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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

**PLAINTIFF'S REPLY IN SUPPORT OF
MOTION FOR INDICATIVE RULING UNDER
FEDERAL RULE OF CIVIL PROCEDURE 62.1
& 60(a) [DKT. 185]**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	August 31, 2019
Motion Cut-Off:	January 31, 2020
Trial Date:	None Set

Plaintiff moved this Court pursuant to Federal Rules of Civil Procedure 62.1 and 60(a) for an indicative ruling that the Court would grant Plaintiff's motion to modify its December 13, 2018 Order to make an express statement that the ordered relief complies with the requirements of the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(a)(1)(A). Dkt. 185. Rule 62.1 explicitly authorizes this Court to make such an indicative ruling while Defendants' appeal is pending. The modification Plaintiff proposed under Rule 60(a) would provide additional clarification, consistent with the findings already in this Court's December 13, 2018 Order, that the relief satisfies the PLRA. Such clarification is squarely in line with the Ninth Circuit's application of this Rule. This Court also has inherent authority to modify or renew its preliminary injunctive relief order to the same effect pursuant to Federal Rule of Civil Procedure 62(d). Defendants' opposition to this motion confuses the issues before this Court versus the issues now pending before the Court of Appeal.

ARGUMENT

I. This Court May Properly Issue an Indicative Ruling That It Would Modify Its Order

Plaintiff's motion under Federal Rules of Civil Procedure 62.1 and 60(a) accords with the requirements of both Rules that Plaintiff make a timely motion for relief, but because the Court lacks authority to grant it while Defendants' appeal is pending, Plaintiff may request an indicative ruling rather than a ruling on the underlying motion itself. Defendants cite no caselaw to support their argument that Plaintiff must file a separate and distinct Rule 60(a) motion rather than filing for this relief in a single motion, given that an appeal is pending.

Nor do Defendants offer any law for their contention that any proposed modification to the District Court's order be made "by redline or highlighting." Dkt. No. 188 at 7. Plaintiff's motion was explicit with respect to the modification requested:

PLEASE TAKE NOTICE that Plaintiff Adree Edmo, through her counsel of record, hereby moves this Court for an indicative ruling under Federal Rule of Civil Procedure 62.1 that it would grant a motion under Federal Rule of Civil Procedure 60(a) to modify its December 13, 2018 Order, Dkt. No. 149, to expressly state pursuant to the Prison Litigation Reform Act that the injunctive relief ordered therein is narrowly drawn,

extends no further than necessary to correct the violation of the federal right, is the least intrusive means necessary to correct the violation of the Federal right, and that there is no evidence that granting this relief will have any adverse impact on public safety or the operation of the criminal justice system. 18 U.S.C. § 3626(a)(1)(A).

Dkt. No. 185 (emphasis added); *see also* Dkt. 185-1 at 3. Rule 60(a) does not require a party to propose the correction of “a mistake arising from oversight or omission,” in any particular way. Fed. R. Civ. P. 60(a). Moreover, Rule 60(a) authorizes the Court to make such modification “on its own, with or without notice,” meaning that this Court has the authority to determine the specific language it wishes to use to correct a mistake “whenever one is found.” *Id.*

Plaintiff’s motion does not request that this Court correct an error of law. This Court already made findings in its December 13, 2018 Order that its relief complied with the requirements of the PLRA. *See* Dkt. 185-1 at 3. The Court’s addition of explicit language to this effect therefore does not correct an error of law; rather, consistent with the findings already contained in the Court’s Order, it clarifies the Court’s original intent and further memorializes that part of the Court’s decision. *See Garamendi v. Henin*, 683 F.3d 1069, 1079, 1079 (9th Cir. 2012) (“Rule 60(a) allows a court to clarify a judgment in order to correct a failure to memorialize part of its decision, to reflect the necessary implications of the original order, to ensure that the court’s purpose is fully implemented, or to permit enforcement. We now hold that Rule 60(a) allows for clarification and explanation, consistent with the intent of the original judgment, even in the absence of ambiguity, if necessary for enforcement.”) (internal quotations omitted); *Blanton v. Anzalone*, 813 F.2d 1574, 1577 (9th Cir. 1987) (finding court has wide latitude to correct clerical mistakes under 60(a), which it describes as mistakes in execution rather than instances where the court changes its mind because of a legal or factual mistake); *see also Parsons v. Ryan*, 912 F.3d 486, 501 (9th Cir. 2018) (finding district court’s initial order for prospective relief compliant with § 3626(a)(1)(A) where the district court made express needs-narrowness-intrusiveness findings in a subsequent order, *see* No. CV-12-0601-PHX-DKD, 2017 WL 476598, at *3 (D. Ariz. Feb. 6, 2017)); *Fields v. Smith*, 653 F.3d 550, 559 (7th Cir. 2011) (noting that the district court’s additional § 3626(a)(1) findings merely lent “further support” to

the court’s conclusion that Wisconsin’s blanket ban on providing hormone therapy and gender confirmation surgery to inmates was unconstitutional). *Sanchez v. City of Santa Ana*, cited by Defendants, does not hold differently. Consistent with the authority cited above, *Sanchez* focuses on “what the court originally intended to do” and permits correction of “errors arising from omission.” 936 F.2d 1027, 1033 (9th Cir. 1990), *as amended on denial of reh’g* (Feb. 27, 1991), *as amended on denial of reh’g* (May 24, 1991); *see also Garamendi*, 683 F.3d at 1078 (“Rule 60(a)’s touchstone is fidelity to the intent behind the original judgment); *Robi v. Five Platters, Inc.*, 918 F.2d 1439, 1445-46 (9th Cir. 1990) (finding that it is not an abuse of discretion for the district court to clarify its original intention).

Contrary to Defendants’ suggestion that it would be improper for the Court to make this clarification because it impacts their pending appeal (or because it is an unconstitutional advisory opinion), Rule 62.1 specifically permits the Court to make an indicative ruling while an appeal is pending. In tandem with Federal Rule of Appellate Procedure 12.1, the precise purpose of Rule 62.1 is to promote judicial economy by allowing the district court to clarify such issues relevant to the appeal. *See Mendia v. Garcia*, 874 F.3d 1118, 1122 (9th Cir. 2017) 12 Moore’s Federal Practice – Civil § 62.1.02-.03 (2019); 20 Moore’s Federal Practice – Civil § 312.1.12; *see also* Fed. R. Civ. P. 1 (noting that the Federal Rules should be “construed . . . by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”).

II. This Court May Also Modify or Renew Its Order Pursuant to Fed. R. Civ. P. 62(d)

This Court may also modify or renew its preliminary injunctive relief order under Federal Rule of Civil Procedure 62(d) to the same effect as the indicative ruling Plaintiff requested in her motion. Rule 62(d) gives this Court such authority while Defendants’ appeal is pending in order to secure Ms. Edmo’s right to relief. Rule 62(d) permits a court to “suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party’s rights.” Here, because Defendants have appealed this Court’s order for injunctive relief, Plaintiff is the “opposing party.” This Court’s authority pursuant to Rule 62(d) allows it, *sua sponte*, to either

modify its December 13, 2018 Order to add the express language that the PLRA requirements are satisfied, or to enter a renewed preliminary injunction providing Ms. Edmo the same relief as the original order. Such action permits the court “during the pendency of an appeal to act to preserve the status quo,” which refers to the circumstances of the parties at the time of the appeal. *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.* (“NRDC”), 242 F.3d 1163, 1166 (9th Cir. 2001); *see also Mayweathers v. Newland*, 258 F.3d 930, 935 (9th Cir. 2001); *McClatchy Newspapers v. Cent. Valley Typographical Union No. 46*, 686 F.2d 731, 734 (9th Cir. 1982); *Tribe v. United States Bureau of Reclamation*, 319 F. Supp. 3d 1168, 1174 (N.D. Cal. 2018).

In *NRDC*, the Ninth Circuit upheld a district court’s Rule 62(d) modification of a preliminary injunction while the case was an appeal where the district court “clarif[ied]” that its directive for the defendant to engage in water column testing “at the surface” meant conducting testing “at the microlayer,” and its directive for defendant to engage in testing “in a reasonably expeditious manner” meant doing so “within 18 months” of the original order. 242 F.3d at 1166-67. The Court of Appeal held that these “modifications did not materially alter the status of the consolidated appeal,” because “[t]hey left unchanged the core questions before the appellate panel deciding the consolidated appeal.” *Id.* at 1167. The Ninth Circuit explained that the defendant “had a full and fair hearing on these core issues before the district court and before the appellate panel deciding its consolidated appeal.” *Id.* Here, Defendants contend on appeal that the preliminary injunctive relief ordered by this Court violates the PLRA because it is overbroad and too intrusive. The Court’s addition of express language finding the PLRA requirements satisfied does not change the scope or terms of the preliminary injunctive relief ordered. Thus, the core question before the Court of Appeal of whether such relief is overbroad or too intrusive in violation of the PLRA will remain unchanged. *See* 19-35017, Dkt. 11-1 at 11 (Defendants stating issue on appeal as, “[d]id the district court err by issuing an overbroad injunction in violation of the Prison Litigation Reform Act when ordering Defendants to broadly provide ‘adequate medical care’ and a surgery not yet approved by a qualified surgeon?”).

Beyond modification, this Court also has the power under Rule 62(d) to enter a renewed

preliminary injunction providing Ms. Edmo the same relief as the original Order, and adding the express language of a PLRA finding.¹ In *Mayweathers*, the Ninth Circuit upheld the district court's entry of a second preliminary injunction after the district court determined that the original preliminary injunction had expired under § 3626(a)(2), while an appeal of the original injunction was pending. *See* 258 F.3d at 935. As the Ninth Circuit explained, “[n]othing in the [PLRA] limits the number of times a court may enter preliminary relief.” *See id.* at 936. Accordingly, the district court appropriately used its Rule 62(d) powers where the “case involve[d] defendants who were subject to an injunction at the time of appeal, and the renewed injunction was identical to the original one.” *See id.* at 935. The Ninth Circuit then consolidated consideration of appeals of both preliminary injunctions. *See id.* 934.

Thus, pursuant to Rule 62(d), this Court may either modify or renew its December 13, 2018 order to clarify that it found that the relief ordered complied with the PLRA requirements, and the order, by its terms, did not expire until the June 13, 2018 deadline set by this Court. Such action by this Court would ensure that Ms. Edmo remains in the posture she was in when Defendants filed their appeal. Nor would it materially alter the status of the appeal, because it would leave the core questions before the appellate panel unchanged and would not interfere with Defendants' ability to have a full and fair hearing on these core issues.

III. Defendants' Request That This Court Deny Plaintiff's Motion as Moot Because Its Preliminary Injunction Has Expired Is Improper

Defendants argue that this Court should deny Plaintiff's motion “as moot because the December 13, Order of this Court has expired, is no longer in effect, and is no longer binding on Defendants.” Dkt. 188 at 4. It is improper for Defendants to request such determination from this Court because Defendants have directly presented this issue to the Court of Appeal. On the

¹ This Court may also renew its order to address any purported “expiration” of this Court's order under the PLRA's 90-day automatic termination provision, § 3626(a)(2), although Defendants have offered no legal authority to support their contention that this Court's December 13, 2018 Order was not “final” for purposes of the PLRA.

same day Defendants filed their response to Plaintiff's motion in this Court, Defendants also filed an "urgent" motion in the Court of Appeal asking that Court to determine that the December 13, 2018 preliminary injunction order has expired and to vacate that order.² 19-35017, Dkt. 31 at 6-7.

Having placed the legal issue of whether this Court's December 13, 2018 Order has expired directly before the Court of Appeal, Defendants have divested this Court from jurisdiction to make a ruling of law as to whether its Order has expired. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam); *NRDC*, 242 F.3d at 1166. Defendants' request that this Court determine that its order has expired would result in "having the same issues before two courts simultaneously," which is not permitted. *NRDC*, 242 F.3d at 1166.

Accordingly, while this Court may issue an indicative ruling pursuant to Rule 62.1 or may take action to modify or renew its preliminary injunction order as specifically set forth in Rule 62(d), this Court may not directly rule as a matter of law on a legal issue Defendants have placed before the Court of Appeal while their appeal is pending. Thus, Defendants' arguments about whether the order, as issued, satisfies the PLRA, and any purported expiration or mootness of the order, are misplaced in this Court.

CONCLUSION

This Court may properly issue an indicative ruling as requested by Plaintiff that, if given leave to do so by the appellate court, it would modify its December 13, 2018 Order to include express language that the relief ordered therein is narrowly drawn, extends no further than necessary to correct the violation of the federal right, is the least intrusive means necessary to correct the violation of the Federal right, and that there is no evidence that granting this relief will have any adverse impact on public safety or the operation of the criminal justice system.

² The Court of Appeal rejected Defendants' use of its "urgent" motion procedures and will consider Defendants' motion to vacate this Court's order under the regular motion procedures. 19-35017, Dkt. 37. The Court of Appeal also indicated it will hear argument on this issue on May 16, 2019 along with argument on Defendants' underlying appeal. *Id.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of April, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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