STATE OF IDAHO)
County of KOOTENAI)ss

FILED 3/31/2022

AT 3:55 O'Clock P. M

CLERK OF DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

SNAP! MOBILE, INC.,

Plaintiff,

vs.

VERTICAL RAISE, LLC, an Idaho limited liability company, and PAUL LANDERS, individually,

Defendants.

Case No. **CV28-19-8796**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANTS' MOTION TO STAY ENFORCEMENT OF JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on defendants' motion to stay enforcement of judgment, defendants' objection to application for writ of execution on final judgment entered October 15, 2021, defendants' objection to application for writ of execution on amended judgment entered December 14, 2021, and defendants' emergency motion to quash the writ of execution on amended judgment entered December 14, 2021.

On September 30, 2021, the Court entered an Order Granting Permanent Injunction. On October 15, 2021, the Court entered a Final Judgment in favor of SNAP! Mobile, Inc. ("Snap") against Vertical Raise, LLC and Paul Landers, individually (collectively "defendants"). On December 14, 2021, the Court entered an Amended Judgment in favor of Snap following Snap's motion for additur or a new trial, which the Court granted on November 17, 2021. On December 29, 2021, defendants filed a notice of appeal to the Idaho Supreme Court, appealing both the Court's November 17, 2021, oral ruling and the Amended Judgment.

On February 8, 2022, defendants filed Defendant's Motion to Stay Enforcement of Judgment, Memorandum in Support of Defendant's Motion to Stay Enforcement of Judgment, and declarations of W. Christopher Pooser and Nathan S. Ohler in support of its motion, as well as an Objection to Application for Writ of Execution of Amended Judgment Entered December 14, 2021, Objection to Application for Writ of Execution of Final Judgment Entered October 15, 2021, and Notice of Posting of Supersedeas Bond. On February 22, 2022, Snap filed its Opposition to Defendants' Motion to Stay Enforcement of Judgment, Response to Objection to Application for Writ of Execution on Amended Judgment, and Response to Objection to Application for Writ of Execution on Final Judgment. On February 25, 2022, defendants filed their Reply in Support of Defendants' Motion to Stay Enforcement of Judgment, Reply to Defendants' Motion to Quash the Writ of Execution on Final Judgment Entered October 15, 2021, and Reply to Defendants' Motion to Quash the Writ of Execution on Amended Judgment Entered December 14, 2021.

On February 18, 2022, defendants filed Defendants' Emergency Motion to Quash the Writ of Execution on Final Judgment Entered October 15, 2021 and Supporting Memorandum, Defendants' Emergency Motion to Quash the Writ of Execution on Amended Judgment Entered December 14, 2021 and Supporting Memorandum, and Motion to Shorten Time. On February 25, 2022, Snap filed its Opposition to Defendants' Emergency Motion to Quash the Writ of Execution on Amended Judgment Entered December 14, 2021 and Opposition to Defendants' Emergency Motion to Quash the Writ of Execution on Amended Judgment Entered October 15, 2021.

A hearing on the motions was held on February 28, 2022. At the conclusion of that hearing, the Court took all motions under advisement.

II. STANDARD OF REVIEW

> Idaho Appellate Rule 13(b) authorizes district courts to take certain actions during an appeal, such as issuing stays and requiring a supersedeas bond. Because the district court has the authority, but is not required, to take such actions under I.A.R. 13(b), this Court reviews these actions under an abuse of discretion standard.

Tricore Investments, LLC v. Estate of Warren through Warren, 168 Idaho 596, __, 485 P.3d 92, 106 (2021). When reviewing a lower court's decision for abuse of discretion, the appellate court considers four essentials, including whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

III. ANALYSIS

The primary issues here are whether the two judgments issued by the Court are appealable, final judgments and whether defendants have posted a proper supersedeas bond sufficient for this Court to grant their motions to stay while their cases are pending appellate review.[1]

Preliminarily, this Court appreciates that whether to grant a motion to stay is a matter committed to its discretion. This Court will show, based on the case law and the analysis below, that this Court is acting within the bounds of that discretion in its findings, is acting consistently with the legal standards applicable to the specific choices available to this Court, and has reached its decision by the exercise of reason.

Defendants argue that the Court should approve the supersedeas bond posted

[1] In their briefing, defendants also argued they are entitled to a stay of the permanent injunction issued by this Court. Mem. in Supp. of Def.'s Mot. to Stay Enf't of J. 5-6. However, the Court will not address that issue since a motion to stay the permanent injunction was not noticed up for hearing, and the parties did not address that issue at oral argument on February 28, 2022.

in the amount of $1,463,755.16, which does not include the additur amount. Mem. in Supp. of Defs.' Mot. to Stay Enf't of J. 4. They argue they should be permitted to exclude the amount of the additur in the supersedeas bond because that amount is "not part of the judgment for purposes of the bond because Defendants have not accepted the additur amount as allowed by I.R.C.P. 59.1." *Id.* They argue, "Under Rule 59.1, the status quo of the judgment does not include the additional damage amounts included as an additur" because of Rule 59.1's language indicating that the filing of an "'appeal does not constitute an acceptance or a rejection of the additur or remittitur and the party is not required to accept or reject the additur or remittitur until the determination of the appeal.'" *Id.* (quoting I.R.C.P. 59.1(a)).

A. Both judgments are appealable, final judgments, and the time to file an appeal of the October, 15, 2021, Final Judgment was tolled when Snap filed its motion for additur or new trial.

Snap responds, first, that enforcement of the Final Judgment should not be stayed because the appeal was untimely. Opp'n to Defs.' Mot. to Stay Enf't of J. 6. Specifically, they argue:

> The Final Judgment was an appealable Judgment as of October 15, 2021 and needed to be appealed by November 26, 2021. I.A.R. 14(a). Additionally, I.A.R. 17 explicitly provides that a notice of appeal only presents for appeal "final judgments and orders entered prior to the judgment or order appealed from *for which the time for appeal has not expired.*" I.A.R. 17(3)(1)(B) (emphasis added [in brief]). Snap! is filing a Motion to Dismiss with the Idaho Supreme Court on this issue.
>
> . . . Here, the terms of the Final Judgment were entirely unaffected by the Amended Judgment. In fact, the Amended Judgment explicitly noted that each of the terms of the October 15, 2021 Final Judgment "'were unchanged and remain in effect." . . . Accordingly, under *McCandless,* the terms of the Final Judgment are not superseded, are not subject to appeal after November 26, 2021, and can be enforced.

Id. at 6-7.

Defendants reply:

. . . [T]he application of I.A.R. 14(a) is not dependent on whether the order *did* affect the judgment but whether the motion, if granted, *could* affect the judgment. Snap's motion for additur or a new trial is such a motion and destroyed the finality of the Final Judgment. *See Sweet v. Foreman*, 159 Idaho 761, 767, 367 P.3d 156, 162 (2016) (finding appeal was premature under I.A.R. 14(a) due to pending new trial motion); *Nations v. Bonner Bldg. Supply,* 113 Idaho 568, 570, 746 P.2d 1027, 1029 (Ct. App. 1987) ("A motion for new trial impacts upon the finality of the judgment in several ways. First, the service of such a motion terminates the running of the forty-two day appeal period."); *Henderson v. State,* 123 Idaho 138, 139, 844 P.2d 1388, 1389 (Ct. App. 1992) ("Once the motion for new trial was denied and judgment was entered, the defendant had 42 days in which to file an appeal. I.A.R. 14(a).").

Further, the only enforceable and appealable judgment is the Amended Judgment. According to I.R.C.P. 54(a)(2), "[i]f the court orders an amendment to a judgment, the amendment will be effective only after the court enters an amended judgment setting forth all of the terms of the new judgment, *including those terms of the prior judgment that remain in effect.*" (Emphasis added [in brief].) The Amended Judgment sets forth the terms of the Final Judgment and includes the conditional additur and an award of $239,525.85 in costs. Again, when a judgment is amended following a motion for new trial, the time to appeal runs from the date of the amendment. *See* I.A.R. 14(a); I.R.C.P. 54(a)(2). Thus, the Amended Judgment superseded the Final Judgment, which is no longer appealable or enforceable. *See McCandless,* 76 Idaho at 520, 286 P.2d at 337.

Despite that, Snap cites *McCandless* to suggest that the Final Judgment remains in effect because it was unchanged. Snap is wrong again. To read *McCandless* to require a party to appeal the surviving parts of an original judgment within 42 days from that judgment-potentially before the trial court decides the motion for new trial is a misreading of the case. *McCandless* does not require a party to proceed with an appeal while the trial court has a motion before it that, if granted, would vacate or alter the judgment. The entire purpose of I.A.R. 14(a) is to prevent unnecessary appellate review. *See Sweet,* 159 Idaho at 767, 367 P.3d at 162.

Sweet illustrates that purpose. There, a party to a custody judgment moved for reconsideration and for a new trial. *Id.* at 765, 367 P.3d at 160. The trial court denied the motion to reconsider and never ruled on the motion for a new trial, and the party appealed. *Id.* The Idaho Supreme Court refused to consider the appeal. It remanded and ordered the trial court to rule on a pending motion for a new trial. 159 Idaho at 767,367 P.3d at 162. Yet, contrary to *Sweet,* Snap would have Defendants appeal the Final Judgment pending the Court's review [sic] its motion for additur or new trial. If Snap is correct, upon the filing of its motion, both the Court and the Idaho Supreme Court would have the power to modify the same judgment.

Sweet recognizes that I.A.R. 14(a) avoids that potential conflict by depriving the appellate courts of jurisdiction in this situation. Defendants did not

need to proceed with an appeal while Snap's motion was pending and timely filed a notice of appeal, as I.A.R. 14(a) provides, after the Court disposed of the motion. For all of these reasons, Defendants timely appealed from the Amended Judgment and have properly sought to stay the enforcement of the Amended Judgment.

Reply in Supp. of Defs.' Mot. to Stay Enf't of J. 4-6.

At the February 28, 2022, hearing, counsel for Snap responded:

The October 15th, 2021, final judgment is an appealable, enforceable final judgment. I know that they relied on *Sweet* in their opposition papers. Sweet's incredibly distinguishable, would've changed if the jury's underlying decision, the new trial would. In our world that's not the case. These are two wholly separate issues. The Supreme Court is gonna view the jury's decision that this court reflected in its October 15, 2021, judgment with substantial and competent evidence standard, and then it's gonna turn to the amended judgment, which on the additur issue and the cost issue, is appealable as of that date on the abuse of discretion standards, and so the Supreme Court very well could uphold the judgment related to the jury's decision that's reflected in your final judgment and then this Court's decision adding to that verdict along with the costs could certainly be ruled on in a different way, and if the Supreme Court rules in our favor, then defendants will have a choice of, as I understand it, of new trial or not, but to say that they don't need to post a bond, to say that in order to stay the execution of this judgment that they shouldn't have to do that just defies the rules.

Mot. to Stay Writ of Execution Hearing 2:01:15 PM – 2:02:43 PM.

The Idaho Appellate Rules give the trial court discretion to stay a writ of execution where a party has filed an appeal of the granting of an additur or new trial:

Idaho Appellate Rule 13 authorizes the district court to stay a judgment during an appeal. In relevant part, I.A.R. 13(b) provides:

> **Stay Upon Appeal—Powers of District Court—Civil Actions**. In civil actions, unless prohibited by order of the Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency on an appeal:
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> . . . .
>
> (14) Stay execution or enforcement of any judgment, order or decree appealed from, other than a money judgment, upon the posting of such security and upon such conditions as the district court shall determine.

I.A.R. 13(b)(14). These actions may be taken to preserve the status quo throughout the appeal. *See Coeur D'Alene Turf Club, Inc. v. Cogswell*, 93 Idaho

324, 330, 461 P.2d 107, 113 (1969).

Tricore Investments, LLC v. Estate of Warren through Warren, 168 Idaho 596, __, 485 P.3d 92, 123-24 (2021). The Idaho Appellate Rules also allow for a tolling of the time for filing an appeal in certain circumstances:

> The time for an appeal from any civil judgment or order in an action is terminated by the filing of a timely motion which, if granted, could affect any findings of fact, conclusions of law or any judgment in the action (except motions under Rule 60 of the Idaho Rules of Civil Procedure or motions regarding costs or attorneys fees), in which case the appeal period for all judgments or orders commences to run upon the date of the clerk's filing stamp on the order deciding such motion.

I.A.R. 14(a); *see also, e.g.*, *State v. Ferguson*, 138 Idaho 659, 661, 67 P.3d 1271, 1273 (Ct. App. 2002) ("in the civil arena, this Court has held that a motion under I.R.C.P. 59 to alter or amend the judgment or a motion under I.R.C.P. 11(a)(2)(B) tolls the time period for the filing of a notice of appeal as provided in I.A.R. 14(a).") (citing *J.P. Stravens Planning Assocs., Inc. v. City of Wallace,* 129 Idaho 542, 546, 928 P.2d 46, 50 (Ct. App. 1996); *Ade v. Batten,* 126 Idaho 114, 116, 878 P.2d 813, 815 (Ct. App. 1994)).

> The time limitation strikes a balance between fairness and finality of district court judgments. As Chief Justice Shepard has declared, prolonged litigation is a painful process for all concerned. A party who has won a victory at trial understandably desires the judgment to be finalized promptly. A. Shepard, *State of the Judiciary, Message to the Idaho Legislature,* reported in STATE COURT JOURNAL, Vol. 11, no. 2, p. 26 (Spring, 1987). A motion for new trial impacts upon the finality of the judgment in several ways. First, the service of such a motion terminates the running of the forty-two day appeal period. I.A.R. 14(a); *Wheeler v. McIntyre, supra.* Second, the trial court may, in its discretion, stay the execution of a judgment pending disposition of the motion for new trial. I.C. § 11-101. Finally, a new trial motion signals a possibility that the trial court might set aside the judgment. By requiring a movant to give the prevailing party prompt notice that a new trial will be requested, Rule 59(b) minimizes this period of uncertainty. *Cf.* 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE, § 2812 (1973) (discussing counterpart federal rule).

Nations v. Bonner Bldg. Supply, 113 Idaho 568, 570, 746 P.2d 1027, 1029 (Ct. App. 1987).

In *McCandless v. Kramer*, 76 Idaho 516, 520, 286 P.2d 334, 337 (1955), the Idaho Supreme Court held that, "if the action of the trial court on motion for new trial properly results in an amended judgment, then the original judgment to the extent of the amendments would be superseded and not subject to appeal" because "[t]he granting of a new trial operates to vacate the judgment and an appeal cannot be maintained thereon". Defendants' assertion that *McCandless* stands for the proposition that "the Amended Judgment superseded the Final Judgment, which is no longer appealable or enforceable" is incorrect. Reply in Supp. of Defs.' Mot. to Stay Enf't of J. 4. The Idaho Supreme Court in *McCandless* indicated that, *if* the trial court on remand grants a new trial, the original judgment is vacated. However, here, a new trial has not been granted—an additur or in the alternative a new trial on damages has been granted. If defendants opt for a new trial rather than the additur, then the October, 15, 2021, Final Judgment will be vacated. But until that time, the October final judgment has not been superseded and it remains in force. Indeed, the Court's December 14, 2021, Amended Judgment specifically states that the original terms of the October 15, 2021, Final Judgment not subject to additur remain in effect. Thus, the Court is not convinced by defendants' argument that, "the Amended Judgment supersceded the Final Judgment, which is no longer appealable or enforceable." *Id.* Nevertheless, as discussed below, this is not fatal to defendants, since the time to appeal the Final Judgment was tolled when Snap filed its motion for additur or new trial.

In *Sweet*, a mother filed a petition to modify custody of her child to grant her primary physical custody. 159 Idaho at 763, 367 P.3d at 158. The trial court granted the mother's petition. *Id.* at 766, 367 P.3d at 161. The father submitted a motion for reconsideration, seeking to present new evidence that arose after the trial court's

decision. *Id.* The trial court denied his request to present new evidence in support of his motion for reconsideration, and he appealed the court's denial of this request. *Id.* He had also filed a motion for a new trial, and the record did not indicate that the court had ever ruled on the motion for a new trial before he filed his appeal. *Id.* at 766-67, 367 P.3d at 161-62. The Idaho Supreme Court found that "The motion for new trial should have been considered and acted upon by the court. Where Sweet's motion for a new trial is still pending, Sweet's appeal to this Court is premature." *Id.* at 767, 367 P.3d at 162. The Idaho Supreme Court cited to Idaho Appellate Rule 14(a) as the sole justification of its findings:

> The time for an appeal from any civil judgment or order in an action is terminated by the filing of a timely motion which, if granted, *could* affect any findings of fact, conclusions of law or any judgment in the action . . . in which case the appeal period for all judgments or orders commences to run upon the date of the clerk's filing stamp on the order deciding such motion.

Id. (quoting I.A.R. 14(a)) (emphasis added). This indicates that the Idaho Supreme Court views a motion for a new trial as something that "could affect any findings of fact, conclusions of law or any judgment in the action", thus tolling the time for appeal. *See id.*

Defendants argue that the Idaho Supreme Court's holding in *Sweet* should not apply here merely because Snap has moved for a new trial solely on the basis of damages and offers no other case law or argument to support this proposition. While it is true that this case is different from *Sweet*, the Court finds no reason to interpret the Idaho Supreme Court's decision to only apply where the entire jury trial is at stake. The Idaho Supreme Court could have indicated that its holding only applied to such situations but chose not to do so.[2] Even the Idaho Trial Handbook makes a blanket

[2] The Idaho Supreme Court has held that an amended judgment does not enlarge the time for appeal if it does not alter the material terms of the original judgment. *Viestra v. Viestra*, 153

statement that a motion for new trial or to amend a judgment under I.R.C.P. 59 tolls the forty-two-day period. D. CRAIG LEWIS, IDAHO TRIAL HANDBOOK § 35:4 (2d ed. November 2021 Update). The only exceptions listed include "motions for relief from judgments under Idaho R. Civ. P. 60 and motions concerning costs or attorney's fees", neither of which apply here. *Id.* It is clear to this Court, therefore, that the time to file an appeal of the October 15, 2021, Final Judgment, was tolled when Snap filed its motion for additur or new trial. This is clearly something that "could affect any findings of fact, conclusions of law or any judgment in the action" because, if defendants opt for a new trial rather than an additur after their pending appeal is decided, the October 15, 2021, Final Judgment could be affected if the new jury elects different amounts of damages than the amounts in the Final Judgment. Accordingly, the Court finds that the forty-two-day period to file an appeal was tolled when Snap filed its motion for additur, and defendant's motions are timely, and the motion will not be denied on that ground.

B. Defendants have not posted sufficient bond; accordingly, defendants' motion to stay is denied.

Snap argues that defendants have not posted the correct bond amount to seek a stay of enforcement of the final judgment.[3] Opp'n to Defs.' Mot. to Stay Enf't of J. 8. Specifically, they argue:

> a bond to seek a stay of the Final Judgment, based on the $800,000 awarded to Snap! in that Judgment and the formula proscribed by I.A.R. 13(b)(15), must be $1,088,000. . . . Defendants have failed to do so and, given their appeal of the Final Judgment is untimely, no stay of the enforcement of the Final Judgment

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Idaho 873, 879-80, 292 P.3d 264, 270-71 (2012). However, this Court will not determine whether the material terms were altered here because the Idaho Supreme Court has not made any indication that the granting of a new trial solely on damages would not be material.

[3] Snap also argued that the Court should not stay execution because the bond posted by defendants is facially invalid due to procedural inadequacies. Opp'n to Defs.' Mot. to Stay Enf't of J. 7-8. However, the Court need not address this argument since it is denying the motion based on the amount of the supersedeas bond, discussed below, and because the parties did not address this issue at the hearing.

should be permitted.

Id. at 8.

Snap also argues that, in addition to the appeal being untimely, defendants have not met the requirements for a stay of enforcement of the Amended Judgment, they have not posted a bond to cover the additur, and the ability of defendants to proceed with a new trial in lieu of accepting the additur is not relevant. Specifically, Snap argues:

> The Amended Judgment ordered two additur awards in Snap!'s favor: $410,021 in unjust enrichment damages and $900,000 in cost of workforce replacement damages. The Amended Judgment also awarded Snap! its costs as a matter of right and discretionary costs in the amounts of $33,174.27 and $206,351.58 respectively. The sum of these amounts is $1,549,546.85. Accordingly, under the provisions of I.A.R. 13(b)(15) requiring that the amount of the judgment plus 36% must be posted as a bond to stay execution or enforcement of a money judgment, Defendants must post a bond of $2,107,383.72 to support their request for a stay related to the Amended Judgment. I.A.R. 13(b)(15). Defendants have not posted a bond for this amount and consequently cannot request a stay of execution on the Amended Judgment.
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> . . . .
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> I.A.R. 13 is clear that the amount of the supersedeas bond posted as a prerequisite for a stay of enforcement of a money judgment "must be in the amount of the judgment or order, plus 36% of such amount." I.A.R. 13(b)(15). Here, Defendants concede that they are seeking a stay of enforcement of the Amended Judgment. . . . However, Defendants did not post a bond that covers the amount of the Amended Judgment plus 36% as required. Instead, Defendants omitted the amounts of the additurs awarded by the Court, claiming that they are not required to include those amounts because the additur has not yet been accepted in lieu of a new trial.
>
> Because Defendants have not posted an adequate bond, this Court should deny Defendants' request for a stay of execution. . . .
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> That the Defendants have not decided whether to accept a new trial has no impact on the amount of a bond required for a stay. Barring a stay, "[e]xecution or other proceedings to enforce a judgment may issue immediately on the entry of judgment." I.R.C.P. 62(a). Appellate Rule 13 (b)(15), by its plain terms, requires a bond be posted in the amount of the judgment for a stay to be issued, and Defendants are clearly seeking a stay of execution on the Amended Judgment. Because the Amended Judgment ordered the additur amounts (and

costs as well), Defendants are required to include the additur amounts and the cost amounts in the calculation of the bond amount for the Amended Judgment under I.A.R. 13(b)(15).

. . . .

. . . Accordingly, because the additur amounts were ordered in the Amended Judgment that was appealed by Defendants, they must be included in the calculation of the bond requirement related to the Amended Judgment. . . .

The case cited by Defendants, *Tricore Invs., LLC v. Est. of Warren ex rel. Warren,* 168 Idaho 596, 485 P.3d 92, 124 (2021), provides no support for Defendants' argument. Defendants cite to *Tricore* for the proposition that a bond's purpose is to preserve the status quo throughout the appeal. However, the status quo is only preserved if Defendants post a bond for the entire amount of the Amended Judgment. Snap! currently has an Amended Judgment entered in its favor for the additur amounts. . . . While those terms of the Amended Judgment may be subject to further amendment if Defendants ultimately elect to proceed with a new trial, they are currently in a valid and enforceable judgment. These terms, and the amounts they award to Snap!, are therefore squarely a part of the "amount of the judgment or order" which Appellate Rule 13 requires a bond for.

Id. at 9-11.

Defendants incorrectly interpret the application of I.R.C.P. 59.1. While the language quoted is correct, it is irrelevant to the context of the amount of the supersedeas bond.

> **(a) Acceptance or Rejection.** If a trial court conditionally grants or denies a new trial subject to either an additur or remittitur, the party to whom it is directed has 42 days from entry of the order in which to accept or reject it. If the party files a notice of appeal, the appeal does not constitute an acceptance or a rejection of the additur or remittitur and the party is not required to accept or reject the additur or remittitur until the determination of the appeal.
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> **(b) Effect of Appeal.** If a party to whom an additur or remittitur is directed is successful on appeal, the case will proceed as provided in the opinion determining the appeal. If the order of the trial court granting a conditional new trial is affirmed, the party to whom the additur or remittitur was directed has 14 days from the date of issuance of the appellate remittitur in which to accept or reject the additur or remittitur consistent with the appellate opinion.

I.R.C.P. 59.1.

Orders granting new trials conditioned upon the acceptance or rejection of an additur are appealable as a matter of right, and the party appealing may

> appeal the order without accepting or rejecting the additur. I.A.R. 11(a)(5); I.R.C.P. 59.1(a). Such party shall not be required to accept or reject the additur until the appeal is determined. I.R.C.P. 59.1(a).

Collins v. Jones, 131 Idaho 556, 558, 961 P.2d 647, 649 (1998). However, the fact that defendants need not accept the additur amount while appeal is pending does not negate the need to include any amount of the additur in the supersedeas bond. A "district court does not have the power to stay enforcement of a money judgment unless the party against whom judgment is entered posts a cash deposit or supersedeas bond equal to 136% of the judgment." *Bagley v. Thomason*, 155 Idaho 193, 198, 307 P.3d 1219, 1224 (2013). The full amount of a judgment, including costs and additur, must be included in the supersedeas bond. *See Student Loan Fund of Idaho, Inc. v. Duemer*, 131 Idaho 45, 55, 951 P.2d 1272, 1282 (1997) (the "amount of the judgment" refers to all money judgments and orders, including those relating to costs and attorney's fees"); *Keybank Nat'l Ass'n v. PAL I, LLC*, 155 Idaho 287, 296, 311 P.3d 299, 308 (2013) ("The supersedeas bond requirement in I.A.R. 13(b)(15) applies to the entire judgment that is appealed to this Court, including costs and attorney fees.").

> The posting of a supersedeas bond is the procedural mechanism by which an appellant secures the right to stay of execution of the judgment complained of, and it is the appellant's responsibility to post the required supersedeas bond if the appellant desires a stay.
>
> The purpose of security for a stay pending appeal is to effect security to the party affected by the appeal, and protect the judgment while the appeal is pending, including the judgment creditor's ability to collect the judgment, if it is affirmed. The bond also preserves the subject matter of the litigation during the appeal to prevent irreparable damage.

4 C.J.S. *Appeal and Error* § 533, Westlaw (database updated March 2022).

Although there is no Idaho case law that explicitly states that the amount of an additur must be included in the supersedeas bond, this Court finds that it clearly falls into the language of *Keybank Nat'l Ass'n* and *Student Loan Fund of Idaho*. The

additurs granted in the Court's December 14, 2021, order are clearly part of the "entire judgment" because they are supplemental amounts in addition to the original order. The additurs consisted of "an additional $410,021 in unjust enrichment damages"; "an additional $900,000 for cost of workforce replacement damages"; "$33,174.27 in costs pursuant to I.R.C.P. 54(d)(1)(C)"; and "$206,351.58 in costs pursuant to I.R.C.P. 54(d)(1)(D)", against Vertical Raise, LLC and Paul Landers, jointly and severally. The first two additurs amend the original judgment to include these amounts in additions to the amounts awarded in the original judgment. If these amounts had been in the original judgment, there would be no question that they would constitute the "entire amount" of the original judgment; thus, it follows that they are part of the "entire amount" of the amended judgment. The second two are costs, which both *Keybank Nat'l Ass'n* and *Student Loan Fund of Idaho* clearly stated must be included in the bond. Accordingly, defendants' motion to stay enforcement of judgment is denied.

IV. CONCLUSION AND ORDER.

For the foregoing reasons,

IT IS HEREBY ORDERED defendants' Motion to Stay Enforcement of Judgment is DENIED without prejudice. The Court grants defendants leave to file a new motion to stay upon the posting of a satisfactory supersedeas bond. If posting of a satisfactory supersedeas bond occurs, the defendants' objections to the applications for writ of execution would seem to be moot. If defendant do not post a satisfactory supersedeas bond, the Court can take up those objections at that time. The Court does not decide defendants' request to stay the permanent injunction at this time.

Entered this 31st day of March, 2022.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 31st day of March, 2022, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Keely Duke	ked@dukeevett.com	T. Jeff Bone	jbone@corrcronin.com
Lawrence Cock	lrc@corrcronin.com	Taylor L. Bruun	tlb@dukeevett.com
Jack Lovejoy	jlovejoy@corrcronin.com	Nathan Ohler	nohler@rmedlaw.com
Michael E. Ramsden	mramsden@rmedlaw.com		
W. Christopher Pooser	christopher.pooser@stoel.com		
April M. Linscott	alinscott@omllaw.com		
Jill Bolton	reception@kjbotonlaw.com		

Jeanne Clausen, Deputy Clerk