

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

KAYLA R. HUTCHINS and MATTHEW R.
HUTCHINS, Individually, and as
Husband and Wife,

Plaintiff,

v.

NORTHWEST PERMANENTE, P.C., an
Oregon corporation; KAISER
FOUNDATION HOSPITALS, INC., a
California corporation,

Defendants.

Case No.

COMPLAINT AND
DEMAND FOR JURY TRIAL
(MEDICAL NEGLIGENCE, LOSS OF
CHANCE and LOSS OF
CONSORTIUM)

PRAYER: \$58,100,000.00
(FILING FEE \$1,111.00 PER
ORS 21.160(1)(e))

NOT SUBJECT TO MANDATORY
ARBITRATION

COMES NOW Plaintiffs, KAYLA R. HUTCHINS and MATTHEW R. HUTCHINS,
Individually, and as Husband and Wife, hereby allege:

1.

At all material times herein, Plaintiffs were husband and wife.

2.

At all times material herein, Defendant Northwest Permanente, PC was a
professional corporation licensed in the State of Oregon and engaged in the business of
providing medical care to patients through the work of health care professionals employed
by or otherwise acting as agents of Northwest Permanente, PC.

3.

At all times material herein, Defendant Kaiser Foundation Hospitals, Inc. was a
California corporation licensed to do business in the State of Oregon and engaged in the
business of owning and operating inpatient and outpatient hospitals and medical centers

1 where patients received healthcare and healthcare consultation from employees and agents
2 of Defendant Northwest Permanente, PC. In addition, Defendant Kaiser Foundation
3 Hospitals, Inc. employed, or otherwise engaged as agents, other health care professionals to
4 provide medical care to patients.

5 4.

6 Defendants Kaiser Foundation Hospitals, Inc., and Northwest Permanente, PC were,
7 at all times material, engaged in a joint enterprise to provide medical care, advice, and
8 services to patients. Each of these Defendants acted as the agent of the other. Hereinafter,
9 Defendants Northwest Permanente, PC and Kaiser Foundation Hospitals, Inc. will be
10 collectively referred to as "Defendant Kaiser."

11 5.

12 At all times material, the agents and employees of Defendant Kaiser involved in
13 Plaintiff Kayla Hutchins' healthcare were acting within the course and scope of their
14 employment or agency with Defendant Kaiser, which is vicariously liable for the negligence
15 alleged below.

16 6.

17 Plaintiff Kayla Hutchins was admitted to Defendant Kaiser on September 4, 2017 for
18 the labor and delivery of her third child. She had elevated blood pressure. She was
19 discharged from Defendant Kaiser on September 6, 2017, after having given birth to her
20 baby on September 5, 2017.

21 7.

22 On or about September 7, 2017, Plaintiff Kayla Hutchins returned to Defendant
23 Kaiser for weakness, nausea, headache, swollen legs, shortness of breath and confusion.
24 Plaintiff had high blood pressure and was severely anemic which required her to receive a
25 transfusion of 2 units of blood. Defendant Kaiser sent her home on blood pressure
26 medication and told her to have her blood pressure checked early the following week. The

1 cause of Plaintiff's symptoms was not diagnosed.

2 8.

3 Five days later, on or about September 12, 2017, Plaintiff Kayla Hutchins returned to
4 Defendant Kaiser as directed for a blood pressure check. She had taken the blood pressure
5 medication as directed, but now her blood pressure was even higher at 205/115, she still
6 had a headache, shortness of breath, and swollen legs. Her kidney blood work
7 ("creatinine") was also abnormally high indicating an acute injury to her kidneys.
8 Defendant Kaiser admitted her as an inpatient, but no diagnosis was made.

9 9.

10 On September 13, 2017, an obstetrician caring for Plaintiff noted that Ms. Hutchins'
11 might have a disease called "atypical hemolytic uremic syndrome" ("aHUS"), a condition
12 caused by over-activation of the immune system causing small blood vessels to develop
13 clots, thus injuring the patient's kidneys. Despite the notation by the examining physician,
14 an evaluation for this diagnosis was not done.

15 10.

16 Plaintiff Kayla Hutchins' kidney function continued to get worse. On September 19,
17 2017, she had a kidney biopsy, a surgical procedure to obtain and microscopically examine
18 kidney tissue. The biopsy showed abnormalities that are known to be present in a patient
19 with aHUS. aHUS was still not diagnosed.

20 11.

21 The only drug on the market that specifically targets and treats the cause of aHUS is
22 called "Eculizumab." Plaintiff Kayla Hutchins was not treated with Eculizumab by
23 Defendant Kaiser during the entire time, over four and a half weeks, that she was at
24 Defendant Kaiser as an inpatient.

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26 ///

12.

On September 20, 2017, Kayla Hutchins was in kidney failure and began to require kidney dialysis to survive. The cause for her condition was not diagnosed, or treated during her continued admission as an inpatient at defendant Kaiser.

13.

Plaintiff Kayla Hutchins was finally transferred from Defendant Kaiser to OHSU on October 16, 2017. OHSU ordered Eculizumab and began treatment for aHUS.

14.

Plaintiff Kayla Hutchins continues to be treated with Eculizumab due to her markedly reduced kidney function and she will require such treatment for the rest of her life. Kayla Hutchins is 35 years old.

FIRST CLAIM FOR RELIEF
(Medical Malpractice)

15.

Plaintiff Kayla Hutchins herein realleges and incorporates by reference paragraphs 1-14 above.

16.

Defendant Kaiser was negligent in one or more of the following particulars:

- (a) In failing to perform proper diagnostic testing, including but not limited to ADAMTS13, in a timely manner to diagnose aHUS;
- (b) In failing to perform proper laboratory repeated diagnostic testing, including peripheral smears and haptoglobin, to diagnose aHUS;
- (c) In failing to pursue and seek diagnostic explanation for the abnormal lab studies including the elevated LDH;
- (d) In relying on laboratory test AH50 as determinative for the use of Eculizumab;

- 1 (e) In failing to promptly treat Ms. Hutchins with Eculizumab;
- 2 (f) In failing to diagnose aHUS;
- 3 (g) In failing to transfer Ms. Hutchins to OHSU prior to October 16, 2017, when
- 4 it was clear that aHUS was on the differential diagnosis;
- 5 (h) In failing to treat Plaintiff with Eculizumab based on the results of the renal
- 6 biopsy results;
- 7 (i) In failing to perform additional diagnostic laboratory testing for aHUS based
- 8 on the results of the renal biopsy, including repeat peripheral smear and
- 9 haptoglobin;
- 10 (j) Obtaining Plaintiff Kayla Hutchins' informed consent for Eculizumab and then
- 11 failing to administer the drug to Plaintiff because it was "expensive" and "not
- 12 in stock";
- 13 (k) In failing to obtain informed consent for not treating with Eculizumab when
- 14 Eculizumab was considered as a treatment and Plaintiff Kayla Hutchins was
- 15 so advised; and
- 16 (l) In failing to give appropriate and timely anti-hypertensive medications to
- 17 Plaintiff.

18 17.

19 As a result of Defendant's negligence, Plaintiff Kayla Hutchins was caused to develop
20 chronic renal disease from permanent damage to her kidneys, which has caused Plaintiff to
21 have less physical stamina, as well as fatigue and lethargy. Because of the kidney damage,
22 Plaintiff had to have intermittent dialysis and is at increased risk for needing additional
23 dialysis and ultimately a kidney transplant, and she is at risk for all of the complications
24 associated with transplant and the medications given to prevent rejection of the
25 transplanted kidney. Plaintiff continues to be treated with Eculizumab which increases her
26 risk of infection and impairs her ability to work as a nurse caring for ill patients. She also

1 suffers from headaches, nausea and vomiting. Her ability to care for her children is
2 impaired, and her life is filled with doctor's appointments and frequent laboratory testing.
3 Plaintiff lives with the knowledge that she has lost so much kidney function that her life
4 may be shortened. All of these conditions and limitations have caused Plaintiff to suffer
5 emotional distress and an interference with her activities of daily living, to her non-
6 economic damage of \$7,500,000.00.

7 18.

8 As a result of Defendant's negligence, Plaintiff Kayla Hutchins has had to incur
9 medical expenses in the approximate sum of \$ 2,000,000.00, to date. She will continue to
10 incur medical expenses that will include Eculizumab for life, a potential kidney transplant
11 and permanent or periodic dialysis, all to Plaintiff's economic damage in the approximate
12 sum of \$44,600,000.00. Additionally, Plaintiff has lost income and wages to date and
13 sustained loss of her future earning capacity in the amount of \$2,000,000.00. Plaintiff
14 Kayla Hutchins, therefore, has sustained economic damages in the approximate sum of
15 \$48,600,000.00.

16 **SECOND CLAIM FOR RELIEF (ALTERNATIVE)**

17 **PLAINTIFF KAYLA HUTCHINS**

18 **(Loss of Chance)**

19 19.

20 Plaintiff Kayla Hutchins herein realleges and incorporates by reference paragraphs 1-
21 18 above.

22 20.

23 In alternative to Plaintiff's First Claim for Relief, Plaintiff Kayla Hutchins alleges that
24 Defendant's negligent acts and omissions alleged above have to a reasonable degree of
25 medical probability, caused her to be deprived of a 20-50% chance of sustaining less kidney
26 damage.

1 21.

2 Plaintiff Kayla Hutchins sustained non-economic and economic damages as alleged
3 in paragraphs 17-18.

4 **THIRD CLAIM FOR RELIEF**

5 **PLAINTIFF MATT HUTCHINS**

6 **(Loss of Consortium)**

7 22.

8 Plaintiff Matt Hutchins herein realleges and incorporates by reference paragraphs 1-
9 18, and 20, above.

10 23.

11 The negligence of Defendant, caused Plaintiff Kayla Hutchins to sustain an injury to
12 her body that resulted in permanent scarring, physical injuries as alleged above, an inability
13 to safely bear further children, emotional distress, all of which have greatly impacted the
14 marital relationship between Plaintiffs. As a result, Plaintiff Matt Hutchins has suffered a
15 loss of consortium and resulting non-economic damages in the amount of \$2,000,000.00.

16 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendant in
17 the following amounts:

18 1. For Plaintiff Kayla Hutchins:

19 (a) For non-economic damages in the amount of \$ 7,500,000.00; and

20 (b) For economic damages in the amount of \$ 48,600,000.00.

21 2. For Plaintiff Matt Hutchins:

22 (a) For non-economic damages in the amount of \$2,000,000.00.

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24 ///

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26 ///

DATED this 5th day of September 2019.

David K. Miller, OSB #823370
Robert S. Wagner, OSB #844115
Of Attorneys for Plaintiff

Trial Attorney:
David K. Miller, OSB #823370
Robert S. Wagner, OSB #844115

PLAINTIFF HEREBY DEMANDS
A JURY TRIAL

David K. Miller, OSB #823370
Robert S. Wagner, OSB #844115