

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 TODD ASHKER, et al.,
5 Plaintiffs,
6 v.
7 GAVIN NEWSOM, et al.,
8 Defendants.

Case No. 09-cv-05796 CW

ORDER GRANTING MOTION FOR DE
NOVO DETERMINATION OF RULING
REGARDING DISTRICT COURT'S
JURISDICTION PENDING APPEAL
AND MOTION TO STAY

(Dkt. No. 1180)

9
10 This class action for violations of 42 U.S.C. § 1983 arises
11 out of the placement and indefinite retention of inmates by the
12 California Department of Corrections and Rehabilitation (CDCR) in
13 solitary confinement in Security Housing Units (SHU) on the basis
14 of so-called gang validation. Plaintiffs, inmates in California
15 prisons, some of whom have been in solitary confinement for more
16 than ten years, bring this class action against Defendants, the
17 Governor of the State of California, the Secretary of CDCR, the
18 Chief of CDCR's Office of Correctional Safety, and the Warden of
19 Pelican Bay State Prison, for violations of their Eighth and
20 Fourteenth Amendment rights.

21 The parties entered into a settlement agreement in August
22 2015, whose terms, and the Court's jurisdiction to enforce the
23 same, were set to expire in twenty-four months, unless Plaintiffs
24 showed, pursuant to the terms of the settlement agreement, the
25 existence of ongoing and systemic violations under the Eighth
26 Amendment or Fourteenth Amendment as alleged in the operative
27 complaints or arising out of the reforms required by the
28 settlement agreement. At the end of the settlement agreement's
 twenty-four-month term, Plaintiffs moved for an extension, and

1 the undersigned referred the motion to the magistrate judge
2 subject to de novo review pursuant to the terms of the settlement
3 agreement. The magistrate judge found that Plaintiffs made the
4 requisite showing of ongoing and systemic violations, and he
5 extended the settlement agreement, and along with it the Court's
6 jurisdiction over it, for twelve months. See Extension Order,
7 Docket No. 1122. Both parties appealed that order directly to
8 the Ninth Circuit, pursuant to their own agreement to bypass the
9 district court and present their case directly to the court of
10 appeals. Defendants moved the magistrate judge to stay the
11 Extension Order; in that motion, Defendants also argued that the
12 district court was divested of jurisdiction to enforce this order
13 when they filed their notice of appeal of it. On April 10, 2019,
14 the magistrate judge ruled that "the filing of the notice of
15 appeal divested the court of jurisdiction as to any matters
16 arising thereafter" because the appeal of the Extension Order
17 fell within the scope of the collateral order doctrine. April 10
18 Order at 8, Docket No. 1174. He then denied the motion to stay
19 as moot.

20 Now before the Court is Plaintiffs' motion for de novo
21 review of the April 10 Order. Defendants oppose the motion. For
22 the reasons set forth below, the Court GRANTS Plaintiffs' motion
23 for de novo review of the April 10 Order, and concludes that the
24 appeal of the Extension Order did not divest the district court
25 of jurisdiction to enforce it, and that Defendants have not met
26 their burden to show that a stay of the order pending the appeal
27 is warranted.

28 //

BACKGROUND

I. Claims and Procedural History

Plaintiffs Todd Ashker and Danny Troxell had lived in solitary confinement in Pelican Bay's SHU for over two decades. Docket No. 1, Compl. ¶¶ 16-18. On December 9, 2009, they filed this lawsuit challenging the conditions of their confinement. Their pro se complaint charged various CDCR officials with violating their First, Fifth, Eighth, and Fourteenth Amendment rights. Id. ¶ 8.

On September 10, 2012, after securing counsel, Ashker and Troxell filed a second amended complaint (2AC) converting this suit into a putative class action and joining eight other long-term SHU inmates as plaintiffs. 2AC ¶ 1, Docket No. 136. In their 2AC, Plaintiffs assert that lengthy exposure to the conditions inside the Pelican Bay SHU violates the Eighth Amendment's ban on cruel and unusual punishments. Id. ¶¶ 177-92. Specifically, they allege that "the cumulative effect of extremely prolonged confinement, along with denial of the opportunity of parole, the deprivation of earned credits, the deprivation of good medical care, and other crushing conditions of confinement at the Pelican Bay SHU" have caused them significant harm, both physically and psychologically. Id. ¶¶ 180-81. They claim that SHU inmates are forced to "languish, typically alone, in a cramped, concrete, windowless cell, for 22 and one-half to 24 hours a day" without access to "telephone calls, contact visits, and vocational, recreational or educational programming." Id. ¶ 3.

1 Plaintiffs also assert that CDCR's procedures for assigning
2 inmates to the SHU violate the Fourteenth Amendment's guarantee
3 of due process. Id. ¶¶ 193-202. According to Plaintiffs, CDCR
4 assigns inmates to the SHU based solely on their membership in or
5 association with prison gangs, without regard for the inmate's
6 "actual behavior." Id. ¶¶ 91-92. CDCR relies instead on the
7 word of confidential informants and various indicia such as
8 "gang-related art, tattoos, or written material" to determine
9 whether inmates are affiliated with a gang - a process known as
10 "gang validation." Id. ¶ 92. Inmates who have been validated as
11 gang members or associates are assigned to the SHU for an
12 indefinite term. Id. ¶¶ 92-94. Once inside the SHU, inmates
13 receive periodic reviews every six months to determine whether
14 they should be released into the prison's general population.
15 Id. ¶¶ 96-97. Plaintiffs allege that these reviews are
16 essentially "meaningless," because they require inmates to
17 "debrief" - that is, to renounce their membership in the gang and
18 divulge the gang's secrets to prison officials in order to secure
19 release. Id. ¶¶ 96-97, 7. Plaintiffs contend that debriefing is
20 not a viable option for most inmates, who either know no such
21 secrets or who believe that debriefing "places [them] and their
22 families in significant danger of retaliation" from other
23 prisoners or their associates outside. Id. ¶ 7. CDCR also
24 conducts reviews of SHU inmates' gang affiliation status every
25 six years to determine whether they are still "active" gang
26 members or associates. Id. ¶¶ 102-04. As with the six-month
27 reviews, however, Plaintiffs aver that this process typically
28 only leads to the inmate's release from the SHU if the inmate is

1 willing to debrief. Id. Plaintiffs allege, in short, that they
2 have effectively been denied "information about an actual path
3 out of the SHU, besides debriefing." Id. ¶ 117. They allege
4 that they "are entitled to meaningful notice of how they may
5 alter their behavior to rejoin general population, as well as
6 meaningful and timely periodic reviews to determine whether they
7 still warrant detention in the SHU." Id. ¶ 200.

8 Plaintiffs' 2AC seeks declaratory and injunctive relief. In
9 particular, Plaintiffs request "alleviation of the conditions of
10 confinement" in the SHU, meaningful review of the continued need
11 for solitary confinement of all inmates who have been in the SHU
12 for over six months, and release from the SHU of every inmate who
13 has spent over ten years there. Id. at ¶¶ 45-46; 202. They have
14 not asserted any claims for monetary damages.

15 Defendants moved to dismiss the complaint in December 2012.
16 They argued, among other things, that Plaintiffs' due process
17 claim was moot because CDCR had implemented in October 2012 a new
18 set of procedures, collectively known as the "Security Threat
19 Group" (STG) pilot program to review existing SHU assignments and
20 transfer certain SHU inmates into the general population. The
21 Court rejected that argument in its April 2013 order denying
22 Defendants' motion to dismiss. It found that the implementation
23 of the STG pilot program was not sufficient to render Plaintiffs'
24 claims moot because CDCR had not implemented the program
25 permanently and, at that time, all ten Plaintiffs remained
26 subject to the preexisting procedure.

27 On May 2, 2013, Plaintiffs moved for class certification
28 under Federal Rules of Civil Procedure 23(b)(1) and 23(b)(2).

1 The motion remained pending for nearly a year at the parties'
2 request while they engaged in settlement negotiations. On May
3 14, 2014, however, the parties notified the Court that they were
4 not able to reach a settlement. On June 2, 2014, the Court
5 granted in part and denied in part Plaintiffs' motion for class
6 certification. The Court certified two classes under Rules
7 23(b)(1) and 23(b)(2): (1) a Due Process Class comprised of all
8 inmates who are assigned to an indeterminate term at the Pelican
9 Bay SHU on the basis of gang validation, under the policies and
10 procedures in place as of September 10, 2012; and (2) an Eighth
11 Amendment Class comprised of all inmates who are now, or will be
12 in the future, assigned to the Pelican Bay SHU for a period of
13 more than ten continuous years. Order at 21, Docket No. 317.

14 On October 17, 2014, CDCR permanently implemented the
15 Security Threat Group (STG) policy, first piloted in October
16 2012. See 15 Cal. Code Regs. § 3000, et seq.; Settlement
17 Agreement ¶ 6, Docket No. 424-2. This policy alters aspects of
18 CDCR's gang validation process and its practice of imposing
19 indeterminate terms in Pelican Bay's SHU. STG, in part, allows
20 Pelican Bay's SHU inmates to "step down" from the most
21 restrictive placement in the SHU to less restrictive housing
22 conditions, provided that the inmate fulfills certain
23 obligations.

24 On March 9, 2015, the Court granted Plaintiffs' motion to
25 file a supplemental complaint, which alleges a supplemental
26 Eighth Amendment claim on behalf of a putative class of gang-
27 validated inmates who were housed at Pelican Bay's SHU for more
28 than ten years and who have been or will be transferred, under

1 the Step Down Program, to a SHU at another CDCR facility. See
2 Order, Docket No. 387; Supp. Compl., Docket No. 388. In this
3 pleading, Plaintiffs allege that their prolonged placement in any
4 combination of SHUs constitutes cruel and unusual punishment.
5 The Court ruled that the new allegations in the Supplemental
6 Complaint would not be litigated until after the conclusion of
7 the trial based on the 2AC allegations. Order at 11, Docket No.
8 387; Order, Docket No. 393.

9 On September 2, 2015, the parties jointly moved for
10 preliminary approval of a settlement agreement (SA) that would
11 resolve all claims in the 2AC and Supplemental Complaint.

12 The Court granted preliminary approval to the settlement
13 agreement on October 14, 2015, and it granted final approval on
14 January 26, 2016. Docket Nos. 445, 488. In accordance with the
15 settlement agreement, the Court retained jurisdiction to enforce
16 it. Docket No. 488 at 2.

17 II. Relevant Terms of the Settlement Agreement

18 The key terms of the settlement agreement include the
19 following: (1) requiring CDCR to no longer place inmates in any
20 SHU, administrative segregation, or the Step Down Program solely
21 on the basis of gang validation; (2) requiring the creation of
22 the Restrictive Custody General Population Unit (RCGP), to
23 provide inmates with increased opportunities for social
24 interaction and programming; (3) requiring that no inmate be
25 placed in the Pelican Bay SHU for more than five continuous
26 years; (4) requiring the Step Down Program to be shortened to two
27 years; and (5) requiring CDCR to train staff to ensure that
28 confidential information used against inmates is accurate and to

1 promote the implementation and management of the procedures and
2 policies described in the settlement agreement. See, e.g., SA ¶¶
3 13-36, Docket No. 424-2.

4 Paragraph 41 of the settlement agreement permits Plaintiffs
5 to seek an extension of the agreement "and the Court's
6 jurisdiction over this matter" of not more than twelve months; to
7 obtain the extension, Plaintiffs must demonstrate "by a
8 preponderance of the evidence" that current and ongoing systemic
9 violations of the Eighth or Fourteenth Amendments exist as
10 alleged in the Second Amended Complaint, or Supplemental
11 Complaint, or as a result of CDCR's reforms to its Step Down
12 Program or the SHU policies contemplated in the agreement. Id. ¶
13 41. In the event that an extension beyond the initial twenty-
14 four months is granted, CDCR's obligations with respect to the
15 production of data and documentation would be extended for the
16 same period. Id. ¶ 44. In the absence of this showing, the
17 settlement agreement and the Court's jurisdiction "shall
18 automatically terminate[.]" Id. ¶ 41.

19 The agreement permits Plaintiffs to seek to extend
20 indefinitely the settlement agreement and the Court's
21 jurisdiction so long as they make the requisite showing just
22 described, with each extension lasting no more than twelve
23 months. Id. ¶ 43.

24 The settlement agreement also contains a procedure for
25 seeking enforcement of its terms; it requires Plaintiffs to
26 demonstrate by a preponderance of the evidence that CDCR is in
27 material breach of its obligations under the settlement
28 agreement. Id. ¶ 53. Any determination by the magistrate judge

1 with respect to enforcement is subject to de novo review by the
2 district court under 28 U.S.C. § 636(b)(1)(B). Id. Multiple
3 enforcement motions have been resolved in accordance with this
4 procedure, and appeals of several of the orders issued by the
5 undersigned in connection with such motions are pending. See
6 Amended Notice of Appeal, Docket No. 1117 (listing pending
7 appeals of enforcement motions).

8 III. Extension of the Settlement Agreement

9 On November 20, 2017,¹ Plaintiffs moved for an extension of
10 the settlement agreement under paragraph 41 on the basis of
11 current and ongoing systemic violations of the Due Process Clause
12 of the Fourteenth Amendment. Docket No. 898-4. Plaintiffs
13 advanced three independent bases for extending the settlement
14 agreement and the Court's jurisdiction (with each being
15 sufficient to warrant an extension): (1) the misuse of unreliable
16 confidential information by Defendants; (2) inadequate procedural
17 protections related to placement and retention of class members
18 in the RCGP; and (3) the retention of CDCR's old gang
19 validations, which Plaintiffs contend ultimately resulted in a
20 denial of a fair opportunity for parole. Id. at 1. Defendants
21 opposed the motion.

22 After the undersigned referred the motion to the magistrate
23 judge, the magistrate judge granted Plaintiffs' motion to extend
24 the settlement agreement on January 25, 2019, finding that
25

26 ¹ Plaintiffs' motion to extend the settlement agreement and
27 the Court's jurisdiction was due on November 20, 2017, pursuant
28 to a stipulation. See Docket No. 886 at 1. Accordingly, this
motion was not untimely or in violation of the settlement
agreement.

1 Plaintiffs had satisfied their burden under the settlement
2 agreement to extend the same for an additional twelve months
3 based on two of the three grounds they advanced in their motion.
4 Docket No. 1122. Specifically, the magistrate judge found that
5 Plaintiffs, as required by paragraph 41 of the settlement
6 agreement, had shown by a preponderance of the evidence that
7 Defendants had engaged in ongoing and systemic due process
8 violations (1) through their misuse of confidential information,
9 which had the effect of improper placement in solitary
10 confinement; and (2) by using unreliable gang validations, which
11 had the effect of denying class members the opportunity for a
12 meaningful parole hearing. Extension Order at 26, Docket No.
13 1122. The magistrate judge further found that that these
14 systemic violations were alleged in the Second Amended Complaint
15 or the Supplemental Complaint, or were the result of the reforms
16 to CDCR policies and practices required by the settlement
17 agreement and, as such, they constituted proper bases for
18 extending the settlement agreement. Id. The magistrate judge
19 did not order or implement any remedies for the systemic
20 violations he found, although he did note in his order,
21 consistent with the settlement agreement, that “in the event of
22 an extension of the Settlement Agreement and the court’s
23 jurisdiction over the matter beyond the initial 24-month period,
24 Defendants’ obligations of production of any agreed upon data and
25 documentation to Plaintiffs’ counsel will be extended for the
26 same period[.]” Id. at 3.

27 The parties agreed to take the position that the Extension
28 Order would be a “final order subject to appellate review[.]”

1 See Joint Notice at 2, Docket No. 1129. Defendants filed a
2 notice of appeal to the Ninth Circuit on February 6, 2019, and
3 Plaintiffs filed a notice of a cross-appeal on February 25, 2019.
4 Docket Nos. 1126, 1130, 1131. The cross-appeals are pending. As
5 noted above, appeals of certain of the orders issued in
6 connection with enforcement disputes also are pending.

7 IV. Magistrate Judge's April 10 Ruling on Defendants' Motion to
8 Stay the Extension Order

9 After the Extension Order was issued, Plaintiffs initiated
10 the meet-and-confer process regarding Defendants' obligation
11 under the settlement agreement to produce documents and data
12 during the twelve-month extension. Plaintiffs then wrote a
13 letter to the magistrate judge on February 13, 2019, requesting a
14 telephonic status conference regarding this issue. See Docket
15 No. 1132-1, Ex. A-C.

16 On February 26, 2019, Defendants moved to stay the Extension
17 Order. Docket No. 1132. In that motion, Defendants made two
18 arguments. First, Defendants contended that their appeal of the
19 Extension Order divested the district court of jurisdiction "over
20 matters relating" to that order. Mot. at 3-4, Docket No. 1132.
21 Second, Defendants contended, in the alternative, that if the
22 district court was not divested of jurisdiction by their appeal
23 of the Extension Order, then the order should be stayed pending
24 the appeal on the ground that they would suffer irreparable harm
25 if they were required to produce documents and data or enact
26 policy changes during the twelve-month extension. Id. at 3-12.

27 Plaintiffs opposed the motion. Docket No. 1147. They
28 argued that the district court was not divested of jurisdiction

1 by Defendants' appeal of the Extension Order, and that the court
2 therefore has jurisdiction to enforce the twelve-month extension
3 of the agreement, including Defendants' obligations to produce
4 documents and data during the extension, and to design a remedy
5 consistent with the systemic constitutional violations that
6 justified the extension. Id. at 3-4. At present, Plaintiffs do
7 not request that remedies be designed. See Motion at 5, Docket
8 No. 1180. They also argued that Defendants did not make the
9 requisite showing to justify a stay of the Extension Order.
10 Specifically, Plaintiffs argued that Defendants cannot suffer
11 irreparable harm from being ordered to comply with their
12 production or other obligations under the settlement agreement
13 during the twelve-month extension because Defendants agreed to
14 undertake such obligations in the event of an extension.

15 The magistrate judge held a teleconference on March 5, 2019,
16 during which he indicated that he would resolve this dispute in
17 conjunction with the motion Defendants had filed to stay the
18 Extension Order. Docket No. 1191-2.

19 On April 10, 2019, the magistrate judge held that this case
20 involves an asserted "right to avoid further proceedings at all,
21 which compels divestiture of those aspects of the case arising
22 after the filing of the notice of appeal as to the Extension
23 Order" based on the collateral order doctrine. April 10 Order at
24 6-8, Docket No. 1174. He then denied Defendants' motion to stay
25 as moot. Id.

26 V. Plaintiffs' Motion for De Novo Review of April 10 Ruling that
27 District Court Was Divested of Jurisdiction

28 Plaintiffs now move for de novo review of the April 10 Order

1 based on these grounds: (1) that the district court was not
2 divested of jurisdiction by the appeal of the Extension Order and
3 has the authority to implement and enforce the Extension Order;
4 (2) that the magistrate judge incorrectly applied the collateral
5 order doctrine; and (3) that Defendants have not shown that a
6 stay is warranted. Docket No. 1180.

7 Defendants oppose the motion, arguing that Plaintiffs'
8 motion is based on the wrong standard because the April 10 Order
9 is not subject to de novo review. Docket No. 1187. Defendants
10 further contend (1) that the collateral order doctrine permits an
11 immediate appeal of the Extension Order because they have
12 "immunity" from further litigation given that the settlement
13 agreement's twenty-four-month period has expired; (2) that the
14 district court was divested of jurisdiction to enforce the
15 Extension Order by their appeal of the order; and (3) that, if
16 the district court was not divested of jurisdiction, then the
17 action should be stayed pending appeal, because they are likely
18 to suffer irreparable harm if its order is enforced. Docket No.
19 1196.

20 ANALYSIS

21 I. The April 10 Order Is Subject to De Novo Review

22 The Court first addresses the parties' dispute with respect
23 to the standard for reviewing the April 10 Order. It concludes
24 that the applicable standard of review is de novo.²

25 First, the April 10 Order resolved a motion by Defendants to
26

27 ² As will be discussed below, even if the standard for
28 reviewing the April 10 Order were "clearly erroneous or contrary
to law," the result would be the same.

1 stay the action, as well as a pending dispute regarding
2 Defendants' obligations under the settlement agreement to produce
3 documents and data during the twelve-month extension. Disputes
4 of that nature are subject to de novo review under the terms of
5 the settlement agreement. See SA ¶¶ 39, 53. At the time
6 Defendants filed the motion to stay, a dispute regarding
7 Defendants' production obligations during the extension was
8 pending. See Docket No. 1132-1, Ex. A-C; see also Extension
9 Order at 6, Docket No. 1147 (noting that "[w]hile the case
10 remains pending in the appellate court, Plaintiffs have
11 'initiated the process for continued monitoring' by demanding
12 document production from Defendants"). Although Plaintiffs did
13 not file a motion for document production, per se, Plaintiffs
14 raised the dispute regarding production during the teleconference
15 with the magistrate judge, who indicated that he would resolve
16 that dispute in conjunction with Defendants' motion to stay.
17 Docket No. 1191, Ex. 1 at 15-17. Accordingly, because the April
18 10 Order was intended to resolve a dispute regarding Defendants'
19 document production obligations, it falls within the scope of
20 paragraph 53 of the settlement agreement and is thus subject to
21 de novo review under 28 U.S.C. § 636(b)(1)(B).³ See SA ¶ 39 ("Any
22 disputes regarding data and document production shall be
23 submitted to Magistrate Judge Vadas in accordance with the
24

25 ³ 28 U.S.C. § 636(b)(1)(B) provides that "[a] judge of the
26 court may accept, reject, or modify, in whole or in part, the
27 findings or recommendations made by the magistrate judge. The
28 judge may also receive further evidence or recommit the matter to
the magistrate judge with instructions." Findings and
recommendations made pursuant to Section 636(b)(1)(B) are subject
to de novo review by the district judge. See 28 U.S.C. §
636(b)(1)(C).

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1 dispute resolution and enforcement proceedings set forth in
2 Paragraphs 52 and 53 [of the Settlement Agreement]."); SA ¶ 53
3 ("An order issued by Magistrate Judge Vadas under this Paragraph
4 is subject to review under 28 U.S.C. § 636(b)(1)(B).").

5 Second, 28 U.S.C. § 636(b)(1)(B) specifically identifies
6 prisoner petitions challenging conditions of confinement as
7 matters that can be referred to a magistrate judge subject to de
8 novo review. The Ninth Circuit has interpreted prisoner
9 petitions as "including section 1983 actions" and "conditions of
10 confinement" as those that relate to "ongoing prison practices
11 and regulations with regard to matters such as placement in
12 maximum security, deadlocks, unhealthy living conditions . . .
13 and cruel and unusual punishment by prison authorities." See
14 Houghton v. Osborne, 834 F.2d 745, 748-50 (9th Cir. 1987)
15 (citation and internal quotation marks omitted). Issues of this
16 nature are the subject of this Section 1983 action. As such,
17 reviewing the April 10 Order de novo is consistent with the
18 language and spirit of 28 U.S.C. § 636(b)(1)(B).

19 II. The District Court Was Not Divested of Jurisdiction by
20 Defendants' Appeal of the Extension Order

21 A. The Court Has the Authority to Implement and Enforce
22 the Extension Order

23 A federal circuit court has jurisdiction over appeals from
24 "final decisions" of the district courts. See 28 U.S.C. § 1291.
25 "A final decision is typically one by which a district court
26 disassociates itself from a case. If non-final decisions were
27 generally appealable, cases could be interrupted and trials
28 postponed indefinitely as enterprising appellants bounced matters
between the district and appellate courts. Costs would be

1 inflated by such a multiplication of proceedings, and district
2 courts would be inhibited in their ability to manage litigation
3 efficiently[.] Moreover, piecemeal appeals would undermine the
4 independence of the district judge.” SolarCity Corp. v. Salt
5 River Project Agric. Improvement & Power Dist., 859 F.3d 720, 723
6 (9th Cir. 2017) (internal citations and quotation marks omitted).

7 “In limited circumstances, however, appeals may be allowed
8 before a final judgment. For example, a district court may
9 certify an order for an immediate appeal. See 28 U.S.C. §
10 1292(b). Alternately, some statutes and rules allow an early
11 appeal of decisions on certain specific issues. Relief from a
12 court order may also be obtained in extraordinary circumstances
13 through a writ of mandamus.” Id. (final citation omitted).
14 Alternatively, “a piece of the case may become effectively
15 ‘final’ under the collateral-order doctrine, even though the case
16 as a whole has not ended.” Id. (citing Cohen v. Beneficial
17 Indus. Loan Corp., 337 U.S. 541, 546 (1949)). The collateral
18 order doctrine is discussed in more detail in the next section.

19 Under the judicially-created divestment doctrine, the filing
20 of a notice of appeal divests the district court of jurisdiction
21 over aspects of a case involved in the appeal. In re Padilla,
22 222 F.3d 1184, 1190 (9th Cir. 2000) (citation omitted). The
23 purpose of divestment is to “avoid the confusion and waste of
24 time that might flow from putting the same issues before two
25 courts at the same time.” Id. (citation omitted). “This rule
26 is not absolute. For example, a district court has jurisdiction
27 to take actions that preserve the status quo during the pendency
28 of an appeal, but may not finally adjudicate substantial rights

1 directly involved in the appeal. Absent a stay or supersedeas,
2 the trial court also retains jurisdiction to implement or enforce
3 the judgment or order but may not alter or expand upon the
4 judgment.” Id. (internal citations and quotation marks omitted).

5 The Extension Order is not a final order within the meaning
6 of Section 1291, because rather than ending the litigation, it
7 extended the settlement agreement and the Court’s jurisdiction
8 for another twelve months. Cf. SolarCity Corp., 859 F.3d at 723
9 (“A final decision is typically one by which a district court
10 disassociates itself from a case.”) (citation omitted).

11 The appeal of the Extension Order⁵, which is interlocutory,
12 does not preclude the Court from enforcing or implementing the
13 Extension Order, as well as the terms of the settlement agreement
14 that are automatically triggered by the Extension Order, for the
15 twelve-month extension period. See In re Padilla, 222 F.3d at
16 1190 (a notice of appeal does not preclude a court from
17 implementing or enforcing the order on appeal so long as it does
18 not “alter or expand” it); GTE Sylvania, Inc. v. Consumers Union
19 of U.S., Inc., 445 U.S. 375, 386 (1980) (“[P]ersons subject to an
20 injunctive order issued by a court with jurisdiction are expected
21 to obey that decree until it is modified or reversed, even if
22 they have proper grounds to object to the order.”).

23
24
25 ⁵ The Ninth Circuit may not accept the parties’ attempt to
26 appeal directly to it the magistrate judge’s Extension Order. A
27 magistrate judge’s order can be appealed directly to a court of
28 appeals instead of the district judge only if it was issued under
the consent statute, 28 U.S.C. § 636(c). 28 U.S.C. § 636(c)(3).
The magistrate judge’s Extension Order was not issued pursuant to
the consent statute; accordingly, Defendants’ appeal of the
Extension Order may be defective.

1 In Britton v. Co-op Banking Grp., 916 F.2d 1405, 1412 (9th
2 Cir. 1990), the Ninth Circuit held that an appeal of an
3 interlocutory order denying a motion to compel arbitration did
4 not divest the district court of jurisdiction to enter subsequent
5 orders. The court of appeals distinguished orders and actions by
6 the district court that involve "moving the case along consistent
7 with its view of the case as reflected in its order denying
8 arbitration," which are within the district court's jurisdiction
9 pending appeal, from orders and actions that would effectuate "a
10 change in the result of the very issue on appeal," which fall
11 outside of the district court's jurisdiction pending appeal. Id.
12 at 1411-12 (emphasis added). The latter are inappropriate
13 because they would force the court of appeals to "deal[] with a
14 moving target." Id.

15 Here, enforcing the terms of the settlement agreement and
16 taking any judicial action under that contract during the twelve-
17 month extension period is permissible, because doing so would not
18 alter or modify the matters determined in the Extension Order,
19 namely, whether Plaintiffs met their burden to show that the
20 twelve-month extension is warranted. See id.; cf. McClatchy
21 Newspapers v. Central Valley Typo. Union No. 46, 686 F.2d 731
22 (9th Cir.1982) (holding that it was error for district court to
23 modify the judgment being appealed while the appeal was pending).

24 Notwithstanding the foregoing, Defendants contend that the
25 district court was divested of jurisdiction to enforce the
26 Extension Order and any matters arising therefrom on the ground
27 that their appeal of that order falls within the collateral order
28 doctrine, which permits an interlocutory order to be treated as

1 "final" for the purpose of permitting an immediate appeal under
2 28 U.S.C. § 1291. The Court concludes, for the reasons discussed
3 below, that this argument is unavailing.

4 B. The Collateral Order Doctrine Does Not Apply to the
5 Appeal of the Extension Order

6 The collateral order doctrine is "best understood" as a
7 "practical construction" of "the final decision rule laid out" in
8 28 U.S.C. § 1291. Digital Equip. Corp. v. Desktop Direct, Inc.,
9 511 U.S. 863, 868 (1994) (citation internal quotation marks
10 omitted). It permits a court of appeals to "treat[] as final" an
11 interlocutory order so that it can be immediately appealed under
12 Section 1291. Id. (citation internal quotation marks omitted).
13 "The collateral-order doctrine has three requirements. First, an
14 interlocutory order can be appealed only if it is conclusive.
15 Second, the order must address a question that is separate from
16 the merits of the underlying case. Third, the separate question
17 must raise some particular value of a high order and evade
18 effective review if not considered immediately. All three
19 requirements must be satisfied for the ruling to be immediately
20 appealable." SolarCity Corp., 859 F.3d at 724 (internal
21 citations and quotation marks omitted). These three requirements
22 have been referred to as the "Cohen test." See Digital Equip.,
23 511 U.S. at 869 (referring to Cohen v. Beneficial Indus. Loan
24 Corp., 337 U.S. 541 (1949)).

25 "The Supreme Court has repeatedly emphasized that these
26 requirements are stringent and that the collateral-order doctrine
27 must remain a narrow exception. In addition, the Court has held
28 that in evaluating these three requirements, [courts] must

1 consider the entire category to which a claim belongs. As long
2 as the class of claims, taken as a whole, can be adequately
3 vindicated by other means, the chance that the litigation at hand
4 might be speeded, or a particular injustice averted, does not
5 provide a basis for jurisdiction under § 1291." SolarCity Corp.,
6 859 F.3d at 724 (citations omitted).

7 Because the scope of the collateral order doctrine is so
8 narrow, the doctrine has been applied in a very limited set of
9 circumstances, namely where a party successfully asserts a
10 constitutional or statutory immunity from suit or trial. For
11 example, the doctrine has been applied to interlocutory denials
12 of certain "particularly important immunities from suit," such as
13 "denials of Eleventh Amendment immunity," absolute and qualified
14 immunity, "foreign sovereign immunity," and "tribal sovereign
15 immunity." Id. at 725 (citations omitted). In the criminal
16 context, the collateral order doctrine has been applied to permit
17 immediate appeals of interlocutory orders where the defendant
18 asserts a constitutional right not to be tried or a
19 constitutional immunity to being subjected to litigation. See,
20 e.g., Abney v. United States, 431 U.S. 651, 659-61 (1977)
21 (applying collateral order doctrine where criminal defendant
22 argued that he was immune from second trial based on the Double
23 Jeopardy Clause of the Fifth Amendment, reasoning that the
24 defendant was "contesting the very authority of the Government to
25 hale him into court to face trial" and that "the rights conferred
26 on a criminal accused by the Double Jeopardy Clause would be
27 significantly undermined if appellate review on double jeopardy
28 claims were postponed until after conviction and sentence");

1 Helstoski v. Meanor, 442 U.S. 500, 508 (1979) (holding that
2 interlocutory order could be immediately appealed under the
3 collateral order doctrine to permit a United States Congressman
4 to assert the immunity conferred upon him by the Speech or Debate
5 Clause, reasoning that the Clause protects Congressmen “not just
6 from the consequences of litigation’s results but also from the
7 burden of defending themselves”). These asserted immunities from
8 suit or trial, when valid, can satisfy the third element of the
9 Cohen test, namely that the order being appealed resolve an
10 important question that would be effectively unreviewable if not
11 considered immediately.

12 Where an interlocutory order is immediately appealable under
13 the collateral order doctrine, the district court is
14 automatically divested of jurisdiction to proceed pending appeal,
15 unless the district court certifies that the appeal is frivolous
16 or another exception applies. See Chuman v. Wright, 960 F.2d
17 104, 105 (9th Cir. 1992) (emphasis added); see also United States
18 v. Claiborne, 727 F.2d 842, 850-51 (9th Cir. 1984) (where an
19 interlocutory claim in a criminal case is considered immediately
20 appealable based on a “right not to be tried,” the district court
21 loses its power to proceed from the time the notice of appeal is
22 filed until the appeal is resolved unless the appeal is found to
23 be frivolous by the district court).

24 Here, the only basis that Defendants have advanced for
25 applying the collateral order doctrine, and for arguing that the
26 district court was divested of jurisdiction to enforce the
27 Extension Order, is one that the Ninth Circuit and the Supreme
28 Court have expressly rejected. Defendants assert that the

1 application of the collateral order doctrine, and the district
2 court's purported divestment of jurisdiction over this
3 litigation, is appropriate based on their asserted "immunity from
4 continuing with the case," which they claim arises, not from
5 statute or the Constitution, but from the notion that this
6 litigation ended at the conclusion of the settlement agreement's
7 initial twenty-four-month term, and from the notion that
8 litigation activity between the notice of appeal and the reversal
9 would be a "waste" if they prevail on appeal. See Supp. Opp'n at
10 3-4, Docket No. 1196.

11 The Ninth Circuit and the Supreme Court specifically have
12 declined to allow immediate appeals under the collateral order
13 doctrine where the "immunity" asserted is a desire "to avoid
14 litigation[.]" See SolarCity Corp., 859 F.3d at 727; Will v.
15 Hallock, 546 U.S. 345, 354 (2006) (rejecting application of
16 collateral order doctrine based only on the asserted right to
17 avoid litigation, reasoning that if that alone were accepted as a
18 justification for an immediate interlocutory appeal, then "28
19 U.S.C. § 1291 would fade out whenever the Government or an
20 official lost an early round that could have stopped the fight").

21 Particularly apt here is the Supreme Court's express
22 rejection of an asserted "privately negotiated right to be free
23 from suit," pursuant to a settlement agreement, as a basis for
24 permitting an immediate appeal under the collateral order
25 doctrine. See Digital Equip., 511 U.S. at 876-77. In Digital
26 Equipment, the parties entered into a settlement agreement that
27 ended the litigation. Id. at 865-867. Then, one of the parties
28 moved to rescind the agreement, and the district court granted

1 the motion and vacated the dismissal of the case. Id. The other
2 party then sought an immediate appeal of that interlocutory order
3 based on the argument that its "right not to go to trial" under
4 the settlement agreement justified permitting an immediate appeal
5 under the collateral order doctrine. Id. The Supreme Court
6 rejected that argument, reasoning that, if a privately negotiated
7 right not to go to trial were a proper ground for applying the
8 collateral order doctrine, then "any district court order denying
9 effect to a settlement agreement could be appealed immediately."
10 Id. at 877. It held that an asserted right to be free from suit
11 derived "by agreement does not rise to the level of importance
12 needed for recognition under § 1291." Id. at 878.

13 Defendants' asserted "immunity" from further proceedings in
14 this action stems from their view that, pursuant to the parties'
15 privately negotiated settlement agreement, this litigation should
16 have ended when the settlement agreement's initial twenty-four
17 month expired. As in Digital Equipment, Defendants here have
18 invoked the collateral order doctrine to justify their immediate
19 appeal of an interlocutory order that, in their view, has
20 deprived them of a privately negotiated right to be free from
21 litigation. For the same reasons that the Supreme Court declined
22 to recognize the immediate interlocutory appeal in Digital
23 Equipment as valid under the collateral order doctrine, the Court
24 will do the same here.

25 The collateral order doctrine cannot be applied to permit an
26 immediate appeal solely because the appeal is of an interlocutory
27 order that denied a motion that could have, or should have, ended
28 the litigation; that is because "virtually every right that could

1 be enforced appropriately by pretrial dismissal might loosely be
2 described as conferring a 'right not to stand trial[.]'" Id. at
3 873. Without more, that circumstance does not give rise to the
4 existence of valid "right not to be tried" that would satisfy the
5 third element of the Cohen test. See United States v. Hollywood
6 Motor Car Co., 458 U.S. 263, 269 (1982) (noting that a "crucial
7 distinction" exists between "a right not to be tried and a right
8 whose remedy requires the dismissal" of charges or claims, and
9 holding, "The former necessarily falls into the category of
10 rights that can be enjoyed only if vindicated prior to trial.
11 The latter does not"). Accordingly, "§ 1291 requires courts of
12 appeals to view claims of a 'right not to be tried' with
13 skepticism, if not a jaundiced eye." Digital Equip., 511 U.S. at
14 873. Only an "explicit statutory or constitutional guarantee
15 that trial will not occur . . . could be grounds for an immediate
16 appeal of rights under § 1291." Id. at 874.

17 Defendants have not meaningfully addressed or distinguished
18 these authorities.

19 Accordingly, because Defendants' purported right to avoid
20 further litigation based on their privately negotiated agreement
21 cannot satisfy the third element of the Cohen test as a matter of
22 law, Defendants' invocation of the collateral order doctrine as a
23 basis for arguing that their appeal was proper, and that,
24 therefore, the district court was divested of jurisdiction over
25 this litigation, fails. For the same reasons, the magistrate
26 judge's ruling that the court is divested of jurisdiction to
27 enforce the Extension Order because Defendants' appeal satisfied
28

1 the requirements of the collateral order doctrine was clearly
2 erroneous and contrary to law.

3 It's worth noting that other reasons prevent the application
4 of the collateral order doctrine to Defendants' appeal of the
5 Extension Order. For example, the Supreme Court has held that
6 the doctrine cannot be applied where "the class of claims [to
7 which the appeal belongs], taken as a whole, can be adequately
8 vindicated by other means[.]" Mohawk Indus., Inc. v. Carpenter,
9 558 U.S. 100, 107 (2009). The class of orders to which the
10 Extension Order belongs, which are orders that extend or refuse
11 to extend an injunctive settlement agreement or consent decree,
12 could be appealed under 28 U.S.C. § 1292(a)(1). That statute
13 permits appeals of an interlocutory order "granting, continuing,
14 modifying, refusing or dissolving injunctions, or refusing to
15 dissolve or modify injunctions[.]" See 28 U.S.C. § 1292(a)(1).
16 Orders, like the Extension Order, which extend a settlement
17 agreement that contains injunctive elements and that was
18 incorporated by reference in a court order, could satisfy the
19 requirements for an appeal under Section 1292(a)(1). See
20 Thompson v. Enomoto, 815 F.2d 1323, 1326 (9th Cir. 1987) (holding
21 that an order is injunctive within the meaning of Section
22 1292(a)(1) if it has the "practical effect of the grant or denial
23 of an injunction").

24 Defendants' argument to the contrary is unpersuasive.
25 Defendants contend that their appeal of the Extension Order
26 cannot fall within the scope of 28 U.S.C. § 1292(a)(1) because
27 the "Extension Order does not order Defendants to do anything."
28 Supp. Opp'n at 4, Docket No. 1196. But Defendants ignore other

1 aspects of the Extension Order, which recognize that, in the
2 event the settlement agreement is extended, Defendants'
3 production and other obligations under the settlement agreement
4 will continue for the duration of the extension. See Extension
5 Order at 3. Additionally, the Extension Order has the effect of
6 giving new life, for twelve months, to the settlement agreement,
7 which is injunctive in nature given that it requires both parties
8 to take and refrain from certain actions; as such, the Extension
9 Order "continues" an injunction within the meaning of Section
10 1292(a)(1).

11 Accordingly, the viability of an alternative path to
12 immediate appeal weighs against finding that the Extension Order
13 is immediately appealable under the collateral order doctrine.

14 III. Defendants Have Not Shown that a Stay is Warranted

15 Having found that the Court is not divested of jurisdiction
16 to enforce and implement the Extension Order, it now turns to
17 Defendants' motion for a stay pending their appeal of the
18 Extension Order.⁸

19 A request for stay calls for the "consideration of four
20 factors: (1) whether the stay applicant has made a strong showing
21 that he is likely to succeed on the merits; (2) whether the
22 applicant will be irreparably injured absent a stay; (3) whether

23

24 ⁸ Defendants contend that their request for a stay should be
25 decided by the magistrate judge in the first instance, but they
26 point to no authority preventing the undersigned from deciding
27 the motion to stay now, without first referring it to the
28 magistrate judge. Because the motion to stay is within the
undersigned's authority and resolving it now will promote
efficiency and prevent undue delay, and because the motion has
been fully briefed by both sides and the underlying facts are not
in dispute or in need of supplementation, the Court will resolve
the motion.

1 issuance of the stay will substantially injure the other parties
2 interested in the proceeding; and (4) where the public interest
3 lies." Nken v. Holder, 556 U.S. 418, 434 (2009) (citations and
4 internal quotation marks omitted). The "preservation of the
5 status quo" is not among the "factors regulating the issuance of
6 a stay." See Golden Gate Rest. Ass'n v. City & Cty. Of San
7 Francisco, 512 F.3d 1112, 1116 (9th Cir. 2008) (noting that
8 "[m]aintaining the status quo is not a talisman").

9 Courts evaluate these factors on a continuum. Id. at 1115-
10 16. "At one end of the continuum, the moving party is required
11 to show both a probability of success on the merits and the
12 possibility of irreparable injury." Id. at 1115 (citation and
13 internal quotation marks omitted). "At the other end of the
14 continuum, the moving party must demonstrate that serious legal
15 questions are raised and that the balance of hardships tips
16 sharply in its favor." Id. at 1116 (citation and internal
17 quotation marks omitted). "These two formulations represent two
18 points on a sliding scale in which the required degree of
19 irreparable harm increases as the probability of success
20 decreases." Id. (citation and internal quotation marks omitted).

21 "A stay is not a matter of right, even if irreparable injury
22 might otherwise result. It is instead an exercise of judicial
23 discretion, and [t]he propriety of its issue is dependent upon
24 the circumstances of the particular case. The party requesting a
25 stay bears the burden of showing that the circumstances justify
26 an exercise of that discretion." Nken, 556 U.S. at 433-34
27 (citations and internal quotation marks omitted).

28

1 Here, Defendants have failed to meet their burden to show
2 that a stay is warranted.

3 As to the first factor, the likelihood of success on the
4 merits, Defendants contend that they are likely to succeed on
5 appeal because the Extension Order was predicated on findings of
6 two categories of ongoing and systemic violations, which
7 Defendants argue are not proper grounds for extending the
8 settlement agreement because the violations "did not stem from
9 the constitutional claims alleged in Plaintiffs' complaint or the
10 policy changes contemplated by the Agreement." Motion at 6,
11 Docket No. 1132. Defendants also argue that the magistrate judge
12 simply accepted Plaintiffs' interpretation of the evidence
13 "without any independent analysis, and without considering
14 Defendants' interpretation of that evidence." Id. at 7.

15 To prevail on appeal, Defendants must show that neither of
16 the two predicates for the Extension Order is a proper ground for
17 extending the settlement agreement. But Defendants have not
18 shown any likelihood that they will be able to do so. Contrary
19 to Defendants' position, each of the two categories of ongoing
20 and systemic violations that served as predicates for the
21 Extension Order is within the scope of the operative complaints
22 or the reforms contemplated by the settlement agreement; as such,
23 each constitutes a proper, independent basis for extending the
24 settlement agreement under paragraph 41.

25 One of the predicates for the Extension Order was a finding
26 that ongoing and systemic due process violations were caused by
27 CDCR's reliance on fabricated or inadequately disclosed
28 confidential information, or by CDCR's failure to independently

1 assess the reliability of confidential information. Extension
2 Order at 26. Because the settlement agreement requires CDCR to
3 take certain steps to ensure that the use of confidential
4 information against inmates "is accurate," see, e.g., SA ¶ 34,
5 these violations arise out of the reforms contemplated by the
6 settlement agreement, and therefore constitute a proper ground
7 for extending the settlement agreement under paragraph 41. The
8 other predicate of the Extension order is the finding that
9 ongoing and systemic violations of due process were caused by the
10 continued use of flawed gang validations, because such
11 validations resulted in the denial to inmates of a fair
12 opportunity for parole. These violations also serve as a proper
13 ground for extending the settlement agreement under paragraph 41,
14 because the 2AC contains allegations that gang validations could
15 and did ultimately result in the denial of a fair opportunity for
16 parole. See, e.g., 2AC ¶¶ 87-90; 171, 187, 196, 199.

17 Further, nothing in the Extension Order suggests that the
18 magistrate judge failed to consider Defendants' interpretation
19 of, or failed to properly analyze, the evidence. See, e.g.,
20 Extension Order at 20 (noting that, because Defendants failed to
21 submit any evidence, "the only task at hand is to evaluate
22 Plaintiffs' evidence in light of Defendants' arguments").

23 Defendants therefore have failed to show any meaningful
24 likelihood of success on the merits. Nken, 556 U.S. at 434 (2009)
25 ("It is not enough that the chance of success on the merits be
26 better than negligible.") (citation and internal quotation marks
27 omitted). Accordingly, to justify a stay, Defendants' showing of
28 irreparable harm must be very strong. See Golden Gate, 512 F.3d

1 at 1116 (“[T]he required degree of irreparable harm increases as
2 the probability of success decreases.”) (citation and internal
3 quotation marks omitted).

4 Defendants have not shown that they are likely to suffer any
5 irreparable harm absent a stay. Defendants argue that, without a
6 stay, they “will be subject to a burdensome and costly twelve
7 months of monitoring, document production, conferences,
8 enforcement motions, and a second extension motion.” Supp. Opp’n
9 at 6. They also argue that they will be required to “engage in
10 extensive document collection and production,” the scope of
11 which, according to Defendants, falls outside of the scope of the
12 settlement agreement and the matters addressed in the Extension
13 Order. Motion at 9-11, Docket No. 1132. Finally, they argue
14 that “CDCR will be forced to reform policies and practices for
15 purported due process violations that are being challenged on
16 appeal, and which Defendants maintain were never part of this
17 case.” Id. at 8, Docket No. 1132.

18 These arguments are unpersuasive. It is well-established
19 that ongoing litigation and related expenses do not constitute
20 irreparable harm of the type that would warrant a stay. See,
21 e.g., Mohamed v. Uber Techs., 115 F. Supp. 3d 1024, 1032-33 (N.D.
22 Cal. 2015) (holding that “ongoing litigation and discovery
23 expense” do not amount to irreparable harm). Further, the
24 sources of irreparable harm that Defendants have identified
25 (i.e., monitoring, enforcement, etc.) arise out of contractual
26 obligations to which Defendants agreed. Under the terms of the
27 settlement agreement, the parties’ rights and obligations,
28 including Defendants’ obligation to produce documents and data,

1 are automatically extended for the duration of any extension of
2 the settlement agreement. See, e.g., SA ¶ 44 (“To the extent
3 that this Agreement and the Court’s jurisdiction over this matter
4 are extended beyond the initial twenty-four month period, CDCR’s
5 obligations and production of any agreed upon data and
6 documentation to Plaintiffs’ counsel will be extended for the
7 same period.”). Irreparable harm cannot result from obligations
8 that Defendants agreed to undertake.

9 Defendants express concern with respect to the scope of the
10 documents and data that Plaintiffs have requested, but they have
11 not shown that present or future disputes about the scope of
12 their contractually-required productions can be a proper basis
13 for a finding of irreparable harm. Here, as discussed above, the
14 settlement agreement is clear that Defendants’ production
15 obligations continue during any extension of the agreement. The
16 scope and nature of the documents and data that Defendants are
17 obliged to produce must agreed upon, according to the settlement
18 agreement. See SA ¶ 37. If the parties are unable to reach an
19 agreement on the scope of production, the parties can avail
20 themselves of the dispute-resolution process set forth in the
21 settlement agreement. See id. ¶ 39 (providing that any “disputes
22 regarding data and document production” are to be resolved by the
23 magistrate judge in accordance with the procedures set forth in
24 paragraphs 52 and 53 of the settlement agreement). In light of
25 these pre-existing mechanisms, to which Defendants themselves
26 agreed, the existence of any present or future disputes regarding
27 production does not weigh in favor of a stay.

1 Finally, Defendants' contention that they will be
2 irreparably harmed if no stay is entered because they will be
3 "forced" to implement reforms and change policies is
4 unconvincing.¹⁰ The settlement agreement does not contain any
5 term that would make the implementation of new reforms or policy
6 changes automatic following the extension of the agreement. As
7 discussed above, the settlement agreement permits the parties to
8 avail themselves of procedures to enforce its terms. Whether any
9 new reforms or policy changes emerge from such enforcement
10 procedures remains to be seen. At present, the Court finds that
11 it would be inappropriate to issue a stay based on the
12 possibility that new reforms and policy changes could be explored
13 in the future, particularly given that Defendants retain the
14 right to request, if and when any such remedies are crafted
15 pursuant to the settlement agreement, that their implementation
16 be stayed pending appeal or otherwise.

17 Because the "most critical" factors in considering whether a
18 stay is warranted are likelihood of success on the merits and
19 irreparable harm, Nken, 556 U.S. at 434 (2009), Defendants'
20 failure to show that either of these factors weighs in favor of a
21 stay is sufficient to deny their motion.

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23
24
25 ¹⁰ Plaintiffs initially requested that the Court "order the
26 parties to meet and confer to present either a joint or separate
27 remedial plans, followed by the issuance of a remedial order and
28 consideration of whether to stay implementation of remedies until
the Ninth Circuit rules" on the appeal. Docket No. 1147 at 14.
But Plaintiffs currently "do not seek de novo review" of the
magistrate judge's rejection of their request for the design of
remedies for the systemic constitutional violations identified in
the Extension Order. See Motion at 5, Docket No. 1180.

1 The Court notes, for completeness, that the remaining
2 factors, namely the likelihood of injury to Plaintiffs if a stay
3 is issued, and the public interest, both weigh against entering a
4 stay. The public interest, and the interests of the class
5 members, would be served by the efficient and effective provision
6 of constitutional due process to California inmates. The recent
7 findings in the Extension Order show that significant and
8 systemic due process violations continue to take place. Staying
9 this litigation while the appeal is pending would contravene
10 these interests, because it could facilitate future violations of
11 the type the settlement agreement was intended to redress and
12 prevent.

13 Accordingly, the Court DENIES Defendants' motion to stay the
14 Extension Order pending their appeal.

15 CONCLUSION

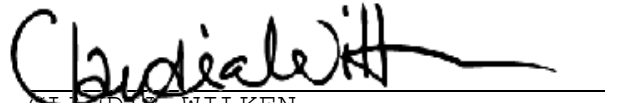
16 For the reasons set forth above, the Court concludes that it
17 is not divested of jurisdiction to enforce the Extension Order in
18 light of Defendants' appeal of the order. The Court declines to
19 exercise its discretion to stay the order pending that appeal.

20 In accordance with the terms of the settlement agreement,
21 the parties' and the Court's obligations under that contract,
22 including Defendants' obligations to produce documents and data,
23 will continue for the duration of the twelve-month extension of
24 the agreement. Defendants shall resume forthwith their
25 production of the same types and quantities of documents and data
26 they had agreed to produce prior to the expiration of the
27 original twenty-four-month period of the settlement agreement.
28 The twelve-month extension will begin on the date Defendants make

1 their first complete production of such documents and data. To
2 the extent that Plaintiffs seek documents or data during the
3 twelve-month extension that go beyond the parties' prior
4 agreements as to the scope of Defendants' productions, the
5 parties shall promptly resume the dispute-resolution process,
6 pursuant to the terms of the settlement agreement, with respect
7 to any such requests for documents and data.

8 IT IS SO ORDERED.

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10 Dated: June 26, 2019

11 
12 CLAUDIA WILKEN
13 United States District Judge
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United States District Court
Northern District of California