

Plaintiff, through her undersigned attorneys, states her Complaint as follows:

NATURE OF ACTION

1. This is a civil rights action for preliminary injunctive relief, permanent injunctive relief, declaratory relief, and damages for violations of the Law Against Discrimination and the State Constitution's promise of equal protection, due process, free expression, and prohibition on cruel and unusual punishment. This action is brought by a woman who has been imprisoned for the past seventeen months in men's prisons and who Defendants treat differently than other women solely because she is transgender. As a result of her confinement in men's prisons, Plaintiff has been subject to discrimination, verbal and sexual harassment, and physical assault at the hands of and/or with specific knowledge by Defendants.

2. Plaintiff brings this action to enjoin Defendants from discriminating against her on the basis of her gender identity or expression and on the basis of her sex including, but not limited to: by housing her solely in men's prisons despite her stated and well-documented gender identity and exceptional vulnerability as a woman, referring to her as male, using male pronouns to address her, and sometimes even explicitly telling her she is a man; by otherwise verbally and sexually harassing her; and by failing to protect her from violence and indeed directly causing her physical assault. Plaintiff also seeks compensatory and punitive damages for the more than seventeen months that Defendants have caused her to suffer in men's prisons, where she has been subject to verbal and sexual harassment, physical assault, and continuous discrimination, including in conditions of prolonged solitary confinement.

VENUE

3. Venue is proper in Mercer County pursuant to *R. 4:3-2(a)*. Although Plaintiff has been subject to discrimination in men's prisons across the state (in Trenton, Newark, and Bridgeton), the ultimate decision to treat her differently than other women because she is transgender was and continues to be made by the New Jersey Department of Corrections, which resides in Mercer County.

PARTIES

4. Plaintiff Sonia Doe is a woman who is being improperly confined in a men's prison solely because she is transgender. At all relevant times to this suit, Defendants knew or should have known that Ms. Doe is a woman.

5. Defendant New Jersey Department of Corrections (NJDOC) has its administrative headquarters on Whittlesey Road in Trenton, New Jersey. NJDOC is a public entity amenable to suit under New Jersey law.

6. Defendant Marcus Hicks is Acting Commissioner of the NJDOC. He was appointed to this position in May 2018 and previously held other positions throughout the NJDOC since 2007. He is sued in his official capacity.

7. Defendant Patrick Nogan is Administrator of Northern State Prison (NSP), which is one of thirteen main correctional facilities operated by the NJDOC, and one of the twelve of which are exclusively for men. Like other NJDOC facilities, NSP is a place of public accommodation under the New Jersey Law Against Discrimination. Administrator Nogan is sued in his official capacity.

8. Defendant Leslie Russell is a Disciplinary Hearing Officer at the Central Office of the NJDOC. She is sued in her official capacity.

9. Defendant Lt. N.R. is a Lieutenant at NSP and an employee of the NJDOC. She is sued using initials pursuant to *R. 4:26-6* or, in the alternative, as a public officer in her official capacity pursuant to *R. 4:26-7*.

10. Defendant Ofc. S.R. is a Corrections Officer at NSP and an employee of the NJDOC. He is sued using initials pursuant to *R. 4:26-6* or, in the alternative, as a public officer in his official capacity pursuant to *R. 4:26-7*.

11. Defendant Ofc. J.L. is a Corrections Officer at NSP and an employee of the NJDOC. He is sued using initials pursuant to *R. 4:26-6* or, in the alternative, as a public officer in his official capacity pursuant to *R. 4:26-7*.

FACTUAL ALLEGATIONS

Ms. Doe's Background and Medical Diagnosis

12. Sonia Doe is a woman.

13. Ms. Doe was born in 1979. She was assigned the sex of male at birth but has identified as female since she was a child. Since approximately 2003, she has used her current, typically feminine name and has publicly lived as a woman in all aspects of her life.

14. In approximately 2005, Ms. Doe was diagnosed with gender identity disorder. Gender identity disorder, subsequently updated in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) to gender dysphoria, is the medical diagnosis given to individuals whose gender identity – a person's innate sense of belonging to a particular gender – differs from the sex they were assigned at birth, causing clinically significant distress. Gender dysphoria is included in the most recent DSM (Fifth ed., 2013) (DSM-V) and is recognized by the other major medical and mental health professional groups, including the

American Medical Association and the American Psychological Association. Ms. Doe's current medical records reflect a diagnosis of gender dysphoria in line with DSM-V.

15. Since her diagnosis in 2005 and until her entry into NJDOC custody in March 2018, Ms. Doe received consistent treatment for gender dysphoria, including hormone therapy which was prescribed by a medical provider. Hormone therapy altered Ms. Doe's physical appearance and secondary sex characteristics including by causing breast tissue to develop in a typically feminine manner, redistributing fat and muscle in a typically feminine manner, and softening Ms. Doe's skin.

16. In 2006, Ms. Doe legally changed her name in court in Center County, Pennsylvania. Her Pennsylvania driver's license recognizes her typically feminine legal name. The following year she moved to Atlantic County, New Jersey and obtained a New Jersey driver's license. Her New Jersey license reflects her female gender and legal name.

17. Ms. Doe has served her community as an emergency medical technician (EMT), search and rescue technician, grief and suicide counselor, and as a board member of several non-profit organizations. She has a number of educational degrees, including a master's degree in business management. For four years, she served as a licensed and bonded officer of the court as a bail agent and fugitive recovery officer with arrest powers in the State of New Jersey.

18. Following extensive surgeries related to vehicular accidents and injuries, Ms. Doe became addicted to prescription painkillers and entered NJDOC custody in March 2018 for offenses stemming from her addiction.

19. When Ms. Doe entered NJDOC custody, her county jail records indicated that she is transgender and/or has a gender dysphoria diagnosis and that she received hormone therapy, namely estrogen and testosterone blocking medications twice a day. She also informed the medical

department and other NJDOC staff about this during her intake process at Central Reception and Assignment Facility (CRAF). Like all other NJDOC facilities at which Ms. Doe has been confined, CRAF is exclusively for men. People who NJDOC classifies as women are processed for intake at the Edna Mahan Correctional Facility for Women (EMCFW).

20. When Ms. Doe entered prison, she was five foot six and 135 pounds. She looked, identified as, and indeed was a woman.

21. Ms. Doe's NJDOC medical records since March 2018 reflect that she is transgender, has a gender dysphoria diagnosis, receives hormone therapy in prison, and is marked for monitoring pursuant to the Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 15601.

Ms. Doe's Confinement in Men's Prisons

22. From NJDOC's own records, Ms. Doe's self-reporting, and Ms. Doe's appearance, NJDOC and its staff knew or should have known that Ms. Doe is a woman. Nevertheless, since her entry into NJDOC custody, Ms. Doe has been treated differently than other women in NJDOC custody solely because she is transgender. Defendants have consistently and continually treated Ms. Doe like a man because she was assigned the sex of male at birth.

23. Whereas non-transgender women are confined at an NJDOC facility designated for women (EMCFW), Ms. Doe has been confined exclusively in men's prisons, with male cellmates or in isolation, at CRAF, New Jersey State Prison (NJSP), Northern State Prison (NSP), and South Woods State Prison (SWSP).

24. Ms. Doe has been consistently misgendered. Most obvious, Defendants have continuously confined her in men's prisons, despite her stated and well-documented female gender. In addition, Defendants and other NJDOC and NSP staff consistently refer to Ms. Doe using male pronouns. NJDOC records list her as male and almost exclusively refer to her with

male pronouns. Her Electronic Medical Record (EMR) while in NJDOC custody also consistently misgenders her. Indeed, she is referred to as male on the very same pages that she is identified as transgender and subject to PREA monitoring. At times, Defendants and/or those under their supervision and control have explicitly told Ms. Doe she does not have breasts and is in fact a man. On a number of occasions, they have responded to her requests or complaints by telling her that she is in a men's prison.

25. Ms. Doe has been denied female commissary items, such as tweezers, which she believes to be available at the women's prison, and has had difficulty obtaining and retaining gender-affirming undergarments, which are available to non-transgender women incarcerated at EMCFW. On January 4, 2019, the medical department at NSP provided temporary permission for Ms. Doe to wear a bra that might trigger the metal detector. The underwire had been removed but the clips on the band were permitted by nurse's order. Nevertheless, on February 7, 2019, her bra was confiscated as contraband. The sergeant who completed the Contraband Seizure form listed the item seized as "bra" and the reason for seizure, "not authorized for retention/receipt." While at NSP, between January 24, 2019 and March 17, 2019, Ms. Doe filed 13 grievances or inmate inquiries to NJDOC and individual facility staff, including administration, concerning issues related to female undergarments.

26. When Ms. Doe entered NJDOC custody, the doctor at CRAF decreased her testosterone blocking dosage by fifty percent, and her prescription was consistently renewed at that level until June 2019. At various facilities, including but not limited to during her time in isolation at NSP, Ms. Doe had difficulty obtaining her hormone therapy regularly and on time, for example when she was told the medication was back-ordered or out of stock. While at NSP, between February 17, 2019 and March 29, 2019, Ms. Doe filed four grievances or inmate inquiries

to NJDOC and individual facility staff, including administration, concerning issues in her hormone therapy. As a result of her inability to obtain appropriate hormone therapy, combined with her lack of access to female commissary items, Ms. Doe developed extensive facial hair growth which required her to shave and exacerbated her gender dysphoria, causing her emotional distress, anguish, and humiliation, and making her feel uncomfortable in her body and unlike herself.

27. While at NSP, between January 17, 2019 and May 21, 2019, Ms. Doe submitted nine grievances or inmate inquiries to NJDOC and individual facility staff, including administration, concerning other issues related to her identity as a woman who is transgender. In them, she reported that she had been misgendered, subject to sexual harassment, and experienced fear of violence due to her identity. In the first of those grievances, she explicitly asked to be referred to using female pronouns.

28. Ms. Doe's EMR categorizes her PREA Status as "Victim." It notes Ms. Doe has reported symptoms that may indicate sexual victimization either currently or in the past, that she has reported a history of prior institutional violence or sexual abuse, and that she has reported being particularly vulnerable to victimization while incarcerated. Yet upon information and belief, despite the notation of her risk in her EMR and her purported designation for PREA monitoring, Defendant NJDOC and its officers never performed an individualized assessment of Ms. Doe's risk of assault, and her views of her own safety were not taken into account and/or were repeatedly ignored.

29. At CRAF and NJSP, after Ms. Doe was strip searched, which occurred frequently, she was forced to finish dressing topless, with her breasts exposed, in front of male prisoners and corrections officers.

30. At SWSP, in March 2018, corrections officers harassed Ms. Doe and shouted that they could not wait to strip search her and “see some titties.” After she filed a PREA complaint through a counselor, she was ridiculed by officers, who said filing a PREA complaint was “pathetic.”

31. Ms. Doe was threatened by her assigned cell mate when she first entered SWSP, who refused to let her into the cell. When she could not force her way into the cell, both because he was physically blocking the door and because she was afraid, she received a disciplinary charge for refusing a housing assignment. She also received a charge that she believes was in retaliation for filing a PREA complaint. In the latter charge, the officer claimed she attempted to throw bodily fluids at him because she allegedly cleared her throat and turned her head towards him. Ms. Doe was adjudicated guilty of both disciplinary offenses and sanctioned with nine months in administrative segregation, which she served in conditions of near-total isolation, or solitary confinement, at NJSP, a facility used almost exclusively for maximum security prisoners.

32. At NJSP, NSP, and SWSP, Ms. Doe has been sexually harassed by other prisoners. At all three prisons, male prisoners have visibly masturbated while staring at her, sometimes exposing their penises to her. At NJSP and NSP, she has received sexually harassing handwritten notes from male prisoners that described sexual acts they wished to perform with her and referred lewdly to genitalia. And at all the prisons in which she has been confined (CRAF, NJSP, NSP and SWSP), male prisoners and/or corrections officers have made lewd remarks to her about her appearance.

33. As with everything else about her placement in men’s prisons, these incidents make Ms. Doe fear for her safety.

The Extreme Vulnerability of Transgender Women in Men's Prisons

34. It is well documented that transgender prisoners, in particular women who are transgender, face exceptional hardship in prison in general. Women who are transgender and incarcerated in men's facilities are especially vulnerable to physical and sexual assault, self-harm, and lasting psychological trauma and emotional distress.

35. According to the U.S. Department of Justice, nearly 40 percent of transgender prisoners in state and federal prisons experience sexual victimization, a rate ten times higher than that for prisoners in general.¹

36. The National Commission on Correctional Health Care (NCCHC) has warned that “[t]ransgender people face an array of risks to their health and well-being during incarceration, and are often targets of physical assault and emotional abuse.”² The NCCHC recognizes that transgender prisoners are “commonly placed in correctional facilities according to their genitals and/or sex assigned at birth, regardless of their gender presentation” and that the “health risks of overlooking the particular needs of transgender inmates [are] severe[.]”³

37. When confined incongruously with their gender identity, transgender prisoners are often “singled out” as targets of harassment and abuse. In a national survey, 21 percent of

¹ BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011–12: SUPPLEMENTAL TABLES: PREVALENCE OF SEXUAL VICTIMIZATION AMONG TRANSGENDER ADULT INMATES (2014). Sexual victimization is defined as non-consensual sexual activity of various kinds, abusive sexual contact, and both willing and unwilling sexual activity with correctional staff. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011–12, at 9 (2014).

² National Commission on Correctional Health Care, *Policy Statement: Transgender Health Care in Correctional Settings* (Oct. 18, 2009), <http://www.ncchc.org/transgender-health-care-in-correctional-settings>.

³ *Id.*

transgender women confined in men's facilities reported suffering physical abuse while in prison, and 20 percent reported sexual violence.⁴

38. In 2012, the U.S. Department of Justice's final regulation implementing PREA recognized the extreme vulnerability of transgender prisoners and detainees. The regulations require individualized assessments when determining whether to house transgender prisoners in men's or women's facilities, prevent cross-gender searches, incorporate the unique vulnerabilities of transgender prisoners into training and screening protocols; ensure transgender prisoners can shower, change clothing, and use the bathroom without improper viewing by prisoners and staff of the opposite gender; and restrict the use of protective custody in conditions of solitary confinement for vulnerable prisoners.⁵

NJDOC's Policies and Practices Regarding Transgender Prisoners

39. Pursuant to PREA, the NJDOC implemented a policy on Transgender/Intersex Inmates, PCS.001.006, effective September 1, 2016 and revised December 15, 2018. Policy PCS.001.006 was approved and issued by Defendant Commissioner Hicks on January 15, 2019. Section III of the Policy reads: "It is the policy of the NJDOC to address the needs of transgender and intersex inmates in a manner that is consistent with PREA standards and in accordance with departmental regulations, policies and procedures."

40. The seven-page policy includes, *inter alia*, definitions of "gender dysphoria," "gender identity," and "transgender" as well as procedures regarding identification of transgender

⁴ *Testimony of Organizations Supporting LGBT Equality, Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights*, Lambda Legal (June 9, 2012), https://www.lambdalegal.org/sites/default/files/ltr_sjsccrhr_20120619_solitary-confinement.pdf.

⁵ See U.S. Dep't of Justice, Office of Public Affairs, *Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape* (May 17, 2012), <https://www.justice.gov/opa/pr/justice-department-releases-final-rule-prevent-detect-andrespond-prison-rape>. For the full rule text, see https://ojp.gov/programs/pdfs/prea_final_rule.pdf.

prisoners, classification reviews, gender identity based housing, respect and confidentiality responsibilities, medical treatment, privacy, prisoner safety, clothing issue, and personal property for transgender prisoners.

41. PCS.001.006(VI)(D) provides that “[t]he gender identity of transgender/intersex inmates will be respected by addressing transgender intersex inmates in gender neutral terms both in person and in written reports. . . . Staff shall conduct searches of inmates, including transgender or intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.”

42. PCS.001.006(VI)(H)-(I) allows transgender prisoners to “be issued, purchase, and retain undergarments associated with the identified gender” and to “request to retain personal property associated with the identified gender[,]” which request “will be processed by the PREA Institutional Compliance Manager.” PCS.001.006(VI)(A)(3) specifies that “PREA Institutional Compliance Managers “receive a weekly list of inmates identified as transgender/intersex via OIT’s PREA Management e-mails.”

43. Presumably pursuant to this policy, Ms. Doe’s EMR indicates that she is subject to PREA monitoring and notes in a yes/no fashion her vulnerability to victimization. Upon information and belief, those notations are not regularly reevaluated or updated through meaningful, individualized assessments of transgender prisoners’ vulnerability to assault or other violence. The policy contains no provisions related to any such individualized assessment of vulnerability or risk. Instead, the entire section entitled “Inmate Safety,” PCS.001.006(VI)(G), reads as follows: “As with all inmates committed to the custody of the NJDOC, if concerns regarding a transgender/intersex inmate’s safety are reported, all effective policies that govern inmate safety are to be implemented.”

44. PCS.001.006(VI)(C) provides a process by which “an inmate [can] request[] correctional facility housing based on a gender identity that differs from the inmate’s sex[.]” In such cases, the “facility refer[s] the request to the NJDOC PREA Agency Coordinator to be scheduled for review by the Central Office level Sexual Assault Advisor Council.” The policy lays out various factors for consideration of housing assignments for transgender prisoners, which relevantly include current gender expression but also include irrelevant or inappropriate factors such as *inter alia* custody level and sentencing information, criminal history, institutional disciplinary history, medical and mental health needs/information/status, and likelihood of perpetrating sexual abuse.

45. Based on these factors, the Council makes a recommendation regarding gender identity-based housing, which is forwarded to the correctional facility Institutional Classification Committee “for consideration when determining the inmate’s housing assignment.” The policy does not set out timelines, review, or appeal procedures, nor does it specify how the process applies when the prisoner has already been improperly classified and confined at a facility not matching her gender identity.

46. Despite its formal policy, upon information and belief, the NJDOC’s practice has been and continues to be to house prisoners according to their genitalia only. Upon information and belief, all women who have penises are assigned to men’s prisons solely on that basis.

47. Upon information and belief, a significant number of women who are transgender are currently in NJDOC custody but the NJDOC continues to treat those women as “male” and to house them in men’s prisons based exclusively on their genital characteristics, even when those women have explicitly requested a transfer to the women’s prison and/or genital surgery, which it has been the NJDOC’s general policy and practice not to provide.

48. Upon information and belief, the NJDOC houses only two women who are transgender at Edna Mahan Correctional Facility for Women (EMCFW) because they have undergone genital surgery.⁶

49. The NJDOC's practice of restricting housing at EMCFW to only those transgender women who have undergone genital surgery is inconsistent with PREA, the NJDOC's own policy, and state and federal law. The practice also violates clear treatment protocols for the treatment of gender dysphoria and is counter to recommendations of the NCCHC.

50. By forcing women who are transgender into men's prisons based solely on their genital characteristics, NJDOC is subjecting a subset of women to a heightened risk of sexual violence and ultimately increasing the likelihood that individuals will engage in self-harm or otherwise experience the deterioration of their health and well-being.

Ms. Doe's Request for Transfer to the Women's Prison

51. Ms. Doe entered NJDOC custody in March 2018 and was immediately identifiable as a woman who is transgender on the basis of her records and self-reporting. Nevertheless, she was processed through the men's facility at CRAF and never provided with the NJDOC's formal policy on Transgender/Intersex Inmates. Ms. Doe only learned about the policy in April 2019, through undersigned counsel at the American Civil Liberties Union of New Jersey (ACLU-NJ).

52. Through counsel, on April 29, 2019, pursuant to PCS.001.006, Ms. Doe submitted to Defendant NJDOC, Defendant Commissioner Hicks, and appropriate staff members a formal request that she be moved to the Edna Mahan Correctional Facility for Women, in line with her

⁶ Genital surgery for transgender women includes "surgery to remove [the] testicles (orchiectomy), create a vagina using penile or colon tissue (vaginoplasty), create a vulva (vulvoplasty), create a clitoris (clitoroplasty), and create labia (labiaplasty)." Mayo Clinic, *Feminizing Surgery* (Sept. 26, 2017), <https://www.mayoclinic.org/tests-procedures/feminizing-surgery/about/pac-20385102>.

gender identity. She stated that, despite her transgender identity, she had been confined solely in men's facilities for the past year, with male cellmates, and cited the urgent, ongoing, and irreparable harms caused by her inappropriate placement at NSP. She asked that the NJDOC render a final decision on her transfer request pursuant to the policy and take steps to initiate her transfer to EMCFW no later than May 28, 2019 and asked that her counsel be provided written confirmation by that date.⁷

53. On May 2, the NJDOC PREA Coordinator responded by email as follows: "NJDOC is in receipt of your correspondence and will review same."

54. No confirmation was provided by May 28, 2019 that the NJDOC had rendered a final decision pursuant to the policy or that a housing transfer to EMCFW would occur.

Officers' Retaliatory Assault of Ms. Doe

55. On May 24, 2019, Ms. Doe was called from her cell at NSP to the "ED Sergeant's Office," into a room she had never before been. NJDOC records reflect that the office did not contain security or surveillance cameras, which are typically visible to prisoners in other locations in the prison, including even in attorney visit rooms. Defendants Lt. N.R., Ofc. S.R., and Ofc. J.L. were in or near the office entrance.

56. Inside the office, Defendant Lt. N.R. immediately misgendered Ms. Doe, telling Defendant Ofc. S.R. to "search him." Ms. Doe responded to Defendant Lt. N.R.'s incorrect use of pronouns by saying "*her*." She then took the position that would allow officers to search her and Defendant Ofc. S.R. reached his hands around her breasts, which are C-cup size. He began fondling

⁷ In submitting this request, Ms. Doe has at no point conceded that she considers the factors enumerated in PCS.001.006 to be appropriate, or non-discriminatory, for decisions about housing assignments.

and massaging her breasts in what Ms. Doe experienced to be a sexual manner and unlike what she had experienced to constitute an appropriate pat down search for security.

57. Ms. Doe immediately took a step backward and exclaimed to Defendant Lt. N.R. that she was being groped. Instead of addressing Defendant Ofc. S.R.'s behavior, Defendant Lt. N.R. reprimanded Ms. Doe, telling her that she could not move one inch while being searched. Ms. Doe responded that Defendant Ofc. S.R. was fondling her, not searching her.

58. As Ms. Doe recalls, Defendant Lt. N.R. said: "Put your hands on the door, search him again. *Him*. Notice I said him? You're a man. You don't have breasts. This is a male prison. You're a he. That's how we do searches. This is Northern State Prison and that's how we do it here."

59. Defendant Ofc. S.R. then completed the pat down search of Ms. Doe and she took a seat in the office. Calmly, she said she would be filing a complaint through the grievance system about this incident.

60. As Ms. Doe recalls, in response, Defendant Lt. N.R. said: "You know what else we do at Northern State Prison?" Then, addressing Defendants Ofc. S.R. and Ofc. J.L., she said, "Go ahead and show him." Defendants Lt. N.R., Ofc. S.R., and Ofc. J.L. proceeded to beat Ms. Doe.

61. Ofc. S.R. punched Ms. Doe in the face. She recalls curling into a fetal position on the floor and being punched and repeatedly kicked. She was also sprayed in the face with a chemical agent and struck with an asp baton on the knuckles, right knee, right elbow, and back.

62. Ms. Doe's injuries were extensive. Her clothes were spotted with blood and there was a small pool of blood on the floor. Ms. Doe was eventually handcuffed and removed from the office into a common area outside of it. She was told to bleed into a trashcan, which she hung her head over as blood dripped from her nose. Afterward, the medical department staff used seven to

eight butterfly stitches to close up a laceration on her elbow. Later, when medical staff visited her in her cell, Ms. Doe, trained as an EMT, recalls the doctor's diagnosis as follows: probable broken nose, fractured jaw, and possible damage to the spine and nerves in the hand.

63. After she was removed from the common area, Ms. Doe's movements were all recorded by handheld camera. Ms. Doe requested that her counsel be notified.

64. Counsel was not notified by Defendants but did meet with Ms. Doe four days later. Her knee was still so bruised she could not cross her legs. She had a bruise on her forearm and a bruise around her elbow that extended about a foot long. Her entire right eye socket, up to her eyebrow and down to her upper cheekbone, was dark black and purple and the bridge of her nose was raised and greenish in color.

65. Ms. Doe was not allowed a shower until May 30, six days after she had been assaulted. The chemical agent remained on her skin and in her hair for almost a week.

66. Ms. Doe continues to have nightmares in which she relives the assault, often waking her up in the middle of the night.

Ms. Doe's Pretextual Disciplinary Charge and Adjudication

67. While at NSP, Ms. Doe never saw a use of force report or received any information that Defendants Lt. N.R., Ofc. S.R., and Ofc. J.L. were held to account for assaulting her when she corrected Defendant Lt. N.R.'s misgendering of her with male pronouns, complained about Defendant Ofc. S.R. groping her breasts, and said she would be filing a grievance.

68. Instead, immediately following the assault, Ms. Doe was charged with disciplinary offenses under N.J.A.C. 10A:4-4.1: Prohibited Act *.002, assault on any person, and Prohibited Act 306, conduct which disrupts or interferes with the security or orderly running of the correctional facility. In the disciplinary charging documents, Defendant Ofc. S.R. reported that,

“After completing a pat frisk of i/m Doe he became combative and struck me in the face with a close fist.” Ms. Doe was placed in prehearing detention in conditions of isolation.

69. While in isolation, Ms. Doe repeatedly asked to speak with her attorney but was repeatedly denied. She had difficulty receiving her hormone medications. Any time she left the unit, she was strip searched by male officers.

70. From that date, May 24, until July 29, Ms. Doe was confined in conditions of isolation, or solitary confinement, where most days she spent fewer than 30 minutes outside of her cell.

71. On the morning of May 29, counsel for Ms. Doe wrote by email to NJDOC staff, including Defendant Commissioner Hicks, asking for an update on Ms. Doe’s housing transfer request and, to the extent a decision had been made, for documentation of the review and decision.

72. By separate email to the same staff members, including Defendant Commissioner Hicks, counsel for Ms. Doe wrote the following:

As you know, the ACLU of New Jersey represents [Sonia Doe], SBI# []. This is the second of three emails I am sending you this morning.

[Assistant Superintendent], I spoke with you by phone on multiple occasions yesterday and in person at 3pm before my attorney visit with Ms. [Doe]. When Ms. [Doe] finally arrived in the visit area at or around 3:50pm, I asked the sergeant please to contact you. Unfortunately, I was told neither you nor another person from NSP administration was still available to speak with me. I also tried calling you this morning shortly after 10am but was told you were unavailable.

As I stated in person, on behalf of my client I hereby request that I be permitted to appear as counsel for Ms. [Doe] in her Courtline adjudication. While I recognize that prisoners are typically limited to counsel substitute, this disciplinary charge is inextricably intertwined with the ACLU of New Jersey’s representation of Ms. [Doe] and her identity as a transgender woman. Given that context and the related legal claims, counsel substitute is wholly insufficient

to ensure Ms. [Doe]'s due process and other rights. I therefore request that you allow me to continue to serve as Ms. [Doe]'s counsel when she appears before the disciplinary hearing officer.

I understand that Ms. [Doe] may have her hearing as soon as today. Ms. [Doe] hereby waives any objection to a short delay of that hearing should Northern State Prison or NJDOC need additional time to consider her request for counsel. However, counsel requires no delay and can be prepared to appear before Courtline on short notice.

73. On the afternoon of May 29, the Assistant Superintendent replied to the group, including Defendant Commissioner Hicks, as follows: "I am sorry for the late response, I was at a classification meeting. Your request to be present during the disciplinary hearing is denied."

74. On May 31, the Director of the NJDOC Office of Legal and Regulatory Affairs replied to counsel's other email, with copies to the same group of recipients, including Defendant Commissioner Hicks, as follows: "Please be advised that no decision has been made at this time. I will note that the recent allegation of assault on staff by Inmate [Doe] has delayed the process. In any event, upon adjudication of the attendant disciplinary charges, the matter will be considered by the Advisory Council and notification will be provided in accordance with PCS.001.006."

75. During the first week of June, Defendant Russell spoke to Ms. Doe a number of times through her cell door to request a statement. Ms. Doe said she wished to and was attempting to discuss with her counsel. On June 6 or 7, Defendant Russell told her that if she did not submit a statement, her case would be decided based only on the evidence against her.

76. While Defendant NJDOC did not permit Ms. Doe access to her attorney, it provided counsel substitute. Counsel substitutes are other prisoners with some knowledge of the disciplinary process, but no professional training as a lawyer, who can assist prisoners in the disciplinary adjudication process upon request. Ms. Doe, through counsel substitute, submitted a four-page handwritten statement describing how she had been assaulted by Defendants Lt. N.R., Ofc. S.R.

and Ofc. J.L. on May 24. At the start, she explained that her request to have her attorney at the ACLU-NJ present for the hearing had been denied.

77. On June 13, Ms. Doe handwrote a statement of mitigation, which her counsel substitute said he was submitting to Defendant Russell, in which she made the following plea:

Ms. Russell and Courtline personnel,

As you and the D.O.C. know I am transgender. I have successfully and passably lived as a woman for over 15 years, and been on female hormones just as long. Also, the diagnosis of Gender Identity Disorder or Gender Dysphoria has been recorded in my EMR [electronic medical record] for an equal length of time. In addition, my drivers license also says (f) female.

Today I ask for leniency in all it[s] forms. I am also asking that if I am found guilty of some kind of admin charge that the punishment imposed not be Ad-Seg (AKA solitary confinement)

Both science and recent statistics have proven that trans persons are much more vulnerable to the negative and harmfu[l] effects of Ad-Seg than the general prison population. In fact at this moment there is legislation in progress to prohibit trans persons from being subjected to any form of ad-seg or solitary confinement. Again I would like to request the services of my attorney given the context of these proceedings.

Please take this statement under serious consideration.

Thank you
– [Sonia Doe]

78. On June 14, Ms. Doe was afforded a limited ability to confront the witnesses against her, Defendants Lt. N.R., Ofc. S.R. and Ofc. J.L. She was placed in a cage approximately four feet by four feet on each side and six feet high. She was handcuffed and the cuffs were attached to a belly chain so tightly that they were plastered to her stomach. She was not allowed to take notes.

79. Under the terms of the disciplinary process, Ms. Doe's counsel substitute was permitted to submit questions to Defendant Russell to ask during confrontation, in Defendant

Russell's discretion. Neither Ms. Doe nor her counsel substitute were permitted to ask questions or follow-up questions of the witnesses directly.

80. Ms. Doe had asked her counsel substitute to submit a number of questions related to her identity as a woman who is transgender, including questions asking explicitly about misgendering and groping by Defendants Lt. N.R. and Ofc. S.R., respectively. However, counsel substitute submitted just two questions related to her identity. First, was the person aware that she identified as female and was transgender? Second, prior to the assault, was the person aware of an NJDOC policy on searching transgender prisoners?

81. For each of Defendants Lt. N.R., Ofc. S.R. and Ofc. J.L.'s questioning, Defendant Russell refused to ask the two questions related to transgender identity. Defendant Russell deemed those "irrelevant" despite the fact that she knew or should have known Ms. Doe's transgender identity was key to both her defense and her request for mitigation: Ms. Doe had submitted statements to Defendant Russell clarifying the assault occurred when she asserted her rights and status as a transgender woman and seeking mitigation because of the risks to transgender people of being placed in conditions of isolation in administrative segregation.

82. In the disciplinary charging documents, Defendant Ofc. S.R. had stated that Ms. Doe "struck me in the face with a close fist." During the confrontation, Ms. Doe recalls that the only injuries Defendant Ofc. S.R. claimed he suffered were a "right hand contusion."⁸ In Ms. Doe's statement to Defendant Russell, she had explained that, in fact, Defendant Ofc. S.R. had punched her in the face.

⁸ Counsel substitute's June 17 statement of the case, submitted to Defendant Russell before her final adjudication, also notes that Defendant Ofc. S.R. responded that the only injury he suffered was a right hand contusion.

83. On June 20, Defendant Russell found Ms. Doe guilty of the assault and disruption charges and imposed aggregate disciplinary sanctions of 270 days, or nine months, in administrative segregation, with nine months loss of commutation and 60 days loss of recreation privileges.

84. On June 24, Ms. Doe's counsel substitute filed an administrative appeal. On June 28, Defendant Nogan, by and through his designee, denied the appeal and upheld Defendant Russell's guilt adjudication and sanctions in full, constituting a final agency decision.⁹

85. Under NJDOC's regulations, N.J.A.C. 10A:4-11.4, Defendant Nogan had "the option to request a total or partial reinvestigation of the charge or proceedings of the hearing." Upon information and belief, no such request was made and no further investigation conducted.

86. In deciding the appeal, Defendant Nogan, by and through his designee, either did or should have reviewed the entire record of the adjudication, which did or should have included Ms. Doe's statement of the May 24 incident itself and her statement of mitigation in light of her transgender identity. Nevertheless, the Disposition of Disciplinary Appeal Form stated: "There was compliance with the New Jersey Administrative Code 10A which prescribes procedural guards on inmate discipline. The sanction of the hearing officer is appropriate, therefore no leniency will be granted."

Ms. Doe's Placement in Solitary Confinement

87. From May 24, when she was placed in disciplinary detention, through July 29, Ms. Doe was subject to prolonged solitary confinement. She was isolated to a cell for almost 24 hours a day on average, and well more than 20 hours a day, in retaliation for her asserting her rights as a

⁹ The appeal form is signed and dated June 26 and marked delivered to Ms. Doe on June 28.

woman to be free from misgendering and groping. The New Jersey Legislature recently defined isolated confinement as more than 20 hours a day in a prison cell.

88. Data show that transgender prisoners are especially vulnerable to the harms of solitary confinement, including because they are more likely to be denied medical care, are at greater risk of assault and harassment by correctional staff, and are at greater risk of suicidal ideation and suicide attempts.¹⁰

89. Even for the general prison population, it is well documented that solitary confinement, even for relatively short periods, causes extreme psychological, physiological and emotional damage.¹¹ An article in the *American Journal of Public Health* noted: “Nearly every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies.”¹² A report by the Vera Institute of Justice described the “litany of negative impacts, including: hypersensitivity to stimuli, distortions and hallucinations, increased anxiety and nervousness, diminished impulse control, severe and chronic depression, appetite loss and weight loss, heart palpitations, talking to oneself, problems sleeping, nightmares, self-mutilation, difficulties with thinking, concentration, and memory, and lower levels of brain function, including a decline in EEG activity after only seven days in

¹⁰ See “Testimony of Organizations Supporting LGBT Equality,” Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights (June 19, 2012), <https://www.lambdalegal.org/blog/dangers-solitary-confinement-transgender-prisoners-detainees>.

¹¹ See, e.g., Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL’Y 325 (2006); Craig Haney, *Mental Health issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003).

¹² David H. Cloud, Ernest Drucker, Angela Browne, and Jim Parsons, “Public Health and Solitary Confinement in the United States,” *American Journal of Public Health*, 105, no.1 (2015): 18-26.

segregation.”¹³ Indeed, survivors of solitary confinement in NJDOC facilities recently testified before the New Jersey Senate and Assembly and called their experiences “torture.”¹⁴

90. In 2011, the United Nations Special Rapporteur on torture warned that prolonged solitary confinement can amount to torture. Prolonged solitary confinement is defined as 22 hours or more per day in a cell, for more than 15 consecutive days. In 2015, the United Nations General Assembly adopted the Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules, which uses the same definition. Rule 43 reads: “In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: . . . prolonged solitary confinement.”

91. On June 20, the same day that Ms. Doe, a transgender woman, was sanctioned with 270 days of administrative segregation, the New Jersey Senate and Assembly passed a bill that would make such a sanction illegal, so long as administrative segregation continued to be in conditions of isolation as Ms. Doe experienced.

92. With narrow exceptions that do not apply to Ms. Doe’s case, the Isolated Confinement Restriction Act (A314/S3261) prohibits prolonged isolation in state prisons and county jails and ensures members of vulnerable groups are never placed in isolated confinement

¹³ Alison Shames et al. *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*. New York, NY: Vera Institute of Justice, 2015.

¹⁴ See Joe Hernandez, “New Jersey considers restricting the use of solitary confinement” WHYY (June 6, 2018), <https://whyy.org/articles/n-j-lawmakers-consider-clamping-down-on-solitary-confinement-in-prisons-and-jails/>; see also Star Ledger Staff, “Torture does happen in N.J.’s prison, former inmates say. It’s called solitary confinement.” *Star Ledger* (April 14, 2019), <https://expo.nj.com/opinion/g661-2019/04/02ee5d48a2717/torture-does-happen-in-njs-prison-former-inmates-say-its-called-solitary-confinement.html>.

for any period of time. The bill defines isolated confinement in an NJDOC facility as isolation for more than 20 hours a day and includes transgender people in the definition of vulnerable groups.

93. On July 11, Governor Murphy signed the bill into law, restricting Defendant NJDOC's and New Jersey counties' ability to use of isolated confinement, effective as of August 1, 2020. Meanwhile, Defendant NJDOC kept a transgender woman in isolation in a men's prison for approximately 67 days, as disciplinary punishment for claiming her identity and right to live and be recognized as a woman.

94. While in isolation, Ms. Doe was often forced to miss or take incomplete dosages of her hormone therapy, as well as other medications, which did exacerbate or risk exacerbating her gender dysphoria. She became anxious, depressed, and even more fearful for her safety.

95. Ms. Doe's experience of isolation – separately and together with the fact that she was still recovering from bodily injury sustained during the assault and knew she was charged as pretext and retaliation – caused her pain, suffering, emotional distress, fear, anguish, and humiliation.

Ms. Doe's Release to General Population Following Court Order

96. On July 25, 2019, through undersigned counsel, Ms. Doe appealed the NJDOC's final agency decision to the Superior Court, Appellate Division. On the same day, she sought a stay of the decision from the NJDOC itself pursuant to R. 2:9-7, directed to Defendant Nogan's designee who had denied her *pro se* disciplinary appeal. The stay request was based on the fact that Ms. Doe had and would continue to suffer irreparable physiological, psychological, and emotional harm in administrative segregation, harms to which she is particularly vulnerable as a transgender woman.

97. On July 26, Defendant Nogan, by and through his designee, denied Ms. Doe's request for a stay.

98. On July 29, Ms. Doe, through counsel, applied for permission to seek emergent relief from the Appellate Division and request a stay of the NJDOC's decision. The same day, the Appellate Division granted her permission and also ordered a temporary stay of the NJDOC's decision.

99. Pursuant to the Appellate Division's Order, Ms. Doe was released from isolation in administrative segregation on the evening of July 29. She was transported from NSP in Newark and to SWSP in Bridgeton, where she was eventually placed in general population.

100. On August 5, the Appellate Division granted Ms. Doe's relief, staying the decision during the pendency of the appeal, and subsequently set an accelerated schedule for the appeal. Accordingly, Ms. Doe currently remains in general population at SWSP, where she has been assigned a male cellmate.

Ms. Doe's Ongoing Experience of Discrimination

101. Since her arrival at SWSP on the night of July 29, Ms. Doe has been subject to verbal and sexual harassment by male prisoners and/or male corrections officers every day. The majority of the comments made by prisoners or officers relate to her breasts, although she is also called slurs such as "f*ggot." On one occasion when she was walking down the hallway, she overheard three officers talking about her, saying: "That's the one they call [Sonia]." "Yeah, did you see her titties?" "No, *his* titties."

102. On July 31, as Ms. Doe was walking to get her hormone therapy, male prisoners in the unit taunted her and said "look at them titties."

103. On August 1, Ms. Doe spoke with a psychologist. Ms. Doe identified herself as transgender, asked to be referred to using female pronouns, and inquired whether the psychologist was aware of the NJDOC policy on transgender prisoners. The psychologist said she was aware such a policy existed but said the unofficial policy at SWSP, as she understood it, was that male pronouns would be used if a prisoner was “anatomically male.” The psychologist said that prisoners had asked to be referred to by female pronouns in the past but that those requests had been denied because it was a men’s prison.

104. The same day, across the hall from her cell, a male prisoner pushed himself up against the small window of his cell. He waved at Ms. Doe to get her attention. When he saw her watching, he pulled out his penis and began masturbating while staring at her.

105. Ms. Doe’s male cellmate and other male prisoners on the tier saw and/or were told about this incident and understood it was directed at Ms. Doe. On August 8, the man again publicly masturbated while staring at her.

106. On August 2, while Ms. Doe was waiting on the dinner line, a male prisoner commented repeatedly on her body and said “booty booty booty, nice booty” and “hey baby.” Meanwhile, officers laughed at the comments and made purring noises.

107. On August 3, on her way back from the lunch line, a male prisoner pointed to Ms. Doe and said, “What the fuck is that?” Another called her “fried green tomatoes,” which Ms. Doe took to mean she was considered “fresh meat” and vulnerable to, and even potentially being threatened with, attack. A third male prisoner approached her and said, “Mmm, mmm. I’d fuck the shit out of that.”

108. As with everything else about her placement in men’s prisons, these incidents at SWSP cause her anxiety, depression, humiliation, self-loathing and, at times, even feelings of self-

harm. These daily reminders that the NJDOC considers and treats Ms. Doe like a man make her fear for her safety, exacerbate her gender dysphoria, and reinforce her urgent need to be transferred to the women’s prison, in line with her female identity.

109. Defendants NJDOC and Commissioner Hicks have not provided a final decision or interim update since May 31 as to Ms. Doe’s request for a transfer to Edna Mahan Correctional Facility for Women. Defendants have provided no assurance that they are considering the urgent nature of the request or the ongoing and irreparable harm they are causing this woman by confining her in prisons for and with men.

110. Plaintiff Sonia Doe brings the claims in her Complaint accordingly.

FIRST CAUSE OF ACTION
VIOLATION OF THE LAW AGAINST DISCRIMINATION
(discrimination on the basis of gender identity or expression)
(against all Defendants)

111. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

112. The New Jersey Law Against Discrimination provides:

All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

113. The Law Against Discrimination mandates that when the use of a public accommodation “is in its nature reasonably restricted exclusively to individuals of one sex, . . . individuals shall be admitted based on their gender identity or expression.”

114. NJDOC facilities, including but not limited to the Central Reception and Assignment Facility, New Jersey State Prison, Northern State Prison, and South Woods State Prison, constitute a place of public accommodation within the meaning of the Law Against Discrimination.

115. Defendants participated in, condoned, ratified, perpetuated, aided and abetted direct actions that discriminated against Ms. Doe on the basis of her gender identity or expression in places of public accommodation in violation of the Law Against Discrimination, including without limitation by consistently misgendering her by referring to her as male and using male pronouns, by denying her female undergarments and female commissary items, by verbally harassing her on the basis of her gender identity and expression, and by otherwise failing to respect her gender identity and expression. This discrimination and harassment have been so severe and pervasive that it constitutes a hostile and abusive environment in violation of the Law Against Discrimination.

116. Additionally, by classifying NJDOC facilities as men's and women's facilities but refusing entry to the women's facility to people including Ms. Doe whose gender identity or expression is female, Defendants have violated the Law Against Discrimination.

117. Ms. Doe is under the care, custody, and control of Defendants such that the impact of their discriminatory conduct was magnified.

118. Defendants' acts or omissions were motivated by actual malice or accompanied by a wanton and willful disregard of individuals who foreseeably might be harmed by those acts or omissions.

119. As a direct and proximal result of Defendants' actions, Ms. Doe has already suffered extensive injury and is entitled to compensatory damages. She is also entitled to punitive damages based on Defendants' egregious conduct.

120. Unless the Court enjoins Defendants from continuing to discriminate against Ms. Doe on the basis of her gender identity and expression, she will suffer irreparable harm.

SECOND CAUSE OF ACTION
VIOLATION OF THE LAW AGAINST DISCRIMINATION
(discrimination on the basis of sex)
(against all Defendants)

121. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

122. The New Jersey Law Against Discrimination which provides:

All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

123. NJDOC facilities, including but not limited to the Central Reception and Assignment Facility, New Jersey State Prison, Northern State Prison, and South Woods State Prison, constitute a place of public accommodation within the meaning of the Law Against Discrimination.

124. Defendants participated in, condoned, ratified, perpetuated, aided and abetted direct actions that discriminated against Ms. Doe on the basis of her sex in places of public

accommodation in violation of the Law Against Discrimination, including without limitation by refusing to house her at the women's prison because of her sex assigned at birth, because she has not undergone genital surgery, and because she is transgender, and by otherwise treating her differently than other women in NJDOC custody solely because she is transgender. Defendants engaged in sex stereotyping in their treatment of Ms. Doe, including but not limited to by denying her female undergarments and female commissary items and by explicitly telling her she did not have breasts and that she was a man.

125. Defendants created an environment for Ms. Doe in men's prisons that is discriminatory based on sex, and the harassment and discrimination has been so severe and pervasive that it constitutes a hostile and abusive environment in violation of the Law Against Discrimination.

126. Ms. Doe is under the care, custody, and control of Defendants such that the impact of their discriminatory conduct was magnified.

127. Defendants' acts or omissions were motivated by actual malice or accompanied by a wanton and willful disregard of individuals who foreseeably might be harmed by those acts or omissions.

128. As a direct and proximal result of Defendants' actions, Ms. Doe has already suffered extensive injury and is entitled to compensatory damages. She is also entitled to punitive damages based on Defendants' egregious conduct.

129. Unless the Court enjoins Defendants from continuing to discriminate against Ms. Doe on the basis of her sex, she will suffer irreparable harm.

**THIRD CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 1 OF
THE NEW JERSEY CONSTITUTION**

(Equal Protection)

(against all Defendants)

(brought directly under the New Jersey Constitution
and pursuant to *N.J.S.A.* 10:6-2(c))

130. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

131. The actions of Defendants described herein violated the right to equal protection of the law, in violation of Article I, Paragraph 1 of the New Jersey Constitution.

132. By treating Ms. Doe differently than other women in NJDOC custody, *inter alia* by consistently misgendering her, by refusing to house her at the women's prison, by denying her access to female undergarments and commissary items, and by otherwise discriminating against Ms. Doe because she is transgender, Defendants deprived her of equal protection of the law.

133. Ms. Doe is under the care, custody, and control of Defendants such that the impact of their discriminatory conduct was magnified.

134. Defendants' acts or omissions were motivated by actual malice or accompanied by a wanton and willful disregard of individuals who foreseeably might be harmed by those acts or omissions.

135. As a direct and proximal result of Defendants' actions, Ms. Doe has already suffered extensive injury and is entitled to compensatory damages. She is also entitled to punitive damages based on Defendants' egregious conduct.

136. Unless the Court enjoins Defendants from continuing to treat Ms. Doe differently from other women because she is transgender, she will suffer irreparable harm.

FOURTH CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 1 OF
THE NEW JERSEY CONSTITUTION
(Right to Live Freely and to Free Expression as a Woman)
(against all Defendants)
(brought directly under the New Jersey Constitution
and pursuant to *N.J.S.A.* 10:6-2(c))

137. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

138. Article I, Paragraph 1 of the New Jersey Constitution provides, “All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”

139. Under Article I, Paragraph 1, Ms. Doe has a constitutional right to live in line with her gender identity and expression and therefore to live and express herself freely as a woman.

140. By continuously misgendering her, *inter alia* by housing her solely in men’s prisons, referring to her as male, using male pronouns to address her, and sometimes even explicitly telling her she is a man, Defendants are forcing Ms. Doe to live as a man and violating her right to live and express herself freely as a woman.

141. As a direct and proximal result of Defendants’ actions, Ms. Doe has already suffered extensive injury and is entitled to compensatory damages. She is also entitled to punitive damages based on Defendants’ egregious conduct.

142. Unless the Court enjoins Defendants from continuing to force her to live as a man, she will suffer irreparable harm.

**FIFTH CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 12 OF
THE NEW JERSEY CONSTITUTION**

(Failure to Protect)

(against all Defendants)

(brought directly under the New Jersey Constitution
and pursuant to *N.J.S.A.* 10:6-2(c))

143. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

144. Article I, Paragraph 12 of the New Jersey Constitution provides that “cruel and unusual punishments shall not be inflicted.” Under Article I, Paragraph 12, prisoners have a constitutional right to safe and humane conditions of confinement.

145. Defendant NJDOC and NJDOC officials and staff, including without limitation Defendants Commissioner Hicks and Administrator Nogan, had a constitutional obligation to protect Ms. Doe from being assaulted or otherwise subject to violence in prison, and Ms. Doe had a constitutional right to be protected from assaults and other violence in prison. Upon the direction of and/or with knowledge by Defendants NJDOC, Commissioner Hicks, and Administrator Nogan, Ms. Doe was confined in conditions posing a substantial risk of harm, including but not limited to being confined in men’s prisons, being assigned male cellmates, being denied female undergarments and commissary items, being subject to repeated, prolonged, and/or extreme sexual harassment, and being consistently and intentionally misgendered by these Defendants and by correctional staff under their supervision and control.

146. Despite being on notice that Ms. Doe is a woman, these Defendants failed to perform a sufficient or meaningful individualized assessment of Ms. Doe’s risk of assault, her views of her own safety were not taken into account and/or were repeatedly ignored, and, despite the notation of her risk in her Electronic Medical Record and her purported designation for PREA

monitoring, sufficient or meaningful precautions were not taken to prevent her from harassment and assault, despite the obviousness of the risk.

147. Additionally, Defendant NJDOC and NJDOC officials and staff, including without limitation Defendants Commissioner Hicks and Administrator Nogan, knew and/or should have known that housing Ms. Doe with male prisoners placed her at a substantial risk of harm, including because Ms. Doe requested a transfer to Edna Mahan Correctional Facility for Women pursuant to NJDOC Policy, citing the risk of irreparable harm. Despite this knowledge, these Defendants failed to transfer Ms. Doe to the women's prison.

148. As a direct result of the refusal to transfer Ms. Doe to the women's prison, Ms. Doe was subjected to physical assault by Defendants Lt. N.R., Ofc. S.R., and Ofc. J.L., resulting in extensive physical injury.

149. By failing properly to investigate Ms. Doe's assault by guards and/or by instead adjudicating her guilty of disciplinary offenses, Defendants Administrator Nogan and Disciplinary Hearing Officer Russell ratified the conduct of Defendants Lt. N.R., Ofc. S.R., and Ofc. J.L.; sent a signal to these Defendants, other correctional staff, and other prisoners that assault, other violence, and harassment of Ms. Doe on account of her gender identity or expression would be met with impunity; and subjected Ms. Doe to additional risk of serious harm.

150. Defendants' acts or omissions were motivated by actual malice or accompanied by a wanton and willful disregard of individuals who foreseeably might be harmed by those acts or omissions.

151. As a direct and proximal result of Defendants' actions, Ms. Doe has already suffered extensive injury and is entitled to compensatory damages. She is also entitled to punitive damages based on Defendants' egregious conduct.

152. Unless the Court enjoins Defendants from continuing to subject Ms. Doe to or otherwise allow these conditions of confinement, she will suffer irreparable harm.

**SIXTH CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 12 OF
THE NEW JERSEY CONSTITUTION**

(No Cruel and Unusual Punishment)

(against all Defendants)

(brought directly under the New Jersey Constitution
and pursuant to *N.J.S.A.* 10:6-2(c))

153. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

154. Article I, Paragraph 12 of the New Jersey Constitution provides that “cruel and unusual punishments shall not be inflicted.” Under Article I, Paragraph 12, prisoners have a constitutional right to safe and humane conditions of confinement.

155. Defendants participated in, condoned, ratified, perpetuated, aided and abetted direct actions that resulted in the use of unreasonable and excessive force by Defendants Lt. N.R., Ofc. S.R., and Ofc. J.L., without legal cause, in violation of Ms. Doe’s rights under Article I, Paragraph 12. This force was objectively unreasonable and was undertaken intentionally, with malice and knowing disregard for or deliberate indifference to Ms. Doe’s clearly established rights. This force was undertaken because she asserted her rights and identity as a woman and not for any legitimate penological purpose.

156. Defendants participated in, condoned, ratified, perpetuated, aided and abetted direct actions that caused Ms. Doe to be placed in administrative segregation in conditions of prolonged isolation, wherein she was confined to her cell for more than 20 hours per day, because she asserted her rights and identity as a woman.

157. Defendants also participated in, condoned, ratified, perpetuated, aided and abetted direct actions that caused Ms. Doe to be subject to conditions of confinement that included repeated, prolonged, and/or extreme sexual harassment, including without limitation male prisoners exposing their penises to her and/or masturbating for her to see.

158. Defendants' acts or omissions were motivated by actual malice or accompanied by a wanton and willful disregard of individuals who foreseeably might be harmed by those acts or omissions.

159. As a direct and proximal result of Defendants' actions, Ms. Doe has already suffered extensive injury, including bodily injury, pain, suffering, emotional distress, fear, anguish, and humiliation, and is entitled to compensatory damages. She is also entitled to punitive damages based on Defendants' egregious conduct.

160. Unless the Court enjoins Defendants from repeating their use of unreasonable and excessive force against Ms. Doe or, should she be again subject to administrative segregation, from subjecting her to conditions of isolation, or otherwise allowing these conditions of confinement, she will suffer irreparable harm.

**SEVENTH CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPHS 1, 6 AND, 18 OF
THE NEW JERSEY CONSTITUTION**

(Retaliation)

(against all Defendants)

(brought directly under the New Jersey Constitution
and pursuant to *N.J.S.A.* 10:6-2(c))

161. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

162. Article I, Paragraph 6 of the New Jersey Constitution provides, “Every person may freely speak, write and publish his sentiments on all subjects. . .” and “[n]o law shall be passed to restrain or abridge the liberty of speech. . . .”

163. Article I, Paragraph 18 of the New Jersey Constitution provides the right “to petition for redress of grievances.”

164. Under Article I, Paragraph 1 of the New Jersey Constitution, Ms. Doe has a constitutional right to live in line with her gender identity and expression and therefore to live freely as a woman.

165. Ms. Doe also has a constitutional right to speak freely about her gender identity and expression and to petition Defendants, formally or informally, to treat her like a woman, including but not limited to requesting that she be transferred to the women’s prison, correcting NJDOC officials and staff when they use incorrect pronouns for her, objecting to being improperly searched by male guards, and stating her intention to file a grievance about misconduct related to her treatment as a woman who is transgender.

166. Defendants have a constitutional duty not to retaliate against Ms. Doe for the exercise of her rights under Article I, Paragraphs 1, 6 or 18.

167. Because Ms. Doe sought to live in line with her gender identity and expression, spoke freely about her gender identity and expression, and petitioned Defendants to treat her as a woman, she suffered numerous adverse actions, including but not limited to physical assault, disciplinary charges, conditions of prolonged solitary confinement, and loss of commutation time and other privileges. Ms. Doe’s constitutionally protected conduct was a substantial or motivating factor in Defendants’ decision to take these adverse actions.

168. As a direct and proximal result of Defendants' retaliation, Ms. Doe has already suffered extensive injury and is entitled to compensatory damages. She is also entitled to punitive damages based on Defendants' egregious conduct.

169. Unless the Court enjoins Defendants from continuing to retaliate against Ms. Doe for being a woman and demanding she be treated like a woman, she will suffer irreparable harm.

**EIGHTH CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 1 OF
THE NEW JERSEY CONSTITUTION**

(Due Process Related to Housing)

(against Defendants NJDOC, Commissioner Hicks, and Administrator Nogan)

(brought directly under the New Jersey Constitution
and pursuant to *N.J.S.A.* 10:6-2(c))

170. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

171. The actions of Defendants NJDOC, Commissioner Hicks, and Administrator Nogan described herein deprived Ms. Doe of procedural due process, in violation of Article I, paragraph 1 of the New Jersey Constitution.

172. Defendants knew or should have known that Ms. Doe is transgender and therefore subject to PCS.001.006, Policy on Transgender/Intersex Inmates, but never provided her with the Policy or told her that she had any rights available pursuant to it to seek review of her placement in men's prisons. She did not discover such a policy existed until over a year after her entry into NJDOC custody, when her counsel provided her with it.

173. Despite Ms. Doe's request, through counsel, that she be transferred to the women's prison pursuant PCS.001.006, and her statement that the harms caused by her inappropriate placement in a men's prison were urgent, ongoing, and irreparable, Defendants failed to transfer Ms. Doe to the women's prison and failed to apprise her or her counsel of their decision-making

or any process by which to appeal the delay or final decision, to the extent such decision had been made.

174. As a direct and proximal result of Defendants' failure to inform Ms. Doe of the policy, failure to transfer Ms. Doe, and failure to apprise her or her counsel of any recourse available to her, Ms. Doe has already suffered extensive injury and is entitled to compensatory damages.

175. Unless the Court orders Defendants to transfer Ms. Doe to the women's prison, she will continue to suffer irreparable harm.

NINTH CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 1 OF
THE NEW JERSEY CONSTITUTION
(Due Process Related to Disciplinary Charge and Adjudication)
(against all Defendants)
(brought directly under the New Jersey Constitution
and pursuant to *N.J.S.A.* 10:6-2(c))

176. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

177. Defendants participated in, condoned, ratified, perpetuated, aided and abetted direct actions that caused Ms. Doe to be charged with assault on a corrections officer and adjudicated guilty, when in fact Ms. Doe herself was assaulted because of her female and transgender identity, which deprived Ms. Doe of procedural due process under Article I, Paragraph 1 of the New Jersey Constitution.

178. As a direct and proximal result of Defendants' charging and adjudication, Ms. Doe was confined in conditions of isolation, or solitary confinement, for 67 days and is entitled to compensatory damages, including *inter alia* for physical pain, suffering, and emotional distress.

**TENTH CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 1 OF
THE NEW JERSEY CONSTITUTION**

(Due Process Related to Right to Counsel)

(against Defendants NJDOC, Commissioner Hicks, Administrator Nogan,
and Disciplinary Hearing Officer Russell)

(brought directly under the New Jersey Constitution
and pursuant to *N.J.S.A.* 10:6-2(c))

179. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

180. By forcing Ms. Doe's to proceed without counsel in her disciplinary adjudication, Defendants NJDOC, Commissioner Hicks, Administrator Nogan and Disciplinary Hearing Officer Russell deprived Ms. Doe of procedural due process under Article I, Paragraph 1 of the New Jersey Constitution.

181. These Defendants participated in, condoned, ratified, perpetuated, aided and abetted the denial of Ms. Doe's request for the assistance of undersigned counsel in her disciplinary proceedings. They denied Ms. Doe counsel despite being informed by her, through counsel, that the disciplinary charge was inextricably intertwined with counsel's representation of Ms. Doe and her identity as a transgender woman and despite her advisement that, in light of that context and related legal claims, counsel substitute was wholly insufficient to ensure Ms. Doe's due process and other rights.

182. The denial of counsel deprived Ms. Doe of a fair hearing in her disciplinary adjudication and unconstitutionally limited the scope of her attorney-client communications.

183. As a direct and proximal result of these Defendants' denial of counsel, and/or their ratification thereof, Ms. Doe was forced to proceed *pro se*, only with another prisoner as counsel substitute, which delayed the adjudication, during which time she was held in conditions of isolation, or solitary confinement, in prehearing detention.

184. As a direct and proximal result of Defendants' denial of counsel, Ms. Doe was unable to fully vindicate her rights, confront the evidence against her, and present a defense and was therefore adjudicated guilty on June 20, 2019, resulting in sanctions of 270 days of administrative segregation, in addition to loss of commutation time and other privileges.

185. Ms. Doe is therefore entitled to compensatory damages, including *inter alia* for physical pain, suffering, and emotional distress.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

- (a) Immediate, preliminary and permanent injunctive relief, ordering Defendants not to discriminate against Ms. Doe on the basis of her gender identity and expression and her sex, including but not limited to ordering them to:
- 1) Treat Ms. Doe the same as other women held by the NJDOC;
 - 2) Transfer Ms. Doe to Edna Mahan Correctional Facility for Women;
 - 3) Use only female pronouns when speaking to or about Ms. Doe;
 - 4) Provide Ms. Doe access to female undergarments and female commissary items;
 - 5) Except in exigent circumstances, only allow strip searches of Ms. Doe to be conducted by female correctional officers, never male correctional officers;
 - 6) Train all NJDOC staff on how to appropriately accommodate, treat and communicate with transgender prisoners and/or prisoners with gender dysphoria;
 - 7) Discipline all NJDOC staff who fail to appropriately accommodate, treat and communicate with transgender prisoners and/or prisoners with gender dysphoria;
 - 8) Ensure Ms. Doe is provided meaningful opportunity for out-of-cell time of at least four hours or more per day, given her status as a member of a vulnerable population who should not be subject to isolated confinement; and

- 9) Any further injunctive relief necessary to ensure Ms. Doe's rights are not violated.
- (b) Declaratory relief including, but not limited to, a declaration that Defendants have violated:
- 1) the Law Against Discrimination by discriminating against Ms. Doe on the basis of her gender identity and expression;
 - 2) the Law Against Discrimination by discriminating against Ms. Doe on the basis of her sex;
 - 3) the New Jersey Constitution by treating Ms. Doe differently than all other woman in NJDOC custody;
 - 4) the New Jersey Constitution by failing to provide procedural due process to Ms. Doe;
 - 5) the New Jersey Constitution by punishing Ms. Doe cruelly and/or unusually, by subjecting her to unreasonable and excessive force, and by failing to protect her;
 - 6) the New Jersey Constitution by retaliating against Ms. Doe; and
 - 7) the New Jersey Constitution by failing to respect Ms. Doe's right to live and express herself freely as a woman.
- (c) Compensatory damages in an amount and form to be determined at trial, including but not limited to compensation for:
- 1) the period(s) during which Ms. Doe was confined in prehearing detention and administrative segregation in conditions of isolation;
 - 2) Ms. Doe's pain, suffering, emotional distress, anguish, and humiliation from being subject to cross-gender strip searches, being denied female undergarments and commissary items, being consistently verbally and sexually harassed and misgendered, and otherwise being treated differently than other women in NJDOC custody; and
 - 3) Ms. Doe's bodily injury, pain, suffering, emotional distress, fear, anguish, and humiliation from the May 24, 2019 assault.
- (d) Punitive damages on all claims allowed by law, in an amount to be determined at trial;
- (e) For prejudgment interest at the maximum rate, pursuant to applicable law;

- (f) Attorneys' fees and costs associated with this action, pursuant to the New Jersey Civil Rights Act, *N.J.S.A.* 10:6-2(f), and the Law Against Discrimination, *N.J.S.A.* 10:5-27.1, and other relevant authority; and
- (g) Any further relief as this Court deems just and proper.

Dated: August 14, 2019



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Counsel for Plaintiff

JURY DEMAND

Plaintiff demands trial by jury in this action.

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates Jeanne LoCicero as trial counsel.


CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, via counsel, hereby certifies that Ms. Doe's disciplinary adjudication for the May 24, 2019 assault is the subject of a current appeal before the Superior Court, Appellate Division, Docket No. A-5101-18 (appeal of final agency decision). The docket is currently under seal, pending appellant Ms. Doe's motion to proceed under pseudonym. In the sealed filings, Ms. Doe is identified by her legal name and is the sole appellant. The New Jersey Department of Corrections is the sole respondent, as the agency whose final decision is being appealed.

Other than that appeal, plaintiff, via counsel, certifies that there are no other proceedings or pending related cases arising from the same factual dispute described herein and that the matter in controversy is not the subject of any other action pending in any other court or a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated.

Other than the parties set forth in this complaint, the undersigned knows of no other parties that should be made a part of this lawsuit. In addition, the undersigned recognizes the continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: August 14, 2019

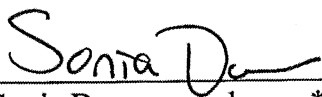


Jeanne LoCicero

VERIFICATION

I, Sonia Doe, hereby affirm under the penalty of perjury that the factual statements contained in the foregoing Verified Complaint are, to the best of my recollection and belief, true and accurate.

Dated: 14. Aug 2019



Sonia Doe, a pseudonym*

*If the motion to proceed under pseudonym is denied, I will promptly refile and sign a verification containing my true name.