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10 Attorneys for Plaintiffs

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 RENEE VIDIKSIS AND MEGAN VIDIKSIS,
16 INDIVIDUALLY AND ON BEHALF OF A
17 CLASS OF SIMILARLY SITUATED
INDIVIDUALS,

18 Plaintiffs,

19 v.

20 CALIFORNIA CRYOBANK LLC,
21

22 Defendants.
23

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

24 TO THE HONORABLE UNITED STATES DISTRICT COURT:

25 COMES NOW, Renee Vidiksis and Megan Vidiksis, individually and on behalf of
26 a class of similarly situated individuals, (“Plaintiffs”) by their undersigned attorney, and
27 file this Original Class Action Complaint against California Cryobank LLC (“California
28 Cryobank” or “Defendant”), and alleges the following based upon personal knowledge as

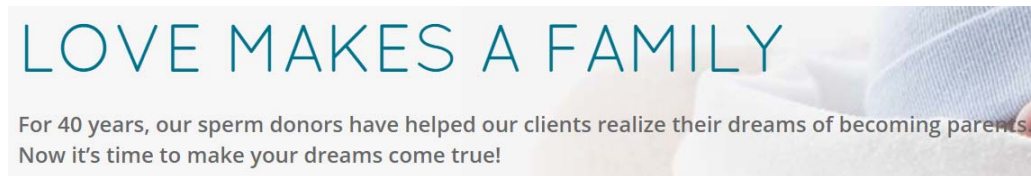
1 to themselves and their own acts, and information and belief as to all other matters, based
2 upon, inter alia, the investigation conducted by and through their attorneys.

3 **I. INTRODUCTION**

4 1. “Children of the same family, the same blood, with the same first
5 associations and habits, have some means of enjoyment in their power which no
6 subsequent connections can supply.” Jane Austen, *Mansfield Park*.

7 2. People who purchase donor sperm often purchase multiple vials to ensure
8 that if they are able to conceive a child and carry it to term, they will have the opportunity
9 to conceive a second (or third) child who is biologically related. This is known as a
10 blood sibling.

11 3. Defendant California Cryobank sells the idea of this dream.



17 But, as to Plaintiffs and the putative class, California Cryobank has interfered with many
18 of those dreams becoming a reality.

19
20 **II. PARTIES**

21 4. Plaintiffs Renee Vidiksis and Megan Vidiksis are residents and citizens of
22 New York.

23 5. Defendant California Cryobank LLC is a California limited liability
24 company with its principal place of business located at 11915 La Grange Ave., Los
25 Angeles California. Defendant California Cryobank LLC may be served with summons
26
27
28

¹ <https://www.cryobank.com/> (last visited on August 15, 2019).

1 by serving its registered agent: CT Corporation Services, 818 West Seventh Street, Suite
2 930, Los Angeles, California 90017.

3 4 **III. JURISDICTION**

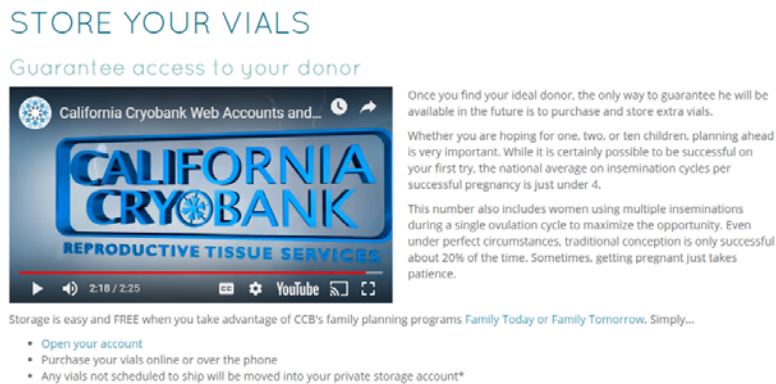
5 6. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. 1332(a),
6 as complete diversity exists in this case and the amount in controversy exceeds \$75,000.

7 7. This Court has general personal jurisdiction over Defendant because
8 Defendant maintains its principal places of business in this District, and Defendant
9 engages in continuous and systematic activities within California.

10 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391. Specifically,
11 as provided by 28 U.S.C. § 1391(c), Defendant is a limited liability company that resides
12 in this District. Moreover, a substantial part of the events or omissions giving rise to the
13 claims alleged herein occurred in this District.

14 **IV. FACTUAL ALLEGATIONS**

15 9. California Cryobank recognizes the importance to its customers of providing
16 a blood sibling. On its website, California Cryobank states “[o]ur donors sell out of vials
17 quickly! Just ask the 2,500 clients on the waiting list. If you plan to use the same donor
18 for your entire insemination process or want more than one child from the same donor, it
19 is imperative to purchase vials now. *It’s heartbreaking for us to explain to a client
20 hoping to give their child a little brother or sister that their donor is no longer
21 available.*”²



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28 ² <https://www.cryobank.com/services/additional-services/family-today---family-tomorrow/> (last visited July 25, 2019) (emphasis added).

1 10. California Cryobank also recognizes the importance to its customers of
2 being able to properly store the vials of donor sperm they purchased until they are ready
3 to use them. On its website, California Cryobank states:

- 4 • “[o]nce you find your ideal donor, the only way to guarantee he will be
5 available in the future is to purchase and *store* extra vials;”³
- 6 • “[w]hile it is certainly possible to be successful on your first try, the
7 national average on insemination cycles per successful pregnancy is just
8 under 4;”⁴ and
- 9 • “[t]his number also includes women using multiple inseminations during
10 a single ovulation cycle to maximize the opportunity. Even under perfect
11 circumstances, traditional conception is only successful about 20% of the
12 time. Sometimes, getting pregnant just takes patience;”⁵

13 11. California Cryobank is not the only sperm bank that offers customers the
14 ability to both purchase and properly store donor sperm for future use. Manhattan
15 Cryobank, Inc. (“MCB”) is another sperm bank offering storage services to its customers.

16 12. Plaintiffs and the other members of the putative class all purchased donor
17 sperm from MCB.

18 13. Plaintiffs and the other members of the putative class entered into a Semen
19 Storage Agreement (the “MCB Storage Agreement”) with MCB to store frozen donor
20 sperm specimens that they purchased from MCB.

21 14. Under the MCB Storage Agreement, “Manhattan Cryobank agrees to
22 analyze, process, freeze, and/or store, release, and discard Client specimens in the manner
23 and on the terms and conditions set forth below.”

24 15. Under the MCB Storage Agreement, “Client has not given any other person
25 any right to claim ownership or possession of any of the specimens.”

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27
28 ³ <https://www.cryobank.com/how-it-works/store-your-vials/> (last visited July 25, 2019).

⁴ <https://www.cryobank.com/how-it-works/store-your-vials/> (last visited July 25, 2019).

⁵ <https://www.cryobank.com/how-it-works/store-your-vials/> (last visited July 25, 2019).

1 16. Under the MCB Storage Agreement, “Manhattan Cryobank shall store
2 Client’s specimens until this Agreement is terminated pursuant to Paragraph 7.”

3 17. Paragraph 7 of the MCB Storage Agreement provides:

4 “TERMINATION:

5 All obligations of Manhattan Cryobank under this Agreement for storage of
6 Client’s specimens shall cease, upon the occurrence of any of the following
7 terminating events:

- 8 a. Upon written instruction Client to Manhattan Cryobank to transfer all
9 specimens to another facility;
- 10 b. Upon disposition of all specimens stored by Manhattan Cryobank
11 pursuant to a default under Paragraph 4⁶.
- 12 c. Upon the disposition of all specimens stored by Manhattan Cryobank
13 pursuant to either Paragraph 5⁷ or Paragraph 6⁸. Client shall make
14 arrangements for the release, use, or other disposition of any remaining
15 stored specimens within ten (10) days, otherwise, Manhattan Cryobank may
16 at its sole discretion without further notice, discard all specimens.
- 17 d. Upon thirty (30) days prior written notice of Manhattan Cryobank’s
18 separate termination agreement and final disposition forms.

19
20 There shall be no refund of storage fees upon termination of this Agreement
21 pursuant to section (a), (b) or (c) of this Paragraph. A prorated refund of storage
22 fees shall be paid by Manhattan Cryobank to the Client if this Agreement is
23 terminated pursuant to section (d) of this Paragraph.
24

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26 _____
27 ⁶ Paragraph 4 is entitled “PAYMENT” and refers to the payment of storage fees by the client.

28 ⁷ Paragraph 5 is entitled “DISPOSITION BY INSTRUCTIONS” whereby the client “authorizes Manhattan Cryobank to discard or release specimens to a licensed physician or clinic designated by the Client, in accordance with the Client signed written authorization....”

⁸ Paragraph 6 is entitled “DISPOSITION UPON DEATH” and refers to the death of the client.

1 The termination of this Agreement shall not affect any rights or obligations of the
2 parties occurring prior to such termination. Without limiting the previous
3 sentence, Client expressly agrees that the provisions of Paragraph 9⁹ and Paragraph
4 10 shall survive termination of this Agreement and remain in full force and effect
5 thereafter.

6 ***California Cryobank, MCB, and the New MCB***

7
8 18. Recently, MCB was purchased by CCB-MCB LLC (the “New MCB”)
9 which is a wholly owned subsidiary of Defendant California Cryobank. The New MCB
10 continued to operate for a time as “Manhattan Cryobank” despite its new ownership.

11 19. The New MCB did ***not*** enter into new storage contracts with Plaintiffs and
12 the putative class.

13 20. Plaintiffs and the other members of the putative class ***never*** entered into any
14 agreements for storage with California Cryobank and continued to store the donor sperm
15 they purchased in accordance with the MCB Storage Agreements.

16 ***Plaintiffs’ Experience with California Cryobank***

17 21. In hopes of conceiving their first child, Plaintiffs purchased five (5) vials of
18 MCB Donor 265 from MCB on April 28, 2015.

19 22. At that time, Plaintiffs entered into the MCB Storage Agreement and paid
20 MCB a total of \$2,600 for the five vials of sperm and six months of storage at MCB.

21 23. Plaintiffs utilized four of the five vials of MCB Donor 265 in conceiving a
22 child, leaving one vial remaining in storage at MCB.

23 24. After the birth of their child, Plaintiffs purchased an additional three vials of
24 MCB Donor 265 sperm from MCB and storage on July 6, 2016. Plaintiffs paid MCB
25 \$2,305 for the additional vials and storage.

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28 ⁹ Paragraph 9 is entitled “LIMITATION OF LIABILITY” and Paragraph 10 is entitled
“INDEMNIFICATION.”

1 25. Plaintiffs purchased the additional vials of sperm after the birth of their child
2 because they wanted to later conceive a second child, and it was extremely important to
3 them that their children be genetically related.

4 26. On May 30, 2019, Plaintiffs notified MCB of their intent to continue the
5 MCB Storage Agreement and paid a full year of storage fees through 2020.

6 27. That same day, Plaintiffs inquired of MCB as to the procedure to have one
7 of their vials shipped to their fertility clinic the following week.

8 28. On June 6, 2019, the Donor Program Director of California Cryobank – not
9 MCB – responded and advised Plaintiffs that *California Cryobank* would not release the
10 vials in Plaintiffs’ MCB storage account.

11 29. To date, Plaintiffs are unable to access the four vials of MCB Donor 265
12 sperm that they contracted with MCB to store at MCB, not California Cryobank.

13 30. Plaintiffs did not authorize or instruct MCB to transfer any of their
14 specimens to California Cryobank.

15 31. Plaintiffs did not authorize California Cryobank to take possession, custody
16 or control of their vials of donor sperm in storage at MCB.

17 32. MCB did not terminate the MCB Storage Agreement with Plaintiffs and the
18 other members of the putative class.

19 **V. CLASS ACTION ALLEGATIONS**

20 33. This action is brought and may be properly maintained under Federal Rules
21 of Civil Procedure 23(a) and (b)(2) and (b)(3).

22 34. Plaintiffs bring this action as a class action on behalf of themselves and all
23 others similarly situated as members of a Class identified as follows: *All persons who*
24 *entered into Semen Storage Agreements with MCB and who are storing donor sperm with*
25 *MCB but are being prevented by California Cryobank, Inc. from accessing their donor*
26 *sperm.*

27 35. Plaintiffs reserve the right to amend this class definition and, if deemed
28 appropriate, to subdivide the Class into subclasses.

1 36. California Cryobank, Inc.’s tortious interference renders the donor sperm
2 purchased unusable.

3 37. Plaintiffs seek to recover on behalf of themselves and the Class members the
4 monies they paid to MCB to purchase the donor sperm and to store the donor sperm.
5 Plaintiffs also seek to recover monetary damages for the lost opportunity to conceive a
6 blood sibling due to California Cryobank, Inc.’s interference.

7 38. **Numerosity**— FED. R. CIV. P. 23(a)(1): The members of the Class are so
8 numerous and widely dispersed that joinder of them in one action is impracticable. The
9 precise number of Class members is unknown to Plaintiffs, but the Class likely numbers
10 in the hundreds or thousands that are geographically dispersed throughout the United
11 States. Each Class member should be readily identifiable from information and records in
12 Defendant’s possession and control. Members of the Class may be notified of the
13 pendency of this action by published, mailed, and/or electronic notice.

14 39. **Existence of Common Questions of Law and Fact**—FED. R. CIV. P.
15 23(a)(2) and (b)(3): Common questions of law and fact exist as to Plaintiffs and all Class
16 members and predominate over any questions affecting only individual Class members.
17 These common legal and factual questions include, but are not limited to, the following:

18 a. Did California Cryobank tortiously interfere with the Semen Storage
19 Agreements between MCB and Plaintiffs and the putative class;

20 b. Has California Cryobank prevented Plaintiffs and other members of
21 the putative class from accessing the donor sperm they have stored at MCB;

22 c. Has California Cryobank prevented Plaintiffs and other members of
23 the putative class from using their donor sperm or embryos fertilized with donor sperm
24 purchased from MCB; and

25 d. Has California Cryobank wrongfully converted Plaintiffs and the
26 putative class’s donor sperm.

27 40. **Typicality**— FED. R. CIV. P. 23(a)(3): Plaintiffs’ claims are typical of the
28 claims of the Class, as Plaintiffs and Class members entered into a uniform contract (the

1 Semen Storage Agreement) with MCB. Plaintiffs' claims are typical of the claims of all
2 Class members because their claims arise from the same underlying facts and are based
3 on the same factual and legal theories as the claims of all Class members. Plaintiffs are
4 no different in any relevant respect from any other member of the Class.

5 41. **Adequacy of Representation**— FED. R. CIV. P. 23(a)(4): Plaintiffs are
6 adequate representatives of the Class because their interests do not conflict with the
7 interests of the Class members they seek to represent. Plaintiffs have retained competent
8 and experienced class action counsel who will vigorously prosecute this action. The Class
9 members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

10 42. **Superiority**—A class action is superior to other available methods for the
11 fair and efficient adjudication of this controversy since joinder of all the Class members
12 is impracticable. Even if Plaintiffs and the other Class members could afford individual
13 litigation, the courts could not. The amount at stake for each Class member is such that
14 individual litigation would be inefficient and cost prohibitive. Additionally, the
15 adjudication of this controversy through a class action will avoid the possibility of
16 inconsistent and potentially conflicting adjudications of the claims asserted herein. There
17 will be no difficulty in the management of this action as a class action.

18 43. This action is certifiable under the provisions of FED. R. CIV. P. 23(b)(2) and
19 (b)(3) because:

20 a. The prosecution of separate actions by individual Class members
21 would create a risk of inconsistent or varying adjudications with respect to individual
22 Class members which would establish incompatible standards of conduct for Defendant;

23 b. The prosecution of separate actions by individual Class members
24 would create a risk of adjudications with respect to them which would, as a practical
25 matter, be dispositive of the interests of the other Class members not parties to the
26 adjudications, or substantially impair or impede their ability to protect their interests; and
27
28

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**
3 **TORTIOUS INTERFERENCE**

4 44. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as
5 if fully set forth herein.

6 45. Plaintiffs and the putative class all entered into a valid Semen Storage
7 Agreement with MCB.

8 46. California Cryobank had knowledge of MCB's contracts with Plaintiffs and
9 the putative class, but California Cryobank was a stranger to those contracts and has no
10 contractual relationship with Plaintiffs and the other members of the putative class.

11 47. California Cryobank acted intentionally to induce a breach or disruption of
12 the contractual relationship between Plaintiffs and the putative class and MCB.

13 48. California Cryobank actually disrupted Plaintiffs' and the putative class's
14 Semen Storage Agreement with MCB.

15 49. Plaintiffs and the putative class have been damaged by California
16 Cryobank's interference and disruption and refusal to provide them with the vials of
17 donor sperm they purchased from and stored at MCB.

18 50. Plaintiffs and the putative class paid various fees to third parties, including
19 MCB and other medical professionals, to store their donor sperm which California
20 Cryobank is preventing them from accessing.

21 **SECOND CLAIM FOR RELIEF**

22 **CONVERSION**

23 51. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as
24 if fully set forth herein.

25 52. Plaintiffs and the putative class own the vials of donor sperm they purchased
26 from MCB and stored at MCB and had a right to possess those vials at the time they were
27 converted by California Cryobank.
28

1 53. California Cryobank wrongfully converted Plaintiffs and the putative class’s
2 donor sperm.

3 54. Plaintiffs and the putative class suffered damages as a result of California
4 Cryobank’s conversion of their donor sperm stored at MCB. Specifically, Plaintiffs and
5 the putative class seek the special damages that were reasonably foreseeable and resulted
6 from California Cryobank, Inc.’s exercise of control over and conversion of the donor
7 sperm in storage, including the time and money spent in attempting to obtain access to
8 their stored donor sperm, costs of medications and procedures done in advance of
9 insemination, and damages resulting from the lost opportunity of conceiving a blood
10 sibling.

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs demand judgment on behalf of themselves and the
13 proposed Class as follows:

14 a. For an order certifying the Class herein under Federal Rule of Civil
15 Procedure 23(a)(b)(2) and (b)(3) and appointing Plaintiffs and their undersigned
16 counsel to represent the proposed Class under Federal Rule of Civil Procedure
17 23(g);

18 b. For an order awarding actual damages and pre-judgment and post-
19 judgment interest;

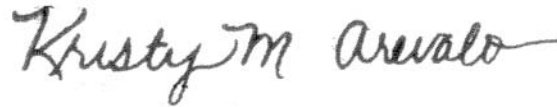
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1 c. For an order awarding Plaintiffs and the Class members the
2 reasonable costs and expenses of suit, including their attorneys' fees; and

3 d. Award any further relief the Court may deem appropriate.

4 RESPECTFULLY SUBMITTED,

5 **MCCUNE·WRIGHT·AREVALO, LLP**

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7
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9 By: _____
10 Kristy M. Arevalo

11 **STECKLER GRESHAM COCHRAN PLLC**

12
13 /s/ R. Dean Gresham

14 R. Dean Gresham (to be admitted *PHV*)
15 Texas Bar No. 24027215)

16 L. Kirstine Rogers (to be admitted *PHV*)
17 Texas Bar No. 24033009

18 **ATTORNEYS FOR PLAINTIFFS**
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