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BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

IN THE MATTER OF:

THE 12th St. COLLABORATIVE
FOR MONTESSORI
dba Sacramento Montessori School
1111-1123 D Street
Sacramento, CA 95814

CDSS No. 7008142001z
OAH No. N2010120768

**FIRST AMENDED
ACCUSATION**
(Probation Revocation)

SACRAMENTO MONTESSORI
SCHOOL-INFANT CARE CENTER
1111-1123 D Street
Sacramento, CA 95814

CDSS No. 7008142001Bz
OAH No.

**FIRST AMENDED
ACCUSATION**
(Probation Revocation)

MARILYN PROSSER

CDSS No. 7008142001D
OAH No.

**FIRST AMENDED
ACCUSATION**
(Exclusion Action)

ANTONIA LOPEZ

CDSS No. 7008142001E
OAH No.

**FIRST AMENDED
ACCUSATION**
(Exclusion Action)

Respondents.

JURISDICTION

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2 1. This matter arises under the California Child Day Care Facilities Act,
3 Health and Safety Code section 1596.70 *et seq.*, which governs the licensing and
4 operation of child day care centers.

5 2. The regulations which govern the licensing and operation of child day
6 care centers are contained in California Code of Regulations, title 22, section 101151 *et*
7 *seq.*¹

8 3. The California Department of Social Services ("Department") is the
9 agency of the State of California responsible for the licensing and inspection of child day
10 care centers.

11 4. The Department may prohibit a licensee from employing, continuing the
12 employment of, allowing in, or allowing contact with clients of a licensed facility by any
13 employee, prospective employee, or other person who is not a client of a child day care
14 center pursuant to Health and Safety Code section 1596.8897.

15 5. Administrative proceedings before the Department must be conducted in
16 conformity with the provisions of the California Administrative Procedure Act, Chapter 5,
17 Government Code section 11500 *et seq.*

18 6. Pursuant to Health and Safety Code section 1596.8897(f), the
19 Department may institute or continue a disciplinary proceeding against a person
20 following the resignation, withdrawal of employment application, or change of duties, or
21 any discharge, failure to hire, or reassignment of the person by the licensee or if the
22 person no longer has contact with clients of the facility.

23 7. Pursuant to Health and Safety Code section 1596.854, the Department
24 may institute or continue a disciplinary proceeding against a licensee following the
25 suspension, expiration, or forfeiture of a license.

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¹ Subsequent references to any regulation section(s) are to Title 22 of the California Code of Regulations.

8. Pursuant to Health and Safety Code sections 1596.887(b), 1596.889, and 1596.8897(e), the standard of proof to be applied in this proceeding is the preponderance of evidence.

THE PARTIES

9. Complainant **JEFFREY HIRATSUKA** is the Deputy Director of the Community Care Licensing Division of the Department. Pursuant to Government Code section 11503, complainant files this **First Amended Accusation** in his official capacity.

10. Respondent, **THE 12th STREET COLLABORATIVE FOR MONTESSORI** (hereafter "**Sac Montessori**"), is licensed by the Department to operate a child care center and infant care center at 1111-1123 D Street, Sacramento, California, 95814 (hereafter "facilities"). The facilities were initially licensed on September 30, 2005. On September 25, 2009, Respondent's licenses were revoked upon the Department's adoption of the Stipulation and Waiver as its Order. The Department stayed the revocation of the licenses for an 18 month period during which time the Respondent was granted probationary licenses subject to limitations and conditions. A copy of the Stipulation, Waiver and Order setting forth the limitation and conditions accompanies this **First Amended Accusation** as **ATTACHMENT A** and is incorporated by reference. A copy of Respondent's most recent licenses setting forth the capacity, limitations, and effective dates accompanies this **First Amended Accusation** as **ATTACHMENT B** and is incorporated by reference.

11. Respondent **ANTONIA LOPEZ** is the President and sole board member of the corporation that is licensed by the Department to operate both facilities and has contact with the clients of the child day care center.

12. Respondent **MARILYN PROSSER** is employed at the facilities and has contact with the clients of the child day care center.

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13. Respondent Sac Montessori and Antonia Lopez, by virtue of licensure, must operate in accordance with the statutes and regulations governing the licensing and operation of child day care centers. Respondents Antonia Lopez and Marilyn Prosser, by virtue of presence in or contact with clients of a child day care center, is subject to the jurisdictional provisions of Health and Safety Code sections 1596.871 and 1596.8897. Copies of the applicable statutes and regulations accompany this **First Amended Accusation** as **ATTACHMENT C** and are incorporated by reference.

FACTUAL ALLEGATIONS

SUBJECT MATTER: Probation Violation and Revocation; Licensee Accountable
and Conduct Inimical

APPLICABLE LAW: Health and Safety Code sections 1596.773; 1596.80;
1596.885(a)-(c) and 1596.8897(a)(1), (2)&(4)
Regulation sections 101152(l); 101206(a); 101208 and
101214

ALLEGATIONS:

14. From September 25, 2009, through March 25, 2010, in accordance with paragraph 3.I. of the Stipulation, Waiver and Order, Respondent Sac Montessori agreed to hire an independent consultant approved by the Department, to have the independent consultant inspect its facilities, observe daily operations, review each facility's plan of operation manual and staff training manual, make recommendations to ensure compliance with Title 22 regulations and to provide written quarterly status reports to the Department. Respondent caused or permitted multiple violations to paragraph 3.I. of the Stipulation, Waiver and Order.

A. Paragraph 3.I.(3) required the first status report to be completed within 90 days of the stipulation's effective date. The Stipulation was effective September 25, 2009. The first quarterly report was not completed and provided to the Department until on or about February 22, 2010 – two months late.

1 B. From on or about February 22, 2010 through March 25, 2011, in
2 violation of paragraph 3.I., Respondent Sac Montessori failed to hire and retain an
3 independent consultant approved by the Department.

4 C. Paragraph 3.I.(2) of the Stipulation required an independent
5 consultant to prepare a quarterly status report for both the Respondent and the
6 Department. By failing to hire and then retain an independent consultant
7 approved by the Department, from on or about February 22, 2010 through March
8 25, 2011, Respondent Sac Montessori caused or permitted the violation of
9 Paragraph 3.I.(2) of the Stipulation, Waiver and Order.

10 D. Paragraph 3.I.(2) of the Stipulation required an independent
11 consultant to prepare a quarterly status report for both the Respondent and
12 the Department. Respondent Sac Montessori failed to file timely quarterly
13 status reports. Quarterly status reports dated March 25, 2010, and June 25,
14 2010, were not submitted to the Department until September 20, 2010.

15 E. Paragraph 3.I.(4) of the Stipulation required Respondent to
16 implement recommendations made by the independent consultant in a timely
17 manner. By failing to hire and retain an independent consultant approved by the
18 Department, from on or about February 22, 2010 through March 25, 2011,
19 Respondent Sac Montessori caused or permitted the violation of Paragraph
20 3.I.(4) of the Stipulation, Waiver and Order.

21 F. Paragraph 3.J. of the Stipulation required Respondent, within
22 ninety (90) days of the stipulation's effective date, to submit a written
23 summary of hiring and training practices, including job descriptions for each
24 position at the facility. Respondent failed to submit the written summary. In
25 doing so, Respondent Sac Montessori caused or permitted the violation of
26 Paragraph 3.J. of the Stipulation, Waiver and Order.

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1 G. Paragraph 3.J., of the Stipulation required Respondent to amend its
2 staff training manual to include training topics recommended by the independent
3 contractor. By failing to hire and retain an independent consultant approved by the
4 Department, from on or about February 22, 2010 through March 25, 2011,
5 Respondent Sac Montessori caused or permitted the violation of Paragraph
6 3.K.(1).c. of the Stipulation, Waiver and Order.

7 SUBJECT MATTER: Lack of Care and Supervision; Staffing Ratio; Probation
8 Violation; Plan of Operation; Licensee Accountable;
9 Deficiencies in Compliance and Conduct Inimical

10 APPLICABLE LAW: Health and Safety Code sections 1596.773; 1596.80;
11 1596.885(a)-(c) and 1596.8897(a)(1), (2)&(4)
12 Regulation sections 101152 (I); 101206(a); 101208; 101214;
13 101216.3; 101416.5 and 101229

14 ALLEGATIONS:

15 15. Respondent Sac Montessori caused or permitted the violation of
16 Paragraphs 3.B. and C of the Stipulation, Waiver and Order. On or about January 6,
17 2011, Respondent failed to schedule a sufficient number of staff to properly supervise
18 the number of children in care. Facilities are required to maintain a staff to child ratio of
19 one teacher to no more than four infants. Respondent had four teachers supervising 18
20 children in care, which exceed the licensed ratio.

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1 SUBJECT MATTER: Criminal Record Clearance; Probation Violation; Licensee
2 Accountable and Conduct Inimical

3 APPLICABLE LAW: Health and Safety Code sections 1596.773; 1596.80;
4 1596.871 and 1596.885(a)-(c) and 1596.8897(a)(1), (2)&(4)
5 Regulation sections 101152(l); 101170(e); 101206(a); 101208
6 and 101214

7 ALLEGATIONS:

8 16. Respondent Sac Montessori caused or permitted the violation of
9 Paragraph 3.F. of the Stipulation, Waiver and Order. Respondent failed to ensure that
10 all individuals working, residing or volunteering in the facility shall have obtained a
11 criminal record clearance or exemption.

12 A. From on or about November 3, 2010, through November 22,
13 2010, Respondent permitted Susan Turof to work in the facility without having her
14 first receive a criminal record clearance or exemption.

15 B. From on or about December 27, 2010, through February 1,
16 2011, Respondent permitted Jose Figueroa to work in the facility without having
17 him first receive a criminal record clearance or exemption.

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1 SUBJECT MATTER: Wrongful Discharge of Employee; Interfering with
2 Department's Inspection Authority; Lacks Reputable
3 Character; Licensee Accountable; and Conduct Inimical
4 APPLICABLE LAW: Health and Safety Code sections 1596.852; 1596.881;
5 1596.885(a)-(c); 1596.8897(a)(1), (2)&(4) and 1596.95(a)&(b)
6 Regulation sections 101152(l); 101200(b); 101206(a); 101208
7 and 101214

8 ALLEGATIONS:

9 17. During the Department's investigation into Jose Figueroa's
10 employment status, and on or about January 12, 2011, Respondents Sac
11 Montessori, Antonia Lopez and Marilyn Prosser, provided or permitted, false or
12 misleading information to be reported to the Department regarding Jose
13 Figueroa's employment status.

14 18. On or about February 1, 2011, Respondents Sac Montessori,
15 Antonia Lopez and Marilyn Prosser, caused or permitted the discharge of Jose
16 Figueroa in retaliation for his cooperation with the Department's investigation.

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1 SUBJECT MATTER: Lacks Reputable Character; Licensee Accountable and
2 Conduct Inimical

3 APPLICABLE LAW: Health and Safety Code sections 1596.885(a)-(c);
4 1596.8897(a)(1), (2)&(4) and 1596.95(a)&(b)
5 Regulation Sections 101206(a); 101208 and 101214

6 ALLEGATIONS:

7 19. Respondents Sac Montessori, Antonia Lopez and Marilyn Prosser
8 made, or permitted, misrepresentations to the Department that the following
9 quarterly status reports were prepared by and/or approved by Dr. Pamela Riggs:

- 10 (1) March 25, 2010;
11 (2) June 25, 2010;
12 (3) September 25, 2010; and
13 (4) December 31, 2010.

14 SUBJECT MATTER: Failure to Provide Notice to Parents; Accountability and
15 Conduct Inimical

16 APPLICABLE LAW: Health and Safety Code sections 1596.885(a)-(c);
17 1596.8595(c); 1596.8895(c) and 1596.8897(a)(1), (2)&(4)
18 Regulation sections 101206(a); 101208 and 101214

19 ALLEGATIONS:

20 20. The licensee is required to provide a copy to the parents or
21 guardians of child in care, and for the next 12 months to parents or guardians of
22 newly enrolled children, of any licensing reports that document a Type A citation.
23 On or about January 28, 2011, the Department issued two Type A citations for
24 violations occurring at Sac Montessori. Respondents Sac Montessori, Antonia
25 Lopez and Marilyn Prosser failed, or prevented, copies of Type A citations from
26 being provided to all parents or guardians of children in care.

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1 21. Upon receipt of an First Amended Accusation, the licensee is
2 required to provide copies of a summary of the First Amended Accusation to the
3 parents or guardians of child in care, and for the next 12 months to parents or
4 guardians of newly enrolled children. On or about March 14, 2011, the
5 Department served an First Amended Accusation on Respondents. Respondents
6 Sac Montessori, Antonia Lopez and Marilyn Prosser failed, or prevented, copies
7 of the First Amended Accusation summary from being provided to parents or
8 guarding of children in care, or newly enrolling children.

9 SUBJECT MATTER: De Facto Facility Director and Conduct Inimical

10 APPLICABLE LAW: Health and Safety Code section 1596.8897(a)(1), (2)&(4)
11 Regulation Sections 101152(c)(8); 101215; 101215.1 and
12 101208

13 ALLEGATIONS:

14 22. Respondent Marilyn Prosser managed the facility in the same
15 capacity as if she were the facility's director. As demonstrated through her
16 statements and actions she was responsible for operation of the center, for
17 compliance with regulations and communication with the Department.
18 Respondent Prosser, as the de facto facility director, was responsible for, or
19 aided or permitted, the violations of rules and regulations governing the
20 operation of child day care centers as alleged in above in paragraphs 14 through
21 21 of the First Amended Accusation.

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1 SUBJECT MATTER: Accountability and Conduct Inimical

2 APPLICABLE LAW: Health and Safety Code sections 1596.885(a)-(c) and
3 1596.8897(a)(1), (2)&(4)
4 Regulation sections 101152(l); 101206(a); 101208 and
5 101214

6 ALLEGATIONS:

7 23. As alleged and demonstrated above in paragraphs 14 through 22 of
8 the First Amended Accusation, Respondent Antonia Lopez is the sole board
9 member of the corporation that is licensed to operate The 12th Street
10 Collaborative for Montessori. She is the de facto licensee and is accountable for
11 the operation and supervision of staff and children in its facilities. Respondent
12 has failed to ensure compliance with the terms of probation, proper supervision
13 of the operation of the facilities and proper care and supervision of children in
14 care.

15 CAUSE FOR DISCIPLINE

16 24. The facts alleged in paragraphs 10 through 23, individually and/or jointly,
17 constitute violations of licensing laws. These facts provide cause, pursuant to Health
18 and Safety Code section 1596.885(a)-(b) to revoke Respondent **THE 12th STREET**
19 **COLLABORATIVE FOR MONTESSORI's** licenses to operate both facilities; and
20 pursuant to Health and Safety Code section 1596.8897(a)(1)&(4) to prohibit
21 Respondents **Antonia Lopez and Marilyn Prosser's** employment in, presence in, and
22 contact with clients of any facility licensed by the Department.

23 25. The facts alleged in paragraphs 10 through 23, individually and/or jointly,
24 constitute conduct by Respondents **THE 12th STREET COLLABORATIVE FOR**
25 **MONTESSORI, Antonia Lopez and Marilyn Prosser**, which is inimical to the health,
26 morals, welfare, or safety of either an individual in or receiving services from the facility
27 or the people of this state. These facts provide cause, pursuant to Health and Safety

1 Code sections 1596.885(c) and 1596.8897(a)(2)&(4), to revoke the licenses to operate
2 both facilities, and to prohibit Respondents **Antonia Lopez and Marilyn Prosser's**
3 employment in, presence in, and contact with clients of any facility licensed by the
4 Department.


5 PETITION FOR RELIEF

6 26. WHEREFORE, complainant requests that Respondent THE 12th
7 St. COLLABORATIVE FOR MONTESSORI's licenses to operate a Day Care Center
8 and Infant Center be revoked.

9 27. WHEREFORE, complainant requests that Respondent Antonia
10 Lopez be prohibited for the remainder of Respondent's life, from employment in,
11 presence in, and contact with clients of any facility licensed by the Department and from
12 being a member of the board of directors, an executive director, or an officer of a
13 licensee of any facility licensed by the Department.

14 28. WHEREFORE, complainant requests that Respondent Marilyn
15 Prosser be prohibited for the remainder of Respondent's life, from employment in,
16 presence in, and contact with clients of any facility licensed by the Department and from
17 being a member of the board of directors, an executive director, or an officer of a
18 licensee of any facility licensed by the Department.

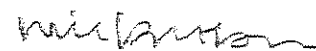
19 DATED: **AUG 23 2011**

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25 for: JEFFREY HIRATSUKA
26 Deputy Director
27 Community Care Licensing Division
California Department of Social Services

DELEGATION

1. I hereby delegate to JoAnn Hirai, as Chief of Investigations Branch, John Rodriguez, as Chief of Continuing Care Contracts Branch, Gloria Merk, as Program Administrator of Child Care Program, Sergio Ramirez, as Program Administrator of Children's Residential Program, Mary Jolls as Program Administrator of Adult and Senior Care Program; my power to issue the following administrative pleadings under the Administrative Procedure Act, Government Code Section 11500 et seq.:
 - (a) Accusations and orders for temporary license suspension prior to hearing, pursuant to Health and Safety Code Sections 1550, 1550.5, 1568.082, 1569.50, 1569.51, 1569.885, or 1596.886.
 - (b) Statements of Issues pursuant to Health and Safety Code Sections 1526, 1568.063, 1569.22, or 1596.879.
 - (c) Orders to require that an employee or prospective employee of a facility not work or be present in a facility pending a final decision of the matter, pursuant to Health and Safety Code Sections 1558, 1568.066, 1569.58, or 1596.8897. They may exercise this power when, in their opinion, the action is necessary to protect the residents or clients from physical or mental abuse, abandonment, or any other substantial threat to the health and safety of the residents or clients.
2. These delegations are made pursuant to Government Code Section 7. They shall remain in effect until explicitly revoked.

DATE: 9/13/11



WILL LIGHTBOURNE

Director

California Department of Social Services