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9  
 10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **FOR THE DISTRICT OF IDAHO**

12 KELLI ROWLETTE, an individual,  
 13 SALLY ASHBY, an individual, and  
 14 HOWARD FOWLER, an individual,

15 Plaintiffs,

16 v.

17 GERALD E. MORTIMER, M.D.,  
 18 LINDA G. McKINNON MORTIMER,  
 19 and the marital community comprised  
 20 thereof, and OBSTETRICS AND  
 21 GYNECOLOGY ASSOCIATES OF  
 22 IDAHO FALLS, P.A, an Idaho  
 23 professional corporation,

24 Defendants.

Cause No.

COMPLAINT

[Demand for Jury Trial]

25 **PARTIES, JURISDICTION & VENUE**

1. Plaintiff Kelli Rowlette (Mrs. Rowlette) is a United States citizen and a married person domiciled in Benton County, within the Eastern District of Washington.

1           2.     Plaintiff Sally Ashby (Ms. Ashby) is a United States citizen and a  
2 single person domiciled in Benton County, within the Eastern District of  
3 Washington.

4  
5           3.     Plaintiff Howard Fowler (Mr. Fowler) is a United States citizen and a  
6 married person domiciled in Benton County, within the Eastern District of  
7 Washington.

8  
9           4.     Defendant Gerald E. Mortimer, M.D., (Dr. Mortimer) is a physician  
10 licensed in the State of Idaho, license number M-3709 with a specialty in  
11 Obstetrics and Gynecology (OB/GYN).

12  
13           5.     Dr. Mortimer and Linda G. McKinnon Mortimer (Mrs. Mortimer) are  
14 husband and wife, comprise a marital community under the laws of the State of  
15 Idaho, are United States Citizens, and are domiciled in Bonneville County, within  
16 the District of Idaho. The acts and omissions complained of herein were for the  
17 benefit of the marital community.

18  
19           6.     Defendant Obstetrics and Gynecology Associates of Idaho Falls, P.A.,  
20 (OGA) is professional corporation incorporated under the laws of Idaho, domiciled  
21 with its principal place of business in Bonneville County, within the District of  
22 Idaho. Dr. Mortimer was an employee acting in the course and scope of his  
23 employment with OGA when the acts and omissions complained of herein  
24 occurred.  
25

1 7. The matters in controversy complained of herein exceed \$75,000.00,  
2 exclusive of interests and costs, are between citizens of different states, and  
3 occurred in Bonneville County, within the District of Idaho.  
4

5 8. The Court has jurisdiction pursuant to 28 U.S.C. § 1332.

6 9. Venue is proper pursuant to 28 U.S.C. § 1391.  
7

### 8 FACTS

9 10. In 1979 Ms. Ashby and Mr. Fowler were a married couple residing in  
10 Idaho Falls, Idaho. At the time, Mr. Fowler was stationed at the Naval Reactors  
11 Facility approximately 50 miles northwest of Idaho Falls. The couple were having  
12 difficulty conceiving a child and became patients of OGA under the care of Dr.  
13 Mortimer, an OB/GYN.  
14

15 11. Dr. Mortimer examined Ms. Ashby and Mr. Fowler to ascertain what  
16 may be causing their reproductive difficulties. Ultimately, Dr. Mortimer diagnosed  
17 Ms. Ashby with a tipped uterus and diagnosed Mr. Fowler with a low sperm count  
18 and low sperm motility.  
19

20 12. Dr. Mortimer recommended that Ms. Ashby and Mr. Fowler undergo  
21 a procedure whereby donor sperm/semens (hereinafter "genetic material") would be  
22 mixed with Mr. Fowler's genetic material in the medical lab prior to insemination  
23 to increase the chances of conception. Dr. Mortimer represented that 85% of the  
24 mixture would be Mr. Fowler's genetic material, while 15% of the mixture would  
25

1 be genetic material from an anonymous donor of characteristics selected by Ms.  
2 Ashby and Mr. Fowler. Dr. Mortimer would then inseminate Ms. Ashby with the  
3 mixture (the Procedure).  
4

5 13. Ms. Ashby and Mr. Fowler agreed to try the Procedure, but only if Dr.  
6 Mortimer could find a donor with the following characteristics: a college student  
7 who physically resembled Mr. Fowler and, to that end, the donor would have  
8 brown hair, blue eyes, and would be over six (6) feet tall.  
9

10 14. Dr. Mortimer represented to Ms. Ashby and Mr. Fowler that he had  
11 access to genetic material from a donor matching their requirements. Relying on  
12 this representation from their trusted physician, Ms. Ashby and Mr. Fowler agreed  
13 to pay Dr. Mortimer to perform the Procedure with the donor genetic material and  
14 Mr. Fowler's genetic material combined. Ms. Ashby and Mr. Fowler also agreed  
15 to pay for access to the donor genetic material which was to be used for the  
16 Procedure.  
17  
18

19 15. Dr. Mortimer collected genetic material from Mr. Fowler for use in  
20 the Procedure on several occasions.  
21

22 16. Dr. Mortimer ultimately performed the Procedure. However, instead  
23 of using donor genetic material and Mr. Fowler's genetic material as promised, Dr.  
24 Mortimer inseminated Ms. Ashby with his own genetic material. Dr. Mortimer  
25 falsely represented that he had used donor genetic material and Mr. Fowler's

1 genetic material, and intentionally concealed this fact from Ms. Ashby and Mr.  
2 Fowler. Dr. Mortimer did not match the donor specifications Ms. Ashby and Mr.  
3 Fowler agreed to.  
4

5 17. Had Mr. Fowler and Ms. Ashby known Dr. Mortimer was going to  
6 inseminate Ms. Ashby with his own genetic material, they would not have agreed  
7 to the Procedure.  
8

9 18. The Procedure was performed every other day for a total of three  
10 procedures per month when Ms. Ashby was ovulating. The Procedure was  
11 repeated on this basis in the months of June, July, and August, of 1980.  
12

13 19. In August of 1980, Ms. Ashby discovered she was pregnant. On May  
14 20, 1981, Ms. Ashby gave birth to Kelli Rowlette (maiden name, Kelli Fowler).  
15 Dr. Mortimer delivered Kelli Rowlette.  
16

17 20. Dr. Mortimer remained Ms. Ashby's OB/GYN for several years. Two  
18 years after Kelli Rowlette's birth, Ms. Ashby and Mr. Fowler successfully  
19 conceived a son without medical assistance. Ms. Ashby, Mr. Fowler, and their  
20 children eventually moved from Idaho Falls, Idaho to the State of Washington. Dr.  
21 Mortimer cried when Ms. Ashby informed him they were moving. Dr. Mortimer  
22 knew Kelli Rowlette was his biological daughter but did not disclose this to Ms.  
23 Ashby or Mr. Fowler. Dr. Mortimer fraudulently and knowingly concealed his use  
24 of his own genetic material in the Procedure.  
25

1           21. The truth that Dr. Mortimer's use of his own genetic material to  
2 impregnate Ms. Ashby remained concealed until July 2017, when Mrs. Rowlette  
3 received a notification on Ancestry.com that a DNA sample she had submitted  
4 matched with Dr. Mortimer's DNA sample. Ancestry.com predicted a parent-child  
5 relationship between Dr. Mortimer and Mrs. Rowlette. Mrs. Rowlette did not  
6 know who Dr. Mortimer was at the time and was not aware that her parents had  
7 undergone the Procedure to help them conceive.  
8  
9

10           22. Mrs. Rowlette initially believed the Ancestry.com results were in  
11 error. She mentioned the confusing results to Ms. Ashby and relayed her  
12 disappointment in the unreliability of the service she had thought she was getting  
13 from Ancestry.com. Mrs. Rowlette gave Ms. Ashby access to the results from  
14 Ancestry.com. When Ms. Ashby was alone, she accessed the account to  
15 investigate further. When Ms. Ashby saw Dr. Mortimer's name, she was  
16 devastated.  
17  
18

19           23. Ms. Ashby contacted Mr. Fowler, her now ex-husband, and relayed  
20 the information she obtained from Ancestry.com. Mr. Fowler was also devastated  
21 by the news. For several months Ms. Ashby and Mr. Fowler painfully labored  
22 over whether to tell Mrs. Rowlette that Dr. Mortimer had been their OB/GYN  
23 when she was conceived, and that they had intended on using 15% donor genetic  
24 material to aid in conception. Ms. Ashby and Mr. Fowler struggled to cope with  
25

1 their own anguish, and had difficulty contemplating the torment the discovery  
2 would cause their daughter when and if she found out.

3  
4 24. In October 2017, Mrs. Rowlette was at Mr. Fowler's house helping  
5 him clean out old papers that had gathered over the course of her life and had been  
6 saved in a roll-top desk. Mrs. Rowlette discovered her birth certificate among the  
7 stack of papers. Upon inspection, she observed that her birth certificate had been  
8 signed by Dr. Mortimer. Mrs. Rowlette was horrified and contacted Ms. Ashby  
9 and Mr. Fowler in a panic to relay what she had found.

10  
11 25. Since discovering Dr. Mortimer's actions, Ms. Ashby, Mr. Fowler,  
12 and Mrs. Rowlette have been suffering immeasurably.

### 13 CAUSES OF ACTION

#### 14 **Medical Negligence**

15  
16 26. Plaintiffs incorporate all paragraphs of this Complaint as if fully set  
17 forth under this count and further allege:

18  
19 27. Dr. Mortimer had a duty to his patients, Ms. Ashby, Mr. Fowler, and  
20 Mrs. Rowlette, to provide health care consistent with the standard of care expected  
21 of an OB/GYN in Idaho Falls, Idaho as the standard existed in 1980.

22  
23 28. Dr. Mortimer breached the standard of care as to Ms. Ashby, Mr.  
24 Fowler, and Mrs. Rowlette by inseminating Ms. Ashby with his own genetic  
25 material.

1 29. Dr. Mortimer breached the standard of care as to Ms. Ashby, Mr.  
2 Fowler, and Mrs. Rowlette by inseminating Ms. Ashby with a mixture of genetic  
3 material from multiple different sources.  
4

5 30. Ms. Ashby, Mr. Fowler, and Mrs. Rowlette have suffered damages as  
6 a direct and proximate result of Dr. Mortimer's breach of the standard of care.  
7

8 **Failure to Obtain Informed Consent**

9 31. Plaintiffs incorporate all paragraphs of this Complaint as if fully set  
10 forth under this count and further allege:

11 32. Dr. Mortimer failed to disclose to Ms. Ashby and Mr. Fowler that he  
12 was using his own genetic material to inseminate Ms. Ashby.  
13

14 33. Ms. Ashby and Mr. Fowler have been damaged as a direct and  
15 proximate result of Dr. Mortimer's failure to disclose that he was using his own  
16 genetic material to inseminate Ms. Ashby.  
17

18 **Fraud**

19 34. Plaintiffs incorporate all paragraphs of this Complaint as if fully set  
20 forth under this count and further allege:

21 35. Dr. Mortimer represented to Ms. Ashby and Mr. Fowler that Ms.  
22 Ashby would be inseminated with a mixture of genetic material that was 85% from  
23 Mr. Fowler and 15% from a donor who was a college student with brown hair, blue  
24 eyes, and over six (6) feet tall.  
25





1 44. Dr. Mortimer's insemination of Ms. Ashby with his own genetic  
2 material is harmful and offensive.

3  
4 **Intentional Infliction of Emotional Distress**

5 45. Plaintiffs incorporate all paragraphs of this Complaint as if fully set  
6 forth under this count and further allege:

7 46. Dr. Mortimer's conduct of inseminating Ms. Ashby with his genetic  
8 material without her consent or the consent of Mr. Fowler was extreme and  
9 outrageous.  
10

11 47. Dr. Mortimer intentionally caused severe emotional distress to Ms.  
12 Ashby, Mr. Fowler, and Mrs. Rowlette as a direct and proximate result of his  
13 conduct.  
14

15 48. Dr. Mortimer recklessly caused severe emotional distress to Ms.  
16 Ashby, Mr. Fowler, and Mrs. Rowlette as a direct and proximate result of his  
17 conduct.  
18

19 **Negligent Infliction of Emotional Distress**

20 49. Plaintiffs incorporate all paragraphs of this Complaint as if fully set  
21 forth under this count and further allege:

22 50. Dr. Mortimer owed Ms. Ashby, Mr. Fowler, and Mrs. Rowlette a duty  
23 of care as their physician and breached that standard of care through the conduct of  
24 inseminating Ms. Ashby with his own genetic material.  
25



1           56. Dr. Mortimer breached the contract between the parties by failing to  
2 inseminate Ms. Ashby with a mixture of 85% genetic material from Mr. Fowler  
3 and 15% genetic material from an anonymous donor who was a college student  
4 with brown hair, blue eyes, and was over six (6) feet tall.  
5

6           57. Ms. Ashby and Mr. Fowler suffered damages as a direct and  
7 proximate result of Dr. Mortimer's breach of the contract between the parties.  
8

9                                   **Consumer Protection Act Violation**

10           58. Plaintiffs incorporate all paragraphs of this Complaint as if fully set  
11 forth under this count and further allege:  
12

13           59. Dr. Mortimer engaged in unfair and deceptive acts and practices in the  
14 conduct of his trade and in commerce by selling his own genetic material to Ms.  
15 Ashby and Mr. Fowler and leading them to believe they were purchasing genetic  
16 material from a college student with brown hair, blue eyes, and a height over six  
17 (6) feet tall.  
18

19           60. Dr. Mortimer engaged in unfair and deceptive acts and practices in the  
20 conduct of his trade and in commerce by inseminating Ms. Ashby with his own  
21 genetic material and without the consent of Ms. Ashby and Mr. Fowler, while  
22 leading them to believe Ms. Ashby would be inseminated with a mixture of 85%  
23 Mr. Fowler's genetic material and 15% genetic material from a college student  
24 with brown hair, blue eyes, and a height over six (6) feet tall.  
25



1 **Negligent Supervision**

2 68. Plaintiffs incorporate all paragraphs of this Complaint as if fully set  
3 forth under this count and further allege:  
4

5 69. OGA knew of Dr. Mortimer's propensity to use his own genetic  
6 material as donor genetic material without patients' consent and failed to exercise  
7 due care to control Dr. Mortimer so he would not injure patients.  
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Plaintiffs pray as follows:

11 70. For judgment against the Defendants and their respective marital  
12 community individually, jointly, and severally in an amount in excess of \$75,000  
13 plus costs, disbursements, reasonable attorney fees, interest; and  
14

15 71. For such other and further relief as this Court deems just and  
16 equitable.  
17

18 DATED this 30<sup>th</sup> day of March, 2018.

19 *s/Shea C. Meehan*

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