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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHELLE LAEL-B. NORSWORTHY, Plaintiff, **v.** **JEFFREY BEARD, et al.,** Defendants.	C 14-00695 JST (PR) **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY ORDER GRANTING PRELIMINARY INJUNCTION** Judge: The Honorable Jon S. Tigar Trial Date: Action Filed: 2/14/2014

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TO PLAINTIFF MICHELLE LAEL-B. NORSWORTHY AND HER ATTORNEYS OF RECORD:

Please take notice that Defendants move this Court under Federal Rule of Civil Procedure 62(c) for a stay of the April 2, 2015 preliminary injunction. (Order Granting Preliminary Injunction (Order), ECF No. 94.) To expedite a ruling on this motion, Defendants have concurrently moved to waive hearing on the motion and requested that the Court decide the motion on shortened time, within seven days, given the Court's order that the preliminary injunction be carried out "as promptly as possible." (*Id.* at 38.)

As the Ninth Circuit has explained, "although a stay pending appeal certainly has some functional overlap with an injunction, stays are typically less coercive and less disruptive than are injunctions." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (citation and internal quotation marks omitted). As such, Defendants "need not demonstrate that it is more likely than not that they will win on the merits," but only that they have "a substantial case for relief on the merits." *Id*. Federal Rule of Appellate Procedure 8(a)(1) requires that a motion for stay pending appeal be made first before the district court.

INTRODUCTION

At issue in this preliminary injunction order is whether the Eighth Amendment requires that the State of California immediately provide Norsworthy with sex-reassignment surgery in addition to her presently prescribed course of treatment for gender dysphoria, which includes hormone therapy, counseling, constant medical and psychological monitoring, and other non-surgical treatment options. In seeking a preliminary injunction, Norsworthy offered declarations from a psychologist and two physicians opining that sex-reassignment surgery was warranted. One of her experts, Dr. Nick Gorton, based his opinion on the mistaken belief that Norsworthy's hormone therapy had been discontinued, and another, Dr. Marci Bowers, provided no opinions at all concerning Norsworthy's status, treatment, or medical need for surgery, only discussing generally the efficacy of sex-reassignment surgery. Defendants did not have an opportunity to depose any of Norsworthy's experts before the Court's ruling.

In opposition, Defendants relied on the report of Dr. Raymond Coffin, a corrections

psychologist who personally examined Norsworthy, reviewed her complete medical record, and determined that genital sex-reassignment surgery was not medically necessary at this time. Defendants also offered a report from Dr. Stephen Levine, an expert physician specializing in transgender care who was retained as an independent expert by the district court in *Kosilek v. Spencer*, who met with Norsworthy for several hours and found that surgery was not immediately medically necessary.

Here, medical and mental-health professionals obviously disagree on Norsworthy's present course of treatment. Indeed, other courts have found treatment similar to that provided to Norsworthy to be constitutionally adequate. *Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014) (en banc). While practitioners agree that non-surgical options such as hormone therapy and counseling are appropriate, they strongly disagree whether sex-reassignment surgery should be performed now, if at all, to alleviate her mental distress. Nevertheless, foregoing a trial, during which the witnesses' opinions and expertise could be tested via direct and cross-examination, this Court made the unprecedented finding that Defendants' treatment plan violates the Eighth Amendment and is cruel and unusual punishment. It reached this conclusion without the benefit of any testimony, and discounted Dr. Levine's opinions by concluding he had relied on a "fabricated anecdote." (Order Granting Prelim. Inj., ECF 94 at 22.) In truth, Dr. Levine fabricated nothing. Rather, Defendants' counsel clarified a potential ambiguity in the report concerning another transgender inmate in CDCR custody for Norsworthy's attorneys. A trial on the merits—or, at a minimum, even the opportunity to depose the witnesses—would have allowed Dr. Levine to explain the truth concerning this issue, allowed Defendants to challenge the inconsistencies in Plaintiff's experts' opinions, and likely served to root out other misconceptions and errors concerning the evidence.

The Court's order prevents any of this from happening now. Its preliminary injunction permanently alters the status quo, grants complete relief to Norsworthy, and ends the case without affording Defendants the chance to defend themselves. The "basic function of a preliminary injunction is to preserve the *status quo* pending a determination of the action on the merits." *Chalk v. U.S. Dist. Court Cent. Dist. of Cal.*, 840 F.2d 701, 704 (9th Cir. 1988).

Complying with the preliminary injunction order "as promptly as possible" will render Defendants' appellate rights moot. These facts present a compelling case of irreversible harm to Defendants if they must comply with the injunction pending appeal.

Under Federal Rule of Civil Procedure 62(c), this Court should stay the preliminary injunction during the pendency of Defendants' appeal, which was filed concurrently with this motion on April 10, 2015, because the facts and law do not support mandatory preliminary injunctive relief on the limited record here.

LEGAL STANDARD FOR A STAY PENDING APPEAL

Federal Rule of Civil Procedure 62(c) authorizes this Court to suspend or modify a preliminary injunction during the pendency of an appeal from an order granting such relief. 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); *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012). Defendants bear "the burden of showing that the circumstances justify" a stay of the injunction pending appeal. *Nken*, 556 U.S. at 433-34; *Lair*, 697 F.3d at 1203. In determining whether to grant a stay, this Court considers four factors: (1) whether Defendants have made "a strong showing that" they are "likely to succeed on the merits;" (2) whether they "will be irreparably injured absent a stay;" (3) "whether issuance of the stay will substantially injure" Norsworthy's interest, and (4) "where the public interest lies." *Nken*, 556 U.S. at 434; *Lair*, 697 F.3d at 1203. The standard is a continuum. At one end of the continuum, if there is a "probability" or "strong likelihood" of success on the merits, a relatively low standard of hardship is sufficient. *Golden Gate Restaurant Ass'n v. City and County of S.F.*, 512 F.3d 1112, 1119 (9th Cir. 2008). At the other end, if the balance of hardships tips sharply in favor of Defendants, a relatively low standard of likelihood of success on the merits is sufficient. *Id.* Thus, the first two factors "are the most critical." *Nken*, 556 U.S. at 434.

ARGUMENT

This Court should stay the preliminary injunction because Defendants' appeal raises serious questions about the propriety of the surgery order, Defendants will be irreparably harmed absent a

stay, sex-reassignment surgery can wait, and the public interest favors appellate review of the mandatory injunction.

I. DEFENDANTS' APPEAL RAISES SERIOUS QUESTIONS ABOUT THE PROPRIETY OF THE PRELIMINARY INJUNCTION MANDATING SEX-REASSIGNMENT SURGERY.

The first prong of the stay analysis requires Defendants to make "a strong showing that" they are "likely to succeed on the merits." *Nken*, 556 U.S. at 434. The Ninth Circuit has characterized a "strong showing" in various ways, including "reasonable probability," "fair prospect," "substantial case on the merits," and "serious legal questions . . . raised." *Leiva–Perez*, 640 F.3d at 967-68. These formulations are "largely interchangeable," and each indicates that, "at a minimum," Defendants must show that there is "a substantial case for relief on the merits." *Lair*, 697 F.3d at 1204; *Leiva–Perez*, 640 F.3d at 967-68. Defendants meet that burden.

This Court issued an unprecedented order compelling state prison officials to perform sex-reassignment surgery on an inmate at the *preliminary-injunction stage*. (Order 38.) The only other court to have issued such an order did so after two full trials, *Kosilek v. Spencer*, 889 F. Supp. 2d 190, 227 (D. Mass. 2012), an order that did not survive appellate review. *Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014) (en banc). The Ninth Circuit has yet to answer whether a treatment plan involving hormone therapy, counseling, and other non-surgical treatments for gender dysphoria meets the constitutional minimum in cases where, as here, it purportedly fails to alleviate the inmate's mental distress. The constitutionality of this treatment plan is a substantial issue of first impression in the Ninth Circuit. As this Court noted two months ago, a serious legal question of first impression satisfies the likelihood-of-success prong of the stay analysis. *United States v. Real Prop. & Improvements Located at 2366 San Pablo Ave., Berkeley, Cal.*, No. 13-CV-02027-JST, 2015 WL 525711, *2 (N.D. Cal. Feb. 6, 2015).

Defendants are likely to succeed on appeal for another reason: the surgery order is vulnerable to reversal because it is a mandatory injunction that is highly disfavored by the Ninth Circuit. *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994). That is because a mandatory injunction compels parties to act in ways that alter the status quo. Of course, even a

prohibitive injunction is "an extraordinary remedy" that should not be lightly granted. *Winter v. NRDC*, 555 U.S. 7, 14 (2008). To ensure that mandatory injunctions remain the exception, the Ninth Circuit has insisted that they should be "denied unless the facts and law *clearly favor* the moving party." *Stanley*, 13 F.3d at 1320 (emphasis added). Here, the facts and law are not clearly in Norsworthy's favor and a mandatory injunction requiring Defendants to perform surgery on Norsworthy should not have issued.

A. The Record Demonstrates that Norsworthy Has Received Sufficient Medical Treatment for Gender Dysphoria and that Sex-Reassignment Surgery Was Not Immediately Necessary.

Since her incarceration in 1987, Norsworthy has received ongoing mental-health treatment, including referral to the California Medical Facility to address her gender issues in 2000, and ongoing mental health therapy. (Coffin Rep. ECF No. 66-1 at 8-9.) Norsworthy has been receiving hormone therapy for her gender dysphoria since 2000, and continues to receive hormone therapy and other forms of treatment. (Pl.'s Mot. ECF No. 62 at 11.) Prison officials have also afforded Norsworthy other treatment, including access to brassieres and the chance to grow her hair long. (Pl.'s Dep. 25:11-18.) The hormone therapy has altered Norsworthy's physical appearance and voice such that she presents as a woman. (FAC ¶ 20, ECF No. 10.) These treatments have helped Norsworthy's distress (Pl.'s Dep. 23:15-24:3) and, in her own words, prison officials "have facilitated and they have made it possible for [her] to come to terms with who [she] really [is]." (Pl.'s Dep. 29:4-5.)

On September 16, 2012, Norsworthy submitted a CDCR Form 602 inmate grievance regarding her gender dysphoria. (Pl.'s Grievance dated Sept. 16, 2012, Bajwa Decl. ¶ 2, 4, Ex. A, C at AGO003294-AGO003297.) At the time Norsworthy filed this grievance, none of her treating primary-care physicians or psychologists had recommended to CDCR that sex-reassignment surgery be performed. Only *after* the second level of review denied Norsworthy's inmate grievance did Dr. Reese, a prison psychologist, opine for the first time that Norsworthy should be scheduled for sex-reassignment surgery. (ECF No. 68 at 13-14.) In his three brief progress notes, Dr. Reese does not explain his reasoning for determining that Norsworthy was an appropriate candidate for sex-reassignment surgery, or state that it was medically necessary

as a treatment for her gender dysphoria. Instead, Dr. Reese asserts that "in his opinion, health, safety, fairness and justice mandate" sex-reassignment surgery for Norsworthy's "continued well-being." (ECF No. 68 at 56.) As explained during the hearing on Norsworthy's preliminary-injunction motion, Dr. Reese has left CDCR's employment, refuses to provide his present residence, and has not made himself available for deposition to explain the bases for his opinions concerning Norsworthy.

As part of this inmate-grievance review, Norsworthy was referred to a licensed psychologist, Dr. Raymond Coffin, who performed a "Gender Identity Disorder Evaluation" on July 1, 2013. After reviewing Norsworthy's central file and complete medical record, and meeting with Norsworthy, Dr. Coffin found that Norsworthy met the criteria for Gender Identity Disorder under the DSM-IV, and concluded that she had received mental-health services appropriate for this diagnosis. (Coffin Rep. ECF No. 66-1 at 17.) But Dr. Coffin concluded that she did not meet the criteria for sex-reassignment surgery because she had not been fully evaluated, recommended, and approved for sex-reassignment surgery by the appropriate medical and psychological staff. (*Id*. at 20-22.) Specifically, Dr. Coffin found that Dr. Reese's progress notes did not support his conclusion that Norsworthy "has not achieved 'normal mental health,' nor evidence supporting his recommendation that a sex change operation would be the appropriate effective intervention." (*Id*. at 18.)

Before Norsworthy filed suit, no medical doctor had informed her that sex-reassignment surgery was a medical necessity. (Pl.'s Dep. 34:14-19.) And Norsworthy first submitted a medical request for sex-reassignment surgery on October 22, 2014, after this litigation commenced, upon the advice of her attorney. (Pl.'s Grievance, Oct. 22, 2014, Bajwa Decl. ¶ 2, 4, Ex. A, C at AGO005155-AGO005156.)

After Norsworthy filed suit, Dr. Stephen Levine, a licensed psychiatrist, interviewed Norsworthy and reviewed her medical records. Dr. Levine has been a practicing physician since 1967; was previously a member of the Harry Benjamin International Gender Dysphoria Association, the precursor to the World Professional Association for Transgender Health (WPATH) (Levine Report at 1); and was retained as the district court's independent expert in a

recent case involving transgender inmate care, *Kosilek v. Spencer*, 889 F. Supp. 2d 190, 227 (D. Mass. 2012), reversed by *Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014) (en banc). Dr. Levine agreed with Dr. Coffin's prior assessment of Norsworthy and opined that Norsworthy's situation does not present a case where immediate sex-reassignment surgery is medically necessary. (Levine Report at 21.) Importantly, Norsworthy failed to rebut, with expert medical testimony, any portion of Dr. Levine's report or any of his conclusions.

B. Norsworthy Failed to Demonstrate that She Faced Immediate Injury.

Norsworthy failed to demonstrate that she faced immediate threatened injury. *See Caribbean Marine Svcs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Evidence about speculative or remote harms does not suffice to justify preliminary injunctive relief. *Id.* at 675. Norsworthy's motion did not argue, much less demonstrate, that she will suffer immediate injury if she does not obtain injunctive relief at this point in this case. Norsworthy has been treated for gender dysphoria for over 20 years, and there is no indication that her condition has somehow worsened to the point where she must obtain sex-reassignment surgery now rather than waiting until this case produces a final judgment on the merits. Neither of Norsworthy's experts provided a reason for why surgery must take place on an emergency basis. Plaintiff's psychologist, Dr. Randi Ettner, opined that "reassignment surgery . . . should be immediately implemented." (Dec. R. Ettner Supp. Pl.'s Mot. Prelim. Inj. (ECF No. 63) ¶ 78.) (As a psychologist, Dr. Ettner cannot authorize surgery.) But Dr. Ettner offers no explanation for this urgency. And although emergency-room physician Dr. Gorton opined that Norsworthy should be "immediately, urgently referred" for genital sex-reassignment surgery, he apparently did so based on a mistaken belief that Norsworthy's hormone therapy has been "completely discontinued." (Decl. R. Gorton Supp. Pl.'s Mot. Prelim. Inj. (ECF No. 64) ¶¶ 35 & 38.) Although Dr. Gorton points to Norsworthy's liver functioning as a purported reason why sex-reassignment surgery is necessary, prison medical staff continually monitor and adjust Norsworthy's estrogen levels. (Munir Decl. ¶ 5.) In contrast, Dr. Levine opined that there is simply no immediacy to sex-reassignment surgery, without dispute from Norsworthy's expert. (Levine Report at 22.) A difference of opinion between an inmate and prison medical staff

concerning appropriate medical care, as it exists here, does not even give rise to a § 1983 claim, let alone support a mandatory injunction requiring Defendants to perform the surgery. *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

II. DEFENDANTS WILL BE IRREPARABLY HARMED IF A STAY IS NOT GRANTED.

The Court's order, by its terms, forces CDCR to perform "sex reassignment surgery" on an inmate – a procedure that is wholly undefined in the order and that several doctors have specifically advised against in Norsworthy's case.

The WPATH Standards of Care do not define any particular procedure as "sex reassignment surgery;" rather, the standards treat "sex-reassignment surgery" as a categorical umbrella consisting of numerous medical procedures. For male-to-female patients, "surgical procedures" may include any of the following: breast/chest surgery (augmentation mammoplasty via implants or lipofilling), genital surgery (penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty), facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation (implants/lipofilling), hair reconstruction, and various aesthetic procedures. (First Am. Compl., Ex. 1 (Coleman, E. et al., *Standards of Care for the Health of Transexual, Transgender, and Gender-Nonconforming People*, Version 7 (2012), pp. 199-205), ECF No. 10-1 at 36-42.) The WPATH's Standards of Care provide no guidance about which of these many procedures are to be considered "medically necessary" for a transgender inmate. Indeed, the Standards of Care acknowledge that opinions diverge regarding which procedures should be considered reconstructive versus cosmetic. (*Id.* at 38.) The Standards of Care concede that phalloplasty or vaginoplasty may be the proper procedure for an individual with persistent, well-documented gender dysphoria and whose medical and mental health concerns are "well controlled." (*Id.* at 39.) However, the Standards of Care also state that an unremarkable procedure, like rhinoplasty, could "have a radical and permanent effect on their quality of life," and may be the most appropriate type of sex-reassignment surgery for that particular person. (*Id.* at 38.)

The Court's order permits an inmate to obtain any number of these procedures based solely on the assertion that the inmate has gender dysphoria and that the preferred surgery is

necessary for the inmate to fully express their identified gender. For example, the Court's order could be read to permit any transgender inmate who has undergone twelve months of hormone therapy to obtain liposuction at the State's expense so long as they declare that the procedure would have a "radical and permanent" effect on their quality of life. And they will be able to obtain this surgery even if a medical opinion advises against it. Such a result will make it impossible for CDCR to determine what surgery – or surgeries – are medically necessary for any given transgender inmate. The Court's order effectively takes inmate healthcare out of CDCR's hands and subjects it to an inmate's personal preferences. But "the law is clear" that when—as here—reasonable alternatives to care exist and prison officials have chosen one of those alternatives, it is not "the place of [the] court to 'second guess medical judgments' or to require that [prison officials] adopt the more compassionate of two adequate options." *Kosilek v. Spencer*, 774 F.3d at 90 (quoting *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976)); *see also Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). And when prison officials have expressed serious safety and security concerns that may arise when an inmate's preferred treatment were to be pursued, their decision on treatment options are entitled to deference. *Kosilek*, 774 F.3d at 94-96.

Once a court orders preliminary injunctive relief providing to a party all that she seeks in the litigation, the defendant is potentially deprived of appellate review. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 398 (1981) ("[W]hether a preliminary injunction should have been issued here is moot, because the terms of the injunction . . . have been fully and irrevocably carried out."). Here, the grant of a mandatory preliminary injunction requiring Defendants to operate on Norsworthy has, absent a stay, disposed of the entire case without a final judgment of liability against Defendants. Additionally, the urgent nature of this Court's mandatory injunction potentially deprives the Ninth Circuit of an opportunity to review the propriety of the unprecedented preliminary-injunction order.

III. SEX-REASSIGNMENT SURGERY CAN WAIT BECAUSE THE CONSTANT CARE NORSWORTHY RECEIVES FROM THE MEDICAL DEPARTMENT MINIMIZES THE RISK OF ANY SUBSTANTIAL THREAT TO HER HEALTH.

Norsworthy will not suffer any substantial injury if the order is stayed. Norsworthy has

and will continue to receive hormone therapy and psychotherapy, and will continue to have her liver functioning monitored by an endocrinologist. There is no evidence that Norsworthy is in serious, immediate physical or emotional danger. Norsworthy has been receiving hormone therapy for her gender dysphoria since 2000, and continues to receive hormone therapy and other forms of treatment. (Pl.'s Mot. ECF No. 62 at 11.) Since June 2014, her hormone treatment has been supervised by Dr. Munir. (Decl. Dr. I. Munir Opp. Pl.'s Mot. Prelim. Inj. (Munir Decl.) ¶¶ 1-2.) Dr. Munir has readjusted Norsworthy's hormone prescriptions so that they safely provide the appropriate therapeutic benefit to Norsworthy, and he continues to monitor and adjust her hormone therapy as necessary. (*Id.* ¶ 4-5.)

IV. THE PUBLIC INTEREST FAVORS A STAY.

The public interest strongly favors a stay. In cases involving governmental action, "the public interest is a factor to be strongly considered." *Lopez v. Heckler*, 713 F.2d 1432, 1435-36 (9th Cir. 1983). Courts defer to a state's political branches in identifying and protecting the public interest. *United States v. Marine Shale Processors*, 81 F.3d 1329, 1359 (5th Cir. 1996). The public has a strong interest in having CDCR manage prisoners' healthcare, and to have that power circumscribed only after comprehensive appellate review.

The public has a strong interest in having this case resolved on the merits, rather than having a decision issued on an incomplete record and misapplication of the law. Courts have noted that deciding cases on the merits is particularly important in civil-rights cases. *See, e.g.*, *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998). This case presents important issues of first impression and the public's interest lies in carrying out final judgments that have been issued based on a full and fair trial on the merits and not based on an incomplete record.

Furthermore, the public interest weighs against Norsworthy's requested relief. "[G]ranting this injunctive relief, which would effectively have the federal courts making ad hoc, and individual, decisions concerning the treatment of a single prisoner, could harm both the defendants' and the public's interest. In this prison context, the defendants' interests and the public's interest in penological order could be adversely effected if the Court began dictating the treatment for the plaintiff, one inmate out of thousands in the state prison system." *Kelly v.*

Merrill, No. 14-CV-2322, 2014 WL 7740025, at *9 (M.D. Pa. Dec. 11, 2014); *Wylie v. Montana Women's Prison*, 2014 WL 6685983, at *3 (D. Mont. Nov. 25, 2014) (rejecting inmate's request for injunctive relief, and noting that "it would not be in the public's interest to interfere with . . . prison policies"). Public interest in "penological order" mandates that Defendants be permitted to provide medically necessary treatment under gender-neutral regulations.

Norsworthy's request for immediate surgery also takes no account of the administrative and security issues that will ensue when Defendants attempt to safely incarcerate Norsworthy following that surgery. "When evaluating medical care and deliberate indifference, security considerations inherent in the functioning of a penological institution must be given significant weight." *Kosilek v. Spencer*, 774 F.3d at 83. Here, similar to *Kosilek*, CDCR is concerned that attempting to provide Norsworthy with safe housing options were she to undergo sex-reassignment surgery would present significant new safety and administrative concerns. (Harrington Decl. ¶¶ 6-8.) Housing Norsworthy as an anatomically female inmate in an all-male facility would pose unacceptable safety and security risks. (*Id*. ¶ 6.) On the other hand, Norsworthy's post-sentencing probation report shows that before committing the murder that resulted in her life sentence, she threatened her then girlfriend with bodily harm, and was arrested under California Penal Code section 148.1 for threatening to bomb her girlfriend's home. (*Id*. ¶ 4.) That history raises significant concerns about transferring Norsworthy to a female institution. (*Id*. ¶ 7.) Although CDCR holds a single post-operative transgender inmate in a female facility (the inmate referenced in Dr. Levine's report whose surgery took place before she was housed in a CDCR institution), the "threats and assaults from female inmates and from [that] transgender inmate herself" have led to numerous issues in providing a "stable housing environment." (*Id.* ¶ 6.) And as a patient in CDCR's Mental Health Services Delivery System, Norsworthy cannot be housed at length in administrative segregation or a Security Housing Unit. (*Id*. ¶ 8; *see also* Order (ECF 5131) at 46-55, *Coleman v. Brown*, No. 2:90-cv-00520 KJM-DAD (E.D. Cal.).) The public's interest in orderly prison administration dictates that the Court's order be stayed pending appeal.

CONCLUSION

For these reasons, Defendants request that the Court stay the April 2, 2015 Order Granting Preliminary Injunction pending review by the Ninth Circuit Court of Appeals.

Dated: April 10, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Case Name: **Michelle-Lael B. Norsworthy v. J. Beard, et al.** No. **C 14-00695 JST (PR)**

I hereby certify that on April 10, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY ORDER GRANTING PRELIMINARY INJUNCTION; and

[PROPOSED] ORDER GRANTING MOTION TO STAY ORDER GRANTING PRELIMINARY INJUNCTION.

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 10, 2015, at San Francisco, California.

C. Look	/s/ C. Look
Declarant	Signature

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