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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO, Plaintiff, vs. 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-151-BLW **IDOC DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DECLARATION OF KRINA L. STEWART AND FOR PROTECTIVE ORDER**

COME NOW Defendants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig and Rona Siegert (collectively referred to as the "IDOC Defendants"), by and through their counsel of record, Moore Elia Kraft & Hall, LLP, and pursuant to District Local Rule Civ. 7.1(c), hereby submit the *IDOC Defendants' Response to the Plaintiff's Motion to Strike Declaration of Krina L. Stewart and for Protective Order*. For the reasons set forth below, the Plaintiff's *Motion to Strike and Motion for Protective Order* should be denied.

FACTS

This matter is currently before the Court on Plaintiff's *Motion for Preliminary Injunction*, filed on June 1, 2018 (Dkt. 62). Plaintiff's *Motion* was supported by declarations from Plaintiff, her counsel, and two retained experts. (Dkt. 62-1, 62-2). The *Motion* and its supporting *Declarations* discuss extensively the Plaintiff's current mental health treatment at IDOC. Specifically, Plaintiff's expert *Declarations* include numerous references to the Plaintiff's current treatment providers, including her IDOC clinicians. For example, Dr. Gorton testifies that "the medical records show that mental health staff have failed to address Ms. Edmo's gender dysphoria in any meaningful way, which has put her life at significant risk." *Declaration of Dr. Ryan Nicholas Gorton* ("*Gorton Decl.*, ¶ 44) (emphasis added) (Dkt. 62-1, p. 63). Dr. Gorton also describes the care provided by IDOC clinicians as inadequate. *Gorton Decl*., ¶¶ 44, 50, 54, 68, 76. Similarly, Dr. Ettner concludes that "the Idaho Department of Corrections has failed to provide the necessary care or to demonstrate an understanding of the severity of this medical condition." *Declaration of Dr. Randi Ettner* ("*Ettner Decl.*, ¶ 64) (Dkt. 62-1, p. 25). Indeed, the

basis of Plaintiff's *Motion* is that IDOC is not currently providing the necessary medical and mental health treatment that Plaintiff requires.

After Plaintiff filed her *Motion*, the IDOC Defendants filed a *Motion for Extension of Time* (Dkt. 63), asking this Court to allow the Defendants adequate time to respond to the Plaintiff's *Motion*, in light of the complex issues presented and the need for the Court decide the *Motion* on a full set of facts regarding the Plaintiff's treatment and mental health history. Plaintiff objected to allowing any additional time for the Defendants to respond to the *Motion*, arguing in part:

> In contrast to Ms. Edmo, the Defendants have and always had, access to the majority of discovery in this case … Given Defendants' singular access to Ms. Edmo's custody and medical records and the fact that the treatment providers they claim they need to 'interview' are Defendants or employees of Defendants, Defendants' claims that they need six months to conduct discovery are specious.

Plaintiff's Opposition to Defendants' Motion for Extension of Time (Dkt. 65, p. 7). Plaintiff further argued that an extension of time for the Defendants to respond to the preliminary injunction *Motion* would prejudice Plaintiff because she was suffering "serious, physical, psychological, and emotional harm and is at serious risk of death by suicide or attempts to perform self-surgery without necessary medical treatment." (Dkt. 65, p.2). By Plaintiff's account, her mental health condition was dire, necessitating the need for an immediate determination on Plaintiff's *Motion for Preliminary Injunction*.

Counsel for the IDOC Defendants reached out to Plaintiff's current IDOC clinicians to assess the accuracy of Plaintiff's statements regarding her current mental health condition and to respond to Plaintiff's *Motion* generally. In support of the *Reply Brief in Support of IDOC's Motion for Extension of Time*, IDOC Defendants filed the *Declaration of Krina L. Stewart*

("*Stewart Decl*.") (Dkt. 68-2), who is one of the Plaintiff's current treating mental health clinicians and whose experience with Plaintiff over the previous year contradicted the information presented in the Plaintiff's *Motion* and *Opposition* brief. *See Stewart Decl*., ¶¶ 8, 9 (Dkt. 68-2, p. 3-4).

After a status conference, this Court granted in part the IDOC Defendants' *Motion for Extension of Time* and set a hearing on the preliminary injunction to take place on October 10-12, 2018 (Dkt. 70). Pursuant to the Court's *Order*, the parties met and conferred regarding the expedited discovery and briefing deadlines and, after reaching agreement, filed a *Stipulation Re: Discovery and Briefing Schedule* on June 15, 2018 (Dkt. 72). Paragraph 4 of the *Stipulation* provides in part, "In lieu of and/or in addition to live testimony at the evidentiary hearing, the parties may submit by this date written testimony of any witness by sworn declaration." (emphasis added). During the meet-and-confer process, the parties disagreed about the timing of several deadlines; however, counsel for Plaintiff did not object to the provision allowing for the submission of declarations in lieu of and/or in addition to live testimony. *Declaration of Marisa S. Crecelius* ("*Crecelius Decl*.), ¶ 3.

On June 8, 2018, after the filing of the IDOC Defendant's *Reply* and the *Stewart Declaration*, counsel for the Plaintiff left a voicemail for and sent an email to counsel for the IDOC Defendants, stating that the information contained in the *Declaration* was confidential and that, by filing the *Declaration*, IDOC counsel had "misused" Plaintiff's private medical information and had breached legal and ethical duties. *Crecelius Decl*., ¶ 4. Counsel further requested that defense counsel immediately remove the *Stewart Declaration* from the docket. *Id*. Counsel for IDOC responded the next day, requesting legal authority for the removal of the

Stewart Declaration from the docket and noting that the Plaintiff had filed several pleadings with the Court, including two expert *Declarations*, revealing the Plaintiff's own confidential medical information. *Crecelius Decl*., ¶ 5. IDOC counsel further indicated that, as a covered entity under HIPAA and as a party to this lawsuit, the IDOC Defendants were entitled to disclose Plaintiff's health information in the lawsuit. *Id*. Finally, counsel stated that Plaintiff's health information was relevant to defend against the Plaintiff's allegations and claims. *Id.* IDOC Counsel offered to review any additional authority that Plaintiff could provide and offered to entertain a motion to file all of Plaintiff's mental health information under seal. *Id.*

Several days later, Plaintiff's objection to the *Stewart Declaration* evolved. In an email on June 12, 2018, Plaintiff's counsel stated that IDOC's counsel's communications with IDOC clinicians were "improper ex parte interviews" of a represented party. *Crecelius Decl*., ¶ 6. Counsel further stated that the information in the *Stewart Declaration* was not relevant and could subject Plaintiff to "punitive consequences." *Id*. Counsel also claimed that the use of Plaintiff's mental health information from her current treatment providers would chill all communications with her clinicians and implied that such clinicians would be using their appointments with the Plaintiff to gather information for the lawsuit. *Id.*

In an email to Plaintiff's counsel on June 12, 2018, counsel for IDOC objected to the implication that counsel and IDOC clinicians were behaving unethically, and requested a practical way for the IDOC Defendants to defend this case and respond to the Plaintiff's *Motion* without putting any evidence on the record from Plaintiff's past and current IDOC mental health providers. *Id*., at ¶ 7. After receiving no response from Plaintiff's counsel, IDOC counsel sent another email on June 15, 2018, asking for a meet-and-confer conference to discuss a potential

solution to Plaintiff's objections, considering that the IDOC Defendants planned to proceed with gathering testimony from individuals familiar with the Plaintiff's mental health treatment at IDOC. *Id*., at ¶ 8.

Counsel for Plaintiff agreed and the parties met and conferred over the telephone on June 20, 2018. *Id*., at ¶ 9. During that meeting, Plaintiff's counsel clarified that she had no objection to defense counsel speaking with their own employee clinicians and treatment providers. *Id.* However, counsel requested that, if defense counsel planned to provide this Court with any of the information obtained during such conversations, the Defendants must use "the formal discovery process" to re-obtain such information prior to filing a sworn declaration from a clinician or other treatment provider. *Id*. Defense counsel was admittedly confused by the prospect of speaking with their clients and client's employees informally, only to have to depose those same clients and employees when the information provided informally was relevant and useful enough to submit to the Court through a declaration. *Id*. Defense counsel also struggled with the idea of being required to serve formal discovery requests or subpoenas for documents upon their own clients and clients' employees. *Id*. Accordingly, defense counsel did not agree to depose their own clients or employees, nor did they agree to serve themselves with discovery. *Id*. However, defense counsel indicated that they were willing to entertain other solutions to the issue, and asked Plaintiff's counsel to provide additional authority to help defense counsel understand her position and to provide practical options available to the parties that did not involve the potential of deposing their own clients and client's employees. *Id.*

On June 22, 2018, IDOC counsel emailed Plaintiff's counsel requesting the follow-up authority she agreed to provide. *Id*., at ¶ 10. Counsel for Plaintiff responded in an email sent on

June 25, 2018, which included several cases that counsel believed supported the position that defense counsel must obtain any information from the Plaintiff's current providers that Defendants planned to file with this Court via "fact witness depositions." *Id*., at ¶ 11. In the alternative, counsel offered for the Defendants to identify the treating providers as experts, allowing Plaintiff's counsel to depose them or move for a protective order. *Id*. After reviewing the cases cited in Plaintiff's counsel's email, counsel for IDOC responded that the IDOC Defendants would not agree to depose their own clients or employees of their clients, and that, in light of the abbreviated discovery and briefing schedule and the shortened time to prepare for the October hearing, the IDOC Defendants intended to file declarations of fact and expert witnesses in lieu of live testimony. *Id*., at ¶ 12.

On July 2, 2018, counsel for IDOC sent a letter to Plaintiff's counsel regarding a number of outstanding issues, including an upcoming mental health visit for Plaintiff with an IDOC clinician that was scheduled for later on in the week. *Crecelius Decl*., ¶ 13. Defense counsel acknowledged Plaintiff's concerns about her continued treatment with providers who may testify in this case, and reiterated the following:

> [C]ounsel 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.

Id. One week later, on July 9, 2018, counsel for Plaintiff sent an email to defense counsel, reiterating Plaintiff's objection "to the manner in which Defendants are using their control over

her medical care/providers to directly obtain protected medical information and convert her medical appointments into discovery." *Id*., at ¶ 14. Counsel further indicated that she planned to file a *Motion to Strike* the *Stewart Declaration* and seek a protective order regarding the "Defendants' future litigation use and disclosure of medical information obtained directly through confidential medical appointments." *Id*.

Plaintiff filed her *Motion to Strike Declaration of Krina L. Stewart and for Protective Order* on July 26, 2018, asking this Court to: 1) strike the entire *Stewart Declaration* and remove it from the docket; 2) restrict the Defendants' use of Plaintiff's protected information in this case to "only that information produced or obtained through formal discovery procedures"; 3) require the Defendants to serve Plaintiff's counsel in the instant case with any documents or subpoenas filed or served, regardless of forum, relating to the discovery or other proceedings in the instant litigation (Dkt 83).

ANALYSIS

Plaintiff asks this Court to use its discretionary authority to regulate discovery in this matter by striking the *Stewart Declaration* and issuing a 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 …" (Dkt. 83-1, p. 8). Federal Rule of Civil Procedure 26(c) governs the issuance of protective orders related to discovery matters, providing that the Court "may, for good cause issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense…" For the reasons set forth below, Plaintiff has not met her burden to demonstrate good cause for a protective order or to strike the *Stewart Declaration*.

First, all the information contained in the *Stewart Declaration* is relevant to the Plaintiff's claim for immediate action to prevent imminent irreparable injury. Namely, Ms. Stewart's *Declaration* described the Plaintiff's then-existing mental health condition, which included references to Plaintiff's lack of preoccupation with her Gender Dysphoria, her stability, and Plaintiff's ability to maintain meaningful personal relationships with others, including her spouse and her family. Such testimony was directly relevant to (albeit inconsistent with) the clinical picture painted by Plaintiff, Plaintiff's experts, and Plaintiffs' counsel in the *Motion for Preliminary Injunction*. Indeed, the crux of the Plaintiff's *Motion for Preliminary Injunction* is that Plaintiff's current mental health condition is so dire that, without immediate intervention by this Court, Plaintiff will suffer irreparable harm. Not only has Plaintiff placed her medical and mental health condition at issue in this case, her declaration and those of her experts directly opine that the IDOC clinicians currently providing mental health treatment are doing so inadequately. Accordingly, the testimony of the Plaintiff's current IDOC mental health clinician is relevant to the Plaintiffs' claims and the IDOC Defendants' defense of this case.

Plaintiff's main concern with the *Stewart Declaration*, however, seems to be with how counsel obtained Ms. Stewart's testimony. Plaintiff asks this Court to prohibit Defendants from filing any declaration or otherwise presenting the testimony of its witnesses unless such testimony has first been "obtained through formal discovery procedures." Such a protective order would be problematic for several reasons. First, the record before this Court currently contains numerous references to the Plaintiff's medical history, social history, and medical and mental health history, in the form of the *Plaintiff's Second Amended Complaint*, *Declaration of Adree Edmo*, *Memorandum in Support of the Motion for Preliminary Injunction*, and the *Declarations*

of Drs. Ettner and Gorton. Plaintiffs' own pleadings thus far in this case contain various, specific references to her mental health treatment at IDOC, all of which was obtained outside the formal discovery procedures and filed publicly with this Court.

As a result, the Plaintiff's concerns regarding the use of testimony regarding her medical treatment during the motion for preliminary hearing have been waived by placing her own mental and physical conditions directly at issue in this case. *See, e.g., Doe v. Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 837 F. Supp. 2d 1145, 1157 (D. Idaho 2011) (under the laws of any state, a plaintiff must disclose medical records relating to any condition he himself puts at issue); *Cassells v. McNeal*, No. 215CV0313KJMACP, 2017 WL 1272482, at *3 (E.D. Cal. Jan. 27, 2017) (prisoner plaintiff who initiated a personal injury lawsuit must fully disclose to defendants all medical information about his physical and mental condition, treatment, diagnosis, prognosis and recovery as a matter of law, as defendants were entitled to all information that was relevant to the issues, claims, and defenses in the action).

Plaintiff's *Motion to Strike* does not dispute that Plaintiff's mental health treatment is directly at issue. However, Plaintiff asserts that her protected health information was improperly disclosed, under the Health Insurance Portability and Accountability Act (HIPAA), Pub.L. No. 104–191, 110 Stat.1936 (1996) (codified primarily in Titles 18, 26, and 42 of the United States Code). To the contrary, HIPAA specifically allows a covered entity to use or disclose protected health information as part of its "health care operations" in legal proceedings when that covered entity is a party. *See* 45 CFR 106.103 (defining "covered entity" as "a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter"); 45 CFR 164.506(a) and (c) ("a covered entity may use or disclose protected

health information for treatment, payment, or health care operations…"); and 45 CFR 164.501 (defining "health care operations" as "conducting or arranging for … legal services …"); *See also* https://www.hhs.gov/hipaa/for-professionals/faq/704/may-a-covered-entity-use-protected-health-information-for-litigation/index.html (Department of Health and Human Services guidelines regarding HIPAA, "where a covered entity is a party to a legal proceeding, such as a plaintiff or defendant, the covered entity may use or disclose protected health information for purposes of the litigation as part of its health care operations."). *See also Rutherford v. Palo Verde Health Care Dist., No. EDCV131247JAKSPX*, 2014 WL 12632901, at *12 (C.D. Cal. Apr. 17, 2014)(HIPAA permits covered entities to use or disclose protected health information as part of its health care operations, including a lawsuit to which they are a party. However, at the time of suit, plaintiffs were no longer a covered entity, so use in the lawsuit at that time was inappropriate). Here, it is further undisputed that IDOC Defendants are parties to this case and that the Plaintiff's mental health condition is at issue. Accordingly, HIPAA, the federal law that regulates the disclosure of a persons' protected health information, contemplates and allows for IDOC to disclose and use protected health information as part of its legal services in defending this lawsuit.

In support of her assertion that the IDOC Defendants are improperly using Plaintiff's mental health information, Plaintiff relies upon the HIPAA provisions which govern the disclosure of protected health information for judicial and administrative proceedings by those who are not parties to the litigation. For example, 45 CFR 164.512(e)(1)(ii) allows for disclosure of health information by a covered entity in response to a "subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal" if the

covered entity receives assurances "from the party seeking the information" (emphasis added). In other words, 45 CFR 164.512(e) governs circumstances where a third party is seeking health information from a covered entity, not the current circumstance where the entity using the information in a legal proceeding currently possesses it. In this case, IDOC is not responding to a request for protected health information from a third party. Rather, IDOC is a covered entity that may use or disclose protected health information as part of its health care operations, which includes defending itself in a lawsuit involving the mental health treatment for one of its inmates.

In further support of her assertion that Defendants should be prohibited from presenting evidence to this Court about the Plaintiff's current mental health condition without first obtaining that information via the formal discovery process, Plaintiff similarly relies on case law prohibiting a defendant's *ex parte* contacts with a plaintiff's third-party treatment provider. Just as with the HIPAA provisions cited above, the cases cited by Plaintiff are not applicable to the facts of this case. For example, Plaintiff relies on *Strayhorne v. Caruso*, No. CIV. 11-15216, 2014 WL 916814, at *1 (E.D. Mich. Mar. 10, 2014), where defendants sought an order to allow them to have *ex parte* communications with "those medical providers who treated Plaintiff outside MDOC" (emphasis added). In that case, the defendants wanted to obtain information informally from a physician who was not the defendant's employee. The Court correctly applied the provisions of HIPAA dealing with the disclosure of protected health information by the outside provider to a third party (in that case, defendant's counsel). Relying in part on 45 CFR 164.512(e), the *Strayhorne* Court determined that formal discovery would be required to protect the plaintiff's privacy. Unlike here, such formal discovery procedures were available to the defendant in *Strayhorne*. Put another way, the Court did not require the defense counsel in that

case to take the deposition of its own client. Presumably, upon denial of its request for *ex parte* interviews, the defendant's attorney served discovery requests or took the deposition of the third-party physician, as would be the procedure with any other fact witness in a civil lawsuit.

Plaintiff also relies on *Piehl v. Saheta*, No. CIV. CCB-13-254, 2013 WL 2470128, at *1 (D. Md. June 5, 2013). There, a defendant physician sought to have unlimited *ex parte* contacts with the plaintiff's outside treatment providers and the Court held that such communications must take place using formal discovery procedures. Notably, the defendant physician in that case was not seeking to communicate with other nurses or PAs in his practice who had also treated the plaintiff. Rather, the defendant physician in *Piehl* was seeking to communicate *ex parte* with outside treatment providers who were presumably represented by other counsel and to whom subpoenas could be sent to obtain medical records and from whom depositions could be taken to learn more about the plaintiff's medical history.

None of the cases cited by the Plaintiff involve a situation where a defendant was ordered to take its own client's or its client's employees' deposition or to serve its own clients or its client's employees with discovery requests or subpoenas to obtain medical information. Plaintiff describes *Boone v. Heyns*, No. 12-14098, 2017 WL 3977524, at *11 (E.D. Mich. Sept. 11, 2017) as a case where defendants sought a protective order "allowing them to communicate with their own counsel regarding the inmate plaintiff's medical condition." (Dkt. 83-1, p.10). However, in denying the defendant's motion for protective order, the Court in *Boone* specifically stated:

> [T]he privacy concerns of Plaintiff are not protected by ex parte communications with his non-MDOC physicians. Further, 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, and would fail to level the playing field as Defendants suggest.

2017 WL 3977524, at *11 (emphasis added). In other words, the *Boone* Court denied defendants' motion to have ex parte communications with the plaintiff's outside treatment providers and held that, because most the plaintiff's treatment providers were already defendants or employees of defendants, there was no need for the Court to allow communication with the plaintiff's non-MDOC providers in order to "level the playing field" for defendants. *Id.*

Plaintiff asserts that the disclosure of her mental health treatment and condition in declarations from her current providers has a "chilling effect" on her ability to obtain adequate care. However, even if Plaintiff had current, outside, third-party mental health providers, all discoverable statements and mental health information during those ongoing treatments would also be subject to public disclosure pursuant to the discovery rules, and therefore "chilled" in the same manner. If there is any "chilling effect" in this case, it is the result of Plaintiff filing the instant lawsuit and placing her mental health condition and the treatment Defendants provided at issue.

Plaintiff repeatedly refers to the "use of formal discovery procedures" as a mechanism to obtain information from the IDOC Defendants and their employees. However, unlike submitting discovery requests to or taking the depositions of third parties, the IDOC Defendants are unaware of any "formal discovery procedure" in existence that would allow (or require) defense counsel to take the deposition and submit subpoenas to its own clients and/or its clients' employees. Furthermore, Defendants cannot practically be expected to serve formal discovery requests or subpoenas upon themselves.

Notably, Plaintiff does not object to counsel for Defendants communicating informally with their clients and clients' employees regarding the Plaintiff's treatment. Plaintiff's objection

only arises when the information received during the communication would be helpful to the Defendants and would be shared with the Court. Once Defendants obtain relevant information pertinent to the Court's decision on the preliminary injunction, Plaintiffs would have Defendants take the deposition of their own clients to re-obtain information that they already had. As stated above, the Plaintiff has not cited to any applicable case law where a Court ordered such an extraordinary procedure.

Furthermore, during the meet-and-confer process, Plaintiff's counsel recognized that the Plaintiff's private medical records from her continued medical and mental health treatment at IDOC would be obtained and reviewed by counsel for both parties and both parties' experts. Prior medical and mental health information has already been reviewed and submitted to this Court in the form of Plaintiff's expert declarations. Similarly, current medical and mental health information will likely be submitted again to this Court either via live witness testimony or via declarations. Plaintiff has not raised any objection to those medical records being reviewed and utilized by her own experts or by the Defendants in response to the Plaintiff's *Motion* or at the October hearing. Certainly, IDOC will not be sending discovery requests to itself for those mental health clinician records. They will be provided directly to IDOC counsel from the facility and then shared with Plaintiff via discovery responses and with this Court through declarations and expert reports. Confusingly, despite having no objection to the mental health treatment records being informally provided to counsel and reviewed by defense witnesses for later disclosure to this Court, Plaintiff objects to the IDOC treatment providers communicating with defense counsel prior to providing direct testimony regarding those medical records and visits in declarations submitted to his Court.

The use of declarations in lieu of live testimony was contemplated by this Court at the status conference on June 12, 2018, and agreed to by all of the parties in the *Stipulation Re: Discovery and Briefing Schedule*. Furthermore, Plaintiff objected to Defendants' request for more time to respond to the Plaintiff's *Motion for Preliminary Injunction* partly on the basis that Defendants would not need additional time to "interview" Defendants or employees of Defendants, which implies that Plaintiff contemplated that defense counsel would be speaking with their own clients and clients' employees. As noted several times above, the Plaintiff has submitted her own declaration to his Court, along with the declarations of her two retained experts. This is not an unusual approach in presenting evidence prior to an expedited hearing on a motion for preliminary injunction. For instance, in a case involving a transgender inmate seeking sex reassignment surgery upon a motion for preliminary injunction, the Court considered declarations from defendants' retained expert, a number of treatment providers, and department of corrections employees regarding the Plaintiff's mental health history and status. *See Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1169 (N.D. Cal.), (appeal dismissed and remanded, 802 F.3d 1090 (9th Cir. 2015)).

In addition, Plaintiff is not precluded from deposing IDOC treatment providers prior to the expiration of the fact discovery deadline. Plaintiff's treating clinicians have been identified in the IDOC Defendants' initial disclosures and presumably, Plaintiff knows the identity of her own treatment providers and could provide counsel with their identities for a deposition. On at least two occasions, IDOC Counsel has requested the names of any IDOC employees or clinicians who Plaintiff intends to depose, in order to ensure that those employees and clinicians are available for deposition during the shortened timeline for discovery. Similarly, despite Plaintiff's

assertion to the contrary, Plaintiff has the opportunity to object to the relevancy of any declaration filed by treatment providers or any testimony presented on the record. Plaintiff has utilized that opportunity by filing the instant *Motion to Strike* regarding the *Stewart Declaration*. Accordingly, the *Stewart Declaration* must not be stricken and the issuance of a protective order prohibiting the IDOC Defendants from communicating with their clients and clients' employees would be unnecessary and unworkable.

Finally, Plaintiff requests that this Court order the Defendants to serve Plaintiff's counsel with any documents or subpoenas filed or served, regardless of forum, relating to the discovery or other proceedings in this case. Plaintiff refers to the IDOC Defendants' *Motion to Disclose Presentence Investigation Reports* ("PSI Reports"), filed in Bannock County Criminal Case No. CR-2009-0008570-FE, and in Bannock County Criminal Case No. CR-2011-0011293-FE, in the District Court of the Sixth Judicial District for the State of Idaho. The PSI Reports are in the custody of the IDOC pursuant to the District Court's sentencing orders, Idaho Criminal Rule (ICR) 32, Idaho Administrative Rule 32, and Idaho Code §§ 19-2519(b) and 20-237. Idaho Criminal Rule 32(h)(1) requires that the PSI Reports remain sealed after the sentencing of a criminal defendant. ICR 32(h)(1) further provides that the PSI Reports cannot be opened without a court order. Any disclosure of the PSI Reports without a court order would result in contempt of court. Therefore, pursuant to ICR 32(h)(3), the IDOC Defendants sought an order from the sentencing court for disclosure of the PSI Reports for use in the instant lawsuit, subject to "appropriate safeguards" for the confidentiality of the information contained in the PSI Reports, as required by the Rule.

In a letter on July 2, 2018, IDOC counsel informed Plaintiff's counsel of IDOC's intent to file such a *Motion to Disclose* the Plaintiff's PSI Reports for use by all of the parties to this lawsuit. *See Crecelius Decl*., ¶ 13. Plaintiff's counsel did not respond to counsel's letter or otherwise object to IDOC's intent to seek disclosure of the PSI Reports. *Id*., ¶ 16. Accordingly, on July 11, 2018, IDOC filed its *Motion to Disclose* in State District Court, and served the Plaintiff's criminal defense counsel and the prosecuting attorney. Despite Plaintiff's assertions, the *Motion* did not disclose any confidential information from the PSI Reports to the State Court. Rather, the *Motion* provided the State Court with the appropriate context regarding the importance of the disclosure of the PSI Reports, along with the protections in place to ensure the Reports' confidentiality. Furthermore, the information in the *Motion to Disclose* regarding the PSI Reports can be found separately in unsealed, non-PSI documents, including the Plaintiff's expert declarations. Additionally, representations to the PSI Reports were noted only for what the PSI Reports did not say. Finally, there is/was no requirement under the Federal Rules or the Idaho State Rules for IDOC to serve Plaintiff's counsel with notice of the *Motion to Disclose*. Plaintiff's counsel had not appeared in that action and Plaintiff has no standing to its release pursuant to the Rules. On July 11, 2018, the Hon. District Judge Robert C. Naftz entered an *Order* authorizing IDOC to disclose the PSI Reports to the parties, expert witnesses, and this Court in the instant matter.

Despite the Plaintiff's accusations, the IDOC Defendants and their counsel take very seriously their obligation to keep the PSI Reports confidential. In fact, the IDOC Defendants have circulated a *Stipulated Motion for Protective Order* and proposed *Protective Order* to Plaintiff's counsel for review, in order to allow for protection and use of the PSI Reports in this

case, to ensure compliance with the State Court's *Order*, and to protect the confidentiality of PSI Reports and the Plaintiff's victim. *Crecelius Decl.*, ¶15. Counsel for IDOC has offered to discuss the language of the *Stipulated Motion* and *Protective Order* with Plaintiff's counsel; however, instead of meeting and conferring about or providing any objection or comment regarding the *Protective Order*, Plaintiff's counsel filed the instant *Motion to Strike* and a *Motion to Seal* IDOC's *Motion to Disclose*. *Id*., at ¶16. Despite the requirements set forth in ICR 32(h)(1), Plaintiff's counsel recently indicated that she does not believe that a protective order is appropriate for disclosure of the PSI Reports. *Id*., at ¶ 17.

On several occasions, Plaintiff has accused the IDOC Defendants and their counsel of being careless, lacking sound judgment, and acting outright unethical in defense of this case. Nevertheless, Defendants have continued to pursue the defense of this case diligently and ethically and with due care and regard for the sensitive issues present, along with IDOC's obligation to continue to treat the Plaintiff and protect the presentence investigation process. Counsel for the IDOC Defendants have and will continue to comply with all notice requirements for any and all documents to be filed and served in the instant litigation. Furthermore, counsel has not and will not interfere in any way with the Plaintiff's current mental health treatment, nor does counsel view the Plaintiff's mental health appointments as opportunities for discovery. Rather, defense counsel has been professional, prompt, and diligent in communicating with counsel for Plaintiff, offering to meet-and-confer on any issues in dispute, and providing notice to Plaintiff regarding all discovery issues that have arisen, including the service of third-party subpoenas and the disclosure of the PSI Reports. For example, defense counsel timely provided Plaintiff's counsel with notice of IDOC's intent to seek disclosure of the PSI Reports in this

litigation, a copy of the State Court's *Order* allowing such disclosure, IDOC's proposed *Protective Order* and *Stipulated Motion*, and a copy of the *Motion to Disclose* upon request. As such, there is no need for an *Order* directing Defendants to comply with their obligations to provide Plaintiff with proper notice of documents and pleadings filed.

CONCLUSION

For the reasons set forth above, Plaintiff has not met her burden to demonstrate good cause for a protective order prohibiting counsel for the IDOC Defendants from filing with this Court declarations or other testimony from its clients or clients' employees that contain information obtained by counsel outside the "formal discovery process." The Plaintiff's physical and mental health conditions are directly at issue in this case and as a result, HIPAA allows the IDOC Defendants, as a party to this case, to use and disclose the Plaintiff's protected health information in defense of this lawsuit. The parties to this lawsuit have contemplated and stipulated to the use of declarations in lieu of live testimony. Furthermore, the record before this Court contains numerous references to personal and sensitive information regarding the Plaintiff's current and former mental health treatment. The *Stewart Declaration* is relevant to those issues and to the claims raised by the Plaintiff in her *Motion for Preliminary Injunction*. There is no basis for, nor is there a realistic formal discovery method available to force the IDOC Defendants to take the depositions of or serve subpoenas upon its own clients or clients' employees. The Plaintiff's requested relief will prejudice Defendants' ability to defend itself in this lawsuit by forcing Plaintiff's counsel's presence as Defendants' counsel meets with and prepares testimony for presentation to the Court. Accordingly, the IDOC Defendants respectfully

request that this Court deny the Plaintiff's *Motion to Strike Declaration of Krina L. Stewart and for Protective Order*.

DATED this 31st day of July, 2018.

/s/ Marisa S. Crecelius
Marisa S. Crecelius
Attorney for IDOC Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st 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:

Dan Stormer
dstormer@hadsellstormer.com
Lori Rifkin
lrifkin@hadsellstormer.com
Shaleen Shanbhag
sshanbhag@hadsellstormer.com
HADSELL STORMER & RENICK, LLP
(Counsel for Plaintiff)

Craig Durham
chd@fergusondurham.com
Deborah Ferguson
daf@fergusondurham.com
FERGUSON DURHAM, PLLC
(Counsel for Plaintiff)

Amy Whelan
awhelan@nclrights.org
Julie Wilensky
jwilensky@nclrights.org
NATIONAL CENTER FOR LESBIAN RIGHTS
(Counsel for Plaintiffs)

Dylan Eaton
deaton@parsonsbehle.com
J. Kevin West
kwest@parsonsbehle.com
PARSONS, BEHLE & LATIMER

/s/ Krista Zimmerman
Krista Zimmerman

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
Special Deputy Attorney General
brady@melawfirm.net
Marisa S. Crecelius (ISB No. 8011)
marisa@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031

Attorneys for Defendants Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO, Plaintiff, vs. 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-151-BLW **DECLARATION OF MARISA S. CRECELIUS IN SUPPORT OF RESPONSE TO PLAINTIFF'S MOTION TO STRIKE AND MOTION FOR PROTECTIVE ORDER**

I, Marisa S. Crecelius, hereby declare under penalty of perjury that the foregoing is true and correct:

1. I am over the age of eighteen and am competent to testify to the matters stated herein. I make this declaration based upon my own personal knowledge.

2. I am one of the attorneys of record for Defendants Idaho Department of Corrections (IDOC), Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert (IDOC Defendants) in this action. My colleague, Brady Hall, is also counsel for the IDOC Defendants.

3. I met and conferred with counsel for the Plaintiff, Lori Rifkin, and counsel for the Co-Defendants, Dylan Eaton, regarding the stipulated deadlines for briefing and discovery in this matter. During the meet-and-confer process, the parties disagreed about the timing of several deadlines; however, counsel for Plaintiff did not object to the provision in the *Stipulation* which provided for the submission of declarations in lieu of and/or in addition to live testimony.

4. On June 8, 2018, after the filing of the IDOC Defendant's Reply and the Stewart Declaration, Ms. Rifkin left a voicemail for and sent an email to Brady Hall, stating that the information contained in the Declaration was confidential and that, by filing the Declaration, IDOC counsel had "misused" Plaintiff's private medical information and had breached legal and ethical duties. A true and correct copy of this email correspondence attached hereto as **Exhibit A**.

5. Mr. Hall responded to Ms. Rifkin on June 9, 2018. A true and correct copy of this email correspondence attached hereto as **Exhibit B.**

6. Ms. Rifkin responded to Mr. Hall on June 12, 2018. A true and correct copy of this email correspondence attached hereto as **Exhibit C**.

7. Mr. Hall responded to Ms. Rifkin on June 12, 2018. A true and correct copy of this email correspondence attached hereto as **Exhibit D**.

8. I sent an email to Ms. Rifkin on June 15, 2018, requesting a meet-and-confer conference regarding the issue of the *Stewart Declaration*. A true and correct copy of this email correspondence attached hereto as **Exhibit E**.

9. Ms. Rifkin agreed to meet-and-confer. On June 20, 2018, I met over the telephone with Ms. Rifkin, Plaintiff's counsel Shaleen Shanbhag, and Mr. Eaton. During that meeting, Ms. Rifkin clarified that she had no objection to defense counsel speaking with their own employee clinicians and treatment providers. Ms. Rifkin requested that, if defense counsel planned to provide this Court with any of the information obtained during such conversations, the Defendants must use "the formal discovery process" to re-obtain such information prior to filing a sworn declaration from a clinician or other treatment provider. I was admittedly confused by the prospect of speaking with my clients and my client's employees informally, only to have to depose those same clients and employees when the information provided informally was relevant and useful enough for us to submit to the Court through a declaration. I also struggled with the idea of being required to serve formal discovery requests or subpoenas for documents upon my own clients. During the conference, Mr. Eaton and I did not agree to depose our own clients or employees, nor did we agree to serve ourselves with discovery. We further indicated that we were willing to entertain other solutions to the issue, and asked Ms. Rifkin to provide additional authority to help us understand her position and to provide practical options available to the parties that did not involve the potential of deposing our own clients and client's employees.

10. I emailed Ms. Rifkin on June 22, 2018, requesting the follow-up authority we discussed during the meet-and-confer conference. A true and correct copy of this email correspondence attached hereto as **Exhibit F**.

11. Ms. Rifkin responded to my email on June 25, 2018. A true and correct copy of this email correspondence attached hereto as **Exhibit G.**

12. I responded to Ms. Rifkin's email on June 25, 2018. A true and correct copy of this email correspondence attached hereto as **Exhibit H.**

13. On July 2, 2018, I sent a letter to Ms. Rifkin regarding several outstanding discovery issues, including an upcoming mental health visit for Ms. Edmo with an IDOC clinician, and IDOC's intent to file a *Motion to Disclose* Ms. Edmo's presentence investigation reports (PSI Reports) for use in the instant lawsuit. A true and correct copy of this correspondence attached hereto as **Exhibit I.**

14. On July 9, 2018, Ms. Rifkin responded to the July 2, 2018 letter. A true and correct copy of this email correspondence attached hereto as **Exhibit J**.

15. On July 19, 2018, I emailed a *Stipulated Motion for Protective Order* and proposed *Protective Order* to Ms. Rifkin and Mr. Eaton for their review, to allow for protection and use of Ms. Edmo's PSI Reports in this case, to ensure compliance with the State Court's *Order* granting IDOC's *Motion to Disclose*, and to protect the confidentiality of the PSI Reports and Ms. Edmo's victim's identity.

16. I have offered to discuss the language of the *Stipulated Motion* and *Protective Order* with Ms. Rifkin. I did not receive any objection or comments regarding the language of the proposed *Stipulated Motion* or *Protective Order*, before Ms. Rifkin filed Plaintiff's *Motion to*

Strike and Motion for Protective Order and Plaintiff's *Motion to Seal* IDOC's *Motion to Disclose*.

17. On July 30, 2018, Ms. Rifkin indicated that she does not think that a protective order is appropriate for disclosure of the PSI Reports to Plaintiffs. A true and correct copy of this email correspondence attached hereto as **Exhibit K.**

18. I responded to Ms. Rifkin's email on July 30, 2018, providing the legal authority for IDOC's decision to seek a *Protective Order* regarding the use and disclosure of Ms. Edmo's PSI Reports. A true and correct copy of this email correspondence attached hereto as **Exhibit L.**

DATED this 31st day of July, 2018.

/s/ Marisa S. Crecelius
Marisa S. Crecelius
Attorney for IDOC Defendants

CERTIFICATE OF SERVICE

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J. Kevin West
kwest@parsonsbehle.com
PARSONS, BEHLE & LATIMER

/s/ Krista Zimmerman
Krista Zimmerman

Marisa Crecelius

From: Brady Hall
Sent: Friday, June 08, 2018 3:45 PM
To: Marisa Crecelius
Subject: Fwd: Edmo v. IDOC et al; urgent issue regarding declaration filed today

Brady Hall
702 West Idaho Street
Suite 800
Boise, Idaho 83702
208.336.6900
Brady@melawfirm.net

Begin forwarded message:

From: Lori Rifkin <lrifkin@hadsellstormer.com>
Date: June 8, 2018 at 1:38:28 PM MDT
To: Brady Hall <Brady@melawfirm.net>
Cc: Shaleen Shanbhag <sshanbhag@hadsellstormer.com>, Dan Stormer <dstormer@hadsellstormer.com>, "Deborah Ferguson" <DAF@fergusondurham.com>, Craig Durham <chd@fergusondurham.com>, Jessica Valdenegro <jessicav@hadsellstormer.com>
Subject: Edmo v. IDOC et al; urgent issue regarding declaration filed today

Dear Mr. Hall,

Today, Defendants publicly filed a declaration from Ms. Edmo's current mental health clinician, Ms. Krina Stewart, providing substantive information that my client disclosed during a confidential medical appointment with her current treater. There is no indication that Ms. Stewart informed Ms. Edmo that the information she obtained during that visit was not confidential and could be used against her in litigation, nor that any waiver was obtained from Ms. Edmo for the use of such information (which would also have required notification to myself and my co-counsel as Ms. Edmo's attorneys). Such misuse of Ms. Edmo's private medical information breaches her privacy rights and the medical provider's ethical and legal obligations, and places Ms. Edmo's ability to obtain health care in jeopardy. It is an abuse of IDOC's custodial relationship over Ms. Edmo.

This matter must be addressed immediately. We request that you immediately contact the court to remove this document from the public docket. Please confirm that you will do so. You may call me to discuss this matter at the number below, or on my cell phone given the urgency: 415-515-0285.

Sincerely,

Lori Rifkin

Hadsell Stormer & Renick LLP
Tel: 626-585-9600
Fax: 626-577-7079
lrifkin@hadsellstormer.com
www.hadsellstormer.com

Exhibit A

Exhibit A

Marisa Crecelius

From: Brady Hall
Sent: Saturday, June 09, 2018 12:12 PM
To: 'Lori Rifkin'
Cc: Shaleen Shanbhag; Dan Stormer; Deborah Ferguson; Craig Durham; Jessica Valdenegro; Marisa Crecelius; Shawna Spangler; deaton@parsonsbehle.com
Subject: RE: Edmo v. IDOC et al; urgent issue regarding declaration filed today
Attachments: vm Fri Jun 08, 2018 0121 PM.WAV; HHS Answer re HIPPA use.pdf

Lori:

I was out of the office yesterday for a Fourth Judicial District Bar event. I have now listened to your voicemail and have read the below email.

Can you please provide me with the legal authority, if any, in support of your statements and position?

Ms. Edmo's medical and mental health conditions and treatment are the subject of this lawsuit. Your client has filed a second amended complaint, a declaration, and now two expert reports containing detailed information regarding the same. None of those prior filings have been made under seal. Under HIPPA, the IDOC is entitled to disclose and use Ms. Edmo's health information in this litigation. Such health information is highly relevant and use of the same is necessary to defend against Ms. Edmo's allegations and claims. The IDOC will be filing additional declarations in the future in responding to Ms. Edmo's motion for preliminary injunction.

I am happy to review any authority you can provide. If you believe all information regarding Ms. Edmo's medical and mental health should be filed under seal, then please prepare a motion pursuant to the federal and local rules and we will consider the arguments contained in the motion. Please email if you have any questions or would like additional information.

Brady Hall
702 West Idaho Street
Suite 800
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208.336.6900
Brady@melawfirm.net

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Sent: Friday, June 8, 2018 1:38 PM
To: Brady Hall <Brady@melawfirm.net>
Cc: Shaleen Shanbhag <sshanbhag@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>; Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <chd@fergusondurham.com>; Jessica Valdenegro <jessicav@hadsellstormer.com>
Subject: Edmo v. IDOC et al; urgent issue regarding declaration filed today
Importance: High

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Exhibit B

was not confidential and could be used against her in litigation, nor that any waiver was obtained from Ms. Edmo for the use of such information (which would also have required notification to myself and my co-counsel as Ms. Edmo's attorneys). Such misuse of Ms. Edmo's private medical information breaches her privacy rights and the medical provider's ethical and legal obligations, and places Ms. Edmo's ability to obtain health care in jeopardy. It is an abuse of IDOC's custodial relationship over Ms. Edmo.

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Sincerely,

Lori Rifkin

Hadsell Stormer & Renick LLP
Tel: 626-585-9600
Fax: 626-577-7079
lrifkin@hadsellstormer.com
www.hadsellstormer.com

Exhibit B

May a covered entity use or disclose protected health information for litigation?

Answer:

A covered entity may use or disclose protected health information as permitted or required by the Privacy Rule, see 45 CFR 164.502(a) (PDF); and, subject to certain conditions the Rule typically permits uses and disclosures for litigation, whether for judicial or administrative proceedings, under particular provisions for judicial and administrative proceedings set forth at 45 CFR 164.512(e) (GPO), or as part of the covered entity's health care operations, 45 CFR 164.506(a) (PDF). Depending on the context, a covered entity's use or disclosure of protected health information in the course of litigation also may be permitted under a number of other provisions of the Rule, including uses or disclosures that are:

- required by law (as when the court has ordered certain disclosures),
- for a proceeding before a health oversight agency (as in a contested licensing revocation),
- for payment purposes (as in a collection action on an unpaid claim), or
- with the individual's written authorization.

Where a covered entity is a party to a legal proceeding, such as a plaintiff or defendant, the covered entity may use or disclose protected health information for purposes of the litigation as part of its health care operations. The definition of "health care operations" at 45 CFR 164.501 (GPO) includes a covered entity's activities of conducting or arranging for legal services to the extent such activities are related to the covered entity's covered functions (i.e., those functions that make the entity a health plan, health care provider, or health care clearinghouse), including legal services related to an entity's treatment or payment functions. Thus, for example, a covered entity that is a defendant in a malpractice action or a plaintiff in a suit to obtain payment may use or disclose protected health information for such litigation as part of its health care operations. The covered entity, however, must make reasonable efforts to limit such uses and disclosures to the minimum necessary to accomplish the intended purpose. See 45 CFR 164.502(b) , 164.514(d).

Where the covered entity is not a party to the proceeding, the covered entity may disclose protected health information for the litigation in response to a court order, subpoena, discovery request, or other lawful process, provided the applicable requirements of 45 CFR 164.512(e) (GPO) for disclosures for judicial and administrative proceedings are met.

Date Created: 01/07/2005

Content created by Office for Civil Rights (OCR)
Content last reviewed on July 26, 2013
https://www.hhs.gov/hipaa/for-professionals/faq/704/may-a-covered-entity-use-protected-health-information-for-litigation/index.html

Exhibit B

Marisa Crecelius

From: Lori Rifkin <lrifkin@hadsellstormer.com>
Sent: Tuesday, June 12, 2018 6:04 AM
To: Brady Hall
Cc: Shaleen Shanbhag; Dan Stormer; Deborah Ferguson; Craig Durham; Jessica Valdenegro; Marisa Crecelius; Shawna Spangler; deaton@parsonsbehle.com
Subject: Re: Edmo v. IDOC et al; urgent issue regarding declaration filed today

Brady,

Thank you for your email. We do not contest that Ms. Edmo has placed her medical condition at issue in the lawsuit, nor that Defendants may, in general, file information related to her medical treatment. However, the declaration filed from Ms. Stewart, Ms. Edmo's current and ongoing medical treater raises specific concerns. This declaration contains information directly obtained from Ms. Edmo during an appointment for the purpose of medical treatment, and uses that information against Ms. Edmo in litigation.

This essentially converts all of Ms. Edmo's future medical appointments to improper ex parte interviews of a represented party by Defendants because of the control Defendants exercise over Ms. Edmo's medical care. *See Crenshaw v. Mony Life Ins. Co.*, 318 F. Supp. 2d 1015, 1029 (S.D. Cal. Apr. 27, 2004); *Coleman v. Brown*, 938 F. Supp. 2d 955, 968 (E.D. Cal. 2013); Idaho Rules of Professional Conduct, Rule 4.2; *cf. State ex re. Kitzmiller v. Henning*, 190 W. Va. 142 S.E.2d 437, 452 (1993). Ms. Edmo has no ability to obtain treatment from medical providers other than Defendants, and does not have the ability to choose her specific clinician, meaning that in order to obtain medical treatment, she must continue to disclose information to a clinician who has directly used such information against her in litigation. While Ms. Edmo placed her medical condition at issue in the lawsuit, she did not automatically waive privilege as to all future communications with her health care providers for her medical condition. *See Strayhorne v. Caruso*, 2014 WL 916814 at *4 (E.D. Mich. Mar. 10, 2014); *Crenshaw* at 1025-26. Nor did she waive privilege as to information provided during the course of medical treatment not directly related to the issues in the litigation. *Fritsch v. City of Chula Vista*, 187 F.R.D. 614, 633 (S.D. Cal. July 14, 1999); *Roosevelt Hotel, Ltd. Partnership v. Sweeney*, 394 N.W.2d 353, 357 (Iowa 1986). Ms. Stewart's declaration contains detailed information Ms. Edmo provided her during the course of treatment that is not directly relevant to the claims at issue for which privilege was not waived, and which could subject Ms. Edmo to punitive consequences.

Defendants' actions have the practical effect of impermissibly chilling all communications between Ms. Edmo and her medical providers, forcing her to risk that any information she discloses in the future to medical providers during visits for medical treatment will be used against her in litigation or expose her to punitive consequences. *See Jaffee v. Redmond*, 518 U.S. 1 (1996). They also raise ethical problems for Ms. Edmo's medical treaters, who are obligated to provide treatment in the best interest of Ms. Edmo, not to collect information for the purposes of using it against her in litigation.

Lori Rifkin

Hadsell Stormer & Renick LLP
626-585-9600
lrifkin@hadsellstormer.com

From: Brady Hall <Brady@melawfirm.net>
Date: Saturday, June 9, 2018 at 11:12 AM
To: Lori Rifkin <lrifkin@hadsellstormer.com>
Cc: Shaleen Shanbhag <sshanbhag@hadsellstormer.com>, Dan Stormer <dstormer@hadsellstormer.com>,

Exhibit C

Deborah Ferguson <DAF@fergusondurham.com>, Craig Durham <chd@fergusondurham.com>, Jessica Valdenegro <jessicav@hadsellstormer.com>, Marisa Crecelius <marisa@melawfirm.net>, Shawna Spangler <Shawna@melawfirm.net>, "deaton@parsonsbehle.com" <deaton@parsonsbehle.com>
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Lori:

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Can you please provide me with the legal authority, if any, in support of your statements and position?

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Brady@melawfirm.net

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Sent: Friday, June 8, 2018 1:38 PM
To: Brady Hall <Brady@melawfirm.net>
Cc: Shaleen Shanbhag <sshanbhag@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>; Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <chd@fergusondurham.com>; Jessica Valdenegro <jessicav@hadsellstormer.com>
Subject: Edmo v. IDOC et al; urgent issue regarding declaration filed today
Importance: High

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Exhibit C

This matter must be addressed immediately. We request that you immediately contact the court to remove this document from the public docket. Please confirm that you will do so. You may call me to discuss this matter at the number below, or on my cell phone given the urgency: 415-515-0285.

Sincerely,

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Marisa Crecelius

From: Brady Hall
Sent: Tuesday, June 12, 2018 10:37 AM
To: 'Lori Rifkin'
Cc: Shaleen Shanbhag; Dan Stormer; Deborah Ferguson; Craig Durham; Jessica Valdenegro; Marisa Crecelius; Shawna Spangler; deaton@parsonsbehle.com
Subject: RE: Edmo v. IDOC et al; urgent issue regarding declaration filed today
Attachments: 68-1 Decl of Brady Hall w-exh.pdf

Dear Lori:

Thank you for attempting to narrow down and clarify your concern with the declaration of Krina Stewart. However, the authority you have cited is neither factually-similar nor instructive, let alone controlling. I also resent the unnecessary implications that you and your fellow counsel are making that me or members of my staff have violated our ethical obligations. This is not the first time your team has unfairly accused me of improper conduct.

It is well-established that my clients not only have the need, but the right to defend against this lawsuit. That necessarily requires placing on the record declarations regarding the care provided to your client and your client's current and recent mental health condition. I also find your concerns for a "chilling" effect unpersuasive, especially since your client has already instituted litigation against my clients for improper care, alleged that her mental health providers are unqualified, and further disclosed considerable information regarding her mental health and treatment on the public record.

Notwithstanding, as I stated in my last email, I remain open to working with you to address your concerns, but I need you to propose actual solutions that recognize my clients' rights to defend themselves and the Court's interest in having the relevant information when it rules on your client's motion. Accordingly, how do you propose we move forward from here? Is there something different you would like us to do apart from refraining from putting any evidence on the record from your client's past and current IDOC mental health providers?

Brady Hall
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Brady@melawfirm.net

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Exhibit D

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Defendants' actions have the practical effect of impermissibly chilling all communications between Ms. Edmo and her medical providers, forcing her to risk that any information she discloses in the future to medical providers during visits for medical treatment will be used against her in litigation or expose her to punitive consequences. *See Jaffee v. Redmond*, 518 U.S. 1 (1996). They also raise ethical problems for Ms. Edmo's medical treaters, who are obligated to provide treatment in the best interest of Ms. Edmo, not to collect information for the purposes of using it against her in litigation.

Lori Rifkin

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Can you please provide me with the legal authority, if any, in support of your statements and position?

Ms. Edmo's medical and mental health conditions and treatment are the subject of this lawsuit. Your client has filed a second amended complaint, a declaration, and now two expert reports containing detailed information regarding the

same. None of those prior filings have been made under seal. Under HIPPA, the IDOC is entitled to disclose and use Ms. Edmo's health information in this litigation. Such health information is highly relevant and use of the same is necessary to defend against Ms. Edmo's allegations and claims. The IDOC will be filing additional declarations in the future in responding to Ms. Edmo's motion for preliminary injunction.

I am happy to review any authority you can provide. If you believe all information regarding Ms. Edmo's medical and mental health should be filed under seal, then please prepare a motion pursuant to the federal and local rules and we will consider the arguments contained in the motion. Please email if you have any questions or would like additional information.

Brady Hall
702 West Idaho Street
Suite 800
Boise, Idaho 83702
208.336.6900
Brady@melawfirm.net

From: Lori Rifkin [mailto:lrifkin@hadsellstormer.com]
Sent: Friday, June 8, 2018 1:38 PM
To: Brady Hall <Brady@melawfirm.net>
Cc: Shaleen Shanbhag <sshanbhag@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>; Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <chd@fergusondurham.com>; Jessica Valdenegro <jessicav@hadsellstormer.com>
Subject: Edmo v. IDOC et al; urgent issue regarding declaration filed today
Importance: High

Dear Mr. Hall,

Today, Defendants publicly filed a declaration from Ms. Edmo's current mental health clinician, Ms. Krina Stewart, providing substantive information that my client disclosed during a confidential medical appointment with her current treater. There is no indication that Ms. Stewart informed Ms. Edmo that the information she obtained during that visit was not confidential and could be used against her in litigation, nor that any waiver was obtained from Ms. Edmo for the use of such information (which would also have required notification to myself and my co-counsel as Ms. Edmo's attorneys). Such misuse of Ms. Edmo's private medical information breaches her privacy rights and the medical provider's ethical and legal obligations, and places Ms. Edmo's ability to obtain health care in jeopardy. It is an abuse of IDOC's custodial relationship over Ms. Edmo.

This matter must be addressed immediately. We request that you immediately contact the court to remove this document from the public docket. Please confirm that you will do so. You may call me to discuss this matter at the number below, or on my cell phone given the urgency: 415-515-0285.

Sincerely,

Lori Rifkin

Hadsell Stormer & Renick LLP
Tel: 626-585-9600
Fax: 626-577-7079
lrifkin@hadsellstormer.com
www.hadsellstormer.com

Marisa Crecelius

From: Marisa Crecelius
Sent: Friday, June 15, 2018 3:11 PM
To: 'Lori Rifkin'; Brady Hall; Dylan A. Eaton
Cc: Shawna Spangler; Shaleen Shanbhag; Dan Stormer; Deborah Ferguson; Craig Durham; Jessica Valdenegro
Subject: Communication with IDOC employees (Edmo v. IDOC)

Good afternoon, Lori:

Over the next couple months, our office will be working with IDOC clinicians and other employees who have knowledge of Ms. Edmo's past and current medical and mental health treatment. We will also be securing declarations and/or trial testimony from some of those individuals.

In prior voicemail and email correspondence, you raised objections to our office having such contact with our clients and their employees. You also objected to Defendants including references to Ms. Edmo's medical and mental health treatment in any declarations that we file with the Court. It is important that we resolve this dispute as we proceed forward with our response to your Motion. Our response will include testimony from the above-referenced individuals in the form of declarations or via live testimony at the hearing. References to Ms. Edmo's treatment and condition are necessary portions of such testimony, particularly in response to your experts' previously-filed declarations and anticipated testimony in this case. On June 12, Brady had asked if there was something different you would like us to do in contacting those individuals, but we haven't yet received a response.

Pursuant to FRCP 26(c), we'd like to arrange a phone call to "meet and confer" about this issue prior to filing a motion for protective order with the Court. If we cannot reach an agreement in the very near future, we'll have to file the motion early next week.

Do you have time to discuss this matter on Monday? I have also included Dylan on this email so he can also participate in our discussions.

Thank you,

Marisa

Marisa S. Crecelius

MOORE ELIA KRAFT & HALL LLP

702 W. Idaho Street, Suite 800 | Boise, ID 83702
P.O. Box 6756 | Boise, ID 83707
Telephone: (208) 336-6900 Fax: (208) 336-7031
www.melawfirm.net

Exhibit E

Marisa Crecelius

From: Marisa Crecelius
Sent: Friday, June 22, 2018 2:40 PM
To: Lori Rifkin; Shaleen Shanbhag
Cc: Shawna Spangler; Brady Hall
Subject: Edmo v. IDOC subpoenas for production of medical and mental health records
Attachments: Bannock Co Detention - Subpoena.pdf; Portneuf - Behaviorial Health - Subpoena.pdf; Portneuf Medical Center - Subpoena.pdf; Shoshone-Bannock Tribe - Community Health - Subpoena.pdf; Shoshone-Bannock Tribe - Tribal Health - Subpoena.pdf; Shoshone-Bannock Tribe Counseling - Subpoena.pdf; Shoshone-Bannock Tribe Four Directions - Subpoena.pdf; US Indian Health Services - Subpoena.pdf; FRCP 45 - attach to Subpoenas.pdf

Hi Lori and Shaleen,

I am emailing about a few issues this afternoon and thought it would be easier to condense everything in one email:

1. We agree to your request during our meet-and-confer conference earlier this week that we accept service by email.

2. We also ask if you will agree to service by email. We plan to serve discovery requests later today and, if you agree, will do so by email. Please let me know right away if email service will not be sufficient for service.

3. Pursuant to Rule 45(a)(4) of the Federal Rules of Civil Procedure, attached please find copies of Subpoenas for Production of Medical and Mental Health Records that I will be serving on third-parties on **June 29, 2018**. Please let me know if you have any questions.

4. Do you still plan to provide us with a follow-up email containing your thoughts and case authority regarding the issues we discussed at the meet-and-confer conference? We'd like to move on that issue as soon as possible.

I look forward to hearing from you.

Have a nice weekend,

Marisa

Marisa S. Crecelius

MOORE ELIA KRAFT & HALL LLP

702 W. Idaho Street, Suite 800 | Boise, ID 83702
P.O. Box 6756 | Boise, ID 83707
Telephone: (208) 336-6900 Fax: (208) 336-7031
www.melawfirm.net

Exhibit F

Marisa Crecelius

From: Marisa Crecelius
Sent: Monday, June 25, 2018 2:44 PM
To: 'Lori Rifkin'; Shaleen Shanbhag
Cc: Shawna Spangler; Brady Hall; 'Dylan A. Eaton'; Jessica Valdenegro; Norma Molina
Subject: RE: Edmo v. IDOC subpoenas for production of medical and mental health records

Lori:

Thank you for your email this morning and for providing us with the authority you referenced in our meeting last week. I've had the chance to review the cases you emailed. Unfortunately, I don't find them applicable to our case. Specifically, the defendants in the cases you provided were seeking permission to communicate with the plaintiffs' outside providers ex parte. Based on our conversations, I understand your concerns to be with a declaration filed on behalf of an IDOC employee and our future communications with our clients and our client's employees. I could only locate one reference to a defendant's communication with its employee treatment provider in the cases you provided. In *Boone*, the Court acknowledged that defendants in that case would be communicating with the prisoner plaintiff's current DOC and Corizon physicians. See *Boone v. Heyns*, No. 12-14098, 2017 U.S. Dist. LEXIS 146089 at 34 (E.D. Mich. Sept. 11, 2017)(" Further, 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…").

As we discussed during our meet-and-confer conference, we do not agree to take the depositions of our own clients. We will continue to follow the deadlines set forth in our Stipulation, including complying with lay witness disclosures and expert disclosures pursuant to Rule 26. In light of the abbreviated discovery and briefing schedule, along with the shortened time for the evidentiary hearing in October, we plan to file declarations containing witness testimony in support of our response briefing. Judge Winmill indicated on the record that he was willing to accept witness declarations in lieu of or in addition to hearing testimony, as does our Stipulation.

If you have any other suggestions or concerns about how to proceed on this issue, please feel free to contact me. We appreciate the discussion.

Also, we'd still like to know your availability for Ms. Edmo's deposition in late July, along with your experts' availability for depositions in September.

Thanks,

Marisa

Marisa S. Crecelius

MOORE ELIA KRAFT & HALL LLP

702 W. Idaho Street, Suite 800 | Boise, ID 83702
P.O. Box 6756 | Boise, ID 83707
Telephone: (208) 336-6900 Fax: (208) 336-7031
www.melawfirm.net

From: Lori Rifkin [mailto:lrifkin@hadsellstormer.com]
Sent: Monday, June 25, 2018 3:25 AM
To: Marisa Crecelius; Shaleen Shanbhag
Cc: Shawna Spangler; Brady Hall; 'Dylan A. Eaton'; Jessica Valdenegro; Norma Molina
Subject: Re: Edmo v. IDOC subpoenas for production of medical and mental health records

Marisa,

Thank you for confirming acceptance of email service. This emails also confirms Plaintiff's acceptance of email service.

Attached are the cases we mentioned during our call addressing these issues in the context of prisoners: Boone (at *30-*34) and Strayhorne. Also attached is PIehl, which contains discussion about the concerns we raised about physicians directly determining what matters are relevant to Plaintiff's claims and the scope of HIPAA protections when a party's medical history is at issue in a court case.

As we discussed, we propose that formal discovery procedures govern the information provided in the instant litigation by Ms. Edmo's current treaters (i.e. providers with an ongoing treatment relationship with Ms. Edmo). To the extent Defendants plan to provide testimony (including declarations) from Ms. Edmo's current treaters, Defendants would either need to obtain such information in a fact witness deposition, or disclose such treaters as experts so that Plaintiff has specific notice and can fully explore the extent of the intended testimony in a deposition and move for a protective order regarding irrelevant or other information if necessary. This second option (designating treaters as experts) should address Defendants' concerns about having to notice their own employees' depositions if they don't want to. We believe this proposal balances the parties' competing interests of Ms. Edmo's ability to rely on medical privacy in obtaining continuing and future treatment and Defendants' need to obtain information for their defense of the legal claims.

Lori Rifkin

Hadsell Stormer & Renick LLP
626-585-9600
lrifkin@hadsellstormer.com

From: Marisa Crecelius <marisa@melawfirm.net>
Date: Friday, June 22, 2018 at 1:40 PM
To: Lori Rifkin <lrifkin@hadsellstormer.com>, Shaleen Shanbhag <sshanbhag@hadsellstormer.com>
Cc: Shawna Spangler <Shawna@melawfirm.net>, Brady Hall <Brady@melawfirm.net>
Subject: Edmo v. IDOC subpoenas for production of medical and mental health records

Hi Lori and Shaleen,

I am emailing about a few issues this afternoon and thought it would be easier to condense everything in one email:

1. We agree to your request during our meet-and-confer conference earlier this week that we accept service by email.

2. We also ask if you will agree to service by email. We plan to serve discovery requests later today and, if you agree, will do so by email. Please let me know right away if email service will not be sufficient for service.

3. Pursuant to Rule 45(a)(4) of the Federal Rules of Civil Procedure, attached please find copies of Subpoenas for Production of Medical and Mental Health Records that I will be serving on third-parties on **June 29, 2018**. Please let me know if you have any questions.

4. Do you still plan to provide us with a follow-up email containing your thoughts and case authority regarding the issues we discussed at the meet-and-confer conference? We'd like to move on that issue as soon as possible.

I look forward to hearing from you.

Have a nice weekend,

Marisa

Marisa S. Crecelius

MOORE ELIA KRAFT & HALL LLP

702 W. Idaho Street, Suite 800 | Boise, ID 83702
P.O. Box 6756 | Boise, ID 83707
Telephone: (208) 336-6900 Fax: (208) 336-7031
www.melawfirm.net

Marisa Crecelius

From: Lori Rifkin <lrifkin@hadsellstormer.com>
Sent: Monday, June 25, 2018 3:25 AM
To: Marisa Crecelius; Shaleen Shanbhag
Cc: Shawna Spangler; Brady Hall; 'Dylan A. Eaton'; Jessica Valdenegro; Norma Molina
Subject: Re: Edmo v. IDOC subpoenas for production of medical and mental health records
Attachments: Boone v. Heyns_ 2017 U.S. Dist. LEXIS 146089.PDF; Strayhorne v. Caruso_ 2014 U.S. Dist. LEXIS 30246.PDF; Piehl v. Saheta_ 2013 U.S. Dist. LEXIS 79401.PDF

Marisa,

Thank you for confirming acceptance of email service. This emails also confirms Plaintiff's acceptance of email service.

Attached are the cases we mentioned during our call addressing these issues in the context of prisoners: Boone (at *30-*34) and Strayhorne. Also attached is PIehl, which contains discussion about the concerns we raised about physicians directly determining what matters are relevant to Plaintiff's claims and the scope of HIPAA protections when a party's medical history is at issue in a court case.

As we discussed, we propose that formal discovery procedures govern the information provided in the instant litigation by Ms. Edmo's current treaters (i.e. providers with an ongoing treatment relationship with Ms. Edmo). To the extent Defendants plan to provide testimony (including declarations) from Ms. Edmo's current treaters, Defendants would either need to obtain such information in a fact witness deposition, or disclose such treaters as experts so that Plaintiff has specific notice and can fully explore the extent of the intended testimony in a deposition and move for a protective order regarding irrelevant or other information if necessary. This second option (designating treaters as experts) should address Defendants' concerns about having to notice their own employees' depositions if they don't want to. We believe this proposal balances the parties' competing interests of Ms. Edmo's ability to rely on medical privacy in obtaining continuing and future treatment and Defendants' need to obtain information for their defense of the legal claims.

Lori Rifkin

Hadsell Stormer & Renick LLP
626-585-9600
lrifkin@hadsellstormer.com

From: Marisa Crecelius <marisa@melawfirm.net>
Date: Friday, June 22, 2018 at 1:40 PM
To: Lori Rifkin <lrifkin@hadsellstormer.com>, Shaleen Shanbhag <sshanbhag@hadsellstormer.com>
Cc: Shawna Spangler <Shawna@melawfirm.net>, Brady Hall <Brady@melawfirm.net>
Subject: Edmo v. IDOC subpoenas for production of medical and mental health records

Hi Lori and Shaleen,

I am emailing about a few issues this afternoon and thought it would be easier to condense everything in one email:

1. We agree to your request during our meet-and-confer conference earlier this week that we accept service by email.

2. We also ask if you will agree to service by email. We plan to serve discovery requests later today and, if you agree, will do so by email. Please let me know right away if email service will not be sufficient for service.

3. Pursuant to Rule 45(a)(4) of the Federal Rules of Civil Procedure, attached please find copies of Subpoenas for Production of Medical and Mental Health Records that I will be serving on third-parties on **June 29, 2018**. Please let me know if you have any questions.

4. Do you still plan to provide us with a follow-up email containing your thoughts and case authority regarding the issues we discussed at the meet-and-confer conference? We'd like to move on that issue as soon as possible.

I look forward to hearing from you.

Have a nice weekend,

Marisa

Marisa S. Crecelius

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www.melawfirm.net

MOORE ELIA KRAFT & HALL LLP

MARISA S. CRECELIUS

July 2, 2018

SENT VIA EMAIL: 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.

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

Marisa Crecelius

From: Lori Rifkin <lrifkin@hadsellstormer.com>
Sent: Monday, July 09, 2018 5:10 PM
To: Brady Hall; deaton@parsonsbehle.com
Cc: Krista Zimmerman; Marisa Crecelius; Shaleen Shanbhag; Deborah Ferguson; Craig Durham; Julie Wilensky; Alexander Chen; Jessica Valdenegro; Norma Molina; Dan Stormer
Subject: Re: Edmo v. IDOC et al

Dear Brady and Dylan,

Thank you for the follow up. Our responses on each issue are below.

1. Plaintiff's Depo: We can confirm Ms. Edmo's deposition for August 24. There will likely be two or three attorneys attending from Plaintiff's team. We are amenable to proceeding without formal leave of Court if the Court allows, or stipulating.

2. Expert Depos: We followed up with Dr. Gorton about the location of the deposition. He is available on September 25 only in California because of his work schedule. He can do the deposition either in Davis, where he is located, or Sacramento. Please confirm this will work for Defendants. We are waiting to hear from Dr. Ettner about other possible dates in September, either in Boise or in Illinois.

   As we discussed last week, if you can let us know the availability in terms of dates for your experts as soon as possible so we can work out the scheduling issues, that will hopefully avoid calendaring problems for all parties/counsel later down the line.

3. Clinical interview: Plaintiff and counsel are available July 25, but we will not stipulate to an IME prior to Defendants providing Plaintiff with the information required under FRCP 35(a)(2)(B), and we will object to excluding attendance by Plaintiff's counsel.

4. Defendants' requested release: Plaintiff has identified all medical records within her possession, custody, or control. We are not aware of law compelling Plaintiff to sign a release for her prior records, and Defendants have not established why they are relevant in this action. Please let us know if you would like to further meet and confer on this issue.

5. Plaintiff's ongoing objections regarding disclosure of information from her medical providers: following the information provided in IDOC counsel's letter, Plaintiff maintains her objection to the manner in which Defendants are using their control over her medical care/providers to directly obtain protected medical information and convert her medical appointments into discovery. Given that the parties have extensively met and conferred on this issue without resolution, Plaintiff plans to file a motion to strike Ms. Stewart's declaration and for a protective order regarding Defendants' future litigation use and disclosure of medical information obtained directly through confidential medical appointments.

Lori Rifkin

Hadsell Stormer & Renick LLP
626-585-9600
lrifkin@hadsellstormer.com

Exhibit J

From: Brady Hall <Brady@melawfirm.net>
Date: Monday, July 9, 2018 at 1:06 PM
To: Lori Rifkin <lrifkin@hadsellstormer.com>, "deaton@parsonsbehle.com" <deaton@parsonsbehle.com>
Cc: Krista Zimmerman <krista@melawfirm.net>, Marisa Crecelius <marisa@melawfirm.net>
Subject: Edmo v. IDOC et al

Lori and Dylan:

Consistent with our conversation last week, I will notice up the deposition of Ms. Edmo for August 24. The deposition will start at 9:00 a.m. at ISCI, likely in one of the hearing rooms near visiting. Can you please let me know who/how many will attend on your clients' behalf? I will provide additional details soon. Also, I will confirm with the Court that formal leave is not required to depose Ms. Edmo as required by FRCP 30(a)(2)(B). If it is required, I will file a motion stating that counsel stipulate to Ms. Edmo's deposition. Okay?

Regarding Dr. Gorton and Dr. Ettner, I understand that Lori is going to check and see if Dr. Ettner can make herself available other than during the labor day weekend. We are going to tentatively schedule Dr. Gordon's deposition for September 25 in Boise.

I also indicated that the IDOC will need to have one of our experts conduct a clinical interview. I propose July 25 at ISCI. I will send over a stipulation shortly with details, but please let me know as soon as possible if July 25 will not work for some reason.

Thank you.

Brady J. Hall

MOORE ELIA KRAFT & HALL LLP

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P.O. Box 6756 | Boise, ID 83707
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www.melawfirm.net

Marisa Crecelius

From: Lori Rifkin <lrifkin@hadsellstormer.com>
Sent: Monday, July 30, 2018 2:16 PM
To: Marisa Crecelius; Brady Hall; 'Dylan A. Eaton'
Cc: 'Deborah Ferguson'; 'Craig Durham'; Shaleen Shanbhag; 'Julie Wilensky'; Krista Zimmerman; Jessica Valdenegro; Dan Stormer; Norma Molina
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Dear Marisa,

As you know, we were surprised to receive the PSI Reports order from you in the email you sent about the stipulated protective order, and, after reviewing what you sent, followed up by asking for a copy of the motion, which Defendants did not serve on us. You then provided that last Wednesday, and after reviewing it, Plaintiff filed a related motion last week with the Court.

We do not believe a protective order is required for Defendants to provide Plaintiff with a copy of these reports, which she is entitled to under Idaho law. Thus, it appears Defendants should have already produced them to Plaintiff given that they are responsive to her discovery requests. Please explain the legal basis for Defendants' withholding of them in response to discovery.

Further, given the concerns expressed in our motion about Defendants' use and disclosure of Plaintiff's protected information, including the PSI Reports, we think it prudent to wait to address your requested protective order concerning the PSI Reports until the issues in Plaintiff's motion have been resolved.

Please let me know if you would like to schedule a telephonic meet and confer on these issues.

Sincerely,

Lori Rifkin

Hadsell Stomer & Renick
626-585-9600
lrifkin@hadsellstormer.com

From: Marisa Crecelius <marisa@melawfirm.net>
Sent: Friday, July 27, 2018 4:18 PM
To: Lori Rifkin <lrifkin@hadsellstormer.com>; Brady Hall <Brady@melawfirm.net>; 'Dylan A. Eaton' <DEaton@parsonsbehle.com>
Cc: 'Deborah Ferguson' <DAF@fergusondurham.com>; 'Craig Durham' <durhamlaw@outlook.com>; Shaleen Shanbhag <sshanbhag@hadsellstormer.com>; 'Julie Wilensky' <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Lori,

On Wednesday morning, you indicated that you'd get back to me that day regarding the proposed Protective Order that I sent you last Thursday regarding the disclosure of the PSI Reports in this case. I have not yet received any response or comment from you on that issue. I had hoped we could meet and confer about the Order this week. Unfortunately, it has been over a week since we emailed you the Order and I do not want to delay the filing of the Motion for the

Protective Order much longer. Please let me know as soon as possible if you plan to join our Motion for the Protective Order or if you have changes to suggest. I plan to file something with the Court Monday.

Have a nice weekend,

Marisa

Marisa S. Crecelius

MOORE ELIA KRAFT & HALL LLP

702 W. Idaho Street, Suite 800 | Boise, ID 83702
P.O. Box 6756 | Boise, ID 83707
Telephone: (208) 336-6900 Fax: (208) 336-7031
www.melawfirm.net

From: Marisa Crecelius
Sent: Wednesday, July 25, 2018 10:23 AM
To: 'Lori Rifkin'; Brady Hall; 'Dylan A. Eaton'
Cc: 'Deborah Ferguson'; 'Craig Durham'; Shaleen Shanbhag; 'Julie Wilensky'; Krista Zimmerman
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Lori,

Attached is the Motion we filed and proof of service on Ms. Edmo's criminal defense attorney in the underlying criminal case in Bannock County where the Motion was filed.

Marisa

Marisa S. Crecelius

MOORE ELIA KRAFT & HALL LLP

702 W. Idaho Street, Suite 800 | Boise, ID 83702
P.O. Box 6756 | Boise, ID 83707
Telephone: (208) 336-6900 Fax: (208) 336-7031
www.melawfirm.net

From: Lori Rifkin [mailto:lrifkin@hadsellstormer.com]
Sent: Wednesday, July 25, 2018 10:19 AM
To: Marisa Crecelius; Brady Hall; 'Dylan A. Eaton'
Cc: 'Deborah Ferguson'; 'Craig Durham'; Shaleen Shanbhag; 'Julie Wilensky'; Krista Zimmerman
Subject: Re: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Marisa,

We will try to get back to you today. However, we were confused by the Order you provided on the PSI reports because none of Plaintiffs' counsel appear to have been served with Defendants' motion related to them. Can you please provide the motion and proof of service?

Thank you.

Lori Rifkin

Hadsell Stormer & Renick LLP
626-585-9600
lrifkin@hadsellstormer.com

From: Marisa Crecelius <marisa@melawfirm.net>
Date: Wednesday, July 25, 2018 at 9:16 AM
To: Lori Rifkin <lrifkin@hadsellstormer.com>, Brady Hall <Brady@melawfirm.net>, "'Dylan A. Eaton'" <DEaton@parsonsbehle.com>
Cc: 'Deborah Ferguson' <DAF@fergusondurham.com>, 'Craig Durham' <durhamlaw@outlook.com>, Shaleen Shanbhag <sshanbhag@hadsellstormer.com>, 'Julie Wilensky' <JWilensky@nclrights.org>, Krista Zimmerman <krista@melawfirm.net>
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Lori,

What are your thoughts on the Stipulated Motion for Protection Order and Protective Order that I sent to you last Thursday? Dylan has indicated that he has no changes and we'd like to get it filed with the Court so we can disclose the PSI Reports in this case. Please let me know if we can file the Motion and proposed Order with the Court with your electronic signature today.

Thanks,

Marisa

Marisa S. Crecelius

MOORE ELIA KRAFT & HALL LLP

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P.O. Box 6756 | Boise, ID 83707
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From: Marisa Crecelius
Sent: Thursday, July 19, 2018 3:19 PM
To: 'Lori Rifkin'; Brady Hall; 'Dylan A. Eaton'
Cc: Deborah Ferguson; Craig Durham; Shaleen Shanbhag; Julie Wilensky; Krista Zimmerman
Subject: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Hi Lori and Dylan:

Attached please find a proposed Stipulated Motion for Entry of Protective Order and Protective Order, along with the Bannock County District Court's Order Granting IDOC's Motion to Disclose the PSI Reports for Ms. Edmo from her 2009 and 2011 criminal cases. Upon entry of the Protective Order, we will produce Ms. Edmo's PSI Reports.

Please let me know your thoughts. If you have no changes to suggest, please let me know if I have your authorization to e-file the Stipulated Motion and Protective Order with your electronic signatures.

Thank you,

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Marisa Crecelius

From: Marisa Crecelius
Sent: Monday, July 30, 2018 3:07 PM
To: 'Lori Rifkin'; Brady Hall; 'Dylan A. Eaton'
Cc: 'Deborah Ferguson'; 'Craig Durham'; Shaleen Shanbhag; 'Julie Wilensky'; Krista Zimmerman; Jessica Valdenegro; Dan Stormer; Norma Molina
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Hi Lori,

The PSI reports are currently in IDOC custody pursuant to the criminal Court's sentencing orders, Idaho Criminal Rule 32, Idaho Administrative Rule 32, and Idaho Code §§ 19-2519(b) and 20-237. PSI reports are required to be filed under seal and it cannot be opened without a court order authorizing its release. Idaho Criminal Rule 32(h)(1) states:

> Any presentence report must be available for the purpose of assisting a sentencing court and once prepared may be released to any district judge for that purpose. After use in the sentencing procedure, the presentence report **must** be sealed by court order, after which it **cannot be opened without a court order** authorizing release of the report or parts of it to a specific agency or individual. The presentence report **must**, however, be **available to the Idaho Department of Corrections** so long as the defendant is committed to or supervised by the Department, and may be retained by the Department for three years after the defendant is discharged. If probation or parole supervision is transferred to another state, the Department may provide a copy of the presentence report to the supervising entity in that state. In addition, when preparing a report on a defendant, a presentence investigator must have access to previous presentence reports, including all attachments and addendums, prepared on that defendant, whether in the same case or in previous cases. The presentence investigator's own copy of the presentence report is restricted from use by all but authorized court personnel. Neither the defendant, defendant's counsel, the prosecuting attorney nor any person authorized by the sentencing court to receive a copy of the presentence report may release to any other person or agency the report itself or any information contained in it. As provided in Article 1, Section 22(9) of the Idaho Constitution, the victim has a right to read, but not to have a copy of, the presentence report. Any violation of this rule is a contempt of court and subject to appropriate sanctions.

IDOC has had a copy of the PSI reports pursuant to ICR 32(h)(1), and sought an order from the Court to disclose the PSI reports pursuant to ICR32(h)(3), which requires that, before disclosure, "appropriate safeguards for the confidentiality of the information contained in the presentence report will be provided by the persons or agencies receiving the information." As custodian of the PSI reports, IDOC informed the sentencing Court that it intended to seek a protective order ensuring that the use of the information in the PSI reports is restricted to the federal lawsuit and would not be used in other proceedings. IDOC intends to produce the PSI Reports to Plaintiff, but wants to have assurances that any other third parties (such as experts and counsel) who receive the reports understand its confidential nature and the order by which it was allowed to be disclosed in the federal lawsuit.

IDOC takes very seriously its obligation to keep the PSI reports confidential. To disclose the reports without the appropriate safeguards would violate that obligation and potentially result in a order for contempt of court. Do you have any issue with the language of the protective order itself? It was my hope that we could file the Stipulated Motion and have the Court issue the protective order as soon as possible so that all parties could review the PSI Reports and use them in this lawsuit, pursuant to safeguards to protect the confidential information in the reports. To be clear, IDOC is not withholding the PSI Reports from Plaintiff; rather, we are making every effort to comply with our obligations to provide the "appropriate safeguards" for disclosure in the federal lawsuit. To do otherwise would be a violation of our duties as custodian of the PSI reports under the ICR, the IAR, and the criminal court's sentencing orders.

Exhibit J

I would be happy to discuss this further over the telephone later this week. Please let me know if the above does not satisfy your request for our legal basis in seeking the protective order.

Thanks,

Marisa

Marisa S. Crecelius

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From: Lori Rifkin [mailto:lrifkin@hadsellstormer.com]
Sent: Monday, July 30, 2018 2:16 PM
To: Marisa Crecelius; Brady Hall; 'Dylan A. Eaton'
Cc: 'Deborah Ferguson'; 'Craig Durham'; Shaleen Shanbhag; 'Julie Wilensky'; Krista Zimmerman; Jessica Valdenegro; Dan Stormer; Norma Molina
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Dear Marisa,

As you know, we were surprised to receive the PSI Reports order from you in the email you sent about the stipulated protective order, and, after reviewing what you sent, followed up by asking for a copy of the motion, which Defendants did not serve on us. You then provided that last Wednesday, and after reviewing it, Plaintiff filed a related motion last week with the Court.

We do not believe a protective order is required for Defendants to provide Plaintiff with a copy of these reports, which she is entitled to under Idaho law. Thus, it appears Defendants should have already produced them to Plaintiff given that they are responsive to her discovery requests. Please explain the legal basis for Defendants' withholding of them in response to discovery.

Further, given the concerns expressed in our motion about Defendants' use and disclosure of Plaintiff's protected information, including the PSI Reports, we think it prudent to wait to address your requested protective order concerning the PSI Reports until the issues in Plaintiff's motion have been resolved.

Please let me know if you would like to schedule a telephonic meet and confer on these issues.

Sincerely,

Lori Rifkin

Hadsell Stomer & Renick
626-585-9600
lrifkin@hadsellstormer.com

From: Marisa Crecelius <marisa@melawfirm.net>
Sent: Friday, July 27, 2018 4:18 PM
To: Lori Rifkin <lrifkin@hadsellstormer.com>; Brady Hall <Brady@melawfirm.net>; 'Dylan A. Eaton' <DEaton@parsonsbehle.com>
Cc: 'Deborah Ferguson' <DAF@fergusondurham.com>; 'Craig Durham' <durhamlaw@outlook.com>; Shaleen Shanbhag <sshanbhag@hadsellstormer.com>; 'Julie Wilensky' <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Lori,

On Wednesday morning, you indicated that you'd get back to me that day regarding the proposed Protective Order that I sent you last Thursday regarding the disclosure of the PSI Reports in this case. I have not yet received any response or comment from you on that issue. I had hoped we could meet and confer about the Order this week. Unfortunately, it has been over a week since we emailed you the Order and I do not want to delay the filing of the Motion for the Protective Order much longer. Please let me know as soon as possible if you plan to join our Motion for the Protective Order or if you have changes to suggest. I plan to file something with the Court Monday.

Have a nice weekend,

Marisa

Marisa S. Crecelius

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From: Marisa Crecelius
Sent: Wednesday, July 25, 2018 10:23 AM
To: 'Lori Rifkin'; Brady Hall; 'Dylan A. Eaton'
Cc: 'Deborah Ferguson'; 'Craig Durham'; Shaleen Shanbhag; 'Julie Wilensky'; Krista Zimmerman
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Lori,

Attached is the Motion we filed and proof of service on Ms. Edmo's criminal defense attorney in the underlying criminal case in Bannock County where the Motion was filed.

Marisa

Marisa S. Crecelius

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From: Lori Rifkin [mailto:lrifkin@hadsellstormer.com]
Sent: Wednesday, July 25, 2018 10:19 AM
To: Marisa Crecelius; Brady Hall; 'Dylan A. Eaton'
Cc: 'Deborah Ferguson'; 'Craig Durham'; Shaleen Shanbhag; 'Julie Wilensky'; Krista Zimmerman
Subject: Re: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Marisa,

We will try to get back to you today. However, we were confused by the Order you provided on the PSI reports because none of Plaintiffs' counsel appear to have been served with Defendants' motion related to them. Can you please provide the motion and proof of service?

Thank you.

Lori Rifkin

Hadsell Stormer & Renick LLP
626-585-9600
lrifkin@hadsellstormer.com

From: Marisa Crecelius <marisa@melawfirm.net>
Date: Wednesday, July 25, 2018 at 9:16 AM
To: Lori Rifkin <lrifkin@hadsellstormer.com>, Brady Hall <Brady@melawfirm.net>, "'Dylan A. Eaton'" <DEaton@parsonsbehle.com>
Cc: 'Deborah Ferguson' <DAF@fergusondurham.com>, 'Craig Durham' <durhamlaw@outlook.com>, Shaleen Shanbhag <sshanbhag@hadsellstormer.com>, 'Julie Wilensky' <JWilensky@nclrights.org>, Krista Zimmerman <krista@melawfirm.net>
Subject: RE: Stipulated Motion for Entry of Protective Order (Edmo v. IDOC)

Lori,

What are your thoughts on the Stipulated Motion for Protection Order and Protective Order that I sent to you last Thursday? Dylan has indicated that he has no changes and we'd like to get it filed with the Court so we can disclose the PSI Reports in this case. Please let me know if we can file the Motion and proposed Order with the Court with your electronic signature today.

Thanks,

Marisa

Marisa S. Crecelius

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Please let me know your thoughts. If you have no changes to suggest, please let me know if I have your authorization to e-file the Stipulated Motion and Protective Order with your electronic signatures.

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