

**MATERIALS SUPPORTING
PRESENTATION OF
HAROLD J. CASSIDY**

Tuesday, August 16, 2016

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INDEX OF DOCUMENTS PROVIDED

IN SUPPORT OF PRESENTATION OF HAROLD CASSIDY

A.

Documents Attached

1. Overview of Considerations
2. Model Surrogacy Statute
3. Facts of the Melissa Cook Case

B.

Additional Documents Provided the Committee

1. Declaration of Dr. Alma L. Golden (6 copies)
2. Declaration of Dr. Anthony Caruso (6 copies)
3. Declaration of Dr. Miriam Grossman (6 copies)
4. Declaration of Dr. Barbara Katz Rothman (6 copies)
5. Declaration of Melissa Cook (6 copies)
6. Copy of Opinion in *Baby M* Case (3 copies)
7. New Jersey Bioethics Commission Report (3 copies)
8. Statement of European Parliament Declaring

Surrogacy a Grave Human Rights Violation (6 copies)

9. Legal Memorandum Filed in Federal Court
in the *Cook* case (3 copies)

OVERVIEW OF CONSIDERATIONS

A.

The Child

Throughout the history of our nation, our policy has always been that the central focus of all child rearing is the welfare of the children. Surrogacy marks the first time that the focus is shifted away from the welfare of the child to the exclusive purpose of accommodating and satisfying the desires of an adult – at the expense of and injury to others.

The Violation of the Children's Rights

Throughout our history, a central tenant of our public policy was to promote and secure the right of every child to know, love and respect, and to have a relationship with, both natural parents to the fullest extent possible. Separation of a child from his or her mother was always viewed as a tragedy for the child, and such separation was treated as a last option reserved only for cases in which it was a necessity.

- Surrogacy is a plan made before a child is conceived, to deliberately ensure that the child will never be able to have a relationship with both of his or her parents.
- Surrogacy is a plan to create a class of children who will never know their mother.

Surrogacy Enabling Statutes enforcing gestational surrogacy contracts are unconstitutional because they violate the children's fundamental right to maintain their constitutionally protected relationship with their mother.

Pregnancy and the physiological bonding and physical and psychological relationship between the pregnant mother and the child she carries is extremely beneficial to the child, and forms the basis for a lifelong loving, committed relationship between a mother and her child.

- Surrogacy is a plan to strip the child of the benefit of pregnancy.
- Surrogacy is a plan to remove the bond and relationship created during pregnancy from child rearing when all evidence is that doing so is harmful to both the child as well as the mother.

Throughout the history and tradition of our nation, we have criminalized the buying and selling of children. No contract for the purchase and sale of a child was enforceable in a court of law.

- Surrogacy is the purchase of a child, the purchase of a human being.
- “In the scheme contemplated by the surrogacy contract in this case, a middleman, propelled by profit, promotes the sale. Whatever idealism may have motivated any of the participants, the profit motive predominates, permeates, and ultimately governs the

transaction” – Unanimous N.J. Supreme Court Decision in the *Baby M* Case.

- Surrogacy marks the first time that some states permit the buying and selling of a child and will enforce a contract for the purchase of a child.
- “There are, in a civilized society, some things money cannot buy. In America, we decided long ago that merely because conduct purchased by money was ‘voluntary’ did not mean that it was good or beyond regulation and prohibition. ... There are, in short, values that society deems more important than granting to wealth whatever it can buy, be it labor, love, or life.” – Unanimous N.J. Supreme Court Decision in the *Baby M* Case.

Surrogacy Enabling Statutes are unconstitutional because they violate the children’s fundamental right to be free from being treated as a commodity and being bought and sold.

Throughout the history and tradition of our nation, the custody of children has always been placed based upon what is in the children’s best interests. Contracts between adults which placed custody in one parent were never enforceable. So strong was that tradition that the United States Supreme Court has held that one of the few exceptions to Article IV of our Federal Constitution which requires one state to give full faith and credit to the judgment of another state is when the first state places custody of a child without determining what is in the child’s best interests. Under such

circumstances, the second state can ignore the order of the first state. *Ford v. Ford*, 371 U.S. 187 (1962).

- Surrogacy Enabling Statutes enforce surrogacy contracts without any regard for whether such placement is in the child's best interest, even if there is evidence that enforcing the contract may be harmful to the child.
- A court construing the California Gestational Surrogacy Enabling Statute stated, on the record, that the statute does not require an investigation of the so-called "intended parent" – the purchaser of the child – and that "what happens to the children after they are turned over to (the "intended parent") is none of the court's business;" and being concerned about what happens to the child is "not the court's job."

Gestational Surrogacy Enabling Statutes are unconstitutional because they violate the Equal Protection Rights of the children, who are entitled to be treated like all other children and be placed based upon what is in their best interests.

B.

The Pregnant Mother

Throughout the history and tradition of our nation, the cherished role of a mother and her relationship with her child, at every moment of life, has always been viewed as having intrinsic worth and beauty; and that this relationship, its unselfish nature and its role in the survival of the race is the touchstone and core of all civilized society. Its denigration is the denigration of the human race.

The Violation of the Rights of the Pregnant Mother

The pregnant mother has always had the right to maintain her relationship with the child she carried, and that right could not be terminated unless she was unfit or she voluntarily consented to termination after the birth of the child, and after she was properly counseled to ensure that the consent was truly informed.

- Gestational Surrogacy Enabling Statutes force a pregnant mother to terminate her relationship with her child even if the mother realizes that it is harmful to the child's rights and interests, and to her own rights and interests.
- Enforcement of the gestational surrogacy contract terminates the pregnant mother's relationship with her child against her will, based solely on a document signed before the child and her relationship even existed.

Gestational Surrogacy Enabling Statutes are

unconstitutional because they violate the pregnant mother's fundamental right to maintain a relationship with the child she carried and gave birth to.

The surrogacy contracts treat a woman as if she is an incubator or a breeding animal.

- Surrogacy Enabling Statutes promote and encourage the use of women as breeding animals and enforce that use by court orders even against the mother's will.
- Surrogacy creates a class of women used as "breeders" for men who want children.
- Surrogacy creates a class of children without mothers.

Surrogacy Enabling Statutes are unconstitutional because they violate the women's fundamental liberty interests to be free of state authorized and state enforced exploitation of women and their reproductive capacity.

Throughout the history and tradition of our nation, women who contemplated voluntarily terminating their rights to their relationships with their children have enjoyed strong protections under the law. Thus, no written intention to terminate a mother's right executed before birth was enforceable. Even if such a document was signed after the birth of her child, the mother always had a period

of time to revoke her consent to terminate her rights. Yet, the mother's rights could be terminated only after a hearing in court in which a judge determined that the mother's consent was voluntary and informed, and that she did not want to revoke her consent.

- For the first time in the history of the nation, a mother's rights will be terminated under surrogacy statutes where the document expressing the mother's intent to give up her rights was signed before birth – in fact, before conception – and before the mother even knows enough about the “intended parents” to know if giving up her rights is in the child's best interests.
- Surrogacy Enabling Statutes have been construed to mean that the mother's rights can be terminated without any finding of whether her decision was truly informed.
- In surrogacy, the document which forms the basis to terminate the mother's rights is signed before the children and her relationship with them ever exists; it constitutes a waiver of a future right with respect to children not yet identified and without knowing if they will ever exist.

Gestational Surrogacy Enabling Statutes are unconstitutional because they violate the Equal Protection Rights of the pregnant mothers who have a right to the same protections as other mothers similarly situated.

C.

The Family

The family unit has always been the foundation of all civilized society. The family was the unit responsible for providing nurture, security, moral values, education and self-identity for children. To those ends, it was essential for the children, to the fullest extent possible, to be raised by both natural parents.

The Destruction of the Family

Surrogacy is a deliberate attempt to destroy the family as we have always known it.

- Under the typical Surrogacy Enabling Statute, there could be only one “intended parent” or there could be two or more “intended parents,” none of whom need to be genetically related to the child for the contract to be enforceable.
- There are no minimal requirements for a person to be an “intended parent.” He or she could be mentally, emotionally, physically, psychologically or financially unfit.
- Surrogacy removes from the creation of the family the conception of children resulting from a loving commitment between a husband and wife who feel connected to the child. It deprives the family and child of the kind of love that only a mother who carries the child in utero can provide. It deprives the mother and child of the love and support of a husband

and father devoted to both of them.

- The entire dynamic of the natural nuclear family is deliberately removed and denied the children and their mothers.
- Children sold through surrogacy are denied the love of natural parents, and often, in the arrangement substituted for that natural family, there is no mother.

There should be a moratorium on all surrogacy until there can be a national study of the harm already caused to the children, to their mothers, and to society at large. There is a need for court decisions which scrutinize the constitutionality of such statutes and a need for State and Federal Statutes to bring a halt to surrogacy during the moratorium period and beyond.

D.

The Surrogacy Brokers and Surrogacy Industry

Surrogacy is promoted by surrogacy brokers who are totally unregulated, and the entire industry is fueled by money from the so-called “intended parents” whose every wish is catered to, without regulation, at the expense of and harm to the women used and discarded by the men, and harm to the children who never get to know their mother.

There is an incestuous relationship between various participants in the surrogacy industry, including the brokers who solicit women and arrange the deals, the doctors who perform the embryo transfers without regulation, often in violation of medical and ethical standards, the lawyers who only serve the interests of the “intended parents,” and the hospital which makes vastly larger amounts of money off of surrogacy than they do in normal childbirth.

There are no rules of ethics in the surrogacy industry and the only apparent guidelines are that all participants must advance the desires of the adult male who buys the children.

E.

The Culture at Large

There is no accurate way to measure the magnitude of the damage done to a culture which adopts official policies which exploit children and women, denigrates motherhood, destroys the family unit, permits unregulated creation of human beings in early stages of life in order to kill and destroy the majority of them, subjects pregnant mothers to demands to submit to abortions, and deliberately exposes women and children to significant risks to their health and their lives.

Surrogacy will irreversibly alter human civilization and denigrate some of our most precious values.

MODEL SURROGACY STATUTE

AN ACT

ENTITLED, An Act to prohibit and deter Surrogate Mother Contracts, to prohibit enforcement of such arrangements, and to establish standards to award custody of children born as a result of such arrangements when deterrence fails.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

Section 1. That Chapter _____ be amended by adding thereto a new section to read as follows:

The Legislature finds that Surrogacy arrangements exploit women and are contrary to the best interests of children, to a Mother's interest in her relationship with her child, and to the State's interest in protecting the relationship between a Mother and her child.

Section 2. That Chapter _____ be amended by adding thereto a new section to read as

follows:

The Legislature finds that Surrogacy Arrangements, whether written or oral, are in direct conflict with numerous public policies of the State of _____, including: the State's policy prohibiting offers of money or payment of money in connection with an adoption and payment of money in exchange for parental rights, and in exchange for control and custody of a child; the State's policy that to the fullest extent possible, children be raised by both parents, their Mother and father; the State policy that custody of children should be determined based upon the best interests of the children; the State's policy against the exploitation of women; the State's policy against trafficking in children, and the commodification of children; the State's policy that no surrender of a Mother's parental rights or waiver of her constitutional right to her relationship with her child will be enforced if made prior to the birth of her child; the State's policy that a Mother's surrender of her parental rights with respect to her child is not recognized or enforced without her first receiving counseling and a determination that such surrender was voluntary and informed; the State's policy that a Mother's parental rights

and her constitutional right to her relationship with her child cannot be terminated without her legal consent absent proof that she is unfit by clear and convincing evidence; the State's policy that the right to custody is equal between a Mother and a father subject to the child's best interests and various policies that protect the general welfare of the people of the State.

Section 3. That Chapter _____ be amended by adding thereto a new section to read as follows:

The Legislature finds that Surrogacy Arrangements, whether written or oral, are in direct conflict with, and are designed to terminate and destroy, the Mother's parental rights, her relationship with her child, and her fundamental liberty interest in that relationship, contrary to the established public policy and laws of the State of _____.

Section 4. That Chapter _____ be amended by adding thereto a new section to read as follows:

The Legislature finds that it is against

the public policy of the State of _____, and the interests of children and their Mothers, for the State to create, recognize or enforce a Surrogacy Arrangement. The legislature also finds that to properly enforce and advance the State's existing policies and laws, the State must establish laws designed to discourage and deter Surrogacy Arrangements in all of their forms, and create legal standards for awarding *pendente lite* custody and awarding custody at a final hearing for children born to the Mother in those instances when such deterrence fails.

Section 5. That Chapter _____ be amended by adding thereto a new section to read as follows:

1. "Surrogacy Arrangement" means an arrangement, whether or not embodied in a formal contract, written or oral, entered into by two or more persons, including, but not limited to, the Mother (some times referred to as the "surrogate" or "gestational carrier") and one or more Intended Parent or Intended Parents, who agree, prior to insemination (or in the case of an implanted embryo, prior to embryo transfer or embryo implantation) to

participate in the creation of one or more children, with the intention that the child or children will be reared as the child or children of the Intended Parent or Intended Parents, and the child or children will not be reared by the Mother.

2. "Commercial Surrogacy Arrangement" means a Surrogacy Arrangement involving: (a) the payment, or agreement to pay, money or any valuable consideration to a Broker/Intermediary; or (b) the payment, or agreement to pay, money or any valuable consideration (other than payments or reimbursement for medical or hospital expenses or maternity clothes actually incurred as a direct result of a Surrogacy Arrangement) to the Mother.
3. "Broker/Intermediary" means an individual, or an agency, association, corporation, partnership, institution, society, or organization that knowingly seeks to introduce or to match a prospective Mother with a prospective Intended Parent or Intended Parents, or introduce a Mother or Intended Parent or Intended Parents to a physician to perform an embryo transfer or implantation or fertilization of ova for

the purpose of initiating, assisting or facilitating a Surrogacy Arrangement.

4. "Intended Parent" is an individual, whether male or female, whether or not genetically related to the child born as a result of a Surrogacy Arrangement, who is intended to be the individual or one of the individuals who will raise the child following birth.
5. "Mother" means the woman who carries and gives birth to the child, whether or not she is genetically related to the child.
6. "Surrogate Mother" means a woman who is intended to be a party to a Surrogacy Arrangement and who is to be the Mother who carries the child whether or not she is genetically related to the child.
7. "Person" includes an individual, agency, association, corporation, partnership, institution, society, organization, or the agents or employees of an agency, association, corporation, partnership, institution, society, or organization.

Section 6. That Chapter _____ be amended by adding thereto a new section to read as

follows:

No physician, licensed by the State of _____, or agent or employee of such a physician shall knowingly assist in the process of insemination or embryo transfer or implantation or fertilization of ova that has the purpose or effect of furthering a Surrogacy Arrangement.

A physician or other Person who violates this section is guilty of a class 5 felony. A Physician or other Person who violates this section is also subject to civil penalties of not less than \$30,000 and not more than \$50,000 for a first offense, and not less than \$50,000 and not more than \$80,000 for each additional offense. The prosecutor who prosecutes a violation of this section, and the court before whom the violation is brought, shall, separately and independently of each other, report such violation and conviction to the (Insert name of relevant state medical board).

Section 7. That Chapter _____ be amended by adding thereto a new section to read as follows:

All Commercial Surrogacy Arrangements, in

all of their forms, are strictly prohibited. Any Person (other than the Mother), that engages in, promotes, profits from, solicits a woman for, or otherwise assists in, Commercial Surrogacy Arrangements in the State of _____, shall be guilty of a class 5 felony. A Person that violates this sections is also subject to civil penalties of not less than \$30,000 and not more than \$50,000 for a first offense, and not less than \$50,000 and not more than \$80,000 for each additional offense.

Section 8. That Chapter _____ be amended by adding thereto a new section to read as follows:

A Broker/Intermediary is strictly prohibited from knowingly seeking to introduce or to match a prospective Mother with a prospective Intended Parent or Intended Parents or introducing a Mother or Intended Parent or Intended Parents to a physician for the purpose of initiating, assisting or facilitating a Surrogacy Arrangement whether or not he receives payment or other valuable considerations. A Person that acts as a Broker/Intermediary in violation of this Section is guilty of a class 5 felony. A

Person that violates this Section is also subject to civil penalties of not less than \$30,000 and not more than \$50,000 for a first offense, and not less than \$50,000 and not more than \$80,000 for each additional offense.

Section 9. That Chapter _____ be amended by adding thereto a new section to read as follows:

Offers of payment of money or payments of money to, or on behalf of a woman (other than payment or reimbursements for medical or hospital expenses or maternity clothes actually incurred as a direct result of the Surrogacy Arrangement) in connection or association with a surrogacy arrangement are strictly prohibited. Any Person that violates this section is guilty of a class 5 felony. A Person that violates this Section is also subject to civil penalties of not less than \$30,000 and not more than \$50,000 for a first offense, and not less than \$50,000 and not more than \$80,000 for each additional offense.

Section 10. That Chapter _____ be amended by adding thereto a new section to read as follows:

Advertising to solicit a woman to act as a Surrogate Mother in a Surrogacy Arrangement in the State of _____, is strictly prohibited. A Person, whether or not residing or maintaining an office or place of business in _____, that advertises for or solicits a woman residing in _____ to act as a Surrogate Mother in a Surrogacy Arrangement, in newspapers, on television, on radio, on the internet, or any other means of advertisement or solicitation, is guilty of a class 6 felony.

Section 11. That Chapter _____ be amended by adding thereto a new section to read as follows:

A surrogacy contract or other form of Surrogacy Arrangement, whether entered into in _____, or in any other jurisdiction, is unenforceable in the state of _____. Notwithstanding any law to the contrary, a foreign judgment based upon a surrogacy contract or other form of Surrogacy Arrangement is unenforceable. A custody dispute brought in a court in _____ concerning a child born as a result of a surrogacy arrangement shall be resolved under _____ policy and law, as set forth

in this chapter.

Section 12. That Chapter _____ be amended by adding thereto a new section to read as follows:

The Mother of a child born as the result of a Surrogacy Arrangement shall have the right to primary physical custody of the child following birth. If the child is in her custody following birth, the Mother shall keep the custody of the child before and during the pendency of any legal action to determine custody, unless there is proof by clear and convincing evidence that she is unfit or she poses a substantial harm to the child. If the child is not in her custody following birth, the Mother may exercise her right to take custody of the child by providing notice in writing within one hundred and twenty days of the date of the child's birth to the individual or entity in whose custody the child then resides. Upon proof that such notice was delivered to the individual or entity in whose custody the child then resides, the court shall enter an order awarding *pendente lite* custody to the Mother. Any claim that the Mother is unfit or otherwise presents a likelihood that she would cause substantial harm to the child

can be made only after the child is placed with the Mother, and all proof of such allegations must be established by clear and convincing evidence.

Section 13. That Chapter _____ be amended by adding thereto a new section to read as follows:

At a final hearing to determine placement of the child born as a result of a Surrogacy Arrangement there shall be a legal presumption that the child should be placed with the Mother. This presumption may be overcome by a demonstration, based on clear and convincing evidence, that the Mother fails to meet minimal parenting standards necessary to satisfy the basic needs and welfare of the child. Such determinations may not be based on consideration of economic or social class, or on the Mother's status as a Surrogate Mother.

Section 14. That Chapter _____ be amended by adding thereto a new section to read as follows:

An Intended Parent in a Surrogacy Arrangement who is not in violation of the provisions of any of Sections 6, 7, 8, 9 and 10

of this Act is not guilty of a crime, but is subject to civil penalties of not less than \$30,000.00 and not more than \$50,000.00 for a first offense, and not less than \$50,000.00 and not more than \$80,000.00 for a second offense, unless an Intended Parent is an immediate family member of the Surrogate Mother of the first or second degree of consanguinity. An Intended Parent who is guilty of a third offense is guilty of a Class 2 Misdemeanor.

Section 15. That Chapter _____ be amended by adding thereto a new section to read as follows:

A Mother in a Surrogacy Arrangement who is not in violation of the provisions of any of Sections 6, 7, 8, 9 and 10 of this Act is not guilty of a crime, but is subject to civil penalties in any case when she has not repudiated the agreement in writing within 120 days of the birth of the child, or in any case where she has not demonstrated a genuine willingness to accept custody of the child or children born as a result of such arrangement following such repudiation. A Mother subject to civil penalties under this Section shall be liable for civil penalties of not less than \$10,000.00 and not more than \$20,000.00 for a

first offense, not less than \$15,000.00 and not more than \$25,000.00 for a second offense, and not less than \$40,000.00 and not more than \$70,000.00 for a third offense.

Section 16. That Chapter _____ be amended by adding thereto a new section to read as follows:

The Intended Parent or Intended Parents shall have a duty to provide financial support for a child born as a result of a Surrogacy Arrangement, whether or not he, she, or they have custody of the child. There is a presumption that a non-custodial but genetically related parent of a child born as a result of a surrogacy arrangement should be given parenting time or visitation, unless it is demonstrated that such parenting time or visitation would be contrary to the best interests of the child. The parenting time should be liberal, based on the facts of the particular case, consistent with the child's best interests and the public policy to deter Surrogacy Arrangements.

Section 17. That Chapter _____ be amended by adding thereto a new section to read as follows:

When a Surrogacy Arrangement is repudiated by any party to the arrangement, the Mother shall be entitled to have all medical and hospital expenses of the pregnancy, including expenses for prenatal care, expenses of the child and expenses of the Mother incurred during child birth and expenses of the child and expenses of the Mother for treatment for complications of the birth which are not covered by medical insurance, paid for by the Intended Parent or Intended Parents, even though the Surrogacy Arrangement is unenforceable and the Mother has custody of the child or children born as a result of the Surrogacy Arrangement.

Section 18. That Chapter _____ be amended by adding thereto a new section to read as follows:

In the event neither the Intended Parent or Intended Parents, nor the Mother are willing or able to assume custody of the child, the child shall be placed for adoption in accordance with existing state law. Until such time as adoption of the child is final, both the Intended Parent or Intended Parents and the Mother are obligated, consistent with their respective financial abilities, to pay

financial support for the child.

Section 19. That Chapter _____ be amended by adding thereto a new section to read as follows:

In disputed multi-state Surrogacy Arrangements within the jurisdiction of the courts of this State, _____ the Laws of this State shall apply.

Section 20. That Chapter _____ be amended by adding thereto a new section to read as follows:

If any provision of this Act or any application of any provision of this Act to any particular person or circumstance is found to be unconstitutional or invalid or its enforcement is temporarily or permanently restrained or enjoined by judicial order, the remainder of this Act and the application of its provisions to any other Person or circumstance shall not be affected and remain in full force and effect.

Facts of the *Melissa Cook v. C.M. Case*

The *Melissa Cook* case is currently pending in the California State Court and the Federal Court in California. The case is unusual because a Complaint is about to be filed in a third jurisdiction in Georgia. All three courts have jurisdiction at the same time, and that unusual fact makes it more likely that we will obtain a favorable constitutional ruling and review by the U.S. Supreme Court

The facts of the case are as follows:

Melissa Cook is 48 years old. She had four children in her marriage. At the age of 47, Melissa was solicited by Surrogacy International, a surrogacy brokerage business in Southern California, to act as a surrogate for C.M., a 50 year old single man. C.M. has never been married and lives in the State of Georgia in the home of his two elderly parents. His mother is permanently confined to bed and needs the care of a nurse's aid throughout the day. His father, in his 80's, is unable to climb stairs and uses a mechanical device to help him up and down stairs.

Melissa Cook signed a surrogacy contract with C.M. on May 31, 2015. She had to undergo ninety days of injections on a drug regimen to manipulate her hormones, her menstrual cycle, and prepare her body for an embryo transfer.

After a triple embryo transfer was performed on August 17, 2015, a series of events unfolded that led Melissa to realize that C.M. was not capable of raising three children.

Almost five months after she became pregnant, Melissa learned that neither S.I., which brokered the surrogacy arrangement, nor Dr. Jeffrey Steinberg, who performed the embryo transfers

associated with the surrogacy arrangement between Melissa Cook and C.M., nor any of their agents or employees conducted, or arranged for, a home study of C.M.'s living arrangements to determine whether he was capable of raising any children, let alone triplets. No one associated with S.I. or Dr. Jeffrey Steinberg even visited C.M.'s home in Georgia.

On August 17, 2015, Dr. Jeffrey Steinberg, working at Fertility Institute, in Encino, California, transferred three six day old embryos into the uterus of Melissa Cook who would turn forty-eight years old during her pregnancy. Those embryo transfers made with a forty-seven year-old woman violated accepted standards of medical practice. Melissa Cook was then required to continue taking pre-natal vitamins, Estrace and progesterone injections. Melissa Cook had to continue the progesterone injections for about another eight weeks after the embryo transfers. On August 31, 2015, Plaintiff Melissa Cook's viable pregnancy was confirmed.

C.M. requested that all of the children be of the male gender. The three embryos transferred on August 17, 2015, were all male.

In an email dated September 16, 2015, C.M. first mentions an abortion, asking how long does he have to have an abortion.

On September 17, 2015, C.M. sent an email to Fertility Institute, the infertility clinic monitoring Melissa Cook's pregnancy. In that email, C.M. states:

"Please try to make her (Melissa Cook's) visits less often, because I get a bill that costs me a lot of money. ... It causes me financial problems not to be able afford triplets (sic) maybe even twins that worries me so bad for real." (Emphasis added).

On September 18, 2015, a representative of the infertility clinic wrote back to C.M. and advised him that because the pregnancy is such a high risk, Melissa must be seen each week. The clinic stated that the risk came with C.M.'s decision to request that three embryos be transferred. It was irresponsible and negligent for the infertility clinic to comply with C.M.'s request since they fully understood the risks C.M.'s request posed for Melissa and the three children.

On the same day, September 18, 2015, C.M. wrote to attorney Walmsley, either in Walmsley's capacity as C.M.'s "attorney" or in his capacity as the surrogate broker at S.I. In that communication, C.M. wrote:

"I cannot afford to continue Melissa's to visit weekly (sic) in the fertility institute because of our contract that I never anticipated something such worse (sic) like draining my finances so fast. ... I do not want to abort twin babies, but I felt that is such possible (sic) to seek aborting all three babies. I do not want to affect Melissa's health. I do not have any more money in the bank, and my job does not pay great biweekly." (Emphasis added).

It then became apparent that C.M. depleted his life savings paying the infertility doctors, paying the surrogacy broker, paying the anonymous ova donor, paying the lawyers and putting money into trust for the surrogate.

It was at that time in mid-September, that C.M. began to contemplate his demand that Melissa have an abortion because he could not financially afford the children and was otherwise incapable of raising the children. It appeared that C.M. thought that he could not raise any of the children.

When Melissa Cook saw the communications which indicated that C.M. thought he could not raise the children, on September 21, 2015, Melissa became anxious, upset and nervous. She wrote to C.M. stating:

“You need to make a decision if you want any of these babies so that I know what to expect I have been really upset and nervous and anxiety ridden.”

On September 21, 2015, in response, C.M. stated that “I said I always would want twin babies.”

That day, Melissa wrote to C.M. stating that they had to make a plan for the third baby and that she would, in order to assist him, raise all the children herself for a few months after birth.

On September 22, 2015, in response to C.M.’s email earlier in the day, Melissa wrote to C.M. stating:

“Do you even know what you want/can do? Are you able to afford and love and have the support to care for all three babies? You need to realistically look at the situation in hand. They will most likely come early and I will try my best to go as long as possible. ... We have to do what’s best for these babies.”

On September 22, 2015, C.M. wrote to Melissa to tell her that C.M. wanted her to terminate the life of one of the babies. C.M. advised her that he was exercising a term under the surrogacy contract for what the contract referred to as a “Selective Reduction.” In that communication, C.M. advised Plaintiff:

“I would decide to select – reduct (sic) one of three

babies, soon as I need to tell my doctor and my lawyer before 14th to 17th weeks. ... I will tell them 3 weeks ahead before November 9 that I would look for twin babies.” (Emphasis added).

The following day, on September 23, 2015, Melissa Cook advised C.M. that she would not “abort any of them. I am pro-life and I am not having an abortion. They are all doing just fine.”

Thereafter, C.M. and the surrogacy broker tried to convince Melissa that she must abort one of the babies. It was originally made clear by both C.M. and the surrogacy broker that the reason that C.M. wanted the abortion was because he was not capable of raising three children. In addition, C.M. made statements indicating that he did not think he could financially afford to raise three children. At a later point C.M. stopped emphasizing his poverty and started making a disingenuous argument that carrying all three children to term will risk the health of the children. Melissa Cook continued to refuse to abort any of the babies, and noted that all three were healthy.

On October 28, 2015, C.M. mentions, in an email, that he may “start looking agencies for adoptive parents (sic).”

The doctors referred to the three children in utero as “Baby A,” “Baby B” and “Baby C.” They are distinct and on each of the sonograms they are located in the same place. They are separate and distinct to their mother, Melissa, and she has named Baby C. On November 12, 2015, Melissa reports to C.M. that Baby B was kicking and that she heard the babies’ heart beats. In that email she told C.M. that if he wanted to raise only two of the children that she “would love to raise and love” the third child.

On November 13, 2015, in response to Melissa stating that

she would love to raise the third child, C.M. wrote that he “would encourage” her to “consider selection reduction (sic).”

On November 16, 2015, C.M. wrote to Melissa and advised her that “... I had decided, after looking at all issues, to pursue reduction.” (Emphasis added). C.M. attempted to convince Melissa that it was his decision whether she had to submit to an abortion. In that same communication, C.M. failed to acknowledge that Melissa offered to raise the third child herself. Instead he announced that he could put the third child up for adoption, but he decided that separating one triplet from the other two was too cruel. He thought it was better to terminate the child’s life rather than separating the third child from his siblings. He added that “I know my decision is not welcomed to you (sic) but I hope you understand. ...” (Emphasis added).

On November 24, 2015, C.M. wrote to Melissa and stated:

“My decision made is, requires a selection reduction (sic). I am so sorry.” On November 27, 2015, C.M. wrote to Melissa about the abortion stating “I made my decision which is best. ...” (Emphasis added).

By the terms of the surrogacy contract, C.M. was responsible to pay for the attorney’s fee of an attorney to provide Melissa Cook with counsel concerning the surrogacy contract. Melissa selected Lesa Slaughter who practices under the name of “The Fertility Law Firm.” C.M. budgeted funds to pay The Fertility Law Firm. After C.M. started to pressure Melissa into having an abortion of one of the children, on September 22, 2015, Melissa contacted Lesa Slaughter to tell her she needed advice about the demand to abort one of the children. Lesa Slaughter told her she couldn’t represent her because she was only paid by C.M. for the contract. Slaughter advised that

she needed to be paid \$400.00 an hour. Melissa Cook did not retain her because of the fee.

Despite the fact that Lesa Slaughter was not retained by Melissa, Robert Walmsley wrote to Slaughter and stated: "Triplets for a married couple is hard enough. Triplets for a single parent would be excruciating; triplets for a single parent who is deaf is – well beyond contemplation." Slaughter responded: "agreed."

On October 28, 2015, Lesa Slaughter wrote to Melissa to tell her she could then give her counsel because "intended parent is paying my time." Thus, at a time when there was a serious dispute between Melissa Cook and C.M. over whether Melissa had to submit to an abortion upon the demands of C.M., Slaughter accepted payment from C.M. to advise Melissa about that issue.

The November 24 and November 27, 2015 emails from C.M. to Melissa Cook came after attorney Walmsley wrote a letter to Melissa Cook, care of Lesa Slaughter, dated November 20, 2015. It appears that the letter was intended to be written by Mr. Walmsley as the attorney for C.M. rather than as the surrogacy broker, S.I., Inc. In that letter, C.M.'s attorney advises Melissa that by refusing to have an abortion she is liable, under the surrogacy contract, for large money damages. In that letter, Mr. Walmsley cites as one of the reasons that C.M. wanted an abortion of one of the children was that "C.M. is a single male and is deaf." The letter went on to list grounds for potential money damages and stated that C.M. "no doubt will also have to resort to substantial counseling, in part, because of your decision not to honor his request for reduction." Thus, C.M. and his attorney/surrogacy broker claimed that C.M. might suffer from mental distress because Melissa did not terminate the life of one of the babies she was carrying, and that Melissa was liable to C.M. for money damages as a result. In fact, after C.M. started making his demands

for an abortion, Melissa Cook became so anxious and depressed that she had to seek treatment from a psychiatrist which has continued to the time of the filing of this Complaint.

In the midst of Melissa Cook being pressured and threatened by C.M. and his attorney, Lesa Slaughter, on November 13, 2015, while being paid by C.M., wrote to Melissa and told her, incorrectly, that C.M. had a right to demand an abortion and that Melissa had liability if she refused.

On or about November 30, 2015, despite C.M.'s pressure and that of his attorney and surrogacy broker to compel her to abort one of the children, Melissa Cook advised C.M. that she will not abort a child and since he said he couldn't raise a third child, she decided that she would raise the child herself.

C.M.'s response was to advise that he will not permit the legal mother of her child to have custody of the child whose life he demanded she terminate. He advised that instead he intended to surrender the child to a stranger in an adoption.

In fact, C.M. is not capable of raising three children by his own admission and may not be capable of raising even one or two children. Upon information and belief, placement of the children with C.M. is not in the best interests of the children.

As of February 22, 2016, C.M. owed Melissa Cook approximately \$19,000.00 under the terms of the surrogacy contract. After the three children were born that day, Melissa informed C.M. that she would not accept any more money from him because it felt too much like she was taking money in exchange for the children. She loved them too much to live with that thought.

Melissa Cook instituted suit in California State Court and the Federal District Court. Those actions were commenced in January and February, 2016, before the children were born. The California Family Court construed the statute to mean that the court should not determine if the “intended parent” was capable of raising the children or whether turning the children over to C.M. was harmful to them.

The court stated that “what happens to those children after they are turned over to the ‘intended parent’ is not of the court’s business – it is not my job.”

The three babies were born by emergency c-section, on February 22, 2016, at the age of twenty-eight weeks post conception. Melissa had been rushed to the hospital, and when the emergency c-section was performed, the hospital personnel refused to let her see the babies and refused to let her know if they were healthy or even alive.

The hospital posted two security guards on her floor to prevent her from seeing the babies and required all those who visited with her to show identification and prevented them from seeing the babies. The babies remained in the hospital for eight weeks and all are healthy.

The cases are now pending in the courts and they feature a direct attack on the constitutionality of California’s Surrogacy Statute.