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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MENDOCINO

MENDOCINO RAILWAY,

Plaintiff,

v.

JOHN MEYER; REDWOOD EMPIRE TITLE COMPANY OF MENDOCINO COUNTY; SHEPPARD INVESTMENTS; MARYELLEN SHEPPARD; MENDOCINO COUNTY TREASURER-TAX COLLECTOR; All other persons unknown claiming an interest in the property; and DOES 1 through 100, inclusive,

Defendants.

Case No. SCUK-CVED-2020-74939

(Assigned to Hon. Jeanine B. Nadel)

(1) PLAINTIFF'S *EX PARTE* APPLICATION FOR AN ORDER:

(A) RECALLING AND QUASHING THE RECORDED ABSTRACT OF JUDGMENT

(B) INVALIDATIN/QUASHING ANY AND ALL OTHER LIENS RECORDED AGAINST PLAINTIFF'S REAL PROPERTY;

(C) RECALLING/QUASHING THE WRIT OF EXECUTION AND NOTICE OF LEVY;

(D) STAYING ANY AND ALL FURTHER ENFORCEMENT OF THE COSTS AWARD PENDING APPEAL; AND

(E) AN AWARD OF ATTORNEYS' FEES

(2) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;

[DECLARATION OF PAUL BEARD II IN SUPPORT OF *EX PARTE* APPLICATION FILED CONCURRENTLY HEREWITH]

Date: September 21, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on September 21, 2023, Plaintiff Mendocino Railway will apply *ex parte* to this Court, located at 100 N. State St, Ukiah, CA 95482, for an order recalling/quashing the abstract of judgment, invalidating/quashing any and all other liens recorded against Plaintiff's real property, recalling/quashing Defendant's writ of execution and notice of levy, and otherwise staying further enforcement of this Court's award of costs, including attorney's fees, pending the appeal of the same. Under sections 916(a) and 917.1(d) of the Civil Procedure Code, an appeal automatically stays enforcement of a costs-only order like the order at issue here. Plaintiff also seeks recover of its attorney's fees and costs for having to bring this application, given Defendant's actions to enforce have been made in bad faith and are completely without merit. (Civ. Proc. Code § 128.5(a).)

Despite Plaintiff's admonition to Defendant's counsel on August 30 that enforcement of the costs award is automatically stayed and requesting he cease from taking any further action, he has continued to take steps to enforce the award, including by recording an abstract of judgment against Plaintiff's real property, and obtaining a writ of execution for possession of its personal property. Plaintiff's counsel has repeatedly advised Defendant's counsel that unless he ceased further enforcement efforts, Plaintiff would be compelled to apply *ex parte* for an order formalizing the automatic stay and quashing prior enforcement actions. But Defendant's counsel has persisted in his unlawful efforts. This, despite the fact that there is ***no risk*** that Plaintiff will not pay the costs award, if upheld on appeal, given that the $350,000 that Plaintiff deposited with the State Treasurer's office at the start of this action is more than enough to satisfy the award.

Before 10:00 a.m. on September 20, Defendant's counsel, Stephen Johnson, was duly notified of Plaintiff's intent to seek *ex parte* relief, consistent with the notice requirements of Local Rule 1.13 and California Rules of Court ("CRC"), Rule 3.1200, *et seq.* His information is as follows: Stephen Johnson, The Law Office of Mannon, King, Johnson & Wipf, LLP, Savings Bank Building, Suite 304, Ukiah, California 95482-0419, (707) 468-9151, Email: steve@mkjlex.com.

This application is made pursuant to Local Rule 1.13 and CRC, R. 3.1200 *et seq.* It is based on the attached Memorandum of Points and Authorities, the Declaration of Paul Beard II filed

concurrently herewith, the pleadings and papers on file herein, and such further arguments and materials as the Court may consider at the hearing on this matter.

DATED: September 20, 2023. s/ Paul Beard II
Attorneys for Plaintiff Mendocino Railway

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The same day that this Court entered an amended judgment incorporating an award of fees and costs of $265,533,50 ("costs award") to Defendant John Meyer's attorney, Stephen Johnson, Plaintiff Mendocino Railway appealed it. The filing of an appeal of a costs-only order automatically stays its enforcement. (Civ. Proc. Code §§ 916(a), 917.1(d).) Nevertheless, Mr. Johnson has taken aggressive steps to enforce the costs award, including recording an abstract of judgment, and enforcing a writ of execution for possession of the Railway's personal property.

The Railway has tried repeatedly to persuade Mr. Johnson to cease and desist, advising him that, if he did not stop, the Railway would have to seek a court order formally staying enforcement of the costs award. But despite the Railway's good-faith efforts to resolve the dispute without Court intervention, Mr. Johnson has persisted in his efforts to enforce the award out of a desire to get paid immediately. Worse, under the false pretense that he was "reviewing" the relevant legal authorities on stays and would get back to the Railway's counsel, Mr. Johnson furtively continued to take enforcement action against the Railway anyway—presumably to beat this *ex parte* application to the punch.

What makes Mr. Johnson's efforts especially perplexing is that there is no risk that the Railway would be unable to pay the costs award if it were upheld on appeal. That's because Mr. Johnson would have access to the $350,000 on deposit with the State Treasurer's office, which the Railway deposited at the start of this case. That is more than enough to satisfy the costs award. In stark contrast, if the Railway is required to pay $265,533.50 to Mr. Johnson now, and the Railway ultimately prevails, there is no guarantee of restitution.

Given the clear mandate of sections 916(a) and 917.1(d), and the ongoing enforcement actions against the Railway, the Court should immediately recall and quash the abstract of judgment, invalidate any and all liens recorded against the Railway's property, recall and quash the writ of execution and notice of levy, and stay any and all enforcement actions until the Court of Appeal issues the remittitur. The Court also should award the Railway its attorney's fees and costs under Civil Procedure Section 128.5(a).

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 22, 2023, this Court signed an order awarding Mr. Johnson $265,533,50 in fees and costs. This Court signed an Amended Judgment, incorporating the costs award into the judgment, on August 30, 2023. (Declaration of Paul Beard II (Beard Decl.), ¶ 2.)

That same day, the Railway filed and served its Notice of Appeal from the costs award. The Railway served Mr. Johnson with a copy of the Notice of Appeal at 9:00 a.m. on August 30. (*Id.*)

Despite being aware of the appeal, Mr. Johnson took immediate steps to enforce the costs award. At 2:52 p.m. on August 30, his office served the Railway a copy of the abstract of judgment that he had requested and that the Court Clerk had issued. Within the hour, the Railway's counsel wrote Mr. Johnson, explaining the impropriety of pursuing enforcement of a stayed order:

> We are in receipt of your application for abstract of judgment.
>
> As you know, this morning, we filed our appeal from the fees/costs order. An appeal stays proceedings in the trial court upon the judgment or order appealed from including enforcement of the judgment or order. (*Quiles v. Parent* (2017) 10 Cal.App.5th 130, 136; *Chapala Management Corp. v. Stanton* (2010) 186 Cal.App.4th 1532, 1546.) This includes attempts to secure and record an abstract of judgment. I am attaching a recent superior court decision that discusses this issue in a similar context as this case and cites relevant precedents. Your application for abstract of judgment is improper.
>
> If you have authorities to the contrary, we'd be happy to review them. Otherwise, please confirm ASAP that you will withdraw/recall your application for abstract of judgment so that we are not required to appear *ex parte* for an order to recall and quash.

(*Id.*, ¶ 3 & Exh. 1, p.3.)

In response, and later that same day (August 30), Mr. Johnson stated: "I will review the matter and get back to you tomorrow" (i.e., on August 31). Hearing nothing by 4:00 p.m. on August 31, the Railway's counsel followed up with Mr. Johnson to see where he stood on the issue, to which he responded: "I have not had an opportunity to properly evaluate the issue. I will get back to you on Tuesday with a response." When asked whether he would, "at a minimum, have the clerk hold the request [for an abstract of judgment] pending resolution of this issue," Mr. Johnson punted: "I am leaving right now, and I, along with most of my staff, are out of the office tomorrow. I will get back to you on Tuesday, have a nice weekend!" (*Id.*, Exh. 1, pp. 1-2.)

In the meantime, the Railway would later learn, Mr. Johnson and his staff were working furiously behind the scenes to enforce the costs award against the Railway.

During the period when Mr. Johnson claimed he was "evaluat[ing] the issue" of whether enforcement of the costs order was stayed, he asked the County Clerk to record the abstract of judgment he had obtained from the Court. The abstract of judgment was recorded on September 5, at 9:08 a.m. (*Id.*, ¶ 4 & Exh. 2.) Later that day, Mr. Johnson left a voicemail with the Railway's counsel, and they finally connected on September 7. It was at that time that Mr. Johnson informed the Railway's counsel that he did not believe that the Railway's appeal automatically stayed enforcement of his costs award. Mr. Johnson made no mention of the September 5 recording of the abstract of judgment against the Railway's property. And he made no mention that he had already requested issuance of a writ of execution for possession of the Railway's personal property, which the Court Clerk issued on September 7. (*Id.*, ¶ 5 & Exh. 3.)

The Railway stumbled on the issued writ of execution ***eight days later***, on September 15, while reviewing this Court's online docket to verify the filing of the Railway's Notice Designating Record for its merits appeal. (*Id.*, ¶ 5.) The writ of execution states:

> The Levying Officer shall place a keeper at Mendocino Railway's Skunk Train depot located at 100 West Laurel Street, Fort Bragg, CA 95437. The keeper shall take custody of the proceeds from all sales and take possession of all money in the cash register or other "tills" located on the premises for 10 days from the time the keeper is placed in the business. Business hours are 9:30 AM to 1:00PM each day, except Tuesday.

(*Id.*, Exh. 3.)

In the September 7 call, Mr. Johnson promised to send the Railway's counsel legal authorities for his view that he could immediately enforce the costs award. By email dated September 8, Mr. Johnson cited an anti-SLAPP case out of the Fourth District Court of Appeal, *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, for the proposition that his fees and costs are so-called "non-routine" costs—and therefore not subject to the automatic stay—because they are based on a statute that awards costs to a successful defendant, but not a successful plaintiff. (*Id.*, ¶ 6.)

On September 10, the Railway's counsel responded by email, explaining how, in 2017, the ***same*** Fourth District Court of Appeal—in *Quiles*, 10 Cal.App.5th 130—rejected the analysis in *Dowling*, holding that the "automatic stay" provisions of state law do ***not*** distinguish between so-

called "routine" and "nonroutine" costs. Again, the Railway warned against further efforts to enforce the stayed costs award. (*Id.*)

Mr. Johnson did not respond—and has not responded—to the September 10 email. Instead, he has continued to take steps to enforce the costs award. (*Id.*, ¶ 7.)

Most recently, on September 18, the Railway received a "Notice of Involuntary Lien" from the County of Mendocino, stating that the abstract of judgment had been recorded against the Railway's real property at Mr. Johnson's request. Also on September 18, the Railway received a "Notice of Levy" from a Levying Officer, demanding—again, at Mr. Johnson's behest—possession of all the Railway's deposit accounts. Mr. Johnson did not serve either of these documents on the Railway or its counsel or, at a minimum, notify Railway's counsel that he was proceeding with enforcement. (*Id.*, ¶ 8 & Exh. 5.)

The foregoing enforcement actions pose an immediate and irreparable threat to the Railway. The recorded abstract of judgment creates a lien on the Railway's real property. (*Longview Internat., Inc. v. Stirling* (2019) 35 Cal.App.5th 985, 988 ("A judgment lien on real property is created by recording an abstract of a money judgment with the county recorder.").) The lien creates a harmful encumbrance and cloud on title. (*RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 423 (observing that a lien on real property can "cloud the owner's title for the years necessary to litigate the claim or force the owner to pay the claim even though it is disputed).) The same is true of the writ of execution, which—if allowed to be enforced—will threaten the Railway's valid interests in its personal property and will disrupt its operations. As noted above, there is no guarantee of restitution of the funds, if the Railway prevails on appeal.

Given the foregoing actions by Mr. Johnson, the Railway is compelled to seek *ex parte* relief from the unlawfully recorded abstract of judgment, the unlawful writ of execution and notice of levy, and any other past and future efforts to unlawfully enforce the costs award in violation of the automatic stay.

III. ARGUMENT

A. Enforcement of Mr. Johnson's Costs Is Automatically Stayed Pending Appeal

Section 916 of the Code of Civil Procedure states the general rule that an appeal automatically

stays enforcement of the appealed judgment or order:

> "[T]he perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, ***including enforcement of the judgment or order***, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.

(Code of Civil Proc. § 916 (emphasis added).)

An exception to the "automatic stay" rule applies to (1) judgements and orders for "[m]oney or the payment of money," and (2) costs awarded pursuant to section 998 or 1141.21 of the Code of Civil Procedure "which otherwise would not have been awarded as costs pursuant to Section 1033.5" of the same. (*Id.* § 917.1(a)(1)-(3).) In those instances—which are not applicable here—the perfecting of an appeal ***can*** stay enforcement, but the stay is not automatic; the appellant must first give an "undertaking." (*Id.* § 917.1(a).)

But the law treats costs-only judgments and orders specially. Section 917.1(d) provides that "no undertaking shall be required . . . solely for costs awarded under Chapter 5 (commencing with section 1021) of Title 14." (*Id.* § 917.1(d).) The upshot is that an award solely of costs is subject to the general "automatic stay" rule: Perfecting an appeal ***automatically*** stays its enforcement; in other words, enforcement is stayed without the appellant having to give an undertaking. (*Id.*)

Mr. Johnson's costs award is squarely subject to the general "automatic stay" rule. Enforcement of that award was automatically stayed upon the Railway's perfecting of its appeal on August 30, and no undertaking was (or is) required to effectuate that stay.

First, Mr. Johnson's costs were awarded pursuant to section 1033.5, not section 998 or 1141.21. Section 1033.5 allows a prevailing party to recover a variety of costs, including "[a]ttorney's fees, when authorized by . . . [s]tatute." (Civ. Proc. Code § 1033.5(a)(10)(B). (*Quiles*, 10 Cal.App.5th at 146 ("Clearly, attorney fees authorized by statute are allowable as costs under section 1033.5, subdivision (a)(10)(B)."). In this case, the statute upon which Mr. Johnson relied to obtain his fees was section 1268.610 of the Code of Civil Procedure.

Second, Mr. Johnson's is a costs-only award made pursuant to section 1033.5. Thus, its enforcement is automatically stayed upon the perfecting of an appeal without the need to give an undertaking. (Civ. Proc. Code § 917.1(d).) "Since the appeal is limited to the order awarding costs,

including attorney's fees, it is within the exclusion of the final provision of section 917.1, subdivision (d)," and "that provision eliminates the requirement of an undertaking when the appeal is solely from an award of costs." (*Ziello v. Superior Court* (1999) 75 Cal.App.4th 651, 655.)

Given the August 30 stay of enforcement, the subsequent issuance and recording of the abstract of judgment, and the issuance of the writ of execution and notice of levy, all violate that automatic stay, and therefore must be quashed and invalidated. (*Ziello*, 75 Cal.App.4th at 654, 656 (affirming trial court's "*ex parte* order recalling and quashing the writ of execution).) Further, given Mr. Johnson's refusal to acknowledge the automatic stay, a court order is needed to formalize the stay.

B. Mr. Johnson's Reliance on *Dowling* Is Misplaced

In arguing for his right to enforce his costs award, Mr. Johnson has thus far pointed to just one decision from 2001: *Dowling*, 85 Cal.App.4th 1400. In *Dowling*, the Court of Appeal considered whether an undertaking was required to stay the enforcement of a judgment for attorney's fees and costs awarded to a prevailing defendant under the anti-SLAPP statute—specifically, Code of Civil Procedure section 425.16(c)(1). (*Id.* at 1432.) The court held that the award was for the payment of money so as to require an undertaking to stay enforcement under section 917.1(a)(1). (*Id.*) The court also held that the award could not "be construed as an award of routine or incidental costs subject to the automatic stay rule" under section 917.1(d); rather, the award was for "discretionary" or "non-routine" costs subject to the undertaking requirement. (*Id.* at 1430, 143)

But the "stay" statutes nowhere distinguish between "routine" and "nonroutine" costs. In drawing that distinction, the *Dowling* court relied principally on a 1992 Supreme Court decision—*Bank of San Pedro v. Super. Ct.* (1992) 3 Cal.4th 797—that had been ***superseded*** by the Legislature's 1993 amendments to the "stay" statutes. (*Quiles*, 10 Cal.App.5th at 144 ("By way of the 1993 amendments, the Legislature made it possible to apply the law in this area by determining, simply enough, whether the costs at issue are awarded pursuant to sections 1021 to 1038. . . . [M]uch of the specific analysis and rationale of *Bank of San Pedro* was superseded by 1993 amendments to the Code of Civil Procedure.").) In other words, *Dowling*'s "routine/nonroutine costs" distinction rested on a faulty foundation.

Regardless, the *Dowling* court proffered two reasons for its holding. First, it noted that the anti-SLAPP provision authorizing fees and costs (section 425.16(c)) is not reciprocal: it authorizes only the SLAPP *defendant* to recover fees after prevailing on a special motion to strike; a *plaintiff* is not entitled to fees unless the plaintiff can show the defendant's motion was frivolous or solely intended to cause unnecessary delay. (*Id.* at 1432-33.) That made the award "nonroutine." Second, the court looked to the legislative intent "to provide SLAPP defendants an efficient tool to quickly and inexpensively unmask and defeat SLAPP suits." (*Id.* at 1433.) The court reasoned that "the Legislature intended to deter SLAPP litigation not only at the trial court level, but also in the appellate courts in order to protect the proper exercise of First Amendment rights." In the court's review, "[r]equiring a SLAPP plaintiff who appeals from an adverse judgment under the anti-SLAPP statute to give an undertaking to stay enforcement of the portion of the judgment awarding reasonable attorneys fees and costs to the prevailing defendant under section 425.16, subdivision (c), will promote meritorious appeals, and will deter continued SLAPP litigation at the appellate level." (*Id.* at 1433–1434.)

Setting aside that *Dowling* was decided in the unique anti-SLAPP context, it has since been repudiated. Rendered in 2001 by the Fourth District Court of Appeal, *Dowling*'s analysis and holding were rejected by a more recent and better-reasoned decision of the ***same*** Court of Appeal. In *Quiles*, 10 Cal.App.5th 130, the court considered whether an appeal automatically stayed (i.e., with no undertaking) attorney's fees and costs awarded under a federal statute and federal case law. The court answered in the affirmative. (*Id.* at 148.)

The court undertook a sweeping review of the history and purposes of the "stay" statutes, including the 1993 amendments. (*Id.* at 137-45.) The court concluded that, since those 1993 amendments, there has been no basis in the statutes or otherwise for the distinction between "routine" and "non-routine" costs—thereby repudiating *Dowling*. The court held:

> "The current statute does not state that the [automatic-stay] rule applies only to 'routine' costs. The current statute does not state that the rule applies only to awards of costs that are mandatory, nondiscretionary, and/or reciprocal. Instead, the current statute states that 'no undertaking shall be required . . . solely for costs awarded' under section 1021 et seq. (§ 917.1, subd. (d). As suggested by the analysis above, there are many categories of costs referenced in sections 1021 to 1038 that are

> nonroutine, discretionary, and/or nonreciprocal. (See, e.g., § 1021.5 [discretionary, nonreciprocal attorney fee authorization for public interest litigation based on complicated multifactor test], § 1038 [nonreciprocal payment of defense costs, including attorney fees and expert witness fees, when plaintiff brings Government Claims Act action in bad faith].)"

(*Id.* at 144.)

As the court saw it, "[a] cost is a cost, unless specifically excepted in section 917.1, subdivision (a)." (*Id.* at 148; *see also id.* at 144 ("By way of the 1993 amendments, the Legislature made it possible to apply the law in this area by determining, simply enough, whether the costs at issue are awarded pursuant to sections 1021 to 1038.").) For the court, the parties were wrong to "focus[] on the routine/nonroutine dichotomy," as "our concern is whether the attorney fees and other costs were awarded under sections 1021 to 1038." (*Id.* at 145.)

The court in *Quiles* clearly rejected the analysis in *Dowling*, which rested on an antiquated, atextual distinction between "routine" and "nonroutine" costs and which seems to have ignored the 1993 amendments. *Quiles* is of more recent vintage and is far better reasoned, largely because it is based on the plain meaning of the "stay" statutes. The Court should enforce the statutorily mandated "automatic stay" rule following the reasoning of *Quiles*.

But even if *Dowling* were persuasive authority, it would not change the outcome here. Like the anti-SLAPP statute, section 1268.610 (the statute authorizing Mr. Johnson's fees) is "non-reciprocal" in that only a prevailing *defendant* in an eminent-domain action is entitled to "litigation expenses." (Civ. Proc. Code § 1268.610(a).) But the similarities end there; important differences separate Mr. Johnson's award from the award at issue in *Dowling*.

Unlike the anti-SLAPP statute in *Dowling*, section 1268.610 awards litigation expenses as a matter of right. And, unlike the anti-SLAPP statute, section 1268.610 gives the trial court no discretion in granting or denying such fees: "[T]he court ***shall*** award the defendant his or her litigation fees" when the defendant prevails. (*Id.* (emphasis added); *cf. id.* § 425.16(c)(1) (making fee award to prevailing plaintiff effectively discretionary).) Given these differences, the costs awarded to Mr. Johnson could, even by the *Dowling* panel's lights, be characterized as "routine" and therefore subject to the "automatic stay" rule. (*See Chapala Mngmt. Corp. v. Stanton* (2010) 186 Cal.App.4th 1532, 1546 (distinguishing *Dowling* on similar grounds to conclude that the "judgment for attorney fees is

automatically stayed pending any appeal on grounds the attorney fees awarded are a routine or incidental item of costs, awarded as a matter of right to the prevailing party").)

Finally, the court's decision in *Dowling* was driven in large part by the unique legislative purpose of the anti-SLAPP statute—namely, to deter appellate litigation and fully protect the SLAPP defendant's First Amendment rights by requiring the unsuccessful SLAPP plaintiff to give an undertaking to secure a stay of enforcement of the defendant's award. (*Dowling*, 85 Cal.App.4th at 1433-44.) Here, no such legislative purpose militates against the automatic stay of enforcement of Mr. Johnson's award. At best, *Dowling*'s analysis and holding are properly limited to the unique world of anti-SLAPP litigation.

C. Requiring an Undertaking Would Be Improper

The Court should not require an undertaking as the precondition of formalizing a stay of enforcement, or of quashing the abstract of judgment, writ of execution, and any other lien pursued by Mr. Johnson. First, Meyer has not sought an undertaking—and rightly so. His costs award is clearly subject to the "automatic stay" rule, meaning no undertaking is required.

Second, this is not a situation where "the costs judgment is large or the danger of asset dissipation is acute," such that the Court must "mitigate any injustices arising from the costs-only judgment rule." (*Quiles*, 10 Cal.App.5th at 145.) As shown at trial, the Railway is a well-established, financially-sound concern with significant real-estate holdings and assets throughout the County.

Finally, Mr. Johnson is fully protected against the risk of nonpayment of his costs award (if it is upheld on appeal). On December 22, 2020, the Railway filed in this Court a Notice of Deposit, stating that it had made a $350,000 "deposit of probable compensation" for Plaintiff Meyer's property, and that the deposit is with the State Treasurer's office. The funds will remain on deposit with the Treasurer's office, available to Mr. Johnson if his costs award is affirmed. The funds would easily cover his costs. On the other hand, the Railway has no similar protection if forced to pay Mr. Johnson his costs award now, as there is no guarantee of restitution should the Railway prevail on appeal.

D. The Court Should Award the Railway Its Reasonable Expenses

Under section 128.5(a) of the Code of Civil Procedure, a "trial court may order a party, the

party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." Under section 128.5(b)(2), "frivolous" means "totally and completely without merit or for the sole purpose of harassing an opposing party."

Here, Mr. Johnson has pursued unlawful enforcement of a stayed order despite being repeatedly advised by the Railway's counsel of the law on automatic stays. Even during discussions about the propriety of enforcing his costs award, he led the Railway to believe he was genuinely "looking into" the issue, without disclosing that he was continuing his enforcement efforts. Mr. Johnson's actions have been in bad faith—and, as demonstrated above, totally and completely without merit. (Beard Decl., ¶ 10.)

The Railway's counsel has expended 15 hours researching and drafting this application and supporting documents. At $550 per hour, the Railway has incurred $8,255.50. In addition, the Railway incurred a filing fee of $60 to file the application. Thus, the Court should award $8,315.50 in reasonable expenses. (*Id.*, ¶ 11.)

IV. CONCLUSION

Mr. Johnson's costs award is subject to the "automatic stay" rule. Enforcement was stayed effective August 30, when the Railway appealed the costs order. All liens, writs, and other enforcement actions taken after that date are invalid and should be quashed.

Accordingly, the Court should issue an order: (1) recalling/quashing the recorded abstract of judgment against the Railway's real property; (2) invalidating any and all other liens that may have been recorded against said property; (3) recalling/quashing the writ of execution and notice of levy issued against the Railway's personal property; (4) staying any and all further enforcement of the costs award until such time that the Court of Appeal issues the remittitur in this case; and (5) awarding the Railway its reasonable expenses, including attorney's fees, for having to make this application.

DATED: September 20, 2023.

s/ Paul Beard II
Attorneys for Plaintiff MENDOCINO RAILWAY