19CVS11359

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 11359

Allison Stilley and Greg Stilley, Individually, and as co-Administrators of the Estate of Dexter Stilley,

Plaintiffs,

v.

Baby + Company Cary 1, LLC, Baby + Company WakeMed JV, LLC; Baby + Company, LLC; Baby + Company NC, LLC; Mandesa Smith, CNM; and Jualeah Early, CNM,

Defendants.

COMPLAINT
(JURY TRIAL DEMANDED)

NOW COME the Plaintiffs, complaining of the Defendants, alleging and saying as follows:

PARTIES

1. The decedent, Dexter Stilley, was born on and died on October 16, 2017 in Cary, Wake County, North Carolina.

2. The Estate of Dexter Stilley, Estate File no. 19 E 1016, was opened in 2019 in Durham County Superior Court, North Carolina.

3. Plaintiffs Allison and Greg Stilley are residents of Durham County, North Carolina. They are the parents of Dexter Stilley and co-Administrators of the Estate of Dexter Stilley.

4. Defendant Baby + Company Cary 1, LLC was a company organized and existing under the laws of the State of Delaware, with its principal place of business located in Cary, North Carolina.

5. The registered agent of Defendant Baby + Company Cary 1, LLC, is C.T. Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

6. Defendant Baby + Company WakeMed JV, LLC was a company organized and

existing under the laws of the State of Delaware, with its principal place of business located in Cary, North Carolina.

7. The registered agent of Defendant Baby + Company WakeMed JV, LLC is C.T. Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

8. Defendant Baby + Company, LLC was a company organized and existing under the laws of the State of Delaware, with its principal place of business located in North Carolina.

9. The registered agent for Defendant Baby + Company, LLC is C.T. Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

10. Defendant Baby + Company NC, LLC was a company organized and existing under the laws of the State of Delaware, with its principal place of business located in Cary, North Carolina.

11. The registered agent for Defendant Baby + Company NC, LLC, is C.T. Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

12. For the remainder of this Complaint, Defendants Baby + Company Cary 1, LLC; Baby + Company WakeMed JV, LLC; Baby + Company, LLC; and, Baby + Company NC, LLC will be collectively referred to hereinafter as "Defendant Baby + Co."

13. Upon information and belief, Defendant Mandesa Smith is a citizen of North Carolina residing in Wake County.

14. Upon information and belief, Defendant Jualeah Early is a citizen and resident of Florida.

15. Upon information and belief, at all times mentioned herein and material hereto, each Defendant mentioned in the Complaint was a "healthcare provider" within the definition of N.C.G.S. 90-21.11 with their principal office in Cary, North Carolina.

16. At all times mentioned herein and material hereto, Defendant Baby + Co. was licensed under North Carolina law to manage and operate and owned or leased a facility known as Baby + Co., located in Cary, North Carolina, wherein healthcare services were provided to the public.

17. Defendant Baby + Co. was, at all times relevant herein, a provider of medical care, including a provider of labor and delivery services to their patients, including those in North Carolina.

18. Defendant Smith and Defendant Early was each, at all times relevant herein, a provider of medical care, including a provider of labor and delivery services to their patients, including those in North Carolina.

19. Defendant Baby + Co., at the time set out in this Complaint, held itself out to the public as being competently staffed and available to properly care for its patients.

20. At all times mentioned herein and material hereto, Defendants Mandesa Smith, CNM and Jualeah Early, CNM provided medical and healthcare services as certified nurse midwives as employees, managers, and/or agents of Defendant Baby + Co.

21. On or about March 7, 2017, Ms. Stilley presented to Defendant Baby + Co. in Cary, North Carolina for obstetrical care and treatment by and through its agents, employees, and servants, including Defendants Smith and Early, and on such occasion and at times subsequent thereto the relationship of health care provider/patient was established.

22. On these occasions and at times subsequent thereto, while the health care provider/patient relationship existed, the treatment administered to Allison, Greg, and Dexter Stilley by Defendants, individually, and through its officers, agents, employees and servants was not in accordance with the standard of practice of members of the same health care profession with

similar training and experience situated in the same or similar communities at the time of the alleged acts giving rise to this action.

23. Defendants are liable for their own negligence and Defendant Baby + Co. is also liable for the negligence of their officers, agents, employees, servants, residents and physicians rendering care to Allison, Greg, and Dexter Stilley under the Doctrine of *Respondeat Superior*, and/or agency, and the acts of negligence of the individual defendants, including Defendants Smith and Early, are imputed to Defendant Baby + Co.

24. The medical care provided by all Defendants and all medical records pertaining to the alleged negligence have been reviewed by a person or persons who are reasonably expected to qualify as expert witnesses under Rule 702 of the Rules of Evidence, and who are willing to testify that the medical care did not comply with the applicable standard of care.

JURISDICTION

25. This Court has jurisdiction over this cause of action and personal jurisdiction over the defendants under N.C. Gen. Stat. §§ 1-75.4(1), 7A-240, and/or 7A-243.

26. Venue for this case is proper under N.C. Gen. Stat. §§ 1-80 and 1-82.

STATEMENT OF FACTS

27. Upon information and belief, at all times relevant hereto, Defendants Mandesa Smith and Jualeah Early practiced midwifery at Defendant Baby + Co. as agents, employees, and/or managers of Defendant Baby + Co.

28. Upon information and belief, at all times relevant hereto, Defendant Baby + Co. had a duty to supervise the care and provision of care by Defendants Smith and Early in the midwifery, healthcare, and treatment they provided at Defendant Baby + Co.

29. All Defendants owed Allison, Greg, and Dexter Stilley, while patients of Defendant

Baby + Co., the duty, when providing them with health care to:

a. Use reasonable care and diligence in the application of their knowledge and skill to their care;
b. Use their best judgment in their treatment and care; and
c. Provide them with treatment and care in accordance with the standards of care and practice among members of the medical professions and other medical support professions with similar training and experience as those situated in Cary, Wake County, North Carolina and/or similar communities.

30. The Defendants were, at all relevant times, legally responsible for the actions of their managerial employees and agents, and/or those employees and agents they supervised while acting within the course and scope of their employment and/or agency. In addition, they had the responsibility to ensure that their employees and agents complied with the standards of care made applicable to the provision of medical and ordinary care contained under State and Federal law.

31. Defendant Baby + Co. and its managerial employees and agents owed certain non-delegable, fiduciary duties to its patients, including the administrative duties to exercise reasonable care in:

a. monitoring and overseeing the treatment which was prescribed and administered by midwives, nurses and other health care professionals, practicing at the birthing center;
b. monitoring and overseeing the qualifications, competency, and compliance with their policies and the applicable standards of care of the midwives, nurses and other health care professionals practicing at the birthing center whether via employment, agency, or contract;
c. monitoring and overseeing the selection, training, and retention of midwives, nurses and other health care professionals practicing at the birthing center; and
d. monitoring and overseeing the policies and procedures, training on facility policies and procedures, and the supervision of midwives, nurses, and other health care professionals providing care to patients of the birthing center, as required by the exercise of ordinary care.

32. Defendant Baby + Co. had the non-delegable fiduciary duty to its patients, including the Stilley family, to exercise direct management and control of the birthing center on a full-time basis, and:

a. to develop and implement proper policies for the management and operation of the facility, to train employees and others providing care to patients at Defendant Baby + Co. concerning those policies and their job duties, to ensure that patient services were provided in accordance with all applicable local, state and federal regulations and codes;
b. to ensure that Baby + Co. staff (both professional and non-professional including employees, agents, and/or independent contractors) were properly hired and/or granted privileges, in sufficient numbers, screened, trained, and supervised; and that all staff was competent and fit to provide medical, custodial and nursing care for the health, safety, and proper care of Defendants' patients; and
c. to ensure that patients received, and that Defendants provided, the necessary care and services to avoid physical harm and mental suffering, a safe environment in which the patients received care.

33. On or about March 7, 2017, Plaintiffs, including Allison Stilley, began receiving prenatal and obstetrical care from Defendant Baby + Co. at Baby + Co. in Cary, North Carolina.

34. Ms. Stilley's estimated date of delivery was determined to be October 25, 2017.

35. Ms. Stilley's pre-pregnancy weight was noted to be 188 lbs. and her planned site of delivery was the Baby + Co. birth center in Cary, North Carolina.

36. From March 7, 2017 through the delivery of Dexter Stilley on October 16, 2017, Allison Stilley had her prenatal and obstetrical care managed by Defendants.

37. On or about October 16, 2017, at approximately 6:50 a.m., Allison Stilley was admitted to Defendant Baby + Co. in Cary, North Carolina for delivery of Dexter Stilley.

38. The Stilleys' doula arrived soon afterward and was present for the labor and delivery.

39. Prior to Plaintiffs' admission to Baby + Co. on October 16, 2017, Allison Stilley had a documented pregnancy weight gain of sixty four (64) lbs. at 37.6 weeks.

40. According to a policy and procedure at Baby + Co., if a mother had a pre-delivery weight gain of more than sixty (60) pounds, the midwives were required to communicate with the

supervising physician regarding the patient and/or plan for the delivery at the hospital and not at Baby + Co.

41. While under the care and treatment of Defendants prior to the delivery of Dexter Stilley, Defendants did not consult with the supervising physician for Defendant Baby + Co. regarding Allison Stilley and her pregnancy.

42. While under the care and treatment of Defendants prior to the delivery of Dexter Stilley, the supervising physician for Defendants did not examine or review the medical records of Allison Stilley.

43. In contradiction of the policy and procedure regarding weight gain, Defendants planned for the delivery of Dexter Stilley at the birth center rather than the hospital.

44. During their labor and delivery at Baby + Co., Plaintiffs were attended by Defendants, including Defendant Smith and Defendant Early.

45. During their labor and prior to delivery at Baby + Co., Plaintiff Allison Stilley was given nitrous.

46. Defendants did not properly monitor and/or document the administration of nitrous to Plaintiff Allison Stilley during her labor at Baby + Co.

47. At approximately 6:50 a.m. on October 16, 2017, Allison Stilley was noted to be 6 cm dilated and 80% effaced. At approximately 9:45 a.m., Allison Stilley was noted as 6.0 cm dilated and 90% effaced. At approximately 13:35, Allison Stilley was noted as 8.0 cm dilated and 70% effaced. At approximately 16:00, Allison Stilley was noted as 9.0 cm dilated and 90% effaced.

48. At approximately 14:30 on October 16, 2017, Defendants recorded that Plaintiffs' "risk status" was "1" and "appropriate for birth center."

49. Defendants did not discuss "risk status 1" with the Plaintiffs or with the supervising physician prior to the delivery of Dexter Stilley.

50. At 16:40 on October 16, 2017, Defendants documented that Plaintiff Allison Stilley is in "Active Labor."

51. At 16:50 on October 16, 2017, Defendants documented that Plaintiff Allison Stilley is "pushing."

52. At 16:51 on October 16, 2017, Defendants documented that Plaintiff Allison Stilley is in "Active Labor."

53. At 17:20 and again at 18:11 on October 16, 2017, Defendants documented that Plaintiff Allison Stilley was on the "Birth Stool."

54. At approximately 17:30 on October 16, 2017, Defendants recorded that Plaintiffs' "risk status" was "0."

55. There is no documentation addressing why Plaintiff Allison Stilley went from "risk status 1" at 14:30 to "risk status 0" at 17:30.

56. There is no indication in the medical records as to why Defendants altered Plaintiffs' risk status during delivery; however, Defendants did not discuss the changing risk status with the Plaintiffs or with the supervising physician prior to the delivery of Dexter Stilley.

57. At approximately 18:27 on October 16, 2017, Defendants recorded "start of Pushing: active pushing, guided. Minimal decent occurred during spontaneous pushing. Baby moves to +1 and retracts back to 0 station."

58. At approximately 18:41 on October 16, 2017, Defendants recorded "no decent past +1."

59. At 19:15 on October 16, 2017, Defendants recorded "Thin mec. Pushing."

60. Prior to 19:15 on October 16, 2017, during the labor and delivery of Plaintiffs, Defendant Early manually manipulated Dexter Stilly while he was in utero, by inserting her hand into Plaintiff Allison Stilley in an attempt to manually turn Dexter.

61. The Medical Director of Defendants admitted that grasping the head or turning a fetus manually or with forceps was not within the scope of practice for a midwife at Baby + Co.

62. In a statement released to the public in 2018, Defendants claimed that "[o]ne of the CNMs did gently attempt with fingers open **manual rotation**, a technique used to optimally tilt a baby's head towards its chest during pushing,..."

63. Despite this admission to the public, there is no documentation in Plaintiff's medical records of any attempt to manually manipulated Dexter while he was in utero.

64. Defendants intentionally omitted documentation of Defendant Early's attempt to manually turn Dexter from the Plaintiff's medical records.

65. Defendant Early exceeded the scope of care and practice for a midwife in North Carolina in her actions during Plaintiffs' labor and delivery.

66. According to the policy and procedure at Baby + Co., if a laboring mother had meconium present prior to delivery, the midwives were required to communicate with the supervising physician regarding the patient and/or plan for delivery at the hospital and not at Baby + Co.

67. During their labor and prior to delivery at Baby + Co., meconium was present in the fluids following the manual manipulation by Defendant Early.

68. At approximately 19:16 on October 16, 2017, Defendants recorded that Plaintiffs' "risk status" was "1."

69. There is no documentation addressing why Plaintiff Allison Stilley went from "risk status 1" at 14:30 to "risk status 0" at 17:30 to "risk status 1" at 19:16.

70. There is no indication in the medical records as to why Defendants altered Plaintiffs' risk status during delivery; however, Defendants did not discuss the changing risk status with the Plaintiffs or with the supervising physician prior to the delivery of Dexter.

71. At approximately 20:05 on October 16, 2017, Defendants recorded that oxygen was applied to Plaintiff Allison Stilley and her position was changed.

72. At approximately 20:10 on October 16, 2017, Defendants recorded that Plaintiff Allison Stilley had "Good recovery with O2."

73. Defendants did not document that oxygen was removed from Plaintiff Allison Stilley after the first administration of oxygen.

74. At approximately 20:55 on October 16, 2017, Defendants recorded "Pushing efforts improved. O2 still applied."

75. Defendants did not document that oxygen was given to Plaintiff Allison Stilley for a second administration and then removed again.

76. Neither prior to nor during the administration of oxygen did any of the Defendants explain to Plaintiffs the purpose of the administration of oxygen.

77. At approximately 21:21 on October 16, 2017, Defendants recorded that Plaintiff was "Complete at 16:40. Active pushing started at 1820…"

78. Defendants improperly documented the start of Plaintiff's pushing as 18:20 when it began much earlier.

79. During their labor and prior to delivery at Baby + Co., decreased heart rate and intolerance to labor were present in Dexter Stilley.

80. There is no documentation addressing the decreased heart rate and intolerance to labor that were present in Dexter Stilley.

81. Defendants did not properly communicate with the supervising physician, the hospital, or Allison and Greg Stilley regarding Dexter Stilley's decreased heart rate and intolerance to labor.

82. Dexter Stilley was born at approximately 21:21 on October 16, 2017. His Apgar scores as documented in the medical records of Baby + Co. were 2/1/1/0.

83. Following Dexter Stilley's birth, Defendants did not adequately and properly take steps to perform proper resuscitative measures.

84. Defendants did not properly resuscitate Dexter Stilley nor ever clear his airway.

85. Following Dexter's birth, Defendants did not adequately and properly take steps to have Dexter transferred to WakeMed for emergency neonatal care.

86. Following Dexter's birth, Defendants did not adequately and properly take steps to communicate with the staff of the EMS services and with WakeMed to ensure that Dexter received proper emergency neonatal care.

87. Upon acceptance by EMS, a thick "pea green" colored fluid began coming from Dexter's mouth and nose. EMS suctioned approximately 3-4 mL of the pea green fluid from Dexter.

88. Defendants informed EMS that Allison Stilly had been "actively pushing for four hours today."

89. Defendants provided inconsistent medical information regarding Allison and Dexter Stilley to EMS and WakeMed.

90. Upon admission to WakeMed, the staff of WakeMed suctioned meconium out of Dexter before intubation and documented that "[m]econium stained fluid poured from the nose and mouth" of Dexter Stilley.

91. Despite attempts to resuscitate and save Dexter Stilley, he was pronounced dead at 10:07 p.m. on October 16, 2017 as a result of hypoxic ischemic encephalopathy.

92. During the labor and prior to delivery at Baby + Co., Defendants requested that a doula, an unlicensed individual, record medical information for the Defendants because there were not enough employees of Defendants present to accomplish the medical documentation.

93. During their labor and prior to delivery at Baby + Co., Defendant Smith and other staff of Defendant Baby + Co. bragged about delivering multiple births at Baby + Co. that day to break the birth records for the number of babies "caught" by a midwife at Baby + Co.

94. Defendant Smith left during the delivery and resuscitation of Dexter Stilley to "catch" another baby at Baby + Co.

95. During their labor and prior to delivery at Baby + Co., an employee of Defendant Baby + Co. who was not licensed as a midwife in North Carolina introduced herself and informed Plaintiffs that she was a midwife working at Baby + Co.

96. According to the policy and procedure at Baby + Co., if the second stage of labor for a laboring mother was greater than two (2) hours, the midwives were required to communicate with the supervising physician regarding the patient and/or plan for delivery at the hospital and not at Baby + Co.

97. Defendants admitted that Plaintiff Allison Stilley actively pushed for more than four (4) hours during the labor and delivery of Dexter; however, Defendants did not contact the

supervising physician, the hospital, or communicate properly with Allison and Greg Stilley about that.

98. During the labor and delivery of Plaintiffs, the risk status of Plaintiffs increased and changed; however, no one contacted the supervising physician or communicated with the Plaintiffs about delivery at a hospital.

99. At all times during Allison Stilley's labor and delivery, she was under the care of Defendant Baby + Co., and its employees and/or agents and/or managers, including Defendant Smith and Defendant Early.

100. As a result of the negligent acts and conduct of all Defendants, Dexter Stilley died soon after his birth on October 16, 2017.

COMPLIANCE WITH RULE 9(j)

101. The preceding numbered paragraphs are incorporated herein by reference as fully as if set forth word for word.

102. Pursuant to Rule 9(j) of the North Carolina Rules of Civil Procedure, Plaintiffs assert that the medical care and all medical records pertaining to the alleged negligence that are available to the Plaintiff after reasonable inquiry have been reviewed by one or more persons who are reasonably expected to qualify as expert witnesses under Rule 702 of the Rules of Evidence and who are willing to testify that the medical care did not comply with the applicable standard of care.

103. If the Court later determines that Plaintiffs' Rule 9(j) expert(s) do not meet the requirements of Rule 702(b) or Rule 702(c), Plaintiffs will seek to have that person(s) qualified as an expert witness by motion under Rule 702(b) of the Rules of Evidence. Plaintiffs hereby move

the Court, pursuant to Rule 9(j) of the North Carolina Rules of Civil Procedure, for such person(s) to be qualified as expert witnesses under Rule 702(e) of the North Carolina Rules of Evidence.

104. Plaintiff reserves the right to raise a constitutional challenge to N.C.G.S. § 90-21.19 if and when the jury returns a verdict for noneconomic damages in excess of the statutory cap and the trial court seeks to reduce that award of damages pursuant to N.C.G.S. § 90-21.19.

FIRST CLAIM FOR RELIEF
Medical Negligence of Defendant Baby + Co.

105. Plaintiffs re-allege each and every preceding paragraph of this Complaint and incorporate each by reference as if fully set forth herein.

106. At all times relevant to this Complaint, Defendant Baby + Co., by and through its employees and agents, including its midwives and nurses, negligently failed to comply with the applicable standard of care as established by North Carolina General Statute § 90.21-12.

107. Defendant Baby + Co., by and through their employees and servants and agents, violated the standard of care prevalent in the community or similar communities at the time treatment was rendered to Plaintiffs, which constituted negligence on the part of the Defendant, said negligence being a proximate cause of the injury suffered, and that in particular, the Defendant was negligent in one or more of the following respects:

a. Its midwives, nurses, and other health care providers failed to possess and exercise that degree of professional knowledge and skill which other members of their profession and specialty, with similar training and experience and situated in the same or similar communities ordinarily possess and exercise;

b. Its midwives, nurses, and other health care providers failed to exercise and use their best judgment in the treatment and care of Plaintiffs;

c. Failed to ensure that its midwives, nurses, and other healthcare providers followed Defendant Baby + Co.'s procedures and protocols;

d. Failed to promulgate proper and sufficient rules, protocols, regulations, and procedures to ensure standard medical treatment to persons coming to

Defendant Baby + Co. for treatment of medical conditions;

e. Its midwives, nurses, and other health care providers failed to exercise reasonable care and diligence in applying their purported knowledge and skill toward the treatment of Plaintiffs;

f. Provided medical treatment and care to Plaintiffs when its midwives, nurses, employees, agents, and servants did not possess the necessary education, training and experience to provide such care;

g. Its midwives and nurses failed to utilize the proper chain of command to ensure that proper treatment was provided to Plaintiffs in an appropriate and timely fashion;

h. Failed to properly monitor and assess Allison and Dexter Stilley;

i. Failed to act upon the deteriorating status of Allison and Dexter Stilley;

j. Failed to have proper protocols, policies, and procedures and to properly monitor and supervise the provision of prescription medication and drugs at Defendant Baby + Co.;

k. Failed to properly administer and document administration of nitrous;

l. Failed to properly manage Allison Stilley's labor;

m. Failed to provide proper interventions to Plaintiffs;

n. Failed to provide appropriate and timely medical care, treatment, and intervention in response to Dexter Stilley's intolerance of labor;

o. Failed to take steps to ensure the timely delivery of Dexter Stilley to prevent his death;

p. Failed to properly respond to decreased heartrate and intolerance to labor in Dexter Stilley;

q. Failed to have proper protocols or to train employees, agents, and servants on correct conscious sedation protocols;

r. Failed to have proper protocols or to train employees, agents, and servants on correct fetal heart monitoring and documentation of same;

s. Failed to have proper protocols in place to prevent a midwife from acting outside of her scope of practice;

t. Failed to have proper protocols in place to require midwives, nurses, and other staff of Defendant Baby + Co. to immediately contact a supervising physician and/or the hospital when a midwife has acted outside her scope of practice;

u. Failed to have employees, staff, and agents properly trained to provide resuscitation and to have a proper plan of action for a resuscitation;

v. Failed to have Allison Stilley deliver in a hospital in accordance with protocols, regulations, policies, and procedures of Defendant Baby + Co.;

w. Failed to timely initiate the resuscitation of Dexter Stilley;

x. Failed to properly resuscitate Dexter Stilley;

y. Failed to ensure that the proper team and equipment were available for Dexter Stilley's delivery and resuscitation;

z. Failed to exercise that degree of care, skill and diligence that prudent midwives and labor and delivery nurses would have provided in like circumstances; and

aa. Defendant was negligent in other ways which shall be identified in discovery, including but not limited to, ways that may be described by health care providers and expert witnesses in the course of discovery in this action, any and all of which discovery is incorporated by this referenced as though fully set forth herein.

108. As a direct and proximate result of the negligence and breaches of the standard of care of Defendant Baby + Co. and its agents and employees as set forth above, Allison and Greg Stilley's son, Dexter, died on the same day as his birth. Plaintiffs sustained permanent mental and physical injuries, including the death of their baby; experienced and will continue to experience emotional pain, suffering, mental anguish, emotional distress, inconvenience and all of the injuries descried in the foregoing paragraphs; and other damages in excess of $25,000.00.

As a result of the foregoing, Plaintiffs have been damaged and are entitled to recover for all damages incurred and to be incurred from the Defendants, jointly and severally, in an amount in excess of $25,000.00 with interest from the date this suit is instituted.

SECOND CLAIM FOR RELIEF
Administrative/Corporate Negligence of Defendant Baby + Co.

109. The preceding numbered paragraphs are incorporated herein by reference as fully as if set forth word for word.

110. At all relevant times, Defendant Baby + Co. had a duty to act in accordance with the standards of care required of those owning, operating, managing, maintaining, and/or controlling a birth center, which was in accordance with the standards of practice of similar health care providers situated in Cary, North Carolina and/or similar communities at the time of the alleged acts of negligence.

111. Defendant Baby + Co. breached their administrative duties to Plaintiffs in a number of ways, including but not limited to:

a. Failing to hire and staff with a sufficient number of midwives, nurses, and other health care providers to provide the required care to the patients;

b. Failing to monitor and oversee the qualifications, competency, and compliance with its policies and the applicable standards of care of the midwives, nurses and other health care providers;

c. Failing to ensure that its health care providers use their best judgment in the treatment and care of patients and adopting and implementing policies which did not interfere with the best judgment of midwives, nurses and other health care providers practicing at the facility;

d. Failing to ensure proper physician supervision agreements were in place and followed to ensure proper care was provided to patients;

e. Failing to monitor and properly oversee the selection, retention, and training of midwives and nurses practicing at Baby + Co.;

f. Failing to ensure that the supervising physician and/or hospital were contacted for any labor and delivery which was outside of the scope of protocols of Baby + Co. midwives;

g. Failing to ensure that proper resuscitation procedures were in place and the staff was properly trained on emergency measures, including resuscitation;

h. Failing to ensure that a physician properly supervised the care of the patients at Baby + Co.;

i. Failing to adopt and implement policies which did not allow midwives and other health care providers practicing at the facility to exceed their scope of practice;

j. Failing to exercise ordinary care in having satisfactory systems and/or policies and procedures in place to ensure that medical record documentation was accurate and reliable;

k. Failing to ensure compliance with the systems and/or policies and procedures in place, if any, to ensure that medical record documentation was accurate and reliable;

l. Failing to ensure that proper policies and procedures were in place for the prescribing and administration of medication and drugs at Defendant Baby + Co.;

m. Failing to ensure there was an appropriate policy in place for dealing with emergency issues; and,

n. Other acts and omissions, which will be shown at the trial of this matter.

112. As a direct and proximate result of the negligence and breaches of the standard of care of Defendant Baby + Co. and its agents and employees as set forth above, Allison and Greg Stilley's son, Dexter, died on the same day as his birth. Plaintiffs sustained permanent mental and physical injuries, including the death of their baby; experienced and will continue to experience emotional pain, suffering, mental anguish, emotional distress, inconvenience and all of the injuries descried in the foregoing paragraphs; and other damages in excess of $25,000.00.

113. As a result of the foregoing, Plaintiffs have been damaged and are entitled to recover for all damages incurred and to be incurred from the Defendants, jointly and severally, in an amount in excess of $25,000.00 with interest from the date this suit is instituted.

THIRD CLAIM FOR RELIEF
Medical Negligence of Defendant Early and Defendant Smith

114. Plaintiffs re-allege each and every preceding paragraph of this Complaint and incorporate each by reference as if fully set forth herein.

115. The care provided to Plaintiffs by Defendant Early and Defendant Smith failed to comply with the applicable standard of care established by North Carolina General Statute §90-21.12.

116. Defendant Early and Defendant Smith violated the standard of care prevalent in the community or similar communities at the time treatment was rendered Plaintiffs which constituted negligence on the part of the Defendants, said negligence being a proximate cause of the injury suffered, and in particular, Defendant Early and Defendant Smith were negligent in one or more of the following respects:

a. Failed to possess and exercise that degree of professional knowledge and skill which other members of their profession and specialty, with similar training and experience and situated in the same or similar communities, ordinarily possess and exercise;

b. Failed to exercise and use their best judgment in the treatment and care of Plaintiffs;

c. Failed to exercise reasonable care and diligence in the application of their knowledge, skill, and ability, clinically, in the care and treatment of Plaintiffs;

d. Failed to properly assess Allison and Dexter Stilley, and/or failed to document their assessments and/or failed to properly communicate their assessments to a physician they were responsible for reporting to;

e. Failed to act in a manner that was consistent with the best interests of the Plaintiffs;

f. Failed to properly manage the labor and delivery of Allison Stilley;

g. Failed to properly interpret the decreased heart rate in Dexter Stilley and respond to fetal stress and intolerance of labor;

h. Failed to timely contact a supervising physician;

i. Failed to timely contact the hospital;

j. Failed to timely contact EMS;

k. Failed to provide appropriate interventions to Dexter Stilley for resuscitation:

l. Failed to recognize the in-utero injuries to Dexter Stilley;

m. Instructed Allison Stilley to continue to push when Dexter could not tolerate labor;

n. Failed to monitor Dexter Stilley's heart rate properly;

o. Allowed Allison Stilley to continue pushing with inadequate fetal heart monitoring in place to determine the condition of the baby;

p. Failed to ensure the timely delivery of Dexter Stilley;

q. Intentionally manipulated Dexter Stilley in utero in a manner which was outside of the scope of practice for a midwife;

r. Failed to follow the protocols, regulations, policies and procedures of Baby + Co.;

s. Failed to properly administer and document administration of nitrous;

t. Intentionally left Allison and Dexter Stilley while there were signs of fetal intolerance to attend to other patient(s) at Baby + Co.;

u. Provided inconsistent and incorrect information to EMS and hospital treaters regarding the labor and delivery;

v. Intentionally documented incorrect information in the medical records;

w. Failed to properly provide information and obtain a proper informed consent from Allison and Greg Stilley during the labor and delivery;

x. Intentionally relied upon a doula, an unlicensed provider, for medical record keeping;

y. Failed to have Allison Stilley deliver in a hospital in accordance with protocols, regulations, policies, and procedures of Defendant Baby + Co.;

z. Failed to timely initiate the resuscitation of Dexter Stilley;

aa. Failed to properly resuscitate Dexter Stilley;

bb. Failed to ensure that the proper team and equipment were available for Dexter Stilley's delivery and resuscitation;

cc. Defendants were negligent in other ways which shall be identified in discovery, including but not limited to, ways that may be described by health care providers and expert witnesses in the course of discovery in this action, any and all of which discovery is incorporated by this referenced as though fully set forth herein

117. As a direct and proximate result of the negligence and breaches of the standard of care of Defendant Baby + Co. and its agents and employees as set forth above, Allison and Greg Stilley's son, Dexter, died on the same day as his birth. Plaintiffs sustained permanent mental and physical injuries, including the death of their baby; experienced and will continue to experience emotional pain, suffering, mental anguish, emotional distress, inconvenience and all of the injuries descried in the foregoing paragraphs; and other damages in excess of $25,000.00.

118. As a result of the foregoing, Plaintiffs have been damaged and are entitled to recover for all damages incurred and to be incurred from the Defendants, jointly and severally, in an amount in excess of $25,000.00 with interest from the date this suit is instituted.

FOURTH CLAIM FOR RELIEF
Intentional Infliction of Emotional Distress – All Defendants

119. Plaintiffs re-allege each and every preceding paragraph of this Complaint and incorporate each by reference as if fully set forth herein.

120. That Plaintiffs Allison and Greg Stilley suffered severe emotional distress, mental suffering and anguish, as a result of the injury done to themselves and for the death of Dexter. That this was a reasonably foreseeable result of and was in fact caused by the Defendants' negligence, recklessness, and intentional actions.

121. That Plaintiffs Allison and Greg Stilley watched as Defendants attempted an

improper resuscitation of Dexter Stilley by placing the baby on the bed for resuscitation, with the bed bouncing up and down during Defendants' poorly attempted CPR and resuscitative measures. Plaintiffs Allison and Greg Stilley suffered severe emotional distress, mental suffering, and anguish as a result of the injury done to themselves and to Dexter. That this was a reasonably foreseeable result of, and was in fact caused by the Defendants' negligence, recklessness, and intentional actions.

122. As a result of these occurrences, the Plaintiffs are entitled to recover all damages, incurred and to be incurred from the Defendants, jointly and severely, in an amount in excess of $25,000.00 with interest from the date this suit is instituted.

FIFTH CLAIM FOR RELIEF
Survival Action and Wrongful Death

123. Plaintiffs re-allege each and every preceding paragraph of this Complaint and incorporate each by reference as if fully set forth herein.

124. Dexter Stilley died as a direct and proximate result of the Defendants' negligence, gross negligence, recklessness and intentional actions as described above and below, as well as other acts and omissions, which will be shown at the trial of this matter.

125. As a direct and proximate cause of the Defendants' breaches of duty and standards of care described in the foregoing and subsequent paragraphs, Dexter and his parents, Allison and Greg Stilley, suffered mental anguish, inconvenience, loss of capacity for enjoyment of life, loss of dignity, pain and suffering, permanent injury and disability, inconvenience, discomfort, wrongful death, and other damages in excess of $25,000.00.

126. The beneficiaries of the Estate of Dexter Stilley, pursuant to N.C. Gen. Stat. §28A-18-2, are entitled to recover the damages therein listed, including, but not limited to, pain and

suffering, death, reasonable funeral expenses, loss of society, companionship, love, loss of income, and comfort of Dexter to his family, in an amount in excess of $25,000.00.

SIXTH CLAIM FOR RELIEF
Punitive Damages

127. Plaintiffs re-allege each and every preceding paragraph of this Complaint and incorporate each by reference as if fully set forth herein.

128. Plaintiffs' injuries and Dexter's death, was a direct, foreseeable and proximate result of Defendants' gross negligence, intentional actions, and reckless disregard for the rights of others, including Allison, Greg, and Dexter Stilley.

129. Additionally, the conduct of Defendants in the following ways rises to the level of gross negligence, intentional actions, and a reckless disregard for the rights of others:

a. Intentionally manipulating Dexter while in utero when same was outside of the scope of practice for a midwife;

b. Intentionally documenting the medical records to change the time of Allison's active labor and omitting some of the actions of the midwives from the medical records;

c. Allowing a midwife licensed in another State but not in North Carolina to identify herself and act as a midwife in North Carolina;

d. Administering nitrous to a birth center patient without proper policy and procedures, including conscious sedation monitoring and documentation;

e. Ignoring decreased heart rate and fetal intolerance to labor;

f. Ignoring fetal distress;

g. Instructing and allowing Allison Stilley to push when her unborn baby was unable to tolerate labor;

h. Failing to give necessary treatment and care;

i. Failing to provide Allison and Greg Stilley with proper information to obtain a full and proper informed consent during the labor and delivery process;

j. Failing to provide competent medical, health, nursing, and overall care and supervision; and

k. Intentionally failing to contact the supervising physician or hospital for a greater than sixty (60) pound weight gain prior to delivery;

l. Intentionally failing to contact the supervising physician or hospital following presence of meconium stained fluids;

m. Providing contradictory information to EMS and hospital providers, thereby ensuring an inability for outside medical providers to best assess and assist a baby in need;

n. Failing to have properly trained resuscitative providers, including having plans and procedures in place to ensure timely and efficient transport to a hospital for heightened care.

130. Defendants' actions were in grossly negligent and in reckless disregard for the safety of Allison, Greg, and Dexter Stilley and thus entitling Plaintiffs to recover punitive damages.

WHEREFORE, Plaintiffs pray the Court for the following relief:

1. That the Plaintiffs have and recover of the Defendants, jointly and severally, a sum in excess of $25,000.00 in compensatory damages, costs, pre- and post-judgment interest, and all other appropriate relief available in the foregoing causes of action.

2. That the Plaintiffs' recovery herein not be limited by the statutory cap on non-economic damages by virtue of the Defendants' gross negligence.

3. That the Plaintiffs recover punitive damages.

4. That this matter be tried by a jury.

5. For such other and further relief as the Court may deem just and proper.

This the 16th day of August, 2019.

By: _____

Rachel A. Fuerst, State Bar No. 28273
Thomas W. Henson, Jr., State Bar No. 16669
HENSON FUERST, P.A.

3110 Edwards Mill Road, Suite 210
Raleigh, NC 27612
Telephone: (919) 781-1107
Facsimile: (919) 781-8048
rfuerst@lawmed.com
thomashenson@lawmed.com

Amberley G. Hammer, Esq.
HAMMER LAW, P.C.
North Carolina State Bar: #48208
Hammer Law, P.C.
Liberty Executive Park – Liberty III
1317 Executive Boulevard, Suite 150
Chesapeake, Virginia 23320
Telephone: (757) 670-3868
Facsimile: (757) 670-3865
ahammer@hammerlegalteam.com

Attorneys for Plaintiffs