

**District Court, Denver County, State of Colorado**

Denver City and County Bldg  
1437 Bannock Street, Denver CO 80202

KANDICE RAVEN, JANE GALLENTINE, TALIJAH MURPHY, AMBER MILLER, MEGAN GULLEY, LAVENYA KARPIERZ, and CUPCAKE RIVERS,

Plaintiffs, as representatives of themselves and all others similarly situated in this class action,

v.

JARED POLIS, Governor of Colorado, THE COLORADO DEPARTMENT OF CORRECTIONS, DEAN WILLIAMS, Executive Director of the Colorado Department of Corrections, individually and in his official capacity, TRAVIS TRANI, Director of Prisons, individually and in his official capacity, RANDOLPH MAUL, M.D., CDOC Chief Medical Officer, individually and in his official capacity, SARAH BUTLER, M.D., Chief of the Gender Dysphoria Committee and Chief of Psychiatry, individually and in her official capacity, WILLIAM FROST, M.D., former CDOC Chief Medical Officer, individually and in his official capacity, DARREN LISH, M.D., former Chief of Psychiatry, individually and in his official capacity,

Defendants.

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**FIRST AMENDED CLASS ACTION COMPLAINT**

The Plaintiffs, Kandice Raven, Jane Gallentine, Taliyah Murphy, Amber Miller, Megan Gulley, Lavenya Karpierz, and Cupcake Rivers, as representatives of themselves and all others similarly situated, by and through their attorneys, Paula Greisen, Jessica Freeman, Lynly S. Egyes, Shawn Thomas Meerkamper, and Dale Melchert, allege the following in this Class Action:

**THE NATURE OF THE CASE**

1. Plaintiffs bring this class action on behalf of themselves and all transgender women who are, have been, or will be confined at the Colorado Department of Corrections (hereinafter referred to as “CDOC”), including but not limited to the all the facilities maintained, operated, or controlled by the CDOC and who have been, are or will be discriminated against solely on the basis of their status as women who are transgender in receiving the rights and privileges accorded to other people in CDOC custody.

2. Plaintiffs are seeking declaratory and injunctive relief, as well as compensatory damages, pursuant to the Colorado Anti-Discrimination Act, C.R.S. §§ 24-34-601, *et seq.*, and the Colorado Constitution Art. II, §§ 29 and 20. Plaintiffs are also requesting an award of costs and attorneys’ fees under these statutes and the Colorado Constitution.

**JURISDICTION AND VENUE**

3. The jurisdiction of this Court arises under the Colorado Constitution and C.R.S. §§ 24-34-601, *et seq.* All procedural and administrative prerequisites and exhaustion requirements for filing this suit have been met. There are no other administrative exhaustion requirements that would pose as a bar to any of the claims in this case.

4. All of the events alleged herein occurred and are continuing to occur within the State of Colorado, and all of the parties are residents of the State. Venue is proper in this Court pursuant to C.R.S. § 24-4-106.

## PARTIES

5. This is a class action on behalf of all transgender women in the custody of the Colorado Department of Corrections. Class Representatives are class members Kandice Raven, Jane Gallentine, Taliyah Murphy, Amber Miller, Megan Gulley, Lavenya Karpierz, and Cupcake Rivers,<sup>1</sup> all of whom are adult citizens and residents of Colorado. They are representatives of the class of transgender women and transgender women with gender dysphoria.

6. Kandice Raven is a 30-year-old transgender woman who is currently incarcerated at the CDOC male correctional facility in Sterling, Colorado. Because she is a transgender woman in CDOC custody, she has been subjected to numerous brutal assaults, resulting in permanent injuries, including a rape in 2014. She has attempted suicide twice and attempted self-castration as a means to deal with her severe gender dysphoria. Her numerous requests for transition-related surgery have been denied by CDOC.

7. Jane Gallentine is a transgender woman and survivor of childhood sexual abuse as well as conversion therapy—a dangerous, and now, illegal practice that seeks to convince people that they are not transgender or gay. She has been incarcerated since 2010 after attempting “suicide by cop.” Currently incarcerated at the CDOC male correctional facility in Sterling, Colorado, Jane has survived several rapes while in CDOC’s care. One of her abusers forcibly tattooed his name on her neck to show everyone that she was “his property;” another was a corrections officer who repeatedly raped her despite Jane’s pleas to his superiors. Jane lives in a constant state of severe anxiety and depression due to lack of medical treatment, lack of mental health treatment, and a persistent fear of sexual assault and a violent death.

8. Taliyah Murphy is a transgender woman who grew up in a military family in Colorado Springs and knew she was a girl around age nine. Taliyah has been incarcerated since 2009, after a conviction resulting from an altercation with her abusive boyfriend. Despite the

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<sup>1</sup> As transgender women, the named Plaintiffs no longer use the names they were given at birth. Some, like Taliyah Murphy, have obtained court-ordered name changes, while others have affected common law name changes. *See, e.g. In re Knight*, 36 Colo. App. 187, 189, 537 P.2d 1085, 1086 (1975) (“At common law, a person could adopt another name at will. Statutes setting forth procedures to be followed in changing a name merely provide an additional method for making the change.”). Each named Plaintiff also uses the pronouns “she” and “her.” While their names and pronouns are generally not respected by CDOC staff and officials, this complaint refers to them respectfully and per their wishes. For identification purposes only, named plaintiffs’ former names and CDOC numbers are as follows: Kandice Raven’s given name was Corwin Raven, and her CDOC number is 160495; Jane Gallentine’s given name was Jordan Gallentine and her CDOC number is 139897; Taliyah Murphy’s given name was Dario Murphy, and her CDOC number is 144525; Amber Miller’s given name was Matthew Miller, and her CDOC number is 163886; Megan Gulley’s given name was Reed Gulley, and her CDOC number is 113324; Lavenya Karpierz’s given name was Andre Karpierz, and her CDOC number is 98252; and Cupcake Rivers’ given name was Keith Rivers, and her CDOC number is 89382.

severe depression her gender dysphoria causes her, Taliyah is a mentor to other transgender women in CDOC and has prepared multiple articles and presentations on what it means to be transgender. Taliyah has repeatedly requested accommodations for her gender dysphoria, including transition-related surgery several times, to be searched by female staff, and to be transferred to a women's prison. She has been repeatedly denied, despite even a recent recommendation for transition-related surgery from a CDOC psychologist called Dr. Thiele. Taliyah is currently housed in a male CDOC facility.

9. Amber Miller is a 32-year-old transgender woman currently incarcerated at the male facility in Buena Vista. While in CDOC's care, she has survived rapes by a male corrections officer as well as incarcerated men. Because she filed a PREA report, Amber was stripped naked by a group of male guards, handcuffed, and placed in the solitary confinement for weeks. Amber has not been able to obtain treatment for the trauma she has suffered in CDOC, and has faced unreasonable obstacles to accessing her medication, sometimes causing sudden drops in her hormone levels and corresponding suicidal ideation and self-harm. She is routinely misgendered and subjected to strip searches by male corrections officers and has been repeatedly punished for seeking safer housing assignments.

10. Megan Gulley is a transgender woman from the Denver area who knew she was a girl from an early age. She has been incarcerated by CDOC in its male correctional facilities since 2002. She was later diagnosed with gender dysphoria and has been receiving hormone replacement therapy since 2014. Now housed in the Fremont male facility, Megan has been raped numerous times while in CDOC custody and has been repeatedly threatened by gang members for sex. Megan has made numerous requests for transfer to a women's prison and for transition-related surgery, which have been denied—despite the severity of her gender dysphoria which led to multiple self-castration attempts.

11. Lavenya Karpierz is a transgender woman who has been in CDOC male correctional facilities since 1998 and started hormone replacement therapy since 2016. Lavenya continues to suffer from severe depression related to her gender dysphoria and has lived in constant fear of being raped in the male facilities. She fought off an attempted rape in Fremont in 2015 and was placed in solitary confinement for fighting off her attacker. Lavenya has filed numerous requests for transition-related surgery, all of which have been denied. After years of requesting transfer to a women's prison, Lavenya was moved to Denver Women's Correctional Facility in late October 2019.

12. Cupcake Rivers is a 42-year-old transgender woman and has been incarcerated in CDOC male correctional facilities since 1999. Cupcake came out as transgender in 2004 and has been receiving hormone replacement therapy since 2015. Cupcake lives in fear of being raped in the male facilities and is often subjected to constant, severe and vulgar sexual harassment by incarcerated men, and she continues to suffer from depression and anxiety and loses sleep worrying for her safety. Her numerous requests for surgical treatment for her gender dysphoria have been denied, and she longs for competent talk therapy related to her gender dysphoria.

13. Each of the above-referenced individuals has been interviewed by undersigned counsel and each is willing to act as a class representative.

14. Defendant Jared Polis is Governor of the State of Colorado. As Governor, Mr. Polis is responsible for appointing the Executive Director of the Colorado Department of Corrections according to C.R.S. § 17-1-101, and furthermore is responsible for the overall administration of the laws of the State. Mr. Polis is sued in his official capacities.

15. Defendant the Colorado Department of Corrections is a statutory entity created pursuant to C.R.S. § 24-1-128.5. This Defendant operates, maintains, and controls the operations of all correctional facilities in the state of Colorado.

16. Defendant Dean Williams is the Executive Director of the Colorado Department of Corrections. Mr. Williams, at all times relevant to the allegations concerning him, was responsible for the overall management, supervision and control of all of the Colorado Department of Corrections facilities according to C.R.S. §§ 17-1-101 and 17-1-103. Mr. Williams's conduct was undertaken in accordance with his authority in his capacity as the Executive Director of the CDOC, under color of state law, and in accordance with the custom, policy and practice of the CDOC and the State of Colorado with respect to class members. Mr. Williams is sued in his official and individual capacities.

17. In early 2019, Defendant Travis Trani was appointed to the position of Deputy Executive Director of Prison Operations at the CDOC. Previously, Defendant Trani was the CDOC Director of Prisons from 2016 to 2019. Mr. Trani, at all times relevant to the allegations concerning him, was responsible for total prison operations, including the overall management, supervision and control of all of the Colorado Department of Corrections operations and facilities according to C.R.S. §§ 17-1-101 and 17-1-103. Mr. Trani's conduct was undertaken in accordance with his authority in his capacity as the Director of Prisons of the CDOC, under color of state law and in accordance with the custom, policy and practice of the CDOC and the State of Colorado with respect to class members. Mr. Trani is sued in his official and individual capacities.

18. Defendant Randolph Maul, M.D. is the Chief Medical Officer of the Colorado Department of Corrections. Dr. Maul, at all times relevant to the allegations concerning him, was responsible for the overall management, supervision and control of all of the Colorado Department of Corrections facilities according to C.R.S. §§ 17-1-101 and 17-1-103. Dr. Maul's conduct was undertaken in accordance with his authority in his capacity as the Chief Medical Officer of the CDOC, under color of state law and in accordance with the custom, policy and practice of the CDOC and the State of Colorado with respect to class members. Dr. Maul is sued in his official and individual capacities.

19. Defendant Sarah Butler, M.D. is the Chief of the Gender Dysphoria Committee and the Chief of Psychiatry of the Colorado Department of Corrections. Dr. Butler, at all times relevant to the allegations concerning her, was responsible for the overall management,

supervision and control of all of the Colorado Department of Corrections facilities according to C.R.S. §§ 17-1-101 and 17-1-103. Dr. Butler's conduct was undertaken in accordance with her authority in her capacity as the Chair of the Gender Dysphoria Committee, and the Chief Psychiatry of the CDOC, under color of state law, and in accordance with the custom, policy and practice of the CDOC and the State of Colorado with respect to class members. Dr. Butler is sued in her official and individual capacities.

20. Defendant William Frost, M.D. is the former Chief Medical Officer of the Colorado Department of Corrections. Dr. Frost, at all times relevant to the allegations concerning him, was responsible for the overall management, supervision and control of all of the Colorado Department of Corrections facilities according to C.R.S. §§ 17-1-101 and 17-1-103. Dr. Frost's conduct was undertaken in accordance with his authority in his capacity as the former Chief Medical Officer of the CDOC, under color of state law and in accordance with the custom, policy and practice of the CDOC and the State of Colorado with respect to class members. Dr. Frost is sued in his official and individual capacities.

21. Defendant Darren Lish, M.D. is the former Chief of Psychiatry of the Colorado Department of Corrections. Dr. Lish, at all times relevant to the allegations concerning him, was responsible for the overall management, supervision and control of all of the Colorado Department of Corrections facilities according to C.R.S. §§ 17-1-101 and 17-1-103. Dr. Lish's conduct was undertaken in accordance with his authority in his capacity as the former Chief Psychiatry of the CDOC, under color of state law, and in accordance with the custom, policy and practice of the CDOC and the State of Colorado with respect to class members. Dr. Lish is sued in his official and individual capacities.

### **CLASS ACTION ALLEGATIONS**

22. This action is brought as a class action on behalf of transgender women as similarly situated persons pursuant to the provisions of Rules 23(b)(1)(A), 23(b)(1)(B), 23(b)(2), and 23(b)(3) of the Colorado Rules of Civil Procedure.

23. The class consists of all transgender women who are or will be confined at the Colorado Department of Corrections.

24. Subclass A consists of class members who have gender dysphoria, which is the clinical diagnosis for the distress that many transgender people experience because of the incongruence between gender identity and sex assigned at birth. The symptoms of gender dysphoria cause a disability that substantially limits major life activities including working, socializing, education, and reproduction. CDOC limits access to its programs, services and benefits based on this disability.

25. All the class representatives have standing to bring this class action because they are transgender women who are currently incarcerated in the CDOC and include those class members who have gender dysphoria.

26. The class is so numerous that joinder of all members is impracticable. On information and belief, there are at least 160 transgender women who CDOC incarcerates in men's prisons. The incarcerated populations at the CDOC facilities change constantly and therefore not all class members can be specifically identified.

27. There are common questions of law and fact that relate to and affect the rights of each member of the class. All class members have been, are, or will be confined at a CDOC facility, and all have been, are, or will be discriminated against solely on the basis of their status as transgender women in receiving the rights and privileges accorded to other incarcerated people.

28. The class representatives are typical of the claims of the class in that:

A. The class representatives have been subjected to conditions at the CDOC facilities which create imminent risks of serious mental and physical injury for transgender women;

B. Class representatives have been subjected to discrimination while in the custody of CDOC solely on the basis of their gender identity and/or their disability, in that they have been denied appropriate housing, subjected to cross-gender searches by male guards, including strip searches, subjected to conditions that pose serious risk to their safety and well-being, and subjected to conditions that expose them to harassment, rape, sexual assault, and other violence based on their sex, transgender status and/or disability;

C. Class representatives are discriminated against based on their sex, transgender status and/or disability in that they are denied living conditions and other necessary accommodations that recognize their appropriate gender identity, including the use of proper pronouns and identification that comports with their gender identity, proper bathing areas that respect their privacy, and full access to gender-appropriate canteen items;

D. Class representatives have been discriminated against based on their sex, transgender status and/or disability and denied appropriate accommodations for their disability in that they have been denied medical and mental health treatment by qualified medical and mental health providers, including medically necessary surgical treatment for gender dysphoria;

E. Class members are discriminated against by being denied full access to rehabilitation programs to facilitate the transition of class members to living conditions upon their release from custody because they are transgender and/or living with gender dysphoria, and

F. The class representatives, like all class members, are discriminated against in that they have been routinely denied access to other programs, services, and benefits

provided by the CDOC and the individual correctional facilities solely on the basis of their sex, transgender status and/or disability.

29. The class representatives and their attorneys will fairly and adequately protect the interests of the class. These class representatives are suitable class representative because their claims are typical of the class claims, and their confinement is expected to continue through the duration of this action. The attorneys representing the class are capable and experienced litigating discrimination and civil rights claims. The class representatives and their attorneys intend to prosecute this class action vigorously.

30. This action is properly maintained as a class action in accordance with Rule 23(b)(1)(A) of the Colorado Rules of Civil Procedure in that the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards for the defendants, or would create disparate conditions of confinement for persons with disabilities among the several Colorado Department of Corrections facilities.

31. This action is properly maintained as a class action in accordance with Rule 23(b)(1)(B) of the Colorado Rules of Civil Procedure in that the prosecution of separate actions by individual members of the class would create a risk of adjudications, which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests. It is not feasible to provide the required access to programs, services, or benefits of the CDOC in piecemeal fashion.

32. This action is properly maintained as a class action in accordance with Rules 23(b)2 and (b)(3) of the Colorado Rules of Civil Procedure in that the defendants have acted or refused to act on grounds generally applicable to all transgender women in the custody of the CDOC, thereby making final declaratory and injunctive relief appropriate for the class as a whole.

## FACTUAL ALLEGATIONS

### ***Gender Identity, Gender Dysphoria, and the Incarceration of Transgender Women***

33. Gender identity is an innate, internal sense of one's sex—*e.g.*, being male or female—and is a basic part of every person's core identity. Everyone has a gender identity. Most people's gender identity is consistent with the sex they were assigned at birth ("assigned sex"). Transgender people, however, have a gender identity that is different from their assigned sex. For example, a transgender woman is a woman who was assigned male at birth and has a female gender identity. A cisgender woman is a woman who was assigned female at birth and has a female gender identity.

34. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) ("DSM-5") recognizes that being transgender is not itself a disability, but that the clinically-relevant condition is the "gender dysphoria" ("GD")

experienced by many individuals whose gender identity conflicts with their assigned sex. GD is defined as the significant distress that may accompany the incongruence between a transgender person's gender identity and assigned sex. This distress limits major life activities and is therefore a disability. A transgender person's gender dysphoria can be alleviated when the person is able to live, and be treated by others, consistently with the person's gender identity.

35. Gender dysphoria often, but not always, emerges during childhood. Most, if not all of the class members have known they were female since childhood. For instance, at the age of three, Megan Gulley wanted to be "the mom" while playing house with other children. Taliyah Murphy knew she was different by age nine and began wearing girls' clothes and makeup.

36. When a transgender person's gender dysphoria is left untreated, or is inadequately treated, the consequences can be dire. Symptoms of untreated gender dysphoria often include intense emotional suffering, anxiety and depression, suicidality, and thoughts or acts of self-harm. All of those symptoms can be mitigated, and often prevented altogether, for transgender people with access to appropriate individualized medical care as part of their gender transitions.

37. Many of the class members have engaged in multiple acts of self-harm, some since childhood, because their gender dysphoria is not accommodated. For instance, Jane Gallentine first attempted suicide around age seven. Kandice Raven's insufficiently treated gender dysphoria causes serious depression and constant thoughts of attempting self-castration. Megan Gulley has attempted self-castration multiple times, and Amber Miller engages in self-harm "cutting" regularly.

38. Certain medical treatments, including hormone replacement therapy and various surgical procedures that align one's physical characteristics with one's gender identity (collectively referred to in this Complaint as "transition-related surgeries" or "surgical treatment for gender dysphoria") are safe and medically effective treatments for gender dysphoria under the applicable standards of care, and are recognized as such by the medical profession.

39. The prison environment can be particularly harmful to transgender women, as reports (including the 2009 report by the National Prison Rape Elimination Commission) consistently document that transgender women are victims of sexual abuse at much higher rates than the rest of the population while in custodial environments including lock-ups, jails and prisons, as well as while being searched by male prison guards.

40. The vast majority of the class members receive hormone replacement therapy ("HRT"). HRT changes the hormonal levels so that these women can develop feminine features in accordance with their gender identity, and results in the development of breasts and other physical characteristics that are stereotypically associated with a feminine appearance. These class members make substantial efforts to present as the women that they are to alleviate the symptoms of gender dysphoria—for example, by styling their hair and wearing makeup to express their female identity.

41. As women living in men's prisons, class members are routinely subjected to sexual harassment and often, to sexual violence. Class members are targeted by incarcerated men and male CDOC staff for sexual encounters and are often treated as chattel – traded for favors in the prison environments and subjected to sex trafficking, especially by gang members who seek to control them as their property. Some transgender women in CDOC's prisons have even had gang symbols forcibly tattooed on their bodies, labelling them as the property of certain gangs – and then forced to provide sexual favors to those gang members.

42. In its June 2015 report of data collection activities, the Bureau of Justice Statistics ("BJS") disclosed that an estimated 35% of transgender people held in prisons such as those in Colorado reported experiencing one or more incidents of sexual victimization in the past 12 months or since admission.

43. According to the BJS report, when asked about the experiences surrounding their victimization by other incarcerated people, 72% of the transgender respondents said they experienced force or threat of force and 29% said they were physically injured.

44. In 2017, at the male facility located in Buena Vista, Amber Miller was thrown to the ground, pinned down, and brutally raped by a male inmate. In hopes of finding safe shelter from her attacker, she filed a Prison Rape Elimination Act ("PREA") report shortly thereafter on February 5, 2017. In response, male CDOC staff stripped her naked, handcuffed her, searched her, and put her in solitary confinement. While in "the hole," Amber was told that she would need to be examined by a male physician to complete her report under PREA. Knowing that such an examination would require her to expose herself in front of male guards, she could not endure the process and refused the examination. Afterward, she was simply told that her claim was unsubstantiated.

45. Soon thereafter, CDOC assigned Amber and her rapist to the same yard. When her pleas to be moved went unanswered, Amber's only option was to violate prison rules, which she knew would result in her being moved to a different unit for disciplinary reasons. Eventually, she was transferred to Arkansas Valley, where she was raped again, this time by a CDOC corrections officer who demanded oral sex from her and told her if she refused, he would falsely report that she'd attacked him, saying, "nobody will believe you," or words to similar effect. Feeling helpless, Amber performed oral sex on the guard, after which he turned her around and raped her anally. Amber again filed a PREA report, but fearing retaliation and recalling her treatment after her prior PREA report, she did not complete her complaint.

46. Jane Gallentine has survived rape and sexual assault in CDOC custody many times. While incarcerated at Buena Vista, her cellmate would strangle her until she would give in to oral sex. Having already learned that CDOC rape investigations were unhelpful, and fearing death for being labeled a "snitch," Jane never reported. While incarcerated at Limon, a man named Eric claimed her as his "property." He raped her on a regular basis, repeatedly

threatened to kill her if she reported him, and tattooed his name on her neck so everyone else would know she “belonged to” him.

47. While incarcerated at Sterling, Jane was repeatedly sexually assaulted by a CDOC employee, Officer Lewis. After she arrived at that facility, Officer Lewis started demanding that he always be the one to escort her in the facility and waited for her after lunch. He would stare at her in a sexually suggestive manner. She filed a PREA report for this, hoping to be separated from Officer Lewis. Emboldened by the lack of response to Jane’s complaints about him, Officer Lewis began taking Jane to secluded areas and started groping her breasts, ultimately raping her, which he would continue to do on multiple occasions. Jane begged for help, from a Lieutenant Embrick and a Captain McIntosh, but nothing was done. Jane made numerous reports about Officer Lewis, including that he was touching and kissing her, that he left marks on her breasts and neck, and that he raped her on numerous occasions. Finally, an investigator was assigned, and Jane showed him the physical evidence of her bruises and hickies, and a SANE exam was performed. Although Jane was told that DNA evidence was retrieved during the SANE exam, Embrick later told her that the DNA test “disappeared.” As a result of filing the PREA report, Jane was placed in the hole for two weeks. Although the investigator, Lieutenant Pimple, told Jane he would return to discuss the investigation with her, she never saw him again, and she never saw the results of the alleged PREA investigation.

48. Kandice Raven was beaten and raped when she was first incarcerated in the MCC unit in Sterling. During that assault her attacker strangled her with a cable cord. Although she made a formal PREA report regarding the assault, CDOC claims it does not have a record of that report. In 2017, Kandice was brutally beaten by Sureño gang members at Buena Vista. The gang members knocked out her tooth, deviated her septum, and caused her eye to swell shut. Instead of being provided immediate medical attention, she was placed in solitary confinement for two weeks. As a result in the delay of treatment for the attack, her gum line is permanently damaged. In March 2019, Kandice was again beaten by three Sureño gang members in the MCC unit at Sterling. These gang members told her to leave the unit saying they did not want “fairies” living in their unit. After surviving such repeated violence, Kandice suffers from PTSD and is afraid to leave her cell. She has grieved her placement and asked to be moved to safe housing, and to the female living facility, but CDOC responded, as it always does, that housing assignments are “not a grievable issue.”

49. Before being transferred last month to a female correctional facility, Lavenya Karpierz was constantly being groped by men in the male CDOC Buena Vista facility. At that facility, there were times when she could only shower at a time and place where she was exposed to incarcerated men who would leer, make harassing comments, solicit sex, and on at least one occasion, expose themselves to her. Lavenya lived in constant fear of rape while in men’s prisons. Despite being transferred to Denver Women’s Correctional Facility, CDOC continues to deny Lavenya full and equal access as to the facility because she is transgender. Lavenya is assigned to an intake unit without access a yard, a gym, or other opportunities allowed to cisgender women in the same prison. The warden of Denver Women’s informed her that she

will be there for at least six months; cisgender women arriving at the same prison typically stay in the intake unit only for around two weeks.

50. Like the other women, Cupcake Rivers has also lived in daily fear of being sexually harassed or raped. For an extended period, Cupcake was subjected to male inmate's watching her during her shower times, shouting at her comments like "suck my dick, bitch!" and "Man, I'd like to fuck that!" Despite her complaints, CDOC refused to take corrective action.

51. Megan Gulley has been raped multiple times since she's been in CDOC's care. She was raped when she was first incarcerated at Buena Vista in 2002. Megan did not report the rapes because CDOC staff at that time had a practice of telling people in their custody that reporting rapes would only make their situations worse. In August 2019, Megan refused a work assignment in the kitchen at Fremont because she had been raped in that very kitchen previously. Rather than work with a rape survivor to mitigate her trauma, CDOC staff put her on restricted privileges to punish her. At Sterling in 2016 and 2017, Megan was extorted by gang members who threatened to either kill her or make her a sex slave unless she paid them money. In order to protect Megan and having their pleas to CDOC to protect Megan go unanswered, Megan's family gave some compensation to the gang members to stop the threats.

#### ***Relevant Standards for Incarcerated Transgender People.***

52. The World Professional Association for Transgender Health (WPATH) is the leading professional association for surgeons, doctors, medical researchers and others who specialize in the medical treatment of people with gender dysphoria. Based on decades of clinical experience, WPATH has promulgated medical standards of care for treating patients with gender dysphoria, the Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People. CDOC, and all Defendants entrusted with the care, treatment, and safety of the transgender women in CDOC custody are aware of and admit that WPATH standards of care are applicable to this community. The WPATH Standards of Care is widely recognized in the medical community as the authoritative standard for the provision of transgender healthcare and the National Commission on Correctional Healthcare recommends the WPATH standards for use in all correctional facilities.

53. The WPATH standards of care apply "in their entirety" to transgender people in prisons and require individual assessment for appropriate treatment in a fair and tolerant climate, which may consist of outward expression of one's internal sense of gender identity, including hormone therapy and/or transition-related surgery, and social role transition, including access to gender-affirming canteen items.

54. WPATH provides that placement of transgender people in a single-sex housing unit, ward, or pod on the sole basis of the appearance of the external genitalia places transgender people at risk for victimization. Defendants have admitted that it makes facility assignments to people in custody solely on the basis of the individual's genitalia.

55. WPATH also provides that housing and shower/bathroom facilities for transgender people living in institutions should take into account their gender identity and role, physical status, dignity, and personal safety. Defendants have failed to follow these requirements for transgender women in CDOC's care, resulting in the ongoing violence they face.

56. In 2003, Congress passed the *Prison Rape Elimination Act of 2003*, 42 U.S.C. § 15601 *et seq.* ("PREA"). PREA establishes a zero-tolerance standard against sexual abuse in adult prisons and other confinement centers. PREA requires agencies to comply with national standards to eliminate sexual abuse, recognizes that transgender people face elevated risks of being victimized in prisons, mandates that state correctional facilities provide proper training to correctional staff, and requires subject agencies to establish methods to deter and detect sexual violence in prison, to identify and treat such victims, and to report incidents of such violence to the Bureau of Justice Statistics ("BSJ").

57. The Commission established to monitor compliance with PREA noted in 2009 that gender nonconformity places transgender people at extremely high risk for abuse, and, as a result, the Commission opined "*In determining whether to house transgender individuals in men's or women's facilities, the Commission requires individualized determinations based on other factors in addition to the person's current genital status*" (NPREC, 2009, p. 89). CDOC and all Defendants have been aware of and claim to comply with the standards required by PREA.

### ***Defendants' Policies and Practices***

58. Defendants refuse to recognize transgender women in their custody as the women that they are. Instead, Defendants routinely refer to these women using the male names they were assigned at birth, even when these women have obtained court-ordered name changes recognizing their female identity. Documentation maintained by Defendants, whether in case management, mental health or medical files, routinely refer to these women as "men" or using male pronouns, despite Defendants' own documentation showing that these individuals belong to the community of transgender women, most of whom have been diagnosed with GD by CDOC medical staff.

59. Even when transgender women in CDOC custody have obtained court orders recognizing their feminine names or gender markers, CDOC refuses to recognize or give effect to those lawful orders. Taliyah Murphy has changed her name in court, on her birth certificate, her Colorado ID, and her social security card. Yet, CDOC claimed it had to use the name on her commitment paperwork. So, Taliyah obtained an additional court order changing the name on the mittimus under which she was sentenced. Nevertheless, CDOC still refused to recognize her legal name reflecting her correct gender identity. Similarly, Amber Miller has since September 2018 had a Colorado ID recognizing her gender as female, yet CDOC still treats her as a man, tells her she is a man, and refers to her using masculine pronouns.

60. Defendants refuse to house transgender women in female housing facilities. The vast majority of transgender women have been and continue to be housed in male correctional facilities. Only in the last few weeks, upon pressure from the class members in this case and a related case, did CDOC finally transfer three transgender women to the CDOC female facility. Thus, there are currently 158 transgender women currently housed in CDOC male facilities. Upon their incarceration in the Colorado Department of Corrections, Defendants screen men to assess proper housing, but routinely fail to properly screen transgender women to ensure that they are appropriately protected and appropriately housed.

61. Although Defendants have an intake policy that purports to evaluate each person on a “case-by-case” basis and that states they give serious consideration to the individual’s concerns for their own safety, upon information and belief Defendants have never immediately housed a transgender women in a facility that corresponds with her gender identity upon initial intake. A large number of transgender women in CDOC’s custody have requested housing in a women’s facility, or in another safe manner that sufficiently protects them from the sexual violence and sexual harassment that they now suffer. Most of these class members have expressed serious safety concerns regarding being housed in all male facilities that do not adequately protect them. Defendants previously admitted that they house all people in custody according to the person’s genitalia and upon information and belief, continue to do so with respect to all initial housing placements. Thus, Defendants are routinely discriminating against these women based on their sex, transgender status and/or disability and exposing them to harassment, rape, sexual assault, and other anti-transgender violence, or a heightened risk thereof by refusing to provide them safe housing.

62. In addition, Defendants routinely allow male guards to conduct searches, including strip searches, of women who are transgender, including those with GD. In at least one documented case, a twenty-year-old transgender woman who was housed in a male facility was strip searched in the presence of five male guards, two of whom were video-taping the strip search—shortly after the woman had reported being sexually assaulted. No female guards were present during the strip search, which included the guards physically cutting off her underwear, and forcing her lie on the floor while the guards shined a flashlight into her genital areas. This woman had lived as a woman for several years, had severe GD, had been on hormone replacement therapy for several years, had breasts and otherwise appeared as the woman she is. Upon information and belief, this type of strip search is routinely allowed by Defendants. Most of the class members, if not all, have routinely been subjected to searches, including strip searches, by male guards and have been subjected to solitary confinement, despite CDOC policies that male guards do not subject women to strip searches and prohibits female inmates from being placed in solitary confinement. In PREA audits conducted at Defendants’ male facilities that house transgender women, Defendants deny that it conducts “cross-gender” searches of people in custody (i.e., searches by staff of persons of the opposite gender), because it does not recognize transgender women as women.

63. In fact, CDOC’s response to a class member’s grievance about being strip searched by male guards and request to be searched by persons who correspond to her gender

identity, CDOC denied the request and responded by quoting its policy that “Strip searches will be conducted by a CDOC employee of the same sex as the offender being searched.” CDOC has similarly responded to complaints by other class members by stating, “It is policy that male offenders will be strip searched by male staff.”

64. Despite knowing that class members in its men’s prisons are repeatedly subjected to sexual violence and harassment because of their gender, Defendants Trani, Lish, Butler, Maul, and Frost have knowingly failed to implement policies to protect these women. As stated above, transgender women are at a heightened risk of sexual violence. Defendants’ policies and practices are that if a transgender woman reports sexual assault, that woman is then subjected to a strip search by male guards and then placed in solitary confinement. This practice punishes the women who report sexual assault and subjects them to another form of sexual assault: a strip search by male guards. This practice also has the effect of deterring women from reporting sexual assaults and imposes a punishment on them because of their sex, transgender status and/or disability. This policy and practice has an especially severe impact on transgender women with gender dysphoria. Many of these women have been subjected to sexual violence even before entering the prison system, and being subjected to strip searches by men exacerbates both their trauma and their symptoms of gender dysphoria. Many of these women suffer from severe depression, and being placed in solitary confinement increases that depression and too often leads to further self-harming behavior.

65. Defendants Trani, Lish, Butler, Maul, and Frost were each personally responsible for setting policies and procedures, were aware that class members were being subjected to sexual assault, and that they were routinely being strip searched by male guards if they reported a complaint of sexual assault. Each of these Defendants is and was aware that most class members have been diagnosed with gender dysphoria and that subjecting these class members to strip searches by men at any time, let alone after a sexual assault, would deny class members necessary accommodations for their disability, as well as pose a substantial risk of serious harm to class members. Nevertheless, each Defendant personally disregarded the obvious risks to class members by failing to take reasonable efforts to abate the harm. Defendant Trani was responsible for implementing and overseeing these strip search policies. Defendants Frost and Maul, as the Chief Medical Officers, and Defendants Lish and Butler, in their respective positions as Chief of Psychiatry and Chairs of the Gender Dysphoria Committee, were responsible for ensuring that class members were provided adequate accommodations for their disability. Despite being aware of the excessive risk of harm these policies posed to class members, and despite receiving numerous pleas from class members for necessary accommodations, these Defendants failed to take any appropriate action to abate the harms.

66. Defendants also routinely fail to adequately report and investigate reports of sexual assault made by the women in its men’s prisons. In documents produced by Defendants in October 2018, Defendants claim that only 45 transgender women in their custody have made reports of being raped since 1991. Some of these women were raped multiple times. Of the 65 reports of sexual assault of transgender women that Defendants have admitted to receiving, all but one of those complaints were determined by Defendants to be “unsubstantiated” or

“unfounded.” In one documented case, the investigation by Defendants indicated that the victim was not credible simply because she did not disclose a phone call she made after the rape occurred. That same investigation did not note any credibility problems with the perpetrator – despite that he had adamantly denied having any sexual contact with the victim, and then later changed his story to describing the sexual contact as “consensual.”

67. Upon information and belief, Defendants knowingly fail to document the vast majority of sexual assault reports made by transgender women. Plaintiffs are aware of at least 4 rapes that were reported to Defendants in 2018 that are not reflected in the records disclosed by Defendants. In fact, Defendants’ records show only one such complaint in 1991 and did not record any complaints from 1992-2000. Applying the national statistics of transgender women in custody who are subjected to sexual assault, Defendants have not documented at least 50% of the rapes suffered by these women. Thus, either Defendants’ policies are having a substantial deterrent effect on these women from reporting the rapes, or Defendants have not properly documented the rapes that are reported, or both.

68. In response to federal lawsuits, Defendants recently enacted new policies providing that transgender women shall be referred to by proper pronouns and given access to the female canteen. Yet, Defendants have failed to provide proper training to staff and other workers at their facilities to ensure compliance with these policies. Although there are some staff who do treat these women with respect, there are many that do not. Instead, these staff members subject class members to verbal harassment because of their feminine appearance – referring to transgender women as “it” or “thing” and when more than one class member are walking together, staff has been heard to reference them as “thing 1” and “thing 2.” Prior to the recent changes, women in this community were not allowed to purchase items from the female canteen and received disciplinary actions if they wore makeup or altered their clothing to conform to their gender identity. Upon information and belief, these new canteen policies still discriminate against class members, by failing to provide them all canteen options available to the women housed in the female facilities. Although men in Defendants’ custody are not subject to disciplinary action for presenting as men and have always been granted access to the male canteen, women who are transgender have been denied these privileges because of their sex, transgender status and/or disability. Denying the class members, especially those who suffer from GD, discriminates against them and denies them the ability to live in an environment in which their gender identity is recognized, and thus denies them critical accommodations for their disabilities and subjects them to extreme emotional distress. Although CDOC made some recent policy changes, there is nothing to prevent CDOC from reverting to its prior policies.

69. During the time Defendant Trani was the Director of Prisons, 2016 to 2018, there were over 33 sexual assaults against class members that were reported to CDOC for investigation. *Not one* of those reports was substantiated by CDOC. The prevalence of sexual assaults against class members is on-going, often with CDOC retaliating against the victim of the assault or unfairly questioning the credibility of the victims, thereby justifying a finding that the complaint is “unsubstantiated.” During his employment with CDOC, Defendant Trani is and has been aware of these conditions, possessed supervisory responsibility over the prison operations

and policies about where and how these women are housed, how they are exposed to sexual violence, and that class members, especially those undergoing hormone treatment, were vulnerable to this harm. Despite this knowledge, he has failed to make changes to policy and practice to prevent these abuses. Defendant Raemish testified that he had numerous conversations with Defendant Trani and other top CDOC management about the care and treatment of class members, including whether accommodations should be provided to this community. On at least one occasion, in late 2017 or early 2018, Director Trani received a letter from a young transgender woman and rape survivor, pleading to be moved to a women's prison for her safety. Rather than take action to protect this young woman, Director Trani forwarded her letter to the Gender Dysphoria Committee for denial. The Committee denied that request in a letter dated January 30, 2018 and signed by Defendant Dr. Darren Lish. Although Director Trani had the authority and responsibility to protect that woman from rape, he took no action. The young woman was subsequently raped several times while in CDOC custody. In fact, Director Trani was aware that multiple class members have complained of being raped during his tenure at CDOC, but he has taken no action to prevent this harm. Defendant Trani is also personally aware of requests from many class members to provide them safe housing as well as many requests to transfer class members to facilities that correspond to their gender identity to accommodate their disabilities of gender dysphoria. Defendant Trani has been personally involved in the decisions to deny these requests, is responsible for setting the policy that denies these requests, is and has been aware that of the substantial harm to class members of denying these risks, and has refused to provide the necessary accommodations and has acted with reckless disregard of the safety and well-being of class members.

***Failure to Provide Necessary Accommodations and Grossly Inadequate Medical and Mental Health Care for Transgender Women***

70. Defendants discriminate against class members by routinely failing to provide accommodations such as medically necessary medical and mental health care for transgender women who experience gender dysphoria. Despite the fact that proper diagnosis and effective treatment of gender dysphoria are well-understood among qualified medical professionals, CDOC has adopted policies, procedures, and practices that deny class members evaluation and medically necessary accommodations, including medical treatment, for gender dysphoria.

71. Despite well-settled authority that dictates that a variety of medical and surgical treatments are often medically necessary to treat transgender women who suffer from GD, Defendants refuse to provide many of that medically necessary treatments except for the provision of HRT.

72. Defendants have historically relegated the medical and mental health care decisions regarding class members to the "Gender Dysphoria Committee" ("GDC") which centralizes all those decisions in the hands of persons who are not qualified to provide treatment to those with gender dysphoria. Committee members typically have never examined or even seen the class members whose course of treatment they are deciding. This committee routinely denies medically necessary accommodations to class members, such as placement in appropriate

and safe facilities. This committee has never granted a class members' request for necessary surgery, and in fact refuses to provide class members with medical and mental health evaluations by qualified personnel to determine if these accommodations are medically necessary. Recently, the GDC deferred all hormone treatment decisions to the CDOC medical staff, which is similarly unqualified to provide medical care to class members. Many class members have received inadequate or wrong HRT dosages, or experienced unacceptable delays in their medication, causing enormous stress, anxiety, and medical complications. This Committee has refused to grant requests to accommodate the social transition of class members, allows routine strip-searches of gender dysphoric class members by male staff, has refused requests that class members be referred to with proper pronouns, and other requests for accommodations made by class members.

73. Defendants' former Chair of its Gender Dysphoria Committee, Dr. Darren Lish, who was also the Chief of Psychiatry at DOC, testified in December 2018 that CDOC medical and mental health staff do not have the required expertise to make these medical assessments.<sup>2</sup> Instead, Dr. Lish testified that the medical and mental health staff do not have the training to determine who needs this treatment, and even if they did have the training, that Defendants refuse to provide any such treatment as a matter of policy. He went on to explain that Defendants have routinely denied any surgical treatment for GD, considering them "elective" surgeries. Although Dr. Lish agreed that even if these procedures were determined to be medically necessary, Defendants' policy is to refuse to provide the procedures. Dr. Lish even remarked that in response to class members who were on HRT and requested bras, CDOC's response was to provide the women with "suppression garments" --- which are essential chest binders to hide the appearance of breasts --- which negates the outward appearance of the HRT treatment.

74. Dr. Lish further testified that he understood that transgender women who suffer from GD have a very high rate of suicide if not treated properly. He admitted that Defendants need to obtain expertise on these matters from outside providers, but have been resistant to doing so, despite the medical necessity.

75. Instead, Defendants have created a policy that prevents transgender women who experience GD from receiving medically necessary accommodations. Defendants' policies require women with GD to receive three letters from medical and mental health providers in the CDOC system to recommend medically necessary treatment for GD. Yet, Defendants do not have qualified medical and mental health care providers who have the necessary training to make this assessment. In one case, plaintiff Taliyah Murphy did finally get a referral for surgical treatment, but the other mental health care providers who treat her refused to provide the necessary recommendations because they did not have the expertise to make the determination of whether she needed the treatment. Thus, necessary accommodations and medically necessary

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<sup>2</sup> Dr. Lish testified that he had more knowledge about GD than any other medical or mental health provider in CDOC, and that he was replaced by Dr. Beatte – but that she was trained by him and did not possess more knowledge about these subjects than himself.

treatments are denied to these women because Defendants have knowingly failed to provide medical and mental health care providers who are qualified to assess whether this treatment is needed. According to Dr. Lish, “the time is now” for “[Defendants] to stop being defensive about it and do something reasonable.”

76. Aware that class members were preparing to file this Class Action, Defendants adopted a new CDOC policy that purports to assure that all class members will be provided adequate medical and mental health care and accommodations. Nonetheless, CDOC has not retained qualified medical and mental health personnel, has not provided adequate training to its staff and cultural awareness training for the people in its custody, has no meaningful manner to supervise the implementation of these policies, and has to date still not approved any surgical accommodations for class members. CDOC can change this new policy at any time and is not bound to implement this policy.

77. Class members are further discriminated against because Defendants lack qualified mental health staff to provide the proper care and treatment required for GD. The women with GD have very limited access to any qualified mental health personnel, and often only see a psychiatrist for a short time once every three months. Although Defendants do provide some so-called therapy groups to transgender women at certain facilities, the mental health providers are not adequately trained or qualified to provide the necessary therapy accommodations. At one such group at the Buena Vista facility, Rose Quinn, the mental health provider leading the group, distributed a pamphlet entitled “Regret Isn’t Rare: The Dangerous Lie of Sex Change Surgery Success” by Walt Heyer, an author with no training or credentials in medicine or mental health, who decries the evils of any transition-related surgery and urges that sex is an “immutable” characteristic that cannot be changed—contrary to widely accepted protocols for the treatment of gender dysphoria. Upon information and belief, it is not uncommon for women who attend these “group therapy” meetings to be provided this type of literature that contravenes prevailing medical standards.

78. Cupcake Rivers was in the group that received this anti-transgender propaganda. Though she filed a formal grievance on the issue, she was told that Dr. Quinn is “a professional” whose judgement cannot be “second guessed.”

79. Defendants know that they provide inadequate accommodations, including medical and mental health treatment, that is critical to these women, and is medically necessary to those women who experience GD.

80. There is no medical or scientific support for Colorado’s refusal to provide transition-related surgical and mental health care for transgender people with gender dysphoria. Although CDOC has a policy that it will make such assessments on a “case-by case” basis, to date not one single transgender woman has ever been approved for any type of surgical treatment for gender dysphoria at CDOC, despite the overwhelming evidence to support the need for such accommodation. Instead, CDOC has mandated that any woman who believes such care to be “medically necessary” must obtain documentation from medical and mental health providers

confirming that the surgical interventions are “medically necessary.” Yet, at the same time, CDOC refuses to provide these women access to qualified medical and mental health providers who can make these determinations.

81. Taliyah Murphy has been seeking surgical treatment for her gender dysphoria since 2017. The “gender dysphoria committee” told her that it could not consider her for surgery because none of her providers had recommended surgery. Yet, none of her providers had recommended surgery because none of them had the necessary training and qualifications to do so, and all of them knew that CDOC does not actually provide surgical treatment for gender dysphoria. However, in July 2019, Taliyah finally found a medical provider in CDOC who understood. In recommending transition-related surgery, Dr. Jonathan Thiele wrote, “If Ms. Murphy were permitted to undergo gender affirmation surgery, I assess that it is more likely than not that it would help to relieve some of the dysphoria she experiences due to still having male anatomy, and thus my clinical impression is that a gender affirmation surgery appears to be medically necessary.” Elated, and knowing that the WPATH Standards of Care require two recommendation letters for surgical treatment, Taliyah then requested evaluative letters from her two other providers at CTCF, Dr. Jane Gilden and Mr. Bundy, a mental health clinician. However, both of these providers have told her that they do not have the knowledge or training to make the required assessment and were not aware of anyone else on the CTCF staff who was trained to make these assessments. As a result, Taliyah continues to suffer from severe depression caused by her gender dysphoria– and is often afraid to tell anyone about the level of her depression because she fears being placed into solitary confinement, which only deepens the pain.

82. Megan Gulley describes her gender dysphoria as “feeling like an alien,” and says that her “despair grows daily.” She is in desperate need of transition-related surgery, has attempted self-castration in the past, and has continued thoughts of self-harm, including self-castration. Rather than have qualified medical providers assess her for this treatment, CDOC has denied each of her requests. Megan received a letter from the gender dysphoria committee stating, “You have been evaluated by licensed medical, psychiatric, and mental health practitioners while in the DOC and none of those providers have recommended a medical need for further evaluation by an outside specialist.” Many of her providers have explained to Megan that CDOC simply does not provide surgical treatment for gender dysphoria. Megan’s gender dysphoria is particularly exacerbated by her continued facial hair growth. Understanding the common misconceptions around electrolysis treatment for transgender women, Megan carefully explained in a grievance, “As a transgender female, my facial hair causes me considered distress, to the point where I have considered burning the follicles to prevent my facial hair from growing... I ask to be given electrolysis on my face to ease the constant distress I feel on a daily basis.” Yet, CDOC’s response to her grievance was that electrolysis is “an expensive” and “elective treatment” “available in spas and specialty areas, but it would be a misuse of clinical services in the prison setting.”

83. Despite CDOC’s refusal to provide this care, there is a strong consensus among medical and mental health professionals that transition-related surgical care and related services

are the only safe and effective medical treatments for many transgender people who experience gender dysphoria, as stated above. The failure to provide this treatment to transgender women is discrimination based on sex, transgender status and disability, and violates the Colorado Constitution.

84. All class members have been subjected to similar unreasonable conditions of confinement at CDOC facilities because CDOC personnel are not qualified to diagnose or care for women with gender dysphoria, and the facilities are lacking the necessary medications and treatment programs. On information and belief, transgender women in custody at CDOC are denied access to the programs, services and benefits of the CDOC on the basis of their sex and transgender status.

85. All class members in the subclass of transgender women who have gender dysphoria are denied the programs, services and benefits of the CDOC on the basis of their disability. All of these class members have been or are at risk of serious harm as a result of Defendants' willful refusal to provide safe housing conditions and medically necessary medical and mental health care.

86. At all times relevant to this complaint, and in all of their actions alleged herein, the defendants and other pertinent employees and agents of the Colorado penal system and its subdivisions were acting within the scope of their official responsibilities and under color of Colorado state law.

87. Defendants sued in their individual capacities, Defendants Trani, Maul, Frost, Lish, and Butler, each personally participated in the decisions to deny class members necessary accommodations, including the medical and mental health treatment that were necessary. Each of these Defendants were personally involved in the creation and implementation of the CDOC custom, practice and policy to deny transgender women a gender affirming environment, to deny them access to female canteen, gender conforming clothing, to deny them privileges to wear makeup and/or sanctioned the disciplinary action taken against class members for possess or wearing makeup, to deny them the basic right to be addressed using the pronouns and names in accordance with class member's gender identity, to deny them protection from sexual harassment and sexual assault and sex trafficking by male inmates, to punish class members who complained about sexual assault by subjecting them to strip searches by make guards and then placed in solitary confinement, to refuse to provide class members with necessary mental health care for the disability known as gender dysphoria despite knowledge that inadequate accommodations and treatment would likely subject class members to heightened risk of grave harm.

88. As the current Chair of the Gender Dysphoria Committee, Dr. Butler personally made the decision regarding whether class members would receive necessary medical and mental health accommodations, participated in decisions regarding the necessary care and treatment of class members, and personally notified class members that they were being denied and/or refused medically necessary treatment for gender dysphoria as well as accommodations for safer

housing placements and a gender conforming environment. Dr. Butler knew of and deliberately disregarded the excessive and substantial risk to the class member's health and safety by denying them necessary accommodations for their disability. Prior to becoming the Chair of the Gender Dysphoria Committee, Dr. Butler worked in concert with Dr. Lish to deny the same types of requests and necessary accommodations.

89. As the former Chair of the Gender Dysphoria Committee and CDOC Chief of Psychiatry, Dr. Lish personally made the decision regarding whether class members would receive necessary medical and mental health accommodations, participated in decisions regarding the necessary care and treatment of class members, and personally notified class members that they were being denied and/or refused medically necessary treatment for gender dysphoria as well as accommodations for safer housing placements and a gender conforming environment. Dr. Lish knew of and deliberately disregarded the excessive and substantial risk to the class member's health and safety by denying them necessary accommodations for their disability. During his tenure as the Chair of the Gender Dysphoria Committee, Dr. Lish worked in concert with Dr. Butler to deny these requests and necessary accommodations. Dr. Lish, in a deposition in December 2018, testified that he knew that CDOC medical and mental health staff did not have the expertise needed to provide proper care and accommodations to class members. Despite that knowledge and testimony, Dr. Lish, and Dr. Butler after him, sent letters from the Gender Dysphoria Committee to class members denying requests for treatment and deferring to those same unqualified providers. Plaintiff Jane Gallentine received such a letter dated July 18, 2018, and another dated January 8, 2019; Megan Gulley received on dated September 18, 2018; Lavenya Karpierz received on dated January 8, 2019. In earlier letters to class members, Dr. Lish would simply admit that CDOC does not allow its providers to recommend surgical treatment for gender dysphoria, as he did in letters to Taliyah Murphy dated March 14, 2017 and September 7, 2016. Lish also testified that he had numerous discussions with the head of the medical and mental health staff, as well as the Deputy Director of Prisons about the need to accommodate class members and provide them proper care and treatment.

90. All of these Defendants knew and know about the necessary accommodations, including the medical and mental health care needed by class members, yet have each participated in decisions to deny these accommodations and/or have decision-making authority over whether the accommodations have been granted, and failed to take necessary action. Each of the individually named Defendants knew and know that the law required them to provide class members with necessary accommodations for their sex and/or disability, that the laws require them not to discriminate against class members based on their sex, and requires them not to subject class members to cruel and unusual punishment.

91. The Defendants who are sued in their individual capacities acted in violation of the clearly established law regarding discrimination against individuals based on their sex, transgender status and disabilities, and in doing so inflicted unconstitutional cruel and unusual punishment. The individually named medical and mental health provider Defendants at CDOC personally provided medical care and treatment to class members, and had and continue to have legal and ethical duty to make independent medical decisions about what, if any, medical and

mental health accommodations are necessary for class members. Instead of exercising that independent medical judgment, these Defendants denied necessary accommodations and treatment in reckless disregard for the safety of class members, discriminated against them based on gender/gender identity, and were deliberately indifferent to their serious medical needs. Despite being responsible for the care and treatment of class members, these Defendants blatantly refused necessary care and accommodations.

92. All of the individually named Defendants have received the necessary training to understand the necessary accommodations that must be provided to class members, and all Defendants have personally participated in at least one training course regarding the unique vulnerabilities of the class members, and the accommodations necessary for those with Gender Dysphoria. The Defendants engaged in the discriminatory practices described herein with malice or reckless indifference to the rights of all class members.

### **FIRST CLAIM FOR RELIEF**

#### **Discrimination in a Place of Public Accommodations Based on Sex and Transgender Status in Violation of the Colorado Anti-Discrimination Act C.R.S. § 24-34-601 et. seq. (On Behalf of All Class Members)**

93. Class members incorporate all other paragraphs of this Complaint.

94. The Colorado Anti-Discrimination Act, C.R.S. § 24-34-601(2)(a) provides that it is a violation of Colorado law for any place of public accommodation to discriminate against any person based on sex or sexual orientation, including transgender status.<sup>3</sup>

95. Colorado prisons are a place of “public accommodation” as defined under C.R.S. § 24-34-601(1). Defendants operate the facilities that house class members and are responsible for providing the full and equal enjoyment of its services, programs and benefits to the public regardless of the status of these women as transgender women.

96. Defendants refuse to provide these services, programs and benefits of these public accommodations to class members because of their transgender status.

97. Defendants provide these public accommodations to cisgender men and cisgender women but deny these services to transgender women because of their sex and transgender status.

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<sup>3</sup> Although sexual orientation and gender identity are separate concepts, C.R.S. § 24-34-301(7) defines “sexual orientation” as “an individual’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another individual’s perception thereof.”

98. Defendants discriminate against these women on the basis of their sex and transgender status, in violation of Colorado law, and in so doing, cause these women serious physical and psychological harm, and subject them to an unreasonable risk of harm.

## **SECOND CLAIM FOR RELIEF**

### **Discrimination in a Place of Public Accommodations Based on Disability in Violation of the Colorado Anti-Discrimination Act C.R.S. § 24-34-601 et. seq.**

#### **(On Behalf of All Class Members Who Have Gender Dysphoria)**

99. Class members incorporate all other paragraphs of this Complaint.

100. The Colorado Anti-Discrimination Act, C.R.S. § 24-34-601(2)(a) provides that it is a violation of Colorado law for any place of public accommodation to discriminate against any person based on the disability of that person.

101. Colorado prisons are a place of “public accommodation” as defined under C.R.S. § 24-34-601(1). Defendants operate the facilities that house class members and are responsible for providing the full and equal enjoyment of its services, programs and benefits to the public regardless of the status of these women as transgender women who have gender dysphoria.

102. Gender dysphoria is a mental health condition that substantially limits one or more of major life activities and thus is a disability under the Colorado Anti-Discrimination Act.

103. Defendants refuse to provide these services, programs and benefits of these public accommodations to class members with gender dysphoria because of their disability.

104. Defendants provide these public accommodations to cisgender men and cisgender women who do not have gender dysphoria but deny these services to transgender women with gender dysphoria because of their disability.

105. Defendants discriminate against these women on the basis of their disability, in violation of Colorado law, and in so doing, cause these women serious physical and psychological harm, and subject them to an unreasonable risk of harm.

## **THIRD CLAIM FOR RELIEF**

### **Colorado Constitution, Article II, Section 29 (On Behalf of All Class members)**

106. All paragraphs above are incorporated herein by reference.

107. The Colorado Constitution, Article II, Section 29 provides: “*Equality of the sexes.* Equality of rights under the law shall not be denied or abridged by the state of Colorado or any of its political subdivisions on account of sex.”

108. As detailed above, all class members are being denied equal treatment by the State of Colorado because of their sex.

109. This denial of equal treatment to class members because of their sex has caused, and continues to cause, substantial harm to these women.

110. Defendants have acted in reckless disregard to the serious medical and mental health needs of the class members and have subjected them to serious harms and serious risk of harm. Defendants’ conduct has been deliberately indifferent, knowingly and willfully, and violates the Colorado Constitution. Defendants have created a policy or custom under which unconstitutional and unlawful practices occurred and knowingly allow such a policy and practices to continue, despite knowing that it causes, and will continue to cause imminent danger to class members.

111. Class members have suffered emotional distress and often physical pain as a result of the Defendants’ deliberate indifference to their rights and welfare, and violations of the Colorado Constitution.

#### **FOURTH CLAIM FOR RELIEF**

#### **Colorado Constitution, Article II, Section 20) (On Behalf of All Class members)**

112. All paragraphs above are incorporated herein by reference.

113. The Colorado Constitution, Article II, Section 20 provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”

114. As detailed above, class members are incarcerated under conditions that subject them to sexual violence and other anti-transgender violence, or the heightened risk thereof, amounting to cruel and unusual punishment.

115. This failure to protect class members has caused, and continues to cause, substantial harm to these women.

116. Defendants have acted in reckless disregard to the serious medical and mental health needs of the class members and have subjected them to serious harms and serious risk of harm. Defendants’ conduct has been deliberately indifferent, knowingly and willfully, and violates the Colorado Constitution. Defendants have created a policy or custom under which

unconstitutional and unlawful practices occurred and knowingly allow such a policy and practices to continue, despite knowing that it causes, and will continue to cause imminent danger to class members.

117. Class members have suffered emotional distress and often physical pain as a result of the Defendants' deliberate indifference to their rights and welfare, and violations of the Colorado Constitution.

WHEREFORE, All class members, on behalf of themselves and all other persons similarly situated, who have been, are, and will be in the custody of the State of Colorado, requests the following:

A. That this action be maintained as a class action as described herein and pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure;

B. That the Court adjudge and declare that the Defendants have violated the constitutional and statutory rights of class members;

C. That the Court enjoin and restrain the defendants from discriminating against class members in the participation of CDOC programs, services and benefits;

D. That the Court direct the Defendants to adopt and implement policies, procedures and other steps necessary to ensure that the CDOC facilities are free from discrimination against all class members in their access to CDOC programs, services and activities, that class members are accommodated with respect to their disability which includes, but not limited to, placement in appropriate and safe facilities, use of correct pronouns by all staff and on all CDOC records, access to mental health care especially in the event of sexual assault, prohibit solitary confinement as a response to class member complaints of sexual assault or sexual harassment, train and supervise appropriate investigators to conduct PREA-related complaints by class members in a meaningful and timely fashion and ensure proper documentation of these complaints, prohibit strip-searching of class members by male guards unless there are exigent circumstances, provide full access to the female canteen to all class members, provide gender affirming clothing and other personal items, and prohibit CDOC operational staff from overriding the medical and mental health decisions, including placement decisions, made by qualified providers concerning class members.

E. That the Court enter declaratory relief against Defendants and order Defendants to adopt and implement policies, procedures and other steps necessary to ensure that people with Gender Dysphoria receive necessary accommodations, including medical and mental evaluations and health care by qualified providers who met the competency requirements stated in the WPATH Standards of Care, and receive all care deemed medically necessary;

F. That damages are provided to all class members for the harm they have and continue to suffer, and penalties against Defendants for the discriminatory practices herein;

G. That the Court enjoin Defendants from any further discriminatory conduct against class members;

H. That the Court award class members the costs of suit and reasonable attorneys' fees pursuant to all available authority; and

I. That the Court grant such other and further relief as the Court deems just and proper.

Dated this 23rd day of December 2019.

Respectfully submitted,

*s/ Paula Greisen*

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