

6.1, hereby respectfully move this Court for an Order finding good cause and extending the deadline set forth in the *Memorandum Decision and Order* (Dkt. 345) by fourteen (14) days.

The grounds upon which this motion is based are set forth in the *Memorandum of Support of the IDOC Defendants' Motion for Extension of Time* and the *Declaration of Counsel Peter Thomas*.

DATED This 26th day of January, 2023.

MOORE, ELIA & KRAFT, LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2023, 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 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

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) **MEMORANDUM IN SUPPORT OF**
) **MOTION FOR EXTENSION**

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BACKGROUND

On September 30, 2022, the Court issued its *Memorandum Decision and Order* (Dkt. 323), which awarded Plaintiff \$2,586,048.80 in attorneys' fees. Defendants timely appealed that award

of attorneys' fees, challenging the amount of fees awarded. See Dkt. 327. Subsequently, the parties engaged in settlement negotiations, but were unsuccessful in reaching settlement. On November 29, 2022, the parties attended a mediation conference with the Ninth Circuit Court of Appeals, in which all parties indicated that they would be willing to mediate towards a settlement of the judgment and award of attorney's fees at issue on appeal. Declaration of Peter E Thomas, ¶ 4 (Dkt. 338-1). Although mediation was scheduled for January 12, 2023, Plaintiff's counsel made efforts to execute upon the judgment beginning in late November, 2022. See Dkt. 338-2, PP. 2-3. Accordingly, Defendants moved to stay Plaintiff's counsel's efforts to execute upon the judgment at least until such time as mediation was complete. See Dkts. 338, 338-1 & 338-2. On December 16, 2022, the Court entered a *Memorandum Decision and Order* (Dkt. 345) staying efforts to execute upon the judgment. Dkt. 345, PP. 20-21. Specifically, the Court's order provided that "the stay shall automatically terminate upon the conclusion of mediation" and "within fourteen days after the stay lifts, Defendants shall pay the fees and costs...or post a supersedeas bond." *Id.*

The parties mediated unsuccessfully on January 12, 2023, and the IDOC Defendants thereafter made substantial efforts towards resolving this lawsuit. Second Declaration of Peter E Thomas, ¶ 2. Those efforts included communications with the various individuals and parties that comprise the IDOC Defendants, and also involved communication with counsel for Corizon. *Id.* P. 3. Regardless, the IDOC Defendants believe there are outstanding issues that still need to be addressed in order to develop an adequate litigation strategy and assess whether the IDOC Defendants are capable of complying with the *Memorandum Decision and Order*, Dkt. 345. *Id.*, P. 5. As relevant: pursuant to Article IV, Section 18 of the Idaho Constitution, and Idaho Code Sections 67-1023 and 67-2002, no claim against the state shall be paid until it is examined and passed upon by the Board of Examiners. As such, the IDOC Defendants are not aware of a process by which the state of Idaho would, practically speaking, be able to satisfy the subject judgment or process any such claim for funds until such claim

has been presented to the Board of Examiners. In other words, the IDOC Defendants cannot necessarily produce funding merely in response to a Court's order without first engaging in the administrative processes required to do so, in light of the time required to engage in those administrative processes.

LEGAL STANDARD

Federal Rule of Civil Procedure 6(b)(1) provides the procedure for a party seeking an extension of time:

(b) Extending Time.

- (1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:
 - (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
 - (B) on motion made after the time has expired if the party failed to act because of excusable neglect.
- (2) Exceptions. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

Fed. R. Civ. P. 6. Similarly, Dist. Local Rule Civ. 6.1 states that a request for time extension will be granted only upon a showing of good cause.

Federal Rule of Civil Procedure 6 “[is] to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258–59 (9th Cir. 2010) (quoting *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir.1983)). Furthermore, pursuant to Rule 1 of the Federal Rules of Civil Procedure, all Federal Rules should be “construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” As a result, requests for extensions of time made before the expiration of the applicable deadline should “normally ... be granted in the absence of bad faith on the part of

the party seeking relief or prejudice to the adverse party.” 4B Fed. Prac. & Proc. Civ. § 1165 (4th ed. 2008). “Good cause” is a non-rigorous standard that has been construed broadly across procedural and statutory contexts. *Ahanchian*, 624 F.3d at 1259.

ARGUMENT

There is good cause in this case to provide Defendants a brief extension of time to comply with the deadline set in the *Memorandum Decision and Order* (Dkt. 345). The judgment in question involves a significant amount of money and there are numerous individuals involved in the decision-making process for the IDOC Defendants. Since becoming aware that mediation was unsuccessful approximately fourteen days ago, all such individuals have made good faith efforts to determine the proper course of litigation and develop an appropriate litigation strategy. However, in light of various procedural and administrative complexities, the IDOC Defendants now seek a brief extension from the Court in order to ensure that they are adequately able to address all such concerns. Notably, the IDOC Defendants are concerned that they would not, in any event, be able to comply with the Court’s order because of the administrative process that must occur before the state of Idaho is capable of issuing any litigation payments, a process that involves claim review by a board of examiners and which is not designed to issue litigation payments *sua sponte*. Further, Corizon has indemnified the IDOC Defendants with regard to attorneys’ fees and costs in this lawsuit, meaning that attempts to develop litigation strategy occurred in coordination with numerous individuals representing the state of Idaho *and* numerous individuals on Corizon’s part, complicating efforts to determine how best to resolve this lawsuit.

As such, there is good cause to provide Defendants a fourteen (14) day extension of time with regard to the deadline set in the *Memorandum Decision and Order*, Dkt. 345. Doing so will not prejudice Plaintiff, who does not stand to recover any of the judgment at issue, but such an

extension will allow the IDOC Defendants, who have put significant efforts into this lawsuit, to ensure that they can adequately address their concerns in the context of the present complexities. Further, IDOC Defendants are limited in its authority or ability to “pay the fees and costs awarded to Plaintiff” absent action taken by the Board of Examiners to examine such claim and pass upon it as required under Article IV, Section 18 of the Idaho Constitution and Idaho Code Sections 67-1023 and 67-2002..

CONCLUSION

For each of the foregoing reasons, the IDOC Defendants respectfully request that this Court grant the *Motion for Extension* as set forth above.

DATED This 26th day of January, 2023.

MOORE, ELIA & KRAFT, LLP

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

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

ADREE EDMO,)	Case No. 1:17-cv-151-BLW
)	
Plaintiff,)	SECOND DECLARATION OF PETER E.
vs.)	THOMAS
)	
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.)	
_____)	

I, Peter E. Thomas, declares and states as follows:

1. After unsuccessfully mediating the issue of attorneys' fees on January 12, 2023, my office, in conjunction with my clients, made substantial efforts towards resolving the remaining issues in this lawsuit.
2. Those efforts included both internal communications between the various IDOC and state of Idaho parties and individuals and also communications with counsel for Corizon who, in turn, communicated with the various individuals and parties making up the Corizon Defendants.
3. Despite these substantial efforts, there remain outstanding issues that need to be addressed in order to adequately develop a litigation strategy and/or assess the ability of the IDOC Defendants to comply with the court's *Memorandum Decision and Order*, Dkt. 345.

DATED This 26th day of January, 2023.

MOORE, ELIA & KRAFT, LLP

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

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