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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

**IN RE DILIGENT DELIVERY WAGE AND
HOUR CASES**

*Simmons v. California Logistics dba Diligent
Delivery Systems*, Superior Court of California,
County of Alameda, Case No. RG17863988

*Ortega v. Michigan Logistics, Inc., dba Diligent
Delivery Systems, et al.*, Superior Court of
California, County of Los Angeles, Case No.
BC720954

*Hadley v. California Logistics, Inc., dba
Diligent Delivery Systems*, Superior Court of
California, County of Los Angeles, Case No.
18CMCV00022

Case No. RG17863988

Case No. JCCP004990

The Honorable Evelio Grillo
Department 21

CONSOLIDATED COMPLAINT

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1 Plaintiffs Alden Ortega, Aries Simmons, Darryl Hadley, and Claudia Farias (“Plaintiffs”), in
2 their capacity as Aggrieved Employees under the Private Attorneys General Act of 2004, Lab. Code
3 §§ 2699, *et seq.* (“PAGA”), allege as follows:

4 **SUMMARY OF CLAIMS**

5 1. Plaintiffs worked as delivery drivers for California Logistics, Inc. d/b/a Diligent
6 Delivery Systems (“CLI”), Western Delivery & Logistics, LLC d/b/a Diligent Delivery Systems
7 (“WDL”), Norlyn Enterprises, Inc. d/b/a Diligent Delivery Systems, and Larry Browne
8 (collectively, “Defendants” or “Diligent”). They bring this PAGA action on behalf of themselves
9 and other Aggrieved Employees, defined as delivery drivers who worked in California beginning on
10 April 8, 2016 through the date of final disposition of this action (“Drivers”) against Defendants and
11 Does 3-50.

12 2. Plaintiffs allege that Diligent has violated and continues to violate the California
13 Labor Code protections applicable to Drivers because they should be classified as employees rather
14 than independent contractors. These violations include: (1) the failure to pay Drivers required
15 overtime or double time compensation; (2) the failure to pay minimum wages; (3) unlawful wage
16 deductions; (4) the failure to provide meal and rest breaks; (5) the failure to timely pay wages; (6)
17 the failure to timely pay wages due upon termination of employment; (7) the failure to provide
18 legally sufficient wage statements; (8) the failure to keep proper payroll records; (9) the failure to
19 provide sick leave and maintain records documenting hours worked and paid sick days accrued;
20 (10) the failure to provide required written notice upon hire; (11) willful misclassification of
21 Drivers as independent contractors; and (12) the failure to reimburse Drivers for business expenses.

22 3. Plaintiffs are not aware of the true names and capacities of the Defendants sued as
23 Does 3-50, whether individual, corporate, associate, or otherwise, and therefore sues such
24 Defendants by fictitious names. Upon information and belief, Plaintiffs allege that each of the
25 Defendants designated herein as a Doe is legally responsible in some manner for the unlawful acts
26 referred to in this Complaint. Plaintiffs will seek leave of court to further amend this Complaint to
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1 reflect the true names and capacities of the Defendants designated as Does when such identities
2 become known.

3 **JURISDICTION AND VENUE**

4 4. The Court has jurisdiction over Plaintiffs' claims under the California Labor Code.

5 5. The Court has personal jurisdiction over Defendants because each conducts
6 substantial business activity in California and engaged in the unlawful acts described herein in
7 California.

8 6. The Court has personal jurisdiction over Norlyn because Norlyn:

9 a. Purposefully availed itself of the privilege of conducting activities in
10 California, thereby invoking the benefits and protections of California's laws, and/or purposefully
11 directed harm into California by controlling and directing Diligent's unlawful conduct alleged
12 herein, in ways such as:

13 i. Acting under the direction of its CEO, Defendant Larry Browne, who
14 controls CLI and WDL's business operations in California;

15 ii. Employing individuals, including employees of Diligent's
16 Independent Contractor Resources Department, the Chief Financial Officer, the Chief Operating
17 Officer, and the Chief Sales Officer, who oversee Drivers and CLI and WDL's business operations
18 in California;

19 iii. Entering into contracts on behalf of CLI and WDL with customers in
20 California involving Drivers through its Chief Sales Officer, Scott Bruder;

21 iv. Performing accounting, human resources, and other business
22 functions for CLI and WDL, including invoicing and collecting payment from customers in
23 California;

24 v. Paying Drivers for work performed in California;

25 vi. Recruiting and soliciting prospective drivers in California;
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1 vii. Housing the Independent Contractor Resource Department, which
2 recruits and screens Drivers, maintains their personnel records, and ensures that Drivers are
3 properly insured and licensed; and

4 viii. Charging WDL and CLI management fees for its work supporting
5 CLI and WDL's California operations.

6 b. Plaintiffs' claims arise directly out of, or relate to, Norlyn's California
7 business activities. Specifically, Plaintiffs allege that Norlyn manages the operations of CLI and
8 WDL from Diligent's headquarters and, jointly with the other Defendants, determined the terms
9 and conditions of Plaintiffs' work, including their classification as independent contractors.

10 7. The Court has personal jurisdiction over Mr. Browne because he:

11 a. Purposefully availed himself of the privilege of conducting activities in
12 California, thereby invoking the benefits and protections of California's laws, and/or purposefully
13 directed harm into California by controlling and directing Diligent's unlawful conduct alleged
14 herein, in ways such as:

15 i. Personally negotiating contracts with clients in California to provide
16 Drivers;

17 ii. Personally signing contracts with clients in California to provide
18 Drivers;

19 iii. Personally approving contracts with clients in California, including
20 rates charged to clients which impacted Drivers' pay;

21 iv. Personally directing Diligent to implement its classification of
22 Drivers as "independent contractors;"

23 v. Personally determining whether certain Drivers in California would
24 be classified as employees, instead of "independent contractors," in negotiations with clients in
25 California;

26 vi. Personally developing the business model that Defendants use in
27 California under which clients outsource their delivery needs to Diligent;

1 vii. Employing Drivers in California, including Plaintiffs;
2 viii. Serving as the sole owner, CEO, President, and alter ego of Diligent,
3 which has substantial and ongoing business dealings in California; and
4 ix. Directing Diligent employees in California to offer settlements to
5 Drivers in exchange for releasing their claims.
6 b. Plaintiffs' claims arise directly out of or relate to Mr. Browne's business
7 activities in California because Mr. Browne decided that Drivers would be classified as
8 "independent contractors" rather than employees, which this lawsuit alleges is unlawful, by among
9 other things:
10 i. Personally soliciting the advice of counsel as to whether Drivers,
11 including Plaintiffs and those in California, should be classified as "independent contractors;"
12 ii. Personally determining whether certain Drivers would instead be
13 classified as employees at the request of a client in California; and
14 iii. Personally determining the pay rates of Drivers by approving rates
15 charged to clients in California.

16 8. Venue is proper in this county under California Code of Civil Procedure § 395.5
17 because a substantial part of the events and omissions giving rise to the claims alleged herein
18 occurred in this county.

19 9. Ms. Simmons provided notice of the claims alleged herein to the California Labor &
20 Workforce Development Agency ("LWDA") and CLI on February 27, 2017. Mr. Ortega provided
21 notice to the LWDA, CLI, and WDL on March 7, 2017, May 11, 2017, and July 18, 2018. Mr.
22 Hadley provided notice to the LWDA and CLI on August 7, 2018. Simmons, Ortega, and Hadley
23 together provided notice to the LWDA, Norlyn, and Mr. Browne on September 7, 2021. Ms. Farias
24 provided notice to the LWDA and all four Defendants on December 9, 2021. The LWDA did not
25 take action with regard to any of the claims during the requisite notice periods.

1 **THE PARTIES**

2 **I. Plaintiffs**

3 **A. Alden Ortega**

4 10. Mr. Ortega worked for Diligent in California as a Driver from approximately
5 August 2017 through November 2017.

6 11. His duties included using his own car to deliver auto parts, and to do so he drove
7 approximately 80-120 miles each day.

8 12. Mr. Ortega generally worked Monday through Saturday, approximately 60 hours a
9 week, from approximately 7:00 a.m. until approximately 4:00 p.m. or 5:00 p.m. each day.

10 13. Diligent did not provide Mr. Ortega with written notice of his pay rate or paid sick
11 leave accrual.

12 14. Diligent unlawfully deducted approximately \$3 a day as an “Administration Fee”
13 from Mr. Ortega’s pay.

14 15. Diligent failed to pay Mr. Ortega an overtime premium when he worked more than
15 eight hours in a day or 40 hours in a week.

16 16. During periods of Mr. Ortega’s work for Diligent, Diligent failed to provide him
17 with the opportunity to take meal and rest breaks.

18 17. Diligent provided Mr. Ortega with a paystub that lacked required information,
19 including his total hours worked and his hourly rate.

20 18. Mr. Ortega was required to spend a significant amount of his own money in order to
21 provide delivery services for Diligent, including on gasoline, routine car maintenance, such as oil
22 changes, major car repairs, financing for the cost of his vehicle, car insurance, and other car
23 expenses. Diligent did not reimburse him for these expenses.

24 19. Mr. Ortega used his personal cell phone during the workday as a GPS to navigate to
25 his delivery locations and to speak with Diligent and its customers. Diligent did not reimburse any
26 portion of his cell phone bill.

20. During all relevant times, Diligent classified Mr. Ortega as an independent contractor.

B. Aries Simmons

21. Ms. Simmons worked for Diligent in Alameda County, California as a Driver from approximately July 2012 to April 2016.

22. Her duties included using her own car to deliver auto parts.

23. Ms. Simmons regularly worked Monday through Friday, from approximately 7:30 a.m. until 4:30 p.m. each day.

24. Diligent did not provide Ms. Simmons with written notice of her pay rate or paid sick leave accrual.

25. Diligent unlawfully deducted approximately \$3-4 a day as an "Administration Fee" from Ms. Simmons' pay.

26. Diligent failed to pay Ms. Simmons an overtime premium when she worked more than eight hours in a day or 40 hours in a week.

27. During periods of Ms. Simmons' work for Diligent, Diligent failed to provide her with the opportunity to take meal and rest breaks.

28. Diligent provided Ms. Simmons with a paystub that lacked required information, including her total hours worked and her hourly rate.

29. Ms. Simmons was required to spend a significant amount of her own money in order to provide delivery services for Diligent, including on gasoline, routine car maintenance, such as oil changes, major car repairs, financing for the cost of his vehicle, car insurance, and other car expenses. Diligent did not reimburse her for these expenses.

30. Ms. Simmons used her personal cell phone during the workday as a GPS to navigate to her delivery locations and to speak with Diligent and its customers. Diligent did not reimburse any portion of her cell phone bill.

31. During all relevant times, Diligent classified Ms. Simmons as an independent contractor.

1 **C. Darryl Hadley**

2 32. Mr. Hadley worked for Diligent in California as a driver from approximately March
3 2017 to July 2018.

4 33. His duties included using his own car to deliver optometry equipment.

5 34. Diligent did not provide Mr. Hadley with written notice of his pay rate or paid sick
6 leave accrual.

7 35. Diligent required Mr. Hadley to purchase a uniform but did not reimburse him. He
8 spent approximately \$36.00 to purchase two Diligent shirts.

9 36. Diligent also unlawfully deducted approximately \$3 a day as an “Administration
10 Fee” from Mr. Hadley’s pay.

11 37. Diligent failed to pay Mr. Hadley an overtime premium when he worked more than
12 eight hours in a day or 40 hours in a week.

13 38. During periods of Mr. Hadley’s work for Diligent, Diligent failed to provide him
14 with the opportunity to take meal and rest breaks.

15 39. Mr. Hadley was required to spend a significant amount of his own money in order to
16 provide delivery services for Diligent, including on gasoline, routine car maintenance, such as oil
17 changes, major car repairs, financing for the cost of his vehicle, car insurance, and other car
18 expenses. Diligent did not reimburse him for these expenses.

19 40. Mr. Hadley used his personal cell phone during the workday as a GPS to navigate to
20 his delivery locations and to speak with Diligent and its customers. Diligent did not reimburse any
21 portion of his cell phone bill.

22 41. During all relevant times, Diligent classified Mr. Hadley as an independent
23 contractor.

24 **D. Claudia Farias**

25 42. Ms. Farias worked for Diligent in California as a driver from approximately 2007
26 until approximately January 2021.

27 43. Her duties included using her own car to deliver auto parts.

1 44. Diligent did not provide Ms. Farias with written notice of her pay rate or paid sick
2 leave accrual.

3 45. Diligent also unlawfully deducted approximately \$3 a day as an “Administration
4 Fee” from Ms. Farias’ pay.

5 46. Diligent failed to pay Ms. Farias an overtime premium when she worked more than
6 eight hours in a day or 40 hours in a week.

7 47. During periods of Ms. Farias work for Diligent, Diligent failed to provide her with
8 the opportunity to take meal and rest breaks.

9 48. Ms. Farias was required to spend a significant amount of her own money in order to
10 provide delivery services for Diligent, including on gasoline, routine car maintenance, such as oil
11 changes, major car repairs, financing for the cost of his vehicle, car insurance, and other car
12 expenses. Diligent did not reimburse her for these expenses.

13 49. Ms. Farias used her personal cell phone during the workday as a GPS to navigate to
14 her delivery locations and to speak with Diligent and its customers. Diligent did not reimburse any
15 portion of her cell phone bill.

16 50. During all relevant times, Diligent classified Ms. Farias as an independent
17 contractor.

18 **II. Defendants**

19 **A. California Logistics, Inc.**

20 51. During the relevant time period, CLI has been in the business of furnishing Drivers
21 to make deliveries.

22 52. CLI is a corporation incorporated under the laws of Texas.

23 53. CLI does business as Diligent Delivery Systems.

24 54. CLI is headquartered at 9200 Derrington Rd., Stes. 100 and 200, Houston, Texas
25 77064.

26 55. At all material times, CLI has been an “employer,” and Drivers have been its
27 “employees,” under the California Labor Code and Wage Order 9.

1 56. During the relevant time period, CLI employed General Managers and Operations
2 Managers who oversaw Drivers' work and had the authority to hire and fire Drivers.

3 **B. Western Delivery & Logistics, LLC**

4 57. During the relevant time period, WDL has been in the business of furnishing Drivers
5 to make deliveries.

6 58. WDL is a corporation incorporated under the laws of Texas.

7 59. WDL does business as Diligent Delivery Systems.

8 60. WDL is headquartered at 9200 Derrington Rd., Stes. 100 and 200, Houston, Texas
9 77064.

10 61. At all material times, WDL has been an "employer," and Drivers have been its
11 "employees," under the California Labor Code and Wage Order 9.

12 62. During the relevant time period, WDL employed General Managers and Operations
13 Managers who oversaw Drivers' work and had the authority to hire and fire Drivers.

14 **C. Norlyn Enterprises, Inc.**

15 63. During the relevant time period, Norlyn has been in the business of furnishing
16 Drivers to make deliveries and provides management services to CLI and WDL.

17 64. Norlyn employs Diligent's directors and officers and houses its accounting and
18 finance departments.

19 65. Norlyn employs the employees who work in Diligent's "Independent Contractor
20 Resources" department, which recruits and screens Drivers, maintains their personnel records, and
21 ensures that Drivers are properly insured and licensed.

22 66. Norlyn charges CLI and WDL a management fee and other overhead costs for the
23 services that it provides to them.

24 67. Norlyn is a corporation incorporated under the laws of Texas.

25 68. Norlyn does business as Diligent Delivery Systems.

26 69. Norlyn is headquartered at 9200 Derrington Rd., Stes. 100 and 200, Houston, Texas
27 77064.

1 70. At all material times, Norlyn has been an “employer,” and Drivers have been its
2 “employees,” under the California Labor Code and Wage Order 9.

3 71. During the relevant time period, Norlyn had the authority to hire and fire Drivers,
4 maintain their personnel records, screen Drivers for adherence to Diligent’s policies and
5 procedures, and determine Drivers’ compensation.

6 **D. Larry Browne**

7 72. Larry Browne is an adult individual who resides in Houston, Texas.

8 73. During the relevant time period, Mr. Browne was the President and Chief Executive
9 Officer of Diligent.

10 74. Upon information and belief, Mr. Browne is the 100% owner of Diligent.

11 75. Upon information and belief, Mr. Browne personally developed Diligent’s business
12 model, under which Drivers are classified as “independent contractors” and assigned by Diligent to
13 perform delivery services for Diligent clients.

14 76. Throughout the relevant time period, Diligent has used this business model in
15 California.

16 77. Upon information and belief, Mr. Browne personally sought advice from counsel as
17 to whether his classification of Drivers is lawful.

18 78. Upon information and belief, Mr. Browne directed Diligent to classify Drivers as
19 “independent contractors” except where he made exceptions for certain Diligent clients who
20 requested that Diligent classify drivers as employees.

21 79. Upon information and belief, Mr. Browne has personally signed contracts with
22 clients with respect to the provision of delivery services by Drivers.

23 80. Upon information and belief, Mr. Browne himself negotiates and executes contracts
24 directly with clients.

25 81. Upon information and belief, Mr. Browne is closely involved in making financial
26 decisions for Diligent. In particular, upon information and belief, Mr. Browne approves the terms
27 of contracts signed with Diligent clients, including the rates charged to clients.

1 82. Upon information and belief, the rates charged to clients effectively determine
2 Drivers' pay.

3 83. Upon information and belief, Mr. Browne has the power to determine whether
4 Drivers are classified as "independent contractors" or employees.

5 84. Upon information and belief, Mr. Browne is aware that the classification of Drivers
6 is not lawful because:

7 a. Diligent has been sued by many Drivers and the U.S. Department of Labor
8 with regard to its classification of delivery drivers as independent contractors under California and
9 federal law and Drivers have obtained judgments from California courts in their favor against
10 Diligent, which Diligent has not paid; and

11 b. Mr. Browne made the decision to classify certain Drivers as employees rather
12 than as "independent contractors."

13 85. Notwithstanding these lawsuits, Mr. Browne has continued to classify Drivers as
14 independent contractors in willful disregard of the law.

15 86. Upon information and belief, Mr. Browne is directly involved in hiring the General
16 Managers who oversee Drivers.

17 87. Mr. Browne directed the General Manager in California to coerce Drivers in
18 California to release their wage and hour claims in exchange for settlement payments.

19 88. Upon information and belief, Diligent's officers, including its CFO and COO, report
20 directly to Mr. Browne.

21 89. Upon information and belief, Mr. Browne has the power to determine Driver pay.

22 90. During the relevant time period, Mr. Browne had the authority to enter into and
23 terminate contracts with Drivers.

24 91. During the relevant time period, Mr. Browne had the authority to discipline Drivers,
25 including by charging them for the cost of lost or damaged parts,

26 92. During the relevant time period, Mr. Browne employed Drivers under Cal. Lab.
27 Code § 558.1 and Wage Order 9.

93. Each Defendant jointly and severally employed Plaintiffs and Drivers in furtherance of Defendants' common business purpose of providing delivery services to customers.

94. The Owner Operator Agreement (“OOA”), which Diligent requires Drivers to sign upon hire, contains a “Diligent” logo at the top.

95. Mr. Ortega's OOA states that it is between himself and WDL.

96. Ms. Simmons' and Mr. Hadley's OOAs state that they are between themselves and

CLI.

97. The OOAs are otherwise identical and drafted by Diligent.

98. Defendants share the same corporate headquarters and personnel in Houston, Texas.

99. Each corporate Defendant does business as “Diligent Delivery Systems.”

100. “Diligent Delivery Systems” is listed as the entity authorized to make direct deposits on the direct deposit authorization form provided to Drivers.

101. The Operator Checklist of documents provided to Drivers states that all original forms are to be sent to a common Diligent corporate office and emailed to the corporate email address: icresources@diligentusa.com.

102. Upon information and belief, Norlyn, CLI, and WDL share the same email domain: @diligentusa.com.

103. Upon information and belief, Norlyn, CLI, and WDL share the same website: diligentusa.com.

FACTUAL BACKGROUND

I. Drivers Are Diligent’s Employees Under California’s ABC Test.

A. Diligent controls and directs Drivers' work.

104. Diligent controls Drivers' work and limits their freedom and discretion through various mechanisms, including: (a) policies set forth in the OOA, and (b) policies that dictate how and when Drivers complete their assignments.

105. For example, the OOA requires Drivers to:

1 a. maintain insurance coverage with minimum policy limits as determined by
2 Diligent;
3 b. maintain a safe vehicle and equipment; and
4 c. maintain safety and security identification, including a shirt and identification
5 badge to identify Drivers, and wear/carry this identification at all times while performing services
6 under the OOA.

7 106. Diligent exercises significant control over Drivers' day-to-day assignments and
8 tasks:

9 a. Diligent requires Drivers to report to their assigned location at a time certain
10 in the morning where Drivers are given preplanned delivery schedules and routes;

11 b. Drivers typically must complete all of the deliveries on the assigned routes;

12 107. Drivers must wear Diligent uniforms and follow Diligent's dress code policy.

13 108. Diligent has the authority to discipline Drivers, including by terminating them.

14 109. Diligent also exercises control over Drivers' employment conditions:

15 c. Diligent sets Drivers' rates of pay and deducts fees and various charges from
16 Drivers' pay;

17 d. Diligent has the power to terminate Drivers, including by refusing to assign
18 them work;

19 e. Diligent made the decision to classify Drivers as "independent contractors,"
20 not employees.

21 **B. Drivers perform work that is in the usual course of Diligent's business.**

22 110. Drivers perform work that is in the usual course of Diligent's business.

23 111. Diligent is engaged in the business of arranging delivery services on behalf of its
24 clients in the automotive industry.

25 112. Diligent's customers outsource their recurring business delivery needs to Diligent.

26 113. Diligent first evaluates a customer's specific delivery needs, and then engages
27 Drivers to provide the requested services.

1 114. Diligent tells potential customers that outsourcing their delivery needs to Diligent
2 will reduce their labor costs and other costs associated with hiring their own delivery drivers:

3 Between monthly vehicle payments, fuel prices, expense of workers' wages
4 and continuous maintenance / vehicle lifecycle costs, maintaining your own in house
5 fleet puts a huge dent in your profit margin. By outsourcing your recurring business
6 delivery needs to Diligent Delivery Systems, you can save as much as 32% of your
7 transportation budget. Allowing you to divert your finances to improve other core
8 activities, specialty services, or products.

9 115. Diligent claims on its website that it "provide[s] exceptional customized delivery
10 outsourcing services for delivery operations nationwide."

11 116. Diligent tells potential customers on its website that "you will be able to support,
12 expand, or replace your current fleet delivery vehicles. Say goodbye to the headaches of canceling
13 or rerouting schedules due to broken down vehicles, and sick employees. Diligent
14 provides professional delivery driver associates, well-maintained delivery vehicle replacements,
15 reliable communication devices, industry tools, and well trained labor to ensure that your packages
16 arrive safely, on time, every time."

17 117. Diligent also tells potential customers on its website, "While we are busy advancing
18 your deliveries, you can redirect attention to the most important aspects of your core business."

19 118. Diligent assigns Drivers to make deliveries and oversees drivers in making
20 deliveries.

21 **C. Diligent unilaterally labeled Drivers as "Independent Contractors;" Drivers do**
22 **not operate independently established businesses.**

23 119. Diligent unilaterally determined that Drivers would be labeled "independent
24 contractors," and continues to so label them to the present.

25 120. Diligent labeled them "independent contractors" in order to evade the requirements
26 of California wage and hour laws.

27 121. Drivers do not operate independently established businesses.

28 122. Diligent precludes Drivers from engaging in other work during the hours when they
are scheduled to work for Diligent.

123. Because Diligent schedules Drivers to work full time, often six days a week, Drivers are prevented from engaging in other work while also working for Diligent.

II. Drivers Regularly Work More Than 8 Hours a Day and/or 40 Hours a Week.

124. Drivers regularly work days of more than 8 hours and weeks of more than 40 hours.

125. Diligent does not pay Drivers daily or weekly overtime.

III. Diligent Requires Drivers To Pay for Work-Related Expenses Out-of-Pocket and Makes Deductions from Their Pay.

126. Diligent requires Drivers to spend significant amounts out-of-pocket and does not reimburse them for mileage, insurance, cell phone service, the cost of cleaning and maintaining their cars, required uniforms, and other similar expenses.

127. Diligent also deducts amounts from Drivers' pay including an administrative fee, the cost of damaged or missing parts, supplies costs, and other similar costs.

IV. Diligent Fails to Provide Drivers with Accurate Wage Statements.

128. Diligent's wage statements do not clearly itemize earnings in such a way that Drivers can readily identify whether they received all pay for which they are eligible under the law, such as hours worked, overtime, minimum wages, and deductions.

129. Payroll records similarly fail to track all pay accurately, as well as paid sick leave accrued and taken.

V. Diligent Fails to Provide Drivers with the Opportunity to Take a Meal and Rest Break.

130. For Drivers who work five or more hours in a day, Diligent does not provide a 30-minute meal break during which they are relieved from all work duties.

131. Diligent does not provide a 10-minute rest break during which Drivers are relieved of all work duties, for each shift of at least 3.5 hours.

132. Diligent lacks a meal or rest break policy under which Drivers are informed of the right to take appropriate meal and rest breaks.

133. Diligent's policies and practices incentivize Drivers to miss, cut short, or interrupt their breaks, in violation of the applicable Wage Order and Labor Code.

1 **VI. Diligent's Violations of the Law Are Willfull.**

2 134. Diligent's violations of the law described herein are willful.

3 135. As Diligent advertises to potential clients on its website, hiring its Drivers will result
4 in significant cost savings by eliminating the obligation to pay overtime, vacation benefits,
5 unemployment, healthcare benefits, vehicle maintenance and repair costs, and other similar
6 expenses.

7 136. Upon information and belief, Diligent adopted its policy of classifying Drivers as
8 independent contractors to avoid its obligations under California wage and hour laws and to attract
9 customers.

10 137. Diligent has continued to classify Drivers as independent contractors
11 notwithstanding that its classification policy has been the subject of several lawsuits and despite the
12 California Supreme Court's decision in *Dynamex Operations W., Inc. v. Superior Court*, No.
13 S222732, 2018 WL 1999120 (Apr. 30, 2018), in which it held that delivery drivers who like
14 Plaintiff performed services in the usual course of the Defendant's business, were employees, not
15 independent contractors.

16 138. Diligent's refusal to reclassify Drivers as employees despite the substantial risk that
17 its policy is unlawful is knowing and voluntary and constitutes willful misclassification.

18 **FIRST CLAIM FOR RELIEF**
19 **(PAGA Penalties for Overtime Violations,**
20 **Cal. Labor Code §§ 510, 1194, 1198, Wage Order 9)**

21 139. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved
22 Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again
23 herein.

24 140. At all relevant times, Diligent has been an employer, and Plaintiffs and Aggrieved
25 Employees were employees under California law entitled to the protections of the California Labor
26 Code.

1 141. The foregoing conduct, as alleged, constitutes a violation of California Labor Code
2 §§ 510, 1194, 1198, and Wage Order 9, which require overtime pay for time worked over eight
3 hours in a day or over 40 hours in a week.

4 142. Although Plaintiffs and an identifiable portion of Aggrieved Employees periodically
5 worked more than eight hours in a day or 40 hours in a week, Diligent has a policy and practice of
6 failing and refusing to pay them overtime and thus violated and continues to violate the above-
7 referenced overtime provisions of the Labor Code.

8 143. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek to
9 recover the appropriate civil penalties set out in Labor Code §§ 558 and 2699 and attorneys' fees
10 and costs.

11 **SECOND CLAIM FOR RELIEF**
12 **(PAGA Penalties for Minimum Wage Violations, Cal. Labor Code**
13 **§§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, Wage Order 9)**

14 144. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved
15 Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again
16 herein.

17 145. At all relevant times, Diligent has been an employer, and Plaintiffs and Aggrieved
18 Employees were employees under California law entitled to the protections of the California Labor
19 Code.

20 146. The foregoing conduct, as alleged, constitutes a violation of California Labor Code
21 §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, and Wage Order 9, which protect Plaintiffs' and
22 Aggrieved Employees' right to earn a minimum wage and provide for damages and punishment for
23 violations of that right.

24 147. Although Plaintiffs and an identifiable portion of Aggrieved Employees periodically
25 did not earn minimum wage, Diligent had a policy and practice of failing and refusing to pay them
26 minimum wage for all hours worked and thus violated and continues to violate the above-
27 referenced minimum wage protections of the Labor Code.

1 Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek to recover
2 the appropriate civil penalties set out in Labor Code §§ 1197.1 and 2699 and attorneys' fees and
3 costs.

4 **THIRD CLAIM FOR RELIEF**
5 **(PAGA Penalties for Unlawful Wage Deductions,**
6 **Cal. Labor Code §§ 221, 223 & 225.5, Wage Order 9)**

7 148. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved
8 Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again
9 herein.

10 149. Under Labor Code Section 221, "It shall be unlawful for any employer to collect or
11 receive from an employee any part of wages theretofore paid by said employer to said employee."

12 150. Under Labor Code Section 223, "Where any statute or contract requires an employer
13 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
14 purporting to pay the wage designated by statute or by contract."

15 151. During the relevant time period, Defendants illegally deducted from Plaintiffs' and
16 Aggrieved Employees' wages, the costs of administrative fees for each day Plaintiffs and
17 Aggrieved Employees worked.

18 152. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek
19 civil penalties, attorneys' fees and costs, and any other appropriate relief pursuant to the PAGA.

20 **FOURTH CLAIM FOR RELIEF**
21 **(PAGA Penalties for Meal and Rest Period Violations,**
22 **Cal. Labor Code §§ 218.5, 226.7 & 512, Wage Order No. 9)**

23 153. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved
24 Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again
25 herein.

26 154. At all relevant times, Diligent has been an employer, and Plaintiffs and Aggrieved
27 Employees were employees under California law entitled to the protections of the California Labor
28 Code.

155. The foregoing conduct, as alleged, constitutes a violation of California Labor Code §§ 226.7, 512, and Wage Order 9, which provide for a 30-minute meal break for employees who work five hours or more in a day and for 10-minute breaks for every three and one-half hours worked.

156. Although Plaintiffs and an identifiable portion of Aggrieved Employees periodically worked five hours or more in a day, Diligent had a policy and practice of failing to provide lawful meal and rest breaks. Diligent thus violated and continues to violate the above-referenced meal and rest break provisions of the Labor Code.

157. Pursuant to Diligent’s policy of classifying Drivers as independent contractors, Diligent lacks a meal or rest break policy that complies with California law. In the absence of such policies, and because Diligent’s policies and practices incentivize Drivers to work constantly, Plaintiffs and Drivers regularly work five or more hours in a day without taking an off-duty meal break and work more than three and one-half hours without taking an off-duty rest break.

158. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek to recover the appropriate civil penalties, attorneys' fees and costs, and any other appropriate relief pursuant to the PAGA.

FIFTH CLAIM FOR RELIEF
(PAGA Penalties for Wage Payment Violations,
Cal. Labor Code §§ 204, 210)

159. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again herein.

160. Under Labor Code § 204, labor performed between the 1st and 15th days or any calendar month will be paid for between the 16th and the 26th of that month, and that labor performed between the 16th and the last day of any calendar month will be paid for between the 1st and the 10th day of the following month. Other payroll periods such as weekly, biweekly (every two weeks) or semimonthly (twice per month), when the earning period is something other than

1 between the 1st and 15th, and 16th and last day of the month, must be paid within seven calendar
2 days of the end of the payroll period within which the wages were earned.

3 161. During the relevant time period, Defendants failed to pay Plaintiffs and Aggrieved
4 Employees in a timely manner all of their wages earned, in violation of California Labor Code
5 section 204.

6 162. According to California Labor Code section 210, "In addition to, and entirely
7 independent and apart from, any other penalty in this article, every person who fails to pay the
8 wages of each employee as provided in Sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5, and
9 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
10 dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any
11 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
12 plus 25 percent of the amount unlawfully withheld."

13 163. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek
14 civil penalties, attorneys' fees and costs, and any other appropriate relief pursuant to the PAGA.

15 **SIXTH CLAIM FOR RELIEF**
16 **(PAGA Penalties for Failure to Timely Pay Wages Due upon Termination,**
17 **Cal. Labor Code §§ 201, 202 & 203)**

18 164. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved
19 Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again
20 herein.

21 165. California Labor Code sections 201 and 202 require Defendants to pay its employees
22 all wages due upon termination within the time specified by law. California Labor Code
23 section 203 provides that if an employer willfully fails to timely pay such wages, the employer must
24 continue to pay the subject employees' wages until the back wages are paid in full or an action is
25 commenced, up to a maximum of thirty days of wages.

26 166. Plaintiffs and all Aggrieved Employees who ceased employment with Defendants
27 are entitled to unpaid compensation, but to date have not received such compensation.

1 167. More than thirty days have passed since Plaintiffs and certain Aggrieved Employees
2 left Defendants' employ.

3 168. As a consequence of Defendants' willful conduct of not paying compensation for all
4 hours worked, Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek
5 civil penalties, attorneys' fees and costs, and any other appropriate relief under PAGA.

6 **SEVENTH CLAIM FOR RELIEF**
7 **(PAGA Penalties for Wage Statement Violations,**
8 **Cal. Labor Code §§ 226(a), 226.3, 1174(d), 1174.5, Wage Order 9)**

9 169. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved
10 Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again
11 herein.

12 170. At all relevant times, Diligent has been an employer, and Plaintiffs and Aggrieved
13 Employees were employees under California law entitled to the protections of the California Labor
14 Code.

15 171. The foregoing conduct, as alleged, constitutes a violation of California Labor Code §
16 226, which provides requirements for properly itemized wage statements.

17 172. Diligent's wage statements do not clearly itemize hours worked, an hourly wage,
18 overtime, or earnings in a way that Plaintiffs and Aggrieved Employees can readily identify
19 whether they received all applicable pay for which they were eligible. Diligent thus violated and
20 continues to violate California Labor Code § 226.

21 173. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek to
22 recover the appropriate civil penalties set out in Labor Code §§ 226.3 and 2699, as well as
23 attorneys' fees and costs.

EIGHTH CLAIM FOR RELIEF
**(PAGA Penalties for Failure to Keep Proper Payroll Records,
Cal. Labor Code §§ 353 & 1174, Wage Order 9)**

174. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again herein.

175. California Labor Code § 1174(d) requires employers to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at their respective plants or establishments. These records shall be kept on file for not less than three years.”

176. California Labor Code § 1174.5 provides that “[a]ny person employing labor who willfully fails to maintain records required by subdivision (c) of Section 1174 or accurate or complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) or Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

177. Defendants have failed to keep the payroll records required by Labor Code § 1174(d).

178. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek civil penalties, attorneys’ fees and costs, and any other appropriate relief pursuant to the PAGA.

NINTH CLAIM FOR RELIEF
**(PAGA Penalties for Failure to Provide and Maintain Records of Paid Sick Leave and
Accrual, Cal. Labor Code §§ 246, 246.7)**

179. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again herein.

1 180. Under California Labor Code § 246(a), “An employee who, on or after July 1, 2015,
2 works in California for 30 or more days within a year from the commencement of employment is
3 entitled to paid sick days as specified in this section.

4 181. California Labor Code § 246(e)(2) requires employers to provide employees with no
5 less than 24 hours or three days of paid sick leave, for employee use of each year of employment or
6 calendar year or 12-month basis.

7 182. Plaintiffs and Aggrieved Employees were not provided with paid sick leave as
8 required.

9 183. Defendants failed to maintain records documenting hours worked and paid sick days
10 accrued by Plaintiffs and Aggrieved Employees in violation of California Labor Code § 247.5.

11 184. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek
12 civil penalties, attorneys’ fees and costs, and any other appropriate relief pursuant to the PAGA.

13
14 **TENTH CLAIM FOR RELIEF**
15 **(PAGA Penalties for Failure to Provide Written Notice Upon Hire,**
16 **Cal. Labor Code § 2810.5)**

17 185. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved
18 Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again
19 herein.

20 186. California Labor Code § 2810.5 provides that “[a]t the time of hiring, an employer
21 shall provide to each employee a written notice, in the language the employer normally uses to
22 communicate employment-related information to the employee,” including rates of pay, overtime
23 pay, accrual of sick leave, and other material and necessary information.

24 187. As set forth above, Defendants failed to provide proper notice upon hire to
25 Aggrieved Employees of their rates of pay, accrual of sick leave, and deductions from pay.

26 Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek civil
27 penalties, attorneys’ fees and costs, and any other appropriate relief pursuant to the PAGA.
28

ELEVENTH CLAIM FOR RELIEF
**(PAGA Penalties for Misclassification as an Independent Contractor,
Cal. Labor Code § 226.8)**

188. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again herein.

189. Pursuant to California Labor Code § 226.8, it is unlawful for a person or employer to willfully misclassify an individual as an independent contractor.

190. As alleged herein, Diligent has continued to classify Drivers as independent contractors notwithstanding that its classification policy has been the subject of several lawsuits and the California Supreme Court's decision in *Dynamex Operations W., Inc. v. Superior Court*, No. S222732, 2018 WL 1999120 (Apr. 30, 2018).

191. Diligent's refusal to reclassify Drivers as employees despite the substantial risk that its policy is unlawful is knowing and voluntary, and constitutes willful misclassification.

192. Diligent has engaged in a pattern or practice of misclassifying its drivers as independent contractors.

193. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek to recover the appropriate civil penalties set out in Labor Code §§ 226.8(b) and (c), attorneys' fees and costs.

TWELFTH CLAIM FOR RELIEF
**(PAGA Penalties for Failure to Reimburse Business Expenses,
Cal. Lab. Code § 2802 and Wage Order 9)**

194. Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved Employees, reallege and incorporate by reference all other paragraphs as if they were set forth again herein.

195. At all relevant times, Diligent has been an employer, and Plaintiffs and Aggrieved Employees were employees under California law entitled to the protections of the California Labor Code.

196. The foregoing conduct, as alleged, constitutes a violation of California Labor Code § 2802, which provides for the reimbursement of expenses incurred while carrying out employment or to comply with employer requirements.

197. Drivers, including Plaintiffs, have incurred and continue to incur expenses that include mileage; car insurance; cell phone service to perform driving services, receive driving requests, and maintain required email and/or text message contact with Diligent; car cleaning, maintenance, and repair to comply with Diligent requirements; and uniforms, among other expenses.

198. Diligent had a policy and practice of failing and refusing to reimburse Plaintiffs and Aggrieved Employees for all of their work-related expenses and thus violated and continues to violate California Labor Code § 2802 and Wage Order 9.

199. Plaintiffs, on behalf of the State of California and Aggrieved Employees, seek to recover the appropriate civil penalties set out in Labor Code §§ 558 and 2699, attorneys' fees, and costs.

PRAYER FOR RELIEF

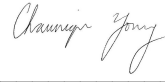
WHEREFORE, Plaintiffs, on behalf of the State of California and all Aggrieved Employees,
pray for relief as follows:

- A) Civil penalties provided, per violation, under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*;
- B) Pre-judgment and post-judgment interest, as provided by law;
- C) Attorneys' fees pursuant to Labor Code § 2699(g)(1) and all other bases for fees in the Labor Code;
- D) Costs of suit, including expert fees and costs;
- E) Appropriate service payments to Plaintiffs for their services as PAGA representatives; and
- F) Such other and further relief as the Court deems just and proper.

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Respectfully submitted,

Dated: May 13, 2022

By: 
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