

COME NOW Defendants, Idaho Department of Correction, Josh Tewalt, Bree Derrick, and Al Ramirez, by and through undersigned counsel of record, Moore, Elia & Kraft, LLP, and Defendants Corizon, LLC and Scott Eliason, by and through their undersigned counsel of record, Parsons Behle & Latimer, and hereby submit this Joint Reply in Support of Defendants' Motion to Stay the attorneys' fees and expenses judgment¹ without bond pending Defendants' appeal (See Dkts. 338 and 340).

INTRODUCTION

Plaintiff's opposition to Defendants' Motion to Stay misrepresents Defendants' positions² and makes irrelevant and inaccurate assertions. Largely ignoring the grounds for a stay and bond waiver raised by Defendants, Plaintiff's opposition instead focused on an alleged contractual agreement between IDOC and Corizon and Corizon's alleged corporate restructuring, both of which are irrelevant to Defendants' motion. It is disingenuous for Plaintiff to assert that Defendants are engaging in "delay" and "obstruction" tactics by seeking an appeal of the substantial \$2.63 million attorneys' fee award and seeking a stay of execution. Plaintiff's counsel should know that appeal rights are fundamental to the legal system in this country. Defendants also have the right under the law to seek a stay of execution as well as an adjustment to or waiver of the bond requirement. Indeed, "there can be no certainty about who is in the right until the appeals are done."

¹ The \$2.63 million attorneys' fees and expenses award may be referred to as attorneys' fees/expenses award or judgment in this brief.

² For example, Plaintiff states that Corizon's joinder to the stay motion is "based *solely* on the rationale that the State of Idaho is solvent[.]" Dkt. 341, p. 1 (emphasis in the original). This statement is plainly false. In their joinder, Corizon Defendants adopted arguments advanced by IDOC's arguments and made additional arguments, only one of which was IDOC's solvency. *See generally* Dkt. 340. Additionally, Defendants have not asked the Court to "bypass posting an appeal bond expressly in order to pressure Plaintiff to settle for a lesser payment through the mediation process." Dkt. 341, p. 3. Rather, Defendants have legitimate legal and factual arguments to support a stay without a bond.

Exxon Valdez v. Exxon Mobil, 568 F.3d 1077, 1084 (9th Cir. 2009). To suggest or imply that Defendants are acting in bad faith by availing themselves of these rights is completely inappropriate.

Finally, notably, Plaintiff seeks relief that is not only inappropriate to seek as part of an opposition to a motion filed by an opposing party, but which the Court does not have authority to grant. Plaintiff expressly asks the Court to “order” Defendants to either pay the judgment or post an appeal bond for at least 133% of the awarded amount. The Court, for example, does not have the authority to force Defendants to post a bond and, as contended by Defendants, no such bond is warranted here.³

I. Any Contractual and/or Indemnity Agreements between IDOC and Corizon are Irrelevant

Plaintiff points to unfounded concerns that defendants won't pay, where the real concern should be how hard, and haphazardly, Plaintiff is pushing to collect on a judgment that is pending on appeal. Indeed, Plaintiff and her counsel sought a judgment and writ of execution against dismissed Defendants and made no effort on their part to correct that significant mistake. Rather, it was rightly corrected by the court after Defendants objected. Moreover, Plaintiff argues Defendants want a stay to force plaintiff to agree to settle for less than the judgment. But, to the contrary, plaintiff wants to collect the entire award now, without recognizing Defendants' right to appeal even though there is risk that judgment may be reduced substantially.

³ A specific bond amount is not at issue in Defendants' motion to stay. Nevertheless, it must be noted that Plaintiff provides no support, evidence, or basis to support a bond in the amount of a 133% of the judgment; in other words, there is no specific support to justify the posting of 33% over the judgment pending appeal. Indeed, such is unreasonable. Generally stating there will be costs on appeal is insufficient to specifically correlate with such a 33% increase.

Plaintiff raises the issue of an indemnity agreement between IDOC and Corizon to suggest that IDOC does not intend to pay. First, this alleged agreement was not raised by IDOC or Corizon, and it has no relevance to the arguments made by Defendants in support of a stay and bond waiver. Moreover, whatever indemnity agreements may exist between the defendants has no impact on Plaintiff's *ability* to collect against Defendants (as further discussed below).⁴ One defendant's desire to pay has no relevance to a plaintiff's legal right to collect on an award that applies to all defendants.

II. Plaintiff's Assertions Regarding Corizon Restructuring Are Incomplete, Inaccurate, and Irrelevant

Plaintiff relies upon hearsay and incomplete information in order to make assumptions about the current corporate structure and status of Corizon. Corizon's current corporate structure is not relevant to any of the arguments raised by IDOC and Corizon Defendants in support of a stay and bond waiver. Plaintiff's counsel spends a tremendous amount of time in their response speculating about Corizon's corporate organization, if it has connection to other companies, such as YesCare and the Flacks Group, and how that may affect Corizon's ability to pay.⁵ But IDOC Defendants did not address this issue in its motion and neither did Corizon in its joinder. Indeed, Corizon did not address its ability to pay or not pay in its filings. Accordingly, the issue of

⁴ While IDOC Defendants take the position that Corizon Defendants are ultimately responsible for the judgment through indemnification agreements, such does not affect Plaintiff's ability to collect from the State at which point the State then address Corizon's obligations separately.

⁵ When one cuts through all the smoke and mirrors and red herrings Plaintiff's tries to insert in her briefing regarding Corizon, it is still difficult to understand what Plaintiff is arguing. Is Plaintiff trying to argue Corizon is solvent because of alleged connections to other companies? Or, are they trying to argue Corizon is insolvent and there is concern of bankruptcy? Elements of both of these arguments seem to appear in Plaintiff's briefing. However, either way, Plaintiff fails to recognize that solvency, as well as insolvency, are arguments that support a stay without a bond. *E.g. see Dixon v. City of Coeur d'Alene*, No. 2:10-CV-00078-LMB, 2011 WL 13137320 at * 2-3 (internal quotations omitted)(holding "[a] waiver of the bond requirement may be appropriate where: (1) the defendant's ability to pay the judgment is so plain that the cost of the bond would be a waste of money; and (2) the opposite case, where the requirement would put the defendant's other creditors in undue jeopardy.")

Corizon's finances (and all of Plaintiff's arguments and assertions in this regard) should be stricken and not considered because it is not an issue before the court. Additionally, Plaintiff's speculation is not supported by actual evidence; rather, Plaintiff's counsel relies on their own self-serving declaration and citations to new articles and websites, some of which were published over two years ago, and which lack foundation and are hearsay, among other things.

Additionally, Plaintiff's counsel unfairly suggests that Corizon has not represented it will pay, thereby apparently asking the court to draw the inference that it will not pay. In essence, plaintiff's counsel is arguing guilt by omission because it was not asserted or argued in the briefing. Such an argument is disingenuous in many respects. Primarily, though, such an argument is unfair because Corizon is put in a position of not being able to defend itself because of settlement negotiation protections. Plaintiff's counsel acknowledges that there have been recent settlement talks about the Court's judgment. But Corizon expects that such settlement conversations are confidential, including under Rule of Evidence 408. Therefore, if Corizon's actions to date suggest they are willing to pay, such as by making substantial settlement offers to try to resolve the judgment, such discussions or offers cannot be discussed here because they are confidential. Accordingly, plaintiff's unfair and twisted argument should be disregarded by the court.

III. Rule 62(f) and Property Lien Issue

Federal Rule of Civil Procedure 62(f) applies when "a judgment **is a lien** on the judgment debtor's property under the law of the state where the court is located." F.R.C.P. 62(f) (emphasis added). Rule 62(f) does not state that it applies only when "a judgment is a *recorded* and/or *perfected* lien upon a judgment debtor's *real* property." Nor does Rule 62(f) state that it applies only when "a judgment is a statutory judgment lien." Plaintiff would have the Court read these limitations into the plain language of Rule 62, when the rule, itself, directs the analysis to Idaho

law. Plainly: “a lien is a charge imposed...upon specific property by which it is made security for the performance of an act.” Idaho Code Section 45-101. Further, in Idaho, liens do not need to be recorded. In *Kalange v. Rencher*, 136 Idaho 192, the plaintiff argued that the defendant’s “knowledge was sufficient to put him on notice of the unrecorded 1991 security interest and to give [plaintiff’s] unrecorded liens priority over [defendant’s] recorded interest. *Kalange*, 136 Idaho at 197. The Idaho Supreme Court noted that:

We have...held that actual knowledge of a prior encumbrance by a subsequent purchaser or mortgagee renders his interest inferior to that encumbrance though not recorded.

Id. (citing *Treasure Valley Bank v. Butcher*, 117 Idaho 974, 793 P.2d 206 (1990) and *Farm Bureau Fin. Co., Inc. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980))(emphasis added).

Idaho Code Section 11-104 reads: “when the Judgment is for money...the same may be enforced by a writ of execution.” Idaho Code Section 11-104. As such, when a judgment is for money and is issued by the Court, it may be enforced against the specific property—money—of a judgment debtor. The purpose behind requiring a bond on appeal is plain: judgment creditors must be afforded security while judgment debtors appeal. See, e.g. *Castillo v. Montelepre, Inc.*, 999 F.2d 931, 941–42 (5th Cir. 1993). In Idaho, a party that possesses a judgment for money has just such a security that can be enforced—that party has a lien. Further, if a person attempts to record a security interest in the “money” or “property” of the judgment debtor after the judgment has been entered *and* that person has actual knowledge of the judgment, that judgment can be considered a senior security.

Here, Plaintiff possesses “a charge imposed...upon specific property by which it is made security for the performance of an act.” Specifically, Plaintiff possesses a charge imposed upon Defendants’ properties for the payment of the award of attorneys’ fees. Defendants acknowledge

that a judgment can be recorded in order to create a statutory judgment lien in a judgment debtor's real property. See Idaho Code Section 10-1110. However, the plain language of Rule 62 does not limit its application to any particular type or variety of lien, and, because Rule 62 is not ambiguous, it should be enforced as written. That the purposes of Rule 62 are satisfied in this case—meaning that Plaintiff possesses sufficient security in any potential judgment moving forward—is even more clear in light of IDOC's solvency, as discussed below. Nonetheless, the plain language of Rule 62(f) is satisfied and the Court should enter a stay without bond.

IV. IDOC's Solvency⁶

As Plaintiff herself recognizes, the core purpose underlying the supersedeas bond requirement is to protect against the risk that the judgment (whatever that amount ends up being) will become “uncollectible” after the appeal. Dkt. 341, pp. 6-7. In opposing Defendants' stay motion, Plaintiff does not deny that the State is solvent⁷ or that she can collect from the State.⁸ Rather, Plaintiff's argument appears to be that the State should pay now, rather than later, because it would simply be a “minor inconvenience” to post a supersedeas bond.

For starters, Plaintiff provides no evidence that it would be a mere inconvenience and, to the contrary, IDOC has pointed out how tying up taxpayer money pending an appeal is against public interest and policy. Dkt. 338-2, p. 13. More importantly, Plaintiff does not dispute that

⁶ IDOC Defendants join and support Corizon Defendants arguments regarding the State's solvency supporting a stay without a bond, including the arguments in this section.

⁷ Plaintiff further does not dispute that the State of Idaho is the backstop for collecting against IDOC Defendants in this case. Nevertheless, I.C. Section 20-21 specifically provides, for example, that the department of correction, a defendant in this case, is an executive department of the State of Idaho government.

⁸ Indeed, Plaintiff's counsel has already started making efforts to collect against the State through a marshal.

collecting against the solvent State is a viable option after the appeal.⁹ Accordingly, there is no need for a bond pending Defendants' appeal as there is no risk the judgment will become uncollectible after the appeal process.

The case law in support of Plaintiff's argument that a solvent state must pay a supersedeas bond because it is only a "minor inconvenience" is scant.¹⁰ Plaintiff relies primarily on a single case from this district, *Balla v. Idaho State Bd. Of Correction*, No. 1: CV 81-1165-BLW, 2010 WL 3001442 (D. Idaho July 28, 2010). The ruling in that case, which is not binding, was related to a truly unique case that had been pending in various forms since the 1980's. Moreover, after the *Balla* ruling, this district court issued rulings in other cases applying different factors than were applied in *Balla*, including at least one decision finding that a solvent government entity was not required to post a supersedeas bond. *Dixon v. City of Coeur d'Alene*, No. 2:10-CV-00078-LMB, 2011 WL 13137320, at *2-3 (D. Idaho Dec. 19, 2011) (granting defendant City of Coeur d'Alene's motion to waive bond based upon adequate assurances that the city was solvent and would be able to satisfy the judgment, if necessary, at the conclusion of the appeal).

Plaintiff cites to three nonbinding cases from other jurisdictions in support of the contention that a bond is necessary despite IDOC's undisputed solvency. Each case is distinguishable. In *Mueller v. Department of Public Safety*, No. 17-00571 HG-WRP, 2022 WL 614983, at *4 (D.

⁹ Plaintiff claims that it would be a substantial collection process, but provides no specific evidence as to why it would be overly difficult to collect against the State. In any event, Plaintiff admits she can collect against the State after the appeal process is complete.

¹⁰ This *Balla* ruling cites to a U.S. Eastern District of Michigan decision for the "minor inconvenience" reference. But, this Michigan case provides no citation to any case or other law to support that if posting a bond is a "minor inconvenience," such is an appropriate consideration for whether to require a supersedeas bond. *O'Callaghan v. SPX Corp.*, 2010 WL 299497 * 1. Additionally, *O'Callaghan* is distinguishable because it addressed a corporation, not a solvent State. Moreover, *O'Callaghan*, in addition to addressing solvency arguments, it also appears to mention insolvency arguments, i.e. that there had been a dramatic demise of corporations, such as GM and Chrysler. But, the *O'Callaghan* court does not make a finding one way or another regarding the SPX Corporation's solvency and fails to recognize that solvency as well as insolvency supports staying a judgment without a bond.

Hawai’I Mar. 2, 2022), the court concluded that the state “provided no evidence” in support of its claim that it is able to pay the judgment. The court also referenced “the sanctionable conduct by the State’s counsel during trial” supporting the need for a supersedeas conduct. *Id.* Here, defense counsel has never engaged in sanctionable conduct, and evidence has been presented establishing that the State is clearly solvent and has the ability to pay. Whether the State *wants* to pay is a different matter entirely and not part of the *Dillon* factors to be analyzed. *See Dillon v. City of Chicago*, 866 F.2d, 904-05 (7th Cir. 1988) (stating that one factor is “whether the defendant’s ability to pay the judgment is so plain that the cost of a bond would be a waste of money”) (emphasis added).

In *Parkcrest Builders, LLC v. Hous. Auth. Of New Orleans*, No. 15-1533 c/w 16-14118, 16-15849, 2018 WL 6267285, at *3 (E.D. La. Nov. 30, 2018), the government entity (housing authority) at issue was funded by the federal government, not by the state. Additionally, the procedural history and underlying facts were complicated and unique, including facts and arguments related to the housing authority’s inability to pay the judgment based in part on that fact that “its hands [were] tied by regulation,” funds had not been appropriated by the Legislature, and because the housing authority had repeatedly failed to provide assurance that the judgment would be satisfied despite being given multiple opportunities to do so. *Id.* Unlike in *Parkcrest*, Plaintiff has presented no evidence or any serious challenge to the State’s solvency and ability to pay the judgment.

Finally, in *Paeste v. Guam*, No. 11-0008-CBM, 2014 WL 12725108, at *4 (D. Guam May 28, 2014), the court dismisses the solvency argument because “[t]his entire case is about the Government of Guam’s willingness to timely pay its obligations,” and the government had “raised baseless arguments in its present attempts to avoid paying Plaintiffs, including Defendants’

assertions that the Court lacks subject matter jurisdiction over this case and that writs of execution against the Government are forbidden as a matter of law.” *Id.* As a result, the court was “not persuaded” that timely payment would be made if Defendants lost their appeal. *Id.* Here, unlike in *Paeste*, the entire case is not about the State’s willingness to timely pay its obligations. Rather, Defendants are simply seeking a stay of execution without a bond pending the appeal of the court’s attorneys’ fee award. Again, Plaintiff has presented no evidence or any serious argument that IDOC does not have the ability to pay.

In contrast to *Balla* and the distinguishable cases discussed above, there is a strong body of case law across multiple jurisdictions (in addition to this court’s *Dixon* ruling) that supports waiving the bond requirement in situations involving solvent government entities. *See, e.g., Manriquez v. Vangilder*, 16-cv-01320-HSG, 2021 WL 1749915, at *2 (N.D. Cal. May 4, 2021) (granting motion to stay and waiving bond requirement, finding that the State’s ability to pay the award is so plain that the cost of bond would be a waste of money); *Lewis v. County of San Diego*, 13-CV-02818-H-JMA, 2018 WL 1071704 (S.D. Cal. Feb. 27, 2018) (granting motion to stay and waiving bond requirement, concluding that “the County has funds available to pay the judgment and that, given the County’s evident ability to pay, the cost of a bond would be a waste of money); *Pauma Band of Luiseno Mission Indians of Pauma and Yuima Reservation v. California*, 3:09-CV-1955-CAB-MDD, 2014 WL 12669557, at *3 (S.D. Cal. Aug. 28, 2014) (granting motion to stay and waive bond and finding that “the State’s ability to pay the judgment is so plain that the cost of bond would be a waste of money”) (citing *Olympia Equip. Leassing, Co. v. W. Union Tel. Co.*, 786 F.2d 794, 796 (7th Cir. 1986)); *Grant v. Lockett*, No. 5:15-cv-0445 (DNH/TWD), 2019 WL 1872967, at *4-5 (N.D.N.Y. Apr. 26, 2019) (“Given the fact that the City of Syracuse is a solvent municipal with good credit ratings, it has established that it will have the ability to pay the

Judgments to plaintiffs if and when the Judgments are affirmed on appeal...requiring defendants to provide a supersedeas bond at this point would represent a waste of money that would be borne by the taxpayers.”); *Cayuga Indian Nation of New York v. Pataki*, 188 F.Supp.2d 223, 255 (N.D.N.Y. 2002) (“Given its status as a ‘sovereign taxing authority’...the court is confident in the State’s ability to pay the judgment herein.”); *Ortiz v. New York City Housing Authority*, 22 F. Supp. 2d 15, 40 (E.D.N.Y. 1998) (granting motion for stay of execution with waiver of supersedeas bond because, among other reasons, as a government subdivision, the City Housing Authority had “ample means” to satisfy the judgment); *River Oaks Marine Inc. v. Town of Grand Island*, No. 89-CV-1016S, 1992 WL 406813, at *2 (W.D.N.Y. Dec. 10, 1992) (granting motion to stay execution of judgment without posting a bond or obtaining other security because, among other things, defendant was a municipal corporation); *Easter House v. State of Illinois Department of Children and Family Services*, 645 F. Supp. 107, 108 (N.D. Ill. 1986) (reasoning that the federal court would not be showing respect for the dignity and interests of the state by requiring it to post a supersedeas bond when Plaintiff did not seriously challenge the state’s ability to satisfy the judgment).

V. Plaintiff Concedes that a Stay of Judgment Against IDOC Defendants without a Bond Should Operate as a Stay As to All Defendants.

In its Joinder, Corizon Defendants contended that a stay of judgment without bond against IDOC Defendants should operate as a stay without bond as to all defendants, in part, because the attorneys’ fee award and judgment do not distinguish between the Defendants, instead grouping all the defendants together, since such makes sense as a particle matter and would create confusion if the stay without bond is not consistent among the defendants, and also because there is no need for a bond so long as Plaintiff’s counsel can collect the judgment after appeal from at least one of the defendants (the State/IDOC Defendants). Dkt. 340, pp. 7-8. In its opposition, Plaintiff does not oppose or counter this argument by Defendants. Plaintiff therefore concedes this point, and to the

extent the Court grants the stay and bond waiver as to IDOC defendants, the stay and bond waiver should apply to all Defendants.

VI. Plaintiff's Make No Specific Arguments Regarding Defendants' Likelihood of Success on the Merits.

In response to the likelihood of success of the merits of Defendants' appeal, Plaintiff provides a single paragraph that cites no caselaw other than stating, essentially "Defendants are wrong because of Ninth Circuit caselaw." Dkt. 341. Defendant IDOC (and Corizon Defendants in their joinder) have set forth a non-exhaustive description of the basis for the appeal in the *Memorandum in Support of Defendants' Motion to Stay Judgment*, citing numerous cases and other binding precedent. Dkt. 338, PP. 8-11. Defendants have demonstrated they have strong arguments on appeal upon which they will likely be successful, as set forth in Dkt. 338, and Plaintiff's counsel's failure to cite a single case or otherwise provide any specific arguments to the contrary is an admission of the strength of Defendants' arguments on appeal.¹¹

VII. Plaintiff is Mistaken about the Risk of Injury to her.

Defendants in this case argued that there was no risk to Plaintiff because the only remaining "damages" at issue will go to Plaintiff's attorneys, *not* to Plaintiff. Plaintiff will be in the same position whether her attorneys prevail on appeal and are entitled to the full amount of attorneys' fees or Defendants prevail and Plaintiff's attorneys' recover nothing in attorneys' fees. In other words: there is no risk of injury to Plaintiff. In response, Plaintiff's attorneys argue that *they* would be subject to a delay in the payment of attorneys' fees and that Plaintiff's "right to effective access to the judicial system" would be "compromised." Dkt. 341, PP 9-10. First, the argument that

¹¹ Even if the Court disagrees the defendants are likely to be successful on appeal, such does not preclude a stay of the judgment without a bond. This is simply one of many reasons a court can stay a judgment without bond. And, Defendants have, at a minimum, viable and appropriate arguments for an appellate court to consider.

Plaintiff's attorneys' would be forced to wait while Defendants exercise their right to appeal is non-responsive to the argument that Plaintiff, herself, is not at risk of injury here. Second, it is not clear how Plaintiff's "right to access" the judicial process in this case could somehow be "compromised" *after* her involvement in this litigation is essentially over. Plaintiff's attorneys continued discussion of the risk that *they* might not get paid is both unfounded, as discussed above¹², and misses the point: Plaintiff's counsel is not party to this lawsuit and there is no risk of injury to Plaintiff.

VIII. Plaintiff is Mistaken that the Balance of Hardships Tip in Her Favor.

Once again, the balance of hardships cannot tip in Plaintiff's favor because she, personally, stands to recover nothing from the judgment at issue on appeal regardless of the outcome. The only parties to this litigation that bear any risk of hardship are Defendants, who are in the process of exercising their rights to appeal. Plaintiff's attorneys provide vague argument that they, not Plaintiff, are subject to hardship using examples, such as "the State of Hawaii's history of delay and incompetence" and "the Housing Authority of New Orleans strenuously resisting satisfying a judgment." Dkt. 341, P. 11. (This cases have been distinguished by Defendants above.) Notably, what Plaintiff's attorneys' do not cite to, in attempting to establish their own hardship, is evidence that any Defendant here has stated that they would refuse to obey a valid judgment contrary to law. Moreover, there is no risk that the judgment will not be collectable after the appeal (as discussed above), so there is no hardship. Defendants continue to make efforts to resolve this issue in good faith and are now awaiting a mediation. Defendants face, not only the possible financial burden of a supersedeas bond, but also the hardship that the mediation that has been ordered by the Ninth

¹² Neither Plaintiff nor her counsel are injured because they can still collect on the judgment after the appeal. Further, as previously argued, Plaintiff and her counsel are injured by the appeal because they are entitled to interest and additional costs for the appeal under the applicable rules and laws and to the extent they prevail on appeal.

Circuit may be rendered essentially meaningless if Plaintiff's attorney already collect the entire award for attorneys' fees in advance of the mediation. Plaintiff's counsel has made no showing that she is subject to hardship by the waiver of a bond.

IX. Defendant' Request for a Stay does Not Contravene Public Interest.

Plaintiff argues that 42 U.S.C. Section 1988 shows a public interest in allowing Plaintiff to collect fees and costs awarded to her. Ironically, the scope of this statute will be a significant part of Defendants' appeal, including whether a multiplier is appropriate or even allowed under the PLRA. Nevertheless, to the extent defendants are unsuccessful on appeal, there is nothing that precludes Plaintiff's counsel from collecting her fees and expenses after the appeal. Hence, there is no contravention of public interest in this regard.

X. Plaintiff does Not Deny that a Stay without Bond is Appropriate At least Until Mediation.

Defendants argue, in the alternative, that a stay of the judgment without a bond is appropriate at least until the parties mediate through the 9th Circuit on January 12, 2022. For all the reasons stated in Defendants' motion for stay, joinders thereto, and this brief, a stay of the judgment without a bond is appropriate for the entire duration of Defendants' appeal. But, to the extent the court does not grant the full stay without a bond, Defendants contend in the alternative that a stay without a bond is, at a minimum, appropriate through the January 12, 2022, mediation. Indeed, allowing Plaintiff to collect now against Defendants is not conducive to having a meaningful mediation. In other words, if Plaintiff position is that it gets to go collect immediately against Defendants, then such seems to render mediation moot. Defendants understand all of the parties are willing to participate in the 9th Circuit mediation in good faith. Therefore, the parties should be given a chance to try to resolve this case without incurring additional costs and potential motion practice related to Plaintiff's collections efforts, or posting a bond for that matter.

XI. Conclusion.

For the reasons stated in Defendants' original Motion to Stay and herein, Defendants request that the Court grant their Motion to Stay, issue an order staying the Judgment and waiving the supersedeas bond as to all Defendants pending appeal, and staying all post-judgment discovery. A complete stay pending appeal without a supersedeas bond is justified. Nevertheless, Defendants, in the alternative, request that, at a minimum, the Court should impose a stay pending the outcome of mediation, which is currently scheduled for January 12, 2023.

DATED This 16th day of December, 2022.

MOORE, ELIA & KRAFT, LLP

By: /s/ Steven R. Kraft
Steven R. Kraft

DATED This 16th day of December, 2022.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton
Dylan A. Eaton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December, 2022, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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