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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE 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.	CIVIL ACTION FILE NO. 1:17-cv-151-BLW **CLOSING STATEMENT IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery ("Corizon Defendants"), by and through their counsel of record, Parsons Behle & Latimer, submit this Closing Statement in Opposition to Plaintiff's Motion for Preliminary Injunction.

I. INTRODUCTION

Plaintiff Adree Edmo must meet an exceptionally heavy burden to establish entitlement to the preliminary relief she is requesting. She has not come remotely close to doing so, failing to establish even one of the elements of the applicable preliminary injunction standard.

Ms. Edmo is demanding medical treatment in the form of major surgery, Sex Reassignment Surgery ("SRS") (also known as "Gender Confirmation Surgery"), for treatment of Gender Dysphoria ("GD").[1] Based on their evaluation of Ms. Edmo and their medical expertise and judgment, her treatment providers—and defendants' experts—have determined that SRS is not medically necessary or appropriate at this time. Though Ms. Edmo disagrees with that evaluation, as do her experts, such disagreements neither constitute deliberate indifference to a serious medical need nor discrimination on the basis of gender, sex, or any other protected category. For good reason, courts do not attempt to resolve such disagreements, which hinge on questions requiring medical expertise and judgement, and they particularly do not do so preliminary injunction phase.

None of the cases cited by Ms. Edmo are to the contrary. Ms. Edmo exclusively cites cases in which an inmate's correctional medical provider determined that a particular treatment for GD was medically necessary, but the judgment of that provider was ignored pursuant to a blanket correctional policy against the provision of such treatments. Ms. Edmo tries very hard to make the facts of this case analogous to those, but they are not. Here, there is no blanket policy, written or

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[1] Though Ms. Edmo's initial request for injunctive relief was broader, the Corizon Defendants understand that Ms. Edmo is now limiting her request for injunctive relief to an order requiring Sex Reassignment Surgery (or, Gender Confirmation Surgery). [*See* Plaintiff's Reply in Support of Motion for Preliminary Injunction, Dkt. 111, p. 1 n. 2 ("Plaintiff also claims that Defendants were deliberately indifferent to her serious medical needs by providing inadequate hormone therapy, but that claim is not the focus of her motion for preliminary injunction, which seeks access to surgery.")].

de facto, prohibited SRS; no medical provider—as opposed to a retained expert—has determined that SRS is medically necessary; and, in fact, several different providers, all understanding that SRS is an option where medically necessary, have independently determined that it is not medically necessary in Ms. Edmo's case. This is not a case in which a medically necessary treatment was denied for non-medical reason or pursuant to some general policy. It is a case in which treatment providers made a medical judgment based on their expertise, the evidence available to them, and in an attempt to provide quality care to Ms. Edmo.

II. ARGUMENT

A. The burden on Ms. Edmo is exceptionally high.

Even in the ordinary case, "preliminary injunctions are an extraordinary remedy never awarded as of right." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation marks omitted) (quoting *Winter v. NRDC,* 555 U.S. 7, 24, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008)) "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Id*.

Ms. Edmo's burden, though, is "doubly demanding: Because [she] seeks a mandatory injunction, she must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed." *Id*. (emphasis added). The relief Ms. Edmo is seeking is a "mandatory injunction, because it orders a responsible party to take action." *Id.* (internal quotation marks and citations omitted). The Ninth Circuit has repeatedly cautioned that "a mandatory injunction goes well beyond simply maintaining the status quo *pendente lite* and is particularly disfavored. The district court should deny such relief unless the facts and law clearly favor the moving party. In plain terms, *mandatory injunctions should not issue in doubtful cases*." *Id*. (emphasis added)

(internal citations, quotation marks, and alterations omitted). "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases or where the injury complained of is capable of compensation in damages." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009).

For a separate and independent reason, the injunctive relief requested by Ms. Edmo is highly disfavored and the burden on her is particularly demanding. The preliminary relief Ms. Edmo is seeking is the very relief to which she might be entitled after a full trial.

> It is so well settled as not to require citation of authority that the usual function of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits. The hearing is not to be transformed into a trial of the merits of the action upon affidavits, and it is not usually proper to grant the moving party the full relief to which he might be entitled if successful at the conclusion of a trial. This is particularly true where the relief afforded, rather than preserving the status quo, completely changes it.

Tanner Motor Livery, Ltd. v. Avis, Inc., 316 F.2d 804, 808–09 (9th Cir. 1963). "[T]he burden on plaintiff is a heavy one where . . . granting the preliminary injunction will give plaintiff substantially the relief it would obtain after a trial on the merits." *Redevelopment Agency of City of Stockton v. Burlington N.*, No. 05-2087 DFL JFM, 2006 WL 931059, at *3 (E.D. Cal. Apr. 11, 2006) (internal quotation marks, citations, and alterations omitted).

Both because the injunctive relief Ms. Edmo is seeking is mandatory—requiring defendants to provide a particular treatment—and because it would provide Ms. Edmo substantially all of the relief to which she might be entitled after a full trial, relief that cannot be "undone" after a full trial on the merits, her burden is "heavy" and her request is "highly disfavored." It should not be granted unless the law and the facts "clearly" favor her, not if the request is in any way "doubtful," and only if "extreme or very serious damage will result" absent injunctive relief.

B. Ms. Edmo has failed to establish, much less clearly establish and render in no way doubtful, a likelihood of success on the merits.

Ms. Edmo's request for injunctive relief as against the Corizon Defendants is based on her claims under the Eighth Amendment, for deliberate indifference to a serious medical need, and under the Eighth Amendment, for discrimination in the provision of medical care based on a protected category.[2] Ms. Edmo's claims—whether under the Eighth Amendment, the Fourteenth Amendment, or the Affordable Care Act—turn on her allegation that she was denied SRS not based on the medical judgment of her treating providers but based on a blanket policy that SRS is per se unavailable to inmates. There is *no* evidence to support that view. To the contrary, the evidence shows that SRS is available to inmates as medically necessary, that Ms. Edmo was

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[2] Ms. Edmo is basing her request for preliminary relief only on her Eighth Amendment, Fourteenth Amendment, and Affordable Care Act claims. [*See* Plaintiff's Notice of Motion and Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof, Dkt. 62, p. 10 n.3 ("Ms. Edmo is also likely to succeed on the merits of her other claims, including her American with Disabilities Act claim. However, given that the law on those claims is less clearly established, Plaintiff's motion for a preliminary injunction focuses more narrowly on her Eight Amendment, Fourteenth Amendment, and ACA claims." (internal citation omitted)]. Her Affordable Care Act claim is not asserted against the Corizon Defendants. [*See* Second Amended Complaint, Dkt. 36, p. 20]. Though not asserted against the Corizon Defendants, that claim clearly cannot sustain a request for preliminary relief. In addition to the argument herein, establishing that there was no discrimination in the provision of care, the Corizon Defendants also rely upon and incorporate the argument of the IDOC Defendants regarding Ms. Edmo's Fourteenth Amendment and Affordable Care Act claims. [Dkt. 99, pp. 14 – 16]. As to her ACA claim in particular, it is noteworthy that Ms. Edmo has not cited a *single case* in which the ACA was applied as she would have the Court do here, in favor of an inmate and against a department of corrections and its employees. That fact alone should be sufficient to show that she has not established that the law is "clearly" in her favor as to her ACA claim. Finally, Ms. Edmo also has a negligence claim against Corizon, but is also not basing her motion for preliminary relief on that claim. Like her other claims, her negligence claim is without merit. Ms. Edmo has not asserted that any particular treating provider was in any way negligent. It is unclear how a negligence claim against an organization can be asserted absent negligence by some agent of the organization. Further, Dr. Garvey, defendants' expert in this matter, has testified that Corizon and its providers were in no way negligent with respect to the care provided to Ms. Edmo. Defendants' Joint Proposed findings of Fact and Conclusions of Law ¶¶ 56 – 81.

evaluated for SRS by her health care providers, and that they judged, based on her condition, history, and their medical expertise, that that treatment was not presently appropriate. That clinical judgment has since been confirmed by defendants' experts in this case.

Ms. Edmo relies heavily on *Norsworthy v. Beard*, 87 F. Supp. 3d 1164 (N.D. Cal.), *appeal dismissed and remanded,* 802 F.3d 1090 (9th Cir. 2015), to support her view that injunctive relief is appropriate here. Ironically, *Norsworthy* provides a very useful contrast to the facts of this case. In *Norsworthy*, the district court granted an inmate's—Norsworthy's—request for a preliminary injunction requiring SRS. It did so, however, in light of facts that are dramatically different than those at issue here.

First, the court emphasized that the evidence indicated that Norsworthy was denied SRS pursuant to "a blanket policy barring GRS as a treatment for transgender inmates," not based on an individualized judgement regarding that inmate and medical necessity. *Id*. at 1191. The Court noted that a written correctional policy provided that SRS "shall not be the responsibility of the Department," that prison medical staff testified that there was "an understanding that [SRS] would not be available," that no prison guidelines provided that SRS was an option, and a recent training to medical staff by Dr. Steven Levine—also defendants' expert in *Norsworthy*—stated that SRS should never be provided to inmates. *Id*.

Exactly the opposite is true here. SRS as a treatment for gender dysphoria is not prohibited by the IDOC, either by written policy or by "de facto" policy. Defendants' Joint Proposed Findings of Fact and Conclusions of Law ("FOF") ¶¶ 31 – 33. An IDOC Standard Operating Procedure ("SOP"), in place since 2011, specifically provides that SRS is available as a treatment for GD when recommended as medically necessary by a qualified provider. *Id*. As is generally true with determinations regarding the medical necessity of particular forms of treatment for any medical

need, IDOC personnel defer to Corizon's qualified medical providers regarding the propriety and medical necessity of SRS as a treatment in particular cases. *Id*. If one of the approximately 30 inmates housed in IDOC facilities diagnosed with GD expressed the desire for surgery and met the criteria for SRS after an evaluation with a qualified GD evaluator, the IDOC would not prohibit such a surgery and would defer to the professional judgment of the mental health and medical providers assessing the inmate's particular condition. *Id*. ¶ 33. Corizon and its providers recognize that SRS is an available treatment for appropriate GD patients, not in any way prohibited as a treatment for GD by either IDOC or Corizon. *Id*. ¶ 28. As with all determinations of medical necessity, Corizon relies on the clinical judgment of its providers as to the medical necessity of particular treatments, including SRS. *Id*.

Ms. Edmo attempts to make much of the fact that Dr. Steven Levine, involved in the *Norsworthy* case, also provided a training to some Corizon and IDOC employees in early 2016. [*See* Plaintiff's Reply in Support of Motion for Preliminary Injunction [Dkt. 62] at 5 – 6]. Again, however, even the facts regarding Dr. Levine's training in this case as opposed to *Norsworthy* are importantly different. In *Norsworthy*, the training stated that SRS is never appropriate in the correctional context. *Norsworthy*, 87 F. Supp. 3d at 1191. Dr. Levine's training in this case did not state that SRS is never appropriate in the correctional context. More importantly, there is no evidence that Dr. Levine's training here was somehow adopted as policy by Corizon or IDOC. FOF ¶ 29 – 30. By contrast, in *Nosworthy*, there was testimony that Dr. Levine's then-expressed view was enshrined in written policy and was understood to be policy by medical providers, despite a finding (discussed further below) of medical necessity by treating providers. *Norsworthy*, 87 F. Supp. 3d at 1191. In this case, the views expressed by Dr. Levine at the training were considered by Corizon providers, but were not taken to be controlling or in any way policy. FOF ¶¶ 29 – 30.

There is simply no evidence to the contrary.

Next, Norsworthy's correctional mental health care provider, "who established a relationship with her over two years, unequivocally determined that she is in the group of patients for whom SRS is medically necessary." *Norsworthy*, 87 F. Supp. 3d at 1186. "Instead of following his recommendations, [correctional personnel] removed her from his care." *Id.* at 1190. Because "[a] prison official acts with deliberate indifference when he ignores the instructions of the prisoner's treating physician or surgeon," the court determined that Norsworthy was likely to succeed on the merits of her claim for deliberate indifference. In addition to the fact that a treating provider had made an affirmative determination that SRS was medically necessary for Norsworthy, there was "no evidence that any provider, as distinguished from an independent evaluator, ha[d] ever determined that SRS [was] not medically necessary for Norsworthy." *Id*. at 1190.

Again, exactly the opposite is true here. No provider has ever determined that SRS is medically necessary for Ms. Edmo, and numerous qualified treating providers have independently determined that it is not. FOF ¶¶ 45 – 55.

Corizon medical providers made this judgement, in part, by relying on the WPATH standards. As the WPATH standards explicitly state, they are "flexible clinical guidelines" that provide direction, but may be departed from, modified, and adjusted based on the patient's "unique social, or psychological situation." *Id*. ¶ 34. *See also Pinson v. United States*, No. 1:17-CV-00584, 2018 WL 1123713, at *3 (M.D. Pa. Feb. 26, 2018), *reconsideration denied,* No. 1:17-CV-00584, 2018 WL 3840820 (M.D. Pa. Aug. 13, 2018) ("The WPATH standards are an information resource which may provide guidance on medical and mental health treatment, which may include education, counseling, medical evaluations, hormone treatments, 'real-life' experience, and, in

some but not all cases, sexual reassignment surgery." (internal quotation marks omitted)). The WPATH only vaguely and generally addresses treatment for GD in the correctional context, the standards have not been universally adopted, and the evidence to support them is inconclusive at best. FOF ¶¶ 39 – 44. Treatment providers, particularly those in a correctional context, are certainly not obligated to follow those standards without deviation in all circumstances. *Id*.

Nevertheless, Ms. Edmo's providers did look to those standards to determine whether SRS was medically necessary. In particular, the WPATH standards require that mental health concerns must be well controlled prior to SRS, and whether such concerns are present and well controlled is a matter of clinical judgment. *Id*. ¶ 35 – 36. Both Dr. Scott Eliason, Corizon's Director of Psychiatry, and Jeremy Clark, LCPC, a supervising licensed mental health clinician and WPATH member, judged that Ms. Edmo had existing mental health concerns that were not in adequate control. *Id*. ¶¶ 10, 45 – 55. Ms. Edmo had existing diagnoses of Major Depressive Disorder and Anxiety; exhibited emotional instability; engaged in concerning behaviors, including assault of other inmates, sexual acting-out with other inmates, anger management issues, and problems with interpersonal relationships; she additionally exhibited borderline personality disorder traits, including sexual deviance, depression, relationship issues, and substance abuse. *Id*. ¶¶ 2 – 5, 19 – 27, 45 – 55. She refused to complete sex offender programing, refused to attend recommended Social Skills and Mood Management Groups, and had not consistently participated in individualized counseling. *Id*. ¶ 23. For these and additional reasons, Dr. Eliason, Jeremy Clark, and other providers judged that SRS was not currently medically indicated.

Defendants' experts have since confirmed that Ms. Edmo's Corizon providers were correct and provided care meeting the standard of care. *Id*. ¶¶ 56 – 81. Dr. Garvey, for example, agrees that Ms. Edmo has existing mental health comorbidities that are not sufficiently controlled for

purposes of SRS. *Id*. ¶¶ 65 – 69. For example, Ms. Edmo has engaged in self-harm, including cutting, just this year, and Dr. Garvey believes that it is important that Ms. Edmo learn and develop further coping skills to avoid further self-harm following any major surgical procedure. *Id*. Dr. Garvey has additionally opined that Ms. Edmo has not satisfied the WPATH standard requiring persistent, well-documented gender dysphoria. *Id*. ¶ 118. In particular, there are crucial inconsistencies between Ms. Edmo's self-report of consistent gender dysphoria and her history (or, lack thereof) of presenting as a female in the community that should be investigated and addressed before serious consideration of SRS. *Id*. ¶ 6 – 7. Finally, like Dr. Eliason, Dr. Garvey noted that WPATH explains that a patient under consideration for SRS must experience all of the things they are going to experience outside of prison, such as social transition or their physical transition, work response, family parties, and all sorts of things that one would encounter in their life, while Ms. Edmo has not been able to fully engage in such experience in prison. *Id*. ¶¶ 49, 68.

Ms. Edmo has presented contrary testimony from her own experts. That fact is irrelevant for a number of reasons. First, unlike Dr. Garvey, Ms. Edmo's experts, Drs. Ettner and Gorton have little or no experience treating GD in the correctional context or, for that matter, treating mental health issues more generally in the correctional context. *Id*. ¶¶ 82, 87. Second, and more importantly for present purposes, this is not a "battle of experts." A "difference of medical opinion"—even a difference of opinion amongst experts—regarding debatable treatment decisions is "insufficient, as a matter of law, to establish deliberate indifference." *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). *See also Savage v. Gelok*, No. 1:16-CV-00073-BLW, 2017 WL 3484159, at *10 (D. Idaho Aug. 14, 2017) ("[M]ere differences of opinion among medical personnel do not rise to the level of deliberate indifference."). Ms. Edmo is receiving treatment for GD, even if not the treatment she prefers. FOF ¶¶ 8 – 18. "The Constitution only requires that the

courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." *Mintun v. Corizon Med. Servs.*, No. 1:16-CV-00367-DCN, 2018 WL 1040088, at *5 (D. Idaho Feb. 22, 2018) (internal alterations omitted).

Even if negligence or malpractice, the view that SRS was and is not medically necessary for Ms. Edmo does not constitute deliberate indifference. *Toguchi v. Chung*, 391 F.3d 1051, 1057 – 60 (9th Cir. 2004) (deliberate indifference is a high legal standard; a difference of opinion concerning the course of treatment, negligence, or medical malpractice does not amount to deliberate indifference). Finally, the fact that Ms. Edmo's providers made a judgment as to medical necessity based on the evidence and their medical expertise establishes that there was no discrimination for purposes of a claim under the Fourteenth Amendment or the ACA. If their determination was based on their medical judgment and the evidence available to them, even if negligence or malpractice, it was not discrimination on the basis of some protected category.

For the reasons discussed above, this case is very unlike *Norsworthy*. It is far more like *Pinson v. United States*, No. 1:17-CV-00584, 2018 WL 1123713, at *14 (M.D. Pa. Feb. 26, 2018), *reconsideration denied,* No. 1:17-CV-00584, 2018 WL 3840820 (M.D. Pa. Aug. 13, 2018). In *Pinson*, an inmate diagnosed with GD demanded SRS, filed suit claiming deliberate indifference, and that suit was dismissed on summary judgment. Relying in part on the WPATH standards, the relevant mental health provider determined that SRS was not medically necessary or appropriate based on uncontrolled mental health issues, including anxiety, oppositional behavior, failure to comply with all treatment recommendations, and failure to live continuously as a female for an appropriate period of time. *Id*. at *8, *14. There was no policy or blanket prohibition on SRS; the court determined that the mental health provider made a "professional judgment" regarding the

propriety of that care in the particular case; that she treated appropriately by providing hormone therapy instead; and that the inmate's mere disagreement regarding the propriety of SRS was not sufficient to support a claim for deliberate indifference. *Id* at *12 – 13. Those facts are virtually identical to the facts here.

Like *Norsworthy*, the other cases centrally relied upon by Ms. Edmo are not on point. Each involves (1) a determination by a treatment provider that SRS (or that other treatment) was medically necessary that was then ignored by other correctional personnel, and/or (2) explicit blanket policies prohibiting SRS (or, some other treatment for GD) in the correctional context. *See Hicklin v. Precynthe*, No. 4:16-CV-01357-NCC, 2018 WL 806764, *3, *11 – 12 (E.D. Mo. Feb. 9, 2018) (primary care providers determined that hormone therapy was medically necessary, but such therapy was denied in compliance with a blanket policy against it); *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011) (affirming determination that statute prohibiting hormone therapy and SRS in correctional contexts was unconstitutional).

Ms. Edmo is not likely to succeed on her claims. The evidence shows that her providers made a medical judgment regarding the propriety of a certain treatment based on the evidence available to them and their medical expertise. Right or wrong, Ms. Edmo's disagreement (and the disagreement of her retained experts) does not give rise to a claim for deliberate indifference or for discrimination under either the Fourteenth Amendment or the ACA. As a matter of fact, however, the evidence also shows that the judgment of Ms. Edmo's treating providers was not only reasonable, but right.

C. Ms. Edmo cannot establish, much less clearly establish and render in no way doubtful, that extreme or very serious damage that cannot be compensated in damages will result absent injunctive relief.

Generally, "a plaintiff seeking a preliminary injunction [must] demonstrate that irreparable

injury is *likely* in the absence of an injunction," not merely possible. *Herb Reed Enterprises, LLC v. Fla. Entm't Mgmt., Inc.*, 736 F.3d 1239, 1249 (9th Cir. 2013) (internal quotation marks omitted) (emphasis in original). Such a showing must be grounded in evidence; it cannot be cursory or conclusory. *Id*. Because Ms. Edmo's request for injunctive relief is both mandatory and seeks substantially all of the relief to which she might be entitled after trial, she must show that "extreme or very serious damage *will* result absent injunctive relief" and that damage cannot be compensable. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (emphasis added).

In support of her claim that this element is met, Ms. Edmo points to her previous suicide attempts, to previous self-harm, and to psychological injury. [Dkt. 62, 16 – 17]. She then further points to the allegation that her constitutional rights are presently being violated. [Id. at 18]. This argument ignores a number of crucial pieces of evidence.

First, as discussed above, both Ms. Edmo's Corizon providers and Dr. Garvey see good reason to be concerned that Ms. Edmo does not have the coping skills and mental and emotional stability to handle SRS and possible relocation to a female prison after such procedure is complete. FOF ¶ 25, 67, 69, 81. If Ms. Edmo's providers are correct that she does not meet the WPATH standards because, among other reasons, she has mental health issues that are not adequately controlled, lacks appropriate coping skills, and has not had the opportunity to live as a female for an extended period of time, SRS is likely to *cause* harm to Ms. Edmo, not prevent it.

Second, and relatedly, Ms. Edmo has a history of self-harm and suicide attempts apparently unrelated to GD. She reported repeated suicide attempts related to relationship problems, economic distress, other feelings of worthlessness, and legal troubles. FOF ¶¶ 3 – 5. Her pre-incarceration records do not reflect that her suicide attempts and mental health issues were related to GD in any

way. *Id*. Dr. Garvey has opined that, if Ms. Edmo is not mentally stable with her mental health issues under control, SRS is likely to exacerbate, not resolve, suicidal ideations. *Id*. ¶ 69.

Next, there are no quality studies regarding outcomes after SRS, making it difficult to form a reasoned and informed judgment about the extent to which SRS will ameliorate Ms. Edmo's pattern of self-harm. Studies that report a low regret rate after SRS have small pool samples and a significant number of people that are lost to follow-up. *Id*. ¶ 64. There are other studies that report a regret higher rate—19.1%—when comparing post-SRS patients with the general population. *Id*.

In sum, while SRS is sometimes medically indicated, the suggestion that SRS is a means to avoid mental suffering, self-harm, and suicide attempts in individuals who have uncontrolled mental health issues is belied by the evidence. The WPATH standards require that mental health issues be well-controlled prior to SRS precisely because SRS can exacerbate such issues, putting patients at risk. Ms. Edmo's uncontrolled mental health issues suggest that SRS may well cause extreme or very serious damage. The evidence certainly does not show that it will prevent that result. Finally, Plaintiff makes no showing, or even any argument, that any harm or damage she might suffer would not be compensable in damages. *See Brady v. Gebbie*, 859 F.2d 1543, 1557 (9th Cir. 1988) (noting that mental and emotional distress is compensable under section 1983).

D. Ms. Edmo has failed to establish, much less clearly establish and render in no way doubtful, that the balance of equities favors granting preliminary relief.

The Corizon Defendants concede that *if* Ms. Edmo can establish that she is receiving constitutionally inadequate care, then this factor weighs in favor of a preliminary injunction. As discussed above, however, Ms. Edmo *cannot* establish that she is receiving constitutionally inadequate care. Because she cannot, she also cannot show that the balance of equities tips in her favor. It is not a balancing of equities to interfere in prison administration and order a health care

provider to provide treatment that he or she reasonably judges, based on evidence and on medical expertise, to be unnecessary and contraindicated.

E. Ms. Edmo has failed to establish, much less clearly establish and render in no way doubtful, that the public interest favors granting preliminary relief.

"The public interest inquiry primarily addresses [the] impact on non-parties rather than parties." *Sammartano v. First Judicial Dist. Court, in & for County of Carson City*, 303 F.3d 959, 974 (9th Cir. 2002). As a result, "[w]hen the reach of an injunction is narrow, limited only to the parties, and has no impact on non-parties, the public interest will be at most a neutral factor in the analysis rather than one that favors granting or denying the preliminary injunction." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138–39 (9th Cir. 2009).

The Corizon Defendants acknowledge that the public has an interest in ensuring that constitutional rights are vindicated. But, again, Ms. Edmo has not shown that her constitutional rights are being or are likely being violated. That claimed interest is therefore not at issue. In addition, the Corizon "Defendants' interests and the public interests in penological order could be adversely affected if the Court began dictating the treatment for the Plaintiff, one inmate out of thousands in the state prison system." *White v. Smyers*, No. 212CV2868MCEACP, 2016 WL 4445338, at *6 (E.D. Cal. Aug. 23, 2016), *report and recommendation adopted,* No. 212CV2868MCEACP, 2016 WL 5661773 (E.D. Cal. Sept. 30, 2016) (internal quotation marks and alterations omitted). To the extent that this element supports either party, therefore, it supports the Corizon Defendants. At any rate, clearly does not support Ms. Edmo.

III. CONCLUSION

Ms. Edmo's motion should be denied. She is requesting substantially all of the relief to which she might be entitled at trial in the form of a mandatory injunction. But even if she was pursuing only ordinary injunctive relief, she falls far short of the required showing.

DATED this 26th day of October, 2018.

PARSONS BEHLE & LATIMER

By: */s/ Dylan A. Eaton*
Dylan A. Eaton
Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2018, 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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