

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE MACLEOD

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WEDNESDAY, THE 28th

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").

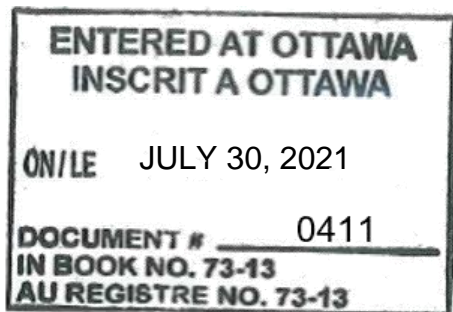
12. **THIS COURT ORDERS** that the Notices referred to in paragraphs 11 and 21 constitute good and sufficient notice of certification, the manner by which to opt out and the Approval Motions.

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.



*C. MacLeod R59*

SCHEDULE "A" to ORDER FOR CERTIFICATION FOR SETTLEMENT –  
"LONG FORM NOTICE"

**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.**

<b>You may:</b>		<b>Date/Deadline</b>
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 if you do not opt out. You can ask to speak in Court at the approval hearing about the proposed settlement	November 1, 2021

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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.

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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, 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.

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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.

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:

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Mother Class	up to \$40,000
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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
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.

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**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:

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<b><u>Mother 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>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.

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**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.

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**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 **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 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
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- 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
- 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.PLAHOLDER.com](http://www.PLAHOLDER.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:

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- 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
  - 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.

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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.shapiromunn@nelliganlaw.ca">frances.shapiromunn@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 “B” to the ORDER FOR CERTIFICATION FOR SETTLEMENT –  
“SHORT FORM NOTICE”

**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/Formal 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 “C” to ORDER FOR CERTIFICATION FOR SETTLEMENT –  
“DNA DATABASE DISCLOSURE AND CONSENT”**

**DNA DATABASE DISCLOSURE AND CONSENT AGREEMENT**

**RE: DR. BARWIN CLASS ACTION**

**I. BACKGROUND**

1. Dr. Norman Barwin performed artificial inseminations as a fertility doctor in Ottawa, Ontario between 1973 and 2012. He practiced at the Ottawa General Hospital and then at his own clinic, the Broadview Fertility Clinic.
2. In November 2016, the law firm of Nelligan O'Brien Payne LLP commenced a class action proceeding against Dr. Barwin in the Superior Court of Justice (Ottawa) being Court File 16-70454CP alleging various errors in his fertility practice. The allegations include the following scenarios:
  - a. Cases where individuals were to be conceived using their father's semen and who subsequently discovered they were not so conceived. They now do not know whose sperm was used at the time of their conception.
  - b. Cases where an individual was to be conceived using a specific anonymous donor or a specific known donor and subsequently discovered that that the donor sperm was not so used. They now do not know whose sperm was used at the time of their conception.
  - c. Cases in which a former patient provided semen to Dr. Barwin for a particular use or purpose and that semen was used to conceive a child or children for another patient.
3. As a result, the individuals conceived do not have accurate information about their medical and health history on the paternal side.

4. These individuals and/or their parental guardians are concerned that they have half-siblings whom they do not know. They are also concerned about the risk of consanguinity (related by blood) if they unknowingly were to meet and form a romantic relationship with a half-sibling.
5. The purpose of the DNA database is to facilitate DNA matching among class members and individuals who left semen with Dr. Barwin. The goal is to identify half-sibling and paternal biological relationships among participants in the DNA database.
6. Although some class members have successfully located half-siblings and their sperm donors through commercial DNA websites like 23andMe.com, Ancestry.ca, and FamilyTreeDNA.com, many others are concerned about the privacy implications of providing their DNA to a commercially operated company. The purpose of the DNA Database is to provide a mechanism for DNA matching among Class Members and former patients of Dr. Barwin in a private and controlled manner.

## **II. DEFINITIONS**

7. "**Offspring**" is a person who was born to a former patient of Dr. Barwin at the Broadview Fertility Clinic and/or the Ottawa Hospital and was conceived by way of assisted reproduction with Dr. Barwin's assistance or at another clinic with semen that had previously been stored with Dr. Barwin.
8. "**Assisted Reproduction**" means a method of conceiving other than by sexual intercourse.
9. "**Potential Progenitor**" includes any person whose semen was stored with Dr. Barwin at the Broadview Fertility Clinic and/or the Ottawa Hospital for the purposes of semen storage, artificial insemination, or anonymous or known sperm donation.
10. "**OrchidPro**" aka Orchid PRO-DNA is the DNA testing company that will collect DNA samples from participants in the DNA Database and operate the DNA Database.

11. "**DNA Database**" is a database that will be set up and operated by Orchid PRO-DNA for the purposes of identifying biological connections among former patients of Dr. Barwin, their offspring, and anonymous sperm donors.
12. "**Participant**" includes:
  - a. an individual who is 18 years of age or older who chooses to participate in the DNA Database;
  - b. an individual who is 18 years of age or older who lacks capacity to consent to participate in the DNA Database and whose Guardian for Personal Care consents to their participation in the DNA Database on their behalf; and
  - c. an individual who is under the age of 18 years, whose parents or legal guardians consents for the minor child to participate in the DNA Database.
13. "**Biological match**" means any DNA connection between two or more participants in the DNA Database including biological paternity matches and biological half-sibling matches.
14. "**Nelligan O'Brien Payne LLP**" is the law firm representing the plaintiff class members in the class action against Dr. Barwin.
15. "**Inconclusive DNA match**" means that a biological relationship cannot be confirmed or ruled out based on initial DNA testing.
16. "**Consanguinity**" means "blood relation" i.e. being from the same ancestral line as another individual. Consanguineous marriages and/or consanguineous sexual relationships can increase the risk of genetic diseases being passed down to the offspring.

### **III. LEGAL CONSIDERATIONS**

17. The purpose of the class action is to allow former patients of Dr. Barwin and their offspring to advance claims for compensation for alleged errors arising out of artificial insemination

performed by him at the Ottawa Hospital and the Broadview Fertility Clinic or performed by others using semen which had been entrusted to him by the patients.

18. In order to help resolve some of the alleged errors summarized above, class members will have the opportunity to **voluntarily participate** in this DNA Database.
19. **Purpose of the DNA Database:** The DNA Database is an opportunity to provide class members with information about their medical history and an opportunity to find out the identity of any of their potential children, progenitor and/or half-siblings.
20. **Legal Obligations:** The DNA Database cannot be used to create obligations under the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, the *Family Law Act*, R.S.O. 1990, c. F.3, the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, the *Health Care Consent Act*, S.O. 1996, c. 2, the *Substitute Decisions Act*, S.O. 1992, C.30, the common law, or any other applicable statute or legislation in your jurisdiction of residence. **By joining the DNA Database, you waive any legal rights or obligations that may arise as a result of any biological connection you may discover through the DNA Database.**
21. **Child Support:** Without limiting the foregoing, as a condition of participating, you specifically release and waive any right to claim child support (past, present, and future) from any progenitor you or your minor child may match with in the DNA Database.
22. **Parenting (Decision-Making, Parenting Time, Contact):** Without limiting the foregoing, you specifically waive the right to seek any decision-making authority (formerly known as "custody"), parenting time (formerly known as "access"), or contact with or in relation to any minor children with whom you share a biological match in the DNA database.
23. **By signing this agreement, the participants waive any rights or obligations to each other that may arise as a result of a biological connection made through the DNA Database.**

**You specifically waive any and all rights you or your minor child may have to seek or claim financial support from any other participant.**

24. **Best Interests of the Child:** Notwithstanding anything in this agreement, Canadian courts are not obligated to follow contractual arrangements when it comes to issues of child support, decision-making authority (formerly known as “custody”), parenting time (formerly known as “access”), or contact with or in relation to any minor children. The court will determine these issues based on the best interests of the child. **We therefore cannot guarantee that there will be no legal obligations flowing from a progenitor/offspring match in the DNA Database. However, courts will respect contractual arrangements wherever possible.**

25. The best interests of any child is not a fixed or final analysis and will remain fluid. Your risks with respect to child support, decision-making authority, parenting time, and contact with or in relation to any minor children, may change once relationships are established, particularly if you take on a role similar to that of a parent to a child. **If you form connections and relationships as a result of this DNA Database (beyond the exchange of medical information), you do so with the knowledge that this could create binding legal obligations *Family Law Act* in the future, such as child support obligations under the *Family Law Act* or dependent support obligations under the *Succession Law Reform Act* (as examples).**

#### **IV. CONSENT & WAIVER**

26. **Consent:** By signing this Agreement, you are consenting to OrchidPro using the data in its possession in regard to your DNA (or that of any infant or person under a disability on whose behalf you are signing this Agreement) in the DNA database for the purpose of making comparisons to the DNA of all other participants in the DNA database.

27. **Waiver:** By signing this Agreement, you are agreeing to waive any and all claims against OrchidPro in respect to the use of your DNA (or that of any infant or person under a disability on whose behalf you are signing this Agreement) in the DNA database and any matches which may be disclosed through it.

## **V. PRIVACY AND DISCLOSURE OF INFORMATION**

28. **Consent to share identifying information:** As a condition of participating in the DNA Database, you must **consent** to providing your **name** and **email address** to a biological match. Participants are required to:
- a. Provide Nelligan O'Brien Payne with an email address that Nelligan O'Brien Payne may forward to your biological matches; and
  - b. Update Nelligan O'Brien Payne of any changes in your email address in order to ensure that our records remain up to date and accurate.
29. **DNA Match:** Following a match, OrchidPro will notify Nelligan O'Brien Payne and in turn, Nelligan O'Brien Payne will then advise the affected parties that there has been a match and the nature of the match. **Nelligan O'Brien Payne will exchange the names and emails of the individuals who match each other.**
30. **Confidentiality:** By participating in the DNA Database, and in consideration of the other participants, you **agree that you will not publish this agreement or the identity of any of your biological matches to any public forum such as newspapers, magazines, internet blogs, television, radio, Facebook or other social networking site.** You agree to be respectful in all of your correspondences and communications with any of your matches and to respect the privacy, confidentiality, and boundaries of any individuals against whom you match.
31. **Exception to Joint Retainer Disclosure:** In a joint retainer, the law firm is unable to keep information confidential from one client that may impact another client. **You acknowledge that by participating in this DNA Database that you are agreeing to an exception to the Joint Retainer Disclosure rules.** You agree that Nelligan O'Brien Payne cannot provide you with any information about any of your biological matches other than their names and email addresses.
32. **Independent Legal Advice:** Nelligan O'Brien Payne is unable to provide you with any legal advice in relation to this agreement or a biological match arising out of the DNA Database.

In executing this agreement, you acknowledge that you have been advised to seek independent legal advice about this agreement or a biological match arising out of the DNA Database.

33. **Jurisdiction:** This agreement is governed by the laws of the Province of Ontario. In executing this agreement, you acknowledge and agree that this agreement will be interpreted under the laws of the Province of Ontario. Nelligan O'Brien Payne is unable to provide you with any legal advice regarding the laws of jurisdictions outside of the Province of Ontario. If you reside outside of Ontario, you acknowledge and understand that Nelligan O'Brien Payne is unable to advise you as to your rights, obligations and risks under the laws of any other jurisdiction. In executing this agreement, you acknowledge that you have been advised to seek independent legal advice in your jurisdiction of residence.

34. Delivery of a signed Agreement by e-mail or fax or other electronic means to Nelligan O'Brien Payne will be sufficient and an electronic copy will have the same effect as an original executed Agreement.

### **Potential Progenitors**

35. In order to participate in the DNA Database, you must consent to this Disclosure Agreement and consent to the release of your name and email to an Offspring and/or the Offspring's parents (in the case of a minor child) following a match.

36. **Medical and Health History Form:** In order to provide participants with answers as to their missing medical history, you may consider completing the Medical and Health History Form attached as Schedule "A." You do not need to complete this form as a condition of participating in the DNA Database. However, many of the offspring participating in the DNA Database will appreciate having this information or similar information from you about their medical history following a match. If you do complete the Medical and Health History Form, Nelligan O'Brien Payne will provide a copy of it to the Offspring or the Offspring's parents in the event of a biological match.



**Offspring**

37. In order to participate in the DNA Database, you must consent to this Disclosure Agreement and consent to the release of your name and email to a half-sibling or progenitor match.

38. **Inconclusive matches:** Where a match is “inconclusive,” Nelligan O’Brien Payne will advise the affected parties of the inconclusive match. The parties will have the option of engaging in further DNA testing in order to resolve the inconsistency. **Both parties must consent to further testing.** Nelligan O’Brien Payne will not disclose the parties’ names and identities until a confirmed DNA match is established.

**VI. END OF DATABASE**

39. Your DNA will remain in the DNA database until: (a) you provide notice in writing that you no longer wish to participate in the DNA Database and that your DNA sample should be removed within 14 business days; or (b) the DNA Database ceases to operate. In either of these cases, OrchidPro will permanently delete the digital copy of your DNA. You may provide written consent for OrchidPro to retain a digital copy of your DNA. In the event that you request OrchidPro to retain a copy of your DNA, OrchidPro will not conduct any further DNA testing without your explicit authorization to do so.

**VII. CONSENT TO PARTICIPATE**

I have read the terms of this agreement and consent to participate based on the conditions set out above.

**Date:**

**Print Name [Participating Party]:**

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**Signature of Participant (or Parent/Guardian):    Witness:**

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**Email address to be provided to a biological match:**

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SCHEDULE “D” to ORDER FOR CERTIFICATION FOR SETTLEMENT-  
“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.

<b>Check all boxes that apply</b>	In most cases, individuals will fall into only <b>one</b> class.  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.
<input type="checkbox"/>	<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.
<input type="checkbox"/>	<b>Spouse/Partner/Former Patient Class:</b>  (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

<input type="checkbox"/>	(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.
<input type="checkbox"/>	<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.

**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>	

<p><b>Name - Parent 2</b></p> <p><i>Complete if one or more of your parents were patients of Barwin</i></p>		<p><b>Parent 2</b></p> <p><b>DOB</b></p>	
<p><b>Name - Partner/Spouse</b></p> <p><i>Complete if you saw Dr. Barwin with a partner or spouse</i></p>		<p><b>Partner/Spouse</b></p> <p><b>DOB</b></p>	
<p><b>Name - Child/Children conceived</b></p> <p><i>Complete if you or your spouse conceived and gave birth to one or more children with Dr. Barwin's assistance</i></p>		<p><b>Child/Children</b></p> <p><b>DOB</b></p>	
<p><b>Dates of Treatment with Dr. Barwin</b></p> <p><i>Dates you, your parent, or your spouse/partner saw Dr. Barwin</i></p>		<p><b>Dates of Artificial Insemination</b></p> <p><i>Dates you, your parent or your spouse/partner received artificial insemination (AI) from Dr. Barwin</i></p>	
<p><b>Instructions and Consent given to Dr. Barwin</b></p> <p><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></p>			

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**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.

<b>Check one box only</b>	
<input type="checkbox"/>	<p>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>
<input type="checkbox"/>	<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> <hr/> <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> <hr/> <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</p>

	<p>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"/>	<p>I have attached a copy of my notarized government issued photo identification.</p>
<input type="checkbox"/>	<p>I have attached a copy of my Orchid Pro Legal Chain of Custody DNA test.</p>
<p><b>OR</b></p>	<p>I have <u>not</u> attached a copy of my DNA test because:</p>



	<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.
<hr/> <b>Name of Class Member Opting Out</b>	<hr/> <b>Signature of Class Member Opting Out</b> <i>(or name and signature of Legal Guardian Opting Out on Class Member's behalf)</i>
<b>DATE</b>	

**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” to ORDER FOR CERTIFICATION FOR SETTLEMENT-  
“NOTICE PLAN”



***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.



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.

## 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.

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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