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STATE OF IDAHO

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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,)	Case No. 1:17-cv-151-BLW
)	
Plaintiff,)	MOTION FOR PROTECTIVE ORDER
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.)	
_____)	

COME NOW Defendants, Idaho Department of Corrections, Josh Tewalt, Bree Derrick, and Al Ramirez, by and through undersigned counsel of record, Moore, Elia & Kraft, LLP, and

hereby move this Court for a protective order with regard to two discovery requests that were served upon these Defendants and the State of Idaho on November 18, 2022. This motion is made pursuant to Federal Rule of Civil Procedure 26 and supported by the *Memorandum in Support of Motion for Protective Order*, filed contemporaneously herewith.

DATED This 16th day of December, 2022.

MOORE, ELIA & KRAFT, LLP

By: /s/ Steven R. Kraft
Steven R. Kraft

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December, 2022, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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Attorneys for Plaintiff

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FERGUSON DURHAM, PLLC
Attorneys for Plaintiff

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*Attorneys for Defendants Corizon, LLC, Dr.
Scott Eliason, Dr. Murray Young and Dr.
Catherine Whinnery*

/s/ Ann McNeese
Ann McNeese

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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,)	Case No. 1:17-cv-151-BLW
)	
Plaintiff,)	MEMORANDUM IN SUPPORT OF
vs.)	MOTION FOR PROTECTIVE ORDER
)	
IDAHO DEPARTMENT OF)	
CORRECTION; HENRY ATENCIO, in)	
his official capacity; JEFF ZMUDA, in)	
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capacities; CORIZON, INC.; SCOTT)	
ELIASON; MURRAY YOUNG;)	
RICHARD CRAIG; RONA SIEGERT;)	
CATHERINE WHINNERY; AND)	
DOES 1-15;)	
)	
Defendants.)	
_____)	

COME NOW Defendants, Idaho Department of Corrections, Josh Tewalt, Bree Derrick, and Al Ramirez, by and through undersigned counsel of record, Moore, Elia & Kraft, LLP, and

hereby submit this *Memorandum in Support of Motion for Protective Order* as follows.

BACKGROUND

On November 18, 2022, Plaintiff served *Plaintiff's Interrogatories to Defendant Idaho Department of Corrections; Fed. R. Civ. P. 69, Set 1* and *Plaintiff's Interrogatories to The State of Idaho; Fed. R. Civ. P. 69, Set One* (collectively "Rule 69 Discovery") to the state of Idaho and the Idaho Department of Corrections (collectively "IDOC Defendants") seeking information and documents including the IDOC Defendants' bank accounts, legislative appropriation amounts, identities and descriptions of "each and every account used to pay" IDOC and state of Idaho employees, descriptions of all real property held by the IDOC Defendants, and all property leased by any IDOC Defendant. Thomas Decl. ¶¶ 3-4. The parties in this case are set for mediation on January 12, 2023. Plaintiff's counsel has expressed an unwillingness to consider postponing, delaying, or withdrawing discovery at this time. *Id.*, ¶ 5.

LEGAL STANDARD

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending. Fed. R. Civ. P. 26. . The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. *Id.* The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: A) forbidding the disclosure or discovery B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; (C) prescribing a discovery method other than the one selected by the party seeking discovery. *Id.* "For good cause to exist, the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted." *Phillips ex rel. Estates of*

Byrd v. General Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002).

ARGUMENT

The Court should issue a protective order forbidding Plaintiff from engaging in Rule 69 discovery efforts against any of the IDOC Defendants at this time. Principally, the parties have agreed to mediate this case, and the discovery sought represents an unnecessary burden and expense on the IDOC Defendants. The subject judgment for attorney's fees is on appeal and the parties have an upcoming opportunity to settle the issue of attorney's fees, at which point discovery would be unnecessary and all costs expended prior to that time would be in waste. As the IDOC Defendants intend to mediate in good faith and with the intention of seeking a resolution to the issue of attorney's fees, there is a substantial risk that allowing discovery at this time creates a risk of particularized harm to the IDOC Defendants and there is, therefore, good cause to issue a protective order at *least* until the conclusion of mediation, which is currently scheduled to take place on January 12, 2023.

On the other hand, Plaintiff has no particularized risk of harm for numerous reasons. Principally, Plaintiff's interests are not implicated by the judgment on appeal because she will not receive any attorney's fees, regardless of the outcome. To the extent that Plaintiff's attorneys argue that there is a need for discovery against the IDOC Defendants or the state of Idaho, such argument is presented to justify discovery efforts that are, in reality, unnecessary, burdensome, and harassing. Plaintiff's counsel has made no showing that the IDOC Defendants or the state of Idaho would be financially incapable of satisfying any ultimate judgment for attorney's fees, nor have Plaintiff's attorney's made any showing that the IDOC Defendants or the state of Idaho would refuse to obey a judgment of this Court subject to all available appellate remedies.

Plaintiff's counsel has no need to identify and/or locate bank accounts and other assets that

belong to the state of Idaho because there is no indication that the state of Idaho is either insolvent or would refuse to follow the Court's order. As such, Plaintiff's recent Rule 69 discovery serves no valid purpose and provides Plaintiff's counsel with no information that they will need in order to pursue their efforts to execute on the Judgment. Notably, Plaintiff's counsel has already begun efforts to execute against the state of Idaho, and was able to do so without the discovery at issue in this motion. Plaintiff's efforts to execute are the subject of a currently-pending motion to stay, but Plaintiff's counsel's efforts to execute against the IDOC Defendants illustrates, clearly, that Plaintiff's counsel has no need for the discovery sought.

The undue, overbroad, burdensome, harassing, and unnecessary nature of the discovery requests is patently apparent. Not only does Plaintiff's counsel not *need* an inventory of all real properties owned by the state of Idaho, providing such a catalogue of information in response to any such interrogatory request would be a tremendous undertaking. Likewise, Plaintiff's counsel has no need for the identity or description of each and every "account" in which the state of Idaho has funds or has previously paid employees. Plaintiff's counsel can make no argument that the state of Idaho has "hidden away" its funds such that Plaintiff's counsel needs to employ discovery in order to locate funding sufficient to satisfy *whatever* judgment or award Plaintiff's counsel ultimately obtains. The state of Idaho is plainly solvent, and the IDOC Defendants should be protected from Plaintiff's expansive and unnecessary request for discovery at this time.

CONCLUSION

For each of the foregoing reasons, Defendants respectfully request that the Court grant the IDOC Defendants' request for a protective order staying discovery until after such time as mediation has occurred with regard to the issue of attorneys' fees.

DATED This 16th day of December, 2022.

MOORE, ELIA & KRAFT, LLP

By: /s/ Steven R. Kraft
Steven R. Kraft

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December, 2022, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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PARSONS, BEHLE & LATIMER
*Attorneys for Defendants Corizon, LLC, Dr.
Scott Eliason, Dr. Murray Young and Dr.
Catherine Whinnery*

/s/ Ann McNeese
Ann McNeese

1. I am licensed to practice law in the state of Idaho and have personal knowledge of the matters set forth herein.
2. I am a member of the law firm of Moore, Elia & Kraft, LLP and am one of the attorneys of record in this lawsuit.
3. Attached hereto as Exhibit A is a true and correct copy of *Plaintiff's Interrogatories to the State of Idaho; Fed. R. Civ. P. 69, Set One*, which my office received on November 18, 2022 pursuant to Rule 69 of the Federal Rules of Civil Procedure.
4. Attached hereto as Exhibit B is a true and correct copy of *Plaintiff's Interrogatories to Defendant Idaho Department of Corrections; Fed. R. Civ. P. 69, Set One*, which my office received on November 18, 2022 pursuant to Rule 69 of the Federal Rules of Civil Procedure.
5. Plaintiff's counsel has indicated that they are not willing to postpone or otherwise delay discovery at this time.

DATED This 16th day of December, 2022.

MOORE, ELIA & KRAFT, LLP

By: /s/ Peter E. Thomas
Peter E. Thomas

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PARSONS, BEHLE & LATIMER
*Attorneys for Defendants Corizon, LLC, Dr.
Scott Eliason, Dr. Murray Young and Dr.
Catherine Whinnery*

/s/ Ann McNeese
Ann McNeese

EXHIBIT A

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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;
JOSH TEWALT, in his official capacity;
BREE DERRICK, in her official capacity; AL
RAMIREZ, in his official capacity; HOWARD
KEITH YORDY, in his individual capacity;
CORIZON, LLC; SCOTT ELIASON;
MURRAY CRAIG; RONA SIEGERT;
CATHERINE WHINNERY; and DOES 1-15;
Defendants.

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

**PLAINTIFF'S INTERROGATORIES TO
THE STATE OF IDAHO; FED. R. CIV. P. 69,
SET ONE**

PROPOUNDING PARTY: PLAINTIFF Adree Edmo

RESPONDING PARTY: State of Idaho

FRCP 69 SET NUMBER: ONE

Pursuant to Rules 26, 33, and 69 of the Federal Rules of Civil Procedure, Plaintiff Adree Edmo hereby requests that the State of Idaho serve responses, under oath, to the following interrogatories. Responding party shall answer each interrogatory separately pursuant to Federal Rule of Civil Procedure 33(b). These interrogatories shall be answered as of the date on which the responses are served, and must be supplemented as required pursuant to Federal Rule of Civil Procedure 26.

I. GENERAL INSTRUCTIONS

All interrogatories shall be deemed to be addressed to the specified defendant, and defendant's responses thereto shall reflect the cumulative and collective knowledge of that defendant, including defendant's businesses, servants, agents, employees, and attorneys and all persons acting on its or their behalf or under its or their control.

II. DEFINITIONS

1. The terms "RESPONDING PARTY," "YOU," or "YOUR" refer to, without limitation, the State of Idaho and all officers, representatives, employees, agents, consultants, attorneys, and any other person(s) acting or purporting to act on the State of Idaho's behalf.

2. "Any" and "All," as used herein, shall include "each" and "every" and are not to be construed to limit a request.

3. In interpreting these requests, any masculine, feminine or neutral term includes all other genders; the singular includes the plural and vice versa; the words "or," "and" and "and/or," shall be read in the conjunctive and in the disjunctive whenever they appear, and shall be read to bring within the scope of request the broadest amount of information.

4. If these Interrogatories cannot be responded to in full, YOU shall respond to the extent possible, specify the reason for YOUR inability to respond to the remainder, and state

whatever information or knowledge YOU have regarding the portion to which YOU have not responded.

III. INTERROGATORIES

INTERROGATORY NO. 1:

Identify each and every State Depository designated pursuant to IC 67-2737 and 67-2739, including name and location of financial institution, account name, account number, and current balance and/or value held by the financial institution on YOUR behalf.

INTERROGATORY NO. 2:

Identify each and every account or location holding funds of the State of Idaho's treasury including name and location of bank or account holder or other physical location where such funds are held, account name, account number, current balance and/or value, and person authorized to disperse such funds.

INTERROGATORY NO. 3:

Identify each and every bank account holding funds that are used or may be used by YOU or are distributed or may be distributed to YOU, including name and location of bank, account name, account number, and current balance.

INTERROGATORY NO. 4:

Identify each and every account used to pay salaries of YOUR employees in 2022, including name and location of bank or account holder, account name, account number, and current balance.

INTERROGATORY NO. 5:

Identify any and all real property owned by YOU or in which YOU have an ownership interest, including physical address, name of listed owner(s), and known or estimated current value.

//

INTERROGATORY NO. 6:

Identify any and all real property leased or rented by or to YOU or on YOUR behalf, including physical address, amount paid per month and/or year, and the landlord, owner, and/or entity to whom such amount is paid.

Dated: November 18, 2022

Respectfully Submitted,

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

By: /s/ Lori Rifkin

Lori Rifkin
Attorneys for Plaintiff

PROOF OF SERVICE

I am employed in the county of Alameda, State of California. I am over the age of 18 and not a party to the within action; my business address is 3630 High St., #18917, Oakland, CA 94619.

On November 18, 2022, I served the foregoing document described as:

PLAINTIFF’S INTERROGATORIES TO THE STATE OF IDAHO; FED. R. CIV. P. 69, SET ONE

on the interested parties in this cause as follows:

Steven R. Kraft Special Deputy Attorney General Moore Elia Kraft & Hall, LLP Post Office Box 6756 Boise, Idaho 83707 Telephone: (208) 336-6900 Facsimile: (208) 336-7031 Emails: steve@melawfirm.net	Attorneys for Defendants IDAHO DEPARTMENT OF CORRECTION; JOSH TEWALT, in his official capacity; BREE DERRICK, in her official capacity; AL RAMIREZ, in his official capacity; HOWARD KEITH YORDY, in his individual capacity.
J. Kevin West, Esq. Dylan A. Eaton, Esq. Parsons, Behle & Latimer 800 W. Main Street, Suite 1300 Boise, Idaho 83702 Telephone: (208) 562-4900 Facsimile: (208) 562-4901 Email: DEaton@parsonsbehle.com KWest@parsonsbehle.com	Attorneys for Defendants CORIZON, LLC; SCOTT ELIASON; MURRAY CRAIG; RONA SIEGERT; CATHERINE WHINNERY

XX ELECTRONIC MAIL

XX I served the above-mentioned document electronically on the parties listed at the e-mail addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary

Executed on November 18, 2022 at Oakland, California.

XX (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the serve was made.

/s/ Lori Rifkin

 Lori Rifkin
 Declarant

EXHIBIT B

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Shaleen Shanbhag, Esq. (CA # 301047)
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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;
JOSH TEWALT, in his official capacity;
BREE DERRICK, in her official capacity; AL
RAMIREZ, in his official capacity; HOWARD
KEITH YORDY, in his individual capacity;
CORIZON, LLC; SCOTT ELIASON;
MURRAY CRAIG; RONA SIEGERT;
CATHERINE WHINNERY; and DOES 1-15;
Defendants.

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

**PLAINTIFF'S INTERROGATORIES TO
DEFENDANT IDAHO DEPARTMENT OF
CORRECTIONS; FED. R. CIV. P. 69, SET
ONE**

PROPOUNDING PARTY: PLAINTIFF Adree Edmo
RESPONDING PARTY: DEFENDANT Idaho Department of Corrections
FRCP 69 SET NUMBER: ONE

Pursuant to Rules 26, 33, and 69 of the Federal Rules of Civil Procedure, Plaintiff Adree Edmo hereby requests that Defendant Idaho Department of Corrections serve responses, under oath, to the following interrogatories. Defendant shall answer each interrogatory separately pursuant to Federal Rule of Civil Procedure 33(b). These interrogatories shall be answered as of the date on which the responses are served, and must be supplemented as required pursuant to Federal Rule of Civil Procedure 26.

I. GENERAL INSTRUCTIONS

All interrogatories shall be deemed to be addressed to the specified defendant, and defendant's responses thereto shall reflect the cumulative and collective knowledge of that defendant, including defendant's businesses, servants, agents, employees, and attorneys and all persons acting on its or their behalf or under its or their control.

II. DEFINITIONS

1. The terms "RESPONDING PARTY," "YOU," or "YOUR" refer to, without limitation, Defendant Idaho Department of Corrections and all officers, representatives, employees, agents, consultants, attorneys, and any other person(s) acting or purporting to act on the Department's behalf.

2. "Any" and "All," as used herein, shall include "each" and "every" and are not to be construed to limit a request.

3. In interpreting these requests, any masculine, feminine or neutral term includes all other genders; the singular includes the plural and vice versa; the words "or," "and" and "and/or," shall be read in the conjunctive and in the disjunctive whenever they appear, and shall be read to bring within the scope of request the broadest amount of information.

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Identify each and every bank account holding funds that are used or may be used by YOU or are distributed or may be distributed to YOU, including name and location of bank, account name, account number, and current balance.

INTERROGATORY NO. 2:

Identify each and every account used to pay salaries of YOUR employees in 2022, including name and location of bank or account holder, account name, account number, and current balance.

INTERROGATORY NO. 3:

Identify each and every account or location holding funds appropriated to YOU by the Idaho Legislature for the years 2022-2023, including but not limited to those funds referenced in the appropriation bill described at: <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2022/legislation/S1420SOP.pdf>, including name and location of bank or account holder or other physical location where such funds are held, account name, account number, and current balance.

INTERROGATORY NO. 4:

Identify any and all real property owned by YOU or in which YOU have an ownership interest, including physical address, name of listed owner(s), and known or estimated current value.

INTERROGATORY NO. 5:

Identify any and all real property leased or rented by or to YOU or on YOUR behalf,

including physical address, amount paid per month and/or year, and the landlord, owner, and/or entity to whom such amount is paid.

Dated: November 18, 2022

Respectfully Submitted,

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

By: /s/ Lori Rifkin

Lori Rifkin

Attorneys for Plaintiff

PROOF OF SERVICE

I am employed in the county of Alameda, State of California. I am over the age of 18 and not a party to the within action; my business address is 3630 High St., #18917, Oakland, CA 94619.

On November 18, 2022, I served the foregoing document described as:
PLAINTIFF’S INTERROGATORIES TO DEFENDANT IDAHO DEPARTMENT OF CORRECTIONS; FED. R. CIV. P. 69, SET ONE
 on the interested parties in this cause as follows:

Steven R. Kraft Special Deputy Attorney General Moore Elia Kraft & Hall, LLP Post Office Box 6756 Boise, Idaho 83707 Telephone: (208) 336-6900 Facsimile: (208) 336-7031 Emails: steve@melawfirm.net	Attorneys for Defendants IDAHO DEPARTMENT OF CORRECTION; JOSH TEWALT, in his official capacity; BREE DERRICK, in her official capacity; AL RAMIREZ, in his official capacity; HOWARD KEITH YORDY, in his individual capacity.
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Executed on November 18, 2022 at Oakland, California.

XX (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the serve was made.

/s/ Lori Rifkin

 Lori Rifkin
 Declarant