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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

11 LANUOLA FUIAVA and JASON BAKER,)
12 Plaintiffs,)
13 v.)
14 PLANNED PARENTHOOD LOS)
ANGELES, JUSTIN DIEDRICH, M.D.;)
15 and DOES 1 to 50, inclusive,)
16 Defendants.)

CASE NO.: 19STCV03079

) Assigned for all purposes to:
) Hon. Laura Seigle - Dept. 4B (SS)

) **DEFENDANTS, PLANNED**
) **PARENTHOOD LOS ANGELES AND**
) **JUSTIN DIEDRICH, M.D.'S**
) **ANSWER TO PLAINTIFFS'**
) **UNVERIFIED COMPLAINT**

) Complaint filed: January 29, 2019
) FSC Date: July 14, 2020
) Trial Date: July 28, 2020

19
20 COMES NOW Defendants, PLANNED PARENTHOOD LOS ANGELES and JUSTIN
21 DIEDRICH, M.D., for themselves alone and for no other persons, firms, or corporations
22 answers the unverified Complaint on file herein, admits, denies and alleges as follows:

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1 1. Under the provisions of Section 431.30 of the *California Code of Civil*
2 *Procedure*, these answering Defendants deny each and every allegation of said unverified
3 Complaint, and each and every cause of action contained therein, and the whole thereof,
4 and deny that Plaintiffs have sustained damages in the sum or sums alleged, or in any other
5 sum or sums whatsoever, or at all.

6 2. Further answering Plaintiffs' unverified Complaint on file herein and the
7 whole thereof, these answering Defendants deny that the Plaintiffs have sustained any
8 injuries, damages, or loss, if any, by reason of any act or omission on the part of these
9 answering Defendants.

10 **FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,**

11 **THESE ANSWERING DEFENDANTS ALLEGE:**

12 3. That the unverified Complaint and each and every cause of action therein is
13 barred by the provisions of Section 340.5 of the *California Code of Civil Procedure*.

14 **FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,**

15 **THESE ANSWERING DEFENDANTS ALLEGE:**

16 4. That the unverified Complaint and each and every cause of action therein does
17 not state facts sufficient to constitute a cause of action.

18 **FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,**

19 **THESE ANSWERING DEFENDANTS ALLEGE:**

20 5. Plaintiffs' injuries and damages, if any, were proximately caused and
21 contributed to by the negligence of third parties other than these answering Defendants.

22 **FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

23 **THESE ANSWERING DEFENDANTS ALLEGE:**

24 6. If any injuries alleged were caused by negligence, these answering Defendants
25 request that the negligence of all persons or parties, and the degree to which such
26 negligence contributed to the alleged incident, or the nature and extent of the injuries
27 actually sustained be determined by the trier of fact.

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1 **FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

2 **THESE ANSWERING DEFENDANTS ALLEGE:**

3 7. These answering Defendants place in issue the negligence, if any, of all
4 persons, including Plaintiffs' breach of duty to care for their own well being, who
5 contributed in any degree to the happenings as alleged in the unverified Complaint, and the
6 degree that such negligence contributed to the injuries sustained, if any, as a result of said
7 occurrence.

8 **FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

9 **THESE ANSWERING DEFENDANTS ALLEGE:**

10 8. That all of the risks and dangers involved in the medical procedure(s) in
11 which the Plaintiffs were involved at the time and place alleged were well known to,
12 understood and appreciated by the Plaintiffs who knowingly assumed all risks involved in
13 such procedure(s).

14 **FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

15 **THESE ANSWERING DEFENDANTS ALLEGE:**

16 9. That the negligence alleged in the unverified Complaint was not a substantial
17 factor in bringing about the alleged injuries, and therefore, was not a contributing cause,
18 but was superseded by an event that was an independent, intervening, sole and proximate
19 cause of any alleged injury or damage, including Plaintiffs' breach of duty to care for their
20 own well being.

21 **FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

22 **THESE ANSWERING DEFENDANTS ALLEGE::**

23 10. In the event that these answering Defendants are found to be negligent (which
24 supposition is denied and merely stated for the purpose of this affirmative defense), these
25 answering Defendants may elect to introduce evidence of any amounts paid or payable, if
26 any, as a benefit to Plaintiffs pursuant to *California Civil Code* Section 3333.1.

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1 **FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

2 **THESE ANSWERING DEFENDANTS ALLEGE:**

3 11. In the event that these answering Defendants should be found liable to the
4 Plaintiffs (which supposition is denied and merely stated for the purpose of this affirmative
5 defense), the damages for non-economic loss shall not exceed the amount specified in
6 *California Civil Code* Section 3333.2.

7 **FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

8 **THESE ANSWERING DEFENDANTS ALLEGE:**

9 12. In the event that these answering Defendants should be found liable to the
10 Plaintiffs (which supposition is denied and merely stated for the purpose of this affirmative
11 defense), these answering Defendants may elect to limit or diminish Plaintiffs' recovery of
12 future damages as specified in *California Code of Civil Procedure* Section 667.7.

13 **FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

14 **THESE ANSWERING DEFENDANTS ALLEGE:**

15 13. That these answering Defendants are entitled to an offset and/or reduction,
16 and Plaintiffs are barred from recovering any and all amounts paid for Plaintiffs' alleged
17 injuries by way of settlement or judgment of any claim, incident, or lawsuit which may have
18 contributed to the injuries alleged in the unverified Complaint (in the event these
19 answering Defendants should be found liable to Plaintiffs, although this supposition is
20 denied and only stated for the purpose of this affirmative defense).

21 **FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

22 **THESE ANSWERING DEFENDANTS ALLEGE:**

23 14. Under and pursuant to the terms of *California Civil Code* Sections 1431
24 through 1431.5, Plaintiff is barred and precluded from recovery against these answering
25 Defendants for any non-economic damages except those allocated to these answering
26 Defendants in direct proportion to their percentage of fault, if any such fault or damages
27 there be.

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1 **WHEREFORE**, these answering Defendants pray as follows:

- 2 1. That Plaintiffs take nothing by reason of the unverified Complaint on file
3 herein;
4 2. For costs of suit herein; and,
5 3. For such other and further relief as this Court may deem just and proper.

6
7 DATED: March 20, 2019

FIELDSLAW

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9 BY: Lauren L. McNerney
10 Gary D. Fields, Esq.
11 Lauren L. McNerney, Esq.
12 Anna Sweeney, Esq.
13 Attorneys for Defendants, PLANNED
14 PARENTHOOD LOS ANGELES and JUSTIN
15 DIEDRICH, M.D.

1 **PROOF OF SERVICE**
2 (Pursuant to CCP §§ 1013 and 2015.5)

3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF LOS ANGELES)

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action; my business address is 400 Oceangate, Suite 700, Long
8 Beach, California 90802 and my business email address is maryanne@fieldslawcorp.com.

9 On March 21, 2019, I served the document described as **DEFENDANTS, PLANNED**
10 **PARENTHOOD LOS ANGELES AND JUSTIN DIEDRICH, M.D.'S ANSWER TO**
11 **PLAINTIFFS' UNVERIFIED COMPLAINT**, addressed as follows:

12 **Attorneys for Plaintiffs,**
13 **LANUOLA FUIAVA and JASON BAKER**
14 Tobie B. Waxman, Esq.
15 LAW OFFICES OF TOBIE B. WAXMAN
16 400 Corporate Pointe, Suite 300
17 Culver City, CA 90230
18 Tel. (310) 410-9902 / Fax (888) 411-9036
19 **Email: tobie@twaxmanlegal.com**

20 I declare that I am "readily familiar" with the firm's practice of collection and processing
21 correspondence for mailing. It is deposited with the U.S. postal service on that same day in the
22 ordinary course of business. I am aware that on motion of party served, service is presumed
23 invalid if postal cancellation date or postage meter date is more than one day after date of
24 deposit for mailing in affidavit.

25 (By Mail) I caused to be deposited such envelope in the mail as stated above at Long
26 Beach, California. The envelope was mailed with postage thereon fully prepaid on
27 March 21, 2019.

28 (By Electronic Mail) Based on an agreement of the parties to accept service by electronic
transmission, I sent this document, via Electronic Mail, as stated above, on March 21,
2019.

(By Facsimile) I sent this document via facsimile as stated above on March 21, 2019.

(By Overnight Courier) Such envelope was delivered by an agent of Federal Express to
the offices stated above. It was requested by the person executing this Proof of Service
that the envelope be delivered the next business day.

(By Personal Service) Such envelope was delivered by an agent of Allen Houser Process
Service to the offices stated above. Executed on March 21, 2019 at Long Beach,
California.

(State) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court
at whose direction the service was made.



MARY ANNE GUTIERREZ