

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

Civil Action No. 16-cv-01717-MSK-STV

BILLY J. RADAN aka “Ms. JAYDE MOONSHADOW,”

Plaintiff,

v.

RICK RAEMISCH in his official capacity; and  
DARREN LISH in his official capacity,

Defendants.

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**THIRD AMENDED COMPLAINT**

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Plaintiff Ms. Jayde MoonShadow (aka Ms. Billy Radan)<sup>1</sup>, by and through counsel, hereby brings the following Third Amended Complaint asserting that Colorado Department of Corrections (“CDOC”), through its agents, continue to violate Ms. MoonShadow’s rights under the Eighth Amendment and Fourteenth Amendment, and justify their actions by relying on unconstitutional policies.

**INTRODUCTION**

1. Ms. MoonShadow is a woman living in a men’s prison. Because of this, she is on constant alert that she is different from those around her. Ms. MoonShadow, however, cannot and will not hide her gender identity. After years of living “in the closet” and conforming to

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<sup>1</sup> Ms. MoonShadow is a male-to-female transgender woman. Her legal name is Billy John Radan. She prefers to be called Jayde MoonShadow and is in the process of legally changing her name. Throughout this complaint, and this legal proceeding, Plaintiff will be referred to as Ms. MoonShadow.

traditional gender norms — to avoid judgment, discrimination, and most frighteningly, physical danger — Ms. MoonShadow confided in CDOC staff about her gender identity and was diagnosed with Gender Identity Disorder (GID). Now diagnosed, Ms. MoonShadow is treated with a regime of hormones that causes physical feminization. Since being diagnosed with GID and prescribed hormones, Ms. MoonShadow has experienced some relief. However, that relief is stunted by CDOC’s staunch refusal to treat any of Ms. MoonShadow’s continuing and persistent symptoms of GID, which cause her severe physical and psychological anguish.

2. As a male-to-female transgender prisoner in a male prison, Ms. MoonShadow faces an uphill battle each day. Each day Ms. MoonShadow is reminded that she is trapped in the wrong body. She experiences constant, chronic pain from her growing breasts. Additionally, she must remain on guard at each moment for objectification, abuse, and violence.

3. Ms. MoonShadow has three simple requests: (1) that CDOC amend the policy that prohibits transgender prisoners from wearing clothing consistent with their biological characteristics in order to provide Ms. MoonShadow with appropriate undergarments, (2) that CDOC amend its policy which prohibits any further treatment for GID beyond the use of hormones, in order to provide Ms. MoonShadow with electrolysis, sex reassignment surgery, and facial feminization, and (3) that CDOC treat Ms. MoonShadow equal to cisgender female prisoners.

4. Providing Ms. MoonShadow with a bra, female underwear, electrolysis, sex reassignment surgery, and facial feminization will treat her psychological and physical suffering caused by not having these forms of treatment for her diagnosed GID. Providing Ms. MoonShadow with the aforementioned bra and female underwear will partially ensure that she is

not treated differently than other women incarcerated in CDOC prisons, simply on the basis that CDOC chooses to remain uninformed about proper treatment of transgender prisoner.

### **JURISDICTION AND VENUE**

5. This action arises under the Constitution and laws of the United States and is brought pursuant to 42 U.S.C. § 1983.

6. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. Jurisdiction supporting Plaintiffs' claim for attorneys' fees and costs is conferred by 42 U.S.C. § 1988.

7. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado, and all of the parties were residents of the State of Colorado at the time of the events giving rise to this litigation.

### **PARTIES**

#### **Plaintiff**

8. Ms. Jayde MoonShadow is a citizen of the United States and a resident of the State of Colorado. She resides in Sterling Correctional Facility, in Sterling, Colorado. This is a CDOC prison.

#### **Defendants:**

9. At all times relevant to the subject matter of this litigation, Defendant Raemisch was a citizen of the United States and a resident of the State of Colorado. At all relevant times, Defendant Raemisch was acting under color of state law in his capacity as Executive Director of the Colorado Department of Corrections. In this capacity, Defendant Raemisch had executive oversight of all functions of CDOC policies and compliance with said policies. Defendant

Raemisch oversees all CDOC prisons and ensures the safety and security of CDOC, including the development and approval of CDOC policies and procedures. Defendant Raemisch is sued in his official capacity.

10. At all times relevant to the subject matter of this litigation, Defendant Lish was a citizen of the United States and a resident of the State of Colorado. At all relevant times, Defendant Lish was acting under color of state law in his capacity as Chief of Psychiatry for the Colorado Department of Corrections. Defendant Lish is sued in his official capacity.

## FACTUAL ALLEGATIONS

### A. Relevant Background Information: Transgender Identity, Ms. MoonShadow, and CDOC Policies, Procedures, and Practices

#### a. *Transgender Identity*

11. A person who identifies as transgender does not identify with the sex he or she was assigned at birth, which is typically determined only by external, physical genitalia.

12. People who do identify with the gender they were assigned at birth are “cisgender.”

13. CDOC considers transgender individuals who exhibit psychological symptoms related to their identity to have “gender dysphoria” or “gender identity disorder.” Both names refer to the official diagnosis by psychologists and physicians for people who identify with a different gender than they were assigned at birth.<sup>2</sup>

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<sup>2</sup> “Gender Identity Disorder” is no longer the accepted nomenclature among medical professionals working with this population. “Gender dysphoria,” which reflects the fact that transgender people are not inherently “disordered,” is now the accepted diagnostic term. The two terms are equivalent, and Ms. MoonShadow will use “gender dysphoria” in place of “Gender Identity Disorder” in all future filings.

14. This diagnosis speaks to the physical and psychological pain and suffering transgender people experience *because of* their gender identity, which includes the constant battle against society’s misunderstanding and their attempts to conform their bodies to their identities, rather than the process of identifying as transgender in itself.

15. There is nothing inherently wrong with identifying as a different gender than that assigned at birth, and it is a fairly common and normal phenomenon. However, transgender people seek medical treatment to help them live in a world and a physical body that is in direct conflict with their identities.

16. For Ms. MoonShadow, living in a male prison, surrounded by prisoners and CDOC staff who refer to her as a man and as “Billy Radan” (rather than the name and pronoun with which she identifies), being deprived clothing that supports her body and affirms her gender identity, and being forced to live with significant facial and body hair and a masculine appearance that does not match her gender identity, among other things, causes her physical pain and severe psychological distress.

*b. Ms. MoonShadow*

17. Ms. MoonShadow is a thirty-five-year-old male-to-female transgender individual. This means, in part, Ms. MoonShadow was assigned “male” at birth but identifies as female.

18. Ms. MoonShadow spent much of her life presenting as a straight male, even though she did not identify that way. Growing up in a conservative Roman Catholic family, being gender non-conforming or transgender was flatly unacceptable to many of those around her.

19. Ms. MoonShadow learned this lesson at a young age. When Ms. MoonShadow was just three years old, she tried on her sister’s Sunday School dress. In response, her father physically

and verbally assaulted her, sending a strong message that Ms. MoonShadow's identity was "wrong."

20. It was not until her teenage years and early adulthood that Ms. MoonShadow began her process to transition from her outward male appearance to a female identity. She did so slowly, exploring different options before learning about transgender identity and realizing that it explained how she had always felt.

21. When Ms. MoonShadow first told her family that she was exploring different gender identities and sexual orientations, some members of her family refused to talk to her for an entire year.

22. In her early twenties, Ms. MoonShadow started officially identifying as transgender and taking steps to align her physical appearance with her gender identity by wearing make-up, waxing, and growing out her hair.

23. When Ms. MoonShadow was first incarcerated within CDOC in 2004, where she has resided ever since, she was devastated when prison officials told her she had to cut her hair. She first refused to do so, even spending three days in segregation before prison officials forced her to cut her hair off.

24. Ms. MoonShadow felt an immediate loss of her female identity, which she was just beginning to create and explore.

25. The transition to life in prison also meant Ms. MoonShadow could no longer wax her body hair or wear make-up — two things that are very important to her identity as a woman. Since then, Ms. MoonShadow has constantly struggled to maintain her identity in an environment that actively suppresses it.

26. While Ms. MoonShadow is now able to grow her hair out and shave her body, living in a male prison severely limits how she may express herself and live as a woman.

27. Because of this, Ms. MoonShadow suffered and continues to suffer severe psychological and emotional distress.

*c. CDOC's Inadequate Policies and Practices*

*i. Scope of Treatment Policy*

28. All prisons within CDOC must follow policies created by CDOC officials. These policies are called Administrative Regulations or ARs.

29. CDOC has hundreds of Administrative Regulations that govern the procedures and practices of its prisons.

30. Defendant Raemisch, as the Executive Director of CDOC, reviews and signs these Administrative Regulations. He is, to some extent, responsible for ensuring implementation of these regulations within CDOC prisons. He also has the power to change or amend these regulations.

31. Most of the Administrative Regulations governing CDOC consider only cisgender males and females. Thus, transgender individuals incarcerated within CDOC are often forced to adhere to policies that do not consider their gender identity.

32. CDOC has one policy, out of its hundreds, that addresses transgender individuals specifically. The policy, AR 700-14 (Scope of Services for the Treatment of Gender Dysphoria), discusses the medical treatment available for prisoners with GID.

33. Defendant Raemisch signed this policy and is, to some extent, responsible for ensuring its implementation.<sup>3</sup>

34. Up until April 1, 2017, this policy made no mention of clothing offered specifically for transgender people.

35. On April 1, 2017, days after Ms. MoonShadow submitted her response to Defendants' Motion to Dismiss (Doc. 66) arguing for a bra, CDOC released an amended policy that allowed for a "chest support undergarment"<sup>4</sup> for male-to-female transgender prisoners.

36. This change in the policy occurred years after Ms. MoonShadow began filing administrative grievances seeking access to bras, and years after she had been pleading with CDOC medical staff for bras. The policy change occurred months after Ms. MoonShadow filed this lawsuit *pro se* seeking the same.

37. At the time, Ms. MoonShadow's understanding of this garment was that it was a compression shirt or binding vest.

38. While Ms. MoonShadow was at Limon Correctional Facility, CDOC staff member Ms. Vargas told Ms. MoonShadow that CDOC was working on getting her a compression shirt.

39. At Sterling, CDOC staff members Landers (first name unknown) and Michelle Wingert told Ms. MoonShadow that the "chest support undergarment" is a compression shirt.

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<sup>3</sup> Defendant Lish's position in relation to this policy is described below in Section A(c). Because of his position on the Gender Dysphoria Management and Treatment Committee (GID Committee), upon information and belief, he also is, to some extent, responsible for ensuring this policy's implementation as well as has some influence and authority over the context of the policy itself.

<sup>4</sup> In CDOC's amended AR 700-14, it referred to these garments as "chest support undergarments," which, upon information and belief, referred to compression shirts. CDOC subsequently provided Ms. MoonShadow with garments that are essentially sports bras, but currently lists these items as "chest cover garments" on Ms. MoonShadow's property list.

40. A compression shirt is not a bra.

41. CDOC's discussion of a "chest support undergarment" in its scope of treatment policy demonstrates CDOC's understanding that a clothing garment for breasts is medically necessary for transgender women with breasts.

42. In addition to a "chest support undergarment," the scope of treatment policy also limits the scope of GID treatment for all transgender prisoners to hormone treatment.

43. Upon information and belief, this policy is the only CDOC policy that expressly limits the scope of treatment for a specific, diagnosable condition.

44. The policy states that hormone therapy will be permitted when medically necessary, but that "cosmetic or elective surgical procedures" are prohibited.

45. The policy does not define "cosmetic or elective."

46. CDOC officials have told Ms. MoonShadow on many occasions that hormone therapy is the only treatment offered for GID.

47. Because CDOC refuses to provide any treatment for GID other than hormones or, since very recently, "chest cover garments," CDOC apparently considers any further treatment to be "cosmetic or elective."

48. Upon information and belief, no competent medical specialist in the treatment of transgender medical care helped craft this definition and understanding of "cosmetic or elective."

49. CDOC's definition and understanding of "cosmetic or elective," which includes every treatment besides hormones, contradicts the standards of care that govern transgender medical treatment. According to the World Professional Association for Transgender Health's Standards of Care (Standards of Care), treatment such as sex reassignment surgery, electrolysis,

and gender-affirming clothing may all be considered medically necessary depending on the specific individual. Additionally, the Standards of Care include facial feminization as a surgical treatment option for male-to-female patients.

50. In addition, community standards of care for all medical care (not just transgender medical care) require medical professionals to make diagnoses and treatment determinations based on individualized assessments using sound medical judgment.

51. CDOC does not make treatment determinations for transgender prisoners diagnosed with GID based on individualized assessments using sound medical judgment because its policy requires that it deny every single transgender prisoner every treatment besides hormones or, until very recently, “chest cover garments.”

52. This means that no matter a transgender prisoner’s level of psychological distress, physical pain, background, or other unique circumstances, CDOC will not provide them medical treatment for their GID beyond hormones.

53. Therefore, CDOC contradicts general community standards of medical care by denying various forms of treatment through a blanket ban without individualized determinations based on sound medical judgment.

54. The scope of treatment policy also states, “[t]he correctional environment is a relative contraindication to the initiation of sex reassignment therapy.”

55. However, the correctional environment is not a justification for denying transgender prisoners treatment. The Standards of Care specifically state that incarceration should not impede an individual’s access to care. Instead, it should mirror the treatment available to them if they were living in a non-institutional setting within the same community.

56. Thus, while the scope of treatment policy at least considers transgender prisoners, it does so only to ensure that CDOC may deny them all medical treatment besides hormones.

ii. Clothing Policy

57. AR 850-11, Offender Clothing and Bedding Issue, Dress Code, Hygiene, and Grooming policy (clothing policy), provides that prisoners be allowed clothing items in accordance with the prison in which they reside, which is determined by natal sex.<sup>5</sup>

58. AR 850-11A, attached to AR 850-11, represents a clothing card CDOC issues to all prisoners and indicates which specific items of clothing are authorized for each prisoner.

59. The card distinguishes clothing items by the labels “male” and “female.”

60. The bra, which is issued in traditional clasp or sports bra, is marked “N/A” for male prisoners.

61. CDOC issues cisgender female prisoners five bras.

62. The clothing policy provides no definition for the consistently repeated terms: male and female.

63. The clothing policy makes no mention of transgender prisoners.

64. Defendant Raemisch reviewed and signed the clothing policy and is, to some extent, responsible for ensuring its implementation.

65. This policy works fine for cisgender individuals: they are issued an appropriate number of undergarments in accordance with their biological sex.

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<sup>5</sup> This policy does not specifically state that clothing is assigned based on gender; however, in responses to Ms. MoonShadow’s grievances on the issue, CDOC interpreted this policy with the scope of treatment policy, which said that prisoners will be placed in institutions based on their natal sex. *See* AR 700-14, effective July 1, 2016. CDOC amended the scope of treatment policy on April 1, 2017.

66. However, the clothing policy causes a potential problem for every transgender individual incarcerated within CDOC because it fails to consider the changing biologics and physical characteristics of a prisoner diagnosed with GID and treated with hormones.

iii. Practices

67. CDOC's day-to-day actions and practices also fall short of the care Ms. MoonShadow needs to treat her serious medical conditions.

68. Ms. MoonShadow is a female. She is no less female simply because she was assigned male at birth.

69. In addition, CDOC prescribed Ms. MoonShadow feminizing hormones, which she has been taking for over two years. This treatment has slowly eliminated (and continues to eliminate) the function of Ms. MoonShadow's male reproductive organs.

70. Yet, CDOC officials continue to repeatedly refer to Ms. MoonShadow as "he," rather than the pronouns that match her gender identity.

71. In addition, based on Ms. MoonShadow's interactions with various CDOC medical professionals and mental health staff, CDOC has failed to staff the prisons in which it confines Ms. MoonShadow with individuals with knowledge or expertise in transgender medical and mental health care.

72. While there are some CDOC mental health staff members who attempt to help Ms. MoonShadow, upon information and belief, none of them have expertise in transgender issues.

73. Some CDOC mental health staff members have even told Ms. MoonShadow that they do not know anything about how to help her, given that many of her psychological issues stem from her transgender identity.

74. Thus, CDOC's policies and practices inform and underlie CDOC's inadequate and unconstitutional treatment of Ms. MoonShadow.

*d. The Gender Dysphoria Management and Treatment Committee*

75. The Gender Dysphoria Management and Treatment Committee (GID Committee) handles the treatment of individuals diagnosed with GID who are incarcerated in CDOC.

76. The GID Committee consists of the Chief Medical Doctor, the Chief Psychiatrist, the Chief of Behavioral Health Services, and the Mental Health Services Program Administrator.

77. Defendant Darren Lish is the Chief Psychiatrist on the GID Committee.

78. Susan Tiona is the Chief Medical Doctor on the GID Committee.

79. The scope of treatment policy states that a non-CDOC medical professional who specializes in transgender medical care may be retained as a consultant for the GID Committee for specific cases.

80. Upon referral by a CDOC medical professional, the GID Committee evaluates the prisoner's case and works with a psychiatrist at the prison who diagnoses the prisoner with GID, if applicable.

81. The GID Committee then considers and approves a treatment plan for any person whom a psychiatrist has diagnosed with GID.

82. According to the scope of treatment policy, "The treatment plan will be based on a review of any previous diagnoses and treatment, the offender's current treatment potential, and the

effects of change in treatment. This treatment plan will address medical, mental health, and personal adjustment needs.”

83. In reality, as described above, the GID Committee is in the business of prescribing hormones — and only hormones — for the treatment of GID.

84. By prescribing only hormones, the GID Committee determines by default that hormones and hormones alone meet the needs of *any* individual with GID without ever assessing the unique needs of that specific individual and determining treatment based on sound medical judgment after individualized evaluation.

**B. Ms. MoonShadow’s Inadequate Medical Care While Incarcerated Within CDOC**

*a. Ms. MoonShadow’s Diagnosis and Hormone Treatment*

85. In August 2014, while Ms. MoonShadow was incarcerated at Buena Vista Correctional Facility, a CDOC medical clinician, Janelle Jones, referred Ms. MoonShadow to the GID Committee because of psychological distress Ms. MoonShadow experienced due to her transgender identity.

86. That same month, Wendy Bresee spoke with Mr. MoonShadow over a video conference at what was presumably part of an evaluation by the GID Committee.

87. Ms. Bresee mentioned to Ms. MoonShadow that Ms. MoonShadow may have GID issues. Ms. MoonShadow was not officially diagnosed with GID at that time.

88. In April 2015, Ms. MoonShadow received a memorandum from Defendant Lish stating that a psychiatrist had diagnosed her with GID, and the GID Committee had approved her for feminizing hormone treatment.

89. Since May 2015, Ms. MoonShadow has taken feminizing hormones.

*b. CDOC, through its Agents, is Aware of Ms. MoonShadow's Need for Gender-Affirming Clothing and Refuses to Adequately Provide Them to Her.*

90. Gender-affirming clothing is clothing that affirms the gender identity of the person wearing it.

91. Gender-affirming clothing is of particular importance to transgender people whose physical appearances often remind them that they are trapped in the wrong physical body, either through sexual organs or through physical processes of the body, such as growing facial hair. Clothing that matches the individual's gender identity can help alleviate the physical and psychological pain that results from the constant reminders of being stuck inside the wrong body.

92. Gender-affirming clothing is more than just a preference or desire. For many individuals with GID, and for Ms. MoonShadow specifically, wearing clothing that aligns with their gender identity is medically necessary to alleviate physical and psychological pain and distress.

93. Gender-affirming clothing is so important to Ms. MoonShadow that she has in the past made her own bras and female underwear out of various materials.

94. The few times that Ms. MoonShadow has made her own undergarments, it has reinforced her gender identity because wearing a bra and female underwear is one way that she can live as a female to the best of her ability in a world and environment that confines her. Wearing these reinforces to Ms. MoonShadow that she is not different from other women.

95. CDOC staff members confiscated these bras and female underwear Ms. MoonShadow made, claiming they were "contraband." Thus, she is unable to wear them.

96. Being forced to wear clothing that does not align with Ms. MoonShadow's gender identity makes Ms. MoonShadow feel trapped, scared, and ashamed because it reinforces the

thought that she is different from other women. It also causes physical pain in Ms. MoonShadow's neck, back, and chest as her muscles develop without proper support.

i. Physical Pain

97. After over two years of being on feminizing hormones, Ms. MoonShadow's appearance has changed. Most notably, she has developed breasts.

98. In these two years, CDOC had not issued Ms. MoonShadow a bra until recently. Ms. MoonShadow received three sports bras, labeled as "chest cover garments," on July 28, 2017, after Ms. MoonShadow filed her initial complaint in this action.

99. Without bras, Ms. MoonShadow is in significant pain, specifically in her back, chest, and neck areas because she is unable to support her growing breasts.

100. She feels a constant pulling in her chest area as her breasts weigh down and pull on her muscles.

101. She also feels an aching pain in her neck and back as her breasts pull on her muscles and tighten them.

102. Because Ms. MoonShadow did not start developing breasts until her early thirties, she does not have the muscle structure to support breasts that cisgender women grow up developing. Thus, Ms. MoonShadow's need for a bra is even more acute than a cisgender woman with similarly sized breasts because the strain on her muscles is more severe.

103. It is common knowledge that most females with breasts wear bras to, in part, alleviate pain and discomfort.

104. Based on common sense alone, it should be obvious to CDOC medical professionals that Ms. MoonShadow needs a bra to support her breasts.

105. Recently, CDOC provided Ms. MoonShadow with three sports bras.

106. Although Ms. MoonShadow has been given three sports bras, the scope of treatment policy and the clothing policy remain unchanged.

107. Ms. MoonShadow's property list shows under canteen items that she has three "chest cover garments." Her property list does not show "sports bras" under state-issued items, as cisgender women's property lists show.

108. Upon information and belief, Ms. MoonShadow is unable to purchase any sports bras from the canteen because they are not listed on the canteen inventory list.

109. Ms. MoonShadow has been told by staff in Laundry that they are unable to replace or repair any of her bras because they do not carry any in stock. Ms. MoonShadow was told that if she were to bring her bras to Laundry for repairs or replacement, she would receive a compression shirt instead of a bra.

Because Ms. MoonShadow is unable to repair or replace her bras through the canteen or through Laundry, and because no policy actually reflects Ms. MoonShadow's access to these sports bras, CDOC has failed to adequately provide access to gender-affirming clothing to Ms. MoonShadow.

ii. Psychological Pain

110. In addition to the physical pain Ms. MoonShadow experiences, she also experiences psychological pain.

111. The Standards of Care recognize that conforming breasts to fit that of the individual's gender identity is socially supportive and gender affirming.

112. It should be obvious to CDOC employees that denying Ms. MoonShadow, a transgender woman, a bra and female underwear would cause psychological distress by

undermining her gender identity and reinforcing the hurtful and discriminatory idea that Ms. MoonShadow is different from cisgender women.

113. Ms. MoonShadow also experiences psychological pain because of her fear of being harassed or attacked due to her visible breasts and nipples.

114. Upon information and belief, female CDOC employees wear bras inside male facilities.

115. Prisoners within CDOC do not have access to material that showcases female bodies and particularly female breasts, such as magazines, books, pictures or other pornographic or non-pornographic materials.

116. As one of the only individuals with female breasts inside a male prison, feels particularly vulnerable because she knows that the male prisoners within her institution are not exposed to female bodies, and she fears individuals will take advantage of her due to her female breasts.

117. Thus, it should be obvious to CDOC employees that exposure of Ms. MoonShadow's breasts could cause Ms. MoonShadow physical danger.

118. Besides the obvious safety risk, Ms. MoonShadow's fears have already been substantiated. Ms. MoonShadow has been sexually harassed by at least one male CDOC officer, as well as sexually harassed and assaulted by many male prisoners.

119. Officer McGrue, at Limon Correctional Facility has made lewd comments to Ms. MoonShadow on multiple occasions when she was working in the kitchen.

120. Officer McGrue suggested that Ms. MoonShadow was interested in his "bull milk/man milk," one day when Ms. MoonShadow was drinking a cup of milk in the kitchen.

121. On another occasion, Officer McGrue also insinuated that Ms. MoonShadow loved “weenies” when she asked for a hot dog.

122. Ms. MoonShadow felt Officer McGrue intended these comments to be sexual, and she indeed interpreted them that way.

123. Officer McGrue also called Ms. MoonShadow a “fucking fag” and otherwise verbally assaulted her.

124. Ms. MoonShadow complained about these comments to the Captain at Limon. Ultimately, CDOC removed Officer McGrue from the kitchen during the same time Ms. MoonShadow was working, but, upon information and belief, never disciplined him.

125. Comments such as these make Ms. MoonShadow feel uncomfortable, ashamed, and fearful that she will be sexually assaulted or otherwise attacked.

126. Because Ms. MoonShadow reported Officer McGrue, CDOC is aware of this harassment.

127. During Ms. MoonShadow’s incarceration, she has also been repeatedly harassed by male prisoners. Male prisoners have made comments to her about her breasts and grabbed her.

128. Ms. MoonShadow has been sexually assaulted four times during her incarceration with CDOC. All of these assaults, she believes, are related to her identity as a transgender woman.

129. CDOC employees are aware of at least some of these assaults because Ms. MoonShadow has reported them.

130. While Ms. MoonShadow requests adequate access to a bra to support, rather than conceal her breasts, she also believes a bra will cover her breasts and nipples in a way that will leave her less vulnerable to others and make her feel safer in a male prison.

131. Because CDOC confiscated Ms. MoonShadow's homemade bras and female underwear, the only way Ms. MoonShadow may alleviate the physical and mental pain is if CDOC issues her a facility-approved bra and female underwear, and guarantees adequate and continued access to them, as it does for other female prisoners.

132. It is common knowledge that cisgender women generally wear different underwear than men.

133. Thus, because Ms. MoonShadow is female, it should be common knowledge to CDOC employees that she requires female undergarments, including both bras and female underwear.

134. However, because Ms. MoonShadow resides in a male prison, CDOC issues her only male undergarments.

iii. Compression Shirts Are Not Sufficient

135. The "chest support garment" CDOC initially offered was a compression shirt, not a bra.

136. A compression shirt would not support Ms. MoonShadow's breasts; instead, it would flatten them.

137. Flattening Ms. MoonShadow's breasts would cause her more pain than she already experiences and may, in fact, damage her breasts.

138. Therefore, a compression shirt would not alleviate the physical pain Ms. MoonShadow experiences because she still cannot support her breasts.

139. In addition, a compression shirt would not fully alleviate the psychological pain Ms. MoonShadow experiences.

140. Being forced to wear a garment made specifically for transgender females reinforces the idea that Ms. MoonShadow is different than other women and thus cannot wear the clothes that other women wear.

141. Ms. MoonShadow needs a bra and female underwear, not a compression shirt, to address her serious medical needs.

142. Though Ms. MoonShadow only recently gained access to sports bras, CDOC refuses to identify them as “sports bras,” and instead refers to them as “chest support garments” or a variation thereof.<sup>6</sup>

143. Ms. MoonShadow has no access to female underwear and no guaranteed access to sports bras.

iv. CDOC, through its Agents is Aware of Ms. MoonShadow’s Need for Gender-Affirming Clothing and Has Failed to Adequately Meet Her Need.

144. Medical professionals know Ms. MoonShadow has breasts that, when left unsupported, cause her pain. Ms. MoonShadow has informed CDOC and made several requests to CDOC medical staff for a bra to alleviate the pain and discomfort she experiences.

145. Medical professionals at CDOC (including the GID Committee, as individuals who prescribed Ms. MoonShadow hormones and/or understand their purpose and effect) are aware that these feminizing hormones would cause Ms. MoonShadow to develop breasts.

146. In addition, CDOC employees are aware Ms. MoonShadow has developed breasts because they are visible beneath her shirt.

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<sup>6</sup> See footnote 4.

147. CDOC medical professionals are also aware Ms. MoonShadow has developed breasts and needs a bra and female underwear because Ms. MoonShadow has repeatedly told or otherwise informed many of them, including Nicole Blatnik, Carla Vargas, Jodi Sinker, Frederick Miller, John Skulstad, Kathleen Boyd, Wendy Bresee, Katrina Garvey, Gene Toewes, Reed Burndt, Mr. Mullens (first name unknown), Landers, and Michelle Wingert, that she has developed breasts and needs a bra and female underwear.

148. Ms. MoonShadow has met with or talked with all of the above CDOC employees since beginning hormone treatment. She has mentioned or continues to mention that her treatment for GID is insufficient and that she needs further treatment, including bras and female underwear, during each discussion.

149. Thus, CDOC officials are aware of Ms. MoonShadow's need for female undergarments and have failed to adequately provide them to her, because Ms. MoonShadow is unable to repair or replace her bras through the canteen or through Laundry.

150. Ms. MoonShadow has asked all of these individuals to refer her to the GID Committee, either through a grievance, health services request, or in person.

151. Since Ms. MoonShadow started her hormone treatment, she has submitted over ten health services requests asking to be seen by the GID Committee and asking specifically for a bra due to her pain. She has also submitted at least one health services request asking for female underwear.

152. Ms. MoonShadow has also filed two complete sets of grievances asking for a bra, which were reviewed by CDOC employees. She has informed CDOC employees of her need for

female underwear at her routine medical checkups, as well as filed grievances about it. CDOC employees denied these grievances because Ms. MoonShadow resides in a male prison.

153. Dr. Garvey has examined Ms. MoonShadow for many routine checkups since Ms. MoonShadow began hormone treatment. Ms. MoonShadow informed Dr. Garvey of her need for a bra and female underwear at each checkup.

154. Dr. Garvey responded to Ms. MoonShadow's health services requests about a bra and female underwear, stating CDOC does not permit female undergarments for prisoners in male prisons.

155. In addition, either Dr. Skulstad or Dr. Miller informed the GID Committee that Ms. MoonShadow wished to see the GID Committee. When Ms. MoonShadow met with Dr. Skulstad and Dr. Miller, she saw one of them send an email to Defendant Lish informing him that Ms. MoonShadow needed to be seen by the GID Committee because her treatment was insufficient, specifically explaining that Ms. MoonShadow needed a bra.

156. Thus, CDOC, through many medical professionals including the GID Committee, is aware that Ms. MoonShadow has breasts and is aware of the physical pain and discomfort she experiences due to the lack of a bra, yet continues to refuse to provide her guaranteed access to one.

157. CDOC, through many medical professionals including the GID Committee, is also aware of Ms. MoonShadow's need for female underwear, and continues to refuse to provide her with any.

- c. *CDOC's Refusal to Assess Ms. MoonShadow for Electrolysis, Sex Reassignment Surgery, or Facial Feminization Deprives Her of Minimally Adequate and Medically Necessary Treatment for Her Gender Dysphoria.*

158. Despite Ms. MoonShadow's feminizing hormone prescription, she still has male genitalia, including testicles and a penis, and masculine facial features. Her hormone treatment cannot, and is not intended to, address the incongruence of her female gender identity and the male genitalia and physical features with which she was born.

159. Because of that, Ms. MoonShadow attempts to outwardly manifest her femininity in every way she can to better conform to her female gender identity and to alleviate the pain and anguish she experiences because of the incongruity. Confinement in a CDOC male prison sharply curtails these attempts at gender expression.

160. Remaining encumbered by male genitalia and masculine features produces constant feelings of self-hatred, low self-esteem, and psychological distress in Ms. MoonShadow. It is a constant reminder that Ms. MoonShadow is trapped in the wrong body.

161. The very mundane act of touching her face when it has stubble or shadow on it, or touching her penis, makes Ms. MoonShadow feel angry, sad and depressed. This anger and sadness leads to urges to self-mutilate and produces suicidal thoughts.

162. Ms. MoonShadow constantly struggles against these thoughts to prevent harming herself in any way.

163. Ms. MoonShadow wants to live, but because her body does not match who she feels she is in her heart, she feels the constant need to destroy or kill her body so that she may come back in one that matches her gender identity.

164. Electrolysis, sex reassignment surgery, and facial feminization are options recognized by the Standards of Care for treatment of medical needs associated with GID.

165. The Standards of Care do not mandate this treatment, or any treatment, because just like the treatment for any medical condition, each individual's treatment needs will vary based on their unique symptoms and specific circumstances.

166. For example, some transgender women may not grow significant amounts of hair to the point that it requires shaving and/or leaves a shadow, or they may not be severely distressed by their male genitalia or masculine facial features. Others, like Ms. MoonShadow, are.

*d. CDOC, Through its Agents, is Aware of Ms. MoonShadow's Need for Electrolysis Treatment and Refuses to Provide it to Her.*

167. Despite Ms. MoonShadow's feminizing hormone prescription, she still grows significant hair on her face and body.

168. Because of that, Ms. MoonShadow shaves her entire body at least every other day to better conform with her gender identity.

169. Ms. MoonShadow either has constant visible facial and body hair or she has a dark shadow from the hair even after shaving.

170. The visible hair and shadow, as well as the act of shaving, produce constant feelings of self-hatred, low self-esteem, and psychological distress in Ms. MoonShadow. It is a constant reminder that Ms. MoonShadow is trapped in the wrong body.

*e. Sex Reassignment Surgery is an Effective and Medically Necessary Treatment for Certain People Suffering from Gender Identity Disorder.*

171. According to the Standards of Care, sex reassignment surgery "is essential and medically necessary" for some people with GID "to alleviate their gender dysphoria."

172. For transgender persons for whom gender reassignment surgery is medically necessary, “relief from gender dysphoria cannot be achieved without modification of their primary and/or secondary sex characteristics to establish greater congruence with their gender identity.”

173. The Standards of Care instruct physicians in the care of transgender patients, stating “[i]n order to understand how surgery can alleviate the psychological discomfort and distress of individuals with gender dysphoria, professionals need to listen to these patients discuss their symptoms, dilemmas, and life histories. The resistance against performing surgery on the ethical basis of ‘above all do no harm’ should be respected, discussed, and met with the opportunity to learn from patients themselves about the psychological distress of having gender dysphoria and the potential for harm caused by denying access to appropriate treatments.”

174. According to the Standards of Care, genital and other surgical treatments for GID “are not merely another set of elective procedures.” Indeed, a wide spectrum of surgical procedures might be prescribed as medically necessary for male-to-female sufferers of gender dysphoria, including breast/chest surgery, genital surgery, facial feminization surgery, hair reconstruction, and various other aesthetic procedures.

*f. Even Though Ms. MoonShadow Has Attempted to Request Further Treatment, CDOC Continues to Deny Her Further Treatment.*

175. As described above, the CDOC GID Committee evaluated Ms. MoonShadow once in 2015 before the GID Committee prescribed her hormones.

176. Ms. MoonShadow has since requested numerous referrals to the GID Committee for an assessment for electrolysis, sex reassignment surgery, facial feminization, and other treatment for GID.

177. Ms. MoonShadow has spoken with or otherwise notified CDOC medical professionals Nicole Blatnik, Carla Vargas, Frederick Miller, Jodi Sinker, John Skulstad, Kathleen Boyd, Wendy Bresee, Katrina Garvey, Gene Toewes, Reed Burndt, Mr. Mullens (first name unknown), Landers (first name unknown), and Michelle Wingert about her need to be seen by the GID Committee to assess her medical need for electrolysis, sex reassignment surgery, and facial feminization.

178. Each time Ms. MoonShadow speaks to any of these individuals, she mentions that her GID treatment is insufficient and that she needs to be seen by the GID Committee so that she can seek further treatment.

179. For example, Ms. MoonShadow meets with Dr. Miller and Dr. Skulstad regularly and has consistently told them of her need for sex reassignment surgery.

180. Either Dr. Miller or Dr. Skulstad wrote Defendant Lish an email informing him that Ms. MoonShadow needed electrolysis treatment and wanted to be seen by the GID Committee to discuss that treatment.

181. Ms. MoonShadow sent formal, written requests for evaluation by the GID Committee to discuss options for her GID treatment, and to request electrolysis, sex reassignment surgery, and facial feminization, several times since she began hormones in May 2015.

182. Despite the frequency of these requests, CDOC has never scheduled Ms. MoonShadow to meet with the GID Committee for a second time or presented Ms. MoonShadow's file to the GID Committee for further assessment or evaluation.

183. In fact, Ms. MoonShadow never even received a response from anyone on the GID Committee stating that the GID Committee had reviewed her case again and/or determined that her treatment is adequate. Her requests were simply ignored.

184. Ms. MoonShadow has also sent grievances requesting electrolysis, sex reassignment surgery, and facial feminization. CDOC denied these grievances based on the scope of treatment policy, which bans treatment for GID beyond hormones.

185. Neither the GID Committee nor any other medical professional evaluated Ms. MoonShadow to assess whether electrolysis, sex reassignment surgery, or facial feminization are medically necessary to treat her before a CDOC employee gave Ms. MoonShadow these responses. Instead, CDOC has simply denied her requests.

186. Ms. MoonShadow continued to grieve all the way to the final level of the CDOC grievance process. In response to her Step Three grievance requesting sex reassignment surgery and electrolysis, CDOC Grievance Officers responded that her medical health providers evaluated her and determined that her treatment for GID was adequate.

187. This evaluation refers to Ms. MoonShadow's initial consultation with the GID Committee. Since receiving hormones for over two years, Ms. MoonShadow has not been reevaluated by the GID Committee.

188. Because there is a CDOC-wide policy that bans all treatment beyond hormones or, until very recently, "chest cover garments," Ms. MoonShadow's initial evaluation certainly did not consider Ms. MoonShadow's need for medical care beyond hormones.

189. Ms. MoonShadow also had several informal conversations with medical professionals informing them of her need for further treatment for psychological distress associated with GID.

190. In October 2015, a doctor evaluated Ms. MoonShadow for a routine checkup. At that checkup, Ms. MoonShadow informed the doctor of her need for female undergarments and electrolysis. In the report, the individual stated that he or she would follow up about the request for undergarments with the GID Committee, but made no note of informing the GID Committee of the request for electrolysis.

191. In April 2016, Dr. Garvey evaluated Ms. MoonShadow for a routine checkup. At that checkup, Ms. MoonShadow informed Dr. Garvey that she needed additional treatment for her GID.

192. In Dr. Garvey's notes for how to meet Ms. MoonShadow's medical needs, she wrote, "[c]ontinue current medications without changes . . . sole treatment is hormone therapy for GID."

193. Dr. Garvey made no medical determination that Ms. MoonShadow did not need electrolysis, sex reassignment surgery, or facial feminization. She simply relied on the policy that prescribes hormone therapy as the sole treatment for GID.

194. Therefore, Ms. MoonShadow has discussed her need for electrolysis, sex reassignment surgery, facial feminization, and – at a minimum – an individualized medical assessment by the GID Committee or other competent medical provider – with many CDOC medical professionals who are aware and continue to be aware of Ms. MoonShadow's serious

medical need and request for electrolysis to treat that need and have done nothing to address her unmet medical needs.

195. In addition, each member on the GID Committee was and is aware of the proper procedure for prescribing a treatment plan to an individual, which includes individualized assessment that is not determined or limited simply by a policy.

196. Thus, the GID Committee was and continues to be aware that prescribing treatment to Ms. MoonShadow and all transgender prisoners based on a policy, without individualized assessment, contradicts general community standards of medical care and the Standards of Care for the treatment of people with GID.

197. Even if a CDOC medical professional were to evaluate Ms. MoonShadow for a second time, without a change in policy that would allow that medical professional to consider electrolysis, sex reassignment surgery, or facial feminization as potential treatment options, this evaluation would be a mere façade.

198. Thus, the policy that bans all treatment besides hormones must be amended for Ms. MoonShadow to receive a medical evaluation based on sound medical judgment.

### **C. CDOC's Discrimination Against Ms. MoonShadow as a Transgender Woman**

#### *a. CDOC's Discrimination Through Policy*

199. The clothing policy provides: "A completely serviceable, properly fitted and properly tagged set of initial state-issued offender clothing will be issued to each offender during the initial intake, diagnostic and admission process."

200. The clothing policy states that cisgender female prisoners at female prisons are provided five state-issued bras.

201. The clothing policy mandates that undergarments, including bras, must be worn at all times, except when the prisoner is sleeping.

202. CDOC issues bras, upon entry, to all cisgender female prisoners in low- to high-security prisons.

203. CDOC is aware of the prisoner's gender identity and biological differences during the initial intake process.

204. AR 850-07 Offender Reception and Orientation states: "During the intake process, transgender and intersex offenders will be informed of their opportunity to shower separately from other offender at all DOC facilities."

205. Therefore, in the early stages of CDOC's relationship with a transgender prisoner, the prison begins treating certain prisoners differently based solely on gender identity.

206. On April 1, 2017, as described above, CDOC amended the scope of treatment policy to provide a "chest support undergarment" for "male to female transgender offenders."

207. CDOC does not issue chest support undergarments upon initial intake.

208. According to CDOC policy, male-to-female transgender prisoners "may request chest support under garments by sending a kite to Clinical Services requesting a sick call appointment . . . The health services administrator will initiate the approval process and notify the administrative head if approved. Once approved, the health services administrator will notify the laundry services manager to issue 3 chest support undergarments to the offender." (emphasis added).

209. This process is unlike the process described in the clothing policy, where the prisoner, during intake, is issued undergarments in accordance with their biological make-up.

210. On information and belief, this process could take weeks, or even months for a transgender prisoner to obtain a chest support undergarment.

211. Additionally, the CDOC health services administrator has the discretion to determine whether a transgender prisoner may have a chest supportive undergarment.

212. It is unclear how the health services administrator determines which prisoners she/he approves for a chest support undergarment and which ones she/he will deny.

213. On information and belief, transgender prisoners who submit a kite requesting a chest supportive undergarment are then measured by CDOC staff.

214. It is unclear whether this measurement is part of the process of health services determining who is eligible for a chest supportive undergarment or whether this measurement is necessary for ordering appropriate sizes.

215. The scope of treatment policy fails to indicate whether and why a transgender prisoner must be measured for a chest supportive undergarment.

216. The scope of treatment policy states: “In the event that an offender is committed to the DOC who has completed sex reassignment surgery, that offender will be placed in a correctional facility appropriate for their reassigned gender.”

217. This classification distinguishes between pre-operative transgender prisoners and post-operative transgender prisoners.

218. In so doing, it establishes that post-operative male-to-female transgender prisoners, who likely have grown breasts as part of the transition process, are entitled to state-issued bras and female underwear.

219. CDOC ignorantly bases this differentiation on a procedure that has nothing do to with the development of breasts.

220. Additionally, the scope of treatment policy prohibits transgender prisoners from receiving sex reassignment surgery because according to CDOC, it is considered “cosmetic or elective surgery.”

221. Assumedly, post-operative male-to-female transgender prisoners are housed in a female prison and issued five bras during their intake.

222. Therefore, CDOC policy blatantly establishes discriminatory differences between cisgender female prisoners and pre-operative transgender prisoners, as well as between pre-operative transgender prisoners and post-operative transgender prisoners, even though all these prisoners have the same biologically relevant similarity for requiring a bra: breasts.

*b. CDOC Discrimination Through Implementation of Policy*

223. Transgender prisoners develop breasts from feminizing hormones as a result of the treatment for GID.

224. Cisgender female prisoners in women’s prisons also have breasts.

225. The *treatment* for cisgender prisoners with breasts in female prisons is a bra (five bras, to be exact).

226. CDOC requires cisgender female prisoners to wear a bra during the day.

227. One of the many times she requested a bra, CDOC told Ms. MoonShadow, “Per 850-11 male offenders in[]prison are only issued boxers, tee shirts and green shirt and pants. There is no allowance for our transgender offenders. Until there is a change in the AR you are going to have to wear what is allowed for our male offenders.”

228. Even when Ms. MoonShadow brought it to CDOC's attention that as a transgender woman she has physical attributes inconsistent with male prisoners in male prisons, CDOC and the grievance responders, including Ashley Davis, Marshall Griffith, Anthony DeCesaro, Nicole Dennis, and Jodi Sinker, failed to challenge the policy, which ignores Ms. MoonShadow's situation.

229. When Ms. MoonShadow asked her treating physician for a bra, Dr. Garvey stated, "DOC doesn't allow the use of female undergarments for offenders residing at male facilities."

230. Over and over CDOC has told Ms. MoonShadow that bras are female undergarments, and because she lives in a male prison, she is not entitled to this item of clothing.

231. Instead, CDOC has amended its policy to allow for chest support garments, which, upon information and belief, were originally intended to be binding compression shirts.

232. Binding refers to the process of flattening and disguising breasts by severely restricting them, sometimes to the point that the breast tissue breaks down and the physical appearance of the breasts are altered or damaged. A compression shirt also covers someone's entire chest rather than just her breasts.

233. Compression shirts used for binding can cause serious health defects such as broken ribs, permanent damage to small blood vessels, blood flow problems, blood clotting, and even an increased risk of heart attack.

234. Male-to-female transgender prisoners do not want to bind their growing breasts. Compression shirts are primarily used by female-to-male transgender individuals to bind their breasts prior to or in place of breast-removal surgery.

235. Crippled with the dysphoria that accompanies their GID, female transgender prisoners want to alleviate both the physical pain that comes from having unsupported breasts, and the psychological pain of having a body that does not match their gender identity.

236. Cisgender female prisoners do not wear compression shirts to support their breasts; therefore, transgender prisoners should not be provided with this unwanted and unsafe undergarment.

237. CDOC's continuous denial of Ms. MoonShadow's gender identity through clothing and care is inconsistent with her diagnosis and treatment for GID.

238. Ms. MoonShadow constantly struggles with the prison denying her reality, which is that she is a woman stuck in a man's body.

239. CDOC employees mock and taunt her by calling her sir, mister, man, and other masculine pronouns, when they are fully aware that she is a transgender female prisoner.

240. CDOC employees placed Ms. MoonShadow in a male prison, where she is constantly reminded that she is different.

241. After a lifetime of feeling different, CDOC enabled Ms. MoonShadow to begin feminizing hormone treatment so that she can finally feel comfortable with herself.

242. However, CDOC stopped short of its constitutional duty to treat Ms. MoonShadow equally based on her gender.

243. For Ms. MoonShadow, wearing gender-affirming clothing "reinforces the identity that's inside of me, rather than outside."

244. Cisgender prisoners do not wake up each day and feel an overwhelming sense of self-hatred because of their required uniform.

245. CDOC provides cisgender prisoners with gender-affirming clothing.

246. However, for Ms. MoonShadow, receiving gender-affirming clothing consistent with her biological makeup is a battle that can only be won by amending CDOC's discriminatory policies and practices.

*c. CDOC Has No Legitimate or Sufficiently Important Interest in Treating Ms. MoonShadow Differently Than Cisgender or Post-Operative Transgender Prisoners.*

247. On information and belief, the sports bras issued to female prisoners are made of elastic material and cotton.

248. On information and belief, state-issued men's undergarments are made of elastic material and cotton.

249. CDOC maintains that issuing female undergarments to a transgender woman in a male prison is a security concern, without providing specific reasons why the same exact bra it issues its cisgender female prisoners and post-operative transgender prisoners does not create an equal security concern.

250. On information and belief, a compression shirt or chest support undergarment, is likely to be made from a similar elastic-type material.

251. On information and belief, any security concern which would result from a prisoner having a bra would also be present if a prisoner had boxer shorts or briefs because they are made from the same materials.

252. Therefore, CDOC's concern that Ms. MoonShadow or other prisoners will be at risk because she is wearing a bra in a male prison is unfounded.

253. If CDOC's suggested security concern stems from its fear of what male prisoners will do to transgender female prisoners if they had bras, this fear is insufficient to justify discriminatory treatment towards transgender female prisoners.

254. As described in detail above, Ms. MoonShadow is already in physical danger by virtue of being a transgender female prisoner housed in a male prison, and CDOC has done little to alleviate that fear.

255. Cisgender prisoners are not only provided with the appropriate undergarments upon entry into a prison, they are mandated to wear such undergarments as part of their uniform.

256. Refusing to guarantee Ms. MoonShadow access to gender-affirming clothing does not ensure her safety and is not a legitimate or substantially important government interest.

*d. Denying Ms. MoonShadow Gender-Affirming Clothing is Not Rationally Related nor Substantially Related to Furthering any Government Interest.*

257. On information and belief, female staff members at male prisons wear bras when they go to work.

258. Presumably, the undergarments they wear do not create an additional safety or security concern, certainly none flagrant enough to deny female staff bras at work.

259. Female lawyers who visit male prisons to see their clients wear bras.

260. The undergarments that they wear do not create additional safety or security concerns, certainly none flagrant enough to deny female lawyers bras.

261. CDOC has now provided Ms. MoonShadow with sports bras, further indicating a lack of concern about a security risk.

262. There is no rational relationship between denying guaranteed access to bras and ensuring safety and security that justifies treating Ms. MoonShadow differently than cisgender female prisoners, cisgender female guards, and post-operative female prisoners.

263. Therefore, the government's half-measure here in treating Ms. MoonShadow's serious medical need is unjustified by its irrational policy which does not consider Ms. MoonShadow's unique but familiar situation: that of being a person in prison with breasts.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **§ 1983 — Eighth Amendment Violation Failure to Provide Adequate Medical Care and Treatment Against CDOC Through Defendants Raemisch and Lish in their Official Capacities**

264. Ms. MoonShadow incorporates all previous paragraphs of this Complaint as if fully set forth herein.

265. At all times relevant to the allegations in this Complaint, CDOC, through its agents, including but not limited to Defendants Raemisch and Lish, acted or failed to act under color of state law.

266. Under the Eighth Amendment of the Constitution, prison officials must provide adequate medical care to prisoners, who rely entirely on the prison system for their medical needs.

267. The requirement to provide adequate medical care includes an understanding of medical conditions and a practice of diagnosis and treatment that is based on sound medical judgment of various medical conditions, including issues arising from a person's transgender identity.

268. Ms. MoonShadow, while incarcerated within CDOC's custody, was and is constitutionally entitled to receive adequate medical care for her medical needs arising from her transgender identity, such as the need for a bra, female underwear, electrolysis treatment, sex reassignment surgery, and facial feminization, which are sufficiently serious.

269. CDOC acted and continues to act with historical deliberate indifference through its agents, including but not limited to Defendants Raemisch and Lish, by refusing to provide Ms. MoonShadow a bra, female underwear, electrolysis procedures, sex reassignment surgery, and facial feminization, and in fact refuses to even consider these treatments.

270. CDOC's refusal to provide Ms. MoonShadow the medical care she needs beyond hormones has caused and continues to cause her to suffer substantial harm, including physical pain and psychological distress.

271. CDOC has no legitimate reason or penological purpose for denying Ms. MoonShadow adequate medical care and causing Ms. MoonShadow pain and psychological suffering.

272. CDOC, through its agents, including but not limited to Defendants Raemisch and Lish, know or should know that its refusal to provide Ms. MoonShadow these treatments equates to inadequate medical care.

273. All of CDOC's acts or omissions are the proximate cause of Ms. MoonShadow's deprivation of rights under the Eighth Amendment.

## **SECOND CLAIM FOR RELIEF**

**§1983 — Eighth Amendment Violation  
Using a Blanket Policy that Denies Medical Treatment to Plaintiff and All Other  
Transgender Prisoners of CDOC Facilities  
Against CDOC Through Defendants Raemisch and Lish in their Official Capacities**

274. Ms. MoonShadow incorporates all previous paragraphs of this Complaint as if fully set forth herein.

275. At all times relevant to the allegations of this Complaint, CDOC, through its agents, including but not limited to Defendants Raemisch and Lish, acted or failed to act under color of state law.

276. Under the Eighth Amendment of the Constitution, prison officials must provide adequate medical care to prisoners, who rely entirely on the prison system for their medical needs.

277. This includes establishing policies and procedures that are based on sound medical judgment and enable and ensure adequate medical care.

278. CDOC's policies and procedures do not provide adequate medical care when they include a blanket ban for a variety of procedures without allowing for or requiring an individual evaluation or assessment.

279. Ms. MoonShadow, during all times incarcerated within the control of CDOC, was and is constitutionally entitled to receive medical care by and through policies that consider her unique medical needs through individualized evaluation.

280. CDOC, through its agents, including but not limited to Defendants Raemisch and Lish, created and continue the use of policies that prevent Ms. MoonShadow from receiving the medical care she needs by flatly refusing even consideration for these treatments.

281. CDOC has no justification for continuing to use a policy that bans treatments without an individual assessment or evaluation.

282. The continued use of these unconstitutional policies by Defendants caused the deprivation of Ms. MoonShadow's rights under the Eighth Amendment.

### **THIRD CLAIM FOR RELIEF**

#### **§1983 — Fourteenth Amendment Violation Violating Plaintiff's Right to Equal Protection CDOC's Discriminatory Practices and Policies Through Defendants Raemisch and Lish in their Official Capacities**

283. Ms. MoonShadow hereby incorporates all other paragraphs of this complaint as if fully set forth herein.

284. At all times relevant to the allegations of this Complaint, CDOC, through its agents, including but not limited to Defendants Raemisch and Lish, acted or failed to act under color of state law.

285. At all times relevant to the allegations in this Complaint, Defendants knew that Ms. MoonShadow is a transgender prisoner, incarcerated in a male prison.

286. Nevertheless, Defendants, with discriminatory intent, failed to treat Ms. MoonShadow equal to other female prisoners with breasts (including cisgender women and post-operative male-to-female transgender women) incarcerated in the Department of Corrections. They did so without any rational justification for denying her a bra.

287. The acts or omissions of all Defendants were conducted within the scope of their official duties of employment.

288. The discrimination exhibited by Defendants in refusing to address Ms. MoonShadow's physical and psychological needs lead to Ms. MoonShadow's continued pain and suffering.

289. The actions, denials, and justifications as described herein intentionally lead to Ms. MoonShadow's unequal treatment by the government in violation of the Fourteenth Amendment: that no state shall deny to any person within its jurisdiction the equal protection of the laws.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants, and award her all relief allowed by law, including but not limited to the following:

- (a) Awarding Plaintiff injunctive relief by amending CDOC's scope of treatment policy to require the GID Committee to individually examine each person with GID, make treatment determinations based on sound medical judgment, allow for treatment beyond hormones if necessary, and provide Ms. MoonShadow electrolysis treatment, sex reassignment surgery, and facial feminization;
- (b) Awarding Plaintiff injunctive relief against Defendants' enforcement of AR 700-14's offering of a chest support undergarment rather than a state-issued bra, that is provided to cisgender female and post-operative transgender female prisoners;
- (c) Awarding Plaintiff injunctive relief against Defendants' under-inclusive policy AR 850-11 which fails to consider transgender prisoners thereby denying transgender prisoners necessary clothing upon initial intake in a Colorado prison;
- (d) Declaring that AR 700-14, on its face, violates the Eighth Amendment of the United States Constitution;

(e) Enjoining Defendants from further discriminating against Ms. MoonShadow and violating her rights in contradiction to the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;

(f) Awarding costs for the suit herein, including Plaintiff's reasonable attorneys' fees and expert fees pursuant to 42 U.S.C. § 1988;

(g) Pre- and post-judgment interest at the highest lawful rate; and

(h) Awarding all other relief that the court deems just and proper.

Dated: October 12, 2017

Respectfully Submitted,

STUDENT LAW OFFICE

*s/Olivia Kohrs*

Olivia Kohrs, Student Attorney

*s/David Valleau*

David Valleau, Student Attorney

*s/Danielle Jefferis*

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<sup>7</sup> Motion for Leave to Appear as Student Attorney forthcoming in January 2018.

**Certificate of Service**

I hereby certify that on October 12, 2017 I electronically filed the foregoing THIRD AMENDED COMPLAINT with the Clerk of Court using the CM/ECF system, which will send electronic notification to the following:

Kathryn Starnella:  
Kathryn.starnella@coag.gov

*Counsel for Defendants*

s/ Danielle C. Jefferis  
Danielle C. Jefferis