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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CHRISTINA M. KETCHAM,
Plaintiff

v.

REGENCE BLUECROSS
BLUESHIELD OF OREGON;
CITYCOUNTY INSURANCE
SERVICES; and CLATSOP COUNTY,
OREGON,
Defendants.

Case No. _____

COMPLAINT

(O.R.S. §§ 659A.030, 659A.112, 659A.403,
659A.406, 659A.199, 746.015, and Oregon
Constitution Art. I §§ 20, 46)

**CLAIMS ARE *NOT* SUBJECT TO
MANDATORY ARBITRATION**

REQUEST FOR JURY TRIAL

Prayer: \$375,000

Filing fee \$560.00 per O.R.S. 21.160(1)(c)

COMPLAINT

Plaintiff Christina M. Ketcham brings this action against Defendants Regence BlueCross BlueShield of Oregon, CityCounty Insurance Services, and Clatsop County, Oregon for violations of O.R.S. §§ 659A.030, 659A.112, 659A.403, 659A.406, 659A.199, 746.015, and Oregon Constitution Art. I §§ 20, 46.

1 healthcare providers submitted a prior authorization request for those procedures. Due to a
2 categorical exclusion for facial-feminization surgery in Ms. Ketcham’s employer-sponsored
3 health insurance plan, the request was denied. She appealed those decisions, each time providing
4 additional information in support of the medical necessity of the requested procedures, and each
5 time she was denied. The final denial was on August 14, 2018.

6 5.

7 Ms. Ketcham subsequently filed timely tort-claims notices and a complaint with the
8 Oregon Bureau of Labor and Industry (“BOLI”). On April 22, 2019, BOLI issued a right-to-sue
9 letter to Ms. Ketcham.

10 **II. JURISDICTION, VENUE, AND PARTIES**

11 6.

12 Ms. Ketcham resides in the city of Astoria in Clatsop County, Oregon. She has been an
13 employee of Clatsop since 1990. Since 2002, she has held the position of Fisheries Biological
14 Aide in the Clatsop County Fisheries Project.

15 7.

16 Defendant Clatsop is Ms. Ketcham’s employer. Clatsop has more than 15 employees.
17 Clatsop is a public and corporate body under Oregon law.

18 8.

19 Defendant CityCounty Insurance Services (“CIS”) is an insurance pool that was formed
20 by the League of Oregon Cities and the Association of Oregon Counties and provides coverage
21 to 98% of cities and over 78% of counties in Oregon. CIS is a public body under Oregon law.
22 CIS has its principal place of business in the city of Salem in Marion County, Oregon. Upon
23 information and belief, CIS conducts regular, sustained business activities in Multnomah County,
24

1 Oregon. CIS provides, *inter alia*, health insurance coverage for its members, through the CIS
2 Trust, which is administered by the CIS Board of Trustees. Upon information and belief, CIS
3 plays a role in determining the health insurance coverage and options for Clatsop employees like
4 Ms. Ketcham.

5 9.

6 Clatsop is a member of CIS, through which Clatsop provides, as a benefit of
7 employment, a self-funded healthcare plan to its employees (the “Plan”), including Ms.
8 Ketcham.

9 10.

10 Defendant Regence BlueCross BlueShield of Oregon (“Regence”) administers the Plan,
11 which is provided through CIS. Regence has its principal place of business in the city of
12 Portland in Multnomah County, Oregon.

13 11.

14 Venue lies with this Court pursuant to O.R.S. § 14.080 because at least one defendant
15 resides within this County and because a substantial part of the events giving rise to the claims
16 occurred within this County.

17 **III. STATEMENT OF FACTS**

18 12.

19 Ms. Ketcham is a transgender woman seeking access to medically necessary treatment
20 for her gender dysphoria that is excluded by her employer-provided health insurance plan in
21 violation of Oregon’s Constitution and antidiscrimination laws.
22
23
24

Transgender Individuals and Gender Dysphoria

13.

Gender identity is a well-established medical concept that refers to one’s sense of belonging to a particular gender, such as male or female. It is a hard-wired and core component of human identity.¹ For most people, their gender identity is consistent with their birth sex, which is referred to in medical literature as assigned sex at birth. Transgender people have a gender identity that differs from their assigned sex at birth.

14.

Although medical science has not yet fully determined what causes a person to be transgender, an increasing body of evidence suggests that there is a strong biological component. Transgender men are men who have a male gender identity but were assigned “female” at birth. Transgender women are women who have a female gender identity but were assigned “male” at birth.

15.

Men and women who are transgender have no impairment in judgment, stability, reliability, or general social or vocational capabilities solely because of their transgender status. But they may require treatment for “gender dysphoria,” a serious medical condition codified in the DSM-5 and the World Health Organization’s International Classification of Diseases.² People diagnosed with gender dysphoria experience intense and persistent emotional distress as a result of the incongruence between their gender identity and their assigned sex.

¹ Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2013) (hereinafter “DSM-5”).

² *Id.*; Int’l Classification of Diseases, *Gender incongruence of adolescence or adulthood* (2019), <https://icd.who.int/browse11/l-m/en#/http%3a%2f%2fid.who.int%2fid%2fentity%2f90875286>.

1 **Medically Recognized Treatment for Gender Dysphoria**

2 16.

3 The widely accepted standards for treating gender dysphoria are set forth in the Standards
4 of Care for Health of Transsexual, Transgender, and Gender Nonconforming People (“Standards
5 of Care”) published by the World Professional Association for Transgender Health (“WPATH”).
6 WPATH is an international, multidisciplinary, professional association that is broadly recognized
7 as the authoritative source on evidenced-based care, education, and policy for transgender health.

8 17.

9 The WPATH Standards of Care are endorsed by the major associations of medical and
10 mental health professionals in the United States, including the American Medical Association,
11 American Psychological Association, American Psychiatric Association, and Endocrine Society,
12 as well as international professional medical organizations such as the World Health
13 Organization.

14 18.

15 Courts have consistently found the WPATH Standards of Care to be the prevailing
16 standard for the treatment of gender dysphoria.³

17 19.

18 The WPATH Standards of Care explain that medically necessary treatment for gender
19 dysphoria may require medical steps to align one’s physical characteristics with one’s gender
20

21
22 ³ See, e.g., *Hicklin v. Precynthe*, No. 4:16-cv-02357-NCC, Dkt. No. 176, at 5-6 (E.D. Mo. May 22, 2018);
23 *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1186 (N.D. Cal. 2015) (WPATH Standards of Care are the
24 accepted standards of treatment for transgender patients); see also *De'lonta v. Johnson*, 708 F.3d 520, 522-23
(4th Cir. 2013); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 231 (D. Mass. 2012); *O'Donnabhain v. Comm'r of
Internal Revenue*, 134 T.C. 34, 65 (U.S. Tax Ct. 2010).

1 identity. Such treatment may include hormone therapy, surgery—including facial-feminization
2 procedures—and other medical services.

3 20.

4 Men and women are sexually dimorphic, which means they exhibit distinct physical
5 differences beyond reproductive organs that are created by the presence of sex hormones in the
6 body during puberty. These differences are visible in facial hair, hair distribution, laryngeal
7 prominence (the “Adam’s apple”), facial shape, and other physical characteristics. As a result,
8 transgender women who begin treatment for gender dysphoria after completing puberty are often
9 mistakenly perceived as men rather than women.

10 21.

11 Surgical treatments to alter these characteristics can alleviate the distress experienced by
12 many transgender women. A broad range of surgical procedures, commonly referred to as
13 facial-feminization surgeries, may be medically necessary to reconstruct a transgender woman’s
14 facial features so that her face properly functions to identify her as a woman. The procedures
15 that fall within the category of facial-feminization surgeries include rhinoplasty, osteoplasty
16 (facial bone reduction), face-lift, and blepharoplasty (eye-lid lift).

17 22.

18 The WPATH Standards of Care and the extensive medical literature on facial-
19 feminization surgeries recognize that these and other facial-feminization procedures are not
20 performed to increase the aesthetic appeal of a transgender woman’s face. Instead, their purpose
21 is to alleviate a transgender woman’s gender dysphoria by bringing her facial features into
22 alignment with her gender identity, thereby improving her health and functioning.

1 23.

2 The WPATH Standards of Care explicitly state that facial-feminization procedures, along
3 with other gender confirming surgeries: “are not ‘cosmetic’ or ‘elective’ or ‘for the mere
4 convenience of the patient.’ These reconstructive procedures are not optional in any meaningful
5 sense, but are understood to be medically necessary for the treatment of the diagnosed condition.
6 In some cases, such surgery is the only effective treatment [for a transgender person’s gender
7 dysphoria].”⁴

8 24.

9 The WPATH Standards of Care further explain that “[f]or certain patients an intervention
10 like a reduction rhinoplasty can have a radical and permanent effect on their quality of life, and
11 therefore is more medically necessary than for someone without gender dysphoria.”⁵

12 25.

13 WPATH’s position on the medical necessity of facial-feminization procedures is
14 supported by extensive and robust evidence-based medical literature.⁶ As a recent literature
15 review found, “[t]he current level of evidence is close to the maximal level of evidence that can
16 be expected for a surgical procedure, as randomized clinical trials will likely never be offered for
17 these procedures.”⁷ As a result, the review concluded that “facial gender confirmation surgery
18 needs to be part of comprehensive surgical gender-confirming care.”⁸

19
20
21 ⁴ WORLD PROF’L ASSOC. FOR TRANSGENDER HEALTH (WPATH), *Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.* 5, <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH-Position-on-Medical-Necessity-12-21-2016.pdf>.

22 ⁵ WPATH, *Standards of Care* 58 (7th ed. 2011); see also WPATH, *supra* note 4, at 2.

23 ⁶ Jens U. Berli et al., *Facial Gender Confirmation Surgery – Review of the Literature and Recommendations for Version 8 of WPATH Standards of Care*, 18(3) INT’L J. OF TRANSGENDERISM 264 (2017).

24 ⁷ *Id.* at 268.

⁸ *Id.*

1 **The Plan’s Exclusion of the Facial-Feminization Procedures**

2 26.

3 Clatsop provides the Plan to Ms. Ketcham as a benefit of her employment.

4 27.

5 The Plan is funded by CIS and administered by Regence.

6 28.

7 The Plan generally provides coverage for treatments that meet Regence’s definition of
8 “medical necessity.”⁹ Regence’s policies define “medical necessity” as:

9 [H]ealth care services that a physician, exercising prudent clinical
10 judgment, would provide to a patient for the purpose of preventing,
11 evaluating, diagnosing or treating illness, injury, disease or its
12 symptoms, and that are:

12 a. In accordance with generally accepted standards of
13 medical practice;

14 b. Clinically appropriate, in terms of type, frequency,
15 extent, site and duration, and considered effective for the
16 patient’s illness, injury, or disease; and

17 c. Not primarily for the convenience of the patient,
18 physician, or other health care provider, and not more
19 costly than an alternative service or sequence of services at
20 least as likely to produce equivalent therapeutic or
21 diagnostic results as to the diagnosis or treatment of that
22 patient’s illness, injury or disease.¹⁰

23 29.

24 Regence does not apply these general standards regarding the determination of medical
necessity to surgical care for gender dysphoria. Rather, Regence’s Policy 153, “Gender

⁹ Regence BlueCross BlueShield, *Medical Policy Development & Review* (Nov. 2018),
<http://blue.regence.com/trgmedpol/intro/>.

¹⁰ *Id.*

1 Affirming Interventions for Gender Dysphoria” (the “Policy”) categorically excludes coverage of
2 facial-feminization procedures, including bilateral blepharoplasty and osteoplasty, wrongly
3 deeming them “not medically necessary” as a treatment for gender dysphoria.

4 30.

5 Regence covers at least some of those procedures or comparable procedures, however,
6 where medically necessary for the treatment of conditions other than gender dysphoria. For
7 example, Regence’s Medical Policy Manual provides that blepharoplasty may be covered as
8 medically necessary to treat conditions such as trichiasis (relating to ingrown eyelashes),
9 ectropion (relating to a lower eyelid turning or sagging outward), or entropion of the eyelid
10 (relating to a lower eyelid turning inward).¹¹ Osteoplasty is covered as medically necessary to
11 correct jaw and craniofacial deformities under certain circumstances.¹²

12 31.

13 Regence does not provide any exception to the Policy for members to establish on an
14 individualized basis that an otherwise excluded procedure is medically necessary to treat their
15 gender dysphoria.

16 32.

17 Thus, the Plan treats transgender members who require facial-feminization surgery
18 differently than members with other diagnoses that require the same surgical procedures. The
19 exclusions set forth in the Policy single out transgender members seeking coverage for medically
20 necessary treatment of gender dysphoria, excluding them from coverage for services that may be
21 available to members with other diagnoses pursuant to the Plan’s general policies to cover
22

23 ¹¹ See Regence Medical Policy Manual, Policy No. 12: Cosmetic and Reconstructive Surgery, Blepharoplasty
and Brow Ptosis Repair, I (effective May 1, 2019).

24 ¹² See Regence Medical Policy Manual, Policy No. 137: Orthognathic Surgery, II (effective February 1, 2019).

1 medically necessary care. Upon information and belief, these exclusions also cause transgender
2 members and members with gender dysphoria to be denied coverage for medically necessary
3 care at a greater rate than other members.

4 33.

5 There is no legitimate medical basis or rational justification for these exclusions, which
6 thus can only be understood as a reflection of animus toward, or an intent to discriminate against,
7 members who are transgender or have a diagnosis of gender identity disorder.

8 **Ms. Ketcham’s Medically Necessary Facial-Feminization Procedures for Gender**
9 **Dysphoria**

10 34.

11 Ms. Ketcham is a 59-year-old transgender woman who has been diagnosed with gender
12 dysphoria. At birth, Ms. Ketcham was assigned male, but as early as childhood she understood
13 she was a girl. Ms. Ketcham has struggled with this feeling of incongruence for much of her life.

14 35.

15 As a young person, Ms. Ketcham’s family and community did not provide any support or
16 options for her to live as a woman consistent with her gender identity. As a result, she spent
17 most of her life trying to conform to male stereotypes and living outwardly as a man, despite the
18 severe emotional distress this caused her.

19 36.

20 Ms. Ketcham has been diagnosed with gender dysphoria and has taken extensive steps to
21 live and be recognized by others as the woman she knows herself to be. In addition to
22 undergoing hormone-replacement therapy, she has engaged a voice coach to help her mitigate
23 the effects of having developed an Adam’s apple during puberty, has undergone electrolysis to
24

1 remove male-pattern hair growth, and changed her name, clothes, and hairstyle. Ms. Ketcham
2 has also had sex-reassignment surgery.

3 37.

4 Despite all of these efforts, Ms. Ketcham continues to be perceived by others as male.
5 Her facial features and the shape of her face frequently lead others to call Ms. Ketcham “sir,”
6 “mister” or “he-she,” and to treat her as a man. Ms. Ketcham’s gender is often mistaken by
7 others even when she attends medical appointments. These experiences exacerbate her gender
8 dysphoria, causing her significant distress that has had a serious negative impact on her mental
9 and physical health.

10 38.

11 Consistent with internationally recognized standards of care and current medical
12 literature, Ms. Ketcham’s healthcare providers have determined that facial-feminization
13 procedures are medically necessary to treat Ms. Ketcham’s gender dysphoria. By bringing
14 Ms. Ketcham’s facial features into alignment with her gender identity, these facial-feminization
15 procedures would help her to be perceived correctly as a woman, alleviating significant distress.

16 39.

17 On October 12, 2016, on the recommendation of Ms. Ketcham’s primary care physicians
18 and therapists, Jens Berli, M.D., Ms. Ketcham’s surgeon, submitted to Regence a pre-
19 authorization request for the facial-feminization procedures of osteoplasty, forehead reduction,
20 blepharoplasty and lip lift. Dr. Berli’s office is in the city of Portland in Multnomah County.

21 40.

22 On October 14, 2016, Regence denied the pre-authorization request on the grounds that
23 additional documentation was needed to evaluate the request. The letter nevertheless stated that
24

1 under the Plan, “blepharoplasty is always considered not medically necessary as a treatment of
2 gender dysphoria” and that lip lift and forehead reduction are “always considered cosmetic.”

3 41.

4 Ms. Ketcham sought reconsideration of the denial on December 4, 2016, and submitted
5 the additional documentation that Regence requested. This documentation established that the
6 facial-feminization procedures for which Ms. Ketcham sought pre-approval were appropriate and
7 medically necessary to treat her gender dysphoria, in accordance with the WPATH Standards of
8 Care.

9 42.

10 On December 30, 2016, Regence again denied Ms. Ketcham’s pre-authorization request
11 on the grounds that “the service(s) . . . are not medically necessary.” In a subsequent letter dated
12 June 30, 2017, Regence clarified that the basis for its denial was that “surgery and/or additional
13 treatments to change specific appearance characteristics are considered not medically necessary
14 as treatments of gender dysphoria.”

15 43.

16 On June 26, 2017, Ms. Ketcham appealed the denial. On July 6, 2017, Regence denied
17 the appeal, explaining that “[a]dditional treatments to change specific appearance characteristics,
18 including . . . osteoplasty and blepharoplasty, are considered not medically necessary as
19 treatments of gender dysphoria” under the Plan.

20 44.

21 Regence informed Ms. Ketcham that she could request a second-level review of its
22 decision, which Ms. Ketcham did on January 4, 2018. On January 18, 2018, Regence informed
23

1 Ms. Ketcham that its original denial was upheld and that she could appeal the decision to an
2 external independent review organization, whose determination would be binding.

3 45.

4 Ms. Ketcham submitted an appeal to the independent review organization on July 17,
5 2018. The independent review organization upheld Regence's decision on August 13, 2018.
6 Regence denied Ms. Ketcham's final appeal on August 14, 2018.

7 **Clatsop's Unlawful Retaliation Against Ms. Ketcham**

8 46.

9 On October 1, 2018, Ms. Ketcham filed a tort-claims notice with Clatsop. That tort-
10 claims notice asserted Ms. Ketcham's intent to file discrimination claims under state law arising
11 from the failure to provide her with a non-discriminatory health insurance plan.

12 47.

13 On or about October 16, 2018, approximately two weeks after filing her tort-claims
14 notice, Ms. Ketcham attended a monthly Safety Committee meeting of Clatsop employees.
15 There were about 12 to 14 employees in attendance. These included Monica Steele, who was
16 then Clatsop County's Assistant County Manager and Budget and Finance Director, and Kelly
17 Stiles, who was then Clatsop's Head of Human Resources. Ms. Ketcham was seated close to
18 Ms. Stiles when Ms. Steele entered the meeting room. An empty chair was placed next to
19 Ms. Ketcham for Ms. Steele. Upon seeing the chair, Ms. Steele looked directly at Ms. Ketcham
20 and openly remarked words to the effect, "*I guess it's okay to sit next to the enemy.*" Ms. Stiles
21 did not react to Ms. Steele's remark and appeared not to have heard it, although the volume of
22 Ms. Steele's voice was loud enough for the whole room to have heard her.
23
24

1 48.

2 Ms. Ketcham reported this incident to Ms. Stiles on or about October 29, 2018. Without
3 having conducted an investigation or interviewed any witnesses, Ms. Stiles insisted that Ms.
4 Steele’s “*enemy*” comment was directed at her, not at Ms. Ketcham. Ms. Stiles then offered to
5 have Ms. Steele apologize to Ms. Ketcham.

6 49.

7 In a letter dated November 14, 2018, Clatsop informed Ms. Ketcham that Ms. Stiles had
8 investigated her complaint and had concluded there was no retaliation. In that letter, Clatsop
9 concluded that the “*enemy*” remark was directed to Ms. Stiles. In the course of her purported
10 official investigation, Ms. Stiles did not interview Ms. Ketcham or follow up with her after
11 having interviewed others who were in the room during the October 16 meeting.

12 50.

13 Clatsop’s refusal to take Ms. Ketcham’s discrimination complaint seriously, including by
14 failing to conduct a thorough and impartial investigation, has created an unsafe working
15 environment in which Ms. Ketcham does not feel comfortable reporting discriminatory
16 treatment. This has compounded her stress and anxiety, negatively impacting her mental and
17 physical health.

18 **Exhaustion of Administrative Remedies**

19 51.

20 On February 1, 2019, Ms. Ketcham timely filed a supplemental tort-claims notice with
21 Clatsop, which notified Clatsop of her intent to pursue claims arising from Clatsop’s unlawful
22 retaliation. This tort-claims notice supplemented Ms. Ketcham’s October 1, 2018 tort-claims
23 notice concerning claims arising from Clatsop’s unlawful discrimination.
24

1 52.

2 On November 14, 2018, Ms. Ketcham timely filed a complaint with BOLI with respect to
3 Clatsop. The complaint asserted that Clatsop had unlawfully discriminated against Ms. Ketcham
4 on the basis of her sex, sexual orientation, gender identity, sex stereotypes, transgender status,
5 gender dysphoria, and disability in violation of federal law and the Oregon Equality Act. The
6 complaint further asserted that Clatsop had unlawfully retaliated against her for complaining
7 about that discrimination.

8 53.

9 On February 8, 2019, Ms. Ketcham timely filed a tort-claims notice with CIS based on
10 CIS's failure to provide its members and their employees with a health insurance plan that covers
11 medically necessary treatments for gender dysphoria on a non-discriminatory basis.

12 54.

13 On April 22, 2019, BOLI issued a right-to-sue letter to Ms. Ketcham.

14 **Harm to Ms. Ketcham**

15 55.

16 As a direct and proximate result of Defendants' conduct, Ms. Ketcham has suffered and
17 will continue to suffer economic damages. Subject to amendment at and before trial to conform
18 to available evidence, Ms. Ketcham requests \$25,000 and the amount necessary to offset any
19 income tax consequences of the award.

20 56.

21 As a direct and proximate result of Defendants' conduct, Ms. Ketcham has suffered and
22 will continue to suffer noneconomic damages, including but not limited to emotional distress,
23 anguish, humiliation, fear, loss of professional reputation, and anxiety, and she is entitled to an
24

1 award of noneconomic compensatory damages in an amount to be determined by the jury at trial.
2 Subject to amendment at and before trial to conform to available evidence, Ms. Ketcham
3 requests \$350,000.

4 57.

5 To obtain relief from the unlawful conduct described herein, Ms. Ketcham has been
6 required to retain attorneys. She is entitled to the attorney’s fees, costs, and expenses incurred
7 investigating, filing, and completing this legal action pursuant to O.R.S. § 659A.885, O.R.S.
8 § 20.107, this Court’s equitable power to award attorneys’ fees in actions vindicating an
9 important constitutional right in the public interest, and any other applicable laws or rules.

10 **FISRT CLAIM FOR RELIEF—O.R.S. § 659A.030(1)(b)**
11 (Against Defendant Clatsop)

12 58.

13 The allegations of the foregoing paragraphs are incorporated as though fully set forth
14 herein.

15 59.

16 Oregon law provides that it is an “unlawful employment practice” for an employer to
17 “discriminate” against an employee “in compensation or in terms, conditions, or privileges of
18 employment” because of “sex” and “sexual orientation.” O.R.S. § 659A.030(1)(b).

19 60.

20 “Sexual orientation” includes an individual’s “gender identity, regardless of whether the
21 individual’s gender identity, appearance, expression or behavior differs from that traditionally
22 associated with the individual’s sex at birth.” O.R.S. § 174.100.

1 61.

2 Discrimination on the basis of “gender identity” under O.R.S. § 659A.030(1)(b) and
3 O.R.S. § 174.100 includes discrimination on the basis of transgender status.

4 62.

5 Clatsop is an employer for the purpose of O.R.S. § 659A.030.

6 63.

7 An employer-sponsored health plan is part of the “compensation[,] terms, conditions, or
8 privileges of employment.” O.R.S. § 659A.030(1)(b).

9 64.

10 By providing employees with a Plan that (1) categorically excludes coverage for
11 medically necessary treatments for gender dysphoria that are otherwise covered where medically
12 necessary to treat other diagnoses and (2) deprives transgender employees of an equal
13 opportunity to demonstrate that transition-related surgeries meet the Plan’s criteria for medical
14 necessity, Clatsop has unlawfully discriminated—and continues to unlawfully discriminate—
15 against Ms. Ketcham based on sex and sexual orientation, gender identity, and transgender
16 status, causing her the harm described herein.

17 **SECOND CLAIM FOR RELIEF—O.R.S. § 659A.112**
18 (Against Defendant Clatsop)

19 65.

20 The allegations of the foregoing paragraphs are incorporated as though fully set forth
21 herein.

1 66.

2 Oregon law provides that it is an unlawful employment practice “for any employer . . . to
3 discriminate in compensation or in terms, conditions or privileges of employment on the basis of
4 disability.” O.R.S. § 659A.112(1).

5 67.

6 It is an unlawful practice for an employer to “participate[] in a contractual or other
7 arrangement or relationship that has the effect of subjecting a qualified job applicant or employee
8 with a disability to the discrimination prohibited by O.R.S. 659A.112 to 659A.139, including but
9 not limited to participating in a relationship with . . . an organization providing fringe benefits to
10 an employee of the employer.” O.R.S. § 659A.112(2)(b).

11 68.

12 Discrimination “on the basis of disability” includes discrimination on the basis of gender
13 dysphoria.

14 69.

15 By offering a Plan that categorically excludes coverage for certain medically necessary
16 gender-affirming treatments, including facial-feminization surgeries, Clatsop has unlawfully
17 discriminated—and continues to unlawfully discriminate—against Ms. Ketcham based on her
18 disability of gender dysphoria.

19 70.

20 By contracting with Regence and CIS to provide employees with a health insurance plan
21 that discriminates on the basis of gender dysphoria, Clatsop has subjected Ms. Ketcham to
22 discrimination on the basis of her disability, causing her the harm described herein.
23
24

1 76.

2 By administering Clatsop’s discriminatory health insurance plan in a way that excludes
3 coverage for medically necessary treatments for gender dysphoria, Regence has aided and
4 abetted and continues to aid and abet Clatsop’s unlawful employment practice, causing
5 Ms. Ketcham the harm described herein.

6 77.

7 By selecting, providing or offering to its members the discriminatory Plan in a way that
8 excludes coverage for medically necessary treatments for gender dysphoria, CIS has aided and
9 abetted and continues to aid and abet Clatsop’s unlawful employment practice, causing
10 Ms. Ketcham the harm described herein.

11 **FOURTH CLAIM FOR RELIEF—O.R.S. § 746.015**
12 (Against Defendants Regence and CIS)

13 78.

14 The allegations of the foregoing paragraphs are incorporated as though fully set forth
15 herein.

16 79.

17 O.R.S. § 746.015(1) provides that “[n]o person shall make or permit any unfair
18 discrimination between individuals of the same class and equal expectation of life, or between
19 risks of essentially the same degree of hazard, in the availability of insurance, in the application
20 of rates for insurance, in the dividends or other benefits payable under insurance policies, or in
21 any other terms or conditions of insurance policies.”

1 80.

2 O.R.S. § 746.015 prohibits insurers from discriminating on the basis of gender identity or
3 gender dysphoria, including in the terms or conditions of health insurance policies. Under
4 O.R.S. § 746.015, a health insurer may not categorically exclude coverage for a particular
5 gender-affirming treatment if that treatment is the only medically necessary treatment available
6 for the insured.

7 81.

8 By offering a Plan that categorically excludes coverage for certain medically necessary
9 gender-affirming treatments, including facial-feminization surgeries, Regence and CIS have
10 unlawfully discriminated—and continue to unlawfully discriminate—against Ms. Ketcham in the
11 “terms or conditions” of an insurance policy on the basis of gender identity or gender dysphoria,
12 causing Ms. Ketcham the harm described herein.

13 **FIFTH CLAIM FOR RELIEF—O.R.S. § 659A.403**
14 (Against Defendants Regence and CIS)

15 82.

16 The allegations of the foregoing paragraphs are incorporated as though fully set forth
17 herein.

18 83.

19 Oregon law provides that “all persons within the jurisdiction of this state are entitled to
20 the full and equal accommodations, advantages, facilities and privileges of any place of public
21 accommodation, without any distinction, discrimination or restriction on account of . . . sex [or]
22 sexual orientation.” O.R.S. § 659A.403(1).

1 84.

2 Sexual orientation includes an individual’s “gender identity, regardless of whether the
3 individual’s gender identity, appearance, expression or behavior differs from that traditionally
4 associated with the individual’s sex at birth.” O.R.S. § 174.100.

5 85.

6 Discrimination on the basis of transgender status or gender identity is discrimination on
7 the basis of “sex” and “gender identity” under O.R.S. § 659A.403(1) and O.R.S. § 174.100.

8 86.

9 In their provision of insurance, Regence and CIS offer a “public accommodation” under
10 Oregon law, O.R.S. § 659A.400.

11 87.

12 By offering a Plan that (1) categorically excludes coverage for medically necessary
13 treatments for gender dysphoria that are otherwise covered where medically necessary to treat
14 other diagnoses and (2) deprives transgender employees of an equal opportunity to demonstrate
15 that transition-related surgeries meet the Plan’s criteria for medical necessity, Regence and CIS
16 have unlawfully discriminated—and continue to unlawfully discriminate—against Ms. Ketcham
17 by denying her access to “full and equal accommodations, advantages, facilities and privileges
18 of” a public accommodation because of her sex, gender identity, and transgender status. O.R.S.
19 § 659A.403(1). This unlawful discrimination caused Ms. Ketcham the harm described herein.
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SIXTH CLAIM FOR RELIEF—O.R.S. § 659A.406
(Against All Defendants)

88.

The allegations of the foregoing paragraphs are incorporated as though fully set forth herein.

89.

Oregon law provides that “it is an unlawful practice for any person to aid or abet any place of public accommodation, as defined in ORS 659A.400, or any employee or person acting on behalf of the place of public accommodation to make any distinction, discrimination or restriction on account of . . . sex [or] sexual orientation.” O.R.S. § 659A.406.

90.

By administering the discriminatory health insurance plan funded by CIS in a way that excludes coverage for medically necessary treatments for gender dysphoria, Regence has aided and abetted and continues to aid and abet CIS’s unlawful denial of public accommodations, causing Ms. Ketcham the harm described herein.

91.

By selecting, providing or offering to its members the discriminatory Plan in a way that excludes coverage for medically necessary treatments for gender dysphoria, CIS has aided and abetted and continues to aid and abet Regence’s unlawful denial of public accommodations, causing Ms. Ketcham the harm described herein.

92.

By selecting, providing, or offering to its members the discriminatory Plan in a way that excludes coverage for medically necessary treatments for gender dysphoria, Clatsop has aided

1 and abetted and continues to aid and abet Regence’s and CIS’s unlawful denial of public
2 accommodations, causing Ms. Ketcham the harm described herein.

3
4 **SEVENTH CLAIM FOR RELIEF—Oregon Constitution Art. I, § 20**
5 (Against Defendants Clatsop and CIS)

6 93.

7 The allegations of the foregoing paragraphs are incorporated as though fully set forth
8 herein.

9 94.

10 The Oregon Constitution provides that “[n]o law shall be passed granting to any citizen
11 or classes of citizens privileges, or immunities, which, upon the same terms, shall not equally
12 belong to all citizens.” Or. Const. Art. I, § 20.

13 95.

14 The reference to “laws” in Section 20 includes both legislative enactments and the
15 administration of laws under delegated authority.

16 96.

17 By offering a Plan that (1) categorically excludes coverage for medically necessary
18 treatments for gender dysphoria that are otherwise covered where medically necessary to treat
19 other diagnoses and (2) deprives transgender employees of an equal opportunity to demonstrate
20 that transition-related surgeries meet the Plan’s criteria for medical necessity, Clatsop and CIS
21 have denied—and continue to deny—Ms. Ketcham the “privileges[] or immunities” available to
22 other Oregon citizens on the basis of sex, gender identity, and disability. This unlawful
23 discrimination caused Ms. Ketcham the harm described herein.
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97.

The Plan’s discriminatory exclusion is not justified by any genuine difference between individuals diagnosed with gender dysphoria and those with other diagnoses. Instead, it relies on stereotyping and prejudice toward transgender people or people diagnosed with gender dysphoria.

EIGHTH CLAIM FOR RELIEF—Oregon Constitution Art. I § 46
(Against Defendant Clatsop)

98.

The allegations of the foregoing paragraphs are incorporated as though fully set forth herein.

99.

The Oregon Constitution provides that “[e]quality of rights under the law shall not be denied or abridged by the State of Oregon or by any political subdivision in this state on account of sex.” Or. Const. Art. I § 46.

100.

By offering a Plan that (1) categorically excludes coverage for medically necessary treatments for gender dysphoria that are otherwise covered where medically necessary to treat other diagnoses and (2) deprives transgender employees of an equal opportunity to demonstrate that transition-related surgeries meet the Plan’s criteria for medical necessity, Clatsop has unlawfully discriminated against—and continues to unlawfully discriminate against—Ms. Ketcham “on account of sex,” causing her the harm described herein.

1 101.

2 The Plan’s discriminatory exclusion is not substantially related to an important
3 governmental interest.

4 102.

5 The Plan’s discriminatory exclusion is not justified by any genuine difference between
6 individuals diagnosed with gender dysphoria and those with other diagnoses.

7 103.

8 The Plan’s discriminatory exclusion cannot be justified by a governmental interest in
9 limiting coverage to medically necessary treatments because the Plan’s general provisions
10 limiting coverage to “medically necessary” treatments already serves that interest. The only
11 function of the exclusion is to exclude medical care that would otherwise qualify as medically
12 necessary under the Plan’s generally applicable standards.

13 **NINTH CLAIM FOR RELIEF—O.R.S. § 659A.030(1)(f)**
14 (Against Defendant Clatsop)

15 104.

16 The allegations of the foregoing paragraphs are incorporated as though fully set forth
17 herein.

18 105.

19 It is unlawful “[f]or any person to discharge, expel or otherwise discriminate against any
20 other person because that other person has opposed an unlawful practice, or because that other
21 person has filed a complaint, testified or assisted in any proceeding under this chapter or has
22 attempted to do so.” O.R.S. 659A.030(1)(f).

1 106.

2 Clatsop discriminated against Ms. Ketcham in violation of 659A.030(1)(f) by
3 (i) retaliating against her by publicly referring to her as “the enemy” because she filed a tort-
4 claims notice alleging unlawful discrimination by Clatsop and (ii) failing to carry out an
5 adequate and unbiased investigation when Ms. Ketcham complained about this retaliation. This
6 unlawful conduct caused Ms. Ketcham the harm described herein.

7 **TENTH CLAIM FOR RELIEF—O.R.S. § 659A.199**
8 (Against Defendant Clatsop)

9 107.

10 The allegations of the foregoing paragraphs are incorporated as though fully set forth
11 herein.

12 108.

13 “It is an unlawful employment practice for an employer to discharge, demote, suspend or
14 in any manner discriminate or retaliate against an employee with regard to promotion,
15 compensation or other terms, conditions or privileges of employment for the reason that the
16 employee has in good faith reported information that the employee believes is evidence of a
17 violation of a state or federal law, rule or regulation.” O.R.S. § 659A.199.

18 109.

19 Clatsop retaliated against Ms. Ketcham in violation of O.R.S. § 659A.199 by (i) publicly
20 referring to her as “the enemy” because she filed in good faith a tort-claims notice alleging
21 unlawful discrimination by Clatsop and (ii) when Ms. Ketcham complained in good faith about
22 this unlawful conduct, failing to carry out an adequate and unbiased investigation. Ms.
23 Ketcham’s opposition to Clatsop’s unlawful employment practices was a substantial factor in
24

1 Clatsop’s adverse treatment of Ms. Ketcham. This unlawful conduct caused Ms. Ketcham the
2 harm described herein.

3 **IV. JURY TRIAL DEMAND**

4 Plaintiff demands a jury trial on all claims and issues to the extent allowed under the law.

5 **V. PRAYER FOR RELIEF**

6 Wherefore, Plaintiff respectfully requests that the Court grant in Plaintiff’s favor, and
7 against the Defendants, as follows:

- 8 a. Declaratory relief, including but not limited to a declaration that:
 - 9 i. Defendant Regence violated O.R.S. §§ 659A.030, 659A.403, 659A.406,
10 746.015;
 - 11 ii. Defendant CIS violated O.R.S. §§ 659A.030, 659A.403, 659A.406,
12 746.015, and Oregon Constitution Art. I § 20; and
 - 13 iii. Defendant Clatsop County violated O.R.S. §§ 659A.030(1)(b),
14 659A.030(1)(f), § 659A.112, § 659A.199, 659A.406, Oregon Constitution
15 Art. I § 20, and Oregon Constitution Art. I § 46;
- 16 b. Permanent injunctive relief restraining Defendants and their employees, agents,
17 and successors in office from enforcing the Plan’s categorical exclusion of
18 coverage for osteoplasty, blepharoplasty, forehead reduction, and lip lift
19 procedures as a treatment for gender dysphoria;
- 20 c. Economic and noneconomic damages with respect to all Defendants in an amount
21 to be determined at trial pursuant to O.R.S. § 659A.885 and any other applicable
22 laws and rules;
- 23 d. Plaintiff’s attorney’s fees, costs, and expenses incurred investigating, filing and
24 completing this legal action, pursuant to O.R.S. § 659A.885, O.R.S. § 20.107 and
any other applicable laws and rules;
- e. Interest on all monies awarded, including on attorneys’ fees, costs, and expenses,
at 9% per annum simple interest accruing from the date of the entry of the
judgment pursuant to O.R.S. § 82.010; and

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1 f. Such other and further relief that the Court deems just, proper, and equitable.

2 Dated: Portland, Oregon
3 July 18, 2019

4 s/Talia Yasmeen Guerriero
5 Talia Yasmeen Guerriero, OSB No. 115271
6 Christina Stephenson, OSB No. 102287
7 Meyer Stephenson
8 Tel: (503) 459-4010
9 *Of Attorneys for Plaintiff*