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

MARCIANO PLATA, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

NO. C01-1351 TEH

ORDER DENYING
DEFENDANTS' MOTION FOR
STAY PENDING APPEAL

This matter comes before the Court on Defendants' motion to stay, pending appeal, this Court's July 23, 2007 Order Granting Plaintiffs' Motion to Convene Three-Judge Court. After carefully considering Defendants' arguments, the Court DENIES Defendants' motion for the reasons set forth below.

As an initial matter, Defendants have failed to file a notice of appeal in this case, and their basis for requesting a stay is thus non-existent. There is no reason to stay a case pending an appeal that has not been filed.

Assuming that Defendants' failure to file a notice of appeal was an inadvertent error or an indication of Defendants' mistaken belief that filing a notice of appeal in *Coleman v. Schwarzenegger*, Case No. CIV S-90-0520 LKK JFM (E.D. Cal.), properly appealed this Court's decision in this case, the Court nonetheless finds no basis for staying its July 23, 2007 order. First, as a practical matter, there is nothing from the July 23 order that remains to be stayed. When the Court granted Plaintiffs' motion, the only action the Court requested was that the Chief Judge of the United States Court of Appeals for the Ninth Circuit designate a three-judge court to consider a prisoner release order pursuant to 18 U.S.C. § 3626(a)(3) and 28 U.S.C. § 2284. Chief Judge Mary Schroeder entered an order

1 designating such a three-judge court on July 26, 2007. No other relief was ordered by this
2 Court; consequently, there is no remaining relief from the Court's July 23 order to be stayed.

3 Moreover, even if this Court had the authority to stay the proceedings of a three-judge
4 court that has already been convened, Defendants have failed to persuade the Court that a
5 stay is appropriate in this instance. Defendants correctly cite the factors this Court should
6 consider in weighing Defendants' request for a stay pending appeal: "(1) whether the stay
7 applicant has made a strong showing that he is likely to succeed on the merits; (2) whether
8 the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will
9 substantially injure the other parties interested in the proceeding; and (4) where the public
10 interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Here, Defendants have made
11 no showing of any likelihood of success on the merits because they have provided no
12 jurisdictional basis for the appealability of the Court's July 23 order. In their notice of appeal
13 of the companion order requesting that a three-judge court be convened in *Coleman*,
14 Defendants state that they are appealing a final decision of the district court. However, the
15 decision to request that a three-judge court be convened clearly is not final on its face
16 because it does not end the litigation, and Defendants have failed to demonstrate that the
17 request should be construed as an appealable final decision under the collateral order
18 doctrine. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978) (holding that for an
19 interlocutory order to be construed as an appealable final decision under 28 U.S.C. § 1291,
20 "the order must conclusively determine the disputed question, resolve an important issue
21 completely separate from the merits of the action, and be effectively unreviewable on appeal
22 from a final judgment"). Nor does the convening of a three-judge court satisfy any of the
23 provisions of 28 U.S.C. § 1292(a), which allows for interlocutory appeals in certain instances
24 not present here, and this Court also does not find that its July 23, 2007 order satisfies the
25 criteria specified in 28 U.S.C. § 1292(b), which allows a district court to certify an order for
26 interlocutory appeal.

27 In addition, Defendants provide no support for their statement that "issuance of a
28 prisoner release order by a three-judge panel will pose a risk to public safety," Mot. at 5, and

1 Defendants fail to weigh properly the harm to members of the Plaintiff class that will result
2 from a delay in proceedings. The harm is not simply a temporal delay; as this Court has
3 repeatedly stated, the inadequacies in California's delivery of medical health care to prison
4 inmates literally present matters of life and death. Beyond that, the three-judge court has
5 only been convened and has not issued any orders or, in fact, even decided whether the
6 criteria for entering a prisoner release order have been satisfied. Defendants' argument of the
7 potential for irreparable harm may have been more convincing if this Court or the three-judge
8 court had ordered Defendants to take or refrain from taking any particular action. For now,
9 however, the Court finds that the balance of equities in this case does not tip in favor of
10 granting Defendants' request for a stay.

11 Accordingly, with good cause appearing for all of the above reasons, Defendants'
12 motion for a stay pending appeal of this Court's July 23, 2007 order is hereby DENIED.

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14 **IT IS SO ORDERED.**

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16 Dated: 07/31/07



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT

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