

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

SEAN ALLEN SIMONSON,

Plaintiff,

v.

OSWEGO COUNTY, A MUNICIPAL
CORPORATION OF THE STATE OF NEW
YORK; and OSWEGO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY, COMPENSATORY, AND INJUNCTIVE RELIEF

Plaintiff Sean Allen Simonson (“Plaintiff” or “Mr. Simonson”), by and through his attorneys, Lambda Legal Defense and Education Fund, Inc., files this Complaint for Declaratory, Compensatory, and Injunctive Relief against Oswego County, a municipal corporation of the State of New York (“Oswego County”), and the Oswego County Department of Social Services (“DSS”), (collectively, “Defendants”), and respectfully alleges as follows:

INTRODUCTION

1. Plaintiff Sean Allen Simonson, a man who is transgender, brings this civil rights action against Oswego County and the Oswego County Department of Social Services for sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (“Title VII”), the New York State Human Rights Law, N.Y. Exec. Law. § 290, *et seq.* (“NYSHRL”), the New York Civil Rights Law (“NYSCRL”), N.Y. CLS Civ. R. § 40-c, and Section 1557 of the Patient Protection and Affordable Care Act (“ACA”), 42 U.S.C. § 18116 (“Section 1557”), and, pursuant to 42 U.S.C. § 1983, for discrimination based on sex and

transgender status in violation of the Fourteenth Amendment of the United States Constitution, U.S. Const. amend. XIV, § 1.

2. Title VII, the NYSHRL, the NYSCRL, Section 1557, and the Equal Protection Clause all prohibit discrimination on the basis of sex, including discrimination based on sex stereotypes, gender identity, gender transition, and transgender status. Nonetheless, Defendants discriminated against Mr. Simonson in the terms and conditions of his employment with Oswego County and DSS, including employer-provided health benefits, because of his sex and transgender status.

3. An exemplary employee and public servant for nearly 30 years, Mr. Simonson worked as a Case Worker and then a Senior Case Worker for DSS, assisting children and adults in need of social services. He retired on October 31, 2015. As part of his benefits as an employee and now retiree, Mr. Simonson received and continues to receive health care insurance coverage through the Oswego County Health Benefit Plan (hereinafter, “the Plan” or “OCHBP”).

4. However, the Plan contains a categorical exclusion prohibiting the coverage of medically-necessary health care that is “connected to sex change surgery, transsexualism, gender dysphoria, sexual reassignment or change or to any treatment of gender identity disorders including medications, implants, hormone therapy, surgery, medical or psychiatric treatment.” Thus, the Plan categorically deprives transgender employees, including Mr. Simonson, from medically-necessary care for the treatment of gender dysphoria.

5. Through the Plan’s exclusion, Defendants singled out transgender employees, including Mr. Simonson, for unequal treatment because of their sex, nonconformity with sex stereotypes, gender identity, gender transition, and transgender status. Specifically, Defendants refused to provide coverage for medical treatments for transgender employees that they would

otherwise cover for non-transgender (“cisgender”) employees.

6. As a result of the Plan’s categorical and discriminatory exclusion and the differential treatment he was subjected to, Mr. Simonson has been forced to pay thousands of dollars out-of-pocket in order to receive medically-necessary care for gender dysphoria. Mr. Simonson has also suffered emotional distress, humiliation, embarrassment, stigmatization, and a loss of dignity at the hands of Oswego County and DSS.

7. Accordingly, Mr. Simonson brings this action against Defendants in order to remedy the harms Oswego County and DSS caused him and to ensure that Defendants can no longer unlawfully discriminate against him and other transgender employees with regards to their health care insurance coverage as result of their sex, nonconformity with sex stereotypes, gender identity, gender transition, and transgender status.

JURISDICTION AND VENUE

8. The Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343(a) because the matters in controversy arise under the laws and the Constitution of the United States, including Title VII, Section 1557, and § 1983, all of which are laws providing for the protection of civil rights.

9. This Court has supplemental jurisdiction over Defendants with respect to Plaintiff’s state law claim pursuant to 28 U.S.C. § 1367 because that claim is so related to Plaintiff’s federal claims that they form part of the same case or controversy.

10. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C.

§ 1391(b) because the unlawful employment practices alleged herein occurred within this District, all parties reside within the Northern District of New York, Defendants reside and have offices within the Northern District of New York, and/or a substantial part of the events giving rise to Plaintiff's claims occurred, and will continue to occur, within this judicial district.

THE PARTIES

12. Plaintiff Sean Simonson, a 64-year old man, is an adult resident of the State of New York. At all times relevant herein, Mr. Simonson has been an employee or retired employee of Oswego County and DSS, and has received health care insurance coverage through the Plan as a benefit of that employment.

13. Defendant Oswego County is a municipal corporation organized under the laws of the State of New York. Oswego County is comprised of the cities of Oswego and Fulton, 10 villages, and 22 towns. The County government delivers many services to the residents of these cities, villages, and towns, including social services through DSS. The County is also an employer, and in the execution of its duties it employs individuals in a number of departments, including, *inter alia*, departments of health, motor vehicles, social services, and corrections. Through its Human Resources Department, Oswego County administers employee benefit plans, labor relations, and civil service regulations for county employees.

14. Defendant Oswego County Department of Social Services ("DSS") is a governmental agency of Oswego County. It is comprised of several units. DSS provides and administers a large number of social services for the residents of Oswego County, including the administration of the Child Health Plus ("CHIP") program, Medicaid, and Supplemental Nutrition Assistance Program, among others. Upon information and belief, DSS receives federal funding or grants from the United States Department of Health and Human Resources ("HHS")

to administer these and other health programs.

ADMINISTRATIVE EXHAUSTION

15. On October 30, 2015, Plaintiff filed a timely Charge of Discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) against the Oswego County Department of Social Services for sex discrimination in violation of Title VII and the NYSHRL, and expressly requested that the EEOC be designated as the investigating agency.

16. On June 26, 2017, the EEOC issued a determination finding reasonable cause to believe that Oswego County and DSS discriminated against Mr. Simonson “due to his sex (transgender status/gender identity) in violation of Title VII.” Specifically, the EEOC found that Defendants had “discriminated against [Mr. Simonson] by denying him medical benefit coverage for treatment due to his sex (transgender status/gender identity).”

17. On September 13, 2017, the United States Department of Justice (“DOJ”) issued Mr. Simonson a Notice of Right to Sue. This action is timely commenced within 90 days of Mr. Simonson’s receipt of the Notice.

18. On June 14, 2017, Mr. Simonson served a timely Notice of Claim with Oswego County, in which he provided notice that he intended to file claims, including, *inter alia*, claims under Title VII, Section 1557, the NYSHRL, the NYSCRL, and the Fourteenth Amendment, against Oswego County, pursuant to New York General Municipal Law § 50-e.

FACTUAL ALLEGATIONS

1. For nearly 30 years, Mr. Simonson worked for Oswego County’s Department of Social Services. His decades-long public service was exemplary. He retired as a Senior Case Worker at DSS on October 31, 2015.

2. Mr. Simonson is a man. He is also transgender.

Sex, Gender Identity, and Gender Dysphoria.

3. A person has multiple sex-related characteristics, including hormones, external and internal morphological features, external and internal reproductive organs, chromosomes, and gender identity. These characteristics may not always be in alignment with each other.

4. The phrase “sex assigned at birth” refers to the sex recorded on a person’s birth certificate at the time of birth. Typically, a person is assigned a sex on their birth certificate solely on the basis of the appearance of external genitalia at the time of birth. Other sex-related characteristics (such as a person’s chromosomal makeup and gender identity, for example) are typically not assessed or considered at the time of birth.

5. Gender identity—a person’s core internal sense of their own gender—is the primary factor in determining a person’s sex. Every person has a gender identity. There is a medical consensus that gender identity is innate and that efforts to change a person’s gender identity are unethical and harmful to a person’s health and well-being.

6. Although there is no singular definitive factor that determines gender identity, biological factors, including sexual differentiation in the brain, have a role in gender identity development.

7. Gender identity is the primary factor in establishing a person’s sex. External genitalia are but one of a number of sex-related characteristics and are not always determinative or indicative of a person’s sex.

8. Transgender persons are people whose gender identity diverges from the sex they were assigned at birth. A transgender man’s sex is male (despite being assigned the sex of female at birth) and a transgender woman’s sex is female (despite being assigned the sex of male at birth).

9. Cisgender persons are people whose gender identity aligns with the sex they were assigned at birth. A cisgender man's sex is male (and was assigned the sex of male at birth) and a cisgender woman's sex is female (and was assigned the sex of female at birth).

10. Gender identity and transgender status are inextricably linked to one's sex and are sex-related characteristics.

11. The incongruence between a transgender person's gender identity and sex assigned at birth can be associated with clinically significant distress, which is known as gender dysphoria. Gender dysphoria is a medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5"), and by other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.

12. The DSM-5 was updated in May 2013 by the American Psychiatric Association to replace the previously used term "Gender Identity Disorder" with "Gender Dysphoria."

13. Gender dysphoria is also included in the International Classification of Diseases, Tenth Revision, Clinical Modification ("ICD-10"), and was included in the International Classification of Diseases, Ninth Revision, Clinical Modification ("ICD-9").

14. If not properly treated, gender dysphoria may result in psychological distress, anxiety, depression, and even self-harm or suicidal ideation.

15. Gender dysphoria often intensifies with time. The longer an individual goes without treatment, the greater the risk of severe harms to the individual's physical and psychological health.

16. Medical treatment for gender dysphoria must be individualized and tailored to the medical needs of each patient. Such treatment is medically necessary.

17. Treatment of gender dysphoria is usually provided pursuant to the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (“Standards of Care”), published by the World Professional Association for Transgender Health (“WPATH”) and internationally recognized as the authoritative articulation of professional consensus on the treatment of gender dysphoria.

18. Treatment in accordance with the Standards of Care may include: (1) social transition; (2) mental health treatment; (3) hormone therapy; and/or (4) gender-affirming surgery.

19. Social transition entails a transgender person living in accordance with the person’s gender identity. For example, for a transgender man, social transition can include, among others, changing his first name to a name typically associated with men, no longer using female pronouns, changing his identity documents to indicate a male gender, wearing clothing and adopting grooming habits stereotypically associated with men, and otherwise living as a man in all aspects of life.

20. Hormone therapy involves taking hormones typically associated with one’s gender identity and other hormonal medications for the purpose of synchronizing one’s secondary sex characteristics with one’s gender identity. Hormone therapy can have significant masculinizing or feminizing effects, and help bring the body into alignment with a person’s true sex, as determined by their gender identity.

21. Gender confirmation surgery—sometimes called “sex reassignment” surgery—does not constitute a single procedure, but refers to any form of surgical procedure undergone by a transgender person to better align that person’s bodily characteristics with his or her gender identity.

22. An established body of medical research demonstrates the effectiveness and medical necessity of gender dysphoria treatment, including mental health care, hormone therapy, and gender confirmation surgery. Health experts, including WPATH and the American Medical Association, have recognized that such treatments are not “cosmetic” or “experimental.” Rather, they are safe and effective treatment for a serious health condition.

23. These treatments do not change a transgender person’s sex, which is determined by their gender identity. Attempts to change a person’s gender identity in order to bring it into alignment with the person’s sex assigned at birth are not only unsuccessful but also dangerous, risking psychological harm and even suicide.

24. By contrast, treatments for gender dysphoria align the transgender person’s body and lived experience with the person’s true sex, as determined by their gender identity.

25. Seeking medically-necessary care to align one’s sex characteristics with one’s true sex, as determined by one’s gender identity, inherently violates sex stereotypes about the proper alignment of a person’s sex-related characteristics.

Oswego County’s Categorical and Discriminatory Exclusion.

26. As part of its terms and conditions for employment, Oswego County, including DSS, offers health care insurance coverage to its employees and retirees through the County of Oswego Health Benefit Plan.

27. Upon information and belief, the Plan is an ERISA-exempt, self-funded group health benefit plan for the employees and retirees of Oswego County as well as their dependents.

28. The Plan is administered and managed by third-party administrators. For example, at relevant times, POMCO has administered the coverage of medical health benefits under the Plan, while ProAct, Inc. has administered the coverage of pharmaceutical health

benefits under the Plan.

29. The Plan “pays benefits for a broad range of medical services found Medically Necessary, according to Plan provisions and limitations, for the treatment of an Illness or Injury.”

30. However, the Plan specifically excludes from coverage “Services or Supplies connected to sex change Surgery, transsexualism, gender dysphoria, sexual reassignment or change, or to any treatment of gender identity disorders including medications, implants, hormone therapy, Surgery, medical or psychiatric treatment,” regardless of medical necessity.

31. As a result of such categorical exclusion, Oswego County and DSS has denied and continues to deny coverage for transition-related care, including the treatment of gender dysphoria.

32. Upon information and belief, on or about November 16, 2017, Defendants entered into an Assurance of Discontinuance (“AOD”) with the Office of the Attorney General of the State of New York, agreeing to remove the categorical exclusion prospectively and to submit a revised Plan for the Attorney General’s Office for review. However, to date, the exclusion remains in place and employees denied coverage for transition-related care have no ability to obtain that coverage.

Plaintiff Sean Simonson.

33. Mr. Simonson worked for Oswego County’s Department of Social Services for nearly 30 years, working to provide social services to children and adults in Oswego County.

34. As part of the terms, conditions, and benefits of his employment, Mr. Simonson was and continues to be enrolled in the Plan.

35. Mr. Simonson is a man. He is also transgender.

36. While he was incorrectly assigned the sex of female at birth, Mr. Simonson is a

man. His identity as a man is just as valid as that of men who were assigned male at birth.

37. Despite being assigned the sex of female at birth, since early childhood, Mr. Simonson has had a persistent innate sense that he is male. But he was unfamiliar with the terms transgender or gender dysphoria until adulthood.

38. In 2014, Mr. Simonson had learned language to identify his experience as transgender and was able to understand the reason for his discomfort and distress since childhood.

39. In February 2015, Mr. Simonson was diagnosed with gender dysphoria by a licensed physician, in accordance with the standards of care promulgated for the treatment of gender dysphoria by WPATH.

40. Shortly after receiving this diagnosis, Mr. Simonson began to take steps, in consultation with his doctor and health care providers, to undergo medically-necessary health care to relieve his gender dysphoria and bring his body into alignment with his true sex—*i.e.*, to transition in a manner consistent with his gender identity. The steps he has taken in his transition have brought Mr. Simonson's outside appearance into alignment with his male gender identity.

41. Mr. Simonson has also sought to align his lived experience with his true sex, as determined by his gender identity. Accordingly, in 2016, Mr. Simonson legally changed his name to fit his male identity.

Defendants' Discriminatory Denial of Coverage for Medically-Necessary Treatment.

42. As part of his transition and ongoing medical care, Mr. Simonson's doctor determined that it was medically necessary for Mr. Simonson to be placed on hormone replacement therapy and prescribed him Androgel, a form of testosterone, on February 19, 2015.

43. On March 4, 2015, Mr. Simonson received a "Notice of Adverse Benefit Determination" from ProAct, Inc., a third-party administrator for the Plan, indicating that the

request for coverage of Androgel was being denied because the Plan “does not cover care, services, or treatment for sexual reassignment or change.”

44. On or about March 15, 2015, Mr. Simonson met with a representative of the Oswego County Human Resources Department to inquire as to how to resolve the discriminatory denial of coverage for his medical treatment for gender dysphoria and was told there was nothing they could do.

45. On June 11, 2015, following the Plan’s internal appeal process, Mr. Simonson’s doctor appealed the adverse benefit determination to ProAct.

46. On June 29, 2015, Mr. Simonson received a “Notice of Adverse Internal Appeal Determination” indicating that the request for coverage of Androgel would continue to be denied because the Plan “does not cover care, services, or treatment for sexual reassignment or change.”

47. Thus, as a result of the Plan’s categorical and discriminatory exclusion, Mr. Simonson continues to be denied coverage for his hormone replacement therapy and has been paying for his recurring testosterone prescription out-of-pocket since April 2015.

48. Upon information and belief, hormone replacement therapy is not excluded from coverage for cisgender individuals for whom it is medically necessary.

49. In addition to hormone replacement therapy, Mr. Simonson’s doctor determined that a bilateral mastectomy was medically necessary for Mr. Simonson as part of his treatment for gender dysphoria.

50. Mr. Simonson underwent a bilateral mastectomy on February 13, 2017.

51. Following his bilateral mastectomy, Mr. Simonson sought reimbursement from the Plan for the costs of the surgery, which he had paid out of his own pocket.

52. On March 20, 2017 and April 4, 2017, Mr. Simonson received adverse notices

of coverage determination pertaining to his bilateral mastectomy and related medical services, such as anesthesia, from POMCO, a third-party administrator for the Plan. In these notices, through their third-party administrator, Defendants denied coverage for Mr. Simonson's bilateral mastectomy and related services as they considered these services to be "ineligible" because they were "not allowed" due to a "benefit exclusion."

The Effects of Defendants' Categorical and Discriminatory Exclusion.

53. Defendants' categorical and discriminatory exclusion harms transgender employees of Oswego County, including Mr. Simonson, by preventing them from aligning, and/or burdening their ability to align, their lived experience and appearance with their true sex, as determined by their gender identity.

54. Because only transgender people require medically-necessary care to treat gender dysphoria, denying coverage for such health care constitutes discrimination based on transgender status or gender identity. As a result of the categorical and discriminatory exclusion in the Plan, cisgender employees received coverage for all medically-necessary care, while transgender employees do not.

55. The Plan, thus, discriminates against transgender employees and retirees by failing to provide them benefits under the Plan that it provides, or are equivalent to those available, to cisgender employees and retirees.

56. By enforcing their categorical and discriminatory exclusion, Defendants deny their transgender employees, including Mr. Simonson, equality and dignity because, unlike cisgender employees of Oswego County, transgender employees are denied coverage for medically-necessary care that is otherwise routinely covered for cisgender employees for whom such treatment is medically necessary.

57. Indeed, Oswego County's refusal to provide insurance coverage for Mr. Simonson's hormone replacement therapy and bilateral mastectomy is particularly humiliating and degrading to Mr. Simonson because he knows Oswego County provides insurance coverage for the very same medically-necessary health care and related treatments to other patients who are not transgender.

58. For example, in the 1980s, Mr. Simonson himself received hormone replacement therapy in the form of estrogen following a procedure. This treatment was covered by the Plan.

59. On information and belief, moreover, a former DSS colleague of Mr. Simonson's had a mastectomy as treatment for a condition other than gender dysphoria, which was covered by the Plan.

60. Because only transgender people require medically-necessary care to treat gender dysphoria, denying coverage for such health care constitutes discrimination based on sex, nonconformity with sex stereotypes, gender identity, gender transition, and transgender status.

61. As such, by enforcing their categorical and discriminatory exclusion, the Plan improperly denies equal terms, conditions, and privileges of employment to transgender employees, like Mr. Simonson; violates Mr. Simonson's civil rights to be free from discrimination; and discriminates with regards to provision of an employee health benefit, all on the basis of sex and transgender status.

62. As a result of the discriminatory actions and practices by Defendants described above, Mr. Simonson has suffered injury and damages, including, *inter alia*, financial damages, emotional distress, humiliation, embarrassment, pain and suffering, stigmatization, and a loss of dignity.

CAUSES OF ACTION

**COUNT ONE – DISCRIMINATION BECAUSE OF SEX
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT**

42 U.S.C. § 2000e-2

(Against Defendants Oswego County and DSS)

63. Plaintiff realleges, adopts, and incorporates the allegations in paragraphs 1 through 62 above, as though fully set forth herein.

64. Title VII of the Civil Rights Act of 1964 provides that employers may not “discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual’s . . . sex.” 42. U.S.C. § 2000e-2(a)(1).

65. Defendants, Oswego County and DSS, are “employers” as that term is defined in Title VII, 42 U.S.C. § 2000e-(b).

66. Mr. Simonson is an “employee” of Oswego County and DSS as that term is defined in Title VII, 42 U.S.C. § 2000e-(f). As a retiree, Mr. Simonson continues to receive health insurance as a form of compensation, as well as a term, condition, or privilege of his employment by the Defendants.

67. Pursuant to Title VII, 42 U.S.C. § 2000e-(a)(1), an employer-sponsored health plan is part of the “compensation, terms, conditions or privileges of employment.”

68. Discrimination on the basis of transgender status, gender identity, gender transition, or nonconformity with sex stereotypes are all encompassed by the prohibition on discrimination on the basis of “sex” under Title VII.

69. Mr. Simonson has a right under Title VII to compensation, terms, conditions, or privileges of employment, including an employer-sponsored health plan, free from discrimination because of his sex, nonconformity with sex stereotypes, gender identity, gender transition, or transgender status.

70. By categorically excluding coverage for all medically-necessary care for “sex change surgery, transsexualism, gender dysphoria, sexual reassignment or change, or... any treatment of gender identity disorders including medications, implants, hormone therapy, surgery, medical or psychiatric treatment,” Defendants have drawn a classification that discriminates based on sex, transgender status, gender identity, gender transition, and nonconformity with sex stereotypes.

71. By denying Mr. Simonson coverage for medically-necessary care for his gender dysphoria, Defendants have discriminated against him on the basis of sex in the compensation, terms, conditions, and privileges of his employment.

72. By categorically excluding coverage for all medically-necessary care for gender dysphoria and denying Mr. Simonson coverage pursuant to that exclusion, Defendants Oswego County and DSS have unlawfully discriminated—and continue to discriminate—against Mr. Simonson because of his sex, in violation of Title VII.

**COUNT TWO – DISCRIMINATION ON THE BASIS OF SEX
IN VIOLATION OF SECTION 1557 OF THE ACA
42 U.S.C. § 18116
(*Against Defendants Oswego County and DSS*)**

73. Plaintiff realleges, adopts, and incorporates the allegations in paragraphs 1 through 62 above, as though fully set forth herein.

74. Section 1557 of the ACA, 42 U.S.C. § 18116, provides, in relevant part, that “an individual shall not, on the ground prohibited under . . . title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, *et seq.*)”—which prohibits discrimination “on the basis of sex”—“be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.”

75. Discrimination on the basis of transgender status, gender identity, gender transition, or nonconformity with sex stereotypes, are all encompassed by the prohibition on discrimination on the basis of “sex” under Section 1557.

76. In 2016, the HHS Office for Civil Rights issued a final rule defining “on the basis of sex” under Section 1557 of the ACA to include “discrimination on the basis of . . . gender identity.” 45 C.F.R. § 92.4.

77. Upon information and belief, Defendants Oswego County and DSS receive federal financial assistance. Accordingly, Defendants are each a “covered entity” within the meaning of 45 C.F.R. §§ 92.4, 92.207.

78. Pursuant to HHS regulations implementing Section 1557, a covered entity such as Defendants Oswego County and DSS “shall not, in providing or administering health-related insurance or other health-related coverage: . . . Have or implement a categorical coverage exclusion or limitation for all health services related to gender transition; or . . . Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific health services related to gender transition if such denial, limitation, or restriction results in discrimination against a transgender individual.” 42 C.F.R. §§ 92.207(b)(4)-(5).

79. Because Defendants receive federal funding that flows to health programs, Mr. Simonson has a right under Section 1557 to receive employee health benefits from his employer free from discrimination based on his sex, nonconformity with sex stereotypes, gender identity, gender transition, or transgender status.

80. By categorically excluding coverage for all medically-necessary care for “sex change surgery, transsexualism, gender dysphoria, sexual reassignment or change, or... any

treatment of gender identity disorders including medications, implants, hormone therapy, surgery, medical or psychiatric treatment,” Defendants have drawn a classification that discriminates based on sex, in violation of Section 1557.

81. Defendants have discriminated against Mr. Simonson on the basis of sex in violation of Section 1557 and have thereby denied Mr. Simonson the full and equal participation in, benefits of, and right to be free from discrimination in, a health program or activity.

82. By categorically excluding coverage for all medically-necessary care for gender dysphoria and denying Mr. Simonson coverage pursuant to that exclusion, Defendants Oswego County and DSS have unlawfully discriminated—and continue to discriminate—against him based on his sex, in violation of Section 1557.

**COUNT THREE – DEPRIVATION OF EQUAL PROTECTION
IN VIOLATION OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
42 U.S.C. § 1983
(Against Defendants Oswego County and DSS)**

83. Plaintiff realleges, adopts, and incorporates the allegations in paragraphs 1 through 62 above, as though fully set forth herein.

84. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1. Oswego County, a municipal corporation, is subject to the equal protection guarantee.

Discrimination Based on Sex Warrants Heightened Scrutiny.

85. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex is presumptively unconstitutional and subject to heightened scrutiny.

86. Discrimination based on sex-related considerations includes, but is not limited to, discrimination based on nonconformity with sex stereotypes, gender identity, transgender status, and gender transition.

87. Through the Plan's categorical exclusion, Defendants Oswego County and DSS have unlawfully discriminated—and continue to unlawfully discriminate—against Plaintiff and other transgender persons based on sex-related considerations.

88. The Plan's categorical exclusion treats transgender persons, including Plaintiff, differently from cisgender persons who are similarly situated.

89. Under the Plan's categorical exclusion, cisgender persons can obtain coverage for medically-necessary care, while transgender employees, like Plaintiff, are deprived of coverage for the same medically-necessary care.

90. Because the Plan's categorical exclusion deprives transgender persons, including Plaintiff, of their right to equal dignity, liberty, and autonomy by stigmatizing them and branding them as second-class citizens, it denies transgender persons of the equal protection of the laws, in violation of the Equal Protection Clause of the Fourteenth Amendment.

91. Accordingly, Defendants are liable for their violation of the Fourteenth Amendment rights of Mr. Simonson under 42 U.S.C. § 1983, and Plaintiff is entitled to declaratory and injunctive relief against Defendants declaring the Plan's categorical exclusion unconstitutional and enjoining its enforcement.

Discrimination Based on Transgender Status Warrants Heightened Scrutiny.

92. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on transgender status is presumptively unconstitutional and subject to heightened scrutiny.

93. Transgender persons have suffered a long history of extreme discrimination and continue to suffer such discrimination at present.

94. Transgender persons are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender persons have largely been unable to secure explicit local, state, and federal protections to safeguard them against, and provide remedies for, discrimination.

95. A person's transgender status bears no relation to a person's ability to contribute to society.

96. Gender identity is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

97. Generally, gender identity is fixed at an early age and is highly resistant to change through intervention.

98. For the foregoing reasons, discrimination based on gender identity and transgender status is entitled to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment, and Plaintiff is entitled to relief against Defendants on that basis.

**COUNT FOUR – DISCRIMINATION BECAUSE OF SEX
IN VIOLATION OF THE NEW YORK STATE HUMAN RIGHTS LAW
N.Y. Exec. Law § 296
*(Against Defendants Oswego County and DSS)***

99. Plaintiff realleges, adopts, and incorporates the allegations in paragraphs 1 through 62 above, as though fully set forth herein.

100. The New York State Human Rights Law, N.Y. Exec. Law § 296(1)(a), provides, in relevant part, that:

It is an unlawful discriminatory practice . . . For an employer . . . , because of an individual's . . . sex, . . . to refuse to hire or employ or to bar or to discharge from

employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

101. New York State enacted the Human Rights Law in recognition that “the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education, training, housing or health care not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.” N.Y. Exec. Law § 290(3).

102. The New York State Division of Human Rights, the agency charged with the power to promulgate rules and regulations to carry out the provisions of the NYSHRL and the policies formulated by it, has enacted rules and regulations stating, in relevant part, that “[t]he prohibitions contained in the Human Rights Law against discrimination on the basis of sex . . . also prohibit discrimination on the basis of gender identity or the status of being transgender.” 9 NYCRR § 466.13(c)(2).

103. Mr. Simonson has a right under the NYSHRL to receive compensation, or terms, conditions or privileges of employment, including an employer-sponsored health plan, free from discrimination because of his sex, nonconformity with sex stereotypes, gender identity, gender transition, or transgender status.

104. By denying Mr. Simonson coverage for his medically-necessary treatment of gender dysphoria, Defendants have discriminated—and continue to discriminate—against Mr. Simonson based on his sex, gender identity, gender transition, transgender status, and nonconformity with sex stereotypes.

105. Defendants have discriminated against Mr. Simonson on the basis of sex in violation of the Human Rights Law and have thereby denied Mr. Simonson the full and equal opportunity to obtain all the compensation, terms, conditions or privileges of employment.

**COUNT FIVE – DISCRIMINATION IN VIOLATION
OF THE NEW YORK CIVIL RIGHTS LAW**
N.Y. CLS Civ. R. § 40-c
(Against Defendants Oswego County and DSS)

106. Plaintiff realleges, adopts, and incorporates the allegations in paragraphs 1 through 62 above, as though fully set forth herein.

107. Section 40-c of the New York Civil Rights Law provides that:

No person shall, because of . . . sex . . . , be subjected to any discrimination in his or her civil rights . . . in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

108. By denying Mr. Simonson coverage for his medically-necessary treatment of gender dysphoria, Defendants have denied—and continue to deny—Mr. Simonson his civil rights because of his sex, in violation of the New York Civil Rights Law.

109. Plaintiff, simultaneous with the filing of this complaint, serves notice of his claim pursuant to N.Y. CLS Civ. R. § 40-c on the Attorney General of the State of New York.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter Judgment in his favor and against Defendants on all claims as follows:

A. Enter a declaratory judgment that the actions of Defendants complained herein, including enforcement of the County of Oswego Health Benefits Plan’s categorical exclusion on treatment for gender dysphoria, are in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2; Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116; the Fourteenth Amendment of the United States Constitution, U.S. Const. amend. XIV, § 1, enforceable pursuant to 42 U.S.C. § 1983; the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.*, and its implementing regulations, N.Y. Comp. Codes R. & Regs. tit. 9, § 466.13; and the New York Civil Rights Law, N.Y. CLS Civ. R. § 40-c;

B. Issue permanent injunctive relief ordering Defendants, their agents, employees, successors, and all others acting in concert with them, to refrain from discriminating on the basis of sex, nonconformity with sex stereotypes, gender identity, gender transition, and transgender status, in the provision of compensation, terms, conditions or privileges of employment, including any employer-sponsored health plan, and to provide insurance coverage for Plaintiff's transition-related care;

C. Award Plaintiff compensatory damages in an amount to be established at trial for his out-of-pocket medical expenses, as well as non-economic, garden variety damages for his emotional distress and suffering, embarrassment, humiliation, pain and anguish, stigmatization, and loss of dignity;

D. Award Plaintiff punitive damages, to the extent allowed by federal or state law;

E. Award Plaintiff costs and disbursements, including reasonable attorneys' fees and costs; and

F. Award Plaintiff such other and further legal and equitable relief as the Court may deem appropriate, just, and proper.

Dated this 30th day of November, 2017.

Respectfully submitted,

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan (Bar No. 520915)

Demoya Gordon*

Richard Saenz*

Carl Charles*

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** Application for admission or motion for
admission pro hac vice forthcoming.*