IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

JEANNETTE SIMONTON, on her own behalf and on behalf of similarly situated others, Plaintiff, v. WASHINGTON STATE HEALTH CARE AUTHORITY, and SUE BIRCH, Director of the Washington State Health Care Authority and Chair of the Public Employees Benefits Board and School Employees Benefit Board, in her official capacity, Defendants.	NO. 23-2-03017-34 **COMPLAINT (CLASS ACTION)**

I. INTRODUCTION

1. This is a dispute over whether the State of Washington's health benefit plans for public and school employees discriminate on the basis of disability when they exclude all coverage for prescription medications to treat obesity.

2. Specifically, semaglutide 1, marketed under the brand names of Ozempic and Wegovy, has been shown to be remarkably effective at treating obesity in at least four random-controlled, double-blind studies, which are the "gold standard" for evidence-based studies.

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3. Despite the medication's demonstrated effectiveness, Defendants exclude coverage of the medication whenever it is sought to treat obesity. Defendants do so without any medical or scientific basis; rather, Defendants' continued exclusion of all prescription medications to treat obesity is a vestige of its historic exclusion of coverage for disabilities.

4. Defendants' exclusion is irrational, arbitrary, and more expensive for the State of Washington than covering the disputed prescription medications. Indeed, the longer Defendants refuse to cover medically necessary prescription medications to treat obesity, the more they put the health of Plaintiff and other class members at risk for the many symptoms and co-occurring conditions associated with obesity. Moreover, the cost of the prescription medications sought here is a fraction of the cost of the only other effective treatment for obesity, bariatric surgery.

5. By virtue of her employment with Kittitas Valley Healthcare, a public district hospital, Plaintiff Jeannette Simonton is enrolled in a "health benefit plan" called the Uniform Medical Plan ("UMP") that is designed by Public Employees Benefits Board ("PEBB") and managed and administered by Defendants Washington State Health Care Authority ("HCA") and HCA Director Sue Birch.

6. Simonton is diagnosed with obesity, a medical condition that is a disability under Washington law. Simonton has been prescribed Wegovy to treat her obesity.

7. Simonton requested pre-authorization of Wegovy, which was denied by Defendants. Defendants maintain that when these mediation are prescribed to treat obesity, HCA may deny coverage of these medications under a blanket, contractual exclusion of all prescription drugs used to treat obesity.

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8. Defendants have never denied coverage of Simonton's requested medication based on medical necessity or that it is experimental or investigational when prescribed for obesity.

9. Defendants' health benefit plans contain an exclusion of all prescription medications used to treat obesity. Specifically, Simonton's Certificate of Coverage contains the following language within the section of the contract describing prescription drug coverage:

> The plan also excludes prescription drugs to treat conditions that are not covered under the medical benefit. These include, but are not limited to, prescription drugs for:
>
> …
>
> - Obesity (or weight loss).

Exh. 1, p. 108.

10. All Defendants' plans offered to public employees through PEBB and those offered to school employees through the School Employees Benefit Board ("SEBB") contain the same or functionally similar plan language (collectively, "Obesity Exclusion").

11. Simonton, on behalf of similarly situated others, challenges Defendants' exclusion of all prescription medications to treat obesity as violating RCW 48.43.0128 (which applies to HCA health benefit plans by RCW 41.05.017) and the Washington Law Against Discrimination ("WLAD"), in addition to breaching its contract with her and other similarly situated individuals. Simonton does not challenge Defendants' exclusion of prescription medications when unrelated to treatment for a diagnosis of obesity.

12. Under the WLAD, obesity is a recognized disability such that insurers like Defendants may not discriminate in the design or administration of health benefits based upon a categorical exclusion related to obesity. *See Taylor v. Burlington N. R.R. Holdings,*

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Inc., 193 Wn.2d 611, 615, 444 P.3d 606, 608 (2019) ("obesity always qualifies as an impairment" under the WLAD).

13. RCW 48.43.0128 and the WLAD apply to Defendants and the health benefit plans that they issue as a fringe benefit of employment. *See* RCW 41.05.017; RCW 49.60.180.

14. Defendants' exclusion of prescription drugs used to treat obesity is grounded in the historic isolation and segregation of people with disabilities, including those with obesity, from the mainstream of American society. *See* 42 U.S.C. § 12101(a)(2)–(3). The Obesity Exclusion at issue here is one of many historical yet ongoing discriminatory exclusions that individuals with disabilities encounter and that anti-discrimination law was designed to combat. *See* 42 U.S.C. § 12101(a)(5). Historically, categorical exclusions of a particular treatment were routinely imposed when the treatment at issue was required by disabled individuals, rather than the general population. *See* Blake, Valarie, *Restoring Civil Rights to the Disabled in Health Insurance,* 95 Neb. L. Rev. 1071, 1086 (2017) (hereinafter "Blake"). Indeed, before enactment of the Affordable Care Act ("ACA") and the WLAD, health insurers purposefully ***and legally*** eliminated coverage of such treatment in order to avoid paying for the health needs of people with disabilities. *Id.* That is the case here.

15. The original purpose of Defendants' health plans was to provide medical care for able-bodied workers. Historically, coverage for treatment and health conditions associated with disabilities was excluded.

16. Such historic exclusionary practices against individuals with disabilities were grounded in the misperception that persons with disabilities could not participate in work, benefit from medical treatment, or fully engage in other aspects of society. These historic exclusions were not reexamined by Defendants when state and federal anti-

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discrimination laws took effect. Such "thoughtless indifference" or "benign neglect" of the coverage needs of insureds with disabilities is a form of discriminatory prejudice. *See Payan v. L.A. Cmty. Coll. Dist.*, 11 F.4th 729, 737 (9th Cir. 2021).

17. Defendants historically excluded the treatment of various disabilities including developmental disabilities, psychiatric disabilities, intellectual disabilities, hearing impairments, and obesity from coverage. They also excluded the medically necessary treatment specific to those conditions.

18. In sum, the exclusion of coverage of prescription medications related to treatment for obesity is a remnant of the historic exclusionary treatment of people with disabilities by employers and health insurers generally, including Defendants. It is a form of discrimination that is now ***illegal*** and must be eliminated.

II. PARTIES

19. ***Jeannette Simonton.*** Simonton is a resident of Kittitas County, Washington. She is enrolled in a health benefit plan designed by PEBB and administered by Defendants HCA and Birch.

20. ***Washington State Health Care Authority.*** Defendant HCA is a duly created executive agency of the State of Washington. RCW 41.05.021. The primary duty of HCA is to manage and administer the state public employees' insurance benefits and the school employee benefits in accordance with the provisions of Chapter 41.05 RCW. Within HCA, PEBB and SEBB are two legislatively authorized boards governing these health benefits. RCW 41.05.055; RCW 41.05.740. The function of each board is to design and approve insurance benefit plans for their respective public and school employees. *Id.* Each board establishes the minimum scope and content of health benefit plans to be offered to enrollees participating in the plans, while HCA administers the plans designed by the boards.

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21. ***Sue Birch, Administrator.*** Defendant Birch is the current Administrator of the HCA and a member of both PEBB and SEBB. She is a named defendant in her official capacity.

III. JURISDICTION AND VENUE

22. Jurisdiction is proper under RCW 2.08.010.

23. Venue is appropriate in Thurston County, Washington, where Defendants are located and where the cause of action arose. RCW 4.12.020; RCW 4.12.025.

IV. CLASS DEFINITION AND CR 23 ALLEGATIONS

24. ***Definition of Class***. The proposed class consists of all individuals who:

> (1) were, are, or will be covered under HCA's self-funded health benefits plan(s) administered by HCA and/or Birch (or her predecessor or successor) that have been, are, or will be offered, established, renewed, or otherwise effective on or after January 1, 2022; and
>
> (2) have required, require, or will require prescription medications to treat a diagnosis of obesity.

25. ***Size of Class***. The class of individuals enrolled in self-funded health benefit plans administered by HCA on behalf of public employees and/or school employees who have required, require, or will require prescription medications for a diagnosis of obesity is so numerous that joinder of all members is impracticable.

26. ***Class Representative Simonton.*** Simonton was and remains an enrollee in Defendants' health benefit plans in the State of Washington.

27. Simonton was diagnosed with obesity by her treating physician and received a prescription for Wegovy to treat her diagnosis of obesity.

28. Simonton sought pre-authorization of the coverage for her prescription.

29. Consistent with the written language of the policy, Defendants denied coverage of medically necessary medications required by Simonton to treat her obesity.

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The denial was based solely on the Defendants' contract exclusions and did not consider the medical necessity of the medications to treat Simonton's condition.

30. Simonton has exhausted the administrative appeals process for Defendants' denial of these claims.

31. Simonton's claims are typical of the claims of the other members of the class. Simonton will fairly and adequately represent the interests of the class.

32. ***Common Questions of Law and Fact***. This action requires a determination of at least the following two common questions: (1) whether Defendants' design, imposition, and administration of the Obesity Exclusion violates RCW 48.43.0128 and the WLAD because it subjects class members to illegal disability discrimination, including disparate treatment, proxy, and disparate impact discrimination; and (2) whether Defendants' administration of the Obesity Exclusion breaches the health benefit contract between Defendants and class members. Adjudication of these issues will in turn determine whether: (1) Defendants may be enjoined from designing, enforcing, and administering the Obesity Exclusion; (2) Defendants may be liable for classwide compensatory damages; and (3) other appropriate classwide equitable relief is available.

33. ***Separate suits would create the risk of varying conduct requirements***. The prosecution of separate actions by proposed class members against Defendants would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct. Certification is therefore proper under Civil Rule 23(b)(1).

34. ***Defendants have acted on grounds generally applicable to the class.*** Defendants, by imposing the uniform Obesity Exclusion, have acted on grounds

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generally applicable to the class, rendering declaratory and injunctive relief appropriate respecting the whole class. Certification is therefore proper under Civil Rule 23(b)(2).

35. ***Questions of law and fact common to the class predominate over individual issues.*** The claims of the individual class members are more efficiently adjudicated on a classwide basis. Any interest that individual members of the class may have in individually controlling the prosecution of separate actions is outweighed by the efficiency of the class action mechanism. Issues as to Defendants' conduct in applying standard policies and practices towards all members of the class predominate over questions, if any, unique to members of the class. Certification is therefore additionally proper under Civil Rule 23(b)(3).

36. Upon information and belief, there has been no class action suit filed against Defendants for the relief requested in this action.

37. This action can be most efficiently prosecuted as a class action in Thurston County, Washington, where Defendants have their principal place of business and do business. It is also the county where the dispute arose.

38. ***Class Counsel***. Simonton has retained experienced and competent class counsel.

V. FACTUAL BACKGROUND

A. Obesity Is a Physiological Impairment or Disease Affecting One or More Bodily Functions

39. Obesity is a chronic disease that impacts one or more body systems, even without any secondary, underlying physical conditions.

40. In 2013, the American Medical Association ("AMA") passed a landmark policy that recognized "obesity as a disease state with multiple pathophysiological aspects requiring a range of interventions to advance obesity treatment and prevention."

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See AMA Policy H440.842, found at https://policysearch.ama-assn.org/policyfinder (last visited 9/15/23).

41. The AMA policy is consistent with conclusions throughout the medical community regarding the nature and impact of obesity.

42. Dozens of other professional organizations, medical and public health entities, and governmental and non-governmental organizations, including the World Health Organization and National Institutes of Health, similarly recognize that obesity is a physiological disease.

43. Evolving research on obesity reveals that it is a chronic, relapsing, multi-factorial disease. It is not resolved through "personal responsibility" or willpower. It is a disease that requires medical treatment.

44. Obesity involves numerous pathophysiological processes, including changes at the cellular, hormonal, neurochemical, and organ levels. It causes or contributes to altered production of numerous hormones, which have pathologic effects across bodily systems and cause further adverse health effects.

45. At a neurochemical level, obesity leads to inflammation within appetite control centers in the hypothalamus, which decreases response to hunger and satiety signaling from other parts of the body. This appetite dysregulation, which leads to elevated hunger and diminished satiety, makes behavioral changes to decrease food intake progressively more challenging. This and other biochemical changes likely underly why sustained weight loss is so difficult to achieve and maintain.

46. Obesity is a recognized physiological medical condition characterized by excessive fat tissue that affects one's endocrine, cardiovascular, and musculoskeletal systems. In other words, it is an impairment that causes concurrent physiological changes in the body and is caused by a variety of factors including physiological factors.

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47. In contrast, being overweight, as opposed to being obese, means having more body weight than is considered normal for an individual's age and height. Being overweight is not a disease condition or impairment.

B. Diagnosing Obesity

48. The initial screening for obesity is usually done by calculating body mass index ("BMI"), a ratio of weight and height that has been shown in actuarial and public health studies to correlate with risk for premature mortality.

49. Misclassification is common with BMI, but as a screening tool, it is inexpensive and efficient.

50. After BMI, a diagnosing provider considers the clinical effects of obesity on health via a medical history and physical examination. The clinical review considers the patient's risk for obesity, history of weight trajectory, and impact of the patient's weight on their health status.

51. Based upon these results, patients may be diagnosed with obesity and be eligible for evidence-based, effective medical treatment.

C. Obesity Is Treated with Medically Necessary Medications, Counseling, and/or Surgery

52. There are proven, clinically effective treatments for obesity.

53. These treatments include behavioral counseling, Food and Drug Administration ("FDA") approved medications or medical device placement, and/or bariatric/metabolic surgery.

54. For example, in 2021, the FDA approved Wegovy as a medication for treatment of obesity. *See* https://www.fda.gov/news-events/press-announcements/fda-approves-new-drug-treatment-chronic-weight-management-first-2014 (last visited 9/15/2023).

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55. Wegovy works by mimicking a hormone called glucagon-like peptide-1 (GLP-1) that targets areas of the brain that regulate appetite and food intake.

56. Wegovy was reviewed in four random, double-blind, placebo-controlled trials. Patients in the trials lost between 12.4% to 6% of their initial body weight, compared to those who received the placebo.

57. These and other prescription medications to treat obesity are excluded by Defendants, even when the medications are medically necessary.

D. History of Disability-Based Exclusions in Health Insurance

58. Defendants' Obesity Exclusion is based on historic stigma and prejudice against people diagnosed with obesity.

59. Most health plans evolved out of employer-based health coverage. For example, Blue Shield plans were started in Washington state in the early 1900s by employers who wanted to provide medical care for their workers. *See BCBSA History Fact Sheet,* found at https://digitalcommons.unf.edu/cgi/viewcontent.cgi?article=3089&context=flablue_text (last visited 06/01/23). Defendants' current claims administrator, Regence BlueShield, is the successor to this original Blue plan.

60. Historically, employer-based plans could freely avoid providing coverage to any groups that were viewed as undesirable risks, including disabled individuals. *See* Blake, p. 1085. Based upon information and belief, Defendants' benefit design during this period did not provide coverage for disability-related conditions, including obesity.

61. In 1965, the Medicare and Medicaid Act was signed into law. These two programs were intended to meet the needs of the elderly and disabled, two populations that were generally excluded from coverage by private insurance. Medicare coverage was modeled on the private coverage offered by Blue Cross and Blue Shield plans at the

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time. *See* Lew, Nancy, *Medicare 35 Years of Service,* Health Care Finance Rev. 2000 Fall: 22(1): 75–103 (hereinafter "Lew").

62. Thus, the exclusions imposed in the typical Blue Cross and Blue Shield plans were imported into Medicare and Medicaid. This caused significant problems since the benefit package for Medicare and Medicaid with its attendant exclusions was not designed to meet the needs of those who are elderly or disabled. *Id.* As a result, the discrimination that occurred in private coverage was imported into the public programs offered by Medicare and Medicaid. *Id.*

63. Medicare began to cover bariatric surgery for treatment of obesity starting in 2006. Some private health plans followed Medicare and added coverage of bariatric surgery.

64. Until the ACA was passed, health insurers and health plan administrators (like Defendants) were free to discriminate in the design of their benefits, including as related to obesity. *Schmitt v. Kaiser Found. Health Plan of Wash.*, 965 F.3d 945, 948 (9th Cir. 2020). The ACA, however, required insurers and administrators to ensure that their benefit design did not result in disability discrimination. *See* 42 U.S.C. § 18116(a). Accordingly, upon implementation of the ACA and, in Washington, under the WLAD, insurers and administrators should have reconsidered whether historic disability-based exclusions, like the Obesity Exclusion, were the result of discrimination or were justified using the same medical and scientific standards applied to other covered services.

65. Based upon this history and on information and belief, the Obesity Exclusion has likely always been part of the benefit design in the Defendants' health benefit plans.

66. Based on information and belief, Defendants have never evaluated whether the Obesity Exclusion was based on medical and scientific evidence.

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Specifically, Defendants' Health Technology Clinical Committee has not reviewed whether Wegovy (semaglutide 1) can be medically necessary for the treatment of obesity. *See* https://www.hca.wa.gov/about-hca/programs-and-initiatives/health-technology-assessment/health-technology-reviews (last visited 7/26/23).

67. Similarly, Defendants' Pharmacy and Therapeutic Committee/Drug Utilization Review Board does not appear to have reviewed whether Wegovy (semaglutide 1) can be medically necessary for the treatment of obesity, although semaglutide 1 marketed as Ozempic appears on the Washington Preferred Drug List as treatment for diabetes.

68. Based on information and belief, Defendants did not consider whether prescription medications for the treatment of obesity should be covered in its health benefit plans, even when Defendants evaluated the required changes in coverage resulting from the non-discrimination requirements in the ACA, RCW 48.43.0128, and WLAD.

69. Although prescription medications like Wegovy can be medically necessary and clinically effective for the treatment of obesity, Defendants have not taken action to include such treatment in its health benefit plans.

70. Based on information and belief, Defendants did not engage in a "cost-benefit" analysis to determine whether coverage for treatment related to obesity should be added to its health plans for public and school employees.

71. Defendants continued to design and administer the Obesity Exclusion simply because it had always done so.

72. Defendants' design and administration of the Obesity Exclusion is an intentional act from which facial discrimination may be inferred. *See Schmitt,* 965 F.3d at 954.

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E. Defendants' Obesity Exclusion

73. Defendants design and administer health benefit plans to thousands of Washington public and school employees and their families.

74. Defendants' health benefit plans are governed by applicable federal and state laws and regulations. *See* ***Exh. 1***, p. 150 ("The plan is governed by and construed in accordance with the laws of the United States of America and by applicable laws of the State of Washington without regard to its conflict of laws rules"); p. 166 ("Any provision of this certificate of coverage that is in conflict with any governing law or regulation of Washington state is hereby amended to comply with the minimum requirements of such law or regulation"); p. 179 (same).

75. Defendants generally cover medically necessary prescription medications. ***Exh. 1***, pp. 87–89, 190–191. Specifically, to be covered, a prescription drug must meet all of the following:

- Does not have a nonprescription alternative, including an over-the-counter alternative with similar safety, effectiveness, and ingredients.
- Has been dispensed from a licensed pharmacy employing licensed, registered pharmacists.
- Has been prescribed by a provider with prescribing authority within their scope of license.
- Has been reviewed by either the Washington State P&T Committee or WSRxS (semaglutide 1 has been reviewed and appears on the Washington Preferred Drug List as a treatment for diabetes).
- Is approved by the FDA.
- Is medically necessary.
- Is not classified as a vitamin, mineral, dietary supplement, homeopathic drug, or medical food.

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- Is not a noncovered prescription drug or product, unless an exception is granted.
- Is not an excluded prescription drug or product.
- May be legally obtained in the U.S. only with a written prescription.
- Meets plan coverage criteria.

76. Indeed, semaglutide 1 meets all of these requirements except that it is excluded under the contract when it is prescribed to treat obesity.

77. In other words, ***but for*** Defendants' decision to maintain the Obesity Exclusion, the prescription medication required by Simonton and the proposed class would be covered when medically necessary.

78. The Exclusion targets obesity, a disability under Washington law. Given Defendants' existing authorization of semaglutide 1 for the treatment of other health conditions, the only purpose of the Exclusion is to eliminate coverage of medically necessary prescription medications for treatment of obesity, *i.e.*, the precise coverage needed by insureds diagnosed with obesity.

79. The Obesity Exclusion also eliminates meaningful access to the internal and external appeals procedures by Simonton and the proposed class when seeking coverage of prescription drugs to treat their diagnosed condition of obesity. The contractual Exclusion blocks any review of the medical necessity of prescription drugs to treat obesity. An external reviewer cannot reverse Defendants' denial based on the Exclusion, even if the reviewer concludes that the medication is medically necessary. *See Z.D. v. Grp. Health Coop.*, 2012 U.S. Dist. LEXIS 76498, at *13 (W.D. Wash. June 1, 2012). All other requests for coverage of this prescription medication are reviewed individually for medical necessity, both internally and upon external review.

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80. Thus, by intentional design, the Obesity Exclusion is uniquely and specifically targeted at disabled insureds with a diagnosis of obesity. Based on information and belief, Defendants deliberately included the Exclusion to ensure that medically necessary prescription drugs to treat obesity would not be covered.

81. The exclusion of prescription medications related to obesity is a proxy for discrimination against insureds with obesity, all of whom are disabled under Washington law.

82. Based on information and belief, Defendants administer the Obesity Exclusion by denying all claims and preauthorization requests for coverage submitted for prescription medications with a diagnosis of obesity.

83. That is exactly what occurred for Simonton. Defendants denied her treatment because Defendants concluded it was sought to treat her obesity. ***Exh. 2*** ("Wegovy for Obesity is in the following category of medications that are not covered under your prescription benefit").

84. The Obesity Exclusion also disparately impacts enrollees diagnosed with obesity. The treatment excluded by Defendants is medically required by people who are diagnosed with obesity.

85. While non-disabled insureds may seek weight control services, those services are not typically medical in nature (*i.e.,* the insureds are not diagnosed with obesity and do not need medications prescribed by a licensed health provider to treat obesity). As a result, those services would not be entitled to coverage under Defendants' health benefit plans if the Obesity Exclusion were removed.

86. Moreover, the fact that the Obesity Exclusion may impact people who are not disabled, a form of "over-discrimination," does not relieve Defendants from liability. *See Schmitt,* 965 F.3d at 959.

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F. Plaintiff's Need for Prescription Medication (Wegovy) that Defendants Exclude under the Obesity Exclusion

87. Simonton is diagnosed with obesity.

88. In December 2022, Simonton was recommended and prescribed Ozempic to treat her diagnosis with obesity.

89. Simonton submitted a request for preauthorization to Defendants, which was denied. ***Exh. 3***. The denial letter stated that: "medications used for weight loss are in a category of medications that are not covered under your prescription benefit." *Id.* Defendants provided no other basis for the denial.

90. Defendants did not deny coverage for Simonton's treatment based upon a determination that the treatment was not medical necessity or experimental/investigational.

91. Simonton appealed the denial of coverage. *See* ***Exh. 2***.

92. Defendants also denied the appeal based solely on the Obesity Exclusion. *Id.*

93. As a result of Defendants' denials, Simonton has paid out-of-pocket for the medically necessary prescription medication she needs to treat her obesity.

94. Simonton has a "disability" under the WLAD because she is diagnosed with obesity.

95. No administrative appeal is required before a claim under the WLAD may be brought.

96. Any such appeal would be futile given Defendants' clearly articulated position described in its health benefit plans and denial letters. *See Horan v. Defendants Steel Ret. Plan*, 947 F.2d 1412, 1416 (9th Cir. 1991).

97. Nonetheless, Simonton exhausted the internal appeals process available through Defendants, to no avail.

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G. Classwide Factual Allegations

98. During the relevant time periods, Simonton and members of the class have been enrolled in one or more Defendants' health benefit plans.

99. Simonton and other members of the class have been diagnosed with obesity. As a result, Simonton and other members of the class are "disabled" pursuant to the WLAD.

100. Simonton and other members of the class have required, require, and/or will require prescription medications to treat their diagnosis with obesity. In other words, class members have been, are, or will be diagnosed with obesity and have been, are, or will be prescribed medications as treatment for obesity by a licensed health provider.

101. Defendants have designed and administered health benefit plans that exclude all coverage for prescription medications to treat obesity. Defendants continue to do so, to date.

102. Defendants' health benefit plans must comply with the requirements of RCW 48.43.0128. *See* RCW 41.05.017.

103. Based upon the Obesity Exclusion, Defendants has a standard policy of denying coverage of medically necessary prescription medications when used to treat obesity. Defendants' design and administration of the Obesity Exclusion is a form of illegal disability discrimination under the WLAD.

104. Specifically, Defendants designed the Obesity Exclusion to target and exclude the health care needs of insureds with obesity, which is always a disability under Washington law.

105. To the extent non-disabled insureds seek prescription drug treatment for weight control, such treatment does not meet the definition in the Defendants contract for "medical necessity." ***Exh. 1***, pp. 190–191. These claims are already excluded as "not

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medically necessary." Thus, the Obesity Exclusion is targeted at excluding medically necessary prescription medications for treatment of obesity sought by disabled insureds.

106. Defendants do not meet the prescription drug needs of disabled enrollees diagnosed with obesity. While other treatment for obesity is covered, that treatment is not appropriate for many disabled enrollees diagnosed with obesity.

107. In 2015, Defendants reviewed and approved bariatric surgery for medical necessity. ***Exh. 4***. The procedure is only approved for enrollees with a BMI greater than or equal to 40, unless other co-morbidities are present.

108. Bariatric surgery is a highly invasive surgery. It refers to a collective group of procedures that involve surgical modifications to the digestive system to promote weight loss and includes gastric bypass, gastric banding, and sleeve gastrectomy. There are significant risks associated with bariatric surgery, which may include bowel obstruction, development of gallstones or hernias, stomach perforation and ulcers, "dumping syndrome" (diarrhea and other symptoms caused by rapid movement of undigested food to the small bowel), and in some cases death. *See* https://www.hca.wa.gov/about-hca/programs-and-initiatives/health-technology-assessment/bariatric-surgery (last visited 7/26/23).

109. The treatment needs of Simonton and proposed class members are not met by Defendants' coverage of bariatric surgery, either because they are not candidates for the surgery, they previously received the surgery but remain diagnosed with obesity, and/or they prefer the less invasive, less costly, and more effective treatment with prescription medications such as Wegovy.

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110. As a result of Defendants' deliberate discriminatory actions, Simonton and other enrollees with obesity do not receive coverage for medically necessary prescription medications they need to treat their condition.

111. Defendants exclude all coverage of prescription medications to treat obesity even though they cover the same medications when used to treat other medical conditions.

112. Defendants' Obesity Exclusion is not based upon clinical or medical evidence.

113. The application of Defendants' Obesity Exclusion denies individuals with obesity the prescription drug benefits available to other insureds, based solely on their disability.

114. As a direct result, Simonton and members of the class owe or have paid out-of-pocket for medically necessary prescription medications to treat their diagnosed condition of obesity. Other class members have been forced to forgo needed prescription medications due to Defendants' conduct.

VI. CLAIMS FOR RELIEF:

COUNT I –BREACH OF CONTRACT

115. Simonton re-alleges all paragraphs above.

116. As enrollees in health benefit plans designed and administered by Defendants, Simonton and the plaintiff class are entitled to coverage for medically necessary prescription drugs.

117. Defendants breached their Certificates of Coverage by denying and excluding coverage for Wegovy and other medically necessary prescription medications to treat obesity under the health benefit plans' Obesity Exclusion.

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118. RCW 48.43.0128 forbids Defendants' health plans from discriminating "in its benefit design or implementation of its benefit design, … against individuals because of their … present or predicted disability, … or other health conditions" or otherwise "discriminate on the basis of … disability."

119. The definition of "disability" under Washington law is broader than the federal Americans with Disabilities Act ("ADA") definition. *See* RCW 49.60.040(7)(a) ("Disability means the presence of a sensory, mental or physical impairment that: (i) [i]s medically cognizable or diagnosable; or (ii) [e]xists as a record or history; or (iii) [i]s perceived to exist whether or not it exists in fact.").

120. Under Washington law, a diagnosis of obesity is always a "disability" because it is a physiological disorder or condition that affects the body systems listed in RCW 49.60.040(7)(c)(i). Accordingly, Simonton and the plaintiff class are all disabled.

121. Defendants' Obesity Exclusion is a form of benefit-design discrimination targeted at disabled individuals with obesity. As a result, RCW 48.43.0128 and the plain terms of Defendants' Certificates of Coverage renders the Exclusion null and void. ***Exh. 1***, pp. 166, 179.

122. Specifically, the Obesity Exclusion discriminates against Simonton and the class because their disability (obesity) is a "substantial factor" in the design and administration of the exclusion of coverage. *See Fell v. Spokane Transit Auth.*, 128 Wn.2d 618, 637, 911 P.2d 1319 (1996).

123. As described above, Defendants' administration of the Obesity Exclusion turns exclusively or substantially on whether the prescription medication is sought for treatment of obesity.

124. By excluding coverage of prescription medication to treat obesity, Defendants have discriminated, and continue to discriminate, against Simonton and the

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class she seeks to represent, on the basis of disability, in violation of RCW 48.43.0128. As Defendants' contracts must be construed and applied without the Obesity Exclusion pursuant to RCW 48.43.0128 and the literal terms of the contracts (***Exh. 1***, pp. 166–179), Defendants' use of the Obesity Exclusion to deny coverage is also a breach of contract.

125. Simonton and the plaintiff class are entitled to damages for breach of contract including, without limitation, out-of-pocket losses, consequential damages, and restitution/disgorgement. *See, e.g., Moore v. Wash. State Health Care Auth.*, 181 Wn.2d 299 (2014).

COUNT II –VIOLATION OF WASHINGTON LAW AGAINST DISCRIMINATION

126. Simonton re-alleges all paragraphs above.

127. A violation of RCW 48.43.0128 in a self-funded health benefit plan designed and administered by an employer is also "unfair discrimination" under RCW 49.60.180 and therefore subject to the WLAD.

128. Defendants designed a benefit plan that provides general coverage for prescription medications but excludes all coverage of medically necessary prescription medications when provided to treat enrollees diagnosed with obesity. For insureds diagnosed with obesity, there is no prescription drug coverage for their disease. Excluding medically necessary prescription drug coverage for obesity fails to address the treatment needs of PEBB and SEBB enrollees diagnosed with obesity who are not candidates for bariatric surgery or who may be more effectively and appropriately treated with prescription medications. The Obesity Exclusion is a benefit design that uniquely targets those enrollees diagnosed with obesity and arbitrarily excludes what is now or will very soon be the predominant treatment for their condition.

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129. Simonton and the class are entitled to remedies under the WLAD, including injunctive relief requiring reprocessing of claims, actual damages, attorney fees, and all other appropriate remedies permitted under RCW 49.60.030(2).

VII. DEMAND FOR RELIEF

WHEREFORE, Simonton requests that this Court:

1. Certify this case as a class action; designate Simonton as class representative; and designate SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC, Eleanor Hamburger, Richard E. Spoonemore and Daniel S. Gross as class counsel;

2. Enter judgment on behalf of Simonton and the class due to Defendants' discrimination on the basis of disability under the Washington Law Against Discrimination and RCW 48.43.0128;

3. Declare on behalf of Simonton and the class that Defendants may not apply the Obesity Exclusion and/or other contract provisions, policies, or practices that deny or exclude coverage of medically necessary prescription medications on the basis that the treatment is for a diagnosis of obesity;

4. Enjoin Defendants from applying the Obesity Exclusion now and in the future to claims from Simonton and the proposed class;

5. Order corrective notice and other equitable relief due to Defendants' misrepresentations about their coverage obligations;

6. Enter judgment in favor of Simonton and the class for all damages due to Defendants' violation of RCW 48.43.0128, RCW 41.05.017, Washington Law Against Discrimination, and its breach of the Certificates of Coverage with Simonton and proposed class members;

7. Award Simonton and the class their attorney fees and costs; and

8. Award any such other relief as is just and proper.

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DATED: September 18, 2023.

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