

1 Jill H. Teitel, NYSBA # 277513
(*Pro Hac Vice*)

HONORABLE THOMAS O. RICE

2 LAW OFFICES OF JILL H. TEITEL, PLLC
3 225 Broadway, Suite 2605
4 New York, NY 10007
5 Phone: (212) 964-0500
6 Fax: (646) 612-7764
7 Email: jt@teitelwise.com

8 Carmen E. Bremer, WSBA #47565
9 BREMER LAW GROUP PLLC
10 1700 Seventh Ave., Suite 2100
11 Seattle, WA 98101
12 Phone: (206) 357-8442
13 Fax: (206) 858-9730
14 Email: carmen.bremer@bremerlawgroup.com

15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **EASTERN DISTRICT OF WASHINGTON**

18 DANIELLE TEUSCHER, an individual;
19 and DANIELLE TEUSCHER, as mother
20 and natural guardian of Z.F., a minor,

No. 19-CV-00204

21 Plaintiffs,

22 **SECOND AMENDED**
23 **COMPLAINT**

24 v.

25 CCB-NWB, LLC, a California limited
26 liability company, d/b/a, NW
CRYOBANK,

Defendant.



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

SECOND AMENDED COMPLAINT

1 Plaintiffs DANIELLE TEUSCHER (“Ms. Teuscher”), an individual, and
2 DANIELLE TEUSCHER, as mother and natural guardian of Z.F., a minor, by and
3 through their attorneys, Law Offices of Jill H. Teitel, PLLC, and Bremer Law
4 Group PLLC, for their complaint against Defendant, CCB-NWB, LLC, d/b/a NW
5 CRYOBANK (“NW Cryo”), allege as follows:
6

7
8 **I. INTRODUCTION**

9 1. For over a year and a half, Ms. Teuscher cryopreserved¹ five vials of
10 sperm from donor #2744 (“Donor #2744”) at NW Cryo (the “Gametes”), which
11 NW Cryo had previously sold and pre-arranged to be transferred to her pursuant
12 to the Customer Agreement that the parties entered into on July 5, 2015
13 (hereinafter, the “Customer Agreement”, **Exhibit A**). Ms. Teuscher relied upon
14 contractual and other promises of NW Cryo that, the Gametes would one day to
15 be used to create her entire family unit, including, specifically, a full genetic
16 sibling for her daughter, Z.F. NW Cryo took away her ownership rights to the
17
18
19
20

21 _____
22 ¹ Stedman’s Medical Dictionary, 416 (26TH ed. 1995) definition of
23 Cryopreservation: “the maintenance of the viability of excised tissues or organs at
24 extremely low temperatures.”
25
26

1 Gametes. NW Cryo asserts in their Cease and Desist letter (hereinafter, the
2 “Cease and Desist Letter”, **Exhibit C**) that because of Ms. Teuscher’s testing of
3 Z.F.’s DNA on the ancestry and health discovery website www.23andMe.com and
4 making consensual contact with a relative of Z.F., Ms. Teuscher should be
5 deprived of her rights to her Gametes. No remedy of forfeiture was reserved in
6 the Customer Agreement – NW Cryo should not be able to write this remedy into
7 the parties’ agreement by fiat.
8

10 2. NW Cryo has engaged in a series of unfair and deceptive business
11 practices, specifically, Ms. Teuscher and Z.F. have been denied the following:
12

- 13 a. Her Gametes pursuant to the Customer Agreement. (**Exhibit A**,
14 Section V);
- 15 b. Donor #2744’s medical health updates and on-line access to their
16 donor sibling registry which establishes important familial bonds
17 with other donor offspring (more than 10 and counting) and their
18 families; and
- 19 c. Donor #2744 as an “Open ID” or “Identity Release Donor” (as
20 defined and advertised by NW Cryo as a donor who is willing to be
21
22
23
24
25
26

1 contacted by donor conceived offspring when that child reached 18
2 years of age).

3 3. NW Cryo has threatened to further penalize Ms. Teuscher with a
4 lawsuit alleging she owes NW Cryo \$20,000.00 *plus attorneys' fees* for testing
5 Z.F.'s DNA and uploading it onto 23andMe's website – to find out medical and
6 ancestry information about Z.F. In addition, NW Cryo is now forcing Ms.
7 Teuscher to execute a new contract in order to be granted full access to its
8 website. NW Cryo's new contract (**Exhibit D**), which Ms. Teuscher has not
9 executed, would dramatically change Ms. Teuscher's and Z.F.'s legal rights.

10
11
12
13 **II. PARTIES AND IMPORTANT INFORMATION**

14 4. Plaintiff, Ms. Teuscher, is an individual who currently resides with
15 her minor donor conceived daughter, Z.F., in Portland, Oregon.

16
17 5. Ms. Teuscher is a high school graduate, who now works odd jobs as
18 a painter, making minimum wage after losing her job as a babysitter/nanny.

19 6. Ms. Teuscher has been dealing with infertility problems due to
20 autoimmune diseases, including Hashimoto's Disease.

21
22 7. Ms. Teuscher's autoimmune diseases become aggravated with stress.
23
24
25
26

1 8. Ms. Teuscher has vision problems, she has had her right eye
2 removed; she cannot see out of one of her eyes.

3 9. Z.F. is the third-party beneficiary of the Customer Agreement
4 **(Exhibit A)** that Ms. Teuscher entered into with NW Cryo.

5
6 10. Defendant, CCB-NWC, LLC, d/b/a NW Cryobank, is a California
7 limited liability company with its principal place of business in Spokane,
8 Washington. CCB-NWC, LLC's Spokane location is 201 W. North River Dr.,
9 Suite 110, Spokane, WA 99201, when the complaint was filed in this matter, it
10 was located at 508 W. 6th Avenue, #118, Spokane, WA 99204.

11
12 11. Defendant's business is to collect donations of gametes (eggs and
13 sperm) from men and women, to sell these gametes to customers, cryopreserve the
14 gametes and perform certain medical tests on them.

15
16 12. Upon information and belief, Defendant does business in Washington
17 State as NW Cryobank.

18
19 13. Manhattan Cryobank, a New York Corporation, purchased the assets
20 of CCB-MCB, LLC, a New York limited liability company.

21
22 14. CCB-MCB, LLC and NW Cryo are wholly owned subsidiaries of
23 California Cryobank LLC, a privately held California Limited Liability Company.
24

1 California Cryobank LLC is wholly owned by Cryobank Holdings LLC, a
2 privately held Delaware Limited Liability Company.

3 15. NW Cryo reported on its website, www.nwcryobank.com, on April 1,
4 2019 that it merged with Manhattan Cryobank.

5
6 16. Defendant holds a medical testing license in the state of Washington
7 pursuant to Clinical Laboratory Improvement Amendments (hereinafter, "CLIA")
8 CLIA #50D0969022 and is subject to all of the relevant Washington statutes
9 governing medical testing sites.

10
11 17. Defendant collects, tests, and cryopreserves, sperm and eggs, or in
12 other words, gametes, that Defendant's customers purchase from it or from other
13 customers who wish to store their gametes at NW Cryo's cryopreservation
14 facility(ies).

15
16
17
18 **III. JURISDICTION**

19 18. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
20 1332 (a)(1) because Plaintiffs and Defendant are citizens of different states and
21 the amount in controversy exceeds \$75,000.00, inclusive of attorney's fees,
22 intrinsic value of the Gametes to Ms. Teuscher, which represent the only
23
24
25
26

1 opportunity for Z.F. to have a full sibling, and contractual damages as a proximate
2 result of the harm caused by Defendant against each Plaintiff, plus damages in
3 tort, including, but not limited to, emotional damages caused by the loss of the
4 Gametes.
5

6 19. The Court has personal jurisdiction over Defendant because
7 Defendant does business with the public in the State of Washington. Personal
8 jurisdiction is also properly exercised because Defendant has purposefully
9 directed its activities toward the state of Washington, and Plaintiffs' claims arise
10 from those activities.
11

12 20. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial
13 portion of the events giving rise to Plaintiffs' claims occurred in this District.
14

15 21. Upon information and belief, the Gametes are located in Spokane,
16 Washington.
17

18
19 **IV. FACTS COMMON TO ALL CLAIMS**

20 **Defendant's Promises and Representations.**
21
22
23
24
25
26

1 22. From on or about 2010 until the present, NW Cryo has maintained
2 the website, www.nwcryo.com.²

3 23. At all times relevant to this complaint, Ms. Teuscher, while at her
4 home computer in Portland, Oregon, reviewed www.nwcryobank.com and relied
5 upon the facts and representations contained in the 2013 website of NW Cryo in
6 order to choose her donor and create her family.
7

8 24. Ms. Teuscher's priority in choosing a healthy donor was to find a
9 donor who would be receptive to contact with her child(ren) when her child(ren)
10 turned turn eighteen (18) years of age (an "Open ID Donor" or "ID Disclosure"),
11 as opposed to an anonymous donor. Ms. Teuscher also researched and sought out
12 an ethical cryobank that valued keeping and providing to her, her donor's
13 important and relevant medical information and upheld the idea of
14 interconnectedness between half siblings and their families.
15
16
17

18 Donor Sperm 

19 *Supportive Community*

20 The donor selection process can feel overwhelming at times. Just know that you're not alone. We have a compassionate
21 community of clients and parents to support you along your journey. Sign up for our free community forum to connect with
22 others that are using donor sperm to create their families.

23
24 ² <https://web.archive.org/web/20130504202140/https://www.nwcryobank.com/>



1 <https://www.nwcryobank.com/donor-sperm/> (last visited on 11/11/19).

2
3 25. Ms. Teuscher would not have chosen Donor #2744 if he was
4 advertised as “Anonymous”.

5
6 26. Donor #2744 was advertised as an “Open ID Donor” on his free
7 profile that Ms. Teuscher reviewed on www.nwcryo.com 2013. Ms. Teuscher
8 kept a copy of Donor #2744’s profile and sample essay as it appeared on its
9 website in early 2013. See **Exhibit E**.

10
11 27. In 2013, NW Cryo advertised and represented on its website that,
12 “Donor health updates” would be posted and that recipients of donor gametes
13 would have access to the “Donor health updates” website page, regardless of
14 whether a donor was “retired” or not. And, in fact, Donor #2744’s profile and
15 health updates were present on the website, www.nwcryobank.com when Ms.
16 Teuscher began purchasing his gametes from NW Cryo.

17
18
19 28. NW Cryo, on its 2019 website asks donors to inform them of whether they
20 wish to make their identity available to those who purchase their sperm,
21
22
23
24
25
26

Sperm Donor Types



When choosing a sperm donor, you may want to think about your future child's ability to communicate with their donor when they are an adult. Our different sperm donor types include **Anonymous**, **Open to Communication**, and **ID Disclosure**. If you personally know someone who you want to be your exclusive donor, you can use our **Directed Donor** services. Here's more information on each type of sperm donor.

<https://www.nwcryobank.com/sperm-donor-types/> (last visited 10/30/19).

29. The Donor that Ms. Teuscher chose was "Open ID" as identified on NW Cryo's 2013 website. "Open ID" is now re-designated as "Open to Communication" pursuant to NW Cryo's website. "Open to Communication" sperm donors have agreed to a minimum of one communication with offspring who are at least 18 years old. <https://www.nwcryobank.com/sperm-donor-types/> (last visited on 11/6/19).

30. NW Cryo advertised and explained on its 2013 website that donors have a moral responsibility to provide information about themselves in a sensitive way, and should be mindful of the psychological consequences of their actions to the donor's offspring.

1 INTERNET ARCHIVE
WayBackMachine http://www.nwcryobank.com/screening-form/?gender=Male
2 1 capture 16 Jun 2011 MAY JUN 16 JUL
3 2010 2011 2012
4 donor screening form NWCRYOBANK™

5 **Instructions:**

6 This document will provide a personal history of yourself that will be
7 used as a donor screening tool, will provide clients of the Cryobank
8 with donor selection information and medical history, and may
9 someday be provided to children produced through your donations
10 should you participate as a commercial donor. While not every couple
11 that uses a commercial donor to help produce their family will choose
12 to disclose this information to the child, or children, all parents need
13 to have accurate medical information, and normally desire to "know"
14 the donor through the information you will provide in this history. If
15 children are told that they were conceived through the use of a sperm
16 donor, the information contained within this document may be very
17 important to them for medical and psychological reasons. It is for
18 these reasons that we ask you to answer each question as carefully
19 and thoroughly as you are able. Please refer to other family members
20 for information that you may not immediately know, as all medical
21 information could be of vital importance.

22 [https://archive.org/web/20110616133616/http://www.nwcryobank.com/scre](https://archive.org/web/20110616133616/http://www.nwcryobank.com/screening-form/?gender=Male)
23 ening-form/?gender=Male (last visited on November 11, 2019).

24 31. NW Cryo acknowledged on its website in 2013 that all parents need
25 to have accurate medical information and warned its donors to provide accurate
26



1 updated medical information because its customers (gamete recipients) thoroughly
2 review donor information prior to purchase and use of their “specimens.”

3 32. NW Cryo promised “non-medical information on its donors such as
4 childhood photos, personality tests, audio interviews, staff impressions and
5 personal profiles” in order to assist its customers in making an educated choice of
6 a donor.
7

8 33. NW Cryo touts its licensure as a medical testing facility, which has
9 the obligation to keep proper records and maintain them pursuant to Washington
10 statute RCW 70.42.060. <https://www.nwcryobank.com/licenses-accreditations/>.³
11

12 34. In 2013, NW Cryo advertised and represented on its website that,
13 “The FDA requires that donor information be maintained for ten (10) years,
14 although most sperm banks keep such information indefinitely.”
15
16
17

18
19 ³ Pursuant to RCW 26.26A.820, *et. seq.*, Washington State supports the
20 policy that cryobanks should keep and provide donors’ medical information to
21 children and parents of donor conceived children. See, RCW 26.26A.820 *et.*
22 *seq.*, which takes effect as to gametes collected after January 1, 2019.
23
24
25
26

1 www.nwcryobank.com (last visited on 10/30/19).

2 35. Defendant advises, “customers should purchase additional vials of
3 gametes as soon as they know they will want to have baby #2 and baby #3.” In
4

5 Donor Sperm FAQs



6 6. How many vials should I order?

7 We recommend talking with your health care provider to determine how many vials you will
8 need. The number of cycles required to conceive depends on many factors, including your age,
9 fertility, and procedure you have planned. Our clients typically use 1-2 vials for each cycle.

10 Our donor inventory can change rapidly, so if you think you may want to have more than one
11 child with the same donor, you should consider purchasing additional vials to store for later on.
12 Storing vials will make sure that you can use the same donor for Baby #2 and Baby #3.

effect, Defendant is selling their customers a “family plan.”

13 www.nwcryobank.com/donor-sperm-faqs/ (last visited 10/30/19)

14
15 36. Ms. Teuscher used and relied upon all of the above-mentioned
16 promises and representations made on www.nwcryo.com and NW Cryo’s
17 promises that respected her fundamental human right to form her family.⁴
18
19
20
21

22 ⁴ The American Convention on Human Rights is a regional human rights treaty
23 that provides for the right to family life under Article 17(1), “1. The family is the
24
25
26

1 37. Ms. Teuscher was and is protecting Z.F.’s human right to know her
2
3 own identity. See, 1989 [Convention on the Rights of the Child](#).⁵
4

5 **Ms. Teuscher’s Search for the Right Donor**
6

7 38. Ms. Teuscher’s search for a donor on NW Cryo’s website took time
8 and effort. Ms. Teuscher purchased NW Cryo’s additional services to assist her in
9 making the right choice for her family. Specifically, on January 28, 2013, Ms.
10 Teuscher asked NW Cryo’s staff to assist her in choosing the donor who most
11 closely matched the physical appearance of her husband, Z.F.’s father’s
12 appearance. Ms. Teuscher purchased extended donor profiles of a few possible
13 donors from NW Cryo.
14
15

16
17 _____
18 natural and fundamental group unit of society and is entitled to protection by
19 society and the state.”
20

21 ⁵ [Convention on the Rights of the Child](#), G.A. res. 44/25, annex, 44 U.N. GAOR
22 Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force on Sept. 2
23 1990.
24

1 39. After analyzing the information provided on NW Cryo’s website,
2 Ms. Teuscher chose to conceive her child through the use of the sperm of Donor
3 #2744 primarily because he appeared to be in good health and identified himself
4 as an “Open Donor”. Also important to Ms. Teuscher was that Donor #2744 was
5 “Retired”, which meant that he had stopped donating and that there was only a
6 limited supply of his gametes available.
7

8
9 40. NW Cryo always had represented to Ms. Teuscher that she would be
10 able to access donor health updates of Donor #2744 on-line through
11 www.nwcryobank.com.
12

13 41. On or about February 1, 2013, Ms. Teuscher registered with NW
14 Cryo to become a customer, enrolled in NW Cryo’s on-line portal for medical
15 information of Donor #2744, and registered on-line with NW Cryo, while at her
16 home on her computer.
17

18 42. Ms. Teuscher never had any phone communications or personal
19 communication of any type with any representative of NW Cryo about the terms
20 of her registration, cryopreservation or storing of the Gametes.
21

22 43. At no time did Ms. Teuscher communicate with any representative of
23 NW Cryo about any of the documents she electronically or physically signed.
24
25
26

1 44. As a result of becoming a NW Cryo customer, NW Cryo promised
2 that all of Ms. Teuscher's documents, as well as the information containing Donor
3 #2744's medical history and updates, would be maintained on its website for Ms.
4 Teuscher to access on her on-line portal at www.nwcryobank.com.
5

6
7 **Ms. Teuscher's Purchase, Cryopreservation and Storage of the**
8 **Gametes**

9 45. In the spring of 2013, Ms. Teuscher prepared herself to become
10 pregnant with gametes of Donor #2744 that she purchased from NW Cryo,
11 including but not limited to: ingesting oral hormones and injecting herself with
12 medication necessary to have a successful impregnation.
13

14 46. In early, April, 2013, Ms. Teuscher became pregnant using Donor
15 #2744's gametes. Ms. Teuscher was 25 years old.
16

17 47. On May 30, 2013, Ms. Teuscher was granted access to the sibling
18 registry which NW Cryo established, maintains and monitors; this sibling registry
19 connects offspring and the parents of the children of the donor offspring in order
20 to support a network and exchange information and other background information
21 about the donor's offspring. Since NW Cryo has maintained and monitored this
22
23
24
25
26

1 sibling registry, NW Cryo approves of contact between these families and the
2 exchange of information between the families about the offspring.

3 48. On December 18, 2013, Z.F. was born.

4 49. Ms. Teuscher frequently checked her on-line account to check to see
5 whether there were new registered siblings of Z.F. and check on Donor #2744's
6 medical updates.
7

8 50. Ms. Teuscher participated in the on-line community at NW Cryo's
9 forum when she became pregnant. She accessed the sibling registry at NW Cryo
10 in order to exchange information with other Donor #2744 recipients and to share
11 the joys and struggles of raising a donor conceived child, as well as to be informed
12 of any undisclosed genetic diseases or issues that may have arisen within this
13 sibling group.
14

15 51. Ms. Teuscher was (and still is) desirous of having another baby using
16 her Gametes – the gametes that were derived from Donor #2744 - because she
17 wants Z.F. to have the benefit of bonding with a full biological sibling.
18
19
20

21 **Neither the Customer Agreement nor the Storage Agreement Permit**
22 **the Taking of the Gametes.**
23
24
25
26

1 52. On July 5, 2015, Ms. Teuscher electronically submitted the Customer
2 Agreement and Request for Anonymous Donor Sperm with Indemnification &
3 Release (**Exhibit A**). The Customer Agreement is a four-page long document and
4 contains, among other things, NW Cryo’s policy regarding the storage of gametes.
5 The Agreement contains spaces for Ms. Teuscher to “click the box” and, when
6 one electronically “clicks on the box”, the electronic document automatically
7 inserts a check mark under each section of the Customer Agreement.
8
9

10 53. At no time prior to electronically signing the Customer Agreement
11 did Ms. Teuscher speak to a representative of NW Cryo about the provisions of
12 this contract.
13

14 54. At no time prior to electronically signing the Customer Agreement
15 did Ms. Teuscher personally meet with any representative of NW Cryobank.
16

17 55. At no time prior to electronically signing the Customer Agreement
18 did Ms. Teuscher consult with an attorney, despite the Customer Agreement
19 stating that she did have the opportunity to consult with an attorney.
20

21 56. Ms. Teuscher was not required to “click the box” after every section
22 of the Customer Agreement - there was no box to check after (a) Section VIII of
23 the Customer Agreement containing the liquidated damages provisions that NW
24

1 Cryo is attempting to use against Ms. Teuscher and (b) the last two paragraphs of
2 the Customer Agreement, appearing below:

3 “All donors provided through this program are anonymous donors
4 and agree by contract not to have any rights or responsibilities
5 associated with biological parentage through use of their specimens.
6 Client also acknowledges that Client shall have no right to claim a
7 donor as a legal parent of any product of conception achieved
8 through the use of specimens provided through this program, or to
9 obtain any type of support or contribution in regard to providing for
10 Client or child produced through this program. NWCryobank will
11 provide Client with invoices at time of specimen purchase only;
12 NWCryobank will not be liable to provide any proof to client of
13 lineage back to the donor, such as DNA evidence. Client assumes full
14 financial and parental responsibility for any child produced through
15 the use of specimens provided under this agreement. NWCryobank
16 cannot and will not provide clients with any proof or supportive
17 evidence of donor specimens being the source of fertilization leading
18 to the birth of a child for the purpose of client obtaining any type of
19 public assistance or for other purposes.

20 By signing below, *Client acknowledges that they have read and fully*
21 *understand the terms and conditions addressed herein, does not rely*
22 *on any representation of NWCryobank not specifically contained*
23 *herein, has had the opportunity to consult with counsel of choice, and*
24 *that this Request for Donor Sperm forms a portion of the consideration*
25 *for this transaction and has been specifically bargained for.”*
26 [Emphasis supplied].

57. The Customer Agreement, at Section I, provided that, “Payment for
monthly storage will be automatically deducted monthly beginning approximately
30 days from purchase.”



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 58. The Customer Agreement *only permits NW Cryo to cease storing*
2 *gametes and to destroy them if payment is not received.*

3 59. Under the Customer Agreement, there is no provision concerning
4
5 NW Cryo’s right to take away Ms. Teuscher’s ownership rights to her Gametes.

6 60. The Customer Agreement at Section VIII represented that, NW Cryo
7 protects the privacy rights of the donor and that “Client agrees not to seek or make
8 any effort to obtain any information not directly provided through NW Cryobank
9 concerning the identity, background, or whereabouts of the Donor at any time and
10 from any source whether directly or indirectly and/or by any means.”

11 61. The Customer Agreement also states at Section VIII that, NW Cryo
12 is entitled to liquidated damages in the amount of \$10,000 per occurrence of any
13 breach of the agreement. The Customer Agreement did not define the phrase
14 “liquidated damages”, “per occurrence” or “breach” nor did it attempt to identify
15 how the “liquidated damages” reasonably related to any foreseeable damages.

16 62. The Customer Agreement at Section V provides that the “Client
17 hereby indemnifies and holds NW Cryobank harmless from any judgment, award,
18 claim, demand, action, suit, cost, expense, including without limitation, reasonable
19 attorney’s fees incurred by it in connection with NW Cryobank’s defense thereof
20
21
22
23
24
25
26



1 or determination of liability in connection therewith, arising from or relating to the
2 matters addressed herein.”

3 63. The Customer Agreement does not provide for Ms. Teuscher’s ability
4 to recover attorneys’ fees and be indemnified by NW Cryo if her claims related to
5 this lawsuit or any other claim she has against NW Cryo is successful.
6

7 64. The Customer Agreement does not contain a provision that it can be
8 amended or modified without the client’s consent.
9

10 65. The Customer Agreement does not restrict Ms. Teuscher’s ability to
11 test or upload her daughter Z.F.’s DNA for the purposes of discovering Z.F.’s
12 medical and genetic history, so long as she does not attempt to determine the
13 identity of the donor.
14

15 66. The Customer Agreement does not prevent mutual and voluntary
16 contact among persons who agree to test their own DNA to discover whether a
17 connection can be made between them independent of the donor.
18
19
20
21
22
23
24
25
26

1 67. On November 6, 2015, Ms. Teuscher purchased two (2) IVF vials of
2 Donor #2744's gametes using NW Cryo's website which she stored at NW Cryo.⁶
3 These two (2) IVF vials of Gametes were two of the five vials she stored for
4 cryopreservation at NW Cryo facility, upon information and belief at its facility in
5 Spokane, Washington.
6

7 68. Upon information and belief, Ms. Teuscher entered into another
8 contract with NW Cryo. This agreement would have been a storage agreement
9 whereunder NW Cryo would have agreed to cryopreserve her Gametes in
10 exchange for Ms. Teuscher's monthly or yearly pre-payment. See the blank
11 model storage agreement found on-line on www.nwcryobank.com (the "Storage
12
13
14
15
16
17
18

19 ⁶ In vitro fertilization, or IVF gametes, are gametes that have been prepared for
20 use by a doctor for insemination. Website: [https://www.nwcryobank.com/vial-](https://www.nwcryobank.com/vial-types/)
21 [types/](https://www.nwcryobank.com/vial-types/).
22
23
24
25
26

1 Agreement”) which was an agreement which NW Cryo used to enter into storage
2 contracts with its customers as of November, 2015 as **Exhibit B**.⁷

3 69. The Storage Agreement makes clear in the very first clause who
4 owns the gametes:
5

6 “Whereas, **client wishes to have their cryopreserved**
7 **(frozen) gamete specimens** stored in liquid nitrogen for
8 possible thawing at some future date.” [Emphasis added]

9 70. Pursuant to the Storage Agreement, the Gametes subject to that
10 agreement would have been stored at an undisclosed locale with NW Cryo in
11 return for a monthly fee which would renew at the end of designated period. The
12 termination of the agreement would occur only upon the happening of certain
13 events pursuant to paragraph 3 sections a through c of the Storage Agreement,
14 specifically, (a) direction by Ms. Teuscher of the Gametes’ release, (b) written
15 direction of Ms. Teuscher for the destruction of the Gametes, (c) failure of Ms.
16 Teuscher to pay storage fees for the cryopreservation of the Gametes or Ms.
17 Teuscher’s failure to execute a new storage agreement, upon the request of NW
18
19
20
21

22 _____
23 ⁷ A copy of any other storage agreement that Ms. Teuscher executed for the
24 Gametes was demanded but was not produced.
25
26

1 Cryo. The Storage Agreement, if it were executed, set forth no equitable remedy
2 to deny Ms. Teuscher her right to her Gametes under that agreement or any other
3 agreement between Ms. Teuscher and NW Cryo.
4

5 71. The Storage Agreement states at paragraph 12, that it is a complete
6 agreement and that it cannot be amended or modified.
7

8 **Ms. Teuscher's Choice to Grow her Family using Defendant's Services.**

9 72. After Z.F. was born in late 2013, Ms. Teuscher purchased two (2)
10 vials of Donor #2744's gametes (these vials comprise part of the Gametes) from
11 NW Cryo and stored them with NW Cryo.
12

13 NW Cryo offered the opportunity for Ms. Teuscher to transfer Donor
14 #2744's gametes from another customer to her. Ms. Teuscher also purchased
15 three (3) more vials of Donor #2744's Gametes from another NW Cryo customer
16 (a mother of Z.F.'s half sibling) who could not use Donor #2744's Gametes any
17 longer.
18
19

20 73. On June 3, 2016, Ms. Teuscher received an email from Brittany
21 Peterson at NW Cryo stating that the 3 vials of Donor #2744's Gametes had been
22 completed and these vials of gametes were transferred to Ms. Teuscher's on-line
23 storage account from another customer's NW Cryo account.
24
25
26

1 74. In total, Ms. Teuscher purchased and secured ownership of five (5)
2 vials of Donor #2744's gametes.

3 75. On July 29, 2016 Ms. Teuscher requested shipment of one (1) vial of
4 the Gametes of Donor #2744 from NW Cryo. While it was in route to her home,
5 Ms. Teuscher had to cancel the shipment and requested by email that NW Cryo
6 continue to store this one (1) vial of her Gametes. Ms. Teuscher paid a restocking
7 fee to NW Cryo for this returned vial on or about August 2, 2016 and received
8 confirmation from NW Cryo that it had received her one (1) returned vial of
9 Gametes and this vial was returned to her to continue to be cryo-preserved.
10

11 76. On January 17, 2017, Ms. Teuscher purchased a full year (12
12 months) of storage at NW Cryo for her five (5) vials of Donor #2744's Gametes.
13

14 77. At the end of 2017, Ms. Teuscher began paying for the Gametes'
15 storage on a month to month basis and was current in her payments at the time she
16 received the Cease and Desist Letter.
17
18

19
20 **23andMe Genetic Testing and the Agreement between 23andMe and its**
21 **Customers**

22 78. In or about November 2018, Ms. Teuscher tested Z.F.'s DNA using
23 the company 23andMe. Ms. Teuscher wanted to gather information about Z.F.'s
24
25
26



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 genetic history, and predispositions to disease and medicine, to possibly locate
2 Z.F.'s half-siblings and to inform Z.F. about her full genetic origins.

3 79. Ms. Teuscher purchased a special health information package from
4 23andMe to provide her with all available health information about Z.F.'s genome
5 including Z.F.'s genomic raw data which provides extensive and scientific
6 ground-breaking opportunities to learn information about Z.F.'s genetic make-up
7 and predispositions to disease.
8
9

10 80. Ms. Teuscher paid \$100.00 for the health package from 23andMe for
11 Z.F.
12

13 81. Z.F.'s DNA was tested for *many hereditary diseases and genetic*
14 *predispositions*. Ms. Teuscher further analyzed the medical genomic data to
15 discover additional genomic and medical information about Z.F. Ms. Teuscher
16 had not known about Z.F.'s hereditary predispositions prior to learning about
17 them from 23andMe.
18

19 82. 23andMe is a company that operates a website designed to allow
20 persons to test their DNA to learn more about themselves, their ancestry, health
21 predispositions and provides raw genomic data to its clients so that they can learn
22
23
24
25
26

1 more about their DNA. 23andMe has several opt-in features, one of them is to be
2 matched with your genetic relatives.

3 83. 23andMe has FDA approval (as a medical testing device) to provide
4 at home genetic testing to customers directly. 23andMe is federally authorized to
5 provide consumers with crucial health information as it may affect them in the
6 future. The goal of the health services is stated to “give individuals ‘a deeper
7 understanding of their health risks,’ and to encourage individuals to provide the
8 information to a healthcare provider for additional testing, diagnosis, or
9 treatment.” As of October 31, 2018, 23andMe was able to provide direct-to-
10 consumer tests regarding genetic variants “that may be associated with a patient’s
11 ability to metabolize some medications to help inform discussions with a health
12 care provider.” [https://www.fda.gov/news-events/press-announcements/fda-
13 authorizes-first-direct-consumer-test-detecting-genetic-variants-may-be-
14 associated-medication](https://www.fda.gov/news-events/press-announcements/fda-authorizes-first-direct-consumer-test-detecting-genetic-variants-may-be-associated-medication)

15
16
17
18
19
20
21 84. In 2017, the FDA approved 23andMe reports on consumers’ genetic
22 health risks (not carrier status) for 10 conditions including celiac, Alzheimer’s
23 disease, and Parkinson disease. 23andMe also applied a proposal for a
24

1 “streamlined” path to market for genetic health risk tests where the manufacturer
2 would complete a one-time review after which it could add certain health risk
3 reports without premarket review (this did not apply to cancer risk tests). In 2018,
4 the FDA approved the 23andMe test providing information on the BRCA
5 /BRCSA gene mutations.⁸

7 85. On 23andMe’s website, it explains that customers can choose to “opt
8 in” to find genetic relatives. The article warns its “opt in” customers to prepare
9 for unexpected results, “ webpage: [https://customercare.23andme.com/hc/en-
10 us/articles/202907980-What-unexpected-things-might-I-learn-from-23andMe-:](https://customercare.23andme.com/hc/en-us/articles/202907980-What-unexpected-things-might-I-learn-from-23andMe-)

11
12
13
14 Looking at your genetic data might uncover information
15 that some people find surprising. This information can
16 be relatively benign. At other times, the information you
17 learn can have profound implications for both you and
18 your family. 23andMe cannot provide you with an
19 exhaustive list of all the unexpected things you might
20 uncover during your genetic exploration, but in general

21
22
23
24
25
26

⁸ Y. Tony Yang and Patricia J. Zettler, “Food and Drug Administration’s
Regulatory Shift on Direct-to-Consumer Genetic Tests for Cancer Risk,” *Cancer*
125(1) (January 1, 2019): 12-14.

<https://onlinelibrary.wiley.com/doi/full/10.1002/cncr.31773>



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 these things fall into four main categories. Health –
2 Ancestry- Family – Relationships.

3 86. 23andMe explicitly warns its customers that:

4 “Individuals who have donated sperm or egg(s), or are
5 donor-conceived themselves should note that
6 participating in the DNA Relatives feature may reveal
7 previously unknown relationships including the potential
8 of close biological relatives (such as a biological father,
9 biological child, or siblings). Some individuals may be
10 open to exploring new biological relationships and
11 choose to opt in to the DNA Relatives feature, while
12 others may wish to preserve their anonymity by
13 choosing not to participate in the DNA Relatives
14 feature.”

15 87. Ms. Teuscher was notified by email from 23andMe that, Z.F.
16 genetically matched with someone who it termed Z.F.’s predicted grandmother
17 (the “PGM”) who had also “opted in” to 23andme’s relative finding service.

18 88. On January 2, 2019, Ms. Teuscher sent an email request through the
19 23andMe website’s server to the PGM. In the email, Ms. Teuscher informed the
20 PGM that through 23andMe genetic testing, Ms. Teuscher’s daughter was related
21 to her, as her daughter was conceived through donor sperm. Ms. Teuscher asked
22 the PGM whether she would like to have contact with her.

23 89. At no time did Ms. Teuscher contact or ask for contact with Donor
24 #2744 or ask for information about him.

1 90. On January 4, 2019, immediately after receiving a confused reply
2 from the PGM, Ms. Teuscher emailed her apology to the PGM.

3 91. Ms. Teuscher has had no further contact with the PGM.
4
5

6 **NW Cryo Confiscates Ms. Teuscher’s Gametes and Restricts Access to**
7 **Donor Sibling Registry and it Re-designates Donor #2744 as**
8 **“Anonymous”**

9 92. On January 12, 2019, Ms. Teuscher received a Cease and Desist
10 Letter from Margaret Howell Benson, Esq., General Counsel at NW Cryo (the
11 “Cease and Desist Letter”).
12

13 93. Ms. Benson stated in the Cease and Desist Letter:

14 Your attempt to seek the identity of the Donor and then
15 to contact the Donor’s mother through 23andMe is, in
16 each case, a flagrant violation of the Agreement (the
17 Customer Agreement). Under Section VIII of the
18 Agreement (Customer Agreement), NWCryobank (sic)
19 is entitled to liquidated damages in the amount of
20 \$10,000 for each act in violation of Section VIII. At this
21 point, we are entitled to seek \$20,000 in liquidated
22 damages from you \$10,000 for seeking the identity,
23 \$10,000 for initiating contact).

24 Upon further investigation, we may be entitled to
25 additional monetary damages if you have used other
26 ancestry DNA programs, facial recognition tools on the
internet or any other means, directly or indirectly, to
contact or seek the identity of the Donor. We will seek a



1 restraining order or injunction if you continue with this
2 course of action in any maner.

3 The letter continues:

4 Moreover, we hereby notify you that as a direct result of
5 your flagrant and material breach of the Agreement we
6 are revoking your right to receive the four (4) *sic*
7 additional vials of Donor's sperm that you purchased.
8 No refund will be given.

9 See, The Cease and Desist Letter, Exhibit C.

10 94. NW Cryo breached the Customer Agreement and its obligations to
11 safely store Ms. Teuscher's Gametes.

12 95. NW Cryo is without basis in contract or statute (RCW 26.26A, the
13 Washington Uniform Parentage Act) to afford itself with the remedy of specific
14 performance and eviscerate Ms. Teuscher's property rights to the Gametes.⁹

15 96. As of January 18, 2019, Ms. Teuscher was able to view her on-line
16 account and there was evidence there that she had paid for and stored all of her
17
18

19 _____
20 ⁹ RCW 26.26 (the prior statute that was in effect at the time the Gametes were
21 collected) was silent on the specific performance rights of a cryobank. However,
22 RCW 26.26A specifically does not provide for equitable relief in connection with
23 rights given to parties under the statute. See, RCW 26.26A.755.
24
25
26



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 five vials of Gametes at NW Cryo. Shortly thereafter, Ms. Teuscher could no
2 longer view her on-line account, see her medical records or access the donor
3 sibling registry.
4

5 97. On February 5, 2019 and March 6, 2019, Ms. Teuscher, by her
6 counsel, demanded in writing that NW Cryo: (a) return her Gametes to her or her
7 chosen cryobank, (b) provide the location of the Gametes, (c) restore access to her
8 on-line account, and (d) produce all executed agreements between Ms. Teuscher
9 and NW Cryo.
10

11 98. NW Cryo did not comply with any of her demands referred to in the
12 paragraph directly above and Ms. Teuscher was never given an adequate reason
13 for its refusal.
14

15 99. NW Cryo has responded to Ms. Teuscher that, it will neither release
16 her Gametes to her or her chosen cryobank nor will they restore her on-line access
17 to NW Cryo.
18

19 100. In or about April, 2019, at the same time as NW Cryo's merger with
20 Manhattan Cryobank, Ms. Teuscher attempted to sign onto her on-line account on
21 or about April 3, 2019. She was not granted access because of NW Cryo's new
22 requirement that women customers who have stored gametes with it must execute
23
24

1 a new agreement entitled, the “Gamete Storage Agreement for Storage of Client
2 Depositor Gamete Specimens” (hereinafter, the “Revised Gamete Storage
3 Agreement”), which restricts their rights in serious ways the customers’ rights,
4 including but not limited to exonerating NW Cryo for not providing medical
5 information to donor recipients and restricting recipients of donors’ gametes from
6 testing the DNA of the gametes’ they have purchased and stored at NW Cryo. The
7 Revised Gamete Storage Agreement is attached hereto as **Exhibit D**.
8
9

10 101. NW Cryo acknowledges in the Revised Gamete Storage Agreement,
11 an agreement that Ms. Teuscher has not signed, that, the liquidated damages
12 provision in the Customer Agreement is unconscionable. At Section 13 of the
13 Revised Gamete Storage Agreement, NW Cryo’s liquidated damages are capped
14 at “the amount of fees paid to Cryobank for such Specimen purchased and the
15 total amount of storage fees paid by Client for the storage period (i.e., the Initial
16 Storage Period or a Renewal Period as the case may be) in which such loss, injury,
17 damage or destruction occurred. The parties stipulate and agree that this declared
18 value is a limit of liability in accordance with California Civil Code Section
19 1840.”
20
21
22
23
24
25
26

1 102. Since receiving the Cease and Desist Letter, Ms. Teuscher was
2 informed that NW Cryo had re-designated Donor #2744's status from "Open ID"
3 to "Anonymous" which was a deceptive and unfair practice and belied all of NW
4 Cryo's representations about its high ethical regard for donor recipients and donor
5 conceived persons.
6

7 103. As a direct result of NW Cryo's wrongful acts, Ms. Teuscher
8 experienced serious mental anguish, including depression and insomnia, causing
9 her take time off from work, used various therapeutic services, and experienced
10 hair loss induced by the stress of forever losing her ability to bear a sibling that is
11 fully genetically related to her daughter, Z.F.
12

13 104. As a result of the Cease and Desist Letter, many women users and
14 consumers of NW Cryo's gametes have been fearful to investigate the genetic
15 history of their children who are suffering from genetic diseases because they
16 might receive a similar threat, get locked out of their on line accounts and will be
17 denied access to donor medical updates and the community forums and sibling
18 registry maintained by NW Cryo.
19
20
21

22 **NW Cryo's Harmful Behavior and Admissions**
23
24
25
26

1 105. NW Cryo stated to its customers on its website beginning in April,
2 2019 that the donor sibling registry was not available. In August 8, 2019, a
3 posting to the community forum revealed a statement from the sibling registry's
4 administrator at NW Cryo that the registry was not available, a sufficient
5 explanation was not provided.
6

7 Comments

NWCRYOBANK™



8 NWC_Admin86 Posts: 83

9 August 8 edited November -1

10 Hello the functionality of the donor sibling registry is
11 currently not available as we are actively reviewing
12 and will keep everyone updated for future web
13 enhancements. We thank you for your patience.

14 (last visited 10/30/19)

15 [https://community.nwcryobank.com/discussion/41070/where-did-the-](https://community.nwcryobank.com/discussion/41070/where-did-the-donor-sibling-registry-go)
16 [donor-sibling-registry-go](https://community.nwcryobank.com/discussion/41070/where-did-the-donor-sibling-registry-go) and
17 <https://community.nwcryobank.com/discussion/18653/sibling-registry>

18 106. As of the date of this filing, NW Cryo's sibling registry has not been
19 reinstated and many sibling donor families are negatively affected because they
20 cannot connect with one another as NW Cryo promised and is necessary to
21 support their children who are seeking information about their identities.
22
23
24
25
26



1 107. Ms. Teuscher has not been able to connect with her daughter's half
2 siblings through the NW Cryo sibling registry since March, 2019.

3 **Public Policy Shift and NW Cryo's Recognition**

4
5 108. In January, 2019, NW Cryo represented to its clients (recipients of
6 donor sperm) that it knows the realities of genetic testing of one's children and the
7 importance of genetic connections.
8



10
11 "Given the advancements in genetic testing and our immediate access to information via
12 the Internet, there is no such thing as anonymous donors," says Westbrook. "Which is why we
13 created forums on our website intended to connect our NW Cryobank families in meaningful ways,
14 including opportunities for families with the same donor to talk, post pictures and register
15 siblings." For more information about NW Cryobank family planning services or to become a donor,
16 visit their website at NWCryobank.com or call 509-232-0132.

17 [https://www.inwawakenings.com/2019/01/01/285210/local-cryobank-provides-](https://www.inwawakenings.com/2019/01/01/285210/local-cryobank-provides-the-gift-of-family)
18 [the-gift-of-family](https://www.inwawakenings.com/2019/01/01/285210/local-cryobank-provides-the-gift-of-family) (last visited 10/30/19)

19
20 109. The U.S. Surgeon General and the Department of Health and Human
21 Services (HHS) launched a national public health campaign called the U.S.
22 Surgeon General's Family History Initiative. This campaign focused attention on
23



1 the importance of the family health history, and encouraged all families to learn
2 more about their health histories.

3 110. As a matter of public policy, the United States Surgeon General's
4 Office has declared on their website at: [https://www.genome.gov/17516481/the-](https://www.genome.gov/17516481/the-us-surgeon-generals-family-history-initiative-family-history-initiative/)
5 [us-surgeon-generals-family-history-initiative-family-history-initiative/](https://www.genome.gov/17516481/the-us-surgeon-generals-family-history-initiative-family-history-initiative/) that,
6
7 "Tracing the illnesses suffered by your parents, grandparents and other blood
8 relatives can help your doctor predict the disorders to which you may be at risk,
9 and help you take action to keep you and your family healthy."
10

11
12 FIRST CLAIM FOR RELIEF
13 PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF BROUGHT BY
14 MS. TEUSCHER AND Z.F.

15 111. Plaintiffs incorporate and reallege each of the foregoing paragraphs
16 as if fully set forth herein.

17
18 112. NW Cryo took Ms. Teuscher's Gametes without any right to do so
19 under the Customer Agreement, Storage Agreement or any other agreement,
20 statute or legal authority.
21

22 113. Ms. Teuscher has been denied information as to the Gametes
23 location.
24

25
26
SECOND AMENDED COMPLAINT



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 114. By Ms. Teuscher not having access to the sibling registry, Ms.
2 Teuscher and Z.F. are prevented from accessing important donor medical updates
3 and important psycho-social information that is relevant for Ms. Teuscher, as a
4 mother to track and analyze so that she can nurture and raise her daughter, Z.F.
5

6 115. By Ms. Teuscher's denial of access to her on-line account, important
7 medical information related to Z.F. is being unjustly withheld by NW Cryo and
8 such actions are consequently harming Ms. Teuscher and Z.F.
9

10 116. Plaintiffs will suffer irreparable harm if an injunction does not issue.
11 Ms. Teuscher will be denied the right to decide when and how to conceive
12 child(ren) using the property that she had purchased and stored: Gametes of Donor
13 #2744. Z.F. will specifically be denied the potential to have a genetic sibling.
14

15 117. Plaintiffs are likely to succeed on the merits of their claims.
16

17 118. A balancing of the equities and a preservation of the *status quo*
18 weighs in favor of granting preliminary injunctive relief to restore the *status quo*
19 to Plaintiffs.
20

21 SECOND CLAIM FOR RELIEF
22 VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT,
23 CHAPTER 19.86 RCW *et. seq.* BROUGHT BY MS. TEUSCHER AND Z.F.

24 119. Plaintiffs incorporate by reference all foregoing factual allegations.
25
26

1 120. NW Cryo has made knowingly false and misleading statements on its
2 website and in its contracts designed to influence women who are desirous of
3 having a baby and face infertility problems to sign agreements that are completely
4 one-sided in its favor, preventing them from properly reviewing and analyzing the
5 terms of these contracts.
6

7 121. NW Cryo has made knowingly false and misleading statements on its
8 website to influence and support its marketing plan for its customers to purchase
9 of as many vials of gametes to ensure that they are able to form the family that
10 they want with the understanding that the customers will receive their gametes
11 upon their request.
12

13 122. NW Cryo profited from Ms. Teuscher's purchasing and storing with
14 it, as many vials of Donor #2744's gametes as she could purchase and have them
15 transferred from NW Cryo, in order to create the family that she planned, while
16 NW Cryo freely decided to take the Gametes away from her.
17

18 123. NW Cryo's advertising and promises are deceptive, as Defendant
19 advertised and marketed to Ms. Teuscher that she should purchase additional
20 gametes to create her family, false advertising of the importance of family
21
22
23
24
25
26



1 connections, yet, swiftly robbed the Plaintiffs of having the family Ms. Teuscher
2 had hoped for and expected.

3 124. NW Cryo seized the Gametes without legal basis for doing so.

4
5 125. NW Cryo seized the Gametes in retaliation for actions they perceived
6 as breaching the Customer Agreement. (See Exhibit C, the Cease and Desist
7 Letter).

8
9 126. NW Cryo repudiated the Customer Agreement and the Storage
10 Agreement, if in fact Ms. Teuscher did sign the Storage Agreement.

11 127. NW Cryo advertised Donor #2744 as an “Open ID” donor which Ms.
12 Teuscher relied upon to build her family; NW Cryo has acted unfairly by
13 changing Donor #2744’s status to “Anonymous”.

14
15 128. The business practice of changing a donor’s contact designation is
16 retaliatory and has the effect of harming many persons that have used Donor
17 #2744 as their donor to assist in the conception of their children. NW Cryo is
18 not properly informing their customers and donors that the internet and genetic
19 ancestry websites are commonplace and pervasive and the testing of one’s child
20 DNA is a private and protected matter.
21
22
23
24
25
26

1 129. Ms. Teuscher has been severely harmed by NW Cryo’s retaliatory
2 and unfair business practices targeted against her which penalize her and Z.F. by
3 influencing Ms. Teuscher to purchase more gametes of the same donor, then
4 taking her gametes away, changing the donor’s designation from “Open” to
5 “Anonymous”, restricting Ms. Teuscher’s access to the donor sibling registry and
6 on-line medical updates of Donor #2744.
7

8
9 130. Ms. Teuscher is now being forced to sign a new adhesion style
10 agreement to continue being a customer of NW Cryo.
11

12 131. Defendant, by forcing Ms. Teuscher (and other customers) to execute
13 the Revised Gamete Storage Agreement, NW Cryo is unfairly and unjustly
14 restricting medical information related to Z.F.
15

16 132. Ms. Teuscher has been harmed as a direct and proximate result of:

- 17 (a) penalizing Ms. Teuscher by taking her Gametes without any
18 contractual or other basis for doing so;
19
20 (b) threatening Ms. Teuscher in the amount of \$20,000.00 for
21 testing Z.F.’s DNA on a genetic website, 23andMe;
22
23 (c) preventing Ms. Teuscher from accessing Z.F.’s genetic
24 medical history and important donor information updates that
25
26

1 only Defendant are the holders of, by blocking Ms. Teuscher
2 from accessing her on-line account and restricting Ms.
3 Teuscher from establishing connections with other donor
4 conceived offspring families on their sibling website;
5

6
7 (d) requiring Ms. Teuscher to agree to terms wholly favorable to
8 NW Cryo contained in the Customer Agreement that she
9 could neither alter nor negotiate; and
10

11 (e) forcing Ms. Teuscher to agree to a new adhesion type
12 contract which waives many of the rights she has in the
13 Customer Agreement, including the right to litigate in the
14 courts, forcing Ms. Teuscher to agree to onerous
15 indemnification and waiver provisions in its new agreement,
16
17

18 **Exhibit D.**

19 133. Z.F. has been severely harmed by NW Cryo's retaliatory and
20 unfair business practice of changing the designation of Donor #2744 so
21 that NW Cryo can claim it is exempt from facilitating contact between her
22
23
24
25
26

1 and her donor as required by law now under RCW 26.26A.815 and
2 26.26A.820.

3
4 134. Z.F. has been harmed as a direct and proximate result of NW
5 Cryo:

- 6
- 7 (a) preventing Z.F. from experiencing her life with a full
8 genetic sibling;
 - 9 (b) sending the Cease and Desist Letter and determining
10 that Z.F.’s right to have her DNA tested by her mother is in
11 violation of the Customer Agreement, which she did not sign;
 - 12 (c) forcing Z.F. to be bound by NW Cryo’s re-designation
13 of Donor #2744 as “Anonymous” and no longer “Open ID”
14 which means that she will be restricted from making a
15 minimum of one contact with her donor when she turns
16 eighteen (18), which is against Z.F.’s autonomy and freedom
17 to communicate when she becomes an adult; and
 - 18 (d) preventing Z.F.’s mother, Ms. Teuscher, from
19 accessing Z.F.’s genetic medical history and important donor
20 information updates and the community of donor families
- 21
22
23
24
25
26



1 who share Z.F.'s DNA and restricting Ms. Teuscher from
2 establishing connections with other donor conceived
3 offspring families on their sibling website.
4

5 WHEREFORE, Plaintiff, Z.F. prays for damages in an amount to be
6 determined at trial but exceeding \$100,000.00, for the deprivation of
7 connections between Z.F and her biological sibling(s) due to NW Cryo's
8 refusal to release the Gametes to Ms. Teuscher in the form of:
9

- 10
- 11 (a) future non-economic and economic emotional damages;
 - 12 (b) treble damages under RCW 19.86.093;
 - 13 (c) attorneys' fees and costs;
 - 14 (d) for prejudgment and post-judgment interest as authorized by

15 law; and
16

- 17 (e) such other and just relief in the Court's discretion.
18

19 WHEREFORE, Plaintiff, Ms. Teuscher prays for damages in an amount
20 to be determined at trial but exceeding \$100,000.00, consisting
21 specifically of the following:
22

- 23 (a) cost of the Gametes and storage of the Gametes (\$8,213.00), including
24 purchase of information (from NW Cryo and 23andMe) to verify the
25



26
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 genetic makeup and history of Donor #2744 by purchasing the
2 extended donor profile containing medical background of Donor #2744
3 and by testing Z.F.'s DNA;

4
5 (b) medical expenses and future medical expenses for infertility including
6 medications and necessary medical procedures (\$20,000) due to the
7 passage of time and non-use of the Gametes;

8
9 (c) therapeutic costs for emotional injuries including therapy for depression
10 and insomnia (\$1,000);

11 (d) alopecia treatment for hair loss associated with extreme stress (\$455);

12
13 (e) future alopecia treatments (\$4,000);

14 (f) lost wages due to inability to work as a child caregiver due to the stress
15 of losing the ability to provide a full genetic sibling for Z.F. (\$2,500);

16
17 (g) replacement costs including the retention of a genealogist to find
18 another donor of the closest match to Donor #2744 genetics, traits and
19 physical characteristics (\$20,000);

20
21 (h) replacement fees of purchasing a new donor's gametes, storage of the
22 new gametes, baby photos and medical history from a different
23 cryobank (\$6,000);
24



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

- 1 (i) attorney's fees billed to date (\$69,473), expenses (\$1,759.75);
2 (j) for an award of treble damages pursuant to RCW 19.86.093;
3 (k) for prejudgment and post-judgment interest as authorized by law; and
4 (l) such other and just relief in the Court's discretion.
5

6
7 THIRD CAUSE OF ACTION
8 BREACH OF BAILMENT BROUGHT BY MS. TEUSCHER
9

10 135. Plaintiff incorporates by reference all foregoing factual allegations.

11 136. At all relevant times, Ms. Teuscher owned the Gametes.

12 137. At all relevant times, Defendant was and upon information and belief
13 still is in possession of the Gametes.
14

15 138. Ms. Teuscher tendered payment to NW Cryo for the storage of the
16 Gametes for Ms. Teuscher's sole use pursuant to the Customer Agreement and
17 pursuant to the Storage Agreement, if in fact she executed the Storage Agreement.
18

19 139. Ms. Teuscher has demanded that NW Cryo deliver the Gametes to
20 her but NW Cryo has wrongfully refused to deliver the Gametes to her or to a
21 cryobank of her choice.
22

23 WHEREFORE, Plaintiff, Ms. Teuscher prays for the following relief:

- 24 (a) The delivery of the Gametes to Ms. Teuscher, or, in the alternative;
25
26



1
2 (b) The intrinsic value of the Gametes to Ms. Teuscher, as the Gametes as
3 represented by NW Cryo cannot be resold on NW Cryo's website
4 pursuant to the Customer Agreement, thus the Gametes have no market
5 value, and since they cannot be exactly replaced or exactly reproduced,
6 damages are sought in excess of \$100,000.00; and
7

8
9 (c) Attorneys' fees, costs, for prejudgment and post-judgment interest as
10 authorized by law
11

12
13 FOURTH CAUSE OF ACTION
14 REPLEVIN BOUGHT BY MS. TEUSCHER

15 140. Plaintiff incorporates and realleges each of the foregoing paragraphs
16 as if fully set forth herein.

17 141. The Gametes were wrongfully taken away from Ms. Teuscher.

18 142. The Gametes are incapable of being assigned a monetary value, they
19 embody the potential of Ms. Teuscher having a child or several children who are
20 the full genetic sibling(s) to Z.F. and therefore, the Gametes are invaluable.
21

22 143. Ms. Teuscher has demanded that NW Cryo deliver the Gametes to
23 her but NW Cryo has refused to do so.
24

25
26
SECOND AMENDED COMPLAINT



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 WHEREFORE, Plaintiff, Ms. Teuscher prays for the following relief:

2 (a) Specific performance of the Customer Agreement, specifically, the
3 delivery of the Gametes to Ms. Teuscher;

4 (b) incidental damages consisting of present and future infertility
5 medical treatments due to the passage of time and non-use of the
6 Gametes (\$20,000);

7 (c) incidental damages consisting of present and future medical expenses
8 used to treat Ms. Teuscher's depression, anxiety, insomnia and alopecia
9 (\$4,455.00);

10 (d) attorneys' fees and costs; and

11 (e) A preliminary injunction requiring:

12 (1) Defendant to preserve the Gametes pending the outcome of this
13 litigation;

14 (2) Defendant to provide the exact location of the Gametes pending the
15 outcome of this litigation;

16 (3) Defendant to provide documentary proof that the Gametes are in
17 fact from Donor #2744;



18 1700 Seventh Avenue, Suite 2100
19 Seattle, Washington 98101
20 Telephone: (206) 357-8442
21 Fax: (206) 858-9730

- 1 (4) Restoring Ms. Teuscher's access to her on-line account and/or to
2 add the Donor back onto their website to provide updated medical
3 updates from Donor #2744; and
4
5 (5) Reinstating Ms. Teuscher's access to the sibling registry.
6
7 (f) A permanent injunction requiring:
8
9 (1) Defendant to deliver the Gametes to Ms. Teuscher;
10
11 (2) Restoring Ms. Teuscher's access to her on-line account to obtain
12 medical updates of Donor #2744; and
13
14 (3) Reinstating Ms. Teuscher's access to the sibling registry; and
15
16 (g) such other and further relief as the Court may order.

17 FIFTH CAUSE OF ACTION
18 CONVERSION BROUGHT BY MS. TEUSCHER

19 144. Plaintiff incorporates and realleges each of the foregoing paragraphs
20 as if fully set forth herein.

21 145. NW Cryo unjustly took Ms. Teuscher's property – her Gametes – by
22 asserting that it would no longer be storing the Gametes for Ms. Teuscher and Z.F.

23 146. NW Cryo has unjustly interfered with Ms. Teuscher's property and
24 her rights to her future family.

25
26
SECOND AMENDED COMPLAINT



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 147. NW Cryo asserted dominion and control of the Gametes and has
2 deprived Ms. Teuscher of the ability to use them to create her child or children.

3 WHEREFORE, Plaintiff, Ms. Teuscher prays for the following relief:
4

5 (a) the fair market value of the Gametes at the time of their conversion by
6 NW Cryobank; and

7 (b) attorneys' fees, costs, and for prejudgment and post-judgment interest as
8 authorized by law
9

10 SIXTH CAUSE OF ACTION
11 DECLARATORY JUDGMENT THAT TERMS OF THE CUSTOMER
12 AGREEMENT ARE UNCONSCIONABLE AND CANNOT BE ENFORCED
13 BROUGHT BY MS. TEUSCHER AND Z.F.

14 148. Plaintiffs incorporate by reference all foregoing factual allegations.

15 149. Paragraph V of the Customer Agreement regarding the responsibility
16 of Ms. Teuscher to indemnify NW Cryo's for all costs, expenses and reasonable
17 attorneys' fees should be stricken and deemed void and/or unenforceable under
18 Washington's Consumer Protection Act at RCW 19.86.093(3) because this
19 provision is procedurally unconscionable and Ms. Teuscher and many other
20 customers of NW Cryo will be immeasurably harmed as a result of this clause.
21
22

23 150. Paragraph VIII of the Customer Agreement should be stricken and
24 deemed void and/or unenforceable under Washington's Consumer Protection Act
25
26

1 at RCW 19.86.093(3) because the liquidated damages clause should be construed
2 as a penalty and as such, is not reasonably related to the harm caused by a
3 potential breach and will harm Ms. Teuscher and other persons.
4

5 151. Paragraph VIII of the Customer Agreement should be stricken
6 because the public policy of knowing your genetic ancestry for a mother to better
7 protect her child's physical and psychological health from future disease, is
8 thwarted by the liquidated damages clause contained therein and is violative of the
9 Washington Consumer Protection Act at RCW 19.86.093(3).
10

11 152. By the inclusion of the above referenced Paragraph VIII in the
12 Customer Agreement, the Defendant is improperly seeking the enforcement of its
13 liquidated damages provision against one of its customers who mutually
14 consented with another adult to make contact with their genetic relatives, which is
15 an unfair practice pursuant to the Washington Consumer Protection Act at RCW
16 19.86.093(3).
17
18

19 153. The above-mentioned paragraph of the Customer Agreement is
20 unlawful and should be declared unenforceable because it contains substantive
21 and procedural unconscionable provisions.
22
23
24
25
26

1 154. Any other agreement which Defendant are now using to substitute for
2 the liquidated damages clause of Paragraph VIII are likewise unconscionable as
3 against public policy and the Washington Consumer Protection Act at RCW
4 19.86.093(3).
5

6 155. Paragraph VIII of the Customer Agreement is unfair in light in the
7 internet and websites such as 23andMe which connect consenting adults who opt-
8 in to their agreements so that they can communicate with genetic relatives.
9

10 WHEREFORE, Plaintiffs, Ms. Teuscher and Z.F pray for the following
11 relief:
12

13 (a) A declaratory judgment declaring that Paragraph VIII of the
14 Customer Agreement related to liquidated damages specifically is
15 unenforceable as an improper restriction against testing a minor's
16 DNA; and
17

18 (b) A declaratory judgment declaring that Paragraph V of the Customer
19 Agreement seeking to enforce indemnification and attorneys' fees
20 provisions of the Customer Agreement, is unenforceable under
21 Washington law.
22
23
24
25
26

1
2 SEVENTH CAUSE OF ACTION
3 BREACH OF CONTRACT BROUGHT BY MS. TEUSCHER AND Z.F.

4 156. Plaintiffs incorporate by reference all foregoing factual allegations.

5 157. The Defendant has a contractual obligation to provide the Gametes to
6
7 Ms. Teuscher pursuant to the Customer Agreement and pursuant to the Storage
8 Agreement, if she executed that agreement.

9 158. The Defendant has an obligation to provide the Gametes to Ms.
10 Teuscher, even if it claims she may have breached a section of the Customer
11 Agreement, because the right to withhold the Gametes from Ms. Teuscher was not
12 a specified remedy of NW Cryo's in the Customer Agreement or in the Storage
13 Agreement.
14

15
16 159. Defendant failed to provide the Gametes to Ms. Teuscher pursuant to
17 the Customer Agreement, Paragraph I.

18
19 160. NW Cryo has restricted Ms. Teuscher from accessing the donor
20 sibling registry.

21 161. Ms. Teuscher has suffered harm which was proximately caused by
22 NW Cryo taking away her right to her Gametes and restrictions placed onto her
23 account consisting of preventing her from seeing recent medical updates of Donor
24
25
26

1 #2744 and restrained her participation in the Donor Sibling Registry, which
2 prevents Z.F.'s rights to know her own identity and restricts Z.F.'s rights to her
3 own autonomy.
4

5 162. Ms. Teuscher is damaged by not having the opportunity to have the
6 family she bargained for and was promised, and she is entitled to real and
7 expectancy damages as a result of NW Cryo's breach.
8

9 163. Plaintiff, Z.F., as the third-party beneficiary of the contractual
10 obligations that NW Cryo owes to Ms. Teuscher the unfettered access to Donor
11 #2744's medical information and updates and is owed the benefit of having a
12 relationship of a full genetic sibling and is therefore entitled to real and
13 expectancy damages as a result of these breaches.
14

15 WHEREFORE, Plaintiff, Ms. Teuscher prays for the following relief:

16 Ms. Teuscher's damages in an amount to be determined at trial but
17 exceeding \$100,000.00, consisting specifically of the following:
18

19 (a) cost of the Gametes and storage of the Gametes (\$8,213.00),
20

21 including purchase of information (from NW Cryo and 23andMe) to
22 verify the genetic makeup and history of Donor #2744 by purchasing
23
24
25
26

1 the extended donor profile containing medical background of Donor
2 #2744 and by testing Z.F.'s DNA;

3 (b) medical expenses and future medical expenses for infertility
4 including medications and medical procedures (\$20,000) for the
5 passage of time to become pregnant;

6 (c) therapeutic costs for emotional injuries including therapy services
7 \$1,000) incurred as a direct and proximate result of NW Cryo's
8 breach of their contractual obligations;

9 (d) alopecia treatment for hair loss associated with extreme stress (\$455)
10 incurred as a direct and proximate result of NW Cryo's breach of
11 their contractual obligations;

12 (e) future alopecia treatments (\$4,000);

13 (f) lost wages due to inability to work as a child caregiver due to the
14 stress of losing the ability to provide a full genetic sibling for Z.F.
15 (\$2,500) incurred as a direct and proximate result of NW Cryo's
16 breach of their contractual obligations;



17
18
19
20
21
22
23
24
25
26
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 (g) replacement costs including the retention of a genealogist to find
2 another donor of the closest match to Donor #2744 genetics, traits
3 and physical characteristics (\$20,000);
4

5 (h) replacement fees of obtaining new donor's gametes, storage of the
6 new gametes, baby photos and medical history from a different
7 cryobank (\$6,000);
8

9 (i) attorney's fees billed to date (\$69,473) and expenses (\$1,759.75);

10 (j) lost opportunity of having a future child(ren) using the Gametes and
11 have the family that Ms. Teuscher worked for (\$100,000.00);
12

13 (k) for prejudgment and post-judgment interest as authorized by law; and

14 (l) A preliminary injunction requiring:

15 (1) Defendant to preserve the Gametes pending the outcome of this
16 litigation;
17

18 (2) Defendant to provide the exact location of the Gametes pending
19 the outcome of this litigation;
20

21 (3) Defendant to provide documentary proof that the Gametes are in
22 fact from Donor #2744;
23
24
25
26



1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

1 (4) Restoring Ms. Teuscher's access to her on-line account and/or to
2 add the Donor back onto their website to provide updated medical
3 updates from Donor #2744; and
4

5 (5) Reinstating Ms. Teuscher's access to the sibling registry.

6 (m) A permanent injunction requiring:

7 (1) Defendant to deliver the Gametes to Ms. Teuscher;

8 (2) Restoring Ms. Teuscher's access to her on-line account to obtain
9 medical updates of Donor #2744; and
10

11 (3) Reinstating Ms. Teuscher's access to the sibling registry; and
12

13 (n) such other and just relief in the Court's discretion.
14

15 WHEREFORE, Plaintiff, Z.F. prays for the following relief:

16 Z.F.'s damages in an amount to be determined at trial but exceeding
17 \$100,000.00, for the deprivation of connections between Z.F and her
18 biological sibling(s) due to NW Cryo's refusal to release the Gametes to
19 Ms. Teuscher in the form of:
20

21 (a) consequential and future economic damages;

22 (b) attorneys' fees and costs;
23
24
25
26

1 (c) for prejudgment and post-judgment interest as authorized by
2 law; and

3 (d) such other and just relief in the Court's discretion.
4

5 EIGHTH CAUSE OF ACTION
6 BREACH OF THE COVENENANT OF GOOD FAITH AND FAIR DEALING
7 BROUGHT BY MS. TEUSCHER AND Z.F.

8 164. Plaintiffs incorporate by reference all foregoing factual allegations.

9 165. The Defendant has an obligation implied in the law to deal with Ms.
10 Teuscher and Z.F., as the third-party beneficiary of Ms. Teuscher's contract(s)
11 with NW Cryo.

12 166. Defendant's obligation is to behave honestly, fairly and in good faith
13 so as not to destroy the benefits of Ms. Teuscher's bargain, that she and Z.F.
14 would receive the Gametes, Ms. Teuscher would have access to her on-line profile
15 containing updated medical information from Donor #2744.
16

17 167. Z.F. has been harmed immeasurably by Donor #2744 changing his
18 profile from "Open" to "Anonymous" thereby restricting his availability to her
19 when she turns eighteen (18) years of age.
20
21
22
23
24
25
26

1 168. Ms. Teuscher relied to her and Z.F.'s detriment upon the Defendant
2 representations of the truth of the Donor's statements that he was "open" to
3 contact with his donor conceived offspring when she turns eighteen (18) years old.
4

5 169. Ms. Teuscher has been harmed immeasurably by Defendant
6 permitting Donor #2744 to change his profile from "Open" to "Anonymous"
7 thereby restricting his availability to her when she turns eighteen (18) years of
8 age.
9

10 170. Ms. Teuscher and Z.F. have experienced damages as a result of the
11 Defendant' willful, outrageous and threatening behavior, specifically, by
12 Defendant:
13

- 14
- 15 (a) Unreasonably deciding to penalize Ms. Teuscher by taking her
16 Gametes away from her, claiming that it had the right to do so
17 under the Customer Agreement;
18
 - 19 (b) Unreasonably deciding to threaten Ms. Teuscher with a
20 lawsuit in the amount of \$20,000.00 for testing Z.F.'s DNA
21 on a genetic website, 23andMe, where she had consensual
22 contact with Z.F.'s genetic relative;
23
24
25
26

1 (c) Preventing Ms. Teuscher from accessing Z.F.'s genetic
2 medical history and important donor information updates that
3 only Defendant are the holders of, by blocking Ms. Teuscher
4 from accessing her on-line account and restricting Teuscher
5 from establishing connections with other donor conceived
6 offspring families on their sibling website; and finally,
7

8
9 (d) Forcing Ms. Teuscher and all Defendant' customers who have
10 gametes stored with them, to agree to a new adhesion type
11 contract which waives many of the rights they had previously,
12 in order to re-gain access to their on line accounts.
13

14
15 WHEREFORE, Plaintiff, Ms. Teuscher prays for the following relief:

16 Ms. Teuscher's damages in an amount to be determined at trial but
17 exceeding \$100,000.00, consisting specifically of the following:
18

19
20 (a) delivery of the Gametes;

21 (b) cost of the Gametes and storage of the Gametes (\$8,213.00),
22

23 including purchase of information (from NW Cryo and 23andMe) to
24 verify the genetic makeup and history of Donor #2744 by purchasing
25
26



1 the extended donor profile containing medical background of Donor
2 #2744 and by testing Z.F.'s DNA;

3 (c) medical expenses and future medical expenses for infertility
4 including medications and medical procedures (\$20,000) for the
5 passage of time to become pregnant;

6 (d) therapeutic costs for emotional injuries including therapy and service
7 animal (\$1,000) incurred as a direct and proximate result of NW
8 Cryo's breach of their contractual obligations;

9 (e) alopecia treatment for hair loss associated with extreme stress (\$455)
10 incurred as a direct and proximate result of NW Cryo's breach of its
11 contractual obligations;

12 (f) future alopecia treatments (\$4,000);

13 (g) lost wages due to inability to work as a child caregiver due to the
14 stress of losing the ability to provide a full genetic sibling for Z.F.
15 (\$2,500) incurred as a direct and proximate result of NW Cryo's
16 breach of their contractual obligations;



17
18
19
20
21
22
23
24
25
26
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730

- 1 (h) replacement costs including the retention of a genealogist to find
2 another donor of the closest match to Donor #2744 genetics, traits
3 and physical characteristics (\$20,000);
4
5 (i) replacement fees of obtaining new donor's gametes, storage of the
6 new gametes, baby photos and medical history from a different
7 cryobank (\$6,000);
8
9 (j) attorney's fees billed to date (\$69,473), expenses (\$1,759.75);
10
11 (k) lost opportunity of having a future child(ren) using the Gametes and
12 have the family that Ms. Teuscher worked for (\$100,000.00); and
13
14 (l) for prejudgment and post-judgment interest as authorized by law;
15
16 (m) transfer of the Gametes to Ms. Teuscher;
17
18 (n) reinstatement of the donor sibling registry to Ms. Teuscher,
19
20 (o) reinstatement of Donor #2744's medical updates to Ms. Teuscher
21 on-line;
22
23 (p) reinstatement of Donor #2744's designation as "Open"; and
24
25 (q) such other and just relief in the Court's discretion.
26

WHEREFORE, Plaintiff, Z.F. prays for the following relief:

1 Z.F.'s damages in an amount to be determined at trial but exceeding
2 \$100,000.00, for the deprivation of connections between Z.F and her
3 biological sibling(s) due to NW Cryo's refusal to release the Gametes to
4 Ms. Teuscher, specifically, to:
5

6 (a) delivery of the Gametes to Ms. Teuscher; or, in the alternative,
7

8 (b) lost opportunity of having a future biological siblings) (\$100,000.00);
9

10 (c) reinstate Ms. Teuscher's access to the donor sibling registry to Ms.
11

Teuscher;

12 (d) reinstate Ms. Teuscher's access of Donor #2744's medical updates to
13

Ms. Teuscher on-line;

14 (e) reinstate of Donor #2744's designation as "Open"; and
15

16 (f) attorneys' fees, costs, pre-judgment and post-judgment interest and
17

such other and just relief in the Court's discretion.
18
19

20 NINTH CAUSE OF ACTION
21 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BROUGHT BY
22 MS. TEUSCHER

23 171. Plaintiffs incorporate by reference all foregoing factual allegations.
24
25
26

1 172. Defendant's intentional act of taking away all of Ms. Teuscher's
2 property rights to the Gametes was extreme and outrageous and beyond the
3 bounds of acceptable conduct in a civilized society.
4

5 173. Defendant's retaliatory actions in sending the Cease and Desist Letter
6 and threatening financial penalties against Ms. Teuscher for her innocently
7 contacting the PGM proximately caused serious harm to Ms. Teuscher.
8

9 174. Defendant has refused to provide the location of the Gametes and
10 Ms. Teuscher does not have proof whether the Gametes are safe and secure or if
11 they have been destroyed.
12

13 175. Ms. Teuscher does not have access to important information she had
14 relied upon receiving in her on-line account (specifically, medical health updates
15 of Donor #2744) that was maintained at NW Cryo.
16

17 176. Defendant's actions were intended to, or could reasonably be
18 foreseen to, cause a reasonable person, serious emotional trauma.
19

20 177. Defendant's actions were intended to harm Ms. Teuscher in
21 preventing her from providing Z.F. with a full genetic sibling, which will deprive
22 her of a sibling relationship and Ms. Teuscher of the opportunity of having a
23 family that she desired and paid for.
24
25
26

1 178. Defendant’s actions in restricting Ms. Teuscher’s access to the Donor
2 Sibling Registry to bond with other families and share common experiences will
3 negatively emotionally impact Z.F. in the future due to her loss of having the
4 bonds of genetic sibling(s) and knowledge of her shared genetic identity.

5
6 179. Ms. Teuscher has suffered serious emotional distress as a proximate
7 result of the forfeiture of the Gametes including, but not limited to, stress,
8 resurgence of her auto-immune disease and hair loss which caused Ms. Teuscher
9 to undergo injections on her scalp and created a situation where she could not
10 work for a period of time to assist to financially support her family.

11
12
13 180. Ms. Teuscher has suffered serious emotional distress as a direct result
14 of the Defendant changing Donor #2744’s profile from “Open” to “Anonymous”
15 thereby restricting his availability to Z.F. when she turns eighteen (18) years of
16 age.

17
18 181. Ms. Teuscher’s physical and emotional distress was the proximate
19 and direct result of Defendant’s behavior, specifically by:

- 20
21 (a) penalizing Ms. Teuscher by taking her Gametes without any
22 contractual or other basis for doing so;

- 1 (b) threatening Ms. Teuscher in the amount of \$20,000.00 for
2 testing Z.F.'s DNA on a genetic website, 23andMe, where she
3 had consensual contact with Z.F.'s genetic relative;
4
- 5 (c) preventing Ms. Teuscher from accessing Z.F.'s genetic
6 medical history and important donor information updates that
7 only Defendant are the holders of, by blocking Ms. Teuscher
8 from accessing her on-line account and restricting Teuscher
9 from establishing connections with other donor conceived
10 offspring families on their sibling website; and finally,
11
- 12 (d) forcing Ms. Teuscher and all Defendant's customers who have
13 gametes stored with them, to agree to a new adhesion type
14 contract which waives many of the rights they had previously,
15 in order to re-gain access to their on line accounts.
16
17
18
19

20 WHEREFORE, Plaintiff, Ms. Teuscher prays for the following relief:

- 21 (a) medical expenses and future medical expenses for autoimmune
22 diseases and infertility treatments including medications and
23
24
25
26

1 medical procedures (\$20,000) for the passage of time, waiting to
2 become pregnant;

3 (b) therapeutic costs for emotional injuries and stress that has
4 exacerbated her autoimmune diseases, including therapy and
5 service animal (\$1,000) incurred as a direct and proximate result
6 of NW Cryo's breach of their contractual obligations;
7

8 (c) alopecia treatment for hair loss associated with extreme stress
9 (\$455) incurred as a direct and proximate result of NW Cryo's
10 breach of their contractual obligations;
11

12 (d) future alopecia treatments (\$4,000);

13 (e) lost wages due to inability to work as a child caregiver due to the
14 stress and anxiety over losing the ability to provide a full genetic
15 sibling for Z.F. (\$2,500) and future lost wages; and
16

17 (f) attorneys' fees, costs, pre-judgment and post-judgment interest.
18

19
20 TENTH CAUSE OF ACTION
21 TRESPASS TO CHATTELS BROUGHT BY MS. TEUSCHER
22

23 182. Plaintiff incorporates and realleges each of the foregoing paragraphs
24 as if fully set forth herein.
25



1 183. NW Cryo intentionally took Ms. Teuscher's property – her Gametes -
2 by asserting that it would no longer be storing the Gametes for Ms. Teuscher and
3 Z.F. and that Ms. Teuscher was not entitled to her property any longer.
4

5 184. NW Cryo has intentionally interfered with Ms. Teuscher's personal
6 property without justification and it deprives Ms. Teuscher of possession or use
7 and denies her rights to her future family and caused her actual and substantial
8 damages.
9

10 185. NW Cryo, by intentionally interfering with Ms. Teuscher's right to
11 store the Gametes and allow her to use the Gametes, has materially harmed Ms.
12 Teuscher's interest in the property because of Ms. Teuscher's infertility problems,
13 and the increased stress she has had to endure, her chances of actually using the
14 Gametes has been substantially decreased. Thus, she is deprived of her use of the
15 Gametes for the past eleven (11) months and has suffered physically and mentally
16 from this loss of use of the Gametes given her medical condition.
17
18

19 WHEREFORE, Plaintiff, Ms. Teuscher prays for the following relief:
20

21 (a) Ms. Teuscher's loss of enjoyment of the Gametes, in an amount
22 exceeding \$100,000.00 to be assessed at trial, for Ms. Teuscher's loss of
23
24
25
26

1 property and opportunity to have another child using the Gametes who
2 would have been the full genetic sibling to Z.F.; and
3 (b) attorneys' fees, costs, and pre-judgment and post-judgment interest.
4

5 ELEVENTH CAUSE OF ACTION
6 PROMISSORY ESTOPPEL BROUGHT BY MS. TEUSCHER

7 186. Plaintiff incorporate by reference all foregoing factual allegations.
8

9 187. NW Cryo promised that Donor #2744 would be an "Open ID" donor.

10 188. NW Cryo promised Ms. Teuscher that she would have access to its
11 donor sibling registry.
12

13 189. NW Cryo promised Ms. Teuscher that retired donors' profiles would
14 be accessible on their website to check for donor health updates.
15

16 190. Ms. Teuscher purchased additional gametes of Donor #2744 in
17 reliance upon those promises in order to have additional children using this donor
18 to have more biological siblings to her daughter, Z.F.

19 191. NW Cryo should have reasonably expected that Ms. Teuscher would
20 have been influenced and actually purchased the Gametes so that she could have
21 the opportunity to have more children using Donor #2744's gametes.
22
23
24
25
26

1 192. Ms. Teuscher actually did purchase the Gametes in reliance upon
2 NW Cryo's promises.

3 193. Ms. Teuscher justifiably relied upon NW Cryo's promises, as would
4 any customer of NW Cryo who needs to purchase gametes to have a baby and
5 desires to raise two or more children who have the same genetics.
6

7 194. Injustice can only be avoided by the enforcement of NW Cryo's
8 promises that (a) Donor #2744 be an "Open" Donor accessible to contact by Z.F.
9 and other offspring when she/they turn 18 years of age; (b) Ms. Teuscher have
10 access to its donor sibling registry; and (c) that Donor #2744's status of a "retired"
11 donor confer accessibility of his profile on NW Cryo's website with health
12 updates.
13
14

15 WHEREFORE, Plaintiff, Ms. Teuscher prays for the following relief:
16

- 17 (a) Donor #2744 be an "Open" Donor accessible to contact by Z.F.
18 and other offspring when she/they turn 18 years of age;
19 (b) Ms. Teuscher's restored access to NW Cryo's donor sibling
20 registry;
21
22
23
24
25
26

1 (c) that Donor #2744’s status of a “retired” donor confers
2 accessibility of his profile on NW Cryo’s website with health
3 updates; and

4 (d) attorneys’ fees, costs and prejudgment interest to the fullest extent
5 allowed by law.
6

7
8
9 TWELFTH CAUSE OF ACTION
10 OF UNJUST ENRICHMENT BROUGHT BY MS. TEUSCHER

11 195. Plaintiff incorporates by reference all foregoing factual allegations.

12 196. NW Cryo has been unjustly enriched by retaining the Gametes and
13 by possibly re-selling them to another customer for a profit.

14 197. NW Cryo received a benefit from Ms. Teuscher for purchasing the
15 Gametes and for years of storage of the Gametes without receiving the property
16 that she paid for and stored with NW Cryo.
17

18 198. It is unjust for NW Cryo to retain these benefits.

19 WHEREFORE, Plaintiff, Ms. Teuscher, prays for the following relief:

20 (a) Ms. Teuscher is entitled to a recoupment of monies in an amount
21 equivalent to the initial payment of the Gametes, storage fees and all
22 incidental and consequential expenses Ms. Teuscher has paid to NW Cryo;
23
24
25
26



1 (b) attorneys' fees, costs and prejudgment interest to the fullest extent
2 allowed by law.
3

4
5 **V. JURY DEMAND**

6 Plaintiffs demand a trial by jury on all claims so triable.
7

8
9 **VI. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for the following relief:

11 (a) Judgment on the Second Cause of Action, the Consumer Protection
12 Act claims of Ms. Teuscher and Z.F. in the amount requested by them;
13

14 (b) Judgment on the Third Cause of Action, the Breach of Bailment
15 claim of Ms. Teuscher and an order for money damages representing the intrinsic
16 value of the Gametes;
17

18 (c) Judgment on the Fourth Cause of Action of Replevin claim of Ms.
19 Teuscher and an order of specific performance and money damages;
20

21 (d) Judgment on the Fifth Cause of Action, Conversion, an order for
22 money damages in an amount assessed at trial.
23
24
25
26

1 (e) Pursuant to the Sixth Claim, a declaratory judgment declaring that
2 the Customer Agreement at Paragraphs VIII related to liquidated damages and
3 NW Cryo's interpretation of Paragraph VIII as a restriction against testing a
4 minor's DNA, and Paragraph V seeking to enforce indemnification provisions of
5 the Customer Agreement, are unenforceable under Washington law;
6

7 (e) Judgment on the Seventh Cause of Action, Breach of Contract,
8 preliminary and permanent injunctive relief and an order for money damages in
9 the amount assessed at trial.
10

11 (f) Judgment on the Eighth Cause of Action, Breach of Covenant of
12 Good Faith and Fair Dealing, an order for money damages in the amount
13 assessed at trial.
14

15 (g) Judgment on the Ninth Cause of Action, Intentional Infliction of
16 Emotional Distress, an order for money damages in the amount assessed at trial.
17

18 (h) Judgment on the Tenth Cause of Action, Trespass to Chattels, an
19 order for money damages in the amount assessed at trial.
20

21 (i) Judgment on the Eleventh Cause of Action, Promissory Estoppel, an
22 order for money damages in the amount assessed at trial.
23
24
25
26

1 (j) Judgment on the Twelfth Cause of Action, Unjust Enrichment, an
2 order for money damages in the amount assessed at trial.

3 DATED: November 12, 2019.
4

5 LAW OFFICES OF JILL H. TEITEL, PLLC
6

7 Jill H. Teitel, NY Bar No. 2775138
8 (*Pro Hac Vice* admission)

9 BREMER LAW GROUP PLLC
10

11 By: s/ Carmen E. Bremer
12 Carmen E. Bremer, WSBA No. 47565

13 *Attorneys for Plaintiffs*
14

15
16 CERTIFICATE OF SERVICE
17

18 I hereby certify that I filed the foregoing Second Amended Complaint
19 through the Court's CM/ECF system on November 12, 2019.
20

21 /s/ Carmen E. Bremer
22 Carmen E. Bremer, WSBA # 47565
23 Attorney for Plaintiffs
24
25
26



SECOND AMENDED COMPLAINT

1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 357-8442
Fax: (206) 858-9730