



COMES NOW Defendants, the Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe” or “Ute Tribe”) and affiliated parties, pursuant to Fed. R. Civ. P. 62, to move for a stay of execution of the judgment entered on February 11, 2022, ECF No. 300, and a waiver of supersedeas bond. As grounds, Defendants state:

1. The Tenth Circuit mandate in this case was entered on the district court docket on January 20, 2022, ECF 293. On January 28, 2022, the Court denied Defendants’ pending motion for reconsideration of the sanction awards to Plaintiff Becker and Movant John P. Jurrius. The Court also rejected Defendants’ challenge to the amount of the sanction awards, the Court awarding Messrs. Becker and Jurrius the full amount that each requested, for sanctions totaling \$330,272.25. See Order of 1/28/2022, ECF No. 297.

2. On February 3, 2022, Defendants submitted a cost bill, ECF No. 298, and on February 10, 2022, the Clerk taxed costs in the amount of \$13,065.95 against Plaintiff Becker, ECF No. 301; however, Plaintiff Becker has until March 17, 2022, in which to challenge the cost award.

3. On February 11, 2022, the Court entered judgment on the sanction awards. ECF No. 300. Defendants plan to file an appeal from the judgment.

4. In the companion case, *Ute Tribe v. Lawrence*, case number 2:16-cv-00579, Defendants timely submitted a cost bill on February 25, 2022, requesting costs in the amount of \$11,774.66. ECF No. 235. No timely objection to Defendants’ cost bill was filed; however, the Court Clerk has not yet taxed costs in that case.

5. In case number 2:16-cv-00579, the Defendants also timely filed a motion seeking attorney fees under 28 U.S.C. § 1988 in the amount of \$616,495.00, and additional costs of \$2,472.00. ECF Nos. 235, 235-1, and 236. In a Memorandum Decision and Order issued on February 28, 2022, the Court denied Defendants' request for attorney fees but did award Defendants additional costs of \$2,028.00. ECF No. 239.

6. Defendants plan to appeal the denial of attorney fees under 28 U.S.C. § 1988. On February 28, 2022, the Court awarded costs in the amount of \$2,028.00 in case number 2:16-cv-00579. See Mem. Decision and Order, ECF No. 239, p. 3.

7. On March 11, 2022, in case number 2:16-cv-00958, Defendants timely filed (i) a motion to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure, and (ii) a motion to recover costs and damages under Rule 65.1 of the Federal Rules of Civil Procedure. ECF Nos. 303, 302, 302-1, and 302-2.

8. Defendants' motion to recover costs and damages from Mr. Becker under Rule 65.1 in case number 2:16-cv-00958 seeks an award of injunction-related costs and damages of \$36,576,83. ECF Nos. 302, 302-1, and 302-2.

9. Defendants seek a stay of execution of the judgment entered in case number 2:16-cv-00958 (i) pending a ruling on Defendants' Rule 59(e) motion to alter or amend judgment, and (ii) during the pendency of Defendants' appeal.

10. In addition, Defendants seek a waiver of supersedes bond. Alternatively, in lieu of a cash supersedes bond, Defendants ask the Court to permit the Defendants to post bond consisting of the following:

- the \$13,065.95 in costs that have been taxed against Plaintiff Becker in case number 2:16-cv-00958, ECF No. 301;

- the \$36,576.83 in injunction-related costs and damages that Defendants are seeking under Fed. R. Civ. P. 65.1 against Plaintiff Becker in case number 2:16-cv-00958, ECF Nos. 302, 302-1, and 302-2;
- the \$11,774.66 in costs that Defendants seek against Plaintiff Becker in case number 2:16-CV-00579, ECF No. 235;
- the \$2,028.00 in additional costs that the Court awarded Defendants in case number 2:16-CV-00579, ECF No. 239, p. 3; and
- the chose in action that Defendants have in case number 2:16-cv-00579 for attorney fees under 42 U.S.C. § 1988 in the amount of \$616,495.00, ECF Nos. 235, 235-1, and 236.

11. In support of their motion, Defendants adopt and incorporate herein the facts set forth in the Declaration of Shaun Chapoose, the Chairman of the Ute Tribe's governing body, its Tribal Business Committee. Mr. Chapoose's Declaration, attached hereto as Exhibit A, attests that the Ute Tribe "has the financial resources to pay the \$330,272.25 in sanctions if the awards are affirmed by the Federal appellate courts on appeal." Exhibit A, Declaration of Shaun Chapoose, ¶ 9.

### **LEGAL ARGUMENT**

A party is entitled to a stay on execution of the judgment as a matter of right if it posts bond in accordance with Rule 62. *In re Federal Facilities Realty Trust*, 227 F.2d 651, 655 (7th Cir. 1955). In the alternative, the appellant may move that the district court employ its discretion to waive the bond requirement. *Dutton v. Johnson Cty. Bd. of Cty. Comm'rs*, 884 F. Supp. 431, 435 (D. Kansas) (citing *Dillon v. City of Chicago*, 866 F.2d 902 (7th Cir. 1988)). Importantly, the district court has discretionary authority to permit a stay without requiring a supersedeas bond when it is shown that the judgment creditor's

interests will not be unduly endangered. *Miami Int'l Realty Co. v. Paynter*, 807 F.2d 873-74 (10th Cir. 1986); *Olympia Equip. Leasing Co. v. Western Union Tel. Co.*, 786 F.2d 794, 796 (7th Cir. 1986).

Courts have held that the full bond requirement may be waived if the appellant demonstrates a present financial ability to respond to the judgment that is likely to continue, or, that defendant's present financial condition is such that posting a full bond would impose an undue financial burden. See *Poplar Grove Planting & Refining Co. v. Bache, Halsey, Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979); *Federal Prescription Service, Inc. v. American Pharmaceutical Assoc.*, 636 F.2d 755, 761 (D.C.Cir. 1980); *Advanced Estimating System, Inc. v. Riney*, 171 F.R.D. 327, 328 (S.D.Fla. 1997); *Arrigan v. Hull*, 125 F.R.D. 185, 186 (S.D.Fla. 1989); *Schreiber v. Kellogg*, 839 F.Supp. 1157, 1159 (E.D.Pa. 1993).

When a party can establish that funds are readily available to satisfy the judgment, courts have waived the bond requirement for public entities. See, e.g., *Grubb v. Federal Deposit Ins. Corp.*, 833 F.2d 222, 226 (10th Cir. 1987) (observing that the federal government generally is not required to post a supersedeas bond because of a general appropriations fund in the Treasury for payment); see *Dillon*, 866 F.2d at 905 (waived bond requirement because the city established by affidavit that an existing fund guaranteed the appellee's judgment).

In the event the Court believes some type of security is necessary during the pendency of the appeal, the Court has discretion to reduce the security, including the amount of a supersedeas bond. *Olcott v. Delaware Flood Co.*, 76 F.3d 1538, 1560 (10th

Cir. 1996); *Strong v. Laubach*, 443 F.3d 1297, 1299 (10th Cir. 2006); *Meyer v. Christie*, Case No. 07-2230-CM, 2009 WL 3294001 (D. Kan. Oct. 13, 2009). As supported by the Declaration of Shaun Chappoose, Chairman of the Ute Tribe's Tribal Business Committee, the Ute Tribe has the ability to pay the sanction awards in the event the awards are affirmed on appeal. Alternatively, to the extent this Court orders the posting of a supersedeas bond, in lieu of a cash bond, Defendants respectfully requests that Defendants be allowed to post bond consisting of the following:

- the \$13,065.95 in costs that have been taxed against Plaintiff Becker in case number 2:16-cv-00958, ECF No. 301;
- the \$36,576.83 in injunction costs and damages that Defendants seek against Plaintiff Becker in case number 2:16-cv-00958, ECF Nos. 302, 302-1, and 302-2;
- the \$11,774.66 in costs that Defendants seek against Plaintiff Becker in case number 2:16-CV-00579, ECF No. 235;
- the \$2,028.00 in additional costs that the Court awarded Defendants in case number 2:16-CV-00579, ECF No. 239, p. 3;
- the \$36,576.83 in injunction-related costs and damages that Defendants are seeking under Fed. R. Civ. P. 65.1 in case number 2:16-cv-00958, ECF Nos. 302, 302-1, and 302-2; and
- the chose in action that Defendants have in case number 2:16-cv-00579 for attorney fees under 42 U.S.C. § 1988 in the amount of \$616,495.00, ECF Nos. 235, 235-1, and 236.

This compromise will fulfill the purpose of a supersedeas bond to secure Messrs. Becker and Jurrius from any loss resulting from the requested stay of execution.

**WHEREFORE**, Defendants respectfully request that the Court stay execution of judgment and waive any security amount during the pendency of Defendants' Rule 59(e)

motion to alter or amend judgment and during the pendency of Defendants' appeal. Alternatively, Defendants request that in lieu of a cash bond, the Court allow Defendants to post choses in action, as set forth above, of equivalent or greater value.

Respectfully submitted this 14th day of March, 2022.

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/s/ Frances C. Bassett

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