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

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

12 GABRIELA ANGEL, GUADALUPE  
13 CABRERA, JAQUELINE CHAMORRO,  
14 SAMANTHA HERNANDEZ, MAYRA  
15 MARTIN, VIVIAN PENA, EMPERATRIZ  
16 RAMIREZ, MARIA RODRIGUEZ,  
17 ROSARIO TORRES, JESSICA CASTILLO,  
18 individually and on behalf of all  
19 employees/former employees similarly  
20 situated,

21 Plaintiff,

22 vs.

23 ACADEMY AUTOMOBILE INSURANCE  
24 SERVICES, INC., a corporation, AGENDA  
25 INSURANCE SERVICES, INC., a  
26 corporation, ALICO INSURANCE, INC., a  
27 corporation, ADELCO INSURANCE  
28 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. BC 545021

[Hon. Elihu M. Berle, Presiding]

[CLASS ACTION]

**CORRECTED PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR CLASS  
CERTIFICATION; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
THEREOF**

Date: February 23, 2017  
Time: 2:00p.m.  
Department: 323

Complaint File: May 8, 2014  
Jury Trial Demanded

ABROLAT LAW PC  
ATTORNEYS AT LAW  
EL SEGUNDO

**TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on January 25, 2017 at 11:00 a.m. in Department 323 of the Los Angeles Superior Court located at 600 South Commonwealth Ave, Los Angeles, California 90012, Honorable Judge Elihu M. Berle, Presiding, Plaintiffs Gabriela Angel, Guadalupe Cabrera, Jaqueline Chamorro, Samantha Hernandez, Mayra Martin, Vivian Pena, Emperatriz Ramirez, Maria Rodriguez, Rosario Torres, and Jessica Castillo will move the Court for an order certifying the instant action to proceed as a class action pursuant to California Code of Civil Procedure section 382.

The Motion is based on the following grounds:

- (1) The proposed class is ascertainable;
- (2) The proposed class is sufficiently numerous to warrant prosecution as a class action;
- (3) The proposed class members have an adequate community of interest to warrant prosecution as a class action;
- (4) The claims of the class representative plaintiffs are typical of the claims of the other class members;
- (5) All representative plaintiffs and their counsel are “adequate” for purposes of class certification; and
- (6) There are factual and legal issues that are common to the class as a whole and/or the specified sub-classes, sufficient in importance so that their adjudication on a class basis is a superior means of proceeding in this instance both for the litigants and the Court.

The Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities and the Declarations of Nancy L. Abrolat, Nancy L. Abrolat, Mayra Martin, Amelia Lopez, Emperatriz Ramirez, Juliana Rivera, Delia Ramirez, Marlene Mendoza, Jacqueline Matamoros, Silvia Noemi Herrera, Mayra Gonzalez, Jessica Castillo, Jacqueline Chamorro, Guadalupe Cabrera, Rosario Torres, Samantha Hernandez, Gabriela Angel, Ariana Herrera, Cynthia Martinez, Maria Rodriguez, Teresa Vargas, Sylvia Jimenez, Vivian Pena as well as the exhibits attached thereto, the Court’s file in this matter, and such further evidence and argument as may be heard by the Court.

In the alternative, should the Court not grant class certification on all legal claims presented by this Motion, Plaintiffs hereby move the Court to allow leave to amend the Complaint to bring the

1 members of the putative Class who have submitted declarations in support of this Motion, Amelia  
2 Lopez, Juliana Rivera, Delia Ramirez, Marlene Mendoza, Jacqueline Matamoros, Silvia Noemi  
3 Herrera, Mayra Gonzalez, Ariana Herrera, Cynthia Martinez, Teresa Vargas, Sylvia Jimenez as  
4 additional plaintiffs.

5 DATED: January 25, 2017

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6  
7  
8 By: 

Nancy L. Abrolat

Shahane A. Martirosyan

Attorneys for Plaintiffs

Gabriela Angel, Guadalupe Cabrera, Jessica Castillo,

Jacqueline Chamorro, Samantha Hernandez,

Mayra Martin, Vivian Pena, Emperatriz Ramirez,

Maria Rodriguez, Rosario Torres

and on behalf of all employees/former employees  
similarly situated

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. Introduction

3 This case arises out of Defendants’ blatant class wide violations of California’s Labor laws at  
4 Academy Automobile Insurance Services, Inc., Agenda Insurance Services, Inc., Alico Insurance, Inc.,  
5 Adelco Insurance Services, Inc., dba Top Value Insurance Services, Magdy Tawil, Adel Tawil  
6 (collectively, “Academy” or “Defendants”). The proposed class and subclasses consist of hourly  
7 customer service/ sales representatives (“CSRs”) who promoted, sold, and provided customer service to  
8 customers purchasing individual and business automobile insurance policies from Academy, answered  
9 the phones, handled accounts receivable/payable, and other clerical work.

10 Common proof supports Plaintiffs’ and putative class’s claims. The declarations and testimony  
11 of 23 employees, former and current, concerning Defendants’ common wage and hour policies and  
12 practices demonstrates that Academy uniformly violated California laws related to 1) overtime; 2) meal  
13 and rest breaks; 3) failing to reimburse business expenses; and 4) charging for shortages. As a result of  
14 these violations, Academy is also liable for inaccurate paystub and waiting time penalties.

15 This case satisfies all of the requirements for class certification set forth by the California  
16 Supreme Court’s decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004.  
17 Common issues of law and fact clearly predominate. Academy subjected Plaintiffs and the Class to  
18 common policies and practices regarding overtime worked on-the-clock on Saturdays and off-the-clock  
19 driving for work, meal and rest break violations, as well as failure of Defendants to reimburse business  
20 expenses and mileage to the Plaintiffs and the putative class members (collectively, the “Class”) and  
21 charging Plaintiffs and the class for cash shortages. This common liability, and the common evidence  
22 to support Plaintiffs’ claims, render this case particularly suitable for class certification under *Brinker*.  
23 Accordingly, Plaintiffs’ motion for class certification should be granted.

24 II. Factual And Procedural Background

25 California Code of Civil Procedure section 382 states:

26 [W]hen the question is one of a common or general interest, of many persons, ow when the  
27 parties are numerous, and it is impractical to bring them all before the court, one or more may  
28 use or defend for the benefit of all.

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1 The proposed Class fits comfortably within the statutory definition and decisional perimeters of  
2 a class action. Academy admitted that wage and hour policies are uniform for all employees in all four  
3 named corporate Academy offices.<sup>1</sup> These policies are the same for all hourly CSRs in all of the  
4 offices. Academy's corporate policies are set at their Hawthorne office and do not vary between the  
5 various sales offices. Rather, Academy uniformly applies the same policies and practices of wage and  
6 hour violations to all employees, regardless of the sale offices that they work out of.

7 Plaintiffs and the Class are current and former non-exempt employees who worked as customer  
8 service representatives for Academy's retail insurance services business. They promoted, sold, and  
9 provided customer services to Academy's customers purchasing individual and business automobile  
10 insurance policies, answered the telephone, handled accounts receivable/payable, and other clerical  
11 work. There are over 131 class members.<sup>2</sup> Plaintiffs originally filed this action on May 8, 2014.

12 **A. Defendants Have Admitted That Wage And Hour Policies are Uniform For All**  
13 **Employees In All Four Named Corporate Defendants' Offices.**

14 Defendants are Academy Automobile Insurance Services, Inc., Agenda Insurance Services,  
15 Inc., Alico Insurance, Inc., and Adelco Insurance Services, Inc. dba Top Value Insurance Services. All  
16 of these entities are ran and operated by Mike Tawil, who is also the President for all of the  
17 companies.<sup>3</sup> They are separate businesses in name only. All of the employees for these four business  
18 units were hired by Mike Tawil at the Academy's Hawthorne office.<sup>4</sup> All employees went through the  
19 same orientation: they were trained at the Hawthorne office, then either stayed in the Hawthorne office  
20 or were transferred to Academy various sales offices upon completion of the orientation.<sup>5</sup>

21 <sup>1</sup> Abrolat Decl. ¶ 3, Ex. A (*See e.g.* Cabrera Depo. 187:10-189:19; 191:8-192:22; 198:9-200:4; 209:3-15; 215:19-217:8;  
222:2-19; 226:21-227:4) Abrolat Decl. ¶ 4, Ex. B (Tawil Depo. 156:8-15; 156:23-157:10; 178:13-179:22; 200:8-25;  
201:15-25; 231:14-233:21; 235:9-25)

22 <sup>2</sup> Abrolat Decl. ¶ 2.

23 <sup>3</sup> Abrolat Decl. ¶ 4, Ex. B (Tawil Depo. 8:16-19); Martin Decl. ¶ 3; Lopez Decl. ¶ 3; Manjarrez Decl. ¶ 3; Rivera Decl. ¶  
24 3; E. Ramirez Decl. ¶ 3; D. Ramirez Decl. ¶ 3; Mendoza Decl. ¶ 3; Matamoros Decl. ¶ 3; S. Herrera Decl. ¶ 3; Gonzalez  
Decl. ¶ 3; Castillo Decl. ¶ 3; Chamorro Decl. ¶ 3; Cabrera Decl. ¶ 3; Torres Decl. ¶ 3; Hernandez Decl. ¶ 3; Angel Decl. ¶  
3; Pena Decl. ¶ 3.

25 <sup>4</sup> Martin Decl. ¶ 4; Lopez Decl. ¶ 4; E. Ramirez Decl. ¶ 4; Manjarrez Decl. ¶ 4; D. Ramirez Decl. ¶ 4; Mendoza Decl. ¶ 4;  
26 Matamoros Decl. ¶ 4; S. Herrera Decl. ¶ 4; Castillo Decl. ¶ 3; Chamorro Decl. ¶ 4; Torres Decl. ¶ 4; Hernandez Decl. ¶  
4; Martinez Decl. ¶ 4; Vargas Decl. ¶ 4; Jimenez Decl. ¶ 4; Pena Decl. ¶ 4. (The only exception being Alico employees  
hired before Tawil bought the company).

27 <sup>5</sup> Martin Decl. ¶¶ 8-9; Lopez Decl. ¶¶ 8-9; E. Ramirez Decl. ¶¶ 8-9; Rivera Decl. ¶¶ 7-8; D. Ramirez Decl. ¶ 7.a; Mendoza  
28 Decl. ¶ 7.a-b; Matamoros Decl. ¶ 8; S. Herrera Decl. ¶¶ 8-9; Gonzalez Decl. ¶¶ 8-9; Chamorro Decl. ¶¶ 8-9; Cabrera Decl.  
¶¶ 7-8; Torres Decl. ¶¶ 8-9; Hernandez Decl. ¶¶ 8-9; Angel Decl. ¶¶ 10-11; A. Herrera Decl. ¶¶ 8-9; Martinez Decl. ¶ 6;  
Vargas Decl. ¶¶ 8-9; Jimenez Decl. ¶ 6; Pena Decl. ¶¶ 8-9.

1 The four companies have 16 sales offices located in Los Angeles and Orange County counties.  
2 Magdy Tawil manages and operates Academy's, Agenda's, and Alico's 14 locations out of Academy's  
3 Hawthorne, California office location. Similarly, Magdy Tawil and Adel Tawil manage and operate  
4 Adelco's two locations (in Los Angeles and Wilmington, California) out of the same Hawthorne  
5 corporate office. For example, all supplies, contracts with vendors and human resources issues were  
6 handled through the corporate Hawthorne office for all four companies and were handled by the same  
7 office personnel. All of the offices had the same policies for meal breaks,<sup>6</sup> rest breaks,<sup>7</sup> shortages,<sup>8</sup>  
8 collection of shortages,<sup>9</sup> and overtime compensation.<sup>10</sup>

9 Academy enforced its wage and hour policies and practices at these 16 offices through use of  
10 its extensive surveillance system. Academy has cameras, microphones and intercoms located  
11 throughout all 16 offices.<sup>11</sup> Academy managers at the Hawthorne corporate office were able to view  
12 the video and audio feeds from the 16 sales offices and were able to speak to the CSRs over the  
13 intercom.<sup>12</sup>

14 Academy also uses an "Admin" software that essentially gives the corporate office the ability  
15 to view the monitors of and control all of the computers used at the 16 sales offices remotely from the  
16 corporate office. Thus, Academy keeps all of the CSRs under constant surveillance, including being  
17 able to watch everything they do on the computer. Academy used this extensive surveillance system to  
18 basically require the CSRs to remain at their desk for the entire workday, other than a short, non-

19 \_\_\_\_\_  
20 <sup>6</sup> Abrolat Decl. ¶ 6, Exs. G-H.

<sup>7</sup> *Id.*

<sup>8</sup> Abrolat Decl. ¶ 6, Exs. I-J.

21 <sup>9</sup> Abrolat Decl. ¶ 6, Exs. K-MM; Martin Decl. ¶¶ 15.a-c; Lopez Decl. ¶14.a; E. Ramirez Decl. ¶14.a-b; Rivera Decl. ¶¶  
22 13.a-b; D. Ramirez Decl. ¶ 12.a-b; Mendoza Decl. ¶ 13.a-c; Matamoros Decl. ¶ 14a-b; S. Herrera Decl. ¶14.a-b;  
23 Gonzalez Decl. ¶¶14a-c; Castillo Decl. ¶¶ 12.a-e; Chamorro Decl. ¶ 14a-b; Cabrera Decl. ¶ 13; Torres Decl. ¶ 13;  
Hernandez Decl. ¶ 13; Angel Decl. ¶¶ 15.a-c; A. Herrera Decl. ¶13.a-d; Martinez Decl. ¶ 9; Rodriguez Decl. ¶ 12; Vargas  
Decl. ¶ 14; Jimenez Decl. ¶ 9; Pena Decl. ¶ 14.

24 <sup>10</sup> Abrolat Decl. ¶ 7, Exs. NN through WW; Abrolat Decl. ¶ 6, Exs. K-MM; Martin Decl. ¶ 16.a; Lopez Decl. ¶14.d; E.  
25 Ramirez Decl. ¶15.a; Rivera Decl. ¶ 14.a; D. Ramirez Decl. ¶ 13.a; Mendoza Decl. ¶ 14.a; Matamoros Decl. ¶ 15a; S.  
26 Herrera Decl. ¶15.a; Gonzalez Decl. ¶¶15a; Castillo Decl. ¶ 9a; Chamorro Decl. ¶ 15a; Cabrera Decl. ¶ 14.a; Torres Decl.  
27 ¶ 14.a; Hernandez Decl. ¶ 14.a; Angel Decl. ¶ 15.a; A. Herrera Decl. ¶14.a; Martinez Decl. ¶ 8.a; Vargas Decl. ¶ 15;  
Jimenez Decl. ¶ 8.a; Pena Decl. ¶ 15.

28 <sup>11</sup> Martin Decl. ¶ 11; Lopez Decl. ¶10; E. Ramirez Decl. ¶10; Rivera Decl. ¶ 9; D. Ramirez Decl. ¶ 8; Mendoza Decl. ¶ 9;  
Matamoros Decl. ¶ 10; S. Herrera Decl. ¶10; Gonzalez Decl. ¶ 10; Castillo Decl. ¶ 7; Chamorro Decl. ¶ 10; Cabrera  
Decl. ¶ 9; Torres Decl. ¶ 10; Hernandez Decl. ¶ 10; A. Herrera Decl. ¶9; Rodrigues Decl. ¶ 10; Vargas Decl. ¶ 10;  
Jimenez Decl. ¶ 16; Pena Decl. ¶ 10.

<sup>12</sup> *Id.*

1 compliant lunch break discussed below. Academy managers would watch CSRs in the 16 sales offices  
2 on the surveillance systems and scold the CSRs over the intercom when they saw that they were away  
3 from their desk, taking too long in the restroom or taking more than one restroom break.<sup>13</sup>

4 Academy treated Plaintiffs and the putative class as interchangeable employees for all of the  
5 Academy entities and office locations, including through their timesheets, earning statements,  
6 employment applications, tax documentations and other indicia of employment.<sup>14</sup>

### 7 **B. Defendants' Policies And Procedures Regarding Rest Breaks**

8 According to Academy's written rest break policy: "Managers and Supervisors are responsible  
9 for scheduling the time for employee rest breaks and should take into consideration the workload and  
10 the nature of the job performed. **Whenever necessary, the frequency and time periods may be**  
11 **changed.**"<sup>15</sup> (Emphasis added.) The rest break policy does not provide that the employees are entitled  
12 to rest breaks under California law. Instead, the rest break policy states that the management decides  
13 when and **if** an employee can take a rest break. The evidence provided demonstrates that Plaintiffs and  
14 Class Members were not provided with rest breaks during the duration of the class period.<sup>16</sup>

### 15 **C. Defendants' Policies And Procedures Regarding Meal Breaks**

16 Academy's meal break written policy, practices and procedures resulted in the CSRs being  
17 denied their uninterrupted 30-minute meal breaks within the first five hours of their shifts. As a result  
18 of Academy's motto: Breaks Only If Business Permits, Academy prohibited meal breaks unless there  
19 were no customers present or there was coverage, and management permitted them to take the break.

20 First, Academy's written meal break policy states: "It is the company policy for the employee  
21 to have a lunch break of 30 minutes only."<sup>17</sup> However, the meal break policy does not provide that  
22 employees are permitted to take their meal breaks before the fifth hour of work.<sup>18</sup> The earning

23 <sup>13</sup> *Id.*

24 <sup>14</sup> Martin Decl. ¶¶ 5-7; Lopez Decl. ¶¶ 5-7; E. Ramirez Decl. ¶¶ 5-7; Rivera Decl. ¶¶ 4-6; D. Ramirez Decl. ¶¶ 5-7;  
Mendoza Decl. ¶¶ 5-7; Matamoros Decl. ¶¶ 5-7; S. Herrera Decl. ¶¶ 5-7; Gonzalez Decl. ¶¶ 5-7; Chamorro Decl. ¶¶ 5-7;  
Cabrera Decl. ¶¶ 4-6; Torres Decl. ¶¶ 5-7; Hernandez Decl. ¶¶ 5-7; Angel Decl. ¶¶ 5-9; A. Herrera Decl. ¶¶ 4-6; Vargas  
Decl. ¶¶ 5-7; Pena Decl. ¶¶ 5-7.

25 <sup>15</sup> Abrolat Decl. ¶ 6, Exs. G-H.

26 <sup>16</sup> Martin Decl. ¶ 14; Lopez Decl. ¶ 13; E. Ramirez Decl. ¶ 13; Rivera Decl. ¶ 12; D. Ramirez Decl. ¶ 11; Mendoza Decl. ¶  
12; Matamoros Decl. ¶ 13; S. Herrera Decl. ¶ 13; Gonzalez Decl. ¶ 13; Castillo Decl. ¶ 8; Chamorro Decl. ¶ 13; Cabrera  
Decl. ¶ 12; Torres Decl. ¶ 12; Hernandez Decl. ¶ 12; Angel Decl. ¶ 14; A. Herrera Decl. ¶ 12; Martinez Decl. ¶ 12;  
Rodriguez Decl. ¶ 11; Vargas Decl. ¶ 13; Jimenez Decl. ¶ 8; Pena Decl. ¶ 13.

27 <sup>17</sup> Abrolat Decl. ¶ 6, Exs. G-H.

28 <sup>18</sup> *Id.*

1 statements for Plaintiffs demonstrates that employees did not take their meal breaks before the fifth  
2 hour of work.<sup>19</sup> Even when the CSRs were relieved for breaks, the breaks were interrupted if a  
3 customer come to or called the sales office or the flow of business otherwise required them to work.<sup>20</sup>

4 Academy' Meal/Rest Break policy does not provide guidelines for second meal break even  
5 though the Plaintiffs and the Class Members typically worked over 10 hours per day.<sup>21</sup> The Plaintiffs  
6 and the Class Members did not know that they were entitled to receive second meal breaks when they  
7 worked over 10 hours per day.<sup>22</sup> The Plaintiffs and the Class Members were not compensated for any  
8 meal breaks that they missed.<sup>23</sup> As a result of these policies, the CSRs' were routinely denied proper  
9 compensation for having had to work during their required meal breaks.

10 Statistics taken from the time clock records will readily reveal the violations and damages. For  
11 example, the clock in and out times show (1) meals breaks that were less than 30 minutes; (2) meal  
12 breaks taken after the fifth hour; and (3) no second meal break when the shift exceeded 10 hours.<sup>24</sup>

#### 13 **D. Academy' Policies And Procedures Regarding Shortages**

14 Academy' Policy for Cash Overages and Shortages explains:

15 Case overages and shortages occur when: "A) The incorrect change is given; B Mixing money  
16 between clients; C) Dishonesty; D) The incorrect payment amount is posted in the system."<sup>25</sup>

17 Academy policy on shortages is in writing and it states:

18 "It is your responsibility to cover any shortages on your daily report on the same day, before  
19 you deliver the report to the company."<sup>26</sup>

20 Plaintiffs and the Class did not know about this policy when they took the job at Academy.<sup>27</sup> Shortly  
21 after working there, Academy informed each Plaintiffs and the Class that they are responsible for

22 <sup>19</sup> Abrolat Decl. ¶ 7, Exs. NN through WW.

23 <sup>20</sup> Martin Decl. ¶¶ 9-10; Lopez Decl. ¶ 9; E. Ramirez Decl. ¶ 9; Rivera Decl. ¶ 8; D. Ramirez Decl. ¶¶ 11; Mendoza Decl.  
24 ¶¶ 7-8; Matamoros Decl. ¶¶ 8-9; S. Herrera Decl. ¶¶ 8-9; Gonzalez Decl. ¶¶ 8-9; Castillo Decl. ¶ 6; Chamorro Decl. ¶¶ 8-  
9; Cabrera Decl. ¶¶ 7-8; Torres Decl. ¶¶ 8-9; Hernandez Decl. ¶¶ 8-9; Angel Decl. ¶¶ 10-11; A. Herrera Decl. ¶¶ 7-8;  
Martinez Decl. ¶ 6; Rodriguez Decl. ¶¶ 7-9; Vargas Decl. ¶¶ 8-9; Jimenez Decl. ¶¶ 6-7; Pena Decl. ¶ 9.

25 <sup>20</sup> Abrolat Decl. ¶ 6, Exs. G-H.

26 <sup>21</sup> *Id.*

27 <sup>22</sup> *Supra* fn. 20.

28 <sup>23</sup> *Id.*

<sup>24</sup> Abrolat Decl. ¶¶ 7, Exs. NN through WW.

<sup>25</sup> *Supra* fns. 8-9.

<sup>26</sup> Abrolat Decl. ¶ 6, Ex. I.

<sup>27</sup> *Supra* fn. 4.



1 personally paying for cash shortages.<sup>28</sup> During the duration of their employment, Plaintiffs and the  
2 Class covered for the shortages between \$1 per day to hundreds of dollars in a day.<sup>29</sup> Academy forced  
3 Plaintiffs and the Class to either pay for the shortages with their personal cash or they deducted the  
4 cash shortages from their pay checks.<sup>30</sup> As a result of this unlawful practice, Plaintiffs and the Class  
5 are entitled to recover for the shortages that Academy illegally collected from them.

6 **E. Academy's Policies And Procedures Regarding Overtime**

7 There are two overtime claims at issue here. First, Academy did not properly compensate  
8 Plaintiffs and the Class for overtime work on Saturdays. Academy's practice was to only pay overtime  
9 on Saturday when the CSR had worked a full eight hours each day of the weekday (i.e., Monday  
10 through Friday, or five days), even if their total hours for the workweek exceeded 40.

11 For example, if a CSR worked over 40 hours during the workweek (such as 10 hours each day  
12 Monday through Thursday), but only 2 hours on Friday, then Academy's practice was to pay straight  
13 time for the first 6 hours worked on Saturday, (i.e., since the CSR only worked 2 hours on Friday, the  
14 CSR did not receive overtime until working an additional 6 hours on Saturday:  $2 + 6 = 8$  hours).

15 For however many hours less than eight that a CSR worked on any particular workweek day,  
16 Academy paid them straight time for the same number of hours that they worked on Saturday, even  
17 though they worked over 40 hours in total during the workweek.<sup>31</sup>

18 Second, the CSRs reported to work and clocked in at Hawthorne, received assignment to go to  
19 another office, clocked out at Hawthorne, drove to the other locations, and clocked back in there.<sup>32</sup>  
20 The CSRs were not compensated for the time driving from one location to another location.<sup>33</sup>

21 **F. Academy's Policies And Procedures Regarding Necessary Employee Expenditures**

22 Academy required the CSRs to drive for work without reimbursing their mileage expense and  
23 to purchase office supplies without being reimbursed.<sup>34</sup> First, Academy had the CSR report to work in

24 <sup>28</sup> *Supra* fns. 8-9.

25 <sup>29</sup> *Id.*

26 <sup>30</sup> *Id.*

27 <sup>31</sup> *Supra* fn. 10.

28 <sup>32</sup> Martin Decl. ¶ 13; Lopez Decl. ¶ 14.f; E. Ramirez Decl. ¶ 15.b; Rivera Decl. ¶ 14.b; D. Ramirez Decl. ¶ 13.b; Mendoza  
Decl. ¶ 14.b; Matamoros Decl. ¶ 15.b; S. Herrera Decl. ¶ 15.b-c; Gonzalez Decl. ¶ 15.b; Castillo Decl. ¶ 9.b; Chamorro  
Decl. ¶ 15.b-c; Cabrera Decl. ¶ 14.b-c; Torres Decl. ¶ 14.b; Hernandez Decl. ¶ 14.b; A. Herrera Decl. 14.b; Martinez  
Decl. ¶ 8.c-d; Jimenez Decl. ¶ 8.c; Pena Decl. ¶ 12.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

1 Hawthorne, clock in there, and then instructed the CSR to clock out in Hawthorne, drive to another  
2 sales office, and clock back in there.<sup>35</sup> Other times, Academy instructed CSRs to drive from their  
3 office to Hawthorne to drop of the reports at the corporate office and other business-related errands.<sup>36</sup>  
4 Academy did not reimburse the CSRs for mileage for driving from one location to another.<sup>37</sup> Second,  
5 Academy did not reimburse any of the CSRs for purchasing office supplies even though the supplies  
6 were necessary to do the work in the office.<sup>38</sup> Therefore, Academy illegal practices of failing to  
7 reimburse for mileage and supplies resulted in monetary damages and occurred on a class wide basis.

### 8 III. Proposed Classes And Subclasses

9 Plaintiffs seek certification on the basis of various subclasses which reflect that nature of the  
10 claims and the respective class wide practices and policies of Academy. Plaintiffs propose the  
11 following classes and subclasses for all hourly Academy employees working in the CSR position or  
12 who performed substantially similar duties to the CSR position (“CSRs”):

- 13 - **Saturday Overtime Class:** All CSRs not compensated at the overtime rate for overtime hours  
14 worked on Saturdays in violation of the Labor Code, IWC Wage Orders and all other  
applicable laws and regulations between May 2010 and judgment;
- 15 - **Overtime For Driving Off the Clock:** All CSRs not compensated for time spent driving from  
16 one Academy location to another and driving to run errands in violation of the Labor Code,  
IWC Wage Orders, and all other applicable laws and regulations between May 2010 and  
17 judgment;
- 18 - **Unlawful Meal Break Subclass (First Meal Period After Fifth Hour):** All CSRs not  
19 compensated for meal periods within the first five working hours of their shifts in violation of  
the Labor Code, IWC Order, and all other applicable laws and regulations between May 2010  
20 and judgment;
- 21 - **Unlawful Meal Break Subclass (First Meal Period Less Than Thirty Minutes Duty Free):**  
22 All CSRs not compensated for first meal periods that were less than thirty minutes of duty-free  
uninterrupted time in violation of the Labor Code, IWC Wage Orders, and all other applicable  
laws and regulations between May 2010 and judgment;
- 23 - **Unlawful Meal Period Subclass (Second Meal Period):** All CSRs not compensated for  
24 second meal periods not taken during 10-hour shift in violation of the Labor Code, IWC Wage  
Order, and all other applicable laws and regulations between May 2010 and judgment;

25  
26 <sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Matamoros Decl. ¶ 17; Gonzalez Decl. ¶ 17; Cabrera Decl. ¶ 16; Torres Decl. ¶ 16; Hernandez Decl. ¶ 16; A. Herrera  
28 Decl. 16; Vargas Decl. ¶ 17; Jimenez Decl. ¶ 11; Pena Decl. ¶ 17.

- 1 - **Rest Break Subclass:** All CSRs not compensated for missed rest breaks in violation of the  
2 Labor Code, IWC Wage Orders, and all other applicable laws and regulations between May  
3 2010 and the date of judgment;
- 4 - **Failure to Reimburse Business Expenses Subclass:** All CSRs not reimbursed for necessary  
5 work expenses such as supplies, cleaning products, and mileage in violation of the Labor Code  
6 including section 2802, and all other applicable laws and regulations between May 2010 and  
7 judgment;
- 8 - **Shortages Subclass:** All CSRs charged for cash shortages in violation of the Labor Code  
9 including sections 221-223, IWC Wage Order 4, section 8, and all other applicable laws and  
10 regulations between May 2010 and judgment;
- 11 - **Inaccurate Paystub Subclass:** All CSRs not provided accurate itemized paystub in violation  
12 of the Labor Code section 226, and all other applicable laws and regulations between May  
13 2013 and judgment;
- 14 - **Derivative and Direct Waiting Time Penalties Subclass:** All CSRs not provided timely  
15 payments of all wages due upon employment termination in violation of the Labor Code  
16 sections 201, 202, or 203, and all other applicable laws and regulations between May 2011 and  
17 judgment;

#### 18 **IV. Class Certification Should Be Granted**

##### 19 **A. California Law Favor the Class Action Device**

20 Strong public policy encourages the use of the class action device. *Richmond v. Dart*  
21 *Industries, Inc.* (1981) 29 Cal. 3d 462, 473. “California courts have liberally interpreted the procedural  
22 prerequisites for class certification creating and fostering an environment conducive to the extensive  
23 use of class actions in a variety of contexts to simplify complex litigation.” *Kaye v. Mounts La Jolla*  
24 *Homeowners Ass’n* (1988) 204 Cal. App. 3d 1476, 1495. Since California public policy encourages  
25 use of the class action device, the Court should resolve any doubts about the appropriateness of class  
26 treatment, in favor of certification. *Richmond*, 29 Cal. At 473-75; *La Sala v. American Sav. & Loan*  
27 *Ass’n* (1971) 5 Cal. 3d 864, 883; *Green v. Obledo* (1981) 29 Cal. 3d 126, 148.

28 In *Brinker*, the California Supreme Court reaffirmed the viability of class actions in wage and  
hour cases, including claims for meal and rest breaks violations. “Class actions have been statutorily  
embraced by the Legislature whenever ‘the question [in a case] is one of a common or general interest,  
of many persons, or when the parties are numerous, and it is impracticable to bring them all before the

1 court...” *Brinker Restaurant Corp. v. Super Ct.* (2012) 53 Cal. 4<sup>th</sup> 1004, 1021. Moreover, as the  
2 California Supreme Court held in *Sav-On Drug Stores, Inc. v. Superior Court*:

3 California’s overtime laws are remedial and are to be construed so as to promote employee  
4 protection. And, as we have recognized, this state has a public policy which encourages the use  
5 of the class action device. By establishing a technique whereby the claims of many individuals  
6 can be resolved at the same time, the class suit both eliminates the possibility of repetitious  
7 litigation and provides small claimants with a method of obtaining redress for claims which  
8 would otherwise be too small to warrant individual litigation.

9 (2000) 34 Cal. 4<sup>th</sup> 319, 326 (internal quotations and citations omitted).

10 **B. All of the Elements of Certification are Present**

11 California Code of Civil Procedure section 382 provides:

12 ... when the question is one of a common or general interest, of any persons, or when the  
13 parties are numerous, and it is impracticable to bring them all before the court, one or more  
14 may sue or defend for the benefit of all.

15 For class certification, “[t]he party advocating class treatment must demonstrate the existence of an  
16 ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial  
17 benefits from certification that render proceeding as a class superior to the alternatives.” *Sav-On Drug  
18 Stores, Inc.*, 34 Cal. 4<sup>th</sup> at 326. “The ‘community of interest’ requirement embodies three factors: (1)  
19 predominate common questions of law or fact; (2) class representatives with claims or defenses typical  
20 of the class; and (3) class representatives who can adequately represent the class.” *Id.*

21 The “ultimate question” the element of predominance presents is whether “the issues which  
22 may be jointly tried, when compared with those requiring separate adjudication, as so  
23 numerous or substantial that the maintenance of a class action would be advantageous to the  
24 judicial process and to the litigants.” The answer hinges on “whether the theory of recovery  
25 advanced by the proponents of certification is, as an analytical matter, likely to prove amenable  
26 to class treatment.” A court must examine the allegations of the complaint and supporting  
27 declarations and consider whether the legal and factual issues they present are such that their  
28 resolution in a single class proceeding would be both desirable and feasible. “As a general rule  
if the defendant’s liability can be determined by facts common to all members of the class, a  
class will be certified even if the members must individually prove their damages.”

*Brinker*, 139 Cal. 4<sup>th</sup> at 7-8 (citations omitted).

As the *Brinker* Court made clear: “The certification question is essentially a procedural one  
that does not ask whether an action is legally or factually meritorious.” *Id.* at 329 (citations omitted).

Therefore, “[a] class certification motion is not a license for a free-floating inquiry into the validity of  
the complaint’s allegations; rather, resolution of disputes over the merits of a case generally must be

1 postponed until after class certification has been decided.” *Id.* Here, Plaintiffs have satisfied all of the  
2 elements for class certification because common issues predominate.

3 **C. The Class is Ascertainable**

4 Ascertainability is determined largely by examining the class definition, the size of the class,  
5 and the means available for identifying class members. *See Bufil v. Dollar Financial Group, Inc.*  
6 (2008) 162 Cal. App. 4<sup>th</sup> 1193, 1207. “Class members are ascertainable where they may be readily  
7 identified without unreasonable expense or time by reference to official records.” *Id.* at 1206.

8 Here, the proposed class and subclasses are ascertainable because all of the class members –  
9 who are made up of non-exempt CSR former and current employees of Academy – may be identified  
10 through Academy’s employee and payroll files. During the *Belaire* process, Academy produced the  
11 list of 131 putative class members.<sup>39</sup> Therefore, the class is ascertainable.

12 **D. Numerosity is Satisfied**

13 The numerosity requirement is met if the class is so large that joinder of all members would be  
14 impracticable. Cal. Code Civ. Proc. Sec. 382. Here, with at least 131 putative class members, the  
15 proposed classes and subclasses are sufficiently numerous. Joinder of all of these class members  
16 would be impracticable and a class-wide proceeding is preferable because this number is so large. *See*  
17 *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (no set minimum to meet “numerosity”; class  
18 of only 28 members is acceptable). This case satisfies the numerosity requirement.

19 **E. A Well-Defined Community of Interest Exists**

20 The community of interest requirement involves three factors: (1) predominant question of law  
21 or fact, (2) a class representative with claims or defenses typical of the class, and (3) a class  
22 representative who can adequately represent the class. *Sav-On Drug Stores, Inc. v. Superior Court*  
23 *(Rocher)* (2004) 34 Cal. 4<sup>th</sup> 319, 326; *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4<sup>th</sup> 429, 434-36. All  
24 three of these factors are present in this case, as set forth below.

25 **1. The Predominant Issues of Law or Fact Involve Common Questions and Have**  
26 **Common Answers**

27  
28 <sup>39</sup> Abrolat Decl. ¶ 2.

1            “[I]t has never been the law in California that the class representative must have *identical*  
2 interests with the class members. The only requirements are that common questions of law and fact  
3 *predominate* and that the class representative be *similarly* situated [to the class].” *Classen v. Weller*  
4 (1983) 145 Cal. App. 3d 27, 46 (*emphasis in original*).

5            In making this determination, the common contentions should be “of such a nature that it is  
6 capable of class-wide resolution-which means that determination of its truth or falsity will resolve an  
7 issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v.*  
8 *Dukes* (2011) 564 U.S. 338, 350. Put another way, “the capacity of a classwide proceeding to generate  
9 common answers apt to drive the resolution of the litigation” is the issue. *Id.*

10            Further, “a court must examine the plaintiff’s theory of recovery and assess the nature of the  
11 legal and factual disputes likely to be presented.” *Bradley*, 211 Cal. App. 4<sup>th</sup> at 1141. “As a general  
12 rule, if the defendant’s liability can be determined by facts common to all members of the class, a class  
13 will be certified even if the members must individually prove their damages.” *Id.* at 1142, citing  
14 *Brinker*, 53 Cal. 4<sup>th</sup> 1021. Here, common question of law and fact predominate.

15            **1. Plaintiffs’ *On-the-Clock Overtime Claims*: “Unlawful Saturday Overtime  
16 *Claims*”**

17            Under Labor Code section 1194, employees are entitled to overtime compensation after eight  
18 hours per day **OR 40 hours per week** of work. Here, however, Academy’s practice was that, for  
19 however many hours less than eight that an employee worked on any particular workweek day,  
20 Academy paid them straight time for the same number of hours that they worked on Saturday, even  
21 though those hours should have been paid as overtime, as described above.

22            **2. Plaintiff’s “Working Off The Clock Overtime Claims”**

23            Academy required the Class to drive between office locations during their work day while off  
24 the clock. As set forth above, when Academy needed a CSR to go to another office location, it  
25 uniformly instructed the CSR to clock out, drive to the other office, and then clock back in. Similarly,  
26 when Academy had CSRs run errands or drop off reports, Academy required them to clock out first.  
27 Since the regular work schedule was at least 8 hour per day, the time spent driving between offices and  
28

1 for errands was overtime. This off-the-clocks times are also reflected in the CSR's time punch detail  
2 records and Academy's computer databases showing which office the CSR was logged into.

3 **3. Bus. & Prof. Code Section 17200 Claim**

4 Plaintiffs' count for violation the Unfair Practices Act is based on violation of the Labor Code  
5 for failure to pay overtime and meal violation payments. See Cal. Bus. & Prof. Code § 17200 *et seq.*  
6 *Cortez v. Purolator Air Filtration Products* (2003) 23 Cal. 4<sup>th</sup> 163 makes clear that Labor Code  
7 violations, including for overtime pay, can form the basis of such a claim. Because of the equitable  
8 nature of such a claim, the statute of limitations is four years, not the three years under the Labor  
9 Code. Thus, if the overtime claims are certified, the Section 17200 claim should be, too.

10 **4. Plaintiffs' Meal Break Claims**

11 Employers must provide employees with a 30-minute duty-free, uninterrupted meal period  
12 within the first 5 hours and a second 30 minute meal period for shifts lasting 10 or more hours. Cal.  
13 Lab Code § 512. The IWC requires that employers record all hours worked, including of meal  
14 periods:

15 Every employer **shall keep accurate information** with respect to each employee including the  
16 following: ... (3) [t]ime records showing when the employee begins and ends each work  
17 period. **Meal periods ... shall also be recorded.**

18 (8 CCR § 11050(7)(A)(3)[**emphasis added**].) Academy violated this provision, as follows.

19 **a. Plaintiffs' "Unlawful Meal Period Subclass - First Meal Period After Fifth  
20 Hour"**

21 The California Supreme Court held: "[c]laims alleging that a uniform policy consistently  
22 applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and  
23 properly, found suitable for class treatment." *Brinker*, 53 Cal. 4<sup>th</sup> at 1033; *see also*, *Bradley v.*  
24 *Networkers Internat., LLC* (2012) 211 Cal. App. 4<sup>th</sup> 1129, 1149. In *Brinker*, the plaintiffs alleged that  
25 the defendant's written rest period policy violated Wage Order No. 5 because it failed to give full  
26 effect to the "major fraction" language of subdivision 12(A). *Brinker*, 53 Cal. 4<sup>th</sup> at 1033-34.

27 That theory was sufficient for certification: "[t]he theory of liability – that [defendant] has a  
28 uniform policy, and that policy, measured against wage order requirements, allegedly violates the law  
– is by its nature a common question eminently suited for class treatment." *Id.* at 1033.

1 Here, Academy's written meal break policy never authorized, permitted, or made Academy's  
2 CSRs aware that they had the right to take a meal period within the first five hours.<sup>40</sup> As in *Brinker*,  
3 since Academy's meal break policy failed to apprise non-exempt employees they had the right to a  
4 meal period within the first five hours, "an employee has no opportunity to decline to take it." *Id.* at  
5 1033 (when analyzing rest periods). Moreover, Academy's policy was to instruct the CSRs that they  
6 could only take lunch when no customers were present, either in the office or on the phone. As the  
7 CSR's clock-in and clock-out times show, the lunch break typically did not occur until after the fifth  
8 hour of work.<sup>41</sup>

9 Academy Meal-Rest Breaks Policy failed to provide for a meal period penalty payment  
10 whenever a meal period was not received within the first five hours of their shifts.<sup>42</sup> Consequently,  
11 here, as in *Brinker* and *Bradley*, Plaintiffs' theory of liability is that Academy "[has] a uniform policy,  
12 and that policy, measured against wage requirements, allegedly violates the law." *Bradley*, 211 Cal.  
13 App. 4<sup>th</sup> at 1149, citing *Brinker*, 53 Cal. 4<sup>th</sup> at 1033. Thus, it "is by its nature a common question  
14 eminently suited for class treatment." *Id.*<sup>43</sup>

15 **b. Plaintiffs' "Unlawful Meal Period Subclass (First Meal Period Less Than  
16 Thirty Minutes In Time Records)"**

17 [A]n employer may not undermine a formal policy of providing meal breaks by pressuring  
18 employees to perform their duties in way that omit breaks. (*Cicairos v. Summit Logisitics, Inc.*  
19 (2005) 133 Cal. App. 4<sup>th</sup> 949, 962-963..., see also *Jaimez v. DAIOWS USA, Inc.*, (2010) 181  
20 Cal. App. 4<sup>th</sup> 1286, 1303-04 [proof of common scheduling policy that made taking breaks  
21 extremely difficult would show violation]; *Dilts v. Penske Logisitics, LLC* (S.D. Cal. 2010) 267  
22 F.R.D. 625, 638 [indicating informal anti-meal-break policy "enforced through 'ridicule' or  
23 'reprimand'" would be illegal].) The wage orders and governing statute do not countenance an  
24 employer's exerting coercion against the taking of, creating incentives to forgo, or otherwise  
25 encouraging the skipping of legally protected breaks. *Brinker, supra*, 50 Cal. 4<sup>th</sup> at 35.

26 According to Academy testimony, written policy, earning statements, and employees'  
27 declarations, the CSRs could only take meal breaks as "business permitted." "Business permitted"  
28 meant that CSRs could only begin their lunch break when no customers were present in the office or

40 Abrolat Decl. ¶ 7, Exs. G-H.

41 Abrolat Decl. ¶ 7, Exs. NN through WW.

42 Abrolat Decl. ¶ 7, Exs. G-H.

43 see also, *Faulkinbury v. Boyd & Assoc., Inc.* (2013) 216 Cal. App. 4<sup>th</sup> 220, 224 ("[I]n light of *Brinker*, [] the trial court erred by denying class certification of [the meal and rest period subclasses] and therefore [we] reverse and remand with directions to certify all three subclasses[.]"); *Bluford v. Safeway Inc.* (2013) 216 Cal. App. 4<sup>th</sup> 864 (reversing the trial court's denial of certification of a rest period subclass).



1 on the phone and then had to stop their lunch break immediately if a customer came into the office or  
2 called to help the customer. To enforce this uniform policy, Academy management: 1) told the CSRs  
3 they could not take lunch if a customer was present in the office or on the phone; 2) always called  
4 CSRs back from lunch if a customer needed service; and 3) instructed CSRs to clock out for lunch but  
5 to keep working when customers were present.

6 **c. Plaintiffs' "Unlawful Meal Period Policy Subclass (Second Meal Period)"**

7 *Brinker* clarified that, if not legally waived, the second meal period under Section 512 must be  
8 taken after no more than ten hours of work. *Brinker*, 53 Cal. 4<sup>th</sup> at 1049.

9 Here, Academy's Meal-Rest Breaks Policy is silent as to a second meal period.<sup>44</sup> It neither  
10 provides for a second meal period to be taken *within* the first 10 hours nor for a meal period penalty  
11 when not taken. Thus, the same analysis regarding Plaintiffs' theory of liability concerning the *first*  
12 meal period before the fifth hour holds true for Plaintiffs' theory of liability concerning the *second*  
13 meal period: The Meal-Rest Breaks Policy fails to permit that second meal period be taken within the  
14 first 10 hours. This theory of liability is one that "is by its nature a common question eminently suited  
15 for class treatment." *Bradley*, 211 Cal. App. 4<sup>th</sup> at 1149; *citing Brinker*, 53 Cal. 4<sup>th</sup> at 1033.

16 As the clock-in and clock-out times prove, Academy uniformly violated the second meal  
17 period requirement when CSRs worked 10 or more hours.<sup>45</sup>

18 **d. Plaintiffs' "Improper Rest Breaks"**

19 Academy's uniform practice and policy prohibited 10 minute rest breaks; only restroom breaks  
20 were permitted, and then only on a limited bases.<sup>46</sup> Restroom breaks do not count for rest breaks.  
21 Under Academy's policies, the CSRs were not permitted to leave their desks for breaks unless the  
22 management allowed them to do so. The written policy itself provides: "[w]henever necessary, the  
23 frequency and time of rest periods may be changed."<sup>47</sup> Further, even for restroom breaks, Academy's  
24 policy and practice was to prohibit CSRs from restroom breaks where there was no "coverage."

25 <sup>44</sup> Abrolat Decl. ¶ 7, Exs. G-H.

26 <sup>45</sup> Abrolat Decl. ¶ 7, Exs. NN through WW.

27 <sup>46</sup> "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for  
28 shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."  
*Brinker*, 53 Cal. 4<sup>th</sup> at 19. Thus, 10-minute rest breaks accrue after the second and sixth hours of work in an eight hour  
shift. *Id.*

<sup>47</sup> Abrolat Decl. ¶ 7, Exs. G-H.

1 “Coverage” meant that there were no customers waiting in the office or on the phone. Academy  
2 enforced this policy through use of its surveillance system, described in more detail above.

3 Although Academy policy unlawfully denied CSRs their 10 minute rest breaks, it offered no  
4 method through which employees could request compensation for the missed rest breaks.

5 In *Brinker*, the plaintiffs presented evidence of a common rest break policy that did not  
6 conform to California law. The Court noted that, “The issue for the trial court was whether any of the  
7 rest break theories of recovery advanced by [Plaintiff] were likely to prove amenable to class  
8 treatment.” *Brinker, supra*, 53 Cal. 4<sup>th</sup> at 23. “Claims alleging that a uniform policy consistently  
9 applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and  
10 properly, found suitable for class treatment.” *Id.* at 24.<sup>48</sup> Accordingly, in light of the evidence of  
11 Defendants’ uniform policy and practice resulting in the systemic denial of 10 minute rest breaks to  
12 the CSRs, the rest break class should be certified.

13 ***e. Plaintiffs’ “Improper Expenses Subclass”***

14 Pursuant to California Labor Code § 2802, an employer must reimburse its employees for all  
15 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of  
16 his or her duties. Here, Academy required the CSRs to purchase the office supplies, such as pens and  
17 paper, to use in doing their work. Academy also required the CSRs to drive from one office to another  
18 and run errands without reimbursing them for mileage. Such expenses were clearly incurred in direct  
19 consequences of these employees’ duties. These claims are based on Academy’s common practices  
20 and policies and therefore are proper for class certification. Damages can be easily calculated, for  
21 example,, by taking into account the distance between the offices and the amount of time the  
22 employees were clocked out using the time records. This is a simple calculation and manageable for a  
23 class this size.

24 ***f. Common Issues Predominate With Respect To Plaintiffs’ Shortages Claim***

25 “It shall be unlawful for an employer to collect or receive from an employee any part of wages  
26 theretofore paid by said employer to said employee.” Cal. Lab. Code § 221.

27 <sup>48</sup> The *Brinker* Court held: “No issue of waiver ever arises for a rest break that was required by law but never authorized;  
28 if a break is not authorized, an employee has no opportunity to decline to take it.” *Id.* at 25.

1 No employer shall make any deduction from the wage or require any reimbursement from an  
2 employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the  
3 shortage, breakage, or loss is caused by a **dishonest or willful act, or by the gross negligence  
4 of the employee.** IWC 4, § 8. (Emphasis added.)

5 Here, Academy had a practice of forcing the CSRs to pay for any “shortages” caused by: “A.  
6 The incorrect change is given. B. Mixing money between clients. C. Dishonesty. D. The incorrect  
7 payment amount is posted to the system.”<sup>49</sup> Academy’s policy also states: “It is your responsibility to  
8 collect the money from the customer.” “It is your responsibility to deliver the exact amount being  
9 collected from the customer to the company on a daily basis.” And “It is your responsibility to cover  
10 any shortage on your daily report on the same day, before you deliver the report to the company.”<sup>50</sup>

11 Under this policy, Academy managers sends the CSR a message on their computer instructing  
12 them to add their own cash into the money collected for the day to make up for any cash shortage.<sup>51</sup>  
13 Academy managers informed the CSR that if they did not add their own cash into the money collected  
14 that day, then Academy would simply deduct the money from their paycheck. The daily shortage  
15 reports show the cash shortage amounts that Academy required the CSRs to pay. Because Academy  
16 had a uniform illegal policy of dealing with shortages, the shortages’ claim must be certified.

17 **g. Common Issues Predominate With Respect To Plaintiffs’ Direct And  
18 Derivative Waiting Time Penalties Subclass**

19 Labor Code sections 201 and 202<sup>52</sup> require the employer to pay all amount due at termination  
20 of employment and section 203 provides a penalty for employers who “willfully” refuse to pay. “As  
21 used in section 203, ‘willful’ merely means that the employer intentionally failed or refused to perform  
22 an act *which was required to be done.*” *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 4<sup>th</sup> 314, 325  
23 (quoting *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal. App. 3d 1, 7).

24 Academy uniformly failed to pay terminated CSRs for their uncompensated overtime hours  
25 and for their missed breaks in violation of section 203.<sup>53</sup> Thus, if the overtime or meal violations are

26 <sup>49</sup> Abrolat Decl. ¶ 7, Ex. J.

27 <sup>50</sup> Abrolat Decl. ¶ 7, Ex. I.

28 <sup>51</sup> *Supra* fn. 8-9.

<sup>52</sup> When an employer terminates and employee, the employer must provide final pay immediately. Lab. Code § 201(a).  
When an employee quits, the employer must provide that employee’s final wages within 72 hours. Lab. Code § 202.

<sup>53</sup> Martin Decl. ¶ 22; Lopez Decl. ¶ 18; E. Ramirez Decl. ¶ 20; Rivera Decl. ¶ 20; D. Ramirez Decl. ¶ 20; Mendoza Decl. ¶  
20; Matamoros Decl. ¶ 22; S. Herrera Decl. ¶ 18; Gonzalez Decl. ¶ 19; Castillo Decl. ¶ 14; Chamorro Decl. ¶ 22; Cabrera

1 certified, waiting time penalties should also be certified, as a derivative claim of the underlying  
2 overtime and break claims. *See Dilts v. Penske Logistics, LLC* (S.D. Cal. 2010) 267 F.R.D. 625, 640;  
3 *Schults v. QualxServ, LLC* (S.D. Cal. 2012) 2012 WL 1439066, \*8-9.

4 ***h. Common Issues Predominate With Respect To Plaintiffs' Inaccurate Wage  
Statements Claims***

5 Employers must furnish wage statements that include, "all applicable hourly rates in effect  
6 during the pay period and the corresponding number of hours worked at each hourly rate by the  
7 employee." Lab. Code § 226(a). Section 226(a) requirements are mandatory and the information  
8 provided must be precise and accurate. *Cicairos v. Summit Logistics Inc.* (2005) 133 Cal. App. 4<sup>th</sup> 949,  
9 956; *Lopez v. G.A.T. Airline Ground Support* (S.D. Cal. 2010) 2010 U.S. Dist. LEXIS 73029, at \*6-\*8.

10 Courts frequently certify class actions where, as here, the face of the wage statements are  
11 allegedly deficient under Labor Code section 226. *See McKenzie v. Fed. Express Corp.* (C.D. Cal.  
12 2011) 275 F.R.D. 290, 300 (plaintiff alleged wage statements did not provide a separate category  
13 calculating total hours worked, the court certified the class because wage statements are "standardized  
14 documents;" thus "injuries suffered by the proposed class ... are subject to common proof").<sup>54</sup>

15 Here, Academy failed to compensate the Class for all overtime hours worked and for all  
16 missed meal periods. These unpaid wages were also omitted from the Class's itemized paystubs,  
17 making the paystubs inaccurate.<sup>55</sup> As a result, Academy engaged in a uniform pattern of violating  
18 section 203 by providing inaccurate paystub to the Class, excluding all of the Class's overtime hours  
19 worked, the proper overtime rate and break penalty payments for breaks the Class were not permitted  
20 to take.

21 **2. Plaintiffs Satisfy the Typicality Requirement**

22  
23  
24 Decl. ¶ 21; Torres Decl. ¶ 20; Hernandez Decl. ¶ 20; Angel Decl. ¶ 21; Martinez Decl. ¶ 17; Vargas Decl. ¶ 22; Jimenez  
Decl. ¶ 17; Pena Decl. ¶ 21.

25 <sup>54</sup> *See Jaimez v. Daijhs USA, Inc.* (2010) 181 Cal. App. 4<sup>th</sup> 1286 (reversing trial court's denial of class certification where  
it was alleged that the face of the wage statements violated Labor Code section 226); *see Ortega v. J.B. Hunt Transp., Inc.*  
26 (C.D. Cal. 2009) 258 F.R.D. 361, 374; *see Perez v. Safety-Kleen Sys., Inc.* (N.D. Cal. 2008) 253 F.R.D. 508, 520-21  
(noting that litigation of the wage statement violation will require "class-wide proof rather than individualized inquiries").

27 <sup>55</sup> Martin Decl. ¶ 21; Lopez Decl. ¶ 17; E. Ramirez Decl. ¶ 19; Rivera Decl. ¶ 19; D. Ramirez Decl. ¶ 19; Mendoza Decl. ¶  
28 19; Matamoros Decl. ¶ 21; S. Herrera Decl. ¶ 17; Gonzalez Decl. ¶ 18; Castillo Decl. ¶ 13; Chamorro Decl. ¶ 21; Cabrera  
Decl. ¶ 20; Torres Decl. ¶ 21; Hernandez Decl. ¶ 19; Angel Decl. ¶ 20; A. Herrera Decl. ¶ 19; Martinez Decl. ¶ 15;  
Rodriguez Decl. ¶ 16; Vargas Decl. ¶ 21; Jimenez Decl. ¶ 15; Pena Decl. ¶ 20.

1 For "typicality," the proposed representative's claim need not be identical to the claims of  
2 other class members; it is sufficient that the representative is similarly situated, so that he or she will  
3 have the motive to litigate on behalf of all class members. *See Classen v. Weller* (1983) 145 Cal. App.  
4 3d 27, 46.

5 Here, typicality is easily met. Academy employed all Plaintiffs as hourly CSRs and subjected  
6 them to the same wage and hour violations as all of the other CSRs of Academy as set forth in detail in  
7 the declarations filed concurrently.

### 8 **3. Plaintiffs and Their Counsel are Adequate Class Representatives**

9 To fairly and adequately represent the class, Plaintiffs must: 1) be represented by counsel  
10 qualified to conduct the pending litigation; and cannot have interests antagonistic to those of the class.  
11 *McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450; *accord Richmond v. Dart* (1981) 29  
12 Cal. 3d 362, 470. Being experienced in class action litigation as more fully described in Abrolat's  
13 declaration, Plaintiffs' counsel is qualified to diligently represent the interests of the proposed class.<sup>56</sup>  
14 There is no indication of conflicts between Plaintiffs and the Class. *McGhee*, 60 Cal. App. 3d at 450.

### 15 **F. A Class Action Is Superior To Other Methods for the Fair and Efficient Adjudication 16 of the Issues at Hand**

17 The class action device exists precisely to allow these types of claims to be adjudicated. *Linder*  
18 *v. Thrifty Oil Co.* (2000) 23 Cal. 4<sup>th</sup> 429, 445-46. Many courts hold that class treatment of wage and  
19 hour claims is clearly "superior to other available methods for the fair and efficient adjudication of the  
20 controversy." *Dean Witter Reynolds, Inc. v. Superior Court (Abascal)* (1989) 211 Cal. App. 3d 758,  
21 772-773. This is so because "[p]ublic policy has long favored the 'full and prompt payment of wages  
22 due an employee.'" *Pressler v. Donald L. Bren Co.* (1982) 32 Cal. 3d 831, 837; *Sav-On Drug Stores,*  
23 *Inc.*, 34 Cal. 4<sup>th</sup> at 340. Courts regularly certify class action wage and hour claims. *Id.*; *see, e.g., Earley*  
24 *v. Superior Court (Washington Mutual Bank, F.A.)* (2000) 79 Cal.App. 4<sup>th</sup> 1420, 1423; *Morillion v.*  
*Royal Packing Co.* (2000) 22 Cal. 4<sup>th</sup> 575.

25 This action presents the perfect case for certification. The cost of effectively litigating  
26 individual suits is high when compared to the relatively small amount of potential recovery per

27  
28 <sup>56</sup> Abrolat Decl. ¶¶ 8-11.

1 individual; thus, a class action is the best method to fairly and efficiently adjudicate these claims.  
2 Moreover, the relative stakes of each party and the outcome are greatly imbalanced. While Defendants  
3 reaped the significant economic benefit from failing to compensate class members for its Labor Code  
4 violations, each individual class member has lost far less by comparison. Because of this economic  
5 imbalance, the potential estoppel effects of an adverse result in a class case will cause defendants to  
6 value a successful result far more than a single person with only a modest individual loss. An  
7 individual class member cannot economically afford to litigate a case that has such little economic  
8 upside for him or her but such great economic downside for defendants.

9 In addition, rather than having over 100 separate suits with seven claims, all of which involve  
10 identical issues and evidence, a class action allows all individual actions to be resolved once on behalf  
11 of all claimants. *Blue Chip Stamps v. Superior Court (Botney)* (1976) 18 Cal. 3d 381, 385.

12 Furthermore, public policy also favors certification so that the Class can afford to have their  
13 important labor rights vindicated without fear of retaliation. *Gentry v. Superior Court (Circuit City*  
14 *Stores, Inc.* (2007) 42 Cal. 4th 443, 455-56 (Labor Code codifies an important public interest in  
15 protection of employees' non-waivable rights to wages). "Courts have widely recognized that fear of  
16 retaliation for individual suits against an employer is a justification for class certification in the arena  
17 of employment litigation." *Id.* at 460; *see also Sav-On Drugs Stores, Inc.*, 430 Cal. 4th at 340 (directing  
18 courts to construe labor laws broadly to promote employee protection in conjunction with California's  
19 "public policy" that encourages the use of the class action device to achieve enforcement of labor  
20 laws).

21 The instant wage and hour Class Action is no exception and should be certified to promote the  
22 fair and efficient adjudication of these wage and hour claims.

## 23 V. Conclusion

24 For all the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order:

- 25 1. Granting Plaintiffs Motion for Class Certification.
- 26 2. Finding that the class is ascertainable, that the claims of the class representative  
27 plaintiffs are typical of the claims of the other class members, and that the class representative plaintiffs  
28 and their counsel are "adequate" for purposes of class certification.

1  
2 3. Finding that there are factual issues that are common to the class as a whole, sufficient  
3 in importance so that their adjudication on a class basis will benefit both the litigants and the Court,  
4 including the following:

- 4 a. Whether Academy must comply with California wage and hour law;
- 5 b. Whether Academy must pay overtime compensation for overtime hours worked  
6 by the class members;
- 7 c. Whether Academy must allow the class members to take meal and rest breaks or  
8 pay the class members wages for missed breaks, as required by California law;
- 9 d. Whether Academy must give the class members regular and accurate wage and  
10 hour statements and maintain payroll records, as required by California law;
- 11 e. Whether Academy must pay the class members all amounts due promptly on  
12 termination, as required by California law;
- 13 f. Whether Academy must reimburse the class members for items required by the  
14 employer, such as business expenses for supplies and mileage, as required by California law;
- 15 g. Whether Academy must cease and desist from charges class members for cash  
16 shortages, including through cash payments and paycheck deductions, in violation of California law;
- 17 h. Whether Academy's violations of California wage and hour law also violate  
18 California's Unfair Competition Law (Cal. Bus. & Prof. Code §17200, et seq.).

17 4. Certifying the following "opt-out" class (the "Class") for purposes of determining both  
18 liability and damages in this matter:

19 All individuals who have been employed or are currently employed by Academy as hourly  
20 "customer service representatives" or in other, similar capacities in California at any time since  
21 May 8, 2010, and continuing while this action is pending.

22 As used in the Class definition, the term "customer service representatives" refers to any  
23 individual whose duties as an employee of Academy included or currently include, but were  
24 not and are not limited to, promoting, selling and providing customer services to Academy  
25 customers in the purchase of individual and business automobile insurance policies, whether  
26 the individual is actually licensed to sell such policies or not.

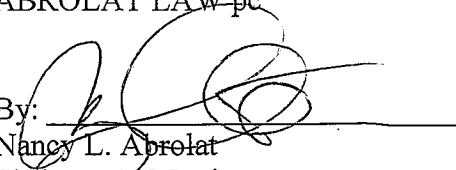
25 5. Certifying a sub-class defined as all members of the Class whose employment with  
26 Academy has terminated and who was not paid all compensation due at the time of  
27 termination.

27 6. Appointing Abrolat Law pc as counsel for the Class.

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1 DATED: January 25, 2017

Respectfully submitted,  
ABROLAT LAW pc

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4 By:   
Nancy L. Abrolat  
Shahane A. Martirosyan  
Attorneys for Plaintiffs

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

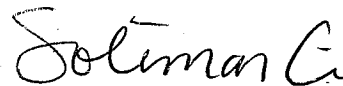
I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 840 Apollo, Suite 300, El Segundo, California 90245. On this date I served the following document(s) by the method indicated below:

**CORRECTED PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

- by transmitting **via facsimile** on this date from fax number (310) 615-0008 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal. R.Ct 2003(3).
- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the **United States mail** at El Segundo, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by placing the document(s) listed above in a sealed envelope(s) and by causing **messenger delivery** of the envelope(s) to the person(s) at the address(es) set forth below. I am readily familiar with the business practice of my place of employment with respect to the collection and processing of correspondence, pleadings and notices for hand delivery. On this date, I caused to be served via messenger the above-listed documents.
- by **personally delivering** the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) and consigning it to an **express mail service** for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.

**Kevin Badkoubehi  
Kmb Law Group, APC  
10866 Wilshire Blvd., Suite 400  
Los Angeles, CA 90024**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 25, 2017, at El Segundo, California.



\_\_\_\_\_  
Solimar Chinchilla