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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JANE CARTMILL, et al.,

vs.

SEA WORLD, INC., et al.,

Plaintiffs,

Defendants.

CASE NO. 10CV00361 DMS (POR)

**ORDER DENYING
DEFENDANT’S MOTION FOR
STAY OF TRIAL COURT
PROCEEDINGS PENDING
APPEAL**

Pending before this Court is Defendant Sea World, Inc.’s (herein, “Defendant”) motion for stay of trial court proceedings pending appeal. For the following reasons, the motion is denied.

**I.
BACKGROUND**

On November 21, 2009, Plaintiff Jane Cartmill and three other individuals staged a demonstration in front of the entrance to Sea World. (First Amended Complaint (“FAC”) ¶¶ 27-29, 33-34.) The individuals were approached by Sea World security officers and were told to leave or face arrest. (*Id.* at ¶¶ 36-38.) When they refused to leave, the Sea World security officers called the San Diego Police Department. (*Id.* at ¶ 39.) Two police officers arrived and informed Plaintiff and the others they needed to leave or they would be arrested, causing the individuals to leave the Sea World premises. (*Id.* at ¶¶ 42-47.) Plaintiffs filed a Complaint in the instant action on February 16, 2010. (Doc. 1). On July 26, 2010, Defendant Sea World, Inc. filed the instant motion to stay this Court’s

1 proceedings in this action pending the Ninth Circuit Court of Appeals' resolution of another pending
2 matter. (Doc. 8.) Plaintiff subsequently filed the FAC. (Doc. 10.)

3 Defendant filed the instant motion to stay pending the Ninth Circuit Court of Appeals'
4 resolution of the appeal from the Judgment entered in *Kuba v. Sea World Inc.*, 07cv1274 MMA (POR)
5 (the "*Kuba* action"). (Cole Decl. Exs. C, D.)¹ In the *Kuba* action, Plaintiffs Alfredo Kuba and San
6 Diego Animal Advocates filed a Complaint relating to a protest they participated in near the entrance
7 to Sea World on March 31, 2007. (Plaintiffs' RJN Ex. C at 2.) Sea World security officers confronted
8 the group of approximately twenty individuals and informed them they were on private property and
9 had to leave or face arrest. (*Id.*) The demonstrators then left the property. (*Id.*) The San Diego Police
10 were not called. (*Id.*) Plaintiffs in the *Kuba* action filed a Complaint on July 13, 2007, alleging
11 violations of the Federal Civil Rights Act, 42 U.S.C. § 1983, and other state law claims. (*Id.* at 1.)
12 On June 5, 2009, the Court issued an Order granting Defendant's motion and denying Plaintiffs'
13 motion for summary judgment on the basis that Plaintiffs had not shown sufficient state action to
14 support a claim under 42 U.S.C. § 1983. (*Id.*)

15 II.

16 DISCUSSION

17 A. Legal Standard

18 "[T]he power to stay proceedings is incidental to the power inherent in every court to control
19 the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and
20 for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "Where it is proposed that a pending
21 proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant
22 a stay must be weighed. Among these competing interests are the possible damage which may result
23 from the granting of a stay, the hardship or inequity which a party may suffer in being required to go
24 forward, and the orderly course of justice measured in terms of the simplifying or complicating of

25
26 ¹ In support of its motion for a stay, Defendant submitted the Declaration of William L.
27 Cole, attaching as exhibits documents filed in this and other court proceedings. (Doc. 8.) In reply,
28 Defendant also submitted a request for judicial notice of an additional court filing. (Doc. 16.) As
these documents are matters of public record properly subject to judicial notice pursuant to Federal
Rule of Evidence 201, the Court grants Defendant's request and takes judicial notice of such
documents. The Court also grants Plaintiffs' request for judicial notice of certain court filings filed
in opposition to Defendant's motion for a stay. (Doc. 15.)

1 issues, proof, and questions of law which could be expected to result from a stay.” *CMAX, Inc. v.*
2 *Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254-55). The party moving for a
3 stay “must make out a clear case of hardship or inequity in being required to go forward, if there is
4 even a fair possibility that the stay for which he prays will work damage to some one else.” *Landis*,
5 299 U.S. at 255.

6 **B. Possible Damage From Stay**

7 Defendant argues Plaintiffs will not be damaged by a stay of these proceedings because this
8 action and the *Kuba* action involve precisely the same legal issues, all key discovery has already been
9 conducted, and Plaintiffs’ free speech rights will not be impacted by a stay. Plaintiffs argue they will
10 in fact be harmed because the stay would cause delay for an indefinite period of time, hamper their
11 need for additional discovery, and allow Sea World to continue its free-speech violations.

12 The potential length of a stay is a relevant consideration in determining whether to grant it.
13 *Keshishzadeh v. Arthur J. Gallagher Serv. Co.*, Nos. 09cv168 LAB (RBB), 09cv1273 LAB (RBB),
14 2010 WL 1904887, at *2 (S.D. Cal. May 12, 2010). Here, although the *Kuba* action on appeal is fully
15 briefed, a date for oral argument has not yet been set and it is likely that such hearing will not occur
16 for many months, and a decision not issued for many more months. *See Richards v. Ernst & Young*
17 *LLP*, No. 08cv4988 JF (HRL), 2010 WL 682314, at *4 (N.D. Cal. Feb. 24, 2010). Accordingly, the
18 potential length of a stay in the present action creates the increased possibility of damage to Plaintiffs
19 and weighs against its imposition.

20 Plaintiffs also argue, particularly in light of the indefinite length of any stay to be granted in
21 this case, there is a risk of evidence being lost or witnesses forgetting relevant facts or relocating
22 outside of the Court’s jurisdiction. They claim they will need additional discovery not conducted in
23 relation to the *Kuba* action because the actions relate to two separate incidents which occurred more
24 than two years apart and discovery from the City of San Diego, which was not a party to the *Kuba*
25 action, will be necessary. Consideration of these factors goes against granting a stay of the instant
26 action pending resolution of the *Kuba* action on appeal.

27 **C. Hardship or Inequity In Going Forward**

28 Defendant argues it will suffer substantial hardship if the stay is not granted in that it will be

1 required to spend additional time and resources litigating the instant action, the issues in which may
2 be substantially or completely limited as a result of the Court of Appeals' decision in the *Kuba* action.
3 Plaintiffs assert this is insufficient hardship to warrant the imposition of a stay and Defendant has
4 provided no evidence that the increased costs of litigation would in fact be a hardship for it. While
5 the possibility of duplicative costs in proceeding with a litigation may justify the imposition of a stay
6 in some cases, the Court does not find that such hardship warrants a stay here.

7 **D. Course of Justice**

8 Defendant claims granting a stay will promote the orderly course of justice because the claims
9 and legal issues in the instant action and the *Kuba* action are virtually identical and involve the same
10 fundamental question: "does Sea World's enforcement of its no-trespassing policy constitute state
11 action such that Sea World may be liable for violations of the right to freedom of speech?" (Mot. for
12 Stay at 7.) Defendant further argues final judgment in the *Kuba* action will have a collateral estoppel
13 and/or res judicata effect on many or possibly all issues in the present action. Plaintiffs argue in
14 response that the Court of Appeals' determination in the *Kuba* action will not be binding on the Court
15 in the instant action because the actions involve two separate free speech violations, the instant action
16 states a new claim against the City regarding its ordinance concerning free speech, and the
17 involvement of the police in the instant action changes the analysis as to state action under the Section
18 1983 claim. Defendant counters that the fact that police enforce a private property owner's rules
19 regarding access to its property does not convert the private action into state action. However, a
20 determination as to whether there is sufficient state action to support a claim for violation of Section
21 1983 must be made on a case-by-case basis. *See Sutton v. Providence St. Joeseeph Med. Ctr.*, 192 F.3d
22 826, 836 (9th Cir. 1999). Here, although the Court of Appeals' decision in the *Kuba* action may affect
23 this Court's resolution of the instant action, the Court does not find that the issuance of a stay pending
24 resolution of the appeal is necessary to promote the orderly course of justice. There are sufficient
25 differences in the factual and legal issues raised in the two actions to warrant their independent
26 progression.

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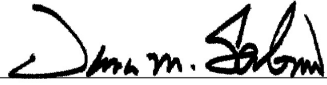
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III.
CONCLUSION

For the foregoing reasons, Defendant's motion for stay of trial court proceedings pending appeal is denied.

IT IS SO ORDERED.

DATED: November 5, 2010



HON. DANA M. SABRAW
United States District Judge