

Court File No.: 16-70454CP

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**DANIEL DIXON, DAVINA DIXON AND REBECCA DIXON**

Plaintiffs

- and -

**DR. NORMAN BARWIN**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

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

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## SETTLEMENT AGREEMENT

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

### SECTION 1: RECITALS

#### 1.1 WHEREAS:

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

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

## SECTION 2: DEFINITIONS

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

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

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

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

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

**Approval Order** means an order made by the Court:

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

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

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

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

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

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

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

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

**Certification and First Notice Order** means an order:

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

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

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

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

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

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

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

**Class Counsel** means Nelligan O'Brien Payne LLP.

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

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

**Common Issues** means:

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

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

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

**Court** means the Ontario Superior Court of Justice.

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

**Defendant** means Dr. B. Norman Barwin.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Party or Parties** means the Plaintiffs and the Defendant.

**Plaintiffs** mean Daniel Dixon, Davina Dixon and Rebecca Dixon.

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

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



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

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

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

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

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

**Second Notice** means the Notice of Settlement Approval.

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

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

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

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

**Settlement** means the settlement provided for in this Agreement.

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

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

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

### **SECTION 3: APPROVAL AND NOTICE PROCESS**

#### **Best Efforts**

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

#### **Certification and First Notice Motion**

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

### **Approval Motion and Notice**

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

### **Notice of Termination**

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

### **Report to the Court**

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

## **SECTION 4: REIMBURSABLE EXPENSES**

### **Payments**

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

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

### **Disputes Concerning Reimbursable Expenses**

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

## **SECTION 5: SETTLEMENT BENEFIT**

### **Payment of Settlement Amount**

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

### **Settlement Amount to be Held in Trust**

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

## **Taxes on Interest**

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

## **SECTION 6: NO REVERSION**

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

## **SECTION 7: DISTRIBUTION OF THE TRUST SETTLEMENT AMOUNT**

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

## **SECTION 8: EFFECT OF SETTLEMENT**

### **No Admission of Liability**

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

### **Agreement Not Evidence**

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

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

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

### **No Further Litigation**

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

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

## **SECTION 9: CERTIFICATION FOR SETTLEMENT ONLY**

### **Consent to Certification**

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

## **SECTION 10: Certification Without Prejudice**

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

## **SECTION 11: OPTING OUT**

### **Awareness of any Potential Opt-Outs**

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

### **Opt-Out Procedure**

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

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

#### **Notification of Number of Opt-Outs.**

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

### **SECTION 12: : TERMINATION OF THE AGREEMENT**

#### **General**

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



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

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

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

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

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

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

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

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

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

### **Allocation of Monies in the Trust Account Following Termination**

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

### **Disputes Relating to Termination**

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

## **No Right to Terminate**

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

## **SECTION 13: DETERMINATION THAT THE SETTLEMENT IS FINAL**

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

## **SECTION 14: RELEASES AND JURISDICTION OF THE COURT**

### **Release of Claims etc. by Releasees**

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

### **No Further Claims**

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

### **Dismissal of the Action**

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

### **No Claims in Interim**

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

### **SECTION 15: ADMINISTRATION**

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

### **Appointment of the Referee**

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

### **Claims Process**

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

### **Disputes Concerning the Decisions of Class Counsel**

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

### **Conclusion of the Administration**

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

### **SECTION 16: THE PLAN OF ALLOCATION**

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

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

## **SECTION 17: THE FEE AGREEMENT AND CLASS COUNSEL FEES**

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

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

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

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

## **SECTION 18: MISCELLANEOUS**

### **Motions for Directions**

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

### **Defendant Has No Responsibility or Liability for Administration**

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

### **Headings, etc.**

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

### **Governing Law**

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

### **Severability**

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

### **Entire Agreement**

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

### **Binding Effect**

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

### **Survival**

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

### **Negotiated Agreement**

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

### **Recitals**

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

### **Acknowledgements**

18.13 Each Party hereby affirms and acknowledges that:



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

### **Counterparts**

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

### **Confidentiality and Communications**

18.15 In any public discussion of, comment on, press release or other communication of any kind (with the media or otherwise) about this Agreement, the Plaintiffs and Class Counsel agree and undertake to describe the Settlement and the terms of this Agreement as fair, reasonable and in the best interests of the Classes and to refrain from negative public commentary about the Defendant except for reference to the allegations contained in the statement of claim and, in any event, whatsoever about the CMPA. Class Counsel agrees to maintain their public statements within the framework of speaking points agreed upon with the Defendant's Counsel.

18.16 Nothing in this Section shall prevent the Parties or their counsel, or any of them, from reporting to their clients, from complying with any order of the Court, or from making any disclosure or comment required by this Agreement, or from making any necessary disclosure or comment for the purposes of any applicable securities or tax legislation or from making any disclosure or comment to Class Members or the Court.

18.17 Without limiting the generality of the foregoing, other than in materials filed in Court for purposes of effecting the Settlement, the Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process, unless required to do so by law. In addition, to the extent that there is public discussion of, comment on or communication of any kind about this Agreement, the Parties and their counsel agree and undertake to make no statement or comment that the Agreement is other than fair, reasonable and in the best interests of the Class, unless required to do so by law.

18.18 French Translation (Partial) The Parties acknowledge that they have required and consented that the Agreement be prepared in English only, but that the following Schedules to the Agreement will be prepared in English and translated into French: Plan of Allocation, Short Form and Long Form Notices, Notice Plan, and Opt-Out Form.

18.19 Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid:

**For the Plaintiffs, Daniel, Davina and Rebecca Dixon:**

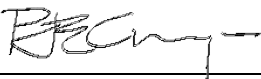
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Frances Shapiro-Munn  
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**For the Defendant, Dr. Norman Barwin**

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160 Elgin Street, Suite 2600  
Ottawa, ON. K1P 1C3  
(613) 786-0174  
karen.hamway@gowlingwlg.com

**Date of Execution**

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

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

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

**SCHEDULE A – PLAN OF ALLOCATION**

## **Plan of Allocation**

1. The following definitions apply in this Schedule:

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

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

- ii. Spouse/Partner/Former Patient Class:**

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

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

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

(f) “Class Period” means the period from July 1, 1973 through December 31, 2012;

(g) “Court Approval Date” means the later of:

i. 31 days after the date on which the Ontario Superior Court of Justice issues the Approval Order; and

ii. The disposition of any appeals from the Approval Order.

(h) “Excluded Claim” means a Claim by a person who has previously and validly opted out of the Action in writing or who has previously settled a claim against the Defendant and executed a release in favour of the Defendant in relation to matters that are the subject of this Action.

(i) “Settlement Fund” means the \$13.375 million the Defendant has agreed to pay in full settlement of the Action inclusive of claims, counsel fee, disbursements, administration costs, notice plan costs, and all applicable taxes.

2. All other capitalized terms used in this Plan of Allocation have the same meaning as in the Settlement Agreement.

3. Any person who wishes to claim compensation will provide the Administrator with a Claim Form no later than 90 days after the date on which the Approval Order becomes a Final Order. If the Administrator does not receive a Claim Form from a Class Member by the deadline, then the Class Member shall not be eligible for any compensation.

4. The Claimant will complete the Claim Form commensurate with their class. There will be a Claim Form for each of the Mothers Class, the Spouse/Partner/Patient Class, and the Children Class.

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

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

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

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

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

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

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

**Harm Category 2A:**

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

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

**Harm Category 2B:**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

# LONG FORM NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT

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

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

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

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

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

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

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

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**THE LITIGATION**

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

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

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

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

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

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

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**WHO QUALIFIES**

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

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

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

**Spouse/Partner/Former Patient Class**

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

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**SUMMARY OF  
THE  
SETTLEMENT**

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

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

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

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

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

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

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

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

**Harm Category 2A:**

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

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

**Harm Category 2B:**

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

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

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

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

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

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

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

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

**HOW MUCH  
COMPENSATION  
YOU MAY  
RECEIVE**

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

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

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

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

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

**RELEASE OF THE CLASS MEMBERS' CLAIMS**

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

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

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

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

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

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**OPTING OUT OF  
THE CLASS  
ACTION**

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

**ADMINISTRATOR CONTACT**

Along with your Opt Out Form, you must include:

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

If you opt out:

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

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

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

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

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

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

Please visit [www.PLACEHOLDER.com](http://www.PLACEHOLDER.com) to download a copy of the Opt Out Form.

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

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#### **DNA DATABASE**

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

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

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

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

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

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

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

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

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

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

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

To obtain a copy of the forms you will need to complete to participate in the DNA Database, visit [www.PLACEHOLDER.ca](http://www.PLACEHOLDER.ca).

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## LEGAL FEES

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

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

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

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**FURTHER  
INFORMATION**

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

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

You may also contact Class Counsel as follows:

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

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

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



# SHORT FORM NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT

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

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

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

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

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

**Spouse/Partner/Former Patient Class**

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

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

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

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

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

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

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

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

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

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

**NAME OF ADMINISTRATOR**  
**EMAIL OF ADMINISTRATOR**  
**WEBSITE**

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

**SCHEDULE D – OPT-OUT FORM**

# Dr. Norman Barwin Class Action – Proposed Settlement

## OPT-OUT FORM

**DEADLINE FOR OPTING OUT: October 14, 2021**

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

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

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

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

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

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

- [Add e-mail address, address and contact person for administrator]

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

- [Add address and contact information for Class Counsel]

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

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

## SECTION A – CLASS MEMBER IDENTIFICATION

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

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

## SECTION B: CLASS MEMBER INFORMATION

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

## SECTION C: DNA DATABASE AND IMPORTANT DEADLINES

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

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

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

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

## SECTION D: DOCUMENTATION

To Opt-Out you require two documents:

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

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

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

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

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

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



## SECTION F: OPT OUT DECLARATIONS

Initial or check off each of the following:

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

\_\_\_\_\_  
**Name of Class Member Opting Out**

\_\_\_\_\_  
**Signature of Class Member Opting Out**

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

**DATE**

## SECTION G: SUBMITTING COMPLETED FORM AND DOCUMENTATION

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

- Insert PO Box and street address \*

**SCHEDULE E – DRAFT ORDER FOR CERTIFICATION FOR SETTLEMENT**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE MACLEOD

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)

WEDNESDAY, THE 28<sup>th</sup>  
DAY OF JULY 2021

B E T W E E N :

DAVINA DIXON, DANIEL DIXON and  
REBECCA DIXON

Plaintiffs

- and -

DR. NORMAN BARWIN

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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DAVINA DIXON, et al.  
Plaintiffs

and

DR. NORMAN BARWIN  
Defendant

Court File No.: 16-70454CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **OTTAWA**

**ORDER**

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Lawyers for the **Plaintiff**



**SCHEDULE F – DRAFT ORDER FOR SETTLEMENT APPROVAL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE MACLEOD

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)  
)  
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MONDAY THE 1<sup>st</sup>

DAY OF NOVEMBER 2021

B E T W E E N :

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

Plaintiffs

- and -

**DR. NORMAN BARWIN**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

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

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

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

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

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

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

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

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

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

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

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

**Spouse/Partner/Former Patient Class:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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DAVINA DIXON, et al.  
Plaintiffs

and

DR. NORMAN BARWIN  
Defendant

Court File No.: 16-70454CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **OTTAWA**

**ORDER**

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Lawyers for the **Plaintiff**

**SCHEDULE G – PLAN OF NOTICE**



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

### CASE ANALYSIS

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

### PROPOSED NOTICE PROGRAM

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

#### **Individual Notice**

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

#### **Digital Media**

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

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

## Display & Video 360

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

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

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

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A Computershare company.

## Google Display Network

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

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

## facebook.

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

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

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

### News Publications

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

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

### CREATIVE DESIGN

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

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

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