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**FILED**

*2:38 pm, Aug 28, 2019*

KRISTINA WASILEWSKI and  
DREW WASILEWSKI, Individually  
and as GUARDIANS AD LITEM for  
N.W.,

Plaintiffs,

v.

THE INSTITUTE FOR  
REPRODUCTIVE MEDICINE AND  
SCIENCE AT SAINT BARNABAS;  
DR. JOHN GARRISI; DR. NATALIE  
A. CEKLENIAK; ABC CORPS. 1-10;  
JOHN DOES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO.: ESX-L-6698-17

CIVIL ACTION

**ORDER COMPELLING DISCOVERY**

THIS MATTER having been opened to the Court by Mazie Slater Katz & Freeman, LLC, attorneys for plaintiffs, seeking an Order compelling discovery, and the Court having considered the moving papers and any opposition filed hereto; and for good cause having been shown;

IT IS on this 28<sup>th</sup> day of August, 2019;

ORDERED that defendants are hereby compelled to produce the documents requested in plaintiffs' Third and Fourth Notices to Produce, including but not limited to the following documents and materials:

1. Any and all documents identifying defendants' employees who were working at The Institute for Reproductive Medicine & Science at St. Barnabas ("IRMS"): (i) on or about 11/7/12 when Mr. Wasilewski provided a semen specimen, and (ii) on or about 11/26/12 when his sperm

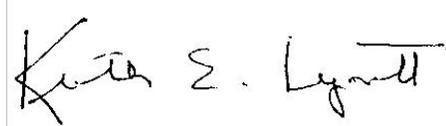
was thawed and was supposed to be used to fertilize Ms. Wasilewski's eggs.

2. All IRMS's log book(s), or similar documents whether a physical or electronic, identifying other male clients of defendants, and their specimen's accession numbers, who provided specimens around the date and time, on or about 11/7/12, that Mr. Wasilewski provided his specimen.
3. Any and all documents identifying other IRMS male clients, and accession numbers, of those whose specimens were thawed when Ms. Wasilewski's eggs were artificially inseminated with the incorrect semen, on or about 11/26/12.
4. Any and all documents relating to the supervision of IRMS lab technician, defendant Melissa Bell, who processed Mr. Wasilewski's specimen on or about 11/7/12.
5. Any and all documents relating to the ascension number 95239, which IRMS assigned to Mr. Wasilewski's specimen, on or about 11/7/12.
6. A list of all the laboratory's clients of Asian descent: (i) who donated a semen specimen on or about 11/7/12, and (ii) whose specimen was thawed on or about 11/26/12.
7. Any and all documents identifying the women who had their eggs fertilized at the time his sperm was allegedly thawed, on or about 11/26/12.
8. Any and all documents regarding the policies, procedures, standards and protocols for the collection, labeling, maintaining, freezing, thawing and/or transferring of semen samples in effect in November 2012.
9. Any and all records regarding the identity of any and all semen donors for 11/7/12.
10. Any and all records of the identity (name and address) of the sperm used in the artificial insemination procedure involving Ms. Wasilewski's eggs, on or about 11/26/12.
11. The Defendants may in their production of documents redact personal identifying information and use initials of clients (save for documents produced in response to #10). The Plaintiffs may move for production of specific documents in unredacted form on the basis of a document-specific showing that the identity of the individual should be disclosed.

and it is;

FURTHER ORDERED that are to produce all responsive documents within 30 days of the posting of this Order; and it is;

FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record via eCourts.



HONORABLE KEITH E. LYNOTT, J.S.C.

Opposed

Unopposed

### **STATEMENT OF REASONS**

The Court finds the requested discovery is relevant to the issues and defenses raised in the case and that the materials sought are admissible or reasonably calculated to lead to the discovery of admissible evidence. As the Defendants are asserting that the Plaintiff's sperm was in fact used for the in vitro fertilization and/or that an extramarital affair led to the minor Plaintiff's birth, the Plaintiffs are entitled to relevant records of the Defendants to explore their claims and the Defendants' defenses. The Court finds the requested discovery is well within the ambit of relevant materials in light of the issues in the case and the Court's broad rules for discovery, permitting full exposure of claims and defenses. The Court also notes in this regard the standard for relevance, which is a tendency to prove a fact.

The Court concludes that discovery of requested records is not barred under the HIPAA statute and rules, even assuming they apply to the Defendants' facility and operation, as the production of documents is being required by Court order. To address legitimate privacy concerns, the Court will permit documents identifying clients by name (and other personal identifying information) to be redacted at this time. The Plaintiffs may seek production of specific documents in unredacted form upon a showing as to the need for the same.

The minor Plaintiff is entitled to learn the identity of the actual father (if different from the Plaintiff). Among other reasons, the minor Plaintiff has a right to ascertain whether she is vulnerable to any genetic diseases. As noted, the Court will address requests for production of specific documents in unredacted form on a document-by-document basis upon any further application.