

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
Special Deputy Attorney General
brady@melawfirm.net
Marisa S. Crecelius (ISB No. 8011)
marisa@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031

Attorneys for Defendants Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,	)	Case No. 1:17-cv-151-BLW
	)	
Plaintiff,	)	IDOC DEFENDANTS' ANSWER TO
vs.	)	PLAINTIFF'S THIRD AMENDED
	)	COMPLAINT
IDAHO DEPARTMENT OF	)	
CORRECTION; HENRY ATENCIO, in	)	
his official capacity; JEFF ZMUDA, in	)	
his official capacity; HOWARD KEITH	)	
YORDY, in his official and individual	)	
capacities; CORIZON, INC.; SCOTT	)	
ELIASON; MURRAY YOUNG;	)	
RICHARD CRAIG; RONA SIEGERT;	)	
CATHERINE WHINNERY; AND	)	
DOES 1-15;	)	
	)	
Defendants.	)	
_____	)	

COME NOW, Defendants Idaho Department of Corrections (“IDOC”), Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert (collectively, “these answering Defendants” or “IDOC Defendants”) by and through their counsel, Brady J. Hall, Special Deputy Attorney General, State of Idaho, and Marisa S. Crecelius, of the law firm Moore Elia Kraft & Hall, LLP, and in answer to Plaintiff’s *Third Amended Complaint* filed January 31, 2019, hereby admit, deny and allege as follows:

FIRST DEFENSE

Plaintiff’s *Third Amended Complaint* fails to state a claim against these answering Defendants upon which relief can be granted.

SECOND DEFENSE

These answering Defendants deny each and every allegation of Plaintiff’s *Third Amended Complaint* not herein expressly and specifically admitted.

THIRD DEFENSE

1. Paragraphs 1-8 in the “Introduction” section of the Plaintiff’s *Third Amended Complaint* are a narrative summary of the Plaintiff’s allegations, which are later alleged individually within the body of the Plaintiff’s *Third Amended Complaint*. These answering Defendants will answer each individual allegation below and therefore, no duplicative response to the “Introduction” is required. Notwithstanding, these answering Defendants deny any and all allegations that these Defendants punished, disciplined, retaliated, or discriminated against Plaintiff for expressing Plaintiff’s gender identity; refused to allow Plaintiff access to medically necessary treatment; or otherwise committed acts in violation of the Eighth and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or the Affordable Care Act. Moreover, these Defendants admit that

Plaintiff has been diagnosed with Gender Dysphoria (GD) and that she has received appropriate and necessary medical and mental health care for Plaintiff's GD diagnoses. To the extent any further response is required, these answering Defendants deny the remaining allegations set forth in paragraphs 1 through 8 because the allegations allege only generalized information, call for expert testimony and/or a legal conclusion, and because these Defendants lack knowledge or information sufficient to form a belief about the truth of those allegations. These Defendants further deny that Plaintiff is entitled to any relief or damages in this case.

2. Regarding the allegations set forth in paragraph 9, these answering Defendants admit that this Court has jurisdiction over the subject matter of Plaintiff's *Third Amended Complaint*. These Defendants deny that Plaintiff is entitled to any relief including, but not limited to, declaratory and injunctive relief or damages.

3. Regarding the allegations set forth in paragraph 10, these answering Defendants admit that this case is properly venued in this Court. These Defendants deny the remaining allegations and any inferences that the non-specific and generalized "events" occurred or impose liability.

4. These answering Defendants deny the allegations set forth in paragraph 11 as phrased. These Defendants previously motioned the Court regarding exhaustion of remedies (Dkt. 39) and the Court made a ruling (Dkt. 66) in which the Court granted, in part, these Defendants' motion. Defendants' position regarding Plaintiff's failure to properly exhaust has not changed and these Defendants do not waive any right to appeal the Court's ruling (Dkt. 66) by way of this answering paragraph.

5. Regarding the allegations set forth in paragraph 12, these answering Defendants admit that Plaintiff is 31 years old and has been incarcerated in IDOC custody since April, 2012.

These answering Defendants deny the remainder of the allegations alleged in paragraph 12. Plaintiff is currently housed at Idaho State Correctional Center (“ISCC”) in Kuna, Idaho.

6. Regarding the allegations set forth in paragraph 13, these answering Defendants admit that IDOC is responsible for managing felony offenders housed in prisons and supervised on probation and parole. IDOC houses inmates in ten prisons and four community reentry centers. These answering Defendants deny the remainder of the allegations alleged in paragraph 13. Plaintiff is currently housed at ISCC.

7. These Answering Defendants deny the allegations set forth in paragraph 14. Defendant Henry Atencio is not the current Director of IDOC. The current Director is Josh Tewalt.

8. Regarding the allegations set forth in paragraph 15, these answering Defendants only admit that Defendant Jeff Zmuda is the current Deputy Director of IDOC. These answering Defendants deny the remainder of the allegations set forth in paragraph 15 as phrased.

9. Regarding the allegations set forth in paragraph 16, these answering Defendants admit that Defendant Keith Yordy was the Warden of Idaho State Correctional Institution (ISCI) from January, 2014 to August, 2018. Since August, 2018, Defendant Yordy has been the Warden at Idaho Maximum Security Institution (“IMSI”). These answering Defendants deny the remainder of the allegations set forth in paragraph 16 as phrased.

10. The allegations set forth in paragraphs 17, 18, and 19 are directed to parties other than these answering Defendants and therefore no response is required. To the extent a response is required, these Defendants lack knowledge or information sufficient to form a belief about the truth of those allegations, and therefore deny the same on that basis.

11. These answering Defendants admit the allegations set forth in paragraph 20 as phrased, but deny any inference or allegations that Defendant Craig provided any unspecified

medical services beyond his scope of practice or improperly, negligently, or otherwise provide care not meeting the applicable standards of care or constitutional requirements.

12. Regarding the allegations set forth in paragraph 21, these answering Defendants admit that, at all times relevant to the allegations set forth in Plaintiff's *Third Amended Complaint*, Defendant Rona Siegert has been employed as the Health Services Director at ISCI and has, at various times, attended meetings of the Management and Treatment Committee ("MTC") during which Plaintiff was discussed. These answering Defendants deny the remainder of the allegations set forth in paragraph 21.

13. The allegations set forth in paragraphs 22, 23, and 24 are directed to parties other than these answering Defendants and therefore no response is required. To the extent a response is required, these Defendants lack knowledge or information sufficient to form a belief about the truth of those allegations, and therefore deny the same on that basis.

14. Regarding the allegations of paragraph 25, these answering Defendants deny the allegations as they are non-specific and overly broad. Absent identification of a specific defendant, acts, and time period, these Defendants lack the knowledge or information sufficient to form a belief about the truth of those allegations.

15. Regarding the allegations set forth in paragraphs 26, 27, and 28, these Defendants deny the same as they call for expert and legal conclusions, raise only general, vague, and overbroad allegations, and reference documents and written authorities that speak for themselves. Notwithstanding, these Defendants admit that GD is a mental health disorder recognized and set forth in the DSM-V and further admit that the World Professional Association for Transgender Health (WPATH) is an organization that publishes flexible clinical guidelines and recommendations for application by mental health and medical providers. These Defendants deny

that the WPATH is the definitive or only resource for medical and mental health care providers to utilize in assessing and treating patients and inmates with GD. These Defendants further deny that the WPATH and its resources establish the standard of care for treating inmates with GD. Furthermore, these Defendants deny any allegation or inference contained in these paragraphs that these Defendants provided inadequate treatment or mental health care to Plaintiff, committed any wrongdoing, or that Plaintiff is entitled to any relief, including damages, from these Defendants.

16. These answering Defendants need not admit nor deny the allegations set forth in paragraphs 29 and 30 of Plaintiff's *Third Amended Complaint*, as the same cite IDOC policy and standard operating procedures, which speak for themselves.

17. These answering Defendants need not admit nor deny the allegations set forth in paragraphs 31, 32, 33, 34, 35, and 36 of Plaintiff's *Third Amended Complaint*, as the same cite the DSM-V and "Standards of Care for the Health of Transgender, and Gender Nonconforming People," the latter of which are flexible clinical guidelines developed by the WPATH. The DSM-V and WPATH guidelines speak for themselves and, allegations contained therein raise matters calling for expert and legal conclusions. The allegations contained in the above-referenced paragraphs are also vague and overly broad and do not provide any specifics facts or individual circumstances from which the generalized conclusions and statements can be drawn or inferred. Notwithstanding, these Defendants deny that the WPATH resources set forth clear and specific treatment and care guidelines for inmates with GD.

18. The allegations set forth in paragraphs 37 and 38 are provided for purely background and informational purposes and therefore do not require a response to the same. Notwithstanding, to the extent a response is required, these Defendants do not deny the accuracy of Plaintiff's stated date and location of birth, but lack knowledge or belief sufficient to admit or

deny the remainder of the allegations contained therein, and therefore deny the same.

19. Regarding the allegations set forth in paragraph 39, these Defendants deny that Plaintiff lived full-time as a woman at any time prior to Plaintiff's incarceration. These Defendants lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegations contained therein, and therefore deny those allegations on that basis.

20. These answering Defendants admit the allegations set forth in paragraph 40.

21. These answering Defendants need not admit nor deny the allegations set forth in the first sentence in paragraph 41, as the same cites an IDOC standard operating procedure, which speaks for itself. These answering Defendants deny the remaining allegations as generally alleged and specifically deny that Defendants failed to provide Plaintiff with individualized, adequate, or otherwise proper treatment and care.

22. These answering Defendants deny the allegations set forth in paragraph 42.

23. Regarding the allegations set forth in paragraph 43 and 44 of the Plaintiff's *Third Amended Complaint*, these answering Defendants admit that Plaintiff has submitted Health Services Requests forms and Concern forms and that those documents speak for themselves. Absent specifics regarding individual forms and requests, these Defendants lack knowledge or belief sufficient to admit or deny any allegations or inferences, and therefore deny the same on that basis. Notwithstanding, these Defendants deny any allegation or inferences that Plaintiff properly exhausted the administrative remedies. These Defendants previously motioned the Court regarding exhaustion of remedies (Dkt. 39) and the Court made a ruling (Dkt. 66) in which the Court granted, in part, these Defendants' motion. Defendants' position regarding Plaintiff's failure to properly exhaust has not changed and these Defendants do not waive any right to appeal the Court's ruling (Dkt. 66) by way of this answering paragraph. Moreover, these Defendants denied

all allegations contained in paragraph 44 and its subparts alleging that these Defendants ignored and/or denied Plaintiff's requests for treatment or otherwise denied to provide Plaintiff with adequate, constitutional, or necessary medical or mental health treatment of any kind. Finally, many of the subparts in paragraph 44 are directed to other Defendants and, therefore, do not require a response by these Defendants. To the extent responses are required, these Defendants lack knowledge and information sufficient to form a belief about the truth of those allegations and, therefore, deny said allegations on that basis.

24. Regarding the allegations set forth in paragraph 45 of Plaintiff's *Third Amended Complaint*, these answering Defendants admit only that Plaintiff alleges to have attempted to self-castrate on two occasions. Plaintiff testified that she never attempted suicide after Plaintiff's incarceration in 2012, Defendants deny the allegation that she attempted suicide in February 2014 and allege that specific allegation was improperly included in the *Third Amended Complaint*. These answering Defendants deny the remaining allegations set forth in paragraph 45 and specifically deny that Plaintiff's alleged intentional self-harm actions were the result of Defendants' alleged acts or omissions. Further, these Defendants deny any allegations or inferences that Plaintiff was denied medically-necessary treatment.

25. Regarding the allegations set forth in paragraphs 46, 47 and 49 of Plaintiff's *Third Amended Complaint*, these answering Defendants admit that Plaintiff was provided medical treatment and close observation following both of the intentional self-castration attempts committed by Plaintiff. The medical and other records surrounding this event speak for themselves. As to what Plaintiff was aware or "unaware" of is beyond the knowledge or belief of these Defendants and therefore deny those allegations on that basis. These answering Defendants deny the remaining allegations contained in these paragraphs.

26. Regarding the allegations set forth in paragraph 50 of Plaintiff's *Third Amended Complaint*, these answering Defendants admit that Plaintiff has received treatment with Dr. Marvin Alviso at the request of other Defendants. These Defendants deny that Plaintiff has not seen Dr. Alviso since December 2016. As to the specifics of the treatment Dr. Alviso has provided to Plaintiff, Dr. Alviso's notes speak for themselves and these Defendants lack information or knowledge beyond what is contained in Dr. Alviso's notes and his testimony on the record in this case.

27. These answering Defendants do not have sufficient information to either admit or deny the allegations set forth in paragraph 51 of the Plaintiff's *Third Amended Complaint* and, therefore, said allegations are denied on that basis.

28. These answering Defendants deny the allegations set forth in paragraph 52 of the Plaintiff's *Third Amended Complaint*.

29. These answering Defendants need not admit nor deny the allegations set forth in the first sentence in paragraph 53 of Plaintiff's *Third Amended Complaint*, as the same cites an IDOC standard operating procedure, which speaks for itself.

30. These answering Defendants deny the first sentence of paragraph 54 of the Plaintiff's *Third Amended Complaint*. These answering Defendants admit that Plaintiff has received over thirty Disciplinary Offense Reports (DORs) for various offenses, including Destruction of Property for cutting prison-issued underwear into thong underwear. These answering Defendants also admit that Plaintiff has received several DORs for Disobedience to Orders for refusing to comply with direct orders to remove makeup or change hairstyles that created a sexually-charged environment within the male prison. These Defendants also admit that Plaintiff has received a DOR for possession of unauthorized property for having items that were

not purchased from commissary and constituted contraband. Those disciplinary offense reports speak for themselves. These answering Defendants deny that Plaintiff has received a single DOR for wearing makeup or wearing feminine hairstyles. These Defendants further deny that Plaintiff's intentional actions that resulted in disciplinary offenses equate to these Defendants having disciplined or punished Plaintiff for expressing Plaintiff's gender identity. Plaintiff has long been able to express Plaintiff's preferred gender consistent with policies and absent punishment or discipline. However, Plaintiff's repeated and deliberate violation of the prison policies and rules aimed, in part, at preventing a sexually-charged environment, posed a significant and legitimate threat to the safe and secure operation of the prison.

31. As to the allegations set forth in paragraph 55 of Plaintiff's *Third Amended Complaint*, these Defendants admit that inmates with a diagnoses of GD are permitted to purchase makeup and other female accoutrements from the commissary.

32. These answering Defendants deny the allegations set forth in paragraph 56 of Plaintiff's *Third Amended Complaint*. Plaintiff is ineligible for parole due to Plaintiff's repeated and deliberate refusal to complete Sex Offender Treatment Programming (SOTP) which was repeatedly communicated to Plaintiff as a pre-requisite to consideration for parole.

33. Regarding the allegations set forth in paragraph 57 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

34. Regarding the allegations set forth in paragraph 58 of Plaintiff's *Third Amended Complaint*, these answering Defendants admit that Plaintiff was diagnosed with Gender Dysphoria (formerly known as Gender Identity Disorder) in 2012 along with Plaintiff's other co-existing mental health conditions, including depression, anxiety, and Borderline Personality Disorder traits.

These Defendants deny the remaining allegations set forth in paragraph 58 of Plaintiff's *Third Amended Complaint* and specifically deny the allegations that Plaintiff has not received appropriate and necessary medical care for GD, with the exception of Plaintiff's repeated failures to participate in her recommended treatment and therapies.

35. As to the allegations set forth in paragraph 59 of Plaintiff's *Third Amended Complaint*, these Defendants admit that the Defendants are to provide appropriate medical care to inmates under the constitution, laws, and applicable standard of care. These Defendants deny the remainder of the allegations as calling for legal conclusions.

36. These answering Defendants deny the allegations set forth in paragraphs 60, 61, 62, 63, 64, 65, 66, and 67 of Plaintiff's *Third Amended Complaint*.

37. Regarding to the allegations set forth in paragraph 68 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

38. These answering Defendants need not admit nor deny the allegations set forth in the first sentence in paragraph 69 of Plaintiff's *Third Amended Complaint*. The Equal Protection Clause of the Fourteenth Amendment speaks for itself and interpretation of the same is a legal question for this Court to decide.

39. These answering Defendants deny the allegations set forth in paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, and 79 of Plaintiff's *Third Amended Complaint*.

40. Regarding to the allegations set forth in paragraph 80 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

41. These answering Defendants need not admit nor deny the allegations set forth in

paragraph 81 of Plaintiff's *Third Amended Complaint*, as the same cites IDOC standard operating procedures and policies, which speak for themselves.

42. These answering Defendants deny the allegations set forth in paragraphs 82, 83, 84, 85, 86, 87 and 88 of Plaintiff's *Third Amended Complaint*.

43. Regarding to the allegations set forth in paragraph 89 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

44. These answering Defendants deny the allegations set forth in paragraphs 90, 91, 92, 93 and 94 of Plaintiff's *Third Amended Complaint*.

45. Regarding to the allegations set forth in paragraph 95 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

46. These answering Defendants need not admit nor deny the allegations set forth in the first sentence in paragraph 96 of Plaintiff's *Third Amended Complaint*. Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, speaks for itself and interpretation of the same is a legal question for this Court to decide.

47. These answering Defendants deny the allegations set forth in paragraphs 97, 98, 99, and 100 of Plaintiff's *Third Amended Complaint*.

48. Regarding to the allegations set forth in paragraph 101 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

49. These answering Defendants deny the allegations set forth in paragraphs 102, 103, 104, 105 and 106 of Plaintiff's *Third Amended Complaint*.

50. As to the content contained in the “Prayer for Relief” section on pages 22 and 23 of Plaintiff’s *Third Amended Complaint*, these Defendants need not provide a response. To the extent a response is required, these Defendants deny that Plaintiff is entitled to any and all relief sought in that section including in subparts (a) through (d).

AFFIRMATIVE DEFENSES

That at the time of filing this Answer, these answering Defendants have not been able to engage in adequate discovery and lack information sufficient to form a belief as to all of those affirmative defenses that might apply in this instance. At this time, pursuant to Rule 12 of the Federal Rules of Civil Procedure, these answering Defendants assert the following affirmative defenses so that the same are not waived. If actual information is not developed sufficient to assert any specific defense, the affirmative defense in question will be withdrawn.

The foregoing defenses are applicable, or appropriate, to any and all of Plaintiff’s claims for relief. In asserting these defenses, these answering Defendants do not admit that they have the burden of proving the allegations or denials set forth in the defenses, but, to the contrary, assert that by reason of the denials and/or by reason of relevant statutory or judicial authority, the burden of proving the facts relevant to many of the defenses and/or burden of proving the inverse to the allegations set forth in many defenses is upon the Plaintiff. These answering Defendants do not admit, in asserting any defense, any responsibility or liability, but, to the contrary, specifically deny any and all allegations of responsibility and liability set forth in the *Third Amended Complaint*.

These answering Defendants have considered and believe that they may have additional defenses to the *Third Amended Complaint*, but cannot at this time, consistent with Rule 11 of the Federal Rules of Civil Procedure, state with specificity those defenses. Accordingly, these

answering Defendants reserve the right to supplement their Answer and add additional affirmative defenses as discovery in this case progresses.

FIRST AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery in whole or in part for failure to mitigate damages.

SECOND AFFIRMATIVE DEFENSE

To the extent Plaintiff's claims sound in equity, Plaintiff's claims are barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has waived the right, and/or is estopped to assert the various claims and causes of action alleged against these answering Defendants.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims against these Defendants fail to make out a case for actual participation in unlawful and/or unconstitutional conduct.

FIFTH AFFIRMATIVE DEFENSE

The alleged actions of these Defendants, if any, do not rise to the level of a deprivation of a constitutionally protected right.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff consented to the events, occurrences, and damages alleged.

SEVENTH AFFIRMATIVE DEFENSE

These answering Defendants allege they are not liable for an injury or damage caused by the act or omission of another person, if any, under a theory of *respondeat superior*.

EIGHTH AFFIRMATIVE DEFENSE

These answering Defendants are entitled to qualified or absolute immunity.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are invalid for failure to allege or prove damages which are the result of an unconstitutional policy, action, or custom.

TENTH AFFIRMATIVE DEFENSE

Any and all conduct of these answering Defendants with respect to matters alleged in Plaintiff's *Third Amended Complaint* were justifiable, reasonable, authorized by law, and performed in good faith with a belief that such acts were proper, legal, adequate, and appropriate.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust all administrative remedies and prerequisites to suit required under Federal and Idaho law.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for relief under the cruel and unusual punishment clause of the Eighth Amendment to the United States Constitution because she has not alleged facts that demonstrate that these answering Defendants acted with deliberate indifference to a serious medical need of Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

All or some of Plaintiff's claims are barred by the failure to file a proper notice of tort claim, Idaho Code § 6-906, et seq.

FOURTEENTH AFFIRMATIVE DEFENSE

All or some of Plaintiff's claims for damages and/or equitable relief are barred by the applicable statute of limitations.

FIFTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are immune from liability as to state law claims for damages,

if any, pursuant to Idaho Code §§ 6-904(1) and 6-904B(5).

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused by the acts or omissions of other persons or entities for which these answering Defendants are not responsible.

SEVENTEENTH AFFIRMATIVE DEFENSE

All or a portion of Plaintiff's damages are the result of pre-existing medical conditions or the progression thereof that were neither aggravated nor exacerbated by any acts or omissions of these answering Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

The acts or omissions complained of by Plaintiff did not arise as a result of, nor was there any agreement, understanding, policy, or procedure which deprived Plaintiff of any civil rights.

NINETEENTH AFFIRMATIVE DEFENSE

At no time did the answering Defendants act in concert or intentionally act to deprive the Plaintiff of her civil rights.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff has suffered no physical injury and may not recover for any emotional injuries pursuant 42. U.S.C. § 12997e(e) and other applicable federal and state law.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are limited or barred by Idaho Code §§ 6-1603 and 6-1606.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's causes of action for declaratory and injunctive relief are not ripe and/or Plaintiff lacks the requisite standing.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The allegations set forth in the *Third Amended Complaint* regarding these answering Defendants' alleged acts or omissions do not show or allege the sufficient likelihood of future injury or irreparable harm for declaratory and/or injunctive relief.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The allegations set forth in the *Third Amended Complaint* regarding these answering Defendants' alleged acts or omissions do not clearly show that Plaintiff will suffer actual harm for declaratory and/or mandatory injunctive relief.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's request for injunctive relief is based upon mere speculation and there is insufficient evidence that any future event complained of will or will not occur.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's request for injunctive relief does not show or sufficiently allege the existence of immediate or irreparable or actual injury.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's request for injunctive relief does not show or sufficiently allege the existence of a clear or reasonable likelihood of success.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's request for injunctive relief does not show or sufficiently allege that the facts and law are clearly in Plaintiff's favor for an award of mandatory or permanent injunctive relief.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages violate the Constitution of the United States and the Constitution of the State of Idaho. Should it be subsequently determined that Plaintiff is entitled

to seek punitive damages against these answering Defendants at trial, these Defendants demand a bifurcated trial.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff is barred in whole or in part from maintaining this action because Plaintiff's alleged damages, if any, were proximately caused by Plaintiff's own deliberate and intentional actions and/or the actions of third parties for whom these Defendants are not responsible.

THIRY-FIRSTAFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against these Defendants because Plaintiff's alleged damages, if any, were proximately caused, in whole or in part, by the superseding, intervening acts and/or omissions of the Plaintiff and/or other entities and/or persons not parties to this action, and/or other parties to this action.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's equal protection claims fail because the allegedly discriminatory actions or policies of the Defendants, if any, were reasonably related to legitimate penological interests.

PRAYER FOR RELIEF

WHEREFORE, these Defendants pray that Plaintiff's *Third Amended Complaint* be dismissed with prejudice, that Plaintiff takes nothing by this action, that Judgment be entered in favor of these answering Defendants and against Plaintiff, and that these answering Defendants are awarded costs of suit and attorney fees, and such other and further relief as the Court deems just.

DEMAND FOR JURY TRIAL

These answering Defendants demand a trial by jury on Plaintiff's *Third Amended Complaint*, on all issues, claims, and defenses so triable, pursuant to the Constitution and laws of the United States and the State of Idaho and Rule 38(b) of the Federal Rules of Civil Procedure.

DATED this 15th day of March, 2019.

MOORE ELIA KRAFT & HALL, LLP

/s/ Brady J. Hall
Brady J. Hall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 2019, I filed the foregoing electronically through the CM/ECF system. I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Dan Stormer
dstormer@hadsellstormer.com
Lori Rifkin
lrifkin@hadsellstormer.com
Shaleen Shanbhag
sshanbhag@hadsellstormer.com
HADSELL STORMER & RENICK, LLP
(Counsel for Plaintiff)

Amy Whelan
awhelan@nclrights.org
Julie Wilensky
jwilensky@nclrights.org
Alexander Chen
AChen@nclrights.org
NATIONAL CENTER FOR LESBIAN
RIGHTS
(Counsel for Plaintiff)

Craig Durham
chd@fergusondurham.com
Deborah Ferguson
daf@fergusondurham.com
FERGUSON DURHAM, PLLC
(Counsel for Plaintiff)

Dylan Eaton
deaton@parsonsbehle.com
J. Kevin West
kwest@parsonsbehle.com
Bryce Jensen
bjensen@parsonsbehle.com
PARSONS, BEHLE & LATIMER
(Counsel for Defendants Corizon Inc., Scott
Eliason, Murray Young, and Catherine
Whinnery)

/s/ Krista Zimmerman
Krista Zimmerman