

<b>DISTRICT COURT, MESA COUNTY, STATE OF COLORADO</b> 125 N. Spruce St. Grand Junction, CO 81501	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
Plaintiffs:            CHERYL EMMONS, JOHN EMMONS, MAIA BORING, and TAHNEE SCOTT  v.  Defendants: PAUL B. JONES and WOMEN’S HEALTHCARE OF WESTERN COLORADO, PC, formally known as Gynecologic-Obstetrical Associates of Western Colorado, PC.	
Attorneys for the Plaintiff Patrick Fitz-Gerald, #36848 Scott Ray, #35079 Eric C. Driskell, #33076 Driskell, Fitz-Gerald & Ray, LLC 1544 North Downing Street Denver, CO 80218 Phone Number: (303) 860-7353 Fax Number:    (303) 997-9246 E-mail address: pfg@trialdenver.com, esr@trialdenver.com, ecd@trialdenver.com	Case Number:  Div./Ctrm.:
<b>COMPLAINT AND JURY DEMAND</b>	

COMES NOW, Plaintiffs, Cheryl Emmons (“Plaintiff Mrs. Emmons” or “Mrs. Emmons”), John Emmons (“Plaintiff Mr. Emmons” or “Mr. Emmons”) Maia Boring (“Plaintiff Boring” or “Boring”), and Tahnee Scott (“Plaintiff Scott” or “Scott”) by and through their attorneys Driskell, Fitz-Gerald and Ray, LLC hereby submits this Complaint and Jury Demand against Defendants Dr. Paul B. Jones (“Defendant Jones” or “Dr. Jones”) and Women’s Healthcare of Western

Colorado, PC (“Defendant Women’s Health Care” or “Women’s Health Care”) and states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Cheryl Emmons is an individual, resident, and domiciliary of the State of Texas.

2. Plaintiff John Emmons is an individual, resident, and domiciliary of the State of Texas.

3. Plaintiff Maia Boring is an individual, resident, and domiciliary of the State of Texas.

4. Plaintiff Tahnee Scott is an individual, resident, and domiciliary of the State of Texas.

5. Defendant Paul B Jones, M.D. is an individual, resident, and domiciliary of the Mesa County, State of Colorado. At all relevant times, Dr. Jones was licensed to practice medicine in the State of Colorado, license # 17520 and specialized in obstetrics and gynecology (OB-GYN).

6. Defendant Women’s Health Care of Western Colorado, PC formally known as Gynecologic-Obstetrical Associates of Western Colorado, PC is a Colorado corporation with an address of 2525 N. 8<sup>th</sup> St, #202, Grand Junction, CO 81501. Dr. Jones was one of the founding members and owners of Women’s Health Care of Western Colorado, PC formally known as Gynecologic-Obstetrical Associates of Western Colorado, PC. Additionally, Dr. Jones was an owner/member at all times which are subject matter of this lawsuit.

7. Jurisdiction and venue are appropriate pursuant to the Colorado Rules of Civil Procedure, Rule 98, as Mesa County is the county in which the acts complained of herein occurred and Plaintiffs seek damages within the jurisdictional limits of this court.

### **GENERAL ALLEGATIONS**

8. Plaintiffs incorporate herein by this specific reference, as if set forth herein in full, all of the allegations contained in paragraphs 1 through 7.

9. Plaintiff Mrs. Emmons lived in Grand Junction, Colorado from 1973 to 1988. She was not able to conceive a child with Mr. Emmons. Mrs. Emmons was a patient of Dr. Jones and Women's Health Care during this same period of time for her OB-GYN care. Dr. Jones performed seven artificial insemination procedures on Mrs. Emmons from 1979 to 1985, wherein he used his own "fresh" sperm instead of an anonymous donor's "fresh" sperm as agreed. Dr. Jones explained to Mrs. Emmons that he would obtain the "fresh" sperm from a donor who was in good health and was either a medical or law student.

10. Mr. and Mrs. Emmons entered into a contract with Dr. Jones and Women's Health Care for the artificial insemination procedure. Mrs. Emmons underwent the fertilization procedure in mid-1979 to conceive her first child. She had the procedure performed by Dr. Jones and Women's Health Care for which Dr. Jones was a shareholder and physician. Dr. Jones explained that the use of "fresh" sperm would provide the best results and she would need to closely monitor her menstrual cycle and temperature and come in immediately to Women's Health Care when each was optimal for insemination with "fresh" sperm. Each time, Mrs. Emmons would come to Women's Health Care to see Dr. Jones, Mr. Emmons was told that he could not be in the room while the procedure was performed. Each time Dr. Jones assured the Emmons that he had obtained

the anonymous “fresh” sperm and then performed the procedure on Mrs. Emmons. Dr. Jones then told Mrs. Emmons and Mr. Emmons to go home that evening and make love so that they would not know if the conceived child was from the anonymous donor or from Mr. Emmons.

11. Ultimately, Mrs. Emmons conceived a child, Plaintiff Maia Boring, who was born to Mrs. Emmons on May 26, 1980.

12. Mrs. Emmons and her family went back to Dr. Jones in late 1984 or early 1985 to have the same artificial insemination procedure as outlined in paragraph 9 which was performed with the hope of conceiving another child for her family. Dr. Jones again assured her that he would obtain “fresh” sperm from an anonymous donor who was in good health and was either a medical or law student. Dr. Jones performed the same procedure on Mrs. Emmons, kept Mr. Emmons and family out of the room, and told the couple to make love that evening.

13. Mrs. Emmons conceived a second child from Dr. Jones’ “fresh” sperm and she gave birth to Plaintiff Scott on August 7, 1985.

14. Mr. and Mrs. Emmons paid for the procedure and Dr. Jones performed the procedure each and every time.

15. Late in the year 2018, Plaintiff Boring became interested in her genealogy. She obtained a home DNA test from Ancestry.com. She submitted her DNA and obtained her results on December 29, 2018. Through these testing results, she learned that the man who she called her father was not in fact her genetic relative.

16. On January 1, 2019 Plaintiff Boring was contacted though Ancestry.com by Crystal McPheeters, who had also submitted her DNA and had determined that the two of them were half-

siblings through the same donor father (Dr. Jones) along with at least five other siblings including her sister Tahnee Scott.

17. On or about January 4, 2019, Plaintiff Boring spoke with her mother, Plaintiff Mrs. Emmons, about the DNA test results. Mrs. Emmons disclosed to her daughter, Boring, that she had in fact had an artificial insemination procedure performed by Dr. Jones at Women's Health Care in 1979 in order to conceive her. She also disclosed that she had used Dr. Jones at Women's Health Care again in 1984 to conceive her second child, Plaintiff Tahnee Scott.

18. Plaintiff Mrs. Emmons and her children would occasionally run into Dr. Jones in the following years and Dr. Jones never disclosed that he was the biological father of the children. He concealed this fact.

19. Plaintiff Boring followed her ancestry DNA through the 23andMe.com and Ancestry.com when she discovered that she and Dr. Jones were related.

20. Boring then urged her sister, Plaintiff Scott, to submit her DNA to the database. Scott discovered the same thing, that she and Dr. Jones were related.

21. Instead of using "fresh" sperm from an anonymous donor to inseminate Mrs. Emmons during these procedures, Dr. Jones used his own "fresh" sperm to artificially inseminate Plaintiff Mrs. Emmons.

22. Plaintiffs did not learn that Dr. Jones used his own "fresh" sperm to artificially inseminate Plaintiff Mrs. Emmons until on or about January 24, 2019 when they were able to confirm the DNA tests results through 23andMe.com and Ancestry.com.

23. As a direct result of the actions of Defendants, Plaintiffs sustained injuries and have suffered past and future economic losses and past and future non-economic losses.

## **FIRST CLAIM FOR RELIEF**

### **Medical Negligence - (Mrs. Emmons v. Dr. Jones)**

24. Plaintiffs incorporate herein by this specific reference, as if set forth herein in full, all of the allegations contained in paragraphs 1 through 23.

25. Plaintiff Mrs. Emmons presented to Dr. Jones in 1979 and again in 1984 for a medical treatment of artificial insemination. It was agreed that Dr. Jones would use the “fresh” sperm of an anonymous donor to artificially inseminate Plaintiff Mrs. Emmons.

26. While under the care and treatment of Dr. Jones, Mrs. Emmons suffered injuries.

27. Defendant Jones owed a duty to exercise that degree of care, skill, caution, diligence, and foresight exercised by and expected of physicians in similar situations. Dr. Jones failed to act in such a manner when he used his own “fresh” sperm to artificially inseminate Plaintiff Mrs. Emmons.

28. Defendant Jones deviated from the pertinent standard of care and was negligent when he failed to use the “fresh” sperm of an anonymous donor and instead used his own “fresh” sperm to artificially inseminate Plaintiff Mrs. Emmons.

29. As a direct and proximate result of the negligence of Defendant Jones, Plaintiff Mrs. Emmons has suffered past and future economic losses and past and future non-economic losses.

## **SECOND CLAIM FOR RELIEF**

### **Lack of Informed Consent – (Mrs. Emmons v. Dr. Jones)**

30. Plaintiffs incorporate herein by this specific reference, as if set forth herein in full, all of the allegations contained in paragraphs 1 through 29 above.

31. Defendant Jones performed artificial insemination procedures on Plaintiff Mrs. Emmons on many different occasions between 1979 and 1985.

32. Defendant Jones used his own sperm to artificially inseminate Plaintiff Mrs. Emmons in 1979 and 1984.

33. Defendant Jones negligently failed to obtain Plaintiff Mrs. Emmons' informed consent before he used his own sperm to artificially inseminate Plaintiff Mrs. Emmons in 1979 and 1984.

34. Had Plaintiff Mrs. Emmons known Defendant Jones was going to use his own "fresh" sperm to artificially inseminate Plaintiff she would have never consented to Dr. Jones using his own sperm to artificially inseminate her.

35. In order for Plaintiff to give informed consent Defendant Jones was required to inform Plaintiff Mrs. Emmons that he was using his own "fresh" sperm to artificially inseminate Plaintiff.

36. Plaintiff Mrs. Emmons has suffered past and future economic losses and past and future non-economic losses as a direct and proximate result of the procedures that Defendant Jones performed on her without her informed consent.

### **THIRD CLAIM FOR RELIEF**

**Fraud - (Mrs. Emmons, Mr. Emmons, Boring, and Scott**

**v. Dr. Jones and Women's Health Care)**

37. Plaintiffs incorporate herein by this specific reference, as if set forth herein in full, all of the allegations contained in paragraphs 1 through 36 above.

38. Defendant Jones and Women's Health Care made false representations to the Plaintiffs that they were using the "fresh" sperm of an anonymous donor.

39. The fact that the "fresh" sperm was Dr. Jones' "fresh" sperm was a material fact.

40. The Defendants concealed this fact with the intent of creating a false impression of the actual facts in the mind of the Plaintiffs.

41. The Defendants concealed the origins of the "fresh" sperm with the intent that Plaintiffs continue with the procedure even though they would not have continued with the procedure if they knew that the "fresh" sperm was that of Dr. Jones.

42. The Plaintiffs agreed and proceeded with the procedure based upon the fraudulent representations of Dr. Jones and Women's Health Care.

43. The Plaintiff's reliance on the advice of Dr. Jones and Women's Health Care was justified as they had a fiduciary relationship.

44. This reliance on the fraudulent advice of Dr. Jones and Women's Health Care caused Plaintiffs to suffer past and future economic losses and past and future non-economic losses.

#### **FOURTH CLAIM FOR RELIEF**

**Negligent Misrepresentation – (Mrs. Emmons, Mr. Emmons, Boring and Scott v.**

**Dr. Jones and Women's Health Care)**

45. Plaintiffs incorporate herein by this specific reference, as if set forth herein in full, all of the allegations contained in paragraphs 1 through 44 above.

46. Defendants negligently gave false information that Dr. Jones was using an anonymous donor's sperm, not Dr. Jones' sperm.



47. Plaintiffs relied upon the information and fact that the sperm was to be from an anonymous donor and Plaintiffs' reliance on this information caused plaintiffs' physical harm.

48. Defendant Jones negligently misrepresented and concealed the origins of the "fresh" sperm thereby causing the Plaintiffs to suffer past and future economic losses and past and future non-economic losses.

#### **FIFTH CLAIM FOR RELIEF**

#### **Breach of Contract - (Mrs. Emmons, Mr. Emmons, Boring, and Scott**

#### **v. Dr. Jones and Women's Health Care)**

49. Plaintiffs incorporate herein by this specific reference, as if set forth herein in full, all of the allegations contained in paragraphs 1 through 48.

50. Defendant Jones entered into a contract with Plaintiff Mrs. Emmons and Mr. Emmons whereby Dr. Jones would use the "fresh" sperm from an anonymous donor who was in good health and was either a medical or law student. Dr. Jones and Women's Health Care breached the contract when Dr. Jones purposefully used his own "fresh" sperm to inseminate Plaintiff Mrs. Emmons.

51. Plaintiffs Boring and Scott were third party beneficiaries of the contract between Plaintiff Mrs. Emmons and Defendant Jones.

52. Plaintiffs have suffered past and future economic losses and past and future non-economic losses as a direct and proximate result of Defendants' breach of the contract between the parties.

## **SIXTH CLAIM FOR RELIEF**

### **Battery - (Mrs. Emmons v. Dr. Jones)**

53. Plaintiffs incorporate herein by this specific reference, as if set forth herein in full, all of the allegations contained in paragraphs 1 through 52 above.

54. Defendant Jones physically inseminated Mrs. Emmons with his own “fresh” sperm.

55. Defendant Jones intended to inseminate Mrs. Emmons with his own “fresh” sperm

56. Mrs. Emmons did not consent to being inseminated with Defendant Jones’ “fresh” sperm, nor did she know.

57. Defendant Jones insemination of Mrs. Emmons with his own “fresh” sperm is harmful and offensive and Plaintiff Mrs. Emmons has suffered past and future economic losses and past and future non-economic losses as result of the battery committed by Defendant Jones.

## **SEVENTH CLAIM FOR RELIEF**

### **Extreme and Outrageous Conduct - (Mrs. Emmons, Mr. Emmons, Boring, and Scott v. Dr. Jones)**

58. Plaintiffs incorporate herein by this specific reference, as if set forth herein in full, all of the allegations contained in paragraphs 1 through 57 above.

59. Defendant Jones engaged in extreme and outrageous conduct by failing to inform Plaintiffs that he was using his own “fresh” sperm for the artificial insemination procedures which created Plaintiffs Boring and Scott.

60. Defendant Jones did so recklessly or with the intent of causing Mrs. Emmons, Mr. Emmons, Boring and Scott severe emotional distress.

61. Defendant Jones' extreme and outrageous conduct caused severe and emotional distress to Mrs. Emmons, Mr. Emmons, Boring and Scott and thus resulted in them suffering past and future economic losses and past and future non-economic losses.

WHEREFORE, Plaintiffs pray for judgment against Defendants on their first, second, third, fourth, fifth, sixth and seventh claims for relief in an amount to be determined at trial and for such other and further relief as the Court deems just and proper, including, but not limited to, interest from the date this action accrued pursuant to C.R.S. § 13-21-101, as amended, for damages, costs and expert witness and attorney fees where appropriate.

**PLAINTIFFS HEREBY DEMAND A JURY OF SIX (6) PERSONS**

Respectfully submitted this 28th day of October 2019.

DRISKELL, FITZ-GERALD & RAY, LLC

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