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15
16 **SUPERIOR COURT OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**
18

19 JASON DIAZ and MELISSA DIAZ,

20 Plaintiffs,

21 v.

22 HUNTINGTON REPRODUCTIVE
23 CENTER MEDICAL GROUP, A
24 MEDICAL CORPORATION;
25 BRADFORD A. KOLB; and FLOR
26 PARADA,

27 Defendants.

Case No.

COMPLAINT

1. FRAUDULENT CONCEALMENT
2. VIOLATION OF UNFAIR
COMPETITION LAW

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. This is another case against Huntington Reproductive Center Medical
3 Group a/k/a HRC Fertility (“HRC Fertility” or “HRC”) and Dr. Bradford Kolb for using
4 their patients’ genetic material in a manner to which their patients did not consent.

5 2. HRC Fertility misrepresented to Plaintiffs Melissa and Jason Diaz the
6 results of genetic testing conducted on Plaintiffs’ embryos. HRC Fertility told Plaintiffs
7 that they had stored a male embryo without a stomach-cancer mutation. But,
8 unbeknownst to Plaintiffs, no such embryo actually existed.

9 3. After Plaintiffs specifically directed HRC Fertility to transfer their male
10 embryo that did not have the stomach-cancer genetic mutation, HRC Fertility
11 transferred an embryo with this cancer mutation.

12 4. Melissa became pregnant from that embryo and had a baby boy. As a
13 result of HRC’s ineptitude, HRC Fertility guaranteed that the baby will develop
14 stomach cancer, require a total stomach-removal surgery, or both.

15 5. Recognizing its error, HRC Fertility then attempted to hide the truth. It
16 produced to Melissa an altered copy of her records that omitted the crucial information
17 of which embryo it transferred. (See paragraphs 73-74 to compare the actual records
18 with the falsified records that HRC sent to Melissa.)

19 6. Unfortunately, this is not the first time that HRC Fertility has falsified
20 patient records. To protect the public, HRC Fertility must provide true and accurate
21 records to its customers.

22 7. Nor is it the first time that HRC Fertility has transferred genetic material
23 in a manner contrary to its patients’ instructions. Such unauthorized use of eggs,
24 embryos, and/or sperm has become a tragic pattern at HRC Fertility.

25 8. This lawsuit, however, is not about HRC’s wrongfully transferring an
26 embryo with the stomach-cancer mutation to Jason and Melissa’s little boy. That issue
27 is being litigated in a simultaneously filed arbitration claim, since HRC Fertility now
28 makes its patients arbitrate such claims, outside the presence of a jury.

1 14. Defendant FLOR PARADA (“Parada”), at all times relevant herein, was
2 and is an agent and/or employee of HRC Fertility and a citizen of California. Ms.
3 Parada was HRC Fertility’s IVF Coordinator and the point of contact for the Plaintiffs.
4 She falsely told Melissa that a male embryo *without* the stomach-cancer mutation was
5 available for transfer, and then instructed the clinic to thaw an embryo *with* the
6 stomach-cancer mutation for transfer, despite Melissa’s clear, unmistakable, and
7 repeated instructions to avoid transferring an embryo carrying the stomach-cancer
8 mutation.

9 15. At all times relevant herein, the Defendants, and each of them, were the
10 agents, servants, partners, aiders and abettors, conspirators, employees, and joint
11 venturers of each other. At all times relevant herein, each and all of the Defendants
12 were operating and acting within the course and scope of their respective agency,
13 service, employment, partnership, conspiracy, and joint venture relationships, and
14 rendered substantial assistance and encouragement to each of the other Defendants.

15 **JURISDICTION AND VENUE**

16 16. This Court has personal jurisdiction over the defendants because
17 Defendants are residents and/or do business in the State of California.

18 17. Venue is proper in this Court because the Defendants reside in Los
19 Angeles County and the injury occurred in Los Angeles County.

20 **STATEMENT OF FACTS**

21 **The Beginning**

22 18. Jason and Melissa married in late 2018. Throughout their courtship and
23 after their marriage, they agreed that conceiving, delivering, and raising children
24 together was one of their most cherished dreams.

25 19. The Diazes’ dream of having a family was complicated by the fact that
26 each of them carried a genetic mutation that they did not want their children to inherit.

27 20. Melissa carries the BRCA-1 mutation, which significantly increases her
28 chances of developing breast and ovarian cancer.

1 21. Jason has a rare mutation in the CDH1 gene, which predisposes him to
2 hereditary diffuse gastric cancer. Only about 1% to 3% of all gastric cancers are
3 hereditary diffuse gastric cancers. Individuals with this CDH1 mutation have an
4 extremely high risk (well over 80%) of developing stomach cancer. In addition, women
5 carrying the CDH1 mutation have a 60% risk of developing lobular breast cancer.

6 22. The pernicious nature of hereditary diffuse gastric cancer makes the
7 CDH1 mutation uniquely dangerous. It is nearly impossible to detect hereditary diffuse
8 gastric cancer at an early stage. As a result, the standard medical recommendation is
9 for all individuals with the CDH1 mutation to have a total gastrectomy, or complete
10 stomach-removal procedure, to prevent or treat gastric cancer. This procedure requires
11 drastically altered eating habits and causes weight loss, ongoing nutrient deficiencies,
12 chronic diarrhea, and other serious and life-long difficulties that can prevent affected
13 people from engaging in many types of employment and general activities of daily
14 living.

15 23. On June 20, 2018, at the age of 32, Jason was diagnosed with diffuse
16 gastric cancer. After chemotherapy was unsuccessful, he was required to undergo a
17 gastrectomy (a stomach-removal surgery) in late 2018. Jason has a well-established
18 family history of gastric cancer and lobular breast cancer, including two aunts who died
19 of gastric cancer in their forties. Based on his family history and age at diagnosis,
20 Jason's treating physician suspected that he carried the CDH1 mutation and referred
21 him to a genetic counselor. Genetic testing confirmed that Jason carries the CDH1
22 mutation.

23 24. Jason and Melissa recognized the risks posed by their respective genetic
24 mutations. Acting responsibly for their future children, they did not attempt to conceive
25 naturally. After consulting with their treating physicians, they sought out IVF with
26 pre-implantation genetic testing.

1 **Choosing HRC Fertility & Dr. Kolb**

2 25. Jason and Melissa conducted research on HRC Fertility and Dr. Kolb
3 before they chose to become patients of HRC Fertility and Dr. Kolb.

4 26. Jason and Melissa relied upon the representations set forth in HRC
5 Fertility and Dr. Kolb’s websites, which boasted their purportedly high standards of
6 care, treatment, and technology. After researching several treatment options, they
7 chose HRC Fertility and Dr. Kolb for IVF services.

8 27. HRC Fertility operates nine locations throughout southern California.
9 HRC Fertility’s website touted HRC Fertility as being “the best” fertility center. It
10 highlighted HRC Fertility’s purportedly “state-of-the-art” embryology labs, claiming
11 that what sets HRC Fertility apart is its “remarkable lab personnel of highly trained
12 and dedicated embryologists who are devoted to obtaining the best possible results.”
13 HRC Fertility further claimed on its website that it does “everything possible to make
14 [its clients’] dreams come to life.” It went so far as to assert on its Yelp page that it had
15 “perfected fertility treatments and procedures.”

16 28. HRC Fertility is an enormous company. Its Yelp page acknowledged that
17 it is “one of the largest” fertility clinics in the world. HRC is owned by the Chinese
18 corporation Jinxin Fertility, which runs one of China’s largest fertility companies and
19 owns multiple large Chinese hospitals. Jinxin, in turn, sold a substantial portion of its
20 company to the global private equity firm Warburg Pincus, which proudly noted that
21 HRC Fertility is “ranked first among all [assisted reproductive services] providers in
22 the United States.”

23 29. HRC Fertility’s website boasted that Dr. Kolb “is internationally known
24 for his expertise in complex reproductive matters” and has “patients traveling from
25 around the world to HRC Fertility Pasadena to see him.” It further stated that his
26 “practice is known for helping to develop and implementing cutting edge technologies
27 in the genetic screening of embryos, the development of new laboratory technologies
28 and the development of highly efficient treatment.”

1 30. Based on these above-referenced representations, the Diazes fully trusted
2 HRC Fertility and Dr. Kolb to perform the promised IVF services competently so they
3 could achieve their dreams of parenthood without subjecting their children to the
4 stomach cancer Jason and his family members had endured.

5 31. The Defendants assured the Diazes that they would treat their most
6 intimate family decisions and precious personal property—their embryos—with the
7 utmost care.

8 32. From the beginning, the Diazes expressly advised HRC Fertility, its
9 employees, and Dr. Kolb that they sought IVF with preimplantation genetic testing to
10 avoid having a child with Jason’s CDH1 mutation for hereditary diffuse gastric cancer.

11 33. Jason and Melissa clearly and unequivocally communicated their
12 instruction for Defendants to transfer only embryos without the CDH1 mutation.
13 Defendants promised to follow this instruction.

14 34. At no point did Defendants disclose a risk that they would transfer an
15 embryo with the stomach-cancer mutation in derogation of Plaintiffs’ express
16 instructions.

17 35. Defendants never disclosed that HRC Fertility has a long history of using
18 its patients’ genetic material in ways that its patients did not authorize.

19 36. Defendants never disclosed that HRC Fertility’s processes and procedures
20 were insufficient to prevent HRC Fertility from using its patients’ genetic material in
21 ways contrary to its patients’ authorization.

22 37. HRC Fertility has concealed and hidden its previous misuse of genetic
23 material from potential clients/patients, and further hidden that it did not alter its
24 processes and procedures to prevent such misconduct.

25 **The IVF Services**

26 38. IVF is an expensive process, especially when incorporating pre-
27 implantation genetic testing and genetic counseling.

1 39. Melissa underwent two separate egg-retrieval procedures, on February
2 17, 2020, and June 11, 2020. HRC Fertility’s embryology laboratory created five
3 embryos from the February retrieval and four embryos from the June retrieval.

4 40. In June 2020, Jason and Melissa began planning for their first embryo
5 transfer with their point of contact at HRC Fertility: Flor Parada, IVF Coordinator.

6 41. On June 19, 2020, Melissa emailed Ms. Parada, with the subject line
7 “Genetic mutations in embryos”:

8 Hey Flor

9 I spoke to my insurance just to have a plan b and maybe try another ivf
10 cycle but it looks like I don't have enough coverage for another round. We
11 want to see what options we have with the embryos from the last cycle. I
12 dont want to know the gender yet but is there a way you can tell me out
of the 4 with genetic mutations how many have the BRCA and how many
have the CDH1 ?

13 42. On June 23, 2020, Ms. Parada emailed Melissa in response: “Number’s 2
14 and 4 have both markers, Number’s 1 and 5 only has your mark and not your husbands
15 And number 3 does not have any of your markers.” Melissa replied the same day: “Ok
16 great can you tell me the sex of 1 and 5 with my markers only. Just to see if there are
17 any boys in there since my gene doesn't really affect the boys. Please and thank you!”

18 43. Ms. Parada replied, also on June 23, 2020: “Ok, number one is a boy and
19 number 5 is a girl.” Melissa replied the same date, confirming that while she and Jason
20 wanted the sex of the embryo without either genetic marker to be a surprise, the sex of
21 the embryos with only BRCA was relevant: “[T]hank you so much Flor this way we have
22 an option of implanting the boy with the braca markers. Just in case we need a plan b.
23 Thank you again!”

24 44. On August 14, 2020, Dr. Kolb transferred the embryo that did not have
25 either mutation (embryo #3). Unfortunately, this transfer resulted in an early
26 miscarriage.

1 45. In December 2020, Melissa and Jason began planning another transfer.
2 On December 18, 2020, Ms. Parada asked Melissa via email which embryo Melissa
3 wanted to transfer. Melissa responded, referring to their prior discussions about the
4 embryo genetic-testing results: "We want to transfer the boy with BRCA." Ms. Parada
5 replied: "Got it."

6 46. Ms. Parada had misrepresented the preimplantation genetic testing
7 results. None of the embryos was a male embryo with the BRCA-1 mutation but not the
8 CDH1 mutation.

9 47. Melissa and Jason had relied on Ms. Parada's representations regarding
10 the preimplantation genetic testing. Melissa and Jason expected and believed that HRC
11 Fertility would transfer a male embryo with the BRCA-1 mutation that did not have
12 the CDH1 mutation.

13 48. On January 7, 2021, Flor Parada sent the following email to various people
14 at HRC Fertility, including "TeamKolb" and an embryologist, with the subject line "RE:
15 Which Embryo to Thaw for Melissa Flores-Diaz," wrongly instructing them to thaw an
16 embryo with the CDH1 mutation:

17 **From:** Flor Parada [REDACTED]
18 **Sent:** Thursday, January 7, 2021 10:28 AM
19 **To:** Caroline Moon [REDACTED]; TeamKolb [REDACTED]
20 **Cc:** PASEmbryologist [REDACTED]
21 **Subject:** RE: Which Embryo to Thaw for Melissa Flores-Diaz

22 Here you go,

23 **RESULTS SUMMARY: 1 EMBRYO MEET TEST SELECTION CRITERIA**

24 Procedure ID: PG519-020713-2, PGD19-002293-2
Biopsy Date: 2020-02-22 Biopsy Performed by: HRC Fertility Sample Type: Trophoctoderm Sample(s) Received: 2020-02-27
Sample Condition: All samples arrived in good condition.

Sample ID	Sample Barcode	Hereditary diffuse gastric cancer PGT-M Result	Breast-ovarian cancer, familial, 1 PGT-M Result	PGT-A Result	Sex	Interpretation
1	(21)2019061901	Mutant allele detected	Wildtype allele not detected	Euploid	XY	Abnormal

25
26 49. Despite the language "Mutant allele detected" under "Hereditary diffuse
27 gastric cancer PGT-M Result," neither Ms. Parada nor any of the email's recipients
28 questioned whether this was the intended embryo for transfer to Melissa.

1 50. The HRC Laboratory Requisition & Records form completed for Melissa’s
2 January 8, 2021 transfer confirmed that the embryo thawed for transfer was the
3 embryo with the cancer mutation. On this same form, which Dr. Kolb signed, boxes
4 were checked for “All PGS/PGD consents signed” and “PGS/PGD result – (FET).”

5 51. Dr. Kolb’s Embryo Transfer Note dated January 8, 2021 stated: “Informed
6 consent was given and consisted of a thorough review of the embryology report[.]” This
7 statement was false. Dr. Kolb did not conduct such a review of the embryology report
8 with Melissa or Jason before the transfer procedure. Had he advised them that he
9 planned to transfer an embryo with the “hereditary diffuse gastric cancer PGT-M
10 result,” Plaintiffs would not have consented to the transfer.

11 52. Dr. Kolb was very familiar with Jason and Melissa, who were his patients.
12 Dr. Kolb knew from the time of his first visit with them, on December 12, 2018, that
13 they intended to avoid passing on this rare mutation for stomach cancer. Jason and
14 Melissa’s genetic counselor sent reports regarding testing for the specific mutations
15 directly to Dr. Kolb in 2019. Dr. Kolb coordinated with Cooper Genomics to ensure that
16 it could conduct specific preimplantation genetic testing for CDH1.

17 53. Even if Dr. Kolb had forgotten his patients’ objective on the transfer date,
18 he had complete access to their charts, which repeatedly referenced the couple’s goal
19 and instructions to avoid transferring any embryo with a CDH1 mutation.

20 54. Despite his knowledge of the Diazes’ intention to avoid transferring any
21 embryo with the gastric-cancer mutation, Dr. Kolb transferred just such an embryo:
22 embryo #1, a male embryo with the CDH1 mutation.

23 55. Based upon his Embryo Transfer Note dated January 8, 2021, Dr. Kolb
24 transferred the embryo after reading the Preimplantation Genetic Testing Results.

25 56. Dr. Kolb did not have Jason and Melissa’s consent to place an embryo with
26 the CDH1 mutation within Melissa’s uterus. The scope of Plaintiffs’ consent to the
27 transfer procedure was limited by an express condition: that Dr. Kolb would transfer a
28

1 male embryo with the BRCA mutation, not the CDH1 mutation. Plaintiffs did not
2 consent to the transfer of any other embryo.

3 57. At the time of the January 8, 2021 transfer, Melissa and Jason had no
4 idea that Dr. Kolb had transferred an embryo with the CDH1 mutation. They believed
5 that he had transferred a male embryo with the BRCA-1 mutation (but not the
6 stomach-cancer gene), just as Melissa had instructed. Melissa's directive was
7 consistent with Jason and Melissa's prior instructions to Dr. Kolb and HRC Fertility
8 over the course of their treatment.

9 58. The Diazes were elated to welcome a baby boy in September 2021. Their
10 families shared their joy. Jason's side of the family through a giant party to celebrate
11 eliminating the CDH1 mutation from the Diaz family line. The Diaz family believed
12 that Jason and Melissa had broken the curse that had doomed other family members
13 to cancer and early death.

14 **Plaintiffs' discovery of Defendants' error and Defendant's subsequent**
15 **efforts to conceal the truth.**

16 59. Tragically, the family's joy was short-lived. In July 2022, when Plaintiffs'
17 baby boy was about ten months old, Melissa began corresponding with her new point
18 of contact at HRC Fertility, IVF Coordinator Yanyun ("Vikki") Zhang, to coordinate
19 either another transfer or, if necessary, an egg-retrieval procedure.

20 60. Melissa and Jason needed to move forward with plans for a second child
21 so Melissa could complete any additional egg-retrieval procedures that were necessary
22 before she was required to undergo an oophorectomy (ovary removal) due to her BRCA-
23 1 mutation.

24 61. Ms. Zhang offered to send Melissa the report showing which embryos
25 Melissa and Jason had stored at the clinic so they could decide which, if any, to transfer.

26 62. On July 15, 2022, Ms. Zhang emailed Melissa: "Before I send your embryo
27 report, just confirm with you, would you like to have fully report, including the gender
28 of the embryo?" Melissa responded the same day: "Yes please and thank you!"

63. Ms. Zhang emailed Melissa a copy of her embryo report at 10:28 a.m. on July 15, 2022. It included the following handwritten notations by HRC Fertility:

RESULTS SUMMARY: 1 EMBRYO MEET TEST SELECTION CRITERIA

Procedure ID: PGS19-020713-Z, PGD19-002293-Z
 Biopsy Date: 2020-02-22 Biopsy Performed by: HRC Fertility Sample Type: Trophoctoderm Sample(s) Received: 2020-02-27
 2020-02-23
 Sample Condition: All samples arrived in good condition.

S 3/13/2022

Sample ID	Sample Barcode	Hereditary diffuse gastric cancer PGT-M Result	Breast-ovarian cancer, familial, 1 PGT-M Result	PGT-A Result	Sex	Interpretation
1	(21)2019061901	Mutant allele detected	Mutant allele not detected	Euploid	XY	Abnormal <i>Boy</i>
2	(21)2019061901	Mutant allele detected	Mutant allele detected	Euploid	XY	Abnormal <i>Boy</i>
3	(21)2019061901	MUTANT ALLELE NOT DETECTED	MUTANT ALLELE NOT DETECTED	EUPLOID	XY	NORMAL <i>Boy</i>
4	(21)2019061901	Mutant allele detected	Mutant allele detected	Euploid	XX	Abnormal <i>girl</i>
5	(21)2019061901	Mutant allele detected	Mutant allele not detected	Euploid	XX	Abnormal <i>girl</i>

Handwritten notes in table:
 Row 1: *4BB Transferred 01/08/21*
 Row 2: *4BB*
 Row 3: *3BB Transferred 8/14/20*
 Row 4: *6BB*
 Row 5: *4BB*

64. Melissa recognized the third embryo as the embryo transferred August 14, 2020, which resulted in a miscarriage.

65. To her horror, Melissa also recognized the first embryo—clearly designated as carrying the mutant allele for hereditary diffuse gastric cancer—as the embryo transferred on January 8, 2021. Embryo #1 had become her beloved infant son.

66. Despite Ms. Parada’s representations, there was no male embryo that carried only the BRCA-1 mutation. All of the Diazes’ male embryos with BRCA-1 also carried CDH1.

67. At 11:07 a.m. on July 15, 2022, Melissa wrote back to Ms. Zhang: “I have a question the embryo we transferred that was successful has the gastric cancer gene?” Ms. Zhang did not respond to this email.

68. Five days later, on July 20, 2022, Ms. Zhang wrote to Melissa about an unrelated issue. She did not even acknowledge Melissa’s urgent question.

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1 69. On July 22, 2022, Melissa emailed Ms. Zhang, again asking for an
2 explanation for the embryo report:

3 Good morning Vikky

4 The reason why we did IVF was to eliminate the gastric cancer mutation if not
5 both genetic mutations. We have been so stressed thinking of what our son will
6 go through because of this genetic mutation. Can you please double check that
7 this is the correct report for our embryos? We are just confused and sad as we
8 had an understanding that my son had my genetic mutation the breast cancer
9 mutation. Is there any way this could be a mistake? Anything you recommend
10 we do? I am on the road but I wanted to send this email out as it is Friday. Can
11 you email me back and I can see it when I get to my destination thank you.

12 70. Ms. Zhang again did not respond.

13 71. Shortly thereafter, someone from HRC Fertility called Melissa and
14 admitted that HRC had made a serious mistake. This HRC Fertility representative
15 asked for Melissa and Jason to come to HRC Fertility’s office for “a sit-down.”

16 72. To determine whether there was any possibility that another embryo—an
17 embryo without the stomach-cancer genetic mutation—had been transferred, Melissa
18 requested her medical records from HRC Fertility. As a patient, Melissa was entitled
19 to receive a complete copy of her medical records under California law, including Cal.
20 Health & Safety Code § 123110.

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73. HRC Fertility provided what it represented to be Melissa's medical records on October 10, 2022. Within that records production was the following:

RESULTS SUMMARY: 1 EMBRYO MEET TEST SELECTION CRITERIA

Procedure ID: PGS19-020713-Z, PGD19-002293-Z
 Biopsy Date: 2020-02-22 2020-02-23 Biopsy Performed by: HRC Fertility Sample Type: Trophoctoderm Sample(s) Received: 2020-02-27
 Sample Condition: All samples arrived in good condition.

S 313 10022

Sample ID	Sample Barcode	Hereditary diffuse gastric cancer PGT-M Result	Breast-ovarian cancer, familial, 1 PGT-M Result	PGT-A Result	Sex	Interpretation
1	(21)2019061901	Mutant allele detected	Mutant allele not detected	Euploid		Abnormal
2	(21)2019061901	Mutant allele detected	Mutant allele detected	Euploid		Abnormal
3	(21)2019061901	MUTANT ALLELE NOT DETECTED	MUTANT ALLELE NOT DETECTED	EUPLOID		NORMAL
4	(21)2019061901	Mutant allele detected	Mutant allele detected	Euploid		Abnormal
5	(21)2019061901	Mutant allele detected	Mutant allele not detected	Euploid		Abnormal

74. This report was an altered, falsified version of the report she had received from Ms. Zhang on July 15, 2022. The July 2022 production, unlike the October 2022 production, showed the embryo grading, sex, and notes about which embryos had been transferred and transfer dates:

RESULTS SUMMARY: 1 EMBRYO MEET TEST SELECTION CRITERIA

Procedure ID: PGS19-020713-Z, PGD19-002293-Z
 Biopsy Date: 2020-02-22 2020-02-23 Biopsy Performed by: HRC Fertility Sample Type: Trophoctoderm Sample(s) Received: 2020-02-27
 Sample Condition: All samples arrived in good condition.

S 313 10022

Sample ID	Sample Barcode	Hereditary diffuse gastric cancer PGT-M Result	Breast-ovarian cancer, familial, 1 PGT-M Result	PGT-A Result	Sex	Interpretation
1	(21)2019061901	Mutant allele detected	Mutant allele not detected	Euploid	XY	Abnormal - Boy
2	(21)2019061901	Mutant allele detected	Mutant allele detected	Euploid	XY	4BB Transferred 01/08/22 Abnormal - Boy
3	(21)2019061901	MUTANT ALLELE NOT DETECTED	MUTANT ALLELE NOT DETECTED	EUPLOID	XY	NORMAL - Boy
4	(21)2019061901	Mutant allele detected	Mutant allele detected	Euploid	XX	3BB Transferred 8/14/20 Abnormal - girl
5	(21)2019061901	Mutant allele detected	Mutant allele not detected	Euploid	XX	4BB Abnormal girl

75. HRC Fertility's falsified records from October 2022 are evidence of HRC Fertility's knowledge of and intent to hide its misconduct.

1 attempting chemotherapy to delay surgery. An early gastrectomy would leave
2 Plaintiffs' child with additional lifelong physical and cognitive impairments from
3 malnutrition.

4 82. Regardless of when the gastrectomy occurs, the effects of the medically
5 inevitable gastrectomy on the child's quality of life cannot be overstated. He will not be
6 able to eat and digest food normally and will experience daily gastrointestinal pain and
7 discomfort. Most post-gastrectomy patients have chronic diarrhea that limits their
8 education and employment prospects. He will be forced to undergo medical monitoring
9 for life.

10 83. Respondents' misconduct has astonishing financial repercussions,
11 including the substantial costs of future medical expenses, occupational therapy,
12 nutritional services, other supportive services, and likely disability from many types of
13 employment for which he would otherwise be suited. Jason and/or Melissa will likely
14 also incur significant lost wages to care for their son.

15 84. Jason and Melissa have suffered and will continue to endure
16 unimaginable mental anguish from Defendants' egregious errors. After Jason and
17 Melissa acted responsibly—and expended considerable funds—to avoid passing down
18 Jason's CDH1 mutation, HRC Fertility, Flor Parada, and Dr. Kolb knowingly, willfully,
19 or intentionally undertook a series of actions damning Plaintiffs' child to a future with
20 a gastrectomy and its attendant consequences, hereditary diffuse gastric cancer, early
21 death, or all three.

22 85. The child himself, of course, will also experience untold pain and suffering
23 because of Defendants' misconduct.

24 86. Plaintiffs have and will continue to suffer damages from Defendant's
25 efforts to conceal what happened with the January 8, 2021 transfer.

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**FIRST CAUSE OF ACTION
FRAUDULENT CONCEALMENT
(All Defendants)**

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2
3 87. Plaintiffs incorporate all paragraphs by reference, as if fully set forth
4 herein.

5 88. HRC Fertility and Dr. Kolb marketed and promoted their services and
6 made representations to the public and to Plaintiffs regarding the quality of those
7 services as described herein.

8 89. Defendants' representations were false, and Defendants either knew the
9 truth or made the representations without regard for the truth. HRC Fertility and Dr.
10 Kolb intended for Plaintiffs to rely on their representations and pay them to perform
11 the above-referenced IVF services, and Plaintiffs reasonably relied on these
12 representations when purchasing such services. Moreover, had Plaintiffs been apprised
13 of the deficiencies affecting HRC Fertility's relevant systems and protocols, Plaintiffs
14 would not have purchased or continued purchasing such services.

15 90. At the time that they advertised and sold their services to Plaintiffs, HRC
16 Fertility and Dr. Kolb intentionally suppressed and concealed material facts
17 concerning the services being provided, including but not limited to the fact that HRC
18 had a history, as alleged, of misusing patients' genetic material in ways not authorized
19 by their patients, and that there were not sufficient protocols and procedures in place
20 to prevent such misuse, including the wrongful transfer of an embryo.

21 91. HRC Fertility and Dr. Kolb knew or reasonably should have known that
22 HRC Fertility and Dr. Kolb's systems and processes were inadequate to protect against
23 such damage to Plaintiffs. HRC and Dr. Kolb intentionally failed to notify Plaintiffs of
24 these risks, and HRC furthermore failed to fully inform them of the true circumstances
25 when questions arose about the January 8, 2021 transfer.

26 92. The omission and concealment of these facts made HRC Fertility and Dr.
27 Kolb's actual disclosures deceptive regarding HRC Fertility's systems and processes,
28

1 the risks of a wrongful embryo transfer, HRC Fertility's supposed expertise in IVF, and
2 the facts of the January 8, 2021 transfer.

3 93. At the time they were using HRC Fertility and Dr. Kolb, Plaintiffs had no
4 reasonable means of knowing that HRC Fertility and Dr. Kolb's systems and processes
5 were inadequate, or that HRC Fertility and Dr. Kolb's representations about such
6 systems were incomplete, false, or misleading for failure to disclose such inadequacies.
7 Plaintiffs did not and reasonably could not have discovered HRC Fertility and Dr.
8 Kolb's deception prior to purchasing (and continuing to pay for) these services.
9 Moreover, had Plaintiffs been apprised of the true facts, Plaintiffs would have taken
10 different, immediate action (*i.e.*, not use HRC Fertility), to HRC Fertility and Dr. Kolb's
11 immediate detriment.

12 94. When Melissa requested her patient records in October 2022, HRC
13 Fertility deceived Plaintiffs by altering the portions of her records showing that
14 Defendants had authorized and completed the transfer of an embryo with the CDH1
15 mutation.

16 95. Defendants were under a duty to disclose the true facts to Plaintiffs. This
17 duty arose by reason of Defendants' exclusive knowledge regarding the true facts, and
18 because Defendants made partial, erroneous representations about relevant facts
19 without disclosing material facts needed to understand the truth.

20 96. Defendants intended to deceive Plaintiffs by concealing the true facts.

21 97. Plaintiffs reasonably relied to their detriment upon Defendants' material
22 omissions and misrepresentations. Plaintiffs were unaware of the omitted material
23 facts and would not have acted as they did had these facts been disclosed.

24 98. Plaintiffs sustained damage as a direct and proximate result of
25 Defendants' fraud, deceit and fraudulent concealment.

26 99. Defendants' deceit and concealment caused Plaintiffs' harm.

27 100. The foregoing acts and omissions were committed maliciously,
28 oppressively, deliberately, with intent to defraud, and in reckless disregard of

1 Plaintiffs’ rights, interests, and well-being to enrich HRC Fertility and Dr. Kolb.

2
3 **SECOND CAUSE OF ACTION**
4 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (“UCL”), CAL. BUS. & PROF. CODE**
5 **§ 17200 ET SEQ.**
6 **(Defendants HRC Fertility and Dr. Kolb)**

7 101. Plaintiffs incorporate all paragraphs by reference, as if set forth fully
8 herein.

9 102. The UCL prohibits acts of “unfair competition,” including any “unlawful,
10 unfair or fraudulent business act or practice.”

11 103. Defendants’ conduct is unfair because it is immoral, unethical,
12 unscrupulous, oppressive, and substantially injurious. Plaintiffs entrusted Defendants
13 to preserve their options for procreating without providing their child with the CDH1
14 gene mutation. Defendants breached that trust by, among other things:

- 15 i. failing to adequately supervise and institute systems and processes
16 that would ensure against the improper use of clients’ embryos,
17 resulting in an unauthorized embryo transfer;
- 18 ii. failing to adequately supervise and institute systems and processes
19 that would ensure against the unauthorized use of clients’ embryos,
20 resulting in an unauthorized embryo transfer;
- 21 iii. failing to adequately supervise and institute systems and processes
22 that would ensure the provision of accurate information about the
23 genetic characteristics of clients’ embryos, resulting in an
24 unauthorized embryo transfer;
- 25 iv. failing to follow reasonable scientific and laboratory procedures for
26 safeguarding embryos and patients in their care, resulting in an
27 unauthorized embryo transfer; and
28

1 v. failing to disclose and actively concealing the lack of appropriate
2 processes and systems in place to protect Plaintiffs' embryos, resulting
3 in an unauthorized embryo transfer.

4 104. The gravity of the harm resulting from Defendants' conduct far outweighs
5 any conceivable utility of this conduct. There are reasonably available alternatives that
6 would further Defendants' legitimate business interests, such as implementing
7 reasonable protocols and procedures, to prevent the misuse of reproductive material.

8 105. Plaintiffs could not have reasonably avoided injury from Defendants'
9 unfair conduct. Plaintiffs did not know, and had no reasonable means of learning, that
10 Defendants were not properly using their patients' genetic material, interpreting
11 preimplantation genetic testing, safeguarding the embryos in their custody and control,
12 and implementing adequate systems and processes in place to do so.

13 106. Defendants' conduct also is fraudulent in violation of the UCL because it
14 is likely to deceive a reasonable consumer.

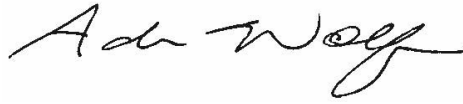
15 107. Defendants knowingly and intentionally concealed from Plaintiffs that
16 they had previously misused other patients' biological material, as alleged, prior to
17 working with Plaintiffs, and they did not put in place sufficient safeguards to ensure
18 the same errors would not occur with Plaintiffs.

19 108. Defendants HRC Fertility and Dr. Kolb volunteered specific information
20 to Plaintiffs through advertising, on the HRC Fertility website, through conversations
21 with Dr. Kolb, and in documents that Defendants' services were of an exceptionally
22 high quality.

23 109. Defendants made these specific representations despite knowing (and
24 without disclosing) that Defendants' systems were inadequate to protect against the
25 unauthorized use of Plaintiffs' genetic material. Defendants' partial representations
26 gave rise to an independent duty to disclose to Plaintiffs that the systems and processes
27 in place at HRC Fertility's facility were inadequate to protect against such damages.
28

1 Date: March 1, 2023

Respectfully submitted,

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3
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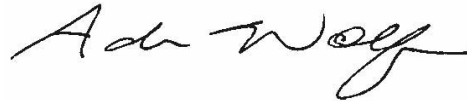
23 *Attorneys for Plaintiffs*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs Jason Diaz and Melissa Diaz hereby demand a jury trial of all causes
3 of action so triable.

4 Date: March 1, 2023

Respectfully submitted,

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