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18 WITNESSES, FREMONT, CALIFORNIA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

JANE DOE,

Plaintiff,

v.

THE WATCHTOWER BIBLE AND TRACT  
SOCIETY OF NEW YORK, INC., a  
corporation; FREMONT CALIFORNIA  
CONGREGATION OF JEHOVAH'S  
WITNESSES, NORTH UNIT, a California  
corporation; JONATHAN KENDRICK, an  
individual; and ROES 1 to 10,

Defendants.

Case No.: HG11558324

**DEFENDANT WATCHTOWER BIBLE AND  
TRACT SOCIETY OF NEW YORK, INC.  
AND FREMONT CONGREGATION OF  
JEHOVAH'S WITNESSES, NORTH UNIT'S  
EX PARTE APPLICATION TO SHORTEN  
NOTICE OF HEARING ON MOTION RE  
APPEAL BOND; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
THEREOF; DECLARATION OF DOUGLAS  
M. EGBERT**

I. APPLICATION

PLEASE TAKE NOTICE that on October 18, 2012, Watchtower Bible and Tract  
Society of New York, Inc. and the North Congregation of Jehovah's Witnesses, Fremont,  
California (collectively, the "Church Defendants") will file this ex parte application for an order  
shortening notice of hearing on the Church Defendant's motion to substitute real property for

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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
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1 the appeal bond or, in the alternative, decrease the amount of the appeal bond, so that said  
2 motion may be heard on November 8 or 9, 2012. Pursuant to Department 22 and the Honorable  
3 Robert D. McGuiness' standing order, applications are considered only on the moving papers  
4 and any written opposition is to be filed within 24 hours of Watchtower filing this application.  
5 This application is made pursuant to California Code of Civil Procedure section 128(a)(3), and  
6 California Rules of Court, Rules 3.1200 through 3.1207.

7 As discussed in the memorandum of points and authorities below, good cause exists for  
8 an order shortening notice of hearing on the Church Defendants' motion to decrease the amount  
9 of the appeal bond because: (1) the Church Defendants' intend to file a motion to substitute real  
10 property as security for the judgment or, in the alternative, to reduce the amount of the appeal  
11 bond, and the Church Defendants face immediate irreparable harm and hardship if the hearing  
12 and ruling on said motion is not completed before November 15, 2012; (2) after an initial good  
13 faith "meet and confer" telephone call, Plaintiff's counsel did not communicate Plaintiff's  
14 position on this issue until October 17, 2012 when he notified the Church Defendants' counsel  
15 that Plaintiff would not agree to substitute real property as security for the judgment; and (3)  
16 Plaintiff will not be prejudiced by any shortened notice because her counsel has been aware of  
17 the instant issue since the Church Defendants' counsel first contacted Plaintiff's counsel during  
18 the week of October 8, 2012, and the judgment for Plaintiff will be protected in any event.

19 Plaintiff is represented in this action by Richard J. Simons (SBN 72676) and Kelly  
20 Kraetsch (SBN 281688) of Furtado, Jaspovice & Simons, 22274 Main Street, Hayward,  
21 California 94541, (510) 582-1080. (Egbert Decl., ¶ 2.) The Church Defendants complied with  
22 Rules 3.1203 and 3.1204 of the California Rules of Court by giving notice of this application to  
23 Mr. Simons and Ms. Kraetsch on October 17, 2012, by e-mail communication. (*Id.* at ¶¶ 3-6,  
24 Exhs. A-C.) **Plaintiff's counsel has stated that he will not oppose this application**, but will  
25 oppose the substantive motion. (*Id.* at ¶ 6, Exh. C.) Plaintiff's counsel has also represented that  
26 he is available for a hearing in the afternoon of November 8, 2012 or the morning of November  
27 9, 2012. (*Id.*)  
28

1 This ex parte application is based on this application, the memorandum of points and  
2 authorities in support thereof (section II below), the declaration of Douglas M. Egbert (section  
3 III below), and all pleadings and papers on file in this action.

## 4 II. MEMORANDUM OF POINTS AND AUTHORITIES

### 5 A. Relevant Facts

6 On or about September 20, 2012, the Church Defendants filed their Notice of Posting  
7 Bond/Undertaking for Appeal of Judgment Under Code of Civil Procedure Section 917.1.  
8 (Egbert Decl., ¶ 8, Exh. D.) As outlined in Exhibit A to the Notice, the bond was for the amount  
9 of \$17,277,299.37, and has a premium of \$86,386.

10 The Church Defendants' payment of the appeal bond premium is due November 15,  
11 2012. However, the Church Defendants seek to substitute real property defendant Watchtower  
12 owns in Patterson, New York in place of the appeal bond as security for the judgment. (*Id.* at ¶  
13 9.) To that end, the Church Defendants' counsel contacted Plaintiff's counsel to see if a  
14 stipulation could be reached concerning the substitution of security. (*Id.*) After a brief  
15 telephone conversation, Plaintiff's counsel's inclination was to not so stipulate, but Plaintiff's  
16 counsel suggested the parties discuss the issue further. After additional "meet and confer"  
17 efforts, Plaintiff's counsel responded on October 17, 2012 that Plaintiff would not agree to  
18 substitute real property for the bond. (*Id.* at ¶ 10.)

### 19 B. Legal Argument

20 California Code of Civil Procedure section 128(a)(3) gives the Court power to provide  
21 for the orderly conduct of the proceedings before it, which may include issuing an order  
22 shortening time to hear certain motions. Further, the Court may make an order shortening time  
23 where good causes exists, and there is nothing in Code of Civil Procedure section 1005  
24 prohibiting the court from doing so. *Eliceche v. Federal Land Bank Ass'n.* (2002) 103  
25 Cal.App.4th 1349, 1364, 1369 (upholding order shortening notice requirements of discretionary  
26 dismissal motion). Good cause exists to grant this application for the following reasons.

1                   **1.     The Church Defendants Face Immediate Harm and Hardship if Their**  
2                   **Motion is Not Heard and Ruled on Prior to November 15, 2012.**

3           The Church Defendants face immediate harm and hardship if their motion is not heard  
4 on shortened time and ruled on by November 15, 2012. Specifically, the Church Defendants  
5 must pay the premium on the appeal bond by that date. (Egbert Decl., ¶ 9.) However, for  
6 reasons that will be fully explained in their motion, the Church Defendants have a good faith  
7 basis for believing that it is proper to substitute the Patterson, New York property for the appeal  
8 bond as security for the judgment. Those reasons include, but are not limited to (1) the  
9 exceedingly high amount of the bond and related premium, (2) the Church Defendants are  
10 permitted to recover the cost of the bond should they prevail on appeal, but they are concerned  
11 they would be unable to recover that cost from Plaintiff if, *arguendo*, they prevail on appeal;  
12 and, (3) the Church Defendants have more than adequate assets, including the Patterson, New  
13 York property, from which they could satisfy the judgment if upheld on appeal. To avoid  
14 having the Church Defendants make the payment for the appeal bond premium on November  
15 15, 2012 that they may be unable to recover, this Court should shorten the time for the Church  
16 Defendants' motion on this issue to be heard prior to that date.

17                   **2.     Plaintiff's Counsel Notified the Church Defendants on October 17, 2012 that**  
18                   **Plaintiff Would Not Stipulate to Substituting the Bond for Real Property.**

19           During the week of October 8, 2012, the Church Defendants' counsel met and conferred  
20 with Plaintiff's counsel regarding substituting the bond with real property to act as security for  
21 the judgment. (Egbert Decl., ¶ 10.) Plaintiff's counsel's initial reaction was to not so stipulate,  
22 but suggested the parties discuss the matter further the following week, after the wedding of  
23 attorney Robert J. Schnack's daughter held on October 13, 2012. (*Id.*) Thereafter, the Church  
24 Defendants' made additional meet and confer efforts on October 15 and 16, and Plaintiff's  
25 counsel responded on October 17, 2012, stating that Plaintiff would not agree to substitute real  
26 property for the appeal bond. (*Id.*) Thus, the affirmative need for a motion was not completely  
27 resolved until October 17, 2012. However, no hearing dates for a motion are available until late  
28 January 2013 – well after the bond payments begin. (*Id.* at ¶ 11.)

1           **3. Plaintiff Will Not Be Prejudiced By Shortened Notice.**

2           As discussed in section B2 above, Plaintiff was notified of the Church Defendants'  
3           desire to substitute the Patterson, New York property as security for the judgment during the  
4           week of October 8, 2012. (Egbert Decl., ¶ 10.) Thus, this issue is not new to Plaintiff or her  
5           counsel (i.e., Plaintiff was not blindsided by any improper gamesmanship; rather, the Church  
6           Defendants have been up front about their desire to substitute the bond for the real property).  
7           Further, even if the Church Defendants' motion is heard on shortened time and granted, Plaintiff  
8           will not be prejudiced because the judgment will be protected by substituting one form of surety  
9           for another. The Church Defendants' motion, even if heard on shortened time, in no way  
10          threatens the judgment for Plaintiff.

11          **C. Conclusion**

12          Based on the foregoing, the Church Defendants respectfully request the Court issue an  
13          order shortening notice of hearing on the Church Defendant's motion to substitute property for  
14          the appeal bond or, in the alternative, decrease the appeal bond, so that said motion may be  
15          heard on November 8 or 9, 2012.

16          DATED: October 18, 2012

JACKSON LEWIS LLP

17  
18          By   
19               Robert J. Schmack

Douglas M. Egbert

20               Attorneys for Defendant Watchtower Bible and  
21               Tract Society of New York, Inc.

22          DATED: October 18, 2012

23               THE McCABE LAW FIRM, APC

24          By   
25               James M. McCabe

26               Attorneys for Defendant North Congregation  
27               of Jehovah's Witnesses, Fremont, California  
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