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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION, et al.,

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**DEFENDANTS CORIZON, LLC AND
SCOTT ELIASON'S JOINDER IN IDOC
DEFENDANTS' MOTION TO STAY
[DKT 338, 338-1, AND 338-2]**

Defendants Corizon, LLC and Dr. Scott Eliason ("Corizon Defendants")¹, by and through their undersigned counsel of record, hereby respectfully submit the following Joinder in IDOC Defendants' Motion to Stay filed December 2, 2022 (Dkt. 338).

¹ The undersigned counsel also represented Defendants Dr. Murray Young and Dr. Catherine Whinnery. These Defendants were dismissed from this case. However, to the extent the courts determine they are still defendants in this case in some regard, Dr. Young and Dr. Whinnery also join this motion to stay.

Corizon Defendants incorporate and adopt herein by reference, in its entirety, IDOC Defendants' Motion to Stay (Dkt. 338), Declaration of Peter E. Thomas in Support of Motion to Stay Judgment (Dkt. 338-1), and Memorandum in Support of Defendants' Motion to Stay Judgment (Dkt. 338-2). To be clear, Corizon Defendants request a stay of this Court's order awarding attorneys' fees and expenses to Plaintiff (Dkt. 323) (hereinafter referred to as "Judgment" or "Attorneys' Fees Award"); the related abstracts of judgment, including Amended Abstract of Judgment (Dkt. 335); any related writs of execution, including Amended Writ of Execution (Dkt. 336); and the underlying collection efforts by Plaintiff (including Rule 69 discovery) until Defendants' current pending appeal is ruled upon and fully addressed by the appellate courts.

In further support of and in addition to the facts and arguments set forth in IDOC's Motion to Stay, Corizon Defendants state the following:

I. The Court Has Inherent and Broad Discretionary Authority to Stay Judgment and Waive the Bond Requirement.

As stated in IDOC's Motion, district courts have "inherent discretionary authority in setting supersedeas bonds," *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505 n. 1 (9th Cir. 1987), including the discretion to allow alternative types of security or to waive the bond requirement. *Townsend v. Holman Consulting Corp.*, 881 F.2d 788, 796 (9th Cir. 1989). Indeed, "there can be no certainty about who is in the right until the appeals are done." *Exxon Valdez v. Exxon Mobil*, 568 F.3d 1077, 1084 (9th Cir. 2009).

A. Corizon Defendants Join All of IDOC Defendants' Arguments.

Corizon Defendants agree with and incorporate IDOC Defendants' arguments that the relevant factors when considering whether to stay judgment and waive the bond requirement weigh

in Defendants' favor, including likelihood of success on appeal, (Dkt. 338-2, pp. 8-11), the complexity of the collections process and time required to obtain a judgment after it is affirmed on appeal (Dkt. 338-2, p. 11), and the irreparable injury to Defendants if execution is not stayed, balancing harm to the parties, and public interest (Dkt. 338-2, pp. 11-14.) All of the arguments set forth by IDOC Defendants apply equally to Corizon Defendants.

Regarding the "complexity of the collections process," IDOC Defendants rightly pointed out that Plaintiff's counsel has made immediate and premature efforts to have the United States Marshall execute upon the writ and immediately seize "goods, chattels, lands or tenements" of the State of Idaho before allowing Defendants ninety days within which to "make return of the writ" in satisfaction of the judgment of attorney's fees. (Dkt. 338-2, pp. 14-15.) Among other things, Plaintiff's counsel's conduct is disrupting the appeal process as well as the parties' ability to meaningfully engage in mediation (Ninth Circuit mediation is currently scheduled for January 12, 2023).

Relatedly, Corizon Defendants wish to emphasize that Plaintiff's improper actions, including ex-parte communications with the Court, has only further complicated the collections process. First, Plaintiff's counsel sought out and obtained from the Court an Abstract of Judgment without involving Defendants, presumably through ex-parte communication with the Court. This resulted in a defective Abstract of Judgment and Writ of Execution that included improperly named Defendants (Defendants who had been previously dismissed from the case) on the Judgment. (These deficiencies were subsequently corrected by this Court.) Moreover, Plaintiff then incorrectly, as was determined by this Court, filed a "motion" for writ of execution causing confusion as to whether Defendants were entitled to a response to the motion. To further complicate matters, after running into problems executing the writ, on December 2, 2022 (the same

day IDOC Defendants filed their motion to stay), Plaintiff's counsel improperly contacted the Court, ex parte, seeking changes to the writ and asking for advice regarding what procedure Plaintiff's counsel should follow in order to have the writ executed.² Presumably recognizing the improper nature of this ex parte communication, Law Clerk Marcus Waterman responded by copying defense counsel "to be sure everyone is on the same page." (Dkt 338-1, pp. 8-10.) Repeated communications with the Court by Plaintiff's counsel without involving Defendants has further complicated the collections process.

In summary, the collections process is already complex, in part due to the multiple defendants involved—including a state agency, a corporation who was acting as an agent of the State, and multiple individual defendants—as well as Plaintiff's counsel's ex-parte communications with the Court and premature and haphazard efforts to collect on the Judgment. Issuing a stay as to all Defendants during the pendency of the appeal will reduce any further complexity related to the collections process. Issuing a stay as to some, but not all, defendants will only further complicate the process.

B. IDOC Defendant's Solvency Weighs in Favor of Waiving the Bond Requirement

There should be a stay with the supersedeas bond waived as to all Defendants of the attorneys' fees award judgment pending appeal because at least one Defendant, the Idaho Department of Correction, is clearly solvent and there is no risk of payment issues after the appeal issues are resolved. The purpose of a bond or security pending appeal (supersedeas bond) is to protect the prevailing party "from the risk of a later uncollectible judgment and compensates him

² Corizon Defendants object to Plaintiff's counsel improperly contacting the court ex parte and also improperly seeking advice from the Court.

for delay in the entry of the final judgment.” *NLRB v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988). Put another way, “[t]he posting of a bond protects the prevailing plaintiff from the risk of a later uncollectible judgment and compensates [plaintiff] for delay in the entry of the final judgment.” *Id.* However, there is no need for supersedeas bond when a debtor party is solvent and there is no such risk. Indeed, “whether the defendant’s ability to pay the judgment is so plain that the cost of a bond would be a waste of money” (in other words, financial solvency) is a critical factor in determining whether to waive the bond requirement. *See Dillon v. City of Chicago*, 866 F.2d 902, 904-06 (7th Cir. 1989).

In this case, the State of Idaho is a backstop for the judgment against its department, Defendant Idaho Department of Correction and the individual IDOC Defendants. The State of Idaho and its department, Defendant Idaho Department of Correction, is solvent and does not lack the means to pay the amount of attorneys’ fees and costs awarded by the Court to the extent the award is affirmed on appeal. It is a given that the State of Idaho is solvent.³ But, to put a finer point on this, among other things, the State of Idaho’s solvency is evidenced by:

- The fact that it is constitutionally required to balance its budget;⁴
- The State of Idaho has a very healthy general fund;⁵
- The State of Idaho has earned an AAA Issuer Default Rating from Fitch, which is the highest credit quality and lowest expectation of default risk. In determining the

³ *E.g. See Cayuga Indian Nation of New York v. Pataki*, 188 F. Supp. 2d 223, 255 (N.D.N.Y 2002) (holding, among other things, that plaintiffs’ rights and their ability to collect on the judgment after an appeal were not jeopardized during the appeal process because the State, with sovereign taxing authority, was a party.)

⁴ Constitution of the State of Idaho, and Article 7, Section 11 and Article 8, Section 1.

⁵ *See Idaho General Fund Revenue Report*, Nov. 7, 2022, accessible at https://dfm.idaho.gov/wp-content/uploads/publications/eab/gfr/gfr2023/gfr_nov2022.pdf.

AAA rating,⁶ it was noted by Fitch, among other things, that the state had many strengths, including broad powers over spending and revenues, strong reserve levels, low long-term liability burden, and expected solid long term economic growth.⁷

- The State of Idaho earned an AA+ rating from Standard and Poor,⁸ which means the state has a “very strong capacity to meet financial commitments.”⁹

This Court has previously found that a governmental entity’s solvency justifies a stay without an appeal bond. *Dixon v. City of Coeur d’Alene*, No. 2:10-CV-00078-LMB, 2011 WL 13137320, at *2–3 (D. Idaho Dec. 19, 2011) (granting defendant City of Coeur d’Alene’s motion to waive bond based upon adequate assurances that the city was solvent and would be able to satisfy the judgment, if necessary, at the conclusion of the appeal) (citing *See Poplar Grove Planting & Refining Co. v. Bache Hasley Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979)). Therefore, like in *Dixon*, this Court should stay its attorneys’ fees award (Dkt. 323) pending appeal and waive the supersedes bond requirement as to all Defendants because the state and IDOC is solvent. Indeed, it makes no sense to allow a stay as to one defendant, but not the others under the circumstances of this case. All Defendants have filed a joint appeal, and there is no reasonable risk

⁶ “AAA ratings denote the lowest expectation of default risk. They are assigned only in cases of exceptionally strong capacity for payment of financial commitments. This capacity is highly unlikely to be adversely affected by foreseeable events. <https://www.fitchratings.com/products/rating-definitions#about-rating-definitions>.

⁷ <https://sto.idaho.gov/Portals/0/xBlog/uploads/2022/11/2/FitchStateofIdaho-2022-10-28.pdf>.

⁸ <https://www.spglobal.com/ratings/en/research/articles/190319-u-s-state-ratings-and-outlooks-current-list-1738758>.

⁹ <https://www.spglobal.com/ratings/en/about/intro-to-credit-ratings>.

that Plaintiff's cannot collect against at least one Defendant after the appellate courts have issued their opinions.¹⁰

II. A Stay of Judgment Against IDOC Defendants Should Operate as a Stay As to All Defendants.

Regardless of the grounds for a stay without bond against IDOC Defendants, a stay of the Judgment as to IDOC Defendants should operate as a stay against all Defendants. First, in seeking and obtaining an attorneys' fee award, Plaintiff did not distinguish between the Defendants. Similarly, in its September 30, 2022 Memorandum Decision and Order (Dkt. 323), the Court did not distinguish between the Defendants and did not direct the award towards any particular defendant(s). In other words, both Plaintiff and the Court have grouped all Defendants together; the attorneys' fee award and Abstracts of Judgment are all intertwined into a single award and single judgment against all Defendants who are jointly and severally liable.

Second, and relatedly, Plaintiff's interests underlying the supersedeas bond requirement are fully protected through IDOC's solvency, as articulated above in Section II(B). This is analogous to Federal Rule of Civil Procedure 62(e), which provides that "[t]he court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government." This is, in part, because "[t]he existence of a general appropriations fund in the Treasury to pay judgment and expedient and convenient means of collections makes the posting of a bond unnecessary." Wright & Miller, Fed. Prac. & Proc. § 2906; *see e.g.*, Resolution Trust Corp., No. CIV-93-1024 MV/RLP, 2001 WL 37125041 at *3 (D.N.M. June 13, 2001) ("The

¹⁰ Further, posting a bond is prejudicial to Defendants. They should not have to tie up funds in an appeal bond unnecessarily, especially when such can be collected at the end of the day from at least one of the parties who is solvent. *See* IDOC Defendants' Motion to Stay, Dkt. 338-2, pp. 12-13.

purpose of [Federal Rule of Civil Procedure] 62(d) is to ensure that a party who has won a money judgment will be able to recoup that judgment if the case is affirmed on appeal. This is not a problem in cases involving the United States, because in those cases, money judgments are paid out of the Judgments Fund.”). Similarly, states are generally not required to post supersedeas bonds due to their status “as a sovereign taxing authority” and court’s confidence in their ability to pay judgments. *See e.g., Cayuga Indian Nation of New York v. Pataki*, 188 F.Supp.2d 223, 255 (N.D.N.Y. 2002) (collecting cases); *see also Dixon*, No. 2:10-CV-00078-LMB, 2011 WL 13137320, at *2–3. Here, because judgment has been entered against all Defendants, there is no need for a bond because Plaintiff’s counsel has the ability to recover from at least one of these Defendants. It is therefore a waste of money and unnecessary to require other Defendants to pay a bond.

Finally, it would simply be impractical and prejudicial to stay the judgment as to some but not all Defendants. It would create a procedural and practical mess if Plaintiff were permitted to proceed with her collection efforts as to some Defendants, but not others, even as the case is still pending on appeal and the parties are schedule to mediate the case soon.

III. The Court Should Stay Discovery Related to Collecting on the Judgment.

Plaintiff’s counsel has recently served Rule 69 discovery on Corizon¹¹, Idaho Department of Correction, and the State of Idaho related to its Writ of Execution and collection efforts. Corizon Defendants responded to the discovery requests on December 5, 2022. Defendants request that to the extent the Court grants Defendants’ request to stay the Judgment, that post-judgment discovery efforts by Plaintiff also be stayed. If the judgment is stayed, then there should be nothing to collect

¹¹ Plaintiff served Rule 69 written discovery (requests for production) on Corizon on November 3, 2022.

pending the appeal, and the underlying discovery and collection efforts should also be stayed. Further, requiring Defendants to engage in incurring more time and costs in responding to discovery is not appropriate during the pendency of a stay (and also with a mediation forthcoming in mid-January 2023).

IV. Conclusion

For the above reasons, Corizon Defendants request that the Court grant IDOC Defendants' Motion to Stay, issue a stay of Judgment as to all Defendants, including Corizon Defendants, without a supersedeas bond, and issue a stay of all post-judgment discovery. A complete stay pending appeal without a supersedes bond is certainly justified. Nevertheless, Corizon Defendants further join IDOC Defendants' alternative request that, at a minimum, the Court should impose a stay pending the outcome of mediation, which is now scheduled for January 12, 2023.

DATED this 7th day of December, 2022.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon, LLC
and Scott Eliason

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of December, 2022, 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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