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7 *Attorneys for Plaintiffs*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ORANGE

10  
11 E.F., an individual; and G.H., an individual,

12 Plaintiffs,

13 v.

14 FPG LABS, LLC d/b/a OVATION  
FERTILITY; FPG SERVICES, LLC d/b/a  
15 OVATION FERTILITY NEWPORT BEACH;  
and DOES 1-50, inclusive,

16 Defendants.  
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Case No.

**COMPLAINT**

1. **NEGLIGENT MISREPRESENTATION**
2. **FRAUD / FRAUDULENT CONCEALMENT**
3. **INTENTIONAL MISREPRESENTATION**
4. **BAILMENT**
5. **CONVERSION**
6. **MEDICAL BATTERY**
7. **NEGLIGENT HIRING AND SUPERVISION**
8. **PREMISES LIABILITY**
9. **NEGLIGENCE**

**DEMAND FOR JURY TRIAL**

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24 Plaintiffs E.F. and G.H. (collectively, "Plaintiffs") respectfully bring this Complaint and  
25 Demand for Jury Trial against Defendants FPG LABS, LLC d/b/a OVATION FERTILITY; FPG  
26 SERVICES, LLC d/b/a OVATION FERTILITY NEWPORT BEACH; and DOES 1-50, inclusive  
27 (collectively, "Defendants" or "Ovation"), and allege as follows:  
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1 **NATURE OF THE ACTION**

2 1. Ovation killed Plaintiffs’ embryo. As a result, Plaintiffs might not be able to have  
3 children who are biologically related to them.

4 2. Ovation markets and sells to the public their fertility services, including embryo  
5 transfers through in vitro fertilization (“IVF”). Ovation falsely claims that it uses “best practices”  
6 and “the highest standards” in its fertility laboratory.

7 3. Comforted by Defendants’ marketing statements and representations, Plaintiffs  
8 entrusted their embryos to Ovation’s facility in Newport Beach, California.

9 4. Unbeknownst to Plaintiffs, Ovation wrongfully used hydrogen peroxide in an  
10 incubator into which it placed embryos, including Plaintiffs’ precious embryo (“Toxic  
11 Incubator”). Ovation’s Toxic Incubator killed Plaintiffs’ embryo.

12 5. Ovation then transferred Plaintiffs’ dead embryo to Plaintiff E.F. Because the  
13 embryo was dead prior to transfer, there was no chance that E.F. would become pregnant, and in  
14 fact, E.F. did not become pregnant.

15 **PARTIES**

16 6. Plaintiff E.F. is a citizen of Orange County, California.

17 7. Plaintiff G.H. is a citizen of Orange County, California.

18 8. Given the sensitive nature of their claims, Plaintiffs are using pseudonymous  
19 initials in this litigation to protect their privacy. If the Court so requires, Plaintiffs will seek  
20 permission to proceed under these pseudonyms.

21 9. Defendant FPG LABS, LLC d/b/a OVATION FERTILITY is and at all relative  
22 times herein was, upon information and belief, a limited liability company that operates fertility  
23 clinics throughout the country, including in Orange County.

24 10. Defendant FPG SERVICES, LLC d/b/a OVATION FERTILITY is and at all  
25 relative times herein was, upon information and belief, a limited liability company that operates  
26 fertility clinics throughout the country, including in Orange County.

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1 11. Defendant OVATION FERTILITY NEWPORT BEACH (“Ovation Newport”) is,  
2 upon information and belief, a facility operating in Newport Beach, California and providing  
3 fertility services such as IVF, including to Plaintiffs.

4 12. Plaintiffs are unaware of the true names or capacities, whether they are individuals  
5 or business entities, of Defendants DOES 1-50, and therefore sue them by such fictitious names  
6 pursuant to California Code of Civil Procedure section 474. Plaintiffs will seek leave of this Court  
7 to insert the true names and capacities once they have been ascertained.

8 13. Plaintiffs are informed and believe, and on that basis allege, that at all times  
9 material hereto: Defendants were, actually or ostensibly, the agents, representatives, and/or  
10 employees of each and every other Defendant; Defendants were acting within the course and  
11 scope of said alternative personality, capacity, identity, agency, representation, and/or  
12 employment; Defendants were the trustees, partners, servants, joint venturers, shareholders, co-  
13 conspirators, contractors, and/or employees of each and every other Defendant; the acts and  
14 omissions alleged herein, while committed individually, were made by Defendants through such  
15 capacity, and within the scope of their authority, and with the permission and consent of each and  
16 every other Defendant, as to make Defendants jointly and severally liable to Plaintiffs for the acts  
17 and omissions alleged herein.

18 **JURISDICTION AND VENUE**

19 14. This Court has jurisdiction over the entire action by virtue of the fact that this is a  
20 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the  
21 jurisdictional minimum of the Court.

22 15. This Court has personal jurisdiction over all Defendants. Each Defendant is, and at  
23 all relevant times herein was, a citizen of and/or authorized to conduct business in the State of  
24 California and/or conducted such business within the State of California, including the actions,  
25 dealings, and/or omissions that caused or contributed to the harm giving rise to this action.

26 16. Jurisdiction is proper pursuant to California Code of Civil Procedure section 410.10  
27 because the actions and/or omissions of Defendants that give rise to this legal action occurred in  
28 Orange County, California.

1 17. Venue is proper in this Court pursuant to California Code of Civil Procedure  
2 section 395.5 because one or more Defendants reside in Orange County and the acts and/or  
3 omissions giving rise to the injuries alleged herein occurred in Orange County.

4 **GENERAL FACTUAL ALLEGATIONS**

5 **General Background of Assisted Reproductive Technology (“ART”)**

6 18. ART involves fertility-related treatments in which human eggs or embryos are  
7 manipulated. The most common type of ART is IVF.

8 19. During the IVF process, eggs are extracted from a woman and fertilized in a  
9 laboratory with sperm to create a viable embryo. Later in the IVF process, the embryo is  
10 transplanted into a uterus.

11 20. The process of extracting human eggs from a woman is lengthy, physically and  
12 emotionally painful, and expensive. It typically requires significant medication, including  
13 injections; frequent bloodwork to monitor hormone levels; monitoring through ultrasound and  
14 other scans to check the development of the eggs; and performing a surgical procedure to collect  
15 the eggs.

16 21. Following the collection of the eggs, sperm is mixed with the eggs in a laboratory  
17 to create embryos, and media is used to cultivate the embryos.

18 22. Many people, including Plaintiffs, elect to have their embryos stored for a period of  
19 time before the embryo is transferred to a woman’s uterus.

20 23. There can be many reasons for undergoing these expensive and extensive  
21 procedures well in advance of the embryo implantation, including that human eggs are a limited  
22 and precious resource. A woman has a limited number of eggs at birth, and this supply diminishes  
23 as part of the natural aging process (commonly referred to as a “biological clock”). Moreover, not  
24 only does the quantity of a woman’s eggs diminish with time, but so does egg quality, with  
25 miscarriages and chromosomal abnormalities occurring more frequently for women who are older.  
26 The most determinative factor in IVF success is the woman’s age when her eggs were extracted.

27 **The Importance of IVF Incubators**

28 24. During IVF, it is crucial to maintain appropriate atmospheric conditions for the

1 proper growth, development, and survival of the embryo. Prior to transfer of a formerly frozen  
2 embryo, the embryo is placed into an incubator. A properly cleaned and well-functioning  
3 incubator provides the necessary conditions for the continued viability of an embryo.

4 25. Incubators, when used properly, provide the correct temperature, humidity, pH  
5 levels, and essential gasses for embryos.

6 26. Appropriate levels of temperature, humidity, pH levels, and gases are critical to  
7 ensure that embryos are not harmed.

8 **Ovation’s Misrepresentations**

9 27. At all relevant times, Ovation has represented (and continues to represent) to its  
10 customers, including Plaintiffs, on its website that it operates a “premier” laboratory” that  
11 implements “best practices.”

12 28. At all relevant times, Ovation has represented (and continues to represent) to its  
13 customers, including Plaintiffs, on its website that its laboratory operates with “the highest  
14 standards.”

15 29. In January 2024, Ovation further represented to Plaintiffs in written material that  
16 Ovation “use[s] the most advanced technologies available in order to promote a successful  
17 outcome.”

18 30. These statements are false. No laboratory that implements “best practices,” operates  
19 with “the highest standards,” and “uses the most advanced technologies available” would create  
20 the conditions of the Toxic Incubator, use the Toxic Incubator, and place Plaintiffs’ embryo into  
21 the Toxic Incubator.

22 **Ovation’s Toxic Incubator**

23 31. Plaintiffs’ embryo was placed in an incubator that was owned, operated, and  
24 monitored by Defendants prior to transfer to Plaintiff E.F.

25 32. Defendants introduced into its embryo incubator an extremely unsafe amount of a  
26 substance that is toxic to human embryos, hydrogen peroxide. Defendants then placed Plaintiffs’  
27 embryo, among other embryos, into the Toxic Incubator before transferring the embryo to Plaintiff  
28 E.F.

1           33. Defendants, and each of them, were responsible for ensuring that the Toxic  
2 Incubator was properly monitored and that their employees were properly trained on how to  
3 operate the incubator to ensure that embryos were not harmed.

4           34. Moreover, Defendants, and each of them, were responsible for adequately training  
5 and supervising Defendants' employees and/or agents who monitored, cleaned, repaired, and/or  
6 maintained the incubator.

7           **Ovation Lacked Proper Procedures and Protocols to Ensure that the Toxic Incubator**  
8 **Would Not Harm Plaintiffs' Embryos**

9           35. Upon information and belief, Defendants did not properly train their employees,  
10 agents, and/or persons working at their clinics on how to operate, manage, or maintain the embryo  
11 incubator.

12           36. However, Defendants represented to Plaintiffs that they had proper policies and  
13 procedures pertaining to usage of their embryo incubator and that such were sufficient to ensure  
14 that Defendants' conduct would not harm Plaintiffs' embryos.

15           37. Defendants further warranted that their policies and procedures pertaining to the  
16 storage of Plaintiffs' embryos in the incubator were sufficient to ensure that Defendants' conduct  
17 would not harm Plaintiffs' embryos.

18           38. In addition, Defendants represented to Plaintiffs at the time of the transfer of  
19 Plaintiffs' embryo in January 2024 that the embryo was viable and had not been harmed, despite  
20 the fact that Defendants knew or should have known that such was not true.

21           **Plaintiffs' Embryo Was Destroyed by Ovation's Misconduct.**

22           39. Plaintiffs utilized ART to try to fulfill their dream of having biological children. To  
23 that end, Plaintiffs entrusted Ovation to assist them with having a child.

24           40. Plaintiff E.F. underwent an egg retrieval in approximately April 2023. From that,  
25 using Plaintiff G.H.'s sperm, Plaintiffs had only one genetically normal embryo.

26           41. Plaintiffs entrusted their sole precious embryo into Defendants' possession until  
27 Plaintiffs were ready for an embryo transfer and to start their family.

28           42. Tragically, and unbeknownst to Plaintiffs at the time, when their embryo was

1 transferred in late January 2024, Defendants had by that point destroyed their embryo in the Toxic  
2 Incubator.

3 43. Plaintiffs are devastated and have suffered irreparable harm. They may no longer  
4 be able to have biologically related children as a result of Defendants' conduct.

5 **FIRST CAUSE OF ACTION**

6 **NEGLIGENT MISREPRESENTATION**

7 **(Against All Defendants)**

8 44. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
9 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

10 45. Defendants represented to Plaintiffs several material facts that Defendants knew  
11 were not true, including but not limited to:

- 12 (a) That Defendants' policies and procedures pertaining to usage of their incubator  
13 were sufficient to ensure that no toxic material(s) would come in contact with  
14 Plaintiffs' embryo;
- 15 (b) That Defendants would use "best practices" in their laboratory to ensure that  
16 Plaintiffs' embryo would not encounter unnecessary harm;
- 17 (c) That Defendants would use the "highest standards" in their laboratory to ensure  
18 that Plaintiffs' embryo would not encounter unnecessary harm;
- 19 (d) That Defendants would "use the most advanced technologies available" to ensure  
20 that Plaintiffs' embryo would not encounter unnecessary harm and "in order to  
21 promote a successful outcome" for Plaintiffs;
- 22 (e) That Defendants' policies and procedures pertaining to their incubator were  
23 sufficient to ensure that no toxic material(s) would come in contact with Plaintiffs'  
24 embryo;
- 25 (f) That Defendants would not take actions that would unduly render Plaintiffs'  
26 embryo non-viable at the time their embryo was transferred;

27 46. Even if Defendants may have believed that any of these representations were true at  
28 the time they were made, Defendants had no reasonable grounds to believe that they were true.

1 47. Defendants knew that these representations were false and made them with the  
2 intent that Plaintiffs would rely on them to form their decision to utilize Defendants' fertility  
3 services.

4 48. Plaintiffs reasonably relied on Defendants' representations.

5 49. Plaintiffs were significantly harmed, as described herein, and Plaintiffs' reliance on  
6 Defendants' misrepresentation(s) was a substantial factor in causing such harm.

7 **SECOND CAUSE OF ACTION**

8 **FRAUD / FRAUDULENT CONCEALMENT**

9 **(Against All Defendants)**

10 50. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
11 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

12 51. Defendants' acts and practices constitute fraudulent concealment because  
13 Defendants failed to disclose information that was material to the reason Plaintiffs entrusted their  
14 embryo in Defendants' possession, including but not limited to, that Defendants represented to  
15 Plaintiffs that Defendants employ "best practices," "the highest standards," and "the most  
16 advanced technologies available" to ensure the safety of Plaintiffs' embryo.

17 52. Defendants made these representations on their website, among other places,  
18 throughout the time Plaintiffs were Defendants' customers.

19 53. Defendants knew that these representations were false and made them with the  
20 intent that Plaintiffs would rely on them to form their decision to utilize Defendants' fertility  
21 services.

22 54. Plaintiffs reasonably relied on Defendants' (mis)representations.

23 55. Plaintiffs were significantly harmed, as described herein, and Plaintiffs' reliance on  
24 Defendants' misrepresentation(s) was a substantial factor in causing such harm.

25 **THIRD CAUSE OF ACTION**

26 **INTENTIONAL MISREPRESENTATION**

27 **(Against All Defendants)**

28 56. Plaintiffs re-allege and incorporate by reference herein each and every allegation



1 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

2 57. Defendants represented to Plaintiffs several material facts that Defendants knew  
3 were not true, including but not limited to the purported (but untrue) facts that Defendants employ  
4 “best practices,” “the highest standards,” and “the most advanced technologies available” to  
5 ensure the safety of Plaintiffs’ embryo.

6 58. Each of these aforementioned representations was false and Defendants knew they  
7 were false at the time Defendants made them and/or made such representation(s) recklessly and  
8 without regard for its truth.

9 59. In fact, Defendants made these representations with the intent that Plaintiffs would  
10 rely on them and would continue to utilize Defendants’ fertility services.

11 60. Plaintiffs reasonably relied on Defendants’ (mis)representations.

12 61. Plaintiffs were significantly harmed, as described herein, and Plaintiffs’ reliance on  
13 Defendants’ misrepresentation(s) was a substantial factor in causing such harm.

14 **FOURTH CAUSE OF ACTION**

15 **BAILMENT**

16 **(Against Ovation Newport Beach)**

17 62. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
18 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

19 63. A bailment arises where possession, but not ownership, of property is transferred  
20 from one party, a bailor, to another, a bailee. Where the personal property of a bailor is delivered  
21 to a bailee, a duty of care is owed.

22 64. Ovation Newport Beach received for safekeeping Plaintiffs’ irreplaceable personal  
23 property (their sole viable embryo), to be safely and securely kept for the benefit of Plaintiffs, and  
24 to be redelivered to them upon demand.

25 65. Plaintiffs agreed to pay, and did pay, substantial sums in exchange for the  
26 safekeeping of their embryo.

27 66. Ovation Newport Beach had a duty to exercise care in maintaining, preserving, and  
28 protecting Plaintiffs’ embryos. Further, Ovation Newport Beach had a duty to return Plaintiffs’

1 embryos to them undamaged.

2 67. Because of Ovation Newport Beach’s wrongful conduct, as set forth herein, the  
3 irreplaceable property of Plaintiffs was irreparably damaged, precluding its proper redelivery to  
4 them.

5 68. Ovation Newport Beach breached its duties to exercise care in the safekeeping of  
6 Plaintiffs’ embryo and to return the embryo, undamaged, to Plaintiffs.

7 69. As a direct and proximate result of Ovation Newport Beach’s breach of the  
8 foregoing duties, Plaintiffs have been deprived of the opportunity to use their embryo, and have  
9 suffered damages in an amount to be determined at trial.

10 **FIFTH CAUSE OF ACTION**

11 **CONVERSION**

12 **(Against Ovation Newport Beach)**

13 70. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
14 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

15 71. Ovation Newport Beach received for safekeeping Plaintiffs’ irreplaceable personal  
16 property (their viable embryo), to be safely and securely kept for the benefit of Plaintiffs, and to be  
17 redelivered to them—unharmd—upon demand.

18 72. Plaintiffs agreed to pay, and did pay, substantial sums in exchange for the  
19 safekeeping of their embryos.

20 73. Ovation Newport Beach had a duty to exercise care in maintaining, preserving, and  
21 protecting Plaintiffs’ embryo. Further, Ovation Newport Beach had a duty to return Plaintiffs’  
22 embryo to them undamaged.

23 74. Because of Ovation Newport Beach’s wrongful conduct, as set forth herein, the  
24 irreplaceable property of Plaintiffs was irreparably damaged, precluding its proper redelivery to  
25 them.

26 75. Ovation Newport Beach destroyed Plaintiffs’ embryo without Plaintiffs’ consent.

27 76. As a direct and proximate result of Ovation Newport Beach’s breach of the  
28 foregoing duties, Plaintiffs have been deprived of the opportunity to use their embryo, and have

1 suffered damages in an amount to be determined at trial.

2 **SIXTH CAUSE OF ACTION**

3 **MEDICAL BATTERY**

4 **(Against All Defendants)**

5 77. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
6 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

7 78. By performing a procedure to which Plaintiff E.F. did not consent—transferring an  
8 embryo that Defendants had killed, and thus had no chance of resulting in a pregnancy—  
9 Defendants, by and through their employees, intentionally and offensively touched Plaintiff E.F.  
10 without her consent.

11 79. As a result of Defendants’ battery, Plaintiffs have suffered and will suffer  
12 substantial damages and such battery was a substantial factor in causing Plaintiffs’ harm and  
13 damages.

14 **SEVENTH CAUSE OF ACTION**

15 **NEGLIGENT HIRING AND SUPERVISION OF EMPLOYEES**

16 **(Against All Defendants)**

17 80. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
18 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

19 81. Defendants, and each of them, hired the employees and/or agents that caused, by  
20 their actions and/or inactions, the Toxic Incubator to destroy Plaintiffs’ embryo.

21 82. Defendants knew and/or should have known that their employees and/or agents  
22 were unfit, not properly trained, and/or incompetent to monitor or use the embryo incubator.

23 83. Defendants’ hiring, supervision, and/or training of employees and/or agents  
24 responsible for toxic substances to contact Plaintiffs’ embryo was a substantial factor in causing  
25 Plaintiffs’ harm and damages.

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1 **EIGHTH CAUSE OF ACTION**

2 **PREMISES LIABILITY**

3 **(Against Ovation Newport Beach)**

4 84. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
5 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

6 85. At all relevant times material to Plaintiffs' claims, Ovation Newport Beach owned,  
7 leased, occupied, and/or controlled the fertility clinic operated under its name for which Plaintiffs  
8 sought fertility treatment and to whom entrusted their sole viable embryo.

9 86. Ovation Newport Beach created a dangerous and hazardous environment in that it  
10 did not properly maintain its clinic, including but not limited to its Toxic Incubator that was  
11 located on Ovation's premises.

12 87. Ovation Newport Beach, as Plaintiffs' fertility clinic, owed a duty of care to  
13 Plaintiffs to ensure that Plaintiffs' embryo was properly stored and cared for such that Plaintiffs'  
14 embryo was viable when Plaintiffs elected to transfer such.

15 88. Ovation Newport Beach also owed Plaintiffs a duty of care to exercise ordinary  
16 care in its management of its IVF facility to avoid damage or destruction of embryos, including  
17 but not limited to management and maintenance of its incubators.

18 89. Defendants breach these foregoing duties and destroyed Plaintiffs' embryo.

19 90. As a direct and proximate result of Ovation Newport Beach's conduct, Plaintiffs  
20 have suffered and will suffer substantial damages, and Ovation Newport Beach's acts and/or  
21 omissions were a substantial factor in causing such harm.

22 **NINTH CAUSE OF ACTION**

23 **NEGLIGENCE**

24 **(Against All Defendants)**

25 91. Plaintiffs re-allege and incorporate by reference herein each and every allegation  
26 contained in all other paragraphs in this Complaint as though fully set forth in this cause of action.

27 92. At all relevant times, Defendants and their agents and/or employees undertook to  
28 treat, monitor, and care for Plaintiffs and their embryo. Defendants, and each of them, had a duty

1 to render the treatment necessary to achieve Plaintiffs' treatment goals using the same level of  
2 skill, prudence, and diligence that other members of their profession commonly possess and  
3 exercise.

4 93. Defendants breached their professional duties and the standard of care in all of the  
5 following respects:

6 a. Failing to monitor, maintain, and/or repair their incubators, such that toxic  
7 substances contacted and killed Plaintiffs' embryo;

8 b. Failing to have in place and/or compel compliance with protocols and procedures  
9 to ensure that placing Plaintiffs' embryo in Defendants' incubator would not cause its destruction;

10 c. Failing to properly or adequately hire, train, and/or supervise their employees  
11 and/or agents to ensure that said agents and/or employees were adequately using, monitoring,  
12 and/or cleaning the embryo incubator and would not pose harm to Plaintiffs' embryos;

13 d. Failing to secure Plaintiffs' informed consent to the transfer procedure, i.e., transfer  
14 of a non-viable embryo;

15 e. Transferring an embryo that Defendants had killed, in derogation of Plaintiffs'  
16 limited consent; and

17 f. Transferring an embryo that Defendants knew or should have known was not  
18 viable.

19 94. This conduct fell far below the applicable standard of care for a fertility clinic.

20 95. As a direct and proximate result of Defendants' misconduct, Plaintiffs have  
21 suffered and will suffer substantial damages.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of them, as  
24 follows:


25 1) For past, present, and future non-economic damages in an amount to be determined  
26 at the time of trial;

27 2) For past, present, and future economic damages in an amount to be determined at  
28 the time of trial;

- 1           3)     For punitive damages in an amount to be determined at the time of trial;
- 2           4)     For costs of suit herein;
- 3           5)     For pre- and post-judgement interest as allowed by law; and
- 4           6)     For such other and further relief as the Court may deem just and proper.

5 DATED: April 18, 2024

PEIFFER WOLF CARR KANE CONWAY &  
WISE, LLP

7  
8 By:   
ADAM B. WOLF  
MELISA A. ROSADINI-KNOTT


10 *Attorneys for Plaintiffs*

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand a trial by jury on all claims so triable.

15 DATED: April 18, 2024

PEIFFER WOLF CARR KANE CONWAY &  
WISE, LLP

17  
18 By:   
ADAM B. WOLF  
MELISA A. ROSADINI-KNOTT

20 *Attorneys for Plaintiffs*