

Thomas D. Rutledge
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091
Telephone: (619) 886-7224

Thomas D. Rutledge (SBN 200497)
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091-4606
Telephone: (619) 886-7224
Email: thomasrutledgelaw@gmail.com

Attorneys for Plaintiffs

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/24/2024 at 08:00:00 AM

Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

MICHELLE ACEVES, as the State of
California's designated proxy under the
Private Attorneys General Act (PAGA)
and on behalf of others,

Plaintiffs,

vs.

ATLAS RETAIL SERVICES INC., a
Texas corporation; and DOES 1 through
50 inclusive

Defendants.

Case No.: 37-2024-00018584-CU-OE-CTL

Judge: Hon. Wendy M. Behan
Dept.: C-66

**FIRST AMENDED COMPLAINT
VIA THE PAGA FOR:**

- 1. Failure to Provide Access to Employee Personnel Records (Cal. Labor Code §§ 226, 432, and 1198.5);**
- 2. Claim for Failure to Pay State Minimum/Regular Wages via the PAGA;**
- 3. Claim for Failure to Pay State Overtime Wages via the PAGA;**
- 4. Claim for Failure to Timely Pay Wages via the PAGA;**
- 5. Claim for Meal and Rest Break Labor Code Violations via the PAGA;**
- 6. Claim for Inaccurate Wage Statements via the PAGA;**
- 7. Claim for Failure to Maintain Payroll Records via the PAGA;**
- 8. Claim for Failure to Reimburse Business Expenses in Violation of California Labor Code § 2802 via the PAGA;**

**9. Failure to Properly Pay Sick Pay;
10. Misclassification;
11. Failure to Maintain Workers'
Compensation Insurance; and
12. Claim for miscellaneous Labor
Code Violations via the PAGA**

Plaintiff MICHELLE ACEVES, in her capacity as the State of California's designated proxy under the Private Attorneys General Act and on behalf of Aggrieved Employees (collectively the "Plaintiffs"), alleges:

NATURE OF THE ACTION

1. Plaintiff is not suing in her individual capacity; she is proceeding herein solely under the Private Attorneys General Act (PAGA) of 2004, as amended, Labor Code §§ 2698, *et seq.*, seeking civil penalties on behalf of the State of California for all Aggrieved Employees and other Aggrieved Employees. *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023); *Balderas v. Fresh Start Harvesting*, 101 Cal. App. 5th 533 (2024).

THE PARTIES

2. The State of California is the real party in interest in a PAGA action. *Kim v. Reins Int'l California, Inc.*, 9 Cal. 5th 73, 81 (2020) (the "government entity on whose behalf the plaintiff files suit is always the real party in interest.")

3. Plaintiff MICHELLE ACEVES is an individual residing in California.

4. Defendant ATLAS RETAIL SERVICES INC. ("ATLAS") is a Texas corporation doing business in California.

5. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants named herein as DOES 1 through 10, are unknown to Plaintiff at this time. Plaintiff therefore sues said Defendants by such fictitious names pursuant to § 474 of the California Code of Civil Procedure. Plaintiff will seek leave to amend this Complaint to allege the true names and capacities of DOES 1 through

1 10 when their names are ascertained. Plaintiff is informed and believes, and based
2 thereon alleges, that each of the DOE Defendants is in some manner liable to Plaintiff
3 for the events and actions alleged herein.

4 6. Unless otherwise specified by name, the named Defendants and DOES 1
5 through 50 are collectively referred to as "DEFENDANT EMPLOYER."

6 7. All named Defendants and DOES 1 through 10 are collectively referred
7 to as "Defendants."

8 8. Plaintiffs are informed and believe, and based thereon allege that at all
9 times relevant herein each Defendant was acting as an agent, joint venture, or as an
10 integrated enterprise and/or alter ego for each of the other Defendants, and each was a
11 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
12 that each is responsible for the acts of the other in connection with the conspiracy and
13 in proximate connection with the other Defendants.

14 9. Plaintiffs are informed and believe, and based thereon allege that each
15 Defendant was acting partly within and partly without the scope and course of their
16 employment, and was acting with the knowledge, permission, consent, and
17 ratification of every other Defendant.

18 10. Plaintiffs are informed and believe, and based thereon allege that each of
19 the Defendants was an agent, managing general partner, managing member, owner,
20 co-owner, partner, employee, and/or representative of each of the Defendants, and
21 were at all times material hereto, acting within the purpose and scope of such agency,
22 employment, contract and/or representation, and that each of them are jointly and
23 severally liable to Plaintiffs for the acts alleged herein

24 11. Plaintiffs are informed and believe, and based thereon allege that each of
25 the Defendants are liable to Plaintiffs under legal theories and doctrines including but
26 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
27 ego, based in part, on the facts set forth below.

28 12. Plaintiffs are informed and believe, and based thereon allege that each of

1 the named Defendants are part of an integrated enterprise and have acted or currently
2 act as the employer and/or joint employer of Plaintiffs, making each of them liable for
3 the wage and hour violations alleged herein.

4 13. Plaintiffs are informed and believe, and based thereon allege, that during
5 all times relevant DOLGEN CALIFORNIA, LLC was a “Client employer” within the
6 meaning of Labor Code § 2810.3(a)(1)(A) and, as such, is jointly liable pursuant to
7 Labor Code §§ 2753 and 2810.3.

8 14. Please take notice that pursuant to Labor Code § 2810.3(b), Plaintiffs
9 demand that DOLGEN CALIFORNIA, LLC provide all facts in support of its
10 contention that DOLGEN CALIFORNIA, LLC is not liable under Labor Code §§
11 2753 and 2810.3.

12 15. On May 21, 2024, Plaintiffs gave notice under Labor Code § 2810.3
13 subdivision (d) to DOLGEN CALIFORNIA, LLC and, thus, have the legal basis to
14 file this Complaint to pursue the claims alleged in this Complaint against the
15 abovementioned pursuant to Labor Code § 2810.3.

16 **JURISDICTION & VENUE**

17 16. Pursuant to Article VI, § 10 of the California Constitution, subject matter
18 jurisdiction is proper in the Superior Court of California, County of San Diego, State
19 of California because Plaintiffs allege claims arising under California law.

20 17. This Court has jurisdiction over the Defendants because each is an
21 association, corporation, business entity, or individual that conducts substantial
22 business in the State of California.

23 18. Pursuant to § 395 of the California Code of Civil Procedure, venue is
24 proper in the Superior Court of California for the County of San Diego because
25 Defendant maintains one of its headquarters in the County of San Diego and it is
26 where the misconduct alleged in this Complaint is believed to have originated.
27 *Crestwood Behavioral Health, Inc. v. Superior Court*, 60 Cal. App. 5th 1069, 1075
28 (2021) (in a PAGA action, a plaintiff is not limited to the county in which he or she

1 performed work).

2 GENERAL ALLEGATIONS

3 19. Defendants are in the retail business.

4 20. During all times relevant, Defendants employed the named Plaintiff as a
5 nonexempt worker in California.

6 21. The named Plaintiff is an “aggrieved employee” because Defendants
7 employed Plaintiff in California and Plaintiff experienced one or more of the alleged
8 Labor Code violations committed against the Plaintiff, and therefore the named
9 Plaintiff is properly suited to act on behalf the state, and collect civil penalties for all
10 violations committed against the Represented Employees, who are also aggrieved
11 employees as defined by Labor Code § 2699(c).

12 22. California law provides that an aggrieved employee may file a
13 representative action under the PAGA against an employer for civil penalties in
14 connection with violations of the Labor Code and Wage Order.

15 23. On information and belief, current and former employees of Defendants
16 suffered from Defendants’ Labor Code violations.

17 **Failure to Provide Payroll Records and Personnel File.**

18 24. On or about March 22, 2024, Plaintiff, via counsel, sent a letter via email
19 and regular U.S. Mail to DEFENDANT EMPLOYER requesting to obtain access to
20 Plaintiff’s payroll records and employee personnel file.

21 25. Defendants failed to respond to the foregoing letter.

22 26. On or about April 17, 2024, Plaintiff, via counsel, sent a second letter via
23 email and regular U.S. Mail to DEFENDANT EMPLOYER requesting to obtain
24 access to Plaintiff’s payroll records and employee personnel file.

25 27. To date, DEFENDANT EMPLOYER has failed to produce all of
26 Plaintiff’s personnel file.

27 28. Due to the foregoing, Plaintiffs seeks all remedies available pursuant to
28 the PAGA.

Unpaid Minimum/Regular Wages/and Prevailing Wages.

29. During all times relevant, Plaintiffs are informed and believe and based thereon allege that pursuant to company policies and/or practices and/or directions implemented and enforced by Defendants, that Defendants failed to pay Aggrieved Employees all their regular/tips/minimum/prevailing wages, in an amount to be proven at trial.

30. This claim is premised on Defendants' promise to pay the named Plaintiff \$20 per hour, but Defendants only paid the named Plaintiff \$18 per hour.

31. This claim is also premised on Plaintiffs' right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018) and Defendants' failure to provide Plaintiff's personnel file and payroll records.

Unpaid Overtime.

32. During all times relevant, Plaintiffs are informed and believe and based thereon allege that pursuant to company policies and/or practices and/or directions implemented and enforced by Defendants, that Defendants underpaid overtime, failed to pay overtime, or both to Aggrieved Employees.

33. This claim is premised on Plaintiffs' right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018) and Defendants' failure to provide Plaintiff's personnel file and payroll records.

Meal and Rests Break Claims.

34. During all times relevant, Plaintiffs are informed and believe and based thereon allege that pursuant to company policies and/or practices and/or directions implemented and enforced by Defendants, that Defendants failed to permit Aggrieved Employees to take all their compliant off-duty meal and rest breaks during the required timeframe as required by law and failed to pay them premium pay in lieu thereof, in an amount to be proven at trial.

1 35. Plaintiffs are also informed and believe and based thereon allege that
2 because of Defendants' policy, Defendants prevented Aggrieved Employees from
3 taking all their uninterrupted rest breaks to which they had the right to enjoy in an
4 amount to be proven at trial, and Defendants failed to pay them premium pay as
5 required under California law. *See Augustus v. ABM Security Services*, 2 Cal. 5th 257
6 (2016).

7 36. This claim is premised, in part, on the named Plaintiff's experience of
8 never being provided meal breaks in a lawful manner and, in part, on Defendants'
9 failure to produce time records thus far despite Plaintiff's requests.

10 37. This claim is also premised on Plaintiffs' right to pursue all Labor Code
11 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
12 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and Defendants' failure to provide Plaintiff's
13 personnel file and payroll records.

14 **Unreimbursed Work-Related Expense Claims.**

15 38. During all times relevant, Plaintiffs are informed and believe and based
16 thereon allege that pursuant to company policies and/or practices and/or directions
17 implemented and enforced by Defendants, that Defendants failed to reimburse
18 Aggrieved Employees for work-related expenses in violation of California law.

19 39. In particular, the named Plaintiff alleges that Defendants failed and
20 continue to fail to reimburse the Plaintiff for, among other things, cell phone and
21 mileage expenses incurred on behalf of the Defendants.

22 40. This claim is also premised on Plaintiffs' right to pursue all Labor Code
23 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
24 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and Defendants' failure to provide Plaintiff's
25 personnel file and payroll records.

26 **Erroneous Wage Statements in Violation of Labor Code § 226.**

27 41. During all times relevant, Plaintiffs are informed and believe and based
28 thereon allege that pursuant to company policies and/or practices and/or directions

1 implemented and enforced by Defendants, that Defendants failed to issue wage and
2 earning statements to Aggrieved Employees in violation of California law.

3 42. This claim is also premised, in part, that when Defendants did issue the
4 named Plaintiff and Aggrieved Employees wage statements, their wage statements
5 were inaccurate or did not comply with Labor Code § 226, such as they were missing
6 rates of pay, name and address of the employer, among other things.

7 43. This claim is also premised on Plaintiffs' right to pursue all Labor Code
8 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
9 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and based on Defendants' failure to provide
10 Plaintiff's personnel file and payroll records.

11 **Misclassification.**

12 44. Defendants have a business plan that includes hiring traveling
13 merchandisers and misclassifying them as independent contractors even though the
14 workers have all the characteristics of employees.

15 45. DOES 1-50 and DOLGEN CALIFORNIA, LLC, which does business
16 under the trade name of Dollar General ("Dollar General"), knowingly utilizes
17 Defendants' workers and exerts enough control over the day-to-day job functions of
18 the Defendants' workers to make Dollar General a joint employer with Defendants.

19 46. Defendants and Dollar General (jointly referred to as "Defendants") break
20 the law in order to avoid paying overtime pay to merchandisers, saving the Defendants
21 money and allowing them to gain an unfair advantage over competitors who follow the
22 law in their employment practices.

23 47. Dollar General hires Defendant ATLAS to "remodel" Dollar General
24 Stores.

25 48. Defendant ATLAS hires individuals to form crews of approximately 12
26 workers to do this work.

27 49. One worker is called the "team lead," and is the liaison with the Dollar
28 General representative and is generally in charge of the crew and their work.

1 50. However, a Dollar General representative is on-site at the store being
2 remodeled during the entire process.

3 51. The Dollar General representative is the person ultimately responsible for
4 the work being performed and determines how that work is done, assigns duties to each
5 crew member and monitors the progress and quality of the work.

6 52. The Dollar General representative has the power and ability to direct
7 Defendant ATLAS to terminate the employment of a crew member that he or she
8 determines to be unacceptable.

9 53. Each remodel requires removing much of the merchandise from a Dollar
10 General store and putting it in a storage container brought on site for that purpose.

11 54. Defendant ATLAS's workers then move shelving, coolers, and other
12 fixtures to new locations according to Dollar General plans and specifications.

13 55. Defendant ATLAS's crew then returns the merchandise to the shelves
14 under Dollar General's direction.

15 56. Each of Defendant ATLAS's crews spend about 5-6 days on each remodel,
16 usually beginning on Saturday and finishing the following Thursday, Friday, or
17 occasionally Saturday and they are paid hourly.

18 57. Defendant ATLAS classifies the crew members as "independent
19 contractors."

20 58. Defendant ATLAS pays Aggrieved Employees hourly.

21 59. Aggrieved Employees' hourly rates are determined solely by Defendant
22 ATLAS and does not vary unless Defendant ATLAS decides to change it.

23 60. Defendant ATLAS assigns the crews to remodel particular locations and
24 both Defendant ATLAS and Dollar General supervise, monitor, and direct the workers
25 in the manner and conduct of their work.

26 61. Defendant ATLAS provides the tools to its workers that are required for the
27 work, and the work is performed at Dollar General's stores according to Dollar
28 General's procedures, instructions, and direct supervision.

62. Defendant ATLAS's workers have no ability to increase their profit or loss due to their own efforts.

63. Defendant ATLAS and Dollar General totally control the workers' pay and the method of getting paid.

64. Pursuant to this unlawful practice, from about January 30, 2024 to March 1, 2024, Defendants hired and paid the named Plaintiff as an independent contractor.

65. During all times relevant and based on the foregoing, Defendants knowingly violate the law. *See e.g., Thompson, et al. v. Atlas Retail Services, Inc., et al.*, Case No. 4:22-cv-00854 (Tex. Dis. Ct. 2022) (FLSA collective action case filed by a class of workers Defendant ATLAS misclassified in Texas).

Derivative PAGA Claims.

66. During all times relevant, Plaintiffs allege that pursuant to company policies and/or practices and/or directions implemented and enforced by Defendants, that Defendants failed to pay Aggrieved Employees their final paychecks immediately upon involuntary termination or within 72 hours of voluntary separation, and/or Defendants did not pay all final wages at the location of employment, and/or said final paychecks did not include all wages due to the employee in violation of California law.

67. This claim is premised on Plaintiffs' right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018) and based on Defendants' failure to provide Plaintiff's personnel file and payroll records.

REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS

68. This is a wage and hour representative action filed pursuant to PAGA, §§ 2698, 2699 that generally consists of the following group:

**All current or former employees who worked for the
Defendants in the state of California from April 19, 2023 to
the present.**

69. All members of the represented group are referred to as the “Aggrieved Employees.”

70. The “PAGA Period” means from **April 19, 2023** to the present.

71. California law provides that an employee may file an action against an employer for penalties in connection with violations of the Labor Code and Wage Orders provided the aggrieved employee file an action on behalf of him or herself and similarly situated current and former employees.

72. At all material times, Defendants and DOES 1 through 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved Employees’ employer, within the meaning of California Labor Code § 558, and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

73. As set forth in further detail below, based on the analysis and investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent letters to the California Labor and Workforce Development Agency (LWDA) and to Defendants informing Defendants of their claims and intent to pursue litigation.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

74. As to penalty claims under the PAGA, on **April 19, 2024**, Plaintiffs, via counsel, sent correspondence to the LWDA (via online filing) and Defendants via certified U.S. Mail indicating that Plaintiffs are pursuing the claims alleged in this Complaint.

75. The LWDA did not serve notice of its intent to assume jurisdiction over the applicable penalty claims nor provide notice as set forth in Labor Code § 2699.3(a)(2)(A) within the statutory period from the date of the foregoing letter.

76. Therefore, Plaintiffs have exhausted Plaintiffs’ administrative remedies to pursue claims and remedies as authorized by the PAGA.

77. The Causes of Action alleged herein are appropriately suited for a Representative Action under the PAGA (Labor Code § 2698, *et seq.*) because:

- 1 a. This action involves allegations of violations of provisions
2 of the California Labor Code that provide for a civil penalty
3 to be assessed and collected by the LWDA or any
4 departments, divisions, commissions, boards, agencies, or
5 employees;
6 b. Plaintiffs are “aggrieved employees” because Plaintiffs were
7 employed by the alleged violator and had one or more of the
8 Labor Code violations alleged on this Complaint committed
9 against them; and
10 c. Plaintiffs have satisfied the procedural requirements of
11 Labor Code § 2699.3, as set forth above.

12 **FIRST CAUSE OF ACTION**

13 **Representative Claim for PAGA Penalties for**
14 **Failure to Provide Access to Employee Personnel File**
15 **and Payroll Records in Violation of**
16 **California Labor Code §§ 226, 432, and 1198.5**

17 (Against all Defendants)

18 78. Plaintiff re-alleges and incorporates by reference the foregoing
19 allegations, as though set forth herein.

20 79. California Labor Code § 226, subdivision (b), requires employers doing
21 business in the State of California to “afford current and former employees the right
22 to inspect or copy records pertaining to their employment, upon a reasonable request
23 to the employer...” and subdivision (c), requires employers to produce such records
24 within “21 calendar days from the date of the request.”

25 80. Plaintiff maintains the records requested fall within the meaning of
26 Labor Code § 226 because, among other reasons, the requested documents are
27 “records pertaining to [his] employment.”

28 81. California Labor Code § 432, subdivision (b), requires employers doing

1 business in the State of California to provide current, former employees, and
2 applicants copies of all written instruments they sign upon request.

3 82. Plaintiff maintains the records requested fall within the meaning of
4 Labor Code § 432 because some of the records requested constitute written
5 instruments the Plaintiff signed.

6 83. California Labor Code § 1198.5, *et seq.*, similarly provides current and
7 former employees the right to inspect their employee personnel records and requires
8 the employer to provide the employee access to such records no later than 30 calendar
9 days from the date the employer receives a written request.

10 84. Plaintiff maintains the records requested fall within the meaning of
11 Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff's
12 personnel file within the meaning of Labor Code § 1198.5.

13 85. As alleged above, Defendants did not provide Plaintiff access to
14 Plaintiff's employee personnel file and/or the records to which Plaintiff has the right
15 to obtain within the meaning of the foregoing statutes in violation of the above
16 described statutes.

17 86. Because of the statutory violations of Labor Code § 226 due to
18 Defendants' failure to provide Plaintiff his payroll records, Plaintiff suffered
19 damages, in an amount to be determined according to proof at trial.

20 87. Because of the statutory violations of Labor Code § 1198.5 due to
21 Defendants' failure to provide Plaintiff his personnel file, Plaintiff suffered damages,
22 in an amount to be determined according to proof at trial.

23 88. Further, Plaintiff is informed and believes and based thereon alleges
24 that Defendants continue to withhold records required to be provided under the
25 foregoing statutes and asserts Plaintiff has been left without an adequate remedy at
26 law, and has the right to obtain injunctive and/or declaratory relief from this Court
27 including, but not limited to, an order by the Court requiring Defendants to turn over
28 copies of Plaintiff's complete employee personnel file.

1 89. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
2 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
3 costs incurred herein all in an amount to be shown according to proof at trial.

4
5
6
7 **SECOND CAUSE OF ACTION**

8 **Representative Claim for PAGA Penalties**

9 **Under California Labor Code §§ 2698, 2699, *et seq.* for**
10 **Failure to Pay Local/State Minimum/Regular/Prevailing Wages**
11 **in Violation of California Labor Code §§ 1194, 1197, 1197.1,**
12 **1771, 1774, 1776, 1811, and 1815, 1198, and the applicable Industrial Welfare**
13 **Commission (IWC) Wage Order via § 1198, and where applicable the Local Min.**
14 **Wage Ordinance**
15 **(Against all Defendants)**

16 90. Plaintiffs re-allege and incorporate by reference the foregoing
17 allegations, as though set forth herein.

18 91. Pursuant to Labor Code §§ 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
19 1815, and 1198, it is unlawful for a California employer to suffer or permit an
20 employee to work without paying wages for all hours worked, as required by the
21 applicable IWC Wage Order and, where applicable on public works projects,
22 prevailing wage laws.

23 92. During all times relevant, Defendants were required to pay Plaintiffs and
24 other Aggrieved Employees their respective hourly rate for all hours worked and/or
25 minimum wages and/or prevailing wages per state law or applicable local law.

26 93. During all times relevant, at least one of the IWC Wage Orders applied
27 to Plaintiffs' employment with Defendants.

28 94. Pursuant to the applicable Wage Order, "hours worked" include the time

1 during which an employee is “suffered or permitted to work, whether or not required
2 to do so.”

3 95. Under state and, where appropriate, local law, every employer must pay
4 each nonexempt employee minimum wages. (*See, e.g.*, Los Angeles County
5 Minimum Wage Ordinance; San Diego Minimum Wage Ordinance, etc.)

6 96. Plaintiffs seek to recover penalties pursuant to the PAGA from the
7 Defendants for any violations of the foregoing laws during the proposed PAGA
8 Period.

9 97. Labor Code § 1194 subdivision (a) permits an action to recover wages
10 because of the payment of a wage less than the minimum wage “applicable to the
11 employee” including attorneys’ fees, costs, and interest.

12 98. At all material times, Defendants were and/or are Aggrieved Employees’
13 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
14 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to civil
15 penalties for each underpaid employee as set for in Labor Code § 558.

16 99. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
17 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
18 period for the initial violation and two hundred (\$200.00) for each aggrieved
19 employee per pay period for each subsequent violation in which Defendants violated
20 the minimum wage and/or regular wage provisions of the Labor Code, including but
21 not limited to §§ 216, 218, 218.5, 558, 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
22 1815, 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is
23 all in an amount to be shown according to proof at trial.

24 100. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
25 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and
26 costs incurred herein all in an amount to be shown according to proof at trial.

27
28

THIRD CAUSE OF ACTION

Representative Claim for PAGA Penalties

Under California Labor Code §§ 2698, 2699, *et seq.* for

Failure to Pay State Overtime and/or Double-Time Compensation

**in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, §§ 351-356,
1182.12, 1194, 1194.2, 1197, 1197.1, 1771, 1774, 1776, 1811, 1815, 1198, and the**

Applicable IWC Wage Order

(Against all Defendants)

101. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

102. California law requires an employer to pay each employee for the actual hours worked. (*See* Cal. Labor Code §§ 200, 226.)

103. During all times relevant, one or more of the IWC Wage Orders applied to Plaintiffs' employment with Defendants.

104. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage Order 4, "hours worked" include the time during which an employee is "suffered or permitted to work, whether or not required to do so."

105. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40) hours in a week and eight (8) hours in a day, the employer must pay the employee's regular hourly wage.

106. For each hour (or fraction thereof) an employee works over forty (40)

1 hours in a week or more than eight (8) hours in a workday the employer must pay the
2 rate of one and a half times the employee's regular hourly wage.

3 107. For each hour (or fraction thereof) an employee works more than twelve
4 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
5 day of work, the employer must compensate the employee at the rate of no less than
6 twice the regular rate of pay for that employee.

7 108. At all material times, Defendants were and/or are Aggrieved Employees'
8 employers or persons acting on behalf of Aggrieved Employees' employer, within the
9 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to
10 penalties for each underpaid employee as set for in Labor Code § 558.

11 109. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
12 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
13 period for the initial violation and two hundred (\$200.00) for each aggrieved
14 employee per pay period for each subsequent violation in which Defendants violated
15 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
16 and 1194, the exact amount of the penalties sought is in an amount to be shown
17 according to proof at trial.

18 110. Pursuant to Labor Code § 2699, Plaintiffs seek to recover from
19 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein all
20 in an amount to be shown according to proof at trial.

21 **FOURTH CAUSE OF ACTION**

22 **Representative Claim for PAGA Penalties**

23 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

24 **Failure to Timely Pay Earned Wages in Violation of California**

25 **Labor Code §§ 201, 201.3, 202, 203, 204, 204b,**

26 **218.5, 218.6, 256, 1198, and the applicable Wage Order**

27 (Against all Defendants)

28 111. Plaintiffs re-allege and incorporate by reference the foregoing allegations

1 as though set forth herein.

2 112. Pursuant to Labor Code § 201, “If an employer discharges an employee,
3 the wages earned and unpaid at the time of discharge are due and payable
4 immediately.”

5 113. Pursuant to Labor Code § 201.3, temporary employment agencies must
6 pay temporary employees weekly.

7 114. Pursuant to Labor Code § 202, “If an employee not having a written
8 contract for a definite period quits his or her employment, his or her wages shall
9 become due and payable not later than 72 hours thereafter, unless the employee has
10 given 72 hours previous notice of his or her intention to quit, in which case the
11 employee is entitled to his or her wages at the time of quitting.”

12 115. Labor Code § 203 provides, in pertinent part: “If an employer willfully
13 fails to pay, without abatement or reduction, ... any wages of an employee who is
14 discharged or who quits, the wages of the employee shall continue as a penalty from
15 the due date thereof at the same rate until paid or until an action therefore is
16 commenced; but the wages shall not continue for more than 30 days. ...”

17 116. Pursuant to Labor Code § 204, “all wages ... earned by any person in
18 any employment are due and payable twice during each calendar month, on days
19 designated in advance by the employer as the regular paydays.”

20 117. Pursuant to Labor Code § 204b, “Labor performed by a weekly-paid
21 employee during any calendar week and prior to or on the regular payday shall be
22 paid for not later than the regular payday of the employer for such weekly-paid
23 employee falling during the following calendar week.”

24 118. Defendants did not properly pay Plaintiff and potentially other
25 Aggrieved Employees pursuant to the requirements of Labor Code §§ 201, 202, 204
26 and/or 204b and thereby Plaintiffs seek the remedies sought in this Complaint.

27 119. At all material times, Defendants and DOES 1 through 50 were and/or
28 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved

1 Employees' employer, within the meaning of California Labor Code § 558, and, as
2 such, are subject to penalties for each underpaid employee as set for in Labor Code §
3 558.

4 120. Plaintiffs seek to recover penalties pursuant to the PAGA from the
5 Defendants for any violations of the foregoing Labor laws during the proposed PAGA
6 Period.

7 121. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
8 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
9 period for the initial violation and two hundred (\$200.00) for each aggrieved
10 employee per pay period for each subsequent violation in which Defendants violated
11 Labor Code §§ 201, 202, 203, 204, 204b, and 256.

12 122. Plaintiffs seek all waiting time penalties, interest, attorneys' fees, costs,
13 damages, and other remedies pursuant to the PAGA in an amount to be proven at trial
14 all in an amount to be shown according to proof at trial.

15 **FIFTH CAUSE OF ACTION**

16 **Representative Claim for PAGA Penalties**

17 **Under California Labor Code §§ 2698, 2699, *et seq.* for** 18 **Failure to Comply with the Meal and Rest Break Requirements Under Labor** 19 **Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order**

20 (Against all Defendants)

21 123. Plaintiffs re-allege and incorporate by reference the foregoing allegations
22 as though set forth herein.

23 124. Plaintiffs seek to recover penalties pursuant to the PAGA from the
24 Defendants for any violations of Labor Code §§ 226.7, 512, and 1198 during the
25 proposed PAGA Period.

26 125. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
27 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
28 for the initial violation and two hundred (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation in which all culpable Defendants violated
2 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
3 an amount to be shown according to proof at trial.

4 126. Wherefore, Plaintiffs request all remedies available to them and to the
5 Aggrieved Employees pursuant to the PAGA all in an amount to be shown according
6 to proof at trial.

7 **SIXTH CAUSE OF ACTION**

8 **Representative Claim for PAGA Penalties**

9 **Under California Labor Code §§ 2698, 2699, *et seq.* for**
10 **Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,**
11 **and the applicable IWC Wage Order**
12 **(Against all Defendants)**

13 127. Plaintiffs re-allege and incorporate by reference the foregoing allegations
14 as though set forth herein.

15 128. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
16 pertinent part, that every employer shall, “semimonthly or at the time of each
17 payment of wages, shall furnish to his or her employees, either as a detachable part of
18 the check, draft, or voucher paying the employee's wages, or separately if wages are
19 paid by personal check or cash, an accurate itemized statement in writing showing (1)
20 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
21 piece-rate units earned and any applicable piece rate if the employee is paid on a
22 piece-rate basis, (4) all deductions, provided that all deductions made on written
23 orders of the employee may be aggregated and shown as one item, (5) net wages
24 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
25 name of the employee and only the last four digits of his or her social security
26 number..., (8) the name and address of the legal entity that is the employer. . . , and
27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee and, beginning July 1,

1 2013, if the employer is a temporary services employer as defined in Section 201.3,
2 the rate of pay and the total hours worked for each temporary services assignment. . .”
3 (Labor Code § 226 subdivision (a).)

4 129. Plaintiffs seek to recover penalties pursuant to the PAGA from the
5 Defendants for any violations of Labor Code §§ 226, 226.3, 226.6, and 1198 during
6 the proposed PAGA Period.

7 130. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
8 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
9 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
10 pay period for each subsequent violation in which all culpable Defendants violated
11 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
12 of the applicable penalty is all in an amount to be shown according to proof at trial.

13 131. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
14 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and
15 costs incurred herein under §§ 226, 226.3, and 226.6 all in an amount to be shown
16 according to proof at trial.

17 **SEVENTH CAUSE OF ACTION**

18 **Representative Claim for PAGA Penalties**

19 **For Failure to Maintain Required Records in Violation of California** 20 **Labor Code §§ 1174 and the Applicable Wage Order and/or § 1198**

21 (Against All Defendants)

22 132. Plaintiffs re-allege and incorporate by reference the foregoing allegations
23 as though set forth herein.

24 133. Section 7 of the typical Wage Order requires every employer to maintain
25 time and payroll records.

26 134. Plaintiffs seek to recover penalties pursuant to the PAGA from the
27 Defendants for any violations of Labor Code § 1174 for failing to maintain certain
28 records which employers are required to maintain, including but not limited to, an

1 accurate record indicating the number hours worked by the Plaintiffs.

2 135. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
3 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
4 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
5 pay period for each subsequent violation in which all culpable Defendants violated
6 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
7 of the applicable penalty is all in an amount to be shown according to proof at trial.

8 136. For the reasons alleged herein, Plaintiffs seek all available remedies
9 pursuant to the PAGA all in an amount to be shown according to proof at trial.

10 **EIGHTH CAUSE OF ACTION**

11 **Representative Claim for PAGA Penalties**

12 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

13 **Failure to Failure to Indemnify/Reimburse Business Expenses in Violation of** 14 **California Labor Code §§ 2802, 1198, and the Applicable Wage Order** 15 **(Against all Defendants)**

16 137. Plaintiffs re-allege and incorporate by reference the foregoing allegations
17 as though set forth herein.

18 138. California Labor Code § 2802 requires employers to indemnify their
19 employees for expenses and losses incurred while discharging their duties or
20 obedience to the directions of their employer.

21 139. California Labor Code § 2804 prohibits waiver of this statutory right.

22 140. Plaintiffs seek to recover penalties pursuant to the PAGA from the
23 Defendants for any violations of Labor Code § 2802 for failing to reimburse
24 employees for work-related expenses.

25 141. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
26 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
27 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation in which all culpable Defendants violated

1 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
2 of the applicable penalty is all in an amount to be shown according to proof at trial.

3 142. For the reasons alleged herein, Plaintiffs seek all available remedies
4 pursuant to the PAGA all in an amount to be shown according to proof at trial.

5
6
7 **NINTH CAUSE OF ACTION**

8 **Representative Claim for Civil Penalties Under the PAGA for**
9 **Violations of Labor Code §§ 246 and 246(l) and**
10 **Municipal Paid Sick Leave Ordinances**

11 143. Plaintiffs re-allege and incorporate by reference the foregoing allegations
12 as though set forth herein.

13 144. Under Labor Code §§ 246, 246(l), and in some jurisdictions local law,
14 employers in California must provide employees with paid sick leave to be paid at a
15 specified rate of pay which must factor in additional earnings during a given pay
16 period wherein such leave is used. *Wood v. Kaiser Foundation Hospitals*, 88 Cal.
17 App. 5th 742 (2023).

18 145. Defendants did not pay sick leave to Aggrieved Employees in violation
19 of California law.

20 146. Defendants have failed to (1) provide paid sick leave; (2) include
21 required information about paid sick leave in wage notices and/or wage statements,
22 including without limitation information on the amount of paid sick leave hours
23 accrued; (3) provide required information about paid sick leave to employees,
24 including without limitation at the time of hire; (4) at the time of hire, provide
25 employees with written notice of the employer's name, address, and telephone
26 number; (5) provide required information about paid sick leave in English, Spanish,
27 Chinese, and in all languages spoken by 5% or more of the employees; (6) post
28 required sick leave notices; (7) maintain payroll records; and/or (8) provide wage

1 statements, and therefore Defendants have violated one or more municipal sick leave
2 ordinances, including without limitation the sick leave ordinances of Berkeley,
3 Emeryville, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, and Santa
4 Monica.

5 147. The PAGA imposes upon Defendants, and each of them, civil penalties
6 for violating Labor Code §§ 246 and 246(l).

7 148. Civil penalties under the PAGA are equitable in nature. *Nationwide*
8 *Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.*, 9 Cal. 5th 279 (2020).

9 149. At all material times, Defendants were and/or are Aggrieved Employees'
10 employers or persons acting on behalf of Aggrieved Employees' employer, within the
11 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
12 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
13 regulating hours and days of work in any Order of the Industrial Welfare Commission
14 and, as such, are subject to penalties for each underpaid employee as set for in Labor
15 Code § 558.

16 150. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
17 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
18 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
19 employee for subsequent violations for all Labor Code provisions for which a civil
20 penalty is not specifically provided.

21 151. Pursuant to the PAGA, Labor Code § 2699(f), and/or any other
22 applicable statute, Plaintiffs are seeking civil penalties against Defendants in an
23 amount to be shown according to proof.

24 152. Pursuant to Labor Code § 248.5, if applicable herein, Plaintiffs seek to
25 recover attorneys' fees, costs, equitable relief in the form of civil penalties, in an
26 amount to be shown according to proof.

27 153. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
28 State of California and Aggrieved Employees seek to recover from Defendants, and

1 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
2 determined at trial.

3
4
5
6
7 **TENTH CAUSE OF ACTION**

8 **Representative Claim for Civil Penalties Under the PAGA for**
9 **Willful Misclassification in Violation of Labor Code § 226.8**

10 (Against all Defendants)

11 154. Plaintiffs re-allege and incorporate by reference the foregoing allegations
12 as though set forth herein.

13 155. California Labor Code § 226.8(a) provides: "It is unlawful for any
14 person or employer to engage in any of the following activities: (1) Willful
15 misclassification of an individual as an independent contractor. (2) Charging an
16 individual who has been willfully misclassified as an independent contractor a fee, or
17 making any deductions from compensation, for any purpose, including for goods,
18 materials, space rental, services, government licenses, repairs, equipment
19 maintenance, or fines arising from the individual's employment where any of the acts
20 described in this paragraph would have violated the law if the individual had not been
21 misclassified."

22 156. California Labor Code § 226.8(b) provides that if the "a court issues a
23 determination that a person or employer has engaged in any of the enumerated
24 violations of subdivision (a), the person or employer shall be subject to a civil penalty
25 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand
26 dollars (\$15,000) for each violation, in addition to any other penalties or fines
27 permitted by law."

28 157. California Labor Code § 226.8(c) provides that if the "court issues a

1 determination that a person or employer has engaged in any of the enumerated
2 violations of subdivision (a) and the person or employer has engaged in or is engaging
3 in a pattern or practice of these violations, the person or employer shall be subject to a
4 civil penalty of not less than ten thousand dollars (\$10,000) and not more than
5 twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
6 penalties or fines permitted by law.”

7 158. Subdivision (a) of California Labor Code § 2753 provides, “(a) A person
8 who, for money or other valuable consideration, knowingly advises an employer to
9 treat an individual as an independent contractor to avoid employee status for that
10 individual shall be jointly and severally liable with the employer if the individual is
11 found not to be an independent contractor.”

12 159. Defendants’ misclassification of the workers as independent contractors,
13 as demonstrated by the decision of the Labor Commissioner of the State of California
14 in *Berwick v. Uber Technologies*, Cal. Lab. Comm’r Dec. No. 11-46739 (June 3,
15 2015), the California Unemployment Insurance Appeals Board ruling (No.: 5371509-
16 June, 1, 2015) that an Uber driver is an employee eligible to obtain unemployment
17 benefits, the California Supreme Court's decision in *Dynamex Operations West, Inc.*
18 *v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction
19 issued against Instacart in *People of the State of California v. Maplebear, Inc.*,
20 *Superior Court of California*, County of San Diego, Case No. 37-2019-00048731-
21 CU-MC-CTL, other changes in common law and state law, and other complaints,
22 claims, and lawsuits against other industry players, constitutes willful
23 misclassification in violation of California Labor Code § 226.8.

24 160. Plaintiff maintains client end-users are joint and severally liable under
25 California law, including but not limited to Labor Code §§ 2753 and 2810.3.

26 161. At all material times, Defendants were and/or are Aggrieved Employees’
27 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
28 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
2 regulating hours and days of work in any Order of the Industrial Welfare Commission
3 and, as such, are subject to penalties for each underpaid employee as set for in Labor
4 Code § 558.

5 162. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
6 State of California and Aggrieved Employees seek to recover from Defendants, and
7 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
8 determined at trial.

9 **ELEVENTH CAUSE OF ACTION**

10 **Failure to Secure Compensation in Violation of Labor Code § 3700, *et seq.***

11 (Against all Defendants)

12 163. Plaintiffs re-allege and incorporate by reference the foregoing allegations
13 as though set forth herein.

14 164. Upon information and belief, Defendants did not secure workers'
15 compensation for the workers, in violation of Labor Code §§ 3700, 3700.5, 3712,
16 3715.

17 165. Because of Defendant's violations of those statutes, Defendant is subject
18 to the penalties and fines per Labor Code § 3700.5 and the PAGA for each aggrieved
19 employee per pay period.

20 166. At all material times, Defendants were and/or are Aggrieved Employees'
21 employers or persons acting on behalf of Aggrieved Employees' employer, within the
22 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
23 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
24 regulating hours and days of work in any Order of the Industrial Welfare Commission
25 and, as such, are subject to penalties for each underpaid employee as set for in Labor
26 Code § 558.

27 167. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
28 State of California and Aggrieved Employees seek to recover from Defendants, and

1 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
2 determined at trial.

3
4
5
6
7 **TWELFTH CAUSE OF ACTION**

8 **Representative Claim for PAGA Penalties**

9 **Under California Labor Code §§ 2698, 2699, *et seq.* for**
10 **for Violations of California Labor Code subdivision (k) of Section 96, Sections**
11 **98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209,**
12 **and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227,**
13 **227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of**
14 **Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-251, §§ 351-**
15 **356, and 403, subdivision (b) of Section 404, Sections 432, 432.2, 432.5, 432.7, 435,**
16 **450, 511, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852,**
17 **921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153,**
18 **1197.5, 1198 via the applicable Wage Order, subdivision (b) of Section 1198.3,**
19 **Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298,**
20 **1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and**
21 **1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8,**
22 **1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40,**
23 **1700.47, 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections**
24 **2695.2, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections**
25 **3073.6, 6310, 6311, and 6399.7 and the Applicable Wage Order**

26 (Against all Defendants)

27 168. Plaintiffs re-allege and incorporate by reference the foregoing allegations
28 as though set forth herein.

1 169. This claim is premised on Plaintiffs' right to pursue all Labor Code
2 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
3 *USA, Inc.*, 23 Cal. App. 5th 745 (2018).

4 170. Plaintiffs have sent their written notice to the LWDA and Defendants of
5 the specific sections of the California Labor Code Defendants violated and continue
6 to violate.

7 171. Plaintiffs will file an amended complaint once they have exhausted their
8 administrative remedies and are entitled to pursue claims and remedies as authorized
9 by PAGA.

10 172. Pursuant to Labor Code § 2699, any provision of the Labor Code that
11 provides for a civil penalty to be assessed and collected by the LWDA or any of its
12 departments, divisions, commissions, boards, agencies or employees for violation of
13 the code may, as an alternative, be recovered through a civil action brought by an
14 aggrieved employee on behalf of himself or herself and other current or former
15 employees pursuant to the procedures specified in Labor Code § 2699.3.

16 173. Plaintiffs seek to recover penalties pursuant to the PAGA from the
17 Defendants for any violations of the foregoing Labor Codes.

18 174. Plaintiffs are "aggrieved employees" because Plaintiffs were employed
19 by the alleged violator and had one or more of the alleged violations committed
20 against Plaintiffs, and therefore are properly suited to represent the interests of other
21 current and former Represented Employees.

22 175. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
23 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
24 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
25 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
26 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
27 subdivision (c) of Section 232.5, Sections 233, 234, 245-251, 351-356, and 403,
28 subdivision (b) of Section 404, Sections 432, 432.2, 432.5, 432.7, 435, 450, 511, 513,

1 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923,
2 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via
3 the applicable Wage Order, subdivision (b) of Section 1198.3, 1198.5, Sections
4 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,
5 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,
6 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9,
7 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47,
8 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,
9 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6,
10 6310, 6311, and 6399.7.

11 176. As to Labor Code §§ 222, 224, 225.5, and 450, Defendants implemented
12 a gimmick that encouraged Aggrieved Employees to “get paid faster” through a
13 process known as “Stabl Pay,” which unlawfully charged Aggrieved Employees a fee
14 for cash advances.

15 177. Labor Code § 558 establishes a civil penalty as follows: Any employer
16 or other person acting on behalf of an employer who violates, or causes to be violated,
17 a section of this chapter or any provision regulating hours and days of work in any
18 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
19 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
20 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
21 which the employee was underpaid in addition to an amount sufficient to recover
22 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
23 each underpaid employee for each pay period for which the employee was underpaid
24 in addition to an amount sufficient to recover underpaid wages; and (3) wages
25 recovered pursuant to this section shall be paid to the affected employee.

26 178. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as
27 permitted by law.

28 179. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover

1 attorney's fees, costs, civil penalties, and wages on behalf of Plaintiff and other
2 current and former Represented Employees as alleged herein all in an amount to be
3 shown according to proof at trial.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 6 1. That Defendants be found liable to the Plaintiffs;
- 7 2. For all remedies available to the Plaintiffs under the applicable
8 provisions of the Labor Code via the PAGA, i.e., Labor Code § 2698, *et seq.*
9 including an award of attorneys' fees, costs, interest, liquidated damages, damages,
10 penalties and waiting time penalties according to proof to the extent permitted by law;
- 11 3. For maximum civil penalties available under the Labor Code and
12 applicable Wage Order as described more particularly in this Complaint, including
13 but not limited to penalties pursuant to Labor Code § 558;
- 14 4. That Aggrieved Employees be awarded reasonable attorneys' fees where
15 available by law, including but not limited to pursuant to Labor Code §§ 2698, *et seq.*,
16 Code of Civil Procedure § 1021.5, and/or other applicable laws; and
- 17 5. For any other relief the Court may deem just, proper, and equitable.

18 Dated: June 23, 2024

Law Office of Thomas D.
Rutledge

20 By: Thomas D. Rutledge
21 /s/Thomas D. Rutledge
22 Attorney for Plaintiffs
23
24
25
26
27
28

Thomas D. Rutledge
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091
Telephone: (619) 886-7224

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On June 23, 2024, I served the foregoing document(s) described as:

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California.

☒ **(BY E-MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for emailing. This correspondence was sent via email to the recipients' business email addresses identified above.

☐ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

Executed June 23, 2024, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

THOMAS D. RUTLEDGE
/s/ THOMAS D. RUTLEDGE

SERVICE LIST

President/HR

Atlas Retail Services, Inc.

990 US HWY 287, Suite 106-201

Mansfield, Texas 76063

Defendant In Pro Per

REGISTERED AGENTS INC ISO Atlas Retail Services, Inc.

1401 21st Street, STE R

Sacramento, CA 95811

Defendant's Registered Agent

Daniel E. Gardenswartz

Tanya M. Schierling

Matthew T. Arvizu

Solomon Ward Seidenwurm & Smith LLP

401 B Street Suite 1200

San Diego, CA 92101

Presumed Attorneys for Defendants

Thomas D. Rutledge

Attorney-at-Law

16956 Via de Santa Fe, Suite 1847

Rancho Santa Fe, California 92091

Telephone: (619) 886-7224