

Exhibit # 11

Nathan R. Goninan
(a.k.a.) Nonnie M. Lotusflower
S.I.D.#17079611
O.S.C.I.
3405 Deer Park DR, S.E.
Salem, OR. 97301
Plaintiff, *pro se*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NATHAN ROBERT GONINAN
Also known as: NONNIE M. LOTUSFLOWER
PLAINTIFF.

CIVIL CASE# 6:17-cv-00197-AC

VS.

plaintiff's first amended complaint
42 U.S.C. §1983 Civil Action

OREGON DEPARTMENT OF CORRECTIONS,
Colette peters, Jana Russel,
Claudia Fischer-Rodriguez, Keeble Giscombe,
Dr.Ruthven, Kaity Imbs, Dana Crane, steve shelton.
Grievances coordinator J. Lawson,
B.H.S. Program manager Bill Christy,

DEFENDANTS,

JURY TRIAL DEMANDED

This is a civil rights action filed by Nathan Robert Goninan, a state prisoner, for damages and injunctive relief under 42 U.S.C. 1983, alleging the denial of plaintiffs 8st amendment and 14th amendment rights of the U.S. constitution, Deliberate indifference to a serious medical need, and 14th equal protection, Plaintiff is pro se and filing with In Forma Pauperis. Plaintiff has filed 5 42 U.S.C. 1983 civil actions in the past. None were strikes. Plaintiff does not have the information on those actions at this time. But will provide that information soon.

I. JURISDICTION

1 Of 14- Plaintiff's first amended complaint- 42 U.S.C. §1983 civil action

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1. Jurisdiction of this court is invoked pursuant to 28 U.S.C. 1331 in this civil action arising under the constitution of the United States.
2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. 1343(a)(3) in that this action seeks to redress the deprivation, under color of state law, of rights secured by acts of congress providing for equal rights of persons within the jurisdiction of the United States. Each defendat is suid under color of law.

II. PARTIES

3. Plaintiff: Nathan Robert Goninan. Address of plaintiff: 3405 Deer Park RD S.E. Salem OR, 97301. Defendants: 1) Oregon Department of correction, 2) Colette Peters O.D.O.C. Director, 3) Jana Russel Behavioral health services Administration, 4) Ciaudia Fischer-Rodriguez B.H.S. clinical director, 5) Keeble Giscombe B.H.S. Director, 6) Dr. Ruthven, 7) Kaity Imbs Q.M.H.P., 8) Dana Crane Q.M.H.P., 9) Steve shelton chief medical officer, 10) J. Lawson grievance coordinator, 11) Bill Christy B.H.S. Program manager. All named defendants are sued in his/her individual and official capacities. All the defendants have acted, and continue to act, under color of law at all times relevant to this complaint. Address of defendants: 2575 Center St. S.E. Salem, OR. 97301.

III. EXHAUSTION OF AVAILABLE REMEDIES

4. Plaintiff Has tried for many months to exhausted his administative remedies, But all defendants and there agents have slow played all my grievances to where it took more than 4 months to answer the first response. When O.D.O.C. rules state thay will answer with in 45 days. I have filed an appeal and this is late as well, at no time has O.D.O.C. sent me notice of a late response as is stated thay should in the O.A.R.'s. then thay have

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10 days to send the late response to the grievance, of which they have not done. The defendants have failed to follow their own rules. Plaintiff requests this court to allow plaintiff to file this action for the purpose of getting a preliminary injunction and temporary restraining order so that plaintiff will not suffer unjust denial of her constitutional rights. Without a preliminary injunction and temporary restraining order, plaintiff is at serious risk of self-harm or suicide. Plaintiff requests this court to grant the preliminary injunction and temporary restraining order till the grievance process is complete, since defendants and their agents will not follow their own rules and answer my grievances in a timely manner. The actions of the defendants have denied me access to the courts. It is now almost a year now and I've still not received the final response to the grievance. *"NOTE: A person filing this amended complaint defendants have answered one of the grievances on these issues and exhaustion is complete after almost a year and there are still Grievances that have never been addressed and covered up. Plaintiff still claims that defendant's did not follow their own rules and impeded all administrative remedies for plaintiff to properly address these issues."*

IV. FACTUAL STATEMENT / STATEMENT OF CLAIM.

1. I, Nathan R. Goninan also known as Nonnie M. Lotusflower am a transgender woman, locked up in the Oregon Department of Correction. I suffer from depression, stress and thoughts of self-harm "castration and suicide" because I'm a woman trapped in a male's body. I have always felt as if I was a female. As a child I played with little girl toys and wore girl clothing. Growing up I acted as a female would act and tried all I could to look female. In 2007 plaintiff committed the crime of assault-2 and came to the Oregon State D.O.C. while there she

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continued to act out and turned 95 months in to 131 month. Plaintiff also had charges of manslaughter-2 in the state of Washington, which she was sentenced to a 120 months in the Washington State D.O.C., after she completes her time in Oregon. Then the plaintiff has to serve 6 months in the federal system before she is released to the street's. Plaintiff has been in the Oregon D.O.C. for a little over 9 years now and living openly as a woman for a little over a year. In May of 2016 I had an evaluation for gender dysphoria done by Kaity Imbs, at the Oregon State Penitentiary.

(3) A few days after the evaluation, Q.M.H.P. Kaity Imbs and Q.M.H.P. Dana Crane both told me that Kaity Imbs was giving me a diagnosis of Gender Dysphoria. Then a week later both Kaity Imbs and Dana Crane told me that they were told by the higher ups that they could not speak to me about any transgender issues or about my evaluation. I then requested a copy of the evaluation 4 different times, filling out all the needed paper work to obtain copies. Each time I was denied a copy without a reason. Plaintiff asked all the above named defendants what was going on, why can't I see my evaluation, why can't I get treatment and why can't I talk to B.H.S. about my stress and depression that's created by my gender dysphoria. I was always told in person and never in writing that O.D.O.C. staff were told not to talk about transgender issues. When I told the defendants I was suffering, I was told to use my D.B.T. skills. Then around 3 and a half months later Kaity Imbs pulled me out and read the evaluation to me. She told me she did not give me the diagnosis of gender dysphoria because she was not sure if I had it. She said that the B.H.U. mental health unit was not a good place to do an evaluation for gender dysphoria. Q.M.H.P. Dana Crane stated that the higher ups told mental health staff not to give me the diagnosis. I asked Q.M.H.P. Kaity Imbs if she was qualified to do a gender dysphoria evaluation

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she stated that she had worked with transgender people in the past. At a later time I spoke with Dr. McCarthy a O.D.O.C. consulting psychiatrist and she told me after reading Q.M.H.P. Kaity Imbs evaluation that Ms. Imbs never used the right format for doing the evaluation and she did not know why O.D.O.C. would have her do the evaluation because she is not qualified to do so. Also Q.M.H.P. Kaity Imbs stated in the evaluation that we meet 2 times to complete the evaluation for about 30 min each time. This is untrue we only meet once for the evaluations and it only lasted about 10-15 min. I wrote over a 100-kytes to Steve Shelton, Jana Russell, Claudia Fischer-Rodriguez, Bill Christy and Dr. Ruthven about transgender issues and requesting treatment and a new evaluation, no kyte was answered by the above named people at one point I spoke with Dr. Ruthven and asked about treatment and hormone treatment. Dr. Ruthven stated to me that O.D.O.C. don't treat transgender people in prison, he also stated that When you come to prison that your no longer in America and don't have rights to treatment and that hormone treatment is controversial and people don't understand it and that tax payers don't want to hear that there money is going to pay for hormones and sex changes. I finely got a new evaluation in October by Dr. McCarthy and was diagnosed with gender dysphoria. But have not had any meaningful treatment. I've begged for treatment Ive told all the defendant that I'am suffering, that I feel that life has no meaning with out treatment, I've requested hormone treatment a number of times and all I'm told by the defendants is they will talk about it . but at no time have I been ofered any meaningful treatment for my gender dysphoria. I'm suffering horribly and feel that there is no hope to life without meaningful treatment. I've begged for help and all I'm told is to use my D.B.T. skills and the only treatment they will give me is D.B.T. class's, which I've already done 5 times and know by heart and still does not relieve my suffering, and one on one

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with my Q.M.H.P. which I've done for 9 and a half years with out relief. I'm suffering and need treatment but O.D.O.C. won't provide it. All they provide is a band-aid for a gunshot wound. Life has no meaning with out treatment. Living in a male body is a nightmare. I'm suffering.

•Facts that support lack of care •

•LACK OF LIFE SAVEING MEDICAL CARE•

STATEMENT OF CLAM

**DEFENDANTS HAVE VIOLATED THE PLAINTFFS 8TH AMENDANT RIGHTS OF
CRULE AND UNUSUAL PUNISHMENT, BY DENIEING LIFE SAVEING MEDICAL
CARE, FOR GENDER DYSPHORIA. AND DEILEARTE INDIFFERENCE TO A
SERIOUS MEDICAL NEEDEFENDATS HAVE VIOLATED PLANTIFFS 14TH
AMENDMENT RIGHTS OF EQUAL RIGHTS**

1. OREGON D.O.C. staff, Steven Shelton M.D. Chief medical officer, Colette Peters O.DO.C. Director, Claudia Fischer-Rodriguez B.H.S. clinical director, Jana Russell, and Dr.Ruthven, and Bill Christy B.H.S. Program manager, have denied and delayed all meaningful treatment for my serious medical needs for gender dysphoria.
2. Plaintiff had no administrative remedies. Plaintiff filed many grievances on these issues. But it has been the practice of Grievance Coordinator J. Lawson, ODOC and the above named defendants, to impede the grievance process by rejecting and / or delaying grievances, as well as incorrectly tracking grievances, responses to grievances, and or

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grievance appeals. Grievance Coordinator J. Lawson even threw away my grievances and I never received any response at all. I filed my first grievance around February of 2016. It is now the 30th of January 2017 and I've still not gotten the final response to that grievance. That's a whole year. At no time has the grievance coordinator sent a late notice or followed the O.D.O.C. rules on the handling of grievances and the time lines on answering them. I've filed over about 50 kytes requesting an answer to my grievance and they are out right ignored and not answered. I've also called the Inspector General many times to report this issue and I've never got a response on this matter. The actions of impeding the grievance process and allowing me to address these issues has denied me the right to file a 1983 civil action do-to the standards of the Prison Litigation Reform Act of 2000 which in turn has denied me access to the court. It has also stopped me from addressing the issues of care and resulted in mass amounts of suffering.

3. The A.C.L.U. has done an investigation in to the matter of O.D.O.C.'s conscience of purposely impeding, delaying grievances and incorrectly tracking them, and has found that O.D.O.C. committed these acts on almost all grievances having to do with transgender issues or treatment, as the A.C.L.U. has stated in the 1983 civil action of Michale Wright vs. Colette S. Peters etl. Case # 6:16-cv-01998 "A transgender inmate that has been abused, mistreated and denied life saving medical care by the above named people."
4. The above named people had an unqualified mental health staff member do an evaluation for gender dysphoria. Afterwards she gave me the diagnosis of gender dysphoria. But the above named people had Q.M.H.P. Kaity Imbs change the diagnosis and instructed

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B.H.S. staff not to talk to me about transgender issues or kinds of treatments. Q.M.H.P. Dana Crane was instructed not to document any of my transgender issues in my medical file. Q.M.H.P. Dana Crane told me many times that she was sorry but that she was instructed not to discuss transgender issues or provide any treatment. Q.M.H.P. Dana Crane stated in her words (I'm so sorry I can't help you. But the higher up's are very against transgender issues but if you ever file a law suit I will testify to how they handled these issues) She also stated when I asked her the names of the staff members that were denying me treatment. (I was told not to give you any information and I don't want to get in trouble)

5. Q.M.H.P. Dana Crane told me that when she went to the gender non-conforming committee to bring my case, she stated (It was very hectic at the meeting people were yelling and arguing and when I tried to speak on your behalf I was interrupted and talked over many times, Dr.Shelton interrupted every one and was very strict in his way of things)
6. I was told many times by B.H.S. staff that the B.H.U. was not the right place to do an evaluation for gender dysphoria and I would need to wait till I got out the B.H.U. for an evaluation.
7. In Oct. 2016 I was given the diagnosis of gender Dysphoria.
8. I went through a year of suffering and begging for treatment. But received none because O.D.O.C. staff thought that transgender people were not entitled to any treatment for there suffering.

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9. Even now I'm not receiving any meaningful treatment. I'm told to wait till next month, and then when next month comes, I'm told to wait till next month again and again, over and over. And instead of trying to help me in my suffering, it's delayed over and Over.
10. My suffering is beyond words and is as deep as my soul; it's a pain that walks with me day and night. It never leaves my thoughts. The nights are the worst when I battle my self not to commit suicide or castrate my self. The stress and depression makes me physically sick at times and when I tell these things to the above named people. I'm told to use my D.B.T. skills or they try to give me some pill that never works or they give me makeup and woman's undergarments, but even this doesn't relieve my suffering.
11. Only hormone treatment will start to heal me. Hormones will start my body to change in to how I feel on the inside and once I have S.R.S. I'll no longer suffer this nightmare.
12. But the above named people deny this life saving treatment and every day I suffer more and more.
13. I've filed many grievances on these issues. But it has been the practice of O.D.O.C. and the above named peoples to impede the grievance process by rejecting and / or delaying grievances, as well as incorrectly tracking grievances, responses to grievances, and or grievance appeals. I filed my first grievance around February of 2016. It is now the 30th of January 2017 and I've still not gotten the final response to that grievance. That's a whole year. At no time has the grievance coordinator sent a late notice or followed the O.D.O.C. rules on the handling of grievances and the time lines on answering them. I've filed over about 50 kytes requesting an answer to my grievance and they are out right ignored and not answered. I've also called the Inspector General many times to report

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this issue and I've never got a response on this matter. The actions of impeding the grievance process and allowing me to address these issues has denied me the right to file a 1983 civil action do to the standards of the Prison Litigation Reform Act of 2000 which in turn has denied me access to the court. It has also stopped me from addressing the issues of care and resulted in mass amounts of suffering.

14. All the actions stated above have been committed out of ignorance, discrimination, hate, and a fundamental lack of caring for human being that suffer from a life threatening condition. The above named people know the risk and have always known the risk associated with untreated Gender Dysphoria. They have spoke of these risks in the medical charts of many transgender inmates. They have witnessed the suicide attempts, the self-mutilation, the depression and stress, the pain and hurt and suffering of countless transgender inmates. But even though they have taken an ethical oath as a medical / mental health professional or the oath of office to up hold the United States constitution and care and provide for those in there custody to help and cure those who suffer, they have in fact become the ones that create the suffering by ignoring and not treating those who suffer from the affects of gender dysphoria. There actions are not just unconstitutional, but out right criminal, premeditated and hurts not just the indivgual that suffers. But also the community as whole. They put me and many transgender people at risk of death. They make it so we can not function inside of prison and by doing so set us up for frailer in the community. We can't get the life saving treatment we so desperately need. Or learn the skills we need when we are released from prison to function in society. O.D.O.C. and the above named people have failed in the duties they promised to up hold

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and are responsible for the untold suffering of so many transgender people inside the Oregon D.O.C.

15. The above named people have also delayed treatment to those in need under the excuse of having to wait till they have a meeting with the G.N.C / T.L.C. even though those people are at need at that moment of life saving care, they are made to suffer and put at risk of self harm or death do to the failure to treat a serious medical condition.
16. This needs to stop. We transgender people are suffering and need help that we are legally entitled to. And the O.D.O.C. needs to take responsibility for their criminal actions and that they be punished and removed from there position and replaced by those that respect and up hold the laws of the U.S. and the oath of there office. It is the job of Dr. Shelton to work with medical and mental health staff in providing treatment for plaintiff's serious medical needs. But Dr. Shelton instead disregarded the plaintiff's medical needs and provided no treatments. B.H.S. Program director Bill Christy Knew that the plaintiff was not receiving any meaningful treatment and was suffering. But did not perform his job in making sure that plaintiff was being treated and even worked to undermine the evaluation. Kaity Imbs stated to the plaintiff that she was not sure if she had gender dysphoria because she did not know if my stress and depression was caused from being housed in the B.H.U. Or if it was caused from gender dysphoria. Kaity Imbs stated to the plaintiff that she also let Bill Christy and all the defendant's know this. After she told plaintiff this. Plaintiff wrote kytes to all the plaintiff's requesting a new evaluation / second opinion since Kaity Imbs was not sure. But all defendant's out right ignored the plaintiff's requests and failed to answer any kytes. After not receiving any returned kytes

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or communications from any of the defendant's, plaintiff started giving all kytes and communication to her mental health counselor Dana Crane, she told plaintiff that she was shocked that none of the defendant's would answer any of my communications and she would turn them in so that none of the officers could throw them away or so they were not miss placed. Even after plaintiff started giving all communications to Q.M.H.P. Dana Crane she still did not receive any answers or treatments. Plaintiff called the inspector general and PREA about all these issues from sexual harassment by staff to the grievance coordinator not answering grievances and complaints and not one time in all most a year was there any investigations, no one ever came and spoke to me or looked into any of the matters. Defendant's placed the plaintiff into a dead zone were she had no voice, no treatments and had to suffer at the hands of the defendant's with out any way to address the issues or any administrative remedies to get help she was shut off from the world and all treatments do to all the actions of the defendants.

V. CAIMS FOR RELIEF

1. The actions of all the above named defendants, based upon deprivation of EIGHTH amendment right's resulting from failure to provid medially necessary hormone treatment, and deliberate indifference to a serious medical need by not providing life saveing treatment for the plaintiffs serious mental illness of GENDER DYSPHORIA , all violate the 8th and 14th Amendment of the United States Constitution.

VI. RELIEF REQUESTED

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WHEREFORE, plaintiff requests that the court grant the following relief:

1. Issue a declaratory judgment stating that: O.D.O.C. will have a gender dysphoria specialist do an evaluation to see if plaintiff is in need of hormone treatment and that the defendants follow the recommended treatment.
2. Issue an injunction ordering all named defendants to: make policies of the care of transgender inmates in the care of the Oregon state department of corrections. To include the medical and mental health treatments.

And for ODOC to shorten the time it takes to evaluate and treat inmates with gender dysphoria.
3. Award compensatory damages in the following amounts: for a jury to decide, jointly and severally against all named defendants
4. Award punitive damages in the following amount: for a jury to decide, jointly and severally against all named defendants.
5. award reasonable attorney fees and costs to plaintiff pursuant to 42 U.S.C. § 1988;
6. Such other relief as the court finds appropriate in the interests of justice.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOR GOING IS TRUE
AND CORRECT.

DATE MAY, 17, 2017



Respectfully submitted, Nathan R. Goninan (aka) Nonnie M. Lotusflower
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CERTIFICATE OF SERVICE AND FILING

I hereby certify that I filed and served a true copy of the foregoing document on the following parties this 15th day of may, 2017, by placing all in a sealed envelope, postage prepaid and deposited the same in the U.S. Postal Service.

Department of Justice
Attn: Shannon Vincent, Senior Assistant Attorney general
1162 Court Street, NE
Salem, Oregon 97301



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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OEREGON

NATHAN ROBERT GONINAN
PLAINTIFF,

CIVIL CASE#6:17-cv-00197-AC

VS.

OREGON D.O.C., COLTTE PETERS etl.

First Amended
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
A PRELIMINARY INJUNCTION

JURY TRIAL DEMANDED

NOW COMES the plaintiff Nathan Robert Goninan to respectfully request this court to grant plaintiffs motion for a Temporary Restraining order and a Preliminary Injunction. Plaintiff sent the original motion for a Temporary Restraining order and a Preliminary Injunction on JUNE ,17,2017. plaintiff requests this court to allow the plaintiff to amend this Temporary Restraining order and a Preliminary Injunction, because new information has become available that needs to be included in this motion plaintiff also did a bad job at editing the material of this motion since she is still learning to use this computer. Defendants have not answered the original motion as of now, and amending this motion at this time would give defendants the an appropriate time line to answer with out creating an undo burden.

With out this T.R.O. and preliminary injunction, plaintiff will suffer the denial of her 8th and 14th amendment rights of the United States Constitution, Deliberate indifference to serious medical need and under the Equal Protection Clause , which creates harm to the well being of the plaintiff. Plaintiff requests an order from the court ordering that the defendants send the plaintiff to a transgender specialist to see if she needs surgery and to allow plaintiff's licensed mental health specialist Q.M.H.P. Kristine Gates to write a letter for recommendation for Sex-reassignment surgery if she believes that this treatment is necessary and comply with any proscribed treatments.

1. Defendant's are still intentionally interfering with plaintiff's treatment and serious medical needs

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First Amended
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
A PRELIMINARY INJUNCTION

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of gender dysphoria for no other purpose than to stop my Q.M.H.P. Kristine Gates from making a recommendation for Sex-reassignment surgery so defendants do not have to provide treatment.

2. Plaintiff's mental health provider Q.M.H.P. Kristine Gates wants to write the plaintiff a letter for recommendation for sex-reassignment surgery. But defendant Claudia Fischer-Rodriguez has ordered Q.M.H.P. Kristine Gates not to do so, even when Q.M.H.P. Kristine Gates believes that it is in the best interest to the plaintiff for her serious medical needs of gender dysphoria.
3. Q.M.H.P. Kristine Gates is a licensed mental health specialist with years of training and experience in treating persons with mental illness's and is stopped by the defendants from properly and legally doing her job as a licensed mental health specialist.
4. The fact that defendants again are giving ODOC staff / mental health specialist direct orders not to provide necessary treatment to the plaintiff for her gender dysphoria, is another show of how the defendants are , Deliberate indifference to the plaintiff's serious medical needs.
5. Stopping Q.M.H.P. Kristine Gates from giving a referral letter for sex-reassignment surgery serves no government interest or does it present a safety and security risk to the institution and only delays the treatment of the plaintiff for her serious medical needs of gender dysphoria there by harming the plaintiff, and plaintiff will suffer irreparable harm in the absence of preliminary relief for the wanton and unnecessary infliction of pain that is created by the defendants deliberate indifference to the plaintiff's serious medical needs.

In deciding whether to grant T.R.O.'s and preliminary injunctions, courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non moving party if the motion is granted. *See e.g., mitchel v. Cuomo, 748 F.2d 804, 808 (2d Cir.1984)* A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).* "[S]erious questions going to the merits and a balance of hardships {87 F. Supp. 3d 1185} that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011)* (internal quotation marks omitted)..The balance is in favor of the plaintiff, with out this T.R.O. and Temporary restraining order, plaintiff will continue to be denied her 8th and 14th amendment rights of the U.S. Constitution. Defendants have failed to even see if plaintiffs gender dysphoria is sever enough to warrant sex-reassignment surgery, it is recognized by the medical community that in some cases that sex-reassignment surgery is the only answer to help manage / cure a person that has been diagnosed with gender dysphoria. Plaintiff has sent 3 letters off to the defendants requesting to be seen by a transgender specialist, to see if I qualify for surgery. At no time has any of my letters been returned or answered. This has effectively denied plaintiff to reasonable medical care and plaintiff is suffering. Plaintiff is at risk of serious harm or even death. All defendant's would be required to do is have plaintiff see a transgender specialist to see if she needs surgery and comply with the treatment proscribed. Defendants are obligated to provide medical care when it is needed. "A preliminary injunction is an

extraordinary remedy never awarded as of right." Winter, 555 U.S. at 24. It may take two forms. "A prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009) (internal alterations and quotation marks omitted). A mandatory injunction orders a party to take action. *Id.* at 879. Because a mandatory injunction "goes well beyond simply maintaining the status quo pendente lite [it] is particularly disfavored." *Id.* (internal alterations omitted). "In general, mandatory injunctions 'are not granted unless extreme or very serious damage will result and are not issued in doubtful cases or where the injury complained of is capable of compensation in damages.'" *Id.* (quoting *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir. 1980)).

Under the Prison Litigation Reform Act ("PLRA"):

A) In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system. 18 U.S.C. § 3626(a)(2).

Likelihood of Success on the Merits

A) To obtain a preliminary injunction requiring Defendants to provide her seeing a transgender specialist to see if she needs surgery, Ms. Goninan must first establish that she is likely to succeed on the merits of her seeing a transgender specialist to see if she needs surgery / SRS claims. She contends that Defendants violated 42 U.S.C. 1983 by denying her medically necessary treatment for gender dysphoria in violation of the Eighth's Amendment's prohibition against cruel and unusual punishment and the Fourteenth Amendment's Equal Protection Clause.

Legal Standard

B) The Eighth Amendment's prohibition against cruel and unusual punishment protects prisoners not only from inhumane methods of punishment but also from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing *Farmer v. Brennan*, 511 U.S. 825, 847, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994) and *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981)). While conditions of confinement may be, and often are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of pain. *Morgan*, 465 F.3d at 1045 (citing *Rhodes*, 452 U.S. at 347).

C) Courts use different formulations to describe the first Nken factor, including "reasonable probability," "fair prospect," "substantial case on the merits," and "serious legal questions . . . raised." *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012). These formulations "are largely interchangeable," and "indicate that, 'at a minimum,' a petitioner must show that there is a

'substantial case for relief on the merits.'" Id. (quoting *Leiva-Perez*, 640 F.3d at 968). "The standard does not require the petitioners to show that 'it is more likely than not that they will win on the merits.'" Id. (quoting *Leiva-Perez*, 640 F.3d at 966).

D) Deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) (internal citation omitted). Such indifference may be manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." Id. In the Ninth Circuit, a plaintiff alleging deliberate indifference must first "show a serious medical need by demonstrating that failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing *Estelle*, 429 U.S. at 104) (internal quotation marks omitted). Second, she "must show the defendant's response to the need was deliberately indifferent." {87 F. Supp. 3d 1186} Id. This second prong "is satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference." Id. An inadvertent or negligent failure to provide adequate medical care does not suffice to state a claim under Section 1983. *Estelle*, 429 U.S. at 105-06. "Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Id. at 106. "However, the Supreme Court has also recognized that while 'deliberate indifference' under *Estelle* requires more than a showing of mere negligence, 'something less than [a showing of] acts or omissions for the very purpose of causing harm or with knowledge that harm will result' will suffice." *Mandala v. Coughlin*, 920 F. Supp. 342, 353 (E.D.N.Y. 1996) (citing *Farmer v. Brennan*, 511 U.S. 825, 835, 114 S. Ct. 1970, 128 L. Ed. 2D 811 (1994)).

Likelihood of Success on the Merits

A) To obtain a preliminary injunction requiring Defendants to provide her SRS, must first establish that she is likely to succeed on the merits of her SRS claims. She contends that Defendants violated 42 U.S.C. § 1983 by denying her medically necessary treatment for gender dysphoria in violation of the Eighth's Amendment's prohibition against cruel and unusual punishment and the Fourteenth Amendment's Equal Protection Clause.

B) plaintiff has satisfied all the requirements to show that defendants are Deliberate indifferent to plaintiffs serious medical needs and that they have caused unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment. The fact that plaintiff has stated to defendants that she is suffering with out sex-reassignment surgery and defendants have even failed to address the issue is grounds for Deliberate indifferent to plaintiffs serious medical needs. Defendants have intentionally denying and delaying access to medical care.

Serious Medical Need

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CIVIL CASE#6:17-cv-00197-AC

First Amended

MOTION FOR TEMPORARY
RESTRAINING ORDER AND
A PRELIMINARY INJUNCTION

Ex #11

A) Ms. Goninan is likely to succeed in establishing a serious medical need. She has presented extensive and consistent evidence that, notwithstanding years of suffering and only a little treatment in the form of hormone therapy and counseling, she continues to experience severe symptoms of gender dysphoria. The "psychological and emotional pain" Ms. Goninan experiences as a result of her gender dysphoria means that she is "unable to complete [her] existence or complete who she is and suffers from extreme thoughts of suicide and self mutilation." See *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) ("chronic and substantial pain" is an example of a serious medical need).

The WPATH Standards of Care explain that some individuals are unable to obtain relief from gender dysphoria without surgical intervention, and describes SRS as "essential and medically necessary" for this group of patients. Standards of Care at 36. Defendants do not challenge Ms. Goninan's credibility or dispute that the WPATH Standards are the accepted standards of care for the treatment of transgender patients like Ms. Goninan. See *De'Lonta v. Johnson*, 708 F.3d 520, 522-23 (4th Cir. 2013) (describing the Standards of Care as "the generally accepted protocols" for the treatment of gender dysphoria); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 231 (D. Mass. 2012) ("the course of treatment for Gender Identity Disorder generally followed in the community is governed by the 'Standards of Care'"); *O'Donnabhain v. Comm'r of Internal Revenue*, 134 T.C. 34, 65 (U.S. Tax Ct. 2010) (the Standards of Care are "widely accepted in the psychiatric profession") defendants have in no way followed any standards of care when it comes to this matter. Just because defendants have provided [a prisoner] with some treatment consistent with the [] Standards of Care, it does not follow that they have necessarily provided her with constitutionally adequate treatment." *De'Lonta*, 708 F.3d at 526 (emphasis in original); see also *Fields v. Smith*, 653 F.3d 550, 556 (7th Cir. 2011); *Ortiz v. City of Imperial*, 884 F.2d 1312, 1314 (9th Cir. 1989) (a plaintiff alleging deliberate medical indifference "need not prove complete failure to treat").

As the Fourth Circuit has explained: *by analogy, imagine that prison officials prescribe a painkiller to an inmate who has suffered a serious injury from a fall, but that the inmate's symptoms, despite the medication, persist to the point that he now, by all objective measure, requires evaluation for surgery. Would prison officials then be free to deny him consideration for surgery, immunized from constitutional suit by the fact that they were giving him a painkiller? We think not. Accordingly, although . . . a prisoner does not enjoy a constitutional right to the treatment of his or her choice, the treatment a prison facility does provide must nevertheless be adequate to address the prisoner's serious medical need.* *De'Lonta*, 708 F.3d at 526.

Moreover, Defendants have provided no credible support for the idea that Ms. Goninan must demonstrate that she is likely to commit suicide or attempt auto-castration in order to demonstrate a serious {87 F. Supp. 3d 1188} medical need, or that her claim fails because she has survived for decades without SRS. A plaintiff demonstrates a "serious medical need" when she establishes that failure to treat her condition could result in further significant injury or the unnecessary and wanton infliction of pain. See *Estelle*, 429 U.S. at 104; *Jett*, 439 F.3d at 1096. She is not required to demonstrate that she is at risk of death or imminent self-harm, or that her risk of injury or pain is new. Ms. Goninan is likely to succeed in establishing that she has experienced decades of severe psychological pain because SRS is the only way to treat her

persistent symptoms of gender dysphoria. The fact that she has not yet received SRS does not lessen her need for it now.

Ms. Goninan is also likely to succeed in establishing that prison officials were deliberately indifferent to her serious medical need. "[D]eliberate indifference to medical needs may be shown by circumstantial evidence when the facts are sufficient to demonstrate that a defendant actually knew of a risk of harm." *Lolli v. County of Orange*, 351 F.3d 410, 421 (9th Cir. 2003) (citing *Farmer*, 511 U.S. at 842).

Here, Ms. Goninan has presented compelling evidence suggesting that prison officials deliberately ignored her continuing symptoms of gender dysphoria and the recognized standards of care; that they were deliberately indifferent to the recommendations of her treating health care provider;

Equal Protection

Ms. Goninan also contends that Defendants violated her rights under the Equal Protection Clause by treating her differently from similarly situated cisgender inmates seeking needed medical treatment.

Irreparable Harm

A) Ms. Goninan has also established that she is currently suffering irreparable harm and that it will likely continue in the absence of a preliminary injunction. Ms. Goninan testified that she suffers continued and "excruciating" "psychological and emotional pain" as a result of her gender dysphoria. Emotional distress, anxiety, depression, and other psychological problems can constitute irreparable injury. See *Chalk v. U.S. Dist. Ct. Cent. Dist. of California*, 840 F.2d 701, 709 (9th Cir. 1988); *Stanley v. University of Southern California*, 13 F.3d 1313, 1324 n.5 (9th Cir. 1994). Ms. Goninan is at risk of significant worsening of her gender dysphoria. The high doses that plaintiff must take for hormone treatment can create complications; blood clots, cancer and other serious medical conditions with SRS plaintiff would not be required to take such big doses there by lowering her risks.

B) Furthermore, the deprivation of Ms. Goninan constitutional rights under the Eighth Amendment is itself sufficient to establish irreparable harm. See *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Nelson v. Nat'l Aeronautics & Space Admin.*, 530 F.3d 865, 882 (9th Cir. 2008), rev'd on other grounds, 562 U.S. 134, 131 S. Ct. 746, 178 L. Ed. 2d 667 (2011) ("Unlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm."); *Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1282 (N.D. Cal. 2014) ("Irreparable harm is presumed if plaintiffs are likely to succeed on the merits because a deprivation of constitutional rights always constitutes irreparable harm.").

C) Defendants cite no authority for the proposition that a patient denied medically necessary treatment is not suffering "irreparable harm" when her serious condition is not properly treated over a period of years or decades. See *McNearney v. Washington Department of Corrections*, No. 11-cv-5930 RBL/KLS, 2012 U.S. Dist. LEXIS 115802, 2012 WL 3545267, at *14 (W.D. Wash. 2012) (finding a likelihood of irreparable injury where plaintiff's medical condition

predated her incarceration and had not worsened, but the evidence showed that she continued to suffer unnecessary pain due to defendants' inadequate treatment plan). Indeed, the record supports the conclusion that Ms. Goninan need for SRS has been a matter of long-standing, not sudden, urgency. The continuation of this suffering constitutes irreparable injury, whether this is the first month she has suffered it or the hundredth. WPATH Standards of Care

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- The World Professional Association for Transgender Health ("WPATH") has developed Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People ("Standards of Care"), which are recognized as authoritative standards of care by the American Medical Association, the American Psychiatric Association, and the American Psychological Association. Ettner Decl. ¶ 21; see also Deposition of Lori Kohler, M.D. ("Kohler Dep."), ECF No. 67 at 21, at 91-92. The Standards of Care explain that treatment for gender dysphoria is individualized: "What helps one person alleviate gender dysphoria might be very different from what helps another person." Standards of Care, Version 7, ECF No. 10-1 at {87 F. Supp. 3d 1171} 5. They address a variety of therapeutic options, including changes in gender expression and role, hormone therapy, surgery, and psychotherapy. Id. at 8.
-
- One treatment for gender dysphoria is sex reassignment surgery ("SRS"). "Vaginoplasty is the definitive male-to-female sex reassignment surgery." Declaration of Dr. Marci L. Bowers ("Bowers Decl."), ECF No. 65 ¶ 15. It involves the removal of the patient's male genitals and creation of female genitals, and has two therapeutic purposes. Id. ¶ 19; Ettner Decl. ¶ 39. SRS for transsexual female patients both removes the principal source of testosterone in the body and creates congruence between the patient's gender identity and her primary sex characteristics. Ettner Decl. ¶¶ 38-39. The Standards of Care explain:
-
- While many transsexual, transgender, and gender-nonconforming individuals find comfort with their gender identity, role, and expression without surgery, for many others surgery is essential and medically necessary to alleviate their gender dysphoria. For the latter group, relief from gender dysphoria cannot be achieved without modification of their primary and/or secondary sex characteristics to establish greater congruence with their gender identity. Standards of Care at 36; see also Ettner Decl. ¶ 38 ("For many individuals with severe gender dysphoria, however, hormone therapy alone is insufficient. Relief from their dysphoria cannot be achieved without surgical intervention to modify primary sex characteristics, i.e. genital reconstruction."); Bowers Decl. ¶ 31 ("Although some transgender people are able to effectively treat their gender dysphoria through other treatments, sex reassignment surgery for many people is a medically necessary treatment needed to treat gender dysphoria and establish congruence with one's gender identity."). Studies have shown that SRS is a safe and effective treatment for individuals with gender dysphoria. See Standards of Care at 36 ("Follow-up

should not be discriminated against in their access to appropriate health care based on where they live, including institutional environments such as prisons." Id. The Standards allow for "[r]easonable accommodations to the institutional environment," such as the use of injectable hormones where diversion of oral prescriptions is highly likely, but they make clear that "[d]enial of needed changes in gender role or access to treatments, including sex reassignment surgery, on the basis of residence in an institution are not reasonable accommodations under the [Standards of Care]." Id. at 44.

Balance of the Equities

A) In considering the equities of a preliminary injunction, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Winter, 555 U.S. at 24. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." Id. The balance of the equities favors Ms. Goninan requested relief. She has established that she is suffering and is likely to continue to suffer unnecessary pain if she is denied SRS. None of the considerations raised by Defendants outweigh her interest.

Public Interest

The Court concludes that an injunction is in the public interest. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012); see also United States v. Raines, 362 U.S. 17, 27, 80 S. Ct. 519, 4 L. Ed. 2d 524 (1960) ("[T]here is the highest public interest in the due observance of all the constitutional guarantees."). "In addition, 'the public has a strong interest in the provision of constitutionally-adequate health care to prisoners.'" McNearney, 2012 U.S. Dist. LEXIS 115802, 2012 WL 3545267, at *16 (quoting Flynn v. Doyle, 630 F. Supp. 2d 987, 993 (E.D. Wis. 2009)). There is no public interest in Norsworthy's continued suffering during the pendency of this litigation.

PLRA

A) Ms. Goninan has established that she is likely to succeed on the merits of her Eighth Amendment claim, that she is likely to suffer irreparable harm without an injunction, that the balance of the equities tips in her favor, and that an injunction is in the public interest. An injunction {87 F. Supp. 3d 1195} granting her access to adequate medical care, including referral to a qualified surgeon for SRS, is narrowly drawn, extends no further than necessary to correct the constitutional violation, and is the least intrusive means necessary to correct the

violation. See 18 U.S.C. § 3626. There is no evidence that granting this relief will have "any adverse impact on public safety or the operation of the criminal justice system." 18 U.S.C. § 3626(a)(2).

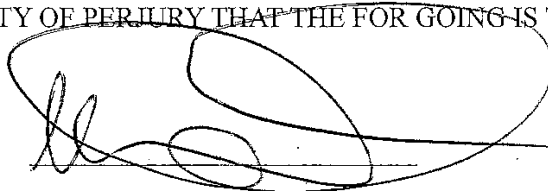
CONCLUSION

For the foregoing reasons, Plaintiff's motion for a preliminary injunction should be granted and this court should order defendants to:

1. For defendants to allow Plaintiff's mental health provider Q.M.H.P. Kristine Gates to write a letter of recommendation for sex reassignment surgery. And proscribe any other treatments that Q.M.H.P. Kristine Gates feels in her professional opinion as a licensed mental health specialist is in need to successfully treat or cure the plaintiff of her serious medical condition of gender dysphoria.
2. Send the plaintiff to a transgender specialist to see if she needs surgery and follow through with any treatment proscribed.
3. To do this in a timely manner.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOR GOING IS TRUE AND CORRECT.

DATE JUNE,21,2017



Respectfully submitted, Nathan R. Goninan (aka) Nonnie M. Lotusflower
NATHAN R. GONINAN S.I.D. #17079611
O.S.C.I.
3405 DEER PARK RD S.E.
SALEM, OR. 97301

CERTIFICATE OF SERVICE AND FILING

I hereby certify that I filed and served a true copy of the foregoing document on the following parties this 21th day of JUNE, 2017, by placing all in a sealed envelope, postage prepaid and deposited the same in the U.S. Postal Service.

Department of Justice
Attn: Shannon Vincent, Senior Assistant Attorney general
1162 Court Street, NE

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CIVIL CASE#6:17-cv-00197-AC
First Amended
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
A PRELIMINARY INJUNCTION

Ex#11

Salem, Oregon 97301



Nathan R. Goninan (a.k.a) Nonnie M. Lotusflower

S.I.D.#17079611

3405 Deer park rd

Salem, Oregon 97301

Plaintiff, *pro se*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NATHAN R. GONINAN,
a.k.a. NONNIE M. LOTUSFLOWER,

Plaintiff,

Case No: 6:16-cv-01999-AC

ORDER

v.

OREGON DEPARTMENT OF CORRECTIONS, et al.,

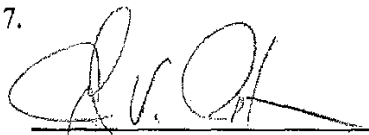
Defendants.

ACOSTA, Magistrate Judge.

The parties having filed a Notice of Settlement and Stipulation of Dismissal with Prejudice (ECF No. 47), IT IS HEREBY ORDERED that this action is DISMISSED, with prejudice. All pending motions are DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 19th day of July, 2017.



John V. Acosta
United States Magistrate Judge

1 - ORDER -

EX #11

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NATHAN ROBERT GONINAN
Also known as: NONNIE M.
LOTUSFLOWER,

Plaintiff,

v.

OREGON DEPARTMENT OF
CORRECTIONS; COLETTE PETERS; JANA
RUSSEL, CLAUDIA FISCHER-
RODRIGUEZ; KEEBLE GISCOMBE;
DR. RUTHVEN; KAITY IMBS; DANA
CRANE; STEVE SHELTON; Grievances
coordinator J. LAWSON; B.H.S. Program
manager BILL CHRISTY,

Defendants.

Case No. 6:17-cv-00197-AC

NOTICE OF SETTLEMENT AND
STIPULATION OF DISMISSAL WITH
PREJUDICE

Pursuant to ORS 17.095(3), defendants notify the Court that this action has been settled pursuant to the terms of the Settlement Agreement and Release of Claims ("Agreement"), a copy of which is attached as *Exhibit 1*. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), and as evidenced

by the stipulation of the parties included on page 4 of the Agreement, Plaintiff agrees to dismiss this action with prejudice.

DATED July 19, 2017.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Shannon M. Vincent

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