

IN THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

KRYSTENA MURRAY,)	
)	
Plaintiff,)	
)	
vs.)	Case Number: _____
)	
COASTAL FERTILITY SPECIALISTS, LLC;)	JURY TRIAL DEMANDED
DR. JEFFREY GRAY; AND)	
DOES 1 THROUGH 5, inclusive,)	
)	
Defendants.)	

COMPLAINT

Plaintiff Krystena Murray (“Plaintiff” or “Ms. Murray”), by and through her attorneys of record, asserts the following against Defendants Coastal Fertility Specialists, LLC (“Coastal Fertility”), Jeffrey Gray (“Dr. Gray”), and Does 1 through 5 (collectively, “Defendants”).

INTRODUCTION

1.

Krystena Murray entrusted Coastal Fertility to assist her becoming pregnant so that she could deliver her biological child. Coastal Fertility created embryos for Ms. Murray—using her eggs—and then it transferred an embryo to Ms. Murray, who became pregnant. When Ms. Murray delivered her child, however, it was readily apparent that Defendants had transferred an embryo that did not belong to Ms. Murray: The child was African American, and Ms. Murray is White.

2.

Defendants had recklessly transferred the embryo belonging to another (“Stranger Couple”) to Ms. Murray’s womb, and she unknowingly and unwillingly carried a child through pregnancy who was not biologically related to her (“Baby”).

3.

Five months after giving birth, Ms. Murray had bonded with her Baby and desperately wanted to keep the child. But after Coastal Fertility found out that Defendants had transferred to Ms. Murray an embryo belonging to another couple (“Stranger Couple”)—and then alerted the Stranger Couple—the Stranger Couple sued Ms. Murray in family court for custody of the Baby.

4.

As a result of that lawsuit, Ms. Murray’s Baby was ripped away from her. Ms. Murray’s connection to the child has been erased: his birth certificate has been changed to the new name the Stranger Couple later chose for the child; and he lives with the Stranger Couple, who have full custody, in a different state from Ms. Murray.

5.

Coastal Fertility promised to safeguard and protect the Plaintiff’s frozen embryos, vouching to maximize her opportunity to become pregnant with her own child. Despite their agreement to maintain this position of extreme trust and fidelity, Coastal Fertility recklessly, negligently, and/or knowingly lost Plaintiff’s embryos and implanted the wrong embryo in Ms. Murray.

6.

To this day, Ms. Murray does not know if Coastal Fertility transferred to yet another couple an embryo that belonged to Ms. Murray and that should have been transferred to her. She does not know if her biologically related child is being raised by anyone else.

7.

These tragic events have been crushing for Ms. Murray. She will live with this trauma for the rest of her life. Ms. Murray brings this suit to seek accountability from Coastal Fertility and its employees for their reckless misconduct that led to this preventable nightmare.

PARTIES

8.

Plaintiff Krystena Murray is, and at all relevant times was, an individual residing in Savannah, Chatham County, in the State of Georgia.

9.

Defendant Coastal Fertility Specialists, LLC, is a South Carolina company, headquartered at 1375 Hospital Drive Mount Pleasant, South Carolina 29464. Coastal Fertility was and is in the business of providing various fertility-related services to the public. Such services include performing in vitro fertilization (“IVF”) retrieval cycles and transfer procedures.

10.

Coastal Fertility operates numerous fertility clinics throughout the states of Georgia and South Carolina.

11.

Defendant Jeffrey Gray, PhD, HCLD, TS, is an individual domiciled in South Carolina. At all relevant times Dr. Gray was the director of the embryology laboratory at Coastal Fertility and oversaw the handling of Ms. Murray's and the Stranger Couple's embryos.

12.

Defendants Does 1 through 5 are individuals who worked for Coastal Fertility and who are jointly and severally responsible for the acts and omissions that led to the wrong embryo being transferred to Ms. Murray. These individuals' names are not yet known to Ms. Murray. These Does' negligent acts and/or omissions caused, or contributed to cause, Plaintiff's injuries and damages. Plaintiff names these individuals fictitiously as Does until such time as Plaintiff may be permitted through discovery to learn their legal names and amend this Complaint to correctly name them. The facts presented in this Complaint are sufficient to place Defendants and these Does on notice that by naming the Does, Plaintiff intends to name them as additional defendants in this suit and pursue all available remedies against them jointly and severally with Defendants.

13.

At all times relevant herein, Defendants, and each of them, were the agents, servants partners, aider and abettors, conspirators, employees, and joint venturers of each other. At all times relevant herein, each and all Defendants were operating and acting within the course and scope of their respective agency, service, employment, partnership, conspiracy, and joint venture relationships, and rendered substantial assistance and encouragement to each of the other Defendants, knowing that their conduct constituted a breach of duty to, and otherwise harmed, Plaintiff.

JURISDICTION AND VENUE

14.

This Court has subject matter jurisdiction under O.C.G.A. § 9-10-91 *et seq.* because the Plaintiff is a citizen of the state of Georgia, and Defendant Coastal Fertility both committed a tortious act or omission within this state and committed a tortious injury in this state caused by acts or omissions outside this state while regularly soliciting business and deriving substantial revenue from services rendered in this state.

15.

This Court has personal jurisdiction over Defendant Coastal Fertility because Coastal Fertility operates a branch of its fertility clinic in this state, located at 9100 White Bluff Road, Suite 201, Savannah, Georgia 31406, and does business in this state. Ms. Murray attended appointments at this Georgia-based branch and entered into agreements for fertility services in Georgia.

16.

Venue is proper under O.C.G.A. § 9-10-91 *et seq.* because a substantial part of the events, omissions, and/or acts giving rise to the claims herein occurred in this state and Coastal Fertility operates a physical location within this state. For example, the vast majority of Ms. Murray's appointments with Coastal Fertility occurred at Coastal Fertility's Savannah facility, which is congruent with Coastal Fertility's promise that "you can get 95 percent of your care in your hometown." Moreover, Ms. Murray entered into agreements for fertility services at Coastal Fertility's Savannah facility, underwent her initial fertility screening at the Savannah facility, received Coastal Fertility's hormone injections in this state, carried the Stranger Couple's misplaced embryo to term in this state, gave birth to the Baby in this state, raised the Baby for five

months in this state, and suffered—and continues to suffer—severe emotional distress in this state arising from Defendants’ acts and omissions.

FACTUAL ALLEGATIONS

A. Ms. Murray Chooses Coastal Fertility to Start Her Family

17.

Ms. Murray is a single woman from Savannah, Georgia.

18.

Ms. Murray contracted with Coastal Fertility to assist her becoming pregnant from an embryo created from one of her eggs and the sperm of a donor she selected.

19.

Ms. Murray chose to contract with Coastal Fertility to assist her becoming pregnant because Coastal Fertility (1) has a satellite office in Savannah; and (2) made reassuring representations on its website. Quoting Dr. Gray, Coastal Fertility proclaimed boldly (and erroneously) on its website at the time that clients should know that “**there is no safer place** for their embryos” than Coastal Fertility’s laboratory. (Emphasis added.)

20.

In 2020, Coastal Fertility posted a video on its website, titled “In Vitro Fertilization.” In it, the company’s founder and Medical Director, John Schnorr, M.D., describes the laboratory’s role in the IVF process:

- “So, what we use is **the lab to really play the role of surrogate uterus, so that the embryos can be put in the lab**, the lab being a high quality lab, **takes care of them as well as does the uterus**. The embryos then grow in the lab and therefore we can pick the best embryos and put them into the uterus.”
- “We have a conviction and a belief that top-tier pregnancy rates come from a top tier lab, and a top tier lab is very expensive [and] very time consuming to maintain

and to manage to make sure **we have the quality assurance and quality controls we need[.]”**

- **“We do everything we can to double down on improving the quality of care you receive, your eggs receive, the sperm receives, and more importantly embryo receives.”**

21.

Coastal Fertility intended for the public, including Ms. Murray, to rely on each of these representations in order to induce the public, including Ms. Murray, to purchase fertility services from Coastal Fertility.

22.

Remarkably, despite knowing for more than a year that it mixed up Plaintiff’s embryos with the embryos of other clients, Coastal Fertility’s website *still* touts erroneously that “there is no safer place” for embryos than its laboratory. The video described above is still posted, as well, complete with Coastal Fertility’s representations about its lab taking care of embryos “as well as does the uterus,” having the “quality assurance and quality controls we need,” and doing “everything we can” to improve the quality of care that its customers’ embryos receive.

23.

Before proceeding further, Ms. Murray reviewed Coastal Fertility’s website and other materials, and she relied upon the representations set forth therein regarding Coastal Fertility’s purportedly high standards of care and technology, as well as its reportedly high success rates.

24.

Under present circumstances, Coastal Fertility’s boasts ring a chilling bell: “Success at our infertility centers throughout South Carolina and Savannah, GA, is ‘taking home a baby.’”

25.

In such a highly competitive industry, fertility clinics, including Coastal Fertility, understand that their reputations and such public pronouncements are vital to attract business.

B. Coastal Fertility's IVF Services

26.

IVF is an invasive and technical process. The first step for IVF involves several weeks of drug therapy designed to hyper-stimulate the woman's reproductive system into producing multiple eggs as part of her monthly cycle. These eggs are retrieved surgically and then fertilized with sperm in a laboratory. The resulting embryos can be frozen for later use.

27.

Ms. Murray picked out a sperm donor who physically resembled her.

28.

Like Ms. Murray, the donor was White, with dirty blonde hair and blue eyes.

29.

Ms. Murray clearly and unequivocally communicated her instruction for Defendants to retrieve Ms. Murray's eggs and fertilize them with her chosen donor's sperm, and then later to have their resulting embryo(s) transferred to Ms. Murray.

30.

At no point did Defendants disclose a risk that they would place someone else's embryo into Ms. Murray's uterus without her consent.

31.

IVF is an expensive and arduous process, subjecting prospective parents, including Ms. Murray, to substantial physical and emotional strain. To prepare for the procedure, Ms. Murray

attended many appointments over the course of several months. During these visits, Ms. Murray underwent numerous tests.

32.

To increase the chance for success, Ms. Murray was prescribed drugs to stimulate egg development and ovulation. The drugs were administered daily by needle for a little over two to three weeks, thereby stimulating the ovaries to increase production from the usual one egg to perhaps twenty eggs per month. During this time period, Ms. Murray went to Coastal Fertility—its Savannah facility—nearly every other day for follow-up examinations and blood tests.

33.

Added to this inconvenience, the physical and emotional side effects of this hormone treatment were substantial. Ms. Murray gave herself up to five different injections per day. The shots were painful and caused unnatural stomach bloating and sharp mood swings.

34.

On the day of the egg-retrieval surgery, several eggs were extracted from Ms. Murray. Following the retrieval procedure, Ms. Murray was in substantial pain.

35.

Coastal Fertility used Ms. Murray's retrieved eggs and created embryos using the donor's sperm that Ms. Murray had purchased.

36.

In May 2023, Coastal Fertility transferred an embryo to Ms. Murray.

37.

As Ms. Murray later learned, however, her own embryo was not actually transferred to her. Unbeknownst to her at the time, the embryo transferred into Ms. Murray's uterus by Defendants belonged to the Stranger Couple who also used Coastal Fertility to get pregnant.

38.

The transfer of the Stranger Couple's embryo to Ms. Murray was carried out under the care and direction of Coastal Fertility.

39.

Ms. Murray became pregnant as a result of this embryo transfer.

40.

Ms. Murray was overwhelmed with joy and hope when she learned that she became pregnant from the embryo transfer. Her joy and hope were rooted in the knowledge that she would grow her biological child in her womb and would give birth to her biological child. More than anything, Ms. Murray's joy and hope were tethered to the knowledge that she would soon begin bonding with her baby—both in the womb and after birth—raising her baby through childhood and eventually shepherding him into adulthood.

41.

Like any pregnancy, Ms. Murray's pregnancy was physically and emotionally difficult. Her body was swollen, she had heartburn, and she was constantly tired. She even needed to go to the hospital twice because she thought she was going into labor prematurely. But all of this would be worth it, she reminded herself while preparing the baby's nursery, when her beautiful baby enters the world.

C. Ms. Murray Unknowingly Delivers a Baby That Was Not Hers

42.

Ms. Murray delivered a beautiful, healthy baby on December 29, 2023.

43.

Upon seeing her baby, however, Ms. Murray knew something was very wrong.

44.

Whereas Ms. Murray is a fair-skinned, White woman who had chosen a sperm donor with a similar appearance, the Baby that she carried in her womb and delivered was dark-skinned, African American baby.

45.

It was obvious that there was no chance the child was biologically related to Ms. Murray. The feeling was terrifying and shocking.

46.

Ms. Murray had no issues or concerns with the Baby's race, other than the fact that it indicated to her that he clearly was not related to her.

47.

Instead of excitement or joy, the day of her child's birth was dominated by confusion and fear.

48.

While attempting to bond with her new baby, Ms. Murray anxiously wondered: Whose embryo was transferred to her? And would someone come to the hospital room—or later, Ms. Murray's house—and take her child?

49.

Ms. Murray had no idea what to do. This scenario was obviously not covered in the parenting classes she had eagerly taken.

D. Ms. Murray Bonds with Her Baby and Cares for Him as Her Own

50.

For the next month following the birth, Ms. Murray remained at home and bonded with her child.

51.

She breast-fed her Baby, took him to doctor's appointments, and cuddled him throughout the day.

52.

At the beginning, Ms. Murray largely followed the same parenting playbook that she had expected.

53.

However, she did not post online any photos of her Baby and did not allow him to be seen by friends and family. The reason was understandable: she did not want to answer questions about whose baby she had delivered or how this came about.

54.

At a family member's funeral shortly after the birth, Ms. Murray draped a blanket over the baby carrier, so that nobody would ask about the origin of her child.

55.

In public, people were neither kind nor diplomatic. Upon seeing her child, they questioned Ms. Murray about whether her child was, in fact, her baby. They made awkward and inappropriate comments.

56.

Nobody should need to hear strangers routinely say: “Is that your baby?”

57.

Of course, none of this changed how much Ms. Murray loved her child. He quickly became her best friend, her daily companion, and her source of strength.

58.

And yet, Ms. Murray’s new life with her Baby boy was terrifying and full of anxiety. Every time the doorbell rang, Ms. Murray worried it would be someone who was there to take her child away. When she walked around every corner in public, she was fearful that her child’s biological parents would be standing there after tracking her down.

59.

At the same time, Ms. Murray needed answers. Ms. Murray wondered with grave concern: Whose embryo was transferred to her? Where is the embryo that was supposed to be transferred to her? Was her embryo transferred to someone else? If so, does she have another baby who is being cared for by a stranger, and who is raising her child? All of this was—and remains—haunting.

60.

Ms. Murray requested a DNA test in the hospital, but the doctors delayed—and then did not perform—such a test.

61.

Accordingly, Ms. Murray purchased an at-home DNA kit. She did not receive her results until late January 2024.

62.

Meanwhile, Ms. Murray wanted Coastal Fertility to know about its misconduct, so that it would not commit such an error again. She also thought it important for the other couple—the Stranger Couple—to know what had occurred. Potentially, Ms. Murray, thought, Coastal Fertility had transferred her embryo to that other couple, who thus had delivered a child related to Ms. Murray.

E. Ms. Murray Seeks Answers, and Her Baby Is Taken Away from Her

63.

Plaintiff's undersigned counsel reached out to Coastal Fertility on February 5, 2024.

64.

By late March 2024, Coastal Fertility surmised that it had transferred to Ms. Murray an embryo that belonged to the Stranger Couple.

65.

Coastal Fertility broke the devastating news to the Stranger Couple on March 29, 2024, that their male embryo was transferred to another woman—Ms. Murray—who became pregnant and delivered the Baby.

66.

By that point, Ms. Murray's child was three months old.

67.

Making matters worse, the Stranger Couple then sued Ms. Murray to obtain custody of Ms. Murray's child.

68.

This required Ms. Murray to hire family-law counsel in multiple states.

69.

A subsequent DNA test confirmed that the Stranger Couple were the genetic parents of Ms. Murray's child.

70.

After spending a tremendous amount of money and time, Ms. Murray's family-law attorneys came to the same, horrifying conclusion: Ms. Murray was going to lose the family-law case, and she ultimately would lose her Baby.

71.

Not wanting to make the situation any harder on her child, Ms. Murray tragically decided that she would give up her Baby voluntarily during an upcoming family-court hearing, on May 24, 2024.

72.

After spending every moment with her child for the prior five months, Ms. Murray has not seen her child ever since.

F. Ms. Murray's Heartbreak and Damages

73.

As a result of Defendants' reckless acts and omissions leading to the wrong embryo being transferred to Ms. Murray, Ms. Murray has suffered severe emotional injuries, as well as significant physical and economic injuries.

74.

As for her physical injuries, Ms. Murray has suffered from sleeplessness / sleep deprivation, nausea, shortness of breath, and numerous other physical manifestations of trauma.

75.

Life will never be the same for Ms. Murray. She was turned into an unwitting surrogate, against her will, for another couple. She carried, lovingly cared for, and delivered a child who ended up not being biologically related to her. And then, for nearly half a year, she bonded with the child—*her* child—in addition to her bonding with the Baby while he was still in the womb.

76.

Ms. Murray likely will never see her child again.

77.

Ms. Murray recently decided that she could no longer live in her house. The house was filled with memories of her little boy. She would imagine him sleeping soundly in the room that had been his bedroom; she would see him smiling in the kitchen; she would think of him looking in wonder at the tree in the front yard. Remaining at her house was far too painful. Accordingly, she has listed her home for sale and will move into a new residence that is not permeated with memories of the child who has been taken from her.

TOLLING, CONCEALMENT & ESTOPPEL

78.

The elements giving rise to Plaintiffs' causes of action were completed in Georgia, when Plaintiff first learned, upon giving birth to the Baby (in Savannah, Georgia), that Defendants had transferred the wrong embryo to her uterus. Plaintiff's damages from Defendants' acts and omissions therefore did not accrue until she made this realization in Savannah, Georgia immediately after giving birth.

79.

Plaintiff did not discover until, at the earliest, the birth of the Baby that Defendants had caused her injury by transferring the wrong embryo to her uterus.

80.

Plaintiff could not have discovered with due diligence Defendants' misconduct any earlier than she did. Plaintiff had no reason or rational basis to request a DNA test while her child was in utero, and none of her health care providers indicated any reason for her to doubt that the Baby she grew in her uterus was her biological child. Rather, Plaintiff trusted that Defendants would perform their obligations with their boasted expertise and never had reason to doubt that they would make such an enormous error.

81.

The earliest Plaintiff could have known about Defendants' conduct was in late December 2023, when the Baby was born and bore no physical resemblance to her.

82.

Defendants are therefore estopped under the discovery rule and all applicable law from relying on any argument concerning the statute of limitations.

RESPONDEAT SUPERIOR

83.

At all times relevant to the allegations in this complaint, Dr. Gray and all employees of Coastal Fertility who took part in Coastal Fertility's care of Plaintiff were employees of Coastal Fertility, were acting within the course and scope of their employment while providing care to Plaintiff, and were doing so in furtherance of Coastal Fertility's business to provide that care.

84.

At all times relevant to the allegations in this complaint, Dr. Gray and all employees of Coastal Fertility who took part in Coastal Fertility's care of Plaintiff's embryos and other genetic material were employees of Coastal Fertility, were acting within the course and scope of their employment while providing care over Plaintiff's embryos and other genetic material at Coastal Fertility, and were doing so in furtherance of Coastal Fertility's business to provide that care.

LEGAL CLAIMS

COUNT I

NEGLIGENCE (against all Defendants)

85.

Plaintiff repeats and re-alleges all paragraphs preceding the Legal Claims section of this Complaint as if fully set forth herein.

86.

Plaintiff hereby asserts a negligence claim against the individual defendants and against Coastal Fertility, for its own negligent acts and omissions and for the negligent acts and omissions of those individual defendants.

87.

At all relevant times, Defendants and their agents and/or employees undertook to care for Plaintiff and her genetic material.

88.

Defendants, and each of them, had a duty to render the care necessary to achieve Plaintiff's fertility goals using the same level of skill, prudence, and diligence that other members of their profession commonly possess and exercise.

89.

Defendants had a duty to use reasonable care in the storage and care of Plaintiff's embryos.

90.

Defendants furthermore had a duty to impose reasonable policies and procedures, as well as to carry out such policies and procedures, to ensure that their services were competently performed. Defendants furthermore had a duty of care based on the fact that they voluntarily undertook to render cryopreservation and fertility services to Plaintiff, and therefore had a duty to perform these services with a reasonable degree of care. Defendants furthermore knew or should have known that failure to exercise such care increased the risk of harm to Plaintiff.

91.

Defendants had a basic duty and a duty based on voluntarily undertaking to oversee and render fertility services to the Plaintiff, and therefore had a duty to perform these services with a reasonable degree of care. These defendants furthermore knew or should have known that failure to exercise such care increased the risk of harm to Plaintiff.

92.

Plaintiff relied on all of Defendants' aforementioned duties of care to her in placing her genetic material in Defendants' care.

93.

Defendants breached their respective duties by failing to monitor, label, and utilize Ms. Murray's genetic material in accordance with her express directives. Defendants further breached their duties by failing to have in place and/or compel compliance with protocols and procedures to ensure that such misuse of Ms. Murray's genetic material could never happen. This conduct fell far below the applicable standard of care.

94.

Defendants breached these duties by negligently, recklessly, and/or knowingly using the Stranger Couple's embryo in a transfer procedure with Ms. Murray, and by failing to have in place policies and procedures that would have prevented such negligent, reckless, and/or knowing improper use.

95.

Defendants breached their duties by failing to ensure that these tasks were carried out with the utmost of skill and competence. Defendants breached their duties by transferring the Stranger Couple's embryo into Ms. Murray's uterus. This conduct fell far below the applicable standard of care for a fertility specialist and renowned fertility clinic.

96.

As a direct and proximate result of Defendants' negligence, Plaintiff suffered, as a direct victim, extreme emotional, property, physical, and economic damages in an amount to be proven at trial.

97.

Plaintiff has attached the expert Affidavit of Dr. Christine Allen, MS, PhD, as Exhibit A. By attaching this affidavit, Plaintiff in no way concedes that any of her claims constitute professional negligence or medical malpractice.

98.

Each of Defendants' conduct caused Plaintiff's harm.

COUNT II

**GROSS NEGLIGENCE
(against all Defendants)**

99.

Plaintiff repeats and re-alleges all paragraphs preceding the Legal Claims section of this Complaint as if fully set forth herein.

100.

Defendants had a duty to use, at a minimum, slight care in the storage and care of Plaintiff's embryos.

101.

Defendants furthermore had a duty of, at a minimum, slight care to impose reasonable policies and procedures, as well as to carry out such policies and procedures, to ensure that their services were competently performed. Defendants furthermore had a duty of slight care based on the fact that they voluntarily undertook to render cryopreservation and fertility services to Plaintiff and therefore had a duty to perform these services with a slight degree of care. Defendants furthermore knew or should have known that failure to exercise such care increased the risk of harm to Plaintiff.

102.

Defendants had a basic duty and a duty based on voluntarily undertaking to oversee and render fertility services to the Plaintiff, and therefore had a duty to perform these services with a slight degree of care. These defendants furthermore knew or should have known that failure to exercise such care increased the risk of harm to Plaintiff.

103.

Plaintiff relied on all of Defendants' aforementioned duties of care to her in placing her genetic material in Defendants' care.

104.

Defendants breached these duties by recklessly and/or knowingly using the Stranger Couple's embryo in a transfer procedure with Ms. Murray, and by failing to have in place policies and procedures that would have prevented such grossly negligent, reckless, and/or knowing improper use.

105.

As a direct and proximate result of Defendants' gross negligence, Plaintiff suffered extreme emotional, physical, property, and economic damages.

106.

Each of Defendants' conduct caused Plaintiff's harm.

COUNT III

**BAILMENT
(against Coastal Fertility)**

107.

Plaintiff repeats and re-alleges all paragraphs preceding the Legal Claims section of this Complaint as if fully set forth herein.

108.

Under a contract between Plaintiff and Coastal Fertility, express or implied, Coastal Fertility acquired Plaintiff's eggs for the particular purpose of creating embryos and delivering one of those embryos to her body so that she may become pregnant with a child grown from that embryo.

109.

Coastal Fertility accepted possession and took control of Plaintiff's eggs and embryos under such circumstances that the law imposes an obligation to safeguard the property of another.

110.

Plaintiff paid Coastal Fertility money and other valuable consideration in exchange for Coastal Fertility's obligations.

111.

Specifically, a constructive bailment arises when Coastal Fertility, as is the case here, take lawful possession of the property of another and have a duty to account for that property, without intending to appropriate it.

112.

During the bailment, Coastal Fertility owed a duty to Plaintiff to exercise reasonable care, diligence and prudence in protecting her eggs and embryos and ensuring they were safely stored. During the bailment, Coastal Fertility also owed a duty to Plaintiff to exercise reasonable care, diligence and prudence to ensure that at least one of the embryos was transferred to her uterus.

113.

Once Coastal Fertility retrieved Plaintiff's eggs, at all times it exercised complete dominion over those eggs and over her embryos that it created from those eggs.

114.

Coastal Fertility breached its duty of care by failing to take appropriate measures to safeguard and protect Plaintiff's embryos, resulting in the failure to transfer any of those embryos to her uterus. Worse, Coastal Fertility transferred the embryo belonging to another family to her uterus, and this embryo gestated until Plaintiff gave birth to this other family's child.

115.

As a direct and proximate result of Coastal Fertility's breach of duty, Plaintiff has suffered compensable damages that were reasonably foreseeable to Coastal Fertility, including but not limited to, the damages set forth herein.

COUNT IV

**BREACH OF FIDUCIARY DUTY
(against Coastal Fertility)**

116.

Plaintiff repeats and re-alleges all paragraphs preceding the Legal Claims section of this Complaint as if fully set forth herein.

117.

In providing her embryos to Coastal Fertility, Plaintiff justifiably placed a special confidence in Coastal Fertility to act in good faith and with due regard for the interests of Plaintiff to safeguard those embryos, to store and label them using reasonable and prudent protocols such that they could be identified for transfer to Ms. Murray for IVF services, and to transfer one of those embryos—and only those embryos—upon a request for an embryo transfer.

118.

Coastal Fertility accepted the special confidence Plaintiff placed in it.

119.

In light of the special relationship between Defendant and Plaintiff, whereby, among other things, Coastal Fertility became a guardian of Plaintiff's embryos, Coastal Fertility became a fiduciary by its undertaking and guardianship of the embryos, to act primarily for the benefit of its customers, including Plaintiff, for the safeguarding of Plaintiff's embryos.

120.

Coastal Fertility has a fiduciary duty to act for the benefit of Plaintiff upon matters within the scope of its customer relationships, in particular, to securely store, handle, and label the embryos of their customers and to timely notify Plaintiff of any failure to so act.

121.

Coastal Fertility breached its fiduciary duty to Plaintiff by failing to protect the integrity of the systems containing Plaintiff's embryos, which led to the Stranger Couple's embryo being implanted in her body to grow a child.

122.

As a direct and proximate result of Coastal Fertility's breaches of its fiduciary duty, Plaintiff has suffered injuries as described herein.

COUNT V

FRAUDULENT CONCEALMENT (against all Defendants)

123.

Plaintiff repeats and re-alleges all paragraphs preceding the Legal Claims section of this Complaint as if fully set forth herein.

124.

Coastal Fertility marketed and promoted its services and made representations to the public and to Plaintiff regarding the quality of those services as described herein.

125.

Coastal Fertility made numerous representations on its website that were false, and Coastal Fertility either knew the truth or made the representations without regard for the truth. Those false representations include the following:

- (A) “there is no safer place” for clients’ embryos than Coastal Fertility laboratory,
- (B) Coastal Fertility’s laboratory “takes care of” its customers’ embryos “as well as does the uterus,”
- (C) Coastal Fertility’s laboratory has “the quality assurance and quality controls [it] needs.”
- (D) Coastal Fertility “do[es] everything [it] can to double down on improving the quality of care you receive, your eggs receive, the sperm receives, and more importantly embryo receives.”

126.

Coastal Fertility’s false representations were on its website and viewed by Ms. Murray when she was considering using Coastal Fertility’s services, as well as when she agreed to use Coastal Fertility’s services—throughout 2022 and 2023. In fact, Coastal Fertility’s false representations are still on its website, despite the now-proven false nature of these statements.

127.

Coastal Fertility intended for Plaintiff to rely on its representations and pay it to perform IVF services—and to allow it to perform all necessary lab work—and Plaintiff reasonably relied on the above-referenced false statements when purchasing such services. Moreover, had Plaintiff been apprised of the falsity of the above-referenced statements, Plaintiff would not have purchased—and continued purchasing such services—from Coastal Fertility.

128.

Plaintiff had no reasonable means of knowing that Coastal Fertility's representations were incomplete, false, or misleading. Plaintiff did not and reasonably could not have discovered Coastal Fertility's deception prior to purchasing (and continuing to pay for) these services. Moreover, had Plaintiff been apprised of the true facts, Plaintiff would have taken different, immediate action—namely, she would not have used Coastal Fertility and/or would have moved to a different clinic—to Coastal Fertility's immediate detriment.

129.

Coastal Fertility was under a duty to disclose the true facts to Plaintiff. This duty arose by reason of Coastal Fertility's exclusive knowledge regarding the true facts, and because Coastal Fertility made erroneous representations about material facts without disclosing the truth.

130.

Coastal Fertility furthermore had a duty to disclose to Plaintiff the truth, and not to lie to Plaintiff as detailed herein. Coastal Fertility's duty arose in part due to its fiduciary duty to Plaintiff. That is, in providing her eggs and embryos to Coastal Fertility, Plaintiff justifiably placed a special confidence in Coastal Fertility to act in good faith and with due regard for the interests of Plaintiff to safeguard those embryos, to store and label them using reasonable and prudent protocols such that they could be identified for transfer to Ms. Murray for IVF services, and to transfer one of those embryos—and only those embryos—upon a request for an embryo transfer. Coastal Fertility accepted the special confidence Plaintiff placed in it. In light of the special relationship between Defendant and Plaintiff, whereby, among other things, Coastal Fertility became a guardian of Plaintiff's embryos, Coastal Fertility became a fiduciary by, among other things, its undertaking and guardianship of the embryos, to act primarily for the benefit of

its customers, including Plaintiff, for the safeguarding of Plaintiff's embryos. Coastal Fertility has a fiduciary duty to act for the benefit of Plaintiff upon matters within the scope of its customer relationships, in particular, to securely store, label, and otherwise handle the embryos of their customers and to timely notify Plaintiff of any failure to so act.

131.

Coastal Fertility intended to deceive Plaintiff by concealing the true facts.

132.

Plaintiff reasonably relied to her detriment upon Coastal Fertility's material omissions and misrepresentations. Plaintiff was unaware of the omitted material facts and would not have acted as she did had these facts been disclosed.

133.

Plaintiff sustained damage as a direct and proximate result of Coastal Fertility's fraud, deceit and fraudulent concealment.

134.

Coastal Fertility's deceit and concealment caused Plaintiff's harm.

135.

The foregoing acts and omissions were committed maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's rights, interests, and wellbeing to enrich Coastal Fertility.

COUNT VI

**BATTERY / LACK OF INFORMED CONSENT
(against Coastal Fertility)**

136.

Plaintiff repeats and re-alleges all paragraphs preceding the Legal Claims section of this Complaint as if fully set forth herein.

137.

Plaintiff consented to the transfer into her uterus of an embryo comprised of genetic material from herself and her selected sperm donor. She did not consent to the transfer into her body of any other embryo or other material.

138.

Coastal Fertility's employees, including one of its physicians, transferred an embryo into Ms. Murray's body that was created from the Stranger Couple's genetic material, without her consent. Coastal Fertility's physician and other employees' physical contact with Plaintiff with respect to the transfer was therefore unauthorized and unprivileged as it exceeded Plaintiff's scope of consent, which only authorized Coastal Fertility's physician to make physical contact with her body to transfer an embryo from her own genetic material.

139.

The physician and other employees who transferred the Stranger Couple's embryo into her uterus were acting within the scope of their employment by Coastal Fertility and in furtherance of Coastal Fertility's business at the time they transferred the embryo into Plaintiff's uterus. Coastal Fertility is therefore liable for those employees' battery under respondeat superior.

140.

This physician's conduct in transferring this material to Ms. Murray's body was made when the physician knew or should have known the origin of the embryo transferred, as well as with willful disregard for Plaintiff's rights and wellbeing.

141.

Coastal Fertility's conduct in connection with this transfer was extreme and outrageous, and in a manner in which they knew, or should have known, would result in Plaintiff's severe emotional distress.

142.

A reasonable person in Plaintiff's situation would have been offended by having an embryo created from the Stranger Couple's genetic material transferred into her body, without her consent.

143.

As a direct and proximate result, Plaintiff sustained severe physical, emotional, and financial damages.

COUNT VII

VIOLATIONS OF THE GEORGIA FAIR BUSINESS PRACTICES ACT O.C.G.A. § 10-1-390, *et seq.* (against all Defendants)

144.

Plaintiff repeats and re-alleges all paragraphs preceding the Legal Claims section of this Complaint as if fully set forth herein.

145.

Georgia's Fair Business Practices Act, O.C.G.A. § 10-1-390 *et seq.*, prohibits deceptive acts or practices in the conduct of any business, trade, or commerce in the state of Georgia.

146.

By reason of the conduct alleged herein, Defendants engaged in unlawful practices within the meaning of the O.C.G.A. § 10-1-391(a) and (b). The conduct alleged herein took place in the context of the consumer marketplace.

147.

Defendants stored Plaintiff's and Stranger Couple's embryos in Coastal Fertility's facility for the purposes of transferring them to the bodies of its respective clients.

148.

Defendants knew or should have known that certain of their statements on Coastal Fertility's website (as quoted in this Complaint) were false and had the capacity to deceive or mislead.

149.

As alleged in this Complaint, Defendants engaged in the unfair or deceptive acts or practices in the conduct of consumer transactions in violation of O.C.G.A. § 10-1-393, including but not limited to:

- Representing on Coastal Fertility's website (as quoted above) that their services were of a particular standard or quality that it knew or should have known were of another;
- Falsely representing to the consumer marketplace, including Plaintiff, that "there is no safer place" for clients' embryos than Coastal Fertility's laboratory;
- Falsely representing to the consumer marketplace, including Plaintiff, that Coastal Fertility's laboratory "takes care of" its customers' embryos "as well as does the uterus";
- Falsely representing to the consumer marketplace, including Plaintiff, that Coastal Fertility's laboratory has "the quality

assurance and quality controls [it] needs”;

- Falsely representing to the consumer marketplace, including Plaintiff, that Coastal Fertility “do[es] everything [it] can to double down on improving the quality of care you receive, your eggs receive, the sperm receives, and more importantly embryo receives”;
- Failing to manage their laboratory in a way that would safeguard their customers’ embryos and ensure embryos were transferred only to the correct customer’s body; and
- Failing to have adequate training, policies, protocols, practices, oversight and other laboratory quality and safety controls in place to prevent them from mistakenly transferring another family’s embryo into Plaintiff’s uterus, which was a direct and proximate cause of Plaintiff’s harm.

150.

Defendants’ above-referenced representations were false; and Defendants either knew the truth or made the representations without regard for the truth.

151.

Coastal Fertility’s false representations were on its website and viewed by Ms. Murray when she was considering using Coastal Fertility’s services, as well as when she agreed to use Coastal Fertility’s services—throughout 2022 and 2023. In fact, Coastal Fertility’s false representations are still on its website, despite the now-proven false nature of this statement.

152.

Coastal Fertility intended for Plaintiff to rely on its representations and pay it to perform IVF services—and to allow it to perform all necessary lab work—and Plaintiff reasonably relied on the above-referenced false statements when purchasing such services. Moreover, had Plaintiff been apprised of the falsity of the above-referenced statements, Plaintiff would not have purchased—and continued purchasing such services—from Coastal Fertility.

153.

Defendants' representations and omissions were material because they were likely to deceive reasonable consumers about the adequacy of Defendant's ability to protect Plaintiff's and Stranger Couple's embryos and ensure that only Plaintiff's embryos were transferred into her body.

154.

Such acts by Defendant are and were deceptive acts or practices which are and/or were likely to mislead a reasonable consumer providing her eggs and embryos to Defendant. Said deceptive acts and practices are material. The requests for and use of such eggs and embryos in Georgia through deceptive means occurring in Georgia were consumer acts or practices and thereby fall under the Georgia's Fair Business Practices Act, O.C.G.A. § 10-1-390, *et seq.*

155.

The aforesaid conduct violated O.C.G.A. § 10-1-390, *et seq.*, in that it is a restraint on trade or commerce.

156.

Defendants' implied and express representations that they would adequately safeguard Plaintiff's embryos constitute representations as to the particular standard, quality, or grade of services that such services did not actually have (as the services were of another, inferior quality), in violation of O.C.G.A. § 10-1-393.

157.

Defendants' violations of O.C.G.A. § 10-1-393 have an impact and general importance to the public, including the people of Georgia and South Carolina. Upon information and good faith belief, many hundreds of residents of Georgia, in addition to many hundreds of residents of South

Carolina have had their eggs, sperm, embryos, and other genetic material stored in Defendant's facilities. Defendants' actions are likely to be repeated because Coastal Fertility continues to make the same herein referenced representations on its website despite being well aware that those representations are false—all while continuing to use those false representations to induce customers to purchase its services in reliance on those false representations.

158.

As a direct and proximate result of these deceptive trade practices, Plaintiff and is entitled to judgment under O.C.G.A. § 10-1-399, to enjoin further violations, to recover actual damages, to recover the costs of this action (including reasonable attorneys' fees), and such other relief as the Court deems just and proper.

159.

In compliance with O.C.G.A. § 10-1-399(b), Plaintiff sent a letter to Defendants, delivered in February 2024, identifying Plaintiff, demanding relief and describing Defendants' unfair and deceptive acts and practices that Plaintiff relied upon and which caused her injury. In that letter, Plaintiff specifically identified several of Defendants' misrepresentations in its website advertising describing how it provided "the highest level of care possible" and that there is "no safer place" for one's embryos than Coastal Fertility's laboratory.

160.

Based on Defendants' actions of making false representations about the qualities of its services as described herein—representations that it knew or should have known were false—Defendants' violations of O.C.G.A. § 10-1-393 were therefore intentional pursuant to § 10-1-399(c).

161.

Accordingly, Plaintiff accordingly seeks all monetary and non-monetary relief allowed by law, including actual damages, treble damages, injunctive relief, and attorneys' fees and costs.

COUNT VIII

**VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT
S.C. Code Ann. § 39-5-10, *et seq.*
(against all Defendants)**

162.

Plaintiff repeats and re-alleges all paragraphs preceding the Legal Claims section of this Complaint as if fully set forth herein.

163.

South Carolina's Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, prohibits deceptive acts or practices in the conduct of any business, trade, or commerce in the state of South Carolina.

164.

By reason of the conduct alleged herein, Defendants engaged in unlawful practices within the meaning of the S.C. Code Ann. § 39-5-20. The conduct alleged herein took place in the context of the consumer marketplace.

165.

Defendants stored Plaintiff's and Stranger Couple's embryos in Coastal Fertility's facility for the purposes of transferring them to the bodies of Coastal Fertility's respective clients.

166.

Defendants knew or should have known that certain of their statements on Coastal Fertility's website (as quoted in this Complaint) were false and had the capacity to deceive or mislead.

167.

As alleged in this Complaint, Defendants engaged in the unfair or deceptive acts or practices in the conduct of consumer transactions in violation of S.C. Code Ann. § 39-5-20, including but not limited to:

- Representing on Coastal Fertility's website (as quoted above) that their services were of a particular standard or quality that it knew or should have known were of another;
- Falsely representing to the consumer marketplace, including Plaintiff, that "there is no safer place" for clients' embryos than Coastal Fertility's laboratory;
- Falsely representing to the consumer marketplace, including Plaintiff, that Coastal Fertility's laboratory "takes care of" its customers' embryos "as well as does the uterus";
- Falsely representing to the consumer marketplace, including Plaintiff, that Coastal Fertility's laboratory has "the quality assurance and quality controls [it] needs";
- Falsely representing to the consumer marketplace, including Plaintiff, that Coastal Fertility "do[es] everything [it] can to double down on improving the quality of care you receive, your eggs receive, the sperm receives, and more importantly embryo receives";
- Failing to manage their laboratory in a way that would safeguard their customers' embryos and ensure embryos were transferred only to the correct customer's body;
- Failing to have adequate training, policies, protocols, practices, oversight and other laboratory quality and safety controls in place to prevent them from mistakenly transferring another

family's embryo into Plaintiff's uterus, which was a direct and proximate cause of Plaintiff's harm;

168.

Defendants' above-referenced representations were false; and Defendants either knew the truth or made the representations without regard for the truth.

169.

Coastal Fertility's false representations were on its website and viewed by Ms. Murray when she was considering using Coastal Fertility's services, as well as when she agreed to use Coastal Fertility's services—throughout 2022 and 2023. In fact, Defendants' false representations are still on Coastal Fertility's website, despite the now-proven false nature of these statements.

170.

Coastal Fertility intended for Plaintiff to rely on its representations and pay it to perform IVF services—and to allow it to perform all necessary work—and Plaintiff reasonably relied on the above-referenced false statements when purchasing such services. Moreover, had Plaintiff been apprised of the falsity of the above-referenced statements, Plaintiff would not have purchased—and continued purchasing such services—from Coastal Fertility.

171.

Defendants' representations and omissions were material because they were likely to deceive reasonable consumers about the adequacy of Defendants' ability to protect Plaintiff's and Stranger Couple's embryos and ensure that only Plaintiff's embryos were transferred into her body.

172.

Such acts by Defendant are and were deceptive acts or practices which are and/or were likely to mislead a reasonable consumer providing her eggs and/or embryos to Defendant. Said

deceptive acts and practices are material. The requests for and use of such eggs and embryos in Georgia through deceptive means occurring in Georgia, as well as in South Carolina through deceptive means occurring in South Carolina, were consumer acts or practices and thereby fall under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*

173.

The aforesaid conduct violated S.C. Code Ann. § 39-5-10, *et seq.*, in that it is a restraint on trade or commerce.

174.

Defendants' implied and express representations that they would adequately safeguard Plaintiff embryos constitute representations as to the particular standard, quality, or grade of services that such services did not actually have (as the services were of another, inferior quality), in violation of S.C. Code Ann. § 39-5-20.

175.

Defendants' violations of S.C. Code Ann. § 39-5-20 have an impact and general importance to the public, including the people of South Carolina and Georgia. Upon information and good faith belief, many residents of South Carolina and Georgia have had their eggs, sperm, embryos, and other genetic material stored in Defendant's laboratory in South Carolina. Defendants' actions are likely to be repeated because Defendants continue to make the same herein referenced representations on Coastal Fertility's website despite being well aware that those representations are false—all while continuing to use those false representations to induce customers to purchase its services in reliance on those false representations.

176.

As a direct and proximate result of these deceptive trade practices, Plaintiff and is entitled to judgment under S.C. Code Ann. § 39-5-140, to recover actual damages, to recover the costs of this action (including reasonable attorneys' fees), and such other relief as the Court deems just and proper.

177.

Based on Defendants' actions of making false representations about the qualities of its services as described herein—representations that it knew or should have known were false—Defendants knew or should have known that their conduct violated § 39-5-20, and such violations were therefore willful pursuant to § 39-5-140(d).

178.

Accordingly, Plaintiff accordingly seeks all monetary and non-monetary relief allowed by law, including actual damages, treble damages, and attorneys' fees and costs.

DAMAGES

179.

Plaintiff incorporates the preceding paragraphs as if fully restated here.

180.

Ms. Murray has incurred special damages, including but not limited to past and future medical expenses, as a direct and proximate result of Defendants' negligence.

181.

Ms. Murray has endured, and will continue to endure, pain and suffering, mental anguish, emotional distress, loss of the capacity for the enjoyment of life, and other general damages as a direct and proximate result of Defendants' negligence.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. that Defendants appear and answer this Complaint;
- B. that Plaintiff has a trial by jury;
- C. that judgment be entered in Plaintiff's favor against some or all Defendants in an amount in excess of \$75,000.00;
- D. that Plaintiff recover punitive damages;
- E. that Plaintiff recover her attorney fees, as permitted by law;
- F. that Plaintiff recover treble damages, as permitted by law;
- G. that all costs and other allowable litigation expenses be taxed against some or all Defendants; and
- H. for such further relief as the Court deems fair and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Respectfully submitted this 18th day of February, 2025.



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**Pro Hac Vice application to be submitted*

Attorneys for Plaintiff

**STATE OF MICHIGAN
COUNTY OF WASHTENAW**

AFFIDAVIT OF DR. CHRISTINE ALLEN, MS, PhD

PERSONALLY APPEARING before the undersigned authority, duly authorized to administer oaths, CHRISTINE ALLEN, MS, PhD, who after being duly sworn, states as follows:

1. My name is Dr. Christine Allen, MS, PhD.
2. I am a certified embryologist and andrologist with over 27 years of such experience in the United States and around the world.
3. For the past 22 years, I have worked in and/or supervised IVF laboratories. My duties have included clinical operations, laboratory management, and quality-control implementation at IVF clinics in the United States. I have served as a consultant for over 150 IVF clinics over the past 18 years.
4. I also have served on several medical and scientific boards for fertility clinics and other companies related to the field. I have been an elected chair—serving both the American Society for Reproductive Medicine and the American Association of Bioanalysts—over the past 7 years.
5. I am qualified to provide opinions on proper operations within the laboratory of a fertility clinic, including but not limited to labeling embryos properly, storing embryos properly, following the instructions of clients regarding the use and disposition of their embryos, and transferring the correct embryos.
6. My understanding is that Krystena Murray instructed Coastal Fertility Specialists to transfer to her an embryo that had been created with her egg and the sperm of a donor she had selected. My further understanding is that Coastal Fertility

Specialists did not follow these instructions, but instead, transferred to Ms. Murray an embryo that belonged to different clients of Coastal Fertility Specialists. My basis for this information is that a test confirmed that the child delivered by Ms. Murray did not genetically match Ms. Murray, but genetically matched other clients of Coastal Fertility Specialists.

7. Coastal Fertility had a duty to follow Ms. Murray's instructions to transfer to her the embryo created with her egg and selected donor sperm. Coastal Fertility also had a duty not to transfer to Ms. Murray the embryo of another Coastal Fertility client(s) against the instructions of Ms. Murray and the other client(s). Coastal Fertility breached each of those duties as described above.

8. The above-referenced conduct falls far below the standard of care for any fertility clinic.



DR. CHRISTINE ALLEN

The foregoing was sworn to and signed before me this 13th day of February 2025.


NOTARY PUBLIC

Brooklyn White
PRINT NAME

01-15-2030
COMMISSION EXPIRES

BROOKLYN WHITE
NOTARY PUBLIC, STATE OF MI
COUNTY OF GENESEE
MY COMMISSION EXPIRES Jan 15, 2030
ACTING IN COUNTY OF

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