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

CAMILLE KIEFEL,

Plaintiff,

v.

AMY RUFF, LCSW, an individual, BRAVE
SPACE LLC, an Oregon limited liability
company; MARA BURMEISTER, LPC, an
individual; PROJECT QUEST dba QUEST
CENTER FOR INTEGRATIVE HEALTH, an
Oregon public benefit nonprofit corporation;
and DOES 1-10, inclusive,

Defendants.

Case No. 22CV29327

PLAINTIFF’S MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT

ORCP 23B

ORAL ARGUMENT BY
TELECOMMUNICATION
REQUESTED

UTCR 5.010 CERTIFICATE

Counsel for plaintiff certifies that he conferred via telephone with defendants’ counsel,
but was unable to resolve all of defendants’ objections. Defendants oppose the motion.

UTCR 5.050 STATEMENT

An hour will suffice for oral argument. Official court reporting services are requested.

MOTION FOR LEAVE TO AMEND

Plaintiff Camille Kiefel, by and through counsel Benjamin Boyd of Hostetter Law Group,
LLP, move the court for an order allowing plaintiff to file her Second Amended Complaint.
Plaintiff’s motion is supported by the following points and authorities, the Declaration of
Benjamin Boyd in Support of Plaintiff’s Motion for Leave to File Second Amended Complaint
(herein “Boyd Decl.”) and Exhibit 1, the proposed Second Amended Complaint (attached hereto).

REQUEST FOR RELIEF FROM UTCR 5.070(1)

UTCR 5.070(1) requires the proposed amended pleading to be formatted with the material
to be added underlined and in bold with braces, and with the material to be deleted italicized with

1 brackets. The proposed Second Amended Complaint (herein “SAC”) is not formatted pursuant
2 to that rule. The proposed SAC is a complete revision and substantial rearrangement of plaintiff’s
3 First Amended Complaint. In consequence, the requirements in UTCR 5.070(1), which are
4 designed to aid the parties’ and court’s comprehension of the proposed amendments at a glance,
5 if applied to the proposed SAC, would not assist in any reader in understanding the proposed
6 amendments.

7 Plaintiff respectfully requests pursuant to UTCR 1.100 that the court grant relief from the
8 formatting requirements in UTCR 5.070(1), and consider the proposed SAC as presented.

9 **I. POINTS AND AUTHORITIES**

10 “A pleading may be amended by a party once as a matter of course at any
11 time before a responsive pleading is served or, if the pleading is one to which no
12 responsive pleading is permitted, the party may so amend it at any time within 20
13 days after it is served. Otherwise a party may amend the pleading only by leave
14 of court or by written consent of the adverse party; and leave shall be freely given
15 when justice so requires. ...”

16 ORCP 23A. “Although the trial court “has broad discretion in determining when justice requires
17 amendment to a complaint,” ... that discretion is not unlimited.” *Safeport, Inc. v. Equip. Roundup*
18 & *Mfg., Inc.*, 184 Or App 690, 699, 60 P3d 1076, 1082 (2002) (citation omitted). Four factors are
19 relevant to the court’s discretion:

20 “(1) the nature of the proposed amendments and their relationship to the
21 existing pleadings; (2) the prejudice, if any, to the opposing party; (3) the timing
22 of the proposed amendments and related docketing concerns; and (4) the colorable
23 merit of the proposed amendments.”

24 *Safeport*, 184 Or App at 699 (citation omitted).

25 **II. DISCUSSION**

26 **A. The Nature of Plaintiff’s Proposed Amendments and Their Relationship to
Plaintiffs’ Existing Pleadings**

Plaintiff’s original Complaint was filed on August 29, 2022 by plaintiff’s first counsel,
Patricia Campbell. All defendants were served the Complaint and summons on October 20, 2022
or on October 21, 2022. Plaintiff’s second counsel, Candice Jackson, filed notice of substitution
of counsel on December 12, 2022. Plaintiff’s First Amended Complaint was also filed on

1 December 12, 2022, before any responsive pleadings were filed.

2 Plaintiff's proposed SAC adds substantial material factual allegations to the First
3 Amended Complaint. The court has discretion to allow the amendment of additional supporting
4 allegations, where the subject matter of the suit continues the same. *Baldock v. Atwood*, 21 Or
5 73, 79, 26 P 1058, 1058 (1891) ("The insertion of new additional allegations in support of the
6 claim made by the plaintiff, when the subject-matter of the suit continues the same, is in the
7 discretion of the trial court.")

8 Plaintiff's proposed SAC retains each of plaintiff's original claims from the First
9 Amendment Complaint, which are: professional malpractice, fraud, and intentional infliction of
10 emotional distress, but with some changes. The SAC splits the claim for professional malpractice
11 into separate counts of malpractice. Count 1 is negligence *per se* against defendants Ruff and
12 Brave Space. Count 2 is negligence *per se* against defendants Burmeister and Project Quest.
13 Count 3 is simple professional medical negligence against all defendants. Plaintiff's fraud claim
14 is now styled a claim for misrepresentation. The facts supporting the misrepresentation claim are
15 pleaded with more particularity. The proposed SAC makes the facts supporting plaintiff's IIED
16 claim more definite and certain.

17 Plaintiff's proposed SAC adds one new claim, a claim for abuse of a vulnerable person
18 under ORS 124.100. The court has discretion to allow an amendment that adds a new cause of
19 action, provided the new cause of action is connected to the subject matter of the controversy. *See*
20 *Nelson v. Smith*, 157 Or 292, 299, 69 P2d 1072, 1075 (1937) ("a court may, in its discretion,
21 before trial, permit an amendment containing a new cause of action if germane to the controversy
22 before the court.") and *Lieuallen v. Mosgrove*, 37 Or 446, 448, 61 P 1022, 1022-23 (1900) ("the
23 court may, before trial, allow a pleading to be amended by inserting a new cause of action or
24 defense, if it is germane to, and connected with, the subject-matter of the controversy.")

25 Plaintiff's new cause of action under ORS 124.100 is germane to and connected to the
26 subject matter of the controversy. Plaintiff's First Amended Complaint include specific
allegations about plaintiff's mental health history and diagnoses, and how her mental health

1 conditions led to plaintiff experiencing general dysfunction, severe depression, and an inability
2 to work. *See* First Amended Complaint, ¶¶ 8-9. Plaintiff’s proposed SAC expands on the
3 allegations about plaintiff’s mental health history, her general dysfunction during the relevant
4 times period, and plaintiff’s inability to work for most of 2018, all of 2019, and 2020. *See* SAC,
5 ¶¶ 14-25. These factual allegations that form a significant factual basis for plaintiff’s claim under
6 ORS 124.100.

7 More recently, the Supreme Court noted that trial courts should allow amendment “if
8 there is no prejudice to the defendant and no material change in the substance of the complaint.”
9 *C.O. Homes, LLC v. Cleveland*, 366 Or 207, 216–17, 460 P3d 494, 500 (2020). Prejudice to
10 defendants will be addressed below. The proposed SAC does not materially change the substance
11 of plaintiff’s complaint against defendants. The factual allegations in plaintiff’s original
12 Complaint, First Amended Complaint, and SAC are all in substance based on defendants’
13 professional malpractice. Likewise, each of plaintiff’s causes of action in plaintiff’s First
14 Amended Complaint and SAC are in substance based on defendants’ professional malpractice.
15 The SAC’s addition of a claim for abuse of vulnerable person under ORS 124.100 does not
16 materially change the substance of plaintiff’s complaint against defendants, nor does that new
17 claim change plaintiff’s theory of defendants’ liability.

18 As to damages, the SAC amends plaintiff’s claimed non-economic damages from
19 \$500,000 to \$3,000,000, and amends plaintiff’s claimed economic damages from \$250,000 to
20 \$500,000. The proposed SAC deletes plaintiff’s claim for damages due to wage loss. While the
21 SAC adds to the amount of damages, the SAC does not add different elements of damages.

22 **B. The Prejudice to Defendants**

23 The court should consider whether defendants would suffer any prejudice if plaintiff is
24 given leave to file the proposed SAC. “To determine whether such prejudice might occur, the
25 court was required to consider not only the face of the proposed amended pleading, but also the
26 stage of the litigation at the time the motion was made.” *Eklof v. Persson*, 369 Or 531, 546–47,
508 P3d 468, 478 (2022). Here, the parties are still at the pleading stage of this proceeding.

1 Plaintiff is seeking leave to file her SAC before defendants have filed an answer or motion in
2 response to plaintiff's First Amended Complaint.

3 The mere requirement of responding to plaintiff's proposed SAC, with its new claim and
4 amended claims, does not constitute prejudice to defendants. "The burden of responding to new,
5 nonfutile claims may impose some cost on the nonmoving party, but the mere requirement to
6 respond to such an additional claim, without more, does not prejudice the ability of the
7 nonmoving party to litigate those claims." *Eklof*, 369 Or at 555, fn. 7.

8 In evaluating whether prejudice exists, "it is important to consider the effect of the
9 amendment upon the adverse party and his right to a reasonable opportunity to research the
10 appropriate law, move against the amended pleading, avail himself of discovery procedures, and
11 prepare requested instructions." *Oregon Post Office Bldg. Corp. v. McVicker*, 246 Or 526, 529,
12 426 P2d 458, 460 (1967). Here, defendants will have every opportunity to research the applicable
13 law, move against the SAC, avail themselves of discovery concerning plaintiff's factual
14 allegations, and prepare requested instructions for trial.

15 Finally, plaintiff's proposed SAC does not come as a surprise to defendants. Defendants'
16 counsel have known since mid-January 2024 that plaintiff intended to amend her pleading. *See*
17 *Boyd Decl.* ¶ 2. Plaintiff's counsel sent defendant's counsel an early draft of the proposed SAC
18 on or about February 20, 2024, which early draft included all of the claims in the current
19 proposed SAC. *Id.* at ¶ 3. Thus, defendants and their counsel have been fully aware of the
20 substance of plaintiff's proposed amended pleading for some time now.

21 **C. The Timing of the Motion for Leave to Amend**

22 As noted above, this case is still at the pleading stage. Defendants have been served with
23 plaintiff's First Amended Complaint, but have not filed answers or responsive motions. This case
24 is many months away from trial. "Amendments to pleadings should be allowed with great
25 liberality before trial if they are essential to a fair trial on the merits of the case." *Nelson v. Smith*,
26 157 Or 292, 298, 69 P2d 1072, 1075 (1937). Here, the proposed amendments to plaintiff's
complaint are essential to a fair trial on the merits.

1 Plaintiff's original Complaint was filed in late August 2022. Plaintiff's First Amended
2 Complaint was filed shortly thereafter on December 12, 2022, before defendants filed any
3 responsive pleading. One consideration of the timing of the motion for leave to amend "is
4 whether the movant knew or reasonably should have known earlier in the case of the need to
5 amend his pleadings." *Cutsforth v. Kinzua Corp.*, 267 Or 423, 434, 517 P2d 640, 645 (1973).
6 Even if plaintiff knew or should have known earlier of the need to amend her pleading, plaintiff
7 simply could not have done so. On January 26, 2023, the court dismissed this action pursuant to
8 Rule 7. The court reinstated this action eleven months later on December 23, 2023. After
9 plaintiff's First Amended Complaint was filed, there was no apparent need for plaintiff to amend
10 her complaint. Six weeks later, the court dismissed this action. During the eleven-month time
11 period during which this action was dismissed, plaintiff could not have amended her pleading.

12 The timing of plaintiff's motion weighs in favor of allowing leave to file the SAC.

13 **D. The Colorable Merit of the Proposed Amendments**

14 The proposed amendments to plaintiff's SAC have merit – both as to plaintiff's amended
15 claims and the new claim. "Absent a showing of prejudice, the lack of merit of proposed amended
16 claims will only justify denial of leave to amend where the proposed amendments are truly
17 futile." *Eklof*, 369 Or at 553. The issue is whether the proposed amendments are futile. The
18 Supreme Court opined that

19 "a futile claim is one that could not prevail on the merits due to some
20 failing in the pleadings or some unavoidable bar or obstacle." ... [and] ... might
21 also include claims that, on their face, are barred by a statute of limitations ... or
22 pleadings that fail to state ultimate facts sufficient to constitute a claim. ..."

23 *Id.* at 543-544. As to stating sufficient ultimate facts, the proposed SAC is a thorough revision
24 of plaintiff's First Amended Complaint, clarifies existing factual allegations, and add a number
25 of new factual allegations. The proposed SAC provides plain and concise statements of the
26 ultimate facts that constitute plaintiff's claims, without unnecessary repetition, and does comply
with the dictates of ORCP 18A.

As to the statutes of limitation, plaintiff's claims for professional malpractice,

1 misrepresentation, and IIED (based on medical treatment) all have a two-year statute of
2 limitations. ORS 12.110(1) (“an action at law based upon fraud or deceit, the limitation shall be
3 deemed to commence only from the discovery of the fraud or deceit.”) and ORS 12.110(4) (“An
4 action to recover damages for injuries to the person arising from any medical, surgical or dental
5 treatment, omission or operation shall be commenced within two years from the date when the
6 injury is first discovered or in the exercise of reasonable care should have been discovered.”).
7 Plaintiff’s original Complaint was timely filed on August 29, 2022, well within the two-year
8 limitation period for actions based on medical treatment or operations and fraud, both of which
9 only start running upon the discovery of the harm.

10 Plaintiff’s claim for abuse of a vulnerable person has a seven-year statute of limitation.
11 See ORS 124.130 (“An action under ORS 124.100 to 124.140 must be commenced within seven
12 years after discovery of the conduct”).

13 For these reasons, the claims in the SAC have colorable merit and are not futile.

14 **E. The Interests of Justice**

15 Under ORCP 23A, the court must consider whether leave to amend should be “freely
16 given” where “justice so requires.” The phrase “when justice so requires”—means that the court
17 must consider the fairness to both parties of allowing the amendment.” *Eklof*, 369 Or at 540.
18 Plaintiff was, at all material times at issue in this proceeding, a vulnerable person, that is, plaintiff
19 was “a person with a disability who is susceptible to force, threat, duress, coercion, persuasion
20 or physical or emotional injury because of the person's physical or mental impairment.” ORS
21 124.100(1)(D). See First Amended Complaint ¶¶ 8-9 and proposed SAC ¶¶ 14-25.

22 The Court of Appeals has noted that legislative “history indicates that, through ORS
23 124.100, the legislature intends to offer robust protection for vulnerable persons.” *Wyers v. Am.*
24 *Med. Response Nw., Inc.*, 268 Or App 232, 251, 342 P3d 129, 139 (2014). ORS 124.100 and its
25 companion “abuse statutes have a strong remedial purpose.” *Id.* It would be fundamentally unfair
26 and unjust for plaintiff to litigate this suit against defendants without the full protection and
strong remedies that Oregon law affords to vulnerable persons such as plaintiff. Likewise, it is

1 no injustice to defendants to be held accountable for their acts and omissions against plaintiff, a
2 vulnerable person.

3 **III. Conclusion**

4 For the above reasons, plaintiff respectfully requests the court to grant leave for her to file
5 her proposed Second Amended Complaint.

6 Dated this 1st day of April, 2024.

7 /s/ Benjamin Boyd
8 Benjamin Boyd, OSB #105854
9 Of Attorneys for Plaintiff Camille Kiefel

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1 **RE: KIEFEL V. RUFF ET AL.**
2 **CASE NO: 22CV29327**
3 **DOCUMENT(S): PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED**
4 **COMPLAINT; DECLARATION OF BENJAMIN BOYD IN SUPPORT OF PLAINTIFF'S**
5 **MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

6 **CERTIFICATE - TRUE COPY**

7 I hereby certify that the foregoing above-named document(s) is a complete true copy of
8 the original.

9 Benjamin Boyd, OSB #105854

10 **CERTIFICATE OF SERVICE**

11 Mailing and Emailing:

12 I hereby certify that the above-named document(s) were served on the following by
13 emailing and then mailing a true-copy thereof, contained in a sealed envelope with postage fully
14 prepaid, addressed to the last known address and deposited in the post office of Enterprise,
15 Oregon on this 1st day of April, 2024:

16 Ms. Katie Eichner
17 Lindsay Hart LLP
18 1300 SW 5th Ave Ste 3400
19 Portland OR 97201
20 keichner@lindsayhart.com

Attorney for Amy Ruff and Brave Space

21 Mr. David Mephram
22 Hodgkinson Street Mephram LLC
23 1620 SW Taylor Ste 350
24 Portland OR 97205
25 dsm@hs-legal.com

Attorney for Mara Burmeister and Quest Center

26 /s/ Benjamin Boyd
Benjamin Boyd, OSB #105854
Of Attorneys for Plaintiff

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

5 CAMILLE KIEFEL,

6 Plaintiff,

7 v.

8 AMY RUFF, LCSW, an individual; BRAVE
9 SPACE LLC, an Oregon limited liability
10 company; MARA BURMEISTER, LPC, an
11 individual; and PROJECT QUEST dba QUEST
CENTER FOR INTEGRATIVE HEALTH, an
Oregon public benefit nonprofit corporation,

12 Defendants.

Case No. 22CV29327

SECOND AMENDED COMPLAINT
FOR PROFESSIONAL
MALPRACTICE, INTENTIONAL
INFLICTION OF EMOTIONAL
DISTRESS, MISREPRESENTATION,
AND ABUSE OF A VULNERABLE
PERSON

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

(Prayer: \$3,500,000.00)

Filing Fee: \$ 884.00

Fee Authority: ORS 21.160(1)(d)

JURY TRIAL DEMANDED

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17 Plaintiff CAMILLE KIEFEL alleges for her SECOND Amended Complaint:

18 **THE PARTIES**

19 1.

20 At all times material hereto, Plaintiff Camille Kiefel (hereinafter, "Kiefel") was a resident
21 of the State of Oregon.

22 2.

23 At all times material hereto, Defendant Amy Ruff, LCSW (hereinafter "Ruff") held herself
24 out to the general public as a Licensed Clinical Social Worker in the State of Oregon. Ruff held
25 herself out to Kiefel as having special skills, training and experience to provide mental health
26 assessment, and/or evaluation of the mental health necessity, appropriateness, risks,
complications, and/or benefits of an individual receiving "gender affirming" surgical procedures.

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3.

Defendant Brave Space LLC (hereinafter, "Brave Space") was at all relevant times an Oregon limited liability company that facilitated access for transgender and non-binary children, youth, adults, and their families to mental health and medical care providers. At all relevant times hereinafter, Ruff was an employee, agent, or apparent agent of Brave Space and at all relevant times acted within the course and scope of her employment and/or agency. Brave Space is vicariously liable for Ruff's acts and omissions alleged herein.

4.

At all times mentioned hereinafter, Defendant Mara Burmeister, LPC (hereinafter, "Burmeister") held herself out to the general public as a Licensed Professional Counselor in the State of Oregon. Burmeister held herself out to Kiefel as having special skills, training and experience to "build a therapeutic alliance" sufficient to provide mental health and "thorough biopsychosocial" assessment and/or evaluation of the mental health appropriateness, risks, and/or benefits of an individual receiving "gender affirming" surgical procedures.

5.

Defendant Project Quest dba Quest Center for Integrative Health (hereinafter, "Quest") was at all relevant times, and is, an Oregon public benefit nonprofit corporation offering behavioral and physical health services to individuals throughout the State of Oregon. At all relevant times herein, Burmeister was an employee, agent, or apparent agent of Quest and at all relevant times acted within the course and scope of her employment and and/or agency. Quest is vicariously liable for Burmeister's acts and omissions alleged herein.

OTHER ENTITIES AND INDIVIDUALS REFERENCED HEREIN

6.

Providence Milwaukie Hospital (hereinafter "PMH") and Providence Medical Group (hereinafter "PMG") are assumed business names of Providence Health & Services - Oregon, which is an Oregon religious nonprofit corporation (hereinafter "Providence Health & Services").

1 PMH is located in Milwaukie, Oregon, and PMG is located in Clackamas, Oregon, both in
2 Clackamas County, Oregon.

3 7.

4 Tina Jenq, M.D. (hereinafter Dr. Jenq and "Jenq") is a board-certified plastic surgeon and
5 board-certified general surgeon in the state of Oregon. Dr. Jenq is the President of the Oregon
6 Cosmetic and Reconstructive Clinic, P.C., (hereinafter OCRC), which has a clinic located in
7 Happy Valley, Clackamas County, Oregon.

8 8.

9 At all material times herein, Dr. Jenq was affiliated with PMH and acting as an employee,
10 agent, or apparent agent of PMH, within the course and scope of her employment, agency, or
11 apparent agency.

12 9.

13 Ewen Harrison, M.D. is a licensed physician in the state of Oregon, and is board-certified
14 in family medicine (hereinafter "Dr. Harrison"). At all material times herein, Dr. Harrison was
15 affiliated with PMG and acting as an employee, agent, or apparent agent of PMG, within the
16 course and scope of his employment, agency, or apparent agency.

17 10.

18 Annelise Manns, Psy.D., is a licensed psychologist in the state of Oregon (hereinafter "Dr.
19 Manns"). At all material times herein, Dr. Manns was affiliated with PMG and acting as an
20 employee, agent or apparent agent of PMG, within the course and scope of her employment,
21 agency, or apparent agency.

22 JURISDICTION AND VENUE

23 11.

24 This Court has subject matter jurisdiction over this action under ORS 14.030 because
25 Defendants committed the acts and omissions complained of in the State of Oregon.

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12.

This Court has personal jurisdiction over the Defendants under ORCP 4(A)(4) and 4(C) because Defendants are engaged in substantial activities and not isolated within this state, and the injuries and damage to Kiefel's person and property arise out of defendants' acts and omissions within the State of Oregon.

13.

Venue is proper under ORS 14.080(1) because some of defendants' acts and omissions occurred in the County of Multnomah.

COMMON ALLEGATIONS

14.

Kiefel is a 33-year-old woman who has struggled with numerous mental health issues and diagnoses since her pre-teen and teenage years. Kiefel has a history of trauma, impulsivity and self-harm, and during all relevant time periods herein, carried cognitive and sensory diagnoses, including generalized anxiety disorder (GAD), major depressive disorder (MDD), post-traumatic stress disorder (PTSD), and attention-deficit hyperactivity disorder (ADHD). Kiefel's diagnoses include sensory symptoms, such as vomiting due to the texture of foods, being unable to find comfortable clothing, and experiencing discomfort with the movement of her breasts, leading to her feeling discomfort and dissociation with her body.

15.

In about 2015, while experiencing social anxiety and harsh treatment by peers, Kiefel began to identify herself as having a "non-binary" "gender identity," and describing to therapists a feeling of distress regarding her breasts. One therapist, who saw her for about a year, diagnosed her with mild "gender dysphoria". Kiefel did not see that therapist after January 2017. While she continued to see a number of other therapists, none of them ever diagnosed her with gender dysphoria.

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16.

In 2018, while having difficulties with medication management and side effects, Kiefel experienced a major depressive episode that included crippling anxiety about work duties, others' opinions, and decision-making for even simple tasks like deciding what side of the sidewalk to walk on, and worrying about making wrong decisions or not knowing what to do. Her cognitive problems worsened, causing physical discomfort concerning lights and colors in her environment, clothing choices, and food and clothing textures. At times, this led to incapacitating panic attacks, at one point requiring de-escalation by the police. In March 2018, she became unable to work or drive, went on short-term disability, and applied for FMLA leave.

17.

In June 2018, one of Kiefel's care providers certified for FMLA purposes that Kiefel's serious health conditions included GAD, MDD, acute symptoms of anxiety with loss of daily functioning, and episodes of panic attacks; and that Kiefel, due to her serious health conditions, was unable to perform any of her job duties, was incapacitated, and would have episodic flare-ups periodically, which would prevent her from performing her job, such that she would be unable to function at work. Around this time, Kiefel went on long-term disability.

18.

In August and September 2018, Kiefel underwent a psychological evaluation and was diagnosed with MDD, ADHD, and Other Specified Personality Disorder, with Mixed Borderline and Dependent Features. Kiefel's borderline features include a pattern of unstable and intense relationships, characterized by extremes of idealization and devaluation, identity disturbance and unstable sense of self, impulsivity, and recurrent suicidal gestures. Kiefel's dependent features include difficulty making decisions and the need for others to assume responsibility for major areas of life. Kiefel's MDD diagnosis was supported by her depressed mood, symptoms of psychomotor retardation, diminished ability to think or concentrate, and recurrent suicidal ideation.

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19.

Throughout the years, Kiefel had additional episodes, including one diagnosed by a PMG physician at her January 2019 well-woman visit as a "severe episode of recurrent major depressive disorder." During the well-woman visit, Kiefel had no concerns about her breasts. The doctor, however, considered her condition serious enough to implement Medicare's "HCC " (Hierarchal Condition Category) protocol for serious conditions that are likely to incur long-term costs for the facility.

20.

From September 2018 through March 2020, Kiefel received therapy and medication management with several providers at Western Psychological and Counseling Services. From July 2019 through mid-February 2020, Kiefel also received individual psychotherapy with psychologist Dr. Donald G. Dodson, Ph.D. The providers at Western Psychological and Dr. Dodson did not diagnose Kiefel with gender dysphoria. The only dysphoria that Dr. Dodson discussed with Kiefel was rejection sensitive dysphoria (RSD).

21.

On February 12, 2020, Dr. Dodson confirmed Kiefel’s diagnoses of PTSD, MDD (Recurrent Episode), GAD, and ADHD. Dr. Dodson confirmed that Kiefel was unable to work during 2019 due to these disorders.

22.

In March 2020, Kiefel was still on mental health leave from work and long term disability. Kiefel went on the Oregon Health Plan (hereinafter “OHP”) due to insurance costs. This required her mental health care and medication management to be transferred to PMG. Dr. Harrison became her primary medical doctor. PMG’s medical staff provided diagnosis and treatment by telephone or video due to COVID-19 protocols.

23.

Dr. Harrison noted that Keifel had a complex psychiatric history, with ADHD, GAD, MDD, PTSD, and catatonia associated with other mental health disorders. Dr. Harrison noted

1 the severe 2019 episode and the HCC designation on Kiefel's chart. He described Kiefel's
2 difficulty maintaining a "balance of issues" between her medications and side effects. Dr.
3 Harrison's stated goal for Kiefel's medical treatment was to assist Kiefel to return to work
4 through "medication management and ongoing therapy." Dr. Harrison began modifying her
5 medication regimen and referred her to Dr. Manns for behavioral health.

6 24.

7 Dr. Manns phoned Kiefel to "collect background information" for "a brief course in
8 behavior support." She noted that Kiefel had a lifelong history of mental health problems and had
9 tried many different treatments. She noted that Kiefel was having worsening anxiety, "difficulty
10 thinking straight and following through."

11 25.

12 In late April 2020, Kiefel spoke to Dr. Manns about a "breakdown" over returning a
13 library book, and was noted to have "limited psychosocial support." Kiefel spoke to Dr. Harrison
14 about upcoming periodic review of her disability benefits, and, on information and belief, he
15 signed paperwork via MyChart confirming that she remained too disabled to work.

16 26.

17 On April 21, 2020, Kiefel told Dr. Harrison in a virtual office visit that she had learned
18 that OHP now covered breast reduction, and that she believed she needed the procedure. Dr.
19 Harrison noted that Kiefel identified as "Non-binary" and, "Does not require masculinizing
20 surgery, but would be comfortable with reduction only, no surgery to nipples or areolae". In
21 addition to deeming her disabled, and noting her diagnoses of ADHD, GAD, MDD, and PTSD,
22 Dr. Harrison advised Kiefel to consult Dr. Jenq for the requested surgery. Dr. Harrison did not
23 diagnose Kiefel with gender dysphoria.

24 27.

25 In mid and late April 2020, Dr. Manns noted that Kiefel had self-discontinued some of
26 her medication because it exacerbated her emotional dysregulation. Kiefel was described as
"getting stuck on tasks and struggl[ing] to let go," having "recurrent thoughts of death," reliving

1 traumatic experiences from bullying by activists, and particularly did "not feel safe in the trans
2 community." In early May 2020, Dr. Manns provided Kiefel with a list of local trans-focused
3 therapists willing to write approval letters for "gender-affirming" surgery. Based on Dr. Manns'
4 recommendation, Kiefel contacted Brave Space, which was included on the list.

5 28.

6 In or about early May 2020, Brave Space scheduled Kiefel for an assessment with Ruff.
7 On or about May 13, 2020, Ruff held one Zoom session with Kiefel, which lasted less than an
8 hour. Based on this single Zoom session, Ruff prepared a written "Referral for Medical
9 Transition" dated May 13, 2020 recommending that Kiefel "be referred to Dr. Tina Jenq at
10 Oregon Cosmetic and Reconstructive Clinic for chest reduction to relieve gender dysphoria"
11 (hereinafter the "Ruff Referral"). Despite the document being titled as a "Referral for Medical
12 Transition"; in fact, the text of the Ruff Referral stated accurately that "they [Kiefel] do not
13 identify with either gender and thus are not interested in transition."

14 29.

15 During the Ruff assessment session, Kiefel disclosed to Ruff her history of mental health
16 diagnoses of ADHD, PTSD, MDD, and GAD. Kiefel described her struggles with those mental
17 health conditions and told Ruff that treatments for those mental health conditions had not been
18 successful. She also disclosed that a major cause of her dysphoria was social stigmatization and
19 lack of support within the trans activist community, and that she expected surgery to alleviate this
20 as well.

21 30.

22 Ruff was and is not a psychologist, nor was Ruff one of Kiefel's regular psychotherapists.
23 The Ruff Assessment was and is not a psychological evaluation, and did not contain any
24 diagnostic assessments of Kiefel, and, in particular, contained no diagnostic assessments of
25 Kiefel's previously diagnosed anxiety, PTSD, ADHD, depression, or whether and how those
26 diagnoses would adversely effect her ability to give informed consent for a "chest reduction"
surgery, i.e., double mastectomy surgery.

1 31.

2 Ruff made statements in the Ruff Referral that Ruff knew were factually false and/or
3 misleading, or that were made with reckless and conscious disregard for the truth or falsity
4 thereof, or that in the exercise of reasonable care Ruff ought to have known were false or
5 misleading; which statements were not based upon the information provided to Ruff by Kiefel,
6 and which were contradicted by Kiefel's medical or mental health treatment records, none of
7 which Ruff discussed or took into account in completing the Ruff Referral. On information and
8 belief, Ruff failed to obtain or review those records prior to completing the Ruff Referral. These
9 false or misleading statements include but were not limited to:

10 (a) that Kiefel's mental health conditions were "successfully managed...with the help of
11 mental health professionals and medication management";

12 (b) that, "At this time, any other symptoms or situations reported appear to be well
13 enough managed that they should not impact the medical experience or outcomes";

14 (c) that, "We have discussed the expectations for this medical procedure, including the
15 outcomes, the next steps in the process, options of medical providers and their wait times,
16 and the risks associated with this procedure."

17 (d) that, "Client experiences significant dysphoria, making this a medically necessary
18 procedure."

19 (e) that, "Client has managed any co-occurring symptoms to the extent that they should
20 not negatively impact the outcomes of this procedure."

21 (f) that, "Client has been informed of the expectations for care and risks and benefits, and
22 has shown the ability to give informed consent and understand the information."

23 (g) that, "Client is aware of the possible effects on mental health by this procedure"

24 32.

25 Ruff opined that Kiefel had "shown the ability [to] give informed consent." However,
26 Ruff did not discuss with Kiefel the following material risks of the proposed double mastectomy
surgery:

- 1 (a) the surgery might not alleviate Kiefel's gender dysphoria and other significant
- 2 social and health problems;
- 3 (b) the surgery might exacerbate Kiefel's gender dysphoria and other significant social
- 4 and health problems;
- 5 (c) the surgery could not mute her feminine features to more closely resemble a
- 6 "non-binary" gender identity;
- 7 (d) that Kiefel would not be able to fit comfortably into women's clothes;
- 8 (e) that surgery would lead to reproductive dysfunction, through lack of sexual
- 9 function, and inability to breastfeed;
- 10 (f) that surgery could exacerbate Kiefel's mental health and sensory problems; and
- 11 (g) that Kiefel might not experience relief of her significant anxiety, distress, shaming
- 12 and ostracism, or that they might indeed worsen, especially should she decide to reclaim
- 13 her female identity after the surgery.

14 33.

15 Ruff opined in the Ruff Referral that Kiefel had "shown the ability [to] give informed
16 consent." However, Ruff did not discuss with Kiefel any non-surgical alternatives that would
17 have addressed her gender dysphoria and other significant problems with far less risk of
18 complications.

19 34.

20 Ruff opined in the Ruff Referral that "Client experiences significant dysphoria" and
21 diagnosed Kiefel with gender dysphoria.

22 35.

23 On information and belief, Brave Space and/or Ruff forwarded the Ruff Referral to Dr.
24 Jenq at OCRC.

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36.

Following procurement of the Brave Space letter, Kiefel informed Dr. Manns by phone that she was "feeling foggy," like her medication was "not really working," and that she had "chronic thoughts of death," and felt like she "might be taking on to [sic] much right now."

37.

Around this time, racial protests erupted in summer 2020, and Kiefel asked Dr. Harrison and Dr. Manns for help with worsening anxiety, which was causing her to relive past traumatic events surrounding activism. She also described having increased trouble with the texture of food, which made her throw up; and she could not avoid troublesome foods because she was disabled and dependent on her parents, with no ability to buy groceries on her own.

38.

On June 8, 2022, Kiefel had a "Top Surgery Consult" with Dr. Jenq at OCRC. Dr. Jenq's chart stated that "Camille is a transgender man ... who desires chest masculinization surgery for gender dysphoria. Was referred by Brave Space for single eval, sees clinical psychologist monthly. Dr. Harrison is PMD." In fact, Kiefel disclosed to Dr. Jenq that she was not a transgender man but was "non-binary" and used both female and "non-binary" pronouns and believed that her breasts were causing problems.

39.

Kiefel disclosed to Dr. Jenq her history of mental health diagnoses of ADHD, PTSD, major depressive disorder, and generalized anxiety disorder. Kiefel described the struggles she was going through with her mental health conditions. Dr. Jenq's charts describe Kiefel's past medical history as: "PMH: depression, anxiety, ADHD, PTSD." Dr. Jenq noted "Tasks prior to surgery: requested mental health clearance from regular psychotherapist." On information and belief, Dr. Jenq did not review Kiefel's past medical history and did not obtain mental health clearance prior to surgery from Kiefel's regular psychotherapists, who included: Dr. Manns, whose records documented Kiefel's complex mental health issues but did not diagnose Kiefel with gender dysphoria and did not clear Kiefel as psychologically fit to undergo surgery; and a

1 psychiatrist named Jonathan Horey, MD, at TMS Medical Services, whose records reflected
2 Kiefel's history of mental health issues but did not diagnose her as having gender dysphoria.
3 Kiefel's other recent treatment, which had ended a few months earlier with her change in
4 insurance, was from: Todd Overman, Ph.D., at Western Psychological and Counseling Services
5 (to whom Dr. Jenq would later refer Kiefel, *after* surgery), whose records reflected Kiefel's
6 history of mental health issues but did not diagnose her with gender dysphoria; and Donald G.
7 Dodson, Ph.D., whose records reflected Kiefel's history of mental health issues but did not
8 diagnose her with gender dysphoria, and instead discussed the possibility that Kiefel had "RSD"
9 (rejection-sensitive dysphoria).

10 40.

11 Kiefel also informed Dr. Manns and Dr. Harrison that Dr. Jenq and/or OHP would need
12 a recommendation letter from them before approving her for the mastectomy. Dr. Manns noted
13 informing Kiefel that she and her supervisor, Dr. Askwith, had "not done a thorough mental
14 health intake or evaluation in order to speak to pt's psychological readiness for surgery," and that
15 such an evaluation would require Kiefel to "establish with specialty mental health provider for
16 comprehensive psychiatric evaluation/intake," because Dr. Manns "[did] not have the training in
17 evaluating pts prior to surgery." Dr. Manns recorded telling Kiefel that PMG had only intended
18 to "address[] distress tolerance and ADHD management as bridge support until pt could establish
19 with a long term provider."

20 41.

21 Kiefel obtained contact information for Quest after learning that a second letter was
22 required in order for Medicaid to pay for the "chest reduction" surgery. Quest scheduled Kiefel
23 for a "mental health assessment for surgery" with Burmeister. On or about July 1, 2020,
24 Burmeister held one Zoom session with Kiefel, which lasted approximately forty minutes. During
25 the Zoom session with Burmeister, Kiefel disclosed her history of mental health diagnoses of
26 ADHD, PTSD, major depressive disorder, and generalized anxiety disorder. Kiefel described her

1 struggles with those mental health conditions. Kiefel disclosed that her individual identity was
2 an absence of femininity, and that she used both female and "non-binary" pronouns.

3 42.

4 After the short Zoom session with Kiefel, Burmeister prepared a written "Referral -
5 Mental Health Assessment for Surgery Letter" signed July 2, 2020 (hereinafter, the "Burmeister
6 Assessment") and a July 1, 2020 letter to Dr. Jenq, (hereinafter, the "Burmeister Surgery Letter").
7 Burmeister stated, among other things, that Kiefel "is seeking gender affirming chest
8 reconstruction surgery in order to align their anatomical body with his lived/preferred gender.
9 Camille has explored the potential psychosocial impacts of surgery and demonstrates the ability
10 and the capacity to make a fully informed decision and give consent."

11 43.

12 The Burmeister Assessment contained statements that Burmeister knew were factually
13 false and/or misleading, or that were made with reckless and conscious disregard for the truth or
14 falsity thereof, or that in the exercise of reasonable care Burmeister ought to have known were
15 false or misleading; which statements were not based upon the information provided to
16 Burmeister by Kiefel, and which were contradicted by Kiefel's medical or mental health treatment
17 records, none of which Burmeister discussed or took into consideration in the Burmeister
18 Assessment. On information and belief, Burmeister failed to obtain or review these records prior
19 to completing the Burmeister Assessment. The false or misleading statements include but were
20 not limited to:

- 21 (a) referring to Kiefel as male;
- 22 (b) describing Kiefel's symptoms as mild: "Anxiety: some anxiety" and "Depression:
23 sometimes" and "Concentration: a little, previously diagnosed with ADHD";
- 24 (c) claiming that Kiefel's "only instance of suicidal ideation was a couple months
25 ago";
- 26 (d) claiming that Kiefel had no "current or past thoughts of harm to others"; and
- (e) claiming that "Client will not be engaging in further mental health treatment."

1 44.

2 Burmeister was and is not a psychologist, nor was Burmeister one of Kiefel's regular
3 psychotherapists. The Burmeister Assessment was and is not a psychological evaluation, and did
4 not contain any diagnostic assessments of Kiefel, and, in particular, contained no diagnostic
5 assessments of Kiefel's previously diagnosed anxiety, PTSD, ADHD, depression, or whether and
6 how those diagnoses would adversely effect her ability to give informed consent for a "chest
7 reconstruction" surgery, i.e., a double mastectomy surgery.

8 45.

9 The Burmeister Assessment was followed by the Burmeister Surgery Letter, which also
10 contained statements that Burmeister knew were factually false and/or misleading, or that were
11 made with reckless and conscious disregard for the truth or falsity thereof, or that in the exercise
12 of reasonable care Burmeister ought to have known were false or misleading; which statements
13 were not based upon the information provided to Burmeister by Plaintiff, and which were
14 contradicted by Kiefel's medical or mental health treatment records, which Burmeister did not
15 discuss or take into account in the Burmeister Surgery Letter. On information and belief,
16 Burmeister failed to obtain or review these records prior to completing the Burmeister Surgery
17 Letter. Burmeister's false or misleading statements include but were not limited to:

- 18 (a) that, "Kiefel (she/they) has gender transitioned from their birth-assigned gender."
19 (b) that, "Kiefel ... has completed a thorough biopsychosocial assessment."
20 (c) that, "Camille has been identifying, independently living, and consistently
21 presenting as gender nonbinary since about 25 years old."
22 (d) that "Camille has explored the potential psychosocial impacts of surgery and
23 demonstrates the ability and the capacity to make a fully informed decision and give
24 consent."
25 (e) noting Kiefel's pronouns as "she/they" yet also incorrectly referring to Kiefel by
26 male pronouns.

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46.

Burmeister opined that Kiefel had the "capacity to make a fully informed decision". However, Burmeister did not discuss with Kiefel the following risks of the proposed double mastectomy surgery:

- (a) that surgery might not alleviate Kiefel's gender dysphoria and other significant social and health problems;
- (b) that surgery might exacerbate Kiefel's gender dysphoria and other significant social and health problems;
- (c) that surgery could not mute her feminine features to more closely resemble a "non-binary" gender identity;
- (d) that surgery would lead to reproductive dysfunction, through lack of sexual function, and the inability to breastfeed;
- (e) that Kiefel would not be able to fit comfortably into women's clothes;
- (f) that surgery could exacerbate Kiefel's mental health problems; and
- (g) that surgery might not alleviate Kiefel's significant anxiety, distress, shaming and ostracism; and that they might indeed worsen, especially should she decide to reclaim her female identity after the surgery.

47.

Burmeister opined that Kiefel had the "capacity to make a fully informed decision". However, Burmeister did not discuss with Kiefel any non-surgical alternatives to address gender dysphoria.

48.

Less than three weeks after the Burmeister Assessment, on July 21, 2020, Dr. Harrison noted frustration with the difficulty of managing Kiefel's medications, as her symptoms were becoming worse, including insomnia, poor self-care, and inability to drive or keep appointments, despite trying "several different formulations."

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49.

On August 12, 2020, Kiefel had a second "Top Surgery Consult" with Dr. Jenq at OCRC. Dr. Jenq's chart notes appeared to have cut and pasted her notes from the first "Top Surgery Consult," and again stated that "Camille is a transgender man ... who desires chest masculinization surgery for gender dysphoria. Was referred by Brave Space for single eval, sees clinical psychologist monthly. Dr. Harrison is PMD."

50.

Kiefel did not ask for chest masculinization surgery and did not consider herself transgender. For example, the record of her regular psychotherapist Dr. Horey, from whom Dr. Jenq claimed to seek clearance, shows that throughout the same time period Dr. Horey's chart referred to Kiefel as a woman using the "she" pronoun, and did not mention gender dysphoria or gender identity disorder.

51.

On August 12, 2020, Dr. Jenq prepared a "Consent to Operation" form for Kiefel. Dr. Jenq's consent form included the following statement that Dr. Jenq knew was factually false and/or misleading, or which she made with reckless and conscious disregard for the truth or falsity thereof, or that in the exercise of reasonable care Dr. Jenq ought to have known was false or misleading, and which was not based upon the information Dr. Jenq provided to Kiefel, nor the information Kiefel provided to Dr. Jenq, nor the information contained in the records of Kiefel's regular psychotherapists, from whom Dr. Jenq claimed to seek clearance; namely:

"I have discussed with my physician, to my satisfaction, my condition and diagnosis, the procedures or treatment to be taken and the viable alternatives."

Dr. Jenq did not discuss with Kiefel any "viable alternatives" to "surgery."

52.

Dr. Jenq's Consent form enumerated the following risks: "bleeding, infection, under/over correction, fluid collection, delayed healing, asymmetry, COVID exposure risk." Dr. Jenq did not discuss with Kiefel the following risks of the proposed double mastectomy surgery:

- 1 (a) that proper healing would require the use of a breast binder-which Dr. Jenq knew
2 Kiefel could not tolerate-during the postoperative period;
- 3 (b) that surgery might lead to inclusion cysts in the reconstructed tissue that could
4 require additional procedures and make cancer screening more difficult;
- 5 (c) that surgery might not alleviate gender dysphoria or Kiefel's other significant
6 social and health problems;
- 7 (d) that surgery might exacerbate gender dysphoria and Kiefel's other significant
8 social and health problems;
- 9 (e) that surgery would lead to reproductive dysfunction, through lack of sexual
10 function, and the inability to breastfeed;
- 11 (f) that Kiefel would not be able to fit comfortably into women's clothes;
- 12 (g) that surgery would exacerbate Kiefel's mental health problems; and
- 13 (h) that Kiefel might not experience relief of her significant anxiety, distress, shaming
14 and ostracism, and that they might indeed worsen, especially should she decide to reclaim
15 her female identity after the surgery:

16 53.

17 Based on the Ruff Referral, the Burmeister Surgery Letter, and the "Top Surgery
18 Consults" with Dr. Jenq, Kiefel underwent double mastectomy on August 27, 2020, at Providence
19 Milwaukie Hospital. Dr. Jenq removed both of Kiefel's breasts and repositioned Kiefel's nipples
20 through a double mastectomy with free nipple grafts.

21 54.

22 As a direct and proximate result of defendants' actions and inactions alleged herein, Kiefel
23 has suffered physical, emotional, mental, and psychological injuries that caused and will continue
24 to cause her serious pain, anguish, distress, discomfort, physical impairment, inconvenience,
25 social stigma and isolation, and interference with her ability to perform both routine and with
26 normal and usual activities; and she is still suffering extreme, excruciating, severe emotional
distress, including but not limited to feelings of betrayal by and mistrust in health professionals,

1 humiliation, distress, and anxiety over having lost her breasts and living with a permanently
2 scarred, disfigured, and physically painful chest that does not fit comfortably into clothing
3 designed for women's bodies, deep feelings of regret over unnecessarily and permanently losing
4 her choice ever to breastfeed a child, and fears and anxiety over finding a life partner sexually and
5 romantically attracted to a woman without breasts, all to Kiefel's general non-economic damage
6 in an amount of \$3,000,000.00.

7 55.

8 As a direct and proximate result of defendants' actions and inactions alleged hereinafter,
9 Kiefel has incurred and will incur in the future necessary costs for medical, psychological, and
10 therapeutic treatment, diagnostics, and other physical and mental health expenses, to Kiefel's
11 economic damage in the amount of \$500,000.00.

12 **FIRST CAUSE OF ACTION - COUNT 1**
13 (For Professional Malpractice: Negligence Per Se against Ruff and Brave Space)

14 56.

15 Kiefel re-alleges paragraphs 1-55 and incorporates them herein by reference.

16 57.

17 Ruff had a duty of care to Kiefel to meet the standards of care applicable to licensed
18 clinical social workers in Oregon, which are found in OAR Chapter 877 and the 2008 Code of
19 Ethics for the National Association of Social Workers (herein NASW Code), which provides
20 ethical standards to which the general public can hold the social work profession accountable.

21 58.

22 Ruff breached her duty of care to Kiefel in the following ways:

23 (a) Violating OAR 877-030-0070(2), which states, "Regulated social workers must
24 provide services with professional skill, cultural awareness, and language competency
25 with respect to each client's needs" by failing to provide services with the professional
26 skill necessary for Kiefel's individual medical and mental health needs;

(b) Violating OAR 877-030-0070(3) which states that "Regulated social workers may

1 not provide inappropriate or unnecessary professional services to clients" by providing
2 Kiefel with a "Referral for Medical Transition" when Ruff acknowledged Kiefel was not
3 interested in transition; by referring Kiefel for surgery that was unnecessary for treatment
4 of gender dysphoria; and by referring Kiefel for surgery that was inappropriate in light of
5 Kiefel's numerous other diagnoses;

6 (c) Violating OAR 877-030-0070(4) which states that: "Regulated social workers must
7 provide clients with accurate and complete information regarding the extent and nature
8 of services available. This includes the risks, rights, opportunities, and obligations
9 associated with the provision of professional services to the client" by failing to provide
10 Kiefel with accurate, complete information about the risks of having Ruff refer Kiefel for
11 a double mastectomy ostensibly to relieve gender dysphoria;

12 (d) Violating OAR 877-030-0070(5) which states that "Regulated social workers
13 must seek consultation or make referrals whenever it may improve the provision of
14 social-work services and is in the best interest of the client" by failing consult with
15 Kiefel's primary care providers, by failing to refer Kiefel to other providers to explore
16 non-surgical alternatives to the surgery, where such consultations and referrals were in
17 Kiefel's best interest;

18 (e) Violating OAR 877-030-0040(1)(b), which provides that a social worker "may not
19 participate in, condone, or be associated with dishonesty, fraud, deceit, or
20 misrepresentation" and violating NASW § 4.04, which provides that "[s]ocial workers
21 should not participate in, condone, or be associated with dishonesty, fraud, or deception"
22 by making material misrepresentations about Kiefel in the Ruff Referral;

23 (f) Violating NASW Code § 1.03(a), which provides that "Social workers should
24 provide services to clients only in the context of a professional relationship based, when
25 appropriate, on valid informed consent" by failing to use clear and understandable
26 language to inform Kiefel of the risks related to Ruff's services, and reasonable
alternatives to the services Ruff provided;

1 (g) Violating NASW Code § 1.04(a), which provides that “[s]ocial workers should
2 provide services and represent themselves as competent only within the boundaries of
3 their education, training, license, certification, consultation received, supervised
4 experience, or other relevant professional experience” by providing services and
5 representing herself as competent outside the bounds of her education, training and other
6 relevant professional training;

7 (h) Violating NASW Code § 3.06(a), which provides that “[w]hen an individual who
8 is receiving services from another agency or colleague contacts a social worker for
9 services, the social worker should carefully consider the client's needs before agreeing to
10 provide services” by failing to carefully consider Kiefel’s needs before providing services;
11 and

12 (i) Violating NASW Code § 3.06(b), which provides, “If a new client has been served
13 by another agency or colleague, social workers should discuss with the client whether
14 consultation with the previous service provider is in the client's best interest” by failing
15 to discuss with Kiefel whether consultation with her previous service providers was in
16 Kiefel’s best interest.

17 59.

18 Brave Space is vicariously liable for Ruff's actions and omissions alleged herein.

19 60.

20 As a direct and proximate consequence of Ruff's actions and inactions alleged herein,
21 Kiefel has suffered noneconomic and economic damages in the amount of \$3,500,000.00.

22 **FIRST CAUSE OF ACTION - COUNT 2**

23 (For Professional Malpractice / Negligence Per Se against Burmeister and Quest)
24 61.

24 Kiefel re-alleges paragraphs 1 to 60 and incorporates them herein by reference.

25 62.

26 Burmeister had a duty of care to Kiefel to meet the standards of care applicable to licensed
professional counselor in the State of Oregon, which are found in the 2014 American Counseling

1 Association Code of Ethics (hereinafter "ACA Code"), which pursuant to OAR 833-100-0011(2)
2 “constitutes the standards against which the required professional conduct of professional
3 counselors ... is measured.”

4 63.

5 Burmeister breached her duty of care to Kiefel as follows:

6 (a) Violating ACA Code A.4.a, which states that “Counselors act to avoid harming their
7 clients, trainees, and research participants and to minimize or to remedy unavoidable or
8 unanticipated harm” by not reviewing any non-surgical alternative treatments Kiefel
9 might want to try before proceeding with a highly invasive, irreversible surgery.

10 (b) Violating ACA Code A.11.e, which states that “Counselors do not abandon or
11 neglect clients in counseling. Counselors assist in making appropriate arrangements for
12 the continuation of treatment, when necessary ... following termination” by
13 recommending that “Client will not be engaging in further mental health treatment.”

14 (c) Violating ACA Code E.1.b. which states that “[c]ounselors do not misuse assessment
15 results and interpretations, and they take reasonable steps to prevent others from misusing
16 the information provided. They respect the client’s right to know the results, the
17 interpretations made, and the bases for counselors’ conclusions and recommendations”
18 by not accounting for Kiefel’s long and complex history of mental health diagnoses, and
19 not respecting Kiefel’s right to know the bases for Burmeister’s conclusions and
20 recommendations, by failing to adequately explain such bases;

21 (d) Violating ACA Code E.5.a., which states that "Counselors take special care to
22 provide proper diagnosis of mental disorders. Assessment techniques (including personal
23 interviews) used to determine client care (e.g., locus of treatment, type of treatment,
24 recommended follow-up) are carefully selected and appropriately used" by failing to
25 conduct a thorough assessment, failing to consider Kiefel’s other well-documented mental
26 health diagnoses, and not consulting Kiefel’s many healthcare providers;

(e) Violating ACA Code E.6.a. which states that "Counselors carefully consider the

1 validity, reliability, psychometric limitations, and appropriateness of instruments when
2 selecting assessments and, when possible, use multiple forms of assessment, data, and/or
3 instruments in forming conclusions, diagnoses, or recommendations" by including only
4 a brief questionnaire in her assessment, and failing to rely upon commonly used, highly
5 accessible mental health assessments, such as the Patient Health Questionnaire (PHQ-9),
6 the Generalized Anxiety Disorder-7 (GAD-7), and the Clinician Administered PTSD
7 Scale (CAPS);

8 (f) Engaging in unprofessional conduct by making material misrepresentations in the
9 Burmeister Assessment and Burmeister Surgery Letter and by bringing the profession into
10 disrepute by purporting to conduct mental health assessments and making mental health
11 diagnoses for Kiefel without taking into account Kiefel's other well-documented mental
12 health diagnoses and without consulting with Kiefel's numerous care providers.

13 64.

14 Quest is vicariously liable for the actions and omissions of Burmeister alleged herein.

15 65.

16 As a direct and proximate consequence of Burmeister's actions and inactions alleged
17 herein, Kiefel has suffered noneconomic and economic damages in the amount of \$3,500,000.00.

18 **FIRST CAUSE OF ACTION - COUNT 3**
19 (For Professional Malpractice - Negligence) (Against all Defendants)

20 66.

21 Kiefel re-alleges paragraphs 1 to 65 and incorporates them herein by reference.

22 67.

23 Ruff and Burmeister have special duties arising from the relationship between medical
24 care / mental healthcare providers and their patients entrusted to their care to not create an
25 unreasonable risk of harm to their patients and not unreasonably expose their patients to a
26 foreseeable risk of harm. Defendants' referral of Kiefel to Dr. Jenq for a "chest reduction" surgery
created foreseeable risks of harm to Kiefel.

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68.

Ruff and Burmeister breached their special duties to Kiefel by referring Kiefel to Dr. Jenq for a "chest reduction" surgery by failing to take reasonable precautions against foreseeable risks of harm to Kiefel from the proposed surgery.

69.

In addition, at all material times, Ruff and Burmeister owed a duty of reasonable care to Kiefel to use that knowledge, skill, and care that is generally used in similar cases and circumstances by professional counselors and social workers in communities having similar medical standards, which duty Ruff and Burmeister breached in the following ways, all of which were departures from the accepted standard of care for professional counselors and social workers:

- (a) referring Kiefel for an irreversible double mastectomy surgery without advising Kiefel of all the risks of the surgery;
- (b) referring Kiefel for an irreversible double mastectomy surgery without advising Kiefel of non-surgical alternatives for treating gender dysphoria;
- (c) referring Kiefel for an irreversible double mastectomy without an appropriate consideration of Kiefel's extensive history of mental health diagnoses and symptoms;
- (d) on information and belief, failing to review Kiefel's prior medical and mental health records in connection with the referrals and recommendations for the double mastectomy surgery;
- (e) by affirming Kiefel's self-reported desire for a "chest reduction" surgery, without adequately explaining the requested procedure, i.e., a double mastectomy; and
- (f) by ignoring Kiefel's physical health problems that contributed to her mental health problems.

70.

Quest and Brave Space are vicariously liable for the actions and omissions of their employees, agents, and apparent agents alleged herein.

1 71.

2 As a direct and proximate consequence of defendants' actions and inactions alleged
3 herein, Kiefel has suffered noneconomic and economic damages in the amount of \$3,500,000.00.

4 **SECOND CAUSE OF ACTION**
5 (For Intentional Infliction of Emotional Distress) (Against all Defendants)

6 72.

7 Kiefel re-alleges paragraphs 1-71 and incorporates them herein by reference.

8 73.

9 Defendants' actions and omissions alleged herein constitute extreme and extraordinary
10 transgressions of the bounds of socially tolerable conduct for medical and mental health
11 professionals, or far exceeded any reasonable limits of social toleration for the actions of medical
12 and mental health professionals, including but not limited to, the following:

- 13 (a) by recommending that Kiefel undergo an irreversible double mastectomy surgery
14 without advising Kiefel of all the risks of the surgery;
- 15 (b) by recommending that Kiefel undergo an irreversible double mastectomy surgery
16 without advising Kiefel of non-surgical alternatives for treating gender dysphoria;
- 17 (c) by recommending that Kiefel undergo an irreversible double mastectomy without
18 an appropriate consideration of Kiefel's extensive history of mental health diagnoses and
19 symptoms;
- 20 (d) on information and belief, by failing to review Kiefel's prior medical and mental
21 health records in connection with the referrals and recommendations for the double
22 mastectomy surgery;
- 23 (e) by affirming Kiefel's self-reported desire for a "chest reduction" surgery, without
24 adequately explaining the double mastectomy surgical procedure; and
- 25 (f) by ignoring Kiefel's physical health problems that contributed to her mental health
26 problems.

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74.

Defendants abused their positions of trust and authority with the intent to cause, or with reckless disregard to causing, Kiefel to suffer extreme, excruciating, severe emotional distress. In the alternative, severe distress was certain or substantially certain to result for Kiefel from defendant's acts and omissions.

75.

Defendant's acts and omissions did in fact cause Kiefel severe mental and emotional distress, as alleged herein.

76.

Quest and Brave Space are vicariously liable for the actions and omissions of Burmeister and Ruff as alleged herein.

77.

As the direct and proximate cause of defendants' actions and omissions alleged herein, Kiefel has suffered damages in the amount of \$ \$3,500,000.00.

THIRD CAUSE OF ACTION
(For Misrepresentation) (Against all Defendants)

78.

Kiefel re-alleges paragraphs 1 to 77 and incorporates them herein by reference.

79.

Ruff knowingly and intentionally made false representations in referring Kiefel for the double mastectomy surgery for gender dysphoria. Ruff's false representations were material. In the alternative, Ruff made false representations with reckless disregard for the truth or falsity of the representations.

80.

Burmeister knowingly and intentionally made false representations in referring Kiefel for the double mastectomy surgery for gender dysphoria. Burmeister's false representations were material. In the alternative, Burmeister made false representations with reckless disregard for the truth or falsity of the representations.

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81.

In addition, Burmeister and Ruff had the duty to disclose all the material facts about the proposed double mastectomy, which duty arose because of defendants' confidential relationships with Kiefel. Defendants knowingly and intentionally made representations that were, at best, half-truths or at worst, intentional concealment of facts about the proposed double mastectomy surgery for gender dysphoria.

82.

Ruff and Burmeister made such false, material representations with an intent that Kiefel rely on defendants' representations and undergo the double mastectomy. Defendants breached their duty to exercise due care in failing to disclose all the material facts about the double mastectomy, in that defendants presented half-truths and/or concealed facts about the proposed surgery. Defendants did so with the intent that Kiefel rely on defendants' representations.

83.

Kiefel justifiably relied on defendants' representations about the double mastectomy surgery for gender dysphoria. Kiefel had a right to rely on defendants' representations.

84.

Quest and Brave Space are vicariously liable for the actions and omissions of Burmeister and Ruff as alleged herein.

85.

As a direct and proximate result of defendants' actions and omissions herein, Kiefel has suffered economic and noneconomic damages in the amount of \$ \$3,500,000.00.

FOURTH CAUSE OF ACTION - COUNT ONE
(Abuse of a Vulnerable Person, ORS 124.100(2))
(Against All Defendants)

86.

Kiefel re-alleges paragraphs 1 to 85 and incorporates them herein by reference.

87.

Kiefel was, at all times material herein, a person with a disability within the definition of

1 ORS 124.100(1)(d), in that Kiefel had mental impairments that were likely to continue and, did
2 in fact continue, without substantial improvement for no fewer than 12 months, and/or which
3 were likely to result in death, and Kiefel's mental impairments prevented the performance of
4 substantially all the ordinary duties of occupations in which an individual not having the mental
5 impairments is capable of engaging, having due regard to the training, experience and
6 circumstances of Kiefel, the person with the mental impairment. Specifically,

7 a. In mid-2018, Kiefel's serious health conditions, including GAD, MDD, acute
8 symptoms of anxiety with loss of daily functioning, and episodes of panic attacks rendered her
9 unable to perform her ordinary work duties, thus incapacitating her.

10 b. On February 12, 2020, Kiefel's psychologist Dr. Dodson confirmed Kiefel's
11 diagnoses of PTSD, MDD, GAD, ADHD and noted Kiefel was unable to work during 2019.

12 c. In April 2020, Dr. Harrison confirmed Kiefel's complex psychiatric history,
13 including PTSD, GAD, MDD, ADHD, and episode of catatonia, noted that Kiefel still was not
14 working, and assisted her in applying for disability.

15 d. On account of her mental health conditions, Kiefel was extremely vulnerable to
16 manipulation, emotional entanglements, and harm which lead to impulsivity, difficulty following
17 through, a compulsive need to please others, and vulnerability to intimidation.

18 88.

19 For the above reasons, Kiefel was, at all times material herein, a vulnerable person within
20 the definition in ORS 124.100(1)(e), in that Kiefel was a person with a disability who was
21 susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because
22 of Kiefel's mental impairments.

23 89.

24 Ruff and Burmeister caused Kiefel physical abuse, by engaging in conduct that would
25 constitute one or more of the following crimes:

26 (a) Ruff and Burmeister recklessly endangered Kiefel under ORS 163.195, in that
Ruff and Burmeister omitted to perform acts required by law, by failing to conform their conduct

1 to the standards of care required for licensed social workers and licensed professional counselors,
2 as alleged in ¶ 58 and ¶ 63, above; their omissions created a substantial risk of serious physical
3 injury to Kiefel; defendants' omissions presented such a substantial risk of serious physical injury
4 to Kiefel, that only a person demonstrating a gross deviation from a reasonable standard of care
5 of a licensed social worker and licensed professional counselor would so omit to act; defendants
6 were aware of the risk of serious physical injury to Kiefel; and they consciously disregarded the
7 substantial and unjustifiable risk to Kiefel.

8 (b) Ruff and Burmeister's conduct constitutes criminal mistreatment in the second
9 degree under ORS 163.200, in that Ruff and Burmeister, with the legal duty to provide care for
10 Kiefel created by an express or implied contractual agreement and by statutory law, with criminal
11 negligence withheld necessary and adequate medical attention from Kiefel, in violation of their
12 duties to provide such care for Kiefel. Specifically, Ruff and Burmeister:

- 13 (i) Had legal duties to provide both necessary and adequate medical attention to
14 Kiefel pursuant to an express or implied contractual agreement and pursuant to
15 Oregon statutory law, as alleged herein;
- 16 (ii) Withheld necessary and adequate medical attention from Kiefel, in violation of
17 their legal duties, as alleged in ¶ 58 and ¶ 63, above;
- 18 (iii) Failed to be aware of a substantial and unjustifiable risk that Kiefel would be
19 harmed by withholding necessary and adequate medical attention;
- 20 (iv) The risk to Kiefel was of such nature and degree that defendants' failures to be
21 aware of it constitutes gross deviations from the standard of care that a reasonable
22 person would observe in the situation;
- 23 (v) Defendants' failures constitutes a gross deviation from the standards of care that
24 applied to licensed social workers and licensed professional counselors in the
25 State of Oregon.

26 90.

Kiefel has suffered injury and damage by reason of defendants causing physical abuse,

1 and has suffered economic and noneconomic damages resulting from defendants' physical abuse
2 in the amount of \$3,500,000.00, which amount should be tripled under ORS 124.100(2)(a)-(b).

3 91.

4 Brave Space and Quest are vicariously liable for the actions and inactions of Ruff and
5 Burmeister as alleged herein.

6 92.

7 Kiefel is entitled to her reasonable attorney fees under ORS 124.100(2)(c).

8 **FOURTH CAUSE OF ACTION - COUNT TWO**
9 (Permitting Abuse of a Vulnerable Person, ORS 124.100(2) and (5))
10 (Against All Defendants)

11 93.

12 Kiefel re-alleges paragraphs 1 to 92 and incorporates them herein by reference.

13 94.

14 Kiefel was, at all times material herein, a person with a disability within the definition of
15 ORS 124.100(1)(d), in that Kiefel had mental impairments that were likely to continue and, did
16 in fact continue, without substantial improvement for no fewer than 12 months, which were likely
17 to result in death, and Kiefel's mental impairments prevented the performance of substantially
18 all the ordinary duties of occupations in which an individual not having the mental impairments
19 is capable of engaging, having due regard to the training, experience and circumstances of Kiefel,
20 the person with the mental impairment. Specifically,

21 a. In mid-2018, Kiefel's serious health conditions, including GAD, MDD, acute
22 symptoms of anxiety with loss of daily functioning, and episodes of panic attacks rendered her
23 unable to perform her ordinary work duties, thus incapacitating her.

24 b. On February 12, 2020, Kiefel's psychologist Dr. Dodson confirmed Kiefel's
25 diagnoses of PTSD, MDD, GAD, ADHD and noted Kiefel was unable to work during 2019.

26 c. In April 2020, Dr. Harrison confirmed Kiefel's complex psychiatric history,
including PTSD, GAD, MDD, ADHD, and episode of catatonia, noted that Kiefel still was not
working, and assisted her in applying for disability.

1 d. On account of her mental health conditions, Kiefel was extremely vulnerable to
2 manipulation, emotional entanglements, and harm which lead to impulsivity, difficulty following
3 through, a compulsive need to please others, and vulnerability to intimidation.

4 95.

5 For the above reasons, Kiefel was, at all times material herein, a vulnerable person within
6 the definition in ORS 124.100(1)(e), in that Kiefel was a person with a disability who was
7 susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because
8 of Kiefel's mental impairments.

9 96.

10 Ruff and Burmeister permitted another person, that is, Dr. Jenq, to engage in physical
11 abuse of Kiefel by knowingly acting or failing to act under circumstances in which a reasonable
12 person should have known of the physical abuse Kiefel suffered. Ruff and Burmeister both
13 purported to evaluate Kiefel's ability to provide informed consent for "chest reduction" surgery
14 or "chest reconstruction" surgery. Ruff opined that Kiefel "has shown the ability to give informed
15 consent." Burmeister opined that Kiefel "demonstrates the ability and the capacity to make a fully
16 informed decision and give consent." As a licensed clinical social worker and licensed
17 professional counselor, Ruff and Burmeister were aware (or should have been aware of) of the
18 substantial risk that Kiefel was not able to and did not valid informed consent, because Kiefel
19 actually did not adequately comprehend the material risks of the surgery and the non-surgical
20 alternative methods for treating gender dysphoria, and therefore Kiefel did not give informed
21 consent. Ruff and Burmeister knew or should have known that without informed consent, then
22 Dr. Jenq's surgery would legally constitute an assault and battery, which is physical abuse.

23 97.

24 Dr. Jenq caused Kiefel physical abuse by engaging in conduct that would constitute one
25 or more of the following crimes:

26 (a) Dr. Jenq committed assault in the fourth degree under ORS 163.160, in that Dr.
Jenq intentionally, knowingly, or recklessly caused physical injury to Kiefel by performing a

1 double mastectomy surgery without informed consent, and did not sufficiently advise Kiefel of
2 the procedure to be undertaken, the existence of alternative, non-surgical methods of treatment
3 for gender dysphoria, and the numerous material risks of the procedure.

4 (b) Dr. Jenq's conduct constitutes the crime of reckless endangerment under ORS
5 163.195, as follows: Dr. Jenq omitted to perform acts required by law, by failing to obtain valid
6 informed consent, as required by ORS 677.097; Dr. Jenq's omissions created a substantial risk
7 of serious physical injury to Kiefel; Dr. Jenq's omissions presented such a substantial risk of
8 serious physical injury to Kiefel, that only a person demonstrating a gross deviation from a
9 reasonable standard of care of a board-certified plastic surgeon would so omit to act; Dr. Jenq was
10 aware of the risk of serious physical injury to Kiefel; and Dr. Jenq consciously disregarded the
11 substantial and unjustifiable risk to Kiefel.

12 (c) Dr. Jenq's conduct constitutes criminal mistreatment in the second degree under
13 ORS 163.200, as follows: Dr. Jenq, with the legal duty to provide care for Kiefel created by an
14 express or implied contractual agreement and by statutory law, with criminal negligence withheld
15 necessary and adequate medical attention from Kiefel, in violation of her duties to provide such
16 care for Kiefel. Specifically, Dr. Jenq:

- 17 (i) Had legal duties to provide necessary and adequate medical attention from Kiefel
18 pursuant to an express or implied contractual agreement and pursuant to Oregon
19 statutory law governing informed consent, ORS 677.097;
- 20 (ii) Withheld necessary and adequate medical attention from Kiefel, in violation of
21 her legal duties by failing to obtain informed consent;
- 22 (iii) Failed to be aware of a substantial and unjustifiable risk that Kiefel would be
23 harmed by withholding necessary and adequate medical attention;
- 24 (iv) The risk to Kiefel was of such nature and degree that Dr. Jenq's failure to be
25 aware of it constitutes a gross deviation from the standard of care that a
26 reasonable person would observe in the situation;
- (v) Dr. Jenq's failures constitutes a gross deviation from the standard of care that

1 apply to board-certified plastic surgeons in Oregon.

2 98.

3 Kiefel has suffered injury and damage by reason of defendants permitting another person
4 to physically abuse Kiefel, and has suffered economic and noneconomic damages resulting from
5 defendants' permitting such physical abuse in the amount of \$3,500,000.00, which amount should
6 be tripled under ORS 124.100(2)(a)-(b).

7 99.

8 Brave Space and Quest are vicariously liable for the actions and inactions of Ruff and
9 Burmeister as alleged herein.

10 100.

11 Kiefel is entitled to her reasonable attorney fees under ORS 124.100(2)(c).

12 **PRAYER**

13 WHEREFORE, Plaintiff Camille Kiefel prays for judgment against all Defendants, as
14 follows:

- 15 1. Economic damages in the amount of \$500,000.00, which amount should be tripled
16 under ORS 124.100(2)(a);
- 17 2. Non-economic damages in the amount of \$3,000,000.00, which amount should
18 be tripled under ORS 124.100(2)(b);
- 19 3. Prejudgment and post-judgment interest at the legal rate;
- 20 4. Reasonable attorney fees incurred herein, as allowed by ORS 124.100(2)(c);
- 21 5. Costs and disbursements incurred herein; and,
- 22 6. For such other, different, equitable, or ancillary relief the court deems just.

23 DATED this ___th day of _____, 2024.

24 /s/ Benjamin Boyd
25 Benjamin Boyd, OSB #105854
26 D. Zachary Hostetter, OSB #100541
Designated Trial Attorney
Attorneys for Plaintiff Camille Kiefel