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12
13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**

15 BEVERLY WILLHELM,

16 Plaintiff,

17 v.

18 PHILLIP M. MILGRAM, M.D.,

19 Defendant.

Case No.

COMPLAINT

1. Battery
2. Intentional Fraud
3. Constructive Fraud
4. Fraud by Concealment
5. Breach of Fiduciary Duty
6. Intentional Infliction of Emotional Distress
7. Unjust Enrichment
8. Negligence/Professional Malpractice
9. Breach of Contract
10. Breach of the Implied Covenant of Good Faith and Fair Dealing
11. Violation of California Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.

Amount demanded exceeds \$25,000

JURY DEMAND

1 **INTRODUCTION**

2 1. Defendant Dr. Phillip M. Milgram inserted his own sperm into his patient, Plaintiff
3 Beverly Willhelm. He did so without her consent and against her wishes. Some people call this
4 “medical rape.” But regardless of the name, this heinous act is unethical, unacceptable, and
5 illegal.

6 2. In 1988, Plaintiff and her husband turned to Defendant for fertility treatment. Without
7 Plaintiff’s knowledge or consent, Defendant used his own sperm to impregnate her, rather than, as
8 promised, sperm from an anonymous donor. Plaintiff learned of his betrayal only recently, after
9 her son obtained his 23andMe DNA profile. Plaintiff’s son is the result of Defendant’s medical
10 rape of Plaintiff. Plaintiff is shocked and devastated by Defendant’s abuse of his power to violate
11 her trust.

12 **PARTIES**

13 3. Plaintiff Beverly Willhelm is a resident of San Diego County.

14 4. Defendant Phillip M. Milgram practices medicine in San Diego County. At the relevant
15 times, he was working as an OBGYN in private practice. Defendant now describes himself as
16 practicing “addiction medicine” and is an attending physician at Scripps Memorial Hospital in La
17 Jolla.

18 **JURISDICTION & VENUE**

19 5. The Court has general jurisdiction to hear this case. The amount in controversy exceeds
20 \$25,000, exclusive of interest and costs.

21 6. The Court has personal jurisdiction over Defendant and venue is proper here because the
22 relevant events took place within the Court’s jurisdiction and Defendant regularly conducts
23 business here.

24 **FACTUAL BACKGROUND**

25 7. In 1988, Plaintiff and her husband were newlyweds and wanted to be parents. Unable to
26 conceive on their own, they turned to Defendant for help.

27 8. Plaintiff and her husband saw Defendant at his office in San Diego.
28

1 9. Plaintiff and her husband submitted to physical examinations and testing, and they
2 consulted with Defendant regarding the results and his recommendations for treatment. Defendant
3 advised the couple that their difficulty conceiving was a result of male-factor infertility.

4 10. Defendant explained that for Plaintiff to become pregnant, he would have to perform an
5 artificial insemination using donor sperm.

6 11. Artificial insemination involves a physician inserting sperm into a woman's uterus,
7 through her vagina, to facilitate pregnancy.

8 12. Plaintiff was unfamiliar with artificial insemination and sperm donation. She was only 20
9 years old at the time. She trusted Defendant fully.

10 13. Defendant told Plaintiff that his colleague was a physician at University of California, San
11 Diego who donated sperm "all the time," and that his colleague's samples had been used to
12 successfully achieve pregnancy. Defendant further represented that this donor was in good health,
13 including good mental health. From Defendant's statements, Plaintiff understood that the donor
14 would have been subjected to standard and appropriate health screenings for sperm donation.
15 Defendant affirmed that the donor was to remain anonymous; he would not know Plaintiff's
16 identity and she would not know his.

17 14. After discussing their options with Defendant, Plaintiff and her husband relied on
18 Defendant's statements and followed his advice: Plaintiff would undergo artificial insemination
19 using the above-referenced donor's sperm.

20 15. Plaintiff consented to be artificially inseminated with donor sperm from the anonymous
21 donor. Defendant told Plaintiff that the cost for the sperm sample would be approximately \$150.
22 Plaintiff instructed Defendant to procure the sperm sample and paid the \$150.

23 16. Rather than honor Plaintiff's wishes and follow her instructions, Defendant—without
24 Plaintiff's knowledge or consent—used his own sperm to impregnate her. As a result, she became
25 pregnant and gave birth to a son on September 13, 1988.

26 17. Defendant performed two amniocentesis procedures on Plaintiff during her pregnancy.

27 18. Plaintiff's son was born very prematurely, and Defendant performed a Caesarian section
28 on Plaintiff to deliver her son.

1 19. Defendant had no right to insert his own sperm into Plaintiff without her consent.

2 20. Defendant had a duty to disclose facts to Plaintiff based on the doctor-patient relationship.
3 His refusal to fulfill that duty began when she became his patient. Since then, Defendant
4 intentionally concealed the truth about his use of his own sperm to impregnate Plaintiff.

5 21. Plaintiff's claims arise out of Defendant medically raping her in 1988. Defendant's
6 fraudulent concealment of his medical rape of Plaintiff began when she was his patient during
7 that time frame. His fraudulent concealment continued into the 1990s when Defendant
8 intentionally misled Plaintiff during her divorce proceedings.

9 22. During Plaintiff's divorce proceedings, Plaintiff's husband disclaimed paternity of
10 Plaintiff's son and refused to pay child support because he was not the child's biological father.
11 Plaintiff learned that Defendant had failed to obtain the requisite signature from Plaintiff's
12 husband establishing paternity as required by California law in 1988. Because Defendant did not
13 obtain the signature of Plaintiff's husband on the required paperwork, as he said he would and
14 was required to do, Plaintiff's ex-husband avoided any obligation to financially support the child
15 they had chosen to bring into the world. Plaintiff was awarded full custody and her ex-husband
16 was not required to provide any financial support for the child, leaving Plaintiff to raise him
17 alone.

18 23. Through Plaintiff's divorce proceedings and beyond, Defendant concealed what he knew
19 to be the truth about Plaintiff's son's paternity. When Plaintiff's counsel reached out to Defendant
20 at the time of the divorce proceedings, Defendant called Plaintiff directly and angrily demanded
21 she tell him what was happening. Plaintiff explained that her husband was denying paternity to
22 avoid paying support and that her lawyer was looking for the paperwork he was supposed to have
23 signed when they elected to undergo artificial insemination at Defendant's recommendation.
24 Defendant hung up. He did not fulfill his duty to disclose his earlier misconduct to Plaintiff.
25 Defendant's scheme to fraudulently conceal his violation of Plaintiff's trust continues to this day.
26 His refusal to acknowledge paternity of Plaintiff's son constitutes a continuing fraud.

27 24. Until recently, Plaintiff believed that Defendant had followed her instructions and used the
28 specific donor sperm that he had promised and that she had paid for.

1 25. Plaintiff's son recently received a 23andMe DNA kit and was excited to learn about his
2 family history. He and Plaintiff were both shocked and disgusted to learn that Plaintiff's
3 biological father was Defendant, not the anonymous donor. They also learned that Plaintiff has a
4 half-sister in New York whom Defendant fathered through sperm donation.

5 26. Further investigation revealed additional disturbing facts about Defendant that made his
6 violation of Plaintiff's trust and bodily integrity even more devastating: according to public
7 records available through the state medical boards of California, Nevada, and New York,
8 Defendant was actively abusing narcotic drugs when he medically raped Plaintiff.

9 27. According to various public records, Defendant graduated from medical school in 1975.
10 He was first licensed to practice medicine in New York (License No. 132354) as of September
11 16, 1977. In 1980, he became licensed to practice in California (License No. 35411) and Nevada
12 (License No. 4084).

13 28. Based on allegations regarding his mistreatment of numerous patients in 1992-93,
14 Defendant surrendered his California medical license in 1999. The Board of Medicine charged
15 him with gross negligence, repeated negligent acts, incompetence, failure to maintain adequate
16 medical records, excessive treatment, prescribing Xanax and Prozac to his nurse-girlfriend (a
17 drug addict who died by suicide shortly thereafter) without a good-faith examination or medical
18 indication to support the prescription, practicing medicine while intoxicated, and using drugs or
19 alcohol in a manner injurious to himself. Defendant was charged with performing an abortion on
20 a patient who was not pregnant, performing other unnecessary surgical procedures, and failing to
21 obtain informed consent to surgical procedures. New York suspended his license around that
22 same time.

23 29. In 1999, Defendant was living and practicing in Nevada, but did not initially inform the
24 state licensing authority of the charges and surrender of his license in California or that his license
25 had been suspended in New York. Nevada revoked Defendant's medical license effective
26 September 13, 2000 due to his failure to provide such notification.

27 30. In 2004, Defendant successfully petitioned to have his license reinstated in California.
28 Based on information he provided to the California medical board in 2004 and 2008, the

1 presiding administrative law judge found as follows: “Sometime in the late 1980’s, petitioner
2 began abusing drugs and alcohol [including] the narcotic Demerol. . . . In 1988, petitioner
3 voluntarily entered the California medical Board’s Diversion Program for Physicians to address
4 his drug and alcohol abuse. He completed Diversion in 1992. Thereafter, petitioner continued his
5 practice in California until 1996 when he moved to Nevada.” *In re Milgram*, Case No. 20-2003-
6 152828 (Apr. 30, 2008) (cleaned up).

7 31. As part of the proceedings preceding his reinstatement to medical practice, Defendant
8 acknowledged that he likely treated patients while under the influence of drugs. Defendant also
9 represented to the medical board that he had “worked through all of the 12 steps” of his recovery
10 program. But that was false. Step 8 requires an addict to make a list of everyone he has harmed
11 and to be willing to make amends to them all. Step 9 requires making amends to those people
12 unless it would injure them to do so. Defendant has not even acknowledged, let alone made
13 amends or accepted his own culpability for, medically raping Plaintiff.

14 32. Substance abuse and other mental-health issues have long been understood to have a
15 hereditary component. In 1988, Defendant knew that he suffered from one or more mental-health
16 disorders and was a regular drug abuser. Yet he used his sperm—possibly swimming in the drugs
17 he was abusing—to impregnate Plaintiff.

18 33. Plaintiff’s son suffers from mental-health issues, which traumatizes both Plaintiff and her
19 son. Defendant’s use of his own sperm to impregnate a patient—knowing the substantial risks of
20 hereditary transmission of mental-health disorders—was outrageous and cruel.

21 34. Plaintiff would never have agreed to allow Defendant to use his own sperm to impregnate
22 her.

23 35. Plaintiff would never have agreed to allow Defendant to use the sperm of a drug abuser to
24 impregnate her.

25 36. Plaintiff relied on Defendant’s express representations, including his statement vouching
26 for the sperm donor’s mental health, in agreeing to undergo artificial insemination using donor
27 sperm.

28

1 37. Defendant abused his position of trust and authority to insert his own sperm into Plaintiff.
2 He violated his oath as a physician to violate an unsuspecting patient.

3 38. As a result of Defendant's repeated misconduct, Plaintiff has suffered severe and
4 debilitating anxiety and emotional pain, in addition to physical symptoms, shattering her trust and
5 her life.

6 39. Plaintiff had no reason to suspect that Defendant had medically raped her before learning
7 of her son's genetic relation to Defendant.

8 40. Defendant stood in a professional and commercial relationship with Plaintiff at the time of
9 the wrongful act, and fraudulently and knowingly concealed from Plaintiff what he had done to
10 her for the purpose of escaping responsibility for his misconduct. Because of his fraud,
11 concealment, and failure to disclose the truth despite his duty to do so, Plaintiff did not know, nor
12 in the exercise of reasonable care could she have been put on inquiry that Defendant used his own
13 sperm to impregnate her without her consent. Her cause of action thus did not accrue until she
14 learned the facts of Defendant's misconduct.

15 41. Defendant's conduct was malicious, oppressive, despicable, willful, and/or in reckless
16 disregard of Plaintiff's rights. She will seek leave under CCP § 425.13 to plead a claim for
17 punitive damages at the appropriate time.

18 **CLAIM 1: BATTERY**

19 42. Plaintiff incorporates all allegations of this complaint.

20 43. Defendant intentionally used his own sperm to impregnate Plaintiff.

21 44. Defendant acted without permission. Plaintiff did not consent to this contact.

22 45. The contact was unlawful, harmful, and offensive.

23 46. Plaintiff suffered severe and debilitating damages as a result.

24 **CLAIM 2: INTENTIONAL FRAUD**

25 47. Plaintiff incorporates all allegations of this complaint.

26 48. Defendant made the following false representations to Plaintiff at the time of her fertility
27 treatment in 1988: (1) the donor would be a colleague of Defendant's (not Defendant himself); (2)
28 the donor would be a physician at the University of California, San Diego; (3) the donor was in

1 good health, including mental health; (4) the donor donated “all the time” (and thus had been
2 medically screened and cleared as a suitable donor); and (5) the donation would be anonymous,
3 such that Plaintiff would not know the donor’s identity and he would not know hers. Plaintiff
4 consented to be artificially inseminated with anonymous donor sperm that met those conditions.

5 49. Defendant knew at the time that each of the representations in the paragraph above were
6 both false and material. Plaintiff would not have agreed to have Defendant use his own sperm to
7 inseminate her. Nor would she have agreed to use a sperm sample from a drug abuser to conceive
8 her child. Nor would she have agreed to use a sperm sample from a donor with a mental-health
9 disorder.

10 50. Defendant intended Plaintiff to rely on Defendant’s false representations.

11 51. Plaintiff was unaware and had no reason to suspect that Defendant’s representations were
12 false. She justifiably relied on Defendant’s lies and was damaged as a result.

13 52. As a direct and proximate result of Defendant’s misconduct, Plaintiff has suffered and
14 continues to suffer severe and debilitating damages.

15 **CLAIM 3: CONSTRUCTIVE FRAUD**

16 53. Plaintiff incorporates all allegations of this complaint.

17 54. A doctor-patient relationship existed between Plaintiff and Defendant, in which Plaintiff
18 reposed trust and confidence in Defendant’s integrity and fidelity to her as his patient.

19 55. Defendant deceived Plaintiff by holding himself out as someone she and her husband
20 could trust and, at the same time, not telling them that Defendant was going to use his own sperm
21 to impregnate her against her will. Defendant failed to obtain Plaintiff’s informed consent.

22 56. Defendant’s acts, omissions, and concealments described above breached his legal or
23 equitable duty, trust, or confidence to Plaintiff, in violation of the obligations imposed on him as
24 her physician by virtue of the position of trust and confidence he held.

25 57. As a direct and proximate result of Defendant’s misconduct, Plaintiff has suffered and
26 continues to suffer severe and debilitating damages.

27 **CLAIM 4: FRAUD BY CONCEALMENT**

28 58. Plaintiff incorporates all allegations of this complaint.

1 59. Defendant concealed material facts that he was under a duty to disclose to Plaintiff in
2 1988, including the following: (1) he was going to use his own sperm to impregnate her rather
3 than the promised donor sperm, and (2) he was going to use the sperm of an individual who
4 suffered from one or more mental-health disorders and abused drugs to impregnate her, rather
5 than the promised sperm of a healthy (and anonymous) donor.

6 60. Defendant concealed these material facts from Plaintiff with the intent to defraud her
7 because he knew she would not agree to allow him to use his sperm to impregnate her.

8 61. Had Defendant disclosed his ongoing mental-health disorders and drug abuse to Plaintiff
9 in 1988, she would not have consented to be treated by him at all, let alone to be inseminated
10 using his sperm.

11 62. Plaintiff was unaware that Defendant was going to or had used his own sperm to
12 impregnate her at that time, and would not have agreed to that had she known the truth Defendant
13 concealed from her.

14 63. As a direct and proximate result of Defendant's misconduct, Plaintiff has suffered and
15 continues to suffer severe and debilitating damages.

16 **CLAIM 5: BREACH OF FIDUCIARY DUTY**

17 64. Plaintiff incorporates all allegations of this complaint.

18 65. Defendant owed Plaintiff a fiduciary duty based on their doctor-patient relationship.

19 66. Defendant breached his fiduciary duty to Plaintiff by inserting his own sperm into her
20 body without her knowledge or consent, rather than using the promised donor sperm, and by
21 continuing to conceal the fact that he was the biological father of her son.

22 67. This breach impaired the value of Defendant's services.

23 68. Defendant's breach was intentional and directly and proximately caused Plaintiff
24 damages.

25 **CLAIM 6: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

26 69. Plaintiff incorporates all allegations of this complaint.

27 70. Defendant intentionally impregnated Plaintiff using his own sperm without her consent.

28 71. A doctor impregnating a patient with his own sperm without her consent is extreme and

1 outrageous. No reasonable person should be expected to tolerate or endure such an intimate
2 betrayal of trust.

3 72. A doctor impregnating a patient with sperm of a drug-abusing donor with a mental-health
4 disorder without her consent is extreme and outrageous. No reasonable person should be expected
5 to tolerate or endure such an intimate betrayal of trust.

6 73. As a direct and proximate result of Defendant's misconduct, Plaintiff has suffered and
7 continues to suffer severe and debilitating damages.

8 **CLAIM 7: UNJUST ENRICHMENT**

9 74. Plaintiff incorporates all allegations of this complaint.

10 75. Plaintiff paid Defendant approximately \$150 for the anonymous donor sperm that he
11 promised to use to inseminate her.

12 76. Defendant did not provide the promised anonymous donor sperm and instead used his
13 own sperm to inseminate Plaintiff. But he did not refund her payment. Defendant was not entitled
14 to retain payment for sperm he did not obtain.

15 77. Plaintiff seeks restitution for the cost of the sperm she paid for but did not receive.

16 **CLAIM 8: NEGLIGENCE AND/OR PROFESSIONAL MALPRACTICE**

17 78. Plaintiff incorporates all allegations of this complaint.

18 79. Defendant owed Plaintiff the following duties (among others): a duty to follow her
19 instructions regarding the artificial insemination she requested; a duty to perform the act(s) he
20 promised her explicitly; a duty not to inject Defendant's own bodily fluid into her body without
21 her consent; a duty to obtain her informed consent for any procedure he performed; and a duty to
22 disclose what he had done rather than fraudulently conceal it for decades.

23 80. Numerous statutory and common-law authorities create the duty for a doctor not to insert
24 his own sperm into his patient without her consent (and contrary to her express instructions).

25 81. Numerous statutory and common-law authorities create the duty for a doctor not to use,
26 without a patient's informed consent, sperm from a donor with mental-health disorders or who is
27 actively abusing drugs given the obvious risks to the child conceived.

28 82. Defendant intentionally concealed his misconduct from Plaintiff for decades.

1 83. As a direct and proximate result of Defendant's gross and intentional breach of his duties,
2 Plaintiff has suffered and continues to suffer severe and debilitating damages.

3 **CLAIM 9: BREACH OF CONTRACT**

4 84. Plaintiff incorporates all allegations of this complaint.

5 85. Plaintiff and Defendant entered a contract in which Defendant agreed to provide certain
6 fertility services desired by Plaintiff, specifically to provide artificial insemination services to
7 Plaintiff using specific donor sperm. Defendant failed to provide those services as required by
8 their contractual agreement, using his own sperm rather than sperm from the promised donor and
9 without disclosing the extent of his mental-health issues that might be genetically transmitted to
10 Plaintiff's child.

11 86. The parties' contract centered on inserting sperm into a woman's body, an act that is
12 inherently personal and intimate. Defendant's breach was of such a kind that serious mental
13 anguish was a particularly likely result, and thus Plaintiff may recover her emotional damages for
14 the traumatic results of Defendant's breach.

15 87. As a direct and proximate result of Defendant's intentional breach of contract, Plaintiff
16 has suffered and continues to suffer severe and debilitating damages.

17 **CLAIM 10: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**
18 **AND FAIR DEALING**

19 88. Plaintiff incorporates all allegations of this complaint.

20 89. Plaintiff performed her obligations under the parties' contract by paying for Defendant's
21 services.

22 90. Plaintiff did not receive the full benefit of her agreement with Defendant.

23 91. Defendant's action of using his own sperm to impregnate Plaintiff without her permission
24 unfairly frustrated and interfered with Plaintiff's rights to receive the benefits of the contract.

25 92. Defendant's action of using sperm from a known drug abuser with one or more mental-
26 health disorders to impregnate Plaintiff without her permission unfairly frustrated and interfered
27 with Plaintiff's rights to receive the benefits of the contract.
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1 93. As a direct and proximate result of Defendant's intentional this implied covenant, Plaintiff
2 has suffered and continues to suffer severe and debilitating damages.

3 **CLAIM 11: VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
4 **(BUS. & PROF. CODE §17200 ET SEQ.)**

5 94. Plaintiff incorporates all allegations of this complaint.

6 95. Defendant's conduct described above constituted an unlawful, unfair, and fraudulent
7 business act or practice.

8 96. Defendant's conduct described above was forbidden by law; offended public policy; was
9 immoral, unethical, oppressive, unscrupulous, and substantially injurious to Plaintiff; deceived
10 Plaintiff; and would have deceived a reasonable member of the public.

11 97. Plaintiff relied on Defendant's deception described above and was injured as a result.

12 98. Had Plaintiff known what Defendant was going to do to her, she would have gone to
13 another doctor.

14 99. Plaintiff was injured as a result of Defendant's unlawful, unfair, and fraudulent conduct.

15 **PRAYER FOR RELIEF**

16 Plaintiff respectfully requests the following relief:

- 17 (A) Declare that Defendant's acts and conduct violate California law;
18 (B) Enter judgment in Plaintiff's favor on all claims for relief;
19 (C) Award Plaintiff full compensatory damages, economic and non-economic,
20 including, but not limited to, damages for pain, suffering, mental anguish,
21 emotional distress, humiliation, and inconvenience that she has suffered and is
22 reasonably certain to suffer in the future;
23 (D) Order forfeiture and disgorgement of the professional fees Plaintiff paid to
24 Defendant;
25 (E) Order restitution, including for Defendant's failure to refund the costs Plaintiff
26 paid to procure donor sperm that was supposed to be used in her artificial-
27 insemination procedure;
28 (F) Order Defendant to provide a copy of his personal health history;

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- (G) Award pre- and post-judgment interest at the highest lawful rate;
- (H) Award all other relief in law or equity to which Plaintiff is entitled and the that Court deems equitable, just, or proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues within this complaint.

Dated: September 16, 2020

Respectfully submitted,

/s/ Adam B. Wolf

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