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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CELESTE KELLY; GRACE GRANATELLI; and
STACEY KOLLMAN,

Plaintiffs,

v.

VICTORIA WHITMORE, in her official capacity
as Executive Director of the Arizona State
Veterinary Medical Examining Board; JIM
LOUGHEAD, JESSICA AMEND, CHRISTINA
BERTCH-MUMAW, D.V.M., J. GREG BYRNE,
D.V.M., NIKKI FROST, C.V.T., LES HATFIELD,
D.V.M., SARAH HEINRICH, D.V.M., DARREN
WRIGHT, D.V.M., and JULIE YOUNG, all in their
official capacities as members of the Arizona
State Veterinary Medical Examining Board,

Defendants.

Case No. CV2014-091906

FIRST AMENDED COMPLAINT

(Declaratory and Injunctive Relief)

INTRODUCTION

1. This civil rights lawsuit seeks to vindicate the constitutional right of Plaintiffs Celeste Kelly, Grace Granatelli, and Stacey Kollman to earn an honest living in the occupation of their choice free from arbitrary, excessive, and unreasonable government regulations.
2. Plaintiffs' right to economic liberty is enshrined in and protected by both the Arizona Constitution and the United States Constitution.
3. Ms. Kelly is and has been an equine massage therapist for over ten years.
4. Ms. Granatelli is and has been a canine massage therapist for ten years.
5. Ms. Kollman is and has been an equine massage therapist for nearly fifteen years.
6. The Arizona State Veterinary Medical Examining Board (the "Board") applies Arizona's law restricting the practice of veterinary medicine to licensed veterinarians to sometimes include individuals practicing animal massage.
7. Animal massage is separate and distinct from veterinary medicine.
8. Plaintiffs are not and do not claim to be veterinarians.
9. Plaintiffs advise their clients that animal massage is not a replacement for veterinary care.
10. The Board's arbitrary and irrational application of Arizona's veterinary licensing scheme to Plaintiffs jeopardizes their ability to engage in their chosen occupations, and thus violates the Arizona and United States constitutions.

JURISDICTION AND VENUE

11. Plaintiffs bring this civil rights lawsuit pursuant to Article II, Sections 4 and 13 of the Arizona Constitution; the Fourteenth Amendment to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; the Arizona Uniform Declaratory Judgments Act, Ariz. Rev. Stat. Ann. (A.R.S.)

§§ 12-1831, *et seq.*; and the authority of this Court to provide injunctive relief pursuant to A.R.S. §§ 12-1801, *et seq.*

12. This Court has jurisdiction over this action pursuant to Article VI, Section 14 of the Arizona Constitution, A.R.S. § 12-123, and 42 U.S.C. § 1983.

13. Venue in Maricopa County is proper under A.R.S. § 12-401(16).

PARTIES

14. Plaintiff Celeste Kelly is a United States citizen. She resides in Tucson, Pima County, Arizona. Ms. Kelly is privately certified in equine massage and has been practicing equine massage for over ten years.

15. Plaintiff Grace Granatelli is a United States citizen. She resides in Scottsdale, Maricopa County, Arizona. Ms. Granatelli is privately certified in canine massage and has been practicing canine massage for ten years.

16. Plaintiff Stacey Kollman is a United States citizen. She resides in Tucson, Pima County, Arizona. Ms. Kollman is privately certified in equine massage and has been practicing equine massage for fourteen years.

17. Defendant Victoria Whitmore is the Executive Director of the Board and is sued in her official capacity.

18. Defendant Jim Loughead is a member of and the current chairman of the Board, and is sued in his official capacity.

19. Defendant Christina Bertch-Mumaw, D.V.M., is a Board-licensed veterinarian, is a member of the Board, and is sued in her official capacity.

20. Defendant Sarah Heinrich, D.V.M., is a Board-licensed veterinarian, is a member of the Board, and is sued in her official capacity.

21. Defendant Les Hatfield, D.V.M., is a Board-licensed veterinarian, is a member of the Board, and is sued in his official capacity.
22. Defendant Darren Wright, D.V.M., is a Board-licensed veterinarian, is a member of the Board, and is sued in his official capacity.
23. Defendant Nikki Frost, C.V.T., is a Board-licensed certified veterinary technician, is a member of the Board, and is sued in her official capacity.
24. Defendant Jessica Amend is a member of the Board and is sued in her official capacity.
25. Defendant Julie Young is a member of the Board and is sued in her official capacity.
26. Defendant J. Greg Byrne, D.V.M., is a Board-licensed veterinarian, is a member of the Board, and is sued in his official capacity.
27. The Board's office is located in Scottsdale, Maricopa County, Arizona.

STATEMENT OF FACTS

The Practice Of Animal Massage

28. Animal massage is the practice of massage on animals.
29. Arizona law defines the practice of massage therapy in its regulation of human massage therapists, as including “[t]he manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis” and “[a]ny combination of range of motion, directed, assisted or passive movements of the joints.” A.R.S. § 32-4201(5).
30. Massage is a non-invasive practice.

Plaintiffs Are Animal Massage Therapists

Celeste Kelly

31. Plaintiff Celeste Kelly is a privately-certified equine massage therapist who has been massaging horses for over ten years.

32. Ms. Kelly obtained private certification in equine massage from Aspen Equine Studies in July 2003, after successfully completing coursework and passing an examination.
33. Ms. Kelly created her business, Hands to Wholeness, after becoming certified by Aspen Equine Studies.
34. Since 2003, Ms. Kelly has taken a number of other courses in animal massage techniques, each of which have privately certified her. For example, Ms. Kelly successfully completed a 120-hour equine massage therapy program with the Galen Equestrian Academy in 2007.
35. Equine massage is Ms. Kelly's livelihood and full-time occupation.
36. Ms. Kelly advertises her business and services. Her advertising efforts have included, *inter alia*, setting up a website and distributing brochures at horse shows.
37. Ms. Kelly has found referrals from existing clients to be the most productive form of growing her business.
38. Veterinarians are familiar with Ms. Kelly's work, and at least one has referred his clients to Ms. Kelly.
39. None of Ms. Kelly's clients have ever complained to her about the services she provides.
40. Ms. Kelly is not an Arizona-licensed veterinarian.
41. Ms. Kelly neither holds herself out as a veterinarian nor advertises that she provides veterinary services.
42. Ms. Kelly tells her clients that she is not an Arizona-licensed veterinarian and advises her clients that her services complement rather than replace veterinary services.

Grace Granatelli

43. Plaintiff Grace Granatelli is a privately-certified canine massage therapist who has been massaging dogs for ten years.

44. Ms. Granatelli first became interested in canine massage in 2003. After twenty years in financial planning, she was looking for a change of pace and decided to pursue canine massage as a side endeavor.
45. She earned her private certification from Equissage in May 2004, after successfully completing coursework and passing an examination.
46. After obtaining her certification, Ms. Granatelli started volunteering at local pet stores and adoption events.
47. She enjoyed the practice so much that she built her volunteer efforts into a business, drawing upon the clientele she had built through volunteering.
48. She named her business Pawsitive Touch and started charging a fee for her services.
49. Ms. Granatelli advertises her business and services. She created a website and placed advertisements in the Yellow Pages and other local publications.
50. When a prospective client enquires about Ms. Granatelli's services, Ms. Granatelli first asks if the animal has seen a veterinarian and often suggests that the animal see a veterinarian before she will massage it.
51. Ms. Granatelli is not an Arizona-licensed veterinarian.
52. Ms. Granatelli neither holds herself out as a veterinarian nor advertises that she provides veterinary services.
53. Ms. Granatelli tells her clients that she is not an Arizona-licensed veterinarian and advises her clients that her services complement rather than replace veterinary services.

Stacey Kollman

54. Plaintiff Stacey Kollman is a privately-certified equine massage therapist who has been massaging horses for nearly fifteen years.

55. Ms. Kollman is a lifelong horsewoman with more than 40 years of practical experience as a horse owner and rider.
56. She is privately certified by EquiTouch Systems and successfully completed the coursework and passed an examination in September 2000.
57. Ms. Kollman owns her own business, Desert Horse Equestrian Services, where she is a riding instructor and horse trainer.
58. As part of her business at Desert Horse Equestrian Services, Ms. Kollman provides equine massage services. She estimates that equine massage constitutes fifteen to twenty percent of her business.
59. Ms. Kollman advertises her business through a website. On this website, she advertises a wide array of services, including riding instruction, horse training, and equine massage.
60. Ms. Kollman is not an Arizona-licensed veterinarian.
61. Ms. Kollman neither holds herself out as a veterinarian nor advertises that she provides veterinary services.
62. Ms. Kollman tells her clients that she is not an Arizona-licensed veterinary and advises her clients that her services complement rather than replace veterinary services.

Arizona's Regulation Of Veterinary Medicine

63. The Board treats animal massage sometimes as the practice of veterinary medicine, therefore requiring animal massage therapists to have a Board-issued veterinary license, and sometimes as not the practice of veterinary medicine.

64. The practice of veterinary medicine is statutorily defined in Arizona:

A person shall be regarded as practicing veterinary medicine . . . within the meaning of this chapter who, within this state:

. . . .

Prescribes or administers any drug, medicine, treatment, method or practice, performs any operation or manipulation, or applies any apparatus or appliance for the cure, amelioration, correction or modification of any animal condition, disease, deformity, defect, wound or injury for hire, fee, compensation or reward that is directly or indirectly promised, offered, expected, received or accepted.

A.R.S. § 32-2231(A) & (A)(4).

65. Arizona exempts equine dentistry from the practice of veterinary medicine. A.R.S. § 32-2231(B) & (B)(3).

66. To be eligible to provide certain equine dental services, an individual need not obtain a veterinary license, but instead must obtain private certification from one of two identified groups.

A.R.S. § 32-2231(B)(3)(a).

67. Like animal massage, equine dentistry is a specialized skill that is taught by private schools offering certification.

68. Like animal massage, equine dentistry does not require a veterinary license in order to safely and competently provide it.

69. Unlike animal massage, Arizona exempts equine dentists from Arizona's veterinary licensing requirements.

70. Arizona requires a license, issued by the Board, to practice veterinary medicine. A.R.S. § 32-2238(A)(4).

71. Any person who practices veterinary medicine without a license is guilty of a class 1 misdemeanor. A.R.S. § 32-2238(A)(4). Class 1 misdemeanors are punishable by up to six months in jail and \$2500 in fines. A.R.S. §§ 13-707, -802.

72. If the Board determines that an unlicensed person is engaging in the practice of veterinary medicine, it has the power to issue cease-and-desist orders, request the county attorney or attorney

general file criminal charges, seek an injunction from the superior court, and impose civil penalties of \$1000 per violation. A.R.S. § 32-2237(E).

73. To obtain a veterinary license in Arizona, an applicant must have graduated from an accredited veterinary school, have passed both national and state licensing exams, and pay a \$400 fee. A.R.S. §§ 32-2214, -2215(A); Ariz. Admin. Code R3-11-105(A)(1).

74. Graduates of accredited veterinary schools obtain the professional doctor of veterinary medicine degree.

75. The American Veterinary Medical Association (AVMA) is the principal accrediting body for veterinary schools in the United States.

76. Arizona requires its applicants for a veterinary license to have graduated from an AVMA-accredited school. A.R.S. § 32-2215(A)(2).

77. At the time of this filing, there are just 28 veterinary schools in the United States with full accreditation status, meaning that they meet AVMA standards and their graduates are eligible to become veterinarians.

78. At the time of this filing, there are no veterinary schools with full accreditation status in Arizona.

79. The AVMA has conferred a “reasonable assurance” status on Midwestern University in Glendale, Arizona. The inaugural class is scheduled to begin at Midwestern in the fall of 2014.

Reasonable assurance status does not confer accreditation on a school.

80. AVMA-accredited veterinary schools require that students be taught over a minimum period of four academic years.

81. The AVMA’s accreditation standards require neither mandatory nor elective courses in animal massage.

82. The AVMA's accreditation standards do not require graduates of AVMA-accredited veterinary schools to demonstrate knowledge of or proficiency in animal massage.

83. Upon information and belief, four years of tuition at an accredited veterinary school can cost over \$150,000.

The Board Requires Animal Massage Therapists To Obtain A Veterinary License

Celeste Kelly

84. On August 29, 2012, the Board, through investigator Tracy Riendeau, sent Ms. Kelly a letter stating that the Veterinary Investigations Division had opened an investigation into allegations that Ms. Kelly was providing veterinary services to the public in Arizona without a veterinary license.

85. That letter directed Ms. Kelly to answer questions regarding the scope of her practice, including how much money she charged for her services, and to provide records of her practice.

86. On September 13, 2012, Ms. Kelly responded and informed the Board that she did not provide veterinary services, diagnose, or prescribe; rather, that she provides the type of "bodywork and massage for which [she] was educated."

87. Ms. Kelly made clear in her letter that her services are not intended to replace veterinary medicine, but complement veterinary care.

88. At the Board's October 17, 2012 meeting, the Board voted to issue Ms. Kelly a cease-and-desist order.

89. The Board's executive director, Victoria Whitmore, signed the cease-and-desist order, which ordered Ms. Kelly to

cease from engaging in the practice of veterinary medicine as defined in A.R.S. § 32-2231 or in any other manner violating the Veterinary Practice Act. **WARNING:** Should you fail to comply with this Cease and Desist Order at any time, the Board reserves the right to take any of the further legal actions authorized under A.R.S. § 32-2237(E).

90. This letter also listed the further legal penalties the Board could pursue if Ms. Kelly continued to provide equine massage services, including the potential for criminal charges and civil fines.

91. Ms. Kelly continued to offer equine massage services because she did not—and does not—believe that the Board may limit animal massage to licensed veterinarians.

92. On May 28, 2013, the Board, through its executive director Victoria Whitmore, sent Ms. Kelly another letter stating that “[t]he Veterinary Investigations Division has received information that you are **continuing** to provide veterinary medical services to the public in Arizona,” and quoting from Ms. Kelly’s website. The letter went on to say: “**As a reminder, the Cease and Desist that was issued to you on October 17, 2012 has no expiration date and remains in effect.**” The letter again threatened criminal sanctions for Ms. Kelly’s offering of animal massage services.

93. Ms. Kelly disabled her website after receiving the May 28, 2013 letter.

94. In October 2013, Ms. Kelly sought clarification from the Board as to what conduct Ms. Kelly engaged in that the Board deemed the practice of veterinary medicine. Her letter stated in part:

If the Board intends to limit the way I make a living, I believe it is only fair for the Board to be specific about which services it is trying to prohibit me from offering to the public. Thus, my clarifying question is this: Which of the services quoted in the Board’s May 2013 letter may I provide without violating the Cease and Desist Order?

95. Three months later, the Board, through its executive director Victoria Whitmore, responded to Ms. Kelly’s letter without answering the question, merely stating:

In response to your letter asking for clarification of the Cease & Desist Order that was issued to you and subsequent correspondence, the Board has asked me to advise you to ensure that the services you provide to the public do not fall within the scope of practicing veterinary medicine. You may want to refer to the Arizona statutes and administrative rules that apply to the Arizona State Veterinary Medical Examining Board; this information is available on our website at www.vetboard.az.gov.

The Board appreciated your efforts to disable your website.

Grace Granatelli

96. On July 26, 2013, the Board, through investigator Tracy Riendeau, sent Ms. Granatelli a letter stating that the Veterinary Investigations Division had opened an investigation into allegations that Ms. Granatelli was providing veterinary medical services to the public in Arizona without a veterinary license.

97. That letter directed Ms. Granatelli to answer questions regarding the scope of her practice, including how much money she charged for her services and who her clients were, and to provide records of her practice.

98. Ms. Granatelli responded on August 5, 2013. In her letter, she described her training and experience, described how she conducts a massage session, and stated that she instructs her clients that she is not a veterinarian and neither diagnoses nor treats animals.

99. At the Board's September 18, 2013 meeting, the Board voted to issue Ms. Granatelli a cease-and-desist order.

100. The Board's executive director, Victoria Whitmore, signed the cease-and-desist order, which ordered Ms. Granatelli to

cease from engaging in the practice of veterinary medicine as defined in A.R.S. § 32-2231 or in any other manner violating the Veterinary Practice Act. **WARNING:** Should you fail to comply with this Cease and Desist Order at any time, the Board reserves the right to take any of the further legal actions authorized under A.R.S. § 32-2237(E).

101. This letter also listed the further legal penalties the Board could pursue if Ms. Granatelli continued to provide massage services.

Stacey Kollman

102. To date, Ms. Kollman has not received an inquiry letter, a cease-and-desist order, or any other form of enforcement from the Board.

103. Because she, like Ms. Kelly and Ms. Granatelli, provides animal massage services, and because the Board is actively attempting to stop people who are not licensed veterinarians from providing those services, Ms. Kollman is concerned that she may face enforcement from the Board in the future.

The Board Changes Its Interpretation

104. In August 2014, Defendants filed an Answer admitting that “the practice of veterinary medicine includes animal massage therapy and that a license is required to practice veterinary medicine in Arizona.”

105. Defendants’ Answer also “affirmatively allege[d] that the practice of animal massage constitutes the practice of veterinary medicine.”

106. The parties spent the next year pursuing discovery.

107. In August 2015, Defendants responded to Plaintiffs’ First Set of Requests for Admission, in which Defendants stated: “The Board does not take the position that all individuals engaging in animal massage must hold a current veterinary license issued by the Board.”

108. Because Defendants’ discovery responses contradicted Defendants’ Answer, Defendants moved for leave to file an amended answer.

109. On February 18, 2016, Defendants filed their First Amended Answer, asserting that “while some individuals providing animal massage services may be practicing veterinary medicine without a license, not all individuals providing animal massage services are necessarily practicing veterinary medicine without a license.”

110. Defendants have not promulgated a rule concerning animal massage.

111. Defendants have not issued any guidance to enable the public to understand when animal massage is considered the practice of veterinary medicine.

INJURIES TO PLAINTIFFS

112. Plaintiffs incorporate and re-allege all the allegations set forth above.

Injury Shared By All Plaintiffs

113. As interpreted and enforced by the Board, Arizona's veterinary licensing scheme prohibits Plaintiffs from providing animal massage services without a veterinary license.

114. Each day Plaintiffs provide animal massage services, each is under the threat of the imposition of civil penalties up to \$1000 per violation because of the Board's statutory power to impose such penalties against individuals engaging in the unlicensed practice of veterinary medicine.

115. Each day Plaintiffs provide animal massage services, each is under the threat of a Board-instituted action in the Superior Court to have her work enjoined because of the Board's statutory power to file for an injunction against individuals engaging in the unlicensed practice of veterinary medicine.

116. Each day Plaintiffs provide animal massage services, each is under the threat of imprisonment and the imposition of fines because of the Board's statutory power to request criminal prosecution by the county attorney or attorney general of individuals engaging in the unlicensed practice of veterinary medicine.

117. Plaintiffs pursue an honest living in their chosen field by offering animal massage services to animals' owners who are willing to pay for their services.

118. Plaintiffs are proficient in animal massage, and each has devoted substantial time and effort to cultivating her skills.

119. Plaintiffs have no desire to become licensed veterinarians.

120. To obtain a veterinary license, Plaintiffs would have to stop working for a minimum of four years in order to attend veterinary school, pay thousands of dollars, and pass the necessary examinations, causing each to lose income.

121. The AVMA sets forth minimum curriculum requirements for accredited veterinary schools. These requirements do not include animal massage therapy, but do include a host of information irrelevant to animal massage.

122. The current regulatory environment, as interpreted and enforced by the Board, limits entry into the animal massage occupation to those who can spend years of their lives and hundreds of thousands of dollars on classes and exams that need not teach massage. Animal massage therapists, like Plaintiffs, are thus forced to take classes in material they do not wish to learn in order to employ a skill they already know.

123. There is no Arizona license that is rationally related to the specialized work done by animal massage therapists.

124. The primary effect of applying Arizona's veterinary licensing laws and regulations to animal massage therapists is to arbitrarily restrict entry into a safe occupation and thereby fence out competition.

Injury to Celeste Kelly

125. In addition to ¶¶ 105-116, *supra*, Plaintiff Celeste Kelly is further directly harmed by Arizona's veterinary licensing scheme, as interpreted and enforced by the Board.

126. Before being contacted by the Board, Ms. Kelly invested significant resources into her business, Hands to Wholeness.

127. On October 31, 2012, the Board sent Ms. Kelly a letter indicating that the Board had concluded that Ms. Kelly practiced veterinary medicine without a veterinary license, which is a crime and a civil violation, by providing animal massage services.

128. On May 28, 2013, the Board sent Ms. Kelly another letter conveying its conclusion that Ms. Kelly practiced veterinary medicine without a veterinary license, which is a crime and a civil violation, by providing animal massage services.

129. Because of the Board's enforcement, Ms. Kelly disabled her website.

130. Because of the Board's enforcement, Ms. Kelly ceased other forms of advertising her services.

131. But for the Board's position that animal massage services constitute the practice of veterinary medicine, Ms. Kelly would advertise her services.

132. Because of the Board's refusal to clarify which services of Ms. Kelly's constitute the practice of veterinary medicine, Ms. Kelly has no way to know whether she may provide some or any massage services without subjecting herself to the Board's enforcement.

133. The Board's actions threaten Ms. Kelly's ability to financially support herself.

Injury to Grace Granatelli

134. In addition to ¶¶ 105-116, *supra*, Plaintiff Grace Granatelli is further directly harmed by Arizona's veterinary licensing scheme, as interpreted and enforced by the Board.

135. Before being contacted by the Board, Plaintiff Grace Granatelli invested significant resources into her business, Pawsitive Touch.

136. On September 25, 2013, the Board sent Ms. Granatelli a letter indicating that the Board had concluded that Ms. Granatelli practiced veterinary medicine without a veterinary license, which is a crime and a civil violation, by providing animal massage services.

137. Because of the Board's enforcement, Ms. Granatelli has stopped accepting nearly all new clients. Ms. Granatelli estimates that she has been contacted by at least ten individuals interested in her services since September 2013. To date, she has turned all of the prospective clients away, except for one whom she feels called to serve.

138. But for the Board's position that animal massage services constitute the practice of veterinary medicine, Ms. Granatelli would stop turning prospective clients away.

139. But for the Board's position that animal massage services constitute the practice of veterinary medicine, Ms. Granatelli would seek new clients. For example, Ms. Granatelli would call pet stores and former clients to advertise her services.

Injury to Stacey Kollman

140. In addition to ¶¶ 105-116, *supra*, Plaintiff Stacey Kollman is further directly harmed by Arizona's veterinary licensing scheme, as interpreted and enforced by the Board.

141. Ms. Kollman is and has been aware of the Board's enforcement against other non-veterinarian animal massage therapists, and has an objectively reasonable fear that the Board will enforce against her at any time.

142. But for the Board's position that animal massage services constitute the practice of veterinary medicine, Ms. Kollman would invest more resources in and expand the equine massage services portion of her business.

143. For example, Ms. Kollman occasionally offers courses teaching people how to massage their own horses. She does not advertise these courses out of concern the Board would enforce Arizona's veterinary licensing scheme against her. Ms. Kollman wishes to offer more of these courses and advertise these courses. But for the Board's position that animal massage services constitute the practice of veterinary medicine, Ms. Kollman would offer more of these courses and advertise such courses.

144. The Board's actions prohibit Ms. Kollman from offering services that she wishes to provide.

COUNT I
(ARIZONA CONSTITUTION ARTICLE II, SECTION 4—DUE PROCESS)

145. Plaintiffs incorporate and re-allege the allegations in ¶¶ 1-136 of this complaint as though set forth in this section.

146. Article II, Section 4 of the Arizona Constitution provides, “No person shall be deprived of life, liberty, or property without due process of law.” Among the liberties secured by this provision is the right to earn an honest living in the occupation of one’s choice free from unreasonable government regulation.

147. Defendants are subjecting Plaintiffs, who engage only in animal massage services, to laws and regulations that do not rationally pertain to animal massage.

148. The laws and regulations governing veterinary medicine far exceed any legitimate and rational public health and safety concerns about animal massage.

149. Requiring animal massage therapists to attend veterinary school and enroll in irrelevant classes in order to obtain a veterinary license, while failing to require any instruction or training in the practice of animal massage, is not rationally related to any public health or safety concerns.

150. Arizona’s veterinary laws and regulations as applied to Plaintiffs by Defendants, their agents and employees, acting under color of state law, unreasonably and arbitrarily restrict Plaintiffs’ ability to pursue their chosen occupations. Thus, Defendants have violated the due process guarantee of the Arizona Constitution by applying Arizona’s veterinary scheme to Plaintiffs and other animal massage therapists.

151. Plaintiffs have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of Article II, Section 4 of the Arizona Constitution, Plaintiffs and other animal massage therapists will continue to suffer great and irreparable harm.

COUNT II

(ARIZONA CONSTITUTION ARTICLE II, SECTION 13—EQUAL PRIVILEGES AND IMMUNITIES)

152. Plaintiffs incorporate and re-allege the allegations in ¶¶ 1-136 of this complaint as though set forth in this section.

153. Article II, Section 13 of the Arizona Constitution provides, “No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.”

154. By unreasonably and arbitrarily applying Arizona’s veterinary laws and regulations to Plaintiffs, subjecting them to the expensive and difficult requirement of becoming fully licensed veterinarians while exempting other animal-health practices from similar licensing requirements, Defendants do not provide an equal opportunity for animal massage therapists to lawfully offer their services. Thus, Defendants, their agents and employees, acting under color of state law, violate Plaintiffs’ economic liberty and their right to equal protection of the laws as guaranteed by Article II, Section 13 of the Arizona Constitution.

155. Among the privileges or immunities secured by the Arizona Constitution is the right to earn an honest living in the occupation of one’s choice free from unreasonable government regulation.

156. Defendants’ application of Arizona’s veterinary laws and regulations treats animal massage therapy as though it were veterinary medicine, when animal massage is in fact a distinct practice.

157. Animal massage therapists are similarly situated to equine dentists in that both engage in activities that benefit from specialized education and/or hands-on knowledge, but do not require the full panoply of veterinary license requirements in order to provide services competently.

158. Application of Arizona’s veterinary laws and regulations to animal massage arbitrarily and unreasonably impairs Plaintiffs’ ability to pursue their chosen livelihood by forcing Plaintiffs to obtain a

license that is unrelated to their profession and subjecting them to criminal penalties and fines that threaten their livelihood and source of income.

159. Defendants, as well as their agents and employees, acting under color of state law, have violated the equal privileges or immunities guarantee of Article II, Section 13 of the Arizona Constitution by unreasonably applying Arizona’s veterinary regulatory framework to Plaintiffs and other animal massage therapists.

160. Plaintiffs have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of Article II, Section 13 of the Arizona Constitution, Plaintiffs and other animal massage therapists will continue to suffer great and irreparable harm.

COUNT III
(U.S. CONSTITUTION FOURTEENTH AMENDMENT—DUE PROCESS)

161. Plaintiffs incorporate and re-allege the allegations in ¶¶ 1-136 of this complaint as though set forth in this section.

162. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law.”

163. By requiring animal massage therapists to obtain veterinary licenses, Defendants, their agents and employees, acting under color of state law, violate Plaintiffs’ right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

164. By requiring animal massage therapists to attend veterinary school and enroll in irrelevant classes in order to obtain a veterinary license, while failing to require any instruction or training in the practice of animal massage, Arizona’s veterinary licensing scheme as applied to Plaintiffs and other animal massage therapists is unconstitutionally overbroad.

165. Requiring Plaintiffs to obtain veterinary licenses at a high financial cost that take years to complete, only a tiny fraction of which could be relevant to animal massage, does not rationally advance any legitimate public health and safety concerns about animal massage.

166. Arizona's veterinary laws and regulations as applied to Plaintiffs by Defendants, their agents and employees, acting under color of state law, unreasonably and arbitrarily restrict Plaintiffs' ability to pursue their chosen occupations. Thus, Defendants have violated the due process guarantee of the United States Constitution by applying Arizona's veterinary scheme to Plaintiffs and other animal massage therapists.

167. Plaintiffs have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment to the United States Constitution, Plaintiffs and other animal massage therapists will continue to suffer great and irreparable harm.

COUNT IV
(U.S. CONSTITUTION FOURTEENTH AMENDMENT—EQUAL PROTECTION)

168. Plaintiffs incorporate and re-allege the allegations in ¶¶ 1-136 of this complaint as though set forth in this section.

169. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

170. Requiring animal massage therapists to obtain veterinary licenses, while not requiring instruction in animal massage therapy, is not rationally related to public health or safety.

171. Animal massage therapists are similarly situated to equine dentists in that both engage in activities that require specialized education and hands-on knowledge, but do not require the full panoply of veterinary license requirements in order to provide services competently.

172. By requiring animal massage therapists to obtain veterinary licenses, Defendants, their agents and employees, acting under color of state law, violate Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

173. By treating animal massage therapy as though it were veterinary medicine, Defendants, their agents and employees, acting under color of state law, violate Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

174. By exempting equine dental practitioners from the veterinary licensing scheme while subjecting animal massage therapists to the veterinary licensing scheme, Defendants, their agents and employees, acting under color of state law, violate Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

175. Plaintiffs have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment to the United States Constitution, Plaintiffs and other animal massage therapists will continue to suffer great and irreparable harm.

COUNT V

(U.S. CONSTITUTION FOURTEENTH AMENDMENT—PRIVILEGES OR IMMUNITIES CLAUSE)

176. Plaintiffs incorporate and re-allege the allegations in ¶¶ 1-136 of this complaint as though set forth in this section.

177. The Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” This clause protects the right to earn a living in the occupation of a person's choice subject only to reasonable government regulation.

178. Application of Arizona’s veterinary licensing scheme to animal massage therapists arbitrarily and unreasonably impairs Plaintiffs’ ability to pursue their chosen livelihood by forcing them to obtain a license that is unrelated to their occupation and subjecting them to fines and penalties, thus threatening the existence, profitability, and potential growth of their businesses, in violation of the privileges or immunities guarantee of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

179. Plaintiffs have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment to the United States Constitution, Plaintiffs and other animal massage therapists will continue to suffer great and irreparable harm.

COUNT VI

(ARIZONA CONSTITUTION ARTICLE II, SECTION 4—VAGUENESS)

180. Plaintiffs incorporate and re-allege the allegations in ¶¶ 1-136 of this complaint as though set forth in this section.

181. Arizona’s definition of the practice of veterinary medicine, as interpreted and enforced by Defendants, is impermissibly vague in violation of Article II, Section 4 of the Arizona Constitution.

182. As interpreted and enforced by Defendants, the definition of the practice of veterinary medicine sometimes includes the provision of animal massage services but does not always include the provision of animal massage services.

183. This definition, as interpreted and enforced by Defendants, is written in such a way that a reasonable person cannot determine whether the statutes prohibit non-veterinarians from providing animal massage services.

184. This definition, as interpreted and enforced by Defendants, is so malleable and standardless that it authorizes or encourages seriously discriminatory enforcement.

185. Plaintiffs have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of Article II, Section 4 of the Arizona Constitution, Plaintiffs and other animal massage therapists will continue to suffer great and irreparable harm.

COUNT VII

(U.S. CONSTITUTION FOURTEENTH AMENDMENT—VAGUENESS)

186. Plaintiffs incorporate and re-allege the allegations in ¶¶ 1-136 of this complaint as though set forth in this section.

187. Arizona's definition of the practice of veterinary medicine, as interpreted and enforced by Defendants, is impermissibly vague in violation of the Fourteenth Amendment of the United States Constitution.

188. As interpreted and enforced by Defendants, the definition of the practice of veterinary medicine sometimes includes the provision of animal massage services but does not always include the provision of animal massage services.

189. This definition, as interpreted and enforced by Defendants, is written in such a way that a reasonable person cannot determine whether the statutes prohibit non-veterinarians from providing animal massage services.

190. This definition, as interpreted and enforced by Defendants, is so malleable and standardless that it authorizes or encourages seriously discriminatory enforcement.

191. Plaintiffs have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment to the United States Constitution, Plaintiffs and other animal massage therapists will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

To further the interests of equity and justice, Plaintiffs request this Court award the following relief:

- A. Enter a judgment declaring that the application of A.R.S. §§ 32-2201, *et seq.*, and Ariz. Admin. Code R3-11-101, *et seq.*, to persons, including Plaintiffs, desiring to massage animals for a fee is unconstitutional in violation of Article II, Section 4 of the Arizona Constitution;
- B. Enter a judgment declaring that the definition of the practice of veterinary medicine, A.R.S. § 32-2231, as interpreted and enforced by Defendants against animal massage practitioners, is void for vagueness in violation of Article II, Section 4 of the Arizona Constitution;
- C. Enter a judgment declaring that the application of A.R.S. §§ 32-2201, *et seq.*, and Ariz. Admin. Code R3-11-101, *et seq.*, to persons, including Plaintiffs, desiring to massage animals for a fee is unconstitutional in violation of Article II, Section 13 of the Arizona Constitution;
- D. Enter a judgment declaring that the application of A.R.S. §§ 32-2201, *et seq.*, and Ariz. Admin. Code R3-11-101, *et seq.*, to persons, including Plaintiffs, desiring to massage animals for a fee is unconstitutional in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- E. Enter a judgment declaring that the definition of the practice of veterinary medicine, A.R.S. § 32-2231, as interpreted and enforced by Defendants against animal massage practitioners, is void for

vagueness in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

F. Enter a judgment declaring that the application of A.R.S. §§ 32-2201, *et seq.*, and Ariz. Admin. Code R3-11-101, *et seq.*, to persons, including Plaintiffs, desiring to massage animals for a fee is unconstitutional in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

G. Enter a judgment declaring that the application of A.R.S. §§ 32-2201, *et seq.*, and Ariz. Admin. Code R3-11-101, *et seq.*, to persons, including Plaintiffs, desiring to massage animals for a fee is unconstitutional in violation of the Privileges or Immunities Clause of the Fourteenth Amendment of the United States Constitution;

H. Permanently enjoin Defendants and their agents and employees from enforcing A.R.S. §§ 32-2201, *et seq.* and Ariz. Admin. Code R3-11-101, *et seq.*, against animal massage therapists, including Plaintiffs;

I. Award nominal damages in the amount of \$1.00;

J. Award attorneys' fees and costs in this action, pursuant to A.R.S. §§ 12-341, 12-348, the private attorney general doctrine, and 42 U.S.C. § 1988; and

K. Such other relief as the Court deems just, equitable, and proper.

RESPECTFULLY SUBMITTED this 13th day of June, 2016.

INSTITUTE FOR JUSTICE

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