner FF Magnat Limited dba Oron.com (“Oron”) have been frozen for 64 days, causing the collapse of Oron. Oron’s inability to access its funds has deprived it of its ability to file post-judgment motions in the district court, bring an appeal, and post an appellate bond or provide other security in order to stay execution of a judgment that Oron contends was improperly entered in favor of real party in interest Liberty Media Holdings, LLC (“Liberty Media”). Moreover, if a writ is not issued immediately, third party vendor PayPal, Inc. will release \$550,000 of Oron’s funds to satisfy the judgment, and Oron will forever be deprived of its due process right to post security and appeal the judgment.

## **JURISDICTIONAL STATEMENT<sup>1</sup>**

On August 7, 2012, the district court granted Liberty Media’s Motion to Enforce Settlement Agreement, and ordered the clerk to enter judgment against Oron in the amount of \$550,000.00 and to issue a writ of execution in that amount. The district court further ordered that Oron’s accounts, which were frozen by an earlier Temporary Restraining Order (“TRO”), remain frozen in order to satisfy any award of attorneys’ fees that Liberty Media might be entitled to if it brought a motion to recover such fees. Judgment was entered that same day.

On August 8, 2012, the clerk of the court issued a writ of execution in the amount of \$550,000. Subsequently, on August 21, 2012, the

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<sup>1</sup> Although Oron contends that this Court has subject matter jurisdiction to hear the instant motion, it maintains that neither this Court nor the district court has personal jurisdiction over Oron.



district court issued an order directing third party PayPal, Inc. to satisfy that judgment by transferring assets from petitioner's PayPal account to a trust account held by counsel for Liberty Media.

The Court has appellate jurisdiction over this matter pursuant to 28 U.S.C. § 1292(a)(1). The district court's orders have had the effect of modifying the existing temporary restraining order. *See, e.g., FSLIC v. Ferm*, 909 F.2d 372, 373 (9th Cir. 1990) (appellate jurisdiction exists over order modifying injunction). In addition, the district court's orders have had a significant negative impact on Oron's assets. *See, e.g., SEC v. Hickey*, 322 F.3d 1123, 1128 n.1 (9th Cir. 2003), *amended by* 335 F.3d 834 (9th Cir. 2003) (exercising jurisdiction over order freezing assets of real estate brokerage); *United States v. Cal-Almond, Inc.*, 102 F.3d 999, 1002 (9th Cir. 1996) (exercising jurisdiction over order directing plaintiff to place assessments in escrow pending resolution of enforcement proceeding); *United States v. Roth*, 912 F.2d 1131, 1133 (9th Cir. 1990) (exercising jurisdiction over order freezing assets from sale of property pending trial in forfeiture action); *FSLIC v. Ferm*, 909 F.2d 372, 373 (9th Cir. 1990) (exercising jurisdiction over order requiring accounting that modified prior preliminary injunction freezing client's assets except for payment of reasonable attorney's fees); *Smith v. Eggar*, 655 F.2d 181, 183-84 (9th Cir. 1981) (exercising jurisdiction over order specifically commanding compliance with terms of security agreement between IRS and taxpayer that had resulted in consent order discontinuing taxpayer's motion for preliminary injunction).

### **STATEMENT OF FACTS**

Petitioner Oron is a Hong Kong-based computer file storage company that provides worldwide "cloud" services to private individuals,

businesses, and professional users. Like well-known “cloud services” offered by such companies as Apple (“iCloud” and apple.me), Amazon, Google, Hewlett Packard and DropBox, Oron offers its users the ability to upload and store large amounts of data on secure, remote servers. The users have complete control over their stored data and decide whether to share their data with others.

Real party in interest Liberty Media is a producer of gay pornographic material, some of which third persons have allegedly stored on Oron’s servers without Liberty Media’s permission. On June 20, 2012, Liberty Media filed a complaint in the United States District Court for the District of Nevada alleging that Oron had violated federal copyright laws by reproducing or distributing Liberty Media’s copyrighted works via its website, Oron.com, and seeking monetary and injunctive relief. (ER 1-60.) That same day, Liberty Media filed an Emergency Motion for Ex Parte Temporary Restraining Order, Order for Seizure, and Appointment of Receiver, and Order to Show Cause Re Preliminary Objection (ER 61-88), asking the district court to issue an order to, among other things, “freez[e] Defendants’ accounts containing profits from the Defendants’ illegal enterprise.” (ER 61 at lines 23-27.) Neither Liberty Media nor the district court provided Oron with notice of the requested TRO or an opportunity to respond.

In its ex parte motion, Liberty Media alleged that Oron had “already taken affirmative steps to move assets beyond the court’s reach in order to frustrate any order the court may issue.” (ER 61-88; ER 70 at lines 11-14.) However, Liberty Media presented the Court with no admissible evidence to support its request for injunctive relief. Instead, Liberty Media relied solely upon a declaration of its litigation counsel,

which was based upon information and belief rather than personal knowledge. The only “evidence” that Liberty Media presented was an unauthenticated and heavily-redacted email obtained from an unspecified third party of a single legitimate and routine transfer of Oron’s funds in the amount of HKD 852,278.58, from its PayPal account to its bank in Hong Kong. (ER 74-75; ER 88.)

There is, of course, nothing nefarious or improper about a Hong Kong company transferring funds from a PayPal account to a bank in its domicile. Nevertheless, based on the affidavit of Liberty Media’s counsel, and without affording Oron notice or an opportunity to be heard, on June 21, 2012, the district court entered a TRO freezing all of Oron’s assets pending the hearing on Liberty Media’s request for a preliminary injunction, including all assets in any U.S. bank or financial institution, and any funds held for Oron by PayPal, Inc., CCBill, LLC, and AlertPay, the companies that processed payments for Oron before the court’s temporary restraining order stopped them. (ER 191-198.) The court further enjoined Oron “from disgorging or dissipating *any* funds, property, domain names, or other assets until further notice.” (*See* ER 197 at ¶ 6, emphasis added.) Oron contends that the district court’s order freezing its assets was unlawful.

The Court made a limited modification to the TRO on June 26, 2012 to allow for the disbursement of \$100,000 from Oron’s PayPal account to Oron to defend this action, including the TRO. (ER 196-298.) Subsequently, the Court denied in part an emergency motion to allow for further funds to be disbursed from Oron’s PayPal account to pay for the lease of Oron’s servers. (ER 399-401.)

Liberty Media also instituted legal proceedings against Oron in Hong Kong, by which it obtained a temporary restraining order freezing “up to US\$3,000,000.” (ER 578-584 at ¶ 20; ER 621-631.) That order expressly allowed Oron to pay legal fees and business expenses, but Oron’s bank in Hong Kong nevertheless stated that it would refuse Oron access to its funds for as long as the Nevada district court’s order was in place. (ER 578-584 at ¶ 21; ER 621-631.) Thus, Oron was left without access to any funds in any country of any sort. (*Id.*)

Oron’s attorneys’ fees have substantially exceeded the \$100,000 that the district court initially disbursed, and a significant portion of those past fees remain unpaid. (*See* ER 803-808; 826-827 at ¶ 2; 828-879.) Nevertheless, the district court has denied Oron’s request for the release of additional funds (ER 399-401.)

As a result of the district court’s order freezing Oron’s assets, Oron has not been able to pay its bills to keep Oron.com up and running. Oron’s website was shut down effective August 1, 2012. (ER 556 at lines 9-21.) Shutting down the website affected more than 99.9% of its customers, none of whom have been alleged to have infringed anyone’s intellectual property rights. As of August 1, 2012, those customers no longer have access to their own material stored on the site. (ER 552 at lines 10-15; ER 579 at ¶ 5.)

On July 6, 2012, Liberty Media filed a motion to enforce an alleged settlement agreement with Oron. (ER 402-414.) Oron opposed that motion on July 12, 2012, arguing that the parties had never reached a meeting of the minds on the scope of the alleged settlement, and that Liberty Media had actually terminated settlement negotiations based on that failure to reach an agreement. (ER 419-451.)

On July 31, 2012, Oron filed an opposition to Liberty Media's motion for preliminary injunction, which sought to maintain the freeze of Oron's assets. (ER 542-631.) Oron opposed the motion on several grounds. First, that asset freezing injunctions are not available to ensure the satisfaction of a plaintiff's money damage claim, and that a complete asset freeze bore no relation to any equitable relief sought. Second, that the Court did not have personal jurisdiction over Oron, which does not have legally sufficient contacts with the U.S. or State of Nevada. Third, that Liberty Media will not likely prevail on its copyright infringement claims because Oron is protected under the safe harbor provisions of the Digital Millennium Copyright Act, among other reasons. Fourth, that Liberty Media cannot establish irreparable harm – given Liberty Media's concession that the allegedly infringing material was taken off of Oron's website before suit was filed. And fifth, that the hardships did not favor Liberty Media – who had only a limited claim for some past infringement of its gay pornographic films, as opposed to the harm that would be caused to Oron and its many users were Oron's assets to remain frozen, forcing it out of business. (ER 542-631.) On July 31, 2012, Oron also moved to dismiss the action for lack of personal jurisdiction. (ER 632-663.)

Neither Liberty Media's motion for preliminary injunction nor Oron's motion to dismiss for lack of personal jurisdiction was ever heard or ruled upon. Rather, on August 7, 2012, the district court granted -- without a hearing -- Liberty Media's Motion to Enforce Settlement

Agreement, and vacated all other pending motions, including Oron's motion challenging personal jurisdiction. (ER 679-686.)<sup>2</sup>

In its order enforcing the settlement agreement, the district court ordered the clerk to enter judgment against Oron in the amount of \$550,000.00 (even though the purported settlement agreement did not provide for entry of a judgment) and to issue a writ of execution in that amount forthwith. (ER 679-686.) However, the settlement payment to Liberty Media was but one of nineteen terms of the alleged settlement agreement between the parties. (*See* ER 407-409.) The district court did not order enforcement of any other terms of the agreement, including those that Oron had negotiated as consideration for the \$550,000 payment. (ER 679-686.)

Despite vacating the hearing on the motion for preliminary injunction, in which Oron had set forth in depth its position on the impropriety of an asset freeze, the district court nevertheless ordered that Oron's "account[s] shall remain frozen, in order to satisfy any fee award, which may be sought by Plaintiff . . ." (ER 686 at lines 3-4.) Again, the purported settlement agreement did not provide for Liberty Media to recover any attorneys' fees. (ER 407-409.)

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<sup>2</sup> In its order enforcing settlement agreement, the district court noted that although Oron had consistently challenged personal jurisdiction, it "waived personal jurisdiction as to the enforcement of the settlement agreement when it agreed to settle this case with Plaintiff." (ER 685 at n.2.) However, the very agreement the district court found enforceable provided: "Although Nevada law applies to this agreement, nothing herein shall be deemed to bring Oron into the US for purposes of Jurisdiction or otherwise." (ER 407-409 at ¶ 18.)

Judgment was entered that same day in favor of Liberty Media in the amount of \$550,000. (ER 687.) On August 8, 2012, the clerk issued a writ of execution on the judgment. (ER 694-695.)

On August 10, 2012, Liberty Media filed a motion seeking to recover \$199,821 in attorneys' fees and costs. (ER 696-767.) Oron has not yet had an opportunity to oppose that motion, although it intends to do so.

On August 14, 2012, Oron filed an Emergency Motion for Disbursement of Funds and to Stay Execution. (ER 768-772.) In that motion, Oron asked the district court to unfreeze Oron's assets over and above the amount necessary to satisfy the judgment and the amount of attorney's fees and costs that Liberty Media seeks (a cumulative total of \$749,821.50) so that Oron could fund post-trial motions and an appeal, and could post an appellate bond. Oron also asked the district court to stay execution on the judgment until its post-judgment motions could be ruled upon. Alternatively, Oron asked the district court to disburse additional funds for payment of attorneys' fees to allow for the filing of post-judgment motions and/or an appeal. (*Id.*)

The district court did not rule on Oron's Emergency Motion for Disbursement of Funds and to Stay Execution. Instead, on August 21, 2012 – a mere three and one-half hours after Liberty Media filed a motion for an order directing PayPal, Inc. to satisfy the judgment, and before Oron had the opportunity to respond to that motion – the district court issued an order directing third party PayPal, Inc. to satisfy the judgment by transferring \$550,000 from petitioner's PayPal account to a trust account held by Liberty Media's attorney. (ER 793-802.)

As a result of the foregoing, Oron's worldwide assets have been frozen for 64 days, causing the collapse of Oron, based upon an original TRO, the propriety of which was never heard or ruled upon. If a writ is not issued immediately, PayPal will release Oron's funds to satisfy the judgment, and Oron will forever be deprived of its due process right to post security and appeal the judgment.

### **STATEMENT OF RELIEF SOUGHT AND ISSUES PRESENTED**

While Oron contends that the district court committed multiple errors (many of which will be addressed at the appropriate time in an appeal), Oron presently seeks the limited remedy of a writ of mandamus directing the district court to (1) enter an order unfreezing Oron's assets worldwide so as to allow Oron to file post-judgment motions, post security, and appeal the district court's judgment; (2) stay enforcement of the judgment to permit the district court to rule on post-judgment motions, including a motion to stay execution pending appeal; and (3) vacate the order directing PayPal to satisfy the judgment. Alternatively, if the Court is not inclined to stay enforcement of the judgment, petitioner respectfully requests that PayPal be permitted to deposit \$550,000 with the court pursuant to Fed.R.Civ.P. 67(a).

### **ARGUMENT**

#### **I. The District Court's Temporary Restraining Order, and All Subsequent Orders Maintaining a Freeze of Oron's Assets, Should be Vacated**

The district court's order granting Liberty Media's TRO freezing Oron's assets, and its subsequent orders maintaining that asset freeze after enforcing the terms of the alleged settlement, were erroneously granted and should be vacated. In *Grupo Mexicano de Desarrollo, S.A.*



*v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), the United States Supreme Court held that a district court has no authority to issue a preliminary injunction freezing a defendant's assets in connection with a claim for money damages, which is what Liberty Media sought in its TRO motion. The *Grupo Mexicano* Court stressed the historical principle that an unsecured creditor has no legal or equitable prejudgment rights in the property of a debtor. *Id.* at 328-330. As the Supreme Court explained:

The remedy [of a preliminary injunction freezing assets] sought here could render Federal Rule of Civil Procedure 64, which authorizes use of state prejudgment remedies, a virtual irrelevance. Why go through the trouble of complying with local attachment and garnishment statutes when this all-purpose prejudgment injunction is available?

*Id.* at 330-331. The Supreme Court warned against allowing creditors to race to the courthouse to freeze assets in a way that could prove “financially fatal” to debtors. *Id.* at 331. That is what has indeed happened since the TRO has been “financially fatal” to Oron.

The district court's asset freeze orders were also inappropriate because they were not limited to funds or property that would be subject to permanent equitable relief if Liberty Media were to prevail on its copyright infringement claims. Rather, Liberty Media sought a preliminary injunction to freeze all of Oron's assets, whatever they may be and wherever they may be located, with no evidence that such assets were in any way involved in this case. The Ninth Circuit has made clear that a district court “cannot issue a preliminary injunction to freeze assets of a defendant that are unrelated to the case to ensure the defendant will

have money to pay a future judgment.” *In re USA Commercial Mortgage Co.*, 397 Fed. Appx. 300, 306 (9<sup>th</sup> Cir. 2010) (citing *Grupo Mexicano*, 527 U.S. at 333).

Even in cases where a preliminary injunction to freeze assets might be proper in order to maintain the status quo so that the court can afford final injunctive relief, the barrier to obtaining such an injunction is a high one that was not met in the proceedings below:

Even under the more lenient standard for claims seeking equitable relief...[the plaintiff] would have to show a ‘likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted. Courts have construed this standard narrowly, only exercising their inherent authority to freeze assets where there is considerable evidence of likely asset dissipation. . . . Certainly, every creditor would like to freeze its alleged debtor’s assets before proving its claims, increasing leverage in settlement negotiations and the chances of collecting any judgment. In the typical case, however, such an imposition on the alleged debtor and the courts is not justified.

*Allstate Insurance Co. v. Baglioni*, No. CV 11–06704 (DDP), 2011 WL 5402487, \*2 (C.D. Cal., November 8, 2011) (citations omitted). The *Allstate* court denied a preliminary injunction even though there was a transfer of property that was “quite possibly fraudulent.” *Id.* Here, on the other hand, the only “evidence” that was provided to the district court was a copy of an email that purported to reflect a transfer of funds from Pay Pal to Hong Kong – where Oron is domiciled. (*See* ER 74-75; ER 88; ER 582 at ¶ 19.) There is no evidence that that transfer, if it occurred, was anything other than a transfer made in the ordinary course

of Oron's business, and it certainly did not justify the extraordinary relief of freezing all of Oron's assets. (*See* ER 582 at ¶ 19.)

Thus, as a matter of law, none of Oron's assets should have been frozen at the outset of the case in connection with a TRO. Nor should the district court have continued that asset freeze in its subsequent orders, especially without providing Oron with an opportunity to object to and be heard on what in effect became an injunction to secure payment for Liberty Media's judgment and potential attorneys' fees award.

A TRO cannot continue indefinitely unless it meets the standards required for a preliminary injunction. *Sampson v. Murray*, 415 U.S. 61, 87 (1974). In this case, however, the district court vacated the hearing on Liberty Media's motion for preliminary injunction while at the same time extending the relief provided by the TRO indefinitely, without providing any explanation of why such a sweeping freeze order should issue other than to imply that funds held in Oron's accounts might be needed to satisfy a fees and costs motion that Liberty Media could file. That is not permitted under the Federal Rules of Civil Procedure. *See* Fed.R.Civ.P. 65(b)(2) (stating that a valid TRO "expires at the time after entry - not to exceed 14 days - that the court sets" and that once granted, a TRO can be extended beyond its initial duration only for "good cause shown" or by the consent of "the party against whom the order is directed.").

Even if the hearing on Liberty Media's motion for preliminary injunction had been held, it would have been improper for the district court to have simply extended the effect of the TRO, as it did here. As the U.S. Supreme Court has held:

Where a hearing on a preliminary injunction has been held after issuance of a temporary restraining order, and where the District Court decides to grant the preliminary injunction, the appropriate procedure is not simply to continue in effect the temporary restraining order, but rather to issue a preliminary injunction, *accompanied by the necessary findings of fact and conclusions of law*.

*Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70*, 415 U.S. 423, 443 (1974) (emphasis added); *see also Hudson v. Barr*, 3 F.3d 970, 975 (6th Cir. 1993) (indefinite continuation of TRO held improper; government's consent to TRO, pending hearing on motion for preliminary injunction, ended on day hearing was supposed to occur); Fed. R. Civ. P. 52(a) (“ . . . and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action.”). No such findings of fact and conclusions of law were made by the district court.

The lack of findings of fact and conclusions of law is particularly egregious here, because in its opposition to the motion for preliminary injunction, Oron presented a strong argument that the court lacks personal jurisdiction over Oron. Rather than consider those arguments specifically, the district court merely stated in a footnote in its order enforcing the settlement agreement:

The Court recognizes that Defendant has always challenged personal jurisdiction in this case. (*See* Response to PI, ER 541-631; Mtn to Dismiss, ER 632-663.) However, Defendant waived personal jurisdiction as to the enforcement of the settlement agreement when it agreed to settle this case with Plaintiff. Accordingly, this Court finds that it has personal

jurisdiction over Defendant for the sole purpose of enforcing the settlement agreement.

(ER 685 at n.2.) However, the settlement agreement itself expressly states “[n]othing herein shall be deemed to bring Oron into the U.S. for purposes of Jurisdiction or otherwise.” (ER 435 at ¶ 18.) Oron was not given an opportunity to respond to this erroneous ruling.

Moreover, even if Liberty Media were entitled to an asset freeze to secure its judgment and fees and costs recovery, the scope of the freeze order issued by the district court greatly exceeds what is necessary to secure Liberty Media’s interests. Liberty Media acknowledged in the court below that Oron’s PayPal account had more than \$1,000,000 in funds – well more than what would be necessary to satisfy Liberty Media’s \$550,000 judgment and its request to recover \$199,821.50 in attorneys’ fees and costs. (*See* ER 773-789; ER 781 at lines 3-4. *See also* ER 349-357 (June 22, 2012 Declaration of Custodian of Records of PayPal, Inc., indicating that the account balance is €1,110,636.90 EUR, which is approximately \$1,385,072 U.S.)). It is respectfully submitted that there was no basis for the district court to encumber any of Oron’s other assets, including those located in other countries, above and beyond what might have been needed to satisfy Liberty Media’s judgment and fee motion. At the very least, all funds in excess of \$749,821 should be unfrozen.

The district court’s freeze orders have been especially prejudicial to Oron because they have effectively deprived Oron of the ability to defend itself in this case. If Oron’s assets are not unfrozen, it is respectfully submitted that the district court should, at the very least, be ordered to authorize the disbursement of \$200,000 from the PayPal

account to permit Oron to pay its attorneys for work already done in this case and to prepare post-judgment motions, file an appeal, and post an appellate bond.

## II. Oron Is Entitled to a Stay of Execution

Almost immediately after judgment was entered, Liberty Media's counsel embarked on a multi-pronged campaign to execute on the judgment or otherwise collect from Oron. Those efforts were improper under Fed.R.Civ.P. 62(a)(1), which provides for an automatic 14-day stay of execution.

In an effort to stop these improper collection efforts, and to afford Oron time to consider whether to appeal, to secure funds to post a bond, and to file post judgment motions, Oron filed an Emergency Motion for Disbursement of Additional Funds and to Stay Execution of Judgment. (ER 768-772.) In that motion, Oron argued that the 14-day stay of execution provided by Rule 62(a) applied,<sup>3</sup> and that even if it did not, Oron was entitled to a further stay of execution under Rule 62(b) until Oron's post-judgment motions were decided and it could ask the district court for a stay pending appeal. *See e.g.*, Fed. R. Civ. P. 62(b) ("On appropriate terms for the opposing party's security, the court may stay the execution of a judgment – or any proceedings to enforce it – pending

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<sup>3</sup> Liberty Media argued that even though the Court entered a money judgment, which did not include any order for injunctive relief, Rule 62(a)(1) permitted immediate enforcement of that money judgment simply because Liberty Media's initial complaint contained a request for injunctive relief. That is not the law. Rule 62(a)(1) clearly applies on its face to cases where the court has ordered injunctive relief as part of a final order or judgment. However, because the 14-day stay of execution provided under Rule 62(a) has now expired, Oron will not belabor the point here.

disposition of any of the following [post-trial] motions . . .”). (See ER 768-772; ER 803-881.)

Rather than hearing and ruling on that motion, however, on August 21, 2012 – just three hours after being requested to do so by Liberty Media’s counsel, and before Oron had the opportunity to file a reply in support of its motion to stay enforcement, and without a hearing on either motion – the district court issued an order directing PayPal to satisfy Liberty Media’s \$550,000 judgment. (ER 793-802.) That order was erroneous and prejudicial to Oron for two reasons.

First, as a procedural matter, Oron was entitled to be heard on its motion for a stay under Fed.R.Civ.P. 62(b). It was a violation of due process for the district court to rule on Liberty Media’s Motion for Order Directing PayPal to Satisfy Judgment immediately when Oron had an earlier-filed motion to stay execution pending. The district court’s order to PayPal rendered Oron’s Rule 62 stay motion moot, without giving Oron an opportunity to fully brief or be heard on that motion.

Second, as a legal matter, Oron is entitled to a stay of execution. In the ordinary course of proceedings, a party could file an appeal, post a bond, and ask the district court for a stay of judgment under Rule 62(d) while the appeal was pending. Upon posting a sufficient bond or obtaining from the court an order disposing of the need for such a bond, and showing “either ‘a probability of success on the merits’ or that ‘serious legal questions are raised,’” a stay pending appeal would be granted. See *Leiva-Perez v. Holder*, 640 F.3d 962 (9th Cir. 2011). In this case, however, the district court’s asset freezing orders effectively denied Oron access to any of its funds worldwide, such that it was unable to fund an appeal or post an appellate bond.

Accordingly, Oron filed a motion asking the district court to unfreeze its assets in excess of an amount necessary to satisfy Liberty Media's judgment and any fees and costs that are awarded so that Oron actually had money to fund an appeal and bond, and to stay execution of judgment while that motion was pending under Rule 62(b) ("On appropriate terms for the opposing party's security, the court may stay the execution of a judgment – or any proceedings to enforce it – pending disposition of any of the following [post-trial] motions . . . . (3) under Rule 59, for a new trial or to alter or amend a judgment. ").<sup>4</sup> The district court should have vacated its order freezing Oron's assets or at the very least ordered a disbursement of funds sufficient to permit Oron to file a notice of appeal, post a bond, and obtain a stay.

Accordingly, Oron respectfully requests that this Court issue a writ of mandate directing the district court to (1) stay enforcement of the judgment to permit the district court to rule on post-judgment motions, including a motion to stay execution pending appeal; and (2) vacate the district court's order directing PayPal to satisfy Liberty Media's judgment.

**III. Alternatively, If the Court Is Not Inclined to Stay Execution, the Court Should Order that the Funds Be Deposited With the District Court**

If the Court is not inclined to stay execution of the judgment as requested or to vacate the order directing PayPal to satisfy Liberty Media's judgment, Oron respectfully requests that PayPal be ordered to

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<sup>4</sup> Although not denominated as such, that motion qualified as a Rule 59 motion to alter or amend a final order of the district court, such that a stay was appropriate under Rule 62(b).



deposit the \$550,000 into the district court registry pursuant to Federal Rule of Civil Procedure 57(a). That rule provides:

Depositing Property. If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

Fed.R.Civ.P. 67(a). Directing PayPal to deposit the disputed funds with the court will fully protect Liberty Media's interest in those funds in the event it prevails on appeal, and will permit the funds remaining in the PayPal account over and above the amount necessary to satisfy Liberty Media's judgment to be released to Oron so that it can fund its defense and appeal in this action.

### **CONCLUSION**

For all of the foregoing reasons, it respectfully requested that the Court of Appeal issue a writ of mandate directing the district court to (1) enter an order unfreezing Oron's assets worldwide so as to allow Oron to file post-judgment motions, post security, and appeal the district court's judgment; (2) stay enforcement of the judgment to permit the district court to rule on post-judgment motions, including a motion to stay execution pending appeal; and (3) vacate the order directing PayPal to satisfy the judgment. Alternatively, if the Court is not inclined to stay enforcement of the judgment, petitioner respectfully requests that PayPal be permitted to deposit \$550,000 with the court pursuant to Fed.R.Civ.P. 67(a).



## **STATEMENT OF RELATED CASES**

Pursuant to Ninth Circuit Rule 28-2.6, Oron states that it is not aware of any related cases pending in this Court.

## CERTIFICATE OF SERVICE

### When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that on August 23, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have enclosed the document in a package provided by an overnight delivery carrier and addressed to the person at the address listed below. I placed the envelope or package for collection and overnight delivery at an office of the overnight delivery carrier.

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