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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

CLF 007, an Individual; and CLF 008, an Individual,

Plaintiffs,

vs.

COOPERSURGICAL, INC.; and THE COOPER COMPANIES, INC.,

Defendants.

Case No.

COMPLAINT FOR:

(1) STRICT PRODUCTS LIABILITY—MANUFACTURING DEFECT

(2) STRICT PRODUCTS LIABILITY—DESIGN DEFECT

(3) STRICT PRODUCTS LIABILITY—FAILURE TO WARN

(4) NEGLIGENCE/GROSS NEGLIGENCE

(5) NEGLIGENT FAILURE TO RECALL

(6) UNJUST ENRICHMENT

(7) TRESSPASS TO CHATTELS

JURY DEMAND

Plaintiffs CLF 007 and CLF 008 (collectively, "Plaintiffs") respectfully bring this Complaint against Defendants COOPERSURGICAL, INC. ("CooperSurgical") and THE COOPER COMPANIES, INC. ("The Cooper Companies") (hereinafter, collectively, "Defendants"), and allege as follows:

NATURE OF THE ACTION

1. Starting a family is a sacred endeavor that encompasses the key aspects of human existence: love, connection, growth, and legacy. For many, it is an experience filled with joy and excitement. For others, problems pertaining to infertility can make the process stressful and frustrating. In the United States, about 1 in 5 women who have not previously had a child, aged 15 to 49, are unable to get pregnant after one year of trying.[1] Additionally, about 1 in 4 of these women will have difficulty carrying a pregnancy to term.[2] Studies also show that male-factor infertility affects about 10 to 15 percent of men who are trying to conceive in the United States.[3] Due to these complications, many couples turn to Assisted Reproductive Technology ("ART") to help grow their families.

2. Plaintiffs used ART so they could try and have their first child. They placed their trust in the process to help them fulfill their dreams of having children. Unfortunately, Defendants' defective embryo culture media—a crucial supply used in In Vitro Fertilization ("IVF")—compromised, delayed development, or completely destroyed all fifteen (15) of Plaintiffs' healthy,

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[1] *Infertility: Frequently Asked Questions*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/reproductive-health/infertility-faq/?CDC_AAref_Val=https://www.cdc.gov/reproductivehealth/infertility/index.htm (last visited Feb. 6, 2024).

[2] *Id.*

[3] *Male Infertility*¸ CLEVELAND CLINIC, https://my.clevelandclinic.org/health/diseases/17201-male-infertility, (last visited June 13, 2024).

fertilized embryos. Defendants not only interfered with what should have been a happy, fulfilling experience, but they directly impeded the creation of human life.

3. Because of Defendants' actions, Plaintiffs' hopes of having children were crushed. Plaintiffs saved up and spent thousands of dollars on their fertility procedures and were left with nothing to show for their efforts. Plaintiffs now must weigh the mental, physical, and financial costs of going through another fertility treatment cycle —with no guarantee of success comparable to what they should have obtained if not for Defendants' product—with their dreams of building their family. This is a moral dilemma that could have been avoided had Defendants properly manufactured and tested their culture media.

4. Defendants manufactured, marketed, promoted, distributed, and/or sold media to be used for culturing and development of human embryos. Defendants marketed that their media provided "an optimized in vitro environment,"[4] which is necessary to ensure that fertilized human eggs can survive and develop into embryos viable for implantation.

5. Defendants further represented that they properly and adequately tested their embryo culture media before making the media available to the public, including clinics and/or healthcare practitioners who would use such embryo culture media for the storage of human embryos. They further claimed: "Our world class ISO 13485 and ISO 9005 certified manufacturing site consistently maintains the highest standards for product quality and reliability."[5]

6. Despite these representations, Defendants did not sufficiently test the embryo culture media that they manufactured, marketed, promoted, distributed, and/or sold. As a result,

[4] *Optimize Your Results*, COOPERSURGICAL, (April 25, 2017) https://coopersurgicalfertility-jp.com/wp-content/uploads/Culture-Media-Brochure-V3-US_web.pdf, (last visited June 13, 2024).
[5] *Id.*

they sold defective lots of embryo culture media, which turned out to lack nutrients critical to embryonic development.

7. Defendants' manufacturing, marketing, promoting, distributing, and/or selling their defective embryo culture media resulted in the death of Plaintiffs' developing embryos.

8. Only after Plaintiffs' embryos died due to Defendants' defective embryo culture media did Defendants recall multiple lots of their embryo culture media, including a lot that ruined Plaintiffs' embryos.

PARTIES

9. **Plaintiff CLF 007** is a citizen of Roseburg, Oregon.

10. **Plaintiff CLF 008** is a citizen of Roseburg, Oregon.

11. Given the sensitive nature of their claims, Plaintiffs request this Court to grant a protective order pursuant to Federal Rule of Procedure 26(c) to permit them to proceed under pseudonyms to ensure Defendants keep Plaintiffs' identities confidential throughout the pendency of the lawsuit thereafter. Plaintiffs intend to file a motion for a protective order, if requested by the Court or Defendants, to proceed under pseudonyms.

12. **Defendant The Cooper Companies** is a global medical device corporation boasting worldwide revenues of $3.6 billion. It is a Delaware corporation with its principal place of business in Alameda County, California. At all relevant times herein, Defendant The Cooper Companies was and is authorized to conduct business within the State of Oregon, and distributed its products, including the above-referenced embryo culture media, within the State of Oregon. Indeed, Plaintiffs' developing embryos were placed in the above-referenced embryo culture media in a fertility clinic in Oregon, where Defendant had distributed its products.

13. On information and belief, The Cooper Companies exercises a significant degree of control over its subsidiary, CooperSurgical. Indeed, The Cooper Companies employs and controls CooperSurgical's top executive, President Holly Sheffield. The Cooper Companies also heavily advertises that it is a medical device company that elevates standards of care with devices for women's health.

14. **Defendant CooperSurgical** is a wholly owned subsidiary of The Cooper Companies. CooperSurgical is a Delaware corporation, with its principal place of business in Trumbull, Connecticut. Defendant primarily manufactures medical devices for women's healthcare and fertility markets. At all relevant times herein, Defendant CooperSurgical was and is authorized to conduct business within the State of Oregon, and distributed its products, including the above-referenced embryo culture media, within the State of Oregon. Indeed, Plaintiffs' developing embryos were placed in the above-referenced embryo culture media in a fertility clinic in Oregon, where Defendant had distributed its products.

15. Plaintiffs reserve the right, pursuant to Federal Rules of Civil Procedure 15, to seek leave to identify additional parties, whom Plaintiffs are currently unaware of, who are responsible for Plaintiffs' harm, as alleged herein.

16. Plaintiffs are informed and believe, and on that basis allege, that at all times material hereto: Defendants were, actually or ostensibly, the agents, representatives, and/or employees of each and every other Defendant; Defendants were acting within the course and scope of said alternative personality, capacity, identity, agency, representation, and/or employment; Defendants were the trustees, partners, servants, joint venturers, shareholders, co-conspirators, contractors, and/or employees of each and every other Defendant; the acts and omissions alleged herein, while committed individually, were made by Defendants through such capacity, and within the scope of

their authority, and with the permission and consent of each and every other Defendant, as to make Defendants jointly and severally liable to Plaintiffs for the acts and omissions alleged herein.

JURISDICTION AND VENUE

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

18. This Court has personal jurisdiction over all Defendants. Plaintiffs' injuries arise out of Defendants' contacts with the State of Oregon. Defendants purposefully distributed their products, including the above-referenced embryo culture media, to Oregon fertility clinics. By doing so, Defendants intended for citizens of Oregon undergoing IVF procedures to be subject to the effects of their products. Plaintiffs had their embryos placed in Defendants' embryo culture media in Oregon, as a result of Defendants' intentional and purposeful distribution of the products, and ultimately, Defendants' distribution led to the impaired development or outright destruction of Plaintiffs' embryos.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims at issue here occurred in this judicial district.

GENERAL FACTURAL ALLEGATIONS

A. General Background of Assisted Reproductive Technology

20. Many people struggling with infertility opt to work with clinics specializing in ART. In broad terms, ART describes fertility-related treatments in which human eggs, embryos, and/or sperm are manipulated to produce a pregnancy or preserve a client's ability to produce a pregnancy later in life. The most common type of ART is in vitro fertilization ("IVF").

21. To prepare for the IVF process, the patient injects a variety of hormones and medications to stimulate the ovaries and develop eggs. Then, during the IVF process, a fertility doctor surgically extracts eggs from a woman. Then, scientists called embryologists fertilize those eggs in a laboratory with sperm, and they are cultured to create viable embryos. The embryos can either be cryopreserved for later use or used right away by transplanting it into a woman's uterus to begin a pregnancy.

22. Unlike sperm collection, the process of extracting human eggs is lengthy, invasive, and physically-taxing. Female patients undergo a strict regimen of injections, which result in an array of side effects, including, but not limited to bruising, redness, swelling, or discomfort at the injection site, bloating, weight gain, water retention, bone loss, fatigue, headaches, muscle aches, abdominal pain, breast tenderness, vaginal yeast infections, vaginal dryness, bone loss, hot flashes, mood swings, depression, nausea, vomiting, diarrhea, clots in blood vessels and strokes. Women injected with these pharmaceuticals also run the risk of a potentially fatal allergic reaction to the drugs. And up to 2% of women will develop Ovarian Hyperstimulation Syndrome ("OHSS"), a life-threatening condition that can cause increased ovarian size, nausea and vomiting, accumulation of fluid in the abdomen, breathing difficulties, increased concentration of red blood cells, kidney and liver problems, blood clots, kidney failure, and death.

23. On top of this, female patients must undergo frequent transvaginal ultrasound monitoring and other tests to monitor egg development, and finally a surgery to collect the eggs. The collection surgery is conducted under anesthesia, where the eggs are extracted with a large needle inserted through the vaginal wall. Risks of the egg retrieval procedure include infection, bleeding, trauma to intra-abdominal organs, allergic reactions, low blood pressure, nausea, vomiting, and in rare cases, death. After the retrieval procedure, a patient often experiences

residual pain for about a week and may need bedrest for several days. This physically burdensome process is also expensive and time consuming.

24. If and when viable eggs are retrieved, sperm is mixed with the eggs in a laboratory to fertilize the eggs, and they are cultured to create developed embryos. During this process, the eggs and sperm are submerged in culture media, which is a nutrient-rich liquid designed to foster embryonic development by replicating the environment of a woman's reproductive system.

25. If the embryos reach the proper stage of development, they can either be transferred into a woman's uterus for the purposes of achieving pregnancy, or they can be frozen, to allow families to transfer at a later date.

B. The Importance of Embryo Culture Media in IVF

26. Embryo culture media plays a pivotal role in the IVF embryology laboratory, serving as the essential substance in which an egg is immersed, typically in a petri dish, when it is fertilized and during its initial development in the lab. Culture media is composed of a salt solution with the addition of other components, such as carbohydrates (pyruvate, lactate, and glucose), amino acids, and magnesium.

27. Magnesium is a critical ingredient of embryo culture media. Magnesium is an essential nutrient in embryonic and human fetal growth.[6] Studies have shown that deficient magnesium levels in culture media can cause embryo growth to arrest.[7]

28. After egg retrieval, the embryologist fertilizes the eggs with sperm, and then the fertilized eggs are given five to seven days in the culture media to develop to the blastocyst stage.

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[6] Yuko Komiya et al., *Magnesium and Embryonic Development*, MAGNES RES. (2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4207262/#:~:text=More%20recent%20epidemiological%20studies%20have,SGA)%20babies%20%5B7%5D, (last visited June 21, 2024).
[7] *Id.*

29. Embryologists closely monitor the cell development during this time period to determine if the embryos are developing as intended and in line with expected timelines. The count begins on "Day 0," or the day the eggs (or oocytes) were fertilized with sperm. On Day 1, the embryologists assess the eggs to see which have successfully fertilized and become embryos. Between Day 1 and Day 3, the embryos begin cell division in the "cleavage stage." By Day 4, the embryos typically enter the "morula stage," characterized by a compacted mass of cells. By Day 5, the embryo re-expands to the blastocyst stage, in which the embryo shows two distinct groups of cells: a distinct inner cell mass and an outer globe of cells. All embryo development is slightly different, and some embryos may develop later than others, but typically fertilized eggs that do not develop to blastocyst by the 6th day are not considered viable. The embryo culture media in a petri dish supports and protects the developing embryos in these critical early stages, just as a woman's body would do during natural conception.

C. The Unique and Precious Nature of Human Embryos

30. Human eggs are a limited and precious resource. Every woman is born with a specific and limited number of eggs that does not increase but rather decreases over the course of her lifetime. In addition to the number decreasing, the egg quality also diminishes over time, with miscarriages and chromosomal abnormalities occurring more frequently for women who are older at the time of a natural conception and pregnancy. The most determinative factor in IVF success is the woman's age when her eggs were extracted. Specifically, eggs retrieved before a woman is thirty-five (35) years old are most likely to produce viable, healthy embryos. Thus, one purpose of embryo preservation and storage is to allow couples to preserve reproductive material so that the embryos may be implanted at a later time, allowing for flexibility in family planning.

31. Embryos offer the opportunity to fulfill a fundamental human desire: to become a parent and start a family. Reproductive material has immense emotional and personal value. Additionally, ART procedures create the opportunity for people to give to others—to donate eggs and embryos to other families struggling with infertility, or to support beneficial research.

32. As leaders in the fertility industry, Defendants are fully aware of why families turn to IVF, why IVF services are so critical, and the emotional and financial resources required to undergo IVF procedures. Defendants know that fertility patients rely on them to create safe and effective products, so as not to jeopardize their health, or the health of their future children.

33. Indeed, the success or failure of creating healthy embryos through IVF has substantial emotional and psychological ramifications for those seeking to become parents. Losing embryos provokes fear, devastation, and despair. Given the ever-closing window of a woman's fertility, many experience grief, anguish, hopelessness, and disappointment when a treatment "fails," or does not result in pregnancy. The potential for serious emotional harm and loss of valuable, irreplaceable property proves that emotional distress stemming from embryo loss or damage is predictable and foreseeable.

D. Defendants' Consolidation of the Fertility and Reproductive Health Device Markets

34. The Cooper Companies and CooperSurgical have worked quickly to solidify their primacy in the lucrative fields of reproductive and fertility healthcare, acquiring competitors to secure their place. In April 2018, CooperSurgical acquired LifeGlobal, a leading global provider of in vitro fertilization devices—including IVF media—for $125 million dollars. [8] In January 2021,

[8] *The Cooper Companies Acquires the LifeGlobal Group, Expanding Fertility Solutions Portfolio*, THE COOPER COMPANIES (April 18, 2023), https://www.coopersurgical.com/wp-content/uploads/The-Cooper-Companies-Acquires-The-LifeGlobal-Group-Expanding-Fertility-Solutions-Portfolio.pdf, (last visited June 21, 2024).

it acquired Embryo Options, a company that provided streamlined case management and billing options for fertility clients.[9] The following month, it acquired AEGEA Medical, a medical manufacturing company that creates devices used in reproductive medicine. [10] In March 2021, it acquired Safe Obstetric Systems, another company that manufactures reproductive medical devices, for $52 million dollars. [11]

35. In November of the same year, CooperSurgical acquired Generate Life Sciences, a purveyor of donor sperm and eggs as well as other fertility services, for $1.6 billion. In February 2022, CooperSurgical acquired Cook Medical's reproductive health business for $875 million.[12] This company produces medical devices for fertility, obstetrics, gynecology, in vitro fertilization (IVF), and assisted reproductive technology (ART).[13]

36. Following this significant consolidation of the fertility medical device industry, fertility clinicians have reported a decline in Defendants' customer service and product quality. In

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[9] Natalie Missakian, *Trumbull's CooperSurgical Acquires Illinois Firm*, HARTFORD BUSINESS (Jan. 6, 2021), https://www.hartfordbusiness.com/article/trumbulls-coopersurgical-acquires-illinois-firm, (last visited June 21, 2024).

[10] *CooperSurgical Buys US Firm AEGEA Medical*, NS MEDICAL DEVICES (Feb. 3, 2023), https://www.nsmedicaldevices.com/news/coopersurgical-aegea-medical/, (last visited June 21, 2024).

[11] Natalie Missakian, *CooperSurgical Buys UK Medical Device Maker for $52M*, HARTFORD BUSINESS (March 3, 2021), https://www.hartfordbusiness.com/article/coopersurgical-buys-uk-medical-device-maker-for-52m, (last visited June 21, 2024).

[12] *CooperCompanies to Acquire Cook Medical's Reproductive Health Business*, COOPERCOMPANIES (Feb. 7, 2022), https://investor.coopercos.com/news-releases/news-release-details/coopercompanies-acquire-cookr-medicals-reproductive-health, (last visited June 21, 2024).

[13] *CooperCompanies to Acquire Cook Medical's Reproductive Health Business*, MEDICAL DEVICE NETWORK (Feb. 8, 2022), https://www.medicaldevice-network.com/news/coopercompanies-cook-medicals-reproductive-health/?cf-view, (last visited June 21, 2024).

fact, on information and belief, the number of Defendants' publicly disclosed product recalls skyrocketed in 2023 as compared to the previous seven years.

E. Defendants Manufacture and Sell Embryo Culture Media

37. Cooper Companies consists of two business units: (1) CooperVision, which manufactures contact lenses and (2) CooperSurgical, which manufactures fertility products and medical devices for the women's healthcare market. Cooper Companies represents that "Our two business units," CooperVision and CooperSurgical, comprise "who we are."[14]

38. Operating through CooperSurgical, Defendant Cooper Companies is a prominent leader in the global IVF market. The Cooper Companies has close involvement of in the operations of CooperSurgical. In fact, Cooper Companies employs and controls CooperSurgical's top executive, President Holly Sheffield, whose employment agreement is exclusively with Cooper Companies.[15] Ms. Sheffield works predominantly from one of The Cooper Companies' offices. Three of CooperSurgical's other principals—Cynthia Wallace, Secretary; Agostino Ricupati, Director and Brian Andrew, Treasurer and Vice President—are also employed at The Cooper Companies' principal address, where CooperSurgical lists as its mailing address, according to the report CooperSurgical filed with the Connecticut Secretary of State in 2024. Lastly, The Cooper Companies' FY23 Form 10-K lists "CooperSurgical research & development and administrative

[14] *Who We Are*, COOPERCOMPANIES, https://www.coopercos.com/our-company/ (last visited June 6, 2024).

[15] *See Form 10-K – The Cooper Companies, Inc.*, COOPERCOMPANIES (Dec. 8, 2023), https://investor.coopercos.com/node/26416/html; *see also* Employment agreement between The Cooper Companies and Holly Sheffield (incorporated and attached to Cooper Companies 2023 10-K, available at: https://www.sec.gov/Archives/edgar/data/711404/000071140419000026/coo-ex104_2019x04x30x10q.htm). Under her employment agreement with The Cooper Companies, Ms. Sheffield "shall render exclusive, full-time services to [The Cooper Companies, Inc.] and its subsidiaries, and exercise such authority and perform such duties as assigned to [Ms. Sheffield] by [The Cooper Companies'] Chief Executive Officer (the 'CEO')." *Id*.

offices" as one of the operations within its principal facilities where it maintains its own executive offices.[16]

39. Together, Defendants have positioned themselves as leaders in the reproductive health and infertility treatment fields. Cooper Companies claims that "[w]e elevate standards of care with best-in-class devices for . . . women's health, and fertility."[17] CooperSurgical describes itself as "a leading fertility and women's health company dedicated to putting time on the side of women, babies, and families at the healthcare moments that matter most in life."[18]

40. Specifically describing its role in the fertility space, CooperSurgical's website promises that "[w]hen you partner with us you become part of a truly global network of scientific leaders, embryologists and clinical training experts, ready to support you with highly specialized solutions, both for individual clinics and across large organizations. By providing you with optimal products, service and training our aim is to offer you the best possible support to drive the efficiency of your clinic – and achieve the best possible results."[19]

41. Defendants also market and represent that their embryo culture media is subject to rigorous testing to ensure it is the highest quality embryo culture media available. Specifically, CooperSurgical claims "[q]uality is our cornerstone," stating its "products undergo thorough quality testing before being released, to ensure consistent quality for your piece of mind."[20]

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[16] *Form 10-K – The Cooper Companies, Inc.*, *supra* note 15.
[17] COOPERCOMPANIES, https://www.coopercos.com/#elevating (last visited June 6, 2024).
[18] *Our Mission,* COOPERSURGICAL, https://www.coopersurgical.com/about-us/ (last visited June 13, 2024).
[19] *Bringing Knowledge to Life,* COOPERSURGICAL, https://fertility.coopersurgical.com/about-us/ (last visited June 13, 2024).
[20] *Quality and Certifications*, COOPERSURGICAL, https://www.coopersurgical.com/healthcare-providers/support-compliance/quality-certifications#qualityCerts (last visited June 13, 2024).

42. However, despite Defendants' quality assurances, on information and belief, CooperSurgical and The Cooper Companies both failed to adequately monitor their manufacturing system and refill the magnesium hopper on the assembly line when it was empty. CooperSurgical and The Cooper Companies both allowed for the continued production of embryo culture media without ensuring that this essential ingredient was included. CooperSurgical and The Cooper Companies both allowed this critical manufacturing failure to occur even though CooperSurgical and The Cooper Companies both knew or should have known, the inclusion of magnesium in the culture media is critical to embryo development. Specifically, CooperSurgical and The Cooper Companies both knew or should have known that the lack of magnesium in culture media may result in the demise of the patient's embryos and increase cost to both the patient and the clinics.

43. Nonetheless, CooperSurgical marketed that all their embryo culture media was properly formulated and tested, and thus that it could be relied upon that it contained the nutrients necessary for growing human embryos.

44. Defendants manufactured, marketed, distributed, and/or sold their CooperSurgical-branded embryo culture media while promoting that their embryo culture media was tested by superior methods, e.g., a Mouse Embryo Assay, to ensure that the media was properly formulated. All the while, Defendants knew or should have known that their embryo culture media was not properly and/or adequately tested and/or inspected, and thus lacked an ingredient critical to the development of human embryos.

F. Plaintiffs' Embryos Were Destroyed By the Recalled Embryo Culture Lots

45. Throughout their nearly fifteen (15) years of marriage, Plaintiffs have attempted to conceive naturally. Unable to do so successfully, Plaintiffs turned to ART to try to fulfill their

dream of having biological children. Plaintiffs' sense of hope was renewed when they learned that through IVF, they may finally be able to become parents.

46. In November of 2023, at the age of forty (40), Plaintiff CLF 007 underwent an egg-retrieval procedure that successfully yielded nineteen (19) eggs.

47. From those eggs, fifteen (15) fertilized embryos were created using the CLF 007's eggs and CLF 008's sperm. Plaintiffs were incredibly excited that they should have a high number of embryos reach blastocyst on Day 5.

48. Plaintiffs' excitement was short-lived. Plaintiffs doctor informed them that *none* of their fifteen (15) fertilized embryos had made it to blastocyst on Day 5. This was an incredibly devastating and unusual result.

49. Plaintiffs learned that, on Day 6, six (6) of their embryos reached the appropriate stage. However, due to their late development, these embryos had a lesser chance of resulting in a successful, healthy pregnancy.

50. Nonetheless, Plaintiffs tried to remain grateful for the embryos that did develop. After undergoing genetic testing, Plaintiffs discovered that they had one (1) genetically normal embryo, which they later discovered was a boy. Although Plaintiffs had hoped for more viable embryos, they were so excited for their "baby boy." At this point, Plaintiffs believed that their low numbers were solely the fault of their own genetic material.

51. A month after Plaintiff 007's retrieval, Plaintiffs' doctor informed them that their embryos were exposed to Defendants' Recalled Embryo Culture Lots, which was almost certainly the cause of the damage and destruction of Plaintiffs' precious embryos. Additionally, given the exposure, there is no good information on whether the couple's precious "boy" embryo was usable or if it was likely to have developmental or other defects in pregnancy or later in life. In their

hearts, Plaintiffs considered this to be the "death" of their baby boy—since they were unwilling to risk transferring an embryo that could have potentially grave long-term health impacts. Plaintiffs were upset, frustrated, and deeply saddened over this preventable tragedy.

52. As the result of Defendants' conduct, Plaintiff CLF 007 and CLF 008's ability to have children has been severely impacted. Further, Plaintiffs expended significant financial resources to undergo these fertility procedures, which were unsuccessful in yielding pregnancy, due to Defendants' actions.

53. Plaintiffs struggled to decide whether they would undergo another IVF cycle. Not only were they worried about the physical toll the procedures took on Plaintiff 007, but they were unsure they would be able to financially afford another cycle. Plaintiffs had already sold one of their cars to finance their failed cycle. Plaintiffs spent months saving up—feeling that this cycle was their "last shot" at being parents. Both Plaintiffs 007 and 008 also used up much of their available time-off balances at work to attend their various appointments and procedures.

54. The process of trying to start a family has already been a long and painful one for Plaintiffs 007 and 008. Defendants' actions and Plaintiffs' failed cycle has compounded Plaintiffs' stress and pain.

55. It is hard for Plaintiffs to convey the toll that this experience has taken on them. Both Plaintiff 007 and 008 often find themselves crying and feeling angry, helpless, and hopeless. They feel as though they have been mourning this loss for months.

56. Plaintiffs initially struggled to open up and seek counseling to help them heal from their grief. Plaintiffs are now both in therapy and they attend meetings for various support groups. These appointments have required Plaintiffs to take additional time off from work.

57. Plaintiffs did eventually make the challenging decision to undergo another IVF cycle. This has caused them further financial strain, and has taken a particular toll on Plaintiff 007, who must again subject herself to the many medications required to prepare for retrieval. Plaintiffs want to feel excited and hopeful for the results of their cycle—but they already feel defeated. Plaintiff 007's advanced age from when they did their original cycle with the CooperSurgical defective media and now means that Plaintiffs have a significantly lower chance of yielding any useable embryos. Defendants have marked the experience with fear, trepidation, and hopelessness.

58. Ultimately, this loss had caused both Plaintiffs a range of emotional distress, including but not limited to deep sadness, guilt, hopelessness, shame, disappointment, and anger. Plaintiffs struggle to find the confidence to continue with this emotionally taxing journey. Additionally, Plaintiff 007 has undergone significant physical strain due to her participation in the original, wasted cycle, as well as the new cycle necessitated by Defendants' faulty product. Plaintiffs have been devastated by the destruction of their embryos, and the uncertainty this situation has caused them for their ability to build the family they desire. Plaintiffs may never fully mentally recover from this preventable tragedy.

G. Defendants' Recall of Their Embryo Culture Media

59. On or about December 5, 2023, Defendants issued a recall of several lots of their embryo culture media, including LGGG Lots 231020-018741, 231020-018742, and 231020-018743 (the "Recalled Embryo Culture Lots.")

60. However, on information and belief, Defendants intentionally did not immediately disseminate notice of the Recalled Lots publicly or throughout the IVF community.

61. The Recall Notice states "CooperSurgical has become aware of a sudden increase in complaints regarding the aforementioned lots of this product," acknowledged that the "risk to

health is impaired embryo development prior to the blastocyst stage," and directed clinics who purchased the product to quarantine and return it.

62. According to regulatory authorities, CooperSurgical issued the recalls because the recalled batches of the Global Media were deficient in magnesium.[21]

H. CooperSurgical Knew or Should Have Known That the Recalled Embryo Culture Media Lots Posed an Unreasonable Risk to Developing Human Embryos

63. On information and belief, Defendants previously have manufactured and sold numerous products used in ART, including media used in the IVF process, that were defective and sometimes recalled.[22]

64. On information and belief, Defendants did not properly monitor their assembly line manufacturing process, and as such, failed to properly refill the magnesium hopper when it was empty.

65. On information and belief, Defendants continued to manufacture embryo culture media despite the empty magnesium hopper, and as a result, produced embryo culture media that lacked a nutrient critical for embryonic development.

66. On information and belief, Defendants did not properly test the impacted lots of their Embryo Culture Media until after receiving formal complaints from numerous fertility

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[21] *CooperSurgical Recalls Faulty I.V.F. Liquid After Destroying Embryos*, LA WEEKLY, (Feb. 16, 2024) https://www.laweekly.com/coopersurgical-recalls-faulty-i-v-f-liquid-destroying-embryos/ ("Regulatory authorities have revealed that CooperSurgical issued recalls for several batches of its I.V.F. product due to a crucial nutrient, Magnesium, being deficient"), (last visited June 21, 2024).

[22] *See, e.g., Urgent: Media Field Safety Corrective Action - SAGE Vitrification Media Kit*, COOPERSURGICAL, (Feb. 27, 2023), available at: https://www.igj.nl/binaries/igj/documenten/waarschuwingen/2023/02/27/coopersurgical-tbd-sage-vitrification-media-kit/IT2075448+CooperSurgical+tbd+Sage+Vitrification+Media+Kit+_v2.pdf, (last visited June 21, 2024).

clinicians—including those who worked on Plaintiffs' embryos—that developing embryos were dying due to their product.

67. As manufacturers and distributors of numerous ART products, including embryo culture media, Defendants knew that defective embryo culture media could prevent human embryos from properly developing. Accordingly, Defendants knew it was vitally important that their embryo culture media was properly tested and/or inspected prior to the distribution of such embryo culture media.

68. Despite this, Defendants failed to properly inspect and/or test their embryo culture media, including the recalled embryo culture media lots. Defendants knowingly put their embryo culture media into the market when they knew or should have known that the recalled embryo culture media lots posed a substantial and unacceptable risk to developing human embryos, including Plaintiffs' embryos.

69. As manufacturers of numerous products for use in ART, Defendants knew that people go to extraordinary lengths to obtain and use viable human embryos. Defendants also knew that people place extreme value on their viable embryos, make substantial emotional and financial investments for their embryos, and that such people expect that great care will be taken to preserve and protect the embryos to avoid the irreparable harm of the death of their embryos.

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

FIRST CLAIM FOR RELIEF

STRICT PRODUCTS LIABILITY—MANUFACTURING DEFECT

71. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

72. At all times relevant herein, Defendants manufactured, distributed, and/or sold embryo culture media to be used with developing human embryos, including the Recalled Embryo Culture Media Lots.

73. The Recalled Embryo Culture Media Lots were in defective condition and were unreasonably dangerous at the time they left control of Defendants. The Recalled Embryo Culture Media Lots were in a condition that rendered them unsafe for normal or anticipated handling, because they lacked ingredients that are necessary for safe embryonic development. In other words, when used as instructed, the Recalled Embryo Culture Media Lots had the opposite effect—they inhibited embryo development. The Recalled Embryo Culture Media Lots were also dangerous to an extent beyond which would be contemplated by the ordinary consumer, because the ordinary consumer would not assume that a product that claims to foster embryonic development would be formulated in a way that would actually harm embryos and inhibit safe embryonic development. The Recalled Embryo Culture Media Lots did not change in condition after they left Defendants' possession.

74. At the time the Recalled Embryo Culture Media Lots left Defendants' possession, the Recalled Embryo Culture Media Lots contained a manufacturing defect such that they differed from Defendants' intended result. This deviation included, but was not necessarily limited to, the lack of magnesium present in the Recalled Embryo Culture Media Lots, such that the Recalled

Embryo Culture Media Lots posed a fatal harm to developing human embryos upon their use for the culture and development of said embryos.

75. Embryo culture media from the Recalled Embryo Culture Media Lots was used (as intended), and it came into contact with Plaintiffs' developing embryos, which resulted in the tragic destruction of Plaintiffs' developing embryos.

76. The defect in the embryo culture media in the Recalled Embryo Culture Media Lots was a substantial factor in causing Plaintiffs' harm.

77. Defendants acted with a conscious disregard for the safety of consumers and/or users of its embryo culture media, including Plaintiffs, because, without limitation, Defendants were aware of the dangerous consequences of not properly or adequately testing their embryo culture media (including specifically the Recalled Embryo Culture Media Lots), they knew or should have known the embryo culture media (specifically, the Recalled Embryo Culture Media Lots) lacked vital nutrients such that it posed a severe risk to irreplaceable developing human embryos, and failed to recall the Recalled Embryo Culture Media Lots before the embryo culture media was used to culture and develop Plaintiffs' embryos.

SECOND CLAIM FOR RELIEF

STRICT PRODUCTS LIABILITY—DESIGN DEFECT

78. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

79. Defendants designed, manufactured, distributed, and/or sold embryo culture media, including the Recalled Embryo Culture Media Lots, or caused such embryo culture media to be designed, manufactured, and/or sold.

80. The Recalled Embryo Culture Media Lots were in defective condition and were unreasonably dangerous at the time they left control of Defendants. The Recalled Embryo Culture Media Lots were in a condition that rendered them unsafe for normal or anticipated handling, because they lacked ingredients that are necessary for safe embryonic development. In other words, when used as instructed, the Recalled Embryo Culture Media Lots had the opposite effect—they inhibited embryo development. The Recalled Embryo Culture Media Lots were also dangerous to an extent beyond which would be contemplated by the ordinary consumer, because the ordinary consumer would not assume that a product that claims to foster embryonic development would be formulated in a way that would actually harm embryos and inhibit safe embryonic development. The Recalled Embryo Culture Media Lots did not change in condition after they left Defendants' possession.

81. The Recalled Embryo Culture Media Lots did not perform as effectively as an ordinary consumer would have expected it to perform when used or misused in a reasonably foreseeable manner.

82. Defendants had actual or constructive notice and knew, or in the exercise of reasonable care and diligence should have known, that the Recalled Embryo Culture Media Lots were defective in their design as discussed herein, including but not limited to their composite materials, resulting in the irreversible damage and destruction of Plaintiffs' developing embryos.

83. The benefits of the Recalled Embryo Culture Media Lots are not outweighed by their risks, particularly considering the potential harm resulting from their use on reproductive materials, including embryos; the likelihood of harm occurring; the feasibility of an alternative safer design at the time of manufacture; and the feasibility of more reliable testing methods and procedures.

84. Defendants had actual or constructive notice and knew, or in the exercise of reasonable care should have known, that the Recalled Embryo Culture Media Lots had significant risks, were defective in design, as discussed herein, and had an unreasonable increased risk of damage or destruction to stored reproductive materials, including embryos.

85. Plaintiffs were irreparably harmed because the Recalled Embryo Culture Media Lots lacked an essential ingredient, magnesium, that was necessary to develop human embryos, such as those belonging to Plaintiffs.

86. As a direct and proximate result of the defective designs of the Recalled Embryo Culture Media Lots, Plaintiffs were harmed as described herein, including but not limited to the destruction of their embryos.

87. The failure of the Recalled Embryo Culture Media Lots to perform safely and effectively was a substantial factor in causing Plaintiffs' harm and damages.

88. Defendants acted with a conscious disregard for the safety of consumers and/or users of their embryo culture media, including Plaintiffs, because, without limitation, Defendants were aware of the dangerous consequences of not properly or adequately testing their embryo culture media (including specifically the Recalled Embryo Culture Media Lots), when it knew or should have known the embryo culture media (specifically, the Recalled Embryo Culture Media Lots) lacked vital nutrients such that it posed a severe risk to irreplaceable developing human embryos, and failed to recall the Recalled Embryo Culture Media Lots before the embryo culture media was used to culture and develop Plaintiffs' embryos.

THIRD CLAIM FOR RELIEF

STRICT PRODUCTS LIABILITY—FAILURE TO WARN

89. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

90. Defendants designed, manufactured, distributed, and/or sold embryo culture media to be used with human embryos, including the Recalled Embryo Culture Media Lots, and/or caused such embryo culture media to be designed, manufactured, distributed, and/or sold.

91. The Recalled Embryo Culture Media Lots were in defective condition and were unreasonably dangerous at the time they left control of Defendants. The Recalled Embryo Culture Media Lots were in a condition that rendered them unsafe for normal or anticipated handling, because they lacked ingredients that are necessary for safe embryonic development. In other words, when used as instructed, the Recalled Embryo Culture Media Lots had the opposite effect—they inhibited embryo development. The Recalled Embryo Culture Media Lots were also dangerous to an extent beyond which would be contemplated by the ordinary consumer, because the ordinary consumer would not assume that a product that claims to foster embryonic development would be formulated in a way that would actually harm embryos and inhibit safe embryonic development. The Recalled Embryo Culture Media Lots did not change in condition after they left Defendants' possession.

92. The Recalled Embryo Culture Media Lots had risks, including but not limited to defective formulation—namely the lack of magnesium, that were known and/or knowable in light of the generally accepted scientific knowledge at the time of manufacture, distribution and/or sale.

93. The risks of defective embryo culture media, including the Recalled Embryo Culture Media Lots, presented a substantial danger, including but not limited to the destruction of

viable embryos, when such embryo culture media was used as intended and/or in a reasonably foreseeable manner.

94. Despite their awareness that its embryo culture media, including the Recalled Embryo Culture Media Lots, was defective and lacked essential nutrients to embryonic development, Defendants failed to warn consumers, including but not limited to Plaintiffs and Plaintiffs' fertility providers who purchased the embryo culture media, that the embryo culture media had not been properly and/or sufficiently tested, and/or lacked ingredients essential to embryonic growth.

95. Neither Plaintiffs nor their fertility providers knew or would have known or recognized the risks of the Recalled Embryo Culture Media Lots.

96. As a direct and proximate result of Defendants' failure to adequately warn of the dangerous effects of the Recalled Embryo Culture Media Lots, Plaintiffs were harmed as described herein, including but not limited to the destruction of their embryos.

97. The lack of sufficient warnings was a substantial factor in causing Plaintiffs' harm and damages. Defective and harmful embryo culture media would not have been used with Plaintiffs' developing embryos if Defendants had provided sufficient warning in advance.

98. Defendants acted with a conscious disregard for the safety of consumers and/or users of their embryo culture media, including Plaintiffs, because, without limitation, Defendants were aware of the dangerous consequences of not properly or adequately testing their embryo culture media (including specifically the Recalled Embryo Culture Media Lots), when they knew or should have known the embryo culture media (specifically, the Recalled Embryo Culture Media Lots) lacked vital nutrients such that it posed a severe risk to irreplaceable developing human

embryos, and failed to recall the Recalled Embryo Culture Media Lots before the embryo culture media was used to culture and develop Plaintiffs' embryos.

FOURTH CLAIM FOR RELIEF

NEGLIGENCE / GROSS NEGLIGENCE

99. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

100. Defendants designed, manufactured, distributed, and/or sold embryo culture media for use with human embryos, including the Recalled Embryo Culture Media Lots, or caused such embryo culture media to be designed, manufactured, and/or sold.

101. As manufacturers of embryo culture media for use with human embryos, Defendants owed a duty, including but not limited to Plaintiffs, to design, manufacture, inspect, and/or test their embryo culture media, including the Recalled Embryo Culture Media Lots, such that their embryo culture media was not defective when used with developing human embryos and/or was properly formulated to contain the ingredients necessary for embryonic development.

102. Defendants owed Plaintiffs a duty to exercise the highest level of care in manufacturing, producing, inspecting, monitoring, and testing of their embryo culture media, including the Recalled Embryo Culture Media Lots, used for its intended purpose in IVF, ART, and/or embryology across the United States. Defendants owed Plaintiffs the highest degree of utmost care when maintaining, caring for, and otherwise protecting Plaintiffs' developing embryos.

103. Defendants owed a duty of care to Plaintiffs to act reasonably in the creation of embryo culture materials and to avoid destroying embryos or jeopardizing the viability of Plaintiffs' developing embryos, as a result of the special relationship between Plaintiffs and

Defendants arising from the extremely sensitive services Defendants decided to perform: protecting and preserving human embryos during the IVF process through the creation of embryo culture media.

104. Defendants created this duty of care through their production of IVF embryo culture media, by marketing it as safe embryo culture media, and through Defendants' presence in the sensitive IVF and ART market and services that Defendants voluntarily undertook.

105. Imposing this duty on Defendants to avoid causing such emotional distress and financial harm is beneficial to public policy of preventing future harm in that Defendants will be motivated to ensure the safety of their IVF embryo culture media.

106. Defendants breached this duty and were negligent in the design, manufacture, inspection, and/or testing of their embryo culture media, including the Recalled Embryo Culture Media Lots, and thus produced an unsafe, dangerous, and defective embryo culture media that guaranteed the failure of embryotic viability during the IVF process. Specifically, Defendants breached this duty by failing to safely produce and further ensure the safety of their defective embryo culture media. Additionally, Defendants breached their duty by failing to inform fertility patients and their medical care providers of the defective nature of the product and by failing to timely recall the Recalled Embryo Culture Media Lots.

107. As a direct and proximate result of Defendants' negligent acts and/or omissions, including but not limited to, failing to properly or adequately test their embryo culture media (including the Recalled Embryo Culture Media Lots), promoting and marketing their embryo culture media as properly tested and safe for use on human embryos despite their knowledge of its defective nature, defectively designing their embryo culture media, defectively manufacturing their embryo culture media, and/or failing to adequately warn of the dangerous effects of the

Recalled Embryo Culture Media Lots, Plaintiffs were harmed as described herein, including but not limited to the destruction of their developing embryos. Additionally, Defendants' breach caused damages in that Plaintiffs are now required to expend additional funds, time, and emotional happiness to go through the IVF process once again.

108. These negligent acts and/or omissions were a substantial factor in causing Plaintiffs' harm and damages.

109. Defendants could have reasonably foreseen that if Defendants' embryo culture media was defective, consumers of the embryo culture media, like Plaintiffs, would have experienced extreme emotional distress as a result of Defendants' breach of their duty of care.

110. It is also foreseeable to Defendants that Defendants' breach would cause such damages as discussed above given that an unsafe and defective embryo culture media would cause developing embryos to stall in development and lose viability. Defendants knew or should have known that embryo culture media is an extremely critical element in the viability of developing embryos.

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

112. Defendants acted willfully, wantonly, and with a conscious disregard for the safety of consumers and/or users of their embryo culture media, including Plaintiffs, because, without limitation, Defendants were aware of the dangerous consequences of not properly or adequately testing their embryo culture media (including specifically the Recalled Embryo Culture Media Lots), they knew or should have known the embryo culture media (specifically, the Recalled Embryo Culture Media Lots) lacked vital nutrients such that it posed a severe risk to irreplaceable

developing human embryos, and failed to recall the Recalled Embryo Culture Media Lots before the embryo culture media was used to culture and develop Plaintiffs' embryos.

113. Defendants' failure to manufacture and ensure the safety of their embryo culture media (including the Recalled Embryo Culture Media Lots) to developing embryos has caused severe emotional distress and economic harm to Plaintiffs. As a result of Defendants' breach of duty, Plaintiffs have been forced to repeat the IVF process and suffer the loss of potential children.

114. Coping with this loss, as well as general infertility and IVF, is often extremely difficult and requires counselling.

115. As a result of this breach on part of Defendants, Plaintiffs suffered damages to be determined at trial, including their lost developing embryos, emotional distress, time, money, and other inconveniences suffered throughout the repetition of the IVF process. A reasonable person would struggle to cope with the losses suffered by Plaintiffs.

FIFTH CLAIM FOR RELIEF

NEGLIGENT FAILURE TO RECALL

116. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

117. At all times relevant herein, Defendants manufactured, distributed, and/or sold embryo culture media for use with human embryos, including the Recalled Embryo Culture Media Lots.

118. As manufacturers of embryo culture media for use with human embryos, Defendants owed a duty, including but not limited to Plaintiffs, to design, manufacture, inspect, and/or test their embryo culture media, including the Recalled Embryo Culture Media Lots, such that their embryo culture media was properly formulated to develop human embryos and/or

contained ingredients essential for embryonic development. Further, these Defendants had an ongoing duty following the manufacture, distribution, and/or sale of their embryo culture media, including the Recalled Embryo Culture Media Lots, to inform purchasers, consumers, and/or others who used their embryo culture media that the embryo culture media was defective and/or lacked essential nutrients critical to developing human embryos, and to immediately recall and/or remove such embryo culture media from the market to prevent harm.

119. Defendants breached these duties and acted negligently by failing to recall their Recalled Embryo Culture Media Lots earlier, including before such embryo culture media came into contact with Plaintiffs' developing embryos.

120. For a significant period of time before they issued the recall of its Recalled Embryo Culture Media Lots, Defendants knew and/or should have known that, when used as intended, their Recalled Embryo Culture Media Lots were not properly or adequately tested for, among other things, proper formulation—such as the inclusion of magnesium, and posed an unreasonable increased risk of contamination to developing embryos.

121. Defendants knew, and/or reasonably should have known that the Recalled Embryo Culture Media Lots, posed a substantial risk of serious injury to the developing embryos with which the embryo culture media came into contact and/or was used to culture and develop human embryos.

122. Defendants knew and/or reasonably should have known that they had failed to properly or adequately test their Recalled Embryo Culture Media Lots before distributing and/or selling and/or causing such embryo culture media to enter the market.

123. A reasonable manufacturer, distributor, and/or seller in the same or similar circumstances would have recalled the embryo culture media and issued a notice to purchasers,

consumers, and/or users—prior to the embryo culture media coming into contact with Plaintiffs' developing embryos—rather than continuing to allow the embryo culture media to be used, sold, distributed, and/or manufactured, thereby obfuscating the true risks of the embryo culture media to developing human embryos.

124. Despite the fact that they knew or should have known that the Recalled Embryo Culture Media Lots were defective, lacked essential nutrients to embryonic development, and posed an unacceptable risk to developing embryos, Defendants failed to recall the embryo culture media.

125. Defendants acted with a conscious disregard for the safety of consumers and/or users of their embryo culture media, including Plaintiffs, because, without limitation, Defendants were aware of the dangerous consequences of not properly or adequately testing their embryo culture media (including specifically the Recalled Embryo Culture Media Lots), they knew or should have known the embryo culture media (specifically, the Recalled Embryo Culture Media Lots) lacked vital nutrients such that it posed a severe risk to irreplaceable developing human embryos, and failed to recall the Recalled Embryo Culture Media Lots before the embryo culture media was used to culture and develop Plaintiffs' embryos.

SIXTH CLAIM FOR RELIEF

UNJUST ENRICHMENT

126. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this claim for relief.

127. Plaintiffs conferred benefits on Defendants in the form of monies paid to purchase Defendants' worthless and defective embryo culture media, i.e., the Recalled Embryo Culture

Media Lots. These monies were not gifts or donations but were given in exchange for the Recalled Embryo Culture Media Lots.

128. Defendants voluntarily accepted and retained these monetary benefits mentioned above.

129. Because this benefit was obtained unlawfully, namely because of Defendants' marketing and sale of embryo culture media (including the Recalled Embryo Culture Media Lots) unfit for their intended use, it would be unjust and inequitable for Defendant to retain the benefit without paying the value thereof.

130. Defendants received benefits in the form of revenues from purchases of their embryo culture media (including the Recalled Embryo Culture Media Lots) to the detriment of Plaintiffs, because Plaintiffs purchased mislabeled and defective embryo culture media (including the Recalled Embryo Culture Media Lots) that were not what Plaintiffs bargained for and were not safe and effective, as claimed by Defendants.

131. Defendants have been unjustly enriched in retaining the revenues derived from the purchases of the Recalled Embryo Culture Media Lots by Plaintiffs. Retention of those monies under these circumstances is unjust and inequitable because Defendants' representations and labeling of the Recalled Embryo Culture Media Lots was misleading to consumers, which caused injuries to Plaintiffs because they would have not purchased the Recalled Embryo Culture Media Lots had they known the true facts and nature of the Recalled Embryo Culture Media Lots.

132. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiffs is unjust and inequitable, Defendants must pay restitution to Plaintiffs for their unjust enrichment, as ordered by the Court.

SEVENTH CLAIM FOR RELIEF

TRESSPASS TO CHATTELS

133. Plaintiffs re-allege and incorporate by reference herein each and every allegation contained in all other paragraphs in this Complaint as though fully set forth in this clam for relief.

134. Plaintiffs owned or had the right to possess their reproductive material—their developing embryos—that was damaged and destroyed by Defendants' embryo culture media.

135. Defendants intentionally interfered with Plaintiffs' possession of their developing embryos by manufacturing a defective product that damaged and destroyed the very genetic materials it was supposed to cultivate and develop. Defendants similarly intentionally interfered with Plaintiffs' possession by failing to warn them of the defective nature of the product before it was used on Plaintiffs' reproductive material.

136. Plaintiffs did not consent to or authorize the use of a faulty and defective culture media on their developing embryos.

137. Defendants caused irreversible physical damage to Plaintiffs personal property when the defective culture media damaged and destroyed their developing embryos.

138. Defendants impaired the condition, quality, or value of Plaintiffs' and class members' personal property when the defective culture media prevented the developing embryos from becoming viable.

139. Defendants' interference with Plaintiffs' reproductive material proximately caused harm to Plaintiffs, as described herein, including by destroying their embryos.

140. As a foreseeable, direct, and proximate result of the harm to Plaintiffs' and class members' reproductive material caused by Defendants' trespass, Plaintiffs continue to suffer injuries in an amount to be determined at trial, including economic loss and serious emotional

distress. A reasonable person in Plaintiffs' and class members' position would sustain emotional distress as a result of Defendants' conduct described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1) For past, present, and future non-economic damages in an amount to be determined at the time of trial;

2) For past, present, and future economic damages in an amount to be determined at the time of trial;

3) For compensatory, restitutionary, rescissory, general, consequential, punitive and/or exemplary damages, in an amount to be determined at trial;

4) For costs of suit herein;

5) For pre- and post-judgement interest as allowed by law;

6) For injunctive relief, in order to ensure that Plaintiffs' biological material does not come into contact with any more defective embryo culture media manufactured by Defendants; and

7) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims in this Complaint so triable.

DATED: June 21, 2024

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