

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

JENNIFER SCOTT, on behalf of herself and all
others similarly situated,
1390 Sentry Lane
Fairborn, OH 45324

Case No.

KATHRYN EDWARDS, on behalf of herself
and all others similarly situated,
13945 Old Mansfield Road
Mt. Vernon, OH 43050

JUDGE

KATHY CLARK, on behalf of herself and all
others similarly situated
12741 Hickory Ridge Road
Plain City, OH 43064

DAVID MUSTO, on behalf of himself and all
others similarly situated
80 Pentry Road
Delaware, OH 43015

KIM WOLFE, on behalf of herself and all
others similarly situated
6256 Newtonsville Rd
Goshen OH 45122

DAVID HIRSCH, on behalf of himself and all
others similarly situated
2878 Etna Street
Columbus, OH 43209

and

LINDA GASPER, on behalf of herself and all
others similarly situated
6014 Lance Road
Medina, OH 44256

Plaintiffs,

v.

BEECHWOLD VETERINARY HOSPITAL
4590 Indianola Avenue

Columbus, Ohio 43214,	:
	:
CANINE SEMEN BANK OF COLUMBUS,	:
LLC	:
4590 Indianola Avenue	:
Columbus, Ohio 43214,	:
	:
DR. MARK J. McCLOSKEY, DVM	:
582 Retreat Lane North	:
Powell, OH 43065,	:
	:
and	:
	:
DR. ERIK D. WEISGERBER, DVM	:
6178 Middlebury Drive East	:
Worthington, OH 43085,	:
	:
	:
Defendants.	:

COMPLAINT

Plaintiffs Jennifer Scott, Kathryn Edwards, Kathy Clark, David Musto, Kim Wolfe, David Hirsch and Linda Gasper, on behalf of themselves and all others similarly situated, for their Complaint against Defendants Beechwold Veterinary Hospital ("Beechwold"), Canine Semen Bank of Columbus, LLC ("CSB"), Dr. Mark J. McCloskey, DVM, and Dr. Erik D. Weisgerber, DVM (collectively, "Defendants"), state as follows:

Introduction

1. Plaintiffs assert claims for breach of contract, negligence and willful and wanton conduct, fraudulent inducement, breach of the implied covenant of good faith and fair dealing, and breach of bailment contract, all relating to Defendants' mishandling of canine semen specimens entrusted to Defendants for freezing and storage, which resulted in the complete destruction of the canine semen.

Parties and Background

2. Plaintiffs are all AKC pure bred dog owners and breeders who hired Defendants to collect, freeze and store canine semen at Defendants' facility in Columbus, Ohio for future breeding purposes, and whose canine semen specimens were destroyed due to Defendants' wrongful conduct.

3. Defendant Beechwold is an Ohio professional association with its principal place of business at 4590 Indianola Avenue, Columbus, Ohio 43214. Beechwold provides veterinary services for various animals, including cats and dogs, to clients across Ohio, and holds itself out as having expertise with respect to canine reproductive services. Its website brags that Beechwold "is proud to be one of only several hospitals in the state of Ohio capable of freezing and storing canine semen," and advertises its Canine Frozen Semen Bank, which it claims to be the only AKC recognized canine semen bank in the state of Ohio, as well as the expertise of Drs. McCloskey and Weisgerber, two of Beechwold's shareholders and veterinarians.

4. Defendant CSB is an Ohio limited liability company operated out of Defendant Beechwold's hospital facility, with its principal place of business at 4590 Indianola Avenue, Columbus, Ohio 43214. It advertises on its website that it is "affiliated with Beechwold Veterinary Hospital." Its stated goal is "to provide the progressive breeder access to high quality frozen canine semen preservation and on-site semen storage." CSB describes its facility as "state of the art," and its website brags of the "numerous" "advantages to a breeding program using frozen semen," including that "[r]esearchers estimate that frozen semen could potentially remain viable for 10,000 years" and that freezing and storing semen provides the "obvious benefit" of "long-term storage of a superior stud dog's genetic material." CSB was founded, and is co-directed, by Defendants McCloskey and Weisgerber, and brags that "[e]ach has received training

in canine frozen semen preservation” at the renowned Camelot Farms in Texas, and that CSB “brings the same methods and materials developed at Camelot Farms to the breeders of Central Ohio.”

5. Dr. Mark McCloskey, DVM is a veterinarian practicing in Columbus, Ohio. He is the hospital director and a shareholder of Defendant Beechwold, and is a founder and co-director of Defendant CSB.

6. Dr. Erik Weisgerber, DVM is a veterinarian practicing in Columbus, Ohio. He is a shareholder in Defendant Beechwold, and is a founder and co-director of Defendant CSB.

7. Jurisdiction and venue are proper in this Court pursuant to Ohio Revised Code §§ 2305.01, et seq., and Ohio Rule of Civil Procedure 3(C)(1), (2), (3) and (6).

Factual Allegations

8. This is a class action lawsuit on behalf of Plaintiffs, individually and on behalf of other class members who were injured as a result of Defendants’ conduct, which caused the destruction of their frozen canine semen specimens.

9. Plaintiffs are Ohio owners and breeders of AKC pure bred dogs. Their dogs are titled in various competitive performance organizations and/or in the conformation ring. Their dogs compete in events across the state of Ohio and around the country. Each of Plaintiffs, and each of the other class members, had obtained canine semen (either from dogs they owned or from dogs owned by others) for the express purpose of breeding litters with that semen at a future date.

10. In professional dog breeding, various methods of artificial insemination using frozen semen are reliable methods used in the breeding of AKC purebred dogs. Often, natural methods of breeding do not take, or are not feasible given the distance between the sire and dame

(both nationally and internationally) or scheduling issues. In many cases, breeding through other techniques using frozen semen (such as surgical in vitro fertilization or transcervical artificial insemination), is the only way to ensure continuation of the breeding line once the dog has passed away, been neutered, or reached an age where motility of the semen is of an insufficient percentage to achieve fertilization.

11. Defendants held themselves out as experts on frozen canine semen storage, and fraudulently induced Plaintiffs to store their canine semen specimens at Defendants' facility.

12. CSB brags on its website that it "has been visited and inspected by the AKC." In reality, the American Kennel Club does not conduct inspections or set compliance standards for frozen canine semen storage facilities.

13. CSB further claims on its website that its goal is "to provide the progressive breeder access to high quality frozen canine semen preservation and on-site semen storage." CSB describes its facility as "state of the art," and its website brags of the "numerous" "advantages to a breeding program using frozen semen," including that "[r]esearchers estimate that frozen semen could potentially remain viable for 10,000 years" and that freezing and storing semen provides the "obvious benefit" of "long-term storage of a superior stud dog's genetic material." In reality, CSB's equipment and processes were neither "high quality" nor "state of the art," and CSB and the other Defendants failed to take adequate steps to ensure the safe, long-term storage of Plaintiffs' and other class members' frozen canine semen specimens.

14. CSB was founded, and is co-directed, by Defendants McCloskey and Weisgerber, and brags that "[e]ach has received training in canine frozen semen preservation" at the renowned Camelot Farms in Texas, and that CSB "brings the same methods and materials developed at Camelot Farms to the breeders of Central Ohio." Upon information and belief, this

was another false statement, as reputable animal semen storage facilities use proper equipment and employ appropriate controls to ensure safe preservation of frozen semen specimens, which Defendants failed to do.

15. As noted above, CSB advertises on its website that it is “affiliated with Beechwold Veterinary Hospital.” Its form contracts describe its actions as undertaken “in conjunction with Beechwold Veterinary Hospital.” It shares the same facilities and address as Beechwold Veterinary Hospital. In order to schedule appointments or otherwise contact CSB, clients must call Beechwold. The “Semen Collection Summary” reports provided to clients detailing the results of the semen collection efforts, and the number of breeding units to be frozen, are issued on letterhead identifying both CSB and Beechwold at the top, in bold font. Invoices for the storage of frozen semen by CSB are issued by, and payable to, Beechwold, and Beechwold sent reminder letters to clients for payment of frozen semen storage fees, on behalf of Dr. Mark McCloskey and Dr. Erik Weisgerber.

16. CSB’s only two principals are Dr. Mark McCloskey and Dr. Eric Weisgerber, who are also principals for Beechwold Veterinary Hospital—indeed, Dr. McCloskey is the hospital director for Beechwold.

17. Beechwold, in turn, advertises that it is “one of only several hospitals in the state of Ohio capable of freezing and storing canine semen.” It brags that it works with breeders “throughout the world” and is “experienced with ... canine fresh chilled and frozen semen.”

18. Based on Defendants’ advertising, Plaintiffs and other class members were falsely and fraudulently induced to entrust Defendants with the freezing and storing of their canine semen specimens.

19. Defendants Beechwold, McCloskey and Weisgerber exercised such complete control over CSB that CSB had no separate existence of its own. Defendants used this arrangement, including control and dominance over CSB, to commit fraud on Plaintiffs and other class members, and to commit other illegal acts, as alleged above and throughout this Complaint, causing injury and unjust loss to Plaintiffs and other class members.

20. Defendants had been collecting, preserving, protecting, and storing Plaintiffs' and other class members' canine semen specimens in one or more liquid nitrogen tanks located at Defendants' facility located at 4590 Indianola Avenue, Columbus, Ohio 43214.

21. Defendants used a form agreement for the storage of canine semen in Defendants' facility. Defendants would have maintained copies of the contracts for all Plaintiffs and class members in their files, for those who executed them; exemplar copies are attached hereto as Exhibits A, B, C and D. Defendants are not signatories on the agreement, although, as noted above, both are referenced therein.

22. Proper preservation of canine semen requires that specimens be kept in pellets, vials or straws in liquid nitrogen tanks. Liquid nitrogen naturally evaporates over time, so it is imperative that controls be implemented to ensure that liquid nitrogen levels are properly monitored and maintained in order to avoid damage to the semen. In this regard, tanks are typically equipped with alarms, and protocols are put in place to ensure tanks are regularly monitored and as necessary refilled with liquid nitrogen.

23. In this case, the damage occurred when Defendants grossly neglected their responsibilities and allowed the liquid nitrogen in the one or more of the storage tanks to evaporate or otherwise dissipate, causing temperatures to rise to unacceptable levels and resulting in the total destruction of Plaintiffs' and other class members' canine semen specimens.

24. Upon information and belief, the tank(s) in question were not alarmed, and Defendants failed to implement and/or follow appropriate protocols with regard to the storage, maintenance and monitoring of the tanks, including protocols to check on liquid nitrogen levels routinely on the tank(s) at issue.

25. Moreover, Defendants engaged in gross negligence in the storage of the canine semen specimens. Typically, the collection of a dog results in multiple breeding units of semen. This allows for the breeding of multiple litters derived from the same collection effort, and allows for the use of additional units of semen should one become insufficient to accomplish fertilization.

26. Defendants negligently elected to store *all* breeding units collected from the same dog in a single tank, rather than seeding the semen across multiple tanks, thus ensuring the total destruction of *all* semen specimens from that single dog should there be a loss of a particular tank's contents.

27. The destruction of the canine semen at issue in this case occurred and/or was detected, upon information and belief, sometime in April 2018. Yet as of late July 2018, Defendants had still failed to notify numerous class members, frequently only advising clients of the loss when the *client* affirmatively contacted *Defendants*.

Named Plaintiffs Factual Allegations

28. Jennifer Scott owns and breeds Boston Terriers. In January 2013, Ms. Scott hired Defendants to collect and store semen from a dog with the call name "Chase" (formally, for AKC registration purposes, "CH MACH3 PACH Katbird's Leading The Chase RN MXB2 MJS2 MXP5 MXPS MJP3 MJPB PAX THD"), AKC champion Boston Terrier who had won numerous agility and show championship titles.

29. Ms. Scott paid Defendants hundreds of dollars between 2013 and 2018 to collect and store two breeding units of Chase's semen, as part of her breeding program.

30. In May 2018, Ms. Scott was preparing to breed Chase's semen with a female bitch owned by another breeder. She had already reached an arrangement with the other dog's owner, leased the bitch for the breeding to occur, and filed the lease papers with the AKC. The two owners were about to embark on progesterone testing of the bitch to ensure the timing was right to proceed with the artificial insemination.

31. It was only then, when Ms. Scott contacted Defendants about moving Chase's stored semen to another facility, that Defendants advised her that the semen had been destroyed.

32. Apart from storage fees, Ms. Scott has lost tens of thousands of dollars in lost breeding opportunities due to the destruction of Chase's semen.

33. Kathy Clark owns and was planning to breed her Border Collie, "Sage" (formally, for AKC purposes, "MACH3 Winthrop Sage MXC MJB2 MFB TQX T2B3 CGC). In addition to multiple championship titles in AKC, Sage also has multiple championship titles in three other dog agility organizations. In 2013, Ms. Clark hired Defendants to collect and store semen from Sage.

34. Ms. Clark paid Defendants hundreds of dollars between 2013 and 2018 to collect and store three breeding units of Sage's semen, as part of her breeding program.

35. In 2013, Sage was neutered, rendering Sage's semen stored with Defendants the only way Ms. Clark could ever have a litter sired by Sage.

36. In late July 2018, Ms. Clark received an email from Defendants advising that because of a loss of liquid nitrogen in the storage tank holding Sage's semen occurring "a few weeks ago," all of Sage's semen was destroyed. (In reality, of course, the problem occurred

several *months* earlier and Defendants' simply never told many of their clients.) Defendants' email acknowledged that other facilities (one of which Defendants proposed using in the future) offer "safety measures that we can't offer," including alarms to detect low liquid nitrogen levels, and automatically-refilling tanks.

37. Apart from storage fees, Ms. Clark has lost tens of thousands of dollars in lost breeding opportunities due to the destruction of Sage's semen.

38. David Musto and his wife breed and show Cane Corsos. In 2012, Mr. Musto imported a Cane Corso named Dante (formally "Dante Dell' Antico Cerberus") from Italy. To do so, Mr. Musto paid a leasing fee of \$10,000 to receive exclusive breeding and freezing rights to Dante in the United States. Mr. Musto finished the dog's AKC conformation championship in the US, had the dog collected by the Defendants and then shipped the dog back to Italy. The collection from Dante, resulted in sufficient semen for 10 breedings. Mr. Musto hired the Defendants to store the semen.

39. Dante's proven track record in producing high quality puppies earned him the designation of a Cane Corso Association of America Reproductive Champion. Mr. Musto paid Defendants hundreds of dollars between and 2018 to store Dante's breeding units of the imported semen, as part of his breeding program.

40. In the summer of 2018, Mr. Musto received a phone call from Dr. Erik Weisgerber advising that all of Dante's stored semen had been destroyed.

41. Apart from storage and leasing fees, Mr. Musto has lost tens of thousands of dollars in lost breeding opportunities due to the destruction of Dante's semen, as well as the opportunity to be Dante's exclusive breeder in the United States.

42. Kathryn Edwards owns and breeds Boxers, and has done so successfully since 1975. She has had over 10 champion Boxers in that time. She is a retired professor of biology at Kenyon College.

43. In November 2013 Ms. Edwards hired Defendants to collect and store semen from a dog with the call name "Paco" (formally registered as "Am/Can Ch Rynwards Bondelero"), an award-winning, champion Boxer.

44. Ms. Edwards paid Defendants hundreds of dollars between 2013 and 2018 to store four breeding units of Paco's semen, as part of her breeding program.

45. In September 2015, Paco died of cancer, rendering his semen stored with Defendants the only way Ms. Edwards could ever again breed puppies sired by him.

46. In or around late May 2018, Ms. Edwards received a phone call from Defendants advising that because the liquid nitrogen in the storage tank holding her canine semen specimens had been depleted, all of her stored frozen semen was destroyed.

47. Apart from storage fees, Ms. Edwards has lost tens of thousands of dollars in lost breeding opportunities due to the destruction of Paco's semen.

48. David Hirsch owns, breeds, and trains Golden Retrievers. He is the owner of the top-ranked Golden Retriever in agility, a dog with the call name "Lotto" (formally, for AKC registration purposes, "MACH 14 Pine Run Z's Super Lotto and Winning Combo MXB4, MJS4, MFB, TQX, T2B3"). Lotto is the #1 AKC agility Golden Retriever in the country.

49. In 2013, Mr. Hirsch hired Defendants to collect and store semen from Lotto. Since he was collected, Lotto has been neutered, rendering the semen stored at Defendants' facility the only way Mr. Hirsch can ever have another litter sired by Lotto.

50. Mr. Hirsch paid Defendants hundreds of dollars between 2013 and 2018 to store five breeding units of Lotto's semen, as part of his breeding program.

51. In or around July 2018, Mr. Hirsch was notified by Defendants by telephone that his golden retriever's frozen semen specimens stored with Defendants had been destroyed.

52. Just a few weeks later, Mr. Hirsch was contacted by one of the top breeders of Golden Retrievers in the country about breeding Lotto to one of their bitches, but, of course, because of Defendants' misconduct, that is now impossible.

53. Apart from storage fees, Mr. Hirsch has lost tens of thousands of dollars in lost breeding opportunities due to the destruction of Lotto's semen.

54. Kim Wolfe owns, breeds, and trains Border Collies. She is the owner of Dream Weavers Agility, a dog training business in the greater Cincinnati, Ohio area. Ms. Wolfe also works as a veterinary technician in Cincinnati.

55. In 2013, Ms. Wolfe hired Defendants to collect and store semen from a dog with the call name "Checkers" (formally, for AKC registration purposes, "MACH3 Topshelf's King Me MXG2, MJB2, MFB, T2B2").

56. Ms. Wolfe paid Defendants hundreds of dollars between 2013 and 2018 to collect and store three breeding units of Checkers' semen, as part of her breeding program.

57. Defendants did not reach out to Ms. Wolfe to notify her of the loss of Checkers' semen. Rather, Ms. Wolfe learned of the incident from her long term boyfriend, David Hirsch, who, as described above, is another Named Plaintiff. Mr. Hirsch, and not Ms. Wolfe, was notified by Defendants in or around July 2018 that his golden retriever's frozen semen specimens stored with Defendants had been destroyed. He asked Defendants whether Ms. Wolfe's stored

canine semen had also been impacted, and (without authorization from Ms. Wolfe to release records about her account to others), Defendants told him that it had.

58. Ms. Wolfe then called Defendants and confirmed that Checkers' semen had been destroyed.

59. Apart from storage fees, Ms. Wolfe has lost tens of thousands of dollars in lost breeding opportunities due to the destruction of Checkers' semen.

60. Linda Gasper own, breeds, and train Boxers. She is the owner of the nationally-known White Pine Boxers & Boarding in Medina, Ohio. She has years of experience breeding champion boxers. She and her late husband owned or bred over 15 champions, and have sold puppies all over the country.

61. Ms. Gasper hired Defendants to collect and store semen from a dog with the call name "Willie" (formally, for AKC registration purposes, "White Pines Willie Be Invited"), a champion Boxer and Sire of Merit, meaning he sired at least seven champions.

62. Ms. Gasper paid Defendants hundreds of dollars to collect and store more than six breeding units of Willie's semen, as part of her breeding program.

63. In the summer of 2018, Ms. Gasper was informed by Defendants that the six remaining breeding units of stored semen from Willie were destroyed.

64. Apart from storage fees, Ms. Gasper has lost tens of thousands of dollars in lost breeding opportunities due to the destruction of Willie's semen.

65. Defendants' gross neglect and failure to properly maintain and monitor one or more liquid nitrogen storage tanks has caused plaintiffs and other similarly situated persons to lose all of their canine semen specimens stored with Defendants. Defendants have impaired, and in many cases entirely eliminated, plaintiffs' ability to breed the dogs whose semen was stored in

Defendants' facility, causing the loss of thousands of dollars in revenue from breeding, but also the loss of their dogs' genetic lineage.

Class Action Allegations

66. Plaintiffs bring this action on behalf of themselves and members of a class comprised of:

All clients of Defendants who are citizens of Ohio and had canine semen specimens stored by Defendants in its liquid nitrogen tanks that were damaged or destroyed by a rise in temperature occurring, or discovered, in or around April 2018.

67. Subject to additional information obtained through further investigation and discovery, the foregoing class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the class is any entity in which a defendant has a controlling interest, or any individual or entity with a controlling interest in a defendant, and Defendants' legal representatives, assigns, and successors.

68. Members of the class are so numerous that joinder is impracticable as required by Ohio Rule of Civil Procedure 23(A)(1). While the exact number of class members is unknown to Plaintiffs, it is believed that the class is comprised of over 50 residents of Ohio. The exact number of class members, as well as their names and addresses, will be readily identifiable from information and records in Defendants' possession, and class members may be notified of the pendency of this action by recognized, Court-approved notice methods, including U.S. Mail, electronic mail, Internet postings, and/or published notice.

69. Common questions of law and fact exist as to all members of the class, satisfying the requirements of Ohio Rule of Civil Procedures 23(A)(2). These questions predominate over questions that may affect only individual class members because these common legal and factual questions derive from a common nucleus of operative facts regarding Defendants' liability to Plaintiffs and other class members for causing or allowing damage to, or destruction of,

Plaintiffs' canine semen specimens, and Defendants' gross neglect and failure to properly freeze, store, and protect their canine semen specimens. Such common questions include:

- a. Whether Defendants breached their template form contract with Plaintiffs and other class members for the storage of canine semen;
- b. Whether Defendants had a duty to ensure that Plaintiffs' and other class members' canine semen specimens remained properly frozen and stored, ensuring their viability;
- c. Whether Defendants had a duty to take reasonable precautions to protect against a rise in temperature in its storage tank at Defendants' facility;
- d. Whether Defendants acted carelessly, negligently, recklessly, willfully, wantonly and/or with gross negligence by failing to protect Plaintiffs and other class members' canine semen specimens from a rise in temperature in one or more of its storage tanks;
- e. Whether Defendants intentionally or recklessly misrepresented themselves, their capabilities, and the capabilities of their canine frozen semen storage facilities in their website advertising and other public statements;
- f. Whether Defendants failed to provide timely and adequate notice of the destruction of Plaintiffs' canine semen specimens;
- g. Whether Defendants breached their bailment contract with Plaintiffs and other class members by failing to return the canine semen specimens undamaged and in a usable and/or viable state;
- h. Whether Defendants Beechwold, McCloskey and Weisgerber exercised complete control and dominance over Defendant CSB, and whether

Defendants used this relationship among themselves to commit fraud or other illegal acts against Plaintiffs and other class members; and

- i. The scope of available legal remedies and/or appropriate compensation for the damages caused to Plaintiffs and other class members, including whether, as a result of Defendants' conduct, Plaintiffs and other class members are entitled to injunctive, declaratory, equitable, and/or other relief, and, if so, the nature of such relief.

70. In addition, Defendants' defenses to Plaintiffs' claims will likely be the same as their defenses to claims of other class members.

71. Plaintiffs' claims are typical of the claims of other class members, as all members of the proposed class are similarly affected by Defendants' actionable conduct. Plaintiffs, and all other class members, contracted with Defendants to freeze and store their canine semen specimens. Defendants had a duty to Plaintiffs and all class members to ensure the canine semen specimens were not harmed while in the Defendants' custody and care. Defendants' conduct that gave rise to Plaintiffs' claims is the same conduct giving rise to the claims of the other class members.

72. Plaintiffs will fairly and adequately protect the interests of the class, because Plaintiffs have no interest antagonistic to, or in conflict with, the interests of the class Plaintiffs seek to represent. Plaintiffs are members of the class that they seek to represent, and are well qualified to act as class representatives. Furthermore, Plaintiffs have retained counsel experienced and competent in complex class action litigation. Plaintiffs have or can acquire financial resources to assure that the interests of the class will not be harmed.

73. Pursuing separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to the class members, and would result in incomprehensible standards for Defendants' conduct. Accordingly, the class meets the requirement of Ohio Rule of Civil Procedure 23(B)(1).

74. Defendants have acted or failed to act on grounds and in a manner that applies generally to Plaintiffs and to the class, so that final injunction and/or declaratory relief requiring Defendants to implement policies, procedures, and the necessary equipment that will prevent future loss of valuable canine semen specimens is appropriate under Ohio Rule of Civil Procedures 23(B)(2).

75. Class action treatment is a superior method for the fair and efficient adjudication of this controversy in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and other class members are relatively small compared to the burden and expense required to individually litigate these claims against Defendants, so it would be impracticable for class members to seek redress individually for Defendants' wrongful conduct. As described above, the questions of law or fact common to members of the class predominate over any questions affecting only individual members. Accordingly, certification of a class is appropriate under Ohio Rule of Civil Procedure 23(B)(3).

76. Under Ohio Rule of Civil Procedure 23(C)(4), a class action is appropriate with respect to determining the scope of the available legal remedies and damages.

77. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

78. The amount in dispute exceeds \$15,000.00 per claimant.

CLAIMS FOR RELIEF

COUNT I-- (Negligence)

79. Plaintiffs, individually and on behalf of the other class members, repeat and reallege paragraphs 1-78, as if fully alleged herein.

80. Defendants owed to Plaintiffs and other class members a duty to exercise the highest degree of care with respect to maintaining, inspecting, monitoring, and/or testing the liquid nitrogen storage tanks in which Plaintiffs' and other class members' canine semen specimens were stored.

81. Defendants breached those duties and/or were negligent in one or more of the following acts or omissions:

- a. Failing to maintain, inspect, monitor and/or test their liquid nitrogen storage tanks;
- b. Permitting the temperature to rise in one or more of their liquid nitrogen storage tanks to higher than acceptable limits;
- c. Failing to implement proper protocols for the inspection and maintenance of their liquid nitrogen storage tanks;

- d. Failing to implement proper protocols to separately store breeding specimens from the same dog in different storage tank units, to minimize the risk of a total catastrophic loss of all of that dog's specimens;
- e. Failing to properly safeguard the semen specimens;
- f. Failing to follow known scientific and laboratory procedures; and/or
- g. Otherwise engaging in careless and/or negligent conduct.

82. Defendants were also grossly negligent for failing to exercise any or very slight care through one or more of the above-listed acts or omissions. Defendants acted willfully and/or wantonly with a conscious or reckless disregard for the rights of Plaintiffs and the other class members that had a great probability of causing—and did cause—substantial harm.

83. As a proximate result of one or more of Defendants' negligent and/or grossly negligent acts and/or omissions, Plaintiffs and the other class members suffered and continue to suffer injuries of a personal and pecuniary nature in an amount to be determined at trial.

COUNT II -- (Breach of Contract)

84. Plaintiffs, individually and on behalf of the other class members, repeat and reallege paragraphs 1-83, as if fully alleged herein.

85. Defendants entered into contracts with Plaintiffs and each of the other class members, wherein Defendants agreed to freeze, store, and preserve canine semen specimens. See Exhibits A, B, and C hereto (exemplar contracts).

86. Each of those contracts provided, in pertinent part that Defendants would collect, freeze, and store canine semen samples on behalf of Plaintiffs. The contracts required an initial two-year minimum term, subject to renewal, and promised to provide the dog's owner with copies of all reports and registry documents pertaining to the semen collection and freezing.

87. Each contract also contained language disclaiming responsibility for “loss or accidental thawing of semen which results from storage tank failure, or any other cause beyond the reasonable control of [CSB] in conjunction with [Beechwold],” and purporting to limit CSB’s and Beechwold’s liability, “[i]f such an event occurs,” to the return of prepaid fees. As described above, Plaintiffs claims do not result from a “storage tank failure,” and could have been avoided through steps that were within the “reasonable control” of Defendants. Accordingly, the limitation of liability language in Defendants’ contracts has no applicability to Plaintiffs’ or other class members’ claims here. Moreover, the exculpatory clause is unenforceable as it is against public policy; among other things, its application would allow Defendants to escape responsibility for their gross negligence and misconduct here.

88. In consideration of Defendants’ promises, Plaintiffs and the other class members agreed to pay, and paid, fees for the services provided.

89. Plaintiffs and the other class members performed all of the terms and conditions required of them under their contracts.

90. Based on the conduct described herein, Defendants breached their contracts with Plaintiffs and each of the other class members.

91. By reason of Defendants’ breaches, Plaintiffs and each of the other class members experienced irreparable damage to their canine semen specimens that they entrusted to Defendants, in amounts to be determined at trial.

COUNT III -- (Fraudulent Inducement)

92. Plaintiffs, individually and on behalf of the other class members, repeat and reallege paragraphs 1-91, as if fully alleged herein.

93. As described in detail above, Defendants knowingly made numerous false, misleading, and misrepresentative statements via its website and other standardized marketing materials regarding Defendants' purported expertise, capabilities, and qualifications to safely store Plaintiffs' frozen canine semen specimens.

94. Plaintiffs and other class members reasonably relied on those false and misleading statements in electing to entrust Defendants with the storage of their canine semen specimens.

95. In reality, Defendants did not have appropriate equipment, experience, or protocols in place to ensure the safe storage of Plaintiffs' and other class members' frozen canine semen specimens.

96. As a result of Defendants' wrongful conduct, as set forth herein, Plaintiffs and the other class members have been permanently deprived of the opportunity to use their canine semen specimens. They have suffered, and continue to suffer, damages in an amount to be determined at trial.

COUNT IV -- (Bailment)

97. Plaintiffs, individually and on behalf of the other class members, repeat and reallege paragraphs 1-96, as if fully alleged herein.

98. Plaintiffs and the other class members delivered to Defendants for safekeeping personal property, to be safely and securely kept and to be redelivered to them on demand.

99. Defendants received canine semen specimens from Plaintiffs and other class members on this condition.

100. Plaintiffs and the other class members agreed to pay, and paid, fees in exchange for Defendants' promise to keep their canine semen specimens in safekeeping.

101. Defendants had a duty to exercise ordinary care in the safekeeping of Plaintiffs and the other class members' canine semen specimens, and Defendants had a duty to return them, undamaged, to Plaintiffs and the other class members.

102. Defendants invited the general public, including Plaintiffs and the other class members in particular, to entrust canine semen specimens to their care by holding themselves out to be a competent, capable, experienced, and established canine reproductive and storage facility capable of handling and caring for canine semen specimens in a satisfactory manner.

103. Because of Defendants' wrongful conduct, as alleged herein, Plaintiffs' and other class members' property was destroyed and/or irreparably damaged, precluding redelivery / return of the property or any part of the property to the Plaintiffs and the other class members.

104. Defendants breached their duty to exercise ordinary care in the safekeeping of Plaintiffs' and the other class members' canine semen specimens delivered to Defendants, and to return them, undamaged, to Plaintiffs and the other class members.

105. As a result of Defendants' wrongful conduct, as set forth herein, Plaintiffs and the other class members have been permanently deprived of the opportunity to use their canine semen specimens. They have suffered, and continue to suffer, damages in an amount to be determined at trial.

COUNT IV – (Breach of Implied Covenant of Good Faith and Fair Dealing)

106. Plaintiffs, individually and on behalf of the other class members, repeat and reallege paragraphs 105, as if fully alleged herein.

107. The parties' contract, while obligating Defendants to store Plaintiffs' and other class members' canine semen specimens for them, contains no integration clause and is silent as

to the specific methods and protocols Defendants were to employ in carrying out the purpose of the contract.

108. Defendants, in choosing equipment, methods and protocols for the safe storage of Plaintiffs' frozen canine semen specimens, were under an obligation under Ohio law to carry out those activities in good faith, and to deal fairly with Plaintiffs and other class members.

109. Defendants breached that duty by, among other things, willfully and negligently failing to employ appropriate equipment, monitoring techniques, and protocols to ensure the safe storage of the frozen semen specimens.

110. Defendants further breached their duty of good faith to Plaintiffs and other class members by failing to distribute the frozen semen specimens from a single dog across multiple tanks to protect against total loss if the temperature inappropriately rose in one or more tanks.

111. Defendants further breached their duty of good faith to Plaintiffs and other class members by failing promptly to advise Plaintiffs and other class members of the loss of the frozen semen specimens, thus creating a risk that dogs would age, die, and/or be neutered in the interim, thereby increasing the risk of injury to Plaintiffs.

112. Defendants knew that the reason they were collecting, freezing and storing the semen specimens in their liquid nitrogen storage tanks was for the purpose of ensuring viable semen would be available to Plaintiffs and the other class members for the future breeding of dogs.

113. Defendants knew that Plaintiffs and the other class members were relying on their expertise, skill and judgment in the collection, freezing, maintenance, and storage of the specimens for the purpose of ensuring viable semen specimens would be delivered to Plaintiffs and other class members for future breeding efforts.

114. Plaintiffs and the other class members relied on Defendants' expertise, skill and judgment in the collection, freezing, maintenance, and storage of the specimens for the purpose of ensuring viable semen specimens would be delivered to Plaintiffs and other class members.

115. As a direct and proximate result of Defendants' failure to carry out their obligations to Plaintiffs and other class members in good faith, Plaintiffs and the other class members have been permanently deprived of the opportunity to use their canine semen specimens. They have suffered, and continue to suffer, damages in an amount to be determined at trial

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other class members, respectfully request that the Court:

1. Certify this action as a class action pursuant to Rule 23 of the Ohio Rules of Civil Procedure, declare that Plaintiffs are proper class representatives, and appoint Plaintiffs' undersigned counsel as class counsel;
2. Award Plaintiffs and the other class members compensatory, consequential, and general damages in an amount to be determined at trial;
3. Award Plaintiffs and the other class members statutory damages, and punitive or exemplary damages, to the fullest extent permitted by law, in an amount to be determined at trial;
4. Grant injunctive and declaratory relief requiring Defendants to install sufficient safeguards, alarms, and improved equipment, and to implement policies and procedures to ensure that a similar incident causing the damage and destruction of canine semen specimens will not recur in the future;

5. Award Plaintiffs and the class their expenses and costs of suit, including reasonable attorneys' fees, to the extent provided by law;
6. Award Plaintiffs and the class prejudgment and post-judgment interest at the highest legal rate provided by law; and
7. Award such further relief as the Court deems appropriate.

JURY DEMAND

Pursuant to Rule 38(B) of the Ohio Rules of Civil Procedure, Plaintiffs demand a trial by jury as to all issues so triable.

Respectfully submitted,

/s/ Jeffrey A. Lipps
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