

Gordon & Rees LLP  
275 Battery Street, Suite 2000  
San Francisco, CA 94111

1 MARK S. POSARD (SBN: 208790)  
mposard@gordonrees.com  
2 JOEL P. GLASER (SBN: 194442)  
jglaser@gordonrees.com  
3 GORDON & REES LLP  
275 Battery Street, Suite 2000  
4 San Francisco, CA 94111  
Telephone: (415) 986-5900  
5 Facsimile: (415) 986-8054

6 Attorneys for Defendant  
ODD FELLOWS HOME OF CALIFORNIA

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF NAPA

10 CORAL MCQUEEN and FELICIA	)	CASE NO. 26-64176
TREVINO individually and on behalf of all	)	
11 others similarly situated,	)	<b>ODD FELLOWS HOME OF</b>
	)	<b>CALIFORNIA'S ANSWER TO THE</b>
12 Plaintiffs,	)	<b>COMPLAINT</b>
	)	
13 vs.	)	
	)	
14 ODD FELLOWS HOME OF CALIFORNIA,	)	
a California corporation, and DOES 1-100,	)	
15	)	
Defendants.	)	

17 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

18 ODD FELLOWS HOME OF CALIFORNIA (hereinafter "Defendant") hereby answers  
19 the Class Action Complaint of Plaintiffs CORAL MCQUEEN and FELICIA TREVINO  
20 ("Plaintiffs") as follows:

21 **ANSWER TO GENERAL ALLEGATIONS**

22 As Plaintiffs' Complaint (hereinafter "Complaint") is unverified, Defendant, pursuant to  
23 California Code of Civil Procedure Section 431.30(d), generally denies each and every allegation  
24 and each and every paragraph and cause of action in Plaintiffs' Complaint, and further denies  
25 that Plaintiffs have been damaged in the amounts alleged or any sum or sums, or at all.

26 **SEPARATE DEFENSE**

27 **(No Cause of Action)**

28 The Complaint, and each claim for relief, fails to state sufficient facts to constitute any

1 cause of action.

2 **SEPARATE AFFIRMATIVE DEFENSES**

3 As a separate and further answer to Plaintiffs' Complaint, Defendant alleges upon  
4 information and belief the following affirmative defenses:

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Statute of Limitations)**

7 Plaintiffs' claims are barred by the applicable statutes of limitation; including but not  
8 limited to, the statute of limitations contained in *California Code of Civil Procedure* §§ 337, 338,  
9 339, and 343; *California Labor Code* §1197.5, *California Business and Professions Code* §  
10 17208, and any other applicable statutes of limitation.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Plaintiffs' Breach of Statutory Obligations)**

13 Plaintiffs' Complaint and all purported causes of action therein are barred by Plaintiffs'  
14 breach of their statutory obligations as employees under the California Labor Code.

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Unclean Hands)**

17 Upon information and belief, Plaintiffs' Complaint, and each cause of action alleged  
18 against Defendant, is barred by the doctrine of unclean hands.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 **(Waiver)**

21 By their conduct, Plaintiffs have waived any right to recover any relief under their  
22 Complaint, or any purported cause of action alleged therein.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 **(Estoppel)**

25 Plaintiffs are estopped by their conduct from recovering any relief under their Complaint,  
26 or any purported cause of action alleged therein.

27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages)**

Any recovery on Plaintiffs' Complaint, or any purported cause of action alleged therein, is barred in whole or in part by Plaintiffs' failure to mitigate their damages. Consequently, any damages suffered by Plaintiffs must be reduced in an amount by which Plaintiffs and/or their agents could have mitigated those damages, if any.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Laches)**

Upon information and belief Plaintiffs are guilty of undue delay in filing and prosecuting this suit, and accordingly, this action is barred by laches.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Payment of Wages)**

Without conceding that there are any wages due, there exists a good faith dispute regarding the payment of wages. Thus, penalties are not warranted.

**NINTH AFFIRMATIVE DEFENSE**

**(Performance Excused)**

Defendant is informed and believes, and thereupon alleges, that it followed all appropriate terms and conditions of the contractual relationship, if any, between Plaintiffs and Defendant.

**TENTH AFFIRMATIVE DEFENSE**

**(Frivolous Claims)**

Plaintiffs' claims against Defendant are asserted in bad faith, and are frivolous, unreasonable and without foundation. Defendant is therefore entitled to an award of costs and expenses of litigation, including reasonable attorney's fees.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Failure to Exhaust Internal and Administrative Remedies)**

Plaintiffs' Complaint and any purported cause of action alleged therein, is barred by Plaintiffs' failure to exhaust administrative and internal remedies available under state and

1 federal laws, including, without limitation, the California Labor Code, and Defendant's internal  
2 policies and procedures.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **(Payment and Release)**

5 Plaintiffs were paid in full and therefore Defendant is released from any and all  
6 continuing obligations to them.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 **(Adequate Remedy at Law)**

9 Plaintiffs had an adequate remedy at law. Thus, injunctive and/or declaratory relief is  
10 inappropriate.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 **(Receipt of All Sums and Benefits)**

13 Plaintiffs had been paid and/or received all sums and benefits due by virtue of Plaintiffs'  
14 employment.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 **(No Standing)**

17 Plaintiffs have no standing to bring some or all of the claims which are therefore barred.  
18 Plaintiffs also have no standing to serve as an adequate class representative.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 **(Defendant Acted in Good Faith)**

21 At all relevant times herein, Defendant alleges that Defendant has complied in good faith  
22 with all employment laws, labor laws, and other applicable law, and reasonable interpretations of  
23 the same, pertaining to the employment of Plaintiffs, including, but not limited to, payment of  
24 wages, overtime, benefits, vacation pay, maintenance of wage and time records, rest breaks and  
25 meal periods, deductions, and reimbursement of expenses, as may be alleged by Plaintiffs in this  
26 action.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Plaintiff Exempt from Overtime Compensation)**

Plaintiffs' Complaint and all purported causes of action therein are barred because Plaintiff was properly classified as exempt and not entitled to overtime compensation or rest breaks or meal periods under federal law and the California Labor Code.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Preemption)**

Defendant alleges that Plaintiffs' Complaint, and the claims for relief contained therein, are preempted by federal law, including the Fair Labor Standards Act, and other applicable Federal Labor Laws.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Failure to Accurately Report Hours Worked)**

Defendant alleges that Plaintiffs did not accurately report the hours for which they seek allegedly unpaid wages, overtime and penalties; therefore, Plaintiffs are barred from seeking to recover any such amounts from Defendant.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Claims Not Representative of Class)**

Defendant alleges that the claims of the named Plaintiffs are not representative of the claims of the members of the putative class, and therefore this action is not properly maintained as a class action. Defendant further alleges that neither Plaintiffs nor their counsel are proper class representatives as a result of their status as Certified Nursing Assistants (CNAs) and/or the class should be limited to CNAs.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Claims Not Numerous)**

Defendant alleges that the putative class is not so numerous that joinder of all members is impracticable; therefore, Plaintiffs cannot meet the prerequisites to a class action set forth in *California Code of Civil Procedure* section 382.





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

**(Class Not Manageable)**

Defendant alleges that this case is not properly maintained as a class action because of the difficulties likely to be encountered in the management of a class action.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

**(No Questions of Common or General Interest)**

Defendant alleges that this Complaint does not raise questions of a common or general interest; therefore, this case may not be properly maintained as a class action under *California Code of Civil Procedure* section 382.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Compliance with Law)**

Defendant alleges that any recovery on Plaintiffs' Complaint, or any cause of action contained therein, may be barred by Defendant's compliance or substantial compliance with all applicable laws underlying Plaintiffs' claims of violation of Labor Code and violation of the Business & Professions Code. Additionally, for this reason, Plaintiffs cannot allege a claim that Defendant's business practices were unfair or unlawful under California Business & Professions Code § 17200.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

**(Business Judgment Rule)**

Defendant alleges that any recovery on Plaintiffs' Complaint, or any cause of action contained therein, may be barred by the Business Judgment Rule applicable to claims of unlawful business practices under California Business & Professions Code § 17200.

**THIRTIETH AFFIRMATIVE DEFENSE**

**(Business Justification Defense)**

Defendant alleges that any recovery on Plaintiffs' Complaint, or any cause of action contained therein, may be barred by the business justification defense to any alleged unfair business practices under California Business & Professions Code § 17200.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

**(Benefits Outweigh Impact)**

Defendant alleges that any recovery on Plaintiffs' Complaint, or any cause of action contained therein, may be barred because the benefits of the alleged unfair business practices outweigh whatever particular harm or impact it may cause to an alleged victim and therefore the business practice is not unfair under California Business & Professions Code § 17200.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

**(Practices Not Likely to Deceive)**

Defendant alleges that any recovery on Plaintiffs' Complaint, or any cause of action contained therein, may be barred because the alleged deceptive business practices under California Business & Professions Code § 17200 are not likely to deceive.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

**(Reasonable Wages)**

Defendant alleges that the actual wages paid to Plaintiffs, which are the subject of this action, were reasonable and appropriate herein.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

**(Absolute Good Faith)**

Defendant alleges that it acted in good faith reliance upon the reasonable interpretation of applicable law and the opinion(s) of the office of the Labor Commissioner and Department of Labor Standards and Enforcement.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

**(Plaintiffs at Fault for any Failure to Take Meal and/or Rest Periods)**

Defendant made Plaintiffs aware of his right to take meals and/or rest periods, encouraged Plaintiffs to take meals and/or rest periods, and did not require Plaintiffs to work during meals and/or rest periods, and accordingly is not liable if Plaintiffs failed to take such meals and/or rest periods. Further, there was not a duty under California law that Defendant ensure Plaintiffs took their meals and/or rest periods.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

**(Waiver, Estoppel and/or Ratification)**

The relief sought by Plaintiffs is barred in whole or in part, by the doctrines of waiver, estoppel and/or ratification.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Disregard of Policies)**

Defendant is informed and believe and based thereon alleges, that to the extent that Plaintiffs have alleged they have not been paid in full, Plaintiffs have disregarded Defendant's policies regarding payment of wages, overtime, benefits, vacation pay, rest breaks and meal periods, deductions and/or reimbursement of business expenses, if any.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Quantum Meruit – Reasonable Wages)**

Defendant alleges that the actual wages paid, which are the subject of this action, were commensurate and appropriate with the services and work actually performed.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

**(Quantum Meruit – Wages Accepted By Plaintiffs)**

Defendant alleges that the actual wages paid, which are the subject of this action, and/or calculation of the same, were accepted and/or approved by the Plaintiffs, and relied upon by Defendant.

**FORTIETH AFFIRMATIVE DEFENSE**

**(Set-Off)**

Any monies or other consideration claimed to be owed Plaintiffs represents amounts to which this Defendant is entitled to equitable, statutory, and/or contractual set-off.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

**(Plaintiffs's Willful Misconduct)**

Plaintiffs' claims are barred by Plaintiffs' willful misconduct.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FORTY-SECOND AFFIRMATIVE DEFENSE**

**(Comparative Negligence)**

Defendant is informed and believes and based thereon alleges, that Plaintiffs were negligent or at fault in and about the matters and activities alleged in Plaintiffs' Complaint in the way they conducted themselves and that said negligence or fault contributed to and was a proximate and/or legal cause of Plaintiffs' alleged injuries and damages, if any. Defendant is further informed and believes and based thereon alleges that if it is found to have been at fault, and if Plaintiffs are entitled to recover damages against this Defendant by virtue of Plaintiffs' Complaint, or any claim for relief therein, such recovery should be diminished by reason of the negligence or fault of Plaintiffs in proportion to the degree of negligence or fault attributable to Plaintiffs.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

**(Intervening and Superseding Cause)**

Defendant is informed and believes and based thereon alleges, that if in fact Plaintiffs were damaged in any manner whatsoever, such damage, if any, was a direct and proximate and/or legal result of the intervening, superseding actions on the part of other persons or entities, and not the actions of this Defendant. Defendant is further informed and believes and thereon alleges that such intervening, superseding actions of such other persons or entities bar recovery herein by Plaintiffs against this Defendant.

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

**(Third Parties' Negligence)**

Defendant is informed and believes and based thereon alleges, that the damages sustained by Plaintiffs, if any, were proximately and/or legally caused, either wholly or in part, by the negligence or fault of persons, firms, corporations, partnerships, or entities other than this Defendant. Defendant is further informed and believes and based thereon alleges that such negligence or fault should be imputed to Plaintiffs by reason of the relationship between such persons or entities and Plaintiffs, and/or that said negligence or fault should reduce or bar any recovery against this Defendant.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

**(No Consent)**

Any apparent consent of this Defendant was obtained through duress, fraud, undue influence, and/or mistake, either unilateral or mutual.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

**(Speculative Damages)**

Plaintiffs are barred from any recovery against this Defendant because Plaintiffs' alleged damages are speculative.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Payment in Full)**

Plaintiffs have been paid in full all monies and other consideration due, or claimed to be due.

**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Accord and Satisfaction)**

Plaintiffs have been paid in full for all monies due and that, as such, the parties have achieved a full accord and satisfaction with respect to those claims asserted against this Defendant.

**FORTY-NINTH AFFIRMATIVE DEFENSE**

**(Plaintiffs' Misrepresentation)**

Plaintiffs are not entitled to the relief requested as a result of fraud and/or misrepresentation (whether intentional or negligent) perpetrated by Plaintiffs and/or their agents.

**FIFTIETH AFFIRMATIVE DEFENSE**

**(Constitutional Violation)**

Defendant alleges that insofar at the instant complaint is an attempt to recover fines or penalties from this Defendant, it violates the following Principles of the United States Constitution and California State Constitution:

(a) Excessive fines clause of the United States Constitution, Eighth Amendment and Fourteenth Amendment;

1 (b) The contract clause, Article I, Section 10, clause 1, and the Fourteenth  
2 Amendment of the United States Constitution;

3 (c) The due process clause of the United States Constitution, Fourteenth  
4 Amendment;

5 (d) The equal protection clause of the United States Constitution;

6 (e) The California Constitution due process and equal protection clauses,  
7 Article 1, Section 7(a); and

8 (f) The California Constitution excessive fines clause Article 1, Section 17.

9 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

10 **(Impossibility)**

11 Defendant alleges that any duty or obligation it may have had to perform certain acts for  
12 the benefit of Plaintiffs was rendered impossible to perform due to the conduct of Plaintiffs.

13 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

14 **(No Jurisdiction)**

15 Defendant alleges that this Court has no personal or subject matter jurisdiction over this  
16 matter.

17 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

18 **(Failure to Comply with Conditions)**

19 Defendant alleges that Plaintiffs have failed to comply with the necessary conditions  
20 precedent, concurrent, or subsequent for bringing this action, including but not limited to  
21 compliance with any and all applicable state and/or federal laws.

22 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

23 **(In Pari Delicto)**

24 Defendant alleges that the claims are barred by reason of the fact that Plaintiffs have  
25 engaged in acts and courses of conduct which rendered Plaintiffs in pari delicto.

26 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

27 **(Defendant's Detrimental Reliance)**

28 Defendant alleges that the relief prayed for in the complaint against this Defendant, is



1 barred because of the wages paid, which are the subject of this action, and/or calculation of  
2 same, were accepted and/or approved by the receiving party and relied upon by Defendant.

3 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

4 **(Privilege)**

5 Defendant alleges that the relief prayed for in the Complaint is barred by Civil Code  
6 section 47(c) in that the statements attributed to this Defendant, if made, were communications  
7 made to interested person(s), without malice, to interested person(s) who requested the  
8 information.

9 **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

10 **(Additional Affirmative Defenses)**

11 Defendant reserves the right to amend this answer to assert additional defenses and/or  
12 supplement, alter or change this answer as may be warranted by the revelation of information  
13 during discovery and investigation.

14 **PRAYER**

15 WHEREFORE, Defendant prays for judgment as follows:

- 16 1. That Plaintiffs take nothing by the Complaint on file herein, and that the  
17 Complaint be dismissed with prejudice;
- 18 2. That judgment be entered in favor of Defendant;
- 19 3. For costs of the suit incurred herein, including reasonable attorneys' fees where  
20 afforded; and
- 21 4. For such other and further relief as the Court may deem just and proper.

22 Dated: September 18, 2014

GORDON & REES LLP

23  
24 By: 

25 Mark S. Posard  
26 Joel P. Glaser  
27 Attorneys for Defendant  
28 ODD FELLOWS HOME OF CALIFORNIA

