The Plaintiff claims the right to serve this pleading on the Defendants, outside British Columbia on the grounds that the proceeding is founded on a tort committed in British Columbia.

NO. Court File No. VLC-S-S-240088
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ALEXANDRIA RICH and ARTHUR MUSHKA

PLAINTIFFS

AND:

THE COOPER COMPANIES, INC. and COOPERSURGICAL, INC.

DEFENDANTS

NOTICE OF CIVIL CLAIM

Brought pursuant to the *Class Proceedings Act,* R.S.B.C. 1996, c. 50

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

(a) if you reside in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The proposed representative Plaintiffs, Arthur Mushka, ("Mushka"), and Alexandria Rich, ("Rich"), are residents of British Columbia and for the purposes of this action have an address for delivery of #804 – 1708 Dolphin Ave, Kelowna, British Columbia, V1Y 9S4, (collectively the "Plaintiffs").

2. The Defendant, The Cooper Companies, Inc., ("Cooper Companies") is a global medical device corporation that distributes medical products, including, but not limited to, fertility products such as the embryo culture media ("Embryo Culture Media"). It is a Delware corporation with its principal place of business in San Ramon, California, USA. In this pleading, a reference to Cooper Companies includes its agents and employees.

3. The Defendant, Cooper Companies, has a lawful address for service at 6101 Bollinger Canyon Road, Suite 500, San Ramon, California, United States of America ("USA"), Zip Code 94583.

4. The Defendant, The CooperSurgical, Inc., ("CooperSurgical") is a wholly owned subsidiary of Cooper Companies. CooperSurgical manufactures medical products for women's healthcare and fertility markets. CooperSurgical distributes medical products, including, but not limited to, fertility products such as the Embryo Culture Media. It is a Delware corporation with its principal place of business in Trumbull, Connecticut, USA. In this pleading, a reference to CooperSurgical includes its agents and employees.

5. The Defendant, CooperSurgical, has a lawful address for service of 75 Corporate Drive, Trumbull, Connecticut, USA, Zip Code 06611.

Nature of the Claim

6. The Plaintiffs developing embryo(s) were destroyed by the Defendants defective Embryo Culture Media and negligent conduct.

7. The Defendants did not sufficiently test the Embryo Culture Media that they manufactured, distributed, and/or sold. As a result, they sold defective lots of Embryo Culture Media, which turned out to be toxic to human eggs, sperm, and embryos ("Toxic Embryo Culture Media").

8. The Defendants' manufacturing, distributing, and/or selling their Toxic Embryo Culture Media resulted in the death of Plaintiffs' developing embryo(s).

9. Only after Plaintiffs' embryo(s) died due to contamination from Defendants' Toxic Embryo Culture Media did the Defendants recall multiple lots of their Toxic Embryo Culture Media, including the lot that ruined Plaintiffs' embryo(s).

10. As a result of the Defendants negligent conduct, the Plaintiffs suffered injury and damages, including but not limited to:

(a) financial loss;

(b) physical;

(c) emotional suffering;

(d) psychological, including anxiety, depression, and PTSD; and

(e) such other injuries and damages to be advised prior to trial.

The Proposed Class

11. The Plaintiffs bring this action on their own behalf, and on behalf of a proposed class of individuals, consisting of:

> All residents of Canada who were patients undergoing an in vitro fertilization process and which utilized the Toxic Embryo Culture Media (the "Class" or the "Class Members").

Background of Assisted Reproductive Technology

12. Many people struggling with infertility opt to work with fertility clinics specializing in assisted reproductive technology ("ART"). ART describes fertility-related treatments in which human eggs, embryos, and/or sperm are manipulated to produce a pregnancy or

preserve a client's ability to produce a pregnancy later in life. The most common type of ART is in vitro fertilization ("IVF").

13. During the IVF process, a fertility doctor surgically extracts eggs from a woman. Scientists called embryologists fertilize those eggs in a laboratory with sperm to create a viable embryo. The embryo can either be cryopreserved for later use or used right away by transplanting it into a woman's uterus to begin a pregnancy.

14. Unlike sperm collection, the process of extracting human eggs is lengthy, invasive, and physically-taxing. It typically involves a woman giving herself or receiving one to several injections of medication per day for weeks, frequent ultrasound monitoring and other tests to monitor egg development, and finally a surgery to collect the eggs. This is an expensive process that comes with many possible physical side effects, some of them serious and long-term.

15. Following the collection of the eggs, sperm is mixed with the eggs in a laboratory to create embryos.

16. Human eggs are a limited and precious resource. Every woman is born with a specific and limited number of eggs that does not increase but rather decreases over the course of her lifetime.

The Importance of Embryo Culture Media in IVF

17. Embryo Culture Media plays a pivotal role in the IVF embryology laboratory, serving as the essential substance in which an egg is immersed, typically in a petri dish, when it is fertilized and during its initial development in the lab. Culture media is composed

of a salt solution with the addition of other components, such as carbohydrates (pyruvate, lactate, and glucose) and amino acids.

18. After egg retrieval, the embryologist fertilizes the eggs with sperm, and then the fertilized eggs are given five to seven days in the culture media to develop to the blastocyst stage.

19. Embryologists closely monitor the cell development during this time period to determine if the embryos are developing as intended and in line with expected timelines. The count begins on "Day 0," or the day the eggs (or oocytes) were fertilized with sperm. On Day 1, the embryologists assess the eggs to see which have successfully fertilized and become embryos. Between Day 1 and Day 3, the embryos begin cell division in the "cleavage stage." By Day 4, the embryos typically enter the "morula stage," characterized by a compacted mass of cells. By Day 5, the embryo re-expands to the blastocyst stage, in which the embryo shows two distinct groups of cells: a distinct inner cell mass and an outer globe of cells.

20. All embryo development is slightly different, and some embryos may develop later than others, but typically fertilized eggs that do not develop to blastocyst by the seventh day are not considered viable. The Embryo Culture Media in a petri dish supports and protects the developing embryos in these critical early stages, just as a woman's body would do during natural conception.

21. The resulting embryos can then either be cryo-preserved or transferred to the uterus where a baby can form.

The Defendants' Embryo Culture Media

22. The Defendants manufactured, distributed, and/or sold Embryo Culture Media for use as an essential medium in which fertility clinics can fertilize eggs and create the embryos that would be the future children of fertility clients like the Plaintiffs.

23. The Defendants knew or should have known, sterility and quality control are crucial to ensure that developing embryos in culture media are not harmed. Microbiological contamination may result in the demise of the patient's embryos and increases cost to both the patient and the clinics. Contamination can also cause DNA fragmentation, poor-quality embryos, early pregnancy loss, and/or preterm birth.

24. The Defendants knew or ought to have known that their Embryo Culture Media was not properly and/or adequately tested and/or inspected for contamination, and thus posed a severe risk of destruction to growing human embryos.

The Plaintiffs IVF Process

25. The Plaintiffs had attempted without success to conceive naturally. Concerned about their advancing age, the Plaintiffs decided to start the expensive and time-consuming process of IVF to fulfill their dream of having children.

26. The Plaintiffs were both tested by the fertility clinic and under the care of a clinic fertility doctor (collectively the "Clinic"). Outside of age, Rich did not have any identified fertility factors for consideration in natural conception. Mushka's sperm returned lower volume results, however with medication provided from the Clinic, the volume number results were increased to within normal levels prior to commencing the IVF process.

27. As part of the IVF process, Rich was required to take the fertility enhancing medication provided by the Clinic, including self-injections, and suffered with the health strain and side effects, including sickness.

28. On November 26, 2023, Rich's egg retrieval cycle was successful, resulting in two viable eggs for fertilization. The Clinic introduced the two eggs along with Mushka's sperm into the Embryo Culture Media for the purpose of fertilizing the eggs.

29. On November 27, 2023, the Clinic told the Plaintiffs that only one of the two eggs had fertilized successfully into an embryo.

30. On December 2, 2023, the Plaintiffs were told by the Clinic that the one embryo had continued developing but the quality did not look good. The Clinic said they would monitor for another day to see if it progressed.

31. On December 3, 2023, the Plaintiffs were told by the Clinic that the embryo did not survive.

32. On or about December 21, 2023, the Plaintiffs were told by the Clinic that the IVF Embryo Culture Media used in their IVF process was contaminated by deficient magnesium levels, which could impact the IVF process.

33. On or about January 2, 2024, the Plaintiffs received a letter from the Clinic advising them that, among other things, certain lots of Embryo Culture Media produced by CooperSurgical and supplied to the Clinic were contaminated with deficient magnesium levels and that the CooperSurgical had recently issued a recall notice.

Embryo Culture Media posed an Unreasonable Risk

34. The Defendants manufactured and sold numerous products used in ART, including media used in the IVF process, that were defective and sometimes subject to a recall.

35. The Defendants did not properly test the impacted lots of their Embryo Culture Media until after receiving formal complaints from numerous fertility clinicians that developing embryos were dying due to their product.

36. As a manufacturer and distributor of numerous ART products, including Embryo Culture Media, the Defendants knew that contaminated and/or toxic Embryo Culture Media could kill developing human embryos. Accordingly, The Defendants knew it was vitally important that their Embryo Culture Media was properly tested and/or inspected prior to the distribution of such Embryo Culture Media.

37. The Defendants failed to properly inspect and/or test their Embryo Culture Media, including the Toxic Embryo Culture Media. The Defendants knowingly put their Embryo Culture Media into the market when they knew or should have known that Toxic Embryo Culture Media posed a substantial and unacceptable risk to developing human embryos, including Plaintiffs' embryos.

38. As a manufacturer of numerous products for use in ART, The Defendants knew that people go to extraordinary lengths to obtain and use viable human embryos. Defendants also knew that people place extreme value on their viable embryos, make substantial emotional and financial investments for their embryos, and that such people

expect that great care will be taken to preserve and protect the embryos to avoid the irreparable harm of the death of their embryos.

Part 2: RELIEF SOUGHT

39. The Plaintiffs, on their own behalf and on behalf of the Class, claim against the Defendant as follows:

(a) an order pursuant to the *Class Proceedings Act,* RSBC 1996, c. 50 certifying this action as a class proceeding and appointing the Plaintiffs as the named representatives for the Class;

(b) a declaration that Defendants owed the Plaintiffs and Class Members a duty of care to take reasonable steps to ensure that the Embryo Culture Media, including the Toxic Embryo Culture Media, they designed, manufactured, inspected, and/or tested were not toxic or hazardous when used with developing human embryos and/or did not contain toxic or contaminated materials and a further declaration that Defendants breached this duty of care owed to the Plaintiffs and Class Members;

(c) a declaration that the Defendants committed the Tort of Negligence and are liable to the Plaintiffs and Class Members pursuant to the law of negligence;

(d) general damages for the Plaintiffs and the Class Members as a result of the negligence of the Defendants;

(e) special damages;

(f) an order pursuant to s. 29 of the *Class Proceedings Act,* RSBC 1996, c. 34, directing an aggregate assessment of damages;

(g) the costs of administering notice and distributing an aggregate damage award;

(h) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act,* RSBC 1996, c 79;

(i) costs; and

(j) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Tort of Negligence by the Defendants

40. The Defendants owed the Plaintiffs and every Class Member a duty of care to take reasonable steps to ensure that the Embryo Culture Media, including the Toxic Embryo Culture Media, they manufactured, inspected, monitored and/or tested were not toxic or hazardous when used for its intended purpose in IVF, ART, and embryology across Canada.

41. Further, the Defendants owed the Plaintiffs and every Class Member a duty of care to avoid destroying human embryos or jeopardize the viability of developing embryos as a result of a special relationship between the Plaintiffs, every Class Member, and the Defendants arising from the sensitive services the Defendants decided to perform: protect and preserve embryos during the IVF process through the creation of Embryo Culture Media.

42. The Defendants breached this duty of care owed to the Plaintiffs and Class Members and were negligent in the design, manufacture, inspection, and/or testing of their Embryo Culture Media, including the Toxic Embryo Culture Media, and thus produced an unsafe, dangerous, and defective Embryo Culture Media that guaranteed the failure of embryotic viability during the IVF process. Specifically, Defendants breached this duty by failing to safely produce and further ensure the safety of their defective Embryo Culture Media. Additionally, Defendants breached their duty by failing to timely recall the Toxic Embryo Culture Media.

Damages

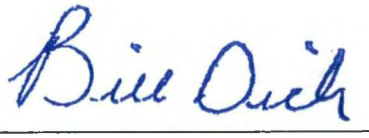
43. As a consequence of the negligence of the Defendants, Class Members, including the Plaintiffs – suffered injury and damages, including but not limited to financial loss, physical, emotional suffering, psychological harm, including anxiety, depression, and PTSD, and such other injuries and damages to be advised prior to trial.

Aggregate Damages

44. The damages sought by the Plaintiffs above can be calculated on an aggregate basis for the Class, as provided by s. 29 of the *Class Proceedings Act,* RSBC 1996, c. 50.

Plaintiff's address for service:	**Murphy Battista LLP** #804 – 1708 Dolphin Ave, Kelowna, B.C. V1Y 9S4
Fax number for service	866-475-5271
Place of trial:	Vancouver, British Columbia
The address of the registry is:	800 Smithe Street Vancouver, B.C. V6Z 2E1

Dated: January 10, 2024



WILLIAM S. DICK, K.C.
Lawyer for the Plaintiffs

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) Prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) service the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Defendants' manufacturing, distributing, and/or selling of their toxic Embryo Culture Media jeopardized and/or impacted the viability of developing embryos and/or caused the death of Plaintiffs' and every Class Members' developing embryo(s).

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:
- [ ] a motor vehicle accident
- [ ] medical malpractice
- [ ] another cause

A dispute concerning:
- [ ] contaminated sites
- [ ] construction defects
- [ ] real property (real estate)
- [ ] personal property
- [ ] the provision of goods or services or other general commercial matters
- [ ] investment losses
- [ ] the lending of money
- [ ] an employment relationship
- [ ] a will or other issues concerning the probate of an estate
- [x] a matter not listed here

Part 3: **THIS CLAIM INVOLVES**:

[x] a class action
[ ] maritime law
[ ] aboriginal law
[ ] constitutional law
[ ] conflict of laws
[ ] none of the above
[ ] do not know

Part 4:

1. *Class Proceeding Act,* RSBC 1996, c. 50;
2. *Negligence Act, RSBC 1996, c 333*