

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

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

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13 LANUOLA FUIAVA and JASON BAKER,

14 Plaintiffs,

15 vs.

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

19 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

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

23
24 **PARTIES**

25 1. Defendant Planned Parenthood Los Angeles [hereinafter referred to as
26 "PPLA"] is a provider of health care and medical services (corporate and/or partnership
27 status unknown) licensed to practice medicine by the State of California.
28

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

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

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

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

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

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

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

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

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

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

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

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

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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.

30. **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.

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

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

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

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

12
13 **THIRD CAUSE OF ACTION BY LANU AGAINST**
14 **ALL DEFENDANTS AND EACH OF THEM**
15 **(Fraud by Misrepresentation and Concealment)**

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

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

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

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

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

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

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

6 46. Further, PPLA's representative on 1/8/2018 represented to LANU that the
7 success of the TAB had been confirmed by pathology. This representation was not only
8 not true, but as the products of conception had never been sent to pathology and there
9 was no pathology report, PPLA had no reason to believe its representations to LANU on
10 1/8/2018 were true or PPLA knew the representations to be false when they were made
11 on 1/8/2018.

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

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

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

24 50. Defendants held themselves out as experts. LANU hired PPLA and
25 DIEDRICH to perform a medical procedure and supply information concerning matters
26 of which she was ignorant. Defendants' unequivocal statements regarding the success
27 of the TAB and confirmation of such success necessarily implied that they knew facts
28 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.

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

5
6 **SIXTH CAUSE OF ACTION BY LANU AND JASON AGAINST**
7 **ALL DEFENDANTS AND EACH OF THEM**
8 **(Wrongful Birth)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19
20 **PRAYER**

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

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

- 25 1. General Damages in a sum according to proof;
- 26 2. Sums incurred for services of hospitals, physicians, surgeons, nurses and
27 other medical supplies and services [i.e. out-of-pocket medical expenses];
- 28

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

3
4 As to the cause of action by LANU against all Defendants and each of them for
5 fraud:

6 1. General Damages in a sum according to proof
7 2. Special Damages in sums according to proof
8 3. In addition, LANU will seek leave of court under Code of Civil Procedure
9 §425.13 to amend this complaint in the future to add a prayer or prayers for punitive
10 damages.

11
12 As to the cause of action for breach of contract by LANU against all Defendants
13 and each of them:

- 14 1. General Damages in a sum according to proof.
15 2. Special Damages in sums according to proof.

16
17 As to the cause of action for wrongful birth by LANU and JASON:

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

22
23 As to all causes of action brought by both plaintiffs collectively:

24 1. Interest provided by law including, but not limited to, California Civil Code
25 §3291; and

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27 ///

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