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6 MISSION-HOPE DEVELOPMENTAL SERVICES,
INC., MISSION-HOPE DAY PROGRAM, LLC,
7 MISSION-HOPE DAY PROGRAM BRENTWOOD,
LLC, VILLAGE PARKWAY WAY PROGRAM,
8 LLC, OSGOOD ROAD DAY PROGRAM, LLC,
MISSION BLVD DAY PROGRAM, LLC,
9 PROGRAM MANAGEMENT NETWORK, LLC

10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF ALAMEDA

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

15 Plaintiffs,

16 v.

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

25 Defendants.
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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 MISSION-HOPE DAY PROGRAM, LLC; MISSION-HOPE DAY PROGRAM
2 BRENTWOOD, LLC; MISSION-HOPE DEVELOPMENTAL SERVICES, INC; VILLAGE
3 PARKWAY WAY PROGRAM, LLC; OSGOOD ROAD DAY PROGRAM, LLC; MISSION
4 BLVD DAY PROGRAM, LLC; and PROGRAM MANAGEMENT NETWORK, LLC
5 ("Defendants") hereby answer the causes of action in the unverified Second Amended Class Action
6 Complaint ("Amended Complaint") by Plaintiffs ALEJANDRO CASAS, ELIEZER GODA, and
7 MARY MARTINEZ ("Plaintiffs") as follows:

8 **GENERAL DENIAL**

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

13 **AFFIRMATIVE DEFENSES**

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

17 **FIRST AFFIRMATIVE DEFENSE**

18 (Failure to State a Claim)

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

22 **SECOND AFFIRMATIVE DEFENSE**

23 (No Violation)

24 As a separate and distinct affirmative defense, Defendants allege they did not violate the
25 California Labor Code, the California Business and Professions Code, or applicable Wage Orders
26 issued by the Industrial Welfare Commission.

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THIRD AFFIRMATIVE DEFENSE

(No Failure to Provide Meal Periods or Rest Breaks)

As a separate and distinct affirmative defense, Defendants allege that they did not fail to provide meal periods or rest breaks pursuant to the California Labor Code, applicable Wage Orders issued by the Industrial Welfare Commission, or any other basis.

FOURTH AFFIRMATIVE DEFENSE

(Good Faith)

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

FIFTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

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

SIXTH AFFIRMATIVE DEFENSE

(Offset)

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

SEVENTH AFFIRMATIVE DEFENSE

(Not Suffered or Permitted to Work)

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

EIGHTH AFFIRMATIVE DEFENSE

(Not Hours Worked)

As a separate and distinct affirmative defense, Defendants allege that some or all of the hours for which Plaintiffs claim compensation are not considered hours worked under California state law.

NINTH AFFIRMATIVE DEFENSE

(Hours Worked Were *De Minimis*)

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

TENTH AFFIRMATIVE DEFENSE

(Exempt)

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

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust, Administrative Remedies)

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

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Exhaust, Internal Remedies)

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

THIRTEENTH AFFIRMATIVE DEFENSE

(Statutes of Limitation)

As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are

1 barred by the applicable statutes of limitation, including, but not limited to, the three-year limitations
2 period contained in California Code of Civil Procedure § 338(a); the one-year limitations period
3 governing recovery of statutory penalties contained in California Code of Civil Procedure § 340(a);
4 the four-year limitations period found in Business and Professions Code § 17208; and/or any other
5 applicable statutes of limitation.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 (Failure to Mitigate)

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

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 (After-Acquired Evidence)

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

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 (Lack of Knowledge – Plaintiffs' Conduct)

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

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 (Avoidable Consequences)

24 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs' claims are
25 barred, in whole or in part, or any recovery should be reduced, pursuant to the avoidable
26 consequences doctrine, because Defendants took reasonable steps to prevent and correct alleged
27 violations of wage and hour laws; Plaintiffs unreasonably failed to use the preventative and
28 corrective opportunities provided by Defendants; Defendants communicated those procedures to

1 Plaintiffs during their employment; Plaintiffs were aware of such procedures; and reasonable use of
2 Defendants' procedures would have prevented at least some of the harm that Plaintiffs allegedly
3 suffered.

4 **EIGHTEENTH AFFIRMATIVE DEFENSE**

5 (Attorneys' Fees Unavailable)

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

8 **NINETEENTH AFFIRMATIVE DEFENSE**

9 (Past Earnings Damages Inapplicable)

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

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 (Lack of Specificity)

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

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

17 (Contributory or Comparative Cause, Plaintiffs)

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

24 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

25 (Equitable Defenses)

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

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 (Mitigation of Damages)

3 As a separate and distinct affirmative defense, Defendants allege that if Plaintiffs have
4 obtained monies from other sources as compensation for injuries alleged in their Amended
5 Complaint, any such monies must be set off against any damages allegedly due Plaintiffs by
6 Defendants.

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

8 (Pre-Judgment Interest Uncertain)

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

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 (Consent)

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

17 **ADDITIONAL DEFENSES**

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

21 **PRAAYER FOR RELIEF**

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


- 23 1. Plaintiffs take nothing by their Amended Complaint;
24 2. The Amended Complaint be dismissed in its entirety, with prejudice, and that
25 a decision be rendered against Plaintiffs and in favor of Defendants with respect to all of Plaintiffs'
26 allegations;

1 3. Plaintiffs be ordered to pay Defendants' costs and attorneys' fees as permitted
2 by law; and

3 4. The Court award Defendants such further relief as it deems just and proper.

4 Dated: May 22, 2018

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PROGRAM BRENTWOOD, LLC, VILLAGE
PARKWAY WAY PROGRAM, LLC,
OSGOOD ROAD DAY PROGRAM, LLC,
MISSION BLVD DAY PROGRAM, LLC,
PROGRAM MANAGEMENT NETWORK,
LLC

PROOF OF SERVICE

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

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

On May 23, 2018, I served the within document(s):

DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a 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.

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

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

☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that 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.

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.**

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

☐ **By messenger service.** I served the documents by placing them in an envelope 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
4 record of the fax transmission, which I printed out, is attached.

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

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

Attorneys for Plaintiffs

14 I declare under penalty of perjury under the laws of the State of California that the
15 above is true and correct. Executed on May 23, 2018, at San Francisco, California.

16 
17 Cathy Grandison

18 Firmwide:154839355.1 076213.1005

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LITTLER MENDELSON, P.C.
2049 CENTURY PARK EAST
5TH FLOOR
LOS ANGELES, CA 90067 3107
310 553 0308
Proof of Service