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

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MARISSA CALHOUN; and STEPHEN
CASTANEDA,

Plaintiffs,

v.

REPRODUCTIVE PARTNERS MEDICAL
GROUP, INC.; and DOES 1-50, inclusive,

Defendants.

Case No.

COMPLAINT

1. **BAILMENT**
2. **CONVERSION**
3. **NEGLIGENT HIRING AND SUPERVISION**
4. **NEGLIGENCE/GROSS NEGLIGENCE**

DEMAND FOR JURY TRIAL

1 Plaintiffs MARISSA CALHOUN and STEPHEN CASTANEDA (collectively,
2 “Plaintiffs”) respectfully bring this Complaint and Demand for Jury Trial against Defendant
3 REPRODUCTIVE PARTNERS MEDICAL GROUP, INC. and DOES 1-50, inclusive (“RPMG”
4 or “Defendant”), and allege as follows:

5 **NATURE OF THE ACTION**

6 1. RPMG intentionally threw away Plaintiffs’ embryos. As a result, Plaintiffs might
7 not be able to have children who are biologically related to them.

8 2. Plaintiffs engaged RPMG to assist them in starting their family. They entrusted
9 RPMG to create embryos from Ms. Calhoun’s eggs and Mr. Castaneda’s sperm, and then to
10 transfer resulting embryo(s) to Ms. Calhoun.

11 3. But after creating Plaintiffs’ embryos, RPMG recklessly failed to label the
12 embryos. Worse yet, RPMG then intentionally took out those unlabeled embryos from an
13 incubator and threw them out.

14 4. RPMG touts itself to the public as a preeminent fertility clinic, providing the
15 highest quality of fertility services and having provided their fertility services to celebrities.

16 5. RPMG admits on its website: “Unquestionably one of the most if not the most
17 important determinant of IVF success is the quality of the embryo laboratory.” This case illustrates
18 the point perfectly. When RPMG’s laboratory performed in an incredibly sub-standard manner,
19 Plaintiffs’ IVF success was sabotaged.

20 6. Despite RPMG’s representations, RPMG intentionally discarded Plaintiffs’
21 precious embryos.

22 **PARTIES**

23 7. Plaintiff MARISSA CALHOUN is a citizen of Los Angeles County, California.

24 8. Plaintiff STEPHEN CASTANEDA is a citizen of Los Angeles County, California.

25 9. Defendant RPMG is and at all relative times herein was a corporation that owns
26 and operates clinics that provide fertility services around the world, including in Los Angeles
27 County, Orange County, and China.

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1 10. Plaintiffs are unaware of the true names or capacities, whether they are individuals
2 or business entities, of Defendants DOES 1-50, and therefore sue them by such fictitious names
3 pursuant to California Code of Civil Procedure section 474. Plaintiffs will seek leave of this Court
4 to insert the true names and capacities once they have been ascertained.

5 11. Plaintiffs are informed and believe, and on that basis allege, that at all times
6 material hereto: Defendants were, actually or ostensibly, the agents, representatives, and/or
7 employees of each and every other Defendant; Defendants were acting within the course and
8 scope of said alternative personality, capacity, identity, agency, representation, and/or
9 employment; Defendants were the trustees, partners, servants, joint venturers, shareholders, co-
10 conspirators, contractors, and/or employees of each and every other Defendant; the acts and
11 omissions alleged herein, while committed individually, were made by Defendants through such
12 capacity, and within the scope of their authority, and with the permission and consent of each and
13 every other Defendant, as to make Defendants jointly and severally liable to Plaintiffs for the acts
14 and omissions alleged herein.

15 **JURISDICTION AND VENUE**

16 12. This Court has jurisdiction over the entire action by virtue of the fact that this is a
17 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the
18 jurisdictional minimum of the Court.

19 13. This Court has personal jurisdiction over all Defendants. Each Defendant is, and at
20 all relevant times herein was, a citizen of and/or authorized to conduct business in the State of
21 California and/or conducted such business within the State of California, including the actions,
22 dealings, and/or omissions that caused or contributed to the harm giving rise to this action.

23 14. Jurisdiction is proper pursuant to California Code of Civil Procedure section 410.10
24 because the actions and/or omissions of Defendants that give rise to this legal action occurred in
25 Los Angeles, California.

26 15. Venue is proper in this Court pursuant to California Code of Civil Procedure
27 section 395.5 because one or more Defendants reside in Los Angeles County and the acts and/or
28 omissions giving rise to the injuries alleged herein occurred in Los Angeles County.

1 **GENERAL FACTUAL ALLEGATIONS**

2 **General Background of Assisted Reproductive Technology (“ART”)**

3 16. Fertility clinics occupy a unique place in our society. They allow people to realize
4 their dreams of becoming parents. Because of this, fertility clinics have great responsibility to
5 ensure they do everything possible to help their customers achieve their goal of parenthood.

6 17. ART involves fertility-related treatments in which human eggs or embryos are
7 manipulated. The most common type of ART is IVF.

8 18. During the IVF process, eggs are extracted from a woman and fertilized in a
9 laboratory with sperm to create a viable embryo. Later in the IVF process, the embryo is
10 transplanted into a uterus. The process of obtaining human eggs is lengthy and painful, typically
11 requiring significant medication, undergoing dozens of injections, monitoring through ultrasound
12 and other scans to check the development of the eggs, and performing a surgical procedure to
13 extract the eggs from the woman’s body.

14 19. The mature eggs are then fertilized with sperm in a laboratory. The fertilized eggs
15 are placed in an incubator to allow them to grow into viable embryos—typically for 5 days. Most
16 commonly, those embryos are then frozen until they are later thawed and transferred into a uterus.

17 20. IVF thus demands a significant physical, emotional, and financial toll: Women
18 typically take a substantial number of medications and hormones—often delivered via dozens of
19 painful shots—suffer through an emotional roller-coaster that is brought about by drastically
20 increased hormone levels, undergo multiple painful surgical procedures, and pay tens of thousands
21 of dollars. But this long, painful, emotionally challenging, and costly journey is worthwhile
22 because it allows people to have a family of their own.

23 21. All of this occurs against the backdrop of a ticking clock. A woman’s eggs have a
24 “biological clock,” meaning that egg quality declines as a woman ages.

25 22. The processes for creating, growing, and thawing embryos are very delicate. It is
26 vital they are performed with the utmost care, attention to detail, and proper procedures and
27 protocols to ensure that customers’ embryos are handled properly and safely.

28

1 **Plaintiffs' IVF Journey**

2 23. Ms. Calhoun's initial treatment at RPMG began in 2021, when she sought
3 assistance to preserve her fertility by having her eggs retrieved and frozen to further her future
4 goal of becoming a mother. Ms. Calhoun endured three difficult egg retrieval procedures in 2021
5 and 2022, with the retrieved eggs stored by RPMG. Ms. Calhoun and Mr. Castaneda were elated
6 that, despite Ms. Calhoun's health condition, they were fortunate to have enough eggs to have the
7 family they wanted when they were ready to start.

8 24. By October 2023, facing some unfortunate news that Ms. Calhoun needed to
9 undergo surgery that could further compromise her fertility, Ms. Calhoun and Mr. Castaneda made
10 the decision to take the next steps to fulfill their dreams of becoming parents under the advisement
11 of their fertility specialist, Dr. Andy Huang. In doing so, Plaintiffs contracted with RPMG to
12 create embryos using Ms. Calhoun's stored eggs and Mr. Castaneda's sperm.

13 **RPMG Intentionally Threw Away Plaintiffs' Embryos**

14 25. In late October 2023, RPMG informed Plaintiffs that all of Plaintiffs' eggs had
15 been fertilized and would be placed in an incubator to grow into viable embryos.

16 26. Tragically, a few days later, Dr. Huang, RPMG's employee who was primarily
17 responsible for Plaintiffs' care in October 2023, called Plaintiffs and informed them that RPMG
18 had discarded and thus destroyed all of Plaintiffs' embryos.

19 27. In the following days, Plaintiffs inquired as to how such a disaster could have
20 occurred. RPMG eventually admitted that (1) one of its employees had not labeled Plaintiffs'
21 embryos before placing them in the incubator, and (2) then took Plaintiffs' unlabeled embryos out
22 of the incubator and intentionally threw them away.

23 28. RPMG's incompetence and recklessness only increased from there. Plaintiffs
24 requested their records to help understand how RPMG committed such misconduct. But instead of
25 providing a full set of Ms. Calhoun and Mr. Castaneda's records, RPMG provided an incomplete
26 set of records on three separate occasions, repeatedly sending Plaintiffs a set of their records that
27 stopped before their embryos were thrown out. These records thus omitted any reference to
28 RPMG's losing Plaintiffs' embryos. Each time, Ms. Calhoun advised RPMG that it needed to send

1 her *complete* records.

2 **RPMG Lacked Proper Procedures and Protocols to Ensure that Plaintiffs' Embryos**
3 **Were Not Thrown Away**

4 29. Upon information and belief, Defendants did not properly train their employees,
5 agents, and/or persons working at their clinics on how to operate, manage, or maintain the embryo
6 incubators, including how to properly label patients' embryos and genetic material, such that they
7 were not discarded without patient approval, and how to handle any unlabeled embryos.

8 30. Defendants acted with a conscious disregard for the safety of its patients, including
9 Plaintiffs, because, without limitation, Defendants were aware of the dangerous consequences of
10 not labeling patients' fertilized eggs/embryos before placing them into incubators; failed to have
11 policies, procedures, and adequate training for their employees to ensure that all embryos placed
12 into incubators were labeled and that any unlabeled embryos would be handled appropriately;
13 knew that placing unlabeled embryos into incubators could result in the reckless and/or intentional
14 discarding of patient embryos absent consent for such; and knew that throwing out unlabeled
15 embryos could result in the reckless and/or intentional discarding of patient embryos absent
16 consent for such.

17 **FIRST CAUSE OF ACTION**

18 **BAILMENT**

19 **(Against All Defendants)**

20 31. Plaintiffs re-allege and incorporate by reference herein each and every allegation
21 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

22 32. A bailment arises where possession, but not ownership, of property is transferred
23 from one party, a bailor, to another, a bailee. Where the personal property of a bailor is delivered
24 to a bailee, a duty of care is owed.

25 33. RPMG received for safekeeping Plaintiffs' irreplaceable personal property, to be
26 safely and securely kept for the benefit of Plaintiffs, and to be redelivered to them upon demand.

27 34. Plaintiffs agreed to pay, and did pay, substantial sums in exchange for the
28 safekeeping of their material.

1 35. RPMG had a duty to exercise care in maintaining, preserving, and protecting
2 Plaintiffs' fertilized eggs and embryos. Further, RPMG had a duty to return Plaintiffs' embryos to
3 them undamaged.

4 36. Because of RPMG's wrongful conduct, as set forth herein, the irreplaceable
5 property of Plaintiffs was irreparably damaged, precluding their proper redelivery to Plaintiffs.

6 37. RPMG breached its duties to exercise care in the safekeeping of Plaintiffs' material
7 and to return the embryos, undamaged, to Plaintiffs.

8 38. As a direct and proximate result of RPMG's breach of the foregoing duties,
9 Plaintiffs have been deprived of the opportunity to use their embryos, and have suffered damages
10 in an amount to be determined at trial.

11 **SECOND CAUSE OF ACTION**

12 **CONVERSION**

13 **(Against All Defendants)**

14 39. Plaintiffs re-allege and incorporate by reference herein each and every allegation
15 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

16 40. RPMG received for safekeeping Plaintiffs' irreplaceable personal property, to be
17 safely and securely kept for the benefit of Plaintiffs, and to be redelivered to them—unharm—
18 upon demand.

19 41. Plaintiffs agreed to pay, and did pay, substantial sums in exchange for the
20 safekeeping of their material.

21 42. RPMG had a duty to exercise care in maintaining, preserving, and protecting
22 Plaintiffs' embryos and specifically to not discard them without Plaintiffs' express consent.
23 Further, RPMG had a duty to return Plaintiffs' embryos to them undamaged.

24 43. RPMG knowingly and intentionally discarded Plaintiffs' embryos.

25 44. Because of RPMG's wrongful conduct, as set forth herein, the irreplaceable
26 property of Plaintiffs was irreparably damaged, precluding their proper redelivery to them.

27 45. RPMG destroyed Plaintiffs' embryos without Plaintiffs' consent.

28 46. As a direct and proximate result of RPMG's breach of the foregoing duties,

1 Plaintiffs have been deprived of the opportunity to use their embryos, and have suffered damages
2 in an amount to be determined at trial.

3 **THIRD CAUSE OF ACTION**

4 **NEGLIGENT HIRING AND SUPERVISION OF EMPLOYEES**

5 **(Against All Defendants)**

6 47. Plaintiffs re-allege and incorporate by reference herein each and every allegation
7 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

8 48. Defendants, and each of them, hired the employees and/or agents that caused, by
9 their actions and/or inactions, Plaintiffs' embryos to be thrown away.

10 49. Defendants knew and/or should have known that their employees and/or agents
11 were unfit, not properly trained, and/or incompetent to label Plaintiffs' embryos, monitor their
12 embryos, handle unlabeled embryos, and/or monitor or use the embryo incubators.

13 50. Defendants' hiring, supervision, and/or training of employees and/or agents who
14 threw away Plaintiffs' embryos was a substantial factor in causing Plaintiffs' harm and damages.

15 **FOURTH CAUSE OF ACTION**

16 **NEGLIGENCE/GROSS NEGLIGENCE**

17 **(Against All Defendants)**

18 51. Plaintiffs re-allege and incorporate by reference herein each and every allegation
19 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

20 52. At all relevant times, Defendants and their agents and/or employees undertook to
21 treat, monitor, and care for Plaintiffs and their embryos. Defendants, and each of them, had a duty
22 to render the care necessary to achieve Plaintiffs' goals using the same level of skill, prudence, and
23 diligence that other members of their profession commonly possess and exercise.

24 53. Defendants breached their duties and the standard of care by failing to label, let
25 alone properly label, Plaintiffs' embryos; and by discarding Plaintiffs' embryos, without knowing
26 or having express authority and consent from Plaintiffs that such embryos were intended to be
27 discarded.

28 54. This conduct fell far below the applicable standard of care for a fertility clinic.

1 55. As a direct and proximate result of Defendants' misconduct, Plaintiffs have
2 suffered and will suffer substantial damages.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
5 follows:

- 6 1) For past, present, and future general and special damages in an amount to be
- 7 determined at the time of trial;
- 8 2) For punitive damages in an amount to be determined at the time of trial;
- 9 3) For costs of suit herein;
- 10 4) For pre- and post-judgment interest as allowed by law; and
- 11 5) For such other and further relief as the Court may deem just and proper.

12
13 DATED: September 17, 2024 PEIFFER WOLF CARR KANE CONWAY &
14 WISE, LLP

15 

16 By: _____
17 ADAM B. WOLF
18 MELISA A. ROSADINI-KNOTT

19 Attorneys for Plaintiffs

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs hereby demand a trial by jury on all claims so triable.

22 DATED: September 17, 2024 PEIFFER WOLF CARR KANE CONWAY &
23 WISE, LLP

24 

25 By: _____
26 ADAM B. WOLF
27 MELISA A. ROSADINI-KNOTT

28 Attorneys for Plaintiffs