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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ERNESTO LIRA,

Plaintiff,

v.

**MATTHEW CATE, SECRETARY OF
THE CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,**

Defendant.

Case No. C-00-0905

**[PROPOSED] ORDER DENYING
DEFENDANT'S MOTION TO STAY**

On September 30, 2009, following a ten-day bench trial, this Court found that Plaintiff's constitutional rights had been violated in connection with his prison-gang validation and subsequent placement in secured housing. The Court ordered Defendant, Secretary of the California Department of Corrections and Rehabilitation (CDCR), to expunge Plaintiff's prison gang records and report the expungement to all gang-related law enforcement databases and clearing houses. Defendant timely appealed the Court's judgment and moved for a stay of the order pending appeal. After carefully considering the arguments from both parties, the Court DENIES Defendant's motion to stay, but orders certain accommodations to address the potential the administrative consequences to CDCR arising from the judgment.

DISCUSSION

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2 In issuing a stay a court must employ two interrelated tests representing the outer reaches of
3 a single continuum. *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983). At one end of the
4 continuum, the court must consider the moving party's probability of success on the merits and
5 the possibility of irreparable injury. *Id.* At the other end, the court must consider whether the
6 moving party raises serious legal questions and whether the balance of hardships tips sharply in
7 its favor. *Id.* In addition, the court must consider where the public interest lies. *Golden Gate*
8 *Restaurant Ass'n v. City and County of S.F.*, 512 F.3d 1112, 1116 (9th Cir. 2008.)

9 In this instance, the Court is not persuaded that it will likely be reversed on appeal. The
10 Court further finds that Plaintiff's interest in avoiding further delay in expungement, including the
11 protection of his safety should he return to prison, outweighs Defendant's interest in maintaining
12 Plaintiff's prison-gang records pending appeal. In addition, the Court finds that the public
13 interest would be best served by leaving the judgment in effect. Accordingly, Defendant's
14 request for a stay is denied.

15 The Court recognizes, however, that its judgment may create significant administrative
16 consequences. California state regulations require that all inmate gang-validations be supported
17 by a "direct link" of association (e.g., the inmate's validation must be supported by one piece of
18 evidence showing association between that inmate and a previously-validated prison gang
19 member or associate). *See* Cal. Code Regs. tit. 15, § 3378(c)(3) & (4). Defendant has
20 represented to the Court that its judgment will require the California Department of Corrections
21 and Rehabilitation (CDCR) to revisit the validations of potentially hundreds of inmates who may
22 have been validated in part based on their documented association with Plaintiff. This process
23 would require the devotion of substantial resources that could prove to be very costly to the state
24 taxpayers. In order to avoid this potential administrative burden pending appeal, the Court finds
25 it appropriate to waive state law as it pertains to inmate gang validations based in any part on
26 association with Plaintiff. *See Plata v. Schwarzenegger*, No. C01-1351 TEH, 2007 WL 1624495,
27 at *3, 7-8 (N.D. Cal. Jun. 4, 2007) (waiving numerous state laws and administrative regulations
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1 governing California's contracting process in order to expedite projects designed to ensure the
2 timely provision of medical care to CDCR inmates).

3 Accordingly, the Court orders the following:

4 1. Defendant shall remove Plaintiff's prison gang validation from all electronic
5 and documentary CDCR records, including Plaintiff's Central File and the Office of Correctional
6 Safety's gang intelligence file, and shall report the removal to all gang-related law enforcement
7 databases and clearinghouses to which the validation was originally reported.

8 2. All removed gang records shall be segregated in a single folder or envelope and
9 held at CDCR's Office of Correctional Safety pending the resolution of Defendant's appeal.
10 Such records shall be held solely for the purpose of facilitating restoration of the validation
11 records in the event the appeal is successful, and otherwise shall be discarded or destroyed in the
12 event the appeal is unsuccessful.

13 3. The Court waives California Code of Regulations title 15, § 3378(c)(3) & (4) to
14 the extent these regulations require CDCR to revisit any inmate's prison gang-validation
15 supported by evidence of association with Plaintiff. Such administrative activities are deferred
16 until the Court's decision is affirmed or reversed on appeal.

17 **IT IS SO ORDERED.**

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19 Dated: 1/27/10
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22 The Honorable Susan Illston
23 United States District Judge
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