

Exhibit #12

Edward J. Reeves, OSB No. 833040  
ed.reeves@stoel.com  
Kennon Scott, OSB No. 144280  
kennon.scott@stoel.com  
Samantha K. Sondag, OSB No. 154244  
samantha.sondag@stoel.com  
STOEL RIVES LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, Oregon 97205  
Telephone: (503) 224-3380  
Facsimile: (503) 220-2480

Mathew dos Santos, OSB No. 155766  
(admission pending in District of Oregon)  
mdossantos@aclu-or.org  
Kelly Simon, OSB No. 154213  
ksimon@aclu-or.org  
ACLU Foundation of Oregon, Inc.  
PO Box 40585  
Portland, Oregon 97240

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

MICHALE WRIGHT (a/k/a  
MICHELLE WRIGHT),

Plaintiff,

v.

COLETTE S. PETERS, Director, Oregon  
Department of Corrections, in her official  
capacity,

STEVEN SHELTON, M.D.  
Chief Medical Officer,

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Case No.: 6:16-cv-01998

COMPLAINT

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Ex #12

Oregon Department of Corrections,  
in his individual and official capacities,

JANA RUSSELL, Administrator,  
Behavioral Health Services, Oregon  
Department of Corrections,  
in her individual and official capacities,

LORI VANCLEAVE, M.A., QMPH  
Behavioral Health Services, Oregon  
Department of Corrections,  
In her individual and official capacities,

DARCI JO JENNINGS, LCSW, QMPH  
Behavioral Health Services, Oregon  
Department of Corrections,  
In her individual and official capacities,

GARTH GULLICK, M.D.  
Medical Services, Oregon  
Department of Corrections,  
In his individual and official capacities,

Defendants.

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**PRELIMINARY STATEMENT**

1. Plaintiff Michale James Wright (a/k/a Michelle Wright) (“Plaintiff” or “Ms. Wright”) is a transgender woman<sup>1</sup> with gender dysphoria, currently in the custody of the Oregon Department of Corrections (“ODOC”). Ms. Wright has requested medically necessary care, including hormone therapy, *nearly 100 times* to treat her gender dysphoria, but all of her requests have been and continue to be denied or ignored. As a direct result of her continued

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<sup>1</sup> Feminine pronouns and the name “Michelle” are used to refer to Plaintiff, consistent with Plaintiff’s gender identity, modern judicial practice, and the advice of mental health professionals who work with transgender persons.

denial of care, Ms. Wright has repeatedly attempted suicide and engaged in acts of self-harm, including three attempts at auto-castration<sup>2</sup> over the last year.

2. Defendants are individuals who, during the time of Ms. Wright's incarceration, have had authority and responsibility for her treatment, safety, and care.

3. ODOC diagnosed Ms. Wright with gender dysphoria in 2014. Despite knowing that gender dysphoria is a serious medical condition that can cause physical injury and mental anguish if left untreated, Defendants have refused and continue to refuse to provide Ms. Wright with medically necessary care.

4. Defendants' failure to treat Ms. Wright's gender dysphoria has led to escalating harm to Ms. Wright.

5. For example, in early 2016, while incarcerated at Snake River Correctional Institution ("SRCI"), Ms. Wright repeatedly expressed a compulsion to auto-castrate and requested hormone therapy and treatment for gender dysphoria.

6. In July 2016, after receiving none of the requested treatment, Ms. Wright attempted auto-castration by tying a band around her scrotum to cut off its blood supply. The band was not discovered for five days, resulting in trauma and infection to her genitalia.

7. In response, Ms. Wright was placed in disciplinary segregation, ostensibly for suicide watch. While on suicide watch, Ms. Wright was ridiculed and mocked by the staff

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<sup>2</sup> Auto-castration is the act of surgical self-treatment to remove or harm one's genitals. It is well documented in the medical literature that individuals with gender dysphoria may attempt auto-castration. The ACLU has repeatedly communicated this risk to ODOC both in writing and in person. ODOC has not once responded to this risk and has instead openly and recklessly disregarded the risk.



entrusted with her care and security, including being called a “fag” and “fucking freak” and being told she could deal with the consequences of her actions.

8. ODOC transferred Ms. Wright to Two Rivers Correctional Institution (“TRCI”) soon after. At TRCI, Ms. Wright continued to request medical care for her gender dysphoria to no avail. Convinced that she would not receive adequate care at TRCI, Ms. Wright again attempted auto-castration, this time using a razor blade to make an incision in her scrotum.

9. Ms. Wright continues to be at a substantial risk of suicide and permanent physical injury, and ODOC is on actual notice of this risk.

10. Ms. Wright brings this action pursuant to 42 U.S.C. § 1983, after fully exhausting her available administrative remedies, to seek redress for Defendants’ deliberate indifference to her serious medical needs, which constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

11. Ms. Wright seeks damages and injunctive relief, as well as a declaratory judgment under 28 U.S.C. §§ 2201 and 2202.

#### **JURISDICTION AND VENUE**

12. This action arises under 42 U.S.C. § 1983.

13. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

14. This Court has personal jurisdiction over each and every Defendant because they are residents of Oregon who were employed in Oregon and acting under color of state law during all relevant times.

15. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because all Defendants are employed by ODOC, which is headquartered in Salem, Oregon.

#### **PARTIES**

16. Plaintiff Michelle Wright is a transgender woman with gender dysphoria, who has been in ODOC custody since August 27, 2013. Since that time, Ms. Wright has been housed at four ODOC facilities: Eastern Oregon Correctional Facility (“EOCI”), Oregon State Penitentiary’s Mental Health Infirmiry (“OSP-MHI”), SRCI, and TRCI. Ms. Wright is currently housed in a single cell at TRCI with an earliest release date of November 10, 2018.

17. Defendant Colette Peters was at all relevant times the Director of ODOC. Defendant Peters exercised final policy- and decision-making authority over ODOC and its personnel at all relevant times. Defendant Peters had a duty to ensure the provision of adequate medical care to prisoners, and to reasonably protect prisoners facing a substantial risk of physical harm, including through the implementation of policies and the training and supervision of ODOC staff. Defendant Peters is among those responsible for denying Ms. Wright medically necessary care and failing to reasonably protect Ms. Wright from harm. She is sued in her official capacity.

18. Defendant Steven Shelton was at all relevant times the Chief Medical Officer for ODOC. Defendant Shelton exercised final policy- and decision-making authority regarding the care and treatment of transgender prisoners; exercised control over ODOC healthcare personnel; and had the final authority to grant or deny medical care to prisoners with gender dysphoria. Defendant Shelton had a duty to ensure the provision of adequate medical care to prisoners, and to reasonably protect prisoners facing a substantial risk of physical and psychological harm,

including through the implementation of policies and the training and supervision of ODOC medical staff. Defendant Shelton is among those responsible for denying Ms. Wright medically necessary care and failing to reasonably protect Ms. Wright from harm, and is sued in his individual and official capacities.

19. Defendant Jana Russell was at all relevant times the Administrator of Behavioral Health Services (“BHS”) for ODOC. Defendant Russell exercised final policy- and decision-making authority regarding the mental health treatment of transgender prisoners, control over BHS personnel, and the authority to grant or deny mental health treatment to prisoners with gender dysphoria. Defendant Russell had a duty to ensure the provision of adequate mental health treatment to prisoners, and to reasonably protect prisoners facing a substantial risk of physical and psychological harm, including through the implementation of policies and the training and supervision of BHS staff. Defendant Russell is among those responsible for denying Ms. Wright medically necessary care and failing to reasonably protect Ms. Wright from harm, and is sued in her individual and official capacities.

20. Defendant Lori VanCleave was at all relevant times a mental health services provider at OSP-MHI. Defendant VanCleave provided direct mental health services to Ms. Wright. Defendant VanCleave had a duty to ensure the provision of mental health care to prisoners, including those with gender dysphoria, and to reasonably protect prisoners facing a substantial risk of physical and psychological harm, including through healthcare decisions and the implementation of policies. She is sued in her individual and official capacities.

21. Defendant Darci Jo Jennings was at all relevant times a mental health services provider at SRCI. Defendant Jennings provided direct mental health services to Ms. Wright.



Defendant Jennings had a duty to ensure the provision of mental health care to prisoners, including those with gender dysphoria, and to reasonably protect prisoners facing a substantial risk of physical and psychological harm, including through healthcare decisions and the implementation of policies. She is sued in her individual and official capacities.

22. Defendant Garth Gullick was at all relevant times the Medical Services Manager at SRCI. Defendant Gullick had control over ODOC healthcare personnel at SRCI, and had the authority to grant or deny medical care to prisoners with gender dysphoria. Defendant Gullick also provided direct medical services to Ms. Wright. Defendant Gullick had a duty to ensure the provision of adequate medical care to prisoners, including those with gender dysphoria, and to reasonably protect prisoners facing a substantial risk of harm, including through medical care decisions, the implementation of policies, and the training and supervision of SRCI medical staff. Defendant Gullick is among those responsible for denying Ms. Wright medically necessary care and failing to reasonably protect Ms. Wright from harm. He is sued in his individual and official capacities.

## FACTS

### Background on Gender Dysphoria

23. Gender dysphoria, formerly known as gender identity disorder, is a medical condition in which an individual's gender differs from the gender the individual was assigned at birth, resulting in clinically significant distress.

24. Gender dysphoria is a recognized condition in the American Psychiatric Association's Diagnostic and Statistical Manual for Mental Disorders ("DSM-V"). Per the DSM-V, the diagnostic criteria for gender dysphoria are:



- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least six months' duration, as manifested by at least two of the following:
1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
  2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
  3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
  4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
  5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
  6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

25. There is medical consensus that gender dysphoria is a serious medical condition and those who suffer from gender dysphoria require treatment. The accepted standards within the medical community for treatment of gender dysphoria are the Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People ("Standards of Care"), published by the World Professional Association for Transgender Health ("WPATH").

26. The Standards of Care are the authoritative and internationally accepted treatment standards for gender dysphoria, and are accepted or endorsed by the American Psychiatric Association, the American Medical Association, the National Commission on Correctional

Healthcare, the U.S. Department of Justice National Institute of Corrections, and courts that have examined the issue.

27. The Standards of Care apply to individuals in custodial settings.

28. Treatment for gender dysphoria includes social transition (dressing and presenting oneself in accordance with one's gender identity), hormone therapy, and surgeries. Appropriate treatment for the condition must be individualized based on the particular medical needs of the patient.

29. The Standards of Care make clear that psychotherapy by itself is not a substitute for social transition, hormone therapy, or surgeries where such treatments are medically required.

30. Persons who need to socially transition or continue or initiate hormone treatment during their incarceration are at risk of severe adverse outcomes if such treatment is denied.

These adverse outcomes include suicidality, auto-castration, self-harm, anxiety, and depression.

31. Use of antidepressants and other psychotropic medications is medically inadequate to treat gender dysphoria and does not meet the prevailing Standards of Care.

**Ms. Wright's Gender Dysphoria and Treatment History Pre-Incarceration**

32. Ms. Wright is a 25-year-old woman.

33. Ms. Wright is transgender and has gender dysphoria. Since childhood Ms. Wright has experienced a divergence between the gender she was assigned at birth and her female gender. Ms. Wright has privately identified as female since a young age, and began doing so publicly prior to her incarceration.

34. Starting at age 16, Ms. Wright wore women's clothing and publicly identified as a woman.

35. Also around this time, Ms. Wright's mother brought her to Outside In, an organization in Portland that helps homeless youth move towards improved health and self-sufficiency, to receive support services. Ms. Wright continued to use Outside In as a resource over the next few years.

36. By the spring of 2011, Ms. Wright discussed her female gender identity and desire to initiate hormone therapy with her counselors at Outside In. However, that summer Ms. Wright suffered a traumatic rape and stopped going to Outside In.

37. On or around January 1, 2013, Ms. Wright was arrested. She later pled guilty to Attempted Robbery I.

Ms. Wright's Initial Gender Dysphoria Diagnosis and Lack of Treatment at ODOC

38. In August 2013, during the ODOC intake process, the screening officer noted that Ms. Wright had seen counselors previously about her gender, but that she had not received a formal diagnosis or treatment prior to incarceration.

39. By 2014, Ms. Wright was clearly expressing her female gender to staff and medical professionals at EOICI. Ms. Wright began requesting hormones and counseling in 2014.

40. In or around September of 2014, Ms. Wright began mental health counseling and discussed her transgender identity with BHS staff at EOICI, as indicated in Ms. Wright's "Mental Health Progress Notes."

41. In or around November 2014, ODOC physician Dr. Donald Matsunaga diagnosed Ms. Wright with gender dysphoria. Ms. Wright also requested hormone therapy from Dr. Matsunaga.



42. As a follow-up to her conversation with Dr. Matsunaga, Ms. Wright submitted a written request for hormones to BHS Prescriber Ted Chase. Chase never prescribed or recommended hormone therapy for Ms. Wright, nor did he refer her for a consultation for hormone therapy, despite later acknowledging in his progress notes the distress Ms. Wright suffered due to the lack of treatment for gender dysphoria.

43. Around this same time, BHS case manager and Qualified Mental Health Provider Bell threatened to refuse Ms. Wright mental health services if Ms. Wright continued to request that those services address her gender dysphoria. Ms. Wright wrote a letter to Defendant Russell to complain about the threat and completed the administrative grievance process about the issue.

44. On or around December 30, 2014, Ms. Wright attempted suicide. Ms. Wright cut the inside of her left arm open. She was found unresponsive in her cell. The wound was stapled shut at a nearby emergency hospital. Ms. Wright was moved to OSP-MHI a few days after this suicide attempt.

45. Upon information and belief, Defendant Shelton was aware of Ms. Wright's suicide attempt and approved her hospital transfer.

46. Following this suicide attempt, Ms. Wright clearly explained to Dr. Matsunaga and Defendant VanCleave that she had been trying to rid herself of her maleness. For example, in a Psychiatric Evaluation dated January 2, 2015, Dr. Matsunaga noted that "[patient] believes he [*sic*] has female anatomy ... inside him [*sic*]. Cleansing through bleeding ... will allow the anatomy to become present." Ms. Wright also noted in later follow-up visits that she was distraught over ODOC's ongoing denials of hormone therapy and other care.



47. By or around January 2015, while in OSP-MHI, Dr. Matsunaga referred Ms. Wright's hormone request to a Therapeutic Level of Care ("TLC") committee in Salem, which includes Defendants Shelton and Russell. Upon information and belief, the committee members and, ultimately, Defendant Shelton, denied her request.

48. On January 22, 2015, Ms. Wright sent a kyte<sup>3</sup> to OSP-MHI Captain Bunnell requesting "a tube of Magic Shave," a hair removal cream. She stated "I believe that by having this item it'll help my self-esteem and lift some of my depressive level/feelings. I'm transgender and having a body full of hair really bothers me mentally."

49. On or around January 22, 2015, Defendant VanCleave completed a progress note in Ms. Wright's mental health file noting a statement by Ms. Wright that she "was fine right now but that could change at any moment based on ... TLOC Committee's decision on his [*sic*] hormonal therapy." Ms. VanCleave also noted that a denial of hormone therapy would exacerbate Ms. Wright's suicidality. Ms. VanCleave also noted that Ms. Wright requested feminine hygiene products to help remove her body hair, explaining that "not having these products effects his [*sic*] state of mind." Finally, Defendant VanCleave noted that Ms. Wright had "no focus on his [*sic*] mental stability but rather on issues that he [*sic*] wants to have resolved regarding gender identity."

50. OSP-MHI Captain Bunnell ultimately denied Ms. Wright's request for hair removal cream.

51. On or around January 29, 2015, Ms. Wright reported to Defendant VanCleave that her health and well-being were dependent on receiving treatment for gender dysphoria.

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<sup>3</sup> A "kyte" is the colloquial term for an Inmate Communication Form at ODOC.

During this same visit, Ms. Wright reported that “she [was] very upset about having erections and she does not want them.”

52. By or around February 2015, Ms. Wright began asking BHS staff, including Dr. Matsunaga and Defendant VanCleave, for a treatment plan for her gender dysphoria.

53. By or around March 2015, Defendant VanCleave completed a Mental Health Continuum Referral Form for Ms. Wright’s departure from OSP-MHI. It listed Ms. Wright’s primary diagnosis as Mood Disorder, NOS with a secondary diagnosis of Gender Dysphoria. Defendant VanCleave noted that any “requests must go through the Gender Non-Conforming Committee” and that ODOC staff “have discussed at length that a treatment plan in MHI will only address his [*sic*] safety needs not quality of life issues, such as needing his [*sic*] depilatory cream, female undergarments, etc.” The only two goals Defendant VanCleave listed on the referral form focused on addressing distress tolerance and emotional regulation when others might treat “him” in a way “he” sees as offensive. The form went on to note:

Mr. [*sic*] Wright has been very focused on developing a treatment plan that incorporates gender identity issues. He [*sic*] has not focused on addressing depression, self-harm, anxiety or skill building while here in the MHI. It has been explained to him [*sic*] several times that our focus is on issues related to safety first and quality of life issues are the lowest priority.

54. Upon information and belief, Defendants Shelton and Russell were at all relevant times members of the committee that Defendant VanCleave refers to as the “Gender Non-Conforming Committee” and denied all of Ms. Wright’s requests for care.

55. On or around March 19, 2015, Ms. Wright again wrote to Defendant Russell to obtain treatment for her gender dysphoria. In the letter, Ms. Wright requested female undergarments and weekly one-on-one counseling.

56. On or about May 4, 2015, Defendant Russell replied. Despite Defendant Russell's personal awareness that Ms. Wright had recently attempted suicide, been diagnosed with gender dysphoria, and repeatedly requested hormone therapy to treat her distress, Defendant Russell refused to initiate any treatment in accordance with the prevailing standards of care for treating gender dysphoria.

Ms. Wright's Lack of Treatment for Gender Dysphoria at SRCI

57. In or around April 2015, Ms. Wright was transferred from OSP-MHI to SRCI.

58. On or around May 2, 2015, Ms. Wright cut her wrist with a razor blade. She reported the incident when she was unable to stop the bleeding. That same day, Ms. Wright wrote a note to Defendant Russell indicating that BHS's failure to treat her gender dysphoria caused her to engage in self-harm.

59. On or around May 5, 2015, Defendant Russell responded to Ms. Wright's note. Again, despite Defendant Russell's knowledge of Ms. Wright's recent and repeated self-harm and numerous requests that her gender dysphoria be treated, Defendant Russell made no mention of any plan for treating gender dysphoria. Instead, Defendant Russell's letter emphasized dialectical behavior therapy ("DBT") skills and included a meditation exercise. Neither DBT skills nor meditation is a recognized form of treatment for gender dysphoria.

60. On or around June 16, 2015, Ms. Wright wrote to PREA<sup>4</sup> Coordinator Sage requesting treatment for her gender dysphoria, including "trans-inclusive healthcare,

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<sup>4</sup> Transgender prisoner safety and certain procedures are addressed by the Prison Rape Elimination Act of 2000, 42 U.S.C. § 15601, *et seq.*, and its implementing regulations, 28 C.F.R. pt. 115 (collectively "PREA"). PREA mandates a zero tolerance policy for all forms of sexual abuse and sexual harassment, and recognizes that transgender prisoners are at heightened risk of sexual assault and harassment. PREA applies to ODOC facilities and staff, and is also discussed



counseling/one-on-ones weekly with a trained trans-counselor, a trans-inclusive support group for those of us within the LGBTQ community, women’s cosmetics/canteen (CCCF), proper undergarments (feminine delicates), androgen suppressants, hormone therapy replacement.”

61. On or around June 19, 2015, Ms. Wright wrote to the Gender Non-Conforming Committee (“GNCC”).<sup>5</sup> In that communication, Ms. Wright again requested treatment for her gender dysphoria. She expressed concern over the delay in her treatment and stated that she was “in need of having regular, ethical, professional, care ... on the table as opposed to being shrugged off.”

62. On or around June 29, 2015, as noted in a “DTU 1 Week Follow Up” note, Defendant Jennings told Ms. Wright that BHS treatment would not focus on her gender dysphoria, even though, on information and belief, Ms. Jennings was fully aware of Ms. Wright’s mental health history, including the severe distress caused by her untreated gender dysphoria. Defendant Jennings told Ms. Wright that ODOC “offer[s] DBT to help her manage her emotional discord,” despite Ms. Wright’s repeated requests for treatment for her gender dysphoria and her statement that “every emotional distress was not the same and could not be treated the same.”

63. On or around July 7, 2015, Ms. Wright met with Defendant Jennings, “another MHS, a contractor, ... and the DTU manager” for a “treatment team type meeting.” Ms. Wright

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in ODOC Policy 40.1.13 (“ODOC PREA Policy”). All ODOC employees, contractors, and volunteers are required to have read and reviewed the ODOC PREA Policy and to sign a document acknowledging such.

<sup>5</sup> Upon information and belief, the GNCC, which has been renamed the Transgender and Intersex Committee, reviews and makes housing placements for transgender (and other gender-nonconforming) prisoners.



told the ODOC staff and contractors present that she was not getting adequate medical care for her gender dysphoria. Ms. Wright also expressed that she hated her penis. Defendant Jennings' response was that BHS only treats mental health symptoms, and the issues that Ms. Wright described were not mental health issues.

64. During the July 7, 2015 meeting, Ms. Wright presented Defendant Jennings with a copy of a self-authored treatment plan in response to requests by ODOC staff that she draft her own. Defendant Jennings informed Ms. Wright that it was "too wordy." The plan that was ultimately approved by ODOC removed all references to being transgender and gender dysphoria.

65. On or around July 9, 2015, in response to Ms. Wright's June 19, 2015 letter to the GNCC asking for treatment for her gender dysphoria, PREA Coordinator Sage, a GNCC member, wrote to Ms. Wright explaining that the GNCC handles housing issues and not treatment issues. She also explained that the Gender Non-Conforming TLC ("GNC-TLC") handles "BHS treatment/transition requests." Ms. Sage further indicated that she had spoken with Defendant Russell about Ms. Wright's requests.<sup>6</sup>

66. Upon information and belief, Defendants Russell and Shelton at all relevant times were members of the GNC-TLC. Despite their knowledge of Ms. Wright's gender dysphoria diagnosis and the serious risks to her health and safety, the GNC-TLC again denied and continues to deny Ms. Wright's requests for hormone therapy and other treatments for her gender dysphoria.

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<sup>6</sup> Upon information and belief, the GNC-TLC reviews and responds to requests for treatment from transgender (and other gender-nonconforming) prisoners.

67. On or around July 22, 2015, Ms. Wright signed an updated treatment plan with Defendant Jennings that continued to prioritize safety (including learning DBT skills) and symptoms of anxiety and depression. While the plan mentions “[i]dentification and treatment of medical needs (requests for hormone treatment, gender reassignment, etc.),” as of the filing of this complaint, Defendants have not provided Ms. Wright with hormone therapy. Even though the plan did not adequately address her gender dysphoria, Ms. Wright felt bullied and intimidated into signing the treatment plan if she wanted to receive any care.

68. With her distress over the lack of treatment escalating, on or around July 27, 2015, Ms. Wright swallowed approximately 14 pieces of razor blade. Defendant Gullick was advised of Ms. Wright’s condition, and he ordered that she be sent to the emergency room at an outside hospital. Defendant Gullick was subsequently responsible for her care.

69. When asked for updates after this event, Ms. Wright clearly communicated that she was distressed about her treatment. Ms. Wright remained in the Disciplinary Segregation Unit (“DSU”)<sup>7</sup> on suicide watch for approximately 21 days following the incident.

70. While on suicide watch, Ms. Wright corrected a staff member’s use of male pronouns and requested to be called “Inmate Wright.” The officer continued to use male pronouns when referring to Ms. Wright.

71. Upon Ms. Wright’s removal from suicide watch, ODOC Officer Faulk asked her if she wanted more razor blades and mockingly referred to her as “Mr. Wright,” emphasizing “Mister.”

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<sup>7</sup> ODOC’s DSU at all institutions is equivalent to solitary confinement. Prisoners are confined for 23 hours and 15 minutes per day, and are allowed no personal property and no contact with the outside world except in the event of an emergency. The confinement is used to punish prisoners who are in violation of rules of conduct.

72. On or around August 22, 2015, Ms. Wright sent a communication to medical staff expressing her physical and psychological concerns with regard to her genitals. Ms. Wright again requested hormone therapy to alleviate her gender dysphoria.

73. Ms. Wright's medical progress notes from on or around August 24, 2015 include her requests for hormone therapy and note she was scheduled for a doctor visit.

74. On or around September 1, 2015, Ms. Wright met with a Dr. Koltes and again requested hormone therapy, explaining that, prior to incarceration, she had been receiving counseling for her gender transition since as early as 2011. The notes also acknowledge a history of self-injurious behavior and genital trauma. Physician's orders were entered referring Ms. Wright specifically to Defendant Russell and the GNC-TLC in Salem, which also included Defendant Shelton.

75. Also in or around September 2015, while in segregation,<sup>8</sup> SRCI Officers Whitaker and Lettunich came by Ms. Wright's cell and ridiculed her, making fun of the size of her "balls" as compared to "real men," and telling her to "man up" and that she was not a woman.

76. On or around October 15, 2015, Ms. Wright wrote to Medical Services Manager ("MSM") Hughes expressing concern over her hormone levels, explaining that Defendant Gullick had told Ms. Wright to write to MSM Hughes. Rather than take steps to initiate care for Ms. Wright, MSM Hughes instructed Ms. Wright to write to "the transgender committee" in Salem.

77. Shortly thereafter, Ms. Wright was again placed on suicide watch.

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<sup>8</sup> Upon information and belief, cumulatively Ms. Wright has spent approximately 445 days in segregation while in ODOC custody.



78. On or around October 21, 2015, while on suicide watch, Ms. Wright took a string from her mattress and tied it tightly around her scrotum in an attempt to cut off the blood flow to her genitals so that they would have to be removed. When the string was discovered on or around October 22, 2015, it was removed by medical staff and noted in her medical file.

79. In connection with this incident, Ms. Wright explained to Defendant Jennings that BHS was not addressing her gender dysphoria. Progress notes about this mental health session also note that, during the conversation, Ms. Wright took blood from a wound in her arm and wrote "I am a female" on the window of her cell. The progress notes then state that Defendant Jennings retrieved security staff, who sprayed Ms. Wright with pepper spray.

80. On or around November 2, 2015, Ms. Wright again wrote to MSM Hughes requesting treatment for gender dysphoria and communicating her distress over her body and genitals. MSM Hughes responded that Ms. Wright's requests had to go through "the Gender Non-Conforming Committee" and that she would forward Ms. Wright's communication to Defendant Russell, who was a member of the GNC-TLC. Ms. Wright's communication was forwarded to Defendant Russell.

81. On or around December 9, 2015, Ms. Wright wrote to Defendant Peters. Ms. Wright included a grievance form explaining that an ODOC doctor had informed her that Defendant Shelton would not approve hormone therapy. Ms. Wright pleaded with Defendant Peters for help getting the care she needed and noted that SRCI Grievance Coordinator Taylor was "far from impartial." On information and belief, Grievance Coordinator Taylor impeded the grievance process by rejecting and/or delaying grievances, as well as incorrectly tracking grievances, responses to grievances, and/or grievance appeals.



82. Ms. Wright continued to request hormone therapy in early 2016, including through direct communications to Defendant Shelton.

83. On or around March 13, 2016, Ms. Wright again submitted a Health Services Request Form requesting hormone therapy and treatment for gender dysphoria. In response, SRCI medical staff directed Ms. Wright to contact Defendant Shelton.

84. On or around March 18, 2016, Ms. Wright wrote to Defendant Shelton to ask about the status of her request for hormones. Defendant Shelton received the communication on or around March 29, 2016, but did not respond.

85. On or around March 24, 2016, Ms. Wright filed a grievance against SRCI medical staff for denial of treatment for gender dysphoria. Ms. Wright stated that she was denied treatment by “Dr. Gullick per an email he received last [week] from Salem stating that no medical or BHS staff are allowed [to] discuss and or provide any form of treatment for gender dysphoria.” On or around May 12, 2016, SRCI Grievance Coordinator Taylor informed Ms. Wright that the grievance was answered, but that Ms. Wright had failed to appeal it. *However*, ODOC did not respond to the grievance until on or around May 20, 2016, when BHS Manager Buster explained that Ms. Wright was “currently being treated for gender dysphoria at a level [ODOC] will continue to evaluate over time.”

86. On or around March 29, 2016, Ms. Wright wrote to BHS Prescriber Evans explaining, among other things, that antidepressant medication and DBT skills were not effectively addressing her gender dysphoria. Ms. Wright suggested that staff consider the WPATH Standards of Care. Upon information and belief, BHS Prescriber Evans never responded to Ms. Wright.

87. On or about April 10, 2016, Ms. Wright wrote in response to SRCI BHS Manager Renee Smith's question regarding how Ms. Wright could better work with BHS. Ms. Wright explained to BHS staff that if they could provide her with hormone replacement therapy and therapeutic one-on-one counseling sessions, then she would have "considerably less dysphoria and impairment." BHS staff responded to that communication by directing Ms. Wright to write to Defendant Shelton about hormones.

88. Ms. Wright has sent multiple written communications to Defendant Shelton, who is a member of the GNC-TLC and the ODOC staff member with final decision-making authority, requesting treatment for her gender dysphoria, including hormone therapy.

89. On or around April 26, 2016, Ms. Wright was sent to DSU, where she was placed on suicide watch. Staff physically and violently dragged Ms. Wright to DSU. Officer Palmer kicked her in the face while she was on the ground.

90. On or around April 28, 2016, while in the DSU, Ms. Wright smeared her own blood on the walls and indicated that she was going to castrate herself.

91. On or around May 3, 2016, Ms. Wright grieved SRCI staff's indifference in taking her off of suicide watch without an assessment. In that grievance, she also requested hormones. Staff's response to the grievance indicated that her request for hormones had already been forwarded to Defendant Shelton.

92. On or around May 4, 2016, Ms. Wright again wrote to Defendant Shelton about her desire to castrate herself. Defendant Shelton never responded to or otherwise acknowledged this communication.

93. On or around May 6, 2016, Ms. Wright filed a discrimination complaint against Defendant Gullick for providing testosterone to male prisoners but not providing her with estrogen. SRCI Grievance Coordinator Taylor returned the complaint on the grounds that it raised an issue already formally complained of, thereby making the administrative process relating to the provision of hormone therapy unavailable.

94. On or around May 16, 2016, Ms. Wright was placed in the Administrative Segregation Unit (“ASU”).<sup>9</sup> According to the segregation order, the GNCC requested the placement.

95. Throughout May, June, and July 2016, Ms. Wright was kept in the ASU and received no responses from Defendant Shelton about her treatment. The only gender-related care ODOC provided was female undergarments. ODOC denied Ms. Wright access to grooming items (e.g., body hair maintenance tools) available to other female prisoners, did not provide therapeutic one-on-one counseling, and did not allow her to consult with medical staff about hormone therapy or initiate such therapy. When Ms. Wright requested a razor or clippers to remove and/or groom her body hair, ODOC Officer Real told her that she could “be a man for a few days.”

96. Ms. Wright continued to submit health services requests for hormone therapy. In or around June 2016, at least one of these forms was forwarded to Defendant Shelton.

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<sup>9</sup> While there is some variation between facilities, ODOC’s ASU at SRCI is equivalent to solitary confinement. ASU is housing separate from the general population and includes in-cell confinement 23 hours a day. While other prisoners may be in the ASU housing unit, interactions are greatly restricted. The only significant difference from solitary confinement is that prisoners are allowed personal property in ASU. Administrative segregation is alleged by ODOC to be non-punitive.



97. In or around June 2016, Ms. Wright filed a grievance regarding Defendant Shelton's failure to respond to communications, specifically citing studies that suggested medical professionals' refusals to treat gender dysphoria is a risk factor contributing to the high rates of suicide by transgender persons.

98. Having received no response and no sign that care was forthcoming, on or around July 22, 2016, Ms. Wright attempted castration by tying off her scrotum with a rubber band. She left the band in place for approximately five days, by which point her scrotum had turned black, cold, and swollen and there was noticeable seepage from a wound caused by the band. On or around July 27, 2016, Ms. Wright became concerned about these symptoms and told her mother what she had done.

99. Staff came to Ms. Wright's cell that same day after monitoring the phone conversation between Ms. Wright and her mother. After medical staff removed the band, she was taken to a local hospital for emergency care.

100. When ODOC staff asked Ms. Wright why she harmed herself, she handed staff a note. The note explained this was a step Ms. Wright felt she needed to take to live, not die, and also referred to Defendant Shelton's failure to respond to her requests for care.

101. After receiving emergency care, Ms. Wright was immediately returned to SRCI and, after a brief stay in the infirmary, was put on suicide watch in DSU. No ODOC doctor visited Ms. Wright until on or around August 2, 2016, when Defendant Gullick came to see her. Defendant Gullick explained to Ms. Wright that many transgender prisoners have tried to castrate themselves, but that Defendant Shelton says institutions do not have to provide hormone therapy.

102. In the days immediately following Ms. Wright's hospital visit, staff charged with her care and security on suicide watch ridiculed and mocked Ms. Wright, including calling her "not [W]right," a "fag," and a "fucking freak," telling Ms. Wright to "knock this crap off," and telling Ms. Wright that she can deal with the consequences of what she did to herself.

**Ms. Wright's Lack of Treatment for Gender Dysphoria at TRCI**

103. On or around August 3, 2016, one week after her hospitalization, Ms. Wright was transferred to TRCI without prior notice to Ms. Wright or her attorneys, who were by then in contact with ODOC. Ms. Wright was placed in TRCI's ASU for approximately two weeks.

104. On September 14, 2016, Ms. Wright received a letter from Claudia Fischer-Rodriguez, LCSW, BHS Clinical Director, stating that she had reviewed six of Ms. Wright's written requests for hormone therapy. It further stated that her request for hormonal therapy had been reviewed by the GNC-TLC on September 12, 2016. The GNC-TLC again denied Ms. Wright's request for hormone therapy and instead recommended that she participate in "treatment opportunities" available to her "in order to decrease self-harm, improve communication skills and increase [her] ability to tolerate stress." This letter did not reference Ms. Wright's gender dysphoria, nor did it discuss any treatment consistent with the established medical protocols for treating gender dysphoria. The letter further stated that her request for treatment would not be reviewed again until January 2017.

105. On or about September 15, Ms. Wright again attempted to auto-castrate, this time using a razor blade to make an incision in her scrotum. Staff rushed her to an outside hospital for emergency care.

106. Ms. Wright returned to TRCI that same day and was kept on suicide watch until on or about September 19, 2016.

107. At the time of filing this complaint, Ms. Wright still has not received a hormone therapy consultation, an evaluation, or any hormone treatment. Ms. Wright continues to seek medical care to stave off infection of the injury to her scrotum and address the associated pain.

108. Ms. Wright has exhausted her available administrative remedies to redress Defendants' failure to provide her with medically necessary treatment for her gender dysphoria. She has submitted written requests for treatment, including but not limited to hormone therapy, nearly 100 times and filed numerous grievances and discrimination complaints addressing the issue.

109. On April 26, 2016, the SRCI Grievance Coordinator rejected a discrimination complaint against BHS for failing to address her gender dysphoria. Grievance Coordinator Taylor wrote: "Rule 291-006 clearly states that you cannot raise issues you have previously raised in a grievance. The issue of BHS and their willingness or resistance to providing Gender Dysphoria treatment has been raised in several grievances to include [at least one grievance] which completed through 2<sup>nd</sup> appeal."<sup>10</sup>

110. On or about July 20, 2015, in grievance SRCI 2015-07-125AA, Ms. Wright complained that ODOC staff was not providing her treatment for gender dysphoria in accordance with her treatment plan, which was to include hormone therapy and surgery, among other things.

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<sup>10</sup> Regardless, ODOC's own policy does not require prisoners to grieve health complaints before seeking alternative remedies, including through the courts. "Inmates may also address complaints about health services to the Governor's office, elected officials, and other state agencies with investigatory or regulatory authority, and *through the judicial system*." Health Services Section Policy and Procedure #P-A-11 (emphasis added).



On or about October 12, 2016, Ms. Wright was notified that grievance SRCI 2015-07-125AA was fully exhausted.

**ODOC Policies on Care for Prisoners with Gender Dysphoria**

111. ODOC medical policies utilize a hierarchy of treatment necessity described in Health Services Section Policy and Procedure #P-A-02.1 (“Health Policy and Procedure”). The hierarchy is referred to as “Therapeutic Levels of Care” or “TLC.”

112. According to the Health Policy and Procedure, the Medical Director forms TLC committees. TLC committees purport to review requests from an institution’s Chief Medical Officer on a case-by-case basis. However, all TLC reviews are subject to the final authority of the Medical Director or his designees.

113. The GNC-TLC makes medical and treatment decisions for prisoners with gender dysphoria.

114. The GNC-TLC may review prisoners’ medical and mental health files at six-month intervals, but the committee members do not meet directly with the prisoner. Nor is there any indication that additional reviews can take place between the six-month intervals if a prisoner’s medical needs become more urgent. If the GNC-TLC has official policies or procedures, they are not published or publicly available.

115. Upon information and belief, and based on the GNC-TLC’s routine denial of hormone replacement therapy and instruction to staff that such treatment will not be provided, Defendant Shelton and the members of the GNC-TLC refuse to provide hormone replacement therapy to prisoners with gender dysphoria who were not receiving such treatment before incarceration. This practice is contrary to the Standards of Care and ODOC’s Health Care Policy

and Procedure, and creates a *de facto* freeze-frame policy with regard to prisoners with gender dysphoria coming into ODOC custody – meaning a limitation on care to the amount and type of care an individual was receiving prior to incarceration, regardless of medical need.<sup>11</sup>

Additionally, the GNC-TLC only reviews a prisoner’s file every six months, regardless of the prisoner’s requests, grievances, or medical need.

116. With respect to mental health care, BHS, as directed by Defendant Russell, has authorized some prisoners, including Ms. Wright, with a gender dysphoria diagnosis to receive or purchase feminine canteen items during their incarceration. Defendant Russell and other BHS staff emphasize DBT skills with prisoners, but individual therapy is only provided on a short-term and limited basis – at most, once every 30 days, absent an emergency. Ms. Wright has not been given mental health counseling that is therapeutic or specific to her gender dysphoria.

#### CLAIMS FOR RELIEF

##### Count One:

##### **Denial of Medically Necessary Care in Violation of the Eighth Amendment to the U.S. Constitution**

##### (As to All Defendants)

117. Ms. Wright incorporates and re-alleges herein the allegations of the foregoing paragraphs.

118. At all relevant times, Defendants were aware that Ms. Wright had gender dysphoria, a serious medical need that compromises an individual’s physical health and mental well-being when left untreated.

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<sup>11</sup> Upon information and belief, ODOC has not approved hormone therapy for any prisoner with gender dysphoria who was not already receiving hormone therapy prior to incarceration, without judicial intervention.

119. Defendants were aware that the medically accepted standards of treatment for gender dysphoria include hormone therapy, individualized talk therapy, and feminine gender expression and that such treatments were medically necessary for Ms. Wright.

120. Defendants knew that the failure to treat Ms. Wright's gender dysphoria consistent with prevailing medical standards for treating her condition placed Ms. Wright at substantial risk of self-mutilation, auto-castration, and severe emotional distress.

121. Acting with deliberate indifference, Defendants, while acting under color of state law, have failed to provide medically necessary care to treat Ms. Wright's gender dysphoria in violation of the Eighth Amendment's prohibition on cruel and unusual punishment.

122. Each of the Defendants personally and directly participated in the constitutional deprivations alleged.

123. Defendants showed deliberate indifference to Ms. Wright's serious medical needs by, *inter alia*, refusing Ms. Wright an appropriate treatment plan, and refusing to authorize gender dysphoria treatment in accordance with the established standards of care for treating this condition, and with no exercise of individualized medical judgment.

124. Defendants showed deliberate indifference to Ms. Wright's serious medical needs by, *inter alia*, ratifying or condoning the unconstitutional actions of their subordinates, and/or failing to take steps to prevent them from continuing to disregard prisoners' need for medically necessary treatment, while fully aware of the constitutional deprivations complained of herein.

125. Defendants Russell and Shelton showed deliberate indifference to Ms. Wright's serious medical needs by, *inter alia*, instructing ODOC healthcare personnel to refuse requests to



initiate or refer prisoners for gender dysphoria treatment, and to ignore their professional medical judgment regarding whether treatment was medically necessary.

126. Defendant Peters showed deliberate indifference to Ms. Wright's serious medical needs by, *inter alia*, encouraging and permitting a practice of denial of hormone therapy to prisoners with gender dysphoria in violation of medical custom and standards.

127. Each of the Defendants also implemented, followed, enforced, and continues to enforce a policy or custom, having the force of law, of refusing requests to initiate gender dysphoria treatment, irrespective of a prisoner's medical need, and providing DBT counseling under the guise of gender dysphoria treatment when they knew, or should have known, it was grossly inadequate care that places prisoners at a substantial risk of mental and physical deterioration or harm.

128. As a direct and proximate result of Defendants' actions, Ms. Wright has suffered and continues to suffer irreparable physical injury and emotional harm.

129. Ms. Wright has suffered physical and emotional injury as a result of the denial of medically necessary care. She has attempted suicide, auto-castration, and other forms of self-harm due to the denial of medically necessary treatment for her well-documented gender dysphoria.

130. Ms. Wright continues to suffer severe distress as a result of her untreated gender dysphoria. Her compulsion to engage in auto-castration and self-harm persists to this day, and, as she remains without medically necessary care, she continues to be at substantial risk of self-harm and other physical injury. Ms. Wright will continue to suffer substantial and irreparable harm absent immediate relief.

**Count Two:**

**Policy or Custom Regarding the Treatment of Gender Dysphoria in Violation of the Eighth Amendment to the U.S. Constitution**

**(As to Defendants Peters, Shelton, and Russell)**

131. Ms. Wright incorporates and re-alleges herein the foregoing paragraphs.

132. Defendants Peters, Shelton, and Russell are final policy- and decision-makers for ODOC and have enforced and continue to enforce an unconstitutional medical care policy that removes decision-making regarding the treatment of gender dysphoria from healthcare professionals and prevents them from initiating medically necessary care. The policy subjects prisoners like Ms. Wright to a substantial risk of serious injury and harm in violation of the Eighth Amendment to the U.S. Constitution.

133. Under ODOC policies and procedures, which have been and continue to be implemented by Defendants Peters, Shelton, and Russell and their agents, officials, employees, and all persons acting in concert with them under color of state law, in their official capacities, Ms. Wright has been denied all medically appropriate treatment for her gender dysphoria, in violation of the prohibition on cruel and unusual punishment in the Eighth Amendment, even though no dispute now exists regarding her gender dysphoria diagnosis.

134. As a direct and proximate cause of Defendants' enforcement of ODOC's policies and procedures, Ms. Wright has suffered and continues to suffer irreparable physical injury and emotional harm and the deprivation of her constitutional rights. She will continue to suffer substantial and irreparable harm absent immediate relief.

**Count Three:**

**Failure to Train and Supervise Staff Regarding Serious Medical Needs in Violation of the Eighth Amendment to the U.S. Constitution**

**(As to Defendants Peters, Shelton, and Russell)**

135. Ms. Wright incorporates and re-alleges herein the foregoing paragraphs.

136. Defendants Peters, Shelton, and Russell, who are final policy- and decision-makers for ODOC, failed to properly train their staff concerning the medical needs of transgender prisoners and prisoners with gender dysphoria, despite knowing of widespread, pervasive patterns of failure to provide medical care by ODOC personnel that were likely to continue absent training.

137. Defendants knew that, based on their failure to train or acquire competent ODOC medical professionals and officers, ODOC staff had repeatedly denied prisoners with gender dysphoria treatment of any kind, and subjected them to discipline and reprimand instead of treatment, including taunting them, calling them names, placing them in segregation, and insisting they act and identify as their assigned sex.

138. As a direct and foreseeable consequence of Defendants' conscious disregard of the obvious need to train personnel, Ms. Wright has been denied medically necessary care for her gender dysphoria, in violation of the Eighth Amendment's prohibition on cruel and unusual punishment, and fundamental notions of decency.

139. Ms. Wright has suffered and continues to suffer irreparable physical injury and emotional harm as a result of Defendants' failure to supervise and train personnel, and will continue to suffer substantial and irreparable harm absent immediate relief.



### REQUEST FOR RELIEF

140. WHEREFORE, Plaintiff Michelle Wright respectfully requests that this Court enter judgment in her favor and against Defendants, providing the following relief:

- A. A declaration that Defendants' refusal to provide medically necessary treatment for gender dysphoria violates the Eighth Amendment to the United States Constitution;
- B. A declaration that ODOC's medical and mental health policies and procedures, as applied to prisoners with gender dysphoria, violate the Eighth Amendment to the United States Constitution;
- C. A preliminary and permanent injunction directing all Defendants to provide Plaintiff medically necessary treatment for her gender dysphoria in accordance with established medical standards of care, including, but not limited to, hormone therapy, therapeutic individual counseling, therapeutic transgender group support, surgery, and permitting Plaintiff to express her feminine gender identity through grooming, pronoun use, and dress;
- D. A permanent injunction requiring Defendants to train ODOC personnel to respect and meet the medical needs of transgender prisoners;
- E. Compensatory damages against each Defendant named in his or her individual capacity, in an amount adequate to compensate Plaintiff for her harms and losses, including but not limited to Plaintiff's physical injuries, mental and emotional injuries, pain and suffering, personal humiliation, and costs incurred by Plaintiff;

- F. Punitive damages against each Defendant named in his or her individual capacity, in an amount to be determined at trial;
- G. Reasonable attorneys' fees and costs including expert fees, under 42 U.S.C. § 1988; and
- H. All other relief that the Court deems just and proper.

DATED: October 17, 2016.

STOEL RIVES LLP

/s/ Kennon Scott

Edward J. Reeves, OSB No. 833040

ed.reeves@stoel.com

Kennon Scott, OSB No. 144280

kennon.scott@stoel.com

Samantha K. Sondag, OSB No. 154244

samantha.sondag@stoel.com

Telephone: (503) 224-3380

ACLU FOUNDATION OF OREGON, INC.

Mathew dos Santos, OSB No. 155766

(admission pending in District of Oregon)

mdossantos@aclu-or.org

Kelly Simon, OSB No. 154213

ksimon@aclu-or.org

PO Box 40585

Portland, Oregon 97240

Attorneys for Plaintiff