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9
10 **NEW YORK STATE SUPREME COURT, CIVIL BRANCH**
11 **COUNTY OF NEW YORK**
12

13 JANE DOE, an individual,

14 Plaintiff,

15 vs.

16 IDANT LABORATOTIES, a New York
17 Corporation; DAXOR CORPORATION, a
18 New York Corporation; THE RONALD O.
19 PERELMAN AND CLAUDIA COHEN
20 CENTER FOR REPREDUCTIVE HEALTH, a
21 New York Corporation; WEILL CORNELL
22 MEDICINE, a New York Corporation; and
23 DOES 1-25, inclusive,

24 Defendants.

25) COMPLAINT FOR DAMAGES

- 26) 1. Fraud
27) 2. Negligent Misrepresentation
28) 3. Products Liability – Strict
) 4. Products Liability – Negligence
) 5. Breach of Express Warranty
) 6. Breach of Implied Warranty
) 7. Battery
) 8. Negligence
) 9. Deceptive Business Practices (N.Y Gen.
) Bus. Law §349)
) 10. Specific Performance
) 11. False Advertising

1 **COMPLAINT**

2 Comes now Plaintiff JANE DOE and demands a jury trial and pleads as follows.

3
4 **JURISDICTION AND VENUE**

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6 1. This is a civil action between citizens of the same state. There is an amount in
7 controversy exceeding the sum or value of \$75,000, and this court has jurisdiction.

8 2. Venue within this district is proper because a substantial part of the events or
9 omissions giving rise to these claims alleged herein occurred within this Judicial Department,
10 District 1.

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12 **PARTIES**

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14 3. Plaintiff, JANE DOE (“Plaintiff” or “Ms. Doe”) resides in the state of New York,
15 and has two children, A.R. and B.R., who were both conceived as a result of her purchase of
16 semen from Defendant Idant Laboratories.

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18 4. Defendant Idant Laboratories (“Defendant Idant,” “Idant,” or “Idant
19 Laboratories”) is a corporation with its principal place of business in New York, New York.
20 Defendant Idant Laboratories is a for-profit seller of human semen. Ms. Doe acquired human
21 semen for artificial insemination, and at all times relevant herein, Defendant Idant Laboratories
22 sold Ms. Doe human semen.

23
24 5. Defendant Daxor Corporation (“Defendant Daxor,” “Daxor,” or “Daxor
25 Corporation”) is a corporation organized and existing under the laws of the State of New York.
26 The Daxor Corporation is a business that, at all times relevant, sold human semen to Ms. Doe
27 through its subsidiary, Defendant Idant Laboratories. The selling and promotion of such human
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1 semen included, but was not necessarily limited to, the testing, collection, promotion,
2 advertising, marketing, sales and distribution of donor semen. Additionally, the Daxor
3 Corporation, through Defendant Idant Laboratories, supervised and coordinated the evaluation
4 and selection of semen donors, the collection of which was advertised, marketed, sold, and
5 promoted as a carefully curated group of extraordinarily smart, educated, and healthy persons.

6
7 6. Defendant The Ronald O. Perelman and Claudia Cohen Center for Reproductive
8 Medicine is, and was at all relevant times, a distributor of donor semen that assisted the other
9 defendants in selling, distributing, and providing human semen to Ms. Doe for purposes of
10 artificial insemination.

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12 7. Defendant Weill Cornell Medicine is, and was at all relevant times, a distributor
13 of donor semen that assisted the other defendants in selling and distributing human semen to Ms.
14 Doe for purposes of artificial insemination.

15
16 8. Defendants, Does 1 through 25, are, and were at all relevant times, employees,
17 agents, owners, parent corporations, directors, and/or doctors, physicians, medical professionals,
18 examiners, and assistants of the other Defendants here - Idant Laboratories, the Daxor
19 Corporation, The Ronald O. Perelman and Claudia Cohen Center for Reproductive Medicine,
20 and Weill Cornell Medicine.

21
22 9. Plaintiff does not know the true names of the Defendants sued herein as Does 1
23 through 25, inclusive. Plaintiff alleges that each of the fictitiously named defendants is
24 responsible in some manner for the occurrences herein alleged, and caused injuries and damages
25 to Plaintiff as set forth herein.

26
27 10. All Defendants herein acted as the agent, servant and employee and/or in
28 concert with each of the other said defendants in doing the acts herein alleged.

1 **FACTUAL ALLEGATIONS**

2 **I. INTRODUCTION.**

3 11. The factual allegations section of this complaint will serve as a chronological
4 presentation of the ways in which Ms. Doe was injured and deceived by Defendant Idant
5 Laboratories. It will also seek to shed light on the despicable behavior of Idant Laboratories.
6

7 12. In this case, Idant Laboratories sold Ms. Doe human sperm from a particular
8 Idant sperm donor, and that sperm was defective. Ms. Doe was impregnated with that defective
9 sperm, and the two children that she gave birth to as a result of that pregnancy, A.R. and B.R.,
10 have been diagnosed with Autism, and severe developmental delays, respectively. Despite the
11 fact that Idant Laboratories has been notified about the fact that Idant Donor H898 is producing
12 autistic children, Idant Laboratories has done absolutely nothing. In fact, Idant Laboratories
13 continues to sell and promote the sperm of Idant Donor H898, even though it had been notified
14 of the fact that sperm from Idant Donor H898 produces autistic children.
15

16 13. Idant Laboratories continues to act with callous disregard for the safety of those
17 who are exposed to its products, and, in its unchecked and unregulated position, it will continue
18 to disrupt and destroy innocent lives if it not held accountable for its conduct. Unbelievably, and
19 disgracefully, Defendant Idant Laboratories thus continues to sell sperm from a particular sperm
20 donor – Idant Donor H898 – even though it has been notified of the fact that his sperm is
21 producing autistic children.
22

23 **II. IDANT’S PUBLIC REPRESENTATIONS REGARDING PRODUCT**
24 **SAFETY AND DONOR SCREENING.**

25 14. Idant Laboratories, through its website, holds itself out to the public as *the*
26 company that “pioneered semen banking” in the United States. Idant proclaims that it is an
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1 “early innovator” that has been “revolutionizing” artificial insemination techniques for decades.
2 Idant Laboratories claims to be “under the direct supervision of a physician medical director,
3 pathologist, laboratory director, and a separate blood bank director.”
4

5 15. Not only does the website for Idant Laboratories assert that the company has
6 exceptional internal regulation, it also notes that it is “inspected and licensed by the New York
7 and California State Departments of Health.” Idant’s website then goes on to inform the public
8 that most “states do not regulate sperm banks.” However, as Idant Laboratories is located in the
9 state of New York, it is therefore in a jurisdiction that does in fact “inspect and license semen
10 banks.” Additionally, Idant claims that is subject to more rigorous regulations than most sperm
11 banks because “New York’s regulations are the most stringent in the industry.”
12

13 16. The website for Idant Laboratories also declares that the company “maintains
14 one of the largest human semen banks” in the United States. Idant Laboratories, through its
15 website, states that it subjects all potential sperm donors to various levels of screening
16 procedures.
17

18 17. When seeking to purchase sperm for the purpose of artificial insemination,
19 Plaintiff, Ms. Doe, heavily relied upon the representations that were made on the website for
20 Defendant Idant Laboratories. Ms. Doe relied upon the assertions on the website for Defendant
21 Idant Laboratories regarding the “genetic screening” and qualification of Idant sperm donors..
22 Thus, before purchasing any sperm from Defendant Idant Laboratories, Ms. Doe conducted an
23 incredibly thorough investigation into Defendant Idant Laboratories and its practices and
24 procedures for screening and qualification of sperm donors. Ms. Doe therefore relied on
25 representations made by Defendant Idant Laboratories in purchasing sperm for the purpose of
26 artificial insemination. Defendant Idant Laboratories made those representations across various
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1 publicly accessible mediums. Those representations included, but were not necessarily limited
2 to, the following:

3 (a) Idant is “very selective” in its choice of donors and estimates that “only 5-
4 10 percent of all donors” are ultimately accepted as semen donors after the screening process.

5 (b) Idant recruits donors “from the approximately 130 colleges and schools of
6 advanced learning in the New York metropolitan area and does not accept donors from the
7 public at large.”

8 (c) Prospective donors “are also screened on the basis of a three-generation
9 family medical history” and a battery of over 30 blood tests.

10 (d) All “semen specimens are checked for viability of sperm, cultured to
11 insure germ-free condition and screened for various forms of hereditary and metabolic
12 disorders.”

13 (e) Idant “also screens semen for genetic diseases common to persons of the
14 prospective donor’s racial or ethnic background.”

15 (f) Idant “also screens for rare genetic traits” when appropriate.

16 (g) “All anonymous donors and their semen is fully tested in accordance with
17 the current New York State Department of Health regulations, the American Association of
18 Tissue Banks Standards, and Health Canada Directives utilizing FDA-licensed test kits.”

19 (h) Prospective donors must complete, “completely and honestly,” a
20 questionnaire concerning his medical, genetic, and social history. A lab technician then analyzes
21 the potential sperm donor’s semen so as to ensure that it is in compliance with the guidelines set
22 out by “New York State and American Association of Tissue Banks.”

1 (i) Prospective donors are then asked to return to Idant Laboratories for “two
2 or more rescreenings” so as to ensure that the guidelines set out by New York State and the
3 American Association of Tissue Banks are being followed.

4 (j) Prospective donors must then submit “blood and urine samples” for
5 scientific testing and screening.

6 (k) Prospective donors are then subjected to a “physical examination and
7 consultation” with a licensed physician working for Defendant Idant Laboratories.

8 (l) Prospective donors are then qualified as an Idant sperm donor if **all** of the
9 results of the aforementioned tests, screenings, and procedures satisfy the guidelines set out by
10 New York State and the American Association of Tissue Banks.

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14 18. Notwithstanding these assertions regarding product safety, donor screening, and
15 compliance with applicable standards and regulations, Defendant Idant Laboratories nevertheless
16 sold sperm to Ms. Doe that was defective and not at all safe for artificial insemination – as is
17 shown below. Ms. Doe relied on these representations in choosing to purchase sperm from
18 Defendant Idant Laboratories.

19
20 **III. IDANT LABORATORIES SELLS DEFECTIVE SPERM TO JANE DOE.**

21 19. In the middle of 2012, Ms. Doe decided to conceive a child via the route
22 artificial insemination. At that point in time, Ms. Doe had a fully-fledged, successful
23 professional career as an attorney in Italy.

24 20. Before Ms. Doe purchased any human sperm whatsoever, she wanted to ensure
25 that she was fully informed of all her options, and she of course wanted to choose the safest way
26 to artificially conceive a child. Ms. Doe knew that sperm could be acquired online for free from
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1 benevolent sperm donors, but Ms. Doe wanted to make absolutely certain that her sperm donor
2 was thoroughly screened by a fully licensed sperm bank.

3 21. After reading the public representations made by Defendant Idant Laboratories
4 regarding product safety and donor screening, Ms. Doe firmly believed that Idant was a
5 responsible sperm bank that rigorously scrutinized each prospective sperm donor’s health,
6 education, family and social history, physical appearance and demeanor, and criminal
7 background. Ms. Doe believed that Defendant Idant Laboratories, as a licensed sperm bank
8 supposedly subject to the strictest sperm bank regulations in the United States, was the safest
9 place for her to purchase sperm for the purpose of artificial insemination.
10

11 22. In selecting a sperm donor for the purpose of artificial insemination, Ms. Doe’s
12 priorities were the health of the donor, his level of education, and his profession. Ms. Doe
13 viewed the online profile for Idant Donor H898, and she was impressed by the fact that he was
14 supposedly a “Forensic Photographer” with a Masters Degree in Medical Photography.
15 Additionally, Idant Donor H898 was also reported to have a perfectly clean health history, and
16 his family members were also reported to be perfectly healthy – including his four year old son.
17 The online profile for Idant Donor H898 also stated that he had no identifiable history of any
18 diseases whatsoever.
19

20 23. Ms. Doe, after reading the representations made by Defendant Idant
21 Laboratories concerning sperm donor screening and qualification, believed that Idant fully vetted
22 prospective sperm donors, and she believed that Idant fully investigated their sperm donors’
23 health and education so as to ensure that the representations made in their donor profiles were
24 actually true. In short, Ms. Doe believed that Idant Laboratories actually verified the information
25 they presented about their sperm donors. Idant claimed that it did such verification, and Ms. Doe
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1 believed Idant, and she believed Idant as it practically claimed to be the most regulated sperm
2 bank in the United States.

3 24. Thus, Ms. Doe believed that Defendant Idant Laboratories had fully screened
4 and vetted Idant Donor H898, and Ms. Doe believed that the information presented in the online
5 profile for Idant Donor H898 had actually been verified – because **that is exactly what Idant**
6 **Laboratories said it would do.**

7
8 25. Additionally, Ms. Doe called Defendant Idant Laboratories on numerous
9 occasions so as to ensure that the information posted on the online profile for Idant Donor H898
10 had been verified. In those communications, representatives for Defendant Idant Laboratories
11 informed Ms. Doe that the information in the profile for Idant Donor H898 had actually been
12 verified, and that it was all accurate and correct. Ms. Doe was also told that Idant Donor H898 a
13 “great choice,” and most likely the “best” Idant sperm donor. Ms. Doe was also told that she
14 “couldn’t get any better.” Needless to say, the representatives for Defendant Idant Laboratories
15 made Ms. Doe feel very confident about her decision to purchase sperm from Idant Donor H898.
16 Ms. Doe also relied on those representations in choosing to purchase sperm from Idant
17 Laboratories.
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20 26. After conducting an exceptionally meticulous investigation into absolutely
21 everything she could discover about Idant Laboratories and their screening and qualification of
22 Idant Donor H898, Ms. Doe decided to purchase sperm from Idant Donor H898 from Idant
23 Laboratories for the purpose of artificial insemination. Again, Ms. Doe believed that purchasing
24 sperm from Idant Laboratories was absolutely the safest way for her to artificially conceive a
25 child of her own.
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1 27. Shortly after speaking with representatives for Defendant Idant Laboratories
2 about the veracity of the information in the online profile for Idant Donor H898, Ms. Doe
3 purchased sperm from Idant Donor H898 from Defendant Idant Laboratories.
4

5 **IV. DEFECTIVE SPERM IS INTRODUCED INTO MS. DOE, AND HER**
6 **CHILDREN ARE SUBSEQUENTLY DIAGNOSED WITH AUTISM SPECTRUM**
7 **DISORDER, AND DEVELOPMENTAL DELAYS.**

8 28. After making her purchase, sperm from Idant Donor H898 was subsequently
9 introduced into Ms. Doe, and she later gave birth to her twins, A.R. and B.R., who are now
10 approximately 3 years old. The sperm from Idant Donor H898 was sent to The Ronald O.
11 Perelman and Claudia Cohen Center for Reproductive Medicine, and that is where Ms. Doe was
12 impregnated. Ms. Doe lived in New York at the time.

13 29. Years later, at the beginning of July of 2015, Ms. Doe was contacted by a series
14 of other women who had conceived autistic children as a result of being inseminated with sperm
15 from Idant Donor H898. Ms. Doe immediately became concerned for her own children. Since
16 Ms. Doe's date of contact with these other women, she has come to discover that Idant Donor
17 H898 does not have any college degrees whatsoever, that Idant Donor H898 went to a special
18 needs school when he was a child, that Idant Donor H898 has been diagnosed with ADHD, and
19 that Idant Donor H898 did not speak until he was 3 years old. Since the beginning of July of
20 2015, Ms. Doe has also come to discover that Idant Donor H898 has produced **at least 12**
21 **children with Autism and developmental issues**. Despite these facts, Defendant Idant
22 Laboratories continues to sell sperm from Idant Donor H898.
23
24

25 30. Ms. Doe was living in Italy when she discovered all of this information, and
26 medical professionals in Italy told her that both of her children were showing signs of severe
27 developmental issues. Ms. Doe was then working as a lawyer for an Italian corporation, but she
28

1 had to leave that position, and relinquish her salary – her main source of income, in order to
2 come back to the United States and seek proper medical care for her children.

3 31. On January 20, 2016, Ms. Doe’s son, A.R., was diagnosed with Autism
4 Spectrum Disorder. It goes without saying that Ms. Doe was absolutely devastated by the
5 diagnosis. On the exact same day, Ms. Doe’s daughter, B.R., was diagnosed with developmental
6 delays in the areas of speech, sensing, and adaptation. Ms. Doe was especially traumatized by
7 this information because she thought that she had done her absolute best to ensure that she gave
8 birth to healthy children. Instead of acquiring sperm from an online donor that had not been
9 subjected to the screening and qualifications procedures supposedly instituted by a state-licensed
10 sperm bank like Idant Laboratories, Ms. Doe thought that she was doing everything in her power
11 to avoid a situation like the one that she had suddenly found herself in. Ms. Doe has received
12 absolutely no help whatsoever from Defendant Idant Laboratories.
13
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15 32. Ms. Doe is not presently working, and she has no time to work because her
16 children require almost constant care because of their autism and developmental delays. Ms.
17 Doe’s financial security has been greatly undermined, and she presently has to live off her
18 savings just pay her bills. Ms. Doe did not ever anticipate that her purchase of sperm from
19 Defendant Idant Laboratories would result in the loss of her legal career, and the birth of two
20 children that require constant attention and care due to their autism and developmental delays.
21
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23 33. As a result of the conduct of all Defendants, set forth hereinabove, Ms. Doe has
24 sustained injuries in the form of physical pain and suffering.

25 34. As a further result of the conduct of all Defendants, set forth hereinabove, Ms.
26 Doe has had to expend a significant amount of money caring for her children, and she has
27 suffered great financial loss as a result.
28

1 35. As mentioned above, Ms. Doe was a lawyer for a corporation in Italy, and she
2 has had to give up on her own professional dreams and quit her job because her two children
3 require almost constant care and attention. Ms. Doe and her two children must now survive on
4 Ms. Doe’s savings alone. The conduct of all Defendants has therefore caused Ms. Doe to incur a
5 series of devastating financial losses that would not be associated with raising two healthy
6 children – that she would not have otherwise incurred but-for the conduct of all Defendants.
7

8 36. As an additional result of the conduct of all Defendants, set forth hereinabove,
9 Ms. Doe has been required to, and will be required to, expend additional funds to evaluate and
10 care for her children to ensure that they receive the best care possible for their autism and
11 developmental delays.
12

13
14 **IV. IDANT CONTINUES TO SELL DEFECTIVE SPERM FROM IDANT DONOR**
15 **H898.**

16 37. As of the date upon which this complaint was filed, Defendant Idant
17 Laboratories is still selling sperm from Idant Donor H898 on its website. Despite being
18 informed that sperm from Idant Donor H898 is producing autistic children, Idant nevertheless
19 continues to sell that sperm with complete disregard for the well being of the women that are
20 purchasing it, and the health of the children that will be conceived as a result of those purchases.
21 Additionally, on January 7, 2016, and again on February 2, 2016, Defendant Idant Laboratories
22 was informed that sperm from Idant Donor H898 was producing autistic children. The situation
23 is thus very clear, and Defendant Idant Laboratories is on notice of the fact that sperm from Idant
24 Donor H898 produces autistic children, but Idant Laboratories is still, disgracefully, selling
25 sperm from Idant Donor H898.
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1 38. Additionally, recent genetic sequencing has irrefutably proven that certain
2 children conceived from Idant Donor H898 inherited an alteration in their genetic makeup
3 commonly reported in individuals with Autism Spectrum Disorder from Idant Donor H898.
4 Again, despite these scientific facts, Defendant Idant Laboratories continues to sell sperm from
5 Idant Donor H898.
6

7 39. Despite the fact that sperm from Idant Donor H898 produces autistic children,
8 and despite the fact that Defendant Idant Laboratories has been alerted to the fact that sperm
9 from Idant Donor H898 produces autistic children, Idant continues to recklessly pursue its
10 commercial motives without any consideration for the lives it is destroying. Rather than help the
11 persons who purchased sperm from Idant Donor H898, and their autistic children, Defendant
12 Idant Laboratories denies any responsibility whatsoever, and, unbelievably, continues to sell
13 dangerous and defective sperm from Idant Donor H898.
14

15 40. If the law allows Defendants to sell sperm from Idant Donor H898, they will
16 continue to do so, and the sperm will continue to produce autistic children. If Idant Laboratories,
17 and all other Defendants here, are never held accountable for their reckless, callous, and
18 injurious conduct, they will continue to engage in their dangerous behavior and destroy innocent
19 peoples' lives with impunity.
20
21

22
23 **FIRST CAUSE OF ACTION**
24 **(Fraud)**
AGAINST ALL DEFENDANTS

25 41. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
26 every allegation contained in this Complaint.
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1 42. In making the representations set forth herein, Defendants knew them to be false
2 and made them with the intent of inducing Plaintiff to rely upon said representations and to
3 purchase the sperm of Idant Donor H898.

4 43. Plaintiff reasonably relied on Defendants' representations in deciding to
5 purchase sperm from Defendant Idant Laboratories, and, in particular, in deciding to purchase
6 sperm from Idant Donor H898.

7 44. Had Plaintiff known the true facts, Plaintiff would not have purchased sperm
8 from Defendants, and Plaintiff has been harmed as a result of Defendants' deceit and fraud.

9 45. All Defendants, and each of them, acted with fraud, malice and oppression and
10 Plaintiffs is thereby entitled to punitive damages.

11 WHEREFORE, Plaintiff prays for judgment against all DEFENDANTS as hereinafter set
12 forth.

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15 **SECOND CAUSE OF ACTION**
16 **(Negligent Misrepresentation)**
17 **AGAINST ALL DEFENDANTS**

18 46. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
19 every allegation contained in this Complaint.

20 47. Defendants represented to Plaintiff that the representations set forth herein were
21 true when they were not true and in so doing, Defendants had no reasonable grounds for
22 believing them to be true when they made the representations in that Defendants had not made
23 reasonable inquiry to ascertain their truth.

24 48. Defendants intended that Plaintiff rely on said representations and Plaintiff
25 reasonably relied on said representations and said reliance was a substantial factor in causing
26 Plaintiff's harm.
27
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1 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as hereinafter set
2 forth.

3 **THIRD CAUSE OF ACTION**
4 **(Products Liability/Strict Liability)**
5 **AGAINST ALL DEFENDANTS**

6 49. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
7 every allegation contained in this Complaint.

8 50. The semen sold and supplied by Defendants, and each of them, was defective
9 and unsafe at the time it was distributed and used by Plaintiff as it contained genetic material that
10 made it completely unsafe for purposes of artificial insemination. These defects caused serious
11 injuries to the user when used as intended and in a foreseeable manner and Defendants knew it
12 would be used without inspection for decades.

14 51. The aforesaid product was unaccompanied by warnings of its dangerous
15 propensities that were known or scientifically knowable at the time of distribution. Defendants
16 and each of them failed to warn of potential injury and the statistical likelihood that offspring
17 produced by the semen would develop Autism.

19 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as hereinafter set
20 forth.

21 **FOURTH CAUSE OF ACTION**
22 **(Products Liability/Negligence)**
23 **AGAINST ALL DEFENDANTS**

24 52. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
25 every allegation contained in this Complaint.

1 53. At all times herein mentioned, Defendants, and each of them, had a duty to
2 properly test, analyze, inspect, research, distribute, evaluate, review, recommend and provide
3 proper warnings and sell the aforesaid product for its intended and approved use.

4
5 54. At all times relevant herein mentioned, Defendants, and each of them, knew that
6 the product was of such a nature that if it was not properly tested, inspected, labeled, distributed,
7 reviewed, evaluated, marketed, promoted, and recommended, it was likely to injure users.

8 55. Defendants and each of them breached their duty by negligently and carelessly
9 recommending, promoting, failing to test, failing to review, failing to evaluate, failing to inspect,
10 and failing to research and acting negligently as set forth above and thereby caused Plaintiff's
11 injuries and damages.
12

13 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as hereinafter set
14 forth.
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17 **FIFTH CAUSE OF ACTION**
18 **(Breach of Express Warranty)**
19 **AGAINST ALL DEFENDANTS**

20 56. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
21 every allegation contained in this Complaint.

22 57. Defendants, and each of them, made representations about the quality of the
23 semen being sold to Plaintiff, and presented themselves as experts in the determination of quality
24 and reliability of the said semen, and thereby created a warranty through their oral and written
25 representations.

26 58. Said Defendants breached their warranty and said breach caused Plaintiff's
27 losses.
28

1 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as hereinafter set
2 forth.

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5 **SIXTH CAUSE OF ACTION**
6 **(Breach of Implied Warranty)**
7 **AGAINST ALL DEFENDANTS**

8 59. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
9 every allegation contained in this Complaint.

10 60. Defendants, and each of them, were the sellers of the semen and had reason to
11 know the purpose to which it would be put by Plaintiff and that Plaintiff was relying upon said
12 Defendants' expertise, and Plaintiff so relied to her detriment and sustained the losses set forth
13 herein.

14 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as hereinafter set
15 forth.

16
17 **SEVENTH CAUSE OF ACTION**
18 **(Battery)**
19 **AGAINST ALL DEFENDANTS**

20 61. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
21 every allegation contained in this Complaint.

22 62. Defendants, and each of them, perpetrated batteries upon Plaintiff. Defendants,
23 by selling the sperm of a person who was not the person defendants said he was, and not the
24 person Plaintiff understood him to be, thereby caused Plaintiff to be inseminated with the semen
25 of a person to whom she would not have consented. This action amounts to nonconsensual
26 contact, and is thus, a battery.

1 63. In committing a battery upon Plaintiff, Defendants, and each of them, acted
2 intentionally and with malice and with conscious disregard for the health and safety of Plaintiff
3 and the general public, thereby entitling Plaintiff to punitive damages.
4

5 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as hereinafter set
6 forth.

7 **EIGHT CAUSE OF ACTION**
8 **(Negligence)**
9 **AGAINST ALL DEFENDANTS**

10 64. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
11 every allegation contained in this Complaint.

12 65. In doing the acts herein alleged, Defendants and each of them, acted carelessly
13 and negligently and caused Plaintiff's injuries and damages thereby.

14 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as hereinafter set
15 forth.

16 **NINTH CAUSE OF ACTION**
17 **(Unfair Business Practices – N.Y. Gen. Bus. Law §349)**
18 **AGAINST ALL DEFENDANTS**

19 66. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
20 every allegation contained in this Complaint.

21 67. Defendants, and each of them, acted in violation of New York law with respect
22 to deceptive business acts and practices. These acts included, but were not limited to,
23 representing that certain goods and services, e.g. semen and evaluation of donors, had
24 characteristics and benefits that they did not have, and that the semen donor in question had
25 characteristics that he did not actually have. Defendants thereby represented that their goods and
26 services were of a particular standard, when they were actually of another standard altogether.
27
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1 68. These actions constitute unfair and deceptive business acts and practices, and
2 Plaintiff is entitled to compensatory and injunctive relief as she was injured by such practices.

3 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as hereinafter set
4 forth.
5

6 **TENTH CAUSE OF ACTION**
7 **(Specific Performance)**
8 **AGAINST ALL DEFENDANTS**

9 69. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and
10 every allegation contained in this Complaint.

11 70. Plaintiff is entitled to specific performance because there was (1) a legally
12 enforceable agreement between Plaintiff and Defendant Idant Laboratories, which was
13 sufficiently certain in its terms; there was (2) adequate consideration for the agreement, and it
14 was a just and reasonable agreement; (3) Plaintiff tendered her performances by purchasing
15 human sperm from Idant Laboratories; the (4) Defendants breached the agreement because they
16 have failed to honor to their promise to disseminate, to sperm purchasers, significant information
17 that is discovered about a donor; and (5) Plaintiff has no adequate remedy at law because, in
18 order to effectively treat and care for her children, she needs to know as much as possible about
19 Idant Donor H898. However, Plaintiff cannot effectively treat her children while Defendants
20 refuse to disseminate what they actually know to be true about Idant Donor H898.
21

22 71. Before Plaintiff purchased sperm from Defendant Idant Corporation, Idant
23 agreed to disseminate significant new information that it learned or discovered about a donor.
24 Notwithstanding this promise, and the facts that have come to light regarding Idant Donor H898,
25 Defendant Idant Laboratories has repeatedly refused to disseminate any information about Idant
26 Donor H898.
27
28

- 1 4. Costs of suit;
- 2 5. Medical Monitoring Fund;
- 3 6. Injunctive Relief; and
- 4 7. Punitive Damages

5
6 **JURY DEMAND**

7 Plaintiff demands trial by struck jury on all issues so triable.

8
9 DATED: June __, 2016

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11 HERSH & HERSH
12 A Professional Corporation

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14 _____
15 NANCY HERSH
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