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25 TARRYN LIBERTY UNIQUE AND
26 MIGUEL ANGEL WHITE

27 **UNITED STATES DISTRICT COURT**
28 **NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

TARRYN LIBERTY UNIQUE AND
MIGUEL ANGEL WHITE,

Plaintiff,

v.

DOCTOR JOSEPH CLAYBAUGH,
ALEXANDER M. POLA, ELIZABETH
FLETES, E. CANCHOLA, A. JARAMILLO,
CJ WILLIAMS, RAYMOND BANALES, V.
SANCHEZ, R. AMIS, R. BLUFORD, M.
IANNONE, R. MERRILL, M. GRIJALVA,
J. FERNANDEZ, M. ELSAYED, D.
STERKEL, WARDEN RAYMOND
MADDEN, AND KATHLEEN ALLISON,

Defendants.

CASE NO. 5:22-CV-00711-VKD

THIRD AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Experts have conservatively estimated that at least 13 percent of inmates in the United
3 States have been sexually assaulted in prison; over 1,000,000 inmates have likely been sexually
4 assaulted in the past 20 years. 34 U.S.C. § 30301. Transgender individuals suffer disproportionately
5 from sexual assault during incarceration: up to 75 percent of transgender inmates in California have
6 experienced sexual assault¹ despite the federal Prison Rape Elimination Act (“PREA”) enacted in
7 2003.

8 2. Plaintiffs Tarryn Liberty Unique (“Unique”) and Miguel Angel White (“White”)
9 (collectively, “Plaintiffs”) are among those transgender victims. While incarcerated by the California
10 Department of Corrections and Rehabilitation (“CDCR”), a penal law enforcement agency of the
11 government of California responsible for the operation of the California state prison and parole
12 systems, Plaintiffs were sexually assaulted by prison psychologist Doctor Joseph Claybaugh
13 (“Claybaugh”) for over half a year; repeatedly assaulted by other inmates at multiple CDCR
14 institutions; and retaliated against by CDCR staff for filing grievances relating to the assaults and their
15 unsafe housing assignments.

16 3. As detailed below, despite knowing the serious risk of harm that Plaintiffs faced at the
17 hands of both CDCR staff and other inmates, CDCR employees at the institutions where Plaintiffs
18 were housed failed to protect Plaintiffs from sexual assault or house Plaintiffs in safe conditions and
19 retaliated against Plaintiffs for exercising their First Amendment rights to file grievances. Rather,
20 CDCR employees acted pursuant to CDCR customs and practices of retaliating against inmates who
21 filed administrative grievances and of failing to safely house vulnerable transgender inmates, including
22 disregarding transgender inmates’ perception of health and safety in housing assignments as required
23 by California Penal Code §§ 2605 and 2606. These CDCR customs and practices, thus, result in
24 unnecessary and brutal assaults on transgender inmates in spite of California Penal Code §§ 2605 and
25 2606.

26
27 ¹ American Medical Association, Press Release: “AMA Urges Appropriate Placement of Transgender
28 Prisoners” (June 11, 2018), <https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners#:~:text=https://perma.cc/CVL4-P26A>].

THE PARTIES

4. Unique is a male-to-female transgender individual who has been incarcerated by CDCR since November 9, 2010. Unique's inmate number is CDCR #AF2823. Between approximately April 2016 and March 2020, she was incarcerated at Salinas Valley State Prison, located at 31625 Highway 101, Soledad, California 93960 ("SVSP"). Between approximately March 2020 and September 2020, she was incarcerated at the California Institution for Men, located at 14901 Central Avenue, Chino, California 91710 ("CIM"). Between approximately September 2020 and August 2021, she was incarcerated at the Substance Abuse Treatment Facility and State Prison, located at 900 Quebec Avenue, Corcoran, California 93212 ("SATF"). Between approximately August 2021 and the present, she has been incarcerated at the Richard J. Donovan Correctional Facility, located at 480 Alta Road, San Diego, California 92179 ("RJD").

5. Since approximately May 2016, Unique has been on feminizing hormones (a/k/a hormone replacement therapy, "HRT"). As a result of these treatments, Unique's physical features and voice have feminized. Unique legally changed her name on or around November 21, 2018, and legally changed her gender to female on or around December 10, 2018.

6. White is a male-to-female transgender individual who has been incarcerated by CDCR since February 3, 2014. Her inmate number is CDCR #AS4897. Between approximately April 2014 and March 2020, she was incarcerated at SVSP. Between approximately March 2020 and November 2020, she was incarcerated at CIM. Between approximately November 2020 and July 2021, she was incarcerated at the California Medical Facility, located at 1600 California Drive, Vacaville, California 95696 ("CMF"). Between approximately July 2021 and March 2022, she was incarcerated at the California Men's Colony, located at Colony Drive, San Luis Obispo, California 93409 ("CMC"). Between approximately March 2022 and the present, she has been incarcerated at RJD-Facility A.

7. White has long hair, is 5'6", and weighs 120 pounds. As of 2018, White identified as an openly femme gay person. In 2019, White openly identified as transfeminine, wore the CDCR transgender clothing, and wore makeup. CDCR recognized her gender dysphoria on paper on or around October 22, 2019. White's gender dysphoria was triggered by the repeated sexual assaults by

1 Claybaugh. Since around July 27, 2020, White has been on HRT. As a result of these treatments,
2 White's physical features and voice have feminized. White legally changed her gender to non-binary
3 with Vital Statistics and received her new birth certificate dated November 18, 2020.

4 8. Claybaugh was at all relevant times a staff psychologist employed by CDCR at SVSP.
5 Claybaugh is sued in his individual capacity.

6 9. Defendant Alexander M. Pola ("Pola") was at all relevant times a correctional officer
7 employed by CDCR at SVSP. Pola is sued in his individual capacity.

8 10. Defendant Elizabeth Fletes ("Fletes") was at all relevant times a correctional officer
9 employed by CDCR at SVSP. Fletes is sued in her individual capacity.

10 11. Defendant E. Canchola ("Canchola") was at all relevant times a correctional officer
11 employed by CDCR working in the mental health department at SVSP. Canchola is sued in her
12 individual capacity.

13 12. Defendants Pola, Fletes, and Canchola are collectively referred to herein as "SVSP
14 Defendants."

15 13. Defendant A. Jaramillo ("Jaramillo") was at all relevant times a correctional officer
16 employed by CDCR at CIM. Jaramillo is sued in his individual capacity.

17 14. Defendant CJ Williams ("Williams") was at all relevant times a correctional officer
18 employed by CDCR at CIM. Williams is sued in her individual capacity.

19 15. Defendant Raymond Banales ("Banales") was at all relevant times a sergeant employed
20 by CDCR at CIM. Banales is sued in his individual capacity.

21 16. Defendants Jaramillo, Williams, and Banales, are collectively referred to herein as
22 "CIM staff."

23 17. Defendant V. Sanchez ("Sanchez") was at all relevant times a member of the CIM
24 Institutional Classification Committee who was responsible for assigning White to housing
25 assignments at CIM. Sanchez is sued in her individual capacity.

26 18. Defendant R. Amis ("Amis") was at all relevant times a member of the CIM Unit
27 Classification Committee who was responsible for assigning White to housing assignments at CIM.
28 Amis is sued in her individual capacity.

1 19. Defendant Correctional Counselor II R. Bluford (“Bluford”) was at all relevant times a
2 member of the CIM Unit Classification Committee who was responsible for assigning White to
3 housing assignments at CIM. Bluford is sued in his individual capacity.

4 20. Defendants Sanchez, Bluford, and Amis are collectively referred to herein as “CIM
5 Housing Defendants.”

6 21. Defendant M. Iannone (“Iannone”) was responsible for assigning White to housing
7 assignments at CMF. Iannone is sued in his individual capacity.

8 22. Defendant CMF PREA Compliance Manager R. Merrill (“Merrill”) was responsible for
9 assigning White to housing assignments at CMF. Merrill is sued in her individual capacity.

10 23. Defendants Iannone and Merrill are collectively referred to herein as “CMF Housing
11 Defendants.”

12 24. Defendant K. Riley (“Riley”) was at all relevant times the counselor assigned to White
13 and was responsible for assigning White to housing assignments at CMC. Riley is sued in his
14 individual capacity.

15 25. Defendant Lt. M. Grijalva (“Grijalva”) was responsible for White’s initial housing
16 review at CMC and accepted White for dorm-style housing at CMC. Grijalva is sued in his individual
17 capacity.

18 26. Defendant Captain J. Fernandez (“Fernandez”) was at all relevant times a member of
19 the CMC Unit Classification Committee who was responsible for assigning White to housing
20 assignments at CMC. Fernandez is sued in his individual capacity.

21 27. Defendant CCI M. Elsayed (“Elsayed”) was at all relevant times a member of the CMC
22 Unit Classification Committee who was responsible for assigning White to housing assignments at
23 CMC. Elsayed is sued in his individual capacity.

24 28. Defendant CCII D. Sterkel (“Sterkel”) was at all relevant times a member of the CMC
25 Unit Classification Committee who was responsible for assigning White to housing assignments at
26 CMC. Sterkel is sued in his individual capacity.

27 29. Grijalva, Riley, Fernandez, Elsayed, and Sterkel are herein collectively referred to as
28 “CMC Housing Defendants.”

30. Defendant Warden Raymond Madden (“Warden Madden”) was at all relevant times the warden of RJD and was responsible for overseeing the overall operation of the facilities; the correctional officers; the training of staff who reviewed inmates’ administrative complaints; the creation and implementation of RJD’s housing customs, practices, and policies; and incoming and outgoing inmate transfers. Warden Madden is sued in his official capacity.

31. Defendant Kathleen Allison (“Allison”) was appointed on October 1, 2020, by Governor Gavin Newsom as Secretary for the CDCR and is responsible for overseeing the overall operation of CDCR facilities and the creation and implementation of CDCR’s housing customs, practices, and policies. Allison is sued in her official capacity.

JURISDICTION AND VENUE

32. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

33. Personal jurisdiction exists generally and specifically over all Defendants because they reside in the State of California and/or are employed by the State of California.

34. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because at least Defendants Pola, Fletes, Canchola, and Allison reside in this district. Further, a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

CDCR HAS A CUSTOM AND PRACTICE OF HOUSING TRANSGENDER INMATES IN UNSAFE CONDITIONS

35. In a September 2020 Special Report (“2020 Special Report”) entitled “The California Department of Corrections and Rehabilitation Has Taken Thoughtful and Important Steps to Address the Difficult Conditions of Confinement for Incarcerated Transgender, Nonbinary, and Intersex Individuals,” OIG noted that “[h]ousing transgender, nonbinary, and intersex individuals with compatible cellmates is critical for ensuring the safety of those individuals while incarcerated. When the department overlooks incarcerated individuals’ safety concerns or concerns regarding incompatibility with a cellmate, it puts these individuals’ lives in jeopardy.” Less than a month later, Governor Gavin Newsom signed into law Senate Bill No. 132 (“SB 132”), which is now incorporated into California Penal Code §§ 2605 and 2606.

36. Yet SB132 has barely moved the needle for the safe housing of transgender inmates in practice. Instead, CDCR continues to operate with a custom and practice of failing to safely house vulnerable transgender inmates, including disregarding transgender inmates' perception of health and safety in housing assignments, and wherein this disregard results in unsafe housing for transgender inmates. These customs and practices have directly impacted and continue to directly impact White's and Unique's guarantees under the Eighth Amendment, which requires prison officials to take reasonable measures to guarantee the safety of inmates.

Pre-SB132 Statistics on Transgender Housing Assignments and Assaults

37. SB132 states the following:

- “In California, a study of the state’s prisons found that the rate of sexual assault for transgender women in those prisons was 13 times higher than for men in the same prisons.”
- “[A]lmost 40 percent of incarcerated transgender individuals *reported* experiencing sexual victimization while incarcerated compared to 4 percent of all incarcerated individuals.”²
- “A congressional study found that instances of prison rape often go unreported, and that ‘most prison staff are not adequately trained or prepared to prevent, report or treat inmate sexual assaults.’”
- “Forty percent of transgender women respondents reported harassment from other incarcerated individuals.”
- “Thirty-eight percent reported being harassed by correctional officers or staff.”

Sb 132, Section 2. Other entities have reported similar statistics. *See, e.g.,* LGBTQ People Behind Bars, National Center for Transgender Equality (2018), <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

38. The 2020 Special Report by OIG included reports from transgender inmates who had been interviewed. These interviews recounted situations in which “officers dismissed their safety concerns and placed them in unsafe housing environments with incompatible cellmates.” Roy W. Wesley & Bryan B. Beyer, Office of the Inspector General, Special Report 29 (2020), <https://www.oig.ca.gov/wp-content/uploads/2020/09/Special-Review-Incarcerated-Transgender-Nonbinary-Intersex-Individuals.pdf>. They further “reported that officers dismiss their safety concerns

² It is a well-known fact that many victims of sexual assault do not report the assault. SB 132, Section 2. Thus, these survey results are likely to be low.

1 and requests for safer housing with comments such as ‘Fuck or fight,’ ‘Fucking deal with it,’ and ‘This
 2 is a man’s prison—deal with it like a man.’ They explained that, regardless of their safety concerns,
 3 refusing to be housed according to officers’ determinations subjects them to disciplinary action,
 4 including being placed in administrative segregation.” *Id.* at 21. One transgender inmate interviewed
 5 by OIG noted that “[c]ellmates are a big issue. Some people are not compatible with transgenders [sic]
 6 and that is creating a hostile environment when the cellmate is forced just because a bunk is available
 7 and the institution needs to house an inmate. CDCR already allows inmates to choose housing
 8 according to race, gang affiliation, etc., but not gender identification.” *Id.* OIG found that
 9 “incarcerated transgender, nonbinary, and intersex individuals reported they are at risk of violence due
 10 to unsafe housing and the department does not respond adequately to their concerns.” *Id.* at 19.

11 39. The public record is replete with reports about CDCR’s failure to protect transgender
 12 inmates from physical assaults. For example, an article entitled “Trans, imprisoned — and trapped”
 13 reports that transgender women are nearly always incarcerated with men, which is “putting many in
 14 danger.” [https://www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-](https://www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436)
 15 [incarcerated-men-s-putting-many-n1142436](https://www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436). In the article, NBC reported on a transgender woman
 16 who had fought off three rape attempts by fellow prisoners and was also physically assaulted by her
 17 cellmate. *Id.* “When she reported the assault, she was told there wasn’t enough evidence to
 18 substantiate it.” *Id.* In the same report, NBC said **9 out of 10 of the transgender women they**
 19 **interviewed had been assaulted.** *Id.* Half had requested transfers to a women’s prison and all had
 20 been denied. *Id.* Transgender advocates told NBC that despite PREA, “the law has not significantly
 21 changed the treatment of transgender prisoners.” *Id.*

22 ***Post-SB123 Statistics on Transgender Housing Assignments and Assaults***

23 40. Despite SB132, CDCR de facto customs, practices, and policies have changed little if
 24 at all. In fact, since the enactment of SB132 multiple entities have reported on the inadequacy or
 25 limited implementation of SB132 in practice. For example, in 2021 CNN published an article entitled,
 26 “Trans women are still incarcerated with men and it’s putting their lives at risk.”
 27 <https://www.cnn.com/2021/06/23/us/trans-women-incarceration/index.html>. CNN reported:

[D]espite robust evidence that trans women are at a significantly higher risk of abuse and assault than the general prison population, according to academic research and surveys of incarcerated trans people. And that is still the case nearly 30 years after a landmark Supreme Court decision in *Farmer v Brennan* that found deliberately failing to protect incarcerated trans people from abuse or violence behind bars qualifies as cruel and unusual punishment.

Activists say not much has changed.

Id. “But activists say this ‘law is also unevenly implemented.’” *Id.* ““Even though SB 132 is now law, they are not implementing it right. They need to be held accountable for that. People are really under attack now.”” *Id.*; see also <https://www.sfchronicle.com/bayarea/article/Advocates-say-California-isn-t-defending-a-law-17163703.php> (“Advocates of transgender rights say California prison officials are hostile to a recent state law that allows inmates to transfer to a prison facility that matches their gender identity, and can’t be counted on to defend it in court.”); <https://www.nationalreview.com/news/ninety-percent-of-transgender-transfer-requests-to-california-womens-prisons-denied/> (““Ninety Percent of Transgender Transfer Requests to California Women’s Prisons Denied”). David Gardiner wrote in 2021: “Transgender advocates, including incarcerated people and their allies, say the state is needlessly putting the safety and mental wellbeing of gender-variant people at risk every day by delaying such moves.” <https://www.sfchronicle.com/politics/article/California-has-moved-few-transgender-women-out-of-16711437.php>

41. This Court has recognized that CDCR’s systematic discriminatory procedures and policies have harmed transgender inmates’ safety and dignity. Order Den. Mot. to Dismiss at 9, *Smith v. Diaz*, 4:20-cv-04335-HSG (N.D. Cal. 2021), ECF No. 57. In a recent case against Ralph Diaz, then Secretary of CDCR, this Court held that a pleading alleging that “CDCR’s official written policies and procedures differ from the PREA Rules in a way that systematically discriminates against transgender inmates and undermines their dignity and safety” was sufficient. *Id.* at 9. This pleading is consistent with media’s coverage of CDCR’s failure to implement SB 132 and protect transgender inmates’ safety. As an example, the San Francisco Chronicle reported in December 2021 that despite the enactment of SB 132, CDCR “has so far allowed few people to make gender-based housing transfers.

1 Less than 10% of people who have asked to go to a women’s facility have been moved. Transgender
 2 advocates, including incarcerated people and their allies, say the state is needlessly putting the safety
 3 and mental well-being of gender-variant people at risk every day by delaying such moves.”
 4 [https://www.sfchronicle.com/politics/article/California-has-moved-few-transgender-women-out-of-](https://www.sfchronicle.com/politics/article/California-has-moved-few-transgender-women-out-of-16711437.php)
 5 [16711437.php](https://www.sfchronicle.com/politics/article/California-has-moved-few-transgender-women-out-of-16711437.php). Human rights advocates who work directly with many transgender inmates share
 6 similar concerns over their safety due to CDCR’s discriminatory policy and procedure. *See, e.g.,* Ex.
 7 A (“Binsfeld Declaration”).

8 42. In March 2023, CDCR released a report by the Moss Group to the public. The purpose
 9 of the report was “to review and assess its implementation efforts in response to the adoption of State
 10 Senate Bill 132 *Transgender Respect, Agency, and Dignity Act (SB 132)*”.
 11 [https://www.cdcr.ca.gov/prea/wp-content/uploads/sites/186/2023/03/Final-SB132-CDCR-](https://www.cdcr.ca.gov/prea/wp-content/uploads/sites/186/2023/03/Final-SB132-CDCR-Assessment-Report_ADA.pdf)
 12 [Assessment-Report_ADA.pdf](https://www.cdcr.ca.gov/prea/wp-content/uploads/sites/186/2023/03/Final-SB132-CDCR-Assessment-Report_ADA.pdf) (the “Moss Group Report”). On information and belief, the Moss Group
 13 Report is underdeveloped and incomplete. For example, CDCR touts “[t]he Moss Group has
 14 conducted in-depth reviews of reports, policies, procedures, training materials and forms as well as
 15 demographic information related to implementing SB 132.”
 16 [https://www.cdcr.ca.gov/news/2023/03/02/consulting-firm-issues-report-on-cdcrs-implementation-](https://www.cdcr.ca.gov/news/2023/03/02/consulting-firm-issues-report-on-cdcrs-implementation-of-senate-bill-132/)
 17 [of-senate-bill-132/](https://www.cdcr.ca.gov/news/2023/03/02/consulting-firm-issues-report-on-cdcrs-implementation-of-senate-bill-132/). Notably, missing from list is an indication of substantial and in-depth interviews
 18 from the community most affected by this policy—namely, the transgender inmates at CDCR. On
 19 information and belief, the small fraction of transgender populations interviewed were inadequate, an
 20 insufficient sample size, and not sufficiently randomized. On information and belief, the Moss Group
 21 Report is not indicative of the effectiveness and implementation of SB 132 at CDCR. Other
 22 independent organizations are currently researching and drafting an independent report of the
 23 implementation efforts of SB 132 that, on information and belief, directly contradict the Moss Group
 24 Report paid for by CDCR.

25 **PLAINTIFFS HAVE REPEATEDLY BEEN HOUSED IN UNSAFE CONDITIONS**

26 43. Consistent with CDCR’s policy and custom of housing transgender inmates in unsafe
 27 conditions, White has repeatedly been housed in unsafe conditions that result in her being assaulted
 28 by fellow inmates. During these repeated assaults White has been in the care and custody of CDCR.

1 During these repeated assaults CDCR has repeatedly ignored White's housing preferences, PREA
 2 alerts, history of past sexual and physical assault (including at the hands of CDCR employees), and
 3 the mental and physiological impacts of past physical and sexual assaults. Cal. Code Regs., Tit. 15, §
 4 3269(a).

5 44. The allegations of Claybaugh's sexual assault are intertwined with the PREA alert and
 6 history of past sexual assault on White's record that CDCR is required to take into consideration in
 7 providing safe housing for White. In fact, Claybaugh's sexual assault of White and Unique provides
 8 a causal and factual link between the allegations against Claybaugh and the allegations against CDCR.
 9 The series of transactions and occurrences that led from Claybaugh's assault to White's repeated
 10 unsafe housing conditions are self-evident. Indeed, White has asserted that Claybaugh's repeated
 11 sexual assaults in 2019 triggered her gender dysphoria, forcing her to confront her gender identity not
 12 on her own terms. CDCR recognized her gender dysphoria on paper on or around October 22, 2019—
 13 only a couple months after Claybaugh was terminated from CDCR and the sexual assaults on White
 14 ceased. Since around July 27, 2020, White has been on HRT. As a result of these treatments, White's
 15 physical features and voice have feminized. White legally changed her gender to non-binary with
 16 Vital Statistics and received her new birth certificate dated November 18, 2020.

17 45. ***But-for*** Claybaugh's sexual assaults, White would have no PREA alert on her record
 18 for CDCR to take into consideration in her housing determinations. *See* PREA Standard § 115.62
 19 ("To require an agency to take immediate action to protect an identified inmate who is at a substantial
 20 risk of imminent sexual abuse. Decisive, timely and affirmative action to protect inmates at high risk
 21 of sexual abuse demonstrates agency commitment to ensuring a sexually safe environment."); *see also*
 22 Cal. Code Regs., Tit. 15, § 3269(a) ("[d]ocumentation that the inmate has been a victim of a sexual
 23 assault"). Likewise, ***but-for*** Claybaugh's assaults triggering White's gender dysphoria, White would
 24 not have been forced to confront her gender identity in this traumatic fashion at this time and her
 25 gender identity as female in future housing assignments may not have been a consideration. Cal. Code
 26 Regs., Tit. 15, § 3269(h) ("Transgender inmates and inmates having symptoms of gender dysphoria
 27 as identified and documented in SOMS by medical or mental health personnel within a CDCR
 28 institution shall be referred to a classification committee for a determination of appropriate housing at

a designated institution.”). Likewise, as noted above, transgender women in male facilities are 13 times more likely to be assaulted. Thus, proper consideration of her gender identity both in past housing assignments and future housing assignments is critical to White’s safety. Additionally, White’s “medical [and] mental health issues,” including those arising from Claybaugh’s assaults, are also required to be considered both in past housing assignments and future housing assignments. Cal. Code Regs., Tit. 15, § 3269(a).

46. White has been unsafely housed at SVSP, CIM, CMF, CMC, and RJD. *See* Counts II and IV, *infra*; *see also* ¶¶48-103, *infra*. CDCR has been deliberately indifferent to the threat of serious harm to White and Unique, and has failed to protect White and Unique from harm. Plaintiffs’ harms arise from the CDCR’s systematic pattern of disregard and indifference toward the safety and health of transgender, nonbinary, and intersex individuals, which is evident in the lack of staff training, unsafe housing conditions, and retaliatory actions faced by Plaintiffs. In addition, both Counts II and IV seek relief under the same question of law.

47. White and Unique’s unsafe housing conditions are described in more detail in the following subsections. *See* ¶¶48-103.

**CLAYBAUGH REPEATEDLY SEXUALLY ASSAULTED PLAINTIFFS AT SVSP
(AND UNSAFE HOUSING CONDITIONS AT SVSP)**

48. Plaintiffs were both incarcerated at SVSP as of early 2017.

49. In or around April 2017, Claybaugh approached Unique at SVSP and asked her if she was interested in obtaining Sex Reassignment Surgery (“SRS”) and said he could help her obtain it. SRS would have brought Unique’s primary and secondary sex characteristics into conformity with her female gender identity and therefore would treat the severe mental anguish she experiences as a result of her gender dysphoria. The surgery would have allowed Unique to reduce the high dosages of hormones she was receiving, which put her at increased risk for heart and vascular conditions and certain types of cancer. Leading medical research and standards of care, including the World Professional Association for Transgender Health Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, state that SRS is an essential and medically necessary treatment for gender dysphoria in certain cases. Unique replied that she would like to have

1 the SRS, and Claybaugh said that he would do what he could to help her obtain the SRS, including
2 conducting an assessment.

3 50. Unique understood that Claybaugh had the ability to determine whether she would get
4 SRS. Unique understood from another transgender inmate that Claybaugh had denied her SRS after
5 that inmate rejected Claybaugh's sexual advances.

6 51. In or around January 2019, Claybaugh offered to sponsor an Inmate Leisure Time
7 Activity Group ("ILTAG") for transgender people incarcerated at SVSP. Claybaugh asked Unique if
8 she would be willing to help him develop a curriculum for the group since she was the Secretary of
9 the Inmate Advisory Council ("IAC").

10 52. In February 2019, Unique and Claybaugh were talking in a common area when White
11 approached them, and Unique introduced White to Claybaugh. Upon meeting White, the first words
12 Claybaugh said to her were: "You're fine as fuck."

13 53. Shortly after meeting White, Claybaugh approached her and told her that he had read
14 her Central file ("C-File"), and that he could help her to be suitable for parole by writing a favorable
15 report for the Board of Parole Hearings ("BPH"). White's minimum eligible parole date at the time
16 was approximately May 2023. An unfavorable BPH evaluation would lengthen the time she would
17 have to spend in prison. Claybaugh informed White that he would schedule numerous "private
18 meetings" to discuss the evaluation and that White's BPH evaluation would be better if they had "fun"
19 at those meetings. Claybaugh further told White that she would "have to motivate" him and give him
20 "energy" to write a favorable evaluation. Claybaugh insinuated that the evaluation would be negative
21 if White did not comply with his demands. Claybaugh said he could "not wait to get started."

22 54. Claybaugh also informed White that he was transforming the ILTAG from a
23 "transgender" support group to a "LGBTQ" support group so that White could join the group since
24 CDCR had not yet recognized White's gender dysphoria diagnosis (CDCR did recognize this in
25 approximately October 2019). Claybaugh informed White that he did this so he could "spend more
26 time" with White.

27 55. The SVSP Community Resource Manager approved Claybaugh's request that the
28 LGBTQ Support Group be facilitated without any custody or other staff involvement.

1 56. Claybaugh also offered to schedule private meetings with White and Unique so that
2 they could assist him in creating a new curriculum for the group.

3 57. On or around February 14, 2019, Claybaugh had custody staff bring both Unique and
4 White to the Mental Health Annex after most of the other staff had left for the day. Once Claybaugh
5 and Plaintiffs were alone in the office, they started discussing the LGBTQ Support Group curriculum.
6 But soon Claybaugh turned the conversation to the topic of LGBTQ community gossip instead of the
7 curriculum. When the correctional officer left the area, Claybaugh began to rub and caress Unique's
8 shoulders and arms in a sexually suggestive manner, causing her to suffer extreme discomfort.
9 Plaintiffs immediately fabricated excuses to leave. Claybaugh groped Unique's buttock as she was
10 leaving the office.

11 58. Plaintiffs then discussed the encounter as they were leaving. Plaintiffs were both
12 aware, and had witnessed, CDCR's custom and practice of finding staff complaints "unsubstantiated"
13 given failures to do complete investigations, and of retaliating against inmates who reported staff
14 misconduct. Thus, Plaintiffs chose, out of fear of similar retaliation from Claybaugh and other staff,
15 not to report the incident at that time.

16 59. Claybaugh began forcing Plaintiffs to engage in sexual acts.

17 60. For example, on February 25, 2019, Claybaugh had custody staff page White to the
18 Medical Health Annex for an unscheduled visit. Claybaugh escorted White to a small room (about
19 six feet by six feet in size) with a very small window in the door, followed her in, and closed the door
20 behind him so that they could be alone and unobserved by anyone else. Claybaugh then instructed
21 White to "[p]ull down your pants." As she did whenever a CDCR staff member gave her an instruction
22 or direct order, she complied and pulled her pants down out of fear of receiving an RVR or an
23 unfavorable psychological evaluation for the BPH.

24 61. On or around March 21, 2019, Claybaugh came to the Education Department and
25 removed White from her class and took her to a secluded area for an unscheduled visit. Once they
26 were alone, Claybaugh said, "I had to come see you and those sexy lips. I want you out so I can visit
27 you on the streets." Claybaugh then groped White's buttocks and penis against her will.
28

1 62. On or around March 25, 2019, Claybaugh instructed Plaintiffs to stay back after their
2 first LGBTQ meeting in the Education Department. After all the other group members had left the
3 meeting, Claybaugh locked both the front door of the building and the door of the room they were in,
4 using the keys custody staff had provided him. Once the doors were locked and Plaintiffs were trapped
5 in the room with him, Claybaugh approached Unique and stroked her shoulder and arm while asking
6 her, “Do you still want your surgery?” He then proceeded to move his hands down her body caressing
7 her breast even as she stepped back, clearly signaling her fear and opposition to his actions, but
8 Claybaugh continued to caress Unique’s hips and squeeze her buttocks. After a while, Claybaugh told
9 Unique to go over by the window and watch for the guards while he turned his attention to White.
10 Claybaugh forced White into the corner of the room where he sexually assaulted her and performed
11 oral sex on her over her objections. Unique was forced to watch White being sexually assaulted.

12 63. Other than the visitation area, SVSP lacks any video monitoring or electronic
13 surveillance system. While Plaintiffs were hoping that one of the guards who was supposed to be
14 patrolling the area would come, no one ever did.

15 64. On or around April 8, 2019, Claybaugh requested, and a lieutenant approved, that
16 White be excluded every Monday afternoon from the requirement that inmates return to their cells to
17 be counted by prison staff, in order for White to attend the LGBTQ group at 16:00, even though White
18 was not on the group roster and thus needed approval to be out-counted.

19 65. On multiple occasions, Claybaugh told Plaintiffs to stay back after their LGBTQ group
20 meeting had concluded in the Education Department. Claybaugh would lock both doors to the building
21 and classroom, trapping Plaintiffs in the room with him. In some instances, Claybaugh would force
22 himself on Unique: hugging, kissing, and groping her breast and buttocks. In some instances, he
23 commanded Unique to stand guard at the door and watch for custody staff, while Claybaugh would
24 then sexually assault and/or rape White while Unique was forced to watch the door and White being
25 raped. Again, no custody staff member came to check on them during these incidents.

26 66. Plaintiffs discussed these incidents as White cried on Unique’s shoulder. Plaintiffs
27 realized that Claybaugh was not going to stop and believed that—without direct proof—they would
28 not be believed and would face brutal staff retaliation for reporting Claybaugh’s rape and sexual

1 misconduct. Plaintiffs resolved to collect evidence and wait until they were transferred to another
2 prison to report the assault.

3 67. On April 18, 2019, Claybaugh interrupted White's class, took her to a private area,
4 groped and kissed her, and told her "I can't wait to fuck you on Monday."

5 68. On April 22, 2019, Claybaugh again instructed Unique to guard the door as he raped
6 White after the LGBTQ group meeting. After Claybaugh was done, White threw up.

7 69. On or around May 6, 2019, Unique did not attend the LGBTQ group meeting.
8 Claybaugh raped White with Unique not present after the LGBTQ group meeting. Again, no custody
9 staff member came to check on them.

10 70. On or around May 13, 2019, Claybaugh raped White with Unique present and guarding
11 the door after the LGBTQ group meeting. Again, no custody staff member came to check on them.

12 71. On or around May 28, 2019, Claybaugh had White paged. He forced her to undress so
13 he could stare at her naked body. Again, no custody staff member came to check on them.

14 72. On or around July 15, 2019, Claybaugh locked the doors to the Education Department
15 building after the LGBTQ group meeting and instructed Unique to guard the door as he raped White.
16 Again, no custody staff member came to check on them.

17 73. On or around August 5, 2019, Claybaugh locked the doors to the Education Department
18 building after the LGBTQ group meeting and instructed Unique to guard the door as he raped White.
19 Again, no custody staff member came to check on them.

20 74. On or around August 12, 2019, Claybaugh locked the doors to the Education
21 Department building after the LGBTQ group meeting and instructed Unique to guard the door as he
22 raped White. Again, no custody staff member came to check on them.

23 75. Over the course of these assaults, White saved boxers with Claybaugh's semen on them
24 as evidence. But Plaintiffs did not report the assaults because they were afraid of retaliation by
25 Claybaugh and/or other CDCR staff. Further, Claybaugh continued to promise favors to Plaintiffs if
26 they behaved as he expected. For example, White regularly asked Claybaugh about the status of the
27 BPH evaluation he had promised to draft. Claybaugh responded that White had to "earn" the favorable
28

1 evaluation and he was continuing to work on it. Unique similarly inquired about her SRS, but
2 Claybaugh responded that getting approval would take time.

3 76. The SVSP Defendants were the correctional officers on duty in or around the Education
4 Department building where and at the times these assaults occurred. They were aware that Claybaugh
5 possessed the only keys to the Education Department building and had locked the doors to the
6 Education Department building in violation of the prison's safety protocols.

7 77. SVSP Defendants did not visually or otherwise monitor the rooms in which Claybaugh
8 assaulted Plaintiffs, but rather left Plaintiffs unattended with him. Upon information and belief,
9 Claybaugh explicitly asked that SVSP Defendants not patrol the area so that he could be alone with
10 Plaintiffs.

11 78. As further evidence of CDCR's policy and custom of housing transgender inmates in
12 unsafe conditions, White has repeatedly been housed in unsafe conditions that result in her being
13 assaulted by fellow inmates.

14 **UNSAFE HOUSING CONDITIONS AT CIM**

15 79. For example, the CIM Housing Defendants housed White in dorm-style facilities at
16 CIM despite the fact that she reported as transgender and expressed safety concerns with being housed
17 in a dorm. Transgender inmates are particularly susceptible to attacks in dorm-style facilities because
18 they are unable to avoid inmates who wish to attack them, for example, by retreating to their cells.

19 80. At her Initial Housing Review, R/R Sgt. Sanchez assigned White to a dorm-style
20 facility despite knowing that White was transgender and the fact that White expressed safety concerns
21 with housing in a dorm-style facility. Late that same night, a cisgender male inmate housed in the
22 same dorm as White threatened to assault her because she is transgender. As he was attacking White,
23 the inmate told her: "We don't want your kind here." On or around March 12, 2020, White was placed
24 in Ad-Seg for her protection.

25 81. Amis reviewed White's safety concern and told White that she did not believe her and
26 sent White back to the dorm facility on March 16, 2020.

27 82. About a week later, on March 24, 2020, White was taken before a UCC presided over
28 by Bluford. She informed Bluford of her safety concerns. She explained that she did not feel safe, as

1 a transgender inmate, living in a dorm setting. She also said that, given her history of sexual assault—
2 including that she was sexually assaulted and raped by a staff member at SVSP, and was attacked at
3 CIM on March 11, 2020—it was dangerous for her to be housed with general population inmates in a
4 dorm-style yard. She specifically informed the committee that her life was in danger if she remained
5 on her current yard. She stated she would feel safest in a women's facility, and if not there, in a two-
6 person cell on C-Yard, which offered cell-style housing. Bluford said "I don't believe you. You don't
7 have safety concerns." The UCC determined that White would stay in dorm-style housing.

8 83. As a result of Bluford's refusal to transfer White out of the dorm, White was attacked
9 by a cisgender male inmate on April 6, 2020 and three cisgender male inmates on April 16, 2020
10 because of her gender identity. White was subsequently placed in Ad-Seg for her protection.

11 84. White filed a grievance regarding her housing placement. Bluford, who had originally
12 ignored White's safety concerns, purportedly investigated the appeal. On second-level review of
13 White's grievance, White's request to be transferred to a woman's facility was denied. While CDCR
14 eventually determined on May 18, 2020, that White should be transferred to another facility for safety
15 reasons, White was kept at CIM in Ad-Seg until November 2020 purportedly for her safety.

16 **UNSAFE HOUSING CONDITIONS AT CMF**

17 85. On or around November 16, 2020, White was transferred to CMF. She was initially
18 housed in isolation in a single cell as a COVID-19 precaution.

19 86. Fourteen days later, CMF officials attempted to transfer White to a dorm-style facility
20 (J-3). White raised safety concerns with being housed in a dorm with cisgender males, given her
21 gender identify. Because inmates in the dorm refused to accept White because she is transgender,
22 CMF officials were forced to rehouse White in a single cell.

23 87. On or about December 30, 2020, White tested positive for COVID. Iannone rehoused
24 White in COVID tents at CMF. PREA Compliance Coordinator Merrill approved White's move to
25 the tents. White informed Iannone and Merrill that she felt unsafe housing with male inmates in the
26 tents. Iannone and Merrill did not offer White alternative housing. White was forced to sleep in a tent
27 designed to hold approximately 50 persons. Eight other tents surrounding her held eight men each.
28 White was the only transgender inmate in the tents.

1 88. Between January 8 and 11, 2021, a cisgender male inmate repeatedly solicited sexual
 2 favors from White, threatened her if she did not comply, and sexually assaulted her. In particular, the
 3 inmate entered the shower while White was inside naked using it. He grabbed her breasts and
 4 attempted to force White to perform fellatio on him. He also came up to her bed twice while she was
 5 sleeping and groped her in the middle of the night. White reported the assaults to a sergeant, but she
 6 did not protect her. Similarly, White reported her assault to a lieutenant, who refused protection and
 7 told her to “Man or woman up.” White was forced to continue sleeping within 30 feet of her assailant.

8 89. On or around January 24, 2021, White filed a grievance regarding the assaults. She
 9 requested and received housing in Ad-Seg for her protection on or around February 2, 2021. On or
 10 around February 28, 2021, White received a report indicating that her assault claim was
 11 “Substantiated.” The sergeant who had completed the investigation into her allegation told White that
 12 he believed her. The next day, however, White received an altered Closure Chrono stating:
 13 “Unsubstantiated.” The sergeant told White that the captain had forced the sergeant to change the
 14 finding because “he wouldn’t send this to the DA without video evidence” despite the fact that there
 15 was no video surveillance system in the COVID tents.

16 90. The sexual assault at CMF caused White psychological pain. White experienced
 17 nightmares and anxiety during the day. She was afraid to shower and tried to hide her feminine body
 18 and breasts from the eyes of men around her. She could not eat. She stopped getting out of bed and
 19 brushing her teeth. She became hopeless and began to contemplate suicide.

20 91. White’s sexual assault grievance became known and fellow inmates and guards began
 21 to call her “a rat” and “snitch bitch.” On or around March 2, 2021, CDCR determined that White had
 22 confidential enemies in the CMF general population mainline. In particular, CDCR determined:

23 [T]he Hispanic inmate population has animosity toward you for making PREA
 24 allegations. Custody staff located a deadly inmate manufactured weapon in your
 25 housing unit, leading staff to believe that your safety would be in jeopardy if you were
 26 to remain housed within the inmate population assigned to CMF. As a result of the
 27 aforementioned, you are being retained in ASU, as your presence within the general
 28 population endangers institutional security and is an immediate threat to the safety of
 yourself and others at CMF. You will remain on ASU status pending Administrative
 review, Institution Classification Committee (ICC) action, and possible transfer to an
 institution compatible with your case factors.

1 92. White was not released from Ad-Seg until over six months later on or around July 5,
2 2021.

3 **UNSAFE HOUSING CONDITIONS AT CMC**

4 93. On or around July 6, 2021, White was transferred to CMC. A new alert had been added
5 to her C-File to indicate that she was a victim of sexual assault. Yet, Grijalva assigned White to a
6 dorm at CMC at her initial housing review. Riley, Fernandez, Elsayed, and Sterkel, who were
7 members of the CMC Unit Classification Committee, also assigned White to a dorm.

8 94. In both instances, White raised her safety concerns with living in a dorm with cisgender
9 male inmates and asked to be transferred to a single cell. Grijalva, Riley, Fernandez, Elsayed, and
10 Sterkel refused White's request.

11 95. As a result of that dorm-style housing, one male prisoner assaulted her, and attempted
12 to sexually assault her because she is transgender.

13 **UNSAFE HOUSING CONDITIONS AT RJD**

14 96. On or around March 2022, White was transferred to RJD and was housed in a two-
15 person cell in Facility A with a transgender cellmate.

16 97. On or about June 28, 2022, White was celled with Unique in Facility A, who had also
17 been transferred to RJD. The staff on Facility A failed to act to proactively stop sexual harassment
18 of transgender inmates and ensure that they are safe.

19 98. On or around April 12, 2022, RJD staff endorsed White to RJD Facility E, which is a
20 Level II facility where inmates are housed in dorms. They did so despite being aware of the fact that
21 White has been assaulted in dorm-style facilities at multiple other institutions.

22 99. On or around April 17, 2022, White submitted an administrative grievance, noting her
23 safety concern with being placed in a dorm given her status as a transgender inmate, and reminding
24 CDCR that all dorm placements she had previously experienced ended with her being placed in Ad-
25 Seg placement for safety reasons.

26 100. On or around May 17, 2022, the Office of Appeals ("OOA") concluded that White "is
27 appropriately endorsed to RJD-II (EOP) per Auditor Action dated 04/15/2022. [White] has not been
28

1 housed in Facility E, no documented enemies at Facility E noted. Endorsement remains appropriate
2 and inmate to be housed accordingly.”

3 101. In early August 2022, White’s counselor notified White that custody staff would be
4 requiring her to transfer to RJD Facility E in accordance with the UCC’s endorsement.

5 102. On or around August 23, 2022, White met with the RJD associate warden and informed
6 her that she did not feel safe being housed in a dorm.

7 103. As of the filing of the first amended complaint and second amended complaint, White
8 was endorsed to transfer to Facility E despite her repeatedly raising safety concerns with being housed
9 in a dorm.

10 **CDCR HAS A CUSTOM AND PRACTICE OF RETALIATION**

11 104. Inmates incarcerated by CDCR who file administrative grievances—and particularly if
12 they report staff misconduct—are often not believed; their claims are inadequately investigated; and
13 they are regularly retaliated against by CDCR staff. This retaliation takes many different forms
14 including, but not limited to: transfer to a more restrictive prison or facility away from their family,
15 friends, and any community support that they might have; placement in administrative segregation
16 (“Ad-Seg”) for months on end, purportedly for their safety while the incident is supposedly being
17 investigated; theft of the inmates’ property or alleged “loss” of the inmates’ property after they are
18 placed in Ad-Seg; and fabricated Rules Violation Reports (“RVRs”). This is done to discourage
19 inmates from reporting staff misconduct or otherwise filing administrative grievances or lawsuits. In
20 fact, CDCR has fostered a “Code of Silence” among its staff: any staff member who takes the side of
21 an inmate against other staff is often also subjected to retaliation.

22 105. In a September 2020 Special Report entitled “The California Department of
23 Corrections and Rehabilitation Has Taken Thoughtful and Important Steps to Address the Difficult
24 Conditions of Confinement for Incarcerated Transgender, Nonbinary, and Intersex Individuals,”³ the

25
26 ³ Roy W. Wesley and Bryan B. Beyer, Office of the Inspector General, “Special Report: The
27 California Department of Corrections and Rehabilitation Has Taken Thoughtful and Important Steps
28 to Address the Difficult Conditions of Confinement for Incarcerated Transgender, Nonbinary, and
Intersex Individuals” (September 2020), <https://www.oig.ca.gov/wp-content/uploads/2020/09/Special-Review-Incarcerated-Transgender-Nonbinary-Intersex-Individuals.pdf> [<https://perma.cc/32KM-UU6P>] (“September 2020 Report”).

Office of the Inspector General (“OIG”), which provides oversight of California’s correctional system through monitoring, reporting, and recommending improvements to CDCR, found:

Incarcerated transgender, nonbinary, and intersex individuals are reluctant to file complaints of sexual assault or harassment because staff do not take their complaints seriously, do not conduct interviews in private settings, and ridicule incarcerated individuals for complaining.

Incarcerated individuals also relayed that staff retaliate against them when they complain—officers automatically place transgender, nonbinary, and intersex complainants in administrative segregation, which results in victims losing their jobs, educational programs, rehabilitative programs, and housing assignments.

At one institution, incarcerated individuals explained that officers, including those in the investigative services unit, do not take allegations of sexual assault seriously and have responded with comments, such as “I thought you liked it that way.

September 2020 Report at 17.

106. Over half of respondents to an OIG survey said that they did not believe they could safely report discrimination, harassment, or violence committed based on their status as a transgender, nonbinary, or intersex person.

107. With respect to SVSP (where Claybaugh assaulted Plaintiffs) in particular, in a January 2019 report entitled “Special Review of Salinas Valley State Prison’s Processing of Inmate Allegations of Staff Misconduct,” OIG concluded that SVSP’s “process for handling staff complaints was inadequate and may have resulted in decisions it cannot defend.”⁴ OIG found that “[t]he deficiencies we found may have resulted, in part, from a lack of training for the staff complaint reviewers.” January 2019 Report at iii. OIG found that, as a result of the inadequate training of reviewers, reviewers “determined that subject staff did not violate policy in 183 of the 188 staff complaint inquiries we reviewed (97 percent).” *Id.* at 31. Worse yet,

[a]lthough the hiring authority determined that at least six officers violated policy [including three officers who used ‘unreasonable force’] in the remaining five inquiries (3 percent), he or she did not timely provide the corrective actions ordered for five of the six officers . . . [T]he failure to train staff in a timely manner also suggests Salinas Valley did not take the violations seriously and failed to demonstrate the prison was committed to ensuring its staff make improvements in these areas of concern.

Id. at 31-32.

⁴ Roy W. Wesley and Bryan B. Beyer, Office of the Inspector General, “Special Review of Salinas Valley State Prison’s Processing of Inmate Allegations of Staff Misconduct” (January 2019), https://www.oig.ca.gov/wp-content/uploads/2019/05/2019_Special_Review_-_Salinas_Valley_State_Prison_Staff_Complaint_Process.pdf [<https://perma.cc/5BC7-CHLZ>] (“January 2019 Report”).

1 108. OIG also found that inadequate staff complaint inquiries resulted from “the staff
2 complaint reviewers’ lack of independence. These reviewers were frequently peers or coworkers who
3 worked in the same location as the accused staff—the same individuals the reviewers must rely upon
4 if their physical safety were threatened. The reviewers also displayed signs of bias in favor of their
5 fellow staff when conducting their staff complaint inquiries; they sometimes ignored corroborating
6 evidence offered by inmate witnesses and often compromised the confidentiality of the process.” *Id.*
7 at iv.

8 109. Finally, OIG concluded that “we question whether Salinas Valley can effectively police
9 itself utilizing the staff complaint process” and that the inadequate staff complaint process “fosters
10 distrust among inmates and, in the cases we reviewed, the compromised confidentiality could have
11 exposed inmates to retaliation for complaining about staff.” *Id.*

12 110. OIG recommended that the department “consider a complete overhaul of the staff
13 complaint inquiry process.” OIG urged CDCR to “reassign the responsibility of conducting staff
14 complaint inquiries to employees who work outside of the prison’s command structure, which is the
15 Division of Adult Institutions.” OIG also recommended specific steps to ensure that all prison
16 employees who conduct staff complaint inquiries possess the requisite knowledge and skills to perform
17 staff complaint inquiry activities effectively and efficiently. *Id.* at 89-90.

18 111. In response, CDCR submitted a budget proposal to the legislature, requesting
19 \$9.8 million in ongoing additional funding to perform inquiries into incarcerated persons’ allegations
20 of staff misconduct through a new unit, called the Allegation Inquiry Management Section (AIMS)
21 that CDCR created to provide reviews of staff complaints that are more independent than the reviews
22 performed at the institutions themselves. In June 2019, the Governor and the legislature approved the
23 department’s proposal as part of the State’s 2019-20 Budget Act.

24 112. In February 2021, however, OIG issued a report entitled “The California Department
25 of Corrections and Rehabilitation: Its Recent Steps Meant to Improve the Handling of Incarcerated
26 Persons’ Allegations of Staff Misconduct Failed to Achieve Two Fundamental Objectives:
27 Independence and Fairness; Despite Revising Its Regulatory Framework and Being Awarded
28

Approximately \$10 Million of Annual Funding, *Its Process Remains Broken*.⁵ The OIG concluded that “the lack of independence we highlighted two years ago still persists, even in [the department’s] new process.” (Emphasis added.) The OIG found that wardens had mostly circumvented the new AIMS process: wardens largely avoided referring staff misconduct grievances to AIMS and retained grievances at the prison for internal investigation. February 2021 Report at iii-iv.

113. Since Plaintiffs both worked in the Program Office at SVSP at their facility, they had witnessed firsthand the CDCR’s retaliation against inmates who reported staff for sexual misconduct or who filed a Prison Rape Elimination Act (“PREA”) complaint against another inmate. Plaintiffs were also aware of CDCR’s custom and practice of finding reports of staff sexual misconduct unsubstantiated, and of failing to keep confidential the identities of inmates who reported staff misconduct.

PLAINTIFFS REPORTED THE SEXUAL ASSAULTS BY CLAYBAUGH

114. Unique approached a correctional captain and associate warden that she trusted and reported that she and White were no longer safe at SVSP, and that they planned to submit an administrative grievance that detailed the basis of their safety concerns. She did not inform the captain or associate warden of the exact nature of Claybaugh’s actions. The captain cautioned Unique that if they filed a formal complaint, they would suffer staff retaliation. The captain agreed to work with Plaintiffs to transfer them together at the same time to a different prison. To avoid any retaliation, the captain agreed to keep the fact of their impending transfer hidden until the morning of the transfer itself.

115. Plaintiffs were transferred to CIM on or around March 10, 2020.

116. Upon arrival, Unique was evaluated for placement in an enhanced outpatient program due to the mental breakdowns and panic attacks.

⁵ Roy W. Wesley and Bryan B. Beyer, Office of the Inspector General, “The California Department of Corrections and Rehabilitation: Its Recent Steps Meant to Improve the Handling of Incarcerated Persons’ Allegations of Staff Misconduct Failed to Achieve Two Fundamental Objectives: Independence and Fairness; Despite Revising Its Regulatory Framework and Being Awarded Approximately \$10 Million of Annual Funding, Its Process Remains Broken” (February 2021), <https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-Staff-Misconduct-Process-Report-2021.pdf> [<https://perma.cc/L5YZ-U6J2>] (“February 2021 Report”)

1 117. On or around March 24, 2020, White informed the Facility-A Unit Classification
2 Committee (“UCC”) that she was sexually assaulted and raped by a staff member while at SVSP; that
3 she wished to report the incidents; and that she wanted them recorded in her CDCR Form 128 series,
4 which is used by staff to provide progress reports on inmates. Defendant Bluford, the CIM official
5 who was acting as captain for this UCC, responded: “I don’t believe you. To me it sounds like you are
6 trying to set something up. I’m not touching that thing you mentioned. It’s not going on your 128.”

7 118. On May 20, 2020, Unique and White were made cell mates in Ad-Seg where they had
8 both been placed purportedly for their safety. Once reunited, Plaintiffs continued to discuss the matter,
9 including the possibility that other transgender inmates still at SVSP could also become victims of
10 Claybaugh or other staff members who might retaliate against inmates who filed allegations against
11 him.

12 119. Plaintiffs each filed administrative grievances, complaining of (a) Claybaugh’s sexual
13 assaults; and (b) failure to protect by SVSP A-Yard custody staff on watch during the times of the
14 assaults (including SVSP Defendants). Plaintiffs requested that their identities be kept confidential to
15 avoid retaliation by staff resulting from the submission of their grievances. Plaintiffs also requested
16 that they not be separated from each other since they were each other’s emotional support and
17 protection.

18 120. CDCR staff never performed a full investigation into Plaintiffs’ reports of staff sexual
19 misconduct. For example, Investigative Services Unit (“ISU”) investigators never interviewed any
20 inmate witnesses Plaintiffs provided. Further, after their interviews of Plaintiffs and once the
21 recording devices were turned off, ISU investigators threatened Unique with RVRs, and told White
22 “you’re making this up. It seems awfully convenient that you and Unique are cellies, it seems as if
23 you had nothing better to do than sit and plot this out.”

24 121. Plaintiffs requested to be notified of any interviews conducted or testimony relied upon
25 to reach these conclusions, but CDCR never provided that information.

26 **CDCR STAFF RETALIATED AGAINST PLAINTIFFS**

27 122. Consistent with CDCR’s custom and practice of retaliation, White and Unique were
28 retaliated against for reporting the repeated sexual assaults of Claybaugh. The series of transactions

1 or occurrences leading from Claybaugh's sexual assaults, to Plaintiffs reporting the assaults, to Staff
2 retaliating against Plaintiffs for reporting the assaults is intertwined with the common question of facts
3 surrounding Claybaugh's sexual assaults.

4 123. CIM staff failed to keep the administrative grievances that Plaintiffs filed regarding
5 Claybaugh and other staff misconduct confidential. For example, correctional officers at CIM, who
6 were not involved in the investigation of any of the grievances, mentioned the grievances and
7 Plaintiffs' alleged proclivity to file grievances, to Plaintiffs.

8 124. CDCR staff retaliated against Plaintiffs in an attempt to get them to withdraw their
9 complaint against Claybaugh, coerce them into not pursuing this case any further, punish them for
10 submitting administrative grievances, and discourage them from submitting additional grievances.

11 125. For example, at CIM, immediately after Plaintiffs filed their grievances relating to
12 Claybaugh's assaults, CIM Ad-Seg staff made known amongst each other that Plaintiffs had spoken
13 to ISU investigators. One of the CIM Ad-Seg sergeants said to Plaintiffs: "[H]ow come every time I
14 come in to work it's always you two I hear about? I get calls from other prisons about you,
15 Sacramento, our warden . . . what do you want?"

16 126. Jaramillo was at all relevant times an Ad-Seg control booth officer at CIM. Jaramillo
17 told White he believed White likes to file administrative grievances and "mess with the Green Wall."⁶
18 Jaramillo routinely threatened and intimidated Plaintiffs. For example, when Plaintiffs were walking
19 down the corridor in Ad-Seg, Jaramillo routinely opened, and immediately closed, the door to each of
20 the cells of general population inmates housed along the corridor as Plaintiffs passed by handcuffed
21 and defenseless. Jaramillo would laugh as he was opening and closing doors. Further, when this
22 would occur, the escorting correctional officer commented to Plaintiffs: "What's this guy's problem,
23 that endangers me too."

24 127. Jaramillo also regularly ransacked Plaintiffs' cell while they were away. On multiple
25 occasions, Plaintiffs' neighbors informed them that Jaramillo had been in their cell. On multiple

26
27 ⁶ The "Green Wall" is a term coined by a gang of SVSP prison guards who called themselves such in
28 reference to the green uniforms they wore. The gang enforced a code of silence to cover up violence
and other misconduct against inmates. The Green Wall began spreading throughout the ranks of
prison guards across the state to other prisons.

occasions, Plaintiffs saw Jaramillo leaving his control booth and going towards Plaintiffs' cell after Plaintiffs walked by. On at least one occasion, Plaintiffs found that Jaramillo had taken difficult-to-acquire administrative grievance forms from their cell. Upon information and belief, Jaramillo did so in order to prevent Plaintiffs from filing additional grievances. Upon information and belief, Jaramillo did not log the fact that he went into Plaintiffs' cell, despite the fact that he was required to do so by policy.

128. CIM officials also filed false RVRs against Plaintiffs in retaliation for submitting administrative grievances. For example, in 2020, Unique had filed a grievance against Williams because she had attempted to interfere with Unique receiving the kosher meals which she was entitled to. When Unique subsequently requested access from Williams to another item to which Unique was entitled, Williams told her that she would not provide the item to Unique because Unique had filed an administrative grievance against her earlier. When Unique offered to withdraw her earlier administrative grievance to avoid retaliation for having filed the grievance, Williams issued Unique a false RVR for attempted bribery. Unique was not attempting to bribe Williams but was attempting to obtain items to which she was entitled. The false RVR increased Unique's classification score, which is used to determine the security level of the institution to which an inmate is assigned.

129. Banales, who was a Sergeant at CIM, pulled White out of her Ad-Seg cell and told White:

control your bitch homie. She thinks she doesn't like it when doors get opened by her as she walks? Me and my boys have a lot more than that coming your way if you don't drop your complaint and stop fucking with us. You fuck with us, with Williams, that's us. Control your bitch. Shut her up. Man up in the relationship.

Other inmates have raised similar allegations against Banales. For example, in the *Armstrong* case (No. 4:94-cv-02307, ECF No. 3227 at 101), plaintiffs submitted a February 9, 2021, letter alleging that Banales told one inmate "we know everything that you do in this building" and warned the inmate not to file any more grievances; when the inmate returned to his cell, it had been searched and his disability vest had been taken.

130. Further, CIM staff separated Plaintiffs within one month of their filing grievances relating to Claybaugh's assault. At her UCC hearing, Williams acted as if she were presiding over the

1 hearing, including making recommendations for Unique's punishment. Williams told Unique that
 2 they wanted to separate her from White to prevent them from submitting administrative grievances.
 3 Even though the false RVR should have extended Unique's stay in Ad-Seg, Williams encouraged the
 4 UCC to transfer Unique out of Ad-Seg and rehouse her in Short Term Restricted Housing (STRH)
 5 with general population inmates. Williams did so despite knowing that Unique is a sensitive-needs,
 6 transgender inmate whose safety would be endangered—and the fact that she had been placed in Ad-
 7 Seg for her safety. Upon information and belief, this transfer was done in retaliation for Plaintiffs
 8 filing administrative grievances.

9 131. Unique repeatedly raised her safety concerns before and while she was being
 10 transferred to STRH. A correctional officer received Unique at STRH and warned her "You shouldn't
 11 be here. You must have fucked with someone somewhere or pissed them off." He said he would try
 12 to move her out of STRH. Unique was then moved to Cypress Hall, which is still a mainline unit. A
 13 captain and correctional officer asked Unique to withdraw her grievances. She refused. Within one
 14 week of this meeting, Unique was transferred to SATF.

15 **COUNT I**
 16 **EIGHTH AMENDMENT CLAIM**
 17 **AGAINST CLAYBAUGH IN HIS INDIVIDUAL CAPACITY**
(SEXUAL HARASSMENT AND ASSAULT)

18 132. Plaintiffs incorporate by reference the allegations in paragraphs 1-131.

19 133. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983.

20 134. Claybaugh was a psychologist employed by SVSP and was acting under color of law
 21 when interacting with Plaintiffs, who were inmates at SVSP at all relevant times.

22 135. Claybaugh repeatedly sexually assaulted White, including raping her, groping and
 23 kissing her, and performing oral sex on her without her consent on at least March 21, 2019; March 25,
 24 2019; April 18, 2019; April 22, 2019; May 6, 2019; May 13, 2019; May 28, 2019; July 15, 2019;
 25 August 5, 2019; and August 12, 2019. He also sexually harassed White, including by making
 26 comments about how she was "fine as fuck" and pulling her out of class to tell her he couldn't "wait
 27 to fuck" her. These actions caused her significant physical and psychological harm, including nausea,
 28 anxiety, depression, fear, shame, loss of sleep, and emotional distress.

136. Claybaugh also repeatedly sexually assaulted Unique, including groping, fondling, and kissing her without her consent. He also sexually harassed Unique by making sexually charged comments and forcing her to watch as he raped White. These actions caused her significant physical and psychological harm, including nausea, anxiety, depression, fear, shame, loss of sleep, and emotional distress.

137. Claybaugh engaged in this sexual conduct for his own sexual gratification, or for the purpose of humiliating, degrading, or demeaning Plaintiffs. There was no legitimate penological purpose for the sexual contact between Plaintiffs and Claybaugh. For example, the contact did not occur in the context of an authorized search.

138. Plaintiffs did not voluntarily participate in the sexual contact with Claybaugh. Claybaugh locked them in a room where security staff would not be able to protect them. Further, as detailed above, Claybaugh promised favors and privileges—including SRS for Unique and a favorable psychological evaluation for the BPH for White—in exchange for sex. Claybaugh also repeatedly warned Plaintiffs that no one would take the word of prisoners over his if Plaintiffs were to expose his actions.

139. Plaintiffs exhausted their administrative remedies as to this claim.

COUNT II
EIGHTH AMENDMENT CLAIM
AGAINST SVSP DEFENDANTS IN THEIR INDIVIDUAL CAPACITIES
(DELIBERATE INDIFFERENCE - FAILURE TO PROTECT)

140. Plaintiffs incorporate by reference the allegations in paragraphs 1-139.

141. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983.

142. The Eighth Amendment requires that prison officials take reasonable measures to guarantee the safety of inmates. In particular, prison officials have a duty to protect inmates from sexual assault by prison staff.

143. Defendants Pola, Fletes, and Canchola (collectively, “SVSP Defendants”) failed to take reasonable measures to guarantee the safety of Plaintiffs, but rather acted with deliberate indifference to the threat of serious harm to Plaintiffs.

1 144. SVSP Defendants, who were correctional officers at SVSP charged with patrolling the
2 area where Claybaugh assaulted Plaintiffs, were acting under the color of the law when they failed to
3 protect Plaintiffs from Claybaugh's sexual assaults.

4 145. Plaintiffs were incarcerated at SVSP under conditions posing a substantial risk of
5 serious harm that resulted in them being sexually assaulted over the course of half a year by Claybaugh.
6 As detailed above and below, they were repeatedly left alone with a staff member who was known to
7 have an unusual interest in them, with no video surveillance or security staff supervision, despite the
8 known issues of staff sexual misconduct at SVSP, as well as of incarcerated transgender individuals'
9 susceptibility to sexual assault.

10 146. SVSP Defendants personally knew of and disregarded the obvious risk to Plaintiffs'
11 safety; they were aware of facts from which the inference could be drawn that a substantial risk of
12 serious harm to Plaintiffs existed, and drew the inference.

13 147. For example, SVSP Defendants were aware that Plaintiffs were vulnerable to sexual
14 abuse because Unique was openly transgender and White was openly transfeminine. SVSP
15 Defendants knew Unique was transgender and that White was transfeminine because they presented
16 as female, wore the transgender-specific female clothing, wore makeup purchased for transgender
17 people through the canteen, and attended the group created specifically for LGBTQ people that SVSP
18 Defendants were charged with patrolling. Further, information about their gender identity was
19 recorded in their C-Files. Further, PREA Standards required that all inmates "be assessed during an
20 intake screening and upon transfer to another facility for their risk of being sexually abused by other
21 inmates or sexually abusive toward other inmates," including "[w]hether the inmate is or is perceived
22 to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming." 28 C.F.R. § 115.41.

23 148. Further, SVSP Defendants were aware that transgender individuals suffer
24 disproportionately from sexual assault during incarceration. For example, in 2018, the American
25 Medical Association ("AMA") issued a press release citing a study of California prisons indicating
26 "59 percent of transgender prisoners experience sexual assault, versus only 4.4 of the overall prison
27 population," as well as another study reflecting "the proportion of transgender prisoners in California
28

1 experiencing sexual assault to be as high as 75 percent.”⁷ To the extent SVSP Defendants were not
 2 personally aware of the AMA study, the fact that transgender individuals suffer disproportionately
 3 from sexual assault during incarceration was commonly known by early 2019.

4 149. SVSP Defendants were further aware that inmates regularly suffer from staff on inmate
 5 sexual misconduct. For example, an audit conducted by CDCR itself found that there were
 6 337 allegations within CDCR in 2018 of Staff on Inmate Sexual Misconduct, which was defined as
 7 “threatened, coerced, attempted, or completed sexual contact, assault or battery of an offender by
 8 staff.”⁸ To the extent SVSP Defendants were not personally aware of the CDCR study, the fact that
 9 inmates regularly suffer from staff on inmate sexual misconduct was commonly known by early 2019.

10 150. Further still, SVSP Defendants were aware that PREA Standards required, with the
 11 specific goal of addressing the high incidence of sexual assault in prisons, that each facility develop
 12 “a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring,
 13 to protect inmates against sexual abuse.” 28 CFR § 115.13. In calculating adequate staffing levels
 14 and determining the need for video monitoring, facilities must take into consideration . . . “Any
 15 findings of inadequacy from internal or external oversight bodies”; “All components of the facility’s
 16 physical plant (including ‘blind-spots’ or areas where staff or inmates may be isolated)”; “The
 17 composition of the inmate population”; “The number and placement of supervisory staff”; “Institution
 18 programs occurring on a particular shift”; and “The prevalence of substantiated and unsubstantiated
 19 incidents of sexual abuse.” *Id.* Further, PREA Standards required that “[i]f vulnerable detainees are
 20 identified pursuant to the screening required by § 115.141, security staff shall provide such detainees
 21 with ***heightened protection, to include continuous direct sight and sound supervision***, single-cell
 22 housing, or placement in a cell ***actively monitored on video by a staff*** member sufficiently proximate
 23 to intervene, unless no such option is determined to be feasible.” 28 CFR § 115.113(d) (emphasis
 24 added).

25 ⁷ American Medical Association, Press Release: “AMA Urges Appropriate Placement of Transgender
 26 Prisoners” (June 11, 2018), [https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners#:~:text=\[https://perma.cc/GK6Q-HY5A\]](https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners#:~:text=[https://perma.cc/GK6Q-HY5A]).

27 ⁸ California Department of Corrections & Rehabilitation, “Prison Rape Elimination Act (PREA)
 28 Annual Report (2018), <https://www.cdcr.ca.gov/prea/wp-content/uploads/sites/186/2020/01/PREA-Annual-Report-2018.pdf> [https://perma.cc/FN8Z-RD2A].

1 151. SVSP Defendants failed to comply with these PREA Standards. For example, other
2 than the visitation area, SVSP lacked any video monitoring or electronic surveillance system in 2019.
3 SVSP Defendants were aware of this fact and further knew that no security staff were in the room with
4 Claybaugh and the inmates who attended the LGBTQ support group meetings. SVSP Defendants
5 were further aware that security staff did not have continuous direct sight or sound supervision of
6 Plaintiffs while they were in the meeting room with Claybaugh.

7 152. SVSP Defendants were further aware that Claybaugh had an unusual interest in White.
8 For example, SVSP Defendants witnessed Claybaugh repeatedly ask custody staff to page White to
9 meet with him for unscheduled visits, remove her from a class in the Education Department for an
10 unscheduled visit, enter the housing units to see White (which was unusual for staff in his position to
11 do), and ask that White be out-counted to join the LGBTQ group even though White was not on the
12 group roster. SVSP Defendants further knew that Claybaugh frequently sought out and conversed
13 with White on the recreational yard and would ask other inmates as to her whereabouts when he could
14 not find her. SVSP Defendants further knew that Claybaugh was alone with Plaintiffs after the
15 conclusion of the LGBTQ group meetings when all the other inmates participating in those meetings
16 had left. SVSP Defendants were further aware that Claybaugh possessed the only keys to the
17 Education Department building and that Claybaugh had locked the doors to the Education Department
18 building where he assaulted Plaintiffs in violation of the prison's safety protocols.

19 153. Upon information and belief, prison protocols required a correctional officer to be
20 posted inside the Education Department, in an office for correctional officers that was directly next
21 door to the classroom where Plaintiffs were assaulted. Yet SVSP Defendants left these posts vacant
22 every time Plaintiffs were assaulted in the Education Department except for approximately three
23 nights. Those three nights, however, the officer that was posted in the office was charged with
24 supervising a Hartnell Community College class that overlapped with the LGBTQ group meetings.
25 After that class ended, the officer left. Indeed, correctional officers could not have gotten to the office
26 inside the Education Department as Claybaugh had locked the door to the entire building. Upon
27 information and belief, Claybaugh explicitly asked that SVSP Defendants not patrol or otherwise
28 monitor the area so that he could be alone with Plaintiffs.

154. The very obviousness of the substantial risk of harm to Plaintiffs in light of these circumstances—including the susceptibility of transgender inmates to sexual assault as well as the prevalence of staff sexual misconduct, the absence of video surveillance within SVSP, and the fact that Claybaugh was permitted to meet with transgender inmates alone with no security staff supervision in violation of PREA Standards when he had a known unusual interest in White—further establishes the SVSP Defendants’ knowledge of the substantial risk to Plaintiffs.

155. SVSP Defendants disregarded the serious risks to Plaintiffs by failing to take reasonable measures to abate those risks. In particular, in light of the OIG reports discussed above, SVSP Defendants were on notice that failing to adequately monitor and supervise non-security staff when they were alone with vulnerable transgender inmates would likely deprive inmates’ constitutional rights. Yet, SVSP Defendants failed to take any steps to ensure Plaintiffs’ safety while they were alone with Claybaugh. For example, despite the fact that SVSP did not have video or audio surveillance installed in the area where Claybaugh would be meeting with vulnerable transgender inmates, SVSP Defendants failed to patrol or otherwise monitor the area, failed to ensure that the room in which Claybaugh and Plaintiffs were meeting alone was not locked, and failed to ensure that Claybaugh was alone with Plaintiffs only for an approved purpose.

156. Plaintiffs were seriously harmed as a result of SVSP Defendants’ failure to take actions to protect Plaintiffs, including because they were sexually assaulted by Claybaugh for about half a year.

157. The constitutional rights of inmates to be protected from sexual assault by prison staff were clearly established at the time SVSP Defendants failed to protect Plaintiffs. It would have been clear to a reasonable officer that their conduct in failing to protect Plaintiffs was unlawful.

158. Plaintiffs exhausted their administrative remedies as to this claim.

COUNT III
FIRST AMENDMENT CLAIM
AGAINST CIM STAFF IN THEIR INDIVIDUAL CAPACITIES
(RETALIATION)

159. Plaintiffs incorporate by reference the allegations in paragraphs 1-158.

160. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983.

1 161. The First Amendment guarantees inmates the right to file administrative grievances
2 and otherwise seek access to the legal process. Yet Jaramillo, Williams, and Banales (collectively,
3 “CIM Staff”) repeatedly retaliated against Plaintiffs for submitting administrative grievances and
4 reporting staff misconduct, resulting from the reporting of the Claybaugh assaults and other staff
5 misconduct.

6 162. CIM Staff were aware of Plaintiffs’ administrative grievances that they filed regarding
7 Claybaugh and other safety issues. CIM Staff mentioned the grievances to Plaintiffs. For example,
8 Jaramillo told White he believed White likes to file administrative grievances and “mess with the
9 Green Wall.” Williams was the subject of one of Unique’s grievances. White attempted to report her
10 grievance directly to Banales when White first arrived at CIM. Banales also told White to “control
11 your bitch,” implying that White should ask Unique to withdraw her grievance against Williams.

12 163. CIM Staff retaliated against Plaintiffs in an attempt to get them to withdraw their
13 complaint against Claybaugh, punish them for submitting administrative grievances, and discourage
14 them from submitting additional grievances. By way of example, Jaramillo routinely opened the door
15 to cells housing general population inmates as Plaintiffs, who were purportedly placed in Ad-Seg for
16 their safety, passed by handcuffed and defenseless, endangering their safety. There was no apparent
17 penological or correctional purpose for opening, and immediately closing, each of these cell doors one
18 by one as Plaintiffs passed by. Plaintiffs had purportedly been placed in Ad-Seg for their safety to
19 avoid interaction with general population inmates. Opening the doors encouraged general population
20 inmates inside to rush to the opening, and make degrading sexual remarks and threats at Plaintiffs as
21 they passed by. In fact, when this happened, the escorting correctional officer commented to Plaintiffs:
22 “What’s this guy’s problem, that endangers me too.”

23 164. Jaramillo also ransacked Plaintiffs’ cell and took administrative grievance forms from
24 Plaintiffs. These forms were newly-issued by CDCR pursuant to the 2020 reform of CDCR’s
25 grievance procedures, but they were difficult to acquire. Upon information and belief, Jaramillo took
26 the forms to prevent Plaintiffs or other inmates (to whom Plaintiffs had given forms) from filing
27 grievances. The searches had no apparent penological or correctional goals. No contraband was ever
28 located in Plaintiffs’ cell in Ad-Seg at CIM. Further, Jaramillo was assigned to the control booth and

1 should not have been conducting cell searches; doing so hindered the movement of inmates and staff
2 as no one was manning the control booth while the officer was in Plaintiffs' cell. In fact, Jaramillo
3 did not log the fact that he went into Plaintiffs' cell despite the fact that he was required to do so by
4 policy.

5 165. Further, Banales threatened Plaintiffs' safety if they did not drop their administrative
6 complaints. These threats had no apparent penological or correctional goals. For example, he told
7 White that he and other staff "have a lot more than that coming your way if you don't drop your
8 complaint."

9 166. Williams issued a false RVR against Unique and transferred her to another housing unit
10 that was unsafe for transgender inmates because Unique had filed an administrative grievance against
11 her, and to prevent Unique from filing additional administrative grievances. The false RVR and
12 transfer had no apparent penological or correctional goals.

13 167. CIM Staff's actions chilled Plaintiffs' First Amendment rights. For example, Unique
14 attempted to withdraw one of her grievances to avoid retaliation. Further, White did not report her
15 subsequent assault at CMC because she feared retaliation. To the extent Plaintiffs did file subsequent
16 grievances, they did so because CDCR had announced the new, purportedly-independent AIMS unit
17 for investigating allegations of staff misconduct in the spring of 2020 that was aimed to prevent staff
18 retaliation.

19 168. CIM Staff's actions also would chill or silence a person of ordinary firmness from
20 future First Amendment activities. For example, CIM Staff repeatedly threatened Plaintiffs' safety.

21 169. Further, Plaintiffs suffered significant other harm as a result of the retaliation. For
22 example, Unique's classification score increased because of the false RVR that Williams issued
23 against her. Further, she was transferred out of Ad-Seg, where she had been placed for her safety, to
24 a facility where her safety was so endangered that the receiving correctional officer refused to house
25 her there.

26 170. The constitutional rights of inmates to be free from retaliation were clearly established
27 at the time CIM Staff retaliated against Plaintiffs. It would have been clear to a reasonable officer that
28 retaliation against inmates for filing grievances was unlawful.

171. Plaintiffs exhausted their administrative remedies as to this claim.

COUNT IV
EIGHTH AMENDMENT CLAIM AGAINST
CIM, CMF, AND CMC HOUSING DEFENDANTS IN THEIR INDIVIDUAL CAPACITIES,
AND EIGHTH AMENDMENT MONELL CLAIM
AGAINST RJD WARDEN AND ALLISON IN THEIR OFFICIAL CAPACITIES
(DELIBERATE INDIFFERENCE - FAILURE TO PROTECT)

172. Plaintiffs incorporate by reference the allegations in paragraphs 1-171.

173. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983.

174. The Eighth Amendment requires that prison officials take reasonable measures to guarantee the safety of inmates. In particular, prison officials have a duty to protect inmates from violence at the hands of other inmates, including by providing safe housing assignments. Sanchez, Amis, and Bluford (collectively, “CIM Housing Defendants”); Iannone and Merrill (collectively, “CMF Housing Defendants”); Grijalva, Riley, Fernandez, Elsayed, and Sterkel (collectively, “CMC Housing Defendants”); Warden Madden; and Allison (collectively, “Housing Defendants”) failed to protect White from attacks by other inmates or from dangerous conditions at the prisons where she was incarcerated, violating her Eighth Amendment rights.

175. CIM, CMF, and CMC Housing Defendants determined Plaintiffs’ housing assignments at CIM, CMF, and CMC respectively. *See* Cal. Code Regs., Tit. 15, § 3269(a) (“Upon arrival at an institution, facility, or program reception center, a designated custody supervisor shall screen an inmate for an appropriate housing assignment.”); § 3376(d)(2)(A) (the Unit Classification Committee must “[r]eview each inmate’s case at least annually . . .”).

176. Warden Madden is involved in the creation and implementation of housing customs, practices, and policies at RJD and has the ability to determine Plaintiffs’ housing assignment at RJD. Allison as the Secretary for the CDCR has the ability to determine Plaintiffs’ housing assignments going forward and will also be involved in the creation and implementation of housing customs, practices, and policies at any institutions to which Plaintiffs may be transferred within CDCR. Such housing customs, practices, and policies affect, and will continue to affect, Plaintiffs wherever Plaintiffs are incarcerated within CDCR.

177. Housing Defendants were aware that transgender individuals suffer disproportionately from sexual assault during incarceration. For example, in 2018, the AMA issued a press release that cited a study of California prisons indicating “59 percent of transgender prisoners experience sexual assault, versus only 4.4 of the overall prison population,” as well as another study reflecting “the proportion of transgender prisoners in California experiencing sexual assault to be as high as 75 percent.”⁹

178. To protect vulnerable transgender inmates from sexual assault, PREA Standards require that all inmates “be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates,” including “[w]hether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming,” “[w]hether the inmate has previously experienced sexual victimization,” and “[t]he inmate’s own perception of vulnerability.” 28 CFR § 115.41. PREA Standards further require that “[i]f vulnerable detainees are identified pursuant to the screening required by § 115.141, security staff shall provide such detainees with heightened protection, to include continuous direct sight and sound supervision, *single-cell housing, or placement in a cell actively monitored on video by a staff member sufficiently proximate to intervene*, unless no such option is determined to be feasible.” 28 CFR § 115.113(d) (emphasis added). Further, since January 2021, the California Penal Code has required that an “individual incarcerated by the Department of Corrections and Rehabilitation who is transgender, nonbinary, or intersex, regardless of anatomy, *shall . . . [h]ave their perception of health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed . . . including, but not limited to, granting single-cell status, housing the individual with another incarcerated person of their choice,* or removing the individual or individuals who pose a threat from any location where they may have access to the individual who has expressed a safety concern.” Ca. Pen. Code § 2606(a)(4) (emphasis added).

⁹ American Medical Association, Press Release: “AMA Urges Appropriate Placement of Transgender Prisoners” (June 11, 2018), [https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners#:~:text=\[https://perma.cc/S4F5-ULTX\]](https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners#:~:text=[https://perma.cc/S4F5-ULTX]).

179. Despite these requirements and known vulnerability of transgender inmates to sexual assault by cisgender male inmates, CDCR, including CIM, CMF, CMC, and RJD, has a custom or practice of failing to safely house transgender inmates. In particular, these facilities house transgender inmates in dorm settings with cisgender male inmates in violation of California regulations (including Ca. Pen. Code §§ 2605–2606) and PREA Standards and without regard to the transgender inmates’ perceptions of safety or to their history of being sexually assaulted by cisgender male staff and inmates. In direct opposition to Cal. Pen. Code §§ 2605–2606, CDCR maintains a custom or practice of unsafe housing practices for transgender inmates that amount to deliberate indifference to Plaintiffs’ constitutional rights to be safely housed. *See* ¶¶48-103, above; *see also* Ex. A.

180. For example, many of White’s vulnerabilities arise from Claybaugh’s actions. White is a victim of sexual assault from the repeated sexual assaults by Claybaugh. Claybaugh’s assaults, therefore, triggered White’s PREA alert on her file which is required to be taken into consideration in future housing assignments and which Housing Defendants have repeatedly failed to do. Claybaugh’s assaults also resulted in mental health issues, another consideration which must be taken into account in future housing assignments and which Housing Defendants have repeatedly failed to do. Claybaugh’s assaults also triggered White’s gender dysphoria and forced White to confront her gender identity in a traumatic fashion and not on her own terms, which must be taken into account in future housing assignments and which Housing Defendants have repeatedly failed to do. On information and belief, CDCR on multiple occasions has failed to take these required factors under consideration in White’s housing assignment as a result of CDCR’s custom and practice of unsafe housing practices for transgender inmates that amount to deliberate indifference to Plaintiffs’ constitutional rights to be safely housed.

181. White was unsafely housed in accordance with this custom and practice at CIM, CMF, and CMC. And RJD’s custom and practice of unsafe housing remains a continual and ongoing to White’s safety.

182. Housing Defendants knew that White faced substantial risk of serious harm if she was housed in dorms or other group housing with cisgender male inmates.

1 183. Through their screening of White and review of her C-Files, Housing Defendants were
2 personally aware that Plaintiffs were transgender, of their history of sexual assault by cisgender staff
3 and inmates, of their perception of safety, and of their request to be housed in the same cell for their
4 safety. See Cal. Code Regs., Tit. 15, § 3269(a) (housing determinations shall be made following a
5 review of, *inter alia*, previous housing status, reason(s) for prior segregation, history of in-cell assaults
6 and/or violence, documentation that the inmate has been the victim of a sexual assault or was
7 previously single celled); and § 3269(d) (housing determinations for single-cell status shall consider
8 “[d]ocumented and verified instances of being a victim of in-cell physical or sexual abuse by another
9 inmate”).

10 184. White’s C-File reflects the history of threats and assaults against her by cisgender staff
11 and inmates. For example, these records reveal that White was repeatedly sexually assaulted by
12 Claybaugh while at SVSP. The file further reveals that White was assaulted at CIM and CMF when
13 she was housed in dorms or a tent with cisgender male inmates. The file further reveals that White
14 repeatedly asked that she be housed in a single cell for her safety and/or be housed in a woman’s
15 prison, including in the administrative grievances that she filed reporting the assaults at SVSP and
16 CMF. White was not seeking this housing assignment based on subjective preferences, but rather
17 based upon a history which reflects a reasonable fear of future sexual assault. Further, White
18 specifically raised her concerns with being housed in dorm-style living with CIM, CMF, and CMC
19 Housing Defendants themselves.

20 185. Further, White reported ongoing assaults at CIM and CMF, but CIM and CMF insisted
21 on keeping her housed in dorm-style facilities and even told her that they did not believe her.

22 186. Despite knowledge of that obvious risk to White, Housing Defendants acted with
23 deliberate indifference to the threat of serious harm to White. Housing Defendants knowingly
24 disregarded the risk to White’s safety and placed her in dorms and a tent in men’s prisons with
25 cisgender male inmates in violation of California regulations and PREA Standards and without regard
26 to White’s perceptions of safety or to her history of being sexually assaulted by cisgender male staff
27 and inmates. CIM, CMF, and CMC Housing Defendants were acting pursuant to the CDCR custom
28

1 or practice of failing to safely house vulnerable transgender inmates, including disregarding
2 transgender inmates' perception of health and safety in housing assignments.

3 187. White suffered assaults as a result of Housing Defendants' deliberate indifference and
4 CDCR's custom and practice of failing to safely house transgender inmates. CDCR's custom and
5 practice were the moving force behind the constitutional violation of White's rights. As a result of
6 Housing Defendants disregarding White's safety concerns and requests to be housed with another
7 transgender inmate, and housing her in dorms or tents with cisgender male inmates, White suffered
8 multiple assaults related to her housing assignments between 2020 and 2022.

9 188. For example, despite White informing CIM Housing Defendants that she was
10 transgender and vulnerable to sexual assault, reporting her sexual assault by Claybaugh at SVSP, and
11 asking to be housed with Unique, CIM Housing Defendants repeatedly housed White in dorm settings.
12 As a result of these unsafe housing placements, White suffered two separate assaults by two separate
13 cisgender male inmates, and one assault by three separate cisgender male inmates, all of whom
14 attacked White because she is transgender.

15 189. Further, despite knowing that White was sexually assaulted by staff at SVSP, and by
16 cisgender male inmates while housed in dorms at CIM, CMF Housing Defendants housed White in a
17 tent with approximately 50 cisgender male inmates, resulting in an additional PREA alert in White's
18 C-File notifying CMF Housing Defendants that White was "at risk as a victim," As a result of this
19 unsafe housing placement, White suffered multiple sexual and physical assaults by the same cisgender
20 male inmate at CMF.

21 190. Further, despite knowing that White was sexually assaulted by staff at SVSP, and by
22 cisgender male inmates while housed in dorms/tents at CIM and CMF, and the PREA alert in White's
23 C-File, CMC Housing Defendants placed White in a dorm. As a result of this unsafe housing
24 placement, White suffered a physical assault at CMC by one male prisoner who also attempted to
25 sexually assault her.

26 191. Further, despite knowing that White was sexually assaulted by staff at SVSP, and by
27 cisgender male inmates while house in dorms/tents at CIM, CMF, and CMC, and the PREA alert in
28 White's C-File, RJD housing staff endorsed White to be transferred to a dorm with cisgender male

1 inmates in Facility E, where she is likely to be assaulted yet again. White has raised her safety concerns
 2 with this housing endorsement to the RJD associate warden, and in administrative grievances that were
 3 reviewed by Warden Madden's designated representative.

4 192. Honoring White's requests to be housed in a cell with another transgender inmate
 5 would have prevented White's injuries at the hands of cisgender male inmates in dorm settings.

6 193. The constitutional right of inmates to be protected from violence at the hands of other
 7 inmates, including by obtaining appropriate housing assignments, was clearly established at the time
 8 CIM, CMF, and CMC Housing Defendants failed to provide safe housing. It would have been clear
 9 to a reasonable officer that their conduct in failing to provide safe housing was unlawful.

10 194. Plaintiffs have exhausted their administrative remedies as to this claim.

11 **JURY DEMAND**

12 Pursuant to Civ. L.R. 3-6 and Fed. R. Civ. P. 38, Plaintiffs' demand trial by jury for all causes
 13 of action, claims, or issues in this action that are so triable.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs' demand judgment against Defendants as follows:

16 195. Judgment in Plaintiffs' favor and against Defendants on all causes of action alleged
 17 herein against them;

18 196. An order requiring Defendants to comply with California regulations and PREA
 19 Standards in assigning Plaintiffs to safe housing, including giving Plaintiffs' perception of health and
 20 safety serious consideration in any bed assignment and placement including, but not limited to,
 21 housing Plaintiffs with another incarcerated person of their choice;

22 197. An award of compensatory damages;

23 198. An award of punitive damages;

24 199. An award of reasonable legal fees and expenses to Plaintiffs pursuant to 42 U.S.C.
 25 § 1988; and

26 200. Any other relief that the Court may deem to be just and proper.

27
28

1 DATED: April 13, 2023

Respectfully submitted,

2 /s/ Nadia Haghighatian

3 Nadia Haghighatian (admitted *pro hac vice*)

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