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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON 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.

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

**PLAINTIFF'S MOTION TO STRIKE  
DECLARATION OF KRINA L. STEWART  
AND FOR PROTECTIVE ORDER**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	None Set
Motion Cut-Off:	None Set
Trial Date:	None Set



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26th day of July, 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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Defendants.

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**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION TO STRIKE  
DECLARATION OF KRINA L. STEWART  
AND FOR PROTECTIVE ORDER**

Complaint Filed: April 6, 2017  
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**TABLE OF CONTENTS**

	<b>Page(s)</b>
Table of Authorities .....	
INTRODUCTION .....	1
BACKGROUND .....	2
ARGUMENT .....	4
I. The Court Should Issue a Protective Order that Balances the Protection of Ms. Edmo's Privacy Interests with the Need for Discovery Into Her Medical Condition and Treatment .....	5
A. Ms. Edmo did not waive all medical privacy by putting her health at issue .....	5
B. Court intervention is especially necessary here where Defendants have complete control over Ms. Edmo's ongoing access to medical treatment .....	6
C. Formal discovery procedures will balance the parties' interests .....	8
II. Krina Stewart's Declaration Violates Ms. Edmo's Medical Privacy Rights .....	9
III. Defendants' Improper Disclosure of Plaintiff's Protected Information in Related State Court Filing .....	10
CONCLUSION .....	11

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Boone v. Heyns</i> 2017 U.S. Dist. LEXIS 146089 (E.D. Mich. Sept. 11, 2017).....	7, 8
<i>Britt v. Superior Ct.</i> 20 Cal. 3d 844 (1978) .....	6
<i>EEOC v. Boston Mkt. Corp.</i> 2004 U.S. Dist. LEXIS 27338 (E.D.N.Y. Dec. 16, 2004) .....	8, 9
<i>Fritsch v. City of Chula Vista</i> 187 F.R.D. 614 (S.D. Cal. July 14, 1999).....	5
<i>Piehl v. Saheta</i> 2013 U.S. Dist. LEXIS 79401 (D. Md. June 5, 2013).....	6, 8, 9
<i>Roosevelt Hotel, Ltd. Partnership v. Sweeney</i> 394 N.W.2d 353 (Iowa 1986) .....	6
<i>Strayhorne v. Caruso</i> 2014 WL 916814 (E.D. Mich. March 10, 2014) .....	5, 7, 8
<i>Tahoe Ins. Co. v. Morrison-Knudsen Co.</i> 84 F.R.D. 362 (D. Idaho Nov. 15, 1979) .....	4, 5
<b>Statutes</b>	
42 U.S.C. § 1320d-6 .....	5
Health Insurance Portability and Accountability Act of 1996.....	<i>passim</i>
45 C.F.R. §§ 164.508 .....	5
45 C.F.R. § 164.512(e).....	<i>passim</i>
<b>Rules &amp; Regulations</b>	
Fed. R. Civ. P. 26(c).....	4
Idaho Criminal Rule 32(h)(1) .....	10
Idaho Rules of Professional Conduct, Rule 4.2.....	7

## INTRODUCTION

On June 8, 2018, Defendants filed a declaration from Plaintiff Adree Edmo's current treating mental health clinician, Krina L. Stewart, that disclosed confidential and protected information irrelevant to the issues raised in this litigation and that puts Ms. Edmo at risk of disciplinary action by the Idaho State Correctional Institution where she is incarcerated. Dkt. No. 68-2 (filed in conjunction with the Reply Brief in Support of IDOC Defendants' Motion for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction and Request for Status Conference). It appears from this declaration that Ms. Stewart spoke directly to Defendants' counsel regarding confidential information Ms. Edmo disclosed during a recent medical appointment she had for the purposes of her ongoing treatment.

While Plaintiff does not dispute that she put her medical condition and treatment at issue by filing this lawsuit alleging that Defendants are failing to adequately treat her gender dysphoria, in so doing she did not automatically waive all rights to medical privacy. And Defendants must still comply with HIPAA and other ethical rules in conducting their discovery into Ms. Edmo's relevant medical information. Here, they did not. By obtaining Plaintiff's protected medical information directly from Ms. Stewart outside of formal discovery procedures, and publicly filing Ms. Stewart's declaration with this information, Defendants have improperly converted all of Plaintiff's medical appointments into *ex parte* discovery contacts and ongoing medical examinations for the purpose of litigation, thereby violating Ms. Edmo's medical privacy rights under HIPAA and the Idaho Rules of Professional Conduct proscribing contacts with a represented party. Indeed, Defendants have now instructed Plaintiff that all information disclosed at all of her future medical appointments may be used against her for the purposes of litigation. This is an abuse of Defendants' complete control of Plaintiff's access to medical treatment and her medical providers, given that she is incarcerated and has no other option for obtaining medical treatment. In the absence of a protective order balancing the parties' interests and access, Ms. Edmo's communications with her treating clinicians will necessarily be chilled, to the detriment of her ongoing medical care, and Ms. Edmo will have no ability to object to the

disclosure of certain irrelevant confidential information prior to its release to the public.

Further abusing Defendant IDOC's access as Plaintiff's jailer to her records and treaters, IDOC filed a motion on July 11, 2018 in the Sixth Judicial District for the State of Idaho, County of Bannock, in which IDOC moved that Court for an order permitting disclosure of Ms. Edmo's Presentence Investigation Reports ("PSI Reports") to third parties in connection with the instant federal case. As Plaintiff's custodian, IDOC already had access to Ms. Edmo's PSI Reports, which are sealed under Idaho law, and made multiple statements in its State Court filing revealing substantive information from these sealed Reports. Although IDOC had informed Plaintiff's counsel in the instant case of its intention to file such motion, IDOC did not then serve Plaintiff's attorneys with its actual state court motion, depriving Plaintiff of an opportunity to object to Defendants' improper disclosure of sealed information. Defendants' indiscretion as to using and publicly revealing Plaintiff's protected information for litigation purposes requires intervention by this Court.

Ms. Edmo now moves this Court for an order (1) striking the Declaration of Krina L. Stewart (Dkt. No. 68-2), for the purpose of sealing it or removing it from the public docket; (2) prohibiting Defendants from using Plaintiff's protected medical information in the present litigation unless produced or obtained through formal discovery procedures as required under the Federal Rules of Civil Procedure and HIPAA, 45 CFR § 164.512(e)(1)<sup>1</sup>; and (3) requiring Defendants to timely serve Plaintiff's counsel in the instant case with any documents or subpoenas filed or served, regardless of forum, relating to discovery or other proceedings in the instant litigation.

## **BACKGROUND**

### Defendants' Direct Use of Protected Information Disclosed to Plaintiff's Clinician

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<sup>1</sup> HIPAA, 45 CFR § 164.512(e)(1), provides several options for a party seeking to use protected medical information in a court proceeding, including through the use of a "subpoena, discovery request, or other lawful process" where a reasonable attempt has been made by the party seeking the information to secure a qualified protective order or give notice to the affected party.

On June 1, 2018, Ms. Edmo moved for a preliminary injunction ordering Defendants to immediately provide her the necessary medical treatment that two experts in treating gender dysphoria determined she urgently needs to address a dire risk of death by suicide or life-threatening self-castration. Dkt. No. 62. On June 5, IDOC Defendants filed a Motion for Extension of Time to Respond. Dkt. No. 63. The following day, Corizon Defendants filed their Joinder in IDOC Defendants' Motion for Extension of Time to Respond. Dkt. No. 64. Ms. Edmo filed an opposition to Defendants' Motion for Extension of Time to Respond on June 6, 2018. Dkt. No. 65. On June 8, 2018, Defendants filed a Reply in Support of their Motion for Extension of Time. Dkt. No. 68.

In support of their Reply, Defendants filed the Declaration of Krina L. Stewart, a Licensed Professional Counselor who serves as the lead mental health clinician at the Idaho State Correctional Institution and as Ms. Edmo's treating mental health clinician. Stewart Decl. at ¶¶ 2-3, 6. In her declaration, Stewart discusses her most recent clinical appointment with Ms. Edmo and provides her opinion regarding Ms. Edmo's mental health status and its connection to Ms. Edmo's gender dysphoria. *Id.* at ¶¶ 6-7. Stewart also reveals information shared with her during a clinical visit on May 18, 2018, that is unrelated to Ms. Edmo's gender dysphoria but rather involves Ms. Edmo's personal relationships. *See id.* at ¶ 8.<sup>2</sup> The nature of this information could expose Ms. Edmo to punitive disciplinary action by IDOC. Declaration of Lori Rifkin in Support of Plaintiff's Motion to Strike and for Protective Order ("Rifkin Decl.") at ¶ 2.

Ms. Stewart's declaration does not state she informed Ms. Edmo that information shared during their May 18, 2018, clinical appointment was not confidential and could be used against Ms. Edmo in litigation. Moreover, when counsel for Ms. Edmo contacted Defendants regarding the public release of this information, Defendants both declined to withdraw the declaration and communicated their intent to continue using information acquired directly through counsel's

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<sup>2</sup> To avoid further disclosure of confidential information, Ms. Edmo does not repeat the problematic information here, but rather refers the Court to paragraph 8 of the Stewart Declaration.

communications with Ms. Edmo's treating providers, outside the scope of formal discovery, in future public filings. Rifkin Decl. at ¶¶ 3-5. In response to Plaintiff's counsel's objections, Defendants have now informed Ms. Edmo that all information disclosed during medical appointments is not protected and may be used for the purposes of litigation, *id.* at ¶ 5 & Ex. A, which does not address the fundamental concern of chilling Plaintiff's ability to access ongoing medical treatment and abuses Defendants' control of Plaintiff's access to medical care and her medical providers. Counsel for all parties have met and conferred but have been unable to reach resolution on this issue. *Id.* ¶ 6.

Defendants' Disclosure of Plaintiff's Protected Information in their State Court Motion

IDOC filed a motion on July 11, 2018 in the Sixth Judicial District for the State of Idaho, County of Bannock, in which IDOC moved the state court for an order permitting disclosure of Ms. Edmo's Presentence Investigation Reports ("PSI Reports") to third parties in connection with the instant federal case, but without serving Plaintiff's attorneys in this case. Rifkin Decl. ¶ 7 & Ex. B. Although Defendants' PSI Report motion explicitly states it is related to the instant federal court litigation, Defendants served their motion only on Ms. Edmo's public defender from more than eight years ago. *Id.* ¶ & Ex. 8. Defendants provided Plaintiff's counsel a copy of this motion for the first time on July 25, 2018 after already having obtained an order on the motion from the state court on July 11, 2018. *Id.* ¶ 7 & Ex. C. Because of its custody over Ms. Edmo, IDOC already had access to Ms. Edmo's PSI Reports which are sealed under Idaho law, and included multiple statements about the actual substance of the information in those Reports in IDOC's public filing in the state court.<sup>3</sup> *Id.* Ex. B at 4-6.

**ARGUMENT**

Federal Rule of Civil Procedure 26(c) confers upon the Court broad authority to regulate or limit discovery. *Tahoe Ins. Co. v. Morrison-Knudsen Co.*, 84 F.R.D. 362, 363-64 (D. Idaho

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<sup>3</sup> To avoid further disclosure of sealed information, Ms. Edmo does not repeat the problematic information here, but rather refers the Court to the first full paragraph on page 5 and the second full paragraph on page 6 of Exhibit B.

Nov. 15, 1979). This authority includes the discretion to require certain discovery procedures or to forbid certain discovery practices in order to protect the interests of the parties. *Id.* Ms. Edmo requests that the Court issue a limited protective order limiting Defendants' use of Plaintiff Adree Edmo's protected medical information in the present litigation to only that information produced or obtained through formal discovery procedures that allow Ms. Edmo the opportunity to object or respond to certain disclosures. And, as the declaration of Ms. Stewart was submitted to the Court without the benefit of such protections, and revealed protected information that could have punitive consequences for Ms. Edmo, she asks that the Court uses its discretionary authority to strike this declaration and remove it from the public docket. Finally, Ms. Edmo requests that this Court issue a directive in the protective order that Defendants provide timely notice to her counsel of any filings or subpoenas related to discovery or proceedings in the instant case.

**I. The Court Should Issue a Protective Order that Balances the Protection of Ms. Edmo's Privacy Interests with the Need for Discovery Into Her Medical Condition and Treatment**

**A. Ms. Edmo did not waive all medical privacy by putting her health at issue**

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") "ushered in a 'strong federal policy in favor of protecting the privacy of patient medical records.'" *Strayhorne v. Caruso*, Civ. Case No. 11-15216, 2014 WL 916814 at \*4 (E.D. Mich. March 10, 2014). Under HIPAA, health care providers are prohibited from releasing a patient's protected health information except under prescribed exceptions. *See* 42 U.S.C. § 1320d-6; 45 C.F.R. §§ 164.508, 512. HIPAA does permit disclosure of medical information pursuant to a court order, subpoena, or discovery request. 45 C.F.R. § 164.512(e). This disclosure must be supported by satisfactory assurance from the party using the information that reasonable efforts have been made to give the patient notice of the request, or reasonable efforts have been made to secure a qualified protective order. *Id.*

A plaintiff does not waive her rights under HIPAA as to all information provided during

the course of medical treatment by putting her health at issue in litigation. *Fritsch v. City of Chula Vista*, 187 F.R.D. 614, 633 (S.D. Cal. July 14, 1999); *Piehl v. Saheta*, 2013 U.S. Dist. LEXIS 79401, at \*5 (D. Md. June 5, 2013) (“In enacting HIPAA, Congress recognized a societal interest in maximizing the protections afforded in the confidential physician-patient relationship, even where a patient’s medical history is at issue in a court case.”); *Roosevelt Hotel, Ltd. Partnership v. Sweeney*, 394 N.W.2d 353, 357 (Iowa 1986). Information irrelevant to the issues raised in the litigation should be protected from disclosure. *Britt v. Superior Ct.*, 20 Cal. 3d 844, 849 (1978) (concluding that waiver of physician-patient and psychotherapist-patient privileges extends only to information relating to the medical conditions in question).

Thus, a balance must be achieved between Defendants’ right to obtain health information relevant to a plaintiff’s claims and HIPAA’s strong federal policy in favor of protecting the privacy of patient medical records.

**B. Court intervention is especially necessary here where Defendants have complete control over Ms. Edmo’s ongoing access to medical treatment**

As a prisoner, Ms. Edmo is unable to obtain treatment from medical providers other than Defendants. In other words, Defendants have complete control over Ms. Edmo’s ongoing access to medical treatment and direct access to and control over Ms. Edmo’s medical providers. This creates a dynamic in which Ms. Edmo must continue to seek care from medical clinicians whose interests are opposed to hers in ongoing litigation. In the absence of discovery protections afforded to Ms. Edmo, under these conditions she will necessarily be chilled from disclosing information to her mental health clinicians due to the fear that any information she discloses may be used against her in litigation or expose her to punitive consequences.

Moreover, under these conditions counsel for Defendants has direct access to medical information that ordinarily would only be accessible through formal discovery. Whereas ordinarily a defendant would have to subpoena a plaintiff’s third-party medical providers to obtain information related to the plaintiff’s medical condition and treatment, here counsel has access to medical providers in Defendants’ employ. As a consequence of this dynamic,

Defendants have direct access to Ms. Edmo through her medical providers, and therefore have the ability to question her and obtain testimony from her outside the presence of her attorney, in violation of the Idaho Rules of Professional Conduct, Rule 4.2 (governing contact between represented parties).

Recognizing the ethical conflicts inherent in these dynamics, prison medical providers have in the past sought qualified protective orders from the court prior to speaking with their own counsel regarding a plaintiff's protected medical information. In *Boone v. Heyns*, 2017 U.S. Dist. LEXIS 146089 (E.D. Mich. Sept. 11, 2017), for example, defendant Corizon Health and several prison medical providers working for Corizon sought from the court a HIPAA disclosure order allowing them to communicate with their own counsel regarding the inmate plaintiff's medical condition. The court in that case denied the request, concluding that defendant medical providers could not speak to their counsel regarding the plaintiff's medical condition outside of the plaintiff's presence because doing so would violate the strong protections of HIPAA. *Id.* at \*33-34. In reaching this conclusion, the *Boone* court explained that "the fact that the majority of Plaintiff's treating physicians are either Defendants or employees of Defendant Corizon, means that the entry of this order would tilt fairness in discovery towards Defendants."

Similarly in *Strayhorne v. Caruso*, Civ. Case No. 11-15216, 2014 WL 916814 at \*4 (E.D. Mich. March 10, 2014), a prisoner civil rights case, the defendant medical provider Corizon Health sought a HIPAA disclosure order and/or qualified protective order to allow medical providers to speak to their counsel about the plaintiff's medical condition outside of his presence. The *Strayhorne* court also denied the request, concluding that "one cannot expect a medical provider to know what protected information is relevant to the plaintiff's claims and what information is not relevant[,] thus creating the risk that confidential information will be shared even where defense counsel has not intended to elicit such information." *Id.* at \*11-12.

Notably here, counsel for Defendants did not seek a HIPAA disclosure order or a qualified protective order prior to speaking *ex parte* with Ms. Edmo's treating clinician. Rather, Defendants discussed medical information directly with Ms. Stewart and then filed that

information in the public record. Defendants have indicated their intention to continue eliciting information from Ms. Edmo's clinicians for purposes of litigation and without any protections to ensure private and irrelevant medical information is not disclosed. Defendants' actions not only violate HIPAA, but they also undermine the efficacy of Ms. Edmo's ongoing treatment and chill her willingness to participate fully in her medical care.

**C. Formal discovery procedures will balance the parties' interests**

Recognizing the need to "strike a balance between a defendant's right to obtain health information relevant to a plaintiff's claims and HIPAA's strong federal policy in favor of protecting the privacy of patient medical records," the courts in both *Strayhorne*, 2014 U.S. Dist. LEXIS 30246, at \*12, and *Boone* prohibited *ex parte* communications between counsel for defendants and plaintiff's medical providers (who in those cases were defendant Corizon's employees), and instead limited release of the plaintiff's health information to formal discovery procedures. *See also Boone*, 2017 U.S. Dist. LEXIS 146089, at \*34 (ordering defendants to "utilize formal discovery procedures" as dictated by HIPAA). While these courts recognized that HIPAA does not expressly forbid *ex parte* communications between a plaintiff's medical providers and counsel for defendants, they nevertheless concluded that to balance the interests between the parties, formal discovery procedures were more appropriate.

Indeed, courts outside of the prison context have reached the same conclusion and denied requests from defendants seeking permission to conduct *ex parte* interviews of a plaintiff's third-party health providers. *See, e.g., Piehl v. Saheta*, 2013 U.S. Dist. LEXIS 79401, at \*5 (D. Md. June 5, 2013) (denying defendant's motion for order permitting *ex parte* communications with plaintiff's treating health care providers); *Boston Mkt. Corp.*, 2004 U.S. Dist. LEXIS 27338 at \*18-19 (denying defendant's motion for order permitting counsel to engage in *ex parte* communications with plaintiff's psychologists because the communications created "too great a risk of running afoul of [HIPAA's] strong federal policy in favor of protecting the privacy of patient medical records"). These courts similarly concluded that "[r]equiring [defendant] to obtain access to [plaintiff's] protected medical information through formal discovery

proceedings strikes an appropriate balance between the parties' ability to obtain all relevant information and the patient's right to have irrelevant medical information remain confidential." *Piehl*, 2013 U.S. Dist. LEXIS 79401, at \*7 (internal quotations and citations omitted); *see also EEOC v. Boston Mkt. Corp.*, 2004 U.S. Dist. LEXIS 27338, \*18-19 (E.D.N.Y. Dec. 16, 2004) ("[R]elease of health information is to be made only through the use of the methods listed in HIPAA . . . ."); *Crenshaw*, 318 F. Supp. 2d at 1029 ("In this case, where no protective order safeguarding [plaintiff's] privacy is in place, HIPAA's disclosure procedures apply. Only formal discovery requests appear to satisfy the requirements of [HIPAA]."); *Harlan*, 141 F.R.D. at 112 ("The participation of both parties' counsel in formal discovery will help insure [sic] that these questions are resolved to the satisfaction of both parties.").

Here, where Ms. Edmo's treating clinicians are—by nature of Ms. Edmo's incarcerated status—employees either of IDOC or Corizon Defendants, a balancing must take place to protect disclosure of information irrelevant to the issues in litigation and to protect Ms. Edmo's right to medical privacy and allow her some assurances that participating fully in ongoing treatment will not undermine her ability to seek justice through the courts. Accordingly, Ms. Edmo seeks the entry of a limited protective order prohibiting Defendants' use in litigation of all information obtained from Ms. Edmo's treating clinicians unless obtained or produced through the procedures required under 45 CFR § 164.512(e)(1) and the Federal Rules of Civil Procedure. Under this order Defendants will in fact still be able to have *ex parte* communications with Ms. Edmo's treating clinicians; however, they will not be able to submit the information obtained through these communications to the Court without noticing a deposition or designating an expert, such that Ms. Edmo will have the opportunity to explore the information Defendants intend to use in litigation and object to the use of any irrelevant information, or move for appropriate protective measures related to any information that, revealed publicly, could expose her to undue consequences such as discipline.

## **II. Krina Stewart's Declaration Violates Ms. Edmo's Medical Privacy Rights**

The importance of a limited protective order providing Ms. Edmo with the opportunity to

object to the disclosure of certain information has already been made evident by Defendants' use of a declaration from Ms. Edmo's treating mental health clinician that revealed personal confidences regarding challenges in Ms. Edmo's personal relationships that have very little probative value to the issues for which the declaration was submitted. Ms. Edmo was not provided notice prior to this appointment that anything she said may be used against her in litigation. To cure this violation of Ms. Edmo's protected privacy rights, she asks that the Court strike the Stewart declaration and remove it from the docket so as to minimize the damage of these disclosures. Defendants will not be prejudiced by this corrective action, as the Court has already issued its ruling on the Motion for Extension of Time in support of which the declaration was filed. (*See* Dkt. No. 70).

### **III. Defendants' Improper Disclosure of Plaintiff's Protected Information in Related State Court Filing**

Defendants' motion in state court for authorization to disclose Ms. Edmo's PSI Reports to third parties in relation to the instant federal litigation was problematic in two ways. First, although IDOC's motion itself specifies that it is directly related to the instant federal case, IDOC did not serve a copy of its motion on Plaintiff's counsel in this case. Second, the content of IDOC's state court motion demonstrates the same lack of discretion and judgment that Defendants' filing of the Declaration of Krina Stewart showed: Defendants publicly filed descriptions of Plaintiff's sensitive and protected information to which they have access only as a result of having custody and control of Plaintiff. Rifkin Decl. ¶ 9 & Ex. B at 5-6. Defendants publicly referenced and described information contained in Plaintiff's PSI Reports that is sealed pursuant to Idaho Criminal Rule 32(h)(1). *Id.* Regardless of whether Ms. Edmo has chosen to disclose some of her medical information in her federal lawsuit, that does not change the sealed status of any information contained in the PSI Reports, and the content of those Reports may not be described in public filings. While Plaintiff does not object to Defendants being able to access information relevant to Plaintiff's claims in the instant lawsuit, Defendants are not entitled to unilaterally decide to publicly disclose sealed information about Plaintiff. Accordingly, this



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26 day of July, 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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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON 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.

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

**DECLARATION OF LORI RIFKIN AND  
EXHIBITS IN SUPPORT OF PLAINTIFF'S  
MOTION TO STRIKE DECLARATION OF  
KRINA L. STEWART AND FOR PROTECTIVE  
ORDER**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	None Set
Motion Cut-Off:	None Set
Trial Date:	None Set

**DECLARATION OF LORI E. RIFKIN**

I, Lori E. Rifkin, hereby declare and state:

1. I am a partner at the law firm of Hadsell Stormer & Renick, LLP. I am an attorney licensed to practice law in the state of California and am admitted *pro hac vice* before this Court, and am counsel of record for plaintiffs in this action. The information contained herein is based on my personal knowledge, or upon review of files and documents generated or received and regularly maintained by my office in connection with this case. If called upon, I could testify in a court of law to the accuracy of the matters set forth herein.

2. In support of their Reply, Defendants filed the Declaration of Krina L. Stewart, a Licensed Professional Counselor who serves as the lead mental health clinician at the Idaho State Correctional Institution and as Ms. Edmo's treating mental health clinician. Dkt. No. 68-2 ("Stewart Decl.") at ¶¶ 2-3, 6. In her declaration, Stewart discusses her most recent clinical appointment with Ms. Edmo and provides her opinion regarding Ms. Edmo's mental health status and its connection to Ms. Edmo's gender dysphoria. *Id.* at ¶¶ 6-7. Stewart also reveals information shared with her during a clinical visit on May 18, 2018, that is unrelated to Ms. Edmo's gender dysphoria but rather involves Ms. Edmo's personal relationships. *See id.* at ¶ 8. Based on my understanding and experience, the nature of this information could expose Ms. Edmo to punitive disciplinary action by IDOC.

3. That same day, June 8, 2018, I wrote to Brady Hall, counsel for IDOC Defendants, to advise them that the Stewart Declaration violates Ms. Edmo's rights to medical privacy and request that Defendants immediately contact the Court to remove this document from the public docket. Defendants responded with a request for legal authority regarding this issue, which I provided in a communication sent June 12, 2018.

4. The parties continued to meet and confer regarding the requirements of HIPAA and the scope of Ms. Edmo's right to medical privacy, including a meet and confer call on June 20, 2018, and further written communications on June 25, 2018. Defendants declined to withdraw Ms. Stewart's declaration and communicated their intent to continue using information

acquired directly through counsel's communication with Ms. Edmo's treating providers, outside the scope of formal discovery, in future public filings.

5. In a letter dated July 2, 2018, Defendants' counsel Marisa Crecelius informed me that counsel "h[as] asked the IDOC mental health clinicians to inform Ms. Edmo that the information she provides in clinic may be used in litigation." Further, she indicated that Defendants believe that "some" of the medical treatment Ms. Edmo receives from IDOC mental health clinicians will be relevant to this lawsuit, and thus Defendants will continue to request this information from clinicians despite Ms. Edmo's concerns regarding medical privacy. Attached hereto as **Exhibit A** is a true and correct copy of Ms. Crecelius's letter.

6. Although counsel for all parties met and conferred extensively on this issue, they have been unable to reach resolution.

7. On July 25, 2018, IDOC Defendants provided Plaintiff's counsel a copy for the first time of their motion filed July 11, 2018 in the Sixth Judicial District for the State of Idaho, County of Bannock, in which IDOC moved the state court for an order permitting disclosure of Ms. Edmo's Presentence Investigation Reports ("PSI Reports") to third parties in connection with the instant federal case. A true and correct copy of the motion has been filed separately under seal as **Exhibit B**. By this time, Defendants had already obtained an order on the motion from the state court. A true and correct copy of the order is attached hereto as **Exhibit C**.

8. IDOC Defendants did not serve Plaintiff's counsel with a copy of their PSI Reports motion and when I requested a copy of this motion and the proof of service, Defendants informed me they had served only Ms. Edmo's prior public defender from more than eight years ago. *See Exhibit B* at 8.

9. Defendants' PSI Reports motion included multiple statements about the actual substance in those Reports although that information is sealed under Idaho law. These include statements in the first full paragraph on page 5 and the second fully paragraph on page 6. Regardless of whether Ms. Edmo has chosen to disclose some of her medical information in the instant lawsuit, that does not change the sealed status of any information contained in the PSI

Reports, and the content of those Reports may not be described in public filings.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed July 26, 2018 in Emeryville, California.

/s/ - Lori E. Rifkin  
Lori E. Rifkin

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26th day of June, 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:

Dylan Eaton  
deaton@parsonsbehle.com

J. Kevin West  
kwest@parsonsbehle.com

Attorneys for Corizon Defendants

Brady James Hall  
brady@melawfirm.net

Attorney for IDOC Defendants

/s/ - Lori E. Rifkin  
Lori E. Rifkin

Rifkin Decl. Supp of Mtn to Strike  
**Exh. A**

MOORE ELIA  
KRAFT & HALL LLP

MARISA S. CRECELIUS

July 2, 2018

**SENT VIA EMAIL: [lrifkin@hadsellstormer.com](mailto:lrifkin@hadsellstormer.com)**

Lori Rifkin  
Hadsell Stormer & Renick LLP  
128 N. Fair Oaks Ave., Ste. 204  
Pasadena, CA 91103

Re: Edmo v. Idaho Department of Corrections, et al.

Dear Lori:

In follow-up to our meet-and-confer meeting in regards to the above-referenced matter on June 20, 2018, and my email to you on June 25, 2018, I would again like to request your availability for Ms. Edmo's deposition sometime in late July. In addition, as we previously requested, please provide us with your experts' available dates for deposition in the month of September. Also, if you've identified any IDOC employees whom you plan to depose, please let me know so we can make arrangements for those as soon as possible.

In addition, we agree with your proposal for the parties to stipulate to the filing of a *Third Amended Complaint*, with the Defendants' *Answer* to be filed at a future time. At your earliest convenience, please send us the *Stipulation* and proposed *Order*, along with your red-lined proposed *Third Amended Complaint* pursuant to District Local Rule Civ. 15.1.

In our *Initial Disclosures*, filed last week, we identified Ms. Edmo's Presentence Investigation report (PSI). Pursuant to Idaho Administrative Rule 32 and Idaho Criminal Rule 32, the PSI must be maintained in IDOC's possession and it cannot be disclosed after sentencing to the criminal defendant or other third parties without a court order. We believe the PSI contains information relevant to this matter and that all parties have a legitimate professional interest in reviewing it. Accordingly, we plan to file a Motion with Ms. Edmo's sentencing court to allow disclosure of the PSI, so that the parties to this case can review and potentially use the information contained in the PSI during the proceedings on the *Motion for Preliminary Injunction*. To protect privacy concerns, we will request that all information in the PSI concerning the victim be redacted, along with Ms. Edmo's social security number and date of birth.

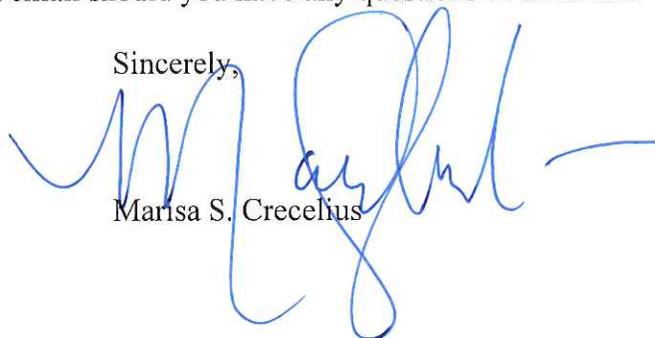
Lori Rifkin  
July 2, 2018  
Page 2

In recent days, we have begun serving Ms. Edmo's pre-incarceration medical providers with Subpoenas Duces tecum, seeking Ms. Edmo's medical and mental health records from January 1, 2008 to May 1, 2012. U.S. Indian Health Services indicated that they have records for Ms. Edmo, but will not release those records without a signed medical records authorization. We ask that you please have Ms. Edmo execute the attached medical records authorization and provide it to us as soon as possible so that we can submit it to U.S. Indian Health Services and any other subpoenaed providers who may require authorization. Of course, we will provide you with copies of any records we receive as a result, along with copies of records from other providers who have not requested a release.

Finally, as we have discussed, IDOC has a continuing obligation to provide mental health treatment to Ms. Edmo. It is our understanding that Ms. Edmo has a mental health clinic visit scheduled for later this week. We are aware of your concerns about Ms. Edmo's continued treatment with providers who may testify in this case. With this letter, we reiterate that counsel for IDOC has not and will not have any involvement in Ms. Edmo's current treatment. We have not directed any of Ms. Edmo's treatment providers to seek particular information from Ms. Edmo and will not do so in the future. In light of your expressed concerns, we have asked the IDOC mental health clinicians to inform Ms. Edmo that the information she provides in clinic may be used in litigation. As we discussed during our meet-and-confer conference and in email correspondence thereafter, information and medical records from Ms. Edmo's current and prior treatment is relevant to the claims raised in her preliminary injunction. Counsel for IDOC has no involvement in Ms. Edmo's treatment, but believes that some of the treatment will be relevant to this lawsuit.

We look forward to hearing from you in regards to these issues. In the meantime, please feel free to give me a call or send an email should you have any questions or concerns.

Sincerely,



Marisa S. Crecelius

MSC/kz

Attachment

cc: Dan Stormer  
Shaleen Shanberg  
Amy Whelan  
Julie Wilensky  
Craig Durham  
Deborah Ferguson  
Dylan Eaton  
J. Kevin West

Rifkin Decl. Supp of Mtn to Strike  
**Exh. B**

Filed  
Conditionally Under Seal

Rifkin Decl. Supp of Mtn to Strike  
**Exh. C**

2018 JUL 11 PM 4:33  
KP  
CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND  
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK**

STATE OF IDAHO,	)	Case No. CR-2009-0008570-FE
	)	CR-2011-0011293-FE
Plaintiff,	)	
vs.	)	<b>ORDER RE MOTION TO DISCLOSE</b>
	)	<b>PRESENTENCE INVESTIGATION</b>
MASON DEAN EDMO,	)	<b>REPORTS</b>
	)	
Defendants.	)	
_____	)	

This matter having come before this Court upon a *Motion to Disclose Presentence Investigation Reports* and good cause appearing therefore;

IT IS HEREBY ORDERED that the *Motion to Disclose Presentence Investigation Reports* is GRANTED. The Idaho Department of Corrections is authorized to disclose the PSI Reports and attachments from the following cases to the Hon. B. Lynn Winmill of the United States District Court for the District of Idaho in *Edmo v. IDOC, et al*, Case No. 1:17-cv-151-BLW, including any appeal therefrom or collateral proceedings:

1. PSI report from Bannock County Case No. CR-2009-0008570-FE; and
2. PSI report from Bannock County Case No. CR-2011-0011293-FE.

The Department of Corrections is also authorized to disclose the above-referenced PSI reports and attachments to the parties and expert witnesses involved in the U.S. District Court case.

7/11/18

  
ROBERT C. NAFTZ  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11 day of July, 2018, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 208-236-7288

Randall Schulthics  
Chief Public Defender

- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 208-236-7048

Brady J. Hall  
Marisa S. Crecelius

- U.S. Mail
- E-Mail: [brady@mclawfirm.net](mailto:brady@mclawfirm.net),  
[marisa@mclawfirm.net](mailto:marisa@mclawfirm.net)
- Courthouse Box
- Fax

*Craig Parish*  
*Probation & Parole*

*E-mail*  
 *E-mail*

*Ken Pavey*  
*Clerk of the Court*

Lori Rifkin, Esq. (CA # 244081)  
(*pro hac vice*)  
HADSELL STORMER & RENICK LLP  
4300 Horton Street, #15  
Emeryville, CA 94608  
Telephone: (415) 685-3591  
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Email: lrifkin@hadsellstormer.com

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(*pro hac vice*)  
Shaleen Shanbhag, Esq. (CA # 301047)  
(*pro hac vice*)  
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128 N. Fair Oaks Avenue  
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Emails: dstormer@hadsellstormer.com  
sshahbhag@hadsellstormer.com

Attorneys for Plaintiff

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Deborah Ferguson (ISB # 5333)  
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Telephone: 208-345-5183  
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DAF@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)  
(*pro hac vice*)  
Julie Wilensky, Esq. (CA # 271765)  
(*pro hac vice*)  
NATIONAL CENTER FOR LESBIAN  
RIGHTS  
870 Market Street, Suite 370  
San Francisco, CA 94102  
Telephone: 415-365-1338  
Facsimile: 415-392-8442  
Email: AWhelan@NCLRights.org  
jwilensky@nclrights.org

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON 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.

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

**[PROPOSED] ORDER STRIKING  
DECLARATION OF KRINA L. STEWART  
AND ISSUING PROTECTIVE ORDER**

Complaint Filed: April 6, 2017  
Discovery Cut-Off: None Set  
Motion Cut-Off: None Set  
Trial Date: None Set

This matter having come before this Court on *Plaintiff's Motion to Strike Declaration of Krina L. Stewart and for Protective Order*, and good cause appearing therefore;

**IT IS HEREBY ORDERED** that the Declaration of Krina L. Stewart (Dkt. No. 68-2), submitted in conjunction with the Reply Brief in Support of IDOC Defendants' Motion for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction and Request for Status Conference (Dkt. No. 68), is **HEREBY STRICKEN**. The Court Clerk is to [seal it / remove it] from the CM/ECF docket system by no later than August 3, 2018.

**IT IS FURTHER ORDERED** that Defendants may use Plaintiff Adree Edmo's protected medical information in the present litigation only if produced or obtained through formal discovery procedures as required under the Federal Rules of Civil Procedure and HIPAA, 45 CFR § 164.512(e)(1).

**IT IS FURTHER ORDERED** that Defendants must timely serve Plaintiff's counsel in the instant case with any documents or subpoenas filed or served, regardless of forum, relating to discovery or other proceedings in the instant litigation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

---

B. LYNN WINMILL  
Chief U.S. District Court Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26th day of July, 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:

Dylan Eaton  
deaton@parsonsbehle. com

J. Kevin West  
kwest@parsonsbehle. com

Attorneys for Corizon Defendants

Brady James Hall  
brady@melawfirm. net

Attorney for IDOC Defendants

/s/ - Lori Rifkin  
Lori E. Rifkin