



THE FIGHT OVER THE FROZEN EMBRYOS

SO

BY HER

**IN TOUCH
WORLD
EXCLUSIVE**

He had nothing but kind words to say about his ex, Sofia Vergara. "I have the highest regard for her," Nick Loeb told *In Touch* shortly before the *Modern Family* star announced her December engagement to actor Joe Manganiello, 38. "It was a great four-and-a-half years with her, but I think Sofia and Joe are much better suited for each other than we were."

Little did anyone know at the time that Nick was keeping a bombshell secret. In a world exclusive, *In Touch* has learned that months earlier, Sofia's former fiancé had filed a lawsuit in California to prevent her from destroying two cryopreserved female embryos created through in vitro fertilization. The embryos at the center of the legal dispute were created in November 2013, just

COLEMAN-RAYNER (2)

The Shocking Court Papers

**SHE WAS
BLINDSIDED**
"Sofia is trying to have the case dismissed," says an insider close to the lawsuit.

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JOHN DOE, an individual
Petitioner and Plaintiff

vs.
JANE DOE, an individual, and ART REPRODUCTIVE CENTER, INC., a California Corporation
Respondents and Defendants.

Case No. SS 024581
FIRST AMENDED COMI
Date Action Filed: August

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, SANTA MONICA COURT

Attorneys for Petitioner and Plaintiff,
JOHN DOE
(pro hac vice application forthcoming)
(pro hac vice application forthcoming)

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JOHN DOE ("JOHN" or "Plaintiff"), by his attorneys, K&L Gates LLP, as and for his First Amended Complaint against Defendants JANE DOE ("JANE" or "Defendant") and ART REPRODUCTIVE CENTER, INC. ("ART") (JOHN and JANE are referred to collectively as the "Parties") alleges as follows:

INTRODUCTION

1. In this action, JOHN seeks to save from destruction two cryopreserved human female embryos created using JOHN's sperm and JANE's ova (the "Female Embryos"). The Parties were engaged to be married and created the Female Embryos using In Vitro Fertilization ("IVF") for the purposes of attempting to have children. However, before the Female Embryos could be implanted in a surrogate, the Parties ended their relationship. Now, JOHN seeks to ensure that the Female Embryos are not destroyed, but JANE refuses to agree to their preservation under all circumstances.

THE PARTIES

2. Defendant, JANE DOE, is an individual who resides in Los Angeles County, California.

3. Defendant ART REPRODUCTIVE CENTER, INC. is a California corporation doing business in Beverly Hills, California, which provides fertility and reproductive services.

4. Plaintiff, JOHN DOE, is an individual who resides in Delray, Florida.

JURISDICTION AND VENUE

5. Venue is appropriate under the Code of Civil Procedure Section 393 because Defendants are located in and the acts or omissions giving rise to liability in this case occurred in the city of Beverly Hills, County of Los Angeles, California.

PROCEEDING WITH PSEUDONYMS

6. In the interest of justice, JOHN respectfully requests that the Parties be permitted to proceed in this matter anonymously.

7. Proceeding with pseudonyms is appropriate where anonymity is necessary to preserve privacy in a matter that is of a sensitive and highly personal nature. See *Doe 1 thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000); see also *Doe v. Lincoln Unified School*

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FIRST AMENDED COMPLAINT

FIRST AMENDED COMPLAINT

IA SUED

EX

Sofía Vergara & Nick Loeb planned on using a surrogate. Now he wants the fertilized eggs

SOFÍA PUNCHED NICK IN THE FACE TWICE, HE CLAIMS

six months before their split, the result of his sperm and her eggs being fertilized. Nick, who filed the suit under the pseudonym John Doe for anonymity, "seeks to ensure that the Female Embryos are not destroyed, but Jane Doe [Sofía] refuses to agree to their preservation under all circumstances," states the explosive documents, obtained by *In Touch*. (The lawsuit was originally filed in August 2014; it was amended with new information and refiled on April 1 after Nick sought new representation.) The court papers claim that the 42-year-old actress "was physically and mentally abusive" to Nick on numerous occasions. "She punched him in the face on two occasions, kicked him, and threw her phone at his head. She also routinely bullied him, calling him a 'loser,' 'worthless' and other



188 Cal. App. 4th 758, 765-66 (2010) ("there have been countless published state court decisions where one or more of the parties have used fictitious names.")

8. This lawsuit involves matters that are highly sensitive and personal, including JOHN and JANE's medical and reproductive history and the Parties' respective desires regarding the creation or preservation of the Female Embryos, which could become children.

9. The public interest in disclosure of JOHN's and JANE's identities is minimal, particularly since this involves personal and private reproductive and medical matters.

10. Upon information and belief, JANE also desires to proceed anonymously.

THE FACTS

11. JOHN and JANE began a romantic relationship in 2010.

12. In July of 2012, JOHN and JANE were engaged to be married and made plans to start a family. After consulting with physicians and staff at ART, JOHN and JANE decided to undergo IVF in order to create fertilized embryos using JOHN's sperm and JANE's ova, and to then have those fertilized embryos transferred to a gestational surrogate to carry the pregnancy to term.

13. JOHN and JANE considered various surrogacy options. JANE insisted that her 44-year-old friend and employee serve as the Parties' surrogate ("the Surrogate"), over JOHN's objections as well as the recommendations of the Parties' doctor. The Parties retained joint counsel to draft a Gestational Surrogate Parenting Agreement to be entered into with the Surrogate, which confirmed that JOHN and JANE "desire to have a Child biologically related to Intended Parents, and to take into their home the Child as their own."

14. Although the Parties' counsel expressly advised the Parties against compensating a gestational surrogate (and against using an employee as a surrogate), upon information and belief, without JOHN's consent, and over JOHN's repeated objections, JANE provided the Surrogate a variety of expensive gifts in exchange for her services. Those gifts had a total value of approximately \$200,000 and included mortgage payments for the Surrogate's home.

15. In the spring of 2013, the Parties underwent their first round of IVF. JOHN deposited sperm, JANE's eggs were retrieved, and JOHN and JANE directed ART to attempt to fertilize each of the retrieved eggs. Two embryos, both female, ultimately survived to viability.

FIRST AMENDED COMPLAINT

16. JOHN and JANE agreed to immediately use those two female embryos to attempt to have children.

17. In early 2013, one of the Parties' female embryos was implanted in the Surrogate. Unfortunately, the implantation was unsuccessful and did not result in a viable pregnancy.

18. In April of 2013, the Parties' second female embryo was implanted in the Surrogate. Unfortunately, the second implantation was likewise unsuccessful and did not result in a viable pregnancy.

19. The Parties' desire to create children remained strong, and accordingly they decided to undergo a second round of IVF. This time, JANE agreed to select a more appropriate gestational surrogate to attempt to carry the pregnancy to term.

20. The Parties immediately began working with a professional agency to find a new gestational surrogate candidate. According to the Surrogacy Program Retainer Agreement entered into by the Parties and the agency, JOHN and JANE "intend[] to have a child or children," and the agency agreed to locate and match women to act as potential surrogates on behalf of JOHN and JANE.

21. The agency presented JOHN and JANE with two surrogacy candidates. On June 24, 2013, JANE wrote JOHN an email stating that she wished to meet with both candidates in person. After that day, JOHN wrote the agency an email stating that he and JANE would like to meet with surrogacy candidates in August, the next time they were scheduled to be in Los Angeles.

22. In November of 2013, JOHN and JANE were prepared to undergo the IVF procedure a second time. On November 16, 2013, JOHN and JANE met with staff at ART and signed a General Informed Consent for Procedures Involved in In Vitro Fertilization (the "General Informed Consent," attached hereto as Ex. A, but redacted to maintain the Parties' anonymity). The General Informed Consent is made up of a number of documents, one of which is titled "Directive for Intended Parents Regarding the Storage and Disposition of CryoPreserved Materials Which May Include Embryos" (the "Form Directive"). (Ex. A, p. 15-20.)

23. Neither Party and no attorney for either Party drafted the Form Directive. Instead, the Form Directive was a form document first presented to JOHN and JANE by ART on the same day

FIRST AMENDED COMPLAINT

HE'S ON A MISSION

"Nick doesn't want the embryos destroyed," says an insider. "Period."

The Shocking Court Papers

that they signed the document. The Parties were given no opportunity to modify the Form Directive or include additional terms in the Form Directive, nor were they advised to consult with legal counsel prior to signing the Form Directive.

24. In the Form Directive, the Parties were given the opportunity to select from just three listed options indicating how the Female Embryos should be disposed of in the event of the death of either one or both of them. (*Id.* at p. 16.) JANE insisted that in such a circumstance, the Female Embryos be thawed with no further action. JOHN did not agree with JANE, and refused to initial his agreement regarding that term. JOHN did not want the Female Embryos to be destroyed under any circumstance. However, JANE insisted that JOHN agree to the destruction of the Female Embryos under that circumstance, and began vigorously berating him in the ART offices. Such abuse was unfortunately common in the Parties' relationship, as JANE was on many occasions physically, emotionally and mentally abusive to JOHN. For example, she physically abused him on four separate occasions: she punched him in the face on two occasions, kicked him, and threw her phone at his head. She also routinely bullied him, calling him a "loser," "worthless," and other degrading names. JOHN accordingly signed this portion of the Form Directive, even though he did not agree with it, in order to avoid further abuse. Further, the Parties had agreed to immediately implant the Female Embryos in a surrogate in an attempt to have children. JOHN therefore assumed that the disposition of these embryos in event of the death of one of the Parties was a circumstance that would never arise.

25. The Form Directive failed to give the Parties the opportunity to specify how the Female Embryos should be disposed of in the event of their separation, nor did anyone at ART ever discuss this circumstance with them. The Form Directive likewise failed to give the Parties the option to donate the Female Embryos to another couple or individual in the event of either or both of their deaths.

26. Shortly after the execution of the General Informed Consent, JOHN deposited sperm and JANE's eggs were retrieved. JOHN and JANE directed ART to attempt to fertilize each of the eggs. Two embryos—both female—survived to viability. It is those Female Embryos that are the subject of this dispute.

27. In May of 2014, before the Female Embryos could be implanted in a surrogate, the Parties ended their romantic relationship.

28. Subsequent to the end of the relationship, JOHN attempted to get JANE to agree that, if one of the Parties should die, the other Party should control the Female Embryos. JANE refused to even respond to this request, apparently because she hoped for the Female Embryos to ultimately be destroyed.

29. JOHN does not desire for the Female Embryos to be destroyed. By this lawsuit, JOHN seeks an order prohibiting ART from destroying the Female Embryos under any circumstance.

COUNTY of Los Angeles Superior Court
Case No. 14-00000-00000-00000
Judgment against JANE and ART

46. When the Parties signed the Form Directive, they were involved in a romantic relationship. They were never advised that the Form Directive would control the disposition of the Female Embryos if and when their relationship ended.

47. The Form Directive fails to set forth the Parties' intent regarding the disposition of the Female Embryos if the Parties were to separate.

48. The Parties have now separated, and therefore a circumstance has arisen that is not contemplated under the Form Directive.

49. I, [redacted], enter an order declaring the [redacted] order declaring that the Form Directive does not control the disposition of the Female Embryos between JOHN and JANE regarding the disposition of the Female Embryos in the event of their separation or the death of either or both party in violation of Section 125315 of the California Health & Safety Code;

3. If the Form Directive is considered a binding agreement, enter an order declaring that it does not control the disposition of the Female Embryos upon separation of the Parties, under the current circumstance in which the Parties find themselves;

4. If the Form Directive is considered a binding agreement, enter an order rescinding the Form Directive between JOHN and JANE; and

ART Reproductive Center, Inc.
450 N. Roxbury Drive, Suite 520
Beverly Hills, CA 90210

DECLARATION OF DONOR/RECIPIENT RELATIONSHIP NEEDS TO BE SIGNED BY UNMARRIED COUPLES ONLY

The ART Reproductive Center (the "Center") is licensed by the California Department of Health Services (DHS) and follows the voluntary standards and guidelines developed by the American Society for Reproductive Medicine (ASRM) and the American Association of Tissue Banks (AATB). As such, the Center follows their standards and makes every effort to protect the recipient from sexually transmitted diseases.

The Center is sensitive to the difficulty many people have in answering highly personal questions. We wish to emphasize that there is an absolute need to establish certain facts about the relationship between the donor and the recipient of the embryos. If the donor is not the biological parent of the child, it is essential that the child be recognized in law as my child. (Applies to [redacted] only)

1. Disposition in the event of my death, or my partner's death.
In the event of the death of either the Patient or Partner, the embryo's disposition shall be of as follows: (Note: write in one choice listed above and both parties initial)

Thawed with no further action.

2. Disposition in the event of death of both partners.
In the event of death of both partners, the embryo's disposition shall be of as follows: (Note: write in one choice listed above and both parties initial)

Thawed with no further action.

degrading names," according to the papers. The suit also reveals that the couple previously used a surrogate and twice unsuccessfully had their embryo implanted in her. Says an insider close to the situation, "Nick has always wanted to be a father and will do whatever it takes to save these two remaining female embryos."

And in early April, Nick served Sofia again. "John seeks to save from destruction two of two cryopreserved Female Embryos created using John's sperm and Jane's ova for

the purposes of attempting to have children. However, before the Female Embryos could be implanted in a surrogate, the Parties ended their relationship," detail the documents, adding that Sofia "hoped for the Female Embryos to ultimately be destroyed" but "John does not desire for the Female Embryos to be destroyed."

It's caused a war, and the 39-year-old businessman will do whatever it takes to win. "Nick is very emotionally invested in these female embryos because he's pro-life

and believes life begins at conception," the source says of the former couple, who, according to the documents, began working with a professional agency in early 2013 to find a gestational surrogate candidate to carry their baby after the previous two unsuccessful implantations.

The lawsuit could go either way. "At the time, there is no California state law that has a specific directive on what should be done with cases like these," attorney Steven Klein, a pioneer in reproductive law, tells

In Touch, explaining that the embryos are legally considered to be a type of personal property, not an actual child. "Ultimately," adds Klein, who does not represent Nick or Sofia, "it will be up to the discretion of the judge." It is unlikely, though, that Nick will be able to use the embryos without Sofia's consent. "The general rule of thumb in most states, including California, is that you cannot force someone to be a parent if he or she does not want to," says Stephanie Caballero of The Surrogacy Law Center in Carlsbad, California, who does not represent Nick or Sofia.

Nothing about the case is clear-cut. The documents claim that when Nick and Sofia met at the California-based fertility center on Nov. 16, 2013 — four months after their engagement and prior to undergoing a second round of IVF — they got into a heated argument about what should happen to the new embryos in the event of their

death. (The center provided forms to the couple for a decision about what would happen in the event of death — but not separation, Nick claims. Because of this, he is also suing the center to prevent them from destroying the embryos.) "Jane insisted that in such a circumstance, the Female Embryos be thawed with no further action," state the documents. "John did not agree with Jane and refused to initial his agreement regarding that term."

Things quickly turned nasty. "Jane insisted that John agree to the destruction of the Female Embryos under that circumstance, and began vigorously berating him in the offices," the documents continue. The papers claim that Sofia had a history of physically and emotionally abusing Nick. "John Doe signed this portion of the Former Directive, even though he did

not agree with it, in order to avoid further abuse."

Sofia and Nick previously used a surrogate who was a friend of the A-list beauty. On two separate occasions in early 2013, according to court papers, an embryo from the couple was implanted in the surrogate. Those implantations were "unsuccessful and did not result in a viable pregnancy," the papers state. The choice of surrogate was controversial. According to the documents, "Jane insisted that her 44-year-old friend ... serve as the Parties' surrogate, over John's objections as well as the recommendations of the Parties' doctor." Sofia also defied Nick and their attorney by showering the surrogate with offerings, say the papers. "Although the Parties' counsel expressly advised the Parties against compensating a gestational surrogate, upon information and belief, without John's consent, and over John's repeated objections, Jane

provided the Surrogate a variety of expensive gifts in exchange for her services. Those gifts had a total value of approximately \$200,000 and included mortgage payments for the Surrogate's home."

Sofia has talked publicly about wanting another child. "I froze my eggs," the actress — who is already a mom to son Manolo, 23, from her first marriage — admitted in April 2013, confirming that she had planned to use a surrogate "because I had thyroid cancer [in 2000] and lots of radiation." As *In Touch* previously reported, she and Joe have found a surrogate and are trying for a baby of their own. "Nick wishes her the best," says the insider, "but he's not going to stop fighting her for their embryos. It's too important to him. She may want them destroyed, but he doesn't. It's in the court's hands now." ■

“Nick is committed to going all the way with this, so Sofia has a fight on her hands”

—AN INSIDER

THEIR ROMANCE WAS SO VOLATILE



ROCKY ROMANCE

"From day one, it had been a roller-coaster relationship," an insider says of Sofia and Nick, who began dating in 2010 and quickly became known for their public brawls.



BIZARRE PROPOSAL

In July 2012, one month after Nick was accused of partying with prostitutes, he proposed to Sofia. "She was desperate to believe him, so she accepted," says the insider.



FLIRTING

In September 2013, Nick was spied chatting with Jessica Alba at a party. "He rolled his eyes when anyone asked about Sofia," says an eyewitness.



IT'S OVER

After a blowout fight on Memorial Day weekend, Sofia finally dumped Nick for good in May 2014. Weeks later, she hooked up with Joe.