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July 28, 2015

VIA ECF

The Hon. Molly C. Dwyer, Clerk of the Court
United States Court of Appeals, Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

**Re: *Michelle-Lael Norsworthy v. Jeffrey Beard, et al.*,
No. 15-15712**

Dear Ms. Dwyer:

Plaintiff-Appellee Michelle-Lael Norsworthy (“Plaintiff”) submits this Status Report pursuant to the Court’s July 20, 2015 Order requesting each party’s position with regard to “whether this case may be mooted by the Board of Parole Hearing panel’s decision and commenting as to any possible effect on whether this court should conduct the oral argument scheduled for Thursday, August 13, 2015.” (Dkt. No. 55.)

I. This Case Is Not Mooted By The Parole Board Panel’s Decision

As acknowledged in Defendants’ Reply brief, on May 21, 2015, “[a] panel of the Board of Parole Hearings . . . *provisionally granted* Ms. Norsworthy parole. . . . This *provisional grant is subject to review* by the full

The Hon. Molly C. Dwyer
July 28, 2015
Page 2

Morgan Lewis

Board of Parole Hearings and the Governor. Cal. Penal Code §§ 3041(b), 3041.2.” (Reply at 22 (emphasis added).) As this statement makes clear, no final determination has yet been made with regard to Plaintiff’s parole, which has been denied on five previous occasions. Indeed, the governor regularly exercises his authority to override the recommendation made by the Board of Parole Hearings. Gary Klien, *Governor reverses parole board decision to release Marin double-murderer*, MARIN INDEPENDENT JOURNAL, Feb. 10, 2015, <http://www.marinij.com/20150210/governor-reverses-parole-board-decision-to-release-marin-double-murderer> (“Since taking office in 2011, [Governor] Brown has reversed the parole board 401 times on grants of release, including six times this year.”).

Because no final decision has yet been made with regard to Plaintiff’s parole, no date has yet been set for her release. Until Plaintiff is physically released from CDCR custody, CDCR remains responsible for her medical care and Plaintiff’s claims seeking access to adequate medical care for her gender dysphoria, including sex reassignment surgery (“SRS”), are not mooted.¹

¹ If Plaintiff ultimately is released from custody and this Court determines that Defendants’ appeal has become moot, the Court should remand to the district court to determine whether the order granting injunctive relief should be vacated and to consider Plaintiff’s claim for attorneys’ fees. *See, e.g., Dilley v. Gunn*, 64 F.3d 1365, 1372-73 (9th Cir. 1995) (finding that appeal of order granting inmate injunctive relief to access law library at specific CDCR facility was mooted by inmate’s transfer to another facility but remanding to district court “to determine whether the order granting injunctive relief should be vacated”); *Cammermeyer v. Perry*, 97 F.3d 1235, 1239 (9th Cir. Wash. 1996)(remanding to district court after finding that order should not

The Hon. Molly C. Dwyer
July 28, 2015
Page 3

Morgan Lewis

II. The Court Should Conduct Oral Argument on August 13, 2015 As Scheduled

The Court should proceed with oral argument on Defendants' appeal on August 13, 2015 as currently scheduled. The district court found compelling evidence that Plaintiff continues to suffer "severe symptoms of gender dysphoria" as a result of Defendants' refusal to provide her with SRS as a treatment for her gender dysphoria. (ER 30.) The district court further found that, "for Norsworthy, the only adequate medical treatment for her gender dysphoria is SRS" and thus that SRS is a medically necessary and constitutionally required treatment for her gender dysphoria. (ER 34.) As a result, the district court concluded that Plaintiff "is currently suffering irreparable harm and that it will likely continue in the absence of preliminary injunction" requiring Defendants to provide SRS as promptly as possible. (*Id.*)

As a result of Defendants' appeal, Plaintiff continues to suffer this irreparable harm and to experience the deprivation of her Constitutional rights. The case is not moot and this Court should not entertain any further delay in

automatically be vacated where mooted by actions of the appellant, "even if the appellant engaged in the conduct which caused the mootness for a purpose other than to prevent the appellate court's review of the district court order" (internal quotation omitted)); *Hiser v. Franklin*, No. 98-35279, 1999 U.S. App. LEXIS 20371 (9th Cir. Aug. 26, 1999) (finding inmate's appeal regarding a claim for injunctive relief had been mooted by a change in CDCR policy but remanding to the district court to consider inmate's claim for attorney's fees); *see also* CD 112 (Order Granting Administrative Motion to Enlarge Time to File Motion for Costs and Attorney's Fees).

The Hon. Molly C. Dwyer
July 28, 2015
Page 4

Morgan Lewis

resolving Plaintiff's claims and providing her access to the medical care she desperately needs.

Respectfully submitted,

/s/ Herman J. Hoying

Herman J. Hoying
On Behalf of Plaintiff-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2015, I electronically filed the foregoing **Status Report** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

 /s/ Herman J. Hoying
Herman J. Hoying