

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ANDERSON FORRESTER

Individually and as Parent and Next

Friend of Minor E.F.

18241 Swiss Circle, Apt. #5
Germantown, Maryland 20874,

and

CASSANDRA FORRESTER

Individually and as Parent and Next

Friend of Minor E.F.

18241 Swiss Circle, Apt. #5
Germantown, Maryland 20874,

and

**E.F., a Minor, by and through her
Parents and Natural Guardians**

18241 Swiss Circle, Apt. #5
Germantown, Maryland 20874,

and

Plaintiffs

v.

DISTRICT OF COLUMBIA

A municipal corporation,
SERVE: Muriel Bowser, MAYOR
Executive Office of the Mayor
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Karl A. Racine, ATTORNEY GENERAL
Office of the Attorney General
441 4th Street, NW
Washington, DC 20001

DEPARTMENT OF FORENSIC SCIENCES

KEVIN DONAHUE

DEPUTY CITY ADMINISTRATOR

Individually, and in his/her Official Capacity

Case No. _____

JURY TRIAL DEMANDED

1350 Pennsylvania Avenue, NW, Suite 533
Washington, DC 20004

JENNIFER SMITH

DIRECTOR, DEPARTMENT OF
FORENSIC SCIENCES

Individually, and in his/her Official Capacity

401 E Street, SW

Washington, DC 20024

ANTHONY TRAN

DIRECTOR, PUBLIC HEALTH
LABORATORY

Individually, and in his/her Official Capacity

401 E Street, SW

Washington, DC 20024

PUBLIC HEALTH LAB WORKER #1

Individually, and in his Official Capacity

401 E Street, SW

Washington, DC 20024

PUBLIC HEALTH LAB WORKER #2

Individually, and in his Official Capacity

401 E Street, SW

Washington, DC 20024

Defendants

COMPLAINT AND JURY TRIAL DEMAND

Comes now the above-named Plaintiffs, by and through counsel, Cary J. Hansel and Hansel Law, P.C., and sues the above-named defendants, stating as follows:

INTRODUCTION

1) This lawsuit is being filed as a result of the gross mismanagement of laboratory tests for the identification of the presence of the Zika Virus, conducted by the District of Columbia's Public Health Laboratory.

2) Information provided by the District of Columbia's Department of Forensic Sciences revealed that after submitting specimen, in the form of blood serum and/or urine

samples, more than four-hundred (400) patients received erroneous test results as the product of negligently mishandled tests.

3) The botched tests were conducted on specimen collected from patients between July and December of 2016.

4) The Zika Virus (“the Virus” or “Zika”) is known for causing microcephaly and other horrific birth defects and abnormalities in the fetus of an infected woman.

5) The negative health effects from the Virus, however, may not appear until as late as five to ten years after birth.

6) The detection of its presence prior to conception or birth can greatly impact the health of the fetus as well as the mother and provide guidance to health care professionals and individuals on the medical treatment to be administered.

7) The erroneous test results produced by the District of Columbia’s Public Health Laboratory (“D.C. Health Lab” or “Lab”) were caused by the negligent failure to ensure the use of the proper solution during a phase of the testing. In addition, D.C. Health Lab workers had muddled a formula used to calculate the test results—a negligent oversight that the Director of the Lab described as being a “basic arithmetic error.”

8) D.C. Health Lab workers were using an overly diluted solution during testing for the Virus, resulting in inaccurate detection of the Virus’ presence, and then compounding the error by using the wrong formula to calculate results.

9) These catastrophic errors occurred not once, but *daily*, for more than six months.

10) Hundreds of women took action based upon the false results that they were provided, many of whom didn’t receive accurate reports until nearly six months later when the Center for Disease Control (“CDC”) retested the specimens.

11) The D.C. Health Lab is one of forty-five (45) laboratories in the United States accredited to perform Zika testing, and the only one to have negligently mishandled the tests.

12) In 2015, the District of Columbia's Department of Forensic Sciences ("the Department"), which oversees the D.C. Health Lab, faced similar claims concerning DNA testing.

13) In September of 2014, the United States Attorney's Office ("USAO") expressed concern about DNA testing results from the Department, resulting in two separate audits being performed. Both audits found deficiencies in training *and* review within the Department and DNA testing was suspended as a result.

14) In April of 2015, Mayor Muriel Bowser called for a thirty (30) day corrective action plan for all of the Department's work, citing concern over the deficiencies revealed in the audits after District Residents spent two-hundred million dollars in building the state-of-the-art facility.

15) The disastrous Zika testing occurred on the heels of the negative audits of DNA testing, taking place just over a year after the Mayor's call to action on the Department's work.

JURISDICTION AND VENUE

16) Jurisdiction is proper in this Honorable Court under Section § 11-921 of the Code of the District of Columbia because this is a civil action brought in the District of Columbia.

17) Venue is proper in this Honorable Court because the Defendant is an entity organized under District of Columbia law, with its primary place of business in the District of Columbia and the events at issue took place in the District of Columbia and written notice of the allegations and claims has been given to the Defendants more than 90 days prior to the filing of this action.

PARTIES

18) Plaintiff Anderson Forrester (“Mr. Forrester”) is the father of minor Plaintiff E.F., and at all times relevant hereto an adult citizen and a resident of Germantown, Maryland.

19) Plaintiff Cassandra Forrester (“Mrs. Forrester”) is the mother of minor Plaintiff E.F. and at all times relevant hereto an adult citizen and a resident of Germantown, Maryland.

20) Minor Plaintiff E.F., is a minor child in the care, custody, and control of Plaintiffs Mr. and Mrs. Forrester.

21) Defendant District of Columbia is a *sui juris* municipal corporation created under the law of the District of Columbia.

22) Defendant Department of Forensic Sciences is an agency established under the laws of the District of Columbia.

23) Defendant Kevin Donahue is an adult citizen of Washington, D.C and was at all relevant times hereto the Deputy .

24) Defendant Jennifer Smith is an adult citizen of Washington, D.C.

25) Defendant Anthony Tran is an adult citizen of Washington, D.C.

26) All other unidentified Defendants whose conduct is referred to herein were at all times relevant hereto employed by the District of Columbia, acting in their professional capacities.

27) The Individual Defendants were acting within the scope of their official duties and employment.

FACTS COMMON TO ALL COUNTS

28) The D.C. Health Lab began providing Zika Virus testing in January of 2016.

29) In December of 2016, after officials were alerted that errors were occurring in the Zika Virus testing being completed at the D.C. Health Lab, further testing was suspended for an indefinite period of time.

30) After review of the procedures and policies in place, officials uncovered that all Zika Virus testing conducted at the Lab on specimen collected between July 14, 2016 and December 14, 2016 had been completed with multiple errors—on every single test administered during that time period, on a daily basis.

31) As a result of the mishandling of the tests, four-hundred and nine (409) specimen (“specimen”) were sent to be retested after the false results had already been provided to the individuals who had submitted their specimen for Zika Virus detection.

32) Of the four-hundred and nine (409) specimen retested, two-hundred and ninety-four (294) were samples submitted from pregnant women.

33) Reportedly, all of the four-hundred and nine (409) individuals were negligently informed by the Lab that they tested negative for the presence of the Zika Virus.

34) Retesting of the specimen did not commence until 2017, with final results for many of the tests not being available until May of 2017.

35) Despite uncovering the tremendous errors in December of 2016, Defendants failed to publicly announce the catastrophe until February 9, 2017.

36) Many individuals who had submitted tests were not made aware of the false test results until news reports revealed the tragedy, and still others, such as the Plaintiffs, were not made aware of the false test results until even later.

37) Even after the Lab attempted to take corrective action in 2017, records of the false test results and records of the subsequent corrected testing completed by the CDC were mismanaged by the Defendants.

38) Mrs. Forrester's specimen was among those processed by the Lab during the time-period of botched testing.

39) Mrs. Forrester's specimen was submitted on September 28, 2016 after having been collected the day before.

40) The report date of the initial false results is October 24, 2016, which indicated that Mrs. Forrester tested negative for the presence of the Zika Virus.

41) On the date of the first false results, Mrs. Forrester was within her first trimester of pregnancy.

42) After news reports surfaced concerning the botched Zika tests, several months still passed before Mr. and Mrs. Forrester were contacted about their results.

43) In March of 2017, Mr. and Mrs. Forrester (collectively, "Forresters") were finally notified that their test results were inaccurate due to incorrect testing procedures.

44) In a test dated March 15, 2017, Mrs. Forrester's corrected test results showed a positive reading for the Zika Virus.

45) At the time of receiving the correct testing results, Mrs. Forrester's due date for delivery was only approximately one month away.

46) As Mrs. Forrester was well into her third trimester of pregnancy, the Forresters sought medical advice from multiple health care providers concerning the best mode of treatment.

47) The Forresters were advised to submit to additional sonograms, and were told that they would have to wait for the results to be reviewed by Children's Hospital within the Children's National Health System.

48) In the month following receipt of the corrected testing results, the Forresters met with countless medical physicians, including Ms. Roberta L. DeBiasi ("Ms. DeBiasi"), Chief of the Division of Pediatric Infectious Diseases for the Children's National Health System.

49) Ms. DeBiasi informed the Forresters that because of how far along Mrs. Forrester was in her pregnancy at the time of receiving the corrected results, delivery testing and ongoing monitoring of the infant post-delivery would have to be performed.

50) Minor Plaintiff E.F. was born in the spring of 2017, and was immediately submitted for post-delivery testing, including blood tests, umbilical cord and placental tissue testing, and head ultrasounds.

51) Minor Plaintiff E.F.'s health requires continuous monitoring for symptoms of microcephaly, the condition present in infants born to parents carrying the Zika Virus.

52) On April 24, 2017, Plaintiffs submitted notice of their claim to the Defendants.

53) On May 8, 2017, the Defendants' Office of Risk Management issued a notice denying Plaintiffs' claims which stated that the Defendants "did not find any record" of the Plaintiffs submitting specimen for testing at the Lab.

54) On June 1, 2017, Plaintiffs' counsel contacted Defendants' Office of Risk Management to confirm the denial, addressing that testing results had been received by the Plaintiffs and further inquiring about the validity of the denial.

55) On that same date, it was confirmed that Plaintiffs' names, dates of birth, and social security numbers were searched, and that based upon those individual identifiers,

Defendants still denied having any records, denying that Plaintiffs had submitted any specimen. Indeed, the Defendants erroneously stated that the Plaintiffs had not submitted to testing.

56) On December 18, 2017, an additional e-mail was sent to the Defendants' Office of Risk Management, this time attaching copies of the testing results. No response to that e-mail was ever sent from the Defendants

56) At all times relevant hereto, Defendants were in the business of providing health care services as a clinical laboratory, through their employees and/ or agents, including but not limited to, laboratory and medical technicians, for clinical diagnostic testing.

57) Defendants were healthcare providers to the Plaintiffs, providing clinical laboratory testing of Plaintiffs' specimen for medical diagnosis purposes.

58) The Defendants owed a special duty to the Plaintiffs, which was greater than that which is owed to the general public, as a special relationship existed between Plaintiffs and Defendants as Defendants provided healthcare services to the Plaintiffs.

59) Defendants owed Plaintiffs a duty of care in accordance with the applicable national standards of care in conducting laboratory testing.

60) Plaintiffs justifiably relied on the Defendants to conduct the testing of their specimen for the Zika Virus without negligence and within the standard of care owed to them.

61) The standard of care applicable to the Defendants required the Defendants to immediately cause the Plaintiff to be informed about their negligent acts.

62) Defendants failed to timely inform Plaintiffs of the incorrect testing.

63) The failure of the Defendants to timely provide notice to the Plaintiffs about the inaccurate test results caused substantial harm and injury to the Plaintiffs, causing limitations in the availability of medical treatment that could be administered.

64) The Defendants have a clearly established duty to maintain patients' medical charts in good order.

65) The Defendants negligently maintained the Plaintiffs' records by failing to retain them mere months after their negligent actions.

66) At no time did Plaintiffs assume the risk of their injuries.

CLAIMS FOR RELIEF

COUNT I – MEDICAL NEGLIGENCE

67) Plaintiffs adopt and incorporate by reference each and every allegation contained elsewhere herein verbatim with the same effect as if herein fully set forth.

68) Defendants, by and through their agents, employees, and staff owed a duty to the Plaintiffs to exercise that degree of care and skill that a reasonably competent clinical laboratory or healthcare provider would have exercised under similar circumstances.

69) Defendants, by and through their agents, employees, and staff were negligent when they failed to act in accordance with the standard of care owed to the Plaintiffs, and breached their duty owed to the Plaintiffs and were negligent in their actions towards the Plaintiffs in the following particulars, among others:

- a. Failing to follow the correct testing procedures in completing diagnostic testing for the presence of the Zika Virus in Plaintiffs' specimen by:
 - i. Using the incorrect concentration of solution during testing and
 - ii. Using the incorrect mathematical calculation of the results.
- b. Failing to timely identify the negligent errors conducted in the Zika Virus testing of the Plaintiffs' specimen.

- c. Failing to timely notify or otherwise cause the Plaintiffs to be notified that the test result from October 24, 2016 was a false negative.
- d. Failing to timely correct the testing procedures.
- e. Failing to follow standard quality assurance protocols and guidelines which would have timely revealed the testing errors.
- f. Failing to adequately credential, train, supervise, and instruct its agents, servants and employees.
- g. Failing to have properly staffed and trained employees conducting medical diagnostic testing.
- h. Failing to establish and/ or enforce and/ or follow appropriate policies and procedures and/ or protocols.
- i. Failing to establish and/ or follow and/ or enforce appropriate policies, procedures and practices to properly address the needs of patients, such as Plaintiffs.
- j. Failing to properly maintain records and negligently mishandling testing results.
- k. Plaintiff also relies upon *res ipsa loquitor*.

70) As a direct and proximate result of the aforesaid conduct, actions and inactions of Defendants and that stated elsewhere herein, Plaintiffs were caused to suffer and continue to suffer temporary and permanent physical injuries, physical pain and suffering, mental pain and suffering, including but not limited to, undue emotional distress, mental anguish, loss of enjoyment of life and disability, and economic damages including, but not limited to, past and future medical bills and expenses, past and future lost time and wages from work, past and future lost earning capacity and unnecessary attorneys' fees, all to the great detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount to be determined at trial, but in excess of \$75,000.00, plus interest, costs and attorneys' fees, and punitive damages, in an amount to be determined at trial.

COUNT II- GENERAL NEGLIGENCE

71) Plaintiffs adopt and incorporate by reference each and every allegation contained elsewhere herein verbatim with the same effect as if herein fully set forth.

72) Defendants owed a special duty to Plaintiffs based upon the special relationship between Defendants and Plaintiffs, wherein Plaintiffs reasonably relied on Defendants to accurately provide diagnostic testing and the specimen submitted to them.

73) Defendants, by and through their agents, employees, and staff were negligent when they failed to act with the prudence that a reasonably careful person or entity would exercise under circumstances similar to those in this case.

74) The negligent acts of Defendants include, but are not limited to:

- a. Failing to follow the correct testing procedures in completing diagnostic testing for the presence of the Zika Virus in Plaintiffs' specimen by:
 - i. Using the incorrect concentration of solution during testing and
 - ii. Using the incorrect mathematical calculation of the results.
- b. Failing to timely identify the negligent errors conducted in the Zika Virus testing of the Plaintiffs' specimen.
- c. Failing to timely notify or otherwise cause the Plaintiffs to be notified that the test result from October 24, 2016 was a false negative.
- d. Failing to timely correct the testing procedures.

- e. Failing to follow standard quality assurance protocols and guidelines which would have timely revealed the testing errors.
- f. Failing to adequately credential, train, supervise, and instruct its agents, servants and employees.
- g. Failing to have properly staffed and trained employees conducting medical diagnostic testing.
- h. Failing to establish and/ or enforce and/ or follow appropriate policies and procedures and/ or protocols.
- i. Failing to establish and/ or follow and/ or enforce appropriate policies, procedures and practices to properly address the needs of patients, such as Plaintiffs.
- j. Failing to properly maintain records and negligently mishandling testing results.
- k. Plaintiff also relies upon *res ipsa loquitor*.

75) Defendants breached their duty of reasonable care to Plaintiffs in committing the acts described herein.

76) As a direct and proximate result of the aforesaid conduct, actions and inactions of Defendants and that stated elsewhere herein, Plaintiffs were caused to suffer and continue to suffer temporary and permanent physical injuries, physical pain and suffering, mental pain and suffering, including but not limited to, undue emotional distress, mental anguish, loss of enjoyment of life and disability, and economic damages including, but not limited to, past and future medical bills and expenses, past and future lost time and wages from work, past and future lost earning capacity and unnecessary attorneys' fees, all to the great detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount to be determined at trial, but in excess of \$75,000.00, plus interest, costs and attorneys' fees, and punitive damages, in an amount to be determined at trial.

COUNT III – NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

77) Plaintiffs adopt and incorporate by reference each and every allegation contained elsewhere herein verbatim with the same effect as if herein fully set forth.

78) In the context of the Defendants' special relationship with the Plaintiffs, as providers of medical diagnostic testing who were to safely and reasonably provide Zika Virus testing of Plaintiffs' specimen for the determination of the presence of the virus under the applicable standard of care, which entailed an especially likely risk of serious emotional distress, their undertaking of such action implicated the emotional well-being of the Plaintiffs.

79) As a direct and proximate result of the aforesaid conduct, actions and inactions of Defendants and that stated elsewhere herein, Plaintiffs were caused to suffer and continue to suffer temporary and permanent physical injuries, physical pain and suffering, mental pain and suffering, including but not limited to, undue emotional distress, mental anguish, loss of enjoyment of life and disability, and economic damages including, but not limited to, past and future medical bills and expenses, past and future lost time and wages from work, past and future lost earning capacity and unnecessary attorneys' fees, all to the great detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount to be determined at trial, but in excess of \$75,000.00, plus interest, costs and attorneys' fees, and punitive damages, in an amount to be determined at trial.

COUNT IV – NEGLIGENT HIRING, TRAINING, SUPERVISION & RETENTION

80) Plaintiffs adopt and incorporate by reference each and every allegation contained elsewhere herein verbatim with the same effect as if herein fully set forth.

81) Defendants had a duty to use reasonable care to select employees who are competent and fit to perform the duties required of an employee of the Public Health Laboratory.

82) Individual Defendants and medical technicians and agents of the Public Health Laboratory who performed the negligent acts described herein were at all times employees of the Defendant District of Columbia.

83) Upon information and belief, employees and agents of the District of Columbia within the Public Health Laboratory and/ or within the Department of Forensic Services have previously committed violations such as those at issue here.

84) Defendants had constructive and/ or actual knowledge of individual employees' and/ or agents previous violations.

85) The prior transgressions of individual employees and/ or agents are such to put Defendants on notice that the individual employees are unfit for duty.

86) The prior transgressions of individual employees are such to give rise to a duty to terminate the employment of individual employees.

87) Despite having the duty and authority to terminate the employment of individual employees, Defendants negligently maintained their employment.

88) As a direct and proximate result of the negligent retention of the employment of individual employees as described herein, individual employees were put in a position to commit the wrongs in this case.

89) Had Defendants exercised reasonable diligence and care, it would have been known that the individual employees were capable of inflicting this type of harm on Plaintiffs.

90) Defendants failed to use proper care in selecting, supervising, disciplining, and/or retaining individual employees.

91) Defendants failed to supervise and train individual employees in a manner sufficient to ensure that they would not engage in unlawful or tortious conduct.

92) Defendants knew or should have known that the supervision and training was inadequate to ensure that its individual employees do not engage in unlawful or tortious conduct.

93) As a direct and proximate result of the aforesaid conduct, actions and inactions of Defendants and that stated elsewhere herein, Plaintiffs were caused to suffer and continue to suffer temporary and permanent physical injuries, physical pain and suffering, mental pain and suffering, including but not limited to, undue emotional distress, mental anguish, loss of enjoyment of life and disability, and economic damages including, but not limited to, past and future medical bills and expenses, past and future lost time and wages from work, past and future lost earning capacity and unnecessary attorneys' fees, all to the great detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount to be determined at trial, but in excess of \$75,000.00, plus interest, costs and attorneys' fees, and punitive damages, in an amount to be determined at trial.

COUNT V – NEGLIGENT MISREPRESENTATION

94) Plaintiffs adopt and incorporate by reference each and every allegation contained elsewhere herein verbatim with the same effect as if herein fully set forth.

95) Defendants owed a duty to provide accurate information to Plaintiffs concerning the results of the Zika Virus tests and concerning their records which Defendants had a duty to manage and retain in an orderly manner.

96) Defendants negligently asserted the false representation that Plaintiffs had not submitted specimen for testing and falsely stated that Plaintiffs did not test positive for the presence of the Zika Virus.

97) Defendants were negligent in the assertion of these false statements by its agents and/ or employees. Careful review would have revealed that Plaintiffs had submitted specimen for testing, information which was available to Defendants agents and/ or employees. Further, proper review would have revealed that the test results were false.

98) The statements made by Defendants agents and/ or employees were made with the intention of having the Plaintiffs act and rely upon the negligent assertions.

99) Defendants knew that Plaintiffs would rely upon their negligent statements and knew, or should have known, that the Plaintiffs would incur injury and damages based upon such reliance.

100) Plaintiffs medical actions and treatment were taken in reliance of Defendants negligent statements.

101) As a direct and proximate result of the aforesaid conduct, actions and inactions of Defendants and that stated elsewhere herein, Plaintiffs were caused to suffer and continue to suffer temporary and permanent physical injuries, physical pain and suffering, mental pain and suffering, including but not limited to, undue emotional distress, mental anguish, loss of enjoyment of life and disability, and economic damages including, but not limited to, past and

future medical bills and expenses, past and future lost time and wages from work, past and future lost earning capacity and unnecessary attorneys' fees, all to the great detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount to be determined at trial, but in excess of \$75,000.00, plus interest, costs and attorneys' fees, and punitive damages, in an amount to be determined at trial.

COUNT VI- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

102) Plaintiffs adopt and incorporate by reference each and every allegation contained elsewhere herein verbatim with the same effect as if herein fully set forth.

103) Through the intentional acts detailed elsewhere herein, the Defendants directly and proximately caused injury to the Plaintiffs.

104) The Defendants' conduct was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

105) The Defendants intentionally and recklessly caused severe emotional distress to the Plaintiffs.

106) The Defendants knew or should have known of the particular vulnerability and susceptibility to emotional distress of those who are pregnant and submitting to Zika Virus testing.

107) As a direct and proximate result of the aforesaid conduct, actions and inactions of Defendants and that stated elsewhere herein, Plaintiffs were caused to suffer and continue to suffer temporary and permanent physical injuries, physical pain and suffering, mental pain and suffering, including but not limited to, undue emotional distress, mental anguish, loss of enjoyment of life and disability, and economic damages including, but not limited to, past and

future medical bills and expenses, past and future lost time and wages from work, past and future lost earning capacity and unnecessary attorneys' fees, all to the great detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount to be determined at trial, but in excess of \$75,000.00, plus interest, costs and attorneys' fees, and punitive damages, in an amount to be determined at trial.

JURY TRIAL DEMAND

The plaintiffs demand trial by jury.

Respectfully submitted,

HANSEL LAW, P.C.

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