

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

JENA FAITH,

Plaintiff,

-against-

STEUBEN COUNTY, SHERIFF JAMES
ALLARD, JAIL SUPERINTENDENT MAJOR
MATTHEW WHITMORE, JAIL PHYSICIAN
BRUCE MACKELLAR, and DOE DEFENDANTS
1-5,

Defendants.

INDEX NO: _____

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL¹**

PRELIMINARY STATEMENT

1. Plaintiff Jena Faith (“Ms. Faith” or “Plaintiff”) is a forty-three-year-old transgender woman and veteran who was held in pre-trial detention at the Steuben County Jail. While there, Steuben County, Sheriff James Allard, Jail Superintendent Major Matthew Whitmore, Jail Physician Bruce MacKellar, and Doe Defendants 1-5 (collectively, “Defendants”) improperly and unlawfully housed Ms. Faith with male inmates, subjected her to severe harassment, and denied her medication related to her transgender status. They discriminated in this manner despite the fact that Ms. Faith is recognized socially, legally, and medically as female—including by Defendants themselves, who initially properly housed Ms. Faith with other women. Defendants then abruptly reversed course and transferred Ms. Faith, over her objections, to the male portion of the jail without regard for her serious medical needs or known risks to her safety and wellbeing.

¹ This complaint has been amended only to correct a clerical error in the original: “Jail Superintendent Major James Whitmore” has been replaced with “Jail Superintendent Major Matthew Whitmore.” A redline version of the original reflecting the change is attached as Exhibit A.

2. While they detained her in the men's facility, Defendants directly and indirectly subjected Ms. Faith to ongoing harassment and discrimination, including verbal and physical sexual harassment, by both guards and detainees. Defendants failed to take reasonable steps to protect her, instead forcing Ms. Faith to remain housed with men even after she reported the harassment, resulting in further instances of sexual harassment and harm. Defendants also denied her medically-necessary hormone therapy.

3. Although jails and prisons are known to have exceptionally high rates of violence and harassment against incarcerated people who are transgender, Defendants failed to adopt or adhere to, or train and supervise officers regarding, policies and procedures that could have prevented the harm to Ms. Faith.

4. Ms. Faith was released after approximately four weeks, but she continues to suffer harm from the actions of Defendants. And until Defendants change their practices, she and other transgender people risk the same or similar mistreatment in the future.

5. Through this action, Ms. Faith seeks declaratory relief, injunctive relief, and damages in an amount to be determined at trial.

PARTIES

6. Plaintiff Jena Faith, a Steuben County resident, is a transgender woman who was in the custody of Defendants at the Steuben County Jail ("SCJ") at all times relevant to this complaint.

7. Defendant Steuben County is a county organized under the laws of the State of New York. The Steuben County Office of the Sheriff operates the Steuben County Jail, and is an agency of Steuben County. Upon information and belief, at all relevant times the individual Defendants named in this Complaint were employees and/or agents of Steuben County.

8. Defendant Sheriff James Allard is, and was at all times relevant to this complaint, the Sheriff of Steuben County and employed by Steuben County and the Office of the Sheriff. Sheriff Allard is the legal custodian of the Steuben County Jail and must “receive and safely keep” detainees there. Corrections Law § 500-c. He is responsible for decisions related to housing, including “remov[ing a] prisoner from one jail to another” and “tak[ing] all reasonable steps to ensure that the assignment of persons to facility housing units . . . affords appropriate precautions for the personal safety and welfare of persons in custody with particular attention to those who are known to be vulnerable to assault or any physical or mental abuse.” *Id.* §§ 500-b(2), (7). Sheriff Allard is sued in his official and personal capacities.

9. Pursuant to Steuben County Local Law 4 (2017), the county has assumed an explicit duty to defend and indemnify the Steuben County Sheriff in all civil actions arising from any act or omission alleged to have occurred while the Sheriff was acting within the scope of his employment or duties.

10. Defendant Major Matthew Whitmore is, and was at all times relevant to this complaint, the Jail Superintendent for the Steuben County Jail. The Jail Superintendent oversees the operations of the SCJ to ensure that it complies with all governmental rules, regulations, and minimum standards for jails, and he provides training for all jail personnel. He also assists the Office of the Sheriff with the establishment and revision of policies, programs, and regulations to provide for the management of the SCJ, and he provides oversight for medical operations at the jail. Along with Defendants Sheriff Allard and Dr. Bruce MacKellar, Major Whitmore has authority over the housing placement of individuals detained at the Steuben County Jail and over decisions regarding their receipt of prescribed medical treatments. Major Whitmore is sued in his official and personal capacities.

11. Defendant Dr. Bruce MacKellar is, and was at all times relevant to this complaint, the Jail Physician for the Steuben County Jail. The Jail Physician is responsible for examining inmates, making diagnoses, prescribing treatments, and writing orders for continuing treatment, including prescriptions for medications to be dispensed. He also oversees the creation and maintenance of inmate medical charts and files, and he supervises and directs the activities of personnel delivering healthcare services within the SCJ. On information and belief, along with Defendants Sheriff Allard and Major Whitmore, Dr. MacKellar had authority over housing placement of individuals detained at the Steuben County Jail and over decisions regarding their receipt of prescribed medical treatments. Dr. MacKellar is sued in his official and personal capacities.

12. Defendant Doe #1 is a Corrections Officer at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #1 appeared to Plaintiff to be a white man, and he worked in the men's housing unit at the jail. Doe #1 is sued in his official and personal capacities.

13. Defendant Doe #2 is a Corrections Officer at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #2 appeared to Plaintiff to be a white man, and he worked in the men's housing unit at the jail. Doe #2 is sued in his official and personal capacities.

14. Defendant Doe #3 is a Corrections Officer at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #3 appeared to Plaintiff to be a white man, and he worked in the men's housing unit at the jail. Doe #3 is sued in his official and personal capacities.

15. Defendant Doe #4 is a Corrections Officer at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #4 appeared to Plaintiff to be a white man, and he worked in the men's housing unit at the jail. Doe #4 is sued in his official and personal capacities.

16. Defendant Doe #5 is a medical professional, on information and belief a Nurse Practitioner or a Registered Nurse, at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #5, on information and belief a woman, is sued in her official and personal capacities.

JURISDICTION AND VENUE

17. All of the facts herein occurred in New York State.
18. Plaintiff resides in Steuben County.
19. Venue is proper in Steuben County pursuant to CPLR § 503(a).
20. At all relevant times, Defendants resided or worked primarily in Steuben County.

STATEMENT OF FACTS

Gender Dysphoria and Ms. Faith's Personal History and Diagnosis

21. Ms. Faith is a woman who is transgender. Like other women, she lives in society as a woman and is socially recognized as a woman. In her daily life, she goes by a female name and pronouns, she uses female restrooms, she wears women's clothing, and she is addressed by others as "ma'am." Apart from her mistreatment while in custody, Ms. Faith has been able to live fully and consistently as a woman.

22. Ms. Faith is legally recognized as female. In April 2014, she legally changed her name to Jena via court order. Her New York State driver's license designates her sex as female. The federal government recognizes her as female on her Social Security records, and although she has never obtained a U.S. Passport, she would be eligible for a female one.

23. Ms. Faith is also medically recognized as female. Ms. Faith understood herself to be female since the age of five, but she did not state so publicly until about 2012, at which point she sought treatment. Also around that time, she was diagnosed with gender dysphoria by her physician.

24. Doctors recognize that a host of factors—including hormone levels, secondary sex characteristics, chromosomes, gonads (ovaries or testes), internal reproductive organs, external genitalia and, most importantly, the innate, internal sense of one's sex—contribute to one's sex.

25. Gender dysphoria is a serious medical condition and disability that can arise when the external sex characteristics of the body develop on a divergent path from the brain. Everyone has a gender identity, which is understood by the medical profession to mean one's internal sense of one's sex. For most people, their internal sense of sex matches the sex designated on their original birth certificate (variously referred to in medical literature as one's "assigned" or "designated" sex at birth, or one's "natal" sex). By contrast, a transgender person is an individual whose gender identity is different from the sex erroneously assigned to that individual at birth. Accordingly, Ms. Faith, as a transgender woman, was labeled male at birth but has a female affirmed gender.

26. The American Psychiatric Association's (the "APA's") Diagnostic and Statistical Manual 5th edition ("DSM-5") describes how a person with gender dysphoria experiences clinical distress based on this incongruence between assigned sex and internal sense of sex, and how this stress can be exacerbated by high levels of stigmatization, discrimination, and victimization. The DSM-5 lists gender dysphoria criteria that constitute the medically accepted clinical diagnostic technique.

27. Individuals suffering from gender dysphoria often experience severe psychological harm and suffering, including anxiety, depression, and/or thoughts of suicide.

28. Gender dysphoria is, however, highly treatable.

29. A well-established medical consensus finds that social and legal transition to living consistently with one's affirmed gender along with hormone therapy, surgery, and counseling can successfully alleviate gender dysphoria. The World Professional Association for Transgender Health ("WPATH"), the Endocrine Society, and the APA have developed the standard of care for treatment of gender dysphoria. This treatment is endorsed by the American Medical Association ("AMA") and numerous other professional organizations such as the American Psychological Association. Proper treatment is vital to combating the severe psychological harm—including depression, anxiety, and suicidality—that individuals may experience in connection with their gender dysphoria.

30. WPATH specifically addresses incarceration settings, stating that "people who enter an institution on an appropriate regimen of hormone therapy should be continued on the same, or similar, therapies."² The National Commission on Correctional Health Care similarly notes that "transgender patients who received hormone therapy . . . prior to incarceration should have that therapy continued without interruption Hormone therapy should not be discontinued precipitously as this will likely cause depression and anxiety."³

² WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 7th ed., 68 (2011) (capitalization altered) [hereinafter *Standards of Care*] https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf.

³ National Commission on Correctional Health Care, *Transgender, Transsexual, and Gender Nonconforming Health Care in Correctional Settings* (2015) (capitalization altered), <https://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care>.

31. The exact biological etiology of gender dysphoria is not presently known, but there a scientific consensus that gender identity is biologically based, and a significant body of scientific and medical research indicates that gender dysphoria has a physiological and biological etiology.⁴

32. Gender dysphoria is a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions that prevent the exercise of a normal bodily function. Specifically, Ms. Faith has anatomy, genetics and physiology that are atypical for a female, resulting in impairments in the reproductive, neurological and endocrine systems. Ms. Faith received counseling, underwent surgery and takes exogenous hormones to address these impairments.

33. Ms. Faith's gender dysphoria substantially limits one or more major life activities, including her ability to care for herself, eating, sleeping, learning, concentrating, thinking, communicating, interacting with others, and reproducing, and also substantially limits the operation of major bodily functions, including neurological function, brain function, and reproductive function.

34. Ms. Faith has a record of gender dysphoria, which substantially limits one or more major life activities, including her ability to care for herself, eating, sleeping, learning, concentrating, thinking, communicating, interacting with others, and reproducing, and also substantially limits the operation of major bodily functions, including neurological function, brain function, and reproductive function.

⁴ See, e.g., AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 457 (5th ed. 2013) (discussing genetic and hormonal contributions to gender dysphoria); Christine Michelle Duffy, *The Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, in GENDER IDENTITY AND SEXUAL ORIENTATION DISCRIMINATION IN THE WORKPLACE: A PRACTICAL GUIDE* 16-72 to 16-74 & n.282 (Christine Michelle Duffy ed., Bloomberg BNA 2014) (citing numerous medical studies conducted in past eight years that "point in the direction of hormonal and genetic causes for the in utero development of Gender Dysphoria").

35. For her care and treatment, Ms. Faith's doctor recommended that she live openly as a woman and undergo a process of social and medical gender transition. In 2013, her physician prescribed her a regimen of hormone replacement therapy. In addition, she underwent an orchiectomy—the surgical removal of her testicles—in October 2014. This means that she can no longer obtain an erection and is permanently infertile.

36. Ms. Faith's currently-prescribed hormone replacement therapy requires her to take estrogen on a biweekly basis via injection. A key requirement of this treatment is that it occur on the same day, as scheduled, every two weeks. One result of this treatment is that her body has developed typical female sex characteristics; namely, the hormones produce breast growth, reduce muscle mass, and affect patterns of fat distribution and hair growth. The treatment is also important in maintaining Ms. Faith's mental health.

Ms. Faith's Military Service and PTSD

37. Ms. Faith has served her state and country in various military branches. From 1993 to 1995, she served in the New York Army National Guard First 108th Infantry. She then served in the United States Navy for about seven months, and returned to the National Guard from 1999 to 2000.

38. As a result of her service, Ms. Faith receives medical care through providers at the Department of Veterans' Affairs ("VA").

39. During her time in the National Guard, Ms. Faith was the victim of a training accident, in which an artillery shell exploded close to her.

40. Ms. Faith was diagnosed with Post-Traumatic Stress Disorder ("PTSD") as a result of that explosion. She takes medication prescribed by her physicians for depression and anxiety related to her PTSD diagnosis, and she regularly speaks with a professional counselor.

Arrest and Incarceration in the SCJ Female Unit

41. On or about April 28, 2018, Ms. Faith was arrested and charged with using counterfeit money to buy pizza, chicken wings, and beer.

42. When she was first brought to the SCJ to be processed, Ms. Faith identified herself to the intake staff as a woman. She also informed them that she is transgender, indicating that she should be accommodated accordingly and housed with other women. She produced her valid New York State driver license, which designates her sex as female. A female officer conducted a search of her body, which included the officer being able to observe her genitals. Subsequent to this intake process, Ms. Faith was placed with other women in the SCJ.⁵

43. Upon information and belief, as part of the intake process Ms. Faith's medical providers at the VA were contacted by Dr. MacKellar and his staff, including the medical professional named as Doe #5, to confirm Ms. Faith's medical diagnoses and treatment, including her status as a transgender person with gender dysphoria and her prescribed medications. Dr. MacKellar was thus aware that Ms. Faith had a record of being diagnosed with gender dysphoria.

44. While housed with other women, Ms. Faith received her prescribed hormone replacement therapy medication, administered by Doe #5, on or about the date on which it was due to be administered according to the schedule prescribed by Ms. Faith's VA physicians. On information and belief, Dr. MacKellar was required to personally approve the decision to provide Ms. Faith with her scheduled hormone replacement therapy.

⁵ This intake process and placement was consistent with two previous occasions—approximately three days in October 2017 and approximately two days in December 2017—during which Ms. Faith was housed at the SCJ with other women without incident.

45. Consistent with her other prescriptions and diagnoses, Ms. Faith received her other regularly-scheduled non-narcotic medications, including those to treat her PTSD-related anxiety.

46. While housed with other women, Ms. Faith lived and slept, as did all of the other women, in a single-person cell that included its own toilet and bed.

47. She showered, as did all of the other women, in an individual shower that included a door that prevented one's body from being seen by anyone who was outside of the shower.

48. At no time during her stay did any woman express to her any discomfort with her presence in the unit, nor did Ms. Faith engage in any behavior towards or with the other women in the unit that could be considered inappropriate.

49. To her knowledge, no one witnessed her in any state of undress during her time in the women's housing unit.

***Defendant's Decision to Harm Ms. Faith's Health and Safety by
Unlawfully Transferring Her to a Men's Unit***

50. As a transgender woman, Ms. Faith faces a disproportionately high risk of discrimination, harassment, and abuse by correctional facility staff and other incarcerated people because of her transgender status. Transgender people in prisons and jails face physical and sexual assault at much higher rates than people who are not transgender.⁶ For example, one national survey found that transgender people are over nine times more likely than the general population to be sexually assaulted by other incarcerated people.⁷ The U.S. Department of

⁶ See, e.g., National Center for Transgender Equality, *LGBTQ People Behind Bars* (October 2018) (collecting sources), <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

⁷ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality 15 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

Justice's Bureau of Justice Statistics has also found that transgender women are nine times more likely than other prisoners to be victims of sexual harassment or assault.⁸

51. In its resolution on the appropriate placement of transgender prisoners, the AMA stated it "supports the ability of transgender prisoners to be placed in facilities, if they so choose, that are reflective of their affirmed gender status, regardless of the prisoner's genitalia, chromosomal make-up, hormonal treatment, or non-, pre-, or post-operative status."⁹

Furthermore, "the facilities housing transgender prisoners shall not be a form of administrative segregation or solitary confinement."

52. The WPATH *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* state, "[h]ousing and shower/bathroom facilities for transsexual, transgender, and gender-nonconforming people living in institutions should take into account their gender identity and role, physical status, dignity, and personal safety."¹⁰ They warn that housing a person based on the appearance of external genitalia alone "may place the individual at risk for victimization."

53. The Prison Rape Elimination Act ("PREA"), 34 U.S.C. §§ 30301-09, a federal statute that, along with its implementing regulations, creates standards and protocols to prevent the sexual assault and victimization of people held in custodial settings, identifies transgender people as a group that is at "risk of victimization and abusiveness," see 28 C.F.R. § 115.41.

⁸ Allen J. Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates*, Bureau of Justice Statistics (2014), https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf; Allen J. Beck et al. *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, Bureau of Justice Statistics, (2013), <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

⁹ American Medical Association, *Appropriate Placement of Transgender Prisoners H-430.982* (June 2018), <https://policysearch.ama-assn.org/policyfinder/detail/Appropriate%20Placement%20of%20Transgender%20Prisoners%20H-430.982?uri=%2FAMADoc%2FHOD.xml-H-430.982.xml>.

¹⁰ *Standards of Care* supra note 2, at 68.

Regarding housing determinations for transgender people specifically, PREA regulations require that a jail consider “whether a placement would ensure the inmate’s health and safety” and give “serious consideration” to the “transgender . . . inmate’s own views with respect to his or her own safety.” *Id.* § 115.42.

54. According to publicly available information, Major Whitmore is responsible for the execution and implementation of PREA policies at the Steuben County Jail.

55. On information and belief, at all times relevant to this action, Defendants have consequently been aware of the requirements of PREA and on notice regarding the regulations that name transgender individuals as a specifically vulnerable group. At all times relevant to this action, Defendants were aware that transgender people—particularly transgender women—face a heightened risk of harassment, discrimination, and sexual abuse in jails and prisons.

56. After being housed for several days in the women’s unit at the SCJ, Dr. MacKellar, with whom Ms. Faith had had no previous direct personal contact, informed her that he would be transferring her to a men’s unit.

57. Dr. MacKellar represented to Ms. Faith that unnamed incarcerated women allegedly complained to unnamed SCJ personnel that Ms. Faith watched them shower, despite the fact that everyone in the unit showered in individual shower stalls with doors that prevented observation of the person showering inside.

58. Dr. MacKellar did not describe any other examples of alleged misconduct on Ms. Faith’s part. The physician also did not explain, in response to Ms. Faith’s question, why an allegation that she was “watching” other women in the shower would result in her being transferred to a men’s unit.

59. Dr. MacKellar represented to Ms. Faith that the SCJ had video evidence of her watching unnamed people in the shower but never showed it to Ms. Faith. Further, he threatened Ms. Faith by claiming if she ever sued for discrimination, the SCJ would publicly release the video.

60. In fact, Ms. Faith never watched any women inmates in the shower (nor could she).

61. On information and belief, the decision to transfer Ms. Faith from being housed with women to being housed with men was made jointly by Dr. MacKellar, Major Whitmore, who as Jail Superintendent was required to approve the transfer of a person from one unit to another, and Sheriff Allard, who pursuant to his duties as described by state law was responsible for decisions regarding housing assignments and transfers.

62. Ms. Faith objected to being transferred to a men's unit and requested that she be allowed to remain in the women's unit, consistent with her status as a woman and consistent with the appropriate treatment for her gender dysphoria. Ms. Faith told Dr. MacKellar that she had undergone gender transition four years prior and that she had been taking female hormones since that time. She told Dr. MacKellar that because she is recognized by New York State as a woman, she should not be moved. She also told Dr. MacKellar that housing her with men would cause her significant distress.

63. On information and belief, Defendants do not have a policy establishing criteria for deciding whether to place a person in the men's versus the women's unit, and they do not adhere to the housing determination standards recommended by PREA's implementing regulations.

64. On information and belief, Defendants regarded Ms. Faith's gender dysphoria as a physical, mental or medical impairment resulting from an anatomical, physiological, genetic or neurological condition that prevents the exercise of a normal bodily function. Specifically, Defendants regarded Ms. Faith as having abnormal bodily function as a female because of her anatomical appearance. Defendants' decision to place Ms. Faith in a men's unit failed to take into consideration her status as a transgender woman, her gender dysphoria, and her specific post-surgical anatomy.

65. Defendants knew or should have known that placing Ms. Faith, a transgender woman with gender dysphoria, in a men's facility, and treating her as male, would impose grave risks to her safety and wellbeing, including harassment, abuse, discrimination, and the exacerbation of her gender dysphoria.

66. Despite being aware of Ms. Faith's gender dysphoria and her request to remain in the women's unit, Defendants refused to make a reasonable accommodation that would have permitted her to be housed without grave risks to her safety and wellbeing.

67. Dr. MacKellar told Ms. Faith that her request to remain in the women's housing unit would be denied and justified the denial, inexplicably, by noting that Ms. Faith's orchiectomy had removed her testicles but not her penis. As described above, Defendants had been fully aware of the status of Ms. Faith's genitals based on the search conducted during her initial intake, prior to her housing assignment with other women. They were also aware that she had been housed with women, without incident, on two prior occasions during October and December of 2017.

68. Ms. Faith was never given an opportunity to appeal the decision to move her to a men's unit.

69. At no point during her detention with women did any other incarcerated woman comment or complain to Ms. Faith that she was looking at them in the shower or otherwise.

70. At no point during her detention with women did any SCJ official, employee, or officer, other than Dr. MacKellar, approach Ms. Faith regarding any comments or complaints from other incarcerated women about Ms. Faith.

71. Ms. Faith was never the subject of any discipline while she was housed with women.

72. Ms. Faith's repeated placement in the women's unit indicates that SCJ personnel had determined that she met the essential eligibility requirements for her to be qualified to reside and receive services at the SCJ in general and to reside in the women's unit specifically.

73. At all times relevant to this complaint, Ms. Faith did not present a security risk to any other incarcerated person, nor a significant risk to the health or safety of others.

74. SCJ staff did not attempt to eliminate or reduce any risk they erroneously perceived to an acceptable level by modifying its policies, practices, or procedures, as applied either Ms. Faith or other women inmates, except by transferring Ms. Faith to a men's unit.

75. There was no legitimate purpose for transferring her from the women's unit to a men's unit.

76. Upon information and belief, Defendants intentionally moved her to a medically-inappropriate, sex-inappropriate housing unit because of her sex, transgender status, and gender dysphoria.

Transfer to a Men's Housing Unit and Harassment

77. Notwithstanding the fact that she was not ill, when Defendants transferred Ms. Faith out of the women's unit, she was initially placed in a medical unit within the men's population, where she stayed for three days.

78. When she asked the SCJ guards why she had been transferred to the medical unit, she was told by it was because “all transgender” people were housed in that unit.

79. During her time in the medical unit, Ms. Faith was deprived of interaction with other detainees and only left her cell for meals and to obtain books to read.

80. After three days in the medical unit, Defendants placed Ms. Faith in a unit of the men’s general population, where almost immediately she was sexually harassed, discriminated against, subjected to verbal abuse, and threatened.

81. At no point during her detention with women had any other incarcerated woman used epithets, threatened, or tormented Ms. Faith in a way that made her feel harassed, uncomfortable or unsafe. These problems only arose after Ms. Faith was transferred to the men’s unit.

82. Upon information and belief, Defendants did not screen Ms. Faith for vulnerability or use relevant information about the prevalence of anti-transgender harassment to protect her from likely aggressors.

83. On her first day in a men’s general unit population unit, a male inmate, Gerry Cleveland, a six-foot-six-inch tall registered sex offender, began to harass and sexually proposition Ms. Faith. He rubbed his feet on her legs, tried to hold her hand, and blew kisses at her. He also told Ms. Faith that he wanted to marry her, and he wrote her several letters claiming he was in love with her. He told Ms. Faith that he wanted to be in a romantic relationship with her upon their release from the SCJ.

84. Ms. Faith was disturbed and threatened by Mr. Cleveland’s behavior and reported him to the SCJ guards. She also provided the SCJ guards the notes Mr. Cleveland wrote.

85. Ms. Faith never filed a written grievance because the guards told her that she could not.

86. Despite the verbal and physical sexual harassment endured by Ms. Faith, and her obvious vulnerability, Defendants did not take the necessary steps to keep Ms. Faith safe. Instead they transferred her to another section of the SCJ's male general population.

87. On information and belief, the decision to transfer Ms. Faith to a new unit was made jointly by Dr. MacKellar, Major Whitmore, who as Jail Superintendent was required to approve the transfer of a person from one unit to another, and Sheriff Allard, who pursuant to his duties as described by state law was responsible for decisions regarding the housing assignments and transfers.

88. Defendants took no measures to protect Ms. Faith from harassment in this new section. Upon information and belief, they again failed to screen Ms. Faith for vulnerability or use relevant information to separate her from likely aggressors.

89. After she was transferred to the new section of the SCJ's male population, Ms. Faith was subjected to continued harassment from the additional male inmates, including Filip Caruso.

90. Inmate Filip Caruso was housed in the general male population, and in the unit to which Ms. Faith was reassigned. Mr. Caruso was known to Defendants as a former member of violent motorcycle gang, the Kingsmen, who left to join a rival gang, Nickel City Nomads. Mr. Caruso is the former New York Northern Regional President of the Kingsmen.

91. Mr. Caruso consistently and systematically verbally harassed and threatened Ms. Faith. He would call her a "faggot" and other epithets related to her transgender status. Many of these slurs were made in the presence of SCJ correctional officers.

92. In response to Mr. Caruso's behavior, the SCJ correctional officers told him to "stop" on one single occasion, but took no further action. Mr. Caruso continued to verbally assault Ms. Faith in the presence of SCJ staff.

93. Aware of his reputation and scared for what Mr. Caruso was capable of doing, Ms. Faith hid in her cell, only leaving for meals and to shower. She spent approximately twenty hours of every day in her cell.

94. Mr. Caruso continued to refer to Ms. Faith in derogatory and threatening terms throughout the remainder of her detention.

95. Additional inmates in the male unit would also shout discriminatory names at Ms. Faith, including "shemale."

96. These words were hurtful and frightening to her, but Ms. Faith did not raise new complaints based on each new instance of harassment because, based on her experience complaining about Mr. Cleveland's and Mr. Caruso's behavior, she felt like the SCJ's officers and staff would not protect her.

97. Ms. Faith was also verbally harassed by several SCJ guards, named here as Doe #1, Doe #2, Doe #3, and Doe #4. These four Defendants began to refer to Ms. Faith as male, including calling her "*Mr.* Faith." Although she explained to these guards that she was a woman and asked to be referred to as "Ms. Faith," and with female pronouns such as "she" and "her," the guards did not respond and continually referred to her as "Mister." This behavior continued until Ms. Faith's release.

98. As a result of Defendants intentionally placing Ms. Faith with men, intentionally referring to her disrespectfully by pronouns and titles of the male gender, and intentionally

denying her hormone treatment, Ms. Faith experienced increased anxiety and stress. This exacerbated her existing medical conditions, namely gender dysphoria and PTSD.

99. In the women's unit, Ms. Faith had experienced no limitations on access to the physical facilities and programming generally available to the women detained at the SCJ. But in the men's population, Ms. Faith was unable to fully access the physical facilities and programming generally available to the men detained there. As a transgender woman with a female identity, female physical characteristics, and gender dysphoria, she was unsafe and unwell in the men's population and had to severely restrict her interactions with others and seclude herself in her cell.

100. Upon information and belief, while Ms. Faith was in the men's population, no other female individuals were placed there. Upon information and belief, while she was in the women's unit, no other female individuals were transferred out of it into the men's population.

101. Defendants' placement of Ms. Faith in a men's facility served to publicize private medical information, namely that she was transgender and had previously undergone a gender transition. Defendants' placement caused some to assume that she was a man, and Ms. Faith was forced to correct them by informing them that she was a woman. Defendants' placement caused Ms. Faith to lose control over the ability to choose when and to whom she shared highly sensitive, private medical information.

102. While she was in the men's population, Defendants also caused Ms. Faith to be publicly identified outside of the SCJ, incorrectly, as a man. The smartphone application "MobilePatrol" allows members of the public to locate people who are being held in jails and prisons, using information provided by the facilities for that purpose. On information and belief, based on the actions of Defendants, including their decision to transfer her to a men's unit, the

application began to identify Ms. Faith as a man after she was transferred to the men's population. Ms. Faith is aware of family and friends who looked her up on MobilePatrol and viewed records identifying her as a man. She has experienced mental anguish and humiliation based on this public misgendering and publication of her private information.

Defendants Fail to Administer Ms. Faith's Hormone Therapy Medication

103. After she had been transferred to a men's unit, Ms. Faith was scheduled to receive another bi-weekly administration of her prescribed hormone replacement therapy medication. On that day, while making the rounds distributing the inmates' medications, Doe #5 refused to administer Ms. Faith's hormone replacement therapy medication.

104. When Ms. Faith inquired into why she had not received her hormone medication, she was told by Doe #5 that she would "get back to" her. No one ever did, nor was she administered the medication later. No one explained the denial, nor gave her the opportunity to challenge it.

105. On information and belief, Defendants Dr. MacKellar, Sheriff Allard, and Major Whitmore made the decision to intentionally deny her the hormone therapy prescribed to treat her gender dysphoria based on her sex, transgender status, and her disability. Defendants continued to provide her with all other regularly prescribed medications, singling out the hormone treatments for denial once she was transferred to a men's unit.

106. Missing a dose of hormone therapy medication results in a number of side effects, all of which Ms. Faith experienced. Specifically, Ms. Faith endured hot flashes, cold flashes, nausea, and stomach pain as a direct result of missing a dose of her hormone therapy medication. Her dosing schedule, which requires strict adherence to a bi-weekly regimen, was also thrown off-balance. She experienced mental anguish, worried that her inability to access hormone replacement therapy would permanently affect her medical transition.

107. Ms. Faith also requested to speak with a counselor or mental health professional regarding her PTSD. She provided Defendants with several letters making this request and continued to follow-up with them when her requests were ignored.

108. At no time did Ms. Faith speak with a mental health professional, including a psychologist, social worker, counselor, or otherwise, despite her many requests to do so.

Ms. Faith's Release from the SCJ and the Ongoing Impact of Her Mistreatment

109. Ms. Faith spent approximately four weeks during her pre-trial detention continuously residing at the SCJ and sleeping there every night.

110. Defendants released Ms. Faith from the SCJ on May 25, 2018. Since that time, she has continued to suffer tremendously as a consequence of Defendants' mistreatment.

111. As a direct result, Ms. Faith has not been able to sleep at night, and she experiences night terrors. These symptoms have been ongoing since her release. Her doctor prescribed prazosin to address the night terrors.

112. Ms. Faith also experienced ongoing physical and mental effects related to her missed hormone replacement therapy dose. These included efforts to get her bi-weekly injection back onto the same schedule that it had been on before her detention, which required several additional visits to her endocrinologist in Buffalo for blood tests to confirm that her estrogen levels had returned to target levels. While Ms. Faith previously made the three-hour trip to Buffalo once per year, as a result of her time at the SCJ she began to visit every three months.

113. Ms. Faith also receives professional medical and mental health counseling to treat her PTSD-related anxiety and depression, which were exacerbated due to Defendants' mistreatment. Her appetite has changed, causing her to lose forty pounds in a single month, and she has experienced problems related to drinking excessively.

The SCJ

114. The SCJ is part of the Steuben County Public Safety Building and is designed and used to house up to 262 people. The SCJ is intended to be used as a residence or sleeping place for people who are in custody there.

115. On information and belief, the SCJ was built in New York after 1950 and is exempt in whole or in part from taxes levied by the state or any of its political subdivisions.

116. The SCJ houses members of the public who are required to be detained for myriad reasons including pre-trial detention, serving misdemeanor sentences, and while in the custody of outside agencies including other county facilities or the U.S. Marshalls and U.S. Immigration and Customs Enforcement, with whom the SCJ maintains contracts. The facility is also open to the public to visit the residents during regularly scheduled hours.

117. The SCJ also offers services to the community in the form of the Steuben County Jail Community Work Program, which is available to any nonprofit organization in the County. The program allows inmates to perform volunteer labor or services in the community, under guard, when in the public interest.

118. Steuben County has publicly acknowledged that the jail “is required to provide medical and mental health care for its inmate population,” it has stated that a doctor, nurse practitioner, three full-time nurses, and two part-time nurses are employed by the SCJ at all times.

119. The jail also employs a full-time psychologist, full-time social worker assistant, and part-time social worker assistant at the facility to work with patients regarding their mental health issues. As alleged above, despite Ms. Faith’s repeated requests to Defendants, she was not permitted to speak with any of these professionals during the nearly four weeks she was held at the SCJ in pre-trial detention.

Defendants Adopted a Practice and Custom that Fails to Train and Supervise the SCJ Staff and Tolerates Discrimination and Abuse of People in their Custody

120. Defendants failed to adequately supervise and train their staff regarding the proper placement of transgender individuals and individuals with gender dysphoria in their facility and on the mechanisms known to reduce and prevent sexual harassment and abuse of people in their custody, demonstrating deliberate indifference to the substantial risk of serious harm to transgender people, including Ms. Faith.

121. Instead of implementing mechanisms to protect people in their custody from sexual harassment and abuse, Defendants adopted customs and practices that are so deficient that Defendants acted, and are acting, in a deliberately indifferent manner to the substantial risk of serious harm to transgender people and people with gender dysphoria, including Ms. Faith.

122. Defendants have failed to implement a policy of training and supervising staff to make housing placement decisions for transgender people and people with gender dysphoria in a manner that safeguards them from harm and reasonably accommodates them.

123. Moreover, they have adopted a custom and practice that deters such individuals in their custody from filing complaints, denies them protection from sexual harassment and abuse, disregards their complaints, and fails to staff the SCJ in a way that adequately protects them against harassment, abuse, and threats to their safety.

124. Upon information and belief, Defendants do not implement measures to protect transgender people and people with gender dysphoria, including Ms. Faith, from harassment and abuse, and they have failed to adequately train staff members regarding how to keep such people safe when making housing placement determinations and accommodations.

125. Upon information and belief, Defendants failed to adequately train staff members regarding protecting people in their custody from discrimination, sexual harassment and abuse.

126. Upon information and belief, Defendants failed to train its staff concerning professional interactions with transgender people and people with gender dysphoria, including a failure to adequately train staff to use pronouns that are consistent with a person's affirmed gender.

127. Upon information and belief, Defendants failed to adequately screen people for vulnerability to sexual harassment and abuse and to separate them from likely aggressors.

128. The willful refusal to address Ms. Faith's concerns is a result of ineffective training, supervision, customs and practices necessary to take proper action to ensure that Defendants and their staff do not discriminate against, harass, or fail to protect transgender people in their custody.

First Claim for Relief

129. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. Defendants' actions violate the New York State Human Rights Law, Executive Law § 296.

Second Claim for Relief

130. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. Defendants' actions violate the New York Civil Rights Law § 40-c.

Third Claim for Relief

131. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. Defendants' actions violate the New York Civil Rights Law § 79-n.

Fourth Claim for Relief

132. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein.

Defendants' actions violate the Equal Protection guarantees of the New York State Constitution, including but not limited to Article I, § 11.

Fifth Claim for Relief

133. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein.

Defendants' actions violate of the Due Process guarantees of the New York State Constitution, including but not limited to Article I, §§ 1 and 6.

Sixth Claim for Relief

134. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein.

Defendants' actions constitute negligent training and supervision.

Service and Notice of Claim Requirements

135. Plaintiff has complied with the requirements of New York State Civil Rights Law § 40-d by serving notice on the state Attorney General.

136. Plaintiff has complied with all notice of claim requirements by serving a notice of claim on Defendants on August 1, 2018, which claim Defendants have failed to adjust or pay.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

- A. Declare that Defendants' actions violated the statutes and constitutional provisions associated with each of the claims listed above;
- B. Issue injunctive relief against Defendants, enjoining them not to discriminate against Jena Faith or any transgender person on the basis of transgender status, sex, and/or disability, and ordering development and implementation of the following policies at the Steuben County Jail:
 - i. requiring the use of correct names, pronouns, and honorifics;
 - ii. prohibiting the denial of housing placement consistent with detainees' affirmed gender and with health and safety needs;

- iii. requiring medical care for transgender individuals consistent with the standard of care, including but not limited to hormone therapy and mental health evaluations for gender dysphoria,
 - iv. requiring the protection of transgender individuals against discrimination, abuse, harassment, and safety threats;
 - v. requiring the training of staff; and,
 - vi. providing for discipline of staff who fail to follow these policies.
- C. Award Plaintiff nominal and compensatory damages against all Defendants based on the claims listed above, in an amount to be determined at trial;
- D. Award Plaintiff punitive damages against all individual defendants based on the claims listed above, in an amount to be determined at trial;
- E. Award Plaintiff statutory penalties against all Defendants, for each and every violation of New York State Civil Rights Law § 40-c, pursuant to Civil Rights Law § 40-d;
- F. Award Plaintiff costs and attorneys' fees; and
- G. Grant such other relief as the Court deems proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: August 22, 2019
New York, NY

Respectfully submitted,

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EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

JENA FAITH,

Plaintiff,

-against-

STEUBEN COUNTY, SHERIFF JAMES
ALLARD, JAIL SUPERINTENDENT MAJOR
~~JAMES MATTHEW~~ WHITMORE, JAIL
PHYSICIAN BRUCE MACKELLAR, and DOE
DEFENDANTS 1-5,

Defendants.

INDEX NO: _____

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL¹**

PRELIMINARY STATEMENT

1. Plaintiff Jena Faith (“Ms. Faith” or “Plaintiff”) is a forty-three-year-old transgender woman and veteran who was held in pre-trial detention at the Steuben County Jail. While there, Steuben County, Sheriff James Allard, Jail Superintendent Major ~~James Matthew~~ Whitmore, Jail Physician Bruce MacKellar, and Doe Defendants 1-5 (collectively, “Defendants”) improperly and unlawfully housed Ms. Faith with male inmates, subjected her to severe harassment, and denied her medication related to her transgender status. They discriminated in this manner despite the fact that Ms. Faith is recognized socially, legally, and medically as female—including by Defendants themselves, who initially properly housed Ms. Faith with other women. Defendants then abruptly reversed course and transferred Ms. Faith, over her objections, to the male portion of the jail without regard for her serious medical needs or known risks to her safety and wellbeing.

¹ This complaint has been amended only to correct a clerical error in the original: “Jail Superintendent Major James Whitmore” has been replaced with “Jail Superintendent Major Matthew Whitmore.” A redline version of the original reflecting the change is attached as Exhibit A.

2. While they detained her in the men's facility, Defendants directly and indirectly subjected Ms. Faith to ongoing harassment and discrimination, including verbal and physical sexual harassment, by both guards and detainees. Defendants failed to take reasonable steps to protect her, instead forcing Ms. Faith to remain housed with men even after she reported the harassment, resulting in further instances of sexual harassment and harm. Defendants also denied her medically-necessary hormone therapy.

3. Although jails and prisons are known to have exceptionally high rates of violence and harassment against incarcerated people who are transgender, Defendants failed to adopt or adhere to, or train and supervise officers regarding, policies and procedures that could have prevented the harm to Ms. Faith.

4. Ms. Faith was released after approximately four weeks, but she continues to suffer harm from the actions of Defendants. And until Defendants change their practices, she and other transgender people risk the same or similar mistreatment in the future.

5. Through this action, Ms. Faith seeks declaratory relief, injunctive relief, and damages in an amount to be determined at trial.

PARTIES

6. Plaintiff Jena Faith, a Steuben County resident, is a transgender woman who was in the custody of Defendants at the Steuben County Jail ("SCJ") at all times relevant to this complaint.

7. Defendant Steuben County is a county organized under the laws of the State of New York. The Steuben County Office of the Sheriff operates the Steuben County Jail, and is an agency of Steuben County. Upon information and belief, at all relevant times the individual Defendants named in this Complaint were employees and/or agents of Steuben County.

8. Defendant Sheriff James Allard is, and was at all times relevant to this complaint, the Sheriff of Steuben County and employed by Steuben County and the Office of the Sheriff. Sheriff Allard is the legal custodian of the Steuben County Jail and must “receive and safely keep” detainees there. Corrections Law § 500-c. He is responsible for decisions related to housing, including “remov[ing a] prisoner from one jail to another” and “tak[ing] all reasonable steps to ensure that the assignment of persons to facility housing units . . . affords appropriate precautions for the personal safety and welfare of persons in custody with particular attention to those who are known to be vulnerable to assault or any physical or mental abuse.” *Id.* §§ 500-b(2), (7). Sheriff Allard is sued in his official and personal capacities.

9. Pursuant to Steuben County Local Law 4 (2017), the county has assumed an explicit duty to defend and indemnify the Steuben County Sheriff in all civil actions arising from any act or omission alleged to have occurred while the Sheriff was acting within the scope of his employment or duties.

10. Defendant Major ~~James~~ Matthew Whitmore is, and was at all times relevant to this complaint, the Jail Superintendent for the Steuben County Jail. The Jail Superintendent oversees the operations of the SCJ to ensure that it complies with all governmental rules, regulations, and minimum standards for jails, and he provides training for all jail personnel. He also assists the Office of the Sheriff with the establishment and revision of policies, programs, and regulations to provide for the management of the SCJ, and he provides oversight for medical operations at the jail. Along with Defendants Sheriff Allard and Dr. Bruce MacKellar, Major Whitmore has authority over the housing placement of individuals detained at the Steuben County Jail and over decisions regarding their receipt of prescribed medical treatments. Major Whitmore is sued in his official and personal capacities.

11. Defendant Dr. Bruce MacKellar is, and was at all times relevant to this complaint, the Jail Physician for the Steuben County Jail. The Jail Physician is responsible for examining inmates, making diagnoses, prescribing treatments, and writing orders for continuing treatment, including prescriptions for medications to be dispensed. He also oversees the creation and maintenance of inmate medical charts and files, and he supervises and directs the activities of personnel delivering healthcare services within the SCJ. On information and belief, along with Defendants Sheriff Allard and Major Whitmore, Dr. MacKellar had authority over housing placement of individuals detained at the Steuben County Jail and over decisions regarding their receipt of prescribed medical treatments. Dr. MacKellar is sued in his official and personal capacities.

12. Defendant Doe #1 is a Corrections Officer at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #1 appeared to Plaintiff to be a white man, and he worked in the men's housing unit at the jail. Doe #1 is sued in his official and personal capacities.

13. Defendant Doe #2 is a Corrections Officer at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #2 appeared to Plaintiff to be a white man, and he worked in the men's housing unit at the jail. Doe #2 is sued in his official and personal capacities.

14. Defendant Doe #3 is a Corrections Officer at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #3 appeared to Plaintiff to be a white man, and he worked in the men's housing unit at the jail. Doe #3 is sued in his official and personal capacities.

15. Defendant Doe #4 is a Corrections Officer at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #4 appeared to Plaintiff to be a white man, and he worked in the men's housing unit at the jail. Doe #4 is sued in his official and personal capacities.

16. Defendant Doe #5 is a medical professional, on information and belief a Nurse Practitioner or a Registered Nurse, at the Steuben County Jail whom Ms. Faith believes she will be able to identify with reasonable discovery and intends to name as a defendant. Doe #5, on information and belief a woman, is sued in her official and personal capacities.

JURISDICTION AND VENUE

17. All of the facts herein occurred in New York State.
18. Plaintiff resides in Steuben County.
19. Venue is proper in Steuben County pursuant to CPLR § 503(a).
20. At all relevant times, Defendants resided or worked primarily in Steuben County.

STATEMENT OF FACTS

Gender Dysphoria and Ms. Faith's Personal History and Diagnosis

21. Ms. Faith is a woman who is transgender. Like other women, she lives in society as a woman and is socially recognized as a woman. In her daily life, she goes by a female name and pronouns, she uses female restrooms, she wears women's clothing, and she is addressed by others as "ma'am." Apart from her mistreatment while in custody, Ms. Faith has been able to live fully and consistently as a woman.

22. Ms. Faith is legally recognized as female. In April 2014, she legally changed her name to Jena via court order. Her New York State driver's license designates her sex as female. The federal government recognizes her as female on her Social Security records, and although she has never obtained a U.S. Passport, she would eligible for a female one.

23. Ms. Faith is also medically recognized as female. Ms. Faith understood herself to be female since the age of five, but she did not state so publicly until about 2012, at which point she sought treatment. Also around that time, she was diagnosed with gender dysphoria by her physician.

24. Doctors recognize that a host of factors—including hormone levels, secondary sex characteristics, chromosomes, gonads (ovaries or testes), internal reproductive organs, external genitalia and, most importantly, the innate, internal sense of one’s sex—contribute to one’s sex.

25. Gender dysphoria is a serious medical condition and disability that can arise when the external sex characteristics of the body develop on a divergent path from the brain. Everyone has a gender identity, which is understood by the medical profession to mean one’s internal sense of one’s sex. For most people, their internal sense of sex matches the sex designated on their original birth certificate (variously referred to in medical literature as one’s “assigned” or “designated” sex at birth, or one’s “natal” sex). By contrast, a transgender person is an individual whose gender identity is different from the sex erroneously assigned to that individual at birth. Accordingly, Ms. Faith, as a transgender woman, was labeled male at birth but has a female affirmed gender.

26. The American Psychiatric Association’s (the “APA’s”) Diagnostic and Statistical Manual 5th edition (“DSM-5”) describes how a person with gender dysphoria experiences clinical distress based on this incongruence between assigned sex and internal sense of sex, and how this stress can be exacerbated by high levels of stigmatization, discrimination, and victimization. The DSM-5 lists gender dysphoria criteria that constitute the medically accepted clinical diagnostic technique.

27. Individuals suffering from gender dysphoria often experience severe psychological harm and suffering, including anxiety, depression, and/or thoughts of suicide.

28. Gender dysphoria is, however, highly treatable.

29. A well-established medical consensus finds that social and legal transition to living consistently with one's affirmed gender along with hormone therapy, surgery, and counseling can successfully alleviate gender dysphoria. The World Professional Association for Transgender Health ("WPATH"), the Endocrine Society, and the APA have developed the standard of care for treatment of gender dysphoria. This treatment is endorsed by the American Medical Association ("AMA") and numerous other professional organizations such as the American Psychological Association. Proper treatment is vital to combating the severe psychological harm—including depression, anxiety, and suicidality—that individuals may experience in connection with their gender dysphoria.

30. WPATH specifically addresses incarceration settings, stating that "people who enter an institution on an appropriate regimen of hormone therapy should be continued on the same, or similar, therapies."² The National Commission on Correctional Health Care similarly notes that "transgender patients who received hormone therapy . . . prior to incarceration should have that therapy continued without interruption Hormone therapy should not be discontinued precipitously as this will likely cause depression and anxiety."³

² WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 7th ed., 68 (2011) (capitalization altered) [hereinafter *Standards of Care*] https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf.

³ National Commission on Correctional Health Care, *Transgender, Transsexual, and Gender Nonconforming Health Care in Correctional Settings* (2015) (capitalization altered), <https://www.nchc.org/transgender-transsexual-and-gender-nonconforming-health-care>.

31. The exact biological etiology of gender dysphoria is not presently known, but there a scientific consensus that gender identity is biologically based, and a significant body of scientific and medical research indicates that gender dysphoria has a physiological and biological etiology.⁴

32. Gender dysphoria is a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions that prevent the exercise of a normal bodily function. Specifically, Ms. Faith has anatomy, genetics and physiology that are atypical for a female, resulting in impairments in the reproductive, neurological and endocrine systems. Ms. Faith received counseling, underwent surgery and takes exogenous hormones to address these impairments.

33. Ms. Faith's gender dysphoria substantially limits one or more major life activities, including her ability to care for herself, eating, sleeping, learning, concentrating, thinking, communicating, interacting with others, and reproducing, and also substantially limits the operation of major bodily functions, including neurological function, brain function, and reproductive function.

34. Ms. Faith has a record of gender dysphoria, which substantially limits one or more major life activities, including her ability to care for herself, eating, sleeping, learning, concentrating, thinking, communicating, interacting with others, and reproducing, and also substantially limits the operation of major bodily functions, including neurological function, brain function, and reproductive function.

⁴ See, e.g., AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 457 (5th ed. 2013) (discussing genetic and hormonal contributions to gender dysphoria); Christine Michelle Duffy, *The Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, in GENDER IDENTITY AND SEXUAL ORIENTATION DISCRIMINATION IN THE WORKPLACE: A PRACTICAL GUIDE* 16-72 to 16-74 & n.282 (Christine Michelle Duffy ed., Bloomberg BNA 2014) (citing numerous medical studies conducted in past eight years that "point in the direction of hormonal and genetic causes for the in utero development of Gender Dysphoria").

35. For her care and treatment, Ms. Faith's doctor recommended that she live openly as a woman and undergo a process of social and medical gender transition. In 2013, her physician prescribed her a regimen of hormone replacement therapy. In addition, she underwent an orchiectomy—the surgical removal of her testicles—in October 2014. This means that she can no longer obtain an erection and is permanently infertile.

36. Ms. Faith's currently-prescribed hormone replacement therapy requires her to take estrogen on a biweekly basis via injection. A key requirement of this treatment is that it occur on the same day, as scheduled, every two weeks. One result of this treatment is that her body has developed typical female sex characteristics; namely, the hormones produce breast growth, reduce muscle mass, and affect patterns of fat distribution and hair growth. The treatment is also important in maintaining Ms. Faith's mental health.

Ms. Faith's Military Service and PTSD

37. Ms. Faith has served her state and country in various military branches. From 1993 to 1995, she served in the New York Army National Guard First 108th Infantry. She then served in the United States Navy for about seven months, and returned to the National Guard from 1999 to 2000.

38. As a result of her service, Ms. Faith receives medical care through providers at the Department of Veterans' Affairs ("VA").

39. During her time in the National Guard, Ms. Faith was the victim of a training accident, in which an artillery shell exploded close to her.

40. Ms. Faith was diagnosed with Post-Traumatic Stress Disorder ("PTSD") as a result of that explosion. She takes medication prescribed by her physicians for depression and anxiety related to her PTSD diagnosis, and she regularly speaks with a professional counselor.

Arrest and Incarceration in the SCJ Female Unit

41. On or about April 28, 2018, Ms. Faith was arrested and charged with using counterfeit money to buy pizza, chicken wings, and beer.

42. When she was first brought to the SCJ to be processed, Ms. Faith identified herself to the intake staff as a woman. She also informed them that she is transgender, indicating that she should be accommodated accordingly and housed with other women. She produced her valid New York State driver license, which designates her sex as female. A female officer conducted a search of her body, which included the officer being able to observe her genitals. Subsequent to this intake process, Ms. Faith was placed with other women in the SCJ.⁵

43. Upon information and belief, as part of the intake process Ms. Faith's medical providers at the VA were contacted by Dr. MacKellar and his staff, including the medical professional named as Doe #5, to confirm Ms. Faith's medical diagnoses and treatment, including her status as a transgender person with gender dysphoria and her prescribed medications. Dr. MacKellar was thus aware that Ms. Faith had a record of being diagnosed with gender dysphoria.

44. While housed with other women, Ms. Faith received her prescribed hormone replacement therapy medication, administered by Doe #5, on or about the date on which it was due to be administered according to the schedule prescribed by Ms. Faith's VA physicians. On information and belief, Dr. MacKellar was required to personally approve the decision to provide Ms. Faith with her scheduled hormone replacement therapy.

⁵ This intake process and placement was consistent with two previous occasions—approximately three days in October 2017 and approximately two days in December 2017—during which Ms. Faith was housed at the SCJ with other women without incident.

45. Consistent with her other prescriptions and diagnoses, Ms. Faith received her other regularly-scheduled non-narcotic medications, including those to treat her PTSD-related anxiety.

46. While housed with other women, Ms. Faith lived and slept, as did all of the other women, in a single-person cell that included its own toilet and bed.

47. She showered, as did all of the other women, in an individual shower that included a door that prevented one's body from being seen by anyone who was outside of the shower.

48. At no time during her stay did any woman express to her any discomfort with her presence in the unit, nor did Ms. Faith engage in any behavior towards or with the other women in the unit that could be considered inappropriate.

49. To her knowledge, no one witnessed her in any state of undress during her time in the women's housing unit.

***Defendant's Decision to Harm Ms. Faith's Health and Safety by
Unlawfully Transferring Her to a Men's Unit***

50. As a transgender woman, Ms. Faith faces a disproportionately high risk of discrimination, harassment, and abuse by correctional facility staff and other incarcerated people because of her transgender status. Transgender people in prisons and jails face physical and sexual assault at much higher rates than people who are not transgender.⁶ For example, one national survey found that transgender people are over nine times more likely than the general population to be sexually assaulted by other incarcerated people.⁷ The U.S. Department of

⁶ See, e.g., National Center for Transgender Equality, *LGBTQ People Behind Bars* (October 2018) (collecting sources), <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

⁷ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality 15 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

Justice's Bureau of Justice Statistics has also found that transgender women are nine times more likely than other prisoners to be victims of sexual harassment or assault.⁸

51. In its resolution on the appropriate placement of transgender prisoners, the AMA stated it "supports the ability of transgender prisoners to be placed in facilities, if they so choose, that are reflective of their affirmed gender status, regardless of the prisoner's genitalia, chromosomal make-up, hormonal treatment, or non-, pre-, or post-operative status."⁹ Furthermore, "the facilities housing transgender prisoners shall not be a form of administrative segregation or solitary confinement."

52. The WPATH *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* state, "[h]ousing and shower/bathroom facilities for transsexual, transgender, and gender-nonconforming people living in institutions should take into account their gender identity and role, physical status, dignity, and personal safety."¹⁰ They warn that housing a person based on the appearance of external genitalia alone "may place the individual at risk for victimization."

53. The Prison Rape Elimination Act ("PREA"), 34 U.S.C. §§ 30301-09, a federal statute that, along with its implementing regulations, creates standards and protocols to prevent the sexual assault and victimization of people held in custodial settings, identifies transgender people as a group that is at "risk of victimization and abusiveness," *see* 28 C.F.R. § 115.41.

⁸ Allen J. Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates*, Bureau of Justice Statistics (2014), https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf; Allen J. Beck et al. *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, Bureau of Justice Statistics, (2013), <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

⁹ American Medical Association, *Appropriate Placement of Transgender Prisoners H-430.982* (June 2018), <https://policysearch.ama-assn.org/policyfinder/detail/Appropriate%20Placement%20of%20Transgender%20Prisoners%20H-430.982?uri=%2FAMADoc%2FHOD.xml-H-430.982.xml>.

¹⁰ *Standards of Care* supra note 2+, at 68.

Regarding housing determinations for transgender people specifically, PREA regulations require that a jail consider “whether a placement would ensure the inmate’s health and safety” and give “serious consideration” to the “transgender . . . inmate’s own views with respect to his or her own safety.” *Id.* § 115.42.

54. According to publicly available information, Major Whitmore is responsible for the execution and implementation of PREA policies at the Steuben County Jail.

55. On information and belief, at all times relevant to this action, Defendants have consequently been aware of the requirements of PREA and on notice regarding the regulations that name transgender individuals as a specifically vulnerable group. At all times relevant to this action, Defendants were aware that transgender people—particularly transgender women—face a heightened risk of harassment, discrimination, and sexual abuse in jails and prisons.

56. After being housed for several days in the women’s unit at the SCJ, Dr. MacKellar, with whom Ms. Faith had had no previous direct personal contact, informed her that he would be transferring her to a men’s unit.

57. Dr. MacKellar represented to Ms. Faith that unnamed incarcerated women allegedly complained to unnamed SCJ personnel that Ms. Faith watched them shower, despite the fact that everyone in the unit showered in individual shower stalls with doors that prevented observation of the person showering inside.

58. Dr. MacKellar did not describe any other examples of alleged misconduct on Ms. Faith’s part. The physician also did not explain, in response to Ms. Faith’s question, why an allegation that she was “watching” other women in the shower would result in her being transferred to a men’s unit.

59. Dr. MacKellar represented to Ms. Faith that the SCJ had video evidence of her watching unnamed people in the shower but never showed it to Ms. Faith. Further, he threatened Ms. Faith by claiming if she ever sued for discrimination, the SCJ would publicly release the video.

60. In fact, Ms. Faith never watched any women inmates in the shower (nor could she).

61. On information and belief, the decision to transfer Ms. Faith from being housed with women to being housed with men was made jointly by Dr. MacKellar, Major Whitmore, who as Jail Superintendent was required to approve the transfer of a person from one unit to another, and Sheriff Allard, who pursuant to his duties as described by state law was responsible for decisions regarding housing assignments and transfers.

62. Ms. Faith objected to being transferred to a men's unit and requested that she be allowed to remain in the women's unit, consistent with her status as a woman and consistent with the appropriate treatment for her gender dysphoria. Ms. Faith told Dr. MacKellar that she had undergone gender transition four years prior and that she had been taking female hormones since that time. She told Dr. MacKellar that because she is recognized by New York State as a woman, she should not be moved. She also told Dr. MacKellar that housing her with men would cause her significant distress.

63. On information and belief, Defendants do not have a policy establishing criteria for deciding whether to place a person in the men's versus the women's unit, and they do not adhere to the housing determination standards recommended by PREA's implementing regulations.

64. On information and belief, Defendants regarded Ms. Faith's gender dysphoria as a physical, mental or medical impairment resulting from an anatomical, physiological, genetic or neurological condition that prevents the exercise of a normal bodily function. Specifically, Defendants regarded Ms. Faith as having abnormal bodily function as a female because of her anatomical appearance. Defendants' decision to place Ms. Faith in a men's unit failed to take into consideration her status as a transgender woman, her gender dysphoria, and her specific post-surgical anatomy.

65. Defendants knew or should have known that placing Ms. Faith, a transgender woman with gender dysphoria, in a men's facility, and treating her as male, would impose grave risks to her safety and wellbeing, including harassment, abuse, discrimination, and the exacerbation of her gender dysphoria.

66. Despite being aware of Ms. Faith's gender dysphoria and her request to remain in the women's unit, Defendants refused to make a reasonable accommodation that would have permitted her to be housed without grave risks to her safety and wellbeing.

67. Dr. MacKellar told Ms. Faith that her request to remain in the women's housing unit would be denied and justified the denial, inexplicably, by noting that Ms. Faith's orchiectomy had removed her testicles but not her penis. As described above, Defendants had been fully aware of the status of Ms. Faith's genitals based on the search conducted during her initial intake, prior to her housing assignment with other women. They were also aware that she had been housed with women, without incident, on two prior occasions during October and December of 2017.

68. Ms. Faith was never given an opportunity to appeal the decision to move her to a men's unit.

69. At no point during her detention with women did any other incarcerated woman comment or complain to Ms. Faith that she was looking at them in the shower or otherwise.

70. At no point during her detention with women did any SCJ official, employee, or officer, other than Dr. MacKellar, approach Ms. Faith regarding any comments or complaints from other incarcerated women about Ms. Faith.

71. Ms. Faith was never the subject of any discipline while she was housed with women.

72. Ms. Faith's repeated placement in the women's unit indicates that SCJ personnel had determined that she met the essential eligibility requirements for her to be qualified to reside and receive services at the SCJ in general and to reside in the women's unit specifically.

73. At all times relevant to this complaint, Ms. Faith did not present a security risk to any other incarcerated person, nor a significant risk to the health or safety of others.

74. SCJ staff did not attempt to eliminate or reduce any risk they erroneously perceived to an acceptable level by modifying its policies, practices, or procedures, as applied either Ms. Faith or other women inmates, except by transferring Ms. Faith to a men's unit.

75. There was no legitimate purpose for transferring her from the women's unit to a men's unit.

76. Upon information and belief, Defendants intentionally moved her to a medically-inappropriate, sex-inappropriate housing unit because of her sex, transgender status, and gender dysphoria.

Transfer to a Men's Housing Unit and Harassment

77. Notwithstanding the fact that she was not ill, when Defendants transferred Ms. Faith out of the women's unit, she was initially placed in a medical unit within the men's population, where she stayed for three days.

78. When she asked the SCJ guards why she had been transferred to the medical unit, she was told by it was because “all transgender” people were housed in that unit.

79. During her time in the medical unit, Ms. Faith was deprived of interaction with other detainees and only left her cell for meals and to obtain books to read.

80. After three days in the medical unit, Defendants placed Ms. Faith in a unit of the men’s general population, where almost immediately she was sexually harassed, discriminated against, subjected to verbal abuse, and threatened.

81. At no point during her detention with women had any other incarcerated woman used epithets, threatened, or tormented Ms. Faith in a way that made her feel harassed, uncomfortable or unsafe. These problems only arose after Ms. Faith was transferred to the men’s unit.

82. Upon information and belief, Defendants did not screen Ms. Faith for vulnerability or use relevant information about the prevalence of anti-transgender harassment to protect her from likely aggressors.

83. On her first day in a men’s general unit population unit, a male inmate, Gerry Cleveland, a six-foot-six-inch tall registered sex offender, began to harass and sexually proposition Ms. Faith. He rubbed his feet on her legs, tried to hold her hand, and blew kisses at her. He also told Ms. Faith that he wanted to marry her, and he wrote her several letters claiming he was in love with her. He told Ms. Faith that he wanted to be in a romantic relationship with her upon their release from the SCJ.

84. Ms. Faith was disturbed and threatened by Mr. Cleveland’s behavior and reported him to the SCJ guards. She also provided the SCJ guards the notes Mr. Cleveland wrote.

85. Ms. Faith never filed a written grievance because the guards told her that she could not.

86. Despite the verbal and physical sexual harassment endured by Ms. Faith, and her obvious vulnerability, Defendants did not take the necessary steps to keep Ms. Faith safe. Instead they transferred her to another section of the SCJ's male general population.

87. On information and belief, the decision to transfer Ms. Faith to a new unit was made jointly by Dr. MacKellar, Major Whitmore, who as Jail Superintendent was required to approve the transfer of a person from one unit to another, and Sheriff Allard, who pursuant to his duties as described by state law was responsible for decisions regarding the housing assignments and transfers.

88. Defendants took no measures to protect Ms. Faith from harassment in this new section. Upon information and belief, they again failed to screen Ms. Faith for vulnerability or use relevant information to separate her from likely aggressors.

89. After she was transferred to the new section of the SCJ's male population, Ms. Faith was subjected to continued harassment from the additional male inmates, including Filip Caruso.

90. Inmate Filip Caruso was housed in the general male population, and in the unit to which Ms. Faith was reassigned. Mr. Caruso was known to Defendants as a former member of violent motorcycle gang, the Kingsmen, who left to join a rival gang, Nickel City Nomads. Mr. Caruso is the former New York Northern Regional President of the Kingsmen.

91. Mr. Caruso consistently and systematically verbally harassed and threatened Ms. Faith. He would call her a "faggot" and other epithets related to her transgender status. Many of these slurs were made in the presence of SCJ correctional officers.

92. In response to Mr. Caruso's behavior, the SCJ correctional officers told him to "stop" on one single occasion, but took no further action. Mr. Caruso continued to verbally assault Ms. Faith in the presence of SCJ staff.

93. Aware of his reputation and scared for what Mr. Caruso was capable of doing, Ms. Faith hid in her cell, only leaving for meals and to shower. She spent approximately twenty hours of every day in her cell.

94. Mr. Caruso continued to refer to Ms. Faith in derogatory and threatening terms throughout the remainder of her detention.

95. Additional inmates in the male unit would also shout discriminatory names at Ms. Faith, including "shemale."

96. These words were hurtful and frightening to her, but Ms. Faith did not raise new complaints based on each new instance of harassment because, based on her experience complaining about Mr. Cleveland's and Mr. Caruso's behavior, she felt like the SCJ's officers and staff would not protect her.

97. Ms. Faith was also verbally harassed by several SCJ guards, named here as Doe #1, Doe #2, Doe #3, and Doe #4. These four Defendants began to refer to Ms. Faith as male, including calling her "*Mr.* Faith." Although she explained to these guards that she was a woman and asked to be referred to as "Ms. Faith," and with female pronouns such as "she" and "her," the guards did not respond and continually referred to her as "Mister." This behavior continued until Ms. Faith's release.

98. As a result of Defendants intentionally placing Ms. Faith with men, intentionally referring to her disrespectfully by pronouns and titles of the male gender, and intentionally

denying her hormone treatment, Ms. Faith experienced increased anxiety and stress. This exacerbated her existing medical conditions, namely gender dysphoria and PTSD.

99. In the women's unit, Ms. Faith had experienced no limitations on access to the physical facilities and programming generally available to the women detained at the SCJ. But in the men's population, Ms. Faith was unable to fully access the physical facilities and programming generally available to the men detained there. As a transgender woman with a female identity, female physical characteristics, and gender dysphoria, she was unsafe and unwell in the men's population and had to severely restrict her interactions with others and seclude herself in her cell.

100. Upon information and belief, while Ms. Faith was in the men's population, no other female individuals were placed there. Upon information and belief, while she was in the women's unit, no other female individuals were transferred out of it into the men's population.

101. Defendants' placement of Ms. Faith in a men's facility served to publicize private medical information, namely that she was transgender and had previously undergone a gender transition. Defendants' placement caused some to assume that she was a man, and Ms. Faith was forced to correct them by informing them that she was a woman. Defendants' placement caused Ms. Faith to lose control over the ability to choose when and to whom she shared highly sensitive, private medical information.

102. While she was in the men's population, Defendants also caused Ms. Faith to be publicly identified outside of the SCJ, incorrectly, as a man. The smartphone application "MobilePatrol" allows members of the public to locate people who are being held in jails and prisons, using information provided by the facilities for that purpose. On information and belief, based on the actions of Defendants, including their decision to transfer her to a men's unit, the

application began to identify Ms. Faith as a man after she was transferred to the men's population. Ms. Faith is aware of family and friends who looked her up on MobilePatrol and viewed records identifying her as a man. She has experienced mental anguish and humiliation based on this public misgendering and publication of her private information.

Defendants Fail to Administer Ms. Faith's Hormone Therapy Medication

103. After she had been transferred to a men's unit, Ms. Faith was scheduled to receive another bi-weekly administration of her prescribed hormone replacement therapy medication. On that day, while making the rounds distributing the inmates' medications, Doe #5 refused to administer Ms. Faith's hormone replacement therapy medication.

104. When Ms. Faith inquired into why she had not received her hormone medication, she was told by Doe #5 that she would "get back to" her. No one ever did, nor was she administered the medication later. No one explained the denial, nor gave her the opportunity to challenge it.

105. On information and belief, Defendants Dr. MacKellar, Sheriff Allard, and Major Whitmore made the decision to intentionally deny her the hormone therapy prescribed to treat her gender dysphoria based on her sex, transgender status, and her disability. Defendants continued to provide her with all other regularly prescribed medications, singling out the hormone treatments for denial once she was transferred to a men's unit.

106. Missing a dose of hormone therapy medication results in a number of side effects, all of which Ms. Faith experienced. Specifically, Ms. Faith endured hot flashes, cold flashes, nausea, and stomach pain as a direct result of missing a dose of her hormone therapy medication. Her dosing schedule, which requires strict adherence to a bi-weekly regimen, was also thrown off-balance. She experienced mental anguish, worried that her inability to access hormone replacement therapy would permanently affect her medical transition.

107. Ms. Faith also requested to speak with a counselor or mental health professional regarding her PTSD. She provided Defendants with several letters making this request and continued to follow-up with them when her requests were ignored.

108. At no time did Ms. Faith speak with a mental health professional, including a psychologist, social worker, counselor, or otherwise, despite her many requests to do so.

Ms. Faith's Release from the SCJ and the Ongoing Impact of Her Mistreatment

109. Ms. Faith spent approximately four weeks during her pre-trial detention continuously residing at the SCJ and sleeping there every night.

110. Defendants released Ms. Faith from the SCJ on May 25, 2018. Since that time, she has continued to suffer tremendously as a consequence of Defendants' mistreatment.

111. As a direct result, Ms. Faith has not been able to sleep at night, and she experiences night terrors. These symptoms have been ongoing since her release. Her doctor prescribed prazosin to address the night terrors.

112. Ms. Faith also experienced ongoing physical and mental effects related to her missed hormone replacement therapy dose. These included efforts to get her bi-weekly injection back onto the same schedule that it had been on before her detention, which required several additional visits to her endocrinologist in Buffalo for blood tests to confirm that her estrogen levels had returned to target levels. While Ms. Faith previously made the three-hour trip to Buffalo once per year, as a result of her time at the SCJ she began to visit every three months.

113. Ms. Faith also receives professional medical and mental health counseling to treat her PTSD-related anxiety and depression, which were exacerbated due to Defendants' mistreatment. Her appetite has changed, causing her to lose forty pounds in a single month, and she has experienced problems related to drinking excessively.

The SCJ

114. The SCJ is part of the Steuben County Public Safety Building and is designed and used to house up to 262 people. The SCJ is intended to be used as a residence or sleeping place for people who are in custody there.

115. On information and belief, the SCJ was built in New York after 1950 and is exempt in whole or in part from taxes levied by the state or any of its political subdivisions.

116. The SCJ houses members of the public who are required to be detained for myriad reasons including pre-trial detention, serving misdemeanor sentences, and while in the custody of outside agencies including other county facilities or the U.S. Marshalls and U.S. Immigration and Customs Enforcement, with whom the SCJ maintains contracts. The facility is also open to the public to visit the residents during regularly scheduled hours.

117. The SCJ also offers services to the community in the form of the Steuben County Jail Community Work Program, which is available to any nonprofit organization in the County. The program allows inmates to perform volunteer labor or services in the community, under guard, when in the public interest.

118. Steuben County has publicly acknowledged that the jail “is required to provide medical and mental health care for its inmate population,” it has stated that a doctor, nurse practitioner, three full-time nurses, and two part-time nurses are employed by the SCJ at all times.

119. The jail also employs a full-time psychologist, full-time social worker assistant, and part-time social worker assistant at the facility to work with patients regarding their mental health issues. As alleged above, despite Ms. Faith’s repeated requests to Defendants, she was not permitted to speak with any of these professionals during the nearly four weeks she was held at the SCJ in pre-trial detention.

Defendants Adopted a Practice and Custom that Fails to Train and Supervise the SCJ Staff and Tolerates Discrimination and Abuse of People in their Custody

120. Defendants failed to adequately supervise and train their staff regarding the proper placement of transgender individuals and individuals with gender dysphoria in their facility and on the mechanisms known to reduce and prevent sexual harassment and abuse of people in their custody, demonstrating deliberate indifference to the substantial risk of serious harm to transgender people, including Ms. Faith.

121. Instead of implementing mechanisms to protect people in their custody from sexual harassment and abuse, Defendants adopted customs and practices that are so deficient that Defendants acted, and are acting, in a deliberately indifferent manner to the substantial risk of serious harm to transgender people and people with gender dysphoria, including Ms. Faith.

122. Defendants have failed to implement a policy of training and supervising staff to make housing placement decisions for transgender people and people with gender dysphoria in a manner that safeguards them from harm and reasonably accommodates them.

123. Moreover, they have adopted a custom and practice that deters such individuals in their custody from filing complaints, denies them protection from sexual harassment and abuse, disregards their complaints, and fails to staff the SCJ in a way that adequately protects them against harassment, abuse, and threats to their safety.

124. Upon information and belief, Defendants do not implement measures to protect transgender people and people with gender dysphoria, including Ms. Faith, from harassment and abuse, and they have failed to adequately train staff members regarding how to keep such people safe when making housing placement determinations and accommodations.

125. Upon information and belief, Defendants failed to adequately train staff members regarding protecting people in their custody from discrimination, sexual harassment and abuse.

126. Upon information and belief, Defendants failed to train its staff concerning professional interactions with transgender people and people with gender dysphoria, including a failure to adequately train staff to use pronouns that are consistent with a person's affirmed gender.

127. Upon information and belief, Defendants failed to adequately screen people for vulnerability to sexual harassment and abuse and to separate them from likely aggressors.

128. The willful refusal to address Ms. Faith's concerns is a result of ineffective training, supervision, customs and practices necessary to take proper action to ensure that Defendants and their staff do not discriminate against, harass, or fail to protect transgender people in their custody.

First Claim for Relief

129. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. Defendants' actions violate the New York State Human Rights Law, Executive Law § 296.

Second Claim for Relief

130. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. Defendants' actions violate the New York Civil Rights Law § 40-c.

Third Claim for Relief

131. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein. Defendants' actions violate the New York Civil Rights Law § 79-n.

Fourth Claim for Relief

132. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein.

Defendants' actions violate the Equal Protection guarantees of the New York State Constitution, including but not limited to Article I, § 11.

Fifth Claim for Relief

133. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein.

Defendants' actions violate of the Due Process guarantees of the New York State Constitution, including but not limited to Article I, §§ 1 and 6.

Sixth Claim for Relief

134. Plaintiff re-alleges all preceding paragraphs as if fully set forth herein.

Defendants' actions constitute negligent training and supervision.

Service and Notice of Claim Requirements

135. Plaintiff has complied with the requirements of New York State Civil Rights Law § 40-d by serving notice on the state Attorney General.

136. Plaintiff has complied with all notice of claim requirements by serving a notice of claim on Defendants on August 1, 2018, which claim Defendants have failed to adjust or pay.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

- A. Declare that Defendants' actions violated the statutes and constitutional provisions associated with each of the claims listed above;
- B. Issue injunctive relief against Defendants, enjoining them not to discriminate against Jena Faith or any transgender person on the basis of transgender status, sex, and/or disability, and ordering development and implementation of the following policies at the Steuben County Jail:
 - i. requiring the use of correct names, pronouns, and honorifics;
 - ii. prohibiting the denial of housing placement consistent with detainees' affirmed gender and with health and safety needs;

- iii. requiring medical care for transgender individuals consistent with the standard of care, including but not limited to hormone therapy and mental health evaluations for gender dysphoria,
 - iv. requiring the protection of transgender individuals against discrimination, abuse, harassment, and safety threats;
 - v. requiring the training of staff; and,
 - vi. providing for discipline of staff who fail to follow these policies.
- C. Award Plaintiff nominal and compensatory damages against all Defendants based on the claims listed above, in an amount to be determined at trial;
- D. Award Plaintiff punitive damages against all individual defendants based on the claims listed above, in an amount to be determined at trial;
- E. Award Plaintiff statutory penalties against all Defendants, for each and every violation of New York State Civil Rights Law § 40-c, pursuant to Civil Rights Law § 40-d;
- F. Award Plaintiff costs and attorneys' fees; and
- G. Grant such other relief as the Court deems proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: August ~~24~~²², 2019
New York, NY

Respectfully submitted,

BAKER & HOSTETLER LLP

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