

1 UNITED STATES OF AMERICA  
2 EASTERN DISTRICT OF MISSOURI  
3 EASTERN DIVISION

3 JESSICA HICKLIN, )  
4 Plaintiff, )  
5 vs. ) No. 4:16-CV-1357 NCC  
6 ANNE PRECYTHE, et al., )  
7 Defendants. )

8 TRANSCRIPT OF STATUS CONFERENCE

9 BEFORE THE HONORABLE NOELLE C. COLLINS  
10 UNITED STATES MAGISTRATE JUDGE

11 February 21, 2018

12 APPEARANCES:

12 For Plaintiff: Ms. Demoya Renee Gordon (via telephone)  
13 Mr. Richard Saenz (via telephone)  
14 LAMBDA LEGAL DEFENSE  
15 120 Wall Street  
16 19th Floor  
17 New York, NY 10005

15 For Defendant Mr. Dean John Sauer  
16 MDOC: Mr. David D. Dean  
17 Mr. Ryan Bangert (via telephone)  
18 ATTORNEY GENERAL OF MISSOURI  
19 1530 Rax Court  
20 P.O. Box 899  
21 Jefferson City, MO 65109

19 For Defendant Mr. Kevin K. Peek  
20 Corizon Health: Mr. Alejandro Valdez  
21 ECKENRODE-MAUPIN  
22 11477 Olde Cabin Road  
23 Suite 110  
24 St. Louis, MO 63141

23 REPORTED BY: SUSAN R. MORAN, RMR, FCRR  
24 U.S. DISTRICT COURT  
25 111 South 10th Street  
St. Louis, MO 63102  
(314) 244-7983

1 (The following proceedings were held in open court  
2 on February 21, 2018 at 2:10 p.m.):)

3 THE COURT: Good afternoon. This is the case of  
4 Jessica Hicklin versus Anne Precythe, Ian Wallace, et al.,  
5 Case No. 4:16-CV-01357 NCC.

6 I know there are some attorneys on the telephone on  
7 behalf of the plaintiff; is that correct? Counsel, could you  
8 make your appearances?

9 MS. GORDON: Yes, Your Honor. Demoya Gordon here  
10 for Lambda Legal on behalf of Plaintiff Jessica Hicklin.

11 MR. SAENZ: Richard Saenz, Lambda Legal, for  
12 Ms. Hicklin. Good afternoon.

13 THE COURT: Good afternoon. And on behalf of the  
14 MDOC defendants?

15 MR. SAUER: Your Honor, Dean Sauer and David Dean  
16 here on behalf of the MDOC defendants. And Mr. Bangert of  
17 our office is on the phone as well.

18 THE COURT: All right. Thank you.

19 MR. BANGERT: Good afternoon, Your Honor.

20 THE COURT: Good afternoon. And on behalf of  
21 Corizon?

22 MR. PEEK: Yes, Your Honor, Kevin Peek and Alex  
23 Valdez for Corizon.

24 THE COURT: All right. Thank you.

25 I set this hearing this afternoon based on a request

1 by the attorneys that there might be some questions or issues  
2 that the attorneys wanted to raise, and so I'll hear first  
3 from Ms. Gordon.

4 MS. GORDON: Sure, Your Honor. I had facilitated  
5 requesting this status conference as a result of discussions  
6 that had been happening among counsel for the parties since  
7 the Court entered its order on February 9th granting  
8 Plaintiff's Motion for Preliminary Injunction.

9 I will say that, you know, we've been having ongoing  
10 conversations wherein defendants have assured us they are  
11 taking steps to provide the treatment modality that the Court  
12 specifically ordered February 9th and that they intend to  
13 continue doing so into the future.

14 Surrounding those conversations there have been  
15 proposals made by defendants with respect to a potential  
16 resolution of the case without hopefully too much more  
17 expenditure of time and expense of the parties, but given  
18 that these conversations were initiated by the defendants, I  
19 guess I'm reluctant to say much more about it in detail other  
20 than to say it seems to me and to us as plaintiff's counsel  
21 based on the conversation that getting some guidance from the  
22 Court as to the appropriate way to proceed if this is, in  
23 fact, a workable resolution seemed like the prudent thing to  
24 do, and that's why I endeavored to facilitate this  
25 conversation with the Court.

1 THE COURT: All right. Mr. Sauer, would you like to  
2 add to that?

3 MR. SAUER: Your Honor, there have been some, I  
4 would describe them as settlement discussions since the  
5 Court's order of I think a week ago Friday granting a  
6 preliminary injunction in this case.

7 My understanding -- and that's conversations I  
8 understand have occurred mostly between Mr. Bangert and  
9 Ms. Gordon. My understanding was that the plaintiffs had a  
10 question about the feasibility of some of the proposals that  
11 had been made that they wanted to inquire of the Court.

12 I think, Mr. Bangert, correct me if I'm wrong, I  
13 don't think we have any objection to the plaintiffs making  
14 that inquiry at this time on the understanding that, you  
15 know, anything that's been said in the course of settlement  
16 discussions and reported back to the Court would be subject  
17 to Rule 408 of the Rules of Evidence.

18 THE COURT: All right. Mr. Bangert, did you want to  
19 speak more specifically on that before I hear from Ms. Gordon  
20 again?

21 MR. BANGERT: Yes, Your Honor, I'm happy to do that.  
22 Ms. Gordon and I as well as Mr. Peek, who I believe is in the  
23 room as well, have had a series of conversations around  
24 potential resolutions of the lawsuit. The idea centers on to  
25 the extent the plaintiffs would be -- would entertain the

1 possibility of moving the Court or seeking relief from the  
2 Court that would have the effect of converting the  
3 preliminary injunction ruling that the Court has entered into  
4 a permanent injunction. It is my understanding, and I have  
5 spoken with my client, and my client would not object to that  
6 kind of a motion to the Court because the client is already  
7 in the process of complying with the Court's preliminary  
8 injunction order. And once that compliance begins, which it  
9 already has begun, it will continue into the future.

10 So my client has no objection to converting that  
11 into a permanent type of relief with respect to Ms. Hicklin.  
12 So that is one aspect of the conversations that we had had.

13 And I would stop there and allow Mr. Peek or  
14 Ms. Gordon to speak to that specific issue because I want to  
15 make sure that I have not misstated anything or inadvertently  
16 said something incorrect.

17 MR. PEEK: That's correct as I understand it that --

18 MS. GORDON: I'm sorry to interrupt, but I think  
19 that Mr. Peek is speaking but I can't hear. At least on this  
20 end we can't hear very well.

21 THE COURT: And, Mr. Peek, this microphone -- we  
22 have several microphones here in the courtroom. Ms. Gordon,  
23 I'm going to ask Mr. Peek to approach. And you can speak  
24 into that microphone and she should be able to hear you.

25 MR. PEEK: All right. Thank you, Your Honor. Sorry

1 about that, Demoya.

2 Your Honor, that's our understanding as well from  
3 the Corizon defense point of view is that everything that  
4 Mr. Bangert said we agree with in terms of the resolution and  
5 some manner of turning this preliminary injunction into a  
6 permanent injunction, whatever method that may be.

7 THE COURT: All right. And, Ms. Gordon, it sounds  
8 like the representations that have been made on behalf of the  
9 defendants are consistent with what they've stated to you  
10 previously. Would the parties anticipate then this would be  
11 some type of joint motions with findings of fact? And how  
12 would you plan to proceed?

13 MS. GORDON: Well, Your Honor, for the most part  
14 what Mr. Bangert has represented does align with my  
15 recollection of our conversations. I will say, however, that  
16 my understanding was that the Department of Corrections would  
17 not object to a motion to convert the preliminary injunction  
18 to a permanent injunction. But my understanding was also  
19 that they would not object to us seeking that that permanent  
20 order or judgment also preclude the continued enforcement of  
21 a freeze-frame policy generally speaking. I may have  
22 misunderstood, but that was a pretty clear understanding of  
23 mine from the conversations that we've had so I wanted to  
24 make that clear.

25 MR. BANGERT: Ms. Gordon and Your Honor, this is

1 Ryan Bangert speaking again. And I stopped there because I  
2 didn't want to pack too much into my initial presentation.  
3 But the second point of our discussions did center around the  
4 very topic that Ms. Gordon just raised, which is the  
5 application of the freeze-frame policy.

6 I have talked with my client and it is my clear  
7 understanding from my client that going forward they intend,  
8 the client intends to continue with its regular process of  
9 evaluating complaints of gender dysphoria brought by  
10 offenders who have been admitted into the system and gender  
11 dysphoria is an emergent condition that arises post-admission  
12 to the facility. At that point the Department of Corrections  
13 will follow its normal procedure for evaluating and treating  
14 those types of complaints, but with one change, that change  
15 being that the Department will no longer apply the  
16 freeze-frame policy as part of that process.

17 So that is correct, what Ms. Gordon has stated is  
18 correct, the Department has stated to me that they will not  
19 be applying the freeze-frame policy going forward.

20 THE COURT: All right. And so on that point I do  
21 want to circle back to get clarification as to what I can  
22 expect to see to be filed, if it will be a motion filed by  
23 plaintiff with no objection or a joint motion. I would like  
24 to know and I think it's worthwhile for the attorneys to  
25 decide because I certainly wouldn't want one side to file a

1 statement of facts and then later there is an objection as to  
2 what the facts are.

3 So to the extent that it is practical, I do believe  
4 that the parties should get together on any facts on a  
5 motion.

6 And with respect to the freeze-frame policy, it  
7 seems as if MDOC has made a policy determination that from an  
8 administrative point of view they will no longer enforce the  
9 freeze-frame policy I guess as to any other possible inmate  
10 who might after becoming incarcerated and later having a  
11 diagnosis of gender dysphoria.

12 That being said, as was set forth in my order, to  
13 the extent that that is outside of the scope of the current  
14 lawsuit, I'd like to hear from Ms. Gordon and the parties as  
15 to if the MDOC has agreed in principle not to apply the  
16 freeze-frame policy and that was not addressed in the  
17 pleadings in this case, why the Court should make that part  
18 of the order on the permanent injunction.

19 MS. GORDON: Your Honor, thank you for raising that.  
20 We very carefully did read Your Honor's order and took away  
21 from that order that the Court did not believe that we had  
22 been clear enough to this point about challenging not just  
23 the denial to Ms. Hicklin specifically, medically necessary  
24 treatment, but challenging the policy generally speaking.  
25 And so we have worked to amend the Complaint to make that

1 even more clear and explicit on its face. And we have  
2 discussed that with defendants, and they have consented to us  
3 amending the Complaint. And based on my conversations with  
4 both of them, and I'll let counsel for other parties say  
5 their understanding, but my understanding is that both DOC  
6 and Corizon would consent to us filing an Amended Complaint  
7 explicitly including a count challenging the policy is  
8 unconstitutional on its face as well as applied to  
9 Ms. Hicklin, and seeking injunctive relief with respect to  
10 the continued enforcement of the policy and declaratory  
11 relief stating that such a policy is unconstitutional.

12 The only gloss on that is that Corizon defendants  
13 wanted any additional language added to the Complaint to I  
14 guess be clear that this is a DOC policy, or at least not  
15 give the implication that the policy is the work of both sets  
16 of defendants. Because I guess it's their position that this  
17 is a DOC policy and not a Corizon policy. And we worked to  
18 try to accommodate that request from Corizon, and which is  
19 not very hard for us to do because in the original Complaint  
20 there are several times in the Complaint where we say the DOC  
21 policy or DOC's freeze-frame policy.

22 So all of that to say that as far as our  
23 understanding, plaintiff's counsel's understanding, the  
24 parties are in agreement with plaintiff amending her  
25 Complaint to exclusively request relief with respect to the

1 policy itself broadly. So we are hoping that that would both  
2 give the Court more guidance as to what we're seeking but  
3 also empower the Court to feel as if it can order relief with  
4 respect to the policy more broadly. And we've also  
5 negotiated the amended stipulation that we filed with the  
6 Court last Friday for the parties to allow that to happen as  
7 well.

8 THE COURT: All right. And in that request, if I  
9 were to enter a second amended case management order, I  
10 believe the deadlines for amendment of pleadings would be  
11 based on the parties' request February 23rd, by this Friday?

12 MS. GORDON: That will be this Friday, yes, Your  
13 Honor.

14 THE COURT: All right. Anything from defendants on  
15 that issue?

16 MR. PEEK: No, Your Honor.

17 MR. SAUER: No, Your Honor, unless Mr. Bangert wants  
18 to say something.

19 MR. BANGERT: No, Your Honor, nothing on that. We  
20 all agreed to the amended case management schedule, and so I  
21 think further terms of that amended case management schedule,  
22 they would not need leave or permission from us to file an  
23 Amended Petition or an Amended Complaint.

24 THE COURT: All right. While we're discussing other  
25 pending matters in this case, the Motion to Compel, there was

1 the Motion to Compel and Motion for Protective Order. Have  
2 those matters been resolved?

3 MS. GORDON: From our perspective, Your Honor, no.  
4 And this is Ms. Gordon for the plaintiff.

5 THE COURT: All right.

6 MR. SAUER: And, Your Honor, I can address that at  
7 perhaps a higher level of generality than Mr. Dean. But as I  
8 understand it, you're aware that Mr. Luepke was the counsel  
9 of record from the Attorney General's Office for a long time.  
10 In our Motion for Leave to File a Response to the Motion to  
11 Compel and for Sanctions Out of Time, we represented to the  
12 Court that Mr. Luepke had suffered some undiagnosed medical  
13 issues. As a result of that he -- I know this hearing is on  
14 the record, and out of respect for his privacy I don't want  
15 to get into too much detail, but he has authorized us to  
16 represent to the Court what occurred. He had a neurological  
17 issue as a result of the interaction between two medications  
18 he was taking that resulted in a series over the past -- as  
19 far as I can tell the past few months memory loss,  
20 concentration gaps, and things of that nature. As of last  
21 Friday he's taken medical leave.

22 When we became aware of this issue, I guess about  
23 two or three weeks ago, his immediate supervisor,  
24 Ms. Baumann, became aware of the issue, we brought in other  
25 attorneys, including Mr. Dean, to kind of review his cases.

1 And we found that there were these -- we did not know that a  
2 sanctions motion had been pending. We did not know that  
3 there was allegations that our discovery production had been  
4 deficient.

5 We have worked as quickly as we can to remediate  
6 those. I believe we've corrected every sort of gap or lapse  
7 in the discovery, but I think we're still waiting for the  
8 full response to one interrogatory, the Plaintiff's  
9 Interrogatory 16, which I think we -- I take it that we're  
10 coordinated with Corizon to get a response in on that until I  
11 think on February 28th. And we'd ask the Court and  
12 plaintiffs to have an understanding attitude toward  
13 Mr. Luepke's issues. We believe it's a correctable issue.  
14 We hope he'll be back with our office very soon, but he is on  
15 medical leave. And he's having his medications changed, and  
16 so hopefully it won't be there.

17 But I believe that if we -- I think if we get the  
18 information they've asked for in Interrogatory 16 to them, I  
19 believe we will have addressed all the issues in those  
20 motions, at least from the production side.

21 THE COURT: All right. Anything else that --

22 MR. DEAN: I would just add, Your Honor, that we've  
23 tried to address the specifically enumerated issues listed in  
24 the motion for sanctions. If there is anything that  
25 plaintiff's counsel believes is still outstanding, we're

1 obviously willing to work with them going forward. I, like  
2 Mr. Sauer, entered this case when Mr. Luepke's problems  
3 arose, so if there's something that plaintiff's counsel  
4 communicated to Bud earlier that they are still waiting on,  
5 you know, if they could communicate that to us, obviously  
6 we'd be willing to work with them going forward.

7 THE COURT: All right. So, Ms. Gordon, you may have  
8 been apprised of some of that information, and while we're  
9 all here I figured I would also address that. And certainly  
10 we wish Mr. Luepke well, good health. And that the other  
11 attorneys in the Attorney General's Office are now being  
12 responsive and at least coordinating with your office about  
13 any outstanding discovery matters.

14 Ms. Gordon, anything else on that?

15 MS. GORDON: Well, Your Honor, it's still our  
16 position that the responses remain deficient. I will  
17 acknowledge that we have received additional documents since  
18 new counsel has come on to the case, but there are still  
19 documents that we have not received. And we're still unclear  
20 as to defendants' precise responses to some of our written  
21 requests, whether or not they are standing on the objections,  
22 whether or not their position is that they produced  
23 everything that they have.

24 THE COURT: I'm sorry, Ms. Gordon, we want to make  
25 sure we get everything you're saying. Whether the AG's

1 Office is standing on the prior objections, could you repeat  
2 after that?

3 MS. GORDON: Yes. Whether they are standing on  
4 their prior objections, whether their position is that they  
5 have produced all responsive documents in their possession,  
6 whether or not they are withholding or any documents have  
7 been withheld to date based on privileged, and if so, a  
8 privilege log identifying what those -- what the basis for  
9 any such withholding might be. Those are -- just looking  
10 through the briefing. Those are some of the issues that we  
11 continue to not view as being resolved right now.

12 And my assumption based on counsel's representation  
13 is that the specific bulleted, enumerated documents that we  
14 have laid out, it's their position that they've either  
15 already produced all of those or they had some kind of basis  
16 for withholding them. But, again, I'm not sure that that's  
17 the case based on the written responses that we have to date.

18 THE COURT: Well, Mr. --

19 MS. GORDON: And this applies to Corizon defendants  
20 as well, but right now we're talking about DOC, but the same  
21 applies to Corizon.

22 THE COURT: Well, it does sound like there's been  
23 some progress maybe on the more global matters, but that does  
24 not mean that plaintiff may not be -- you know, they are  
25 entitled to what they've requested and discovering what they

1 are entitled to under the rules. So I guess until the case  
2 is resolved, the defendants need to either provide the  
3 information or substantiate a basis for why that information  
4 has not been provided.

5 MR. SAUER: And we're happy to meet and confer with  
6 plaintiffs and make sure that they are comfortable they have  
7 received all the documents and the transparency that they are  
8 requesting in this. I can't address -- I'm not prepared to  
9 address any specific retail-level issues but that our office  
10 is committed to making sure that there's been a complete  
11 production on all issues to which they are entitled.

12 THE COURT: Mr. Peek.

13 MR. PEEK: Your Honor, if I can jump in. Kevin Peek  
14 for the Corizon defendants. We've provided a lot of  
15 documents as well responsive prior to, during, and after the  
16 motion was filed. We continue to request from Corizon.  
17 There are certain documents that are simply not kept in a  
18 file folder that are easy to find. We have to dig through a  
19 lot. We have to get our clients to dig through a lot. And  
20 we're trying to come up with those remaining documents if  
21 they exist. I know for certain we've requested meeting,  
22 certain meeting notes that the plaintiff has requested. And  
23 we've requested those directly from our client. And we hope  
24 to receive those soon as well. But we are continuing our  
25 search. But at this time, you know, plaintiff has been given

1 everything that seems relevant to their request and what we  
2 have.

3 THE COURT: All right. Well, it sounds like that  
4 matter is still open, and I know the parties were not  
5 necessarily prepared to go through the fine details today of  
6 the pending motion to compel and the motion for protective  
7 order. What about the protective order as to -- and I'm  
8 hoping -- I hope that I am pronouncing her name correctly.  
9 Anne Precythe. How does she pronounce her name?

10 MR. SAUER: Precythe, Your Honor.

11 THE COURT: Has that matter been resolved?

12 MR. SAUER: Your Honor, I don't believe so. I  
13 believe that they've noticed that deposition and we've  
14 applied for a protective order. I don't know if they  
15 received a ruling on that in light of the fact that we do  
16 have some significant settlement discussions that have  
17 occurred. Our position, which is the position we take in  
18 other cases as well, is that we seek to avoid that kind of  
19 deposition to avoid -- DOC has a lot of litigation, and we  
20 tend to take the position that unless there's firsthand  
21 knowledge, we'd rather not produce the director.

22 THE COURT: All right. So it sounds like those two  
23 matters are very much still pending. I'm assuming,  
24 Ms. Gordon, you were to say it is not resolved as far as  
25 plaintiff is concerned, is that fair to say?

1 MS. GORDON: Yes, Your Honor. You know, we take  
2 issue with the representation that she does not have  
3 firsthand knowledge of the issues. She's the current  
4 director. We know that this decision went all the way up to  
5 the former director. And she's been the director now for I  
6 want to say at least a year, maybe a little bit more.

7 So, you know, as we made out in our brief, we  
8 believe that she does have firsthand knowledge as to the  
9 continued enforcement of this policy. However, I do want to  
10 just harken back to the characterization of the  
11 communications that the parties have been having as  
12 settlement discussions. We have had extensive settlement  
13 discussions in this case that have fallen through.

14 My understanding of the conversation we've been  
15 having with counsel is not so much a settlement discussion,  
16 but perhaps we need to talk more about it to get clarity,  
17 because we are more than willing to reopen settlement  
18 discussions that could lead to an actual settlement agreement  
19 in this case, but it's not my understanding of what has been  
20 proposed by defendants to date.

21 But, again, you know, I think the Court has raised  
22 during this call the need for the clarity as to what exactly,  
23 you know, would be happening going forward towards reaching a  
24 resolution. But I don't believe that since new counsel has  
25 been on the case that we have actually been talking about a

1 settlement in the case. But I want to be clear that  
2 plaintiff is more than open to having such conversations.

3 MR. PEEK: Your Honor, if I can jump in.

4 THE COURT: Yes.

5 MR. PEEK: Kevin with the Corizon defendants. I  
6 think what we're hoping, and Mr. Bangert, please correct me  
7 if I'm wrong. We'd like to take the preliminary injunction,  
8 turn it into a permanent injunction. And we need to figure  
9 out the best mode to do that. Our initial thought was a  
10 motion to make it into a permanent injunction filed by the  
11 plaintiff and then with no objection, but we want to make  
12 sure that we proceed in the best way possible. If anybody  
13 has a different understanding than I do, please correct me.

14 MR. BANGERT: This is Ryan speaking here. And I  
15 think we can get caught up in nomenclature and labels, but I  
16 personally would characterize what we've been doing as  
17 resolution discussions or even if you want to call them  
18 settlement discussions, I think that would be a fair way to  
19 characterize them. But as I see it, what we have done is we  
20 have set up a framework where the issues that are raised and  
21 teed up in the Complaint, both the Complaint as it stands  
22 today as well as any Amended Complaint which would be filed  
23 will be addressed. I do know there is always the issue of  
24 attorneys' fees, which I believe --

25 THE COURT: Issues of attorneys' fees is what he

1 said. Sorry to cut you off.

2 MR. BANGERT: I apologize, Your Honor, I should talk  
3 more slowly here for the benefit of the court reporter. But,  
4 yes, we do have the issue of attorneys' fees that we have not  
5 discussed today. I believe that would not be resolved  
6 necessarily by the path that we have proposed today. But  
7 apart from setting aside the attorneys' fees issue, I think  
8 that the entry -- and this is from the perspective of the  
9 State, the entry of the type of injunction that we have  
10 discussed today would resolve the material issues in the case  
11 with the exception of fees.

12 So we can call that settlement discussions, we can  
13 call that resolution discussions, we can just call that  
14 discussions, but I think that's the ultimate thrust of what  
15 we've been trying to do at least from the perspective of the  
16 State.

17 THE COURT: All right. I think that gives me some  
18 additional clarity as well. To the extent that the parties  
19 are asking the Court to tell you precisely in what form this  
20 proposed motion for a permanent injunction, how it would be  
21 drafted, whether it's a motion by the defendants with no  
22 objection from the plaintiff or a motion by the plaintiff  
23 with no objection by the defendants, my primary concern with  
24 that would be that there would be agreement clearly set forth  
25 as to facts and as to what in addition, if anything, that has

1 not yet been set forth in the preliminary injunction that the  
2 parties would anticipate agreeing upon.

3 I think it behooves the parties to maybe do this in  
4 a joint fashion. I don't want to tell you to do that, but I  
5 just want to make sure that once I receive a filing and if I  
6 decide to enter that as an order that there is not going to  
7 be some last-minute concern raised by any of the parties that  
8 no, in fact, this paragraph we don't agree. I mean, you all  
9 need to work that out before anything is filed. But I would  
10 certainly encourage you to try to work together with respect  
11 to all of the proposed findings. And beyond that I'm not  
12 sure what exactly -- what more you're asking of the Court at  
13 this point. Anything else, Mr. Sauer?

14 MR. SAUER: No, Your Honor, that was my  
15 understanding. I believe, and I don't want to speak for  
16 plaintiffs, but I believe that was one of the main reasons  
17 they asked for the conference.

18 THE COURT: Certainly. Ms. Gordon, is that helpful  
19 to you in terms of how to proceed? Again, I will leave it up  
20 to the parties as to who will do the drafting, who will do  
21 the reviewing, who will do -- however you all want to do it,  
22 but I would encourage you to set forth joint facts so that  
23 there is no dispute there.

24 And if you all can agree as well, it seems as if  
25 what is not -- what is not presently addressed in the

1 preliminary injunction primarily deals with the freeze-frame  
2 policy. Once the Amended Complaint has been filed tailoring  
3 any additional issues that may come up with respect to the  
4 freeze-frame policy can be addressed.

5 But, again, is there anything else that you were  
6 seeking that you haven't had an opportunity to raise?

7 MS. GORDON: Your Honor, to attend to your question  
8 as to whether or not this is helpful, I believe it is. And  
9 from plaintiff's counsel's perspective for this to be a  
10 fruitful exercise we really need to be fairly certain that  
11 everybody is on the same page with whatever it is that gets  
12 filed. And I think counsel for the parties will need to have  
13 some additional discussions among ourselves to figure out  
14 what that ultimately looks like.

15 On the issue of attorneys' fees, I would agree that  
16 that is definitely not something that's been resolved. And  
17 our position is plaintiff should get attorneys' fees for the  
18 time and effort that has been put into getting up to this  
19 point, but, again, we're open to discussions with defendants  
20 about where they are coming from on that point.

21 I guess the only other thing is the amended case  
22 management order. It sounds like from your description, Your  
23 Honor, just now, you know, wanting to make sure that  
24 everybody agrees to the same facts and all of that, you know,  
25 it appears that some work will need to be done to create the

1 motion and the briefing for the motion. It doesn't sound as  
2 if the Court is anticipating a very brief -- a very short  
3 filing, it sounds like something that is going to be fairly  
4 meaty and have facts set forth in it. And so I guess the  
5 only question I'm left with is is the Court anticipating  
6 whatever we file be something that, you know, is fairly meaty  
7 in terms of setting out facts, setting out argument, all of  
8 these things. Because if so, you know, part of what we're  
9 looking at is what is feasible for the parties to work  
10 together in some way to produce that. Because my sense in  
11 talking to both Mr. Bangert and Mr. Peek is that they were  
12 thinking perhaps it might be something not quite as involved.

13 But, you know, again, whatever it is that the Court  
14 would like for us to do is what we'll do. But just thinking  
15 about the timeline and whether everybody is comfortable with  
16 the stipulation that we put forward to the Court last Friday  
17 in terms of getting what we need to get done --

18 THE COURT: Well, with respect to a timeline, I will  
19 certainly continue the trial date in my new -- in the new  
20 case management order, the second amended case management  
21 order. The parties did propose new dates, and so I would  
22 anticipate moving the trial to Monday, August 13, 2018 at  
23 9:30 a.m., and dates working backwards consistent with that.  
24 So there would not be some immediacy with respect to needing  
25 to drop everything to get this draft together.

1           So I do anticipate entering a second amended case  
2 management order based on what has been discussed here today  
3 and allowing plaintiff to amend her Complaint with the date,  
4 Friday, February 23rd, 2018.

5           You know, I'm not going to tell you exactly -- I'm  
6 not going to give you a page count. I'm not going to say it  
7 needs to be a certain number of pages. What I know is that I  
8 have made findings of fact based on what has been filed. So  
9 it's up to the parties really to in terms of trying to set  
10 forth enough facts that meet the standard for the entry of a  
11 permanent injunction, you know, I will leave it to the  
12 parties. But I am not going to impose a page count or  
13 suggest the number of documents in support or exhibits. I  
14 think the parties have done a capable job thus far with the  
15 briefing in this case that gave me what I needed to enter the  
16 preliminary injunction. So longer is not necessarily better  
17 as we all know. It just needs to be effective; it needs to  
18 be appropriate; and it needs to be something that everyone  
19 can live with.

20           So if that is helpful, then that's what I'm saying  
21 about the matter until I see something in writing.

22           Is there anything --

23           MS. GORDON: Thank you, Your Honor. I apologize.

24           THE COURT: No problem. Is there anything else that  
25 I need to take up at this time?

1 MR. SAUER: No, Your Honor.

2 MS. GORDON: No, Your Honor.

3 MR. PEEK: No, Your Honor.

4 MS. GORDON: I did have one question.

5 THE COURT: Certainly.

6 MS. GORDON: And I completely agree with Your Honor  
7 that brief and effective is what we're going to aim for.  
8 However, just in case I wanted to raise the issue of, I  
9 believe the local rule default is 15 pages, and we will try  
10 to keep it within 15 pages. I think we've done a pretty good  
11 job on all the briefing we have filed so far, and we will  
12 endeavor to that, but would Your Honor require us to seek  
13 leave if we needed to exceed that number?

14 THE COURT: Yes, you will need to seek leave. Yes,  
15 you will.

16 MS. GORDON: Okay. Understood. Thank you.

17 THE COURT: All right. And to the extent that I did  
18 not properly mention that we have the solicitor here on  
19 behalf of the State of Missouri, then let me correct the  
20 record now, Mr. Sauer.

21 MR. SAUER: Thank you, Your Honor. It's a pleasure  
22 to appear in front of you for the first time.

23 THE COURT: If there's nothing else then we will be  
24 in recess. Thank you.

25 MR. PEEK: Thank you, Your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. GORDON: Thank you, Your Honor.

MR. BANGERT: Thank you, Your Honor.

(Court in recess at 2:46 p.m.)

C E R T I F I C A T E

I, Susan R. Moran, Registered Merit Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 - 26 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this 2nd day of March, 2018.

\_\_\_\_\_  
/s/ Susan R. Moran  
Registered Merit Reporter