

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

ADREE EDMO

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION,  
et al.

Defendants.

Case No. 1:17-cv-00151-BLW

**DISCOVERY PLAN**

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I. Preservation

- a. **Preservation & Proportionality:** The parties have applied the proportionality standard in Rule 26(b)(1) to determine what information should be preserved and what information should not be preserved.
- b. **Electronically Stored Information (ESI):** The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:
  - i. All ESI created or received between January 2012 through the date of trial will be preserved, subject to Defendants' document retention practices. For example, IDOC does not maintain email

correspondence longer than 2 years from the date the email was created. Thus, some potentially responsive emails not subject to prior litigation hold(s) may not be available, although any in existence as of the time of the litigation hold(s) will be preserved moving forward.

- ii. Within 14 days of service of a Request for Production of Documents and/or Inspection under Federal Rule of Civil Procedure 34, the parties' ESI liaisons will meet and confer concerning the possible sources of ESI, the number and identity of the custodians whose ESI is to be searched, and a list of search terms and parameters.
- iii. Any party served with a Rule 34 Request for Production, agrees to make all reasonable efforts to produce an initial ESI response within the timeline for production, and to identify a date certain by which any remaining ESI will be produced thereafter.
- iv. **Cost Sharing:**

*[The parties agree to share the cost of an electronic discovery vendor; shared document repository; or other cost saving measures]*

*[The parties agree to bear their own costs for preservation of e-discovery]*

## II. Initial Disclosures

- a. Pursuant to Rule 26(a), initial disclosures were provided on the following dates:

- Plaintiffs: June 29, 2018.
- Defendants: June 29, 2018.

The parties have agreed to serve supplemental initial disclosures relevant to the Third Amended Complaint by March 15, 2019. The parties may engage in discovery after the Court approves the discovery plan; the parties need not wait until the parties exchange supplemental initial disclosures or the Defendants file Answers to the Third Amended Complaint.

## III. Scope of Discovery

- a. **Scope:** Discovery is necessary on the following subjects/issues in addition to those identified during discovery related to Plaintiff's motion for preliminary injunction. The parties recognize that this is a preliminary list of subjects meant to provide flexibility to the parties in future discovery. Defendants have expressed concern that some of the topics proposed by Plaintiff are overbroad and are not relevant to the claims raised in the Second Amended Complaint. Plaintiff intends to file a Third Amended Complaint that may remove and/or clarify claims. Following the filing of the Third Amended Complaint, the parties will meet and confer on or

before April 1, 2019 to discuss whether the below discovery topics need to be expanded or reduced.

- For Plaintiff:

1. Defendants' procedures and practices for evaluation and treatment of medical conditions other than gender dysphoria;
2. IDOC's disciplinary policies and procedures;
3. IDOC's parole policies and procedures;
4. IDOC's housing policies and procedures;
5. Training provided to custody and health staff regarding gender dysphoria;
6. Consideration, adoption, and implementation of IDOC's new gender dysphoria policy;
7. IDOC's disciplinary and punitive actions towards Plaintiff;
8. Plaintiff's damages as related to the claims contained in the operative complaint and limited by the Court's prior rulings (Dkt. 66);

- For Defense:

9. Plaintiff's damages claims as related to the claims contained in the Second Amended Complaint and limited by the Court's prior rulings (Dkt. 66);
10. Plaintiff's pre-incarceration medical, mental health, and social history, including but not limited to her history of

substance abuse, depression, anxiety, criminal conduct, incarceration, relationship history, and suicide and self-harm attempts;

11. Plaintiff's conduct and actions taken during her incarceration from 2012 to present, including but not limited to her mental health and medical treatment for GD and other conditions, relationship history, suicide and self-harm attempts, self-surgery attempts, disciplinary history, and claims of sexual and/or physical assault;
12. Depositions of inmates, parties, and witnesses, if any, relevant to Plaintiff's claims of disparate treatment raised in the Second Amended Complaint.

#### IV. Discovery Boundaries

- a. **Limits:** The parties agree to limit future discovery as follows:

Depositions to be noticed by each side (Plaintiff, IDOC

Defendants, Corizon Defendants): 20

Interrogatories that may be propounded by Plaintiff to IDOC

Defendants collectively; by Plaintiff to Corizon Defendants

collectively; by IDOC Defendants collectively to Plaintiff; and by

Corizon Defendants collectively to Plaintiff: 30

☒ Requests for Production that may be propounded by Plaintiff to IDOC Defendants collectively; by Plaintiff to Corizon Defendants collectively; by IDOC Defendants collectively to Plaintiff; and by Corizon Defendants collectively to Plaintiff: 100

## V. ESI

- a. **Checklist:** *The Court has attached the “Checklist” for ESI Discovery prepared by the Federal District Court for the Northern District of California to assist counsel in their meet-and-confer session. Counsel should refer also to Dist. Idaho L. Rule 16.1(c).*
- b. **Proportionality:** *Although not a hard and fast rule, a party from whom ESI has been requested in the typical case will not be expected to search for responsive ESI:*
  - *from more than 15 key custodians;*
  - *that was created more than 5 years before the filing of the lawsuit;*
  - *from sources that are not reasonably accessible without undue burden or cost; or*
  - *for more than 80 hours, inclusive of time spent identifying potentially responsive ESI, collecting that ESI, searching that ESI, and reviewing that ESI for responsiveness, confidentiality, and for privilege or work product protection. The producing party must be*

*able to demonstrate that the search was effectively designed and efficiently conducted.*

- c. **ESI File Format:** The parties agree to produce documents in the following file format[s] [*check any that apply*]:

PDF;

TIFF;

Native; and/or

Paper.

If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

- d. **Liaison:** Each party will identify a Liaison who is responsible for, and knowledgeable about (or has access to a person knowledgeable about), that party's ESI. This includes the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the Liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.
- e. **Search:** The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in

discovery and filter out ESI that is not subject to discovery. The parties agree that they will provide a description of potential data sources (e.g. intranet, server, cloud, electronic corrections management systems, electronic mail, individual hard drives) that may contain relevant ESI, and any necessary information for constructing efficient and appropriate search terms for these data sources. The parties will then meet and confer about search terms and custodians, and will attempt to reach agreement. If the parties cannot reach agreement about search terms and custodians, they will use the Court's informal discovery resolution process, if available, before proceeding to noticed discovery motions

## VI. Deadlines

- a. The deadline for the completion of fact discovery is: August 15, 2019.
- b. The deadline for completion of expert witness discovery is: December 31, 2019.

## VII. Phasing

When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to discuss whether phasing the production of ESI is appropriate. If phasing is necessary in order to achieve a timely production so that depositions and other discovery can proceed, the parties agree to meet and confer regarding a rolling production schedule.

## VIII. Documents Protected From Discovery

a. **Clawback:** Pursuant to Fed. R. Evid. 502(d), the parties request the Court to enter an Order that production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or work-product protection in this case or in any other federal or state proceeding. The Court will enter such an order in its CMO unless the parties object or otherwise request that no such order be issued during the telephone scheduling conference.

b. **Quick Peek:** The parties

[agree that a “quick peek” process pursuant to Fed.R.Civ.P.

26(b)(5) is not necessary in this case]

[agree to a “quick peek” process pursuant to Fed.R.Civ.P.

26(b)(5) as set forth herein: \_\_\_\_\_].

c. **Post-Complaint Communications:** Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.

## IX. Protective Order

a. The parties have agreed to the terms of a Protective Order to protect proprietary and/or confidential material (ECF No. 94).

- b. The parties understand that, even if they agree to seal material filed with the Court, they must still file a motion to seal and obtain Court approval that the sealing meets the Ninth Circuit standards for sealing. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

Respectfully Submitted,

Dated: January 15, 2019

NATIONAL CENTER FOR LESBIAN RIGHTS  
FERGUSON DURHAM  
HADSELL STORMER & RENICK LLP

By: /s/ - Shaleen Shanbhag

Dan Stormer  
Lori Rifkin  
Shaleen Shanbhag

Attorneys for Plaintiffs

Dated: January 15, 2019

By: /s/ - Brady Hall

Brady Hall  
Marisa S. Crecelius

Attorneys for IDOC Defendants

Dated: January 15, 2019

By: /s/ - Dylan A. Eaton

Dylan A. Eaton

Attorneys for Corizon Defendants