

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.