

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
NO. 3:22-cv-191

KANAUTICA ZAYRE-BROWN,)
)
 Plaintiff,)
)
 v.)
)
 NORTH CAROLINA DEPARTMENT OF)
 PUBLIC SAFETY, et al.,)
)
 Defendant.)

**ANSWER AND DEFENSES OF
DEFENDANTS**

NOW COME Defendants to hereby answer and otherwise respond to the allegations contained in Plaintiff's complaint.

INTRODUCTION

1. Plaintiff Kanautica Zayre-Brown ("Plaintiff") has been in the custody of the North Carolina Department of Public Safety ("DPS") since October 2017. Plaintiff is a transgender woman who has been diagnosed as suffering from gender dysphoria, a serious medical condition. Plaintiff has needed and requested treatment for gender dysphoria for several years. DPS and its officials sued herein (collectively, "Defendants") have a constitutional obligation to provide Plaintiff with the medically necessary care she requires. Defendants have failed and continue to fail to meet their constitutional obligations to Plaintiff.

RESPONSE: Defendants admit that Plaintiff has been in DPS custody since October 2017. Defendants admit that Plaintiff identifies as a transgender woman and that she has been diagnosed with gender dysphoria. Defendants admit that Plaintiff has requested various treatment modalities for multiple years. Defendants admit that Plaintiff sues them in their official capacities. Defendants specifically deny that they have failed and/or continue to fail to meet their constitutional

obligations to Plaintiff. The remaining allegations of Paragraph 1 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

2. Plaintiff was first diagnosed with gender dysphoria in 2010. Gender dysphoria is a condition involving clinically significant distress or impairment resulting from an incongruity between a person's gender identity and the sex they were assigned at birth. Plaintiff's gender dysphoria is a disability, because it is the result of a physical impairment causing severe distress and substantial limitations on her major life activities. In 2017, DPS confirmed Plaintiff's gender dysphoria diagnosis and her need for treatment.

RESPONSE: Defendants admit, upon information and belief, that Plaintiff was first diagnosed with gender dysphoria in 2010. Defendants admit that gender dysphoria is a mental health diagnosis currently defined by Diagnostic and Statistical Manual of Mental Disorders (DSM-5) as, "[a] strong and persistent cross gender identification. It is manifested by a stated desire to be the opposite sex and persistent discomfort with his or her biologically assigned sex." Defendants also admit that the DSM-5 notes that this condition is associated with, "clinically significant distress or impairment in social, occupational, or other important areas of functioning." Defendants admit that in 2017, DPS diagnosed Plaintiff with gender dysphoria. The remaining allegations of Paragraph 2 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

3. Since entering DPS custody in 2017, Plaintiff has requested necessary treatment and accommodations for her gender dysphoria, including gender-affirming hormone therapy and use of her legal name and gender-consistent pronouns. Plaintiff's requests have been met with unjustified delays that have needlessly prolonged her suffering. Even when DPS has granted approval for these requests, it has failed to provide these necessary treatments and

accommodations consistently.

RESPONSE: Defendants specifically deny that they have failed to provide or authorize requested medical treatment or accommodations in violation of any legal duties owed to Plaintiff. Defendants specifically deny that any of their actions constitute unjust delay or have needlessly contributed to any suffering Plaintiff may have experienced or may be experiencing. Defendants also deny that the provision of medical, health, and other services to Plaintiff has been inconsistent. Defendants admit that since 2017, Plaintiff has made multiple requests for treatment and accommodations related to her gender dysphoria. The remaining allegations of Paragraph 3 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

4. Plaintiff's previous treatments have not adequately alleviated her gender dysphoria. She has suffered and continues to suffer severe physical, emotional, and psychological distress as a result.

RESPONSE: The allegations of Paragraph 4 are legal conclusions to which no response is required. To the extent a response is deemed required, those allegations are denied.

5. Plaintiff needs gender-affirming surgery for the treatment of gender dysphoria. Plaintiff has requested gender-affirming surgery from DPS on numerous occasions. Medical providers to whom DPS referred Plaintiff agreed that gender-affirming surgery is medically necessary for her. Plaintiff meets the criteria for gender-affirming surgery under DPS's Policy and Procedure for the Evaluation and Management of Transgender Offenders¹ ("DPS Policy for

¹ See N.C. Dept. of Pub. Safety Policy & Proc. Manual, Ch. E § .2700 (Aug. 22, 2019) *reissued with amendments* at Ch. F § .4300 (March 31, 2021), https://files.nc.gov/ncdps/F-4300-03_31_21.pdf. All subsequent citations shall be to the version of the policy reissued on March 31, 2021, unless otherwise indicated.

Transgender Prisoners”) and the recognized standards of care for the treatment of gender dysphoria.

RESPONSE: Defendants admit that Plaintiff has requested gender-affirming surgery. Defendants admit this paragraph refers to a written document which speaks for itself. The remaining allegations of Paragraph 5 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

6. Defendants have known these facts for years. Acting with deliberate indifference to Plaintiff’s serious medical needs, Defendants have repeatedly rejected Plaintiff’s requests to be provided gender-affirming surgery, wrongfully deeming it as “elective.” Defendants have also repeatedly refused to act through their own established internal protocols for this kind of care on Plaintiff’s request. Defendants have offered no medical justification for why Plaintiff’s receipt of this care should be denied or delayed.

RESPONSE: Defendants deny that they have acted with deliberate indifference, have wrongfully denied access to medical services, and/or have offered no medical justifications. The remaining allegations of Paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

7. For these reasons and as alleged below, Defendants have violated Plaintiff’s rights under federal and state law. Plaintiff seeks declaratory and injunctive relief, and damages.

RESPONSE: Defendants deny that they have violated any of Plaintiff’s rights under any law. Defendants further deny that Plaintiff is entitled to any of the relief she seeks.

JURISDICTION AND VENUE

8. Plaintiff brings this action under 42 U.S.C. § 1983; the Eighth Amendment to the United States Constitution; Article I, Section 27 of the North Carolina Constitution; the Americans

with Disabilities Act (“ADA”), 42 U.S.C. §12101 *et seq.*; and Section 504 of the Rehabilitation Act of 1973 (“Rehab Act”), 29 U.S.C. §794a.

RESPONSE: Defendants admit that Plaintiff asserts legal claims pursuant to the authority cited in this paragraph. Defendants deny that Plaintiff is entitled to any of the relief she seeks.

9. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, which provides federal district courts original jurisdiction in civil actions arising under the U.S. Constitution and the laws of the United States, and § 1343(a)(3), which provides federal district courts original jurisdiction in civil actions to redress the deprivation, under color of any State law, of any right secured by the U.S. Constitution.

RESPONSE: Admitted.

10. This Court has supplemental jurisdiction over Plaintiff’s state law claim under 28 U.S.C. § 1367(a) because it so related to Plaintiff’s federal law claims that it is part of the same case or controversy under Article III of the U.S. Constitution.

RESPONSE: Admitted.

11. This Court has personal jurisdiction over Defendants as residents of North Carolina.

RESPONSE: Admitted.

12. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in the Western District of North Carolina.

RESPONSE: Admitted.

13. Plaintiff has exhausted all available administrative remedies for the claims alleged herein.

RESPONSE: Denied.

PARTIES

14. Plaintiff Kanautica Zayre-Brown is a 40-year-old woman who is currently housed at Anson Correctional Institution (“Anson CI”). Plaintiff has been incarcerated in the custody of DPS since October 2017.

RESPONSE: Admitted.

15. Defendant DPS is a public entity as defined by Title II of the ADA and constitutes a program or activity receiving federal financial assistance under the Rehab Act. DPS is sued under the ADA, Rehab Act, and Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that DPS is a state agency. Defendants further admit that Plaintiff sues them under the authorities referenced in this paragraph. The remaining allegations of Paragraph 15 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

16. Defendant Eddie Buffaloe Jr. is the Secretary of DPS. He is responsible for overall operation of DPS, including North Carolina’s prisons. Defendant Buffaloe has a legal duty to provide needed health care to all persons in DPS custody. Upon information and belief, Defendant Buffaloe is also the final reviewer and decision-maker of grievances submitted pursuant to DPS’s Administrative Remedy Procedure. He is sued in his official capacity under §1983 for violations of Plaintiff’s Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Eddie Buffaloe Jr. is the Secretary of DPS. Defendants deny that Defendant Buffaloe is the final reviewer and decision-maker regarding grievances submitted by incarcerated individuals. Defendants admit that Defendant Buffaloe is sued in his official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Buffaloe has violated any of Plaintiff’s rights under any law. The remaining allegations

of Paragraph 16 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

17. Defendant Todd Ishee is the Prisons Commissioner for the Division of Prisons (“DOP”) of DPS. He is responsible for the administration of North Carolina’s prisons, including the creation and implementation of DPS policies and procedures. Defendant Ishee has a legal duty to provide needed health care to all persons in DOP custody. He is sued in his official capacity under §1983 for violations of Plaintiff’s Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that, at the time this lawsuit was filed, Todd Ishee was the Commissioner of the Section of Prisons within DPS. Defendants admit that Defendant Ishee is sued in his official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Ishee has violated any of Plaintiff’s rights under any law. The remaining allegations of Paragraph 17 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

18. Defendant Dr. Gary Junker is the Director of Health and Wellness for DOP. He is responsible for planning, organizing, and coordinating a Health and Wellness delivery system which includes medical, nursing, dental, behavioral health, mental health, pharmacy, quality assurance, and administration for all persons in DOP custody. As Director of Health and Wellness, Defendant Junker must approve all DOP Health and Wellness policies and directives. Defendant Junker has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Junker is one of the two final reviewers and decision-makers of requests for surgical intervention made to the Division Transgender Accommodation Review Committee (“DTARC”). He is sued in his official capacity under §1983 for violations of Plaintiff’s

Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Gary Junker, PhD., is the Director of Health and Wellness for the Section of Prisons within DPS. Defendants admit that Defendant Junker is one of two reviewers of certain recommendations made by the DTARC. Defendants admit that Defendant Junker is sued in his official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Junker has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 18 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

19. Defendant Brandeshawn Harris is the Assistant Commissioner of Prisons for DOP. She is responsible for the overall custody and security operations of DOP. Upon information and belief, Defendant Harris is one of two final reviewers and decision-makers for requests for surgical intervention made to DTARC. She is sued in her official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Brandeshawn Harris is the Assistant Commissioner of Prisons for the Section of Prisons within DPS. Defendants further admit that Defendant Harris is presently the Acting Commissioner for the Section of Prisons. Defendants admit that Defendant Harris is one of two reviewers of certain recommendations made by the DTARC. Defendants admit that Defendant Harris is sued in her official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Harris has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 19 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

20. Defendant Dr. Arthur "Les" Campbell is the Medical Director for DOP. He is responsible for oversight of the day-to-day operations of medical services and for the quality of

medical services provided to all persons in DOP custody. Defendant Campbell has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Campbell is a member of DTARC. He is sued in his official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Arthur Campbell, MD, is the Medical Director for the Section of Prisons within DPS. Defendants admit that Defendant Campbell is a member of the DTARC. Defendants admit that Defendant Campbell is sued in his official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Campbell has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 20 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

21. Defendant Terri Catlett is the Director of Healthcare Administration for DOP. She is responsible for the oversight of the budget, staffing, and contracts for DOP medical services, as well as medical records, electronic records, and telehealth related to all persons in DOP custody, among other things. Defendant Catlett has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Catlett is a member of DTARC. She is sued in her official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Terri Catlett is the Director of Healthcare Administration for the Section of Prisons within DPS. Defendants admit that Defendant Catlett is a member of the DTARC. Defendants admit that Defendant Catlett is sued in her official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Catlett has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph

21 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

22. Defendant Dr. Johnathan Peiper is the Behavioral Health Director for DOP. He is responsible for the approval of behavior health services provided to all persons in DOP custody. Defendant Peiper is also responsible for overseeing the day-to-day operation of behavior health services and ensuring their quality. Defendant Peiper has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Peiper is a member of DTARC. He is sued in his official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Johnathan Pieper, PhD, is the Behavioral Health Director for the Section of Prisons within DPS. Defendants admit that Defendant Peiper is a member of the DTARC. Defendants admit that Defendant Peiper is sued in his official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Peiper has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 22 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

23. Defendant Dr. Brian Sheitman is the Chief of Psychiatry for DOP. Defendant Sheitman has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Sheitman is a member of DTARC. He is sued in his official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Brian Sheitman, MD, is the Chief of Psychiatry for the Section of Prisons within DPS. Defendants admit that Defendant Sheitman is a member of the

DTARC. Defendants admit that Defendant Sheitman is sued in his official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Sheitman has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 23 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

24. Defendant Valerie Langley, RN, is the Director of Nursing for DOP. Defendant Langley has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Langley is a member of DTARC. She is sued in her official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Valerie Langley, RN, is the Director of Nursing for the Section of Prisons within DPS. Defendants admit that Defendant Langley is a member of the DTARC. Defendants admit that Defendant Langley is sued in her official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Langley has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 24 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

25. Defendant Dr. Abhay Agarwal is the Deputy Medical Director of DOP. Defendant Agarwal has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Agarwal is a member of DTARC. He is sued in his official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Abhay Agarwal, MD, is the Deputy Medical Director

for the Section of Prisons within DPS. Defendants admit that Defendant Agarwal is a member of the DTARC. Defendants admit that Defendant Agarwal is sued in his official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Agarwal has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 25 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

26. Defendant Sarah Cobb is the Director of Rehabilitative Services of DOP. Defendant Cobb has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Cobb is a member of DTARC. She is sued in her official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Sarah Cobb is the Director of Rehabilitative Services for the Section of Prisons within DPS. Defendants admit that Defendant Cobb is a member of the DTARC. Defendants admit that Defendant Cobb is sued in her official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Cobb has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 26 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

27. Defendant Josh Panter is the Director of Operations for DOP. Upon information and belief, Defendant Panter is a member of DTARC. Defendant Panter has a legal duty to provide needed health care to all persons in DOP custody. He is sued in his official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Josh Panter is the Director of Operations for the Section of Prisons within DPS. Defendants admit that Defendant Panter is a member of the DTARC. Defendants admit that Defendant Panter is sued in his official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Panter has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 27 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

28. Defendant Charlotte Williams is the Prison Rape Elimination Act ("PREA") Director for all of DPS Adult Correction and Juvenile Justice. She is responsible for developing, implementing, and overseeing DPS efforts to comply with PREA standards in all of its facilities. Defendant Williams has a legal duty to provide needed health care to all persons in DOP custody. Upon information and belief, Defendant Williams is a member of DTARC. She is sued in her official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Charlotte Williams is the PREA Director for the Section of Prisons within DPS. Defendants admit that Defendant Williams is a member of the DTARC. Defendants admit that Defendant Williams is sued in her official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Williams has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 28 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

29. Defendant Dr. Elton Amos is a member of the Utilization Review Board for DOP. Defendant Amos has a legal duty to provide needed health care to all persons in DOP custody. He

is sued in his official capacity under §1983 for violations of Plaintiff's Eighth Amendment rights and under Article I, Section 27 of the state Constitution.

RESPONSE: Defendants admit that Elton Amos, MD is a member of the Utilization Review Board for the Section of Prisons within DPS. Defendants admit that Defendant Amos is a member of the DTARC. Defendants admit that Defendant Amos is sued in her official capacity pursuant to the authorities cited in this paragraph. However, Defendants deny that Defendant Amos has violated any of Plaintiff's rights under any law. The remaining allegations of Paragraph 29 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

FACTUAL ALLEGATIONS

I. Gender Identity and Gender Dysphoria

30. "Gender Identity" is a well-established medical concept, referring to a person's deeply felt, internal sense of their own gender, e.g., being male, female, or non-binary.

RESPONSE: Admitted.

31. All human beings develop and possess a gender identity. It is a core part of identity that cannot be altered by choice or by external factors.

RESPONSE: Based on the specific language used in this allegation, Defendants lack sufficient information and knowledge to admit or deny allegations in Paragraph 31 and therefore deny them.

32. Typically, people who are assigned female at birth based on their external anatomy identify as girls or women, and people who are assigned male at birth based on their external anatomy identify as boys or men. Individuals with a gender identity congruent with the sex they were assigned at birth are cisgender. A cisgender man, for example, is a person who was assigned

male at birth and who has a male gender identity.

RESPONSE: Admitted.

33. Transgender people have a gender identity that differs from the sex assigned to them at birth. A transgender woman is a woman who was assigned male at birth but who, like a cisgender woman, has a female gender identity. A transgender man is a man who was assigned female at birth but who, like a cisgender man, has a male gender identity.

RESPONSE: Admitted.

34. “Gender dysphoria” is a medical diagnosis for a condition involving clinically significant distress and impairment that may result from the incongruence between one’s gender identity and one’s sex assigned at birth. “Gender identity disorder” was a diagnostic label used in the past to refer to people experiencing incongruence between their gender identity and their sex assigned at birth, but that term was abandoned to acknowledge that neither a transgender person’s identity nor gender incongruence are “disordered.”

RESPONSE: Defendants admit that “gender dysphoria” is a mental health diagnosis currently defined by Diagnostic and Statistical Manual of Mental Disorders (DSM-5) as, “[a] strong and persistent cross gender identification. It is manifested by a stated desire to be the opposite sex and persistent discomfort with his or her biologically assigned sex.” Defendants also admit that the DSM-5 notes that this condition is associated with, “clinically significant distress or impairment in social, occupational, or other important areas of functioning.” Defendants admit that the phrase “gender identity disorder” is a phrase that was used by some healthcare professionals and organizations. Defendants lack sufficient knowledge and information to respond to the allegations concerning to whom that phrase was intended to refer or why that phrase may no longer be used, and therefore deny them. Except as specifically admitted, Defendants deny any

remaining allegations contained in this paragraph.

35. Gender dysphoria is a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (“DSM-5”) and the International Classification of Diseases-10 (“ICD-10”).

RESPONSE: Defendants admit that gender dysphoria appears in both the DSM-5 and ICD-10. Defendants further admit that this paragraph refers to written documents which speak for themselves. Except as specifically admitted, Defendants deny any remaining allegations contained in this paragraph.

36. If untreated or inadequately treated, gender dysphoria can lead to serious harms. These harms include clinically significant psychological distress, impairment of basic life activities, and debilitating depression. Untreated or inadequately treated gender dysphoria is also associated with higher risks of experiencing unemployment, homelessness, victimization, and involvement in the criminal legal system. For some individuals, not receiving necessary treatment for gender dysphoria results in self-harm, suicidal ideation, suicide, and death.

RESPONSE: Defendants admit that if untreated or inadequately treated, gender dysphoria may lead to harms that may include those listed in the first sentence of Paragraph 36. Defendants further admit that some studies suggest there may be an association—though not necessarily causation—between gender dysphoria and higher risks of the certain conditions, some of which are listed in this paragraph. Defendants also admit that for some individuals, not receiving necessary treatment for gender dysphoria may result in some of the harms listed in the final sentence of Paragraph 36. Any remaining allegations of Paragraph 36 are denied.

37. The widely accepted standards of care for treating gender dysphoria are published by the World Professional Association for Transgender Health (“WPATH”). WPATH is the

leading international organization focused on transgender healthcare with a membership of physicians, psychiatrists, psychologists, social workers, surgeons, and other health professionals who specialize in the diagnosis and treatment of gender dysphoria.

RESPONSE: Defendants admit that the WPATH is an international professional and advocacy organization with members from a variety of disciplines that focuses on transgender healthcare and gender dysphoria. Defendants further admit that this paragraph refers to written documents that speak for themselves and offer their own assertions, to which Defendants do not specifically respond herein. The remaining allegations of Paragraph 37 are denied.

38. WPATH publishes the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (“SOC”). The current version of the Standards of Care—Version 7—was released in September 2011 following a five-year process in which 18 gender dysphoria specialists submitted peer-reviewed papers to help identify the most effective treatments for gender dysphoria. The SOC are the prevailing standards of care used by mental health providers and medical professionals treating gender dysphoria.

RESPONSE: Defendants admit that the WPATH publishes the SOC. Defendants further admit that the current version of the SOC—Version 7—was released in September 2011. Defendants further admit that the SOC is a written document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein. Defendants also admit that the SOC are followed by some providers in some settings. Defendants deny that the SOC are universally accepted. Defendants lack sufficient knowledge and information regarding the specific process of publication and therefore deny those allegations. Any remaining allegations of Paragraph 38 are denied.

39. The SOC explicitly apply “in their entirety” to transsexual, transgender, and gender

non-conforming people in “institutional environments such as prisons,” and state:

Health care for transsexual, transgender, and gender- nonconforming people living in an institutional environment should mirror that which would be available to them if they were living in a non-institutional setting within the same community. All elements of assessment and treatment as described in the [Standards of Care] can be provided to people living in institutions Access to these medically necessary treatments should not be denied on the basis of institutionalization or housing arrangements. If the in-house expertise of health professionals in the direct or indirect employ of the institution does not exist to assess and/or treat people with gender dysphoria, it is appropriate to obtain outside consultation from professionals who are knowledgeable about this specialized area of health care.²

RESPONSE: Defendants admit that the SOC is a written document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein.

40. There is broad agreement among leading medical and mental-health professional associations and organizations—including the American Medical Association, the American Psychological Association, the American Psychiatric Association, the American Academy of Family Physicians, the American Congress of Obstetricians and Gynecologists, the Endocrine Society, the National Association of Social Workers, and WPATH—that gender dysphoria is a serious medical condition and that treatment for gender dysphoria is medically necessary.

RESPONSE: The allegations of Paragraph 40 are legal conclusions to which no response is required. To the extent a response is required to any remaining allegations, those allegations are denied.

41. The National Commission on Correctional Healthcare recommends that the medical management of prisoners with gender dysphoria “follow accepted standards developed by professionals with expertise in transgender health,” citing the SOC.³

² World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, at 67 (7th Ed. 2012), <https://www.wpath.org/publications/soc>.

³ National Commission on correctional Health Care, Position Statement: Transgender Health

RESPONSE: Defendants admit that this paragraph references a written document that speak for itself and offers its own assertions, to which Defendants do not specifically respond herein.

42. The SOC are designed to help individuals live in accordance with their gender identity, eliminating the clinically significant distress often associated with an incongruence between a person's gender identity and sex assigned at birth. Treatment protocols include social transition (dressing, grooming, and living in accordance with one's gender identity in all facets of life), legal transition, and medical transition, including gender affirming hormone therapy and gender- affirming surgical care. The particular course of medical treatment varies based on the individualized needs of the person suffering from gender dysphoria.

RESPONSE: Defendants admit that this paragraph references a written document that speak for itself and offers its own assertions, to which Defendants do not specifically respond herein.

II. Mrs. Zayre-Brown's History of Gender Dysphoria

43. Since she was a child, Mrs. Zayre-Brown has been aware of her female identity and understood herself to be female. From a young age, Mrs. Zayre-Brown felt repelled by and sought to hide her genitalia. Mrs. Zayre-Brown frequently dressed in a feminine manner despite disapproval from many of her family members. Because of her feminine presentation, Mrs. Zayre-Brown was targeted for violence and sexual harassment and ran away from home multiple times to avoid abuse.

RESPONSE: Defendants lack sufficient knowledge and information to respond the

Care in Correctional Settings (October 18, 2009; reaffirmed with revision April 2015), <https://www.ncchc.org/filebin/Positions/Transgender-and-Gender-Diverse-Health-Care-inCorrectional-Settings-2020.pdf> (last visited Dec. 12, 2021).

allegations in this paragraph.

44. In or around 1996, when Mrs. Zayre-Brown was about 15 years old, she left home permanently. At that time, Mrs. Zayre-Brown began routinely dressing in a feminine manner and going by the name Kanautica, instead of the typically masculine name she was given at birth.

RESPONSE: Defendants lack sufficient knowledge and information to respond the allegations in this paragraph.

45. Mrs. Zayre-Brown was under DPS supervision in programs for youth from 2001 until 2005, and under DPS supervision for adults from 2005 until January of 2010. Upon information and belief, Mrs. Zayre-Brown was held under only minimum security or less during these periods of DPS supervision, was permitted to hold a job in the community, and was permitted to express herself by wearing her own clothes.

RESPONSE: Defendants admit that Plaintiff was housed at the Western Youth Institution from November 3, 1999, to February 16, 2000, and that for the remainder of that incarceration and each of the three incarcerations that have followed, she was and remains under supervision as an adult offender. Defendants further admit that Plaintiff was briefly placed on work release in 2008 and again in 2009. Defendants deny the remaining allegations.

46. After being released from DPS supervision in 2010, Mrs. Zayre-Brown socially transitioned to live openly as the woman she knew herself to be in all aspects of her life.

RESPONSE: Defendants lack sufficient knowledge and information to respond to the allegations in this paragraph.

47. In or around 2010, Mrs. Zayre-Brown was diagnosed with gender dysphoria by psychologist Dr. Katrina Kuzyszyn-Jones at the UNC School of Psychiatry and began receiving psychotherapy for treatment of her gender dysphoria.

RESPONSE: Defendants lack sufficient knowledge and information to respond to the allegations in this paragraph.

48. In May of 2012, with the support of Dr. Kuzyszyn-Jones, Mrs. Zayre-Brown began gender-affirming hormone therapy to treat her gender dysphoria at UNC Health Care. Upon information and belief, Mrs. Zayre-Brown began hormone therapy under the care of UNC endocrinologist Dr. Julie Sharpless.

RESPONSE: Defendants lack sufficient knowledge and information to respond to the allegations in this paragraph.

49. In November of 2012, Mrs. Zayre-Brown legally changed her name from the typically masculine name she was given at birth to Kanautica Promises Zayre, to align with her female identity.

RESPONSE: Admitted, upon information and belief.

50. In 2012 and 2013, as part of treatment for gender dysphoria, Mrs. Zayre-Brown had gender-affirming mammoplasty and body contouring surgeries, resulting in a more typically feminine body shape.

RESPONSE: Defendants admit that Plaintiff reported to DPS staff upon her incarceration in October 2017, that she had undergone various surgeries, included those indicated in this paragraph. Defendants lack sufficient knowledge and information to respond to the remaining allegations in this paragraph.

51. In 2014, Mrs. Zayre-Brown married her long-time partner, Dionne Brown, and began going by Kanautica Promises Zayre-Brown.

RESPONSE: Admitted, upon information and belief.

52. On July 20, 2017, Mrs. Zayre-Brown underwent gender-affirming orchiectomy—

removal of the testes—as part of treatment of her gender dysphoria. The orchiectomy was intentionally performed in a manner to facilitate later gender-affirming genital surgery, the next step in Mrs. Zayre-Brown’s treatment plan prior to her incarceration by DPS.

RESPONSE: Admitted, upon information and belief.

III. DPS’s Policy for Transgender Prisoners

53. On or around August 22, 2019, DPS rescinded its previous Health Services Policy regarding the care and treatment of incarcerated transgender people⁴ and issued the DPS Policy for Transgender Prisoners.

RESPONSE: Admitted.

54. The DPS Policy for Transgender Prisoners establishes procedures for the “evaluation and management” of transgender people in DPS custody. These include procedures for housing assignments and health care.

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

55. Under the DPS Policy for Transgender Prisoners, “Routine Accommodation” requests include continuation of hormone therapy (if prescribed immediately before incarceration); male or female undergarments; hygiene/hair products, cosmetics, and other canteen items; private showering; and facility housing considerations.⁵ Routine Accommodation requests are evaluated by a Facility Transgender Accommodation Review Committee (“Facility TARC” or “FTARC”),

⁴ See N.C. Dept. of Pub. Safety Health Services Policy and Procedure Manual, Policy TX I-13 (Aug. 2018), <https://files.nc.gov/ncdps/Transgender.pdf>.

⁵ DPS Policy for Transgender Prisoners, § .4303(j)(3).

in consultation with the Warden of the facility.⁶ Each Facility TARC “includes representatives from psychiatry (as needed), behavioral health, primary care provider, nursing administration (Associate Wardens for custody and operations/programs), unit manager, and the facility PREA Compliance Manager.”⁷

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

56. “Non-Routine Accommodation” requests include, but are not limited to: initiation of hormone therapy; gender-consistent facility assignment; and gender- affirming surgical requests.⁸

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

57. “Non-Routine Accommodation” requests and appeals from decisions made by FTARC are considered by the Division Transgender Accommodation Review Committee (“Division TARC” or “DTARC”).⁹ The DTARC must include, “at a minimum, the Medical Director, Chief of Psychiatry, Behavioral Health Director, Director of Rehabilitative Services, and the PREA Director.”¹⁰

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are

⁶ *Id.*, § .4303(j).

⁷ *Id.*, § .4302(j).

⁸ *Id.*, § .4303(j)(4).

⁹ *Id.*, § .4303(i), (j)(4).

¹⁰ *Id.*, § .4302(k).

inconsistent with said document.

58. Upon information and belief, the current members of the DTARC are Defendants Campbell, Catlett, Peiper, Sheitman, Langley, Agarwal, Cobb, Panter, and Williams.

RESPONSE: Admitted.

59. The DPS Policy for Transgender Prisoners requires that the DTARC refer its recommendations regarding surgical intervention or gender-identity-consistent facility transfer to the Assistant Commissioner of Prisons—Defendant Harris—and Director of Health and Wellness Services—Defendant Junker—for final determinations.¹¹

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

60. An interim policy issued on July 13, 2021 for the purpose of amending the policy “prior to the annual review date” clarified that “[a]fter gender-identity- consistent facility transfer, subsequent transfers will be managed according to Division guidelines.”¹²

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

61. Decision-making under the DPS Policy for Transgender Prisoners is supposed to require individualized review and consideration on a case-by-case basis.¹³

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for

¹¹ *Id.*, § .4303(j)(4).

¹² *See* Interim Policy and Procedure: Evaluation & Management of Transgender Offenders, N.C. Dept. of Pub. Safety Policy & Proc. Manual, Ch. F, § .4300(I) (July 13, 2021), <https://files.nc.gov/ncdps/F.4300-Interim-Evaluation-Management-of-TransgenderOffenders.pdf>.

¹³ DPS Policy for Transgender Prisoners, § .4303(g), (j)(2)(G), (j)(4).

itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

62. The DPS Policy for Transgender Prisoners also enumerates training requirements and “respectful communication” requirements for DPS staff in relation to transgender individuals in DPS custody. Staff are required to use either “gender preferred or gender-neutral” pronouns and names when interacting with a transgender person in DPS custody. Intentional misuse of gender pronouns is prohibited. DPS staff are required to “maintain the privacy and confidentiality” of people who are transgender.¹⁴ Additionally, DPS staff are supposed to “receive training specific to the care and custody of LGBTI offenders,” both initially and annually.¹⁵

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

63. Upon information and belief, DPS has never provided any prisoner with gender-affirming surgery for the treatment of gender dysphoria.

RESPONSE: Admitted.

IV. Defendants’ Delays and Denials of Mrs. Zayre-Brown’s Requests for Gender Dysphoria Treatment

64. On October 10, 2017, Mrs. Zayre-Brown entered DPS custody. Immediately after her incarceration began, Mrs. Zayre-Brown informed DPS correctional officers that she is a transgender woman who needs to be treated consistently with her female identity and provided medical treatment for gender dysphoria. DPS medical and mental health staff obtained medical records from Mrs. Zayre-Brown’s previous health care providers, which documented her treatment

¹⁴ *Id.*, § .4306.

¹⁵ *Id.*, § .4305.

for gender dysphoria including hormone therapy and certain gender-affirming surgeries.

RESPONSE: Defendants admit that on October 10, 2017, Plaintiff entered DPS custody, and subsequently informed DPS correctional officers that she is a transgender woman. Defendants admit that DPS medical and mental health staff obtained Plaintiff's external past medical records which documented a variety of past medical treatment. Defendants further admit that this paragraph references written documents which speak for themselves and may contain their own assertions to which Defendants do not specifically respond herein. The remaining allegations of Paragraph 64 contain legal conclusions to which no response is required. Except as specifically admitted, any remaining allegations contained in this paragraph are denied.

65. On October 13, 2017, DPS mental health provider Susan Garvey evaluated Mrs. Zayre-Brown for gender dysphoria and noted that “[a]ccording to the DSM-V, [Mrs. Zayre-Brown] meets the criteria for a diagnosis of Gender Dysphoria in Adolescents and Adults[.]” On November 16, 2017, DPS medical provider Dr. Joseph J. Umesi confirmed Mrs. Zayre-Brown's gender dysphoria diagnosis.

RESPONSE: Defendants admit that this paragraph appears to refer to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Defendants further admit, upon information and belief, that Dr. Umesi entered a diagnosis of gender dysphoria into Plaintiff's medical record. Any remaining allegations contained in this paragraph are denied.

66. On November 27, 2017 Mrs. Zayre-Brown had her first interview with the FTARC panel at Harnett Correctional Institution (“Harnett CI”) to formally request treatment of her gender dysphoria. At that time, Mrs. Zayre-Brown requested, among other things, that her legal name be used on all documents in the DPS system to prevent her from being misgendered by DPS staff,

which exacerbates her gender dysphoria, and to be referred to an endocrinologist to restart hormone therapy. Mrs. Zayre-Brown also asked about receiving the gender-affirming genital surgery that she intended to undergo prior to her incarceration, as part of treatment for gender dysphoria.

RESPONSE: Defendants admit that on or about November 2017, Plaintiff met with an FTARC panel and made certain requests related to her status as a transgender woman. Defendants lack sufficient knowledge and information to respond the remaining allegations in this paragraph.

67. Despite the fact that DPS has known since the beginning of her term of incarceration that Mrs. Zayre-Brown is a transgender woman with gender dysphoria who has undergone hormone therapy and gender-affirming surgeries, DPS housed Mrs. Zayre-Brown in male facilities for almost two years. Mrs. Zayre-Brown was misgendered on a near-constant basis by both correctional and medical staff and other prisoners. Being a transgender woman in a male facility exacerbated Mrs. Zayre-Brown's gender dysphoria, caused her extreme mental and psychological distress, placed her at grave risk of physical assault and sexual assault, and led to Mrs. Zayre-Brown being placed on suicide-watch.

RESPONSE: Defendants admit that Plaintiff was housed in a male facility from October 10, 2017 until August 15, 2019. Defendants deny any assertion that doing so was in any way a violation of any of Plaintiff's legal rights. Defendants deny any remaining allegations.

68. After numerous attempts to obtain a transfer to a women's facility and after the added public pressure of community advocacy and media coverage, Mrs. Zayre-Brown was finally transferred to Anson CI, a women's facility on August 15, 2019.

RESPONSE: Defendants admit that Plaintiff was transferred to Anson CI, a women's facility on August 15, 2019. Defendants deny any remaining allegations contained in this

paragraph.

69. While at Anson CI, Mrs. Zayre-Brown has continued to face discrimination in the treatment of, and refusal to accommodate, her gender dysphoria.

RESPONSE: Defendants deny violating any of Plaintiff's legal rights. Defendants further deny any knowledge of discriminatory refusal of treatment or other requested accommodations. Defendants deny any remaining allegations contained in this paragraph.

70. Although DPS's Policy for Transgender Prisoners requires respectful communication and training to that effect, DPS staff has persistently mis-gendered Mrs. Zayre-Brown—addressing her using masculine pronouns or her since-changed name—which has the known impact of worsening her gender dysphoria.

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Defendants deny any knowledge of DPS staff persistently and intentionally mis-gendering Plaintiff—addressing her using masculine pronouns or her since-changed name. Defendants lack sufficient knowledge and information to respond the remaining allegations in this paragraph.

71. Further, in implementing its Policy for Transgender Prisoners, DPS has erected onerous and medically unnecessary barriers which have delayed or prevented Mrs. Zayre-Brown from obtaining treatment for gender dysphoria, and which do not apply to the treatment of other disabilities.

RESPONSE: Denied.

72. As detailed *infra*, Mrs. Zayre-Brown's requests for accommodation and necessary medical treatment of Mrs. Zayre-Brown's gender dysphoria have been unjustifiably delayed,

provided inconsistently, and/or outright denied.

RESPONSE: Denied.

73. On top of the harm from the unlawful discrimination Mrs. Zayre-Brown has experienced on the basis of her disability, Mrs. Zayre-Brown continues to suffer extreme psychological and emotional harm due to DPS's deliberate indifference to her need for necessary treatment of her gender dysphoria, including gender-affirming surgery.

RESPONSE: Denied.

74. The physical, psychological, and emotional distress caused by DPS's failure to provide needed treatment of Mrs. Zayre-Brown's gender dysphoria is persistent and severe. For Mrs. Zayre-Brown, her external genitalia fill her with feelings of disgust and unrelenting fear and anxiety that others will know that she is not "complete" in the way that she needs to be. DPS's repeated delay, interruption, and denial of treatment for Mrs. Zayre-Brown's gender dysphoria has placed and continues to place her at risk of serious harm.

RESPONSE: Denied.

A. Denial and Delay of Hormone Therapy

75. Despite extensive documentation in her pre-incarceration medical records of her history of receiving hormone therapy, DPS's confirmation of her diagnosis of gender dysphoria, and Mrs. Zayre-Brown requests for hormone therapy, DPS did not reinstate Mrs. Zayre-Brown's hormone therapy for the treatment of her gender dysphoria until June of 2018, eight months after entering DPS custody.

RESPONSE: Defendants admit that in June 2018, Plaintiff began receiving hormone therapy while in DPS custody. Defendants deny the remaining allegations in this paragraph based on the wording thereof.

76. In addition to DPS's eight-month delay in reinitiating Mrs. Zayre-Brown's hormone therapy, Mrs. Zayre-Brown has also experienced unwarranted and repeated interruptions of her hormone therapy, as well as inconsistent and inadequate monitoring of her hormone levels.

RESPONSE: Denied.

77. When taken consistently at an appropriate dosage, hormone therapy for transgender women like Mrs. Zayre-Brown suppresses androgens, which has feminizing effects, including body fat redistribution, decreased body and facial hair growth, and decreased erectile function. However, inadequate or interrupted hormone therapy will not sufficiently suppress androgens to achieve the maximum possible feminizing effects.

RESPONSE: Defendants admit, upon information and belief, that consistent and appropriate hormone therapy for transgender women generally suppresses androgens, which may have feminizing effects, including body fat redistribution, decreased body and facial hair growth, and decreased erectile function. Any remaining allegations are denied.

78. As a result of periods of interrupted and/or inadequate hormone therapy, Mrs. Zayre-Brown has suffered physical and emotional distress from hair growth, weight gain, and genital sensation that exacerbate her gender dysphoria, causing depression, anxiety, suicidal thoughts, and a dangerous attempt and ongoing desire to self-mutilate her genitals.

RESPONSE: Denied.

79. On January 31, 2019, Mrs. Zayre-Brown had an appointment with Dr. Karla Pou, an endocrinologist with UNC Health that DPS referred her to for hormone therapy treatment. Dr. Pou discovered that the labs assessing Mrs. Zayre-Brown's hormone levels sent from DPS in advance of Mrs. Zayre-Brown's visit had been incorrectly calibrated to male hormone target ranges, resulting in mislabeling of the lab values, and that Mrs. Zayre-Brown's hormone levels

were below the target female range.

RESPONSE: Defendants admit, upon information and belief, that on or about January 31, 2019, Plaintiff had an appointment with Dr. Karla Pou as indicated in this paragraph. Defendants further admit that records from that appointment indicate that Dr. Pou noted that she discovered that Plaintiff's laboratory values were being run on a platform for a male and that this was causing the values to be mislabeled as high or low. Defendants also admit that the medical note indicates that this labelling error needed to be changed as Dr. Pou was targeting a female hormone range. Any remaining allegations in this paragraph are denied.

80. On or around January 26, 2019, Mrs. Zayre-Brown ran out of her prescribed hormone therapy medication and a refill was not issued. Upon information and belief, DPS did not administer Mrs. Zayre-Brown her prescribed hormone therapy for approximately five days prior to her appointment with Dr. Pou.

RESPONSE: Denied.

81. Following the January 31, 2019 appointment, Dr. Pou informed DPS providers about the lab results and instructed that Mrs. Zayre-Brown's hormone therapy should not be withheld without a medical justification.

RESPONSE: Defendants lack sufficient knowledge and information to respond the remaining allegations in this paragraph.

82. On April 15, 2019, Mrs. Zayre-Brown had an appointment with Dr. Pou for maintenance of her hormone therapy. Dr. Pou noted at this appointment that DPS failed to provide her with the requested labs necessary to evaluate the efficacy of Mrs. Zayre-Brown's hormone therapy regimen.

RESPONSE: Defendants lack sufficient knowledge and information to respond the

remaining allegations in this paragraph.

83. On July 9, 2020, Mrs. Zayre-Brown had a hormone therapy maintenance appointment at UNC Endocrinology with Dr. Donald Caraccio. Although Mrs. Zayre- Brown had routinely attended hormone therapy maintenance appointments roughly every three months to monitor and assess the efficacy of her hormone therapy, after this appointment, no further maintenance appointments were scheduled for Mrs. Zayre-Brown for the remainder of 2020.

RESPONSE: Defendants admit that Plaintiff attended and was scheduled for the appointments she references in this paragraph. Defendants deny the remaining allegations in this paragraph.

84. Mrs. Zayre-Brown was transferred to Anson CI on August 15, 2020. Upon information and belief, Mrs. Zayre-Brown was not provided hormone therapy for at least two weeks following her transfer. Though Anson CI staff eventually reinitiated Mrs. Zayre-Brown's hormone therapy, the efficacy of her hormone therapy went unmonitored for several months.

RESPONSE: Denied.

85. As detailed further *infra*, from fall of 2020 through spring of 2021, Mrs. Zayre-Brown filed numerous requests for information as well as an emergency grievance to Defendant Ishee seeking, among other things, an endocrinology appointment to maintain her hormone therapy, and noting her worsening gender dysphoria as a result of the unwanted physical effects caused by her unregulated hormones.

RESPONSE: Defendants admit that Plaintiff has made numerous requests for information and including an emergency grievance sent to Defendant Ishee. Defendants further admit that this paragraph refers to written documents which speak for themselves and offer their own assertions, to which Defendants do not specifically respond herein.

86. On May 28, 2021, Mrs. Zayre-Brown's counsel issued a demand letter to DPS General Counsel seeking, among other things, an endocrinologist appointment for maintenance of Mrs. Zayre-Brown's hormone therapy.

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein.

87. On June 10, 2021, Mrs. Zayre-Brown had an appointment with Dr. Caraccio via telehealth to discuss the severe mental health symptoms she was experiencing because of her gender dysphoria. This was Mrs. Zayre-Brown's first hormone therapy maintenance appointment since July 9, 2020.

RESPONSE: Defendants admit that on the June 10, 2021, Plaintiff had an appointment with Dr. Caraccio via telehealth. Defendants further admit that Plaintiff's previous appointment with Dr. Caraccio occurred on July 9, 2020. Defendants deny the remaining allegations in this paragraph.

88. Mrs. Zayre-Brown expressed that she felt like she was not receiving adequate hormone therapy and the lack of adequate hormone therapy was contributing to her worsening mental health. Dr. Caraccio could make no determinations about the adequacy of hormone therapy, however, because DPS had not had labs drawn and sent them to Dr. Caraccio before the appointment.

RESPONSE: Defendants lack sufficient knowledge and information to respond the allegations in this paragraph.

89. In July 2021, after DPS finally sent labs to Dr. Caraccio, it was determined that Mrs. Zayre-Brown's hormone levels were again not within target range and that her hormone therapy treatment needed to be altered to be effective.

RESPONSE: Defendants lack sufficient knowledge and information to respond the allegations in this paragraph.

B. Denial of Gender-Affirming Surgery

90. Mrs. Zayre-Brown made her first inquiry to DPS about the gender-affirming genital surgery she required for treatment of her gender dysphoria on November 27, 2017, and Mrs. Zayre-Brown started requesting gender-affirming surgery from DPS through formal channels on November 7, 2018. Since then, DPS has repeatedly delayed, deferred, and denied Mrs. Zayre-Brown's requests for gender-affirming surgery without sufficient medical justification and on non-medical grounds.

RESPONSE: Defendants admit, upon information and belief, that Plaintiff first inquired about gender-affirming surgery in November 2017, and first formally requested the same in November 2018. Defendants deny that since then they have denied, delayed, or deferred the requested surgery in bad-faith. Defendants deny any remaining allegations in contained in this paragraph.

91. On November 7, 2018, Mrs. Zayre-Brown made her first request for gender-affirming surgery for the treatment of gender dysphoria through a sick call while housed at Harnett CI.

RESPONSE: Admitted.

92. On December 7, 2018, Mrs. Zayre-Brown submitted a request for gender-affirming surgery to the FTARC at Harnett CI.

RESPONSE: Admitted.

93. On January 7, 2019, in advance of a January 11, 2019 Harnett CI FTARC meeting, Mrs. Zayre-Brown was evaluated for gender-affirming surgery by Dr. Umesi, who submitted a

Utilization Review (“UR”) request for “[f]ull genital gender- affirming surgery,” noting that this was the next step in her treatment plan prior to incarceration and that her previous genital surgery was performed in accordance with the SOC.

RESPONSE: Defendants admit, upon information and belief, that Plaintiff was evaluated by Dr. Umesi on January 7, 2019, and that this encounter was documented, and speaks for itself. Said document may offer its own assertions, to which Defendants do not specifically respond herein. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. The remaining allegations of Paragraph 93 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

94. Upon information and belief, on or around January 11, 2019, the Harnett CI FTARC reviewed Mrs. Zayre-Brown’s request for gender-affirming surgery and indicated that gender-affirming surgery was “not recommended” but did not provide any rationale. The Harnett CI FTARC referred the request and its recommendation to the DTARC.

RESPONSE: Defendants admit that on or about January 11, 2019, the Harnett CI FTARC reviewed a request by Plaintiff and indicated its findings on a document, to which this paragraph refers. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

95. Beginning in or around February of 2019, DTARC repeatedly “deferred” Mrs. Zayre-Brown’s request for gender-affirming surgery for decision at a later date, and without referral for a consultation with a health care provider competent in the treatment of gender dysphoria.

RESPONSE: Denied.

96. Mrs. Zayre-Brown made repeated inquiries and expressed distress to medical and

mental health providers at Harnett CI and Warren Correctional Institution (“Warren CI”), where she was transferred in March of 2019, regarding the status of her request for gender-affirming surgery.

RESPONSE: Defendants lack sufficient knowledge and information to respond the allegations in this paragraph.

97. On April 15, 2019, at a hormone therapy maintenance appointment with Dr. Pou, Mrs. Zayre-Brown expressed to Dr. Pou that she needed gender-affirming surgery.

RESPONSE: Defendants lack sufficient knowledge and information to respond the allegations in this paragraph.

98. At this same appointment, Dr. Pou referred Mrs. Zayre-Brown to Dr. Brad Figler, a urologist with UNC Urology and surgical provider in the UNC Transgender Health Program. Dr. Figler performs a range of gender-affirming surgeries, including the gender-affirming genital surgery that Mrs. Zayre-Brown needs.

RESPONSE: Defendants lack sufficient knowledge and information to respond the allegations in this paragraph concerning Dr. Pou’s actions. Defendants admit, upon information and belief, that Dr. Figler is a physician who practices in the fields of medicine as described in this paragraph and that Plaintiff was referred to Dr. Figler for an evaluation.

99. Upon information and belief, Dr. Figler’s office contacted Warren CI, but the facility declined his assistance, asserting lack of knowledge about the desire for a consultation.

RESPONSE: Defendants lack sufficient knowledge and information to respond the allegations in this paragraph.

100. On July 8, 2019, Mrs. Zayre-Brown had another hormone therapy maintenance appointment with Dr. Pou. Following that appointment, Dr. Pou again referred Mrs. Zayre-Brown

for consultation for gender-affirming surgery with Dr. Figler. Dr. Pou requested that DPS contact Dr. Figler's office directly and arrange a consultation for gender-affirming surgery "ASAP."

RESPONSE: Defendants admit that a medical record from this appointment reflects that Dr. Pou reiterated her referral of Plaintiff to Dr. Figler. Defendants further admit that the same medical record indicates that Dr. Pou had previously referred Plaintiff to Dr. Figler. Any remaining allegations in this paragraph are denied.

101. Multiple DPS medical and mental health providers for Mrs. Zayre-Brown—including Physician's Assistant Gloria Harvey, Nurse Caroline Fleming, Defendant Agarwal, Dr. Anita Wilson, and Dr. Patricia Hahn—were aware of Dr. Pou's recommendations and referred Dr. Pou's recommendation for a consultation with Dr. Figler to DTARC for review.

RESPONSE: Defendant Agarwal does not recall being made aware of Dr. Pou's recommendation as referenced in this paragraph. As to the knowledge of the other persons referenced in this paragraph, Defendants lack sufficient knowledge and information to respond the allegations in this paragraph and therefore deny the same.

102. Mrs. Zayre-Brown expressed extreme distress to her mental health providers, including Dr. Hahn, caused by the lack of response from DTARC to her requests for gender-affirming surgery. The severity of Mrs. Zayre-Brown's distress culminated in her being taken to the emergency room on August 6, 2019. She was subsequently placed on suicide watch.

RESPONSE: Defendants admit that on August 6, 2019, Plaintiff was sent to the emergency room after what the hospital records refer to as a "syncopal episode" and "nausea and vomiting." Defendants also admit that a mental health assessment was conducted upon her return to the facility and that during the assessment Plaintiff reported being under a lot of stress and expressed worry that she would self-harm. Defendants further admit that Plaintiff was placed on self-injurious

behavior watch as a result and that this watch was ended the next day when Plaintiff expressed that she had no suicidal ideation or other thoughts of self-injury. Any remaining allegations are denied.

103. On August 15, 2019, Mrs. Zayre-Brown was transferred to Anson CI. On August 21, 2019, DTARC again “deferred” Mrs. Zayre-Brown’s December 7, 2018 request for gender-affirming surgery. The DTARC report stated that it was deferring Mrs. Zayre-Brown’s request for gender-affirming surgery, inaccurately asserting both that Mrs. Zayre-Brown had “successfully completed gender reassignment surgically” and that “[v]aginoplasty is an elective procedure which is not medically necessary for reassignment.” The DTARC report also asserted that “[c]urrent staffing and resources does [sic] not allow for the proper post-operative care of this procedure.” While designating its decision as a deferral, DTARC’s decision was a denial of Mrs. Zayre-Brown’s request for gender-affirming surgery.

RESPONSE: Defendants admit that, on August 15, 2019, Mrs. Zayre-Brown was transferred to Anson CI. Defendants admit that the DTARC did not reach a decision on the request on August 21, 2019. Defendants admit that this paragraph refers to a DTARC document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Any remaining allegations contained in this paragraph are denied.

104. After learning of DTARC’s decision, Mrs. Zayre-Brown initiated the administrative remedy process to appeal DTARC’s denial by filing a grievance using form DC-410 on October 27, 2019. In her Grievance Statement, Mrs. Zayre-Brown noted that gender-affirming care—including surgery—is medically necessary for the treatment of her gender dysphoria and cited to the DPS Policy for Transgender Prisoners regarding the appropriate procedure for review. On October 30, 2019, DPS accepted this grievance for review and assigned

it the Grievance No. 4575-2019- JPODA-13296.

RESPONSE: Defendants admit that Plaintiff submitted and that DPS received a grievance as described in this paragraph. Defendants further admit that this grievance is a written document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein. Defendants admit that, on October 30, 2019, DPS accepted this grievance for review and assigned it the Grievance No. 4575-2019-JPODA-13296. Defendants deny any remaining allegations in this paragraph.

105. On November 22, 2019, DPS issued a Step One Unit Response to Grievance No. 4575-2019-JPODA-13296 stating that Mrs. Zayre-Brown's request for gender- affirming surgery had been "reviewed by the DTARC committee in compliance with the Transgender Accommodation policy and procedure. Decisions rendered have been based on current policy and relevant factors taken under consideration."

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

106. Mrs. Zayre-Brown appealed Grievance No. 4575-2019-JPODA-13296 to Step Two on or around November 22, 2019.

RESPONSE: Admitted, upon information and belief.

107. On December 3, 2019, DPS issued a Step 2 Area/Complex/Institution Response to Grievance No. 4575-2019-JPODA-13296 reiterating that Mrs. Zayre-Brown's request for gender-affirming surgery had been "reviewed by the D-TARC in compliance with the Transgender Accommodation policy and procedure. Decisions rendered have been based on current policy and relevant factors taken under consideration."

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

108. Mrs. Zayre-Brown appealed Grievance No. 4575-2019-JPODA-13296 to the Secretary of DPS (Step Three) on December 3, 2019.

RESPONSE: Admitted, upon information and belief.

109. On January 2, 2020, the Inmate Grievance Resolution Board (“IGRB”) issued a Step Three Administrative Remedy Response dismissing the final step of Grievance No. 4575-2019-JPODA-13296 as resolved. The Findings and Disposition Order stated: “it appears that medical staff have seen and treated this offender within the parameters of the Health Care Policy. The disagreement of the offender with that of trained medical professionals does not render the professionals’ judgment incompetent nor does it signify any indifference to the offender’s medical care.” The IGRB found that because the most current iteration of the DPS Policy for Transgender Prisoners did not go into effect until August 22, 2020—the day after DTARC’s decision was rendered—there was no requirement for any Director to review DTARC’s decision.

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Any remaining allegations contained in this paragraph are denied.

110. On January 15, 2020, Mrs. Zayre-Brown submitted a request for re-consideration for gender-affirming surgery to the Anson CI FTARC under the then- current DPS Policy for Transgender Prisoners.

RESPONSE: Admitted, upon information and belief.

111. On or around February 7, 2020, the Anson CI FTARC construed Mrs. Zayre-

Brown's request for re-consideration as a request for an Accommodation Update under the DPS Policy for Transgender Prisoners, noted Mrs. Zayre-Brown's desire to appeal DTARC's previous decision denying her gender-affirming surgery, and referred the request to DTARC.

RESPONSE: Admitted, upon information and belief.

112. On or around May 21, 2020, DTARC met to discuss Mrs. Zayre-Brown's January 15, 2020 request for reconsideration for gender-affirming surgery. Following re-consideration, the DTARC report stated that no determination would be made until after "an in-person consultation with an OBGYN surgical specialist with experience in gender affirming surgery." Defendant Junker and Defendant Harris concurred with DTARC's recommendation and directed DTARC "to review consultation results to reconsider the request for accommodation to include rationale that any proposed surgery is supported as medically necessary."

RESPONSE: Defendants admit that the DTARC met to discuss Plaintiff's request on or about the date described in this paragraph. Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Any remaining allegations contained in this paragraph are denied.

113. Upon information and belief, a consultation with a provider outside of DPS has to be submitted and approved through a UR request by a DPS medical provider. Upon information and belief, DPS provider Jennifer Norris, NP and Medical Records Assistant Deloise Hildreth submitted UR Requests between July 1 and July 13, 2020 for a consult with Dr. Figler at UNC.

RESPONSE: Defendants admit that a consultation with an outside provider must be submitted and approved through a UR request. Defendants further admit that a UR request was put in and approved for a consult with Dr. Figler at UNC. Except as specifically admitted, any

remaining allegations are denied.

114. Upon information and belief, on July 23, 2020, Mrs. Zayre-Brown's DPS provider Norris and Medical Records Assistant Hildreth submitted a UR Request for Mrs. Zayre-Brown to have a telephone interview with the coordinator for the UNC Transgender Health Program. This interview was required in order to schedule an in-person consultation for gender-affirming surgery with Dr. Figler. Mrs. Zayre- Brown had this telephonic interview on August 8, 2020. No in-person consultation with Dr. Figler was scheduled at that time, however.

RESPONSE: Defendants admit that Plaintiff was required by UNC to have a phone interview with a staff member at UNC. Defendants further admit that this was a prerequisite to having an in-person consultation with Dr. Figler and was a requirement set by UNC. Defendants further admit that Plaintiff participated in this phone interview in early August 2020. Defendants further admit that the in-person consultation with Dr. Figler was not scheduled at that time. Any remaining allegations are denied.

115. On or around August 27, 2020, DTARC met again to review Mrs. Zayre- Brown's January 2020 request for reconsideration and reissued its approval for a consultation with a specialist with experience in gender-affirming surgery. DTARC noted that Mrs. Zayre-Brown had spoken with the UNC coordinator by phone as necessary, and that an appointment for in-person consultation with the surgeon was "pending scheduling."

RESPONSE: Defendants admit that the DTARC met to discuss Plaintiff's request on or about the date described in this paragraph. Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Any remaining allegations contained in this paragraph are denied.

116. Despite Mrs. Zayre-Brown's repeated inquiries, no surgical consultation was scheduled before the next DTARC meeting on November 12, 2020. At that meeting, DTARC noted that Defendant Catlett would seek to follow up with the UNC Transgender Health Program.

RESPONSE: Defendants admit that the DTARC met to discuss Plaintiff's request on or about the date described in this paragraph. Defendants admit, upon information and belief, that on the date referenced in this paragraph, an in-person consultation had not yet been scheduled. Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Any remaining allegations contained in this paragraph are denied.

117. In December of 2020, Mrs. Zayre-Brown was admitted to the inpatient mental health facility at the North Carolina Institution for Women after expressing an urge to self-mutilate her genitals, suicidal ideation, and extreme hopelessness due to her persistent gender dysphoria and DPS's refusal to provide her with the gender-affirming surgery she needs. After returning to Anson CI in January of 2021, Mrs. Zayre-Brown renewed her inquiries about the consultation for gender-affirming surgery and also inquired about her hormone therapy maintenance appointments.

RESPONSE: Defendants admit that on December 11, 2020, Plaintiff was sent to the North Carolina Correctional Institution for Women and was housed in the mental health unit for a period of time thereafter. Defendants lack sufficient knowledge and information to respond the remaining allegations in this paragraph.

118. In or around February of 2021, Mrs. Zayre-Brown sent an emergency grievance to Defendant Ishee, per DPS Administrative Remedy Procedures, noting that she had made nearly 50 requests for medically necessary treatment for her gender dysphoria since July of 2020, that she had been without a hormone therapy maintenance appointment for more than 200 days, and that

she was very concerned about her worsening mental health and resulting urges to self-mutilate her genitals.

RESPONSE: Defendants admit that Plaintiff submitted an emergency grievance to Defendant Ishee in February 2021. Defendants further admit that the DPS Administrative Remedy Procedure is a written document that speaks for itself. Defendants further admit that said grievance speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein. Defendants deny any remaining allegations.

119. Upon information and belief, Defendant Ishee did not respond to Mrs. Zayre-Brown's emergency grievance.

RESPONSE: Defendants admit that Defendant Ishee did not send a response to Plaintiff concerning this grievance. Any other allegations in this paragraph are denied.

120. On or around February 25, 2021, DTARC again met to review Mrs. Zayre-Brown's January 2020 request for reconsideration for gender-affirming surgery. DTARC reported that Defendant Catlett had been notified that Mrs. Zayre-Brown would need to meet with the UNC Transgender Health Program Management Team prior to a surgical consultation with Dr. Figler and that Defendant Catlett had "requested additional details of what the meeting . . . would entail."

RESPONSE: Defendants admit that the DTARC met to discuss Plaintiff's request on or about the date described in this paragraph. Defendants admit that this paragraph refers to a document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document.

121. In or around March through around early May 2021, without any communications from DPS related to her requests for gender-affirming surgery, Mrs. Zayre-Brown became increasingly distressed and began to experience thoughts of self-harm more frequently.

RESPONSE: Defendants lack sufficient knowledge and information to respond the allegations in this paragraph.

122. Upon information and belief, Mrs. Zayre-Brown met with Katherine Croft of the UNC Transgender Health Program to discuss treatment options via telehealth on May 25, 2021, as the final prerequisite for a surgical consultation with Dr. Figler. Following this appointment, however, DPS did not schedule the surgical consultation with Dr. Figler for Mrs. Zayre-Brown.

RESPONSE: Defendants admit that Plaintiff met with Katherine Croft of the UNC Transgender Health Program on May 25, 2021. Defendants deny that they failed to schedule a surgical consultation or that a surgical consultation did not occur. Defendants lack sufficient knowledge and information to respond the remaining allegations in this paragraph.

123. On May 28, 2021, counsel for Mrs. Zayre-Brown issued a demand letter to the DPS general counsel seeking the requested surgical consultation with UNC Urology for evaluation for gender-affirming surgery and all medically necessary treatment for Mrs. Zayre-Brown's gender dysphoria.

RESPONSE: Defendants admit that on or about May 28, 2021, Plaintiff's counsel sent a letter to DPS' general counsel. Defendants further admit that this paragraph refers to a document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein.

124. On July 12, 2021, Mrs. Zayre-Brown finally had an in-person consultation with Dr. Figler at the UNC Transgender Health Program—two-and-a-half years after her initial request for gender-affirming surgery and more than a year after approval for the consultation by DTARC.

RESPONSE: Defendants admit that on July 12, 2021, Plaintiff had an in-person consultation with Dr. Figler at the UNC Transgender Health Program. Defendants further admit

that the timing of that consultation relative to other events speaks for itself. Defendants lack sufficient knowledge and information to respond the remaining allegations in this paragraph.

125. During her consultation, Dr. Figler and Mrs. Zayre-Brown further discussed gender-affirming genital surgical options for the treatment of gender dysphoria. Recognizing that treatment of gender dysphoria is individualized for each patient, and taking into account Mrs. Zayre-Brown's need for immediate relief of her extreme and increasing distress related to her genitalia, Dr. Figler recommended that Mrs. Zayre-Brown receive a gender affirming vulvoplasty.

RESPONSE: Defendants admit that this paragraph refers to a clinical encounter which was documented, speaks for itself, and offers its own assertions, to which Defendants do not specifically respond herein. Defendants lack sufficient knowledge and information to respond the allegations in this paragraph concerning conversations between Plaintiff and Dr. Figler.

126. Dr. Figler indicated that, but for a recommendation of weight loss prior to surgery, Mrs. Zayre-Brown satisfied the WPATH criteria for the gender-affirming surgery and he stated that a vulvoplasty was necessary in her case as the next step in Mrs. Zayre-Brown's treatment plan for her gender dysphoria, a plan with which Mrs. Zayre-Brown agreed.

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein. Defendants lack sufficient knowledge and information to respond the allegations in this paragraph concerning the representations, intentions, or understanding of Plaintiff and Dr. Figler.

127. Upon information and belief, Dr. Figler's recommendation was communicated to DPS.

RESPONSE: Admitted.

128. In or around the first week of September of 2021, Mrs. Zayre-Brown met the goal

weight recommended by Dr. Figler for gender-affirming surgery.

RESPONSE: Admitted, upon information and belief.

129. Despite having achieved the goal weight recommended for surgery and despite the recommendations of health care providers directly involved in treating Mrs. Zayre-Brown's gender dysphoria—including Dr. Pou as early as July, 2019, Dr. Hahn, and the providers at UNC's Transgender Health Program—on September 8, 2021, Dr. Elton Amos deferred the UR request submitted by provider Norris and Medical Records Assistant Hildreth to schedule Mrs. Zayre-Brown's gender-affirming surgery. He noted in comments, "ELECTIVE PROCEDURES NOT APPROVED."

RESPONSE: Defendants admit that Dr. Pou referred Plaintiff to Dr. Figler for a surgical consultation in the spring and summer of 2019. Defendants deny any knowledge of Dr. Pou recommending surgery in July 2019. Defendants lack sufficient knowledge and information to respond to the allegations in this paragraph concerning the recommendations of "the providers at UNC's Transgender Health Program." Defendants deny any knowledge of Dr. Hahn recommending surgery in September 2021. Defendants further admit that this paragraph refers to UR request form which is a written document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Any remaining allegations in this paragraph are denied.

130. On October 20, 2021, in a Transgender Accommodation Summary, DPS provider Jennifer Dula, MSW, noted:

Based on the review of her records and the current assessment, it appears the next appropriate step for Ms. Brown is to undergo trans-feminine bottom surgery. The surgery will help her make significant progress in further treatment of her gender dysphoria. Ms. Brown is psychologically stable to undergo this surgery and will be able to access post-operative care at an appropriate DPS facility . . . Review of . . . all medical consultations with UNC Trans Health show that the risks, benefits and alternatives of this surgery have been

reviewed with Ms. Brown, and she showed an excellent understanding during those consultations and this evaluation. She has demonstrated the ability to make an informed decision about undertaking surgery. In summary, Ms. Brown has met the WPATH criteria and is an appropriate candidate for surgery.

RESPONSE: Defendants admit that this paragraph refers to a document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein.

131. In reference to a consultation on October 21, 2021, Dr. Caraccio noted, “Regarding desire for vulvoplasty [sic], this is medically necessary part of treatment for this patient. She has been treated with hormones since 2012 and orchiectomy in 2017, with persistent symptoms of gender dysphoria.”

RESPONSE: Defendants admit that on or about the date referenced in this paragraph, Plaintiff had a consultation with Dr. Caraccio. Defendants further admit that this paragraph refers to a document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond herein.

132. On October 4, 2021, Ms. Zayre-Brown filed another grievance seeking gender-affirming vulvoplasty and transfer to NCCIW to be closer to providers competent to treat her gender dysphoria, noting that she had achieved the weight loss recommended to undergo gender-affirming surgery, and reiterating that the surgery was medically necessary to treat her gender dysphoria, despite Dr. Amos’s deferral inaccurately characterizing the procedure as “elective.” In a Screening Response issued on October 11, 2021, DPS indicated that it received the grievance on October 7, 2021, that it had been accepted, and that it would begin a review process. The October 4, 2021 grievance was assigned Grievance No. 4575-2021-LPODF-19705.

RESPONSE: Defendants admit that Plaintiff submitted and that DPS received a grievance as described in this paragraph. Defendants further admit that this grievance is a written document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond

herein. Defendants further admit that DPS responded to the grievance in a document that speaks for itself. And Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Defendants deny any remaining allegations in this paragraph.

133. On October 15, 2021, despite the previous response indicating that Grievance No. 4575-2021-LPODF-19705 had been accepted for review, DPS issued another screening response indicating that Grievance No. 4575-2021-LPODF-19705 had been rejected pursuant to Section .0306 of the Administrative Remedy Procedure because it “requested a remedy for more than one incident.”

RESPONSE: Defendants admit that it issued a response to a grievance on or about the date referenced in this paragraph. Defendants further admit that this response is a written document that speaks for itself. And Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Any remaining allegations contained in this paragraph are denied.

134. On November 4, 2021, Mrs. Zayre-Brown submitted yet another grievance seeking gender-affirming surgery and transfer to NCCIW to be closer to providers competent to treat her gender dysphoria, that, upon information and belief, was substantially similar to Grievance No. 4575-2021-LPODF-19705. In a Screening Response issued on November 13, 2021, DPS indicated that it received the grievance on November 10, 2021, that it had been accepted, and that it would begin a review process. The November 4, 2021 grievance was assigned Grievance No. 4575-2021-LPODE-20189.

RESPONSE: Defendants admit that Plaintiff submitted and that DPS received a grievance as described in this paragraph. Defendants further admit that this grievance is a written document that speaks for itself and offers its own assertions, to which Defendants do not specifically respond

herein. Defendants further admit that DPS responded to the grievance in a written document that speaks for itself. And Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Defendants deny any remaining allegations in this paragraph.

135. On November 28, 2021, DPS issued a Step One Unit Response to Grievance No. 4575-2021-LPODE-20189 noting: “According to the electronic health record, the Utilization Review Request that was placed for this procedure on 8/18/21 was deferred on 9/8/2021.” Upon information and belief, Mrs. Zayre-Brown received this response on November 29, 2021, and appealed Grievance No. 4575-2021-LPODE- 20189 to Step Two on or around November 30, 2021.

RESPONSE: Defendants admit that DPS responded to the grievance on or about the date indicated in this paragraph. Defendants further admit that this response is a written document that speaks for itself. And Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Defendants further admit, upon information and belief, that Plaintiff appealed the grievance response as indicated in this paragraph.

136. On December 16, 2021, DPS issued a Step Two Area/Complex/Institution Response to Grievance No. 4575-2021-LPODE-20189 stating that on September 28, 2021 “[i]t was indicated that the surgery was an elective procedure and not approved, however it was deferred. It was noted that your case is to be reviewed at the end of January 2022 at the next scheduled DTARC Meeting.” The response further noted that Mrs. Zayre-Brown was “on the backlog” transfer to NCCIW, contingent on “several factors.” The response did not specify these factors, but simply noted “one of the main factors will be your behavior.” Mrs. Zayre-Brown appealed Grievance No. 4575-2021-LPODE-20189 to Step Three on December 17, 2021.

RESPONSE: Defendants admit that DPS responded on or about the date indicated in this paragraph. Defendants further admit that this response is a written document that speaks for itself. And Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Defendants further admit, upon information and belief, that Plaintiff appealed the grievance response as indicated in this paragraph.

137. On January 18, 2022, the IGRB issued a Step Three Administrative Remedy Response to Grievance No. 4575-2021-LPODE-20189 stating that “prison staff have taken appropriate action to address and resolve the offender’s concerns voiced in the grievance” and reiterating that Mrs. Zayre-Brown’s surgical request was scheduled for review “at the end of January at the next DTARC meeting.” The IGRB dismissed Grievance No. 4575-2021-LPODE-20189 as resolved.

RESPONSE: Defendants admit that DPS responded on or about the date indicated in this paragraph. Defendants further admit that this response is a written document that speaks for itself. And Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Defendants further admit, upon information and belief, that Plaintiff appealed the grievance response as indicated in this paragraph.

138. Upon information and belief, DTARC did not meet in January of 2022 and no explanation as to why has been provided to Mrs. Zayre-Brown.

RESPONSE: Defendants admit that DTARC did not meet in did not meet in January of 2022 and that DPS does not inform Plaintiff or others why any particular meeting may or may not occur.

139. Upon information and belief, at some point between February 17 and April 26, 2022, DTARC recommended that Mrs. Zayre-Brown be denied gender-affirming vulvoplasty as

not medically necessary, and Defendants Junker and Harris agreed, despite the contrary determinations of her direct providers, including Ms. Dula, MSW, Dr. Caraccio, and Dr. Figler. This denial was conveyed to Mrs. Zayre-Brown on April 26, 2022.¹⁶

RESPONSE: Defendants admit that DTARC made a recommendation as to Plaintiff's requested surgery. That recommendation is contained in a written document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Defendants admit that this recommendation was communicated to Plaintiff on or about April 26, 2022. Defendants deny the remaining allegations in this paragraph.

140. DTARC members have repeatedly deferred or declined to timely approve decisions on appropriate consultations for medically necessary treatment, unnecessarily prolonging and worsening Mrs. Zayre-Brown's life-threatening mental and emotional distress as a result of her severe gender dysphoria.

RESPONSE: Denied.

141. The DPS Policy for Transgender Prisoners allows the DTARC, Defendant Harris, and Defendant Junker to delay action on—or override entirely—determinations of medical necessity made by Mrs. Zayre-Brown's qualified medical and mental health providers. It also creates medically unjustified obstacles to the provision of care for individuals like Mrs. Zayre-Brown who are suffering from gender dysphoria, simply on the basis of their specific medical condition and disability. DPS's implementation of this policy has led and continues to lead to unnecessary suffering constituting cruel and unusual punishment.

¹⁶ These events were discovered or took place on the eve of filing, and following Mrs. Zayre-Brown's verification of the facts of this Complaint. Accordingly, Plaintiff's accompanying verification does not purport to verify any facts contained in this paragraph or that have occurred after her April 25, 2022 verification.

RESPONSE: Defendants deny that any of its policies or procedures led to or in any way contributed to any cruel and/or unusual punishment. Defendants further deny that any of their actions, statements, decisions, or omissions, in any way constitute cruel and/or unusual punishment. Defendants admit that this paragraph refers to written document that speaks for itself. Defendants deny any allegations contained in this paragraph to the extent they are inconsistent with said document. Any remaining allegations contained in this paragraph are denied.

142. As a result of Mrs. Zayre-Brown's repeated requests and the recommendations from her medical providers both inside and outside DPS, Defendants have been deliberately indifferent to Mrs. Zayre-Brown's serious medical needs for treatment of gender dysphoria.

RESPONSE: Denied.

143. Due to Defendants' discriminatory treatment of Mrs. Zayre-Brown on the basis of her disability and their deliberate indifference to Mrs. Zayre-Brown's serious medical needs, she has suffered, and will continue to suffer irreparable harm, including severe mental and emotional distress, anxiety, depression, suicidal ideation, and self-injury.

RESPONSE: Denied.

COUNT I

Cruel and Unusual Punishment in Violation of the Eighth Amendment to the U.S. Constitution

Against Defendants Buffaloe, Ishee, Junker, Harris, Campbell, Catlett, Peiper, Sheitman, Langley, Agarwal, Cobb, Panter, Williams, and Amos in their official capacities for declaratory and injunctive relief

144. Mrs. Zayre-Brown incorporates the allegations in all preceding paragraphs as if stated fully herein.

RESPONSE: Defendants incorporate all preceding responses to all preceding paragraphs by reference.

145. Defendants Buffaloe, Ishee, Junker, Harris, Campbell, Catlett, Peiper, Sheitman, Langley, Agarwal, Cobb, Panter, Williams, and Amos are each responsible for providing adequate and necessary medical treatment for Mrs. Zayre-Brown's gender dysphoria.

RESPONSE: The allegations of Paragraph 147 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

146. Each of these Defendants know of and enforce the DPS Policy for Transgender Prisoner's procedures.

RESPONSE: Defendants admit that each are aware of the document referenced herein. The allegations of Paragraph 146 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

147. Mrs. Zayre-Brown's gender dysphoria is an objectively serious medical condition necessitating treatment.

RESPONSE: Denied.

148. Consistent hormone therapy is, and for years has been, medically necessary to adequately treat Mrs. Zayre-Brown's gender dysphoria.

RESPONSE: The allegations of Paragraph 148 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

149. Gender-affirming surgery including vulvoplasty is, and has long been, medically necessary to treat Mrs. Zayre-Brown's gender dysphoria.

RESPONSE: Denied.

150. Each of these Defendants know that Mrs. Zayre-Brown is a transgender woman suffering from gender dysphoria, that her current and previous healthcare has failed to adequately treat her gender dysphoria, and that Mrs. Zayre-Brown has not received the gender-affirming

surgery she requires to alleviate her gender dysphoria.

RESPONSE: Defendants admit that each are aware that Plaintiff is a transgender woman. Defendants deny the remaining allegations.

151. Each of these Defendants know that Mrs. Zayre-Brown's medical providers—including providers to whom DPS referred Mrs. Zayre-Brown—have determined gender-affirming surgery to be medically necessary to treat Mrs. Zayre-Brown's serious medical condition, gender dysphoria.

RESPONSE: Defendants admit that they are aware of certain opinions of certain medical professionals. The remaining allegations of Paragraph 151 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

152. Each of these Defendants have long known that failure to adequately treat Mrs. Zayre-Brown's gender dysphoria has caused her serious harm and that there continues to be a substantial risk of further serious harm for as long as her receipt of additional gender-affirming surgery is delayed or denied.

RESPONSE: Denied.

153. Each of these Defendants' conscious disregard for the past harms and the substantial risk of future harm facing Mrs. Zayre-Brown violates all standards of decency, is grossly deficient medical care, will only exacerbate or prolong her pain, and constitutes deliberate indifference to serious medical needs in violation of the Eighth Amendment.

RESPONSE: Denied.

154. Each of these Defendants, by engaging in the aforementioned acts and omissions and in ratifying such acts or omissions, acted with willful and conscious disregard of the rights, welfare, and safety of Mrs. Zayre-Brown.

RESPONSE: Denied.

COUNT II
Cruel or Unusual Punishment
in Violation of N.C. Const. Art. I, Section 27

Against Defendant North Carolina Department of Public Safety and Defendants Buffaloe, Ishee, Junker, Harris, Campbell, Catlett, Peiper, Sheitman, Langley, Agarwal, Cobb, Panter, Williams, and Amos in their official capacities for declaratory and injunctive relief and damages

155. Mrs. Zayre-Brown incorporates the allegations in all preceding paragraphs as if stated fully herein.

RESPONSE: Defendants incorporate all preceding responses to all preceding paragraphs by reference.

156. North Carolina’s constitutional prohibition on “cruel or unusual punishments” provides at least the same level of protection as the Eighth Amendment. *See State v. Jackson*, 348 N.C. 644, 648, 503 S.E.2d 101, 103 (1998). The North Carolina Supreme Court has stated that “[o]ur state constitutional provision emphasizes the importance of this interest in North Carolina.” *Medley v. N.C. Dep’t of Correction*, 330 N.C. 837, 844, 412 S.E.2d 654, 659 (1992).

RESPONSE: The allegations of Paragraph 156 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

157. For the same reasons alleged in Count I of this complaint, Defendants have been deliberately indifferent to Plaintiff’s serious medical need in violation the state Constitution.

RESPONSE: Denied.

158. Plaintiff has no other adequate remedy under state law for the violation of her state constitutional right to be free from cruel or unusual punishment.

RESPONSE: Denied.

COUNT III
Discrimination on the Basis of Disability
in Violation of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

Against Defendant North Carolina Department of Public Safety for declaratory and injunctive relief and damages

159. Mrs. Zayre-Brown incorporates the allegations in all preceding paragraphs as if stated fully herein.

RESPONSE: Defendants incorporate all preceding responses to all preceding paragraphs by reference.

160. The Americans with Disabilities Act (ADA) prohibits public entities from discriminating against persons with disabilities in their programs, services, and activities and from excluding persons with disabilities from participation in, or denying them the benefits of, the services, programs, or activities of such a public entity. 42 U.S.C. §§ 12131-12134.

RESPONSE: The allegations of Paragraph 160 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

161. Defendant DPS is a “public entity” as defined by the ADA.

RESPONSE: The allegations of Paragraph 161 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

162. Based on her diagnosis of gender dysphoria, which has been recognized and documented by DPS, Mrs. Zayre-Brown is a person with a “disability” within the meaning and scope of 42 U.S.C. § 12102. Mrs. Zayre-Brown’s gender dysphoria is the result of a physical impairment that has caused parts of her anatomy to be in conflict with her gender identity, resulting in severe distress and substantial limitations on her major life activities of interacting with others, social functioning, thinking, caring for herself, and ensuring her safety.

RESPONSE: The allegations of Paragraph 162 are legal conclusions to which no response

is required. To the extent a response is required, those allegations are denied.

163. DPS provides healthcare and accommodations to prisoners with disabilities other than gender dysphoria.

RESPONSE: Admitted.

164. Mrs. Zayre-Brown is “a qualified individual with a disability” under the ADA because she is incarcerated in DPS’s facilities. She is therefore “eligible” to participate in DPS’s programs, services, and activities: indeed, she is required to participate in prison life because she is being held in prison against her will. However, DPS is failing to provide Mrs. Zayre-Brown equal access to prison life, on the basis of her disability and DPS’s failure to accommodate it. DPS is failing to make reasonable modifications to its rules, policies, or practices, necessary to accommodate her disability and provide her an equal opportunity to participate safely, fully, and equally in prison life, including an equal opportunity to receive needed healthcare.

RESPONSE: Defendants deny that DPS is failing to provide Plaintiff equal access to prison life, on the basis of any disability. Defendants also deny that DPS is failing to accommodate any disability that Plaintiff may have. Defendants also deny that DPS is failing to make reasonable modifications to its rules, policies, or practices, necessary to accommodate any disability that Plaintiff may have or provide her an equal opportunity to participate safely, fully, and equally in prison life. The remaining allegations of Paragraph 164 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

165. DPS has discriminated against and continues to discriminate against Mrs. Zayre-Brown in violation of both the ADA by maintaining policies, practices, and procedures that deny her access to treatment and support needed to treat and manage her disability, causing her ongoing harm solely because of her disability. By withholding medically necessary treatment that will

likely cure her disability of gender dysphoria. DPS is violating the ADA because it excludes Mrs. Zayre-Brown from, and denies her the benefits of, the health care programs operated by DPS, because of her disability.

RESPONSE: Denied.

166. DPS further has discriminated against and continues to discriminate against Mrs. Zayre-Brown in violation of the ADA by failing to provide proper and reasonable training to custody and health staff in responding to persons diagnosed with gender dysphoria.

RESPONSE: Denied.

167. DPS has acted and continues to act with intent to discriminate against Mrs. Zayre-Brown based on her disability. DPS knew and knows that the harms to Mrs. Zayre-Brown's federally protected rights under the ADA were substantially likely and failed and continues to fail to act to not infringe those rights, thereby acting with deliberate indifference toward Mrs. Zayre-Brown's federally protected rights.

RESPONSE: Denied.

168. As a direct and legal result of DPS's actions and omissions, Mrs. Zayre-Brown has suffered and continues to suffer damages including, without limitation, pain and suffering and emotional, psychological, and physical distress.

RESPONSE: Denied.

COUNT IV

Discrimination on the Basis of Disability in Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. §794a

Against Defendant North Carolina Department of Public Safety for declaratory and injunctive relief and damages

169. Mrs. Zayre-Brown incorporates the allegations in all preceding paragraphs as if

stated fully herein.

RESPONSE: Defendants incorporate all preceding responses to all preceding paragraphs by reference.

170. Section 504 of the Rehabilitation Act of 1973 prohibits an otherwise qualified individual with a disability being excluded from participation in, being denied the benefits of, or being subjected to discrimination under any program or activity receiving Federal financial assistance, solely by reason of the individual's disability. 29 U.S.C. §794a.

RESPONSE: The allegations of Paragraph 170 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

171. Defendant DPS receives federal financial assistance, as defined by the Rehab Act.

RESPONSE: The allegations of Paragraph 171 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

172. Based on her diagnosis of gender dysphoria, which has been recognized and documented by DPS, Mrs. Zayre-Brown is a person with a "disability" within the meaning and scope of 29 U.S.C. § 705(9)(B). Mrs. Zayre-Brown's gender dysphoria is the result of a physical impairment that has caused parts of her anatomy to be in conflict with her gender identity, resulting in severe distress and substantial limitations on her major life activities of interacting with others, social functioning, thinking, caring for herself, and ensuring her safety.

RESPONSE: The allegations of Paragraph 172 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

173. DPS provides healthcare and accommodations to prisoners with disabilities other than gender dysphoria.

RESPONSE: Admitted.

174. Mrs. Zayre-Brown is “a qualified individual with a disability” under the Rehab Act because she is incarcerated in DPS’s facilities. She is therefore “eligible” to participate in DPS’s programs, services, and activities: indeed, she is required to participate in prison life because she is being held in prison against her will. However, DPS is failing to provide Mrs. Zayre-Brown equal access to prison life, on the basis of her disability and DPS’s failure to accommodate it. DPS is failing to make reasonable modifications to its rules, policies, or practices, necessary to accommodate her disability and provide her an equal opportunity to participate safely, fully, and equally in prison life, including an equal opportunity to receive healthcare.

RESPONSE: Defendants deny that DPS is failing to provide Plaintiff equal access to prison life, on the basis of any disability. Defendants also deny that DPS is failing to accommodate any disability that Plaintiff may have. Defendants also deny that DPS is failing to make reasonable modifications to its rules, policies, or practices, necessary to accommodate any disability that Plaintiff may have or provide her an equal opportunity to participate safely, fully, and equally in prison life. The remaining allegations of Paragraph 174 are legal conclusions to which no response is required. To the extent a response is required, those allegations are denied.

175. DPS has discriminated against and continues to discriminate against Mrs. Zayre-Brown in violation of the Rehab Act by maintaining policies, practices, and procedures that deny her access to treatment and support needed to treat and manage her disability, causing her ongoing harm solely because of her disability. By withholding medically necessary treatment that will likely cure her disability of gender dysphoria, DPS is violating the Rehab Act because it excludes Mrs. Zayre- Brown from, and denies her the benefits of, the health care programs operated by DPS, solely because of her disability.

RESPONSE: Denied.

176. DPS further has discriminated against and continues to discriminate against Mrs. Zayre-Brown in violation of the Rehab Act by failing to provide proper and reasonable training to custody and health staff in responding to persons diagnosed with gender dysphoria.

RESPONSE: Denied.

177. DPS has acted and continues to act with intent to discriminate against Mrs. Zayre-Brown solely based on her disability. DPS knew and knows that the harms to Mrs. Zayre-Brown's federally protected rights under the Rehab Act were substantially likely and failed and continues to fail to act to not infringe those rights, thereby acting with deliberate indifference toward Mrs. Zayre-Brown's federally protected rights.

RESPONSE: Denied.

178. As a direct and legal result of DPS's actions and omissions, Mrs. Zayre-Brown has suffered and continues to suffer damages including, without limitation, pain and suffering and emotional, psychological, and physical distress.

RESPONSE: Denied.

ALL OTHER ALLEGATIONS MADE IN PLAINTIFF'S COMPLAINT, INCLUDING THE DOCUMENTS REFERENCED THEREIN AND THE RELIEF REQUESTED, EXCEPT AS SPECIFICALLY ADMITTED ABOVE, ARE HEREBY DENIED.

FURTHER ANSWERING THE COMPLAINT OF PLAINTIFF AND AS FURTHER DEFENSES THERETO, DEFENDANTS AVER AS FOLLOWS:

FIRST FURTHER DEFENSE

Plaintiff fails to state a claim upon which this Court can grant relief pursuant to Article I, Section 27 of the North Carolina Constitution.

SECOND FURTHER DEFENSE

Plaintiff fails to state a claim upon which this Court can grant relief pursuant to the Eighth Amendment to the United States Constitution.

THIRD FURTHER DEFENSE

The Complaint fails, in whole or in part, to state valid claims for relief against Defendants and should be dismissed.

FOURTH FURTHER DEFENSE

The individual defendants are shielded from liability by the Eleventh Amendment and sovereign immunity, which Defendants assert in this action including but not limited to all official capacity claims against them.

FIFTH FURTHER DEFENSE

Defendants deny that their policies, practices, or actions violate Plaintiff's constitutional or other rights. Defendants specifically deny that any of their policies, practices, or actions subject Plaintiff to cruel and/or unusual punishment, are deliberately indifferent to serious or significant physical, psychological, or emotional injury, or create substantial risk of serious harm, or death.

SIXTH FURTHER DEFENSE

Because Plaintiff has not exhausted alternative administrative remedies available to her and has not sufficiently alleged that such available remedies are inadequate, her claims are barred.

SEVENTH FURTHER DEFENSE

Plaintiff's claims are barred, in whole or in part, because if Plaintiff has suffered any injury, which is expressly denied, such injury did not and would not be a proximate result of any of Defendants' policies, practices, or actions.

EIGHTH FURTHER DEFENSE

Defendants plead that they acted in good faith, without malice, and with the reasonable belief that their actions were lawful and consistent with Plaintiff's clearly established rights at all times. Defendants are therefore protected from liability in this action by qualified immunity which

Defendants specifically assert as a defense and bar to all applicable claims in this action.

NINTH FURTHER DEFENSE

To the extent not already asserted herein, Defendants plead all other applicable immunities (including all absolute and qualified immunities) to which they are entitled by law as a complete bar to all applicable claims in this action.

TENTH FURTHER DEFENSE

To the extent that Plaintiff complains of alleged (but denied) wrongful conduct which occurred outside the applicable statute(s) of limitation for her claims, Defendants plead the same in bar of Plaintiff's claims against them.

ELEVENTH FURTHER DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Prison Litigation Reform Act. Defendants specifically plead that Plaintiff seeks prospective relief that may exceed this Court's authority under 18 U.S.C. § 3626.

TWELFTH FURTHER DEFENSE

Plaintiff is not entitled to recovery of any attorneys' fees, as attorneys' fees are unavailable for some of the claims Plaintiff asserts.

THIRTEENTH FURTHER DEFENSE

Prior to and since the filing of this action, Defendants have been in the process of voluntarily working to enhance its policies and practices regarding the treatment and accommodation of transgender persons in state prisons. Therefore, no attorneys' fees are appropriate in this case. If attorneys' fees were appropriate, they should be limited to an hourly rate that is 150 percent of the hourly rate established under 17 U.S.C. § 3006A for court appointed counsel.

FOURTEENTH FURTHER DEFENSE

Ordering Defendants to formulate and implement new policies and practices may constitute an inappropriate incursion by the Court into functions that the North Carolina Constitution delegates to the state executive branch of government.

ADDITIONAL DEFENSES

Defendants reserve the right, as allowed by law or the Court, to amend their Answer to assert any additional affirmative or other defenses allowed by the Federal Rules of Civil Procedure that develop or arise as additional evidence is discovered during the course of this litigation.

WHEREFORE, having responded to the allegations of Plaintiff's Complaint, and having asserted the above-noted defenses, Defendants herein pray the Court as follows:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That Plaintiff's have and recover nothing from them in this action;
3. That costs of this action, including reasonable attorney's fees, be taxed to Plaintiff's;
4. For such other and further relief as the Court deems just and proper; and
5. For a trial by jury of all issues of fact herein.

Respectfully submitted this 7th day of October, 2022.

JOSHUA H. STEIN
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