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CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF OREGON  
FOR MULTNOMAH COUNTY

PAT RIES and KATHRYN MORGAN  
husband and wife

Plaintiffs,

v.

KAISER FOUNDATION HOSPITAL,  
A California Corporation, KAISER  
FOUNDATION HEALTH PLANS OF THE  
NORTHWEST, INC., an Oregon  
Corporation, and NORTHWEST  
PERMANENTE, P.C., an Oregon  
Corporation,

Defendants.

NO.

**1303-03395**

COMPLAINT

**03395**

MEDICAL NEGLIGENCE

(Claim Not Subject to Mandatory Arbitration)

1.

Plaintiffs are and were at all material times husband and wife and residents of Clark County,  
Washington

2.

A. Defendant, KAISER FOUNDATION HOSPITAL, A California Corporation,  
organized and existing under the laws of the State of California, is registered to do business within

1 the County of Multnomah, in the State of Oregon.

2 B. Defendant, KAISER FOUNDATION HEALTH PLANS OF THE  
3 NORTHWEST, INC., an Oregon Corporation, is a healthcare provider with a principal place of  
4 business in Multnomah County, Oregon

5 C. Defendant, NORTHWEST PERMANENTE, P.C., an Oregon Corporation, organized  
6 and existing under the laws of the State of Oregon, is registered to do business within the County of  
7 Multnomah, in the State of Oregon.  
8

9 D. At all material times Dr. Fabio Cappuccini, was a physician and an agent and/or  
10 employee of one or more of the Kaiser defendants.

11 **FIRST CLAIM FOR RELIEF**

12 **(Negligence)**

13 3.

14 On or about March 15, 2011 Plaintiff, Kathryn Morgan, underwent a total abdominal  
15 hysterectomy with bilateral salpingo oophorectomy, omentectomy, bilateral pelvic lymphadenectomy  
16 and periaortic lymphadenectomy for Leiomyosarcoma of the uterus. Kaiser physician, Dr. Fabio  
17 Cappuccini at Kaiser Sunnyside Hospital, performed the surgery.  
18

19 4.

20 Prior to surgery, on March 15, 2011, Plaintiff met with Kaiser physician, Dr. Fabio  
21 Cappuccini, and discussed with him the procedure to be performed and the risks and benefits of the  
22 same. During this discussion Dr. Cappuccini did not discuss with Plaintiff any plan to remove the  
23 periaortic lymph nodes. He did not discuss with her the risks and benefits of doing so. The History  
24 and Physical document completed by Dr. Cappuccini makes no reference to removal of the periaortic  
25  
26

1 lymph nodes and the procedure that was planned as documented in the History and Physical summary  
2 prepared by Dr. Cappuccini makes no reference to a periaortic lymphadenectomy.

3  
4 5.

6 Plaintiff did not consent to a periaortic Lymphadenectomy and did not know that this was a  
7 procedure that Dr. Cappuccinni planned to perform on March 15, 2011.

8  
9 6.

10 Dr. Cappuccini advised Plaintiff that the surgery of choice for Leiomyosarcoma of the uterus  
11 was total abdominal hysterectomy with bilateral salpingo oophorectomy, omentectomy, bilateral  
12 pelvic lymphadenectomy. He did not advise the Plaintiff that removal of the ovaries was optional  
13 and did not discuss with her the potential benefits and risks of removing the ovaries as part of the  
14 surgical procedure. Dr. Cappuccini did not advise Plaintiff of the risks and benefits of removing the  
15 pelvic lymph nodes during the procedure and did not advise her that this procedure was optional,  
16 likely had no significant benefit in terms of long-term prognosis and was associated with significant  
17 potential complications, such as the development of ascites.

18  
19 7.

20 The lymph nodes removed during the March 15, 2011 surgery were sent for pathological  
21 analysis. The pelvic and periaortic lymph nodes removed were benign.

22  
23 8.

24 During the course of the surgery performed by Dr. Cappuccini on March 15, 2011 one of the  
25 arteries leading to the kidney was damaged.

26  
27 9.

28 On March 19, 2011, Plaintiff was discharged from the hospital.

10.

On or about March 20, 2011 Plaintiff was readmitted to Kaiser Sunnyside Hospital with abdominal distension, inability to pass urine and acute renal failure. She remained in the hospital until March 30, 2011. Between March 20 and March 24 she was kept in bed for a significant proportion of the time. On March 24, 2011 she was diagnosed with a Pulmonary Embolism and started on anticoagulation therapy.

11.

Following the surgery performed on March 15, 2011 and as a consequence of removal of the lymph nodes, Plaintiff developed a chylous leak or ascites.

12.

On or about May 10, 2011 Plaintiff was readmitted to Kaiser Sunnyside Hospital with abdominal discomfort and swelling, elevated blood pressure, nausea, inability to eat and difficulty breathing as a result of the ascites. A paracentesis procedure was performed to remove the abdominal fluid collection.

13.

Plaintiff underwent additional paracentesis procedures on or about May 25, 2011, June 8, 2011, June 29, 2011, July 15, 2011 and July 22, 2011.

On or about July 21, 2011 Plaintiff's Kaiser physicians placed a drain in her abdomen to drain accumulation of fluid. The drain was replaced on or about September 3, 2011 and October 5, 2011. The drain was removed on or about November 14, 2011.

14.

On or about July 24, 2011, Plaintiff became lightheaded after she had drained her abdominal fluid via the pigtail that had been installed and, as a result, fell and broke her nose. As she remained

1 on anticoagulant therapy her Kaiser physicians refused to perform surgery at that time. A rhinoplasty  
2 was performed on or about November 23, 2011 after anticoagulation therapy had been discontinued.

3 15.

4 As a result of the ascites, Plaintiff was required to undergo tube feeding with TPN therapy for  
5 a period of approximately six months and lost a considerable amount of weight as a result.

6 16.

7 Defendants were negligent in one or more of the following ways:

8 a) In removing the pelvic and periaortic lymph nodes during surgery performed on March 15,  
9 2011 when removal was not indicated and did not have any known benefit in light of the underlying  
10 diagnosis of Leiomyosarcoma of the uterus;

11 b) In failing to perform a biopsy of the pelvic and/or aortic lymph nodes to determine if they  
12 were malignant or benign prior to removal;

13 c) In failing to advise Plaintiff of the risks and benefits of removal of the periaortic and/or  
14 pelvic lymph nodes prior to the surgery performed on March 15, 2011 and specifically in failing to  
15 advise Plaintiff that there is little to no clinical benefit or indication for removing the lymph nodes  
16 when the diagnosis is of Leiomyosarcoma of the uterus and the risks of doing so include development  
17 of ascites;

18 d) In performing a periaortic lymphadenectomy and removing the aortic lymph nodes on  
19 March 15, 2011 when Plaintiff had not consented to their removal;

20 e) In performing a bilateral salpingo-oophorectomy and removing both of Plaintiff's ovaries  
21 without having advised her of the potential benefits and risks of doing so.

22 f) In failing to diagnose and treat Plaintiff's ascites on or before her admission on May 10,  
23 2011.

17.

As a result of Defendants' negligence Plaintiff developed ascites requiring multiple hospital admissions, paracentesis procedures, placement of a drain for several months and TPN feeding for several months. Plaintiff further developed a Pulmonary Embolism requiring anticoagulation therapy for several months as a consequence of immobility during hospital admissions to address the ascites. In addition she fell suffering a broken nose requiring a rhinoplasty as a consequence of treatment for the ascites. Plaintiff also has experienced early menopause as a consequence of removal of her ovaries and is at increased risk for coronary artery disease, hip fracture and stroke in the future. Plaintiff also suffered depression and mental anguish as a result of the ascites and its consequences and treatment. In addition to the medical expenses paid by Kaiser as Plaintiff's healthcare provider, exact amounts unknown, Plaintiff also incurred medical co pays and lost wages in the estimated amount of \$8,000, exact amounts to be proven at trial.

## **SECOND CLAIM FOR RELIEF**

### **(Failure to Obtain Informed Consent)**

18.

Defendants did not obtain Plaintiff's informed consent to the surgery performed on March 15, 2011. Specifically they did not discuss with her the removal of the periaortic lymph nodes and did not advise her of the risks and benefits of doing so. Defendants failed to advise that removal of the periaortic lymph nodes was not necessary or indicated and carries no recognizable benefit with a diagnosis of Leiomyosarcoma of the uterus. Defendants failed to advise of the risks of periaortic lymph node removal, specifically the development of ascites and complications from the same.

19.

Plaintiff consented to the surgery on March 15, 2011 without being aware of said risks and

1 without consenting to the defendants performing a periaortic lymphodectomy.

2 Plaintiff would not have consented to the performance of the surgery and to the periaortic  
3 lymphadectomy had she been made aware of the risks and benefits referenced.

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5 20.

6 Defendants further failed to obtain Plaintiff's informed consent to the surgery performed on  
7 March 15, 2011 in failing to advise her of the risks and benefits of removing the pelvic lymph  
8 nodes. Specifically Defendants failed to advise Plaintiff that removal of the nodes was unlikely to  
9 increase her chances of long term survival and had potential significant side effects and  
10 complications such as the development of ascites.

11 21.

12 Defendants further failed to obtain Plaintiff's informed consent to the surgery performed on  
13 March 15, 2011 in failing to advise her of the risks and benefits of bilateral salpingo-oophorectomy  
14 (removal of the ovaries). Specifically Defendants failed to advise Plaintiff that removal of the  
15 ovaries was unlikely to increase her chances of long term survival and was likely to cause symptoms  
16 associated with early menopause and future risks.

17  
18 22.

19 Plaintiff consented to the surgery on March 15, 2011 without being aware of said risks.

20 23.

21 Plaintiff would not have consented to the performance of the surgery as to the pelvic lymph  
22 node removal and bilateral salpingo oophorectomy had she been made aware of the risks and benefits  
23 referenced.

24 24.

25 As a result of Defendants' failure to obtain Plaintiff's informed consent she sustained the  
26

injuries and damages referenced above.

### THIRD CLAIM FOR RELIEF

#### (Battery)

25.

Defendants committed battery on Plaintiff in performing a procedure on March 15, 2011, specifically a periaortic lymphadenectomy to which she did not consent and which had not been discussed with her prior to the procedure.

26.

As a result of Defendants battery Plaintiff sustained the injuries and damages referenced above.

### FOURTH CLAIM FOR RELIEF

#### (Loss of Consortium)

27.

As a result of Defendants' negligence and the damages sustained by Plaintiff Kathryn Morgan as a result thereof, Plaintiff Pat Ries, lost the society and companionship of his wife, which they shared, before her injuries.

WHEREFORE Plaintiffs pray for Judgment as follows:

1. For economic damages in the estimated amount of \$8,000.00 plus medical expenses paid by defendants, exact amounts to be proven at trial

2. For non-economic damages of \$950,000.00

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1  
2 3. For such other damages as permitted by law; and

3 4. For costs and disbursements.

4 DATED this 7<sup>th</sup> day of March, 2013.

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7 Jane Clark  
8 JANE E. CLARK, OSBA#031791  
9 Of Attorney for Plaintiffs  
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