

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.B., by and through her next friend
Cassie Cordell Trueblood, *et al.*

Plaintiffs,

v.

Washington State Department of
Social and Health Services, *et al.*,

Defendants.

No. 14-cv-01178-MJP

PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER

Note on Motion Calendar:

May 19, 2016

I. INTRODUCTION

Plaintiffs respectfully move the Court for a temporary restraining order ("TRO") enjoining Defendant Department of Social and Health Services ("DSHS") and its Maple Lane contractors from placing class members at risk of serious injury or harm. Class members at the Maple Lane facility currently have access to the stairwell and second floor even though the Court Monitor, Dr. Danna Mauch, her expert, Dr. Debra Pinals, and Plaintiffs have identified serious jumping, falling, and hanging risks inherent in the design of the stairwell and second tier railings.

Although Defendants have been enjoined from allowing class members access to a stairwell in the Yakima Competency Restoration Center ("YCRC") because of the great risk of

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1 harm to class members, Dkt. 216, Defendants failed to mitigate risks of suicide and bodily injury
2 created by a central stairwell at the Maple Lane competency restoration facility. Defendants'
3 decision to gamble with class members' safety rather than invest in infrastructure revisions they
4 have long known and admitted were necessary is impermissible. Now, Defendants refuse to take
5 any steps to mitigate the ligature, jumping, and falling risks caused by the stairwell and railing.
6 Instead, Defendants informed Plaintiffs that they will simply require their contractor to
7 "constantly monitor the stairs." Cooper Decl. Ex. A at 3. This Court rejected such arguments
8 when Defendants made them regarding the YCRC facility for good reason: all it takes is for one
9 staff member to be distracted or move a little bit too slowly and a class member could end up
10 dead. Dkt. 216 at 4 ("While the Court appreciates the Yakima program's commitment to
11 monitoring the class members at all times to ensure their safety, monitoring cannot prevent
12 suicide from jumping or hanging in many instances because of the speed with which people
13 intent on harming themselves might accomplish those actions.")). Defendants should be enjoined
14 from allowing class members to access to the stairwell and second tier until these meet the safety
15 needs of class members as determined by the Court Monitor.

16 II. BACKGROUND

17 This Court ordered Defendants to provide inpatient competency restoration services in
18 the "therapeutic environment of a psychiatric hospital." Dkt. 131 at 22. To comply with this
19 directive, Defendants' originally planned to create thirty additional beds for competency services
20 at the state psychiatric hospitals. Dkt. 164 at 13-17. Weeks before the initial compliance
21 deadline, Defendants decided to forgo opening beds at the state hospitals in lieu of opening up
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thirty beds at Maple Lane.¹ Dkt. 194-12 at 1, 12-16.

Defendants' hastily moved to open Maple Lane despite Plaintiffs' concerns regarding the physical environment of the facility and Defendants' plan to contract with Correct Care Solutions—an entity with no experience providing restoration services in Washington but a notorious track record of providing substandard jail based mental and medical care. Cooper Decl. Ex. C at 4. Plaintiffs were not the only ones with concerns regarding Defendants' use of Maple Lane. Both the Court Monitor and her clinical expert have long expressed their concerns with Maple Lane, including its two-tiered structure and access to a stairwell that poses jumping, falling, and hanging risks to vulnerable class members. Dr. Pinals expressed her concerns regarding use of buildings that are two-tiered and include stairs that are not appropriately designed to limit risk of jumping, falling, and hanging. Cooper Decl. Ex. D. In that report Dr. Pinals noted that:

The two tier model is one that is used often in jails and prisons, but can be dangerous especially for individuals with thoughts of suicide. The plan to apply Plexiglas to the stair railings in the tiers is one that makes good safety sense

Cooper Decl. Ex. D at 18. In a November 2015 report, Dr. Pinals expressed her concerns about Maple Lane's physical plant and the risk that the stairway and railings present, when she noted that:

Stairwells to the upstairs had open areas, similar to layering of tiers. After discussion there were recommendations about using Plexiglas to block off areas that might be risk areas for jumping points that could result in self-harm. Other suicide mitigation strategies need to be examined such as support railings, handles, and the like, which should be reviewed and removed.

Ex. E at 9.

¹ Maple Lane is owned and operated by the Department of Corrections ("DOC"). See Cooper Decl. Ex. B.

1 Dr. Pinal's concerns were reiterated by Dr. Mauch in her January 2016 quarterly report to
 2 the Court where she noted that there were safety concerns raised by Maple Lane's upper tiers and
 3 open staircases and that stair rails pose ligature risks. Dkt. 180 at 29. Dr. Mauch also noted that
 4 Defendants had yet to respond to Dr. Pinal's concerns regarding Maple Lane. *Id.* at 32.

5 In the four months since Defendants' unilateral decision to forgo bed expansion at the
 6 state hospital and instead open a thirty bed restoration unit at Maple Lane, *see* Dkt. 180 at 19,
 7 Defendants repeatedly assured Plaintiffs and the Court Monitor that the stairway and the risks
 8 that it causes to class members would be addressed through physical restructuring of the facility.
 9 *See* Cooper Decl. Ex. F ("These suicide mitigation efforts are reflected in the remodeling plan.");
 10 Dkt. 194-12 at ("[L]igature concerns, etc., are all part of this careful ongoing planning[.]").
 11 However, during a tour of Maple Lane, it was discovered that—despite Defendants' repeated
 12 assurances—the safety concerns regarding the stairway had not been addressed.² Instead,
 13 Defendants informed Plaintiffs that instead of eradicating the risks the stairway and railings
 14 create, Defendants would simply require someone to "constantly monitor the stairs." Cooper
 15 Decl. Ex. A at 3. Despite these risks, Defendants have transferred at least nine class members to
 16 a facility that could cause them irreparable harm.

17 III. ARGUMENT

18 Plaintiffs move this Court to issue a TRO enjoining Defendants from allowing class
 19 members access to the stairway at Maple Lane, housing class members on the second floor, and
 20 ordering them to create a barrier to ensure that class members are not able to access the stairway
 21 or railings. This will ensure that class members are not put at risk by Defendants' refusal to
 22

23 ² The parties met and conferred regarding other safety concerns arising from Maple Lane and were able to resolve all but the safety concerns raised by the stairwell and railings. *See* Cooper Decl. Ex. A at 1.

1 provide restoration services to class members in a safe environment. A TRO is necessary to
 2 ensure class members are not irreparably harmed by being housed in an unsafe facility.

3 When asked to grant a temporary restraining order where the public interest is at stake, a
 4 court must consider whether: (1) the plaintiff is likely to succeed on the merits, (2) the plaintiff is
 5 likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities
 6 tips in his or her favor, and (4) an injunction is in the public interest. *Winter v. Nat'l Res. Def*
 7 *Council, Inc.*, 555 U.S. 7, 20 (2008). The standard “is substantially identical for the injunction
 8 and the TRO,” *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839
 9 n.7 (9th Cir. 2001), except for the additional requirement that the applicant show immediate
 10 relief is necessary to obtain a TRO. *See Hunt v. Nat'l Broad. Co., Inc.*, 872 F.2d 289, 293 (9th
 11 Cir.1989).

12 A TRO that arises from a party's contempt of a court order must show that they are likely
 13 to succeed on the merits of a contempt motion. Civil contempt is defined as “a party's
 14 disobedience to a specific and definite court order by failure to take all reasonable steps within
 15 the party's power to comply.” *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th
 16 Cir. 2006). “The contempt ‘need not be willful’, and there is no good faith exception to the
 17 requirement of obedience to a court order.” *In re Dual-Deck Video Cassette Recorder Antitrust*
 18 *Litigation Go-Video v. Motion Picture Association of America*, 10 F.3d 693,695 (9th Cir. 1993)
 19 (citation omitted). The moving party has the burden of proving contempt by clear and convincing
 20 evidence. *Id.* Once this burden is met, it “then shifts to the contemnors to demonstrate why they
 21 were unable to comply.” *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). The
 22 Ninth Circuit has long held that a finding of contempt depends on “whether the defendants have
 23 performed ‘all reasonable steps within their power to insure compliance’ with the court's orders.”

1 *Stone v. San Francisco*, 968 F.2d. 850, 856 (9th Cir. 1992) (citing *Sekaquaptewa v. MacDonald*,
2 544 F.2d 396, 404 (9th Cir.1976)).

3 As discussed below, Plaintiffs can show by clear and convincing evidence that Maple
4 Lane does not comport with the Court's order that requires Defendants to provide competency
5 restoration services "without sacrificing the therapeutic environment of a psychiatric hospital,"
6 Dkts. 131 at 22; 193 at 2-15, and that Maple Lane's physical plant poses an unreasonable risk of
7 serious injury to class members who might attempt to injure themselves or others. Further, it is
8 clear Defendants have not taken all reasonable steps in their power to ensure that the Maple Lane
9 facility complies with this Court's directives and that it does not pose a risk to class members.
10 As such, Plaintiffs meet the *Hunt* test and seek an order that temporarily restrains Defendants
11 from placing class members at risk of irreparable harm.

12 **A. Plaintiffs Are Likely to Succeed on Their Claim that Assigning Class Members to**
13 **Receive Competency Services in Maple Lane Violates This Court's April 2, 2015**
Order and Places Them at Risk of Irreparable Harm

14 Enforcement of this Court's order is warranted given that Defendants admitted at least
15 nine class members to Maple Lane despite knowing that the facility poses serious risks of bodily
16 injury and even death to class members.

17 **1. Plaintiffs will likely suffer irreparable harm if a TRO is not issued.**

18 As noted by the Court Monitor and Dr. Pinals, Maple Lane's stairwell is unsafe and poses
19 a risk to class members who may injure themselves or others because of the jumping, falling, and
20 hanging risks that the current stairway and railings pose. *Supra* at 2-4.

21 Defendants have acknowledged the risks the stairway and railings at Maple Lane present
22 to class members and claimed that they would eliminate those risks. *Supra* at 4. Defendants
23 clearly know that risks caused by unprotected stairwells endanger class members should as this

1 Court recently enjoined Defendants from allowing class members access to a similarly
2 unprotected stairwell in Defendants' Yakima facility. Dkt. 216. Yet, Defendants have failed to
3 remediate the stairwell at Maple Lane and instead rely on the same argument they presented
4 regarding YCRC, that their contracted providers' monitoring alone would fully mitigate the risk.
5 Dkt. 201 at 19; *see also* Dkt. 205 at 8. Defendants' refusal to block access to the stairs and the
6 railings, even though the stairs have been identified by the Court Monitor and her expert, Dr.
7 Pinals, as presenting a serious risk to class members, creates a likelihood that class members will
8 suffer irreparable harm if the TRO is not issued.

9 **2. A TRO is consistent with a balance of equities and the public interest.**

10 Defendants have a legitimate interest in running an efficient system and in ensuring that
11 their mental health systems operate smoothly so that they can provide class members
12 competency services in order to move their criminal matters forward in a timely manner. Dkt.
13 131 at 18. Plaintiffs have a strong interest in receiving competency restoration services in a
14 manner that complies with this Court's order, best practices, and without risk of bodily injury or
15 other harm. Dkt. 131 at 16. Finally, the public has an interest in ensuring that the most
16 vulnerable of our society are protected and provided the services to which they have a
17 constitutional right and in seeing that the \$7.3 million dollars allocated for Maple Lane are used
18 wisely.

19 In this instance, as with the unsafe stairwell at Defendants' Yakima facility, the balance
20 of interests clearly favors class members. There is no legitimate state interest in subjecting
21 patients undergoing competency restoration to a facility that poses obvious, unacceptable risks to
22 their safety. The class members' interest in their safety, the public's interest in ensuring that
23 class members are not harmed, and Defendants interest in protecting and providing class

1 members appropriate restoration services all point towards issuance of a TRO to protect class
2 members from an unsafe facility.

3 **B. Plaintiffs Seek a Waiver of the Bond Requirement**

4 Federal courts may exercise their discretion under FRCP 65(c) to waive the bond
5 requirements in suits to enforce important federal rights of public interest. *Cal. ex rel. Van de*
6 *Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) (holding no bond
7 required for non-profit group). This Court should do so here as Plaintiffs are a disability rights
8 advocacy group and a marginalized class of people in need of mental health services requiring a
9 bond would likely make it impossible for Plaintiffs to pursue the judicial remedies necessary to
10 protect them from the injuries that Maple Lane poses.

11 **IV. CONCLUSION**

12 A TRO is necessary to ensure that Plaintiffs are not exposed to unreasonable risks of
13 irreparable harm caused by the unsafe stairwell at Maple Lane. As such, Defendants should be
14 ordered to keep class members safe by cordoning off the stairwell, disallowing access to the
15 stairwell, and not housing class members on the second tier until the facility has adequately
16 addressed the ligature, jumping, and falling risks posed by the stairwells and railings as
17 determined by the Court Monitor.

18 DATED this 19th day of May, 2016.

19 Respectfully submitted,

20 /s/ La Rond Baker

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- Nicholas A Williamson (NicholasW1@atg.wa.gov)
- Sarah Jane Coats (sarahc@atg.wa.gov)
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DATED: May 19, 2016, at Seattle, Washington

/s/La Rond Baker

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