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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

11 L.N. and T.N.,

12 Plaintiffs,

13 v.

14 FPG SERVICES, LLC d/b/a OVATION
15 FERTILITY; FPG LABS LLC d/b/a
16 OVATION FERTILITY; AND NEWPORT
17 BEACH IVF LLC d/b/a OVATION
18 FERTILITY NEWPORT BEACH, and DOES
19 1-10.

20 Defendants.

Case No.

COMPLAINT FOR DAMAGES

1. Negligence and/or Gross Negligence
2. Bailment
3. Conversion
4. Premises Liability
5. Breach of Contract
6. Violation of the Unfair Competition Law,
Cal. Bus. & Prof. Code § 17200
7. Violation of the California Consumer
Legal Remedies Act, Cal. Civ. Code §
1750 *et. seq.*

DEMAND FOR JURY TRIAL

1 Plaintiffs L.N. and T.N. by and through their undersigned counsel, bring this action against FPG
2 Services LLC d/b/a Ovation Fertility, FPG Labs LLC d/b/a Ovation Fertility, Newport Beach IVF,
3 LLC, d/b/a Ovation Fertility Newport Beach, (“Ovation”) and DOEs 1-10, and allege as follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiffs L.N. and T.N. are a married couple who went to Ovation for help building
6 their family and preserving their fertility options. Plaintiffs contracted with Ovation to receive In Vitro
7 Fertilization (“IVF”) laboratory services at Ovation’s Newport Beach location.

8 2. IVF treatment involves extracting eggs from a woman’s uterus, fertilizing the eggs
9 (which then become embryos), incubating the embryos, then implanting the embryos back into the
10 uterus to mature in the womb. IVF treatment is time consuming, emotionally and physically taxing,
11 dangerous, and expensive. L.N. was injected with potentially life-threatening medications, attended
12 numerous appointments, and Plaintiffs spent thousands of dollars, all in the hopes of having children.

13 3. Recognizing that embryos entrusted to their care are irreplaceable, Ovation promises
14 their clients, including Plaintiffs, that they will use state-of-the-art laboratory equipment and protocols
15 to ensure the safekeeping of the embryos. Plaintiffs chose Ovation in part based on these
16 representations of care and safety on its website. Safe handling requires proper treatment of the
17 embryos by laboratory staff, appropriate equipment cleaning and maintenance, and adequate
18 supervision to prevent embryos being exposed to an unsafe environment. For the incubator that held
19 Plaintiffs’ precious embryo, Ovation failed utterly to provide and ensure the safe handling.

20 4. Plaintiffs planned to thaw and transfer their only remaining male embryo from the IVF
21 cycle they did in 2019, when L.N. was 35 years old. In January 2024, Ovation placed Plaintiffs’
22 embryo into a contaminated incubator that destroyed it and all the other patient’s reproductive tissue it
23 held. The contamination was not discovered, and Plaintiffs were not informed, until February 2024.
24 The investigation was prompted by inquiries from fertility doctors who partner with Ovation’s IVF lab,
25 because all the patients experienced a 100% failure rate for attempted transfers of embryos in the
26 contaminated incubator.

27 5. The incubator’s contamination was caused by the acts and omissions of Ovation’s staff,
28 who mishandled the equipment and exposed the embryos inside to hydrogen peroxide. Ovation failed to

1 properly train and supervise its staff to prevent this terrible result. Ovation’s misconduct was a
2 substantial factor in bringing about Plaintiffs’ loss.

3 6. Because of Defendant’s failure to protect and safeguard Plaintiffs’ embryo, Plaintiffs
4 lost invaluable, irreplaceable property—their final male embryo that could have grown into the
5 couple’s son—and were emotionally, physically, and psychologically damaged as a result. Plaintiffs
6 bring this action to hold Defendant accountable for its conduct.

7 **THE PARTIES**

8 **I. Plaintiffs**

9 7. L.N. is a citizen and resident of Orange County, California.

10 8. T.N. is a citizen and resident of Orange County, California.

11 9. Given the sensitive nature of their claims, Plaintiffs are using initials in this litigation to
12 protect their privacy. Plaintiffs will move for an order to continue to use initials in this litigation to
13 protect their privacy if needed.

14 **II. Defendants**

15 10. FPG Services LLC d/b/a Ovation Fertility is a limited liability company organized under
16 the laws of Delaware with its principle place address of 105 WESTPARTK DRIVE, SUITE 370,
17 BRENTWOOD, TN 37027. FPG Services LLC is registered in California with the mailing Address
18 15821 VENTURA BOULEVARD, SUITE 625, ENCINO, CA 91436. FPG Services LLC owns the
19 trademark for Ovation Fertility.

20 11. FPG Labs LLC d/b/a Ovation Fertility is a limited liability company organized under the
21 laws of Delaware with its principle place of business at 15821 VENTURA BOULEVARD, SUITE 625,
22 ENCINO, CA 91436. FPG Services LLC is registered in California with the same mailing Address.
23 FPG Services LLC lists IVF laboratories across the United States as its members, including “Newport
24 Beach IVF, LLC,” located at 361 HOSPITAL RD, SUITE 433, NEWPORT BEACH, CA 92663—the
25 address of Ovation Fertility Newport Beach. Ovation Fertility is a “national network of IVF labs and
26 partner physician practices,”¹ including Ovation Fertility Newport Beach, an IVF laboratory located at
27 361 Hospital Rd, Suite 433, Newport Beach, CA 92663. Ovation advertises that its “IVF laboratory in
28

¹ <https://www.ovationfertility.com/about/>

1 Newport Beach has assisted men and women with family building services since 1992” and “the
2 program was one of the first IVF labs in the country.”²

3 12. Newport Beach IVF, LLC, d/b/a Ovation Fertility Newport Beach, is a limited liability
4 company organized under the laws of Delaware with its principle place of business at located at 361
5 HOSPITAL RD, SUITE 433, NEWPORT BEACH, CA 92663. Newport Beach IVF, LLC is registered
6 in California with the mailing Address 15821 VENTURA BOULEVARD, SUITE 625, ENCINO, CA
7 91436 and its “Type of Business” listed as “IVF Lab Services.”

8 13. FPG Services LLC, FPG Labs LLC, and Newport Beach IVF LLC are referred to
9 collectively as “Ovation” or Defendants.

10 14. DOEs 1-10 are persons or entities of unknown places of residence or states of
11 incorporation that perpetrated the wrongdoing alleged herein. Plaintiffs will attempt to identify DOEs
12 1-10 through discovery served on Defendant and third parties with whom Defendant interacted.

13 **JURISDICTION AND VENUE**

14 15. This Court has subject matter jurisdiction over all causes of action alleged in this
15 Complaint pursuant to the California Constitution, article VI, section 10, and is a Court of competent
16 jurisdiction to grant the relief requested.

17 16. At all relevant times alleged in this Complaint, Defendant did or continues to do
18 substantial business in or affecting the State of California, rendering this Court’s exercise of jurisdiction
19 over them proper. Defendant is registered with the California Secretary of State to conduct business in
20 California.

21 17. Venue is proper in this Court pursuant to California Code of Civil Procedure sections
22 395 and 395.5, and California Business and Professions Code section 17203.

23 **FACTUAL ALLEGATIONS**

24 18. Seeking help to build their family, Plaintiffs contracted with Ovation to provide IVF
25 laboratory services in connection with the IVF treatment provided by their fertility doctor, and
26 specifically to provide lab services to facilitate the retrieval eggs, creation and cryopreservation of
27 embryos for use to attempt pregnancies.

28

² <https://www.ovationfertility.com/network-labs/newport-beach-ivf/>.

1 19. Ovation Fertility has an IVF lab located at 361 Hospital Rd, Suite 433, Newport Beach,
2 CA 92663, which provided services to the Plaintiffs.

3 20. Before and at the time Plaintiffs contracted with Ovation for IVF laboratory services,
4 Ovation held itself out as a gold standard facility with state-of-the-art technology and emphasized (and
5 continues to emphasize today) that eggs and embryos would be safely handled, touting that the lab is
6 “Safe. Reliable. Secure. Successful.”³

7 21. Plaintiffs cryopreserved embryos at Ovation in 2019. In January 2024, Plaintiffs
8 prepared to transfer their final male embryo at Ovation’s Newport Beach location. As is standard
9 practice, Ovation placed the embryos in an incubator to undergo a controlled thaw and reach maturity
10 in preparation to be transferred. Tragically, unbeknownst to Plaintiffs, staff at Ovation responsible for
11 maintaining the incubator as a safe environment for the embryos placed their embryo in an incubator
12 that was contaminated, and it was damaged or destroyed, frustrating the substantial efforts Plaintiffs
13 had expended to create it.

14 22. At first, Ovation allowed Plaintiffs to believe the transfer had been unsuccessful because
15 of bad luck as part of the routine IVF process where a pregnancy is not guaranteed. But in February
16 2024, Plaintiffs’ fertility doctor, Dr. Terence Lee, contacted them with alarming news. Dr. Lee reported
17 that all his patients with embryos in the same incubator as Plaintiffs over a span of several days or
18 weeks had experienced unsuccessful transfers. This 100% failure rate was highly unusual, and
19 prompted him and other fertility doctors who use Ovation’s laboratory services (and whose patients
20 also experienced a 100% failure rate in this time frame) to request that Ovation conduct an
21 investigation. Plaintiffs were told that this investigation found a problem in the pH levels in the
22 incubator, and suggested that embryos in the incubator had been exposed to hydrogen peroxide, which
23 destroyed them.

24 23. Ovation negligently handled Plaintiffs’ embryos and misrepresented the quality of its
25 facilities. It also negligently trained and supervised the staff who caused the contamination, and
26 allowed it to continue to impact embryos.

27 _____
28 ³ <https://www.ovationfertility.com/network-labs/newport-beach-ivf/> (“Every Ovation professional adheres to strict industry regulations, and our Newport Beach IVF lab maintains the highest standards”).

1 24. Defendant's failures were a substantial factor in causing Plaintiffs' loss; had the
2 incubator been maintained properly, Plaintiffs' invaluable embryos would not have been lost, and
3 Plaintiffs would not have suffered emotionally and physically. Ovation's misrepresentations were also a
4 substantial factor in causing Plaintiffs' injuries; had Plaintiffs known that Ovation's facilities did not
5 meet industry standards, they would not have chosen to contract with it for IVF services.

6 **I. In Vitro Fertilization Procedure**

7 25. IVF has become an established means of allowing individuals and couples the
8 opportunity to become pregnant using their biological material. IVF provides the flexibility to begin a
9 family when it makes sense for individuals and couples personally and professionally. IVF is also a
10 way for those suffering from infertility to start their families, using their own biological material.

11 26. An IVF cycle typically includes the following steps or procedures: (1) the patient takes
12 medications, including regular injections of hormones, to grow multiple eggs; (2) the clinic retrieves
13 the patient's eggs from the ovary or ovaries; (3) the eggs are inseminated with sperm; (4) the clinic
14 cultures any resulting fertilized eggs, fostering their development into embryos, including with the use
15 of culture media; (5) one or more embryo(s) are placed ("transferred") into the patient's uterus; and (6)
16 the patient takes additional hormones to support of the uterine lining to permit and sustain pregnancy.

17 27. In certain cases, additional procedures may be employed, including (1) intracytoplasmic
18 sperm injection ("ICSI") to increase the chance for fertilization; (2) assisted hatching of embryos to
19 potentially increase the chance of embryo attachment ("implantation"); and (3) cryopreservation
20 (freezing) of eggs or embryos.

21 28. The success of IVF largely depends on growing multiple eggs at once and then
22 retrieving the eggs (egg retrieval process). To achieve this goal, patients undergo a strict regimen of
23 injections with hormones and other medicines. These injections can cause a plethora of known side
24 effects, including but not limited to bruising, redness, swelling, or discomfort at the injection site,
25 bloating, weight gain, water retention, bone loss, fatigue, headaches, muscle aches, abdominal pain,
26 breast tenderness, vaginal yeast infections, vaginal dryness, bone loss, hot flashes, mood swings,
27 depression, nausea, vomiting, diarrhea, clots in blood vessels and strokes. Women injected with these
28 pharmaceuticals also run the risk of a potentially fatal allergic reaction to the drugs. And up to 2% of
women will develop Ovarian Hyperstimulation Syndrome ("OHSS"), a life-threatening condition that

1 can cause increased ovarian size, nausea and vomiting, accumulation of fluid in the abdomen, breathing
2 difficulties, increased concentration of red blood cells, kidney and liver problems, blood clots, kidney
3 failure, and death.

4 29. IVF requires multiple doctor visits involving routine blood tests and invasive
5 transvaginal ultrasound examinations, which are often scheduled with very little advanced warning.
6 IVF also places restrictions on diet, work, and travel.

7 30. The egg retrieval process itself involves surgery conducted under anesthesia, where the
8 eggs are extracted with a large needle inserted through the vaginal wall. Risks of the egg retrieval
9 procedure include infection, bleeding, trauma to intra-abdominal organs, allergic reactions, low blood
10 pressure, nausea, vomiting, and in rare cases, death. After the retrieval procedure, a patient often
11 experiences residual pain for about a week and may need bedrest for several days.

12 31. Another potential risk is that the procedure will fail to obtain any eggs, or the eggs may
13 be abnormal or of poor quality and otherwise fail to produce a viable pregnancy.

14 32. Based on their age and medical status, women may undergo multiple rounds of retrievals
15 to obtain enough eggs or embryos to achieve their reproductive goals. This process can take months or
16 even years. On average, women and couples spend \$40,000-\$60,000 out of pocket for these services.

17 33. If and when viable eggs are retrieved, IVF and embryo culture occurs. Sperm and eggs
18 are placed together in specialized conditions (culture media, controlled temperature, humidity, and
19 light) to achieve fertilization. Sperm and eggs are submerged in culture media, which is a nutrient-rich
20 liquid designed to promote the growth and development of a fertilized egg into a viable embryo by
21 replicating the natural environment and fluids in a woman's reproductive system. When they develop
22 successfully, embryos grow and reach certain milestones for viability over the course of several days
23 following insemination.

24 34. After the egg retrieval process, IVF patients can either receive a fresh embryo transfer or
25 a frozen embryo transfer. A fresh transfer occurs after a few days of embryo development. Embryos are
26 selected for transfer and are placed in the uterine cavity with a tube. By contrast, a frozen transfer
27 involves cryogenically freezing the embryo, then after a period of time, thawing the embryo and
28 placing it in the patient's uterus. Frozen transfers allow a patient to elect to genetically screen the
embryos to determine if any suffer from genetic abnormalities making them unsuitable for transfer. If

1 multiple viable embryos are created in an IVF cycle, patients can opt to do a fresh transfer of one or
2 more embryos and freeze others for later transfer attempts. Excess embryos of sufficient quality that are
3 not transferred can be frozen. So long as they are properly stored, frozen embryos can remain viable
4 and be transferred years after they are retrieved.

5 35. As Ovation describes in its informed consent agreement, “Embryo warming, commonly
6 referred to as thawing, involves the removal of embryos from a liquid nitrogen storage tank and
7 warming them under conditions that are designed to retain viability of the embryos. Warmed embryos
8 are observed for a period of time to ensure that they have survived the warming procedure.” An
9 incubator is used to create and maintain those conditions.

10 **II. The Loss of Eggs and Embryos Has Severe Consequences**

11 36. People who engage in fertility services make large monetary and emotional investments.
12 They endure painful and invasive procedures, financial stress, and the strain the process puts on their
13 mental health and relationships with others, all in the hopes that one day they will be able to have a
14 child.

15 37. In addition to the physical burdens of IVF, the process is also emotionally grueling. The
16 success or failure of IVF, including egg retrieval and embryo storage, has substantial emotional and
17 psychological ramifications for those seeking to become parents.

18 38. For many, the IVF process represents their last hope for having children. Many women
19 experience and express strong feelings of anxiety, failure, hopelessness, and disappointment during this
20 process. The IVF process can affect a patient and her spouse or partner medically, financially, socially,
21 emotionally, and psychologically. Feelings of anxiety, depression, isolation, and helplessness are not
22 uncommon in patients undergoing IVF. Losing eggs and embryos provokes fear, devastation, and
23 despair. Many people experience grief and anguish when fertility treatment does not result in pregnancy
24 or when they lose fertility choices.

25 39. As discussed above, women take drug and hormone cocktails and injections over several
26 weeks to stabilize the uterine lining, stimulate ovaries into producing follicles, and stop these ovary
27 follicles from releasing eggs. A woman may be subjected to multiple injections each day, resulting in
28 bruising, swelling, and discomfort. The drug and hormone therapy may also trigger other side effects,
such as tiredness, nausea, headaches, and blood clots, as well as negative emotions. The process can

1 limit travel and other activities, entails numerous doctor visits, and often requires time off from work.
2 The retrieval procedure itself requires anesthesia, as well as insertion of a thick needle through the
3 vaginal wall to drain the ovary follicles of their fluid. After the procedure, a woman often experiences
4 residual pain for about a week and may need bed rest for several days. Some women suffer significant
5 side effects, such as ovarian hyperstimulation syndrome, requiring hospitalization.

6 40. These invasive services are expensive. According to recent estimates, “a single IVF
7 cycle—defined as ovarian stimulation, egg retrieval and embryo transfer—can range from \$15,000 to
8 \$30,000, depending on the center and the patient’s individual medication needs.” Clients typically pay
9 thousands of dollars for fertility drugs leading up to egg retrieval and may also spend hundreds of
10 dollars on acupuncture and other services recommended to them to improve outcomes. Depending on
11 age and health status, some women will undergo (and pay for) more than one IVF cycle, or if they
12 freeze multiple embryos, will pay thousands of dollars for each transfer attempted with an existing
13 embryo.

14 41. Ovation is aware of the lengths to which people go to obtain eggs and create embryos,
15 how much they mean to patients, the patients’ emotional (and financial) investment in the survival of
16 the eggs and embryos, and the patients’ expectations that great care will be taken to preserve and
17 protect the eggs and embryos to avoid irreparable, devastating harm.

18 42. Eggs and embryos are precious. They offer the opportunity to fulfill one of the most
19 fundamental human urges: to become a parent and create one’s own family when the time is right. Eggs
20 and embryos are also irreplaceable. The most determinative factor in IVF success is the woman’s age at
21 the time her eggs were extracted. At some point, usually around her mid-40s, a woman can no longer
22 produce viable eggs. When preserved eggs or embryos are damaged or compromised, it may be
23 impossible for clients to build their family as they had planned.

24 **III. Ovation stated on its website that it would keep Plaintiffs’ embryos safe and secure**

25 43. Because it is central to its business, Ovation was well aware of the lengths to which
26 people go to obtain eggs and create embryos, how much they mean to their clients, the clients’
27 emotional (and financial) investment in the survival of the eggs and embryos, and the clients’
28 expectations that great care will be taken to preserve and protect the eggs and embryos to avoid
irreparable, devastating harm.

1 44. Before and at the time Plaintiffs contracted with Ovation for IVF laboratory services,
2 Ovation held itself out as a gold standard facility with state-of-the-art technology and emphasized (and
3 it continues to emphasize today) that eggs and embryos would be safely handled.

4 45. The below representations can all be found on Ovation’s website and existed there prior
5 to Plaintiffs’ purchase of IVF laboratory services:

6 46. “Every Ovation professional adheres to strict industry regulations, and our Newport
7 Beach IVF lab maintains the highest standards.”⁴

8 47. The Newport Beach Ovation lab is “Safe. Reliable. Secure. Successful.”⁵

9 48. “Ovation Fertility’s Newport Beach IVF lab is nationally accredited by the College of
10 American Pathologists, federally certified by CLIA and certified as a Reproductive Specialty Lab and
11 Cryopreservation Tissue Bank by the State of California.”⁶

12 49. “It was our Newport Beach IVF lab team that developed microSecure Vitrification —
13 the tremendously successful preservation technique for oocytes and embryos. Our highly skilled
14 embryologists routinely perform the most intricate lab techniques in reproductive medicine today.”⁷

15 50. “Our newly renovated laboratory features a high-efficiency air purification system to
16 remove potential contaminants from a carefully controlled environment. This results in air that is
17 greater than 98% cleaner than rooms without this high-tech system.”⁸

18 51. “Ovation began as a national network of IVF labs and partner physician practices
19 committed to applying leading-edge treatment through the hands and minds of the world’s foremost
20 experts.”⁹

21 52. “Our team of scientific experts take very seriously our responsibility to produce healthy
22 embryos, which in turn develop into healthy children. Ovation labs hold all required industry
23 accreditations and certifications but adhere to even more rigorous standards established by our internal
24 clinical advisory committee of physicians and scientists passionate about improving outcomes. This
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26 ⁴ <https://www.ovationfertility.com/network-labs/newport-beach-ivf/> (accessed April 17, 2024).

27 ⁵ *Id.*

28 ⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ <https://www.ovationfertility.com/about/> (accessed April 17, 2024).

1 committee regularly convenes to assess Ovation’s existing capabilities and identify opportunities to
2 improve on them even further.”¹⁰

3 53. “Working as a unified team, Ovation team members deliver next-generation results by
4 applying our collective knowledge to state-of-the-art processes and technologies.”¹¹

5 **IV. Plaintiffs’ Embryos were Destroyed Because of Defendant’s Conduct**

6 54. In 2019, L.N. (then age 35) and T.N. (then age 43), began seeking fertility treatments to
7 preserve their fertility options and help build their family. Plaintiffs decided to attempt IVF treatment.
8 Plaintiffs chose to engage Dr. Terence Lee as their fertility doctor, and engage Ovation for IVF
9 laboratory services.

10 55. L.N. underwent the emotionally and physically taxing process of IVF, including daily
11 injections and frequent doctors’ visits with little advanced warning. She had egg retrieval surgery, and
12 her eggs were fertilized her T.N.’s sperm. L.N. was bedridden after her egg retrieval and had difficulty
13 walking as a result of the process. The IVF cycle resulted in five healthy embryos, two male and three
14 female.

15 56. Plaintiffs underwent a successful fresh transfer with a female embryo, and cryopreserved
16 the remainder. L.N. gave birth to twin daughters.

17 57. Last year, hoping to add a son to their family, Plaintiffs attempted a frozen transfer with
18 one of the male embryos, without success.

19 58. In January 2024, Plaintiffs returned to Ovation’s Newport Beach location to attempt a
20 transfer with their final male embryo. As is standard practice, Ovation placed the embryos in an
21 incubator it owned to undergo a controlled thaw and reach maturity in preparation to be transferred.

22 59. In advance of the warming procedure, Ovation represented to Plaintiffs in its informed
23 consent agreement that during warming, it would keep the embryo “under conditions that are designed
24 to retain viability of the embryos” in Ovation’s incubator.

25 60. Tragically, unbeknownst to Plaintiffs, staff at Ovation responsible for maintaining the
26 incubator as a safe environment for the embryos it held failed miserably in their duties. The incubator
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28 _____
¹⁰ *Id.*

¹¹ *Id.*

1 was contaminated, and Plaintiffs' final male embryo was damaged or destroyed, frustrating the
2 substantial efforts Plaintiffs had expended to create it.

3 61. Plaintiffs' fertility doctor, Dr. Lee, told Plaintiffs he was shocked the transfer failed,
4 because L.N.'s uterine lining was very healthy and the embryo was highly graded. In February 2024,
5 Dr. Lee reported that based on a 100% rate of failed transfers among all patients with embryos in the
6 same incubator as Plaintiffs over a span of several days or weeks, he and other doctors requested that
7 Ovation conduct an investigation. Plaintiffs were told that this investigation found a problem in the pH
8 levels in the incubator, and suggested that embryos in the incubator had been exposed to hydrogen
9 peroxide, which destroyed them.

10 62. Following this investigation, Ovation sought to resolve Plaintiffs' claim. Their
11 understanding is that Ovation offered similarly affected plaintiffs one free embryo transfer, services
12 worth only approximately \$5,000 (and would require that patients to have another embryo available to
13 attempt). Ovation has made no offer to account for the immense value of the embryos that were
14 destroyed, or the emotional harm suffered by the Plaintiffs.

15 63. The embryo that Plaintiffs lost is irreplaceable. Even if they were able to create
16 additional embryos—a physically, emotionally, and financially costly procedure that is by no means
17 guaranteed to succeed—L.N. and T.N. are both older now than they were at the time the eggs and
18 sperm used to create the lost embryos were retrieved. As a result, embryos made with older eggs and
19 sperm would not have as high of a chance of successfully developing into a healthy child or children.

20 64. Plaintiffs still long to add a son to their family, but are unlikely to attempt another IVF
21 cycle because of L.N. and T.N.'s age and the trauma they experienced as a result of these devastating
22 events. Because of this incident, Plaintiffs in all likelihood lost their last opportunity to have a son using
23 their own biological material. They suffered significant emotional distress as a result of Defendant's
24 conduct.

25 **V. Defendant's Conduct Was a Substantial Factor in Bringing About Plaintiffs' Loss**

26 65. Ovation had a duty to safeguard Plaintiffs' embryos and failed in that duty by
27 unreasonably acting in a manner that injured Plaintiffs.

28 66. Ovation had a duty to safeguard Plaintiffs' embryos with a reasonable degree of care. As
an IVF laboratory, Ovation holds itself out to the public and Plaintiffs as a medical provider that can

1 safely develop and safeguard eggs and embryos. For example, Ovation prominently displays on its
2 website that the Newport Beach IVF lab is “nationally accredited by the College of American
3 Pathologists, federally certified by CLIA and certified as a Reproductive Specialty Lab and
4 Cryopreservation Tissue Bank by the State of California.”¹²

5 67. And as described above, Ovation purports to maintain a lab that is “Safe. Reliable.
6 Secure. Successful.” and promises that “Every Ovation professional adheres to strict industry
7 regulations, and our Newport Beach IVF lab maintains the highest standards”¹³

8 68. CAP, CLIA, and other industry organizations establish standards by which a reasonable
9 IVF laboratory should operate. For example, CLIA requires¹⁴ that “The laboratory must have
10 appropriate and sufficient equipment, instruments, reagents, materials, and supplies for the type and
11 volume of testing it performs.” 42 C.F.R. 493.1101 (b) Standard: Facilities. And “The laboratory must
12 be in compliance with applicable Federal, State, and local laboratory requirements.” *Id.* at (c). Also,
13 “The laboratory must define criteria for those conditions that are essential for proper storage of reagents
14 and specimens, accurate and reliable test system operation, and test result reporting. The criteria must
15 be consistent with the manufacturer's instructions, if provided. These conditions must be monitored and
16 documented.” 42 C.F.R. § 493.1252 Standard: Test systems, equipment, instruments, reagents,
17 materials, and supplies.

18 69. And The American Society for Reproductive Medicine (“ASRM”) also sets industry
19 standards through published guidelines. One such publication is the “Comprehensive guidance for
20 human embryology, andrology, and endocrinology laboratories: management and operations: a
21 committee opinion,” which offers “comprehensive guidance for human embryology, andrology, and
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23
24

25 ¹² <https://www.ovationfertility.com/network-labs/newport-beach-ivf/> (accessed April 17, 2024).

26 ¹³ *Id.*

27 ¹⁴ Although CLIA regulations apply only to andrology and endocrine laboratories and not embryology
28 laboratories, if an andrology laboratory provides quantitative semen analysis (“SA”) or any procedure
that includes diagnostic quantitative analysis of sperm concentration (sperm count), the laboratory must
satisfy the requirements of and be registered as a high-complexity clinical laboratory as specified in the
CLIA regulations. Even if only one test performed in the laboratory is high complexity, the entire
laboratory must be registered and treated as a high-complexity laboratory.

1 endocrinology laboratories.”¹⁵ Under this guidance, “Equipment should be maintained and calibrated
2 on a regular basis (daily, weekly, monthly, and yearly). This includes a record of instrument calibration;
3 functional checks of equipment, when possible; evidence of an active review of records; and
4 documentation of corrective action taken when instruments malfunction.”¹⁶

5 70. By failing to properly maintain an incubator free of contamination, and by failing to
6 properly train and supervise staff to prevent the introduction of substances such as hydrogen peroxide
7 in the environment of developing embryos, Ovation acted negligently or grossly negligently.

8 **FIRST CAUSE OF ACTION**

9 **Negligence and/or Gross Negligence**

10 71. Plaintiffs incorporate the above and below allegations by reference.

11 72. Ovation owed Plaintiffs a duty to exercise the highest degree of care when maintaining,
12 inspecting, monitoring, testing, and using the incubators used to grow their embryo at Ovation’s
13 Newport Beach laboratory.

14 73. Ovation owed a duty of care to Plaintiffs to act reasonably in all aspects of the handling
15 and storage of Plaintiffs’ embryo so as to avoid destroying them, damaging them, or jeopardizing their
16 viability given that doing so would inevitably lead to the loss of invaluable property, physical, and
17 emotional distress.

18 74. Ovation assumed that duty of care through communications with Plaintiffs and by
19 reason of Ovation’s special relationship with Plaintiffs arising from the sensitive services Ovation
20 undertook to perform—in vitro fertilization, including embryo storage.

21 75. Plaintiffs’ harm occurred in the course of specified categories of activities, undertakings,
22 or relationships in which negligent conduct is especially likely to cause serious harm. As Ovation states
23 in its marketing, fertility services, including those relating to egg and embryo storage, can be stressful
24 and overwhelming for those who use them.

25 76. It was reasonably foreseeable to Ovation that Plaintiffs would experience economic loss
26 and severe emotional distress as a result of Ovation’s breach of its duty of care.

27 _____
28 ¹⁵ <https://www.asrm.org/practice-guidance/practice-committee-documents/comprehensive-guidance-for-human-embryology-andrology-and-endocrinology-laboratories-management-and-operations-a-committee-opinion-2022/>.

¹⁶ *Id.*

1 77. Ovation’s carelessness and negligence directly and foreseeably damaged Plaintiffs.
2 Plaintiffs entrusted Ovation with preserving, handing, and storing their invaluable embryos, and
3 Ovation’s mishandling of their embryo naturally and foreseeably caused economic loss, mental
4 anguish, and emotional distress, among other injuries, to Plaintiffs.

5 78. There was a close connection between Ovation’s conduct and Plaintiffs’ injuries.
6 Plaintiffs’ economic loss, emotional distress, and other harms occurred because of Ovation’s failure to
7 act reasonably in all aspects of the handling and storage of Plaintiffs’ embryo.

8 79. Plaintiffs entrusted Ovation to use reasonable care to safeguard their embryos to
9 preserve their reproductive options. Ovation’s carelessness with this precious material, and ultimately,
10 with Plaintiffs’ careful plans for parenthood, is reprehensible.

11 80. Imposing a duty on Ovation to avoid causing emotional distress and loss of invaluable
12 property would promote the policy of preventing future harm, insofar as it will be motivated to
13 implement more effective processes and systems to ensure that eggs and embryos are

14 81. safeguarded and properly stored going forward. Imposing a duty on Ovation to avoid
15 causing emotional distress also furthers the community’s interest in ensuring that reliable fertility
16 services are available to those who wish to become parents.

17 82. The burden on Ovation from a duty to avoid causing economic loss and emotional
18 distress is fair and appropriate in light of the importance of the eggs and embryos they voluntarily
19 agreed to protect, at considerable cost to Plaintiffs.

20 83. Ovation owed Plaintiffs a non-delegable duty of care with respect to the maintenance
21 and protection of the embryo entrusted to their care.

22 84. Ovation breached these duties and acted with negligence and gross negligence in at least
23 the following respects:

- 24 a. failing to adequately maintain, inspect, monitor, and/or test the incubator free
- 25 from contamination;
- 26 b. failing to establish, maintain, and proper standards for the cleaning and
- 27 maintenance of incubators;
- 28 c. failing to properly train and supervise staff responsible for the cleaning and
- maintenance of incubators;

- 1 d. failing to disclose that it did not have appropriate processes and systems in place
2 to protect Plaintiffs' embryo;
3 e. failing to properly safeguard the eggs and embryos in its care; and
4 f. failing to follow reasonable scientific and laboratory procedures for safeguarding
5 the eggs and embryos in their care.

6 85. Ovation's acts and omissions constitute gross negligence because they constitute an
7 extreme departure from what a reasonably careful person would do in the same situation to prevent
8 foreseeable loss of eggs and embryos.

9 86. Ovation acted willfully, wantonly, and with conscious and reckless disregard for the
10 rights and interests of Plaintiffs. Ovation's acts and omissions had a great probability of causing
11 significant harm and in fact did cause such harm—the loss of Plaintiffs' invaluable property.

12 87. As a proximate result of Ovation's negligence and/or gross negligence, Plaintiffs'
13 suffered economic loss in an amount to be determined at trial, including the loss of irreplaceable and
14 invaluable property. A reasonable person would be unable to cope with the losses suffered by Plaintiffs.

15 88. As a proximate result of Ovation's negligence, Plaintiffs suffered harm in an amount to
16 be determined at trial, including economic loss and severe emotional distress consisting of shock,
17 fright, horror, anguish, suffering, grief, anxiety, nervousness, embarrassment, humiliation, and shame.

18 **SECOND CAUSE OF ACTION**

19 **Bailment**

20 89. Plaintiffs incorporate the above and below allegations by reference.

21 90. Plaintiffs delivered to Ovation for safekeeping irreplaceable personal property to be
22 safely and securely kept for the benefit of Plaintiffs, and to be redelivered to them upon demand.

23 91. Ovation received Plaintiffs' embryo on this condition.

24 92. Plaintiffs agreed to pay, and did pay, substantial sums in exchange for Ovation's
25 promise to safeguard reproductive material for the benefit of Plaintiffs. To the extent Plaintiffs'
26 payment of substantial sums of money was not specifically made for Ovation's promise to safeguard
27 their embryo, Ovation knowingly accepted possession of Plaintiffs' invaluable personal property
28 without consideration and had exclusive possession and control over the property.

1 93. Plaintiffs gave Ovation exclusive possession and control of Plaintiffs invaluable
2 personal property (i.e., the embryo), after it was transferred from L.N.'s womb to cryopreservation to
3 Ovation's incubator. Ovation knowingly accepted Plaintiffs invaluable personal property (i.e., the
4 embryo).

5 94. Ovation had a duty to exercise care in maintaining, preserving, and protecting Plaintiffs'
6 embryo that was delivered to Ovation. Further, Ovation had a duty to return the embryo, undamaged, to
7 Plaintiffs, to whom the embryo belonged.

8 95. Ovation invited the general public, including Plaintiffs, to entrust eggs and embryos to
9 Ovation's care by holding out Ovation as a competent, capable, and established reproductive and
10 storage facility able to handle and care for eggs and embryos in a safe and satisfactory manner, and in a
11 manner specified on their websites.

12 96. Because of Ovation's wrongful conduct, as set forth herein, the irreplaceable property of
13 Plaintiffs was destroyed, precluding its redelivery to them.

14 97. Ovation breached their duty to exercise care in the safekeeping of Plaintiffs embryo
15 delivered to Ovation and to return the embryo, undamaged, to Plaintiffs.

16 98. As a direct and proximate result of Ovation's breach of bailment contract, Plaintiffs have
17 been deprived of the opportunity to use the embryo they entrusted to Ovation and have suffered
18 damages in an amount to be determined at trial.

19 **THIRD CAUSE OF ACTION**

20 **Conversion**

21 99. Plaintiffs incorporate the above and below allegations by reference.

22 100. Plaintiffs owned and had the right to possess their embryos, which are unique items of
23 personal property.

24 101. Ovation substantially interfered with Plaintiffs' embryo by intentionally failing to
25 properly maintain a safe incubator free of contamination, which was a substantial factor in the
26 destruction of Plaintiffs' embryos. Ovation knew, or should have known, that contamination in the
27 incubator would destroy any embryos it held.

28 102. Plaintiffs did not consent to the embryo being destroyed.

1 103. Plaintiffs were harmed when their embryo was destroyed; they lost invaluable property
2 that could have enabled them to have a child and were emotionally and physically harmed.

3 **FOURTH CAUSE OF ACTION**

4 **Premises Liability**

5 104. Plaintiffs incorporate the above and below allegations by reference.

6 105. At all relevant times, Ovation owned and controlled the Newport Beach IVF laboratory
7 and its incubators.

8 106. Ovation owed Plaintiffs a duty to exercise the highest degree of care in maintaining,
9 inspecting, monitoring, and testing the incubators. This includes preventing contamination with toxic
10 substances. Ovation knew, or reasonably should have known that the incubators were used to store and
11 safeguard developing human embryos, and that contamination could cause the loss of these embryos.
12 Ovation knew, or reasonably should have known, that the loss of embryos would cause Plaintiffs sever
13 emotional distress and physical harm.

14 107. Ovation's duty was non-delegable because it was aware that the policies it maintained
15 for laboratory safety and care were inadequate and its staff insufficiently trained and/or supervised.
16 Ovation failed to take necessary steps to address these inadequacies.

17 108. Ovation breached these duties and was negligent in the ownership, management, control,
18 inspection, and maintenance of the above-described premises, including the incubator. Ovation's
19 breach resulted in foreseeable permanent damage to Plaintiffs' embryo. Defendant knew, or reasonably
20 should have known, that its failure to maintain incubators free of contamination created an
21 unreasonable risk of harm to Plaintiffs' embryo.

22 109. Ovation acted willfully, wantonly, and with conscious and reckless disregard for the
23 rights and interests of Plaintiffs. Defendant's acts and omissions had a great probability of causing
24 significant harm and in fact did.

25 110. As a direct and proximate result of Defendant's negligence in the ownership,
26 management, control, maintenance, inspection, and monitoring of these premises, Plaintiffs suffered
27 harm in an amount to be determined at trial.

28

1 111. As a direct and proximate result of Defendant's negligence and gross negligence,
2 Plaintiffs experienced mental anguish, grief, shock, anxiety, serious emotional distress, humiliation, and
3 feelings of helplessness and despair that a reasonable person would be unable to cope with.

4 **FIFTH CAUSE OF ACTION**

5 **Breach of Contract**

6 112. Plaintiffs incorporate the above and below allegations by reference.

7 113. Ovation entered into an express contract with Plaintiffs, under which Ovation agreed to
8 provide IVF laboratory services, which included storing and protecting Plaintiffs' embryo.

9 114. Although styled as an "Informed Consent to Perform Embryo Thaw and Assisted
10 Hatching" agreement, Ovation agreed to "to thaw and assisted hatch embryos obtained from a previous
11 assisted reproductive technology cycle" in exchange for monetary consideration from the Plaintiffs, and
12 the agreement was signed and dated by Plaintiffs and Defendant.

13 115. Ovation agreed to perform "Embryo warming, commonly referred to as thawing,
14 [which] involves the removal of embryos from a liquid nitrogen storage tank and warming them *under*
15 *conditions that are designed to retain viability of the embryos.*" Ovation furthered agreed that "Warmed
16 embryos are observed for a period of time to ensure that they have survived the warming procedure."

17 116. To the extent an express contract was not formed, Plaintiffs and Ovation entered into an
18 implied-in-fact contract. Ovation agreed to provide services to Plaintiffs, including storing Plaintiffs
19 embryo safely and warming them in conditions designed to retain their viability for of L.N.'s IVF
20 treatment. Plaintiffs paid Ovation money for this service. Ovation knew, or should have known, that
21 Plaintiffs would interpret this conduct as assent to an agreement to safely store Plaintiffs' invaluable
22 personal property. Ovation also knew, or should have known, that representations it made on its
23 website regarding safely storing eggs and embryos would be a material term of the implied-in-fact
24 contract.

25 117. A contract involving egg and embryo storage and preservation is highly personal and
26 implicates vital concerns regarding parenthood, procreation, and assisting others in achieving their
27 family plans.

28

1 118. In consideration of Ovation’s promises, including to keep the embryo safe and secure by
2 following practices and protocols, including as outlined on their websites and in other marketing
3 materials, Plaintiffs agreed to pay, and did pay, substantial sums for the services rendered.

4 119. Plaintiffs performed all the terms and conditions required of them under their contracts
5 with Ovation.

6 120. Based on the conduct described herein, Ovation breached their contracts with Plaintiffs,
7 including the incorporated contractual covenant of good faith and fair dealing. Ovation’s failure to
8 safely store and preserve Plaintiffs’ reproductive materials violated commercial norms, deprived
9 Plaintiffs of the fruits of the contracts, and contravened their objectively reasonable expectations under
10 the contracts.

11 121. A contract whereby an IVF laboratory undertakes to store and handle human eggs and
12 embryos is one as to which it is reasonably foreseeable that breach thereof will cause mental anguish to
13 the person or persons who entrusted the clinic with such material.

14 122. As a direct and proximate result of Ovation’s breach of contract, Plaintiffs suffered
15 harm, including economic loss of invaluable embryos, and emotional distress, including mental
16 anguish, in an amount to be determined at trial.

17 **SIXTH CAUSE OF ACTION**

18 **Violations of the Unfair Competition Law (“UCL”),**

19 **Cal. Bus. & Prof. Code § 17200 *et seq.***

20 123. Plaintiffs incorporate the above and below allegations by reference.

21 124. The UCL prohibits acts of “unfair competition,” including any “any unlawful, unfair or
22 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising....” Cal. Bus.
23 & Prof. Code § 17200.

24 125. Ovation violated each of the UCL’s provisions: they acted in an unlawful, unfair, and
25 fraudulent manner, including disseminating unfair, deceptive, untrue or misleading advertising....”

26 126. Ovation is a “person” under Cal. Bus. & Prof. Code § 17201.

27 127. Ovation acted unlawfully. Section 17200’s “unlawful” prong “borrows violations of
28 other laws ... and makes those unlawful practices actionable under the UCL” *Klein v. Chevron U.S.A.,
Inc.*, 202 Cal. App. 4th 1342, 1383 (2012), *as modified on denial of reh'g* (Feb. 24, 2012. “[V]irtually

1 any law or regulation—federal or state, statutory or common law—can serve as [a] predicate for a ...
2 [section] 17200 ‘unlawful’ violation.” *Paulus v. Bob Lynch Ford, Inc.*, 139 Cal. App. 4th 659, 681
3 (2006) (interna citations omitted). Ovation violated the law through its negligence, gross negligence,
4 bailment violations, conversion, and breach of contract. *See supra* Claims 1–5.

5 128. Ovation also acted unfairly and fraudulently through its unfair, deceptive, untrue or
6 misleading advertising and representations to Plaintiffs and the public.

7 129. Unfair, deceptive, untrue, or misleading advertising under the UCL means:

8 For any person, ...corporation ... or any employee thereof with intent directly or
9 indirectly to dispose of real or personal property or to perform services . . .or to
10 induce the public to enter into any obligation relating thereto, to make or
11 disseminate . . . before the public in this state, . . . in any newspaper or other
12 publication . . . or in any other manner or means whatever . . . any statement,
13 concerning that real or personal property or those services . . which is untrue or
14 misleading, and which is known, or which by the exercise of reasonable care should
15 be known, to be untrue or misleading....

16 Cal. Bus. & Prof. Code § 17500.

17 130. Ovation’s conduct is unfair and fraudulent in violation of the UCL because it is immoral,
18 unethical, unscrupulous, oppressive, and substantially injurious.

19 131. Ovation voluntarily took responsibility for safeguarding Plaintiffs’ embryos, and misled
20 Plaintiffs and the public concerning the IVF services it provided, specifically in the quality of care it
21 would use to safeguard eggs and embryos. In particular, Ovation advertised on its website the following
22 misleading or untrue statements:

- 23 a. “Every Ovation professional adheres to strict industry regulations, and our
24 Newport Beach IVF lab maintains the highest standards.”¹⁷
- 25 b. The Newport Beach Ovation lab is “Safe. Reliable. Secure. Successful.”¹⁸
- 26 c. “Ovation Fertility’s Newport Beach IVF lab is nationally accredited by the
27 College of American Pathologists, federally certified by CLIA and certified as a
28

¹⁷ <https://www.ovationfertility.com/network-labs/newport-beach-ivf/> (accessed April 17, 2024).

¹⁸ *Id.*

1 Reproductive Specialty Lab and Cryopreservation Tissue Bank by the State of
2 California.”¹⁹

- 3 d. “It was our Newport Beach IVF lab team that developed microSecure
4 Vitrification — the tremendously successful preservation technique for oocytes
5 and embryos. Our highly skilled embryologists routinely perform the most
6 intricate lab techniques in reproductive medicine today.”²⁰
- 7 e. “Our newly renovated laboratory features a high-efficiency air purification
8 system to remove potential contaminants from a carefully controlled
9 environment. This results in air that is greater than 98% cleaner than rooms
10 without this high-tech system.”²¹
- 11 f. “Ovation began as a national network of IVF labs and partner physician practices
12 committed to applying leading-edge treatment through the hands and minds of
13 the world’s foremost experts.”²²
- 14 g. “Our team of scientific experts take very seriously our responsibility to produce
15 healthy embryos, which in turn develop into healthy children. Ovation labs hold
16 all required industry accreditations and certifications but adhere to even more
17 rigorous standards established by our internal clinical advisory committee of
18 physicians and scientists passionate about improving outcomes. This committee
19 regularly convenes to assess Ovation’s existing capabilities and identify
20 opportunities to improve on them even further.”²³
- 21 h. “Working as a unified team, Ovation team members deliver next-generation
22 results by applying our collective knowledge to state-of-the-art processes and
23 technologies.”²⁴

26 ¹⁹ *Id.*

27 ²⁰ *Id.*

28 ²¹ *Id.*

²² <https://www.ovationfertility.com/about/> (accessed April 17, 2024).

²³ *Id.*

²⁴ *Id.*

1 132. Ovation knew or should have known through the exercise of reasonable care that these
2 statements were untrue or misleading. For example, “adher[ing] to strict industry regulations, and . . .
3 maintain[ing] the highest standards” would adhere to reasonable standards of care to safeguard eggs
4 and embryos.

5 133. The gravity of the harm resulting from Ovation’s unlawful, unfair, and fraudulent
6 conduct outweighs any potential utility of the conduct. There are reasonably available alternatives that
7 would further Ovation’s business interests, such as implementing alarms and reasonable protocols and
8 procedures to prevent power failures, and not misrepresenting the procedures and protections in place
9 to protect Plaintiffs’ embryos.

10 134. The harm from Ovation’s unlawful, unfair, and fraudulent conduct was not reasonably
11 avoidable by Plaintiffs. Plaintiffs had no reasonable means of discovering the inadequacies of the
12 contaminated incubator and Ovation’s training and supervision of its staff.

13 135. As a direct and proximate result of Ovation’s unlawful, unfair, and fraudulent conduct,
14 Plaintiffs have lost invaluable property, their embryo, which is treated as property under California law.
15 Plaintiffs also lost money, including the money spent on their IVF treatment with Ovation and their
16 fertility doctor.

17 **SEVENTH CAUSE OF ACTION**

18 **Violation of California Consumer Legal Remedies Act (Cal. Civ. Code § 1750, et seq.)**

19 136. Plaintiffs incorporate the above and below allegations by reference.

20 137. Ovation is a “person” under Cal. Civ. Code § 1761(c).

21 138. Plaintiffs are “consumers” under Cal. Civ. Code § 1761(d).

22 139. Plaintiffs’ purchase of Defendants’ services constitute “transactions” under Cal. Civ.
23 Code § 1761(e).

24 140. Defendants’ services are “services” under Cal. Civ. Code § 1761 (a-b).

25 141. The CLRA proscribes “unfair methods of competition and unfair or deceptive acts or
26 practices undertaken by any person in a transaction intended to result or which results in the sale or
27 lease of goods or services to any consumer.” Cal. Civ. Code § 1770(a).

28 142. As alleged herein, Defendants have engaged in unfair or deceptive acts or practices in
violation of the CLRA, Cal. Civ. Code § 1750, et seq. by, among other things, representing that

1 Defendants' services have characteristics, uses, benefits, and qualities which they do not have;
2 representing that their services are of a particular standard, quality, and grade when they are not; and
3 advertising their services with the intent not to sell them as advertised. Cal Civ. Code § 1770 (5), (7),
4 and (9).

5 143. Defendants actively failed to disclose and concealed material facts about their services,
6 and otherwise engaged in activities with a tendency or capacity to deceive a substantial portion of the
7 purchasing public, as described herein.

8 144. Defendants could have readily disclosed the entire truth regarding its services to
9 Plaintiffs through various sources, including its website and marketing materials, and through
10 Plaintiffs' fertility doctors.

11 145. Defendants' CLRA violations materially affected the decisions of Plaintiffs. Plaintiffs
12 reasonably relied upon Defendant's material omissions and partial claims regarding the quality of their
13 services, and would not have purchased those services had they known the truth.

14 146. As a result of the CLRA violations described herein, Plaintiffs have suffered actual
15 damages.

16 147. Pursuant to Cal. Civ. Code § 1780, Plaintiffs seek recovery of attorney's fees and costs,
17 and injunctive relief for Defendants' violations of the CLRA.

18 148. Venue is proper under California Civil Code § 1780(d) because Ovation does business in
19 Orange County where a substantial portion of the acts and omissions at issue occurred. Plaintiffs'
20 CLRA venue declaration is attached as **Exhibit 1** to this complaint.

21 149. At this time, Plaintiffs only seek injunctive relief under the CLRA. On April 22, 2024,
22 Plaintiffs' counsel sent Defendants CLRA notice letters, which complies in all respects with California
23 Civil Code § 1782(a). A true and correct copy of the letter is attached hereto as **Exhibit 2**. Each letter
24 was sent via certified mail, return receipt requested, advising Defendant that it was in violation of the
25 CLRA and demanding that it cease and desist from such violations and make full restitution by
26 refunding the monies received therefrom. Plaintiffs reserve the right to amend their complaint to add a
27 claim for compensatory and punitive damages under the CLRA if Defendants fail to correct their
28 business practices or provide the requested relief within 30 days.

PRAYER FOR RELIEF

1 Wherefore, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- 2 a. Award Plaintiffs compensatory, restitutionary, rescissory, general, consequential,
3 punitive and/or exemplary damages in an amount to be determined at trial;
4 b. Award pre-judgment interest as permitted by law;
5 c. Enter appropriate equitable relief;
6 d. Award reasonable attorneys' fees and costs, as provided for by law; and
7 e. Such other and further relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 NOTICE IS HEREBY GIVEN that Plaintiffs herein demand trial by jury in the above-entitled
10 action.

11 Dated: April 22, 2024

Respectfully submitted,

12 /s/ Adam E. Polk

13 Dena C. Sharp (State Bar No. 245869)

14 Adam E. Polk (State Bar No. 273000)

15 Nina R. Gliozzo (State Bar No. 333569)

GIRARD SHARP LLP

601 California Street, Suite 1400

16 San Francisco, CA 94108

17 Telephone: (415) 981-4800

18 Facsimile: (415) 981-4846

dsharp@girardsharp.com

19 apolk@girardsharp.com

ngliozzo@girardsharp.com

20 *Attorneys for Plaintiffs*

EXHIBIT 1

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

L.N. and T.N., declare as follows:

1. We have personal knowledge of the facts stated herein and, if called upon to do so, could competently testify thereto.
2. We are the Plaintiffs in the above-captioned action.
3. We are residents of Orange County, California.
4. We submit this declaration in support of the Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*
5. The complaint has been filed in the proper place for trial under California Civil Code Section 1780(d).
6. Defendants FPG Services LLC, d/b/a Ovation Fertility, FPG Labs LLC d/b/a Ovation Fertility, and Newport Beach IVF, LLC, d/b/a Ovation Fertility Newport Beach conduct substantial business, including the acts and practices at issue in this action, within Orange County, and Newport Beach IVF, LLC, has its principle place of business in Orange County, California.
7. We purchased IVF laboratory services from Defendants in California.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge. Executed on April 22, 2024 in Huntington Beach, California.

/s/ L.N.

L.N

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge. Executed on April 22, 2024 in Huntington Beach, California.

/s/ T.N.

T.N.

EXHIBIT 2

GIRARD SHARP

April 22, 2024

VIA CERTIFIED MAIL

Ovation Fertility and Ovation Fertility Newport Beach

FPG Services LLC, d/b/a Ovation Fertility
15821 VENTURA BOULEVARD,
SUITE 625,
ENCINO, CA 91436

Newport Beach IVF, LLC, d/b/a
Ovation Fertility Newport Beach
15821 VENTURA BOULEVARD,
SUITE 625, ENCINO, CA 91436

FPG Labs LLC d/b/a Ovation Fertility
15821 VENTURA BOULEVARD,
SUITE 625,
ENCINO, CA 91436

**Re: Notice of Legal Violation:
Ovation Fertility Newport Beach Contaminated Incubator**

Girard Sharp LLP represents L.N. and T.N. (“Plaintiffs”), a married couple who purchased Ovation Fertility’s IVF laboratory services at its Newport Beach, California location. In January 2024, Plaintiffs engaged Ovation to perform an embryo thaw in advance of a planned frozen embryo transfer with their last remaining male embryo. The transfer was unsuccessful because Ovation staff caused an incubator to become contaminated, and placed Plaintiffs’ embryo in the contaminated incubator, damaging or destroying it.

Plaintiffs have now learned that Ovation’s representations regarding the quality of their laboratory services and staff are false and misleading. Generally, Ovation represents that it provides high quality of care in safeguarding patient’s eggs and embryos, such as statements that “Every Ovation professional adheres to strict industry regulations, and our Newport Beach IVF lab maintains the highest standards.” And specifically, Ovation agreed in its “Informed Consent to Perform Embryo Thaw and Assisted Hatching” to perform for Plaintiffs “Embryo warming, commonly referred to as thawing, [which] involves the removal of embryos from a liquid nitrogen storage tank and warming them *under conditions that are designed to retain viability of the embryos.*” Tragically, Plaintiffs’ embryo was warmed under conditions that destroyed its viability. Plaintiffs would not have purchased Ovation’s IVF laboratory services or experienced significant distress at the outcome had they known the truth of the unsafe conditions allowed to exist in Ovation’s lab. The incubator was contaminated for several days or weeks, affecting numerous patients receiving IVF laboratory services.

With this letter, Plaintiffs request that Ovation take prompt action to remedy this problem.

STATEMENT OF VIOLATIONS

Companies such as Ovation violate California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, when they engage in false, misleading, or deceptive practices in connection with transactions, including the sale of IVF laboratory services.

Ovation has violated the CLRA by:

- Representing that services have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have;
- Representing that services are of a particular standard, quality, or grade, if they are of another;
- Advertising services with intent not to sell them as advertised;
- Representing that services have been supplied in accordance with a previous representation when they have not.

If Ovation does not take prompt action, Plaintiffs intend to bring claims for monetary relief under the CLRA.

Please direct all communications or responses regarding this notice to the following counsel:

GIRARD SHARP LLP

Dena C. Sharp (SBN 245869)

Adam E. Polk (SBN 273000)

Nina R. Gliozzo (SBN 333569)

601 California Street, Suite 1400

San Francisco, CA 94108

Tel: (415) 981-4800

Email: dsharp@girardsharp.com

Email: apolk@girardsharp.com

Email: ngliozzo@girardsharp.com

REQUESTED REMEDIES

PLAINTIFFS DEMAND THAT WITHIN THIRTY DAYS after this notice is served on you, you remedy your violations by doing the following:

- A. Provide Plaintiffs payments to compensate their lost embryo, emotional distress caused by that loss, as well as any consequential costs; and reimbursement of the purchase price attributable to the purported quality of Ovation's IVF laboratory services.

Ovation Fertility Newport Beach

April 22, 2024

Page 3 of 3

- B. Pay into an escrow account an amount of money sufficient to pay Plaintiffs' attorneys' fees and costs.

Please contact us within thirty days to discuss Ovation's implementation of these remedies.

Sincerely,

GIRARD SHARP LLP



Adam E. Polk