

1 Kevin M. Badkoubehi, Esq. (SBN 172851)  
2 Peyman Dadmehr, Esq. (SBN 211611)  
3 BADKOUBEHI & DADMEHR, LLP  
4 10866 Wilshire Blvd. Suite 400  
5 Los Angeles, California 90024  
6 Telephone: (310) 598-8448  
7 Facsimile: (310) 598-8486

8 Attorneys for ACADEMY AUTOMOBILE INSURANCE  
9 SERVICES, INC., AGENDA INSURANCE SERVICES, INC.,  
10 ALICO INSURANCE, INC., ADELCO INSURANCE  
11 SERVICES, INC., MAGDY TAWIL and ADEL TAWIL

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

14 GABRIELA ANGEL, GUADALUPE )  
15 CABRERA, JACQUELINE CHAMORRO, )  
16 SAMANTHA HERNANDEZ, MAYRA )  
17 MARTIN, VIVIAN PENA, EMPERATRIZ )  
18 RAMIREZ, MARIA RODRIGUEZ, )  
19 ROSARIO TORRES and JESSICA )  
20 CASTILLO, individually and on behalf of all )  
21 employee similarly situated, )

22 Plaintiff,

23 -vs-

24 ACADEMY AUTOMOBILE INSURANCE )  
25 SERVICES, INC., a corporation, AGENDA )  
26 INSURANCE SERVICES, INC., a )  
27 corporation, ALICO INSURANCE, INC., a )  
28 corporation, ADELCO INSURANCE )  
SERVICES, INC., a corporation, dba TOP )  
VALUE INSURANCE SERVICES, MAGDY )  
TAWIL, an individual, ADEL TAWIL, an )  
individual and DOES 1-100, inclusive, )

Defendants.

Case No. BC545021

*[Assigned to the Honorable Elihu M. Berle in  
Department 323]*

**DEFENDANTS ANSWER TO UNVERIFIED  
SECOND AMENDED COMPLAINT**

Defendants, ACADEMY AUTOMOBILE INSURANCE SERVICES, INC., a corporation,  
AGENDA INSURANCE SERVICES, INC., a corporation, ALICO INSURANCE, INC., a corporation,  
ADELCO INSURANCE SERVICES, INC., a corporation, dba TOP VALUE INSURANCE

1 SERVICES, MAGDY TAWIL, an individual, ADEL TAWIL, an individual (“Defendants”), for  
2 themselves and for no other defendants, in response to the unverified Second Amended Complaint  
3 (“Second Amended Complaint”) of GABRIELA ANGEL, GUADALUPE CABRERA, JACQUELINE  
4 CHAMORRO, SAMANTHA HERNANDEZ, MAYRA MARTIN, VIVIAN PENA, EMPERATRIZ  
5 RAMIREZ, MARIA RODRIGUEZ, ROSARIO TORRES and JESSICA CASTILLO, individually and  
6 on behalf of all employee similarly situated (“Plaintiffs”), answer as follows:

7 **GENERAL DENIAL**

8 Pursuant to provisions of Section 431.30 of the California *Code of Civil Procedure*, Defendants  
9 deny each and every, all and singular, allegations of Plaintiff’s unverified Second Amended Complaint  
10 and further deny that Plaintiffs were damaged in the sum alleged or sums alleged or in any sum at all.

11  
12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 (Failure to State a Cause of Action)

15 The Complaint and each cause of action presented therein fail to state facts sufficient to  
16 constitute a claim or cause of action against Defendants.

17 **SECOND AFFIRMATIVE DEFENSE**

18 (Waiver)

19 As a result of the acts, conduct and omissions of Plaintiffs and the putative class members the  
20 Complaint and each cause of action presented therein have been waived as against Defendants.

21 **THIRD AFFIRMATIVE DEFENSE**

22 (Laches)

23 Plaintiffs and the putative class members have unreasonably delayed the commencement of this  
24 action to the prejudice of Defendants, thereby rendering the Second Amended Complaint and each  
25 cause of action therein barred by the doctrine of laches.

1 FOURTH AFFIRMATIVE DEFENSE

2 (Knowledge)

3 Defendants allege that each and every transaction referred to in Plaintiffs' Second Amended  
4 Complaint was entered into with full knowledge and approval of Plaintiffs and the putative class  
5 members.

6 FIFTH AFFIRMATIVE DEFENSE

7 (Unclean Hands)

8 Plaintiffs are guilty of unclean hands.

9 SIXTH AFFIRMATIVE DEFENSE

10 (Statute of Limitations - Statutory Defenses)

11 Plaintiffs and the putative class members' Second Amended Complaint, and each cause of action  
12 presented therein, are barred and/or limited as against Defendants Pursuant to CCP 338(a),338(d), 337,  
13 339, 340(a) and Labor Code 203.

14 SEVENTH AFFIRMATIVE DEFENSE

15 (Equitable Estoppel)

16 Defendants allege that Plaintiffs and the putative class members are equitably estopped from  
17 asserting each and all of its purported causes of action in its Second Amended Complaint by reason of  
18 the acts of Plaintiffs, upon which Defendants relied to their prejudice and detriment.

19 EIGHTH AFFIRMATIVE DEFENSE

20 (Good Faith)

21 Defendants allege that Plaintiffs and the putative class members' claims are barred because  
22 Defendants' conduct, as alleged in the Complaint, was fully justified and undertaken in good faith.

23  
24 NINTH AFFIRMATIVE DEFENSE

25 (Failure to Exhaust Administrative Remedies)

26 Defendants allege that Plaintiffs and the putative class members failed to exhaust their  
27 administrative remedies as required under California laws including but not limited to, those prescribed  
28 by the California Department of Fair Employment and Housing.



1 reserve the right to assert such additional defenses in the event of discovery, investigation or analysis  
2 indicate they are proper.

3 SIXTEENTH AFFIRMATIVE DEFENSE

4 (Consent)

5 As a separate and distinct affirmative defense, Defendants allege that the First Amended  
6 Complaint, and each and every alleged cause of action therein are barred, in whole or in part, because Plaintiffs and  
7 the putative class members consented to the conduct about which they now complain.

8 SEVENTEENTH AFFIRMATIVE DEFENSE

9 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs and the putative  
10 class members have not suffered any losses and Defendants have not been unjustly enriched as a result of any  
11 action or inaction by Defendants or their agents. Plaintiffs are not therefore entitled to any disgorgement or  
12 restitution.

13 EIGHTEENTH AFFIRMATIVE DEFENSE

14 As a separate and distinct affirmative defense, Defendants allege that the claims for  
15 additional compensation of any type fail as Plaintiffs and the putative class members are exempt  
16 from California's overtime laws.

17 NINETEENTH AFFIRMATIVE DEFENSE

18 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs and  
19 the putative class members have been paid and/or received all wages due to them by virtue of their  
20 employment.

21 TWENTIETH AFFIRMATIVE DEFENSE

22 As a separate and distinct affirmative defense, Defendants alleges that Plaintiffs and  
23 the putative class members were treated fairly and in good faith, and that all actions taken with  
24 regard to them was taken for lawful business reasons and in good faith.

25 TWENTY FIRST AFFIRMATIVE DEFENSE

26 As a separate and distinct affirmative defense, Defendants alleges that the Complaint and each  
27 cause of action set forth therein cannot be maintained because, without admitting that any violation took place,  
28 Defendants allege that any violation of the California Labor Code or of a Wage Order of the Industrial Welfare  
Commission was an act or omission made in good faith, and that in any participation in such acts, Defendants had

1 reasonable grounds for believing that the act or omission was not a violation of the California Labor Code or  
2 any Wage Order of the Industrial Welfare Commission.

3 TWENTY SECOND AFFIRMATIVE DEFENSE

4 As a separate and distinct affirmative defense, Defendants allege that assuming, *arguendo*, that  
5 Plaintiffs and the putative class members are entitled to additional compensation, Defendants have not willfully or  
6 intentionally failed to pay any such additional compensation to Plaintiffs and the putative class members, to  
7 justify any awards of penalties or fees.

8 TWENTY THIRD AFFIRMATIVE DEFENSE

9 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs and the putative  
10 class are barred from obtaining relief pursuant to their cause of action for violation of California Business and  
11 Professions Code section 17200, *et seq.* because California law does not permit representative  
12 actions where liability can only be determined through fact-intensive individualized assessments of  
13 alleged wage and hour violations.

14 TWENTY FOURTH AFFIRMATIVE DEFENSE

15 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs and the putative  
16 class lack standing to bring their claims as to all or a portion of the claims alleged in the Complaint.

17 TWENTY FIFTH AFFIRMATIVE DEFENSE

18 As a separate and distinct affirmative defense, Defendants allege that this suit may not be properly  
19 maintained as a class action because: (1) Plaintiffs have failed to plead, and cannot establish the necessary  
20 procedural elements for class treatment; (2) a class action is not an appropriate method for the fair and efficient  
21 adjudication of the claims described in the Complaint; (3) common issues of fact or law do not predominate; to the  
22 contrary, individual issues predominate; (4) Plaintiffs' claims are not representative or typical of the claims of the  
23 putative class; (5) Plaintiffs are not proper class representatives; (6) the named plaintiffs and alleged putative class  
24 counsel are not adequate representatives for the alleged putative class; (7) Plaintiffs cannot satisfy any of the  
25 requirements for class action treatment, and class action treatment is neither appropriate nor constitutional; (8)  
26 there is not a well-defined community of interest in the questions of law or fact affecting Plaintiffs and the  
27 members of the alleged putative class; and (9) the alleged putative class is not ascertainable, nor are its members  
28 identifiable.

1 TWENTY SIXTH AFFIRMATIVE DEFENSE

2 As a separate and distinct affirmative defense, Defendants oppose class certification  
3 and dispute the propriety of class treatment. If the Court certifies a class in this case over  
4 Defendants' objections, then Defendant asserts the affirmative defenses set forth herein against each  
5 and every member of the certified class.

6 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

7 As a separate and distinct affirmative defense, Defendants allege that, to the extent  
8 that Plaintiffs and the putative class claim penalties, such claims must comport with the due process requirements of  
9 *State Farm v. Campbell*, 538 U.S. 408 (2003) and subsequent case law regarding the same issue.

10 TWENTY EIGHTH AFFIRMATIVE DEFENSE

11 As a separate and distinct affirmative defense, Defendants allege that the request for restitution,  
12 declaratory relief, and/or injunctive relief is barred with respect to any and all alleged violations of California  
13 Business and Professions Code section 17200, *et seq.* that have discontinued, ceased, and are not likely to recur.

14 TWENTY NINETH AFFIRMATIVE DEFENSE

15 As a separate and distinct affirmative defense, Defendants allege that their business actions or  
16 practices were not unfair, unlawful, fraudulent or deceptive within the meaning of California Business and  
17 Professions Code section 17200, *et seq.*

18 THIRTIETH AFFIRMATIVE DEFENSE

19 As a separate and distinct affirmative defense, Defendants allege that the Second Amended  
20 Complaint fails to properly state a claim for injunctive relief.

21 THIRTY FIRST AFFIRMATIVE DEFENSE

22 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs and the putative class  
23 members are not entitled to equitable relief insofar as they have adequate remedies at law.

24 THIRTY SECOND AFFIRMATIVE DEFENSE

25 (Punitive Damages – Insufficiency of Pleading)

26 The conduct of Defendants do not rise to the level by which punitive damages are warranted,  
27 and based thereon, the claim for punitive damages should be denied and stricken from the Complaint  
28 based upon a failure to plead adequate facts giving rise to a cause of action as to Defendants.





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

**PROOF OF SERVICE**

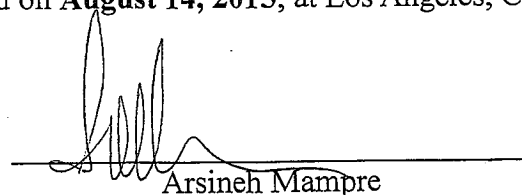
I declare that I am employed in the County of Los Angeles, California. My business address is 10866 Wilshire Blvd., Suite 400, Los Angeles, CA 90024. I am over the age of eighteen years and not a party to the within cause.

On **August 14, 2015**, I served the foregoing document described as **DEFENDANTS ACADEMY AUTOMOBILE INSURANCE SER, INC. ET AL ANSWER TO UNVERIFIED SECOND AMENDED COMPLAINT** by placing true copies thereof enclosed in a sealed envelope addressed as follows:

**ABROLAT LAW PC**  
**Nancy L. Abrolat**  
**Shahane A. Martirosyan**  
**The Plaza at Continental Park**  
**840 Apollo Street, Suite 300**  
**El Segundo, CA 90245**

- By Fax/Email.** By transmitting a true and correct copy thereof via facsimile or email transmission to the person(s) at the facsimile number(s) or email address(es) above..
- By U.S. Mail.** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, 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.
- By Personal Service.**
  - By personally delivering such envelope to the addressee.
  - By causing such envelope to be delivered by messenger to the office of the addressee.
- By Next-Day Delivery Service.** By causing such envelope to be delivered to the office of the addressee by overnight delivery via OverniteExpress (a division of Norco Delivery Services).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this proof of service was executed on **August 14, 2015**, at Los Angeles, California.

  
\_\_\_\_\_  
Arsineh Mampre