



## II. Factual Background

Mendocino Railway appears to be trying to infer that the collection of the litigation expenses was handled inappropriately, which was not the case. Mendocino Railway is not the arbitrator of the law or the facts in this case, and contrary to Mendocino Railway's argument, Meyer has the right to proceed with collecting on the judgment.

Worth noting in Mendocino Railway's abundant outline of the interactions between Mendocino Railway's attorney, Paul Beard, and Meyer's attorney, Stephen Johnson, was the omission that Johnson responded to Beard's email as promised, by leaving a phone message on Tuesday, September 5, 2023, requesting that Mr. Beard call him to discuss the matter. Mr. Beard did not return the call until September 7, 2023, at which point the attorneys had a frank discussion of the issues. Specifically, Johnson informed Mr. Beard that he did not agree with Mendocino Railway's analysis of the issues, and that Meyer was going to proceed with collection of the judgment. (Johnson Declaration, p. 1-2.)

The interactions between Beard and Johnson are of little value to the court's evaluation of the issues in question, however Meyer and his attorney wished to briefly address the omission from the chain of events given the indignant tone of Mendocino Railway's argument.

## III. Argument

### A. Stay Of Enforcement Of Cost-only Awards On Appeal.

Code of Civil Procedure § 916(a), provides in part: "(a) Except as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the 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 . . . ." "The purpose of the automatic stay rule is 'to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The rule prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by

1 conducting other proceedings that may affect it.” (*Chapala Management Corp. v. Stanton*  
2 (2010) 186 Cal App 4<sup>th</sup> 1532, 1542.)

3 Code of Civil Procedure § 917.1(a)(2) establishes a “money judgment exception”  
4 to the stay otherwise imposed by Code of Civil Procedure § 916. (*Chapala Management*  
5 *Corp., supra*, 186 Cal App 4<sup>th</sup> at 1542.) Under this provision, an appeal will not stay the  
6 enforcement of a judgment or order, and thus an undertaking is required if the judgment  
7 or order is for “[m]oney or the payment of money, whether consisting of a special fund or  
8 not, and whether payable by the appellant or other party to the action.” (Code of Civil  
9 Procedure § § 917.1(a)(1).) A money judgment that includes costs is enforceable unless  
10 the appellant posts a bond. (Code of Civil Procedure §§ 917.1(d), 917.9; *Quiles v. Parent*  
11 (2017) 10 Cal. App. 5<sup>th</sup> 130,139.)

12 **B. Meyer Was Awarded A Judgment For “Litigation Expenses,” Which Is A**  
13 **Money Judgment, Not A “Cost-only” Judgment.**

14 Pursuant to Code of Civil Procedure § 917.1(d) “costs awarded by the trial court  
15 under Chapter 6 commencing with section 1021 of Title 14 shall be included in the  
16 amount of the judgment, ” however an undertaking is not required for solely for awarded  
17 costs. Code of Civil Procedure § 1033.5(a) features a list of 16 categories of items  
18 “allowable as costs under Code of Civil Procedure § 1032 . . . .” The majority of the  
19 sections included in Chapter 6 of title 14 explicitly authorize the award of attorney fees in  
20 specific types of cases. (*Quiles v. Parent* (2017), *supra*, 10 Cal. App. 5<sup>th</sup> at 140.)

21 “Moreover, there are two subtly different catchall provisions for the recovery of  
22 costs.” (*Quiles v. Parent* (2017) *supra*, 10 Cal. App. 5<sup>th</sup> at 141.) .) First costs may  
23 include “any other item that is required to be *awarded to the prevailing party* pursuant to  
24 statute as an incident to prevailing in the action at trial or appeal.” (Code of Civil  
25 Procedure § 1033.5(a)(16), emphasis added.) Second, “items not mentioned in this  
26 section and items assessed upon application may be allowed or denied in the court’s  
27 discretion.” (Code of Civil Procedure § 1033.5(c)(4); *Quiles v. Parent* (2017) *supra*, 10  
28 Cal. App. 5<sup>th</sup> at 141.)

The court’s judgment awarded to Meyer was for “*litigation expenses*” pursuant to

1 Code of Civil Procedure § 1268.610(a). Code of Civil Procedure § 1235.140, defines  
2 “litigation expenses” as including both of the following:

3 “(a) All expenses reasonably and necessarily incurred in the proceeding in  
4 preparing for trial, during trial, and in any subsequent judicial proceeding.

5 (b) Reasonable attorney fees, appraisal fees, and fees for the services of other  
6 experts where such fees were reasonably and necessarily incurred to protect the  
7 defendant’s interests in the proceeding in preparing for trial, during trial, and in  
8 any subsequent judicial proceedings whether such fees were incurred for services  
9 rendered before or after the filing of the complaint.”

10 The broad definition of “litigation expenses” in Code of Civil Procedure §  
11 1235.140(a) includes “all expenses reasonably and necessarily incurred in the proceeding  
12 in preparing for trial, during trial, and in any subsequent judicial proceeding.” This  
13 definition for litigation expenses far exceeds the scope of the specific definitions of costs  
14 in Code of Civil Procedure § 1033.5(a) that features a list of 16 categories of items  
15 “allowable as costs under Code of Civil Procedure § 1032.”

16 The breadth of litigation expenses in Code of Civil Procedure § 1235.140(a) also  
17 exceeds the scope of the catchall in Code of Civil Procedure § 1033.5(a)(16) which  
18 provides that costs may include “any other item that is required to be *awarded to the*  
19 *prevailing party* pursuant to statute as an incident to prevailing in the action at trial or  
20 appeal.” (Code of Civil Procedure § 1033.5(a)(16), emphasis added.) In an eminent  
21 domain action, the award of litigation expenses is not reciprocal, as they are not granted  
22 to the prevailing party, rather litigation expenses are only awarded to a successful  
23 defendant. Accordingly, Code of Civil Procedure § 1033.5(a)(16), is not an applicable  
24 “catchall” for the recovery of costs in an eminent domain action.

25 The court cannot overlook the fact that the awarded litigation expenses are broader  
26 in scope than “costs” as defined by Code of Civil Procedure § 1033.5, and therefore the  
27 awarded litigation expenses represent a “money judgment” subject to collection.

28 It is also worth noting that Mendocino Railway’s motion fails to even address the  
fact that the “litigation expenses” were granted, and not “attorney fees and costs.”

1                                   **C. Application of *Dowling* and *Quiles*.**

2           The general rule in civil cases is that an award of costs is automatically stayed on  
3 appeal. But the money judgment exception to that rule has been interpreted differently in  
4 two decisions of the Courts of Appeal. The first decision, *Dowling v. Zimmerman* (2001)  
5 85 Cal. App. 4<sup>th</sup> 1400, makes the money judgment exception to the automatic stay large,  
6 so that unless bond is posted, many types of costs are enforceable on appeal, including fee  
7 awards in anti-SLAPP actions and non-routine costs. The second decision, *Quiles v.*  
8 *Parent* (2017) 10 Cal. App. 5<sup>th</sup> 130, makes the money judgment exception small,  
9 excepting just three types of costs, as defined by statute.

10           Contrary to Mendocino Railway’s belabored argument, that *Quiles* is the  
11 controlling precedent, both *Dowling* and *Quiles* are valid precedents. Until the Supreme  
12 Court resolves the conflict of authority, trial courts may exercise discretion under *Auto*  
13 *Equity Sales, Inc. v. Superior Court* (1962) 57 Cal. 2d 450, 456, to choose between sides  
14 of a conflict, and this court may rely on *Dowling* or *Quiles*.

15                                   **1. *Dowling* Analysis of “Costs” That Are Enforceable On Appeal.**

16           In *Bank of San Pedro v. Superior Court* (1992) 3 Cal.4th 797, the California  
17 Supreme Court explained the long-standing rule automatically staying cost awards  
18 pending appeal: “Costs of suit are awarded to the prevailing party in nearly every civil  
19 action or proceeding. A judgment for costs alone was not a judgment directing the  
20 payment of money within the meaning of former section 942 (now section 917.1,  
21 subdivision (a)) and was therefore stayed without the need for an undertaking. [Citations.]  
22 This rule has become well established.” (*Chapala Management Corp., supra*, 186 Cal  
23 App 4<sup>th</sup> at 1543; *Bank of San Pedro, supra*, 3 Cal.4th at 800–801.) The Supreme Court  
24 emphasized that in each of its prior decisions on this point, however, “the costs were of a  
25 routine nature, such as those awarded as a matter of right under section 1032.” (*Chapala*  
26 *Management Corp., supra*, 186 Cal App 4<sup>th</sup> at 1544; *Bank of San Pedro, supra*, 3 Cal.4th  
27 at 800–801.)

28           In *Dowling*, the court applied the above statutes and the *Bank of San Pedro*

1 “routine costs” standard, to decide whether an appeal bond or undertaking was required to  
2 stay the enforcement of a judgment for reasonable attorney fees and costs awarded to a  
3 prevailing defendant under Code of Civil Procedure § 425.16, commonly known as the  
4 “anti-SLAPP statute.” (*Dowling v. Zimmerman, surpa*, 85 Cal. App. 4<sup>th</sup> at. 1432;  
5 *Chapala Management Corp., supra*, 186 Cal App 4<sup>th</sup> at 1545.) The court held that under  
6 the express language of Code of Civil Procedure § 917.1(a)(1), such a judgment was  
7 unquestionably a judgment for payment of money so as to require an undertaking to stay  
8 enforcement of the judgment. (*Dowling v. Zimmerman, surpa*, 85 Cal. App. 4<sup>th</sup> at. 1432;  
9 *Chapala Management Corp., supra*, 186 Cal App 4<sup>th</sup> at 1545.)

10 Looking to the operation of the anti-SLAPP statute, the court reasoned the  
11 judgment “cannot be construed as an award of routine or incidental costs subject to the  
12 automatic stay rule” under Code of Civil Procedure § 917.1(d). (*Dowling v. Zimmerman,*  
13 *surpa*, 85 Cal. App. 4<sup>th</sup> at. 1432; *Chapala Management Corp., supra*, 186 Cal App 4<sup>th</sup> at  
14 1545.) Code of Civil Procedure § 425.16(c) authorizes only the SLAPP defendant to  
15 recover reasonable attorney fees and costs after prevailing on a special motion to strike a  
16 complaint under the anti-SLAPP statute. (*Dowling v. Zimmerman, surpa*, 85 Cal. App. 4<sup>th</sup>  
17 at. 1432.) *Dowling* went on to state that a plaintiff who prevails by defeating the motion  
18 to strike is not entitled to recover fees and costs under the anti-SLAPP statute simply by  
19 prevailing on the motion. Under Code of Civil Procedure § 425.16(c) the plaintiff may  
20 recover fees and costs only by showing that the defendant's special motion to strike was  
21 frivolous or solely intended to cause unnecessary delay within the meaning of Code of  
22 Civil Procedure § 128.5. Thus, a statutory award of attorney fees and costs under Code  
23 of Civil Procedure § 425.16(c) is not routine because it is not reciprocal. (*Dowling v.*  
24 *Zimmerman, Dowling v. Zimmerman, surpa*, 85 Cal. App. 4<sup>th</sup> at 1432-1433.) *Dowling*  
25 concluded that only a judgment for routine costs (i.e., costs awarded under Code of Civil  
26 Procedure § 1021 et seq.) is stayed automatically by the perfecting of an appeal. (*Id.*)

## 27 **2. *Quiles* Analysis of Costs That Are Enforceable On Appeal.**

28 In *Quiles* the court discounted the analysis in *Dowling*, and came to the following

1 conclusion:

2 “there is a reasonable argument that nearly all postjudgment awards of costs in  
3 California courts should be subject to the automatic stay of section 917.1,  
4 subdivision (d), including attorney fees and unusual costs particular to specific  
5 statutes or contracts. The only obvious exceptions would be those stated in statute,  
6 section 998 and section 1141.21. (§ 917.1, subd. (a).)” (*Quiles v. Parent, supra*, 10  
7 Cal. App. 5<sup>th</sup> at 141.)

8 **3. Under Both *Dowling* And *Quiles* The Award of Litigation Expenses  
9 Should Not Be Automatically Stayed Pending The Appeal.**

10 Until the Supreme Court resolves the conflict of authority, trial courts may  
11 exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal. 2d 450,  
12 456, to choose between sides of a conflict, and may rely on *Dowling* or *Quiles*.

13 Under *Dowling*, the court is required to decide whether the costs awarded to Meyer  
14 were routine or nonroutine costs. Under *Dowling*, the award of litigation expenses in an  
15 eminent domain action are nonroutine costs because they are not reciprocal, thereby  
16 creating a money judgment that is not subject to automatic stay.

17 Code of Civil Procedure § 1033.5(a)(16) is also not an applicable “catchall” for the  
18 recovery of costs in an eminent domain action because attorney fee and costs do not go to  
19 the prevailing party. In an eminent domain action, the awarding of litigation expenses is  
20 not reciprocal, as the litigation expenses are not awarded to the prevailing party, rather  
21 litigation expenses are only granted to a successful defendant.

22 Under *Quiles* the award of litigation expenses should also not be stayed without an  
23 adequate undertaking because the definition of litigation expenses is broader in scope  
24 than the “attorney fees and costs” that are subject to a stay under *Quiles*.

25 **D. Mendocino Railway Should Be Required To Deposit An Undertaking To  
26 Stay Collection Of The Judgment Pending Appeal.**

27 A money judgment under Code of Civil Procedure § 917.1(a)(1) needs to be  
28 bonded for a stay of enforcement to occur. An appropriate undertaking shall be double  
the amount of the judgment unless given by an admitted surety in which event it shall be  
for one-half times the amount of the judgment. (Code of Civil Procedure § 917.1(b).)  
The undertaking should be calculated based on the entire judgment, including costs, not

1 just the damages award. (*Quiles v. Parent, supra*, 10 Cal. App. 5<sup>th</sup> at 137.)

2 Meyer was granted a judgment for litigation expenses in the amount of  
3 \$265,533.50, so in order to stay collection, Mendocino Railway should be required to  
4 deposit an undertaking of \$531,067.00, unless given by an admitted surety, in which case  
5 the amount of \$398,300.25 should be deposited as an undertaking.

6 Mendocino Railway has argued that the existing amount of the eminent domain  
7 deposit of \$350,000 is adequate to cover attorney, which is not the case. Additionally the  
8 existing \$350,000 deposit was made to potentially purchase the Meyer property, and the  
9 deposit is not necessarily being retained to cover litigation expenses, including additional  
10 expenses incurred by Meyer on appeal. The court should require that Mendocino Railway  
11 make a separate undertaking for the awarded litigation expenses.

12 **E. Alternatively, Meyer Requests That The Court Require An Undertaking  
13 To Mitigate Any Injustices.**

14 Trial courts have discretion to impose an undertaking for a judgment solely for  
15 costs awarded to the respondent by the trial court pursuant to Chapter 6, commencing  
16 with Section 1032 of Title 14. (Code of Civil Procedure § 917.9(a)(3); *Quiles v. Parent,*  
17 *supra*, 10 Cal. App. 5<sup>th</sup> at 145.) “In a case where the costs judgment is large or the danger  
18 of asset dissipation is acute, a trial court can mitigate any injustices arising from the costs-  
19 only judgment rule.” (*Id.*)

20 Meyer’s award of litigation expenses in the amount of \$265,533.50, is significantly  
21 large as far as Meyer is concerned. Mendocino Railway claims in its motion that the  
22 award is not a large amount, and if that is the case, then Mendocino Railway should be  
23 ordered to make a proper undertaking for the litigation expenses.

24 Mendocino Railway is a party to numerous legal actions involving the City of Fort  
25 Bragg and the California Coastal Commission that could potentially result in Mendocino  
26 Railway incurring significant legal liabilities. Mendocino Railway recently sold and  
27 transferred significant real property assets to its parent company, Sierra Northern, as  
28 evidenced by the article attached as Exhibit 1 to the request for judicial notice filed  
herewith. Meyer is concerned that Mendocino Railway may continue to transfer its assets



1 to Sierra Northern and then subsequently declare bankruptcy, thereby preventing Meyer  
2 from collecting his litigation expenses. The previous owner of the Mendocino Railway  
3 line filed bankruptcy, and it is quite possible that Mendocino Railway could file  
4 bankruptcy as well. (Johnson Declaration, p.2.)

5 Meyer respectfully requests that the court use its discretion, and order Mendocino  
6 Railway to deposit an undertaking in the amount of \$531,067.00, unless given by an  
7 admitted surety, in which case the amount should be \$398,300.25.

8 **F. Meyer Should Be Awarded His Fees In Opposing This Motion.**

9 Meyer had every right to disagree with Mendocino Railway's analysis of the  
10 automatic stay on the collection of the judgment. The arguments stated in this opposition  
11 to Mendocino Railway's motion are not frivolous in any way. Mendocino Railway's  
12 request for attorney fees and costs for filing this motion is not legally justified, and the  
13 request must be denied.

14 The court's judgment was in favor of Meyer, and Meyer was awarded his litigation  
15 expenses pursuant to Code of Civil Procedure § 1268.610(a). Code of Civil Procedure §  
16 1235.140(a), provides that "litigation expenses" include all expenses reasonably and  
17 necessarily incurred in the proceeding in preparing for trial, during trial, and *in any*  
18 *subsequent judicial proceeding*. As a result, Meyer should be awarded his fees for  
19 opposing this motion, which consists of 20 hours researching and drafting this opposition  
20 and supporting documents. Meyer's attorney will also likely spend 1.5 hours preparing  
21 for the hearing and attending the hearing. At \$350 per hour, Meyer has incurred  
22 \$7,525.00, in fees to address this motion, which amount should be awarded to Meyer..


23 **IV. Conclusion**

24 A money judgment under Code of Civil Procedure § 917.1(a)(1) needs to be  
25 bonded for a stay of enforcement to occur. Meyer was granted litigation expenses in the  
26 amount of \$265,533.50, so in order to stay collection, Mendocino Railway should be  
27 required to deposit \$531,067.00, unless given by an admitted surety, in which case the  
28 amount should be \$398,300.25. Meyer should also be awarded his fees of \$7,525.00, for

opposing this motion pursuant to Code of Civil Procedure § 1268.610(a).

DATED: September 26, 2023.

MANNON, KING, JOHNSON & WIPF, LLP

  
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Stephen F. Johnson  
Attorney for Defendant John Meyer

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1 **PROOF OF SERVICE**

2 Mendocino County Superior Court Case No.: SCUJ-CVED-20-74939


3 I declare that I am over the age of 18 years, employed in the County of Mendocino,  
4 and not a party to the within action; my business address is P.O. Box 419, 200 N. School  
5 Street, Room 304, Ukiah, CA 95482.

6 On September 26, 2023, I served the **DECLARATION OF STEPHEN F. JOHNSON**  
7 **IN SUPPORT OF DEFENDANT JOHN MEYER'S OPPOSITION TO EX PARTE**  
8 **APPLICATION FOR ORDER, JOHN MEYER'S OPPOSITION TO EX PARTE**  
9 **APPLICATION FOR ORDER, and DEFENDANT JOHN MEYER'S REQUEST FOR**  
10 **JUDICIAL NOTICE** on the interested parties in this action by placing  the original  true  
11 copies thereof, as follows:

12 **SEE ATTACHED SERVICE LIST**

13 <input type="checkbox"/>	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
14 <input type="checkbox"/>	By MAIL. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Ukiah, California, following ordinary business practices.
15 <input checked="" type="checkbox"/>	By E-MAIL. I e-mailed above-listed document(s) to the e-mail address(es) of the addressee(s) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
16 <input type="checkbox"/>	By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Ukiah, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
17 <input type="checkbox"/>	By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties indicated on the service list.
18 <input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

19 Executed on September 26, 2023, at Ukiah, California.

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21 Fatima Perez, Legal Assistant

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**SERVICE LIST**

Mendocino County Superior Court Case No.: SCUK-CVED-20-74939

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