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FELDMAN & SMALLEY, P.C.
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Identification Nos.: 30546, 202850
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Attorneys for Plaintiffs

Martha Wilson, Nancy Wilson and James Wilson, :
and :
Neil Pancoast, :
:
On Behalf of Themselves and All :
Others Similarly Situated, :
Plaintiffs :

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

v. :

APRIL TERM, 2008

Biomedical Tissue Services, Ltd.; :
Michael Mastromarino; Joseph Nicelli; :
Lee Cruceta; LMC Tissue Recovery Services; :
Christopher Aldorasi; MCM Tissue Recovery :
Services, Inc.; Chris Aldorasi Funeral Service; :
Kevin Vickers; Liberty Cremation, Inc.; :
Garzone Funeral Home; Garzone Funeral Home, :
Inc.; Gerald Garzone; Louis Garzone; James :
McCafferty; James A. McCafferty Funeral Home, :
Regeneration Technologies, Inc.; :
LifeCell Corporation, Inc.; Tutogen Medical, Inc.; :
Blood & Tissue Center of Central Texas; and :
Lost Mountain Tissue Bank, :
Defendants :

DOCKET NO.: 003629

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COME NOW Plaintiffs, on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C., and bring this Class Action Complaint. Plaintiffs demand a jury trial as to issues triable by a

jury. Plaintiffs seek certification of this matter as a Class Action. For their Complaint against Defendants, Plaintiffs allege the following:

INTRODUCTION

1. Plaintiffs, Martha Wilson, Nancy Wilson, James Wilson (hereafter collectively “Wilsons”) and Neil Pancoast (hereafter “Pancoast”) bring this Class Action Complaint on behalf of themselves and on behalf of all other similarly situated individuals, against these Defendants, who, upon information and belief were involved in a scheme in which they participated in obtaining human body parts, such as bones, skin, tendons, and other tissues, from corpses of Plaintiffs’ next-of-kin or loved ones while the corpses were under the care of either the individual Defendants or the various funeral home Defendants and other unknown individuals or business entities. Defendants participated in this scheme of harvesting body parts from the corpses without the consent of the decedents (while alive) or of the decedents’ next-of-kin or loved ones allowing the harvesting of body parts by Defendants for ultimate use as transplantation materials (allografts) for use as transplants into living human beings.

2. The Wilsons’ father, James L. Bonner died May 31, 2004. Decedent’s body was entrusted to the care of Liberty Cremation, Inc. in Philadelphia for the purpose of cremation. Neither James L. Bonner nor any member of his family consented orally or in writing to the harvesting of tissue from James L Bonner’s corpse for use as allograft transplantation material by any Defendant. On or about August 16, 2007 a Philadelphia detective came to the home of Martha Wilson with a purported release allowing for the harvesting of tissue from the corpse of James L. Bonner. Martha Wilson informed the detective that she had not signed any release, and that no one else had. The release contained information regarding a fictitious wife. James L. Bonner had never been married.

3. Neil Pancoast's wife, Felicia E. Pancoast, died on September 24, 2005.

Decedent's body was entrusted to James A. McCafferty Funeral Home and Liberty Cremation, Inc. in Philadelphia for the purpose of cremation. Neither Felicia E. Pancoast nor any member of her family consented orally or in writing to the harvesting of tissue from Felicia Pancoast's corpse for use as allograft transplantation material by any Defendant. Decedent, Felicia E. Pancoast, died at the age of 59 as a result of lung and bone cancer. Upon information and belief, Plaintiff, Pancoast, believes that Defendants harvested the body parts of his wife without his consent.

4. The members of the Class are similarly situated in that they allege that Defendants were involved in a scheme to, and did in fact, harvest tissue from the corpses of their next-of-kin or loved ones without consent.

THE FACTS COMMON TO ALL COUNTS AND CLASS CERTIFICATION

5. Plaintiffs allege that beginning in or around 2000, former New Jersey dentist and oral surgeon, Michael Mastromarino, entered into a partnership with Joseph Nicelli, a master embalmer, to open Biomedical Tissue Services, Ltd. ("BTS") for the purpose of harvesting human tissue, bone and organs from human corpses for resale to commercial human tissue, bone and organ processors and resellers. When human tissue, such as ligaments, tendons, heart valves, skin or bone are removed from one human for preparation and transplantation into another, the tissue, bone or organ is known as an allograft.

6. Plaintiffs allege that shortly after opening their business, Mastromarino and Nicelli began harvesting tissue and bones from human bodies, including bodies of Plaintiffs' next-of-kin, family members, and loved ones, improperly obtained from various funeral homes and crematories.

7. Plaintiffs allege that Mastromarino and Nicelli were aided in this enterprise by, among others, Kevin Vickers, Lee Cruceta and Christopher Aldorasi.

8. Plaintiffs allege that Lee Cruceta was head of LMC Tissue Recovery Services.

9. Plaintiffs allege that Christopher Aldorasi was head of MCM Tissue Recovery Services, Inc. and also of Chris Aldorasi Funeral Service.

10. Kevin Vickers worked for Biomedical Tissue Services, Inc.

11. Plaintiffs allege that the deceased individuals obtained by Biomedical Tissue Services from funeral and crematories and dissected by Mastromarino, Nicelli, Cruceta, Vickers and Aldorasi among others, never intended to be tissue donors, or if they did they did not give their consent to have their tissues or bones removed with the correct authorization, and their families never authorized the use of their bodies for human tissue harvesting for later transplantation.

12. Plaintiffs allege that to circumvent obtaining releases from the families of the dissected corpses, Biomedical Tissue Services, Mastromarino, Nicelli, Cruceta, Aldorasi, Vickers and/or their agents or employees, with the aid, knowledge, agreement, or common understanding of Defendant funeral homes and funeral home officers, secretly dissected the bodies without the knowledge of family members and prepared them for burial or cremation. Such dissections included replacement of harvested bone and tissue with foreign objects, such as PVC piping and other objects, so that bodies would still appear normal for their pending visitations, funerals, or post mortem proceedings.

13. Plaintiffs allege that BTS, Mastromarino, Nicelli, Cruceta, Aldorasi, Vickers and/or or their agents or employees, with the aid, knowledge, agreement, or common understanding of Defendant funeral homes and their officers, also altered the medical records,

death certificates, and even identities of the corpses to conceal the lifestyle and medical or disease histories of the corpses.

14. Plaintiffs allege that between February 2004 and September 2005 certain funeral homes and crematories, including Liberty Cremation, Inc., Garzone Funeral Home, Garzone Funeral Home, Inc. and James A. McCafferty Funeral Home, among others, allowed Mastromarino, Nicelli, Cruceta, Aldorasi, or their agents, or employees to harvest body parts from corpses under the funeral homes/crematory's care and with aid, knowledge, agreement or common understanding of the funeral home/crematory and its officers, even though neither the decedents (while alive) nor decedents' families or next-of-kin gave permission for such harvesting of body parts ultimately to be used for transplantation as allografts into living human bodies.

15. Gerald Garzone, Louis Garzone and James McCafferty, as co-owners of Liberty Cremation, gave BTS access by and through its agents, servants and employees to bodies for the purpose of harvesting in exchange for money.

16. Gerald Garzone, as the owner of the Garzone Funeral Home located at 4149-51 L Street, Philadelphia, PA, gave BTS access by and through its servants, agents and employees to bodies for the purpose of harvesting in exchange for money.

17. Louis Garzone, as the owner of the Garzone Funeral Home located at 1830 Somerset Street, Philadelphia, PA, gave BTS access by and through its agents, servants and employees to bodies for the purpose of harvesting in exchange for money.

18. James McCafferty, as the funeral director of James A. McCafferty Funeral Home located at 6711 Frankford Ave., Philadelphia, PA 19134 gave BTS access by and through its agents, servants and employees to bodies for the purpose of harvesting in exchange for money.

19. Plaintiffs allege that there were at least 244 bodies that were harvested from the Garzone Funeral Homes, Liberty Cremation and/or James A. McCafferty Funeral Home without consent from the next-of-kin.

20. Plaintiffs allege that the body parts harvested were sold to Defendants, Regeneration Technologies, Inc. (hereafter "RTI"), Lifecell Corporation, Inc. (hereafter "LifeCell), Tutogen Medical, Inc. (hereafter "Tutogen"), Blood & Tissue Center of Central Texas (hereafter "the Center"), and Lost Mountain Tissue Bank (hereafter "Lost Mountain") for the purpose of processing and preparation for transplantation.

21. Plaintiffs allege that Defendants, RTI, Lifecell, Tutogen, the Center and Lost Mountain, processed, sold and/or distributed decedent's body parts while deliberately and/or carelessly disregarding forged, incomplete and/or inaccurate documents such as, but not limited to, consent forms, state death certificates, medical records, and medical reports.

22. On October 13, 2005, the FDA advised the public of a voluntary recall of human allografts distributed by BTS.

23. On September 27, 2007, the Grand Jury for the Court of Common Pleas of Philadelphia County, Pennsylvania indicted Gerald Garzone, Louis Garzone, James McCafferty, Liberty Cremation, Inc., Garzone Funeral Home, Garzone Funeral Home, Inc., Michael Mastromarino and Lee Cruceta and released a 103 page Report of the Grand Jury.

THE PARTIES

24. Plaintiffs, Martha Wilson and Nancy Wilson are adult individuals and citizens of the Commonwealth of Pennsylvania residing at 2017 W. Montgomery Avenue, Philadelphia, PA.

25. Plaintiff, James Wilson, is an adult individual and citizen of the Commonwealth of Pennsylvania residing at 3126 N. Patton Street, Philadelphia, PA 19132.

26. Plaintiff, Neil Pancoast , is an adult individual and citizen of the Commonwealth of Pennsylvania residing at 2848 Neptune Road, Philadelphia, PA 19154.

27. Defendant Biomedical Tissue Services, Ltd., (“BTS”) is a business entity organized and existing under and by virtue of the law of the State of New Jersey with its principal place of business located at 1273 77th Street, Brooklyn, New York 11228. BTS may be served on its registered agent Michael Mastromarino, 260 Columbia Avenue, Suite #1, Fort Lee, New Jersey 07024.

28. Defendant Michael Mastromarino (“Mastromarino”) is an individual located at 2125 Center Avenue, Fort Lee, New Jersey 07024. Mastromarino may be served at 260 Columbia Avenue, Suite #1, Fort Lee, New Jersey 07024.

29. Defendant Joseph Nicelli (“Nicelli”) is an individual located at 29 Clifton Avenue, Staten Island, New York 10305-4911 and may be served at that address.

30. Defendant Lee Cruceta (“Cruceta”) is an individual located at 206 Oakland Avenue, Monroe, New York 109050 and may be served at that address.

31. Defendant LMC Tissue Recovery Services (“LCM”) is a business entity organized and existing under and by virtue of the State of New Jersey with its principal place of business at 2125 Center Avenue, Ft. Lee, New Jersey. It may be served on its registered agent Lee Cruceta, located at 206 Oakland Avenue, Monroe, New York 10950.

32. Defendant Christopher Aldorasi (“Aldorasi”) is an individual located at 1 Runsom Road, Staten Island, New York 10314 and may be served at that address.

33. Defendant MCM Tissue Recovery Services Inc. (“MCM”) is a business entity organized and existing under and by virtue of the law of the State of New York with its principal place of business at 1 Rumson Road, Staten Island, New York 10313. It may be served on its registered agent Christopher Aldorasi located at 1 Rumson Road, Staten Island, New York 10314.

34. Defendant Chris Aldorasi Funeral Service (“Aldorasi Funeral Service”) is a business entity organized and existing under and by virtue of the law of the State of New York located at 1 Rumson Road, Staten Island, New York 10314. It may be served on its registered agent Christopher Aldorasi located at 1 Rumson Road, Staten Island, New York 10314.

35. Upon information and belief, Defendant, Kevin Vickers (hereafter “Vickers”) is an adult individual who resides at 8493 Sherbrooke Street, Honeoye, NY 14471-9709.

36. Upon information and belief, Defendant, Liberty Cremation, Inc. (hereafter “Liberty”) is a Pennsylvania corporation in the business of funeral crematory services with its principle place of business located at 2778 Ruth Street, Philadelphia, Pennsylvania 19134-3408.

37. Upon information and belief, Defendant, Garzone Funeral Home, Inc., is a Pennsylvania corporation in the business of funeral/crematory services with its principle place of business located at 4149-51 L Street, Philadelphia, PA 19124 and 1830 E. Somerset Street, Philadelphia, PA.

38. Upon information and belief, Defendant, Garzone Funeral Home, is a Pennsylvania corporation in the business of funeral/crematory services with its principle place of business located at 4149-51 L Street, Philadelphia, PA 19124 and 1830 E. Somerset Street, Philadelphia, PA.

39. Upon information and belief, Defendant, James A. McCafferty Funeral Home, is a Corporation, partnership, proprietorship, non-profit or for profit organization, or other business entity in the business of funeral/crematory services with its principle place of business located at 6711 Frankford Ave., Philadelphia, PA 19134.

40. Upon information and belief, Defendant, Gerald J. Garzone (hereafter “G. Garzone”) is an adult individual who resides at 114 Davis Drive, North Wales, PA.

41. Upon information and belief, Defendant, Louis H. Garzone (hereafter “L. Garzone”) is an adult individual who resides at 1830 East Somerset Street 32, Philadelphia, Pennsylvania 19134-3455.

42. Upon information and belief, Defendant, James A. McCafferty (hereafter “McCafferty”) is an adult individual who is a resident of the Commonwealth of Pennsylvania and can be served at 2778 Ruth Street, Philadelphia, Pennsylvania 19134-3408.

43. Upon information and belief, Defendant, Regeneration Technologies, Inc. (hereafter “RTI”) is a Florida corporation with a principal place of business located at 11621 Research Circle, Alachua, Florida 32615.

44. Upon information and belief, Defendant, Lifecell Corporation (hereafter “Lifecell”) is a New Jersey corporation with a principal place of business located at One Millennium Way, Branchburg, New Jersey.

45. Upon information and belief, Defendant, Tutogen Medical Inc. (hereafter “Tutogen”) is a Florida corporation with a principal place of business located at 13709 Progress Boulevard, Box 19, Alachua, Florida 32615.

46. Upon information and belief, Defendant, Blood & Tissue Center of Central Texas (hereafter “the Center”) is a Texas not-for-profit corporation with its principal place of business located at 4300 North Lamar Boulevard, Austin, Texas 78756.

47. Upon information and belief, Lost Mountain Tissue Bank (hereafter “Lost Mountain”) is a Georgia corporation with its principal place of business located at 3175 Cherokee Street, Kennesaw, Georgia 30144.

VENUE/JURISDICTION

48. The aggregated amount in controversy exceeds \$50,000.00, the jurisdictional amount requiring arbitration referral by Local Rule 1301.

49. Venue is proper pursuant to Pa R.Civ.P. 2179(a)(1) and 2179(a)(3) because this is an action against corporations whose principle place of business is located in Philadelphia County and the transaction or occurrence out of which the cause of action arose, took place in Philadelphia, PA.

CLASS ACTION ALLEGATIONS

50. This action is brought by Plaintiffs as a class action pursuant to Pennsylvania Rules of Civil Procedure 1701 et seq. on behalf of themselves and a class of all other similarly situated persons, such class consisting of:

All individuals who were contacted by the Philadelphia District Attorney’s Office and informed that their that their next-of-kin’s or loved one’s corpse had body parts removed by Defendants for ultimate use as allografts or had body parts removed for ultimate use as allografts while the decedent’s corpse was under the care of any Defendants, and neither the decedent (while alive) nor the decedents next-of-kin or loved one had given consent or permission to any Defendant for the removal of such body parts for ultimate use as allografts.

51. Plaintiffs also seek to have sub-class (“no notice class”) certified that consists of:

All individuals who did not receive explicit notice from the Philadelphia District Attorney’s Office of the mutilation of their loved ones, but who, upon information and belief, allege that the body parts of their next-of-kin or loved one were removed by Defendants for ultimate use as allografts or had body parts removed for ultimate use as allografts while the decedent’s corpse was under the care of any Defendants, and neither the decedent (while alive) nor the decedents next-of-kin or loved one had given consent or permission to any Defendant for the removal of such body parts for ultimate use as allografts.

52. The Class consists of hundreds of persons located primarily in Pennsylvania and specifically the Philadelphia area; thus, the Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.

53. There are questions of law and/or fact common to the Class which predominate over any questions affecting only individual members, including, but not limited to, the following:

- (a) Whether Defendants removed body parts from Plaintiffs’ next-of-kin’s or loved one’s corpse without proper consent or authorization;
- (b) Whether Defendants engaged in deceptive acts and practices, including, but not limited to, hiding from Plaintiffs the fact that body parts had been harvested from their next-of-kin or loved ones;
- (c) Whether Defendants represented that they would honor the wishes and directive of, and agreements with, decedents or their next-of-kin and loved ones;
- (d) Whether Defendants intentionally or negligently misrepresented to decedents or their next-of-kin and loved ones that they would honor the wishes and directives of, and agreements with, decedents or their next-of-kin and loved ones;
- (e) Whether Defendants committed fraud in hiding the fact that they were involved in harvesting body parts from corpses for monetary gain when the proper consent or authorization had not been secured from decedents’ next-of-kin or loved ones.;

- (f) Whether Defendants, as caretakers of decedents' corpses, had a duty to the Class members to treat the corpses with dignity and respect and whether the breach of this duty was the proximate cause of severe emotional distress and/or severe mental anguish caused to the Class members;
- (g) Whether Defendants knew or should have known that harvesting Class members' decedents' corpses for body parts without proper consent or authorization from decedents or Class members would cause Class members severe emotional distress and/or severe mental anguish; and
- (h) Whether Defendants' conduct was extreme and outrageous as to extend beyond all possible bounds of decency.
- (i) Whether Defendants failed to properly request donation of tissue under Pa. C.S. §8617;
- (j) Whether Defendants obtained proper consent for donation pursuant to 20 Pa. C.S. §8613(f);
- (k) Whether Defendants knew or should have known that proper consent for donation was not obtained; and
- (l) Whether Defendants recklessly and/or negligently accepted facially fraudulent, inaccurate, and/or incomplete death certificates, medical histories/records, and consent forms.

54. Each of these enumerated questions of law and fact is common to each member of the Class.

55. The claims of representative Plaintiffs are typical of the claims of the members of the Class; the representative Plaintiffs and all members entrusted their next-of-kin or loved one's corpse to defendant funeral homes/crematories. While in the care of these funeral homes/crematories, the corpses were harvested of various body parts, without consent of decedents (while alive) or next-of-kin or loved ones, by various Defendants for sale as allografts for monetary gain.

56. The representative Plaintiffs will fairly and adequately represent the interests of the Class in that Plaintiffs claims are typical of those of the Class Members and they have

retained counsel who are experienced and skilled in complex class action litigation. Plaintiffs have no conflict of interest in the maintenance of this class action, and have or can acquire adequate financial resources to assure that the interests of the class will not be harmed. Counsel for Plaintiffs have agreed, consistent with Pennsylvania Rules of Professional Conduct, specifically Rule 1.8(e)(1), to advance the court costs and expenses of litigation on their behalf, contingent on the outcome of this litigation.

57. Maintenance of this action as a Class Action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each member of the class who has suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

58. No unusual difficulties are likely to be encountered in the management of this action as a class action.

59. Class certification is appropriate because Defendants have acted on grounds generally applicable to the Class, making final equitable relief appropriate with respect to the class.

COUNT ONE – CIVIL CONSPIRACY

ALL PLAINTIFFS V. ALL DEFENDANTS

60. Plaintiffs incorporate all previous paragraphs by reference as if fully set forth herein.

61. At all times relevant, Defendants had an agreement, engaged in a common undertaking, and acted in concert, and the foregoing conduct resulted in Plaintiffs' harm.

62. At all times relevant, Defendants acted with a common purpose to harvest and process bone and tissue from decedent without proper and adequate consent from the decedent or decedent's next-of-kin.

63. At all times relevant, Defendants acted with a common purpose to harvest and process bone and tissue from decedent by forging and falsifying consent documents, death certificates, and medical information for the donation of decedent's bone and tissue.

64. In the alternative, at all times relevant, Defendants acted with a common purpose to harvest and process bone and tissue from decedent by misusing the medical records, consent forms, and/or death certificates that contained inaccurate and/or incomplete information.

65. As a direct and proximate result of the conduct of Defendants as stated above, Plaintiffs were caused, or shall in future be caused, to suffer severe pain and suffering, severe emotional distress, mental anguish and harm, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

66. Defendants are liable to Plaintiffs for all torts perpetrated by any or all of the Defendants pursuant to Pennsylvania law of civil conspiracy as alleged herein; all Defendants acted with a common purpose to commit the aforementioned unlawful acts and/or for the unlawful purposes of harvesting the bone and tissue from decedent without consent from decedent or decedent's next-of-kin.

67. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress, mental anguish and harm.

68. In the alternative, Defendants acted negligently and carelessly, and as a direct result caused the above described severe pain and suffering and severe emotional distress and mental anguish and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT TWO – NEGLIGENCE

**ALL PLAINTIFFS v. BIOMEDICAL TISSUE SERVICES LTD.,
MICHAEL MASTROMARINO, JOE NICELLI, LEE CRUCETA,
LMC TISSUE RECOVERY SERVICES, CHRISTOPHER ALDORASI,
MCM TISSUE RECOVERY SERVICES, INC., CHRIS ALDORASI FUNERAL
HOME SERVICES, AND KEVIN VICKERS**

69. Plaintiffs incorporate all previous paragraphs by reference as if fully set forth herein.

70. At all times relevant, Defendants were engaged in some manner in the business of caring for, disposing of, or preparing corpses for burial, interment or cremation or in the business of procuring, harvesting, testing, evaluating, preserving, selling, labeling, advertising or supplying products from human tissue and bone for implantation in the human body.

71. At all times relevant, Defendants negligently and carelessly cared for the corpse and/or negligently and/or unlawfully procured, harvested, tested, researched, evaluated, preserved, labeled, advertised, supplied, or sold the body parts of decedent.

72. The negligent, careless and/or reckless conduct of Defendants, by their agents, servants and/or employees acting within the scope of their employment or authority, includes, the following:

- (a) Failure to properly request donation of tissue under 20 Pa.C.S. § 8617;
- (b) Failure to obtain proper and adequate consent from decedent's next-of-kin thereby allowing for the procurement and/or harvesting of tissue from decedent;
- (c) Failure to verify the accuracy and adequacy of the consent form that lead to the procurement and/or harvesting of tissue from decedent;
- (d) Failure to accurately prepare and complete the consent form;
- (e) Failure to accurately prepare and complete the death certificate;
- (f) Improperly providing an inaccurate consent form and death certificate;
- (g) Improperly relying upon the consent form, death certificate, and medical records;
- (h) Failure to confirm medical information about decedent, including but not limited to age, cause of death, address, next-of-kin, and social security number in the preparation of the forms;
- (i) Entrusting decedent to the above-named persons and entities for tissue harvesting when they knew or should have known decedent was not a candidate for tissue harvesting;
- (j) Failure to prevent the procurement and/or harvesting of decedent;
- (k) Procuring and/or harvesting tissue from decedent without obtaining and/or verifying proper and adequate consent from next-of-kin;
- (l) Accepting an inaccurate or incomplete death certificate and/or an inaccurate or incomplete consent form when defendants knew or should have known that said documents were inadequate;
- (m) Accepting and/or providing a telephone Consent For Donation of Anatomical Gifts form without a supporting telegraphic, recorded telephonic, and/or recorded message as required under Pennsylvania law 120 Pa. C.S. §8613(f); and
- (n) Concealing from Plaintiffs the foregoing activities set forth at subsections (a) through (m), including the use of the unauthorized and/or inadequate consent form, the use of the inadequate death certificate, the unauthorized entrustment of Plaintiffs' decedent's body for tissue harvesting, permitting unauthorized persons access to plaintiffs' decedent's body, and the harvesting of tissue from Plaintiffs' decedent's body.

73. The foregoing acts and omissions constituting professional malpractice represent Defendants' dereliction from their professional duties and/or failure to exercise the accepted degree of professional skill or learning in the disposition of decedent's body.

74. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm as set forth herein.

75. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm caused by the negligence of Defendants.

76. As a direct and proximate result of the conduct of Defendants as stated above, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress, mental anguish and harm, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

77. In the further alternative, defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress, mental anguish and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT THREE – NEGLIGENCE

**ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE,
LOUIS GARZONE, JAMES McCAFFERTY, GARZONE
FUNERAL HOME, GARZONE FUNERAL HOME, INC.
AND JAMES A. McCAFFERTY FUNERAL HOME**

78. Plaintiffs incorporate all previous paragraphs by reference as if fully set forth herein.

79. At all times relevant, Defendants were engaged in some manner in the business of caring for, disposing of, or preparing corpses for burial, interment or cremation.

80. At all times relevant, Defendants negligently and carelessly cared for, disposed of, and/or prepared the corpse of decedent for cremation.

81. The professional malpractice of Defendants, Liberty Cremation, Gerald Garzone, Louis Garzone, James McCafferty, Garzone Funeral Home, Garzone Funeral Home, Inc. and James A. McCafferty individually or collectively and by and through their agents, servants, and/or employees acting within the scope of their employment or authority, includes the following conduct:

- (a) Failure to properly request donation of tissue under 20 Pa. C.S. §8617;
- (b) Failure to obtain proper and adequate consent from decedent's next-of-kin thereby allowing for the procurement and/or harvesting of tissue from decedent;
- (c) Failure to verify the accuracy and adequacy of the consent form that lead to the procurement and/or harvesting of tissue from decedent;
- (d) Failure to accurately prepare and complete the consent form;
- (e) Failure to accurately prepare and complete the death certificate;
- (f) Improperly providing an inaccurate consent form and death certificate;
- (g) Improperly relying upon the consent form, death certificate, and medical records;

- (h) Failure to confirm medical information about decedent, including but not limited to age, cause of death, address, next-of-kin, and social security number in the preparation of the forms;
- (i) Entrusting decedent to the above-named persons and entities for tissue harvesting when they knew or should have known decedent was not a candidate for tissue harvesting;
- (j) Failure to prevent the procurement and/or harvesting of tissue from decedent;
- (k) Providing and/or accepting telephone Consent For Donation of Anatomical Gifts form without a supporting telegraphic, recorded telephonic, and/or recorded message as required under Pennsylvania law, 20 Pa. C.S. §8613(f); and
- (l) Concealing from Plaintiffs the foregoing activities set forth at subsections (a) through (k), including the use of the unauthorized and/or inadequate consent form, the use of the inadequate death certificate, the unauthorized entrustment of Plaintiffs' decedent's body for tissue harvesting, permitting unauthorized persons access to plaintiffs' decedent's body, and the harvesting of tissue from Plaintiffs' decedent's body.

81. The foregoing acts and omissions constituting professional malpractice represent Defendants' dereliction from their professional duties and/or failure to exercise the accepted degree of professional skill or learning in the disposition of decedent's body.

82. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm as set forth herein.

83. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm caused by the negligence of Defendants.

84. As a direct and proximate result of the conduct of Defendants as stated above, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe

emotional distress, mental anguish and harm, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

85. In the further alternative, defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress, mental anguish and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT FOUR – NEGLIGENCE

ALL PLAINTIFFS v. REGENERATION TECHNOLOGIES, INC., LIFECCELL CORPORATION, INC., TUTOGEN MEDICAL, INC., BLOOD & TISSUE CENTER OF CENTRAL TEXAS, AND LOST MOUNTAIN TISSUE BANK

86. Plaintiffs incorporate all previous paragraphs by reference as if fully set forth herein.

87. At all times relevant, Defendants were engaged in some manner in the business of harvesting, testing, evaluating, preserving, selling, processing, marketing, labeling, advertising or supplying products from human tissue and bone for implantation in the human body.

88. At all times relevant, Defendants negligently and carelessly accepted bone and tissue from the corpse and/or negligently and/or unlawfully procured, harvested, tested, researched, evaluated, preserved, processed, marketed, labeled, advertised, supplied, or sold the body parts of decedent.

89. The negligent, careless and/or reckless conduct of Defendants, by their agents, servants and/or employees acting within the scope of their employment or authority, including, but is not limited to, the following:

- (a) Negligently, carelessly, and recklessly accepting a telephone Consent For Donation of Anatomical Gifts form without a supporting telegraphic, recorded telephonic, and/or recorded message as required under Pennsylvania law, 20 Pa. C.S. §8613(f);
- (b) Failure to ensure that there was a proper and adequate request for donation of tissue under 20 Pa.C.S. § 8617;
- (c) Failure to require proper documentation to ensure that decedents bone and tissue was properly obtained under Pennsylvania Law;
- (d) Failure to confirm information about the donor such as, but not limited to, age, cause of death, address, next-of-kin, and social security number;
- (e) Negligently, carelessly and recklessly accepting a facially forged death certificate that was inaccurate, typed as oppose to hand written, not signed by the Registrar and missing critical information;
- (f) Negligently, carelessly, and recklessly accepting bone and tissue without proper and adequate consent from plaintiffs;
- (g) Negligently, carelessly and recklessly accepting a forged consent form;
- (h) Negligently, carelessly and recklessly confirming the information regarding the consenting legal next of kin on the BTS Consent For Donation of Anatomical Gifts;

90. The foregoing acts and omissions constituting professional malpractice represent Defendants' dereliction from their professional duties and/or failure to exercise the accepted degree of professional skill or learning in the disposition of Plaintiffs' decedent's body.

91. Defendants, individually or any number of them, by their agents, servants, and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm as set forth herein

92. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in common undertaking and acted in concert to bring about Plaintiffs' harm caused by the negligence of Defendants.

93. As a direct and proximate result of the conduct of Defendants as stated above, Plaintiffs were caused, or shall in future be caused, to suffer severe pain and suffering, severe emotional distress and mental anguish and harm, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

94. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress and mental anguish and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT FIVE –INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

**ALL PLAINTIFFS v. REGENERATION TECHNOLOGIES, INC.,
LIFECCELL CORPORATION, INC., TUTOGEN MEDICAL, INC., BLOOD & TISSUE
CENTER OF CENTRAL TEXAS, AND LOST MOUNTAIN TISSUE BANK**

95. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

96. Defendants', RTI, Lifecell, Tutogen, The Center, and Lost Mountain, acts and omissions set forth herein demonstrated conduct that was extreme, outrageous, and unnecessarily reckless in a deliberate intent to cause Plaintiffs significant emotional distress, and mental

anguish or that can be deemed to be willful and wanton disregard of the fact that emotional distress could and should be expected.

97. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused by the intentional infliction of emotional distress.

98. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking and acted in concert to bring about Plaintiffs' harm caused by the intentional infliction of emotional distress.

99. As a direct and proximate result of Defendants', RTI, LifeCell, Tutogen, The Center, and Lost Mountain, acts and omissions, as described herein, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and harm, mental anguish, financial or economic loss, including, but not limited to, present and future lost wages and other damages.

100. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress and mental anguish and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT SIX - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

ALL PLAINTIFFS v. ALL DEFENDANTS

101. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

102. Defendants' acts and omissions set forth herein, demonstrated conduct that was negligent, and this negligence caused the Plaintiffs severe emotional distress and mental anguish given the nature of the harm caused as set forth herein.

103. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm caused by the negligent infliction of emotion distress.

104. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking and acted in concert to bring about Plaintiffs' harm caused by the negligent infliction of emotional distress.

105. As a direct and proximate result of Defendants' acts and omissions, as described herein, Plaintiffs were caused, or shall in the future be caused to suffer severe pain and suffering, severe emotional distress, mental anguish and harm, financial or economic loss, including but not limited to, present and future lost wages, and other damages.

106. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress, and mental anguish and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand

(\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT SEVEN - BREACH OF FIDUCIARY DUTY

**ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE,
LOUIS GARZONE, JAMES McCAFFERTY, GARZONE
FUNERAL HOME, GARZONE FUNERAL HOME, INC.
AND JAMES A. McCAFFERTY FUNERAL HOME**

107. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

108. By its conduct and advertising, Defendants, Liberty Cremation, G. Garzone, L. Garzone, McCafferty, Garzone Funeral Home, Garzone Funeral Home, Inc. and James A. McCafferty Funeral Home by and through its employees, servants and/or agents has created, and admits that it has created, a fiduciary relationship with Plaintiffs in which Plaintiffs were led to believe that they could rely with trust and confidence on Liberty Cremation. In particular, with respect to appropriate care, handling, and disposition of decedent.¹

109. Defendants, Liberty, G. Garzone, L. Garzone, McCafferty, Garzone Funeral Home, Garzone Funeral Home, Inc. and James A. McCafferty Funeral Home by and through their employees, servants and/or agents has unique and superior knowledge relating to the handling, dealings, disposition and process of cremation and/or funeral arrangements. Plaintiffs were lead to believe that they could place special trust and confidence in Defendants, Liberty, G. Garzone, L. Garzone, McCafferty, Garzone Funeral Home, Garzone Funeral Home, Inc. and James A. McCafferty Funeral Home and their employees, servants and/or agents, to act on behalf of Plaintiffs' wishes and desires with regard to decedent, including the appropriate care, proper handling and disposition of decedent's body.

¹ See contact between Plaintiff, Martha Wilson and Liberty Cremation attached hereto as Exhibit "A".

110. Defendants, Liberty, G. Garzone, L. Garzone, McCafferty, Garzone Funeral Home, Garzone Funeral Home, Inc. and James A. McCafferty Funeral Home have breached their fiduciary relationship by concealing material facts related to the unauthorized procurement and/or harvesting of bone and tissue from decedent.

111. Defendants, Liberty, G. Garzone, L. Garzone, McCafferty, Garzone Funeral Home, Garzone Funeral Home, Inc. and James A. McCafferty Funeral Home by and through their employees, agents and/or servants have breached such fiduciary relationship by allowing the procurement and/or harvesting of bone and tissue from decedent without proper consent and concealing such activities from Plaintiffs.

112. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm by the breach of fiduciary duty.

113. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in common undertaking and acted in concert to bring about Plaintiffs' harm caused by the breach of fiduciary duty.

114. The breach by Defendants, Liberty Cremation, Gerald Garzone, Louis Garzone,, James McCafferty, Garzone Funeral Home, Garzone Funeral Home, Inc. and James A. McCafferty Funeral Home directly and proximately caused Plaintiffs or shall in the future cause, severe pain and suffering, severe emotional distress and harm, mental anguish, financial and/or economic loss, including but not limited to, present and future lost wages, and other damages.

115. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress and harm and mental anguish.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

**COUNT EIGHT – FRAUD/DECEPTION UNDER PENNSYLVANIA UNFAIR
TRADE PRACTICES AND CONSUMER PROTECTION LAW,
73 Pa. C.S. § 201-2(4)(xxi)**

**ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE,
LOUIS GARZONE, JAMES McCAFFERTY, GARZONE FUNERAL
HOME, GARZONE FUNERAL HOME, INC. AND
JAMES A. McCAFFERTY FUNERAL HOME**

116. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

117. Defendants’ conduct falls within the purview of the Pennsylvania Unfair Trade Practices and Consumer Protection Statute, 73 Pa. C.S. §201.

118. Defendants, as natural persons, corporations, incorporated or unincorporated associations, and/or other legal entities are “persons” within the meaning of the Statute, and as such are prohibited from engaging in deceptive acts and practices.

119. Defendants have employed unconscionable commercial practices and/or fraud and/or other unlawful acts in connection with the sale of funeral/cremation services in violation of the Statute, including, but not limited to, making material misrepresentations about, or engaging in fraudulent or deceptive conduct concerning the quality, characteristics, and/or benefits of their funeral/cremation services.

120. The following conduct by Defendants constitutes unconscionable commercial practices, deceptions, frauds, false pretenses, false promises, misrepresentations and/or the knowing concealment, suppression, and/or omissions of material facts with the intent that

decedent (while alive) and Plaintiffs as members of the general public rely on such concealment, suppression and/or omission, in connection with the sale of funeral/cremation services that are unlawful under this Statute:

- (a) engaging in deceptive acts and practices, including, but not limited to, representing that their services respected the dignity of the corpse of decedent which was entrusted to them and the dignity of Plaintiffs, decedent's living relatives, who put their trust in Defendants;
- (b) engaging in deceptive and/or fraudulent acts and practices by allowing the bone, tissue, skin, ligaments, and/or any other body parts of decedent's corpse to be harvested without the knowledge and/or consent of Plaintiffs;
- (c) engaging in deceptive and/or fraudulent acts and practices by failing to inform Plaintiffs that decedent's body parts were harvested and sold for donation;
- (d) engaging in deceptive and/or fraudulent acts and practices by representing that their services would respect the decision of Plaintiffs not to donate any organs or any other body parts of the decedent; and
- (e) committing consumer fraud, acting negligently or with reckless disregard for the rights and reasonable expectations of Plaintiffs.

121. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm as set forth herein under the Pennsylvania Unfair Trade Practices and Consumer Protection Statute.

122. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm as set forth herein under the Pennsylvania Unfair Trade practices and Consumer Protection Statute.

123. As a direct and proximate result of the conduct of Defendants as stated above, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe

emotional distress and harm, mental anguish, financial and/or economic loss, including but not limited to, present and future lost wages, and other damages.

124. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress and harm and mental anguish.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

**COUNT NINE – REPRESENTING THAT DEFENDANTS’ SERVICES
HAD CHARACTERISTICS/BENEFITS IT DOES NOT HAVE
UNDER PENNSYLVANIA UNFAIR TRADE PRACTICES
AND CONSUMER LAW 73 Pa. C.S. §201-2(4)(v)**

**ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE,
LOUIS GARZONE, JAMES McCAFFERTY, GARZONE
FUNERAL HOME, GARZONE FUNERAL HOME, INC.
AND JAMES A. McCAFFERTY FUNERAL HOME**

125. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

126. Defendants have employed unconscionable commercial practices and/or fraud and/or other unlawful acts in connection with the sale of funeral/cremation services in violation of the Statute, including, but not limited to, making material misrepresentations about and/or engaging in fraudulent and/or deceptive conduct concerning the quality, characteristics and/or benefits of their funeral/cremation services.

127. The following conduct by Defendants constitutes unconscionable commercial practices, deceptions, frauds, false pretenses, false promises, misrepresentations and/or the

knowing concealment, suppression and/or omission of material facts with the intent that decedent (while alive) and Plaintiffs and members of the general public rely on such concealment, suppression and/or omission, in connection with the sale of funeral/cremation services that are unlawful under the Statute:

- (a) representing that their funeral/cremation services had certain sponsorship, approval, characteristics, uses, and/or benefits that they did not have.

128. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm as set forth in the Pennsylvania Unfair Trade Practices and Consumer Protection Statute.

129. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm as set forth herein under the Pennsylvania Unfair Trade Practices and Consumer Protection Statute.

130. As a direct and proximate result of the conduct of Defendants as stated above, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and harm, mental anguish, financial and economic loss, including but not limited to, present and future lost wages, and other damages.

131. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress and harm and mental anguish.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT TEN – REPRESENTING THAT SERVICES ARE OF A PARTICULAR STANDARD/QUALITY UNDER THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW 73 Pa. C.S. § 201-2(4)(vii)

ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE, LOUIS GARZONE, JAMES McCAFFERTY, GARZONE FUNERAL HOME, GARZONE FUNERAL HOME, INC. AND JAMES A. McCAFFERTY FUNERAL HOME

132. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

133. Defendants have employed unconscionable commercial practices and/or fraud and/or other unlawful acts in connection with the sale of funeral/cremation services in violation of the Statute, including, but not limited to, making material misrepresentations about, and/or engaging in fraudulent and/or deceptive conduct concerning, the particular standard and/or quality of their funeral/cremation services.

134. The following conduct by Defendants constitutes unconscionable commercial practices, deceptions, frauds, false pretenses, false promises, misrepresentations and/or the knowing concealment, suppression, and/or omission of material facts with the intent that decedent (while alive) and Plaintiffs and members of the general public rely on such concealment, suppression and/or omission in connection with the sale of funeral/cremation services that are unlawful under the Statute:

- (a) unfairly exploiting unwarranted trust in their well known names and improperly touting their representations for quality;
- (b) unfairly exploiting unwarranted trust in their well known names and improperly touting their representations for high standards; and
- (c) falsely representing that their cremation services were the highest quality and/or held to the highest standards.

135. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm as set forth in the Pennsylvania Unfair Trade Practices and Consumer Protection Statute.

136. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm as set forth herein under the Pennsylvania Unfair Trade Practices and Consumer Protection Statute.

137. As a direct and proximate result of the conduct of Defendants as stated above, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress, mental anguish, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

138. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress and harm and mental anguish.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

**COUNT ELEVEN – FALSELY ADVERTISING SERVICES UNDER
PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW 73 Pa. C.S. § 201-2(4)(ix)**

**ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE,
LOUIS GARZONE, JAMES McCAFFERTY, GARZONE
FUNERAL HOME, GARZONE FUNERAL HOME, INC.
AND JAMES A. McCAFFERTY FUNERAL HOME**

139. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

140. Defendants have employed unconscionable commercial practices and/or fraud and/or other unlawful acts in connection with the advertising of funeral/cremation services in violation of the Statute, including, but not limited to, making material misrepresentations about and/or engaging in fraudulent deceptive conduct concerning, the quality, characteristics, and/or benefits of their funeral/cremation services.

141. The following conduct by Defendants constitutes unconscionable commercial practices, deceptions, frauds, false pretenses, false promises, misrepresentations, and/or the knowing concealment, suppression and/or omission of material facts with the intent that decedent (while alive) and Plaintiffs and members of the general public rely on such concealment, suppression and/or omission, in connection with the advertising of funeral/cremation services that are unlawful under the act:

- (a) falsely representing in their written brochures, promotional materials, and/or advertisements, distributed throughout the Commonwealth of Pennsylvania, that their treatment of corpses comports with accepted commercial, legal, and/or ethical standards of the funeral and cremation industry;
- (b) falsely representing in their written brochures, promotional materials, and/or advertisements, distributed throughout the Commonwealth of Pennsylvania, that corpses entrusted to them would not be harvested for donation purposes without proper consent from Plaintiffs; and

- (c) falsely representing in their written brochures, promotional materials, and/or advertisements, distributed throughout the Commonwealth of Pennsylvania, that the wishes of the decedent and the decedent's next-of-kin not to donate organs and/or tissue material would be accepted, honored, and respected.

142. Defendants, individually or any number of the, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conducted caused Plaintiffs harms as set forth in the Pennsylvania Unfair Trade Practices and Consumer Protection Statute.

143. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm as set forth herein under the Pennsylvania Unfair Trade Practices and Consumer Protection Statute.

144. As a direct and proximate result of the conduct of the Defendants as stated above, Plaintiffs were caused or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and harm, mental anguish, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

145. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering and severe emotional distress and harm and mental anguish.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT TWELVE – NEGLIGENT MISREPRESENTATION

**ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE,
LOUIS GARZONE, JAMES McCAFFERTY, GARZONE
FUNERAL HOME, GARZONE FUNERAL HOME, INC.
AND JAMES A. McCAFFERTY FUNERAL HOME**

146. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

147. The dignified treatment and disposition of the corpse of decedent were material facts for Plaintiffs at the time they purchased funeral and cremation services and that induced them to purchase said services.

148. Defendants negligently and recklessly misrepresented to Plaintiffs that the casket or container containing the corpse of decedent would not be opened by Liberty Cremation, Inc., when, in fact, decedent's body parts were harvested/procured while decedent's body was in the care and control of Defendants in direct violation of the parties' contract.

149. Defendants negligently and recklessly misrepresented to Plaintiffs that decedent's corpse would be cremated without any prior harvesting and/or procurement of body parts, when, in fact, decedent's corpse was dissected and bone, tissue, veins and/or skin were removed for donation purposes.

150. Defendants recklessly and negligently misrepresented that they would honor, accept and respect Plaintiffs' directives regarding the cremation of decedent's corpse as well as Plaintiffs' desire not to allow any harvesting and/or procurement of decedent's body parts for the purposes of donation, when, in fact, Defendants disregarded Plaintiffs' directives by allowing decedent's body parts to be harvested and/or procured without the consent of Plaintiffs.

151. Defendants knew and/or should have known, that their representations concerning the treatment of decedent's corpse while in their entrustment were false and misleading.

152. Defendants' conduct was intentional and/or made with a reckless disregard of the rights of Plaintiffs.

153. Plaintiffs have suffered injury as a result of their justifiable reliance on these misrepresentations.

154. As the recipients of the misrepresentations, Plaintiffs are entitled to rescind the service contract at their option.

155. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm by the negligent misrepresentations of Defendants.

156. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm caused by the negligent misrepresentation of Defendants.

157. As a direct and proximate result of the conduct of the Defendants as stated above, Plaintiffs were caused or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and harm, mental anguish, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

158. Defendants' acts and omissions, in allowing decedent's body parts to be harvested and/or procured for donation purposes without the consent of Plaintiffs, were malicious, wanton, reckless, willful and oppressive such that punitive damages should be awarded.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT THIRTEEN – INTENTIONAL MISREPRESENTATION

**ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE,
LOUIS GARZONE, JAMES McCAFFERTY, GARZONE
FUNERAL HOME, GARZONE FUNERAL HOME, INC.
AND JAMES A. McCAFFERTY FUNERAL HOME**

159 Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

160. The dignified treatment of the corpse of decedent were material facts for Plaintiffs at the time they purchased funeral and cremation services.

161. Defendants, negligently and recklessly misrepresented to Plaintiffs that the casket or container containing the corpse of decedent would not be opened by Liberty Cremation, Inc., when, in fact, decedent's body parts were harvested/procured while decedent's body was in the care and control of Defendants in direct violation of the parties' contract.

162. Defendants intentionally misrepresented to Plaintiffs that decedent's corpse would be cremated without any prior harvesting and/or procurement of body parts, when, in fact, decedent's corpse was dissected and bone, tissue, veins and/or skin were stolen for donation purposes.

163. Defendants intentionally misrepresented that they would honor, accept and respect Plaintiffs' directives regarding the cremation of decedent's corpse as well as Plaintiffs' desire not to allow any harvesting and/or procurement of decedent's body parts for the purposes of donation, when, in fact, Defendants blatantly disregarded Plaintiffs' directives by allowing decedent's body parts to be harvested and/or procured without the consent of Plaintiffs.

164. Defendants falsely made such misrepresentations with the knowledge that such representations were false or Defendants made such misrepresentations with reckless disregard as to whether or not they were true or false.

165. Defendants made such material misrepresentations with the intent of misleading Plaintiffs into relying on such misrepresentations.

166. Plaintiffs have suffered injury as a result of their justifiable reliance on Defendants' misrepresentations.

167. As a direct and proximate result of the Plaintiffs' reliance on Defendants' misrepresentations, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and harm, mental anguish, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

168. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs' harm by their intentional misrepresentations.

169. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm by their intentional misrepresentations.

170. As a direct and proximate result of the conduct of the Defendants as stated above, Plaintiffs were caused or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and harm, mental anguish, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

171. Defendants' acts and omissions, by illegally harvesting and/or procuring decedent's body parts without the consent of Plaintiffs, were malicious, wanton, reckless, willful, and oppressive such that punitive damages should be awarded.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT FOURTEEN – COMMON LAW TORT OF DECEIT

**ALL PLAINTIFFS v. LIBERTY CREMATION, GERALD GARZONE,
LOUIS GARZONE, JAMES McCAFFERTY, GARZONE
FUNERAL HOME, GARZONE FUNERAL HOME, INC.
AND JAMES A. McCAFFERTY FUNERAL HOME**

172. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

173. The acts and omissions of Defendants by allowing the harvesting and/or procuring decedent's body parts without the consent of Plaintiffs, as set forth above, constitutes common law deceit.

174. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs harm by their deceit.

175. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm caused by their deceit.

176. Defendants acted recklessly and/or willfully in deceitfully failing to comply with State and Federal rules, statutes and regulations, regarding the harvesting of body parts in funeral

homes, FDA donor criteria for tissue donation and consent from next-of-kin for donation, in a deliberate effort to harvest, procure, process, sell, market and distribute human body parts for a lucrative profit, knowing that compliance with such State and Federal rules, statutes and regulations might prevent them from such profit.

177. As a direct and proximate result of Defendants' conduct, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and harm, mental anguish, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

178. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering, mental anguish and severe emotional distress and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT FIFTEEN – COMMON LAW TORT OF DECEIT

**ALL PLAINTIFFS v. BIOMEDICAL TISSUE SERVICES, LTD.,
MICHAEL MASTROMARINO, JOE NICELLI, LEE CRUCETA,
LMC TISSUE RECOVERY SERVICES, CHRISTOPHER ALDORASI,
MCM TISSUE RECOVERY SERVICES, INC., CHRIS ALDORASI
FUNERAL HOME SERVICES, AND KEVIN VICKERS**

179. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

180. The acts and omissions of Defendants by harvesting and/or procuring decedent's body parts without the consent of Plaintiffs, as set forth above, constitutes common law deceit.

181. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs harm by their deceit.

182. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm caused by their deceit.

183. Defendants acted recklessly and/or willfully in deceitfully failing to comply with state and federal rules, statutes and regulations regarding the harvesting of body parts in funeral homes, FDA donor criteria for tissue donations and consent from next of kin for donations in a deliberate effort to harvest, procure, process, sell, market and distribute human body parts for a lucrative profit, knowing that compliance with such state and federal rules, statutes and regulations might prevent them from such profit.

184. As a direct and proximate result of Defendants conduct, Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and harm, mental anguish, financial or economic loss, including but not limited to present and future lost wages and other damages.

185. Defendants acted willfully, wantonly and with reckless indifference for the rights of Plaintiffs and as a direct result caused the above described severe pain and suffering, mental anguish, and severe emotional distress and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

COUNT SIXTEEN – COMMON LAW TORT OF DECEIT

**ALL PLAINTIFFS v. REGENERATION TECHNOLOGIES, INC.
LIFECELL CORPORATION, INC., TUTOGEN MEDICAL, INC., BLOOD & TISSUE
CENTER OF CENTRAL TEXAS, AND LOST MOUNTAIN TISSUE BANK**

186. Plaintiffs incorporate the previous paragraphs by reference as though fully set forth herein.

187. The acts and omissions of Defendants by accepting body parts that were harvested from decedent's body without the consent of Plaintiffs, as set forth above, constitutes common law deceit.

188. Defendants, individually or any number of them, by their agents, servants and/or employees acting within the scope of their employment or authority by engaging in any or all of the foregoing conduct caused Plaintiffs harm by their deceit.

189. In the alternative, Plaintiffs allege that all Defendants had an agreement, engaged in a common undertaking, and acted in concert to bring about Plaintiffs' harm caused by their deceit.

190. Defendants acted recklessly and/or willfully in deceitfully failing to comply with state and federal rules, statutes and regulations regarding the harvesting of body parts in funeral homes, FDA donor criteria for tissue donation and consent from next of kin for donation, in a deliberate effort to harvest, procure, process, sell, market and distribute human body parts for a lucrative profit, knowing that compliance with such state and federal rules, statutes and regulations might prevent them from such profit.

191. As a direct and proximate result of Defendants conduct Plaintiffs were caused, or shall in the future be caused, to suffer severe pain and suffering, severe emotional distress and

harm, mental anguish, financial or economic loss, including, but not limited to, present and future lost wages, and other damages.

192. Defendants acted willfully, wantonly, and with reckless indifference for the rights of Plaintiffs, and as a direct result caused the above described severe pain and suffering, mental anguish and severe emotional distress and harm.

WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, demand judgment in their favor and against Defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with pre-judgment and post-judgment interest, costs, punitive damages and such further relief as allowed by the Court.

**ANAPOL, SCHWARTZ, WEISS, COHAN
FELDMAN & SMALLEY, P.C.**

**BY: _____
LAWRENCE R. COHAN, ESQUIRE
MELISSA FRY HAGUE, ESQUIRE
Attorneys for Plaintiffs**

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

**ANAPOL, SCHWARTZ , WEISS, COHAN,
FELDMAN & SMALLEY, P.C.**

**BY: _____
LAWRENCE R. COHAN, ESQUIRE
MELISSA FRY HAGUE, ESQUIRE**