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6 ALICO INSURANCE, INC., ADELCO INSURANCE
SERVICES, INC., MAGDY TAWIL and ADEL TAWIL
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

10 GABRIELA ANGEL, GUADALUPE
11 CABRERA, JACQUELINE CHAMORRO,
SAMANTHA HERNANDEZ, MAYRA
12 MARTIN, VIVIAN PENA, EMPERATRIZ
RAMIREZ, MARIA RODRIGUEZ,
13 ROSARIO TORRES and JESSICA
CASTILLO, individually and on behalf of all
14 employee similarly situated,

15 Plaintiff,

16 -vs-

17 ACADEMY AUTOMOBILE INSURANCE
SERVICES, INC., a corporation, AGENDA
18 INSURANCE SERVICES, INC., a
corporation, ALICO INSURANCE, INC., a
19 corporation, ADELCO INSURANCE
SERVICES, INC., a corporation, dba TOP
20 VALUE INSURANCE SERVICES, MAGDY
TAWIL, an individual, ADEL TAWIL, an
21 individual and DOES 1-100, inclusive,

22 Defendants.
23
24

) Case No. BC545021

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

) **DEFENDANTS OPPOSITION TO
PLAINTIFFS MOTION FOR CLASS
CERTIFICATION**

) **DATE : JANUARY 25, 2017**
) **TIME : 11:00 A.M.**
) **PLACE : DEPARTMENT 323**

25 **1. Summary of argument.**

26 Plaintiffs' evidence does not satisfy the "commonality" requirement for class certification.
27 Plaintiffs' purported common issues do not predominate because individual questions of fact must be
28

1 addressed to determine liability. Proof that Academy violated meal break, rest break, or overtime
2 statutes would require more than just showing that the plaintiff Consumer Service Representatives
3 missed a meal break or a rest break or a premium payment for an hour of overtime. Plaintiffs' evidence
4 does not demonstrate by way of common proof that Academy prevented each putative class member
5 from taking meal breaks or rest breaks or failed to pay premium pay for overtime in accordance with a
6 uniform policy or a systematic practice.

7 Plaintiffs' evidence does not show that their claims are typical of the putative class, and the
8 plaintiffs cannot adequately represent the putative class members. More than half of the putative class
9 members, a total of 66, have submitted declarations opposing this litigation and class certification.

10 Notably, plaintiffs have not moved to include Alico Insurance, Inc. as a defendant in the class
11 action omitting mention of it from the notice and argument, and tellingly deleted Alico as defendant in
12 the case caption for all pleadings in support of this motion.

13 **2. Introduction.**

14 On May 8, 2014, plaintiffs' filed their initial complaint. On May 15, 2015, plaintiffs filed the
15 operative Second Amended Complaint. Defendants filed their Answer on August 14, 2015. The Bellaire
16 process disclosed 131 putative class members [Mtn. 10:11, 14] of which 66 have submitted declarations
17 disavowing any claim based on plaintiffs' Second Amended Complaint.

18 On October 25, 2016, plaintiffs filed this motion to seek an order to certify this action as a class
19 action to include all hourly wage Academy employees working in the Customer Service Representative
20 position for lost compensation from May 2010 through judgment. Plaintiffs propose 10 classes and
21 subclasses: A. those not paid premium rate for overtime hours worked on Saturdays (Saturday Overtime
22 Class; B. those not compensated for overtime for driving off the clock (Overtime for Driving Off the
23 Clock); C. those not compensated for meal periods within first five working hours of their shifts
24 (Unlawful Meal Break Subclass for First Meal Period after Fifth Hour); D. those not compensated for
25 first meal periods less than 30 minutes of duty-free uninterrupted time (Unlawful Meal Break Subclass
26 for First Meal Period Less Than Thirty Minutes Duty Free); E. those not compensated for second meal
27 periods not taken during 10-hour shift (Unlawful Meal Period Subclass for Second Meal Period); F.
28 those not compensated for missed meal breaks (Rest Break Subclass); G. those not reimbursed for

1 necessary work expenses (Failure to Reimburse Business Expenses Subclass); H. those charged for cash
2 shortages (Shortages Subclass); I. those not provided accurate itemized pay stubs (Inaccurate Pay stub
3 Subclass) J. those not provided time payments of all wages due upon employment termination
4 (Derivative and Direct Waiting Time Penalties Subclass).

5 **3. Relevant factual background.**

6 According to plaintiffs' Second Amended Complaint and their certification motion, all members of the
7 putative class, including the plaintiffs, are Customer Sales Representatives ("CSR") at 16 offices
8 located in Los Angeles and Orange County selling and servicing individual retail automobile insurance
9 policies to the general public. Many of the members of the putative class, including plaintiffs, worked at
10 more than one location, sometimes on the same day.

11 Defendants are Academy Automobile Services, Inc.; Agenda Insurance Services, Inc.; Adelco
12 Insurance Services, Inc. dba Top Value Insurance Services; and two named individuals. Each of the
13 entity defendants named in this motion has the same company personnel policies. Each office had a
14 time clock, and each CSR logged in and off work using handprint scanners. Some of the CSR's have
15 testified at deposition that their fingernail extensions periodically prevented them from logging in on
16 the time clock. [Vivian Pena Depo. at 50:17-25]. If a CSR had a computer problem, the company IT
17 person had the ability to remotely takeover the CSR's computer to resolve the problem. Plaintiffs'
18 overblown Orwellian description of the owners watching every transaction existed more in their
19 imagination than in reality only the IT technician has access to the CSR's computers and has the ability
20 to designate limited access to specific support personnel to assist during insurance transactions.
21 Contrary to Plaintiff counsel's unsupported contentions, there are no audio surveillance systems which
22 overhear conversations in any of the locations. [Tawil declaration].

23 **4. This Court should deny the plaintiffs' motion because plaintiffs have failed to meet**
24 **the requirements for class action certification.**

25 "[I]t is incumbent upon the class action proponent to prove each required element for class
26 certification." Washington Mutual Bank, FA v. Superior Court (2001) 24 Cal.4th 906, 922-923.

27 The California Supreme Court has delineated the requirements for class certification. Class
28 certification requires (1) proof of a sufficiently numerous, ascertainable class, (2) proof of a well-

1 defined community of interest, and (3) proof that certification would provide substantial benefits to
2 litigants and the courts, i.e.: that proceeding as a class is superior to other methods. Code Civil
3 Procedure § 382; Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326; Linder v.
4 Thrifty Oil Co. (2000) 23 Cal.4th 429, 435; City of San Jose v. Superior Court (1974)12 Cal.3d 447,
5 459.

6 The "community of interest requirement embodies three factors: (1) predominant common
7 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
8 class representatives who can adequately represent the class." Richmond v. Dart Industries. Inc. (1981)
9 29 Cal.3d 462, 470; Fireside Bank v. Superior Court (Gonzalez) (2007) 40 Cal.4th 1069, 1089.

10 In the instant motion, plaintiffs have failed to prove each of the required elements for class
11 certification; hence, plaintiffs' motion should be denied.

12 **5. Plaintiffs' exhibits in the Compendium of Evidence in support of their motion are**
13 **inadmissible, subject to objection and exclusion, and the Court should not consider the**
14 **inadmissible exhibits when ruling on this motion.**

15 Defendants have concurrently filed written objections to the over 1300 pages of plaintiffs'
16 exhibits, Exhibits "A" through "WW", offered as evidence. Plaintiffs made no attempt to authenticate
17 their exhibits. Evidence Code §§ 1400, 1401. As a result, plaintiffs' exhibits are inadmissible under the
18 Secondary Evidence Rule. Section 1521(c) Evidence Code. Plaintiffs' exhibits are inadmissible
19 hearsay; Evidence Code § 1200, et seq., and they do not fall within the Business Records Exception in
20 section 1271 since plaintiffs offered no evidence at all to bring the exhibits under the exception. Given
21 the inadmissibility of plaintiffs' exhibits, the Court should exclude them and not consider them when
22 ruling on this motion.

23
24 **6. Plaintiffs failed to meet their statutory burden to prove that "the parties are**
25 **numerous" and that "it is impracticable to bring them all before the court.**

26 " Code of Civil Procedure § 382 provides that class certification is appropriate only when,
27 among other particulars, "the parties are numerous, and it is impracticable to bring them all before the
28 court." Plaintiffs allege that there are 131 putative class members for the relevant time period. Of that

1 alleged 131 putative class members at least 65 have disavowed any claim arising out of plaintiffs’
2 Second Amended Complaint and have submitted for the Court’s consideration declarations to that effect
3 stating that they do not believe plaintiffs’ allegations in the Second Amended Complaint are true. Other
4 than plaintiffs’ declarations, plaintiffs have only submitted 11 declarations from former Academy
5 employees to support their motion and argument that joinder would be impracticable. Yet, plaintiffs’
6 counsel has had the contact information for all of the putative class members for over six months to
7 allow her to obtain additional declarations from putative class members if they existed.

8 In short, plaintiffs have failed to prove by substantial evidence that “the parties are numerous”
9 and that “it is impracticable to bring them all before the court.” In fact, plaintiffs could easily join the
10 other 11 putative class members as plaintiffs in their case. “The class suit was an invention of equity to
11 enable it to proceed to a decree in suits where the number of those interested in the subject of litigation
12 is so great that their joinder as parties in conformity to the usual rules of procedure is impracticable.”
13 *Daar v. Yellow Cob Co.* (1967) 67 Cal.2d 695, 715 fn. 14, quoting from *Hansberry v. Lee*, 311 U.S. 32,
14 41 (1940).

15 **7. Plaintiffs have failed to provide substantial evidence of a well-defined “community**
16 **of interest” among the putative class members.**

17 “The ‘community of interest’ requirement embodies three factors: (1) predominant common
18 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
19 class representatives who can adequately represent the class.” *Lockheed Martin Corp. v. Superior Court*
20 (2003) 29 Cal.4th 1096. 1104. Plaintiffs have failed to meet the “community of interest” requirements.

21 Plaintiffs have failed to prove that common issues of fact and law “predominate” since their
22 claims and Academy’s defenses must be decided according to facts individual to each Consumer
23 Service Representative. Plaintiffs do not meet the “commonality” requirement for class certification.
24 Proving the Academy violated meal break, rest break, and overtime statutes would require more than
25 just showing that the plaintiff Consumer Service Representatives missed a meal period or a rest break or
26 premium payment for an hour of overtime. Plaintiffs must demonstrate to this Court by way of common
27 proof that Academy prevented each putative class member from taking meal breaks and rest breaks or
28 failed to pay premium pay for overtime in accordance with a uniform policy or a systematic practice.

1 To determine whether common issues predominate, the Court must consider plaintiffs' legal
2 theories for liability. *Sav-On Drug Stores*, supra, 34 Cal.4th at 326-327. Academy's affirmative defenses
3 must also be considered since a defendant can defeat class certification by showing that an affirmative
4 defense would raise issues specific to each putative class member and that the issues presented by the
5 defense predominate over the common issues. *Walsh v. IKON Office Solutions, Inc.* (2007) 148
6 Cal.App.4th 1440, 1450-1451 [whether each account manager was exempt from overtime and employer
7 was liable would require an individual determination because of variance in the way they performed
8 their duties]. The community of interest requirement is not satisfied if all members of the class must
9 litigate numerous and substantial questions to determine their individual right to recover following a
10 class judgment that decides the issues common to the purported class. *Vasquez v. Superior Court (Karp)*
11 (1971) 4 Cal.3d 800, 809.

12 Even though a motion for certification is procedural, the issue of whether there is the requisite
13 community of interest would be determined on the merits requiring plaintiffs to establish the
14 community as a matter of fact. *Global Minerals & Metals Corp. v. Superior Court (National Metals)*
15 (2003) 113 Cal.App.4th 836, 849. "Only in an extraordinary situation would a class action be justified
16 where, subsequent to the class judgment, the members would be required to individually prove not only
17 damages but also liability." *City of San Jose v. Superior Court (Lands Unlimited)* (1974) 12 Cal.3d
18 447, 463.

19 As demonstrated herein plaintiffs' purported common issues do not predominate, as they are
20 overwhelmed by individual questions of fact that must be addressed to determine liability. For example,
21 plaintiffs confuse daily and weekly overtime so that each overtime claim must be examined individually
22 to determine liability. California law does not require double payment of overtime for both daily and
23 weekly overtime. Overtime must be paid only once. Labor Code section 510; Section 3 IWC Wage
24 Orders.

25 A. and B.: Saturday Overtime Class and Overtime for Driving Off the Clock. Plaintiffs'
26 proposed "Saturday Overtime Class" arises out of Academy's alleged failure to pay premium overtime
27 pay the plaintiff CSR's for overtime hours worked on Saturday. Another proposed class, the "Overtime
28 for Driving Off the Clock involves Academy's alleged failure to pay premium overtime pay for the time

1 the CSR's spent driving from one office location to another as part of their work assignments. Common
2 issues do not predominate for these two classes because an intensive factual inquiry must be made as to
3 whether each class member worked more than eight hours in a day or 40 hours in a week to determine
4 if Academy is liable. See the "Wage Order" (IWC Order 14-2001; section 3A Cal. Code of Regs., Tit. 8
5 § 11160); Labor Code §§ 510, 1810. Even if the plaintiffs were to make the required showing, each
6 class member would then have to individually examined as to the amount of hours worked – on
7 Saturday and/or while driving off the clock – that were not paid the premium overtime rate of pay. That
8 data cannot be ascertained by a review of the CSR's time cards or other documents during the damages
9 phase of this litigation; rather each putative class member would have to be examined individually to
10 prove liability. City of San Jose, supra, 12 Cal.3d at 463. Further, Academy may have affirmative
11 defenses applicable to the individual CSR's such as a showing that a CSR voluntarily requested
12 compensatory time off in lieu of premium overtime pay in compliance with Labor Code § 204.3. Those
13 showings would require individual examinations of the particular CSR's to determine liability, if any.
14 Labor Code § 204.3; Walsh v. IKON , supra, 148 Cal.App.4th at 1454-1456. Plaintiff Jessica Castillo
15 testified that defendants never asked her to punch in or out and work off the clock. [Castillo Depo. at
16 5:1-4]. Plaintiff Maria Rodriquez testified that there never was a time that she noticed her pay stub not
17 reflecting the rate of pay that she should have been receiving. [Rodriquez Depo. at 44:1-6].

18 Furthermore, plaintiffs have not offered any admissible evidence, certainly not "substantial
19 evidence," that it was the defendants' common policy or procedure to "uniformly" require all of the
20 CSR's to work overtime without premium overtime compensation. Sav-On Drug Stores, supra, 34
21 Cal.4th at 329 [common policies or practices of the defendant resulted in all members of the potential
22 class being affected in the same manner]. Academy never had a policy or practice of preventing
23 premium pay for overtime work. [Tawil Declaration].

24
25 Intensive factual inquiries will be required as to the particular job on which each class member
26 worked on a day-by-day basis, who supervised that job, and whether any overtime hours were actually
27 worked on that job, facts that Academy should have the opportunity to refute. For instance, Mayra
28 Martin testified in her deposition that she was not paid premium overtime fir her sick wages paid by

1 Academy even though she did not work those hours[Martin Depo. at 160-163; 167-168]. Brown v.
2 Regents of the University of California (1984) 151 Cal.App.3d 982, 988-989 [class certification should
3 not be granted “where there are diverse factual issues” that must be determined for each class member
4 individually, “even though there may be many common questions of law.”]; City of San Jose, supra, 12
5 Cal.3d at 459 [“[A] class action cannot be maintained where each member's right to recover depends on
6 facts peculiar to his case.”]; Dunbar v. Albertson's, Inc. (2006) 141 Cal.App.4th 1422, 1431-1433 [trial
7 court did not abuse its discretion in denying class certification; most important factor was significant
8 variation in managers' work from store to store and week-to-week requiring particularized individual
9 liability determinations].

10 In absence of evidence of a systematic practice, policy, or procedure requiring the CSR’s to
11 work off-the-clock would necessitate a case-by-case inquiry into each individual CSR’s activities to
12 ascertain whether the CSR worked off-the-clock and if Academy had knowledge of that individual
13 CSR’s work off-the-clock. Morllion v. Royal Packing Co. (2000) 22 Cal.4th 575, 585 [employer not
14 liable for hours worked which it did not require or neither knew or had reason to know were being
15 performed].

16 C., D., and E.: Unlawful Meal Break Subclass for First Meal Period after Fifth Hour;
17 Unlawful Meal Break Subclass for First Meal Period Less Than Thirty Minutes Duty Free; and
18 Unlawful Meal Period Subclass for Second Meal Period. Plaintiffs’ proposed unlawful meal-period
19 subclasses arise out of Academy’s alleged “meal break written policy, practices and procures [that
20 allegedly] resulted in the CSR’s being denied their uninterrupted 30-minute meal breaks...” whether
21 within the first five hours, the second meal period, or meal breaks of less than 30 minutes. [Mtn. at
22 4:14-21; 5:1-11]. For these subclasses, individualized inquiries into each of the 16 CSR work locations
23 and shifts would be required to determine if the CSR’s were denied meal breaks or the full 30-minutes
24 for meal breaks. The Motion’s argument to the contrary, the particular individualized claims cannot be
25 determined solely from the time cards. For example, did any of the CSR’s voluntarily not take lunch?
26 Plaintiff Vivian Pena's testimony was that she estimated that she took lunch 80% of the time and 20% of
27 the time did not of her own volition. [Pena Depo at 165:14-18]. Or did any have an agreement with
28 Academy for “on-duty” meal period that was counted and paid as time worked of the CSR’s? If the

1 “nature of the work” at any of the 16 work locations would have allowed for off-duty meal breaks, why
2 have the plaintiffs not submitted declarations to show that the “nature” of the declarant’s duties
3 allegedly would have allowed for off-duty meal breaks.

4 Labor Code § 226.7 required Academy to provide the CSR’s with meal breaks in accordance
5 with the IWC Wage Orders. IWC Wage Order 4-2001 provides that “[u]nless the employee is relieved
6 of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal
7 period and counted as time worked. An “on duty” meal period shall be permitted only when the nature
8 of the work prevents an employee from being relieved of all duty and when by written agreement
9 between the parties an on-the-job meal is agreed to.”

10 Plaintiffs’ motion does not take into account the differing circumstances presented to each CSR
11 each work day at 16 separate locations. The inquiry must depend on the nature of the duties performed
12 in a particular day and whether or not that particular CSR opted or declined to take a meal break.
13 *Brown v. Federal Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580-584-585 [in light of the “provide”
14 standard applicable to meal periods, individualized factual inquiries predominate over the few common
15 legal and factual issues; *Blackwell v. Sky West Airlines* (S.D. Cal. 2007) 245 F.R.D. 453, 467 [“to
16 determine which employees were not provided with a timely 30-minute meal period requires a highly
17 individualized factual inquiry”]; *Salazaar v. Avis Budget Group, Inc.* (S.D. Cal. 2008) 251 F.R.D. 529
18 [finding individual issues predominate with regard to meal breaks]. Whether an employee decides to
19 take a break or continue to work is not a common question, but rather an individual inquiry of whether
20 the decisions is self-imposed or management imposed. *Petty v. Wal-Mart Stores, Inc.* (Ohio Ct. App.
21 2002) 773 N.E.2d 576, 582.

22 Because meal breaks are volitional under California law, individualized inquiries into when and
23 why a particular CSR did not take a meal break would be required. As a statutorily protected right, the
24 decision to forego a meal period must be made personally by each CSR on a daily basis. *Brinker*
25 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. “An employer's duty with respect to
26 meal breaks under both section 512, subdivision (a) and Wage Order No. 5 is an obligation to provide a
27 meal period to its employees. The employer satisfies this obligation if it relieves its employees of all
28 duty, relinquishes control over their activities and permits them a reasonable opportunity to take an

1 uninterrupted 30-minute break, and does not impede or discourage them from doing so....On the other
2 hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed.”

3 F.: Rest Break Subclass. Commonality does not predominate for the proposed rest break
4 subclass since exhaustive factual inquiries would have to be made for each putative class member CSR
5 as to which, if any, rest breaks were missed. The particular individualized missed rest breaks cannot be
6 determined solely from the time cards because if plaintiffs can show missed rest breaks further
7 individualized inquiry would have to be made to determine the reasons the rest breaks were missed.
8 Those reasons could establish no liability for Academy for the missed rest breaks. For instance, where a
9 missed rest break was the result of a CSR voluntarily forfeiting the rest break, the CSR would have no
10 claim, and Academy would have no liability. *White v. Starbucks Corp.* (N.D. Cal. 2007) 497 F.Supp.2d
11 1080, 1089 [employee could not recover for authorized or permitted rest breaks that he voluntarily
12 chose to forego]. Plaintiff Guadalupe Cabrera testified that she did not take rest breads about 80% of the
13 time. [Cabrera Depo. at 51:13-18]. As in meal breaks, under California law, rest breaks are volitional,
14 and any missed rest break would require an individualized inquiry into when and why a particular CSR
15 did not take a rest break. The admissible evidence shows that at all relevant times, Academy did not
16 have a uniform policy or practice to forbid the CSR’s from taking rest breaks. Since numerous factual
17 inquiries and the application of Academy’s affirmative defenses would be required to determine liability
18 as to each individual CSR, plaintiffs have not established commonality.

19 G.: Failure to Reimburse for Business Expenses Subclass. Once again commonality does
20 not predominate for a subclass based on Academy’s alleged failure to reimburse for business expenses.
21 As previously discussed, exhaustive factual inquiries would have to be made of each member of the
22 CSR putative class to determine which CSR’s expended personal funds to purchase office supplies or
23 drove a personal vehicle for company business. Then, after determining which particular CSR’s had
24 claims for unreimbursed business expenses, further individualized inquiry would have to be made into
25 the reasons the business expense were not reimbursed as those reasons might negate Academy’s
26 liability. For example, did the individual CSR fail to submit a request for mileage reimbursement or for
27 purchased business supplies? Plaintiff Jessica Castillo testified that she did not request reimbursement
28 for her gas mileage or for pens that she purchased to use at the office. [Castillo Depo at 97:8 - 98:4, 8-

1 11]. Did the particular CSR purchase a certain business supply out of personal preference rather than
2 necessity (i.e.: purchase a Pilot pen because preferred Pilot over the BIC pens supplied by Academy)?
3 Plaintiffs have failed to prove commonality since numerous individual factual inquiries would be
4 required to determine liability, including Academy's affirmative defenses, as to each CSR who
5 allegedly was not reimbursed for business expenses.

6 H.: Shortages Subclass. Commonality does not predominate for a subclass based on
7 Academy's alleged policy of requiring the CSR's to cover their shortages. As plaintiffs point out in their
8 Motion, Academy was allow to make a deduction or require reimbursement for shortages caused by "a
9 dishonest or willful act, or by the gross negligence of the employee [CSR]." IWC 4, § 8. Exhaustive
10 factual inquiries would have to be made of each member of the CSR putative class to determine if the
11 Academy's deduction or reimbursement for shortages resulted from the CSR's "dishonest or willful act,
12 or by the gross negligence" to determine Academy's liability, including consideration of its affirmative
13 defenses. Even if plaintiffs' evidence were admissible, that evidence showing the shortages repayment
14 or deductions does not answer the necessary inquiry to determine Academy's liability. Plaintiffs have
15 failed to prove commonality since numerous individual factual inquiries would be required to determine
16 liability, including Academy's affirmative defenses, as to each CSR who allegedly had to reimburse
17 Academy for a shortage.

18 I. and J.: Inaccurate Pay Stub Subclass and Derivative and Direct Waiting Time Penalties
19 Subclass. Plaintiffs' alleged inaccurate pay stub and penalties subclasses are based on Academy's
20 alleged failed to pay the CSR's properly and in full for all hours worked. For the reasons discussed
21 herein above in subsections 7.A - 7.H, since plaintiffs cannot establish commonality as to their proposed
22 subclasses, commonality cannot be established for the paystub/penalties subclasses. Since Academy
23 cannot be liable for inaccurate information on pay stubs unless it "knowingly and intentionally" made
24 the misstatements and the CSR suffered an injury as a result, there is no commonality. Labor Code §
25 226; Brinkley v. Public Storage, Inc. (2008) 167 Cal.App.4th 1278, 1280. Academy should have the
26 opportunity to refute liability as to each individual CSR in the putative class by showing that it did not
27 knowingly and intentionally make misstatements on the pay stubs and/or show that the individual CSR
28 did not suffer injury as a result of the alleged misstatements. Brinkley v. Public Storage, supra, 167

1 Cal.App.4th at 1282. Plaintiffs' Motion ignores that the CSR's cannot recover waiting time penalties
2 unless each individual shows that Academy acted "willfully" in failing to pay wages at termination. Cal.
3 Code Regs., § 13520. Thus, in order to impose a waiting time penalty, the Court will have to examine
4 the facts and circumstances for each individual CSR's termination. As such, commonality does not
5 predominate in the inaccurate pay stub/penalties subclass.

6 **8. Plaintiffs have failed to prove that their claims are typical of the classes and**
7 **subclasses.**

8 When examining whether a class representative's claims are typical of the class or subclass, the
9 Court must determine if the plaintiff CSR's are "truly representative of the unnamed, absent class
10 members." *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 663. "it is the fact that the class
11 plaintiff's claims are typical and his representation of the class adequate which gives legitimacy to
12 permitting him to bind members who have notice of the action." *Id.* Plaintiffs cannot make the required
13 showing since "[i]t is axiomatic that a putative representative cannot adequately protect the class if his
14 interests are antagonistic to those he purports to represent." *Richmond v. Dart Industries.* *supra*, 29
15 Cal.3d at 470. As above in Sections 2 and 6 and as demonstrated in the submitted declarations by the
16 putative class CSR's at least 66 CSR putative class members have expressed interests antagonistic to
17 those of plaintiffs.

18 **9. Plaintiffs are not adequate class representatives.**

19 Class representatives must also be able to provide "fair and adequate representation" for the
20 other absent class members. *Richmond v. Dart Industries.* *supra*, 29 Cal.3d at 470. In determining the
21 adequacy of a proposed class representative, the Court should focus on two issues: (1) whether the
22 interests of the proposed class representative are antagonistic or in conflict with the interests of the
23 putative class members; and (2) whether the proposed class representative will adequately protect the
24 interests of other class members. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450; *City of*
25 *San Jose*, *supra*, 12 Cal.3d at 464.

26 A. Plaintiffs have not established that they are well informed about the action and
27 independent of their counsel. The named plaintiffs have a duty to "vigorously and tenaciously" protect
28 the interest of the class. *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846. To do so a class

1 representative must be well informed about the action and be independent of its counsel. Apple
2 Computer. Inc. v. Superior Court (2005) 126 Cal.App.4th 1253, 1265; Howard County Profit Sharing
3 Plan v. Superior Court (2001) 88 Cal.App.4th 572 [trial court properly refused to certify class action
4 where named plaintiff was simply lending his name to suit controlled entirely by class attorney]. This is
5 necessary so that class representatives can “monitor the conduct of class counsel throughout the
6 litigation. [Citation].” Apple Computer, supra, 126 Cal.App.4th at 1268.

7 Here, plaintiffs are not well informed about the action and, thus, cannot adequately represent the
8 class. For example, plaintiff Vivian Pena testified that she cannot recall if she saw a copy of the lawsuit
9 or if she ever reviewed the lawsuit. [Pena Depo. at 38:14-25]. Prior to retaining Abrolat Law, she never
10 had any conversations with co-plaintiffs regarding the contents of the lawsuit. [Id. at 4:23 - 41:2].
11 Plaintiff Jessica Castillo testified that when she verified discovery responses, she had no personal
12 knowledge or evidence showing that defendants had falsified pay stubs.[Castillo Depo. at 159:24-
13 160:5]; Plaintiff Emperatriz Ramirez testified that she had not seen any of the questions in the Form
14 Interrogatories, Set No. One [Ramirez Depo. at 170:2-4]. She testified that she skimmed through the
15 responses to the Form Interrogatories, Set No. One [Id. at 157:9-21]. She testified that she did not read
16 the responses to the Form Interrogatories, Set No. One one-by- one before signing the verification form
17 [Id. at 158:2-6]. She testified that despite responding to Form Interrogatory No. 9.1 with “loss of use of
18 property,” she does not know what that means and prior to the day of the deposition, she had never seen
19 the question. [Id. at 164:3-25]. Plaintiff Jacqueline Chamorro testified that she could not recall if she
20 made sure to produce all documents for her deposition that were requested in the notice. [Chamorro
21 Depo at 44:18-22]. Plaintiff Guadalupe Cabrera testified that despite responding to Form Interrogatory
22 No. 9.1 that her other losses were “penalties, punitive damages, and loss of use of property,” she does
23 not know what “punitive damages” means. [Cabrera Depo. at 96:21-23]. She also testified that she did
24 not have any loss of use of property. [Id. at 98:10-14]. She also testified that despite responding to Form
25 Interrogatory No. 9.1(c) with “Defendants intentional illegal conduct,” she does not understand that
26 response. [Id. at 98:16-24]. She also testified that despite her response to Form Interrogatory 12.1 that
27 listed 30 names, she does not know the relation of those people. [Id. at 110:4-10]. Academy provided
28 plaintiffs with all available documentation, but plaintiffs have failed to provide Academy with any

1 estimate of the amount of their individual overtime claims. [Tawil Declaration]. Since plaintiffs cannot
2 articulate the scope and amount of their own claims, it begs the question as to how they are qualified to
3 adequately represent the interests of others.

4 Additionally, the plaintiffs cannot establish that they are independent of their counsel. Apple,
5 supra, 126 Cal.App.4th at 1265. The plaintiffs' deposition testimony cited above shows that they did not
6 recognize or understand certain responses to discovery prepared by their counsel that the plaintiffs had
7 verified under penalty of perjury. The inescapable conclusion is that the discovery responses were
8 supplied by counsel, not the plaintiffs or even with consultation with plaintiffs.

9 B. The named plaintiffs cannot adequately represent the class because the widespread
10 antagonism among putative class members. "To be deemed an "adequate" class representative, the class
11 action proponent must show it has claims or defenses that are typical of the class, and it can adequately
12 represent the class. This is part of the community of interest requirement." Lockheed, supra, 29 Cal.4th
13 at 1104.) Where there is a conflict that goes to the "very subject matter of the litigation," it will defeat a
14 party's claim of class representative status. Richmond, supra, 29 Cal.3d at 470. Thus, a finding of
15 adequate representation will not be appropriate if the proposed class representative's interests are
16 antagonistic to the remainder of the class. In re Seagate Tech. II Securities Litigation (N.D.Cal.1994)
17 843 F.Supp. 1341, 1346-1347. "The adequacy inquiry...serves to uncover conflicts of interest between
18 named parties and the class they seek to represent." Amchem Products, Inc. v. Windsor (1997) 521 U.S.
19 591, 625, 117 S.Ct. 2231, 138 L.Ed.2d 689.) [A] class representative must be part of the class and
20 possess the same interest and suffer the same injury as the class members. [Citations.] To assure
21 "adequate" representation, the class representative's personal claim must not be inconsistent with the
22 claims of other members of the class. [Citation.] In re Beer Distribution Antitrust Litigation (1998) 188
23 F.R.D. 549, 554 [intra-class conflicts among a proposed class of plaintiff custom beer brewers justified
24 denial of class certification]. Here, plaintiffs' motion is based only on the 11 declarations of putative
25 class members, and Plaintiffs' counsel. A review of the declarations submitted by 66 putative class
26 members in opposition to class certification evidence the declarants' belief that plaintiffs' claims
27 alleged in the Second Amended Complaint have no merit and that the 66 declarants do not want to be a
28 part of this lawsuit. The 66 declarants amount to more than one-half of the putative class members.

1 The widespread antagonism towards this class action merits a denial of class certification.
2 Hansherry, supra, 311 U.S. at 44 [plaintiff cannot maintain his action as a class suit when his interests
3 are antagonistic to the interests of the persons he purports to represent].

4 **10. Plaintiffs have failed to prove that certification will provide substantial benefits to**
5 **the litigants and the courts, to wit: that proceeding as a class is superior to other methods.**

6 Plaintiffs have failed to prove that a class action proceeding would be “the superior means for
7 fair and efficient adjudication of the litigation.” Dean Witter Reynolds, Inc. v. Superior Court (1989)
8 211 Cal. App. 3d 758, 773 [noting that this criterion is “manifest in the... requirement that the class
9 mechanism confer substantial benefits”]. In view of the lack of numerosity, the practicality of joinder,
10 the lack of adequate representatives, and the predominance of individual issues, a simpler and fairer
11 alternative would be to join in the nine other individuals who have supplied declarations in support of
12 the Plaintiffs' present motion. Lockheed, supra, 29 Cal.4th at 1116-1118 [where the class action
13 mechanism could deprive a litigant of a fair trial without substantially promoting efficiency, “other
14 procedures traditionally used to manage complex litigation, like consolidation and coordination, may be
15 more appropriate”]. Where, as here, there are few common issues that can be tried as a class and a
16 defendant that has legitimate defenses to negate plaintiffs' claim of liability, a class-wide trial would
17 splinter into individual trials on liability and damages for each former and current employee, a costly
18 and time-consuming scenario. Fireside, supra, 40 Cal.4th at 1089 [although “designed to foster justice,
19 class actions may create injustice”].

20 **11. Conclusion.**

21 Based on the foregoing reasons, plaintiffs' Motion for Class Certification should be denied.

22 Respectfully Submitted,

23 DATED: December 22, 2016

BADKOUBEHI & DADMEHR, LLP

24 By: 

25 KEVIN M. BADKOUBEHI, ESQ.

26 Attorneys for ACADEMY AUTOMOBILE
27 INSURANCE SERVICES, INC., AGENDA
28 INSURANCE SERVICES, INC., ALICO
INSURANCE, INC., ADELCO INSURANCE
SERVICES, INC., MAGDY TAWIL and ADEL
TAWIL

**Excerpted from Deposition of:
Emperatriz Ramirez
October 13, 2015**

1 I, BARBARA SMALL, a Certified Shorthand Reporter,
2 do hereby certify:

3 That prior to being examined, the witness in the
4 foregoing proceedings was by me duly sworn to testify
5 to the truth, the whole truth, and nothing but the
6 truth;

7 That said proceedings were taken before me at the
8 time and place therein set forth and were taken down by
9 me in shorthand and thereafter transcribed into
10 typewriting under my direction and supervision.

11 I further certify that I am neither counsel for,
12 nor related to, any party to said proceedings, nor in
13 anywise interested in the outcome thereof.

14 In witness thereof, I have hereunto subscribed by
15 me.

16 Dated: *October 28, 2015.*

17
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19
20 *Barbara Small*

21 Barbara Small, CSR No. 13345
22
23
24
25

1 A. I don't remember the exact date.

2 Q. Was it before or after or on September 19,
3 2015?

4 A. On.

5 Q. On the same day? Okay.

6 Now, did you spend time reviewing those
7 responses?

8 A. No.

9 Q. Okay. Now, if you're to look at the
10 verification which is 1, it says that these responses
11 are given under penalty of perjury. Okay? Also, it
12 says -- let me withdraw that question.

13 It says on the first line that, "I have read
14 these responses." Now, when did you read these
15 responses?

16 MS. MARTIROSYAN: And respond to it without
17 attorney-client privilege. He's just asking as far as
18 you reviewing it.

19 THE WITNESS: I skimmed through it on the
20 19th. I know it was my information that I provided. I
21 provided those responses.

22 BY MR. BADKOUBEHI:

23 Q. But did you thoroughly read response by
24 response?

25 A. No, because I don't understand everything

1 that's written.

2 Q. I understand that. Being a lawyer, I myself
3 don't get it sometimes. My question is simply did you
4 read response to response, one by one, before signing
5 that verification form?

6 A. No.

7 Q. Okay. Did you -- you testified earlier you
8 have not seen that document before; is that correct?

9 A. I have not.

10 Q. Okay. Now, do you recall on what basis did
11 you get a chance to know what you're responding to?

12 MS. MARTIROSYAN: Vague.

13 THE WITNESS: Could be more specific?

14 MR. BADKOUBEHI: Sure.

15 BY MR. BADKOUBEHI:

16 Q. How do you know what the question is -- how
17 do you know what the answer is when you don't know what
18 the question is?

19 MS. MARTIROSYAN: Attorney-client --

20 MR. BADKOUBEHI: That's my question.

21 MS. MARTIROSYAN: Attorney-client privilege.

22 I'll instruct her not to answer.

23 THE WITNESS: I'm not going to answer that.

24 MR. BADKOUBEHI: Okay.

25 ////

1 to me?

2 BY MR. BADKOUBEHI:

3 Q. The question -- those are Form
4 Interrogatories. I mean what was your understanding of
5 that question when you responded to 9.1 (a) as in
6 apple?

7 MS. MARTIROSYAN: All prior objections.

8 And you can -- you can answer that without
9 disclosing any information provided to you from my
10 office.

11 Can you read the question back?

12 THE WITNESS: I don't understand his
13 question.

14 MS. MARTIROSYAN: Can we get
15 Mr. Badkoubahi's question read back?

16 THE WITNESS: I understand what he's asking
17 me. I just don't understand this question.

18 MS. MARTIROSYAN: Okay. You should tell
19 him.

20 THE WITNESS: I don't understand this
21 question.

22 BY MR. BADKOUBEHI:

23 Q. But prior to today you haven't seen that
24 question; is that correct?

25 A. Exactly.

1 BY MR. BADKOUBEHI:

2 Q. So far you haven't -- so you have not seen
3 those questions before; correct?

4 A. I've not seen this document.

5 Q. Exactly. So how did you respond to a
6 question that you have not seen?

7 MS. MARTIROSYAN: Attorney-client privilege.
8 I'm going to instruct her not to answer.

9 THE WITNESS: I'm not going to answer that
10 question.

11 BY MR. BADKOUBEHI:

12 Q. So you just basically gave a bunch of
13 responses.

14 MS. MARTIROSYAN: Misstates testimony, the
15 record. And that's not a question, unless that is a
16 question.

17 BY MR. BADKOUBEHI:.

18 Q. And then your testimony, is it your
19 testimony today those responses were prepared by Nancy
20 Abrolat; is that correct?

21 A. I provided the responses. It was drafted by
22 my attorney.

23 Q. And after it was drafted did you see these
24 responses?

25 MS. MARTIROSYAN: Asked and answered now

Excerpted from Deposition of:

Vivian Pena

October 5, 2015

1 Q Yes.

2 A I don't remember.

3 Q Do you recall what time you left that day?

4 A I don't remember.

5 Q Do you recall if it was night or day?

6 A Night.

7 Q Do you recall how many hours you worked that day?

8 MS. MARTIROSYAN: Vague.

9 THE WITNESS: I don't remember.

10 BY MR. BADKOUBEHI:

11 Q Okay. Now, with that in mind, you filed a lawsuit on
12 May 6, 2012 is that -- 2014; is that correct?

13 A I don't know.

14 Q Have you ever seen a copy of that lawsuit?

15 A I don't recall it.

16 Q I'm sorry?

17 A I don't remember.

18 Q Have you ever seen a copy of the lawsuit?

19 MS. MARTIROSYAN: Asked and answered.

20 THE WITNESS: I don't remember.

21 BY MR. BADKOUBEHI:

22 Q Do you remember ever reviewing a copy of that lawsuit?

23 MS. MARTIROSYAN: Calls for a legal -- calls for an
24 attorney-client privilege. Go ahead.

25 THE WITNESS: I don't remember.

1 A Repeat your question.

2 Q Do you know whether or not the Los Angeles Superior
3 Court has a court website?

4 A Yes.

5 Q Okay. Have you ever gone on that court website?

6 A No.

7 Q Have you ever reviewed a copy of your complaint on the
8 court website?

9 A No.

10 Q Okay. And you don't recall whether you've seen your
11 lawsuit before; is that correct.

12 MS. MARTIROSYAN: Vague.

13 THE WITNESS: I don't recall -- I don't remember.

14 BY MR. BADKOUBEHI:

15 Q You don't remember. Okay. Did you ever discuss the
16 content of your lawsuit with any other co-defendant prior to
17 the -- prior to your attorneys being retained?

18 MS. MARTIROSYAN: Vague. Lacks foundation and also
19 misstates the record.

20 BY MR. BADKOUBEHI:

21 Q Answer the question.

22 A Repeat the question.

23 Q Did you discuss the content of your lawsuit -- the
24 facts of your lawsuit with your co-plaintiffs prior to you being
25 retained -- that you retaining Abrolat Law?

1 MS. MARTIROSYAN: Vague.

2 THE WITNESS: No.

3 BY MR. BADKOUBEHI:

4 Q Okay. Have you ever discussed the content of your
5 lawsuit with your co-plaintiff in this case absence presence of
6 your counsel?

7 MS. MARTIROSYAN: She's also answered that. Asked and
8 answered.

9 BY MR. BADKOUBEHI:

10 Q You may answer one last time and we can move on.

11 A No.

12 Q Did they discuss the facts in the case with you prior
13 to you being retained by Abrolat Law?

14 MS. MARTIROSYAN: Vague and ambiguous. Calls for
15 speculation -- calls for speculation.

16 THE WITNESS: No.

17 BY MR. BADKOUBEHI:

18 Q Okay. Never?

19 A No.

20 Q Okay. All right. So it's my understanding that you
21 filed your lawsuit on May 6, 2014. So my question is about,
22 from this point on, is going to be from the four-year window,
23 starting May 6th, 2010 to today. Do you understand that?

24 A Yes.

25 Q I'm not asking to answer anything prior to that date

1 A Once it gave you the -- the digits on top -- the
2 number.

3 Q Okay. And then you would -- now, would you do the same
4 thing when you were leaving your place of work?

5 A Yes.

6 Q Okay. And you would enter your pin and then place your
7 hand; is that correct?

8 MS. MARTIROSYAN: Misstates prior testimony.

9 THE WITNESS: Yes.

10 BY MR. BADKOUBEHI:

11 Q Okay. And sitting here today, you don't recall what
12 were your working hours at Academy on or about May 6th, 2010; is
13 that correct.

14 MS. MARTIROSYAN: Assumes facts that are not in evidence.

15 THE WITNESS: That's correct. I don't remember.

16 BY MR. BADKOUBEHI:

17 Q Okay. Did you have any problem with that machine that
18 you know of?

19 MS. MARTIROSYAN: Vague.

20 THE WITNESS: Yes.

21 BY MR. BADKOUBEHI:

22 Q Okay. When?

23 A Almost every two weeks.

24 Q What was the problem?

25 A I would have nails on.

1 MR. BADKOUBEHI: Okay. That's fine.

2 BY MR. BADKOUBEHI:

3 Q If you're going to give me an estimate and I know I'm
4 not -- an estimate is not the exact amount. I'm not going to
5 hold you to it.

6 Give me an estimate. What percentage of time you would
7 take your lunch break? What percentage of time you would not
8 take your lunch break?

9 MS. MARTIROSYAN: Same objection.

10 BY MR. BADKOUBEHI:

11 Q During that two year window --

12 MS. MARTIROSYAN: Same objections and it also assumes facts
13 that are not in evidence.

14 THE WITNESS: Estimate?

15 BY MR. BADKOUBEHI:

16 Q Yes. That's all I'm asking.

17 A I'm not good at estimates. But I could say 80 percent
18 I took it; 20 percent I didn't take it.

19 Q All right. Now, the 80 per -- the 20 percent that you
20 did not take it, do you remember what time period was it -- in
21 other words, was it a certain time period within that two year
22 window that you might have been busy and you would not take a
23 lunch break? Certain months? Certain times of the year?

24 MS. MARTIROSYAN: Vague. Compound. Overbroad. And
25 potential calls for a conclusion -- legal conclusion and you're

V. PENNA

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

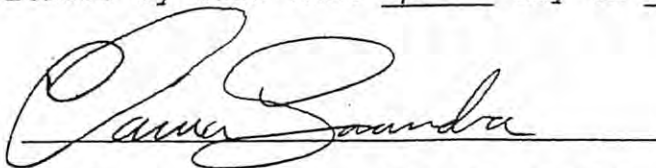
I, VANNA SAAVEDRA, CSR No. 14030, Certified
Shorthand Reporter for the State of California, do hereby
certify;

That the deponent named in the foregoing deposition,
prior to being examined, was by me first duly sworn to
testify to the truth, the whole truth, and nothing but
the truth;

That said deposition was taken before me at the time
and place therein stated and was thereafter transcribed
into print under my direction and supervision, and I
hereby certify the foregoing deposition is a full, true,
and correct transcript of my shorthand notes so taken.

I further certify that I am not of counsel nor
attorney for either of the parties hereto or in any way
interested in the event of this case and that I am not
related to either of the parties hereto.

Witness my hand this 15th day of October, 2015



Vanna Saavedra, CSR No. 14030

**Excerpted from Deposition of:
Jessica Castillo
October 7, 2015**

1 Q Okay. All right. Did my client ever ask you to punch
2 in or punch out and then work after?

3 MS. MARTIROSYAN: Vague. Calls for legal conclusion.
4 Overbroad. You can answer.

5 THE WITNESS: No.

6 BY MR. BADKOUBEHI:

7 Q Thank you. And you testified earlier that the machines
8 were pretty accurate except seldomly from time to time?

9 A Correct.

10 Q So on what basis right now were you able to pull those
11 aside.

12 MS. MARTIROSYAN: Same objections.

13 THE WITNESS: Again, because of the hours showing under
14 regular.

15 BY MR. BADKOUBEHI:

16 Q Okay. But you had no issues with the overtime pay
17 because of your regular hours.

18 MS. MARTIROSYAN: Misstates prior testimony. Vague and
19 ambiguous. Calls for legal conclusion.

20 THE WITNESS: Yes.

21 BY MR. BADKOUBEHI:

22 Q Okay. So you had no issues with the overtime?

23 MS. MARTIROSYAN: Misstates prior testimony. Overbroad
24 vague and ambiguous.

25 THE WITNESS: I had an issue not being paid my full amount

1 THE WITNESS: That's correct.

2 BY MR. BADKOUBEHI:

3 Q Okay. So with the exception of that there was no other
4 gas reimbursement issue was there?

5 MS. MARTIROSYAN: Misstates prior testimony. Assumes facts
6 that are not evidence. Vague. Overbroad. Calls for legal
7 conclusion.

8 THE WITNESS: I would still go to the bank to get change
9 for the office.

10 BY MR. BADKOUBEHI:

11 Q Okay. And how often would you do that?

12 MS. MARTIROSYAN: Overbroad.

13 BY MR. BADKOUBEHI:

14 Q During the time period of 2010 until 2012?

15 A Once or twice a week.

16 Q Okay. And how close was the bank?

17 A About two miles, approximately.

18 Q Approximately. Okay. And you do it once or twice a
19 week; is that correct?

20 A Yes.

21 Q And you were never reimbursed for your gas; is that
22 correct?

23 A That's correct.

24 Q Did you ever submit a bill or invoice for your gas to
25 my client?

1 A No.

2 Q Did you ever tell him that you -- you need to get
3 reimbursed for the gas?

4 A No.

5 Q Okay.

6 MS. MARTIROSYAN: Belated calls for legal conclusion.

7 BY MR. BADKOUBEHI:

8 Q Did you ever tell him that you want to get
9 reimbursement for your pens?

10 MS. MARTIROSYAN: Same objection.

11 THE WITNESS: No.

12 BY MR. BADKOUBEHI:

13 Q What was the average cost you spend on pens on a
14 monthly basis during the time period of 2010 to 2012?

15 A A couple dollars a month.

16 Q Okay. All right. So we covered overtime. We covered
17 the breaks. We've covered the lunch, we've talked
18 reimbursement. All right.

19 Now let me do this --

20 MS. MARTIROSYAN: Is this a great time to take a break?

21 MR. BADKOUBEHI: Of course. Let the record reelect that
22 we're taking a break.

23 MS. MARTIROSYAN: Let's go off the record.

24 (Recession taken from 11:18 a.m. to 11:25 a.m.)

25 (All parties left the conference room.)

1 stubs given to responding party to try -- and plaintiff in
2 punitive class members to try to cover up their numerous and
3 egregious wage and hour violation".

4 Why do you mean by that?

5 MS. MARTIROSYAN: Calls for legal conclusion. Overbroad
6 vague and ambiguous. Compound. Lacks any foundation and,
7 counsel, we are going past 1:00 now.

8 THE WITNESS: We didn't have -- we are ourselves didn't
9 have access to our clock in and clock out so --

10 BY MR. BADKOUBEHI:

11 Q Is that -- I'm sorry. I apologize.

12 A Yeah.

13 Q Is that the only evidence that you have that defendants
14 falsified the pay stubs?

15 MS. MARTIROSYAN: All prior objections.

16 THE WITNESS: As of right now, yes.

17 BY MR. BADKOUBEHI:

18 Q So as of sitting here, when you verified these
19 responses you had no personal knowledge; is that correct?

20 MS. MARTIROSYAN: Misstates prior testimony. Vague and
21 ambiguous. Calls for a legal conclusion.

22 THE WITNESS: I don't understand that question.

23 BY MR. BADKOUBEHI:

24 Q When you verified these responses, you had no
25 information -- any evidence showing that the defendant falsifies

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CERTIFIED COPY CERTIFICATION

I, Vanna Saavedra, Certified Shorthand Reporter, No. 14030, hereby certify that the attached deposition is a correct and certified copy of the deposition of the deponent named in the foregoing deposition, taken before me at the time and place therein stated.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____ this ____ day of _____.

Vanna Saavedra, CSR No. 14030

**Excerpted from Deposition of:
Jacqueline Chamorro
October 15, 2015**

1 whether there are any documents to be produced?

2 MS. MARTIROSYAN: Same objection.

3 THE WITNESS: I don't recall.

4 BY MR. BADKOUBEHI:

5 Q Did you look inside your -- do you have a place -- a
6 home office?

7 A No.

8 Q Okay. Where did you keep your documents at home?

9 A Wherever there's space.

10 Q Now, to your knowledge, where is there space at your
11 house?

12 A Everywhere.

13 Q Okay. Did you look everywhere to find any documents
14 that are responsive to today's production of documents?

15 MS. MARTIROSYAN: Same objections.

16 THE WITNESS: I don't recall.

17 BY MR. BADKOUBEHI:

18 Q Okay. All right. So you don't recall having doing
19 any -- any effort to make sure that you have all the documents
20 produced today; is that correct?

21 MS. MARTIROSYAN: Misstates prior testimony.

22 THE WITNESS: I don't recall.

23 BY MR. BADKOUBEHI:

24 Q You don't recall. Fine. And you've never seen a
25 notice of deposition; is that correct?

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REPORTER'S CERTIFICATE

I, the undersigned Certified Shorthand Reporter holding a valid and current license issued by the State of California, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed under my direction and supervision.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

The dismantling, unsealing, or unbinding of the original transcript will render the Reporter's certificate null and void.

IN WITNESS WHEREOF, I have subscribed my name on this date: October 23, 2015.



Certified Shorthand Reporter

**Excerpted from Deposition of:
Maria Rodriguez
October 20, 2015**

1 Q Sure. Has there been -- let me take the -- reverse the
2 question. Has there been any time on your pay stub that you
3 notice your rate of pay was not the rate that you should have
4 been getting paid?

5 MS. MARTIROSYAN: Same objections.

6 THE WITNESS: No.

7 BY MR. BADKOUBEHI:

8 Q Okay. Good. With that in mind, whenever you've
9 received -- again our question is May 2010 until today -- would
10 you receive a copy of your time sheet every time you received
11 your pay stub?

12 MS. MARTIROSYAN: Overbroad. Lacks foundation. Compound.
13 Vague. Calls for speculation.

14 THE WITNESS: Yes.

15 BY MR. BADKOUBEHI:

16 Q Okay. And that was always the case?

17 MS. MARTIROSYAN: Same objection. Now asked and answered.

18 THE WITNESS: I don't recall if it's 2010.

19 BY MR. BADKOUBEHI:

20 Q Okay. 2010. One time? Or two times? Or how many
21 times that it was not attached?

22 A I don't think we were receiving --

23 Q I'm sorry?

24 A I don't think I was receiving them by 2010.

25 Q Okay. And did you ask for them during the year 2010?

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CERTIFIED COPY CERTIFICATION

I, Vanna Saavedra, Certified Shorthand Reporter, No. 14030, hereby certify that the attached deposition is a correct and certified copy of the deposition of the deponent named in the foregoing deposition, taken before me at the time and place therein stated.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____ this _____ day of _____.



Vanna Saavedra, CSR No. 14030

**Excerpted from Deposition of:
Guadalupe Cabrera
October 7, 2015**

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

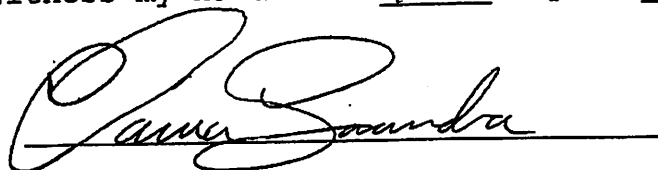
I, VANNA SAAVEDRA, CSR No. 14030, Certified
Shorthand Reporter for the State of California, do hereby
certify;

That the deponent named in the foregoing deposition,
prior to being examined, was by me first duly sworn to
testify to the truth, the whole truth, and nothing but
the truth;

That said deposition was taken before me at the time
and place therein stated and was thereafter transcribed
into print under my direction and supervision, and I
hereby certify the foregoing deposition is a full, true,
and correct transcript of my shorthand notes so taken.

I further certify that I am not of counsel nor
attorney for either of the parties hereto or in any way
interested in the event of this case and that I am not
related to either of the parties hereto.

Witness my hand this 19th day of October, 2015



Vanna Saavedra, CSR No. 14030

1 THE WITNESS: Not all the time.

2 BY MR. BADKOUBEHI:

3 Q Okay. But you did take ten minute breaks?

4 MS. MARTIROSYAN: Same objection and misstates prior
5 testimony.

6 THE WITNESS: Not all the time.

7 BY MR. BADKOUBEHI:

8 Q Okay. That's fine. When you said not all time, how
9 often you would not take them?

10 MS. MARTIROSYAN: Same objections.

11 THE WITNESS: I could probably say how many times I took
12 them in a week.

13 Q Perhaps give me an estimate during that time period --
14 give my a percentage of time that you did not take your rest
15 break.

16 MS. MARTIROSYAN: All prior objections.

17 THE WITNESS: Approximately 80 percent of time, I wouldn't
18 take it.

19 BY MR. BADKOUBEHI:

20 Q Okay. Were you prohibited from taking them?

21 MS. MARTIROSYAN: Same objection and lacks foundation.
22 Vague as to "prohibited" also.

23 THE WITNESS: What do you mean by prohibited?

24 BY MR. BADKOUBEHI:

25 Q Did someone tell you you cannot take them?

1 Q We're going to look at your response to 9.1 and now can
2 you read what is the request 9.1.

3 A "Are there any other damages that you attribute to the
4 incident. If so, for each item of damage state."

5 BY MR. BADKOUBEHI:

6 Q Okay. Under response to 9.1A, can you look in your
7 record and see what the other damages are?

8 MS. MARTIROSYAN: I'm going to -- go ahead look at it.
9 There's no question pending.

10 BY MR. BADKOUBEHI:

11 Q Okay. Now question is what do you mean by punitive
12 damages?

13 MS. MARTIROSYAN: Calls for legal conclusion. Vague and
14 ambiguous. Overbroad. And if you can answer, go ahead.

15 THE WITNESS: What is the meaning of punitive?

16 BY MR. BADKOUBEHI:

17 Q I'm sorry? Either you do or you don't?

18 MS. MARTIROSYAN: Same objections.

19 THE WITNESS: What's the question again?

20 BY MR. BADKOUBEHI:

21 Q What do you mean by punitive damages?

22 MS. MARTIROSYAN: Same objections.

23 THE WITNESS: I'm sorry. I'm not sure.

24 BY MR. BADKOUBEHI:

25 Q Okay. What about loss of use of property? What do you

1 BY MR. BADKOUBEHI:

2 Q There's only one question: What do you mean by "loss
3 of use of property"? I'm trying to assess your damage?

4 MS. MARTIROSYAN: Same objections assessments of damages
5 especially in this case will be expert testimony.

6 THE WITNESS: I'm not sure I know.

7 BY MR. BADKOUBEHI:

8 Q I'm sorry?

9 A I'm not sure right now.

10 Q So you can't sitting here today think of any loss of
11 property that you're claiming; is that correct?

12 MS. MARTIROSYAN: Same objections and also misstates prior
13 testimony.

14 THE WITNESS: Not at this time, no.

15 BY MR. BADKOUBEHI:

16 Q Thank you. If you go to line 13 under the same
17 response it says "Responding parties has suffered as result of
18 defendant's intentional illegal conduct." What do you mean by
19 that?

20 MS. MARTIROSYAN: The document speaks for itself. Vague
21 and ambiguous. Overbroad. Calls for a legal conclusion and as
22 I stated Nancy Abrolat is the one who drafted the document but
23 you can answer. Also calls for an expert opinion.

24 THE WITNESS: I don't understand it.

25 BY MR. BADKOUBEHI:

1 Q Okay. Now, if you were to look at form interrogatory
2 12.1 it's requested for name of all the witnesses in this case.

3 BY MR. BADKOUBEHI:

4 Q Okay. Must be over 30 names there. How did you come
5 up with those names?

6 MS. MARTIROSYAN: Vague and ambiguous. She did not draft
7 the document. Calls for legal conclusion. Overbroad. Lacks
8 foundation. Irrelevant line of questioning meant to waste time.
9 You can answer if you can of course.

10 THE WITNESS: I don't know.

11 BY MR. BADKOUBEHI:

12 Q But you did review that document; is that correct?

13 A Yes.

14 Q And you verified those responses there; correct?

15 A Yes.

16 Q And you have no idea who the relations of those people
17 are in reference to 12.1; correct?^ checkers

18 MS. MARTIROSYAN: Misstates prior testimony. Vague and
19 ambiguous. And if responses specifically claim attorney-client
20 privilege, work product, privilege, ambiguity objection for the
21 record. Therefore if you can answer, absent those objections of
22 how you came up with this list, go right ahead. Otherwise
23 I'm -- if you received this information from your counsel, I'm
24 instruct you not to answer. Go ahead.

25 THE WITNESS: I can't answer.

Excerpted from Deposition of:

Mayra Martin

October 27, 2015

1 Q And who was in that little group?

2 A I don't recall their names. They weren't there too
3 long.

4 Q So let's assume in a week, you worked from 10:00 to
5 7:00 and that's nine hours a day eight and a half hours minus
6 the lunch; correct?

7 A Correct.

8 Q On an eight and a half hour cycle you're entitled to
9 half an hour of overtime; correct?

10 A Correct.

11 Q And you worked six days a week on that schedule?

12 A Saturday was 10:00 to 6:00.

13 Q Okay. And Saturdays were also considered overtime;
14 correct?

15 A Yes, they should have, yes.

16 Q Okay. So Monday through Friday we have five half an
17 hour overtime; correct?

18 MS. MARTIROSYAN: Vague.

19 THE WITNESS: It depends.

20 BY MR. BADKOUBEHI:

21 Q On a regular schedule -- let's talk about just on a
22 regular schedule based on the schedule that you had 10:00 to
23 7:00 just on that schedule alone right there, you're entitled to
24 five half an hour overtime; correct?

25 MS. MARTIROSYAN: Lacks foundation and also legal question.

1 The 10:00 to 7:00 that's an eight and a half hours; right? So
2 in that schedule week, if you happen to have a one day, okay, a
3 one day of let's say a holiday break, your overtime that
4 particular week would only be two hours; correct?

5 MS. MARTIROSYAN: Calls for an improper hypothetical.
6 Calls for a legal conclusion.

7 THE WITNESS: I don't know.

8 BY MR. BADKOUBEHI:

9 Q Okay. My question basically being in weeks that
10 there -- in a pay cycle in pay cycle, holidays or sick days or
11 vacation days, okay, any of these, and as a result of that
12 day -- in that week, were you entitled to overtime if your hours
13 including that day went beyond?

14 MS. MARTIROSYAN: Calls --

15 BY MR. BADKOUBEHI:

16 Q Your eight hours for two weeks?

17 MS. MARTIROSYAN: Calls for improper hypothetical. Vague.

18 THE WITNESS: Yes.

19 BY MR. BADKOUBEHI:

20 Q Okay. So you feel -- so you think that regardless of
21 whether the time is worked hours amounting to certain amount of
22 hours or if it also includes a vacation or break time --
23 vacation or sick or vacation or sick at the time that would
24 amount to the same amount, it's still overtime; correct?

25 MS. MARTIROSYAN: Calls for a legal conclusion. Improper

1 hypothetical. Vague and ambiguous.

2 THE WITNESS: Any -- anything over eight hours daily --

3 BY MR. BADKOUBEHI:

4 Q Okay --

5 A -- should be paid overtime.

6 Q I'm okay with that. You're absolutely correct.

7 Anything beyond eight hours a day you're entitled to overtime.

8 My question is when you have an accumulation of an hours in a

9 pay cycle -- which is beyond the 40 hour thing that we were

10 discussing -- is it your understanding that that is based upon

11 hours actually worked? Or does it also include hours that were

12 part of vacation time or sick time?

13 MS. MARTIROSYAN: Same objections and compound.

14 THE WITNESS: Include.

15 BY MR. BADKOUBEHI:

16 Q I'm sorry?

17 A Include them.

18 Q Okay. So -- regardless of the fact that you worked or

19 not on the days that there was vacation that should accumulate

20 to give you the overtime?

21 MS. MARTIROSYAN: Same objection. Now asked and answered.

22 THE WITNESS: Yes.

23 BY MR. BADKOUBEHI:

24 Q Okay. So that's your understanding. Now, based upon

25 that understanding -- strike that.

1 it belonged to vacation time, are you still entitled to overtime
2 for anything beyond 80 hours in that pay cycle?

3 MS. MARTIROSYAN: Improper hypothetical. Calls for legal
4 conclusion.

5 THE WITNESS: If it's within eight hours overtime the other
6 day that I was not on vacation or sick days, yes.

7 BY MR. BADKOUBEHI:

8 Q I'm sorry?

9 A If it's -- if it goes to eight hours or more on the
10 days that are not sick day or holidays, yes.

11 Q Okay. So if I were to ask you -- if -- with that eight
12 hours of holiday, your hours would amount to 85, would that
13 still entitle you in your opinion, to five hours of overtime?

14 MS. MARTIROSYAN: All prior objections.

15 THE WITNESS: Yes.

16 BY MR. BADKOUBEHI:

17 Q Okay. So it's your understanding that it's not really
18 hours actually worked that would entitle you to over -- entitle
19 you to overtime but hours which may have included you getting
20 paid for vacation time or sick time; is that correct?

21 MS. MARTIROSYAN: Prior objections. Compound. Vague.
22 Asked and answered.

23 THE WITNESS: No.

24 BY MR. BADKOUBEHI:

25 Q I'm sorry?

1 A No.

2 Q No what?

3 MS. MARTIROSYAN: That's not a question. So vague and
4 ambiguous.

5 BY MR. BADKOUBEHI:

6 Q What do you mean by "no"?

7 A No. I'm not stating that I need to get paid overtime
8 on the day that I was -- that I was getting holiday pay or sick
9 day.

10 Q Okay. But my question being if that holiday -- the
11 eight hours of that holiday makes the accumulation of the number
12 beyond the 80 hours in a pay cycle, anything beyond the eight
13 hours in a period of cycle, do you believe that you're entitled
14 to a overtime?

15 MS. MARTIROSYAN: Calls for a legal conclusion and improper
16 hypothetical.

17 THE WITNESS: Yes.

18 BY MR. BADKOUBEHI:

19 Q Okay. That's the question that I had. Okay. And is
20 that what you were complaining to Angie about?

21 MS. MARTIROSYAN: Vague.

22 THE WITNESS: No.

23 BY MR. BADKOUBEHI:

24 Q Okay. Now, do you recall to the best of your
25 recollection that during the time period of 2010 until 2013, the

1
2
3 REPORTER'S CERTIFICATE
4

5 I, the undersigned Certified Shorthand Reporter
6 holding a valid and current license issued by the State of
7 California, do hereby certify:
8

9 That said proceedings were taken down by me in
10 shorthand at the time and place therein set forth and
11 thereafter transcribed under my direction and supervision.
12

13 I further certify that I am neither counsel for nor
14 related to any party to said action, nor in any way
15 interested in the outcome thereof.

16 The dismantling, unsealing, or unbinding of the
17 original transcript will render the Reporter's certificate
18 null and void.

19 IN WITNESS WHEREOF, I have subscribed my name on this
20 date: November 2, 2015
21

22
23 

24 Certified Shorthand Reporter
25

1 **PROOF OF SERVICE**

2 I declare that I am employed in the County of Los Angeles, California. My business address is
3 10866 Wilshire Blvd., Suite 400, Los Angeles, CA 90024. I am over the age of eighteen years and not a
4 party to the within cause.

5 On **December 27, 2016**, I served the foregoing document described as **DEFENDANTS**
6 **OPPOSITION TO PLAINTIFFS MOTION FOR CLASS CERTIFICATION** by placing true
7 copies thereof enclosed in a sealed envelope addressed as follows:

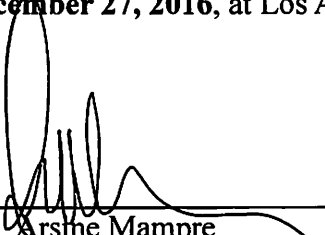
8 **Attorney for Plaintiffs and Class Members**

9 Nancy L. Abrolat, Esq.
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11 840 Apollo St., Ste. 300
12 El Segundo, CA 90245
13 Fx: (310) 615-0009
14 Email: nancy@AbrolatLaw.com
15 Email: ed@abrolatlaw.com

16 **By CASE ANYWHERE.** These documents were electronically transmitted to CASE
17 ANYWHERE for electronic service on the parties listed above.

18 **By U.S. Mail.** I am "readily familiar" with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice, it would be deposited with U.S. postal service
20 on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary
21 course of business. I am aware that on motion of the party served, service is presumed invalid if
22 postal cancellation date or postage meter date is more than one day after date of deposit for
23 mailing in affidavit.

24 I declare under penalty of perjury under the laws of the State of California that the above is true
25 and correct and that this proof of service was executed on **December 27, 2016**, at Los Angeles,
26 California.

27
28

Arsine Mampre