

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Timothy P. DeMartini, et al. v. Michael J. DeMartini, et al.

DeMartini · No. 2:14-cv-02722-DJC-CKD · Decided June 23, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Defendants’ motion to dismiss Plaintiffs’ partition claim and denied Plaintiffs’ motions for sanctions. The court granted reconsideration of its prior denial of Plaintiffs’ motion for allocation of partition attorneys’ fees and costs, apportioning \$615,891.60 in fees and \$3,550 in law firm costs equally between the parties. The court also stayed enforcement of a writ of execution pending resolution of Defendants’ appeal, without requiring a supersedeas bond.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Daniel J. Calabretta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 23, 2025
DOCKET	2:14-cv-02722-DJC-CKD
DISPOSITION	other
PROCEDURAL POSTURE	The district court ruled on Defendants’ motion to dismiss Plaintiffs’ partition claim, Plaintiffs’ motions for sanctions, Plaintiffs’ motion for reconsideration of the prior denial of partition-related attorneys’ fees, and Defendants’ emergency motion to quash or stay enforcement of a writ of execution.
STANDARD OF REVIEW	Reconsideration of an interlocutory order is generally appropriate when controlling law has changed, new evidence is available, or reconsideration is necessary to correct clear error or prevent manifest injustice. The court exercised discretion concerning sanctions, quashing a writ of execution, and a stay without a supersedeas bond.
PRECEDENTIAL VALUE	unpublished
PARTIES	Michael J. DeMartini, Renate DeMartini v. Timothy P. DeMartini, Margie DeMartini

TOPICS

partition

motions to dismiss

motion for reconsideration

appellate procedure

attorney fees

PRACTICE AREAS

civil procedure

real estate

partition

appellate procedure

attorney fees

QUESTIONS PRESENTED

1. Whether Plaintiffs' partition claim was barred because it should have been asserted as a compulsory counterclaim in a prior state-court action.
2. Whether Plaintiffs were entitled to sanctions based on Defendants' repeated attempts to relitigate the dismissal argument.
3. Whether reconsideration was warranted because the court's prior denial of partition-related attorneys' fees rested on the erroneous conclusion that the interlocutory judgment of partition was a final judgment.
4. Whether California partition law required allocation of reasonable partition fees and costs according to the parties' interests or equitable considerations.
5. Whether the writ of execution should be quashed or the judgment set aside based on equitable setoff or Federal Rule of Civil Procedure 60(b).
6. Whether enforcement of the writ should be stayed pending Defendants' appeal, without requiring a supersedeas bond.

HOLDINGS

1. The partition claim was not dismissed because Defendants failed to establish a valid basis to reconsider the court's prior rejection of the same argument, and the Ninth Circuit's remand for a new trial did not extend to the partition claim.
2. Sanctions were denied because, in light of Defendants' pro se status and the complex history and posture of the case, the court declined to impose sanctions at that time.
3. Reconsideration was warranted because the court's prior ruling incorrectly treated the interlocutory judgment of partition as a final judgment and because reconsideration was necessary to prevent manifest injustice.
4. The court apportioned \$615,891.60 in attorneys' fees and \$3,550 in law-firm costs among the parties according to their 50 percent interests, after applying a 10 percent reduction to the claimed attorneys' fees.
5. The court declined to quash the writ or grant Rule 60(b) relief because Defendants' pending appeal deprived the district court of authority to grant the requested relief and Defendants had not shown that the writ was improperly issued.
6. Enforcement of the writ was stayed without requiring a bond until the Ninth Circuit issued a mandate resolving Defendants' appeal of the partition-cost allocation order.

KEY QUOTATIONS

“Generally, reconsideration is appropriate only when controlling law has changed, new evidence has become available, or when necessary to correct a clear error or prevent manifest injustice.” (p. 5)

“There is no ambiguity in the language of section 874.040. It simply states that the trial court must apportion the costs incurred in a partition action based upon either the parties’ interests in the property, or equitable considerations.” (p. 6)

“Once an appeal is filed, the district court no longer has jurisdiction to consider motions to vacate.” (p. 11)

“When no bond is posted, grant or denial of a stay is “a matter strictly within the judge’s discretion.”” (p. 12)

FACTUAL BACKGROUND

Plaintiffs sought partition of property located at 12757, 12759, and 12761 Loma Rica Drive in Grass Valley, California. The court ordered partition in kind in 2018 and later allocated \$225,652.05 in partition fees and costs, leading to a writ of execution for \$113,838.94 against Defendants. Defendants asserted that a prior \$134,673.60 payment should equitably offset the writ because the Ninth Circuit had vacated the judgment underlying that payment, while Plaintiffs sought reconsideration of an earlier denial of partition-related fees.

PROCEDURAL HISTORY

Plaintiffs filed a partition action in 2014 concerning real property in Grass Valley, California. After a 2018 bench trial, the court entered an interlocutory judgment ordering partition in kind; after a separate jury trial on related contract claims, the Ninth Circuit later vacated the contract judgment and remanded for a new trial, but did not require retrial of the partition claim. The district court denied Defendants’ repeated efforts to set aside or dismiss the partition judgment, granted a later motion allocating partition fees and costs, and issued a writ of execution. In this order, the court denied dismissal and sanctions, granted reconsideration of the prior fee ruling, allocated specified fees and costs, and stayed enforcement of the writ pending Defendants’ appeal.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. Enforcement of the writ of execution is stayed until the Ninth Circuit issues a mandate on Defendants’ appeal of the order allocating statutory partition costs.

CASES CITED

- United States v. Martin, 226 F.3d 1042, 1049 (9th Cir. 2000)
- Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)
- Advanced Steel Recovery, LLC v. X-Body Equip., Inc., No. 2:16-cv-00148-KJM-JDP, 2020 WL 6043935, at *5 (E.D. Cal. Oct. 13, 2020)
- Lin v. Jeng, 203 Cal. App. 4th 1008, 1025 (2012)

- *Orien v. Lutz*, 16 Cal. App. 5th 957, 967-68 (2017)
- *Capuccio v. Caire*, 215 Cal. 518, 528 (1932)
- *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013)
- *Davis v. Yageo Corp.*, 481 F.3d 661, 685 (9th Cir. 2007)
- *Moreno v. Ross Island Sand & Gravel Co.*, No. 2:13-cv-00691-KJM-KJN, 2016 WL 3549453, at *1 (E.D. Cal. June 30, 2016)
- *United States v. Watson*, 29 F. App'x 455, 456 (9th Cir. 2005)
- *In re Matter of Combined Metals Reduction Co.*, 557 F.2d 179, 193 (9th Cir. 1977)
- *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505 n.1 (9th Cir. 1987)
- *Fed. Prescription Serv. v. Am. Pharm. Ass'n*, 636 F.2d 755, 760-61 (D.C. Cir. 1980)
- *Bolt v. Merrimack Pharms., Inc.*, No. S-04-0893-WBS-DAD, 2005 WL 2298423, at *2 (E.D. Cal. Sept. 20, 2005)
- *Townsend v. Holman Consulting Corp.*, 881 F.2d 788, 796 (9th Cir. 1989), vacated on rehearing on other grounds by 929 F.2d 1358 (9th Cir. 1990) (en banc)
- *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979)
- *Hines v. Cal. Pub. Utils. Comm'n*, No. C 07-04145-CW, 2010 WL 3565498, at *1 (N.D. Cal. Sept. 10, 2010)
- *Estate of Casillas v. City of Fresno*, 471 F. Supp. 3d 1035, 1036 (E.D. Cal. 2020)
- *Olympia Equip. v. W. Union Tel. Co.*, 786 F.2d 794, 796 (7th Cir. 1986)
- *Cotton ex rel. McClure v. City of Eureka, Cal.*, 860 F. Supp. 2d 999, 1028 (N.D. Cal. 2012)
- *Dillon v. City of Chicago*, 866 F.2d 902, 904-05 (7th Cir. 1988)
- *Yenidunya Investments, Ltd. v. Magnum Seeds, Inc.*, No. CIV. 2:11-1787-WBS-CKD, 2012 WL 1085535, at *2 (E.D. Cal. Mar. 30, 2012)
- *United States v. Moyer*, No. C 07-00510 SBA, 2008 WL 3478063, at *12 (N.D. Cal. Aug. 12, 2008)

OPINION

(PS) *DeMartini v. DeMartini*

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 TIMOTHY P. DEMARTINI, et al., No. 2:14-cv-02722-DJC-CKD 12 Plaintiffs, v.

13 ORDER

MICHAEL J. DEMARTINI, et al., 14 Defendants. 15 16 17 Before the Court is Defendants' Motion to Dismiss Plaintiffs' partition claim, 18 wherein Defendants argue that claim is barred as a matter of law because it was 19 required to be brought in the Parties prior state court action. Plaintiffs, in turn, argue 20 the Court should deny dismissal and also impose sanctions on Defendants as they 21 have moved for dismissal of the partition claim on that same basis numerous times 22 before, and their motion has been denied each time. 23 Before the Court is

also Plaintiffs' Motion for Reconsideration of the Court's 24 prior denial of Plaintiffs' Motion for Attorneys' Fees in 2019. Therein, Plaintiffs argue 25 that the controlling law has changed and new evidence has come to light 26 necessitating reconsideration of the denial. 27 Finally, Defendants have moved to quash or stay enforcement of the Writ of 28 Execution issued in this matter on May 14, 2025, for \$113,838.94, arguing the 1 doctrine of equitable setoff extinguishes Plaintiffs' claim against them as Plaintiffs 2 owes them the significantly larger sum of \$134,673.60, and Defendants have 3 appealed the Court's judgment forming the basis for the Writ of Execution, weighing 4 in favor of a stay. 5 Having considered the Parties' briefings and arguments, the Court will deny 6 Defendants' Motion to Dismiss and Plaintiffs' Motions for Sanctions. However, the 7 Court will grant Plaintiffs' Motion for Reconsideration. The Court will also grant 8 Defendants' Ex Parte Emergency Motion and stay enforcement of the Writ of 9 Execution until Defendants' appeal has been resolved.

10 BACKGROUND

11 The Parties and Court are well acquainted with the factual background of this 12 matter as laid out in the Court's prior orders. (See ECF No. 483 at 2–4; ECF No. 529 at 13 1–6.) As is relevant here, Plaintiffs Timothy DeMartini and Margie DeMartini brought 14 this partition action on September 15, 2014, seeking partition of real property located 15 at 12757, 12759, and 12761 Loma Rica Drive, Grass Valley, California (the "Property") 16 and asserting related claims. (ECF Nos. 1, 225.) The Court held a bench trial on 17 Plaintiffs' partition claim in April 2018, and issued an Interlocutory Judgment of 18 Partition on May 30, 2018, ordering the Property be partitioned in kind. (ECF No. 19 361.) 20 On May 10, 2019, Plaintiffs filed a Motion for Attorneys' Fees, seeking allocation 21 of statutory partition costs incurred from the inception of the case through February 22 2019. (ECF No. 414.) The Court denied the motion in finding that the Interlocutory 23 Judgment of Partition was a final order, and that Plaintiffs' motion came too late after 24 entry of final judgment under Local Rule 293(a). (ECF No. 428.) Plaintiffs appealed 25 the denial of their Motion for Attorneys' Fees as well as the Court's determination that 26 the Interlocutory Judgment of Partition was a final order. (ECF No. 438.) The Ninth 27 Circuit dismissed the appeal for lack of jurisdiction, finding that the Interlocutory 28 Judgment of Partition was not a final judgment. (ECF No. 473.) 1 The Court also held a jury trial on Plaintiffs' related breach of contract claim in

2 April 2018. The jury rendered a verdict for Plaintiffs, and the Court entered judgment 3 on May 4, 2018, with costs taxed September 18, 2018. (ECF Nos. 335, 347, 387.) 4 Defendants paid Plaintiffs \$134,673.60 in satisfaction of that judgment on or around 5 March 22, 2019, and Plaintiffs filed a Satisfaction of Judgment on April 4, 2019. (ECF 6 413.) Defendants Michael DeMartini and Renate DeMartini appealed, and the Ninth 7 Circuit vacated the Court's judgment on Plaintiffs' breach of contract claim, reasoning 8 that the Court had improperly granted summary judgment on Defendants' 9 counterclaims for breach of partnership and defamation and excluded partnership 10 and mitigation evidence during the trial

which likely tainted the jury's verdict. (ECF

11 No. 455.) The Ninth Circuit remanded for a new trial of Plaintiffs' breach of contract

12 claim and Defendants' counterclaims. (Id.) 13 On December 3, 2021, Defendants moved to set
aside the Court's Interlocutory 14 Judgment on Partition, arguing that the Ninth Circuit's mandate
that the Court retry 15 Plaintiffs' breach of contract and Defendants' counterclaims extended to
Plaintiffs' 16 partition claim as well. (ECF No. 458.) On March 13, 2024, the Court denied 17
Defendants' Motion to Set Aside, and subsequently denied reconsideration of that 18 denial on
June 5, 2024, holding that nothing in the Ninth Circuit's decision required 19 retrial of the
partition claim as the reasoning in the Ninth Circuit's order was limited to 20 the breach of
contract and counterclaims. (ECF Nos. 483, 497.) 21 On October 2, 2024, Defendants filed a
Motion to Dismiss Plaintiffs' Claim for 22 Partition of Real Property. (ECF No. 515.) Plaintiffs, in
response, opposed dismissal, 23 and also filed two Motions for Sanctions, arguing Defendants'
Motion to Dismiss was 24 brought in bad faith. (ECF No. 518; ECF No. 530.) These Motions were
taken under 25 submission by the Court pursuant to Local Rule 230(g). (ECF No. 536.) 26 On
December 3, 2024, Plaintiffs filed a Motion for Allocation of Statutory 27 Partition Costs, seeking
allocation of attorneys' fees and law firm costs incurred by 28 Plaintiffs from March 2019 through
September 2024. (ECF No. 538.) On April 2, 1 2025, the Court granted Plaintiffs' Motion,
allocating \$225,652.05 in partition fees and 2 costs among the Parties according to their respective
50% interests in the Property. 3 (ECF No. 548.) Defendants appealed that Order on April 30, 2025.
(ECF No. 553.) 4 On May 13, 2025, Plaintiffs filed an Application for Writ of Execution in the
amount of 5 \$113,838.94, seeking Defendants half of the partition costs plus interest. (ECF No. 6
558.) On May 14, 2025, the Clerk of Court issued the Writ of Execution. (ECF No. 7 559.) The
next day, Defendants filed an Ex Parte Emergency Motion to Quash Writ of 8 Execution, for Stay
of Enforcement, and for Relief from Judgment, seeking to quash or 9 stay enforcement of the Writ,
arguing they had effectively already paid Plaintiffs the 10 \$113,838.94 due and that their pending
appeal warranted a stay. (ECF No. 560.) 11 On April 18, 2025, Plaintiffs also filed a Motion for
Reconsideration of the 12 Court's prior denial of their May 10, 2019, Motion for Attorneys' Fees,
arguing that 13 Ninth Circuit's determination that the Interlocutory Judgment of Partition was not
a 14 final order rendered the Court's denial on that basis improper. (ECF No. 552.) The 15 Court
held a hearing on June 12, 2025, with Christian Kemos appearing for Plaintiffs, 16 and Defendants
representing themselves, during which the Court heard argument on 17 Plaintiffs' Motion for
Reconsideration. The Motion was taken under submission.

18 DISCUSSION

19 I. Defendants' Motion to Dismiss and Plaintiffs' Motions for Sanctions Will be 20 Denied 21
Defendants move to dismiss Plaintiffs' partition claim, arguing Plaintiffs were 22 required to assert
this claim as a counterclaim in a previously filed state court action 23 involving the same Parties,
but failed to do so, barring the Plaintiffs from asserting that 24 claim here. (ECF No. 515.)
Plaintiffs argue dismissal is improper because Defendants 25 have previously sought for dismissal

of their partition claim on this same ground three 26 times and have been denied each time. (ECF No. 521.) Thus, Plaintiffs argue this is an 27 improper attempt to relitigate the same argument without proper grounds for 28 reconsideration, as the motion presents no newly discovered evidence, no showing 1 that the Court committed clear error, nor any intervening change in the controlling 2 law. (Id.) Plaintiffs also argue the Court should impose sanctions on Defendants for 3 bringing this frivolous motion, including requiring that Defendants pay all costs and 4 fees associated with defending against the motion, and imposing a prefilng order 5 restraining Defendants from filing motions without demonstrating their merit and 6 legal basis. (ECF Nos. 518, 530.) 7 The Court will not dismiss Plaintiffs' partition claim. As Plaintiffs point out, this 8 Court has thoroughly considered, and rejected, Defendants' argument that Plaintiffs 9 were required to raise their partition claim as a counterclaim in the prior state court 10 action. (See ECF Nos. 343 at 239:13-240:2, 242:18-21, 408.) Defendants have 11 demonstrated no valid basis to reconsider that conclusion here. Instead, Defendants 12 suggest that this Motion "was correctly filed pursuant to the Ninth Circuit's order to 13 remand for a new trial and the Court's order permitting the filing of dispositive 14 motions." (ECF No. 527 at 2.) As this Court has explained numerous times, the Ninth 15 Circuit's mandate that this Court retry Plaintiffs' breach of contract claim and 16 Defendants' counterclaims does not extend to Plaintiffs' partition claim. (ECF Nos. 17 483, 497.) Defendants repeated attempts at a do-over of the partition trial despite this 18 Court's clear orders to the contrary are not well-taken. In light of Defendants' pro se 19 status, and the complex history and posture of this case, the Court will not impose 20 sanctions at this time. That said, Defendants are advised to refamiliarize themselves 21 with Federal Rule of Civil Procure 11's requirements and to abide by those 22 requirements moving forward. 23 In sum, Defendants' Motion to Dismiss and Plaintiffs' Motions for Sanctions will 24 be denied. 25 II. Plaintiffs' Motion for Reconsideration Will be Granted 26 Plaintiffs argue that their May 10, 2019, Motion for Attorneys' Fees, which 27 sought allocation of their statutory partition costs incurred from inception of the 28 matter through February 2019, was improperly denied on the basis that it was 1 brought too late after entry of the Court's Interlocutory Judgment of Partition, i.e., 2 "final judgment" on partition. (ECF No. 552.) Plaintiffs argue that the Ninth Circuit has 3 since clarified that the Interlocutory Judgment of Partition was not a final order, and 4 that reconsideration of the Court's denial is therefore appropriate given the erroneous 5 basis for the Court's prior ruling. (Id.) Thus, Plaintiffs ask that this Court allocate their 6 partition costs from inception through February 2019 for the reasons stated in their 7 Motion for Attorneys' Fees. (Id.) Given the length of time for which Plaintiffs have 8 borne these costs alone, Plaintiffs also ask for prejudgment interest. (Id.) 9 A district court has inherent power to reconsider, rescind, or modify an 10 interlocutory order for sufficient cause. *United States v. Martin*, 226 F.3d 1042, 1049 11 (9th Cir. 2000); L.R. 230(j) (authorizing motions for reconsideration of "any motion 12 [that] has been granted or denied in whole or in part"). Generally, reconsideration is 13 appropriate only when controlling law has changed, new evidence has become 14 available, or when necessary to correct a clear error or

prevent manifest injustice. Sch. 15 Dist. No. 1J, Multnomah Cnty., Oregon v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 16 1993). Absent a showing of manifest injustice, the court will not disturb its prior ruling. 17 Advanced Steel Recovery, LLC v. X-Body Equip., Inc., No. 2:16-cv-00148-KJMJD, 18 2020 WL 6043935, at *5 (E.D. Cal. Oct. 13, 2020). This Court's local rules also govern 19 reconsideration. They require the moving party to provide "what new or different 20 facts or circumstances are claimed to exist which did not exist or were not shown" or 21 "what other grounds exist for the motion" and "why the facts or circumstances were 22 not shown at the time of the prior motion." L.R. 230(j). 23 The Court finds that reconsideration is warranted here. This Court previously 24 denied Plaintiffs' Motion for Attorneys' Fees under Local Rule 293, which provides that 25 "[m]otions for awards of attorneys' fees to prevailing parties pursuant to statute shall 26 be filed not later than twenty-eight (28) days after entry of final judgment." L.R. 293(a). 27 The Court reasoned that it's May 30, 2018, Interlocutory Judgment of Partition was a 28 final judgment, and accordingly Plaintiffs' Motion for Attorneys' Fees, which was 1 brought a year later, was untimely. (ECF No. 428.) However, the Ninth Circuit has 2 since clarified that the Interlocutory Judgment of Partition was not a final judgment on 3 the merits. (See ECF No. 473.) Thus, under the Ninth Circuit's guidance, this Court 4 clearly erred in determining that the Interlocutory Judgment of Partition was a "final 5 judgment" barring Plaintiffs from bringing their fees motion. Further, the Court finds 6 that reconsideration is warranted to avoid manifest injustice, as California clearly 7 mandates that courts "shall apportion the costs of partition among the parties in 8 proportion to their interests or make such other apportionment as may be equitable." 9 Cal. Code Civ. Proc. § 874.040. "There is no ambiguity in the language of section 10 874.040. It simply states that the trial court must apportion the costs incurred in a 11 partition action based upon either the parties' interests in the property, or equitable 12 considerations." Lin v. Jeng, 203 Cal. App. 4th 1008, 1025 (2012). Thus, without 13 reconsideration, Plaintiffs will be left to bear a large portion of the partition costs and 14 fees alone in contravention of California law. 15 The Court has reviewed Plaintiffs' prior Motion for Attorneys' Fees, wherein 16 Plaintiffs request that the Court apportion \$684,324 in attorneys' fees¹ and \$3,550 in 17 costs according to the Parties' interests, i.e., 50% to Plaintiffs, and 50% to Defendants. 18 (ECF No. 414.) The Court finds that apportionment of these costs and fees is 19 appropriate for the same reasons discussed in the Court's Order Granting Allocation 20 of Statutory Partition Costs. (See ECF No. 548.) 21 Notably, the costs and fees sought are for the common benefit, as they were 22 expended in preserving both Parties' ownership interests in the Property and 23 advancing partition of the Property according to those interests. As detailed by 24 Plaintiffs, since the inception of this case, Defendants have pursued a theory that the 25 26 1 The attorneys' fees were calculated as follows: (1) \$155,575 charged by Kirk S. Rimmer, (2) \$477,349 charged by Peter A. Kleinbrodt, (3) \$42,130 charged by Peter H. Cuttitta, and (4) \$9,270 charged by 27 Susan K. McGuire. (Rimmer Decl. (ECF No. 414-2); Kleinbrodt Decl. (ECF No. 414-3); Cuttitta Decl. (ECF No. 414-4); McGuire Decl. (ECF No. 414-5).) Each attorney provided supporting documentation for 28 their

request. 1 Property is owned by a partnership, not the Parties, thereby calling into question the 2 Parties' title in and right to partition the Property. (ECF No. 414 at 1–5, 7–8.) Plaintiffs 3 argue their “bringing of the action, the [temporary restraining order], and the defense 4 against Defendants' counterclaims of partnership ownership were all necessary in 5 preserving the title of the property and accomplishing equitable partition of the 6 property itself.” (Id. at 7–8.) Indeed, “Defendants insisted on their theory of a 7 partnership ownership of the Grass Valley Property even in trial . . . [demonstrating] 8 Plaintiffs' efforts in defending the title of the property for the actual owners was for the 9 common benefit of those owners.” (Id. at 8.) Thus, Plaintiffs argue a great deal of the 10 work they performed from the start of this case through trial was for the Parties' 11 common benefit. 12 The Court agrees. As California courts have explained, “the ‘common benefit’ 13 in a partition action is the proper distribution of the ‘respective shares and interests in 14 the said property by the ultimate judgment of the court.’” *Orien v. Lutz*, 16 Cal. App. 15 5th 957, 967 (2017) (quoting *Capuccio v. Caire*, 215 Cal. 518, 528 (1932)). “This 16 sometimes will require that controversies be litigated to correctly determine those 17 shares and interests, but this ultimately can be for the common benefit as well.” Id. 18 (internal citations and quotations omitted). “That fact that a party resists the partition 19 does not change this.” Id. Such is the case here, where Plaintiffs have pursued the 20 proper distribution of the Property according to the Parties' respective shares. 21 In addition, the Court finds that the costs and fees sought are largely 22 reasonable. Defendants object that many of Plaintiffs' billing entries are vague, 23 difficult to discern, and appear “overlapping, divergent, excessive, and unexplained.” 24 (ECF No. 425 at 11–12.) The Court largely credits Plaintiffs' representation that their 25 counsel have “cut out fees that they have in their discretion determined not to be for 26 the common good, have deducted any awards for attorneys' fees which have already 27 occurred through sanctions and discovery orders to avoid double recovery, and have 28 [charged] their fees that were for the common good by a reduced hourly rate” 1 (ECF No. 414 at 8–9.) As with the Court's prior Order, however, the Court will impose 2 a 10% reduction to counsels' claimed fees to account for any vague entries that may 3 not correspond to fees for the common benefit and that were missed in counsels' 4 review. See *Orien*, 16 Cal. App. 5th at 968 (courts may adjust allocation of fees to the 5 extent they do not provide a common benefit to all parties or are not reasonable 6 including by “setting the fee amounts and determining the appropriate allocation”); 7 see also *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1203 (9th Cir. 2013) (a district 8 court can impose a small reduction no greater than 10% based on its exercise of 9 discretion and without a more specific explanation). 10 Finally, Plaintiffs request that the Court award prejudgment interest under 11 California Code of Civil Procedure section 874.020, which provides that the “costs of 12 partition include reasonable expenses, including attorney's fees, necessarily incurred 13 by a party for the common benefit in prosecuting or defending other actions or other 14 proceedings . . . with interest thereon at the legal rate from the time of making the 15 expenditures.” (ECF No. 552 at 13–15.) Plaintiffs ask that the Court “award Plaintiffs 16 interest of 10% on those allocated costs

as of July 17, 2019, the date Plaintiffs' first allocation motion was denied." (Id. at 13.) The Court declines to award interest here. First, the Court notes that the definition of partition costs in section 874.020, as cited by Plaintiffs, applies to costs incurred in related actions. See Cal. Code Civ. Proc. § 874.020 ("Costs incurred in related action"). Plaintiffs seek attorneys' fees incurred in this action, which are governed by section 874.010, and make no mention of interest. See Cal. Code Civ. Proc. § 874.010 (establishing that the costs of partition include "[r]easonable attorney's fees incurred or paid by a party for the common benefit"). Second, the Court acknowledges that Plaintiffs have been forced to wait some time to recover on Defendants' portion of the partition costs and fees. However, this delay is attributable to the Court, not the Parties themselves. Thus, the Court finds it would be inequitable to charge the Parties, particularly Defendants, interest due to the Court's delay. See Cal. Code Civ. Proc. § 874.040 ("[T]he court shall apportion the costs of partition among the parties in proportion to their interests or make such other apportionment as may be equitable.") (emphasis added). Accordingly, the Court shall apportion \$615,891.60 (i.e., \$684,324 x .9) in attorney's fees and \$3,550 in law firm costs among the Parties according to their interests, i.e., 50% to Plaintiffs and 50% to Defendants. III. Defendants' Ex Parte Emergency Motion to Quash Writ of Execution, For Stay of Enforcement, and For Relief from Judgment Finally, Defendants have moved for relief from the Writ of Execution entered on

May 14, 2025, obligating them to pay \$113,838.94. (ECF No. 560.) First, Defendants argue that the Writ should be quashed because Plaintiffs owe them a greater debt of \$134,673.60, and the doctrine of equitable setoff dictates that these mutual debts be extinguished. (Id. at 1.) As Defendants explain, this larger debt was incurred because Defendants previously paid Plaintiffs \$134,673.60 in satisfaction of the judgment entered on Plaintiffs' breach of contract claim following trial in 2019. (Id. at 2.) Defendants argue that, because the Ninth Circuit reversed the underlying judgment, Plaintiffs' entitlement to the \$134,673.60 is now null and void, but Plaintiffs have refused to return the funds, thereby indebting themselves to Defendants. (Id. at 2–3.) Second, Defendants argue that the Court should stay enforcement of the judgment under Federal Rule of Civil Procedure 62 given their pending appeal of the Court's Order Granting Allocation of Statutory Partition Costs. (Id. at 3.) They argue that the Court should not require a bond to institute this stay given that Plaintiffs' debt to Defendant exceeds the writ amount. (Id.) Finally, Defendants argue relief is proper under Federal Rule of Civil Procedure 60(b) because the judgment has been effectively "satisfied, released, or discharged" by the larger offsetting debt, and its prospective application is "no longer equitable" given the Ninth Circuit's reversal creating that offset. (Id. at 3–4.) The Court declines to quash the Writ or grant relief from the Court's Order Granting Allocation of Statutory Partition Costs under Rule 60 at this time. First, the Court finds that it lacks jurisdiction to grant relief under Rule 60 given Defendants' pending appeal of the Court's Order. See *Davis v. Yageo Corp.*, 481 F.3d 661, 685 (9th Cir. 2007) ("Once an appeal is filed, the

district court no longer has jurisdiction to consider motions to vacate.”); see also Fed. R. Civ. P. 62.1(a) (“If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.”). Second, while a “court can recall and quash a writ of execution if it was improperly ordered,” *Moreno v. Ross Island Sand & Gravel Co.*, No. 2:13-cv-00691-KJM-KJN, 2016 WL 3549453, at *1 (E.D. Cal. June 30, 2016), whether a motion to quash is granted is left to the district court’s discretion, *United States v. Watson*, 29 F. App’x 15 455, 456 (9th Cir. 2015). Here, Defendants argue that their financial obligations to Plaintiffs have already been satisfied by virtue of their payment of a prior judgment to which Plaintiffs are no longer entitled. (ECF No. 560 at 2–3.) Plaintiffs, in turn, argue that Defendants are already seeking repayment of that judgment in a different court proceeding. (ECF No. 561 at 2–3.) On balance, while Defendants may have a valid argument for equitable setoff, they have not briefed whether Plaintiffs were required to return the \$134,673.60 judgment to them following the Ninth Circuit’s mandate nor addressed if they are currently seeking repayment of that amount elsewhere. Accordingly, the Court cannot find that the Writ of Execution was “improperly ordered” at this time. However, the Court will stay execution of the Writ until such time as the Ninth Circuit has resolved Defendants’ appeal. An appeal does not automatically stay enforcement of a judgment. However, “[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security.” Fed. R. Civ. P. 62(b). Under the Local Rules, “a supersedeas bond shall be 125 percent of the amount of the judgment unless the Court otherwise orders.” L.R. 151(d). When no bond is posted, grant or denial of a stay is “a matter strictly within the judge’s discretion.” *In re Matter of Combined Metals Reduction Co.*, 557 F.2d 179, 193 (9th Cir. 1977); see also *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505 n.16 (9th Cir. 1987) (“District courts have inherent discretionary authority in setting supersedeas bonds . . .”). While not addressed by the Ninth Circuit, the Court of Appeals for the District of Columbia has observed that courts grant partially secured or unsecured stays only in “unusual circumstances . . . if they do not unduly endanger the judgment creditor’s interest in ultimate recovery.” *Fed. Prescription Serv. v. Am. Pharm. Ass’n*, 636 F.2d 755, 760–61 (D.C. Cir. 1980); see also *Bolt v. Merrimack Pharms., Inc.*, No. S-04-0893-WBS-DAD, 2005 WL 2298423, at *2 (E.D. Cal. Sept. 20, 2005) (“While parties have a right to a stay obtained through a supersedeas bond, an unsecured stay is reserved for ‘unusual circumstances’ and awarded at the district court’s discretion.”); *Townsend v. Holman Consulting Corp.*, 881 F.2d 788, 796 (9th Cir. 1989) (“[C]ourts have deviated from the terms of Rule 62 when the equities so required.”), vacated on reh’g on other grounds by 929 F.2d 1358 (9th Cir. 1990) (en banc). The moving party typically bears the burden of demonstrating the reasons for a departure from the full security supersedeas bond. See *Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979) (creating this

standard); *Hines v. Cal. Pub. Utils. Comm'n*, No. C 07-04145-CW, 2010 WL 3565498, 22 at *1 (N.D. Cal. Sept. 10, 2010) (applying *Poplar Grove*). 23 When analyzing whether a bond waiver is justified, courts often consider 24 whether “(1) ‘defendant’s ability to pay is so plain that the cost of the bond would be a 25 waste of money’” or (2) “requiring a bond ‘would put the defendant’s other creditors in 26 undue jeopardy.’” *Estate of Casillas v. City of Fresno*, 471 F. Supp. 3d 1035, 1036 (E.D.

27 Cal. 2020) (quoting *Olympia Equip. v. W. Union Tel. Co.*, 786 F.2d 794, 796 (7th Cir.

28 1986)). Courts may also consider “(1) the complexity of the collection process; (2) the 1 amount of time required to obtain a judgment after it is affirmed on appeal; [and] (3) 2 the degree of confidence that the district court has in the availability of funds to pay 3 the judgment.” *Cotton ex rel. McClure v. City of Eureka, Cal.*, 860 F. Supp. 2d 999, 4 1028 (N.D. Cal. 2012) (quoting *Dillon v. City of Chicago*, 866 F.2d 902, 904-05 (7th Cir. 5 1988)); see also *Yenidunya Investments, Ltd. v. Magnum Seeds, Inc.*, No. CIV. 2:11- 6 1787-WBS-CKD, 2012 WL 1085535, at *2 (E.D. Cal. Mar. 30, 2012) (applying these 7 factors); *United States v. Moyer*, No. C 07-00510 SBA, 2008 WL 3478063, at *12 (N.D. 8 Cal. Aug. 12, 2008) (“Ninth Circuit courts regularly use these factors.”). 9 Here, Plaintiffs do not dispute that Defendants previously paid them 10 \$134,673.60 in satisfaction of a judgment, and that their current entitlement to that 11 amount is uncertain given the Ninth Circuit’s mandate. While the Court finds the 12 Parties current evidence and briefing on this dispute is insufficient to quash the Writ of 13 Execution, it is sufficient to excuse Defendants’ bond requirement to obtain a stay. 14 Accordingly, the Court will stay enforcement of the Writ of Execution until the Ninth 15 Circuit has issued a mandate on Defendants’ appeal of the Court’s Order Granting 16 Allocation of Statutory Partition Costs.

17 CONCLUSION

18 In accordance with the above, it is hereby ORDERED that: 19 1. Defendants’ Motion to Dismiss (ECF No. 515) is DENIED; 20 2. Plaintiffs’ Motions for Sanctions (ECF Nos. 518, 530) are DENIED; 21 3. Plaintiffs’ Motion for Reconsideration (ECF No. 552) is GRANTED. The 22 Court hereby apportions \$615,891.60 in attorney’s fees and \$3,550 in 23 law firm costs among the Parties according to their interests, i.e., 50% to 24 Plaintiffs and 50% to Defendants; and 25 4. Defendants’ Ex Parte Emergency Motion to Quash Writ of Execution, For 26 Stay of Enforcement, and For Relief from Judgment (ECF No. 560) is 27 GRANTED. The Court hereby STAYS enforcement of the Writ of 28 Execution (ECF No. 559) until the Ninth Circuit has issued a mandate on 1 Defendants’ appeal of this Court’s Order Granting Allocation of Statutory 2 Partition Costs (ECF No. 548). 3 A IT IS SO ORDERED. 5 | Dated: _June 20, 2025 “Darel A CDbnetto Hon. Daniel alabretta

6 UNITED STATES DISTRICT JUDGE

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