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17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF WASHINGTON

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

22 Plaintiffs,

23 v.

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

Defendant.

No. 19-CV-00204

COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF

Plaintiffs DANIELLE TEUSCHER (“Ms. Teuscher”), an individual, and
DANIELLE TEUSCHER, as mother and natural guardian of Z.F., a minor, by and

COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF - 1

1 through their attorneys, Law Offices of Jill H. Teitel, PLLC, and Witherspoon
2 Brajcich McPhee, LLC, for their complaint against Defendant, CCB-NWB, LLC,
3 d/b/a NW CRYOBANK (“NW Cryo”), allege as follows:
4

5 **I. INTRODUCTION**

6 1. For over a year and a half, Ms. Teuscher stored at NW Cryo sperm
7 (the “Gametes”) which NW Cryo had sold to her. Ms. Teuscher expected that the
8 Gametes would one day to be used to create her entire family unit. Out of
9 vindictive retaliation for a perceived breach of Ms. Teuscher’s contract with NW
10 Cryo, it took away her ownership rights to the Gametes. This alleged breach, NW
11 Cryo asserts, occurred when Ms. Teuscher uploaded Z.F.’s DNA on the ancestry
12 and health discovery website, www.23andMe and made consensual contact with a
13 relative of Z.F.’s. NW Cryo’s unfair and unjust stripping of Ms. Teuscher’s right
14 to her Gametes and, along with it, violated her legal and human right to decide
15 when and how to form her family.
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19 2. To conceal its intentional wrongdoing, NW Cryo has engaged in a
20 series of deceptive business practices, doing its best to ensure that Ms. Teuscher
21 was misled into believing that:
22

- 23 a. NW Cryo would store her Gametes for her;
24
25 b. deliver them to her upon request;
26

1 c. honor its obligation to provide her with her donor's medical health
2 updates, and

3 d. ensure that its designation of Donor #2744 as an "Open ID" donor (a
4 donor who is willing to be contacted by his offspring when that child
5 reached 18 years of age) could be relied upon.
6

7 3. None of these promises were met by NW Cryo. Instead, NW Cryo
8 indignantly denied Ms. Teuscher's ownership of her Gametes and then further
9 penalized her by re-designating Donor #2744 as "Anonymous." This action was
10 an unlawful attempt to coerce Ms. Teuscher to execute a new onerous contract
11 with it in order to be granted access on its website to Donor #2744's medical
12 updates, which she needed to safeguard the health of her children by providing
13 physicians with their biological parents' medical history. NW Cryo's conduct is
14 nothing less than an unlawful attempt to hold her children's health hostage to their
15 scheme to gain some unconscionable commercial advantage.
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19 **II. PARTIES**

20 4. Plaintiff, Ms. Teuscher, is an individual who currently resides in
21 Portland, Oregon.
22

23 5. Plaintiff, Z.F., is an individual and the daughter of Ms. Teuscher and a
24 third-party beneficiary of contracts that Ms. Teuscher entered into with NW Cryo.
25
26

1 Ms. Teuscher utilized the Defendant's services including the gametes of Donor
2 #2744 to assist her in conceiving Z.F. Z.F. currently resides in Portland, Oregon.

3 6. Defendant, CCB-NWC, LLC, is a California limited liability company
4 with its principal place of business in Spokane, Washington. CCB-NWC, LLC's
5 Spokane location is 508 W. 6th Avenue, #118, Spokane, WA 99204.

7 7. Defendant, CCB-NWC, LLC's business is to collect donations of
8 gametes (eggs and sperm) from men and women to provide sperm and egg for
9 customers to purchase and store, cryopreservation services and to perform certain
10 medical tests on these gametes. Upon information and belief, Defendant CCB-
11 NWC, LLC does business as NW Cryobank.

12 8. Defendant CCB-NWC, LLC holds a medical testing license in the
13 state of Washington pursuant to Clinical Laboratory Improvement Amendments
14 (hereinafter, "CLIA") CLIA #50D0969022.

15 9. Defendant CCB-NWC, LLC collects, tests, and cryopreserves, sperm
16 and eggs, or in other words, gametes, that, Defendant's customers purchase from it
17 or from other customers, who wish to store their gametes at NW Cryo's
18 cryopreservation facility.

19 10. In or about April, 2019, NW Cryo merged with Manhattan Cryobank.

III. JURISDICTION

1
2 11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
3 1332 (a)(1) because Plaintiffs and Defendant are citizens of different states and the
4 amount in controversy exceeds \$75,000.00.

5
6 12. The Court has personal jurisdiction over Defendant because
7 Defendant does business with the public in the State of Washington. Personal
8 jurisdiction is also properly exercised because Defendant has purposefully directed
9 its activities toward the state of Washington, and Plaintiffs' claims arise from those
10 activities.
11

12
13 13. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial
14 portion of the events giving rise to Plaintiffs' claims occurred in this District.
15

IV. FACTS COMMON TO ALL CLAIMS

Defendant's Promises and Representations.

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17
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19 14. From on or about 2013 until the present, NW Cryo has maintained the
20 website, www.nwcryo.com.¹
21

22 15. At all times relevant to this complaint, Ms. Teuscher, while at her
23 home in Portland, Oregon, reviewed and relied upon the facts and representations
24

25
26 ¹ <https://web.archive.org/web/20130504202140/https://www.nwcryobank.com/>

1 contained in the 2013 website of NW Cryo to choose her donor to create her
2 family.

3 16. Ms. Teuscher's criteria for choosing a donor included finding
4 someone who would be receptive to contact with her child when her child(ren)
5 would turn eighteen (18) years of age (an "Open Donor"), finding an ethical
6 cryobank that valued keeping and providing to her, a donor's important and
7 relevant medical information.
8

9
10 17. In 2013, NW Cryo advertised and represented on its website that,
11 "Donor health updates" would be posted and that recipients of donor gametes
12 would have access to the "Donor health updates" website page.
13

14 18. Also, in 2013, NW Cryo advertised and represented on its website
15 that, "The FDA requires that donor information be maintained for ten (10) years,
16 although most sperm banks keep such information indefinitely."
17

18 19. NW Cryo advertised and explained on its 2013 website that donors
19 have a moral responsibility to provide information about themselves in a sensitive
20 way, and should be mindful of the psychological consequences of their actions to
21 the donor's offspring.
22

23 20. NW Cryo acknowledged on its website in 2013 that all parents need to
24 have accurate medical information and warned its donors to provide accurate
25
26

1 updated medical information because its customers (gamete recipients) thoroughly
2 review donor information prior to purchase and use of their “specimens.”

3 21. NW Cryo promised “non-medical information on its donors such as
4 childhood photos, personality tests, audio interviews, staff impressions and
5 personal profiles” in order to assist its customers in making an educated choice of
6 donor.
7

8 22. NW Cryo touts its licensure as a medical testing facility, which has
9 the obligation to keep proper records and maintain them pursuant to Washington
10 statute RCW 70.42.060. <https://www.nwcryobank.com/licenses-accreditations/>.²
11

12 23. Defendant advises, “customers should purchase additional vials of
13 gametes as soon as they know they will want to have baby #2 and baby#3.” In
14 effect, Defendant is selling their customers a “family plan.”
15

16 www.nwcryobank.com/donor-sperm-faqs/.
17

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

22
23 ² Pursuant to RCW 26.26A.820, *et. seq.*, Washington State supports the
24 policy that cryobanks should keep and provide donor’s medical information to
25 children and parents of donor conceived children. See, RCW 26.26A.820 *et. seq.*
26 which took effect as of January 1, 2019.

1 **Ms. Teuscher’s Search for the Right Donor**

2 25. Ms. Teuscher’s search for a donor on NW Cryo’s website took time
3 and effort. Ms. Teuscher purchased NW Cryo’s additional services to assist her in
4 making the right choice for her family. Specifically, on January 28, 2013, Ms.
5 Teuscher asked NW Cryo’s staff to choose the donor who most closely matched
6 the physical appearance of her husband, Z.F.’s father’s, appearance. Ms. Teuscher
7 purchased extended donor profiles of a few possible donors.
8

9
10 26. After analyzing the information provided on NW Cryo’s website, Ms.
11 Teuscher chose to conceive her child through the use of the sperm of donor #2744
12 (“Donor #2744”) primarily because he identified himself as an “Open Donor.” His
13 identification as an Open Donor means that he was open to communicating with
14 his donor-conceived offspring, as opposed to remaining “Anonymous,” and that he
15 was “Retired.” This meant he had stopped donating and that there was only a
16 limited supply of his gametes available.
17

18
19 27. Ms. Teuscher chose Donor #2744 because: (a) there would most
20 likely not be a large donor sibling group, (b) of all the donors, Donor #2744 most
21 closely matched her husband’s physical characteristics, and (c) Donor #2744
22 gametes had been used successfully in impregnating other customers of NW Cryo.
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1 28. On or about February 1, 2013, Ms. Teuscher registered with NW Cryo
2 to become a customer, enrolled in NW Cryo's on-line portal for medical
3 information of Donor #2744, and registered on-line with NW Cryo, while at her
4 home on her computer.
5

6 29. As a result of becoming a NW Cryo customer, NW Cryo promised
7 that all of Ms. Teuscher's documents, as well as the information containing Donor
8 #2744's medical history and updates, would be maintained on its website for Ms.
9 Teuscher to access on her on-line portal at www.nwcryobank.com.
10
11

12 **Ms. Teuscher's Purchase and Storage Donor #2744 Gametes**

13 30. Ms. Teuscher then prepared herself to become pregnant with gametes
14 of Donor #2744 that she purchased from NW Cryo, including but not limited to:
15 ingesting oral hormones and injecting herself with medication necessary to have a
16 successful impregnation.
17
18

19 31. In early, April, 2013, Ms. Teuscher became pregnant using Donor
20 #2744's gametes.
21

22 32. On May 30, 2103, Ms. Teuscher was granted access to NW Cryo's
23 sibling registry; this sibling registry connects offspring and their parents of the
24 same donor and is maintained and monitored by NW Cryo.
25

26 33. On December 18, 2013, Z.F. was born.

1 34. Ms. Teuscher frequently checked her on-line account to upload her
2 own medical records, and to check whether NW Cryo had uploaded any medical
3 data on Donor #2744.

4
5 35. Ms. Teuscher participated in the on-line community NW Cryo forum
6 when she became pregnant. She accessed the sibling registry at NW Cryo in order
7 to exchange information with other Donor #2744 recipients and to share the joys
8 and struggles of raising a donor conceived child, as well as to be informed of any
9 undisclosed genetic diseases or issues that may have arisen within this sibling
10 group.
11

12
13 36. Ms. Teuscher was (and still is) desirous of having another baby using
14 her Gametes – the gametes that were derived from Donor #2744 - because she
15 wants Z.F. to have the benefit of bonding with a full biological sibling.
16

17
18 **Neither the Customer Agreement nor the Storage Agreement Permit the**
19 **Taking of the Gametes.**

20 37. On July 5, 2015, Ms. Teuscher electronically submitted the Customer
21 Agreement and Request for Anonymous Donor Sperm with Indemnification &
22 Release, (hereinafter, “Customer Agreement”). The Customer Agreement is a four-
23 page long document and contains, among other things, NW Cryo’s policy
24 regarding the storage of gametes. The Agreement has a space for Ms. Teuscher to
25
26

1 “click the box” and, when she electronically clicks on the box, the computer
2 program will insert a check mark under each section of the Customer Agreement.
3 The Customer Agreement is attached hereto as **Exhibit A**.

4
5 38. The Customer Agreement, at Section I, provided that, “Payment for
6 monthly storage will be automatically deducted monthly beginning approximately
7 30 days from purchase.”

8
9 39. The Customer Agreement only permits NW Cryo to cease storing
10 gametes and to destroy them if payment is not received.

11 40. Under the Customer Agreement, there is no provision concerning NW
12 Cryo’s right to take away Ms. Teuscher’s ownership rights to her Gametes.

13
14 41. The Customer Agreement at Section VIII represented that, NW Cryo
15 protects the privacy rights of the donor and that “Client agrees not to seek or make
16 any effort to obtain any information not directly provided through NW Cryobank
17 concerning the identity, background, or whereabouts of the Donor at any time and
18 from any source whether directly or indirectly and/or by any means.”

19
20 42. The Customer Agreement also states in this section VIII that NW
21 Cryo is entitled to liquidated damages in the amount of \$10,000 per occurrence of
22 any breach of the agreement.
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1 43. The Customer Agreement does not contain a provision that it can be
2 amended or modified without the client's consent.

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

6 45. The Customer Agreement does not prevent mutual and voluntary
7 contact among persons who agree to test their own DNA.

8 46. On November 6, 2015, Ms. Teuscher purchased two (2) IVF vials of
9 Donor #2744's gametes using NW Cryo's website which she stored at NW Cryo.³
10 These two (2) IVF vials of Gametes were two of the five vials she stored for
11 cryopreservation at NW Cryo facility, upon information and belief at its facility in
12 Spokane, Washington.

13 47. Upon information and belief, Ms. Teuscher entered into another
14 contract with NW Cryo. This agreement would have been a storage agreement
15 whereunder NW Cryo would have agreed to cryopreserve her Gametes in
16 exchange for Ms. Teuscher's monthly or yearly pre-payment. See the blank model
17 storage agreement (the "Storage Agreement") which was an agreement which NW
18

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25 ³ In vitro fertilization, or IVF gametes, are gametes that have been prepared for use
26 by a doctor for insemination. Website: <https://www.nwcryobank.com/vial-types/>.

1 Cryo used to enter into storage contracts with its customers as of November, 2015
2 as **Exhibit B.**⁴

3 48. The Storage Agreement makes clear in the very first Whereas clause
4 who owns the gametes:
5

6 “Whereas, **client wishes to have their cryopreserved (frozen)**
7 **gamete specimens** stored in liquid nitrogen for possible
8 thawing at some future date.” (emphasis added)

9 49. The Gametes are stored at NW Cryo in return for a monthly fee which
10 renews at the end of designated period, pursuant to the Storage Agreement.

11 50. The Storage Agreement sets forth limited conditions for NW Cryo’s
12 termination of its duties to store its clients’ gametes: when the customer or their
13 doctor requests the release of the gametes, upon the written direction of the
14 customer to destroy the gametes, or when payment is not delivered to NW Cryo.
15

16 51. The Storage Agreement states at paragraph 12, that it is a complete
17 agreement and that it cannot be amended or modified.
18

19 52. Ms. Teuscher entrusted to Defendant, the right to store her Gametes
20 and tendered monthly payments to NW Cryo, until such time as she would be
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25 ⁴ A copy of Ms. Teuscher’s storage agreement was demanded of NW Cryo but not
26 produced to Teuscher.

1 ready to become pregnant and request that NW Cryo release them to her directly or
2 to her doctor's office or to another laboratory of her choosing.

3
4 **Ms. Teuscher's Choice to Grow her Family using Defendant's Services.**

5 53. After Z.F. was born, Ms. Teuscher purchased two (2) vials of Donor
6 #2744 gametes (these vials comprise part of the Gametes) from NW Cryo and
7 stored them with NW Cryo.
8

9 54. Ms. Teuscher also purchased three (3) vials of Donor #2744 Gametes
10 from another NW Cryo customer (a mother of Z.F.'s sibling) who could not use
11 Donor #2744 any longer.
12

13 55. In total, Ms. Teuscher purchased and secured ownership of five (5)
14 vials of Donor #2744 gametes.
15

16 56. On June 3, 2016, Ms. Teuscher received an email from Brittany
17 Peterson at NW Cryo stating that the 3 vials of Donor #2744 gametes had been
18 completed and these vials of gametes were transferred to Ms. Teuscher's on-line
19 storage account.
20

21
22 57. On July 29, 2016 Ms. Teuscher requested shipment of one (1) vial of
23 the Gametes of Donor #2744 from NW Cryo. While it was in route to her home,
24 Ms. Teuscher had to cancel the shipment and requested by email that NW Cryo
25
26

1 continue to store this one (1) vial of her Gametes. Ms. Teuscher paid a restocking
2 fee to NW Cryo for this returned vial on or about August 2, 2016 and received
3 confirmation from NW Cryo that it had received her one (1) returned vial of
4 Gametes and this vial was returned to her to continue to be cryo-preserved.
5

6 58. On January 17, 2017, Ms. Teuscher purchased a full year (12 months)
7 of storage at NW Cryo for her five (5) vials of Donor #2744's Gametes.
8

9 **23andMe Genetic Testing and the Agreement between 23andMe and its**
10 **Customers**

11 59. In or about November 2018, Ms. Teuscher tested Z.F.'s DNA using
12 the company 23andMe. Ms. Teuscher wanted to learn more about Z.F.'s genetic
13 history and predispositions to disease and to possibly locate Z.F.'s half-siblings
14 and inform Z.F. about her origins.
15

16 60. 23andMe is a company that operates a website designed to allow
17 persons to test their DNA to learn more about themselves, their ancestry, their
18 health predispositions and to connect with other genetic relatives. It has several
19 opt-in features, one of them is to be matched with your genetic relatives.
20

21 61. On 23andMe's website, it explains that customers can choose to "opt
22 in" to find genetic relatives. The article warns its "opt in" customers to prepare for
23
24
25
26

1 unexpected results, “ webpage: [https://customercare.23andme.com/hc/en-](https://customercare.23andme.com/hc/en-us/articles/202907980-What-unexpected-things-might-I-learn-from-23andMe-)
2 [us/articles/202907980-What-unexpected-things-might-I-learn-from-23andMe-](https://customercare.23andme.com/hc/en-us/articles/202907980-What-unexpected-things-might-I-learn-from-23andMe-)
3

4 Looking at your genetic data might uncover information
5 that some people find surprising. This information can be
6 relatively benign. At other times, the information you
7 learn can have profound implications for both you and
8 your family. 23andMe cannot provide you with an
9 exhaustive list of all the unexpected things you might
10 uncover during your genetic exploration, but in general
11 these things fall into four main categories. Health –
12 Ancestry- Family – Relationships.

11 62. 23andMe explicitly warns its customers that:

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

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

22 64. Ms. Teuscher was notified by email from 23andMe that, Z.F.
23 genetically matched with someone who it termed Z.F.’s predicted grandmother
24 (the “PGM”) who had also “opted in” to 23andme’s relative finding service.
25
26

1 65. On January 2, 2019, Ms. Teuscher sent an email request through the
2 23andMe website's server to the PGM. In the email, Ms. Teuscher informed the
3 PGM that through 23andMe genetic testing, Ms. Teuscher's daughter was related
4 to her, as her daughter was conceived through donor sperm. Ms. Teuscher asked
5 the PGM whether she would like to have contact with her.
6

7 66. At no time did Ms. Teuscher contact or ask for contact with Donor
8 #2744 or ask for information about him.
9

10 67. On January 4, 2019, immediately after receiving a confused reply
11 from the PGM, Ms. Teuscher emailed an apology to the PGM.
12

13 68. Ms. Teuscher has had no further contact with the PGM.
14

15 **NW Cryo Confiscates Ms. Teuscher's Gametes**
16

17 69. On January 12, 2019, Ms. Teuscher received a Cease and Desist
18 Letter from Margaret Howell Benson, Esq., General Counsel at NW Cryo (the
19 "Cease and Desist Letter").
20

21 70. Ms. Benson stated in the Cease and Desist Letter:

22 Your attempt to seek the identity of the Donor and then
23 to contact the Donor's mother through 23andMe is, in
24 each case, a flagrant violation of the Agreement (the
25 Customer Agreement). Under Section VIII of the
26 Agreement (Customer Agreement), NWCryobank (sic) is
entitled to liquidated damages in the amount of \$10,000

1 for each act in violation of Section VIII. At this point,
2 we are entitled to seek \$20,000 in liquidated damages
3 from you \$10,000 for seeking the identity, \$10,000 for
4 initiating contact).

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

12 The letter continues:

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

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

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

24 73. On February 5, 2019 and March 6, 2019, Ms. Teuscher, by her
25 counsel, demanded in writing that NW Cryo: (a) return her Gametes to her or her
26 chosen cryobank, (b) the location of the Gametes be provided to her, (c) her on-

1 line account access be restored, and (d) produce all executed agreements between
2 Ms. Teuscher and NW Cryo.

3 74. NW Cryo did not comply with any of her demands referred to in
4 paragraph directly above and Ms. Teuscher was never given an adequate reason for
5 its refusal.
6

7 75. NW Cryo has responded to Ms. Teuscher that, it will neither release
8 her Gametes to her or her chosen cryobank nor will they restore her on-line access
9 to NW Cryo.
10

11 76. In or about April, 2019, at the same time as NW Cryo's merger with
12 Manhattan Cryobank, Ms. Teuscher attempted to sign onto her on-line account on
13 or about April 3, 2019. She was not granted access because of NW Cryo's new
14 requirement that women customers who have stored gametes with it must execute
15 a new agreement which restricts their rights in serious ways including but not
16 limited to exonerating it for not providing medical information to donor recipients
17 and restricting recipients from testing the DNA of gametes' they have purchased
18 and stored at NW Cryo.
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20
21

22 77. The new agreement referenced above is an adhesion type of contract;
23 NW Cryo's are required to enter into it before they are granted access to their
24 accounts.
25
26

1 78. Since receiving the Cease and Desist Letter, Ms. Teuscher was
2 informed that NW Cryo had re-designated Donor #2744's status from "Open ID"
3 to "Anonymous" which was a deceptive and unfair practice which belied all of
4 NW Cryo's representations about its high ethical regard for donor recipients and
5 the donor's offspring.
6

7 79. As a direct result of N W Cryo's wrongful acts, Ms. Teuscher
8 experienced serious mental anguish causing her take time off from work, used
9 various therapeutic services, and experienced hair loss induced by the stress of
10 people believing that her behavior was anything but designed to support her
11 family.
12

13 80. As a result of the Cease and Desist Letter, many women users and
14 consumers of NW Cryo gametes have been fearful to investigate the genetic
15 history of their (sometimes suffering from genetic diseases) children because they
16 believe that they might receive a similar cease and desist letter and become locked
17 out of their on line accounts and denied access to donor medical updates and
18 sharing community forums concerning their children.
19

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

3 82. As a matter of public policy, the United States Surgeon General's
4 Office has declared on their website at: [https://www.genome.gov/17516481/the-](https://www.genome.gov/17516481/the-us-surgeon-generals-family-history-initiative-family-history-initiative/)
5 [us-surgeon-generals-family-history-initiative-family-history-initiative/](https://www.genome.gov/17516481/the-us-surgeon-generals-family-history-initiative-family-history-initiative/) that,
6
7 "Tracing the illnesses suffered by your parents, grandparents and other blood
8 relatives can help your doctor predict the disorders to which you may be at risk,
9 and help you take action to keep you and your family healthy."

10
11 FIRST CLAIM FOR RELIEF
12 PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

13 83. Plaintiffs incorporate and reallege each of the foregoing paragraphs as
14 if fully set forth herein.

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

19 85. Ms. Teuscher has been denied information as to the Gametes location.

20 86. By Ms. Teuscher not having access to the sibling registry, Ms.
21 Teuscher and Z.F. are prevented from accessing important donor medical updates
22 and important psycho-social information that is relevant for Ms. Teuscher, as a
23 mother to track and analyze so that she can nurture and raise her daughter, Z.F.
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1 87. By Defendant denying Ms. Teuscher information on the location of
2 her Gametes and by preventing the return of the Gametes to her, Ms. Teuscher has
3 been harmed by Defendant.
4

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

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

14 90. Plaintiffs are likely to succeed on the merits of their claims.
15

16 91. A balancing of the equities and a preservation of the *status quo*
17 weighs in favor of granting preliminary injunctive relief to restore the *status quo* to
18 Plaintiffs.
19

20 92. Should Defendant continue not to disclose the location of the
21 Gametes, whether they are safe and preserved, and not be able to learn important
22 donor medical information, Plaintiffs will experience continued and future
23 damages.
24
25
26

1
2 SECOND CLAIM FOR RELIEF
3 VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT,
4 CHAPTER 19.86 RCW

5 93. Plaintiffs incorporate by reference all foregoing factual allegations.

6 94. NW Cryo has made knowingly false and misleading statements on its
7 website and in its contracts supporting the purchase of as many vials of gametes to
8 ensure that they are able to form the family that they want.

9
10 95. NW Cryo profited from Ms. Teuscher's purchasing and storing with
11 it, as many vials of Donor #2744 gametes as she could find in order to create the
12 family she planned, while NW Cryo freely decided to take the Gametes away from
13 her.

14
15 96. NW Cryo's advertising and promises are deceptive, as Defendant,
16 swiftly robbed the Plaintiffs of having the family Ms. Teuscher had hoped for and
17 expected, and as their actions have shown, in retaliation for an act of Ms.
18 Teuscher's.

19
20 97. NW Cryo seized the Gametes without legal basis for doing so.

21
22 98. NW Cryo repudiated the Customer Agreement and the Storage
23 Agreement.

24
25 99. NW Cryo advertised Donor #2744 as an "Open ID" donor which Ms.
26 Teuscher relied upon to build her family.

1 100. Now, NW Cryo changed Donor #2744's status to "Anonymous".

2 101. The business practice of changing a donor's contact designation is an
3 ineffective attempt to protect Donor #2744's anonymity. NW Cryo is
4 perpetuating a fallacy and is not properly informing their customers and donors
5 that the internet and genetic matching databases are commonplace and pervasive
6 and the testing of one's child DNA is a private and protected matter.
7
8

9 102. NW Cryo's business practice of having the donors believe that they
10 are anonymous is false and misleading.

11 103. Ms. Teuscher is harmed by NW Cryo's retaliatory and unfair business
12 practices.
13

14 104. Ms. Teuscher discovered that she needed to sign a new adhesion style
15 agreement before she could gain access to her donor's medical information
16 updates.
17

18 105. Defendant, by forcing Ms. Teuscher (and other customers) to execute
19 its new agreement, NW Cryo is unfairly and unjustly holding the medical
20 information related to Z.F hostage until Ms. Teuscher acquiesces.
21

22 106. Ms. Teuscher has been harmed as a direct and proximate result of:

- 23 (a) penalizing Ms. Teuscher by taking her Gametes without any
24 contractual or other basis for doing so;
25
26

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

15 107. Z.F. has been harmed immeasurably by Defendant's permitting Donor
16 #2744 to change his profile from "Open" to "Anonymous" thereby restricting the
17 Donor #2744's availability to Z.F. when she turns eighteen (18) years of age.

18 108. Ms. Teuscher relied to her and Z.F.'s detriment upon the Defendant's
19 representations of the truth and reliability of the Donor's statement that he was
20 "open" to contact with his donor conceived offspring when she turns eighteen (18)
21 years old.

22 109. Ms. Teuscher has been harmed immeasurably by Defendant
23 permitting Donor #2744 to change his profile from "Open" to "Anonymous"
24 thereby restricting his availability to Z.F., when she turns eighteen (18) years of
25 age.

1 THIRD CAUSE OF ACTION
2 BREACH OF BAILMENT

3 110. Plaintiffs incorporate by reference all foregoing factual allegations.

4 111. At all relevant times, Ms. Teuscher owned the Gametes.

5 112. At all relevant times, Defendant were and upon information and belief
6 still are in possession of the Gametes.
7

8 113. Ms. Teuscher tendered payment to NW Cryo for the storage of the
9 Gametes for Ms. Teuscher's sole use.
10

11 114. Ms. Teuscher has demanded that NW Cryo deliver the Gametes to her
12 but NW Cryo has refused to deliver the Gametes to her or to a cryobank of her
13 choice.
14

15 115. Defendant have refused to deliver the Gametes to Ms. Teuscher.
16

17 FOURTH CAUSE OF ACTION
18 REPLEVIN

19 116. Plaintiff incorporates and realleges each of the foregoing paragraphs
20 as if fully set forth herein.

21 117. The Gametes were wrongfully removed from Ms. Teuscher.

22 118. The dispossessed Gametes are incapable of being assigned a monetary
23 value, they embody the potential of Ms. Teuscher having a child or several
24
25
26

1 children who are the full genetic sibling(s) to Z.F. and therefore, the Gametes are
2 invaluable.

3 119. Ms. Teuscher has demanded that NW Cryo be ordered to deliver the
4 Gametes to her but NW Cryo has refused to do so.
5

6 FIFTH CAUSE OF ACTION
7 CONVERSION

8 120. Plaintiffs incorporate and reallege each of the foregoing paragraphs as
9 if fully set forth herein.
10

11 121. NW Cryo unjustly took Ms. Teuscher's property – her Gametes by
12 asserting that it would no longer be storing the Gametes for Ms. Teuscher.
13

14 122. NW Cryo has unjustly interfered with Ms. Teuscher's property and
15 her rights to her future family.
16

17 SIXTH CAUSE OF ACTION
18 DECLARATORY JUDGMENT THAT TERMS OF THE CUSTOMER
19 AGREEMENT ARE UNCONSCIONABLE AND CANNOT BE ENFORCED

20 123. Plaintiffs incorporate by reference all foregoing factual allegations.

21 124. Paragraph VIII of the Customer Agreement should be stricken and
22 deemed void as against public policy because the scope of the paragraph
23 liquidated damages provision should be construed as a penalty and as such not
24 reasonably related to the harm caused by a potential breach.
25
26

1 125. Paragraph VIII of the Customer Agreement should be stricken
2 because the public policy of knowing your genetic ancestry for a mother to better
3 protect her child's physical and psychological health from future disease, is
4 thwarted by the language contained therein.

6 126. By the inclusion of the above referenced paragraph, VIII in
7 Defendant' Customer Agreement, the Defendant are improperly seeking the
8 enforcement of its liquidated damages provision against one of their customers
9 who mutually consented with another adult to make contact with their genetic
10 relatives.
11

13 127. The above-mentioned paragraph of the Customer Agreement is
14 unlawful and should be declared unenforceable because it contains unconscionable
15 provisions.
16

17 128. The liquidated damages paragraph VIII of the Customer Agreement
18 improperly acts as a penalty and is an unconscionable provision in the Customer
19 Agreement.
20

21 129. Any other agreement which Defendant are now using to substitute for
22 Paragraph VIII are likewise unconscionable as against public policy.
23

24 130. The above-mentioned paragraph of the Customer Agreement is moot
25 in light in the internet and websites such as 23andMe which connect consenting
26

1 adults who opt-in to their agreements so that they can communicate with genetic
2 relatives.

3 SEVENTH CAUSE OF ACTION
4 BREACH OF CONTRACT

5 131. Plaintiffs incorporate by reference all foregoing factual allegations.

6
7 132. The Defendant has a contractual obligation to return the Gametes to
8 Ms. Teuscher.

9 133. Defendant failed to return the Gametes to Ms. Teuscher despite her
10 demands.

11
12 134. Defendant NW Cryo has the contractual obligation to provide Ms.
13 Teuscher access to her on-line profile containing updated medical information
14 from Donor #2744.

15
16 135. Ms. Teuscher has been damaged by not having the opportunity to
17 have the family she bargained for, and she is entitled to real and expectancy
18 damages as a result of this breach.

19
20 136. Plaintiff Z.F., as the third-party beneficiary of the contractual
21 obligations that NW Cryo owes to Ms. Teuscher the unfettered access to Donor
22 #2744's medical information and updates and is owed the benefit of having a
23 relationship of a full genetic sibling and is therefore entitled to real and expectancy
24 damages as a result of these breaches.
25
26

1 EIGHTH CAUSE OF ACTION
2 BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

3 137. Plaintiffs incorporate by reference all foregoing factual allegations.

4 138. The Defendant has an obligation implied in the law to deal with Ms.
5 Teuscher and Z.F., as the third-party beneficiary of Ms. Teuscher's contract(s) with
6 NW Cryo.

7
8 139. Defendant's obligation is to behave honestly, fairly and in good faith
9 so as not to destroy the benefits of Ms. Teuscher's bargain, that she and Z.F. would
10 receive the Gametes, Ms. Teuscher would have access to her on-line profile
11 containing updated medical information from Donor #2744.
12

13 140. Z.F. has been harmed immeasurably by Donor #2744 changing his
14 profile from "Open" to "Anonymous" thereby restricting his availability to her
15 when she turns eighteen (18) years of age.
16

17 141. Ms. Teuscher relied to her and Z.F.'s detriment upon the Defendant
18 representations of the truth of the Donor's statements that he was "open" to contact
19 with his donor conceived offspring when she turns eighteen (18) years old.
20

21 142. Ms. Teuscher has been harmed immeasurably by Defendant
22 permitting Donor #2744 to change his profile from "Open" to "Anonymous"
23 thereby restricting his availability to her when she turns eighteen (18) years of age.
24
25
26

1 143. Ms. Teuscher and Z.F. have experienced damages as a result of the
2 Defendant' willful, outrageous and threatening behavior, specifically, by
3 Defendant:
4

- 5 (a) penalizing Ms. Teuscher by taking her Gametes without any
6 contractual or other basis for doing so;
7
8 (b) threatening Ms. Teuscher in the amount of \$20,000.00 for
9 testing Z.F.'s DNA on a genetic website, 23andMe, where she
10 had consensual contact with Z.F.'s genetic relative;
11
12 (c) preventing Ms. Teuscher from accessing Z.F.'s genetic
13 medical history and important donor information updates that
14 only Defendant are the holders of, by blocking Ms. Teuscher
15 from accessing her on-line account and restricting Teuscher
16 from establishing connections with other donor conceived
17 offspring families on their sibling website; and finally,
18
19 (d) forcing Ms. Teuscher and all Defendant' customers who have
20 gametes stored with them, to agree to a new adhesion type
21 contract which waives many of the rights they had previously,
22 in order to re-gain access to their on line accounts.

18 NINTTH CAUSE OF ACTION
19 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

20 144. Plaintiffs incorporate by reference all foregoing factual allegations.

21 145. Defendant' intentional act of taking away all of Ms. Teuscher's
22 property rights to the Gametes was extreme and outrageous and beyond the bounds
23 of acceptable conduct in a civilized society.
24
25
26

1 146. Defendant’ retaliatory actions in sending the Cease and Desist Letter
2 and threatening financial penalties against Ms. Teuscher for her innocently
3 contacting the PGM proximately caused serious harm to Ms. Teuscher.
4

5 147. Defendant have refused to provide the location of the Gametes and
6 Ms. Teuscher does not know whether the Gametes are safe and secure or if they
7 have been destroyed.
8

9 148. Ms. Teuscher does not have access to important information she had
10 relied upon receiving in her on-line account that was maintained at NW Cryo.
11

12 149. Defendant actions were intended to, or could reasonably be foreseen
13 to, cause a reasonable person serious emotional trauma.
14

15 150. Ms. Teuscher has suffered serious emotional distress as a proximate
16 result of the forfeiture of the Gametes including but not limited to anxiety and hair
17 loss which caused Ms. Teuscher to undergo injections on her scalp and created a
18 situation where she could not work for a period of time to assist to financially
19 support her family.
20

21 151. Ms. Teuscher has suffered serious emotional distress as a direct result
22 of the Defendant permitting Donor #2744 to change his profile from “Open” to
23 “Anonymous” thereby restricting his availability to Z.F. when she turns eighteen
24 (18) years of age.
25
26

1 152. Ms. Teuscher's physical and emotional distress was the proximate and
2 direct result of Defendant' behavior, specifically by:

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

19 **V. JURY DEMAND**

20 153. Plaintiffs demand a trial by jury on all claims so triable.

21 **VI. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for the following relief:

23 A. A preliminary injunction requiring:

- 24 (1) Defendant to preserve the Gametes pending the outcome of this
25 litigation;
26

1 (2) Defendant to provide the exact location of the Gametes pending the
2 outcome of this litigation;

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

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

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

10 B. A permanent injunction requiring:

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

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

15 (3) Reinstating Ms. Teuscher's access to the sibling registry.
16

17 C. A declaratory judgment declaring that Paragraph VIII the Customer
18 Agreement is unenforceable under Washington law;

19 D. For judgment in Plaintiffs' favor on all causes of action;

20 E. For an award of damages in an amount to be proven at trial, but in an
21 amount no less than \$100,000;
22

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

24 G. For an award of attorneys' fees and costs as authorized by law;
25
26

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

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

3 DATED this 6th day of June, 2019.

4
5 LAW OFFICES OF JILL H. TEITEL, PLLC

6
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8 Jill H. Teitel, NY Bar No. 2775138
9 Counsel for Plaintiffs
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12
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