

# EXHIBIT 4



## AlaFile E-Notice

01-CV-2012-001045.00

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ROBERTA CLARK VS PLANNED PARENTHOOD OF GEORGIA INC ET AL  
01-CV-2012-001045.00

The following complaint was FILED on 9/2/2014 11:51:30 PM

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THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ROBERTA CLARK, )  
Plaintiff, )

vs. )

)CIVIL ACTION NO.:  
)CV2012-1045  
)

**PLANNED PARENTHOOD SOUTHEAST, INC.)**  
**PLANNED PARENTHOOD OF GEORGIA, INC )**  
**PLANNED PARENTHOOD OF ALABAMA, )**  
**and DR. AQUA DON E. UMOREN, MD., )**  
**DR. AQUA DON E. UMOREN, MD**

**PYHSICIANS LABORATORY SERVICE, INC AND DR MICHAEL B ROHFING, MD, and, Defendants, A B C** refer to that person, firm, corporation, administrator/nursing practitioner, governing authority, board of directors, clinic director, medical director, attending physician, supervising physician, medical specialist, technician, nursing assistant, sonographers, ultrasound technicians or any other agents of named defendants who negligently and/or wantonly, recklessly failed to provide proper medical care, treatment to the plaintiff, and whose negligent and wanton conduct proximately caused the misdiagnosis of the plaintiff's ectopic pregnancy thus causing physical bodily injuries, pain and suffering, psychological damages and emotional distress to the plaintiff; **Defendants, DEF,** refer to that person, firm, corporation, administrator/nursing practitioner, governing authority, board of directors, clinic director, medical director, attending physician, supervising physician, medical specialist, technician, nursing assistant, sonographers, ultrasound technicians or any other agents of named defendants negligently and/or wantonly failed to train, failed to supervise and who negligently and/or wantonly hired the person or persons, entity or entities whose failure to utilize that degree of a medical care, knowledge, skill, competence, care, treatment, assistance and supervision required in rendering medical treatment to the plaintiff; **Defendants, GHI,** refer to that person, administrator/nursing practitioner, firm, corporation, governing authority, board of directors, clinic director, medical director, attending physician, supervising physician, medical specialist, technician, nursing assistant, ultrasound technicians sonographers or any other agents of named defendants who negligently and/ wantonly failed to provide the plaintiff with the adequate advise, counseling and information required under the law with respect to abortion and reproductive services made the basis of plaintiff's complaint; and wherefore, **Defendants, A through I** are fictitious parties whose proper names and true identities are presently unknown to the plaintiff but will be correctly named and substituted when ascertained.

Defendants.

## PLAINTIFF'S AMENDED COMPLAINT

1. Plaintiff adopts and incorporates by reference all allegations, pleading and wherefore clauses and any other information in the original complaint and first amendment to plaintiff's complaint as if fully stated and alleged herein.
2. Plaintiff further amends her complaint by adding Physicians Laboratory Service, Inc (hereinafter may be referred to as "**Physicians Laboratory**") and Dr Michael B. Rohlfing hereinafter may be referred to as "**Dr Rohlfing**" as party defendants under R.Civ.P. Rule 15(c) and/or Rule 9(h) related back doctrine and substituting fictitious parties DEF, described in the original complaint as that person, firm, corporation, whose negligent and/or wanton conduct proximately caused the misdiagnosis of the plaintiff's ectopic pregnancy thus causing physical bodily injuries, pain and suffering, damages and emotional distress to the plaintiff;
3. At all times material hereto, Plaintiff, **Roberta Clark** is an adult citizen of the State of Alabama and a resident of Jefferson County, Alabama-Birmingham Judicial Division.
4. Defendant, **Planned Parenthood Southeast, Inc** is an Abortion and Reproductive Health Clinic domestic corporation. At all time material hereto, **Planned Parenthood Southeast, Inc**, was doing business in Jefferson County, Alabama at its location on 1211 27<sup>th</sup> Place South, Birmingham, Alabama 35205 where the wrongful conducts made the basis of this lawsuit occurred. Defendants, **PLANNED PARENTHOOD** is directly liable for its own culpable conduct under corporate liability and also is vicariously liable for the negligent, breach of standard of care and any wrongful conduct of all co-defendant, **Dr Aqua Don E Umoren** and

for the wrongful conducts of fictitious parties **A** through **I**. Upon information and belief, Planned Parenthood of Alabama has merged with Planned Parenthood of Georgia, Inc which in turn merged with **Planned Parenthood of Southeast, Inc** as the parents companies or surviving corporate entity.

5. Defendant, **Dr. Aqua Don E Umoren, MD**. [hereinafter referred to as **Dr Umoren**], upon information and belief is an adult resident of State of Alabama, he is a physician, and he is being sued individually and in his official capacity as a physician agent, a servant, Medical Director and employee of corporate defendants, **PLANNED PARENTHOOD**. **Dr. Umoren** was acting within the scope of his duties as an employee or agent of **PLANNED PARENTHOOD** at all times material hereto.

6. At all time material hereto Defendant, **Physicians Laboratory Service, Inc** is a foreign corporation doing business in Jefferson County, Alabama on a contract to provide pathology and histopathology services to Defendants, Planned Parenthood and Dr Umoren.

7. At all time material hereto, Defendant, **Dr Michael B. Rohlfig, MD.**, is an adult citizen of State of North Carolina. He is a Pathologist, an employee of Physicians Laboratory Service, Inc, also under a contract to provide pathology and histopathology services to Planned Parenthood and Dr Umoren for the benefits of Planned Parenthood and Dr Umoren's patrons including plaintiff, Roberta Clark.

8. Plaintiff alleges that Defendants' negligent and/or wanton conduct, breach of standard of care, breach of standard of practice, fraud, misrepresentation, breach of contract, negligent and wanton training and supervision either separately or

combined with the wrongful conducts of one another to proximately cause Plaintiff's injuries and damages made this basis of this lawsuit.

9. The substantive claims in this action are governed by The Alabama Medical Liability Act, the common law of Alabama and any other applicable laws and regulations of the State of Alabama; in particular, because of lack of patient-physician relationship, the claims against Physicians Laboratory Service, Inc. and Dr Michael B. Rohlfing may be governed by Alabama common law and outside the purview of Alabama Medical Malpractice Act (AMLA).

10. At all time material hereto; there was an express and/or implied contract between plaintiff and defendants, Planned Parenthood and Dr Umoren

11. Also all time material hereto, Plaintiff was a beneficiary of a contract between defendants, Planned Parenthood, Dr Umoren, MD., Physicians Laboratory Service, Inc and Dr Rohlfing.

12. On August 10, 2010, plaintiff presented to defendants' Clinic, PLANNED PARENTHOOD in Birmingham Alabama for abortion services which include but not limited to pregnancy testing, evaluation and termination of pregnancy.

13. Upon completion of the paperwork, on August 10, 2010 by the plaintiff, a staff of Planned Parenthood without the supervision or assistance from Dr Umoren ordered labs and pregnancy test with the following finding and results; Hgb11.9 gm/dl; Rh Pos(+); Pregnancy Test: Type Stanbio Result Pos(+).

14. Defendant Dr Umoren did not see the Plaintiff on August 10, 2010.

15. On August 20, 2010, a female staff who was not qualified to make diagnosis of pregnancy or make differential diagnosis pertaining to pregnancy or clinical

findings required to make diagnosis of pregnancy whether uterine, intrauterine or extrauterine or heterotopic, performed or conducted an Ultrasound testing on the Plaintiff without assistance or supervision from Dr Umoren or any other Planned Parenthood employee.

16. Also on August 20, 2010, the same female staff who performed the Ultrasound testing on the plaintiff also performed the Ultrasound testing/examinations on about ten (10) other patrons who were waiting with the plaintiff for abortion procedure. Defendant Dr Umoren was not around when these Ultrasound examinations were conducted on the Plaintiff and about 10 other patrons who were waiting with the Plaintiff for surgical abortion procedure on August 20, 2010.

17. Based on the electronic time stamp on the Ultrasound Imaging copy produced, the Plaintiff's Ultrasound was conducted by the female staff member of Planned Parenthood at about 11:23AM on August 20, 2010 without supervision or assistance from Dr Umoren. According to defendants 8 weeks 4 days old uterine pregnancy was diagnosed.

18. According to Defendants' note and records, the female staff member who performed the Ultrasound at about 11:23AM without training, without requisite qualifications for diagnosis of pregnancy, whether intrauterine or extrauterine, wrongly noted, CRL 2.04mm as opposed to Ultrasound stamped CRL of 2.04cm.

19. Dr Umoren did not see the plaintiff at any time prior to or during Plaintiff's first Ultrasound which was conducted at about 11:23AM on August 20, 2010.

20. Dr Umoren neither saw, nor examined the plaintiff on August 10, 2010 during plaintiff's pre procedure visit and initial examination and testing for pregnancy, the initial testing for pregnancy was conducted by Planned Parenthood staff member who was not qualified to make diagnosis of pregnancy or make differential diagnosis pertaining to pregnancy or clinical findings needed to make diagnosis of pregnancy whether intrauterine or extrauterine.

21. Based on Defendants' record and note, at about 11:15AM, Plaintiff was given 2mg of Ativan and 800mg of Ibuprofen by a female staff of Planned Parenthood, Dr Umoren was not present when these medications were administered to the Plaintiff.

22. It was after Ultrasound was completed by said Planned Parenthood female employee without supervision or assistance from Dr Umoren and after plaintiff had been given medication and plaintiff was ready for the actual surgical procedure that Dr Umoren walked in, introduced himself to the plaintiff and started the surgical procedure referred to as (D&C) suction curettage.

23. According to Defendants' record and procedure note, Dr started the surgical abortion procedure at 1342MT, it was the first time plaintiff ever laid eye on Dr Umoren; after the procedure, and plaintiff was discharged to recovery at 1353MT.

24. Plaintiff alleges that the only Ultrasound performed by Dr Umoren was after the surgical abortion procedure was completed on August 20, 2010.

25. Plaintiff alleges that after the procedure on August 20, 2010, Dr Umoren did not make a determination as to whether the contents of his surgical procedure contained fetal parts, instead, on or about September 2, 2010, Dr Umoren sent the



20gms specimen labeled as product of abortion to co-defendants, Physicians Laboratory Service, Inc and Dr Rohlifing for pathological and histopathological examination and testing for determination of presence of fetal components.

26. Pursuant to discovery request on or about March 5, 2013, Planned Parenthood produced, plaintiff's records which contained a Surgical Pathology Report dated, 9/3/2010 from Physicians Laboratory Service, Inc and Dr Michael B Rohlifing, MD to Defendants, Planned Parenthood and Dr Umoren.

27. According Physicians Laboratory Service, Inc and Dr Michael B Rohlifing, MD, the specimen received was identified as products of conception weighing 20 gms, 1% clot and 99% tissue collected on 8/20/2010, Patient name, CR 171492 with Roberta Clark noted by handwriting on the report.

28. The Surgical Pathology Report signed by Dr Michael B Rolfing's contained the following finding or information:

**GROSS DESCRIPTION:** "SPECIMEN IS RECEIVED IN A CONTAINING LABELED WITH THE ABOVE PATIENT [ROBERTA CLARK] INFORMATION AND CONSIST OF SOFT, SPONGY, TAN TISSUE FRAGMENTS ADMIXED WITH BLOOD. NO FETAL TISSUE IDENTIFIED",  
**DIAGNOSIS:** "PLACENTAL AND DECIDUAL TISSUE (PRODUCTS OF CONCEPTION). CHORIONIC VILLI ARE PRESENT".

29. In this case, Defendants have produced to the plaintiff, two Surgical Pathology Reports, both with different report dates. One report has a report of 9/2/2010, stamped received by Planned Parenthood on **9/17/2010** while the other has a report date **9/17/2010** but was stamped received by Planned Parenthood on **9/16/10**.

30. Both Surgical Pathology Reports dated, 9/3/2010 and 9/17/2010 are similar in contents except for report dates and dates received; report dated, 9/3/2010 was stamped received 9/17/2010 while report, dated, 9/17/2010 was stamped received 9/16/2010 by defendants, Planned Parenthood.

31. According to Defendants' records and report of induced termination of pregnancy filed with State of Alabama clinical estimate of gestation of 8 weeks and 4 days.

32. Following the surgical procedure designed to terminate pregnancy at defendants' facility by Dr Umoren on August 20, 2010, plaintiff continued to pain, bleeding accompanied with nausea, vomiting and lower quadrant pain.

33. On September 14, 2010, plaintiff presented to emergency department of BMC Princeton Medical Center in Birmingham Alabama with complaints of pain, nausea, vomiting and left lower quadrant pain.

34. On September 14, 2010 following physical examination and ultrasound testing at the emergency department of BMC Princeton Medical Center, the ultrasound showed evidence of a 13-week gestation that was extrauterine involving left adnexa (fallopian tube), this finding prompted emergency admission of plaintiff for surgical intervention, pain management and treatments.

35. On September 15, 2010, at BMC-Princeton Medical Center, plaintiff underwent a laparoscopy with conversion to laparotomy for ruptured ectopic pregnancy to remove a 13-week fetus and the placenta.

**COUNT ONE**  
**NEGLIGENCE AND/OR WANTONNESS CLAIMS AGAINST PLANNED**  
**PARENTHOOD AND DR UMOREN UNDER ALABAMA MEDICAL LIABILITY**  
**ACT [AMLA]**

36. Plaintiff adopts and re-alleges all the averments and factual allegations in paragraphs 1 through 35 as if fully set out herein in Count One and further alleges the following:

37. On or about August 10, 2010 and at all time material hereto, plaintiff, Roberta Clark entered into an express or implied contract with the defendants, PLANNED PARENTHOOD and Dr Umoren and fictitious parties A through I for consideration duly paid by the plaintiff to the defendants to provide the plaintiff with medical services and care by defendants. By the terms of the parties' contract, the defendants expressly or impliedly agreed or warranty to use acceptable standard of care, reasonable care, diligence and skill in providing medical services and medical treatments, including but not limited to using trained, qualified and competent healthcare providers to conduct interviews, conduct physical examination, conduct pregnancy tests, conduct ultrasounds-sonograms, make differential diagnosis for possible modes of pregnancy, whether, uterine, intrauterine, extrauterine, ectopic or heterotopic and to arrive at correct or probable mode or type diagnosis of pregnancy and terminate pregnancy after proper diagnosis of intrauterine pregnancy or make appropriate referrals to competent Hospitals and provide any other necessary abortion services and counseling and to exercise reasonable care in maintaining the personal safety and general health and welfare of the plaintiff and the welfare of all similarly situated members of public at large who under similar circumstances entrusted their medical care and welfare to the defendants

for the purposes of receiving abortion and/or reproductive services from the defendants.

38. That at all time material hereto, defendants, PLANNED PARENTHOOD and Dr Umoren and fictitious defendants, A through I, jointly and/or separately owed the Plaintiff, Roberta Clark a duty of care, i.e., the duty to exercise that degree of care, reasonable care, skill and diligence commonly possessed and exercised by similarly situated medical practitioners, physicians, nurses, healthcare providers, medical entities in the same neighborhood/medical community acting under the same or similar circumstances made the basis of this lawsuit and described in this complaint.

39. Plaintiff alleges that on August 10, 2010; August 20, 2010 and at all time material hereto, Defendants, PLANNED PARENTHOOD AND Dr Umoren, their staffs, nurses, assistants and fictitious defendants, A through I, negligently and/wantonly breached the standard of care owed plaintiff Robert Clark in that defendants negligently and/or wantonly deviated from acceptable standard of care in the diagnosis of pregnancy, termination of pregnancy and provision of abortion services to plaintiff by failing to exercise such reasonable care, skill, and diligence as other similarly situated health care providers in the same in the same neighborhood/community and in the same general line of practice have and exercise in like cases, specifically,

- i. PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs and fictitious parties A through I, negligently and/ wantonly failed to diagnose ectopic pregnancy;

- ii. PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs and fictitious parties A through I, negligently and/or wantonly failed to diagnose the nature of plaintiff's pregnancy before and after a suction curettage procedure was performed.
- iii. PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs and fictitious parties A through I, negligently and/or wantonly failed to exercise proper and appropriate, sufficient and reasonable due care in regard to diagnosis of existence of uterine pregnancy or ectopic pregnancy;
- iv. PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs and fictitious parties A through I, negligently failed to exercise proper and appropriate, sufficient and reasonable due care in regard to reviewing the ultrasound conducted on plaintiff on August 20, 2010 which defendants interpreted as demonstrating that no viable intrauterine pregnancy was present, had the defendants exercised proper and appropriate, sufficient and reasonable due care in regard in the performance to reviewing the ultrasound conducted on August 20, 2010 defendants would have determined that an extrauterine tubal pregnancy (ectopic) existed.
- v. PLANNED PARENTHOOD and Dr Umoren and fictitious parties A through I, negligently/or wantonly failed to terminate plaintiff's pregnancy thereby causing the plaintiff to continue to carry an ectopic tubal pregnancy which ruptured within 3 weeks after Dr. Umoren and

PLANNED PARENTHOOD and fictitious parties A through I claimed they terminated pregnancy that did not exist in the uterus;

- vi. PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs on August 10, 2010 and August 20, 2010 negligently and/or wantonly failed to conduct adequate physical examination, failed to obtain necessary history of pain, cramping and/or bleeding to allow for evaluation for ectopic pregnancy;
  - vii. PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs failed to conduct appropriate post-op and failed to follow their own Post-Op High Alert Protocol for diagnosis of ectopic pregnancy having received report of pathological and histopathological examination that did not show microscopic examination for tissue to identify chorionic villi.
  - viii. PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs negligently and/or wantonly failed to inform Plaintiff that no fetal tissue identified in the August 20, 2010 procedure.
40. Plaintiff alleges that aforesaid conducts, acts and omissions described in i-viii above and other acts and omissions of defendants described in this complaint constitute negligent and/or wanton breach of standard of care and violations and deviations from acceptable standard of care by PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs and fictitious parties A through I.
41. Plaintiff alleges that as a direct and proximate consequence of aforesaid negligent and/or wanton breach of standard of care, violations and deviations from

acceptable standard of care either separately by PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs, combined and concurred with negligent conducts acts and omissions of fictitious parties A through I to cause plaintiff's injuries and damages made the basis of this lawsuit.

42. Defendants knew or should have known that suction curettage procedure did not result in termination of plaintiff's pregnancy and that plaintiff was still pregnant after the procedure because no fetal tissue was identified in tissue specimen sent to pathology on August 20, 2010 and no microscopic examination was conducted to identify presence of chorionic villi.

43. Plaintiff alleges that as a direct and proximate consequence of defendants' negligence and/or wantonness, breach of standard of care, deviations from acceptable standard of care by defendants, PLANNED PARENTHOOD, Dr Umoren and defendants' staff or staffs s either separately or combined and concurred with negligent and/or wanton conducts of fictitious defendants, Plaintiff, Roberta Clark was injured, suffered and continues to suffer damages which include but not limited to:

- i. ruptured fallopian tube as a result of ectopic pregnancy;
- ii. hospitalization to undergo painful surgical operations to treat ruptured ectopic pregnancy which said operations included laparoscopy with conversion to laparotomy with left salpingectomy, lysis of pelvic adhesions, removal of a 13-week extrauterine pregnancy and placement of a Jackson-Pratt drain,

- iii. Loss of tube resulting in infertility.
- iv. bleeding, vomiting, nausea;
- v. physical pain, mental anguish and emotional distress;
- vi. medical expenses, loss time and wages
- vii. other unliquidated damages

44. Wherefore, premises considered, the plaintiff, claims and demands compensatory and punitive damages and cost in excess of the jurisdiction limit of this court against the defendants and fictitious parties separately and jointly in an amount to be determined by a struck jury.

**COUNT TWO**  
**NEGLIGENT AND/WANTON HIRING, SUPERVISION TRAINING**  
**AND RETENTION**

45. The Plaintiff adopts and re-alleges all the averments/allegations in paragraphs 1 through 44 and the wherefore clause in Count One as if fully set out herein.

46. The plaintiff alleges that defendants Dr Umoren and PLANNED PARENTHOOD owners, governing authority and Board of Directors negligently and/wantonly failed to monitor, manage, train and supervise fictitious parties A through I who without requisite training, education, experience and certification were allowed to conduct pregnancy tests and performed ultrasound without proper training and certification.

47. The plaintiff alleges that defendants PLANNED PARENTHOOD, its owners, Medical Director, governing authority and Board of Directors and fictitious parties A



through I, negligently and/wantonly failed to monitor, manage, train and supervise the activities of its attending physician/Medical Director, Dr Umoren thereby allowing unqualified and untrained employees or other fictitious parties who did not possess the requisite training, education, experience and certification to conduct pregnancy tests, perform and interpret ultrasound results.

48. Defendants conducts in allowing unqualified and untrained employees and other fictitious parties, other than a physician to conduct Ultrasound on August 20, 2010 violated Defendants own policy and Alabama law which requires either the referring physician or the physician performing the abortion to perform an ultrasound before abortion and as result said lack of qualification, lack of training, said defendants' staff failed to diagnose or make provision for differential diagnosis of ectopic pregnancy.

49. As a direct a proximate result of defendants' negligent and/wanton training, monitoring, supervision, hiring, retention and inadequate staffing, Defendants negligently and/or wantonly failed to diagnose ectopic pregnancy thereby causing the plaintiff to suffer physical injuries including but not limited to ruptured ectopic pregnancy, infertility, and damages alleged and described in this complaint.

50. Wherefore, premises considered, the plaintiff, claims and demands compensatory and punitive damages and cost in excess of the jurisdiction limit of this court against the defendants and fictitious parties separately and jointly in an amount to be determined by a struck jury.

**COUNT THREE  
NEGLIGENT AND/OR WANTONNES AGAINST  
PHYSICIANS LABORATORY SERVICE, INC. AND DR MICHAEL B. ROHLFING,  
MD**

51. The Plaintiff adopts and re-alleges all the averments/allegations in paragraphs 1 through 50 and the wherefore clause in Count Two, as if fully set out herein.

52. That at all time material hereto, defendants, Physicians Laboratory Service, Inc. and Dr Michael B. Rohlfing, MD, and fictitious defendants, A through I, jointly and/or separately owed the Plaintiff, Roberta Clark a duty of care, i.e., the duty to exercise that degree of care or practice, reasonable care, skill and diligence commonly possessed and exercised by similarly situated pathologists or pathology laboratories rendering pathological and histopathological examinations of specimens including but not limited to evaluation of products of abortion for presence or lack of presence of fetal materials.

53. Plaintiff alleges that on September 2, 2010, Defendants, Physicians Laboratory Service, Inc and Dr Michael B. Rohlfing, MD received specimen or tissue materials form co-defendants, PLANNED PARENTHOOD AND Dr Umoren for pathological and histopathological examination for presence of fetal material or tissues.

54. Plaintiff alleges that after determining that there was no fetal tissue identified grossly, defendants, Physicians Laboratory Service, Inc. and Dr Michael B. Rohlfing, MD and fictitious defendants, A through I, negligently and/wantonly failed to conduct microscopic examination required to make diagnosis of presence of chorionic villi.

55. Defendants knew or should have known that a microscopic examination of tissue material and specimen is required to make diagnosis of chorionic villi, instead, without microscopic examination, defendants made erroneous an incorrect diagnosis of presence of “Chorionic Villi”.

56. As a proximate consequence of Defendants’ negligence and/or wantonness, plaintiff did not receive notification necessary that would have alerted her or other healthcare providers to the likelihood that Plaintiff may be pregnant ectopically and the procedure of August 20, 2010 did not terminate any pregnancy.

57. As a direct a proximate result of defendants’ negligence and/ or wantonness in failing to conduct appropriate histopathological study of specimen, and erroneous diagnosis of chorionic villi, plaintiff was caused to suffer physical injuries including but not limited to ruptured ectopic pregnancy, problem with infertility and other damages alleged and described in this complaint.

58. Wherefore, premises considered, the plaintiff, claims and demands compensatory and punitive damages and cost in excess of the jurisdiction limit of this court against the defendants and fictitious parties separately and jointly in an amount to be determined by a struck jury.

**COUNT IV  
FRAUDULENT SUPPRESSION, FAILURE TO DISCLOSE, CONCEALMENT,  
FRAUDULENT SCHEME TO SUPPRESS, CONCEAL LACK OF EVIDENCE OF  
UTERINE PREGANCY AGAINST PLANNED PARENTHOOD  
AND DR UMOREN**

59. The Plaintiff adopts and re-alleges all the averments/allegations in paragraphs 1 through 60 and the wherefore clause in Count One through Count Three as if fully set out herein.

60 At all time material hereto, defendants were under a duty and had the obligation provide the plaintiff with services of a qualified and competent healthcare provider to attend to plaintiff and make appropriate diagnosis of plaintiff's pregnancy as to allow for surgical abortion at defendants facility.

61. At all time material hereto, Defendants intentionally, recklessly and willfully failed to disclose and otherwise fraudulently suppressed information on the competency and qualification of the person conducting ultrasound on 8/20/2010. Defendants knew or should have known that their staff member who conducted ultrasound on 8/20/2010 was not qualified or competent and without requisite training to conduct and interpret ultrasound for diagnosis of pregnancy.

62. Defendants' through their Policy and Guidelines, mandated that ultrasound in Alabama will be conducted by a physician but fraudulently allowed an unqualified staff/employee to perform ultrasound for diagnosis of pregnancy not only on the plaintiff but on other patrons in the facility on 8/20/2010.

63. In his deposition, Dr Umoren lied under oath when he testified that he performed plaintiff's ultrasound and diagnosed uterine pregnancy when in fact he was did not perform ultrasound examination either to diagnose uterine pregnancy or rule out ectopic pregnancy.

64. Defendants' conduct in not disclosing the competency, qualification of the person who conducted ultrasound on 8/20/2010 was wanton and reckless and also constitutes fraudulent misrepresentations of material fact, fraudulent suppression of material fact, deceit and fraudulent concealment, all actionable under Sections 6-5-101, 102, 103 and 104, Ala. Code, 1975 and Alabama laws.

65. Defendants knew or should have known that their misrepresentations, fraudulent misrepresentations, fraudulent suppressions, failure to promptly disclose will cause damages, emotional distress, mental anguish and agony to the plaintiff and in fact defendants' misrepresentations, fraudulent misrepresentations, fraudulent suppressions, failure to disclose caused the plaintiff to submit to ultrasound in the hand of incompetent person who failed to diagnose ectopic pregnancy on 8/20/2010.

66. Also, in this case, produced two Surgical Pathology Reports, both with different report dates. One report has a report of 9/2/2010, stamped received by Planned Parenthood on **9/17/2010** while the other has a report date **9/17/2010** but was stamped received by Planned Parenthood on **9/16/10**.

67. Both Surgical Pathology Reports dated, 9/3/2010 and 9/17/2010 are similar in contents except for report dates and dates received; report dated, 9/3/2010 was stamped received 9/17/201 while report, dated. 9/17/2010 was stamped received 9/16/2010 by defendants, Planned Parenthood.

68 Upon information and belief, plaintiff alleges that defendants received a timely result of pathological and histopathological examination which showed that "No fetal tissue identified grossly" and had information that no microscopic examination was conducted and that chorionic villi could not be diagnosed without microscopic examination but instead of informing the plaintiff in accordance with Post-Op High Alert Protocol to come back for repeat sonogram or ultrasound, defendants engaged in a fraudulent and deceitful scheme of manipulating the dates on these reports whether individually, jointly or in connivance with others in a

fraudulent scheme to cover their misdiagnosis of ectopic pregnancy thereby causing the plaintiff to suffer ruptured ectopic pregnancy on September 15, 2010.

69 As a proximate result of defendants' fraudulent misrepresentations of material fact, fraudulent suppression of material fact, deceit and fraudulent concealment, fraudulent scheme to deceive, conceal their timely knowledge of lack of fetal tissue, plaintiff suffered physical injury, pain and suffering including but not limited to ruptured ectopic pregnancy and future problems with infertility, grave emotional distress, mental anguish and other unliquidated damages.

70. Wherefore, premises considered, the plaintiff, claims and demands compensatory and punitive damages and cost in excess of the jurisdiction limit of this court against the defendants and fictitious parties separately and jointly in an amount to be determined by a struck jury.

**[Fictitious Parties]**

71. The plaintiff adopts and re-alleges all the averments/allegations in paragraphs 1 through 70 and the wherefore/damage clauses in Count One, Count Two, Count Three and Count Four against all fictitious parties designated in this complaint.

72. Wherefore, premises considered, the plaintiff, claims and demands compensatory and punitive damages and cost in excess of the jurisdiction limit of this court against the defendants and fictitious parties separately and jointly in an amount to be determined by a struck jury.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL CLAIMS SET FORTH IN THIS COMPLAINT.

Respectfully submitted by,

/s/ Adedapo T. Agboola  
/s/ Darryl Bender  
Attorneys for Plaintiff

OF COUNSEL

BENDER AND AGBOOLA, LLC  
711 North 18<sup>th</sup> Street  
Birmingham, Alabama 35203  
PH. (205) 322-2500/FAX: (205) 324-2120  
E mail: Agbula@aol.com

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 2nd day of September 2014, I have served the foregoing on all counsel of record via Ala e file to:

Charles A. McCallum, III, Esq.  
McCallum, Hoaglund, Cook & Irby, LLP  
905 Montgomery Hwy, Suite 201  
Vestavia Hill, AL 35216  
PH. (205) 824-7767/FAX (205) 824-7768

**NEWLY ADDED DEFENDANT: SERVICE BY CERTIFIED MAIL UNDER ALABAMA RULE**

PYSICIAN LABORATORY SERVICE, INC  
AGENT: IRENE E MEYER  
2511 HWY 441 NORTH  
MONTAIN CITY, GA 30562

**NEWLY ADDED DEFENDANT: SERVICE BY CERTIFIED MAIL UNDER ALABAMA RULE**

DR MICHAEL ROHLFING, MD  
ANGEL MEDICAL CENTER  
120 RIVERVIEW ST  
FRANKLIN, NC 28734

/s/ Adedapo T. Agboola  
Of Counsel