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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE 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.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**DEFENDANTS' JOINT MOTION TO
STAY**

Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery, by and through their counsel of record, Parsons Behle & Latimer, and the Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert, by and through their counsel of record, Moore Elia Kraft & Hall, LLP, hereby move this Court to issue an order staying the litigation before the district court on all of Plaintiff's claims in this case.

This Motion is supported by a Memorandum in support filed contemporaneously herewith and the record before the court.

DATED this 30th day of September, 2019.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton
Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

DATED this 30th day of September, 2019.

MOORE ELIA KRAFT & HALL, LLP

By: /s/ Brady J. Hall
Brady J. Hall
Counsel for Defendants Idaho Department of
Correction, Henry Atencio, Jeff Zmuda, Howard
Keith Yordy, Richard Craig, and Rona Siegert

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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Defendants.

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NO. 1:17-cv-151-BLW

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' JOINT MOTION TO
STAY**

COME NOW, Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery, by and through their counsel of record, Parsons Behle & Latimer, and the Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert, by and through their counsel of record, Moore Elia Kraft & Hall, LLP (collectively referred to as “Defendants”), hereby file this Memorandum in Support of their Motion to Stay.

I. INTRODUCTION

The Court should stay the litigation in this matter pending the resolution of Defendants’ appeal of the Court’s December 13, 2018 Order. First, the Court does not have jurisdiction over the claims in this case because all of Ms. Edmo’s claims are inextricably intertwined with the issues raised by Defendants on appeal. Second, even if the Court did have jurisdiction over any of Ms. Edmo’s claims, the Court should exercise its discretion and stay the litigation. The Court has already adjudicated Ms. Edmo’s claims for injunctive relief, and she will suffer no harm if the Court issues a stay. Moreover, a stay will further judicial economy because the resolution of the issues on appeal will simplify and clarify the remaining litigation in this Court.¹ Thus, the Court should issue stay.

II. BACKGROUND AND PROCEDURAL POSTURE

This case is in a unique and complex procedural posture. In the operative complaint, Ms. Edmo listed six claims for relief: 1) failure to provide necessary medical treatment under the Eighth Amendment; 2) discrimination based on sex in violation of the Fourteenth Amendment; 3) discrimination based on diagnosis of gender dysphoria in violation of the Fourteenth Amendment;

¹ Moreover, granting a stay under the circumstances is also consistent Rule 1 of the Federal Rules of Civil Procedure – *i.e.*, “to secure the just, speedy, and inexpensive determination of every action and proceeding.” Proceeding forward with litigation and discovery under the circumstances and without a final mandate renders it likely that the parties will be forced to incur unnecessary expenses and additional delay to the full and final resolution of this dispute.

4) discrimination based on diagnosis of gender dysphoria in violation of the Americans with Disabilities Act (“ADA”); 5) discrimination based on sex in violation of the Affordable Care Act (“ACA”); and 6) negligence under Idaho state law. (Third Amended Complaint, ECF No. 172 at 14-22). Each of these claims is primarily based on Ms. Edmo’s allegation that Defendants have failed to provide medically-necessary treatment for her gender dysphoria. (*Id.* ¶¶ 61, 70, 83-84, 91, 99, and 102).

Ms. Edmo filed a Motion for Preliminary Injunction, arguing that she was likely to succeed on her Eighth Amendment claim, her Fourteenth Amendment claim based on sex discrimination, and her ACA claim. (ECF No. 62 at 10-16). Asserting that Defendants failed to provide appropriate medical treatment for Ms. Edmo’s gender dysphoria (“GD”), Ms. Edmo requested that the Court enter an injunction ordering Defendants to provide necessary medical treatment for her GD, including gender confirmation surgery (“GCS”) and access to gender-appropriate items. (*Id.* at 20).

Eventually, the Court partially granted and partially denied Ms. Edmo’s request for an injunction. (ECF No. 149 at 45). The Court held that Defendants had not provided Ms. Edmo with necessary medical treatment, in violation of the Eighth Amendment. (*Id.* at 41). Consequently, the Court ordered Defendants “to provide Plaintiff with adequate medical care, including gender confirmation surgery.”(*Id.* at 45). However, the Court denied Ms. Edmo’s request for an injunction based on her Fourteenth Amendment and ACA claims. (*Id.* at 44-45). In addition, the Court denied as moot Ms. Edmo’s request related to accessing gender-appropriate items. (*Id.* at 45). While Ms. Edmo’s motion was pending, the Idaho Department of Correction had implemented a new gender dysphoria policy, which unrelatedly mooted the relief Ms. Edmo had requested from the Court. (*Id.*). Defendants appealed the Court’s Order, and the Ninth Circuit stayed the injunction.

Meanwhile, believing that the Court had entered only a preliminary injunction and that the Court's findings did not have any preclusive effect, the parties continued to litigate Ms. Edmo's claims.

On appeal, a three-judge panel of the Ninth Circuit affirmed in part and vacated in part the injunction. The panel held that the Court did not err in determining that Ms. Edmo was not provided necessary medical treatment and that Ms. Edmo had succeed on the merits of her Eighth Amendment claim against Dr. Eliason. *Edmo v. Corizon, Inc.*, No. 19-35017, 2019 WL 3978329, at *20-30 (9th Cir. Aug. 23, 2019). However, the panel concluded that Ms. Edmo had "not established the liability" of Defendants Yordy, Siegert, Dr. Young, Dr. Craig, and Dr. Whinnery. *Id.* at 32. In addition, the court remanded with instructions to exclude Corizon from the injunction. *Id.* According to the panel, the Court had properly converted the hearing to a final trial on the merits of Ms. Edmo's claims for injunctive relief, and Defendants "waived [their] right to a jury trial with respect to issues common to Edmo's request for an injunction ordering GCS and her legal claims" by failing to object. *Id.* at 35.

Defendants filed a Petition for Rehearing En Banc. *Edmo v. Corizon, Inc.*, Nos. 19-35017 and 19-35019, Dkt. 99. Defendants contend that converting the hearing to a final trial on the merits violated their rights to a jury trial and that the Court failed to provide the requisite clear and unambiguous notice. *Id.* at 3-12. In addition, Defendants argue that the treatment they provided to Ms. Edmo was medically acceptable. *Id.* at 12-19. Defendants' Petition is pending before the Ninth Circuit, and the injunction remains stayed while the Petition is pending. No mandate from the Ninth Circuit has issued to date.

III. ARGUMENT

The Court should issue a stay of this case pending resolution of Defendants' appeal. First, the Court must stay litigation regarding any issue that is "inextricably intertwined" with Defendants' appeal because the Court lacks subject matter jurisdiction over those issues. Second,

the Court should stay the litigation because it will not cause any harm to Ms. Edmo and a stay will promote judicial economy.

A. The Court Lacks Jurisdiction Over Ms. Edmo's Claims

“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982); *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001). Regarding an interlocutory appeal of a permanent injunction, the jurisdiction of the court of appeals “extends to all matters ‘inextricably bound up’ with the order from which appeal is taken, including the merits of the case.” *TransWorld Airlines, Inc. v. Am. Coupon Exch., Inc.*, 913 F.2d 676, 680 (9th Cir. 1990) (quoting *Marathon Oil Co. v. United States*, 807 F.2d 759, 764 (9th Cir. 1986)). Because the court of appeals has jurisdiction over those issues, the district court does not. *Griggs*, 459 U.S. at 58.

In considering an interlocutory appeal of a permanent injunction, the Ninth Circuit has jurisdiction over at least 1) any claim for which injunctive relief was requested, whether granted or denied, 2) any underlying determination regarding liability, and 3) any factual or legal determinations involved in granting the injunction or determining liability, including determinations regarding affirmative defenses. *TransWorld Airlines, Inc.*, 913 F.2d at 680. The court also has jurisdiction over claims for which the plaintiff requests merely damages (and not injunctive relief) to the extent those damage claims involve “virtually” the same allegations as the claims for injunctive relief. *Id.* at 681. Such related claims for damages are “inextricably bound up” with the issues on appeal because they involve common questions of law and fact. *Id.* Thus, the scope of the Ninth Circuit’s jurisdiction is quite broad when considering a permanent injunction on interlocutory appeal.

Here, the Court does not have jurisdiction over the claims on which Ms. Edmo moved for injunctive relief. Those claims include at least Ms. Edmo's claims under the Eighth Amendment, the Fourteenth Amendment based on sex discrimination, and the ACA.² Defendants' generally appealed the issuance of the injunction based on Ms. Edmo's Eighth Amendment claim. However, one of the primary issues on appeal is whether the Court properly converted the hearing to a trial on the merits of Ms. Edmo's claims for injunctive relief. The ultimate answer to that legal question will determine whether the Court conclusively adjudicated liability regarding all of those claims litigated at the hearing or whether those claims are still "live" and must be heard by a jury. Thus, the Court does not have jurisdiction over those claims at this time

Similarly, the Court does not have jurisdiction over Ms. Edmo's other claims because they are inextricably intertwined with the issues on appeal. Indeed, as mentioned above, as a part of her motion for preliminary injunction, Ms. Edmo broadly sought all medically necessary care for her Gender Dysphoria. Moreover, each of Ms. Edmo's other claims is based primarily on her allegation that her treatment was not medically acceptable. (ECF No. 172 ¶¶ 61, 70, 83-84, 91, 99, and 102). In its Order, the Court decided that issue in Ms. Edmo's favor and granted her injunctive relief by not only ordering Defendants to provide Gender Confirmation Surgery to Ms. Edmo, but also ordering all adequate medical care be provided to her. Defendants have challenged that determination on appeal. Consequently, the Court does not have jurisdiction to determine whether Ms. Edmo's treatment was medically acceptable in any regard,³ and any claim involving that issue

² It appears that Ms. Edmo also moved for an injunction on her Fourteenth Amendment claim based on her diagnosis of gender dysphoria. However, that issue does not need to be resolved at this point, because the Court does not have jurisdiction over that claim in any event.

³ As noted, it is disputed on appeal whether the Court properly converted the hearing to a trial on the merits, granted a permanent injunction, and thereby gave its factual findings preclusive effect. If the Court had only ordered a preliminary injunction, then its factual findings would not be binding on a subsequent jury and the Court would have jurisdiction to continue to litigate Ms.

(which is all of them) is inextricably intertwined with Defendants' appeal. Thus, the Court does not have jurisdiction over Ms. Edmo's other claims, which all primarily involve allegations that Ms. Edmo's treatment was inadequate.

In sum, the Court does not have jurisdiction to adjudicate any of Ms. Edmo's claims. The Court does not have jurisdiction over the claims at issue at the hearing because those claims are directly at issue on appeal. In addition, the Court does not have jurisdiction over Ms. Edmo's other claims, including the ADA and state negligence claims, because they all directly relate to Ms. Edmo's claim that she has not received appropriate medical treatment, which is directly at issue on appeal. Consequently, the Court does not have jurisdiction over Ms. Edmo's claims, and the Court should stay all litigation.

B. The Court Should Exercise Its Discretion and Issue a Stay.

Even if the Court does have jurisdiction over some of Ms. Edmo's claims, the Court should grant a stay. "A district court has discretionary power to stay proceedings in its own court." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). In deciding whether to stay litigation pending appeal, the district court must weigh "the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay."⁴ *CMAX, Inc.*

Edmo's claims while the preliminary injunction appeal was pending. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits."). That was Defendants view until the panel of the Ninth Circuit held that the hearing was converted to a trial on the merits. This issue and the issue of whether there is preclusive effect from the final trial on the merits is on appeal and the parties cannot reasonably conduct discovery until they know these parameters.

⁴ "The likelihood of success on the merits [on appeal] is not an independent factor." *Kuang v. United States Dep't of Def.*, No. 18-CV-03698-JST, 2019 WL 1597495, at *6 (N.D. Cal. Apr. 15, 2019).

v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). In this case, Ms. Edmo will not suffer any harm if the Court issues a stay and a stay would promote the orderly course of justice. Thus, the Court should grant a stay.

Ms. Edmo will not be harmed by a stay. When a plaintiff seeks only damages, “[d]elay of [plaintiff]’s suit would result, at worst, in a delay in [plaintiff]’s monetary recovery, with possible (though by no means certain) loss of prejudgment interest.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005). In contrast, if a plaintiff “seeks injunctive relief against ongoing and future harm,” then the plaintiff will suffer damage from a stay. *Id.* at 1112. Here, a stay would not delay any injunctive relief. The Court has already granted Ms. Edmo injunctive relief, but that injunction is stayed pending appeal.⁵ In addition, the Court found that Ms. Edmo’s other claims for injunctive relief were effectively moot because IDOC’s new gender dysphoria policy provided Ms. Edmo the relief she was seeking. Consequently, the only harm Ms. Edmo might possibly suffer is a delay in any monetary recovery. That type of harm is not sufficient to defeat a request for a stay. *Id.*

Importantly, a stay will promote the orderly course of justice. A stay will promote the orderly course of justice if it will simplify “issues, proof, and questions of law.” *CMAX*, 300 F.2d at 268. “Considerations of judicial economy are highly relevant in determining whether the orderly course of justice weighs in favor of a stay.” *Apple Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2016 WL 9021536, at *2 (N.D. Cal. Mar. 22, 2016) (quotation marks and alteration omitted). In particular, a stay is appropriate if the court would be “forced to address the . . . claims in

⁵ On September 26, 2019, Ms. Edmo filed a motion to partially lift the stay entered by the Ninth Circuit Court of Appeals, requesting that the stay be partially “lifted for Ms. Edmo regarding all presurgical treatments and any related corollary appointments or consultations necessary for gender confirmation surgery.” *Edmo v. Corizon*, 19-35017, Dkt.Entry: 101-1.

piecemeal fashion [because it] may have to wait until the issue on appeal is resolved before deciding the final relief, if any.” *Manriquez v. DeVos*, No. 17-CV-07210-SK, 2018 WL 5316174, at *3 (N.D. Cal. Aug. 30, 2018). Further, a stay is appropriate if the “discovery issues that remain might be different if the Court addresses the case as a whole rather than only addressing in part.” *Id.* Consequently, a stay is appropriate when “an interlocutory appeal contains issues that may dispose of the case or significantly reshape the merits” even if the appeal does not involve all of the plaintiff’s claims. *Kuang v. United States Dep’t of Def.*, No. 18-CV-03698-JST, 2019 WL 1597495, at *6 (N.D. Cal. Apr. 15, 2019).

These factors all apply in favor of granting a stay in this case. The ultimate resolution of Defendants’ appeal will determine whether the Court properly converted the hearing to a trial on the merits and, consequently, which of Ms. Edmo’s claims remain to be adjudicated. Thus, a stay will allow the court to avoid addressing Ms. Edmo’s claims in a piecemeal fashion. In addition, because it is uncertain which of Ms. Edmo’s claims are still left to be adjudicated, the scope of permissible discovery is also uncertain. Moreover, the ultimate resolution of Defendants’ appeal will also significantly reshape the merits of Ms. Edmo’s claims because the appeal involves issues that are common to all of Ms. Edmo’s claims, primarily the propriety of her treatment.

This case is already in a confusing procedural posture. Pushing forward with litigation without receiving the final word regarding Defendants’ appeal will increase the confusion, unnecessarily increase litigation costs for the parties, and waste judicial resources. In addition, a stay will not harm Ms. Edmo. Thus, the Court should grant a stay.

IV. CONCLUSION

First, the Court should stay the litigation in this case because all of Ms. Edmo's claims are inextricably intertwined with the issues on appeal. Second, even if the Court does have jurisdiction over some of Ms. Edmo's claim, the Court should exercise its discretion and grant a stay. A stay will promote judicial economy and will not harm Ms. Edmo.

DATED this 30th day of September, 2019.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton
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Counsel for Defendants Corizon Inc.,
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Catherine Whinnery

DATED this 30th day of September, 2019.

MOORE ELIA KRAFT & HALL, LLP

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