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DAVID P. KEMP (K-112/0020665)

NITED STATES DISTRICT COURT
THERN DISTRICT OF OHIO
WESTERN DIVISION

| | | |
|---|---|---|
| CATHERINE O. HAGER, Administratrix of the Estate of Joseph J. Mitchell, Deceased<br>590 Delta Avenue<br>Cincinnati, OH 45227 | : | CASE NO.: |
| and | : | |
| JAMES NICHOLAS, Administrator of the Estate of Mary Hampton Singleton, Deceased<br>430 Reading Road<br>Cincinnati, OH 45202 | : | |
| on behalf of themselves and all others similarly situated | : | |
| Plaintiffs | : | COMPLAINT WITH JURY DEMAND |
| vs. | : | |
| THE UNIVERSITY OF CINCINNATI<br>College of Medicine<br>234 Goodman Street<br>Cincinnati, OH 45267 | : | CLASS ACTION |
| and | : | |
| UNIVERSITY HOSPITAL<br>(formerly known as Cincinnati General Hospital)<br>234 Goodman Street<br>Cincinnati, OH 45267 | : | |
| and | : | |
| THE CITY OF CINCINNATI<br>c/o Fay Dupuis, Esq.<br>City Solicitor<br>801 Plum Street<br>Cincinnati, OH 45202 | : | |
| and | : | |
| EUGENE L. SAENGER, M.D.<br>University Hospital<br>234 Goodman Street<br>Cincinnati, OH 45267 | : | |

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and :

EDWARD B. SILBERSTEIN, M.D. :
Radioisotope Laboratory
U.C. Medical Center :
ML 577
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and :

BERNARD S. ARON, M.D. :
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and
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2800 Winslow Avenue, #310 :
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:

and
:

JAMES G. KEREIAKES, PH.D.
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and :

I-WEN CHEN, PH.D :
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and
:

CAROLYN WINGET, M.D.
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and :

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Defendants

## I. INTRODUCTION

1. This is a class action complaint filed by plaintiffs Catherine O. Hager, Administratrix of the estate of Joseph J. Mitchell, deceased; and James Nicholas, Administrator of the estate of Mary Singleton, deceased, individually and on behalf of all others similarly situated, for violation of civil rights, medical malpractice and other claims for civil damages arising out of full-and partial-body radiation experimentation or testing conducted at Cincinnati General Hospital (now known as University Hospital) between 1960 and 1972. The experiments were conducted by University Hospital's predecessor, Cincinnati General Hospital ("CGH"), by defendant Eugene Saenger, M.D., under the auspices of the University of Cincinnati College of Medicine ("UCCM") with the authorization, cooperation, funding, encouragement and ratification of the United States Department of Defense's Defense Nuclear Agency ("DNA"), which was formerly known as the Defense Atomic Support Agency ("DASA").

2. This action is brought on behalf of the estates of persons who suffered from incurable cancer. As such, this Complaint is not a malpractice action in the traditional sense: there is no allegation that the decedents would have recovered

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But for the mistakes of the treating physicians. Rather, Plaintiffs allege that the experiments described herein were undertaken without due regard for the persons subjected thereto or their safety and well-being, by professionals whose conduct fell far below the standard of care expect of such professionals. The risks and non-efficacy of total body radiation (TBR) and partial body radiation (PBR) in treating cancers of the kinds suffered by the subjects of these experiments were well documented by the time the UCCM/CGH studies were undertaken. Such studies were instead undertaken principally or exclusively as a means of providing information to the Defense Department about the effects of radiation on military personnel in the event of a nuclear attack.

3. As shown herein, none of the subjects gave informed consent to participating in such experiments, which offered no therapeutic benefit to them nor benefit for future cancer patients.

## II. JURISDICTION AND VENUE

4. Jurisdiction in this matter is based upon and conferred upon this Court by 28 U.S.C. § 1331, on the basis of federal questions as to violations of the rights of plaintiffs and the class under the United States Constitution and 42 U.S.C. §§ 1983 and 1985; § 170 [42 U.S.C. §2210(n)(2) of The Atomic Energy Act of 1954 (also known as the "Price-Anderson Act") as amended by the Price-Anderson Amendments Act of 1988, 42 U.S.C.

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§§ 2011 et seq.; and 28 U.S.C. § 1367, which provides for supplemental and pendent jurisdiction of related claims.

5. Venue is proper in this district pursuant to 42 U.S.C. §2210(n)(2), and pursuant to 28 U.S.C. § 1391(b) on the grounds that the events giving rise to the claims, or a substantial portion thereof, occurred in this district.

## III. PARTIES

6. (a) Plaintiff Catherine O. Hager is a resident of Cincinnati, Ohio. Her father, for whose estate she is administratrix (with will annexed), was Joseph J. Mitchell, who died on July 14, 1965, 74 days after receiving TBR at UC/CGH.

(b) Plaintiff James Nicholas is a resident of Cincinnati, Ohio. He is the administrator of the Estate of Mary Singleton, deceased, who died on December 5, 1970, 28 days after receiving TBR at UCCM/CGH.

7. Defendant Eugene L. Saenger, M.D. was, at all relevant times hereto, the chairman of and employed by the Department of Radiology of the University of Cincinnati College of Medicine. Defendant Saenger designed, supervised and conducted the experiments which are at the heart of this Complaint.

8. Defendants Edward B. Silberstein, M.D.; Bernard S. Arch, M.D.; Harry Horwitz, M.D.; James G. Kereiakes, Ph.D.; I-Wen Chen, Ph.D.; Carolyn Winget, M.A.; and Goldine C. Gleser, Ph.D. at all relevant times assisted Defendant Saenger in the conduct of the experiments described herein. These defendants

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are referred to collectively hereinafter as the "Individual Defendants."

9. Defendant University of Cincinnati ("UC") is now a state-owned academic institution located in Cincinnati, Ohio. During the time of the experimentation described herein, UC and its College of Medicine were owned and operated by Defendant City of Cincinnati. As a municipality-owned entity, UC engaged in "state action" for the purposes of civil rights liability.

10. Defendant University Hospital, formerly Cincinnati General Hospital is a medical facility owned by UC and located in Cincinnati, Ohio where plaintiffs' decedents and other similarly situated individuals were the subjects of intentional exposure to TBR and PBR. Defendant CGH's conduct with respect to the events alleged in this Complaint both as a city-owned hospital and as an agent of the Department of Defense ("DOD") was so intertwined with the conduct of the program of human experimentation that defendant CGH's conduct constitutes "state action" for the purposes of civil rights liability.

## IV. FACTUAL ALLEGATIONS

11. Between 1960 and 1971, defendants acted in concert to design, authorize, fund, execute and ratify a program of experimentation whereby at least 87 and possibly as many as 120 individuals, many of whom were poor and uneducated, were subjected to total or partial-body radiation at levels far in excess of levels at which any therapeutic benefit could be reasonably expected. These experiments were part of an overall

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program of testing of radioactive materials upon human subjects without their informed consent, under the auspices of the United States Defense Nuclear Agency (known until the mid-1960's as the Defense Atomic Support Agency).

12. Defendants did not inform plaintiffs' decedents of the dangers, risks or purposes of the experiments, but instead concealed such information. Defendants falsely informed the subjects that all such procedures were for therapeutic purposes and did not pose a substantial risk to the patients.

13. The experiments in question were designed and conducted by Defendant Saenger and the other Individual Defendants with callous indifference to the effect such experiments would have on the physical and mental health of the subjects and conscious disregard for the rights and safety of the subjects in situations where there was a great probability of causing substantial harm. Indeed, although reports submitted by Defendant Saenger and the other individual Defendants to the Defense Nuclear Agency indicated that "all studies were performed in conformation with the 'recommendations guiding doctors in clinical research' as stated in the Declaration of Helsinki of the World Medical Association (1964)" (the "Helsinki Declaration"), the studies in fact were conducted recklessly and without due regard for the rights of the subjects of the research.

14. Even in the context of non-therapeutic clinical research, i.e., research which is purely scientific and without

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therapeutic value to the subject, the Helsinki Declaration requires that the doctor "remain the protector of the life and health of that person on whom clinical research is being carried out."

15. Against this standard, the "protections" accorded to the subjects of the experimentation carried out by Defendant Saenger and the other Individuals Defendants were woefully inadequate. For example, decedent Joseph J. Mitchell was subjected to total body radiation on or about May 1, 1965. Mr. Mitchell had lung cancer from which recovery was not expected. He was referred to Dr. Saenger for participation in the TBR experiments. Mr. Mitchell was not told that TBR was experimental, that he was a part of a study, nor that there could be very severe side effects. He was simply told that the purpose of the treatment was to prolong his life. However, this was not the purpose of the treatment. Mr. Mitchell never gave informed consent, permitting Defendants to subject him to TBR.

16. In May, 1965, Mr. Mitchell was subjected to 150 rads of TBR. After the TBR, Mr. Mitchell's chest and the rest of his body were burned to the point where he could not wear clothes. His hair was gone. Mr. Mitchell hallucinated, claiming to see snakes. Finally, on July 14, 1965, Mr. Mitchell died.

17. Defendant Saenger and the other Individual Defendants claimed in various reports to the Defense Nuclear Agency that "all patients gave informed consent" to the experimentation.

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However, with respect to Mr. Mitchell and, on information and belief, all other subjects, no informed consent was given.

18. If plaintiffs' decedents had been informed of the dangers, risks and purposes of the procedures, they would not have consented to undergo such experimentation, and any consent that they may have given to undergo these procedures is invalidated by the defendants' failure to provide the basis for informed consent.

19. The program of radioactive experimentation was carried out by agents and employees of defendants City of Cincinnati, UC, and CGH, and those defendants are liable for the wrongful acts and omissions of their employees and agents, including Defendant Saenger and the other Individual Defendants.

20. Defendants' fraudulent concealment, including but not limited to the intentional failure to inform plaintiffs' decedents and the class members of the true nature and dangers of the radioactive experiments, have tolled any and all applicable statutes of limitation, due to the inability of plaintiffs and the class members to discover their claims for relief against defendants.

21. Plaintiffs and the class members did not know or have reason to know the true nature and dangers of the radioactive experimentation to which the decedents were subjected, and plaintiffs did not know or have reason to know of their claims for relief against defendants until early 1994, when newspaper articles were published and media reports were broadcast that

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described the radiation experiments and the dangers and deaths that resulted.

22. The patients subjected to radiation experiments from 1960 to 1971 were primarily poor, primarily poorly-educated and of lower than average intelligence. Virtually all the patients were charity cases at CGH; none were paying patients being treated at Holmes Hospital, another hospital operated by U.C. and the Individual Defendants.

23. While the subjects of the experiments had cancer which may have been incurable at the time, they were all deemed to be "in reasonably good clinical condition." Even Dr. Saenger noted that the patients selected for the testing had life expectancies of up to two years. Yet while some cancers, notably leukemia and certain forms of lymphatic cancer responded well to TBR, TBR was not indicated for the types of localized cancers - lung, colon, rectal, breast -- of the subjects in the study.

24. The study undertaken by Dr. Saenger and the other Defendants lasted for approximately 12 years. In the early stages of the study, Dr. Saenger and the individual Defendants were frank, at least in their reports to DASA, about the purposes of the study. For example, a report for the period 1960 to 1966 (the "1966 Report") states in pertinent part as follows:

> "Psychological, hematological, metabolic, immunological and chromosomal findings are statistically analyzed and some implications concerning reduction in combat effectiveness of military personnel exposed to ionizing radiation are drawn."

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In other words, the study was solely designed to test the effects of radiation on military personnel. The 1966 Report was distributed to over 100 military and naval commands and agencies.

25. The goal of the tests, as further stated in the 1966 Report, was to develop a baseline for determining how much radiation exposure was too much, how shielding could decrease "the deleterious effect of radiation," and what a single dose of whole or partial body radiation could do to "cognitive or other functions mediated through the central nervous system."

26. While the 1966 Report was honest in terms of its goals, the subjects participating in the study, at least through 1966, were not dealt with honestly. For example, one of the first reports issued under the study, covering the period 1960 through October, 1961 (the "1961 Report") described how patients entered the study: "The patient is told that he is to receive treatment to help his sickness." The 1966 Report however, made clear that this was not the case. Indeed, with the exception of the cancers described above (leukemia and some lymphatic cancer), TBR as a therapeutic treatment for cancer was generally regarded as quackery even during the time of this study.

27. Between 1967 and 1972, during the height of the Vietnam War, criticism of the radiation experiments increased markedly. As a result, while the experiments continued, the defendants' explanations and rationalization of the need for

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them changed significantly and a campaign of disinformation was undertaken.

28. For example, in 1971, after a story in the Washington Post criticized the use of advanced cancer patients in radiation experiments, UC officials publicly stated that the primary purpose of the research was for the good of the patient and that "the transmission of information to the Pentagon was probably a by-product of the research." Such statements flatly contradicted the goals of the study as set forth in the 1966 Report, the 1961 Report and elsewhere: far from being a "by-product," supplying information to the Pentagon was the only reason the studies were undertaken.

29. Plaintiffs and the class members are entitled to compensatory and punitive damages as a result of the injuries and deaths caused by defendants' negligent, reckless and intentional misconduct.

CIVIL RIGHTS "STATE ACTION" ALLEGATIONS

30. The program of human radiation experiments that includes the experiments alleged in this Complaint began in the mid 1940's and was coordinated and carried out by the United States Government, acting through its agents, including defendants herein.

31. At all times material to this Complaint, all research programs involving human radiation experiments, including the experiments alleged in this Complaint, were submitted to the Atomic Energy Commission ("AEC") and/or the DNA for approval,

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and the AEC and/or DNA authorized, funded, encouraged, ratified and supervised all such human radiation experiments.

32. In or about 1960, Defendant Saenger, acting as an employee and/or agent of CGH and UC, entered into several contracts with DNA, including contract # DASA-01-69-C-0131. Pursuant to one or more of these contracts, UC/CGH and Saenger's research team received grants totaling over $650,000 from DNA to conduct the experiments described herein. While DNA funded this study, it was up to Defendants Saenger, UC, CGH and the Individual Defendants to design, implement and find subjects for it.

33. Because UC and CGH were agents or instrumentalities of the City of Cincinnati, and because UC and CGH were under contract to carry out the work of the Department of Defense, the conduct of defendants constitutes "state action".

34. Accordingly, defendants City of Cincinnati, UC and CGH are liable for the violation of, and conspiracy to violate, the civil rights of plaintiffs' decedents and the class to life and liberty; to the privacy and sanctity of their own bodies; to equal protection under law; and to property rights.

## CLASS ACTION ALLEGATIONS

35. Individual and Representative Plaintiffs Catherine O. Hager, Administratrix, and James Nicholas, Administrator bring this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and all persons similarly situated who have been

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damaged by the defendants' conduct in subjecting plaintiffs' decedents and the class members to radioactive experimentation without their knowledge or consent. Plaintiffs bring this action on behalf of two proposed classes, initially defined as follows:

(a) <u>The Class of Executors, Administrators, Legatees, Beneficiaries and Next of Kin of Deceased Radiation Victims</u>

This class consists of legal representatives, legatees, beneficiaries and next of kin of radiation victims who were subjected to TBR or PBR by Defendants between 1960-72.

(b) <u>The Class of Surviving Subjects of Radiation Experimentation</u>

This class consists of those individuals who were subjected to TBR or PBR by Defendants in the 1960-1972 period and who are still living.

36. Each of the classes is so numerous that individual joinder of all its members in a single action is impracticable. Plaintiffs estimate, based on available data and published reports, that there are between 87 and 120 subjects of radiation, each of whom may have multiple beneficiaries, legatees, and next of kin.

37. There are numerous common questions of law and fact that predominate over any questions affecting only individual members of the proposed classes. Among these questions of law and fact common to the classes are:

(a) whether the defendants' acts and omissions, under color of state law and/or federal law, deprived Plaintiffs'



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decedents and the class, or caused them to be deprived, of their rights under federal law including, but not limited to, the rights of life and liberty; the right to due process; the right of equal protection; property rights to pursue claims for relief which were concealed by defendants; and the rights of privacy and bodily security; as guaranteed by the United States Constitution and 42 U.S.C. §§ 1983 and 1985.

(b) whether the defendants acted under color of state law, either alone or in concert with governmental agencies, to deprive plaintiffs and the class members of their rights under federal law as set forth in the preceding paragraph;

(c) Whether the Plaintiffs' decedents and class members were damaged in a "nuclear incident" as defined in the Atomic Energy Act as amended by the Price-Anderson Amendments Act such that the remedies set forth in such Acts applies to this case;

(d) whether TBR and PBR was an accepted mode of treatment for the cancers suffered by Plaintiffs' decedents at the times TBR and PBR were administered;

(e) whether the defendants willfully, recklessly or negligently caused damages to Plaintiffs' decedents and the class members by prescribing TBR or PBR having no therapeutic value, without the informed consent of plaintiffs' decedents and the class members;

(f) whether defendants acted willfully, recklessly, with gross negligence, or negligently in each and every

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particular aspect of the planning, supervision, conduct, follow-up, and concealment of information about the experiments to which plaintiffs' decedents and the class were subjected;

(g) whether the defendants breached duties of care owed to the plaintiffs' decedents and the class members;

(h) whether defendants' conduct constitutes a battery;

(i) whether plaintiffs' decedents and the class members are entitled to damages for bodily injury, wrongful death, and severe emotional distress, and, if so, what are the appropriate means of calculating such monetary damages.

38. The claims of the plaintiffs are typical of the claims of other class members, and plaintiffs have the same interest as the other class members. Accordingly, plaintiffs are adequate representatives of the classes they seek to represent and will fairly and adequately protect the interest of the other class members. Plaintiffs are committed to the vigorous prosecution of this action and have retained counsel experienced in litigation of this nature to represent them. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

39. A class action is the only method for the fair and efficient adjudication of this controversy. The members of the plaintiff classes are so numerous that joinder of all members is impracticable, if not impossible. Since the damages suffered by some individual class members, while not inconsequential, may be

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relatively small, the expense and burden of individual litigation makes it impracticable for members of the classes to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the classes, the resulting multiplicity of lawsuits will cause undue hardship and expense for the court and the litigants. The prosecution of separate actions will also create a risk of inconsistent rulings which might be dispositive of the interest of the other class members who are not parties to the adjudications and/or may substantially impede their ability to protect their interests.

**FIRST CLAIM FOR RELIEF**

(Violation of Civil Rights: United States Constitution; 42 U.S.C. §1983;);

40. Plaintiffs incorporate by reference paragraphs 1 through 39 of this Complaint as if fully stated herein.

41. As set forth in paragraphs 1 through 10 of this Complaint, Saenger, the Individual Defendants, UC- and CGH, acting under the direction of and pursuant to authority granted by the City of Cincinnati, acted pursuant to and as agents of the government of the United States with respect to the program of radioactive experimentation that caused injuries to plaintiffs' decedents and the classes, and therefore the conduct of the defendants constitutes state action or governmental action.

42. Defendants, under color of state law, deprived plaintiffs' decedents and the class, or caused them to be

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deprived, of their rights pursuant to the United States Constitution and 42 U.S.C. § 1983, in some or all of the following ways:

(a) By designing, encouraging, ratifying, and executing a program of radioactive experimentation that caused victims to be exposed to injurious or deadly levels of radiation without informed consent, defendants deprived the decedents of the right to life, without due process.

(b) By designing, encouraging, funding, authorizing, ratifying, and executing a program of radioactive experimentation directed primarily at poor, poorly-educated and in some cases low-intelligence patients, defendants deprived plaintiffs' decedents and the class of their right to equal protection under law.

(c) By designing, encouraging, funding, authorizing, ratifying, and executing a program of radioactive experimentation that caused victims to be exposed to deadly levels of radiation without informed consent, defendants violated the rights of plaintiffs' decedents and the class to the privacy of their own bodies, and the right to bodily security.

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(d) By conducting the program of experimentation without informing plaintiffs' decedents of its dangers and risks, and by continuing to conceal information required by plaintiffs' decedents and the class to determine the nature of their claims for relief, defendants deprived plaintiffs' decedents and the class of their property right to such claims, without due process.

43. As a direct and proximate result of defendants' conduct, plaintiffs' decedents and the class suffered severe injuries, including extremely painful radiation burns, disorientation, nausea and, in some cases, death that was not attributable to the cancer they suffered but instead attributable to the TBR; death; severe and permanent pain, suffering and emotional distress; and other physical and emotional injuries.

44. As a direct and proximate result of defendants' conduct, plaintiffs and the class are entitled to the damages set forth in this Complaint.

**SECOND CLAIM FOR RELIEF**
**(Conspiracy to violate Civil Rights; United States Constitution; 42 U.S.C. §1985)**

45. Plaintiffs and the class incorporate by reference paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. Defendants conspired to violate the rights of Plaintiffs' decedents and the class to equal protection by

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acting in concert to authorize, encourage, design, fund, execute and ratify a program of unscientific radioactive experimentation upon a class composed exclusively of cancer victims, in violation of 42 U.S.C. § 1985 and the United States Constitution, as set forth in paragraphs 1-44 of this Complaint.

47. As a result of Defendants' conduct, Plaintiffs' decedents and the class have suffered the injuries and losses set forth in this Complaint, and are entitled to damages as set forth herein.

**THIRD CLAIM FOR RELIEF**
**(Public Liability Under Price-Anderson Act, 42 U.S.C. §§ 2011 et seq.)**

48. Plaintiffs incorporate by reference paragraphs 1 through 47 as if fully set forth herein.

49. Pursuant to the Price-Anderson Act, 42 U.S.C. §§ 2011 et seq., the radiation experimentation conducted by Defendants upon Plaintiffs' decedents and the class members constitutes a series of "nuclear incidents" as defined in that Act because such testing caused bodily injury, sickness, disease, and/or death to Plaintiffs' decedents and the class members.

50. The Defendants, and each of them, are jointly and severally liable for the injuries and damages caused to the Plaintiffs' decedents and other class members caused by the aforementioned nuclear incidents.

**FOURTH CLAIM FOR RELIEF**
**(Medical Malpractice)**

51. Plaintiffs incorporate by reference paragraphs 1 through 50, as if fully set forth herein..

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52. Defendant CGH is a licensed medical facility that owed a duty to plaintiffs' decedent and the class to provide professional medical services that met the standard of care applicable to professional physicians and medical facilities in the community at the time and place of the events alleged in this Complaint.

53. Defendant UC owned and operated the CGH, and defendant UC is equally liable for damages resulting from the wrongful acts and omissions of CGH, Saenger and the individual Defendants.

54. Defendants UC and CGH are liable for the wrongful acts and omissions of their officers, agents and employees.

55. Defendant City of Cincinnati at all times relevant hereto owned and operated UC and CGH and as such is equally liable for damages from the wrongful acts and omissions of CGH, Saenger and the Individual Defendants.

56. Defendants City of Cincinnati, UC and CGH, Saenger and the Individual Defendants and their officers, agents and employees violated their duties of care to Plaintiffs' decedents and the class by providing services that failed to meet the applicable standards of care, in some or all of the following ways:

(a) By exposing Plaintiffs' decedents, and the class members, to fatal and harmful doses of TBR or FBR;

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(b) By exposing Plaintiffs' decedents and the class members to excessive radiation, when such exposure had no therapeutic purpose;

(c) By intentional concealment of the risks, dangers and purposes of the TBR and PBR described herein;

(d) By failure to obtain the informed consent of Plaintiffs' decedents and the class members for TBR and PBR.

57. As a direct and proximate result of defendants' wrongful acts and omissions, Plaintiffs' decedents and the class members suffered the damages set forth in this Complaint.

**FOURTH CLAIM FOR RELIEF**
**(Negligence)**

58. Plaintiffs incorporate by reference paragraphs 1 through 57 as if fully set forth herein.

59. Defendants owed a duty of ordinary care to Plaintiffs' decedents and the class members with respect to the events alleged in this Complaint. To the extent that the Court may determine that defendants' conduct does not constitute medical malpractice, on the grounds that exposure of plaintiffs' decedents and the class to radiation served no medical or therapeutic purpose, but was instead an experiment outside the scope of a claim for medical malpractice, then defendants must be held accountable pursuant to an ordinary negligence standard.

60. Defendants breached their duty of care to plaintiffs, in some or all of the following ways:

(a) Defendants, UC, City of Cincinnati and CGH negligently authorized, encouraged, ratified and/or supervised

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its officers, agents, and employees in the operations of defendant CGH, including Saenger and the individual Defendants, who carried out the radioactive experiments upon plaintiffs' decedents and the class members and thereby caused the damages alleged in this Complaint.

(b) Officers, agents and employees of defendants UC and CGH negligently planned, designed, authorized, encouraged, supervised, and carried out the program of radioactive experiments upon Plaintiffs' decedents and the class member, and defendants, City of Cincinnati, UC and CGH are liable for the wrongful acts and omissions of their officers, agents and employees.

**FIFTH CLAIM FOR RELIEF**

(Negligent Infliction of Emotional Distress)

61. Plaintiffs incorporate by reference paragraphs 1 through 60 as if fully set forth herein.

62. As a result of defendants' negligence described above, Plaintiffs' decedents and the class members were exposed to harmful and fatal doses of radiation.

63. As a direct and proximate result of defendants' negligent conduct, Plaintiffs' decedents and the class members have suffered mental anguish and severe emotional distress and worry over the actual injuries and deaths they suffered.

64. Plaintiffs' decedents and the class members are entitled to compensatory damages for the mental anguish, severe

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emotional distress, anxiety, worry and fear caused by defendants' negligent conduct.

**SIXTH CLAIM FOR RELIEF**
**(Intentional or Reckless Infliction of Emotional Distress)**

65. Plaintiffs incorporate by reference paragraphs 1 through 64 as if fully set forth herein.

66. Defendants recklessly or intentionally inflicted severe emotional distress by extreme and outrageous conduct including the conduct of an immoral program of intentional experimentation with harmful or fatal doses of radiation upon human subjects; the failure to disclose the purpose or dangers of such experiments; the failure to obtain informed consent of the victims; and the intentional concealment of the claims for relief to which plaintiffs and the class members are entitled.

67. As a direct and proximate result of defendants' intentional or reckless conduct, plaintiffs and the class members have suffered serious mental and emotional injuries, including but not limited to mental anguish over the deaths and injuries of their loved ones; severe emotional distress associated with physical injuries suffered by plaintiffs' decedents; severe mental anguish and anger on the basis of knowledge that their family members were used as human guinea pigs without their consent.

68. As a direct and proximate result of defendants' intentional or reckless misconduct, Plaintiffs and the class members are entitled to compensatory and punitive damages for the mental and emotional injuries set forth above.

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## SEVENTH CLAIM FOR RELIEF
(Battery)

69. Plaintiffs incorporate by reference Paragraphs 1 through 68 as if fully set forth herein.

70. By intentionally exposing Plaintiffs' decedents and the class to harmful or fatal doses of radiation without informed consent, Defendants and their officers, agents and employees committed a battery upon the persons of the Plaintiffs' decedents and the class members.

71. As a direct and proximate result of defendants' conduct, Plaintiffs' decedents and the class members have suffered premature death, illness, and other physical injuries and emotional distress, as set forth in this Complaint.

## DAMAGES

72. As a direct and proximate result of defendants' acts and omissions, Plaintiffs' decedents and the class members suffered the following damages:

(a) deprivation of life and liberty;

(b) loss of equal protection and equal privileges and immunities under the law;

(c) taking of their property rights without due process;

(d) invasion of their privacy rights to their own bodies and their confidential medical information;

(e) severe pain, suffering, emotional distress and anxiety, premature death and in some cases death not attributable to cancer but instead the radiation itself;

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## PRAYER FOR RELIEF

WHEREFORE, individual and representative Plaintiffs, on behalf of themselves and the other class members, pray for the following relief:

(1) a certification by this Court of this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(2) compensatory damages in amounts to be proven at trial but which presently exceed $87,000,000.00;

(3) punitive and exemplary damages according to proof in an amount sufficient to punish the Defendants and to deter them and others from engaging in similar wrongdoing;

(4) an award to the class of their costs, interest and attorney's fees; and

(5) any and all other further relief as this Court deems just and proper.

Respectfully submitted,

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**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable herein.

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