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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/22/2023 at 10:45:00 AM
Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

5 Attorney for Defendant Abhay Schweitzer, individually and doing business as TECHNE

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

10 AMY SHERLOCK, an individual and on behalf)
of her minor children, T.S. and S.S., ANDREW)
11 FLORES, an individual,)

12 Plaintiffs,)

13 v.)

14 GINA M. AUSTIN, an individual; AUSTIN)
LEGAL GROUP, a professional corporation,)
15 LARRY GERACI, an individual, REBECCA)
BERRY, an individual; JESSICA McELFRESH,)
16 an individual; SALAM RAZUKI, an individual;)
NINUS MALAN, an individual; FINCH,)
17 THORTON, AND BARID, a limited liability)
partnership; ABHAY SCHWEITZER, an)
18 individual and dba TECHNE; JAMES (AKA JIM))
BARTELL, an individual; NATALIE)
19 TRANG-MY NGUYEN, an individual, AARON)
MAGAGNA, an individual; BRADFORD)
20 HARCOURT, an individual; SHAWN MILLER,)
an individual; LOGAN STELLMACHER, an)
21 individual; EULENTHIAS DUANE)
ALEXANDER, an individual; STEPHEN LAKE,)
22 an individual, ALLIED SPECTRUM, INC., a)
California corporation, PRODIGIOUS)
23 COLLECTIVES, LLC, a limited liability)
company, and DOES 1 through 50, inclusive,)
24)

25 Defendants.)
26)
27)
28)

Case No.: 37-2021-00050889-CU-AT-CTL
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PLAINTIFFS' EX PARTE APPLICATION
FOR STAY OF ACTION SUBMITTED BY
DEFENDANT AND JUDGMENT
CREDITOR ABHAY SCHWEITZER

IMAGED FILE

UNLIMITED CIVIL CASE

Complaint Filed: 12/3/2021

Judgment entered: 1/30/23
(for Schweitzer)

Date: February 23, 2023

Time: 8:30 A.M.

Dept.: C-75

Judge: Honorable James A Mangione

1 Defendant ABHAY SCHWEITZER, individually and doing business as TECHNE
2 (hereinafter, “Defendant Schweitzer”), hereby submits his Memorandum of Points and Authorities
3 in Opposition to the Ex Parte Application For Stay of Action filed by Plaintiffs Amy Sherlock, an
4 individual and on behalf of her minor children, T.S. and S.S., and Andrew Flores, an individual
5 (hereinafter, “Plaintiffs”).

6 **I**

7 **DISCUSSION**

8 On December 2, 2022, the Court, the Honorable James A Mangione, presiding, granted
9 Defendant Schweitzer’s special motion to strike (anti-SLAPP), disposing of Plaintiffs’ entire case as
10 against Defendant Schweitzer.

11 On January 30, 2023, Judgment was entered in favor of Defendant Schweitzer as against
12 Plaintiffs. Defendant Schweitzer was also awarded costs in the amount of five hundred seventy-two
13 dollars and fifty cents (\$572.50).

14 On February 22, 2023, Defendant Schweitzer filed and served his Notice of Entry of
15 Judgment, beginning the sixty (60) day period for Plaintiffs to file any appeal of the Court’s order
16 granting his special motion to strike.

17 On April 7, 2023, hearing will be held on Defendant Schweitzer’s motion for attorney fees.

18 Plaintiffs seek to stay this entire proceeding *against all parties* based solely upon their appeal
19 of the Austin special motion to strike. Defendant Schweitzer’s motion for attorney fees does not relate
20 to the Austin judgment or order. Defendant Schweitzer simply seeks an attorney fee award finding
21 to finalize his judgment.

22 Code of Civil Procedure, section 916, subdivision (a), states in pertinent part, “the perfecting
23 of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon
24 the matters embraced therein or affected thereby, including enforcement of the judgment or order, but
25 the trial court may proceed any other matter embraced in the action and not affected by the judgment
26 or order.” Defendant Schweitzer’s attorney fee motion is “any other matter in the action and not
27 affected by” the Austin judgment or order.

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1 Plaintiffs misinterpret the California Supreme Court holding in *Varian Medical Systems, Inc.*,
2 *v. Delfino* (2005) 35 Cal. 4th 180, 189 (2005). “We now determine whether the perfecting of an
3 appeal from the denial of a special motion to strike automatically stays all further trial court
4 proceedings on the merits upon the causes of action affected by the motion. We conclude that it
5 does.” *Id.* at p. 186. *Varian* solely pertained to the denial of a special motion to strike, and only as to
6 proceedings *on the merits*. Defendant Schweitzer’s pending attorney fees motion is not a proceeding
7 on the merits. *Varian* is inapplicable.

8 In *Carpenter v. Jack In The Box Corporation* (2007) 151 Cal. App. 4th 454, 461, the Second
9 District held that an appeal from an order denying an anti-SLAPP motion did not divest the trial court
10 of jurisdiction to consider plaintiff’s motion for attorney fees pursuant to Code Civ. Proc., § 425.16,
11 subd. (c). Defendant Schweitzer, like the plaintiff in *Carpenter*, is the prevailing party. Therefore,
12 Plaintiffs’ motion for stay must be denied to allow the Court to consider Defendant Schweitzer’s
13 motion for attorney fees pursuant to Code Civ. Proc., § 425.16, subd. (c).

14 **II**

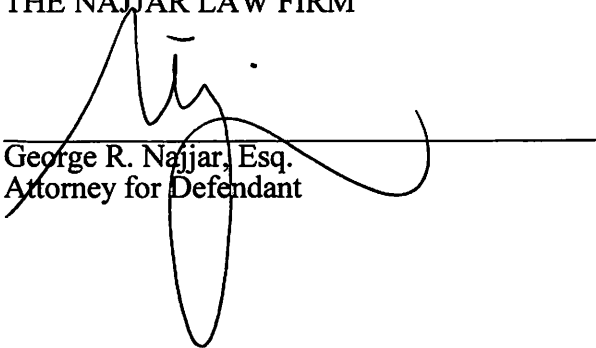
15 **CONCLUSION**

16 Statutory and case law support denial of Plaintiffs’ request for stay. Granting the requested
17 stay will prevent Defendant Schweitzer from finalizing his judgment with an attorney fees ruling.
18 Therefore, Defendant ABHAY SCHWEITZER, individually and doing business as TECHNE,
19 requests the Court deny Plaintiffs’ motion for stay.

20 Respectfully submitted,

21 THE NAJAR LAW FIRM

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23 Dated: February 22, 2023

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25 _____
26 George R. Najjar, Esq.
27 Attorney for Defendant
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