



Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE MACLEOD

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MONDAY THE 1st

DAY OF NOVEMBER 2021

B E T W E E N :

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

Plaintiffs

- and -

DR. NORMAN BARWIN

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION for settlement approval brought by the Plaintiffs was heard on November 1, 2021 at 2:00 p.m.

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

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

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

AND UPON READING the motion record of the plaintiffs;

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

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

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

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

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

- (i) **"Approval Date"** means the date that this Order is approved;
- (ii) **"Class"** or **"Class Members"** means a natural person who falls into one of the following classes:

Mother 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:

- 1. 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
- 2. 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.

Child Class:

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

- (iii) **"Implementation Date"** means the latest date following the last day on which a Class Member may appeal or seek leave to appeal either of this Order or the date of a final determination of any appeal brought in relation to this Order;
- (iv) **"Releasees"** means individually and collectively, the Defendant, Dr. Norman Barwin, his heirs, executors, administrators, current or former employees, agents, servants, representatives, successors, assignees, advisors, the Canadian Medical Protective Association and its assigns, insurers and related entities and the lawyers for the Defendant and the Canadian Medical Protective Association and as further particularized in the Settlement Agreement;
- (v) **"Releasers"** mean, jointly and severally, individually and collectively, the Plaintiffs, the Class Members, and their respective heirs, executors, trustees, administrators, assigns, attorneys, representatives, partners and insurers (including Ontario Health Insurance Plan and any other health care or disability insurers of the Class Members) and their predecessors, successors, heirs, executors, trustees, administrators and assignees, but, for greater certainty, excludes Opt-Out Parties and as further particularized in the Settlement Agreement;
- (vi) **"Released Claims"** means all claims made or that could have been made with respect to the subject matter of the amended statement of claim herein and as further particularized in the Definitions set out in the Settlement Agreement herein;
- (vii) **"Settlement Agreement"** means the Settlement Agreement dated July 23, 2021, attached as **Schedule "A"** to this Order; and
- (viii) **"Settlement Fund"** means the \$13.375 million the Defendant has agreed to pay in full settlement of this Action inclusive of claims, counsel fee, disbursements, administration costs, notice plan costs, and all applicable taxes.

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

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

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

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

6. **THIS COURT ORDERS** that the Releasees are hereby released from all Released Claims by the Releasors in accordance with sections 14.1 and 14.2 of the Settlement Agreement

7. **THIS COURT ORDERS** that this Order, including the releases referred to in paragraph 6 above, and the Settlement Agreement are binding upon all Class Members, including those persons who are minors or under a disability in accordance with Rule 7.08 of the *Rules of Civil Procedure*.

8. **THIS COURT ORDERS** that any compensation owing to persons who are minors will be paid into Court unless otherwise directed.

9. **THIS COURT ORDERS** that any compensation owing to a person under a disability will be paid to that person's Power of Attorney for Property.

10. **THIS COURT ORDERS** that the requirements of Rule 7.04 of the *Rules of Civil Procedure* are dispensed with in respect of this action.

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

12. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Administrator, the adjudicators, or any employees, agents, partners, associates,

representatives, successors or assigns, for any matter in any way relating to the Settlement Agreement, the administration of the Settlement Agreement or the implementation of this judgment, except with leave of this Court on notice to all affected parties.

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

14. **THIS COURT ORDERS** that the Notice Plan provided for in paragraph 13 above satisfies the requirements of the *Class Proceedings Act, 1992* and this Court, and is the best notice practicable under the circumstances.

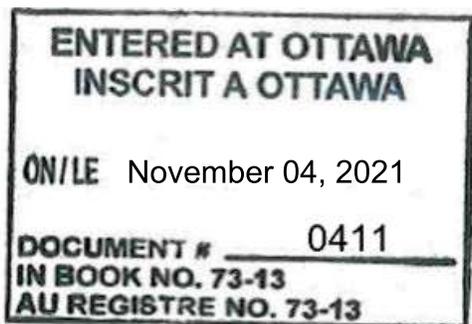
15. **THIS COURT ORDERS** that this Court may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this Order.

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

17. **FURTHER TO THE ORDER OF JULY 28, 2021**, and the approval of the Orchid Pro agreement attached therein, an order approving the updated amended Consent and Waiver Agreement for participation in the DNA Database attached here **as Schedule "D"**;

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

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



C. MacLeod R5Q

DAVINA DIXON, et al.
Plaintiffs

DR. NORMAN BARWIN
Defendant

and

Court File No.: 16-70454CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **OTTAWA**

ORDER

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