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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF GILA

THE ESTATE OF BABY VILLEGAS, DECEASED, by and through MARIO VILLEGAS; MARIO VILLEGAS on his own behalf and on behalf of all survivors of BABY VILLEGAS, Deceased, Plaintiffs, v. JACKRABBIT FAMILY MEDICINE, INC., an Arizona corporation, d/b/a CAMELBACK FAMILY PLANNING; GABRIELLE J. GOODRICK, M.D., a single woman; JOHN DOES I-X; JANE DOES I-X; ABC PARTNERSHIPS I-X; and XYZ CORPORATIONS I-X. Defendants.	**NO.: CV202200007** **MARIO VILLEGAS'S WRITTEN CLOSING ARGUMENT, PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW** (Assigned to the Hon. Bryan Chambers)

I. Introduction

Before trial, the Court held that M.S.V.'s consent for an abortion was invalid under the informed consent statute, A.R.S. § 36-2153, and that the abortion Defendants performed violated the Act. That ruling is the law of the case. Only three questions remained for trial. First, does the "criminal conduct" bar of A.R.S. § 36-2153(K)(2)

disqualify Mario from recovering money damages for the loss of his unborn child? The evidence established that it does not. Second, does M.S.V.'s claim that she would have had an abortion anyway relieve Defendants' of liability for unlawfully destroying Mario's unborn child? It does not. Third, what amount of money damages will fairly compensate Mario for his emotional distress from the loss of his child. According to Mario's expert witness, Dr. Eric Hazelrigg, a board-certified OB-GYN who has delivered over 10,000 babies, his embryo had a greater than 95% chance of being born alive. Mario himself described, in vivid and specific terms, how the devastating loss of his child affected him.

Plaintiffs urge the Court to reject the criminal conduct defense and award Mario compensatory damages as argued below.

II. The Criminal Conduct Defense Does Not Apply

A. Burden and Standard of Proof

A.R.S. § 36-2153(K)(2) authorizes a married father of a wrongfully aborted embryo to recover damages for that loss "*unless the pregnancy resulted from the plaintiff's criminal conduct*." This subsection creates a defense that an offending medical provider can raise, but the provider has the burden of proof by a preponderance of the evidence, as noted by the Court at the close of trial:

> *"[M]y thought is they [Defendants] have the burden and the standard is preponderance of the evidence."* Tr. Day 2, p. 223:25 - 224:1.

Plaintiffs agree with the Court's statement. A.R.S. § 36-2153(K)(2) creates a classic affirmative defense, which are always raised by a defendant to defeat liability, and are the defendant's burden to prove. Defendants first raised this "criminal conduct" defense in their 2-10-2023 Answer to Plaintiffs' Second Amended Complaint, and there they listed it as Affirmative Defense #3. See A.R.S. § 13-205 and 13-103 for the analogous rule in criminal cases.

Placing the burden on Mario would require him to prove a negative, that he did NOT commit a crime. Arizona law does not impose such a burden absent clear legislative

direction. The statute does not say "a husband may recover if he proves the pregnancy did not result from his criminal conduct." It says he "may" recover, period, subject to an exception that operates only "if" a disqualifying condition is shown.

B. "Nature of the Act" Means the Act Itself, Not Its Consequences

Defendants claim Mario committed sexual assault under A.R.S. § 13-1406(A) by having sex with M.S.V. "without consent." They rely on A.R.S. § 13-1401(A)(7)(c), which defines "without consent" to include situations where "[t]he victim is intentionally deceived as to the nature of the act." Their theory is that Mario deceived M.S.V. about his vasectomy reversal, so she did not know sex with Mario could result in pregnancy. They say this changed the "nature" of the act from non-procreative to procreative.

This theory fails. "Nature of the act" has a settled meaning in criminal law. It refers to fraud in the factum, where the victim does not know that sexual intercourse is taking place. The classic example is a medical provider who represents vaginal penetration as a medical procedure. *People v. Ogunmola*, 193 Cal.App.3d 274, 277-81 (1987). The victim consents to a medical exam, not to sex.

That is not this case. M.S.V. knew she was having sex with her husband. She consented to intercourse. She was not confused about what was happening. According to the defense, she was confused about a possible consequence of what was happening. But a potential consequence of an act is not the "nature" of the act.

Boro v. Superior Court, 163 Cal.App.3d 1224 (1985), is the leading case on this distinction. A man told a woman she had a fatal disease curable only by having sex with a "donor." She agreed to intercourse believing it would save her life. The California Court of Appeal held she was not "unconscious of the nature of the act" because she knew she was having sex:

> *"The 'act' referred to in [the statute] is the physical act of sexual intercourse, not the act of intercourse with a particular person or under particular circumstances."*

People v. Babaali, 171 Cal.App.4th 982, 987-88 (2009), explains the rule plainly:

> *"In fraud in the factum, the defendant fraudulently induces the victim to consent to 'act X' but then the defendant engages in 'act Y.' . . . By contrast, in fraud in the inducement, the defendant uses misrepresentations to induce the victim to consent to 'act X' and then commits 'act X.' . . . [T]he general common law rule is that fraud in the inducement does not vitiate consent because the victim agreed knowing the true nature of the act to be performed."*

M.S.V. consented to sex (act X). Mario engaged in sex (act X). If Mario lied about fertility, that is a misrepresentation about a collateral matter, not deception about the nature of the act. That is fraud in the inducement. It does not negate consent under A.R.S. § 13-1401(A)(7)(c).

No published Arizona decision has ever held that fertility deception constitutes deception "as to the nature of the act." No published appellate decision in any American jurisdiction has held that lying about contraception or fertility constitutes sexual assault. When California wanted to reach non-consensual condom removal, the closest analogue, the Legislature had to pass new legislation (AB 453, 2021). Courts do not expand the definition of sexual assault by judicial construction. *See Suliveres v. Commonwealth*, 449 Mass. 112, 865 N.E.2d 1086 (2007) (declining to overrule 50-year precedent that fraud cannot substitute for force in rape statute; the legislature has had ample opportunity to change the law and has not).

If this Court holds that lying about fertility constitutes deception about the "nature of the act," it would be the first court in the country to do so. And the consequences would be sweeping: any misrepresentation about contraception would become sexual assault. A woman who lies about being on birth control, or a man who says he will pull out but does not, would be guilty of a criminal act. The Legislature did not intend that.

C. This Is Not a Crime Under Arizona Law

Two additional points support the conclusion that fertility deception does not fit within A.R.S. § 13-1401(A)(7)(c). First, Arizona is a code state. "No act or omission is a

crime unless prescribed by a state statute." A.R.S. § 13-103(A). No Arizona statute makes deception about fertility a crime. Courts cannot create new crimes through judicial decision. *State v. Womack*, 174 Ariz. 108, 111-12 (App. 1992).

And the rule of lenity applies. A.R.S. § 13-1401(A)(7)(c) is part of the criminal code. Any ambiguity about whether it reaches fertility deception must be resolved against expanding criminal liability. *Reinesto v. Superior Court*, 182 Ariz. 190, 192 (1995). The K(2) bar asks whether Mario committed a crime. Even though this is a civil proceeding, the criminal statute's meaning must be determined by criminal law principles.

D. The Trial Evidence Does Not Establish Intentional Deception

Even if the Court determines that fertility deception could theoretically constitute deception about "the nature of the act" (which Plaintiffs deny), Defendants still must meet their burden of proof that Mario actually and intentionally deceived M.S.V. They have not.

Mario denied it. When asked directly: "Did you ever lie to your wife about being fertile?" he answered: "No." Tr. Day 1, p. 158:10-12.

In rebuttal, when the question came up again, Mario gave a careful, precise answer: "No, absolutely -- well, I didn't lie to her. Let me clarify. No, I did not tell her that I was not fertile until after the -- we talked right before the surgery, I told her I would become fertile. But prior to that, I was not fertile, no." Day 2, p. 179:17-21

A liar gives a flat denial and moves on. Mario paused, corrected himself, and drew a truthful distinction: before the surgery he was not fertile, and he told M.S.V. before the surgery that he would become fertile. That is the answer of a man trying to be accurate.

Mario told M.S.V. about the reversal. Mario described a specific conversation in their kitchen:

> "I told her I would get a vasectomy reversal and that, you know, we'd have to be careful because we would have kids. And that was the first time . . . where she said well, whatever happens, happens." Tr. Day 2, p. 181:22 - 182:3.

He recalled a song called Ophelia playing on the radio, and M.S.V. saying she liked the name for a daughter. Tr. Day 2, p. 183:16-22 – 185:5. This is the kind of incidental, sensory detail that comes from memory, not invention.

M.S.V. had the information. M.S.V. testified that Mario told her about the procedure and that it was coded as a "vasectomy reversal" "for insurance purposes, I believe is what he said, is that they had to put it down as a vasectomy reversal, but that's not really what it was." Tr. Day 1, p. 196:22 - 197:2.

The words "vasectomy reversal" were in front of her. She signed discharge paperwork describing a "microscopic bilateral vasovasostomy." She chose to accept Mario's explanation rather than ask a question. A person cannot be "intentionally deceived" about a matter her own testimony shows she had access to the truth about.

M.S.V.'s belief was her own assumption. M.S.V. described her belief this way: "I thought he was still fixed. I wasn't worried about it." Tr. Day 1, p. 197:15-17. Section 13-1401(A)(7)(c) requires "intentional" deception, an active, knowing lie. It does not cover situations where one spouse forms her own assumption and the other fails to correct it.

M.S.V. had unprotected sex with Mario after the abortion, knowing he was fertile. It is undisputed that M.S.V. had unprotected sex with Mario on at least two occasions after the abortion, at a time when she knew without question he was fertile. If her position is that she "never would have had unprotected sex" with Mario if she had known about the reversal, her post-abortion conduct contradicts that claim.

E. The Defense Expert Did Not Say Mario Lied

Dr. Rae Taylor, Defendants' IPV expert, explicitly disclaimed any opinion on whether Mario lied about his fertility:

> *Q: ". . . you are not going to offer an opinion based on your review of everything that Mario lied to his wife about being fertile?"*
> *A: "No."*

Q: "Okay."
A: "I believe the Judge decides that."
Tr. Day 2, p. 61:19-24.

Dr. Taylor's opinions depend on M.S.V.'s account being accurate. She conceded that *"the validity of your opinions about intimate partner violence and coercive control and reproductive control, your opinions overall depend on the validity of the facts that is you relied upon; true?" "Yes."* Tr. Day 2, p. 89:20-22.

She also admitted that if the facts on which her opinions were based were found to be false, her opinions would change. Tr. Day 2, p. 71:3 - 77:14. Mario's rebuttal testimony contradicted each of the following facts that her opinions were based upon:

- He did not prevent M.S.V. from working. "Did you ever prevent her from getting a job?" "No." Tr. Day 2, p. 169:6-8.
- M.S.V. had access to vehicles, including a Kia Soul and a pickup truck. Day 2, p. 170:9 - 171
- She visited friends and family freely. Her parents lived "within like a three minute walk." Day 2, p. 175:11 - 176:6.
- She did not need or ask permission to leave the house. "Did she have to ask you permission before she left the house?" "No." "Did she ever ask you permission?" "No." Day 2, p. 176:7-11

The coercive control theory also does not hold up against M.S.V.'s own decision to get an abortion. The defense theory requires M.S.V. to have been so controlled by Mario that she could not question his statements about a medical procedure. But on the single most important decision of the marriage, abortion, M.S.V. acted with total autonomy. **Her decision and actions were the definition of self-efficacy.** She decided instantly to have an abortion. She never wavered. She overrode Mario's strong moral objections without hesitation. She carried the decision through to completion, over weeks, against his sustained opposition.

This is the opposite of diminished "self-efficacy," which is Dr. Taylor's own term for the hallmark of coercive control. Tr. Day 2, p. 22:15. A woman cannot simultaneously lack the self-efficacy to question her husband's explanation of a medical procedure, and at the same time, possess the self-efficacy to overrule his deepest moral convictions on the most consequential decision of their lives.

F. Mario Honored M.S.V.'s Choice About Abortion

Despite his profound moral opposition to abortion, Mario drove M.S.V. to the clinic for all three appointments. He did it because she had no other reliable transportation and because he respected her right to make her own decision, even when he disagreed with it. This conduct is the opposite of coercive control. It is the conduct of a husband who honors his wife's autonomy. Mario testified that he tried to persuade M.S.V. to change her mind but, as he put it, "I had no say in it." Tr. Day 1, p. 133:25. He "accepted the reality that she was going to go through with this." Day 1, p. 105:20-22

The duty to provide informed consent belongs to the physician, not the husband. A.R.S. § 36-2153(A)A.R.S. § 36-2153(A). Mario's compliance with M.S.V.'s lawful decision does not shift Defendants' statutory obligation to him.

G. Stipulation A.7

The parties stipulated in the Joint Pretrial Statement (A.7) that M.S.V.'s "pregnancy resulted from sexual intercourse between MSV and Mr. Villegas." Not from assault. Not from criminal conduct. From sexual intercourse.

III. Causation

A. The Statutory Framework

A.R.S. § 36-2153(L)(1) provides that a married father may recover "all psychological, emotional and physical injuries resulting from the violation of this section." Defendants focus on the phrase “resulting from”, but not the phrase “the violation of this section”. Obviously, there are no damages that flow from an invalid consent, unless the provider proceeds to perform an abortion. The "violation", or injury causing event, is the

abortion performed without proper consent. The statute prohibits performing an abortion until all consent requirements are satisfied. A.R.S. § 36-2153(A)-(B). When Dr. Goodrick gave M.S.V. the medication which killed the unborn child, before obtaining valid consent M.S.V., that was the violation. This Court has already said so.

B. The Causal Chain Is Direct and Undisputed

There are three links and no speculation:

1. Dr. Goodrick performed the abortion without valid consent.

2. The abortion destroyed the embryo. Even Defendants' expert agrees: "The abortion ended the pregnancy." Tr. Day 2, p. 158:19.

3. The destruction of the embryo caused Mario's injuries. He testified at length about grief, guilt, the loss of his child, the end of his marriage, and the collapse of his political career. Tr. Day 1, p. 104:24 - 147:19.

That is direct causation. The injuries "result from the violation" because the violation, the illegal abortion, destroyed the embryo, and the embryo's death is what Mario grieves.

C. Two Distinct Injuries

Mario experienced two kinds of distress, and the distinction matters. He experienced distress when M.S.V. first told him she wanted an abortion. That distress arose before Defendants were involved, and Mario does not seek damages for it. It was the pain of an unwanted decision, and it would have existed regardless of what Defendants did.

What Mario does seek damages for is the permanent, irrevocable destruction of his child. That happened on July 26, 2018, when Dr. Goodrick dispensed the abortion medication without valid consent. Before that date, Mario faced a threat. After that date, his child was gone. The divorce, the campaign withdrawal, the guilt, the ultrasound carried for eight years - those are consequences of a child who is dead, not of a wife who expressed a preference.

Had Defendants followed the statute, had M.S.V. received the required information, the waiting period, the DHS website, the description of fetal development, there is no telling what would have happened. She might have proceeded. She might not have. But Mario would have had the chance the Legislature intended him to have: the chance that his wife, fully informed, might have chosen differently. The violation took that chance away permanently.

D. The Common Law Informed Consent Rules Do Not Apply

Defendants argue M.S.V. would have had the abortion anyway, so the violation did not matter. That argument tries to graft a common law causation standard onto a statutory claim.

This is a statutory claim, not a common law negligence action. The Legislature created A.R.S. § 36-2153 as a specific remedy with its own damages provision. Courts cannot add elements to statutes that the Legislature left out. *In re Pima County Juvenile Appeal*, 164 Ariz. 25, 33 (1990).

Defendants rely on two common law cases, *Shetter v. Rochelle*, 2 Ariz.App. 358 (1965), and *Gorney v. Meaney*, 214 Ariz. 226 (App. 2007). These cases require a plaintiff in a common law informed consent malpractice lawsuit to prove the patient would not have consented if she had been fully informed. But those are common law cases. The statutory claim under A.R.S. § 36-2153 has its own causation language, "resulting from the violation," and it requires only that the injuries flow from the violation. They do.

This Court already ruled that proximate cause is not required. Defendants' argument that M.S.V.'s independent decision "breaks the causal chain" is a proximate cause argument dressed up in different clothes.

And there is a practical reason to reject this approach. If a physician can always defeat the father's claim by showing the patient would have chosen the same procedure regardless, a father’s private right of action in A.R.S. § 36-2153(L)(1) would be meaningless. Every abortion provider would simply have the patient testify that she

wanted the abortion. The Legislature would not create a remedy that is automatically defeated by the scenario the statute was designed to prevent.

E. Reliability of M.S.V.'s Testimony

M.S.V. testified she was "a hundred percent certain" she wanted the abortion. Tr. Day 1, p. 201:4-5. She said nothing would have changed her mind. Tr. Day 1, p. 201:4-20.

But M.S.V. never received the information the statute required. She cannot know what she would have done with information she never had. The question asks her to reconstruct a hypothetical decision in a counterfactual scenario, years after the fact. That is speculation, not evidence.

And M.S.V. has obvious reasons to testify this way. Saying she would have changed her mind implies regret, and it aligns her with a lawsuit she wants no part of. Her certainty is understandable as a human matter. As evidence of what would have happened in a world where she received full informed consent, it proves nothing. Mario incorporates into this Closing Statement the arguments he made in his 2025-05-27 - MIL #2 - MSV'S Opinion.

IV. Damages

A. The Embryo Would Have Been Born Alive, More Probably Than Not

Both experts agree on this, including the defense's own expert. Dr. Isaacson conceded that "most pregnancies carry to term." Tr. Day 2, p. 151:17-19. He testified that approximately 20% of clinically recognized pregnancies miscarry in the first nine weeks, meaning 80% do not. Tr. Day 2, p. 152:8-11. He could not identify any specific risk factor, genetic, chromosomal, maternal, or otherwise, that **probably** would have reduced this embryo's viability. Tr. Day 2, p. 157:3-15. The preponderance standard requires only a probability greater than 50%. By Defendants' own expert's numbers, the probability of live birth was approximately 80%.

Dr. Hazelrigg, a board-certified OB-GYN who has delivered over 10,000 babies in more than 30 years of practice, placed the probability higher. At 8 weeks gestation with a detectable fetal heartbeat, he testified to a greater than 95% likelihood of successful delivery, with less than a 3% chance of miscarriage. Tr. Day 1, p. 41:24 - 42:11. Defendants may question Dr. Hazelrigg's experience with abortion care, but his expertise in pregnancy outcomes and fetal development is based on decades of clinical experience delivering babies, which is exactly the relevant qualification.

No expert identified any specific risk factor that would have reduced this embryo's viability. The defense points to hypothetical risks, chromosomal abnormalities, structural defects, maternal complications, but offers no evidence that any of those applied to M.S.V.'s pregnancy. Speculation about what might have gone wrong is not evidence that it would have.

The loss of this child is not speculative. Both experts confirmed: more probably than not, substantially more, this embryo would have been born alive if not aborted.

B. Mario's Injuries

Mario described his injuries with specificity and emotion. His testimony was corroborated by objective evidence of how his life was disrupted by the loss of his child.

Immediate breakdown. When M.S.V. told him she wanted an abortion, Mario "immediately became emotionally detached. I broke down and cried." Tr. Day 1, p. 104:24-25. "I never thought that she would want to abort our child or kill our baby." Tr. Day 1, p. 105:14-16.

Professional incapacitation. At a CAP convention where he served as a board member, Mario could not function. "very emotional dinner. I didn't eat. I spent most of my time crying." Tr. Day 1, p. 107:7-9. He left the multi-day conference after the first day. Tr. Day 1, p. 111:24 - 113:5.

Political career destroyed. Before the abortion, Mario had quit his federal government job to run for Justice of the Peace in Globe. He collected petition signatures,

qualified for the ballot, and was actively campaigning: "Went out, went to events, talked to different areas, tried to speak with as many voters as I could to get my name out there." Tr. Day 1, p. 143:17-21. After the abortion, it fell apart. "I kind of withdrew. I didn't really go out as much. I still tried certain areas, but I just couldn't get into -- back to the swing of the things that way it was before." Tr. Day 1, p. 144:8-10. When asked why, his answer was not about strategy. It was about grief. "I would say just because, I mean, I was dealing with like guilt, grief, and I felt overwhelmed." Tr. Day 1, p. 144:8-10

This is a man who gave up a federal career, gathered community signatures, knocked on doors, talked to voters, all the grinding, hopeful work of a first-time candidate, and then lost the ability to continue because his child was dead.

Marriage destroyed. Mario filed for divorce on August 9, 2018, within two weeks of the abortion. He "couldn't get over the abortion part of our marriage." Tr. Day 1, p. 142:2-4.

Guilt. "my baby was no longer living, and was there anything else I could have did to change the outcome." Tr. Day 1, p. 144:8-10.

Grief. "feeling of loss, I lost an opportunity to have somebody in my life." Tr. Day 1, p. 144:8-10.

Parenting impaired. "I probably could have did a little bit better job if I wasn't so distracted and overcome with emotion." Tr. Day 1, p. 145:14-16.

Ongoing. Mario still carries the ultrasound image of his aborted child everywhere, including to his oldest son's Fort Benning graduation. Tr. Day 1, p. 146:3-10. Eight years later, "I could have a seven-year-old, I'd be playing with a 7, a 5 and a newborn. I mean, the thought -- you never forget it." Tr. Day 1, p. 147:16-19.

C. Measure of Damages

The statute provides for "all psychological, emotional and physical injuries resulting from the violation of this section." A.R.S. § 36-2153(L)(1). The word "all" is not

decorative. It means the Court should compensate every injury that flows from the violation.

A.R.S. §§ 36-2153(L)(1) and (L)(2) create independent categories of recovery. (L)(1) provides individualized compensatory damages for emotional distress. (L)(2) separately provides statutory damages of "$5,000 or three times the cost of the abortion, whichever is greater." These are cumulative, not alternative. If (L)(1) merely duplicated (L)(2), the Legislature would not have written both. Reading (L)(1) as limited to the (L)(2) amount renders it surplusage, which violates the canon that every statutory provision must be given meaning. *Cicoria v. Cole*, 222 Ariz. 428, 431 (2009).

Mario's injuries fall into four categories:

- **Acute distress (2018-2019):** Emotional breakdown, professional incapacitation at the CAP conference, divorce, immediate grief and guilt.

- **Impact on his career:** Quit federal job, collected petition signatures, canvassed voters, then lost the ability to function as a public figure. The loss of the JP campaign and the federal career he left behind.

- **Chronic, ongoing distress (2019 to present):** Eight years of daily guilt, grief, impaired parenting, and the daily absence of his child. The ultrasound carried everywhere. The ongoing sense of loss.

- **Loss of the parent-child relationship:** The child who would have been (at least might have been) Ophelia. The first steps, first words, birthdays, school events, graduations, holidays that will never happen. Mario sees this loss concretely: "I could have a seven-year-old."

Mario has suffered approximately 2,900 days of continuous emotional distress from the date of the abortion through the present. At a daily value of $430, that alone exceeds $1,250,000. That figure is modest for the grief of a parent who lost a child, a category of suffering that psychologists rank among the most severe a person can experience.

Plaintiffs request an award of **$1,250,000** in compensatory damages under A.R.S. § 36-2153(L)(1).

This amount is reasonable. It is less than a typical wrongful death verdict for a child. Arizona juries routinely return seven figure verdicts in wrongful death cases involving the loss of a child. While this is a statutory claim, at its core, it is a wrongful death claim. The underlying harm is the same: the permanent loss of a child.[1]

V. Conclusion

The Court held that Defendants violated the Act. The criminal conduct defense fails because fertility deception is not deception about "the nature of the act" under established law, because the trial evidence does not establish that Mario intentionally deceived M.S.V., and because the (K)(2) bar must be narrowly construed. Causation is established by the direct chain of events from the improper abortion to the embryo's death to Mario's injuries. The common law does not apply to this statutory claim.

Mario urges the Court to enter judgment in his favor and award $1,250,000 in compensatory damages, plus $5,000 in statutory damages under A.R.S. § 36-2153(L)(2), plus reasonable attorney's fees and costs under A.R.S. § 36-2153(L)(3).

Plaintiffs' Proposed Findings of Fact and Conclusions of Law are submitted herewith.

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mario submits the following Proposed Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

A. Stipulated Facts

1. Defendant Camelback Family Planning is an Arizona corporation. It operated an abortion clinic in Phoenix during the relevant time period. (JPTS A.1-A.2.)

[1] While jury verdicts from other proceedings are not binding, they provide context for the range of reasonable awards. In *In re Pacific Fertility Center Litigation*, Case No. 3:18-cv-01586-JSC (N.D. Cal., verdict filed June 10, 2021), a federal jury awarded $7.2 million to a couple (Laura and Kevin Parsell) for the loss of four non-viable IVF embryos, including $7 million in non-economic emotional distress damages. This case was cited in Plaintiffs' Reply in Support of Motion to Amend, filed July 28, 2025, and is part of this Court's record.

2. Defendant Gabrielle Goodrick, D.O., is a licensed physician. She is the sole owner of Camelback Family Planning. (JPTS A.3-A.4.)

3. Mario and M.S.V. were married in July 2018. They were residents of Gila County, Arizona. (JPTS A.5.)

4. M.S.V. learned she was pregnant in July 2018. (JPTS A.6.)

5. M.S.V.'s pregnancy resulted from sexual intercourse between M.S.V. and Mario. (JPTS A.7.)

6. M.S.V. visited Camelback Family Planning on July 24 and July 26, 2018. (JPTS A.8.)

7. On July 26, 2018, Dr. Goodrick dispensed medications to induce an abortion. M.S.V. self-administered those medications. (JPTS A.9.)

B. The Statutory Violation

8. The Court has previously determined, as a matter of law, that Defendants failed to obtain valid informed consent from M.S.V. as required by A.R.S. § 36-2153 ("the Act") before performing the medication abortion on July 26, 2018.

9. The abortion violated the Act.

C. Whether Mario Intentionally Deceived M.S.V. About His Fertility

10. Mario had a vasectomy in 2004 and a vasectomy reversal in 2017. (Tr. Day 1, p. 149:1-5.)

11. Mario testified under oath that he never lied to his wife about being fertile:

Q: "Mario, did you ever lie to your wife about being fertile?"

A: "No."

(Tr. Day 1, p. 158:10-12.)

12. Mario testified to a specific conversation with M.S.V. in their kitchen. He told her he was getting a vasectomy reversal, and they would need to "be careful because we would have kids." M.S.V. responded, "whatever happens, happens." A song called

"Ophelia" was playing. M.S.V. said she liked the name for a potential daughter. (Tr. Day 2, p. 181:22 - 182:3, 183:16-22.)

13. M.S.V. testified that Mario told her the procedure was "for insurance purposes" and was coded as a "vasectomy reversal, but that's not really what it was." (Tr. Day 1, p. 196:22 - 197:2.)

14. M.S.V. testified that her belief was: "he was still fixed. I wasn't worried about it." (Tr. Day 1, p. 197:15-17.) This was her own assumption. She did not testify that Mario made a specific, affirmative statement that she could not become pregnant.

15. On cross-examination, the defense asked M.S.V. about her feelings regarding children. M.S.V.'s testimony showed ambivalence, not the absolute refusal Defendants claim. (Tr. Day 1, p. 151:19 - 152:8.)

16. Mario's testimony regarding the kitchen conversation is credible and specific. It contains incidental detail, the song on the radio, the name Ophelia, that indicates genuine recollection rather than fabrication.

17. M.S.V. had the label "vasectomy reversal" available to her. She chose to accept an alternative explanation rather than investigate further.

18. The Court finds that Defendants have not proven by a preponderance of the evidence that Mario intentionally deceived M.S.V. about his fertility.

19. Mario's Day 2 testimony further supports this finding. When given the opportunity to clarify, Mario confirmed: he told M.S.V. about the reversal. (Tr. Day 2, p. 179:17-21.) This is the testimony of a man being honest, not evading.

D. The IPV/Coercive Control Evidence

20. Defendants' expert Dr. Shauna Rae Taylor opined that the evidence supported a finding of coercive control and reproductive coercion. (Tr. Day 2, p. 45:1-46:5.)

21. Dr. Taylor explicitly disclaimed any opinion on whether Mario actually lied about his fertility: "Correct, that's beyond the scope of my role." (Tr. Day 2, p. 61:9-10.) She stated: "I believe the Judge decides that." (Tr. Day 2, p. 61:24).

22. Dr. Taylor conceded that the validity of her opinions depends on the validity of the facts she relied upon. (Tr. Day 2, p. 89:20-22.)

23. Dr. Taylor admitted that if specific factual foundations were found false, her opinions on those elements would change. (Tr. Day 2, p. 71:3 - 77:14.)

24. Mario's rebuttal testimony contradicted the factual bases of Dr. Taylor's opinions:

- He did not prevent M.S.V. from working. He encouraged her to get a job. (Tr. Day 2, p. 169:6-8.)
- M.S.V. had access to vehicles, including a Kia Soul and a pickup truck. (Tr. Day 2, p. 170:9 - 171:25.)
- M.S.V. visited friends and family freely. Her parents lived within a three-minute walk. (Tr. Day 2, p. 175:11 - 176:66.)
- M.S.V. did not need or ask permission to leave the house. (Tr. Day 2, p. 176:7-11.)

25. M.S.V.'s conduct is inconsistent with the coercive control theory. Despite the alleged coercive control, M.S.V. independently decided to obtain an abortion over Mario's strong opposition and carried that decision through to completion. She testified: "I was a hundred percent certain. I was going to make it happen, I just didn't know how." (Tr. Day 1, p. 201:4-5.) She added that "nothing would change [her] mind." (Tr. Day 1, p. 202:1-3.)

26. Mario drove M.S.V. to the clinic. Defendants point to this as evidence of control. It is the opposite. A man who drives his wife to obtain an abortion he opposes is honoring her autonomy, not exercising control over it.

27. The Court does not find Dr. Taylor's opinions persuasive. The factual foundations of those opinions have been challenged, and M.S.V.'s demonstrated autonomy contradicts them.

C. Post-Abortion Conduct

28. M.S.V. had unprotected sexual contact with Mario on at least two occasions after the abortion. At that time, she knew he was fertile. This is inconsistent with the claim that she would never have had unprotected sex with him had she known about his fertility.

D. Causation

29. Dr. Goodrick performed the medication abortion on M.S.V. on July 26, 2018, without obtaining valid informed consent. (Finding 8.)

30. The abortion terminated M.S.V.'s pregnancy and destroyed the embryo. Defendants' own expert, Dr. Isaacson, confirmed: "The abortion ended the pregnancy." (Tr. Day 2, p. 158:19.)

31. The destruction of the embryo directly caused Mario's psychological, emotional, and physical injuries.

32. M.S.V. testified that nothing would have changed her mind about obtaining the abortion. (Tr. Day 1, p. 201:4-5, 202:1-3.) M.S.V. never received the information the statute required. She cannot reliably testify about what she would have done with information she never had.

33. The "violation" that caused Mario's injuries was the abortion performed without proper consent, not merely the failure to provide information. The abortion directly destroyed the embryo. That destruction directly caused Mario's injuries.

E. Viability of the Embryo

34. At the time of the abortion, M.S.V. was approximately 8 weeks pregnant. The embryo had a detectable heartbeat. (Tr. Day 1, p. 41:24 - 42:11.)

35. Dr. Eric Hazelrigg, a board-certified OB/GYN with over 30 years of experience who has delivered over 10,000 babies, testified that at 8 weeks gestation with a fetal heartbeat, there is a greater than 95% likelihood of successful delivery to term. (Tr. Day 1, p. 41:24 - 42:11.)

36. Dr. Paul Isaacson, Defendants' expert, conceded that "most pregnancies carry to term." (Tr. Day 2, p. 151:17-19.) He acknowledged that only 20% of clinically recognized pregnancies miscarry. (Tr. Day 2, p. 152:8-11.)

37. Dr. Isaacson is actively litigating against the Act in separate proceedings. His advocacy against the statute he is asked to interpret creates a bias the Court considers in weighing his testimony. (Tr. Day 2, p. 107:11 - 108:13.)

38. No expert identified any specific risk factor, chromosomal abnormality, maternal health issue, or other condition, that would have reduced this particular embryo's viability.

39. The Court finds that, more probably than not, the embryo would have been carried to term and born alive.

F. Two Distinct Injuries

40. Mario suffered two distinct categories of harm. The first is pre-violation distress. Mario learned of M.S.V.'s decision to abort before the procedure occurred. He experienced immediate emotional distress, including a breakdown, inability to eat, and disruption to his professional life. (Tr. Day 1, p. 104:24-25, 105:14-16, 107:7-9.) This distress flowed from M.S.V.'s decision, which she had every right to make.

41. The second category is post-violation loss. On July 26, 2018, Defendants performed an abortion without valid informed consent. That act destroyed the embryo. The loss of the embryo, and the parent-child relationship Mario would have had, is the injury caused by Defendants' violation of the Act.

42. The distinction matters. Mario does not seek damages for the distress of learning his wife wanted an abortion. He seeks damages for the destruction of an embryo that Defendants had no legal authority to destroy without first complying with the Act.

G. Damages

43. Mario experienced immediate and severe emotional distress upon learning of M.S.V.'s decision to abort. He had a breakdown. He could not eat. He could not function.

(Tr. Day 1, p. 104:24-25.) He testified: "I had never thought that she would want abort our child of kill our baby." (Tr. Day 1, p. 105:14-16.)

44. Mario was at a professional conference (CAP convention) when he learned of M.S.V.'s intent. He could not focus. He had to leave early. (Tr. Day 1, p. 107:7-9, 111:24-25.)

45. Mario attempted to persuade M.S.V. not to proceed with the abortion. He had no say. He accepted the reality that she was going through with it.

46. Mario filed for divorce on August 9, 2018. He "couldn't get over the abortion part of our marriage." (Tr. Day 1, p. 142:2-4.)

47. Mario had been running for Justice of the Peace. He gathered petition signatures. He quit his federal job. He campaigned. Then he withdrew from the race because he was "dealing with like guilt, grief, and I felt overwhelmed." (Tr. Day 1, p. 142:17-21, 143:12-16, 143:17-21, 144:3-6.)

48. Mario experienced guilt: "My baby was no longer living, and was there anything else I could have did to change the outcome." (Tr. Day 1, p. 144:13-15). He experienced grief: "feeling of loss, I lost an opportunity to have somebody in my life." (Tr. Day 1, p. 144:17-18.)

49. Mario's ability to parent his other children was impaired: "I probably could have did a little bit better job if I wasn't so distracted and overcome with emotion." (Tr. Day 1, p. 145:14-16.)

50. Mario continues to carry the ultrasound image of the embryo everywhere he goes, including to his child's Fort Benning graduation. (Tr. Day 1, p. 146:3-10.)

51. Mario's injuries are ongoing: "I could have a seven-year-old, I'd be playing with a 7, a 5 and a newborn. I mean, the thought -- you never forget it." (Tr. Day 1, p. 147:16-19.)

52. Mario's emotional distress testimony was credible, specific, and corroborated by objective evidence of life disruption: divorce filing, campaign withdrawal, job difficulties.

II. CONCLUSIONS OF LAW

A. The Criminal Conduct Defense Does Not Apply

1. The criminal conduct bar of the Act, A.R.S. § 36-2153(K)(2), prohibits a married father from bringing a civil action under the Act if the pregnancy resulted from his criminal conduct.

2. Defendants bear the burden of proving the (K)(2) defense by a preponderance of the evidence.

3. Defendants' theory is that Mario committed sexual assault under A.R.S. § 13-1406(A) by engaging in sexual intercourse "without consent" as defined in A.R.S. § 13-1401(A)(7)(c), where "the victim is intentionally deceived as to the nature of the act."

4. The phrase "deceived as to the nature of the act" refers to fraud in the factum, where the victim does not know that sexual intercourse is occurring, not fraud in the inducement, where the victim knows the act is sexual intercourse but is deceived about surrounding circumstances. *Boro v. Superior Court*, 163 Cal.App.3d 1224 (1985); *People v. Babaali*, 171 Cal.App.4th 982 (2009).

5. Alleged deception about fertility is fraud in the inducement, not fraud in the factum. M.S.V. knew she was having sexual intercourse with her husband. She was not deceived about the nature of the act. At most, she was deceived about a potential consequence (pregnancy risk).

6. No published Arizona decision holds that fertility deception constitutes deception "as to the nature of the act." No published appellate decision in any American jurisdiction has so held.

7. The (K)(2) bar extinguishes a private right of action created by the Legislature. It must be narrowly construed. Arizona is a code state. No statute prescribes fertility

deception as a crime. A.R.S. Section 13-103(A); *State v. Womack*, 174 Ariz. 108 (App. 1992).

8. Even if fertility deception could constitute deception about the nature of the act, the trial evidence does not establish deception by a preponderance. Mario denied lying. (Tr. Day 1, p. 158:10-12.) He testified to a specific conversation in which he disclosed the vasectomy reversal. (Tr. Day 2, p. 181:22 - 182:3, 183:16-22.) M.S.V.'s own testimony shows she had access to the truth. (Tr. Day 1, p. 196:22 - 197:2.)

9. The Court stated on the record that the (K)(2) defense requires proof that the pregnancy resulted from criminal conduct. (Tr. Day 2, p. 222:8 - 224:23.) The parties stipulated that M.S.V.'s "pregnancy resulted from sexual intercourse between MSV and Mr. Villegas" (JPTS A.7), but not criminal conduct.

10. Defendants have failed to carry their burden. The K(2) bar does not apply.

B. Causation Is Established

11. The Act, A.R.S. § 36-2153(L)(1), provides for damages for "all psychological, emotional and physical injuries resulting from the violation of this section."

12. The "violation of this section" is the abortion performed without valid informed consent, not merely the failure to provide information. The statute prohibits performing the abortion until all consent requirements are satisfied. A.R.S. § 36-2153(A)-(B).

13. The direct causal chain from violation to injury is undisputed. The improper abortion destroyed the embryo. The destruction of the embryo caused Mario's psychological and emotional injuries.

14. The statute does not require proof that M.S.V. would have made a different decision had she been fully informed. The common law "but-for" causation standard from *Shetter v. Rochelle*, 2 Ariz.App. 358 (1965), and *Gorney v. Meaney*, 214 Ariz. 226 (App. 2007), applies to common law informed consent claims, not to a statutory cause of action under the Act.

15. The Court previously ruled that proximate cause is not required for Plaintiff's claims. Defendants' argument that M.S.V.'s independent decision breaks the causal chain is a proximate cause argument. It is foreclosed by the Court's prior ruling.

16. Causation has been established.

17. Mario has established that his injuries result from the violation of the Act.

C. A.R.S. § 36-2153(L)(1) and L(2) Are Independent, Cumulative Damage Provisions

18. The Act creates two separate damage provisions. A.R.S. § 36-2153(L)(1) provides compensatory damages for "all psychological, emotional and physical injuries resulting from the violation." A.R.S. § 36-2153(L)(2) provides statutory damages of "not less than five thousand dollars."

19. These provisions are independent and cumulative. L(1) compensates for actual harm suffered. L(2) imposes a statutory floor. The Legislature created both. There is no textual basis to read one as subsuming the other.

20. A plaintiff who proves a violation and resulting injuries is entitled to recover under both A.R.S. § 36-2153(L)(1) and (L)(2).

D. Damages

21. Under A.R.S. § 36-2153(L)(1), Mario is entitled to recover "all psychological, emotional and physical injuries resulting from the violation of this section."

22. The embryo more probably than not would have been carried to term and born alive. Dr. Hazelrigg testified to a greater than 95% probability. (Tr. Day 1, p. 41:24 - 42:11.) Dr. Isaacson conceded that "most pregnancies carry to term." (Tr. Day 2, p. 151:17-19.)

23. Mario has established severe and ongoing psychological and emotional injuries resulting from the violation:

- Severe emotional distress, grief, and guilt;
- Loss of the parent-child relationship he would have had with his child;

- Disruption to his marriage, career, and public life; and
- Continuing emotional harm that persists to the present.

24. Mario's damages testimony was credible, specific, and corroborated by objective evidence of life disruption.

25. The Court should award $1,250,000 in compensatory damages under A.R.S. § 36-2153(L)(1) for Mario's psychological, emotional, and physical injuries resulting from Defendants' violation of the Act.

26. The Court should award $5,000 in statutory damages under A.R.S. § 36-2153(L)(2).

27. Under A.R.S. § 36-2153(L)(3), Mario is entitled to recover reasonable attorney fees and costs. Plaintiff requests an award of attorney fees in an amount to be determined upon submission of a fee application.

May 6, 2026.

MARTINEAU LAW, PLLC

/s/ J. Stanley Martineau
J. Stanley Martineau
Attorney for Plaintiff

ORIGINAL of the foregoing e-filed today
with the Clerk of the Gila County Superior Court,

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