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13 SHILOH QUINE (a/k/a. RODNEY JAMES QUINE)

14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17  
18 SHILOH QUINE (a/k/a. RODNEY  
JAMES QUINE),

19 Plaintiff,

20 vs.

21 JEFFREY BEARD; S. PAJONG; D.  
22 BRIGHT; J. DUNLAP; J. LEWIS; and  
DOES 1-30,

23 Defendants.  
24

Case No. 14-02726-JST

**FIRST AMENDED COMPLAINT**

1 Plaintiff Shiloh Quine (a/k/a. Rodney James Quine) (“Plaintiff”) for her Complaint against  
2 Defendants Jeffrey Beard, S. Pajong, D. Bright, J. Dunlap, J. Lewis and Does 1-30, alleges as  
3 follows:

#### 4 **NATURE OF THIS ACTION**

5 1. Plaintiff brings this civil rights action under 42 U.S.C. § 1983 to seek prospective  
6 injunctive relief based upon Defendants’ failure to provide Plaintiff with medically necessary  
7 surgery in violation of the Eighth and Fourteenth Amendments to the United States Constitution  
8 and failure to provide Plaintiff access to clothing, cosmetic and hygiene items available to  
9 inmates housed in female institutions in violation of the Fourteenth Amendment to the United  
10 States Constitution.

#### 11 **PARTIES**

12 2. Plaintiff Shiloh Quine is a citizen of California currently housed at Mule Creek  
13 State Prison in Ione, California by the California Department of Corrections and Rehabilitation  
14 (“CDCR”), and was previously housed at Salinas Valley State Prison. Plaintiff has been  
15 incarcerated under the custody of the CDCR since 1980. Plaintiff is a transgender woman – an  
16 individual whose gender identity is different from the male gender assigned to her at birth, who  
17 requires medical treatment to better conform her body to that gender identity. She experiences  
18 severe dysphoria and distress resulting from the incongruence between her male physical features  
19 and her female gender identity. Plaintiff received her first feminizing hormone therapy in  
20 approximately January 2009 as a treatment for her gender dysphoria. Plaintiff has consistently  
21 lived openly as a female since 2008 and taken feminizing hormones since 2009, yet she still  
22 suffers from extreme dysphoria and Defendants have refused to allow Plaintiff to obtain  
23 medically necessary surgery to further her treatment.

24 3. Upon information and belief, Defendant Dr. Jeffrey Beard (“Beard”) is a resident  
25 of California. Since his appointment by Governor Edmond G. Brown, Jr. on December 27, 2012,  
26 Beard has served as Secretary of the CDCR. In his position as Secretary, Beard has ultimate  
27 responsibility and authority for the operation of the CDCR, including the administration of health  
28 care and the execution of policies governing medical care.

1           4.       Upon information and belief, Defendant S. Pajong (“Pajong”) is a resident of  
2 California. Upon information and belief, at all relevant times, Pajong was an agent or employee  
3 of the CDCR with the title “Physician & Surgeon- Salinas Valley State Prison” and was charged  
4 with evaluating certain appeals of prisoner health care issues with the authority to grant or deny  
5 the relief requested in the appeals. Upon information and belief, Pajong is currently employed by  
6 the CDCR at Salinas Valley State Prison in Soledad, California.

7           5.       Upon information and belief, Defendant D. Bright (“Bright”) is a resident of  
8 California. Upon information and belief, at all relevant times, Bright was an agent or employee  
9 of the CDCR with the title “Physician & Surgeon- Salinas Valley State Prison” and was charged  
10 with evaluating certain appeals of prisoner health care issues with the authority to grant or deny  
11 the relief requested in the appeals. Upon information and belief, Bright is currently employed by  
12 the CDCR at Salinas Valley State Prison in Soledad, California.

13           6.       Upon information and belief, Defendant J. Dunlap (“Dunlap”) is a resident of  
14 California. Upon information and belief, at all relevant times, Dunlap was an agent or employee  
15 of the CDCR with the title “Chief Medical Executive” and was charged with evaluating certain  
16 appeals of prisoner health care issues with the authority to grant or deny the relief requested in the  
17 appeals. Upon information and belief, Dunlap is currently employed by the CDCR at Salinas  
18 Valley State Prison in Soledad, California.

19           7.       Upon information and belief, Defendant J. Lewis (“Lewis”) is a resident of  
20 California. Upon information and belief, at all relevant times, Lewis was “Deputy Director-  
21 Policy and Risk Management Services” in the California Correctional Health Care Service-Office  
22 of Third Level Appeals with the authority to grant or deny the relief requested in the appeals.

23           8.       Does 1-30 are unnamed agents or employees of CDCR that participated in the  
24 decision to deny Plaintiff access to clothing, cosmetic and hygiene items available to inmates  
25 housed in female institutions and adequate medical care including sex reassignment surgery.

26           9.       Plaintiff reserves the right, consistent with applicable rules and orders, to amend  
27 this Complaint to include other officials should it become apparent that those officials’ inclusion  
28 is necessary to grant the prospective injunctive relief requested herein.

1 **JURISDICTION**

2 10. This court has jurisdiction over the claims pursuant to 42 U.S.C. §§ 1331 and  
3 1343(a)(3).

4 11. Venue is appropriate in this judicial district pursuant to 42 U.S.C. § 1391(b)(2), as  
5 a substantial part of the events giving rise to the claim occurred in the Northern District of  
6 California.

7 **FACTUAL BACKGROUND**

8 **I. PLAINTIFF’S PERSONAL HISTORY WITH GENDER DYSPHORIA**

9 12. Plaintiff was born Rodney James Quine on August 7, 1959 in Los Angeles,  
10 California, and grew up in northern California and Arizona.

11 13. During childhood and early adolescence, Plaintiff never felt comfortable in the  
12 male gender that was assigned to her at birth. This manifested itself in Plaintiff feeling herself to  
13 be a female as early as nine years old, playing with dolls, and preferring to socialize with girls.

14 14. As a child, Plaintiff lived with her mother and father and her sister (now deceased)  
15 and two half-sisters. Plaintiff identified closely and maintains a relationship with her mother but  
16 Plaintiff’s father was an emotionally and physically abusive individual who antagonized Plaintiff  
17 when she showed signs of her female identity.

18 15. At the age of around twelve, Plaintiff experienced her first “out” experience by  
19 dressing in female clothes for a school event called “weird” day. It was at this event that Plaintiff  
20 was able to express her female gender for the first time.

21 16. At the age of 18, Plaintiff was detained in county jail for approximately a month.  
22 During her confinement, she cut her wrists in an attempted suicide in large part because she did  
23 not feel comfortable in her own skin as a result of her gender dysphoria.

24 17. Plaintiff dropped out of school after the ninth grade, never received a high school  
25 diploma and was functionally illiterate at the time of her incarceration. Plaintiff educated herself  
26 while in prison, learning to read and write at the age of 27.

27 18. Plaintiff was arrested in Los Angeles on March 1, 1980 and charged with robbery,  
28

1 kidnapping, and murder for events that occurred on February 18, 1980. Plaintiff was convicted  
2 and received life in prison without possibility of parole.

3 19. Although Plaintiff was unaware of the term “transgender” until approximately  
4 2008, she has identified as female from a young age and lived the life of a woman in a  
5 compromised form since her childhood. Plaintiff first tried female hormones that she purchased  
6 on the black market around the age of 19. Around that time, Plaintiff unsuccessfully attempted  
7 self-castration as a result of her gender dysphoria.

8 20. Since she has been under the care of CDCR, Plaintiff has attempted suicide several  
9 additional times, largely as a result of her feelings of hopelessness surrounding her gender  
10 dysphoria. It was after an attempt in 2008 that she first received a referral for transgender  
11 services from her doctors. On September 18, 2008, Dr. Lyle filed a “Physician Request for  
12 Services” noting that Plaintiff felt her psychological diagnosis was related to not acting on her  
13 transgender status, and asked that she be seen by the Transgender Clinic for an initial consultation  
14 “ASAP.” Dr. Lyle also noted that Plaintiff “has wanted to be transgender/female since 8 yrs old.”

15 21. On August 23, 2008, Plaintiff made a formal request for gender-related hormone  
16 therapy treatment, stating that she had always “felt this [female] gender,” and that at 18 years old,  
17 she had been “looking to become fully a woman,” but then she was incarcerated and was unable  
18 to do so.

19 22. In her August 23, 2008 letter, Plaintiff stated treatment to fully transition to female  
20 is “the only decision [she] can live with.”

21 23. On October 15, 2008, Plaintiff’s physician again requested that she be seen by the  
22 Transgender Clinic.

23 24. On or around October 28, 2008, Plaintiff had a consultation with a transgender  
24 specialist, who diagnosed her with gender identity disorder. Subsequent to Plaintiff’s initial  
25 diagnosis, the American Psychiatric Association published a revised version of its Diagnostic and  
26 Statistical Manual of Mental Disorders in 2013, which replaced the “gender identity disorder”  
27 diagnosis with that of “gender dysphoria.” The DSM-V characterizes the diagnosis of gender  
28 dysphoria as follows: “[i]ndividuals with gender dysphoria have a marked incongruence between

1 the gender they have been assigned to (usually at birth, referred to as *natal gender*) and their  
2 experienced/expressed gender.” Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of  
3 Mental Disorders 453 (5th ed. 2013) (“DSM-V”). In addition to this marked incongruence,  
4 “[t]here must also be evidence of distress about this incongruence.” *Id.* This Complaint will  
5 generally refer to the condition as gender dysphoria even when referring to Plaintiff’s diagnoses  
6 prior to 2013.

7 25. Upon receiving her gender dysphoria diagnosis in 2008, it was determined that it  
8 was medically necessary for Plaintiff to receive treatment for her condition that would help to  
9 bring her body into greater conformity with her gender identity. Towards achieving this goal,  
10 Plaintiff was prescribed feminizing hormone therapy starting in January 2009. Plaintiff has now  
11 been on female hormone therapy continuously for approximately six years.

12 26. As a result of Plaintiff’s feminizing hormone therapy over the past six years, her  
13 physical features and voice have feminized and she has essentially been medically castrated. She  
14 presents herself as female, and is described in her prison records as having a “feminine  
15 appearance (long, braided hair, eye shadow).” A CDCR prison psychologist notes that she has  
16 been living “openly as a woman since 2008.”

17 27. Plaintiff had at times been able to unofficially procure makeup to allow herself to  
18 present herself as she actually sees herself; however, when she would attempt to wear make-up  
19 (as non-transgender female inmates are allowed to do); staff members insisted that she wash her  
20 face or take a shower. As a result of these responses, Plaintiff tattooed make-up permanently on  
21 her face so that she would be able to present a more feminized face to the world and it could no  
22 longer be removed against her will.

23 28. Further, as part of her treatment for gender dysphoria and to militate against the  
24 effects caused by the discrepancy between Plaintiff’s female gender identity and the male sex  
25 assigned to her at birth, Plaintiff changed her name from the normatively masculine Rodney  
26 James Quine, to the normatively feminine name Shiloh Quine. Plaintiff has been using the name  
27 “Shiloh” – in all settings in which she had the ability to do so – since 2008. Plaintiff has also  
28 formally submitted a request to officially change her name pursuant to CDCR requirements.

1           29.     Despite living openly as a female and receiving hormone therapy, however,  
2 Plaintiff has continued to suffer from severe dysphoria causing her extreme mental anguish as the  
3 end goal of Plaintiff's treatment always has been to bring her primary and secondary sex  
4 characteristics into conformity with her female gender identity. The only way this can be  
5 accomplished for Plaintiff is through sexual reassignment surgery ("SRS"), also known as gender  
6 conformation surgery, which involves, *inter alia*, reconstructing the genitals to conform in  
7 appearance and function to that typically associated with the individual's gender identity. As her  
8 records indicate, Plaintiff always has believed SRS would bring a sense of "internal  
9 completeness."

10           30.     Indeed, plaintiff has made numerous formal and informal requests for SRS since  
11 she started on hormones in 2009, but her cries for relief though surgery have repeatedly gone  
12 unanswered.

13           31.     In 2009, Plaintiff filed a Patient/Inmate Health Care Appeal Form 602-HC  
14 seeking, *inter alia*, "sex reassignment (sex change) surgery." The informal level review was  
15 bypassed and Plaintiff's appeal was sent directly to the second level of review. Although the  
16 second level reviewer acknowledged that Plaintiff had specific medical needs relating to her  
17 transgender status and granted her request in part with regard to other concerns regarding her  
18 treatment, Plaintiff's request for SRS was completely ignored by CDCR at both the second and  
19 third levels of review.

20           32.     Plaintiff's medical records show extreme emotional distress and mental anguish  
21 relating to her failure to obtain SRS. The records show Plaintiff attempted suicide in June 2014  
22 after "they told me I can't get the surgery (for a sex change)." This was a serious attempt, with  
23 cuts on her wrists "requiring some sutures."

24           33.     In addition to treating the severe mental anguish, including anxiety, depression and  
25 suicidal ideation Plaintiff experiences as a result of her gender dysphoria, SRS also is medically  
26 necessary so that Plaintiff may reduce the high doses of feminizing hormones she receives, which  
27 hormones Defendants repeatedly have acknowledged are a medically necessary treatment for  
28 Plaintiff's gender dysphoria. Large intakes of female hormones over the course of many years

1 can contribute to increased risks of heart and vascular conditions and certain cancers. Eliminating  
2 these unnecessary risks is especially important in Plaintiff's situation as she suffers from Hepatitis  
3 C, which has caused and continues to cause damage to her liver function that would be  
4 exasperated by continuing high dosages of the hormones, particularly in the oral format to which  
5 Plaintiff currently is prescribed. If she were to develop any of the aforementioned side-effects  
6 from the feminizing hormones, she would face significant, heightened risks due to her Hepatitis C  
7 status.

8 34. On April 11, 2014, Plaintiff was seen by Dr. B. Bloch, Psy.D., for assessment as to  
9 whether SRS was medically necessary for her gender dysphoria. Dr. Bloch unequivocally stated  
10 "[i]t is the opinion of this writer that the patient is a good candidate for sexual reassignment  
11 surgery on the basis of medical necessity, that a surgical procedure is reasonable and necessary to  
12 alleviate severe pain."

13 35. In the April 11, 2014 analysis, Dr. Bloch states that "[a]n assessment of patient's  
14 requests should take into account both Title 15 and community standards." Dr. Bloch articulates  
15 that WPATH is an appropriate community standard to look to. Dr. Bloch then unequivocally  
16 states that Plaintiff "is a good candidate for sexual reassignment surgery on the basis of medical  
17 necessity, [and] that a surgical procedure is reasonable and necessary to alleviate severe pain."  
18 Dr. Bloch continues, stating Plaintiff "is effectively living the life of a woman in a male prison;  
19 that [she] does this with a degree of self-confidence does not diminish the need for expressing  
20 [her] identity as [she] experiences it, or the suffering [she] may possibly face again in the future  
21 because of [her] physical and environmental situation. Therefore this writer recommends that  
22 sexual reassignment surgery would be an appropriate and effective intervention in the treatment  
23 of this patient."

24 36. Dr. Bloch also noted that access to "specific feminine products and clothing items"  
25 would "enhance the patient's ability to function comfortably in [her] environment," and that  
26 "these forms of self-expression are not in themselves a superficial matter." Dr. Bloch did  
27 conclude, however, that compared to Plaintiff's medical need for SRS, these items were "not  
28 critical factors in the alleviation of severe pain at this time," but noted that "they would have to be



1 considered more closely should sexual reassignment surgery be denied.”

2 **II. SRS IS WIDELY RECOGNIZED AS MEDICALLY NECESSARY TREATMENT**  
3 **FOR GENDER DYSPHORIA**

4 37. Dr. Bloch’s finding that SRS was a medically necessary treatment for Plaintiff’s  
5 gender dysphoria is supported by leading medical research and standards of care. Gender  
6 dysphoria is recognized as a serious medical condition, with mental and physical manifestations.  
7 SRS has widely been accepted as genuine, necessary treatment for severe cases of gender  
8 dysphoria, including by the California Medicaid program, the federal Medicare program and  
9 federal courts that have addressed the issue.

10 38. Gender dysphoria is not just a mild discomfort with one’s sex assigned at birth;  
11 rather, it is a profound disturbance such that the lives of some transgender people revolve only  
12 around performing activities to lessen their gender distress. DSM-V 453-454. Gender dysphoria  
13 often comes with severe mental anguish and the inability to function normally at school, at work,  
14 or in a relationship. *Id.* at 457-58. Moreover, those suffering from gender dysphoria often  
15 become socially ostracized and stigmatized, which further diminishes self-esteem. *Id.* Although  
16 gender dysphoria on its own is not considered a life-threatening illness, when not properly  
17 treated, it is often associated with dangerous related conditions such as depression, substance  
18 related disorders, self-mutilation, and suicide. *Id.* at 458-59. Without treatment, the path for  
19 those suffering from gender dysphoria can be torturous, as evidenced by shockingly  
20 high suicide attempt rates: 45 percent for those aged 18-44, in comparison to the national average  
21 of 1.6 percent, according to the 2009 National Transgender Discrimination Survey. Plaintiff’s  
22 medical records reflect this troubling statistic, as she has repeatedly engaged in self harm and  
23 suicidal ideation (including creating a noose in her cell and cutting her wrists) as a response to her  
24 despair over her gender dysphoria.

25 39. The World Professional Association for Transgender Health (“WPATH”) is a non-  
26 profit, multidisciplinary professional association dedicated to understanding and treating gender  
27 dysphoria. The organization seeks to promote evidence-based care, education, research,  
28 advocacy, public policy, and respect for transgender health. WPATH publishes the Standards of

1 Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (“Standards  
2 of Care”), which are based upon the best available science and expert professional consensus and  
3 articulate clinical guidance for health professionals to assist with safe and effective care that  
4 maximizes the patients’ overall health and psychological well-being. The current version of the  
5 Standards of Care—Version 7—was released in September 2011 following a five-year process in  
6 which eighteen gender dysphoria specialists submitted peer-reviewed papers to help identify the  
7 most effective treatments for gender dysphoria. Eli Coleman et al., Standards of Care for the  
8 Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7, 13 INT’L J.  
9 OF TRANSGENDERISM, 165 (2011) (“Standards of Care”). WPATH’s Standards of Care are the  
10 prevailing standards for treating gender dysphoria. Mental health providers and medical  
11 professionals rely heavily on the Standards of Care in determining the best course of treatment for  
12 their patients.

13 40. The Standards of Care make clear that SRS is an “essential and medically  
14 necessary” treatment for gender dysphoria in certain cases. Hormone therapy alone for those  
15 individuals is not sufficient. As the Standards of Care explain:

16 While many transsexual, transgender, and gender-nonconforming individuals find  
17 comfort with their gender identity, role, and expression without surgery, for many  
18 others surgery is essential and medically necessary to alleviate their gender  
19 dysphoria. For the latter group, relief from gender dysphoria cannot be achieved  
20 without modification of their primary and/or secondary sex characteristics to  
21 establish greater congruence with their gender identity.

22 41. Under the Standards of Care, the criteria for vaginoplasty (surgical construction of  
23 a vagina) in male-to-female transsexuals include “[p]ersistent, well-documented gender  
24 dysphoria,” “[twelve] continuous months of hormone therapy as appropriate to the patient’s  
25 gender goals,” and “[twelve] continuous months of living in a gender role that is congruent with  
26 their gender identity.” *Id.* at 60. The twelve-month requirement that an SRS candidate live in an  
27 identity-congruent gender role is “based on expert clinical consensus that this experience provides  
28 ample opportunity for patients to experience and socially adjust in their desired gender role,  
before undergoing irreversible surgery.” *Id.* It is also recommended that patients seeking SRS  
have regular visits with a mental health professional or other medical professional.

1           42.     The Standards of Care apply equally to inmates and non-inmates, expressly noting  
2 that “[h]ealth care for transsexual, transgender, and gender-nonconforming people living in an  
3 institutional environment should mirror that which would be available to them if they were living  
4 in a non-institutional setting within the same community. . . . All elements of assessment and  
5 treatment as described in the SOC can be provided to people living in institutions. Access to  
6 these medically necessary treatments should not be denied on the basis of institutionalization or  
7 housing arrangements.” *Id.* at 206-07.

8           43.     In California, both Medicaid and private health insurance plans are legally  
9 required to offer coverage for health care treatment related to gender transition, including SRS.

10          44.     Medical studies have shown the effectiveness of SRS as a treatment for gender  
11 dysphoria. Modern SRS has been practiced for more than half a century and is the internationally  
12 recognized treatment for severe gender dysphoria in transgender persons. A thorough analysis of  
13 available research conducted in 1990 concluded that SRS is an effective treatment for gender  
14 dysphoria because it drastically reduced the distress of patients with gender dysphoria. In 2007 a  
15 review of multiple studies on SRS was conducted. Special attention was paid to the effects of  
16 SRS on gender dysphoria, sexuality, and regret. The researchers concluded that SRS is an  
17 effective treatment for gender dysphoria and the only treatment that has been evaluated  
18 empirically with large clinical case series.

19          45.     A 2009 study aimed at evaluating the results of surgical reassignment of genitalia  
20 in transgender women concluded that surgical conversion of the genitalia is a safe and important  
21 phase of the treatment of transgender women.

22          46.     In a study published in 2010 on outcomes of individuals following sex  
23 reassignment almost all patients were satisfied with the sex reassignment and 86% were assessed  
24 by clinicians at follow-up as stable or improved in global functioning.

25          47.     Another study conducted in 2010 with 247 transgender women indicated surgical  
26 treatments are associated with improved mental health-related quality of life.

27          48.     Nearly every study to date has concluded SRS is an effective treatment for gender  
28 dysphoria.

1           49.     Research also has confirmed that hormone therapy alone is insufficient to treat  
2 certain cases of gender dysphoria. For example, one study compared gender dysphoria patient  
3 groups before treatment, during hormone therapy and after SRS and showed that a bigger  
4 improvement occurs after SRS than after simply changing the gender role.

5     **III.    DEFENDANTS DENIED PLAINTIFF ACCESS TO PERSONAL ITEMS AND**  
6     **MEDICALLY NECESSARY SURGERY**

7           50.     On September 26, 2013, Plaintiff again filed a Patient/Inmate Health Care Appeal  
8 Form 602-HC seeking (among other things) SRS as a medically necessary treatment for her  
9 gender dysphoria, because the feminizing hormones Plaintiff has been treated with were  
10 unsuccessful in reducing the extreme distress Plaintiff suffers as a result of her gender dysphoria.  
11 Plaintiff specifically requested that she be allowed to complete “triadic therapy” defined by her as  
12 “hormones,” a “real-life experience” and “sex-change surgery.” In addition to SRS, Plaintiff  
13 sought access to clothing, cosmetic and hygiene items pre-approved and available to inmates  
14 housed in female institutions. All inmates have access to certain catalogs which contain items  
15 that have been pre-approved for special purchase by the inmates, depending on their security  
16 status. Plaintiff has repeatedly been denied access to items in the catalogs pre-approved for  
17 inmates in female institutions.

18           51.     Plaintiff ultimately was denied access both to SRS and the requested personal  
19 items. Remarkably, Plaintiff was denied SRS despite her clear record of severe distress,  
20 including suicidal ideation and attempts, resulting from her gender dysphoria and the explicit  
21 finding by Dr. Bloch – a CDCR psychologist – during the appeals process that SRS is medically  
22 necessary to treat Plaintiff’s gender dysphoria.

23           52.     The first level of review of Plaintiff’s appeal was performed by Defendants S.  
24 Pajong, DO, and D. Bright, DO, physicians and surgeons at Salinas Valley State Prison. Despite  
25 Plaintiff’s well-documented case of serious gender dysphoria and the resulting mental anguish,  
26 including anxiety, depression and suicidal ideation and attempts that only SRS would effectively  
27 treat, Defendants Pajong and Bright did not even address Plaintiff’s request for SRS in their First  
28 Level Appeal response dated December 12, 2013. Plaintiff’s medical records make clear that

1 Plaintiff had been living as a female and receiving feminizing hormone therapy for over four  
2 years but still experienced significant distress and anxiety as a result of the discrepancy between  
3 her remaining male sex characteristics and her female gender identity. Plaintiff's mental anguish  
4 is intensified by being forced to live every minute of every day in a body with male genitalia that  
5 does not match her biology or deeply rooted identity. It thus was clear under prevailing Standards  
6 of Care and medical research that SRS was medically necessary and that Plaintiff fully met the  
7 requirements for sex reassignment surgery. Despite this fact, Defendants Pajong and Bright  
8 entirely ignored and thereby denied her request for surgery and only addressed Plaintiff's appeal  
9 with regard to access to clothing, cosmetic and hygiene items pre-approved and available to  
10 inmates housed in female institutions. Although the response purportedly "partially granted"  
11 Plaintiff's appeal, in fact, Defendants actually only parroted a CDCR guideline that provides  
12 access to sports bras to transgender female inmates and wholly ignored and thereby denied  
13 Plaintiff's request to obtain additional clothing, cosmetic and hygiene items that are pre-approved  
14 and available to inmates housed in female institutions, such bras other than sports bras.

15 53. The response makes clear that Defendants Pajong and Bright were fully aware of  
16 Plaintiff's diagnosed gender dysphoria but were deliberately indifferent to Plaintiff's medical  
17 need for SRS and completely ignored this aspect of her appeal, denying her medically necessary  
18 treatment by their silence. Defendants Pajong and Bright failed to take any reasonable measures  
19 to address the ongoing mental anguish that Plaintiff suffers as a result of her gender dysphoria,  
20 which is not fully addressed by the feminizing hormone therapy that Plaintiff has been receiving.  
21 Defendant Pajong and Bright's failure to address Plaintiff's request for medically necessary SRS  
22 was unreasonable and manifested a wanton disregard for appropriate treatment of Plaintiff's  
23 gender dysphoria based upon her history documented in her medical records and the prudent  
24 professional standards embodied by the WPATH Standards of Care. In particular, Defendants  
25 were deliberately indifferent to Plaintiff's repeated attempts for SRS and documented severe  
26 anguish, including suicidal ideation and attempts, resulting from the denial of that treatment.  
27 Defendants' deliberate indifference is further evidenced by the complete failure to even mention  
28 Plaintiff's clear request for SRS to alleviate her suffering. Defendant Pajong and Bright's failure

1 to even address Plaintiff's request further evidences the CDCR's blanket policy and custom of  
2 prohibiting SRS for transgender individuals, in direct disregard for universally accepted standards  
3 of medically necessary treatment. The failure to address Plaintiff's request for personal items  
4 approved and available to individuals in female facilities also evidences a clear policy to treat  
5 transgender women inmates differently than cisgender women inmates.

6 54. Moreover, Defendants Pajong and Bright's apparent reliance on their own, non-  
7 specialized conclusion that SRS was not medically necessary also evidences their deliberate  
8 indifference. Had Defendants Pajong and Bright taken Plaintiff's condition and request seriously,  
9 they would have authorized the medically necessary treatment or referred Plaintiff to a specialist  
10 with the requisite expertise and experience to assess Plaintiff's medical needs.

11 55. Following Defendants Pajong and Bright's failure to address SRS in Plaintiff's  
12 first level appeal, Plaintiff appealed to the second level of review on December 23, 2013, stating  
13 "the decision 12-12-13 didn't even respond to my appeal. . . . There was no response [sic] to the  
14 surgery . . . ." Plaintiff also noted that the appeal did not address her request for the personal items  
15 approved and available to individuals in female institutions. Plaintiff's second level appeal was  
16 denied by Defendant J. Dunlap, Chief Medical Executive of Salinas Valley State Prison on or  
17 around February 7, 2014.

18 56. In the denial, Defendant Dunlap writes that "[g]ender reassignment surgery is  
19 currently not considered a treatment option within the current GID guidelines." Defendant  
20 Dunlap presumably refers to the CDCR's blanket restriction on the provision of SRS embodied in  
21 CDCR Department Operation's Manual section 91020.26, a section captioned "Gender Dysphoria  
22 Treatment," that states: "Implementation of surgical castration, vaginoplasty, or other such  
23 procedures shall be deferred beyond the period of incarceration. Surgical procedure shall not be  
24 the responsibility of the Department."

25 57. Defendant Dunlap's response makes clear that Defendant Dunlap was fully aware  
26 of Plaintiff's diagnosed gender dysphoria but was deliberately indifferent to Plaintiff's medical  
27 need for SRS. Defendant Dunlap failed to take any reasonable measures to address the ongoing  
28 mental anguish that Plaintiff suffers as a result of her gender dysphoria, which is not fully

1 addressed by the feminizing hormone therapy that Plaintiff has been receiving. Defendant  
2 Dunlap's failure to address Plaintiff's request for medically necessary SRS other than to cite a  
3 blanket policy against the provision of SRS was unreasonable and manifested a wanton disregard  
4 for appropriate treatment of Plaintiff's gender dysphoria based upon her history documented in  
5 her medical records and the prudent professional standards embodied by the WPATH Standards  
6 of Care. In particular, Defendant was deliberately indifferent to Plaintiff's repeated attempts for  
7 SRS and documented severe anguish, including suicidal ideation and attempts, resulting from the  
8 denial of that treatment.

9 58. Moreover, Defendant Dunlap's apparent reliance on Dunlap's own, non-  
10 specialized conclusion that SRS was not medically necessary also evidences his deliberate  
11 indifference. Had Defendant Dunlap taken Plaintiff's condition and request seriously, he would  
12 have authorized the medically necessary treatment or referred Plaintiff to a specialist with the  
13 requisite expertise and experience to assess Plaintiff's medical needs.

14 59. Defendant Dunlap also denied Plaintiff's request to have "female clothing,  
15 cosmetics and personal hygiene" items because "these treatment modalities is not within the  
16 existing GID guidelines." The response clearly evidences a CDCR policy to treat transgender  
17 women inmates differently than cisgender women inmates with regard to their ability to access  
18 these personal items.

19 60. On February 17, 2014, Plaintiff appealed from the second level response. She  
20 clearly articulated that she was seeking SRS because of her "serious medical needs" and that SRS  
21 is a treatment under the "acceptable standards of care." She also renewed her appeal for the  
22 personal items, explaining that she had specified which female clothing and accessories that she  
23 was requesting access to; *i.e.*, the ones available "for special purchase" within the vendor catalog  
24 sections that already were approved for inmates in female institutions.

25 61. Plaintiff's appeal was not addressed at the third level until November 3, 2014 –  
26 almost nine months after she sought review and approximately five months after Dr. Bloch, a  
27 psychologist employed by CDCR, analyzed Plaintiff's repeated requests for SRS and determined  
28 it to be medically necessary. Dr. Bloch's assessment appears to have been undertaken directly in

1 response to Plaintiff's 602 appeal.

2 62. At the third level of appeal, Defendant J. Lewis denied Plaintiff's appeal and  
3 determined that the decision exhausted Plaintiff's administrative remedies. Defendant Lewis's  
4 third level appeal decision stated "[a]t this time it remains unclear whether you are currently  
5 seeking SRS as a medically necessary treatment. Your appeal documents indicate that you would  
6 like SRS available 'at some point' and as an 'option.'" This pretextual explanation is nothing  
7 more than an attempt to disguise Defendant Lewis's deliberate indifference to Plaintiff's suffering  
8 and a wanton disregard of her medical needs. Plaintiff has been in prison for a great deal of time,  
9 and her use of the phrase "at some point" was clearly no more than an acceptance of the reality  
10 that she cannot simply obtain the medically necessary treatment when she would like it, but that  
11 she must wait until it is formally approved.

12 63. That the documents that Plaintiff submitted in support of her appeal make clear  
13 that she was seeking SRS is evident from the fact that the second level reviewer specifically  
14 addressed the request for SRS and the fact that the forms repeatedly reference SRS as part of the  
15 treatment Plaintiff seeks. Moreover, Plaintiff's records reviewed by Defendant Lewis in  
16 considering the appeal make clear that Plaintiff repeatedly has sought SRS as a medical treatment  
17 for the severe anxiety and mental anguish she suffers as a result of her gender dysphoria, even  
18 after years of hormone therapy. Indeed, Plaintiff pursued a 602 appeal seeking SRS as early as  
19 2009. Similarly, in a September 15, 2013 Health Care Services Request, Plaintiff states  
20 unequivocally "I'm seeking reassignment sex-change surgery," and states that she is seeking all  
21 three elements of "triadic therapy," one of which is surgery.

22 64. Defendant Lewis's assertion, seven months after Plaintiff received her second-  
23 level appeal denial, that a determination of medical necessity is "time-specific" and thus that she  
24 must reapply, shows deliberate indifference to Plaintiff's well-documented medical needs.  
25 Defendant Lewis failed to take any reasonable measures to address the ongoing mental anguish  
26 that Plaintiff suffers as a result of her gender dysphoria, which is not fully addressed by the  
27 feminizing hormone therapy treatments that Plaintiff has been receiving since 2009. Remarkably,  
28 Defendant Lewis completely ignores the April 11, 2014 recommendation by Dr. Bloch that SRS



1 was medically necessary to treat Plaintiff's gender dysphoria. Even if Dr. Bloch had not made  
2 the recommendation that SRS was medically necessary for Plaintiff five months prior to her  
3 appeal being denied, Plaintiff's medical records make clear that Plaintiff had been living as a  
4 woman and receiving feminizing hormone therapy since 2009 but still experienced (and continues  
5 to experience) significant distress, anxiety and suicidal thoughts and behaviors as a result of the  
6 discrepancy between her remaining male sex characteristics, and her female gender identity and  
7 thus that SRS is medically necessary treatment for her.

8           65. Defendant Lewis's denial of Plaintiff's request for medically necessary SRS was  
9 unreasonable and manifested a wanton disregard for appropriate treatment of Plaintiff's gender  
10 dysphoria based upon her history documented in her medical records and the prudent professional  
11 standards embodied by the WPATH Standards of Care. Defendant Lewis's explanation is a  
12 pretext; the denial of Plaintiff's request for SRS illustrates the blanket custom and/or policy of the  
13 CDCR that prohibits SRS for transgender individuals, in direct disregard of applicable medical  
14 standards and the medical necessity of the treatment for individuals such as Plaintiff.

15           66. Moreover, Defendant Lewis's apparent reliance on his own, non-specialized  
16 opinion to deny SRS evidences his deliberate indifference. Had Defendant Lewis taken  
17 Plaintiff's condition and request seriously, he would have authorized the medically necessary  
18 treatment based upon Dr. Bloch's report and/or referred Plaintiff to a specialist with the requisite  
19 expertise and experience to assess Plaintiff's medical needs.

20           67. Defendant Lewis's cursory denial of Plaintiff's request for access to vendor pre-  
21 approved personal items available for female inmates because the items purportedly are  
22 "controlled by custody and not under the jurisdiction of health care services" also is pretextual in  
23 nature. Dr. Bloch's report makes it clear that these types of items *are* a medical treatment, noting  
24 that the items "would enhance the patient's ability to function comfortably in [her] environment .  
25 . . ." Failure to analyze access to these items as a medical treatment for Plaintiff's gender  
26 dysphoria or direct the appeal of this to the appropriate correctional officials was unreasonable  
27 and manifested a wanton disregard for Plaintiff's medical needs.  
28

1 **IV. CALIFORNIA CODE OF REGULATIONS TITLE 15, SECTION 3350.1 IS**  
2 **DISCRIMINATORY AND DOES NOT IMMUNIZE DEFENDANTS’**  
3 **UNCONSTITUTIONAL DENIAL OF SRS**

4 68. Defendants’ refusal to provide SRS to Plaintiff is not justified by California Code  
5 of Regulations (“C.C.R.”) Title 15, Section 3350.1, which identifies vaginoplasty as a “[s]urgery  
6 not medically necessary [that] shall not be provided” except for cystocele or rectocele (conditions  
7 involving damages to the vaginal wall) unless the patient’s attending physician prescribes the  
8 treatment and “[t]he service is approved by the medical authorization review committee and the  
9 health care review committee.” 15 C.C.R. § 3350.1(b)(2); 15 C.C.R. § 3350.1(d). It is also not  
10 justified by the Department Operations Manual, section 91020.26, a section captioned “Gender  
11 Dysphoria Treatment,” that provides for a strict bar on SRS for inmates in CDCR custody:  
12 “Implementation of surgical castration, vaginoplasty, or other such procedures shall be deferred  
13 beyond the period of incarceration. Surgical procedure shall not be the responsibility of the  
14 Department.”

15 69. As a preliminary matter, this regulatory scheme is facially discriminatory against  
16 transgender women inmates because it makes vaginoplasty *de facto* unavailable for such inmates  
17 but allows the treatment for non-transgender female inmates with certain conditions such as  
18 cystocele. The regulation singles out inmates assigned male at birth, and transgender women  
19 inmates in particular, for discriminatory treatment by establishing onerous, significant barriers  
20 that have the effect of barring them from obtaining vaginoplasty or castration even when, as here,  
21 it is medically necessary.

22 70. Moreover, this policy was applied by each of the Defendants in a manner that  
23 discriminated against Plaintiff on the basis of her status as an inmate assigned male at birth, and a  
24 transgender woman in particular. Each of the Defendants failed to give proper consideration to  
25 whether or not SRS was a medical necessity for the treatment of Plaintiff’s gender dysphoria and  
26 based their conclusions on different factors and processes than they would have in determining  
27 the appeal of a non-transgender inmate’s request for medically necessary surgery. Each  
28 Defendant regarded and applied the policy as a *de facto* bar to Plaintiff’s request for SRS – and  
vaginoplasty in particular – solely as the result of Plaintiff being assigned male at birth, and her

1 status as a transgender woman in particular.

2 71. Finally, each of the Defendants discriminated against Plaintiff and manifested  
3 deliberate indifference to the mental anguish and suffering still resulting from her gender  
4 dysphoria by failing to prescribe SRS, to follow the medical standards of care established by  
5 WPATH, or even to follow Defendants’ own discriminatory policy and refer Plaintiff’s SRS for  
6 approval by the medical authorization review committee and the health care review committee  
7 pursuant to 15 C.C.R. § 3350.1(d).

8 72. Plaintiff continues to suffer deep anxiety and distress as a result of the discrepancy  
9 between her female gender identity and her remaining male sex characteristics, including male  
10 genitalia. Plaintiff’s mental anguish is intensified by the fact – repeatedly established in her  
11 medical records – that Plaintiff has been taking female hormone therapy since 2009, yet is being  
12 forced to live every minute of every day in a body with male genitalia that does not match her  
13 deeply rooted female identity, causing her extreme distress, including suicidal ideation and  
14 suicide attempts.

15 **COUNT ONE**

16 VIOLATION OF 42 U.S.C. § 1983 BASED UPON  
17 DEPRIVATION OF EIGHTH AMENDMENT RIGHTS RESULTING FROM  
18 FAILURE TO PROVIDE MEDICALLY NECESSARY SURGERY

19 73. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 72 as if fully  
20 set forth herein.

21 74. Plaintiff has been diagnosed with the serious medical condition of gender  
22 dysphoria which, despite more than five years of feminizing hormone therapy, continues to cause  
23 Plaintiff serious mental distress, and requires treatment in the form of SRS as prescribed by  
24 CDCR psychologist Dr. Bloch, and supported by Plaintiff’s medical records and prevailing  
25 medical standards of care.

26 75. Each Defendant – acting in his/her official capacity and under color of state law –  
27 was and remains deliberately indifferent to Plaintiff’s medical need for SRS. Each Defendant  
28 knew of Plaintiff’s serious medical need for SRS and disregarded Plaintiff’s need and failed to

1 take any reasonable measures to address Plaintiff's continued pain and suffering resulting from  
 2 her gender dysphoria. The deliberate indifference of each Defendant is further demonstrated by  
 3 that Defendant's unreasonable reliance on his/her own conclusions or those of other non-  
 4 specialized individuals rather than the conclusions and recommendations of a health care  
 5 professional with sufficient training and experience in the treatment of gender dysphoria.

6 76. Defendants' continued denial of SRS is causing irreparable harm to Plaintiff,  
 7 including severe anxiety and distress as a result of the discrepancy between her remaining male  
 8 sex characteristics, including male genitalia, and her female gender identity and appearance.  
 9 Plaintiff's mental anguish is intensified by the fact – repeatedly established in her medical records  
 10 – that Plaintiff has been receiving female hormone therapy since 2009, and is “effectively living  
 11 the life of a woman in a male prison,” yet is being forced to live every minute of every day in a  
 12 body with male genitalia that does not match her biology. The denial of SRS also unreasonably  
 13 and recklessly places Plaintiff at increased risk for heart and vascular conditions and certain types  
 14 of cancer, particularly given that she has Hepatitis C, which risks could be substantially reduced  
 15 as a result of the substantially reduced hormone treatments that would be required following SRS.

16 77. By failing to provide SRS to Plaintiff while incarcerated, Defendants have  
 17 deprived Plaintiff of her right to medically necessary treatment guaranteed by the Eighth  
 18 Amendment to the United States Constitution.

## 19 COUNT TWO

### 20 VIOLATION OF 42 U.S.C. § 1983 BASED UPON DEPRIVATION OF FOURTEENTH 21 AMENDMENT RIGHT TO EQUAL PROTECTION BY REFUSING PLAINTIFF SRS ON 22 THE BASIS OF GENDER AND TRANSGENDER STATUS

23 78. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 77 as if fully  
 24 set forth herein.

25 79. California Code of Regulations (“C.C.R.”) Title 15, Section 3350.1 identifies  
 26 vaginoplasty as a “[s]urgery not medically necessary [that] shall not be provided” except for  
 27 cystocele or rectocele unless the patient's attending physician prescribes the treatment and “[t]he  
 28 service is approved by the medical authorization review committee and the health care review

1 committee.” 15 C.C.R. § 3350.1(b)(2); 15 C.C.R. § 3350.1(d).

2 80. Additionally, the CDCR Department Operations Manual section 91020.26, a  
3 section captioned “Gender Dysphoria Treatment,” provides for a strict bar on SRS for inmates in  
4 CDCR custody: “Implementation of surgical castration, vaginoplasty, or other such procedures  
5 shall be deferred beyond the period of incarceration. Surgical procedure shall not be the  
6 responsibility of the Department.”

7 81. As a preliminary matter, this regulatory scheme is facially discriminatory against  
8 transgender women inmates because it makes vaginoplasty *de facto* unavailable for such inmates  
9 but allows the treatment for non-transgender female inmates with certain conditions such as  
10 cystocele. The regulation singles out inmates assigned male at birth, and transgender women  
11 inmates in particular, for discriminatory treatment by establishing onerous, significant barriers  
12 that have the effect of barring them from obtaining vaginoplasty or castration even when, as here,  
13 it is medically necessary.

14 82. Each Defendant applied the statute in a manner that discriminated against Plaintiff  
15 on the basis of her gender and transgender status. In considering Plaintiff’s need for SRS, each  
16 Defendant failed to give proper consideration to the specific circumstances of Plaintiff’s gender  
17 dysphoria and need for SRS but instead either ignored Plaintiff’s requests or based their  
18 conclusions on factors and processes that they would not have considered in determining the  
19 medical necessity of a treatment for a non-transgender inmate’s request for medically-necessary  
20 surgery. Each Defendant regarded and applied the policy as a *de facto* bar to Plaintiff’s request  
21 for SRS – and vaginoplasty in particular – solely as the result of Plaintiff being assigned male at  
22 birth, and a transgender woman in particular.

23 83. Finally, each Defendant discriminated against Plaintiff and manifested deliberate  
24 indifference to the mental anguish and suffering still resulting from her gender dysphoria by  
25 failing to prescribe SRS or follow the medical standards of care established by WPATH.

26 84. Defendants intentionally treat Plaintiff differently from non-transgender female  
27 inmates seeking vaginoplasty due to her gender and transgender status.

28 85. Due to the difference in treatment, similarly situated non-transgender women with

1 serious medical needs are able to receive adequate medical care, including medically necessary  
2 vaginoplasty, but inmates assigned male at birth and transgender inmates requiring such treatment  
3 are either barred from receiving it or, at a minimum, held to a more onerous standard.

4 86. The difference in treatment between transgender women and non-transgender  
5 women does not further any important government interest in a way that is substantially related to  
6 that interest, nor is it rationally related to any legitimate government interest.

7 87. Defendants' discriminatory denial of SRS is causing irreparable harm to Plaintiff,  
8 including severe anxiety and distress as a result of the discrepancy between her remaining male  
9 sex characteristics and her female gender identity. Plaintiff's mental anguish is intensified by the  
10 fact – repeatedly established in her medical records – that Plaintiff is living as a woman and has  
11 been receiving female hormone therapy since 2009, yet is being forced to live every minute of  
12 every day in a body with male genitalia that does not match her deeply rooted identity. The  
13 denial of SRS also unreasonably and recklessly places Plaintiff at increased risk for heart and  
14 vascular conditions and certain types of cancer, particularly given that she has Hepatitis C, which  
15 risks could be substantially reduced as a result of the substantially reduced hormone treatments  
16 that would be required following SRS. By failing to provide SRS to Plaintiff while incarcerated,  
17 Defendants have deprived Plaintiff of her right to equal protection of the laws guaranteed by the  
18 Fourteenth Amendment to the United States Constitution.

19 **COUNT THREE**

20 VIOLATION OF 42 U.S.C. § 1983 BASED UPON DEPRIVATION OF FOURTEENTH  
21 AMENDMENT RIGHT TO EQUAL PROTECTION BY REFUSING PLAINTIFF ACCESS TO  
22 PERSONAL ITEMS APPROVED AND AVAILABLE TO INMATES IN FEMALE  
INSTITUTIONS ON THE BASIS OF GENDER AND TRANSGENDER STATUS

23 88. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 87 as if fully  
24 set forth herein.

25 89. CDCR's policy, implemented by Defendants, discriminates against transgender  
26 women inmates by refusing access to clothing, cosmetic and hygiene items that are approved and  
27 available to cisgender women inmates. The policy singles out inmates assigned male at birth, and  
28 transgender women in particular, by placing onerous, significant barriers to obtaining these

1 products, which would enhance these inmates' ability to function comfortably in their  
2 environment.

3 90. Each of the Defendants applied the policy in a manner that discriminated against  
4 Plaintiff on the basis of her gender and transgender status. In considering Plaintiff's ability and  
5 need to access these pre-approved special purchase products, each Defendant failed to give proper  
6 consideration to the specific circumstances of Plaintiff's request and instead either ignored  
7 Plaintiff's requests or based their denial of her requests on a blanket discriminatory policy and/or  
8 bias against transgender women inmates. Each Defendant regarded and applied the policy as a  
9 bar to Plaintiff's request for access to these pre-approved personal items solely as the result of  
10 Plaintiff being assigned male at birth, and a transgender woman in particular.

11 91. Defendants intentionally treat Plaintiff differently from non-transgender female  
12 inmates seeking access to these pre-approved personal items due to her gender and transgender  
13 status.

14 92. Due to the difference in treatment, similarly situated non-transgender women are  
15 able to receive access to these personal items, but inmates assigned male at birth and transgender  
16 inmates requiring or desiring such products are barred from receiving them.

17 93. The difference in treatment between transgender women and non-transgender  
18 women does not further any important government interest in a way that is substantially related to  
19 that interest, nor is it rationally related to any legitimate government interest.

20 94. Defendants' discriminatory denial of access to these personal items is causing  
21 irreparable harm to Plaintiff, including severe anxiety and distress, and this discrimination further  
22 encourages the mistreatment of and discrimination against Plaintiff in other contexts and by other  
23 persons.

24 95. By failing to provide access to these pre-approved special purchase items to  
25 Plaintiff while incarcerated, Defendants have deprived Plaintiff of her right to equal protection of  
26 the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment against Defendants Beard, Pajong, Bright,

1 Dunlap, Lewis, and Does 1-30 as follows:

2 96. Enter injunctive relief enjoining Defendants from interfering with the discretion of  
3 the mental health and other medical professionals involved in Plaintiff’s care;

4 97. Enter injunctive relief declaring California Code of Regulations, Title 15, Section  
5 3350.1(b)(2), CDCR Department Operations Manual section 91020.26, and CDCR’s  
6 discriminatory restriction of women’s items available for transgender female inmates  
7 unconstitutional on their face and as applied;

8 98. Enter injunctive relief enjoining Defendants to provide Plaintiff with adequate  
9 medical care, including access to appropriate specialists and SRS;

10 99. Enter injunctive relief enjoining Defendants to provide Plaintiff equal access to  
11 clothing, cosmetic and hygiene items available to inmates housed in female institutions;

12 100. Award reasonable attorneys fees and costs to Plaintiff pursuant to 42 U.S.C. §  
13 1988; and

14 101. Such other relief as the Court finds appropriate in the interests of justice.

15  
16 Dated: December 10, 2014

MORGAN, LEWIS & BOCKIUS LLP

17  
18 By  /s/ - Herman J. Hoying

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