Fill in this information to identify the case:

Debtor 1 Tehum Care Services, Inc.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: Southern District of Texas

Case number 23-90086

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Adree Edmo
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Adree Edmo c/o ME Heard, Attorney PLLC
Name

100 NE Loop 410, Suite 605
Number Street

San Antonio TX 78216
City State ZIP Code

Contact phone (210) 572-4925

Contact email _____

Where should payments to the creditor be sent? (if different)

Rifkin Law Office Client Trust Fund
Name

3630 High St, #18917
Number Street

Oakland CA 94619
City State ZIP Code

Contact phone (510) 414-4132

Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

23900862308140000000000075

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☐ No
☑ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 3 2 4 2

7. **How much is the claim?** $ 2,794,019.58 . **Does this amount include interest or other charges?**
☐ No
☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

1983 Judgment and Fee Judgment

9. **Is all or part of the claim secured?**
☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____
Amount of the claim that is secured: $_____
Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%
☐ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

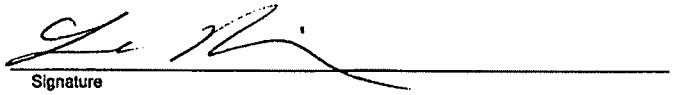
☐ I am the creditor.
☑ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08 / 14 / 23
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name: Lori Rifkin
First name | Middle name | Last name

Title: Attorney

Company: Rifkin Law Office PC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 3630 High St., #18917
Number Street

Oakland | CA | 94619
City | State | ZIP Code

Contact phone: (510) 414-4132 Email: _____

In RE: Tehum Care Services, Inc.

Case No. 23-90086

Debtor: Tehum Care Services, Inc.

Claimant: Adree Edmo

Claim Amount: $2,794,019.58

Basis for Claim: 1983 Judgment and Fee Judgment

ADDENDUM TO PROOF OF CLAIM

Creditor has the following claims against Debtor:	
Original Judgment awarded September 30, 2022	$2,631,593.00
Post-Judgment interest pursuant to 28 U.S.C. §1961	
(4.08% interest rate of $294.16 per diem)	$40,005.98
Total Judgment Amounts	$2,671,598.98
Additional fees added to claim:	
Fees incurred since 12/14/2021	$61,204.80
Fee multiplier awarded in September 30, 2022 Judgment	x 2
- See Exhibit B Pages 33-34 "Conclusion on Lodestar Enhancement"	
Additional Costs	$11.00
Total Additional Fees	$122,420.60
Total Claim:	**$2,794,019.58**

ATTACHMENT TO PROOF OF CLAIM

1. On April 6, 2017, Ms. Adree Edmo filed a § 1983 civil rights case (the "1983 Action") against the Idaho Department of Corrections ("IDOC", several IDOC administrators in their official capacities, Corizon, and several individual Corizon employees and individual-capacity defendants (IDOC, Corizon, and along with the individual IDOC administrators, the individual Corizon employees, and the individual capacity defendants, collectively, are "Defendants"). The 1983 Action is Case No. 1:17-cv-00151-BLW in the United States District Court of Idaho.

2. On December 13, 2018, Ms. Edmo successfully obtained an order for permanent injunctive relief from the District Court of Idaho. *Edmo v. Idaho Dep't of Corr., et al.*, 358 F.Supp.3d 1103 (D. Idaho 2018) (the "1983 Injunction"). The 1983 Injunction is attached to the Proof of Claim as Exhibit A.

3. On August 23, 2019, a panel of the Ninth Circuit Court of Appeals affirmed the District Court's injunction (the "1983 Judgment"), *Edmo v. Corizon, Inc., et al.*, 935 F.3d 757 (9th Cir. 2019).

4. On February 10, 2020, the Ninth Circuit declined to rehear the case *en banc*, 949 F.3d 489 (9th Cir. 2020). Subsequently, Defendants petitioned for *certiorari* to the United States Supreme Court. On October 13, 2020, the Supreme Court denied the Defendants' petition. *Idaho Dep't of Corr. v. Edmo*, 141 S. Ct. 610 (2020).

5. On September 30, 2022, the District Court granted Ms. Edmo's motion for attorneys' fees and costs under 42 U.S.C. § 1988, awarding Ms. Edmo $2,631,593 (the "Fee Judgment"), which is jointly and severally enforceable against IDOC, official-capacity IDOC Defendants, Corizon, and an individual Corizon employee. *Edmo v. Idaho Dep't of*

Corr., et al., ---F.Supp.3d---2022 WL 16860011, No. 1:17-cv-00151-BLW (D. Idaho Sept. 30, 2022). The Fee Judgment became enforceable and collectible against Defendants on October 31, 2022, after an automatic 30-day stay. *See* Fed. R. Civ. P. 62(a). The Fee Judgment accrues interest at a daily rate of $294.16 pursuant to 28 U.S.C. § 1961, and Defendants are also jointly and severally liable for further fees-on-fees required to defend and enforce the Fee Judgment. The Fee Judgment includes as an enhancement to the lodestar a fee multiplier of two times. The Fee Judgment is attached to the Proof of Claim as Exhibit B. On November 28, 2022, the Amended Abstract of Judgment ("Abstract of Judgment") was entered by the district court. The Abstract of Judgment is attached to the Proof of Claim as Exhibit C.

6. Ms. Edmo continues to incur fees-on-fees to defend and enforce the Fee Judgment, including, but not limited to, attorneys' fees incurred in this bankruptcy case and any related adversary proceedings and any related appeals. Ms. Edmo's counsel's fee statements are attached to the Proof of Claim as Exhibit D. Ms. Edmo has computed the appropriate multiplier for fees-on-fees according to the Fee Judgment. Ms. Edmo reserves the right to amend the appropriate multiplier for fees-on-fees through the Petition Date based on any applicable law or court order.

7. Nothing contained in this Proof of Claim is a waiver of any rights, claims, or defenses of Ms. Edmo against the Debtor. All rights are expressly reserved. Nothing contained in this Proof of Claim is a waiver of any rights, claims, or defenses against any non-debtor party, including, but not limited to, Defendants. Ms. Edmo hereby reserves the right to alter, amend, supplement, modify, and /or withdraw this Proof of Claim at any and all times. To the fullest extent of the law, including pursuant to *Stern v. Marshall*, 564

U.S. 462 (2011) and *Wellness Int'l Network, Ltd. v. Sharif*, 675 U.S. 665 (2015), Ms. Edmo **DOES NOT CONSENT** to the adjudication of any "non-core" disputes or claims in the bankruptcy court. Ms. Edmo further asserts that, pursuant to Fifth Circuit precedent, any third-party disputes with Defendants or claims against the Defendants other than the Debtor do not have any effect on the bankruptcy case and therefore do not fall within "related to" jurisdiction under 28 U.S.C. § 1334(b). *Galaz v. Galaz (In re Galaz)*, 765 F.3d 426, 431 (5th Cir. 2014); *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 569 (5th Cir. 1995). This court does not have subject matter jurisdiction over Ms. Edmo's claims against non-debtors who are the remaining Defendants, and Ms. Edmo in no way consents to the adjudication, determination, estimation, liquidation, etc... of any claims against non-debtor parties by this court.

8. Ms. Edmo reserves her rights to assert any and all rights, claims, actions, defenses, setoffs, withdrawals of the reference, appeals, or recoupments in federal district court.

9. Ms. Edmo reserves all rights to assert claims for post-petition fees and costs against the estate and/or against Defendants.

10. Ms. Edmo reserves all rights to assert claims for post-confirmation fees and costs against the estate and/or against Defendants.

11. Ms. Edmo reserves all rights to assert claims for post-effective date fees and costs against the estate and/or against Defendants.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION, *et al.*,

Defendants.

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

For more than forty years, the Supreme Court has consistently held that consciously ignoring a prisoner's serious medical needs amounts to cruel and unusual punishment in violation of the Eighth Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 103 (1976). After all, inmates have no choice but to rely on prison authorities to treat their medical needs, and "if the authorities fail to do so, those needs will not be met." *Id.* Prison authorities thus treat inmates with all manner of routine medical conditions – broken bones are set; diabetic inmates receive insulin; inmates with cancer receive chemotherapy; and so on. This constitutional duty also applies to far less routine, and even controversial, procedures – if necessary to address a serious medical need. And so it is here. Plaintiff Adree Edmo alleges that prison authorities violated her Eighth Amendment rights by refusing to provide her with gender confirmation surgery. For the

reasons explained below, the Court agrees and will order defendants to provide her with this procedure, a surgery which is considered medically necessary under generally accepted standards of care.

The Court will explain its reasoning below but will first pause to place this decision in a broader context. The Rule of Law, which is the bedrock of our legal system, promises that all individuals will be afforded the full protection of our legal system and the rights guaranteed by our Constitution. This is so whether the individual seeking that protection is black, white, male, female, gay, straight, or, as in this case, transgender. This decision requires the Court to confront the full breadth and meaning of that promise.

Adree Edmo is a male-to-female transgender prisoner in the custody of the Idaho Department of Correction ("IDOC"). She has been incarcerated since April 2012. In June 2012, soon after being incarcerated, an IDOC psychiatrist diagnosed Ms. Edmo with gender dysphoria. An IDOC psychologist confirmed that diagnosis a month later.

Gender dysphoria is a medical condition experienced by transgender individuals in which the incongruity between their assigned gender and their actual gender identity is so severe that it impairs the individual's ability to function. The treatment for gender dysphoria depends upon the severity of the condition. Many transgender individuals are comfortable living with their gender identity, role, and expression without surgery. For others, however, gender confirmation surgery, also known as gender or sex reassignment surgery ("SRS"), is the only effective treatment.

To treat Ms. Edmo's gender dysphoria, medical staff at the prison appropriately

began by providing Ms. Edmo with hormone therapy. This continued until she was hormonally confirmed – meaning she had the same circulating sex hormones and secondary sex characteristics as a typical adult female. Ms. Edmo thus achieved the maximum physical changes associated with hormone treatment. But, Ms. Edmo continued to experience such extreme gender dysphoria that she twice attempted self-castration. For her second attempt, Ms. Edmo prepared for weeks by studying the anatomy of the scrotum and took steps to diminish the chance of infection by boiling a razor blade and scrubbing her hands with soap. She was successful in opening the scrotum and exposing a testicle. But because there was too much blood, Ms. Edmo abandoned her second self-castration attempt and sought medical assistance. She was transported to a hospital where her testicle was repaired.

As already noted, an inmate has no choice but to rely on prison authorities to treat their medical needs. For this reason, the United States Supreme Court has held that deliberate indifference to a prisoner's serious medical needs constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. *See, e.g., Estelle v. Gamble*, 429 U.S. 97, 103 (1976). To show such deliberate indifference, Ms. Edmo must establish two things. First, she must show a "serious medical need" by demonstrating that failure to treat a medical condition could result in significant further injury or the "unnecessary and wanton infliction of pain." Second, she must show that the prison officials were aware of and failed to respond to her pain and medical needs, and that she suffered some harm because of that failure.

Ms. Edmo's case satisfies both elements of the deliberate indifference test. She has presented extensive evidence that, despite years of hormone therapy, she continues to experience gender dysphoria so significant that she cuts herself to relieve emotional pain. She also continues to experience thoughts of self-castration and is at serious risk of acting on that impulse. With full awareness of Ms. Edmo's circumstances, IDOC and its medical provider Corizon refuse to provide Ms. Edmo with gender confirmation surgery. In refusing to provide that surgery, IDOC and Corizon have ignored generally accepted medical standards for the treatment of gender dysphoria. This constitutes deliberate indifference to Ms. Edmo's serious medical needs and violates her rights under the Eighth Amendment to the United States Constitution. Accordingly, for the reasons explained in detail below, IDOC and Corizon will be ordered to provide Ms. Edmo with gender confirmation surgery. Thus, the Court will grant in part Plaintiff's Motion for Preliminary Injunction (Dkt. 62).

In so ruling, the Court notes that its decision is based upon, and limited to, the unique facts and circumstances presented by Ms. Edmo's case. This decision is not intended, and should not be construed, as a general finding that all inmates suffering from gender dysphoria are entitled to gender confirmation surgery.

FINDINGS OF FACT

I. Transgender and Gender Dysphoria

1. Transgender is an umbrella term for a person whose gender identity is not congruent with their assigned gender. Tr. 50:5-11. A transgender person suffers

from gender dysphoria when that incongruity is so severe that it impairs the individual's ability to function. Tr. 50:12-14.

2. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM-5") sets forth specific criteria which must exist before a diagnosis of gender dysphoria is appropriate. Specifically, two conditions are required:

   a. First, there must be marked incongruence between one's experienced/expressed gender and assigned gender, of at least six month's duration, as manifested by at least two of the following:

      i. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics.

      ii. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender.

      iii. A strong desire for the primary and/or secondary sex characteristics of the other gender.

      iv. A strong desire to be of the other gender.

      v. A strong desire to be treated as the other gender.

      vi. A strong conviction that one has the typical feelings and reactions of the other gender.

   b. Second, the individual's condition must be associated with clinically

significant distress or impairment in social, occupational, or other important areas of functioning. Exh. 1001 at 3-4.

3. "Clinically significant distress" means that the distress impairs or severely limits the person's ability to function in a meaningful way and has reached a threshold that requires either medical or surgical interventions, or both. Tr. 51:3-8.

4. Not every person who identifies as transgender has gender dysphoria. Tr. 50:5-11.

II. WPATH

5. The World Professional Association of Transgender Health ("WPATH") Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People were first promulgated in 1979 and are the internationally recognized guidelines for the treatment of individuals with gender dysphoria. Tr. 42:6-20; Exh. 15. WPATH Standards of Care are "flexible clinical guidelines." Tr. 118:16-24, 119:1-7, 8-25, 288:7-23, and "are intended to be flexible in order to meet the diverse health care needs of transsexual, transgender, and gender nonconforming people." Exh. 15 at 8.

6. The WPATH Standards of Care have provided treatment guidelines for incarcerated individuals since 1998. Tr. 54:11-21; Exh. 15 at 73. The current WPATH Standards of Care apply equally to all individuals "irrespective of their housing situation" and explicitly state that health care for transgender people "living in an institutional environment should mirror that which would be available to them if they were living in a non-institutional setting within the same

community." Tr. 54:11-21; Exh. 15 at 73. The next update to the WPATH Standards of Care will also apply to an individual regardless of where that person is housed, including in a prison setting. Tr. 54:25-55:12.

7. The WPATH Standards of Care indicate that options for psychological and medical treatment of gender dysphoria include:

   a. changes in gender expression and role,

   b. hormone therapy to feminize or masculinize the body,

   c. surgical changes of primary or secondary sex characteristics, and

   d. psychotherapy. Exh. 15 at 15-16.

8. The WPATH Standards of Care suggest options for social support and changes in gender expression, including:

   a. offline and online peer support resources, groups, or community organizations that provide avenues for social support and advocacy;

   b. offline and online support resources for families and friends;

   c. voice and communication therapy to help individuals develop verbal and non-verbal communication skills that facilitate comfort with their gender identity;

   d. hair removal through electrolysis, laser treatment, or waxing;

   e. breast binding or padding, genital tucking or penile prostheses, padding of hips or buttocks; and

   f. changes in name and gender marker on identity documents. Exh. 15 at 16.

9. The WPATH Standards of Care provide that the purposes of psychotherapy include "exploring gender identity, role, and expression; addressing the negative impact of gender dysphoria and stigma on mental health; alleviating internalized transphobia; enhancing social and peer support; improving body image; or promoting resilience." Exh. 15 at 16.

10. Cross-sex hormone therapy results in development of secondary sex characteristics of the other sex and provides an increase in the overall level of well-being of a person with gender dysphoria. Tr. 60:8-22. For a transgender woman, hormone treatment has physical effects such as breast growth, thinning of facial hair, redistribution of fat and muscle, and shrinkage of the testicles. Tr. 246:7-20. The maximum physical effects of hormone therapy will typically be achieved within two to three years. Exh. 15 at 42; Tr. 60:23-61:5, 246:7-247:1.

11. Surgery – particularly genital surgery – is often the last and the most considered step in the treatment process for gender dysphoria. Exh. 15 at 60.

12. Many transgender individuals find comfort with their gender identity, role, and expression without surgery. Exh. 15 at 60. For many others, however, surgery is essential and medically necessary to alleviate their gender dysphoria. Exh. 15 at 60. For the latter group, relief from gender dysphoria cannot be achieved without modification of their primary or secondary sex characteristics to establish greater congruence with their gender identity. Exh. 15 at 60.

13. For individuals with severe gender dysphoria, where hormone therapy is insufficient, gender confirmation surgery is the only effective treatment and is medically necessary. Tr. 168:23-169:15; *see also* Ettner Decl. ¶ 51.

14. The WPATH criteria for genital reconstruction surgery in male-to-female patients include the following:

    a. Persistent, well documented gender dysphoria;

    b. Capacity to make a fully informed decision and to consent for treatment;

    c. Age of majority in a given country;

    d. If significant medical or mental health concerns are present, they must be well controlled;

    e. 12 continuous months of hormone therapy as appropriate to the patient's gender goals; and

    f. 12 continuous months of living in a gender role that is congruent with their gender identity. Exh. 15 at 66.

15. Regarding the first criterion, "persistent, well documented gender dysphoria" is deemed to exist when the person has a well-established diagnosis of gender dysphoria that has persisted beyond six months. Tr. 55:21-56:3.

16. Regarding the fourth criterion, the WPATH Standards of Care make clear that the presence of co-existing mental health concerns does not necessarily preclude possible changes in gender role or access to feminizing/masculinizing hormones or surgery. Exh. 15 at 31. But these concerns need to be optimally managed prior to,

or concurrent with, treatment of gender dysphoria. Exh. 15 at 31.

a. It is often difficult to determine whether coexisting mental health concerns are a result of gender dysphoria or are unrelated to that medical condition. Tr. 171:1-14, 24-25, 172:1-5; 387:20-25, 388:1, 398:2-18, 601: 11- 602: 2; Campbell Decl., Dkt. 101-4, ¶¶ 30-33. Co-existing mental health issues directly tied to an individual's gender dysphoria should not be considered in assessing whether an individual meets the fourth WPATH criterion that significant medical or mental health concerns must be well controlled. Tr. 387:6 to 388:6.

17. Regarding the sixth criterion – a twelve-month experience of living in an identity-congruent role – the WPATH Standards of Care provide that this is intended to ensure that the individual has had the opportunity to experience the full range of different life experiences and events that may occur throughout the year (e.g., family events, holidays, vacations, season-specific work or school experiences). During this time, patients should present consistently, on a day-to-day basis and across all settings of life, in their desired gender role. This includes coming out to partners, family, friends, and community members (e.g., at school, work, and in other settings). Exh. 15 at 67.

18. An individual in prison can satisfy the criterion of living in a gender role congruent with their gender identity. Tr. 62:16-63:4, 584:16-25.

III. Expert Testimony

A. Plaintiff's Experts

19. Dr. Ettner is one of the authors of the WPATH Standards of Care, version 7. Tr. 42:21-24. Dr. Ettner has been a WPATH member since 1993 and chairs its Committee for Institutionalized Persons. Tr. 43:2-16; Exh. 1003.

a. Dr. Ettner has treated approximately 3,000 individuals with gender dysphoria, including evaluating whether gender confirmation surgery is necessary for certain patients. She has referred approximately 300 patients for gender confirmation surgery and assessed approximately 30 incarcerated individuals with gender dysphoria. Tr. 43:17-44:1, 44:9-13.

b. Dr. Ettner has extensive experience treating patients who have undergone gender confirmation surgery. Tr. 44:2-8.

c. Dr. Ettner is an author or editor of numerous peer-reviewed publications on treatment of gender dysphoria and transgender healthcare. Dr. Ettner is an editor for the textbook, "Principles of Transgender Medicine and Surgery," which was revised in 2017 and is the textbook used in medical schools. Tr. 44:14-45:1; Exh. 1003.

d. Dr. Ettner also trains medical and mental health providers on treating people with gender dysphoria, including assessing whether gender confirmation surgery is appropriate, through the global education initiative of WPATH and other presentations. Tr. 41:8-16, 45:17-46:18.

e. Dr. Ettner has been appointed by a federal court as an independent expert related to evaluation of an incarcerated patient for gender confirmation surgery. Tr. 46:19-22.

f. However, Dr. Ettner is not a Certified Correctional Healthcare Professional, and she has not treated inmates with gender dysphoria. Tr. 106:21-24, 107:11-18.

20. Dr. Gorton is an emergency medicine physician who practices at a federally qualified healthcare center that primarily services uninsured patients or those with Medicare or Medicaid. Exh. 1004; Tr. 234:24-235:2. Dr. Gorton also works with Project Health, which has provided training for numerous clinics regarding the provision of transgender health care in California. Tr. 233:5-21. Dr. Gorton is a member of WPATH and is on WPATH's Transgender Medicine and Research Committee and its Institutionalized Persons Committee. Tr. 238:4-6; Exh. 1004.

a. Dr. Gorton has been the primary care physician for approximately 400 patients with gender dysphoria and is currently the primary care physician for approximately 100 patients with gender dysphoria. Exh. 1004; Tr. 237:4-12. Dr. Gorton currently provides follow-up care for about thirty patients who have had vaginoplasty. Exh. 1004; Tr. 249:20-250:3.

b. Dr. Gorton has published peer-reviewed articles regarding treatment of gender dysphoria. Tr. 239:16-18, Exh. 1004.

c. Dr. Gorton has been qualified as an expert in multiple cases involving transgender healthcare. Tr. 239:19-240:19; Exh. 1004.

d. However, Dr. Gorton has no experience treating inmates with gender dysphoria. Tr. 269:17-23. Dr. Gorton is not a Certified Correctional Healthcare Professional. Tr. 270:9-16.

B. Defendants' Experts

21. Dr. Garvey is a psychiatrist and Certified Correctional Healthcare Professional under the National Commission on Correctional Health Care. Tr. 525:15-23. As the Chief Psychiatrist in the Massachusetts Department of Corrections, Dr. Garvey served as the chair of the Gender Dysphoria Treatment Committee. Tr. 508:10-11. Dr. Garvey directly treated patients in the Massachusetts Department of Correction who had gender dysphoria. Tr. 508:13-509:1.

a. Prior to evaluating Ms. Edmo, Dr. Garvey had never conducted an in-person evaluation to determine whether a patient needed gender confirmation surgery. Tr. 558:10-14.

b. Dr. Garvey has never recommended that a patient with gender dysphoria receive gender confirmation surgery or done long-term follow-up care with a patient who has had gender confirmation surgery. Tr. 556:20-557:9.

22. Dr. Andrade is a licensed independent clinical social worker and is a Certified Correctional Healthcare Professional with an emphasis in mental health. Tr. 626:1-21. Dr. Andrade has over a decade of experience providing and supervising the

provision of correctional mental health care, including directing and overseeing the treatment of all inmates diagnosed with gender dysphoria in the custody of the Massachusetts Department of Corrections in his role as clinical director, chair of the Gender Dysphoria Supervision Group, and member of the Gender Dysphoria Treatment Committee. Tr. 627:22-23.

a. Over the last decade, Dr. Andrade has provided treatment to gender dysphoria inmates in his role on the treatment committee and has evaluated and confirmed diagnoses of gender dysphoria for over 100 inmates. Tr. 627:2-14. But Dr. Andrade has never provided direct treatment for patients with gender dysphoria and has never been a treating clinician for a patient who has had gender confirmation surgery. Tr. 647:8-14, 651:10-12.

b. As part of a committee, Dr. Andrade has recommended gender confirming surgery for incarcerated inmates on two occasions. Tr. 627-629:1-10. But the recommendation was contingent upon the requirement that the inmates first live in a women's prison for approximately twelve months. Tr. 647:19-648:25. The Massachusetts Department of Corrections houses prisoners according to their genitals, so the inmates were not allowed to move to a women's prison. Tr. 649:1-650:11. To Dr. Andrade's knowledge, the inmates had not been moved to a women's prison at least seven months after his recommendation. Tr. 649:1-650:11. Thus, the twelve-month period of living in a women's prison could not have started. Tr. 650:6-11.

c. As a licensed independent clinical social worker, Dr. Andrade does not qualify under IDOC's former gender dysphoria policy as a "gender identity disorder evaluator" who could assess someone for surgery. Tr. 660:11-17; Exh. 8 at 3.

23. Dr. Campbell is IDOC's Chief Psychologist. He has provided mental health services to incarcerated inmates since 2012. Campbell Decl., Dkt. 101-4, ¶¶ 2-7. Dr. Campbell is a member of WPATH and is familiar with the WPATH Standards of Care regarding gender dysphoria offenders and transgender inmates as provided by the National Commission on Correctional Healthcare ("NCCHC"), the National Institute of Corrections, and the Federal Bureau of Prisons. Campbell Decl., Dkt. 101-4, ¶¶ 8-10.

a. Dr. Campbell serves as chair of the Management and Treatment Committee ("MTC"), a multidisciplinary committee that meets monthly to discuss and evaluate the needs of inmates who have been diagnosed with gender dysphoria. Campbell Decl., Dkt. 101-4, ¶¶ 13-14.

b. Dr. Campbell has directly conducted six gender dysphoria assessments and has overseen the treatment and assessment of approximately fifty inmates who have requested gender dysphoria evaluations, through his role as chair of the Management and Treatment Committee and as the Chief Psychologist. Campbell Decl., Dkt. 101-4, ¶¶ 13-14.

c. There is no evidence that Dr. Campbell has ever recommended gender confirmation surgery for an inmate.

IV. NCCHC

24. The NCCHC endorses the WPATH Standards of Care as the accepted standards for the treatment of transgender prisoners. Exh. 1041 at 2, 4, n.1; Tr. 477:14-478:22.

V. Defendants' Policies and Practices Regarding Gender Dysphoria

A. Corizon's Policies and Practices

25. Corizon is a private corporation that contracts to provide health care to prisons and jails throughout the country. Corizon providers have never recommended gender confirmation surgery to a patient at any of the prisons where it provides medical services. Tr. 489:20-23.

26. Corizon's only written policy regarding gender dysphoria treatment does not include gender confirmation surgery as a form of treatment. Tr. 482:25-483:9; Exh. 14.

B. IDOC's Policies and Practices

27. The IDOC MTC is a multiple-disciplinary team that addresses treatment, planning, and security issues associated with IDOC inmates who have gender dysphoria. Tr. 322:12-20. The Management and Treatment Committee reviews the treatment of all inmates with gender dysphoria but does not make medical decisions. Tr. 323:4-13, 324:9-14.

28. There are currently 30 prisoners with gender dysphoria in IDOC custody. Tr. 322:21-323:3. No individual in IDOC custody has ever been recommended for, or received, gender confirmation surgery. Tr. 376:23-377:4.

29. IDOC's operative gender dysphoria policy when Ms. Edmo was assessed for surgery defined a "qualified gender identity disorder (GID) evaluator as '[a] Doctor of philosophy (PhD) level practitioner licensed by an appropriate state licensing authority as a psychologist, or a physician licensed by a state Board of Medicine, who has demonstrated an indicia of basic competence related to the diagnosis and treatment of GID and related mental or emotional disorders through their licensure, training, continuing education, and clinical experience.'" Exh. 8 at 3; Tr. 388:16-389:1.

30. This policy stated that gender confirmation surgery "will not be considered for individuals within the Idaho Department of Correction (IDOC), unless determined medically necessary by the treating physician." Exh. 8 at 8.

31. On October 5, 2018, shortly before the hearing in this matter, IDOC implemented a new gender dysphoria policy that would allow prisoners at Idaho State Correctional Institute ("ISCI") diagnosed with gender dysphoria to order and possess female commissary items and present in a manner consistent with their gender identity. Tr. 347:18-348:23; Exh. 9.

a. The new policy also states that "to avoid a sexually charged atmosphere in IDOC facilities . . .. [n]o provocative or sexually charged clothing or behavior will be permitted." Exh. 9 at 6.

b. IDOC's new gender dysphoria policy continues to state that gender confirmation surgery "will not be considered for individuals within the Idaho Department of Correction (IDOC), unless determined medically necessary by the treating physician." Exh. 9 at 8-9.

c. The policy further states that prisoners will be housed "based upon the inmate's primary physical sexual characteristics." Exh. 9 at 4.

V. Adree Edmo's Gender Dysphoria

32. Adree Edmo is a male-to-female transgender prisoner in the custody of IDOC. Ms. Edmo has been incarcerated at ISCI since April 2012. Tr. 192:19-20; *see also* Edmo Decl. ¶ 12. She is 30 years of age. Tr. 192:17-18.

33. From the age of 5 or 6, Ms. Edmo has viewed herself as female. In her words, "my brain typically operates female, even though my body hasn't corresponded with my brain." Tr. 193:7-8.

34. While others viewed her as being gay, that is not how she perceived herself. Tr. 193:18-23. While, she struggled with her gender identity as a child and teenager, she began living as a woman at age 20 or 21. Tr. 211:1-11. She views herself as a woman with a heterosexual attraction to men. Tr. 193:15-17.

35. Prior to being incarcerated, and learning about gender identity and transgender, Ms. Edmo struggled with her own identity and sexual orientation. On two occasions in 2010 and 2011, she attempted suicide. Tr. 206:12-15.

36. In June 2012, soon after being incarcerated, Ms. Edmo was diagnosed with gender identity disorder by Corizon psychiatrist Dr. Eliason. Exh. 1 at 321. In July 2012, Corizon psychologist Claudia Lake confirmed Ms. Edmo's diagnosis of gender identity disorder. Exh. 1 at 323-27. There is no dispute that Ms. Edmo suffers from gender dysphoria. Tr. 69:20-70:3, 251:23-252:3, 518:16-18, 635:1-7.

37. Ms. Edmo legally changed her name to Adree Edmo in September 2013. Tr. 192:6-9. Ms. Edmo has also changed her sex to "female" on her birth certificate to further affirm her gender identity. Tr. 203:13-22; Exh. 1002.

38. Ms. Edmo has consistently presented as feminine throughout her incarceration by wearing her hair in traditionally feminine hairstyles when able to do so, wearing makeup when able to do so, and acting in a feminine demeanor. Tr. 194:24-195:5, 411:1-7, 463:11-464:21. Ms. Edmo's feminine presentation has been documented by Defendants' medical providers since 2012. *See, e.g.*, Exh. 1 at 321, 347, 425, 452, 538. Ms. Edmo has also held two jobs while in prison and has presented as feminine at her places of employment. Tr. 201:24-202:10.

39. Ms. Edmo has continually sought to present herself as feminine despite receiving multiple disciplinary offense reports related to wearing makeup, styling her hair in a feminine manner, and altering her male-issued undergarments into female

panties. Tr. 195:11-20; Exh. 5 at 8, 9, 21-22, 25, 27-28, 33-34, 41-43, 48-57, 62-65; Yordy Dep. 47:4-49:15, 85:22-87:11; Edmo Decl. ¶ 19.

40. Ms. Edmo testified that hormone therapy helped treat her gender dysphoria to some extent. Tr. 223:9-14. The hormones "cleared her mind," and resulted in breast growth, body fat redistribution, and changes in her skin consistency. Tr. 196:15-25. As a result of hormone therapy, Ms. Edmo is hormonally confirmed, which means she has the same circulating sex hormones and secondary sex characteristics as a typical adult female. Tr. 72:14-21; Ettner Decl. ¶ 59.

41. Ms. Edmo has achieved the maximum physical changes associated with hormone treatment. Tr. 602:1-603:4. However, Ms. Edmo continues to experience distress related to gender incongruence, which is mostly focused on her male genitalia. She testified she feels "depressed, embarrassed, and disgusted" by her male genitalia and that this is an "everyday reoccurring thought." Tr. 197:7-24.

42. Ms. Edmo first attempted self-castration to remove her testicles in September 2015 using a disposable razor blade. She wrote a note to let the officers know she was not trying to commit suicide and was only trying to help herself. She attempted to cut her testicle sac open but was unsuccessful. Edmo Decl. ¶ 31; Tr. 197:25-198:8.

43. In January 2016, Ms. Edmo reported to Dr. Eliason that she was having difficulty sleeping due to thoughts of self-castration. In response, Dr. Eliason prescribed Ms. Edmo sleeping medication. Tr. 458:5-10, 461:18-24.

44. Ms. Edmo also reported her frequent thoughts of self-castration to her assigned clinician, Krina Stewart, in November 2016. Ms. Stewart testified that none of the interventions she identified for Ms. Edmo at that visit would alleviate her gender dysphoria or desire to self-castrate. Stewart Dep. 58:15-59:16; Exh. 1 at 584-85.

45. Ms. Edmo attempted self-castration a second time in December 2016. She prepared for weeks by studying the anatomy of the scrotum and took steps to diminish the chance of infection by boiling the razor blade and scrubbing her hands with soap. Ms. Edmo made more surgical headway on this attempt and was able to cut open the testicle sac and remove the testicle. Gorton Decl. ¶ 74. Because there was too much blood, Ms. Edmo abandoned her attempt and sought medical assistance. Tr. 198:9-16. She was transported to a hospital where her testicle was repaired. Tr. 198:25-199:13.

46. Ms. Edmo was receiving hormone therapy both times she attempted to self-castrate. Tr. 228:20-25.

47. After the procedure, Ms. Edmo felt disappointed in herself because she felt she had come so close to removing her testicle but had not succeeded. Tr. 199:17-23. Ms. Edmo continues to actively experience thoughts of self-castration. Tr. 197: 21-24. In an effort to avoid acting on them, when she has experienced extreme episodes of gender dysphoria in the past year, Ms. Edmo "self-medicat[es]" by using a razor to cut her arm. The physical pain she feels from

cutting helps her release the emotional torment and mental anguish she feels at the time. Tr. 199:24-200:15.

48. Ms. Edmo will likely be released from prison sometime in 2021. Tr. 201:14-15, 230:3-10.

VI. Defendants' Treatment of Ms. Edmo for Gender Dysphoria

49. On April 20, 2016, Dr. Eliason evaluated Ms. Edmo for sex reassignment surgery. Jt. Exh. 1 at 538. Dr. Eliason noted that Ms. Edmo reported she was "doing alright," that she was eligible for parole, but it had not been granted because of multiple Disciplinary Offense Reports ("DORs"). Jt. Exh. 1 at 538. The DORS were related to her use of makeup and feminine appearance. Jt. Exh. 1 at 538.

50. Dr. Eliason noted that Ms. Edmo had been on hormone replacement for the last year and a half, but that she felt she needed more. Jt. Exh. 1 at 538. Dr. Eliason specifically noted that Ms. Edmo stated an improvement in gender dysphoria on hormone replacement but had ongoing frustrations stemming from her current anatomy. Jt. Exh. 1 at 538. He also recognized Ms. Edmo's multiple attempts to "mutilate her genitalia" because of the severity of her distress. Jt. Exh. 1 at 538. He also noted that he spoke to prison staff about Ms. Edmo's behavior, "which is notable for animated affect and no observed distress." Jt. Exh. 1 at 538. Dr. Eliason then stated that he also personally observed Ms. Edmo in these settings and did not observe significant dysphoria. Jt. Exh. 1 at 538.

51. Nevertheless, Dr. Eliason noted that Ms. Edmo appeared feminine in demeanor and interaction style. Jt. Exh. 1 at 538. He concluded that Ms. Edmo had Gender Dysphoria, Alcohol Use disorder, and Depression, Jt. Exh. 1 at 538, but his ultimate conclusion was that Ms. Edmo "[d]oes not meet criteria for medical necessity for sex reassignment surgery." Jt. Exh. 1 at 538.

52. In assessing Ms. Edmo's need for gender confirmation surgery, Dr. Eliason indicated that he staffed her case with Dr. Jeremy Stoddart, Dr. Murray Young, and Jeremy Clark LCPC (clinical supervisor and WPATH member). Each of these individuals agreed with his assessment. Jt. Exh. 1 at 538.

53. Dr. Eliason indicated he would continue to monitor and assess Ms. Edmo for the medical necessity of gender confirmation surgery. Jt. Exh. 1 at 538. He further determined that the combination of hormonal treatment and supportive counseling is sufficient for Ms. Edmo's gender dysphoria for the time being.

54. To justify his conclusion, Dr. Eliason noted that while medical necessity for gender confirmation surgery is not very well defined and is constantly shifting, the following situations could constitute medical necessity for the surgery:

    a. Congenital malformations or ambiguous genitalia;

    b. Severe and devastating dysphoria that is primarily due to genitals; and

    c. Some type of medical problem in which endogenous sexual hormones were causing severe physiological damage. Jt. Exh. 1 at 538.

55. He also explained that there may also be other situations where gender confirmation surgery is medically necessary as more information becomes available. Jt. Exh. 1 at 538.

56. Although not noted in his April 20, 2016 progress notes, Dr. Eliason testified that Ms. Edmo's mental health concerns were not "fully in adequate control." Tr. 430:22-431:2. He testified that not all of Ms. Edmo's mental health issues, such as her major depression and alcohol use disorders, stemmed from her gender dysphoria. His testimony, however, is contradicted by his April 20, 2016 clinician notes. Tr. 451:1-12.

57. Ms. Edmo has received mental health treatment from a psychiatrist and mental health nurse practitioner since she began her incarceration in 2012. Tr. 225:8-227:2. However, she has not consistently attended therapy to help her work through serious underlying mental health issues and a pre-incarceration history of trauma, abuse, and suicide attempts. Tr. 134:8-25, 135:1-23, 218:21-25, 219:1-14, 220:17-20; 221:16-19; Campbell Decl. Dkt., 101-4, ¶¶24, 29; Stewart Decl., Dkt. 101-1, ¶12; Watson Decl., Dkt. 101-3, ¶18; Clark Decl., Dkt. 101-7, ¶14).

58. Dr. Eliason testified that there were two primary reasons why sex reassignment surgery was not medically necessary at the time:

    a. Ms. Edmo had not satisfied the 12-month period of living in her identified gender role under WPATH standards. Tr. 430: 25-431:2; and

b. "[I]t was not doing Ms. Edmo any service to rush through getting gender reassignment surgery in that current social situation." Tr. 431:3-6.

59. Dr. Eliason's evaluation was the only time IDOC and Corizon evaluated Ms. Edmo for gender confirmation surgery prior to this lawsuit. Exh. 1 at 538; Tr. 419:1-10.

60. In concluding that surgery was not medically necessary for Ms. Edmo, Dr. Eliason did not review her prior criminal record, disciplinary history, or her presentence investigation reports. Tr. 468:4-18. The only information Dr. Eliason relied upon was Ms. Edmo's medical record, staff observations, and her therapist's notes. Tr. 469:16-25. Dr. Eliason testified that when he assessed her for surgery, he was aware of Ms. Edmo's prior self-surgery attempt. He believed Ms. Edmo's gender dysphoria had risen to another level, but he made no change to her treatment plan. Tr. 471:7-22.

VII. Ms. Edmo's Medical Necessity for Gender Confirmation Surgery

61. Plaintiff's and Defendants' experts disagree on whether Ms. Edmo meets all the WPATH standards criteria for gender confirmation surgery. Specifically, Defendants' experts believe that Ms. Edmo does not meet the fourth and sixth criteria – that any significant mental health concerns be well controlled and that she live twelve months in a fully gender-congruent role. Tr. 75:9-78:3; 252:13-254:11; 607:2-10, 639:14-640:25.

62. Notably, however, Dr. Eliason did not rely upon any finding that Ms. Edmo did not meet the WPATH criteria in concluding in his April 2016 assessment that she did not meet the criteria for gender confirmation surgery. Tr. 462:3-463:10.

63. With regard to the fourth criterion, Ms. Edmo has been diagnosed with Major Depressive Disorder, Alcohol Use Disorder, and Gender Dysphoria. *See, e.g.*, Exh. 1 at 538. These diagnoses were generally confirmed by each of the experts, with observation that any substance use disorder has been in remission while Ms. Edmo has been incarcerated. Tr. 67:16-18, 253:3-9, 518:16-219:6, 603:22-604:5.

a. Plaintiff's experts testified that Ms. Edmo's depression and anxiety are as controlled as they can be and do not impair her ability to undergo surgery. Tr. 76:13-25, 123:14-124:11, 253:3-9; Exh. 15 at 30. In their view, the clinical significance of Ms. Edmo's self-surgery attempts and recent cutting of her arm is that she has severe genital-focused gender dysphoria and is not getting medically necessary treatment to alleviate it. Tr. 254:15-19, 98:11-22. Ms. Edmo's self-surgery attempts are not acts of mutilation or self-harm, but are instead attempts to remove her target organ that produces testosterone, which is the cure for gender dysphoria. Tr. 80:3-13. Ms. Edmo's gender dysphoria, not her depression and anxiety, is the driving force behind her self-surgery attempts. Tr. 254:20-255:8.

b. Thus, Ms. Edmo's self-surgery attempts and cutting do not indicate she has mental health concerns that are not well controlled. Tr. 98:11-22. Rather,

Ms. Edmo's recent cutting is attention-reduction behavior that she uses to prevent herself from cutting her genitals. Tr. 98:16-22. Her self-surgery attempts indicate a need for treatment for gender dysphoria. Tr. 98:11-15.

c. In the more than six years she has spent in IDOC custody, no Corizon or IDOC provider has ever diagnosed Ms. Edmo with borderline personality disorder. Tr. 361:18-362:3, 470:4-6. Defense expert Dr. Andrade is the first person to ever diagnose Ms. Edmo with borderline personality disorder, and he was unable to identify his criteria for this diagnosis of Ms. Edmo during his testimony. Tr. 652:21-24, 638:16-22. None of the other experts, including Defense expert Dr. Garvey, diagnosed Ms. Edmo with borderline personality disorder. Tr. 131:24-132:3, 139:19-24.

d. One of the primary concerns underlying the fourth criterion is that the individual be able to properly participate in postsurgical care. Ms. Edmo has demonstrated the capacity to follow through with the postsurgical care she would require. Tr. 99:3-8, 169:23-170:25.

e. Although it is troubling that Ms. Edmo has declined to fully participate in the mental health treatment and counseling sessions recommended by Dr. Eliason and others, Dr. Ettner made clear that, "Psychotherapy is neither a precondition for treatment or a condition -- a precondition for surgery." Tr. 98:23-99:2.

f. Dr. Ettner concludes that Ms. Edmo meets the fourth criterion, since she has no unresolved mental health issues that would prevent her from receiving gender confirmation surgery. Tr. 98:3-10.

64. With respect to the sixth criterion, both Plaintiff's experts testified that Ms. Edmo meets and exceeds the condition of social role transition by living as a woman to the best of her ability in a male prison.

a. For the six-plus years she has lived in prison, Ms. Edmo has consistently sought to present as feminine, despite living in an environment hostile to her efforts, and despite the disciplinary consequences she faces. Tr. 77:9-78:3, 254:4-11.

65. Dr. Ettner testified that gender confirmation surgery would eliminate Ms. Edmo's gender dysphoria and significantly attenuate much of the attendant depression and symptoms she is experiencing. Tr. 104:24-105:9. She testified that gender confirmation surgery is the cure for gender dysphoria and will therefore result in therapeutic and beneficial effects for Ms. Edmo. Tr. 81:13-19.

66. Dr. Gorton testified that it is highly unlikely that Ms. Edmo's severe gender dysphoria will improve without gender confirmation surgery. Tr. 267:19-22.

67. The risks of not providing gender confirmation surgery to Ms. Edmo include surgical self-treatment, emotional decompensation, and risk of suicide given her high degree of suicide ideation. Tr. 80:24:81:8, 264:13-22. If she is not provided with surgery, Ms. Edmo has indicated that she will try self-surgery again to deal

with her extreme episodes of gender dysphoria. Tr. 199:24-200:5. Given that Ms. Edmo made increasing progress on her first two self-surgery attempts, it is likely that Ms. Edmo will be successful if she attempts self-surgery again. Tr. 264:13-22.

68. Scientific studies indicate that the regret rate for individuals who have had gender confirmation surgery is very low and generally in the range of one percent of patients. Tr. 103:25-12, 165:16-166:4. Ms. Edmo does not have any of the risk factors that make her likely to regret undergoing gender confirmation surgery. Tr. 266:1-267:1.

CONCLUSIONS OF LAW

I. Injunction Standard

1. Ms. Edmo asks for a preliminary injunction. A preliminary injunction is only awarded upon a clear showing that the plaintiff is entitled to the requested relief. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008).

2. To make this showing, the plaintiff must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving party; and (4) that an injunction is in the public interest. *Id*.

3. The requirements are stated in the conjunctive so that all four elements must be established to justify injunctive relief. The court may apply a sliding scale test, under which "the elements of the preliminary injunction test are balanced, so that a

stronger showing of one element may offset a weaker showing of another." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

4. A more stringent standard is applied where mandatory, as opposed to prohibitory, injunctive relief is sought. Prohibitory injunctions restrain a party from taking action and effectively "freeze[ ] the positions of the parties until the court can hear the case on the merits." *Heckler v. Lopez*, 463 U.S. 1328, 1333 (1983). Mandatory injunctions go well beyond preserving the status quo, as they order a party to take some action. *See Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009).

5. Although the same general principles inform the court's analysis in deciding whether to issue mandatory or prohibitory relief, courts should be "extremely cautious" about ordering mandatory relief. *Martin v. Intl Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984). Mandatory preliminary relief should not issue unless both the facts and the law clearly favor the moving party and extreme or very serious damage will result. *See Marlyn Nutraceuticals*, 571 F.3d at 879. Mandatory injunctions are not issued in doubtful cases, or where the party seeking an injunction could be made whole by an award of damages. *Id.*

6. The Court agrees with defendants that Edmo seeks mandatory relief. Thus, the Court will apply the more stringent standard.[1]

7. The Prison Litigation Reform Act ("PLRA") requires any preliminary injunction to be "narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct the harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system." 18 U.S.C. § 3626(a)(2).

II. Eighth Amendment Claim

A. Likelihood of Success on the Merits

8. The Eighth Amendment to the United States Constitution protects prisoners against cruel and unusual punishment. To state a claim under the Eighth

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[1] In discussions with counsel before the evidentiary hearing, the Court expressed the concern that the nature of the relief requested in this case, coupled with the extensive evidence presented by the parties over a 3-day evidentiary hearing, effectively converted these proceedings into a final trial on the merits of the plaintiff's request for permanent injunctive relief. Neither party addressed the Court's concern, and both parties appear to have treated the evidentiary hearing as a final trial of Ms. Edmo's claims.

In an abundance of caution, the Court has considered the standard for the issuance of a permanent injunction, which would have required the plaintiff to show (1) she has suffered an irreparable injury, (2) monetary damages would not compensate her for that injury, (3) after balancing the hardships between the parties, a remedy of equity is warranted, and (4) the public interest would not be disserved by a permanent injunction. S*ee, eBay Inc. v. MercExchange, L.L.C.,* 547 U.S. 388, 391 (2006). That standard appears to be no more rigorous than that applicable to a claim for preliminary mandatory relief. The Court concludes that under either standard Ms. Edmo is entitled to relief.

Amendment, Ms. Edmo must show that she is "incarcerated under conditions posing a substantial risk of serious harm," or that she has been deprived of "the minimal civilized measure of life's necessities" as a result of Defendants' actions. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal quotation marks omitted).

9. An Eighth Amendment claim requires a plaintiff to satisfy "both an objective standard – that the deprivation was serious enough to constitute cruel and unusual punishment – and a subjective standard – deliberate indifference." *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012).

10. The Eighth Amendment includes the right to adequate medical care in prison, and prison officials or prison medical providers can be held liable if their "acts or omissions [were] sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

11. Regarding the objective standard for prisoners' medical care claims, the Supreme Court of the United States has explained that "[b]ecause society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are 'serious.'" *Hudson v. McMillian*, 503 U.S. 1, 9 (1992) (quoting *Estelle v. Gamble*, 429 U.S., 97, 103 (1976)).

12. The Ninth Circuit has defined a "serious medical need" in the following ways: failure to treat a prisoner's condition [that] could result in further significant injury or the unnecessary and wanton infliction of pain [;] ... [t]he existence of an injury

that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain . . . ." *McGuckin v. Smith*, 974 F.2d 1050, 1059–60 (9th Cir. 1992) (internal citations omitted), overruled on other grounds, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc).

13. As to the subjective standard, a prison official or prison medical provider acts with "deliberate indifference . . . only if the [prison official] knows of and disregards an excessive risk to inmate health and safety." *Gibson v. Cnty. of Washoe, Nev.*, 290 F.3d 1175, 1187 (9th Cir. 2002) (citation and internal quotation marks omitted). "Under this standard, the prison official must not only 'be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,' but that person 'must also draw the inference.'" *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting *Farmer*, 511 U.S. at 837).

14. "If a [prison official] should have been aware of the risk, but was not, then the [official] has not violated the Eighth Amendment, no matter how severe the risk." *Gibson*, 290 F.3d at 1188 (citation omitted). However, "whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, . . . and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at

842; *see also Lolli v. County of Orange*, 351 F.3d 410, 421 (9th Cir. 2003) (deliberate indifference to medical needs may be shown by circumstantial evidence when the facts are sufficient to demonstrate that defendant actually knew of a risk of harm).

15. In the medical context, a conclusion that a defendant acted with deliberate indifference requires that the plaintiff show both "a purposeful act or failure to respond to a prisoner's pain or possible medical need and . . . harm caused by the indifference." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

16. Deliberate indifference can be "manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Estelle*, 429 U.S. at 104–05 (footnotes omitted).

17. Non-medical prison personnel are generally entitled to rely on the opinions of medical professionals with respect to the medical treatment of an inmate. However, if "a reasonable person would likely determine [the medical treatment] to be inferior," the fact that an official is not medically trained will not shield that official from liability for deliberate indifference. *Snow*, 681 F.3d at 986; *see also McGee v. Adams*, 721 F.3d 474, 483 (7th Cir. 2013) (stating that non-medical personnel may rely on medical opinions of health care professionals unless "they have a reason to believe (or actual knowledge) that prison doctors or their

assistants are mistreating (or not treating) a prisoner") (internal quotation marks omitted).

18. Differences in judgment between an inmate and prison medical personnel regarding appropriate medical diagnosis and treatment are not enough to establish a deliberate indifference claim. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir.1989). "[T]o prevail on a claim involving choices between alternative courses of treatment, a prisoner must show that the chosen course of treatment 'was medically unacceptable under the circumstances,' and was chosen 'in conscious disregard of an excessive risk' to the prisoner's health." *Toguchi*, 391 F.3d at 1058, (alteration omitted) (quoting *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996)).

19. Mere indifference, medical malpractice, or negligence will not support a cause of action under the Eighth Amendment. *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir.1980) (per curiam). Likewise, a delay in treatment does not constitute a violation of the Eighth Amendment unless the delay causes further harm. *McGuckin*, 974 F.2d at 1060.

1. Serious Medical Need

20. There is no dispute that Ms. Edmo suffers from gender dysphoria. And there is no dispute that gender dysphoria is a serious medical condition recognized by the DSM-5.

21. WPATH Standards of Care are the accepted standards of care for treatment of transgender patients. These standards have been endorsed by the NCCHC as applying to incarcerated persons.

22. There are no other competing, evidence-based standards that are accepted by any nationally or internationally recognized medical professional groups.

23. The Court finds credible the testimony of Plaintiff's experts Drs. Ettner and Gorton, who have extensive personal experience treating individuals with gender dysphoria both before and after receiving gender confirmation surgery. Plaintiff's experts found that Ms. Edmo satisfied all six WPATH medical necessity criteria for surgery.

24. Defendants' experts, by contrast, have opined that surgery is not medically necessary for Ms. Edmo. However, neither Dr. Garvey nor Dr. Andrade has any direct experience with patients receiving gender confirmation surgery or assessing patients for the medical necessity of gender confirmation surgery. Defendants' experts also have very little experience treating patients with gender dysphoria other than assessing them for the existence of the condition.

25. Defendants' experts appear to misrepresent the WPATH Standards of Care by concluding that Ms. Edmo, despite presenting as female since her incarceration in 2012, cannot satisfy the WPATH criteria because she has not presented as female outside of the prison setting. But there is no requirement in the WPATH Standards of Care that a "patient live for twelve months in his or her gender role outside of

prison before becoming eligible for SRS." *Norsworthy v. Beard*, 87 F. Supp. 3d 1164 (N.D. Cal. 2015),

26. Indeed, Plaintiff's experts opine that Ms. Edmo exceeds this criterion because she has not only presented as female for far longer than twelve months, but has done so in an environment arguably more hostile to these efforts than the non-custodial community, and despite the disciplinary consequences of doing so. The WPATH Standards of Care explicitly provide that they apply "in their entirety . . . to all transsexual, transgender, and gender-nonconforming people, irrespective of their housing situation," and "including institutional environments such as prisons." Exh. 15 at 73. The Standards of Care make clear that "[d]enial of needed changes in gender role or access to treatments, including sex reassignment surgery, on the basis of residence in an institution are not reasonable accommodations." Exh. 15 at 74.

27. Defendants' evidence to the contrary is unconvincing and suggests a decided bias against approving gender confirmation surgery.

28. In 2016, Dr. Eliason contacted Dr. Steven Levine to lead a training for IDOC and Corizon providers on medical necessity for gender confirmation surgery. Tr. 433:23-434:24. Dr. Levine's training presentation was titled "Medical Necessity of Transgender Inmates: In Search of Clarity When Paradox, Complexity, and Uncertainty Abound." Exh. 17 at 1. Dr. Levine trained Corizon and IDOC staff that gender confirmation surgery is "not conceived as lifesaving as is repairing a

potentially leaking aortic aneurysm but as life enhancing as is providing augmentation for women distressed about their small breasts." Exh. 17 at 43; Exh. 16.

29. Dr. Levine is considered an outlier in the field of gender dysphoria and does not ascribe to the WPATH Standards of Care. Tr. 176:14-21. His training materials do not reflect opinions that are generally accepted in the field of gender dysphoria. Tr. 176:22-179:1.

30. Dr. Levine's training includes additional criteria proposed by Cynthia Osborne and Anne Lawrence that incarcerated individuals must meet in order to receive gender confirmation surgery. Exh. 17 at 39-41, 51; Exh. 19. These requirements are not part of the WPATH criteria and are in opposition to the WPATH Standards of Care. Tr. 101:15-22, 103:14-20. There are no scientific studies that support these additional requirements, and no professional associations or organizations have endorsed Osborne and Lawrence's proposed requirements for prisoners. Tr. 103:4-13. The NCCHC has not adopted Osborne and Lawrence's additional requirements. Tr. 480:12-16. Like Dr. Levine, Osborne and Lawrence are considered outliers in the field of gender dysphoria treatment, are not WPATH members, and do not ascribe to the WPATH Standards of Care. Tr. 101:2-14.

31. A decision of the U.S. District Court in the Northern District of California, *Norsworthy v. Beard*, 87 F. Supp. 3d 1164 (N.D. Cal. 2015), is noteworthy here. Dr. Levine was retained as a defense expert by the California Department of

Corrections and Rehabilitation in a suit filed by a transgender plaintiff in that case. In ordering the prison to provide the plaintiff gender confirmation surgery, the *Norsworthy* court afforded Dr. Levine's opinions "very little weight," stating: "To the extent that Levine's apparent opinion that no inmate should ever receive SRS predetermined his conclusion with respect to Norsworthy, his conclusions are unhelpful in assessing whether she has established a serious medical need for SRS." *Norsworthy*, 87 F. Supp. 3d at 1188. The court also determined that Dr. Levine's opinion was not credible because of illogical inferences, inconsistencies, and inaccuracies," including misrepresentations of the WPATH Standards of Care, overwhelming "generalizations about gender dysphoric prisoners" and Dr. Levine's fabrication of a prisoner anecdote. *Id*.

32. Under these circumstances, the Court gives virtually no weight to the opinions of Defendants' experts that Ms. Edmo does not meet the fourth and sixth WPATH criteria for gender confirmation surgery.

2. Deliberate Indifference

33. Defendants misapplied the recognized standards of care for treating Ms. Edmo's gender dysphoria.

34. Defendants insufficiently trained their staff with materials that discourage referrals for surgery and represent the opinions of a single person who rejects the WPATH Standards of Care.

35. Defendants' sole evaluation of Ms. Edmo for surgery prior to this lawsuit failed to accurately apply the WPATH Standards of Care. Specifically, Dr. Eliason's assessment that Ms. Edmo did not meet medical necessity for surgery did not apply the WPATH criteria.

36. Defendants have been deliberately indifferent to Ms. Edmo's medical needs by failing to provide her with available treatment that is generally accepted in the field as safe and effective, despite her actual harm and ongoing risk of future harm including self-castration attempts, cutting, and suicidal ideation.

37. Evidence also suggests that Ms. Edmo has not been provided gender confirmation surgery because Corizon and IDOC have a *de facto* policy or practice of refusing this treatment for gender dysphoria to prisoners.

38. In *Norsworthy*, the court found that the prison had a blanket policy barring surgery in light of evidence that the prison's "guidelines for treating transgender inmates, which do not mention SRS as a treatment option, and the 2012 training provided to CDCR staff by Levine, which indicated that SRS should never be provided to incarcerated patients." *Norsworthy*, 87 F. Supp. 3d at 1191.

39. Here, the only guidelines Corizon issued to assist its providers in treating gender dysphoria likewise do not include surgery as a treatment option. Moreover, Dr. Levine's training provided to Corizon and IDOC staff, and incorporated into further Corizon and IDOC training, discourages providing surgery to incarcerated persons with gender dysphoria.

40. Significantly, no Corizon or IDOC provider has ever recommended that gender confirmation surgery is medically necessary for a patient in IDOC custody. In fact, Corizon has never provided this surgery at any of its facilities in the United States.

41. As was the case in *Norsworthy*, "[t]he weight of the evidence demonstrates that for [Ms. Edmo], the only adequate medical treatment for her gender dysphoria is [gender confirmation surgery], that the decision not to address her persistent symptoms was medically unacceptable under the circumstances, and that [Defendants] denied her the necessary treatment for reasons unrelated to her medical need." *Norsworthy*, 87 F. Supp. 3d at 1192.

42. Accordingly, Ms. Edmo is likely to succeed on the merits of her Eighth Amendment claim.

B. Likelihood of Irreparable Harm

43. The Ninth Circuit has repeatedly held that serious psychological harm, in addition to physical harm and suffering, constitutes irreparable injury. *See, e.g.*, *Chalk v. U.S. Dist. Ct. Cent. Dist. of California*, 840 F. 2d 701, 709 (9th Cir. 1988) (plaintiff's "emotional stress, depression and reduced sense of well-being" constituted irreparable harm); *Thomas v. Cnty. of Los Angeles*, 978 F. 2d 504, 512 (9th Cir. 1992) ("Plaintiffs have also established irreparable harm, based on this Court's finding that the deputies' actions have resulted in irreparable physical and emotional injuries to plaintiffs and the violation of plaintiffs' civil rights.").

44. Ms. Edmo's gender dysphoria results in clinically significant distress or impairment of functioning.

45. Both Plaintiff's and Defendants' experts agree that Ms. Edmo is properly diagnosed with gender dysphoria and continues to experience serious distress from this condition.

46. Ms. Edmo has received hormone treatment and achieved the maximum feminizing effects years ago.

47. Other district courts have recognized that the significant emotional pain, suffering, anxiety, and depression caused by prison officials' failure to provide adequate treatment for gender dysphoria constitute irreparable harm warranting a preliminary injunction. *See, e.g.*, *Hicklin v. Precynthe*, 2018 WL 806764, at *9 (E.D. Missouri 2018); *Norsworthy*, 87 F. Supp. 3d at 1192.

48. Ms. Edmo has twice attempted self-castration resulting in significant pain and suffering.

49. The Court is persuaded by Plaintiff's experts that, without surgery, Ms. Edmo is at serious risk of life-threatening self-harm.

50. Thus, Ms. Edmo has satisfied the irreparable harm prong by showing that she will suffer serious psychological harm and will be at high risk of self-castration and suicide in the absence of gender confirmation surgery.

C. Balance of Equities

51. "Courts 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.'" *Winter*, 555 U.S. at 24 (quoting *Amoco Production Co.*, 480 U.S. 531, 542 (1987)).

52. The balance of equities tips in a plaintiff's favor where the plaintiff has established irreparable harm in the form of unnecessary physical and emotional suffering and denial of her constitutional rights. *See, e. g.*, *Hicklin*, 2018 WL 806764, at *13; *Norsworthy*, 87 F. Supp. 3d at 1193.

53. Ms. Edmo has established that Defendants' refusal to provide her with gender confirmation surgery causes her ongoing irreparable harm.

54. Defendants have made no showing that an order requiring them to provide treatment that accords with the recognized WPATH Standard of Care causes them injury.

D. The Public Interest

55. The Court finds that a mandatory preliminary injunction is in the public interest. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *See Melendres v. Arpaio*, 695 F. 3d 990, 1002 (9th Cir. 2012).

56. "In addition, 'the public has a strong interest in the provision of constitutionally adequate health care to prisoners.'" *McNearney v. Wash. Dep't of Corr.*, 2012 WL 3545267, at *16 (W.D. Wash. 2012).

57. Accordingly, a mandatory preliminary injunction should issue because both the facts and the law clearly favor Ms. Edmo and extreme or very serious damage will result if it is not issued. *See Marlyn Nutraceuticals*, 571 F.3d at 879.

III. FOURTEENTH AMENDMENT AND ACA CLAIMS

58. Plaintiff has not met her burden for a preliminary injunction on her Fourteenth Amendment and Affordable Care Act claims at this time.

59. As explained above, to make this showing for preliminary injunction, the plaintiff must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving party; and (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 22.

60. While Ms. Edmo may ultimately prevail on her Fourteenth Amendment and Affordable Care Act claims, she is unable to show that she is entitled to injunctive relief at this time. Given the Court's ruling on her Eighth Amendment claim, there is no likelihood of irreparable harm to Ms. Edmo in the absence of injunctive relief on these two claims.

61. Moreover, the balance of equities tips in favor of Defendants because a more developed record on Defendants' treatment of transgender inmates is necessary before making a broader ruling based upon the Fourteenth Amendment or the Affordable Care Act.

62. Likewise, a more developed record is necessary to assess the public's interest in granting such injunctive relief. *Id*.

ORDER

IT IS ORDERED:

1. Plaintiff's Motion for Preliminary Injunction (Dkt. 62) is **GRANTED IN PART**. Defendants are ordered to provide Plaintiff with adequate medical care, including gender confirmation surgery. Defendants shall take all actions reasonably necessary to provide Ms. Edmo gender confirmation surgery as promptly as possible and no later than six months from the date of this order. However, given IDOC's implementation of an updated gender dysphoria policy on October 5, 2018 that appears to provide Plaintiff's requested injunctive relief related to accessing gender-appropriate underwear, clothing, and commissary items, the Court will not address that relief at this time. This is without prejudice to the plaintiff's right to raise the issue in the future, should IDOC revoke the new policy or if the implementation of the policy results in ongoing violations.

2. The Court's Deputy, Jamie Bracke, is directed to set a telephonic status conference in this case no later than two weeks after this decision issues.

DATED: December 13, 2018

B. Lynn Winmill
Chief U.S. District Court Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION, *et al.*,

Defendants.

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

MEMORANDUM DECISION AND ORDER

INTRODUCTION

Before the Court is Ms. Edmo's Motion for Attorneys' Fees and Expenses. Dkt. 315. Having reviewed the parties' briefs and the record in this matter, the Court concludes that oral argument is not necessary. Accordingly, for the reasons explained below the Court will grant in part and deny in part Ms. Edmo's motion and award her attorneys' fees in the amount of $2,586,048.80 and non-taxable costs in the amount of $45,544.20.

LITIGATION BACKGROUND

Plaintiff Adree Edmo, a male-to-female transgender person, brought this action against Defendants alleging various constitutional and statutory violations. At the time she filed suit in 2017, Ms. Edmo was a prisoner in the custody of the

Idaho Department of Corrections. Diagnosed with severe gender dysphoria, Ms. Edmo claimed that Defendants were failing to provide her with necessary medical treatment in the form of gender confirmation surgery.

After Ms. Edmo initially brought her case pro se, the Court appointed counsel to represent her. Ms. Edmo's attorneys promptly filed an amended complaint asserting seven claims against Defendants and seeking injunctive relief, declaratory relief, and damages. Dkt. 36. Two months later, Defendants filed a Motion for Dispositive Relief asking the Court to dismiss several of Ms. Edmo's claims. Dkt. 39. The Court granted that motion in part and denied it in part but left the core of Ms. Edmo's case intact. Dkt. 66.

Ms. Edmo's counsel then moved to the second and most time-consuming phase of this litigation. Based on three legal theories—primarily the Eighth Amendment prohibition against cruel and unusual punishment—Ms. Edmo sought an injunction requiring Defendants to provide her with a name change, transfer to a women's facility, access to gender-appropriate clothing and commissary items, and gender confirmation surgery. Dkt. 62. After a three-day evidentiary hearing, the Court granted Ms. Edmo an injunction on Eighth Amendment grounds and ordered Defendants to provide her with "adequate medical care," including gender confirmation surgery. Dkt. 146, at 45. But the litigation was far from over.

Soon after the Court granted the injunction, Defendants filed a notice of appeal and motion to stay the injunction in the Ninth Circuit. Dkts. 154 & 155. The Ninth Circuit granted the stay and set the appeal on an expedited briefing schedule. After oral argument on the appeal, the Ninth Circuit remanded for this Court to consider two limited issues. When this Court resolved those issues, Defendants filed yet another notice of appeal, challenging this Court's order on remand.

The Ninth Circuit then affirmed this Court's injunction except as it applied to five defendants in their individual capacities. Dkt. 209, at 85. Defendants sought rehearing en banc and, while that request was pending, refused to provide Ms. Edmo with pre-surgical care. As a result, Ms. Edmo successfully moved the Ninth Circuit to partially lift the stay of this Court's injunction and require Defendants to proceed with pre-surgical appointments. Dkt. 220. Eventually, the Ninth Circuit denied Defendants' request for rehearing en banc and dismissed yet another, third appeal. Dkts. 257 & 263.

In July 2020, nineteen months after this Court's injunction, Ms. Edmo received the ordered treatment. Yet the legal battle continued before the U.S. Supreme Court, where Defendants had filed an application for stay, petition for *certiorari*, and suggestion of mootness. Dkts. 278, 279 & 294.

Eventually, when the Supreme Court denied certiorari, this Court lifted the stay on Ms. Edmo's remaining claims and the parties engaged in judicially-

supervised settlement negotiations. As a result of those mediated negotiations, Ms. Edmo voluntarily dismiss her remaining claims against Defendants. Dkts. 307 & 313.

What remains is Ms. Edmo's request for attorneys' fees and expenses. Dkt. 315.

LEGAL STANDARD

1. Attorneys' Fees Under § 1988

Under the American Rule, each party to a lawsuit generally bears its own attorneys' fees unless Congress has statutorily provided otherwise. *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). Title 42 U.S.C. § 1988 authorizes an award of reasonable attorneys' fees to prevailing parties in civil rights actions brought under 42 U.S.C. § 1983. The purpose of awarding attorneys' fees in civil rights actions is to ensure that plaintiffs have "effective access to the judicial process." *Hensley*, 461 U.S. at 429. If successful plaintiffs always had to bear their own legal fees, "few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts." *Jankey v. Poop Deck*, 537 F.3d 1122, 1131 (9th Cir. 2008). Therefore, in most cases the prevailing party should recover attorneys' fees. *Hensley*, 461 U.S. at 429.

2. The Lodestar Method

Courts in the Ninth Circuit use the two-step "lodestar method" to calculate reasonable attorneys' fee awards. *Haegar v. Goodyear Tire and Rubber Co.*, 813 F.3d 1233, 1249 (9th Cir. 2016).

The first step is to determine whether the hourly rate and the hours expended by the attorneys were reasonable. *Hensley*, 461 U.S. at 433. The burden is on the party seeking the fees to document and "submit evidence in support of those hours worked." *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992). But the court generally defers to the prevailing lawyer's professional judgment as to how much time the case required—"after all, he won, and might not have, had he been more of a slacker." *Moreno v. City of Sacramento,* 534 F.3d 1106, 1112 (9th Cir. 2008). The hourly rate and the hours expended are then multiplied for an initial estimate of the attorneys' fees. *Hensley*, 461 U.S. at 433. The result—called the "lodestar figure"—is a presumptively reasonable fee. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013).

Second, the court considers whether to adjust the lodestar figure based on the factors set forth in *Kerr v. Screen Extras Guild, Inc.* "that are not already

subsumed in the initial lodestar calculation." *Morales v. City of San Rafael*, 96 F.3d 359, 363-64 (9th Cir. 1996).[1] These include:

> (5) the customary fee, ... (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

Id. at 364 n.9. If the lodestar figure does not fully account for these factors, the court has discretion to adjust the award to a reasonable amount. *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045–47 (9th Cir. 2000).

3. Limits Under the PLRA

The Prison Litigation Reform Act ("PLRA") applies to all civil rights actions by prisoners and imposes two important limitations on the availability of attorneys' fees. 42 U.S.C. § 1997e(d).

First, courts may award attorneys' fees to prisoners only to the extent that (1) the fees were "directly and reasonably incurred in proving an actual violation of

[1] There are twelve *Kerr* factors in total: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

the plaintiff's rights," § 1997e(d)(1)(A), and (2) the fees are either "proportionately related to the court ordered relief for the violation" or "directly and reasonably incurred in enforcing the relief ordered for the violation," § 1997e(d)(1)(B). *See Jimenez v. Franklin*, 680 F.3d 1096, 1099 (9th Cir. 2012).

Second, the PLRA dictates that that fee awards shall not be based on an hourly rate "greater than 150 percent of the hourly rate established under section 3006A of Title 18 for payment of court-appointed counsel." 42 U.S.C. § 1997e(d)(3). For these purposes, the relevant rate for court-appointed counsel is the one "the Judicial Conference authorized and requested from Congress," as reflected in the Congressional Budget Summary. *Parsons v. Ryan*, 949 F.3d 443, 464-65 (9th Cir. 2020).

ANALYSIS

The threshold question when considering a fee petition is whether the party requesting fees was the "prevailing party" in the action. *See* 42 U.S.C. § 1988. Ms. Edmo was clearly the prevailing party in this case. She sought an injunction ordering gender confirmation surgery, and that is exactly what she got. Defendants do not appear to dispute that Ms. Edmo was the prevailing party, but instead object to the reasonableness of the fees incurred.

1. Reasonableness of the Requested Fees

A. Hourly Rate

The hourly rate used to calculate counsel's fees is dictated by the PLRA. During this case's five-year lifespan, the rates authorized by the Judicial Conference for court-appointed counsel have changed several times. As an adjustment for the delay in payment, the Court will use the FY 2021 rate applicable at the time of Ms. Edmo's fee request. *See Missouri v. Jenkins,* 491 U.S. 274, 283-84 (1989). The rate authorized by the Judicial Conference for the payment of court-appointed counsel in FY 2021 was $155 per hour.[2] Calculating 150% of that rate yields the hourly rate applicable in this case—$232.50 per hour.

B. Hours Expended

Having determined the applicable hourly rate, the next step is to evaluate whether the hours expended by Ms. Edmo's attorneys are reasonable. *Hensley*, 461 U.S. at 433.

Ms. Edmo's attorneys have provided the Court with declarations and timesheets detailing the services they provided, as well as attorney biographies and their regular hourly rates. Dkts. 315-2 through 315-7. In total, the timesheets record 5,968.30 hours billed for work on Ms. Edmo's case. *Id.*; *Pl.'s Reply*, Ex. A,

[2] Admin. Office of the U.S. Courts, The Judiciary Fiscal Year 2021 Congressional Budget Summary 39 (Feb. 2020), https://www.uscourts.gov/sites/default/files/fy_2021_congressional_budget_summary_0.pdf (last visited July 20, 2021).

Dkt. 321. Ms. Edmo has also submitted a declaration from Howard Belodoff, an experienced Idaho civil rights litigator, attesting to the reasonableness of her fee request. *Belodoff Aff.*, Dkt. 315-8. After reviewing each declaration and timesheet, the Court finds that, except as detailed below, Ms. Edmo has met her burden to submit evidence supporting her attorneys' hours. *Gates*, 987 F.2d at 1397-98.

Defendants object on numerous grounds to the hours expended by Ms. Edmo's attorneys. First, Defendants asks the Court to reduce the number of hours by 86 percent because only one of her seven original claims ultimately succeeded. *Def.'s Resp.* at 13, Dkt. 319. Essentially, they argue that any time spent on claims other than the successful Eighth Amendment claim was not directly related to Ms. Edmo's success and therefore is not recoverable. Next, Defendants assert numerous specific objections that can be categorized as follows: (i) overstaffing; (ii) excessive billing; (iii) duplicative billing; (iv) block billing and vague descriptions; (v) travel time; and (vi) clerical tasks.

C. Time Spent on Unsuccessful Claims

Ms. Edmo did not succeed on all of her original claims or against all original defendants. Only one of her original claims ultimately formed the basis for her injunction against Defendants. Two of her other claims were rejected at the injunction stage. Dkt. 149. And the four remaining claims were ultimately dismissed. Dkts. 66, 301 & 311. According to Defendants, Ms. Edmo's fee award

should therefore be reduced in proportion to the number of unsuccessful claims—by their calculations, a reduction of six-sevenths, or 86%. *Def.'s Resp.* at 13, Dkt. 319.

At the outset, the Court rejects Defendants' strictly mathematical approach. Four of the seven claims that Ms. Edmo asserted in her Second Amended Complaint were not pursued during the injunction phase. Further, the Court "cannot imagine why a lawyer would allocate equal hours to each claim," so an automatic pro rata reduction would "make[] no practical sense." *McGinnis v. Ky. Fried Chicken*, 51 F.3d 805, 808 (9th Cir. 1994). Indeed, the Ninth Circuit squarely rejected Defendants' mathematical approach in *McGinnis*. *Id.* at 809; *see also Hensley*, 461 U.S. at 435 n.11. Instead of resorting to crude proportionality calculations, the Court must carefully consider whether the attorneys' fees were "directly reasonably incurred" in proving that Ms. Edmo's rights were violated. 42 U.S.C. § 1997e(d)(1).

In *Hensley*, the Supreme Court set forth the two-part framework for determining whether a plaintiff's success on only some claims requires an attorneys' fee reduction. *Hensley*, 461 U.S. at 434-37. The first step is to determine whether the plaintiff failed on any claims wholly unrelated to her successful claims. *Id.* at 435. If so, she should not recover the fees incurred for work on those unrelated claims. *Id.* at 434-35. The second step is to determine whether the

plaintiff failed on any claims that *were* related to her successful claims. *Id.* at 436. If so, she should nevertheless recover a full fee award so long as she ultimately "obtained excellent results." *Id.* at 435. In other words, where a highly successful plaintiff "presents different claims for relief that involve a common core of facts or are based on related legal theories, the district court should not attempt to divide the request for attorney's fees on a claim-by-claim basis." *McCown v. City of Fontana*, 565 F.3d 1097, 1103 (9th Cir. 2009) (cleaned up).

Beginning with step one, the Court finds that Ms. Edmo's case did not involve wholly unrelated claims. All seven claims in Ms. Edmo's Second Amended Complaint made essentially the same point: Defendants were denying her necessary medical treatment by refusing to provide gender confirmation surgery.[3] *Sec. Am. Compl.* ¶¶ 62, 71, 84, 92, 99, 103, & 111, Dkt. 36. Although each claim advanced a different legal justification for relief, each involved the same "common core of facts" surrounding Ms. Edmo's need for, and Defendants' refusal of, medical treatment for gender dysphoria. The Court therefore finds that Ms. Edmo's claims were essentially alternative legal theories seeking the same result, not distinct claims for relief. Dkt. 62. Ms. Edmo clears the first hurdle.

[3] The Court recognizes that Ms. Edmo also sought additional forms of relief, including equal access to gender-appropriate clothing and items, transfer to a female facility, and unspecified compensatory and punitive damages. *Sec. Am. Compl.*, Dkt. 36.

Moving to step two, Defendants correctly note that Ms. Edmo did not succeed on all of her related claims. Indeed, only one—based on the Eighth Amendment—ultimately formed the basis for the injunction. But this case cannot simply be reduced to the number of claims asserted and succeeded on. Doing so obscures the reality that Ms. Edmo's claims substantially overlapped, and her attorneys obtained the result she was seeking—an injunction requiring Defendants to provide her with gender confirmation surgery. That was not "partial success," despite how Defendants' numerical analysis makes it seem. *Hensley*, 461 U.S. at 435. That was exactly—and almost exclusively—what she was seeking. The Court will not attempt to divide Ms. Edmo's fee award on a "claim-by-claim basis." *McCown*, 565 F.3d at 1103; *see also Padgett v. Loventhal*, 706 F.3d 1205, 1209 (9th Cir. 2013). As the Supreme Court put it in *Hensley*: "The result is what matters." *Hensley*, 461 U.S. at 435.

The PLRA's fee limitation does not change the Court's conclusion on this issue. Considering that Ms. Edmo's claims were all closely intertwined and sought the same basic result (which was obtained), the Court finds that the fees attributable to all of her claims were "directly and reasonably incurred" in proving that Ms. Edmo's rights were violated. 42 U.S.C. § 1997e(d)(1). The Ninth Circuit has made clear that fees attributable to counsel's unsuccessful efforts—so called "fees for losing" —may be recovered in PLRA cases so long as they are

reasonably incurred. *Balla v. Idaho*, 677 F.3d 910, 918 (9th Cir. 2012). In other words, a plaintiff can lose the battle with an unsuccessful argument or motion but win the war by obtaining the relief she seeks. *Id.* at 920.

Ms. Edmo won the war by obtaining and defending an injunction ordering Defendants to provide her with the medical treatment she sought. Her attorneys' efforts advancing alternative legal theories in the Second Amended Complaint and motion for injunction were directly and reasonably related to Ms. Edmo's ultimate victory—even if she did not "prevail on every contention raised in the lawsuit." *Hensley*, 461 U.S. at 435.

The Court therefore will not proportionately reduce the attorneys' fees incurred for preparing and defend the Second Amended Complaint and Motion for Preliminary Injunction.

(1) Fees Incurred Litigating, Mediating, and Settling the Remaining Claims

The Court will, however, exclude the fees incurred for litigating, mediating, and settling Ms. Edmo's four remaining claims after the injunction was obtained and defended. Those hours, billed between November 2020 and March 2021, were not "directly and reasonably incurred in proving an actual violation of the plaintiff's rights." § 1997e(d)(1). The actual violation had already been proven and remedied. Nor were they incurred "in enforcing the relief ordered for the

violation." § 1997e(d)(1). Again, Ms. Edmo had already received her court-ordered surgery.

After reviewing the timesheets, the Court finds that Ms. Edmo's attorneys billed approximately 154 hours to litigate, mediate, and settle her remaining claims between November 2020 and March 2021. Accordingly, the Court will deduct 154 hours from the lodestar calculation.

D. Specific Objections

(1) Overstaffing

Defendants ask the Court for a fee reduction because Ms. Edmo's case was overstaffed. They argue that having six law firms and nineteen attorneys involved was "facially unreasonable." *Def.'s Resp.* at 16-17, 19, Dkt. 319.

But the Court will not reduce attorneys' fees based on an abstract notion that the number of attorneys involved seems high. *See De Jesus Ortega Melendres v. Arpaio*, Nos. 13-16285 & 13-17238, 2017 WL 10808812, at *7 (9th Cir. March 2, 2017) (rejecting generalized objections to the sheer number of timekeepers). As Ms. Edmo points out, most of the hours—4,314 of the total 5,968.3—were billed by just three attorneys over the course of several years and involved dozens of motions, memoranda, depositions, and numerous appeals. Accordingly, the Court will not reduce the fee award based on this objection.

(2) *Excessive Billing*

Defendants repeatedly argue that counsel billed excessive hours. Most of the specific objections merely restate the number of hours billed for certain tasks without explaining why those hours are unreasonable. This case involved extensive motion practice before three courts and depended heavily on expert testimony related to unique medical issues. Over the course of several years, multiple appeals were taken, stays sought, and briefing deadlines expedited. Based on these circumstances and the Court's familiarity with the record and the nature of this litigation, the Court finds that, except as discussed below, counsel did not bill excessive hours.

Defendants first challenge the number of hours spent researching issues they view as uncomplicated or irrelevant, including "how to request medical records in Idaho," *Def.'s Resp.* at 19, Dkt. 319, and an "unrelated Hep-C case," *Id.* at 21. Both objections are off the mark. As to the first, careful review of the docket and entry description shows that this matter was highly relevant to Ms. Edmo's Motion to Strike and for a Protective Order, Dkt. 83, where the disclosure of Ms. Edmo's medical records was directly at issue. *Stormer Aff.* at 52, Dkt. 315-4. As to the second, the Court finds that .5 hours researching the "Hep-C case" was reasonable as a precaution against waiving Ms. Edmo's rights in this case. *See Pl.'s Reply* at 4, Dkt. 321.

Next, Defendants challenge "close to 40 hours" billed by Shaleen Shanbhag "to prepare for the 6.5-hour deposition of Dr. Eliason." *Def.'s Resp.* at 19, Dkt. 319. In fact, of the 45.7 hours Ms. Shanbhag billed related to that deposition, 12.5 hours involve travel to and from Idaho for the deposition and another 6.5 hours account for the deposition itself. *Stormer Aff.* at 54, Dkt. 315-4. That leaves 26.7 hours of preparation for the 6.5-hour deposition, which the Court finds is reasonable.

Defendants' also object to 73 hours spent "preparing and reviewing statements made to the media," most of which have already been excluded through billing judgment reductions. *Def.'s Resp.* at 21, Dkt. 319; *see e.g.*, *Whelan Aff.* at 95 & 100, Dkt. 315-3; *Rifkin Aff.* at 39, 40, 41 & 43, Dkt. 315-2. But Ms. Edmo still requests 12.9 hours billed by local counsel for media-related tasks, including radio interviews and responding to media requests. Public relations work is compensable only if it is "directly and intimately related to the successful representation of a client." *Davis v. City and Cnty. of San Francisco*, 976 F.2d 1536, 1545 (9th Cir. 1992), *vacated in part on other grounds on denial of reh'g, 984 F.2d 345 (9th Cir.1993)*. According to Ms. Ferguson, media work in this case "focused on fostering the litigation goals of our client, and addressing the animosity, misinformation and 'fake news' about the claims of our client." *Ferguson Aff.* ¶ 22, Dkt. 315-5. Laudable as those goals might be, the Court finds

that these efforts were not intimately related to Ms. Edmo's success and will therefore exclude 12.9 hours from the lodestar calculation.

Next, Defendants twice object to the number of hours Lori Rifkin billed in a single day or series of days. *Rifkin Aff.* at 30, Dkt. 315-2 (20.5 hours in a single day during the injunction hearing); *Id.* at 31 (60 hours over four days for post-trial briefing and proposed findings of fact). The Court does not agree, however, that these long hours were unreasonably excessive. As lead counsel at the injunction hearing, Ms. Rifkin presented the opening and closing statements and examined six witnesses. Dkts. 137, 138 & 139. The time she spent on post-trial briefing is also unsurprising considering the product was a 40-page Proposed Findings of Fact and Conclusions of Law, Dkt. 144, and an 11-page post-hearing brief, Dkt. 143. Defendants have given no reason why these hours, however demanding, were unreasonably excessive—and the Court finds none.

Another of Defendants' objections is more convincing. Ms. Shanbhag billed 1.5 hours to research page and word limits for the Ninth Circuit brief. *Stormer Aff.* at 60, Dkt. 315-4. The Court agrees that 1.5 hours was excessive for this task and will reduce the time to .5 hours.

Finally, Defendants argue that billing for three moot courts was excessive: one before the injunction hearing and two before the Ninth Circuit oral argument. The Court is not convinced that holding one moot court before the injunction

hearing was unreasonable. That hearing covered a great deal of ground and involved testimony from seven witnesses and the admission of ninety-four exhibits. Defendants' argument is stronger when it comes to the two moot courts before the Ninth Circuit argument. Counsel billed a combined 17.8 hours for moot courts in preparation for Ms. Rifkin's 1.5-hour oral argument. The Court finds that this was excessive and will reduce those hours by one-half, or 8.9 hours.

As for Defendants' remaining excessiveness objections, the Court has reviewed each challenged entry and finds that none are unreasonable excessive.

(3) Duplicative Billing

Defendants next object that Ms. Edmo's counsel duplicated efforts. Although it is "no easy task" to determine what work is unnecessarily duplicative, *Moreno*, 534 F.3d at 1110, the Ninth Circuit has made clear that "the participation of more than one attorney does not necessarily constitute an unnecessary duplication of effort." *McGrath v. Cnty. of Nevada*, 67 F.3d 248, 255 (9th Cir. 1995) (citation omitted). Rather, "[a]n award for time spent by two or more attorneys is proper as long as it reflects the distinct contribution of each lawyer to the case and the customary practice of multiple-lawyer litigation." *Johnson v. Univ. College*, 706 F.2d 1205, 1208 (11th Cir. 1983).

(a) Hearing Attendance by Multiple Attorneys

On several occasions, multiple attorneys attended the same hearing: (1) two local attorneys billed to attend the dispositive relief hearing where neither argued; (2) seven attorneys attended the three-day preliminary injunction hearing where three argued; and (3) four attorneys attended the oral argument before the Ninth Circuit where only one argued.

It is not always unreasonable for multiple attorneys to attend the same deposition or hearing. *See Kelly*, 7 F.Supp.3d 1069, 1079 (D. Idaho 2014), *aff'd by 822 F.3d 1085 (9th Cir. 2016).* If an attorney may assist during the hearing or will be working on the case in the future, for example, her attendance is usually reasonable. *Democratic Party of Washington State v. Reed*, 388 F.3d 1281, 1287 (9th Cir. 2004).

Here, the Court finds that it was reasonable for one local attorney, but not both, to attend the dispositive motion hearing on April 4, 2018. The timesheets show that Ms. Ferguson and Mr. Durham met with the lead attorney, Ms. Rifkin, for discussions before and after the hearing. *Ferguson Aff.* at 17-19, 30-31, Dkt. 315-5. Both attorneys were also involved in the case in the months immediately following the hearing. *Id.* The Court finds, however, that it was not reasonable for both attorneys to bill to attend and will deduct 1.4 hours.

Next, the Court finds that it was reasonable for five attorneys to bill for attending the three-day preliminary injunction hearing.[4] That hearing was the main act of this case. Three of Ms. Edmo's attorneys appeared on the record to present arguments and examine witnesses. *Hearing Tr.* at 9, Dkt. 137; *Hearing Tr.* at 231, Dkt. 138; *Hearing Tr.* at 457, Dkt. 139. The other two billing attorneys were local counsel who had been the primary point of contact for Ms. Edmo leading up to the hearing. *Ferguson Aff.* at 19-20, 30-31, Dkt. 315-5. Moreover, both were heavily involved in preparing Ms. Edmo and the expert witnesses for the hearing. *Id.* Each day after the hearing session, all five attorneys met to debrief and prepare for the following day. *Stormer Aff.* at 58, Dkt. 315-4; *Whelan Aff.* at 53-54, Dkt. 315-3; *Rifkin Aff.* at 30, Dkt. 315-2; *Ferguson Aff.* at 20 & 31, Dkt. 315-5. Considering these facts and the great deal of ground covered in the hearing, the Court finds that it was reasonable for all five attorneys to attend the hearing.

The Court does, however, agree with Defendants that it was unreasonable for four attorneys to bill for attending oral argument at the Ninth Circuit on May 16, 2019. Only Ms. Rifkin argued at the hearing. Aside from participating in moot courts before the hearing, Julie Wilensky was apparently uninvolved in the pre-

[4] Defendants state that seven attorneys billed to attend the hearing, but the timesheets show only six attorneys attending, and Mr. Chen's hours were already removed as a billing judgment reduction. *Whelan Aff.* at 128, Dkt. 315-3.

hearing research and preparation. *Whelan Aff.* at 123, Dkt. 315-3. In contrast, Ms. Whelan and Ms. Shanbhag were heavily involved leading up to oral argument, and therefore could reasonably have been needed for assistance during the argument. *Id.* at 70; *Stormer Aff.* at 62-63, Dkt. 315-4. The Court will therefore deduct 1.5 hours for Ms. Wilensky's attendance at the hearing.

(b) Collaboration by Multiple Attorneys

The Court is not persuaded that counsel needlessly duplicated efforts when researching and preparing pleadings. Defendants note that five attorneys worked on the opposition to Defendants' motion for dispositive relief, and six attorneys collaborated on Ms. Edmo's Motion for Preliminary Injunction. *Def.'s Resp.* at 19, Dkt. 319. But those generalized groupings are unhelpful—in both cases, the vast majority of hours were billed by just one attorney. *Rifkin Aff.* at 23-24, 25-26, Dkt. 315-2.

Although Defendants don't object, counsel's timesheets also include many entries for intra-office meetings and communications. Billing for such meetings can be unnecessarily duplicative. *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 929 (9th Cir. 2008). In this case, however, the Court finds that those hours were reasonable considering the need for regular coordination between legal teams located in different states. Where numerous attorneys work closely to represent a

client, some overlap is unavoidable. Additionally, many of those entries are deducted anyway, as discussed below, due to vagueness.

(4) Block Billing and Vague Descriptions

Defendants state, without identifying any specific examples, that "numerous" entries are block billed. *Def.'s Resp.* at 22, Dkt. 319. After carefully reviewing the timesheets, the Court has identified only one instance of block-billing: 40.1 hours billed in one entry by Sairah Budwhani for "Review review IDOC production." *Stormer Aff.* at 55, Dkt. 315-4. That entry clumps numerous days of work into one block, making it difficult to evaluate the reasonableness of the hours. The Court will therefore reduce that entry by fifty percent.

The Court also agrees that numerous billing entries are vague. Timesheets must be detailed enough for the court to determine how the time is directly attributable to the claims in the case, although counsel need not "record in great detail how each minute of his time was expended." *Hensley*, 461 U.S. at 437 n.12. When entries are vague, the Court has discretion to reduce the fee to a reasonable amount. *Welch*, 480 F.3d at 948.

The entry descriptions for 12.4 hours of Mr. Stormer's work use extremely broad terms, such as "calls," "strategy," and "review issues," insufficient to enable the Court to evaluate the reasonableness of the time spent. Those lean entries provide no real sense of what Mr. Stormer was doing, who he was conferring with,

or what those conversations were about. Nor do the surrounding entries or the docket provide clarity. The same is true of 7.8 hours billed by Ms. Shanbhag, 5.1 hours billed by Ms. Valdenegro, and 8.7 hours billed by Ms. Rifkin, all of which use comparably vague terms.

The Court will therefore exclude a total of 34 hours from the lodestar calculation due to vagueness.

(5) Travel Time

Defendants object to 200.5 hours billed for "driving and other travel time," almost all of which involved out-of-state counsel traveling to Idaho.[5] *Def.'s Resp.* at 18, Dkt. 319. The Ninth Circuit has established that travel time is "reasonably compensated at normal hourly rates if such is the custom in the relevant legal market." *Davis*, 976 F.2d at 1543.

Idaho courts only award fees for attorney travel time as a sanction. *Portfolio Recovery Assoc., LLC v. Ruiz*, No. 42982, 2015 WL 6441722, at *4 (Idaho Ct. App. Oct. 23, 2015). But Idaho is not the "relevant legal market" in this case, so that custom is not controlling. Ms. Edmo's case presented unique issues of prisoner conditions and transgender healthcare. It was therefore reasonable for Ms. Edmo to

[5] As Ms. Edmo noted in her Reply, this number includes time already deducted by counsel for Mr. Chen's travel to and from the injunction hearing. *Reply*, Dkt. 321, at 4.

retain outside counsel that specialized in those areas. *Ferguson Aff.* ¶¶ 19 & 31, Dkt. 315-5. Even Ms. Edmo's local counsel who have substantial prisoner litigation experience would not have accepted her case without the assistance of outside counsel. *Id.* at ¶ 19. Nor does it appear that any other Idaho law firm could or would have done so. *Id.* at ¶ 18; *Belodoff Aff.* ¶ 18, Dkt. 315-8; *see Saint Alphonsus Med. Ctr.-Nampa, Inc. v. St. Luke's Health Sys., Ltd.*, No. 1:13-CV-00116-BLW, 2016 WL 1232656 (D. Idaho March 28, 2016) (awarding $247,237.50 in attorneys' fees for travel time by specialized out-of-state counsel). Consequently, extensive travel by outside counsel was necessary. *Marbled Murrelet v. Pacific Lumber Co.*, 163 F.R.D. 308, 327 (N.D. Cal. 1995) (refusing to disallow travel time where it would "deter out-of-town attorneys from undertaking this type of representation in the future.").

The Court will, however, exclude time for travels not necessitated by outside counsel's absence from Idaho. This includes incidental travels—such as driving to and from home, hotels, meetings, and depositions—that are a routine feature of every lawyer's day. *Stormer Aff.* at 54, Dkt. 315-4. After reviewing the timesheets, the Court will deduct 6.2 hours of incidental attorney travels.

(6) Clerical Tasks

Defendants object to fees incurred for performing what they view as clerical work. *Def.'s Resp.* at 22, Dkt. 319. Work that is secretarial in nature should be

Case 1:17-cv-00151-BLW Document Filed 09/30/22 Page 25 of 39

absorbed into overhead costs, not billed separately. *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009). Some examples of clerical work are document filing and organization, scheduling, copying or scanning, and transcription. *See Scott v. Jayco Inc.*, Case No. 1:19-cv-0315 JLT, 2021 WL 6006411 (E.D. Cal. Dec. 20, 2021). After reviewing the timesheets, the Court finds that several hours billed by numerous attorneys and paralegals, reflected in the table below, were for non-substantive work that should not be billed separately. Accordingly, 37.3 hours will be excluded from the lodestar calculation.

Professional	**Description**[6]	**Hours**
Jessica Valdenegro	File Preparation & Organization	3.8
Jessica Valdenegro	Scheduling/Coordinating	2.1
Norma Molina	File Preparation & Organization	3.4
Norma Molina	Scanning/Copying	0.6
Norma Molina	Scheduling/Coordinating	1.9
Maxie Bee	File Preparation & Organization	3.3
Shaleen Shanbhag	File Preparation & Organization	3.0
Shaleen Shanbhag	Scheduling/Coordinating	0.7
Jordyn Bishop	Transcription	18.5
	Total	**37.3**

E. Conclusion Regarding Expended Hours

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[6] These are not the descriptions provided in the actual time entries submitted by Ms. Edmo. The Court has grouped the relevant entries into categories based on a broad description of the task performed for ease of reference.

In sum, the Court finds that Ms. Edmo's attorneys' fees are reasonable, except as discussed above. The result is a total of 5,691.5 expended hours to insert into the lodestar calculation.

2. Presumptive Lodestar Calculation

Taking into account the reductions discussed above, the presumptive lodestar amount is $1,317,821.75, as illustrated below.

Professional	Rate	Adjusted Hours	Lodestar
Lori Rifkin	$232.50	2,286.8	$531,681.00
Dan Stormer	$232.50	30.2	$7,021.50
Shaleen Shanbhag	$232.50	1,112.5	$258,656.25
Caitlan McLoon	$232.50	73.1	$16,995.75
Jordyn Bishop	$232.50	33.6	$7,812.00
Sairah Budwhani	$220	43.7	$9,614.00
Norma Molina	$210	62.4	$13,104.00
Jessica Valdenegro	$175	9.2	$1,610.00
Elizabeth Prelogar	$232.50	69.5	$16,158.75
Barrett J. Anderson	$232.50	247.6	$57,567.00
Jamie D. Robertson	$232.50	11.7	$2,720.25
Kathleen R. Hartnett	$232.50	40.9	$9,509.25
Deborah Ferguson	$232.50	170.8	$39,711.00
Craig Durham	$232.50	108.2	$25,156.50
Devi Rao	$232.50	16.2	$3,766.50
Cheryl L. Olson	$232.50	6.7	$1,557.75
Eliza McDuffie	$232.50	24	$5,580.00
Amy Whelan	$232.50	820	$190,650.00
Shannon Minter	$232.50	7.1	$1,650.75
Julie Wilensky	$232.50	120.6	$28,039.50
Alex Chen	$232.50	314.4	$73,098.00
Ary Smith	$220	39.1	$8,602.00
Maxie Bee	$175	43.2	$7,560.00
Totals		**5,691.5**	**$1,317,821.75**

3. Lodestar Enhancement

Ms. Edmo asks the Court to enhance the presumptive lodestar by applying a 2.0 multiplier. *Mtn.* at 12, Dkt. 315. Defendants respond that Ms. Edmo has not carried the heavy burden of overcoming the presumption that the lodestar represents a reasonable fee. After carefully reviewing the relevant *Kerr* factors and briefing, the Court finds that Ms. Edmo has demonstrated an extraordinary reason to enhance the lodestar.

The burden is on the party seeking an enhancement to produce specific evidence showing that the lodestar amount is unreasonably low. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 553 (2010). There is a strong presumption that the lodestar figure represents a reasonable fee and modifications are proper only in "rare and exceptional circumstances and must be supported by specific evidence in the record and detailed findings by the court." *Id.* at 546–62. Ultimately, though, the decision whether to enhance the lodestar is within the district court's discretion. *Stranger v. China Elec. Motor, Inc.*, 812 F.3d 734, 740 (9th Cir. 2016).

At the outset, the Court disagrees with Defendants that multipliers are never appropriate in PLRA cases. *Def.'s Resp.* at 23, Dkt. 319. The Ninth Circuit has explicitly rejected that argument on more than one occasion. *See Parsons*, 949 F.3d at 466 n.14; *Kelly v. Wengler*, 822 F.3d 1085, 1100 (9th Cir. 2016). This Court will not ignore that binding precedent.

Turning to whether a multiplier is appropriate here, the Court finds that several of the *Kerr* factors not subsumed in the lodestar calculation support an enhancement.

A. Customary Fees and Excellent Results

Ms. Edmo argues that the PLRA rate cap of $232.50 per hour undervalues her counsel considering customary fees (fifth *Kerr* factor) charged by other attorneys and the excellent results obtained (eighth *Kerr* factor) in this case. The Court agrees.

The quality of an attorney's performance and the results obtained are typically not grounds for an enhancement because they "normally are reflected in the reasonable hourly rate." *Perdue*, 559 U.S. at 553 (citation omitted). But in "rare circumstances," a court may enhance the lodestar based on counsel's exceptional success. *Perdue*, 559 U.S. at 554-55. As the Supreme Court explained in *Perdue v. Kenny*, one such circumstance exists where "the method used in determining the hourly rate employed in the lodestar calculation does not adequately measure the attorney's true market value, as demonstrated in part during the litigation." *Id.* Under those circumstances, an enhancement is appropriate "so that an attorney is compensated at the rate that the attorney would receive in cases not governed by the federal fee-shifting statutes." *Id.* at 555. The court should therefore "adjust the

attorney's hourly rate in accordance with specific proof linking the attorney's ability to a prevailing market rate." *Id.*

Ms. Edmo's case is precisely the kind of rare circumstance described in *Perdue*. *See Kelly v. Wengler*, 7 F.Supp.3d 1069, 1082 (D. Idaho 2014), *aff'd by 822 F.3d 1085* (9th Cir. 2016) (awarding multiplier where PLRA did not "fully reflect" counsel's success); *see also Ginest v. Board of Cnty. Com'rs of Carbon Cnty., WY*, 423 F.Supp.2d 1237, 1241 (D. Wyo. 2006) ("[T]he PLRA fees are exceptionally low and an enhancement is permissible to make the fee more fair."). There is a substantial disparity between the PLRA rate and customary fees for comparable attorneys, and Ms. Edmo's counsel obtained excellent results through superior performance in this litigation.

(1) Customary Fees

First, the Court agrees that the PLRA rate is exceptionally low when compared with the customary fees charged by civil litigators with comparable experience in this region. Ms. Edmo's local counsel—Ms. Ferguson and Mr. Durham—charge regular hourly rates of $475 and $400 per hour, respectively. *Ferguson Aff.* ¶ 36, Dkt. 315-5. According to Howard Belodoff, an experienced Idaho civil rights lawyer, those rates are "in line with or below the market rates charged by other attorneys in the Boise area." *Belodoff Aff.* ¶ 16, Dkt. 315-8. Mr. Belodoff, who himself litigates prisoner civil rights cases, further attests that (1)

his own hourly rate is $475 per hour, (2) two Holland & Hart attorneys with less experience than local counsel charge $400 and $485 per hour, and (3) Ms. Ferguson's and Mr. Durham's "excellent reputation[s], background, and experience" support their regular hourly rates. *Id.* at ¶ 12. The Court credits these declarations and finds that customary rates for comparable civil litigators in the Boise area range between $400 and $485 per hour.

That means the PLRA rate of $232.50 per hour undervalues local counsel's time by between forty and fifty percent. *Ferguson Aff.* ¶ 36, Dkt. 315-5; *Belodoff Aff.* ¶¶ 10, 16, 315-8. The rate disparity is even more pronounced for out-of-state counsel, with the PLRA rate constituting as low as twenty percent of those attorneys' regular rates. *See Rifkin Aff.* ¶ 46, Dkt. 315-2 (69% below regular rate); *Whelan Aff.* ¶ 30, Dkt. 315-3 (51% and 42% below regular rates); *Hartnett Aff.* ¶ 19, Dkt. 315-7 (81%, 78%, 65%, 78%, and 76% below regular rates); *Rao Aff.* ¶ 14, Dkt. 315-6 (74% below regular rate); *Stormer Aff.* ¶ 21, Dkt. 315-4 (81%, 60%, and 56% below regular rates). However, other than her own attorneys' declarations, Ms. Edmo has not submitted any evidence of the customary rates charged by out-of-state counsel with comparable skill and experience. Without "specific proof linking the attorney's ability to a prevailing market rate" for outside counsel, the Court cannot determine whether outside counsel's regular rates are the customary rates in their localities. *Perdue*, 559 U.S. at 543. The Court will

therefore use the local market rate as the comparator for both local counsel and outside counsel in this case.

Defendants' credibility challenges to Ms. Ferguson's and Mr. Belodoff's declarations are unpersuasive. First, there is nothing suspect about Ms. Ferguson stating that her own regular hourly rate of $475 per hour is in line with the customary rates in the area. Such statements are often credited when accompanying fee requests. *See, e.g.*, *United Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Second, the Court will not discredit Mr. Belodoff, an experienced civil rights lawyer, based on a three-and-a-half-year-old fee reduction in a different case. That has absolutely no bearing Mr. Belodoff's familiarity with customary rates charged by civil litigators in the Boise area.

(2) Excellent Results

Second, Ms. Edmo's counsel obtained excellent results through superior performance in this case. Through this Court's injunction—which her attorneys successfully defended on appeal to the Ninth Circuit and on petition for *certiorari* from the Supreme Court—Ms. Edmo became the first prisoner in the nation to receive court-ordered gender confirmation surgery. *Mtn.* at 15, Dkt. 315. Her counsel skillfully navigated novel legal issues involving transgender healthcare in the Eighth Amendment context, conducted extensive expert discovery, and

reviewed over ten-thousand pages of documents produced by Defendants. *Rifkin Aff.* ¶ 22, Dkt. 315-2. Moreover, their written and oral advocacy before this court, the Ninth Circuit, and the Supreme Court was exemplary.

In sum, the Court finds that the PLRA rate does not adequately measure counsel's true market value, as demonstrated during this litigation, and will apply a lodestar enhancement.

B. Time Limitations and Awards in Similar Cases

Two additional factors support an enhancement: unique time pressures (seventh *Kerr* factor) and awards in similar cases (twelfth *Kerr* factor).

In this case, Ms. Edmo sought medical treatment necessary to mitigate a "serious risk of life-threatening self-harm." *Findings of Fact, Conclusions of Law, and Order* at 45, Dkt. 149. Because the need for treatment was urgent, the litigation was expedited on numerous occasions.[7] A careful review of the district and appellate dockets reveal that Ms. Edmo's counsel faced serious time

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[7] Expedited portions of this litigation include: (1) briefing and oral argument on Defendants' first appeal, 9th Circuit No. 19-35017, Dkt. 19; (2) briefing before this Court on Defendants' emergency motion to stay the order requiring pre-surgical treatments, 9th Circuit No. 1:17-cv-151, Dkt. 231; (3) briefing before the Ninth Circuit on Defendants' emergency motion to stay the same order, 9th Circuit No. 19-35917, Dkt. 7; (4) Ms. Edmo's emergency motion to modify the Ninth Circuit's stay by exempting pre-surgical appointments, 9th Circuit No. 19-35017, Dkt. 22; and Ms. Edmo's response to Defendants' application for stay in the Supreme Court, U.S. Supreme Court No. 19-1280.

constraints, especially from March to November of 2019, and in May of 2020. This factor favors an enhancement.

Looking to fee awards in similar cases, Ms. Edmo points to numerous prisoner civil rights cases in which multipliers have been used. *Bown v. Reinke*, No. 1:12-cv-00262-BLW, 2016 WL 2930904 (D. Idaho May 19, 2016) (awarding multipliers of 1.8 and 1.4 to bring PLRA rates in line with market rates); *Kelly*, 7 F.Supp.3d at 1083 (awarding multipliers of 2.0 and 1.3 to bring PLRA rates in line with market rates); *Balla v. Idaho State Bd. Of Corr.*, No. 81-cv-01165-BLW, 2016 WL 6762651, at *12 (D. Idaho Feb. 1, 2016) (awarding multipliers of 1.97, 1.39 and 1.26 to bring PLRA rates in line with market rates).

Over Defendants' objection, the Court is satisfied that the cases Ms. Edmo cites are sufficiently similar to be instructive here. Each case involved the use of a lodestar enhancement to avoid substantially undervaluing highly effective counsel who were subject to the PLRA rate cap. The Court agrees that this factor also favors an enhancement.

4. Conclusion on Lodestar Enhancement

A lodestar enhancement is appropriate where a "successful plaintiff has demonstrated that [the] lodestar amount does not represent a fully compensatory fee." *Planned Parenthood of Cent. & N. Ariz. v. State of Ariz.*, 789 F.2d 1348, 1354 (9th Cir. 1986). Ms. Edmo has made that showing here. The Court will

therefore apply a multiplier of 1.7 for Mr. Durham and 2.0 for all other attorneys in order to more closely align the fee award with the market value of counsel's services.[8]

5. Litigation Expenses

Under § 1988, a prevailing party may recover reasonable out-of-pocket litigation expenses that "would normally be charged to a fee paying client." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986), *amended by 808 F.2d 1373 (9th Cir. 1987)*. These include, for example, costs for travel, lodging, computer-assisted research, long-distance phone calls, postage, and photocopying.

Ms. Edmo requests $91,878.73 in litigation expenses. *Mtn.*, Dkt. 315-1. Defendants object that those expenses are excessive and not supported by sufficient documentation. *Def.'s Resp.* at 39-40, Dkt. 319.

A. Lack of Documentation

Defendants object to the lack of "supporting documents, such as receipts or invoices," for Ms. Edmo's claimed expenses. *Id.* at 40. Without documentation,

[8] As discussed, the Court will use the local customary fee as a comparator for outside counsel's hours because Ms. Edmo has not demonstrated the customary fees for outside counsel. Based on the affidavits and the Court's experience assessing fee requests, however, the Court does find that outside counsel's rates should be enhanced to the upper end of the customary fee range in the Boise area.

they argue, the Court cannot evaluate "the reasonableness and appropriateness of the claimed expenses." *Id.* Defendants' point is well taken, but it is worth noting that there is no hard-and-fast requirement to submit documentation and receipts. Such evidence is only necessary if the Court would otherwise be unable to determine the reasonableness of a given expense.

The Court agrees with Defendants that Ms. Edmo's travel expenses are lumped together and lack sufficient detail. For example, the Court has no way of evaluating the reasonableness of $9,188.13 spent on "case related travel expenses incurred by Lori Rifkin from June 9-October 13, 2018." *Stormer Aff.*, Ex. D, Dkt. 315-4. Nor can the Court evaluate $2,053.60 in "lodging charges" without more information—most obviously the length of stay. *Id.*

The Court will therefore exclude $20,492.29 in travel expenses from the fee award.

B. Routine Expenses

"Routine expenses which are incorporated into attorneys' rates as routine office overhead are not recoverable." *Cleveland Area Bd. of Realtors v. City of Euclid*, 965 F.Supp. 1017, 1023 (N.D. Ohio 1997). Whether expenses are routine depends on "the prevailing practice in [the] community." *Tr. of Const. Industry and Laborers Health and Welfare Trust v. Redlands Ins. Co.*, 460 F.3d 1253, 1258 (9th Cir. 2006) (citation omitted).

Among Ms. Edmo claimed expenses is $5,414.50 for "monthly word processing" costs and $826.80 for "office supplies." *Stormer Aff.*, Ex. D, Dkt. 315-4. The Court finds that these are routine costs that are ordinarily not billed separately and will therefore exclude them from the fee award.

Ms. Edmo also seeks reimbursement for $385 in meals and drinks purchased by her attorneys before and after hearings. *Whelan Aff.*, Ex. C, Dkt. 315-3; *Rifkin Aff.*, Ex. C, Dkt. 315-2. The Court will exclude those costs because they are not the kind which would normally be charged to a fee-paying client.

6. Bill of Costs

Ms. Edmo filed a bill of costs in the amount of $18,793.34. *Pl.'s Bill of Costs*, Dkt. 312. Defendants raise four objections: (1) counsel did not meet and confer as required by Local Rule 54.1(a)(1) before filing the bill of costs; (2) counsel did not file a certificate of counsel as required by Local Rule 54.1(a)(1)(B); (3) Ms. Edmo was not the "prevailing party" on all claims or against all defendants; and (4) some of the claimed costs are not allowable. *Def.'s Resp.* at 41-42, Dkt. 319.

The first objection begins and ends the Court's analysis. Local Rule 54.1(a)(1) plainly states that no bill of costs "may be filed before the parties have met and conferred regarding costs." Counsel concedes that they did not meet and confer prior to filing the bill of costs. *Pl.'s Reply* at 13, Dkt. 321.

"It has long been a tradition in this district to hold counsel strictly to the Local Rules, especially regarding bills of costs." *Blaine Larsen Processing, Inc. v. Hapco Farms, Inc.*, No. 97–0212–E–BLW, 2000 WL 35539979, at *14 (D. Idaho Aug. 9, 2000). The Court will continue that tradition here, recognizing that awarding costs despite clear noncompliance with the local rules would reduce those rules to mere suggestions. The Court will therefore deny Ms. Edmo's request for costs.

7. Final Calculation

Based on the foregoing, the Court awards attorneys' fees and costs as follows:

A. Attorneys' Fees

Professional	Rate	Adjusted Hours	Multiplier	Total
Lori Rifkin	$232.50	2,286.8	2	$1,063,362.00
Dan Stormer	$232.50	30.2	2	$14,043.00
Shaleen Shanbhag	$232.50	1,112.5	2	$517,312.50
Caitlan McLoon	$232.50	73.1	2	$33,991.50
Jordyn Bishop	$232.50	33.6	2	$15,624.00
Sairah Budwhani	$220	43.7	-	$9,614.00
Norma Molina	$210	62.4	-	$13,104.00
Jessica Valdenegro	$175	9.2	-	$1,610.00
Elizabeth Prelogar	$232.50	69.5	2	$32,317.50
Barrett J. Anderson	$232.50	247.6	2	$115,134.00
Jamie D. Robertson	$232.50	11.7	2	$5,440.50
Kathleen R. Hartnett	$232.50	40.9	2	$19,018.50
Deborah Ferguson	$232.50	170.8	2	$79,422.00
Craig Durham	$232.50	108.2	1.7	$42,766.05

Devi Rao	$232.50	16.2	2	$7,533.00
Cheryl L. Olson	$232.50	6.7	-	$1,557.75
Eliza McDuffie	$232.50	24	2	$11,160.00
Amy Whelan	$232.50	820	2	$381,300.00
Shannon Minter	$232.50	7.1	2	$3,301.50
Julie Wilensky	$232.50	120.6	2	$56,079.00
Alex Chen	$232.50	314.4	2	$146,196.00
Ary Smith	$220	39.1	-	$8,602.00
Maxie Bee	$175	43.2	-	$7,560.00
Totals		**5,691.5**		**$2,586,048.80**

B. Litigation Expenses

Firm	Adjusted Expenses
National Center for Lesbian Rights	$13,571.63
Cooley LLP	$1,327.40
Ferguson Durham, PLLC	$272.42
Hadsell Stormer & Renick, LLP	$29,268.19
Rifkin Law Office	$1,104.56
Total	**$45,544.20**

8. Disposition

After considering the totality of the record and the arguments of counsel, the Court awards Ms. Edmo's $2,586,048.80 in fees and $45,544.20 in litigation expenses. The Court finds this award is reasonable and appropriate based on its analysis.

ORDER

IT IS ORDERED that:

1. Plaintiff's Motion for Attorney Fees and Expenses (Dkt. 315) is **GRANTED in part and DENIED in part**.

DATED: September 30, 2022

B. Lynn Winmill
U.S. District Court Judge

Lori Rifkin, Esq. (CA # 244081)
(*pro hac vice)*
Rifkin Law Office
3630 High St., # 18197
Oakland, CA 94619
Telephone: (510) 414-4132
Email: lrifkin@rifkinlawoffice.com

Dan Stormer, Esq. (CA # 101967)
(pro hac vice)
Shaleen Shanbhag, Esq. (CA # 301047)
(pro hac vice)
HADSELL STORMER RENICK & DAI LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshanbhag@hadsellstormer.com

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
(*pro hac vice*)
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: AWhelan@NCLRights.org

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; CORIZON, LLC; and SCOTT ELIASON; Defendants.	Case No.: 1:17-cv-00151-BLW **AMENDED ABSTRACT OF JUDGMENT**

UNITED STATES OF AMERICA CLERK'S OFFICE, BOISE, IDAHO
U.S. DISTRICT COURT FOR THE DISTRICT OF IDAHO

ABSTRACT OF JUDGMENT

On September 30, 2022, in Case No. 1:17-cv-00151-BLW, the District Court entered Judgment for Plaintiff Adree Edmo for $2,586,048.80 in attorneys' fees and $45,544.20 in litigation expenses against Defendants IDAHO DEPARTMENT OF CORRECTION; JOSH TEWALT, in his official capacity; BREE DERRICK, in her official capacity; AL RAMIREZ, in his official capacity; CORIZON, LLC; and SCOTT ELIASON. Said Judgment of $2,631,593 is duly subject to the provisions of 28 U.S. Code Section 1961.

I certify that the foregoing is a correct Abstract of Judgment rendered in said action, in said Court, as it appears by my docket now in my possession.

Dated at Boise, Idaho, this 28th day of November, 2022.

UNITED STATES COURTS DISTRICT OF IDAHO
United States Courts
District of Idaho
ISSUED
Kelly Montgomery
on Nov 28, 2022 12:05 pm

STEPHEN W. KENYON, CLERK

By /s/ Kelly Montgomery
Deputy Clerk

NCLR NATIONAL CENTER FOR LESBIAN RIGHTS

NATIONAL OFFICE
870 Market St Suite 370
San Francisco CA 94102
tel 415 392 6257
fax 415 392 8442
info@nclrights.org
www.nclrights.org

***Edmo v. IDOC, et al.*, Case No. 1:17-cv-00151-BLW**

Fees Statement for National Center for Lesbian Rights, 12/14/21 – 02/14/23

Month	Task	Time	2023 PLRA Rate ($246)
September 2022	Fee award enforcement	.3	$73.80
October 2022	Fee award enforcement	3.6	$885.60
November 2022	Fee award enforcement	4.3	$1,057.80
December 2022	Fee award enforcement	4.6	$1,131.60
January 2023	Fee award enforcement	11.0	$2,706.00
February 2023	Fee award enforcement	2.5	$615.00
TOTAL		**26.3**	**$6,469.80**

	Hadsell Stormer Renick & Dai LLP		
	Summary of Fees and Costs		
	Edmo- Case 1130		
	December 13, 2021 to February 14, 2023		
	Hours	**Rate**	**Fees**
Dan Stormer	**20.50**	**246.00**	**$5,043.00**
TOTALS	**20.50**		**$5,043.00**
TOTAL COSTS TO DATE			**-**
Total Fees and Costs to Date:			**$5,043.00**

FERGUSON/DURHAM, PLLC
ATTORNEYS AT LAW

223 N. 6th Street, Suite 325
Boise, ID 83702
208 484-2253
daf@fergusondurham.com
www.fergusondurham.com

***Edmo v. IDOC, et al.*, Case No. 1:17-cv-00151-BLW**

Fees Statement for Ferguson Durham, PLLC
for the time period 12/14/21 – 2/14/23

61.20 hours at $246.00 per hour:	$15,055.20
Expenses advanced:	$11.00
TOTAL:	$15,066.20

Rifkin Law Office

3630 High Street, #19187
Oakland, CA 94619
www.rifkinlawoffice.com

Phone: (510) 414-4132
Email: lrifkin@rifkinlawoffice.com

***Edmo v. IDOC, et al.*, Case No. 1:17-cv-00151-BLW**

Fees Statement for Rifkin Law Office, 12/14/21 – 2/14/23

Month	**Task**	**Time**	**Fee at 2023 PLRA Rate ($246)**
October 2022	Fee award enforcement	5.1	$1,254.6
November 2022	Fee award enforcement	10.4	$2,558.4
December 2022	Fee award enforcement	84.7	$20,836.20
January 2023	Fee award enforcement	36.4	$8,954.40
February 2023	Fee award enforcement	5.4	$1,328.40
TOTAL		**140.8**	**$34,636.80**