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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

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

REPLY TO OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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

Complaint Filed: May 8, 2014
Jury Trial Demanded

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Defendants' Opposition fails to set forth evidence to contradict the evidence presented by Plaintiffs' Motion. Defendants appear to argue in the bulk of their brief that plaintiffs are required to prove every element of their substantive case. They assert a nonexistent burden. Class certification "'is essentially a procedural [question] that does not ask whether an action is legally or factually meritorious.' " *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal. 4th 1004, at 1023. A certification motion does not invite the trial court to resolve disputed facts in a free-floating inquiry aimed at deciding the merits of the plaintiff's claims. The trial court ordinarily must assume the claims have merit. *Id.* at 1023 ("resolution of disputes over the merits of a case generally must be postponed until after class certification has been decided, with the court assuming for purposes of the certification motion that any claims have merit."); *Dailey v. Sears, Roebuck and Co.* (2013) 214 Cal.App.4th 974, 990 (*Dailey*). Plaintiffs have sufficiently met each requirement for class certification.

II. Legal Argument

A. Plaintiffs' Exhibits A through WW are not in violation of Evidence Code §§ 1400, 1401, 1200. Plaintiff requested the evidence and defendants produced the evidence.

Plaintiffs' Exhibits A through WW are properly in front of the Court. Defendants' objections pursuant to Evidence Code sections 1400, 1401, and 1200 must be overruled. Evidence Code section 1401 provides that authentication that the writings are truthful is necessary. California Evidence Code section 1400 provides in a relevant part:

> Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is[.]

Here, Nancy Abrolat's declaration in support of the Motion states that Plaintiffs served Defendants with request for production of documents marked as Exhibit A through WW. In response to the request, Defendants produced to Plaintiffs the documents marked Exhibit A through WW. Therefore, circumstantial evidence exists to show the documents marked Exhibit A through WW are Defendants' documents, and are properly authenticated under the Evidence Code.

Next, Evidence Code section 1200 must be overruled because the information within Exhibit A through WW is not submitted for the truth of the matter asserted. Motion for Class Certification is not a motion on the merits and/or strengths of the allegations. Rather, the documents are submitted to show

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that these documents exist that can later on support Plaintiffs' claims in this action. Further, the documents are submitted to show that these documents can help Plaintiffs to prove the truth of the matter asserted during trial at which point Defendants can challenge the facts within. Therefore, the objections based on hearsay must be overruled.

B. **Alico Insurance, Inc. was accidentally not included in the caption for the Motion. On January 25, 2017, Plaintiffs filed a Notice of Errata to correct this issue.**

Plaintiffs did not intentionally exclude Defendant Alico Insurance, Inc. from the Motion for Class Certification. It was an inexplicable error. For reasons unknown to Plaintiffs, the Motion for Class Certification was filed without listing Defendant Alico Insurance, Inc. on the document. Plaintiffs corrected this error by filing a Notice of Errata on January 25, 2017. Furthermore, Plaintiffs Gabriela Angel, Jessica Castillo, and Maria Rodriguez worked in the Alico Insurance store after being trained in the Academy Hawthorne office. They submitted declarations in support of the Motion for Class Certification. Therefore, there is no reason other than pure accident that left Defendant Alico Insurance, Inc.'s name off of the moving papers.

C. **66 declarations submitted in support must be disregarded as they lack foundation, and are legal conclusions unsupported with facts.**

Defendants' sixty-six declarations in support of their Opposition to Plaintiffs' Motion for Class Certification must be stricken. Forty-two of the sixty-five declarations are from current employees. In April 2016, Wendy Verduzco, a former Academy employees submitted a declaration to this Court highlighting the process through which declarations were obtained in opposition to the Class Certification Motion. (Declaration of Wendy Verduzco filed concurrently). Verduzco declared specifically that when she signed a declaration to oppose a motion for class certification she was not informed facts about the case, rather she was asked to meet with Defendants' attorney of record, Kevin Badkoubehi, for ten minutes as to ask her questions but did not provide her with information about the case. (Verduzco Decl. ¶ 3). Further, Verduzco declared that after the meeting with Mr. Badkoubehi, she met with Defendant Tawil and signed a legal document without reading it and being pressured to sign the document. (Verduzco Decl. ¶ 5). From the 66 declarations, it is clearly obvious that the declarants state what the counsel and the Defendants tell them to state in the declaration.

The declarations fail for lack of factual support. Specifically, the declarations merely state in

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conclusory form that Academy Defendants told them about the law and that they believe that Defendants follow the law. The declarations do not provide a factual evidence that would support the position that Defendants actually followed the law. For instance, the sixth paragraph of each declaration states:

> I have been advised by my Employer that under Labor Code section 1174(d), Employer must keep at a central location payroll records showing the hours worked daily by, and the wages paid to, its employees. I believe and hereby allege that Employer has complied with said requirements in regards to my payroll records and that these records have always been accessible to me upon request.

First, this statement is classic hearsay because the declarant states statement that goes directly to the truth of the matter asserted. Second, even if it was not hearsay, it states what the employer told the employee, and that the employee believes the statement to be true. This is not evidence. Evidence would have been if the employee could and would declare that she has requested her payroll records and the payroll records were provided to her. In the 66 declarations, not a single employee declares that to be true. Belief of the employee that the employer is following the law is insufficient evidence.

Further, better evidence exists to prove that these records are in a central location. For instance, Defendants should and could produce these records if in fact they are in one location. In this case, Defendants have not produced any records from any of the 66 declarants. (Abrolat Decl. ¶ 2). Therefore, the sixty-five declarations must be stricken accordingly.

D. **Tawil's Declaration Supports "Community of Interest."**

Defendants argue in error that there is no commonality because each plaintiff will have to prove his or her specific losses. (Defendants' Opp. 6-12.) Defendants assert that Plaintiffs' purported common issues do not predominate, as they are overwhelmed by individual questions of fact that must be addressed to determine liability. Such a position is contrary to the administration of many class action cases and the facts of this case. Defendants presume that liability is unable to be determined because employees allege various levels of damages. The policies used by defendants, however, impacted the plaintiffs in exactly the same way.

The degree to which each plaintiff was injured can be figured out by a formula, at a later and more appropriate stage of litigation. Courts have determined varying amounts of recovery based on the level of damage by the illegal practices of defendants.

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> Academy Defendants admit their policies are uniform for all employees in all four companies: "9. I manage the day-to-day operations of the 16 retail automobile insurance sales office owned by the corporate defendants. I set company policy for each of the corporate defendants named in support of this motion. As such, it is my testimony that at all times relevant to this litigation, none of the corporate defendant, Academy, Agenda or Adelco has, or ever had a policy or practice to deny or prevent the payment of premium pay for our employees' over work.
>
> 10. When an employee requests reimbursement for out-of-pocket expenditure for automobile mileage or for the purchase of office supplies, it is the policy of all of the corporate defendants to pay reimbursement to our employees on request."

(Tawill Decl. ¶¶ 9-10.) Significantly, owner Tawil concedes that all entities are run by him and use the same policies and procedures related to the employees, i.e., the putative class members. Tawil's attempt to claim that those policies are consistent with California law goes to the merits of the claims and are thus, not relevant at this certification stage. *See Eilsen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 157 (noting that "there is nothing in either the language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action. Indeed, such a procedures contravenes the Rule.") Thus, Academy Defendants are not arguing that they treated the putative class member differently, they are arguing that they treated all putative class member the same, but in doing so, did not break the law.

The theory of this case is that Academy Defendants violated wage and hour laws to the detriment of a large number of employees. The alleged commonality was the practice of CRS employees working off-the-clock in order to complete their daily work, losing meal and rest breaks, driving between job locations without compensation on the clock, etc. Under California law, an employer who knew, or should have known, of overtime work exposes the employer to liability. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585; *York v. Starbucks* (C.D. Cal. 2011) 2011 WL 8199987, *28-29. A company-wide practice can sustain a common question of fact or law that supports commonality for class certification. *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 358 ("convincing proof of a companywide discriminatory pay and promotion policy" could have "established the existence of [a] common question"). "Even a single common question" can suffice to create commonality. *Id.* at 358; *Wang v. Chinese Daily News, Inc.* (9th Cir. 2010) 623 F.3d 743; *see e.g. Driver v. Appleillinois, LLC* (N.D. Ill. 2012) 2012 U.S. Dist. LEXIS 27659 (in a case challenging practice of using tipped employees in duties arguably unrelated to their tipped occupations, court applied *Dukes* and concluded plaintiffs

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"have submitted substantial evidence of exactly what the Supreme Court found to be missing in [Dukes]: standardized conduct that could render [the defendant employer] liable to the class members for claims alleged.").) Plaintiffs specifically narrowed each cause of action into multiple sub-classes to ensure that the certification of each sub-class has a representative for similarly situated putative plaintiffs. The following provides a response to every fact Defendants use to attack Plaintiffs' sub-classes.

- **Saturday Overtime Class and the Overtime for Driving Off the Clock:** To argue that Plaintiffs' sub-class for Saturday overtime sub-class and driving off the clock class should not be certified for lack of commonality. However, the facts in support do not provide the necessary evidence. First, Defendants argue that Plaintiff Jessica Castillo testified that defendants never asked her to punch in or out and work off the clock. (Opp. 7:14-16). However, this testimony does not counter Plaintiffs' sub-classes for Saturday Overtime, and it does not counter that Plaintiffs' drove off the clock. Further, because Plaintiff Castillo did not drive for work, she is not part of the sub-class for driving off the clock. Second, Defendants argue that "Plaintiff Maria Rodriguez testified that there never was a time that she noticed her pay stub not reflecting the rate of pay that she should have been receiving." (Opp. 7:16-17). Plaintiffs' objected that this testimony was a legal conclusion and documents would present the more accurate representation of her pay. In support of their Motion, Plaintiffs submitted Exhibit UU, which shows that Plaintiff Maria Rodriguez was not paid proper overtime rates during her employment. Third, Defendants argue that "Mayra Martin testified in her deposition that she was not paid premium overtime fir [sic] her sick wages paid by Academy even though she did not work those hours." (Opp. 7:27-28:1) However, this is irrelevant as to Plaintiffs' claims to Saturday Overtime Class and Overtime Driving Off the Clock. Therefore, Defendants do not set forth any evidence to counter the commonality in Plaintiffs' sub-classes for Saturday Overtime and Driving Off the Clock.

- **Unlawful Meal Break Subclass for First Meal Period after Fifth Hour, Unlawful Meal Break Subclass for First Meal Period Less than Thirty Minutes Duty Free, and Unlawful Meal Period Subclass for Second Meal Period.** Defendants do not set forth any evidence to oppose commonality. The meal period sub-classes are very specific. There is zero evidence that anyone ever took a second meal period. Nothing in Defendants' opposition provides evidence to the contrary. Defendants argue that because one class member testified that she took lunch that mean the claims do not have commonality. However, the allegations are not that no-one ever ate lunch, the allegations are that the putative class members were not provided with a duty free meal break before the fifth hour of the day as the law requires. Plaintiffs submit evidence that shows that there was no policy allowing them to take a duty free meal break before the fifth hour and there was no policy that employees could take a second meal break. Defendants do not counter the evidence to show that there was no commonality.

- **Rest Break Subclass.** Defendants do not forth evidence that the rest break subclass does not have commonality. They argue that individual inquiry may be necessary, but they do not argue that individual inquiry is necessary. Defendants could argue that they had a policy for everyone to take a rest break or anything to that effect. However, no such evidence is set forth.

- **Failure to Reimburse for Business Expenses Subclass.** Plaintiffs' subclass for Failure to Reimburse for Business Expenses meets the commonality requirement. Defendants' Opposition argues that Jessica Castillo did not request reimbursement. (Opp. 10:27-28). As submitted and showed by the declarations in support of Motion for Class Certification, Plaintiff Castillo is not a class representative of this sub-class. The sub-classes are made for the purposes of ensuring that the putative class members are represented in each sub-class that they can be represented within.

- **Shortages Subclass.** Plaintiffs' moving papers adequately demonstrate commonality as Plaintiffs present a companywide written policy demanding shortages from employees. Defendants' opposition does not set forth any evidence to show that the claim for shortages does not meet the commonality. The Opposition simply argues merit argument pertaining to whether the deductions were done when the CSR's acted dishonest or willful. However, Academy's policy does not distinguish. *See* Abrolat Decl. Exs. J – MM. Therefore, Plaintiffs meet the commonality standard while Defendants are unable to show otherwise.

- **Inaccurate Pay Stub Subclass and Waiting Time Penalties Subclass.** Defendants' Opposition relies heavily on law to argue that there is no commonality. However, Defendants' argument does not show there is no commonality because its argument solely attacks the claim on merit.

Accordingly, the "commonality" test is adequately met for class certification purposes.

E. A Putative Class of Sixty-Six Employees Would Satisfy the Numerosity Requirement.

Academy Defendants' efforts to attack the numerosity element also fails. "No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." *Stewart v. Abraham* (3d Cir. 2001) 275 F.3d 220, 227-28; *Consol. Rail Corp v. Town of Hyde Park* (2d Cir. 1995) 47 F.3d 473. Here, even if the 66 alleged disinterested members for the putative class are removed from the 131 putative class, 65 CSRs still remain. Further, already 11 putative class members have stepped forward wanting the class action to proceed.

In any event, "it is well-established that the numerosity requirement of Rule 23 is not determined by a numerical test along." *Grice v. PNC Mort. Corp.* (E.D. Pa. 1998) 1998 U.S. Dist. LEXIS 23875. Where the class is relatively small, the determination of whether joinder is practical depends on factors such as the size of the class, the ease of identifying its members and determining their addresses, the difficulty of serving the members if joined, their geographic dispersion, the judicial economy in avoiding multiplicity of actions and whether the size of the individuals claims is so small as to discourage individuals from separately pursuing their own claims. *See Robiodoux v. Celani* (2d Cir.

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1993) 987 F.2d 931, 936; *Paton v. Union Nat'l Bank* (8th Cir. 1982), cert. denied, (1983) 460 U.S. 1083.

Each of these factors weighs in favor of establishing numerosity:

1. The size of the class: Currently, the class size will be at least 65 members, assuming that the alleged 66 disinterested actually do end up releasing their claims;

2. The ease of identifying its members and determining their addresses: All of the putative class members are current or former employees of Academy.[1] As such, they are all both readily identifiable and their addresses are known;

3. The difficulty of serving the members if joined: There will be no difficulty serving the members; indeed, they primarily reside with Los Angeles County, California, where they executed their declarations[2];

4. Their geographic dispersion: Each of the Plaintiffs and declarants all signed their declarations in Los Angeles County, showing that they are all local to this action. Id.;

5. The judicial economy in avoiding multiplicity of actions: Certification of the class allows the court to focus on common issues in an efficient manner without litigating multiple, individual lawsuits. Further, the policy behind class action lawsuits is to provide an avenue for collective redress which would otherwise be shut off because it would be too burdensome and expensive for these plaintiffs to pursue individually. Here, this is particularly appropriate as many of the putative class members are still within their statute of limitations and those which have signed declarations are also seeking to join as named plaintiffs if the certification is denied. Thus, these individuals are likely to bring their own actions if not joined into this action;

[1] Torres Decl. 2:5; Meza Decl. 2:5; Alcantra Decl. 2:5; Romero Decl. 2:5; Castro Decl. 2:5; Carrasco Decl. 2:5; Herrera Decl. 2:5; Franco Decl. 2:5; Manjarrez Decl. 2:5; Manzano Decl. 2:5; Rocha Decl. 2:5; Olvera-Flores Decl. 2:5; Rodriguez Decl. 2:5; Urzua 2:5; Perez Decl. 2:5; Noriega Decl. 2:5; Arteaga Decl. 2:5; Diaz Decl. 2:5; Coral Decl. 2:5; Figueroa Decl. 2:5; Aguilar Decl. 2:5; Inzunza Decl. 2:5; Lopez Decl. 2:5; Navarro Decl. 2:5; Quinonez Decl. 2:5; Ramos Decl. 2:5; Meza Decl. 2:5; Valenzuela Decl. 2:5; Arrizon Decl. 2:5; De Jesus Garcia Decl. 2:5; Garcia Decl. 2:5; Vega Decl. 2:5; Vaca-Rios Decl. 2:5; Serrano Decl. 2:5; Toledo Decl. 2:5; Flores Decl. 2:5; Perez Decl. 2:5; Tirado Decl. 2:5; Huerta Decl. 2:5; Infante Decl. 2:5; Estrada Decl. 2:5; Alcantra Decl. 2:5; Jimenez Decl. 2:5; Vargas Decl. 2:5; Banuelos Decl. 2:5; Marquez Decl. 2:5; Herrera-Mateos Decl. 2:5; Ron Decl. 2:5; Bonilla Decl. 2:4; Garcia Decl. 2:5; Delaguila Decl. 2:5; Fernandez Decl. 2:5; Navarro Decl. 2:5; Martinez Decl. 2:5; Diaz Decl. 2:5; Alcantra Decl. 2:5; Munoz Decl. 2:5; Rodriguez Decl. 2:5; Lopez Decl. 2:5; Barrientos Decl. 2:5; Chavez Decl. 2:5; Lobos Decl. 2:5; Landeros Decl. 2:5; Solorzano Decl. 2:5; Gutierrez Decl. 2:5; Lopez Decl. ¶ 8 (2:27-28); Rivera Decl. ¶ 7 (2:5-6); Ramirez Decl. ¶ 7 (2:24-25); Mendoza Decl. ¶ 7 (2:20-21); Matamoros Decl. ¶ 8 (2:20-21); Herrera Decl. ¶ 8 (2:25-26); Gonzalez Decl. ¶ 8 (2:14-15); Herrera Decl. ¶ 7 (2:13-14); Martinez Decl. ¶ 6 (2:12); Vargas Decl. ¶ 8 (3:9-10); Jimenez Decl. ¶ 6 (2:14-15); Castillo Decl. ¶ 2 (1:6-7); Martin Decl. ¶ 8 (2:24-25); Ramirez Decl. ¶ 8 (2:24-25); Castillo Decl. ¶ 5 (1:22-23); Chamorro Decl. ¶ 8 (2:26-27); Cabrera Decl. ¶ 7 (2:20-21); Torres Decl. ¶ 8 (2:21-22); Hernandez Decl. ¶ 8 (3:1-2); Angel Decl. ¶ 10 (2:24-26); Rodriguez Decl. ¶ 4 (1:21-22); Pena Decl. ¶ 8 (2:21-22).

[2] Castillo Decl. 7:16; Martin Decl. 14:4-5; Ramirez Decl. 13:15; Castillo Decl. 7:16; Chamorro Decl. 20:16; Cabrera Decl. 17:14; Torres Decl. 13:6; Hernandez Decl. 12:6; Angel Decl. 10:18; Rodriguez Decl. 7:6-7; Rodriguez Decl. 6:4-6; Pena Decl. 14:15; Lopez Decl. 12:25; Rivera Decl. 12:11; Ramirez Decl. 11: 25; Mendoza Decl. 11:22-23; Matamoros Decl. 10:15; Herrera Decl. 12:15; Gonzalez Decl. 10:8-9; Herrera Decl. 14:3; Martinez Decl. 11:1; Vargas Decl. 12:21; Jimenez Decl. 10:22; Lopez Decl. ¶ 8 (2:27-28); Rivera Decl. ¶ 7 (2:5-6); Ramirez Decl. ¶ 7 (2:24-25); Mendoza Decl. ¶ 7 (2:20-21); Matamoros Decl. ¶ 8 (2:20-21); Herrera Decl. ¶ 8 (2:25-26); Gonzalez Decl. ¶ 8 (2:14-15); Herrera Decl. ¶ 7 (2:13-14); Martinez Decl. ¶ 6 (2:12); Vargas Decl. ¶ 8 (3:9-10); Jimenez Decl. ¶ 6 (2:14-15).

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6. Whether the size of the individuals' claims is so small as to discourage individuals from separately pursuing their own claims: Here, given the cost and expense of litigation, the wage and hour damages are not such that each putative class member would be compelled to bring their own action.

Additionally, in determining whether numerosity is met, courts may consider the financial resources of the putative class members. E.g., *Robiodoux v. Celani* (2nd Cir.1993) 987 F.2d 931. 936 (holding that in determining whether joinder is impracticable, the court may consider "financial resources of class members" and "the ability of claimants to institute individual suits"); *Kazarov. Achim*, (N.D. Ill Dec. 12, 2003) 2003 U.S. Dist. LEXIS 22407 (certifying 10-17 immigrants challenging their detention where class members were likely indigent and unable to speak English.). Here, as customer service representatives, the putative class members are essentially living paycheck to paycheck without the funds to pay for litigation on their own.

Finally, whether the putative class members are current employees who may fear reprisal from the employer is relevant to numerosity and joinder. Here, there are at least 42 putative class members still employed by Academy.[3] Of the 66 declarations that Academy submitted allegedly disavowing this action based on Academy statements to them, 42 – or 65% -- are current employees. *Id.* The courts recognize that current employees may fear reprisal from a current employer if they pursue claims against their employer while still employed. *See, e.g., Mullen v. Treasure Chest Casino, LLC* (5th Cir. 1999) 186 F.3d 620, 625 (joining 100 to 150 class members where potential class members still employed "might be unwilling to sure individually or join a suit for fear of retaliation at their jobs."), cert. denied 528 U.S 1159 (2000); *Adames v. Mitsubhishi Bank Ltd.* (E.D.N.Y. 1989) 133 F.R.D. (holding that the numerosity requirement was satisfied "[s]ince here a number of putative class members are current employee, and concern for possible employer reprisal action exists and renders the alternative of individual joinder less than practicable.").

[3] Torres Decl. ¶ 2 (2:5); Meza Decl. ¶ 2 (2:5); Alcantra Decl. ¶ 2 (2:5); Romero Decl. ¶ 2 (2:5); Castro Decl. ¶ 2 (2:5); Carrasco Decl. ¶ 2 (2:5); Herrera Decl. ¶ 2 (2:5); Franco Decl. ¶ 2 (2:5); Manjarrez Decl. ¶ 2 (2:5); Manzano Decl. ¶ 2 (2:5); Rocha Decl. ¶ 2 (2:5); Olvera-Flores Decl. ¶ 2 (2:5); Rodriguez Decl. ¶ 2 (2:5); Urzua Decl. ¶ 2 (2:5); Perez Decl. ¶ 2 (2:5); Noriega Decl. ¶ 2 (2:5); Arteaga Decl. ¶ 2 (2:5); Diaz Decl. ¶ 2 (2:5); Coral Decl. ¶ 2 (2:5); Figueroa Decl. ¶ 2 (2:5); Aguilar Decl. ¶ 2 (2:5); Inzunza Decl. ¶ 2 (2:5); Lopez Decl. ¶ 2 (2:5); Navarro Decl. ¶ 2 (2:5); Quinonez Decl. ¶ 2 (2:5); Ramos Decl. ¶ 2 (2:5); Meza Decl. ¶ 2 (2:5); Valenzuela Decl. ¶ 2 (2:5); Arrizon Decl. ¶ 2 (2:5); De Jesus Garcia Decl. ¶ 2 (2:5); Garcia Decl. ¶ 2 (2:5); Vega Decl. ¶ 2 (2:5); Vaca-Rios Decl. ¶ 2 (2:5); Serrano Decl. ¶ 2 (2:5); Toledo Decl. ¶ 2 (2:5); Flores Decl. ¶ 2 (2:5); Perez Decl. ¶ 2 (2:5); Tirado Decl. ¶ 2 (2:5); Huerta Decl. ¶ 2 (2:5); Infante Decl. ¶ 2 (2:5); Estrada Decl. ¶ 2 (2:5); Alcantra Decl. ¶ 2 (2:5); Jimenez Decl. ¶ 2 (2:5); Vargas Decl. ¶ 2 (2:5).

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F. Plaintiffs' Claims are Typical to the Proposed Class, Not "Antagonistic" to Them

The Court must simply find that class representatives' claims are typical of the putative class members, including subclass members. Academy Defendants unreasonably claim that the putative class of CSRs are "antagonistic" to all other CSRs who filed a notice of disinterest in the case. But "only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." *Kuck v. Berkey Photo, Inc.* (S.D.N.Y. 1979) 81 F.R.D. 736, 740. Academy Defendants' reliance on *Richmond v. Dart Industries* (1981), 29 Cal.3d 462, 470 for the proposition that it is "axiomatic that a putative representative cannot adequately protect the class if his interests are antagonistic to those he purports to represent," does not help. In *Richman*, the Court overruled the trial court's finding that any antagonism between the putative class members and the class representative required denied of class certification. The Court explained: "class status may be denied **only** if antagonism of such a substantial degree is shown that the purpose of class certification would be defeated if the motion were granted." *Id.* at 472; [**emphasis added**].

Defendants then make a bold leap that because some potential members would opt out of the class, the putative class before the court is antagonistic to all potential CSRs impacted by this litigation. This is a non sequitur. Not every potential class member is required to join the class to satisfy the numerosity and impracticability requirement. Further, none of the 66 declarations state that any of the declarants would leave the class. The case cited by Defendants sets forth the standard for typicality as determining whether the CSR's are "truly representative of the unnamed, absent class members." *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 663.

In the present case, Plaintiffs filed substantial evidence including declarations based upon personal knowledge and experiences of Academy Defendants' wage and hour violations and time card documents confirming substantial claims. Academy Defendants improperly claim that because the approximately 66 CSR putative members filed an expression of "disinterest," then somehow that establishes that class representatives are somehow adverse to the putative class. Disinterest does not equal antagonism. The named Plaintiffs' claims are typical of putative class members.

G. Plaintiffs Adequately Represent the Class

Numerous courts have stated that "class certification should not be denied by speculative

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suggestions of potential conflicts." *Gruby v. Brady* (S.D.N.Y. 1993) (refusing to deny certification simply because class members included retired and active members of company offering retirement plan, and persons who may have disagreed on appropriate plan-wide relief). The fact that they are not aware of legal terms and proceedings, does not disqualify them from serving as adequate representatives of the class. *See, Gunnells v. Healthplan Servs., Inc.* (4th Cir. 2003) ("It is hornbook law . . . that '[i]n a complex lawsuit . . . the representative need not have extensive knowledge of the facts of the case in order to be an adequate representative.)

Plaintiffs are lay people and not lawyers. Yet, Defendants criticize them for not being familiar with discovery and other terminology, such as complaining that class representative Pena did not talk to the other class reps about the lawsuit before retaining class counsel, that call representative Cabrera does not know what "punitive damages" means, or that class representative Chamorro could not recall if she made sure to produce all documents for her deposition. Academy Defendants' quibbles about the class representatives fail to raise to the level of disqualifying the class representatives.

Finally, as to Academy Defendants' claims that certain putative class member "do not want to be part of this lawsuit" (Opp. 14:26-29), case law soundly rejects such an argument as grounds for denying certification. E.g., *Fanucchi* v. *Coberly-West Co.* (1957) 151 Cal.App.2d 72, 82 (Held: even though one-third of the proposed class signed affidavits stating that they did not wish to be a part of the class, the class action suit could not be barred: "If [the opponents of the class] do not want to be paid they need not claim their share of any recovery which may result, but they may not thus defeat the right of the remaining growers to maintain a class action. . . ."); *Hebbard* v. *Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (holding that several antagonistic class members out of a total of 50 could not defeat class certification. Even though the dissident class members intervened on the defendants' side in the federal class suit, the court held that their antagonism only went to their "desire to proceed or belief in the culpability of the defendants." Therefore, the interests of these class members could still be represented by the named plaintiffs "even though [the absent members] may . . . forego their share of the recovery.") Therefore, Plaintiffs are proper class representatives.

III. Conclusion

For all of the foregoing reasons, as stated herein, Plaintiffs respectfully ask the Court to certify the class as presented.

DATED: February 15, 2017 ABROLAT LAW PC

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