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San Francisco County Superior Court

APR 27 2018

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Deputy Clerk

1 Elizabeth J. Cabraser (State Bar No. 083151)  
ecabraser@lchb.com  
2 Lexi J. Hazam (State Bar No. 224457)  
lhazam@lchb.com  
3 Sarah R. London (State Bar No. 267083)  
slondon@lchb.com  
4 Tiseme G. Zegeye (State Bar No. 319927)  
tzegeye@lchb.com  
5 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
6 San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
7 Facsimile: 415.956.1008

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9 Attorneys for Plaintiff G.H.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

11

COUNTY OF SAN FRANCISCO

CGC-18-200130

12

13

G.H.,

Case No. \_\_\_\_\_

14

Plaintiff,

**COMPLAINT**

15

v.

1. Negligence and/or Gross Negligence;
2. Negligent Infliction of Emotional Distress;
3. Breach of Contract;
4. Conversion;
5. Bailment;
6. Violation of the Unfair Competition Law,  
Cal. Bus. & Prof. Code § 17200 *et seq.*; and
7. Premises Liability.

16

PACIFIC FERTILITY CENTER,  
PRELUDE FERTILITY, INC., and DOES  
17 1-100,

18

Defendants.

**DEMAND FOR JURY TRIAL**

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CC FAX  
1-415-398-1111

1 Plaintiff G.H. (“Plaintiff”) files this action against Defendants Pacific Fertility Center  
2 (“Pacific Fertility Center”), Prelude Fertility, Inc. (“Prelude”), and Does 1-100 (collectively,  
3 “Defendants”) and alleges as follows.

#### 4 **INTRODUCTION**

5 1. Plaintiff brings this action alleging irreparable harm and seeking relief from  
6 Defendants’ failure to preserve and safeguard her frozen eggs.

7 2. In early 2013, at age 42, Plaintiff entrusted Defendants with safeguarding her  
8 frozen eggs to preserve her ability to have a child when the time was right. On March 4, 2018,  
9 Defendants became aware that the temperature was too high in a storage tank containing all 25 of  
10 Plaintiff’s frozen eggs. It was not until March 16, 2018, that Plaintiff received a phone call from  
11 her doctor, who told her that PFC had an equipment failure. Her doctor said that somebody  
12 passing by noticed that the nitrogen oxide in a storage tank, known as “Tank 4”, was low. He  
13 told her that all of her frozen eggs were “more than likely damaged,” and that he would leave her  
14 “to process” the information.

15 3. As a result of Defendants’ misconduct, Plaintiff, now 47, is irreparably damaged  
16 and devastated, as she believes she has lost her ability to have biological children. Any further  
17 fertility treatments at this point would be far too costly, risky, and burdensome on body.

18 4. Plaintiff seeks all damages, equitable relief, and remedies available under the law.

#### 19 **PARTIES**

20 5. At all relevant times, Plaintiff G.H. was a citizen and resident of San Francisco  
21 County, California. Plaintiff G.H. is using initials (not hers) in this litigation to protect her  
22 privacy, and if required by the Court, will seek permission to proceed under this pseudonym.

23 6. Defendant Pacific Fertility Center is a private unincorporated entity located at  
24 55 Francisco Street, Suite 500, San Francisco, California 94133.

25 7. At all relevant times, Defendant Prelude Fertility, Inc. was a privately-held  
26 Delaware corporation headquartered in Florida.

27 8. On information and belief, Prelude has owned and operated Pacific Fertility Center  
28 since September 2017.



1 its website to contact PFC.

2 18. Along with Pacific Fertility Center, the “Prelude Network” includes Reproductive  
3 Biology Associates of Atlanta, My Egg Bank North America, and the Vivere Health clinics.

4 19. Prelude markets and provides their “Prelude Method,” a four-step process that  
5 includes egg and sperm freezing, genetic testing, embryo creation, and single-embryo transfer.

6 20. Prelude represents that its egg and embryo freezing and storage services are safe:  
7 “Eggs can be safely stored for as long as you need them. There is no current evidence that  
8 suggests they deteriorate with time, so you can take as long as you need to prepare for your future  
9 family”<sup>1</sup> and “Set it and forget it until you’re ready. When you are ready to start your family,  
10 frozen eggs are thawed and combined with sperm to create embryos.”<sup>2</sup>

11 21. Prelude directs those who visit its website to Pacific Fertility Center for egg and  
12 embryo freezing services, specifying that it is the “[l]eading provider of egg freezing services in  
13 the Bay Area.”<sup>3</sup>

14 **B. Pacific Fertility Center**

15 22. Pacific Fertility Center is a San-Francisco-based fertility clinic founded in 1999  
16 and acquired by Prelude in September 2017.

17 23. Pacific Fertility Center states that “Fertility is a precious resource, limited to just a  
18 few years of your life” and claims “Egg freezing, however, allows you to save some of your  
19 youthful fertility resources for later use. This risk-reduction strategy can increase your chances of  
20 conception by 5 to 10 times.”<sup>4</sup>

21 24. Pacific Fertility Center preserves retrieved eggs through a rapid freezing process  
22 called “vitrification.” Pacific Fertility Center’s first cycle of egg freezing, retrieval, and storage  
23 for a year costs \$8,345. Subsequent cycles cost \$6,995 each. The new patient consultation costs  
24 \$375, egg retrieval medications range from \$2,000 to \$6,000, lab work requires additional fees,  
25 and tissue storage costs \$600 per year.

26 <sup>1</sup> <https://preludefertility.com/faq>.

27 <sup>2</sup> <https://preludefertility.com/faq>.

28 <sup>3</sup> <https://preludefertility.com/clinics>.

<sup>4</sup> <https://www.pacificfertilitycenter.com/fertility-preservation/my-eggs#assessment>.

1           25. Pacific Fertility Center represents that its egg and embryo freezing and storage  
2 services are successful: “At Pacific Fertility Center, the egg recovery rate after vitrification and  
3 later thawing is 83 percent, and fertilization rate is 84 percent”<sup>5</sup>, and its use of vitrification  
4 “successfully protects the embryos from damage and allows them to be warmed later giving  
5 survival rates consistently above 90%.”<sup>6</sup>

6           26. Pacific Fertility Center represents that its egg and embryo freezing and storage  
7 services are safe: “there is no limit to how long cells remain viable in the frozen state. We have  
8 had some patients return to thaw embryos after more than 10 years and the embryos were no  
9 different than when they were frozen. The temperature of liquid nitrogen is so cold that scientists  
10 think that all biological activity is stopped and that there are no issues with very long term  
11 storage.”<sup>7</sup>

12           27. “Emotional health” and “well being” are central to PFC’s care, and PFC  
13 undertakes a “whole patient approach”:

14           We are dedicated to a whole patient approach. We recognize that fertility treatment  
15 may impact all corners of our patient’s lives, including work, personal  
16 relationships and financial concerns. When designing their treatment course, our  
17 physicians, nurses and counselors work with them to accommodate all of these  
18 considerations.

19           Our support is integrated. Emotional health and well being are central to our  
20 patient’s care. Our clinic’s services include acupuncture and an array of  
21 Mind/Body and stress reduction workshops, seminars and support groups. Our in-  
22 house family therapist is available to any patient and will also gladly provide  
23 referrals to other qualified professionals. Our genetics counselor consultant can  
24 help our patients understand their genetic history and how this may factor into  
25 their treatment options.<sup>8</sup>

26           Further, PFC undertakes to address clients’ “emotional and even spiritual needs” as part of their  
27 journey through the “emotional ups and downs” of infertility:

28           At PFC, we know that the physical demands and emotional ups and downs of  
infertility experience can impact life at home, at work and with family. This is a  
path that one likely did not anticipate and, while there is much reason for hope, the  
treatment process can also be emotionally trying. The well being of our patients is  
a crucial aspect of fertility treatment, and we encourage our patients to take

<sup>5</sup> <https://www.pacificfertilitycenter.com/fertility-preservation/my-eggs#success>.

<sup>6</sup> <https://www.pacificfertilitycenter.com/treatment-care/vitrification>.

<sup>7</sup> <https://www.pacificfertilitycenter.com/treatment-care/sperm-and-embryo-freezing>.

<sup>8</sup> <https://www.pacificfertilitycenter.com/treatment-care/fertility-treatment-and-care>.

1 advantage of the many resources we have developed to address the emotional and  
2 even spiritual needs they may have as a part of their journey.

3 PFC's extensive support system includes a devoted patient care team, experienced  
4 clinical coordinators and educators and an in-house marriage and family therapist  
5 who has long specialized in fertility and third party parenting issues. Each of our  
6 physicians has his or her own team that will then work with each patient. We do  
7 try to get to know our own patients as much as possible in the (hopefully short)  
8 time they are working with us in their attempts to conceive. We all feel grateful to  
9 work in a rewarding field that allows us to help our patients build their families  
10 and have a positive impact on the lives of so many people.<sup>9</sup>

11 28. Acknowledging the stress and challenges faced by those undergoing IVF, PFC  
12 promises to be "by their side every step of the way":

13 A diagnosis of infertility can feel overwhelming and stressful for individuals and  
14 couples who always assumed that pregnancy would come easily. At Pacific  
15 Fertility Center, we see infertility as a workable challenge.

16 It is our commitment to address our patient's unique set of circumstances, medical  
17 as well as non-medical. Our physicians, counselors and staff consider patient care  
18 a team effort involving superior medical treatment and ground-breaking  
19 technology in an environment that emphasizes a compassionate, whole patient  
20 approach.

21 We feel strongly that the physical well being is tied to emotional well being, and  
22 we take into account all of the challenges patients may be facing. Diagnosis,  
23 treatment and the inevitable 'waiting game' as well as financial stress all may  
24 impact our patients and those closest to them. We are by their side every step of  
25 the way to help address each and all of these needs.<sup>10</sup>

### 26 **C. Plaintiff Entrusted Pacific Fertility Center with Genetic Material**

#### 27 **1. Plaintiff G.H.**

28 29. In 2012, at age 42, Plaintiff G.H. contracted with Defendants to have her eggs  
preserved for future reproductive use. Based on information provided by PFC regarding IVF  
success rates at her age, as well as her favorable fertility medical profile, she underwent one  
retrieval cycle, resulting in 25 eggs. She later learned that all 25 of her frozen eggs were stored in  
Tank 4.

30. Plaintiff G.H. incurred significant costs in the retrieval and egg storage, in excess  
of \$30,000. The process was time-consuming, physically burdensome, and emotionally  
challenging. She experienced side effects from the medication and surgery, requiring additional

<sup>9</sup> <https://www.pacificfertilitycenter.com/treatment-care/patient-support>.

<sup>10</sup> <https://www.pacificfertilitycenter.com/the-center/infertility-center>.

1 time off work. But ultimately, she believed that the process was worth it, because, as PFC stated  
2 in its marketing, she could rest easier knowing that she had taken measures toward her goal of  
3 having children when the time was right.

4 31. Plaintiff G.H. has regularly and timely paid the fees for continued cryopreservation  
5 and storage of the eggs.

6 32. PFC's conduct not only frustrated G.H.'s reproductive plans, but also her wishes  
7 for what should be done with the remaining frozen eggs entrusted to their care. Plaintiff G.H.  
8 instructed PFC to donate any remaining frozen eggs to her sister for reproductive purposes,  
9 should G.H. die or choose to discontinue treatment, or to donate them for research, if G.H. could  
10 no longer pay the storage fee.

11 33. At all relevant times thereafter, Plaintiff's eggs were under Defendants' protection,  
12 custody, and control. Defendants kept Plaintiff's eggs frozen within a steel storage tank  
13 containing liquid nitrogen at their San Francisco laboratory facility on Francisco Street.

14 34. Thousands of frozen eggs and embryos belonging to more than 400 patients were  
15 stored in the same tank.

16 35. On information and belief, PFC does not have a policy or practice to place  
17 patient's eggs or embryos in different tanks to ensure that at least some tissue would be safe in the  
18 event that one tank fails.

19 36. In other words, it appears that for a given IVF round, PFC stores all of a patient's  
20 eggs in the same proverbial basket. That was indeed the case for G.H.

21 **D. Defendants' Storage Tank Four Fails**

22 37. Pacific Fertility Center stores eggs and embryos in cryogenic tanks. These tanks  
23 consist of metal welded into an inner and outer tank to create a vacuum seal. Liquid nitrogen  
24 added to the tank maintains the low temperatures that keep eggs and embryos frozen.

25 38. On March 4, 2018, Pacific Fertility Center discovered a problem with the liquid  
26 nitrogen in one of its cryogenic storage tanks, Tank 4. After finding the problem during a routine  
27 check, a senior embryologist refilled the tank and then later transferred the contents to another  
28 tank.

1           39.     It is not known how long the nitrogen level had dropped to unsafe levels in Tank 4  
2 before the problem was discovered.

3           40.     Pacific Fertility Center did not attempt to notify patients until March 11, 2018 at  
4 4:00 am, when it acknowledged in a boilerplate email that the storage tank failure may have  
5 damaged thousands of frozen eggs and embryos, affecting more than 400 families.

6           41.     Plaintiff G.H., however, did not receive any emails from PFC regarding the tank  
7 failure. She understands that PFC has her correct email, as PFC has emailed her with billing  
8 questions.

9           42.     On March 16, 2018, Plaintiff G.H. learned for the first time that all 25 of her eggs  
10 were impacted by the failure in Tank 4. She was told that her eggs were “more than likely  
11 damaged”, but PFC could not know for certain whether any of the eggs were viable until they  
12 were thawed and fertilized. She was told that once an egg was thawed and fertilized, she would  
13 have to also be prepared to go through with an IVF transfer at that that time. Thus, to determine  
14 whether her eggs remained viable despite having been exposed to unsafe conditions, she would  
15 have to actually go ahead and find a sperm donor, fertilize the eggs, and then try to get pregnant  
16 with those eggs or hire a surrogate to do so—untenable options that would entail significant risk  
17 and cost, considerable emotional, ethical and moral implications, and likely heartache.

18           43.     PFC has since claimed to have “successfully thawed a limited number of eggs. It  
19 will take more time to know ultimate outcomes, but these results are encouraging and confirm  
20 that there is viable tissue from the tank.” No further information has been provided.

21           44.     PFC has not definitively stated what caused the failure in Tank 4.

22           45.     According to PFC, “[p]reliminary findings indicate that [the incident] likely  
23 involved a failure of the tank’s vacuum seal.”

24           46.     On information and belief, there was a crack in Tank 4 that allowed nitrogen to  
25 escape.

26           47.     On information and belief, an alarm system failed.

27           48.     On information and belief, a back-up generator failed.

28           49.     It is not yet known exactly what caused the vacuum seal/tank malfunction, why



1 there was no alarm to alert PFC staff, why there was no backup system, such as an autofill  
2 function or additional generator, nor why the problem went undiscovered until someone passed  
3 through the lab with a clipboard during a routine check.

4 50. PFC has brought in a third party for a full investigation.

5 51. Whatever the cause, Defendants grossly failed to have the appropriate systems in  
6 place to avoid this catastrophic failure.

7 52. On April 19, 2018, more than a month after the incident, PFC reported that  
8 “additional steps have been taken to make sure everything is done to provide the safest storage  
9 facility possible. These steps include re-inspection of onsite storage tanks, the purchase of several  
10 emergency tanks beyond our standard back-up tanks, and an extra layer of redundancy in our  
11 warning systems.”

12 53. Defendants’ mishandling of Plaintiff’s eggs has caused irreparable harm and  
13 devastation. Not only is retrieving and freezing eggs an expensive, time-consuming, physically  
14 burdensome and often painful process that typically requires time away from work, and can cost  
15 approximately \$30,000 or more, plus hundreds of dollars in annual storage fees and  
16 recommended ancillary treatments (such as medication, acupuncture, and visits to nurses to  
17 administer hormone shots, and therapy), the value and importance of the eggs that Plaintiff  
18 entrusted to Defendants’ care, and for which Defendants accepted all legal responsibility to store,  
19 preserve, and protect, is extraordinary. For Plaintiff, the eggs in Tank 4 likely were the last and  
20 only chance to have a biological child. At 47, she understands that she is not a candidate for  
21 further retrievals, as the process would be too risky and too burdensome on her body.

22 54. Even if Plaintiff were to undergo additional retrievals, she would face a  
23 substantially lower chance that any eggs retrieved at this point will lead to a successful  
24 pregnancy, as the age at which eggs are retrieved is the most significant factor in determining  
25 success rates.

26 55. Defendants’ misconduct has left Plaintiff hopeless, as it seems that all of her  
27 reproductive options are gone, and deprived of the very thing she had sought from PFC—the  
28 ability to consider her reproductive options when the time was right.

1 56. IVF requires those undergoing treatment to rely heavily on friends and significant  
2 others for support, including coping with stress and providing rides to and from services.<sup>11</sup>

3 57. PFC well understands how overwhelming its services can be. According to its  
4 website, “the time and energy that is needed, both physically and emotionally can drain even the  
5 staunchest crusader.”<sup>12</sup>

6 58. Nevertheless, after the incident, PFC did not offer any additional support services  
7 or counseling, even though they have a counselor on staff. PFC’s failure to offer compassionate  
8 support services and to communicate clearly and consistently with Plaintiff has caused further  
9 confusion, pain and distrust.

10 59. The conduct alleged against Defendants in this complaint was despicable and  
11 subjected Plaintiff to cruel and unjust hardship in conscious disregard of her rights, constituting  
12 oppression, for which Defendants must be punished by punitive and exemplary damages in an  
13 amount according to proof. Defendants’ conduct evidences a conscious disregard for the safety  
14 the eggs and embryos entrusted to them, and by extension, those who placed the eggs and  
15 embryos in Defendants’ care, including Plaintiff’s. Defendants’ conduct was and is despicable  
16 conduct and constitutes malice as defined by Civil Code § 3294. An officer, director, or  
17 managing agent of Defendants personally committed, authorized, and/or ratified the despicable  
18 and wrongful conduct alleged in this complaint. Plaintiff is entitled to an award of punitive  
19 damages sufficient to punish and make an example of these Defendants.

20 **FIRST CLAIM FOR RELIEF**  
21 **Negligence and/or Gross Negligence**

22 60. Plaintiff incorporates the above and below allegations by reference.

23 61. Defendants owed Plaintiff a duty to exercise the highest degree of care when  
24 maintaining, inspecting, monitoring, and testing the liquid nitrogen storage tanks used for the  
25 preservation of eggs at Defendants’ San Francisco laboratory.

26 62. Defendants owed Plaintiff a non-delegable duty of care with respect to the

27 <sup>11</sup> See, e.g., <https://www.pacificfertilitycenter.com/blog/fertility-resources-your-fingertips>.

28 <sup>12</sup> <https://www.pacificfertilitycenter.com/blog/fertility-resources-your-fingertips>.

1 maintenance and protection of the eggs entrusted to their care.

2 63. Defendants breached these duties and acted with negligence and gross negligence  
3 in at least the following respects:

4 a. failing to adequately design, maintain, inspect, monitor, and/or test their  
5 liquid nitrogen storage tanks, in accordance with industry standards, including through a  
6 functional electronic tank monitoring system capable of detecting a rise in temperature or a drop  
7 in liquid nitrogen levels and promptly alerting staff to the immediate problem;

8 b. permitting a leakage or tank failure to occur from one of their liquid  
9 nitrogen storage tanks containing human eggs;

10 c. failing to have back-up alarm and generator systems;

11 d. failing to properly safeguard the human reproductive tissue in its care; and

12 e. failing to follow accepted scientific and laboratory procedures for  
13 safeguarding the human reproductive tissue in its care.

14 64. Defendants' acts and omissions constitute gross negligence, because they  
15 constitute an extreme departure from what a reasonably careful person would do in the same  
16 situation to prevent foreseeable loss of human reproductive tissue.

17 65. Defendants acted willfully, wantonly, and with conscious and reckless disregard  
18 for the rights and interests of Plaintiff. Defendants' acts and omissions had a great probability of  
19 causing significant harm and in fact did.

20 66. As a proximate result of Defendants' negligence and/or gross negligence, Plaintiff  
21 suffered harm in an amount to be determined at trial.

22 **SECOND CLAIM FOR RELIEF**  
23 **Negligent Infliction of Emotional Distress**

24 67. Plaintiff incorporates the above and below allegations by reference.

25 68. Defendants owed a duty of care to Plaintiff to act reasonably in all aspects of the  
26 handling and storage of Plaintiff's eggs so as to avoid needlessly causing emotional distress.

27 69. Defendants owed Plaintiff a non-delegable duty of care with respect to the  
28 maintenance and protection of the eggs entrusted to their care.

1           70. Defendants carelessly and negligently handled and stored Plaintiff's eggs.

2           71. Plaintiff was directly involved in and directly impacted by Defendants'  
3 carelessness and negligence, in that Defendants assumed the duty of care to avoid causing  
4 emotional distress through communications with patients, through marketing and on their  
5 website, and/or because Defendants have a special relationship with Plaintiff, based on their  
6 contractual relationship, and/or the doctor-patient relationships between Plaintiff with her fertility  
7 specialists, and/or because of the nature of the services that Defendants undertake to perform:  
8 undertaking egg and embryo storage for those seeking to preserve the opportunity to become a  
9 parent.

10          72. Defendants owed Plaintiff a duty of care, because her emotional harms occurred in  
11 the course of specified categories of activities, undertakings, or relationships in which negligent  
12 conduct is especially likely to cause serious emotional harm. As PFC states in its marketing,  
13 fertility services, including frozen egg and embryo storage, can be highly stressful,  
14 overwhelming, and emotional, and thus PFC undertakes a "whole patient" treatment approach.

15          73. It was reasonably foreseeable to Defendants that Plaintiff would experience severe  
16 emotional distress as a result of Defendants' mishandling her eggs, as Defendants market  
17 themselves as compassionate and understanding regarding the highly emotional aspect to fertility  
18 issues.

19          74. Defendants' failure to appropriately handle and safeguard Plaintiff's has caused  
20 severe emotional distress, regardless of whether it is ever determined conclusively that her eggs in  
21 Tank 4 are not viable, as Defendants' misconduct has irreparably breached trust and caused  
22 uncertainty, anxiety and fear over how to proceed with almost no information regarding the long-  
23 term effects, if any, from an egg's exposure to the unsafe conditions in Tank 4.

24          75. There was a close connection between Defendants' conduct and Plaintiff's  
25 injuries; the harms occurred because Defendants' mishandled the eggs in their care.

26          76. Plaintiff entrusted Defendants to use reasonable care to safeguard and preserve her  
27 eggs for the ultimate goal of becoming a parent. Defendants' carelessness with this precious  
28 material, and ultimately, with their patients' plans for parenthood, is morally blameworthy.

1           77.     Imposing a duty on Defendants would promote a policy of preventing future harm,  
2 insofar as they will be more incentivized to use tighter protocols and systems to ensure that eggs  
3 are properly handled going forward.

4           78.     The burden on Defendants by imposing this duty is only fair and appropriate, in  
5 light of the importance of the eggs they have voluntarily agreed to protect, and at considerable  
6 costs to Plaintiff.

7           79.     Imposing a duty to exercise care with resulting liability for breach furthers the  
8 community's interest in ensuring that high quality, reliable fertility services are available to those  
9 who desire to become parents.

10          80.     As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has  
11 sustained and will continue to sustain severe emotional distress, including: suffering, anguish,  
12 fear, nervousness, grief, depression, anxiety, worry, shock, humiliation, and shame. An ordinary,  
13 reasonable person would be unable to cope with the losses suffered by Plaintiff.

14   **THIRD CLAIM FOR RELIEF**  
15   **Breach of Contract**

16          81.     Plaintiff incorporates the above allegations by reference.

17          82.     Defendants entered into contracts with Plaintiff, under which Defendants agreed to  
18 collect, store, and preserve her eggs.

19          83.     A contract involving egg collection, storage, and preservation affects Plaintiff's  
20 vital concern in preserving her opportunity to become a parent when the time was right.

21          84.     In consideration of Defendants' promises, including to keep the eggs safe and  
22 secure, Plaintiff agreed to pay, and did pay, substantial sums for the services rendered.

23          85.     Plaintiff performed all of the terms and conditions required of her under their  
24 contracts.

25          86.     Based on the conduct described herein, Defendants breached their contracts with  
26 Plaintiff.

27          87.     A contract whereby a fertility clinic undertakes to store human eggs or embryos is  
28 one in which it is reasonably foreseeable that breach may cause mental anguish to the person or

1 persons who entrusted the clinic with such material.

2 88. As a direct and proximate result of Defendants' breach of contract, Plaintiff  
3 suffered harm, including mental anguish, in an amount to be determined at trial.

4 **FOURTH CLAIM FOR RELIEF**  
5 **Conversion**

6 89. Plaintiff incorporates the above allegations by reference.

7 90. Plaintiff owned her eggs, which were placed in Defendants' care for the express  
8 purpose of safekeeping and storage until a time as Plaintiff directed otherwise.

9 91. Plaintiff agreed to pay, and did pay, substantial sums in exchange for Defendants'  
10 promise to safeguard and store her eggs for the benefit of Plaintiff.

11 92. As described above, Defendants converted the eggs by assuming control over them  
12 and harming the eggs by subjecting them to temperatures that damaged and destroyed them, or  
13 rendered their viability so uncertain as to render them practically destroyed, thereby depriving  
14 Plaintiff of her ownership over her property.

15 93. As a direct and proximate result of Defendants' misconduct, Plaintiff has been  
16 deprived of the opportunity to use the eggs entrusted to Defendants, and has suffered damages in  
17 an amount to be determined at trial.

18 **FIFTH CLAIM FOR RELIEF**  
19 **Bailment**

20 94. Plaintiff incorporates the above allegations by reference.

21 95. Plaintiff delivered to Defendants for safekeeping personal property to be safely  
22 and securely kept for the benefit of Plaintiff, and to be redelivered to her upon demand.

23 96. Defendants received eggs from Plaintiff on this condition.

24 97. Plaintiff agreed to pay, and did pay, substantial sums in exchange for Defendants'  
25 promise to safeguard her eggs for the benefit of Plaintiff.

26 98. Defendants had a duty to exercise care in maintaining, preserving, and protecting  
27 Plaintiff's eggs that were delivered to Defendants. Further, Defendants had a duty to return the  
28 eggs, undamaged, to the Plaintiff to whom they belonged.



- 1 c. failing to have back-up alarm and generator systems;  
2 d. failing to properly safeguard the human reproductive tissue in its care; and  
3 e. failing to follow accepted scientific and laboratory procedures for  
4 safeguarding the human reproductive tissue in its care.

5 107. The gravity of the harm resulting from Defendants' conduct detailed above far  
6 outweighs any conceivable utility of this conduct. There are reasonably available alternatives that  
7 would further Defendants' legitimate business interests, such as implementing reasonable  
8 protocols and procedures, as promised, to prevent a catastrophic failure like the one that occurred  
9 in Tank 4.

10 108. Plaintiff could not have reasonably avoided injury from Defendants' unfair  
11 conduct. Plaintiff did not know, and had no reasonable means of learning, that Defendants were  
12 not adequately safeguarding the human reproductive tissue in their custody and control.

13 109. As a direct and proximate result of Defendants' unlawful and unfair conduct,  
14 Plaintiff has suffered injuries in fact and seeks appropriate relief under the UCL, including  
15 injunctive relief and restitution.

16 **SEVENTH CLAIM FOR RELIEF**  
17 **Premises Liability**

18 110. Plaintiff incorporates the above allegations by reference.

19 111. At all times herein mentioned, Defendants Prelude and Pacific Fertility Center,  
20 owned, leased, occupied, and the property, premises, machinery, equipment including Tank 4 on  
21 the premises at 55 Francisco Street, Suite 500 in San Francisco, California.

22 112. At all times herein mentioned, Defendants Prelude and Pacific Fertility Center had  
23 a duty to use reasonable care to keep Plaintiff's personal property in a reasonably safe condition  
24 and free from defects that would cause injury or harm to the human tissue which was owned by  
25 Plaintiff.

26 113. At all times herein mentioned, Defendants Prelude and Pacific Fertility Center,  
27 knew or should have known by reasonable inspection and monitoring of the defective condition  
28 of the premises, and specifically Tank 4.





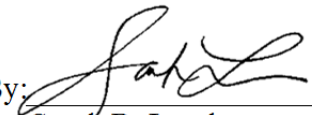
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**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 26, 2018

Respectfully submitted,

By:   
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Sarah R. London

Elizabeth J. Cabraser (State Bar No. 083151)  
*ecabraser@lchb.com*  
Lexi J. Hazam (State Bar No. 224457)  
*lhazam@lchb.com*  
Sarah R. London (State Bar No. 267083)  
*slondon@lchb.com*  
Tiseme G. Zegeye (State Bar No. 319927)  
*tzegeye@lchb.com*  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: 415.956.1000  
Facsimile: 415.956.1008

*Attorneys for Plaintiff G.H.*