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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/22/2014 at 12:48:00 PM
Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

6 Attorneys for Defendants
AMERICAN MEDICAL RESPONSE, INC., d/b/a
7 and erroneously sued as "NATIONAL COLLEGE
OF TECHNICAL INSTRUCTION," ENVISION
8 HEALTHCARE CORPORATION, and ENVISION
HEALTHCARE HOLDINGS, INC.
9

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

12 JUSTIN SPANGLER and TRAVIS
LEIGHTON, individually and on behalf of
13 all those similarly situated,
14
Plaintiffs,

CASE NO. 37-2014-00038832-CU-BT-CTL
**DEFENDANTS' ANSWER TO
PLAINTIFFS' CLASS ACTION
COMPLAINT**

15 v.
16 NATIONAL COLLEGE OF TECHNICAL
INSTRUCTION, AMERICAN MEDICAL
17 RESPONSE, INC., a Delaware Corporation,
ENVISION HEALTHCARE
18 CORPORATION, a Delaware Corporation,
ENVISION HEALTHCARE HOLDINGS,
19 INC., a Delaware Corporation, and DOES 1
through 1000,
20
Defendants.

[IMAGED FILE]
DEPT: C-72
IC JUDGE: Hon. Timothy Taylor
CASE FILED: November 14, 2014
TRIAL DATE: Not Set.

22
23 **COMES NOW** Defendants AMERICAN MEDICAL RESPONSE, INC., d/b/a and
24 erroneously sued as "NATIONAL COLLEGE OF TECHNICAL INSTRUCTION," ENVISION
25 HEALTHCARE CORPORATION, and ENVISION HEALTHCARE HOLDINGS, INC.
26 ("Defendants"), severing themselves from any and all remaining defendants, and answering the
27 Class Action Complaint (the "Complaint") filed by Plaintiffs JUSTIN SPANGLER and TRAVIS
28 LEIGHTON ("Plaintiffs") state, allege, and aver:

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1 Under the provisions of California Code of Civil Procedure section 431.30(d), answering
2 Defendants deny each and every allegation in said Complaint, and the whole thereof, including
3 each and every purported cause of action contained therein, and deny that Plaintiffs or the
4 purported class sustained or will sustain damages in the sums alleged, or any other sums, or at all.

5 Further answering the Complaint herein, and the whole thereof, answering Defendants
6 deny that Plaintiffs or the proposed class sustained any injuries, damages, or losses by reason of
7 any alleged act or omission, whether active or passive, expressed or implied, breach of warranty
8 or contract, statement or publication, or any other conduct or absence thereof on the part of
9 answering Defendants, or any agent, servant, or employee of answering Defendants, and deny
10 that answering Defendants, or any agent, servant, or employee of answering Defendants, were
11 negligent, reckless, careless, breached any contract, acted unlawfully or were or are guilty of any
12 other wrongful or recoverable act or omission whatsoever.

13 As separate affirmative defenses to the Complaint and the whole thereof, answering
14 Defendants assert as follows:

15 **FIRST AFFIRMATIVE DEFENSE**

16 (Failure to State a Claim)

17 1. The Complaint and each and every purported cause of action contained therein fail
18 to state a cause of action against these answering Defendants.

19 **SECOND AFFIRMATIVE DEFENSE**

20 (No Damages)

21 2. Answering Defendants allege that Plaintiffs and the putative class members'
22 claims are barred as they have not been damaged or injured in any way by any alleged act or
23 omission of answering Defendants.

24 **THIRD AFFIRMATIVE DEFENSE**

25 (No Causation)

26 3. Answering Defendants allege that if the Plaintiffs and the putative class members
27 suffered any loss, damage or injury, which is expressly denied, such loss, damage or injury was
28 not caused, either legally or proximately, by any act or omission of these answering Defendants.

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FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

4. The Complaint, and each and every purported cause of action contained therein is barred by reason of the acts, omissions, representations and courses of conduct by Plaintiffs and the putative class members, which answering Defendants relied upon to their detriment, thereby barring under the Doctrine of Equitable Estoppel any claim asserted by Plaintiffs and the putative class members.

FIFTH AFFIRMATIVE DEFENSE

(Waiver/Release)

5. The Complaint, and each and every purported cause of action contained therein, is unenforceable in that Plaintiffs and the putative class members have voluntarily and knowingly waived, settled and released each and all of their rights and claims against these answering Defendants.

SIXTH AFFIRMATIVE DEFENSE

(Consent)

6. Plaintiffs and the putative class members, by their acts and conduct, have consented to all conduct as alleged on the part of these answering Defendants.

SEVENTH AFFIRMATIVE DEFENSE

(Statutes of Limitations)

7. The Complaint, and each and every purported cause of action contained therein, is barred by the applicable statute(s) of limitations set forth in the statutory laws of the State of California, including without limitation, California Code of Civil Procedure sections 337, 338, 339, 340, 343, Civil Code section 1783, and Business & Professions Code section 17208.

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EIGHTH AFFIRMATIVE DEFENSE

(Code of Civil Procedure §128.7)

8. The Complaint is unsupported by law or fact and was filed in bad faith and solely for the purpose of harassing and annoying these answering Defendants. Therefore, answering Defendants are entitled to recover their reasonable expenses, including attorneys' fees, incurred by them in defending this action, pursuant to California Code of Civil Procedure section 128.7, and any or other similar laws.

NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

9. The Complaint, and each and every purported cause of action contained therein, is barred by virtue of unlawful, immoral, careless, negligent and other wrongful conduct, and Plaintiffs and the putative class members should be barred from recovery against these answering Defendants by the equitable doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

(Complete Performance)

10. Answering Defendants allege that they have appropriately, completely and fully performed and discharged any and all obligations and legal duties arising out of the matters alleged in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

11. Answering Defendants deny that they entered into any express or implied-in-fact contract with Plaintiffs or the putative class members but, to the extent the trier of fact determines there was some sort of contract, answering Defendants allege one or more of the alleged agreements under which Plaintiffs and the putative class members seek affirmative relief are barred by the statute of frauds.

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TWELFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

12. Answering Defendants allege that Plaintiffs and the putative class members, though under a duty to do so, failed and neglected to mitigate their alleged damages, if any, and therefore cannot recover against these answering Defendants, whether as alleged or otherwise.

THIRTEENTH AFFIRMATIVE DEFENSE

(Rescission)

13. Answering Defendants deny that they entered into entered into any express or implied-in-fact contract with Plaintiffs or the putative class members but, to the extent the trier of fact determines there was some sort of contract, answering Defendants allege one or more of the alleged agreements under which Plaintiffs and the putative class members seek affirmative relief were rescinded or otherwise terminated.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Comply With Procedural Prerequisites and Failure to Exhaust Administrative Remedies)

14. Answering Defendants allege that Plaintiffs and the putative class members' claims are barred to the extent that they failed to exhaust administrative remedies, failed to exhaust answering Defendants' internal grievance procedures, or otherwise failed to comply with procedural prerequisites to bring claims for damages and penalties as alleged in the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Mutual Assent)

15. Answering Defendants deny that they entered into entered into any express or implied-in-fact contract with Plaintiffs or the putative class members but, to the extent the trier of fact determines there was some sort of contract, answering Defendants allege that their duty of performance under the contract, if any, was excused due to a failure of mutual assent.

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SIXTEENTH AFFIRMATIVE DEFENSE

(Mistake of Fact)

16. Answering Defendants deny that they entered into any express or implied-in-fact contract with Plaintiffs or the putative class members but, to the extent the trier of fact determines there was some sort of contract, answering Defendants allege Plaintiffs and the putative class members are barred from any recovery sought in the Complaint because there was a material mistake of fact.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

17. The Complaint, and each and every purported cause of action contained therein, is barred because Plaintiffs and the putative class members lack standing to sue these answering Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Ratification)

18. The Complaint, and each and every purported cause of action contained therein, is barred because Plaintiffs and the putative class members ratified the alleged acts, and therefore the doctrine of ratification bars Plaintiffs and the putative class members' claims.

NINETEENTH AFFIRMATIVE DEFENSE

(Lack of Consideration)

19. Answering Defendants deny that they entered into any express or implied-in-fact contract with Plaintiffs or the putative class members but, to the extent the trier of fact determines there was some sort of contract, answering Defendants allege that their duty of performance under the contract, if any, was excused due to a failure of consideration.

TWENTIETH AFFIRMATIVE DEFENSE

(Failure to State a Claim For Punitive Damages)

20. Answering Defendants allege that the Complaint, and each and every purported cause of action contained therein, fails to state facts sufficient to constitute a claim for punitive damages against these answering Defendants.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Res Judicata / Collateral Estoppel)

21. The Complaint, and each and every purported cause of action contained therein, is barred by virtue of the doctrines of res judicata and/or collateral estoppel.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(A Claim for Punitive Damages is Unconstitutional)

22. Answering Defendants allege that any award of punitive damages against these answering Defendants will violate their rights under the due process clauses of the California and United States Constitutions.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure to Perform)

23. Answering Defendants deny that they entered into any express or implied-in-fact contract with Plaintiffs or the putative class members but, to the extent the trier of fact determines there was some sort of contract, answering Defendants allege Plaintiffs and the putative class members failed to fully perform all conditions, covenants and promises required to be performed in accordance with the terms and conditions of any alleged written and oral contracts which are the subject of this lawsuit.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Uncertainty)

24. Answering Defendants allege that the Complaint, and each and every purported cause of action contained therein, is uncertain and ambiguous as to Plaintiffs and the putative class members' claims for damages, punitive damages, and declaratory relief.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

25. Plaintiffs and the putative class members' claims are barred by the equitable doctrine of unjust enrichment.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Intentional Misrepresentations/Concealment or Reliance)

26. Plaintiffs and the putative class members' alleged cause of action for Fraudulent Misrepresentation and Negligent Misrepresentation against these answering Defendants are barred because there were no intentional misrepresentations and/or intentional omissions, and/or there was no justifiable reliance by Plaintiffs or the putative class members.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Apportionment)

27. Answering Defendants deny that they are responsible or liable in any way for the damages or loss alleged in the Complaint. However, if answering Defendants are found to be liable or responsible for any or all of the alleged damages or loss, answering Defendants allege that their liability, if any, is not the sole proximate cause of Plaintiffs and the putative class members' damage or loss, and that the damages awarded to Plaintiffs and the putative class members, if any, should be apportioned according to the respective fault and legal responsibility of all parties, persons and entities, and their agents, servants, and employees who contributed to and/or caused such damages or loss according to the proof presented at the time of trial.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Abatement, C.C.P. section 430.10, subd. (c))

28. The Complaint, and each and every purported cause of action contained therein, is barred by reason that there is "another action pending between the same parties on the same cause of action." (C.C.P. § 430.10, subd. (c).)

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Improper Class Allegations)

29. Answering Defendants are informed and believe that the Complaint, and each and every purported cause of action therein, fails to allege facts sufficient to satisfy the statutory criteria for a class action under Code of Civil Procedure section 382. Answering Defendants further allege that the unique and individualized allegations in the Complaint contradict Plaintiffs and the putative class members' later conclusory assertion of the commonality of the alleged

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1 “class,” and Plaintiffs and the putative class members’ allegation that it would be impractical to
2 bring all other similarly situated members of the putative class to Court.

3 **THIRTIETH AFFIRMATIVE DEFENSE**

4 (No Unlawful Business Practices)

5 30. Answering Defendants’ business practices are not unlawful in that answering
6 Defendants complied with all applicable statutes and regulations.

7 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

8 (No Unfair Business Practices)

9 31. Answering Defendants business practices are not unfair within the meaning of
10 Business and Professions Code sections 17200, et seq.

11 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

12 (CLRA Standing)

13 32. Plaintiffs and the putative class members’ cause of action based on California’s
14 Consumer Legal Remedies Act, California Civil Code section 1750 *et seq.*, and every other cause
15 of action based on an alleged violation of that Act, is barred because the products and/or services
16 Plaintiffs and the putative class members allege they purchased from answering Defendants are
17 not “goods” as defined in the Act, and Plaintiffs and the putative class members are not a
18 “consumer” as defined in the Act.

19 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

20 (Failure to File CLRA Affidavit)

21 33. Plaintiffs and the putative class members’ cause of action based on the California’s
22 Consumer Legal Remedies Act, California Civil Code section 1750 *et seq.*, and every other cause
23 of action based on an alleged violation of that Act, is barred and should be dismissed because
24 Plaintiffs and the putative class members failed to submit the requisite affidavit regarding venue
25 pursuant to California Civil Code section 1780(d).

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses May Be Available)

34. Answering Defendants allege that they currently have insufficient knowledge or information upon which to determine whether additional affirmative defenses may be available to them which have not yet been asserted in this Answer and, therefore, reserve the right to assert additional affirmative defenses based upon subsequent discovery, investigation and analysis.

ATTORNEYS' FEES

35. Answering Defendants allege, based on Plaintiffs and the putative class members' request for attorneys' fees, that in the event answering Defendants are determined to be prevailing parties, then answering Defendants are entitled to recover their attorneys' fees pursuant to California Labor Code section 218.5, and/or other applicable standards.

REQUEST FOR JURY TRIAL

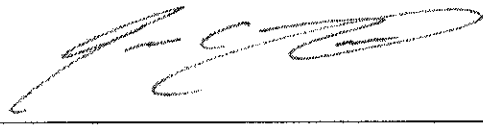
Answering Defendants requests a trial by jury.

WHEREFORE, Answering Defendants pray for judgment as follows:

- 1. That Plaintiffs and the putative class members' Complaint be dismissed;
- 2. That Plaintiffs and the putative class members take nothing by reason thereof;
- 3. That answering Defendants be awarded reasonable attorneys' fees and costs of suit herein incurred;
- 4. For such other and further relief as the court deems just and proper.

DATED: December 22, 2014

HIGGS FLETCHER & MACK LLP

By: 

JAMES M. PETERSON, ESQ.
JASON C. ROSS, ESQ.
Attorneys for Defendants
AMERICAN MEDICAL RESPONSE, INC., d/b/a
and erroneously sued as "NATIONAL COLLEGE OF
TECHNICAL INSTRUCTION," ENVISION
HEALTHCARE CORPORATION, and ENVISION
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6 Attorneys for Defendants
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10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

12 JUSTIN SPANGLER and TRAVIS
LEIGHTON, individually and on behalf of
13 all those similarly situated,

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15 v.

16 NATIONAL COLLEGE OF TECHNICAL
INSTRUCTION, AMERICAN MEDICAL
17 RESPONSE, INC., a Delaware Corporation,
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18 CORPORATION, a Delaware Corporation,
ENVISION HEALTHCARE HOLDINGS,
19 INC., a Delaware Corporation, and DOES 1
through 1000,

20 Defendants.
21

CASE NO. 37-2014-00038832-CU-BT-CTL

PROOF OF SERVICE

[IMAGED FILE]

DEPT: C-72
IC JUDGE: Hon. Timothy Taylor

CASE FILED: November 14, 2014
TRIAL DATE: Not Set.

23 I, Denise Mendoza, declare:

24 I am a resident of the State of California and over the age of eighteen years, and not a
25 party to the within-entitled action; my business address is 401 West "A" Street, Suite 2600,
San Diego, California 92101-7913. On December 22, 2014, I served the within documents, with
all exhibits (if any):

26 **DEFENDANTS' ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT**
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- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California, addressed as set forth below.
- by placing the document(s) listed above in a sealed overnight envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an overnight agent for delivery.
- by having the document(s) listed above personally delivered to the person(s) at the address(es) set forth below via American Messenger Service.
- by transmitting via e-mail or electronic transmission through One Legal the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

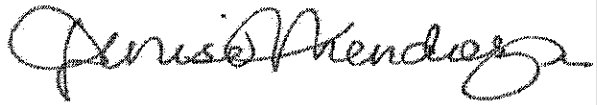
Jason S. Hartley, Esq.
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Stueve Siegel Hanson LLP
 550 West C Street, Suite 1750
 San Diego, CA 92101
 Telephone: 619.400.5822
 Facsimile: 619.400.5832

Attorneys for Plaintiffs
 JUSTIN SPANGLER and TRAVIS LEIGHTON

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 22, 2014, at San Diego, California.



DENISE MENDOZA