

registered agent, Peter J. Durkin, 3601 Fannin, Houston, Texas 77004.

5. To the extent that the above-named Defendants are conducting business pursuant to a trade name or assumed name, then suit is brought against it pursuant to the terms of Tex. R. Civ. P. 28, and the Plaintiff hereby demands that upon answering this suit, that Defendants answer in its correct legal name and assumed name.

III. JURISDICTION AND VENUE

6. The subject matter in controversy is within the jurisdictional limits of this court.

7. This court has personal jurisdiction herein because Defendants are entities doing business in Texas, with contacts in Texas, and have designated registered agents for suits arising out of their actions in the state.

8. Venue in Harris County is proper because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

IV. FACTS

9. Plaintiff Siria Gonzalez was treated by Defendant Planned Parenthood on May 19, 2009. During this visit, staff of Defendant Planned Parenthood prescribed an intrauterine contraceptive device manufactured by Defendant Bayer, Mirena. Staff of Planned Parenthood implanted this device in Ms. Gonzalez. Over the next several months, Ms. Gonzalez developed symptoms such as rashes, hair loss, rapid weight loss, weakness, muscle deterioration, and chronic pain. She returned to Planned Parenthood, but the staff failed to diagnose the cause of such symptoms and failed to remove the Mirena device. On December 3, the Mirena device was removed. In late December, Ms. Gonzalez was again hospitalized, and later diagnosed with systemic lupus, caused by the product and/or the implantation process.

V. NEGLIGENCE

10. Defendant Planned Parenthood's management of the care of Plaintiff Siria Gonzalez was

below the accepted standard of care and constituted negligence.

11. Defendant breached the accepted standard of care in at least one or more of the following ways:

- a. In implanting a potentially harmful medication without complete disclosure of risks to the Plaintiff;
- b. In improperly implanting such medication;
- c. In failing to diagnose potential harm on subsequent visits even after notice of symptoms by the Plaintiff;
- d. In failing to inspect or discover side effects of the medication;
- e. In failing to educate its employees about the risks, limitations, potential side effects, and/or dangers of the medication.

12. Such negligence directly and proximately caused the injuries sustained by Ms. Gonzalez made the basis of this suit, as described herein.

13. At all times relevant to this matter, the staff of Defendant was acting in the course and scope of their employment as employees, agents, servants, partners and/or alter-egos of Planned Parenthood, which is thereby liable for their acts and/or omissions under the theory of *respondeat superior*, as that doctrine is recognized and defined under the laws of the State of Texas.

VI. PRODUCTS LIABILITY

14. Plaintiff incorporates each of the allegations in the preceding paragraphs as if set forth in full herein.

15. Plaintiff would show that Defendant Bayer further caused harm to Ms. Gonzalez by placing into the stream of commerce an unreasonably dangerous and defective product.

16. Defendant designed, manufactured, assembled, tested (or failed to test), inspected (or failed to inspect), packaged, labeled, fabricated, constructed, analyzed, distributed, serviced,

merchandised, advertised, promoted, marketed, and/or sold the product.

17. The product was unsafe by reason of the defects in the design, manufacture, testing, labeling, packaging, and marketing.

18. These acts and omissions directly and proximately caused harm to the Plaintiff, as described herein.

VII. BREACH OF EXPRESS WARRANTY

19. The Plaintiff incorporates each of the allegations in the preceding paragraphs as if set forth in full herein.

20. Plaintiff would show that the injuries and damages to Plaintiff were caused the breach of express warranties made by the Defendant. Plaintiff is a consumer within the definitions of the Tex. Bus. & Com. Code § 17.

21. Defendant placed a product into the stream of commerce that was a violation of its own express warranties.

22. In placing the product into the stream of commerce, the Defendant utilized advertising media and professional publications to urge the purchase and use of the product and expressly warranted to members of the general public, including Plaintiff, that it was effective and proper.

23. Plaintiff relied upon the representations made by the Defendants in the purchase and/or use of the product.

VIII. BREACH OF IMPLIED WARRANTY

24. Plaintiff hereby incorporates each of the allegations in the preceding paragraphs as if set forth in full herein.

25. Plaintiff would show that her injuries were caused by the breach of implied warranty of merchantability by the Defendants.

26. Defendants implied to members of the general public, including Plaintiff, that the

product was of merchantable quality and safe for the use for which it was intended.

27. The drug manufactured by Defendant Bayer, Mirena, was unfit for the ordinary purpose for which it was to be used.

IX. GROSS NEGLIGENCE OF DEFENDANTS

28. The negligence of the Defendants was of such a character to make the Defendants guilty of gross negligence and the Defendants should accordingly be held liable.

29. The conduct of the Defendants was in heedless and reckless disregard of the rights of the Plaintiff and involved such an entire want of care as to indicate that it was a result of conscious indifference to the rights, welfare, and safety of the Plaintiff.

X. ECONOMIC AND ACTUAL DAMAGES

30. As a result of the events described herein, Plaintiff has suffered personal injuries causing permanent bodily impairment.

31. These injuries incurred by Plaintiff have caused her to suffer injuries and damages which will continue into the future, including:

- (a) Reasonable medical care and expenses in the past and future;
- (b) Physical pain and suffering and mental anguish, past and future;
- (c) Past and future disfigurement;
- (d) Past and future physical impairment;
- (e) Fear of future disease or condition;
- (f) Lost wages;
- (g) Loss of future earning capacity; and
- (h) Punitive damages.

XII. CONDITIONS PRECEDENT

32. All conditions precedent, including notice of claims to Defendants as required by law, have been satisfied.

XIII. DEMAND FOR A JURY TRIAL

33. Plaintiff respectfully requests a trial by jury on all of her claims.

XIV. ATTORNEY'S FEES

34. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by: (a) Section 17.50(d) of the Texas Business and Commerce Code; (b) Chapter 38 of the Texas Civil Practice and Remedies Code; and, (c) common law.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for the economic and actual damages requested hereinabove in an amount within the jurisdictional limit of the Court, together with prejudgment and post-judgment interest at the maximum rate allowed by law, attorney's fees, costs of court, and such other and further relief to which the Plaintiff may be entitled at law or in equity, whether pled or unpled.

Respectfully submitted,

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