

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PATRICK WILLS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF AIDEN WILLS; COLEEN WHITE, a single person; WHITNEY STETTLER, a single person; WHITNEY LaROSE, a single person; CHRISTOPHER GUNNELL, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF IAN GUNNELL; LISA FAIRCLOTH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER D. HUNSUCKER; LISA HELMS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WYNN DEE NIEMI; LAURIE SCHULTZ, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JENNIFER ROSE LANKTREE; JANET R. SINGLE-SCHWALL, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HANNAH A. SINGLE-SCHWALL; ANNA DESHANE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BLAKE R. VAILLANCOURT; JILL SAHLSTROM, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JONATHAN T.

NO. 19-2-31648-9 SEA

PLAINTIFFS' SIXTH AMENDED CLASS ACTION AND MASS TORT COMPLAINT

1 SAHLSTROM; MEGAN BAKER, Guardian
2 for L.B., minor child and SHAWN BAKER
3 and MEGAN BAKER, husband and wife,
4 individually and on behalf of their marital
5 community; M.F., a single person; ALAN
6 FRANCIS and CHARLOTTE FRANCIS,
7 husband and wife, individually and on behalf
8 of their marital community; A.P., a single
9 person; STEFAN PENTCHOLOV and
10 IVANKA PENTCHOLOV, husband and
11 wife, individually and on behalf of their
12 marital community; MARCUS FELLOWS,
13 INDIVIDUALLY AND AS PERSONAL
14 REPRESENTATIVE OF THE ESTATE OF
15 JORDAN I. FELLOWS; SHANNON
16 NOGGLES, a single person; C.D., a single
17 person; AL DUNLAP and RACHELLE R.
18 JASPER DUNLAP, husband and wife,
19 individually and on behalf of their marital
20 community; PARMINDER KAUR,
21 Guardian for S.K., minor child and
22 HAVINDER SINGH and PARMINDER
23 KAUR, husband and wife, individually and
24 on behalf of their marital community; DRU
KERR, Guardian for L.K., minor child and
individually; KYLA HAILSTONE,
Guardian for T.H., minor child and
individually; DEBRA MORRIS, Guardian
for KYLE MORRIS, an incapacitated
individual and SCOTT J. MORRIS and
DEBRA MORRIS, husband and wife,
individually and on behalf of their marital
community; MARGARET WALDROP, a
single person; RHONDA MITTBY, a
single person; SAMUEL TRUETT
WALDROP, a single person; JOHN P.
ALBRECHT, Guardian for V.A., a minor
and JOHN P. ALBRECHT and CELMA
MARIA BARRETO, husband and wife,
individually and on behalf of their marital
community; KATIE RAE WHITMORE,
Guardian for F.F., minor child and
individually; PAT FOSTER, a single person;
STEPHANIE McCOY, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF TROY ROEDER II;

1 MALLORY FISHER, Guardian for C.F., a
2 minor and MALLORY FISHER and CRAIG
3 FISHER, husband and wife, individually and
4 on behalf of their marital community;
5 CINDY GOULDING, Guardian for V.G., a
6 minor and CINDY GOULDING and
7 MICHAEL GOULDING, husband and wife,
8 indiviually and on behalf of their marital
9 community; DIANE PALMER,
10 INDIVIDUALLY AND AS PERSONAL
11 REPRESENTATIVE OF THE ESTATE OF
CAITLIN PALMER,

Plaintiffs,

v.

9 SEATTLE CHILDREN’S HOSPITAL, a
10 non-profit Washington Corporation,

Defendant.

12 Plaintiffs allege:

13 I. INTRODUCTION

14 1.1 For decades Defendant Seattle Children’s Hospital [SCH] has been one of the most
15 revered pediatric medical facilities in the country.

16 1.2 In November 2019, Defendant shocked the public by admitting its premises at 4800
17 Sandpoint Way Northeast, Seattle, Washington, had been contaminated with *Aspergillus* mold
18 since 2001 which sickened and caused the death of numerous child patients.

19 1.3 By at least 2005, Defendant knew the transmission of *Aspergillus* into its premises
20 could be related to its air-handling system. At that time in order to win a lawsuit brought by the
21 Patnode family, Defendant hired lawyers and experts in an attempt to disprove that fact.

22 1.4 During the course of that lawsuit troubling information surfaced regarding the
23 Defendant’s failure to maintain and staff its air-handling systems for years even before the Patnode
24

1 child was treated. In 2008, Defendant settled the lawsuit and insisted on confidentiality. In the
2 following years, the Defendant kept a deadly secret: *Aspergillus* continued to contaminate Seattle
3 Children’s Hospital. Defendant engaged in a cover-up designed to reassure its patients, doctors,
4 nurses, and the public that its premises were safe, when in fact they were not.

5 1.5 This amended action is brought both as a Class Action and Mass Tort Lawsuit
6 because both actions stem from the same conduct of Defendant and involve the same broad body
7 of child patients and their families.

8 1.6 The Class Action allegations assert claims on behalf of Defendant’s child patients
9 and their families (1) who received notice from Defendant of potential *Aspergillus* infection
10 between December 2, 2016 and the present (“Notice Class”), and (2) whom Defendant treated
11 prophylactically for *Aspergillus* infection between December 2, 2016 and the present
12 (“Prophylaxis Class”). Plaintiffs designated in Section II as class representatives (“Class
13 Plaintiffs”) bring claims individually and on behalf of the Class.

14 1.7 The Mass Tort Action allegations assert individual claims on behalf of the named
15 plaintiffs (“Plaintiffs”) as a Mass Tort case for *Aspergillus* infection on Defendant’s premises.

16 1.8 For purposes of the causes of action, damages, and relief requested in this lawsuit,
17 all Plaintiffs are referred to collectively, as they have all been the victims of the same 20-year-long
18 course of conduct by Defendant detailed below.

19 II. PARTIES

20 2.1 Plaintiff Patrick Wills, as Personal Representative brings this action on behalf of
21 the Estate of Aiden Wills, a three-year-old child patient of Defendant who was hospitalized from
22 August 2008 until his death in March 2009. Patrick Wills, residing in Pandora, Ohio and Coleen
23 White, residing in New Rochelle, New York, bring individual parent claims.

1 2.2 On December 5, 2019, Patrick Wills was duly appointed as the Personal
2 Representative of the Estate of Aiden Wills in King County Superior Court Cause No.: 19-4-
3 22440-9-SEA.

4 2.3 Plaintiff Whitney Stettler was 17 years-of-age when she was a patient of Defendant.
5 She was hospitalized and received inpatient and outpatient treatment from June 2011 through late
6 2012. She is now an adult residing in Battleground, Washington.

7 2.4 Plaintiff Whitney LaRose is the mother of Whitney Stettler and resides in
8 Battleground, Washington. She brings parental claims as a result of the injury to her daughter.

9 2.5 Plaintiff Christopher Gunnell, as Personal Representative brings this action on
10 behalf of the Estate of Ian Gunnell, a twelve-year-old child patient of Defendant who was re-
11 admitted in August 2017 and received inpatient and outpatient treatment until his death on
12 February 15, 2019. Christopher and Tanya Gunnell, residing in Lewiston, Idaho, bring individual
13 parent claims.

14 2.6 On December 5, 2019 Christopher Gunnell was duly appointed as the Personal
15 Representative of the Estate of Ian Gunnell in King County Superior Court Cause No.: 19-4-
16 22439-5-SEA.

17 2.7 Plaintiff Lisa Faircloth, as Personal Representative brings this action on behalf of
18 the Estate of Christopher D. Hunsucker, a 15-year-old child patient of Defendant who was
19 hospitalized from June 14, 1997 until his death on July 26, 1997. Lisa Faircloth, residing in
20 Monroe, Washington, brings an individual parent claim.

21 2.8 On January 20, 2021 Lisa Faircloth was duly appointed as the Personal
22 Representative of the Estate of Christopher D. Hunsucker in King County Superior Court Cause
23 No.: 21-4-00486-9 SEA.

1 2.9 Plaintiff Lisa Helms, as Personal Representative brings this action on behalf of the
2 Estate of Wynn Dee Niemi, her daughter and a patient of Defendant who was hospitalized
3 periodically between 1999 and 2005. She died in January 2018 from complications of repeated
4 Aspergillosis infections sustained during her treatment at Defendant’s hospital. Plaintiff Lisa
5 Helms, residing in Oahu, Hawaii, and Gordon Niemi, residing in Seattle, Washington, bring
6 individual parent claims.

7 2.10 On January 24, 2020 Lisa Helms was duly appointed as the Personal Representative
8 of the Estate of Wynn Dee Niemi in King County Superior Court Cause No.: 20-4-00564-6 SEA.

9 2.11 Plaintiff Laurie Schultz, as Personal Representative brings this action on behalf of
10 the Estate of Jennifer Rose Lanktree, a 15-year-old child patient of Defendant who was
11 hospitalized between August 2001 and October 2001. Laurie Schultz, residing in Kalispell,
12 Montana, brings an individual parent claim.

13 2.12 On October 26, 2020 Laurie Schultz was duly appointed as the Personal
14 Representative of the Estate of Jennifer Rose Lanktree in King County Superior Court Cause No.:
15 19-4-22977-0 SEA.

16 2.13 Plaintiff Janet R. Single-Schwall, as Personal Representative brings this action on
17 behalf of the Estate of Hannah A. Single-Schwall, a 12-year-old child patient of Defendant who
18 was hospitalized periodically between March 2003 until her death on February 18, 2005. Janet R.
19 Single-Schwall and David J. Schwall, residing in Coeur d’Alene, Idaho, bring individual parent
20 claims.

21 2.14 On January 19, 2021 Janet R. Single-Schwall was duly appointed as the Personal
22 Representative of the Estate of Hannah A. Single-Schwall in King County Superior Court Cause
23 No.: 21-4-00455-9 SEA. Plaintiff Anna Deshane, as Personal Representative brings this action on
24

1 behalf of the Estate of Blake R. Vaillancourt, a 17-year-old patient of Defendant who was
2 hospitalized from approximately March 2006 until his death on August 18, 2006. Anna Deshane,
3 residing in Venice, Florida, brings an individual parent claim.

4 2.15 On January 20, 2021 Anna Deshane was duly appointed as the Personal
5 Representative of the Estate of Blake R. Vaillancourt in King County Superior Court Cause No.:
6 21-4-00468-1 SEA.

7 2.16 Plaintiff Jill L. Sahlstrom, as Personal Representative brings this action on behalf
8 of the Estate of Jonathan T. Sahlstrom, a 17-year-old patient of Defendant who was hospitalized
9 August 2006 until his death on September 23, 2006. Ken and Jill Sahlstrom, residing in
10 Snohomish, Washington, bring individual parent claims.

11 2.17 On October 7, 2020 Jill L. Sahlstrom was duly appointed as the Personal
12 Representative of the Estate of Jonathan T. Sahlstrom in King County Superior Court Cause No.
13 20-4-05877-4 SEA.

14 2.18 Plaintiff Megan Baker brings this action on behalf of her minor son, L.B. who was
15 five and a half months old when he became a child patient of Defendant. He was hospitalized
16 periodically beginning in September 2003 through 2018. L.B. resides in Maple Valley,
17 Washington with his parents, Shawn and Megan Baker.

18 2.19 Plaintiffs Shawn Baker and Megan Baker are the parents of Plaintiff L.B. and reside
19 in Maple Valley, Washington. They bring parental claims as a result of the injury to their son.

20 2.20 Plaintiff M.F. was 12 years old when she became a child patient of Defendant in
21 March 2011 thereafter receiving inpatient and outpatient treatment and care. She is now an adult
22 and resides in Lacy, Washington with her parents Alan and Charlotte Francis.

23 2.21 Plaintiffs Alan and Charlotte Francis are the parents of Plaintiff M.F. and reside in
24

1 Lacy, Washington. They bring parental claims as a result of the injury to their daughter.

2 2.22 Plaintiff A.P. was 11 years old when she became a child patient of Defendant in
3 October 2011 receiving outpatient treatment and care. She is now an adult and resides in Shoreline,
4 Washington with her parents Stefan and Ivanka Pentcholov.

5 2.23 Plaintiff Stefan Pentcholov and Ivanka Pentcholov are the parents of Plaintiff A.P.
6 and reside in Shoreline, Washington. They bring parental claims as a result of the injury to their
7 daughter.

8 2.24 Plaintiff Marcus Fellows, as Personal Representative brings this action on behalf of
9 the Estate of Jordan I. Fellows, a 25-year-old patient of Defendant who was hospitalized from June
10 2015 until his death on December 2, 2015. Marcus Fellows, residing in Pasco, Washington, and
11 Shannon Noggles residing in Kennewick, Washington, bring individual parental claims.

12 2.25 On January 25, 2021 Marcus Fellows was duly appointed as the Personal
13 Representative of the Estate of Jordan I. Fellows in King County Superior Court Cause No. 21-4-
14 00615-2.

15 2.26 Plaintiff C.D. was 15 years old when he became a child patient of Defendant in
16 May 2016 thereafter receiving inpatient and outpatient treatment and care. He is now an adult and
17 resides in St. Regis, Montana with his parents Al Dunlap and Rachelle Jasper Dunlap.

18 2.27 Plaintiffs Al Dunlap and Rachelle Jasper Dunlap are the parents of Plaintiff C.D.
19 and reside in St. Regis, Montana. They bring parental claims as a result of the injury to their son.

20 2.28 Plaintiff Parminder Kaur brings this action on behalf of her minor daughter S.K.
21 who was 12 years old when she became a child patient of Defendant in August 2016 thereafter
22 receiving inpatient and outpatient treatment and care. S.K. resides with her parents, Parminder and
23 Havinder Kaur in SeaTac, Washington.

1 2.29 Plaintiffs Parminder Kaur and Havinder Kaur are the parents of S.K. and reside in
2 SeaTac, Washington. They bring parental claims as a result of the injury to their daughter.

3 2.30 Prophylaxis Class Plaintiff Dru Kerr brings this action on behalf of his minor son.
4 L.K. who was 7 years old when he became a child patient of Defendant in July 2014 thereafter
5 receiving inpatient and outpatient treatment and care. L.K. resides with his father, Dru Kerr in
6 Spokane, Washington. He also brings claims on behalf of the Prophylaxis Class.

7 2.31 Prophylaxis Class Plaintiff Dru Kerr is the father of L.K. and resides in Spokane,
8 Washington. He brings parental claims as a result of the injury to his son, individually and on
9 behalf of the Prophylaxis Class.

10 2.32 Prophylaxis Class Plaintiff Kyla Hailstone brings this action on behalf of her minor
11 daughter, T.H. who was 11 years old when she became a child patient of Defendant in November
12 2018, thereafter receiving inpatient and outpatient treatment and care. T.H. resides with her
13 mother, Kyla Hailstone in Billings, Montana. She also brings claims on behalf of the Prophylaxis
14 Class.

15 2.33 Prophylaxis Class Plaintiff Kyla Hailstone is the mother of T.H. and resides in
16 Billings, Montana. She brings parental claims as a result of the injury to her daughter, individually
17 and on behalf of the Prophylaxis Class.

18 2.34 Plaintiff Debra Morris is the legal guardian of her incapacitated son and brings this
19 action on behalf of her son, Kyle Morris, who was 2 years old when he became a child patient of
20 Defendant in 1998, thereafter receiving inpatient and outpatient treatment and care. Kyle Morris
21 resides with his mother, Debra Morris and father, Scott J. Morris in Snohomish, Washington, who
22 bring individual parent claims.

23 2.35 On June 2, 2020, Debra Morris was duly appointed as the Legal Guardian of Kyle
24

1 Morris in Snohomish County Superior Court Cause No. 13-4-01315-6.

2 2.36 Plaintiff Margaret Waldrop was 2 years old when she became a child patient of
3 Defendant in 2005, thereafter receiving inpatient and outpatient treatment and care. She is now an
4 adult and resides in Snohomish, Washington with her mother Rhonda Mittby.

5 2.37 Plaintiffs Rhonda Mittby and Samuel Truett Waldrop are the parents of Plaintiff
6 Margaret Waldrop. Samuel Truett Waldrop resides in Hobbs, New Mexico. They bring parental
7 claims as a result of the injury to their daughter.

8 2.38 Prophylaxis Class Plaintiff John Albrecht is the father and guardian of V.A. and
9 brings this action on behalf of his minor daughter V.A. who was 12 years old when she became a
10 child patient of Defendant in 2019, thereafter receiving inpatient and outpatient treatment and care.
11 V.A. resides with her parents in Anchorage, Alaska. He also brings claims on behalf of the
12 Prophylaxis Class.

13 2.39 Prophylaxis Class Plaintiffs John Albrecht and Celma Maria Barretto are the
14 parents of V.A. and reside in Anchorage, Alaska. They bring parental claims as a result of the
15 injury to their daughter, individually and on behalf of the Prophylaxis Class.

16 2.40 Plaintiff Katie Rae Whitmore is the mother and guardian of F.F. and brings this
17 action on behalf of her minor daughter F.F., who was 6 months old when she became a child patient
18 of Defendant in 2015, thereafter receiving inpatient and outpatient treatment and care. F.F. resides
19 with her mother in Great Falls, Montana.

20 2.41 Plaintiff Katie Rae Whitmore is the mother of minor F.F and resides in Great Falls,
21 Montana. She brings parental claims as a result of the injury to her daughter.

22 2.42 Plaintiff Pat Foster is the father of minor F.F. and resides in Houston, Texas. He
23 brings parental claims as a result of the injury to his daughter.

1 2.43 Notice Class Plaintiff Stephanie McCoy brings this action individually and on
2 behalf of the Estate of her deceased son, Troy Roeder II, who became a child patient of Defendant
3 shortly after his birth in May 2017, thereafter, receiving inpatient treatment and care. Stephanie
4 McCoy resides in Waynesville, Missouri. She also brings claims on behalf of the Notice Class.

5 2.44 Prophylaxis Class Plaintiff Mallory Fisher brings this action individually and on
6 behalf of her minor son C.F. who was a newborn when he became a child patient of Defendant in
7 2012, thereafter receiving inpatient and outpatient treatment and care. C.F. resides with his parents
8 in Marysville, Washington. She also brings claims on behalf of the Prophylaxis Class.

9 2.45 Prophylaxis Class Plaintiffs Mallory Fisher and Craig Fisher are the parents of C.F.
10 and reside in Marysville, Washington. They bring parental claims as a result of the injury to their
11 son, individually and on behalf of the Prophylaxis Class.

12 2.46 Notice Class Plaintiff Cindy Goulding brings this action individually and on behalf
13 of her minor daughter V.G. who was a newborn when she became a child patient of Defendant in
14 December 2012, thereafter receiving inpatient and outpatient treatment and care. V.G. resides
15 with her parents in Redmond, Washington. She also brings claims on behalf of the Notice Class.

16 2.47 Notice Class Plaintiffs Cindy Goulding and Michael Goulding are the parents of
17 V.G. and reside in Redmond, Washington. They bring parental claims as a result of the injury to
18 their daughter, individually and on behalf of the Notice Class.

19 2.48 Plaintiff Diane Palmer, brings this action individually and on behalf of the Estate
20 of her deceased daughter, Caitlin Palmer, who became a child patient of Defendant in 1998
21 thereafter, receiving inpatient treatment and care until her death on June 24, 2002. Diane Palmer
22 resides in Seattle, Washington.

23 2.49 Plaintiffs and Class-Plaintiffs bring this healthcare negligence and premises
24

1 liability action against Defendant. Defendant’s facilities located at 4800 Sandpoint Way
2 Northeast, Seattle, Washington, should have been, but were not, reasonably safe for the uses
3 intended. The Defendant negligently maintained and tested its facilities, resulting in the
4 transmission of *Aspergillus* mold spores to hospitalized patients.

5 2.50 Defendant Seattle Children's Hospital is a nonprofit corporation organized under
6 the laws of the State of Washington authorized to do business in the State of Washington.
7 Defendant is a “healthcare provider” within the meaning of RCW 7.70 and was duly authorized to
8 provide healthcare services to Plaintiffs and each class member. There existed a fiduciary health
9 care provider-patient relationship between the parties.

10 2.51 Defendant provided to Plaintiff and each Class member medical care, treatment,
11 and housing within its facilities.

12 2.52 Defendant through its agents, employees, and contractors, acted at all relevant times
13 on behalf of Defendant and within the scope of their employment or agency (whether actual or
14 ostensible).

15 III. DATE OF OCCURRENCE

16 3.1 The care in question occurred from the time that the *Aspergillus* mold entered into
17 the Defendant’s premises to the present date. By admission of Defendant’s Chief Executive
18 Officer Jeff Sperring, MD, that date is 2001 to the present time.

19 3.2 By 1997, the Defendant knew or should have known of the dangerous condition as
20 a result of internal communication outlining ongoing and systemic problems with the maintenance
21 of its air-handling system.

22 3.3 During 2002 and 2003, Defendant knew of the numerous problems with its air-
23 handling system and risk to patient population due to internal communications and concerns raised
24

1 by a professional engineering consultant, including lack of formal maintenance program, water
2 leaks, plugged drains, standing water, plugged intake screens, live and dead birds in fan shafts,
3 leaking coils, overall filthy condition of all air handling units, lack of organized blue prints of
4 HVAC system, under-qualified and under-staffed Building and Engineering
5 Department, misallocation of monies from the Building and Engineering Department and failure
6 to test air handling units to determine if operating as designed.

7 3.4 In 2005, Eugene and Clarissa Patnode brought a lawsuit on behalf of their child.
8 The litigation exposed the direct link between inadequate maintenance of the air-handling system
9 and transmission of *Aspergillus* mold into Children’s Hospital.

10 3.5 In 2008, Defendant settled the Patnode case on condition of confidentiality. By
11 invoking secrecy and in other ways, Defendant took active steps to hide from the public the
12 existence of *Aspergillus* mold as spread throughout the hospital’s air-handling system.

13 3.6 Based upon the evidence discovered in the Patnode case, Defendant knew or should
14 have known by at least August 2000 that its negligent failure to provide safe premises directly
15 caused the transmission of *Aspergillus* to its vulnerable child patients.

16 3.7 Between 2000 and the present time, the Defendant did not notify the public, its
17 doctors, nurses, or its patients or their parents that there were problems with the maintenance of
18 its air-handling system. Even when hospitalized child patients became sickened by *Aspergillus*,
19 Defendant concealed its culpability.

20 3.8 In 2019, after seven infections and one death were connected to the latest outbreak
21 of *Aspergillus* as transmitted by Defendant’s air-handling system, Defendant looked back at prior
22 cases and identified seven more illnesses and five deaths between 2001 and 2014. Only then did
23 Defendant admit that *Aspergillus* exposure was evident at the hospital these past 18 years.

1 **IV. JURISDICTION AND VENUE**

2 4.1 The Superior Court of King County, State of Washington, has subject matter
3 jurisdiction over this action pursuant to RCW 2.08.010.

4 4.2 Jurisdiction and venue are proper in and for the Superior Court of Washington for
5 King County Seattle Division because the incident occurred at Defendant’s place of business in
6 Seattle, King County, Washington.

7 **V. CLASS ACTION ALLEGATIONS**

8 5.1 **Class Definitions:**

9 5.1.1 **Notice Class.** Class Plaintiffs bring this Class action pursuant to
10 Washington CR 23(b)(3) on behalf of the Notice Class defined as follows:

11 All of Defendant’s child patients and their parents, who received
12 notice of potential *Aspergillus* exposure at Seattle Children’s
13 Hospital between December 2, 2016 and the Present, and suffered
14 special and/or general damages as a result of the notice and/or
15 potential exposure to *Aspergillus*.

16 5.1.2 **Prophylaxis Class.** Class Plaintiffs bring this Class action pursuant to
17 Washington CR 23(b)(3) on behalf of the Prophylaxis Class defined as follows:

18 All Defendant’s child patients and their parents where the children
19 were treated prophylactically for *Aspergillus* due to exposure on
20 Defendant’s premises between December 2, 2016 and the Present,
21 and suffered special and/or general damages as a result.

22 5.2 **Numerosity:**

23 5.2.1 **Notice Class.** Defendant notified at least 136 patients in 2018 as to their
24

1 potential exposure to *Aspergillus* on Defendant's premises. Defendant notified at least 3,500
2 patients in 2019 as to their potential exposure to *Aspergillus* on Defendant's premises. True and
3 correct copies of written notifications are attached as Exhibit 1. Any notifications that occurred in
4 2017 are also encompassed within this class. The Class is so numerous that joinder of all members
5 is impracticable. The disposition of the claims of the Class in a single action will provide
6 substantial benefits to all parties and the Court.

7 **5.2.2 Prophylaxis Class.** Upon information and belief, hundreds of patients
8 notified in the Notice Class, and others, were treated prophylactically for *Aspergillus* infections
9 contracted on Defendant's premises. The Class is so numerous that joinder of all members is
10 impracticable. The disposition of the claims of the Class in a single action will provide substantial
11 benefits to all parties and the Court.

12 **5.3 Commonality:** There are questions of law and fact which are common to the Notice
13 Class and Prophylaxis Class, including, but not limited to:

14 5.3.1 Whether Defendant breached its duty to comply with the standard of care
15 of a pediatric hospital;

16 5.3.2 Whether Defendant exercised the requisite degree of skill, care and learning
17 expected of a reasonably prudent hospital/healthcare provider;

18 5.3.3 Whether Defendant fell below its professional standard of care by failing to
19 provide a safe environment within its premises and related facilities;

20 5.3.4 Whether Defendant failed to obtain informed consent that surgery would
21 not occur in a safe environment and included the risk of contamination by *Aspergillus* mold
22 which could lead to further injury, including death;

23 5.3.5 Whether Defendant failed to reasonably maintain its air-handling system;

1 5.3.6 Whether Defendant reasonably monitored its premises and related facilities
2 to ensure that a safe environment existed;

3 5.3.7 Whether Defendant had a duty to take reasonably prudent measures to
4 prevent *Aspergillus* mold from infecting Plaintiff and each Class member in the
5 Defendant's premises;

6 5.3.8 Whether Defendant failed to exercise reasonable care to protect its child
7 patient business invitees from injury;

8 5.3.9 Whether Defendant failed to take reasonable precautions to eliminate the
9 risk of *Aspergillus* transmission from its air-handling system to its child patient business;

10 5.3.10 Whether Defendant owed a duty of care to its child patient business invitees,
11 including Plaintiff and each Class member, which required it to inspect for dangerous
12 conditions, followed by such repair, safeguards, or warnings as may be reasonably
13 necessary under the circumstances;

14 5.3.11 Whether Defendant violated WAC 246-320;

15 5.3.12 Whether Defendant concealed the existence of chronic *Aspergillus*
16 contamination in its premises from its patients and the public between 1997 and 2019;

17 5.3.13 Notices issued to the Notice Class;

18 5.3.14 Subjecting child patient members of the Notice Class to diagnostics,
19 monitoring and testing and related effects as a result of the *Aspergillus* exposure as set
20 forth in the notices;

21 5.3.15 Subjecting child patient members of the prophylactic Class to diagnostics,
22 monitoring, testing, treatment medication, and related effects as a result of the *Aspergillus*
23 exposure.
24

1 5.3.16 The nature and extent of Class-wide injury and the measure of
2 compensation for such injury.

3 5.4 **Typicality:** Class Plaintiffs' claims are typical of the claims of other members of
4 the Class and Class Plaintiffs are not subject to any atypical claims or defenses. Defendant did not
5 take reasonable steps to inhibit the transmission of *Aspergillus* into its premises. Defendant failed
6 to advise the child patient's parents that the premises were unsafe and later did not admit to them
7 that the *Aspergillus* infection was caused by Defendant's own negligence. Notice Class Plaintiffs
8 received the same notice and instructions from Defendant as thousands of other class members.
9 Prophylaxis Class Plaintiffs underwent similar prophylactic treatment as hundreds of other class
10 members. Plaintiffs' claims like those of the Class, arise out of the same common course of
11 conduct by Defendant directed toward Plaintiffs and the Class and are based on the same legal and
12 remedial theories.

13 5.5 **Adequacy:** Class-Plaintiffs will fairly and adequately represent the Class, as they
14 are committed to prosecuting this action, have no conflicts of interest, and have retained competent
15 counsel who are experienced civil trial lawyers with recent significant experience in complex and
16 Class action litigation and trial, including tort litigation. Plaintiffs and their counsel are committed
17 to prosecuting this action vigorously on behalf of the Class and have the financial resources to do
18 so. Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with those
19 of the proposed Class.

20 5.6 **Predominance:** The common issues in the Notice Class and Prophylaxis Class
21 predominate over any individualized issues. Adjudication of these common issues in a single
22 action has important and desirable advantages of judicial economy.

23 5.7 **Superiority:** Class-Plaintiffs and Class members have suffered and will continue
24

1 to suffer harm and damages as a result of Defendant’s negligence. Absent a Class action, most
2 Class members likely would find the cost of litigating their claims prohibitive. Class treatment is
3 superior to multiple individual suits or piecemeal litigation because it conserves judicial resources,
4 promotes consistency and efficiency of adjudication, and provides a forum for all claims. There
5 will be no significant difficulty in the management of this case as a Class action. The identity of
6 each Class member is readily identifiable from Defendant’s own records. Unless this matter
7 proceeds as a Class action, many children and young people who were injured by exposure to
8 *Aspergillus* at Defendant’s hospital may not otherwise learn how or why they were injured.

9 VI. BACKGROUND



16 6.1 Defendant’s admirable mission is to “provide hope, care and cures to help every
17 child live the healthiest and most fulfilling life possible.” For over 100 years, Defendant has been
18 known to “deliver superior patient care, advance new discoveries and treatments through pediatric
19 research and serve as the pediatric and adolescent academic medical center for Washington,
20 Alaska, Montana and Idaho – the largest region of any children’s hospital in the country.” In 2019,
21 *U.S. News & World Report* named Seattle Children’s to its Honor Roll of the 10 best children’s
22 hospitals in the country. The Honor Roll designates excellence across a range of pediatric
23 specialties.

1 6.2 Included within the Defendant’s responsibilities is the requirement that it ensure
2 that its premises are safe for its child patients. This includes ensuring that its premises remain a
3 sterile environment, including, but not limited to, adequately maintaining its air-handling systems,
4 and testing its premises and affiliated areas for the presence of *Aspergillus* mold spores.

5 6.3 *Aspergillus* is a common mold. People with lung disease or weakened immune
6 systems – especially organ or stem cell transplant patients – are at higher risk of developing
7 Aspergillosis. The condition can appear as an allergic reaction, but in more serious cases causes
8 infections in the lungs and other organs. According to the CDC:

9 6.3.1 Azole-Resistant *Aspergillus fumigatus*: Occurs when one species of
10 *Aspergillus, A. fumigatus*, becomes resistant to certain medicines used to treat it. Patients
11 with resistant infections might not get better with treatment.

12 6.3.2 Aspergilloma: Occurs when a ball of *Aspergillus* grows in the lungs or
13 sinuses, but usually does not spread to other parts of the body. Aspergilloma is also called
14 a “fungus ball.”

15 6.3.3 Chronic pulmonary aspergillosis: Occurs when *Aspergillus* infection causes
16 cavities in the lungs and can be a long-term (3 months or more) condition. One or more
17 fungal balls (aspergillomas) may also be present in the lungs.

18 //

19 //

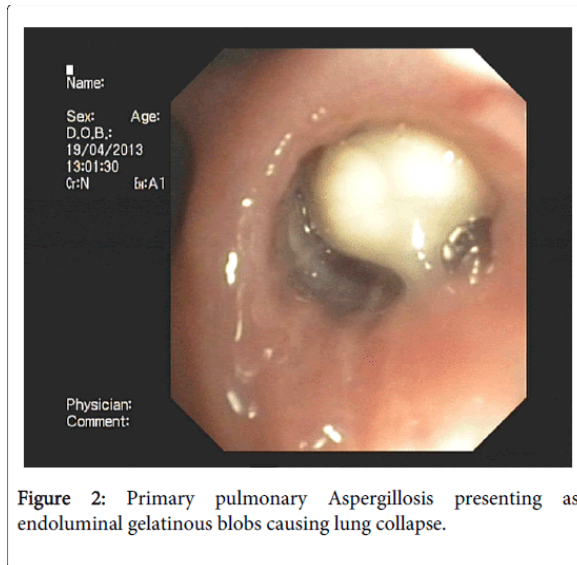
20 //

21 //

22 //

23 //

24



9
10
*Demonstrative Photo from
Journal of Pulmonary and Respiratory Infection (2014)*

11
12
13
14
6.3.4 Invasive aspergillosis: Occurs when *Aspergillus* causes a serious infection, and usually affects people who have weakened immune systems, such as people who have had an organ transplant or a stem cell transplant. Invasive aspergillosis most commonly affects the lungs, but it can also spread to other parts of the body.

15
16
17
18
19
6.3.5 Cutaneous (skin) aspergillosis: Occurs when *Aspergillus* enters the body through a break in the skin (for example, after surgery or a burn wound) and causes infection, usually in people who have weakened immune systems. Cutaneous aspergillosis can also occur if invasive aspergillosis spreads to the skin from somewhere else in the body, such as the lungs.

20
Defendant’s Historic Failure to Safely Maintain its Premises.

21
22
23
24
6.4 SCH’s facilities date back to the 1950s and have been in a near continuous state of construction ever since. “Constant upgrades and renovations...have required tie-ins and revisions to the infrastructure of the system, requiring frequent upgrades to the HVAC system.”

1 6.5 Despite the on-going expansions, SCH failed to establish a Utilities Management
2 Plan or Preventative Maintenance Program. Then, faced with budgetary concerns, the hospital
3 chose to downsize the number of staff serving its Building and Engineering (“B&E”) department
4 in the mid-1990s.

5 6.6 An Infrastructure Assessment completed in 1997 showed a lack of maintenance
6 data and the existence of accumulated mildew, mold, and rust in several of the hospital’s HVAC
7 units.

8 6.7 These failures continued through the early 2000s.¹ Upper hospital management
9 received repeated warnings from B&E engineers about dangerous conditions in the HVAC system,
10 including mold in the intake screens, fan coils, and drain pans, and warnings that air intake screens
11 were plugged with dead and live birds and their droppings.² Nevertheless, SCH failed to follow
12 the Preventative Maintenance program for the facility’s HVAC system.³

13 6.8 Between 2002 and 2014, the Preventative Maintenance lead position was held by
14 Leonard Blumer, a boiler engineer who was not a certified HVAC engineer. Between 2002 and
15 2003, air sampling results taken inside the hospital showed approximately 80 positive *Aspergillus*
16 results.

17 **Knowledge of Its *Aspergillus* Problem from the Patnode Case**

18 6.9 In December 2002, 12-year-old Jane Doe Patnode had a brain tumor surgically
19

20
21 ¹ See **Ex. 2**, Fergusson Dep. at 52.

22 ² E.g., **Ex. 3**-, Declaration of Kenneth L. Johnson, at 4-5. (“... SF-3 has plugged drains in all but [two] condensate
pans... SF-2 has [two] to [three] inches of water on the deck and we should see if we are getting leaks from
anywhere else.”)

23 ³ See **Ex. 4**, Excerpts from the Deposition of Leonard Blumer, taken in the matter of *Patnode v. Children’s Hospital*
24 on March 6, 2007, at 40-44; **Ex. 5**, Excerpts from Deposition of Margret Brown, taken in the matter of *Patnode v.*
Children’s Hospital on Nov. 8, 2007, at 42-47. Margaret Brown, B&E Manager in 2003, describes this lack of a
formal system or schedule for HVAC filter maintenance as the “Leonard System.” *Id.*

1 removed at Defendant's hospital. The child survived the tumor removal but developed
2 Aspergillosis in her brain and spine which rendered her permanently disabled. The family sued
3 Defendant in 2005. Two declarations summarize the nature of Defendant's failures regarding its
4 air-handling systems:

5 6.10 Margaret Brown, had a master's degree in civil engineering and construction
6 management, and had been a Navy civil engineer for 20 years. She had previously been a project
7 manager at Fred Hutchison when they built the Seattle Cancer Care Alliance, and was Director of
8 Engineering at Harborview Medical Center. From October 2002 to March 2003, she was retained
9 by Defendant as a consultant for the Building & Engineering Department (B&E). Ms. Brown
10 stated under oath on August 31, 2007:

11 6.10.1 She was advised by Defendant's infection control staff that *Aspergillus* was
12 a concern for the B&E Department.

13 6.10.2 The operating and maintenance manuals for the air-handling system had
14 been missing for approximately one year.

15 6.10.3 The air-handling system was only repaired when it would breakdown.

16 6.10.4 Preventative maintenance of the air-handling system was not occurring.

17 6.10.5 The air-intake systems were in poor condition and it appeared maintenance
18 had not been performed for many years. Dead birds along with copious other debris were
19 lodged in the screens. Air-handling unit water pans were filled with slimy water.

20 6.10.6 B&E employees had no air-handling education.

21 6.10.7 Overall Defendant's B&E Department did not have employees with the skill
22 and knowledge of other B&E staff she had worked with in the past.

23 6.10.8 She had grave concerns about how the hospital's critical care systems
24

1 impacted Defendant's patient populations.

2 6.10.9 When she brought and explained these concerns to Defendant, it abruptly
3 terminated her services.

4 6.11 Defendant hired Kenneth Johnson as an engineer in the B&E Department in April
5 1999. He received a promotion to Lead Engineer but left in September 2003. Mr. Johnson stated
6 under oath that during his time there:

7 6.11.1 All of the air-handling units were in a filthy condition. Mold accumulated
8 around fan coils and drain pans. Air intake screens were plugged with debris, including
9 dead and live birds and bird droppings.

10 6.11.2 The only preventative maintenance performed was limited to changing
11 filters on the air handling units.

12 6.11.3 It would have taken several years without maintenance for the system to
13 deteriorate to this state.

14 6.11.4 Most of the time the air-handling units and fans had some form of water
15 leak. This is because the system was "rotting out."

16 6.11.5 The B&E Department tried to put temporary patches on the problems.

17 6.11.6 The air-handling system was not tested.

18 6.11.7 The maintenance department was understaffed and needed additional
19 funding to complete maintenance, make repairs, and provide for a computerized
20 maintenance management system.

21 6.11.8 Defendant's B&E Manager repeatedly expressed concerns in writing by
22 email to Defendant.

23 6.12 In August 2008, the Patnode lawsuit ended in a secret settlement. The Defendant
24

1 did not advise its patients or the public that children taken for surgery at its Hospital had been or
2 could be exposed to *Aspergillus* mold through its air-handling system.

3 6.13 Defendant failed to take adequate steps to address the long-standing *Aspergillus*
4 contamination spread through its air-handling system, including, but not limited to, negligence in
5 the maintenance of that system and negligence in testing its premises for the presence of mold
6 spores.

7 6.14 In addition to rats, in the ensuing years, birds⁴ and bees⁵ were found in air-handling
8 units and gnats were discovered in the operating rooms.⁶

9 6.15 In 2013, Mr. Blumer reported “big problem[s]” with the exhaust fans and stated: “I
10 don’t know how we have gotten away with this for so many years.”⁷

11 **Plaintiff Estate of Aiden Wills**



20
21 ⁴ **Ex. 6**, Emails among Buildings & Engineering Department Re: New Air Handling Units (June 2008).

22 ⁵ See **Ex. 7**, Preliminary Facility Assessment and Retro-Commissioning Scoping Study (Dec. 14, 2012). McKinstry
23 completed a Preliminary Facility Assessment and Retro-Commissioning Study of the HVAC system, and found that
24 the bees were getting past the filters of SF-2 and SF-3 and into the fan and fan coils, noting the filter rack was not
square which did not allow the filters to fit properly. McKinstry recommended SCH investigate why the bees were
so bad in those locations and to see if the filter rack could be repaired to hold the filters more securely. *Id.*

⁶ See **Ex. 8**, Emails from Eden Advanced Pest Technologies Re: Gnats in ORs (Aug. 2014).

⁷ **Ex. 9**, Emails among Buildings & Engineering Department (June 26, 2013).

1 6.16 In August 2008, three-year-old Aiden Wills became a patient at Defendant’s
2 hospital. He suffered from hemophagocytic lymphohistiocytosis (HLH), a rare disorder where the
3 body makes too many immune cells. He underwent bone marrow transplant.

4 6.17 In about January 2009, doctors performed a bronchoalveolar lavage [BAL] (a
5 procedure where a bronchoscope is passed into the lungs). He was then diagnosed with *Aspergillus*
6 fungal infection. At the time doctors explained that due to the *Aspergillus* infection:

7 “...we are in a tougher spot than we have been. In the past a fungal infection post-
8 transplant was a fatal condition. However, we do now have medications that can
9 treat fungal infections. The dilemma is that we must prioritize whether to treat the
10 fungus of the VGHD most effectively. If we treat the GVHD (Acute Graft versus
11 Host Disease) most aggressively with a steroid burst and possibly additional
12 medications, we put Aiden at greater risk for the spread of his fungal infection. If
13 we treat the fungus aggressively with immunosuppressants, then we risk a
14 worsening of his GVHD. At present we are choosing to treat the fungus most
15 aggressively with voriconazole and micafungin.

12 6.18 By February 17, 2009, the *Aspergillus* was “unchanged.”

13 6.19 Aiden died March 24, 2009.

14 6.20 Exposure to *Aspergillus* while in Defendant’s premises directly caused Aiden’s
15 pulmonary infection and interfered with his treatment.

16 6.21 The doctors and nurses employed by Defendant who provided care to Aiden did
17 not know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
18 Defendant’s fault.

19 6.22 Although Defendant treated Aiden for the infection, it failed to notify his parents
20 that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
21 maintenance of its air-handling system.

1 **Plaintiff Whitney Stettler**



11 6.23 In 2011, Plaintiff Whitney Stettler was a 17-year-old teenager living in Alaska
12 when diagnosed with Leukemia. She was flown to Defendant’s hospital for urgent care. Whitney
13 underwent surgery in the operating room where a port (central venous line) was placed. Through
14 the port she received life-saving medication. The goal was to stabilize Whitney so that she could
15 receive a bone marrow transplant.

16 6.24 After the port placement, Whitney became ill in a manner not associated with
17 Leukemia or its treatment. Tests revealed the existence of *Aspergillus* mold in her blood. Whitney
18 went into a coma and remained in-patient for the next month until her condition stabilized.

19 6.25 Exposure to *Aspergillus* while in Defendant’s premises directly caused Whitney’s
20 pulmonary Aspergillosis and interfered with her treatment.

21 6.26 The doctors and nurses employed by Defendant who provided care to Whitney did
22 not know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
23 Defendant’s fault.

1 6.27 Although Defendant treated Whitney for the infection, it failed to notify her or her
2 parents that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
3 maintenance of its air-handling system.

4 **Plaintiff Estate of Ian Gunnell**



13 6.28 In 2017, eleven-year-old Ian Gunnell had a previous diagnosis of blastic
14 plasmacytoid dendritic cell neoplasm (BPDCN), a rare form of blood cell cancer. He was admitted
15 to Defendant’s hospital for additional chemotherapy. On August 30, 2017, he underwent surgery
16 in the operating room where a port (central venous line) was placed.

17 6.29 Within a few weeks one of his eyes began to swell. By September 15, 2017,
18 uncertain of what was causing the eye symptoms, doctors began performing tests and attempted to
19 treat the unknown infectious disease process which later was verified as *Aspergillus*. Ian
20 complained of pain, subconjunctival hemorrhage was noted, and his eye was swollen shut. Doctors
21 performed surgery to debride (scrape away) black necrotic debris down to bleeding tissue.

22 6.30 Ian died February 15, 2019.

23 6.31 Exposure to *Aspergillus* while in Defendant’s premises directly caused Ian’s severe
24

1 eye infection and interfered with his cancer treatment.

2 6.32 The doctors and nurses employed by Defendant who provided care to Ian did not
3 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
4 Defendant's fault.

5 6.33 Although Defendant treated Ian for the infection, it failed to notify Ian's parents
6 that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
7 maintenance of its air-handling system.

8 **Plaintiff Estate of Christopher D. Hunsucker**



16 6.34 Christopher (Chris) Hunsucker was born to Lisa Faircloth and Robert Hunsucker
17 on October 12, 1981, in Milton, Florida. When Chris was six-months old he was diagnosed with
18 Wiskott-Aldrich Syndrome (WAS), an autoimmune genetic blood disorder that leaves its victims
19 susceptible to infections and abnormal bleeding.

20 6.35 In December of 1982, when Chris was a year old, Lisa and Chris' siblings moved
21 to Renton, Washington and subsequently relocated to Monroe, Washington in 1990 when Lisa
22 remarried. As he grew, Chris began experiencing WAS flares. When he was 8 years old, he had
23 his first bout which required a six week stay at Defendant's hospital. Chris remained under the
24

1 treatment and care of Defendant in the years that followed.

2 6.36 On June 13, 1997, fifteen-year-old Chris experienced spontaneous swelling in his
3 left knee. He was at the beginning of another WAS flare and was taken to SCH. Upon admission,
4 Chris was without a fever. Within days of arriving, Chris developed a fever as well as a cough. He
5 was noted to have numerous purpuras and eczema. Chris was diagnosed with a *staphylococcal*
6 superinfection and fungal infection. A CT scan on June 27 showed slightly increased uniform
7 opacity throughout Chris' abdomen and a pleural effusion in his left lung requiring O2
8 supplementation.

9 6.37 Chris was transferred to the PICU unit due to progressing cholecystitis, pancreatitis,
10 and massive pulmonary hemorrhage. Scans over the coming days revealed Chris' enlarged heart,
11 pleural fluid and patchy pulmonary opacities bilaterally. A blood culture dated July 16 revealed
12 *Aspergillus Fumigatus*.

13 6.38 A CT scan on July 24 of Chris' brain, due to mental changes as well as the thorax
14 and abdomen for signs of overwhelming sepsis, revealed signs of a growing *Aspergillus* infection
15 in his brain, lungs and likely kidneys.

16 6.39 A follow up CT scan of Chris' brain on July 25 showed the brain lesions were
17 increasing in size. His temperature spiked to 108 degrees leaving him brain dead.

18 6.40 Chris died on July 26, 1997. The autopsy confirmed the presence of a "systemic
19 *Aspergillus* infection" in his brain and lungs.

20 6.41 Exposure to *Aspergillus* while in Defendant's premises directly caused Chris' brain
21 and pulmonary infections and death.

22 6.42 The doctors and nurses employed by Defendant who provided care to Chris did not
23 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
24

1 Defendant's fault.

2 6.43 Although Defendant treated Chris for the infection, it failed to notify Chris' parents
3 that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
4 maintenance of its air-handling system.

5 **Plaintiff Estate of Wynn Dee Niemi**



13 6.44 In December 1999, decedent Wynn Dee Niemi, born December 8, 1982 was
14 diagnosed with acute myeloid leukemia (AML) and admitted to Defendant's hospital for induction
15 chemotherapy. She was 17 years old. Within days of receiving chemotherapy, Wynn Dee
16 experienced severe neutropenia. She remained in-patient at SCH until June 2000. During that time,
17 Wynn Dee developed Aspergillosis and underwent a lobectomy to have a fungal ball, an
18 Aspergilloma, removed. She continued to treat the fungal infection as an out-patient.

19 6.45 In December 2000, Wynn Dee's cancer relapsed—Myelodysplastic syndrome
20 (MDS)—and she was re-admitted to SCH. Her conditioning treatment caused severe neutropenia.
21 Although bronchoalveolar lavage performed shortly after admission showed no signs of infection,
22 Wynn Dee again developed Aspergillosis weeks into her stay, which delayed her transplant.

23 6.46 The transplant was a success and Wynn Dee never had cancer again. The side
24

1 effects of Aspergillosis and its treatment, however, caused ongoing and irreversible damage. In
2 2004, before leaving SCH's care, she developed Aspergillosis for the third time. She experienced
3 ongoing renal insufficiency, kidney failure, and tissue death in her hips, knees, and shoulders,
4 which necessitated a complete hip replacement. Her Aspergillosis infections also caused her to
5 develop graft-versus-host disease (GVHD) in 2002 and bronchiolitis obliterans syndrome (BOS)
6 in 2004. BOS made Wynn Dee oxygen dependent. In late 2017, Wynn Dee's BOS progressed to
7 where she could no longer dispel carbon dioxide. She died on January 11, 2018 from asphyxiation
8 by hypoxia.

9 6.47 Exposure to *Aspergillus* while in Defendant's premises directly caused and/or
10 contributed to Wynn Dee's lung infections and subsequent death.

11 6.48 The doctors and nurses employed by Defendant who provided care to Wynn Dee
12 did not know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
13 Defendant's fault.

14 6.49 Although Defendant treated Wynn Dee for the infection and resulting conditions,
15 it failed to notify her—or her parents—that the *Aspergillus* had been contracted directly from its
16 facilities as the result of negligent maintenance of its air-handling system.

17 **Plaintiff Estate of Jennifer Rose Lanktree**



1 6.50 Jennifer Rose Lanktree was born on May 16, 1986 and grew up with her family on
2 the outskirts of Kalispell, Montana. In August 2001, at the age of 15, Jennifer was taken to
3 Kalispell Regional Medical Center and given a preliminary diagnosis of leukemia. On August 20,
4 2001, she was airlifted to Defendant’s hospital and diagnosed with Epstein-Barr Virus-associated
5 Hemophagocytic Lymph histiocytosis Syndrome (EBV-HLH), disseminated intravascular
6 coagulation, pulmonary edema, and hypotension requiring chemotherapy and related procedures
7 as an inpatient and outpatient.

8 6.51 On September 8, 2001, Jennifer was readmitted to SCH for a fever, headaches,
9 runny nose, bloodshot, nosebleeds, and watery eyes. Jennifer also complained of a “crusty”
10 sensation within her nose. Examination on September 14, 2001, revealed a necrotic ulceration of
11 her septum, left middle nostril and middle meatus. Following an endoscopic nasal debridement of
12 her left nasal cavity, a pathology report of the tissue confirmed *Aspergillus fumigatus*.

13 6.52 Multiple CT scans were taken of her sinuses, thorax, pelvis, and abdomen. A CT
14 scan on September 14 showed near complete opacification in her left maxillary sinus, dense
15 opacification in her left ethmoidal air cells, and mild opacification within her right maxillary and
16 ethmoidal sinuses. Another CT scan taken days later on September 19 showed progression of her
17 bilateral paranasal sinus disease with near-complete opacification of her paranasal sinuses, an
18 enlarged pineal gland measuring 12mm (3-6mm is normal) and increased mucosal thickening in
19 her left sphenoid sinus and right maxillary sinus.

20 6.53 Her high fevers, elevated white blood cell count, and nosebleeds continued,
21 requiring a second debridement surgery on September 20. The former necrotic dime-sized anterior
22 septum was then found to be a complete perforation.

23 6.54 On October 9, 2001, Jennifer returned home, taking hydrocortisone and anti-fungal
24

1 medications requiring frequent blood draws in order to ensure the anti-fungal medications were at
2 therapeutic levels. A fiberoptic sinus endoscopy on October 25 revealed atrophy and adhesions in
3 her middle turbinate and a 15mm septal perforation with residual complications.

4 6.55 Jennifer continued to battle EBV-HLH leukemia following her hospital acquired
5 *Aspergillus* infection and succumbed on June 14, 2006.

6 6.56 Exposure to *Aspergillus* while in Defendant's premises directly caused Jennifer's
7 paranasal sinus infections and interfered with her treatment.

8 6.57 The doctors and nurses employed by Defendant who provided care to Jennifer did
9 not know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
10 Defendant's fault.

11 6.58 Although Defendant treated Jennifer for the infection, it failed to notify Jennifer's
12 parents that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
13 maintenance of its air-handling system.

14 **Plaintiff Estate of Hannah A. Single-Schwall**



23 6.59 Hannah Single-Schwall was born on May 27, 1992. The Single-Schwall family
24 moved to Ephrata, Washington in 2000.

1 6.60 In March 1995, at the age of three, Hannah was diagnosed with aplastic anemia.
2 She received treatment the next 4 years at Kaiser Permanente and OHSU Doernbecher Children's
3 Hospital. Hannah was in remission for several years following ATG therapy. In 2001, her counts
4 began to decline. Hannah's severe aplastic anemia had evolved into myelodysplastic syndrome
5 with refractory anemia. She began ATG therapy at Deaconess Hospital in Spokane, Washington
6 which was unsuccessful. The decision was made to move forward with a bone marrow transplant
7 at Seattle Children's Hospital.

8 6.61 Hannah was admitted to Defendant's hospital on March 31, 2003 in anticipation of
9 a bone marrow transplant. Her medical records noted no sign of infection. A chest X-ray on April
10 7, 2003, showed that Hannah's lungs were clear. Hannah had a matched unrelated peripheral blood
11 stem cell transplant on April 8, 2003. A week later she was diagnosed with graft versus host
12 disease (GVHD). Hannah remained hospitalized at SCH through December 8, 2003, due to
13 multiple medical issues, including several pulmonary hemorrhages and bacteremia.

14 6.62 Hannah was discharged on December 8, 2003 and was followed at the Outpatient
15 Department at Seattle Cancer Care Alliance. She remained on oxygen via nasal cannula. Follow-
16 up chest imaging demonstrated worsening interval right middle lobe infiltrates, increase in
17 densities in the right middle lobe opacities with increased perihilar opacities and possible
18 paratracheal adenopathy and worsening evolving right middle lobe pneumonia. She was
19 readmitted to SCH on December 23 for evaluation.

20 6.63 A bronchoscopy with bronchoalveolar lavage was performed on December 24,
21 2003 to test for viral, bacterial, and fungal infections. The pathologist saw evidence of mold
22 infection from the bronchoscopy specimen and her culture grew *Aspergillus fumigatus*.

23 6.64 Hannah was discharged to the Outpatient Department on December 25, 2003 with
24

1 anti-fungal medications. On February 20, 2004 Hannah was readmitted with increased oxygen
2 requirement and low-grade fever. She had been continuing to have difficulties with gut and skin
3 GVHD. A biopsy of the lower left lung was performed and was positive for *Rhizopus*.

4 6.65 Hannah's sputum cultures taken on March 13, 2004, tested positive for *Aspergillus*
5 *fumigatus* and an ultrasound on March 23 showed new onset of right-sided loculated pleural
6 effusion. Treatment continued with noted improvement in her pulmonary status in June 2004.

7 6.66 In September of 2004 a chest CT showed new dense consolidation in the left lower
8 lobe and lingula, an increase in the left pleural effusion, and new consolidation in the right middle
9 lobe. By the end of September, Hannah had acute increased oxygen requirement and diminished
10 breath sounds. The culture results from a BAL performed on October 12, 2004 were positive for
11 *Aspergillus fumigatus*.

12 6.67 Hannah was admitted to the PICU on November 28 with a severe GI bleed and fluid
13 overload in her lungs with bronchiolitis obliterans-organizing pneumonia. A CT scan on December
14 7, 2004, showed lesions on Hannah's liver and spleen suspicious for fungus. Due to Hannah's dire
15 pulmonary status, increased therapy, surgery, biopsies and additional BALs were not advised. On
16 December 26, 2004, she had another positive sputum for *A. fumigatus*. While in the PICU
17 Hannah's GVHD continued to progress.

18 6.68 Hannah died on February 18, 2005. The death certificate lists the cause of death as
19 pneumonia with (fungal and bacterial).

20 6.69 Exposure to *Aspergillus* while in Defendant's premises directly caused Hannah's
21 pulmonary infection, interfered with her treatment and contributed to her death.

22 6.70 The doctors and nurses employed by Defendant who provided care to Hannah did
23 not know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
24

1 Defendant's fault.

2 6.71 Although Defendant treated Hannah for the infection, it failed to notify Hannah's
3 parents that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
4 maintenance of its air-handling system.

5 **Plaintiff Estate of Blake R. Vaillancourt**



13
14 6.72 In 2006, Blake Vaillancourt was a 17-year-old residing in Bangor, Maine. He was
15 diagnosed with Myelodysplastic Syndrome (MDS) in May 2000. Myelodysplastic Syndromes are
16 a group of cancers in which immature blood cells in the bone marrow do not mature or become
17 healthy blood cells. In March 2006, Blake became a patient at Defendant's hospital, admitted for
18 transplant to treat MDS. A BAL performed on April 15, 2006 reported as negative for fungal, viral,
19 and other infectious etiologies. Blake was also specifically tested for *Aspergillus* through a serum
20 galactomannan test which also came back negative. Prophylactic anti-fungal medications were
21 begun.

22 6.73 Following a stem cell transplant on May 4, 2006, Blake underwent several BAL's
23 and intubation for compromised respiratory function. In July 2006, a bone marrow aspirate
24 confirmed transplant failure. Following a bone marrow transplant on July 28, a galactomannan test

1 came back positive confirming Blake had an active *Aspergillus* infection making it difficult to
2 breathe requiring aggressive antifungal medication and treatment for progressive organ
3 dysfunction. Blake was again placed on a ventilator on August 15 and eventually transitioned to
4 an oscillator.

5 6.74 In the early afternoon of August 18, Blake exhibited signs that he had sustained
6 brain damage. A CT to confirm the extent of the damage was not feasible given his precarious
7 respiratory status. He was too unstable to be taken off the oscillator long enough to obtain the CT.

8 6.75 Blake died on August 18, 2006 at the age of 18. The cause of death was listed as
9 respiratory failure due to pulmonary Aspergillosis.

10 6.76 Exposure to *Aspergillus* while in Defendant's premises directly caused Blake's
11 pulmonary infection and contributed to his death.

12 6.77 The doctors and nurses employed by Defendant who provided care to Blake did not
13 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
14 Defendant's fault.

15 6.78 Although Defendant treated Blake for the infection, it failed to notify Blake or his
16 parents that the *Aspergillus* had been contracted directly from its facilities as a result of negligent
17 maintenance of its air-handling system.

18 **6.79 Plaintiff Estate of Jonathan T. Sahlstrom**



1 6.80 Jonathan Sahlstrom was born on May 23, 1989. At the age of 15, Jonathan was
2 diagnosed with acute lymphoblastic leukemia (ALL) on November 12, 2004. He received inpatient
3 and outpatient treatment at Defendant hospital the following two years for his ALL resulting in
4 remission.

5 6.81 On August 12, 2006, Jonathan developed fevers and joint pains and was taken to
6 SCH. Evaluation determined he had relapsed. A chest x-ray on August 15th showed bilateral
7 pulmonary abnormalities. Fungal cultures showed no growth at the time. He was stabilized and
8 discharged on August 22.

9 6.82 On August 29, 2006, Jonathan received intrathecal (IT) chemotherapy and bone
10 marrow aspiration. He was admitted to SCH again on August 30, 2006 for intensification of his
11 treatment. On September 7 he developed a fever, cough, chest pain that hurt when he took deep
12 breaths and had an increased respiratory rate. A chest x-ray on September 7 revealed bilateral
13 densities throughout all of his lung lobes. On September 8, Jonathan underwent a BAL. The culture
14 was negative for fungal disease. On September 13, a culture of lung biopsy tissue tested positive
15 for *Aspergillus fumigatus*. Jonathan's pulmonary symptoms continued to worsen.

16 6.83 Jonathan died on September 23, 2006.

17 6.84 Jonathan's cause of death was listed as pulmonary hemorrhage, pulmonary
18 Aspergillosis, acute leukemia relapse.

19 6.85 Exposure to *Aspergillus* while in Defendant's premises directly caused Jonathan's
20 pulmonary infection and death.

21 6.86 The doctors and nurses employed by Defendant who provided care to Jonathan did
22 not know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
23 Defendant's fault.

1 6.87 Although Defendant treated Jonathan for the infection, it failed to notify Jonathan
2 or his parents that the *Aspergillus* had been contracted directly from its facilities as the result of
3 negligent maintenance of its air-handling system.

4 **Plaintiff L.B., a Minor**



13 6.88 At six months of age, L.B. was diagnosed with cystic fibrosis. In April 2008, L.B.
14 underwent an adenoidectomy in OR 3 at Defendant hospital. Within days, L.B. began exhibiting
15 signs of an infection and required treatment. In the years following his adenoidectomy, L.B.
16 required ongoing care at SCH which at times involved admission to in-patient care. Throughout
17 the last twelve years, L.B.’s blood lab results have displayed increasing *Aspergillus* levels in his
18 body.

19 6.89 Exposure to *Aspergillus* while in Defendant’s premises directly necessitated the use
20 of increasing amounts of steroids, anti-fungal medications and antibiotics to combat L.B.’s
21 infection. L.B.’s exposure to and necessary treatment for the *Aspergillus* exposure he had at
22 Defendant’s hospital complicated his course of care for his cystic fibrosis and negatively impacted
23 his candidacy for a lung transplant – a common course of care for cystic fibrosis patients.

1 6.90 The doctors and nurses employed by Defendant who provided care to L.B. did not
2 know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
3 Defendant’s fault.

4 6.91 Although Defendant treated L.B. for the infection, it failed to notify L.B. or his
5 parents that the *Aspergillus* had been contracted directly from its facilities as a result of negligent
6 maintenance of its air-handling system.

7 **Plaintiff M.F., an Adult**



16 6.92 In 2011, M.F. was a 12-year-old girl living in Lacey, Washington with her family
17 when diagnosed with acute myelogenous leukemia (AML). On March 21, 2011, M.F. underwent
18 surgery in an operating room at Defendant hospital to place a double lumen Hickman catheter/right
19 Central Line to allow her to receive her chemotherapy treatment.

20 6.93 Following the surgery, M.F. became ill in a manner not associated with AML or its
21 treatment. Tests revealed the existence of *Aspergillus* mold in her lungs.

22 6.94 Exposure of *Aspergillus* while in Defendant’s premises directly caused M.F.’s lung
23 infection, development of pulmonary nodules and permanent scarring, and exacerbated her pre-
24

1 existing asthma. She was placed on anti-fungal medication for eighteen (18) months and is at high
2 risk for kidney and liver damage due to their lengthy use. M.F.'s exposure to, infection, and
3 necessary treatment for the *Aspergillus* infection she contracted at SCH interfered with her
4 treatment for AML.

5 6.95 The doctors and nurses employed by Defendant who provided care to M.F. did not
6 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
7 Defendant's fault.

8 6.96 Although Defendant treated M.F. for the infection, it failed to notify M.F. or her
9 parents that the *Aspergillus* had been contracted directly from its facilities as a result of negligent
10 maintenance of its air-handling system.

11 **Plaintiff A.P., an Adult**



18 6.97 In 2012, A.P. was an 11-year-old girl living in Shoreline, Washington with her
19 family when diagnosed with severe aplastic anemia. On July 2, 2013, A.P. underwent surgery in
20 an operating room at Defendant hospital where a central venous Hickman line was placed in
21 advance of a planned bone marrow transplant.

22 6.98 Following the surgery, A.P. became ill in a manner not associated with Anaplastic
23 Anemia or its treatment. Tests revealed the existence of *Aspergillus* mold in her lungs and brain.

24 6.99 Exposure of *Aspergillus* while in Defendant's premises directly caused A.P.'s lung

1 infection, development of pulmonary nodules, and lesions in her brain. She was placed on anti-
2 fungal medication for eighteen (18) months and is at high risk for kidney and liver damage due to
3 their lengthy use. A.P.'s exposure to, infection, and necessary treatment for the *Aspergillus*
4 infection she obtained at Defendant's facility interfered with her treatment for Anaplastic Anemia
5 and delayed the planned bone marrow transplant for over five months.

6 6.100 The doctors and nurses employed by Defendant who provided care to A.P. did not
7 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
8 Defendant's fault.

9 6.101 Although Defendant treated A.P. for the infection, it failed to notify A.P. or her
10 parents that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
11 maintenance of its air-handling system.

12 **Plaintiff Estate of Jordan I. Fellows**



21
22 6.102 In 2015, Jordan Fellows was 25 years old, attending college, working and residing
23 in Richland, Washington. Jordan was born with Neutropenia, a rare blood disorder which causes
24 deficiency of white blood cells. He was also diagnosed with acute myelogenous leukemia (AML)

1 in 2015.

2 6.103 In June 2015, Jordan was admitted to Defendant’s hospital for management of his
3 Neutropenia and AML. Following a bone marrow transplant in August, Jordan’s AML was in
4 remission.

5 6.104 Jordan remained hospitalized at SCH. In November 2015, he was diagnosed with
6 *Aspergillus* pneumonia. He underwent testing and was treated for the fungal infection. On
7 November 15, 2015, Jordan’s endotracheal tube replacement revealed thick viscous-to-gelatinous
8 inspissated mucin. Five days later, *Aspergillus* was confirmed in Jordan’s lungs.

9 6.105 Jordan died December 2, 2015.

10 6.106 Exposure to *Aspergillus* while in Defendant’s premises directly caused Jordan’s
11 pulmonary infection, interfered with his treatment and contributed to his death.

12 6.107 The doctors and nurses employed by Defendant who provided care to Jordan did
13 not know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
14 Defendant’s fault.

15 6.108 Although Defendant treated Jordan for the infection, it failed to notify Jordan or his
16 parents that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
17 maintenance of its air-handling system.

18 //

19 //

20 //

21 //

22 //

23 //

24

1 **Plaintiff C.D., an Adult**



10 6.109 C.D. was born on June 6, 2000 and was raised in St. Regis, Montana. On May 9,
11 2016, C.D. went to the emergency room for difficulty breathing and swallowing. A Chest CT
12 revealed a mass in his chest, and he was airlifted to Defendant’s hospital and admitted. A cervical
13 lymph node biopsy confirmed a diagnosis of T-cell lymphoblastic lymphoma.

14 6.110 C.D. was discharged on May 18, 2016 and returned to SCH once a week for
15 chemotherapy. A chest CT on June 10, 2016 revealed a new mass in C.D.’s lung. Culture tests
16 from the lung biopsy performed on June 14, 2016, confirmed Aspergillosis. Antifungal treatment
17 was commenced and maintained through December 26, 2016 with complications affecting his
18 kidneys and loss of muscle mass.

19 6.111 Exposure to *Aspergillus* while in Defendant’s premises directly caused C.D.’s
20 pulmonary infection. His exposure to, infection, and necessary treatment for the *Aspergillus*
21 infection he obtained at Defendant’s facility interfered with his treatment for T-cell Lymphoblastic
22 Lymphoma.

23 6.112 The doctors and nurses employed by Defendant who provided care to C.D. did not
24 know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was

1 Defendant's fault.

2 6.113 Although Defendant treated C.D. for the infection, it failed to notify C.D. or his
3 parents that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
4 maintenance of its air-handling system.

5 **Plaintiff S.K., a Minor**



15 6.114 In August 2016, S.K. was diagnosed with Pediatric B-cell lymphoblastic leukemia
16 (pre-B ALL). On September 8, 2016, S.K. underwent surgery in OR 3 at Defendant's hospital
17 where a port was placed into her chest to facilitate treatment for her condition. She remained in-
18 patient at SCH for the next month.

19 6.115 Following the surgery, S.K. became ill in a manner not associated with pre-B ALL
20 or its treatment. Tests revealed the existence of *Aspergillus* mold in her lungs and chest.

21 6.116 Exposure to *Aspergillus* while in Defendant's premises directly caused S.K.'s lung
22 infection, development of pulmonary embolisms and nodules. She was placed on anti-fungal
23 medication for eighteen (18) months and is at high risk for kidney and liver damage due to their
24

1 lengthy use. S.K.'s exposure to, infection, and necessary treatment for the *Aspergillus* infection
2 she contracted at SCH interfered with her treatment for pre-B ALL.

3 6.117 The doctors and nurses employed by Defendant who provided care to S.K. did not
4 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
5 Defendant's fault.

6 6.118 Although Defendant treated S.K. for the infection, it failed to notify her parents that
7 the *Aspergillus* had been contracted directly from its facilities as a result of negligent maintenance
8 of its air-handling system.

9 **Plaintiff L.K., a Minor**



18
19 6.119 In May 2014, L.K. was a 7-year-old boy residing in Spokane, Washington when he
20 was diagnosed with craniopharyngioma – a noncancerous tumor in his head. On May 15, 2019,
21 L.K. underwent surgery in an operating room at Defendant's hospital for his reoccurring
22 craniopharyngioma and returned home upon discharge.

23 6.120 Following the surgery, L.K.'s family heard about the *Aspergillus* infections at
24 Defendant's facility and contacted L.K.'s surgeons. L.K. was placed on anti-fungal medication

1 prophylactically for ninety (90) days.

2 6.121 Exposure to *Aspergillus* while in Defendant’s premises directly necessitated the use
3 of prophylactic anti-fungal medications by L.K., with resultant side-effects such as loss of hair,
4 chapped lips, nausea, vomiting, fatigue, and sensitivity to sunlight. L.K.’s exposure to and
5 necessary treatment for the *Aspergillus* exposure he had at Defendant’s facility complicated his
6 recovery from his most recent surgery to treat his reoccurring craniopharyngioma.

7 6.122 The doctors and nurses employed by Defendant who provided care to L.K. did not
8 know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
9 Defendant’s fault.

10 6.123 Defendants failed to notify his father, that L.K. was at risk of contracting an
11 *Aspergillus* infection during L.K.’s brain surgery due to Defendant’s negligent maintenance of its
12 air-handling system, and only treated after reports in the media surfaced and his family contacted
13 Defendant with concern of exposure.

14 **Plaintiff T.H., a Minor**



22 6.124 In 2018, T.H. was 11 years old and living in Billings, Montana when she was
23 diagnosed with Hodgkin’s Lymphoma. Between November 2018 through early 2019, she
24

1 underwent multiple procedures at Defendant's hospital including several exploratory
2 laparotomies, lymph node excisions, biopsies, bone marrow aspirates, and closure of her
3 ileostomy.

4 6.125 A May 16, 2019 CT revealed a cap of an Aspeto syringe had been left in T.H. after
5 one of her procedures at SCH and had adhered to her abdominal wall. Surgery to remove the
6 abdominal foreign body was performed at SCH the next day.

7 6.126 Because T.H. had undergone surgery at Defendant's hospital during the period
8 when *Aspergillus* was identified in their operating rooms, she was started on a course of anti-fungal
9 medications. Her bone marrow transplant was delayed. T.H. experienced adverse reactions to the
10 medication as her chemotherapy and anti-fungal medications were alternated.

11 6.127 Furthermore, a large cyst developed at the site where the syringe cap was removed.
12 The cyst ruptured in June 2020, halted T.H.'s bowel functions and resulted in additional medical
13 care.

14 6.128 Exposure to *Aspergillus* while in Defendant's premises directly interfered and
15 caused delay with T.H.'s cancer treatment.

16 6.129 The doctors and nurses employed by Defendant who provided care to T.H. did not
17 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
18 Defendant's fault.

19 //

20 //

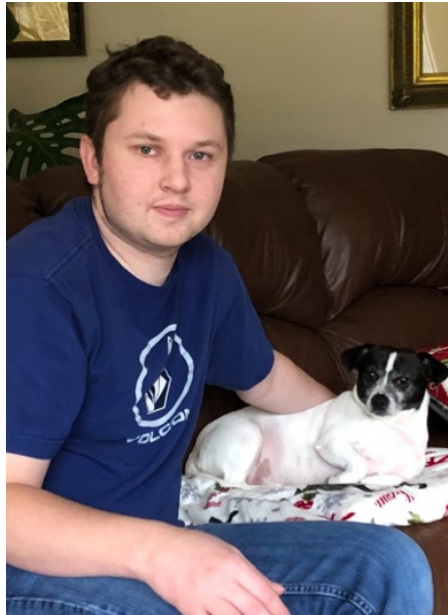
21 //

22 //

23 //

24

1 **Plaintiff Kyle Morris, an Adult**



11 6.130 Kyle Morris was born on May 14, 1996. At age 2, he was diagnosed with leukemia
12 and began treatment at Seattle Children’s Hospital.

13 6.131 A September 26, 1998 CT revealed presence of a left lower lobe infiltrate and a
14 small area infiltrate in the upper lobe. Three days later, Kyle underwent a biopsy and excision of
15 nodules and a mass. Pathology of the lung mass was consistent with *Aspergillus*.

16 6.132 Kyle was treated with Amphotericin. His chemotherapy regimen was modified.

17 6.133 Kyle is now 24 years old, suffers from seizures and has intellectual disabilities.

18 6.134 Exposure to *Aspergillus* while in Defendant’s premises directly caused Kyle’s
19 pulmonary infection. His exposure to, infection, and necessary treatment for the *Aspergillus*
20 infection he obtained at Defendant’s facility interfered with his treatment for leukemia.

21 6.135 The doctors and nurses employed by Defendant who provided care to Kyle did not
22 know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
23 Defendant’s fault.

1 6.136 Although Defendant treated Kyle for the infection, it failed to notify Kyle or his
2 parents that the *Aspergillus* had been contracted directly from its facilities as the result of negligent
3 maintenance of its air-handling system.

4 **Plaintiff Margaret Waldrop, an Adult**



14 6.137 Margaret Waldrop was born on April 20, 2003 in Anchorage, Alaska. The family
15 moved to Snohomish, Washington due to Margaret’s health issues. She was diagnosed with cystic
16 fibrosis at age two and treated Seattle Children’s Hospital which, at times involved frequent
17 admission to in-patient care for respiratory exacerbations. On occasion, Margaret required PICU
18 care. Throughout the last ten years, she has cultured positive for *Aspergillus* over twenty times.

19 6.138 Exposure to *Aspergillus* while in Defendant’s premises directly necessitated the use
20 of increased amounts of high dose steroids, anti-fungal medications and antibiotics to combat
21 Margaret’s infections. Her exposure to and necessary treatment for the *Aspergillus* exposure at
22 Defendant’s hospital complicated her course of care for her cystic fibrosis.

23 6.139 The doctors and nurses employed by Defendant who provided care to Margaret did
24 not know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was

1 Defendant's fault.

2 6.140 Although Defendant treated Margaret for the infections, it failed to notify her or
3 her parents that the *Aspergillus* had been contracted directly from its facilities as a result of
4 negligent maintenance of its air-handling system.

5 **Plaintiff V.A., a Minor**



15 6.141 In 2019, V.A. was 12 years old and residing in Anchorage, Alaska. She has a
16 history of tetralogy of falot and pulmonary atresia with multiple admissions to Seattle Children's
17 Hospital.

18 6.142 V.A. was scheduled for open heart surgery at Seattle Children's Hospital in the
19 Spring of 2019. Twice the surgery had to be rescheduled due to dangerous air quality conditions.
20 After initiating plans to move V.A. to a different facility, SCH notified V.A.'s parents of an
21 available operating room and assured them the air quality situation had been resolved.

22 6.143 On October 3, 2019 V.A. underwent a right ventricle to pulmonary artery conduit
23 replacement and left pulmonary arterioplasty. Soon thereafter, V.A. and her family learned she
24

1 had been exposed to *Aspergillus* at Defendant’s facility. She was placed on proactive *Aspergillus*
2 monitoring including galactomannan level draws and treated with anti-fungal medication.

3 6.144 The doctors and nurses employed by Defendant who provided care to V.A. did not
4 know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
5 Defendant’s fault.

6 6.145 Defendant failed to notify V.A.’s parents that she was at risk of contracting an
7 *Aspergillus* infection during her open heart surgery due to Defendant’s negligent maintenance of
8 its air-handling system.

9 **Plaintiff F.F., a Minor**



20 6.146 F.F. was born on January 21, 2015 and residing with her family in Great Falls,
21 Montana when she was diagnosed with external dysplasia and SCID secondary to I-kappa-B-alpha
22 mutation. She underwent a bone marrow transplant in October 2017 with graft failure and repeat
23 bone marrow transplant in January 2019 with full engraftment.

1 6.147 In October 2020, as a result of transmission at Defendant hospital, F.F. was
2 diagnosed with an *Aspergillus* pneumonia infection via BAL and placed on anti-fungal therapy.

3 6.148 The doctors and nurses employed by Defendant who provided care to F.F. did not
4 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
5 Defendant's fault.

6 6.149 Although Defendant treated F.F. for the infection, it failed to notify F.F.'s parents
7 that she was at risk of contracting an *Aspergillus* infection during her SCH admissions due to
8 Defendant's negligent maintenance of its air-handling system.

9 **Plaintiff Estate of Troy Roeder II**



19 6.150 Troy Roeder II was born on May 4, 2017 with atrioventricular septal defect
20 (AVSD) and down syndrome. Shortly after his birth, he was transferred to Seattle Children's
21 Hospital where he was an inpatient for 804 days until he passed on July 16, 2019.

22 6.151 On March 21, 2019, Troy was taken into the OR where he underwent a bronchial
23 scope procedure. Post-procedure, Troy's health deteriorated.
24

1 6.152 Plaintiff received a letter from Seattle Children’s Hospital stating her son may have
2 been exposed to *Aspergillus*.

3 6.153 Troy was treated with anti-fungals before the doctor’s ceased the treatment because
4 his liver could not take any more treatment.

5 6.154 The doctors and nurses employed by Defendant who provided care to Troy Roeder
6 II did not know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
7 Defendant’s fault.

8 6.155 Although Defendants treated Troy for the infection, it failed to notify his parents
9 that he was at risk of contracting an *Aspergillus* infection during his SCH admissions due to
10 Defendant’s negligent maintenance of its air-handling system.

11 **Plaintiff C.F., a Minor**



22 6.156 C.F. was born on December 30, 2012 with ventricular septal defect (VSD) and has
23 treated at Seattle Children’s Hospital as an inpatient and outpatient ever since.

24 6.157 C.F. has undergone three open heart surgeries at Defendant hospital. Between

1 approximately December 2019 and March 2020, C.F. was admitted to Seattle Children’s Hospital
2 multiple times.

3 6.158 During that timeframe, C.F. was started on anti-fungal medications.

4 6.159 C.F.’s parents received a letter from Seattle Children’s Hospital stating their son
5 may have been exposed to *Aspergillus*.

6 6.160 The doctors and nurses employed by Defendant who provided care to C.F. did not
7 know that Defendant’s premises were unsafe, and that transmission of *Aspergillus* was
8 Defendant’s fault.

9 6.161 Defendants failed to notify C.F.’s parents that he was at risk of contracting an
10 *Aspergillus* infection during his SCH admissions due to Defendant’s negligent maintenance of its
11 air-handling system.

12 **Plaintiff V.G., a minor**



22 6.162 V.G. was born with hypoplastic left heart syndrome and admitted to Defendant
23 hospital on the day of her birth on December 31, 2012.

1 6.163 Following V.G.'s third open heart surgery at Seattle Children's Hospital in
2 September, 2019, they were notified their daughter may have been exposed to *Aspergillus*.

3 6.164 V.G. underwent additional testing protocols due to this exposure.

4 6.165 The doctors and nurses employed by Defendant who provided care to V.G. did not
5 know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
6 Defendant's fault.

7 6.166 Defendants failed to notify V.G.'s parents that she was at risk of contracting an
8 *Aspergillus* infection during her SCH admissions due to Defendant's negligent maintenance of its
9 air-handling system.

10 **Plaintiff Estate of Caitlin Palmer**



19 6.167 In 1998, Caitlin Palmer, then age 9, was diagnosed with acute lymphocytic
20 leukemia (ALL) and began treatment at Seattle Children's Hospital.

21 6.168 After chemotherapy and a bone marrow transplant in August 2001, Caitlin relapsed
22 and was readmitted to Seattle Children's Hospital on May 20, 2002.

23 6.169 On June 19, 2002, Caitlin was diagnosed with pulmonary *Aspergillus*, was placed
24

1 on antifungal medication, and underwent additional testing protocols as a result of this exposure.

2 6.170 Caitlin Palmer died on June 24, 2002 from brain death in the setting of multiple
3 organ system failure associated with systemic fungal infection.

4 6.171 The doctors and nurses employed by Defendant who provided care to Caitlin did
5 not know that Defendant's premises were unsafe, and that transmission of *Aspergillus* was
6 Defendant's fault.

7 6.172 Defendants failed to notify Caitlin's parents that she was at risk of contracting an
8 *Aspergillus* infection during her SCH admissions due to Defendant's negligent maintenance of its
9 air-handling system.

10 **Department of Health**

11 6.173 In October 2017, State Department of Health inspectors cited Defendant for serious
12 violations involving its failure to "implement and monitor an effective infection prevention
13 program."

14 6.174 In June 2018, Defendant closed two of its premises and an equipment storage room
15 for three days after detection of *Aspergillus*.

16 6.175 In May 2019, the Defendant discovered another *Aspergillus* infestation in the air-
17 handling unit. As a result, the Defendant closed all of its premises. State inspectors cited
18 Defendant for failing to adequately maintain its air-handling units and exhaust fans, to wit:

19 6.175.1 **Violation of WAC 246.320.136(5)** requiring that hospital
20 leadership provide safe and appropriate care. Specifically – failure to ensure that all
21 patients have access to safe and appropriate air through effective oversight for quality
22 improvement, infection control and physical environment put patients at risk of harm from
23 pathogenic organisms.

1 6.175.2 Failure of the hospital’s Quality Improvement Steering Committee
2 to approve and implement the hospital’s Infection Prevention Quality Assessment &
3 Performance Improvement plan that received approval from the Infection Prevention
4 Executive Oversight Committee.

5 6.175.3 Failure of the hospital’s Safety Leadership Committee to approve
6 and implement the facility’s draft Water Management Plan.

7 6.175.4 Failure of the hospital’s Quality Program to ensure that facility staff
8 completed preventative maintenance of the hospital’s utility system according to industry
9 standards and manufacturer’s recommendations.

10 6.175.5 **Violation of WAC 246.320.176(1)** by failure to approve an annual
11 infection control plan.

12 6.175.6 **Violation of WAC 246.320.176(4)** by failure to approve and
13 implement a water management plan to prevent exposure to water borne pathogens.

14 6.175.7 **Violation of WAC 246.320.296(9)(e)** by failure of facilities staff to
15 complete preventative maintenance at required intervals for air handlers in the operating
16 room, failure to inspect and calibrate filter performance, air pressure, and airflow
17 monitoring equipment to ensure accuracy, and failure to maintain written criteria to assign
18 priority levels and maintenance schedules.

19 6.175.8 Notably interview of the Building Operations Manager included:

- 20 ○ He was unaware what risk assessment or classification the hospital used to
21 identify maintenance strategies for utility equipment.
- 22 ○ He was unable to provide any written documentation that showed
23 completion of a risk assessment or establishment of risk criteria.

- 1 ○ He stated the department was not currently inspecting, validating, or
2 calibrating equipment used to monitor filter performance, air pressure, or
3 airflow rates within the facility and had not developed schedules as
4 specified in the utilities management plan.

5 **Centers for Disease Control and Prevention**

6 6.176 In July 2019, the Centers for Disease Control and Prevention (CDC) reported that
7 its investigation into six cases of invasive Aspergillus infections occurring from May 2018 to May
8 2019 identified the HVAC system as a likely source of Aspergillus spores detected in the operating
9 rooms.

10 6.177 The CDC found that primary and secondary filter banks had gaps between filters
11 and housing, allowing outside air to bypass the filters and enter the system.

12 6.178 The CDC found that air pressure monitoring was not manually validated or
13 routinely checked.

14 6.179 The CDC found that HEPA filters were not installed at diffusers in the OR ceilings.

15 6.180 The CDC found that the last HVAC risk/vulnerability assessment was inadequately
16 performed in 2016 since it failed to review the AHUs.

17 6.181 The CDC found that within the Sterile Processing Department, doors between the
18 sterilizer equipment room, the clean work area, and the sterile storage area were maintained open
19 – which could disrupt intended air pressure differentials and promote the undesirable movement
20 of air from dirty to clean areas.

21 6.182 The CDC made several recommendations to SCH for immediate and ongoing
22 action to mitigate risk of further transmission.

23 6.183 The areas identified by the CDC as needing immediate attention include ensuring
24

1 appropriate pressure relationships and air flow among all areas providing direct and ancillary
2 services to the perioperative area.

3 6.184 The CDC additionally recommended SCH pay attention to specific observations
4 and opportunities within HVAC, infection prevention, surveillance for mold infections, air
5 sampling and laboratory analyses.

6 6.185 Defendant claimed to be addressing the issues and reopened the premises on July 4,
7 2019. Mark Del Beccaro, Defendant's Chief Medical Officer, informed investigators that the risk
8 to patients was "incredibly low."

9 6.186 On November 10, 2019, an inspection revealed *Aspergillus* in three of Defendant's
10 premises. The Defendant closed these premises.

11 6.187 For a period of at least 19 years (2000 until July 4, 2019), Defendant failed to
12 adequately maintain the safety of its premises due to negligent maintenance of its air-handling
13 system, and negligent failure to adequately test for mold spores.

14 6.188 On July 4, 2019, Defendant began to test for mold spores at least once per week.
15 Defendant is also in the process of replacing its air-handling system.

16 6.189 The Plaintiffs did not learn that there was a link between their *Aspergillus* infections
17 and Defendant's hospital until November of 2019 when they heard through the media, Defendant's
18 admission of responsibility for the unintended transmission of *Aspergillus* to child patients.

19 VII. MEDICAL NEGLIGENCE

20 7.1 As a health care provider, Defendant owed to Plaintiffs a duty to comply with the
21 standard of care for one of the profession or Class to which it belongs.

22 7.2 Defendant owed a duty to Plaintiffs to exercise the degree of skill, care, and
23 learning expected of a reasonably prudent hospital in the State of Washington acting in the same
24

1 or similar circumstances at the time of the care or treatment in question.

2 7.3 Defendant owed a duty to Plaintiffs to take reasonably prudent measures to prevent
3 *Aspergillus* from infecting Plaintiffs in its premises.

4 7.4 Defendant violated WAC 284-320, including specifically 246-320-296, partially
5 excerpted as follows:

6 **WAC 246-320-296 - Management of environment for care.**

7 The purpose of this section is to manage environmental hazards and risks, prevent accidents
8 and injuries, and maintain safe conditions for patients, visitors, and staff.

9 (1) Hospitals must have an environment of care management plan that addresses safety,
10 security, hazardous materials and waste, emergency preparedness, fire safety, medical
11 equipment, utility systems and physical environment.

12 (2) The hospital must designate a person responsible to develop, implement, monitor, and
13 follow-up on all aspects of the management plan.

14 (3) Safety. The hospital must establish and implement a plan to:

- 15 (a) Maintain a physical environment free of hazards;
- 16 (b) Reduce the risk of injury to patients, staff, and visitors;
- 17 (c) Investigate and report safety related incidents;
- 18 (d) Correct or take steps to avoid reoccurrence of the incidents in the future;
- 19 (e) Develop and implement policies and procedures on safety related issues such as
20 but not limited to physical hazards and injury prevention; and

21 ...
22 (9) Utility systems. The hospital must establish and implement policies, procedures and a
23 plan to:

- 24 (a) Maintain a safe and comfortable environment;
- (b) Assess and minimize risks of utility system failures;
- (c) Ensure operational reliability of utility systems;
- (d) Investigate and evaluate utility systems problems, failures, or user errors and
report incidents and corrective actions;
- (e) Perform and document preventive maintenance; and
- (f) Educate staff on utility management policies and procedures.

(10) Physical environment. The hospital must provide:

- ... (c) Ventilation to:
 - (i) Prevent objectionable odors and/or excessive condensation; and
 - (ii) With air pressure relationships as designed and approved by the
department when constructed and maintained within industry standard
tolerances;

1 11.2 Defendant has a fiduciary relationship with its patients.

2 11.3 Defendant has a statutory and common law duty to inform patients of the risks of
3 medical care, and all information needed for patients to make informed healthcare decisions.

4 11.4 Defendant was required not only to inform patients about the substantially
5 increased risk of *Aspergillus* infection at its facilities, but in cases where *Aspergillus*-related
6 conditions were diagnosed, that the Hospital itself was the source of infection.

7 11.5 Defendant was required to inform patients that the source of infection was the
8 Hospital's negligently maintained air handling system.

9 11.6 Without that information, Plaintiffs were deprived of material facts to inform their
10 treatment decisions, including those related to follow-up care.

11 11.7 Defendant knew that in withholding material facts, it was affirmatively
12 misrepresenting information to Plaintiffs.

13 11.8 Defendant intended for Plaintiffs to rely on Defendant, and Defendant's
14 concealments, to make informed healthcare decisions.

15 11.9 Plaintiffs did not know Defendant was concealing material facts and had the right
16 to and did reasonably rely on Defendant to meet its statutory and common law duty to inform them
17 of material facts.

18 11.10 Defendant's failure to inform Plaintiffs of the cause of *Aspergillus* infection, in the
19 face of a legal duty to do so, constitutes fraud by concealment.

20 11.11 Plaintiffs suffered damages as a result of their reasonable reliance on Defendant's
21 fraud and negligent misrepresentation.

22 11.12 Through its acts and omissions, Defendant allowed Plaintiffs to believe that
23 *Aspergillus* infection was part of the inherent risks of surgery, was caused by exposure outside the
24

1 hospital, was an unexplainable or unique phenomenon, or simply bad luck.

2 11.13 By misleading Plaintiffs as to the genesis of the *Aspergillus* infection in relation to
3 its negligently maintained air handling systems, Defendant negligently inflicted emotional distress
4 upon its patients and parents of patients by causing them to believe they could be at fault for
5 transmission of the *Aspergillus* infection, when instead it was Defendant's fault.

6 11.14 Through its acts and omissions, Defendant deprived Plaintiffs of the opportunity to
7 discover the role it played in infection, and other factual bases for the causes of action, until 2019.

8 XII. DAMAGES

9 12.1 Defendant's failure to exercise such skill, care and learning, and failure to exercise
10 reasonable prudence, was a direct and proximate cause of the injuries and damages to Plaintiffs.

11 12.2 Defendant's negligence caused Plaintiffs' infection by *Aspergillus* and all related
12 harms, including treatment and monitoring, then and into the future.

13 12.3 As a direct and proximate result of Defendant's negligence, Plaintiffs have suffered
14 past and future physical and emotional harm, pain and suffering, loss of enjoyment of life, lost
15 earning potential, disability, and related medical expenses.

16 12.4 As a direct and proximate result of Defendant's negligence, Plaintiffs' statutorily
17 qualified family members suffered loss of consortium, and special damages.

18 12.5 All damages allowed under RCW 4.20.010, RCW 4.20.20, RCW 4.20.046, RCW
19 4.20.060, and RCW 4.24.010, as applicable.

20 XIII. STATUTORY ELECTION

21 13.1 Plaintiffs do not elect to submit this dispute to arbitration pursuant to RCW
22 7.70A.020, and declarations by parties are attached as Exhibit 10.

1 **XIV. WAIVER OF PRIVILEGE**

2 14.1 Waiver of the physician-patient privilege under RCW 5.60.060(4)(b) does not
3 waive or release any other rights or privileges, including those related to the physician-patient
4 relationship, other than the privilege set out in the above-cited statute.

5 **XV. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment against Defendant in their favor and in favor
7 of the Class and against Defendant, as follows:

8 15.1 Declaring and decreeing that this action is properly maintainable as a Class action
9 pursuant to CR 23(b)(3), and certifying each class.

10 15.2 Declaring and decreeing that Defendant violated WAC 246-320.

11 15.3 Declaring and decreeing that Defendant was negligent for introducing the
12 *Aspergillus* mold into what should have been its sterile premises.

13 15.4 Declaring and decreeing that Defendant’s negligence resulted in injury to each
14 Plaintiff.

15 15.5 For special and general damages to Plaintiffs and the Class in amounts to be proven
16 at trial.

17 15.6 For costs and disbursements.

18 15.7 For statutory attorney fees.

19 15.8 If Defendant brings any frivolous or unfounded defenses, for attorneys’ fees and
20 costs pursuant to RCW 4.84.185 and/or Rule 11 of the Superior Court Civil Rules.

21 15.9 For statutory interest on the judgment from the date judgment is entered until paid
22 in full.

23 15.10 For prejudgment interest on the special damages.
24

1 15.11 For prejudgment interest on liquidated damages.

2 15.12 For such other and further relief as the Court may deem just and equitable.

3 **DATED** this 29th day of August , 2022.

4 **STRITMATTER KESSLER**
5 **KOEHLER MOORE**

6 /s/ Karen K. Koehler
7 Karen K. Koehler, WSBA #15325

8 Andrew Ackley, WSBA #41752
9 Ruby Ailiment, WSBA #51242
10 Co-Counsel for Plaintiffs and Class

11 **LAYMAN LAW FIRM**

12 /s/ John R. Layman
13 John R. Layman, WSBA #13823
14 Co-counsel for Plaintiffs and Class