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Attorneys for Plaintiff

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

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION;
HENRY ATENCIO, in his official capacity;
JEFF ZMUDA, in his official capacity;
HOWARD KEITH YORDY, in his official
and individual capacities; CORIZON, INC.;
SCOTT ELIASON; MURRAY YOUNG;
RICHARD CRAIG; RONA SIEGERT;
CATHERINE WHINNERY; and DOES 1-15;

Defendants.

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

**PLAINTIFF'S OPPOSITION TO CORIZON
DEFENDANTS' MOTION FOR RULE 35
EXAMINATION**

Complaint Filed: April 6, 2017
Discovery Cut-Off: August 31, 2018
Motion Cut-Off: None Set
Trial Date: None Set

I. INTRODUCTION

Plaintiff's position that Defendants' second Fed. R. Civ. P. 35 examination should be limited to areas distinct from those covered by Defendants' first exam is reasonable and necessary to minimize the intrusion and burden to Plaintiff.

On July 27, 2018, counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery ("Corizon Defendants") informed Plaintiff's counsel for the first time of their request to conduct a Fed. R. Civ. P. 35 medical examination of Plaintiff Adree Edmo. Despite all the parties, including Corizon, participating in meet and confer efforts from July 5 to July 25 regarding the Rule 35 exam requested by Idaho Department of Correction ("IDOC") Defendants, Corizon Defendants deliberately waited until after the Court issued its order allowing IDOC Defendants' Rule 35 exam to inform Plaintiff's counsel of its intent to take a separate second exam—which Corizon Defendants had already scheduled for August 10, less than two weeks later. While Corizon Defendants characterize their requested exam as necessary and justified because they are a separate party entitled to their own expert's examination, it is clear that IDOC and Corizon Defendants are, in fact, coordinating expert discovery and sharing expert witnesses. Corizon Defendants' request for a Rule 35 exam is an attempt by Defendants to conduct a duplicative exam of Plaintiff by their shared expert that should have been part of the parties' and Court's original consideration and decision about the allowable scope and duration of Defendants' Rule 35 exam of Plaintiff.

Defendants are not permitted unfettered access to Plaintiff, and Rule 35 requires a showing of good cause for an exam. This Court has recognized that a motion for a second exam must be supported by a strong showing as to why a second interview is necessary. *Does v. BSA*, 2017 U.S. Dist. LEXIS 155750, at *4 (D. Idaho Sept. 22, 2017). Defendants have not made this showing, much less addressed Plaintiff's objection that a second Rule 35 exam must be limited in scope to the issues Corizon Defendants have identified differ between the two experts and are necessary to rebut Plaintiff's expert opinions. While Plaintiff has attempted to resolve this dispute through the meet and confer process by agreeing to a second exam that is limited in

scope, Defendants refuse to agree to such limitations.

II. FACTUAL BACKGROUND

Since the Court's July 3, 2018 Scheduling Order setting the deadlines for factual discovery and expert discovery on August 31, 2018 and September 28, 2018, respectively, the parties have been actively engaged in discovery. ECF. 73. On July 5, 2018, counsel for Plaintiff Adree Edmo, counsel for IDOC Defendants, and counsel for Corizon Defendants met and conferred telephonically regarding various discovery issues. Declaration of Shaleen Shanbhag ("Shanbhag Decl.") ¶ 2. During this call, counsel for IDOC Defendants communicated to Plaintiff's counsel their request for an examination of Plaintiff pursuant to Fed. R. Civ. P. 35. *Id.* Following this conversation, counsel for Plaintiff and counsel for IDOC Defendants met and conferred about the Rule 35 exam for nearly three weeks. Counsel for Corizon Defendants were part of the July 5 call, as well as most of the subsequent communications. *Id.*

On July 24, 2018, IDOC Defendants filed a motion for a Rule 35 exam of Plaintiff. ECF No. 78. Following IDOC Defendants' motion and further meet and confer, Plaintiff stipulated to a proposed order concerning a Rule 35 exam. ECF No. 79. On July 27, 2018, this Court entered an Order granting the parties' stipulation for a Rule 35 exam of Plaintiff by Dr. Andrade, Ph.D, LICSW, CCHP-MH. ECF No. 84; Shanbhag Decl. ¶ 3. The Order stated that the exam would take place on July 31, 2018, last no longer than three hours, and would be audio recorded and monitored by a non-attorney representative of Plaintiff's choice. ECF No. 84. Less than thirty minutes after the Court's entry of the Order, counsel for Corizon Defendants emailed Plaintiff's counsel stating for the first time that Corizon Defendants intended to have an expert psychiatrist conduct a separate clinical interview of Ms. Edmo without the presence of any representative for Plaintiff. Shanbhag Decl. ¶ 4. Despite Corizon Defendants' involvement in the meet and confer process concerning IDOC Defendants' request for a Rule 35 exam, Corizon Defendants never informed Plaintiff of their intention to conduct a separate Rule 35 exam until after the Court issued its Order. *Id.*

Plaintiff's counsel objected to the second exam, stating: "It is not clear to us why

Defendants could not have worked together to conduct one joint IME and Corizon never suggested during the meet and confer process that it would be conducting its own IME. Nor did Corizon make any objections to the conditions for the IME requested by IDOC or stipulated to by IDOC and Plaintiff.” *Id.* ¶ 5. The parties met and conferred on this issue. Corizon Defendants maintained that they were not required to coordinate with IDOC Defendants, and stated that the second exam was necessary because their expert is a psychiatrist and would be opining on “different areas” than IDOC’s expert psychologist—specifically the standards of medical care provided to Plaintiff and Plaintiff’s need for sex reassignment surgery. *Id.* ¶ 6.

Counsel for Corizon Defendants agreed to provide Plaintiff, on Thursday, August 2, a draft stipulation containing the proposed parameters of their requested Rule 35 exam and the issues that their expert, Dr. Garvey, anticipated covering that were distinct from those covered by IDOC Defendants’ expert, Dr. Andrade. *Id.* ¶ 7. In its e-mail containing the draft stipulation, counsel for Corizon repeated its position that IDOC and Corizon are “separate defendants,” that Corizon Defendants are “entitled to their own expert who can conduct her own clinical interview,” and that “Corizon defendant’s expert is a psychiatrist, not a clinician, as with IDOC’s expert. They are different professions.” *Id.* ¶ 8.

Upon review of the proposed stipulation and in an effort to reach a resolution, on Friday, August 3, Plaintiff’s counsel responded: “We will agree to your expert conducting a recorded Rule 35 exam of our client, so long as the exam is limited to the areas necessary for your expert’s medical opinions, which you stated are: the medical standards of care and whether Ms. Edmo’s treatment meets those standards, as well as the appropriate medical treatment and care for Ms. Edmo, including whether sex reassignment surgery is medically necessary.” *Id.* ¶ 9.

Despite their previous contention that the second exam was necessary because of Dr. Garvey’s intent to offer different opinions based on her particular area of expertise, Corizon Defendants responded that the scope of the exam would not be limited in any way, stating: “The proposed stip is completely within the scope of our expert’s profession and reasonable *Id.* ¶ 10. Plaintiff’s counsel made an additional effort to meet and confer regarding the scope of Dr.

Garvey's exam over the weekend, but received no response. *Id.* ¶ 11. Instead, Corizon Defendants filed their motion on Monday, August 5. ECF No. 89.

Defendants have now represented to the Court that Corizon and IDOC Defendants in fact "worked together" to retain experts in this matter. *Id.* ¶ 12. Corizon Defendants' assertion that they were not required to coordinate a joint Rule 35 exam or otherwise minimize Defendants' intrusion on Plaintiff is disingenuous, and suggests that Defendants' approach is an attempt to avoid this Court's requirement of "a strong showing as to why a second interview, or separate reports by separate testifying experts" is necessary. *BSA*, 2017 U.S. Dist. LEXIS 155750, at *4 (D. Idaho Sept. 22, 2017). Nonetheless, Plaintiff has repeatedly made clear to Defendants in the meet and confer process that Plaintiff does not object to a second exam in toto, but, rather, seeks to limit the second exam to a reasonable scope that does not duplicate the first exam.

III. ARGUMENT

Fed. R. Civ. P. 35(a) requires a showing of "good cause" for a court order that "a party . . . submit to a physical or mental examination by suitably licensed examiner." Fed. R. Civ. P. 35(a). "[E]ven if the moving party [meets the Rule 35(a) criteria], it is still within the sound discretion of the trial court to determine whether to order the examination." *Storlie v. State Farm Mut. Auto. Ins. Co.*, 2010 U.S. Dist. LEXIS 97837, at *11 (D. Nev. Aug. 25, 2010).

Although Rule 35(a) does not itself limit the number of examinations allowed, the "number of examinations ordered should be held to the minimum necessary considering the party's right to privacy and the need for the court to have accurate information." *Terrell v. Harder Mech. Contrs., Inc.*, 2011 U.S. Dist. LEXIS 44861, at *6 (N.D. Cal. Apr. 19, 2011) (quoting *Shirsat v. Mutual Pharm. Co., Inc.*, 169 F.R.D. 68, 72 (E.D. Penn. 1996)). "The requesting party must meet a stronger showing of necessity before the court will order a second exam." *Alhozbur v. McHugh*, 2010 U.S. Dist. LEXIS 80271, at *3 (N.D. Cal. July 13, 2010); *see also BSA*, 2017 U.S. Dist. LEXIS 155750, at *5 (finding that two separate Rule 35 exams were not warranted based on the facts of the case). Consistent with this principle, courts permit multiple Rule 35 exams only in limited circumstances, such as where a significant amount of

time has elapsed since the first examination, if there is reason to believe that the plaintiff's condition has changed since the first examination, or if testing was not completed during the first examination. *See, e.g., Alhozbur v. McHugh*, 2010 U.S. Dist. LEXIS 80271, at *4-5 (N.D. Cal. July 13, 2010); *Edson v. Liberty Mut. Ins. Co.*, 2002 U.S. Dist. LEXIS 25258, at *3 (N.D. Cal. Oct. 4, 2002).

A. Defendants Have Not Made the Stronger Showing of Necessity Required for a Second Rule 35 Exam

None of the circumstances courts have found to support multiple separate Rule 35 exams are present here. *See, e.g., Alhozbur*, 2010 U.S. Dist. LEXIS 80271, at *4-5; *Edson*, 2002 U.S. Dist. LEXIS 25258, at *3. Indeed, Corizon Defendants set the exam date for ten days after the first Rule 35 exam, and have provided no evidence that Plaintiff's condition has changed.

Corizon Defendants have not made the requisite showing of necessity as to why, after purposefully remaining silent on this issue for weeks, even while IDOC Defendants' Rule 35 motion was before the Court, they are entitled to a second clinical interview. Moreover, Corizon Defendants admit that Dr. Garvey's exam will duplicate in some respects the clinical interview recently completed by Defendants' shared expert Dr. Andrade. Shanbhag Decl. ¶ 6. While Plaintiff recognizes that Defendants are entitled to rebut Plaintiff's expert opinions, the scope of the proposed second Rule 35 exam must relate only to any issues necessary for Dr. Garvey to rebut Plaintiff's expert testimony that were not previously covered by Dr. Andrade.

This Court's reasoning in *Does v. BSA*, 2017 U.S. Dist. LEXIS 155750 (D. Idaho Sept. 22, 2017) is instructive. There, this Court rejected the defendants' proposal to conduct two separate Rule 35 exams of the two plaintiffs in the case. Although this Court recognized that defendants were entitled to rebut the plaintiffs' reports, and acknowledged that the defendants "provided evidence that the substance of their proposed interviews will not substantially overlap," this Court concluded that the defendants failed to "[make] a strong showing as to why a second interview, or separate reports by separate testifying experts, are necessary to rebut Plaintiffs' expert testimony." *Id.* at *4. In this case, Corizon Defendants' only argument for

why a second exam is necessary is that Dr. Garvey, as a psychiatrist, will opine on different areas than Dr. Andrade, a psychologist. But Defendants refuse to agree to any limitation on the scope of Dr. Garvey's exam where it would be duplicative of Dr. Andrade's exam. This Court has recognized that separate exams by two separate mental health professionals are not automatically warranted. *See id.* Plaintiff seeks to reduce the invasiveness and burden of Defendants' exams by appropriately limiting the scope of Dr. Garvey's exam to matters not covered by Dr. Andrade. Defendants have not shown good cause for rejecting such limitation as to scope, especially given that Dr. Garvey has access to the audio recording of Dr. Andrade's exam.

District courts have rejected the proposition that "every defendant in a multi-defendant case is automatically entitled to a separate mental exam" under Fed. R. Civ. P. 35. *Terrell v. Harder Mech. Contrs., Inc.*, 2011 U.S. Dist. LEXIS 44861, at *11 (N.D. Cal. Apr. 19, 2011). In *Terrell*, the court denied a defendant's demand for an additional Rule 35 exam made after the court had granted two other defendants' joint request for an exam. The court reasoned that an additional exam would be "untenable and inconsistent with the principle of proportionality in discovery" under Fed. R. Civ. P. 26. *Id.* at *12. After "[b]alancing the burden of a second mental exam on Plaintiff with Defendant Harder's need for information with which it may defend itself, and taking into account the principle that a stronger showing of necessity is required before the Court may order a second Rule 35 exam," the court concluded there was no good cause to order the additional Rule 35 exam. *Id.* Instead, the court ordered the parties to provide the defendant's expert with the audio recording of the previously ordered Rule 35 exam, the experts' reports, and other related information. *Id.* at *13. The court denied the request without prejudice and stated that the defendant could later move for an additional exam if, after reviewing the other experts' materials, it made a "particularized showing" of prejudice if not afforded the opportunity to conduct its own exam. *Id.* at *13-14.

Terrell is similar to this case in several respects. Both cases involve multiple defendants seeking a Rule 35 examination of the plaintiff, and both involve a defendant's request for a

separate Rule 35 exam made after the conclusion of proceedings on another defendant's request for a Rule 35 exam. Thus, the Court's conclusion in *Terrell* is likewise instructive here. Medical professionals routinely rely upon examinations and reports of other medical professionals in forming their own opinions, and Corizon Defendants have advanced no legitimate reason why Dr. Garvey cannot use the audio recording from Dr. Andrade's prior exam on the issues for which Corizon Defendants admit their exams will overlap. If Corizon Defendants contend it is not appropriate for Dr. Garvey to rely on the audio recording, they should be required to state with particularity, based on Dr. Garvey's review of the recording, why it is insufficient and will result in prejudice to Defendants.

Lastly, none of the cases cited by Corizon Defendants to support their argument that they are entitled to a duplicative Rule 35 examination are persuasive, because none of those cases involved a request for a second Rule 35 exam. *See Gavin v. Hilton Worldwide Inc.*, 291 F.R.D. 161 (N.D. Cal. 2013); *Letcher v. Rapid City Regional Hosp., Inc.*, 2010 U.S. Dist. LEXIS 46959 (D.S.D. May 12, 2010); *Franco v. Boston Scientific Corp.*, 2006 U.S. Dist. LEXIS 81425 (N.D. Cal. Oct. 27, 2006). Given the facts of the instant case, a second Rule 35 exam should be limited to particular areas distinct from those covered by Defendants' shared expert's first exam in order to minimize the intrusion to Plaintiff. Defendants have made no showing that they are entitled to a second opportunity to examine Plaintiff in full, particularly after they deliberately delayed informing Plaintiff and the Court of their intent to conduct a second exam.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of August, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle. com

J. Kevin West
kwest@parsonsbehle. com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm. net

Attorney for IDOC Defendants

/s/ - Shaleen Shanbhag
Shaleen Shanbhag

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Attorneys for Plaintiff

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

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION;
HENRY ATENCIO, in his official capacity;
JEFF ZMUDA, in his official capacity;
HOWARD KEITH YORDY, in his official
and individual capacities; CORIZON, INC.;
SCOTT ELIASON; MURRAY YOUNG;
RICHARD CRAIG; RONA SIEGERT;
CATHERINE WHINNERY; and DOES 1-15;

Defendants.

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

**DECLARATION OF SHALEEN SHANBHAG
AND EXHIBIT IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO CORIZON
DEFENDANTS' MOTION FOR RULE 35
EXAMINATION**

Complaint Filed: April 6, 2017
Discovery Cut-Off: August 31, 2018
Motion Cut-Off: None Set
Trial Date: None Set

DECLARATION OF SHALEEN SHANBHAG

I, Shaleen Shanbhag, hereby declare and state:

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

2. On July 5, 2018, counsel for Plaintiff Adree Edmo, counsel for IDOC Defendants, and counsel for Corizon Defendants met and conferred telephonically regarding depositions and other discovery issues. On this call, counsel for IDOC Defendants communicated their request for an examination of Plaintiff pursuant to Fed. R. Civ. P. 35. Over the next several weeks, the parties met and conferred regarding IDOC Defendants' proposed Rule 35 exam, particularly regarding Plaintiff's request that a representative attend the exam. Counsel for Corizon Defendants were part of the July 5 call, as well as most of the subsequent communications.

3. On July 24, 2018, IDOC Defendants filed a motion for a Rule 35 exam of Plaintiff. ECF No. 78. Following IDOC Defendants' motion and further meet and confer, Plaintiff stipulated to a proposed order regarding the Rule 35 exam. The exam would be conducted by Dr. Andrade, Ph.D, LICSW, CCHP-MH on July 31, 2018, last no longer than three hours, and would be audio recorded and monitored by a non-attorney representative of Plaintiff's choice.

4. On July 27, 2018 at 10:45 a.m. PST, Plaintiff's counsel received notice that the Court had entered an Order granting the parties' stipulation for IDOC Defendants' Rule 35 examination of Plaintiff. At 11:11 a.m. PST, twenty-six minutes later, Plaintiff's counsel received an email from Dylan Eaton, counsel for Corizon Defendants, requesting a clinical interview of Plaintiff by Corizon's expert psychiatrist on August 10, 2018 without the presence of any representative for Plaintiff. At no point prior had counsel for Corizon Defendants

informed Plaintiff's counsel of their intention to conduct a Rule 35 exam.

5. Plaintiff's counsel objected to the second Rule 35 exam, stating: "It is not clear to us why Defendants could not have worked together to conduct one joint IME and Corizon never suggested during the meet and confer process that it would be conducting its own IME. Nor did Corizon make any objections to the conditions for the IME requested by IDOC or stipulated to by IDOC and Plaintiff."

6. After several e-mail exchanges, the parties met and conferred telephonically on Wednesday, August 1, 2018. Counsel for IDOC Defendants also participated in the discussion. Mr. Eaton maintained that Corizon Defendants were not required to coordinate with IDOC Defendants, and stated that the second exam was necessary because their expert, Dr. Garvey, is a psychiatrist and would be opining on "different areas" than IDOC's expert psychologist Dr. Andrade, such as the standards of medical care provided to Plaintiff and Plaintiff's need for sex reassignment surgery. Mr. Eaton admitted that Dr. Garvey's exam would likely duplicate in some respects the clinical interview recently completed by Dr. Andrade. Plaintiff's counsel made clear that they would not object to the Rule 35 exam, but were concerned about the invasiveness of duplicative exams and sought to ensure that the scope of the second exam was appropriate.

7. Mr. Eaton agreed to provide, by noon on Thursday, August 2, a draft stipulation containing the proposed parameters of their requested Rule 35 exam and the issues that Dr. Garvey anticipated covering that were distinct from those covered by Dr. Andrade. Plaintiff's counsel agreed to review the materials and provide Plaintiff's position by the end of the week

8. Mr. Eaton provided Plaintiff's counsel the agreed-upon materials at 2:08 p.m. PST on August 2. His e-mail stated that IDOC and Corizon were "separate defendants," that Corizon Defendants are "entitled to their own expert who can conduct her own clinical interview," and that "Corizon defendant's expert is a psychiatrist, not a clinician, as with IDOC's expert. They are different professions."

9. Upon review of the proposed stipulation and in an effort to reach a resolution, on

Friday, August 3, I responded to Mr. Eaton: “We will agree to your expert conducting a recorded Rule 35 exam of our client, so long as the exam is limited to the areas necessary for your expert’s medical opinions, which you stated are: the medical standards of care and whether Ms. Edmo’s treatment meets those standards, as well as the appropriate medical treatment and care for Ms. Edmo, including whether sex reassignment surgery is medically necessary.”

10. Later that day, Mr. Eaton responded that the scope of the Rule 35 exam would not be limited in any way. He stated: “The proposed stip is completely within the scope of our expert’s profession and reasonable.”

11. On August 5, 2018, I made an additional effort to meet and confer regarding the scope of Dr. Garvey’s exam, but received no response from Mr. Eaton.

12. On August 7, 2018, Marisa Crecelius, counsel for IDOC Defendants, sent an e-mail advising that IDOC Defendants were joining in Corizon Defendants’ motion for a Rule 35 exam. Her e-mail stated that both defendants had “worked together to retain experts to respond to Plaintiff’s separate expert opinions.” Attached hereto as **Exhibit A** is a true and correct copy of Ms. Crecelius’s e-mail.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed August 8, 2018 in Pasadena, California.

/s/ - Shaleen Shanbhag
Shaleen Shanbhag

Exhibit A

From: Marisa Crecelius
To: ["Dylan A. Eaton"](#); [Shaleen Shanbhag](#); [Dave Metcalf@id.uscourts.gov](mailto:Dave_Metcalf@id.uscourts.gov); awhelan@nclrights.org; chd@fergusondurham.com; [Dan Stormer](#); [Lori Rifkin; daf@fergusondurham.com](mailto:Lori_Rifkin_daf@fergusondurham.com); jwilensky@nclrights.org; [J. Kevin West](#); [Brady Hall](#); christine_england@usdoj.gov; [Lauri A. Ehredt](#)
Subject: RE: Edmo v Corizon -- Emergency Motion
Date: Tuesday, August 7, 2018 12:28:07 PM
Attachments: [image006.png](#)
[image001.png](#)

Mr. Metcalf:

The IDOC Defendants join in Corizon's emergency Motion for Rule 35 exam. In light of the mediation conference, we will submit our comments to you here via email. Regarding the time for the mediation, counsel for IDOC Defendants is available this afternoon until 3:15 pm, tomorrow at 2 pm, and Thursday morning.

Despite previous objections, it no longer appears that Plaintiff objects to a second Rule 35 exam. The time, place, manner, and conditions of the exam are not at issue here. Rather, Plaintiff attempts to limit and restrict Dr. Garvey's opinions through the Rule 35 process, which is improper.

Plaintiff has retained two experts – a psychologist and a psychiatrist – who have each interviewed the Plaintiff on separate occasions and provided opinions to this Court in the form of declarations and Rule 26 expert reports. In light of the expedited nature of the hearing on Plaintiff's Motion and to promote efficiency and save costs, the Defendants have worked together to retain experts to respond to Plaintiff's separate expert opinions, which form the basis for Plaintiff's Motion. In so doing, IDOC Defendants have retained a clinician, who conducted a clinical interview of the Plaintiff, and Corizon Defendants have retained a psychiatrist, Dr. Garvey. Those experts have separate and distinct professions, as do the Plaintiff's experts, who conducted different exams and relied on those separate examinations to form their opinions. The Corizon Defendants are asking for the same opportunity provided to Plaintiff's psychiatrist to be afforded to Dr. Garvey.

The IDOC Defendants have an interest in the outcome of the Corizon Defendants' emergency Motion, as the IDOC Defendants have not retained their own psychiatrist. Similarly, the Corizon Defendants did not retain a clinician or psychologist. To disallow or to limit the Rule 35 exam by Dr. Garvey would impede all the Defendants' ability to defend this case, particularly in light of the Plaintiff's substantial reliance upon each of her experts' opinions in support of her Motion.

For those reasons and the reasons set forth in Corizon's emergency motion, there is good cause for the Rule 35 examination of the Plaintiff by Corizon's retained psychiatrist, as set forth in the proposed Stipulation circulated by Corizon's counsel last week.

Thank you,

Marisa Crecelius

Marisa S. Crecelius



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From: Dylan A. Eaton [mailto:DEaton@parsonsbehle.com]

Sent: Tuesday, August 07, 2018 12:36 PM

To: Shaleen Shanbhag; Dave_Metcalf@id.uscourts.gov; awhelan@nclrights.org; chd@fergusondurham.com; Dan Stormer; Lori Rifkin; daf@fergusondurham.com; jwilensky@nclrights.org; J. Kevin West; Brady Hall; Marisa Crecelius; christine.england@usdoj.gov; Lauri A. Ehredt

Subject: RE: Edmo v Corizon -- Emergency Motion

I just received an email notice that the attorneys at Hadsell Stormer & Renick may not have received my email I just sent. So, I'm resending ...

I am surprised that none of Plaintiff's many attorneys are available tomorrow. However, I'm available anytime today as well, if that is workable with the court. I am also available on Thursday, but then obviously have issues with my expert having booked flights on Thursday.

Dylan

From: Shaleen Shanbhag <sshahbhag@hadsellstormer.com>

Sent: Tuesday, August 7, 2018 12:15 PM

To: Dylan A. Eaton <deaton@parsonsbehle.com>; Dave_Metcalf@id.uscourts.gov; awhelan@nclrights.org; chd@fergusondurham.com; Dan Stormer <dstormer@hadsellstormer.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; daf@fergusondurham.com; jwilensky@nclrights.org; J. Kevin West <KWest@parsonsbehle.com>; brady@melawfirm.net; marisa@melawfirm.net; christine.england@usdoj.gov

Subject: RE: Edmo v Corizon -- Emergency Motion

Mr. Metcalf,

Thank you. Plaintiff's counsel is only available on Thursday, August 9 (at 10am or later).

Shaleen Shanbhag
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From: Dylan A. Eaton <DEaton@parsonsbehle.com>

Sent: Tuesday, August 7, 2018 10:11 AM

To: Dave_Metcalf@id.uscourts.gov; awhelan@nclrights.org; chd@fergusondurham.com; Dan Stormer <dstormer@hadsellstormer.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; Shaleen Shanbhag <sshahbhag@hadsellstormer.com>; daf@fergusondurham.com; jwilensky@nclrights.org; J. Kevin West

<KWest@parsonsbehle.com>; brady@melawfirm.net; marisa@melawfirm.net; christine.england@usdoj.gov

Subject: RE: Edmo v Corizon -- Emergency Motion

Thank you. I can be available anytime on August 8th.

Our expert has flights on Thursday, August 9, to come to Boise for the IME. So, I'd appreciate it if we could address this the day before.

Regards,
Dylan



A Professional
Law Corporation

Dylan A. Eaton • Attorney at Law
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From: Dave_Metcalf@id.uscourts.gov <Dave_Metcalf@id.uscourts.gov>

Sent: Tuesday, August 7, 2018 10:15 AM

To: awhelan@nclrights.org; chd@fergusondurham.com; dstormer@hadsellstormer.com; lrifkin@hadsellstormer.com; sshanbhag@hadsellstormer.com; daf@fergusondurham.com; fwilensky@nclrights.org; Dylan A. Eaton <deaton@parsonsbehle.com>; J. Kevin West <KWest@parsonsbehle.com>; brady@melawfirm.net; marisa@melawfirm.net; christine.england@usdoj.gov

Subject: Edmo v Corizon -- Emergency Motion

Counsel

Judge Winmill has asked that I mediate the dispute over defendant's emergency motion concerning the IME of plaintiff. Because of the emergency nature of the motion, a quick mediation conference will need to be held. Please respond as to which of the following times is best:

1. Wednesday Aug 8 at 2 pm (or later that day)
2. Thursday Aug 9 at 10 am (or later that day)

Because Corizon has already submitted a brief, plaintiff may respond (by email) as to their position prior to the mediation session. Defendant Corizon will set up the conference call - a call-in number is fine. Let me know which time works best.

Note: Jeff Severson is the law clerk assigned to this case but he is unavailable this week.

Dave Metcalf



Judge Winmill Law Clerk
U.S. Courts, District of Idaho
dave_metcalf@id.uscourts.gov
(208) 334-9025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of August, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle. com

J. Kevin West
kwest@parsonsbehle. com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm. net

Attorney for IDOC Defendants

/s/ - Shaleen Shanbhag
Shaleen Shanbhag