UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

CHAMBERS OF
Paula Xinis
UNITED STATES DISTRICT JUDGE

6500 Cherrywood Lane
Greenbelt, MD 20770
(301) 344-0653

June 03, 2020

Re: 20-1028, *Keith Seth, et. al. v. Mary Lou McDonough*

LETTER ORDER

Pending before the Court is Defendant's motion to stay the temporary injunctive relief this Court had ordered in the above-captioned case pending Defendant's appeal. ECF No. 90. The Court incorporates its findings of fact and conclusions of law set forth in its memorandum opinion and order that granted the challenged relief. ECF Nos. 84, 85. For the following reasons, the motion is denied.

In seeking a stay, Defendant bears the burden of demonstrating (1) that Defendant is likely to succeed on the merits of her appeal; (2) that enforcement of the stay will cause irreparable harm to Defendant; (3) whether the stay will substantially injure the other parties interested in the proceeding; and (4) whether stay is in the public interest. *See Nkwn v. Holder*, 556 U.S. 418, 433–34 (2009).

As to the first prong, Defendant argues that Defendant will prevail because Plaintiffs have not exhausted administrative remedies under the Prison Litigation Reform Act (PLRA). ECF No. 90 at 3. Defendant makes a halfhearted reference to lack of exhaustion and does not put forward any facts to substantiate her claim. She fails, for example, to address the myriad ways in which, on the current record, exhaustion may be excused based on futility—a very likely outcome given that scores of detainees attested to a hobbled, if not outright broken, grievance procedure. *See, e.g.*, ECF No. 2, Ex. 10 ¶ 24, Ex. 11 ¶ 38, Ex. 14 ¶ 10, Ex. 19 ¶ 11, Ex. 23 ¶ 9, Ex. 24 ¶ 12 (detainees describing how the Facility failed to provide them an opportunity to formally complain about COVID-19-related issues); ECF No. 65-1 at 8 (Court-appointed independent inspector Dr. Franco-Paredes affirming that "[t]here is no existing functioning protocol for inmates to report grievances of recent negative events. It is a major challenge for detainees to report any abuses."). The Court is thus unpersuaded Defendant's bare averment constitutes demonstrated likelihood of success in this respect. As for her alternative argument—

likelihood of her success on the merits of the Eighth Amendment claim—Defendant again has failed to marshal any evidence to upset the Court's previous determination. ECF Nos. 84, 85.[1]

The motion equally fails as to demonstrable irreparable injury. The Court has ordered narrowly drawn relief that, in large measure, can be summed as follows: make a plan, write it down, show it to the Plaintiffs and Court. This relief can hardly cause irreparable harm to the Defendant. Indeed, one primary contention throughout the proceedings was that Defendant already had such a plan. *See, e.g.*, ECF No. 29 at 8; ECF No. 78 at 3. Defendant has since emphasized to the Court that the newly-documented plan is simply a "continuation" of the Facility's existing efforts. *See* ECF No. 88 at 6, 8, 10, 13, 14, 17, 22. In this respect, Defendant's argument regarding the overly burdensome expenditure of additional resources to memorialize a plan she claims to have crafted already lacks credulity.[2]

As to the third and fourth prongs, the Court stands by its previous determination as to both irreparable harm to Plaintiffs and the public interest. ECF No. 84. Simply stated, Defendant's motion for stay is DENIED.

Although informal, this correspondence constitutes an Order of the Court and shall be docketed as such.

Sincerely,

/S/
PAULA XINIS
United States District Judge

[1] Defendant also raises, for the first time, that Plaintiffs failed to plead a *Monell* claim. ECF No. 90 at 9. *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694, (1978). The current record proves otherwise. Plaintiffs have brought a class action against Defendant, contending that the practices, procedures, customs, if not de facto policies, resulted in constitutional injury to the class and subclasses of detainees. The robustly pleaded Complaint, fortified with the sworn declarations of 27 detainees and several experts, combined with the additional evidence marshaled in support of the current restraining order and the report of Dr. Franco-Paredes, defeats any late-breaking insufficiency argument.

[2] Insofar as the ordered relief constitutes some loss of Defendant's unrestrained discretion in running the Facility, still no showing has been made that the interim relief characteristic of a *temporary* restraining order amounts to permanent injury. *Cf. Mountain Valley Pipeline, LLC v. 6.56 Acres of Landed, Owned by Sandra Townes Powell*, 915 F.3d 197, 218 (4th Cir. 2019) ("By definition, a temporary loss is not irreparable.")