UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

REIYN KEOHANE,

Plaintiff,

v.

JULIE JONES, in her official capacity as Secretary, Florida Department of Corrections; TRUNG VAN LE, in his official capacity as Chief Health Officer of the Desoto Annex; TERESITA DIEGUEZ, in her official capacity as Medical Director of Everglades Correctional Institution; and FRANCISCO ACOSTA, in his official capacity as Warden of Everglades C.I.,

Defendants.

CASE NO. 4:16cv511-MW/CAS

DEFENDANTS, DOCTOR TRUNG VAN LE AND DOCTOR TERESITA DIEGUEZ'S, MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF [DE #1] AND INCORPORATED MEMORANDUM OF LAW

Defendants, DOCTOR TRUNG VAN LE and DOCTOR TERESITA DIEGUEZ, pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1), move to dismiss Plaintiff's Complaint for Declaratory and Injunctive Relief for failure to state a claim and lack of subject matter jurisdiction based on mootness. In support of their Motion, Dr. Le and Dr. Dieguez incorporate the following Memorandum of Law, and state as follows:

BACKGROUND[1]

Plaintiff, Reiyn Keohane, is serving a 15 year prison sentence within the Florida Department of Corrections. [DE #1 ¶¶ 1, 33]. Although Plaintiff was born male, Plaintiff identifies with the

[1] For the sole purpose of this Motion to Dismiss, Dr. Le and Dr. Dieguez accept the Plaintiff's factual allegations as true as required by federal law. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.") Accordingly, Dr. Le and Dr. Dieguez refer to the Plaintiff with use of feminine pronouns as alleged in this Motion.

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female gender identity. [DE #1 ¶¶ 25-26; DE #3-2, 3-4, 3-5]. Before Plaintiff's incarceration, she was diagnosed with Gender Dysphoria, a medical condition in which the person's internal sense of their own gender differs from their external anatomy. [DE #1 ¶¶ 11-15, 28].

Around September 22, 2013, Plaintiff was charged with attempted second degree murder and taken into the custody of the Lee County Jail. [DE #1 ¶ 31]. Plaintiff was confined in the Lee County Jail from September 22, 2013 until July 17, 2014. [DE #1 ¶¶ 32-34]. Plaintiff did not obtain treatment of any kind for Gender Dysphoria during this time. [DE #1 ¶¶ 32-34]. Plaintiff has been committed in the Department of Corrections from July 17, 2014 to April 9, 2015 and from December 16, 2015 to the present. [DE #1 ¶¶ 34, 64]. Between April 9, 2015 and December 16, 2015, Plaintiff was transferred to the Charlotte County Jail because she was charged with tampering with a security device at the Charlotte Correctional Institution. [DE #1 ¶ 64]. Although Plaintiff alleges various interactions with numerous "DOC officials," she has had very limited interaction with Dr. Le and Dr. Dieguez. *See generally* [DE #1].

Plaintiff filed a one count Complaint for Declaratory and Injunctive Relief against all Defendants (Secretary of Corrections Jones, Warden Acosta, Dr. Le and Dr. Dieguez) for the alleged denial of medically necessary care for gender dysphoria in violation of the Eighth Amendment to the United States Constitution. [DE #1 ¶¶ 87-98]. Dr. Le was[2] the Chief Health Officer of the Desoto Annex, where Plaintiff was committed from August 26, 2014 through January 13, 2015. [DE #1 ¶¶ 8, 40, 60]. Plaintiff does not allege ever meeting with Dr. Le; however, seeks to pursue a deliberate indifference claim against him. [DE #1 ¶ 8]. Dr. Dieguez is the Medical Director of the Everglades Correctional Institution, where Plaintiff has been committed since February 18, 2016. [DE #1 ¶¶ 9, 70].

[2] While Dr. Le is sued in his official capacity as the Chief Health Officer of the Desoto Annex. [DE #1 ¶ 8], Dr. Le has since retired.

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Plaintiff's allegations essentially fall into three categories: (1) denial of hormone therapy; (2) lack of access to female clothing standards; and (3) lack of access to female grooming standards. [DE #1 ¶ 91].

INCORPORATED MEMORANDUM OF LAW

Pursuant to N.D. Fla. Local Rule 7.1(E), Dr. Le and Dr. Dieguez incorporate the following memorandum of law into this document in support of their Motion to Dismiss Plaintiff's Complaint.

GENERAL PLEADING STANDARD

Plaintiff fails to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) and the pleading standard required by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). A complaint must include "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. While the Court must accept factual allegations as true for the purposes of a Motion to Dismiss, this tenet is inapplicable to legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678. Moreover, the court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

ARGUMENT

A. Plaintiff's Complaint fails to seek specific and plausible relief against Dr. Le or Dr. Dieguez.

Plaintiff's Complaint seeks a Prayer for Relief, as follows:

a) Declare that the DOC is denying Plaintiff medically necessary treatment for Gender Dysphoria in violation of the Eighth Amendment to the United States Constitution;

b) Enter a permanent injunction directing the DOC to provide to Plaintiff hormone therapy, access to female clothing and grooming standards, and all other treatment for Gender Dysphoria deemed medically necessary by a qualified professional in the treatment of the condition;

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c) Enter a permanent injunction enjoining the DOC from enforcing its rule limiting treatment for Gender Dysphoria to treatment provided prior to incarceration (Procedure 602.053, Specific Procedure 2(a)5.);

d) Direct the entry of judgment for Plaintiff against Defendants for nominal damages of $1;

e) Award Plaintiff her reasonable attorneys' fees, litigation expenses, and costs incurred in connection with this action from Defendants, pursuant to 42 U.S.C. § 1988; and

f) Award all other relief that this Court deems just and proper.

[DE #1 ¶ 98].

As shown above, subparagraphs a, b, and c seek declaratory and injunctive relief solely against the DOC. Because no specific and plausible relief is sought against either Doctor, the Complaint fails to state cause of action against them.

Because Plaintiff fails to state a cause of action, she is not entitled to money damages as alleged in subparagraph d. Moreover, as Plaintiff alleges, the Doctors acted under color of state law at all material times. [DE #1 ¶ 97]. Therefore, Plaintiff's claim for damages is barred by Eleventh Amendment Immunity. *See Zabriskie v. Court Admin.*, 172 F. App'x 906, 907-909 (11th Cir. 2006). It does not matter that Plaintiff seeks only nominal damages. *Simmons v. Conger*, 86 F.3d 1080, 1084 (11th Cir. 1996).

Finally, because Plaintiff is not seeking relief against Dr. Le or Dr. Dieguez as alleged in subparagraphs 98a through 98d, Plaintiff is not entitled to an award of attorneys' fees, litigation expenses and costs pursuant to 42 U.S.C. § 1988.

B. Plaintiff's Complaint fails to comply with Rule 8 because Plaintiff lumps the allegations against all Defendants and non-parties together in an attempt to seek relief.

A pleading that states a claim for relief must contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for the relief sought. Fed. R. Civ. P. 8(a)(2) and (3). Moreover, "[a] complaint that lumps all the defendants together in each claim and provides no factual basis to distinguish their conduct fails to satisfy Rule 8." *Pro Image Installers*,

Inc. v. Dillon, No. 3:08CV273/MCR/MD, 2009 WL 112953, at *1 (N.D. Fla. Jan. 15, 2009) (internal quotations omitted). To the contrary, a complaint alleging multiple claims against multiple defendants must give adequate notice to each defendant as to the nature of the claim. *Joseph v. Bernstein*, Case No. 13–24355–CIV, 2014 WL 4101392 at *3 (S.D. Fla. Aug. 19, 2014).

Plaintiff's Complaint fails to provide a basis for declaratory or injunctive relief against either Doctor based on the specific allegations against them. While Plaintiff sued four Defendants in this lawsuit, Plaintiff alleges only one count – the denial of medically necessary care in violation of the Eighth Amendment to the United States Constitution. [DE #1 ¶¶ 87-98]. There are numerous allegations throughout Plaintiff's Complaint against the DOC and DOC Officials which appear to be bases for seeking relief against Doctors Le and Dieguez. For example, Plaintiff often refers to an undefined class of "DOC Officials, including Le and Dieguez." [DE #1 ¶¶ 89, 91-93, 96-97]. Dismissal is especially appropriate when a plaintiff attempts to hold one defendant liable for the acts of others. *Pro Image Installers, Inc. v. Dillon*, No. 3:08CV273/MCR/MD, 2009 WL 112953, at *2 (N.D. Fla. Jan. 15, 2009). Because Plaintiff's Complaint contains numerous allegations of wrongdoing against various individuals and the DOC generally, and because such allegations cannot be imputed to either Dr. Le or Dr. Dieguez, dismissal is appropriate.

C. Neither Doctor was deliberately indifferent to a serious medical need of the Plaintiff.

Not every claim by a prisoner that alleges inadequate medical treatment states a violation of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 105 (1976). "In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Id.* at 106. Therefore, a plaintiff must allege: (1) a serious medical need; (2) deliberate indifference to that need by the defendants; and (3) causation between the defendants' indifference and the plaintiff's injury. *Youmans v. Gagnon*, 626 F.3d 557, 563 (11th Cir. 2010). "In order to establish deliberate indifference to a serious medical need on the part of a

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defendant, a plaintiff must show subjective knowledge of a risk of serious harm and disregard of that risk by conduct that is more than gross negligence." *Hood v. Dep't of Children & Families*, No. 2:12-CV-637-FTM-29, 2015 WL 686922, at *5 (M.D. Fla. Feb. 18, 2015) (citing *Townsend v. Jefferson County*, 601 F.3d 1152, 1158 (11th Cir. 2010)).

1. Plaintiff's factual allegations fail to support a deliberate indifference claim against Dr. Le.

Plaintiff's specific allegations against Dr. Le for the denial of Plaintiff's request for treatment of her gender dysphoria appear to be based on Dr. Le's denial of Plaintiff's grievance in 2014 [DE #1 ¶ 55]. While Dr. Le denied the grievance on November 20, 2014, he noted that hormone therapy was not provided at the time because Plaintiff had cancelled her last appointment with her Doctor in November of 2013 and that her Doctor noted the prescription for the hormone therapy would be suspended as it would be dangerous to continue without any close endocrine supervision. [DE #1 ¶ 55]. Plaintiff does not allege that she ever attempted to "correct" Dr. Le's understanding that the reason of the cancellation of the appointment was because Plaintiff was in jail. Rather, Plaintiff alleges only that she informed the DOC Secretary and a Dr. Sicilia of these facts. [DE #1 ¶ 56-57]. There are no allegations that Dr. Le knew of these facts, let alone was deliberately indifferent to a serious medical need. Dr. Le also advised Plaintiff that she was being seen by mental health staff with an individualized service plan and that Plaintiff could contact the health care staff. *Id.*

Without any further communication to Dr. Le, Plaintiff alleges she cut a 3cm laceration into her scrotum. In response, it was recommended that Plaintiff see a psychiatrist for treatment. [DE #1 ¶ 59]. Plaintiff does not allege any further interaction with Dr. Le. Therefore, such facts do not support a claim that Dr. Le had subjective knowledge of a risk of serious harm, that he was deliberately indifferent to such risk, and that there was causation between the alleged indifference and Plaintiff's injury.

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2. Plaintiff's factual allegations fail to support a deliberate indifference claim against Dr. Dieguez.

Plaintiff alleges that Dr. Dieguez denied Plaintiff's grievance for treatment on May 18, 2016. [DE #1 ¶ 77]. The grievance was denied, however, based on the request for the Plaintiff to sign an authorization for the release of information for all pertinent outside medical and mental health records related to the Plaintiff's gender dysphoria. [DE #1 ¶ 77]. Plaintiff failed to comply with the request. [DE #1 ¶ 78]. Instead, Plaintiff appears to take the position that she was not required to sign the release because she did so previously while she was confined at two separate institutions. [DE #1 ¶ 78]. Plaintiff does not allege any further interaction with Dr. Dieguez. Therefore, such facts do not support a claim that Dr. Dieguez had subjective knowledge of a risk of serious harm, that she was deliberately indifferent to such risk, and that there was causation between the alleged indifference and Plaintiff's injury.

D. Plaintiff's Complaint should be dismissed for lack of subject matter jurisdiction because the claims are moot.

1. Plaintiff's alleged claim against Dr. Le is moot because Plaintiff is no longer confined at the Desoto Annex.

"[A] prisoner's request for injunctive relief relating to the conditions of his confinement becomes moot when he is transferred." *Davila v. Marshall*, No. 15-10749, 2016 WL 2941929, at *2 (11th Cir. May 20, 2016) (citing *Spears v. Thigpen*, 846 F.2d 1327, 1328 (11th Cir.1988)); *see also Smith v. Courtney*, No. 3:14CV231/MCR/CJK, 2016 WL 1554137, at *5 (N.D. Fla. Mar. 22, 2016), *report and recommendation adopted*, No. 3:14CV231-MCR/CJK, 2016 WL 1532246 (N.D. Fla. Apr. 15, 2016) (denying prisoner's claim for declaratory and injunctive relief against three employees of the Santa Rosa Correctional Institution as moot because Plaintiff was transferred from the institution). A case that is moot is properly dismissed for lack of subject matter jurisdiction. *Lobianco v. John F. Hayter, Attorney at Law, P.A.*, 944 F. Supp. 2d 1183, 1186 (N.D. Fla. 2013) (citing *Genesis Healthcare Corp. v. Symczyk*, 133 S.Ct. 1523, 1532 (2013)).

Dr. Le was the Chief Medical Officer at the Desoto Annex, where Plaintiff was committed from August 26, 2014 through January 13, 2015. [DE #1 ¶¶ 8, 40, 60]. Because Plaintiff is no longer committed at the Desoto Annex, her challenges seeking injunctive relief against Dr. Le in his official capacity as the former Chief Health Officer of Desoto Annex are moot. Therefore, the claim against Dr. Le must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

2. Plaintiff's alleged claim against Dr. Dieguez, to the extent one can be inferred from the Complaint, is moot because Plaintiff currently receives hormone therapy.

"A case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Reich v. Occupational Safety & Health Review Comm'n*, 102 F.3d 1200, 1201 (11th Cir. 1997) (citing *Powell v. McCormack*, 395 U.S. 486, 496, (1969)) (internal quotations omitted). A claim for injunctive relief may be moot if "(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Reich*, 102 F.3d at 1201 (citing *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)).

As discussed above, Plaintiff has not sought any specific declaratory or injunctive relief against Dr. Dieguez. *See supra* pp. 3-4. Nonetheless, Plaintiff has since been provided the hormone therapy during a visit with an endocrinologist on September 2, 2016. To the extent that Plaintiff's Complaint can be construed as requiring Dr. Dieguez to personally provide Plaintiff with hormone therapy, Plaintiff's claim is therefore moot. *See Smith v. Sec'y, Dep't of Corr.*, 602 F. App'x 466, 470-471 (11th Cir. 2015) (inmate's claim that he required placement of a crown on his tooth was moot once the tooth was fixed); *see also Wilson v. Franceschi*, 735 F. Supp. 395, 401–02 (M.D. Fla. 1990) (holding prisoner's injunctive relief claims were moot because the prisoner was provided the requested treatment and the plaintiff failed to show an immediate threat of repeated injury).

E. Plaintiff fails to state a cause of action against Dr. Le or Dr. Dieguez regarding "access to female clothing and grooming standards" because neither Doctor is charged with enforcing the Department of Corrections' Policies or constitutionally required to provide the Plaintiff with such "access."

1. Female clothing standards

a. Department of Corrections Policies, which are enforced by Secretary Jones, govern the type of clothing Plaintiff is required to wear.

Clothing standards for Department of Corrections Inmates are governed by Department of Corrections Policy, as codified by Rule 33-602.101, Florida Administrative Code. "Inmates shall at all times wear the regulation clothing and identification card in accordance with Department rules, procedures, and institution policy." Rule 33-602.101(2), Fla. Admin. Code. The DOC Procedure identifies three classes of uniforms (A, B, and C) and specifies when each class of uniform shall be worn. Rule 33-602.101(2)(b), Fla. Admin. Code. Each class of uniform provides different requirements for males and females Rule 33-602.101(2)(a), Fla. Admin. Code.

As Plaintiff's Complaint acknowledges, Defendant Jones, as the Secretary of Corrections, is "responsible for planning, coordinating, and managing the corrections system of the state." 20.315(3), Fla. Stat.; [DE #1 ¶7]. Moreover, the Department of Corrections has authority to adopt rules to implement its statutory authority, including uniforms for inmates. § 944.09(1)(*i*), Fla. Stat. Neither Dr. Le nor Dr. Dieguez is responsible for enforcing the clothing standards. Therefore, any enforcement or exceptions to these policies must be granted by the Secretary or her designee, and there is no cause of action against either Doctor.

b. There is no allegation that either Doctor had subjective knowledge of Plaintiff's request for female clothing or underwear.

"In order to establish deliberate indifference to a serious medical need on the part of a defendant, a plaintiff must show subjective knowledge of a risk of serious harm and disregard of that risk by conduct that is more than gross negligence." *Hood v. Dep't of Children & Families*, No. 2:12-CV-637-FTM-29, 2015 WL 686922, at *5 (M.D. Fla. Feb. 18, 2015) (citing *Townsend v. Jefferson County*, 601 F.3d 1152, 1158 (11th Cir. 2010)). The first time Plaintiff alleges she

requested female underwear from any prison official was at the Dade Correctional Institution, where neither Dr. Le nor Dr. Dieguez is or was the Chief Medical Officer. [DE #1 ¶¶ 8-9, 66]. This request occurred on December 31, 2015 when Plaintiff filed an informal grievance. [DE #1 ¶ 66]. By this time, Plaintiff had long been transferred from the Desoto Annex, where Dr. Le was the Chief Medical Officer, and had not yet arrived at the Everglades Correctional Institution, where Dr. Dieguez is the Medical Director. [DE #1 ¶¶ 8, 9, 40, 60, 70]. As discussed above, Plaintiff's allegations against "DOC Officials" generally is insufficient to provide this subjective knowledge. *See supra* p. 5. Because the Complaint fails to provide any factual basis that either Doctor had subjective knowledge of the Plaintiff's request for female clothing or underwear, Plaintiff fails to state a claim for deliberate indifference.

c. Plaintiff's desire to wear female clothing does not support a claim for cruel and unusual punishment under the Eighth Amendment against either Doctor.

Neither Dr. Le nor Dr. Dieguez are constitutionally obligated to violate Department of Corrections Policy in order to provide Plaintiff with "access to female clothing," as alleged. [DE #1 ¶¶ 91-93]. Plaintiff currently resides at the Everglades Correctional Institution, a male facility. [DE #1 ¶ 70]; Florida Department of Corrections Facility Directory, http://www.dc.state.fl.us/orginfo/facilitydir.html (identifying Everglades Correctional Institution as a male facility) (last accessed September 12, 2016). As discussed above, neither Doctor is engaged in the provision of clothing or uniforms. Therefore, neither Doctor is constitutionally obligated to violate Department of Corrections policy and provide the Plaintiff with the female clothing Plaintiff demands.

Nonetheless, lack of access to female clothing in a male prison does not support an inmate's claim for cruel and unusual punishment. In *Hood v. Department of Children and Families*, the court found no authority "indicating that a transgender person has the right to choose the clothing worn while confined or that the facility is constitutionally obligated to purchase all the clothing and

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feminine products requested." *Hood*, No. 2:12-CV-637-FTM-29, 2015 WL 686922, at *8 (M.D. Fla. Feb. 18, 2015). In support of its conclusion, the Court noted that federal courts have generally held the opposite. *Id.* (citing *Murray v. United States Bureau of Prisons*, 106 F.3d 401 (6th Cir.1997) (transsexual prisoner not entitled to wear clothing of his choice and prison officials do not violate the Constitution simply because the clothing is not aesthetically pleasing); *Star v. Gramley*, 815 F.Supp. 276 (C.D.Ill.1993) (noting that provision of female clothing to transsexual prisoner would be unduly burdensome for prison officials and would make little fiscal sense); *Jones v. Warden of Stateville Corr. Ctr.*, 918 F.Supp. 1142 (N.D.Ill.1995) ("Neither the Equal Protection Clause nor the First Amendment arguably accord [Plaintiff] the right of access to women's clothing while confined in a state prison."). The Court therefore dismissed Plaintiff's claims. *Hood*, 2015 WL 686922 at *8.*; See also Brown v. Wilson*, No. 3:13CV599, 2015 WL 3885984 at *6 (E.D. Va. June 23, 2015) (dismissing inmate's claim that the inmate was subjected to cruel and unusual punishment "by failing to allow her to purchase commissary products appropriate for assisting her in her transition to a female gender, *i.e.*, facial makeup, clothing, and other items.") (internal quotations omitted). Similarly, there can be no cause of action against the Doctors for deliberate indifference to a serious medical need regarding the provision of female clothing.

2. Female grooming standards

a. Like clothing standards, grooming standards are set by Department of Corrections Policy.

Like clothing standards, grooming standards for Department of Corrections Inmates are governed by Department of Corrections Policy, as codified by Rule 33-602.101, Florida Administrative Code. Specifically "[m]ale inmates shall have their hair cut short to medium uniform length at all times with no part of the ear or collar covered." Rule 33-602.101(4), Fla. Admin. Code. In addition, "[f]emale inmates may possess one (1) disposable state-issued razor." *Id.* As with clothing standards, neither Dr. Le nor Dr. Dieguez is responsible for enforcing grooming

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standards. Therefore, any enforcement or exceptions to these policies must be granted by the Secretary or her designee, and there can be no cause of action against either Doctor for deliberate indifference to a serious medical need regarding the access to grooming standards.

b. There is no allegation that either Doctor had subjective knowledge of Plaintiff's request for a waiver of the Department of Corrections Policy on hair length.

Nonetheless, Plaintiff's Complaint fails to allege a specific factual allegation that either Doctor had subjective knowledge of Plaintiff's request for a waiver of the Department of Corrections Policy on hair length. As discussed above, Plaintiff's allegations against "DOC Officials" generally is insufficient to allege either Doctor's subjective knowledge. *See supra* p. 5.

c. Plaintiff's desire to have longer hair does not support a claim for cruel and unusual punishment under the Eighth Amendment against either Doctor.

Neither Dr. Le nor Dr. Dieguez are constitutionally obligated to violate Department of Corrections Policy in order to provide Plaintiff with "access to female…grooming standards" as alleged. In addition to not being responsible for enforcing or excepting grooming standards, neither Doctor is in a position to permit the Plaintiff the ability to grow hair longer than "short to medium" length as required by Rule 33-602.101(4). Plaintiff does not suffer from any medical need which allegedly prevents the Plaintiff from being able to grow long hair. Rather, it is the DOC Policy, as codified by Rule 33-602.101(4), which apparently prevents the Plaintiff from being able to grow long hair. Because neither Doctor enforces these procedures, there is no cause of action against either Doctor based on an alleged constitutional violation.

Moreover, "restrictions placed on [the prisoner's] choice of haircut do not present the type of deprivation of life's necessities that rise to an Eighth Amendment violation." *Casey v. Hall*, No. 2:11-CV-588-FTM-29, 2011 WL 5583941, at *3 (M.D. Fla. Nov. 16, 2011) (citing *Chandler v. Crosby*, 379 F. 3d 1278, 1298 (11th Cir. 2004)); *Taylor v. Gandy*, No. CIV.A. 11-00027-KD-B, 2012 WL 6062058, at *4 (S.D. Ala. Nov. 15, 2012), *report and recommendation adopted,* No.

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CIV.A. 11-00027-KD-B, 2012 WL 6062072 (S.D. Ala. Dec. 6, 2012) (prisoner's disagreement with prison grooming policy or Defendants' interpretation of the policy fails to support a deliberate indifference claim under the Eighth Amendment).

REQUEST FOR RELIEF

WHEREFORE, Defendants, TRUNG VAN LE and TERESITA DIEGUEZ, respectfully move this Court for dismissal of Plaintiff's Complaint against them for failure to state a claim. In the alternative, Dr. Le and Dr. Dieguez move to dismiss Plaintiff's claims for lack of subject matter jurisdiction based on mootness. Finally, Dr. Le and Dr. Dieguez demand judgment in their favor together with any attorneys' fees and costs as may be recoverable by law, and request the entry of any other relief this Court deems just and proper.

WORD COUNT CERTIFICATE

Pursuant to N.D. Fla. Local Rule 7.1(F), I hereby certify that this Motion is in compliance with the Court's word limit. According to the word processing program used to prepare this Motion, the total number of words in the document, inclusive of headings, footnotes and quotations, and exclusive of the case style, signature block, and any certificate of service is 4206.

Respectfully submitted,

By: ***s/Daniel R. Lazaro***

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **12th day of September 2016**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record, in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

By: ***s/Daniel R. Lazaro***

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