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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**MAGDA GONZALEZ, KAREN HARTSON  
SHAWNA MADISON, CARRIE NEILL,  
AMY SHANK, AMY STOKES  
SHANDA TURNIDGE, BAIRBRE WALSH  
and DENISE WESTFAHL**

**Plaintiffs**

vs.

**COMPASS VISION, INC. and  
NATIONAL MEDICAL SERVICES, INC.  
d/b/a NMS LABS**

**CIVIL ACTION**

**NO. 07 CV 1951 BEN AJB**

**JURY TRIAL DEMANDED**

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**FIRST AMENDED COMPLAINT**

Plaintiffs, by way of Amended Complaint against Defendants, upon information and belief, allege as follows:

**PARTIES**

1. Plaintiff, **MAGDA GONZALEZ** (“**MS. GONZALEZ**”), is a citizen and resident of California, residing at 5594 N. Berkeley Street, San Bernardino, CA 92407.

2. Plaintiff, **KAREN HARTSON** (“**DR. HARTSON**”), is a citizen and resident of California, residing at 9003 Bridget Leigh Way, Bakersfield, CA 93312.
3. Plaintiff, **SHAWNA MADISON** (“**MS. MADISON**”), is a citizen and resident of California, residing at PO Box 9053, Rancho Santa Fe, CA 92067.
4. Plaintiff, **CARRIE NEILL** (“**MS. NEILL**”), is a citizen and resident of California, residing at 19295 Glenwood Avenue, Riverside, CA 92508.
5. Plaintiff, **AMY SHANK** (“**MS. SHANK**”), is a citizen and resident of California, residing at 7202 Via Capri, La Jolla, CA 92037.
6. Plaintiff, **AMY STOKES** (“**MS. STOKES**”), is a citizen and resident of California, residing at 844 Maltman Avenue, Los Angeles, CA 90026.
7. Plaintiff, **SHANDA TURNIDGE** (“**MS. TURNIDGE**”), is a citizen and resident of California, residing at 6341 Edgefield Avenue, Lakewood, CA 90713.
8. Plaintiff, **BAIRBRE WALSH** (“**MS. WALSH**”), is a citizen and resident of California, residing at 5015 Santa Cruz Avenue #209, San Diego, CA 92107.
9. Plaintiff, **DENISE WESTFAHL** (“**MS. WESTFAHL**”), is a citizen and resident of California, residing at 407 Stone Cross Drive, Bakersfield CA 93312.
10. Defendant, **COMPASS VISION, INC.** (“**COMPASS**”) is a corporation with its principal place of business in Oregon at SW Town Center Loop E, Wilsonville, ORE 97070. It has transacted business in California, including the business that gives rise to the causes of action at issue.
11. Defendant Compass is a third party administrator (“**TPA**”), specializing, inter alia, in the design, implementation, and management of drug and alcohol testing programs, including the collection of urine samples.

12. On information and belief defendant Compass contracted with the California State Board of Nursing and the California State Board of Pharmacy, through Maximus, Administrator of the California nurses and pharmacists recovery programs, to be the TPA administering drug and alcohol testing of nurses and pharmacists, including the testing of the plaintiffs in the Southern District of California.

13. Defendant **NATIONAL MEDICAL SERVICES, INC. DBA NMS LABS (“NMS”)** is a corporation with its principal place of business in Pennsylvania at 3701 Welsh Road, Willow Grove, PA 19090. NMS also has lab testing facilities and offices throughout the United States. It has transacted business in California, including the business that gives rise to the causes of action at issue.

14. On information and belief defendant NMS through defendant Compass contracted with the California State Boards of Nursing and Pharmacy, through Maximus, to do EtG (ethyl glucuronide) testing of health care providers, including the plaintiffs, who are nurses and pharmacists.

#### **JURISDICTION AND VENUE**

15. Jurisdiction in this action is based upon diversity of citizenship, 28 U.S.C. Section 1332 (a), and that damages for each plaintiff exceed, exclusive of interest and costs, the sum of Seventy-five Thousand (\$75,000.00) Dollars.

16. Venue lies in the Southern District of California as the plaintiffs reside therein and the defendants are transacting substantial business in this District.

#### **COMMON OPERATIVE FACTS**

17. As a TPA, Compass contracts its services to various state and municipal agencies, as well as state licensure boards. At all relevant times pertinent to this action Compass provided TPA services to the California State Boards of Nursing and Pharmacy.

The Boards administer, inter alia, the licensing privileges of registered nurses and pharmacists.

18. At all times relevant hereto, it is believed and therefore averred that Compass and NMS provided to the Boards the results and interpretation of the results of EtG alcohol testing upon registered nurses and pharmacists as contracted through Compass.

19. Because of the sensitive nature of their positions with respect to patient care, California registered nurses and pharmacists who have an admitted history of addiction, are allowed to enter into Diversion Program Recovery Contracts with Maximus, by which they agree to submit to random urine analysis to document a drug-free condition in a known “zero-tolerance” environment.

20. Random drug screening is not a requirement for registered nurses and pharmacists in California, unless they have an admitted history of addiction, and have voluntarily entered into an agreement as part of continued employment.

21. “EtG” stands for ethyl glucuronide, a metabolite of alcohol, and was reported by Gregory Skipper, M.D. (“Dr. Skipper”) and Friedrich Wurst, M.D., in November 2002 at an international meeting of the American Medical Society, to provide proof of alcohol consumption as much as 5 days after drinking an alcoholic beverage, well after the alcohol itself had been eliminated from the body.

22. In 2003, because of these and other reportedly remarkable results (e.g., positive findings, confirmed by admissions by the tested individuals, after traditional urine tests had registered negative), EtG testing began in the United States.

23. On information and belief, Compass and NMS became leading proponents of EtG testing, and, starting in 2003, published statements and claims promoting the

absolute reliability and validity of EtG in detecting alcohol abuse, in promotional materials, on websites, in published articles and in statements by their sales personnel, including promoting EtG testing as the “gold standard.”

24. On information and belief, initially, the defendants, Compass and NMS, determined and established a reporting limit or cutoff of 250ng/ml at or over which EtG test results would be reported as “positive” for drinking alcohol. This was later changed by the defendants to 500ng/ml.

25. It is believed and therefore averred that on laboratory reports indicating the results of EtG testing, issued at relevant times to this action, National Medical Services included the statement that “any value above 250 ng/ml indicates ethanol consumption.”

26. It is believed and therefore averred that Compass Vision claims that any EtG test result of 500 ng/ml and above conclusively proved intentional consumption of an alcoholic beverage, and that Compass sponsored a paper with that claim by Dr. Martha Brown, its employee and Medical Review Officer.

27. It is believed and therefore averred that based on such unequivocally conclusive statements and claims by the defendants, California instituted EtG testing and the State Boards of Nursing and Pharmacy, through Maximus, became a signatory to a service contract with Compass as its TPA, which in turn engaged NMS as its testing lab facilities for EtG testing programs

28. It has come to light about EtG testing that:
- a. Many ordinary products, including the omnipresent Purell sanitizer and other hand sanitizers used in hospitals throughout the country, contain ethanol;

- b. The use or exposure to such products – known collectively as “incidental” or “involuntary” – could result in positive test results, since they all would metabolize as ethyl glucuronide;
- c. The cutoffs of 250ng/ml and 500ng/ml are arbitrary standards since incidental exposure to ethanol-containing products could show up at levels well above these levels;
- d. The published state of scientific knowledge, going as far back as March 2004, included the information set forth in subparagraphs a-c above.

29. This has not deterred the \$4 billion-a-year industry, and the defendants, it is believed and therefore averred, solely due to a motive of profits, (a) continue to promote the EtG test as valid, (b) have not established a non arbitrary cutoff; and/or, (c) have not repudiated the test to the licensing boards and agencies.

30. On August 12, 2006, The Wall Street Journal published a front-page article, titled “A Test for Alcohol – And Its Flaws.”

31. Quoting Dr. Skipper, among others, the article includes:

“Little advertised, though, is that EtG can detect alcohol even in people who didn’t drink. Any trace of alcohol may register, even that ingested or inhaled through food, medicine, personal-care products or hand sanitizer.”

“The test ‘can’t distinguish between beer and Purell’ hand sanitizer, says H. Westley Clark, director of the Federal Substance Abuse and Mental Health Services Administration. . . ‘When you’re looking at loss of job, loss of child, loss of privileges, you want to make sure the test is right’, he says...”

“Use of this screen has gotten ahead of the science,’ says Gregory Skipper...”

32. In a February 2007 article in the magazine “New Scientist,” Dr. Skipper is quoted that:

“...there is not yet an agreed threshold concentration that can be used to separate people who have been drinking from those exposed to alcohol from other sources. Below 1000 nanograms. of EtG per millilitre of urine is probably ‘innocent’, and above 5000 booze is almost certainly to blame. In between there is a question zone...”

33. Upon information and belief, representatives of Compass and NMS continue to deny and challenge these warnings, insisting that the tests are accurate and reliable measurements based on alleged scientific research.

34. On September 28, 2006, SAMHSA, a federal agency that is part of the U.S. Department of Health and Human Resources, issued an Advisory, which on the first page contained a “grey box” warning, as follows:

“Currently, the use of an EtG test in determining abstinence lacks sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a criminal justice or a regulatory compliance context, has truly been drinking. Legal or disciplinary action based solely on a positive EtG, or other test discussed in this *Advisory* is inappropriate and scientifically unsupportable at this time. These tests should currently be considered as potential valuable clinical tools, but their use in forensic settings is premature.”

35. Defendants have refused to follow the SAMHSA Advisory and continue to utilize an arbitrary cutoff, and support their “positive” findings to the Board (and other licensing and law enforcement agencies) in the face of disciplinary action against the tested individuals.

36. Defendants, by promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the drug and alcohol testing program, and/or collecting the urine samples and/or utilizing reporting and interpreting the EtG test to allegedly establish that the plaintiffs consumed an alcoholic beverage, had a duty to the plaintiffs, to use a reasonable degree of care to avoid erroneous test results.

37. Plaintiffs, as nurses and pharmacists, were intended test subjects and defendants knew that their licenses, occupations and reputations would be in jeopardy if they tested positive.

38. Plaintiffs by entering into voluntary screening programs, both for rehabilitative and occupational reasons, relied on the validity of the tests to which they subjected themselves – with the goal that they could provide laboratory evidence of their abstinence.

39. Because of the obvious, foreseeable, serious and devastating consequences (including, but not limited to damage to plaintiff's reputation, credibility and emotional well being) of reporting that the results were positive (within cutoffs established by the defendants), defendants had to use a reasonable degree of care to avoid erroneous test results to the foreseeable test subjects, including the plaintiffs.

40. Instead, upon information and belief, defendants acted negligently and/or recklessly by:

- a. Marketing their tests without conducting adequate scientific or medical studies;
- b. Establishing cutoffs over which test results would be reported as “positive” that were arbitrary and scientifically unreliable and invalid;
- c. Promoting the EtG test with unsupported and false statements that a positive EtG test would unequivocally establish that the subject individual had consumed alcoholic beverages;
- d. Publishing warnings that the failure to conduct such a test would be negligence on the part of an employer or licensing board;
- e. Falsely asserting that the EtG test was the “gold standard” in ferreting out former alcoholics or drug users who were resuming

or beginning to engage in prohibited alcoholic consumption in occupations requiring a “zero tolerance”;

f. Falsely asserting that EtG is not detectable in the urine unless an alcoholic beverage has been consumed, thereby concealing that incidental or involuntary exposure or consumption of products containing alcohol could result in positive findings;

g. Failing and refusing to re-evaluate and re-set cutoff limits at levels that were scientifically sound and reliable markers for detecting the prohibited activity of alcoholic beverage consumption, and excluding other causes for their results;

h. Failing to heed the warnings or cautionary advisories issued by Dr. Skipper, SAMHSA and others – that the cutoff levels were unreliable and arbitrary, and that incidental use could trigger positive results at levels at or above the cutoffs – and, instead, denying publicly and maintaining the warnings were insufficient to discredit the EtG test and its cutoff limits;

i. Failing to protect the plaintiffs from foreseeable substantial harm in the form of disciplinary and punitive measures, when their EtG test systems were employed and relied upon for their accuracy and reliability.

j. Utilizing, reporting and interpreting the EtG results of plaintiffs to assert that plaintiffs were violating their recoveries by intentionally drinking alcoholic beverages.

41. It was foreseeable to the defendants that false positive EtG results would severely damage the reputation and credibility of nurses and pharmacists who were maintaining their recovery from addiction, and that the apprehension of further false positives and the damage to their reputation would cause severe anxiety and emotional distress to such professionals, who had spent years in education to gain the right to practice their chosen profession, and who had in actuality maintained their recovery by overcoming addictions in order to reestablish their reputations as competent professionals.

**COUNT I**  
**MAGDA GONZALEZ V COMPASS VISION & NMS**

42. Plaintiff Magda Gonzalez incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

43. In or about June 2003, after admitting to drug and alcohol dependency, Magda Gonzalez signed a Recovery Contract with the California State Board of Nursing submitting herself to a recovery program including, inter alia, future random urine testing.

44. At all relevant times to this action, including the time in which she participated in the program while working as a registered nurse, Ms. Gonzalez maintained her recovery and sobriety, denied intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage.

45. At all relevant times after June 2003, Ms. Gonzalez completely complied with all of the aspects of her program, including attending meetings, and did her job soberly and competently.

46. After nearly three years of working hard to maintain her recovery and regain her professional reputation, within a few months of the end of her program, on or about January 6, 2006, Ms. Gonzalez submitted to a random urine analysis collected by Compass and performed by NMS.

47. In late January 2006 Ms. Gonzalez received notice of a “positive” result of 350 ng/ml, on the EtG test, as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drunk an alcoholic beverage, and later suffered injury when she was placed in violation of her agreement.

48. Ms. Gonzalez continued to declare and maintain that she had not drunk alcoholic beverages in violation of her agreement, but she was labeled a liar, and not believed, due to the actions of both defendants, including Compass Vision through its MRO, in maintaining that these EtG tests were proof that she had drunk alcoholic beverages.

49. After the false positive, Ms. Gonzalez continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having a false positive EtG test and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

50. The so called “positive” EtG testing of Ms. Gonzalez and the injuries she suffered are as a direct result of the negligence and/or recklessness of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when the test lacked sufficient proven specificity for use as primary or sole

evidence that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

51. As a result of the “positive” EtG test, Ms. Gonzalez was suspended for two months, not allowed to work as a nurse, and suffered damage to her reputation with consequent humiliation, anxiety and stress.

52. As a further result of the “positive” EtG test, Ms. Gonzalez was forced to leave the diversion program when she was unable to afford mandatory in-patient treatment, which the Board required as a result of her “positive” EtG test.

53. As a further result of the “positive” EtG test, Ms. Gonzalez now faces years of probation, with attendant costs, and/or the future loss of her license to practice nursing.

54. As a further result of the “positive” EtG test, Ms. Gonzalez suffered damage to her reputation and credibility in her chosen profession.

55. As a further result of the “positive” EtG test, Ms. Gonzalez has a permanent stain on her license, which would have been avoided had she successfully completed her program.

56. The stain on Ms. Gonzalez’ license, her damaged reputation and credibility, the apprehension that she would again have a false positive test, and the probable future revocation of her nursing license after years of education and commitment to her profession, have caused plaintiff to suffer severe emotional distress, despite her knowing that she did not drink alcoholic beverages and that this test must have been a false positive.

57. As a direct and proximate result of the defendants’ negligence, plaintiff has suffered great, permanent and irreparable harm. These injuries may include, but are

not limited to: the active suspension of her license, probation, risk of the loss of her license, loss of earnings and earning capacity, additional expenses associated with random EtG tests and other evaluations and programs, lawyers fees, other pecuniary losses flowing directly and consequentially from the EtG testing, damage to reputation, humiliation, insomnia, depression, anxiety and severe emotional and psychological distress, all or some of which are continuing in nature.

58. As a direct and proximate result of the defendants' negligence, plaintiff suffered damages as a result of lost earnings and consequent costs for medical evaluations, treatment, program attendance and drug screenings. Her total monetary losses to date are more than \$12,000 dollars.

59. The aforesaid negligence and recklessness on the part of the defendants was wanton and/or outrageous in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount exceeding the jurisdictional limits for diversity, and punitive damages, plus interest and costs.

**COUNT II**  
**KAREN HARTSON V COMPASS VISION & NMS**

60. Plaintiff Karen Hartson incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

61. In or about June 2003, after admitting to pain medication dependency, Karen Hartson, Pharm. D., signed a Recovery Contract with the California State Board of Pharmacy submitting herself to a recovery program including, inter alia, future random urine testing.

62. At all relevant times to this action, including the time in which she participated in the program while working as a pharmacist, Dr. Hartson maintained her recovery and sobriety, denied intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage.

63. At all relevant times after June 2003, Dr. Hartson completely complied with all of the aspects of her program, including attending meetings, and did her job soberly and competently.

64. After over three years of working hard to maintain her recovery and regain her professional reputation, on or about September 7, 2006, Dr. Hartson submitted to a random urine analysis collected by Compass and performed by NMS.

65. Later that month Dr. Hartson received notice of a “positive” result of 1000 ng/ml on the EtG test, as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drank an alcoholic beverage, and suffered injury when she was placed in violation of her agreement.

66. On or about September 16, 2006, Dr. Hartson had a second “positive” EtG test of 1200 ng/ml as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drank an alcoholic beverage.

67. Dr. Hartson continued to declare and maintain that she had not drank alcoholic beverages in violation of her agreement, but she was labeled a liar, and not believed, due to the actions of both defendants, including Compass Vision through its MRO, in maintaining that these EtG tests were proof that she had drank alcoholic beverages.

68. After the first false positive, Dr. Hartson continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having false

positive EtG testing and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

69. The so called “positive” EtG testing of Dr. Hartson and the injuries she suffered are as a direct result of the negligence and/or recklessness of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when it lacked sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

70. As a result of these “positive” EtG tests, Dr. Hartson was suspended for over two weeks, not allowed to work as a pharmacist, and was required to have additional testing and to participate in a Rehab program. She also suffered damage to her reputation with consequent humiliation, anxiety and stress.

71. As a further result of these “positive” EtG tests Dr. Hartson was forced to travel 5-10 hours a week to attend professional support group meetings in Fresno, California.

72. As a further result of these “positive” EtG test, Dr. Hartson suffered damage to her reputation and credibility in her chosen profession.

73. The threat of a permanent stain on Dr. Hartson’s license, her damaged reputation and credibility, the apprehension that she would again have a false positive test, and the possible future revocation of her pharmacy license after years of education and commitment to her profession, have caused plaintiff to suffer severe emotional

distress, despite her knowing that she did not drink alcoholic beverages and that these tests must have been false positives.

74. As a direct and proximate result of the defendants' negligence, plaintiff has suffered great, permanent and irreparable harm. These injuries may include, but are not limited to: the active suspension of her license, probation, risk of the loss of her license, loss of earnings and earning capacity, additional expenses associated with random EtG tests and other evaluations and programs, lawyers fees, other pecuniary losses flowing directly and consequentially from the EtG testing, damage to reputation, humiliation, insomnia, depression, anxiety and severe emotional and psychological distress, all or some of which are continuing in nature.

75. As a direct and proximate result of the defendants' negligence, plaintiff suffered damages as a result of lost earnings and consequent costs for medical evaluations, treatment, program attendance and drug screenings. Her total monetary losses to date are more than \$15,000 dollars.

76. The aforesaid negligence and recklessness on the part of the defendants was wanton and/or outrageous in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount exceeding the jurisdictional limits for diversity, and punitive damages, plus interest and costs.

**COUNT III**  
**SHAWNA MADISON V COMPASS VISION & NMS**

77. Plaintiff Shawna Madison incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

78. In or about February 2004, after admitting to pain medication dependency, Ms. Madison signed a Recovery Contract with the California State Board of Nursing submitting herself to a recovery program including, inter alia, future random urine testing.

79. At all relevant times to this action, including the time in which she participated in the program while working as a registered nurse, Ms. Madison maintained her recovery and sobriety, denied intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage.

80. At all relevant times after February 2004, Ms. Madison completely complied with all of the aspects of her program, including attending meetings, and did her job soberly and competently.

81. After over two years of working hard to maintain her recovery and regain her professional reputation, in or about June 2006, Ms. Madison submitted to a random urine analysis collected by Compass and performed by NMS.

82. Later that month Ms. Madison received notice of a “positive” result of 1800 ng/ml on the EtG test as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drank an alcoholic beverage, and suffered injury when she was placed in violation of her agreement..

83. Ms. Madison had a second “positive” EtG test of 800 ng/ml on a urine sample collected by Compass, performed by NMS and reported and interpreted by both defendants, on or about December 29, 2006.

84. Ms. Madison continued to declare and maintain that she had not drank alcoholic beverages in violation of her agreement, but she was labeled a liar, and not believed, due to the actions of both defendants, including Compass Vision through its

MRO, in maintaining that these EtG tests were proof that she had drank alcoholic beverages.

85. After the first false positive, Ms. Madison continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having false positive EtG testing and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

86. The so called “positive” EtG testing of Ms. Madison and the injuries she suffered are as a direct result of the negligence and/or recklessness of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when it lacked sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

87. As a result of these “positive” EtG tests, Ms. Madison was required to start over her program as of about June 2006 and was required to have additional testing. She also suffered damage to her reputation with consequent humiliation, anxiety and stress.

88. As a further result of these “positive” EtG tests, in January 2007, Ms. Madison was forced to leave the diversion program when she rightfully refused mandatory inpatient treatment to be followed by residence in a sober living home, which the board required as a result of her “positive” EtG tests.

89. As a further result of these “positive” EtG tests, Ms. Madison now faces years of probation with attendant costs and/or the future loss of her license to practice nursing.

90. As a further result of these “positive” EtG tests, Ms. Madison suffered damage to her reputation and credibility in her chosen profession.

91. As a further result of these “positive” EtG tests, Ms. Madison has a permanent stain on her license, which would have been avoided had she successfully completed her program.

92. The stain on Ms. Madison’s license, her damaged reputation and credibility, the apprehension that she would again have a false positive test, and the possible future revocation of her nursing license after years of education and commitment to her profession, have caused plaintiff to suffer severe emotional distress, despite her knowing that she did not drink alcoholic beverages and that these tests must have been false positives.

93. As a direct and proximate result of the defendants’ negligence, plaintiff has suffered great, permanent and irreparable harm. These injuries may include, but are not limited to: the active suspension of her license, probation, risk of the loss of her license, loss of earnings and earning capacity, additional expenses associated with random EtG tests and other evaluations and programs, lawyers fees, other pecuniary losses flowing directly and consequentially from the EtG testing, damage to reputation, humiliation, insomnia, depression, anxiety and severe emotional and psychological distress, all or some of which are continuing in nature.

94. As a direct and proximate result of the defendants’ negligence, plaintiff suffered damages as a result of lost earnings and consequent costs for medical

evaluations, treatment, program attendance and drug screenings. Her total monetary losses to date are more than \$2,500 dollars.

95. The aforesaid negligence and recklessness on the part of the defendants was wanton and/or outrageous in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount exceeding the jurisdictional limits for diversity, and punitive damages, plus interest and costs.

**COUNT IV  
CARRIE NEILL V COMPASS VISION & NMS**

96. Plaintiff Carrie Neill incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

97. In or about December 2004, after admitting to pain medication dependency, Ms. Neill signed a Recovery Contract with the California State Board of Nursing submitting herself to a recovery program including, inter alia, future random urine testing.

98. At all relevant times to this action, including the time in which she participated in the program while working as a registered nurse, Ms. Neill maintained her recovery and sobriety, denied intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage.

99. At all relevant times after December 2004, Ms. Neill completely complied with all of the aspects of her program, including attending meetings, and did her job soberly and competently.

100. After over one year of working hard to maintain her recovery and regain her professional reputation, on or about May 31, 2006, Ms. Neill submitted to a random urine analysis collected by Compass and performed by NMS.

101. In June 2006 Ms. Neill received notice of a “positive” result of 610 ng/ml on the EtG test as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drunk an alcoholic beverage, and suffered injury when she was placed in violation of her agreement..

102. Ms. Neill had a second “positive” EtG test of 410 ng/ml on a urine sample collected by Compass, performed by NMS and reported and interpreted by both defendants, on or about August 21, 2006.

103. Ms. Neill continued to declare and maintain that she had not drunk alcoholic beverages in violation of her agreement, but she was labeled a liar, and not believed, due to the actions of both defendants, including Compass Vision through its MRO, in maintaining that these EtG tests were proof that she had drunk alcoholic beverages.

104. After the first false positive, Ms. Neill continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having a false positive EtG test and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

105. The so called “positive” EtG testing of Ms. Neill and the injuries she suffered are as a direct result of the negligence and/or recklessness of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or

utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when it lacked sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

106. As a result of these “positive” EtG tests, Ms. Neill was forced to start over her program in June 2006, her license was suspended for more than 3 months during which time she was not allowed to work as a nurse; she was required to have additional testing and to live in a sober living home. She also suffered damage to her reputation with consequent humiliation, anxiety and stress.

107. As a further result of these “positive” EtG tests, Ms. Howe suffered damage to her reputation and credibility in her chosen profession.

108. The threat of a permanent stain on Ms. Howe’s license, her damaged reputation and credibility, the apprehension that she would again have a false positive test, and the possible future revocation of her nursing license after years of education and commitment to her profession, have caused plaintiff to suffer severe emotional distress, despite her knowing that she did not drink alcoholic beverages and that these tests must have been false positives.

109. As a direct and proximate result of the defendants’ negligence, plaintiff has suffered great, permanent and irreparable harm. These injuries may include, but are not limited to: the active suspension of her license, probation, risk of the loss of her license, loss of earnings and earning capacity, additional expenses associated with random EtG tests and other evaluations and programs, lawyers fees, other pecuniary losses flowing directly and consequentially from the EtG testing, damage to reputation,

humiliation, insomnia, depression, anxiety and severe emotional and psychological distress, all or some of which are continuing in nature.

110. As a direct and proximate result of the defendants' negligence, plaintiff suffered damages as a result of lost earnings and consequent costs for medical evaluations, treatment, program attendance and drug screenings. Her total monetary losses to date are more than \$21,000 dollars.

111. The aforesaid negligence and recklessness on the part of the defendants was wanton and/or outrageous in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount exceeding the jurisdictional limits for diversity, and punitive damages, plus interest and costs.

**COUNT V**  
**AMY SHANK V COMPASS VISION & NMS**

112. Plaintiff Amy Shank incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

113. In or about May 2006, after admitting to prescription medication dependency due to her suffering from a back injury, anxiety, depression and insomnia, Ms. Shank signed a Recovery Contract with the California State Board of Nursing submitting herself to a recovery program including, inter alia, future random urine testing.

114. Aside from an admitted tasting of a dessert wine at her mother's home, some three nights before she entered the program and began testing, at all relevant times to this action, including the time in which she participated in the program while working as a registered nurse, Ms. Shank maintained her recovery and sobriety, denied

intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage.

115. At all relevant times after May 2006, Ms. Shank completely complied with all of the aspects of her program, including attending meetings, did her job soberly and competently, and worked hard to maintain her recovery and regain her professional reputation.

116. At the very beginning of her program, on or about May 12, 2006, Ms. Shank submitted to a random urine analysis collected by Compass and performed by NMS.

117. Later that month Ms. Shank received notice of a “positive” result of 800 ng/ml on the EtG test as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drank an alcoholic beverage, and suffered injury when she was placed in violation of her agreement.

118. Ms. Shank had a second “positive” EtG on May 25, 2006 of 260 ng/ml and a third on August 8, 2006 of 330 ng/ml.

119. Ms. Shank has had a total of four “positive” EtG tests on urine samples collected by Compass and performed by NMS and reported and interpreted by both defendants, with the last “positive” EtG test of 440 ng/ml in or about May 2007. She has been told that one more “positive” EtG will result in her facing probation and loss of her license.

120. Ms. Shank continued to declare and maintain that she had not drank alcoholic beverages in violation of her agreement, but she was labeled a liar, and not believed, due to the actions of both defendants, including Compass Vision through its

MRO, in maintaining that these EtG tests were proof that she had drank alcoholic beverages.

121. After the first false positive, Ms. Shank continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having false positive EtG testing and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

122. The so called “positive” EtG testing of Ms. Shank and the injuries she suffered are as a direct result of the negligence and/or recklessness of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when it lacked sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

123. As a result of these “positive” EtG tests, Ms. Shank has had her program extended, her license was suspended for approximately 6 weeks during which time she was not allowed to work as a nurse and she was required to have additional testing. She also suffered damage to her reputation with consequent humiliation, anxiety and stress.

124. As a further result of these “positive” EtG tests, Ms. Shank suffered damage to her reputation and credibility in her chosen profession.

125. The threat of a permanent stain on Ms. Shank’s license, her damaged reputation and credibility, the apprehension that she would again have a false positive test, and the possible future revocation of her nursing license after years of education and

commitment to her profession, have caused plaintiff to suffer severe emotional distress, despite her knowing that she did not drink alcoholic beverages and that these tests must have been false positives.

126. As a direct and proximate result of the defendants' negligence, plaintiff has suffered great, permanent and irreparable harm. These injuries may include, but are not limited to: the active suspension of her license, probation, risk of the loss of her license, loss of earnings and earning capacity, additional expenses associated with random EtG tests and other evaluations and programs, lawyers fees, other pecuniary losses flowing directly and consequentially from the EtG testing, damage to reputation, humiliation, insomnia, depression, anxiety and severe emotional and psychological distress, all or some of which are continuing in nature.

127. As a direct and proximate result of the defendants' negligence, plaintiff suffered damages as a result of lost earnings and consequent costs for medical evaluations, treatment, program attendance and drug screenings. Her monetary losses to date total approximately \$12,000 dollars.

128. The aforesaid negligence and recklessness on the part of the defendants was wanton and/or outrageous in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount exceeding the jurisdictional limits for diversity, and punitive damages, plus interest and costs.

**COUNT VI**  
**AMY STOKES V COMPASS VISION & NMS**

129. Plaintiff Amy Stokes incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

130. In or about November 2002, after admitting to pain medication and alcohol dependency, Ms. Stokes signed a Recovery Contract with the California State Board of Nursing submitting herself to a recovery program including, inter alia, future random urine testing.

131. At all relevant times to this action, including the time in which she participated in the program while working as a registered nurse, Ms. Stokes maintained her recovery and sobriety, denied intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage.

132. At all relevant times after November 2002, Ms. Stokes completely complied with all of the aspects of her program, including attending meetings, and did her job soberly and competently.

133. After over three years of working hard to maintain her recovery and regain her professional reputation, and only one month from her completion date, on or about April 10, 2006 Ms. Stokes submitted to a random urine analysis collected by Compass and believed and therefore averred as being performed by NMS.

134. Later that month Ms. Stokes received notice of a “positive” result of 2400 ng/ml on the EtG test as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drank an alcoholic beverage, and suffered injury when she was placed in violation of her agreement.

135. Ms. Stokes had a second “positive” EtG test of 270 ng/ml on a urine sample collected by Compass, performed by NMS and reported and interpreted by both defendants, on or about September 5, 2006.

136. Ms. Stokes continued to declare and maintain that she had not drank alcoholic beverages in violation of her agreement, but she was labeled a liar, and not

believed, due to the actions of both defendants, including Compass Vision through its MRO, in maintaining that these EtG tests were proof that she had drank alcoholic beverages.

137. After the first false positive, Ms. Stokes continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having a false positive EtG test and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

138. The so called “positive” EtG testing of Ms. Stokes and the injuries she suffered are as a direct result of the negligence and/or recklessness of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when it lacked sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

139. As a result of these “positive” EtG tests, Ms. Stokes had her program extended for 6 months, her license was suspended for more than 3 weeks during which time she was not allowed to work as a nurse and she was required to have additional testing. She also suffered damage to her reputation with consequent humiliation, anxiety and stress.

140. As a further result of these “positive” EtG tests, Ms. Stokes suffered damage to her reputation and credibility in her chosen profession.

141. The threat of a permanent stain on Ms. Stokes' license, her damaged reputation and credibility, the apprehension that she would again have a false positive test, and the possible future revocation of her nursing license after years of education and commitment to her profession, have caused plaintiff to suffer severe emotional distress, despite her knowing that she did not drink alcoholic beverages and that these tests must have been false positives.

142. As a direct and proximate result of the defendants' negligence, plaintiff has suffered great, permanent and irreparable harm. These injuries may include, but are not limited to: the active suspension of her license, probation, risk of the loss of her license, loss of earnings and earning capacity, additional expenses associated with random EtG tests and other evaluations and programs, lawyers fees, other pecuniary losses flowing directly and consequentially from the EtG testing, damage to reputation, humiliation, insomnia, depression, anxiety and severe emotional and psychological distress, all or some of which are continuing in nature.

143. As a direct and proximate result of the defendants' negligence, plaintiff suffered damages as a result of lost earnings and consequent costs for medical evaluations, treatment, program attendance and drug screenings. Her monetary losses to date total approximately \$4,000 dollars.

144. The aforesaid negligence and recklessness on the part of the defendants was wanton and/or outrageous in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount exceeding the jurisdictional limits for diversity, and punitive damages, plus interest and costs.

**COUNT VII**  
**SHANDA TURNIDGE V COMPASS VISION & NMS**

145. Plaintiff Shanda Turnidge incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

146. In or about November 2004, after admitting to pain medication dependency, Ms. Turnidge signed a Recovery Contract with the California State Board of Nursing submitting herself to a recovery program including, inter alia, future random urine testing.

147. At all relevant times to this action, including the time in which she participated in the program while working as a registered nurse, Ms. Turnidge maintained her recovery and sobriety, denied intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage. In fact, Ms. Turnidge has not had an alcoholic drink in close to 20 years, as she became ill when she tried alcohol at age 21.

148. At all relevant times after November 2004, Ms. Turnidge completely complied with all of the aspects of her program, including attending meetings, and did her job soberly and competently.

149. After eleven months of working hard to maintain her recovery and regain her professional reputation, on or about October 5, 2005, Ms. Turnidge submitted to a random urine analysis collected by Compass and performed by NMS.

150. Later that month Ms. Turnidge received notice of a “positive” result on the EtG test as reported and interpreted by defendants Compass Vision and NMS., despite the fact that she had not drank an alcoholic beverage, and suffered injury when she was placed in violation of her agreement. She was not told the actual level.

151. Ms. Turnidge had two additional “positive” EtG tests, on urine samples collected by Compass, performed by NMS and reported and interpreted by both defendants, in or about April, 2006.

152. Ms. Turnidge continued to declare and maintain that she had not drank alcoholic beverages in violation of her agreement, but she was labeled a liar, and not believed, due to the actions of both defendants, including Compass Vision through its MRO, in maintaining that these EtG tests were proof that she had drank alcoholic beverages.

153. After the first false positive, Ms. Turnidge continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having false positive EtG testing and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

154. The so called “positive” EtG testing of Ms. Turnidge and the injuries she suffered are as a direct result of the negligence and/or recklessness of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when it lacked sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

155. As a result of these “positive” EtG tests, due to her inability to handle the stress of being called a liar concerning her emphatically denying use of alcohol despite these “positive” EtG tests, in April 2006, Ms. Turnidge was forced to leave the diversion

program. She had already been required to start over her program in October 2005, had her license suspended for two weeks, during which time she was not allowed to work as a nurse, and was required to have additional testing. She also suffered damage to her reputation with consequent humiliation, anxiety and stress.

156. In or about July, 2007 Ms. Turnidge received notice of a license termination and/or probation hearing that was scheduled to take place on January 8, 2008. Since receiving that letter she has been unable to obtain employment as a nurse.

157. As a further result of these “positive” EtG tests, Ms. Turnidge now faces years of probation with attendant costs and/or the future loss of her license to practice nursing.

158. As a further result of these “positive” EtG tests, Ms. Turnidge suffered damage to her reputation and credibility in her chosen profession.

159. As a further result of these “positive” EtG tests, Ms. Turnidge has a permanent stain on her license, which would have been avoided had she successfully completed her program.

160. The stain on Ms. Turnidge’s license, her damaged reputation and credibility, the apprehension that she would again have a false positive testing, and the probable future revocation of her nursing license after years of education and commitment to her profession, have caused plaintiff to suffer severe emotional distress, despite her knowing that she did not drink alcoholic beverages and that these tests must have been false positives.

161. As a direct and proximate result of the defendants’ negligence, plaintiff has suffered great, permanent and irreparable harm. These injuries may include, but are not limited to: the active suspension of her license, probation, risk of the loss of her

license, loss of earnings and earning capacity, additional expenses associated with random EtG tests and other evaluations and programs, lawyers fees, other pecuniary losses flowing directly and consequentially from the EtG testing, damage to reputation, humiliation, insomnia, depression, anxiety and severe emotional and psychological distress, all or some of which are continuing in nature.

162. As a direct and proximate result of the defendants' negligence, plaintiff suffered damages as a result of lost earnings and consequent costs for medical evaluations, program attendance and drug screenings. Her total monetary losses to date are more than \$20,000.

163. The aforesaid negligence and recklessness on the part of the defendants was wanton and/or outrageous in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount exceeding the jurisdictional limits for diversity, and punitive damages, plus interest and costs.

**COUNT VIII**  
**BAIRBRE WALSH V COMPASS VISION & NMS**

164. Plaintiff Bairbre Walsh incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

165. On or about March 17 2006, after admitting to pain medication dependency, Ms. Walsh signed a Recovery Contract with the California State Board of Nursing submitting herself to a recovery program including, inter alia, future random urine testing. As a condition of the program she was not allowed to work for 6 months to a year.

166. At all relevant times to this action, including the time in which she participated in the program, Ms. Walsh maintained her recovery and sobriety, denied intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage.

167. At all relevant times after March 17, 2006, Ms. Walsh completely complied with all of the aspects of her program, including attending meetings, did her job soberly and competently, and worked hard to maintain her recovery and regain her professional reputation.

168. About three months after starting her program, on or about July 7, 2006, Ms. Walsh submitted to a random urine analysis collected by Compass and believed and therefore averred as performed by NMS.

169. Later in July Ms. Walsh received notice of a “positive” result of 520 ng/ml on the EtG test as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drank an alcoholic beverage, and suffered injury when she was placed in violation of her agreement.

170. Ms. Walsh had a five additional “positive” EtG tests on urine samples collected by Compass, performed by NMS and reported and interpreted by both defendants, in July and August 2006, including one of 818 ng/ml on or about July 18, 2006. She was not given the other test levels.

171. Ms. Walsh continued to declare and maintain that she had not drank alcoholic beverages in violation of her agreement, but she was labeled a liar, and not believed, due to the actions of both defendants, including Compass Vision through its MRO, in maintaining that these EtG tests were proof that she had drank alcoholic beverages.

172. After the first false positive, Ms. Walsh continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having a false positive EtG test and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

173. The so called “positive” EtG testing of Ms. Walsh and the injuries she suffered are as a direct result of the negligence of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when it lacked sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

174. As a result of these “positive” EtG tests, Ms. Walsh was forced to leave the diversion program when she was unable to afford mandatory in-patient treatment, which the Board required as a result of her “positive” EtG tests.

175. As a further result of these “positive” EtG tests Ms. Walsh suffered damage to her reputation and credibility in her chosen profession, with consequent humiliation, anxiety, and stress.

176. As a further result of these “positive” EtG tests, Ms. Walsh now faces years of probation, with attendant costs, and/or the future loss of her license to practice nursing.

177. As a further result of these “positive” EtG tests, in July 2006 Ms. Walsh was hospitalized for approximately a week due to stress, severe dehydration, electrolyte

imbalance and acute renal failure. As a result she was disabled for work until about the end of October 2006.

178. As a further result of these “positive” EtG tests, Ms. Walsh has a permanent stain on her license, which would have been avoided had she successfully completed her program.

179. The stain on Ms. Walsh’s license, her damaged reputation and credibility, the apprehension that she would again have a false positive testing, and the probable future revocation of her nursing license after years of education and commitment to her profession, have caused plaintiff to suffer severe emotional distress and hospitalization, despite her knowing that she did not drink alcoholic beverages and that these tests must have been false positives.

180. As a direct and proximate result of the defendants’ negligence, plaintiff has suffered great, permanent and irreparable harm. These injuries may include, but are not limited to: the active suspension of her license, probation, risk of the loss of her license, loss of earnings and earning capacity, additional expenses associated with random EtG tests and other evaluations and programs, lawyers fees, other pecuniary losses flowing directly and consequentially from the EtG testing, damage to reputation, physical illness and harm leading to her hospitalization, humiliation, insomnia, depression, anxiety and severe emotional and psychological and physical distress, all or some of which are continuing in nature.

181. As a direct and proximate result of the defendants’ negligence, plaintiff suffered damages as a result of lost earnings and consequent costs for medical treatment. Her monetary losses to date total approximately \$11,000 dollars.

182. The aforesaid negligence and recklessness on the part of the defendants was wanton and/or outrageous in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount exceeding the jurisdictional limits for diversity, and punitive damages, plus interest and costs.

**COUNT IX**  
**DENISE WESTFAHL V COMPASS VISION & NMS**

183. Plaintiff Denise Westfahl incorporates by reference paragraphs 1-41 as if set forth fully hereunder.

184. In or about November 2002, after admitting to pain medication dependency due to severe osteoarthritis, Ms. Westfahl signed a Recovery Contract with the California State Board of Nursing submitting herself to a recovery program including, inter alia, future random urine testing.

185. At all relevant times to this action, including the time in which she participated in the program while working as a registered nurse, Ms. Westfahl maintained her recovery and sobriety, denied intentionally drinking any alcoholic beverages, denied any relapse and did not drink any alcoholic beverage.

186. At all relevant times after November 2002, Ms. Westfahl completely complied with all of the aspects of her program, including attending meetings, and did her job soberly and competently.

187. While in transition with a program completion date in or about early April 2006, after almost three years of working hard to maintain her recovery and regain her professional reputation, on or about October 21, 2005, Ms. Westfahl submitted to a random urine analysis collected by Compass and performed by NMS.

188. Later that month Ms. Westfahl received notice of a “positive” result of 2200 ng/ml on the EtG test as reported and interpreted by defendants Compass Vision and NMS, despite the fact that she had not drank an alcoholic beverage, and suffered injury when she was placed in violation of her agreement.

189. Ms. Westfahl had six additional “positive” EtG tests in November 2005, July 2006, August 2006, December 2006, March 2007 and April 2007, on urine samples collected by Compass, performed by NMS and reported and interpreted by both defendants. The test levels were all below 700 ng/ml.

190. Ms. Westfahl continued to declare and maintain that she had not drank alcoholic beverages in violation of her agreement, but she was labeled a liar, and not believed, due to the actions of both defendants, including Compass Vision through its MRO, in maintaining that these EtG tests were proof that she had drank alcoholic beverages.

191. After the first false positive, Ms. Westfahl continued to submit to testing and has suffered severe apprehension and anxiety from the fear of again having a false positive EtG test and from the possibility of suffering a permanent stain on her license should she not be allowed to finish her program.

192. The so called “positive” EtG testing of Ms. Westfahl and the injuries she suffered are as a direct result of the negligence of the defendants in promoting, advertising, marketing, selling, and/or contracting with the licensing board, and/or designing, implementing, and managing the EtG alcohol testing program, and/or collecting the urine samples and/or performing and/or interpreting the EtG testing and/or utilizing the EtG test to allegedly establish that the plaintiff consumed an alcoholic beverage, when it lacked sufficient proven specificity for use as primary or sole evidence

that an individual prohibited from drinking, in a regulatory compliance context, had truly been drinking.

193. As a result of these “positive” EtG tests, Ms. Westfahl was forced to start over her program in or about November 2005 and again in or about April 2007, her license was suspended for approximately one month during which time she was not allowed to work as a nurse; she was required to have additional testing and attend additional meetings. She also suffered damage to her reputation with consequent humiliation, anxiety, and stress.

194. As a further result of these “positive” EtG tests, on or about May 11, 2007, Ms. Westfahl was forced to leave the diversion program when she was unable to afford to do a mandatory in-patient treatment, which the Board required as a result of her “positive” EtG tests.

195. As a further result of these “positive” EtG tests, Ms. Westfahl now faces years of probation, with attendant costs, and/or the future loss of her license to practice nursing.

196. As a further result of these “positive” EtG tests, Ms. Westfahl suffered damage to her reputation and credibility in her chosen profession.

197. As a further result of these “positive” EtG tests, Ms. Westfahl has a permanent stain on her license, which would have been avoided had she successfully completed her program.

198. The stain on Ms Westfahl’s license, her damaged reputation and credibility, the apprehension that she would again have a false positive testing, and the probable future revocation of her nursing license after years of education and commitment to her profession, have caused plaintiff to suffer severe emotional distress,

