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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]*

**PLAINTIFFS' NOTICE OF MOTION
AND 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

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on September 18, 2026, at 10:15 a.m. in Department C-66 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiffs Michelle Aceves and Gary Martinez (“Plaintiffs”) individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:

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.
3. Preliminary appointment of Plaintiffs as Class Representatives;
4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, and Thomas D. Rutledge of Thomas Rutledge Law as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Service Awards to Plaintiffs, civil penalties payable to the Labor & Workforce Development Agency (“LWDA”), settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and Notice of Estimated Individual Settlement Award (collectively, the “Notice Packet”), and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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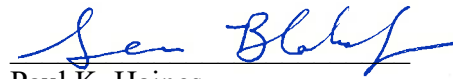
1 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
2 Authorities; the declarations of Paul K. Haines, Sean M. Blakely, Thomas D. Rutledge, Plaintiff
3 Michelle Aceves, Plaintiff Gary Martinez, and Anthony Rogers of ILYM Group, Inc., and the
4 exhibits attached thereto; the pleadings and other papers filed in this action; and on any further
5 oral or documentary evidence or argument presented at the time of hearing.

6
7 Respectfully submitted,

8 Dated: August 26, 2026

HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Liam A. Hall
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Michelle Aceves and Gary Martinez (hereinafter “Plaintiffs”) brought this class
4 and representative action for various wage and hour violations on behalf of current and former
5 non-exempt employees of Defendant Atlas Retail Services, Inc. (“Atlas Retail”) in California
6 from June 20, 2020 through July 30, 2025 (the “Class Period”), and all current and former
7 individuals classified as independent contractors who performed work in California during the
8 Class Period.

9 On July 9, 2026, Plaintiff Aceves filed the operative Third Amended Class and
10 Representative Action Consolidated Complaint (“TAC”), adding Plaintiff Martinez as a named
11 plaintiff and adding various causes of action, class allegations, and certain factual allegations.
12 The operative Third Amended Class and Representative Action Consolidated Complaint (“TAC”)
13 alleges various wage and hour causes of action against Atlas Retail.

14 Plaintiffs now respectfully request that this Court preliminarily approve this non-
15 reversionary, common-fund class action settlement,¹ in which Atlas Retail has agreed to pay Five
16 Hundred Seventy Thousand Dollars and Zero Cents (\$570,000.00) to the following Settlement
17 Class:

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

21 If the Settlement is approved, Atlas Retail will pay a non-reversionary Gross Settlement
22 Amount of \$570,000.00. After deducting administration costs, Plaintiffs’ requested Class
23 Representative Service Awards, the amount designated as PAGA civil penalties, and requested
24 attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately \$275,000.00 will
25 be distributed to all Settlement Class members who do not opt-out of the Settlement based on the

26
27 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
28 as **Exhibit 1**. The proposed Class Notice and Notice of Estimated Individual Settlement Award
are attached as **Exhibits A** and **B**, respectively, to the Settlement. All defined terms in this motion
have the same definition as that in the Settlement.

1 proportionate number of workweeks worked by each Settlement Class member during the Class
2 Period.

3 Significantly, Settlement Class members do not need to file a claim to reap the financial
4 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
5 unless they affirmatively opt-out. There are approximately 880 Settlement Class members, and
6 the average Individual Settlement Award to participating Settlement Class members is projected
7 to be approximately **\$312.50**.

8 The proposed Settlement is within the range of possible approval in light of the significant
9 legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation, and the
10 tangible monetary benefits to be received by Plaintiffs and the Settlement Class. For the reasons
11 discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval of the
12 Settlement.

13 **II. SUMMARY OF THE LITIGATION**

14 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

15 Atlas Retail was founded in 2015 and provides commercial construction, store remodels,
16 fixture installations, merchandising, and large-scale retail rollout services for retailers and
17 consumer brands. *See* Declaration of Sean M. Blakely (“Blakely Decl.”), ¶ 8. Plaintiff Aceves
18 was employed by Atlas Retail in the position of “Merchandiser” from approximately January
19 2024 until approximately April 2024. *See* Declaration of Plaintiff Michelle Aceves In Support of
20 Approval of Class Action Settlement (“Aceves Decl.”), ¶ 3. Plaintiff Martinez was employed by
21 Atlas Retail as a “Electrician” from approximately January 2023 until March 2024. *See*
22 Declaration of Plaintiff Gary Martinez In Support of Approval of Class Action Settlement
23 (“Martinez Decl.”), ¶ 2.

24 On April 19, 2024, Plaintiff Michelle Aceves (“Plaintiff Aceves”) filed an individual
25 complaint against Atlas Retail for failure to provide access to employee personnel records.
26 Blakely Decl., ¶ 9. On that same day, Plaintiff Aceves sent her PAGA notice letter to Atlas Retail
27 and the Labor & Workforce Development Agency (“LWDA”). *Id.*, ¶ 9, Exhibit 2 (Plaintiff Aceves
28 LWDA Letter). On June 24, 2024, Plaintiff Aceves filed a First Amended Representative Action

1 Complaint seeking to recover civil penalties under the Private Attorneys General Act (“PAGA”)
2 for various wage and hour violations. *Id.*, ¶ 9.

3 On June 21, 2024, Plaintiff Gary Martinez (“Plaintiff Martinez”) filed a separate class
4 action complaint alleging various wage and hours violations against Atlas Retail in the Superior
5 Court of California for the County of San Diego entitled *Gary Martinez v. Atlas Retail Services,*
6 *Inc.*, Case No. 37-2024-00029333-CU-OE-CTL (the “Martinez Action”). Blakely Decl., ¶ 9. On
7 that same day, Plaintiff Martinez sent his PAGA notice letter to Atlas Retail and the LWDA. *Id.*,
8 ¶ 9, Exhibit 3 (Plaintiff Martinez LWDA Letter). On August 26, 2024, Plaintiff Martinez filed a
9 First Amended Class and Representative Action Complaint to add a cause of action for civil
10 penalties under the PAGA. *Id.*, ¶ 9.

11 On July 9, 2026, and as part of the Parties’ settlement, Plaintiff Aceves filed the operative
12 Third Amended Class and Representative Action Complaint (“TAC”), adding Plaintiff Martinez
13 as a named plaintiff and adding various causes of action, class allegations, and certain factual
14 allegations. Blakely Decl., ¶ 9. The TAC alleges the following causes of action: (1) Failure to
15 Provide Access to Employee Personnel Records; (2) Claim for Failure to Pay State
16 Minimum/Regular Wages; (3) Claim for Failure to Pay State Overtime wages; (4) Claim for
17 Failure to Timely Pay Wages; (5) Claim for Meal and Rest Break Labor Code Violations; (6)
18 Inaccurate Wage Statements; (7) Claim for Failure to Maintain Payroll Records; (8) Claim for
19 Failure to Reimburse Business Expenses; (9) Failure to Properly Pay Sick Pay; (10)
20 Misclassification; (11) Failure to Maintain Workers’ Compensation Insurance; (12) Claim for
21 Miscellaneous Labor Code Violations via the PAGA; and (13) Unfair Business Practices. *Id.*, ¶
22 9.

23 **B. PLAINTIFFS’ CLAIMS AND ATLAS RETAIL’S DEFENSES**

24 **1. Arbitration Agreements**

25 As an initial matter, Atlas Retail asserts that Plaintiff Martinez and many Class Members
26 signed valid and enforceable arbitration agreements with class action waivers. Blakely Decl., ¶
27 14. Setting aside any arguments as to the merits of Plaintiffs’ claims, Atlas Retail contends that
28 absent settlement, a classwide recovery was not possible and that only PAGA civil penalties could

1 potentially be recovered on behalf of a subset of the Class Members. *Id.* As such, Atlas Retail
2 contends that absent its agreement to not raise the arbitration agreements as an affirmative
3 defense, any recovery to the Class Members would be limited to only the employees' potential
4 25% share of PAGA civil penalties. *Id.*

5 **2. Misclassification Claims**

6 Plaintiffs allege that Atlas Retail improperly misclassified Plaintiffs and other non-exempt
7 employees as independent contractors during a portion of the Class Period, thereby depriving
8 them of the protections afforded to employees under the California Labor Code. Blakely Decl., ¶
9 15. Plaintiffs contend that Atlas Retail required newly hired workers to execute independent
10 contractor agreements, despite exercising the degree of control over their work necessary to
11 establish an employment relationship under California law. *Id.* Plaintiffs allege that Atlas Retail
12 controlled Plaintiffs' and other employees' work assignments, schedules, and manner of
13 performing their duties, which were performed in Atlas Retail's usual course of business, thereby
14 establishing employee status under the ABC test. *Id.*; see *Dynamex Operations W., Inc. v.*
15 *Superior Court*, 4 Cal. 5th 903, 955–57 (2018). Plaintiffs further allege that Atlas Retail later
16 reclassified Plaintiffs and other individuals as non-exempt employees. Blakely Decl., ¶ 15.

17 Atlas Retail disputes that it willfully misclassified Plaintiffs or any other non-exempt
18 employees as independent contractors. Blakely Decl., ¶ 15. Atlas Retail maintains that any
19 temporary classification of certain workers as independent contractors resulted from an isolated
20 administrative or payroll error associated with the implementation of its payroll systems, rather
21 than any intentional effort to evade California wage and hour laws. *Id.* Furthermore, Atlas Retail
22 contends that Plaintiffs' misclassification claims present individualized issues that would
23 complicate class treatment, including identifying which workers were allegedly misclassified, the
24 duration of any such classification, whether each worker satisfied the applicable legal standard
25 for employee status, and the nature and extent of any resulting damages or penalties. *Id.*

26 **3. Unpaid Wages Due to Timekeeping Policies/Practices**

27 Plaintiffs allege that Atlas Retail failed to pay Plaintiffs and other non-exempt employees
28 all wages earned during the Class Period. Blakely Decl., ¶ 16. Specifically, Plaintiffs contend

1 Atlas Retail required employees to frequently travel, often across state lines, to remote job sites
2 for extended assignments. *Id.* Despite requiring such travel, Atlas Retail failed to compensate
3 employees all unpaid wages for their travel time. *Id.*

4 Atlas Retail disputes that it failed to pay Plaintiffs and other non-exempt employees all
5 wages owed. Blakely Decl., ¶ 16. Atlas Retail contends it maintained compliant timekeeping
6 policies and that any travel time at issue was non-compensable under applicable California and
7 federal law because employees were not under Atlas Retail's control during the travel, were
8 engaged in ordinary commuting or otherwise non-compensable travel, or were relieved of all
9 duties during such time. *Id.* Finally, Atlas Retail maintains that Plaintiffs' unpaid wages claims
10 are not amenable to class treatment because individualized inquiries would be required to
11 determine the amount of travel time each employee worked, whether particular travel time was
12 compensable, the circumstances surrounding each employee's travel, whether any uncompensated
13 work was performed, and the amount of damages, if any, sustained by each employee. *Id.*

14 **4. Meal Period Claims**

15 Plaintiffs allege that Atlas Retail failed to provide Plaintiffs and other non-exempt
16 employees with legally compliant meal periods throughout the Class Period. Blakely Decl., ¶ 17.
17 Specifically, Plaintiffs contend that Atlas Retail maintained non-compliant written meal period
18 policies that failed to accurately advise employees of their meal period rights under California
19 law. *Id.* Plaintiffs further contend that Atlas Retail failed to provide timely, uninterrupted meal
20 periods and failed to pay meal period premiums when compliant meal periods were not provided,
21 due to the work demands imposed by Atlas Retail. *Id.*

22 Atlas Retail disputes that it violated California's meal period requirements. Blakely Decl.,
23 ¶ 17. Atlas Retail contends that it maintained lawful meal period policies and provided employees
24 with the opportunity to take compliant meal periods, arguing that it was not required to ensure
25 employees actually took their meal periods. *Id.*; see *Brinker Restaurant Corp. v. Superior Court*,
26 53 Cal. 4th 1004, 1034 (2012). Atlas Retail further maintains that its electronic timekeeping
27 records accurately reflect employees' recorded meal periods and that any late, short, or missed
28 meal periods resulted from individualized circumstances rather than any uniform policy or

practice. Blakely Decl., ¶ 17. Atlas Retail further maintains that Plaintiffs' meal period claims present significant factual, legal, and class certification issues that would be vigorously contested. *Id.*

5. Rest Period Claims

Plaintiffs allege that Atlas Retail failed to authorize and permit Plaintiffs and other non-exempt employees to take all legally compliant, duty-free rest periods during the Class Period. Blakely Decl., ¶ 18. Plaintiffs contend that Atlas Retail's demanding work schedules, productivity expectations, and operational demands placed employees under constant pressure to meet deadlines and complete assigned work, resulting in interrupted, delayed, shortened, or missed rest periods. *Id.*

Atlas Retail disputes that it failed to authorize and permit compliant rest periods or that it maintained unlawful rest period policies or practices. Blakely Decl., ¶ 18. Atlas Retail contends that it maintained compliant written policies and consistently authorized and permitted employees to take all rest periods required under applicable California law, and that any missed or interrupted rest periods resulted from employees' own choices or individualized circumstances rather than any uniform policy or practice. *Id.* Atlas Retail further argues that Plaintiffs' rest period claims are not amenable to class treatment because individualized inquiries would be required to determine whether a particular employee missed a rest period, the reason any rest period was not taken, whether the employee voluntarily chose to forego the rest period, and whether premium pay, if any, was owed. *Id.* Atlas Retail also maintains that these individualized issues are particularly significant because employers are not required to record employees' rest periods, making liability dependent upon individualized testimony rather than common proof. *Id.*

6. Unreimbursed Business Expenses

Plaintiffs allege that Atlas Retail failed to reimburse Plaintiffs and other employees for all necessary business expenditures incurred in the discharge of their duties, including expenses related to the work-related use of personal cellular phones and personal vehicles. Blakely Decl., ¶ 19. Plaintiffs contend that Atlas Retail required employees to use their personal smartphones to access the company's timekeeping application, record their work hours, review work schedules,

1 and communicate with management, yet failed to reimburse employees for the associated cellular
2 phone expenses. *Id.* Plaintiffs further allege that Atlas Retail failed to fully reimburse employees
3 for mileage incurred while using their personal vehicles for work-related travel. *Id.*

4 In response, Atlas Retail disputes that it failed to reimburse Plaintiffs and other non-
5 exempt employees for necessary business expenses. Blakely Decl., ¶ 19. Atlas Retail contends
6 that it maintained lawful reimbursement policies and reimbursed employees for all reasonable
7 and necessary business expenses that were properly submitted in accordance with company
8 policy. *Id.* Atlas Retail further argues that any work-related cellular phone usage was minimal or
9 incidental and that employees were not required to incur unreimbursed personal cellular phone
10 expenses. *Id.* With respect to mileage, Atlas Retail maintains that it reimbursed employees for
11 qualifying business travel and disputes that any alleged failure to reimburse resulted from a
12 uniform policy or practice. *Id.* Finally, Atlas Retail contends that Plaintiffs' reimbursement claims
13 are not amenable to class treatment because individualized inquiries would be required to
14 determine whether employees incurred reimbursable expenses, whether reimbursement requests
15 were submitted in accordance with company policy, the amount and reasonableness of any
16 claimed expenses, and whether any unreimbursed expenses were necessary within the meaning
17 of Labor Code section 2802. *Id.*

18 **7. Claims Under Labor Code §§ 203, 226 and the PAGA**

19 As a result of these alleged wage and hour violations, Plaintiffs assert that Atlas Retail
20 failed to comply with its wage statement obligations, in violation of Labor Code § 226. Blakely
21 Decl., ¶ 20. In addition, as a result of the unpaid wages and unpaid meal and rest period premiums
22 alleged above, Plaintiffs assert that Atlas Retail failed to pay all wages owed at the time of their
23 separation of employment with Atlas Retail. *Id.*, at ¶ 21. Finally, Plaintiffs seek civil penalties
24 under the PAGA, based on the aforementioned claims. *Id.*, at ¶ 22.

25 Atlas Retail contends that any alleged wage statement violations could not be shown to
26 be “knowing and intentional,” particularly given its good-faith defenses, that Plaintiffs cannot
27 show they or other employees “suffer[ed] injury” due to alleged wage statement violations, as
28 required by Lab. Code § 226(e) for the imposition of penalties, and that the wage statements

1 always accurately reflected amounts *paid* to employees. Blakely Decl., ¶ 20; *see also, Maldonado*
2 *v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1337 (2018) (“The purpose of section 226 is to
3 ‘document the paid wages to ensure the employee is fully informed regarding the calculation of
4 those wages’”).

5 With respect to alleged waiting time penalties, Atlas Retail argues that it possesses strong,
6 good-faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time
7 penalties, which are only available for the “willful” failure to pay wages. Blakely Decl., ¶ 21; *see*
8 *also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude
9 imposition of waiting time penalties under Section 203 . . . A ‘good faith’ dispute that any wages
10 are due occurs when an employer presents a defense, based in law or fact which, if successful,
11 would preclude any recovery on the part of the employee.”). Atlas Retail further asserts that
12 Plaintiffs’ waiting time penalty exposure was grossly inflated as not every former employee
13 experienced the alleged Labor Code violations. Blakely Decl., ¶ 21.

14 Finally, Atlas Retail contends that since Plaintiffs’ PAGA claim is derivative of their
15 underlying wage claims, Plaintiffs’ PAGA claim would fail with those claims. Blakely Decl., ¶
16 22; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
17 causes of action fail, the derivative UCL and PAGA claims also fail”). Atlas Retail further
18 maintains that given its good-faith defenses, the Court would substantially reduce any PAGA
19 penalties awarded. Blakely Decl., ¶ 22; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA
20 penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112,
21 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-
22 10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by
23 over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA
24 penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the
25 law).

26 C. DISCOVERY AND MEDIATION

27 In connection with mediation, the Parties engaged in extensive informal discovery.
28 Blakely Decl., ¶ 10. Atlas Retail produced a sampling of timekeeping and payroll records for the

1 putative class, as well as its relevant Employee Handbook utilized during the putative class period,
2 relevant data points such as the number of putative class members and the number of aggregate
3 workweeks during the Class Period and the number of Aggrieved Employees and pay periods
4 worked during the PAGA Period, and other relevant documents and information. *Id.* Plaintiffs’
5 counsel conducted a comprehensive analysis and extrapolation of the data produced by Atlas
6 Retail to calculate Atlas Retail’s potential exposure for each of Plaintiffs’ claims at issue. *Id.* This
7 discovery allowed the Parties to assess the merits and value of Plaintiffs’ claims, the chances of
8 certification of Plaintiffs’ claims, and Atlas Retail’s potential defenses. *Id.*

9 On May 30, 2025, the Parties participated in a full-day mediation with Steven G. Mehta,
10 Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During
11 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
12 certification of Plaintiffs’ claims, the legal basis for the claims and defenses, as well as Atlas
13 Retail’s financial condition. *Id.* At the conclusion of the mediation, the Parties were unable to
14 come to a resolution. *Id.* Following mediation, Atlas Retail produced financial records for
15 Plaintiffs to review. *Id.* With the help of its retained forensic accountant, Plaintiffs reviewed the
16 financial documents to evaluate Atlas Retail’s financial condition. *Id.* Following Plaintiffs’
17 review, the Parties continued engaging in settlement negotiations through Mr. Mehta leading to a
18 mediator’s proposal for a class-wide settlement that was ultimately accepted by both sides. *Id.*
19 During the months that followed, the Parties finalized the terms of the Settlement and executed
20 the long-form Settlement Agreement now before the Court. *Id.*

21 **III. THE PROPOSED SETTLEMENT**

22 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

23 If the Court preliminarily approves the Settlement, Atlas Retail will pay a Gross
24 Settlement Amount of \$570,000.00.² See Settlement, § 3. Significantly, this Settlement is non-

25
26 ² Following Atlas Retail’s representation of its financial condition, Atlas Retail turned over its
27 financial records to Plaintiffs’ retained expert, Keith D. Messerschmidt, who is a forensic
28 accountant and has consulted or provided expert testimony in dozens of litigation and insurance
matters. Blakely Decl., ¶ 11. 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

1 reversionary, and no Settlement Class member will have to submit a claim form to receive an
2 Individual Settlement Award. *Id.*, at §§ 3-4. Each Settlement Class member who does not request
3 exclusion will automatically receive an Individual Settlement Award. *Id.* The monetary terms of
4 the Settlement are summarized below:

5	• Gross Settlement Amount:	\$570,000.00
6	• Minus Court-approved attorneys' fees:	\$190,000.00
7	• Minus Court-approved verified costs (up to):	\$40,000.00
8	• Minus Court-approved Service Awards (to each Plaintiff):	\$10,000.00
9	• Minus amount set aside as PAGA penalties:	\$40,000.00
10	• <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

11 **1. The Settlement Provides for Reasonable Monetary Payments**

12 After deducting amounts for the Court-approved attorneys' fees and costs, the Class
13 Representative Service Award to each Plaintiff, the amount designated as PAGA civil penalties,
14 and Settlement Administrator's fees and expenses, the Settlement requires Atlas Retail to pay a
15 Net Settlement Amount ("NSA") of at least \$275,000.00 to all Settlement Class members who do
16 not timely opt out. *See* Settlement, § 4(A). The Net Settlement Amount shall be allocated to
17 participating Settlement Class members who worked during the Class Period, as follows: each
18 participating Settlement Class member shall receive a proportionate share of the Net Settlement
19 Amount based upon the number of workweeks worked during the Class Period. *Id.*, at § 4(B)(i).
20 In addition to the NSA, Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross
21 Settlement Amount has been designated as the "PAGA Amount" and each Aggrieved Employee
22 shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he
23 or she worked between the PAGA Period. *Id.*, at §§ 2(B), 4(B)(ii).

24 Based on information from Atlas Retail, Plaintiffs understand that there are
25 approximately 880 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average

26 _____
27 necessary to avoid serious interruptions to its business operations. *Id.* Should the Court wish to
28 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. *Id.*

1 Individual Settlement Award is projected to be approximately \$312.50. *Id.*

2 Settlement Class members who wish to opt out of the Settlement must complete and mail
3 a Request for Exclusion to the Settlement Administrator within sixty (60) calendar days of the
4 date of the initial mailing of the Notice Packets (the “Response Deadline”). *See* Settlement, §
5 9(C). Settlement Class members who do not opt-out of the Settlement will be bound by its terms
6 and will release all claims against Atlas Retail included within the Settlement. Settlement, § 2(A).

7 **2. Attorneys’ Fees and Costs, Service Awards, and PAGA Payment**

8 Plaintiffs will apply for Class Representative Service Awards at the time of seeking final
9 approval of the proposed class action settlement in the amount of \$5,000.00 to each Plaintiff (for
10 a total of \$10,000.00), for their service to the Settlement Class. *See* Settlement, §§ 3(D)(iii), 6.
11 “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
12 class representatives for work done on behalf of the class [and] to make up for financial or
13 reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186
14 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval,
15 Plaintiffs’ requested Service Awards are intended to recognize the time and effort Plaintiffs
16 expended on behalf of the Settlement Class, including providing substantial factual information
17 and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the
18 claims and theories at issue in the litigation, actively participating in the prosecution of their
19 claims, as well as the significant risks Plaintiffs undertook by agreeing to serve as the named
20 Plaintiffs in this case and the fact that Plaintiffs agreed to a general release of all claims subject
21 to a waiver of California Civil Code section 1542. *See generally*, Aceves Decl; *see also* Martinez
22 Decl.

23 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
24 Settlement Amount, which is currently estimated to be \$190,000.00, and up to \$40,000.00 in
25 verified costs reimbursement. *See* Settlement, §§ 3(D)(iv), (5); Blakely Decl., ¶ 25. Plaintiffs
26 submit the requested fee is fair compensation for undertaking complex, risky, expensive, and
27 time-consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 25. Class Counsel
28 has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiffs’

1 claims, conducting legal research, conducting extensive informal discovery, analyzing Settlement
2 Class members' timekeeping and payroll records and other data and documents, creating a
3 comprehensive damages model, preparing for and attending mediation, reviewing Atlas Retail's
4 financials with the help of a retained forensic accountant, preparing the long-form Settlement
5 Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expect to
6 expend additional attorney time in attending the hearing on this Motion, overseeing the Notice
7 process and fielding questions from Settlement Class members, preparing the final approval
8 papers, and attending the Final Approval hearing. *Id.*

9 California courts recognize an appropriate method for awarding attorneys' fees in class
10 actions is to award a percentage of the "common fund" created as a result of a settlement. *See*
11 *e.g., Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund
12 method survives in California class action cases"). Class Counsel's request for fees of one-third
13 of the Gross Settlement Amount is well within the range of reasonableness, and indeed is
14 considered the typical rate for common fund settlements. Historically, courts have awarded
15 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4
16 Newberg on Class Actions § 14.6 (4th Ed. 2013).

17 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
18 overall percentage of the Settlement and in light of the substantial risks and significant work
19 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
20 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
21 and verified costs upon seeking final approval.

22 Additionally, the Parties have agreed to designate \$40,000.00 of the Gross Settlement
23 Amount as PAGA civil penalties, of which \$30,000.00 (75%) will be paid to the LWDA, with
24 the remaining \$10,000.00 (25%) for distribution to the Settlement Class, as the PAGA requires
25 such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(D)(v). Plaintiffs
26 submit this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v.*
27 *Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal.
28 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund

1 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
2 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
3 settlement).

4 **IV. ARGUMENT**

5 **A. PRELIMINARY APPROVAL IS WARRANTED**

6 California Rule of Court 3.769 conditions settlement of a class action on court approval,
7 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
8 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
9 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
10 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
11 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
12 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
13 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
14 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
15 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
16 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
17 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
18 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

19 **1. Standard for Preliminary Approval**

20 To make a fairness determination, the Court should consider several factors, including:
21 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
22 litigation, the risk of maintaining class action status through trial, the amount offered in
23 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
24 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
25 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
26 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
27 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
28 reasonable in light of the overall balance of factors in this case.

1 **a. The Strength of Plaintiffs' Case**

2 Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs
3 acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As
4 described above in section II.B., *supra*, Atlas Retail presented multiple defenses to Plaintiffs'
5 claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were
6 prepared to litigate these claims through class certification, and ultimately trial, success was far
7 from certain.

8 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

9 Although the Parties engaged in significant informal discovery prior to mediation, the
10 Parties still had significant formal discovery to complete had the matter not settled. Blakely Decl.,
11 ¶ 24. This would have required expenditure of substantial time and resources by both Parties that
12 would have very likely spanned several years. *Id.* Even if Plaintiffs were to certify the classes, the
13 Parties would incur considerably more attorneys' fees and costs through a possible decertification
14 motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying
15 expense. *Id.*

16 **c. Risk of Maintaining Class Action Status**

17 Plaintiffs have not yet filed their motion for class certification, and as such, the extent to
18 which Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement,
19 there was a risk that there would not be a certified class at the time of trial, or if there were, it
20 would consist of a significantly smaller group of employees than the proposed Settlement Class
21 (either due to a narrowing of the class definition in a Court order on a contested motion for class
22 certification, or through settlement agreements entered into by Atlas Retail with individual class
23 members by way of *Pick-up-Stix* type settlement agreements), and the expected recovery could
24 be significantly reduced, given the settlement amounts that are typically offered through the *Pick-*
25 *up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

26 **d. Amount Offered in Settlement Given Realistic Value of Claims**

27 The Settlement provides a positive recovery for the Settlement Class in the face of hotly
28 disputed claims. Plaintiffs conducted an analysis of Atlas Retail's potential meal and rest period

premium payments owing, unpaid wages due to its unlawful timekeeping policies/practices, wage statement penalties, waiting time penalties, and PAGA civil penalties. Atlas Retail contends that Plaintiffs and other Settlement Class members executed arbitration agreements containing class action waivers that, if enforced, could significantly limit or eliminate classwide relief. Blakely Decl., ¶ 10. Atlas Retail maintains that these agreements present a substantial litigation risk that would reduce the value of Plaintiffs' claims and has consistently asserted that it would seek to compel arbitration absent settlement. *Id.* Plaintiffs exposure analysis is detailed in the concurrently filed Blakely Decl., at ¶¶ 14-23.

e. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 3-11; Declaration of Thomas D. Rutledge, ¶¶ 3-22 (“Rutledge Decl.”). Class Counsel conducted an in-depth review of Atlas Retail’s timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs’ case. *See* Blakely Decl., ¶ 10. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

At this stage, the Court can grant preliminary approval of the settlement and direct that notice be given if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed and non-collusive negotiations; and (3) has no obvious deficiencies. *See Manual for Complex Litigation* § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

///

1 **a. The Settlement Is Within the Range of Possible Approval**

2 The proposed settlement reflects approximately 85.7% of the estimated recovery the
3 Settlement Class could reasonably expect in light of the significant litigation risks and Atlas
4 Retail’s financial condition, and will provide tangible, substantial monetary compensation for
5 hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far
6 exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case
7 No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing
8 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000)
9 (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural Telecomm.*
10 *Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a
11 proposed settlement may be acceptable even though it amounts to only a fraction of the potential
12 recovery that might be available to the Settlement Class members at trial”). Further, the average
13 Individual Settlement Award of approximately **\$312.50** is in line with average payments achieved
14 in other wage and hour class action settlements. Thus, Plaintiffs submit that the proposed
15 settlement is within the range of possible approval, such that notice should be provided to the
16 Settlement Class members so that they can consider the Settlement. The Court will have the
17 opportunity to again assess the reasonableness of the Settlement after the Settlement Class
18 members have had the opportunity to opt-out or object.

19 **b. The Settlement Resulted from Serious, Informed Negotiations**

20 The Settlement resulted from an exchange of substantial information, arm’s-length
21 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
22 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
23 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
24 discussed above, Plaintiffs carefully vetted the claims at issue and reviewed extensive
25 timekeeping and payroll data and conducted a detailed statistical analysis of the data to arrive at
26 their estimated classwide damages figures. *See Blakely Decl.*, ¶¶ 14-22. Thus, this factor supports
27 preliminary approval.

28 ///

1 **c. The Settlement Is Devoid of Obvious Deficiencies**

2 Preliminary approval of the Settlement is also warranted because there are no obvious
3 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
4 members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment,
5 and Plaintiffs’ Class Representative Service Awards, are all reasonable and appropriate based on
6 the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports
7 preliminary approval.

8 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

9 The Settlement Class satisfies the criteria for certification of a settlement class under
10 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
11 (2) common questions of law and fact predominate over individual questions such that class
12 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs’
13 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiffs and their
14 counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ.
15 Proc. § 382.

16 **1. The Proposed Class Is Ascertainable and Numerous**

17 A class is “ascertainable” where the members “may be readily identified without
18 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
19 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
20 defined as all current and former non-exempt employees of Atlas Retail in the State of California
21 who worked during the Class Period and all current and former individuals classified as
22 independent contractors who performed work in California during the Class Period. *See*
23 Settlement, § 1. Therefore, Settlement Class members can be identified from Atlas Retail’s
24 personnel and employment records. Based on information provided by Atlas Retail, Plaintiffs
25 understand that the Settlement Class consists of approximately 880 current and former employees.
26 *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members
27 before the Court, or for each Settlement Class member to bring an individual lawsuit. The
28 proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d

574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not the merits, but rather on what types of questions, “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated on, among other issues, Atlas Retail’s uniform timekeeping policies and/or practices, and meal and rest period policies and/or practices. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Claims of the Named Plaintiffs Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiffs’ claims are typical of those held by the Settlement Class members. First, Plaintiffs were employed by Atlas Retail in the State of California during the Class Period, and Plaintiffs were subject to Atlas Retail’s wage and hour policies at issue in this case. *See Aceves Decl.*; *see also Martinez Decl.* Second, Plaintiffs were injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. Because Plaintiffs have suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class, and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no

1 indication that Class Counsel were not qualified and the named plaintiff had no interests
2 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
3 and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 3-11; Rutledge Decl.,
4 ¶¶ 3-22.

5 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

6 This Court should order distribution to the Settlement Class of the proposed Notice Packet,
7 by U.S. Mail, postage prepaid, using last known mailing address information provided by Atlas
8 Retail. *See* Settlement, ¶ 9. This manner of giving notice is the “best notice practicable” under the
9 circumstances because it provides “individual notice to all members who can be identified through
10 reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties
11 have agreed that the Settlement be administered by ILYM Group, Inc. (“ILYM”), an experienced
12 class action settlement administrator. *See generally* Declaration of Anthony Rogers (“Rogers
13 Decl.”) and attached exhibits. Settlement Class members’ addresses will be ascertainable through
14 Atlas Retail’s personnel and payroll records, which Atlas Retail will provide to ILYM within
15 thirty (30) business days after entry of order preliminarily approving the Settlement. *See*
16 Settlement, ¶ 9(A). Within ten (10) business days from receipt of this information, the Settlement
17 Administrator will run the names of all Settlement Class members through the National Change
18 of Address (“NCOA”) database to determine any updated addresses for Settlement Class members
19 and mail a Notice Packet to each Settlement Class member at his or her last known address. *Id.*,
20 at ¶ 9(B). To the extent that any notices are returned, ILYM will perform a “skip trace” to track
21 any Settlement Class member’s current mailing address. *Id.*, at ¶ 9(F).

22 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
23 because it advises Settlement Class members of the nature of the claims, basic contentions and
24 denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object
25 to the Settlement and the procedures by which to do so, explains the recovery formula and
26 expected recovery amount for each Settlement Class member, and advises them that they will be
27 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. A & B to
28 Exh. 1. The proposed Class Notice will also notify Settlement Class members of the final approval

1 hearing date and provides the Settlement Class contact information for Class Counsel and advises
2 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
3 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
4 cost-effective method of reaching Settlement Class members.

5 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

6 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
7 appropriately scheduled to follow the deadline by which Settlement Class members must file
8 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

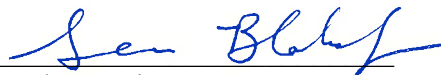
9 **V. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
11 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
12 Proposed Order submitted concurrently herewith.

13
14 Dated: August 26, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

15
16 By:



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