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DISTRICT OF WYOMING
CASPER

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CLERK
U.S. DISTRICT COURT

Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING
CASPER DIVISION**

MIKI ANN DIMARCO,

Plaintiff,

v.

**WYOMING DEPARTMENT OF CORRECTIONS,
DIVISION OF PRISONS, WYOMING WOMEN'S
CENTER; JUDY UPHOFF, individually;
NOLA BLACKBURN, individually;
VIKI McKINNEY, individually;
KAREN REA, individually;
(First Name Unknown) LLOYD, individually
EMPLOYEES & DOES, I - X; BLACK & WHITE
CORPORATIONS, A-J; AND RED & YELLOW
STATE AGENCIES, 1 - 10,**

Defendants,

03CV1006-B

VERIFIED AMENDED COMPLAINT

COMES NOW, the Plaintiff, **MIKI ANN DIMARCO**, by and through her attorney, Tom Sedar, and as and for complaint against Defendants, complains, alleges and avers as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this subject matter pursuant to 28 U.S.C. § 1331, 1343 (a), and 1367 because the claims arise under the constitution and law of the United States, because there are claim brought to redress the deprivation, under color of state law, the privileges and immunities secured by the constitution of the United States, and because of the supplemental jurisdiction of the court.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(1), (b)(2) and (c).
3. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over any claims arising under Wyoming law.
4. The requirements of the “Wyoming Governmental Claims Act, ” WY ST. § 1-39-113, have been fulfilled.

PARTIES

5. Plaintiff, MIKI ANN DIMARCO, resides in Douglas, Converse County, Wyoming.
6. Upon information and belief, the STATE OF WYOMING, DEPARTMENT OF CORRECTIONS, DIVISION OF PRISONS have general supervision, control and custody of all penal institutions in the State of Wyoming, including the WYOMING WOMEN’S CENTER. The STATE OF WYOMING, DEPARTMENT OF CORRECTIONS, DIVISION OF PRISONS, WYOMING WOMEN’S CENTER, (collectively, “DEPARTMENT OF CORRECTIONS”) is a governmental agency which has general supervision and control of, and provides care and maintenance for women inmates in Lusk, Wyoming.
7. Defendant JUDITH UPHOFF is sued individually; she was formerly Director of the State of Wyoming, Department of Corrections and the chief administrative officer of the Wyoming

Department of Corrections. Upon information and belief, at all times relevant Defendant UPHOFF resided in Cheyenne, Wyoming.

8. Defendant NOLA BLACKBURN is sued individually; she was at all times relevant hereto Warden of WYOMING WOMEN'S CENTER. Upon information and belief, at all times relevant Defendant BLACKBURN resided in Lusk, Wyoming.
9. Defendant VIKI McKINNEY is sued individually; she was at all times relevant hereto Major of WYOMING WOMEN'S CENTER. Upon information and belief, at all times relevant Defendant McKINNEY resided in Lusk, Wyoming.
10. Defendant KAREN REA is sued individually; she was at all times relevant hereto Lieutenant of WYOMING WOMEN'S CENTER. Upon information and belief, at all times relevant Defendant Rea resided in Lusk, Wyoming.
11. Defendant (First Name Unknown) LLOYD is sued individually; she was at all times relevant hereto Corporal of WYOMING WOMEN'S CENTER. Upon information and belief, at all times relevant Defendant LLOYD resided in Lusk, Wyoming.
12. The true names or capacities, whether individual, corporate, associate or otherwise of the Defendants sued fictitiously herein are unknown to Plaintiff, who is informed, believes and thereon alleges that each of the fictitiously named Defendants is in some way liable to Plaintiff on the causes of action below and are therefor sued by such fictitious names; Plaintiff will move to amend this complaint and insert the true names and capacities of said fictitiously named Defendants when the same have been ascertained.
13. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, each actually and fictitiously named Defendant was the principal, agent, co-venturer, partner, surety, guarantor, officer, director, and/or employee of each co-defendant and in doing the things herein alleged, was acting within the scope of authority and with the

permission of each co-defendant or took some part in the acts and commissions hereinafter set forth, and by reason thereof, each of said defendants are liable to plaintiff for the relief prayed herein

14. At all times relevant herein, the Defendants, and each of them, were acting under color of state law.
15. On or about February 2, 2002, Plaintiff caused a governmental claim and again on or about June 21, 2002, Plaintiff caused a supplemental governmental claim, all pursuant to the “Wyoming Governmental Claims Act,” to be delivered to the following individuals and entities: (a) Michael E. Able, Administrator, Wyoming Division of General Services, Department of Administration; (b) Director Judith Uphoff, Wyoming Department of Corrections; (c) Warden Nola Blackburn, Wyoming Women’s Center ; and (d) the Hon. Gay Woodhouse, Wyoming Attorney General. Plaintiff has complied with the provisions of the Wyoming Governmental Claims Act.
16. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, each actually named Defendant was the principal, agent, co-venturer, partner, surety, guarantor, officer, director, and/or employee of each co-defendant and in doing the things herein alleged, was acting within the scope of authority and with the permission of each co-defendant or took some part in the acts and commissions hereinafter set forth, and by reason thereof, each of said defendants are liable to plaintiff for the relief prayed herein.

Facts

17. The Plaintiff, Miki Ann DIMARCO, is a citizen of ambiguous gender. Demonstrating attributes of both male and female sexes at birth and developing breasts at puberty, she was

raised as a female, exhibits the outward appearance of a female, and has adopted a life-long identity as a female.

18. Ms. DIMARCO was arrested and housed at the Laramie County Detention Center in Cheyenne, Wyoming, during the course of prosecution and trial for a non-violent offense of check fraud in the amount of \$517.03. While held at the Detention Center, Ms. DIMARCO was housed in the general population of female inmates for her entire stay of approximately 38 days; during those 38 days, detention officials were fully aware of her ambiguous gender. As an inmate Ms. DIMARCO adapted as well as possible under the circumstances and created no problems for detention officials. While in the detention facility, she participated in all activities permitted any other detainee, including being allowed visitors, regular attendance at religious services and receipt of communion, Alcoholics Anonymous meetings, etc.
19. Ms. DIMARCO subsequently was sentenced to a prison term; she was remitted to the WYOMING DEPARTMENT OF CORRECTIONS for incarceration at the WYOMING WOMEN'S CENTER in Lusk, Wyoming. Prior to her departure from the Laramie County Detention Center, the facility psychologist, Dr. Michael Sandifer, contacted the WYOMING WOMEN'S CENTER and advised them that notwithstanding Ms. DIMARCO's ambiguous gender, she got along quite well in general female population. Dr. Sandifer then told Ms. DIMARCO that he had worked out everything with the WYOMING WOMEN'S CENTER and that she would be okay there.
20. On or about May 3, 2000, two transportation officers of the WYOMING WOMEN'S CENTER, Officer HENRY and Corporal LLOYD, arrived to transport Ms. DIMARCO to the WYOMING WOMEN'S CENTER. While preparing Ms. DIMARCO for transportation, Corporal LLOYD substantially stated to Ms. DIMARCO that they knew all

about her but didn't know what to do with her because she was just another freak. This comment terrified Ms. DIMARCO and was her introduction to a course of conduct by prison officials designed to humiliate, terrify and degrade Ms. DIMARCO that was to endure for her entire tenure in custody at the WYOMING WOMEN'S CENTER.

21. On arrival at the WYOMING WOMEN'S CENTER, Ms. DIMARCO was escorted inside to a receiving area where she surrendered her clothing and personal effects. She was led to a bathing facility adjoining the receiving area where she was instructed to undress and shower. While standing in the shower, a large number of staff (five to seven people) entered the small room—among them Major McKINNEY, Lieutenant REA, Officer HENRY, Corporal LLOYD, Nurse PROVIENCE, Nurse ROBINSON and probably one or two others. As the group entered, Ms. DIMARCO turned to hide her nakedness; Lieutenant REA commanded: "DIMARCO, turn around! You'd better not be embarrassed! You live this way!" Lieutenant REA then said: "If you open your mouth to anybody about this or let any of the rest of the women know you will never see sunshine." Later, in the same room, Lieutenant REA told Ms. DIMARCO: "we've discussed you coming here. We don't know what we're going to do with you. We don't have to deal with this on a daily basis. We knew you were going to be a problem when Cheyenne called. You should just be happy with what we do with you and it will make it easy on everybody." This public act was intended to humiliate, terrify and degrade Ms. DIMARCO because of her ambiguous gender.
22. Ms. DIMARCO was then examined for scars, marks and tattoos; such marks were then documented on two sheets of prison forms titled "WYOMING WOMEN'S CENTER Transporting / Receiving Notation Sheet", one sheet being signed by Officer HENRY and Corporal LLOYD, the second sheet being signed by Lieutenant REA. Beside scars marks and tattoos, both sheets had a specific notation that the inmate, Ms. DIMARCO, had a 4"

- penis; Lieutenant REA commented: "Well, we sure have to note this." Although noting the presence of a penis, intake staff failed to record that Ms. DIMARCO had no testicles but had developed breasts. Referring to her penis on a form normally used to document scars, marks and tattoos was an act intended to humiliate, terrify, and degrade Ms. DIMARCO.
23. Receiving personnel confiscated Ms. DIMARCO's glasses, her contact lenses, and her lower dental bridge. The third day of her incarceration, her glasses were returned but she never saw her contact lenses or dental bridge again. Several months later, she received a duplicate dental bridge made of plastic and of lesser quality than her original bridge. Officials also confiscated Ms. DIMARCO's prescribed medication, in particular her hormone tablets. These were only restored to her some weeks later in half doses, contributing to her chronic depression while incarcerated.
24. During the intake process, Ms. DIMARCO was asked a few questions and told by Lieutenant REA that she [Ms. DIMARCO] was a freak and that the only place for her was in "Max." Ms. DIMARCO was then escorted to the Maximum Security Unit on the East Wing of the WYOMING WOMEN'S CENTER, where she was housed in solitary confinement for the entire term of her incarceration (approximately fourteen months). Placing Ms. DIMARCO in the last cell of the unit, Lieutenant REA commented: "We're going to put you all the way down here so no one can see you." These acts and comments were intended to humiliate, terrify, and degrade Ms. DIMARCO.
25. Ms. DIMARCO was taken to Counselor Crawford's office where she was addressed by Major McKINNEY: "I'm Major McKINNEY and I've heard all about you. You have no rights. I think you're fucking lying, I don't think you're being honest about your gender. It's my decision where to send you and what to do with you. I'm thinking right now that we're going to send you to Rawlins because you don't belong here. If you go over there you'll

just be somebody's bitch and I think that'll just be funny. Rawlins is a meat market and you ought to like it there. You'll never see "population"; you'll never be around the rest of the women here because of the possibility you could get them pregnant. I don't know that you don't like women. I don't know what you do. You're not being honest with me about your sexual identity. I'm going to talk to the director and the warden and we're probably going to send you out of here in the next three days." These comments were intended to humiliate, terrify, and degrade Ms. DIMARCO.

26. Ms. DIMARCO was physically examined shortly after her admission to the WYOMING WOMEN'S CENTER by Dr. Carlton HEWITT. Dr. HEWITT examined Ms. DIMARCO's pelvic area, took a swab to test for sexually transmitted diseases, and palpated her breasts; no other examinations were performed at this time. During the course of the examination HEWITT remarked: "There's no excuse for people like you; you could have had this straightened out and you could have been a man and not put people through all this shit. This is ridiculous." Dr. HEWITT'S comments were intended to humiliate, terrify, and degrade Ms. DIMARCO. A few days later, Ms. DIMARCO met with Dr. KAHN, the facility psychiatrist. Kahn did a partial physical and later wrote a report in which he recommended, among other things, that Ms. DIMARCO be sent to the Wyoming State Hospital in Evanston, Wyoming, or be given a urological examination. These two recommendations were never adopted.
27. When below-zero winter weather arrived, Ms. DIMARCO asked to be moved to a warmer cell because of her lupus and multiple sclerosis. She was moved to an adjoining cell on the Maximum Security Unit where she was still troubled by the cold since the rear wall of the cell was still an outside wall. At this point Ms. DIMARCO wrote a grievance asking for warmer housing and the Deputy Warden, DAWN SIDES, came to Ms. DIMARCO and

told her: "We're not moving you. You're a problem for us. You're just paying for the way you are." For a period of time, the outside temperature was approximately thirty degrees below zero and the heat source on the Maximum Security Unit was malfunctioning for three days. Some time later, Ms. DIMARCO requested and was allowed additional blankets on authority of the staff nurse (with approval of the the doctor) because of Ms. DIMARCO's medical condition, which, besides lupus and multiple sclerosis at this time included a severe foot infection. About two weeks later, when guards discovered the Ms. DIMARCO had extra blankets, they confiscated them. The acts and comments were intended to humiliate, terrify, and degrade Ms. DIMARCO.

28. That winter as Christmas approached, the prison chaplain made tapes of Christmas carols available. Ms. DIMARCO requested a tape player to play the Christmas tapes. The request was curtly denied with no explanation. This refusal was part of a continuing course of conduct intended to humiliate, terrify, and degrade Ms. DIMARCO.
29. During the course of her confinement, Ms. DIMARCO repeatedly asked prison staff in writing to place her in general population; this request was always refused. Shortly after Ms. DIMARCO's incarceration, she was visited by JUDITH UPHOFF, Director of the Department of Corrections. Director UPHOFF told Ms. DIMARCO that she [Ms. DIMARCO] was a freak and they didn't know what to do with her. Director UPHOFF also told Ms. DIMARCO that she [Director UPHOFF] and her peers would decide where Ms. DIMARCO would be held and that Ms. DIMARCO at any time could be sent to the men's prison at Rawlins, Wyoming. The mere thought of being sent to a men's facility terrorized Ms. DIMARCO, yet prison staff, in particular Lieutenant REA and Major McKINNEY, continually threatened Ms. DIMARCO with transfer to the men's facility. On one occasion, Major McKINNEY told Ms. DIMARCO that if she was sent to the men's facility at

Rawlins, she would be “somebody’s bitch.” These comments were intended to humiliate, terrify, and degrade Ms. DIMARCO.

30. Ms. DIMARCO was evaluated by prison staff, who recorded their findings on a Wyoming Department of Corrections Initial Classification Instrument dated 6-1-2000. This evaluation, designed to rate an inmate’s need for supervision and special handling, rates an inmate by points (from zero to twenty-three plus) for such things as escape risk, history of violence, etc. The higher the score, the more the inmate is to be considered dangerous or in need of special handling. Ms. DIMARCO scored zero on the normal evaluation and one on the “close custody” score, yielding a total of one point (the lowest possible score an inmate could achieve). Ms. DIMARCO qualified for minimum security in the general population. When Ms. DIMARCO countersigned the form (which had been prepared by Counselor LAURIE CRAWFORD), she noticed that Counselor CRAWFORD had circled “minimum” twice on the evaluation. The results of the evaluation were later overridden by virtue of Ms. DIMARCO’s ambiguous gender and, although the override recommended “Close/Restricted” custody, she was immediately and directly confined in the Maximum Security Unit, housing normally devoted to those inmates receiving a score of 23 or more on the classification evaluation or who were awaiting execution of a death sentence. The only other use of Maximum Security housing was for disciplinary purposes or suicide watch, and that only for limited times. Other “Close/Restricted” inmates were not housed on the Maximum Security Unit, but on a unit with less rigorous security and fewer restrictions.
31. Ms. DIMARCO, by virtue of her confinement in the Maximum Security Unit, was denied most privileges available to inmates in any other classification: she was not allowed to attend regular religious services and receive communion; she was denied access to an

Alcoholics Anonymous group; she was not allowed to visit the gymnasium or library; she was not allowed verbal contact with any other inmate; she was not allowed non-professional visitors; she was ineligible for the work release program; she was denied access to legal books and resources; even her articles of clothing and blankets were severely limited in number.

32. Approximately three months prior to her release and after numerous written requests, Ms. DIMARCO was allowed to attend group therapy sessions with other inmates. Several restrictions applied, however. Ms. DIMARCO had to be personally escorted to the session and a guard kept her under observation during the entire session. Ms. DIMARCO was not allowed to say anything about her gender issues, nor was she permitted to say anything about her housing situation. She was not allowed to speak to any inmate participant in the session, but was required to address all remarks and questions to the counselor conducting the session. After the meeting Ms. DIMARCO was escorted back to her isolation cell on the Maximum Security Unit where she was searched before being admitted to her cell. The unique manner in which the Plaintiff was handled was intended to humiliate, terrify, and degrade Ms. DIMARCO.

33. Ms. DIMARCO made repeated requests to be allowed to attend regular religious services. She was never allowed to attend regular services. Ms. DIMARCO also made several requests to visit with the local priest, Father JOHN WHITE. She was allowed to see Father WHITE only once during the term of her incarceration and that only in a non-contact, closed visiting room reserved for professionals. While separated from Father WHITE by a thick glass partition, Ms. DIMARCO received Holy Communion. Concurrent with the sacramental ceremony, Father WHITE was required to pass the Host to Ms. DIMARCO

through a slot in the glass partition. Severe curtailment and denial of the right of regular religious observation was intended to humiliate, terrify, and degrade Ms. DIMARCO.

34. Ms. DIMARCO began requesting reclassification to a lower classification within the first week of her incarceration. In fact, in her Interdisciplinary Progress Notes of May 12, 2003, WYOMING WOMEN'S CENTER psychologist Dr. VICTORIA TOWERS made the following statement: "Reduce isolation if possible. Pt's [patient's] circumstances are very likely to exacerbate her Axis I depressive sx's [symptoms] and Axis II psychopathology and related behaviors." The Plaintiff is informed and believes, and hereby alleges, that solitary confinement and the continuing course of conduct by prison officials designed to humiliate, terrify and degrade her intensified and exacerbated her depression.
35. As early as June 6, 2000 (around one month after Ms. DIMARCO began serving her sentence at the WYOMING WOMEN'S CENTER), Warden NOLA BLACKBURN sent a letter to JILL WATSON, Prison Division Administrator in Cheyenne asking for clarification of Ms. DIMARCO's housing situation. In the text of that long letter, Warden BLACKBURN stated: "I believe inmate Timm-Demarco [sic] will soon become more intent on equal access/privileges as other inmates (females) are afforded." Apparently, no one in the Department of Corrections ever responded to that letter; Warden BLACKBURN never altered Ms. DIMARCO's housing status of her own authority. Ms. DIMARCO's status remained the same during her term.
36. Throughout her term at the WYOMING WOMEN'S CENTER, Ms. DIMARCO was housed in an area normally used for punishment and subjected to long-term treatment usually doled out to inmates of the very worst temperament for no good reason other than her ambiguous gender, a condition over which she had no control. Ms. DIMARCO's condition was a matter of the most intense personal nature and whether she could have

altered her condition surgically was a matter beyond the ken or control of the WYOMING WOMEN'S CENTER.

37. Several months after Ms. DIMARCO'S incarceration, a party was hosted by JUDITH UPHOFF for inmates on the East Wing of the WYOMING WOMEN'S CENTER. All inmates were invited, and attended, this festivity, including two of the three inmates confined to the Maximum Security Unit. The only inmate in the entire East Wing not invited or allowed to attend was the Plaintiff, Ms. DIMARCO.
38. At all times relevant hereto, Plaintiff MIKI ANN DIMARCO requested she be transferred out of segregated maximum security housing and into the general prison population, which requests were callously, arbitrarily, capriciously, unreasonably, and with deliberate indifference, ignored.
39. Plaintiff is informed and believes, and on that basis alleges, that Defendants have no policy in place with regard to the placement or treatment of incarcerated prisoners of ambiguous gender.
40. Plaintiff is further informed and believes, and on that basis alleges, that during her tenure at the WYOMING WOMEN'S CENTER, Plaintiff DIMARCO was never a disciplinary problem and never merited the austere privations meted out by prison staff, even though she was housed in the Maximum Security Unit; by being placed in solitary confinement on the Maximum Security Unit, Plaintiff DIMARCO's privileges and quality of life were so austere that they were consistent with the WYOMING WOMEN'S CENTER'S highest level of punitive confinement.
41. By each of the acts and omissions made by Defendants, and each of them, the Defendants, and each of them, recklessly, wilfully, wantonly, callously, negligently, wrongfully and with

deliberate indifference violated Plaintiff MIKE ANN DIMARCO's rights as guaranteed by federal and Wyoming law.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE EIGHTH AMENDMENT

42. The Plaintiff, MIKI ANN DIMARCO, re-alleges and incorporates, by this reference, paragraphs 1 through 41 herein.
43. Article 97-1-016 of the Wyoming Constitution as well as general principles of human decency prohibit treatment of prisoners with "unnecessary rigor" and requires the "humane treatment of all prisoners."
44. Despite several requests by Plaintiff DIMARCO throughout the tenure of her incarceration at the WYOMING WOMEN'S CENTER, the Defendants, and each of them, deliberately, intentionally, unlawfully, willfully and wantonly continued to segregate, isolate and stigmatize Plaintiff, and Plaintiff is informed and believes and on that basis alleges, that the Defendants, and each of them, prohibited Plaintiff's companionship and communication with the general prison population and otherwise deprived her of the normal functions and privileges commonly made available to inmates during terms of incarceration at WYOMING WOMEN'S CENTER.
45. The Eighth Amendment to the United States Constitution and Article 97-1-014 of the Wyoming Constitution guarantee the right of incarcerated inmates to be free from cruel and unusual punishment.
46. Plaintiff is informed and believes, and on that basis alleges, that from the time the Wyoming Department of Corrections and the WYOMING WOMEN'S CENTER learned of her committal, Plaintiff DIMARCO was considered to be unlike any other inmate and from the

time she was taken into custody by the DEPARTMENT OF CORRECTIONS, through her intake and evaluation at the WYOMING WOMEN'S CENTER until the time she left the WYOMING WOMEN'S CENTER, she received abnormally harsh treatment and cruel and unusual punishment at the hands and by the direction of the Defendant's, and each of them, and she was deliberately, wantonly, intentionally, unlawfully, willfully vilified, verbally abused, punished and was deprived of a wide spectrum of privileges to which she would normally have been entitled, merely because of her condition or status of ambiguous gender.

47. Placement by Defendants, and each of them, of Plaintiff DIMARCO, solely because of the condition and status of ambiguous gender, in solitary isolation with concomitant severely limited privileges was an unjustifiable, unreasonable exercise in bad faith and was a violation of the Eighth Amendment prohibition against cruel and unusual punishment.
48. As a direct and proximate cause of the unjustified placement by Defendants, and each of them, of Plaintiff in segregated confinement during her entire period of incarceration, Plaintiff has suffered physical and mental damages.
49. The Plaintiff, as a prisoner of ambiguous gender, is entitled to special, compensatory, and emotional distress damages caused by the Defendants, and each of them, as a result of their unjustified placement of the Plaintiff in segregated incarceration and violation of the Plaintiff's federally protected rights under the Eighth Amendment of the United States Constitution as made actionable under 42 U.S.C. §1983.
50. Plaintiff is informed and believes, and therefore alleges that at all times relevant hereto the Defendants, and each of them, acted unlawfully, intentionally, carelessly, recklessly, wantonly and wilfully with regard to the acts herein alleged. Further, as a direct and proximate cause of the unlawful, intentional, careless, reckless, wanton and willful acts of the Defendant, and each of them, the Plaintiff has suffered damages. Consequently the

Plaintiff is entitled to punitive damages by way of example for the malicious, outrageous and intentional conduct of the Defendants and each of them.

51. Plaintiff is entitled to attorney's fees, court costs and the costs of expert witnesses pursuant to 42 U.S.C. §1988.

SECOND CLAIM FOR RELIEF

FOURTEENTH AMENDMENT

(Procedural Due Process)

52. The Plaintiff, **MIKI ANN DIMARCO**, re-alleges and incorporates, by this reference, paragraphs 1 through 51 herein.
53. Article 97-1-016 of the Wyoming Constitution as well as general principles of human decency prohibit treatment of prisoners with "unnecessary rigor" and requires the "humane treatment of all prisoners" and provides inmates with a protected liberty interest.
54. Despite Plaintiff DIMARCO'S several requests for more humane treatment throughout the tenure of her incarceration at the WYOMING WOMEN'S CENTER, the Defendants, and each of them, deliberately, intentionally, unlawfully, willfully and wantonly continued to segregate and isolate Plaintiff and withhold from her the privileges, rights, companionship of, and communication with, the general prison population during her entire period of incarceration at WYOMING WOMEN'S CENTER.
55. The Fourteenth Amendment to the United States Constitution guarantees the right of incarcerated inmates to be protected from loss of a liberty interest without procedural due process, pursuant to 42 U.S.C. § 1983.
56. Plaintiff DIMARCO is informed and believes, and on that basis alleges, that she was placed by the Defendants, and each of them, in isolated confinement solely and arbitrarily, without

hearing, because of the condition and status of ambiguous gender, thus being atypically and significantly deprived of a panoply of rights and privileges to which she would otherwise be entitled as an inmate; such willful, indifferent and wanton deprivation, particularly through its long duration and severe degree of restriction constitutes loss of a liberty interest without due process in contravention of the Fourteenth Amendment.

57. As a direct and proximate cause of the unjustified placement by Defendants, and each of them, of Plaintiff in segregated confinement during her entire period of incarceration, Plaintiff has suffered physical and mental damages.
58. The Plaintiff is entitled to special, compensatory, and emotional distress damages caused by the Defendants, and each of them, as a result of their unjustified, permanent placement of the Plaintiff in segregated incarceration and violation of the Plaintiff's federally protected rights under the Fourteenth Amendment of the United States Constitution as made actionable under 42 U.S.C. §1983.
59. Plaintiff is informed and believes, and therefore alleges that at all times relevant hereto the Defendants, and each of them, acted unlawfully, intentionally, carelessly, recklessly, wantonly and wilfully with regard to the acts herein alleged. Further, as a direct and proximate cause of the unlawful, intentional, careless, reckless, wanton and willful acts of the Defendant, and each of them, the Plaintiff has suffered damages. Consequently the Plaintiff is entitled to punitive damages by way of example for the malicious, outrageous and intentional conduct of the Defendants and each of them.
60. Plaintiff is entitled to attorney's fees, court costs and the costs of expert witnesses pursuant to 42 U.S.C. §1988.

THIRD CLAIM FOR RELIEF

NINTH AMENDMENT;
WYOMING CONSTITUTION SECTION 97-1-036;
FOURTEENTH AMENDMENT
(Substantive Due Process)

61. The Plaintiff, **MIKI ANN DIMARCO**, re-alleges and incorporates, by this reference, paragraphs 1 through 60 herein.
62. Rights not enumerated in the United States Constitution and the Wyoming Constitution are retained by the people.
63. The status of gender identity, whether as an accident of birth or personal choice, is as fundamental to each individual as are personal questions relating to marriage, procreation, contraception, family relationships, child-rearing and education; hence, gender identity is one of the key attributes of personhood and, as such, is a fundamental liberty which, although otherwise not enumerated in the Bill of Rights is reserved to the people by virtue of the Ninth Amendment and the Wyoming Constitution and accordingly protected by the Fourteenth Amendment.
64. Gender differences in humans are the fuel that feeds the engine of species survival. Society itself forces persons of ambiguous gender, even though they may not be able to procreate. to make a choice between identifying with, and becoming part of, one of two states: male or female. There is no third alternative. There is, in the absolute sense of being a part of society, no alternative for an individual of ambiguous gender to do anything other than make a choice, a choice often at odds with what persons of definitive gender might consider appropriate. However, such a choice is so deeply personal and fundamental to the very psyche of someone of ambiguous gender that such a choice must be entitled to deep

consideration and respect by those not forced to make such a choice, especially in the context of state action. Such a choice is unique in that no other condition or status requires a similar decision: a paraplegic is never required to make any such decision; nor is a blind person or a person with a non-gender oriented birth defect, a medical condition or an addiction. Plaintiff DIMARCO made that choice, not to evade any responsibility or to avoid any merited punishment under the law; rather, the demand for a choice was dictated to her by a society largely bereft of understanding of the mental, physical and emotional dynamics of the condition and status of ambiguous gender.

65. Plaintiff DIMARCO is informed and believes, and on that basis alleges, that when she was arbitrarily and capriciously placed by the Defendants, and each of them, in solitary confinement solely because of a question of gender without any rational basis for determining or justifying that action, the Defendants, and each of them, were unlawfully punishing her and significantly infringing upon a fundamental liberty right protected by the Fourteenth Amendment.
66. Plaintiff DIMARCO further is informed and believes, and on that basis alleges, that she, being deprived for even a brief time, let alone for fourteen months, of rights and privileges to which she would otherwise be entitled but for her condition and status of ambiguous gender was subjected by the Defendants, and each of them, to an unconstitutional deprivation of a fundamental liberty protected by the Fourteenth Amendment.
67. As a direct and proximate cause of the unjustified placement by Defendants, and each of them, of Plaintiff in segregated confinement during her entire period of incarceration, Plaintiff has suffered physical and mental damages.
68. The Plaintiff is entitled to special, compensatory, and emotional distress damages caused by the Defendants, and each of them, as a result of their unjustified, permanent placement of

the Plaintiff in segregated incarceration and violation of the Plaintiff's federally protected rights under the Fourteenth Amendment of the United States Constitution as made actionable under 42 U.S.C. §1983.

69. Plaintiff is informed and believes, and therefore alleges that at all times relevant hereto the Defendants, and each of them, acted unlawfully, intentionally, carelessly, recklessly, wantonly and wilfully with regard to the acts herein alleged. Further, as a direct and proximate cause of the unlawful, intentional, careless, reckless, wanton and willful acts of the Defendant, and each of them, the Plaintiff has suffered damages. Consequently the Plaintiff is entitled to punitive damages by way of example for the malicious, outrageous and intentional conduct of the Defendants and each of them.
70. Plaintiff is entitled to attorney's fees, court costs and the costs of expert witnesses pursuant to 42 U.S.C. §1988.

FOURTH CLAIM FOR RELIEF

FOURTEENTH AMENDMENT

(Equal Protection)

71. The Plaintiff, **MIKI ANN DIMARCO**, re-alleges and incorporates, by this reference, paragraphs 1 through 70 herein.
72. Plaintiff DIMARCO is informed and believes, and on that basis alleges, that she was placed by the Defendants, and each of them, in isolated confinement solely and arbitrarily because of the condition and status of ambiguous gender, without hearing, and was inflicted with restraints upon her privileges and quality of life that were so austere that they were consistent with the WYOMING WOMEN'S CENTER'S highest level of punitive confinement, thus being atypically and significantly deprived of a panoply of rights and

privileges to which she would otherwise be entitled as an inmate; such willful, indifferent and wanton deprivation, particularly through its long duration and severe degree of restriction constitutes an infringement of her equal protection right to be treated like all other inmates with similar intake placement scores, in contravention of the Fourteenth Amendment.

73. As a direct and proximate cause of the unjustified placement by Defendants, and each of them, of Plaintiff in segregated confinement during her entire period of incarceration, Plaintiff has suffered physical and mental damages.
74. The Plaintiff is entitled to special, compensatory, and emotional distress damages caused by the Defendants, and each of them, as a result of their unjustified, permanent placement of the Plaintiff in segregated incarceration and violation of the Plaintiff's federally protected rights under the Fourteenth Amendment of the United States Constitution as made actionable under 42 U.S.C. §1983.
75. Plaintiff is informed and believes, and therefore alleges that at all times relevant hereto the Defendants, and each of them, acted unlawfully, intentionally, carelessly, recklessly, wantonly and wilfully with regard to the acts herein alleged. Further, as a direct and proximate cause of the unlawful, intentional, careless, reckless, wanton and willful acts of the Defendant, and each of them, the Plaintiff has suffered damages. Consequently the Plaintiff is entitled to punitive damages by way of example for the malicious, outrageous and intentional conduct of the Defendants and each of them..
76. Plaintiff is entitled to attorney's fees, court costs and the costs of expert witnesses pursuant to 42 U.S.C. §1988.

FIFTH CLAIM FOR RELIEF

AMERICANS WITH DISABILITIES ACT

77. The Plaintiff, **MIKI ANN DIMARCO**, re-alleges and incorporates, by this reference, paragraphs 1 through 76 herein.
78. Plaintiff has, or is regarded as having, a physical impairment that substantially limits one or more of her major life activities. Possessing ambiguous, undeveloped genitalia and lacking definitive physical gender qualities significantly impairs Plaintiff's ability to interact with society at large.
79. No qualified individual with a disability may, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
80. While incarcerated Plaintiff was excluded from and denied the benefits of the services, programs or activities of the general prison population due to her physical impairment.
81. Defendants, and each of them, despite repeated requests by Plaintiff DIMARCO, failed, neglected, or refused to accommodate Plaintiff's physical impairment and her medical conditions of lupus and multiple sclerosis.
82. As a direct and proximate cause of the arbitrary, capricious, unreasonable and unjustified placement by the Defendant, and each of them, of Plaintiff in segregated confinement during her entire period of incarceration, Plaintiff has suffered physical and mental damages.
83. Plaintiff is entitled to attorney's fees, court costs and the costs of expert witnesses pursuant to 42 U.S.C. §1988 and 42 U.S.C. § 12205.

SIXTH CLAIM FOR RELIEF

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

84. The Plaintiff, **MIKI ANN DIMARCO**, re-alleges and incorporates, by this reference, paragraphs 1 through 83 herein.
85. Defendants, and each of them, had a duty of due care with regard to the care and treatment of Plaintiff at all relevant times herein.
86. In arbitrarily, capriciously, and unreasonably isolating and segregating Plaintiff without regard for her physical and emotional well-being, Defendants, and each of them, breached their duty of due care.
87. As a proximate result of acts or omissions to act by the Defendants, and each of them, Plaintiff has suffered emotional and physical damages.
88. As a further proximate result of acts or omissions to act by the Defendants, and each of them, Plaintiff has suffered severe humiliation, mental anguish, and emotional and physical distress.

SEVENTH CLAIM FOR RELIEF

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

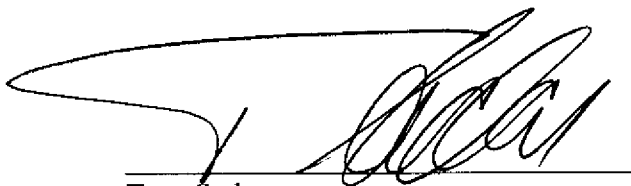
89. The Plaintiff, **MIKI ANN DIMARCO**, re-alleges and incorporates, by this reference, paragraphs 1 through 88 herein.
90. Defendants, and each of them, had a duty of due care with regard to the care and treatment of Plaintiff at all relevant times herein.
91. Defendants, and each of them, knew or should have known that their failure to exercise due care in the performance of their duty to act with due regard for the physical and emotional well-being of Plaintiff would cause Plaintiff several emotional distress.

92. As a proximate result of the acts or omissions to act by the Defendant, and each of them,, Plaintiff has suffered emotional and physical damages.
93. As a further proximate result of the acts or omissions to act by the Defendants, and each of them, Plaintiff has suffered severe emotional distress and mental suffering.

WHEREFORE, the Plaintiff, MIKI ANN DIMARCO, prays for a judgment against the Defendants, and each of them, on all claims for relief as follows:

1. For special and compensatory damages to be determined at trial;
2. Special and compensatory damages for present physical and emotional distress to be determined at trial;
3. Special and compensatory damages for future physical emotional distress in excess of \$75,000.00 to be determined at trial; and
4. An award of attorney's fees, court costs, and the costs of expert witnesses;
5. Pre-judgment and post-judgment interest as allowed by law;
6. Punitive damages, by way of example; and
7. For any and all other relief deemed just and equitable by the Court.

DATED this 11th day of August, 2003.



Tom Sedar
Attorney for Plaintiff
254 North Center St.,
Suite 100
Casper, WY 82601
307-265-1924

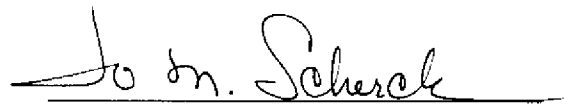
STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

MIKI ANN DIMARCO, of lawful age and being first duly sworn upon hers oath, deposes and says: That she has read the foregoing Verified Complaint by her subscribed; and that the matters stated therein are true; that as to the matters alleged on information and belief, she believes the same to be true.



MIKI ANN DIMARCO

Subscribed, sworn, and acknowledged to before me by Miki Ann DIMARCO this 11th day of August, 2003.



Notary Public



CERTIFICATE OF SERVICE

This is to certify on this 11th day of August, 2003, I served the above and foregoing Plaintiff's Verified Amended Complaint by sending a true and correct copy as follows:

Craig Kirkwood
Assistant Attorney General
Litigation Division
Herschler Bldg., 1st Floor West
Cheyenne, WY 82002

☒ U.S. Mail, postage prepaid
☐ Fed Ex
☐ Fax
☐ Hand Delivered

Attorney for Defendants Wyoming Department of Corrections, Division of Prisons, Center; Judy Uphoff and Nola Blackburn



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