UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-4113 PSG (JEMx)	Date	August 28, 2018
Title	Keith Andrews et al. v. Plains All American Pipeline, L.P. et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **The Court DENIES Defendants' Motion to Stay the Proceedings**

Before the Court is Defendants Plains All American Pipeline, L.P. and Plains Pipeline, L.P.'s motion to stay. Dkt. # 469 ("*Mot.*"). Plaintiffs Keith Andrews; Tiffani Andrews; Baciu Family LLC; Robert Boydston; Captain Jack's Santa Barbara Tours, LLC; Morgan Castagnola; Crab Cowboys LLC; The Eagle Fleet, LLC; Zachary Frazier; Mike Gandall; Alexandra B. Geremia; Jim Guelker; Jacques Habra; iSurf, LLC; Mark Kirkhart; Mary Kirkhart; Richard Lilygren; Hwa Hong Muh; Ocean Angel IV, LLC; Pacific Rim Fisheries, Inc.; Sarah Rathbone; Community Seafood LLC; Santa Barbara Uni, Inc.; Southern Cal Seafood, Inc.; TracTide Marine Corp.; Wei International Trading Inc.; and Stephen Wilson ("Plaintiffs") oppose, see Dkt. # 470 ("*Opp.*"), and Defendants replied, see Dkt. # 471 ("*Reply*"). The Court held a hearing in this matter on August 27, 2018. Having considered the arguments in the moving, opposing, and reply papers, and at the hearing, the Court **DENIES** Defendants' motion to stay.

I. Background

This action stems from the May 2015 Santa Barbara oil spill, an incident that has been extensively recounted in the Court's prior orders in this action. Defendants' present motion arises from the Court's February 9, 2018 order certifying the "oil-industry" subclass, for which Defendants have successfully petitioned the Ninth Circuit to appeal. *See Mot.* 1. The portions of the litigation linked to the certification of that class, Defendants argue, should be stayed pending the Ninth Circuit's ruling on the oil-industry subclass certification. *Id.* The specific aspects of the case that Defendants seek to stay are distribution of notice to members of the oil-industry subclass; any fact or expert discovery in which the oil-industry subclass has an interest; and the dispositive motion deadline. *Id.* 1–2.

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II. Legal Standard

The Court's authority to stay a proceeding is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The Ninth Circuit's standard for stay requests is adopted from the preliminary injunction context. *See Leiva-Perez v. Holder*, 640 F.3d 962, 963–66 (9th Cir. 2011); *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983). Among the competing interests to be weighed when considering a stay pending appeals are "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see also Leiva-Perez*, 640 F.3d at 964. The "proponent of a stay bears the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

A "flexible approach" to balancing these factors, "so that a stronger showing of one element may offset a weaker showing of another[,]" is "appropriate in the stay context." *Leiva–Perez,* 640 F.3d at 964–66 (internal quotation omitted). Thus, along this continuum, the factors comprise "two interrelated legal tests." *See Lopez,* 713 F.2d at 1435. At one end of the continuum, a stay is justified if the moving party shows "a probability of success on the merits and the possibility of irreparable injury." *Id.* (citation omitted). At the other end, the moving party must demonstrate "that serious legal questions are raised and that the balance of hardships tips sharply in its favor." *Id.* (citation omitted); *see also Brown v. Wal-Mart Stores, Inc.*, 2012 WL 5818300, at *4 (N.D. Cal. Nov. 15, 2012) ("[W]here the movant relies on a 'serious legal question' to satisfy the first prong of the stay analysis, the movant must show that the balance of harm tips sharply in its favor.") (citing *Alliance for the Wild Rockies v. Cottrell,* 632 F.3d 1127, 1132 (9th Cir. 2011)).

III. Discussion

Defendants request stay until the resolution of their appeal to the Ninth Circuit of this Court's denial of class certification of the oil-industry class the following: 1) the distribution of class notice for the oil-industry subclass; 2) any discovery in which the oil-industry subclass has an interest; and 3) the dispositive motion deadline. *See Mot.* 1. Plaintiffs counter that the significant burden that a stay would place on Plaintiffs outweighs any injury to Defendants. The Court agrees.

A. Likelihood of Success on Appeal

To satisfy the likelihood of success factor, Defendants need not demonstrate that it is more likely than not that they will win on the merits. *Leiva-Perez*, 640 F.3d at 966. Rather, "a reasonable probability" of success, "a substantial case on the merits," or "that serious questions are raised," can satisfy the first prong. *Id.* at 967-68 (internal quotations omitted).

As the Court indicated in its February 9, 2018 order, courts have applied the *J'Aire* factors in different ways. *See* Dkt. # 350 at 14-15. Some find that the first factor, "intent to affect," dispositive, while others fully consider all six factors. *See id.* Thus, this Court analyzed the *J'Aire* factors without clear direction from California appellate courts. *See id.* Therefore, Defendants' petition for appellate review of the February 9, 2018 order presents an unsettled question of California law.

Because California courts have varied in how to balance the *J'Aire* factors, the Court finds that Defendants have presented a "serious legal question" in its Rule 23(f) appeal. Thus, the first factor weighs in favor of a stay.

B. Balance of Hardships

The second and third prongs of the stay analysis require the Court to consider, respectively, the likelihood of irreparable harm to Defendants and the injury to other parties interested in the proceeding. When relying on "serious legal questions," as is the case here, the movant must show that the "balance of hardships tips *sharply* in its favor." *Lopez,* 713 F.2d at 1435 (emphasis added). Therefore, this Court will consider the second and third prongs together.

Defendants specifically seek to stay 1) the distribution of notice to members of the oil-industry subclass; 2) any fact or expert discovery in which the oil-industry subclass has an interest; and 3) the dispositive motion deadline. The Court will consider each request in turn.

i. Distribution of Class Notice

"Ordinarily, notice to class members should be given promptly after the certification order is issued." *Manual for Complex Litigation* (Fourth) § 21.311 (Fed. Judicial Ctr. 2004). Defendants argue that distributing the class notice for the oil-industry subclass prior to the Ninth Circuit's decision would create a potential for confusion among class members. *See Mot.* 7. Defendants also point out that if the Ninth Circuit modifies or decertifies the subclass, a revised notice must be sent out, creating duplicative litigation costs. *See id.*

Plaintiffs contend that any concerns of confusion can be cured by adding language to the class notice to advise the class members of the pending appeal. *See Opp.* 15–16. Under Plaintiffs' proposal, the class notice will inform class members about the pending appeal and the possibility that the oil-industry subclass would not be allowed to move forward as a class.[1] *See id.* Exs. A, B. Further, class members will be given the option to be kept informed about the progress of the appeal. *See id.* Therefore, the Court is satisfied that Plaintiffs' proposed addition to the class notice will adequately address the potential for confusion among class members.

Defendants claim that Plaintiffs' proposed language would cause even more confusion about what options the class members have. *See Reply* 4–5. However, the Court does not find it persuasive that the class members' decisions would be dependent on the pending status of an appeal. For example, Defendants posit that class members will ask: "If I opt-out, is that choice binding on me if the subclass is later modified following the Ninth Circuit's decision?" *Id.* The Court finds it hard to imagine a scenario in which class members who opt out of the class might want to change their minds because the definition of the class changed.

The only area that *may* raise confusion is that Plaintiffs' proposed notice may not fully inform the class members of how a decertification of the class would affect their rights against Defendants: Will they be still part of this litigation? Will they give up any rights to sue Defendants on their own? *See id.* Yet, a class is at risk of being decertified at any point of the litigation. The risk of confusion decertification may have on class members is inherent in any class action suit. Thus, the Court is not convinced that the present class members would be subject to any more confusion that they would be in other similar suits. *See id.* Further, class members may contact the Plaintiffs' attorneys through the toll-free number or electronically with any questions about how the appeal may affect them. *See id.*

Thus, the Court finds that adding curative language about the appeal in the class notice provides "information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action." *Ravens v. Iftikar*, 174 F.R.D. 651, 655 (N.D. Cal. 1997).

Moreover, while the authority Defendants rely on found additional litigation costs to be a persuasive reason to stay the class notice, see *Brown*, 2012 WL 5818300, at *4, that case

[1] Plaintiffs specifically propose to add the following statement: "Plains has filed an appeal with the Ninth Circuit Court of Appeals requesting that the oil industry subclass not be allowed to move forward as a class. Please register at www.PlainsOilSpill.com or call 1-888-684-6801 to be kept informed about the progress of this appeal." *Opp.* 15 n.9.

involved a class estimated to exceed 22,000 individuals. The Court finds that the potential for confusion and duplicative litigation costs are smaller here, where the estimated size of the oil-industry subclass is approximately 500 members.[2] *See Ambrosio v. Cogent Commc'ns, Inc.* 2016 WL 777775 at *6 (N.D. Cal. Feb. 29, 2016) (finding additional litigation costs associated with issuing notice and discovery for a 250-member class is not an irreparable injury).

Finally, the Court finds that the benefit of informing the oil-industry subclass members of their rights and the state of the litigation outweighs the potential risk of confusion due to a revised notice. *See* William B. Rubenstein, Newberg on Class Actions § 8.11 (5th ed. 2018) ("Some courts have interpreted the need to send notice promptly as trumping even the possibility that the certification decision will be reversed on appeal.").

The Court is cognizant that several district courts have stayed class notice due to similar concerns raised by Defendants. *See Mot.* 7. Nonetheless, "[a] stay is not a matter of right," but instead "an exercise of judicial discretion, and the propriety of its issues is dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks and alterations omitted). Having considered the circumstances of this case, the Court, in its discretion, finds that the balance of hardships does not tip sharply in Defendants' favor with respect to the proposed stay on the class notice.

ii. Discovery

Defendants request a partial stay on any fact and expert discovery in which the oil-industry subclass has an interest. *See generally Mot.* Defendants contend that continuing discovery while the Ninth Circuit appeal is pending would cause irreparable harm to Defendants, because parties will likely spend substantial time and resources on discovery concerning the oil-industry subclass. *Mot.* 8-9.

Plaintiffs argue that even a "partial" stay would halt discovery for all three subclasses, for it would be "impossible to disentangle" discovery pertaining to the oil-industry subclass from the other two subclasses. *Opp*. 9. The Court agrees.

The three subclasses have brought suit against the Defendants based on the same oil spill. Thus, the subclasses share interests in factual and legal issues, especially pertaining to Defendants' liability. Although Defendants contend that the parties may continue discovery specific to the fisher and real-property subclasses during the stay, the Court is not convinced that

[2] This estimate is based on the Plaintiffs' representation during the August 27, 2018 hearing.

the scope of discovery for the oil-industry subclass can be easily untangled from that of the other two classes. Thus, Defendants' request for a partial stay would significantly delay discovery not only for the oil-industry subclass but also for the other subclasses that are not subject to appeal. Three years have already passed since the inception of this lawsuit. Further "[delay in resolving] the claims would substantially harm class members." *In re Rail Freight*, 286 F.R.D. 88, 93–94 (D.D.C. 2012); *see also Bradberry v. T-Mobile USA, Inc.*, No. C 06-6567 CW 2007 WL 2221076, at *4 (N.D. Cal. Aug. 2, 2007) (holding that "delaying a plaintiff's day in court constituted substantial injury to the plaintiff").

Plaintiffs also point out that the factual record will grow weaker over time and that some witnesses may become unavailable. Since document discovery is largely completed, the factual record is somewhat protected. Nonetheless, the Court recognizes that witness depositions are still pending and that "case delays may compromise plaintiffs' ability to call relevant witnesses at trial or that memories may fade." *In re Rail Freight*, 286 F.R.D. at 94.

Thus, although the Court recognizes continuing discovery may lead to increased litigation costs, Defendants have not shown that the balance of hardships tips sharply in their favor with respect to the proposed stay of discovery.

iii. Dispositive Motions Deadline

Defendants first argue that the dispositive motions deadline should be stayed under the "one-way intervention rule." Defendants also contend that keeping the current deadline would lead to unnecessary litigation costs.

The Court finds that staying the dispositive motion deadline at this stage is premature. The last day to file dispositive motions is February 25, 2019, which is three months after the deadline for all briefings for the Ninth Circuit. *See* Dkt. #467. If it appears that the Ninth Circuit's decision will be rendered after the dispositive motion deadline, creating an actual risk of one-way intervention, the Court can extend or stay the deadline at that time under its broad discretion to manage its own docket.

Further, keeping the current dispositive motion deadline would not result in unnecessary litigation costs. As the Plaintiffs point out, were the oil-industry subclass to be decertified, the named plaintiffs would still have individual causes of action. *Opp.* 12. As litigation will almost certainly proceed in this case, even if the certification decision is reversed or modified, the parties' work in "summary judgment briefs will be of use even if the defendants prevail on their appeal." *In re Rail Freight*, 286 F.R.D. at 93.

Thus, in the Court's view, Defendants have failed to show that the balance of hardships tips sharply in their favor to support a stay of the dispositive motion deadline.

C. Public Interest

Finally, the Court considers whether the public interest favors a stay. The public's interest in conserving judicial resources often weighs in favor of a stay. *See, e.g., Steiner v. Apple Computer, Inc.*, 2008 WL 1925197 at *6. However, because this case is over three years old, the Court agrees with Plaintiffs that the public's interest in "efficient prosecution of [] laws and seeking to hold corporate wrongdoers accountable" is significant. *See Mauss v. NuVasive, Inc.*, No. 13-2005, 2017 WL 4838826, at *2 (S.D. Cal. 2017). Thus, this final factor does not weigh in favor of granting a stay.

IV. Conclusion

Upon considering the necessary factors, although Defendants' Rule 26(f) appeal presents a serious legal question, the balance of hardships does not tip sharply in Defendants' favor, and the public's general interest weighs against a stay. For the foregoing reasons, the Court **DENIES** Defendants' motion for a stay pending the resolution of their appeal to the Ninth Circuit.

IT IS SO ORDERED.