

1 Jill H. Teitel, NYSBA #277513
2 (*Pro Hac Vice*)
3 LAW OFFICES OF JILL H. TEITEL, PLLC
4 225 Broadway, Suite 2605
5 New York, NY 10007
6 Phone: (212) 964-0500
7 Fax: (646) 612-7765
8 Email: jt@teitelwise.com

9 Thaddeus J. O’Sullivan, WSBA # 37204
10 WITHERSPOON BRAJCICH MCPHEE, PLLC
11 601 W. Main Ave., Suite 714
12 Spokane, WA 99201
13 Phone: (509) 455-9077
14 Fax: (509) 624-6441
15 Email: tosullivan@workwith.com

16 *Attorney for Plaintiffs*

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF WASHINGTON

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

22 Plaintiffs,

23 v.

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

27 Defendant.

28 No. 19-CV-00204

29 AMENDED COMPLAINT FOR
30 DAMAGES AND INJUNCTIVE
31 RELIEF



1 Plaintiffs DANIELLE TEUSCHER (“Ms. Teuscher”), an individual, and
2 DANIELLE TEUSCHER, as mother and natural guardian of Z.F., a minor, by
3 and through their attorneys, Law Offices of Jill H. Teitel, PLLC, and
4 Witherspoon Brajcich McPhee, LLC, for their complaint against Defendant,
5 Witherspoon Brajcich McPhee, LLC, for their complaint against Defendant,
6 CCB-NWB, LLC, d/b/a NW CRYOBANK (“NW Cryo”), allege as follows:
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8
9 **I. INTRODUCTION**

10 1. For over a year and a half, Ms. Teuscher cryopreserved¹ sperm
11 from donor #2744 (hereinafter, “Donor #2744”) at NW Cryo (the “Gametes”),
12 which NW Cryo had previously sold and/or arranged to be transferred to her.
13 Ms. Teuscher expected that the Gametes would one day to be used to create her
14 entire family unit. Out of vindictive retaliation for a perceived breach of Ms.
15 Teuscher’s contract with NW Cryo, it took away her ownership rights to the
16 Gametes. This alleged breach, NW Cryo asserts, occurred when Ms. Teuscher
17 uploaded Z.F.’s DNA on the ancestry and health discovery website,
18 www.23andMe.com and made consensual contact with a relative of Z.F.’s. NW
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27 ¹ Stedman’s Medical Dictionary, 416 (26TH ed. 1995) definition of
28 Cryopreservation: “the maintenance of the viability of excised tissues or organs
29 at extremely low temperatures.”
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1 Cryo's unfair and unjust stripping of Ms. Teuscher's rights to her Gametes
2 unlawfully violates her legal and human right to decide when and how to form
3 her family.
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5 2. To conceal its intentional wrongdoing, NW Cryo has engaged in a
6 series of deceptive business practices, doing its best to ensure that Ms. Teuscher
7 was misled into believing that:
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- 9
- 10 a. NW Cryo would store her Gametes for her;
 - 11 b. NW Cryo would deliver her Gametes to her upon her request;
 - 12 c. NW Cryo would honor its obligation to provide her with Donor
13 #2744's medical health updates, and
14
 - 15 d. NW Cryo would ensure that its designation of Donor #2744 as an
16 "Open ID" or "Identity Release Donor" (as defined and advertised
17 by NW Cryo as a donor who is willing to be contacted by donor
18 conceived offspring when that child reached 18 years of age), could
19 be relied upon.
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25 3. None of these promises were met by NW Cryo. Instead, NW Cryo
26 indignantly denied Ms. Teuscher's ownership of her Gametes, took away her
27 rights to see medical updates of Donor #2744, penalized her by re-designating
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1 Donor #2744 as “Anonymous”, and threatened to further penalize with a lawsuit
2 alleging she owes NW Cryo \$20,000.00 plus attorneys’ fees. In addition, NW
3 Cryo is now forcing Ms. Teuscher to execute a new contract in order to be
4 granted access on its website to Donor #2744’s medical updates. NW Cryo’s
5 conduct is nothing less than an unlawful attempt to hold her children’s health
6 hostage to their scheme to gain some unconscionable commercial advantage.
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10 **II. PARTIES**

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12 4. Plaintiff, Ms. Teuscher, is an individual who currently resides in
13 Portland, Oregon.
14

15 5. Ms. Teuscher is a high school graduate and she works as a
16 babysitter and earns minimum wage.
17

18 6. Ms. Teuscher was and is faced with infertility problems and sought
19 the services of NW Cryo.
20

21 7. Plaintiff Z.F., is a minor individual and Ms. Teuscher’s daughter.
22 Z.F. is a donor conceived using the gametes of NW Cryo’s Donor #2744.
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24 8. Z.F. is the third-party beneficiary of a contract that Ms. Teuscher
25 entered into with NW Cryo.
26

27 9. Z.F. currently resides with her mother in Portland, Oregon.
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1 10. Defendant, CCB-NWC, LLC, is a California limited liability
2 company with its principal place of business in Spokane, Washington. CCB-
3
4 NWC, LLC's Spokane location is 508 W. 6th Avenue, #118, Spokane, WA
5
6 99204.

7 11. Defendant, CCB-NWC, LLC's business is to collect donations of
8
9 gametes (eggs and sperm) from men and women to sell these gametes to
10
11 customers, cryopreserve the gametes and perform certain medical tests on them.

12 12. Upon information and belief, Defendant CCB-NWC, LLC does
13
14 business in Washington State as NW Cryobank.

15 13. Defendant CCB-NWC, LLC holds a medical testing license in the
16
17 state of Washington pursuant to Clinical Laboratory Improvement Amendments
18
19 (hereinafter, "CLIA") CLIA #50D0969022 and is subject to all of the relevant
20
21 Washington statutes governing medical testing sites.

22 14. Defendant CCB-NWC, LLC collects, tests, and cryopreserves,
23
24 sperm and eggs, or in other words, gametes, that, Defendant's customers
25
26 purchase from it or from other customers, who wish to store their gametes at
27
28 NW Cryo's cryopreservation facility(ies).

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IV. FACTS COMMON TO ALL CLAIMS

Defendant's Promises and Representations.

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

20. At all times relevant to this complaint, Ms. Teuscher, while at her home in Portland, Oregon, reviewed and relied upon the facts and representations contained in the 2013 website of NW Cryo in order to choose her donor and create her family.

21. Ms. Teuscher's criteria for choosing a donor included finding: (a) a donor who would be receptive to contact with her child(ren) when her child(ren) turned turn eighteen (18) years of age (an "Open ID Donor" or "Identity Release Donor"), and (b) an ethical cryobank that valued keeping and providing to her the donor's important and relevant medical information.

22. In 2013, NW Cryo advertised and represented on its website that, "Donor health updates" would be posted and that recipients of donor gametes have access to the "Donor health updates" website page.

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

1 23. NW Cryo also described to donors and recipients of donor's
2 gametes on its website the meaning and intentions of the donor's designations:
3
4 "Open ID Donor" and "Identity Release Donor".

5 24. Also, in 2013, NW Cryo advertised and represented on its website
6 that, "The FDA requires that donor information be maintained for ten (10) years,
7
8 although most sperm banks keep such information indefinitely."
9

10 25. NW Cryo advertised and explained on its 2013 website that donors
11 have a moral responsibility to provide information about themselves in a
12 sensitive way, and should be mindful of the psychological consequences of their
13
14 actions to the donor's offspring.
15

16 26. NW Cryo acknowledged on its website in 2013 that all parents need
17 to have accurate medical information and warned its donors to provide accurate
18
19 updated medical information because its customers (gamete recipients)
20
21 thoroughly review donor information prior to purchase and use of their
22
23 "specimens."
24

25 27. NW Cryo promised "non-medical information on its donors such as
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27 childhood photos, personality tests, audio interviews, staff impressions and
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1 personal profiles” in order to assist its customers in making an educated choice
2 of a donor.
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4 28. NW Cryo touts its licensure as a medical testing facility, which has
5 the obligation to keep proper records and maintain them pursuant to
6 Washington statute RCW 70.42.060. [https://www.nwcryobank.com/licenses-
8 accreditations/](https://www.nwcryobank.com/licenses-
7 accreditations/).³
9

10 29. Defendant advises, “customers should purchase additional vials of
11 gametes as soon as they know they will want to have baby #2 and baby#3.” In
12 effect, Defendant is selling their customers a “family plan.”
13

14 www.nwcryobank.com/donor-sperm-faqs/.
15
16

17 30. Ms. Teuscher used and relied upon all of the above-mentioned
18 promises and representations made on the NW Cryo website to create her
19 family.
20
21

22 ³ Pursuant to RCW 26.26A.820, *et. seq.*, Washington State supports the policy
23 that cryobanks should keep and provide donors’ medical information to
24 children and parents of donor conceived children. See, RCW 26.26A.820 *et.*
25 *seq.*, which takes effect as to gametes collected after January 1, 2019.
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2 **Ms. Teuscher's Search for the Right Donor**

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4 31. Ms. Teuscher's search for a donor on NW Cryo's website took time
5 and effort. Ms. Teuscher purchased NW Cryo's additional services to assist her
6 in making the right choice for her family. Specifically, on January 28, 2013,
7 Ms. Teuscher asked NW Cryo's staff to choose the donor who most closely
8 matched the physical appearance of her husband, Z.F.'s father's appearance.
9 Ms. Teuscher purchased extended donor profiles of a few possible donors.
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13 32. After analyzing the information provided on NW Cryo's website,
14 Ms. Teuscher chose to conceive her child through the use of the sperm of Donor
15 #2744 primarily because he identified himself as an "Open Donor." His
16 identification as an Open Donor means that he was open to communicating with
17 his donor-conceived offspring, as opposed to remaining "Anonymous," and that
18 he was "Retired", which meant that he had stopped donating and that there was
19 only a limited supply of his gametes available.
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24 33. Ms. Teuscher chose Donor #2744 because: (a) offspring carrying
25 the genetics of Donor #2744 would most likely not be a large sibling group due
26 to Donor #2744's status as "Retired"; (b) of all the donors, Donor #2744 most
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1 closely matched her husband's physical characteristics; and (c) Donor #2744's
2 gametes had been used successfully in impregnating other customers of NW
3 Cryo.
4 Cryo.

5 34. On or about February 1, 2013, Ms. Teuscher registered with NW
6 Cryo to become a customer, enrolled in NW Cryo's on-line portal for medical
7 information of Donor #2744, and registered on-line with NW Cryo, while at her
8 home on her computer.
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10

11 35. Ms. Teuscher never had any phone communications or personal
12 communication of any type with any representative of NW Cryo about the terms
13 of her registration, cryopreservation or storing of the Gametes.
14
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16 36. At no time did Ms. Teuscher communicate with any representative
17 of NW Cryo about any of the documents she electronically or physically signed.
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20 37. As a result of becoming a NW Cryo customer, NW Cryo promised
21 that all of Ms. Teuscher's documents, as well as the information containing
22 Donor #2744's medical history and updates, would be maintained on its website
23 for Ms. Teuscher to access on her on-line portal at www.nwcryobank.com.
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1 **Ms. Teuscher's Purchase, Cryopreservation and Storage of Donor**
2 **#2744's Gametes**

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4 38. Ms. Teuscher then prepared herself to become pregnant with
5 gametes of Donor #2744 that she purchased from NW Cryo, including but not
6 limited to: ingesting oral hormones and injecting herself with medication
7 necessary to have a successful impregnation.
8

9
10 39. In early, April, 2013, Ms. Teuscher became pregnant using Donor
11 #2744's gametes.
12

13 40. On May 30, 2103, Ms. Teuscher was granted access to NW Cryo's
14 sibling registry; this sibling registry connects offspring and their parents of the
15 same donor and is maintained and monitored by NW Cryo.
16

17 41. On December 18, 2013, Z.F. was born.
18

19 42. Ms. Teuscher frequently checked her on-line account to upload her
20 own medical records and Donor #2744's medical updates.
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23 43. Ms. Teuscher participated in the on-line community at NW Cryo's
24 forum when she became pregnant. She accessed the sibling registry at NW Cryo
25 in order to exchange information with other Donor #2744 recipients and to share
26 the joys and struggles of raising a donor conceived child, as well as to be
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1 informed of any undisclosed genetic diseases or issues that may have arisen
2 within this sibling group.
3

4 44. Ms. Teuscher was (and still is) desirous of having another baby
5 using her Gametes – the gametes that were derived from Donor #2744 - because
6 she wants Z.F. to have the benefit of bonding with a full biological sibling.
7

8
9 **Neither the Customer Agreement nor the Storage Agreement Permit**
10 **the Taking of the Gametes.**

11
12 45. On July 5, 2015, Ms. Teuscher electronically submitted the
13 Customer Agreement and Request for Anonymous Donor Sperm with
14 Indemnification & Release, (hereinafter, “Customer Agreement”). The
15 Customer Agreement is a four-page long document and contains, among other
16 things, NW Cryo’s policy regarding the storage of gametes. The Agreement has
17 a space for Ms. Teuscher to “click the box” and, when she electronically clicks
18 on the box, the computer program will insert a check mark under each section of
19 the Customer Agreement. The Customer Agreement is attached hereto as
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24 **Exhibit A.**
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1 46. At no time prior to electronically signing the Customer Agreement
2 did Ms. Teuscher speak to a representative of NW Cryo about the provisions of
3 this contract.
4

5 47. At no time prior to electronically signing the Customer Agreement
6 did Ms. Teuscher personally meet with any representative of NW Cryobank.
7

8 48. Ms. Teuscher was not required to “click the box” as she was
9 required to after looking at prior sections of the agreement. Specifically, there
10 was no box to check after reading the last two paragraphs of the Customer
11 Agreement. These last two paragraphs of the Customer Agreement appear
12 below:
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16
17 All donors provided through this program are anonymous
18 donors and agree by contract not to have any rights or
19 responsibilities associated with biological parentage
20 through use of their specimens. Client also acknowledges
21 that Client shall have no right to claim a donor as a legal
22 parent of any product of conception achieved through the
23 use of specimens provided through this program.
24 NWCryobank will provide Client with invoices at time of
25 specimen purchase only; NWCryobank will not be liable to
26 provide any proof to client of lineage back to the donor,
27 such as DNA evidence. Client assumes full financial and
28 parental responsibility for any child produced through the
29 use of specimens provided under this agreement.
30 NWCryobank cannot and will not provide clients with any
31 proof or supportive evidence of donor specimens being the
32 source of fertilization leading to the birth of a child for the

1 purpose of client obtaining any type of public assistance or
2 for other purposes.

3 By signing below, *Client acknowledges that they have*
4 *read and fully understand the terms and conditions*
5 *addressed herein, does not rely on any representation of*
6 *NWCryobank not specifically contained herein, has had*
7 *the opportunity to consult with counsel of choice, and that*
8 *this Request for Donor Sperm forms a portion of the*
9 *consideration for this transaction has been specifically*
10 *bargained for. [Emphasis supplied].*

11 49. At no time prior to signing the Customer Agreement did Ms.
12 Teuscher have the opportunity to consult with counsel of her choice as the
13 agreement states at the bottom of the agreement.
14

15 50. The Customer Agreement, at Section I, provided that, “Payment for
16 monthly storage will be automatically deducted monthly beginning
17 approximately 30 days from purchase.”
18

19 51. The Customer Agreement only permits NW Cryo to cease storing
20 gametes and to destroy them if payment is not received.
21

22 52. Under the Customer Agreement, there is no provision concerning
23 NW Cryo’s right to take away Ms. Teuscher’s ownership rights to her Gametes.
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25 53. The Customer Agreement at Section VIII represented that, NW
26 Cryo protects the privacy rights of the donor and that “Client agrees not to seek
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1 or make any effort to obtain any information not directly provided through NW
2 Cryobank concerning the identity, background, or whereabouts of the Donor at
3 any time and from any source whether directly or indirectly and/or by any
4 means.”
5

6
7 54. The Customer Agreement also states at Section VIII that, NW Cryo
8 is entitled to liquidated damages in the amount of \$10,000 per occurrence of any
9 breach of the agreement. The Customer Agreement did not define the phrase
10 “liquidated damages”, “per occurrence” or “breach”.
11

12
13 55. The Customer Agreement at Section V provides that the “Client
14 hereby indemnifies and holds NW Cryobank harmless from any judgment,
15 award, claim, demand, action, suit, cost, expense, including without limitation,
16 reasonable attorney’s fees incurred by it in connection with NW Cryobank’s
17 defense thereof or determination of liability in connection therewith, arising
18 from or relating to the matters addressed herein.”
19

20
21 56. The Customer Agreement does not provide for Ms. Teuscher’s
22 ability to be indemnified by NW Cryo if her claims related to this lawsuit or any
23 other claim she has against NW Cryo is successful.
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1 57. The Customer Agreement does not contain a provision that it can
2 be amended or modified without the client's consent.

3
4 58. The Customer Agreement does not restrict Ms. Teuscher's ability
5 to upload her daughter Z.F.'s DNA for the purposes of discovering her genetic
6 history and relatives.

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9 59. The Customer Agreement does not prevent mutual and voluntary
10 contact among persons who agree to test their own DNA.

11
12 60. On November 6, 2015, Ms. Teuscher purchased two (2) IVF vials
13 of Donor #2744's gametes using NW Cryo's website which she stored at NW
14 Cryo. ⁴ These two (2) IVF vials of Gametes were two of the five vials she stored
15 for cryopreservation at NW Cryo facility, upon information and belief at its
16 facility in Spokane, Washington.

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20 61. Upon information and belief, Ms. Teuscher entered into another
21 contract with NW Cryo. This agreement would have been a storage agreement
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25 ⁴ In vitro fertilization, or IVF gametes, are gametes that have been prepared for
26 use by a doctor for insemination. Website: [https://www.nwcryobank.com/vial-](https://www.nwcryobank.com/vial-types/)
27 [types/](https://www.nwcryobank.com/vial-types/).

1 whereunder NW Cryo would have agreed to cryopreserve her Gametes in
2 exchange for Ms. Teuscher’s monthly or yearly pre-payment. See the blank
3
4 model storage agreement found on-line on www.nwcryobank.com (the “Storage
5 Agreement”) which was an agreement which NW Cryo used to enter into
6
7 storage contracts with its customers as of November, 2015 as **Exhibit B.**⁵
8

9 62. The Storage Agreement makes clear in the very first Whereas
10 clause who owns the gametes:
11

12 “Whereas, **client wishes to have their cryopreserved**
13 **(frozen) gamete specimens** stored in liquid nitrogen for
14 possible thawing at some future date.” [Emphasis added]
15

16 63. Pursuant to the Storage Agreement, the Gametes are stored at an
17 undisclosed locale with NW Cryo in return for a monthly fee which renews at
18 the end of designated period.
19

20 64. The Storage Agreement sets forth limited conditions for NW
21 Cryo’s termination of its duties to store its clients’ gametes: when the customer
22 or their doctor requests the release of the gametes, upon the written direction of
23
24
25

26 _____
27 ⁵ A copy of Ms. Teuscher’s storage agreement was demanded of NW Cryo but
28 not produced to her.
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1 the customer to destroy the gametes, or when payment is not delivered to NW
2 Cryo.

3
4 65. The Storage Agreement states at paragraph 12, that it is a complete
5 agreement and that it cannot be amended or modified.
6

7 66. Ms. Teuscher entrusted to Defendant, the right to store her Gametes
8 and tendered monthly payments to NW Cryo, until such time as she would be
9 ready to become pregnant and request that NW Cryo release them to her
10 directly, to her doctor's office, or to another laboratory of her choosing.
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12

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

16
17 67. After Z.F. was born, Ms. Teuscher purchased two (2) vials of
18 Donor #2744's gametes (these vials comprise part of the Gametes) from NW
19 Cryo and stored them with NW Cryo.
20

21 68. Ms. Teuscher also purchased three (3) vials of Donor #2744's
22 Gametes from another NW Cryo customer (a mother of Z.F.'s half sibling) who
23 could not use Donor #2744's Gametes any longer. NW Cryo provided and still
24 provides the opportunity to Ms. Teuscher and other customers who are wishing
25 to obtain gametes from particular donors who might be "Retired". NW Cryo
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1 offered the opportunity for Ms. Teuscher to transfer Donor #2744's gametes
2 from another customer to her.
3

4 69. On June 3, 2016, Ms. Teuscher received an email from Brittany
5 Peterson at NW Cryo stating that the 3 vials of Donor #2744's Gametes had
6 been completed and these vials of gametes were transferred to Ms. Teuscher's
7 on-line storage account from another customer's NW Cryo account.
8

9
10 70. In total, Ms. Teuscher purchased and secured ownership of five (5)
11 vials of Donor #2744's gametes.
12

13
14 71. On July 29, 2016 Ms. Teuscher requested shipment of one (1) vial
15 of the Gametes of Donor #2744 from NW Cryo. While it was in route to her
16 home, Ms. Teuscher had to cancel the shipment and requested by email that NW
17 Cryo continue to store this one (1) vial of her Gametes. Ms. Teuscher paid a
18 restocking fee to NW Cryo for this returned vial on or about August 2, 2016 and
19 received confirmation from NW Cryo that it had received her one (1) returned
20 vial of Gametes and this vial was returned to her to continue to be cryo-
21 preserved.
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27 72. On January 17, 2017, Ms. Teuscher purchased a full year (12
28 months) of storage at NW Cryo for her five (5) vials of Donor #2744's Gametes.
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1
2 **23andMe Genetic Testing and the Agreement between 23andMe and**
3 **its Customers**

4
5 73. In or about November 2018, Ms. Teuscher tested Z.F.’s DNA using
6 the company 23andMe. Ms. Teuscher wanted to learn more about Z.F.’s genetic
7 history and predispositions to disease and to possibly locate Z.F.’s half-siblings
8 and inform Z.F. about her full genetic origins.
9
10

11 74. 23andMe is a company that operates a website designed to allow
12 persons to test their DNA to learn more about themselves, their ancestry, health
13 predispositions and to connect with other genetic relatives. It has several opt-in
14 features, one of them is to be matched with your genetic relatives.
15
16

17 75. On 23andMe’s website, it explains that customers can choose to
18 “opt in” to find genetic relatives. The article warns its “opt in” customers to
19 prepare for unexpected results, “ webpage:
20
21

22 <https://customercare.23andme.com/hc/en-us/articles/202907980-What->
23 [unexpected-things-might-I-learn-from-23andMe-](https://customercare.23andme.com/hc/en-us/articles/202907980-What-)
24

25
26
27 Looking at your genetic data might uncover information
28 that some people find surprising. This information can be
29 relatively benign. At other times, the information you
30 learn can have profound implications for both you and
31

1 your family. 23andMe cannot provide you with an
2 exhaustive list of all the unexpected things you might
3 uncover during your genetic exploration, but in general
4 these things fall into four main categories. Health –
5 Ancestry- Family – Relationships.

6 76. 23andMe explicitly warns its customers that:

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

19 77. Ms. Teuscher purchased a specific package from 23andMe which
20 provided to her all available health information about Z.F.’s genome and
21 ancestry.

22 78. Ms. Teuscher was notified by email from 23andMe that, Z.F.
23 genetically matched with someone who it termed Z.F.’s predicted grandmother
24 (the “PGM”) who had also “opted in” to 23andme’s relative finding service.
25

26 79. On January 2, 2019, Ms. Teuscher sent an email request through
27 the 23andMe website’s server to the PGM. In the email, Ms. Teuscher informed
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1 the PGM that through 23andMe genetic testing, Ms. Teuscher's daughter was
2 related to her, as her daughter was conceived through donor sperm. Ms.
3
4 Teuscher asked the PGM whether she would like to have contact with her.

5
6 80. At no time did Ms. Teuscher contact or ask for contact with Donor
7 #2744 or ask for information about him.

8
9 81. On January 4, 2019, immediately after receiving a confused reply
10 from the PGM, Ms. Teuscher emailed an apology to the PGM.

11
12 82. Ms. Teuscher has had no further contact with the PGM.

13
14 **NW Cryo Confiscates Ms. Teuscher's Gametes**

15
16 83. On January 12, 2019, Ms. Teuscher received a Cease and Desist
17 Letter from Margaret Howell Benson, Esq., General Counsel at NW Cryo (the
18 "Cease and Desist Letter").

19
20 84. Ms. Benson stated in the Cease and Desist Letter:

21
22 Your attempt to seek the identity of the Donor and
23 then to contact the Donor's mother through 23andMe
24 is, in each case, a flagrant violation of the Agreement
25 (the Customer Agreement). Under Section VIII of the
26 Agreement (Customer Agreement), NWCryobank (sic)
27 is entitled to liquidated damages in the amount of
28 \$10,000 for each act in violation of Section VIII. At
29 this point, we are entitled to seek \$20,000 in liquidated
30

1 damages from you \$10,000 for seeking the identity,
2 \$10,000 for initiating contact).

3 Upon further investigation, we may be entitled to
4 additional monetary damages if you have used other
5 ancestry DNA programs, facial recognition tools on
6 the internet or any other means, directly or indirectly,
7 to contact or seek the identity of the Donor. We will
8 seek a restraining order or injunction if you continue
9 with this course of action in any maner.

10 The letter continues:

11
12 Moreover, we hereby notify you that as a direct result
13 of your flagrant and material breach of the Agreement
14 we are revoking your right to receive the four (4) *sic*
15 additional vials of Donor's sperm that you purchased.
16 No refund will be given.

17 85. The Cease and Desist Letter attached a copy of the Customer
18 Agreement. A true and correct copy of the Cease and Desist Letter and its
19 attachment, the Customer Agreement, is attached hereto as **Exhibit C**.

20
21
22 86. As of January 18, 2019, Ms. Teuscher was able to view her on-line
23 account and there was evidence there that she had paid for and stored all of her
24 five vials of Gametes at NW Cryo.

25
26
27 87. On February 5, 2019 and March 6, 2019, Ms. Teuscher, by her
28 counsel, demanded in writing that NW Cryo: (a) return her Gametes to her or
29
30

1 her chosen cryobank, (b) the location of the Gametes be provided to her, (c) her
2 on-line account access be restored, and that NW Cryo (d) produce all executed
3 agreements between Ms. Teuscher and NW Cryo.
4

5 88. NW Cryo did not comply with any of her demands referred to in
6 the paragraph directly above and Ms. Teuscher was never given an adequate
7 reason for its refusal.
8
9

10 89. NW Cryo has responded to Ms. Teuscher that, it will neither release
11 her Gametes to her or her chosen cryobank nor will they restore her on-line
12 access to NW Cryo.
13
14

15 90. In or about April, 2019, at the same time as NW Cryo's merger
16 with Manhattan Cryobank, Ms. Teuscher attempted to sign onto her on-line
17 account on or about April 3, 2019. She was not granted access because of NW
18 Cryo's new requirement that women customers who have stored gametes with it
19 must execute a new agreement entitled, the "Gamete Storage Agreement for
20 Storage of Client Depositor Gamete Specimens" (hereinafter, the "Revised
21 Gamete Storage Agreement"), which restricts their rights in serious ways the
22 customers' rights, including but not limited to exonerating NW Cryo for not
23 providing medical information to donor recipients and restricting recipients of
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1 donors' gametes from testing the DNA of the gametes' they have purchased and
2 stored at NW Cryo. The Revised Gamete Storage Agreement is attached hereto
3
4 as **Exhibit D**.

5
6 91. NW Cryo acknowledges in the Revised Gamete Storage Agreement
7 that its liquidated damages provision in the Customer Agreement was
8
9 unconscionable. At Section 13 of the Revised Gamete Storage Agreement, NW
10 Cryo's liquidated damages are capped at "the amount of fees paid to Cryobank
11 for such Specimen purchased and the total amount of storage fees paid by Client
12 for the storage period (i.e., the Initial Storage Period or a Renewal Period as the
13 case may be) in which such loss, injury, damage or destruction occurred. The
14 parties stipulate and agree that this declared value is a limit of liability in
15 accordance with California Civil Code Section 1840."
16
17
18
19

20 92. Since receiving the Cease and Desist Letter, Ms. Teuscher was
21 informed that NW Cryo had re-designated Donor #2744's status from "Open
22 ID" to "Anonymous" which was a deceptive and unfair practice which belied all
23 of NW Cryo's representations about its high ethical regard for donor recipients
24 and donor conceived persons.
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1 93. As a direct result of NW Cryo’s wrongful acts, Ms. Teuscher
2 experienced serious mental anguish causing her take time off from work, used
3 various therapeutic services, and experienced hair loss induced by the stress of
4 people believing that her behavior was anything but designed to support her
5 family.
6
7

8
9 94. As a result of the Cease and Desist Letter, many women users and
10 consumers of NW Cryo’s gametes have been fearful to investigate the genetic
11 history of their children who are suffering from genetic diseases because they
12 believe that they might receive a similar threat, get locked out of their on line
13 accounts and will be denied access to donor medical updates and the community
14 forums concerning their donor conceived children.
15
16

17
18 95. The U.S. Surgeon General and the Department of Health and
19 Human Services (HHS) launched a national public health campaign called the
20 U.S. Surgeon General's Family History Initiative. This campaign focused
21 attention on the importance of the family health history, and encouraged all
22 families to learn more about their health histories.
23
24

25
26 96. As a matter of public policy, the United States Surgeon General’s
27 Office has declared on their website at:
28
29

1 <https://www.genome.gov/17516481/the-us-surgeon-generals-family-history->
2 [initiative-family-history-initiative/](https://www.genome.gov/17516481/the-us-surgeon-generals-family-history-) that, “Tracing the illnesses suffered by your
3
4 parents, grandparents and other blood relatives can help your doctor predict the
5 disorders to which you may be at risk, and help you take action to keep you and
6
7 your family healthy.”

8
9 FIRST CLAIM FOR RELIEF
10 PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

11
12 97. Plaintiffs incorporate and reallege each of the foregoing paragraphs
13 as if fully set forth herein.

14
15 98. NW Cryo took Ms. Teuscher’s Gametes without any right to do so
16 under the Customer Agreement, Storage Agreement or any other agreement,
17 statute or legal authority.

18
19
20 99. Ms. Teuscher has been denied information as to the Gametes
21 location.

22
23 100. By Ms. Teuscher not having access to the sibling registry, Ms.
24 Teuscher and Z.F. are prevented from accessing important donor medical
25 updates and important psycho-social information that is relevant for Ms.
26
27
28
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1 Teuscher, as a mother to track and analyze so that she can nurture and raise her
2 daughter, Z.F.
3

4 101. By Defendant denying Ms. Teuscher information on the location of
5 her Gametes and by preventing the return of the Gametes to her, Ms. Teuscher
6 has been harmed by Defendant.
7

8 102. By Ms. Teuscher's denial of access to her on-line account,
9 important medical information related to Z.F. is being unjustly withheld by NW
10 Cryo and such actions are consequently harming Ms. Teuscher and Z.F.
11

12 103. Plaintiffs will suffer irreparable harm if an injunction does not
13 issue. Ms. Teuscher will be denied the right to decide when and how to
14 conceive child(ren) using the property that she had purchased and stored:
15 Gametes of Donor #2744. Z.F. will specifically be denied the potential to have
16 a genetic sibling.
17

18 104. Plaintiffs are likely to succeed on the merits of their claims.
19

20 105. A balancing of the equities and a preservation of the *status quo*
21 weighs in favor of granting preliminary injunctive relief to restore the *status quo*
22 to Plaintiffs.
23
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1 110. NW Cryo profited from Ms. Teuscher's purchasing and storing
2 with it, as many vials of Donor #2744's gametes as she could purchase and have
3 them transferred from NW Cryo, in order to create the family she planned, while
4 NW Cryo freely decided to take the Gametes away from her.
5

6
7 111. NW Cryo's advertising and promises are deceptive, as Defendant,
8 swiftly robbed the Plaintiffs of having the family Ms. Teuscher had hoped for
9 and expected, and as their actions have shown, in retaliation for an act of Ms.
10 Teuscher's.
11

12
13 112. NW Cryo seized the Gametes without legal basis for doing so.
14

15 113. NW Cryo repudiated the Customer Agreement and the Storage
16 Agreement.
17

18 114. NW Cryo advertised Donor #2744 as an "Open ID" donor which
19 Ms. Teuscher relied upon to build her family, now, NW Cryo changed Donor
20 #2744's status to "Anonymous".
21

22
23 115. The business practice of changing a donor's contact designation is
24 an ineffective attempt to protect Donor #2744's anonymity. NW Cryo is
25 perpetuating a fallacy and is not properly informing their customers and donors
26
27
28
29
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1 that the internet and genetic matching databases are commonplace and
2 pervasive and the testing of one's child DNA is a private and protected matter.
3

4 116. NW Cryo's business practice of informing the donors that they are
5 anonymous given the accessibility of information on the internet is false and
6 misleading.
7

8
9 117. Ms. Teuscher is harmed by NW Cryo's retaliatory and unfair
10 business practices.
11

12 118. Ms. Teuscher discovered that she needed to sign a new adhesion
13 style agreement before she could gain access to Donor #2744's medical
14 information updates.
15

16
17 119. Defendant, by forcing Ms. Teuscher (and other customers) to
18 execute the Revised Gamete Storage Agreement, NW Cryo is unfairly and
19 unjustly holding the medical information related to Z.F and Z.F.'s half-siblings'
20 hostage.
21
22

23 120. Ms. Teuscher has been harmed as a direct and proximate result of:
24

- 25 (a) penalizing Ms. Teuscher by taking her Gametes without
26 any contractual or other basis for doing so;
27
28 (b) threatening Ms. Teuscher in the amount of \$20,000.00 for
29 testing Z.F.'s DNA on a genetic website, 23andMe, where
30 she had consensual contact with Z.F.'s genetic relative;
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- 1
- 2 (c) preventing Ms. Teuscher from accessing Z.F.’s genetic
- 3 medical history and important donor information updates
- 4 that only Defendant are the holders of, by blocking Ms.
- 5 Teuscher from accessing her on-line account and restricting
- 6 Ms. Teuscher from establishing connections with other
- 7 donor conceived offspring families on their sibling website;
- 8
- 9 (d) requiring Ms. Teuscher to agree to terms wholly favorable
- 10 to NW Cryo contained in the Customer Agreement that she
- 11 could neither alter nor negotiate; and finally,
- 12
- 13 (e) forcing Ms. Teuscher and all Defendant’s customers who
- 14 have gametes stored with them, to agree to a new adhesion
- 15 type contract which waives many of the rights they had
- 16 previously, in order to re-gain access to their on line
- 17 accounts.

18 121. Z.F. has been harmed immeasurably by Defendant’s permitting

19 Donor #2744 to change his profile from “Open” to “Anonymous” thereby

20 restricting the Donor #2744’s accessibility to Z.F. when she turns eighteen (18)

21 years of age.

22 122. Ms. Teuscher relied to her and Z.F.’s detriment upon the

23 Defendant’s representations of the truth and reliability of the Donor’s statement

24 that he was “open” to contact with his donor conceived offspring when they turn

25

26 eighteen (18) years old.

27

28

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1 123. Ms. Teuscher has been harmed immeasurably by Defendant
2 permitting Donor #2744 to change his profile from “Open” to “Anonymous”
3
4 thereby restricting his availability to Z.F., when she turns eighteen (18) years of
5
6 age.

7 THIRD CAUSE OF ACTION
8 BREACH OF BAILMENT
9

10 124. Plaintiffs incorporate by reference all foregoing factual allegations.
11

12 125. At all relevant times, Ms. Teuscher owned the Gametes.
13

14 126. At all relevant times, Defendant were and upon information and
15 belief still are in possession of the Gametes.
16

17 127. Ms. Teuscher tendered payment to NW Cryo for the storage of the
18 Gametes for Ms. Teuscher’s sole use.
19

20 128. Ms. Teuscher has demanded that NW Cryo deliver the Gametes to
21 her but NW Cryo has refused to deliver the Gametes to her or to a cryobank of
22 her choice.
23

24 129. Defendant have refused to deliver the Gametes to Ms. Teuscher.
25
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1 136. NW Cryo has unjustly interfered with Ms. Teuscher's property and
2 her rights to her future family.
3

4 SIXTH CAUSE OF ACTION
5 DECLARATORY JUDGMENT THAT TERMS OF THE CUSTOMER
6 AGREEMENT ARE UNCONSCIONABLE AND CANNOT BE ENFORCED
7

8 137. Plaintiffs incorporate by reference all foregoing factual allegations.
9

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

19 139. Paragraph VIII of the Customer Agreement should be stricken and
20 deemed void and/or unenforceable under Washington's Consumer Protection
21 Act at RCW 19.86.093(3) because the liquidated damages clause should be
22 construed as a penalty and as such, is not reasonably related to the harm caused
23 by a potential breach and will harm Ms. Teuscher and other persons.
24
25
26

27 140. Paragraph VIII of the Customer Agreement should be stricken
28 because the public policy of knowing your genetic ancestry for a mother to
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30
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1 better protect her child's physical and psychological health from future disease,
2 is thwarted by the liquidated damages clause contained therein and is violative
3
4 of the Washington Consumer Protection Act at RCW 19.86.093(3).

5
6 141. By the inclusion of the above referenced Paragraph VIII in the
7 Customer Agreement, the Defendant is improperly seeking the enforcement of
8
9 its liquidated damages provision against one of their customers who mutually
10 consented with another adult to make contact with their genetic relatives, which
11
12 is an unfair practice pursuant to the Washington Consumer Protection Act at
13
14 RCW 19.86.093(3).

15
16 142. The above-mentioned paragraph of the Customer Agreement is
17
18 unlawful and should be declared unenforceable because it contains substantive
19
20 and procedural unconscionable provisions.

21
22 143. Any other agreement which Defendant are now using to substitute
23
24 for the liquidated damages clause of Paragraph VIII are likewise unconscionable
25
26 as against public policy and the Washington Consumer Protection Act at RCW
27
28 19.86.093(3).
29
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1 144. Paragraph VIII of the Customer Agreement is moot in light in the
2 internet and websites such as 23andMe which connect consenting adults who
3
4 opt-in to their agreements so that they can communicate with genetic relatives.
5

6 SEVENTH CAUSE OF ACTION
7 BREACH OF CONTRACT
8

9 145. Plaintiffs incorporate by reference all foregoing factual allegations.

10 146. The Defendant has a contractual obligation to return the Gametes to
11 Ms. Teuscher.
12

13 147. Defendant failed to return the Gametes to Ms. Teuscher despite her
14 demands.
15

16 148. Defendant NW Cryo has the contractual obligation to provide Ms.
17 Teuscher access to her on-line profile containing updated medical information
18 from Donor #2744.
19

20 149. Ms. Teuscher has been damaged by not having the opportunity to
21 have the family she bargained for, and she is entitled to real and expectancy
22 damages as a result of this breach.
23

24 150. Plaintiff Z.F., as the third-party beneficiary of the contractual
25 obligations that NW Cryo owes to Ms. Teuscher the unfettered access to Donor
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1 #2744's medical information and updates and is owed the benefit of having a
2 relationship of a full genetic sibling and is therefore entitled to real and
3
4 expectancy damages as a result of these breaches.

5
6 EIGHTH CAUSE OF ACTION

7 BREACH OF THE COVENENANT OF GOOD FAITH AND FAIR DEALING

8
9 151. Plaintiffs incorporate by reference all foregoing factual allegations.

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

14
15 153. Defendant's obligation is to behave honestly, fairly and in good
16 faith so as not to destroy the benefits of Ms. Teuscher's bargain, that she and
17 Z.F. would receive the Gametes, Ms. Teuscher would have access to her on-line
18 profile containing updated medical information from Donor #2744.
19

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

25
26 155. Ms. Teuscher relied to her and Z.F.'s detriment upon the Defendant
27 representations of the truth of the Donor's statements that he was "open" to
28
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1 contact with his donor conceived offspring when she turns eighteen (18) years
2 old.
3

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

10 157. 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) penalizing Ms. Teuscher by taking her Gametes without any
16 contractual or other basis for doing so;
- 17 (b) threatening Ms. Teuscher in the amount of \$20,000.00 for
18 testing Z.F.’s DNA on a genetic website, 23andMe, where
19 she had consensual contact with Z.F.’s genetic relative;
20
21
- 22 (c) preventing Ms. Teuscher from accessing Z.F.’s genetic
23 medical history and important donor information updates
24 that only Defendant are the holders of, by blocking Ms.
25 Teuscher from accessing her on-line account and restricting
26 Teuscher from establishing connections with other donor
27 conceived offspring families on their sibling website; and
28 finally,
29
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1 (d) forcing Ms. Teuscher and all Defendant' customers who
2 have gametes stored with them, to agree to a new adhesion
3 type contract which waives many of the rights they had
4 previously, in order to re-gain access to their on line
5 accounts.

6 NINTTH CAUSE OF ACTION
7 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

8
9 158. Plaintiffs incorporate by reference all foregoing factual allegations.

10 159. Defendant's intentional act of taking away all of Ms. Teuscher's
11 property rights to the Gametes was extreme and outrageous and beyond the
12 bounds of acceptable conduct in a civilized society.
13

14
15 160. Defendant's retaliatory actions in sending the Cease and Desist
16 Letter and threatening financial penalties against Ms. Teuscher for her
17 innocently contacting the PGM proximately caused serious harm to Ms.
18 Teuscher.
19

20
21 161. Defendant has refused to provide the location of the Gametes and
22 Ms. Teuscher does not know whether the Gametes are safe and secure or if they
23 have been destroyed.
24
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1 162. Ms. Teuscher does not have access to important information she
2 had relied upon receiving in her on-line account that was maintained at NW
3 Cryo.
4

5 163. Defendant's actions were intended to, or could reasonably be
6 foreseen to, cause a reasonable person serious emotional trauma.
7

8 164. Ms. Teuscher has suffered serious emotional distress as a proximate
9 result of the forfeiture of the Gametes including but not limited to anxiety and
10 hair loss which caused Ms. Teuscher to undergo injections on her scalp and
11 created a situation where she could not work for a period of time to assist to
12 financially support her family.
13
14

15 165. Ms. Teuscher has suffered serious emotional distress as a direct
16 result of the Defendant changing Donor #2744's profile from "Open" to
17 "Anonymous" thereby restricting his availability to Z.F. when she turns eighteen
18 (18) years of age.
19
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21
22

23 166. Ms. Teuscher's physical and emotional distress was the proximate
24 and direct result of Defendant's behavior, specifically by:
25

- 26
27
28 (a) penalizing Ms. Teuscher by taking her Gametes without any
29 contractual or other basis for doing so;
30

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

18 V. JURY DEMAND

19 167. Plaintiffs demand a trial by jury on all claims so triable.

20 VI. PRAYER FOR RELIEF

21 WHEREFORE, Plaintiffs pray for the following relief:

22 A. A preliminary injunction requiring:

- 23
- 24
- 25 (1) Defendant to preserve the Gametes pending the outcome of this
- 26 litigation;
- 27
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1 (2) Defendant to provide the exact location of the Gametes pending
2 the outcome of this litigation;

3
4 (3) Defendant to provide a DNA test on the Gametes to Ms. Teuscher
5 to ensure to Ms. Teuscher that she is receiving her Gametes;

6
7 (4) Restoring Ms. Teuscher's access to her on-line account to obtain
8 medical updates from Donor #2744; and

9
10 (5) Reinstating Ms. Teuscher's access to the sibling registry.
11

12 B. A permanent injunction requiring:

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

14
15 (2) Restoring Ms. Teuscher's access to her on-line account to obtain
16 medical updates from Donor #2744; and

17
18 (3) Reinstating Ms. Teuscher's access to the sibling registry.
19

20 C. A declaratory judgment declaring that Paragraphs VIII related to
21 liquidated damages and Paragraph V related to the indemnification
22 provisions of the Customer Agreement are unenforceable under
23 Washington law;
24
25

26 D. For judgment in Plaintiffs' favor on all causes of action;
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1 E. For an award of damages in an amount to be proven at trial, but in an
2 amount no less than \$100,000;

3
4 F. For an award of treble damages pursuant to RCW 19.86.093;

5
6 G. For an award of attorneys' fees and costs as authorized by law;

7
8 H. For prejudgment and post-judgment interest as authorized by law; and

9
10 I. For such other relief as the Court deems just and equitable.

11 DATED this 12th day of August, 2019.

12
13 LAW OFFICES OF JILL H. TEITEL, PLLC

14
15 By: s/ Jill H. Teitel
16 Jill H. Teitel, NY Bar No. 2775138
17 *Counsel for Plaintiffs*
18 *(Pro Hac Vice)*

19
20 WITHERSPOON BRAJCICH MCPHEE, PLLC

21 By: s/ Thaddeus J. O'Sullivan
22 Thaddeus J. O'Sullivan, WSBA No.
23 37204
24 *Counsel for Plaintiffs*