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COMMONWEALTH OF KENTUCKY
30th JUDICIAL CIRCUIT COURT
JEFFERSON CIRCUIT COURT
CASE NO. _____
HON _____

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ELECTRONICALLY FILED

SALLY MCCULLUM and
CHRISTOPHER MCCULLUM

PLAINTIFFS

v.

COMPLAINT

NORTON HEALTHCARE, INC.

DEFENDANT

SERVE: Robert B. Azar
4967 U.S. Highway 42
Suite 101
Louisville, KY 40222

Plaintiffs, Sally McCullum (“Sally”) and Christopher McCullum (“Chris”),
state their Complaint against the above-named Defendants as follows:

1. Finnley McCullum was eight years old when he died at Norton
Children’s Hospital on April 19, 2023 after Norton Healthcare, Inc. (Norton) acting
through its wholly owned subsidiary, Norton Hospitals, Inc. d/b/a Norton Children’s
Hospital (Norton Children’s), unilaterally decided to withdraw all life-sustaining
treatment from Finnley. Until Norton withdrew life-sustaining care, Finnley was
fully conscious and cognitively aware.

FACTUAL BACKGROUND

- 2. Finnley was born on August 27, 2014, in Jefferson County, KY.
- 3. Finnley had a congenital heart defect, for which he received treatment

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throughout his life. On or around July 30 – August 1, 2022, Finnley underwent a heart transplant. The transplant was rejected within hours of implantation.

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4. For the next eight-and-a-half months, Finnley and his parents awaited another possible heart transplant. At the recommendation of his healthcare providers, Finnley was kept alive by a Berlin Heart, a medical device that is often used as a “bridge” treatment until a heart transplant can take place.

5. During this bridge period, Finnley also received dialysis treatment.

6. Finnley was also sustained by a tracheostomy and ventilator.

7. Collectively, Finnley’s Berlin Heart, dialysis treatment, and tracheostomy and ventilator are considered “life-sustaining treatment.”

8. On or around April 4, 2023, Finnley’s parents, Chris and Sally, were informed by Norton that Finnley was no longer a candidate for another heart transplant.

9. Shortly thereafter, Norton informed Chris and Sally that Norton was going to remove Finnley’s life-sustaining treatment, at which point Finnley would die.

10. Norton unilaterally set an initial deadline of only 24 hours before its personnel would remove Finnley’s life-sustaining treatment. Norton did not condition its decision upon Chris and/or Sally’s approval or consent.

11. Norton stated that the life-sustaining treatment would be removed unless Chris and/or Sally obtained a court order to stop it.

12. Norton engaged in a number of other actions intended to pressure and

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manipulate Chris and Sally into “assenting” to Norton’s decision to withdraw Finnley’s life-sustaining treatment. These included setting arbitrary deadlines, setting tight deadlines, and emotional manipulation of Finnley’s parents.

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13. Norton acknowledged to Chris and Sally that its personnel and healthcare providers had never before removed life-sustaining treatment from a conscious and cognitively aware child such as Finnley.

14. Finnley was in fact fully cognitively aware immediately before Norton implemented its decision to withdraw Finnley’s life-sustaining treatment. Finnley was also fully knowledgeable about his medications and especially the monitors and significance of alarms.

15. The process that Norton employed to withdraw life-sustaining treatment from Finnley was a drastic departure from the standard medical ethics recognized in end-of-life decision making.

16. Norton’s actions in unilaterally implementing its decision to end Finnley’s life by withdrawal of all life-sustaining treatment caused Chris and Sally significant emotional trauma and distress, both in the moment and throughout the rest of their lives.

17. Norton promised Chris and Sally that Finnley would not be aware of the steps its personnel were taking to end Finnley’s life.

18. Norton promised Chris and Sally that Finnley would not experience and fear, anxiety, terror or fright, that he would not feel pain, and that he would not experience any emotional, mental or physical pain, suffering, or distress as Norton

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personnel withdrew his life-sustaining treatment.

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19. Norton did not have any physician personnel present during Norton's withdrawal of Finnley's life-sustaining treatment despite the plan that the procedure would end in Finnley's death and despite the promises that Finnley would experience no fear, pain, terror or fright.

20. Because no one skilled in this critical end-of-life procedure was provided by Norton during its implementation of end-of-life steps, from the moment Norton commenced these steps, Finnley was fully conscious, awake, and in severe emotional fear, pain, terror and fright and physical agony.

21. At varying points as he was dying, Finnley cried out for help. All his parents could do was to (falsely) assure him that everything would be alright.

22. After hours of immense pain and suffering, Finnley died.

23. Norton failed to exercise ordinary care in its actions and failure to act with regard to Finnley, Chris, and Sally.

24. The care and treatment that Norton provided, especially the care and treatment that Norton failed to provide to Finnley at the end of his life, and its actions and failures to act with regard to Finnley, Chris and Sally, were in unconscionable disregard of and departure from the standard of care and constitute negligence and gross negligence.

25. Chris and Sally, present with Finnley for the entirety of these events, suffered, and will continue for the rest of their lives to suffer, emotional distress and trauma as a result of watching helplessly as their only child was gripped by terror

and fear about what was happening to him, as he looked to his parents for help, and as they could do nothing but stand by and tell him untruths that everything was alright.

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26. As a result of the wrongful acts and omissions of Norton, Finnley endured conscious pain and suffering, emotional distress, mental terror, fear, anxiety and fright prior to his death.

27. As a result of the wrongful acts and omissions of Norton, Finnley died sooner than his remaining life expectancy.

28. As a result of the wrongful acts and omissions of Norton, Chris and Sally observed Finnley’s suffering.

29. As a result of the wrongful acts and omissions of Norton, Chris and Sally have suffered and will suffer in the future severe emotional injuries and associated physical injuries caused thereby; have incurred and will incur in the future medical expenses; and have suffered, and will suffer in the future, physical, mental, and emotional pain and suffering and loss of enjoyment of life, and have lost the love affection, companionship and enjoyment of the child, Finnley.

PARTIES AND JURISDICTION

30. At the time of his death, Finnley McCullum was a resident of New Albany, Indiana.¹ He was also a part-time resident of Jefferson County, Kentucky.

31. Sally McCullum is, and at all times pertinent hereto was, a resident of

¹ Plaintiffs, Chris and Sally McCullum, are currently in the process of being appointed co-administrators of Finnley’s estate and anticipate joining Finnley’s claims in this action in the near future.

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Louisville, Jefferson County, Kentucky.

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32. Christopher McCullum is, and at all times pertinent hereto was, a resident of Indiana.

33. Defendant, Norton Healthcare, Inc. (Norton), is, and at all times pertinent hereto was, a Kentucky corporation authorized to do business in Kentucky, and in fact doing business in Jefferson County, Kentucky. At all times pertinent hereto, Norton held itself out as capable of providing specialized medical, pediatric, intensive care, and palliative care and services to persons such as Finnley. At all times pertinent hereto, Norton, through its employees, servants, agents, and ostensible agents, provided specialized medical, pediatric, intensive care, and palliative care and services to Finnley in Jefferson County, Kentucky.

34. Norton acts through its wholly-owned subsidiary and agent, Norton Hospitals, Inc. d/b/a Norton Children’s Hospital (hereinafter collectively referred to as “Norton Children’s”). Norton Children’s is, and at all times pertinent hereto was, a Kentucky corporation authorized to do business in Kentucky, and in fact doing business in Jefferson County, Kentucky. At all times pertinent hereto, Norton Children’s held itself out as capable of providing specialized medical, pediatric, intensive care, and palliative care and services to persons such as Finnley. At all times pertinent hereto, Norton Children’s, through its employees, servants, agents, and ostensible agents, provided specialized medical, pediatric, and palliative care and services to Finnley in Jefferson County, Kentucky.

35. At all times pertinent hereto, Norton acted by and through Norton

Children’s, and by and through its own and Norton Children’s employees, servants, agents, and/or ostensible agents, including physicians, nurses, and other members of the medical staff.

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36. Norton is vicariously liable for the actions and omissions of all of its own and Norton Children’s employees, servants, agents, and/or ostensible agents, whether or not expressly named herein.

37. All amounts claimed herein are in excess of the minimal jurisdiction limits of this Court.

38. In accordance with KRS 411.167, attached is the affidavit and certificate of merit of undersigned counsel for Plaintiffs. Exhibit A is incorporated by reference herein.

**COUNT I – CHRIS AND SALLY’S CLAIMS FOR NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS**

39. Plaintiffs adopt, reiterate, and incorporate by reference in this paragraph all of the allegations contained elsewhere in this Complaint.

40. Norton owed duties of care to Chris and Sally, Finnley’s parents and bystanders at Norton’s withdrawal of Finnley’s life-sustaining treatment.

41. Norton failed to exercise ordinary care in the discharge of the duties owed to Chris and Sally and were negligent in the performance of such duties as alleged herein.

42. As a proximate result of the acts and omissions of Norton, as set forth herein, Chris and Sally suffered serious and/or severe injuries as alleged herein.

**COUNT II – CHRIS AND SALLY’S CLAIMS FOR LOSS OF
FINNLEY’S CONSORTIUM**

43. Plaintiffs adopt, reiterate, and incorporate by reference in this paragraph all of the allegations contained elsewhere in this Complaint.

44. As a proximate result of the acts and omissions of Norton, as set forth herein, Chris and Sally suffered loss of the love, care, affection and companionship of their child, Finnley, as alleged herein.

COUNT III – PUNITIVE DAMAGES

45. Plaintiffs adopt, reiterate, and incorporate by reference in this paragraph all of the allegations contained elsewhere in this Complaint.

46. The acts and omissions of Norton as set forth herein constitute willful and wanton conduct, gross negligence, malice, and oppression, for which Plaintiffs are entitled to recover punitive damages.

47. Norton is liable for punitive damages attributable to its direct liability and their vicarious liability based on the actions and omissions of their respective employees, agents, ostensible agents, servants, affiliates, and/or subsidiaries as alleged in this Complaint.

48. The heightened standard of proof for punitive damages as required by the General Assembly in KRS 411.184(2) is unconstitutional and should be determined to be null and void.

49. The restrictions on recovery of punitive damages against a principal or employer, as set forth in KRS 411.184(3), are unconstitutional and should be determined to be null and void.

50. In the alternative, Norton authorized, ratified, or should have anticipated the acts and omissions of their respective employees, servants, **WDRB** and/or ostensible agents, including, but not limited to any physicians, nurses, and hospital staff who were providing care and treatment to Finnley in their facilities.

51. Norton is liable for punitive damages in an amount to be determined by the jury.

WHEREFORE, Plaintiffs, **SALLY MCCULLUM** and **CHRISTOPHER MCCULLUM**, demand judgment against Defendant, **NORTON HEALTHCARE, INC.**, jointly and severally, and in favor of Plaintiffs, in such sums as will fairly and adequately compensate them for past and future mental, emotional, and physical pain and suffering, including the loss of enjoyment of life; emotional distress, and mental anguish; for loss of the love, care, affection and companionship of their child, Finnley; for their past and future hospital, medical, healthcare, and rehabilitative expenses; for punitive damages; for a trial by jury on all issues so triable; for Plaintiffs' attorney fees, expenses, and costs expended in this litigation; for pre-judgment interest from April 19, 2023 until the date any judgment is rendered herein, and thereafter for post-judgment interest until any such judgment rendered herein is fully paid and satisfied, all at the statutory rate and compounded annually; and for any and all other relief to which Plaintiff may be entitled.

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/s/ Ann B. Oldfather

Ann B. Oldfather (KBA 52553)

Benjamin F. Hachten (KBA 98858)

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bhachten@oldfather.com

*Counsel for Plaintiffs***CERTIFICATE OF SERVICE**

The above signature certifies that, in accordance with KRS 418.075 and CR 24.03, a true and correct copy hereof was served, via United States mail, postage pre-paid, on July 19, 2023, to:

Hon. Daniel Cameron
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601