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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MICHELLE ACEVES, and GARY
MARTINEZ, as individuals, and on behalf of
all others similarly situated, and as the State of
California's designated proxies under the
Private Attorneys General Act ("PAGA") on
behalf of the State of California and other
aggrieved employees,

Plaintiffs,

vs.

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

Defendants.

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

*[Assigned for all purposes to the Hon.
Wendy M. Behan, Dept. C-66]*

**DECLARATION OF SEAN M.
BLAKELY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: September 18, 2026
Time: 10:15 a.m.
Dept.: C-66

Action Filed: April 19, 2024
Trial Date: None Set

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I, SEAN M. BLAKELY, declare as follows:

1. I am a Partner at Haines Law Group, APC, and counsel for the named Plaintiff Martinez (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice law in that Court. I have personal knowledge of the facts stated in this declaration and could testify truthfully to them if called upon to do so.

2. I am a 2008 graduate of Southwestern Law School. I was admitted to the California Bar in September 2009. From December 2010 to September 2011, I worked as a Law Clerk at Rose, Klein & Marias, a civil litigation firm in Long Beach, California. At Rose, Klein & Marias, I assisted trial attorneys in employment and personal injury cases. From September 2011 to May 2016, I worked as an associate at the employment law firm of Mahoney Law Group, APC in Long Beach, California. The vast majority of my work at Mahoney Law Group, APC was focused on representing employees in wage and hour class actions. My work at Mahoney Law Group, APC also included representing employees in individual claims for wrongful termination, harassment, discrimination, and retaliation. Although non-exhaustive, the types of work I performed at Mahoney Law Group, APC included: conducting client intakes performing pre-discovery research and analysis, drafting complaints, attending court hearings, corresponding with opposing counsel, drafting and responding to written discovery, preparing for and taking and conducting depositions, analyzing payroll and timekeeping records and employee handbooks, drafting motions for summary judgment, as well as a variety of other motions such as motions to compel, demurrers and motions to dismiss, motions to strike, motions to compel, motions to set aside and motions for class certification, drafting mediation briefs, attending mediations, negotiating long-form settlement agreements, drafting motions for preliminary and final settlement approval, and overseeing the notice process.

3. Since November 8, 2016, I have worked at my current firm, Haines Law Group, where, in 2020, I became a Partner. I am currently responsible for managing over sixty collective wage and hour class and representative actions in both state and federal court.

1 4. The following is a non-exhaustive list of wage and hour class actions in which I
2 have been appointed as class counsel and/or played a significant role in prosecuting the litigation,
3 and which have received final approval: *Santimateo v. Sun Healthcare Group, Inc., et al*, Case
4 No. BC471884, California Superior Court, Los Angeles County, Judge Jane L. Johnson presiding
5 (granted final approval of settlement on behalf of employees at rehabilitation facility involving
6 claims for unpaid wages and meal and rest period violations, and other claims, in which I was
7 approved at an hourly rate of \$325 for work performed in 2012-2013); *Teyuca v. Pacific Alliance*
8 *Medical Center, Inc.*, California Superior Court, Los Angeles County, Judge William F.
9 Highberger presiding (granting final approval of settlement on behalf of healthcare workers for
10 unpaid wages, meal and rest period violations, and other claims, in which I was approved at an
11 hourly rate of \$325 for work performed in 2012-2013); *Arteaga v. Command Center Security,*
12 *Inc.*, Case No. BC480496, California Superior Court, Los Angeles County, Judge John Shepard
13 Wiley, Jr. presiding (granting final approval of settlement on behalf of security guards involving
14 claims for unpaid overtime, meal and rest period violations, and other claims, in which I was
15 approved at an hourly rate of \$425 for work performed in 2012-2015); *Casadine v. Maxim*
16 *Healthcare Services, Inc.*, Case No. CV 12-10078-DMG (CWx), United States District Court,
17 Central District of California, Judge Dolly M. Gee presiding (granting final approval of settlement
18 on behalf of home health care employees involving claims for unpaid wages and other claims, in
19 which I was approved at an hourly rate of \$425 for work performed in 2012-2015); *Guzman v.*
20 *Andrew Lauren Interiors, Inc., et al.*, Case No. BC567757, California Superior Court, Los
21 Angeles County, Judge Elihu M. Berle presiding (granting final approval of settlement on behalf
22 of construction workers involving claims for unpaid wages, meal and rest period violation, and
23 other claims, in which I was approved at an hourly rate of \$425 for work performed in 2014-
24 2016); *Booker v. The Goodyear Tire and Rubber Company*, Case No. BC498399, California
25 Superior Court, Los Angeles County, Judge Amy Hogue presiding (granting final approval of
26 settlement on behalf of tire mechanics involving claims for unpaid wages, meal and rest period
27 violations, and other claims, in which I was approved at an hourly rate of \$425 for work performed
28 in 2013-2015); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior

1 Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of
2 settlement on behalf of IT support workers for overtime, meal and period, reimbursement, and
3 related violations, approved at hourly rate of \$475 for work performed in 2016 and 2017); *Galvan*
4 *v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
5 Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of
6 settlement on behalf of non-exempt employees of a chemical manufacturing company involving
7 claims for unpaid overtime and waiting time penalties); *Razon v. TTM Technologies, Inc., et al.*,
8 Case No. 37-2016-00038326-CU-OE-CTL, California Superior Court, San Diego County, Judge
9 Gregory W. Pollack presiding (granting final approval of settlement involving claims for unpaid
10 overtime wages, wage statement violations, and meal period violations); *Blank v. Coty, Inc., et*
11 *al.*, Case No. BC624850, California Superior Court, Los Angeles County, Judge Williams F.
12 Highberger presiding (granting final approval of settlement involving claims for wage statement
13 violations, meal period violations, and other claims); *Morales v. Caremeridian, LLC, et al.*, Case
14 No. BC593191, California Superior Court, Los Angeles County, Judge William F. Highberger
15 presiding (granting final approval of settlement on behalf of direct support professionals
16 involving claims for unpaid wages, meal and rest period violations, wage statement violations,
17 and other claims); *Aguilar v. Act Fulfillment, Inc.*, Case No. RIC1616643, California Superior
18 Court, Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement
19 on behalf of non-exempt factory workers involving claims for meal period violations); *Sandoval*
20 *v. AMCOR Flexibles Inc.*, Case No. BC617499, California Superior Court, Los Angeles County,
21 Judge Kenneth R. Freeman presiding (granting final approval of settlement on behalf of
22 manufacturing employees involving claims for unpaid wages, meal period violations, rest period
23 violations, and waiting time penalties); *Le v. GBW Railcar Services, L.L.C.*, Case No.
24 RIC1612209, California Superior Court, Riverside County, Judge Sharon J. Waters presiding
25 (granting final approval of settlement on behalf of non-exempt employees of a freight railcar
26 manufacturer involving claims for unpaid overtime and minimum wages, meal period violations,
27 and rest period violations); *Silva v. ADJ Products, LLC*, Case No. BC618581, California Superior
28 Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of

1 settlement involving claims for unpaid overtime and minimum wages, rest period violations,
2 wage statement violations, and waiting time penalties); *Lira v. Discus Dental, LLC, et al.*, Case
3 No. CIVDS1620402, California Superior Court, San Bernardino County, Judge David Cohn
4 presiding (granting final approval of settlement on behalf of non-exempt manufacturing
5 employees involving claims for unpaid minimum and overtime wages, meal and rest period
6 violations, and other claims); *Gonzales v. PathPoint*, Case No. BC657147, California Superior
7 Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of
8 settlement on behalf of non-exempt direct support professionals involving claims for meal and
9 rest period violations and other claims); *Duran v. PRADA USA CORP.*, Case No. BC644319,
10 California Superior Court, Los Angeles County, Judge Maren E. Nelson presiding (granting final
11 approval of settlement on behalf of non-exempt commissioned salespersons involving claims for
12 unpaid overtime wages, meal and rest period violations, failure to reimburse for necessary
13 expenditures, and other claims); *Banegas v. UPM, Inc.*, Case No. BC644438, California Superior
14 Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of
15 settlement on behalf of non-exempt manufacturing employees involving claims for unpaid wages,
16 meal and rest period violations, and other claims); *Palafox v. Pacific Line Clean-Up, Inc.*, Case
17 No. 30-2017-00921632-CU-OE-CXC, California Superior Court, Orange County, Judge William
18 D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees
19 involving claims for unpaid overtime wages, meal and rest period violations, and other claims);
20 *Janet Arroyo v. AST Sportswear, Inc., dba Bayside Apparel Manufacturing, Inc.*, Case No. 30-
21 2017-00909663-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda Sanders
22 presiding (granting final approval of settlement on behalf of non-exempt garment employees
23 involving claims for unpaid minimum wages, meal and rest period violations, and other claims);
24 *Carlos Garcia v. Fabrica International, Inc.*, Case No. 30-2017-00949461-CU-OE-CXC,
25 California Superior Court, Orange County, Judge William D. Claster presiding (granting final
26 approval of settlement on behalf of non-exempt manufacturing employees involving claims for
27 unpaid minimum and overtime wages, meal and rest period violations, and statutory penalties);
28 *Jonathan Leon v. Piercey West, Inc.*, Case No. BC656874, California Superior Court, Los

1 Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf
2 of non-exempt commissioned salespersons and other employees involving claims for unpaid
3 wages, meal and rest period violations, unreimbursed business expenses, and other claims); and
4 *Matthew Tovar, et al. v. Rentokil North America, Inc.*, Case No. BC676386, California Superior
5 Court, Los Angeles County, Judge Daniel J. Buckley presiding (granting final approval of
6 settlement on behalf of non-exempt employees involving claims for unpaid overtime, meal and
7 rest break violations, and other claims); *Seungmin Samantha Lee v. Infor (US) Inc.*, Case No.
8 CGC-18-566393, California Superior Court, San Francisco County, Judge Ethan P. Schulman
9 presiding (granting final approval of settlement on behalf of sales development representatives
10 involving claims for unpaid overtime, meal and rest period violations, and penalty claims); *Tracy*
11 *Aguilar, et al. v. Aero Port Services, Inc.*, Case No. BC659234, California Superior Court, Los
12 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
13 of non-exempt employees involving claims for meal and rest period violations, and other claims);
14 *Carlos Perez, et al. v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905, California
15 Superior Court, Riverside County, Judge Sunshine S. Sykes presiding (granting final approval of
16 settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid
17 wages, meal and rest period violations, other claims); and *Julio Alfaro v. Orange Automotive*
18 *d/b/a Kia of Orange*, Case No. 30-2017-00945105-CU-OE-CXC, California Superior Court,
19 Orange County, Judge Randall J. Sherman presiding (granting final approval settlement on behalf
20 of non-exempt commissioned employees involving claims for unpaid wages, meal and rest period
21 violations, unreimbursed business expenses, and penalty claims).

22 5. I have also moved to certify and have received an order certifying a class action in
23 *Ontiveros v. Safelite Fulfillment, Inc., et al.*, Case No. CV 15-7118-DMG (RAOx), United States
24 District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six
25 classes of employees for rest period violations, wage statement violations, meal period violations,
26 and overtime and double-time violations); *Vazquez v. Kraft Heinz Foods Company*, Case No. 16-
27 CV-02749-WQH (BLM), United States District Court, Southern District of California, Honorable
28 William Q. Hayes, presiding (certifying unpaid wages classes, meal period classes, wage

statement class, and waiting time penalty class); *McDonald, et al. v. Sierra Pacific Industries*, Case No. 191133, Shasta County Superior Court, Hon. Tamara L. Wood (certifying eight classes for meal period violations, rest period violations, unpaid wages, unreimbursed business expenses, wage statement violations, and waiting time penalties); and *Rosales v. Laclede, Inc.*, Case No. 20STCV01184, Los Angeles Superior Court, Hon. Stuart M. Rice, presiding (certifying three classes for meal period violations, unpaid wages, and waiting time penalties).

6. In each year from 2018-2023, Thomson Reuters recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year.

7. As co-counsel for Plaintiffs Michelle Aceves and Gary Martinez (“Plaintiffs”) and the proposed Settlement Class, I have been intimately involved in this case, and I believe that the proposed Settlement is a favorable result for the Settlement Class. Attached hereto as **Exhibit 1** is a true and correct copy of the fully executed Stipulation of Settlement (“Settlement”). The proposed Class Notice and Notice of Estimated Individual Settlement Award are attached to the Settlement as **Exhibits A** and **B**, respectively.

8. Defendant Atlas Retail Services, Inc. (“Atlas Retail”) was founded in 2015 and provides commercial construction, store remodels, fixture installations, merchandising, and large-scale retail rollout services for retailers and consumer brands.

9. On April 19, 2024, Plaintiff Michelle Aceves (“Plaintiff Aceves”) filed an individual complaint against Atlas Retail for failure to provide access to employee personnel records. On that same day, Plaintiff Aceves sent her PAGA notice letter to Atlas Retail and the Labor & Workforce Development Agency (“LWDA”). Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff Aceves’s April 19, 2024 LWDA Letter. On June 24, 2024, Plaintiff Aceves filed a First Amended Representative Action Complaint seeking to recover civil penalties under the Private Attorneys General Act (“PAGA”) for various wage and hour violations. On June 21, 2024, Plaintiff Gary Martinez (“Plaintiff Martinez”) filed a separate class action complaint alleging various wage and hours violations against Atlas Retail in the Superior Court

1 of California for the County of San Diego entitled *Gary Martinez v. Atlas Retail Services, Inc.*,
2 Case No. 37-2024-00029333-CU-OE (the “*Martinez Action*”). On that same day, Plaintiff
3 Martinez sent his PAGA notice letter to Atlas Retail and the Labor & Workforce Development
4 Agency (“LWDA”). Attached hereto as **Exhibit 3** is a true and correct copy of Plaintiff Martinez’s
5 June 21, 2024 LWDA Letter. On August 26, 2024, Plaintiff Martinez filed a First Amended Class
6 and Representative Action Complaint to add a cause of action for civil penalties under the PAGA.
7 On July 9, 2026, and as a part of the Parties’ settlement, Plaintiff Aceves filed the operative Third
8 Amended Class and Representative Action Complaint (“TAC”), adding Plaintiff Martinez as a
9 named plaintiff and adding various causes of action, class allegations, and certain factual
10 allegations. The TAC alleges the following causes of action: (1) Failure to Provide Access to
11 Employee Personnel Records; (2) Claim for Failure to Pay State Minimum/Regular Wages; (3)
12 Claim for Failure to Pay State Overtime wages; (4) Claim for Failure to Timely Pay Wages; (5)
13 Claim for Meal and Rest Break Labor Code Violations; (6) Inaccurate Wage Statements; (7)
14 Claim for Failure to Maintain Payroll Records; (8) Claim for Failure to Reimburse Business
15 Expenses; (9) Failure to Properly Pay Sick Pay; (10) Misclassification; (11) Failure to Maintain
16 Workers’ Compensation Insurance; (12) Claim for Miscellaneous Labor Code Violations via the
17 PAGA; and (13) Unfair Business Practices.

18 10. In connection with mediation, the Parties engaged in extensive informal discovery.
19 Atlas Retail produced a sampling of timekeeping and payroll records for the putative class, as
20 well as its relevant Employee Handbook utilized during the putative class period, relevant data
21 points such as the number of putative class members and the number of aggregate workweeks
22 during the Class Period and the number of Aggrieved Employees and pay periods worked during
23 the PAGA Period, and other relevant documents and information. Plaintiffs’ counsel conducted
24 a comprehensive analysis and extrapolation of the data produced by Atlas Retail to calculate Atlas
25 Retail’s potential exposure for each of Plaintiffs’ claims at issue. This discovery allowed the
26 Parties to assess the merits and value of Plaintiffs’ claims, the chances of certification of
27 Plaintiffs’ claims, and Atlas Retail’s potential defenses.

28 11. On May 30, 2025, the Parties participated in a full-day mediation with Steven G.

Mehta, Esq., a well-respected wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses, as well as Atlas Retail's financial condition. At the conclusion of the mediation, the Parties were unable to come to a resolution. Following Atlas Retail's representation of its financial condition, Atlas Retail turned over its financial records to Plaintiffs' retained expert, Keith D. Messerschmidt, who is a forensic accountant and has consulted or provided expert testimony in dozens of litigation and insurance matters. Mr. Messerschmidt opines that Atlas Retail could not reasonably afford to pay more than the Gross Settlement Amount and that the requested payment plan was necessary to avoid serious interruptions to its business operations. Should the Court wish to review a declaration from Mr. Messerschmidt attesting to these facts and Atlas Retail's financial condition, this declaration could either be filed in *camera* or filed under seal, at the Court's request. Following Plaintiffs' review of Atlas Retail's financial records, the Parties continued engaging in settlement negotiations through Mr. Mehta leading to a mediator's proposal for a class-wide settlement that was ultimately accepted by both sides. During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court.

12. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount:	\$570,000.00
• Minus Court-approved attorneys' fees:	\$190,000.00
• Minus Court-approved verified costs (up to):	\$40,000.00
• Minus Court-approved Service Awards (to each Plaintiff):	\$10,000.00
• Minus amount set aside as PAGA penalties:	\$40,000.00
• <u>Minus estimated Settlement Administration costs:</u>	<u>\$15,000.00</u>
Net Settlement Amount ("NSA"):	\$275,000.00
• PLUS 25% "PAGA Amount" to Aggrieved Employees:	\$10,000.00
Total Amount Paid to Settlement Class members:	\$285,000.00

13. Based on information from Atlas Retail, Plaintiffs understand that there are approximately 880 Settlement Class members. Therefore, the average Individual Settlement Award is projected to be approximately \$321.02.

14. As an initial matter, Atlas Retail asserts that Plaintiff Martinez and many Class Members signed valid and enforceable arbitration agreements with class action waivers. Setting

1 aside any arguments as to the merits of Plaintiffs' claims, Atlas Retail contends that absent
2 settlement, a classwide recovery was not possible and that only PAGA civil penalties could
3 potentially be recovered on behalf of a subset of the Class Members. As such, Atlas Retail
4 contends that absent its agreement to not raise the arbitration agreements as an affirmative
5 defense, any recovery to the Class Members would be limited to only the employees' potential
6 25% share of PAGA civil penalties. Atlas Retail has further asserted that it would seek to compel
7 arbitration of Plaintiffs' claims absent settlement.

8 15. Plaintiffs allege that Atlas Retail improperly misclassified Plaintiffs and other non-
9 exempt employees as independent contractors during a portion of the Class Period, thereby
10 depriving them of the protections afforded to employees under the California Labor Code.
11 Specifically, Plaintiffs contend that Atlas Retail required newly hired workers to execute
12 independent contractor agreements, despite exercising the degree of control over their work
13 necessary to establish an employment relationship under California law. Plaintiffs allege that
14 Atlas Retail controlled Plaintiffs' and other employees' work assignments, schedules, and manner
15 of performing their duties, which were performed in Atlas Retail's usual course of business,
16 thereby establishing employee status under the ABC test. Plaintiffs further allege that Atlas Retail
17 later reclassified Plaintiffs and other individuals as non-exempt employees. Atlas Retail contends
18 that at least 440 employees were negatively affected by Atlas Retail's misclassification. Labor
19 Code Section 226.8(b) provides that an employer will be subject to a civil penalty for every
20 employee misclassified. Specifically, Labor Code section 226.8(b) states that an employer who
21 willfully misclassifies an individual as an independent contractor can be subject to a civil penalty
22 of not less than \$5,000 and not more than \$15,000. Assuming Plaintiffs obtained a civil penalty
23 in the amount of \$10,000 for each individual, Plaintiffs estimate Atlas Retail's exposure for its
24 misclassification at \$4,400,000 (440 employees * \$10,000.00 civil penalty). Atlas Retail disputes
25 that it willfully misclassified Plaintiffs or any other non-exempt employees as independent
26 contractors. Atlas Retail maintains that any temporary classification of certain workers as
27 independent contractors resulted from an isolated administrative or payroll error associated with
28 the implementation of its payroll systems, rather than any intentional effort to evade California

1 wage and hour laws. Finally, Atlas Retail contends that Plaintiffs' misclassification claims present
2 individualized issues that would complicate class treatment, including identifying which workers
3 were allegedly misclassified, the duration of any such classification, whether each worker
4 satisfied the applicable legal standard for employee status, and the nature and extent of any
5 resulting damages or penalties. Based on these defenses, Plaintiffs discounted the maximum
6 amount by 75% for risk of non-certification and considering many Settlement Class members
7 signed arbitration agreements with class action waivers, and an additional 75% for risk of losing
8 on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of
9 approximately \$275,000.

10 16. Plaintiffs allege that Atlas Retail failed to pay Plaintiffs and other non-exempt
11 employees all wages earned during the Class Period. Specifically, Plaintiffs contend Atlas Retail
12 required employees to frequently travel, often across state lines, to remote job sites for extended
13 assignments. Despite requiring such travel, Atlas Retail failed to compensate employees all
14 unpaid minimum and overtime wages for their travel time. Based on Plaintiffs' investigation and
15 analysis of Atlas Retail's timekeeping and payroll record, Plaintiffs contend that employees spent
16 approximately 7.5 hours per week commuting to and from assigned job sites without being
17 compensated for such time. Because employees generally worked shifts of at least 8.0 hours,
18 Plaintiffs contend that these unpaid wages should be paid at an overtime rate of pay. Accordingly,
19 Plaintiffs estimate the maximum potential exposure for these unpaid wages at approximately
20 \$1,091,475 (5,390 workweeks * 7.5 hours * \$27.00 average overtime rate). Atlas Retail disputes
21 that it failed to pay Plaintiffs and other non-exempt employees all wages owed. Atlas Retail
22 contends it maintained compliant timekeeping policies and that any travel time at issue was non-
23 compensable under applicable California and federal law because employees were not under Atlas
24 Retail's control during the travel, were engaged in ordinary commuting or otherwise non-
25 compensable travel, or were relieved of all duties during such time. Finally, Atlas Retail maintains
26 that Plaintiffs' unpaid wages claims are not amenable to class treatment because individualized
27 inquiries would be required to determine the amount of travel time each employee worked,
28 whether particular travel time was compensable, the circumstances surrounding each employee's

1 travel, whether any uncompensated work was performed, and the amount of damages, if any,
2 sustained by each employee. In light of these defenses, Plaintiffs discounted this maximum
3 amount by 75% for risk of non-certification and in light of the signed arbitration agreements with
4 class action waivers, and an additional 50% for a risk of being unsuccessful on the merits or of
5 failing to recover the full amount sought, to arrive at an estimated realistic exposure of
6 approximately \$136,435.

7 17. Plaintiffs allege that Atlas Retail failed to provide Plaintiffs and other non-exempt
8 employees with legally compliant meal periods throughout the Class Period. Specifically,
9 Plaintiffs contend that Atlas Retail maintained non-compliant written meal period policies that
10 failed to accurately advise employees of their meal period rights under California law. Plaintiffs
11 further contend that Atlas Retail failed to provide timely, uninterrupted meal period and failed to
12 pay meal period premiums when compliant meal periods were not provided, due to the work
13 demands imposed by Atlas Retail. Plaintiffs estimate there to be approximately 26,950 meal
14 period eligible shifts in the Class Period. Plaintiffs further calculate that the average hourly rate
15 of pay for Settlement Class members during the Class Period at approximately \$18.00.
16 Accordingly, Plaintiffs estimate Atlas Retail's maximum exposure for meal period violations at
17 \$485,100 (26,950 non-compliant meal periods * \$18.00 average meal period premium). Atlas
18 Retail disputes that it violated California's meal period requirements. Atlas Retail contends that it
19 maintained lawful meal period policies and provided employees with the opportunity to take
20 compliant meal periods, arguing that it was not required to ensure employees actually took their
21 meal periods. Atlas Retail maintains that its electronic timekeeping records accurately reflect
22 employees' recorded meal periods and that any late, short, or missed meal periods resulted from
23 individualized circumstances rather than any uniform policy or practice. Atlas Retail further
24 maintains that Plaintiffs' meal period claims present significant factual, legal, and class
25 certification issues that would be vigorously contested. In light of these defenses, Plaintiffs
26 discounted this maximum amount by 75% for risk of non-certification and in light of the signed
27 arbitration agreements with class action waivers, and an additional 65% for a risk of being
28 unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated

1 realistic exposure of approximately \$42,446.

2 18. Plaintiffs allege that Atlas Retail failed to authorize and permit Plaintiffs and other
3 non-exempt employees to take all legally compliant, duty-free rest periods during the Class
4 Period. Plaintiffs contend that Atlas Retail's demanding work schedules, productivity
5 expectations, and operational demands placed employees under constant pressure to meet
6 deadlines and complete assigned work, resulting in interrupted, delayed, shortened, or missed rest
7 periods. Based on Plaintiffs' analysis of Atlas Retail's timekeeping records, Plaintiffs estimate
8 there were approximately 26,950 shifts in excess of 3.5 hours during the Class Period.
9 Accordingly, Plaintiffs calculate Atlas Retail's maximum potential exposure for rest period
10 violations at approximately \$485,100 (26,950 rest period violations * \$18.00 average rest period
11 premium). Atlas Retail disputes that it failed to authorize and permit compliant rest periods or
12 that it maintained unlawful rest period policies or practices. Atlas Retail contends that it
13 maintained compliant written policies and consistently authorized and permitted employees to
14 take all rest periods required under applicable California law, and that any missed or interrupted
15 rest periods resulted from employees' own choices or individualized circumstances rather than
16 any uniform policy or practice. Atlas Retail further argues that Plaintiffs' rest period claims are
17 not amenable to class treatment because individualized inquiries would be required to determine
18 whether a particular employee missed a rest period, the reason any rest period was not taken,
19 whether the employee voluntarily chose to forego the rest period, and whether premium pay, if
20 any, was owed. Atlas Retail also maintains that these individualized issues are particularly
21 significant because employers are not required to record employees' rest periods, making liability
22 dependent upon individualized testimony rather than common proof. Given these defenses,
23 Plaintiffs discounted this maximum amount by 75% for risk of non-certification and considering
24 many Settlement Class members signed arbitration agreements with class action waivers, and an
25 additional 75% for a risk of being unsuccessful on the merits or for failing to recover the full
26 amount sought, to arrive at an estimated realistic exposure of approximately \$30,319.

27 19. Plaintiffs allege that Atlas Retail failed to reimburse Plaintiffs and other employees
28 for all necessary business expenditures incurred in the discharge of their duties, including

1 expenses related to the work-related use of personal cellular phones and personal vehicles.
2 Specifically, Plaintiffs contend that Atlas Retail required employees to use their personal
3 smartphones to access the company's timekeeping application, record their work hours, review
4 work schedules, and communicate with management, yet failed to reimburse employees for the
5 associated cellular phone expenses. Assuming that employees are owed approximately \$5.00 per
6 weekly pay period for cellular phone usage, Plaintiffs estimate Atlas Retail's maximum liability
7 for its failure to reimburse employees for usage of their personal cellular phones at approximately
8 \$26,950 (5,390 weekly pay periods * \$5.00 per pay period). Plaintiffs further allege that Atlas
9 Retail failed to reimburse employees for mileage incurred while using their personal vehicles for
10 work-related travel. The average mileage reimbursement during the Class Period is approximately
11 \$0.6439 per mile. Assuming that employees commute approximately 100 miles each workweek,
12 Plaintiffs estimate Atlas Retail's maximum liability for its failure to reimburse employees for gas
13 mileage at approximately \$347,062 (5,390 workweeks * 100 miles * \$0.6439 per mile). In total,
14 Plaintiffs' estimate Atlas Retail's maximum liability for unreimbursed business expenses at
15 approximately \$374,012. In response, Atlas Retail disputes that it failed to reimburse Plaintiffs
16 and other non-exempt employees for necessary business expenses. Atlas Retail contends that it
17 maintained lawful reimbursement policies and reimbursed employees for all reasonable and
18 necessary business expenses that were properly submitted in accordance with company policy.
19 Atlas Retail further argues that any work-related cellular phone usage was minimal or incidental
20 and that employees were not required to incur unreimbursed personal cellular phone expenses
21 beyond those already maintained for personal use. With respect to mileage, Atlas Retail maintains
22 that it reimbursed employees for qualifying business travel and disputes that any alleged failure
23 to reimburse resulted from a uniform policy or practice. Finally, Atlas Retail contends that
24 Plaintiffs' reimbursement claims are not amenable to class treatment because individualized
25 inquiries would be required to determine whether employees incurred reimbursable expenses,
26 whether reimbursement requests were submitted in accordance with company policy, the amount
27 and reasonableness of any claimed expenses, and whether any unreimbursed expenses were
28 necessary within the meaning of Labor Code section 2802. Based on these defenses, Plaintiffs

discounted the estimated maximum amount by 75% for risk of non-certification and considering many Settlement Class members signed arbitration agreements with class action waivers, and by an additional 50% to account for risk of losing on the merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of approximately \$46,752.

20. As a result of these alleged wage and hour violations, Plaintiffs assert that Atlas Retail failed to comply with its wage statement obligations, in violation of Labor Code § 226. Plaintiffs' analysis reflected that there were approximately 650 putative class members and approximately 2,466 pay periods worked during the liability period applicable to Plaintiffs' wage statement claim. Those penalties are calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). Accordingly, Plaintiffs calculated Atlas Retail's potential wage statement exposure at approximately \$214,100 ([650 "initial" violations * \$50] + [1,816 "subsequent" violations * \$100]). Atlas Retail contends that any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses, that Plaintiffs cannot show they or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e) for the imposition of penalties, and that the wage statements always accurately reflected amounts *paid* to employees. Considering this, Plaintiffs discounted the maximum exposure by 75% for risk of non-certification and considering many Settlement Class members signed arbitration agreements with class action waivers, and by an additional 75% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$13,381.

21. In addition, as a result of the unpaid wages and unpaid meal and rest period premiums alleged above, Plaintiffs assert that Atlas Retail failed to pay all wages owed at the time of their separation of employment with Atlas Retail. Plaintiffs estimate that approximately 440 employees separated from employment during the applicable statutory period. Based on an hourly rate of \$18.00, Plaintiffs estimated the average waiting time penalty per former employee to be \$4,320 (\$18.00 * 8 hours per day * 30 days). Therefore, Plaintiffs calculated Atlas Retail's maximum exposure for potential waiting time penalties to be approximately \$1,900,800 (440

former employees * \$4,320 average penalty). With respect to alleged waiting time penalties, Atlas Retail argues that it possesses strong, good-faith defenses to Plaintiffs' underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. Atlas Retail further asserts that Plaintiffs' waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Moreover, because the waiting time claim is derivative of Plaintiffs' underlying wage claims, Plaintiffs would need to overcome Atlas Retail's defenses, both as to class certification and on the merits, as to their underlying claims. To account for Atlas Retail's defenses, Plaintiffs discounted the maximum exposure by 75% for the risk of non-certification and in light of the arbitration agreements with class action waivers, and an additional 85% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$71,280.

22. Finally, Plaintiffs seek civil penalties under the PAGA, based on the aforementioned claims. Plaintiffs estimated a maximum total PAGA exposure at approximately \$246,600 (2,466 pay periods * \$100 "initial" penalty). However, these penalties derive from the underlying wage and hour violations discussed above, which Atlas Retail vigorously disputes. Atlas Retail contends that since Plaintiffs' PAGA claim is derivative of their underlying wage claims, Plaintiffs' PAGA claim would fail with those claims. Atlas Retail further maintains that given its good-faith defenses, the Court would substantially reduce any PAGA penalties awarded. Therefore, Plaintiffs discounted the maximum figure by 50% for risk of losing on the merits and/or not recovering a PAGA penalty for every pay period, and an additional 60% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$49,320.

23. Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential realistic recovery for the Settlement Class would be approximately \$664,933. The proposed Settlement of \$570,000 represents approximately 85.7% of the reasonably forecasted recovery for the Settlement Class.

24. Although the Parties engaged in significant informal discovery prior to mediation,

1 the Parties still had significant formal discovery to complete had the matter not been settled. This
2 would have required the expenditure of substantial time and resources by both Parties that would
3 have very likely spanned several years. Even if Plaintiffs were to certify the proposed classes, the
4 Parties would incur considerably more attorneys' fees and costs through a possible decertification
5 motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying
6 expense.

7 25. Class Counsel will also apply for an attorneys' fees award of one-third of the Gross
8 Settlement Amount, which is currently estimated to be \$190,000.00, and up to \$40,000.00 in
9 verified costs reimbursement. Plaintiffs submit the requested fee is fair compensation for
10 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee
11 basis. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation,
12 analyzing Plaintiffs' claims, conducting legal research, conducting extensive informal discovery,
13 analyzing Settlement Class members' timekeeping and payroll records and other data and
14 documents, creating a comprehensive damages model, preparing for and attending mediation,
15 reviewing Atlas Retail's financials with the help of a retained forensic accountant, preparing the
16 long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. Class
17 Counsel expect to expend additional attorney time in attending the hearing on this Motion,
18 overseeing the Notice process and fielding questions from Settlement Class members, preparing
19 the final approval papers, and attending the Final Approval hearing.

20 26. Plaintiffs will apply for Class Representative Service Awards at the time of
21 seeking final approval of the proposed class action settlement in the amount of \$5,000.00 to each
22 Plaintiff (for a total of \$10,000.00), for their service to the Settlement Class. As will be fully
23 briefed at the time of final approval, Plaintiffs' requested Service Awards are intended to
24 recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including
25 providing substantial factual information and documents to Class Counsel, discussing the claims
26 and theories at issue in the litigation, actively participating in the prosecution of their claims, as
27 well as the significant risks Plaintiffs undertook by agreeing to serve as the named plaintiffs in
28 this case.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on August 26, 2026, at El Segundo, California.

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EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiffs Michelle Aceves and Gary Martinez (“Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below) and all Aggrieved Employees (defined below), on the one hand, and Defendants Atlas Retail Services, Inc., a Texas Corporation (“Atlas”), Jason Parrish, and Kyle Watkins (together, “Defendants”), on the other hand. Plaintiffs and Defendants are sometimes referred to individually as a “Party” and collectively as the “Parties.” Plaintiffs, the Settlement Class, and the Aggrieved Employees are represented by Thomas D. Rutledge of Thomas Rutledge Law and Paul K. Haines and Sean M. Blakely of Haines Law Group, APC (“Class Counsel”). Defendants are represented by Daniel E. Gardenswartz, Mei-Ying Imanaka and Adam R. Scott of Solomon Ward Seidenwurm & Smith, LLP (“Defendants’ Counsel”).

On April 19, 2024, Plaintiff Michelle Aceves filed notice with the Labor Workforce Development Agency (“LWDA”) and an enforcement action under the California Private Attorneys General Act (“PAGA”) in the Superior Court of California for the County of San Diego entitled *Michelle Aceves v. Atlas Retail Services, Inc., et al.*, Case Number 37-2024-00018584-CU-OE-CTL (the “*Aceves Action*”). The initial complaint was amended on June 24, 2024, and then again on July 31, 2024. On or about July 2, 2025, Plaintiff Aceves filed an amendment to her operative complaint, pursuant to Code of Civil Procedure Section 474, to name Jason Parrish (the President of Atlas) and Kyle Watkins (the CEO of Atlas) as individual defendants in the *Aceves Action* (together, the “Individual Defendants”). Defendants contest the validity of that amendment because, among other things, Plaintiff Aceves did not seek leave of Court prior to the filing.

On June 21, 2024, Plaintiff Gary Martinez filed a separate class action complaint against Atlas in the Superior Court of California for the County of San Diego entitled *Gary Martinez v. Atlas Retail Services, Inc.*, Case No. 37-2024-00029333-CU-OE-CTL (the “*Martinez Action*”). That same day, Plaintiff Martinez provided notice to the LWDA and Atlas regarding his intent to file an action for civil penalties under the PAGA. On August 26, 2024, Plaintiff Martinez filed a First Amended Class and Representative Action Complaint to add a cause of action for civil penalties under the PAGA.

On May 30, 2025, the Parties, through counsel, participated in a full day of private mediation before Steven G. Mehta, Esq. On October 18, 2025, Atlas filed a Notice of Related Case in the *Aceves Action* and *Martinez Action*. On November 25, 2025, following months of arm’s-length negotiations, the Parties accepted a mediator’s settlement proposal and proceeded to negotiate and finalize the terms of this Settlement Agreement. On December 19, 2025, the Parties filed a joint stipulation to reassign and consolidate the *Aceves Action* and *Martinez Action* before this Court, with the *Aceves Action* serving as the lead case. As part of this Settlement, the Parties also stipulated to the filing of a Third Amended Individual, Class and Representative PAGA Consolidated Complaint (“TAC”) in the *Aceves Action*, adding Plaintiff Gary Martinez as a named Plaintiff and class representative, adding various causes of action, adding class allegations, and adding certain factual allegations. The operative TAC in the *Aceves Action* alleges the following causes of action: (1) Failure to Provide Access to Employee Personnel Records; (2) Claim for Failure to Pay State Minimum/Regular Wages; (3) Claim for Failure to Pay State Overtime wages; (4) Claim for Failure to Timely Pay Wages; (5) Claim for Meal and Rest Break Labor Code Violations; (6) Inaccurate Wage Statements; (7) Claim for Failure to Maintain Payroll Records; (8) Claim for Failure to Reimburse Business Expenses; (9) Failure to Properly Pay Sick Pay; (10)

Misclassification; (11) Failure to Maintain Workers' Compensation Insurance; (12) Claim for Miscellaneous Labor Code Violations via the PAGA; and (13) Unfair Business Practices. The Parties shall seek settlement approval of this Settlement Agreement through the *Aceves Action*. The TAC, and all of the claims alleged therein, shall hereinafter be referred to as the "Action."

Defendants have always and still contend that Plaintiffs' executed valid and enforceable arbitration agreements, which include class action waivers, covering the claims at issue each action ("Plaintiffs' Arbitration Agreements"). Defendants have also repeatedly reserved the right to enforce Plaintiffs' Arbitration Agreements in the future, if necessary. However, given the uncertainty of litigation, Plaintiffs and Defendants wish to settle all disputes between them, both individually and on behalf of the Settlement Class and the Aggrieved Employees, and hereby agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendants stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees employed by Atlas in California from June 20, 2020 through July 30, 2025 (the "Class Period"), and all current and former individuals classified as independent contractors who performed work in California during the Class Period.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If, for any reason, this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiffs.** Plaintiffs and every member of the Settlement Class (except those who opt out and except as to the PAGA Released Claims specified below) will fully release and discharge Defendants, specifically including Jason Parish and Kyle Watkins, and all of Atlas' past and present officers, directors, shareholders, owners, employees, agents, principals, heirs, representatives, accountants, auditors, insurers, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively the "Released Parties"), as follows:

A. **Settlement Class Member Release.** Upon the Effective Date and the complete funding of the Gross Settlement Amount, all Settlement Class members, on behalf of themselves and their former and present representatives, agents, attorneys (including Class Counsel), heirs, estates, administrators, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, representatives and assigns will generally and forever waive and release all claims, demands, rights, liabilities and causes of action that they have or had against Defendants, including the claims and/or causes of action that were alleged, or reasonably could have been alleged, based on the facts contained or contemplated in the *Aceves Action*, the *Martinez Action*, the operative TAC and in Plaintiffs' LWDA notices, and which arose during the Class Period, including claims for: (1) Failure to Provide Access to Employee Personnel Records; (2) Claim for Failure to

Pay State Minimum/Regular Wages; (3) Claim for Failure to Pay State Overtime wages; (4) Claim for Failure to Timely Pay Wages; (5) Claim for Meal and Rest Break Labor Code Violations; (6) Inaccurate Wage Statements; (7) Claim for Failure to Maintain Payroll Records; (8) Claim for Failure to Reimburse Business Expenses; (9) Failure to Properly Pay Sick Pay; (10) Misclassification; (11) Failure to Maintain Workers' Compensation Insurance; (12) Claim for Miscellaneous Labor Code Violations via the PAGA; and (13) Unfair Business Practices (the "Class Released Claims"). The period of the Class Released Claims shall extend to the limits of the Class Period.

- B. **Release of PAGA Claims.** In addition, all Settlement Class members (regardless of whether they opt out) who worked for Defendants at any time from April 19, 2023 through July 30, 2025 (the "PAGA Period") are "Aggrieved Employees" and shall release the Released Parties from all claims for civil penalties under PAGA arising during the PAGA Period as disclosed in Plaintiffs' Notification Letters to the LWDA and as alleged in the Action (the "PAGA Released Claims").
- C. **Releases by Plaintiffs.** Upon Defendants' complete funding of the Gross Settlement Amount, Plaintiffs have agreed to release, individually, the Class Released Claims and PAGA Released Claims described above, as well as any other individual claims they have against Defendants, as part of a separate settlement agreement that shall become effective upon the Effective Date. Further, the Parties understand and agree that Plaintiffs are not, by way of these releases, releasing any workers' compensation claims, unemployment insurance claims, nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiffs understand that their releases of the Class Released Claims and the PAGA Released Claims include unknown claims related to or arising out of those claims and the TAC, and that Plaintiffs are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

3. **Gross Settlement Amount.** As consideration, Atlas agrees to pay a non-reversionary "Gross Settlement Amount" of Five Hundred Seventy Thousand Dollars and Zero Cents (\$570,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage ILYM Group, Inc. as the "Settlement Administrator" to administer this Settlement.
- B. The Effective Date shall be defined as the later of: (1) date on which the Court enters an Order granting Final Approval of the Settlement Agreement or, (2) solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last

date on which any appeal might be filed or (ii) the successful resolution of any appeal(s)—including expiration of any time to seek reconsideration or further review.

- C. The Gross Settlement Amount shall be deposited with the Settlement Administrator as follows: (1) Atlas shall make an initial installment payment of \$270,000.00 within 61 days of the Effective Date, or by January 8, 2027, whichever is later; (2) Atlas shall make a second installment payment of \$90,000.00 within 90 days of the first installment payment; (3) Atlas shall make a third installment payment of \$90,000.00 within 90 days of the second installment payment; (4) Atlas shall make a fourth installment payment of \$90,000.00 within 90 days of the third installment payment; and (5) Atlas shall make a fifth and final installment payment of \$30,000.00 within 60 days of the fourth installment payment.
- D. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- i. All payments (including interest) to the Settlement Class;
 - ii. Reasonable costs for settlement administration by an approved Settlement Administrator. Under no circumstances shall Defendants be obligated to pay the Settlement Administrator any amounts greater than what is allocated from the Gross Settlement Amount;
 - iii. Up to Five Thousand Dollars and Zero Cents (\$5,000.00) to each Plaintiff, for a total of Ten Thousand Dollars and Zero Cents (\$10,000.00), for Plaintiffs' Class Representative Service Awards, in recognition of their contributions to the Action and their service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement Agreement, and it will remain binding;
 - iv. Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Forty Thousand Dollars and Zero Cents (\$40,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - v. Forty Thousand Dollars and Zero Cents (\$40,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty Thousand Dollars and Zero Cents (\$30,000.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Ten Thousand Dollars and Zero Cents (\$10,000.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

- vi. Any difference between these requested amounts and the amounts approved by the Court will revert to the Net Settlement Amount for the benefit of the Settlement Class members who do not opt out.
 - vii. Any required changes that may be necessary for preliminary or final Court approval shall not require any increase to the Gross Settlement Amount.
- D. **Escalator Clause.** The Gross Settlement Amount is based on Defendants' representations that Settlement Class members worked approximately 5,390 workweeks during the Class Period. If, at the time of preliminary approval, the number of workweeks has increased by 11% or more (i.e., if there are 5,983 or more workweeks), then (i) the Gross Settlement Amount shall increase proportionally with the increase in workweeks (e.g., if there was 18% increase in the number of estimated workweeks during the Class Period, then the Gross Settlement Amount would increase by 7%) or (ii) Defendants may limit the scope of this Settlement Agreement to a lower amount that does not trigger the escalator provision contemplated above.
- E. Defendants' share of employer payroll taxes shall be paid by Defendants separately from, and in addition to, the Gross Settlement Amount.
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Award") from the Settlement. Individual Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiffs' Class Representative Service Awards, the Settlement Administrator's fees and expenses for administration, and the total amount designated as PAGA civil penalties (i.e., the "PAGA Amount"). The remaining amount shall be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Award based on the following formula:
 - i. Payments to Participating Settlement Class Members. The Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate Workweeks worked during the Class Period, and will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.

- ii. Payments to Participating PAGA Members. In addition to the Net Settlement Amount, the PAGA Amount will be allocated as follows: Each Settlement Class member who was employed by and/or worked for Defendants in California at any time during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement) (the “Aggrieved Employees”), shall receive a portion of the PAGA Amount proportionate to the number of Workweeks worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member’s gross number of Workweeks worked during the PAGA Period, and the denominator of which is the total number of Workweeks worked by all Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) during the PAGA Period.
- C. Within ten (10) calendar days following Defendants’ deposit of the fifth and final installment payment, the Settlement Administrator will calculate Individual Settlement Award amounts and provide the same to the Parties’ counsel for review and approval. Within seven (7) calendar days of approval by the Parties’ counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendants’ Counsel.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Any payment from the Net Settlement Amount shall be allocated as follows: (i) 80% shall be treated as penalties and interest and shall be subject to 1099 reporting; and (ii) 20% shall be treated as wages and shall be subject to W2 reporting. 100% of all payments made from the PAGA Amount shall be treated as penalties and shall be subject to 1099 reporting. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each member of the Settlement Class who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be sent to the Unclaimed Property Fund with the California State Controller's Office.

- F. Neither Plaintiffs nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendants will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be One Hundred Ninety Thousand Dollars and Zero Cents (\$190,000.00). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

6. **Class Representative Service Awards.** Defendants will not object to a request for Class Representative Service Awards of up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff Aceves and Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff Martinez, for a total of Ten Thousand Dollars and Zero Cents (\$10,000.00), for their time and risk in prosecuting this case, and their service to the Settlement Class. These awards will be in addition to Plaintiffs' respective Settlement Awards as Settlement Class members and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. In the event that the Court reduces or does not approve the requested Service Awards, Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding.

7. **Settlement Administrator.** Defendants will not object to the appointment of ILYM Group, Inc. as Settlement Administrator. Defendants will not object to Plaintiffs' request to the Court to pay up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Individual Settlement Awards and preparing all checks and mailings, calculating Defendants' share of taxes payable on the wage portion of the Individual Settlement Awards, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Individual Settlement Awards have been mailed to all participating Settlement Class members. The Settlement Administrator shall also be responsible for posting the Final Judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Thomas D. Rutledge of Thomas Rutledge Law and Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, as Class Counsel;

- C. Appointing Plaintiffs as Class Representatives for the Settlement Class;
- D. Approving ILYM Group, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and confirming that its terms are fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Estimated Settlement Award, drafts of which are attached hereto as **Exhibits A** and **B**, respectively), and directing the mailing of the same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within thirty (30) business days after entry of an order preliminarily approving this Settlement, Defendants will compile and provide the Settlement Administrator with sufficient information about the Settlement Class to administer this Settlement, including: employee/contractor names, last known addresses, social security numbers (if available), and dates of employment and/or contractual relationship during the Class Period and PAGA Period (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. **Requests for Exclusion.** Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be

postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(4), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid, so long as the Settlement Administrator has sufficient information to identify the Class member. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Notwithstanding the foregoing, the PAGA settlement and release provisions will apply to all Settlement Class members whether or not they exclude themselves from the class action settlement. Settlement Class members who were employed by Defendants at any time during the PAGA Period and submit a valid and timely Request for Exclusion shall still receive their portion of the PAGA Amount described above, and will release all PAGA Released Claims, whether they submit a valid and timely Request for Exclusion or not.

- ii. For the avoidance of doubt, no Party or their counsel shall seek to solicit or otherwise encourage Settlement Class members to file or serve written objections to the Settlement or to appeal any order issued by the Court, including the Final Judgment of the Action.

- D. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' Counsel, as well as file all such objections with the Court). Defendants' Counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendants' Counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any written objection should: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may alternatively object to the Settlement by appearing at the Final Approval Hearing. Members of the Settlement class who request exclusion *may not* object to the Settlement.

- E. **Notice of Estimated Settlement Award / Disputes.** Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Award as well as all of the information that was used from Defendants' records in order to calculate the Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendants' records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Award shall be binding upon the Settlement Class member and the Parties.

- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendants' Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval of the Settlement and adjudging its terms to be fair, adequate, and reasonable;

- B. Approving Plaintiffs' and Class Counsel's request for attorneys' fees and reimbursement of costs, Class Representative Service Awards, and settlement administration costs; and

- C. Entering Final Judgment pursuant to California Rule of Court 3.769. Said Judgment shall be posted on the Settlement Administrator's website.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendants: Daniel E. Gardenswartz (dgardenswartz@swsslaw.com); Mei-Ying M. Imanaka (mimanaka@swsslaw.com); Adam R. Scott (ascott@swsslaw.com), Solomon Ward Seidenwurm & Smith LLP, 401 B Street, Suite 1200, San Diego, California 92101.

if to Plaintiffs: Thomas D. Rutledge, Law Offices of Thomas D. Rutledge, 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606; thomasrutledgelaw@gmail.com; Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com.

14. **Confidentiality.** To the extent permitted by law, all agreements made and/or orders entered with respect to this Settlement Agreement or the settlement of the Action, including any prior agreements entered into by and between Plaintiffs and Defendants, shall be confidential and shall survive the execution of this Agreement. Similarly, no Party shall issue any press release or disclose any information regarding this Settlement Agreement other than as necessary to obtain Court approval or effectuate the terms contemplated in this Agreement. Nothing in this provision will prevent Class Counsel from disclosing information as necessary to attest to their qualifications in other cases, as may be required by any state and/or federal court.

15. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the Action and supersedes all prior negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **California Law.** All terms of this Settlement Agreement, including the exhibits attached hereto, shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

18. **Representation.** The Parties have each been represented by counsel and have cooperated in the drafting and preparation of this Settlement Agreement. This Settlement Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

19. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

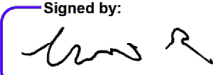
20. **Enforcement Action.** Consistent with the class action procedure, the Parties agree that the San Diego County Superior Court shall have jurisdiction to enforce this Settlement pursuant to California Code of Civil Procedure section 664.6, and California Rule of Court 3.769. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

[Signatures on Following Page]

APPROVED AND AGREED:

DATED: 6/5/2026, 2026

PLAINTIFF MICHELLE ACEVES

Signed by:

By: 7D7A630E5BF84DC...
Plaintiff and Settlement Class Representative

DATED: _____, 2026

PLAINTIFF GARY MARTINEZ

By: _____
Plaintiff and Settlement Class Representative

DATED: 7/8/2026 | 12:44:45 PM PDT, 2026

DEFENDANT ATLAS RETAIL SERVICES, INC.

Kyle Watkins

DocuSigned by:

By: 8CBF8400F8024D5...

Title: Chief Executive Officer

APPROVED AND AGREED:

DATED: _____, 2026

PLAINTIFF MICHELLE ACEVES

By: _____
Plaintiff and Settlement Class Representative

DATED: 06/29 _____, 2026

PLAINTIFF GARY MARTINEZ

By: Gary Martinez
Gary Martinez (Jun 29, 2026 20:22:45 PDT) _____
Plaintiff and Settlement Class Representative

DATED: _____, 2026

DEFENDANT ATLAS RETAIL SERVICES, INC.

By: _____

Title: _____

APPROVED AS TO FORM:

DATED: June 30, 2026

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff Gary Martinez

DATED: _____, 2026

THOMAS RUTLEDGE LAW

By: _____
Thomas D. Rutledge
Attorneys for Plaintiff Michelle Aceves

DATED: July 8, 2026

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: 

Daniel E. Gardenswartz
Mei-Ying Imanaka
Adam R. Scott
Attorneys for Defendants

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MICHELLE ACEVES, and GARY MARTINEZ, as individuals, and on behalf of others similarly situated, and as the State of California's designated proxies under the Private Attorneys General Act (PAGA) on behalf of the State of California and other aggrieved employees,

Plaintiffs,

vs.

ATLAS RETAIL SERVICES INC., a Texas corporation; Jason Parrish, individual; Kyle Watkins, individual; and DOES 1 through 50 inclusive,

Defendants.

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

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT**

To: All current and former non-exempt employees employed by Defendant Atlas Retail Services, Inc. in California from June 20, 2020 through July 30, 2025 (the "Class Period"), and all current and former individuals classified as independent contractors who performed work in California during the Class Period. Collectively, these employees will be referred to as "Settlement Class members."

**PLEASE READ CAREFULLY
THIS NOTICE IS BEING PROVIDED TO YOU IN BOTH ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this Notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in the matter of *Michelle Aceves, et al. v. Atlas Retail Services, Inc., et al*, San Diego County Superior Court Case No. 37-2024-00018584-CU-OE-CTL (the "Lawsuit"). Your rights may be affected by the Settlement, and it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Atlas Retail Services, Inc.'s ("Atlas Retail" or "Defendant") records show that you were employed by Atlas Retail as a non-exempt employee or were classified as an independent contractor and performed work in the State of California during between June 20, 2020 through July 30, 2025 (the Class Period. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

On April 19, 2024, Plaintiff Michelle Aceves ("Plaintiff Aceves") filed notice with the Labor & Workforce development Agency and an enforcement action under the California Private Attorneys General Act ("PAGA") in the Superior Court of California for the County of San Diego.

On June 21, 2024, Plaintiff Gary Martinez ("Plaintiff Martinez") filed a separate class action complaint alleging various wage and hours violations against Atlas Retail in the Superior Court of California for the County of San Diego

entitled *Gary Martinez v. Atlas Retail Services, Inc.*, Case No. 37-2024-00029333-CU-OE (the “*Martinez Action*”). On August 26, 2024, Plaintiff Martinez filed a First Amended Class and Representative Action Complaint to add a cause of action for civil penalties under the PAGA.

On July 9, 2026, Plaintiff Aceves filed the operative Third Amended Class and Representative Action Complaint (“TAC”), adding Plaintiff Martinez as a named plaintiff and adding various causes of action, class allegations, and certain factual allegations.

The operative Third Amended Class and Representative Action Complaint (“TAC”) alleges the following causes of action: (1) Failure to Provide Access to Employee Personnel Records; (2) Claim for Failure to Pay State Minimum/Regular Wages; (3) Claim for Failure to Pay State Overtime Wages; (4) Claim for Failure to Timely Pay Wages; (5) Claim for Meal and Rest Break Labor Code Violations; (6) Claim for Inaccurate Wage Statements; (7) Claim for Failure to Maintain Payroll Records; (8) Claim for Failure to Reimburse Business Expenses; (9) Failure to Properly Pay Sick Pay; (10) Misclassification; (11) Failure to Maintain Workers’ Compensation Insurance; (12) Claim for Miscellaneous Labor Code Violations via the PAGA; and (13) Unfair Business Practices.

Plaintiffs are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

Atlas Retail denies that it has done anything wrong. Atlas Retail denies that it owes Settlement Class members any wages, restitution, penalties, damages, or other amounts. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Atlas Retail, by whom all liability is expressly denied.

The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Atlas Retail has concluded that it is in its best interests to settle the Lawsuit on the terms summarized in this Notice. The Settlement was reached after an exchange of information and documents, a mediation, and arms-length negotiations between the Parties.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Atlas Retail, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Atlas Retail, your decision about whether to participate in the Settlement will not affect your employment. California law and Atlas Retail’s policy strictly prohibit unlawful retaliation. Atlas Retail will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiffs/Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Defendant: SOLOMON WARD SEIDENWURM & SMITH, LLP Daniel E. Gardenswartz dgardenswartz@swsslaw.com Mei-Ying M. Imanaka mimanaka@swsslaw.com Adam R. Scott ascott@swsslaw.com 401 B Street, Suite 1200 San Diego, California 92101 Tel: (619) 231-0303 Fax: (619) 231-4755
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THOMAS RUTLEDGE LAW

Thomas D. Rutledge
thomasrutledgelaw@gmail.com
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091-4606
Tel: (619) 886-7224

Depending on what action you take in connection with the Settlement, you may need to contact or submit documents to the Settlement Administrator. You can do this as follows:

ILYM GROUP, INC.
2832 Walnut Ave., Suite C
Tustin, CA 92780
[EMAIL ADDRESS]
Telephone: (888) 250-6810
Fax: (888) 845-6185
www.ILYMgroup.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees employed by Atlas Retail in California during the Class Period and all current and former individuals classified as independent contractors who performed work in California during the Class Period. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release claims against Atlas Retail as specifically described below.

Atlas Retail has agreed to pay \$570,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class members, Class Counsel’s attorneys’ fees and expenses, Settlement administration costs, an amount set aside as PAGA civil penalties, and each Class Representative’s Service Award.

The following deductions from the Gross Settlement Amount will be requested by Class Counsel and the amount of the deductions will be decided at the Final Approval Hearing:

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for up to one-third of the Gross Settlement Amount, which is currently estimated at \$190,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in the Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$40,000.00 in verified costs incurred in connection with the Lawsuit.

Settlement Administration Costs. The Court has approved ILYM Group, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$15,000.00 from the Gross Settlement Amount to pay the settlement administration costs.

Class Representative Service Award. Class Counsel will ask the Court to award a Class Representative Service Award in the amount of \$5,000.00 to each Plaintiff (for a total of \$10,000.00) to compensate them for their services and extra work provided on behalf of the Settlement Class members.

PAGA Payment to the State of California. The parties have agreed to allocate \$40,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$30,000.00) will be payable to the Labor & Workforce Development Agency (“LWDA”) for its share of PAGA penalties, and the remaining 25% (\$10,000.00) will be payable to certain members of the Settlement Class as the “PAGA Amount.”

Calculation of Individual Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the “Net Settlement Amount”, which will be proportionally distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion from the Settlement (described below) (the “Individual Settlement Awards”). The Net Settlement Amount will be divided as follows:

- (i) The Net Settlement Amount shall be allocated to all participating Settlement Class members based on each participating Settlement Class member’s proportionate number of workweeks worked for Atlas Retail during the Class Period, and will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class members during the Class Period.
- (ii) In addition to the Net Settlement Amount, \$10,000.00 of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above and will be allocated to all Settlement Class members (regardless of whether they opt-out) who worked for Atlas Retail at any time between April 19, 2023 through July 20, 2025 (the “PAGA Period”), in proportion to the number of workweeks that each Settlement Class member worked for Atlas Retail in California during that time period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion from the Settlement.

Allocation and Taxes. For tax purposes, each Individual Settlement Award shall be treated as follows: twenty percent (20%) as “wages,” for which an IRS Form W-2 will be issued; and eighty percent (80%) as penalties and interest, for which an IRS Form 1099 will be issued. All payments made from the PAGA Amount shall be treated 100% as penalties and shall be subject to 1099 reporting. The Settlement Administrator will be responsible for issuing to Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, Atlas Retail and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, and as of the Effective Date and upon Atlas Retail’s complete funding of the Gross Settlement Amount, each Settlement Class member who has not submitted a timely and valid Request for Exclusion from the Settlement, will fully release and discharge Atlas Retail, specifically including Jason Parish and Kyle Watkins, and all of Atlas Retail’s past and present officers, directors, shareholders, owners, employees, agents, principals, heirs, representatives, accountants, auditors, insurers, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively, “Released Parties”) from any and all claims, demands, rights, liabilities and causes of action that they have or had against Atlas Retail, Jason Parish and Kyle Watkins, including the claims and/or causes of action that were alleged, or reasonably could have been alleged, based on the facts contained or contemplated in the *Aceves* Action, the *Martinez* Action, the operative TAC and in Plaintiffs’ LWDA notices, and which arose during the Class Period, including claims for: (1) Failure to Provide Access to Employee Personnel Records; (2) Claim for Failure to Pay State Minimum/Regular Wages; (3) Claim for Failure to Pay State Overtime Wages; (4) Claim for Failure to Timely Pay Wages; (5) Claim for Meal and Rest Break Labor Code Violations; (6) Claim for Inaccurate Wage Statements; (7) Claim for Failure to Maintain Payroll Records; (8) Claim for Failure to Reimburse Business Expenses; (9) Failure to Properly Pay Sick Pay; (10) Misclassification; (11) Failure to Maintain Workers’ Compensation Insurance; (12) Claim for Miscellaneous Labor Code Violations via the PAGA; and (13) Unfair Business Practices (collectively, the “Class Released Claims”). The period of the Class Released Claims shall extend to the limits of the Class Period.

Additionally, all Settlement Class members (regardless of whether they opt out) who worked for Atlas Retail at any time from April 19, 2023 through July 30, 2025 (the “PAGA Period”) are “Aggrieved Employees” and shall release the Released Parties from all claims for civil penalties under PAGA arising during the PAGA Period as disclosed in Plaintiffs’ Notification Letters to the LWDA and as alleged in the Lawsuit (collectively, “PAGA Released Claims”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period, and the proportionate number of workweeks you worked during the PAGA Period, as stated in the accompanying Notice of Estimated Individual Settlement Award. You also will be bound by the Settlement, including the release of all claims stated above.

Check Cashing Deadline. If you are issued an Individual Settlement Award, you will have one hundred and eighty (180) calendar days after your check is mailed by the Settlement Administrator to cash it. If you do not cash your check within 180 days after mailing, the check will become void and the funds shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in your name, until such time that you claim your property.

What other options do I have?

Dispute Information in Notice of Estimated Individual Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, and the proportionate number of workweeks worked during the PAGA Period. The information contained in Atlas Retail’s records regarding each of these factors, along with your estimated Individual Settlement Award, is listed on the accompanying Notice of Estimated Individual Settlement Award. If you disagree with the information in your Notice of Estimated Individual Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Individual Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator’s determination of the eligibility for and amount of any Individual Settlement Award will be binding on the Settlement Class member and the Parties.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written Request for Exclusion no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *MICHELLE ACEVES, ET AL. v. ATLAS RETAIL SERVICES, INC., ET AL.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member, shall be barred from participating in any portion of the class action Settlement, and shall receive no monetary benefits from the class action Settlement. However, if you were employed by Atlas Retail at any time during the PAGA Period, you may not opt out of the PAGA settlement, and you will still be entitled to a portion of the PAGA Amount as described above. **Do not submit both a Dispute and a Request for Exclusion.** If

you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you should mail a written objection to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, any legal or factual support for each objection, and any and all supporting papers, briefs, written evidence, declarations, and/or other evidence. Objections should be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>. Notwithstanding the foregoing, you do not need to object in writing to be heard at the Final Approval Hearing.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department C-66 of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *Michelle Aceves, et al. v. Atlas Retail Services, Inc., et al.*, San Diego County Superior Court Case No. 37-2024-00018584-CU-OE-CTL. You need not file a written objection in order to appear at the Final Approval Hearing.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department C-66 of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101. The Court also will be asked to rule on Class Counsel's request for attorneys' fees, reimbursement of costs and expenses, the Service Awards to the Class Representatives, the payment to the LWDA, and payment to the Settlement Administrator. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101, during regular court hours. You may also download case-related documents from the Court's website, for a fee. You may also contact the Settlement Administrator using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, ATLAS RETAIL, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED INDIVIDUAL SETTLEMENT AWARD

Michelle Aceves, et al. v. Atlas Retail Services, Inc., et al.
SAN DIEGO COUNTY SUPERIOR COURT CASE NO. 37-2024-00018584-CU-OE-CTL

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to Atlas Retail Services, Inc.'s ("Atlas Retail") records:

(a) you worked [REDACTED] workweeks from June 20, 2020 through July 30, 2025 for Atlas Retail;

(b) you worked [REDACTED] workweeks from April 19, 2023 through July 30, 2025 for Atlas Retail.

Based on the above, your Individual Settlement Award is estimated at \$ [REDACTED].

(IV) If you disagree with items (a) and/or (b) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Atlas Retail's records, Atlas Retail's records will control unless you are able to provide documentation that establishes otherwise and that Atlas Retail's records are mistaken. If there is a dispute about whether Atlas Retail's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Proposed Class Action Settlement" that accompanies this Form.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT 2

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

April 19, 2024

File No. 731.03

VIA INTERNET UPLOAD

Director
Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, California 94612

VIA CERTIFIED MAIL (HAND RECEIPT REQUESTED)(70221670000314383210)

President/HR
Atlas Retail Services, Inc.
990 US HWY 287, Suite 106-201
Mansfield, Texas 76063

Re: *Aceves, et al. v. Atlas Retail Services, Inc., et al.*

Dear Sir or Madam:

This office represents Michelle Aceves and aggrieved employees employed by the above-named employer pursuant to California Labor Code §§ 2699, *et seq.* Accordingly, we are informing you of our representation and ask that all communication regarding this matter be directed to our attention at the address located on this letterhead and that no contact be made directly with our client. This letter is sent pursuant to the provisions of California Labor Code §§ 2699, *et seq.*

I. FACTS & NATURE OF THE DISPUTE.

This is a representative action seeking penalties for Defendants' violations of various California Labor Code provisions. The details of our client's claims are discussed in the enclosed draft Complaint, which allegations are incorporated by reference as though set forth herein.

II. § 2699, et seq., LABOR CODE VIOLATIONS.

Our client has numerous legal claims against the abovementioned parties. In summary, Defendants wantonly, intentionally, and willfully refuse to provide Plaintiff's personnel file and payroll records despite multiple written attempts to obtain them, issued confusing wage and earning statements to the Plaintiff, unlawfully underpaid paid overtime compensation, failed to reimburse employee work related expenses, failed to pay meal break premiums, among other claims.

The details of our client's Labor Code § 2699 claims are discussed in the enclosed draft Complaint, which allegations are incorporated by reference and incorporated herein as though set forth herein. These violations include all California Labor Code provisions including but not limited to violations of Labor Code subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-251, 351, 353, and 403, subdivision (b) of Section 404, Sections 432, 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, 1198.5, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, 6399.7, and the Labor Code provisions specified in the enclosed draft complaint.

Please take notice, if Defendant maintains that any of the named Plaintiff's claims lack merit, provide all facts in support of your contention within 30 days of the date of this letter. Otherwise, Plaintiff will presume the claims asserted herein have merit and will proceed accordingly.

III. CONCLUSION.

Please take notice this letter is intended to exhaust the pre-litigation requirements set forth under California Labor Code §§ 2699, *et seq.* By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of § 2699, *et seq.*, by seeking redress in court. (Labor Code § 2699.3(a)(1).) The LWDA must then notify the employer and the employee within the time required by statute regarding whether it intends to investigate the alleged violation. (Labor Code §

2699.3(a)(2)(B).) If the LWDA advises it will not investigate, or if no notice is provided within the time required by statute, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. (Labor Code §2699.3(a)(2)(A).) It is the intention of this office to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 seeking the remedies for the Labor Code violations referenced in this letter and its enclosure should your office not address these matters within the proscribed time.

We write this letter subject to and without waiver of our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Very truly yours,

Thomas D. Rutledge
/s/Thomas D. Rutledge

Enclosure

Cc: Michelle Aceves (via e-mail)

ENCLOSURE 1

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Attorneys for Plaintiffs

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.:

**REPRESENTATIVE ACTION
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; and
9. Claim for miscellaneous Labor Code Violations via the PAGA

1 Plaintiff MICHELLE ACEVES, on behalf of herself and acting for the
2 interests of the State of California and other current and former employees
3 (cumulatively "Plaintiffs"), alleges the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to Labor Code Private Attorney General Act (PAGA), §§ 2698,
6 2699 of the California Labor Code, Plaintiffs also bring this representative action
7 against Defendants for violations of the California Labor Code and the Industrial
8 Welfare Commission Wage Orders (the "IWC Wage Orders"). *Adolph v. Uber*
9 *Technologies, Inc.*, 14 Cal. 5th 1104 (2023).

10 **THE PARTIES**

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

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

15 4. Defendant ATLAS RETAIL SERVICES INC. is a Texas corporation
16 doing business in California.

17 5. The true names and capacities, whether individual, corporate, associate,
18 or otherwise of the Defendants named herein as DOES 1 through 10, are unknown to
19 Plaintiff at this time. Plaintiff therefore sues said Defendants by such fictitious names
20 pursuant to § 474 of the California Code of Civil Procedure. Plaintiff will seek leave
21 to amend this Complaint to allege the true names and capacities of DOES 1 through
22 10 when their names are ascertained. Plaintiff is informed and believes, and based
23 thereon alleges, that each of the DOE Defendants is in some manner liable to Plaintiff
24 for the events and actions alleged herein.

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

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

JURISDICTION & VENUE

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

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

10. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the Superior Court of California for the County of San Diego because this is where the misconduct alleged in this Complaint occurred. *Crestwood Behavioral Health, Inc. v. Superior Court*, 60 Cal. App. 5th 1069, 1075 (2021) (in a PAGA action, a plaintiff is not limited to the county in which he or she performed work).

GENERAL ALLEGATIONS

11. Defendants are in the retail business.

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

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

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

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

Failure to Provide Payroll Records and Personnel File.

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

17. Defendants failed to respond to the foregoing letter.

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

19. To date, DEFENDANT EMPLOYER has failed to produce Plaintiff's personnel file.

20. Due to the foregoing, Plaintiffs are informed and believe and based thereon allege that Defendants are up to no good and are trying to avoid the legal process mistakenly believing the Plaintiffs will just go away—they will not.

Unpaid Minimum/Regular Wages/and Prevailing Wages.

21. 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.

22. 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.

Unpaid Overtime.

23. 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.

1 24. 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) and Defendants' failure to provide Plaintiff's
4 personnel file and payroll records.

5 **Meal and Rests Break Claims.**

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

12 26. Plaintiffs are also informed and believe and based thereon allege that
13 because of Defendants' policy, Defendants prevented Aggrieved Employees from
14 taking all their uninterrupted rest breaks to which they had the right to enjoy in an
15 amount to be proven at trial, and Defendants failed to pay them premium pay as
16 required under California law. *See Augustus v. ABM Security Services*, 2 Cal. 5th 257
17 (2016).

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

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

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

26 29. During all times relevant, Plaintiffs are informed and believe and based
27 thereon allege that pursuant to company policies and/or practices and/or directions
28 implemented and enforced by Defendants, that Defendants failed to reimburse

1 Aggrieved Employees for work-related expenses in violation of California law.

2 30. In particular, the named Plaintiff alleges that Defendants failed and
3 continue to fail to reimburse the Plaintiff for cell phone and mileage expenses
4 incurred on behalf of the Defendants.

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

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

10 32. During all times relevant, Plaintiffs are informed and believe and based
11 thereon allege that pursuant to company policies and/or practices and/or directions
12 implemented and enforced by Defendants, that Defendants failed to issue wage and
13 earning statements to Aggrieved Employees in violation of California law.

14 33. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
15 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*,
16 23 Cal. App. 5th 745 (2018) and based on Defendants' failure to provide Plaintiff's
17 personnel file and payroll records.

18 **Derivative PAGA Claims.**

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

26 35. This claim is premised on Plaintiffs' right to pursue all Labor Code
27 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
28 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and based on Defendants' failure to provide

1 Plaintiff's personnel file and payroll records.

2 **REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS**

3 36. This is a wage and hour representative action filed pursuant to PAGA,
4 §§ 2698, 2699 that generally consists of the following group:

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

8 37. All members of the represented group are referred to as the "Aggrieved
9 Employees."

10 38. The "PAGA Period" means from **April 19, 2023** to the present.

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

15 40. At all material times, Defendants and DOES 1 through 50 were and/or
16 are Aggrieved Employees' employers or persons acting on behalf of Aggrieved
17 Employees' employer, within the meaning of California Labor Code § 558, and, as
18 such, are subject to penalties for each underpaid employee as set for in Labor Code §
19 558.

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

24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

1 43. In the event the LWDA does not serve notice of its intent to assume
2 jurisdiction over the applicable penalty claims nor provide notice as set forth in Labor
3 Code § 2699.3(a)(2)(A) within the statutory period, Plaintiffs will file an amended
4 complaint once the notice period has expired and to inform the Court they have
5 exhausted their administrative remedies and have the right to pursue claims and
6 remedies as authorized by the PAGA.

7 44. Therefore, Plaintiffs will have exhausted Plaintiffs' administrative
8 remedies to pursue claims and remedies as authorized by the PAGA.

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

- 11 a. This action involves allegations of violations of provisions
12 of the California Labor Code that provide for a civil penalty
13 to be assessed and collected by the LWDA or any
14 departments, divisions, commissions, boards, agencies, or
15 employees;
16 b. Plaintiffs are "aggrieved employees" because Plaintiffs were
17 employed by the alleged violator and had one or more of the
18 Labor Code violations alleged on this Complaint committed
19 against them; and
20 c. Plaintiffs have satisfied the procedural requirements of
21 Labor Code § 2699.3, as set forth above.

22 **FIRST CAUSE OF ACTION**

23 **Failure to Provide Access to Employee Personnel File**
24 **and Payroll Records in Violation of**
25 **California Labor Code §§ 226, 432, and 1198.5**
26 **(Against all Defendants)**

27 46. Plaintiff re-alleges and incorporates by reference the foregoing
28 allegations, as though set forth herein.

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

6 48. Plaintiff maintains the records requested fall within the meaning of
7 Labor Code § 226 because, among other reasons, the requested documents are
8 “records pertaining to [his] employment.”

9 49. California Labor Code § 432, subdivision (b), requires employers doing
10 business in the State of California to provide current, former employees, and
11 applicants copies of all written instruments they sign upon request.

12 50. Plaintiff maintains the records requested fall within the meaning of
13 Labor Code § 432 because some of the records requested constitute written
14 instruments the Plaintiff signed.

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

19 52. Plaintiff maintains the records requested fall within the meaning of
20 Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff’s
21 personnel file within the meaning of Labor Code § 1198.5.

22 53. As alleged above, Defendants did not provide Plaintiff access to
23 Plaintiff’s employee personnel file and/or the records to which Plaintiff has the right
24 to obtain within the meaning of the foregoing statutes in violation of the above
25 described statutes.

26 54. Because of the statutory violations of Labor Code § 226 due to
27 Defendants’ failure to provide Plaintiff his payroll records, Plaintiff suffered
28 damages, in an amount to be determined according to proof at trial.

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

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

10 57. Plaintiff seeks the recovery of costs and attorney's fees as provided by
11 applicable law, including but not limited to California Labor Code § 226, subdivision
12 (h) and § 1198.5, subdivision (l).

13 58. 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 all in an amount to be shown according to proof at trial.

16 **SECOND CAUSE OF ACTION**

17 **Individual and Representative Claim for PAGA Penalties**

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

19 **Failure to Pay Local/State Minimum/Regular/Prevailing Wages**

20 **in Violation of California Labor Code §§ 1194, 1197, 1197.1,**

21 **1771, 1774, 1776, 1811, and 1815, 1198, and the applicable Industrial Welfare**
22 **Commission (IWC) Wage Order via § 1198, and where applicable the Local Min.**

23 **Wage Ordinance**

24 **(Against all Defendants)**

25 59. Plaintiffs re-allege and incorporate by reference the foregoing
26 allegations, as though set forth herein.

27 60. Pursuant to Labor Code §§ 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
28 1815, and 1198, it is unlawful for a California employer to suffer or permit an

1 employee to work without paying wages for all hours worked, as required by the
2 applicable IWC Wage Order and, where applicable on public works projects,
3 prevailing wage laws.

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

7 62. During all times relevant, at least one of the IWC Wage Orders applied
8 to Plaintiffs' employment with Defendants.

9 63. Pursuant to the applicable Wage Order, "hours worked" include the time
10 during which an employee is "suffered or permitted to work, whether or not required
11 to do so."

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

15 65. Plaintiffs seek to recover penalties pursuant to the PAGA from the
16 Defendants for any violations of the foregoing laws during the proposed PAGA
17 Period.

18 66. Labor Code § 1194 subdivision (a) permits an action to recover wages
19 because of the payment of a wage less than the minimum wage "applicable to the
20 employee" including attorneys' fees, costs, and interest.

21 67. At all material times, Defendants were and/or are Aggrieved Employees'
22 employers or persons acting on behalf of Aggrieved Employees' employer, within the
23 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to civil
24 penalties for each underpaid employee as set for in Labor Code § 558.

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

1 the minimum wage and/or regular wage provisions of the Labor Code, including but
2 not limited to §§ 216, 218, 218.5, 558, 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
3 1815, 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is
4 all in an amount to be shown according to proof at trial.

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

8 **THIRD CAUSE OF ACTION**

9 **Individual and Representative Claim for PAGA Penalties**

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

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

12 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, §§ 351-356,**
13 **1182.12, 1194, 1194.2, 1197, 1197.1, 1771, 1774, 1776, 1811, 1815, 1198, and the**

14 **Applicable IWC Wage Order**

15 (Against all Defendants)

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

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

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

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

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

1 75. For each hour (or fraction thereof) an employee works over forty (40)
2 hours in a week or more than eight (8) hours in a workday the employer must pay the
3 rate of one and a half times the employee's regular hourly wage.

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

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

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

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

**Individual and Representative Claim for PAGA Penalties
Under California Labor Code §§ 2698, 2699, *et seq.* for
Failure to Timely Pay Earned Wages in Violation of California
Labor Code §§ 201, 201.3, 202, 203, 204, 204b,
218.5, 218.6, 256, 1198, and the applicable Wage Order
(Against all Defendants)**

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

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

82. Pursuant to Labor Code § 201.3, temporary employment agencies must pay temporary employees weekly.

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

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

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

86. Pursuant to Labor Code § 204b, “Labor performed by a weekly-paid

1 employee during any calendar week and prior to or on the regular payday shall be
2 paid for not later than the regular payday of the employer for such weekly-paid
3 employee falling during the following calendar week.”

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

7 88. At all material times, Defendants and DOES 1 through 50 were and/or
8 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
9 Employees’ employer, within the meaning of California Labor Code § 558, and, as
10 such, are subject to penalties for each underpaid employee as set for in Labor Code §
11 558.

12 89. Plaintiffs seek to recover penalties pursuant to the PAGA from the
13 Defendants for any violations of the foregoing Labor laws during the proposed PAGA
14 Period.

15 90. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
16 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
17 period for the initial violation and two hundred (\$200.00) for each aggrieved
18 employee per pay period for each subsequent violation in which Defendants violated
19 Labor Code §§ 201, 202, 203, 204, 204b, and 256.

20 91. Plaintiffs seek all waiting time penalties, interest, attorneys’ fees, costs,
21 damages, and other remedies pursuant to the PAGA in an amount to be proven at trial
22 all in an amount to be shown according to proof at trial.
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1 **FIFTH CAUSE OF ACTION**

2 **Individual and Representative Claim for PAGA Penalties**

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

4 **Failure to Comply with the Meal and Rest Break Requirements Under Labor**
5 **Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order**

6 (Against all Defendants)

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

9 93. Plaintiffs seek to recover penalties pursuant to the PAGA from the
10 Defendants for any violations of Labor Code §§ 226.7, 512, and 1198 during the
11 proposed PAGA Period.

12 94. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
13 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
14 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation in which all culpable Defendants violated
16 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
17 an amount to be shown according to proof at trial.

18 95. Wherefore, Plaintiffs request all remedies available to them and to the
19 Aggrieved Employees pursuant to the PAGA all in an amount to be shown according
20 to proof at trial.

21 **SIXTH CAUSE OF ACTION**

22 **Individual and Representative Claim for PAGA Penalties**

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

24 **Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,**
25 **and the applicable IWC Wage Order**

26 (Against all Defendants)

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

1 97.Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in pertinent
2 part, that every employer shall, “semimonthly or at the time of each payment of
3 wages, shall furnish to his or her employees, either as a detachable part of the check,
4 draft, or voucher paying the employee's wages, or separately if wages are paid by
5 personal check or cash, an accurate itemized statement in writing showing (1) gross
6 wages earned, (2) total hours worked by the employee. . . (3) the number of piece-rate
7 units earned and any applicable piece rate if the employee is paid on a piece-rate
8 basis, (4) all deductions, provided that all deductions made on written orders of the
9 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
10 inclusive dates of the period for which the employee is paid, (7) the name of the
11 employee and only the last four digits of his or her social security number..., (8) the
12 name and address of the legal entity that is the employer. . . , and (9) all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate by the employee and, beginning July 1, 2013, if the
15 employer is a temporary services employer as defined in Section 201.3, the rate of
16 pay and the total hours worked for each temporary services assignment. . .” (Labor
17 Code § 226 subdivision (a).)

18 98.Plaintiffs seek to recover penalties pursuant to the PAGA from the
19 Defendants for any violations of Labor Code §§ 226, 226.3, 226.6, and 1198 during
20 the proposed PAGA Period.

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

27 100. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
28 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and

1 costs incurred herein under §§ 226, 226.3, and 226.6 all in an amount to be shown
2 according to proof at trial.

3 **SEVENTH CAUSE OF ACTION**

4 **Individual and Representative Claim for PAGA Penalties**
5 **For Failure to Maintain Required Records in Violation of California**
6 **Labor Code §§ 1174 and the Applicable Wage Order and/or § 1198**
7 **(Against All Defendants)**

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

10 102. Section 7 of the typical Wage Order requires every employer to maintain
11 time and payroll records.

12 103. Plaintiffs seek to recover penalties pursuant to the PAGA from the
13 Defendants for any violations of Labor Code § 1174 for failing to maintain certain
14 records which employers are required to maintain, including but not limited to, an
15 accurate record indicating the number hours worked by the Plaintiffs.

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

22 105. For the reasons alleged herein, Plaintiffs seek all available remedies
23 pursuant to the PAGA all in an amount to be shown according to proof at trial.
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EIGHTH CAUSE OF ACTION

Individual and Representative Claim for PAGA Penalties

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

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION

Individual and Representative Claim for PAGA Penalties

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

Individual and Representative Claim for PAGA Penalties and Wage

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

(Against all Defendants)

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

113. 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).

114. Plaintiffs have sent their written notice to the LWDA and Defendants of

1 the specific sections of the California Labor Code Defendants violated and continue
2 to violate.

3 115. Plaintiffs will file an amended complaint once they have exhausted their
4 administrative remedies and are entitled to pursue claims and remedies as authorized
5 by PAGA.

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

12 117. Plaintiffs seek to recover penalties pursuant to the PAGA from the
13 Defendants for any violations of the foregoing Labor Codes.

14 118. Plaintiffs are “aggrieved employees” because Plaintiffs were employed
15 by the alleged violator and had one or more of the alleged violations committed
16 against Plaintiffs, and therefore are properly suited to represent the interests of other
17 current and former Represented Employees.

18 119. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
19 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
20 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
21 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
22 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
23 subdivision (c) of Section 232.5, Sections 233, 234, 245-251, 351-356, and 403,
24 subdivision (b) of Section 404, Sections 432, 432.2, 432.5, 432.7, 435, 450, 511, 513,
25 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923,
26 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via
27 the applicable Wage Order, subdivision (b) of Section 1198.3, 1198.5, Sections
28 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,

1 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,
2 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9,
3 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47,
4 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,
5 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6,
6 6310, 6311, and 6399.7.

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

18 121. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as
19 permitted by law.

20 122. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
21 attorney’s fees, costs, civil penalties, and wages on behalf of Plaintiff and other
22 current and former Represented Employees as alleged herein all in an amount to be
23 shown according to proof at trial.

24 **PRAYER FOR RELIEF**

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

- 26 1. That Defendants be found liable to the Plaintiffs;
- 27 2. For all remedies available to the Plaintiffs under the applicable provisions of
- 28 the Labor Code via the PAGA, i.e., Labor Code § 2698, *et seq.* including an award of

1 attorneys' fees, costs, interest, liquidated damages, damages, penalties and waiting
2 time penalties according to proof to the extent permitted by law;

3 3. For maximum civil penalties available under the Labor Code and applicable
4 Wage Order as described more particularly in this Complaint, including but not
5 limited to penalties pursuant to Labor Code § 558;

6 4. That Aggrieved Employees be awarded reasonable attorneys' fees where
7 available by law, including but not limited to pursuant to Labor Code §§ 2698, *et seq.*,
8 Code of Civil Procedure § 1021.5, and/or other applicable laws; and

9 5. For any other relief the Court may deem just, proper, and equitable.

10 Dated: April 19, 2024

Law Office of Thomas D.
Rutledge

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12 By: DRAFT
13 /s/Thomas D. Rutledge
14 Attorney for Plaintiffs
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EXHIBIT 3

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

June 21, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Gary Martinez v. Atlas Retail Services Inc*

To Whom It May Concern:

Please be advised that this law firm represents Gary Martinez (“Mr. Martinez”) in claims arising from his employment with Atlas Retail Services Inc and Does 1 through 100 (collectively “Atlas Retail Services”). Mr. Martinez is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Atlas Retail Services’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” include all of Atlas Retail Services’ non-exempt employees who worked for Atlas Retail Services in California during the one year immediately preceding the date of this letter through the present.

Atlas Retail Services provides construction and installation services to retail businesses. Mr. Martinez worked for Atlas Retail Services as a non-exempt employee in the position of “Electrician” (or similarly titled position) from approximately January 2023 through the present.

For at least a portion of Mr. Martinez’s employment, Atlas Retail Services improperly misclassified Mr. Martinez as an independent contractor. Under the applicable statutes and Wage Order regulations, Atlas Retail Services is the “employer” of Mr. Martinez and other improperly classified non-exempt employees because Atlas Retail Services has engaged Mr. Martinez and other aggrieved employees to do something of benefit for it or a third-party (Labor Code § 2750), and because Atlas Retail Services exercised pervasive control over Mr. Martinez and other aggrieved employees and retained all necessary control over its business enterprise. Further, Atlas Retail Services exercised control over the wages, hours, and/or working conditions of Mr. Martinez and other aggrieved employees, such that Mr. Martinez and other aggrieved employees are employees of Atlas Retail Services.

Under the applicable IWC Wage Order and the decision of *Dynamex Operations*

West, Inc. v. Superior Court (2018) 4 Cal.5th 903, a worker in California cannot be an independent contractor unless the hiring entity can prove: (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) that the worker performs work that is outside the usual course of the hiring entity's business; and (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. Atlas Retail Services cannot prove that it meets all of the above requirements. As such, Atlas Retail Services intentionally misclassified Mr. Martinez and other aggrieved employees as independent contractors instead of employees.

During the time period in which Mr. Martinez and other aggrieved employees were misclassified as independent contractors, Mr. Martinez and other aggrieved employees were subject to Atlas Retail Services' complete control, and Atlas Retail Services completely controlled the overall operations of its business. Mr. Martinez and other aggrieved employees had no ability to alter or modify their job duties and/or responsibilities, and were required to complete tasks in accordance with Atlas Retail Services' instructions. While misclassified as an independent contractor, Mr. Martinez and other aggrieved employees provided services which were integral and central to the operation of Atlas Retail Services' core business.

As a result of Atlas Retail Services' classification of Mr. Martinez and other aggrieved employees as independent contractors, Atlas Retail Services failed to pay Mr. Martinez and other aggrieved employees all minimum wages for all hours worked, failed to pay Mr. Martinez and other aggrieved employees all overtime wages for all overtime hours worked, and failed to provide compliant off-duty meal and rest periods.

As a result of Atlas Retail Services' intentional misclassification, Atlas Retail Services failed to properly pay California taxes it owes and deprived Mr. Martinez and other aggrieved individuals of the protection of workers' compensation benefits in the event of an injury, among other benefits to which they are entitled.

Additionally, by willfully and intentionally misclassifying Mr. Martinez and other aggrieved individuals as independent contractors, pursuant to Labor Code § 226.8, Atlas Retail Services is liable for civil penalties as a result of its willful misclassification of Mr. Martinez and other aggrieved individuals as independent contractors.

During the relevant time period, Mr. Martinez was re-classified as an employee of Atlas Retail Services.

During the course of his employment with Atlas Retail Services, Mr. Martinez and other aggrieved employees were paid a flat rate per day rather than hourly wages. Even though Atlas Retail Services required all employees to clock in and out for work on a phone-based application, this timekeeping system was used to track work progress and not for the purposes of recording compensable time. On most days, Mr. Martinez and

other aggrieved employees were required to work 10 or more hours. Furthermore, Mr. Martinez and other aggrieved employees were not compensated for time traveling to jobs either within state or out of state, not compensated for the time spent coordinating and planning travel, and not compensated during out-of-state jobs for travel time from hotels to job sites. In addition, Mr. Martinez and other aggrieved employees were frequently required to show up to job sites and then sent home, without compensation, if there was no work that needed to be done on that day. As a result of Atlas Retail Services' compensation policies/practices, and due to the misclassification of Mr. Martinez and other aggrieved employees as independent contractors for at least a portion of their employment, Atlas Retail Services failed to pay Mr. Martinez and other aggrieved employees for all hours worked and therefore failed to pay for all minimum wages earned.

While working for Atlas Retail Services, Mr. Martinez and other aggrieved employees routinely worked in excess of 8 hours per workday and/or more than 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours when they worked in excess of 8 hours per day and/or twice the regular rate of pay when they worked in excess of 12 hours in a day. As indicated above, Mr. Martinez was exclusively paid a flat daily rate and was not paid overtime wages for hours worked in excess of 8.0 hour a day. As a result of Atlas Retail Services' compensation policies/practices, and due to the misclassification of Mr. Martinez and other aggrieved employees as independent contractors for at least a portion of their employment, Mr. Martinez and other aggrieved employees never received overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours and did not receive double-time compensation equal to two times their regular rate of pay for working double-time hours.

In addition, Atlas Retail Services' meal period policies/practices failed to provide Mr. Martinez and other aggrieved employees with all legally compliant meal periods because Atlas Retail Services failed to provide Mr. Martinez and other aggrieved employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before the end of the fifth hour of work, and/or a second 30-minute meal period for shifts of over 10 hours. On those occasions when Mr. Martinez and other aggrieved employees were not provided with all legally compliant meal periods to which they were entitled, Atlas Retail Services failed to compensate Mr. Martinez and other aggrieved employees with the required meal period premium(s) for each workday there was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, Atlas Retail Services maintained no mechanism for the payment of meal period premium payments as required by Labor Code section 226.7.

Atlas Retail Services has also failed to authorize and permit all required rest periods for Mr. Martinez and other aggrieved employees as Atlas Retail Services' rest period policies/practices failed to authorize and permit employees to take an off-duty rest period of at least 10 minutes for every four hours worked, or major fraction thereof. Specifically, due to work demands, Atlas Retail Services failed to authorize and permit a full 10 minutes of uninterrupted "net rest" in an area appropriate for rest away from the

workstation during rest periods. Despite failing to authorize and permit Mr. Martinez and other aggrieved employees to take all rest periods to which they are entitled, upon information and belief, during at least a portion of the relevant time period, Atlas Retail Services maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7 and did not pay Mr. Martinez or other aggrieved employees any rest period premiums when they experienced a rest period violations.

At all times relevant herein, Atlas Retail Services failed to reimburse Mr. Martinez and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, personal cellular phone expenses needed clock in and out for shifts, book travel arrangements, get work schedules, and receive information about deliveries. Mr. Martinez and other aggrieved employees also were required to use their personal vehicle to complete their job duties; however, Mr. Martinez and other aggrieved employees received insufficient mileage reimbursement for his travel time. Therefore, Mr. Martinez and other aggrieved employees are entitled to reimbursement pursuant to Labor Code § 2802.

As a result of Atlas Retail Services' failure to pay Mr. Martinez and other aggrieved employees for all minimum wages, overtime wages, and meal and rest period premium wages earned, Atlas Retail Services maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements. Upon information and belief, Atlas Retail Services failed to issue accurate itemized wage statements during the time period in which Atlas Retail Services misclassified Mr. Martinez as an independent contractor.

As described above, Atlas Retail Services committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 16 ("Wage Order 16"):

Willful Misclassification as Independent Contractor

As alleged above, Atlas Retail Services willfully misclassified Mr. Martinez and other aggrieved employees as independent contractors. As a result, Atlas Retail Services violated Labor Code § 226.8(a)(1), which makes it unlawful for any person or employer to willfully misclassify an employee as an independent contractor.

Minimum Wage Violations

Atlas Retail Services was required to pay Mr. Martinez and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; Wage Order 16, § 4. As alleged above, Atlas Retail Services failed to conform its pay practices to the requirements of the law by failing to pay Mr. Martinez and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Atlas Retail Services and/or suffered or permitted to work under the California Labor Code and Wage Order 16. As a result of these policies/practices, which fail to compensate for all hours

worked, Mr. Martinez and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Atlas Retail Services was required to pay Mr. Martinez and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 16, § 3. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” As alleged above, Atlas Retail Services caused Mr. Martinez and other aggrieved employees to work overtime hours but did not compensate Mr. Martinez and other aggrieved employees at one and one-half times their regular rate of pay for such hours. As a result of these policies/practices, Mr. Martinez and other aggrieved employees were not compensated for all overtime and double-time wages.

Meal Period Violations

As alleged above, Atlas Retail Services failed to provide Mr. Martinez and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 11. As a result, Mr. Martinez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As alleged above, Atlas Retail Services also failed to authorize and permit Mr. Martinez and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 12. As a result, Mr. Martinez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Failure to Indemnify Employees for Necessary Business Expenditures

As alleged above, Atlas Retail Services failed to reimburse Mr. Martinez and other aggrieved employees for necessary work expenses, including the use of their personal cellular phones and personal vehicles for business purposes. Atlas Retail Services' policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 16, § 9, and Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.") Mr. Martinez and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Wage Statement Violations

Atlas Retail Services was required to furnish Mr. Martinez and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 16, § 7. As a result of Atlas Retail Services' failure to pay all overtime, minimum, and double-time wages, and failure to pay all required meal and rest period premium wages, Atlas Retail Services maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Martinez and other aggrieved employees in violation of Labor Code § 226. Atlas Retail Services' failure to comply with its wage statement obligations was knowing and intentional, and Mr. Martinez and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Atlas Retail Services failed to timely pay other aggrieved employees all of their final wages at the time of separation, which included all overtime, double-time, and minimum wages as well as all meal and rest period premium wages. Pursuant to Labor Code § 203, Atlas Retail Services' failure to pay all final wages due to aggrieved employees was willful and, consequently, entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Atlas Retail Services failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Martinez will initiate a civil action on behalf of himself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Martinez's own investigation, and on

information and belief, Atlas Retail Services committed and continues to commit the following Labor Code violations:

- a. Atlas Retail Services violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Martinez and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Atlas Retail Services violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Martinez and other aggrieved employees all overtime compensation earned;
- c. Atlas Retail Services violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Martinez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Atlas Retail Services violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Martinez and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Martinez and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Atlas Retail Services violated Labor Code §§ 2802 and 2804 by failing to indemnify Mr. Martinez and other aggrieved employees for all necessary expenditures incurred;
- f. Atlas Retail Services violated Labor Code § 226 by failing to furnish Mr. Martinez and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Atlas Retail Services violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to other aggrieved employees;
- h. Atlas Retail Services violated Labor Code § 204 by failing to pay Mr. Martinez and other aggrieved employees all wages earned at least twice during each calendar month; and
- i. Atlas Retail Services violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Martinez and other aggrieved employees.
- j. Atlas Retail Services has violated Labor Code § 226.8 by willfully misclassifying Mr. Martinez and other aggrieved employees as independent contractors.

LWDA
June 21, 2024
Page 8 of 8

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Atlas Retail Services if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: Atlas Retail Services Inc (via certified mail)

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 06/22/2024

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8366 8350 10

Our records indicate that this item was accepted by the USPS at:

ORIGIN ACCEPTANCE EL SEGUNDO,CA 90245 06/21/2024 22:18

ORIGINAL INTENDED RECIPIENT:

ATLAS RETAIL SERVICES INC
C/O: REGISTERED AGENTS INC
1401 21ST ST STE R
SACRAMENTO CA 95811-5226

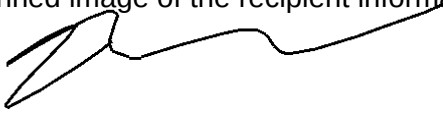
Mailer: Haines Law Group

Date Produced: 06/27/2024

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 9403 8366 8350 10. Our records indicate that this item was delivered on 06/26/2024 at 10:25 a.m. in SACRAMENTO, CA 95811. The scanned image of the recipient information is provided below.

Signature of Recipient :


Aliya

Address of Recipient :

**1401 21ST ST, SACRAMENTO,
CA 95811**

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

This USPS proof of delivery is linked to the customers mail piece information on file as shown below:

ATLAS RETAIL SERVICES INC
C/O: REGISTERED AGENTS INC
1401 21ST ST STE R
SACRAMENTO CA 95811-5226

Customer Reference Number: C5112564.30808185