

J. Kevin West (ISB No. 3337)
KWest@parsonsbehle.com
Dylan A. Eaton (ISB No. 7686)
DEaton@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901
(Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery)

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
Special Deputy Attorney General
brady@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031
(Counsel for Defendants Idaho Department of Correction, Henry Atencio, Al Ramirez, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert)

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; AL RAMIREZ, in his
official capacity; HOWARD KEITH
YORDY; 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

**REPLY 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, Al Ramirez, Richard Craig, and Rona Siegert, by and through their counsel of record, Moore Elia Kraft & Hall, LLP (collectively referred to as “Defendants”), and file this Reply in Support of their Motion to Stay.

I. INTRODUCTION

The Court should stay the litigation in this matter for two independent reasons. First, the Court does not have jurisdiction over the claims in this case—all of Ms. Edmo’s claims are inextricably intertwined with the issues raised by Defendants on appeal. Second, the Court should exercise its discretion and stay the litigation. Ms. Edmo will not suffer any harm if the Court issues a stay because the Court has already adjudicated Ms. Edmo’s claims for injunctive relief. 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. Ms. Edmo’s arguments to the contrary are unavailing. Thus, the Court should issue stay.

II. ARGUMENT

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). This “divestiture rule was created to prevent two courts from simultaneously considering the same issues in, or aspects of, a case.” *United States v. Powell*, 24 F.3d 28, 31 (9th Cir. 1994). Thus, if the court of appeals has jurisdiction over a particular issue in a case, then the district court does not have jurisdiction over that issue. *Griggs*, 459 U.S. at 58.

When considering 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)). Consequently, the Court of Appeals 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.*

Ms. Edmo does not dispute that the Court lacks jurisdiction over all of the claims on which Ms. Edmo moved for expedited relief. *See* Response (ECF No. 223) at 8-9. However, Ms. Edmo argues that the Court retains jurisdiction over Ms. Edmo’s other claims for relief. She asserts that the “inextricably intertwined” standard discussed in *TransWorld Airlines, Inc.* “relates to an *appellate court’s* jurisdiction,” not the jurisdiction of the district court. *Id.* at 4. Ms. Edmo further argues that, even if the “inextricably intertwined” standard applies, the Court still has jurisdiction over Ms. Edmo’s other claims. *See* Response (ECF No. 223) at 9 n.4. Ms. Edmo is wrong on both counts.

The district court should apply the “inextricably intertwined” standard to determine what matters are properly before the district court and what matters are on appeal. The divestiture rule

prevents a district court from exercising jurisdiction simultaneously with the court of appeals. In other words, where the court of appeals has jurisdiction, the district court does not. Thus, as numerous other courts have done, the appropriate inquiry is to determine the extent of the court of appeal's jurisdiction by applying the "inextricably intertwined" standard. *Ellington v. House*, No. 217CV07587SVWJDE, 2018 WL 6133690, at *1 (C.D. Cal. Oct. 18, 2018); *In re Williams Sports Rentals, Inc.*, No. 217CV00653JAMEFB, 2017 WL 4923337, at *1 (E.D. Cal. Oct. 31, 2017); *Does v. Univ. of Washington*, No. C16-1212JLR, 2016 WL 8738683, at *1 (W.D. Wash. Dec. 16, 2016); *Morgan Stanley & Co., LLC v. Couch*, No. 1:15-CV-1291-LJO-JLT, 2015 WL 7271717, at *4 (E.D. Cal. Nov. 17, 2015); *Dietzmann v. City of Homer*, No. 3:09-CV-00019-RJB, 2010 WL 11570196, at *2 (D. Alaska Dec. 23, 2010); *Ariav v. Mesch, Clark & Rothschild, P.C.*, No. CV 03-464-TUC-MHM, 2005 WL 3008616, at *1 (D. Ariz. Nov. 8, 2005).

Ms. Edmo's other claims are inextricably intertwined with the issues on appeal. Ms. Edmo's other claims are based primarily on her allegation that her treatment was not medically acceptable. (ECF No. 172 ¶¶ 61, 70, 83-84, 91, 99, and 102). However, whether Ms. Edmo's treatment was medically acceptable is an issue directly on appeal because it was "a necessary predicate to the entry of the injunction." *TransWorld Airlines, Inc.*, 913 F.2d at 680.

Citing a case from the Northern District of California, Ms. Edmo claims that "mere factual overlap between issues does not demonstrate that those issues are 'inextricably bound' to each other." *See* Response (ECF No. 223) at 9 n.4. That may very well be true, but it does not matter here because this case does not involve "mere factual overlap." Rather, whether Ms. Edmo received medically appropriate treatment was a "necessary predicate" to the Court issuing the injunction. Whether Ms. Edmo's treatment was medically acceptable is also the primary issue on which each of her other claims rest. Even the case cited by Ms. Edmo recognizes that the Court

does not have jurisdiction to oversee litigation related to that issue: “predicate issues that are necessary to resolution of an injunction are ‘inextricably bound up with’ an interlocutory appeal and thus removed from the district court’s jurisdiction during the appeal.” *Apple, Inc. v. Samsung Elecs. Co.*, No. 12-CV-00630-LHK, 2014 WL 6687122, at *6 (N.D. Cal. Nov. 25, 2014). Therefore, the Court does not have jurisdiction to adjudicate Ms. Edmo’s other claims.¹

B. Even if the Court has Jurisdiction, the Court Should Exercise Its Discretion and Issue 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.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

Ms. Edmo concedes that a stay will promote the orderly course of justice, but she argues that she will suffer harm because the memory of some witnesses may fade. *See* Response (ECF No. 223) at 9-11. As a result, Ms. Edmo agrees that the Court should grant a stay but requests that the Court create a carveout to allow Ms. Edmo to take the depositions of five specific individuals.² *Id.* However, Ms. Edmo fails to grapple with the fact that the scope of permissible discovery, including the scope of the proposed depositions, depends on the outcome of Defendants’ appeal.

¹ Ms. Edmo argues that she will be able to proceed on her other claims for relief regardless of the outcome of Defendants’ appeal. However, even if some aspects of Ms. Edmo’s other claims are not inextricably intertwined with the issues on appeal, the Court should avoid engaging in piecemeal litigation regarding Ms. Edmo’s other claims.

² Ms. Edmo also requests an order requiring Defendants to periodically provide updates to Ms. Edmo’s custody and medical records and preserve all evidence moving forward, regardless of Defendants’ retention policy. Defendants have voluntarily agreed to these requests.

Because the resolution of Defendants' appeal will greatly shape the remaining litigation in this case, including the scope of discovery, the Court should grant a stay.

Other courts have granted stays under similar circumstances. "Given that the potential risk of lost evidence is the sole purported harm from a stay, this factor weighs only slightly against a stay." *Arris Enterprises LLC v. Sony Corp.*, No. 17-CV-02669-BLF, 2017 WL 3283937, at *3 (N.D. Cal. Aug. 1, 2017). In contrast, "[w]ithout a stay, the parties would have to conduct multiple depositions of the same witnesses because of their ability to speak only to the non-overlapping [claims] while the overlapping [claims] are stayed." *Id.*

Any determination from the Circuit, one way or the other, will go far in streamlining the case. If the Ninth Circuit overturns this Court's ruling, the landscape of this case will be altered dramatically and the ruling will significantly modify the course of this litigation. If the Ninth Circuit upholds the injunction, that too will streamline the case as the 'central issues' will have been largely resolved in [Plaintiff]'s favor and against the defendants When the Court weighs these considerations against *potential* loss of memory or evidence -- the *only* prejudice raised by [Plaintiff] -- a stay is warranted.

Herbalife Int'l of Am. Inc. v. Ford, No. CV072529GAFFMOX, 2008 WL 11491587, at *2 (C.D. Cal. Mar. 12, 2008) (emphasis in original). The Court should similarly grant a stay in this case.

Additionally, Plaintiff has waived the right to assert an argument that they need to depose the remaining individual defendants because they are concerned about memories fading. Indeed, Plaintiff had full and complete opportunity to depose other individual defendants last summer when this Court allowed about 4 months of discovery leading up to what the Courts have now construed as a final trial on the merits. Plaintiff's concern about individual memories fading does not hold water since they did not show that concern a year ago and made no attempt to take these individual Defendants' depositions then. Moreover, Plaintiff did not show any urgency and concern to take these individual Defendants depositions last year in this case even though it had already been over two years since Dr. Eliason's assessment of Plaintiff at issue (and longer since

some of the Defendants' involvement with respect to Ms. Edmo) and over one year since the original complaint had been filed.

Finally, as a practical matter, if the depositions of some of the other individual Defendants are allowed to go forward, there will likely be a lot of objections and issues that arise during those depositions since the Courts have taken the position to date that the October 2018 hearing was a final trial on the merits. Given these holdings by the Courts, Defendants will contend that there are many issues and facts that cannot be addressed in the depositions since the Courts have indicated this was a final trial on the merits. It simply makes no sense to have depositions on issues that were already fully adjudicated.³ Accordingly, this Court should stay the underlying district court litigation, and not allow the depositions requested by Plaintiff, until the appeals in this case have been exhausted.⁴

III. 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 did have jurisdiction over some of Ms. Edmo's claims, the Court should exercise its discretion and grant a stay. A stay will promote judicial economy and outweighs any potential harm to Ms. Edmo.

DATED this 4th day of November, 2019.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

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

³ Defendants still contend and do not waive their arguments in this case, including on appeal, that the October 2018 hearing was not a final trial on the merits.

⁴ To the extent the Court allows discovery to continue in this case, Defendants reserve the right to proceed with discovery on their end as well. There is at least one important deposition Defendants have been holding off on at this point as well. Defendants are content to continue to hold off on their discovery pending a resolution of the appeals in this case. But, they do not want the discovery, if allowed, to be one sided.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of November, 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:

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

Amy Whelan
Julie Wilensky
Alexander Chen
National Center for Lesbian Rights
awhelan@nclrights.org
jwilensky@nclrights.org
AChen@nclrights.org
(Counsel for Plaintiff)

Brady J. Hall
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
marisa@melawfirm.net
(Counsel for Defendants Idaho Department of Correction, Henry Atencio, Al Ramirez, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert)

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

Lori E. Rifkin
RIFKIN LAW OFFICE
lrifkin@rifkinlawoffice.com
(Counsel for Plaintiff)

By: */s/ Dylan A. Eaton*

Dylan A. Eaton