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

AJ REYES,

Plaintiff,

v.

EDUCATIONAL CREDIT
MANAGEMENT CORPORATION,

Defendant.

Case No. 15-cv-00628-BAS-AGS
ORDER:
**(1) GRANTING MOTION TO
STAY [ECF No. 137]**

AND
**(2) DENYING WITHOUT
PREJUDICE MOTION TO
AMEND PLEADINGS
[ECF No. 125]**

20 Presently before the Court are two motions filed by each respective party.
21 Plaintiff AJ Reyes seeks leave to file an amended complaint. The proposed
22 amendments concern adding a new named plaintiff to the case and amending the
23 allegations pertaining to the class definition. (ECF Nos. 125-1, 128.) Defendant
24 ECMC has renewed its request for a stay of all district court proceedings pending the
25 Ninth Circuit’s disposition of the Rule 23(f) appeal of this Court’s class certification
26 order. (ECF No. 137.) For the reasons stated below, the Court grants Defendant’s
27 motion to stay. Because the Court grants the motion to stay, the Court denies without
28 prejudice Plaintiff’s motion to amend the pleadings.

DISCUSSION

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2 Federal Rule of 23(f) provides a mechanism for interlocutory appeal of a
3 court's order granting or denying class certification. Such appeals do "not stay
4 proceedings in the district court unless the district court or the court of appeals so
5 orders." Fed. R. Civ. P. 23(f). "A stay is not a matter of right, even if irreparable
6 injury might otherwise result." *Nken v. Holder*, 556 U.S. 418 (2009). The decision
7 of whether to grant a stay is an "exercise of judicial discretion" and "the propriety of
8 its issue is dependent upon the circumstances of the particular case." *Id.* A court
9 balances four factors in determining how to exercise its discretion: (1) whether the
10 movant is likely to succeed on the merits; (2) whether the movant is likely to suffer
11 irreparable harm in the absence of a stay; (3) whether the issuance of the stay would
12 not substantially harm the non-moving party; and (4) whether a stay will serve the
13 public interest. *Rainbow Bus. Solutions v. Merch. Servs., Inc.*, No. C 10-1993 CW,
14 2014 WL 1783945, at *1 (N.D. Cal. May 5, 2014). The first two factors of the
15 standard "are the most critical." *Id.*

16 The factors are examined on a "flexible continuum" or "sliding scale
17 approach." *Aguayo v. U.S. Bank*, No. 08-cv-2139 W (BLM), 2015 WL 13344756, at
18 *1 (S.D. Cal. June 26, 2015). Specifically, a party seeking a stay must either (1)
19 make a strong showing it is likely to succeed on the merits and show it will be
20 irreparably harmed absent a stay, or (2) demonstrate that its appeal presents a serious
21 question on the merits and the balance of hardships tilts sharply in its favor." A stay
22 may be appropriate if the party moving for a stay demonstrates that serious legal
23 questions are raised and the balance of hardships tips sharply in its favor. *Morse v.*
24 *Servicemaster Global Holdings, Inc.*, Nos. C 10-00628, C 08-03894, C 09-04044, C
25 09-05152, C 09-05153, 2013 WL 123610, at *2 (N.D. Cal. Jan. 8, 2013).

26 The Court previously considered whether a stay in this case was warranted
27 when Defendant filed its Rule 23(f) petition with the Ninth Circuit. (ECF No. 127.)
28 The Ninth Circuit granted Defendant's petition after the Court issued its order on the

1 earlier stay request. (ECF No. 133.) The grant of the petition satisfies the first factor
2 for a stay and also alters the calculus of the harms that Defendant faces if proceedings
3 in this Court proceed. Although the Court previously determined that the equities
4 did not tip sharply in favor of a full stay of the proceedings (ECF No. 127), it is clear
5 that Defendant faces the risk of litigating on two fronts now that its petition has been
6 granted. Indeed, Plaintiff seeks to add a new class plaintiff to this case and amend
7 the class certification order currently on appeal to name that plaintiff as a class
8 representative. (ECF Nos. 125, 128-1.) Both parties also face the risk of potentially
9 wasteful expenditure of resources if the proceedings are not stayed, including
10 Plaintiff who disputes whether the certified class is a failsafe class. (ECF No. 138 at
11 5–6.) Lastly, the public interest is best served by the avoidance of potentially
12 conflicting judicial pronouncements regarding this case. For example, any ruling on
13 Plaintiff’s motion for leave to amend presents a risk that this Court might issue a
14 decision that would conflict with the Ninth Circuit’s jurisdiction over the Rule 23(f)
15 appeal or the Ninth Circuit’s ultimate resolution of that appeal.


16 **CONCLUSION & ORDER**

17 For the foregoing reasons, the Court **GRANTS** Defendant’s motion to stay.
18 (ECF No. 137.) All district court proceedings in this case are **HEREBY STAYED**.
19 Either party may file a request to lift the stay within seven days of the Ninth Circuit’s
20 decision on Defendant’s Rule 23(f) appeal.

21 The Court **DENIES WITHOUT PREJUDICE** Plaintiff’s motion to add
22 Beheshta Mahboob as a named plaintiff and add her as a class representative to the
23 certified class. (ECF Nos. 125-1; 128.) Plaintiff is hereby permitted to refile a
24 motion for leave to amend the pleadings within fourteen days of the Ninth Circuit’s
25 decision on Defendant’s Rule 23(f) appeal.

26 **IT IS SO ORDERED.**

27
28 **DATED: March 13, 2018**


Hon. Cynthia Bashant
United States District Judge