

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVINA DIXON, DANIEL DIXON, and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

**MOTION RECORD OF THE PLAINTIFFS
(Motion for Certification)**

Date: July 23, 2021

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TAB 1

Court File No. 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVINA DIXON, DANIEL DIXON, and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

**NOTICE OF MOTION
(Motion for Certification)**

THE PLAINTIFFS WILL MAKE A MOTION to the Honourable Justice MacLeod on July 28, 2021 at 10:00 a.m. or as soon after that time as the motion can be heard by way of videoconference.

PROPOSED METHOD OF HEARING: The motion is to be heard orally by way of videoconference.

THE MOTION IS FOR:

1. An Order certifying this action as a class proceeding for the purposes of settlement;
2. An Order defining three Classes as follows:

Mothers Class: All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from

which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen;

Spouse/Partner/Former Patient Class:

(i) All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and

(ii) All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen;

Children Class: All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

3. An Order defining the common issues as:
 - (a) Did the defendant owe the members of the Mothers Class a duty of care? If so, did the Defendant breach the duty resulting in compensable damages?
 - (b) Did the defendant owe the members of the Spouse/Partner Class a duty of care? If so, did the defendant breach the duty resulting in compensable damages?
 - (c) Do the Children Class members have a cause of action arising from negligence or, in the alternative, pursuant to s. 61 of the *Family Law Act*, R.S.O 1990, c. F.3 resulting in compensable damages?
4. An Order appointing Davina Dixon as the representative Plaintiff for the Mothers Class, Daniel Dixon as the representative Plaintiff for the Spouse/Partner/Former Patient Class, and Rebecca Dixon as the representative Plaintiff of the Children Class;

5. An Order approving:
 - (a) the manner in which Class Members will be notified that the proceeding has been certified as a class proceeding, that the matter has settled, and how Class Members may object to the settlement or attend the settlement approval motion (the "Plan of Notice");
 - (b) the Short and Long Form Notices to be disseminated pursuant to the Plan of Notice; the manner in which a Class Member may opt out of the class proceeding and the Opt-Out Form; and
 - (c) the date after which Class Members may not opt out.
6. An Order appointing Ricepoint Administration Inc. as the Administrator;
7. An Order appointing Orchid PRO-DNA to manage and operate the DNA Database;
8. An Order appointing Nelligan O'Brien Payne LLP as Class Counsel; and
9. Such further and other Orders as counsel may request and the Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Amended Statement of Claim asserts that the Defendant breached its duties to the Classes as a result of errors made in the course of artificial insemination procedures ("AI") which cause the genetic paternity of children born as a result of these AI procedures to be other than that to which the relevant parents consented;
2. These claims are tenable in law and the statement of claim therefore discloses reasonable causes of action against the Defendant;
3. There is an identifiable class of two or more persons as disclosed in the statement of claim that uses objective criteria to determine membership in the Classes;
4. There is a rational relationship between the class definitions and the common issues;

5. The claims of the proposed Classes raise common questions of law and fact, the determination of which will substantially advance the litigation;
6. In light of the access to justice concerns and with regard to achieving judicial economy, a class proceeding is not only the preferable procedure for resolving these claims, but is the only manner by which these claims can be realistically adjudicated;
7. The proposed representative plaintiffs:
 - (a) Will fairly and adequately represent the interests of the Classes;
 - (b) Have prepared a proposed settlement that sets out a workable method of resolving the proceeding on behalf of the Classes and of notifying Class members as to how the proposed claims process will function;
 - (c) Do not have, on the common questions of law or fact, an interest that is in conflict with the interests of other Class members;
8. As the claims meet the criteria for certification set out in the *Class Proceedings Act, 1992*, this action should be certified as a class proceeding;
9. The proposed notice dissemination plan contemplates a significant degree of direct notice to be provided to Class Members and includes other means which are both bilingual and national in scope, constituting good, sufficient and adequate notice in all of the circumstances;
10. This motion is made on consent and by agreement of the Plaintiffs and the Defendant;
11. The *Class Proceedings Act, 1992*, S.O. 1992, c.6, in particular, section 5(1); and
12. Any further and other grounds that counsel may advise and this Court may so permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Fresh as Amended Statement of Claim issued October 29, 2019.
2. The Affidavit of Rebecca Dixon, sworn July 23, 2021;
3. The Affidavit of Davina Dixon, sworn July 23, 2021;
4. The Affidavit of Daniel Dixon, sworn July 23, 2021;
5. The Affidavit of Frances Shapiro Munn, sworn July 23, 2021;
6. Such other and further documentary evidence as counsel may submit and this Honourable Court may permit.

Date: July 23, 2021

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DAVINA DIXON, et al. and
Plaintiffs

DR. NORMAN
Defendant

BARWIN

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**NOTICE OF MOTION
(Motion for Certification)**

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TAB 2

Court File No. 16-70454CP

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVINA DIXON, DANIEL DIXON and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November 1, 2016

Registrar
Local Registrar

Address of Court Office:
161 Elgin Street
Ottawa, ON K2P 2K1

TO: Dr. Norman Barwin
c/o Karen Hamway
Gowling WLG (Canada) LLP
2600-160 Elgin Street
Ottawa, ON K1P 1C3

CLAIM

1. The Plaintiff, Davina Dixon, claims on her own behalf and on behalf of all members of her Plaintiff class against the Defendant for:
 - a. An Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended and appointing Davina Dixon as a representative Plaintiff as set out at paragraph 4;
 - b. General damages for pain, suffering and loss of enjoyment of life and damages for breach of contract;
 - c. Damages for breach of contract, breach of trust, battery and/or for mental distress;
 - d. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;
 - e. Damages for loss of income, loss of competitive position in the employment market and/or other economic loss in amounts yet to be determined, the particulars of which will be provided prior to trial;
 - f. Damages for past and future care costs, including any subrogated claim on behalf of OHIP, the particulars of which will be provided prior to trial;
 - g. An Order that the Defendant preserve any and all records in relation to Davina Dixon and the members of her Plaintiff Class;
 - h. Punitive and aggravated damages;
 - i. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
 - j. Costs of this action on a substantial indemnity basis plus HST; and
 - k. Such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, Daniel Dixon, claims on his own behalf and on behalf of all members of the Plaintiff Daniel Dixon's class against the Defendant for:
 - a. An Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended and appointing Daniel Dixon as a representative Plaintiff as set out at paragraph 5;

- b. General damages for pain, suffering and loss of enjoyment of life and damages for breach of contract
 - c. Damages for breach of contract, breach of trust and/or for mental distress;
 - d. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;
 - e. Damages for loss of income, loss of competitive position in the employment market and/or other economic loss in amounts yet to be determined, the particulars of which will be provided prior to trial;
 - f. Damages for past and future care costs, including any subrogated claim on behalf of OHIP, the particulars of which will be provided prior to trial;
 - g. An Order that the Defendant preserve any and all records in relation to Daniel Dixon and the members of his Plaintiff class;
 - h. Punitive and aggravated damages;
 - i. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
 - j. Costs of this action on a substantial indemnity basis plus HST; and
 - k. Such further and other relief as this Honourable Court may deem just.
3. The Plaintiff, Rebecca Dixon, claims on her own behalf and on behalf of all members of her Plaintiff class against the Defendant for:
- a. An Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended and appointing Rebecca Dixon as a representative Plaintiff as set out at paragraph 6;
 - b. General damages for pain, suffering and loss of enjoyment of life;
 - c. Special damages in an amount yet to be determined for out-of-pocket costs, the particulars of which will be provided prior to trial;
 - d. Damages for loss of income, loss of competitive position in the employment market and/or other economic loss in amounts yet to be determined, the particulars of which will be provided prior to trial;
 - e. Damages for past and future care costs, including any subrogated claim on behalf of OHIP, the particulars of which will be provided prior to trial;

- f. An Order that the Defendant provide the Plaintiff Rebecca Dixon and all members of her Plaintiff class with a DNA sample for the purposes of determining whether or not the Defendant is their biological father-and/or to permit any member who is his biological child to access necessary medical and health information contained in his DNA;
- g. Punitive damages;
- h. Damages for loss of care, guidance and companionship pursuant to the *Family Law Act*, R.S.O. 1190, Chapter F.3.;
- i. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
- j. Costs of this action on a substantial indemnity basis plus HST; and
- k. Such further and other relief as this Honourable Court may deem just.

PARTIES

4. The Plaintiff, Davina Dixon (“Davina”), is an individual who resides in the City of Ottawa in the Province of Ontario. At all material times, Davina was married to the Plaintiff Daniel and is the mother of the Plaintiff Rebecca. Davina brings this action pursuant to the *Class Proceedings Act, 1992* on behalf of the following class:

- (a) *All patients of Dr. Barwin who received artificial insemination services from Dr. Barwin at the Ottawa Hospital and/or the Broadview Fertility Clinic; and/or*
- (b) *All individuals who were artificially inseminated with material that had previously been entrusted to Dr. Barwin or stored with Dr. Barwin.*

5. The Plaintiff, Daniel, is an individual who resides in the City of Ottawa in the Province of Ontario. Daniel is married to Davina and is the father of Rebecca. Daniel brings this action pursuant to the *Class Proceedings Act, 1992* on behalf of the following class:

All individuals who:

- (a) *were the spouse or partner of a patient who Dr. Barwin artificially inseminated at the Ottawa Hospital or Broadview Fertility Clinic; and/or*

(b) entrusted their sperm to Dr. Barwin to be used for artificial insemination and/or for safe-keeping and preservation.

6. The Plaintiff, Rebecca Dixon (“Rebecca”), is an individual who resides in the City of Ottawa in the Province of Ontario. Rebecca was born on June 1, 1990. Rebecca brings this action pursuant to the *Class Proceedings Act, 1992* on behalf of the following class:

All individuals conceived and born by Davina Dixon’s class as a result of artificial insemination performed by Dr. Barwin or from biological material previously stored with Dr. Barwin.

7. The Defendant, Dr. Barwin, was a duly qualified medical practitioner who represented himself to the Plaintiffs as a specialist in infertility. In and around 1974 to 1984, Dr. Barwin operated a fertility practice at the Ottawa Hospital’s Fertility Clinic. In 1984, Dr. Barwin left the Ottawa Hospital and established his own fertility Clinic, the Broadview Fertility Clinic (the “Clinic”). The Clinic continued to operate until 2014. At all material times, Dr. Barwin was vicariously liable for the conduct, representations, omissions and/or negligence of the employees, agents, servants and/or contractors at his own Clinic and previously at the Ottawa Hospital.

BACKGROUND

8. Davina and Daniel wanted to become parents but were unable to conceive a child. In and around 1989, Davina and Daniel contracted with Dr. Barwin and the Clinic for the purposes of assisting them in conceiving a child together. The couple selected Dr. Barwin to assist them because of his reputation and expertise in fertility medicine. At all material times, Daniel and Davina put their trust in Dr. Barwin and his Clinic and Dr. Barwin and Broadview Fertility Clinic were paid for the fertility services provided.
9. Before starting fertility treatments, Dr. Barwin collected and stored a sample of Daniel’s sperm at his Clinic. During her fertility treatments, Davina believed and Dr. Barwin represented to her that he was inseminating her with her husband’s biological material, that is, sperm belonging to Daniel. At all material times, Daniel and Davina intended that Daniel’s sperm and **only** Daniel’s sperm would be used to inseminate Davina.

10. Davina and Daniel returned to Dr. Barwin's Clinic on a number of occasions in 1989 for insemination attempts. Before each attempt, Dr. Barwin would show Daniel and Davina the straw containing Daniel's sperm which was labeled with Daniel's name.
11. As a result of the artificial insemination procedures, Davina became pregnant in or around the fall of 1989. She gave birth to Rebecca on June 1, 1990.
12. From the time of Rebecca's birth and into her childhood, teenage, and young adult years, Rebecca, Daniel, and Davina believed that Rebecca was Daniel's biological daughter.
13. It was not until 2016 that the Plaintiffs began to worry that there may have been a mix-up in Dr. Barwin's Clinic. In or around February 2016, Davina saw a Facebook post that stated words to the effect that it was unusual for two individuals with blue eyes to give birth to a child with brown eyes. She was concerned because she and Daniel have blue eyes and Rebecca has brown eyes.
14. Davina assumed the Facebook post could not be true, but nonetheless booked an appointment with her family doctor in hopes that he would reassure her that the Facebook post was a myth. Rather than allay Davina's fears, her family doctor suggested that the family perform a DNA test as between Rebecca and Daniel. Alternatively, he suggested that they test Rebecca's blood type as against Daniel's blood type.
15. The Plaintiffs proceeded with testing Rebecca's blood type. She tested as type O-positive. Daniel has type AB blood.
16. From available medical and other research, the Plaintiffs learned that it was impossible for an individual with type AB blood to conceive a child with type O blood.
17. By way of paternity DNA test dated April 15, 2016, the Plaintiffs confirmed that Daniel could not be the biological father of Rebecca. The probability of his paternity was 0.0%.

Dr. Barwin is Rebecca's biological father

18. After discovering that Daniel was not Rebecca's biological father, the Plaintiffs researched the media coverage regarding prior legal proceedings that had been commenced against Dr. Barwin. They could not help but notice that Rebecca bore an uncanny physical resemblance to Dr. Barwin.
19. In or around May 2016, Rebecca submitted a sample of her DNA to the ancestry website known as 23andMe. Through this website, she learned that her largest ancestry composition was Ashkenazi Jewish in the range of almost 60 percent.
20. Dr. Barwin is a well-known member of the Jewish community in Ottawa.
21. In September 2016, Rebecca connected over the Internet with a woman named Kathryn Palmer ("Kat") who lives in Vancouver, British Columbia and who Rebecca learned is a biological child of Dr. Barwin.
22. Kat was born on January 31, 1991. Like Rebecca, she was conceived at Dr. Barwin's Clinic in Ottawa. Her parents, Lyon and Janet Palmer (respectively, "Lyon" and "Janet"), saw Dr. Barwin for his help in conceiving a child in or around the beginning of 1990 due to fertility problems. Lyon and Janet decided to proceed with artificial insemination by way of an anonymous sperm donor. They specifically selected an anonymous sperm donor with certain traits and characteristics that were important to them.
23. With Dr. Barwin's assistance, Janet became pregnant in the spring of 1990 and gave birth to Kat on January 31, 1991. At all material times, Dr. Barwin represented to Janet and to Lyon that he was using the anonymous sperm selected by Janet and Lyon for the purposes of inseminating Janet. Until late 2015, Kat and her parents believed that Kat was conceived with anonymous sperm.
24. In or around the summer of 2015, Kat became curious about her genetic background. In hopes of finding her half-siblings, and perhaps even locating her sperm donor, Kat submitted a sample of her DNA to the ancestry website Family Tree DNA. Through this company, Kat was matched with a second cousin who lived in New York City. Kat was

immediately in touch with this match and, in tracing the cousin's family history, she determined that this cousin was a relative of Dr. Barwin.

25. In August 2015, Kat contacted Dr. Barwin with this information and inquired into whether he was her biological father. Dr. Barwin took it upon himself to conduct a DNA test as between them. On October 27, 2015, in an email to Kat, Dr. Barwin confirmed that he was her biological father.
26. In September 2016, Kat and Rebecca compared their respective DNA test results from 23andMe and Family Tree DNA. The results showed that they had 29 shared segments in common, a number of segments which strongly suggested that they were half-siblings.
27. Kat and Rebecca underwent DNA testing. On October 24, 2016, the DNA test results concluded that they were half-sisters by way of the same biological father.

DUTIES OWED TO THE PLAINTIFFS BY THE DEFENDANT

Duties owed to Rebecca Dixon and the members of her Plaintiff Class

28. There is sufficient proximity between the Defendant and Rebecca and the members of Rebecca's Plaintiff class such that it was reasonably foreseeable that Rebecca and the members of Rebecca's Plaintiff class would suffer damages if Dr. Barwin used the wrong biological material at the time of their conception. As a result, Dr. Barwin owed Rebecca and the members of her Plaintiff class duties of care in tort, the breaches of which give rise to a claim for negligence.
29. Furthermore, Dr. Barwin had the unilateral ability to exercise discretion or power so as to affect the interests of Rebecca and the other members of her Plaintiff class, all of whom were vulnerable to his actions. Accordingly, Dr. Barwin also owed fiduciary obligations to Rebecca and to the other members of her Plaintiff class.

Duties owed to Davina Dixon and the members of her Plaintiff Class

30. The Defendant owed the following duties to Davina and the members of her Plaintiff class:
- a. Contractual duties giving rise to a claim for breach of contract;
 - b. Duties in tort, the breaches of which give rise to a claim for negligence and medical battery; and
 - c. Fiduciary duties.

Duties owed to Daniel Dixon and members of his Plaintiff Class

31. The Defendant owed the following duties to Daniel and the members of his Plaintiff class:
- a. Contractual duties giving rise to a claim for breach of contract;
 - b. Duties in tort, the breaches of which give rise to a claim for negligence; and
 - c. Fiduciary duties.

LIABILITY OF THE DEFENDANT

Breach of Contract

32. It was an express or implied term or a warranty of Dr. Barwin's contracts with his patients, including his contract with Daniel and Davina and the members of their Plaintiff classes, that:
- a. the Defendant would employ a degree of skill, expertise and/or experience within acceptable norms in the assisted conception process;
 - b. the only sperm that would be used to inseminate Davina and all members of her Plaintiff class would be sperm they specifically selected for the insemination procedure;
 - c. that under no circumstances would Dr. Barwin's sperm be in any way involved in the process;
 - d. that any sperm Dr. Barwin collected from Daniel and all members of his Plaintiff class would not be used for the purposes of inseminating other patients without their knowledge or consent;

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- e. that any sperm Dr. Barwin collected from Daniel and all members of his Plaintiff class would be safely stored while in Dr. Barwin's possession and control;
 - f. that prior to an insemination attempt, Dr. Barwin would conduct any and all appropriate tests to ensure that he was using the correct or designated biological material; and
 - g. that Daniel's sperm or sperm collected from his Plaintiff class would be returned to them after Dr. Barwin completed the insemination procedure or that Dr. Barwin would obtain their consent to dispose of their sperm in a safe and timely manner.
33. The Defendant and/or any employees, servants, agents or contractors for whom the Defendant is vicariously liable, breached the implied or express terms of the contract or the warranties provided by the Defendant by:
- a. negligently inseminating Davina and all members of her Plaintiff class with sperm from a donor who they did not select for the purposes of insemination and for which they did not consent to being placed in their bodies;
 - b. negligently using his own sperm to inseminate Davina and other members of her Plaintiff class without their consent, knowledge, or approval;
 - c. negligently handling, storing, preserving and/or labeling the sperm donated by Daniel and other members of his Plaintiff class;
 - d. failing to employ a degree of skill, expertise and/or experience within acceptable norms when collecting and using the sperm donated by the public and by Daniel and members of his Plaintiff class; and
 - e. failing to take appropriate steps or have in place appropriate procedures to prevent contamination among sperm samples and equipment.

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34. Further or in the alternative, the Defendant has breached implied warranties or conditions under *the Sales of Goods Act*, R.S.O. Chapter S.1, or under the common law, pertaining to fitness for use and merchantability.
35. It was reasonably foreseeable that the Defendant's failures, including but not limited to, the failure to safeguard, label and safely store his patients' sperm, including Daniel's sperm and the sperm of the members of his Plaintiff class, would result in damages and consequential losses for the Plaintiffs and their respective members' classes.
36. Further, it was reasonably foreseeable that Dr. Barwin's use of his own sperm to inseminate Davina and other members of her Plaintiff class would result in damages and consequential losses for the Plaintiffs and their respective member classes.
37. Dr. Barwin's contract with his patients, including Davina and Daniel and the respective members of their Plaintiff classes, implicitly provided them with a psychological benefit. Specifically, the opportunity to conceive and ultimately raise a biological child together afforded them with intangible benefits such as peace of mind after their fertility struggles. The Plaintiffs state that it was foreseeable that the manner in which Dr. Barwin breached this contract would cause them to suffer from mental distress and psychological harm and in fact has caused them to suffer from mental distress and psychological harm.

Medical Battery

38. Davina and members of her Plaintiff class consented to the insemination procedure on the basis that Dr. Barwin would be using the sperm they selected under their contract with Dr. Barwin. In view of the Defendant's failure to use the designated sperm, their consent for the insemination procedure was vitiated.
39. Davina consented and only consented to Dr. Barwin using her husband's sperm for the purposes of artificial insemination. As a result of Dr. Barwin's use of his own sperm in the insemination procedure, Dr. Barwin violated her bodily integrity.

40. Dr. Barwin's failure to use the correct or designated sperm for the purposes of inseminating Davina and other members of her class constitutes medical battery.

Negligence

41. The Defendant owed a duty of care to his patients and to the children he helped his patients conceive, including Daniel, Davina, Rebecca and the members of their Plaintiff classes, to take care at the time of conception that he use the biological material selected by his patients for the purposes of artificial insemination.
42. Dr. Barwin's conduct and/or the conduct of the employees, servants, agents or contractors for whom Dr. Barwin is vicariously liable fell below the standard of care and was negligent. The particulars of negligence include but are not limited to the following:
- a. failing to use the sperm selected by Davina, Daniel and the members of their Plaintiff classes to conceive Rebecca and the other members of Rebecca's class;
 - b. inseminating Davina and the other members of her Plaintiff class with his own sperm or with sperm not selected by them without obtaining their consent, prior approval, or agreement;
 - c. failing to keep proper records with respect to the identification and storage of sperm samples he collected from his patients, including from Daniel and members of Daniel's Plaintiff class, prior to and following insemination procedures;
 - d. failing to prevent the contamination of his patient's sperm straws, including the straws of Daniel and other members of Daniel's class;
 - e. contaminating sperm straws from anonymous sperm donors and from his own patients, including those of Daniel and other members of Daniel's class, with his own sperm;
 - f. failing to implement sufficient or any policies and procedures for the identification, preservation and storage of sperm;

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- g. failing to implement sufficient or any policies and procedures to prevent contamination among sperm samples while in storage and at the time of insemination;
 - h. failing to implement sufficient or any policies and procedures with respect to record keeping, including implementing sufficient or any policies and procedures regarding the collection and distribution of Dr. Barwin's own sperm;
 - i. conducting business in such a way as to make it impossible to monitor the storage, use, contamination and/or destruction of sperm at the Ottawa Hospital's Fertility Clinic and/or at the Broadview Fertility Clinic, including the use and storage of Dr. Barwin's own sperm;
 - j. employing methods or procedures which he knew or ought to have known would result in the improper collection, storage, use, return and/or destruction of sperm stored and collected at the Ottawa Hospital's Fertility Clinic and/or at the Broadview Fertility Clinic, including:
 - i. patient sperm;
 - ii. anonymous donor sperm; and
 - iii. Dr. Barwin's own sperm;
 - k. failing to employ competent servants, agents or employees;
 - l. failing to adequately train its servants, agents and employees in maintaining proper records and in preventing contamination among sperm straws stored and collected at the Ottawa Hospital's Fertility Clinic and/or at the Broadview Fertility Clinic,; and
 - m. failing to comply with the ordinary standards and ethics expected of a medical practitioner.
43. Further or in the alternative, Dr. Barwin represented that he possessed sufficient skill, expertise and/or experience to securely and safely handle Daniel's sperm and the sperm of

Daniel's Plaintiff class and to safely and properly inseminate Davina and the members of her Plaintiff class.

44. Davina and Daniel and the members of their requisite Plaintiff classes relied on the Defendant's representations that he would safely and properly inseminate Davina and the members of her Plaintiff class with the sperm they had selected for the purposes of insemination. As a result of Dr. Barwin's failure to use the correct biological material at the time of Rebecca's conception and the conception of the members of Rebecca's Plaintiff class, the Plaintiffs and the members of the Plaintiff classes have suffered damages.

Breach of trust and fiduciary duty

45. The relationship between Dr. Barwin and his patients, including Daniel, Davina and the members of their Plaintiff classes, was one of trust and reliance. Dr. Barwin saw his patients at a particularly vulnerable time in their lives – a time when they were coming to him for his help in conceiving a child. Daniel, Davina, and the members of their Plaintiffs' classes relied on Dr. Barwin and trusted him with his help in conceiving a child. At all material times, Dr. Barwin owed Daniel, Davina, and the members of their Plaintiffs' classes a fiduciary duty.
46. Davina and the members of Davina's Plaintiff class trusted that Dr. Barwin would use the sperm they had specifically selected for the purposes of artificial insemination. Dr. Barwin breached Davina's bodily integrity and the bodily integrity of the members of Davina's Plaintiff class when he inseminated them with sperm that they did not know about, did not consent to, and would not have consented to had they known the sperm's true origins.
47. Daniel and the other members of his Plaintiff class put the outmost faith and trust in Dr. Barwin when they provided Dr. Barwin with their sperm samples and relied on Dr. Barwin to help them conceive a child who was of their biological material. Dr. Barwin breached this trust and reliance when he did not use the sperm from Daniel and the members of his Plaintiff class to inseminate Davina and the members of Davina's Plaintiff class.

48. Dr. Barwin further breached his patients' trust, including the trust of the Plaintiffs and their member classes, when he failed to disclose to his patients that their children may not be of the genetic material that they selected and, furthermore, that Dr. Barwin himself may be their biological father.
49. The relationship between parent and child is fiduciary in nature. The Defendant knew or ought to have known that Rebecca and other members of her Plaintiff class were conceived with his genetic material. As a result, the Defendant owed fiduciary obligations to Rebecca and to the members of Rebecca's Plaintiff class who are also of Dr. Barwin's biological material.
50. The Plaintiffs state that Dr. Barwin breached his fiduciary duties to Rebecca and the members of her Plaintiff class by concealing from them that he was their biological father, thereby depriving them of the opportunity to have any relationship or connection with their biological father and biological half-siblings.
51. The Plaintiffs state that in the circumstances, Dr. Barwin's conduct amounted to a breach of trust and/or breach of fiduciary duty.

DR. BARWIN'S DNA

52. Other than Kat Palmer, neither Rebecca nor the members of Rebecca's Plaintiff class have been able to compare their DNA to Dr. Barwin's DNA. In order for all members of Rebecca's Plaintiff class to determine conclusively whether Dr. Barwin is or is not their biological father, the Plaintiffs seek an Order that Dr. Barwin provide a sample or samples of his DNA for the purposes of paternity DNA testing.
53. Further, the Plaintiffs seek an Order for the production of Dr. Barwin's DNA for the purpose of extracting genetic and medical information into the future to allow all members of Rebecca's Plaintiff class to ascertain their biological ancestry and complete their medical background. The Plaintiffs state that Dr. Barwin should bear the cost of keeping and storing such sample(s).

DAMAGES

54. The Plaintiffs and their respective Plaintiff classes claim damages in all cases where, as a result of Dr. Barwin's negligence, breach of contract and/or breach of fiduciary duty:
- a. the sperm identified by the Plaintiffs in Davina's and/or Daniel's classes to be used in the process of artificial insemination was not used and instead other sperm, including Dr. Barwin's own, was used to conceive children in Rebecca's class;
 - b. the sperm identified by the Plaintiffs in Davina's and/or Daniel's class to be used was contaminated with other sperm in the possession of Dr. Barwin, including his own, such that the children in Rebecca's class were conceived with unintended sperm;
 - c. the sperm left in the possession of Dr. Barwin by members of Daniel's class was used in the process of artificial insemination of patients other than those intended by the members of Daniel's class.
55. The said Plaintiffs and the members of their classes claim general damages for their pain and suffering and loss of enjoyment of life.
56. The said Plaintiffs and the members of their classes have suffered damages for loss of income, loss of competitive position in the employment market and/or other economic loss in amounts yet to be determined, the particulars of which will be provided prior to trial.
57. The said Plaintiffs and the members of their classes have incurred out-of-pocket expenses, including for DNA testing, blood type testing, and for genetic testing. Further particulars of their out-of-pocket expenses will be provided prior to trial.
58. As a further result of Dr. Barwin's actions, Rebecca and the said members of her Plaintiff class were deprived of knowing their full medical history. They were also deprived of the chance to search for and potentially locate any half-siblings or other familial relationships. In addition, the members of this class have had and will continue to have difficulties determining who their biological fathers and half-siblings are. The damages for this class include funds to allow them to investigate and determine their biological ancestry and relationships and to complete their medical backgrounds, now or in the future.

59. Rebecca and the said members of her Plaintiff class have suffered a loss of care, guidance and companionship due to their lost biological connection to their intended fathers.
60. The said Plaintiffs and the members of their classes have and will continue to require individual and family counselling, and other medical treatment in order to come to terms with what has happened to them. Further particulars of the cost of this treatment, including any OHIP subrogated claim, will be provided prior to trial.
61. The Plaintiffs further state that the Defendant's conduct warrants an award of punitive damages.
62. The Plaintiffs plead and rely upon the provision of *the Negligence Act*, R.S.O. 1990, c. N.1 and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, *Family Law Act*, R.S.O. 1990, C. F.3, and the *Sale of Goods Act*, R.S.O. 1990, Chapter S.1.
63. The Plaintiffs propose that the trial of this action be heard in Ottawa, Ontario.

Date: November 1, 2016

Nelligan O'Brien Payne LLP
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Ottawa, ON K1P 6L2

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Munn/Jessica Fullerton**
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Lawyers for the Plaintiffs

DAVINA DIXON et al.

- and -

Dr NORMAN BARWIN

Plaintiff(s)

Defendant(s)

Court File No. 16-70454CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at OTTAWA

FRESH AS AMENDED STATEMENT OF
CLAIM

NELLIGAN O'BRIEN PAYNE LLP

Barristers & Solicitors
50 O'Connor Street - Suite 300
Ottawa ON K1P 6L2

Frances Shapiro Munn LSO # 63493P

Tel: (613) 231-8355

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E-mail: frances.shapiromunn@nelliganlaw.ca

Lawyers for the PLAINTIFFS

Courthouse Box No. 285

AMENDED THIS 29 DAY / JOUR
MODIFIÉE DE

OF / DE October 20 19
PURSUANT TO RULE 26.02(a)
CONFORMÉMENT A LA REGLE

OR ORDER
OU A L'ORDONNANCE

DATED THIS / FAIT CE

DAY / JOUR OF / DE 20.....

REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER, COUR SUPÉRIEURE DE JUSTICE



TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVINA DIXON, DANIEL DIXON and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

**AFFIDAVIT OF REBECCA DIXON
(Sworn July 23, 2021)**

I, REBECCA DIXON, of the City of Ottawa, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am one of the named Plaintiffs in this action and my parents were former patients of Dr. Barwin. As such I have personal knowledge of the matters in this Affidavit. Where I have relied upon the information of others, I have so stated and believe that information to be true.
2. I swear this affidavit in support of the motion for certification for the purposes of settlement.

BACKGROUND

3. I was conceived with the assistance of the Defendant, Dr. Norman Barwin. In 1989, my parents Daniel and Davina Dixon were struggling with fertility issues. They went to see Dr. Barwin at his clinic, Broadview Fertility Clinic, for his assistance in conceiving a child together.

4. My parents told me that Dr. Barwin performed artificial insemination procedures on my mother. At all times, I understand that Dr. Barwin told my parents that he was using my father's semen to inseminate my mother. My mother became pregnant in late 1989. I was born on June 1, 1990.
5. I grew up believing that my father, Daniel Dixon, was my biological father. In early 2016, my mother saw a Facebook post that stated words to the effect that two individuals with blue eyes could not give birth to a child with brown eyes. This was concerning to us because I have brown eyes whereas both of my parents have blue eyes.
6. We decided to compare our blood types. I have O-positive blood. My father has AB type blood. Based on our blood types, we learned that it was impossible that I could have been conceived with my father's semen. An individual with type AB blood cannot conceive a child with type O blood.
7. We underwent DNA testing in April 2016. On April 15, 2016, the DNA test confirmed that there was a 0.0% probability that Daniel Dixon was my biological father. A copy of this DNA test is attached as **Exhibit "A"**.
8. After we discovered that Daniel Dixon was not my biological father, we could not help but notice that my facial features and colouring bore an uncanny resemblance to Dr. Barwin. I joined the DNA ancestry website known as 23andMe. According to my ancestry profile on 23andMe, my largest ancestry composition is Ashkenazi Jewish in the range of almost 60 percent. Dr. Barwin is a known member of the Jewish community in Ottawa.
9. In September 2016, my lawyers introduced me to a woman living in Vancouver, British Columbia by the name of Kathryn Palmer ("Kat"). Kat had been conceived with Dr. Barwin's assistance at the Broadview Fertility Clinic in early 1990 with anonymous donor semen. Kat had learned that she was the biological offspring of Dr. Barwin.

10. Kat and I underwent DNA testing against each other. On October 24, 2016, the DNA test results concluded that we are half-sisters by way of the same biological father. A copy of this DNA test is attached as **Exhibit “B.”**
11. Based on these results, I believe that my biological father does not accord with the consent given by my mother and father in regard to the artificial insemination that led to my birth.
12. I feel that I have suffered as a result of these turn of events. I worry about the impact on my mother and father.

THE NATURE OF THIS ACTION

13. I retained Nelligan O’Brien Payne to commence this action against Dr. Barwin.
14. This action is brought on behalf of former patients of Dr. Barwin and their children. The Statement of Claim in this action asserts that Dr. Barwin’s patients consented to certain semen being used in the artificial insemination process and that he failed to use the semen that accorded with that consent.
15. The Statement of Claim asserts that Dr. Barwin breached a common law duty of care to all class members.

I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF

16. The proposed definition for my class, the Children Class, is:

All persons conceived and born by the Mothers Class Members as a result of AI performed by the Defendant with semen entrusted to the Defendant whose biological father does not accord with the consent given by their biological mother for the AI.

17. I am prepared to act as a representative Plaintiff for the Children Class in this proceeding. I understand that as a representative Plaintiff, I would be obliged to direct this litigation, give instructions to my lawyers, and to act in the best interests of the class members. For example, I understand that settlement discussion with the Defendant cannot relate only to my own damages but must relate to the claims of the class as a whole.

18. My counsel, Nelligan O'Brien Payne, has been providing me with updates regarding this action.

19. I understand the major steps of class actions normally include:
 - a. Preparing and serving a Statement of Claim;
 - b. A motion for certification to determine whether or not this action is appropriate for a class proceeding. I understand that one of the issues on a certification motion will be whether I can fairly and adequately represent the proposed class.
 - c. If the motion for certification is successful, there will be notice to the class that the class is certified and that they have the right to opt-out or not participate in the class action. The Notice of Certification will be drafted by my legal counsel in consultation with me.
 - d. Relevant documents must be disclosed and exchanged on both sides.
 - e. The parties will schedule examinations for discovery where the Defendant's lawyers can examine me about my claim and the class action and my counsel can examine the Defendant.
 - f. A trial of common issues (that is, a trial that only deals with the issues that are common to me and all class members as opposed to issues that are individual to me and other class members).
 - g. The determination of individual issues if necessary.
 - h. There may be a settlement reached at any stage of the proceedings. If a settlement is reached, the court will need to approve the settlement before it is finalized and approve the fees and disbursements of class counsel.
 - i. The distribution of money to the class members arrived at by way of judgment or settlement.

20. I understand that the parties have reached a settlement in principle to be approved by the court and that the certification motion is for settlement purposes only. If the settlement is terminated for any reason the certification will be vacated and my lawyers will need to prepare and serve new motion materials for certification.
21. I have reviewed the Plan of Allocation attached as a Schedule to an Exhibit in the Affidavit of Frances Shapiro Munn. I believe that the Plan of Allocation provides a reasonable outcome for all class members to this action.
22. I further understand that class members who do not opt out of the proceeding will be bound by the settlement.
23. My lawyer, Peter Cronyn, has explained to me that as the Representative Plaintiff, I am responsible for:
 - a. Keeping myself informed of the status of the case and the steps in the litigation;
 - b. Being familiar with the issues to be decided at the common issues stage and the other issues in the action;
 - c. Assist my counsel with preparing affidavits and other materials that support certification or that may be needed at the common issues trial;
 - d. Attend cross-examination on my affidavit;
 - e. Attend examinations for discovery;
 - f. Assist my counsel with preparing an affidavit of documents containing the relevant documents for this proceeding;
 - g. Attend the common issue trial;
 - h. Discuss potential settlement offers and strategy with my counsel; and
 - i. Assist my counsel in preparing materials in support of the court approving any settlement.
24. I have been committed to working with Nelligan O'Brien Payne to move this litigation forward in the best interest of all class members. I completely support the settlement and I

am prepared to work closely with Nelligan O'Brien Payne to see the settlement approved and distributed to the class.

25. I understand from my legal counsel that I owe a duty to all class members to provide them with fair and adequate representation. I believe that I can fairly and adequately represent the interests of all class members and I am committed to fulfilling my obligations as their representative.

MY MOTIVATION IN COMMENCING THIS ACTION

26. I commenced this action, along with my parents, Daniel Dixon and Davina Dixon, to obtain justice for my family and the other class members and to provide a mechanism for other patients of Dr. Barwin and their children to obtain information as to what happened at the time of their conception.
27. Peter Cronyn of Nelligan O'Brien Payne has advised me, and I believe, that litigating individual lawsuits of this nature against Dr. Barwin would be expensive and time-consuming. He also advised me that the legal issues in my class, being the "Children Class," are complex and unsettled in law. Specifically, he advised me that the Defendant's position was that the children of patients of Dr. Barwin do not have a cause of action at law because doctors in Canada do not owe duties of care to children in these circumstances. Although we would have asserted a contrary legal position, I understand that this legal issue could take years to resolve through the courts with a significant risk of it being decided against us.
28. I believe that a class action, along with the negotiated settlement in principle, is the most efficient way to move this action forward for myself and the members of the Children Class.

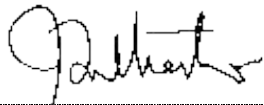
LITIGATION PLAN

29. I have reviewed a copy of the Litigation Plan proposed by Frances Shapiro Munn in her Affidavit. I agree with the plan to certify for settlement purposes only on July 28, 2021 with

the settlement approval hearing to be held on November 1, 2021 or as soon after as the court may hear the matter.

30. I do not have a conflict of interest with the proposed class members with respect to any of the common issues in this case.
31. I am not aware of any other material facts to the motion that has not been disclosed in this affidavit.

AFFIRMED REMOTELY by Rebecca Dixon stated as being located in the City of Ottawa, in the Province of Ontario, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely on this 23rd day of July, 2021




Commissioner for Taking Affidavits



Rebecca Dixon

This is Exhibit "A" to the Affidavit of Rebecca Dixon, sworn remotely before me at the City of Ottawa, in the Province of Ontario, on the 23rd day of July, 2021, in accordance with O. Reg 431/20, Administering Oath Remotely.



A Commissioner, etc.

Paternity Testing Center of Canada
Customer Service - PTCC
2020, Corydon Avenue, Unit-F
Winnipeg, MB R3P 0N2
Canada

Case No. : 16-573

	Race	Sample	Date	Place
Child : DIXON, Rebecca Anne	Caucasian	Buccal Swab	2016-04-07	Ottawa, Canada
Alleged Father : DIXON, Daniel Peter	Caucasian	Buccal Swab	2016-04-07	Ottawa, Canada

RESULTS

Marker	Child	Alleged Father	Paternity Index
D8S1179	12 - 13	8 - 16	0.00
D21S11	28 - 32.2	32.2	6.98
D7S820	10 - 12	9 - 11	0.00
CSF1PO	11 - 12	11 - 12	1.55
D3S1358	17	14 - 17	2.75
TH01	6 - 8	6	2.44
D13S317	12	10 - 12	1.62
D16S539	9 - 11	11 - 13	0.78
D2S1338	17 - 20	20 - 24	1.71
D19S433	13 - 14	12 - 14	0.73
vWA	16 - 17	19	0.00
TPOX	9 - 10	8 - 12	0.00
D18S51	15 - 17	14 - 15	1.84
D5S818	11 - 12	12	1.42
FGA	22 - 24	19 - 20	0.00

Combined Paternity Index	=	0.00
Probability of Paternity	=	0.00 %
Prior probability: 50%		

CONCLUSION

Based on the analysis of the 15 genetic markers listed, Daniel Peter DIXON cannot be the biological father of Rebecca Anne DIXON. Daniel Peter DIXON was excluded as being the father of Rebecca Anne DIXON by the D8S1179, D7S820, vWA, TPOX and FGA genetic markers. The probability of paternity is 0.00 %.

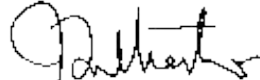
I certify that the testing was conducted in accordance with the standard protocol.

Josée Demers

Josée Demers, M.Sc.
Specialist

Orchid PRO-DNA is not responsible for any errors or irregularities that might have occurred during the sampling or delivery of the samples to its laboratory.

This is Exhibit "B" to the Affidavit of Rebecca Dixon, sworn remotely before me at the City of Ottawa, in the Province of Ontario, on the 23rd day of July, 2021, in accordance with O. Reg 431/20, Administering Oath Remotely.



A Commissioner, etc.



**DNA TEST REPORT
HALF-SIBLING - Legal**

Nelligan O'Brien Payne LLP
Peter J.E. Cronyn, Attorney
1500-50, O'Connor Street
Ottawa, ON K1P 6L2
Canada

Case No. : 16-1489

	Race	Sample	Date	Place
Mother 1 : DIXON, Divina	Caucasian	Buccal Swab	2016-10-04	Ottawa, ON
Child 2 : DIXON, Rebecca Anne	Caucasian	Buccal Swab	2016-10-04	Ottawa, ON
Child 3 : PALMER, Kathryn Rose	Caucasian	Buccal Swab	2016-10-12	Vancouver, BC
Mother 4 : PALMER, Janet Beatrice	Caucasian	Buccal Swab	2016-10-03	Ottawa, ON

RESULTS

Marker	Mother 1	Child 2	Child 3	Mother 4	Relationship Index
D8S1179	13 - 15	12 - 13	13 - 16	13	0.50
D21S11	28 - 29	28 - 32.2	31.2 - 32.2	30 - 31.2	7.48
D7S820	10 - 12	10 - 12	8 - 10	8	1.69
CSF1PO	11 - 12	11 - 12	11 - 12	12 - 13	1.27
D3S1358	15 - 17	17	17 - 18	17 - 18	1.94
TH01	6 - 9.3	6 - 8	8 - 9.3	9.3	4.86
D13S317	11 - 12	12	9 - 11	11 - 13	0.50
D16S539	9 - 13	9 - 11	13	11 - 13	0.50
D2S1338	17 - 20	17 - 20	16 - 17	16 - 24	2.06
D19S433	13 - 15.2	13 - 14	14	14 - 15	1.97
vWA	14 - 16	16 - 17	17 - 18	14 - 18	2.54
TPOX	8 - 9	9 - 10	8 - 11	8 - 11	0.50
D18S51	12 - 17	15 - 17	14 - 16	14	0.50
D5S818	11	11 - 12	11	11 - 12	0.50
FGA	20 - 22	22 - 24	19 - 22	19 - 23	0.50
D1S1656	15 - 18.3	15 - 16	17.3 - 18.3	15.3 - 18.3	0.50
D6S1043	11 - 12	11 - 12	12 - 13	13 - 21	1.42
Penta E	5 - 19	13 - 19	11 - 13	11	4.77
Penta D	9	9 - 13	11 - 12	9 - 11	0.50
D12S391	15 - 18	18 - 23	23	18 - 23	7.96

Combined Relationship Index	=	165
Probability of Relationship	=	99.40 %
Prior probability: 50%		





**DNA TEST REPORT
HALF-SIBLING - Legal**

Nelligan O'Brien Payne LLP
Peter J.E. Cronyn, Attorney
1500-50, O'Connor Street
Ottawa, ON K1P 6L2
Canada

Case No. : 16-1489

	Race	Sample	Date	Place
Mother 1 : DIXON, Divina	Caucasian	Buccal Swab	2016-10-04	Ottawa, ON
Child 2 : DIXON, Rebecca Anne	Caucasian	Buccal Swab	2016-10-04	Ottawa, ON
Child 3 : PALMER, Kathryn Rose	Caucasian	Buccal Swab	2016-10-12	Vancouver, BC
Mother 4 : PALMER, Janet Beatrice	Caucasian	Buccal Swab	2016-10-03	Ottawa, ON

CONCLUSION

Based on the analysis of the 20 genetic markers listed, Rebecca Anne DIXON is 165 times more likely to be a biological paternal half-sibling of Kathryn Rose PALMER than another untested individual chosen at random from the Caucasian population. The probability of paternal relationship is 99.40 %. The results strongly support a biological paternal half-sibling relationship. These results do not supersede any genetic testing in which the alleged father is tested directly.

Note : According to the information obtained, Divina Dison is the biological mother of Rebecca Anne Dixon and Janet Beatrice Palmer is the biological mother of Kathryn Rose Palmer.

I certify that the testing was conducted in accordance with the standard protocol.

Josée Demers

Josée Demers, M.Sc.
Specialist



DAVINA DIXON, et al.
Plaintiffs

DR. NORMAN BARWIN
Defendant

Court File No.: 16-70454CP

and

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**AFFIDAVIT OF REBECCA DIXON
(Sworn July 23, 2021)**

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Lawyers for the Plaintiffs

TAB 4

Court File No. 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVINA DIXON, DANIEL DIXON and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

**AFFIDAVIT OF DAVINA DIXON
(Sworn July 23, 2021)**

I, DAVINA DIXON, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a former patient of Dr. Barwin and one of the named Plaintiffs in this action. As such I have personal knowledge of the matters in this Affidavit. Where I have relied upon the information of others, I have so stated and believe that information to be true.
2. I swear this affidavit in support of the motion for certification for the purposes of settlement.

BACKGROUND

3. Starting in 1988, I saw Dr. Barwin at his clinic in Ottawa, Broadview Fertility Clinic, with my husband, Daniel Dixon. We were having difficulty conceiving a child and went to Dr. Barwin for assistance. Daniel and I made it clear to Dr. Barwin that we consented to the use of Daniel's semen and only Daniel's semen in the artificial insemination process.
4. Before performing an artificial insemination attempt on me, Dr. Barwin always showed me

the semen vial labeled with Daniel's name. At all times, I believed Dr. Barwin was inseminating me with my husband's semen. I never consented to or agreed to have someone else's semen inseminated in me.

5. I became pregnant in 1989 and gave birth to Rebecca on June 1, 1990.
6. On April 15, 2016, we received the paternity DNA test which confirmed that Daniel cannot be Rebecca's biological father. Through Rebecca's DNA half-sibling connection to Kathryn Palmer ("Kat"), we also learned that Rebecca was conceived with the biological material of Dr. Barwin rather than Daniel's.
7. Learning that Rebecca was not biologically Daniel's daughter, as we intended, has been painful for myself and for our family. While my main concern is for the impact on Rebecca, I feel violated, angry and confused at what has happened.

THE NATURE OF THIS ACTION

8. I retained Nelligan O'Brien Payne along with my daughter, Rebecca, and my husband, Daniel to commence this action against Dr. Barwin.
9. The action is brought on behalf of Dr. Barwin's former patients and their children. The Statement of Claim in this action asserts that Dr. Barwin's patients consented to certain semen being used in the artificial insemination process and that he failed to use the semen that accorded with that consent.
10. The Statement of Claim asserts that Dr. Barwin breached a common law duty of care, among other things, to all class members.

I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF

11. The proposed definition for my class, the Mothers Class, is:

All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.

12. I am prepared to act as a representative Plaintiff for the Mothers Class in this proceeding. I understand that as a representative Plaintiff, I would be obliged to direct this litigation, give instructions to my lawyers, and to act in the best interests of the class members. For example, I understood that settlement discussion with the Defendant could not relate only to my own damages but must relate to the claims of the class as a whole.

13. My counsel, Nelligan O'Brien Payne, has been providing me with updates regarding this action.

14. I understand the major steps of class actions normally include:

- a. Preparing and serving a Statement of Claim;
- b. A motion for certification to determine whether or not this action is appropriate for a class proceeding. I understand that one of the issues on a certification motion will be whether I can fairly and adequately represent the proposed class.
- c. If the motion for certification is successful, there will be notice to the class that the class is certified and that they have the right to opt-out or not participate in the class action. The Notice of Certification will be drafted by my legal counsel in consultation with me.
- d. Relevant documents must be disclosed and exchanged on both sides.

- e. The parties will schedule examinations for discovery where the Defendant's lawyers can examine me about my claim and the class action and my counsel can examine the Defendant.
 - f. A trial of common issues (that is, a trial that only deals with the issues that are common to me and all class members as opposed to issues that are individual to me and other class members).
 - g. The determination of individual issues if necessary.
 - h. There may be a settlement reached at any stage of the proceedings. If a settlement is reached, the court will need to approve the settlement before it is finalized and approve the fees and disbursements of class counsel.
 - i. The distribution of money to the class members arrived at by way of judgment or settlement.
15. I understand that the parties have reached a settlement in principle to be approved by the court and that the certification motion is for settlement purposes only. If the settlement is terminated for any reason the certification will be vacated and my lawyers will need to prepare and serve new motion materials for certification.
16. I have reviewed the Plan of Allocation attached as a Schedule to an Exhibit in the Affidavit of Frances Shapiro Munn. I believe that the Plan of Allocation provides a reasonable outcome for all class members to this action.
17. I further understand that class members who do not opt out of the proceeding will be bound by the settlement.
18. My lawyer, Peter Cronyn, has explained to me that as the Representative Plaintiff, I am responsible for:
- a. Keeping myself informed of the status of the case and the steps in the litigation;
 - b. Being familiar with the issues to be decided at the common issues stage and the other issues in the action;

- c. Assist my counsel with preparing affidavits and other materials that support certification or that may be needed at the common issues trial;
 - d. Attend cross-examination on my affidavit;
 - e. Attend examinations for discovery;
 - f. Assist my counsel with preparing an affidavit of documents containing the relevant documents for this proceeding;
 - g. Attend the common issue trial;
 - h. Discuss potential settlement offers and strategy with my counsel; and
 - i. Assist my counsel in preparing materials in support of the court approving any settlement.
19. I have been committed to working with Nelligan O'Brien Payne to move this litigation forward in the best interest of all class members. I completely support the settlement and I am prepared to work closely with Nelligan O'Brien Payne to see the settlement approved and distributed to the class.
20. I understand from my legal counsel that I owe a duty to all class members to provide them with fair and adequate representation. I believe that I can fairly and adequately represent the interests of all class members and I am committed to fulfilling my obligations as their representative.

MY MOTIVATION IN COMMENCING THIS ACTION


21. I commenced this action along with my daughter, Rebecca, and my husband, Daniel, to obtain justice for my family and the other class members. I was also motivated to provide a mechanism for other patients of Dr. Barwin to determine whether the semen Dr. Barwin used at the time of their artificial insemination procedures accorded with their consent. Through this class proceeding, we have been able to assist other former patients obtain information as to what happened at the time of their fertility treatments and provide them with a vehicle to seek compensation for what happened to them.
22. Peter Cronyn of Nelligan O'Brien Payne has advised me, and I believe, that litigating

individual lawsuits of this nature against Dr. Barwin would be expensive and time-consuming. I believe that a class action, along with the negotiated settlement in principle, is the most efficient way to move this action forward for myself and the members of the Mothers Class.

LITIGATION PLAN

23. I have reviewed a copy of the Litigation Plan proposed by Frances Shapiro Munn in her Affidavit. I agree with the plan to certify for settlement purposes only on July 28, 2021 with the settlement approval hearing to be held on November 1, 2021 or as soon after as the court may hear the matter.
24. I do not have a conflict of interest with the proposed class members with respect to any of the common issues in this case.
25. I am not aware of any other material facts to the motion that has not been disclosed in this affidavit.

AFFIRMED BEFORE ME at the
City of Ottawa, in the Province of
Ontario, this 23rd day of July, 2021


Commissioner for Taking Affidavits
JESSICA FULLERTON


Davina Dixon

DAVINA DIXON, et al.
Plaintiffs

and

DR. NORMAN BARWIN
Defendant

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**AFFIDAVIT OF DAVINA DIXON
(Sworn July 23, 2021)**

NELLIGAN O'BRIEN PAYNE LLP

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Lawyers for the Plaintiffs

TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVINA DIXON, DANIEL DIXON and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

**AFFIDAVIT OF DANIEL DIXON
(sworn July 23, 2021)**

I, DANIEL DIXON, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a former patient of Dr. Barwin and one of the named Plaintiffs in this action. As such I have personal knowledge of the matters in this Affidavit. Where I have relied upon the information of others, I have so stated and believe that information to be true.
2. I swear this affidavit in support of the motion for certification for the purposes of settlement.

BACKGROUND

3. Starting in 1988, I saw Dr. Barwin at his clinic, Broadview Fertility Clinic, with my wife, Davina Dixon for his assistance in conceiving a child together.
4. Dr. Barwin collected and stored a sample of my semen at his clinic. Each time he performed an artificial insemination attempt on Davina, Dr. Barwin would first show me and Davina the semen straw to be used.. The semen straw was labeled with my name.

5. Davina became pregnant in 1989. She gave birth to our daughter Rebecca on June 1, 1990.
6. On April 15, 2016, we received the paternity DNA test which confirmed that I could not be Rebecca's biological father. Through Rebecca's connection to Kathryn Palmer ("Kat"), we learned that Rebecca had been conceived with Dr. Barwin's biological material rather than with my own.
7. It was extremely difficult and confusing to learn that Rebecca was not my biological daughter; and in fact, is biologically Dr. Barwin's offspring.
8. At every stage I trusted Dr. Barwin. I feel blindsided by this outcome. My primary concern in all of this is the impact on Rebecca and what it means for her.
9. I am frustrated, angry and confused at what has transpired. Through this action, we have learned about other former patients of Dr. Barwin whose consent regarding semen for use in Artificial Insemination, or storage, does not accord with the intended biological fathers of some children born as a result of artificial insemination. I worry about what happened to my semen which I left with Dr. Barwin. I worry I have biological children that I do not know about.

THE NATURE OF THIS ACTION

10. I retained Nelligan O'Brien Payne along with my daughter, Rebecca, and my wife, Davina, to commence this action against Dr. Barwin.
11. The action is brought on behalf of Dr. Barwin's former patients and their children. The Statement of Claim in this action asserts that Dr. Barwin's patients consented to certain semen being used in the artificial insemination process and that he failed to use the semen that accorded with that consent in addition to failing to safe-keep semen that had been entrusted to him.

12. The Statement of Claim asserts that Dr. Barwin breached a common law duty of care, among other things, to all class members.

I AM PREPARED TO ACT AS REPRESENTATIVE PLAINTIFF

13. The proposed definition for my class, the Spouse/Partner/Former Patient Class, is:
 - (a) *All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified anonymous donor semen used for the AI of a Mothers Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and*
 - (b) *All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.*
14. I am prepared to act as a representative Plaintiff for the Spouse/Partner/Former Patient Class in this proceeding. I understand that as a representative Plaintiff, I would be obliged to direct this litigation, give instructions to my lawyers, and to act in the best interests of the class members. For example, I understand that settlement discussion with the Defendant cannot relate only to my own damages but must relate to the claims of the class as a whole.
15. My counsel, Nelligan O'Brien Payne, has been providing me with updates regarding this action.
16. I understand the major steps of class actions normally include:
 - a. Preparing and serving a Statement of Claim;
 - b. A motion for certification to determine whether or not this action is appropriate for a class proceeding. I understand that one of the issues on a certification motion will be whether I can fairly and adequately represent the proposed class.

- c. If the motion for certification is successful, there will be notice to the class that the class is certified and that they have the right to opt-out or not participate in the class action. The Notice of Certification will be drafted by my legal counsel in consultation with me.
 - d. Relevant documents must be disclosed and exchanged on both sides.
 - e. The parties will schedule examinations for discovery where the Defendant's lawyers can examine me about my claim and the class action and my counsel can examine the Defendant.
 - f. A trial of common issues (that is, a trial that only deals with the issues that are common to me and all class members as opposed to issues that are individual to me and other class members).
 - g. The determination of individual issues if necessary.
 - h. There may be a settlement reached at any stage of the proceedings. If a settlement is reached, the court will need to approve the settlement before it is finalized and approve the fees and disbursements of class counsel.
 - i. The distribution of money to the class members arrived at by way of judgment or settlement.
17. I understand that the parties have reached a settlement in principle to be approved by the court and that the certification motion is for settlement purposes only. If the settlement is terminated for any reason the certification will be vacated and my lawyers will need to prepare and serve new motion materials for certification.
18. I have reviewed the Plan of Allocation attached as a Schedule to an Exhibit in the Affidavit of Frances Shapiro Munn. I believe that the Plan of Allocation provides a reasonable outcome for all class members to this action.
19. I further understand that class members who do not opt out of the proceeding will be bound by the settlement.

20. My lawyer, Peter Cronyn, has explained to me that as the Representative Plaintiff, I am responsible for:
- a. Keeping myself informed of the status of the case and the steps in the litigation;
 - b. Being familiar with the issues to be decided at the common issues stage and the other issues in the action;
 - c. Assist my counsel with preparing affidavits and other materials that support certification or that may be needed at the common issues trial;
 - d. Attend cross-examination on my affidavit;
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 - f. Assist my counsel with preparing an affidavit of documents containing the relevant documents for this proceeding;
 - g. Attend the common issue trial;
 - h. Discuss potential settlement offers and strategy with my counsel; and
 - i. Assist my counsel in preparing materials in support of the court approving any settlement.
21. I have been committed to working with Nelligan O'Brien Payne to move this litigation forward in the best interest of all class members. I completely support the settlement and I am prepared to work closely with Nelligan O'Brien Payne to see the settlement approved and distributed to the class.
22. I understand from my legal counsel that I owe a duty to all class members to provide them with fair and adequate representation. I believe that I can fairly and adequately represent the interests of all class members and I am committed to fulfilling my obligations as their representative.

MY MOTIVATION IN COMMENCING THIS ACTION

23. I commenced this action along with my daughter, Rebecca, and my wife, Davina, to obtain justice for my family and the other class members. I was also motivated to provide a mechanism for other patients of Dr. Barwin to find out information if they were concerned as to what happened to their semen stored with him. Though this class proceeding, we have


been able to assist other patients obtain information as to what happened at the time of their fertility treatments and provide them with a vehicle to seek compensation for what happened to them.


24. Peter Cronyn of Nelligan O'Brien Payne has advised me, and I believe, that litigating individual lawsuits of this nature against Dr. Barwin would be expensive and time-consuming. I believe that a class action, along with the negotiated settlement in principle, is the most efficient way to move this action forward for myself and the members of the Spouse/Partner Class.

LITIGATION PLAN

25. I have reviewed a copy of the Litigation Plan proposed by Frances Shapiro Munn in her Affidavit. I agree with the plan to certify for settlement purposes only on July 28, 2021 with the settlement approval hearing to be held on November 1, 2021 or as soon after as the court may hear the matter.
26. I do not have a conflict of interest with the proposed class members with respect to any of the common issues in this case.
27. I am not aware of any other material facts to the motion that has not been disclosed in this affidavit.

AFFIRMED BEFORE ME at the
City of Ottawa, in the Province of
Ontario, this 23rd day of July, 2021


Commissioner for Taking Affidavits
JESSICA FULLERTON


Daniel Dixon

DAVINA DIXON, et al.
Plaintiffs

and

DR. NORMAN BARWIN
Defendant

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**AFFIDAVIT OF DANIEL DIXON
(Sworn July 23, 2021)**

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Lawyers for the Plaintiffs

TAB 6

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVINA DIXON, DANIEL DIXON and
REBECCA DIXON

Plaintiffs

-and-

DR. NORMAN BARWIN

Defendant

Proceeding under the Class Proceedings Act, 1992

AFFIDAVIT OF FRANCES SHAPIRO MUNN

I, FRANCES SHAPIRO MUNN, of the City of Ottawa, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a partner at Nelligan O'Brien Payne LLP, one of the counsel for the Plaintiffs in this action and, as such, have knowledge of the matters in this Affidavit. Where I have relied upon the information of others, I have so stated and believe that information to be true.

Background

2. Nelligan O'Brien Payne LLP acts as Class Counsel for the Plaintiffs in this action.

3. The proposed Representative Plaintiffs in this action are: Davina Dixon, Daniel Dixon, and Rebecca Dixon. On the instructions of the Representative Plaintiffs, we issued the Statement of Claim on November 1, 2016 pursuant to the *Class Proceedings Act, 1992* (“CPA”). We subsequently issued a Fresh as Amended Statement of Claim on October 19, 2019.
4. We served the Defendant, Dr. Norman Barwin (“Dr. Barwin”), on November 2, 2016. The Defendant has not delivered a Statement of Defence on consent of all parties.
5. Dr. Barwin was a medical doctor who, among other things, practiced artificial insemination (AI) procedures in Ottawa between about July 1, 1973 and February 15, 2012. He operated out of the Ottawa Hospital’s Fertility Clinic from 1976 until 1984 and then established his own fertility clinic, the Broadview Fertility Clinic in 1984. He retired from the practice of medicine voluntarily in 2014.
6. Dr. Barwin’s patients gave him consent to use specific semen for the AI procedures i.e. semen from their spouses or from specific sperm donors. The claim alleges that Dr. Barwin used semen in the AI procedures that did not accord with that consent.

PROPOSED CLASS

7. The proposed classes are defined as:

Mothers Class: All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.

Spouse/Partner/Former Patient Class:

- (a) All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their

own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and

- (b) All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.

Children Class: All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

8. The proposed class period dates back to July 1, 1973, when Dr. Barwin first began practising in Ottawa, to December 31, 2012, the end of the year when he ceased performing AI.
9. The proposed classes are limited to patients and their children where those children do not biologically accord with the semen their parents consented to being used in the artificial insemination process. The proposed classes also include male patients who entrusted their own semen to the Defendant for storage, safe-keeping or specific use but whose semen resulted in the conception of one or more children for another unrelated female patient.
10. Examples of Class Members include the following:
 - a. Couples who received AI services from the Defendant and who consented to the man in the couple's semen being used in the AI procedure. Through DNA testing, the couple has determined that their child or children are not the biological child of the man in the couple. In some of these cases, the couple has determined their child is the biological offspring of Dr. Barwin.

- b. Individuals or couples who received AI services from the Defendant and who consented to a specific sperm donor being used in the AI procedure. These Class Members have now determined that an individual other than that donor was used in the AI procedure. In some cases, these Class Members have determined that their child or children are the biological offspring of Dr. Barwin.
- c. Men who left semen with the Defendant for the purposes of conceiving a child with their spouse through AI services or for another personal reason without expectation of it being used without further instructions who have determined their semen resulted in the conception of a child or children for another unrelated female patient of Dr. Barwin.

MEDIATION AND SETTLEMENT

11. Subject to the approval of the Court, the Plaintiffs and the Defendant have reached a settlement. Details of this settlement will be included in the Short-Form and Long-Form Notices as well as in the press release and on our website. This means class members will have an estimate of the compensation they may receive through the class action before the opt-out period expires.
12. The parties have attended a total of four days of mediation. The first mediation was scheduled for April 19 and 20, 2021 with Justice Stephen Goudge, Q.C., former judge of the Ontario Court of Appeal. I was not available to attend this mediation, however, Peter Cronyn advised me that the negotiations on April 19 and 20, 2021 focussed on vigorous debate of the significant and novel legal issues, and little progress toward settlement was made between the parties.
13. At the conclusion of the negotiations on April 20, 2021 Counsel for both parties mutually agreed to attend two days of mediation with mediator Rick Weiler for a different approach. Mr. Weiler had mediated a number of claims involving the Defendant prior to the issuance of the Class Action. Counsel for both parties felt he was familiar with the legal and damages issues arising from the Class Action and was our best opportunity to assist the parties in reaching a resolution.

14. The parties attended two days of mediation with Rick Weiler on May 26 and 27, 2021. I attended both days of mediation which included a hard-fought debate around all of the issues concerning liability and damages for all potential claimants. With Mr. Weiler's assistance, the parties came to an agreement in principle on the second day of mediation, May 27, 2021. Although I cannot divulge the course of the negotiations, the Settlement Agreement represents a lengthy negotiation that resulted in a give and take compromise between the parties.
15. The settlement amount is \$13,375,000.00 inclusive of all claims, interest, administration, notice fees, legal fees, expenses, disbursements and taxes. A copy of the Settlement Agreement is attached as **Exhibit "A."** The following documents are Schedules to the Settlement Agreement:

Schedule A	Plan of Allocation
Schedule B	Long Form Notice of Certification and Proposed Settlement
Schedule C	Short Form Notice of Certification and Proposed Settlement
Schedule D	Opt-Out Form
Schedule E	Draft Order for Certification for Settlement
Schedule F	Draft Order for Settlement Approval
Schedule G	Plan of Notice

16. The Plaintiffs now seek to certify the Action for settlement purposes only, on consent.

LITIGATION PLAN

17. The certification motion is scheduled for July 28, 2021. At the certification motion, the Plaintiffs will seek to certify the action as a class proceeding for settlement purposes only (the "certification motion").
18. The motion herein for certification and approval of notices will be on consent of all parties.

19. At the certification motion, the Plaintiffs will seek the following orders:
 - a. An order defining the three Classes as set out at paragraph 7 of this Affidavit;
 - b. An order defining the common issues as:
 - i. Did the Defendant owe the members of the Mothers Class a duty of care? If so, did the Defendant breach the duty resulting in compensable damages?
 - ii. Did the Defendant owe the members of the Spouses/Partners Class a duty of care? If so, did the Defendant breach the duty resulting in compensable damages?
 - iii. Do the Children Class Members have a cause of action arising from negligence or, in the alternative, pursuant to s. 61 of the *Family Law Act* resulting in compensable damages?
 - c. An order appointing Davina Dixon as Representative Plaintiff for the Mothers Class, Daniel Dixon as the Representative Plaintiff for the Spouse/Partner/Former Patient Class, and Rebecca Dixon as the Representative Plaintiff for the Children Class.
20. At the certification motion, the Plaintiffs will request the Court settle the form and content for notification of the certification of this action, the timing and manner of providing the notice of certification and setting an opt-out date of October 14, 2021.
21. The Plaintiffs will ask the Court to approve an opt-out form to be used by Class Members wishing to opt-out of the Class Action which will require the Class Member to provide sufficient information to establish their membership in the class.
22. The Plaintiffs will ask the Court to appoint an Administrator to organize and receive opt-out forms or other written documentation from any class member opting out of the class action. Only written elections to opt-out will be accepted and must be delivered to the administrator by October 14, 2021.
23. The motion to approve the settlement and to hear objections is set to be heard on November 1, 2021.

24. If the settlement is not approved or if the settlement agreement is otherwise terminated, for any reason, the certification order sought herein will be set aside and the Plaintiffs will bring a new motion for certification to be opposed by the Defendant. The Plaintiffs will at that time propose a new Litigation Plan that sets out a workable method of advancing the proceeding on behalf of the Class Members.

CLASS PROCEEDING IS THE PREFERABLE PROCEDURE

25. A class proceeding is the preferable procedure for resolving the common issues in this matter for a number of reasons.
26. Pursuing actions such as this one on an individual basis would be time consuming and expensive. I believe a class proceeding promotes the interests of judicial economy. If each Class Member is forced to commence his or her own action to recover their damages, I believe the multiplicity of proceedings would place a burden on judicial resources. The judicial involvement in those proceedings would be substantially greater than the resources required to manage this litigation.
27. I also believe the class proceeding will permit some class members to pursue a claim for their damages that they might not otherwise be able to pursue. The class members are in various stages of life with varying degrees of damages. I believe many class members would conclude it is economically inefficient to pursue a claim against the Defendant on their own in a regular court proceeding.
28. Most of the identified Class Members are struggling to come to terms with what has happened to them as a result of the Defendant's negligence. I believe most Class Members would not wish to commence a public proceeding against the Defendant on their own during a time of instability in their lives and in the lives of their families. This Class Action is therefore not only the best procedure to preserve their rights, but may also be their only practical option.

CLASS SIZE AND NOTICE TO THE CLASS

29. We do not have a definitive estimate of the size of the proposed Class. Counsel for the Defendant advises that for the years 1996 to February 2012, the Defendant identified **232** instances where OHIP codes were billed for: (1) AI; (2) an 8-week prenatal visit; and (3) a 12-week prenatal ultrasound. The actual number of successful pregnancies between 1996 and 2012 may be somewhat higher or lower than 232. Some women may have successfully conceived with AI but followed up with another doctor for the 8-week prenatal visit and 12-week ultrasound. Other women may have had miscarriages following the 12-week ultrasound. However, based on the 232 number provided by the Defendant, we estimate an average of 15 successful pregnancies per year between 1996 and 2012 resulting from the Defendant's AI services.
30. Dr. Barwin performed AI services in Ottawa between 1976 and 2012. Assuming the rate of 15 pregnancies per year between the years 1976 and 2012, we estimate a potential total of 540 pregnancies resulted from the Defendant's AI services. It is important to note that a number of families have tested their DNA and have found that the child who resulted from AI in Dr. Barwin's clinic does have a match to the expected biological paternity. Therefore, not all of these potential claimants would become Class Members if tested. In addition, we are already aware of 100 Children Class members which leaves a remainder from the total estimate of potential pregnancies set out above of 440 potential children for whom a DNA mismatch is possible.
31. Where there is a DNA mismatch between consent of the patients for specified semen and the paternity of the child resulting from AI procedures, this usually results in multiple class members. For instance, a couple who conceived a child through AI services with what they believed was the man in the couple's sperm would give rise to three class members: the mother, the father, and the child. A couple in the same scenario who conceived two children would give rise to four class members: the mother, the father, and each of the two children. In other instances, a single mother may have consented to conceiving two children with the same donor and has subsequently discovered her children have different biological fathers. In that case, two pregnancies would give rise to three class members: the mother and her two

offspring. At most, we anticipate that 1,500 individuals may be affected by this class action: this estimates 500-600 offspring between 1976 and 2012 with two parents.

32. However, as explained in paragraph 30 herein, those 1,500 potential class members are only eligible for compensation where they can demonstrate that a child resulting from AI where Dr. Barwin either administered the AI or originally stored the semen has DNA evidence showing that their biological father does not accord with the patient's consent in regard to the semen.. We anticipate that the **majority** of pregnancies resulting from Dr. Barwin's interventions accorded with the patient's consent. Assuming that approximately 75% of pregnancies accorded with the patient's consent, and the other 25% did not, approximately 375 of those potential class members may have claims for compensation in this action. We have already identified 226 of these Class Members as a result of DNA testing since this action began in 2016.
33. Class members also include cases where men entrusted their semen with the Defendant with specific instructions for use and safekeeping and later discovered that semen was used in a manner that did not accord with their consent. For instance, the Defendant administered that semen to another patient in the course of AI services which resulted in the birth of a child. It is difficult to estimate how many individuals may qualify for this class. However, as previously stated, we anticipate that the majority of AI procedures administered by the Defendant accorded with the consent of his patients.
34. We therefore believe that all of the class members number in the hundreds as opposed to thousands. At present, we have identified **226** individuals who qualify for compensation as class members. Although additional Class Members may yet be identified, this case has received significant media attention since the Statement of Claim was first issued on November 2, 2016. As a result of this media coverage, we anticipate that we have already heard from most of the individuals who will be eligible for compensation.
35. Examples of articles about the action include but are not limited to:
 - a. **November 2, 2016:** [Lawsuit claims fertility doctor used his own sperm to inseminate patients](#) | The Globe and Mail

- b. **November 2, 2016:** [Ottawa fertility doctor accused of impregnating patients with his own sperm](#) | CTV News
 - c. **December 20, 2017:** [Decades of patients sought for possible lawsuit against Ottawa fertility doctor accused of using own sperm](#) | Ottawa Citizen
 - d. **April 6, 2018:** [Dozens sue Canadian fertility doctor for 'suing wrong sperm'](#) | BBC News
 - e. **April 6, 2018:** [Canadian doctor accused of using own sperm in IVF treatment](#) | The Guardian
 - f. **April 7, 2018:** [Patients of fertility doctor accused of fathering 11 kids, mixing up dozens of sperm samples, speak out](#) | CTVNews
 - g. **April 10, 2018:** [Fertility doctor is father to 11 of clients' kids, lawsuit says](#) | CNN
 - h. **May 03, 2018:** [Barwin's babies: The remarkable story of a disgraced Ottawa fertility doctor and those who say they are his children](#) | Ottawa Citizen
 - i. **May 03, 2018:** [Timeline: A look at the story of Dr. Norman Barwin](#) | Ottawa Citizen
 - j. **May 03, 2018:** ['It felt like something had been taken from me:' Family copes with fallout from Barwin clinic bombshell](#) | Ottawa Citizen
 - k. **June 25, 2019:** [Fertility doctor's licence revoked after he used own sperm to inseminate patients](#) | CBC
 - l. **June 27, 2019:** [Fertility doctor accused of impregnating at least 11 women with his own sperm](#) | NBC News
 - m. **June 15, 2020:** [Two hundred plaintiffs involved in proposed suit against fertility doctor](#) | Ottawa Citizen
 - n. **June 15, 2020:** [Class-action lawsuit against disgraced fertility doctor grows](#) | CBC Ottawa
36. On November 2, 2016, CBC's The Current aired a radio documentary containing interviews with the Dixon family as well as class members Kathryn Palmer and her father, Lyon Palmer: [Ottawa family sues fertility doctor for use of wrong sperm – his own.](#)

37. CTV's W5 aired a documentary about the class action. The documentary included interviews with Rebecca Dixon, Kathryn Palmer, and other class members. The documentary first ran in April 2018 on television and is still available online: [The Barwin Babies](#).
38. There has also been French media coverage. In June 2020, Antoine Trépanier with CBC Radio Canada published a detailed interview with Rebecca Dixon and other class members in French. His article, [16 enfants pour le Dr Barwin](#), contains a detailed and interactive timeline of the allegations against Dr. Barwin. In addition, Mr. Trepanier has presented a 12-episode podcast entitled "[Le dieu des bébés](#)" on Radio Canada's website providing in-depth coverage of this case and the various class members.
39. The above links provide only a small sample of the media attention on this case. Hundreds more articles and interviews with Rebecca Dixon and Kathryn Palmer and other former patients of Dr. Barwin can be found by searching for "[Dr. Barwin](#)" on any Internet search engine.
40. The attention this case has garnered has not been limited to Canadian media. A number of US and European television networks and news services reported on the case when it first broke and have shown continued interest in the case since then.
41. Each time the media covered this action, we received an uptick in individuals contacting us to query whether they were part of the class. By now, we believe that most former patients and their children who may be affected by the class action have already contacted us and will have taken steps in accord with their decision whether to get tested.
42. We have a database of emails and contact information for all of the individuals who have reached out to us since we first issued the claim on November 2, 2016. In total, we have contact information for a further 207 individuals who have contacted us about the class action (these individuals contacted us on behalf of themselves and their families and so at a minimum would represent over 600 potential total claimants, including parents and children). Some individuals who have contacted us do not qualify for compensation in the class action. For instance, we have heard from former patients of Dr. Barwin who were unsuccessful in

conceiving a child. Others completed DNA tests proving that their child or children are a biological match to their father. By now, we believe we have heard from the majority of individuals who may be affected by the class action.

43. Accounting for the media coverage to date, we propose that the **Long-Form Notice** and **Short-Form Notice** (the “Notices” are attached to as Schedules “B” and “C” respectively to the Settlement Agreement which is Exhibit “A” hereto) be distributed and published in the following manner in the **Plan of Notice** (attached as Schedule “G” to the Settlement Agreement which is Exhibit “A” hereto):
- a. Forwarding the Notices by email, in English and French, by Class Counsel to all individuals who have contacted Nelligan Law to date about the Class Action and who have provided Nelligan Law with a valid email address. If an interested individual has contacted Nelligan Law by means other than email (i.e. by telephone or mail) then Class Counsel will follow up with those individuals about delivering the Notices by way of mail.
 - b. Posting the Notices on Class Counsel’s and the Administrator’s website and social media pages.
 - c. Establishing a toll-free telephone support line to provide assistance to class members, family, guardians or other persons who make inquiries on their own behalf or on behalf of Class Members.
 - d. Issuing a press release.
 - e. Publishing the Notices in local and national newspapers including the *Ottawa Citizen*, the *Globe and Mail*, and *Le Devoir*.
 - f. Publishing a Facebook and Google display banner to advertise the Notices to potential class members.
44. I believe that this Notice Program will be sufficient for the purposes of notifying Class Members of certification and providing them an adequate opportunity to opt-out of the Class Action. To the extent that there are additional Class Members who have yet to reach out to our firm, I believe that there will be significant media attention and interest in this Class Action following certification and the announcement of a settlement. This media attention,

along with the information posted on our website, will identify any additional class members who have yet to contact us.

THE RECOMMENDED ADMINISTRATOR

45. Class Counsel recommends RicePoint Administration Inc. (“RicePoint”) for appointment as Administrator of the settlement funds. RicePoint is an experienced national class action notice provider and class administrator. Its services included settlement fund escrow and reporting, class member data management, legal notification, call centre support, and claims administration. The proposal for administration with estimate of fees is attached hereto as **Exhibit “B”**.
46. Class Counsel recommend that RicePoint, as Administrator, receive the Opt-Out forms, implement the notice plan, and administer the settlement.

THE COMPENSATION SCHEME

47. The Plan of Allocation is attached as Schedule “A” to the Settlement Agreement which is Exhibit “A” hereto. In order to obtain compensation, a Class Member will submit the Claim Form that corresponds with their class (i.e. Mothers Class, Spouse/Partner/Former Patient Class or Children Class) to the Administrator.
48. The Plan of Allocation provides for a confidential and paper-based claims process that does not require any Class Member to testify publicly nor prove harm or damages which are presumed to have been sustained as set out below.
49. The Claim Form requires a claimant to provide identifying and background information and to provide a written narrative or description of events explaining the Class Member’s claim. The Class Member must qualify for one of the following three categories of harm (the “Harm Categories”):

Harm Category 1: Cases where a couple went to see Dr. Barwin (typically husband and wife) and where the couple consented to the Spouse/Partner's semen to be used in the process of artificial insemination. Claimants will qualify for compensation where they have DNA evidence showing that the child or children conceived with Dr. Barwin's assistance or with semen previously entrusted to Dr. Barwin is/are not the biological child of the man in the couple.

The Claimants in this category include, the Mother, the Spouse/Partner and their Child(ren) conceived with semen other than the Spouse/Partner's semen.

Mother Class	up to \$50,000
Spouse/Partner Class	up to \$50,000
Children Class	up to \$40,000
In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under this category, they will be entitled up to a further \$10,000 each, in total.	

Harm Category 2: Cases where a parent or parent(s) had one or more children by way of artificial insemination administered by Dr. Barwin and where the couple consented to a specific donor or donors being used in the artificial insemination procedure(s). Claimants will qualify for compensation where they have DNA evidence demonstrating that (a) their child or children do not match their semen donor; or (b) the parent(s) consented to the same donor being used for all of their children and the children do not share the same semen donor. In some cases, Claimants may prove their case by way of reliable evidence other than a legal DNA tests where, for instance, they are unable to locate their semen donor.

The Claimants in this category include, the Mother, the Spouse/Partner of the mother and any Child(ren) who were conceived by artificial insemination with semen other than the semen consented to by their Mother.

Harm Category 2A:

In cases where the Child(ren) is/are the biological offspring of Dr. Barwin:

Mother Class	up to \$40,000
Spouse/Partner Class	up to \$40,000
Children Class	up to \$30,000

Harm Category 2B:

In cases where the biological father has been identified otherwise or not at all:

Mother Class	up to \$30,000
Spouse/Partner Class	up to \$30,000
Children Class	up to \$30,000

In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under either Harm Category 2A and/or 2B, they will be entitled up to a further \$10,000 each, in total.

Harm Category 3: Cases where an individual entrusted semen with Dr. Barwin for the purposes of storage and safe-keeping or other specified purpose and that semen resulted in the conception of one or more children for another unrelated patient. Claimants will qualify for compensation where they provide DNA evidence that the semen entrusted with Dr. Barwin resulted in the conception and birth of another unrelated patient's child or children. Anonymous semen donors are excluded from this claim.

The Claimants in this category are the Former Patients who entrusted the semen with Dr. Barwin.

Former Patient	up to \$25,000
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In cases where there is more than one such child conceived using the Former Patient's semen, up to a further \$5,000 per additional child up to a maximum of \$10,000 in total.

50. In the majority of cases, the Class Member will need to attach a legal DNA test that proves he or she qualifies for one of the Harm Categories. In some cases, such as a donor case where a donor cannot be located, the Class Member will be unable to provide a legal DNA test. In those cases, the Class Member must provide other compelling evidence of their claim. Class Counsel has already completed many of the steps that a Class Member will need to verify their claim such as coordinating DNA test results. Class Counsel will be available to assist Class Members in completing the Claim Form and to provide supporting medical records and DNA tests to the Administrator.
51. Once the Administrator has verified that the Claimant is eligible for compensation and the Claim Period has terminated, the Administrator will assign the Claimant to one of the following levels of compensation:

<u>Mother Class</u>	
Harm Category 1	up to \$50,000.00
Harm Category 2A	up to \$40,000.00
Harm Category 2B	up to \$30,000.00
In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total.	
<u>Spouse/Partner/Former Patient Class</u>	
Harm Category 1	up to \$50,000.00
Harm Category 2A	up to \$40,000.00
Harm Category 2B	up to \$30,000.00

In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total.	
Harm Category 3	up to \$25,000.00
In cases of Harm Category 3, where there is more than one child conceived using the Former Patient's semen, up to \$5,000 per additional child up to a maximum of \$10,000, in total	
<u>Child Class</u>	
Harm Category 1	up to \$40,000.00
Harm Category 2A and 2B	up to \$30,000.00

52. If there are not enough funds in the Settlement Fund to compensate all Claimants on the basis of the values set out for each of the Harm Categories above, the value of each category shall be adjusted downward such that each Claimant receives the proportionate share of the Settlement Fund based on his or her Harm Category.
53. If the compensation for all claims does not exhaust the settlement fund (after legal fees, disbursements and taxes are deducted) then each claimant will receive a proportionate increase to their compensation based on his or her Harm Category.

THE DNA DATABASE

54. Class Counsel intend to set aside a portion of the settlement funds for OrchidPRO DNA Laboratories to set up and operate a DNA database for Class Members that will allow Class Members to test their DNA against each other as well as against individuals who stored sperm with the Defendant.
55. I have spoken to almost every potential Class Member who has contacted our firm. Many members of the Children Class are concerned about missing medical history. They would like an opportunity to find their donor or biological father. They also wish for an opportunity to identify half-siblings. Individuals who left semen with the Defendant are similarly

concerned that their semen may have been used during AI services to create a child that they do not know about. They would like an opportunity to test their DNA against members of the Children Class to determine if they are biological father to anyone in the Children Class.

56. For some potential Class Members, the DNA database may be an opportunity to determine whether they have a claim in the Class Action. For instance, an individual who left semen with the Defendant may discover he qualifies for Harm Category 3 upon joining the database and learning his semen was used to conceive a child with another patient. However, the primary purpose of the DNA Database will be to provide the Children Class with the opportunity to identify their donors and half-siblings. Our hope is that the DNA Database can potentially provide members of the Children Class with some of the medical information they are lacking from the paternal side.

Operation of the DNA Database

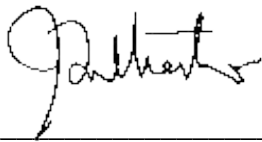
57. We have identified OrchidPro as the best laboratory to create and run the DNA Database. OrchidPro has performed the majority of DNA tests to date for Class Members and already has many DNA profiles on file. Upon receiving appropriate consent from a participant, OrchidPro will be able to transfer the samples it has in its possession into the DNA Database and cross-match them through a computer program. This will be more cost effective than if we were to partner with a new laboratory that did not have any DNA profiles in its system.
58. Participation in the DNA Database will be voluntary. Each of the participants would be given a Disclosure Agreement and Consent explaining that the goal of the DNA Database is to identify medical history and half siblings. The Disclosure Agreement and Consent provides for what happens in the event of a match. Participants will have to consent to the exchange of their names and email addresses.
59. All participants would have to sign a consent to participate and confirming that they have read the disclosure statement. A copy of the proposed **Disclosure Agreement and Consent** is attached as **Exhibit “C”**

60. Individuals who left semen with the Defendant, and who wish to participate, will be asked to complete a standardized medical history form setting out their known medical history. The completion of the form is not mandatory to participate in the database. If completed, the form would be provided to any offspring against whom they matched. A copy of the proposed **Medical Health History Form** is attached as **Exhibit “D”**
61. I have further been advised by my colleague, Peter Cronyn, and do verily believe the additional details set out below have been confirmed by representatives at Orchid Pro:
- a. Orchid Pro could efficiently transfer the existing DNA profiles that it has into the DNA Database once it receives confirmation from Class Counsel that existing Class Members who previously provided DNA to Orchid Pro have signed and returned the **DNA Database Disclosure Agreement and Consent**;
 - b. Orchid Pro has laboratories across Canada and is amenable to Class Counsel directing potential Class Members who have not previously provided DNA to Orchid Pro to any of these locations for the collection of the DNA;
 - c. To provide Legal Chain of Custody DNA results, participants have to attend in person, with a government issued photo identification, to provide a DNA sample, typically a cheek swab. All prior DNA collected by Orchid Pro in relation to this proceeding meets this standard;
 - d. Orchid Pro could start collecting new DNA samples for potential Class Members, including former patients who do not know whether they have a claim, as of August 3, 2021;
 - e. Orchid Pro could proceed with the initial comparison of all samples transferred into the Database and all new samples collected by September 30, 2021;
 - f. If matches are disclosed through the database, a technician will review and verify the match which may take a few days;
 - g. Occasionally, there are inconclusive results with DNA tests. Orchid Pro has advanced testing options available to it or through partner organizations that could be accessed to resolve inconsistencies;
 - h. Orchid Pro is available to keep the DNA Database open and operational as directed by Class Counsel, including throughout as much of the Claims Period as needed;

- i. Orchid Pro would remove a participant from the DNA Database and/or delete digital copies of the DNA of any participant who provided notice to Class Counsel in writing and within 14 days; and
- j. Orchid Pro has confirmed that upon receiving a request in writing from Class Counsel following the completion of the Claims Period, Orchid Pro will permanently delete all DNA samples in the DNA database.

62. I make this Affidavit solely in support of the Plaintiffs' motion for certification and for no other or improper purpose.

AFFIRMED REMOTELY by Frances Shapiro Munn stated as being located in the City of Williston, in the State of Vermont, United States of America in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely on this 23 day of July, 2021



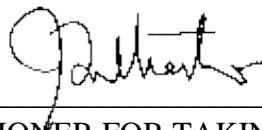
Commissioner for Taking Affidavits



Frances Shapiro Munn

EXHIBIT "A": Settlement Agreement signed July 23, 2021 with Schedules A-G

This is Exhibit "A" to the Affidavit of Frances Shapiro Munn, sworn remotely before me at the City of Williston, in the State of Vermont, United States, on the 23rd day of July 2021, in accordance with O. Reg 431/20 Administering Oath Remotely.



A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No.: 16-70454CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

DANIEL DIXON, DAVINA DIXON AND REBECCA DIXON

Plaintiffs

- and -

DR. NORMAN BARWIN

Defendant

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT
(Made as of 23rd day of July, 2021)

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SETTLEMENT AGREEMENT

Subject to the approval of the Court, the Plaintiffs and the Defendant agree that, in consideration of the promises and covenants set forth in this Agreement and upon the Approval Order becoming a Final Order, this Action will be settled and compromised on the terms and conditions contained herein.

SECTION 1: RECITALS

1.1 WHEREAS:

- (a) The Plaintiffs commenced this Action in Ontario against the Defendant alleging, among other things, that errors made in the course of artificial inseminations (AI) caused the genetic paternity of children born as a result of these AI procedures to be other than that to which the relevant parents consented.
- (b) The Defendant has denied and continues to deny all of the Plaintiffs' claims in this Action, has denied any liability of any kind whatsoever, and states that he would have actively and diligently pursued affirmative and other defences had this Action not been settled.
- (c) The Plaintiffs, with the benefit of advice from Class Counsel, have concluded that this Agreement, which resolves finally and completely the Action against the Defendant, is fair, reasonable and in the best interests of the Classes based on an analysis of the facts and law applicable to the issues in this Action, and taking into account factors including the burdens, complexities, risks and expense of continued litigation, including the determination of liability, damages, any potential appeals in continuing the Action.
- (d) The Defendant similarly has concluded that this Agreement is desirable in order to avoid the time, risk and expense of continuing with the litigation, including any potential appeals, and any other present or future litigation arising out of the facts that gave rise to this Action, and to resolve finally and completely the pending claims advanced or that could have been advanced against him in this Action.
- (e) The Plaintiffs and the Defendant, through counsel, have engaged in hard-fought and extensive arm's length settlement discussions and negotiations in respect of the Action.
- (f) The Plaintiffs and the Defendant intend to and hereby do finally resolve the Action and all the claims that were or could have been asserted in the Action, subject to the approval of the Court as hereinafter provided, without any admission of liability or wrongdoing whatsoever by the Defendant.
- (g) The Plaintiffs assert that they are suitable representatives for the three respective Classes, including subclasses, and will seek to be appointed as the representative plaintiffs for the certified Classes in this Action.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the settlement set out herein.

SECTION 2: DEFINITIONS

2.1 For the purposes of this Agreement, including the Recitals and Schedules hereto:

Action means the action styled *Daniel Dixon, Davina Dixon and Rebecca Dixon v. Dr. Norman Barwin*, filed in the Ontario Superior Court of Justice (Ottawa Registry), Court File. No.: 16-70454CP.

Administration Expenses means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs or Class Counsel relating to the approval, implementation and administration of this Agreement, including the costs of publishing and delivering all notices and administering the verification and payment of claims by themselves or a retained third party service provider or otherwise, and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses include the Reimbursable Expenses but do not include Class Counsel Fees.

Agreement means this settlement agreement, including the Recitals and Schedules hereto.

Approval Motion means a motion to be brought by the Plaintiffs, in the Court, for the Approval Order and the approval of Class Counsel Fees and expenses to be paid as a first charge on the Settlement Amount.

Approval Order means an order made by the Court:

- (a) approving this Agreement;
- (b) approving the proposed distribution of the Settlement Amount;
- (c) approving the form of the Second Notice; and
- (d) dismissing the Action as against the Defendant with prejudice and without costs, on the Effective Date;

in a form satisfactory to the Plaintiffs and the Defendant, all acting reasonably.

Authorized Claimant means a Claimant who submitted a completed Claim Form on or before the Claims Bar Deadline, with the necessary supporting information including dates of artificial insemination by the defendant, explanation of consent given to the defendant, proof with government issued photo ID of required dates of birth and current addresses, and except as provided below, the relevant legal chain of custody DNA test results from Orchid Pro DNA Laboratories proving a mismatch with the said consent.

Claimants will be exempted from the obligation to produce a legal chain of custody DNA paternity test from Orchid Pro DNA Laboratories, in two circumstances:

(A) Where a legal chain of custody DNA test result is obtained from another provider and a reasonable explanation is provided by the Claimant as to why Orchid Pro DNA Laboratories could not be used; or

(B) Where a legal chain of custody DNA test is not possible or not available to the Claimant to prove a mismatch with the said consent and the Claimant can produce other reliable evidence to

the satisfaction of the Claims Administrator or, where applicable, the Referee to prove the mismatch.

Certification and First Notice Motion means a motion to be brought by the Plaintiffs, in the Court, for the Certification and First Notice Order.

Certification and First Notice Order means an order:

- (a) certifying the Action for settlement purposes only;
- (b) approving the form, content and method of dissemination of the First Notice;
- (c) prescribing opt-out procedures and objections; and
- (d) fixing the date for the Approval Motion

in a form satisfactory to the Plaintiffs and the Defendant, all acting reasonably.

Claims Bar Deadline means the date by which each Class Member must file a Claim Form and all required supporting documentation with Class Counsel, which date shall be 90 days after the date on which the Approval Order becomes a Final Order.

Claim Form means the form to be approved by the Court which, when completed and submitted in a timely manner to Class Counsel, constitutes a Class Member's claim for compensation pursuant to the Settlement.

Class or Class Members means a natural person who falls into one of the following classes:

- i. **Mothers Class:** All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.
- ii. **Spouse/Partner/Former Patient Class:**
 - a) All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and
 - b) All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.
- iii. **Children Class:** All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen

entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

Class Counsel means Nelligan O'Brien Payne LLP.

Class Counsel Fees means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel as well as a *pro rata* share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.

Class Period means the period from July 1, 1973 through December 31, 2012;

Common Issues means:

- (a) Did the defendant owe the members of the Mothers Class a duty of care? If so, did the Defendant breach the duty resulting in compensable damages?
- (b) Did the defendant owe the members of the Spouse/Partner Class a duty of care? If so, did the defendant breach the duty resulting in compensable damages?
- (c) Do the Children Class members have a cause of action arising from negligence or, in the alternative, pursuant to s. 61 of the *Family Law Act*, R.S.O 1990, c. F.3 resulting in compensable damages?

Contributing Parties means the Defendant and his medical defence protection association ("Canadian Medical Protective Association" or "CMPA").

Counsel for the Defendant means Gowling WLG (Canada) LLP.

Court means the Ontario Superior Court of Justice.

CPA means the *Class Proceeding Act*, 1992, S.O. 1992, c. 6, as amended.

Defendant means Dr. B. Norman Barwin.

DNA Database means a database established and maintained by OrchidPro DNA Laboratories whereby claimants may submit legal chain of custody DNA samples for comparison with other claimants to determine if there are any genetic matches between them.

Effective Date means the date on which both of the following occur or have occurred:

- (a) the Settlement Amount has been paid into the Trust Account; and
- (b) the Defendant's right to terminate the Agreement has expired and the Approval Order becomes a Final Order.

Excluded Persons means persons that properly opt-out of their own relevant Class in accordance with the certification order issued by the Court.

First Notice means the Notice of Certification and Settlement Approval Hearing.

Final Order means any order of the Court contemplated by this Agreement from which any right of appeal has been exhausted, expired, or where no appeal lies.

FLA means the *Family Law Act*, R.S.O. 1990, c. F.3, as amended.

Notice of Certification and Settlement Approval Hearing means the long-form and short-form notice to the Classes of:

- (a) the granting of certification of the Action as against the Defendant, for settlement purposes only;
- (b) the procedure for submitting an Opt-Out Form or Objection; and
- (c) the date and time of the Approval Motion

in a form satisfactory to the Plaintiffs and the Defendant, all acting reasonably.

Notice of Settlement Approval means notice to the Classes of the Approval Order in a form satisfactory to the Plaintiffs and the Defendant, all acting reasonably.

Objection means the process by which a Class Member notifies the Court (through the Administrator or Class Counsel) of a Class Member's view that the Settlement is not fair, reasonable, or in the best interest of the class, and therefore ought not to be approved.

Opt-Out Deadline means the date seventy-five (75) days after the date on which the First Notice is first published in accordance with the Certification and First Notice Order or such date thereafter as the court may order upon motion on consent of the parties.

Opt-Out Form means the document, as approved by the Court, that if properly completed and submitted by a Class Member to Class Counsel before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class, the Action, and participation in the Settlement, as set out in Section 11.2 herein.

Opt-Out Party or Opt-Out Parties means any and all persons who would otherwise be Class Members and who submit a valid Opt-Out Form to Class Counsel by the Opt-Out Deadline.

Opt-Out Period means the period up to and including the Opt-Out Deadline, during which Opt-Out Forms may be submitted by persons who fall within the Class and wish to opt-out of the Action and the Settlement.

Opt-Out Threshold means the confidential threshold stated in the Term Sheet executed by the Parties, dated May 28, 2021, which if exceeded gives the Defendant the option to withdraw from and terminate the Agreement as further explained in Section 12.2-12.5 herein.

Party or Parties means the Plaintiffs and the Defendant.

Plaintiffs mean Daniel Dixon, Davina Dixon and Rebecca Dixon.

Plan of Allocation means the distribution plan stipulating the proposed implementation and administration of the Settlement.

Plan of Notice means the plan for disseminating the First Notice and Second Notice to the Classes, in a form satisfactory to the Plaintiffs and the Defendant, all acting reasonably.

Referee means Rick Weiler or such other person or persons appointed by the Court to serve in that capacity.

Reimbursable Expenses means certain Administration Expenses stipulated in this Agreement that will be incurred by Class Counsel prior to Settlement Approval, which: (i) if the Settlement is approved, will be reimbursed to Class Counsel from the Settlement Amount; or (ii) if the Settlement is not approved, or is terminated pursuant to this Agreement, will be reimbursed to Class Counsel by the Contributing Parties up to the maximum amounts specified in s. 4.1 of this Agreement.

Released Claims (or Released Claim in the singular): means any and all claims, complaints, demands, actions, suits, injuries, and causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, including assigned claims, and damages and liabilities of any nature, whenever or however incurred (whether actual, compensatory, punitive, aggravated or otherwise), including damages, interest, costs, expenses, class administration expenses (including Administrative Expenses), penalties, and lawyers' fees (including Class Counsel fees), foreseen or unforeseen, suspected or unsuspected, actual or contingent, existing now or arising in the future, whether known or unknown, asserted or unasserted, accrued or unaccrued, in law, contract, tort, pursuant to the FLA, or in equity, regardless of the legal theory, that any of the Releasors ever had, now have or hereafter can, shall or may have, arising from or relating in any way to the claims that were made, or the claims that could have been made arising from the medical care that is the subject matter thereof, in the Action.

Releasees means the Defendant, his heirs, executors, administrators, current or former employees, agents, servants, representatives, successors, assignees, advisors, the Canadian Medical Protective Association and its assigns, insurers and related entities and the lawyers for the Defendant and the Canadian Medical Protective Association.

Releasors mean, jointly and severally, individually and collectively, the Plaintiffs, the Class Members, and their respective heirs, executors, trustees, administrators, assigns, attorneys, representatives, partners and insurers (including Ontario Health Insurance Plan and any other health care or disability insurers of the Class Members) and their predecessors, successors, heirs, executors, trustees, administrators and assignees; but, for greater certainty, excludes Opt-Out Parties.

Second Notice means the Notice of Settlement Approval.

Semen means the biological fluid used in Artificial Insemination and includes the term "sperm" interchangeably as necessary herein and in all related documents.

Schedules means the documents attached hereto as Schedules A through XX agreed between the parties to be used in the process of notification, approval and administration, and more generally, the execution of, this Settlement Agreement pursuant to its terms.

Schedule A	Plan of Allocation
Schedule B	Long Form Notice of Certification and Proposed Settlement
Schedule C	Short Form Notice of Certification and Proposed Settlement
Schedule D	Opt-Out Form

Schedule E	Draft Order for Certification for Settlement
Schedule F	Draft Order for Settlement Approval
Schedule G	Plan of Notice

Settlement means the settlement provided for in this Agreement.

Settlement Amount means \$13,375,000 (THIRTEEN MILLION THREE HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS) in Canadian currency, all-inclusive of all claims for damages, Administration Expenses, if any, distributions, Class Counsel's disbursements and legal fees plus taxes, and any other costs or expenses otherwise related to the Action.

Supporting Documents means documents to evidence a Class Member's membership in a class including a notarized copy of government issued Photo ID showing the Claimant's current address and date of birth, a completed Claim Form and a legal chain of custody DNA result from Orchid Pro DNA Laboratories supportive of the Class Member's claim or other proof as permitted under this Agreement or as may be agreed between the Class Member and Class Counsel or the administrators as the case may be.

Trust Account means the interest-bearing trust account of Class Counsel or, if directed by the Court, an interest-bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of a claims administrator appointed by the Court.

SECTION 3: APPROVAL AND NOTICE PROCESS

Best Efforts

- 3.1 The Parties shall use their best efforts to give effect to this Settlement and to secure the Approval Order in a prompt and timely manner.
- 3.2 Until the Approval Order becomes a Final Order or the termination of this Agreement, whichever occurs first, the Parties agree to hold in abeyance all steps in the Action, other than the motions provided for in this Agreement and such other matters required to implement the terms of this Agreement.

Certification and First Notice Motion

- 3.3 The Plaintiffs will, as soon as is reasonably practicable following the execution of this Agreement, bring the Certification and First Notice Motion. Subject to the content of the First Notice and the Certification and First Notice Order being satisfactory to the Defendant, and for the purpose of this Agreement only, the Defendant will consent to the Certification and First Notice Order being issued by the Court for the purposes of the Settlement only.
- 3.4 Upon entry of the Certification and First Notice Order, Class Counsel shall cause the First Notice to be published in accordance with the Plan of Notice and the directions of the Court. Any third-party costs for publishing the First Notice shall be a Reimbursable Expense.

Approval Motion and Notice

- 3.5 The Plaintiffs will bring the Approval Motion before the Court in accordance with the Court's directions. The Defendant will consent to the issuance of the Approval Order, subject to the content of the Approval Order sought at the Approval Motion being satisfactory to the Defendant, and for the purposes of the Settlement only.
- 3.6 Upon entry of the Approval Order, Class Counsel shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. Any third-party costs for publishing the Second Notice shall be a Reimbursable Expense.

Notice of Termination

- 3.7 If this Agreement is terminated after the First Notice has been published and disseminated, a notice of the termination will be given to the Classes. Class Counsel will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs. Any third-party costs for publishing a notice of termination shall be a Reimbursable Expense.

Report to the Court

- 3.8 After publication and dissemination of each of the notices required by this Section, Class Counsel shall file with the Court an affidavit confirming publication and dissemination.

SECTION 4: REIMBURSABLE EXPENSES

Payments

- 4.1 In the event the Settlement is not approved or is terminated, expenses reasonably incurred (if any) for the following purposes shall be Reimbursable Expenses:
- (a) the third-party costs incurred in connection with establishing and operating the Trust Account;
 - (b) the third party costs incurred prior to termination no greater than \$200,000 in total based on the following estimated breakdown:
 - i. the third-party costs incurred in publishing and distributing the First Notice, including the mailing expenses as may be applicable, estimated to be \$75,000;
 - ii. if the Court appoints a third-party administrator, the costs of that third party in connection with receiving Objections and Opt-Out Forms and reporting to the Court, plus reasonable and documented disbursements and HST, estimated to be \$30,000;
 - iii. if the Court appoints a third-party administrator, the costs reasonably incurred by said administrator for performing the services required to prepare to implement the Settlement, including any mailing expenses, whether or not a claim has been filed or reviewed, as approved by the Court, estimated to be \$5,000;

- iv. if necessary, the costs incurred in publishing notice to the Classes that the Agreement has been terminated or not approved estimated to be \$15,000
- v. and the costs of setting up and running the DNA database estimated to be \$75,000.

Disputes Concerning Reimbursable Expenses

- 4.2 Any dispute concerning the entitlement to or quantum of Reimbursable Expenses shall be dealt with by way of a motion to the Court on notice to the Parties. The Contributing Parties shall have full standing in respect of such a motion.

SECTION 5: SETTLEMENT BENEFIT

Payment of Settlement Amount

- 5.1 The Contributing Parties, or any of them, shall pay the Settlement Amount to Class Counsel, in trust, within 10 business days after the Court Approval Order of the Settlement is final and shall be immediately deposited by the Class Counsel into an interest-bearing trust account at a Canadian bank with a branch located in Canada.
- 5.2 The Contributing Parties shall not have any obligation to pay any amount to the Plaintiffs, the Class Members or Class Counsel other than the payment of the Settlement Amount to Nelligan O'Brien Payne LLP, in trust, per s. 5.1 hereof, with respect to this Agreement or the Action for any reason whatsoever, including any amount for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Action, the Notices including as described in Sections 3.4 and 3.6, the Released Claims, the Settlement, and Administration Expenses, if any.
- 5.3 Class Counsel shall provide an accounting to the Court for all payments made from the Trust Account by Class Counsel.

Settlement Amount to be Held in Trust

- 5.4 Class Counsel shall hold the Settlement Amount in an interest-bearing Trust Account.
- 5.5 Class Counsel shall maintain the Settlement Amount in the Trust Account for the benefit of the Classes, as provided for in this Agreement; however, in the event a third-party claims administrator is appointed by the Court, Class Counsel shall, as directed by the Court, immediately transfer the full balance of the Settlement Amount to such claims administrator, who shall maintain the Settlement Amount in the Trust Account for the benefit of the Class, as provided for in this Agreement.
- 5.6 No amount shall be paid out from the Trust Account by Class Counsel or a Court appointed claims administrator except in accordance with this Agreement, or in accordance with an order of the Court obtained on notice to the Parties.

Taxes on Interest

- 5.7 Except as expressly provided in Section 5.8, all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be solely the Class Counsel's responsibility and shall be paid by Class Counsel (or a claims administrator, as may be appointed by the Court) from the Trust Settlement Amount, or by the Class as Class Counsel considers appropriate, and the Contributing Parties shall have no liability for any taxes payable on the interest.
- 5.8 The Contributing Parties shall have no responsibility to make any filings relating to the Trust Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Trust Account, unless this Agreement is terminated, in which case any interest earned on the Settlement Amount in the Trust Account shall be paid to the Contributing Parties at the direction of their counsel, who, in such case, shall be responsible for the payment of any applicable taxes on such interest not previously paid by Class Counsel or a Court-appointed claims administrator.

SECTION 6: NO REVERSION

- 6.1 Unless this Agreement is terminated as provided herein or otherwise by the Court, the Contributing Parties shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount contributed under Section 5.1 and then only to the extent of and in accordance with the terms provided herein.

SECTION 7: DISTRIBUTION OF THE TRUST SETTLEMENT AMOUNT

- 7.1 If the Settlement becomes final as contemplated by Section 13, Class Counsel (or the Court-appointed claims administrator, if one is appointed) shall distribute the Settlement Amount out of the Trust Account in accordance with the following priorities:
- (a) to pay Class Counsel the Class Counsel Fees approved by the Court;
 - (b) to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, or soliciting Class Members to submit a Claim Form (including payment of the costs of genetic testing with Orchid Pro DNA Laboratories). For greater certainty, the Defendant is specifically excluded from eligibility for any payment of costs and expenses under this subsection;
 - (c) to pay all of the costs and expenses reasonably and actually incurred by Class Counsel and the Referee, relating to determining eligibility, the filing of Claims Forms, processing Claims Forms, resolving disputes arising from the processing of Claims Forms and administering and distributing the Settlement Amount;
 - (d) to pay any taxes required by law to be paid to any governmental authority; and
 - (e) to pay a pro rata share of the balance of the Trust Settlement Amount to each Authorized Claimant in proportion to his or her claim as provided for and in accordance with the Plan of Allocation.

SECTION 8: EFFECT OF SETTLEMENT

No Admission of Liability

8.1 Whether or not this Agreement is terminated, this Agreement, anything contained in it, any and all negotiations, discussions, and communications associated with this Agreement, shall not be deemed, construed or interpreted as a concession or admission of wrongdoing or liability by the Defendant or CMPA, or as a concession or admission by the Defendant or CMPA of the existence of any particular cause of action or veracity of any allegation asserted in this Action. Neither this Agreement nor anything contained herein shall be used or construed as an admission by the Defendant or CMPA of any fault, omission, liability or wrongdoing in connection with any statement, medical judgment or care, medical and biological storage, or otherwise, and in fact the Defendant continues to dispute and contest the allegations made in this Action.

Agreement Not Evidence

8.2 The Parties agree that, whether or not it is terminated, unless otherwise agreed, this Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to implement this Agreement, shall not be referred to, offered as evidence or received as evidence or interpreted in this Action or in any other pending or future civil, criminal, quasi-criminal, administrative action, disciplinary investigation or other proceeding as any presumption, concession or admission:

- (a) of the validity of any claim that has been or could have been asserted in the Action by the Plaintiffs against the Defendant, or the deficiency of any defence that has been or could have been asserted in the Action;
- (b) of wrongdoing, fault, neglect, breach of fiduciary, professional standards or other duty, or liability by the Defendant; and
- (c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Action after trial.

8.3 Notwithstanding Section 8.2, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

No Further Litigation

8.4 Class Counsel, and anyone formerly, currently or hereafter employed by, associated with, or a partner with Class Counsel may not, directly or indirectly participate or be involved in, or in any way assist with respect to any claim made by any person, including but not limited to any putative class member who opts-out of the settlement, in relation to any claim they have or may in the future assert, regarding the subject matter of the Action.

8.5 Class Counsel also is prohibited from divulging to anyone for any purpose any information obtained in the course of the negotiation, preparation or execution of this Agreement, without the prior written consent of the Defendant or unless ordered to do so by a court.

SECTION 9: CERTIFICATION FOR SETTLEMENT ONLY

Consent to Certification

- 9.1 The Defendant will consent to certification of the Action as a class proceeding, pursuant to Sections 2, 5 and 6 of the CPA, solely for the purpose of effecting this Agreement.
- 9.2 The Plaintiffs and the Defendant agree that the only common issues that the Plaintiffs will seek to define as against the Defendant are the Common Issues and the only classes that the Plaintiffs will assert are the Classes.

SECTION 10: Certification Without Prejudice

- 10.1 The Parties agree that the granting of certification of the Action as a class proceeding in accordance with Sections 9.1-9.2 hereof is for the sole purpose of effecting the Settlement. In the event that this Agreement is terminated as provided herein, the Certification and First Notice Order shall be vacated or set aside to the extent of the order granting leave to proceed and certifying this Action as a class proceeding for the purposes of implementing this Agreement, and shall be without prejudice to any position that any of the Parties may later take on any issue in the Action including in subsequent certification motions. In particular, the fact of the Defendant's consent to certification for settlement purposes shall not be referenced in any way in the further prosecution of the Action, nor shall such consent be deemed to be an admission by the Defendant, or any of them, that the Plaintiffs have met any of the requisite criteria for granting certification of the Action as a class proceeding.

SECTION 11: OPTING OUT

Awareness of any Potential Opt-Outs

- 11.1 The Plaintiffs and Class Counsel represent and warrant that:
- (a) they are unaware of any Class Member who has expressed an intention to opt-out of the Class;
 - (b) they are unaware of any Class Member who has expressed an intention to object to this Settlement; and
 - (c) they will not encourage or solicit any Class Member to opt-out of the Class or object to the Settlement.

Opt-Out Procedure

- 11.2 Each Class Member who wishes to exclude themselves, or any other person under the age of majority or other disability for whom they have legal authority to bind that person, from the relevant Class must submit a properly completed Opt-Out Form along with all required supporting documents to Class Counsel or court appointed administrator on or before the Opt-Out Deadline. An Opt-Out Form shall consist of the following:
- (a) a confirmation of the intention to Opt-Out of the Class Action signed by the Class Member or a person authorized to bind the Class Member;

- (b) date(s) of artificial insemination allegedly administered by the Defendant, or at another fertility centre with semen previously stored with the Defendant, and statement of alleged consent and direction for use of semen given to Defendant;
 - (c) a notarized copy of government issued photo ID and dates of birth of the Class Member, their partner or spouse, their relevant child or children, and any other relevant person(s)
 - (d) contact information for the Class Member, including name, address, telephone number and email address; and
 - (e) a legal chain of custody DNA test by Orchid Pro Laboratories proving a mismatch with the consent provided to the Defendant for use of semen during AI, unless a reasonable explanation is provided for why a legal chain of custody DNA test could not be obtained with substitution therefore of acceptable evidence of a mismatch.
- 11.3 In order to remedy any deficiency in the completion of an Opt-Out Form, Class Counsel may request that additional information be submitted by a Class Member who submits an Opt-Out Form.
- 11.4 If a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to Class Counsel or fails to remedy any deficiency by the Opt-Out Deadline, the Class Member shall not have opted out of the Action, subject to any order of the Court to the contrary, and will in all other respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein.
- 11.5 The Opt-Out Deadline will not be extended unless the Court orders otherwise.
- 11.6 Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement. Class Members who do not opt-out shall be bound by the Settlement and the terms of this Agreement.

Notification of Number of Opt-Outs.

- 11.7 Within ten (10) days after the Opt-Out Deadline, Class Counsel shall report to the Court and the Defendant the number and Class type of Opt-Out Parties, and a summary of the information delivered by each Opt-Out Party including the DNA test results received pursuant to paragraph 11.2(e) above.
- 11.8 Class Counsel shall also provide to Counsel for the Defendant copies of all of the Opt-Out Forms submitted by Opt-Out Parties at the same time as the report provided for in Section 11.7.

SECTION 12: : TERMINATION OF THE AGREEMENT

General

- 12.1 This Agreement shall, without notice, automatically terminate if:
- (a) the Court declines to grant the Certification and First Notice Order and such order becomes a Final Order;

- (b) the Court grants the Certification and First Notice Order but such order is reversed on appeal and the reversal becomes a Final Order;
- (c) the Court declines to grant the Approval Order and such order becomes a Final Order; or
- (d) the Court grants the Approval Order but such order is reversed on appeal and the reversal becomes a Final Order.

12.2 The Defendant shall have the right to terminate this Agreement by delivering a written notice pursuant to Section 12.10 herein within thirty (30) days after any of the following events:

- (a) the Court grants the Certification and First Notice Order in a form that is not satisfactory to the Defendant, acting reasonably; or
- (b) the Court grants the Approval Order in a form that is not satisfactory to the Defendant, acting reasonably.

12.3 This Agreement shall be terminated if the Defendant elects to terminate the agreement in accordance with s. 12.6 forthwith upon delivery to Class Counsel of the notice of election to terminate contemplated by that section.

12.4 In the event this Agreement is terminated in accordance with its terms:

- (a) the Parties will be restored to their respective positions prior to the execution of this Agreement;
- (b) the Parties will consent to an Order vacating or setting aside the Certification and First Notice Order to the extent of the order certifying this Action as a class proceeding for the purposes of implementing this Agreement, including any definitions of the Class and Common Issues; and such order shall include a declaration that:
 - i. the prior consent granting certification of this Action for settlement purposes be deemed to not be an admission by the Defendant that the Action met any of the criteria for granting certification as a class proceeding; and
 - ii. no Party to this Action and no other person may rely upon the fact of the prior consent granting of certification for any purpose whatsoever;
- (c) any Reimbursable Expenses, with reasonable proof of the expenditure, are to be reimbursed to Class Counsel by the Contributing Parties;
- (d) this Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;
- (e) this Agreement and the consent certification order will not be introduced into evidence or otherwise referred to in any litigation against the Defendant.

12.5 Notwithstanding the provisions of Section 12.4(d), if this Agreement is terminated, the provisions of this Section 12 and Sections 1, 2, 3.7, 3.8, 4.1, 4.2, 5.3, 5.8, 6.1, 8.1, 8.2, 8.3, 8.5, 10.1, 12, 14.5, , and 18 shall survive termination and shall continue in full force and effect.

Effect of Exceeding the Opt-Out Threshold, Conditions Precedent and Right to Terminate

- 12.6 Notwithstanding any other provision in this Agreement, the Defendants shall have the option to withdraw from and terminate the Agreement, and to render the Agreement null and void in the event that persons eligible to participate in the settlement of the Action opt-out of the class with the result that the number of claimants who opt-out exceeds the Opt-Out Threshold, provided that notice of the election to terminate is provided by Counsel for the Settling Defendant to Class Counsel within ten (10) business days of Class Counsel notifying Counsel for the Defendant of the number of Opt-Out Parties and other information required in paragraph 11.7 herein, after which date the right to terminate the Agreement will have expired.
- 12.7 If the Opt-Out Threshold is not exceeded, the Defendant's right to terminate this Agreement pursuant to the provisions of this Section is inoperative and of no force and effect.
- 12.8 The Opt-Out Threshold is stated in the settlement term sheet dated May 28, 2021 and executed by the Parties. The Opt-Out Threshold as stated in the Settlement Term Sheet will be kept confidential by the Parties and their counsel, and may be shown to the Court confidentially if requested by the Court but shall not be otherwise disclosed by the Parties and their counsel, unless disclosure is ordered by the Court or the Defendant provides prior written consent to disclosure.

Allocation of Monies in the Trust Account Following Termination

- 12.9 If this Agreement is terminated, consistent with Section 5.3, then Class Counsel shall account to the Court and the Parties for any Reimbursable Expenses incurred. This accounting shall be delivered no later than ten (10) days after such termination.
- 12.10 If this Agreement is terminated, the Defendant shall, within thirty (30) days after termination, apply to the appropriate Court, on notice to the Plaintiffs, for an order:
- (a) declaring this Agreement null and void and of no force or effect except for the provisions listed in Section 12.5;
 - (b) determining whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
 - (c) requesting an order setting aside, nunc pro tunc, all prior orders or judgments entered by the Court in accordance with the terms of this Agreement, including any order certifying the Action as a class proceeding for the purposes of implementing this Agreement; and
 - (d) authorizing the payment of all remaining funds in the Trust Account, including accrued interest, to the Contributing Parties.
- 12.11 Subject to Section 12.12, the Parties shall consent to the orders sought in any motion made by the Defendant pursuant to Section 12.10.

Disputes Relating to Termination

- 12.12 If there is any dispute about the termination of this Agreement, the Court shall determine any dispute by motion made by a Party on notice to the other Parties.

No Right to Terminate

- 12.13 For greater certainty, no dispute or disagreement among the Plaintiffs and/or members of the Class or any of them about the proposed distribution of the Settlement Amount shall give rise to a right to terminate this Agreement.

SECTION 13: DETERMINATION THAT THE SETTLEMENT IS FINAL

- 13.1 The Settlement shall be considered final on the Effective Date.

SECTION 14: RELEASES AND JURISDICTION OF THE COURT**Release of Claims etc. by Releasees**

- 14.1 Upon the Effective Date, in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Agreement, the sufficiency of which is hereby acknowledged by the Releasors, the Releasors forever and absolutely release, remise and discharge the Releasees from the Released Claims.
- 14.2 The Releasors acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the Action and the subject matter of this Agreement, and that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, this release and, subject to the provisions of Section 12, this Agreement, shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

No Further Claims

- 14.3 As of the Effective Date and provided that the Settlement Amount has been deposited into the Trust Account, the Releasors provide a Full and Final Release of all potential claims that are or could have been made by the plaintiffs in the claim herein by the Releasors of the Releasees. The Full and Final Release further prohibits claims or assignment of claims to third parties by Releasors that could result in claims, third party claims or crossclaims including for contribution and indemnity against the Releasees. The Releasors hereby represent and warrant that they have not assigned to any person, firm or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind which they have released. The Releasors agree not to make or continue any claim or take or continue any proceedings against any other person or entity that may claim contribution and/or indemnity from the Releasees in respect of any of the matters released herein. The Releasors also give the Release on behalf of all other persons entitled under the provisions of Part V of the Family Law Act, R.S.O. 1990 D.F.3 and in particular the Releasors agree thereby that they will indemnify and save harmless the Releasees against any claims asserted by or on behalf of any person entitled to claim under Part V of the Family Law Act arising out of the aforementioned action. For clarity, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Ontario or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any of the Releasees, whether direct, derivative, subrogated, by virtue of legislation or common law, or any other person who may claim contribution or indemnity from the Releasees in respect of any Released Claim. For greater certainty, this provision does not prohibit the Releasors or Class Counsel from advancing any cause of action against the Releasees that is not a Released Claim.

Dismissal of the Action

- 14.4 As of the Effective Date, the Action shall be dismissed as against the Defendant with prejudice and without costs.

No Claims in Interim

- 14.5 As of the date of this Agreement, Class Counsel represent that they do not represent the Plaintiffs in any other proceeding related to any matter at issue in this Action.

SECTION 15: ADMINISTRATION

- 15.1 It is the intention of Class Counsel to retain a Third Party Administrator to serve as the claims administrator to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the agreement and in the Plan of Allocation.
- 15.2 If a third-party is appointed by the Court as claims administrator and the Agreement is terminated, the claims administrator's fees, disbursements and taxes will be fixed as set out in Section 4.1 and 4.2.
- 15.3 If a third-party is appointed by the Court as claims administrator and the Settlement becomes final as contemplated by Section 13, the Court will fix the third-party administrator's compensation and payment schedule.

Appointment of the Referee

- 15.4 The Court will appoint the Referee with the powers, duties and responsibilities set out in the Agreement and the Plan of Allocation.
- 15.5 The fees, disbursements and taxes of the Referee will be fixed by the Court.

Claims Process

- 15.6 In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to Class Counsel (or the third-party claims administrator if one is appointed by the Court), in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline, and any Class Member who fails to do so shall not share in any distribution made in accordance with the Plan of Allocation unless the Court orders otherwise.
- 15.7 In order to remedy any deficiency in the completion of a Claim Form, the claims administrator, if one is appointed by the Court, may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of thirty (30) days from the date of the request from the claims administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within the thirty (30) day period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary, but will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.

Disputes Concerning the Decisions of Class Counsel

- 15.8 In the event that a Class Member disputes the decision of the third-party claims administrator if one is appointed by the Court, whether in whole or in part, the Class Member may appeal the decision to the Referee in accordance with the provisions in the Plan of Allocation. The decision of the Referee will be final, with no right of appeal.
- 15.9 No action shall lie against the Releasees, the Defendant, Counsel for the Defendants, Class Counsel, the third-party claims administrator (if one is appointed by the Court) or the Referee for any decision made in the administration of the Agreement and Plan of Allocation without an order from the Court authorizing such an action.

Conclusion of the Administration

- 15.10 Following the Claims Bar Deadline, and in accordance with the terms of the Agreement, the Plan of Allocation, and such further order of the Court, as may be necessary, or as circumstances may require, the third-party claims administrator (if one is appointed by the Court) shall distribute the remainder of the Trust Settlement Amount to Authorized Claimants.
- 15.11 No claims shall lie against the Releasees, the Defendant, Counsel for the Defendant, Class Counsel, the third-party claims administrator (if one is appointed by the Court) or the Referee based on distributions made substantially in accordance with the Agreement and the Plan of Allocation.
- 15.12 If the Trust Account is in a positive balance in an amount greater than 5% of the net Settlement Amount (whether by reasons of tax refunds, uncashed cheques or otherwise) after sixty (60) days from the date of distribution of the Trust Settlement Amount to the Authorized Claimants, Class Counsel (or the third-party claims administrator if one is appointed by the Court) shall, if economically feasible, allocate and distribute such balance among Authorized Claimants on a pro rata basis. If there is a balance in the Trust Account after each Authorized Claimant is paid his/her pro rata share or if an amount equal to or less than 1% of the net Settlement Amount remains undistributed, the remaining funds shall be paid first as honoraria to the Representative Plaintiffs up to a maximum of \$15,000.00 for each Representative Plaintiff and then the balance, if any, by way of *cy près*, to a recipient approved by the Court, if necessary.
- 15.13 Upon the conclusion of the administration, or at such other time(s) as the Court directs, Class Counsel (or the third-party claims administrator if one is appointed by the Court) shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed and obtain an order from the Court discharging it as claims administrator.

SECTION 16: THE PLAN OF ALLOCATION

- 16.1 At the hearing of the motion for the Approval Order, the Plaintiffs shall seek the Court's approval of the Plan of Allocation. The approval of the Plan of Allocation is not a condition of the Settlement and its approval may be considered separately from that of the Settlement.
- 16.2 The procedure for, and the allowance or disallowance by the Court of the approval of the Plan of Allocation is to be considered by the Court separately from its consideration of the fairness, reasonableness and adequacy of the Settlement provided for herein.

- 16.3 Any order or proceeding relating solely to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Approval Order and the Settlement of the Action provided herein.
- 16.4 The Defendant shall have no obligation to consent to but shall not oppose the approval of the Plan of Allocation.
- 16.5 Unless requested to do so by the Court, the Defendant will not make any submissions to the Court relating to the Plan of Allocation.

SECTION 17: THE FEE AGREEMENT AND CLASS COUNSEL FEES

Motion for Approval of Class Counsel Fees and Directions for Distribution of the Remainder of the Settlement Amount

- 17.1 At the Approval Motion, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.
- 17.2 The Defendant acknowledges that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees and they will not take any position or make any submissions to the Court concerning Class Counsel Fees, except as requested and required by the Court. Subject to the foregoing, the Plaintiffs will provide the Defendant with notice of the motion to approve Class Counsel Fees and copies of the materials filed with the Court and the Defendant and their counsel are entitled to attend any motion for approval of Class Counsel Fees.
- 17.3 The procedure for and the allowance or disallowance by the Court of any requests for Class Counsel Fees to be paid out of the Settlement Amount are not part of the Settlement provided for herein, and are to be considered by the Court separately from, and subsequent to, its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.
- 17.4 Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Approval Order and the Settlement of this Action provided herein.

Payment of Class Counsel Fees and Distribution of the Remainder of the Settlement Amount

- 17.5 Forthwith after the Settlement becomes final, as contemplated in Section 13.1, Class Counsel may withdraw the Class Counsel Fees approved by the Court from the Trust Account.

SECTION 18: MISCELLANEOUS

Motions for Directions

- 18.1 Any one or more of the Parties, Class Counsel, the administrator (should one be appointed), or the Referee may apply to the Court for directions in respect of any matter in relation to this Agreement and the Plan of Allocation.
- 18.2 All motions contemplated by this Agreement shall be on notice to the Parties.

Defendant Has No Responsibility or Liability for Administration

- 18.3 Except for the obligations in respect of the performance of the obligations under Section 5.1, the Defendant shall have no responsibility for and no liability whatsoever with respect to the implementation of this Agreement and the Plan of Allocation, including, without limitation, the distribution of the Settlement Amount.

Headings, etc.

- 18.4 In this Agreement:
- (a) the division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
 - (b) the terms "the Agreement", "this Agreement", "herein", "hereto" and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement;
 - (c) all amounts referred to are in lawful money of Canada as described by the Currency Act R.S.C., 1985, c. C-52;
 - (d) "person" means natural persons or the estate of a deceased person;
 - (e) In the computation of time in this Agreement, except where a contrary intention appears:
 - i. where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - ii. only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

Governing Law

- 18.5 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- 18.6 The Parties agree that the Court shall retain exclusive and continuing jurisdiction over this Proceeding, the Parties and Class Members to interpret and enforce the terms, conditions and obligations under this Agreement and the Approval Order.

Severability

18.7 Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall, upon the agreement of all of the Parties, be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

Entire Agreement

18.8 This Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

Binding Effect

18.9 If the Settlement is approved by the Court and becomes Final Order, this Agreement shall be binding upon, and inure to the benefit of, the Plaintiffs, the Class Members, the Defendant, Class Counsel, the Releasees and the Releasors, CMPA, or, any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs and the Defendant shall be binding upon all Releasors and Releasees, as applicable.

Survival

18.10 The representations and warranties contained in this Agreement shall survive its execution and implementation.

Negotiated Agreement

18.11 This Agreement and the underlying settlement have been the subject of arm's length negotiations and many discussions among the undersigned and counsel including a successful mediation. The Plaintiffs and the Defendant have been represented and advised by competent counsel. The Parties agree that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

Recitals

18.12 The recitals to this Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

Acknowledgements

18.13 Each Party hereby affirms and acknowledges that:

- (a) its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;
- (b) the terms of this Agreement and the effects thereof have been fully explained to it by his or its counsel; and
- (c) he, she or its representative fully understands each term of this Agreement and its effect.

Counterparts

18.14 This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a signature delivered by DocuSign, email or facsimile shall be deemed an original signature for purposes of executing this Agreement.

Confidentiality and Communications

- 18.15 In any public discussion of, comment on, press release or other communication of any kind (with the media or otherwise) about this Agreement, the Plaintiffs and Class Counsel agree and undertake to describe the Settlement and the terms of this Agreement as fair, reasonable and in the best interests of the Classes and to refrain from negative public commentary about the Defendant except for reference to the allegations contained in the statement of claim and, in any event, whatsoever about the CMPA. Class Counsel agrees to maintain their public statements within the framework of speaking points agreed upon with the Defendant's Counsel.
- 18.16 Nothing in this Section shall prevent the Parties or their counsel, or any of them, from reporting to their clients, from complying with any order of the Court, or from making any disclosure or comment required by this Agreement, or from making any necessary disclosure or comment for the purposes of any applicable securities or tax legislation or from making any disclosure or comment to Class Members or the Court.
- 18.17 Without limiting the generality of the foregoing, other than in materials filed in Court for purposes of effecting the Settlement, the Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process, unless required to do so by law. In addition, to the extent that there is public discussion of, comment on or communication of any kind about this Agreement, the Parties and their counsel agree and undertake to make no statement or comment that the Agreement is other than fair, reasonable and in the best interests of the Class, unless required to do so by law.
- 18.18 French Translation (Partial) The Parties acknowledge that they have required and consented that the Agreement be prepared in English only, but that the following Schedules to the Agreement will be prepared in English and translated into French: Plan of Allocation, Short Form and Long Form Notices, Notice Plan, and Opt-Out Form.
- 18.19 Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid:

For the Plaintiffs, Daniel, Davina and Rebecca Dixon:


Peter. Cronyn
 Frances Shapiro-Munn
 Jessica Fullerton
 Nelligan O'Brien Payne LLP
 50 O'Connor St. –Suite 300
 Ottawa, ON. K1P 6L2
 (613) 231-8355
peter.cronyn@nelliganlaw.ca
frances.shapiro-munn@nelliganlaw.ca
jessica.fullerton@nelliganlaw.ca


For the Defendant, Dr. Norman Barwin

Karen Hamway
 Stephanie Pearce
 Gowling WLG
 160 Elgin Street, Suite 2600
 Ottawa, ON. K1P 1C3
 (613) 786-0174
karen.hamway@gowlingwlg.com

Date of Execution

18.20 The Parties have executed the Agreement as of the date on the cover page.

Per: 
 Name: Peter. Cronyn
 Title:
 Counsel for the Plaintiffs and Class Counsel

Per: 
 Name: Karen A. Hamway
 Title:
 Counsel for the Defendant, Dr. B. Norman
 Barwin and Canadian Medical Protective
 Association

SCHEDULE A – PLAN OF ALLOCATION

Plan of Allocation

1. The following definitions apply in this Schedule:

- (a) “Administrator” means a person or entity hired to administer the claims made pursuant to this Plan of Allocation.
- (b) “Claim” means the claim of a Class Member or his or her representative submitted on a Claim Form.
- (c) “Claimant” means a Class Member who has not opted out and who has submitted a Claim Form.
- (d) “Claim period” means the time period in which Class Members may submit a Claim Form to the Administrator, which will run from the Court Approval Date to the Claims Bar Deadline;
- (e) “Class or Class Members” means a natural person who falls into one of the following classes:

i. Mothers Class: All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.

ii. Spouse/Partner/Former Patient Class:

- a) All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and
- b) All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or

more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.

iii. **Children Class:** All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

- (f) “Class Period” means the period from July 1, 1973 through December 31, 2012;
 - (g) “Court Approval Date” means the later of:
 - i. 31 days after the date on which the Ontario Superior Court of Justice issues the Approval Order; and
 - ii. The disposition of any appeals from the Approval Order.
 - (h) “Excluded Claim” means a Claim by a person who has previously and validly opted out of the Action in writing or who has previously settled a claim against the Defendant and executed a release in favour of the Defendant in relation to matters that are the subject of this Action.
 - (i) “Settlement Fund” means the \$13.375 million the Defendant has agreed to pay in full settlement of the Action inclusive of claims, counsel fee, disbursements, administration costs, notice plan costs, and all applicable taxes.
2. All other capitalized terms used in this Plan of Allocation have the same meaning as in the Settlement Agreement.
 3. Any person who wishes to claim compensation will provide the Administrator with a Claim Form no later than 90 days after the date on which the Approval Order becomes a Final Order. If the Administrator does not receive a Claim Form from a Class Member by the deadline, then the Class Member shall not be eligible for any compensation.
 4. The Claimant will complete the Claim Form commensurate with their class. There will be a Claim Form for each of the Mothers Class, the Spouse/Partner/Patient Class, and the Children Class.

5. The Claim Form will require all Claimants to provide a notarized copy of government issued identification and up to date contact information. Claimants will also be required provide the location where they saw Dr. Barwin and the year(s) they saw Dr. Barwin.
6. Claimants who complete the Claim Form will be required to identify the nature of their harm. The Claim Form provides for three broad categories of harm (the “Harm Categories”) and compensation:

Harm Category 1: Cases where a couple went to see Dr. Barwin (typically husband and wife) and where the couple consented to the Spouse/Partner’s semen to be used in the process of artificial insemination. Claimants will qualify for compensation where they have DNA evidence showing that the child or children conceived with Dr. Barwin’s assistance or with semen previously entrusted to Dr. Barwin is/are not the biological child of the man in the couple.

The Claimants in this category include, the Mother, the Spouse/Partner and their Child(ren) conceived with semen other than the Spouse/Partner’s semen.

Mother Class	up to \$50,000
Spouse/Partner Class	up to \$50,000
Children Class	up to \$40,000
In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under this category, they will be entitled up to a further \$10,000 each, in total.	

Harm Category 2: Cases where a parent or parent(s) had one or more children by way of artificial insemination administered by Dr. Barwin and where the couple consented to a specific donor or donors being used in the artificial insemination procedure(s). Claimants will qualify for compensation where they have DNA evidence demonstrating that (a) their child or children do not match their semen

donor; or (b) the parent(s) consented to the same donor being used for all of their children and the children do not share the same semen donor. In some cases, Claimants may prove their case by way of reliable evidence other than a legal DNA tests where, for instance, they are unable to locate their semen donor.

The Claimants in this category include, the Mother, the Spouse/Partner of the mother and any Child(ren) who were conceived by artificial insemination with semen other than the semen consented to by their Mother.

Harm Category 2A:

In cases where the Child(ren) is/are the biological offspring of Dr. Barwin:

Mother Class	up to \$40,000
Spouse/Partner Class	up to \$40,000
Children Class	up to \$30,000

Harm Category 2B:

In cases where the biological father has been identified otherwise or not at all:

Mother Class	up to \$30,000
Spouse/Partner Class	up to \$30,000
Children Class	up to \$30,000

In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under either Harm Category 2A and/or 2B, they will be entitled up to a further \$10,000 each, in total.

Harm Category 3: Cases where an individual entrusted semen with Dr. Barwin for the purposes of storage and safe-keeping or other specified purpose and that semen resulted in the conception of one or more children for another unrelated

patient. Claimants will qualify for compensation where they provide DNA evidence that the semen entrusted with Dr. Barwin resulted in the conception and birth of another unrelated patient's child or children. Anonymous semen donors are excluded from this claim.

The Claimants in this category are the Former Patients who entrusted the semen with Dr. Barwin.

Former Patient	up to \$25,000
In cases where there is more than one such child conceived using the Former Patient's semen, up to a further \$5,000 per additional child up to a maximum of \$10,000 in total.	

7. Once the Administrator has verified that the Claimant is eligible for compensation and the Claim Period has terminated, the Administrator will assign the Claimant to one of the following levels of compensation:

<u>Mother Class</u>	
Harm Category 1	up to \$50,000.00
Harm Category 2A	up to \$40,000.00
Harm Category 2B	up to \$30,000.00
In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total.	
<u>Spouse/Partner/Former Patient Class</u>	
Harm Category 1	up to \$50,000.00
Harm Category 2A	up to \$40,000.00
Harm Category 2B	up to \$30,000.00

In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total.	
Harm Category 3	up to \$25,000.00
In cases of Harm Category 3, where there is more than one child conceived using the Former Patient's semen, up to \$5,000 per additional child up to a maximum of \$10,000, in total	
<u>Child Class</u>	
Harm Category 1	up to \$40,000.00
Harm Category 2A and 2B	up to \$30,000.00

8. If there are not enough funds in the Settlement Fund to compensate all Claimants on the basis of the values set out above, the value of each category shall be adjusted downward such that each Claimant receives the proportionate share of the Settlement Fund based on his or her Harm Category.
9. A Claimant may not recover twice under the Harm Categories. If a Claimant qualifies for more than one Harm Category, the Administrator will assign the Claimant to the Harm Category that provides the Claimant with the highest amount of compensation for which they qualify.
10. There will be no compensation for an Excluded Claim.
11. Claimants completing the Claim Form will be required to provide a narrative or description of the events leading to their claim and attach the DNA or other compelling evidence that proves their claim.
12. Claimants will be required to swear a declaration that all of the information they provide on the Claim Form is true, accurate, and complete.

13. If a Class Member is a minor then the Claim Form may be completed by the Class Member's parent or legal guardian. If the Class Member is 18 years or older and lacks capacity then the Claim Form may be completed by the Class Member's Guardian for Personal Care or litigation guardian.
14. If a Class Member has died then the Claim Form may be completed by the legal executor of his or her Estate. A deceased Class Member will only be entitled to compensation if he or she discovered his or her claim prior to his or her death. Deceased Class Members who died without knowledge of their claims are presumed to have suffered no damages and will not be entitled to compensation.
15. The Administrator will review each Claim Form and verify that the Claimant is eligible for compensation as follows:
 - (a) The Administrator must be satisfied that the Claimant was a former patient of Dr. Barwin or, in the case of Children Class, the Claimant's parent(s) was/were a patient of Dr. Barwin. In making this determination, the Administrator will review the clinical notes and records submitted with the Claim Form, if any, the description/narrative of events provided by the Claimant, and request a review of the electronic database of Dr. Barwin's patients by Gowling WLG to provide any available patient information relevant to the Claimant.
 - (b) The Administrator must be satisfied that the Claimant has provided DNA or similar evidence that demonstrates the Claimant qualifies for one of the Harm Categories.
 - (c) The Administrator must be satisfied that the Claimant is not an Excluded Claim.
 - (d) Where a Claim is brought on behalf of a minor, the Administrator must be satisfied that the parent or legal guardian has the authority to act on behalf of the minor Class Member.
 - (e) Where a Claim is brought on behalf of an individual who is 18 years of age or older and who lacks capacity, the Administrator must be satisfied that the Guardian for Personal Care or litigation guardian has the authority to act on behalf of the individual who lacks capacity.
 - (f) Where a claim is brought on behalf of an Estate, the Administrator must be satisfied that the individual filing the Claim Form has the requisite authority to do so.

16. The Administrator will mail the individual compensation cheques to the Claimants at the postal addresses indicated on the Claim Forms within 30 days following the Claims Bar Deadline. If a Claimant does not cash a cheque within six months after the date of the cheque, the Claimant will forfeit the right to compensation and the funds will be distributed in accordance with paragraph 5.13 of the Settlement Agreement. Thirty days prior to the six month forfeit period, the Administrator will:
 - (a) Provide Class Counsel with a list of Claimants who have not cashed their compensation cheques;
 - (b) Send the Claimant a further letter (copied to Class Counsel) advising the Claimant that he or she has 30 days to cash the compensation cheque; and
 - (c) Provide an accounting to Class Counsel of any interest accrued by the Administrator in relation to any monies it has held pending the clearance or expiration of all cheques.
17. The claims process is intended to be expeditious, cost effective and “user friendly” and to minimize the burden on the Class Members. The Administrator will, in the absence of reasonable grounds to the contrary, assume the Class Members to be acting honestly and in good faith.
18. If a Claim Form contains minor omissions or errors, the Administrator will correct those omissions or errors if the information necessary to correct the errors or omission is readily available to the Administrator.
19. The claims process is also intended to prevent fraud and abuse. If the Administrator believes the claim is fraudulent or contains intentional errors which would materially exaggerate the Class Member’s claim then the Administrator will disallow the claim in its entirety.
20. If a Claimant wishes to dispute his or her Harm Category, his or her individual compensation, or any other finding or determination of the Administrator, including the

decision to disallow a claim in its entirety, he or she may request the Referee reconsider the Administrator's decision by way of administrative review.

21. Any request for reconsideration must be sent to the Administrator within 21 days of any finding or determination by the Administrator. If the Administrator does not receive a request for reconsideration within this time period, the Claimant is deemed to accept the Administrator's determination and the determination will be final and binding and not subject to further review by the Referee or any court or tribunal.
22. Where a Claimant files a request for reconsideration with the Administrator, the Administrator will advise Class Counsel of the request and provide the Referee with a copy of the Claimant's Claim Form, the Claimant's request for reconsideration, and a copy of its decision or determination.
23. Following the administrative review, the Referee will advise the Claimant of its determination of the request for reconsideration.
24. The determination of the Referee is final and binding and is not subject to further review by any court or tribunal.

**SCHEDULE B – LONG FORM NOTICE OF CERTIFICATION
AND PROPOSED SETTLEMENT**

LONG FORM NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT

Did you and/or your spouse undergo Artificial Insemination treatment with, or entrust your semen to Dr. Norman Barwin, resulting in the birth of a child whose biological paternity does not match your consent?

If YES, a Class Action may affect your, your spouse and your child's rights.

THIS IS A FORMAL NOTICE, APPROVED BY THE COURT, OF CERTIFICATION FOR A PROPOSED SETTLEMENT OF CLASS ACTION. PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR, YOUR SPOUSE AND YOUR CHILD'S RIGHTS.

You may:		Date/Deadline
PROVIDE SAMPLE TO DNA DATABASE IN ORDER TO OPT OUT	Contact Class Counsel and sign consent to participate in the DNA Database and make arrangements to provide a DNA sample to OrchidPro - DNA	August 3, 2021 to September 15, 2021
OPT OUT & EXCLUDE YOURSELF FROM THIS ACTION	Provide completed opt-out form to Administrator accompanied by DNA test confirming a match. If you do this, you are not entitled to any of the settlement benefits of this class action, but you maintain your right to sue Dr. Barwin in regard to your own claim.	October 14, 2021
FIND A DNA MATCH FOR PERSONAL REASONS OR TO PURSUE A CLAIM IN THIS CLASS ACTION	Contact Class Counsel and sign consent to participate in the DNA Database and make arrangements to provide a DNA sample to OrchidPro - DNA	August 3, 2021 to February 15, 2022
COMMENT	Write to the Court to object to the settlement and/or class counsel's fees.	October 14, 2021
APPEAR AT THE VIRTUAL HEARING	You are not required to enter an appearance in the lawsuit in order to participate in the proposed settlement approval hearing, but you may enter an appearance on your own or through your own lawyer in addition to filing an objection	November 1, 2021

	if you do not opt out. You can ask to speak in Court at the approval hearing about the proposed settlement	
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PURPOSE OF THIS NOTICE

The purpose of this Notice is to inform Class Members (defined below) of their rights and options in respect of a settlement agreement that resolves the litigation, described below, and will provide compensation to Class Members who submit valid claims.

If you would like more details or would like a copy of the Statements of Claim or Settlement Agreement, they are available at www.PLACEHOLDER.ca or a copy can be obtained by contacting Class Counsel as listed below or by contacting the Claims Administrator.

THE LITIGATION

On November 1, 2016, the Action was issued in the Ontario Superior Court of Justice as a proposed class action. The Action is styled as: *Davina Dixon, Daniel Dixon, and Rebecca Dixon v. Dr. Norman Barwin*, Court File No. 16-70454CP.

The action alleges Dr. Barwin's patients in Canada gave him consent to use specific semen for artificial insemination ("AI") procedures administered by him (or at another fertility clinic with semen previously stored with him) and generally for the safe-keeping of semen entrusted to him. The claim alleges that Dr. Barwin used semen in the AI procedures that did not accord with that consent or failed to safe-keep the semen entrusted to him in breach of his common law duties of care, among other things, resulting in the birth of children whose biological fathers do not accord with the consents provided by the relevant patients.

The Defendant denies the allegations in the claim and that there is any basis for liability.

The Court has not taken any position as to the truth or merits of the claims or defences of the parties.

On July 28, 2021, the Court certified this action as a class proceeding for the purposes of settlement. If you think you fall into one of the class definitions described below, you could be bound by the settlement.

The Court will be holding a hearing to decide whether to approve this settlement. The hearing will take place virtually over Zoom on November 1, 2021 at 10:00AM. The Court will decide whether the settlement is fair, reasonable, and in the best interests of the Class Members.

WHO QUALIFIES

You may qualify for compensation if you fall under one of the following classes:

Mothers Class: All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant,

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.

Spouse/Partner/Former Patient Class

- a. All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child conceived during the Class Period and born of the AI does not accord with their said agreement; and
 - b. All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.
2. **Children Class:** All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

**SUMMARY OF
THE
SETTLEMENT**

The settlement amount is \$13,375,000.00. Legal fees, disbursements, applicable taxes, and administration costs will be deducted from the settlement amount.

Compensation cannot be provided until and unless the settlement is fully approved, including resolving any appeals in favour of upholding the settlement. Since we do not know precisely when compensation will be available, please check www.PLACEHOLDER.com regularly for updates regarding the settlement.

Under the Plan of Allocation, a Class Member must qualify for one of the following four categories (the “Harm Categories”) to receive compensation:

Harm Category 1: Cases where a couple went to see Dr. Barwin (typically husband and wife) and where the couple consented to the Spouse/Partner’s semen to be used in the process of artificial insemination. Claimants will qualify for compensation where they have DNA evidence showing that the child or children conceived with Dr. Barwin’s assistance or with semen previously entrusted to Dr. Barwin is/are not the biological child of the man in the couple.

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

The Claimants in this category include, the Mother, the Spouse/Partner and their Child(ren) conceived with semen other than the Spouse/Partner's semen.

Mother Class	up to \$50,000
Spouse/Partner Class	up to \$50,000
Children Class	up to \$40,000
In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under this category, they will be entitled up to a further \$10,000 each, in total.	

Harm Category 2: Cases where a parent or parent(s) had one or more children by way of artificial insemination administered by Dr. Barwin and where the couple consented to a specific donor or donors being used in the artificial insemination procedure(s). Claimants will qualify for compensation where they have DNA evidence demonstrating that (a) their child or children do not match their semen donor; or (b) the parent(s) consented to the same donor being used for all of their children and the children do not share the same semen donor. In some cases, Claimants may prove their case by way of reliable evidence other than a legal DNA tests where, for instance, they are unable to locate their semen donor.

The Claimants in this category include, the Mother, the Spouse/Partner of the mother and any Child(ren) who were conceived by artificial insemination with semen other than the semen consented to by their Mother.

Harm Category 2A:

In cases where the Child(ren) is/are the biological offspring of Dr. Barwin:

Mother Class	up to \$40,000
Spouse/Partner Class	up to \$40,000
Children Class	up to \$30,000

Harm Category 2B:

In cases where the biological father has been identified otherwise or not all:

Mother Class	up to \$30,000
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This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

Spouse/Partner Class	up to \$30,000
Children Class	up to \$30,000

In cases where the Mother and Spouse/Partner had more than one child who qualifies for compensation under either Harm Category 2A and/or 2B, they will be entitled up to a further \$10,000 each, in total.

Harm Category 3: Cases where an individual entrusted semen with Dr. Barwin for the purposes of storage and safe-keeping or other specified purpose and that semen resulted in the conception of one or more children for another unrelated patient. Claimants will qualify for compensation where they provide DNA evidence that the semen entrusted with Dr. Barwin resulted in the conception and birth of another unrelated patient's child or children. Anonymous semen donors are excluded from this claim.

The Claimants in this category are the Former Patients who entrusted the semen with Dr. Barwin.

Former Patient	up to \$25,000
In cases where there is more than one such child conceived using the Former Patient's semen, up to a further \$5,000 per additional child up to a maximum of \$10,000 in total.	

The Class Member will need to attach DNA or other relevant evidence that proves he or she qualifies for one of the Harm Categories.

The settlement does not include semen donors or individuals who left semen with Dr. Barwin and consented to that semen being used on other patients.

**HOW MUCH
COMPENSATION
YOU MAY
RECEIVE**

If you qualify for one of the three Harm Categories, the amount of compensation you receive will depend on the total number of eligible claimants. You may receive up to the following amounts:

<u>Mother Class</u>	
Harm Category 1	up to \$50,000
Harm Category 2A	up to \$40,000

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

Harm Category 2B	up to \$30,000
In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total.	
<u>Spouse/Partner/Former Patient Class</u>	
Harm Category 1	up to \$50,000
Harm Category 2A	up to \$40,000
Harm Category 2B	up to \$30,000
In cases under Harm Categories 1, 2A and/or 2B, where more than one child qualifies for compensation, up to a further \$10,000, in total.	
<u>Child Class</u>	
Harm Category 1	up to \$40,000.00
Harm Category 2A and 2B	up to \$30,000.00

There may not be sufficient funds to compensate all Claimants on the basis of the values set out above. In that scenario, the value of each category will be adjusted downward such that each Claimant receives the proportionate share of the settlement based on his or her Harm Category.

Other than as provided above, a Claimant may not recover twice under the Harm Categories. If a Claimant qualifies for more than one Harm Category, the Administrator will assign the Claimant to the Harm Category that provides the Claimant with the highest amount of compensation for which they qualify.

**RELEASE OF
THE CLASS
MEMBERS'
CLAIMS**

In exchange for compensation, the Action will be dismissed and each Class Member will release all of his or her claims including all *Family Law Act* and subrogated claims against the Defendant arising from the subject matter of the Action.

**PROVIDING
COMMENTS TO
THE COURT
REGARDING
THE
SETTLEMENT**

If you want to tell the Court what you think about the proposed settlement or speak to the Court at the Approval Hearing Date, Class Counsel must receive your submissions by email at PLACEHOLDER@nelliganlaw.ca **no later than October 14, 2021**. The written submissions must state the nature of any comments or objections, and whether you intend to appear at the settlement approval hearing. The written submission of any

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

Class Member must include: (a) a heading which refers to the Action; (b) the commenter's full name, telephone number, email address, and address (the commenter's actual residential address); (c) if represented by counsel, the full name, telephone number, and address of all counsel; (d) all of the reasons for his or her comments; (e) whether the commenter intends to appear at the Approval Hearing on his or her own behalf or through counsel; (f) a statement that the commenter is a Class Member, including the nature of his or her claim and any DNA evidence to prove his or her claim; and (g) the commenter's signature. Supporting documents may be attached to the written submission. If any testimony is proposed to be given in support of the comment at the Approval Hearing, the names of all persons who will testify must be provided for in the written submission.

You may (but do not need to) attend the Approval Hearing. If you wish to attend the hearing, please contact Class Counsel for details.

**OPTING OUT OF
THE CLASS
ACTION**

You can choose to exclude yourself from the Class Action ("opt out"). You can opt out by delivering by mail, courier, or personal delivery an Opt Out Form to the Claims Administrator at:

ADMINISTRATOR CONTACT

Along with your Opt Out Form, you must include:

- A notarized copy of government issued photo identification.
- An Orchid Pro Legal Chain of Custody DNA test that shows the nature of your claim, and if not possible to obtain, the next best evidence.

If you opt out:

- You will not be eligible to receive any compensation or benefits from the settlement or the class action, but
- You will be able to start your own case against the defendant regarding the claims at issue in the action. Applicable limitation periods will resume running against you. You should consult with another lawyer at your cost if you wish to pursue your own claim.

If you do nothing, and so do not opt out:

- You will remain eligible to receive compensation from the class action, but
-

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

-
- You will not be able to start your own case against the defendant regarding the claims at issue in the class action.

This is your only chance to exclude yourself or opt out of the class action. You will not be provided with another chance to opt out.

To properly and timely opt out of the action, the Opt Out Form must be filled out and postmarked by **no later than October 14, 2021**.

Please visit www.PLACEHOLDER.com to download a copy of the Opt Out Form.

If you have decided you **do not wish to participate in the class action** and you also **do not wish to start your own claim** against Dr. Barwin, **you do not need to opt out or do anything at all**.

DNA DATABASE

A portion of the settlement funds will be used to set up and operate a DNA Database that will allow Class Members to test their DNA against each other as well as against individuals who stored their semen with the Defendant. The primary purpose of the DNA Database will be to provide the Children Class with the opportunity to identify their biological fathers, obtain medical health history, and locate half-siblings.

However if a match or matches are found, you could also be eligible for compensation under Harm Category 3.

If you left semen with Dr. Barwin, and you are concerned that your semen may have resulted in the conception of a child or children for another patient, you may participate in the DNA database that will be available with OrchidPro DNA laboratories. The database will allow you to test your DNA against Class Members who are searching for their biological fathers/their donors. If you match against a Class Member in the DNA database, you may have a claim in the Class Action.

If you think you fall into this category of persons and are interested in participating in the DNA database, your choices are:

- A. Participate in the DNA database for the purposes of permitting others in the database to discover whether there are any matches with you even if you are not interested in making any claim, either in this class action or personally;
 - B. Participate in the DNA database for the purposes of discovering whether you are an eligible claimant in order to stay in the class action and make a claim for compensation; OR
-

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

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- C. Participate in the DNA database for the purposes of discovering whether you are an eligible claimant in order to opt out and exclude yourself from this class action and any potential compensation provided by it.

If you choose option "A" or "B", you may participate in the DNA database at any time during its operation between August 3, 2021 and February 15, 2022

If you choose option "C" because you wish to opt out, you must participate in the DNA database and provide your DNA sample by no later than September 15, 2021. Class Counsel can assist you with the DNA Database process.

You will have to complete a Disclosure and Consent to Participate form to participate in the DNA Database. If you left semen with Dr. Barwin, you will be asked to provide details of your medical health history that can be provided to the Children Class member in the event of a match.

The DNA Database will run from August 3, 2021 until February 15, 2022.

We invite semen donors to participate in the DNA Database in order to assist members of the Children Class to possibly find out their medical history. However, anyone who left semen with Dr. Barwin for the purposes of semen donation and consented to that semen being used on other patients will not qualify for compensation in the Class Action.

To obtain a copy of the forms you will need to complete to participate in the DNA Database, visit www.PLACEHOLDER.ca.

LEGAL FEES

Class Counsel have requested legal fees, expenses and applicable taxes in the amount of \$3,375,000. Class Counsel were retained on a contingency basis. Class Counsel were responsible for funding all disbursements incurred in pursuing this litigation. Payment of Class Counsel's fees will require Court approval.

Class Counsel will assist Class Members in completing the Claim Forms and making their claims. Class Members are not liable for any legal fees incurred to date by Class Counsel or that will be incurred during the claims administration process.

Class Members may retain their own lawyers at their own expense but you certainly are not required to do so. Any questions about this Settlement, individual claims, or any related issues should be directed to Class Counsel at the contact information listed below.

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**FURTHER
INFORMATION**

To obtain a complete copy of the Statement of Claim, the Settlement Agreement, DNA Database Forms, a Claim Form, an Opt Out Form or other documents, visit www.PLACEHOLDER.ca. Once the settlement is approved, you may submit a Claim Form online.

For further information, please contact the **Claims Administrator, toll free, at 1-800-000-0000**.

You may also contact Class Counsel as follows:

Peter Cronyn Tel: 613-231-8213 Fax: 613-788-3659 peter.cronyn@nelliganlaw.ca	Jessica Fullerton Tel: 613-231-8366 Fax: 613-788-3651 Jessica.fullerton@nelliganlaw.ca
Frances Shapiro Munn Tel: 613-231-8355 Fax: 613-788-3697 frances.shapiro@nelliganlaw.ca	Robyn Beaulne – law clerk Tel: 613-231-88214 Fax: 613-788-2370 robyn.beaulne@nelliganlaw.ca

There will be no further notice from the Administrator about this settlement unless the settlement is not approved.

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**SCHEDULE C – SHORT FORM NOTICE OF CERTIFICATION
AND PROPOSED SETTLEMENT**

SHORT FORM NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT

Did you and/or your spouse undergo Artificial Insemination treatment with, or entrust your semen to Dr. Norman Barwin, resulting in the birth of a child whose biological paternity does not match your consent?

If YES, a Class Action may affect your, your spouse and your child's rights.

There is a proposed settlement in a certified class action lawsuit started in Ontario against Dr. Norman Barwin. The action alleges Dr. Barwin's patients in Canada gave him consent to use specific semen for artificial insemination ("AI") procedures administered by him or entrusted their semen to him for later use or storage only. The claim alleges that Dr. Barwin's mishandling of the semen in some cases, during AI or in the course of storage, did not accord with the consent of his patients in breach of his common law duties of care, among other things, resulting in the birth of children whose biological fathers do not accord with the consents provided by the relevant patients

The Ontario Superior Court of Justice certified this case as a class proceeding for the purposes of settlement on July 28, 2021. You are a class member and may qualify for compensation if you fall into one or more of the following classes:

Mothers Class: All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.

Spouse/Partner/Former Patient Class

- a. All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child conceived during the Class Period and born of the AI does not accord with their said agreement; and
- b. All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in

the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.

Children Class: All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

The Court will hold a **settlement and counsel fee approval hearing** over the Zoom platform on November 1, 2021 at 10:00AM to consider whether the settlement should be approved and, if so, whether class counsel's fees should be approved. You have the right to appear in court to object to the proposed settlement and/or class counsel's fees.

Under the proposed settlement, you may be eligible for **compensation** if you demonstrate that you are a class member. The level of compensation will depend on which class you belong to and what type of harm you suffered.

If you are an eligible class member and you do nothing, you will remain in the class and be eligible to receive the benefits of the settlement, but you will not be able to commence your own action against Dr. Barwin.

You can exclude yourself—"opt out"—from the class action by **October 14, 2021**. If you do so, you will not be eligible to receive any settlement benefits from the class action but you will have the right to start an action against Dr. Barwin on your own. However if you do so, you will have full responsibility to take all legal steps to protect any claim(s) you may have, including addressing any relevant limitation periods. If you choose to pursue any legal action on your own, it will be at your own expense, including lawyers' fees and any risk of adverse legal costs against you personally should you not succeed.

If you do not wish to participate in the class action or bring a claim against Dr. Barwin on your own, **you do not need to do anything at all, and in particular, you do not need to opt-out.**

The full length notice describing the quantum of compensation, how to object, or how to opt out is available at: www.PLACEHOLDER.ca.

For more information or to obtain an opt-out or claim form, contact:

NAME OF ADMINISTRATOR
EMAIL OF ADMINISTRATOR
WEBSITE

There will be no further notice from the Administrator about this settlement unless the settlement is not approved.

SCHEDULE D – OPT-OUT FORM

Dr. Norman Barwin Class Action – Proposed Settlement

OPT-OUT FORM

DEADLINE FOR OPTING OUT: October 14, 2021

[www.\[website\].com](http://www.[website].com)

This is NOT a claim form. Completing this **Opt-Out Form** will exclude you from the class action and you will not receive any compensation arising out of the proposed settlement. Further details are below.

If you do not wish to participate in the class action or bring a claim against Dr. Barwin on your own, **you do not need to complete this Opt-Out Form.**

If you want to Opt Out, this form and supporting documentation must be submitted to the Administrator by e-mail or mail **no later than October 14, 2021** or you will be assumed to be part of the settlement and barred from any future legal proceeding.

- Opt-Out Forms require supporting documentation, including an Orchid Pro Laboratories DNA test. It is highly recommended that potential Class Members who do not yet have their DNA test, contact Class Counsel promptly and **no later than September 1, 2021** to coordinate a test free of charge. Further information is available in Sections C and D below.

IF YOU HAVE GENERAL QUESTIONS ABOUT THIS FORM, PLEASE CONTACT THE ADMINISTRATOR AT:

- [\[Add e-mail address, address and contact person for administrator\]](#)

IF YOU HAVE QUESTIONS ABOUT YOUR LEGAL RIGHTS OR OBTAINING AN ORCHID PRO DNA TEST, PLEASE CONTACT CLASS COUNSEL AT:

- [\[Add address and contact information for Class Counsel\]](#)

If you would like to **Opt-Out** of the proposed settlement, you must fill out the form below completely except for section E which is optional and submit the form with the required additional documentation.

The form must be submitted to the Administrator by mail, courier or in person by no later than October 14, 2021 (mail may be postmarked October 14, 2021).

SECTION A – CLASS MEMBER IDENTIFICATION

Below are the list of classes. Please review and select all classes that apply.

Check all boxes that apply	<p>In most cases, individuals will fall into only one class.</p> <p>As detailed further in Sections D and E you will require a legal DNA test as evidence that you fall into one of the Classes below.</p>
<input type="checkbox"/>	<p>Mothers Class: All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen.</p>
<input type="checkbox"/>	<p>Spouse/Partner/Former Patient Class:</p> <p>(a) All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mother Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and</p>
<input type="checkbox"/>	<p>(b) All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen.</p>
<input type="checkbox"/>	<p>Children Class: All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.</p>

SECTION B: CLASS MEMBER INFORMATION

Full Legal Name		Name of Legal Guardian <i>If you are completing this on behalf of a minor or a person under a disability, include your name and relationship to the Class Member</i>	
Prior Name(s)			
Date of Birth (for Class Member)		Current Address <i>Address for Class Member or Legal Guardian</i>	
Phone Number		E-mail address	
Name(s) of other relevant persons		Date of Birth (“DOB”) of Parent or Partner/Spouse	
Name - Parent 1 <i>Complete if one or more of your parents were patients of Barwin</i>		Parent 1 DOB	
Name - Parent 2 <i>Complete if one or more of your parents were patients of Barwin</i>		Parent 2 DOB	
Name - Partner/Spouse <i>Complete if you saw Dr. Barwin with a partner or spouse</i>		Partner/Spouse DOB	
Name - Child/Children conceived <i>Complete if you or your spouse conceived and gave birth to one or more children with Dr. Barwin’s assistance</i>		Child/Children DOB	
Dates of Treatment with Dr. Barwin <i>Dates you, your parent, or your spouse/partner saw Dr. Barwin</i>		Dates of Artificial Insemination <i>Dates you, your parent or your spouse/partner received artificial insemination (AI) from Dr. Barwin</i>	
Instructions and Consent given to Dr. Barwin <i>Set out details of instructions given to Dr. Barwin about which sperm was to be used to conceive a child and/or directions about the storage of sperm</i>			

SECTION C: DNA DATABASE AND IMPORTANT DEADLINES

To Opt-Out you will require an Orchid Pro Legal Chain of Custody DNA test proving you are an eligible class member.

A portion of the settlement funds in the Class Action are being used to set up, operate and pay for a DNA Database with Orchid Pro DNA Laboratories. The Database will permit Class Members and potential Class Members, including former patients who stored or entrusted semen to Dr. Barwin, to test against each other, free of charge.

If you do not yet have an Orchid Pro DNA test proving your claim, you need to act **promptly**. Below is further information on the timelines and the assistance that Class Counsel can provide to assist you.

Check one box only	
<input type="checkbox"/>	<p>I currently <u>have</u> an Orchid Pro DNA test proving I am an eligible class member.</p> <p><i>If you already have your Orchid Pro DNA test, the only other information you need to Opt-Out is a notarized copy of your government issued ID as is set out below in Section D. Please proceed directly to Section D.</i></p>
<input type="checkbox"/>	<p>I do <u>not yet</u> have an Orchid Pro DNA test proving I am an eligible class member.</p> <p><i>In this case you will need to act promptly and follow the steps below to coordinate your participation in the DNA database by September 30, 2021. Class Counsel will assist you at every stage.</i></p> <p>STEP 1: Contact Class Counsel: If you are considering Opting Out and do not yet have an Orchid Pro DNA test, you should contact Class Counsel promptly and by no later than September 15, 2021. Class Counsel will provide you with additional information and answer any questions that you have.</p> <p>STEP 2: Review, Sign and Return DNA Database Agreement: After you contact Class Counsel, you will be provided with a DNA Database Disclosure Agreement and Consent. Class Counsel can answer any questions that you have. You will need to return the signed Agreement to Class Counsel by e-mail or mail. It is recommended that you do this before September 15, 2021.</p> <p>STEP 3: Attend at Orchid Pro DNA to provide your DNA sample: Orchid Pro has laboratories across Canada. Class Counsel can assist you in finding a location that is convenient for you. You will need to bring a copy of your government issued photo identification. It is recommended that you attend to provide your DNA sample (a cheek swab) by September 15, 2021.</p> <p>STEP 4: Wait to receive Orchid Pro DNA results: After you give your DNA sample, it will take Orchid Pro 5-10 business days to process your results. A copy of those results will be sent to you by Class Counsel by e-mail (or mail if you prefer).</p>

SECTION D: DOCUMENTATION

To Opt-Out you require two documents:

Document 1: (Notarized Photo ID): A notarized copy of a government issued photo identification. If you have questions about how to get your ID notarized, contact Class Counsel.

Document 2 (Orchid Pro Legal Chain of Custody DNA Test): As noted in Section C, you must also provide an Orchid Pro Legal Chain of Custody DNA test proving you are an eligible class member. The steps for you to obtain an Orchid Pro DNA test free of charge are set out above in Section C.

If you cannot obtain an Orchid Pro Legal DNA test, you will have to explain why below.

<input type="checkbox"/>	I have attached a copy of my notarized government issued photo identification.
<input type="checkbox"/>	I have attached a copy of my Orchid Pro Legal Chain of Custody DNA test.
OR	I have <u>not</u> attached a copy of my DNA test because:
	<input type="checkbox"/> I am a child conceived through AI performed by Dr. Barwin and I cannot locate or do not have access to the intended donor or father to do a DNA test against.
	<input type="checkbox"/> I am a mother, spouse or partner of a child conceived through AI performed by Dr. Barwin and I cannot locate or do not have access to the intended donor or father to do a DNA test against.
	<input type="checkbox"/> Other reason(s) (please provide details below)

SECTION E: REASON FOR OPTING OUT (*OPTIONAL*)

<input type="checkbox"/>	I do not want to be a Class Member or involved with this proceeding
<input type="checkbox"/>	I intend to bring my own individual action against Dr. Barwin and/or his clinic
<input type="checkbox"/>	Other reason(s) (please provide details below)

SECTION F: OPT OUT DECLARATIONS

Initial or check off each of the following:

<input type="checkbox"/>	I confirm that I have carefully read the Notice of Class Certification and Proposed Settlement available here: www.PLACEHOLDER.com
<input type="checkbox"/>	I declare that all of the information provided in this Opt-Out form is true and correct.
<input type="checkbox"/>	I understand that there is a proposed settlement of the Dr. Barwin Class Action which may provide eligible class members a payment of up to \$50,000 each depending on which Class they fall into, their circumstances and how many Class Members there are.
<input type="checkbox"/>	I understand that by Opting Out of this Class Proceeding, I am confirming that I do <u>NOT</u> wish to participate in this class proceeding which means that I will <u>NOT</u> be eligible to receive money from the settlement or to obtain any other benefits of the class proceeding.
<input type="checkbox"/>	I understand that by Opting Out , I take full responsibility for taking all legal steps to protect any claim(s) I may have, including addressing any relevant limitation periods. If I choose to pursue any legal action on my own, it will be at my own expense, including lawyers' fees and any risk of adverse legal costs against me personally should I not succeed.
<input type="checkbox"/>	I confirm that I have attached the required documentation with my Opt-Out Form
<input type="checkbox"/>	I understand that this Opt-Out Form , completed in full, must be received by the Administrator no later than <u>October 14, 2021</u> . If it is not, I understand that I will be assumed to be included in the proposed settlement and barred from any future legal proceeding. I am aware of the option to contact Class Counsel or the administrator if I have questions.
<input type="checkbox"/>	I understand that completion of this Opt-Out form is a <u>final</u> decision and that I cannot change my mind later and decide to receive compensation once the Settlement is approved.
<input type="checkbox"/>	By my signature below, I confirm that I wish to Opt-Out of the proposed settlement of this Class Action.

Name of Class Member Opting Out

Signature of Class Member Opting Out

(or name and signature of Legal Guardian Opting Out on Class Member's behalf)

DATE

SECTION G: SUBMITTING COMPLETED FORM AND DOCUMENTATION

Opt-Out Forms must be submitted to the Administrator with mandatory supporting documentation no later than **October 14, 2021** by mail, courier or in person (mail may be postmarked October 14, 2021).

- Insert PO Box and street address *

SCHEDULE E – DRAFT ORDER FOR CERTIFICATION FOR SETTLEMENT

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE MACLEOD

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)
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WEDNESDAY, THE 28th

DAY OF JULY 2021

B E T W E E N :

DAVINA DIXON, DANIEL DIXON and
REBECCA DIXON

Plaintiffs

- and -

DR. NORMAN BARWIN

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for certification, for the purposes of settlement of the action, brought by the Plaintiffs, was heard virtually on July 28, 2021.

ON READING the pleadings and motion record of the Plaintiffs, upon hearing the submissions of counsel for the Plaintiffs and the Defendant and upon being advised of the Defendant's consent,

AND WITHOUT ANY ADMISSION OF LIABILITY on behalf of the Defendant,

1. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act, 1992* for the purposes of settlement only pursuant to a Settlement Agreement dated July 23, 2021.

2. **THIS COURT ORDERS** that the "Classes" are defined as:

(a) **Mothers Class:** All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived

and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen;

(b) **Spouse/Partner/Former Patient Class:**

- a) All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and
- b) All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen;

(c) **Children Class:** All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI.

3. **THIS COURT ORDERS AND DECLARES** that the causes of action asserted against the Defendant are breach of contract, negligence and breach of fiduciary duty, among other things, between July 1, 1973 through December 31, 2012 (the "Class Period").

4. **THIS COURT ORDERS** that the common issues be and are hereby certified as follows:

- (a) Did the Defendant owe the members of the Mothers Class a duty of care? If so, did the Defendant breach the duty resulting in compensable damages?
- (b) Did the Defendant owe the members of the Spouse/Partner Class a duty of care? If so, did the defendant breach the duty resulting in compensable damages?
- (c) Do the Children Class members have a cause of action arising from negligence or, in the alternative, pursuant to s. 61 of the *Family Law Act*, R.S.O 1990, c. F.3 resulting in compensable damages?

5. **THIS COURT ORDERS AND DECLARES** that Davina Dixon, Daniel Dixon and Rebecca Dixon be and are hereby appointed as the representative plaintiffs for the Classes.

6. **THIS COURTS ORDERS** that Nelligan O'Brien Payne LLP be and is hereby appointed as Class Counsel.

7. **THIS COURT ORDERS** that certification of this action as a class proceeding is conditional upon the approval of the Settlement Agreement dated July 23, 2021 (the "Settlement Agreement") and if the Settlement Agreement is not approved by this Court, all materials filed, submissions made or position taken by any party, are without prejudice to any future positions to be taken by any party on any future certification motion.

8. **THIS COURT ORDERS** that any other action or application based on the subject matter of this action is stayed, as of the date of this Order, except for any individual court action or application in respect of an individual who has validly opted out of this proceeding.

9. **THIS COURT ORDERS** that no other court action or application may be commenced in Ontario in respect of the subject matter of this action without leave of the Court.

10. **THIS COURT ORDERS** that the motions for approval of the Settlement Agreement and for the payment of Class Counsel's legal fees shall be heard on November 1, 2021 (the "Approval Motions").

11. **THIS COURT ORDERS** that Class Members shall be notified that this proceeding has been certified as a class proceeding and that they may file written objections prior to the Approval Motions and/or observe the Approval Motions in the form and manner attached hereto as Schedule "A" (the "Long Form Notice") and Schedule "B" (the "Short Form Notice").

12. **THIS COURT ORDERS** that the Notices referred to in paragraphs 11 and 21 constitute good and sufficient notice of certification, the manner by which to opt out and the Approval Motions.

13. **THIS COURT ORDERS** that the expense of notice in paragraphs 11 and 21 herein shall be borne by the Plaintiffs, subject to review and/or readjustment by agreement or order at the termination of this proceeding.

14. **THIS COURT ORDERS** that Ricepoint Administration Inc. (the "Administrator") be and hereby is appointed as the Administrator of this class proceeding.

15. **THIS COURT ORDERS** that Orchid PRO-DNA be and hereby is appointed to operate and manage the DNA Database between August 3, 2021 and January 31, 2022.

16. **THIS COURT ORDERS** that the consent attached at Schedule "C" is hereby approved and its execution shall be a condition to participate in the DNA Database.
 17. **THIS COURT ORDERS** that a Class member may opt out of this class proceeding by delivering a signed opt-out coupon, in the form and manner attached at Schedule "D", by October 14, 2021 (the "Opt Out Deadline") to the Administrator by email, mail or facsimile and must be received or post marked, if delivered by mail, by the Opt Out Deadline.
 18. **THIS COURT ORDERS** that no Class Member may opt out of the class proceeding after the Opt Out Deadline, except with leave of the Court.
 19. **THIS COURT ORDERS** that Class Counsel may make non-material changes to the notices and/or the Opt Out Form as are necessary and desirable with the consent of the Defendant.
 20. **THIS COURT ORDERS** that Class Members may file written objections to the Approval Motions with Class Counsel or the Administrator by no later than October 15, 2021.
 21. **THIS COURT ORDERS AND DECLARES** that the manner of notice dissemination attached hereto as Schedule "E" is hereby approved.
 22. **THIS COURT ORDERS** that the notice period shall commence on August 3, 2021 and conclude on October 15, 2021 unless otherwise ordered by the Court.
 23. **THIS COURT ORDERS** that there shall be no costs of this motion.
-

DAVINA DIXON, et al.
Plaintiffs

and

DR. NORMAN BARWIN
Defendant

Court File No.: 16-70454CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **OTTAWA**

ORDER

NELLIGAN O'BRIEN PAYNE LLP

300-50 O'Connor Street
Ottawa, ON K1P 6L2

Frances Shapiro Munn LSO #63493P

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Toronto, ON M5H 3R3

Celeste Poltak LSO #46207A

Tel: 416-595-2701

Fax: 416-204-2909

cpoltak@kmlaw.ca

Lawyers for the **Plaintiff**

SCHEDULE F – DRAFT ORDER FOR SETTLEMENT APPROVAL

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE MACLEOD

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)
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MONDAY THE 1st

DAY OF NOVEMBER 2021

B E T W E E N :

**DAVINA DIXON, DANIEL DIXON and
REBECCA DIXON**

Plaintiffs

- and -

DR. NORMAN BARWIN

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for settlement approval brought by the Plaintiffs was heard virtually on November 1, 2021.

WHEREAS the Plaintiffs and the Defendant have entered into the Settlement Agreement in respect of the Plaintiffs' claims against the Defendant;

AND WHEREAS this Honourable Court approved the form of notice and plan for distribution of the notice of this motion by Order dated July 28, 2021 (the "**Notice Order**");

UPON HEARING the motion made by the Plaintiffs, on consent, for an order approving the settlement agreement dated July 23, 2021 between the parties (the "**Settlement Agreement**" or "**Settlement**"); and approving the notice of this settlement, the claims plan and period and other ancillary orders to facilitate the Settlement;

AND UPON BEING ADVISED of the Defendant's consent to the form of this Order,

AND WITHOUT ANY ADMISSION OF LIABILITY on the part of the Defendant,

AND UPON HEARING the oral submissions of counsel for the Plaintiffs, counsel for the Defendant, all interested parties, including objections, written and oral,

ON READING the pleadings and motion record of the Plaintiffs, upon hearing the submissions of counsel for the Plaintiffs and the Defendant and upon being advised of the Defendant's consent, on the following terms,

1. **THIS COURT ORDERS** that for the purposes of this Order, the following definitions shall apply:

- (i) **"Approval Date"** means the date that this Order is approved;
- (ii) **"Class"** or **"Class Members"** means

Mothers Class: All patients of the defendant who were administered artificial insemination (AI) in Canada during the Class Period by either (i) the Defendant, or (ii) at another fertility clinic, with semen originally entrusted to the Defendant, from which AI they conceived and gave birth to a child whose biological father does not accord with the consent given by these patients in regard to the semen;

Spouse/Partner/Former Patient Class:

- a) All persons who were a partner or spouse of a Mothers Class Member when the AI was administered and who agreed to have their own semen or specified donor semen used for the AI of a Mothers Class Member, but where the biological father of the child born of the AI does not accord with their said agreement; and
- b) All patients of the defendant in Canada who entrusted their semen to the defendant for storage, safe-keeping or specific purpose but which semen was used in the course of AI performed by the defendant during the Class Period that resulted in the birth of one or more children who do not accord genetically with the consent these patients gave in regard to the storage and/or use of their semen;

Children Class: All persons conceived and born by Mother Class Members as a result of AI performed by the defendant during the Class Period with semen entrusted to the defendant whose biological father does not accord with the consent given by their biological mother for the AI;

- (iii) **"Implementation Date"** means the latest date following the last day on which a Class Member may appeal or seek leave to appeal either of this Order or the date of a final determination of any appeal brought in relation to this Order;
- (iv) **"Releasees"** means individually and collectively, the Defendant, Dr. Norman Barwin, and any and all of his employees, agents, officers, officials, representatives, volunteers, administrators and assigns and the Canadian Medical Protective Association;
- (v) **"Settlement Agreement"** means the Settlement Agreement dated July 23, 2021, attached as **Schedule "A"** to this Order; and
- (vi) **"Settlement Fund" or "Settlement Amount"** means the settlement fund established pursuant to section 2.1 of the Settlement Agreement.

2. **THIS COURT DECLARES** that all applicable parties have adhered to and acted in accordance with the Notice Order and the procedures provided therein which constitutes good and sufficient notice of the hearing of this motion and the right to opt out of this proceeding.

3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Class Members.

4. **THIS COURT ORDERS** that the Settlement Agreement, which is expressly incorporated by reference into this Order, shall be and hereby is approved and shall be implemented in accordance with this Order and further orders of this Court.

5. **THIS COURT ORDERS** that the claims of the Class Members and the Class as a whole, shall be dismissed against the Defendant and are released against the Releasees in accordance with sections 2.1 and 14 of the Settlement Agreement.

6. **THIS COURT ORDERS** that this Order, including the releases referred to in paragraph 5 above, and the Settlement Agreement are binding upon all Class Members, including those persons who are under a disability.

7. **THIS COURT ORDERS** that the claims of the Class Members are dismissed against the Defendant, without costs and with prejudice and such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

8. **THIS COURT ORDERS** that this Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this action, the Plaintiffs, all of the Class Members, and the Defendant for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this Order.

9. **THIS COURT ORDERS** that save as set out above, leave is granted to discontinue this action against the Defendant without costs and with prejudice, and that such discontinuance shall be an absolute bar to any subsequent actions against the Defendant in respect of the subject matter hereof.

10. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against either the Administrator or Orchid PRO-DNA, their adjudicators, or any of their employees, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the Settlement Agreement, the administration of the Settlement Agreement or the implementation of this judgment, except with leave of this Court on notice to all affected parties.

11. **THIS COURT ORDERS** that notice, substantially in the form attached hereto as **Schedules "B"** and **"C"** shall be given of this judgment, the approval of the Settlement Agreement and the claims period by the commencement of the Notice Plan attached here to **Schedule "D"**, to be paid from the Settlement Fund.

12. **THIS COURT ORDERS** that the Notice Plan provided for in paragraph 11 above satisfies the requirements of the *Class Proceedings Act, 1992* and this Court, and is the best notice practicable under the circumstances.

13. **THIS COURT ORDERS** that the Plan of Allocation attached hereto as Schedule **"E"** is fair and reasonable to all class members and is hereby approved.

14. **THIS COURT ORDERS** that this Court may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this Order.

15. **THIS COURT ORDERS** Class Counsel shall report back to the Court on the administration of the Settlement Agreement at the conclusion of the claims period or as requested by the Court and upon the final completion of the administration of the Settlement Agreement.

16. **THIS COURT ORDERS** that the statutory provisions of the *Class Proceedings Act, 1992* shall apply in their entirety to the supervision, operation, and implementation of the Settlement Agreement and this Order.

17. **THIS COURT ORDERS** that there shall be no costs of this motion.

DAVINA DIXON, et al.
Plaintiffs

and

DR. NORMAN BARWIN
Defendant

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **OTTAWA**

ORDER

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Lawyers for the **Plaintiff**

SCHEDULE G – PLAN OF NOTICE

Dixon v. Dr. Norman Barwin Highlights of Notice Program Recommendations

CASE ANALYSIS

The notice program seeks to notify all patients of Dr. Barwin who were inseminated at the Broadview Fertility Clinic with the wrong biological material, i.e., with sperm other than the sperm they consented to being used by Dr. Barwin for the purposes of artificial insemination, or who provided their sperm to Dr. Barwin for safe-keeping and preservation and it was not.

PROPOSED NOTICE PROGRAM

The proposed notice program consists of individual notice to known class members, as well as a media program designed to provide notice nationally and reach 70% of adults residing in Ontario. In addition to these efforts, Plaintiffs' Counsel may garner a significant amount of media coverage through news stories and other sources.

Individual Notice

An email and/or postal notice will be sent to all identifiable class members with available respective contact records.

Digital Media

Approximately 18.7 million digital media impressions will be purchased programmatically and distributed over various websites on the Google Display Network and Facebook, over a period of 30 days.

The impressions will be targeted to people aged 18 and over in the Ontario area with 80% of the impressions in the English-language market and 20% in the French. The notices will appear on both desktop and mobile devices, including tablets and smartphones, in abbreviated display and native ad formats. All digital media notices will include an embedded link to the case website.

Display & Video 360

RicePoint utilizes curated data segments to amplify the efficacy of programmatic digital display campaigns.

- **Google Display & Video 360 (DV360)** is a platform that provides access to a digital media mix inclusive of dozens of digital media marketplaces and ad exchanges, like the Google Display Network, OpenX, BrightRoll Exchange, and AppNexus. The platform allows RicePoint to curate relevant audience segments and purchase ad space programmatically, utilizing intelligent automation to reach the right targets at the right time.

DV360's audience segmentation technology takes advantage of data sources that capture "self-declared" demographic attributes from online and offline data sources. Online data sources ensure that all users tagged in an audience have indeed taken actions online—either observed or declared—to identify themselves as belonging to a specific audience segment. The platform also aggregates multiple online and offline data sources from big data providers like Oracle, Nielsen, LiveRamp, and Eyeota, including B2B and B2C transactions on and off the web.

Google Display Network

Impressions will be delivered using display ads across the Google Display Network due to cost efficacy and opportunities for placement on a large variety of popular websites.

- **Google Display Network** is a vast ad network that reaches over 90% of internet users and harnesses the power of advertising opportunities to over two million websites, including some of the most-visited websites and most recognizable properties on the entire internet. Display banner ads will target likely Class members on various apps and websites on both desktop and mobile devices.

facebook.

Impressions will be delivered across Facebook due to high usage of this social media platform across Canada.

- **Facebook** is the largest social media platform in terms of both audience size and engagement, with the capability to reach millions of users daily.

Facebook image ads will target likely Class members natively via the desktop newsfeed (on Facebook.com), mobile app newsfeed (via the Facebook app or Facebook.com mobile site), and via Stories. Facebook is the most widely used social media platform in Canada.

News Publications

Print ads will be placed once in each of the below publications via an approximate eighth-page ad unit.

PUBLICATION	LANGUAGE	PROVINCE	READERSHIP
<i>Globe and Mail</i>	English	National	3,200,000
<i>Ottawa Citizen</i>	English	Ontario	496,700
<i>Le Droit</i>	French	Quebec	35,829
TOTAL			3,732,529

CREATIVE DESIGN

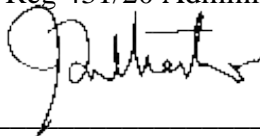
RicePoint recommends the use of attention-getting design elements in all creative to enhance participation:

- **Headline** – text should be brief in order to capture readers' attention
- **Content** – text should be abbreviated and simplified where possible from formal long or short form notice documents to consist of a brief call to action
- **Images and/or design elements** – should be utilized in all creative

All public materials should prominently display a URL and will link to the case website. All digital content will be abbreviated and modified from original notice documents to fit platform formats.

EXHIBIT "B": RicePoint Proposal for Administration

This is Exhibit "B" to the Affidavit of Frances Shapiro Munn, sworn remotely before me at the City of Williston, in the State of Vermont, United States, on the 23rd day of July 2021, in accordance with O. Reg 431/20 Administering Oath Remotely.



A COMMISSIONER FOR TAKING AFFIDAVITS

Administration Services Estimate
Barwin Fertility

July 21, 2021

Michael Mooney; mmooney@ricepoint.com; +1-226-235-1611



Key Assumptions Used in Estimate Preparation

Size of Class:	1,500 class members
Estimated # of Known Class Members:	220 class members
Estimated # of Unknown Class Members:	1,280 class members
Estimated # of Minor Children:	10 class members
Case Duration:	12 months
# of Electronic, Finalized Data Files Provided (Excel, Access, etc.):	1 file(s)
Claims Processing:	Yes
Returned Mail Handling:	No
% of returned undeliverable notices:	10%
Media Campaign Required:	Yes
Expert Media Services:	No
English Only:	No (French)
# of Email Campaigns:	1
% of emails bounced back ("Bouncebacks"):	20%
Reminder Mailing:	No
Duration of Claims Filing Period:	8 weeks
Documentation Required:	Yes
% of known class members that will file a claim:	100%
% of unknown class members that will file a claim:	25% to 75%
% of claims filed online:	95%
% of claims filed by postal mail:	5%
% of disputed claims:	5%
% of deficient claims:	30%
Type of Telephone Support:	Live
% of class that will call:	10%
% of callers that will request a Notice Packet:	5%
Duration of Telephone Support:	12 months
Type of Website Support:	Dynamic
Online Claims Filing:	Yes
Duration of Website Support:	12 months

SUMMARY OF COSTS	
Project Set-Up	\$78,275
Noticing Options (Per Phase)	
Email Campaign	\$2,750
Print/ Mail Notice Packet	\$2,381
Short Form Notice	\$2,480
Long Form Notice	
Media	
Main Media Campaign	\$55,966
Telephone Support	\$4,116
Claims Administration	
25% Claims	\$45,836
50% Claims	\$78,539
75% Claims	\$111,542
Distribution & Tax Reporting	
25% Claims	\$25,277
50% Claims	\$26,195
75% Claims	\$27,114

PROJECT SET-UP	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL	PRE-HEARING	POST-HEARING
Data and Forms Set-up							
- Intake and Process Data, Set up Case Management System		25 hrs	\$150.00	\$3,750		\$3,750	\$0
- Format Document(s)		25 hrs	\$150.00	\$3,750		\$1,875	\$1,875
- Translate Documents into French		15 hrs	\$150.00	\$2,250		\$1,125	\$1,125
Sub-total of Data and Forms Set-up					\$9,750		
Website Set-up & Maintenance							
- Design & Set up Dynamic Website		75 hrs	\$150.00	\$11,250		\$5,625	\$5,625
- Domain Registration (5 yrs/Privacy Registration)				\$175		\$175	\$0
- Maintenance		5 hrs	\$150.00	\$750			\$750
- Server Space rental		12 mos	\$50.00	\$600		\$300	\$300
Sub-total of Website Set-up & Maintenance					\$12,775		
Case Management, Opt Out Processing, and General Reporting							
- Case Management		250 hrs	\$150.00	\$37,500		\$9,375	\$28,125
- Executive Oversight		50 hrs	\$290.00	\$14,500		\$3,625	\$10,875
- Opt-Out/Objection/ Correspondence Processing - estimated units		50 units					
- Staff Hours for Opt-Out/ Objection/ Correspondence Processing		5 hrs	\$150.00	\$750		\$750	\$0
- General Reporting		20 hrs	\$150.00	\$3,000		\$1,500	\$1,500
Sub-total of Case Management, Opt Out Processing, and General Reporting					\$55,750		
SUB-TOTAL OF PROJECT SET-UP					\$78,275	\$28,100	\$50,175

NOTICING OPTIONS (per phase)	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL	PRE-HEARING	POST-HEARING
Email Campaign							
- Email Service		220 units		\$500			
- Email Campaign Management		10 hrs	\$150.00	\$1,500			
- Estimated # of Bouncebacks	20%	44 units					
- Track/Manage Bouncebacks		5 hrs	\$150.00	\$750			
Sub-total of Email Campaign					\$2,750		
Print/Mail Notice Packet- Short Form Notice							
- Address Verification		220 units		\$250			
- 1-page (2-impresion) Notice in English, 1-page (2-impresion) Notice in French, 1-page Objection Form, #10 outbound envelope		220 units	\$1.95	\$429			
- Estimated Postage*		220 units	\$0.92	(actual)			
- Print Production Management		10 hrs	\$150.00	\$1,500			
Sub-total of Print/Mail Notice Packet- Short Form Notice					\$2,179		
Plus Estimated Postage*					\$202		
Total of Print/ Mail Notice Packet- Short Form Notice, Plus Estimated Postage*					\$2,381		
Print/Mail Notice Packet- Long Form Notice							
- Address Verification		220 units		\$250			
- 2-page (2-impresion) Notice in English, 2-page (2-impresion) Notice in French, 2-page Objection Form, #10 outbound envelope		220 units	\$2.40	\$528			
- Estimated Postage*		220 units	\$0.92	(actual)			
- Print Production Management		10 hrs	\$150.00	\$1,500			
Sub-total of Print/Mail Notice Packet- Long Form Notice					\$2,278		
Plus Estimated Postage*					\$202		
Total of Print/ Mail Notice Packet- Long Form Notice, Plus Estimated Postage*					\$2,480		

**Administration Services Estimate
Barwin Fertility
July 21, 2021**



Michael Mooney; mmooney@ricepoint.com; +1-226-235-1611

Media Campaign	\$55,966
Main Media Program	
- Digital Media	
- 70% reach of Ontarians aged 18+; approximately 18.7 million impressions/ views across Google and Facebook networks over 30 days with an 80/20 split of English and French language notice	
- Newspapers	
- <i>Le Droit</i> - 1x 1/7th page, weekday	
- <i>Globe and Mail</i> - 1x, 1/8th page, weekday	
- <i>Ottawa Citizen</i> - 1x, 1/8th page, weekday	
Sub-total of Media Campaign	\$55,966

TELEPHONE SUPPORT	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL	PRE-HEARING	POST-HEARING
Call Centre Support							
- Script Drafting and Management		10 hrs	\$150.00	\$1,500		\$750	\$750
- Monthly Maintenance Fees		12 mos	\$50.00	\$600		\$300	\$300
- Projected # of Calls (% of Class)	10%	150 calls					
- Average Call Duration (minutes)		5 mins					
- Live Operator Line Charges		750 mins	\$2.25 /min	\$1,688		\$844	\$844
- Long-Form Notice Packet Requests	5%	8 units					
- Fulfill Notice Packet Requests		8 units	\$2.70	\$22		\$11	\$11
- Estimated Postage*		8 units	\$0.92	(actual)			
- Print Production Management		2 hrs	\$150.00	\$300		\$150	\$150
SUB-TOTAL OF TELEPHONE SUPPORT					\$4,109	\$2,055	\$2,055
Plus Estimated Postage*					\$7	\$4	\$4
Total of Telephone Support, Plus Estimated Postage*					\$4,116	\$2,059	\$2,059

CLAIMS ADMINISTRATION	25% Filing Rate				50% Filing Rate				75% Filing Rate			
	%	Quantity	Rate	Total	%	Quantity	Rate	Total	%	Quantity	Rate	Total
# of Known Class Member Claims		220 claims				220 claims				220 claims		
# of Unknown Class Member Claims	25%	320 claims			50%	640 claims			75%	960 claims		
Estimated # of Claims		540 claims				860 claims				1,180 claims		
Process Claims Filed Online	95%	513 claims	\$1.50	\$770	95%	817 claims	\$1.50	\$1,226	95%	1,121 claims	\$1.50	\$1,682
Process Claims Filed by Postal Mail	5%	27 claims			5%	43 claims			5%	59 claims		
- Processing Staff Time (mins/claim)		5 min/claim				5 min/claim				5 min/claim		
- Staff Hours Processing Claims		5 hrs	\$150.00	\$750		5 hrs	\$150.00	\$750		5 hrs	\$150.00	\$750
- Open/Image Forms		27 units	\$1.85	\$50		43 units	\$1.85	\$80		59 units	\$1.85	\$109
Documentation Review		320 units				640 units				960 units		
- Review Documents		30 min/response				30 min/response				30 min/response		
- Staff Hours Reviewing Documents		160 hrs	\$150.00	\$24,000		320 hrs	\$150.00	\$48,000		480 hrs	\$150.00	\$72,000
- Open/Image Forms		320 units	\$0.95	\$304		640 units	\$0.95	\$608		960 units	\$0.95	\$912
Deficient Claims	30%	162 units			30%	258 units			30%	354 units		
- Print/Mail Deficiency Letters		162 units	\$1.25	\$203		258 units	\$1.25	\$323		354 units	\$1.25	\$443
- Estimated Postage*		162 units	\$0.950	(actual)		258 units	\$0.950	(actual)		354 units	\$0.950	(actual)
- Process Deficiency Responses		30 min/response				30 min/response				30 min/response		
- Staff Hours Processing Deficiencies		85 hrs	\$150.00	\$12,750		130 hrs	\$150.00	\$19,500		177 hrs	\$150.00	\$26,550
- Open/Image Forms		162 units	\$1.85	\$300		258 units	\$1.85	\$477		354 units	\$1.85	\$655
Decision Notices	100%	540 units			100%	860 units			100%	1,180 units		
- Print/Mail Decision Notices		540 units	\$1.50	\$810		860 units	\$1.50	\$1,290		1,180 units	\$1.50	\$1,770
- Estimated Postage*		540 units	\$0.920	(actual)		860 units	\$0.920	(actual)		1,180 units	\$0.920	(actual)
Appeals Mediator Coordination		25 hrs	\$150.00	\$3,750		25 hrs	\$150.00	\$3,750		25 hrs	\$150.00	\$3,750
Status Reports		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
SUB-TOTAL OF CLAIMS ADMINISTRATION				\$45,186				\$77,503				\$110,120
Plus Estimated Postage*				\$651				\$1,036				\$1,422
Total of Claims Administration, Plus Estimated Postage*				\$45,836				\$78,539				\$111,542

DISBURSEMENTS & TAX REPORTING	25% Filing Rate				50% Filing Rate				75% Filing Rate			
	%	Quantity	Rate	Total	%	Quantity	Rate	Total	%	Quantity	Rate	Total
# of Claims Payments		540 units				860 units				1,180 units		
# of Minor Children Claimants		10 units				10 units				10 units		
# of Adult Claimants		530 units				850 units				1,170 units		
Funds Management, Obtain Tax ID		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Distribution Calculations & Prep QA / QC		75 hrs	\$150.00	\$11,250		75 hrs	\$150.00	\$11,250		75 hrs	\$150.00	\$11,250
Print/Mail Cheques- Clerk of the Court		20 hrs	\$150.00	\$3,000		20 hrs	\$150.00	\$3,000		20 hrs	\$150.00	\$3,000
- Estimated Postage*		1 units	\$5.00	\$5		1 units	\$5.00	\$5		1 units	\$5.00	\$5
- Estimated Postage*		1 units	\$0.920	(actual)		1 units	\$0.920	(actual)		1 units	\$0.920	(actual)
Print/Mail Cheques- Adult Claimants		530 units	\$1.95	\$1,034		850 units	\$1.95	\$1,658		1,170 units	\$1.95	\$2,282
- Estimated Postage*		530 units	\$0.920	(actual)		850 units	\$0.920	(actual)		1,170 units	\$0.920	(actual)
Distribution Management		15 hrs	\$150.00	\$2,250		15 hrs	\$150.00	\$2,250		15 hrs	\$150.00	\$2,250
Post-Distribution Follow-up & Reports		25 hrs	\$150.00	\$3,750		25 hrs	\$150.00	\$3,750		25 hrs	\$150.00	\$3,750
Settlement Fund Tax Returns (annual)		1 yrs	\$2,000.00	\$2,000		1 yrs	\$2,000.00	\$2,000		1 yrs	\$2,000.00	\$2,000
SUB-TOTAL OF DISBURSEMENTS & TAX REPORTING				\$24,789				\$25,413				\$26,037
Plus Estimated Postage*				\$489				\$783				\$1,077
Total of Disbursements & Tax Reporting, Plus Estimated Postage*				\$25,277				\$26,195				\$27,114

Administration Services Estimate
Barwin Fertility

July 21, 2021

Michael Mooney; mmooney@ricepoint.com; +1-226-235-1611



A Computershare company.

OTHER SERVICES AND OUT-OF-POCKET EXPENSES	ESTIMATED COST
Other Services and Ad Hoc Reporting, as needed or requested	(standard hourly rates)
Other Charges and Out-of-Pocket Costs***	(actual)

* Estimated Postage and Handling.

** Does not include applicable taxes or escheatment services.

*** Includes, but is not limited to long distance calls, overnight shipping, photocopies, storage, PO Box rentals, broker fees, etc.

This Class Action Administration Services Estimate and the attached Cost Summary & Scope of Services (together, the "Proposal") are valid for ninety days from 7/21/2021. After such period, RicePoint reserves the right to amend the Proposal (including, without limitation, by increasing fees and costs) or to withdraw the Proposal in its sole discretion.

All services to be provided to the undersigned (the "Client") and all fees and costs set forth in the Proposal are subject to the terms, specifications, assumptions and conditions set forth in the Proposal and the attached Terms and Conditions (the "Terms of Service"). The estimated fees and charges in the Proposal are based on certain information provided to RicePoint as well as significant assumptions. Accordingly, this estimate is not intended to limit RicePoint's actual fees and charges, which may be less or more than estimated due to the scope of actual services or changes to the underlying facts or assumptions.

RicePoint

BY: _____ DATE: _____
TITLE:

Nelligan O'Brien Payne LLP

BY:  DATE: July 21, 2021
TITLE: Partner

TERMS AND CONDITIONS

All services to be provided by RicePoint Administration Inc. (together with its affiliates, "RicePoint"), including services provided to Client as set forth in the attached Proposal, are subject to the following Terms and Conditions:

1. SERVICES. RicePoint agrees to provide the services set forth in the Proposal attached hereto as well as any additional services as directed by the Client (the "Services"). Capitalized terms not otherwise defined herein have the meanings given to such terms in the Proposal. RicePoint will often take direction from Client's representatives, employees, agents and/or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that RicePoint may rely upon, and Client agrees to be bound by, any directions, requests, advice or information provided by the Client Parties to the same extent as if such directions, requests, advice or information were provided by Client. Client agrees and understands that RicePoint shall not provide Client or any other party with any legal advice.

2. PRICES, CHARGES AND PAYMENT. RicePoint agrees to charge and Client agrees to pay, subject to the terms herein, RicePoint for its fees and expenses as set forth in the Proposal. Client acknowledges that any estimate in the Proposal is based on information provided by Client to RicePoint and actual fees and expenses may vary depending on the circumstances and length of the case. Notwithstanding the foregoing, where total expenses are expected to exceed \$10,000 in any single month, RicePoint may require advance payment from Client due and payable upon demand and prior to the performance of services. RicePoint's prices are inclusive of commission and other charges (but exclusive of harmonized sales taxes) and are generally adjusted periodically to reflect changes in the business and economic environment. RicePoint reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceeds 10%, RicePoint will give thirty (30) days written notice to Client. Client agrees to pay the reasonable out of pocket expenses incurred by RicePoint in connection with Services, including, but not limited to, transportation, lodging and meals. RicePoint agrees to submit its invoices to Client and Client agrees that the amount invoiced is due and payable upon receipt.

RicePoint agrees to submit its invoices to Client and Client agrees that the amount invoiced is due and payable upon receipt. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Client further agrees to pay a late charge (the "Finance Charge"), calculated at a monthly rate of one and one-half percent (1-1/2%) (being an annual rate of eighteen percent (18%)) of the total amount unpaid. In the case of a dispute in the invoice amount, Client shall give written notice to RicePoint within twenty (20) days of receipt of the invoice by Client. Client agrees the Finance Charge is applicable to instances where RicePoint agreed to provide certain pre-settlement work while deferring the billing of said work until the settlement phase.

3. FURTHER ASSURANCES. Client agrees that it will use its best efforts to include provisions reasonably acceptable to RicePoint in any relevant court order, settlement agreement or similar document that provide for the payment of RicePoint's fees and expenses hereunder. No agreement to which RicePoint is not a party shall reduce or limit the full and prompt payment of RicePoint's fees and expenses as set forth herein and in the Proposal.

4. RIGHTS OF OWNERSHIP. The parties understand that the software programs and other materials furnished by RicePoint to Client and/or developed during the course of the performance of Services are the sole property of RicePoint. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by RicePoint.

5. CONFIDENTIALITY. Each of RicePoint and Client, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the Services; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party (unless notice is prohibited by such order), release the required information. These provisions shall survive termination of Services.

6. BANK ACCOUNTS. BANK ACCOUNTS. At Client's request, RicePoint shall be authorized to establish accounts with financial institutions as agent for Client or as otherwise agreed by the parties. All Client accounts established by RicePoint shall be segregated in the records of RicePoint and shall be deposit accounts of commercial banks with capital exceeding \$1 billion and an FIR rating of above Investment Grade or higher (each, an "Approved Bank"). Notwithstanding the foregoing, the parties may utilize any financial institution or electronic payment service provider specified in the Proposal in connection with the services to be provided hereunder, or as otherwise agreed to in writing, which institution or provider will be deemed an Approved Bank. In some cases, RicePoint may derive financial benefits from financial institutions resulting from settlement funds and other moneys on deposit or invested with them including, for example, interest or discounts provided on certain banking services and

service fees. The amounts held pursuant to these Terms and Conditions ("Amounts Held") are at the sole risk of Client and, without limiting the generality of the foregoing, RicePoint shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with an Approved Bank including any losses resulting from a default by the Approved Bank or other credit losses. RicePoint shall have no responsibility or liability for any claims or losses arising from or related to the delivery of electronic payments. It is acknowledged and agreed that RicePoint will have acted prudently in depositing the fund at any Approved Bank, and RicePoint is not required to make any further inquiries in respect of any such bank. The delivery of the Amount Held to RicePoint shall not give rise to a debtor-creditor or other similar relationship. It is acknowledged and agreed that RicePoint will have acted prudently in depositing the Amount Held at any Approved Bank, and that RicePoint is not required to make any further inquiries in respect of any such bank

7. TERMINATION. The Services may be terminated by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of RicePoint that causes serious and material harm to Client, (ii) the failure of Client to pay RicePoint invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services where RicePoint reasonably believes it will not be paid. Termination of Services shall not relieve Client of its obligations to pay all fees and expenses incurred prior to such termination.

In the event that the Services are terminated, regardless of the reason for such termination, RicePoint shall reasonably coordinate with Client to maintain an orderly transfer of data, programs, storage media or other materials furnished by Client to RicePoint or received by RicePoint in connection with the Services. Client agrees to pay for such services in accordance with RicePoint's then existing prices for such services.

8. LIMITATIONS OF LIABILITY AND INDEMNIFICATION. Client shall indemnify and hold RicePoint, its affiliates, shareholders, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to RicePoint's performance of the Services under the terms of applicable settlement documents, court orders, and the Client's direction. Such indemnification shall exclude Losses resulting from RicePoint's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. Client shall notify RicePoint in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that Client becomes aware of with respect to the Services provided by RicePoint.

Except as provided herein, RicePoint's liability to Client or any person making a claim through or under Client or in connection with Services for any Losses of any kind, even if RicePoint has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of RicePoint, shall be limited to the total amount billed to Client and actually paid to RicePoint for the Services. In no event shall RicePoint be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the Services. Except as expressly set forth herein, RicePoint makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity. The provisions of this Section 8 shall survive termination of Services.

9. FORCE MAJEURE. RicePoint will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

10. INDEPENDENT CONTRACTORS. RicePoint is and shall be an independent contractor of Client and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of the Services or these Terms and Conditions.

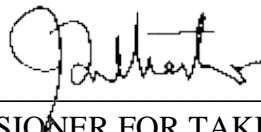
11. NOTICES. All notices and requests hereunder shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited with Canada Post, postage pre-paid or on the day it is given if sent by facsimile or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth in the Proposal or to such other address as the party to receive the notice or request so designates by written notice to the other.

12. APPLICABLE LAW. These Terms and Conditions will be governed by and construed in accordance with the laws of the Province of Ontario, without giving effect to any choice of law principles.

13. ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY; BINDING EFFECT. These Terms and Conditions, together with the Proposal delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersede all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof. If any provision herein shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. These Terms and Conditions may be modified only by a written instrument duly executed by the parties. All of the terms, agreements, covenants, representations, warranties and conditions of these Terms and Conditions are binding upon, and enure to the benefit of and are enforceable by, the parties and their respective successors and permitted assigns.

EXHIBIT "C": DNA Database Disclosure Agreement and Consent

This is Exhibit "C" to the Affidavit of Frances Shapiro Munn, sworn remotely before me at the City of Williston, in the State of Vermont, United States, on the 23rd day of July 2021, in accordance with O. Reg 431/20 Administering Oath Remotely.



A COMMISSIONER FOR TAKING AFFIDAVITS

**DNA DATABASE DISCLOSURE AND CONSENT AGREEMENT
RE: DR. BARWIN CLASS ACTION**

I. BACKGROUND

1. Dr. Norman Barwin performed artificial inseminations as a fertility doctor in Ottawa, Ontario between 1973 and 2012. He practiced at the Ottawa General Hospital and then at his own clinic, the Broadview Fertility Clinic.

2. In November 2016, the law firm of Nelligan O'Brien Payne LLP commenced a class action proceeding against Dr. Barwin in the Superior Court of Justice (Ottawa) being Court File 16-70454CP alleging various errors in his fertility practice. The allegations include the following scenarios:
 - a. Cases where individuals were to be conceived using their father's semen and who subsequently discovered they were not so conceived. They now do not know whose sperm was used at the time of their conception.

 - b. Cases where an individual was to be conceived using a specific anonymous donor or a specific known donor and subsequently discovered that that the donor sperm was not so used. They now do not know whose sperm was used at the time of their conception.

 - c. Cases in which a former patient provided semen to Dr. Barwin for a particular use or purpose and that semen was used to conceive a child or children for another patient.

3. As a result, the individuals conceived do not have accurate information about their medical and health history on the paternal side.

4. These individuals and/or their parental guardians are concerned that they have half-siblings whom they do not know. They are also concerned about the risk of consanguinity (related by blood) if they unknowingly were to meet and form a romantic relationship with a half-sibling.

5. The purpose of the DNA database is to facilitate DNA matching among class members and individuals who left semen with Dr. Barwin. The goal is to identify half-sibling and paternal biological relationships among participants in the DNA database.
6. Although some class members have successfully located half-siblings and their sperm donors through commercial DNA websites like 23andMe.com, Ancestry.ca, and FamilyTreeDNA.com, many others are concerned about the privacy implications of providing their DNA to a commercially operated company. The purpose of the DNA Database is to provide a mechanism for DNA matching among Class Members and former patients of Dr. Barwin in a private and controlled manner.

II. DEFINITIONS

7. "**Offspring**" is a person who was born to a former patient of Dr. Barwin at the Broadview Fertility Clinic and/or the Ottawa Hospital and was conceived by way of assisted reproduction with Dr. Barwin's assistance or at another clinic with semen that had previously been stored with Dr. Barwin.
8. "**Assisted Reproduction**" means a method of conceiving other than by sexual intercourse.
9. "**Potential Progenitor**" includes any person whose semen was stored with Dr. Barwin at the Broadview Fertility Clinic and/or the Ottawa Hospital for the purposes of semen storage, artificial insemination, or anonymous or known sperm donation.
10. "**OrchidPro**" aka Orchid PRO-DNA is the DNA testing company that will collect DNA samples from participants in the DNA Database and operate the DNA Database.
11. "**DNA Database**" is a database that will be set up and operated by Orchid PRO-DNA for the purposes of identifying biological connections among former patients of Dr. Barwin, their offspring, and anonymous sperm donors.

12. "**Participant**" includes:

- a. an individual who is 18 years of age or older who chooses to participate in the DNA Database;
- b. an individual who is 18 years of age or older who lacks capacity to consent to participate in the DNA Database and whose Guardian for Personal Care consents to their participation in the DNA Database on their behalf; and
- c. an individual who is under the age of 18 years, whose parents or legal guardians consents for the minor child to participate in the DNA Database.

13. "**Biological match**" means any DNA connection between two or more participants in the DNA Database including biological paternity matches and biological half-sibling matches.

14. "**Nelligan O'Brien Payne LLP**" is the law firm representing the plaintiff class members in the class action against Dr. Barwin.

15. "**Inconclusive DNA match**" means that a biological relationship cannot be confirmed or ruled out based on initial DNA testing.

16. "**Consanguinity**" means "blood relation" i.e. being from the same ancestral line as another individual. Consanguineous marriages and/or consanguineous sexual relationships can increase the risk of genetic diseases being passed down to the offspring.

III. LEGAL CONSIDERATIONS

17. The purpose of the class action is to allow former patients of Dr. Barwin and their offspring to advance claims for compensation for alleged errors arising out of artificial insemination performed by him at the Ottawa Hospital and the Broadview Fertility Clinic or performed by others using semen which had been entrusted to him by the patients.

18. In order to help resolve some of the alleged errors summarized above, class members will have the opportunity to **voluntarily participate** in this DNA Database.

19. **Purpose of the DNA Database:** The DNA Database is an opportunity to provide class members with information about their medical history and an opportunity to find out the identity of any of their potential children, progenitor and/or half-siblings.
20. **Legal Obligations:** The DNA Database cannot be used to create obligations under the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, the *Family Law Act*, R.S.O. 1990, c. F.3, the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, the *Health Care Consent Act*, S.O. 1996, c. 2, the *Substitute Decisions Act*, S.O. 1992, C.30, the common law, or any other applicable statute or legislation in your jurisdiction of residence. **By joining the DNA Database, you waive any legal rights or obligations that may arise as a result of any biological connection you may discover through the DNA Database.**
21. **Child Support:** Without limiting the foregoing, as a condition of participating, you specifically release and waive any right to claim child support (past, present, and future) from any progenitor you or your minor child may match with in the DNA Database.
22. **Parenting (Decision-Making, Parenting Time, Contact):** Without limiting the foregoing, you specifically waive the right to seek any decision-making authority (formerly known as "custody"), parenting time (formerly known as "access"), or contact with or in relation to any minor children with whom you share a biological match in the DNA database.
23. **By signing this agreement, the participants waive any rights or obligations to each other that may arise as a result of a biological connection made through the DNA Database. You specifically waive any and all rights you or your minor child may have to seek or claim financial support from any other participant.**
24. **Best Interests of the Child:** Notwithstanding anything in this agreement, Canadian courts are not obligated to follow contractual arrangements when it comes to issues of child support, decision-making authority (formerly known as "custody"), parenting time (formerly known as "access"), or contact with or in relation to any minor children. The court will determine

these issues based on the best interests of the child. **We therefore cannot guarantee that there will be no legal obligations flowing from a progenitor/offspring match in the DNA Database. However, courts will respect contractual arrangements wherever possible.**

25. The best interests of any child is not a fixed or final analysis and will remain fluid. Your risks with respect to child support, decision-making authority, parenting time, and contact with or in relation to any minor children, may change once relationships are established, particularly if you take on a role similar to that of a parent to a child. **If you form connections and relationships as a result of this DNA Database (beyond the exchange of medical information), you do so with the knowledge that this could create binding legal obligations *Family Law Act* in the future, such as child support obligations under the *Family Law Act* or dependent support obligations under the *Succession Law Reform Act* (as examples).**

IV. CONSENT & WAIVER

26. **Consent:** By signing this Agreement, you are consenting to OrchidPro using the data in its possession in regard to your DNA (or that of any infant or person under a disability on whose behalf you are signing this Agreement) in the DNA database for the purpose of making comparisons to the DNA of all other participants in the DNA database.
27. **Waiver:** By signing this Agreement, you are agreeing to waive any and all claims against OrchidPro in respect to the use of your DNA (or that of any infant or person under a disability on whose behalf you are signing this Agreement) in the DNA database and any matches which may be disclosed through it.

V. PRIVACY AND DISCLOSURE OF INFORMATION

28. **Consent to share identifying information:** As a condition of participating in the DNA Database, you must **consent** to providing your **name** and **email address** to a biological match. Participants are required to:

- a. Provide Nelligan O'Brien Payne with an email address that Nelligan O'Brien Payne may forward to your biological matches; and
 - b. Update Nelligan O'Brien Payne of any changes in your email address in order to ensure that our records remain up to date and accurate.

29. **DNA Match:** Following a match, OrchidPro will notify Nelligan O'Brien Payne and in turn, Nelligan O'Brien Payne will then advise the affected parties that there has been a match and the nature of the match. **Nelligan O'Brien Payne will exchange the names and emails of the individuals who match each other.**

30. **Confidentiality:** By participating in the DNA Database, and in consideration of the other participants, you **agree that you will not publish this agreement or the identity of any of your biological matches to any public forum such as newspapers, magazines, internet blogs, television, radio, Facebook or other social networking site.** You agree to be respectful in all of your correspondences and communications with any of your matches and to respect the privacy, confidentiality, and boundaries of any individuals against whom you match.

31. **Exception to Joint Retainer Disclosure:** In a joint retainer, the law firm is unable to keep information confidential from one client that may impact another client. **You acknowledge that by participating in this DNA Database that you are agreeing to an exception to the Joint Retainer Disclosure rules.** You agree that Nelligan O'Brien Payne cannot provide you with any information about any of your biological matches other than their names and email addresses.

32. **Independent Legal Advice:** Nelligan O'Brien Payne is unable to provide you with any legal advice in relation to this agreement or a biological match arising out of the DNA Database. In executing this agreement, you acknowledge that you have been advised to seek independent legal advice about this agreement or a biological match arising out of the DNA Database.

33. **Jurisdiction:** This agreement is governed by the laws of the Province of Ontario. In executing this agreement, you acknowledge and agree that this agreement will be interpreted under the laws of the Province of Ontario. Nelligan O'Brien Payne is unable to provide you with any legal advice regarding the laws of jurisdictions outside of the Province of Ontario. If you reside outside of Ontario, you acknowledge and understand that Nelligan O'Brien Payne is unable to advise you as to your rights, obligations and risks under the laws of any other jurisdiction. In executing this agreement, you acknowledge that you have been advised to seek independent legal advice in your jurisdiction of residence.
34. Delivery of a signed Agreement by e-mail or fax or other electronic means to Nelligan O'Brien Payne will be sufficient and an electronic copy will have the same effect as an original executed Agreement.

Potential Progenitors

35. In order to participate in the DNA Database, you must consent to this Disclosure Agreement and consent to the release of your name and email to an Offspring and/or the Offspring's parents (in the case of a minor child) following a match.
36. **Medical and Health History Form:** In order to provide participants with answers as to their missing medical history, you may consider completing the Medical and Health History Form attached as Schedule "A." You do not need to complete this form as a condition of participating in the DNA Database. However, many of the offspring participating in the DNA Database will appreciate having this information or similar information from you about their medical history following a match. If you do complete the Medical and Health History Form, Nelligan O'Brien Payne will provide a copy of it to the Offspring or the Offspring's parents in the event of a biological match.

Offspring

37. In order to participate in the DNA Database, you must consent to this Disclosure Agreement and consent to the release of your name and email to a half-sibling or progenitor match.

38. **Inconclusive matches:** Where a match is “inconclusive,” Nelligan O’Brien Payne will advise the affected parties of the inconclusive match. The parties will have the option of engaging in further DNA testing in order to resolve the inconsistency. **Both parties must consent to further testing.** Nelligan O’Brien Payne will not disclose the parties’ names and identities until a confirmed DNA match is established.

VI. END OF DATABASE

39. Your DNA will remain in the DNA database until: (a) you provide notice in writing that you no longer wish to participate in the DNA Database and that your DNA sample should be removed within 14 business days; or (b) the DNA Database ceases to operate. In either of these cases, OrchidPro will permanently delete the digital copy of your DNA. You may provide written consent for OrchidPro to retain a digital copy of your DNA. In the event that you request OrchidPro to retain a copy of your DNA, OrchidPro will not conduct any further DNA testing without your explicit authorization to do so.

VII. CONSENT TO PARTICIPATE

I have read the terms of this agreement and consent to participate based on the conditions set out above.

Date:

Print Name [Participating Party]:

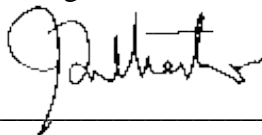
**Signature of Participant (or
Parent/Guardian):**

Witness:

Email address to be provided to a biological match:

EXHIBIT "D": Medical Health History Form

This is Exhibit "D" to the Affidavit of Frances Shapiro Munn, sworn remotely before me at the City of Williston, in the State of Vermont, United States, on the 23rd day of July 2021, in accordance with O. Reg 431/20 Administering Oath Remotely.



A COMMISSIONER FOR TAKING AFFIDAVITS

MEDICAL AND HEALTH HISTORY FORM

Category:

Donor <input type="checkbox"/>	Donor No.:
Patient <input type="checkbox"/>	Patient Name:

Background:

Ancestry:
Ethnic Background:
Blood Type:

Family Medical History:

Age of mother or age at death: _____
Cause of death: _____
Health problems / genetic diseases: _____
Age of father or age at death: _____
Cause of death: _____
Health problems / genetic diseases: _____

We are interested in both your health and the health of your “wider family” - parents; brothers & sisters; grandparents; aunts & uncles; and cousins – that may have implications for your offspring.

TYPE OF HEALTH CONDITION	SELF (Mark X)	LIST FAMILY MEMBERS AFFECTED
1. CHRONIC DISEASES		
Diabetes (Types I and II)		
Heart Disease		
High Blood Pressure		
Asthma		
Rheumatoid Arthritis		
Elevated Cholesterol		
Multiple Sclerosis		
Parkinson Disease		
Other:		
2. CANCER		
Bowel		
Breast		
Ovarian		
Thyroid		
Testicular		
Leukemia		
Prostate		
Other:		
3. MENTAL HEALTH		
Bipolar Disorder		
Schizophrenia		
Autism Spectrum Disorder		
Generalized Anxiety Disorder		
Depression		
Dementia		
Addiction (drugs; alcohol)		
Other:		
4. GENETIC DISORDERS		
Cystic Fibrosis		
Muscular Dystrophy		
Huntington’s Disease		
Fragile X Syndrome		
Thalassemia		
Sickle Cell Anemia		
Hemophilia		

DAVINA DIXON, et al.
Plaintiffs

and

DR. NORMAN BARWIN
Defendant

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**AFFIDAVIT OF FRANCES SHAPIRO MUNN
(Sworn July 23, 2021)**

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Lawyers for the Plaintiffs

DAVINA DIXON, et al.
Plaintiffs

and

DR. NORMAN BARWIN
Defendant

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**MOTION RECORD OF THE PLAINTIFFS
(Motion for Certification)**

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