UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SHILOH HEAVENLY QUINE,

Plaintiff,

v.

JEFFREY BEARD, et al.,

Defendants.

Case No. 14-cv-02726-JST

ORDER DENYING MOTION TO STAY

Re: ECF No. 150

Before the Court is Defendants' motion to stay the Court's order granting enforcement of the settlement agreement. ECF No. 150. The Court will deny the motion.

I. INTRODUCTION

On March 1, 2017, Plaintiff Shiloh Quine moved to enforce the parties' settlement agreement. ECF No. 98. On April 28, 2017, the Court granted the motion in part and denied it in part. ECF No. 116. The Court concluded, among other things, that "(1) the existing property policy must be revised to provide access to items that present safety and security concerns to transgender inmates in all 24 non-'hub' transgender institutions, although transgender inmates are housed in the 11 'hub' institutions; (2) the existing property policy must be revised to include access to pajamas, nightgowns, rovers, scarves, bracelets, earrings, hair brushes, and hair clips; and (3) CDCR must provide compression tops and binders to inmates who cannot afford them, at state expense." ECF No. 150 at 2 (citing April 28 Order). Defendants appealed the order, and Plaintiff cross-appealed. ECF Nos. 121, 123. On July 20, 2017, Defendants moved for a stay of the Court April 28 Order pending Ninth Circuit review. ECF No. 150.

II. LEGAL STANDARD

A court's "power to stay proceedings is incidental to the power inherent in every court to

control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254 (1936). A stay is "an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case." Nken v. Holder, 556 U.S. 418, 433 (2009) (internal alterations, citations, and quotations omitted).

Courts consider four factors when analyzing a request to stay:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 426 (quoting Hilton v. Braunskill, 481 U.S. 770, 776 (1987)).

III. ANALYSIS

A. Likelihood of Success on the Merits

Defendants argue they are likely to succeed on the merits of their appeal for two reasons. First, Defendants claim that the Ninth Circuit is likely to agree with them that the settlement agreement only gave Plaintiff the right to comment on CDCR's revised property policy, not to challenge the exclusion of specific property items. ECF No. 150 at 4. Therefore, Defendants argue, this Court was wrong to even consider the specific property items Plaintiff's raised in her motion to enforce, since Plaintiff indeed had the opportunity to comment on the property policy. Defendants especially take issue with this Court's reliance in its April 28 Order on defense counsel's representation to Judge Vadas that Plaintiff would be able to dispute the exclusion of specific property items. Id. at 5. But Defendant ignores that the Court gave two justifications for its decision to review the specific property item challenges: "Both due to defense counsel's representation to Judge Vadas and the plain language of the Agreement, the Court will consider Plaintiff's arguments related to specific property items." ECF No. 116 at 7. Therefore, even if Defendants were to prevail on their extrinsic evidence argument, they have not demonstrated that they are likely to prevail on the merits.[1]

[1] Nor could Plaintiff, by virtue of signing the Settlement Agreement, have waived her right to challenge the exclusion of particular property items, ECF No. 150 at 6, if that right was a part of

Second, Defendants argue that a stay is warranted because the April 28 Order "raises serious legal questions of first impression in this circuit": namely, whether the Turner v. Safley "reasonable relation" test, 482 U.S. 78, 89 (1987), applies to gender discrimination claims that implicate prison administration. ECF No. 150 at 5-6. As a general matter, it is correct that a stay may be appropriate to allow the Ninth Circuit to address a "genuine matter[] of first impression." Morse v. Servicemaster Glob. Holdings, Inc., No. C 08-03894, 2013 WL 123610, at *3 (N.D. Cal. Jan. 8, 2013). Here, however, Defendants have not given the Court any basis to conclude that there is even a "minimal chance" that the Ninth Circuit will disagree with this Court's application of intermediate scrutiny to Plaintiff's claims. O'Connor v. Uber Techs., Inc., No. 13-CV-03826-EMC, 2015 WL 9303979, at *1 (N.D. Cal. Dec. 22, 2015). In its April 28 Order, the Court cited more than one district court case that relied on the reasoning in Johnson v. California, 543 U.S. 499, 509 (2005), to reject the application of Turner to gender discrimination cases related to prison administration. ECF No. 116 at 8-9. Defendants cite no case in their motion that has come to the contrary conclusion.[2] After the reply deadline, Defendants filed a statement of recent decision: Harrison v. Kernan, No. 16-cv-07103-NJV, ECF No. 48 (N.D. Cal. Aug. 21, 2017). ECF No. 155. While that court applied Turner to a gender discrimination claim, it did not engage with any of the post-Johnson cases this Court discussed in its April 28 Order and is therefore not persuasive. See ECF No. 155-1 at 15-16. The Court disagrees that the standard of review question, though undecided by the Ninth Circuit, warrants a stay pending appeal.[3]

In sum, this factor weighs against a stay.

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the very Settlement Agreement she signed.

[2] Defendants cite a number of cases on reply (all but one were issued before Johnson, and are therefore unpersuasive), but "[i]t is inappropriate to consider arguments raised for the first time in a reply brief." Ass'n of Irritated Residents v. C & R Vanderham Dairy, 435 F. Supp. 2d 1078, 1089 (E.D. Cal. 2006).

[3] In any event, "if only this lesser showing [of a question of first impression] is made, [Defendants] must further demonstrate that the balance of the hardships absent a stay tips 'sharply' in its favor." O'Connor, 2015 WL 9303979, at *1 (N.D. Cal. Dec. 22, 2015) (emphasis added). As discussed below, Defendants have failed to make that showing.

B. Irreparable Injury

On irreparable injury, Defendants make two ultimately unpersuasive arguments. First, Defendant claims that it will suffer irreparable injury absent a stay because "inmates in male institutions will have access to property that compromises prison safety and security." ECF No. 150 at 6. But the Court already addressed these safety concerns in the April 28 Order and found them "unconvincing." ECF No. 116 at 11.[4]

Second, Defendants argue that disseminating the property items to non-hub institutions will cause irreparable harm because "it may discourage inmates from moving to a hub institution." ECF No. 150 at 8 (emphasis added). Not only is this statement inconclusive, it is unsupported. See In re Excel Innovations, Inc., 502 F.3d 1086, 1098 (9th Cir. 2007) ("Speculative injury cannot be the basis for a finding of irreparable harm."). Moreover, as Plaintiff points out, ECF No. 152 at 14, CDCR chooses where inmates live, not the other way around. Relatedly, Defendants claim that it will be "operationally very difficult for CDCR to administer a system-wide property access policy." ECF No. 150 at 8. But again, Defendants offer little support for that broad statement, and seem to contradict themselves by also arguing that the "transgender inmate population is very small." Id. at 7.

This factor weighs against a stay.

[4] For example, Defendants recycle the argument that male inmates should not be given certain clothing items subject to dispute because they are more likely than female inmates to use those items to escape. ECF No. 150 at 7. The Court rejected this very argument in its April 28 Order:

> CDCR's draft policy allows transgender female inmates in male institutions to have sandals, t-shirts, and walking shoes, but not the other items listed above. CDCR says it cannot introduce the other clothing items into male institutions "because male inmates are more escape-prone than female inmates." CDCR goes on to explain that these items "contain large amounts of cloth that is significantly different from the cloth used in prison-issued clothing, which can be altered by inmates to approximate the look of street clothing, thus aiding in escape attempts." But as Plaintiff notes, inmates at male institutions can purchase a number of other "street clothing" items—athletic shorts, sweat pants, a poncho, etc.—that would seem to create the same risk, if not a greater one.

ECF No. 116 at 10 (internal citations omitted).

C. Injury to Plaintiff

The third factor is potential injury to parties other than the one seeking the stay. Here, the only other party is Plaintiff. The Court agrees with Defendants that a stay would not cause Plaintiff substantial harm. Plaintiff is already housed in a female institution and "has access to property in the same manner as any other female inmate." ECF No. 150 at 8. Therefore, the property disputes resolved by the April 28 Order will not affect her directly. Plaintiff does not address this argument in her opposition, except to say that the "minimization of Plaintiff's harm fails to consider the harm caused to all the other inmates for whom the property policies must also be updated." ECF No. 152 at 15. But the impact on the other inmates is a consideration for the fourth factor, not this one. More generally, Plaintiff does suffer harm if she is prevented from obtaining the benefit of the bargain she struck with CDCR.[5] This factor weighs only slightly in

[5] The Court rejects Defendants' standing argument (which it appears to abandon on reply). Plaintiff is a party to the settlement agreement. The enforcement of settlement agreements is "governed by [] established contract principle[s]." Hook v. State of Ariz., Dep't of Corr., 972 F.2d 1012, 1014 (9th Cir. 1992). Under basic principles of contract law, "a promisee may sue to enforce such a contract made for the benefit of a third party in equity under the principle that the promisor is under an equitable obligation to the promisee to perform." 55 N.Y. Jur. 2d Equity § 55; cf. Salazar v. Buono, 559 U.S. 700, 712, (2010) (holding that the plaintiff had standing to enforce a final judgment because, "[a] party that obtains a judgment in its favor acquires a 'judicially cognizable' interest in ensuring compliance with that judgment").

Imagine, for example, that Barbara evicts Alice from an apartment building she owns. Alice sues Barbara, arguing that the eviction was based on race. The parties reach a settlement agreement where Barbara pays Alice $100 and also agrees to undergo training on racial bias in exchange for Alice dismissing the case. Alice has no plans to rent from Barbara again, meaning she cannot benefit from Alice's training. But the training was important to Alice, and she would not have agreed to settle without that provision. Clearly, Alice can sue Barbara if she fails to do the training and hold up her end of the agreement. Likewise, here, Plaintiff can sue to enforce the agreement she made with Defendants, even if some parts of the agreement benefit other prisoners and not her.

Adopting Defendants' position would render void any provisions in settlement agreements that require some form of institutional reform or that do not directly benefit the plaintiff. Given the prevalence of these provisions in individual plaintiff cases, that cannot be so. See, e.g., Jessica K. v. Eureka City Sch. Dist., No. 13-cv-5854, ECF Nos. 79, 81 (N.D. Cal. Dec. 19, 2014) (approving settlement agreement in case brought by a group of individual students, which required the school district to "retain an outside consulting group and undertake a process to review school climate, policies and practices, and adopt programs and services to achieve the goals stated in the agreement," ECF No. 79 ¶ 17); E.E.O.C. v. Hosp. Housekeeping Sys. of Houston, Inc., No. 1:11-CV-1658-LJO-BAM, 2014 WL 223536, at *5 (E.D. Cal. Jan. 21, 2014) (upholding language in consent decree that would "enjoin defendants from discriminating or retaliating against their employees in the future"); Jacobson v. Washington State Univ., No. CV-05-0092-FVS, 2007 WL 26765, at *1 (E.D. Wash. Jan. 3, 2007) (describing settlement agreement in individual

favor of a stay.

D. Public Interest in a Stay

"The public interest inquiry primarily addresses impact on non-parties rather than parties." Sammartano v. First Judicial Dist. Court, 303 F.3d 959, 974 (9th Cir. 2002). "It embodies the Supreme Court's direction that 'in exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.'" Bernhardt v. Los Angeles Cty., 931-32 (9th Cir. 2003) (quoting Weinberger v. Romero–Barcelo, 456 U.S. 305, 312 (1982). Here, other CDCR inmates stand to benefit from implementation of the Court's order, particularly those inmates in male institutions or at non-hub institutions. Defendants respond that if they win on appeal, inmates will possess contraband that prison officials will have to confiscate. ECF No. 150 at 9. But that argument is premised on a victory before the Ninth Circuit, which this Court already found to be unlikely. Defendants also argue that if they are forced to promulgate new emergency or permanent rules to comply with the Court's order, the existing policy (which does provide some access) may expire. Id. The Court finds this argument unconvincing. The April 28 Order was issued over three months before Defendants filed their stay motion. Had they complied with the Order immediately, the process of updating the property policy regulations would be well underway.

CONCLUSION

All four factors weigh against a stay. Accordingly, the motion for a stay is denied.

IT IS SO ORDERED.

Dated: October 12, 2017

JON S. TIGAR
United States District Judge

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discrimination case that required the defendant "to provide an additional 40 hours of training in law enforcement and diversity"); In re Marriage of Smith & Maescher, 21 Cal. App. 4th 100, 104 (Cal. Ct. App. 1993) (action seeking specific performance of a marital separation agreement in which the husband agreed to pay for his children's undergraduate education).

Accordingly, Plaintiff has standing to seek its enforcement and, correspondingly, to argue against a stay of the Court's April 28 Order.