

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JOHN & GRACE HUMMASTI,

CIVIL NO. 06-251-ST

PLAINTIFFS,

VS.

PLAINTIFF'S MOTION TO

JOHN BUCKMASTER, MD., ET. AL.,

ENJOIN DEFENDANTS

DEFENDANTS.

Comes now, John & Grace Hummasti, and hereby submits this MOTION to ENJOIN DEFENDANTS from Offering, Advising or Providing Abortions to all Persons similarly situated as Plaintiffs.

BACKGROUND AND FACTUAL STATEMENT

In Support thereof, Plaintiffs aver under the penalty of perjury under the laws of the United States of America pursuant to 28 USC 1746 the following:

Plaintiff Grace (Hala) Bassem Hummasti, (nee Farah), (aka, *P'nina Brachah* bat Avraham), (hereafter, Hala, or Hummasti, unless otherwise noted) is a person of color within the meaning of the Fourteenth Amendment to the United States Constitution.

Hummasti is a person having a limited knowledge, understanding and ability to speak and read the English language. She primarily speaks Arabic, was born in the City of Nazareth, Israel and immigrated to the United States with her family in the 1980's and returned to the State of Israel sometime thereafter. She is a Naturalized American Citizen of Arab ancestry and a convert to Judaism.

The purpose of her having returned to the United States in November 2004 was to convert to Judaism as it was impossible for her and her husband, John Mauritz

Hummasti, (aka: Yochanan Ezra ben Avraham) to convert Judaism in the State of Israel or for John Hummasti to establish Jewish ancestry for the purposes of John Hummasti to make *Aliyah* under Israel's Law of Return as a family unit.

Hummasti's were married in the State of Israel as Messianic Jews in the Greek Orthodox Church in Nazareth, and remarried in the State of Oregon.

Their Oregon Marriage was performed according to Traditional Judaism by Rabbi David Rosenberg, an Israeli citizen and the Rabbi of Congregation *Shaarie Torah* in Portland, Oregon.

Prior to their marriage, Plaintiff John Hummasti in consideration of the marital contract that Plaintiffs were entering into, transferred to *P'nina Brachah* bat Avraham one silver ring as an acquisition of the rights to marriage to *P'nina Brachah* bat Avraham, to the exclusion of all others in the presence of witnesses in conformity to the Jewish rite of *kinyan* (otherwise known as *eruisin* or *kiddushin*) which may be translated in English as Betrothal through acquisition by transfer of a thing of value.

According to the Maurice Lamm, in "The Jewish Way in Love and Marriage," this is not betrothal in a Western sense of the word, but the inchoate step in the marriage process. In all respects, Jewish law recognizes the couple as being lawfully married at the point of transfer of a thing of value in the rite of *kiddushin*.

Following this rite, Plaintiffs read and signed a *Ketuvah* (Jewish Marriage Contract) which was witnessed according to Jewish law.

The Plaintiffs then entered under the *Chuppah* (wedding canopy) and recited the *Sheva Brachos* (Seven Blessings); then they and all present took a drink from a cup of wine and the cup was traditionally smashed under the heel in the symbolic gesture of

irreparability of a broken marriage.

They then entered into *yichud*, seclusion according to Jewish law and thereafter held a specially prepared meal.

Plaintiff John Mauritz Hummasti has set aside a sum of foreign coin and currency for the payment of spousal support as required by said *ketuvah*.

Due to the uncertainty of Plaintiffs refugee status, Plaintiff has set aside said monies for deposit in an account (# 57495-065) in the First Provisional Bank and Savings Association of Antarctica, Inc., under the auspices of the Commonwealth of Antarctica.

Plaintiff John Hummasti, was a full time student at Portland State University enrolled in the International Studies Program.

Shortly after their marriage, *P'nina Brachah* bat Avraham returned to the State of Israel to acquire money from her family for establishing a Middle Eastern *Falafel kiosk* business in down town Portland.

She was previously the personal chef for Ehud Olmert, (the Prime Minister of the State of Israel,) when he was the Mayor of Jerusalem. As a result of the injuries she has suffered by the wrongful acts, omissions, misrepresentations, fraud, and negligence of Defendants, she is unable to return to her profession as a professional chef; and has suffered irreparable economic damages.

Upon her return from visiting her family and doctor in Israel she informed her husband, Yochanan ben Avraham that she was pregnant, showing him an ultrasound of her fetus.

Shortly thereafter, she and her husband established said kiosk which was ultimately closed due to her pregnancy and RICO problems with a Muslim Health

inspector, (Emal Wahab) from Multnomah County Health Department attempting to extort money from Plaintiffs; leading to Plaintiffs decision to emigrate to Israel as a refugee under the Israeli Law of Return.

Subsequent to Grace Hummasti's return from Israel in 2004 she suffered a threatened miscarriage and sought emergency care at Legacy-Good Samaritan Hospital on 23<sup>rd</sup> and Lovejoy in NW Portland who referred her to OHSU for health care related to her threatened miscarriage and her pregnancy.

At this time both her and her husband were operating a falafel koisk, called *Poorat Kosher Foods* at 6<sup>th</sup> and Main Street in downtown Portland located at the Gus Solomon US Courthouse.

Thereafter as a person dependent on the Oregon Health Plan for insurance coverage and medical care, Hummasti was placed under the medical care of OHSU and without any advise about, or knowledge of the risks of any forms of abortion was advised to undergo a dilation and evacuation (or suction) (hereafter **D & Ev**) abortion by Defendant John Buckmaster (Hereafter, Buckmaster).

Defendant Buckmaster was of the opinion that the baby *P'nina Brachah* bat Avraham was pregnant with would need extensive heart surgery in order to survive for more than two weeks.

Buckmaster advised *P'nina Brachah* bat Avraham to undergo a **D & Ev** abortion by suction.

At no time while Plaintiff Hummasti was under the care of any of the Defendants did Buckmaster ever explain to *P'nina Brachah* bat Avraham that there were alternatives to a **D & Ev** abortion, such as a Dilation and Extraction Abortion (hereafter, **D & Ex**) or

the risks related thereto.

At no time while Plaintiff Hummasti was under the care of any of the Defendants was she asked if she had any questions about the procedures she would undergo. The only thing that was explained to her was that she would, undergo, [that is, that Defendant Buckmaster would perform] a **D & Ev** abortion.

Plaintiff Hummasti returned to Israel because that is where Plaintiffs intended to have a new life as a Jewish couple with their baby (*Ya'acov Menachem*). They had already purchased airline tickets a month before having been advised by Defendant Bucmaster and genetic specialists at Defendant OHSU's OBGYN Department to abort their baby.

Approximately three to four months after returning to Israel Hummasti underwent a medical procedure at EMMS Hospital in Nazareth to clean her uterus and discover why she was having constant pain.

As set forth in the medical documents attached to the initially filed Memorandum of Law, Plaintiff's, by and through medical staff at said EMMS Hospital, discovered that Defendant Buckmaster left what appears to be necroplacental tissue in Plaintiff's uterus.

After having a second pregnancy that resulted in a miscarriage in Portland, Oregon in 2005 and after having returned to the United States in 2005 for classes at Portland Community College and Portland State University, Plaintiffs returned to the State of Israel to complete their Aliyah process.

Subsequent thereto, Plaintiff's gynecologist in Nazareth discovered that the cause of Plaintiff's constant pain was caused by adhesion from uterine scarring due to either curettage or beire's forceps used during said abortion.

Thereafter, (approximately 10-10-05) Plaintiff Hummasti underwent corrective surgery to remove the adhesions from her uterus and approximately six months thereafter underwent additional surgery to remove the stitches from said surgery.

Plaintiffs were not able to enjoy a normal marital relationship due to the above facts (i.e. procreation and normal conjugal relations because of the constant pain and emotional suffering Hummasti experiences) and have subsequently divorced under Jewish Law.

### INJUNCTIVE RELIEF

The requirements for this Court entering an Injunction against Defendants are,

- 1) a strong likelihood of success on the merits, the possibility of irreparable injury to Plaintiff, a balance of hardship favoring Plaintiff, and advancement of a public interest in certain cases. Save Our Sonoran, Inc.v. Flowers, 408 F. 3<sup>rd</sup> 1120 (9<sup>th</sup> Cir. 2995).
- 2) The alternative test requires either the above, *or* that serious questions are raised and the balance of hardships tip sharply in Plaintiff's favor.

Here, Plaintiff's have a substantial and fundamental right *in all fairness* to protection as a class wherein Plaintiff and all such similarly situated persons of limited English proficiency require OB/GYN medical care through OHSU or Lovejoy Surgicenter under the Oregon Health Plan or similar health insurance plans where informed consent is concerned.

In the instant case, because Defendants OHSU have been found to be in serious noncompliance with the laws and regulations concerning informed consent, a public interest will be served by the regulation of abortion through the Court's granting injunctive relief.

Plaintiffs have already suffered irreparable injury for which there is no adequate

compensation measurable in dollar amounts where wrongful death, personal injury and loss of consortium are concerned.

As the Supreme Court said in, Monell v. New York City Dept. Of Social Services, 436 U.S. 658 (1978) , a municipal corporation [state agency, body or other corporate person such as Defendant OHSU] can be sued under Section 1983 for an act which is done as a custom, policy, or usage "under the color of state law."

There, the Court stated, "Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom 1983 applies. 54 Local governing bodies, 55 therefore, can be sued directly under 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other 1983 "person," by the very terms of the statute, may be sued for constitutional [436 U.S. 658. 691] deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels. As Mr. Justice Harlan, writing for the Court, said in Adickes v. S. H. Kress & Co., 398 U.S. 144, 167 -168 (1970): "Congress included customs and usages [in 1983] because of the persistent and widespread discriminatory practices of state officials . . . . Although not authorized by written law, such practices of state officials could well be so permanent and well settled as to constitute a `custom or

usage' with the force of law.'”

As set forth above, with respect to the findings of the Secretary of the Department of Health and Human Services by and through the Office of Human Research Protection (OHRP), in its letter to Dr. Kohler, it has been the *custom or pattern* of Defendants OHSU to be in serious non-compliance with the Federal Regulations [45 CFR 46.116, et. seq.,] governing informed consent under the color of state law.

As set out in ORS 677.097, and 677.099 the statutory right to procedural and substantive Due Process of Law requires a physician or hospital to follow specific steps in obtaining informed consent.

The form or substance of Defendants' OHSU's informed consent documents follows the language requirements of both ORS 677.097, and 677.099 and 45 CFR 46.116, et. seq., but in practice has been used in a habitual pattern, or cursory or customary manner that violates the laws and regulations involving informed consent procedures.

For example, the Secretary's letter, at page three, ¶ (8) (a)(i), Defendant OHSU was using informed consent documents for a purpose other than that for which consent was granted.

Again, in the Secretary's letter, at page four, ¶ (9) Defendant OHSU was using informed consent documents that contained “complex language that would not be understandable to all subjects.”

Finally, at page six of the Secretary's letter, , ¶ (6), the Secretary provided the following guidance:

“Similarly, where the HHS regulations require specific findings



on the part of the IRB, such as (a) approving a procedure which waives the requirements for obtaining a signed consent form...; (b) approving research involving pregnant women, human fetuses,..., the IRB should document such findings.”

Plaintiff avers that the Defendants as state actors whose conduct while regulating abortion pursuant to ORS 30.267, 268 and 677.097, 099, without informed consent, cannot impair obligations of a marital contract, because such conduct would be the effects of state law, and would violate Article I Section VIII of the United States Constitution.

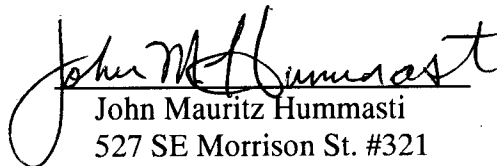
In conclusion, this Court should find that the Defendants violated Plaintiff’s constitutional, statutory and regulatory rights to be informed of the medical procedure Defendants intended to perform, the risks related thereto, and any alternatives available.

In making its finding, the Court should also find that Defendants unethical or unlawful misrepresentations, wrongful or negligent acts or omissions led to the wrongful death of *Ya’acov Hummasti* and violated Plaintiff’s constitutional right to an unimpaired marital contract.

In making its findings the Court should enjoin Defendants from enforcing or regulating abortion pursuant to ORS 677.097 and 099, et. seq. because Congress banned the procedure used by Defendants under the Partial Birth Abortion Ban Act of 2003, codified at 18 USC § 1531.

In conclusion, the granting of Injunctive Relief against Defendants will serve an important public interest in providing protection to all persons of Plaintiffs class who are or may be similarly situated as Plaintiffs where informed consent procedures are concerned.

Dated this 17<sup>th</sup> day of May 2006.

  
John Mauritz Hummasti  
527 SE Morrison St. #321  
Portland, OR. 97214

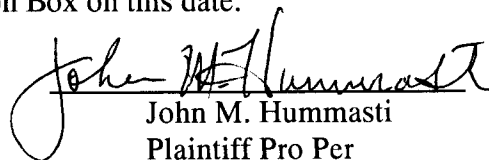
CERTIFICATE OF SERVICE

I, John Mauritz Hummasti, hereby declare that I have served by Regular US Mail, a true copy of the attached Plaintiff's Motion for Injunctive Relief on the Defendants by placing the Attached in an Addressed, Sealed Envelope with prepaid postage affixed thereon addressed to:

Kari A Furnanz -Attorney At Law  
HOFFMAN, HART AND WAGNER  
ATTORNEYS AT LAW  
Twentieth Floor  
1000 SW Broadway  
Portland, OR. 97205

and depositing the same in a US Postal Collection Box on this date.

Dated this 18<sup>th</sup> day of May 2006.

  
John M. Hummasti  
Plaintiff Pro Per  
527 SE Morrison St. #321  
Portland, OR. 97214-2364