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JORELLE GAMEZ, NICOLE NUNNERY, JAY  
8 GAMEZ, JUANITA NIMFA GAMEZ

9  
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF ALAMEDA

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

14 Plaintiffs,

15 v.

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

24 Defendants.  
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26  
27  
28

Case No. RG15797671

Assigned for All Purposes to Judge Winifred Y.  
Smith, Department 21

**DEFENDANTS' ANSWER TO  
PLAINTIFFS' SECOND AMENDED CLASS  
ACTION COMPLAINT**

Complaint Filed: December 22, 2015  
Amended Complaint Filed: February 8, 2016  
Second Amended Complaint Filed: April 18, 2018

Case No. RG15797671

1 Defendants GLORIA GONZALES, JIAN GAMEZ, FELY BAUTISTA, NISSIE  
2 ESCOLANO, VY LE, FENINA GAMEZ PHAM, DANIEL RANGEL, JORELLE GAMEZ,  
3 NICOLE NUNNERY, JAY GAMEZ, JUANITA NIMFA GAMEZ (collectively "Defendants")  
4 hereby answer the causes of action in the unverified Second Amended Class Action Complaint  
5 ("Amended Complaint") by Plaintiffs ALEJANDRO CASAS, ELIEZER GODA, and MARY  
6 MARTINEZ ("Plaintiffs") as follows:

7 **GENERAL DENIAL**

8 Pursuant to § 431.30(d) of the California Code of Civil Procedure, Defendants hereby answer  
9 the Amended Complaint filed by Plaintiffs by generally denying each and every allegation contained  
10 therein. Defendants further deny that Plaintiffs have been damaged in the manner alleged, or at all,  
11 or that Plaintiffs are entitled to any relief whatsoever.

12 **AFFIRMATIVE DEFENSES**

13 In further answer to the Amended Complaint, Defendants assert the following affirmative  
14 defenses. In asserting these defenses, Defendants do not assume the burden of proof as to matters  
15 that, as a matter of law, are Plaintiffs' burden to prove.

16 **FIRST AFFIRMATIVE DEFENSE**

17 (Failure to State a Claim)

18 As a separate and distinct affirmative defense, Defendants allege that the Amended  
19 Complaint, and each and every alleged cause of action therein, fails to state facts sufficient to  
20 constitute a cause of action upon which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 (No Violation)

23 As a separate and distinct affirmative defense, Defendants allege they did not violate, or  
24 caused to be violated, the California Labor Code or applicable Wage Orders issued by the Industrial  
25 Welfare Commission.

26 **THIRD AFFIRMATIVE DEFENSE**

27 (No Failure to Provide Meal Periods or Rest Breaks)

28 As a separate and distinct affirmative defense, Defendants allege that they did not fail to

1 provide meal periods or rest breaks pursuant to the California Labor Code, applicable Wage Orders  
2 issued by the Industrial Welfare Commission, or any other basis.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 (Good Faith)

5 As a separate and distinct affirmative defense, Defendants allege that any violation of the  
6 Labor Code or an Order of the Industrial Welfare Commission was an act or omission made in good  
7 faith and Defendants had reasonable grounds for believing that their payment, overtime, meal and  
8 rest period practices complied with applicable laws and that such act or omission was not a violation  
9 of the Labor Code or any Order of the Industrial Welfare Commission such that Plaintiffs are not  
10 entitled to any damages or penalties.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 (Accord and Satisfaction)

13 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are  
14 barred, in whole or in part, because Plaintiffs have been fully compensated for any wages owed, and  
15 by accepting the payments made to them, have effectuated an accord and satisfaction of their claims.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 (Offset)

18 As a separate and distinct affirmative defense, Defendants allege that they are entitled to a  
19 credit or offset for any amounts overpaid to Plaintiffs during the course of their employment with  
20 Defendants.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 (Not Suffered or Permitted to Work)

23 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs were not  
24 suffered or permitted to work during any time for which they were not paid the appropriate wage  
25 rate, including the proper minimum wage and overtime rates.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 (Not Hours Worked)

28 As a separate and distinct affirmative defense, Defendants allege that some or all of the hours

1 for which Plaintiffs claim compensation are not considered hours worked under California state law.

2 **NINTH AFFIRMATIVE DEFENSE**

3 (Hours Worked Were *De Minimis*)

4 As a separate and distinct affirmative defense, Defendants allege that, to the extent Plaintiffs  
5 claim they are entitled to pay for time they spent working or working overtime, such time was *de*  
6 *minimis*.

7 **TENTH AFFIRMATIVE DEFENSE**

8 (Exempt)

9 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are  
10 barred, in whole or in part, because Plaintiffs were exempt from applicable California law providing  
11 for the payment of meal break, rest break and/or overtime wages and premiums as alleged in  
12 Plaintiffs' Amended Complaint.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 (Failure to Exhaust, Administrative Remedies)

15 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are  
16 barred, in whole or in part, because Plaintiffs failed to exhaust their administrative remedies and/or  
17 otherwise failed to comply with the statutory prerequisites to the bringing of this action.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 (Failure to Exhaust, Internal Remedies)

20 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are  
21 barred, in whole or in part, because Plaintiffs failed to exhaust Defendants' internal remedies prior to  
22 bringing this action.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 (Statutes of Limitation)

25 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are  
26 barred by the applicable statutes of limitation, including, but not limited to, the three-year limitations  
27 period contained in California Code of Civil Procedure § 338(a); the one-year limitations period  
28 governing recovery of statutory penalties contained in California Code of Civil Procedure § 340(a);

1 the four-year limitations period found in Business and Professions Code § 17208; and/or any other  
2 applicable statutes of limitation.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 (Failure to Mitigate)

5 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs failed to  
6 mitigate their damages.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 (After-Acquired Evidence)

9 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are  
10 barred, or that Plaintiffs' claims must be reduced or denied, under the doctrine of after-acquired  
11 evidence.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 (Lack of Knowledge – Plaintiffs' Conduct)

14 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims for  
15 pay for hours worked (including overtime) and for meal and rest periods are barred to the extent that  
16 the employers had no knowledge of or reason to know that Plaintiffs were working for time for  
17 which they were not paid, or that they were not taking meal or rest breaks in accordance with the  
18 law.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 (Avoidable Consequences)

21 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are  
22 barred, in whole or in part, or any recovery should be reduced, pursuant to the avoidable  
23 consequences doctrine, because Defendants took reasonable steps to prevent and correct alleged  
24 violations of wage and hour laws; Plaintiffs unreasonably failed to use the preventative and  
25 corrective opportunities provided by Defendants; Defendants communicated those procedures to  
26 Plaintiffs during their employment; Plaintiffs were aware of such procedures; and reasonable use of  
27 Defendants' procedures would have prevented at least some of the harm that Plaintiffs allegedly  
28 suffered.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 (Attorneys' Fees Unavailable)

3 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs have failed to  
4 state facts sufficient to constitute a claim for which attorneys' fees and costs may be granted.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 (Past Earnings Damages Inapplicable)

7 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs have failed to  
8 state facts sufficient to constitute a claim for past earnings.

9 **TWENTIETH AFFIRMATIVE DEFENSE**

10 (Lack of Specificity)

11 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs have failed to  
12 allege special damages with the requisite specificity.

13 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

14 (Contributory or Comparative Cause, Plaintiffs)

15 As a separate and distinct affirmative defense, Defendants allege that any loss, injury,  
16 damage, or detriment as alleged in Plaintiffs' Amended Complaint was caused and contributed to by  
17 the actions of Plaintiffs themselves in that Plaintiffs' own acts and omissions proximately caused and  
18 contributed to the loss, injury, damages and detriment alleged. Plaintiffs' recovery from Defendants,  
19 if any, should be reduced in proportion to the percentage of Plaintiffs' own negligence or proportion  
20 of fault.

21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 (Equitable Defenses)

23 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are  
24 barred by the equitable doctrines of estoppel, waiver, unclean hands, consent, *res judicata* and/or  
25 laches.

26 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

27 (Mitigation of Damages)

28 As a separate and distinct affirmative defense, Defendants allege that if Plaintiffs have

1 obtained monies from other sources as compensation for injuries alleged in their Amended  
2 Complaint, any such monies must be set off against any damages allegedly due Plaintiffs by  
3 Defendants.

4 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

5 (Pre-Judgment Interest Uncertain)

6 As a separate and distinct affirmative defense, Defendants allege that the Amended  
7 Complaint fails to properly state a claim for prejudgment interest, as the damages claimed are not  
8 sufficiently certain to support an award of prejudgment interest.

9 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

10 (Consent)

11 As a separate and distinct affirmative defense, Defendants allege that some or all of the  
12 Plaintiffs' claims are barred by Plaintiffs' consent to and/or voluntary participation in all or some of  
13 the acts alleged, or conduct similar thereto.

14 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

15 (Nature of Work)

16 As a separate and distinct affirmative defense, Defendants allege that the nature of Plaintiffs'  
17 work frequently prevented them from being relieved of all duty for a thirty-minute meal period and  
18 Plaintiffs were signed to valid, written on-duty meal period agreements.

19 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

20 (Bona Fide Dispute)

21 As a separate and distinct affirmative defense, Defendants allege there exists a bona fide  
22 dispute as to whether any additional compensation is actually due to Plaintiffs or to any putative  
23 class member, and if so, the amount thereof.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 (Not Willful And No Intent)

26 As a separate and distinct affirmative defense, Defendants allege that, even if Plaintiffs or  
27 any putative class member are entitled to any additional compensation, which Defendants deny, they  
28 have not willfully or intentionally failed to pay any such additional compensation to Plaintiffs or any

1 putative class member to justify an award of penalties or fees, whether under California Labor Code  
2 section 203, California Labor Code section 226 or otherwise.

3 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

4 (Standing)

5 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs lack standing  
6 as representatives of the proposed class and does not and cannot adequately represent the putative  
7 class members as to some or all claims.

8 **THIRTIETH AFFIRMATIVE DEFENSE**

9 (PAGA claims not suitable for class action)

10 As a separate and distinct affirmative defense, Defendants allege Plaintiffs' claims for  
11 penalties under the Private Attorneys General Act, Labor Code section 2698 et seq. ("PAGA")  
12 cannot be determined on a class or community-wide basis.

13 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

14 (Plaintiffs are not "aggrieved employees")

15 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs lacks  
16 standing to bring claims for civil penalties on behalf of others because Plaintiffs are not "aggrieved  
17 employees" pursuant to PAGA.

18 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

19 (Failure to identify other "aggrieved employees")

20 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs has failed to  
21 identify any other allegedly "aggrieved employees" as required by PAGA.

22 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

23 As a separate and distinct affirmative defense, Defendants allege that any civil penalties  
24 awarded to Plaintiffs or some, or all, of the alleged "aggrieved employees" Plaintiffs seek to  
25 represent under the PAGA must be limited to those penalties applicable to an initial violation.

26 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

27 As a separate and distinct affirmative defense, Defendant asserts that the Complaint, and  
28 each and every alleged cause of action therein, or some of them, are barred because the PAGA



1 violates the prohibition against excessive fines in violation of the Eighth Amendment to the United  
2 States Constitution and Article I, Section 7 of the California Constitution. (*People ex rel Lockyer v.*  
3 *R.J. Reynolds Tobacco Co.* (2005) 47 Cal.4th 707.)

4 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

5 (Failure to exhaust administrative remedies for PAGA)

6 As a separate and distinct affirmative defense, Defendants assert that Plaintiffs' causes of  
7 action fail because Plaintiffs failed to exhaust their administrative remedies under PAGA, and  
8 Plaintiffs failed, *inter alia*, to specify all facts and theories to support the alleged violation as  
9 required under Labor Code section 2699.3(a)(1).

10 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

11 (Due Process)

12 As a separate and distinct affirmative defense, Defendants allege that their due process rights  
13 would be violated if Plaintiffs were allowed to adjudicate the claims of other alleged "aggrieved  
14 employees," pursuant to the PAGA, without first establishing that the claims or defenses of Plaintiffs  
15 are typical of the claims or defenses of the other alleged "aggrieved employees" Plaintiffs purport to  
16 represent, or without first establishing that there are common questions of law and fact to all of the  
17 alleged "aggrieved employees" whom Plaintiffs purport to represent.

18 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

19 (Unlawful Delegation)

20 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims for  
21 penalties under PAGA are barred to the extent private actions seeking PAGA penalties manifest an  
22 unlawful delegation of executive or other authority.

23 **ADDITIONAL DEFENSES**

24 Defendants respectively reserve the right to amend this Answer should they later discover  
25 facts demonstrating the existence of new and/or additional affirmative defenses, and/or should a  
26 change in the law support the inclusion of new and/or additional affirmative defenses.


27 **PRAYER FOR RELIEF**

28 WHEREFORE, Defendants pray for judgment from the Court that:

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1. Plaintiffs take nothing by their Amended Complaint;
2. The Amended Complaint be dismissed in its entirety, with prejudice, and that a decision be rendered against Plaintiffs and in favor of Defendants with respect to all of Plaintiffs' allegations;
3. Plaintiffs be ordered to pay Defendants' costs and attorneys' fees as permitted by law; and
4. The Court award Defendants such further relief as it deems just and proper.

Dated: August 10, 2018



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ROBERT G. HULTENG  
SEAN P. PIERS  
TOM LIN  
LITTLER MENDELSON, P.C.  
Attorneys for Defendants  
GLORIA GONZALES, JIAN GAMEZ, FELY  
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FENINA GAMEZ PHAM, DANIEL  
RANGEL, JORELLE GAMEZ, NICOLE  
NUNNERY, JAY GAMEZ, JUANITA  
NIMFA GAMEZ

Firmwide:156286324.1 076213.1005

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a  
3 party to the within action. My business address is:

4  333 Bush Street, 34th Floor, San Francisco, California 94104

5 On August 10, 2018, I served the within document(s):

6 **DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND**  
7 **AMENDED CLASS ACTION COMPLAINT**

8  **By personal service.** I personally delivered the documents to the persons at the  
9 addresses listed below. (1) For a party represented by an attorney, delivery was  
10 made to the attorney or at the attorney's office by leaving the documents, in an  
11 envelope or package clearly labeled to identify the attorney being served, with a  
12 receptionist or an individual in charge of the office, between the hours of nine in  
the morning and five in the evening. (2) For a party, delivery was made to the  
party or by leaving the documents at the party's residence with some person not  
younger than 18 years of age between the hours of eight in the morning and six in  
the evening.

13  **By United States mail.** I enclosed the documents in a sealed envelope or  
14 package addressed to the persons at the addresses below and (*specify one*):

15  deposited the sealed envelope with the United States Postal Service, with the  
16 postage fully prepaid.

17  placed the envelope for collection and mailing, following our ordinary  
18 business practices. I am readily familiar with this business's practice for  
19 collecting and processing correspondence for mailing. On the same day that  
20 correspondence is placed for collection and mailing, it is deposited in the  
ordinary course of business with the United States Postal Service, in a sealed  
envelope with postage fully prepaid.

21 I am a resident or employed in the county where the mailing occurred. The  
envelope or package was placed in the mail at: **San Francisco, California.**

22  **By overnight delivery.** I enclosed the documents in an envelope or package  
23 provided by an overnight delivery carrier and addressed to the persons at the  
24 addresses below. I placed the envelope or package for collection and overnight  
25 delivery at an office or a regularly utilized drop box of the overnight delivery  
26 carrier.

27  **By messenger service.** I served the documents by placing them in an envelope  
28 or package addressed to the persons at the addresses listed below and providing  
them to a professional messenger service for service.

1  **By fax transmission.** Based on an agreement of the parties to accept service by  
2 fax transmission, I faxed the documents to the persons at the fax numbers listed  
3 below. No error was reported by the fax machine that I used. A copy of the  
record of the fax transmission, which I printed out, is attached.

4  **By electronic service.** Based on a court order or an agreement of the parties to  
5 accept electronic service, I caused the documents to be sent to the persons at the  
6 electronic service addresses listed below.

7 Richard A. Hoyer, Esq.  
8 Ryan L. Hicks, Esq.  
9 HOYER & HICKS  
10 4 Embarcadero Center,  
11 Suite 1400  
12 San Francisco, CA 94111

Attorneys for Plaintiffs

13 I declare under penalty of perjury under the laws of the State of California that the  
14 above is true and correct. Executed on August 10, 2018, at San Francisco, California.

15   
16 Cathy Grandison

17 Firmwide: 156384852.1 076213.1005