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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

DANIEL RUFF,)	No. CV-F-05-631 OWW/GSA
)	
)	MEMORANDUM DECISION AND
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
)	MOTION TO INCREASE
vs.)	SUPERSEDEAS BOND (Doc. 280)
)	
COUNTY OF KINGS, et al.,)	
)	
Defendant.)	
)	
)	

By motion filed on April 5, 2010, Plaintiff moved the Court to increase the \$250,000 "supersedeas bond" ordered by the Court in its Memorandum Decision and Order Granting Defendants' *Ex Parte* Application for Stay of Enforcement of Judgment Pending Post Trial Motions and Appeal filed on December 2, 2009 (Doc. 237; December 2, 2009 Memorandum Decision). Plaintiff's motion sought to increase the "supersedeas bond" to \$350,000 to cover the award of attorney's fees to Plaintiff in the amount of \$198,615 and "additional fees that plaintiff would likely occur in opposing the defendants' appeal."

1 No supersedeas bond was posted by Defendants. Pursuant to a
2 subsequent oral ruling by the Court, Defendants deposited
3 \$250,000.00 into the registry of the Court in lieu of posting a
4 supersedeas bond. (Doc. 247).

5 On May 8, 2010, Plaintiff filed a supplemental brief.
6 Plaintiff notes that Defendants' voluntarily dismissed their
7 appeal on May 7, 2010, (Doc. 284), although Plaintiff's appeal
8 remains pending. Because of the dismissal by Defendants' of
9 their appeal, Plaintiff moves the Court for an order releasing
10 the \$250,000 cash bond to Plaintiff in order to satisfy the
11 Judgement. Plaintiff asserts that the amount currently owed by
12 Defendants to Plaintiff is \$415,483.65, comprised of: (1) the
13 \$200,000 Judgment; (2) prejudgment interest in the amount of
14 \$15,900.97; (3) costs in the amount of \$987.68; and (4)
15 attorney's fees in the amount of \$198,615.00. Plaintiff moves
16 the Court to order Defendants to pay the \$165,483.65 balance over
17 the cash deposit "forthwith."

18 A threshold issue not discussed by the parties is whether
19 this Court has any jurisdiction to entertain Plaintiff's motion.
20 As a general rule, "[t]he filing of a notice of appeal is an
21 event of jurisdictional significance - it confers jurisdiction on
22 the court of appeals and divests the district court of its
23 control over those aspects of the case involved in the appeal."
24 *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).
25 As explained in *Stein v. Wood*, 127 F.3d 1187, 1189 (9th
26 Cir.1997):

1 The rationale for this general rule is that
2 it avoids 'the confusion and waste of time
3 that might flow from putting the same issues
4 before two courts at the same time.' ... The
5 general rule is thus a rule of judicial
6 economy. It does not rest on a statute and
7 'should not be employed to defeat its
8 purposes nor to induce needless paper
9 shuffling.'

6 There are a number of exceptions to the
7 general rule that a district court loses
8 jurisdiction upon the filing of a notice of
9 appeal. A district court may, for example,
10 retain jurisdiction to correct clerical
11 errors or clarify its judgment pursuant to
12 Fed.R.Civ.P 60(a) ... A district court may
13 retain jurisdiction when it has a duty to
14 supervise the status quo during the pendency
15 of an appeal, or in aid of execution of a
16 judgment that has not been superseded

12 *See also Ribbens Intern., S.A. de C.V. v. Transport Int'l Pool,*
13 *Inc.*, 40 F.Supp.2d 1141, 1143 (C.D.Cal.1999) ("This Court ... has
14 jurisdiction to hear and decide this ex parte application for
15 enforcement of the supersedeas bond and stay of execution
16 (application) despite the fact that a notice of appeal has been
17 filed in this Court.")

18 In *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196 (1988),
19 the Supreme Court ruled that a district court's decision on the
20 merits was appealable as a final decision within the meaning of
21 28 U.S.C. § 1291, even though the recoverability or amount of
22 attorney's fees for the litigation remains to be determined:

23 "A 'final decision' generally is one which
24 ends the litigation on the merits and leaves
25 nothing for the court to do but execute the
26 judgment." ... A question remaining to be
decided after an order ending litigation on
the merits does not prevent finality if its
resolution will not alter the order or moot

1 or revise decisions embodied in the order.

2 *Id.* at 199.

3 The fact that Plaintiff's cross-appeal continues in the
4 Ninth Circuit should not preclude granting this motion, Plaintiff
5 contends, because his appeal pertains only to issues or rulings
6 on which Plaintiff was unsuccessful:

7 If plaintiff prevails on his cross-appeal, he
8 could be entitled to additional declaratory
9 relief and/or further proceedings on his
10 unsuccessful claims, but the current
11 judgment's validity is no longer in question
12 and should be ordered paid and satisfied
13 forthwith.

14 Defendants respond that the pendency of Plaintiff's appeal
15 precludes granting this motion because, until Plaintiff's appeal
16 is resolved, there is no final judgment. Defendants assert that
17 Plaintiff "is appealing not only the jury verdict with regard to
18 his substantive due process and equal protection claims, he is
19 also appealing the jury's verdict on the procedural due process
20 claim and the court's ruling on his motion for declaratory and/or
21 ancillary relief." Defendants refer to the Court's conclusion in
22 the Memorandum Decision Granting Plaintiff's Motion for
23 Attorney's Fees and Awarding Costs, (Doc. 271), that the issues
24 pertaining to substantive due process and equal protection were
25 inextricably inter-related to the claim on which Plaintiff
26 prevailed. Plaintiff's amended notice of cross-appeal filed on
January 7, 2010 is of this Court's "adverse rulings on the
defendants' motion to dismiss the First Amended Complaint, the
defendants' motion for summary judgment or summary adjudication,

1 plaintiff's motion for partial adjudication as a matter of law,
2 the adverse aspects of the jury verdict and judgment, plaintiff's
3 motion for declaratory relief, as well as the Court's various
4 adverse rulings on post-trial motions, including any adverse
5 ruling on the pending motion for attorney's fees." (Doc. 254).
6 Defendants argue that, should Plaintiff prevail on any of these
7 issues, it is likely that the money judgment "could increase,
8 decrease or simply remain the same" and that "[g]iven the
9 uncertainty as it pertains to the judgment, the plaintiff is not
10 entitled to a release of the funds currently deposited with the
11 court." Defendants cite *Tennessee Valley Authority v. Atlas*
12 *Machine & Iron Works, Inc.*, 803 F.2d 794 (4th Cir.1986).

13 In *Atlas Machine & Iron Works*, TVA sued to recover for
14 Atlas' breach of contract to construct and deliver steel
15 embedments for use at nuclear reactors. Atlas counterclaimed for
16 TVA's alleged breach of warranty. The District Court determined
17 TVA's damages due to Atlas' breach, but also found that Atlas was
18 entitled to costs due to defective specifications and to an
19 unpaid balance due on the contract, resulting in a net award to
20 TVA. Atlas filed a notice of appeal and posted a supersedeas
21 bond, with Fireman's Fund acting as surety on the supersedeas
22 bond. TVA then filed a notice of cross-appeal. The Fourth
23 Circuit affirmed on the question of liability, but remanded for
24 calculation of damages. On remand, the District Court
25 recalculated the damages, resulting in a net award to TVA. TVA
26 moved for enforcement of the supersedeas bond when it was

1 determined that Atlas was unable to pay any part of the new
2 judgment. The District Court denied TVA's motion and TVA
3 appealed. On appeal, Fireman's Fund, the surety for the
4 supersedeas bond argue that it was not liable "(1) because TVA,
5 by taking its own appeal, lost its right to enforce the original
6 judgment and rendered supererogatory the supersedeas bond; (2)
7 because, under the terms of the supersedeas bond itself, the
8 obligations of both principal and surety had been discharged when
9 the court of appeals vacated the original judgment." 803 F.2d at
10 797. As to the first issue, the Fourth Circuit ruled:

11 Fireman's Fund is correct in contending that
12 TVA's filing of a cross-appeal deprived TVA
13 of the right to execute the original judgment
14 even in the absence of a supersedeas bond.
15 Where the prevailing party in the lower court
16 appeals from that court's judgment, the
17 appeal suspends the execution of the decree
18 ... Moreover, where the prevailing party is
19 the first to take an appeal, no supersedeas
20 bond can be required of the losing party when
21 it subsequently files its own appeal, because
22 the execution of the judgment has already
23 been superseded by the prevailing party's
24 appeal

19 However, Fireman's Fund can point to no
20 authority to support its conclusion that
21 where the losing party is the first to appeal
22 and a supersedeas bond is properly required,
23 the appellant's obligations under that bond
24 are excused when the prevailing party
25 subsequently files a cross-appeal. On the
26 contrary, the Fifth Circuit implicitly
rejected that view in *Aviation Credit
Corporation v. Conner Air Lines*, 307 F.2d 685
(5th Cir.1962), where it enforced a
supersedeas bond filed by an appellant
despite the fact that the appellee had taken
a cross-appeal. While no explanation for the
court's ruling is forthcoming in its opinion,
we are satisfied as to the correctness of its

1 result. Had Atlas filed the bond as part of
2 a bargained-for exchange, receiving in
3 response TVA's promise not to execute the
4 district court's judgment, Fireman's Fund
5 might perhaps be entitled to argue that its
6 obligation was excused because TVA's filing
7 of a cross-appeal deprived Atlas of
8 consideration or frustrated its purpose.
9 Those contract-law doctrines are inapplicable
10 here, however, where the bond was given not
11 as part of a bargained-for exchange, but
12 pursuant to the requirements of Fed.R.Civ.P.
13 62(d). Moreover, to hold the bond vacated by
14 the cross-appeal would have put TVA to an
15 untenable choice of either taking a
16 \$200,300.29 bird in the hand or, with a
17 substantial degree of probability, losing any
18 recovery altogether, although it was finally
19 vindicated in its conclusion that the damages
20 award had been very substantially
21 understated.

22 803 F.2d at 797-798.

23 Given the dismissal by Defendants of their appeal, it is
24 extremely unlikely that the monetary Judgment and the award of
25 attorney's fees and costs will decrease. Plaintiff's amended
26 notice of cross-appeal makes clear that Plaintiff's appeal is
limited to claims on which he was unsuccessful and does not
appeal the claim on which he prevailed. Plaintiff argues that
Atlas Machine is distinguishable because, here, there is no net
damages award involved and "the issues on appeal have no possible
effect on the jury award, fee award, cost award, and interest
award, which are no longer being appealed by the party who posted
the bond." Further, *Atlas* does not stand for the proposition
that a losing party who appeals may be excused from a supersedeas
bond merely by virtue of a prevailing party's subsequent cross-
appeal. Following the hearing, Plaintiff filed a supplemental

1 brief, (Doc. 292), in which he cites *BASF Corp. v. Old World*
2 *Trading Co.*, 979 F.2d 615 (7th Cir.1992).

3 In *BASF Corp.*, BASF won a judgment against Old World of \$2.5
4 million and costs of \$275,000 and Old World received \$1 on its
5 counterclaim. Both parties filed notices of appeal, BASF
6 contending that it is entitled to more damages, and Old World
7 contending that BASF should get nothing while the \$1 should be
8 increased. Old World argued to the District Court that it was
9 entitled to a stay of execution of judgment without posting a
10 bond or other security because an appeal by the nominally
11 prevailing party automatically stays the judgment. The District
12 Court rejected Old World's position. The Seventh Circuit noted
13 that the Courts of Appeal had taken divergent views, citing *Atlas*
14 *Machine & Iron Works, supra*, and *Enserch Corp. v. Shand Morahan &*
15 *Co.*, 918 F.2d 462 (5th Cir.1990) (appeal by prevailing party does
16 not stay enforcement). The Seventh Circuit denied Old World's
17 motion for a stay of enforcement of BASF's judgment without
18 security. The Seventh Circuit rejected Old World's contention
19 that BASF was taking inconsistent positions by demanding
20 enforcement of the judgment while contending that the amount of
21 the judgment was too low:

22 [W]e know ... that a litigant may accept a
23 tender of the amount of the judgment without
24 forfeiting his right to seek more on appeal
25 ... Why should things be otherwise when the
26 loser is reluctant to pay? In either case,
the holder of the judgment wants to enjoy its
benefits while seeking more.

979 F.2d at 616. The Seventh Circuit ruled:

1 Rule 62(d) requires a bond as a condition of
2 the stay of a money judgment during an
3 appeal. There are some automatic exceptions
4 - for example, when the losing party is the
5 United States or a federal agency, Rule 62(e)
6 - but an appeal by the victor is not among
7 them

8 For six years, until the district court
9 resolved the case, Old World held the
10 disputed stakes. BASF was at risk that
11 business reverses or other developments might
12 render Old World unable to pay any sum
13 ultimately awarded. Now that BASF has
14 carried its burden of persuasion and
15 possesses a judgment, it is entitled to be
16 made secure during the steps leading to the
17 final disposition. So much would be clear if
18 Old World were the only appellant. Old
19 World's belief that BASF should get nothing
20 does not justify leaving the prevailing party
21 at risk. A bond secures both sides: the
22 winner is sure to recover if the judgment is
23 affirmed, and the loser need not fear
24 inability to recoup if the judgment is
25 reversed. If the loser must pay or post
26 security even though the judgment may be too
high, the need for security is even more
urgent if the judgment may be too low. To
see this, suppose BASF is right and the
judgment should be increased; in that event,
BASF is under-secured even if Old World posts
a bond for the full amount of the judgment.
If instead BASF is wrong and the judgment is
proper, then security for the full amount of
the judgment remains appropriate, just as if
Old World were the only appellant.

...

21 The fifth circuit held in *Enserch* that a
22 prevailing party's appeal suspends
23 enforcement of the judgment only when the
24 theory of the appeal is inconsistent with
25 enforcement in the interim. We agree with
26 that approach and join the fifth circuit in
rejecting *Atlas Machine*. Nothing in BASF's
appellate demand for Old World's profits as
damages is inconsistent with collecting the
loss-based award that BASF deems paltry.

1 *Id.* at 617.

2 Plaintiff argues that Defendant's reliance on *Atlas Machine*
3 is misplaced and that the weight of authority provides that "a
4 prevailing party's appeal suspends enforcement of the judgment
5 only when the theory of the appeal is inconsistent with
6 enforcement in the interim." *BASF, id.* Plaintiff contends:

7 The mere existence of plaintiff's cross-
8 appeal does not absolutely bar him from
9 executing the portion of the judgment
10 favorable to him, so long as the issues on
11 appeal make it clear that the favorable
12 judgment is not being challenged and will not
13 be altered by the appellate disposition.
14 Since plaintiff has made it clear in his
15 amended notice of cross-appeal ... that he is
16 not appealing the claims he won, but rather
17 those he lost, there is no legal reason to
18 suspend the execution of the favorable
19 portion of the judgment further.

20 Neither *Atlas Machine* nor *BASF* are relevant to the
21 resolution of this motion; here Defendants did post security for
22 the judgment and received a court-ordered stay of the judgment
23 pending appeal. At the hearing on the instant motion, the Court
24 questioned whether there is a final judgment for purposes of
25 execution because of the pending appeal. *BASF* stands for the
26 proposition that a judgment is final for purposes of execution
notwithstanding an appeal if no supersedeas bond or other
security is posted by the losing party and the prevailing party's
issues on appeal are not inconsistent with enforcement of the
judgment in the interim. As explained in *Exxon Valdez v. Exxon*
Mobil, 568 F.2d 1077, 1085 (9th Cir.2009) (Kleinfeld, J.,
concurring):

1 The rationale for a supersedeas bond is that
2 there can be no certainty about who is in the
3 right until the appeals are done; the party
4 that lost should not have to pay the winner
5 until the district court's decision is
6 finally affirmed, but in the meantime, the
7 party that won in district court should not
8 be at risk of the money disappearing. To
9 protect the winner from the risk that the
10 loser will not have the money if and when the
11 judgment is affirmed, the bond is ordinarily
12 secured by property or by surety.

13 Here, the jury's monetary award and the amount of prejudgment
14 interest and attorney's fees and costs awarded to Plaintiff by
15 the Court are now essentially final given the dismissal of
16 Defendants' appeal. Plaintiff may be entitled to more money or
17 different relief if he prevails on his cross-appeal, but he
18 cannot be entitled to less. The purpose behind requiring
19 Defendants to deposit the moneys with the Court in lieu of a
20 supersedeas bond no longer exists. Defendants' reliance on cases
21 determining the amount of an award of attorney's fees to a
22 prevailing party is misplaced.

23 Defendants further argue that Plaintiff has failed to
24 utilize the proper procedure for executing on his Judgment. Rule
25 69(a)(1), Federal Rules of Civil Procedure, provides:

26 A money judgment is enforced by a writ of
execution, unless the court directs
otherwise. The procedure on execution - and
in proceedings supplementary to and in aid of
judgment or execution - must accord with the
procedure of the state where the court is
located, but a federal statute governs to the
extent it applies.

As explained in the Memorandum Decision and Order Denying without
Prejudice Plaintiff's Motion for Declaratory and Ancillary Relief

1 under 28 U.S.C. §§ 2201 and 2202, filed on December 21, 2009

2 (Doc. 236):

3 Defendants, citing *Lenzinger v. County of*
4 *Lake*, 253 F.R.D. 469, 473 (N.D.Cal.2008),
5 contend that Plaintiff must use California's
6 procedures for executing or enforcing the
7 Judgment.

8 Defendants refer to California Government
9 Code §§ 970 *et seq.*, which pertain to
10 enforcement of judgments against a local
11 public entity. The Judgment in this case is
12 not against a "local public entity." The
13 Judgment is against Defendants Zumwalt and
14 Roper for monetary damages. However,
15 California Government Code § 825(a) provides:

16 Except as otherwise provided in
17 this section, if an employee or
18 former employee of a public entity
19 requests the public entity to
20 defend him or her against any claim
21 or action against him or her for an
22 injury arising out of an act or
23 omission occurring within the scope
24 of his or her employment as an
25 employee of the public entity and
26 the request is made in writing not
less than 10 days before the day of
trial, and the employee or former
employee reasonably cooperates in
good faith in the defense of the
claim or action, the public entity
shall pay any judgment based
thereon or any compromise or
settlement of the claim or action
to which the public entity has
agreed.

If the public entity conducts the
defense of an employee or former
employee against any claim or
action with his or her reasonable
good-faith cooperation, the public
entity shall pay any judgment based
thereon or any compromise or
settlement of the claim or action
to which the public entity has
agreed. However, where the public

1 entity conducted the defense
2 pursuant to an agreement with the
3 employee or former employee
4 reserving the rights of the public
5 entity not to pay the judgment,
6 compromise, or settlement until it
7 is established that the injury
8 arose out of an act or omission
9 occurring within the scope of his
10 or her employment as an employee of
11 the public entity, the public
12 entity is required to pay the
13 judgment, compromise, or settlement
14 only if it is established that the
15 injury arose out of an act or
16 omission occurring in the scope of
17 his or her employment as an
18 employee of the public entity.

10 Although it is not known whether Defendants
11 Zumwalt and Roper made a timely request to
12 the County, given that the County assumes in
13 response to this motion that the County is
14 liable for the Judgment, it is reasonable to
15 infer that there was compliance with Section
16 845 [sic].

14 Assuming that Government Code §§ 970 *et seq.*
15 applies to Plaintiff's enforcement of the
16 Judgment, Section 970.2 provides:

17 A local public entity shall pay any
18 judgment in the manner provided in
19 this article. A writ of mandate is
20 an appropriate remedy to compel a
21 local public entity to perform any
22 act required by this article.

20 Government Code §§ 970.4 - 970.6 provide the
21 procedure by which local public entities must
22 pay tort judgments. The judgment must be
23 paid to the extent funds are available in the
24 fiscal year in which it becomes final. If
25 the judgment cannot be paid in full in such
26 fiscal year, the public entity must pay the
balance of the judgment in the ensuing fiscal
year unless this would result in undue
hardship to the entity. In the case of undue
hardship, the public entity is authorized to
spread the payment of the balance of the
judgment over a period not to exceed ten

1 years. Law Revision Commission Comments,
2 1963 Addition.

3 Plaintiff replies that California Government Code §§ 970.4.
4 - 970.6 on their face apply only when the judgment is against a
5 local entity and not when it is an indemnitor of a government
6 official pursuant to California Government Code § 825. Plaintiff
7 cites *Scott v. County of Los Angeles*, 27 Cal.App.4th 125, 155
8 (1994). In *Scott*, a jury awarded damages to a minor for
9 injuries she suffered from negligent supervision of her foster
10 care by a county and an employee of the court's department of
11 children's services. The jury found that 1 percent of the
12 negligence was attributable to the foster parent, 24 percent was
13 attributable to the county employee and 75 percent was
14 attributable to the county. In pertinent part, the Court of
15 Appeals ruled:

16 [T]he defendants would appear to be correct
17 in contending that the rate of interest
18 applicable to all defendants' share of the
19 judgment is 7 percent. As the plaintiff has
20 expressly conceded, Government Code section
21 970.1, subdivision (b), limits the rate of
22 interest on the County's share of the
23 judgment to 7 percent. (*San Francisco*
24 *Unified School Dist. v. San Francisco*
25 *Classroom Teachers Assn.* (1990) 222
26 Cal.App.3d 146, 151-152 ... The intent of the
Legislature in enacting section 970.1,
subdivision (b), was to provide that
execution and other remedies under the Code
of Civil Procedure for enforcement of money
judgments do not apply to enforcement of
money judgments against local public
entities. (222 Cal.App.3d at p. 151.) It
would be inconsistent with that intent to
allow interest at more than 7 percent on
judgments against parties entitled to be
indemnified by a local entity. Under

1 Government Code section 825, Maxwell is
2 entitled to be indemnified by the County for
3 her share of the judgment. To prevent the
4 County from being liable for interest on a
5 judgment in excess of that allowed by section
6 970.1, subdivision (b), interest on Maxwell's
7 share of the judgment should also be limited
8 to 7 percent.

9 Plaintiff argues that, although Scott found that imposing the
10 same interest rate on judgments against local entities and
11 against local officials who are indemnified by the local entity
12 is consistent with legislative intent,

13 there is no indication that imposing the
14 payment standards applicable only to public
15 entity judgments also to public official
16 judgments would be consistent with
17 legislative intent; to the contrary, it would
18 undermine the seemingly mandatory language of
19 section 825(a), i.e., the portion which
20 provides that 'the public entity shall pay
21 any judgment' against a public official, and
22 sections 970(b) and (c), which expressly
23 decline to include judgments against public
24 officials in the definition of 'judgment'
25 against a local public entity and also
26 excludes government officials from the
definition of 'local public entity' itself.
Accepting the defendants [sic] argument that
the county liability procedures of Government
Code §§ 970 et seq. apply would require a
rewriting of state law, as well as the
judgment in this case, under which Kings
County was held not liable to plaintiff.

Plaintiff is correct that Government Code § 970(b) provides
that "[j]udgment' means a final judgment for the payment of
money rendered against a local entity." However, Plaintiff is
not correct that Government Code § 970(c) expressly excludes
judgment against officials of the local public entity. Section
970(c) provides:

1 'Local public entity' includes a county,
2 city, district, public authority, public
3 agency, and any other political subdivision
4 or public corporation in the state, but does
5 not include the Regents of the University of
6 California and does not include the state or
any office, officer, department, division,
bureau, board, commission or agency of the
state claims against which are paid by
warrants drawn by the Controller.

7 The Court can find no authority concerning the procedure to
8 be followed to enforce a judgment for which a local public entity
9 is liable pursuant to Government Code § 825(a) and the parties
10 cite none. However, enforcement of such a judgment against the
11 local public entity would be subject to the same procedural
12 requirements as it would if the judgment had been directly
13 against the local public entity. To make an extreme example, if
14 a judgment which the local public entity agrees to pay pursuant
15 to Section 825(a) is for millions of dollars which the local
16 public entity cannot pay in that fiscal year, why should the
17 public entity not be entitled to the protections of Government
18 Code §§ 970.4-970.6?

19 Plaintiff argues that California Code of Civil Procedure §§
20 699.510 - 699.560, pertaining to issuance of writs of execution,
21 allows a judgment creditor to obtain an order directing the
22 judgment debtor to pay a judgment, attaching a Judicial Council
23 Form EJ-130, entitled Writ of Execution (Money Judgment).

24 Plaintiff asserts:

25 There is no inconsistency between the relief
26 requested by the plaintiff, i.e., an order
requiring the defendants to pay the judgment,
and the procedures set forth in the above-

1 cited state law provisions. Rule 69(a)
2 'permits judgment creditors to use any
3 execution method consistent with the practice
 and procedure of the state in which the
 district court sits.'

4 Assuming that execution of Plaintiff's judgment is not
5 subject to the California Government Code, *see discussion supra*,
6 a court order to Defendants to pay the judgment is not
7 appropriate. The California Code of Civil Procedure sections
8 upon which Plaintiff relies pertain to the issuance of a writ of
9 execution, which is issued by the Clerk of the Court. If the
10 Court orders Defendants to pay the judgment, how can the Court
11 enforce the order - by contempt? The appropriate way to proceed
12 would be to vacate the Order Granting Defendants' Ex Parte
13 Application for Stay of Enforcement of Judgment Pending Post
14 Trial Motions and Appeal filed on December 21, 2009. Plaintiff
15 can then take whatever steps he believes is appropriate to
16 execute the judgment.

17 If Plaintiff's motion to immediately enforce the money
18 judgment is denied and the stay remains in place, Plaintiff
19 argues that Defendants should be required to increase the amount
20 of security posted with the Court pursuant to Rule 62(d).
21 Plaintiff concedes that he has found no authority permitting the
22 Court to increase the amount of a supersedeas bond or security
23 during the pendency of an appeal but contends that "the Court
24 cannot abdicate its duty to do justice in a given situation
25 merely because it has never arisen before." Plaintiff refers to
26 the December 9, 2009 Memorandum Decision where the Court ruled

1 that "[t]he supersedeas bond should reflect the amount of
2 monetary damages, prejudgment interest, recoverable costs, and
3 some amount for delay," and then ordered Defendants to post a
4 supersedeas bond in the amount of \$250,000. Because the Court
5 subsequently awarded Plaintiff attorney's fees in the amount of
6 \$198,615.00, Plaintiff asserts that the \$250,000 deposit does not
7 comply with the December 9, 2009 Memorandum Decision "any longer,
8 because that order obligated the defendants to post a bond in an
9 amount sufficient to cover the entire judgment." Plaintiff
10 contends that Defendants are seeking to benefit from a continued
11 stay that resulted from their initial supersedeas bond, which is
12 now insufficient to cover the amount of the judgment. Plaintiff
13 seeks to increase the amount of the cash deposit by \$165,502.00,
14 for a total deposit of \$415,502.00.

15 Authority has been found that supports a Court's authority
16 to exercise its discretion to increase the security for the
17 increased award of attorney's fees and costs. See *Acacia*
18 *Research Corp. v. National Union Fire Ins. Co.*, 2008 WL 4381649
19 (C.D.Cal., Sept. 9, 2008) (District Court increased amount of
20 supersedeas bond after notice of appeal filed to include amount
21 awarded as attorney's fees). Increasing the amount of
22 Defendants' security for the judgment pending appeal is
23 collateral; it does not involve the merits of the Judgment or
24 Plaintiff's appeal.

25 Plaintiff's motion is GRANTED. Defendants shall increase
26 the amount of the supersedeas bond or the cash deposited with the

1 registry of the Court in lieu of a supersedeas bond to the total
2 amount of \$415,502.00.

3 IT IS SO ORDERED.

4 Dated: June 23, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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