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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

RANDALL GAMMETT aka Jenniffer Ann
Spencer,

Plaintiff,

vs.

IDAHO STATE BOARD OF CORRECTIONS,
CAROLYN MELINE, RALPH TOWNSEND,
DWIGHT BOARD, JIM TIBBS, JAY
NIELSEN, ROBIN SANDY, IDAHO
DEPARTMENT OF CORRECTIONS,
THOMAS BEAUCLAIR, VAUGHN KILLEEN,
GREGORY FISHER, JOHN HARDISON,
KEVIN KEMPH, DAVID HAAS, DEBI TITUS,
THOMAS KRUZICH, M.D., FRAUN

Case No. CV05-257-S-MHW

AMENDED COMPLAINT

FLERCHINGER, M.D., EDWARD CHEENEY,
KENNETH G. KHATAIN, M.D., CHAD
SOMBKE, Ph.D., MARY PERRIEN,
SHARLENE GREEN, PRISON HEALTH
SERVICES, and CORRECTIONAL MEDICAL
SERVICES,

Defendants.

Plaintiff Randall Gammett aka Jenniffer Spencer,¹ by counsel, brings this action to obtain redress for the deprivation of her federally and state protected rights, as hereinafter alleged.

INTRODUCTION

1. Jenniffer Spencer has been imprisoned in Idaho state prison since May 2000 for “theft by receiving or possessing stolen property” — specifically, possession of a stolen car. Ms. Spencer was not charged or convicted for stealing the car. Throughout her incarceration she has suffered from Gender Identity Disorder (“GID”), a serious medical condition characterized by: (1) a strong cross-gender identification, which is the desire to be, or the insistence that one is, of the other sex, and (2) a persistent discomfort about one’s assigned sex or a sense of inappropriateness in the gender role of that sex. GID causes clinically significant distress or impairment in social, occupational, or other important areas of functioning. The most common form of treatment is hormonal therapy, which in this case would be estrogen, administered by a qualified professional.

2. Prior to her incarceration, Jenniffer Spencer lived full time as a woman and took female hormones in the form of oral contraceptives. She sought treatment for GID in September 2003, when she became aware that Defendant Idaho State Board of Corrections adopted a policy

¹ Although Plaintiff was born a biological male, she identifies as female and wishes to be referred to using the feminine pronoun. She has changed her legal name to Jenniffer Ann Spencer. Accordingly, throughout this pleading, she will be referred to by the feminine pronoun.

for the treatment of offenders with GID. Beginning in September 2003 through the filing of this lawsuit, Ms. Spencer submitted approximately 75 separate requests for treatment relating to GID.

3. Ms. Spencer's requests fell on deaf ears. Despite her repeated requests, Defendants, the Idaho State Board of Corrections and its officers and agents, have shown deliberate, persistent indifference to her condition in violation of (1) the Idaho State Board of Corrections' Directives relating to the care of offenders with GID and (2) the United States Constitution.

4. Specifically, Defendants failed to follow their own directives to apply appropriate standards of care as required under Idaho Department of Corrections Directive 01.06.03.501 to evaluate Ms. Spencer. Despite clear evidence suggesting gender dysphoria, Defendants failed to appoint qualified medical professionals to evaluate Ms. Spencer.

5. Upon learning that Defendants denied her treatment in August 2004, Ms. Spencer attempted suicide.

6. Following the suicide attempt, Ms. Spencer submitted 21 different inmate concern/request forms to Defendants requesting the reasoning behind Defendants' declaration that she did not have GID. When she failed to receive a satisfactory explanation, Ms. Spencer filed this lawsuit in the United States District Court on June 30, 2005.

7. Still Defendants failed to respond. As a result of her inability to secure adequate treatment, Ms. Spencer attempted self-castration, cutting her scrotum with a razor blade. Ten days later, on October 19, 2005, she cut her scrotum again, this time removing her testicles and flushing them down the toilet. Attending prison guards discovered a note in her cell: "I cut my genitals off do [sic] to the facts that I am a transgendered individual and I could stand the sight of

them no more. This is not a suicide attempt. This is simply a way for me to remmady [sic] my problem.”

8. As a result of her castration, Ms. Spencer is in need of hormone therapy to avoid a range of negative health effects. Specifically, hormone therapy is necessary to prevent osteoporosis, muscle mass loss, relative fat mass increase, and increased cardiovascular disease in patients without functioning ovaries or testicles. In a male-to-female transgender person, feminizing hormones can also improve mood stability, decrease mental illness, and relieve anxiety. Withholding hormone therapy can lead to continued depression, suicidal ideation, and self-injury.

9. Defendants recognize that Ms. Spencer requires hormone therapy but have refused to provide estrogen. Ms. Spencer brings this action for an order requiring that Defendants provide treatment of feminizing hormones and psychological counseling by a mental health professional with substantial training and experience in the diagnosis and treatment of persons with GID. Ms. Spencer further seeks an order appointing a medical or mental health professional with experience in the diagnosis and/or treatment of persons with GID to serve as a member of the Management and Treatment Committee for a minimum of one year, to ensure the proper implementation of the Court’s order as it relates to Ms. Spencer as well as the Department of Corrections’ own directives relating to GID.

PARTIES

10. Plaintiff Jenniffer Spencer is a citizen of the United States of America. She is currently a resident of the Idaho Maximum Security Institution at Boise, Idaho (“IMSI”).

11. Defendant Idaho State Board of Corrections (“Board of Corrections”) is a political subdivision of the State of Idaho, as defined in Idaho Code Section 20-201.

12. Defendants Carolyn Meline, Ralph Townsend, Dwight Board, Jim Tibbs, Jay Nielsen, and Robin Sandy were or are currently duly appointed members of the Board of Correction, and were acting within the course and scope of their duties as members and as agents, servants and employees of the State of Idaho at all material times.

13. Defendant Idaho Department of Corrections (“IDOC”) is a political subdivision of the State of Idaho as defined in Idaho Code Section 20-201.

14. Defendant Thomas Beauclair was at all times material hereto and up until July 2006 the duly appointed Director of IDOC as well as chief administrative officer and business manager of the state penitentiary pursuant to Idaho Code Section 20-217A. Defendant Beauclair was employed by IDOC, and was acting within the course and scope of his duties as director, chief administrative officer and business manager and as the agent, servant and employee of the State of Idaho at all material times.

15. Defendant Vaughn Killeen was appointed Director of IDOC in July 2006 as well as chief administrative officer and business manager of the state penitentiary pursuant to Idaho Code Section 20-217A. Beginning July 2006, defendant Killeen was employed by IDOC, and was acting within the course and scope of his duties as director, chief administrative officer and business manager and as the agent, servant and employee of the State of Idaho at all material times.

16. Defendant Kevin Kempf was at all times material hereto the Warden of the Idaho Correctional Institution at Orofino (“ICIO”). Defendant Kempf was employed by IDOC, and was acting within the course and scope of his duties as warden and as the agent, servant and employee of the State of Idaho at all material times.

17. Defendant Gregory Fisher was at all times material hereto, and up until June 2005, Warden of the Idaho Maximum Security Institution (“IMSI”). Defendant Fisher was employed by IDOC and was acting within the course and scope of his duties as warden and as the agent, servant and employee of the State of Idaho at all material times.

18. Defendant John Hardison, since June 2005, has been Warden of IMSI. Defendant Hardison was employed by IDOC and was acting within the course and scope of his duties as warden and as the agent, servant and employee of the State of Idaho at all material times.

19. Defendant David Haas was at all times material hereto the Medical Services Manager at IDOC. Defendant Haas was employed by IDOC and was acting within the course and scope of his duties as Medical Services Manager and as the agent, servant and employee of the State of Idaho at all material times.

20. Defendant Prison Health Services (“PHS”) is a corporation doing business in the State of Idaho. Pursuant to contractual agreement with IDOC, PHS provided medical services for IDOC inmates, including Plaintiff, until July 2005.

21. Defendant Correctional Medical Services (“CMS”) is a corporation doing business in the State of Idaho. Pursuant to contractual agreement with IDOC, CMS provided medical services for IDOC inmates, including Plaintiff, beginning July 2005.

22. Defendant Debi Titus was at all times material hereto the Health Services Administrator at IMSI, either under contract to provide medical services for inmates at IDOC, or employed directly by IDOC to provide medical services to inmates. Defendant Titus was acting within the course and scope of her duties as a medical service provider to IDOC inmates (including Plaintiff) and as the agent, servant, and employee of PHS, CMS, and/or the State of Idaho at all material times.

23. Defendant Edward Cheeney was at all times material hereto a Clinician at ICIO, either under contract to provide medical services for inmates at IDOC, or employed directly by IDOC to provide medical services to inmates. Defendant Cheeney was acting within the course and scope of his duties as a medical service provider to IDOC inmates (including Plaintiff) and as the agent, servant, and employee of PHS, CMS, and/or the State of Idaho at all material times.

24. Defendant Thomas Kruzich was at all times material hereto a treating physician at ICIO, either under contract to provide medical services for inmates at IDOC, or employed directly by IDOC to provide medical services to inmates. Defendant Kruzich was acting within the course and scope of his duties as a medical service provider to IDOC inmates (including Plaintiff) and as the agent, servant, and employee of PHS, CMS, and/or the State of Idaho at all material times.

25. Defendant Fraun Flerchinger was at all times material hereto a treating physician at ICIO, either under contract to provide medical services for inmates at IDOC, or employed directly by IDOC to provide medical services to inmates. Defendant Flerchinger was acting within the course and scope of her duties as a medical service provider to IDOC inmates (including Plaintiff) and as the agent, servant, and employee of PHS, CMS, and/or the State of Idaho at all material times.

26. Defendant Kenneth Khatain was at all times material hereto Chief Psychiatrist at IMSI, either under contract to provide medical services for inmates at IDOC, or employed directly by IDOC to provide medical services to inmates. Defendant Khatain was acting within the course and scope of his duties as a medical service provider to IDOC inmates (including Plaintiff) and as the agent, servant, and employee of PHS, CMS, and/or the State of Idaho at all material times.

27. Defendant Chad Sombke was, until the end of 2005, Chief Psychologist at IMSI, either under contract to provide medical services for inmates at IDOC, or employed directly by IDOC to provide medical services to inmates. Defendant Sombke was acting within the course and scope of his duties as a medical service provider to IDOC inmates (including Plaintiff) and as the agent, servant and employee of PHS, CMS, and/or the State of Idaho at all material times.

28. Defendant Mary Perrien has been, since the end of 2005, Chief Psychologist at IMSI, either under contract to provide medical services for inmates at IDOC, or employed directly by IDOC to provide medical services to inmates. Defendant Perrien was acting within the course and scope of her duties as a medical service provider to IDOC inmates (including Plaintiff) and as the agent, servant and employee of PHS, CMS, and/or the State of Idaho at all material times.

29. Defendant Sharlene Green has been, since spring of 2006, a psychologist at IMSI, either under contract to provide medical services for inmates at IDOC, or employed directly by IDOC to provide medical services to inmates. Defendant Green was acting within the course and scope of her duties as a medical service provider to IDOC inmates (including Plaintiff) and as the agent, servant and employee of PHS, CMS, and/or the State of Idaho at all material times.

30. Each and all of the acts of Defendants alleged herein were done by Defendants not just as individuals, but under the color of law and pretense of the statutes, ordinances, regulations, customs, practices and usages of the State of Idaho, and under the authority of Defendants as public officials for the State of Idaho.

JURISDICTION AND VENUE

31. This action arises under the Constitution of the United States, particularly under the provisions of the Eighth and Fourteenth Amendments, and under federal law, particularly 42 U.S.C. sections 1983 and 1988.

32. This Court has subject matter jurisdiction of this cause under Title 28 of the United States Code, Section 1331, because the case arises under the Constitution and laws of the United States, and Section 1343, because this action seeks redress and damages for violation of Title 42 U.S.C. Sections 1983 and 1988, and the federal claims are not insubstantial. This Court has jurisdiction of Plaintiff's pendent state claims under Title 28 of the United States Code, Section 1367.

33. This Court has personal jurisdiction because, on information and belief, each Defendant is domiciled within the State of Idaho.

34. Venue is proper in this district pursuant to 28 U.S.C. § 1291(b) because, on information and belief, Defendants reside in this district and a substantial part of the events or omissions giving rise to the claims occurred in this district.

GENERAL ALLEGATIONS

Background

35. Jenniffer Spencer was born in Nampa, Idaho on October 25, 1979. From an early age, Jenniffer felt she was born into the wrong body, and that she was a female trapped in a male's body. As a minor child, Jenniffer often would dress in girls' clothing, preferring it to boys' clothing. She was consistently treated by her parents as a girl, her father referring to her as "the little girl."

36. Beginning at the age of six, Jenniffer was sexually abused by her father's cousin, James Masker. The abuse included fondling, oral sex, and anal sex. The abuse occurred on a

regular basis for a period of roughly two years and then increased when Masker moved in with Jennifer's family when she was eight years old. The abuse ended only after Jennifer confronted James when she was thirteen years old, brandishing her father's pistol and exclaiming, "[i]f I ever see you again, I'll kill you."

37. At age eleven, Jennifer was diagnosed with a severe learning disability along with a high level of hyperactivity.

38. At age fifteen, following an arrest for petit burglary, Jennifer became a ward of the State of Idaho and was placed in a group home.

39. The following year, Jennifer was placed in a juvenile detention facility after she, together with a group of friends, took her father's rifle from his pickup truck and went to the river to shoot targets and fire at the water. Her parents reported the theft to Owyhee County Police and Jennifer was arrested.

40. Following her release from the juvenile facility, in 1999, Jennifer lived with an older man and dressed, lived, and portrayed herself as a woman. In June of 1999, she began taking female hormones, in the form of birth control pills, in the hope that the estrogen would give her the secondary sex characteristics of a female. Finally, during this time period, Jennifer applied for employment while dressed as a woman and indicated on an employment application that she was a female.

41. Jennifer's presenting as a woman came to an end in July 1999 when she was arrested for possession of a stolen vehicle.

Conviction for Possession of Stolen Property and Incarceration

42. On July 26, 1999, Jennifer was arrested by the Owyhee County, Idaho Police, for possession of a stolen vehicle. The Owyhee County Court, Third Judicial District, found that the vehicle had been stolen by another person from the Portland, Oregon Airport and given to Ms.

Spencer to use. Jennifer admitted to police that she knew the vehicle was stolen and was taken into custody.

43. Observing that Ms. Spencer was unable to pay any of the \$13,000 in restitution to the owner of the car, she was sentenced for evaluation at the Northern Idaho Correctional Institution (“NICI”) in Cottonwood. NICI is a program-specific prison designed for male offenders sentenced to a retained jurisdiction commitment by the court. It provides a sentencing alternative for the courts to target offenders who might, after a period of programming and evaluation, be viable candidates for probation rather than incarceration.

44. On May 25, 2000, Ms. Spencer escaped from the Cottonwood facility and was apprehended two days later in Lewiston, Idaho.

45. As a result of the attempted escape, Ms. Spencer was transferred to the Idaho State Correctional Institution Orofino to serve a nine year sentence (six years for possession of stolen property and a three year enhancement for escape). Currently, Plaintiff is incarcerated at IDOC’s IMSI facility in Boise, where she has been held in the psychiatric unit (known as “C-Block”) since October 2005.

Plaintiff Jennifer Spencer’s Requests for Treatment

46. In August 2003, Defendant IDOC instituted certain policies relating to the treatment of offenders suffering from GID. On September 11, 2003, Ms. Spencer submitted her first request for information relating to the treatment of GID seeking copies of the policies.

47. After September 2003, Ms. Spencer submitted multiple requests for medical and psychiatric attention with regards to her gender dysphoria. Examples of those communications include:

a) On September 14, 2003, Ms. Spencer submitted a written health services request stating "I feel that I have a Gender Identity Disorder. I Feel that I need to Become a Women [sic]. I want to becom [sic] a women! [sic]"

b) On April 24, 2004, Ms. Spencer submitted a written request to Defendant Titus inquiring about the composition of the Treatment Committee, including the involvement of the Director.

c) On August 21, 2004, Ms. Spencer submitted a request to Defendant Haas stating "I want to know why I was told I Dont [sic] Have GID when I do have it. I want to know why I was Not seen by A GID specialist? I want to be seen by A GID specialist and Given my Treatment for it." Defendants failed to respond.

d) On August 22, 2004, Plaintiff submitted another request to Defendant Haas stating "I want to know why you are not following policiys [sic] concerning people who clame [sic] they have GID. [] Why are you not following your own procedures and policies?" Defendants failed to respond.

e) On March 8, 2005, Plaintiff submitted a Grievance Form asking why she had not received a response from Defendant Haas so that she could proceed with legal recourse. The Grievance Form stated "This is a personal issue that I am trying to get help with and I am being eagnored [sic]. I'm tired of it." Finding IDOC's response insufficient, Plaintiff appealed. In response, on April 5, 2005, IDOC found that Plaintiff had been "evaluated appropriately" and that "a reasonable decision" had been made.

48. Ms. Spencer also submitted a number of requests to IDOC, IMSI, PHS, and CMS staff, specifically inquiring about the status of treatment for her GID condition. Defendants,

however, continuously delayed in evaluating Plaintiff for GID, failed to provide appropriate medical care, and continue to do so today. Examples of Plaintiff's communications include:

a) On January 5, 2004, Plaintiff submitted a request asking why the Treatment Team was taking so long to come to Orofino and asking whether the medical department knew when they would visit. On January 9, 2004, Plaintiff was informed by Defendant Titus that the December meetings had been cancelled and that she had no further information.

b) Four months later, on May 15, 2004, Plaintiff submitted a request to Defendant Titus asking, "Do you know what the hold up is? It's been Almost a year well 8 months since I started this process." She asked further whether it was appropriate for Plaintiff to shave body hair and pluck eyebrows and stated, "it is very Frustrating. I feel like they are Just Brushing me off."

c) On May 21, 2004, Plaintiff submitted a request asking about the GID Policy Directives, MTC composition and recommendations, informed consent for treatment, and GID services available and stated, "I feel at the End of my 'rope' so to speak. I don't know what to do. I don't like the way I feel! I hate my self. I don't feel I'm being taken serious at all. All I want is help so that I don't have to feel the way I do."

d) Eleven months after her initial request, on August 10, 2004, Plaintiff submitted a request to Defendant Sombke stating "You said that you would talk to me. I would like to know what is going on with my case! I feel like I'm being ignored and I want to know why? I feel like maby [sic] I need to do something drastic to get your attention. Do I have to?"

49. Defendants have been aware of Ms. Spencer's serious medical condition since at least September 2003. Plaintiff repeatedly stated to Defendants, as well as other prison staff and medical providers, that she believed she was a woman trapped in a man's body. Plaintiff

informed Defendant Khatain about having lived as a woman prior to incarceration. Plaintiff informed Defendants Khatain and Sombke about going out numerous times in public dressed as a woman. Plaintiff also presented herself to other inmates as a woman and requested that they refer to her by her now legal name “Jenniffer” or “Jen.” Defendants have also been aware that Plaintiff attempted suicide on August 14, 2004, attempted to castrate herself on October 9, 2005, and actually castrated herself on October 19, 2005.

Standard of Care for Offenders with GID

50. Defendants are required to follow a standard of care for the diagnosis and treatment of offenders with GID. Defendants failed to do so.

51. The Harry Benjamin International Gender Dysphoria Association’s Standards of Care for Gender Identity Disorders (“Standards of Care”) articulate the professional consensus about the psychiatric, psychological, medical, and surgical management of gender identity disorders. According to the Standards of Care, after a diagnosis of GID is made by a competent mental health professional, the therapeutic approach usually includes the administration of hormones of the desired gender and a real-life experience in the desired gender role. Further according to the Standards of Care, cross-sex hormonal treatments are often medically necessary for patients suffering from GID. Not only do they improve the quality of life, but they also limit psychiatric co-morbidity (the development of additional mental disorders), which often accompanies lack of treatment. In some patients, hormonal therapy alone may provide sufficient symptomatic relief to obviate the need for “cross-living.” Defendant IDOC has adopted the Harry Benjamin standards for the diagnosis and treatment of GID.

52. In addition, Defendants failed to follow their own directives for the diagnosis and treatment of offenders with GID. IDOC Directive 401.06.03.501, entitled “Health Care Services for Offenders with Gender Identity Disorder,” governs the “treatment of offenders with [GID]

and shall define the extent and general limits of health care services provided to offenders identified as meeting the criteria for diagnosis of [GID].” Section 05.01.00 of this Directive provides that the “diagnosis of GID will be based on the DSM IV criteria and the Harry Benjamin Standards, and must be assigned and/or approved by the Management and Treatment Committee.” The Directive further provides that the MTC “shall conduct an evaluation of each offender considered and develop and recommend a treatment plan for each offender diagnosed. The treatment plan will be based on a review of any previous diagnosis and treatment, the offender’s current treatment potential and the effects of change in treatment. The treatment plan shall address medical, mental health, placement and personal adjustment needs.”

53. The Directive further provides that MTC is composed of the Medical Services Manager, the chief psychiatrist, the chief psychologist, the facility head (who, upon information and belief, is the warden), and other mental health, human services and security staff. According to this Directive, the MTC may also consult with “a medical specialist in the treatment of offenders with GID (such as an endocrinologist or psychiatrist).”

54. According to the Directive, the MTC “shall forward its recommendation for treatment and placement of offenders with GID to the Administrative Review Committee” (“ARC”). The ARC shall review the recommendation of the MTC, and “may, at its discretion, consult a medical specialist in the treatment of persons with Gender Identity Disorder, such as an endocrinologist or psychiatrist.” The ARC then shall “submit its recommendation for placement, together with the recommendation of the [MTC], to the Director, who shall have final authority for placement.”

55. At no time did Defendants actually comply with the requirements of their own directives or the Harry Benjamin standards adopted by Defendant IDOC.

Plaintiff Ms. Spencer Receives Inadequate Treatment

56. Despite their knowledge of Plaintiff's serious medical condition and Plaintiff's requests for diagnosis and treatment, Defendants failed to provide medical care for her GID condition. Examples of Defendants' knowledge of Plaintiff's serious medical condition and their deliberate failure to provide medical care despite repeated signs of GID include:

(a) Plaintiff was hospitalized at Intermountain Hospital in Boise prior to incarceration, for mutilation of her genitals. Not only were Defendants aware of this hospitalization, but Defendant Kruzich, who treated Plaintiff at Intermountain Hospital, also saw Plaintiff for GID at ICIO.

(b) On September 26, 2003, Plaintiff's file was reviewed by Edward Cheeney, M.S., a clinician at ICIO, for indications of GID. Defendant Cheeney summarized his findings in a one-paragraph medical memo, in which he stated that he found no indication of GID.

(c) On September 30, 2003, Plaintiff requested to be seen regarding a list of 19 detailed questions relating to GID. Plaintiff was seen by Defendant Titus who could not answer many of the questions, but instead educated Plaintiff on how a person develops values.

(d) On January 27, 2004, Plaintiff was seen by Dr. Flerchinger at ICIO regarding GID. Defendant Flerchinger noted that Plaintiff had "felt like this for a long time," had always been treated like her sisters, feels like a woman, in dreams is a woman, and felt normal when dressed in female clothing. Defendant Flerchinger concluded that Plaintiff was confused but not convincing regarding GID, and thus did not meet the criteria for GID. Defendant Flerchinger further concurred with Defendant Cheeney's memorandum of September 26, 2003.

(e) On July 20, 2004, Defendant Khatain examined Plaintiff for GID. In a memorandum summarizing his conclusions, Defendant Khatain stated that "[t]here were definite

references throughout [Plaintiff's] chart over the last few years . . . that he feels that he is a woman and would like to have his sex changed surgically etc.” He further stated that Plaintiff “stated ‘I feel like I am a woman trapped in a man’s body.’” Dr. Khatain concluded that it was “unclear if he does or does not fulfill criteria for a gender identity disorder.” He further concluded that “there are no other current disorders.”

(f) On August 11, 2004, in response to Plaintiff's request inquiring about the status of her case, Defendant Sombke informed Plaintiff that she would be going back to ICIO. Three days later, Plaintiff attempted suicide by hanging. In a “Mental Health Services Crisis Intervention” report regarding the suicide attempt, Defendant Sombke notes that Plaintiff “was just told he does not have GID and will be returned to ICIO.”

(g) On August 17, 2004, Defendant Khatain examined Plaintiff regarding the suicide attempt. Despite his conclusion only a month earlier that Plaintiff had no current disorders, Defendant Khatain diagnosed Plaintiff with bipolar disorder and placed Plaintiff on Lithium, a mood stabilizer. On November 3, 2004, Defendant Khatain noted in a psychiatric consultation report that Plaintiff was doing well on Lithium and “is no longer fixated on the gender issue.” Defendant Khatain misdiagnosed Ms. Spencer and failed to treat the underlying GID.

(h) On October 9, 2005, Plaintiff ingested 30 Tylenol tablets and attempted to castrate herself by making an incision in the scrotum with a razor blade. Plaintiff was placed on suicide watch, and was asked to and did sign a “Suicide Contract” agreeing not to make any further suicide attempts, gestures, or threats. On October 10, 2005, Dorothy Brandt, a clinician at ICIO, met with Plaintiff regarding the suicide attempt. During the interview, Plaintiff stated that the reason she was depressed was due to the lack of treatment for her GID condition. Ms.

Brandt did not respond or discuss the GID issue with Plaintiff. In her report, Ms. Brandt noted that Plaintiff was back on her medication, and that she appeared to be at a lower risk for suicide. According to the report, she educated Plaintiff on “normalizing being depressed to a certain degree on his birthday,” and discussed education therapy groups with Plaintiff. The report lacks any reference to Plaintiff’s GID issues.

(i) On October 19, 2005, Plaintiff castrated herself using a razor blade, and flushed her testicles down the toilet. She left a note regarding the incident stating: “I cut my genitals off do [sic] to the fact that I am a transgender individual and I could stand the sight of them no more. This is not a suicide attempt. This is simply a way for me to remmady [sic] my problem.” Plaintiff also explained her intention on the day of the incident. When asked why she had caused pain to herself, Plaintiff responded that it was much more painful to live as a transgender.

(j) On November 8, 2005, Plaintiff met with Defendant Khatain for a psychiatric assessment. Defendant Khatain noted in his report that Plaintiff was recently sent to IMSI after self-castration, and was being seen “primarily to assess his mood status.” He indicated a diagnosis of bipolar disorder, and noted that plaintiff was “stable on current medications.” Again, Defendant Khatain misdiagnosed Ms. Spencer and failed to treat the underlying GID.

(k) On January 11, 2006, Plaintiff was seen by the “Interdisciplinary Treatment Committee,” which upon information and belief, consisted of Defendant Perrien, D. Mitchell, M. Shaw, M. Johnson (a deputy warden at IMSI), and M. Crimson, a clinician at IMSI. Upon information and belief, the “Interdisciplinary Treatment Team” is not a treatment team for the management and treatment of inmates with GID pursuant to IDOC policy. On the contrary,

the memorandum issued as a result of this examination is merely a boilerplate form in which five generic categories of information are “checked.” The memorandum is silent as to whether the “Interdisciplinary Treatment Team” reviewed Plaintiff’s current level of care to ensure appropriate care, or whether the team developed a treatment plan for Plaintiff.

(l) On March 3, 2006, Plaintiff was seen by Dr. Richard Christensen, an endocrinologist, regarding treatment in connection with the lack of hormones resulting from Plaintiff’s self-castration. Dr. Christensen diagnosed Plaintiff with “male hypogonadism,” and noted beard growth, hot flashes, temperature intolerance, decreased libido, and sleep disturbance. Dr. Christensen further noted the risks of untreated hypogonadism, including osteoporosis, muscle mass loss, fat mass increase, and metabolic change.

(m) On August 3, 2006, Plaintiff was seen by Defendant Green, who offered Plaintiff testosterone treatment. Plaintiff refused testosterone treatment, and informed Dr. Green that she had castrated herself to eliminate testosterone in her body and that estrogen was the only appropriate hormonal therapy for her condition. On October 13, 2006, Dr. Green again offered Plaintiff testosterone, which Plaintiff again refused. Despite the dangers associated with a failure to treat hypogonadism, Defendants have not offered any hormonal therapy to Ms. Spencer other than testosterone.

(n) On September 19, 2006, in response to a request inquiring about treatment for her GID condition, Defendant Green informed Plaintiff that her treatment consists of “attend[ing] groups as allowed or as available.” Rather than providing Plaintiff with an appropriate treatment plan for her condition, Defendant Green instructed Plaintiff to “[p]lease continue with your art.”

FIRST CAUSE OF ACTION

*Against All Defendants in Their Individual and Official Capacities
Violation of the Eighth Amendment of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Cruel and Unusual Punishment — Inadequate Medical Care)*

57. Plaintiff incorporates paragraphs 1 through 56 above.

58. Plaintiff is a biological male who suffers from Gender Identity Disorder (“GID”), also known as gender dysphoria or transsexualism. Plaintiff has been incarcerated at IDOC since May 2000. As a result of her GID, Plaintiff castrated herself in October 2005.

59. Even after Plaintiff’s self-castration, Defendants continued to refuse to diagnose Plaintiff with GID or treat her for her GID symptoms. As a result, Plaintiff continues to suffer emotionally and physically due to her GID condition. Defendants’ refusal to provide Plaintiff with female hormones after her self-castration has caused Plaintiff to lack adequate levels of sex hormones.

60. The only treatment offered by Defendants (specifically, Defendants Sombke, Khatain and Green) is testosterone. Plaintiff, however, has consistently refused testosterone and has clearly indicated to Defendants that in view of her GID condition, the only hormone she should be receiving is estrogen. Plaintiff expresses no regret for her self-castration, enjoys the changes in her body, and is much happier now that she has taken action to treat herself for her disorder.

61. Medical professionals with expertise in the diagnosis and treatment of GID agree that testosterone treatment is psychiatrically inappropriate and potentially dangerous for persons with GID who have self-eliminated their testosterone production via castration. Male sex hormones are likely to increase gender dysphoric symptoms, leading to depression, irritability, overall diminished mental health, and possibly overt suicidality. In such patients, treatment with

feminizing hormones such as estrogen meets both the physical and the psychiatric needs for sex hormone replacement. Therapy with estrogen will minimize the effects of hypogonadism (for example, by reducing the risk of osteoporosis) while at the same time stabilizing psychological functioning.

62. None of the Defendants is qualified to diagnose or treat GID. None of the Defendants has an expertise in the diagnosis or treatment of GID. None of the Defendants has ever provided Plaintiff with access to a mental health or medical provider (other than Plaintiff's medical experts) who is competent and qualified to diagnose and/or treat GID.

63. The IDOC Management and Treatment Committee never convened to evaluate Plaintiff for GID despite her repeated requests for diagnosis and treatment, even after her self-castration. Defendant Haas did not convene the MTC to evaluate Plaintiff because he felt that there were no issues to discuss concerning a treatment plan for GID or specialized housing needs associated with GID.

64. Defendants Haas, Fisher, Hardison, Sombke, Khatain, Perrien, and Green were members of the Management and Treatment Committee at all material times. Upon information and belief, none of the Defendants has any relevant experience or expertise in GID diagnosis or treatment. None of the members of the Management and Treatment Committee has any particular experience or expertise in diagnosing or treating individuals with GID. None of the Defendants employs any personnel with relevant experience or expertise in GID diagnosis or treatment, nor have Defendants ever referred an IDOC inmate to a GID specialist for diagnosis or treatment.

65. The acts or omissions complained of herein were undertaken by Defendants with deliberate indifference to Plaintiff's serious medical needs. Defendants intentionally denied,

delayed, and interfered with Plaintiff's attempts to obtain appropriate medical treatment. In particular, Defendants acted with deliberate indifference to Plaintiff's health and safety by their delay in evaluating and treating Plaintiff for GID, their lack of competence in diagnosing and treating Plaintiff's condition and their failure to do so, and their ongoing failure to address Plaintiff's serious medical needs.

66. Plaintiff's GID condition qualifies as a serious medical need because a reasonable doctor or patient would find it important and worthy of comment or treatment.

67. Plaintiff's GID condition qualifies as a serious medical need because the presence of GID significantly affects an individual's daily activities.

68. Plaintiff's GID condition qualifies as a serious medical need because the failure to treat this condition can result in further significant injury and in the unnecessary and wanton infliction of pain.

69. Plaintiff's medical condition poses a substantial risk of serious harm, which risk and harm Defendants have been aware of and disregarded. To the extent any treatment was provided, the chosen course of treatment was medically unacceptable under the circumstances. Thus, Defendants have acted with deliberate indifference to the serious risks posed by Plaintiff's medical condition.

70. Each of the Defendants acted under color of state law as to the matters set forth herein. All of the acts or omissions complained of herein are the result of specific decisions, official policies, and customs of Defendants. Each of the Defendants knows of and is responsible for the acts and omissions set forth herein.

71. Defendants have a duty to provide adequate medical care to Plaintiff and other state prisoners.

72. Defendants' acts and omissions complained of herein amount to deliberate indifference to Plaintiff's serious medical needs and therefore constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution as incorporated by the Fourteenth Amendment.

73. Defendants' acts and omissions complained of herein have caused Plaintiff to suffer economic and non-economic damages in an amount to be determined at trial.

74. Plaintiff also seeks a judgment declaring that the acts and omissions complained of herein are prohibited by the Eighth Amendment of the United States Constitution and 42 U.S.C. § 1983 and seeks the injunctive relief set forth in the prayer for relief.

SECOND CAUSE OF ACTION

*Against All Defendants in Their Individual and Official Capacities
Violation of the Eighth Amendment of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Cruel and Unusual Punishment — Inadequate Medical Care)*

75. Plaintiff incorporates paragraphs 1 through 74 above.

76. The Board of Corrections is responsible pursuant to Idaho Code Section 20-209 for the control, direction and management of correctional facilities and for the provision of care and maintenance for all prisoners in state custody. Additionally, the Board of Corrections is responsible pursuant to Idaho Code Section 20-214 for the training, employment, and fixing of duties for all assistants, officers and other persons necessary for the proper and efficient administration of the Idaho Department of Corrections.

77. Pursuant to Idaho Code Section 20-212, the Board of Corrections may adopt, repeal, suspend or amend such rules as it deems necessary to the efficient management and control of the functions under the Board of Corrections' authority and all properties used in

connection therewith. These rules have the force and effect of law and shall have precedence over policy and procedure statements, division directives or field memoranda.

78. According to IDOC Policy Number 401, entitled "Hospitalization, Institutional Clinical Services and Treatment," the Director serves as the chief administrative officer and business management authority for the Idaho Department of Corrections. The Director may, at his discretion, designate and assign an administrator to oversee IDOC's medical services. Moreover, according to IDOC Directive 401.06.03.501, the Director reviews the recommendations of the MTC and the ARC, and "shall have final authority for placement" of inmates with GID.

79. According to IDOC Policy Number 401, the Medical Services Manager shall act as the Department Health Authority, as approved by the Director. Along with the Director, the Medical Services Manager is responsible for the establishment of written health care standards for IDOC's facilities. In addition, upon information and belief, the Medical Services Manager serves on the MTC.

80. Upon information and belief the warden at each IDOC facility serves as the facility head. The facility head is the person with primary responsibility to oversee, manage or operate an IDOC facility. In addition, upon information and belief, the facility head serves on the MTC.

81. Upon information and belief, Defendants Titus, Kruzich, Flerchinger, Cheeney, Khatain, Sombke, Perrien and Green have provided or currently provide medical services to IDOC inmates (including Plaintiff), either under contract as employees of PHS and/or CMS or employed directly by IDOC. Upon information and belief, none of Defendants Titus, Kruzich, Flerchinger, Cheeney, Khatain, Sombke, Perrien or Green has any particular experience or

expertise in diagnosing or treating individuals with GID. Upon information and belief, none of the medical care providers directly employed by IDOC, or employed by PHS and/or CMS and under contract with IDOC, has any particular experience or expertise in diagnosing or treating individuals with GID.

82. As part of their supervisory duties, Defendants know or must have known that medical care providers providing services to prisoners in IDOC custody are not qualified to diagnose or treat GID. Defendants also know or must have known of a custom, practice or usage of interfering with, or providing delayed and/or inadequate medical care to prisoners, particularly mental health care and more particularly treatment for GID, and therefore created a custom, practice or usage of delivery of constitutionally inadequate medical care to prisoners.

83. Defendants failed to provide adequate recruitment, retention, supervision and discipline policies relating to the delivery of medical care to prisoners, thereby creating within IDOC a custom or practice of tolerance toward the delivery of constitutionally inadequate medical care, in particular, as related to the diagnosis or treatment of GID.

84. Defendants' aforementioned actions and omissions constituted a state policy, custom or persistent practice, which actions and omissions amounted to deliberate indifference to the constitutional rights of Plaintiff and other prisoners.

85. Each of the Defendants acted under color of state law as to the matters set forth herein. All of the acts or omissions complained of herein are the result of specific decisions, official policies, and customs of Defendants. Each of the Defendants knows of and is responsible for the acts and omissions set forth herein.

86. Defendants have a duty to provide adequate medical care to Plaintiff and other state prisoners.

87. Defendants' acts and omissions complained of herein amount to deliberate indifference to Plaintiff's serious medical needs and therefore constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution as incorporated by the Fourteenth Amendment.

88. Defendants' acts and omissions complained of herein have caused Plaintiff to suffer economic and non-economic damages in an amount to be determined at trial.

89. Plaintiff also seeks a judgment declaring that the acts and omissions complained of herein are prohibited by the Eighth Amendment of the United States Constitution and 42 U.S.C. § 1983 and seeks the injunctive relief set forth in the prayer for relief.

THIRD CAUSE OF ACTION

*Against All Defendants in Their Individual and Official Capacities
Violation of the Fourteenth Amendment of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Equal Protection)*

90. Plaintiff incorporates paragraphs 1 through 89 above.

91. IDOC's policies require that mentally disordered inmates incarcerated at IDOC's prison facilities, including IMSI, be provided with appropriate medical and psychiatric care by Defendants. For example, IDOC Directive 401.06.03.035, entitled "Mental Health Care/Evaluation and Assessment," provides that "[m]entally disordered and developmentally disabled inmates must be identified and their treatment needs addressed as soon as possible. Those inmates who require acute mental health services beyond those available at the prison will be transferred to an appropriate facility which may include a facility in the community."

92. Upon information and belief, inmates with mental disorders other than GID are diagnosed and treated by Defendants according to IDOC Directive 401.06.03.035, regardless of whether they were diagnosed or treated with those mental disorders before incarceration.

93. IDOC inmates such as Plaintiff who suffer from GID are not provided with medical care that is appropriate for their condition. Inmates such as Plaintiff who suffer from GID require acute mental health services beyond those currently made available at IDOC. IDOC inmates such as Plaintiff who suffer from GID are not transferred to an appropriate facility for proper diagnosis and treatment. Inmates with GID who were not diagnosed or treated for GID prior to incarceration are refused appropriate diagnosis and treatment by Defendants.

94. Plaintiff was not diagnosed with or treated for GID prior to incarceration. Defendants have refused to diagnose Plaintiff with GID or to provide Plaintiff with appropriate treatment for GID.

95. Defendants have intentionally discriminated against Plaintiff because of her membership in a suspect class, namely, the class of inmates with GID. Defendants discriminate against inmates with GID, including against Plaintiff, by providing them inferior medical care as compared to medical care provided to inmates having mental health disorders other than GID.

96. Defendants have no rational basis in a legitimate governmental interest for intentionally discriminating against Plaintiff because of her status as an inmate with GID. Defendants' policy and the implementation of that policy represent an absolute ban on appropriate medical treatment for those inmates who were not already diagnosed with GID and receiving treatment before incarceration, and the policy provides no exceptions to this ban regardless of the seriousness of an inmate's GID problems. For example, prison personnel have stated in writing that "[w]e do not give out estrogen. This is a male prison."

97. Each of the Defendants acted under color of state law as to the matters set forth herein. All of the acts or omissions complained of herein are the result of specific decisions,

official policies, or customs of Defendants. Each of the Defendants knows of and is responsible for the acts or omissions set forth herein.

98. Defendants' acts and omissions complained of herein amount to a denial of Equal Protection by discriminating against inmates with GID, such as Plaintiff, without any rational basis.

99. Defendants' acts and omissions complained of herein have caused Plaintiff to suffer economic and non-economic damages in an amount to be determined at trial.

100. Plaintiff also seeks a judgment declaring that the acts and omissions complained of herein are prohibited by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 and seeks the injunctive relief set forth in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

a) An Order requiring that Defendants provide to Plaintiff, within 14 days of the Order, (1) treatment with feminizing hormones, and (2) psychological counseling by a mental health professional with substantial training and experience in the diagnosis and treatment of persons with GID, which treatment and counseling shall continue throughout Plaintiff's incarceration in the Idaho Department of Corrections system;

b) An Order appointing a medical or mental health professional with experience in the diagnosis and/or treatment of persons with GID to serve as a member of the Management and Treatment Committee for a minimum of one year, to ensure the proper implementation of the Court's order in (a) above as well as IDOC Directive Nos. 401.06.03.501, regarding the health

STATE OF IDAHO)
) ss.
County of Ada)

I, Randall Jason Gammett (aka Jenniffer Ann Spencer), being first duly sworn on oath depose and say that I am the Plaintiff in the above-entitled case, that I have read the within and foregoing Complaint, that I know the contents thereof and that upon information and belief the facts herein stated are true and correct.

Handwritten signature of Randall Jason Gammett (aka Jenniffer Ann Spencer)
Randall Jason Gammett (aka Jenniffer Ann Spencer)

Subscribed and sworn before me this 29th day of November, 2006.

Handwritten signature of Sheryl L. Musgrove
Notary Public for the State of Idaho

Residing at Boise, ID

My Commission Expires 12/22/11



