

COPY

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

SHARON FRAUSTO and  
CHAUNNA BATES,

Plaintiffs,

vs.

ENDORSED  
FILED IN MY OFFICE THIS

APR 14 2010

*Quanita M. Durazo*  
CLERK DISTRICT COURT

LINDA ALLO

NO. **CV 2010 04754**

BIOCARESW.ORG  
a/k/a BIO CARE SOUTHWEST,  
a/k/a BIO CARE, INC.;  
NEW MEXICO LEARNING CENTER, LLC;  
PAUL MONTANO; and  
LEAH MONTANO,

Defendants.

**COMPLAINT FOR FRAUD, INTENTIONAL INFLECTION OF  
EMOTIONAL DISTRESS AND UNFAIR TRADE PRACTICES**

Plaintiffs, Sharon Frausto and Chaunna Bates, through their attorneys, the Harvey Law Firm, state as follows:

**PARTIES**

1. Plaintiff Sharon Frausto is a resident of Albuquerque, Bernalillo County, New Mexico.
2. Plaintiff Chaunna Bates is a resident of Albuquerque, Bernalillo County, New Mexico.
3. Defendant BIOCARESW.ORG (Bio Care) is a New Mexico company with a principal address of 6501 Eagle Rock Ave NE B-1, Albuquerque, New Mexico, 87113.

BIOCARESW.ORG also does business as “Bio Care Southwest”, “Bio Care, Inc.” and “Bio Care.”

4. According to New Mexico Public Regulation Commission, Bio Care represents itself to be engaged in the business of “Educational Tissue Bank Research/Development.”

5. Defendant Bio Care may be served with process through its registered agent, Anna Montano, at 6 Alegre Ct., Los Lunas, New Mexico, 87031.

6. Defendant New Mexico Learning Center (“Learning Center”) is a New Mexico company with a principal place of business located at 6501 Eagle Rock Ave NE B-1, Albuquerque, New Mexico, 87113.

7. Defendant Learning Center is engaged in business with Defendant Bio Care.

8. Learning Center may be served with process through its registered agent, Corporation Service Company, 125 Lincoln Ave, Suite 223, Santa Fe, New Mexico, 87501.

9. Defendant Paul Montano is a resident of Los Lunas, New Mexico and may be served with process at his residence located at 140 El Cerro Loop, Los Lunas, NM.

10. Paul Montano is the owner of Defendant Bio Care and Defendant Learning Center.

11. Defendant Leah Montano is a resident of Los Lunas, New Mexico and may be served with process at her residence located at 140 El Cerro Loop, Los Lunas, NM.

12. Defendant Leah Montano is an employee of Bio Care and is believed to be Paul Montano’s wife.

13. Venue and jurisdiction are proper in Bernalillo County, New Mexico.

#### **FACTUAL BACKGROUND**

14. Sharon Frausto was married to Johnny Frausto at the time of his death on January 10, 2010.

15. Chaunna Bates is Johnny Frausto's daughter.

16. Johnny Frausto died of pancreatic cancer and his dying wish was to donate his body for scientific research in an effort to advance a possible cure for cancer.

17. Upon recommendation by Heartland Hospice, Mrs. Frausto and Ms. Bates contacted Bio Care to discuss Mr. Frausto's wish and donating Mr. Frausto's organs.

18. Mrs. Frausto and Ms. Bates met with Bio Care representative Defendant Leah Montano.

19. Defendant Leah Montano represented that Bio Care was "well-established" and falsely represented that Bio Care would take good care of Mr. Frausto.

20. Defendant Leah Montano represented that Bio Care would pick up Mr. Frausto's body from the funeral home and harvest organs such as his liver, heart and pancreas, and then return his body to the funeral home for cremation.

21. Defendant Leah Montano represented that the process would take approximately two weeks.

22. Mrs. Frausto signed a contract authorizing Bio Care to temporarily take possession of Mr. Frausto's body and harvest Mr. Frausto's organs.

23. Beginning on January 25, 2010, Mrs. Frausto and Ms. Bates began calling Bio Care on a weekly basis inquiring as to Mr. Frausto's remains.

24. Every week, Plaintiffs were told that Mr. Frausto's remains were "not ready" to be returned.

25. On March 30, 2010, a local news station reported that Bio Care was being investigated in connection with boxes of body parts that were shipped from Bio Care, or New Mexico Learning Center, a related entity, to a medical waste facility in Kansas.

26. Upon hearing this report, Ms. Bates called Bio Care and spoke with Defendant Leah Montano, who denied any involvement in the shipments found in Kansas, but stated that she did not know where Mr. Frausto's remains were.

27. Later that day, Paul Montano called Mrs. Frausto and falsely claimed that the funeral home had not yet released Mr. Frausto's body.

28. In fact, Leah Montano had accepted the body on January 15, 2010.

29. In a subsequent telephone conversation, Defendant Paul Montano told Mrs. Frausto that Bio Care had Mr. Frausto's remains but represented that he did not have anyone available to cremate the body.

30. Mrs. Frausto asked Defendant Paul Montano to prove that he still had possession of Mr. Frausto's remains. Defendant Paul Montano hung up on Mrs. Frausto.

31. The New Mexico Office of the Medical Investigator has identified Mr. Frausto's torso, which was found in a walk-in freezer at the Bio Care office.

32. The exact location of Mr. Frausto's other remains, including his head and limbs, is unknown by Plaintiffs at this time, but they are believed to have been sent to a medical waste facility in Kansas.

33. The American Association of Tissue Banks has reported receiving a copy of a forged letter claiming that Bio Care was accredited by the American Association of Tissue Banks.

34. Bio Care is not accredited by the American Association of Tissue Banks.

## **FRAUD**

35. Defendants fraudulently represented that Bio Care would harvest Mr. Frausto's organs, such as his liver, heart and pancreas, and then return his body to the funeral home for cremation.

36. Defendants promised to treat Mr. Frausto's body with dignity and respect.

37. Defendants were apparently financially troubled and never intended to have Mr. Fausto cremated so that his remains could be returned to Plaintiffs in a dignified manner.

38. Defendants made this representation for the purpose of inducing Plaintiffs to donate Mr. Fausto's organs.

39. Plaintiffs relied on Defendants' representations and authorized Defendants to take temporary possession of Mr. Frausto's body.

40. Despite the promise to simply harvest organs and treat his body with dignity and respect, Mr. Frausto's limbs were sawed away from his torso.

41. Upon information and belief, despite promising to return the unusable parts of Mr. Frausto's body for cremation, Defendants improperly shipped Mr. Frausto's limbs to a medical waste facility.

42. As a consequence of being deceived, Plaintiffs are now suffering the profound emotional loss associated with the indignities that Mr. Frausto's body experienced in the hands of Defendants.

## **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

43. Defendants' conduct in accepting Mr. Frausto's body and promising dignity, respect and the advancement of medicine and thereafter disposing of it in the manner described

above is extreme and outrageous under the circumstances, going beyond the bounds of common decency, and is intolerable.

44. Defendants acted intentionally or recklessly.

45. As a result of Defendants' conduct, Mrs. Frausto and Ms. Bates have experienced severe emotional distress of such an intensity and duration that no ordinary person would be expected to tolerate it.

### **UNFAIR TRADE PRACTICES**

46. In connection with their business, Defendants made several misrepresentations including but not limited to the following:

- a. Defendants represented that they adhered to "the highest standards in the industry" and that they would provide "compassionate care."
- b. Defendants represented that they treat donors and families with "honesty, respect and dignity."
- c. Defendants told Plaintiffs that the donation of Mr. Frausto's body would "impact the development of drugs and therapies to treat diseases and illnesses."
- d. Defendants represented that they would match each donation with researchers and medical educators and return the remains to the funeral home.
- e. Defendants falsely represented that Bio Care was accredited by the American Association of Tissue Banks.

47. Defendants falsely represented that their services were of a high standard.

48. Defendants failed to deliver the quality of services they promised.

49. Each of these representations were false and were known to be false at the time they were made.

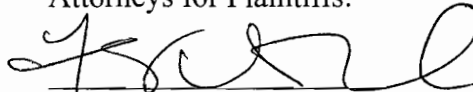
50. Plaintiffs are entitled to any and all damages available under NMSA 1978, § 57-12-10.

**RELIEF SOUGHT**

WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

- a. For damages to be determined by the jury, in an amount to adequately compensate Plaintiffs for all the injuries and damages sustained;
- b. For all general and special damages caused by the alleged conduct of Defendants;
- c. For the costs of litigating this case;
- d. Damages available under NMSA 1978, § 57-12-10; and
- e. For punitive damages sufficient to punish Defendants for their egregious conduct and to deter Defendants and others from repeating such atrocities; and
- f. For all other relief to which Plaintiffs are entitled under New Mexico law.

Attorneys for Plaintiffs:



Dusti D. Harvey  
Feliz A. Rael  
HARVEY LAW FIRM, LLC  
201 Broadway SE  
Albuquerque, NM 87102  
(505) 254-0000