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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

**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.

The parties appear to generally agree on the governing law. Whether to grant a stay in this case is a matter of discretion. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). In exercising its discretion, the Court must weigh “the competing interests which will be affected by the granting or refusal to grant a stay,” including whether the stay will harm the opposing party and whether the stay will promote judicial economy. *Id.*

Defendants have argued that a stay will promote judicial economy and there is no indication of harm to Ms. Edmo beyond general concerns that witnesses’ memories might fade during the stay. (*See* Dkt. 272-1 at 6–7.) In response, Ms. Edmo argues that the memories of four witnesses (Defendants Craig, Whinnery, and Young and former Deputy Director of IDOC Jeff Zmuda) might fade. (*See* Dkt. 274 at 6–7.) According to Ms. Edmo, these witnesses’ memories might fade more quickly than usual because they no longer work in the IDOC system. (*Id.*) Defendants do not wish to rehash these arguments in full again. But Ms. Edmo’s argument is speculative—there is no indication that these witnesses are forgetful or that the events in question were so inconsequential that they might not remember what occurred. And, as previously indicated, a general concern about fading memories is insufficient to overcome the need for a stay. *Herbalife Int’l of Am. Inc. v. Ford*, No. CV072529GAFFMOX, 2008 WL 11491587, at *2 (C.D. Cal. Mar. 12, 2008). Thus, the Court should grant a stay.

Additionally, Defendants note that staying the depositions of these four witnesses is also appropriate based on the current health crisis related to COVID-19.¹ Ms. Edmo indicates that at least two of these witnesses no longer reside in Idaho—Young now works in New Mexico and Zmuda works in Kansas. (Dkt. 274 at 7.) Additionally, Dr. Whinnery currently lives in Salt Lake City, but also spends some time in Ketchum, Idaho, which like the entire State of Idaho, is currently under a stay in place order due to COVID-19. Moreover, Defendants’ counsel understands that Plaintiff’s counsel works in San Francisco, California, which is currently under shut down and stay in place orders. Thus, deposing these witnesses would require out of state travel and could endanger the health of counsel, the witnesses, and the public.²

In summary, Ms. Edmo has failed to show that she will be harmed by a stay. There is no indication that the witnesses Ms. Edmo wants to depose will become unavailable. Instead, Ms. Edmo can only offer the speculative argument that the witnesses’ memories will fade more quickly because they have changed jobs. And Ms. Edmo does not explain why these depositions are now so important to conduct relatively quickly but were not needed before the hearing on Plaintiff’s Motion for Preliminary Injunction in 2018. Accordingly, Defendants ask the Court to follow its inclination at the last status conference and grant Defendants’ Motion to Stay all underlying litigation, including the four depositions Ms. Edmo requests. Waiting to hear from the Supreme Court will provide guidance to the Court and parties as to the scope of discovery. Moreover, the

¹ Defendants recognize that this issue was not raised in their initial memorandum filed on March 2, 2020. However, circumstances have changed drastically since that time and cannot go unmentioned. Additionally, only hours prior to the filing of this brief, the Governor of the State of Idaho declared an extreme emergency related to the COVID-19 pandemic and issued a statewide stay-home order effective for at least the next 21 days.

² Video depositions are also difficult, if not impossible, to arrange right now due to shutdowns and stay in place orders in many communities and meetings with deponents before the depositions is also complicated.

recent health crisis related to COVID-19 also justifies a stay. Coordinating travel and schedules would be difficult and could jeopardize the health of those involved and the community. Thus, the Court should grant a stay.

DATED this 25th day of March, 2020.

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 25th day of March, 2020.

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 25th day of March, 2020, 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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