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*Attorneys for Plaintiff and the Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

ALDEN ORTEGA, on behalf of himself, and  
all others similarly situated,

Plaintiff,

v.

MICHIGAN LOGISTICS, INC. d/b/a  
DILIGENT DELIVERY SYSTEMS,  
CALIFORNIA LOGISTICS, INC. d/b/a  
DILIGENT DELIVERY SYSTEMS, and  
WESTERN DELIVERY & LOGISTICS,  
LLC, d/b/a DILIGENT DELIVERY  
SYSTEMS,

Defendants.

Case No. **BC 720954**

**COMPLAINT FOR CIVIL PENALTIES  
PURSUANT TO PRIVATE ATTORNEYS  
GENERAL ACT, CAL. LAB. CODE §§  
2699 ET SEQ.**

SEP 24 2018

1 Plaintiff Alden Ortega (“Plaintiff”), in his capacity as an Aggrieved Employee under the  
2 Private Attorneys General Act of 2004, Lab. Code §§ 2699, *et seq.* (“PAGA”), alleges as follows:

3 **SUMMARY OF CLAIMS**

4 1. Mr. Ortega worked as a delivery driver for Michigan Logistics, Inc. d/b/a  
5 Diligent Delivery Systems, California Logistics, Inc. d/b/a Diligent Delivery Systems, and  
6 Western Delivery & Logistics, LLC d/b/a Diligent Delivery Systems (collectively, “Defendants”  
7 or “Diligent”). He brings this PAGA action on behalf of himself and other Aggrieved  
8 Employees, defined as delivery drivers who worked in California from March 6, 2016 through the  
9 date of the final disposition of this action (“Drivers”).

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

20 **JURISDICTION AND VENUE**

21 3. The Court has jurisdiction over Plaintiff’s claims under the California Labor Code.

22 4. The Court has personal jurisdiction over this matter because each Defendant  
23 conducts substantial business activity in California and engages in the unlawful acts described  
24 herein in California.

25 5. Venue is proper in this county under California Code of Civil Procedure § 395.5  
26 because a substantial part of the events and omissions giving rise to the claims alleged herein  
27 occurred in this county.



1 **II. Defendants**

2 **A. Michigan Logistics, Inc.**

3 15. During the relevant time period, Michigan Logistics has been in the business of  
4 furnishing Drivers to make deliveries.

5 16. Michigan Logistics is a corporation incorporated under the laws of Texas and does  
6 business as Diligent Delivery Systems.

7 17. Michigan Logistics is headquartered at 333 N. Sam Houston Parkway East #1000,  
8 Houston, Texas 77060.

9 18. Michigan Logistics is the parent company of California Logistics, Inc. and  
10 Western Delivery & Logistics, LLC.

11 19. At all material times, Michigan Logistics has been an “employer,” and Drivers  
12 have been its “employees,” under the California Labor Code and Wage Order 9. *See* Cal. Lab.  
13 Code § 1171; Wage Order No. 9.

14 20. During the relevant time period, Drivers received their payments from Michigan  
15 Logistics.

16 21. During the relevant time period, Michigan Logistics had authority to hire and fire  
17 Drivers.

18 **B. California Logistics, Inc.**

19 22. During the relevant time period, California Logistics has been in the business of  
20 furnishing Drivers to make deliveries.

21 23. California Logistics is a corporation incorporated under the laws of Texas.

22 24. California Logistics does business as Diligent Delivery Systems.

23 25. California Logistics is a domestic corporation organized and existing under the  
24 laws of the State of California, and is headquartered at 333 N. Sam Houston Parkway East,  
25 #1000, Houston, Texas 77060.

26 26. On information and belief, California Logistics is a subsidiary of Michigan  
27 Logistics, and Michigan Logistics does business in the State of California as California Logistics.

28

1           27.     At all material times, California Logistics has been an “employer,” and Drivers  
2 have been its “employees,” under the California Labor Code and Wage Order 9. *See* Cal. Lab.  
3 Code § 1171; Wage Order No. 9.

4           28.     During the relevant time period, California Logistics had authority to hire and fire  
5 Drivers.

6           **C.     Western Delivery & Logistics, LLC**

7           29.     During the relevant time period, Western Delivery & Logistics has been in the  
8 business of furnishing Drivers to make deliveries.

9           30.     Western Delivery & Logistics is a corporation incorporated under the laws of  
10 Texas.

11          31.     Western Delivery & Logistics does business as Diligent Delivery Systems.

12          32.     Western Delivery & Logistics is a domestic corporation organized and existing  
13 under the laws of the State of California, and is headquartered at 333 N. Sam Houston Parkway  
14 East, #1000, Houston, Texas 77060.

15          33.     On information and belief, Western Delivery & Logistics is a subsidiary of  
16 Michigan Logistics, and Michigan Logistics does business in the State of California as Western  
17 Delivery & Logistics.

18          34.     During the relevant time period, Western Delivery & Logistics had authority to  
19 hire and fire Drivers.

20          **D.     Defendants Jointly Employed Drivers**

21          35.     Michigan Logistics is the parent company of California Logistics and Western  
22 Delivery & Logistics.

23          36.     The companies together jointly employed Mr. Ortega and Drivers in furtherance of  
24 their shared business purpose of providing delivery services to customers.

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

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1 38. Plaintiff's OOA states that it is between himself and Western Delivery &  
2 Logistics.

3 39. Upon information and belief, OOAs that list other subsidiaries are substantially  
4 similar in their material terms.

5 40. Each company shares the same address in Houston, Texas.

6 41. Each company does business as "Diligent Delivery Systems."

7 42. "Diligent Delivery Systems" is listed as the entity authorized to make direct  
8 deposits on Plaintiff's direct deposit authorization form.

9 43. The Operator Checklist of documents provided to Drivers states that all original  
10 forms are to be sent to a common Diligent corporate office and emailed to the corporate email  
11 address: [icresources@diligentusa.com](mailto:icresources@diligentusa.com).

12 44. Upon information and belief, the three companies share the same email domain:  
13 @diligentusa.com.

## 14 **FACTUAL BACKGROUND**

### 15 **I. Drivers Are Diligent's Employees Under California's ABC Test.**

#### 16 **A. Diligent controls and directs Drivers' work.**

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

20 46. For example, the OOA requires Drivers to:

21 a. maintain insurance coverage with minimum policy limits as determined by  
22 Diligent;

23 b. maintain a safe vehicle and equipment; and

24 c. maintain safety and security identification, including a shirt and  
25 identification badge to identify Drivers, and wear/carry this identification at all times while  
26 performing services under the OOA.

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- 1           47. Diligent exercises significant control over Drivers’ day-to-day assignments and  
2 tasks:
- 3                   a. Diligent requires Drivers to report to their assigned location at 7 or 8 a.m.,  
4 where Drivers are given preplanned delivery schedules and routes;
- 5                   b. Drivers typically must complete their last delivery by approximately 5  
6 p.m.;
- 7                   c. In a typical workday, Drivers must complete approximately 2 routes or  
8 “runs,” and each run consists of approximately 15 delivery stops.
- 9           48. Drivers must wear Diligent uniforms and follow Diligent’s dress code policy.
- 10           49. Diligent has the authority to discipline Drivers, including by terminating them.
- 11           50. Diligent also exercises control over Drivers’ employment conditions:
- 12                   a. Diligent sets Drivers’ rates of pay and deducts fees and various charges  
13 from Drivers’ pay;
- 14                   b. Diligent has the power to terminate Drivers, including by refusing to assign  
15 them work;
- 16                   c. Diligent made the decision to classify Drivers as “independent  
17 contractors,” not employees.
- 18           **B. Drivers perform work that is in the usual course of Diligent’s business.**
- 19           51. Drivers perform work that is in the usual course of Diligent’s business.
- 20           52. Diligent is engaged in the business of arranging commercial transportation  
21 services on behalf of its clients in the automotive industry.
- 22           53. Diligent’s customers outsource their recurring business delivery needs to Diligent.
- 23           54. Diligent first evaluates a customer’s specific transportation needs, and then  
24 engages Drivers to provide the requested services.
- 25           55. Diligent tells potential customers that outsourcing their delivery needs to Diligent  
26 will reduce their labor costs and other costs associated with hiring their own delivery drivers:
- 27
- 28

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

7 56. Diligent claims on its website that it "provide[s] exceptional customized delivery  
8 outsourcing services for delivery operations nationwide."

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

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

18 59. Diligent assigns Drivers to make deliveries, tracks deliveries, and requires Drivers  
19 to utilize its tracking and recordkeeping system.

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

22 60. Diligent unilaterally determined that Drivers would be labeled "independent  
23 contractors."

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

26 62. Drivers do not operate independently established businesses.

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



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

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

4 65. Drivers regularly work days of more than 8 hours and weeks of more than 40  
5 hours.

6 66. Diligent does not pay Drivers daily or weekly overtime.

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

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

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

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

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

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

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

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

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

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

28

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

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

4 75. Diligent's violations of the law described herein are willful.

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

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

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

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

20 **FIRST CLAIM FOR RELIEF**  
21 **(PAGA Penalties for Overtime Violations,**  
22 **Cal. Labor Code §§ 510, 1194, 1198 & Wage Order No. 9)**

23 80. Plaintiff Ortega, on behalf of himself, the State of California, and all Aggrieved  
24 Employees, realleges and incorporates by reference all other paragraphs as if they were set forth  
25 again herein.



1 them minimum wage for all hours worked and thus violated and continues to violate the above-  
2 referenced minimum wage protections of the Labor Code.

3 Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks to  
4 recover the appropriate civil penalties set out in Labor Code §§ 1197.1 and 2699 and attorneys'  
5 fees and costs.

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

8 89. Plaintiff, on behalf of himself, the State of California, and all Aggrieved  
9 Employees, realleges and incorporates by reference all other paragraphs as if they were set forth  
10 again herein.

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

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

17 92. During the relevant time period, Defendants illegally deducted from Plaintiff's and  
18 Aggrieved Employees' wages, the costs of administrative fees for each day Plaintiff and  
19 Aggrieved Employees worked.

20 93. Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks  
21 civil penalties, attorneys' fees and costs, and any other appropriate relief pursuant to the PAGA.

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

25 94. Plaintiff Ortega, on behalf of himself, the State of California, and all Aggrieved  
26 Employees, realleges and incorporates by reference all other paragraphs as if they were set forth  
27 again herein.

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1           95.     At all relevant times, Diligent has been an employer, and Ortega and Aggrieved  
2 Employees were employees under California law entitled to the protections of the California  
3 Labor Code.

4           96.     The foregoing conduct, as alleged, constitutes a violation of California Labor Code  
5 §§ 226.7, 512, and Wage Order 9, which provide for a 30-minute meal break for employees who  
6 work five hours or more in a day and for 10-minute breaks for every three and one-half hours  
7 worked.

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

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

18          99.     Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks  
19 to recover the appropriate civil penalties, attorneys’ fees and costs, and any other appropriate  
20 relief pursuant to the PAGA.

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

23          100.    Plaintiff, on behalf of himself, the State of California, and all Aggrieved  
24 Employees, realleges and incorporates by reference all other paragraphs as if they were set forth  
25 again herein.

26          101.    Under Labor Code § 204, labor performed between the 1st and 15th days or any  
27 calendar month will be paid for between the 16th and the 26th of that month, and that labor  
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1 performed between the 16th and the last day of any calendar month will be paid for between the  
2 1st and the 10th day of the following month. Other payroll periods such as weekly, biweekly  
3 (every two weeks) or semimonthly (twice per month), when the earning period is something other  
4 than between the 1st and 15th, and 16th and last day of the month, must be paid within seven  
5 calendar days of the end of the payroll period within which the wages were earned.

6 102. During the relevant time period, Defendants failed to pay Plaintiff and Aggrieved  
7 Employees in a timely manner all of their wages earned, in violation of California Labor Code  
8 section 204.

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

16 104. Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks  
17 civil penalties, attorneys’ fees and costs, and any other appropriate relief pursuant to the PAGA.

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

21 105. Plaintiff, on behalf of himself, the State of California, and all Aggrieved  
22 Employees, realleges and incorporates by reference all other paragraphs as if they were set forth  
23 again herein.

24 106. California Labor Code sections 201 and 202 require Defendants to pay its  
25 employees all wages due upon termination within the time specified by law. California Labor  
26 Code section 203 provides that if an employer willfully fails to timely pay such wages, the  
27  
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1 employer must continue to pay the subject employees' wages until the back wages are paid in full  
2 or an action is commenced, up to a maximum of thirty days of wages.

3 107. Plaintiff and all Aggrieved Employees who ceased employment with Defendants  
4 are entitled to unpaid compensation, but to date have not received such compensation.

5 108. More than thirty days have passed since Plaintiff and certain Aggrieved  
6 Employees left Defendants' employ.

7 109. As a consequence of Defendants' willful conduct of not paying compensation for  
8 all hours worked, Plaintiff, on behalf of the State of California and the Aggrieved Employees,  
9 seeks civil penalties, attorneys' fees and costs, and any other appropriate relief under PAGA.

10 **SEVENTH CLAIM FOR RELIEF**  
11 **(PAGA Penalties for Wage Statement Violations,**  
12 **Cal. Labor Code §§ 226(a), 226.3, 1174(d), and 1174.5)**

13 110. Plaintiff Ortega, on behalf of himself, the State of California, and all Aggrieved  
14 Employees, realleges and incorporates by reference all other paragraphs as if they were set forth  
15 again herein.

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

19 112. The foregoing conduct, as alleged, constitutes a violation of California Labor Code  
20 § 226, which provides requirements for properly itemized wage statements.

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

25 114. Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks  
26 to recover the appropriate civil penalties set out in Labor Code §§ 226.3 and 2699, as well as  
27 attorneys' fees and costs.

28

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

115. Plaintiff, on behalf of himself, the State of California, and all Aggrieved Employees, realleges and incorporates by reference all other paragraphs as if they were set forth again herein.

116. 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.”

117. 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).”

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

119. Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks 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)**

120. Plaintiff, on behalf of himself, the State of California, and all Aggrieved Employees, realleges and incorporates by reference all other paragraphs as if they were set forth again herein.



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

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

7 123. Plaintiff and Aggrieved Employees were not provided with paid sick leave as  
8 required.

9 124. Defendants failed to maintain records documenting hours worked and paid sick  
10 days accrued by Plaintiff and Aggrieved Employees in violation of California Labor Code §  
11 247.5.

12 125. Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks  
13 civil penalties, attorneys’ fees and costs, and any other appropriate relief pursuant to the PAGA.

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

17 126. Plaintiff, on behalf of himself, the State of California, and all Aggrieved  
18 Employees, realleges and incorporates by reference all other paragraphs as if they were set forth  
19 again herein.

20 127. 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.

24 128. 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 Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks 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)**

129. Plaintiff, on behalf of himself, the State of California, and all Aggrieved Employees, realleges and incorporates by reference all other paragraphs as if they were set forth again herein.

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

131. 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).

132. 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.

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

134. Plaintiff, on behalf of the State of California and the Aggrieved Employees, seeks 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)**

135. Plaintiff Ortega, on behalf of himself, the State of California, and all Aggrieved Employees, realleges and incorporates by reference all other paragraphs as if they were set forth again herein.

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

1 137. The foregoing conduct, as alleged, constitutes a violation of California Labor Code  
2 § 2802, which provides for the reimbursement of expenses incurred while carrying out  
3 employment or to comply with employer requirements.

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

9 139. Diligent had a policy and practice of failing and refusing to reimburse Ortega and  
10 Aggrieved Employees for all of their work-related expenses and thus violated and continues to  
11 violate California Labor Code § 2802.

12 140. Ortega, on behalf of the State of California and Aggrieved Employees, seeks to  
13 recover the appropriate civil penalties set out in Labor Code §§ 558 and 2699, attorneys' fees, and  
14 costs.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of the State of California and all Aggrieved  
17 Employees, prays for relief as follows:

- 18 A) Civil penalties provided, per violation, under the Private Attorney General Act, Labor  
19 Code § 2698, *et al.*;
- 20 B) Pre-judgment and post-judgment interest, as provided by law;
- 21 C) Attorneys' fees pursuant to Labor Code § 2699(g)(1) and all other bases for fees in the  
22 Labor Code;
- 23 D) Costs of suit, including expert fees and costs;
- 24 E) An appropriate service payment to Plaintiff for his service as a PAGA representative;  
25 and
- 26 F) Such other and further relief as the Court deems just and proper.
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Respectfully submitted,

Dated: September 24, 2018

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