Electronically FILED by Superior Court of California, County of Los Angeles on 01/29/2019 04:41 PM Sherri R. Carter, Executive Officer/Clerk of Court, by N. Alvarez,Deputy Clerk
19STCV03079

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Laura Seigle

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LANUOLA FUIAVA and JASON BAKER,

Plaintiffs,

vs.

PLANNED PARENTHOOD LOS ANGELES, JUSTIN DIEDRICH, M.D., and Does 1 to 50, inclusive

Defendants

Case No.:

COMPLAINT FOR DAMAGES:

1. **Medical Malpractice**
2. **Medical Malpractice [Agency]**
3. **Fraud**
4. **Lack of Informed Consent**
5. **Breach of Contract**
6. **Wrongful Birth**

COMES NOW Plaintiffs LANUOLA FUIAVA and JASON BAKER and allege as follows:

PARTIES

1. Defendant Planned Parenthood Los Angeles [hereinafter referred to as "PPLA"] is a provider of health care and medical services (corporate and/or partnership status unknown) licensed to practice medicine by the State of California.

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2. Defendant, PPLA also provides physician and non-physician care to patients, surgical and non-surgical care to patients, and where physicians licensed to practice medicine by the State of California perform out-patient procedures such as therapeutic abortions. Plaintiff Lanuola Fuiava was treated at PPLA's West Hollywood location at 825 N. San Vicente Blvd., Los Angeles, California 90069.

3. Defendant, Justin Diedrich, M.D. (hereinafter referred to as "DIEDRICH") is, and at all times herein mentioned was, a medical doctor and physician licensed to practice medicine by the State of California.

4. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned, Defendant DIEDRICH was the agent of Defendant PPLA, in doing the acts hereinafter described, and was acting in the course and within the scope of his authority as agent in the transaction of the business of said agency. Defendant PPLA is therefore liable to Plaintiffs for the acts of Defendant DIEDRICH hereinafter alleged under the doctrines of respondent superior, ostensible and actual agency.

5. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of defendants sued herein as DOES 1 through 50, inclusive, and therefore sues said defendants by such fictitious names. Plaintiffs are informed and believe, and upon such information and belief, allege that each of the defendants designated herein as a DOE is legally responsible in some manner for the events and happenings referred to herein and caused the damages proximately thereby to Plaintiffs as hereinafter alleged. Plaintiffs will seek leave of court to amend this complaint to show the true names and capacities of the defendants designated herein as DOES when the same have been ascertained.

FACTS RELEVANT TO ALL CAUSES OF ACTION

6. On 11/06/2017 Lanuola Fuiava (hereinafter referred to as "LANU") presented to Planned Parenthood's clinic in West Hollywood with plans to terminate an unwanted pregnancy. This would have been a high-risk pregnancy complicated by

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advanced maternal age, obesity, and HPV. She was unmarried and living alone. Estimated fetal age as of 11/6/2017 was 6 weeks and 6 days. A transvaginal ultrasound confirmed a yolk sac, cardiac motion, fetal pole, gestational sac with double ring sign, single pregnancy.

7. After a history and physical were taken and she was counseled regarding available alternatives to terminating her pregnancy, LANU contracted with Planned Parenthood to undergo the abortion [hereinafter referred to as "TAB"]. Specifically, LANU hired Planned Parenthood to terminate her pregnancy. Planned Parenthood agreed to perform an abortion. LANU paid for the procedure and the TAB was allegedly performed by a physician at Planned Parenthood's clinic thereby successfully terminating the patient's pregnancy. The terms of this contractual arrangement were agreed to and based on Planned Parenthood's representations, the terms were carried out.

8. Informed consent was not obtained from the patient. The procedure was performed the same day by DIEDRICH. His operative note indicates the procedure started at 9:31 a.m. and was over/stopped at 9:33 a.m. The procedure was done by manual vacuum aspiration ["MVA"]. In the 2 minutes this procedure allegedly took, the cervix was cleaned and prepped, a paracervical block was applied, a cannula was inserted and then MVA used. When the abortion was finished, an intrauterine birth control device ["IUD"] was inserted at the patient's election. All of this, according to the chart took just 2 minutes.

9. No ultrasound was used during the abortion. There was no ultrasound performed after the conclusion of the procedure to either confirm its completion or to confirm the positioning and placement of the IUD. The success of the abortion was confirmed only by DIEDRICH's examination of the products of conception. He noted seeing the Villi, and the membranes/sac. His noted impression based on this visualization was that the "pregnancy was terminated successfully" and the patient required no follow-up visit. The tissue was then disposed of; it was not sent to pathology.

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10. There was no pathological confirmation that the pregnancy was terminated and no follow up appointment made for blood work to confirm the pregnancy was successfully terminated.

11. On 12/28/2017 the patient presented to her regular ObGyn with complaints of nausea, vomiting, backache and breast tenderness which she attributed to side effects of the IUD. She asked that it be removed.

12. Ultrasound was performed but no IUD was seen. Instead, what was seen was an active fetus. Pregnancy was confirmed by blood test. The estimated gestational age was 15 weeks and 3 days.

13. The news of this pregnancy was very upsetting to LANU and to the biological father Jason Baker [hereinafter referred to as "JASON"].

14. LANU returned to planned parenthood on 1/8/2018 to discuss the failed TAB and her options. She met with a gentleman who identified himself as the director of the clinic. DIEDRICH would not meet with her.

15. The chart notes from this visit identify LANU as a "new patient" who presented for a TAB. The medical record number for this note was the same number as was used during the November 2017 visit to the clinic. The History and Physical however, makes no mention of the TAB allegedly performed just 2 months prior, but states that the patient has an IUD.

16. Ultrasound performed at PPLA's clinic on 1/8/2018 showed a gestational age of 16-weeks with fetal movement and cardiac motion. There was no mention in the ultrasound report of the IUD being visualized. There was absolutely no mention of this patient's history of having presented for a TAB just 2 months prior.

17. There was no written note generated as a result of LANU's meeting with the director of the clinic. The director informed LANU that pathology confirmed the existence of villi confirming the success of the TAB.

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18. After repeated written and verbal requests by LANU, PPLA provided what was represented to be her entire chart. There were no pathology reports in LANU's chart.

19. At this point, 16 weeks into her pregnancy, LANU and JASON decided to proceed with the pregnancy and carry the pregnancy to term.

20. The baby was carried full term and delivered on June 21, 2018.

FIRST CAUSE OF ACTION BY PLAINTIFF LANUOLA FUIAVA AGAINST ALL DEFENDANTS, AND EACH OF THEM

(Medical Negligence)

21. LANU refers to Paragraphs 1-20 of this Complaint, and by reference makes them a part hereof.

22. DIEDRICH lacked the necessary knowledge and skill to properly care for LANU's condition and was negligent and unskillful in conducting the TAB.

23. PPLA and DIEDRICH breached the applicable standard of care by performing the TAB in a negligent manner, by performing the TAB too early in the pregnancy and by failing to perform any post-op procedure or testing to confirm its success or failure.

24. The products of conception were never sent to pathology and therefore no pathological examination or analysis of the removed tissue was done. Contrary representations made to the patient by the director of the clinic were false. There was no follow up examination performed or planned for this patient. No post procedure ultrasound was done to at the very least confirm the positioning of the IUD. There was no blood test or urinalysis to confirm the success or failure of the TAB. Early detection and diagnosis of a failed abortion is necessary to avoid complications and harm to the fetus.

25. Failure to confirm the completed suction by ultra sound or similar means, is contraindicated and below the standard of care following IUD insertion.

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SECOND CAUSE OF ACTION BY PLAINTIFF LANU

AGAINST DEFENDANT PPLA

(Medical Negligence/Ostensible Agency)

26. LANU refers to Paragraphs 1-25 of this Complaint, and by reference makes them a part hereof.

27. The intake paperwork the patient completed upon her first visit to PPLA identified PPLA as a provider of care and treatment to the patient along with its surgeons, and other health care workers.

28. PPLA holds itself out to the public as the direct provider of medical care and services to its patients including LANU.

29. PPLA, by and through its staff and employees was a direct provider of negligent medical care to LANU as set forth herein.

Ostensible Agency

30. PPLA intentionally, or by want of ordinary care, caused LANU and JASON to believe DIEDRICH was its agent and a regular provider of services to patients of PPLA. PPLA is therefore liable to LANU and to JASON for the damages caused by DIEDRICH's professional negligence based on a theory of ostensible agency.

31. At all times relevant to this litigation, each time LANU communicated with or saw DIEDRICH it was at PPLA in West Hollywood.

32. When she presented to the clinic to discuss the failed TAB on 1/8/2018 she was denied a request to speak with DIEDRICH and instead discussed the failed TAB with another individual as if employees/agents of PPLA are all one and the same.

33. At all times relevant to this litigation, every communication, physical examination, pre-operative appointment, lab work, operative care and post-operative visit occurred at PPLA.

34. Every document provided to LANU included the PPLA logo.

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35. Based on the foregoing and based on additional records in LANU's chart which are not identified in this complaint, LANU reasonably believed that DIEDRICH was an agent or employee of PPLA and in performing medical care was acting on behalf of PPLA, his principal.

36. PPLA is responsible for DIEDRICH's conduct, medical negligence, and omissions because DIEDRICH was, at all times relevant herein, the apparent agent.

37. PPLA intentionally or carelessly created the impression that DIEDRICH was PPLA's agent.

38. LANU reasonably believed that DIEDRICH was PPLA's agent and she was harmed as a result. LANU justifiably relied on the existence of this relationship when she decided to entrust DIEDRICH and PPLA with her surgical and medical care.

THIRD CAUSE OF ACTION BY LANU AGAINST
ALL DEFENDANTS AND EACH OF THEM
(Fraud by Misrepresentation and Concealment)

39. LANU refers to Paragraphs 1-38 of this complaint, and by reference makes them a part hereof.

40. On 1/8/2018 PPLA actively concealed its negligence by misrepresenting to LANU that pathology confirmed the existence of villi. DIEDRICH's operative note however, specifically stated that products of conception were discarded. The products of conception were never sent to pathology. The director's contrary representations were knowingly false.

41. Further, there was no chart note created to memorialize this meeting furthering the concealment of PPLA's fraud.

42. A physician patient relationship existed between LANU and DIEDRICH and LANU and PPLA.

43. Each defendant intentionally misrepresented to LANU and JASON that the TAB had been successful and that its success had been confirmed by pathology.

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44. As a result of the misrepresentations as to the success of the TAB, LANU sustained damages as described hereinabove and hereinafter.

45. Defendants each made representations of material facts to LANU. Specifically, each defendant informed LANU that a TAB had been performed successfully. These representations however, were false.

46. Further, PPLA's representative on 1/8/2018 represented to LANU that the success of the TAB had been confirmed by pathology. This representation was not only not true, but as the products of conception had never been sent to pathology and there was no pathology report, PPLA had no reason to believe its representations to LANU on 1/8/2018 were true or PPLA knew the representations to be false when they were made on 1/8/2018.

47. Compounded with an aggressive effort on the part of PPLA to get LANU to undergo a second TAB on 1/8/2018, it is clear that the representations made were intended to induce LANU to terminate her pregnancy now at 16 weeks and to minimize PPLA's exposure to litigation if the pregnancy were carried to term and/or the infant was born with anticipated complications.

48. LANU justifiably relied on the representations made to her on 11/6/2017 that the TAB had been successful and that no follow up appointment or testing was needed. In reliance on these representations, LANU did not make a follow up appointment, did not seek any testing or second opinion to confirm the pregnancy had been terminated.

49. As a result of these misrepresentations and concealment and LANU's reliance thereon, LANU was damaged.

50. Defendants held themselves out as experts. LANU hired PPLA and DIEDRICH to perform a medical procedure and supply information concerning matters of which she was ignorant. Defendants' unequivocal statements regarding the success of the TAB and confirmation of such success necessarily implied that they knew facts that justified these statements

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FOURTH CAUSE OF ACTION BY LANU AGAINST ALL DEFENDANTS AND EACH OF THEM

(Lack of Informed Consent)

51. Plaintiff refers to Paragraphs 1-50 of this Complaint, and by reference makes them a part hereof.

52. There is no written record in LANU's chart from PPLA of informed consent. There is no written record of the patient being informed of any specific risks or complications associated with the TAB, including the risk of failure.

53. The risk of failure of a TAB is 6 times greater at 6 weeks as compared to 9 or more weeks. Such risks were not discussed with the patient prior to her agreeing to undergo the abortion at 6 weeks, nor was she advised to or given the preferred option of waiting until later in the pregnancy to undergo the abortion.

FIFTH CAUSE OF ACTION BY LANU AGAINST ALL DEFENDANTS AND EACH OF THEM

(Breach of Contract)

54. Plaintiff refers to Paragraphs 1-53 of this Complaint, and by reference makes them a part hereof.

55. Defendants' failure to complete the TAB was a breach in the express contract entered into between Plaintiff and PPLA and DIEDRICH.

56. LANU presented to PPLA with an unwanted pregnancy. PPLA and DIEDRICH offered to terminate the pregnancy. To accept this offer, LANU paid for the service. Defendants allegedly performed the TAB thereby satisfying and completing the contract terms.

57. At the conclusion of the TAB, PPLA and DIETRCH advised LANU that the procedure was a success and the pregnancy was terminated.

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58. The TAB however, had not in fact been performed. The pregnancy had not in fact been terminated. PPLA and DIETRICH therefore breached the terms of the contract between them and LANU causing LANU damage in an amount to be shown according to proof.

SIXTH CAUSE OF ACTION BY LANU AND JASON AGAINST ALL DEFENDANTS AND EACH OF THEM

(Wrongful Birth)

59. Plaintiffs refer to Paragraphs 1-58 of this Complaint, and by reference makes them a part hereof.

60. As a result of the negligence of defendants and each of them, LANU gave birth to a child that she and the father, JASON had taken steps to prevent.

61. JASON and LANU were injured by the resulting unwanted pregnancy and the resulting sequalae, including the birth of a child.

62. The mental suffering attendant to the unexpected pregnancy because of the complications which may or may not result, the complications that do result, and the delivery of a child are all foreseeable consequences of the failed abortion.

63. There was concern throughout the pregnancy of the potential harm to the fetus from the IUD and whether the IUD was mobile and could physically harm the baby or the placenta.

64. According to the USDA, as of 2018 the average cost to raise a child was $233,610. That only includes food, shelter, and other necessities. This is the national average. In Los Angeles however, the overall cost of living is 44% higher than the rest of the country. (or an additional $102,788).

65. These are expenses JASON and LANU will have to expend as the result of defendants' negligence.

66. As a direct and proximate result of the negligence and carelessness of Defendants and each of them LANU suffered injuries including, but not limited to

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emotional pain and suffering, fear, the physical pain and discomfort associated with pregnancy, and the pain of child birth.

67. In addition, plaintiffs incurred costs associated with prenatal and postnatal care.

68. As a further proximate result of the negligence and carelessness of the Defendants and each of them, LANU was required to expend money and incur obligations, for medical services, x-rays/ultra-sounds, prescriptions and non-prescription medications.

69. By reason of the foregoing, LANU is informed and believes, and upon such information and belief, alleges that she has been damaged in an amount to be shown according to proof.

70. By reason of the foregoing, LANU and JASON are informed and believe, and upon such information and belief allege, that they have been damaged and incurred financial obligations and will continue to incur financial obligations in amounts to be shown according to proof.

71. Plaintiffs sent Notices of Intent to Sue letters pursuant to Code of Civil Procedure §364 to Defendants, and each of them in a timely manner and in compliance with the applicable statute of limitations.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

As to causes of action by LANU against all Defendants, and each of them, for medical negligence, medical negligence/agency, and lack of informed consent:

1. General Damages in a sum according to proof;

2. Sums incurred for services of hospitals, physicians, surgeons, nurses and other medical supplies and services [i.e. out-of-pocket medical expenses];

3. Special and Economic Damages (such as, but not limited to, loss of earnings) in sums according to proof.

As to the cause of action by LANU against all Defendants and each of them for fraud:

1. General Damages in a sum according to proof

2. Special Damages in sums according to proof

3. In addition, LANU will seek leave of court under Code of Civil Procedure §425.13 to amend this complaint in the future to add a prayer or prayers for punitive damages.

As to the cause of action for breach of contract by LANU against all Defendants and each of them:

1. General Damages in a sum according to proof.

2. Special Damages in sums according to proof.

As to the cause of action for wrongful birth by LANU and JASON:

1. Economic Damages in a sum according to proof. For this category of damages Plaintiffs seek reimbursement for the cost of raising a child to the age of 18 in the State of California, County of Los Angeles according to calculations performed by the United States Department of Agriculture.

As to all causes of action brought by both plaintiffs collectively:

1. Interest provided by law including, but not limited to, California Civil Code §3291; and

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2. Costs of suit and for such other and further relief and/or damages as the Court deems proper.

LAW OFFICES OF TOBIE B. WAXMAN

Dated: 1/28/2019

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Attorney for Plaintiffs, Lanuola Fuiava and Jason Baker

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