UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, ET AL.,

Petitioners,

and

SACRAMENTO FAMILY MEDICAL CLINICS, INC., et al.,

Intervenors,

vs.

SANDRA SHEWRY, Director of the Department of Health Care Services of the State of California; DEPARTMENT OF HEALTH CARE SERVICES, a Department of California

Respondent.

Case No. CV 08-3315 CAS (MANx)

ORDER DENYING RESPONDENTS MOTION TO STAY THE COURT'S JANUARY 22, 2010 ORDER AMENDING THE AUGUST 18, 2008 INJUNCTION

The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing date of March 1, 2010, is hereby vacated, and the matter is hereby taken under submission.

I. INTRODUCTION

The facts and procedural history of this action are known to the parties and summarized in this Court's August 18, 2008 order granting in part and denying in part petitioners' motion for preliminary injunction. On January 22, 2010, this Court issued an order amending this Court's August 18, 2009 order pursuant to the mandate from the Ninth Circuit Court of Appeals. See Indep. Living Ctr. of S. Cal. v. Maxwell-Jolly, ("ILC II"), 572 F.3d 644, 662-63 (9th Cir. 2009) (affirming in part and reversing in part this Court's August 18, 2008 order); Indep. Living Ctr. of S. Cal. v. Maxwell-Jolly, ("ILC III"), 590 F.3d 725, 730 (9th Cir. 2009) (denying respondent's motion to vacate ILC II and ordering the mandate to reissue). Pursuant to the mandate, this Court vacated the August 27, 2008 order modifying the injunction and amended the August 18, 2008 order to change the effective date to July 1, 2008. Accordingly, this Court ordered "respondent Director, her agents, servants, employees, attorneys, successors, and all those working in concert with her to refrain from enforcing Cal. Welf. & Inst. Code § 14105.19(b)(1), including refraining from reducing by ten percent payments under the Medi-Cal fee-for-service program for physicians, dentists, optometrists, prescription drugs, adult day health care centers, and clinics for services provided on or after July 1, 2008."[1] See Jan. 22 and 29, 2010 orders.

On January 29, 2010, respondent filed the instant motion to stay, under Fed. R. Civ. P. 62(c), this Court's January 22, 2010 order pending filing and disposition of respondent's petition for certiorari to the Supreme Court. On February 8, 2010, petitioners and intervenors (collectively, "petitioners") filed an opposition. A reply was filed on February 16, 2008. After carefully considering the arguments set forth by both parties, the Court finds and concludes as follows.

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[1] On January 29, 2010, the Court issued a minute order amending the January 22, 2010 order to clarify the six categories of services subject to injunction.

II. LEGAL STANDARD

While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, a court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. Fed. R. Civ. P. 62(c). Although different rules of procedure govern the power of district courts and court of appeals to stay an order pending appeal, see Fed. R. Civ. P. 62(c) and Fed. Rule App. P. 8(a), the Supreme Court has held that the factors regulating the issuance of a stay are generally the same: (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. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Cal. Pharmacists Ass'n v. Maxwell-Jolly, 563 F.3d 847, 849-50 (9th Cir. 2009).

III. DISCUSSION

Respondent moves to stay this Court's January 22, 2010 order pending disposition of his petition for certiorari to the Supreme Court.[2] Mot. at 1. Respondent contends that compliance with the January 22, 2010 order will cause respondent to suffer administrative and financial hardship, which if the Supreme Court rules in his favor, would have been "in vain and to the taxpayers' detriment since the additional payments would then have to be re-collected at an additional expense." Id. at 3-4. Specifically, he asserts that because the order lengthens the period of reimbursement from August 18,

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[2] Respondent requests that the Court take judicial notice of his petition for certiorari filed in the United States of Supreme Court. Under Fed. R. Evid. 201, a court may take judicial notice of "matters of public record." Mack v. South Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986). As such, judicial notice is proper insofar as judicial notice is taken that this filing was made. The Court GRANTS respondent's request for judicial notice to the extent he requests that the Court take judicial notice that the document was filed with the Court. However, the Court does not take judicial notice of the truth of the matters asserted therein.

1 2008 back to July 1, 2008, that respondent will be compelled to reprocess
2 "approximately 8 million medical provider claims and 620,635 dental provider claims."
3 Id.; Dworman Decl. ¶ 4; Marks Decl. ¶ 4. Further, respondent asserts that the total cost
4 to reimburse ten percent claims processed during this period and to develop the
5 necessary administrative procedures and programs to accomplish this reimbursement
6 would be approximately "$62 million for medical providers and $8,367,688 for dental
7 providers."[3] Id. Accordingly, respondent argues that under the applicable standard, the
8 balance of hardships weighs heavily in favor of granting a stay.[4] Id. Moreover,
9 respondent contends that his petition for certiorari to the Supreme Court presents
10 important legal questions that merit review, most notably whether private parties may
11 maintain a claim under the Supremacy Clause to enforce a provision of the Medicaid
12 Act, 42 U.S.C. § 1396a(a)(30(A). Id. at 4-5. Finally, respondent argues that any further
13 strain on scarce public resources would not be in the public interest. Id. at 6. As a
14 threshold matter, petitioners respond that this Court is bound by the rule of mandate to
15 execute the Ninth Circuit's mandate, and thus lacks jurisdiction to stay the January 22,
16 2010 order. Opp'n at 1-2 (citing U.S. v. Thrasher, 483 F.3d 977, 982 (9th Cir. 2007)).
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18 [3] According to respondent, the estimated cost of developing and running a program
19 to recoup reimbursements, if the injunctions are overturned by the Supreme Court, is
20 $119,080 for medical providers and $78,00 for dental providers. Mot. at 4; Dworman
Decl. ¶ 5; Marks Decl. ¶ 5.
21
[4] Respondent maintains that the Ninth Circuit interprets the standard for granting
22 a stay as "two interrelated legal tests" operating along a continuum. Mot. at 2. "At one end
23 of the continuum, the moving party is required to show both a probability of success on the
merits and the possibility of irreparable injury. . . . At the other end of the continuum, the
24 moving party must demonstrate that 'serious legal questions' are raised and that the
25 'balance of hardships tips sharply in its favor.'" Golden Gate Rest. Ass'n v. City and
County of San Francisco, 713 F.3d 1112, 1115-16 (9th Cir. 2008). The "relative hardship
26 to the parties," respondent contends is the "critical element" in deciding at which point
27 along the continuum is justified. Mot. at 2. Petitioners respond that the continuum
standard was expressly repudiated in Winter v. Natural Res. Def. Council, 129 S. Ct. 365,
28 374 (2008). Opp'n at 2.

According to petitioners, to obtain the relief requested in the instant motion, respondent should have timely filed a motion with the Ninth Circuit, pursuant to Fed. R. App. P. 41(d), to stay the mandate pending petition for certiorari.[5] Id. In the event that the Court determines that jurisdiction over the motion is proper, petitioners contend that respondent cannot demonstrate that he is likely to prevail on the merits. Id. at 3-4. Moreover, given that the Supreme Court already declined to review the legal issues identified by respondent in Maxwell-Jolly v. Indep. Living Ctr. of S. Cal, 129 S. Ct. 2828 (2009) (denying petition for writ of certiorari in ILC I, 543 F.3d 1050 (9th Cir. 2008)), petitioners argue that respondent cannot even demonstrate that he will be granted review. Id. Finally, petitioners argue that the only harm claimed by respondent is monetary injury which is not recognized as irreparable, and thus the public interest favors denying a stay. Id. at 5.

Respondent replies that although this Court is bound by the Ninth Circuit mandate, it has discretion to suspend the injunction pending appeal, under Fed. R. Civ. P. 62(c). Reply at 2. Accordingly, respondent reiterates that he meets the threshold requirements for a stay. Id. at 3-7.

This Court is expressly bound by the Ninth Circuit mandate and issued the January 22, 2010 order in accordance with this mandate. See Thrasher, 483 F.3d at 981 (On remand, the district court "is bound by the decree as the law of the case, and must

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[5] Rule 41(d) provides that a "party may move to stay the mandate pending the filing of a petition for writ of certiorari in the Supreme Court." Fed. R. App. P. 41(d)(2)(A). The Supreme Court "rarely grants a stay of mandate pending the filing and disposition of petition for certiorari," unless three conditions are met:

> First, there must be a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari. Second, there must be a significant possibility that a majority of the Court will conclude that the decision below was erroneous. Finally, there must be a likelihood that irreparable harm will result if the decision below is not stayed.

Curry v. Baker, 479 U.S. 1301, 1302 (1986).

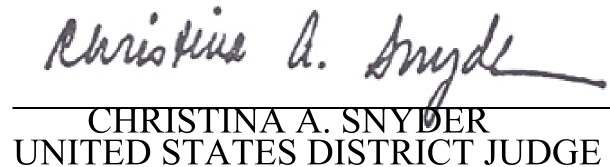
carry it into execution according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief . . . ."). Thus, given that the law and findings in this case have been affirmed on appeal, the Court does not find it appropriate to stay the January 22, 2010 order. Even if it could be said that this Court has the discretion to suspend the execution of the mandate, there does not appear to be any basis to stay that order. While the Court is mindful of the difficulty facing the State of California in light of its fiscal crisis, respondent has not demonstrated a strong showing that he is likely to succeed on the merits of his petition for certiorari, nor that he will be irreparably harmed absent a stay. Just as the Ninth Circuit held that vacating the ILC II opinion would "neither be in the public interest, nor would it be fair to the parties to the litigation," ILC III, 590 F.3d at 730, this Court finds that it would not be in the public interest to stay the order issued in accordance with that mandate.

IV. CONCLUSION

In accordance with the foregoing, the Court DENIES respondent's motion to stay.

IT IS SO ORDERED

Dated: February 25, 2010



CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE