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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 BROOKE OXENDINE and MICHAEL
OXENDINE,

15 Plaintiffs,

16 v.

17 THE COOPER COMPANIES, INC.;
18 COOPERSURGICAL, INC.; and DOES 1-
19 10, inclusive,

20 Defendants.

Case No. 4:24-cv-2168

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

1. Strict Products Liability—Manufacturing Defect;
2. Strict Products Liability—Design Defect—Consumer Expectations Test;
3. Strict Products Liability—Design Defect—Risk-Utility Test;
4. Strict Products Liability—Failure To Warn;
5. Negligence/Gross Negligence;
6. Negligent Failure to Recall;
7. Trespass to Chattels;
8. Unjust Enrichment

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2 Plaintiffs BROOKE OXENDINE and MICHAEL OXENDINE (collectively, “Plaintiffs”)
3 respectfully bring this Complaint against Defendants COOPERSURGICAL, INC.
4 (“CooperSurgical”) and THE COOPER COMPANIES, INC. (“Cooper Companies”), and DOES
5 1-10 (hereinafter, collectively, “Defendants”), and allege as follows:
6

7 **INTRODUCTION**

8 1. After years of fertility struggles, Plaintiffs Brooke and Michael Oxendine were
9 devastated to learn that Defendants’ defective product and negligent conduct damaged, destroyed
10 or otherwise rendered unusable their precious and irreplaceable embryos.

11 2. Plaintiffs have been trying to create their family for years. After the heartbreak of
12 continued failures to conceive a child, they decided to pursue in vitro fertilization (“IVF”)
13 treatments in 2023.

14 3. In approximately November 2023, Brooke underwent an egg retrieval and 27 eggs
15 were retrieved. 13 eggs were fertilized with Michael’s sperm and placed in Defendants’ embryo
16 culture media (“media”). The embryos were frozen after three days of exposure to Defendants’
17 media, before they could develop into viable blastocysts.

18 4. Plaintiffs were shattered when weeks later, their fertility clinic informed them that
19 their precious, irreplaceable embryos had been placed in Defendants’ recalled defective media.

20 5. Defendants manufactured, marketed, promoted, distributed, and/or sold media that
21 was intended to protect and nourish Plaintiffs’ reproductive material and encourage development
22 into healthy embryos.

23 6. On December 5, 2023, Defendants issued a recall¹ of three lots of media, only
24 *after* Plaintiffs’ embryos were placed in the defective media, stating the recalled media does the
25 opposite of its intended use, creating a “risk to health” due to “impaired embryo development
26 prior to the blastocyst stage.”
27

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¹ https://www.lieffcabraser.com/pdf/Cooper_Recall_Notice.pdf.

1 affiliates, a leading global provider of IVF devices, for \$125 million.⁵ In January 2021 it acquired
2 Embryo Options, a leader in cryo-storage software solutions for clinics and patients.⁶ In
3 November 2021, CooperSurgical acquired Generate Life Sciences, a privately held provider of
4 donor egg and sperm for fertility treatments, fertility cryopreservation services and newborn stem
5 cell storage (cord blood & tissue), for approximately \$1.6 billion.⁷ In November 2023,
6 CooperSurgical acquired select Cook Medical assets focused primarily on the obstetrics, doppler
7 monitoring, and gynecology surgery markets, for \$300 million.⁸

8 15. Doe(s) 1 through 10 are persons and/or entities, whose identities are currently
9 unknown and who participated in the wrongs alleged herein. Plaintiffs are informed and believe,
10 and based upon such information and belief, allege that each Doe Defendant is in some manner
11 legally responsible for the faulty culture media that harmed Plaintiffs, including but not limited to
12 being involved the manufacture, design, sale, distribution, and/or inspection of the defective
13 culture media, or any other involvement in, or responsibility for, for the events and happenings
14 herein referred to, and thereby caused injury and damages proximately and foreseeably to
15 Plaintiffs as herein alleged.

16 16. Cooper Companies, CooperSurgical, and Does 1-10 will be referred to hereinafter
17 collectively as “Defendants.”

18 **JURISDICTION AND VENUE**

19 17. Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction over this action because
20 this is a civil action between citizens of different states and the matter in controversy exceeds
21 \$75,000, exclusive of interest and costs.

22 18. This Court has personal jurisdiction over Defendants because Defendants are
23 residents and/or do business in the State of California. Defendants have purposely availed
24 themselves of the benefits, protections, and privileges of the laws of the State of California in

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26 ⁵ <https://www.globenewswire.com/news-release/2018/04/03/1459615/0/en/The-Cooper-Companies-Acquires-The-LifeGlobal-Group-Expanding-Fertility-Solutions-Portfolio.html>.

27 ⁶ <https://fertility.coopersurgical.com/coopersurgical-acquires-embryo-options/>.

28 ⁷ <https://fertility.coopersurgical.com/coopersurgical-to-acquire-generate-life-sciences/>.

⁸ <https://investor.cooperkos.com/news-releases/news-release-details/coopercompanies-expands-coopersurgicals-medical-device-portfolio>.

1 conducting their business, and have purposely directed their activities in this State. Defendants
2 market their products, including their Global Media, in the State of California. Cooper
3 Companies' principal place of business is in San Ramon, California, and CooperSurgical holds
4 offices in the State of California, including in the cities of Los Altos and Los Angeles.⁹
5 Defendants have sufficient minimum contacts with this State to render the exercise of jurisdiction
6 by this Court permissible.

7 19. Venue is proper in this Court because Defendant Cooper Companies' principal
8 place of business is in Contra Costa County, which is within this District.

9 **FACTUAL ALLEGATIONS**

10 **In Vitro Fertilization**

11 20. IVF is an assisted reproductive technology ("ART") that requires surgically
12 retrieving a woman's eggs and fertilizing them with sperm in a laboratory. The fertilized eggs,
13 once developed into viable embryos, are then transferred into the woman's uterus.

14 21. To prepare for egg retrieval, women take drug and hormone therapies and endure
15 injections over several weeks to stabilize the uterine lining, stimulate their ovaries into producing
16 follicles, and stop the ovary follicles from releasing eggs. The injections can result in bruising,
17 swelling, and discomfort. The drugs and hormones may also trigger other side effects, such as
18 fatigue, nausea, headaches, allergic reactions and blood clots, as well as negative emotions. The
19 process can limit travel, work, and other activities, entails numerous doctor visits, and often
20 requires time off from work for both partners. After an ovulation trigger injection, women
21 proceed to the operating room for egg retrieval, where they are sedated or placed under general
22 anesthesia, and undergo insertion of a needle through the vaginal wall and into each follicle in
23 the ovary to drain the follicles of their fluid. The fluid in the follicle is then extracted into a test
24 tube and studied under a microscope to look for eggs.

25 22. Residual pain from the egg retrieval procedure often lasts for about a week and
26 bed rest may be required for several days. Some women suffer significant side effects such as
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⁹ <https://www.coopersurgical.com/contact-us>.

1 ovarian hyperstimulation syndrome which causes the ovaries to painfully swell and can lead to
2 hospitalization and even death.

3 **Embryo Culture Media**

4 23. The male partner typically produces a sperm sample on the same day as the egg
5 retrieval. The eggs are then fertilized with the sperm and submerged in embryo culture media,
6 usually in a petri dish, to develop into embryos.

7 24. When a fertilized egg divides, it becomes known as an embryo. Embryos are
8 submerged, or “cultured,” in the embryo culture media for approximately five to six days to
9 develop to the blastocyst stage. Embryos of good quality are then transferred into the woman’s
10 uterus or frozen for future use.

11 25. Young, developing embryos are fragile and sensitive. The environment in which
12 the embryo is developed is tightly controlled in an IVF laboratory setting. Even minor variations
13 in an embryo’s growing conditions can have devastating impacts on the embryo’s development.

14 26. Embryo culture media is an essential part of the development of embryos through
15 IVF. The culture media is developed to mimic the fluids in a woman’s reproductive tract to
16 closely approximate the natural environment and circumstances of a developing embryo. This
17 provides the embryo the same advantages available to them in the female reproductive system.

18 27. Culture media for embryo development must meet the metabolic needs of
19 preimplantation embryos by providing necessary sources of energy, nutrients, and PH levels
20 based on the specific developmental stage of the embryo. The specific nutrients in the media are
21 thus crucial to the embryo’s successful growth.

22 28. Embryo culture media is a complex solution that is typically comprised of
23 ingredients including carbohydrates, amino acids, vitamins, magnesium, and growth factors.

24 29. Magnesium is required for embryonic development, and is an essential component
25 of embryo culture media.¹⁰ Magnesium is one of the essential, crucial nutrients for embryonic and
26

27 ¹⁰ Yuko Komiya et al., *Magnesium and Embryonic Development*, MAGENES RES. (2014)
28 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4207262/>; Liyou An et al., *Magnesium is a critical element for competent development of bovine embryos*, THERIOGENOLOGY (2019) doi.org/10.1016/j.theriogenology.2019.08.015.

1 fetal growth and is a key element to repair mutations during cell division.¹¹ Deficient magnesium
2 levels in embryo culture media can cause embryo growth to arrest and inhibit DNA repair.¹²

3 30. Embryologists closely monitor the embryos during each day of the embryo culture.
4 After two days, the embryo is typically comprised of two to four cells. It is possible to transfer
5 the embryo at this early stage if the embryos are developing poorly, or if few embryos are
6 available. After three days, the embryo is typically comprised of six to eight cells. Typically, an
7 embryo is cultured for at least five days, when the embryo has developed to a blastocyst
8 comprised of greater than 64 cells. By this point, the blastocyst has two distinct cell types—
9 surface cells, called the trophectoderm, that will later develop into the placenta, and an inner cell
10 mass, which will become the fetus.

11 31. During this time, the embryo culture media is critical to an embryo's successful
12 development. Culture media has been shown to not only impact an embryo's ability to develop
13 into a healthy blastocyst, but also future fetal development and perinatal outcomes, including
14 gestational age and birthweight.

15 **The Unique and Precious Nature of Human Embryos**

16 32. Defendants are aware of the lengths to which families go to extract eggs and
17 create embryos, their emotional and financial investment in the survival of their embryos, and
18 their expectations that their embryos will be handled with care to avoid irreparable, devastating
19 harm.

20 33. Embryos are precious. They offer the opportunity to fulfill a fundamental human
21 desire: to become a parent and start a family. Reproductive material has immense emotional and
22 personal value. Families who do not use all of their embryos may donate them to a family
23 member or another couple struggling with infertility, or toward beneficial research. Indeed,
24 embryos may offer life-saving medical treatment options for anyone in the family down the road.

25 34. Embryos are also irreplaceable. Human eggs, also known as oocytes, are a
26 limited resource. A woman has about one million eggs at birth and this supply diminishes at a

27
28 ¹¹ *Id.*

¹² *Id.*

1 rate of about 1,000 eggs per month. This decline is part of the natural aging process and is
2 commonly referred to as a woman's biological clock. The loss of oocytes from the ovaries
3 continues in the absence of menstrual cycles, and even when women are pregnant, nursing, or
4 taking oral contraceptives. Egg quality diminishes with time, with miscarriages and
5 chromosomal abnormalities occurring more frequently for older women. The most
6 determinative factor in IVF success is the woman's age at the time her eggs were extracted. At
7 some point, usually around her mid-40s, a woman can no longer produce viable eggs. If a couple
8 is unable to use their preserved embryos it might be too late to go through another round of IVF,
9 thereby making it impossible to get pregnant and start a family.

10 35. The success or failure of creating healthy embryos through IVF has substantial
11 emotional and psychological ramifications for those seeking to become parents. Losing embryos
12 provokes fear, devastation, and despair. Many experience grief and anguish when fertility
13 treatment does not result in pregnancy or when their fertility choices diminish.

14 36. The loss or improper development of embryos naturally results in serious
15 emotional harm to hopeful parents. Families undergoing IVF entrust their embryos to
16 manufacturers such as Defendants. These hopeful parents invest the most precious parts of who
17 they are, their reproductive material, which is their most valuable and irreplaceable property.
18 Emotional distress stemming from embryo loss or damage is thus predictable.

19 **Defendants' Role in the IVF/ART Market**

20 37. Defendants have positioned themselves as leaders in the reproductive health and
21 infertility treatment fields.

22 38. Defendant CooperSurgical describes itself as "the global leader in IVF and
23 reproductive genetics, providing innovative products and services for every step in the ART
24 journey. Our company vision is a world with healthy women, babies and families."¹³

25 39. CooperSurgical boasts its ability to provide "unique solutions at every step of the
26 ART cycle" and "industry-leading ART innovation."¹⁴ CooperSurgical claims to offer "effective

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28 ¹³ <https://fertility.coopersurgical.com/about-us/>.

¹⁴ <https://fertility.coopersurgical.com/about-us/>.

1 solutions that support clinical efficiency and engaged and supported patients. All to conceive,
2 deliver, and protect healthy babies.”¹⁵

3 40. Cooper Companies claims “We elevate standards of care with best-in-class devices
4 for ... women’s health, and fertility.”¹⁶

5 41. Cooper Companies owns a large stake in the women’s health and fertility market,
6 including through millions of dollars in assets it owns related to fertility products, including but
7 not limited to the Bakri Postpartum Balloon, Cook's Cervical Ripening Balloon, and the Doppler
8 Blood Flow Monitor portfolios.¹⁷

9 42. In April 2018, Cooper Companies acquired The LifeGlobal Group—“a leading
10 global provider of in-vitro fertilization (IVF) devices.” Cooper’s president and CEO described
11 this acquisition as “improving [Cooper Companies’] industry leading fertility business overall.”¹⁸

12 43. In December 2021, Cooper Companies acquired Generate Life Sciences, “a
13 leading provider of donor egg and sperm for fertility treatments, fertility cryopreservation
14 services and newborn stem cell storage (cord blood & cord tissue).”¹⁹

15 44. Cooper Companies elected physician Maria Rivas to its board of directors in May
16 2021, in part based on her background in the field of fertility.²⁰

17 45. Cooper Companies’ \$875 million acquisition of Cook Medical’s Reproductive
18 Health business—“ a manufacturer of minimally invasive medical devices focused on the fertility,
19 obstetrics and gynecology markets”—in May 2022 demonstrates Cooper Companies’ prominent
20 role in the fertility industry. Cooper Companies’ president and CEO commented on this
21 acquisition by stating, “We’re improving our international fertility footprint, especially within the
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23 ¹⁵ <https://www.coopersurgical.com/healthcare-providers/fertility-birth>.

24 ¹⁶ <https://www.coopercos.com/improving-lives/#elevating>.

25 ¹⁷ <https://investor.coopercos.com/news-releases/news-release-details/coopercompanies-expands-coopersurgicals-medical-device-portfolio>.

26 ¹⁸ <https://investor.coopercos.com/news-releases/news-release-details/cooper-companies-acquires-lifeglobal-group-expanding-fertility>.

27 ¹⁹ <https://investor.coopercos.com/news-releases/news-release-details/coopercompanies-completes-acquisition-generate-life-sciencesr>.

28 ²⁰ <https://investor.coopercos.com/news-releases/news-release-details/coopercompanies-elects-maria-rivas-md-board-directors>.

1 Asia-Pacific region, and adding highly synergistic and respected labor and delivery devices to our
2 ObGyn portfolio.”²¹

3 46. CooperSurgical’s mission states: “We are a leading fertility and women’s health
4 company dedicated to putting time on the side of women, babies, and families at the healthcare
5 moments that matter most in life.”²²

6 47. CooperSurgical participates in symposiums and expos regarding IVF-related
7 topics.²³ For example, CooperSurgical was a platinum-level sponsor for the American Society for
8 Reproductive Medicines 2023 Scientific Congress & Expo.²⁴

9 48. Operating through CooperSurgical, Defendant Cooper Companies is a prominent
10 leader in the global infertility treatment market.

11 49. As a manufacturer and supplier of IVF products, the emotional concerns of
12 Defendants’ consumers, like Plaintiffs, are the essence of their work, as the very materials
13 manufactured by Defendants play a critical role in the highly personal and emotionally-laden
14 process of conceiving a child through IVF.

15 50. Defendants recognize the incredible value of the reproductive material that their
16 products are designed to test and safeguard.

17 51. There are very few manufacturers of products for use in ART laboratories.
18 Defendants operate in a very niche market. In this small and highly specialized space,
19 Defendants are, upon information and belief, one of the largest manufacturers of ART products.
20 Very few companies provide similar products, and these other companies are much smaller than
21 Defendants.

22 52. Further, Defendants work very closely with IVF laboratories to provide IVF
23 products to families, like Plaintiffs, who are desperately hoping to have a healthy baby.
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26 ²¹ <https://investor.coopercos.com/news-releases/news-release-details/coopercompanies-acquire-cookr-medicals-reproductive-health>.

27 ²² <https://www.coopersurgical.com/about-us>.

28 ²³ <https://fertility.coopersurgical.com/session/symposiums/>.

²⁴ <https://asrmcongress.org/>.

1 53. Indeed, on its public website, CooperSurgical includes patient testimonials from
2 families struggling with infertility.²⁵

3 54. For example, one testimonial on CooperSurgical’s website describes the
4 experience of an embryologist facing infertility and undergoing IVF.²⁶ This testimonial
5 recognizes the “incredible struggles that IVF patients go through,” the “hysterics” that can arise
6 from unexpected events in the IVF process, and the “devastation,” “confusion,” and “stress” that
7 often arises during one’s IVF journey.²⁷ The embryologist writes, “I look at every single embryo
8 with awe about what it is capable of. I think about how my babies started from a little bundle of
9 cells just like them. [. . .] I know how it feels to get that positive pregnancy test, to feel a baby
10 grow inside me, the excitement of packing a hospital bag, setting up a nursery and bringing a
11 baby home. I want this for every single person that I know is trying for a baby.”²⁸

12 55. CooperSurgical’s website states, “At CooperSurgical, we understand the struggles
13 that families facing infertility go through. Families #deservetoknow they are not alone, and that
14 their family, friends, and CooperSurgical are here for them every step of the way.”²⁹ This page of
15 CooperSurgical’s website provides greeting cards for families going through infertility to “help
16 spread the message of support and empathy for families in need.”³⁰ CooperSurgical writes,
17 “Thank you for your continued support as we work to create a more compassionate and
18 understanding world for families facing infertility.”³¹

19 56. Defendants recognize that they engage in a peculiarly sensitive and emotional
20 business by manufacturing and supplying IVF products used by families, like Plaintiffs, who
21 face barriers to conceiving a healthy child.

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23 ²⁵ [https://www.coopersurgical.com/patients/patient-article-
list?refinementList%5Blife_stage_name%5D%5B0%5D=I%20want%20kids&refinementList%5Bcondition_name%5D%5B0%5D=Infertility%20%26%20IVF&page=2](https://www.coopersurgical.com/patients/patient-article-list?refinementList%5Blife_stage_name%5D%5B0%5D=I%20want%20kids&refinementList%5Bcondition_name%5D%5B0%5D=Infertility%20%26%20IVF&page=2).

24 ²⁶ [https://www.coopersurgical.com/patient-article/an-embryologists-journey-to-conceive-while-
helping-others-on-the-same-path](https://www.coopersurgical.com/patient-article/an-embryologists-journey-to-conceive-while-helping-others-on-the-same-path).

25 ²⁷ *Id.*

26 ²⁸ *Id.*

27 ²⁹ [https://www.coopersurgical.com/patient-article/our-greeting-card-initiative-is-here-to-send-a-
message-about-infertility](https://www.coopersurgical.com/patient-article/our-greeting-card-initiative-is-here-to-send-a-message-about-infertility).

28 ³⁰ *Id.*

³¹ *Id.*

1 **Defendants’ Defective Embryo Culture Media**

2 57. Defendants manufacture and market multiple lines of “cutting-edge ART culture
3 media for IVF procedures.”³² These products are advertised as “[c]reating the optimal
4 environment for human embryology procedures.”³³

5 58. Among Defendants’ culture media is the CooperSurgical LifeGlobal global®
6 Media (the “Global Media”).

7 59. Defendants’ Global Media is advertised by CooperSurgical as “the original single-
8 step, protein-free medium for uninterrupted embryo culture.”³⁴ The media “[c]ontains energy
9 substrates and essential amino acids to support embryo growth and development.”³⁵

10 60. CooperSurgical advertises: “Our products undergo thorough quality testing before
11 being released, to ensure consistent quality for your piece of mind. Our focus on quality at every
12 level of our operations is audited and confirmed by our notified bodies, that delivers quality
13 certificates.”³⁶

14 61. Specifically, Defendants advertise that the performance of the Global Media “has
15 been demonstrated through 15 years of use and 500 independent publications using global
16 medium.”³⁷

17 62. Yet, on December 5, 2023, Defendants issued an Urgent Media Recall: Field
18 Safety Notice³⁸ (the “Recall Notice”) regarding certain lots of the Global Media (part numbers
19 LGGG-100, LGGG-50, and LGGG-20; lot numbers 231020-018741, 231020-018742, and
20 231020-018743 (the “Recalled Lots”).

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³² <https://fertility.coopersurgical.com/art-media-products/culture-media-for-ivf-procedures/>.

25 ³³ <https://fertility.coopersurgical.com/culture-solutions/>.

26 ³⁴ https://fertility.coopersurgical.com/art_media/global/#toggle.

27 ³⁵ *Id.*

28 ³⁶ <https://www.coopersurgical.com/healthcare-providers/support-compliance/quality-certifications>.

³⁷ https://fertility.coopersurgical.com/art_media/global/#toggle.

³⁸ https://www.lieffcabraser.com/pdf/Cooper_Recall_Notice.pdf.

1 63. The Recall Notice states “CooperSurgical has become aware of a sudden increase
2 in complaints regarding the aforementioned lots of this product” and identifies that “[t]he risk to
3 health is impaired embryo development prior to the blastocyst stage.”

4 64. Defendants did not immediately communicate the information contained in the
5 Recall Notice to the public or the IVF community.

6 65. Defendants knew or should have known that embryo culture media is carefully
7 formulated with specific necessary elements, and that a lack of such critical components, such as
8 magnesium, in the Global Media may result in the destruction or arrested development of human
9 embryos.

10 66. Despite this, on information and belief, Defendants failed to adequately monitor
11 their manufacturing systems and processes, and allowed for the production of embryo culture
12 media without ensuring that sufficient amounts of magnesium and/or other critical elements were
13 included.

14 67. On information and belief, Defendants did not properly test or inspect the
15 impacted lots of Global Media until after receiving numerous complaints from fertility clinics that
16 embryos cultured in Defendant’s Global Media were destroyed at elevated rates.

17 68. As a leading manufacturer and supplier of IVF products, including embryo culture
18 media, Defendants knew that if the Global Media was contaminated or manufactured improperly,
19 it could damage, destroy, or otherwise make unusable human embryos upon contact, prevent the
20 proper and healthy development of human embryos, have significant and adverse consequences
21 for the survival outcome of embryos, and/or harm the children that result from those embryos.
22 Accordingly, Defendants knew it was vitally important that their culture media was properly
23 assembled, composed, tested and/or inspected prior to the distribution of such media.

24 69. Despite this, Defendants failed to properly inspect, assemble, compose, and/or test
25 its culture media, including the Recalled Lots of Global Media. Defendants knowingly put their
26 culture media into the market when they knew or should have known that the Recalled Lots posed
27 a substantial and unacceptable risk to human embryos, including Plaintiffs’ embryos.
28

1 70. As described above, Defendants knew that people go to extraordinary lengths to
2 obtain and use viable human embryos. Defendants knew that people place an extremely high
3 value on their embryos, make substantial physical, emotional, and financial investments for their
4 embryos, and expect that great care will be taken to preserve and protect the embryos in order to
5 avoid irreparable harm to their embryos.

6 71. Defendants' conduct was despicable and was carried out by Defendants with a
7 willful and conscious disregard of the rights and/or safety of others, including putting
8 Defendants' profits over the safety of others, including Plaintiffs. Defendants' conduct subjected
9 Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights. Moreover, as
10 discussed herein, Defendants' conduct amounted to a deceit and/or concealment of material
11 fact(s) known to Defendants with the intention on the part of Defendants to deprive individuals of
12 property and/or legal rights and/or otherwise cause injury.

13 72. On information and belief, Defendants previously have manufactured and sold
14 numerous products used in ART, including other culture media, that were defective and
15 sometimes recalled.³⁹

16 **Plaintiffs' Embryos Exposed to Defendants' Dangerous Culture Media**

17 73. When Plaintiffs began IVF in 2023 after navigating years of devastating infertility,
18 they were hopeful and delighted to fulfill their dreams of becoming parents.

19 74. Plaintiffs thus sought IVF treatments from CNY in Syracuse, New York.

20 75. After undergoing the physically and emotionally taxing process of preparing for,
21 and undergoing, an egg retrieval on or about November 18, 2023, Plaintiffs were delighted to
22 discover that 27 of Brooke's eggs had been retrieved. 13 mature eggs were fertilized and placed
23 in Defendants' Global Media.

24 76. On January 30, 2024, CNY emailed Plaintiffs to inform them that their precious
25 embryos had been placed in the recalled Global Media manufactured by Defendants.

26 _____
27 ³⁹ See

28 <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfres/res.cfm?id=198891#:~:text=CooperSurgical%2C%20Inc.&text=It%20has%20come%20to%20CooperSurgical's,for%20embryo%20culture%20and%20development.&text=An%20URGENT%3A%20VOLUNTARY%20MEDIA%20RECALL,23%20was%20sent%20to%20customers;>

1 77. Plaintiffs were devastated. After years of fertility struggles and undergoing a
2 series of physically and mentally fatiguing preparations and procedures to create their embryos,
3 they were heartbroken to learn that their embryos had been cultured in the recalled Global Media
4 manufactured by Defendants.

5 78. Plaintiffs' embryos were profoundly important to them—their most sacred
6 possessions. These embryos represented Plaintiffs' hopes and dreams to build their family.

7 79. As a result of each Defendant's conduct, Plaintiffs have suffered foreseeable,
8 serious, life-long harm, including the loss of and/or risks to their potential children.

9 80. As a result of each Defendant's conduct, Plaintiffs suffered emotional trauma,
10 including anxiety, hopelessness, fear, depression, devastation, and grief over the loss of their
11 embryos, the loss of their rights to control their fertility and fertility options, the loss of control
12 over their reproductive futures, and the increased uncertainty and risk of future infertility.

13 81. Further, time is not on Plaintiffs' side, as they face increasingly daunting odds of
14 achieving their family planning goals. Brooke's egg quantity and quality will decline as
15 Plaintiffs attempt to preserve their dwindling fertility options.

16 82. Plaintiffs seek all damages, equitable relief, and remedies available under the law.

17 **FIRST CAUSE OF ACTION**

18 **STRICT PRODUCTS LIABILITY—MANUFACTURING DEFECT**

19 83. Plaintiffs incorporate the above and below allegations by reference.

20 84. Defendants manufactured, tested, supplied, distributed, and/or sold embryo culture
21 media, including the defective Global Media used on Plaintiffs' embryos.

22 85. The Global Media contained a manufacturing defect when it left Defendants'
23 possession. This defect included, but is not limited to, the Global Media containing difference(s)
24 in its chemical structure or composition and/or toxicity, such as a lack of sufficient levels of
25 magnesium and/or other critical elements, such that it damaged, destroyed, rendered unusable,
26 and/or hindered the development of human embryos upon contact, in addition to the other serious
27 risks discussed above.
28

1 86. Defendants had constructive notice or knowledge and knew, or in the exercise of
2 reasonable care should have known, that the Global Media was dangerous, had risks, and was
3 defective in manufacture, including because it could damage, destroy, render unusable, and
4 prevent the development of fragile human embryos.

5 87. The Global Media was used as intended when it came into contact with Plaintiffs'
6 embryos.

7 88. As a result of Defendants' conduct, Plaintiffs were harmed as described herein.

8 89. A reasonable person in Plaintiffs' position would sustain emotional distress as a
9 result of Defendants' manufacturing defect.

10 90. The defective nature of the Global Media was a substantial factor in causing
11 Plaintiffs' harm.

12 **SECOND CAUSE OF ACTION**

13 **STRICT PRODUCTS LIABILITY—DESIGN DEFECT—**
14 **CONSUMER EXPECTATIONS TEST**

15 91. Plaintiffs incorporate the above and below allegations by reference.

16 92. Defendants designed, manufactured, distributed, tested, supplied, and/or sold
17 embryo culture media, including the defective Global Media used on Plaintiffs' embryos.

18 93. The Global Media was defective in design in that it did not perform as safely as
19 an ordinary consumer would have expected it to perform when used in an intended or reasonably
20 foreseeable way.

21 94. Defendants had constructive notice or knowledge and knew, or in the exercise of
22 reasonable care should have known, that the Global Media was dangerous, had risks, and was
23 defective in design, including because it could damage, destroy, render unusable, and prevent the
24 development of fragile human embryos.

25 95. As a result of Defendants' conduct, Plaintiffs were harmed as described herein,
26 including by the damage to, destruction of, or rendering unusable their embryos.

27 96. A reasonable person in Plaintiffs' position would sustain emotional distress as a
28 result of Defendants' conduct described herein.

1 97. The Global Media’s failure to perform safely and effectively was a substantial
2 factor in causing Plaintiffs’ harm.

3 **THIRD CAUSE OF ACTION**

4 **STRICT PRODUCTS LIABILITY—DESIGN DEFECT—**
5 **RISK-UTILITY TEST**

6 98. Plaintiffs incorporate the above and below allegations by reference.

7 99. Defendants designed, manufactured, distributed, tested, supplied, and/or sold
8 embryo culture media, including the defective Global Media used on Plaintiffs’ embryos.

9 100. The benefits of the Global Media’s design are not outweighed by its risks,
10 considering the gravity of the potential harm resulting from the use of the Global Media, the
11 likelihood that the harm would occur, the feasibility of an alternative safer design at the time of
12 manufacture, and the disadvantages of an alternative design.

13 101. Defendants had constructive notice or knowledge and knew, or in the exercise of
14 reasonable care should have known, that the Global Media was dangerous, had risks, and was
15 defective in design, including because it could damage, destroy, render unusable, and prevent the
16 development of human embryos upon contact.

17 102. As a result of Defendants’ conduct, Plaintiffs were harmed as described herein,
18 including by the destruction of their embryos.

19 103. A reasonable person in Plaintiffs’ position would sustain severe emotional distress
20 as a result of Defendants’ conduct described herein.

21 104. Defendants’ design of the Global Media was a substantial factor in causing
22 Plaintiffs’ harm.

23 **FOURTH CAUSE OF ACTION**

24 **STRICT PRODUCTS LIABILITY –FAILURE TO WARN**

25 105. Plaintiffs incorporate the above and below allegations by reference.

26 106. Defendants designed, manufactured, tested, supplied, distributed, and/or sold the
27 defective Global Media used on Plaintiffs’ embryos.
28

1 107. The Global Media had potential risks—including but not limited to defective
2 formulation due to, on information and belief, a lack of magnesium and/or other critical
3 elements—that were known or knowable in light of the scientific and medical knowledge that
4 was generally accepted in the scientific community at the time of the manufacture, distribution,
5 or sale of the Global Media.

6 108. The potential risks of damaging, destroying, rendering unusable, and preventing
7 the development of human embryos upon contact presented a substantial danger when the Global
8 Media was used or misused in an intended or reasonably foreseeable way. The ordinary
9 consumer would not have recognized the potential for risks.

10 109. The Global Media was defective and unreasonably dangerous when it left
11 Defendants' possession because it did not contain adequate warnings, including warnings
12 concerning the risk of damaging, destroying, rendering unusable, and preventing the
13 development of human embryos when used to culture human reproductive cells. Defendants
14 failed to adequately warn or instruct of the potential risks of applying its defective Global Media
15 to human reproductive material.

16 110. Defendants had constructive notice or knowledge and knew, or in the exercise of
17 reasonable care should have known, that the Global Media was dangerous, had risks, was
18 defective in manufacture or design, and would damage, destroy, render unusable, and prevent the
19 development of human embryos upon contact.

20 111. Defendants knew or reasonably should have known that users may not have
21 adequate quality control measures in place to detect the dangers of the Global Media before
22 applying it to reproductive cells, and failed to adequately warn or instruct concerning the
23 potential risks of applying the Global Media to reproductive cells when a reasonable
24 manufacturer, distributor, or seller under similar circumstances would have warned of the danger
25 or instructed in the safe use of the Global Media.

26 112. It was foreseeable to Defendants that the failure to adequately warn about the
27 risks of the defective Global Media would cause irreparable harm, including the type of
28

1 emotional distress suffered by Plaintiffs. A reasonable person in Plaintiffs' position would
2 sustain severe emotional distress as a result of Defendants' failure to warn.

3 113. As a result of Defendants' failure to adequately warn, Plaintiffs were harmed as
4 described herein. The lack of sufficient instructions and warnings was a substantial factor in
5 causing Plaintiffs' harm.

6 **FIFTH CAUSE OF ACTION**

7 **NEGLIGENCE/GROSS NEGLIGENCE**

8 114. Plaintiffs incorporate the above and below allegations by reference.

9 115. Defendants and/or their predecessors-in-interest designed, produced,
10 manufactured, assembled, sold, supplied and/or otherwise placed the defective Global Media into
11 the stream of commerce, or maintained and inspected the Global Media, and owed a duty of care
12 to those whose embryonic cells were tested upon using the Global Media, such as Plaintiffs, as a
13 result. Defendants knew or reasonably should have known that the Global Media needed to be
14 designed, produced, manufactured, assembled, maintained, inspected, sold and supplied
15 properly, without defects and with due care, to safely test precious embryonic matter.
16 Defendants knew or should have known that any changes in the Global Media could damage,
17 destroy, render unusable, or prevent the development of human embryonic cells when used for
18 embryo culture. Defendants and/or their predecessors-in-interest were negligent, reckless, and
19 careless and failed to take the care and duty owed to Plaintiffs, thereby causing Plaintiffs to
20 suffer harm.

21 116. As manufacturers of culture media for use with human embryos, Defendants
22 owed a duty, including to Plaintiffs, to design, manufacture, inspect, and/or test their embryo
23 culture media such that the media was properly formulated and contained the ingredients
24 necessary for embryonic development, including but not limited to, on information and belief,
25 sufficient levels of magnesium and/or other critical elements.

26 117. Specifically, and as described above, Defendants negligently designed, produced,
27 manufactured, assembled, supplied, maintained, and/or tested and analyzed the Global Media by
28 designing, producing, assembling, supplying, and/or failing to warn or correct through

1 inspection, maintenance, monitoring, testing, and analysis the Global Media with multiple flaws
2 in manufacture and/or design, including, but not limited to: an embryo culture media that, when
3 applied to embryonic cells, would damage, destroy, render unusable, or prevent the development
4 of the cells.

5 118. The negligence and extreme carelessness of Defendants and/or their predecessors-
6 in-interest includes, but is not limited to, the following:

7 a. Failure to use reasonable care in the design of the Global Media applied to
8 Plaintiffs' fertilized eggs;

9 b. Failure to use reasonable care in the production of the Global Media
10 applied to Plaintiffs' fertilized eggs;

11 c. Failure to use reasonable care in the manufacture of the Global Media
12 applied to Plaintiffs' fertilized eggs;

13 d. Failure to use reasonable care in the assembly of the Global Media applied
14 to Plaintiffs' fertilized eggs;

15 e. Failure to use reasonable care in supplying the Global Media applied to
16 Plaintiffs' fertilized eggs;

17 f. Failure to reasonably and properly test and properly analyze the testing of
18 the Global Media under reasonably foreseeable circumstances;

19 g. Failure to warn its customers about the dangers associated with use of the
20 Global Media, in that the Global Media would damage, destroy, render unusable, and prevent the
21 development of human embryos upon contact;

22 h. Failure to utilize proper materials and components in the design of the
23 Global Media to ensure it would not damage, destroy, render unusable, and prevent the
24 development of human embryos upon contact;

25 i. Failure to use due care under the circumstances;

26 j. Failure to take necessary steps to modify the Global Media;

27 k. Failure to promptly recall the Global Media;

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1 l. Failure to properly design, manufacture, assemble, sell, distribute, supply,
2 repair, and/or modify the Global Media; and

3 m. Failure to maintain safety systems and procedures to ensure that the
4 Global Media would operate properly and safely culture human embryos.

5 119. Defendants' total lack of care is an extreme departure from what a reasonably
6 careful entity would do in the same situation and constitutes negligence.

7 120. Plaintiffs were harmed by Defendants' negligence when their defective Global
8 Media damaged, destroyed, rendered unusable, and/or prevented the development of their
9 embryos.

10 121. Defendants' carelessness and negligence directly and foreseeably damaged
11 Plaintiffs. Defendants' negligent production of the defective Global Media foreseeably caused
12 mental anguish and serious emotional distress, among other injuries, to Plaintiffs.

13 122. Defendants explicitly and intentionally are involved in the business of
14 manufacturing products for the culture of human embryos in IVF laboratories, and know the
15 sensitive and emotional nature of the IVF procedures for which their products are used.
16 Defendants further knew that Plaintiffs would be particularly vulnerable to emotional distress
17 and other harms, such as potentially being foreclosed from having a biological child, if the
18 culture their fertilized eggs failed due to Defendants' faulty product.

19 123. Given that Defendants manufacture products that are used for the culture and
20 development of incredibly valuable, unique, personal, irreplaceable, and sensitive material—
21 human embryos—Defendants assumed a duty to Plaintiffs where emotional concerns are of the
22 essence. The culture and development of embryonic cells is intertwined with Plaintiffs' most
23 vital concerns, including comfort, happiness, and personal welfare. Manufacturing and
24 supplying defective IVF products is likely to cause serious emotional distress to hopeful parents,
25 like Plaintiffs, whose embryos are affected by the defective products. Thus, the negligence at
26 issue here is of the type that would cause predictable emotional distress.

27
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1 124. There was a close connection between Defendants' conduct and Plaintiffs'
2 injuries. Plaintiffs experienced emotional distress and other harms because Defendants failed to
3 act reasonably in all aspects of the creation of the defective Global Media.

4 125. Plaintiffs trusted that those responsible for designing, manufacturing, and selling
5 the Global Media would use reasonable care to create a safe and working product for embryo
6 culture. Defendants' carelessness with this precious task, and ultimately, with Plaintiffs' careful
7 plans for parenthood, amounts to despicable conduct.

8 126. Defendants' acts and omissions constitute gross negligence because they are an
9 extreme departure from what a reasonably careful person would do in the same situation to
10 prevent the foreseeable loss of embryos during the IVF process.

11 127. Defendants acted willfully, wantonly, and with a conscious disregard for the safety
12 of users of their embryo culture media, including Plaintiffs, because Defendants were aware of
13 the dangerous consequences of not properly or adequately testing their embryo culture media
14 (specifically the Recalled Lots of Global Media), Defendants knew or should have known the
15 embryo culture media (specifically, the Recalled Lots of Global Media) lacked vital nutrients
16 such that it posed a severe risk to irreplaceable developing human embryos, and Defendants
17 failed to recall the Global Media before it was used to culture Plaintiffs' embryos.

18 128. Defendants' failure to use reasonable care in designing, manufacturing, and
19 selling its Global Media was a substantial factor in causing Plaintiffs severe emotional distress.
20 Defendants' misconduct has irreparably breached trust and caused uncertainty, anxiety, and fear
21 among Plaintiffs and other affected families.

22 129. As a result of Defendants' negligence, Plaintiffs were harmed as described herein.

23 130. Defendants' negligence was a substantial factor in causing Plaintiffs' injuries.

24 131. As a foreseeable, direct and proximate result of the harm to Plaintiffs'
25 reproductive material caused by Defendants' negligence, Plaintiffs have suffered and continue to
26 suffer injuries in an amount to be determined at trial, including severe emotional distress
27 consisting of worry, shock, fright, horror, anguish, suffering, grief, anxiety, and nervousness. A
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1 reasonable person in Plaintiffs' position would sustain emotional distress as a result of
2 Defendants' conduct described herein.

3 **SIXTH CAUSE OF ACTION**

4 **NEGLIGENT FAILURE TO RECALL**

5 132. Plaintiffs incorporate the above and below allegations by reference.

6 133. Defendants acted negligently by failing to recall the Global Media prior to its use
7 on Plaintiffs' reproductive material.

8 134. At all times relevant herein, Defendants designed, manufactured, produced,
9 distributed, maintained, tested, supplied and/or sold the defective Global Media.

10 135. Given the special relationship arising from the nature of the products Defendants
11 market and sell, Defendants owed Plaintiffs a duty to exercise reasonable care with respect to the
12 Global Media so as to avoid damaging Plaintiffs' reproductive material and jeopardizing their
13 embryos' health and development. Embryo culture and development are intertwined with
14 Plaintiffs' most vital concerns, including comfort, happiness, and personal welfare.

15 136. Defendants knew or reasonably should have known that, when used as intended,
16 the defective Global Media was likely to present a danger to reproductive material. Defendants
17 knew or reasonably should have known that the Global Media, when used on reproductive
18 material, would damage and/or destroy human cells, render them unusable, and prevent their
19 development. Moreover, Defendants knew or reasonably should have known that upon use of
20 the defective Global Media, Plaintiffs' embryos would be damaged, destroyed, or rendered
21 unusable.

22 137. When Defendants sold the Global Media for use on patients', including
23 Plaintiffs', reproductive material, Defendant knew or reasonably should have known that the
24 Global Media was defective, including, but not limited to, by destroying, damaging, rendering
25 unusable, and/or preventing the development of fertilized eggs.

26 138. Nevertheless, Defendants did not recall, repair, or warn of the danger posed by the
27 defective Global Media prior to its use on Plaintiffs' developing embryos.

28

1 146. Plaintiffs owned or had the right to possess their reproductive material—their
2 fertilized eggs—that was damaged, destroyed, or rendered unusable by Defendants’ Global
3 Media.

4 147. Defendants intentionally interfered with Plaintiffs’ possession of their fertilized
5 eggs by manufacturing a defective product that damaged and/or destroyed the material instead of
6 safely culturing the fertilized eggs to develop into healthy embryos, and by failing to recall or
7 warn about the dangers of this product before it was used on Plaintiffs’ reproductive material.

8 148. Plaintiffs did not consent to or authorize the use of a faulty and defective culture
9 media on their fertilized eggs.

10 149. Defendants caused physical damage to Plaintiffs’ personal property when the
11 Global Media damaged, destroyed, or rendered unusable their fertilized eggs.

12 150. Defendants impaired the condition, quality, or value of Plaintiffs’ personal
13 property when the Global Media prevented the fertilized eggs from developing into blastocysts.

14 151. Defendants’ interference with Plaintiffs’ reproductive material proximately caused
15 harm to Plaintiffs, as described herein, including by damaging, destroying, or rendering unusable
16 their embryos.

17 152. As a foreseeable, direct and proximate result of the harm to Plaintiffs’
18 reproductive material caused by Defendants’ trespass, Plaintiffs have suffered and continue to
19 suffer injuries in an amount to be determined at trial, including severe emotional distress
20 consisting of worry, shock, fright, horror, anguish, suffering, grief, anxiety, and nervousness. A
21 reasonable person in Plaintiffs’ position would sustain emotional distress as a result of
22 Defendants’ conduct described herein.

23 **EIGHTH CAUSE OF ACTION**

24 **UNJUST ENRICHMENT**

25 153. Plaintiffs incorporate the above and below allegations by reference.

26 154. Plaintiffs conferred a tangible and material economic benefit on Defendants by
27 purchasing the defective Global Media.

28 155. Defendants voluntarily and readily accepted and retained the benefits.

