

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 TO EXTEND
TEMPORARY RESTRAINING ORDER

NOTED: MAY 6, 2016

This Motion to Extend the Temporary Restraining Order ("TRO") is brought by Plaintiffs pursuant to Federal Rule of Civil Procedure 65 and LCR 7(d)(1).

Background

On March 18, 2016, Plaintiffs filed its motion for a TRO due to the physical safety risks at the Yakima County Restoration Center ("YCRC") that put class members in immediate risk of harm. Dkt. 193. At the hearing on March 28, 2016, Dr. Pinals testified that the open stairway and the seclusion and restraint room at YCRC present significant potential risks to class members. Dkt. 211 at 46. Dr. Pinals went on to state that she was concerned with the lack of clear policies regarding the use of seclusion and restraint. *Id.* at 47. The Court Monitor, Dr. Mauch, joined Dr. Pinals' concerns. *Id.* at 55.

On April 12, 2016, this Court granted Plaintiffs Motion for a TRO in part. Dkt. 216. Defendants were ordered to take two remedial steps to address the risk to class members. First, Defendants were ordered to “seal off the staircase” and close the second floor of the facility “unless and until the jumping, falling, and hanging risks posed by the staircase have been remediated.” *Id.* at 6. Second, Defendants were prohibited from using the seclusion and restraint room until they remediated the ligature risks and adopted a clear policy on the use of seclusion and restraint and “secure approval of that policy from the Court Monitor” followed by training of the staff. *Id.* The Court stated the TRO “would remain in effect until April 22, 2016, or until proof of compliance has been submitted to the Court and the Court Monitor and is found acceptable by the Court, whichever is earlier.” *Id.* at 7.

When Defendants failed to both remediate the staircase and secure the Court Monitor’s approval for the seclusion and restraint policy, Plaintiffs filed a motion to extend the TRO on April 22, 2016. Dkt. 222. On April 26, 2016, this Court granted our motion stating, “The TRO shall remain in effect until 5/6/2016 or until proof of compliance has been submitted to the Court and the Court Monitor and is found acceptable by the Court, whichever is earlier.” Dkt. 226. Defendants have still failed to remediate the staircase or secure the Court Monitor’s approval as required by the Court’s order.

Extending the TRO for Good Cause

Plaintiffs are now requesting an extension because Defendants have failed to comply with both requirements of the TRO and the risks to class members persist. Federal Rule of Civil Procedure 65(b)(2) states that a TRO may not exceed 14 days *unless* there is good cause to grant an extension and the reasons for the extension are entered into the record. Here, good cause is warranted for two reasons.

1 First, while Defendants have made progress and plan to remediate the stairway by
 2 enclosing it, Defendants recently informed Plaintiffs that the plan to complete the renovations is
 3 slated for “4-6 weeks once the construction begins.” Cooper Decl. at Ex. A. The construction is
 4 set to begin on Monday, May 9, 2016. *Id.* Thus, the TRO should be extended, so that
 5 Defendants continue to seal off the second floor, temporarily mitigating the risk to class
 6 members.

7 Second, Defendants have failed to obtain the Court Monitor’s approval of the facility’s
 8 seclusion and restraint policy. As Plaintiffs submitted in its first motion to extend the TRO, Dkt.
 9 222 -1, Dr. Pinals issued a report regarding her ongoing concerns with the policy. Dr. Pinals also
 10 made a series of recommendations to improve the policy including “greater medical oversight for
 11 clinical assessment, treatment planning and policy development as it relates to Seclusion and
 12 Restraint and the general program.” *Id.* at 17. Ultimately, Defendants have not produced proof
 13 of compliance nor has the Court found the policy acceptable.

14 For all the foregoing reasons, Plaintiffs request that the Court extend its Temporary
 15 Restraining Order until May 20, 2016, or when Defendants produce proof of compliance that
 16 they have completed their plans to enclose the staircase and have the Court Monitor’s approval
 17 regarding the seclusion and restraint policy, whichever is earlier.

18 DATED this 6th day of May, 2016.

19 Respectfully submitted,

20 /s/Emily Cooper

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 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)
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DATED: May 6, 2016 at Seattle, Washington.

/s/Mona Rennie

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