

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act (“PAGA”) Settlement Agreement (“Agreement”) is made by and between Plaintiffs Aries Simmons (“Simmons”), Alden Ortega (“Ortega”), Darryl Hadley (“Hadley”), and Claudia Farias (“Farias”) (collectively, “Plaintiffs”) and Defendants California Logistics, Inc. and Western Delivery & Logistics, LLC (collectively, “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiffs’ consolidated PAGA lawsuits alleging wage and hour violations against Defendants captioned *In Re Diligent Delivery Wage And Hour Cases*, coordinated on February 27, 2019 and consolidated on April 19, 2022, pending in Superior Court of the State of California, County of Alameda, Case No. JCCP 4990. The Action includes: (1) Plaintiff Simmons’ PAGA lawsuit against Defendants captioned *Simmons v. California Logistics dba Diligent Delivery Systems, et al.*, initiated on June 12, 2017 and pending in Superior Court of the State of California, County of Alameda, Case No. RG17863988 (the “Simmons Action”); (2) Plaintiff Ortega’s PAGA lawsuit against Defendants captioned *Ortega v. Michigan Logistics, Inc., dba Diligent Delivery Systems, et al.*, initiated on September 24, 2018 and pending in Superior Court of the State of California, County of Los Angeles, Case No. BC720954 (the “Ortega Action”); and (3) Plaintiff Hadley’s PAGA lawsuit against Defendants captioned *Hadley v. California Logistics, Inc., dba Diligent Delivery Systems, et al.*, initiated on October 17, 2018 and pending in Superior Court of the State of California, County of Los Angeles, Case No. 18CMCV00022 (the “Hadley Action”). On May 13, 2022, Plaintiffs’ consolidated complaint was filed, which added Claudia Farias as a named Plaintiff and Norlyn Enterprises, Inc. and Larry Browne as Defendants. Michigan Logistics, Inc. was dismissed.
- 1.2. “Administrator” means Rust Consulting, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employees” are defined as any individual or business who contracted with Defendants or either of them to perform delivery services in California from April 8, 2016 to the Effective Date. Defendants represent there were approximately 1,458 alleged aggrieved employees as of May 31, 2022.
- 1.5. “Aggrieved Employees Data” means Aggrieved Employees’ identifying information in Defendants’ possession including the Aggrieved Employees’ (i) respective number of

days of work as available from Defendants' records for purposes of allocating the PAGA Payment, (ii) last known address(es), (iii) last known telephone number(s), (iv) last known email address(es), and (v) social security number. Due to the nature of the work, the number of days worked may be estimated.

- 1.6. "Aggrieved Employees Address Search" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.8. "Court" means the Superior Court of California, County of Alameda.
- 1.9. "Defendants" means Defendants California Logistics, Inc. and Western Delivery & Logistics, LLC.
- 1.10. "Defense Counsel" means Steven A. Groode, Esq., Alexandria Rafizadeh, Esq. and David Maoz, Esq. of Littler Mendelson P.C.
- 1.11. "Effective Date" means the date this Settlement is approved as provided herein and the Court's order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Settlement Agreement, "becomes final and is no longer appealable" shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Settlement Agreement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Settlement Agreement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Settlement Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Settlement Agreement is affirmed. In the event that: (i) the Court does not approve the Settlement Agreement as provided herein; or (ii) the Effective Date does not occur for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions.
- 1.12. "Gross Settlement Amount" means \$2,836,667 which is the total amount Defendants jointly and severally shall pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, Service Awards to Plaintiffs, Plaintiffs' Counsel's Fees and Costs Payment, and the Administration Expenses Payment.

- 1.13. "Individual PAGA Payment" means each Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to his or her number of PAGA Days Worked during the PAGA Period.
- 1.14. "Judgment" means the judgment entered by the Court approving this PAGA Settlement.
- 1.15. "Limited Release by Aggrieved Employees" means the claims being released by the Aggrieved Employees and as described in Paragraph 5.1 below.
- 1.16. "LWDA" means the California Labor and Workforce Development Agency.
- 1.17. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.18. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Service Awards to Plaintiffs, Plaintiffs' Counsel Fees and Costs Payment, and the Administration Expenses Payment. This balance is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.19. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.20. "PAGA Days Worked" means any day during which an Aggrieved Employee worked with Defendants for at least one day during the PAGA Period.
- 1.21. "PAGA Notices" means (1) Plaintiff Simmons' February 27, 2017 letter to Defendants and the LWDA; (2) Plaintiff Ortega's March 6, 2017, May 11, 2017, and July 18, 2018 letters to Defendants and the LWDA; (3) Plaintiff Hadley's August 7, 2018 letter to Defendants and the LWDA; and (4) Plaintiff Farias' December 9, 2021 letter to Defendants, Norlyn, and Browne and the LWDA, all of which provided notice pursuant to Labor Code section 2699.3(a).
- 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees as the Net Settlement Amount (approximately \$310,416.75) and the 75% to LWDA (approximately \$931,250.25) in settlement of PAGA claims.
- 1.23. "PAGA Period" means the period from April 8, 2016 to the date this Settlement is approved by the Court.
- 1.24. "Plaintiffs" means Plaintiffs Aries Simmons ("Simmons"), Alden Ortega ("Ortega"), Darryl Hadley ("Hadley"), and Claudia Farias ("Farias"), the named Plaintiffs in the Action.
- 1.25. "Plaintiffs' Counsel" means Rachel Bien, Esq. (Olivier & Schreiber LLP), Chauniqua Young, Esq. and Adam Koshkin, Esq. (Outten & Golden LLP), and Troy Kessler, Esq.

and Marijana Matura Esq. (Kessler Matura P.C.) for Ortega and Farias; Jocelyn Burton, Esq. (Burton Employment Law) for Simmons; and Daniel F. Gaines, Esq. and Evan S. Gaines, Esq. (Gaines & Gaines, APLC) for Hadley.

1.26. "Plaintiffs' Counsel Fees and Costs Payment" mean the amounts Plaintiffs' Counsel will request for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.27. "Released Parties" means: California Logistics, Inc. d/b/a/ Diligent Delivery Systems, Western Delivery & Logistics, LLC d/b/a Diligent Delivery Systems, Michigan Logistics, Inc. d/b/a Diligent Delivery Systems, Norlyn Enterprises, Inc. d/b/a/ Diligent Delivery Systems, any commonly owned entities operating as "Diligent Delivery Systems", and any and all parents, subsidiaries and affiliate entities and each of their past, present, and future parents, affiliated companies, subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, insurers, reinsurers and assigns, and each of their past, present and future officers, investors, directors, executives, trustees, agents, employees, attorneys, representatives, benefit plans sponsored or administered by the Released Parties, including, but not limited to Larry Browne, any entities for whom Drivers performed services through the Drivers' relationship with Defendants, any commonly owned entities operating as "Diligent Delivery Systems," or any of them, and any other persons or entities acting on behalf of or in concert with any of the foregoing.

1.28. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

2.1. On February 27, 2019, the Court coordinated Plaintiffs' lawsuits into this coordinated Action. The coordinated Action includes:

2.1.1. (1) the Simmons Action, which alleges a cause of action pursuant to PAGA against Defendants for: (i) misclassification as independent contractor; (ii) failure to pay overtime; (iii) failure to provide meal breaks; (iv) failure to provide rest breaks; (v) failure to timely pay wages upon each pay period; (vi) failure to provide paid sick days; (vii) failure to furnish complete and accurate itemized wage statements; (viii) failure to pay all wages due upon termination; (ix) failure to indemnify employees for expenses; (x) unlawful deductions; (xi) failure to keep payroll; and (xii) failure to pay minimum wages;

2.1.2. (2) the Ortega Action, which alleges a cause of action pursuant to PAGA against Defendants for: (i) the failure to pay Drivers required overtime or double time compensation; (ii) failure to pay minimum wages; (iii) unlawful wage deductions; (iv) failure to provide meal and rest breaks; (v) failure to timely pay wages; (vi) failure to timely pay wages due upon termination of employment; (vii) failure to provide legally sufficient wage statements; (viii) failure to keep proper payroll records; (ix) failure to provide sick leave and maintain records documenting hours

worked and paid sick days accrued; (x) failure to provide required written notice upon hire; (xi) willful misclassification of Drivers as independent contractors; and (xii) failure to reimburse Drivers for business expenses; and

2.1.3. (3) the Hadley Action, which alleges a cause of action pursuant to PAGA against Defendants for: (i) failure to provide meal and rest breaks; (ii) failure to timely pay wages due upon termination of employment; (iii) failure to provide legally sufficient wage statements; (iv) failure to provide sick leave and maintain records documenting hours worked and paid sick days accrued; (v) failure to reimburse Drivers for business expenses; and (vi) willful misclassification of Drivers as independent contractors.

2.2. On May 3, 2022, the Court consolidated the actions, and granted Plaintiffs Simmons, Ortega, and Hadley's Motion to Consolidate the Cases, which added Farias as a named Plaintiff and added Norlyn Enterprises, Inc. and Larry Browne as defendants.

2.3. Defendants deny the allegations in the Action, deny any failure to comply with the laws identified in the Action, and deny any and all liability for the causes of action alleged.

2.4. On September 10, 2019, the Parties participated in a private mediation with mediator Tripper Ortman, Esq., which was unsuccessful. Thereafter, on January 14, 2021, the Parties participated in a second private mediation with mediator John Adler, Esq., and likewise unsuccessful. Finally, on March 1, 2022, the Parties participated in a (successful) third private mediation with mediator Dan Downey, Esq., a retired judge in Texas. This mediation culminated in the basic terms of a settlement.

2.5. Prior to mediations, the Parties engaged in extensive discovery, including Defendants producing thousands of pages of electronically stored information, policies and other relevant documents, and pay data, for a significant number of allegedly Aggrieved Employees and depositions of Plaintiffs Simmons and Ortega.

2.6. The Parties, Plaintiffs' Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants shall jointly and severally pay \$2,836,667 as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadlines stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:

3.2.1. To Plaintiffs' Counsel: Plaintiffs' Counsel will request Court approval of not more than \$1,400,000 as attorneys' fees and not more than \$150,000 as costs. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. If the Court approves Plaintiffs' Counsel Fees Payment and/or Plaintiffs' Counsel Costs Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Plaintiffs' Counsel Fees Payment and Plaintiffs' Counsel Costs Payment using one or more IRS 1099 Forms. Plaintiffs' Counsel assumes full responsibility and liability for taxes owed on the Plaintiffs' Counsel Fees and Costs Payments. Except for reasonable attorneys' fees and costs incurred to enforce this Agreement, including but not limited to enforce the right to conduct the audits contemplated in paragraph 10.14 below, neither Plaintiffs' Counsel nor any other current or past counsel for Plaintiff shall be permitted to petition the Court for, or to accept, any additional payments for attorneys' fees, costs, interest, or any other amount from the Released Parties related to the Action except as specified above.

3.2.2. Service Awards to Each Plaintiff: The amount awarded to each Plaintiff as a "Service Award" will be set by the Court in its discretion, not to exceed \$5,000 each (\$20,000 total). This amount will be deducted from the Gross Settlement Amount. An IRS Form 1099 will be issued to each Plaintiff for their Service Award. Defendants agree not to dispute or otherwise object to the Service Awards if Plaintiffs each request \$5,000 or less. If the Court approves Plaintiffs' Service Award Payments less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$25,000, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$25,000, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of approximately \$1,241,667 to be paid from the Gross Settlement Amount, with 75% (approximately \$931,250.25) allocated to the LWDA PAGA Payment and 25% (approximately \$310,416.75) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (approximately \$310,416.75) by the total number of PAGA Days Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Days Worked. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves an LWDA PAGA Payment of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Aggrieved Employee PAGA Days Worked. Based on a review of their records to date, Defendants estimate there are 1,458 Aggrieved Employees who worked a maximum of 838,697 days worked between April 8, 2016 and May 31, 2022. Defendants are continuing to evaluate their estimate of days worked by reviewing Aggrieved Employee pay data and counting up the days worked attributable to each Aggrieved Employee, in order to determine a final estimate of days worked to be included in the spreadsheet discussed in Section 4.2 below. Due to the nature of the work, the number of days worked may be estimated.
- 4.2. Aggrieved Employee Data. Within 10 calendar days after execution of this Agreement, Defendants will deliver the Aggrieved Employees Data to Plaintiffs' Counsel and to the Administrator in the form of a Microsoft Excel spreadsheet. To protect the Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employees Data in confidence, use the Aggrieved Employees Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employees Data to Administrator employees who need access to the Aggrieved Employees Data to effect and perform under this Agreement. The production of the Aggrieved Employees Data will be pursuant to the Protective Order previously entered in the Action. Without any extension of the deadline by which Defendants must send the Aggrieved Employees Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing, imprecise, or omitted Aggrieved Employees Data.
- 4.3. Funding of Gross Settlement Amount. Defendants will have no more than 48 months from the date on which this Agreement is executed to pay the Gross Settlement Amount ("Payment Period"). The first installment payment shall be paid no later than 15 days after the Effective Date. The amount of that payment will be calculated by dividing the Gross Settlement Amount by the number of months remaining in the Payment Period as of the initial payment date. For example, if the initial payment date occurs six months after this Agreement is executed, the initial payment will be calculated as follows: $\$2,836,667 / 42 \text{ months} = \$67,539.69$. In the month following the initial payment, Defendants will begin making monthly payments on or before the 10th day of each month of at least \$67,539.69 until they have fully paid the Gross Settlement Amount.
- 4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after Defendants deposit each installment of the Gross Settlement Amount, the Administrator will issue pro rata payments for the obligations due for Plaintiffs' Counsel Fees and Costs Payments, Administration Expenses Payment, the Service Awards Payments to Plaintiffs,

and the payment to the LWDA. Aggrieved Employees will be issued their Individual Payment Amount in annual installments beginning one year after the first installment payment is deposited and the same date each year thereafter until paid in full (i.e., four disbursements to each Aggrieved Employee over four years).

Should Defendants accelerate payments and satisfy their entire obligation to pay the Gross Settlement Amount by (i) December 31, 2022, they shall be entitled to a \$240,000 discount of the balance owed. If Defendants satisfy their entire obligation to pay the Gross Settlement Amount by (ii) June 1, 2023, a \$180,000 discount will be applied. And if Defendants satisfy their entire obligation to pay the Gross Settlement Amount by (iii) June 1, 2024, a \$90,000 discount will be applied. If a discount is applied, it shall be applied proportionately to all allocations from the Gross Settlement Amount except for the Service Awards and Administration Expenses Payment.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid, together with the Notice of PAGA Settlement, which will be distributed in Spanish and English (attached hereto as Exhibit "A"). The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be paid to the Office of the California State Controller – Unclaimed Property Fund. The value of checks uncashed more than 180 days after issuance shall be paid to the Office of the California State Controller – Unclaimed Property Fund, to be held in the name of the respective Aggrieved Employees. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employees Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employees Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiffs and Aggrieved Employees will release claims against all Released Parties as follows:

5.1 Limited Release by Aggrieved Employees. Upon entry of final judgment and Defendants' satisfaction of their obligation to pay the Gross Settlement Amount in full in accordance with the timing requirements set forth in this Agreement, the Released Parties shall be entitled to a release from the Aggrieved Employees for any and all claims under or pursuant to PAGA based on Aggrieved Employees' alleged misclassification by Defendants as independent contractors or any PAGA-enabling violation of any law arising from any act or omission by the Released Parties relating to Aggrieved Employees' alleged misclassification by Defendants as independent contractors, whether known or unknown, suspected or unsuspected, to which Aggrieved Employees and Plaintiffs may have been entitled or may be entitled under the California Labor Code, sections 1-9104, 200-3122.4 inclusive, from April 8, 2016 up to and including the Approval Order Date against any of the Released Parties, and for the Sanctions Order. This includes, but is not limited to, civil penalties based on or arising from alleged violations of California Labor Code sections 200, et seq., 201-203, 204, 207, 208, 210, 212, 221-224, 222.5, 225.5, 226, 226.3, 226.7, 226.8, 231, 245-249, 256, 351, 352, 353, 354, 432.5, 450, 500, et seq., 510, 512, 515, 550, 551, 552, 558, 1024.5, 1174, 1174.5, 1182, 1182.11-1182.13, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, 2753, 3700, 3700.5, 3712, 3715; and to the fullest extent permissible under governing law, the California Code of Regulations and/or Industrial Welfare Commission Wage Orders, including, but not limited to Wage Order 9-2001, and any and all other statutes, laws, or regulations on which a claim for penalties under PAGA may be based.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. Plaintiffs will prepare and file an application or motion for approval of this Settlement. Plaintiffs will provide a draft of the motion for approval at least four business days in advance of filing for review and comment.

6.1 Cooperation. The Parties will cooperate in obtaining, through a stipulation, or an unopposed motion, if required, an Order from the Court approving the payment of the Gross Settlement Amount as described in this Agreement at the earliest possible date. Concurrently with the submission of this Agreement to the Court, Plaintiffs shall submit it to the LWDA as required by PAGA. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to, the approval and implementation of the payment of the Gross Settlement Amount as described in this Agreement. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order, which shall be transmitted to the LWDA promptly upon entry, as required by PAGA. Should the Court not grant approval of the Gross Settlement Amount as described in this Agreement or decline to enter judgment in the Action, this Agreement shall be null and void and have no further effect, and all sums paid by Defendants, if any, shall be promptly returned to them.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with Rust Consulting other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.3 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE.

This settlement is based on Defendants' representation that there are a maximum of 838,697 days worked by approximately 1,458 Aggrieved Employees during the PAGA Period (through May 31, 2022). If the number of days worked exceeds these representations by 3% or more, one of the following shall occur at Defendants' election: (a) Defendants shall pay an increased Gross Settlement Amount proportional to the increase over the 3% threshold (for example, if the final number of days worked is 4% greater than 838,697, the Gross Settlement Amount will increase by 1%); or (b) the PAGA Period shall be reduced to a date before May 31, 2022 that is consistent with a maximum of 838,697 days worked by approximately 1,458 Aggrieved Employees.

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Action have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. Plaintiffs' Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.5 No Tax Advice. Neither Plaintiffs, Plaintiffs' Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.6 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.7 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.8 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.9 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.10 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.11 Publicity. The Parties agree that Plaintiffs and Plaintiffs' Counsel will not communicate the fact of, or the terms of, this Agreement to members of the press, including to Verdicts and Settlements. Plaintiffs and Plaintiffs' Counsel will not publish the fact of, or terms of, this Settlement or any related information on their website, for advertising purposes and/or in publication materials generally available to the public. Nothing herein shall

preclude the Parties or their Counsel from disclosing the terms of this Agreement to the Court for purposes of settlement approval.

10.12 Disputes. Any dispute between the Parties as to the remaining terms of the Agreement shall be presented to Dan Downey, Esq., the mediator, for resolution. All Parties agree to negotiate in good faith and take all reasonable steps to finalize this Agreement.

10.13 Tolling. The claims set forth in the Consolidated Complaint shall remain tolled until Defendants have fully satisfied their obligations under this Agreement, including payment in full of the Gross Settlement Amount. Should any Aggrieved Employee pursue claims against the Released Parties that are covered by the release while Defendants are timely making payments pursuant to this Agreement, the Parties agree that pursuit of such claims should be stayed and a court of competent jurisdiction shall be authorized to stay such claims through Defendants' satisfaction of their obligation to pay the Gross Settlement Amount in full in accordance with the timing requirements set forth in this Agreement.

10.14 Security and Disclosures. While any balance of the Gross Settlement Amount remains outstanding, Defendants: (1) Will not pay management fees in excess of \$102,750.00 per month, or in amount that would reduce available cash, after the Monthly Settlement Payment, to less than zero, whichever is less; (2) will defer any distributions to Larry Browne and/or to other Diligent officers or companies; and (3) will not change accounting practices.

Defendants will provide Plaintiffs' Counsel with reasonably detailed profit and loss statements and balance sheets on a quarterly basis beginning in the first quarter following execution of this Agreement and on a quarterly basis thereafter; as well as annual state and federal tax filings during the period in which any balance of the Gross Settlement Amount is owed.

Plaintiffs' Counsel and/or their expert(s) or consultant(s) will have a right to conduct a commercially reasonable audit of financial statements of Defendants on a quarterly basis beginning in the first quarter following execution of this Agreement at Plaintiffs' Counsel's expense. Such audits shall be conducted at a mutually agreed upon data and time, and such audits shall not unreasonably interfere with Defendants' regular business operations.

10.15 Default; Notice; Cure; Acceleration; Time is of the Essence; Final Order and Judgment.

Time is of the essence with respect to all provisions of this Agreement. Defendants agree to the Final Order and Judgment, attached to this Agreement as Exhibit B, that, among other things, sets forth their obligations to pay the Gross Settlement Amount and the timing required for such payment, and that accelerates Defendants' obligation to pay the outstanding portion of the payment plus a penalty of ten (10%) interest per year beginning from the date of the violation. Defendants agree that, after notice and a reasonable cure period of 10 business days, their failure to adhere to payment deadlines as set forth herein and/or their violation of the above security provisions will upon application to the Court

in the form attached to this Agreement as Exhibit C, authorize the Court to lift the stay on enforcement specified in the Final Order and Judgment, allowing for acceleration of all amounts due hereunder.

- 10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Dated: November 9, 2022

CALIFORNIA LOGISTICS, INC.

By Lh
Its LARRY BROWN

Dated: November 9, 2022

WESTERN DELIVERY & LOGISTICS, LLC

By Lh
Its LARRY BROWN

11 / 23 / 2022

Dated: November __, 2022

By HH
DARRYL HADLEY

Dated: November __, 2022

By _____
CLAUDIA FARIAS

Dated: November __, 2022

By _____
ARIES SIMMONS

Dated: November __, 2022

By _____
ALDEN ORTEGA

4888-5270-2014.1 / 093223-1003

Dated: November 9, 2022

CALIFORNIA LOGISTICS, INC.

By Lh
Its LARRY BROWN

Dated: November 9, 2022

WESTERN DELIVERY & LOGISTICS, LLC

By Lh
Its LARRY BROWN

Dated: November __, 2022

By _____
DARRYL HADLEY

Dated: November __, 2022

By _____
CLAUDIA FARIAS

Dec 12, 2022

Dated: November __, 2022

By aries
Aries Simmons (Dec 12, 2022 13:09 PST)
ARIES SIMMONS

Dated: November __, 2022

By _____
ALDEN ORTEGA

4888-5270-2014.1 / 093223-1003

Dated: November 9, 2022

CALIFORNIA LOGISTICS, INC.

By 
Its LARRY BROWNE

Dated: November 9, 2022

WESTERN DELIVERY & LOGISTICS, LLC

By 
Its LARRY BROWNE

Dated: November __, 2022

By _____
DARRYL HADLEY

12/13/2022
Dated: November __, 2022

By *Claudia Farias*
CLAUDIA FARIAS

Dated: November __, 2022

By _____
ARIES SIMMONS

Dated: November 28, 2022

By *Alden Ortega*
ALDEN ORTEGA