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6 Attorneys for Plaintiffs
ALEJANDRO CASAS, ELIEZER GODA and
7 MARY MARTINEZ

8 SUPERIOR COURT OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 ALEJANDRO CASAS, ELIEZER GODA, and
11 MARY MARTINEZ, on behalf of all others
similarly situated, aggrieved employees, and
12 the State of California

13 Plaintiffs,

14 vs.

15 MISSION-HOPE DEVELOPMENTAL
SERVICES, INC., MISSION-HOPE DAY
PROGRAM, LLC, MISSION-HOPE DAY
16 PROGRAM BRENTWOOD, LLC, VILLAGE
PARKWAY DAY PROGRAM, LLC,
17 OSGOOD ROAD DAY PROGRAM, LLC,
MISSION BLVD DAY PROGRAM, LLC,
18 PROGRAM MANAGEMENT NETWORK,
LLC, GLORIA GONZALES, JIAN
19 GAMEZ, FELY BAUTISTA, NISSIE
ESCOLANO, VY LE, FENINA GAMEZ
20 PHAM, DANIEL RANGEL, JORELLE
GAMEZ, NICOLE NUNNERY, JAY
21 GAMEZ, JUANITA NIMFA GAMEZ, and
DOES 16-25,

22 Defendants.
23
24

ENDORSED
FILED
ALAMEDA COUNTY

APR 18 2018

CLERK OF THE SUPERIOR COURT
Anita Dhar

Case No. RG15797671
ASSIGNED FOR ALL PURPOSES TO
JUDGE Winifred Y. Smith
DEPARTMENT 21

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE AND CALIFORNIA
BUSINESS AND PROFESSIONS
CODE**

DEMAND FOR JURY TRIAL

BY FAX

1 Pursuant to the Court's Order Granting Plaintiffs' Motion for Leave to Amend the
2 Complaint, Plaintiffs, ALEJANDRO CASAS, ELIEZER GODA, and MARY MARTINEZ
3 (hereinafter "Plaintiffs"), on behalf of themselves and all others similarly situated, all other
4 aggrieved employees, and the State of California, by and through their attorneys, file this
5 Amended Complaint against Defendant entities MISSION-HOPE DEVELOPMENTAL
6 SERVICES, INC., MISSION-HOPE DAY PROGRAM, LLC, MISSION-HOPE DAY
7 PROGRAM BRENTWOOD, LLC, VILLAGE PARKWAY DAY PROGRAM, LLC, OSGOOD
8 ROAD DAY PROGRAM, LLC, MISSION BLVD DAY PROGRAM, and PROGRAM
9 MANAGEMENT NETWORK, LLC (collectively the "Mission-Hope Entities"), and individuals
10 GLORIA GONZALES, JIAN GAMEZ, FELY BAUTISTA, NISSIE ESCOLANO, VY
11 LE, FENINA GAMEZ PHAM, DANIEL RANGEL, JORELLE GAMEZ, NICOLE NUNNERY,
12 JAY GAMEZ, and JUANITA NIMFA GAMEZ (collectively the "Individual Defendants")
13 seeking to recover for Defendants' violations of the California Labor Code, applicable
14 Industrial Welfare Commission ("IWC") Wage Orders, and the Unfair Business Practices Act,
15 California Business and Professions Code §§ 17200, *et seq.* ("UCL"). Plaintiffs, on behalf of
16 themselves and all others similarly situated and aggrieved, complain and allege as follows:

17 **INTRODUCTION**

18 1. This is a class and representative action complaint against Defendants to challenge
19 its policies and practices of: (1) failing to authorize, permit, and/or make available to its
20 Program Instructors/Drivers meal and rest periods to which they are entitled by law and failing
21 to pay premium pay for these missed breaks; (2) as a result of the missed breaks, failing to
22 pay its Program Instructors/Drivers for all hours worked, including overtime compensation
23 and minimum wage; (3) failing to provide such employees with accurate, itemized wage
24 statements; and (4) failing to pay all wages owed after these employees voluntarily or

1 involuntarily terminated their employment with Defendants. Plaintiffs are current and former
2 Program Instructors/Drivers for Defendants' adult day care centers. Plaintiffs seek to
3 represent other current and former Program Instructors/Drivers in this class and
4 representative action. Plaintiffs allege that Defendants have engaged in unlawful patterns
5 and practices of failing to meet the requirements of the California Labor Code, the applicable
6 IWC Wage Orders, and the California Business and Professions Code.

7 2. Plaintiffs were routinely denied timely and compliant rest and meal periods.
8 Defendants require Plaintiffs to remain with their "participants" at all times and to sign a
9 "constant supervision agreement." Defendants' policies and scheduling procedures
10 precluded Program Instructors/Drivers from taking meal and rest breaks, discouraged
11 employees from taking such breaks, and usually made attempting to take a meal and/or rest
12 period impossible. Defendants failed to pay Plaintiffs the premium wages for the missed
13 breaks and the requisite pay for working through the rest breaks to which they were entitled.

14 3. The daily time Defendants required Plaintiffs and the class members to work through
15 breaks without compensation deprived them of substantial amounts of pay to which they are
16 entitled under California law. Depending on how many hours Plaintiffs and the class worked
17 on a given day, this unpaid time is owed to Plaintiffs and the class at both straight-time and
18 overtime rates.

19 4. Defendants routinely refuse to authorize, permit, and/or make available to Plaintiffs
20 timely and compliant thirty-minute meal periods as required by law. Under California law,
21 generally, non-exempt hourly employees are to receive one thirty-minute unpaid meal break
22 at the conclusion of every five hours of labor performed. Defendants' policy violates California
23 law in this respect.

24 5. Defendants also routinely refuse to authorize or permit Plaintiffs to take ten-minute

1 rest periods as required by law. Under California law, non-exempt hourly employees are to
2 receive one ten-minute rest period for every four hours, or major fraction thereof, worked.
3 Defendants' policies violate California law in this respect.

4 6. As a result of these violations, Defendants are liable for additional penalties under the
5 Labor Code, including the Private Attorneys' General Act and for violation of the Unfair
6 Business Practices Act.

7 7. Plaintiffs seek full compensation for all denied timely and compliant meal and rest
8 periods, unpaid wages, including unpaid overtime, waiting time penalties, and premium
9 wages under the applicable sections of the Labor Code. Plaintiffs also seek declaratory and
10 injunctive relief, including restitution. Finally, Plaintiffs seek reasonable attorneys' fees and
11 costs under the California Labor Code and California Code of Civil Procedure § 1021.5.

12 **JURISDICTION AND VENUE**

13 8. The amount of damages sought herein is greater than \$25,000. Hence this case is
14 within the unlimited jurisdiction of this Court.

15 9. Venue is proper in Alameda County pursuant to California Code of Civil Procedure §
16 395.5 because three of Defendants five adult day care centers, where most relevant events
17 occurred, are located in Alameda County.

18 **PARTIES**

19 10. Plaintiffs are all residents of the state of California.

20 11. Plaintiff Alejandro Casas is a current employee of Defendants' adult day care center
21 in Dublin, California.

22 12. Plaintiff Mary Martinez is a former employee of Defendants' adult day care center in
23 Hayward, California.

24 13. Plaintiff Eliezer Goda is a current employee of Defendants' adult day care center in

1 Hayward, California.

2 14. Based on information and belief, Defendant MISSION-HOPE DEVELOPMENTAL
3 SERVICES, INC. (“MISSION-HOPE DEVELOPMENTAL SERVICES”) is a California
4 Corporation and operated Defendants’ facility in Dublin, California at which Defendants
5 employed putative class members and PAGA collective members, as alleged herein. Also,
6 as alleged herein, Defendant MISSION-HOPE DEVELOPMENTAL SERVICES, along with
7 other Mission-Hope entities, was a joint employer of putative class members and the
8 members of the PAGA Collective. According to documents filed with the California Secretary
9 of State, this Defendant’s headquarters are located at 6300 Village Parkway, Suite 200 in
10 Dublin (Alameda), CA 94568. At all relevant times, Defendant has done business under the
11 laws of California, has had places of business in the State of California, and has employed
12 class members in this state. MISISON-HOPE DEVELOPMENTAL SERVICES is a “person”
13 as defined in California Labor Code § 18 and California Business and Professions Code §
14 17201. MISISON-HOPE DEVELOPMENTAL SERVICES is also an “employer” as that term
15 is used in the California Labor Code and the IWC’s Wage Orders.

16 15. Based on information and belief, Defendant MISSION-HOPE DAY PROGRAM, LLC
17 (“MISSION HOPE DAY PROGRAM”) is a California Limited Liability Company and operated
18 Defendants’ facility in Antioch, California at which Defendants employed putative class
19 members and PAGA collective members, as alleged herein. Also, as alleged herein,
20 Defendant MISSION-HOPE DAY PROGRAM, along with other Mission-Hope entities, was a
21 joint employer of putative class members and the members of the PAGA Collective.
22 According to documents filed with the California Secretary of State, this Defendant’s
23 headquarters are located at 7080 Donlon Way, Suite 200 in Dublin (Alameda), CA 94568. At
24 all relevant times, Defendant has done business under the laws of California, has had places

1 of business in the State of California, and has employed class members in this state.
2 MISSION-HOPE DAY PROGRAM is a “person” as defined in California Labor Code § 18 and
3 California Business and Professions Code § 17201. MISSION-HOPE DAY PROGRAM is
4 also an “employer” as that term is used in the California Labor Code and the IWC’s Wage
5 Orders.

6 16. Based on information and belief, Defendant MISSION-HOPE DAY PROGRAM
7 BRENTWOOD, LLC (“MISSION-HOPE BRENTWOOD”) is a California Limited Liability
8 Company and operated Defendants’ facility in Brentwood, California at which Defendants
9 employed putative class members and PAGA collective members, as alleged herein. Also,
10 as alleged herein, Defendant MISSION-HOPE BRENTWOOD, along with other Mission-
11 Hope entities, was a joint employer of putative class members and the members of the PAGA
12 Collective. According to documents filed with the California Secretary of State, this
13 Defendant’s headquarters are located at 7080 Donlon Way, Suite 200 in Dublin (Alameda),
14 CA 94568. At all relevant times, Defendant has done business under the laws of California,
15 has had places of business in the State of California, and has employed class members in
16 this state. MISSION-HOPE BRENTWOOD is a “person” as defined in California Labor Code
17 § 18 and California Business and Professions Code § 17201. MISSION-HOPE
18 BRENTWOOD is also an “employer” as that term is used in the California Labor Code and
19 the IWC’s Wage Orders.

20 17. Based on information and belief, Defendant VILLAGE PARKWAY DAY PROGRAM,
21 LLC (“VILLAGE PARKWAY DAY PROGRAM”) is a California Limited Liability Company and
22 operated Defendants’ facility in Dublin, California at which Defendants employed putative
23 class members and PAGA collective members, as alleged herein. Also, as alleged herein,
24 Defendant VILLAGE PARKWAY DAY PROGRAM, along with other Mission-Hope entities,

1 was a joint employer of putative class members and the members of the PAGA Collective.
2 According to documents filed with the California Secretary of State, this Defendant's
3 headquarters are located at 6300 Village Parkway, Suite 125 in Dublin (Alameda), CA 94568.
4 At all relevant times, Defendant has done business under the laws of California, has had
5 places of business in the State of California, and has employed class members in this state.
6 VILLAGE PARKWAY DAY PROGRAM is a "person" as defined in California Labor Code §
7 18 and California Business and Professions Code § 17201. VILLAGE PARKWAY DAY
8 PROGRAM is also an "employer" as that term is used in the California Labor Code and the
9 IWC's Wage Orders.

10 18. Based on information and belief, Defendant OSGOOD ROAD DAY PROGRAM, LLC
11 ("OSGOOD ROAD DAY PROGRAM") is a California Limited Liability Company and operated
12 Defendants' facility in Fremont, California at which Defendants employed putative class
13 members and PAGA collective members, as alleged herein. Also, as alleged herein,
14 Defendant OSGOOD ROAD DAY PROGRAM, along with other Mission-Hope entities, was
15 a joint employer of putative class members and the members of the PAGA Collective.
16 According to documents filed with the California Secretary of State, this Defendant's
17 headquarters are located at 6300 Village Parkway, Suite 200 in Dublin (Alameda), CA 94568.
18 At all relevant times, Defendant has done business under the laws of California, has had
19 places of business in the State of California, and has employed class members in this state.
20 OSGOOD ROAD DAY PROGRAM is a "person" as defined in California Labor Code § 18
21 and California Business and Professions Code § 17201. OSGOOD ROAD DAY PROGRAM
22 is also an "employer" as that term is used in the California Labor Code and the IWC's Wage
23 Orders.

24 19. Based on information and belief, Defendant MISSION BLVD DAY PROGRAM, LLC

1 (“MISSION BLVD DAY PROGRAM”) is a California Limited Liability Company and operated
2 Defendants’ facility in Dublin, California at which Defendants employed putative class
3 members and PAGA collective members, as alleged herein. Also, as alleged herein,
4 Defendant MISSION BLVD DAY PROGRAM, along with other Mission-Hope entities, was a
5 joint employer of putative class members and the members of the PAGA Collective.
6 According to documents filed with the California Secretary of State, this Defendant’s
7 headquarters are located at 21328 Mission Blvd in Hayward (Alameda), CA 94541. At all
8 relevant times, Defendant has done business under the laws of California, has had places of
9 business in the State of California, and has employed class members in this state. MISSION
10 BLVD DAY PROGRAM is a “person” as defined in California Labor Code § 18 and California
11 Business and Professions Code § 17201. MISSION BLVD DAY PROGRAM is also an
12 “employer” as that term is used in the California Labor Code and the IWC’s Wage Orders.

13 20. Based on information and belief, Defendant PROGRAM MANAGEMENT NETWORK,
14 LLC (“PROGRAM MANGEMENT NETWORK”) is a California Limited Liability Company and
15 operated Defendants’ facility in Dublin, California at which Defendants employed putative
16 class members and PAGA collective members, as alleged herein. Also, as alleged herein,
17 Defendant PROGRAM MANAGEMENT NETWORK, along with other Mission-Hope entities,
18 was a joint employer of putative class members and the members of the PAGA Collective.
19 Indeed, according to the representations of defense counsel in this action, PROGRAM
20 MANAGEMENT NETWORK administers all of Defendants’ day program facilities, and based
21 on information and belief, that central administration of all of the day program facilities
22 includes control of the terms and conditions of the employment of Plaintiffs and the putative
23 class members. According to documents filed with the California Secretary of State, this
24 Defendant’s headquarters are located at 7080 Donlon Way, Suite 209 in Dublin (Alameda),

1 CA 94568. At all relevant times, Defendant has done business under the laws of California,
2 has had places of business in the State of California, and has employed class members in
3 this state. PROGRAM MANAGEMENT NETWORK is a “person” as defined in California
4 Labor Code § 18 and California Business and Professions Code § 17201. PROGRAM
5 MANAGEMENT NETWORK is also an “employer” as that term is used in the California Labor
6 Code and the IWC’s Wage Orders.

7 21. Based on information and belief, Defendant GLORIA GONZALES is a California
8 resident and worked for the Defendant Mission-Hope Entities as a DIRECTOR at the
9 HAYWARD facility during the class period and PAGA statutory period. GLORIA GONZALES
10 violated and/or caused to be violated the applicable IWC Wage Order as alleged below.
11 Specifically, based on information and belief, GONZALES created and/or implemented
12 Defendants’ policy of requiring Plaintiffs and putative class members to execute “on-duty
13 meal period agreements,” “constant supervision agreements,” and other policies which
14 prevented, impeded, and discouraged them from taking meal and rest periods required by
15 law and the applicable wage order. When faced with complaints by employees that they were
16 not getting meal and rest periods as required by law and the applicable wage order (including
17 numerous complaints to the Labor Commissioner of which this defendant was certainly
18 aware), GONZALES refused and refuses to change those policies which violate the
19 applicable Wage Order as discussed herein. GLORIA GONZALES is a “person” as defined
20 in California Labor Code § 18 and California Business and Professions Code § 17201.

21 22. Based on information and belief, Defendant JIAN GAMEZ is a California resident and
22 worked for the Defendant Mission-Hope Entities as an ADMINISTRATOR at the HAYWARD
23 facility during the class period and PAGA statutory period. JIAN GAMEZ violated and/or
24 caused to be violated the applicable IWC Wage Order as alleged below. Specifically, based

1 on information and belief, JIAN GAMEZ created and/or implemented Defendants' policy of
2 requiring Plaintiffs and putative class members to execute "on-duty meal period agreements,"
3 "constant supervision agreements," and other policies which prevented, impeded, and
4 discouraged them from taking meal and rest periods required by law and the applicable wage
5 order. When faced with complaints by employees that they were not getting meal and rest
6 periods as required by law and the applicable wage order (including numerous complaints to
7 the Labor Commissioner of which this defendant was certainly aware), JIAN GAMEZ refused
8 and refuses to change those policies which violate the applicable Wage Order as discussed
9 herein. JIAN GAMEZ is a "person" as defined in California Labor Code § 18 and California
10 Business and Professions Code § 17201.

11 23. Based on information and belief, Defendant FELY BAUTISTA is a California resident
12 and worked for the Defendant Mission-Hope Entities as a DIRECTOR at the FREMONT
13 facility during the class period and PAGA statutory period. FELY BAUTISTA violated and/or
14 caused to be violated the applicable IWC Wage Order as alleged below. Specifically, based
15 on information and belief, FELY BAUTISTA created and/or implemented Defendants' policy
16 of requiring Plaintiffs and putative class members to execute "on-duty meal period
17 agreements," "constant supervision agreements," and other policies which prevented,
18 impeded, and discouraged them from taking meal and rest periods required by law and the
19 applicable wage order. When faced with complaints by employees that they were not getting
20 meal and rest periods as required by law and the applicable wage order (including numerous
21 complaints to the Labor Commissioner of which this defendant was certainly aware), FELY
22 BAUTISTA refused and refuses to change those policies which violate the applicable Wage
23 Order as discussed herein. FELY BAUTISTA is a "person" as defined in California Labor
24 Code § 18 and California Business and Professions Code § 17201.

1 24. Based on information and belief, Defendant NISSIE ESCOLANO is a California
2 resident and worked for the Defendant Mission-Hope Entities as an ADMINISTRATOR at the
3 FREMONT facility during the class period and PAGA statutory period. NISSIE ESCOLANO
4 violated and/or caused to be violated the applicable IWC Wage Order as alleged below.
5 Specifically, based on information and belief, NISSIE ESCOLANO created and/or
6 implemented Defendants' policy of requiring Plaintiffs and putative class members to execute
7 "on-duty meal period agreements," "constant supervision agreements," and other policies
8 which prevented, impeded, and discouraged them from taking meal and rest periods required
9 by law and the applicable wage order. When faced with complaints by employees that they
10 were not getting meal and rest periods as required by law and the applicable wage order
11 (including numerous complaints to the Labor Commissioner of which this defendant was
12 certainly aware), NISSIE ESCOLANO refused and refuses to change those policies which
13 violate the applicable Wage Order as discussed herein. NISSIE ESCOLANO is a "person" as
14 defined in California Labor Code § 18 and California Business and Professions Code §
15 17201.

16 25. Based on information and belief, Defendant VY LE is a California resident and worked
17 for the Defendant Mission-Hope Entities as a DIRECTOR at the BRENTWOOD facility during
18 the class period and PAGA statutory period. VY LE violated and/or caused to be violated the
19 applicable IWC Wage Order as alleged below. Specifically, based on information and belief,
20 VY LE created and/or implemented Defendants' policy of requiring Plaintiffs and putative
21 class members to execute "on-duty meal period agreements," "constant supervision
22 agreements," and other policies which prevented, impeded, and discouraged them from
23 taking meal and rest periods required by law and the applicable wage order. When faced with
24 complaints by employees that they were not getting meal and rest periods as required by law

1 and the applicable wage order (including numerous complaints to the Labor Commissioner
2 of which this defendant was certainly aware), VY LE refused and refuses to change those
3 policies which violate the applicable Wage Order as discussed herein. VY LE is a “person”
4 as defined in California Labor Code § 18 and California Business and Professions Code §
5 17201.

6 26. Based on information and belief, Defendant FENINA GAMEZ PHAM is a California
7 resident and worked for the Defendant Mission-Hope Entities as an ADMINISTRATOR at the
8 BRENTWOOD facility during the class period and PAGA statutory period. FENINA GAMEZ
9 violated and/or caused to be violated the applicable IWC Wage Order as alleged below.
10 Specifically, based on information and belief, FENINA GAMEZ created and/or implemented
11 Defendants’ policy of requiring Plaintiffs and putative class members to execute “on-duty
12 meal period agreements,” “constant supervision agreements,” and other policies which
13 prevented, impeded, and discouraged them from taking meal and rest periods required by
14 law and the applicable wage order. When faced with complaints by employees that they were
15 not getting meal and rest periods as required by law and the applicable wage order (including
16 numerous complaints to the Labor Commissioner of which this defendant was certainly
17 aware), FENINA GAMEZ refused and refuses to change those policies which violate the
18 applicable Wage Order as discussed herein. FENINA GAMEZ is a “person” as defined in
19 California Labor Code § 18 and California Business and Professions Code § 17201.

20 27. Based on information and belief, Defendant DANIEL RANGEL is a California resident
21 and worked for the Defendant Mission-Hope Entities as a DIRECTOR at the ANTIOCH facility
22 during the class period and PAGA statutory period. DANIEL RANGEL violated and/or caused
23 to be violated the applicable IWC Wage Order as alleged below. Specifically, based on
24 information and belief, DANIEL RANGEL created and/or implemented Defendants’ policy of

1 requiring Plaintiffs and putative class members to execute “on-duty meal period agreements,”
2 “constant supervision agreements,” and other policies which prevented, impeded, and
3 discouraged them from taking meal and rest periods required by law and the applicable wage
4 order. When faced with complaints by employees that they were not getting meal and rest
5 periods as required by law and the applicable wage order (including numerous complaints to
6 the Labor Commissioner of which this defendant was certainly aware), DANIEL RANGEL
7 refused and refuses to change those policies which violate the applicable Wage Order as
8 discussed herein. DANIEL RANGEL is a “person” as defined in California Labor Code § 18
9 and California Business and Professions Code § 17201.

10 28. Based on information and belief, Defendant JORELLE GAMEZ is a California resident
11 and worked for the Defendant Mission-Hope Entities as an ADMINISTRATOR at the
12 ANTIOCH facility during the class period and PAGA statutory period. JORELLE GAMEZ
13 violated and/or caused to be violated the applicable IWC Wage Order as alleged below.
14 Specifically, based on information and belief, JORELLE GAMEZ created and/or implemented
15 Defendants’ policy of requiring Plaintiffs and putative class members to execute “on-duty
16 meal period agreements,” “constant supervision agreements,” and other policies which
17 prevented, impeded, and discouraged them from taking meal and rest periods required by
18 law and the applicable wage order. When faced with complaints by employees that they were
19 not getting meal and rest periods as required by law and the applicable wage order (including
20 numerous complaints to the Labor Commissioner of which this defendant was certainly
21 aware), JORELLE GAMEZ refused and refuses to change those policies which violate the
22 applicable Wage Order as discussed herein. JORELLE GAMEZ is a “person” as defined in
23 California Labor Code § 18 and California Business and Professions Code § 17201.

24 29. Based on information and belief, Defendant NICOLE NUNNERY is a California

1 resident and worked for the Defendant Mission-Hope Entities as a DIRECTOR at the DUBLIN
2 facility during the class period and PAGA statutory period. NICOLE NUNNERY violated
3 and/or caused to be violated the applicable IWC Wage Order as alleged below. Specifically,
4 based on information and belief, NICOLE NUNNERY created and/or implemented
5 Defendants' policy of requiring Plaintiffs and putative class members to execute "on-duty
6 meal period agreements," "constant supervision agreements," and other policies which
7 prevented, impeded, and discouraged them from taking meal and rest periods required by
8 law and the applicable wage order. When faced with complaints by employees that they were
9 not getting meal and rest periods as required by law and the applicable wage order (including
10 numerous complaints to the Labor Commissioner of which this defendant was certainly
11 aware), NICOLE NUNNERY refused and refuses to change those policies which violate the
12 applicable Wage Order as discussed herein. NICOLE NUNNERY is a "person" as defined in
13 California Labor Code § 18 and California Business and Professions Code § 17201.

14 30. Based on information and belief, Defendant JAY GAMEZ is a California resident and
15 worked for the Defendant Mission-Hope Entities as an ADMINISTRATOR at the DUBLIN
16 facility during the class period and PAGA statutory period. JAY GAMEZ violated and/or
17 caused to be violated the applicable IWC Wage Order as alleged below. Specifically, based
18 on information and belief, JAY GAMEZ created and/or implemented Defendants' policy of
19 requiring Plaintiffs and putative class members to execute "on-duty meal period agreements,"
20 "constant supervision agreements," and other policies which prevented, impeded, and
21 discouraged them from taking meal and rest periods required by law and the applicable wage
22 order. When faced with complaints by employees that they were not getting meal and rest
23 periods as required by law and the applicable wage order (including numerous complaints to
24 the Labor Commissioner of which this defendant was certainly aware), JAY GAMEZ refused

1 and refuses to change those policies which violate the applicable Wage Order as discussed
2 herein. JAY GAMEZ is a “person” as defined in California Labor Code § 18 and California
3 Business and Professions Code § 17201.

4 31. Based on information and belief, Defendant JUANITA NIMFA GAMEZ is a California
5 resident and worked for the Defendant Mission-Hope Entities as the EXECUTIVE
6 DIRECTOR at all five Mission-Hope facilities during the class period and PAGA statutory
7 period. JUANITA NIMFA GAMEZ violated and/or caused to be violated the applicable IWC
8 Wage Order as alleged below. Specifically, based on information and belief, JUANITA NIMFA
9 GAMEZ created and/or implemented Defendants’ policy of requiring Plaintiffs and putative
10 class members to execute “on-duty meal period agreements,” “constant supervision
11 agreements,” and other policies which prevented, impeded, and discouraged them from
12 taking meal and rest periods required by law and the applicable wage order. When faced with
13 complaints by employees that they were not getting meal and rest periods as required by law
14 and the applicable wage order (including numerous complaints to the Labor Commissioner
15 of which this defendant was certainly aware), JUANITA NIMFA GAMEZ refused and refuses
16 to change those policies which violate the applicable Wage Order as discussed herein.
17 JUANITA NIMFA GAMEZ is a “person” as defined in California Labor Code § 18 and
18 California Business and Professions Code § 17201.

19 32. Plaintiffs did not know the true names and capacities of Defendants previously sued
20 as DOES 1–25 and therefore sued those Defendants by such fictitious names. Plaintiffs now
21 amend their complaint to allege their true identities and capacities that have since been
22 ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of these
23 previously fictitiously named Defendants is responsible in some manner for the occurrences
24 alleged herein and thereby proximately caused Plaintiffs’ injuries alleged herein. The

1 following are DOE Defendants, as amended:

- 2 a. DOE 1: VILLAGE PARKWAY DAY PROGRAM, LLC
- 3 b. DOE 2: OSGOOD ROAD DAY PROGRAM, LLC
- 4 c. DOE 3: MISSION BLVD DAY PROGRAM, LLC
- 5 d. DOE 4: PROGRAM MANAGEMENT NETWORK, LLC
- 6 e. DOE 5: GLORIA GONZALES
- 7 f. DOE 6: JIAN GAMEZ
- 8 g. DOE 7: FELY BAUTISTA
- 9 h. DOE 8: NISSIE ESCOLANO
- 10 i. DOE 9: VY LE
- 11 j. DOE 10: FENINA GAMEZ
- 12 k. DOE 11: DANIEL RANGEL
- 13 l. DOE 12: JORELLE GAMEZ
- 14 m. DOE 13: NICOLE NUNNERY
- 15 n. DOE 14: JAY GAMEZ
- 16 o. DOE 15: JUANITA NIMFA GAMEZ

17 33. Plaintiffs are informed and believe, and on that basis allege, that, at all relevant times,
18 each of the Defendants was the agent or employee of each of the remaining Defendants,
19 and, in doing the things herein alleged was acting within the course and scope of such
20 employment, and that Defendants authorized, ratified, and approved, expressly or implicitly,
21 all of the conduct alleged herein.

22 34. At all times relevant hereto, Defendants, and each of them, were the agents,
23 employees, managing agents, supervisors, co-conspirators, parent corporation, joint
24 employers, alter ego, and/or joint ventures of the other Defendants, and each of them, and

1 in doing the things alleged herein, were acting at least in part within the course and scope of
2 said agency, employment, conspiracy, joint employer, alter ego status, and/or joint venture
3 and with the permission and consent of each of the other Defendants.

4 35. Whenever and wherever reference is made in this Complaint to any act or failure to
5 act by a Defendant or co-Defendant, such allegations and references shall also be deemed
6 to mean the acts and/or failures to act by each Defendant acting individually, jointly and
7 severally.

8 **FACTUAL ALLEGATIONS**

9 36. The Defendant Mission-Hope Entities are in the business of providing day care
10 services to adults with developmental disabilities. The Defendant Mission-Hope Entities own
11 and operate three adult day care centers in Alameda County (Dublin, Fremont, and Hayward)
12 and two adult day care centers in Contra Costa County (Antioch and Brentwood).

13 37. Plaintiffs are current and former Program Instructors/Drivers who worked at the
14 Defendant Mission-Hope Entities' adult day care centers, transporting and supervising
15 "participants" of the day care centers. They are paid a nominal hourly wage.

16 38. Defendants regularly failed to timely authorize, permit, provide, or make available to
17 Plaintiff Alejandro Casas all of the meal and rest periods to which he was entitled. Casas was
18 never paid any premium wages for the meal and rest periods which were interrupted,
19 untimely, or otherwise not in compliance with the applicable Wage Orders and law. Like all
20 Program Instructors/Drivers, Casas was required to remain with his "participants" at all times
21 and required to sign a "constant supervision agreement." These policies and practices
22 required him to perform work duties at all times during his shift and left no opportunity for him
23 to take breaks.

24 39. Defendants regularly failed to timely authorize, permit, provide, or make available to

1 Plaintiff Eliezer Goda all of the meal and rest periods to which he was entitled. Goda was
2 never paid any premium wages for the meal and rest periods which were interrupted,
3 untimely, or otherwise not in compliance with the applicable Wage Orders and law. Like all
4 Program Instructors/Drivers, Goda was required to remain with his “participants” at all times
5 and required to sign a “constant supervision agreement.” These policies and practices
6 required him to perform work duties at all times during his shift and left no opportunity for him
7 to take breaks.

8 40. Defendants regularly failed to timely authorize, permit, provide, or make available to
9 Plaintiff Mary Martinez all of the meal and rest periods to which she was entitled. Martinez
10 was never paid any premium wages for the meal and rest periods which were interrupted,
11 untimely, or otherwise not in compliance with the applicable Wage Orders and law. Like all
12 Program Instructors/Drivers, Martinez was required to remain with her “participants” at all
13 times and required to sign a “constant supervision agreement.” These policies and practices
14 required Martinez to perform work duties at all times during her shift and left no opportunity
15 for her to take breaks.

16 41. The class members were situated similarly to Plaintiffs in that they are and/or were
17 Program Instructors/Drivers who worked for the Defendant Mission-Hope Entities at one or
18 more of their adult day care centers, and were subject to the same uniform policies and
19 practices of requiring Program Instructors/Drivers to remain with “participants” at all times,
20 during which time the Program Instructors/Drivers are required to perform work duties such
21 that taking an uninterrupted meal or rest period is impossible. Plaintiffs are informed, believe,
22 and thereon allege that the policies and practices of Defendants have at all relevant times
23 been similar for Plaintiffs and the putative class members, regardless of location.

24 42. Defendants routinely denied Plaintiffs timely and compliant off-duty meal periods and

1 routinely refused to authorize or permit them to take compliant rest periods. Plaintiffs and
2 similarly situated non-exempt hourly employees typically work at least six-hour days, yet are
3 routinely denied off-duty meal and rest periods due to the Defendants' policies and practices.

4 43. Defendants are aware of the fact that their Program Instructors/Drivers do not get the
5 meal and rest periods to which they are entitled and that they maintain policies and practices
6 that deprive their Program Instructors/Drivers of compensation for time worked, including
7 overtime compensation. In fact, Plaintiffs complained on multiple occasions that they should
8 be authorized and permitted to take breaks, yet Defendants continue to engage in these
9 practices. Therefore, the denial of meal and rest periods and denial of wages to Plaintiffs is
10 knowing and willful.

11 44. Defendants are aware of the fact that their Program Instructors/Drivers do not get
12 timely and compliant meal and rest periods to which they are entitled and that Defendants
13 have, and are, depriving their hourly non-exempt employees of compensation for all time
14 worked. Furthermore, the Defendant Mission-Hope Entities are aware that they must
15 compensate Plaintiffs for missed and/or non-compliant meal and rest periods, yet they refuse
16 to do so. Defendants' unlawful conduct has been widespread, repeated, and willful
17 throughout their adult day care centers.

18 45. On November 17, 2015, Plaintiffs provided notice by U.S. Certified Mail to the Labor
19 Workforce and Development Agency and also to Defendant of its intent to seek penalties
20 pursuant to the Private Attorney's General Act ("PAGA;" Labor Code § 2698, *et seq.*).

21 **CLASS ACTION ALLEGATIONS**

22 46. Plaintiffs bring the First through Seventh Causes of Action on behalf of themselves
23 and all Program Instructors/Drivers who performed work serving clients and/or customers of
24 the Defendant Mission-Hope Entities at their adult day care centers located in Antioch,

1 Brentwood, Dublin, Fremont, and Hayward California during the four years preceding the
2 date that Plaintiffs filed this class action.

3 47. Class Members number well over fifty.

4 48. Common questions of law and fact exist with regard to Class Members, including,
5 without limitation, the following:

6 a. Whether the Defendant Mission-Hope Entities authorized and permitted Class
7 Members to take a paid, 10-minute rest period as near as possible to the middle of each four
8 hours of work;

9 b. Whether the Defendant Mission-Hope Entities failed to pay Class Members' a
10 premium wage for each missed and/or non-compliant rest period;

11 c. Whether the Defendant Mission-Hope Entities authorized and permitted Class
12 Members to take an off-duty 30-minute meal period as near as possible to the middle of each
13 five hours of work;

14 d. Whether the Defendant Mission-Hope Entities failed to track Class Members'
15 meal periods;

16 e. Whether the Defendant Mission-Hope Entities failed to pay Class Members' a
17 premium wage for each missed and/or noncompliant meal period;

18 f. Whether the Defendant Mission-Hope Entities were on notice that Class
19 Members were not receiving premium compensation for non-compliant and/or missed meal
20 and rest periods;

21 g. Whether the Defendant Mission-Hope Entities failed to maintain and furnish
22 Class Members with accurate records of hours worked;

23 h. Whether the Defendant Mission-Hope Entities failed to furnish Class Members
24 with accurate, itemized wage statements;

1 i. Whether the Defendant Mission-Hope Entities failed to pay all wages to its
2 terminated employees immediately upon termination;

3 j. The proper measure of damages sustained and the proper measure of
4 restitution recoverable by Class Members.

5 49. Common methods of proof exist, including, without limitation, the following:

6 a. Deposition testimony of the Defendant Mission-Hope Entities' Persons Most
7 Knowledgeable and the head supervisors of all Class Members (including the Individual
8 Defendants) during the applicable class period;

9 b. Company-wide written policies;

10 c. Electronic timekeeping records;

11 d. Electronic compensation records;

12 e. Scheduling records (which are kept in a computer);

13 f. Representative declaration testimony of Class Members.

14 50. Plaintiffs' claims are typical of Class Members' claims. Plaintiffs, like other Class
15 Members, were subjected to Defendants' common policy, plan, or practice of requiring
16 Program Instructors/Drives to remain with "participants" at all times in a way that did not
17 provide time for an uninterrupted ten-minute rest period, and no meal period before the end
18 of the fifth hour of work when four hours of work were scheduled prior to a scheduled meal
19 period, failing to authorize and permit meal and rest breaks, failing to pay premium wages for
20 missed breaks, failing to maintain accurate timekeeping records, failing to furnish accurate,
21 itemized wage statements, and failing to pay all wages immediately upon termination, in
22 violation of California law.

23 51. Plaintiffs will fairly and adequately represent and protect the interests of the Class
24 Members.

1 52. Plaintiffs have retained counsel competent and experienced in complex wage-and-
2 hour class action litigation. Plaintiffs' counsel have litigated numerous class actions on behalf
3 of employees asserting wage-and-hour claims under California and federal law. Plaintiffs'
4 counsel intend to commit the necessary resources to prosecute this action vigorously for the
5 benefit of all Class Members.

6 53. Class certification is appropriate because common questions of law and fact
7 predominate over questions relating only to individual Class Members, and because a class
8 action is superior to other available methods for the fair and efficient adjudication of Class
9 Members' claims. The damages suffered by individual Class Members may be small
10 compared to the expense and burden of the prosecution of individual actions. Furthermore,
11 class certification will obviate the need for unduly duplicative litigation that might result in
12 inconsistent judgments regarding Defendants' employment practices.

13 **FIRST CAUSE OF ACTION**

14 **Failure to Provide Rest Periods**

15 **(Against the Defendant Mission-Hope Entities)**

16 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
17 below.

18 54. Defendants' conduct, as alleged herein, constitutes a violation of Lab. Code § 226.7,
19 which prohibits an employer from requiring employees to work during any meal or rest period
20 mandated by the IWC. The applicable Wage Order requires that employers authorize and
21 permit their employees to take one ten-minute paid rest period as near as possible to the
22 middle of every four hours worked, or major fraction thereof. Lab. Code § 226.7(b) and the
23 applicable Wage Order also require employers to pay employees one hour of premium wages
24

1 at the employee's regular rate of compensation for each day that all rest periods are not
2 provided in accordance with the law.

3 55. Defendants knowingly and intentionally failed to authorize and permit Plaintiffs and the
4 Class Members with the legally required rest periods and failed to pay them the resulting
5 premium wages owed.

6 56. As a direct result of Defendants' unlawful employment practices, as alleged herein,
7 Plaintiffs and the Class members have been injured and are entitled to recover unpaid
8 premium wages and interest.

9 **SECOND CAUSE OF ACTION**

10 **Failure to Provide Meal Periods**

11 **(Against the Defendant Mission-Hope Entities)**

12 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
13 below.

14 57. Defendants' conduct, as alleged herein, constitutes a violation of Lab. Code § 512(a),
15 which requires employers to provide one off-duty thirty-minute meal period as near as
16 possible to the middle of every five hours of work.

17 58. Defendants' conduct, as alleged herein, also constitutes a violation of Lab. Code §
18 226.7, which prohibits an employer from requiring employees to work during any meal period
19 mandated by the IWC. The applicable IWC Wage Order requires that employers provide its
20 employees with one thirty-minute meal period as near as possible to the middle of every five
21 hours of work. Lab. Code § 226.7(b) and Wage Order No. 5 require employers to pay
22 employees who miss their legally required meal periods one hour of premium wages at the
23 employee's regular rate of compensation for each day that all meal periods are not provided
24 in accordance with the law.

1 59. Defendants knowingly and intentionally failed to provide Plaintiffs and the Class
2 Members with the legally required meal periods and failed to pay them the resulting premium
3 wages owed.

4 60. As a direct result of Defendants' unlawful employment practices, as alleged herein,
5 Plaintiffs and the Class members have been injured and are entitled to recover unpaid
6 premium wages and interest.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Pay Straight Time Wages and Overtime**

9 **(Against the Defendant Mission-Hope Entities)**

10 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
11 below.

12 61. California law requires an employer to pay its employees for all hours worked,
13 including overtime.

14 62. Defendants maintained a practice of paying employees without regard to the number
15 of hours actually worked by refusing to pay Plaintiffs wages for the time that they are entitled
16 to be taking paid rest periods which are missed and/or non-compliant with the requirements
17 of the California Labor Code and the applicable IWC Wage Order.

18 63. Because of Defendants' failures as alleged herein, Plaintiffs and the Class Members
19 did not receive compensation for all hours actually worked for Defendant, and did not receive
20 all of the overtime compensation to which they were entitled.

21 64. Defendants' failure to pay the correct amount of straight-time hourly wages permits a
22 civil suit to recover wages due to Plaintiffs and the Class Members under Labor Code § 204,
23 plus recovery of interest.

24 65. By violating Labor Code §§ 204 and 510, and the applicable IWC Wage Order,

1 Defendants are also liable for reasonable attorneys' fees and costs pursuant to Labor Code
2 § 1194.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Provide Accurate Wage Statements**
5 **(Against the Defendant Mission-Hope Entities)**

6 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
7 below.

8 66. Defendants' conduct, as alleged herein, constitutes a violation of Lab. Code § 226(a),
9 which requires an employer to provide employees with accurate itemized wage statements
10 for each pay period. Defendant knowingly and intentionally failed to provide Plaintiffs and the
11 Class Members with accurate itemized wage statements showing total hours worked and
12 total wages earned, including wages and premium wages for missed breaks.

13 67. As a direct result of Defendants' unlawful employment practices, as alleged herein,
14 Plaintiffs and the Class Members have been injured and are entitled to recover statutory
15 penalties and attorney's fees under Lab. Code § 226(e). Specifically, Plaintiffs and the Class
16 Members have been injured because Defendant failed to provide accurate and complete
17 information regarding Plaintiffs' and the Class Members' total hours worked and total wages
18 earned, and it was therefore impossible for them to determine from the wage statement alone
19 their total number of hours worked and total wages earned during each pay period without
20 engaging in discovery or complicated mathematics.

21 **FIFTH CAUSE OF ACTION**

22 **Waiting Time Penalties**
23 **(Against the Defendant Mission-Hope Entities)**

24 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein

1 below.

2 68. Defendants' conduct, as alleged herein, constitutes a violation of Lab. Code § 201(a),
3 which requires an employer to pay an employee all earned and unpaid wages immediately
4 upon discharge. Defendants wilfully failed to pay Plaintiffs and other Class Members who
5 were terminated all wages owed upon their termination.

6 69. As a direct result of Defendants' unlawful employment practices, as alleged herein,
7 Plaintiffs and the Class Members have been injured as alleged herein and are entitled to
8 recover statutory penalties under Lab. Code § 203(a).

9 **SIXTH CAUSE OF ACTION**

10 **Unfair and Unlawful Business Practices**

11 **(Against the Defendant Mission-Hope Entities)**

12 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
13 below.

14 70. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
15 Bus. & Prof. Code § 17200 *et seq.*, which prohibits unfair business acts and/or practices.

16 71. As a direct result of Defendants' unlawful employment practices, as alleged herein,
17 Plaintiffs and the Class Members have suffered, and are entitled to recover, unpaid wages,
18 interest, and attorney's fees.

19 **SEVENTH CAUSE OF ACTION**

20 **Declaratory Relief**

21 **(Against the Defendant Mission-Hope Entities)**

22 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
23 below.

24 72. An actual controversy has arisen between Plaintiffs and the Class members on the

1 one hand, and Defendants on the other, as to their respective rights, remedies and
2 obligations with regard to Defendants' unlawful conduct, as alleged herein.

3 73. Plaintiffs therefore seek a declaratory judgment as to the respective rights, remedies,
4 and obligations of the parties.

5 **EIGHTH CAUSE OF ACTION**

6 **Private Attorney General Act Penalties**

7 **(Against ALL Defendants)**

8 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
9 below.

10 74. As described hereinabove, during the Period one year prior to the filing of this action,
11 Defendants' wage and hour practices with respect to Plaintiffs and other aggrieved
12 employees violated Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 210, 512, 558, 1174,
13 1174.5, 1197, 2802, 2810.5, and 2699(f). Plaintiffs seek penalties against the Mission-Hope
14 Entities for all violations asserted herein, and seeks penalties from the Individual Defendants
15 pursuant to Labor Code § 558 with respect to each Individual Defendant's affirmative actions
16 which caused the various violations of the applicable Wage Order asserted hereinabove,
17 including but not limited to creating and/or implementing policies in effect at the facilities at
18 which the Individual Defendant was in charge that required Plaintiffs and putative class
19 members to execute "on-duty meal period agreements," "constant supervision agreements,"
20 and other policies which prevented, impeded, and discouraged them from taking meal and
21 rest periods required by law and the applicable wage order. When faced with complaints by
22 employees that they were not getting meal and rest periods as required by law and the
23 applicable wage order (including numerous complaints to the Labor Commissioner of which
24 this defendant was certainly aware), each of the Individual Defendants refused and refuses

1 to change those policies which violate the applicable Wage Order at the facilities under their
2 control and/or supervision.

3 75. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee to bring a civil action
4 to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.
5 Pursuant to those sections Plaintiffs are entitled to recover civil penalties for Defendant's
6 violations of the Labor Code as described hereinabove.

7 76. Pursuant to Labor Code § 2699.3, Plaintiffs gave written notice via the online
8 submission system to the California Labor and Workforce Development Agency ("LWDA")
9 and to Defendant by U.S. Certified Mail of the specific provisions of the Labor Code alleged
10 to have been violated and the facts and theories to support the alleged violations. The LWDA
11 failed to respond to that notice within thirty-three calendar days. Thus, under California law,
12 Plaintiffs are permitted by Labor Code § 2699.3(a)(2)(C) to amend their existing Complaint
13 as of right to add this cause of action for PAGA penalties.

14 77. Pursuant to Labor Code § 2699(g), Plaintiffs are entitled to an award of reasonable
15 attorneys' fees and costs in connection with their claim for civil penalties.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 18 1. Certification of this action as a class action on behalf of the Class Members;
- 19 2. Designation of Plaintiffs as representatives of the Class;
- 20 3. Designation of Plaintiffs' counsel of record as class counsel for the Class;
- 21 4. Damages and restitution for unpaid wages and missed break premium wages,
22 together with interest at the legal rate;
- 23 5. All applicable statutory penalties arising from Defendants' unlawful conduct, as alleged
24 herein;

- 1 6. Attorney's fees and costs pursuant to Code Civ. Proc. § 1021.5 and any other attorney
2 fee provisions referenced herein;
- 3 7. Injunctive and declaratory relief; and
- 4 8. Such other relief as the Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to
7 which they have a right to jury trial.

8

9 Respectfully submitted,

10 Date: February 23, 2018

HOYER & HICKS

11 

12
13 Ryan E. Hicks
14 Attorneys for Plaintiffs
15 ALEJANDRO CASAS, ELIEZER GODA,
16 and MARY MARTINEZ