

Candice Jackson (SBN 224648)  
**FREEMAN MATHIS & GARY, LLP**  
1010 B Street, Suite 300  
San Rafael, California 94901  
[cjackson@fmglaw.com](mailto:cjackson@fmglaw.com)  
Telephone: 415.352.6434

Lauren Adams (Wisconsin Bar No. 1095653)  
(*Pro Hac Vice* forthcoming)  
**WOMEN'S LIBERATION FRONT**  
1802 Vernon St. NW, #2036  
Washington, DC 20009  
Telephone: 202.964.1127  
[legal@womensliberationfront.org](mailto:legal@womensliberationfront.org)

*Counsel for Plaintiffs*

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA (FRESNO DIVISION)**

JANINE CHANDLER; KRYSTAL  
GONZALEZ; TOMIEKIA JOHNSON; NADIA  
ROMERO, individuals; and WOMAN II  
WOMAN, a California non-profit corporation,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION;  
KATHLEEN ALLISON, Secretary of the  
California Department of Corrections and  
Rehabilitation, in her official capacity;  
MICHAEL PALLARES, Warden, in his official  
capacity; MONA D. HOUSTON, Warden, in her  
official capacity; and DOES 1-10, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**NATURE OF THE ACTION**

1. This case challenges California Penal Code §§ 2605, 2606, sections added to the Penal Code by S.B. 132, an act titled “The Transgender Respect, Agency, and Dignity Act” (herein, “S.B. 132”) on the ground that S.B. 132 cannot be applied in any manner that avoids violating the

1 federal and state constitutional rights of Plaintiffs, who are women incarcerated in one of  
2 California's women's correctional facilities, and a non-profit organization run by formerly and  
3 currently incarcerated women to advocate for justice-involved women, including women currently  
4 incarcerated in California. S.B. 132 became effective on January 1, 2021.

5       2.       S.B. 132 (at Cal. Pen. Code § 2606(a)(3)) acknowledges that in California,  
6 correctional facilities are designated either for men, or for women. However, S.B. 132 requires  
7 Defendant California Department of Corrections and Rehabilitation ("CDCR") to (1) ask each  
8 individual entering CDCR custody the individual's "gender identity of female, male, or nonbinary"  
9 and ask "Whether the individual identifies as transgender, nonbinary, or intersex" (Cal. Pen. Code  
10 § 2605(a)(1)-(2)) and then requires Defendant CDCR to (among other things) house the individual  
11 "at a correctional facility designated for men or women based on the individual's preference[.]"  
12 Cal. Pen. Code § 2606(a)(3).

13       3.       S.B. 132 limits Defendant CDCR's ability to deny an individual's "preferred  
14 housing placement" only to situations where CDCR "has management or security concerns with an  
15 incarcerated individual's...preferred housing placement preference" and certifies "in writing a  
16 specific and articulable basis why the department is unable to accommodate that...housing  
17 preference" and CDCR "shall not deny...a housing placement...based on any discriminatory  
18 reason, including, but not limited to...The anatomy, including, but not limited to, the genitalia or  
19 other physical characteristics, of the incarcerated person" or the "sexual orientation of the  
20 incarcerated person" or for "a factor present among other people incarcerated at the preferred type  
21 of facility." Cal. Pen. Code § 2606(b)-(c).

22       4.       There is no application of S.B. 132 that avoids violating the constitutional rights of  
23 the individual Plaintiffs, and the other incarcerated women on whose behalf Plaintiff Woman II  
24 Woman advocates, which include the rights of incarcerated women:

- 25           a.   to be protected from known, elevated risks of the consequences of sex with men  
26               (such as pregnancy and sexually transmitted diseases),  
27           b.   to be protected from known, elevated risks of being raped and sexually assaulted  
28               by men,

- c. to be protected from known, elevated risks of being sexually harassed by men;
- d. to privacy and dignity by not being compelled to sleep, shower, or otherwise be naked in the presence of (or exposed to the naked bodies of) incarcerated men;
- e. to equal protection of the laws in the form of opportunity for rehabilitation in a single-sex environment comparable to the single-sex environment provided for men;
- f. to equal protection of law in the form of as much deference and “serious consideration” given to the “preferences” and “perceptions” of a female prisoner *without any gender identity* about her housing placement, single-cell occupancy, choice of cellmate, and removal of incarcerated persons whom the woman believes to be a threat, as S.B. 132 (Cal. Pen. Code § 2606(a)(4)) requires be given to any incarcerated individual who does claim to have a gender identity;
- g. not to be compelled, coerced, or pressured into using speech that reflects a belief to which a woman does not subscribe (whether as a matter of contrary religious belief, personal or philosophical belief, or scientific understanding), in the form of pronouns that are self-selected by a person claiming a gender identity, but which pronouns depart from the sex-based indicator function of a pronoun and thus imply that the speaker believes an individual’s sex to be whatever the individual’s “personal pronoun” indicates;
- h. to practice, and not be forced to violate, a woman’s sincerely-held religious beliefs that forbid her from living with a man other than a husband or family member, undressing in front of, being naked in the presence of, or being in the presence of the naked body of, a man other than a husband or family member.

5. In both the general population, and the offender population, men commit the vast majority of violent and sexual offenses, and women are disproportionately victimized by male sexual violence.

6. Women comprise less than ten percent of the California prison population. The only women’s correctional facilities in California are overcrowded, at more than 150% above-capacity,

1 meaning for instance that eight women share a small room (cell) designed to accommodate four  
2 people.

3         7. A significant proportion of incarcerated women have been subjected to domestic  
4 violence, sexual abuse, and sexual harassment throughout their lifetimes, perpetrated by men on the  
5 basis of sex, and many incarcerated women suffer from traumatic brain injury as a result of male-  
6 perpetrated violence against them, and the vast majority of female offenders suffer from physical  
7 or emotional trauma upon entry into the prison system.

8         8. Male patterns of violence and sexual offending are not lower in the subset of men  
9 who claim a “gender identity of female” than in the overall population of men. Regardless of a  
10 man’s declared “gender identity,” men remain more likely to intimidate, overpower, harass, abuse,  
11 and violate women’s safety and dignity than any such risk posed by women toward men. Regardless  
12 of the self-declared “gender identity” of individual men or women, women are placed at heightened  
13 risk of sexual violence, sexual harassment, and trauma conditions (such as post-traumatic stress  
14 disorder) when forced to share housing quarters with men.

15         9. The rehabilitative environment created by an exclusively female prison population  
16 differs greatly from the environment created by an exclusively male prison population. Incarcerated  
17 women are much more likely than incarcerated men to be serving sentences for non-violent offenses  
18 and to be mothers motivated to earn release due to desire to reunite with children. Incarcerated  
19 women are far less likely to behave violently in prison than men, and the security measures and  
20 protocols utilized by CDCR therefore differ significantly in women’s correctional facilities than in  
21 men’s correctional facilities.

22         10. Decades of research has demonstrated that female offenders fare best in  
23 rehabilitative environments away from men. Female-only prison spaces have consistently been  
24 shown to be effective, and cost-effective, penological methods of enabling female offenders to work  
25 through the complex issues involved in their offending and have the best chance of rehabilitation,  
26 release, and assimilation into society. Nearly all states, including California, have long concluded  
27 that separate correctional facilities for female offenders best serves the interests of women and of  
28 the state. The United Nations Standard Minimum Rules for the Treatment of Prisoners states that

1 men and women shall so far as possible be detained in separated facilities (Rule 11).

2 11. Women's correctional facilities involve minimal privacy for inmates, who live  
3 together in close proximity, sharing shower and toilet facilities and communal areas, and sleeping  
4 in very close quarters. Incarcerated women have little to no choice over whom they share their  
5 spaces with and little to no physical privacy from other inmates.

6 12. By requiring women's correctional facilities to become mixed-sex facilities, S.B.  
7 132 places incarcerated women in significantly increased danger of physical and sexual violence,  
8 consequences of consensual or nonconsensual sex with men (such as pregnancy and sexually  
9 transmitted disease), infringes upon the dignity of women to bodily security and privacy, and  
10 removes the rehabilitative benefits that accrue to women in an exclusively-female correctional  
11 facility. However, these negative consequences do not also fall upon men in men's correctional  
12 facilities because few incarcerated women (even women who claim a transgender or nonbinary  
13 identity) desire to be housed in a men's facility, and because women (regardless of any claimed  
14 identity) do not pose a threat of violence (or the consequence of pregnancy following sex) to men.

15 13. S.B. 132 imposes these violations and harms upon incarcerated women for the stated  
16 purpose of avoiding the harms of "sexual abuse and sexual harassment" to "transgender women"  
17 and of "sexual and gender-based violence, harassment, and discrimination" to "transgender men."  
18 Stats 2020 ch 182 § 4 (SB 132), Sec. 2(a), 2(d). S.B. 132 states that "Regardless of the ways in  
19 which a person chooses or is able to express their gender or to take medical, social, or legal  
20 transitions steps, they deserve respect, agency, and dignity." *Id.* at Sec. 2(j).

21 14. It is not constitutionally permissible to seek to avoid violating the rights of one  
22 protected class by deliberately transferring the risk of the same (and additional) types of violations  
23 of rights onto another protected class, nor is it permissible to purport to uphold the dignity of one  
24 class by inflicting indignities onto another.

25 15. S.B. 132 expressly seeks to protect the "agency" and "dignity" of inmates who  
26 identify into a category labeled "transgender, nonbinary, or intersex" but does so by removing the  
27 agency and dignity of inmates who belong to (not by self-identity, but by virtue of material fact)  
28 the category "women," who are disproportionately subjected to violence, harassment, and

1 discrimination on the basis of belonging in the class of humans who are of the female sex, and such  
2 harms are inflicted upon women overwhelmingly by men (humans of the male sex).

3 16. If both women, and a subset of men (those who self-identify as “transgender,  
4 nonbinary, or intersex”) are at increased risk of harm from being housed with men, the solution  
5 cannot be to lower the vulnerability of that subset of men by increasing the vulnerability of women.

6 17. Under S.B. 132, any man who claims a “transgender, nonbinary, or intersex”  
7 “identity” may state his “housing preference” for a women’s facility and that preference must be  
8 granted unless CDCR can certify a “specific and articulable basis” for denying his housing  
9 preference, without relying on the factual bases that explain why men are a danger when housed  
10 with vulnerable women. That is, men’s anatomy, genitalia, physical characteristics, and physiology  
11 all differentiate men as a class from women as a class and directly impact the fact that women suffer  
12 violence and subjugation imposed by men on the basis of sex – yet S.B. 132 expressly forbids taking  
13 men’s physiology into account when CDCR considers whether to deny a man transfer to a women’s  
14 facility due to “management or security concerns.”

15 18. Further, because S.B. 132 forbids CDCR from denying a man’s housing preference  
16 based on, *inter alia*, “sexual orientation” without defining that term (Cal. Pen. Code § 2606(b)-(c)),  
17 S.B. 132 prevents CDCR from taking into account the probability of harm to women’s safety and  
18 dignity by housing with women male offenders with paraphilias such as transvestic fetishism,  
19 autogynephilia, pedophilia, or other paraphilias that some consider to be sexual “orientations.” but  
20 that present inherent risks of sexual offenses against women.

21 19. By specifically forbidding CDCR from relying on “discriminatory” reasons to  
22 justify refusal to accommodate an inmate’s housing preference, with discriminatory defined to  
23 include “a factor present among other people incarcerated at the preferred type of facility” (Cal.  
24 Pen. Code § 2606(b)-(c)), SB 132 precludes CDCR from refusing men’s housing preference based  
25 on, *inter alia*, an inmate’s mental illness, or conviction history, regardless of whether such factors  
26 may indicate a specific, articulable reason why an individual inmate poses a particular threat to  
27 women.

28 20. S.B. 132 effectively eliminates women-only correctional facilities in California,

1 leaving incarcerated women at unnecessarily increased risk of physical and sexual violence and  
2 reduced opportunity for rehabilitation. Because few women desire to be housed in a men's facility,  
3 while hundreds and potentially thousands of men desire to be housed with women, the result of  
4 S.B. 132 is to transform the California prison system from being sex-separated with facilities for  
5 men, and facilities for women, to a system comprised of men's facilities, and mixed-sex facilities.

6 21. S.B. 132's terminology rests on illogical, circular reasoning and counterfactual  
7 assertions that inevitably cause S.B. 132 to irrationally and arbitrarily harm, endanger, and violate  
8 the rights, of women.

9 22. S.B. 132 does not define "men," "women," "male," "female," "gender," or "gender  
10 identity," yet uses all of those terms in tautological attempts to define other terms such as  
11 "transgender," "nonbinary," and "intersex." Stats 2020 ch 182 § 4 (SB 132), Sec. 2(a).

12 23. S.B. 132 (annotated) states that the term "transgender" is "broad and inclusive of all  
13 gender identities different from the gender a person was assigned at birth including, but not limited  
14 to, transsexual, two-spirit, and mahu." *Id.* The annotated law goes on to state that "Nonbinary" is  
15 "an inclusive term used to describe individuals who may experience a gender identity that is neither  
16 exclusively male nor female or is in between or beyond both of those genders, including, but not  
17 limited to, gender fluid, agender or without gender, third gender, genderqueer, gender variant, and  
18 gender nonconforming." *Id.*

19 24. S.B. 132 inaccurately claims that "intersex" is "a broad and inclusive term referring  
20 to people whose anatomy, hormones, or chromosomes fall outside the strict male and female  
21 binary." Stats 2020 ch 182 § 4 (SB 132), Sec. 2(a).

22 25. People with differences of sexual development (DSDs, the preferred term over the  
23 older, less accurate term "intersex") are women, or men, who have any number of congenital,  
24 medical conditions that affect their reproductive systems and may result in a person's anatomy,  
25 hormones, and/or chromosomes falling outside the *normal presentation for the person's sex* but no  
26 such condition results in the person with a DSD falling "outside" being either male, or female.

27 26. Adding further insult to people with DSDs, S.B. 132 claims that a person can  
28 "identify" as "intersex," (Cal. Pen. Code § 2605(a)(2)), as opposed to recognizing that DSDs are



1 objectively existing medical conditions, not a matter of self-declared “identity.”

2       27. S.B. 132 grants the right to have a housing preference granted, and the right to be  
3 “addressed in a manner consistent with the incarcerated individual’s gender identity” only to an  
4 incarcerated individual “who is transgender, nonbinary, or intersex, regardless of anatomy[.]” Cal.  
5 Pen. Code § 2606(a)(1), (3).

6       28. Classifying an incarcerated individual is done by CDCR asking the individual “The  
7 individual’s gender identity *of female, male, or nonbinary*” and “Whether the individual *identifies*  
8 *as transgender, nonbinary, or intersex.*” Cal. Pen. Code § 2605(a)(1)-(2).

9       29. S.B. 132 asserts that expression of a person’s “gender” and granting the person  
10 “respect, agency, and dignity” (by granting the person the rights to, *inter alia*, have a housing  
11 preference granted), is required regardless of whether the person undertakes “Gender transition” in  
12 the form of “social transition, legal transition, medical transition, or none of these” and regardless  
13 of whether the person meets diagnostic criteria for the condition of “gender dysphoria” or otherwise  
14 experiences mental distress based on their sex.

15       30. Thus, S.B. 132 requires classification of an incarcerated individual as “transgender,  
16 nonbinary, or intersex” (and thus entitled to the right for a housing preference to be granted) based  
17 solely on the individual’s subjective self-declaration that the person “identifies as transgender,  
18 nonbinary, or intersex.” Any and all objective or factual inquiry into the manner in which, or for  
19 what motive or purpose, an individual “identifies” is prohibited by S.B. 132, including taking into  
20 account anatomy, genitalia, physical characteristics, or even legal sex designation. In short, there is  
21 no basis on which CDCR, or anyone else, can challenge the sincerity or factual correctness of an  
22 incarcerated individual’s proclaimed “identity” as transgender, nonbinary, or intersex

23       31. Under S.B. 132, CDCR must house a man in a women’s facility even if the man  
24 does *not* claim a “gender identity of female,” since a man qualifies for this special right if he  
25 “identifies as transgender” which means any gender identity “different from the gender a person  
26 was assigned at birth” including labels such as “agender” or “genderqueer” or “gender fluid” (no  
27 definitions of these neologisms are given in the statute), or identifies as “nonbinary” (a gender  
28 identity that is “neither exclusively male nor female or is in between or beyond both of those



1 genders”) or identifies as “intersex” (people whose “anatomy, hormones, or chromosomes fall  
2 outside the strict male and female binary”).

3 32. S.B. 132 thus requires incarcerated women to be housed with men who do not even  
4 claim a female gender identity and may instead be claiming an identity consisting of feeling entirely  
5 male one day and entirely female the next day (gender fluidity) or claiming to be neither male nor  
6 female (agender; nonbinary), or a feeling that one is 75% male and 25% female (nonbinary). S.B.  
7 132 does not even attempt to ensure that incarcerated women are housed with men who believe  
8 they are, or wish to be, or feel best presenting and blending in as, women. Any man who does not  
9 “identify” as “exclusively male” has the right to be housed with women, many of whom have been  
10 traumatized by male violence in their past, and some of whom have been victimized physically or  
11 sexually by violence perpetrated by men who claim a “transgender” identity.

12 33. In this way, S.B. 132 converts “women’s facilities” into facilities housing a  
13 collection of women, and men with any self-declared “identity” that is not exclusively male even  
14 though such men may (and most do) retain the anatomy, genitalia, and physical characteristics that  
15 define them as male-sexed humans.

16 34. By insisting that anatomy, genitalia, and physical characteristics must not be taken  
17 into account in determining whether CDCR has a legitimate reason to deny a man’s housing  
18 preference, S.B. 132 impliedly acknowledges that it is precisely a combination of anatomy,  
19 genitalia, and physical characteristics that differentiate men from women, justifying sex-separation  
20 of prisons in the first place. If human beings were not sexually dimorphic, divided into males and  
21 females each with reproductive systems, hormones, and chromosomes that result in significant  
22 differences between men, and women, most of which place women in a physically, emotionally,  
23 and psychologically vulnerable position vis-à-vis men and result in women having medical and  
24 psychological needs exclusive to their status as female humans, then there would be no rationale or  
25 need to house incarcerated women separately from incarcerated men.

26 35. The reality that men and women are factually, materially, immutably different, in  
27 ways that disadvantage women and necessitate attention to women’s unique needs, supports  
28 protection of incarcerated women by providing women-only correctional facilities. S.B. 132

1 removes the protection of women-only facilities to the detriment of women, with no corresponding  
2 detriment to men.

3 36. Recognizing some of the negative consequences for incarcerated women of  
4 converting women's facilities to mixed-sex facilities, on information belief, CDCR has been  
5 approving transfers of men into women's facilities pursuant to S.B. 132 in a manner not consistent  
6 with S.B. 132. For example:

- 7 a. Incarcerated women on the Inmate Advisory Council (IAC) at California  
8 Institution for Women ("CIW") were informed in July 2021 in an IAC  
9 meeting with an associate warden and other prison officials for CIW, that  
10 "no one will be forced to live with a transgender female," that "Transgender  
11 females will be clustered for their orientation period" and after orientation  
12 may "house together with someone they are compatible with...if they want  
13 to" and that the "preference is to place individuals in vacant cells" but  
14 "double-celled."
- 15 b. On information and belief, CDCR is requiring men who state a housing  
16 preference for a women's facility to take "orientation" courses before and  
17 after transfer to a women's facility.
- 18 c. On information and belief, CDCR staff are holding up many housing  
19 requests from men wishing to transfer to women's facilities due to staff's  
20 concerns that the men are applying for transfer under "false pretenses" and  
21 are not "really transgender or nonbinary."
- 22 d. On information and belief in August 2021 during a State Senate hearing, a  
23 CDCR official testified that the department has "elected to slow down a little  
24 bit in our implementation of SB 132. We're looking to contract with  
25 nationwide experts on this issue to help us navigate a complex issue. ... So,  
26 as a department, as I said, we're slowing down a little bit. We want to make  
27 sure we get this right. We want to make sure we're providing safe housing  
28 for our population, and we get this right."

1           37.     Nowhere does S.B. 132 permit CDCR to “cluster transgender females” or grant  
2 incarcerated women the right to “not be forced to live with a transgender female,” nor does the  
3 statute give CDCR the discretion to require a man with a transgender identity to take “orientation”  
4 courses before granting the man’s housing preference, nor does it provide any basis on which  
5 CDCR might determine that a man’s claim to a transgender or nonbinary identity is “false,” nor the  
6 option of “slowing down” implementation of S.B. 132 to first consult with “nationwide experts.”

7           38.     These actions by CDCR are *ultra vires* and in contravention of S.B. 132. That CDCR  
8 cannot implement S.B. 132 as written, out of concern that doing so will not “provide safe housing  
9 for our population,” evidences the facial unconstitutionality of S.B. 132.

10          39.     On information and belief, several hundred men have applied for transfer to a  
11 women’s facility since S.B. 132 took effect, and CDCR has transferred some two dozen men into  
12 California Institution for Women (“CIW”) and Central California Women’s Facility (“CCWF”),  
13 and has denied zero requests for transfers from men’s facilities into women’s facilities.

14          40.     If there was no difference between women, and men with a transgender identity,  
15 nonbinary identity, or intersex identity, then CDCR would not be faced with challenges with regard  
16 to how to “get this right” with regard to housing such men with women in women’s facilities. There  
17 would be no need to “slow down” approving the hundreds of housing preference requests that men  
18 have made that CDCR has not yet granted, if such transfers were simply a matter of adding  
19 individuals who are the same as women, to the women’s facilities. But precisely because there are  
20 meaningful differences between women and men (including men with these special identities),  
21 CDCR is unsurprisingly finding it difficult to house men with women and still provide women with  
22 safe housing.

23          41.     When being of the female sex is replaced by stating an “identity” (of anything other  
24 than exclusively male) as the criterion for housing incarcerated individuals in women’s facilities,  
25 the facilities are no longer sex-separated into men’s and women’s facilities, but are instead  
26 separated based on each individual’s subjective belief about what it means to feel male, female,  
27 both, or neither. As there are no objective factors for such a selection criterion, under S.B. 132 all  
28 facilities in California have become mixed-sex as well as multi-“gender” (though “gender” is

1 nowhere defined or clarified as to whether gender is a synonym for sex, or something different from  
2 sex).

3 42. On information and belief, incarcerated women including the individual Plaintiffs  
4 herein, have experienced fear, anxiety, depression, and/or post-traumatic stress disorder, as a direct  
5 result of now: sharing close-quarters housing, showering, dining, and recreation with men;  
6 observing that some incarcerated women are now having sexual relations with the incarcerated men  
7 transferred into CIW and CCWF, creating a risk of pregnancy and the health and emotional  
8 complications from becoming pregnant while incarcerated, which would not have occurred but for  
9 S.B. 132; and observing changes to the environment of women's facilities to become more like  
10 men's facilities, to the emotional and psychological detriment of incarcerated women.

11 43. On information and belief, some incarcerated women sharing a cell with a man,  
12 along with other women, now make sleep schedules among the women so that a woman is on watch  
13 to try to prevent rape by the male cellmate.

14 44. On information and belief, prison staff in women's facilities are now armed with  
15 new, stronger pepper spray and riot control measures in anticipation that men are stronger and more  
16 violent than women.

17 45. On information and belief, women's facilities have procured condoms, have  
18 changed contraceptive policy to make them available to all female inmates, at least temporarily  
19 dispensed condoms to incarcerated women, along with printed information about pregnancy and  
20 sexually transmitted diseases, in anticipation that with male offenders now housed with female  
21 offenders, male/female sex would occur and present those risks to women.

22 46. On information and belief, CCWF has considered cutting down the only shade trees  
23 in the exercise yard, which also attract birds that the women enjoy and appreciate, because  
24 incarcerated men might use the trees as weapons and/or because the trees cause visual blind spots  
25 that present security risks in a mixed-sex environment that are not present in a female-only  
26 environment, and numerous women suffered psychological distress at the prospect of having the  
27 women's only connection to nature stripped away because of the presence of male offenders.

28 47. On information and belief, incarcerated women in CIW and CCWF experience

1 psychological distress, fear, and anxiety at the constant possibility of additional men being housed  
2 in the women's facilities. The psychological impact of being housed with men, and/or constantly  
3 fearing it, constitutes an "unofficial punishment" experienced by incarcerated women with no  
4 corresponding experience inflicted upon incarcerated men.

5 48. On information and belief, when incarcerated women have filed administrative  
6 grievances requesting that CDCR stop transferring men into the women's facilities, CDCR has  
7 altered the complaining inmate's statements recounted or summarized in written complaint forms  
8 to, for example, change references to "men" to "transgender females," or "transgender women,"  
9 thereby altering the complaining inmate's own words, perception, and substance of requested  
10 corrective action.

11 49. Though not expressly stated, to the extent that a motivating purpose of S.B. 132 is  
12 to honor the "dignity" of a man who identifies as a "transgender woman" by allowing him to serve  
13 his sentence experiencing a female environment because such an environment is most consonant  
14 with the man's inner sense of feeling or desiring to be female, the very environment unique to a  
15 female-exclusive space deteriorates due to the presence of men (even men with a "gender identity"  
16 of female, and S.B. 132 does not require men even to claim a "gender identity" of female). Thus,  
17 under S.B. 132 both women, and men with a "female gender identity," are denied the experience  
18 of an exclusively-female environment in which to serve their sentences and try to rehabilitate.

19 50. On information and belief, the impact of S.B. 132 and the approximately 23 men  
20 transferred into women's facilities since it became effective, has already resulted in significant  
21 deterioration of the female environment of CCWF and CIW. Transfers of the nearly three hundred  
22 additional men who have already requested housing with women pursuant to S.B. 132 will only  
23 further that deterioration, resulting in loss of benefits to women with no benefit accruing to the  
24 transferred men in terms of experiencing an environment consistent with a "female gender identity."

25 51. CDCR's "Senate Bill 132 FAQs" on its website, found at  
26 <https://www.cdcr.ca.gov/prea/sb-132-faqs/>, claims that CDCR cannot house incarcerated  
27 individuals with a transgender identity in a facility specifically designed for transgender inmates,  
28 because that would violate the Prison Rape Elimination Act (PREA) Standard found at 28 C.F.R.

1 115.42(g). However, PREA does not require the State of California to dismantle sex-separated  
2 correctional facilities, and leaves wide discretion to states to ensure the safety of inmates with  
3 transgender identities within the framework of single-sex facilities.

4 52. CDCR's Prison Rape Elimination Policy in its Operations Manual (revised May 19,  
5 2020) at Article 44, Section 54040.1, sets forth a goal of ensuring a "secure environment, free from  
6 offender on offender sexual violence, staff sexual misconduct, and sexual harassment" and the  
7 policy applies to "all offenders." The policy is to ensure compliance with PREA and provides  
8 "guidelines for the prevention, detection, response, investigation, and tracking" of sexual violence  
9 and harassment against offenders. *Id.* at Section 54040.2.

10 53. PREA, and CDCR's PREA Policy contain special provisions to address the  
11 vulnerability of "LGBTI" offenders (the acronym used and defined in the CDCR's PREA Policy,  
12 Article 44, Section 54040.3, as meaning "sexual minorities, including lesbian, gay, bisexual,  
13 transgender and intersex"). These "LGBTI" provisions apply to both men and women. However,  
14 PREA, and CDCR's PREA Policy, are also intended to protect women (and men) who do not have  
15 "sexual minority" designation, further emphasizing that a goal of decreasing vulnerability of a  
16 subset of men (those with "sexual minority" designation) cannot be pursued by increasing the  
17 vulnerability of women (regardless of "sexual minority" designation).

18 54. Incarcerated women are victimized by sexual assault (perpetrated almost entirely by  
19 male prison staff) at much higher rates than the general female population. Subjecting women to  
20 the presence of male *inmates* in addition to male staff substantially increases the risk of sexual  
21 violence and sexual harassment faced by incarcerated women. Given that men employed by the  
22 State, trained to work as corrections officers and other prison staff (including training specific to  
23 preventing sexual violence) perpetrate sexual harassment and assault against incarcerated women  
24 at a higher rate than male-on-female violence in the general population, there is every reason to  
25 believe that male *offenders* pose as great, or greater, a risk to incarcerated women.

26 55. CDCR's PREA Policy does not mandate that male offenders who are "sexual  
27 minorities" (according to the definition used in the PREA Policy) must be transferred to women's  
28 facilities due to actual or potential sexual victimization by other men in men's facilities; alternative

1 procedures and processes are set forth to protect men who are at high risk of sexual violence in  
2 men's facilities (including sexual minorities, and others). Yet, S.B. 132 now requires CDCR to  
3 house a subset of that male inmate population with women.

4       56. While PREA contains certain protections for offenders who are LGBTI, PREA's  
5 purpose, to prevent and redress sexual harassment and sexual assault in prisons, applies to women  
6 with or without LGBTI classification, as much as to men. Thus, decreasing the risk that a subgroup  
7 of men will suffer prison rape only by creating a corresponding increased risk that women will  
8 suffer prison rape, is neither constitutional nor compliant with PREA.

9       57. S.B. 132 singles out men with self-declared identities of "transgender, nonbinary, or  
10 intersex" for the special right to be housed in women's facilities, while not granting that same right  
11 to other men who are "sexual minorities" under the PREA definition (such as, gay or bisexual men)  
12 nor to other men who are also at high risk of sexual victimization (for instance, inmates convicted  
13 of sexual offenses against minors).

14       58. S.B. 132 ostensibly serves a legitimate or important purpose (preventing sexual  
15 victimization of some men who are at high risk of victimization by other men). But the means by  
16 which that purpose is served – housing men who identify as transgender, nonbinary, or intersex  
17 with women – results in those subgroups of men being safer from sexual victimization only by  
18 concurrently making women less safe from sexual victimization.

19       59. Additionally, men who are also at high risk of sexual victimization in a men's facility  
20 are not provided by S.B. 132 with the right to "preferred" housing with women, solely because such  
21 men do not declare a specific "identity." Similarly, S.B. 132 grants men housed with women special  
22 rights to select cell arrangements and similar choices not granted to women, solely because such  
23 women do not declare a specific "identity." S.B. 132 therefore treats men, and women, less  
24 favorably on the basis of self-declared identity insofar as incarcerated men and women without the  
25 "right kind" of identity do not receive the rights granted to those inmates who do declare specific  
26 identities.

27       60. Further, S.B. 132 grants special housing preference rights based solely on self  
28 declaration of identity, with no prerequisite demonstration that an individual is actually more



1 vulnerable to sexual victimization, such that any man regardless of actual vulnerability can secure  
 2 the right to be housed with women. Absurdly, this can include a man with *no medical condition or*  
 3 *difference of sexual development whatsoever* nor any self-declared “gender identity” at all, merely  
 4 declaring himself to have an “intersex identity” and he is then entitled to be housed with women.

5         61. Men who identify as “transgender” suffer from mental illness at higher rates than in  
 6 the general male population. Male offenders who identify as “transgender” have higher rates of  
 7 sexual offenses in their criminal backgrounds than the general male offender population. Mental  
 8 illness, as well as sex offender status, are factors correlated with a higher risk of sexual victimization  
 9 in prison. S.B. 132 therefore places women at knowingly increased risks of harm, by housing  
 10 incarcerated women with men who are even more likely than other men to suffer from mental illness  
 11 and commit sex offenses, and preventing CDCR from refusing housing preference requests by men  
 12 based on mental illness or sex offender status.

13         62. Under S.B. 132 any man can claim the right to be housed with women merely by  
 14 uttering the incantation “I have a transgender (or nonbinary) (or intersex) identity.” S.B. 132  
 15 specifically prevents CDCR from evaluating a male inmate’s request for transfer to a women’s  
 16 facility based upon the man’s “physical characteristics.” S.B. 132 is not proportionately tailored to  
 17 protect the population whom the statute ostensibly intends to help: men who claim a transgender,  
 18 nonbinary, or intersex identity *who are vulnerable to sexual victimization by other men because of*  
 19 *that identity*. Similar deficiency exists with respect to the statute’s other stated purpose, of  
 20 upholding the agency and dignity of men with a transgender, nonbinary, or intersex identity: there  
 21 is no reasonable or compelling connection between that goal, and the “solution” of housing men  
 22 with women – particularly since by definition, the men receiving that special right include not only  
 23 men who claim a “female gender identity” but men whose identity is, essentially, anything except  
 24 fully, exclusively male. There is thus no inherent, logical reason why these men’s “dignity” is  
 25 furthered by housing them with women, especially when doing so poses risks and harms to women,  
 26 including women who claim a transgender, nonbinary, or intersex identity. Although S.B. 132  
 27 grants women the same right as men to claim a transgender, nonbinary, or intersex identity, the vast  
 28 majority of inmates claiming such an identity *and also requesting to be housed with the sex opposite*

1 *of the sex of the requesting inmate*, are men. On information and belief, only a handful of women  
2 claiming a transgender, nonbinary, or intersex identity have requested to be housed with men, while  
3 hundreds of men have requested to be housed with women.

4 63. S.B. 132 is thus neither a rational nor substantially related means to achieving the  
5 legitimate or important interest of preventing sexual victimization of men with transgender,  
6 nonbinary, or intersex “identities” and violates the federal and state constitutional rights of Plaintiffs  
7 and other incarcerated women without adequate justification.

8 64. There is no administrative remedy available to address, redress, or remediate the  
9 harms, injuries, and deprivations of rights caused by S.B. 132 that CDCR can provide to Plaintiffs  
10 while complying with S.B. 132.

#### 11 **JURISDICTION AND VENUE**

12 65. This Court has original subject matter jurisdiction over Plaintiffs’ claims that S.B.  
13 132 is unconstitutional under the United States Constitution, pursuant to 28 U.S.C. § 1331.

14 66. This Court has authority to exercise supplemental jurisdiction over Plaintiffs’ claims  
15 that S.B. 132 is unconstitutional under the California Constitution, pursuant to 28 U.S.C. § 1367.

16 67. This Court has personal jurisdiction over the Defendants, who are charged by law  
17 with implementing S.B. 132 and have in fact begun its implementation in CIW and CCWF, which  
18 are California state prisons operated by Defendant CDCR and by the individual Defendants in their  
19 official capacities, and one of which (CCWF) is located in this District, causing injury in fact to the  
20 individual Plaintiffs who are currently housed in CCWF.

21 68. This District is the appropriate venue for resolving this case or controversy under 28  
22 U.S.C. § 1391(b), as each of the Defendants resides in this District, and a substantial part of the  
23 events or omissions giving rise to Plaintiffs’ claims occurred in this District (Fresno Division).

#### 24 **PARTIES**

25 69. Plaintiff Nadia Romero (“Nadia”) is a female offender currently incarcerated in  
26 Central California Women’s Facility. Nadia is a survivor of severe sexual and physical abuse  
27 beginning in childhood. Nadia has a history of anxiety, depression, and substance abuse. Sharing a  
28 housing unit with men has led to Nadia experiencing panic attacks, insomnia, and self-harm

1 ideation. Nadia filed a grievance describing an incident where she was grabbed by a man in her unit  
2 informing the prison of her heightened risk of rape and violence from male offenders; the prison's  
3 response referred to men in her unit as "transgender females." Nadia does not believe that sex is  
4 determined by a person's internal identity. Nadia is a Catholic whose faith is deeply important to  
5 her, and whose religious practice is impaired by being placed in an intimate setting with unrelated  
6 men.

7         70. Plaintiff Krystal Gonzalez ("Krystal") is a female offender currently incarcerated in  
8 Central California Women's Facility. Krystal was sexually assaulted by a man transferred to her  
9 unit under S.B. 132. Krystal filed a grievance and requested single-sex housing away from men;  
10 the prison's response to Krystal's grievance referred to her assault by a "transgender woman with  
11 a penis." Krystal does not believe that women have penises, and she the psychological distress  
12 caused by her assault is exacerbated by the prison's refusal to acknowledge the sex of her  
13 perpetrator.

14         71. Plaintiff Janine Chandler ("Janine") is a female offender currently incarcerated in  
15 Central California Women's Facility. Janine is an observant Muslim whose right to privacy and  
16 right to exercise her religion are both violated when she is housed in facilities with men. She is also  
17 a survivor of domestic violence.

18         72. Plaintiff Tomiekia Johnson ("Tomiekia") is a female offender currently incarcerated  
19 in Central California Women's Facility. Tomiekia is a survivor of domestic violence.

20         73. Plaintiff Woman II Woman, Inc. ("Woman II Woman") is a nonprofit corporation  
21 formed under the laws of the State of California in March 2021 with a business address in Torrance,  
22 California, organized by formerly incarcerated women to advocate for incarcerated women.  
23 Woman II Woman provides dignified re-entry services, parole hearing preparation, and advocacy  
24 for the safety and dignity of incarcerated and other justice-involved women in California.

25         74. S.B. 132 poses such a risk to the safety and dignity of incarcerated women that it is  
26 causing Woman II Woman to expend a distorted proportion of its modest revenues and time  
27 resources pursuing avenues for declaring S.B. 132 unconstitutional or otherwise repealed. As a  
28 result, Woman II Woman is diverting substantial portions of its monetary and time resources away

1 from projects and services core to its mission, such as providing no-cost re-entry services and parole  
2 hearing preparation to individual women in need.

3 75. Woman II Woman assists and advocates for individual women, as clients, who reach  
4 out to Woman II Woman through the limited channels available for incarcerated women to seek  
5 outside assistance. Woman II Woman represents and advocates for the interests of its clients,  
6 including the many clients who are suffering harm as the direct result of S.B. 132.

7 76. Those clients of Woman II Woman who remain incarcerated in California (as  
8 opposed to on parole) are being injured by S.B. 132, and remedying that injury by seeking to have  
9 S.B. 132 declared unconstitutional is germane to a core mission and purpose of Woman II Woman  
10 – promoting the safety and dignity of incarcerated women in California. Because this lawsuit seeks  
11 declaratory and injunctive relief, participation of Woman II Woman’s individual clients is not  
12 necessary for Woman II Woman to pursue claims on their behalf.

13 77. Defendant California Department of Corrections and Rehabilitation (CDCR) is a  
14 department of the State of California that manages all state-operated adult prisons, including the  
15 women’s correctional facilities CIW and CCWF where the individual Plaintiffs, and many of  
16 Woman II Woman’s clients, are currently housed. By statute, Defendant CDCR is charged with  
17 implementing the provisions of S.B. 132.

18 78. Defendant Kathleen Allison (“Allison”) is the current Secretary of CDCR and is  
19 responsible in her official capacity for the operation of all adult state correctional institutions,  
20 including the women’s correctional facilities CIW and CCWF where the individual Plaintiffs, and  
21 many of Woman II Woman’s clients, are currently housed. In that capacity, Defendant Allison is  
22 required by law to exercise powers and perform duties prescribed by law with respect to  
23 administration of California’s prison system. Defendant Allison is legally responsible, in her  
24 official capacity, for implementing S.B. 132, including by exercising her authority to direct  
25 activities of subordinate officers and other CDCR employees. At all relevant times Defendant  
26 Allison was acting under color of law and is being sued in her official capacity.

27 79. Defendant Michael Pallares (“Pallares”) is the current Warden of CCWF and is  
28 responsible in his official capacity for the day to day operations of the women’s correctional facility

1 CCWF where the individual Plaintiffs, and many of Woman II Woman's clients, are currently  
2 housed. In that capacity, Defendant Pallares is required by law to exercise powers and perform  
3 duties prescribed by law with respect to administration of California's prison system. Defendant  
4 Pallares is legally responsible, in his official capacity, for implementing S.B. 132, including by  
5 following directives from Defendant Allison and by exercising his authority to direct activities of  
6 subordinate CDCR employees. At all relevant times Defendant Pallares was acting under color of  
7 law and is being sued in his official capacity.

8 80. Defendant Mona D. Houston ("Houston") is the current Warden of CIW and is  
9 responsible in her official capacity for the day to day operations of the women's correctional facility  
10 CIW where many of Woman II Woman's clients are currently housed. In that capacity, Defendant  
11 Houston is required by law to exercise powers and perform duties prescribed by law with respect  
12 to administration of California's prison system. Defendant Houston is legally responsible, in her  
13 official capacity, for implementing S.B. 132, including by following directives from Defendant  
14 Allison and by exercising her authority to direct activities of subordinate CDCR employees. At all  
15 relevant times Defendant Houston was acting under color of law and is being sued in her official  
16 capacity.

17  
18 **FIRST CLAIM FOR RELIEF**  
19 **(FOR DECLARATORY JUDGMENT THAT S.B. 132 VIOLATES THE EIGHTH**  
20 **AMENDMENT TO THE U.S. CONSTITUTION)**

21 81. Plaintiffs reallege and incorporate herein by reference each of the foregoing  
22 allegations.

23 82. As set forth above, S.B. 132 on its face imposes cruel and unusual punishment on  
24 incarcerated women, including the individual Plaintiffs and female offenders who are clients of the  
25 organizational Plaintiff.

26 83. The Eighth Amendment to the U.S. Constitution prohibits cruel and unusual  
27 punishment. Prison officials have a duty under the Eighth Amendment to protect prisoners from  
28 physical and sexual violence and abuse by other prisoners, including a known substantial risk or  
probability that such violence will occur, and including the psychological distress and terror of

1 knowing that such violence may occur at any time.

2 84. Women are disproportionately subject to sexual victimization by men. S.B. 132  
3 permits any man, by stating an identity and without requiring any proof, evidence, or action on the  
4 man's part that would indicate any lower risk of male pattern violence than for an average man, to  
5 demand to be housed with women. This statutory directive unconstitutionally imposes cruel,  
6 unusual punishment on female offenders, by subjecting them to substantially increased risk of  
7 sexual harassment, sexual assault, rape, and physical violence, and to psychological fear of such  
8 harms, compared to those risks when men are not legally entitled to transfer to women's facilities  
9 based on a statement of "identity."

10 85. S.B. 132 is unconstitutional in all applications, as there is no application that does  
11 not result in imposition of cruel, unusual, unconstitutional punishment imposed on Plaintiffs and  
12 other incarcerated women, in violation of the Eighth Amendment.

13 86. Defendants have begun implementing S.B. 132 and, on information and belief,  
14 continue its implementation at least in part, even if Defendants have also "slowed down"  
15 implementation to consult with "national experts" on how best to implement S.B. 132 while  
16 meeting Defendants' known duty to provide safe housing to all populations in California prisons,  
17 including incarcerated women.

18 87. A controversy has arisen over the constitutionality under the Eighth Amendment of  
19 S.B. 132, wherein Plaintiffs contend the statute is facially unconstitutional, and unconstitutional as  
20 applied to Plaintiffs, and on information and belief, Defendants will contend that it is possible to  
21 implement S.B. 132 in a constitutional manner that comports with the Eighth Amendment's  
22 prohibition against cruel and unusual punishment.

23 88. Plaintiffs request a judicial declaration pursuant to 28 U.S.C. § 2201 that S.B. 132  
24 is unconstitutional on its face and as applied to Plaintiffs under the Eighth Amendment, and that  
25 application by CDCR of the directives in Cal. Pen. Code §§ 2605, 2606 regarding housing male  
26 offenders who identify themselves as "transgender, nonbinary, or intersex" in women's facilities  
27 violates the duty of Defendants under the Eighth Amendment to protect Plaintiffs from cruel and  
28 unusual punishment.

**SECOND CLAIM FOR RELIEF**  
**(FOR DECLARATORY JUDGMENT THAT S.B. 132 VIOLATES THE**  
**FIRST AMENDMENT TO THE U.S. CONSTITUTION)**

89. Plaintiffs reallege and incorporate herein by reference each of the foregoing allegations.

90. S.B. 132 grants to inmates who claim a “transgender, nonbinary, or intersex” identity the right to be referred to by pronouns and honorifics of the inmate’s preference. The law contains no exception, exemption, or distinction between CDCR staff, and CDCR inmates, such that all are compelled by S.B. 132 to use words and language in a manner that suggests adherence to beliefs the speaker may not share (for instance, that “she” refers to a male person, or that once he has declared a “transgender” identity a man is no longer a man but is a “transgender woman”).

91. S.B. 132 requires individual Plaintiffs and other incarcerated women to refer to men using words and language that obscures the speaker’s own perception and rationally-based belief about the sex of individuals required by S.B. 132 to be housed in women’s facilities, subjecting women who do not comply with S.B. 132’s demand for compelled speech and belief potentially to discipline with consequences ranging from placement in administrative segregation to denial of parole and extension of sentences. Knowing these likely, foreseeable consequences of speaking about the men housed in women’s facilities (and awaiting transfer), Plaintiffs’ freedom of speech and expression is chilled by S.B. 132.

92. On information and belief, CDCR has applied S.B. 132’s mandates regarding compelled speech and belief to individual Plaintiffs by, *inter alia*, refusing to consider Plaintiffs’ own written statements of complaint about being housed with men and instead altering Plaintiffs’ written statements that refer to men and males, using factual, neutral, and appropriate sex-indicative pronouns such as “he.” By refusing to consider complaints and grievances that Plaintiffs actually presented to CDCR, and instead only considering versions of such complaints and grievances rewritten with language and concepts that reflect the government’s approved set of beliefs, S.B. 132 as applied in this manner by CDCR violates Plaintiffs’ First Amendment right to petition the government. Furthermore, S.B. 132 necessarily results in this deprivation of Plaintiffs’ First



1 Amendment right to petition the government, because S.B. 132 mandates that an inmate who claims  
2 a “transgender, nonbinary, or intersex” identity “shall (1) Be addressed in a manner consistent with  
3 the incarcerated individual’s gender identity.” Cal. Pen. Code § 2606(a)(1).

4 93. S.B. 132 violates the right of Plaintiffs to freedom of speech under the First  
5 Amendment of the U.S. Constitution by prohibiting Plaintiffs from using words and language with  
6 objective, neutral meaning to describe and express concerns about the dynamic of men housed with  
7 women created by S.B. 132. S.B. 132 further constitutes an unconstitutional prior restraint on  
8 Plaintiffs’ speech, chilling Plaintiffs’ speech and expression protected under the First Amendment.

9 94. S.B. 132 contains no exemption or exception that might protect the right of women  
10 with sincerely held religious beliefs concerning sharing living quarters and intimate spaces with  
11 men other than the woman’s husband or family member, including exposure of a woman’s  
12 unclothed body to the view of men other than a woman’s husband or family member, or exposure  
13 of such a man’s unclothed body in the presence of a woman who holds such religious beliefs, to the  
14 free exercise of religion guaranteed under the First Amendment of the U.S. Constitution. A  
15 governmental interest in protecting certain men from sexual victimization in men’s prisons, or in  
16 upholding the dignity of such men, is not a compelling reason to refuse to accommodate women’s  
17 constitutionally guaranteed right to free exercise of religion.

18 95. S.B. 132 violates the Establishment Clause of the First Amendment of the U.S.  
19 Constitution by requiring prison housing placements between men’s and women’s facilities to be  
20 made, and by imposing speech and expression requirements, based on a faith-based belief system  
21 founded on acceptance of the unproven (and unprovable) assertion that human beings have no  
22 objective, immutable sex or that a person’s sex can be changed or made irrelevant by a person’s  
23 inner “identity,” when identity (like the theological concept of a “soul”) has no scientific, factual  
24 basis yet human sexual dimorphism is a material fact of reality. Adoption by government of a faith-  
25 based belief system that is not grounded in objective, provable facts and contradicts objective,  
26 provable facts, establishes a government-sanctioned religious doctrine in which Plaintiffs and other  
27 incarcerated women are compelled to profess adherence, and upon which government actions  
28 regarding the treatment of women and men in prisons are founded, violates the Establishment

1 Clause's prohibition against government promotion of and entanglement with religion for purposes  
2 that are wholly religious in nature, not secular.

3 96. A controversy has arisen over the constitutionality of S.B. 132, wherein Plaintiffs  
4 contend the statute is facially, and as applied to Plaintiffs, unconstitutional and in violation of the  
5 Free Speech Clause, Free Exercise Clause, right to petition the government, and Establishment  
6 Clause, of the First Amendment of the U.S. Constitution. On information and belief, Defendants  
7 will contend that it is possible to implement S.B. 132 in a constitutional manner that comports with  
8 the First Amendment and that CDCR has not applied S.B. 132 in a manner that has violated any  
9 Plaintiff's First Amendment rights.

10 97. Plaintiffs request a judicial declaration pursuant to 28 U.S.C. § 2201 that S.B. 132  
11 is unconstitutional on its face and as applied to Plaintiffs under the First Amendment, and that  
12 application by CDCR of the directives in Cal. Pen. Code §§ 2605, 2606 regarding housing male  
13 offenders who identify themselves as "transgender, nonbinary, or intersex" in women's facilities,  
14 and mandating that such male offenders be referred to only by pronouns and honorifics that validate  
15 the offender's chosen identity, violates the duty of Defendants under the First Amendment.

16  
17 **THIRD CLAIM FOR RELIEF**  
18 **(FOR DECLARATORY JUDGMENT THAT S.B. 132 VIOLATES THE EQUAL**  
19 **PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT**  
20 **TO THE U.S. CONSTITUTION)**

21 98. Plaintiffs reallege and incorporate herein by reference each of the foregoing  
22 allegations.

23 99. S.B. 132 on its face deprives incarcerated women including the individual Plaintiffs  
24 and female offenders who are clients of the organizational Plaintiff from equal protection of the  
25 laws on the basis of sex and on the basis of "identity" or "gender identity" or "transgender status"  
26 in violation of the Fourteenth Amendment of the U.S. Constitution.

27 100. A female-only environment best serves the interests of the government, and of  
28 women, in rehabilitation following criminal offenses committed by women. S.B. 132 converts  
women's correctional facilities into mixed-sex facilities, with no corresponding conversion of

1 men's facilities, imposing on women on the basis of sex a significant disadvantage and burden in  
2 the form of serving prison time without the benefit of rehabilitating in a single-sex environment.

3 101. S.B. 132 imposes on female offenders increased risks of physical assault, sexual  
4 assault, sexual harassment, loss of dignity due to living in close quarters with and exposing one's  
5 naked body to persons of the opposite sex, and serious consequences of sexual relations between  
6 males and females such as pregnancy, abortion, and sexually transmitted diseases, with no  
7 corresponding increased risks imposed on men.

8 102. S.B. 132 is not substantially related to any purported important governmental  
9 purpose aimed for by S.B. 132, and Defendants cannot justify imposing significant disadvantages,  
10 burdens, or increased risks of harms, on female offenders on the basis of sex. Incarcerated men, and  
11 incarcerated women, are similarly situated for purposes of whether men and women each are housed  
12 in single-sex correctional facilities. S.B. 132 results in elimination of women-only facilities, but not  
13 comparable elimination of men-only facilities. S.B. 132 causes harms to women from being housed  
14 with men, with no comparable harms imposed on men from being housed with women.

15 103. S.B. 132 grants rights to inmates who declare a "transgender, nonbinary, or intersex"  
16 identity to choose to be housed with women, or with men, but also grants additional rights to "Have  
17 their perception of health and safety given serious consideration in any bed assignment, placement,  
18 or programming decision within the facility in which they are housed" including "but not limited  
19 to, granting single-cell status, housing the individual with another incarcerated person of their  
20 choice, or removing the individual or individuals who pose a threat from any location where they  
21 may have access to the individual who has expressed a safety concern." Cal. Pen. Code §  
22 2606(a)(4). These rights are granted only to inmates who claim a "transgender, nonbinary, or  
23 intersex" identity, and not to persons who express safety concerns but whose "identity" is something  
24 other than "transgender, nonbinary, or intersex." S.B. 132 thus treats inmates differently on the  
25 basis of "gender identity" or "transgender status" causing disadvantage to inmates who have no  
26 "gender identity" or whose "gender identity" is not one of the identities favored under the statute.  
27 S.B. 132 serves no important governmental interest in treating people differently on the basis of  
28 "gender identity" or "transgender status" and does not employ means that are substantially related

1 to any governmental interest purported to be served by the statute.

2 104. A controversy has arisen over the constitutionality of S.B. 132, wherein Plaintiffs  
3 contend the statute is facially, and as applied to Plaintiffs, unconstitutional and in violation of the  
4 Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, on the basis of sex  
5 and on the basis of “gender identity” or “transgender status.” On information and belief, Defendants  
6 will contend that it is possible to implement S.B. 132 in a constitutional manner that comports with  
7 the Equal Protection Clause and that CDCR has not applied S.B. 132 in a manner that has violated  
8 any Plaintiff’s Fourteenth Amendment rights.

9 105. Plaintiffs request a judicial declaration pursuant to 28 U.S.C. § 2201 that S.B. 132  
10 is unconstitutional on its face and as applied to Plaintiffs under the Equal Protection Clause of the  
11 Fourteenth Amendment of the U.S. Constitution, and that application by CDCR of the directives in  
12 Cal. Pen. Code §§ 2605, 2606 violates the Equal Protection Clause on the basis of sex and of  
13 “gender identity” and/or “transgender status.”

14  
15 **FOURTH CLAIM FOR RELIEF**  
16 **(FOR DECLARATORY JUDGMENT THAT S.B. 132 VIOLATES ARTICLE 1 § 17 OF**  
17 **THE CALIFORNIA CONSTITUTION)**

18 106. Plaintiffs reallege and incorporate herein by reference each of the foregoing  
19 allegations.

20 107. CA Constitution Art. 1 § 17 mandates that cruel or unusual punishment may not be  
21 inflicted. Prison officials have a duty under the California Constitution to protect prisoners from  
22 physical and sexual violence and abuse by other prisoners, including a known substantial risk or  
23 probability that such violence will occur, and including the psychological distress and terror of  
24 knowing that such violence may occur at any time.

25 108. Women are disproportionately subject to sexual victimization by men. S.B. 132  
26 permits any man, by stating an identity and without requiring any proof, evidence, or action on the  
27 man’s part that would indicate any lower risk of male pattern violence than for an average man, to  
28 demand to be housed with women. This statutory directive unconstitutionally imposes cruel,  
unusual punishment on female offenders, by subjecting them to substantially increased risk of

1 sexual harassment, sexual assault, rape, and physical violence, and to psychological fear of such  
2 harms, compared to those risks when men are not legally entitled to transfer to women's facilities  
3 based on a statement of "identity."

4 109. S.B. 132 is unconstitutional in all applications, as there is no application that does  
5 not result in imposition of cruel, unusual, unconstitutional punishment imposed on Plaintiffs and  
6 other incarcerated women, in violation of the CA Constitution Art. 1 § 17.

7 110. Defendants have begun implementing S.B. 132 and, on information and belief,  
8 continue its implementation at least in part, even if Defendants have also "slowed down"  
9 implementation to consult with "national experts" on how best to implement S.B. 132 while  
10 meeting Defendants' known duty to provide safe housing to all populations in California prisons,  
11 including incarcerated women.

12 111. A controversy has arisen over the constitutionality under CA Constitution Art. 1 §  
13 17 of S.B. 132, wherein Plaintiffs contend the statute is facially unconstitutional, and  
14 unconstitutional as applied to Plaintiffs, and on information and belief, Defendants will contend  
15 that it is possible to implement S.B. 132 in a constitutional manner that comports with the  
16 prohibition in CA Constitution Art. 1 § 17 against cruel or unusual punishment.

17 112. Plaintiffs request a judicial declaration pursuant to 28 U.S.C. § 2201 that S.B. 132  
18 is unconstitutional on its face and as applied to Plaintiffs under CA Constitution Art. 1 § 17, and  
19 that application by CDCR of the directives in Cal. Pen. Code §§ 2605, 2606 regarding housing male  
20 offenders who identify themselves as "transgender, nonbinary, or intersex" in women's facilities  
21 violates the duty of Defendants under CA Constitution Art. 1 § 17 to protect Plaintiffs from cruel  
22 or unusual punishment.

23  
24 **FIFTH CLAIM FOR RELIEF**  
25 **(FOR DECLARATORY JUDGMENT THAT S.B. 132 VIOLATES ARTICLE 1 § 2 OF**  
26 **THE CALIFORNIA CONSTITUTION)**

26 113. Plaintiffs reallege and incorporate herein by reference each of the foregoing  
27 allegations.

28 114. CA Constitution Art. 1 § 2 provides: "Every person may freely speak, write and

1 publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law  
2 may not restrain or abridge liberty of speech or press.”

3 115. S.B. 132 grants to inmates who claim a “transgender, nonbinary, or intersex” identity  
4 the right to be referred to by pronouns and honorifics of the inmate’s preference. The law contains  
5 no exception, exemption, or distinction between CDCR staff, and CDCR inmates, who are all  
6 compelled by S.B. 132 to use words and language in a manner that suggests adherence to beliefs  
7 the speaker may not share (for instance, that “she” refers to a male person, or that once he has  
8 declared a “transgender identity” a man is no longer a man but is a “transgender woman”).

9 116. S.B. 132 requires individual Plaintiffs and other incarcerated women to refer to men  
10 using words and language that obscures the speaker’s own perception and rationally-based belief  
11 about the sex of individuals required by S.B. 132 to be housed in women’s facilities, subjecting  
12 women who do not comply with S.B. 132’s demand for compelled speech and belief potentially to  
13 discipline with consequences ranging from placement in administrative segregation to denial of  
14 parole and extension of sentences. Knowing these likely, foreseeable consequences of speaking  
15 about the men housed in women’s facilities (and awaiting transfer), Plaintiffs’ freedom of speech  
16 and expression is chilled by S.B. 132.

17 117. S.B. 132 violates the right of Plaintiffs to freedom of speech under CA Constitution  
18 Art. 1 § 2 by prohibiting Plaintiffs from using words and language with objective, neutral meaning  
19 to describe the dynamic of men housed with women created by S.B. 132. S.B. 132 further  
20 constitutes an unconstitutional prior restraint on Plaintiffs’ speech, chilling Plaintiffs’ speech and  
21 expression protected under CA Constitution Art. 1 § 2.

22 118. A controversy has arisen over the constitutionality of S.B. 132, wherein Plaintiffs  
23 contend the statute is facially, and as applied to Plaintiffs, unconstitutional and in violation of CA  
24 Constitution Art. 1 § 2. On information and belief, Defendants will contend that it is possible to  
25 implement S.B. 132 in a constitutional manner that comports with CA Constitution Art. 1 § 2 and  
26 that CDCR has not applied S.B. 132 in a manner that has violated any Plaintiff’s rights under CA  
27 Constitution Art. 1 § 2.

28 119. Plaintiffs request a judicial declaration pursuant to 28 U.S.C. § 2201 that S.B. 132

1 is unconstitutional on its face and as applied to Plaintiffs under CA Constitution Art. 1 § 2, and that  
2 application by CDCR of the directives in Cal. Pen. Code §§ 2605, 2606 regarding housing male  
3 offenders who identify themselves as “transgender, nonbinary, or intersex” in women’s facilities,  
4 and mandating that such male offenders be referred to only by pronouns and honorifics that validate  
5 the offender’s chosen identity, violates the duty of Defendants under CA Constitution Art. 1 § 2.

6  
7 **SIXTH CLAIM FOR RELIEF**  
8 **(FOR DECLARATORY JUDGMENT THAT S.B. 132 VIOLATES ARTICLE 1 § 4 OF**  
9 **THE CALIFORNIA CONSTITUTION)**

10 120. Plaintiffs reallege and incorporate herein by reference each of the foregoing  
11 allegations.

12 121. CA Constitution Art. 1 § 4 states: “Free exercise and enjoyment of religion without  
13 discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that  
14 are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no  
15 law respecting an establishment of religion.”

16 122. S.B. 132 contains no exemption or exception that might protect the right of women  
17 with sincerely held religious beliefs concerning sharing living quarters and intimate spaces with  
18 men other than the woman’s husband or family member, including exposure of a woman’s  
19 unclothed body to the view of men other than a woman’s husband or family member, or exposure  
20 of such a man’s unclothed body in the presence of a woman who holds such religious beliefs, to the  
21 free exercise of religion guaranteed under CA Constitution Art. 1 § 4. A governmental interest in  
22 protecting certain men from sexual victimization in men’s prisons, or in upholding the dignity of  
23 such men, is not a compelling reason to refuse to accommodate women’s constitutionally  
24 guaranteed right to free exercise of religion.

25 123. S.B. 132 violates the prohibition against government establishment or promotion of  
26 religious belief, CA Constitution Art. 1 § 4, by requiring prison housing placements between men’s  
27 and women’s facilities to be made, and by imposing speech and expression requirements, based on  
28 a faith-based belief system founded on acceptance of the unproven (and unprovable) assertion that  
human beings have no objective, immutable sex or that a person’s sex can be changed or made



1 irrelevant by a person's inner "identity," when identity (like the theological concept of a "soul")  
2 has no scientific, factual basis yet human sexual dimorphism is a material fact of reality. Adoption  
3 by government of a faith-based belief system that is not grounded in objective, provable facts and  
4 contradicts objective, provable facts, establishes a government-sanctioned religious doctrine in  
5 which Plaintiffs and other incarcerated women are compelled to profess adherence, and upon which  
6 government actions regarding the treatment of women and men in prisons are founded, violates the  
7 prohibition in CA Constitution Art. 1 § 4 against government establishment and promotion of  
8 religion.

9       124. A controversy has arisen over the constitutionality of S.B. 132, wherein Plaintiffs  
10 contend the statute is facially, and as applied to Plaintiffs, unconstitutional and in violation of the  
11 guarantee of free exercise and enjoyment of religion and the prohibition in CA Constitution Art. 1  
12 § 4 against government establishment of religion. On information and belief, Defendants will  
13 contend that it is possible to implement S.B. 132 in a constitutional manner that comports with CA  
14 Constitution Art. 1 § 4 and that CDCR has not applied S.B. 132 in a manner that has violated any  
15 Plaintiff's rights under CA Constitution Art. 1 § 4.

16       125. Plaintiffs request a judicial declaration pursuant to 28 U.S.C. § 2201 that S.B. 132  
17 is unconstitutional on its face and as applied to Plaintiffs under the free exercise and enjoyment of  
18 religion and prohibition against government establishment of religion provisions in CA  
19 Constitution Art. 1 § 4, and that application by CDCR of the directives in Cal. Pen. Code §§ 2605,  
20 2606 violates the duty of Defendants under CA Constitution Art. 1 § 4.

21  
22                   **SEVENTH CLAIM FOR RELIEF**  
23                   **(FOR DECLARATORY JUDGMENT THAT S.B. 132 VIOLATES ARTICLE 1 § 7 OF**  
24                   **THE CALIFORNIA CONSTITUTION)**

25       126. Plaintiffs reallege and incorporate herein by reference each of the foregoing  
26 allegations.

27       127. CA Constitution Art. 1 § 7 protects against denial of equal protection of the laws.  
28 S.B. 132 on its face deprives incarcerated women including the individual Plaintiffs and female  
offenders who are clients of the organizational Plaintiff from equal protection of the laws on the

1 basis of sex and on the basis of “identity” or “gender identity” or “transgender status” in violation  
2 of CA Constitution Art. 1 § 7.

3 128. A female-only environment best serves the interests of the government, and of  
4 women, in rehabilitation following criminal offenses committed by women. S.B. 132 converts  
5 women’s correctional facilities into mixed-sex facilities, with no corresponding conversion of  
6 men’s facilities, imposing on women on the basis of sex a significant disadvantage and burden in  
7 the form of serving prison time without the benefit of rehabilitating in a single-sex environment.

8 129. S.B. 132 imposes on female offenders increased risks of physical assault, sexual  
9 assault, sexual harassment, loss of dignity due to living in close quarters with and exposing one’s  
10 naked body to persons of the opposite sex, and serious consequences of sexual relations between  
11 males and females such as pregnancy, abortion, and sexually transmitted diseases, with no  
12 corresponding increased risks imposed on men.

13 130. S.B. 132 is not substantially related to any purported important governmental  
14 purpose aimed for by S.B. 132, and Defendants cannot justify imposing significant disadvantages,  
15 burdens, or increased risks of harms, on female offenders on the basis of sex. Incarcerated men, and  
16 incarcerated women, are similarly situated for purposes of whether men and women each are housed  
17 in single-sex correctional facilities. S.B. 132 results in elimination of women-only facilities, but not  
18 comparable elimination of men-only facilities. S.B. 132 causes harms to women from being housed  
19 with men, with no comparable harms imposed on men from being housed with women.

20 131. S.B. 132 grants rights to inmates who declare a “transgender, nonbinary, or intersex”  
21 identity regarding housing with women, or with men, but also grants additional rights to “Have  
22 their perception of health and safety given serious consideration in any bed assignment, placement,  
23 or programming decision within the facility in which they are housed” including “but not limited  
24 to, granting single-cell status, housing the individual with another incarcerated person of their  
25 choice, or removing the individual or individuals who pose a threat from any location where they  
26 may have access to the individual who has expressed a safety concern.” Cal. Pen. Code §  
27 2606(a)(4). These rights are granted only to inmates who claim a “transgender, nonbinary, or  
28 intersex” identity, and not to persons who express safety concerns but whose “identity” is something

1 other than “transgender, nonbinary, or intersex.” S.B. 132 thus treats inmates differently on the  
2 basis of “gender identity” or “transgender status” causing disadvantage to inmates who have no  
3 “gender identity” or whose “gender identity” is not one of the identities favored under the statute.  
4 S.B. 132 serves no important governmental interest in treating people differently on the basis of  
5 “gender identity” or “transgender status” and does not employ means that are substantially related  
6 to any governmental interest purported to be served by the statute.

7 132. A controversy has arisen over the constitutionality of S.B. 132, wherein Plaintiffs  
8 contend the statute is facially, and as applied to Plaintiffs, unconstitutional and in violation of CA  
9 Constitution Art. 1 § 7 by denying equal protection of the laws on the basis of sex and on the basis  
10 of “gender identity” or “transgender status.” On information and belief, Defendants will contend  
11 that it is possible to implement S.B. 132 in a constitutional manner that comports with CA  
12 Constitution Art. 1 § 7 and that CDCR has not applied S.B. 132 in a manner that has violated any  
13 Plaintiff’s rights under CA Constitution Art. 1 § 7.

14 133. Plaintiffs request a judicial declaration pursuant to 28 U.S.C. § 2201 that S.B. 132  
15 is unconstitutional on its face and as applied to Plaintiffs under CA Constitution Art. 1 § 7, and that  
16 application by CDCR of the directives in Cal. Pen. Code §§ 2605, 2606 denies equal protection of  
17 the laws on the basis of sex and of “gender identity” and/or “transgender status.”

18  
19 **EIGHTH CLAIM FOR RELIEF**  
20 **(FOR DECLARATORY JUDGMENT THAT S.B. 132 VIOLATES ARTICLE 1 § 1 OF**  
21 **THE CALIFORNIA CONSTITUTION)**

22 134. Plaintiffs reallege and incorporate herein by reference each of the foregoing  
23 allegations.

24 135. CA Constitution Art. 1 § 1 guarantees a right to privacy. Even in the setting of a  
25 correctional facility, women including individual Plaintiffs and the clients whose interests are  
26 represented by the organizational Plaintiff, have a right to keep one’s physical body (particularly  
27 when one’s body must be unclothed, as to use a toilet, shower, or change clothes) shielded from the  
28 view, scrutiny, and commentary of men. The dignity inherent in women’s right to bodily privacy  
out of the presence of men is premised on long-recognized social norms that acknowledge the

1 physical, biological, physiological differences between the females and males of the human species,  
2 and the prevention of indignity, embarrassment, and even sexual violation in the form of verbal  
3 harassment or sexual assault, posed to women who are forced to be unclothed in the presence of  
4 men.

5 136. In the setting of a correctional facility, inmates may not have a general expectation  
6 of privacy as to unavoidable exposure of their unclothed bodies while using toilets, showers, or  
7 changing clothes. However, incarcerated women do have a reasonable expectation of privacy that  
8 their daily activities that unavoidably involve being unclothed occur outside the presence of men –  
9 particularly male inmates.

10 137. Allowing men to be housed with women, such that female inmates are forced to live  
11 in close quarters with male inmates, including when engaged in daily activities that necessitate  
12 exposing one's body to other inmates (such as when using a toilet, shower, or changing clothes),  
13 constitutes an egregious breach of the social norms that uphold women's right to bodily privacy  
14 from men's view, scrutiny, commentary, or presence. S.B. 132, on its face, constitutes an invasion  
15 of women's rights to privacy in violation of CA Constitution Art. 1 § 1.

16 138. A controversy has arisen over the constitutionality of S.B. 132 under CA  
17 Constitution Art. 1 § 1, wherein Plaintiffs contend the statute is facially unconstitutional, and  
18 unconstitutional as applied to Plaintiffs, and on information and belief, Defendants will contend  
19 that it is possible to implement S.B. 132 in a constitutional manner that comports with the right to  
20 privacy contained in CA Constitution Art. 1 § 1.

21 139. Plaintiffs request a judicial declaration pursuant to 28 U.S.C. § 2201 that S.B. 132  
22 is unconstitutional on its face and as applied to Plaintiffs under the rights to privacy guaranteed by  
23 CA Constitution Art. 1 § 1.

24  
25 **NINTH CLAIM FOR RELIEF**  
26 **(FOR PERMANENT INJUNCTION)**

27 140. Plaintiffs reallege and incorporate herein by reference each of the foregoing  
28 allegations.

141. SB. 132 is facially unconstitutional, and unconstitutional as applied to Plaintiffs, in the ways above alleged. Enforcement or implementation of S.B. 132 imposes irreparable harms on Plaintiffs. Plaintiffs have no adequate remedy at law, and the balance of equities weighs in favor of upholding Plaintiffs' constitutional rights. Plaintiffs are entitled to a permanent injunction enjoining Defendants from enforcing or implementing S.B. 132 (Cal. Pen. Code §§ 2605, 2606).

**PRAYER**

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Judgment in Plaintiffs' favor on all claims;
2. A judicial declaration that S.B. 132 is unconstitutional on its face, and as applied to Plaintiffs, under the Eighth Amendment to the U.S. Constitution;
3. A judicial declaration that S.B. 132 is unconstitutional on its face, and as applied to Plaintiffs, under the First Amendment to the U.S. Constitution;
4. A judicial declaration that S.B. 132 is unconstitutional on its face, and as applied to Plaintiffs, under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;
5. A judicial declaration that S.B. 132 is unconstitutional on its face, and as applied to Plaintiffs, under Article 1 § 17 of the California Constitution;
6. A judicial declaration that S.B. 132 is unconstitutional on its face, and as applied to Plaintiffs, under Article 1 § 2 of the California Constitution;
7. A judicial declaration that S.B. 132 is unconstitutional on its face, and as applied to Plaintiffs, under Article 1 § 4 of the California Constitution;
8. A judicial declaration that S.B. 132 is unconstitutional on its face, and as applied to Plaintiffs, under Article 1 § 7 of the California Constitution;
9. A judicial declaration that S.B. 132 is unconstitutional on its face, and as applied to Plaintiffs, under Article 1 § 1 of the California Constitution;
10. A permanent injunction prohibiting Defendants and their agents from implementing the directives contained in S.B. 132 (Cal. Pen. Code §§ 2605, 2606).

11. Costs, including reasonable attorneys' fees under 42 U.S.C. § 1988 or as otherwise permitted by law;

12. Such other relief that the Court deems just and equitable.

Dated: November 17, 2021

RESPECTFULLY SUBMITTED,

By:       /s/ Candice Jackson  
Candice Jackson (SBN 224648)  
**FREEMAN MATHIS & GARY, LLP**  
1010 B Street, Suite 300  
San Rafael, California 94901  
[cjackson@fmglaw.com](mailto:cjackson@fmglaw.com)  
Telephone: 415.352.6434

Lauren Adams (Wisconsin Bar No. 1095653)  
(*Pro Hac Vice* forthcoming)  
WOMEN'S LIBERATION FRONT  
1802 Vernon St. NW, #2036  
Washington, DC 20009  
Phone: 202-964-1127  
[legal@womensliberationfront.org](mailto:legal@womensliberationfront.org)

Counsel for Plaintiffs