

RETURN DATE: December 24, 2024

NICOLE COUTURE-GALLAGHER an)	SUPERIOR COURT
individual; and DANIEL GALLAGHER an)	J.D. OF FAIRFIELD
individual,)	AT BRIDGEPORT
Plaintiffs,)	
v.)	
MARK LEONDIRES, an individual; and)	November 25, 2024
ILLUME FERTILITY PLLC,)	
Defendants.)	

COMPLAINT

Plaintiffs Nicole Couture-Gallagher and Daniel Gallagher (collectively, “Plaintiffs”) respectfully bring this Complaint against Defendants Dr. Mark Leondires (“Leondires”) and Illume Fertility PLLC (“Illume”) (hereinafter, collectively, “Defendants”), and allege as follows:

NATURE OF THE ACTION

1. Few relationships involve as much trust as between a couple and their fertility doctor, working to bring children into the world via Assisted Reproductive Technology (“ART”). In Vitro Fertilization (“IVF”), the most common form of ART, is a lengthy, expensive, and intensely emotional process for a hopeful couple, and is particularly physically taxing on the would-be mother.

2. Ms. Nicole Couture-Gallagher, now forty-five years of age, together with her husband Mr. Daniel Gallagher, first placed their trust in Dr. Mark Leondires over fourteen years ago. The couple turned to Leondires for help after experiencing years of emotional and otherwise taxing complications related to fertility.

3. Nicole and Daniel knew their best chance to realize the family for which they were planning would be to undergo the notoriously expensive and painful IVF procedures while Nicole was in her early thirties, a woman's most fertile years.

4. Nicole and Daniel shared their family planning wishes with Leondires: to become first-time parents as soon as possible and then grow their family over time as they adjusted to parenthood and became financially stable enough to have the large family that they always dreamed of.

5. Leondires assured Nicole and Daniel they could proceed with treatment now, while Nicole had the best chance of success, and freeze any number of viable embryos for later use in what is known as a Frozen Embryo Transfer ("FET").

6. Nicole and Daniel thus proceeded, excitedly, even though they knew the IVF process would be painful and expensive, including ongoing frozen embryo storage fees.

7. Ultimately, Nicole's egg retrieval process was a wonderful success, resulting in eleven (11) viable embryos. To realize their short-term dream, Nicole and Daniel went forward with a "fresh transfer" of two (2) of their precious embryos. They entrusted Leondires and his fertility practice to freeze, preserve, and safely store their remaining embryos for later use as planned.

8. Nicole and Daniel's fresh transfer unfortunately did not result in pregnancy. But because they had nine (9) additional embryos frozen, they knew they had enough embryos to continue trying to get pregnant now, while preserving embryos for their long-term family planning goals.

9. Over the course of a year, Nicole and Daniel proceeded to transfer six (6) of their frozen embryos. Delightedly, Nicole gave birth to healthy triplets in late 2011, and, by complete

surprise, she conceived naturally the following year and gave birth to their fourth healthy baby in 2013.

10. Nicole and Daniel's hands were full with four young children. Still, when the time was right, they wanted a larger family, like the large and loving families that raised each of them. So, they continued to pay Leondires and his fertility practice for their services: the safe storage and care of the precious frozen embryos that Nicole and Daniel created together years prior.

11. Unfortunately, that trust was misplaced. This year, Leondires informed Nicole and Daniel that his clinic, Illume, had mistakenly discarded their three (3) frozen embryos. This accident occurred because Illume supposedly confused Nicole's unique, hyphenated last name with the last name of another patient who had in fact requested the destruction of their embryos. Distraught, Nicole and Daniel wondered how that could possibly be, but Leondires had no further explanation.

12. Given the precious life with which fertility doctors and their clinics are entrusted, extreme attention to proper labeling, storage, recording, and handling of frozen embryos are well-established industry norms. Typically, the process and paperwork by which embryos may be destroyed are extensive and full of checks to ensure client wishes are respected and protected—as they should be, given the human life at stake.

13. Against this backdrop, the 'your name sounded like someone else's' excuse Leondires provided to Nicole and Daniel is no cover for Illume's grossly negligent processes. Further underscoring Leondires's and Illume's negligence, it took the clinic *five years* to even simply notice its tragic misstep and alert Nicole and Daniel of the loss.

14. While Leondires never informed Nicole and Daniel how something like this could actually happen, he did downplay their loss and pain by continuously expressing that Nicole and Daniel should be *grateful for the children they were already able to have*.

15. This would be a cold and callous response from anyone, but it was especially shocking to hear from their once-trusted fertility doctor in whom they confided their long-time and long-term family planning goals with, and who promised to do everything he could to help realize those dreams. Naturally, Leondires's insensitive response only exacerbated the extreme pain and mental anguish Nicole and Daniel have and continue to suffer.

16. Equally troubling, after Leondires belatedly informed Nicole and Daniel of this tragedy, Illume continued, for months, to send Nicole and Daniel invoices for the storage of embryos they had carelessly discarded years before. With each invoice, Nicole and Daniel could not help but to be painfully reminded of the children they could no longer have. The continued billing further highlights Illume's grossly negligent processes that caused this preventable tragedy to begin with.

17. No precious embryo is 'replaceable' especially from an emotional point of view, as each represents a unique potential life. Worse for Nicole and Daniel, even if they were able to pursue additional rounds of invasive egg retrievals, at forty-five, Nicole is now past the age at which that process could be successful. Daniel also underwent a vasectomy years ago, since they believed their path to future children was secure in their frozen embryos.

18. The embryos Leondires destroyed were thus Nicole and Daniel's last, and only, hope to have the family for which they planned, dreamed, and paid Leondires for all these years. Nicole and Daniel therefore bring suit to hold Leondires and Illume accountable for this

unexpected and painful reality, with the hope that it will also drive the change necessary to ensure that at least others under Leondires's care may someday have the families of which they dream.

PARTIES

19. **Plaintiff Nicole Couture-Gallagher** is a citizen of Hopewell Junction, New York.

20. **Plaintiff Daniel Gallagher** is a citizen of Hopewell Junction, New York.

21. **Defendant Illume** is a fertility clinic that offers ART services to Connecticut residents. It is a Connecticut corporation with its principal place of business in Norwalk, Connecticut. At all relevant times, Defendant Illume was authorized to conduct business within the state of Connecticut and did so by offering fertility services from of its various Connecticut offices. Defendant Leondires is the founder and medical director at Illume. Prior to being known as Illume, Leondires's fertility practice was known as RMA of Connecticut.

22. **Defendant Mark Leondires** is a citizen of Westport, Connecticut. Leondires is the founder and medical director at Illume Fertility. At all relevant times, Leondires was Plaintiffs' physician when receiving treatments at Illume Fertility.

23. Plaintiffs reserve the right to seek leave to identify additional parties, whom Plaintiffs are currently unaware of, who are responsible for Plaintiffs' harm, as alleged herein.

24. Plaintiffs are informed and believe, and on that basis allege, that at all relevant times : Defendant Leondires was, actually or ostensibly, the agent, representative, owner, officer, and/or employee of Defendant Illume; Defendant Leondires was acting within the course and scope of said alternative personality, capacity, identity, agency, representation, and/or employment; Defendant Leondires was the trustee, partner, servant, joint venturer, shareholder, co-conspirators, contractor, and/or employee of Defendant Illume; the acts and omissions alleged herein, while committed individually, were made by Defendant through such capacity, and within the scope of

his authority, and with the permission and consent of Defendant Illume, as to make Defendants jointly and severally liable to Plaintiffs for the acts and omissions alleged herein.

JURISDICTION AND VENUE

25. This Court has jurisdiction over the subject matter of this action and the parties.

26. This Court has personal jurisdiction over Illume, because Illume's principal place of business is located in Connecticut and Illume has transacted business related to the matters alleged within the state of Connecticut. Conn. Gen. Stat. § 52-57a.

27. This Court has personal jurisdiction over Leondires, because Leondires is domiciled in Connecticut. Conn. Gen. Stat. § 52-57a.

28. Further, the acts and omissions giving rise to Plaintiffs' claims all took place in Connecticut. Plaintiffs had their initial egg retrieval done in Connecticut, they stored their frozen embryos in Connecticut, and Defendants destroyed Plaintiffs' embryos in Connecticut.

29. Venue is proper in this Court because named Defendants reside in this judicial district. Conn. Gen. Stat. § 51-345(a)(3).

30. Removal of this action is barred by 28 U.S. Code § 1441(b)(2) because both named Defendants are citizens of Connecticut.

GENERAL FACTURAL ALLEGATIONS

A. General Background of Assisted Reproductive Technology

31. Many people struggling with infertility opt to work with clinics specializing in ART. In broad terms, ART describes fertility-related treatments in which human eggs, embryos, and/or sperm are manipulated to produce a pregnancy or preserve a client's ability to produce a pregnancy later in life. The most common type of ART is in vitro fertilization ("IVF").

32. To prepare for the IVF process, the patient injects a variety of hormones and medications to stimulate the ovaries and develop eggs. Then, during the IVF process, a fertility doctor surgically extracts eggs from a woman. Scientists called embryologists fertilize those eggs in a laboratory with sperm, and they are cultured to create viable embryos. The embryos can either be cryopreserved for later use or used right away by transplanting it into a woman's uterus to begin a pregnancy.

33. Unlike sperm collection, the process of extracting human eggs is lengthy, invasive, and physically-taxing. Female patients undergo a strict regimen of injections, which result in an array of side effects, including, but not limited to bruising, redness, swelling, or discomfort at the injection site, bloating, weight gain, water retention, bone loss, fatigue, headaches, muscle aches, abdominal pain, breast tenderness, vaginal yeast infections, vaginal dryness, bone loss, hot flashes, mood swings, depression, nausea, vomiting, diarrhea, clots in blood vessels and strokes. Women injected with these pharmaceuticals also run the risk of a potentially fatal allergic reaction to the drugs. Additionally, up to 2% of women will develop Ovarian Hyperstimulation Syndrome ("OHSS"), a life-threatening condition that can cause increased ovarian size, nausea and vomiting, accumulation of fluid in the abdomen, breathing difficulties, increased concentration of red blood cells, kidney and liver problems, blood clots, kidney failure, and death.

34. On top of this, female patients must undergo frequent transvaginal ultrasound monitoring and other tests to monitor egg development, and finally a surgery to collect the eggs. The collection surgery is conducted under anesthesia, where the eggs are extracted with a large needle inserted through the vaginal wall. Risks of the egg retrieval procedure include infection, bleeding, trauma to intra-abdominal organs, allergic reactions, low blood pressure, nausea, vomiting, and in rare cases, death. After the retrieval procedure, a patient often experiences

residual pain for about a week and may need bedrest for several days. This physically burdensome process is also expensive and time consuming.

35. If and when viable eggs are retrieved, sperm is mixed with the eggs in a laboratory to fertilize the eggs, and they are cultured to create developed embryos. During this process, the eggs and sperm are submerged in culture media, which is a nutrient-rich liquid designed to foster embryonic development by replicating the environment of a woman's reproductive system.

36. If the embryos reach the proper stage of development, they can either be transferred into a woman's uterus for the purposes of achieving pregnancy, or they can be frozen, to allow transfer at a later date.

B. Embryo Cryopreservation

37. Embryo cryopreservation is the process of freezing embryos so that they may be used by a patient later. Embryos are frozen in one of two ways: by vitrification, which involves flash freezing the embryos, or by slow programmable freezing. Once frozen, embryos are stored in liquid nitrogen-filled tanks.

38. Cryopreservation allows embryos to be stored and later thawed, when a woman decides she wants to move forward with transferring embryos to achieve pregnancy. Frozen embryos can be stored indefinitely.

39. Cryopreserved embryos are essentially frozen in time. Many women seek out embryo cryopreservation so that they can retrieve eggs at a young age and create embryos at their peak viability before storing them until they are ready to have children. Cryopreservation is critical to successful IVF conception for women who are in their late thirties or very early forties, as the younger the age of the eggs *at the time of embryo creation*, the better the chances of carrying a successful pregnancy to term—even decades later.

40. Research has shown that, aside from a very small attrition rate of typically less than 10% upon thawing, freezing and thawing embryos does not harm babies that are created through IVF. Additionally, the length of time the embryo is frozen does not affect whether it will successfully result in pregnancy.

C. The Unique and Precious Nature of Human Embryos

41. Human eggs are a limited and precious resource. Every woman is born with a specific and limited number of eggs that does not increase but rather decreases over the course of her lifetime. In addition to the number decreasing, the egg quality also diminishes over time, with miscarriages and chromosomal abnormalities occurring more frequently for women who are older at the time of a natural conception and pregnancy. The most determinative factor in IVF success is the woman's age when her eggs were extracted. Specifically, eggs retrieved before a woman is thirty-five (35) years old are most likely to produce viable, healthy embryos. After thirty-five, the number and viability of eggs sharply declines, typically falling off completely in a woman's late thirties or very early forties.

42. Thus, one purpose of embryo preservation and storage is to allow couples to preserve reproductive material so that the embryos may be implanted at a later time, allowing for flexibility in family planning. This is particularly relevant here, as Nicole's eggs were retrieved when she was at peak fertility—only thirty-one years old. Defendants did not inform her that they had destroyed her embryos until she was already forty-four years old—well past the age where she could expect to have another successful egg retrieval. Even if she were willing to go through the physical ordeal of another retrieval cycle and was able to obtain additional eggs, at this age, the chances of chromosomal abnormalities are so high that most clinics would not even attempt it.

43. Embryos offer the opportunity to fulfill a fundamental human desire: to become a parent and start a family. Reproductive material has immense emotional and personal value. Additionally, ART procedures create the opportunity for people to give to others—to donate eggs and embryos to other families struggling with infertility, or to support beneficial research.

44. As fertility care providers, Leondires and Illume are fully aware of why families turn to IVF, why IVF services are so critical, and the emotional and financial resources required to undergo IVF procedures. Leondires and Illume know that fertility patients rely on them to offer safe and effective fertility services, so as not to jeopardize their health, or the health of their future children.

45. Indeed, the success or failure of creating healthy embryos through IVF has substantial emotional and psychological ramifications for those seeking to become parents. Losing embryos provokes fear, devastation, and despair. Given the ever-closing window of a woman's fertility, many experience grief, anguish, hopelessness, and disappointment when a treatment "fails," or does not result in pregnancy. The potential for serious emotional harm and loss of valuable, irreplaceable property proves that emotional distress stemming from embryo loss or damage is predictable and foreseeable.

D. Plaintiffs' Fertility Journey

a. Plaintiffs' use of ART to start a family.

46. Plaintiffs have always dreamed of having a large family—both Daniel's mother and Nicole's father were one of fourteen children. Accordingly, they began trying to conceive early on, so that they would have time to have multiple children while Nicole was still fertile. After about a year without success, however, Plaintiffs turned to ART to pursue their dreams of starting a family.

After much consideration, they decided to trust Leondires and his fertility practice, now known as Illume, to help them in their journey to become parents.

47. In 2010, Nicole underwent an egg retrieval cycle that successfully yielded eleven (11) healthy blastocysts. The retrieval and the preparation for it was incredibly physically and mentally taxing on Nicole, but she and Daniel were grateful for the promising results of her retrieval.

48. All eleven (11) of Plaintiffs' embryos were of sufficient grade and viability to transfer. Plaintiffs were ecstatic.

49. Directly after the embryos were created, Plaintiffs attempted to transfer two (2) of the eleven (11) embryos in a "fresh transfer." They cryopreserved the remaining nine (9) embryos, for later use in a Frozen Embryo Transfer ("FET"). Illume informed Plaintiffs that "[t]here are very strict criteria for freezing embryos, and [Illume] only freeze[s] embryos that have reproductive potential."

50. Unfortunately, the fresh transfer was unsuccessful, and Nicole did not carry a child to term. Both Plaintiffs were devastated by the failure and needed time to recover emotionally. They were reassured by Defendants that they had plenty of embryos in storage for whenever they were ready to begin their family.

51. In early 2011, Plaintiffs decided they were ready to again try and get pregnant. Nicole underwent two separate transfer procedures. In February of 2011, Plaintiffs attempted to transfer three of their cryopreserved embryos. Two embryos were successfully transferred, but unfortunately, the transfer did not result in live birth. In March of 2011, Plaintiffs transferred three more of their cryopreserved embryos. Nicole and Daniel were overjoyed that the transfer took, and Plaintiffs welcomed three triplets to the world in November of 2011.

52. Plaintiffs decided to keep their remaining three (3) viable embryos cryogenically stored consistent with their long-term family planning goals. They had high hopes that in the future they could attempt additional transfer procedures to have more children once the triplets were older.

53. In November of 2012, Plaintiffs found out they had gotten pregnant naturally. Plaintiffs were incredibly surprised, given the fertility complications they experienced prior to giving birth to the triplets. Yet, often, a woman's success in carrying a pregnancy to term predicts future success, as it did here. Plaintiffs gave birth to their fourth child in July of 2013.

54. After their fourth child was born, Plaintiffs resumed discussions about using their remaining three (3) viable cryopreserved embryos. Plaintiffs always came back to the idea that when their four young children were older and more self-sufficient, they would like to use their frozen embryos to attempt to have another child. Leondires reassured them they would be able to choose to give their children new siblings whenever they wanted, and Daniel therefore had a vasectomy to ensure Plaintiffs could add to their family on their own, desired, schedule.

55. Plaintiffs continued to invest in this family planning goal including by paying annual storage fees to Defendants. At no point did they give permission to Defendants to discard their embryos. Instead, they took great comfort in the fact that, per their request and Defendants' express promises, the embryos would be kept safe and sound for when Plaintiffs were ready to again add to their family.

b. Defendants' destruction of Plaintiffs' embryos.

56. From 2010 to 2023, Plaintiffs continued to pay Illume and Leondires to safely store their frozen embryos whenever they were invoiced.

57. By early 2024, Plaintiffs had not yet undergone another transfer procedure. However, they felt at peace knowing their three (3) embryos were still being safely stored by Illume and Leondires. Plaintiffs still thought about the possibility of transferring another one of their frozen embryos, to try and have another child.

58. To Plaintiffs dismay, on March 14, 2024, Plaintiffs received a call from Leondires, informing them that their embryos had been thrown out by accident several years prior. Plaintiffs were shocked. They never gave Illume nor Leondires consent to discard their three (3) remaining embryos, nor would they have done so, if they were asked. Plaintiffs were absolutely distraught at this sudden news and did not know how to process the loss of their precious embryos.

59. Nicole texted Leondires, hoping for more information. His response was brief and cold: “It occurred back in 2019. Brought to my attention after that. I’m not in the office at this time.” Plaintiffs’ sadness and anger quickly grew as they began to process the news.

60. On March 21, 2024, Plaintiffs had a Zoom call with Leondires. Leondires was insensitive and disregarded Plaintiffs’ clear heartbreak. Despite Nicole’s clearly visible tears, Leondires harped on the fact that Plaintiffs should be grateful that they already have children. Leondires stated that it was unlikely that Plaintiffs would have used the embryos. This sentiment was not only hurtful but untrue, as Plaintiffs frequently considered having another child. Plaintiffs tried to explain that these three embryos were three potential babies—but Leondires offered them limited sympathy. Leondires explained that Plaintiffs’ embryos were discarded due to a clerical error: another patient with a similar name requested that their embryos be discarded, and Defendants mistakenly discarded Plaintiffs’ embryos instead. Plaintiffs were confused by how a mistake like this could have happened, because Nicole has a unique, hyphenated last name—Couture-Gallagher—that seemed unlikely to be confused with another patient’s name. Further,

Leondires failed to provide a reasonable explanation as to why Plaintiffs were not informed of this mistake *five years prior*, when their embryos were thrown out and destroyed.

61. Pouring salt on their open wounds, for several months in 2024, Illume sent Plaintiffs bills for the continued storage of their *already destroyed* embryos. Illume billed Plaintiffs for embryo storage for the months of February, March, April, May, June, and July 2024. Per Illume's most recent bill, Plaintiffs owe 450 dollars for the storage of their embryos. Plaintiffs were disgusted and distressed by Illume's lack of oversight and complete insensitivity.

62. On April 17, 2024, Plaintiffs emailed Leondires, trying to gather more information about how this incident took place. Leondires called Nicole on April 19, 2024, and again displayed the same insensitivity. Leondires claimed—with zero cause or support—that Plaintiffs were never going to use the embryos. Leondires failed to recognize that Plaintiffs did have intentions to use their embryos, and regardless, it was not up to Illume or Leondires to strip them of their choice.

c. The Impact on Plaintiffs.

63. Plaintiffs feel deeply violated by Illume and Leondires's actions. They feel as though they were stripped of a choice that was solely theirs to make—a choice that was deeply personal and carried immense weight. Plaintiffs saw each of those embryos as a future child, and since Daniel had gotten a vasectomy so they could responsibly plan when to have their next child, these three (3) cryopreserved embryos were their only path to introducing more children into the world. They now have zero chances of having another child who is biologically related to either parent.

64. In addition to her grief, Nicole was deeply offended by Leondires's insinuation that she did not intend to use her cryopreserved embryos because she already had four children. To the

contrary, Nicole had longed for the opportunity to raise another child after her four close-in-age children had gotten older.

65. Nicole has struggled to move forward, feeling like she did not get any true closure. Neither Leondires nor Illume were able to offer her concrete proof that Plaintiffs' embryos were destroyed or how they were destroyed. Leondires told Nicole to trust him, but how could she after he and his clinic carelessly threw away Plaintiffs' precious embryos.

66. Whenever Nicole looks at her four children, she now thinks about the three siblings they should have had. The three siblings that were never given a chance at life, and whose personalities, smiles, and faces, they will never know. Nicole has and continues to experience depression, unexpected crying, short temper, anger, nightmares, headaches, sleeplessness, hopelessness, and anxiety. Her mental and physical distress have also made her unable to work at times. For a year prior to hearing the news of the loss of her embryos, Nicole had been pursuing a career in real estate. While she felt passionate and fulfilled by her career, the stress caused by the destruction of her embryos ultimately caused her to completely end her real estate pursuits.

67. Nicole worries that she will never recover from this trauma. For a while after hearing the news, Nicole attended counseling to help her cope with the sadness and pain that she felt. However, after several months, Nicole stopped attending sessions because the out-of-pocket costs were too high. Nicole feels that she needs to resume her counseling sessions but is unable to because of the high costs.

68. Daniel also feels incredibly angry that their choice to have more children was stolen from them. He struggles with regret, knowing that his primary reason for getting a vasectomy was because their three frozen embryos preserved their ability to have another child. Daniel now feels immense sadness when he looks at photos of his children when they were babies. His desire to

have another child has only grown stronger, but because of Defendants' actions, they no longer have the ability to grow their family.

69. For Daniel, the news from Illume that their embryos had been discarded felt like a punch in the gut. Knowing he would never be able to hold another of his newborn babies, watch them take their first steps, or speak their first words was heartbreaking. Daniel has and continues to experience mood swings, depression, anger, anxiety, regret, and hopelessness. Like Nicole, Daniel has struggled to move forward and feels like he lacks closure.

70. Ultimately, this loss caused both Plaintiffs a range of emotional distress which they continue to experience to this day, including but not limited to deep sadness, guilt, hopelessness, shame, disappointment, and anger. Plaintiffs have been devastated by the destruction of their embryos, and the foreclosure on their ability to build the family they desire. Plaintiffs may never fully mentally recover from this preventable tragedy.

E. Defendants Lacked Proper Procedures and Protocols to Ensure that Plaintiffs Embryos were Stored Safely

71. As care providers, Illume and Leondires owed Plaintiffs a duty to perform the services they offered to Plaintiffs safely, effectively, and responsibly.

72. Given the extremely sensitive nature of the services Illume and Leondires were providing—namely storing Plaintiffs' irreplaceable frozen embryos—Defendants had a heightened duty to ensure that there were reasonable policies and procedures in place to ensure the safekeeping of Plaintiffs' embryos.

73. To ensure the safekeeping of Plaintiffs' precious embryos, Leondires and Illume should have made sure that the following policies and procedures were in place:

- a. A system of labeling stored embryos that ensures that the embryos of different patients are not confused or mistaken for one another;
- b. A plan and method for organizing cryopreserved embryos that allows the embryos of patients to be easily identified and located;
- c. A practice of recording the exact location in a laboratory where each patients' embryos are stored;
- d. Responsible procedures for embryo disposal and destruction, including sufficient checks to ensure that embryos are not discarded accidentally and/or without patient consent;
- e. A policy to conduct timely and effective audits of a laboratory's stored embryos, so that any damage to or loss of embryos can be promptly ascertained; and
- f. Continuous, regular, and effective communication with patients to ensure they are aware of the status of their embryos—such as sending patients yearly letters and billing statements.

74. As medical providers with specialized knowledge of fertility treatments—including cryopreservation and storage of embryos—Defendants knew or should have know that failing to implement all the above listed policies and procedures could result in confusion of different patients' embryos, misplacing embryos, and accidental disposal of embryos.

75. Despite their knowledge, Illume and Leondires failed to implement all the above policies and procedures in their lab.

76. Had Illume and Leondires implemented all the above policies and procedures, Plaintiffs' embryos would not have been mistaken for that of another Illume patient who did consent to the disposal of their embryos.

77. Had Illume and Leondires implemented all the above policies and procedures, Plaintiffs' embryos would not have been discarded without Plaintiffs' knowledge, consent, or permission.

78. Had Illume and Leondires implemented all the above policies and procedures, it would not have taken Defendants five years to discover that Plaintiffs' embryos had been mistakenly discarded.

79. Despite the context where this incident occurred—an embryology lab at a fertility clinic—under state law, this action is rooted in ordinary negligence. Illume and Leondires's negligent actions were not of a specialized medical nature, and did not stem from the exercise of specialized medical judgment.¹ Rather, Defendants' failure resulted from a misreading of patient names—a simple, clerical error. That failure was then compounded by administrative lapses that resulted in the extremely delayed notification to Plaintiffs of the unplanned destruction.

80. Nevertheless, even if viewed through the lens of professional negligence, Illume and Leondires's conduct in this matter falls below the applicable standard of care in the fertility field.

F. Plaintiffs' Claims are Timely Under the Continuing Course of Treatment Doctrine.

¹ Other Connecticut state court cases have found that cases similarly involving the mishandling of reproductive materials are rooted in ordinary negligence. *See Suprynowicz v. Tohan*, No. HHDCV216140245S, 2021 Conn. Super. LEXIS 1548, at *8 (Super. Ct. Sep. 30, 2021) (holding that ordinary negligence applied where a reproductive endocrinologist inseminated a patient with sperm of his own, because his actions did not involve negligence of a specialized medical nature); *Witt v. Yale-New Haven Hosp.*, 51 Conn. Supp. 155, 157, 977 A.2d 779, 782 (2008) (applying ordinary negligence to a case where plaintiffs frozen ovarian tissue was discarded); *Mansur v. CT Fertility, P.C.*, No. FBTCV186076746S, 2019 Conn. Super. LEXIS 1048, at *13 (Super. Ct. Apr. 22, 2019) (finding that the complaint did not implicate professional negligence because plaintiffs alleged that the doctor failed to perform the IVF procedure pursuant to the unambiguous terms of the contract).

81. From 2010 on, Nicole and Daniel sought ongoing medical care and treatment from Illume and Leondires for their fertility complications. Nicole and Daniel struggled to conceive naturally, so they turned to Illume and Leondires to provide them with medical care that would help them overcome their challenges to conception.

82. From 2010 through 2024, Plaintiffs received ongoing and uninterrupted treatment and care from Illume and Leondires for their fertility complications. Leondires was Plaintiffs' fertility doctor throughout this entire time period, and Plaintiffs were treated at his practice, Illume (formerly known as RMA of Connecticut), for the entire time period.

83. Plaintiffs began their treatment in 2010, when they first went to Leondires and Illume for fertility treatment. In 2010, Plaintiffs had several appointments with Defendants leading up to and after Nicole's egg retrieval, including a fresh embryo transfer procedure.

84. In late 2010, Plaintiffs opted to have Leondires and Illume cryogenically preserve and store nine (9) of their fertilized embryos.

85. From 2010 to 2011 Plaintiffs had several more appointments with Defendants, including two separate frozen embryo transfer procedures. Nicole was monitored by Defendants after each of these transfers.

86. From 2010 through 2024, Plaintiffs reasonably believed they were still receiving continuous care from Illume and Leondires in the form of frozen embryo storage. Plaintiffs' embryo storage amounted to ongoing treatment for their fertility complications because the frozen embryos were Plaintiffs' path to conception. So long as Plaintiffs embryos were stored by Leondires and Illume, Plaintiffs retained the possibility to seek out further transfer procedures with Leondires and Illume. In order for Plaintiffs' embryos to be able to effectuate pregnancy, or a

“cure” for their fertility complications, Leondires and Illume were required to provide continuous care and support in the form of cryogenic embryo storage.

87. Plaintiffs were billed by Defendants for the storage of their embryos throughout the course of their treatment. Illume billed Plaintiffs and/or Plaintiffs’ insurance plan periodically for the continuous storage of Plaintiffs’ embryos from 2010 through 2024, including after the destruction of Plaintiffs’ embryos.

88. Plaintiffs’ continuous treatment with Leondires and Illume did not terminate prior to March of 2024, because Plaintiffs never took steps to affirmatively terminate their treatment by disposing of or using their remaining three (3) frozen embryos. Had this termination occurred, it would have been clear and apparent.

89. Prior to March of 2024, Plaintiffs had no reason to believe their continuous treatment and embryo storage with Defendants had ended or had been terminated by Defendants. Up until March 2024, Plaintiffs believed that Defendants were still storing Plaintiffs’ frozen embryos, so that should Plaintiffs decide to move forward with another frozen embryo transfer, Defendants would be able to treat Plaintiffs. Plaintiffs were not informed that their embryos were discarded until March of 2024, and Plaintiffs had no reason to know that their embryos were discarded prior to this.

90. Plaintiffs believed there was an ongoing and continuous relationship between Plaintiffs and Defendants because Plaintiffs knew their embryos remained in storage with Defendants, and because Plaintiffs received periodic—though not regular—invoices from Defendants from 2010 through 2024. From 2010 through March of 2024, Plaintiffs maintained the desire to potentially transfer one of their remaining frozen embryos, which also would have necessitated Defendants provide Plaintiffs with additional treatments and procedures.

G. Connecticut Public Policy Condemns Defendants' Conduct as Criminal.

91. Connecticut has a strong public policy in favor of safeguarding embryos and protecting the rights of families to determine the disposition of their embryos.

92. Connecticut General Statute Section 32-41jj, codified in 2005 and amended in 2015, demonstrates this public policy, stating that physicians and health care providers “shall provide [fertility] patient[s] with timely, relevant and appropriate information sufficient to allow that person to make an informed and voluntary choice regarding the disposition of any embryos . . . remaining following an infertility treatment.” Subsection (c)(2) of the statute requires such practitioners to present patients with options regarding the disposition of unused embryos. Lastly, Subsection (c)(4) makes violations of the foregoing provisions a felony.

93. In short, Connecticut law recognizes the crucial and pressing need to hold clinics and fertility practitioners accountable for usurping or otherwise interfering with patients’ most basic reproductive rights—including the extremely personal and important decisions regarding the disposition of their precious, irreplaceable, and valuable embryos.

94. All these provisions were codified in Connecticut law prior to Illume and Leondires’s destruction of Plaintiffs’ embryos. Thus, prior to recklessly disposing of Plaintiffs’ embryos without their consent, Defendants knew or should have known that doing so was not only a reprehensible and unforgivable breach of their duties to the Plaintiffs, but also a felony punishable under Connecticut law.

FIRST COUNT: ORDINARY NEGLIGENCE/GROSS NEGLIGENCE

Against All Defendants

95. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

96. Illume and Leondires's negligent actions were not of a specialized medical nature, and did not stem from the exercise of specialized medical judgment. Rather, Defendants' failure resulted from a simple, clerical error, compounded by a failure to maintain appropriate records, perform regular audits, and ensure all information is regularly and accurately communicated to clients of the clinic.

97. As a fertility clinic holding itself out to perform services for patients, Illume had a duty to ensure that services were performed safely, and in accordance with the consent of its patients. As a clinic that offered embryo storage, Illume had a duty to ensure the safekeeping of frozen embryos that it agreed to store. Illume had a duty to ensure that these embryos were sufficiently labeled, properly organized, and frequently monitored so that they were accounted for and not mixed up with embryos belonging to other patients.

98. As Illume's founder and medical director, and as a fertility specialist holding himself out to perform services for patients, Leondires similarly had a duty to ensure that services were performed safely, and in accordance with the consent of his patients. Because his practice offers embryo storage, Leondires had a duty to ensure the safekeeping of all frozen embryos his practice agreed to store. Leondires had a duty to ensure that these embryos were sufficiently labeled, properly organized, and frequently monitored so that they were accounted for and not mixed up with embryos belonging to other patients.

99. Illume and Leondires had a duty to exercise reasonable care in storing, monitoring, accounting for, transferring, and discarding Plaintiffs' embryos.

100. Illume and Leondires had a duty to Plaintiffs to act with the upmost care when discarding or disposing of human embryos, because of their valuable and irreplaceable nature. Defendants owed Plaintiffs a duty to ensure that Plaintiffs' embryos were properly labeled and

accounted for, such that they could not be accidentally discarded in place of another patient's embryos. Defendants also owed Plaintiffs a duty to conduct routine and timely audits of their lab, such that they could promptly ascertain whether any embryos in their lab had been damaged, misplaced, moved, or accidentally discarded. Defendants also owed Plaintiffs a duty to provide regular, continuous, and effective communications about the status of Plaintiffs' embryos.

101. Illume and Leondires's duty of care to Plaintiffs arose from the extremely sensitive nature of the storage services they decided to offer and perform. Plaintiffs trusted Defendants to care for their precious and irreplaceable biological material because Defendants held themselves out as highly qualified, capable, and trustworthy.

102. Illume and Leondires's duty of care to Plaintiffs additionally arose from Defendants' voluntary decision to undertake, for consideration, to render storage services to Plaintiffs. Defendants' storage services, which they voluntarily undertook, were necessary for the protection of Plaintiffs' embryos.

103. Imposing this duty on Illume and Leondires to avoid causing such emotional distress, physical trauma, and financial harm is beneficial to public policy of preventing future harm in that Defendants will be motivated to ensure the safe keeping of frozen embryos they voluntarily agree to store.

104. Illume and Leondires breached their duties to Plaintiffs by failing to properly label embryos stored in their lab, failing to properly organize embryos stored in their lab, failing to implement adequate procedures for the storage and organization of embryos in their lab, failing to implement adequate procedures for the disposal of embryos in their lab, and/or failing to implement adequate storage auditing procedures to ensure that any potential errors or mistakes were promptly identified and addressed.

105. Illume and Leondires breached their duties to Plaintiffs by mistakenly discarding Plaintiffs' embryos, without Plaintiffs' consent, knowledge, or permission. Illume and Leondires breached their duties to Plaintiffs by mixing up Plaintiffs' embryos with the embryos of another Illume patient.

106. Illume and Leondires breached their duties to Plaintiffs by failing to perform an audit of the embryos in their lab in a timely and regular fashion. By failing to account for Plaintiffs' embryos, Defendants did not discover that Plaintiffs' embryos had been accidentally discarded for five years and are unable to this day to adequately account for how this monumental breach occurred.

107. Illume and Leondires breached their duties to Plaintiffs by failing to keep in regular communication with Plaintiffs about the status of their embryos. Had Defendants had a plan in place to send patients, for example, yearly embryo status letters or billing statements, it would have required that Defendants monitor patients' embryos and verify their existence on at least a yearly basis.

108. As a direct and proximate result of Illume and Leondires's negligent acts/or omissions, including but not limited to, failing to properly label and identify embryos in their lab, failing to fully identify the ownership of embryos prior to disposal, mixing up patients' embryos, mistakenly discarding Plaintiffs' embryos without consent, failing to perform audits of their lab in a timely and regular fashion, and failing to timely notify Plaintiffs that their embryos were discarded, Plaintiffs were harmed as described herein, including but not limited to the permanent destruction of their embryos and continuing emotional distress. There is also a physical component to this damage, as Nicole underwent an extremely grueling and physically taxing egg retrieval in

order to obtain the biological material to create the embryos that Defendants so carelessly threw away.

109. These negligent acts and/or omissions were a substantial factor in causing Plaintiffs' harm and damages.

110. Illume and Leondires could and should have reasonably foreseen that if they accidentally discarded patients' embryos, such as Plaintiffs', without their consent, knowledge, or permission, the patients would have experienced extreme emotional distress as a result of their breach of their duty of care.

111. It is also foreseeable to Leondires and Illume that if they did not put in place adequate measures to label embryos, organize embryos, identify embryos, locate embryos, and/or dispose of embryos, that embryos of one patient might get mixed up with embryos of another patient, thus prompting the mistaken disposal of a patient's embryos.

112. Illume and Leondires could and should have reasonably foreseen that if they did not implement practices to regularly audit and/or identify embryos in their lab, that they may not be able to timely identify when embryos, such as Plaintiffs', have been improperly disposed of or discarded. Illume and Leondires could and should have reasonably foreseen that not informing patients, such as Plaintiffs, for several years that their embryos have been mistakenly discarded would result in extreme emotional distress and impair patients' ability to have children with their biological material.

113. Illume and Leondires's acts and omissions constitute gross negligence because they are an extreme departure from what a reasonable careful person would do in the same situation to prevent foreseeable loss of embryos, and foreseeable emotional distress. Illume and Leondires

acted willfully, wantonly, and with conscious disregard by failing to implement policies and procedures that would prevent the accidental disposal of human embryos.

114. Illume and Leondires's failure to implement reasonable and adequate procedures to ensure the safe keeping of embryos in their lab has caused Plaintiffs severe emotional distress, physical trauma, and economic harm. As a result of Defendants' breach, Plaintiffs have suffered the loss of the opportunity to have additional children. Coping with this loss is extremely difficult and has required Nicole to attend counseling.

115. As a result of this breach on part of Illume and Leondires, Plaintiffs suffered damages to be determined at trial, including their lost embryos, loss of opportunity to have children, physical trauma, emotional distress, time, and money. A reasonable person would struggle to cope with the losses suffered by Plaintiffs.

SECOND COUNT: PROFESSIONAL NEGLIGENCE

Against All Defendants

Brought in the Alternative to Count One

116. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

117. In an abundance of caution, Plaintiffs bring this claim in the alternative to Claim One, should this Court determine that Plaintiffs' claim sounds in professional negligence, rather than ordinary negligence. In support of this alternative claim, Plaintiffs have provided a written opinion letter authored by an American Board-Certified medical specialist practicing in the fertility field.

118. At all times relevant herein, Illume and Leondires were acting in their capacity as medical providers and/or professionals. Illume and Leondires held themselves out as fertility care

providers who could assist patients with fertility complications. Illume and Leondires offered a number of services related to fertility and reproductive care, including the cryogenic preservation and storage of embryos.

119. Leondires is American Board Certified in Obstetrics and Gynecology, and Reproductive Endocrinology and Fertility.

120. Illume and Leondires held themselves out to the public, including Plaintiffs, as having specialized medical knowledge with respect to fertility treatments, IVF, and cryogenic embryo storage. Plaintiffs trusted Illume and Leondires because of this specialized and superior knowledge, and as such, Plaintiffs relied on Illume and Leondires to perform these services safely and effectively.

121. With respect to the cryogenic preservation of embryos, the requisite standard of care implemented by other similar medical care providers requires the following: (1) a system of labeling stored embryos that ensures that the embryos of different patients are not confused or mistaken for one another; (2) a plan and method for organizing cryopreserved embryos that allows the embryos of patients to be easily identified and located; (3) a practice of recording the exact location in a laboratory where each patients' embryos are stored; (4) responsible procedures for embryo disposal and destruction, including sufficient checks to ensure that embryos are not discarded accidentally and/or without patient consent; (5) a policy to conduct timely and effective audits of a laboratory's stored embryos, so that any damage to or loss of embryos can be promptly ascertained; and (6) continuous, regular, and effective communication with patients to ensure that they are aware of the status of their embryos.

122. Leondires and Illume did not abide by the requisite standard of care applicable to fertility clinics offering cryogenic embryo preservation and similar American Board-Certified physicians.

123. Illume and Leondires deviated from the requisite standard of care by failing to properly label embryos stored in their lab, failing to properly organize embryos stored in their lab, failing to implement adequate procedures for the storage and organization of embryos in their lab, and failing to implement adequate procedures for the disposal of embryos in their lab.

124. Illume and Leondires deviated from the requisite standard of care by mistakenly discarding Plaintiffs' embryos, without Plaintiffs' consent, knowledge, or permission. Illume and Leondires breached their duties to Plaintiffs by mixing up Plaintiffs' embryos with the embryos of another Illume patient.

125. Illume and Leondires deviated from the requisite standard of care by failing to perform an audit of the embryos in their lab in a timely and regular fashion, such that they could promptly discern whether embryos, such as Plaintiffs', were damaged, misplaced, or mistakenly discarded.

126. Illume and Leondires deviated from the requisite standard of care by failing to keep in regular and continuous communication with Plaintiffs about the status of their embryos.

127. As a direct and proximate result of Illume and Leondires's negligent acts/or omissions, including but not limited to, failing to properly label and identify embryos in their lab, failing to fully identify the ownership of embryos prior to disposal, mixing up patients' embryos, mistakenly discarding Plaintiffs' embryos without consent, failing to perform audits of their lab in a timely and regular fashion, and failing to timely notify Plaintiffs that their embryos were

discarded, Plaintiffs were harmed as described herein, including but not limited to the permanent destruction of their embryos.

128. These negligent acts and/or omissions directly involved Plaintiffs' medical condition: namely, Plaintiffs' fertility complications. Leondires and Illume continued to store Plaintiffs' embryos for the purpose of overcoming this fertility complication, by achieving pregnancy through IVF.

129. These negligent acts and/or omissions stemmed from a failure by Illume and Leondires to exercise judgement based on their specialized medical knowledge. As providers offering cryogenic preservation and storage, Defendants knew that they should have had adequate measures in place to label embryos, organize embryos, identify embryos, locate embryos, and/or dispose of embryos, such that embryos do not get mixed up, lost, damaged, or mistakenly discarded.

130. These negligent acts and/or omissions were a substantial factor in causing Plaintiffs' harm and damages.

131. Illume and Leondires could and should have reasonably foreseen that if they accidentally discarded patients' embryos, such as Plaintiffs', without their consent, knowledge, or permission, the patients would have experienced extreme emotional distress as a result of their deviation from the requisite standard of care.

132. It was also foreseeable to Leondires and Illume that if they did not put in place adequate measures to label embryos, organize embryos, identify embryos, locate embryos, and/or dispose of embryos, that embryos of one patient might get mixed up with embryos of another patient, thus prompting the mistaken disposal of a patient's embryos.

133. Illume and Leondires could and should have reasonably foreseen that if they did not implement practices to regularly audit and/or identify embryos in their lab, that they may not be able to timely identify when embryos, such as Plaintiffs', have been improperly disposed of or discarded. Illume and Leondires could and should have reasonably foreseen that not informing patients, such as Plaintiffs, for several years that their embryos have been mistakenly discarded would result in extreme emotional distress and impair patients' ability to have children with their biological material.

134. Illume and Leondires's failure to implement reasonable and adequate procedures to ensure the safe keeping of embryos in their lab has caused Plaintiffs severe emotional distress, physical trauma, and economic harm. As a result of Defendants' breach, Plaintiffs have suffered the loss of the opportunity to have additional children. Coping with this loss is often extremely difficult and has required Nicole to attend counseling.

135. As a result of Illume and Leondires's deviation from the requisite standard of care, Plaintiffs suffered damages to be determined at trial, including their lost embryos, loss of opportunity to have children, emotional distress, time, and money. A reasonable person would struggle to cope with the losses suffered by Plaintiffs.

THIRD COUNT: BAILMENT

Against All Defendants

136. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

137. Plaintiffs' cryogenically preserved embryos were their personal property.

138. Plaintiffs, as bailors, delivered their property to Leondires and Illume, the bailees. Plaintiffs made the decision to entrust Illume and Leondires with the safekeeping of their embryos.

Plaintiffs gave their embryos to Illume and Leondires for the particular purpose of cryogenically storing the embryos, indefinitely, to support Plaintiffs' fertility needs. They did so based on Defendants' own voluntary undertaking of these obligations and representations that they were adequately qualified to provide such bailment services.

139. Once Plaintiffs' fertility needs were fulfilled, Defendants represented that Plaintiffs would have the opportunity to decide the disposition of their embryos. At that point, Plaintiffs, and only Plaintiffs, could determine whether to discard, donate, or otherwise dispose of their cryogenically preserved embryos.

140. As the bailees, Leondires and Illume had a duty to use reasonable care under the circumstances to protect Plaintiffs' embryos.

141. Leondires and Illume failed to use reasonable care to protect Plaintiffs' embryos because they failed to implement adequate measures to ensure that embryos in their lab were properly labeled, organized, identified, located, and/or disposed of. Defendants failed to implement measures to prevent embryos from being mixed up, lost, damaged, or mistakenly discarded. Defendants also failed to implement procedures that would have allowed them to timely discern whether any embryos in their lab were damaged, misplaced, and/or accidentally discarded.

142. Leondires and Illume's lack of reasonable measures to ensure the safe keeping of embryos are evidenced by their mistaken disposal of Plaintiffs' three (3) cryogenically preserved embryos.

143. As a direct and proximate result of Leondires and Illume's failure to use reasonable care to protect Plaintiffs' embryos, Plaintiffs' embryos were permanently destroyed. Leondires and Illume were unable to return Plaintiffs' embryos to Plaintiffs, or otherwise allow Plaintiffs to

decide the disposition of their embryos, because Leondires and Illume mistakenly discarded Plaintiffs' embryos without their knowledge, consent, or permission.

FOURTH COUNT: CONVERSION

Against All Defendants

144. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

145. Plaintiffs' cryogenically preserved embryos were their personal property.

146. Plaintiffs allowed Leondires and Illume to cryogenically store Plaintiffs' embryos in their lab. Plaintiffs entrusted their embryos to Defendants for the limited purpose of storing the embryos until Plaintiffs made the decision to transfer, discard, donate, or otherwise dispose of their embryos.

147. Plaintiffs retained the right to decide the disposition of their embryos. Neither Leondires nor Illume had the authority to transfer, discard, donate, or otherwise dispose of Plaintiffs' embryos without Plaintiffs' express knowledge, consent, and permission.

148. Leondires and Illume wrongfully and intentionally exercised control over Plaintiffs three (3) cryogenically preserved embryos by discarding all three (3) of the embryos in 2019. This action permanently dispossessed Plaintiffs of their embryos.

149. Leondires and Illume did not have Plaintiffs' consent or permission to discard Plaintiffs' embryos. Defendants' discarding of Plaintiffs' embryos was completely unauthorized and wrongful. Plaintiffs would not have consented to the disposal of their embryos, had Illume or Leondires inquired.

150. Leondires and Illume have admitted that they did not have authority to discard Plaintiffs' embryos. Plaintiffs did not fill out the requisite paperwork that would allow Leondires and Illume to discard Plaintiffs' embryos.

151. As a direct and proximate result of Leondires and Illume's unauthorized disposal of Plaintiffs' embryos, Plaintiffs were harmed as described herein, including but not limited to the permanent destruction of their embryos.

FIFTH COUNT: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Against All Defendants

152. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

153. Illume and Leondires's conduct of (1) failing to implement measures to prevent the mixing up of different patients' embryos, (2) failing to implement measures to prevent the accidental discarding of embryos, or the discarding of embryos without patient consent, (3) accidentally discarding Plaintiffs' embryos without knowledge, permission, or consent, (4) failing to implement measures to allow for the timely discovery of lost, damaged, or accidentally discarded embryos, (5) failing to inform Plaintiffs that their embryos had been discarded until five years after the fact, and (6) insinuating that Plaintiffs no longer needed or intended to use their precious embryos, all created an unreasonable risk of causing Plaintiffs emotional distress.

154. Illume and Leondires could and should have reasonably foreseen that if they did not put in place adequate measures to label embryos, organize embryos, identify embryos, locate embryos, and/or dispose of embryos, that embryos of one patient might get mixed up with embryos of another patient, thus prompting the mistaken disposal of a patient's embryos. Further, Illume and Leondires could and should have reasonably foreseen that if they accidentally discarded

patients' embryos, such as Plaintiffs', without their consent, knowledge, or permission, the patients would have experienced extreme emotional distress.

155. Illume and Leondires could and should have reasonably foreseen that if they did not implement practices to regularly audit and/or identify embryos in their lab, that they may not be able to timely identify when embryos, such as Plaintiffs', have been improperly disposed of or discarded. Illume and Leondires could and should have reasonably foreseen that not informing patients, such as Plaintiffs, for several years that their embryos have been mistakenly discarded would result in extreme emotional distress and impair patients' ability to have children with their biological material.

156. Leondires could and should have reasonably foreseen that insinuating to Plaintiffs that they had no intention of using their frozen embryos, or no longer needed their frozen embryos, would compound Plaintiffs' emotional distress in the wake of finding out that their embryos had been wrongfully discarded.

157. The emotional harm stemming from the loss of opportunity of experiencing pregnancy, prenatal bonding, and the birth of a child is foreseeable.

158. Plaintiffs' emotional distress was severe enough that it might result in illness or bodily harm.

159. It was reasonably apparent to Leondires and Illume that Plaintiffs harbored a significant emotional investment in their frozen embryos. Leondires and Illume could and should have reasonably anticipated the level of fear, anxiety, sadness, grief, and heartbreak that could be caused by the loss of opportunity to conceive a child—*regardless* of whether Plaintiffs had already had children. Indeed, on information and belief, a good number of Defendants' clients who have already conceived store embryos to later add to their family and *do in fact use* those stored embryos

when they are ready to do so. Even for clients who may never use the embryos, Defendants knew or should have known that unilaterally divesting someone else of their right to decide whether to have additional children is a deeply emotional and offensive act.

160. As a direct and proximate result of Illume and Leondires's conduct, Plaintiffs experienced severe emotional distress: Nicole has and continues to experience depression, unexpected crying, short temper, anger, nightmares, headaches, sleeplessness, hopelessness, and anxiety. Daniel has and continues to experience mood swings, depression, anger, anxiety, regret, and hopelessness.

SIXTH COUNT: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Against All Defendants

161. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

162. Illume and Leondires knew or should have known that mistakenly discarding Plaintiffs' precious and irreplaceable embryos would result in severe emotional distress. As fertility care providers, Illume and Leondires know how much value patients place on their genetic material, specifically on fully developed human embryos. As fertility care providers, Illume and Leondires know that patients regard their embryos as future children.

163. Illume and Leondires require that patients fill out extensive paperwork to have their cryogenically preserved embryos removed from storage and discarded. This paperwork demonstrates that Defendants are aware that discarding embryos is a major decision that requires the full consent, knowledge, and permission of a patient. Illume and Leondires knew or should have known that discarding embryos without this consent, knowledge, and permission of Plaintiffs would result in severe emotional distress.

164. As fertility care providers, Illume and Leondires know that the passing of time can have a tremendous effect on a woman's ability to produce eggs or carry a pregnancy. As such, Illume and Leondires knew or should have known that not informing a patient, such as Plaintiffs, that their embryos had been discarded years prior, without their knowledge, would result in severe emotional distress and a permanent impact on their ability to have future children.

165. Defendants' discarding Plaintiffs' embryos without their knowledge, consent, or permission is extreme and outrageous.

166. Defendants' failure to have adequate policies in place to prevent the mixing up of different patients' embryos, and the accidental discarding of embryos is extreme and outrageous.

167. Defendants' failure to perform regular and timely audits of the embryos they agree to safely store, such that they cannot timely determine when embryos are lost, misplaced, or improperly discarded, is extreme and outrageous.

168. Defendants' informing Plaintiffs that their embryos were accidentally discarded five years after the fact, is extreme and outrageous.

169. Further, Leondires's insinuation that Plaintiffs did not need their frozen embryos and/or did not plan to use their frozen embryos, was extreme and outrageous. The decision to transfer or discard their frozen embryos was Plaintiffs' alone—it is a deeply personal and emotional decision that impacts rights enshrined in Constitutional law. Leondires and Illume stripped Plaintiffs of their intimate and important reproductive choices.

170. Defendants' conduct exceeded all bounds usually tolerated by human society. Defendants acted with complete disregard for Plaintiffs' embryos, which Defendants know are a limited and precious resource. Given that fourteen years have passed since Plaintiffs' retrieval, Plaintiffs are not able to replicate the results of their retrieval and create embryos of similar grade

and viability. Depriving Plaintiffs of their opportunity to bring additional children into this world is utterly intolerable.

171. As a direct and proximate result of Illume and Leondires's extreme and outrageous conduct, Plaintiffs experienced severe emotional distress: Nicole has and continues to experience depression, unexpected crying, short temper, anger, nightmares, headaches, sleeplessness, hopelessness, and anxiety. Daniel has and continues to experience mood swings, depression, anger, anxiety, regret, and hopelessness.

SEVENTH COUNT: NEGLIGENT SUPERVISION

Against All Defendants

172. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

173. At all relevant times, Leondires and Illume were in a special relationship of employer-employee and/or principal-agent with the individuals who worked at Illume, and specifically, the individuals who were responsible for overseeing, monitoring, accounting for, disposing of, and otherwise handling cryopreserved embryos in the lab where Illume and Leondires store their patients' cryopreserved embryos. Defendants owed a duty to control the acts and conduct of their employees and/or agents to prevent foreseeable harm to Plaintiffs. Defendants' duties encompassed using reasonable care in supervising its employees and/or agents, to ensure that they were abiding by applicable policies regarding the safe keeping of embryos.

174. The relevant lab employees failed to label, identify, organize, and locate cryopreserved Plaintiffs' embryos such that they were not mixed up with the embryos of another patient. The relevant lab employees failed to correctly identify the patient's embryos that they were trying to dispose of when they accidentally disposed of Plaintiffs' embryos. The relevant lab

employees failed to recognize the mistake they had made with respect to Plaintiffs' embryos. The relevant lab employees failed to conduct regular and routine audits of the embryos in the lab, such that they could timely identify whether any embryos in their inventory had been lost, damaged, or mistakenly disposed of. The relevant lab employees failed to identify that Plaintiffs' embryos, specifically, had been accidentally discarded for a period lasting from 2019 through early 2024.

175. Leondires and Illume knew or should have known that the relevant lab employees and/or agents were not properly trained, and/or incompetent to handle Plaintiffs' embryos, monitor embryos, handle unlabeled embryos, and/or dispose of embryos.

176. Leondires and Illume knew or should have known that they did not adequately train the relevant lab employees to handle embryos, or implement sufficient policies and procedures to ensure that the relevant lab employees knew how to adequately label, identify, organize, locate, and dispose of cryopreserved embryos.

177. As a direct and proximate result of Leondires and Illume's negligent supervision of their employees and/or agents, Plaintiffs were harmed as described herein, including but not limited to the permanent destruction of their embryos.

178. These negligent acts and/or omissions were a substantial factor in causing Plaintiffs' harm and damages.

EIGHTH COUNT: BREACH OF FIDUCIARY DUTY

Against All Defendants

179. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

180. Plaintiffs decided to trust Leondires and his fertility practice, Illume, to perform their very personal and sensitive IVF procedures. Plaintiffs had a unique degree of trust and

confidence in Leondires and Illume, because, as medical providers, Leondires and Illume had a superior degree of knowledge, skill, and expertise related to fertility complications, IVF procedures, and cryogenic embryo preservation and storage.

181. Because of Leondires and Illume's superior knowledge, Plaintiffs relied and depended on Defendants to provide them with competent storage services that were in Plaintiffs' best interests. Plaintiffs trusted that, as a reputable fertility professional and practice, Leondires and Illume had adequate policies and procedures in place to ensure effective and competent storage services. Specifically, Plaintiffs trusted that Leondires and Illume had adequate measures in place to label embryos, organize embryos, identify embryos, locate embryos, and/or dispose of embryos, such that embryos do not get mixed up, lost, damaged, or mistakenly discarded. Plaintiffs also trusted that Defendants had policies in place to regularly audit, locate, or identify embryos in their lab, to ensure that embryos were where they should be, and had not been otherwise lost, damaged, or destroyed. Plaintiffs expected and trusted Leondires and Illume to regularly, effectively, and continuously communicate with Plaintiffs about the status of their embryos—especially should something go wrong with the storage of their embryos.

182. As a result of this fiduciary relationship, Illume and Leondires owed Plaintiffs a duty of loyalty, and a duty to act in Plaintiffs' best interest.

183. Leondires and Illume breached the fiduciary duty created by their relationship with Plaintiffs by (1) failing to implement measures to prevent the mixing up of different patients' embryos, (2) failing to implement measures to prevent the accidental discarding of embryos, or the discarding of embryos without patient consent, (3) accidentally discarding Plaintiffs' embryos without knowledge, permission, or consent, (4) failing to implement measures to allow for the timely discovery of lost, damaged, or accidentally discarded embryos, (5) failing to have a system

in place for the regular, continuous, and effective communication with patients about embryo status, and (6) failing to inform Plaintiffs that their embryos had been discarded until five years after the fact.

184. Through this conduct, Leondires and Illume did not act in Plaintiffs' best interest. As fiduciaries, Leondires and Illume should have acted with the upmost sensitivity, honesty, candor, scrupulous good faith and undivided loyalty. However, Leondires and Illume failed to inform Plaintiffs that they did not have adequate measures in place to ensure the safe keeping of Plaintiffs' embryos, carelessly operated their lab such that they could not prevent the mix up of different clients' embryos, and discarded Plaintiffs' embryos despite not having authorization to do so. None of this conduct was in Plaintiffs' best interest.

185. Leondires and Illume also had inadequate measures in place with respect to performing audits of their lab and identifying, organizing, and monitoring embryos, which had the consequence of legally benefiting Defendants at Plaintiffs' expense. Because it took Defendants five years to adequately audit their lab and discover that Plaintiffs embryos had been improperly discarded, Plaintiffs' claims are now jeopardized by the applicable statute of repose. By delaying Plaintiffs' discovery of their harm, Defendants' actions have the incidental effect of potentially insulating Defendants from litigation. A fiduciary who delays a cause of action beyond the expiration of a statute of limitations obtains an obvious benefit.

186. As a direct and proximate result of Leondires and Illume's breach of their fiduciary duties, Plaintiffs were harmed as described herein, including but not limited to the permanent destruction of their embryos.

NINTH COUNT: BREACH OF CONTRACT

Against All Defendants

187. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

188. Plaintiffs and Defendants entered into an agreement, memorialized by a letter sent from Defendants to Plaintiffs on December 13, 2010, regarding the storage of Plaintiffs' cryopreserved embryos. Defendants offered to provide Plaintiffs storage services and Plaintiffs accepted these services.

189. Plaintiffs agreed to pay an initial fee of \$1,155.00 and a subsequent yearly storage fee of \$900.00 in exchange for Defendants' storage services.

190. The embryo storage agreement provided that Plaintiffs, and only Plaintiffs, could decide when to transfer, discard, donate, or otherwise dispose of their cryopreserved embryos. Per the agreement, and as evidenced by Defendants' December 13, 2021 letter, should they decide that they want to discard their embryos, Plaintiffs were to notify Defendants and then fill out the requisite paperwork.

191. Per the agreement, Defendants did not have the authority to dispose of Plaintiffs' cryopreserved embryos without their knowledge, consent, or permission.

192. Plaintiffs and/or Plaintiffs insurance carrier satisfied Plaintiffs' performance by paying all required invoices and fees, from 2010 through 2023.

193. In 2019, Defendants mistakenly discarded Plaintiffs' embryos without Plaintiffs' knowledge, consent, and permission, directly in violation of Plaintiffs' and Defendants' agreement. By discarding Plaintiffs' embryos without Plaintiffs' knowledge, consent, and permission, Defendants breached the terms of the agreement.

194. As a direct and proximate result of Leondires and Illume's breach, Plaintiffs were harmed as described herein, including but not limited to the permanent destruction of their embryos.

TENTH COUNT: UNJUST ENRICHMENT

Against All Defendants

195. Plaintiffs re-allege and incorporate by reference herein, each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

196. Plaintiffs conferred a benefit on Leondires and Illume in the form of monies paid for fertility treatments, including an egg retrieval procedure and egg fertilization, cryogenic embryo preservation, and continued cryogenic embryo storage. These monies were not gifts or donations but were given in exchange for the services Defendants provided.

197. Leondires and Illume voluntarily accepted and retained these monetary benefits mentioned above.

198. Leondires and Illume failed to provide Plaintiffs with the full benefit of their bargain. Plaintiffs paid for their eggs to be retrieved and fertilized, and their embryos to be safely stored, until Plaintiffs decided whether to transfer, discard, donate, or otherwise dispose of their embryos. Leondires and Illume discarded Plaintiffs' three (3) cryogenically preserved embryos which Plaintiffs had invested significant resources to harvest, develop, and store. As such, it would be unlawful, unjust, and inequitable to allow Defendants to retain the benefit without paying the value thereof.

199. Leondires and Illume received benefits in the form of revenues paid by Plaintiffs and/or Plaintiffs' insurance carrier for fertility treatments and embryo storage to the detriment of

Plaintiffs, because Plaintiffs' embryos were discarded without their knowledge, permission, and consent.

200. Leondires and Illume have been unjustly enriched in retaining the revenues derived from Plaintiffs' payments for fertility treatments and embryo storage, because Leondires and Illume represented that it was solely Plaintiffs' decision to decide whether and when to discard, transfer, donate, or otherwise dispose of their frozen embryos. Further, Leondires and Illume represented that they were capable of safety and responsibly storing Plaintiffs' embryos, which, as evidenced by their failure to adequately label, organize, locate, identify, and properly dispose of embryos in their lab, was not the case. Plaintiffs would not have decided to store their embryos with Defendants had they known of Defendants' inadequate safeguards for the storage of frozen embryos.

201. Plaintiffs have a superior equitable entitlement to the benefit conferred on Illume and Leondires, because they have not compensated for the loss Illume and Leondires caused. Illume and Leondires retain the money paid by Plaintiffs' and/or Plaintiffs' insurance carrier for their fertility treatments and embryo storage, and Plaintiffs' insurance carrier retains the money Plaintiffs pay for their insurance coverage. It is unjust for Plaintiffs to bear the burden of Defendants' negligence.

202. Because Leondires and Illume's retention of the non-gratuitous benefits conferred on them by Plaintiffs is unjust and inequitable, Leondires and Illume must pay restitution to Plaintiffs for their unjust enrichment, as ordered by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- 1) For past, present, and future non-economic damages in an amount to be determined at the time of trial;
- 2) For past, present, and future economic damages in an amount to be determined at the time of trial;
- 3) For compensatory, restitutionary, rescissory, general, consequential, punitive and/or exemplary damages, in an amount to be determined at trial;
- 4) For costs of suit herein;
- 5) For pre- and post-judgement interest as allowed by law;
- 6) For injunctive relief, in order to ensure that Plaintiffs' are no longer charged for the storage of their embryos by either Illume or Leondires; and
- 7) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims in this Complaint so triable.

**RESPECTFULLY SUBMITTED,
THE PLAINTIFFS.**

BY: s/Samuel M. Gagnon
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Tracey B. Cowan (*pro hac vice* application to be
filed)
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Attorneys for Plaintiffs

Please enter our appearances on behalf of the Plaintiffs.

NICOLE COUTURE-GALLAGHER, an)	SUPERIOR COURT
individual; and DANIEL GALLAGHER an)	J.D. OF FAIRFIELD
individual,)	AT BRIDGEPORT
Plaintiffs,)	
v.)	
MARK LEONDIRES, an individual; and)	November 25, 2024
ILLUME FERTILITY PLLC,		
Defendants.		

STATEMENT OF AMOUNT IN DEMAND

The Plaintiffs claims damages in excess of \$15,000.00 and equitable relief.

**RESPECTFULLY SUBMITTED,
THE PLAINTIFFS.**

BY: s/Samuel M. Gagnon
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Attorneys for Plaintiffs

CERTIFICATE OF GOOD FAITH

Pursuant to Connecticut General Statute Section 52-190a, I hereby certify that, prior to the filing of the Complaint in this action, I made a reasonable inquiry, as permitted by the circumstances, to determine whether there were grounds for a good faith belief that there was negligence in the care or treatment of Plaintiffs. Pursuant to the attached and signed opinion letter of a similar health care provider, this inquiry has given rise to a good faith belief on my part, that grounds exist for an action against the named Defendants.

**RESPECTFULLY SUBMITTED,
THE PLAINTIFFS.**

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Attorneys for Plaintiffs

November 19, 2024

To: Tracey B. Cowan, Esq.
Clarkson Law Firm, P.C.
22525 Pacific Coast Highway
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To: Samuel M. Gagnon
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Certificate of Good Faith

Ms. Cowan and Mr. Gagnon:

I am a practicing physician certified by the American Board of Obstetrics and Gynecology in Obstetrics and Gynecology, and Reproductive Endocrinology. I attended medical school, and I completed my residency in Obstetrics and Gynecology. Additionally, I obtained a Ph.D. in reproductive biology. I have extensive experience in providing In Vitro Fertilization (IVF) services and treatments and I am currently the Medical Director of a hospital's IVF program.

Dr. Mark Leondires, the physician at issue in this matter, is certified by the American Board of Obstetrics and Gynecology in Obstetrics and Gynecology, and Reproductive Endocrinology/Fertility. Dr. Leondires attended medical school at the University of Vermont College of Medicine and completed his residency in Obstetrics and Gynecology at Maine Medical Center. As such, Dr. Leondires and I are trained and experienced in the same specialty and are similar health care providers.

I have reviewed the facts underlying this matter, *Nicole Couture-Gallagher and Daniel Gallagher v. Mark Leondires et al.* Specifically, I have reviewed the entirety of Plaintiffs' Illume Fertility records that have been provided to me. It is my professional opinion based on the facts that I have reviewed that Plaintiffs' embryos were discarded due to medical negligence. Dr. Mark Leondires and Illume Fertility's actions that resulted in the disposal of Plaintiffs' three (3) cryopreserved embryos fell below the standard of care applicable to physicians certified in Obstetrics and Gynecology, and Reproductive Endocrinology.

The applicable standard of care with respect to storing and maintaining cryopreserved embryos requires the following: (1) a system of labeling stored embryos that ensures that the embryos of different patients are not confused or mistaken for one another; (2) a plan and method for organizing cryopreserved embryos that allows the embryos of patients to be easily identified and located; (3) a practice of recording the exact location in a laboratory where each patients' embryos are stored; (4) responsible procedures for embryo disposal and destruction, including sufficient checks to ensure that embryos are not discarded accidentally and/or without patient consent; (5) a policy to conduct timely and effective audits of a laboratory's stored embryos, so that any damage to or loss of embryos can be promptly ascertained; and (6) continuous, regular, and effective communication with patients to ensure they are aware of the status of their embryos—such as sending patients yearly letters and billing statements.

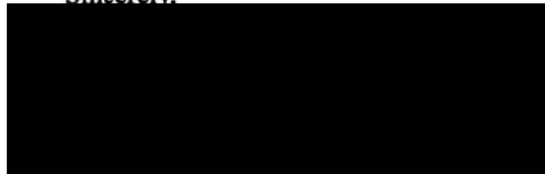
According to Dr. Leondires, Plaintiffs' embryos were mistakenly discarded due to Plaintiffs' embryos being confused with the embryos of another Illume Fertility patient with a similar name. Instead of discarding the embryos of the patient that had requested the disposal of their embryos, Dr. Leondires and Illume mistakenly discarded Plaintiffs' embryos. In my

professional opinion, Plaintiffs' embryos would not have been mistakenly discarded had Dr. Leondires and Illume Fertility: (1) properly labeled their cryopreserved embryos; (2) properly organized cryopreserved embryos in their laboratory; (3) properly recorded the exact location in the laboratory where each Illume Fertility patient's embryos were stored; and/or (4) properly verified the identity of embryos and patient consent prior to the disposal of embryos.

Additionally, according to Dr. Leondires, Plaintiffs' embryos were discarded in 2019, five years prior to when Plaintiffs were notified of their disposal, in March of 2024. In my professional opinion, the delayed identification of the accidental disposal of Plaintiffs' embryos and the delayed notification to Plaintiffs of such disposal also fell below the standard of care. It would not have taken Dr. Leondires and Illume Fertility five years to identify that Plaintiffs' embryos had been mistakenly discarded had they conducted routine and timely audits of the embryos in their laboratory, and kept in continuous, regular communication with their patients about the status of their embryos.

This is a preliminary opinion to satisfy the Good Faith Certificate requirement of Connecticut General Statute 52-190a. I understand that the Good Faith Certificate "shall not be subject to discovery by any party except for questioning the validity of the certificate." Further, I understand that a copy of this opinion, with my name and signature expunged, will be attached to the Good Faith Certificate with the Complaint.

Sincerely,

A large black rectangular redaction box covering the signature of the author.

MD, PhD