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HAIRON MARTINEZ, MIGUEL RIOS, and
RIGOBERTO GODOY, and all others similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN DECENA, an Individual,
HAIRON MARTINEZ, an Individual, an
Individual; MIGUEL RIOS, an
Individual; RIGOBERTO GODOY, an
Individual; Individually, and on Behalf of
All Similarly Situated Individuals,

Plaintiffs,

v.

ALLEGiant FINAL MILE INC., A
Florida corporation; DIVERSE
LOGISTICS & DISTRIBUTION, INC.,
a Florida corporation; MATTRESS
FIRM, INC., a Delaware corporation;
and DOES 1 through 25, Inclusive,

Defendants.

Case No: 4:23-cv-03633-YGR

[*The Honorable Yvonne Gonzalez Rogers*]

CLASS ACTION

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**

[CONCURRENTLY FILED WITH SUPPORTING
DECLARATIONS; [PROPOSED] ORDER]

Date: March 25, 2025

Time: 2:00 p.m.

Courtroom: 1 (4th Floor), Oakland Courthouse

**NOTICE OF MOTION AND MOTION TO ALL PARTIES AND THEIR ATTORNEYS
OF RECORD:**

PLEASE TAKE NOTICE that on Tuesday, March 25, 2025 at 2:00 p.m., or as soon thereafter as the matter can be heard in Courtroom 1 of the United States District Courthouse located at 1301 Clay Street, Oakland, California 94612, before the Honorable Yvonne Gonzalez Rogers, Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy (“Plaintiffs”) will and hereby do move this Court for an Order Granting Final Approval of Class Action Settlement. Plaintiffs’ Motion is based on this Notice and the accompanying Memorandum of Points and Authorities and exhibits thereto; the Declaration of Armand R. Kizirian, and the respective exhibits thereto; the Proposed Order; this Court’s files and records; and any other evidence, briefing, or argument properly before this Court.

Plaintiffs respectfully request that the Court: (1) grant final approval of the proposed Settlement¹; (2) certify the Class for settlement purposes only; (3) find that the Notice was the best practicable notice under the circumstances and satisfied all Constitutional and other requirements; (4) confirm Class Members who have submitted timely requests for exclusion; (5) confirm as final the Court’s preliminary appointment of settlement Class Counsel; (6) confirm as final the Court’s preliminary appointment of Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy as the class representatives; (7) approve a payment of \$22,500 to the California Labor and Workforce Development Agency (LWDA); (8) grant service enhancement awards to each class representative of \$10,000; (9) approve a gross settlement amount of \$918,000² and grant an award of attorneys’ fees of \$229,500 (25% from the gross settlement amount of \$918,000) and litigation costs of \$19,468.90, for a total fee and expense award of \$244,468.90; (10) tentatively award the settlement administrator,

¹ Capitalized terms herein have the same meaning as in the Settlement Agreement, attached as Exhibit “1” to the Declaration of Armand R. Kizirian in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Kizirian Decl.”), filed herewith.

² There are 618 Class Members, which exceeds Allegiant’s estimate by 7% (i.e., 2% above the 5% variance provided in the settlement agreement). Accordingly, Allegiant is responsible for paying an additional \$18,000 (2% of the \$900,000) for a total Gross Settlement Amount funding of \$918,000

1 Simpluris, Inc., \$17,270 for claims administration expenses; (11) dismiss the action with prejudice
2 pursuant to the terms and conditions of the Settlement Agreement; (12) retain jurisdiction over the
3 enforcement and implementation of the Settlement Agreement; and (13) issue related orders as
4 necessary.

5
6 Dated: January 24, 2025

Respectfully Submitted,

BOYAMIAN LAW, INC.

7
8 By: /s/ Armand R. Kizirian

Armand R. Kizirian

9 Attorneys for Plaintiffs CHRISTIAN DECENA,
10 HAIRON MARTINEZ, MIGUEL RIOS, and
11 RIGOBERTO GODOY, and all others similarly
situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 10, 2024, this Court granted preliminary approval of the class action settlement reached in this action between Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy (“Plaintiffs”) and Defendants Allegiant Final Mile, LLC (“Allegiant”), Mattress Firm, Inc. (“Mattress Firm”), and Diverse Logistics & Distribution, LLC (“Diverse”) (erroneously sued as Diverse Logistics & Distribution, Inc.) (Allegiant and Mattress Firm collectively, “Defendants”) (“October 10, 2024 Order”). Plaintiffs now seek final approval of the proposed Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

Plaintiffs allege that they and other Settlement Class Members were misclassified as Independent Contractors while performing services for Defendants, and therefore denied the protections of the California Labor Code. Plaintiffs therefore alleged claims for unpaid wages, minimum wages, overtime pay, interest thereon, wage statement and waiting time penalties, and other equitable relief, as well as reasonable attorneys’ fees and costs. Defendants deny Plaintiffs’ allegations, and the parties reached a settlement of claims that includes a Gross Settlement Amount of Nine Hundred Eighteen Thousand Dollars and Zero Cents (\$918,000.00)³, which includes attorneys’ fees and costs, the payment to the Labor and Workforce Development Agency (“LWDA”), enhancement awards to the class representatives, and court-approved costs of settlement administration.

Notice was mailed to 618 Class Members November 22, 2024. As explained in detail below, the notice procedures here were adequate. To date, the reaction of the Class has been unanimously positive. The postmark deadline for opt-outs, disputes, and objections is February 21, 2025. As of January 24, 2025, the settlement administrator, Simpluris, Inc. (“Simpluris”), has received zero requests for exclusion from the Settlement. More significantly, Simpluris has

³ There are 618 Class Members, which exceeds Allegiant’s estimate by 7% (*i.e.*, 2% above the 5% variance provided in the settlement agreement). Accordingly, Allegiant is responsible for paying an additional \$18,000 (2% of the \$900,000) for a total Gross Settlement Amount funding of \$918,000

received zero objections to the Settlement. Therefore, thus far, 618 Class Members have chosen to participate in this Settlement and none have opposed it. Declaration of Markus Bulthuis Regarding Notice and Settlement Administration (“Bulthuis Decl.”), ¶¶ 8, 11-12.

Based upon the substantial result Plaintiffs’ Counsel has achieved on behalf of the Class, Plaintiffs’ Counsel requests a fee award of 25% of the common fund, (\$229,500), the Ninth Circuit’s benchmark for class action settlements.

In addition, through this Motion, Plaintiffs seeks reimbursement of \$19,468.90 in litigation costs and authorization to pay the settlement administrator \$17,270 in for their work in this matter. As Plaintiffs’ litigation costs and the work of Simpluris have been necessary to the resolution of this matter, reimbursement to Plaintiffs’ Counsel and payment to the settlement administrator is proper and authorized under numerous precedents. Finally, Plaintiffs’ Counsel seeks a service award of \$10,000 to each of the Plaintiffs for their assistance to counsel in this action and for agreeing to a comprehensive general release as part of the proffered settlement.

With respect to the request for 25% of the Gross Settlement Amount for attorneys’ fees, this should be granted by the Court for the following reasons:

Degree of Success: The \$918,000 gross settlement is a respectable recovery for the approximately 618 Class Members given the significant hurdles the Class faces in pursuing a misclassification wage and hour class action suit such as this against the three named defendants. Before the putative class could even reach a trial on the merits, Plaintiffs would first have to secure certification, something that Defendants have strenuously contested. Instead, rather than waiting several years for a resolution of the instant matter, the Parties’ settlement allows for Class Members to receive compensation for their harm at a relatively early stage in the litigation. Moreover, as Plaintiffs’ Counsel has reduced their fee request from 33%, as estimated in the Motion for Preliminary Approval (Dkt. No. 54, p. 30), to 25% of the gross settlement amount, the net amount available to Class Members will be higher than first anticipated.

Risks of Continued Litigation: The substantial result achieved in this case was obtained in the face of a significant risk of receiving nothing or a substantially reduced amount if litigation continued. As set forth below, Defendants had potentially several strong defenses to this case

that would either completely defeat Plaintiffs’ claims or substantially limit their value, particularly if Defendants were able to limit the scope of the class or the claims to be certified as a result of a second motion to dismiss and strike portions of the operative complaint.

Fees Awarded by Other Courts: The percentage sought by Class Counsel is within the historical range of fees awarded by other federal and state courts in similar class actions.

Time Expended and Lodestar Cross-Check: Class Counsel performed significant work to achieve the settlement. The lodestar to date is \$294,347.50. The negative multiplier of 0.78 which Plaintiffs seek in order to secure a recovery of 25% of the gross settlement amount (\$229,500) is well within the range of attorney fee awards permitted by state and federal courts in California.

Contingent Nature of Litigation: During the pendency of the case, Class Counsel has not received any money and has advanced all costs to date.

Ultimately, the present 100 percent participation rate in a Class comprised of several hundred individuals confirms that the Settlement is reasonable and in the best interests of the Class.⁴ Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement and grant the requested attorneys’ fees, costs, service awards, and payment to the settlement administrator.

II. FACTUAL BACKGROUND AND THE PARTIES’ CONTENTIONS

Defendant Allegiant is a logistics company that contracts with retailers, such as Mattress Firm, to handle the logistics for consumer deliveries in California. Allegiant’s logistics work includes utilizing its property brokerage authority to place Mattress Firm goods with Contract Carriers that have the equipment (trucks) and labor (typically a driver and helper per truck) to physically deliver the goods.⁵ The Contract Carriers and their workers—referred to here as “Drivers” and “Helpers”— are

⁴ Plaintiffs will submit a supplemental declaration from the third-party administrator once the notice period closes to apprise the Court of the final number of opt-outs and/or objections to the proposed Settlement on or before March 18, 2025 per the Court’s Order (Dkt. No. 60).

⁵ “Contract Carrier” is a term of art in the transportation industry for a motor carrier providing transportation service to meet the special needs of an individual shipper. *See, e.g.*, Freight Motor Carrier Oversight: Hearing Before the Subcomm. on Surface Transp. of the Comm. on Commerce, Sci., and Transp., 102d Cong. 10 (1991) (“Contract carrier authority allows carriers

1 the focus of this suit. Information exchanged in the litigation shows that, while Defendant Diverse
 2 shares some common ownership with Allegiant, Diverse does not operate in California and does not
 3 have any employees or independent contractors in California. Declaration of Armand R. Kizirian
 4 (“Kizirian Decl.”), ¶ 6.

5 This freight that putative Class Members moved were products provided by Defendant
 6 Mattress Firm. Along with Allegiant’s personnel, the warehouses that the Contract Carriers, Drivers,
 7 and Helpers operated out of were also staffed by employees of Mattress Firm. Essentially, while
 8 Allegiant’s role was focused more upon the logistics of planning the deliveries to Mattress Firm’s
 9 customers, it is Plaintiffs’ contention that Mattress Firm’s role was in ensuring that the Contract
 10 Carriers, Drivers, and Helpers provided the appropriate customer experience while conducting the
 11 deliveries. Plaintiffs Christian Decena, Hairon Martinez, and Miguel Rios were Contract Carriers that
 12 contracted with Allegiant during the Class Period. Plaintiffs Christian Decena, Hairon Martinez,
 13 Miguel Rios, and Rigoberto Godoy all worked as Drivers for Contract Carriers that contracted with
 14 Allegiant during the Class Period. In addition, Plaintiff Rigoberto Godoy worked as a Helper for
 15 Contract Carriers that contracted with Allegiant during the Class Period. Kizirian Decl., ¶ 7.

16 Plaintiffs contend that the Contract Carriers, Drivers, and Helpers, are misclassified as
 17 independent contractors when they are really employees. Defendants deny that any of the Contract
 18 Carriers, Drivers, or Helpers have been misclassified. If Plaintiffs were to establish the employment
 19 relationship between Defendants and the putative Class, Plaintiffs contend that Defendants would owe
 20 the Contract Carriers, Drivers, and Helpers substantial compensation for violation of California’s wage
 21 and hour laws as no attempt is made by Defendants to track the putative Class’s hours of work, ability
 22 to take meal and rest breaks, or reimbursement of the Class’s work expenses. Kizirian Decl., ¶ 8.

23 ///

24
 25 _____
 26 to tailor specific service standards to individual shippers and is considered an extremely
 27 important marketing tool in securing shipper business.”); *BML Stage Lighting, Inc. v. Mayflower*
 28 *Transit, Inc.*, 14 S.W.3d 395, 403 (Tx. Ct. App. 2000) (a “contract carrier provides transportation
 of “property for compensation under continuing agreements with one of more persons (i) by
 assigning motor vehicles for a continuing period of time for the exclusive use of each such
 person; or (ii) designed to meet the distinct needs of each such person.”) (cleaned up).

1 This is so, Plaintiffs contend, because Defendants maintained no meal period policies, rest
 2 policies, or any other wage and hour policies for the Settlement Class because they simply did not treat
 3 them as employees. Moreover, the expenses Plaintiffs contend that Class Members, particularly
 4 Contract Carriers, were forced to shoulder include the costs for things like truck insurance, fuel,
 5 vehicle maintenance, and cell phones used to communicate with dispatch. Defendants deny all of
 6 these claims. Kizirian Decl., ¶ 9.

7 There are 618 Settlement Class Members who currently or formerly delivered Mattress Firm
 8 products as Contract Carriers, Drivers, and Helpers in the State of California. As noted, Plaintiffs
 9 claim that these Contract Carriers, Drivers, and Helpers were Defendants misclassified independent
 10 contractors who should have been treated as employees. However, because Defendants maintain that
 11 these Contract Carriers, Drivers, and Helpers were not their employees, Defendants cannot be liable
 12 for the allegedly unpaid wages, penalties, or other damages, that were sought in this action. Kizirian
 13 Decl., ¶ 10.

14 **III. PROCEDURAL BACKGROUND**

15 On March 24, 2023, Plaintiffs filed this case in Alameda County Superior Court on behalf of
 16 all individuals who performed delivery services for Defendants as Contract Carriers, Drivers, and/or
 17 Helpers and worked in the State of California from September 27, 2018, and continuing while the
 18 action was pending. The Complaint included nine causes of action: (1) Failure to Pay Minimum
 19 Wages; (2) Failure to Pay Overtime Compensation; (3) Reimbursement of Employment Expenses; (4)
 20 Unlawful Deduction from Wages; (5) Failure to Provide Meal Periods; (6) Failure to Authorize and
 21 Permit Rest Periods; (7) Failure to Furnish Accurate Wage and Hour Statements; (8) Waiting Time
 22 Penalties; and (9) Unfair Competition. On June 6, 2023, Plaintiffs filed a First Amended Complaint
 23 which added a tenth cause of action under the Private Attorneys General Act of 2004. Kizirian Decl.,
 24 ¶ 11.

25 On July 21, 2023, Defendant Mattress Firm removed this action to the United States District
 26 Court for the Northern District of California. The case was ultimately assigned to the Honorable
 27 Yvonne Gonzalez Rogers. In August 2023, Counsel discussed the possibility of attending an early
 28

1 mediation. The Parties agreed to attend a mediation with Antonio Piazza, Esq., which was scheduled
2 for January 16, 2024. Kizirian Decl., ¶ 12.

3 While the Parties were gearing up for their mediation, they did not stay this matter. Instead, on
4 July 28, 2023, Defendants Allegiant and Diverse filed a Motion to Dismiss the Second (failure to pay
5 overtime), Fifth (failure to provide meal breaks), and Sixth Causes of Action (failure to provide rest
6 breaks). Plaintiffs filed their opposition on August 25, 2023, with Defendants Allegiant and Diverse
7 submitting their reply on September 1, 2023. The Court thereafter issued its ruling on January 2,
8 2024, granting Defendants' motion, but allowing Plaintiffs leave to amend. On June 16, 2024,
9 Plaintiffs filed their operative Second Amended Complaint. Kizirian Decl., ¶ 13.

10 From before they filed suit, but especially in the months leading up to mediation, Class/PAGA
11 Counsel conducted a thorough investigation into the relevant facts and legal claims. Class/PAGA
12 Counsel formulated a list of documents and data they would need from Defendants in order to conduct
13 a meaningful mediation. After meeting and conferring with Defendants' Counsel on this matter,
14 Defendants informally produced substantial amounts of data and documentary evidence to Plaintiffs.
15 With this data, Class/PAGA Counsel estimated the amount of damages potentially available to
16 putative Class Members based on the scope of wage and hour violations, assuming Plaintiffs
17 successfully established misclassification. Through the efforts of Plaintiffs themselves, Class/PAGA
18 Counsel was also able to contact various other Contract Carriers, Drivers, and Helpers in the putative
19 Class, thus allowing Class/PAGA Counsel to gain a better understanding of the strengths and
20 weaknesses of the case before attending mediation. Kizirian Decl., ¶ 14.

21 After a full day of mediation, with the extensive efforts and assistance of Mr. Piazza, the
22 Parties were able to reach a settlement in principle on January 16, 2024. Class/PAGA Counsel's
23 experience in litigating numerous independent contractor misclassification suits and the documents
24 and data exchanged by the Parties in the lead up to mediation informed Class/PAGA Counsel's
25 decision to endorse the \$918,000 (previously \$900,000) gross settlement amount. Although the
26 Parties agreed upon a settlement figure on January 16, 2024, negotiations regarding the specific terms
27 of the agreement continued into June 2024. Kizirian Decl., ¶ 15.

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1 In January 2024, following the Parties' mediation, Class/PAGA Counsel came to believe that
2 the federal Department of Labor might initiate their own action against Defendant Allegiant for
3 alleged wage and hour violations. Not wanting to inadvertently undermine a government enforcement
4 action that could result in an objection to the Parties' settlement, Plaintiffs gave the Department of
5 Labor time to initiate their own action with the idea of potentially taking such action into account in
6 framing the scope of the Parties' settlement. As Plaintiffs are not aware of the Department of Labor
7 initiating such an action, the Parties moved ahead with finalizing their Settlement. Kizirian Decl., ¶
8 16.

9 Plaintiffs thereafter moved for preliminary approval of their class and PAGA settlement on
10 August 23, 2024 (Dkt. No. 54). The Motion for Preliminary Approval was unopposed. At the
11 hearing, the Court required changes to be made to the proposed settlement notice documents,
12 specifically the Notice of Class and PAGA Representative Settlement and the Payment Information
13 Form, which were subsequently lodged thereafter (Dkt. No. 57). Preliminary approval was granted by
14 the Court on October 10, 2024, setting the final approval hearing for March 18, 2025 (Dkt. No. 58).
15 Due to the wildfires in the Los Angeles area in January 2025 impacting counsel for the Parties, the
16 Court granted a stipulation submitted by the Parties to move the final approval hearing date, resetting
17 it to March 25, 2025 at 2:00 p.m. (Dkt. No. 60). Kizirian Decl., ¶ 17.

18 Based on their independent investigation and evaluation, Class/PAGA Counsel are of the
19 opinion that the Settlement with Defendants for the consideration and on the terms set forth in the
20 Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of the Settlement
21 Class Members, in light of all known facts and circumstances, including the risk of significant delay,
22 the risk that if this matter is litigated a class may not be certified by the Court or that it may later be
23 decertified, the risk that Defendants will prevail on their defenses, as well as potential appellate issues.
24 Given the highly positive response of the Settlement Class Members to the proffered settlement,
25 Plaintiffs believe that this Court should enter final approval of the Parties' class and PAGA settlement.
26 Kizirian Decl., ¶ 18.

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1 **IV. TERMS OF THE SETTLEMENT**

2 The complete Settlement Agreement, along with its exhibits, is attached as Exhibit “1” to the
3 Declaration of Armand R. Kizirian, filed concurrently herewith.

4 **V. NOTICE PROCESS, OBJECTIONS, AND EXCLUSIONS**

5 With the Court’s preliminary approval, the Settlement designated Simpluris as the settlement
6 administrator in this case. The Settlement provided that Simpluris would provide Notice of Settlement
7 of Class Action (the “Notice”) by first class mail to the last known addresses of Class Members.
8 Settlement, ¶ IV(C).

9 Settlement Class Members have had 60 days to submit the optional Payment Information
10 Form, opt-out, or object to the Settlement. Settlement, ¶ IV(E), (H), (J).

11 On October 28, 2024, Simpluris received from Defendants a computerized list of 618 Class
12 Members. Bulthuis Decl., ¶ 6. Simpluris formatted the list for mailing purposes, removed duplicate
13 records, and processed the names and addresses through the National Change of Address Database to
14 update any addresses on file with the United States Postal Service. Bulthuis Decl., ¶¶ 7-8.

15 On November 22, 2024, Simpluris caused the Notice to be printed and mailed to the 618 names
16 on the original class list. Simpluris delivered the Notices to the United States Post Office. Bulthuis
17 Decl., ¶ 8.

18 In addition, since the mailing date, 100 Notices have been returned by USPS to Simpluris as
19 bearing undeliverable addresses. Simpluris performed advanced address searches for this Notice and
20 was able to remail the Notice for 47 Class Members. However, according to Simpluris 53 Notices
21 remain undeliverable. Bulthuis Decl., ¶¶ 10.

22 The postmark deadline for filing requests for exclusion, objections, and disputes of the
23 employment information provided in the Notice is February 21, 2025. To date, Simpluris has received
24 zero requests for exclusion. Notably, Simpluris has not received any objections to the Settlement.
25 Bulthuis Decl., ¶¶ 11-13.

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1 **VI. LEGAL ARGUMENT**

2 **A. The Settlement Meets the Criteria for Final Approval.**

3 Courts strongly favor settlement, particularly in complex class actions. *Class Plaintiffs v.*
 4 *City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *see also Churchill Vill., LLC. V. Gen. Elec.*
 5 (9th Cir. 2004) 361 F.3d 566, 576. Approval of a class action settlement rests in the sound
 6 discretion of the trial court. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.

7 In determining final approval, the court's inquiry is whether the settlement is "fair,
 8 adequate, and reasonable." Fed. R. Civ. P. 23(e)(2). A class action settlement meets this
 9 standard when "the interests of the class are better served by the settlement than by further
 10 litigation." Manual for Complex Litigation (Fourth) § 21.61 (2004). Rule 23(e)'s primary
 11 concern is "the protection of those class members, including the named plaintiffs, whose rights
 12 may not have been given due regard by the negotiating parties." *Ma v. Covidien Holding, Inc.*
 13 (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 76359, *4. However, rather than reaching any
 14 conclusions on the contested legal and factual issues, a court may "presume that through
 15 negotiation, the Parties, counsel, and mediator arrived at a reasonable range of settlement by
 16 considering Plaintiff's likelihood of recovery." *Villegas v. J.P. Morgan Chase & Co.*, (N.D. Cal.
 17 2012) 2012 U.S. Dist. LEXIS 166704, *15-16.

18 In deciding whether a class action settlement is fair, adequate and reasonable, courts in
 19 the Ninth Circuit consider the following factors: (1) the strength of the Plaintiff's case; (2) the
 20 risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining
 21 class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
 22 discovery completed, and the stage of the proceedings; (6) the experience and views of counsel;
 23 (7) the presence of a governmental participant; and (8) the reaction of the class members to the
 24 proposed settlement. *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 963
 25 (overruled on other grounds).

26 As discussed below, these factors weigh heavily in favor of final approval because the
 27 benefit of a considerable non-reversionary financial recovery of \$918,000 distributed to 618
 28 Class Members outweighs the risks, costs and delays inherent in further class action litigation.

1. **The Settlement is Fair Given the Strength of Plaintiffs’ Case and the Risk, Expense, Complexity, and Likely Duration of Litigation.**

The first, second, and third *Rodriguez* factors all support final approval of this Settlement. As to the first prong, Plaintiffs face the difficult task of proving that Class Members were misclassified as independent contractors. Plaintiffs must convince the trier of fact that Defendants exerted so much control over Class Members that they should as a matter of law be deemed to be the employees of Defendants. Plaintiffs must clear this significant hurdle before even beginning to approach the issue of proving the asserted labor code violations. The uncertainty over whether Plaintiffs will be able to achieve class certification, whether Class Members will be deemed to be employees of both (or either) Defendants, and whether Plaintiffs will be able to prove the asserted labor code violations make this \$918,000 settlement amount for 618 Class Members a genuinely “fair, adequate, and reasonable” result.

Plaintiffs allege that Defendants improperly misclassified the Settlement Class Members as independent contractors exempt from minimum wage, overtime, meal and rest period laws, and the wider protections of the California Labor Code and wage orders. Although Plaintiffs believe they have a strong case, further litigation carries numerous risks and obstacles for Plaintiffs and Settlement Class Members, as described below. Kizirian Decl., ¶ 19.

Plaintiffs contend Settlement Class Members suffered injuries as a result of Defendants misclassifying them as independent contractors when they were actually employees. If Plaintiffs were to establish the employment relationship between Defendants and the Settlement Class, Plaintiffs contend that Defendants would owe the Contract Carriers, Drivers, and Helpers substantial compensation for violation of California’s wage and hour laws as no attempt is made by Defendants to track the Settlement Class’s hours of work, ability to take meal and rest breaks, or reimbursement of the Class’s work expenses. Kizirian Decl., ¶ 20.

In particular, Plaintiffs contend that many Class Members such as Contract Carriers, were forced to cover the costs for truck insurance, fuel, vehicle maintenance, and cell phones used to communicate with dispatch. Plaintiffs’ investigation and the document exchange completed with Defendants has shown that Defendants imposed common policies, whether

1 formally or through a course of conduct, where they and only they exerted significant control
2 over the work of Class Members. Nevertheless, Defendants disagree with this characterization,
3 and if trial testimony reveals that contract carrier Class Members were somewhat insulated from
4 Defendants' control, and that the truck owner Class Members were mostly exerting control over
5 the contract carrier Class Members, class treatment in such a scenario may become untenable.
6 Kizirian Decl., ¶ 21.

7 However, the uncertainty over whether Plaintiffs will maintain class certification and the
8 appropriateness of class treatment, and whether Plaintiffs will be able to prove the asserted labor
9 code violation makes this \$918,000 settlement amount for 618 Class Members a genuinely "fair,
10 adequate, and reasonable" result.

11 The second *Rodriguez* factor also supports the final approval of this settlement. First,
12 Plaintiffs may not be able to certify the Putative Class under Rule 23(b). Plaintiffs largely rely on
13 the Defendants' uniform business practices that treat the Settlement Class Members as non-
14 employees or independent contractors to establish both commonality and predominance.
15 Plaintiffs will also argue that other common issues also predominate, such as whether the job
16 expectations and degree of control exercised by Defendants upon the Contract Carriers, Drivers,
17 and Helpers are uniform across the Class. Kizirian Decl., ¶ 22.

18 Even if Plaintiffs can show that Contract Carriers, Drivers, and Helpers were not
19 independent contractors, Defendants can assert numerous defenses regarding liability and
20 damages. For instance, Defendants contend that the Contract Carriers with which they contracted
21 to perform delivery services employed Drivers and Helpers, creating both a conflict within the
22 class if pursued, and also shifting liability away from Defendants. Kizirian Decl., ¶ 23.

23 With regard to Plaintiffs' claims for wage statement and waiting time penalties, both
24 claims are derivative of Plaintiffs' primary wage claims. Thus, Plaintiffs would recover nothing
25 for themselves, or the Class, if the underlying claims are unsuccessful. Kizirian Decl., ¶ 24.

26 Defendants' positions in this litigation may result in no recovery for Plaintiffs and the
27 Settlement Class Members, or protracted appeals and significant risks to meaningful recovery for
28 the Settlement Class Members. Consequently, the benefits of the settlement greatly outweigh the

1 risks of continuing to litigate the issues in this case. Kizirian Decl. ¶ 25.

2 Moreover, if this case ultimately reaches trial, the trial process itself is likely to be long
3 and complicated. As this is a misclassification case, Plaintiffs must present evidence on the issue
4 of whether Class Members are to be deemed the employees of Defendants. Only after presenting
5 evidence on the issue of employee or independent contractor status would Plaintiffs begin
6 presenting evidence on the asserted labor code violations. As Plaintiffs allege claims for
7 numerous violations, including unpaid overtime, meal break violations, rest break violations,
8 unfair competition, and PAGA penalties, the trial length would be significant. Kizirian Decl. ¶
9 26.

10 Finally, the third *Rodriguez* factor also favors approval of the instant settlement. While
11 Plaintiffs contend that Settlement Class Members were misclassified, it is nevertheless true that
12 the way each Contract Carrier conducted operations, including from the Drivers and Helpers it
13 formally employed, varied to an extent between them. For the Contract Carriers themselves, the
14 nature of their work was less consistent than with Drivers and Helpers. Thus, even if most or all
15 of the Contract Carriers, Drivers, and Helpers can be said to have been misclassified, whether
16 class certification outside of the settlement context under Rule 23 would be granted is a very
17 different question. Thus, while the \$918,000 gross settlement amount appears at first glance to
18 be a substantial discount on the maximum damages available, given the risks of this particular
19 suit, the amount is extremely reasonable and results in a good settlement for the putative class.
20 Put differently, if trial testimony shows that the amount of control that Defendants had over
21 Class Members varied based on the way each Contract Carrier conducted operations varied, the
22 suit may then be deemed inappropriate for class treatment. Kizirian Decl., ¶ 27.

23 2. **The Settlement Consideration and Allocation are Fair.**

24 Simpluris has preliminarily calculated the class member settlement awards based on a
25 Net Settlement Amount of \$581,761.10 and 618 participating Class Members. Specifically, the
26 net settlement sum was calculated by subtracting the requested attorneys' fees (\$229,500.00), the
27 amount allocated for litigation costs and expenses (\$19,468.90), the requested Enhancement
28 Payments (\$10,000.00 for each Plaintiff, total \$40,000), the requested Settlement Administration

Costs (\$17,270.00), and the LWDA Payment (\$22,500.00) from the Gross Settlement Amount (\$918,000.00). Bulthuis Decl., ¶ 14.

Based on the above calculations, the average claim value for 618 participating Class Members with a \$581,761.10 Net Settlement Amount is \$941.36, and the highest individual settlement payment will be \$6,458.44. Bulthuis Decl., ¶ 14.

“[I]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment.” *Villegas*, 2012 U.S. Dist. LEXIS 166704 at *16. (internal quotations and citations omitted).

Case law demonstrates that even a fractional recovery may be fair and reasonable depending on the circumstances of the case. *See Balderas v. Massage Envy Franchising, LLC* (N.D. Cal. July 21, 2014) 2014 U.S. Dist. LEXIS 99966, *16 (preliminarily approving settlement “on the low end of the spectrum for class settlement awards receiving approval” where gross settlement amount of \$504,000 “represents roughly eight percent of the maximum recovery” and net settlement amount of \$325,000 represents “just five percent.”); *O’Sullivan v. AMN Services, Inc.* (N.D. Cal. Feb. 7, 2014) 12-cv-2125 (ECF No. 92) (\$3 million gross settlement amount for a class of 11,685 people – total exposure estimated for the case was \$108 million, before penalties and interest); *Scott v. Bimbo Bakeries USA* (E.D. Pa. March 5, 2014) No. 2:10-cv-03154 (ECF No. 174) (approving settlement of wage and hour claims alleging independent contractor misclassification for payments of \$900 to each current driver and \$450 to each former driver); *Bautista v. Harvest Management Sub* (C.D. Cal. July 7, 2014) No. 2:12-cv-10004 (ECF No. 79) (final approval of a \$2.2 million gross settlement amount for wage-and hour violation claims of 14,000-member class).

Accordingly, as set forth in Plaintiffs’ Motion for Preliminary Approval and based on the settlement administrator’s calculation of the projected individual recoveries, the amount in settlement here is reasonable given the strength of Plaintiffs’ claims and the risks, expenses, and complexity of continued litigation as described above. Kizirian Decl., ¶ 28.

1 The plan of allocation is also fair and reasonable. The Settlement provides that the
 2 settlement fund shall be allocated based, for all intents and purposes, the length of work of the
 3 participating Class Member during the time period encompassed by the suit. Kizirian Decl., ¶
 4 29.

5 3. **The Settlement Reflects the Informed Views of Experienced Counsel**
 6 **and Is the Product of Serious, Arms-Length Negotiations Conducted**
 7 **After Extensive Discovery and Investigation.**

8 The fifth and sixth *Rodriguez* factors—the informed views of counsel and the discovery
 9 conducted to date in the litigation—also support final approval of the Settlement.

10 Prior to filing the complaint, Class Counsel was readily familiar with the business model
 11 of Defendants, having filed similar wage and hour class action lawsuits against other retailers
 12 and logistics providers with an analogous arrangement as that of Mattress Firm and Allegiant.
 13 From before they filed suit, but especially in the months leading up to mediation, Plaintiffs’
 14 Counsel conducted a thorough investigation into the relevant facts and legal claims. Plaintiffs’
 15 Counsel formulated a list of documents and data they would need from Defendants in order to
 16 conduct a meaningful mediation. Kizirian Decl., ¶ 30.

17 After meeting and conferring with Defense Counsel on this matter, Defendants
 18 informally produced substantial amounts of data and documentary evidence to Plaintiffs. With
 19 this data, Plaintiffs’ Counsel calculated the damages potentially available to Putative Class
 20 Members based on the scope of wage and hour violations, assuming Plaintiffs successfully
 21 established misclassification. Through the efforts of Plaintiffs themselves, Plaintiffs’ Counsel
 22 were also able to contact various other Contract Carriers, Drivers, and Helpers of Defendants,
 23 thus allowing Plaintiffs’ Counsel to gain a better understanding of the strengths and weaknesses
 24 of the case before attending mediation. Kizirian Decl., ¶¶ 31.

25 After a full day of mediation, with the extensive efforts and assistance of the mediator,
 26 Antonio Piazza, the Parties were able to reach a settlement in principle on January 16, 2024.
 27 Settlement Class Counsel’s experience in litigating numerous independent contractor
 28 misclassification suits and the documents and data exchanged by the Parties in the lead up to

mediation informed Plaintiffs' Counsel decision to endorse the \$918,000 gross settlement amount. Although the Parties agreed upon a settlement figure on January 16, 2024, negotiations regarding the specific terms of the agreement continued into May 2023. Kizirian Decl., ¶ 32.

Class Counsel is experienced in class action litigation and focuses on employment wage and hour matters. Under these circumstances, Class Counsel's assessment that the Settlement is fair, adequate, and reasonable is worthy of deference. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528 ("Great weight" is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.").

4. **The Lack of Opposition by the Class Supports Approval.**

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F. Supp. 2d 1036, 1043 (internal citations omitted).

As described above, pursuant to the Court's preliminary approval order, Simpluris mailed the Notice to all Settlement Class Members identified through the data provided by Defendants. Bulhuis Decl., ¶ 8. The deadline to object to the Settlement and the deadline to opt-out from the Settlement is February 21, 2025. To date, Simpluris has received zero objections and zero opt-outs to the Settlement. Bulhuis Decl., ¶¶ 11-13.

A 100% participation rate and 0% objection rate supports the view that the Settlement is fair and reasonable. *Barcia v. Contain-A-Way, Inc.* (S.D. Cal. 2009) 2009 U.S. Dist. LEXIS 17118, *12 (absence of objectors "strongly supports the fairness, reasonableness, and adequacy of the settlement").

B. Confirmation of the Court's Provisional Class Certification is Appropriate

Plaintiffs also requests that the Court confirm its provisional certification order and find that the proposed Settlement Class meets all the requirements under Rule 23. Specifically, Plaintiffs ask the Court to finally certify the following classes for settlement purposes: "Settlement Class Members: (a) all individuals who provided services to Allegiant delivering Mattress Firm products as contract carrier owners, drivers

and/or helpers in the State of California; and (b) all contract carrier owners who owned or controlled an entity that contracted directly with Allegiant and provided delivery services delivering Mattress Firm products in the State of California, at any time during the Class Period [January 1, 2020 to October 10, 2024].”

Settlement Agreement sec. II.C. Plaintiffs also request approval of the following:

“PAGA Group Members: (a) all individuals who provided services to Allegiant delivering Mattress Firm products as contract carrier owners, drivers and/or helpers in the State of California; and (b) all contract carrier owners who owned or controlled an entity that contracted directly with Allegiant and provided delivery services delivering Mattress Firm products in the State of California, at any time during the PAGA Period [March 31, 2022 to October 10, 2024].”

Dkt. 58 at 5.

The provisionally certified classes satisfy each of the certification requirements that: (1) the individuals in the settlement Class are so numerous that joinder would be impracticable (618 settlement Class Members); (2) there are common questions of law or fact common to the class; (3) Plaintiffs’ claims are typical of the claims of the absent settlement class members; and (4) Plaintiffs and their counsel will adequately and fairly represent the interests of the absent settlement class members. *Hanlon*, 150 F.3d at 1019. In addition, Plaintiffs have established that the Class is maintainable under Rule 23(b)(3) because common questions “predominate over any questions affecting only individual members,” and class resolution “is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. Pro. 23(b)(3). Accordingly, Plaintiffs request that the Court finally certify the class for settlement purposes under Rule 23.

C. The Court-Ordered Notice Program Is Constitutionally Sound.

Under Rule 23(e), the Court “must direct notice in a reasonable manner to all Class Members who would be bound by a propos[ed settlement].” Fed. R. Civ. P. 23(e)(1) Fed. R. Civ. P. 23(e)(1). Class Members are entitled to receive “the best notice practicable” under the circumstances. *Burns v. Elrod* (7th Cir. 1985) 757 F.2d 151, 154. Notice is satisfactory “if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill., L.L.C.*, 361 F.3d at 575 (internal citations omitted). Moreover, notice that is mailed to each member of a class “who can be identified with reasonable effort” constitutes reasonable notice. *Eisen v. Carlisle &*

1 *Jacquelin* (1974) 417 U.S. 156, 177. For any certified Rule 23(b)(3) class, the notice must
2 inform Class Members “that the court will exclude from the class any member who requests
3 exclusion, stating when and how members may elect to be excluded.” Fed. R. Civ. P.
4 23(c)(2)(B).

5 The final Notice, submitted as Exhibit “A” to the Settlement, explains the nature of the
6 action and the terms of the Settlement (including the Settlement Amount, how individual
7 Settlement awards will be calculated, the attorneys’ fees to be paid, the claims that will be
8 released). It also explains how the Class Members may receive a portion of the Settlement, be
9 excluded from the Settlement, or object to the Settlement. Moreover, the accompanying
10 Payment Information Form, submitted as Exhibit “B” to the Settlement, informed Class
11 Members of their estimated settlement share, the qualifying workweeks used for that calculation,
12 and provided Class Members with information on how they may dispute that calculation if the
13 Class Member felt that the allocation was incorrect. This information satisfies Rule 23(e). *See,*
14 *e.g., Villegas 2012 U.S. Dist. LEXIS 166704*, at * 23 (approving a notice containing the same
15 categories of information).

16 The notice plan provided for in the Settlement and approved by the Court in its October
17 10, 2024 Order satisfies the notice standard for all persons who were mailed notice. Class
18 Counsel formatted this Notice in an easy-to-read manner. The Notice encouraged Class
19 Members to contact the Settlement Administrator or Class Counsel with any questions and
20 provided their names, telephone numbers, and mailing addresses. Kizirian Decl., ¶¶ 5, 33,
21 Exhibit “A” to the Settlement Agreement.

22 Accordingly, the Notice and Notice plan fulfilled all requirements of adequate notice and
23 should be duly approved. *See Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
24 1374-75; Fed. R. Civ. P. 23(c)(2).

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D. Class Counsel Should be Compensated for Their Work from the Common Fund That Has Been Created Only Through Class Counsel's Significant Efforts.

1. Class Counsel's Fee Is Properly Calculated as a Percentage of the Total Class Settlement

It is well-established that when a litigant's efforts create or preserve a fund from which others derive benefits, the court may spread litigation costs proportionately among all the beneficiaries to compensate those who created the fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund for the benefit of persons other than...his client is entitled to a reasonable attorneys’ fee from the fund as a whole.”). In *Serrano v. Priest*, 20 Cal.3d 25 (1977), the California Supreme Court held that:

[W]here a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the fund.

Id. at 34; *see also Bell v. Farmers Insurance Exchange*, 115 Cal.App.4th 715, 726 (2004) (25% fee awarded from \$90 million dollar fund); *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 254 (2001) (recognizing that one method for calculating attorneys’ fees in class actions is the percentage of recovery); *Sanders v. City of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970) (affirming award of attorneys’ fee based on percentage of recovery).

Indeed, it is an accepted practice in wage and hour class action settlements to award attorneys’ fees to Class Counsel based on a total settlement value agreed upon by the parties. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-72 (9th Cir. 2003). In fact, courts have made “the percentage-of-the-benefit approach the preferred method for determining fees” in cases like this one. *See Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 31 (2000) citing *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 379 (9th Cir. 1995); *Paul, Johnson, Alston & Hunt v. Gaulty*, 866 F.2d 268 (9th Cir. 1989). This is because the lodestar approach encourages inefficiency and wasteful attorney hours. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (“[I]t is widely recognized that the lodestar method creates

incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee”).

Notably, the California Supreme Court reaffirmed the percentage of the recovery method as a basis to determine attorneys’ fees in class action cases. As stated by the Supreme Court in *Laffitte v. Robert Half Intern, Inc.*, 1 Cal.5th 480, 503 (2016):

We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation. . . .

Other courts have declared a preference for the percentage method because deficiencies of the lodestar method “ha[ve] stimulated greater judicial willingness to evaluate a fee award as a percentage of the recovery.” *In re Thirteen Appeals Arising Out of San Juan*, 56 F.3d 295, 305-06 (1st Cir. 1995); *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 517 (6th Cir. 1993); *Matter of Continental Illinois Securities Litigation*, 962 F.2d 566, 572 (7th Cir. 1992); *Chun v. Bd. of Trustees of E.R.S.*, 992 P.2d 127 (Haw. 2000); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1266-67 & fn.3, 1271 (D.C. Cir.1993) (noting that the lodestar approach “encourages significant elements of inefficiency,” by giving attorneys an “incentive to spend as many hours as possible” and “a strong incentive against early settlement”; the percentage of the fund approach “more accurately reflects the economics of litigation practice,” and “the monetary amount of the victory is often the true measure of success, and therefore it is most efficient that it influence the fee award”; and stating “we join the Third Circuit Task Force and the Eleventh Circuit, among others, in concluding that a percentage-of-the-fund method is the appropriate mechanism for determining the attorney fees....”).⁶

⁶ *Mashburn v. National Healthcare, Inc.*, 684 F. Supp. 679, 695 (M.D. Ala. 1988) (“One of the reasons for supporting a percentage fee award is to encourage early settlement of cases,” citing H. Newberg, *Attorney Fee Awards*, § 2.07 at 48-51).

1 The percentage of the fund method also more accurately reflects the fees counsel deserve
 2 and the benefit conferred upon the class in cases, like this one, where the case resolves before
 3 class certification or trial. *See Glass v. UBS Financial Services, Inc.*, 2007 WL 221862, at *16
 4 (N.D. Cal. 2007) (25% of the \$45,000,000 fund awarded; “Class counsel’s prompt action in
 5 negotiating a settlement ... should be fully rewarded”; no lodestar cross check conducted or
 6 needed); *Kirchoff v. Flynn*, 786 F.2d 320, 325-26 (7th Cir. 1986) (“The contingent fee uses
 7 private incentives rather than careful monitoring to align the interests of lawyer and client. The
 8 lawyer gains only to the extent his client gains...The unscrupulous lawyer paid by the hour may
 9 be willing to settle for a lower recovery coupled with a payment for more hours. Contingent
 10 fees eliminate this incentive and also ensure a reasonable proportion between the recovery and
 11 the fees assessed to defendants...At the same time as it automatically aligns interests of lawyer
 12 and client, rewards exceptional success, and penalizes failure, the contingent fee automatically
 13 handles compensation for the uncertainty of litigation.”); *In re M.D.C. Holdings Securities*
 14 *Litigation*, 1990 WL 454747, at *9 (S.D. Cal. 1990) (“[T]he results reached here were
 15 accomplished in a remarkably short period of time. It is my strong belief that in general the
 16 actual amount of recovery, if any, which ultimately goes to plaintiffs in the majority of cases is
 17 inversely proportional to the time spent in litigation...And finally, concluding litigation quickly
 18 and with a fair result is beneficial to the general public in that it frees the resources of the courts
 19 to deal with other matters.”); *In re Quantum Health Resources, Inc.*, 962 F. Supp. 1254, 1257
 20 (C.D. Cal. 1997) (“As critics have noted, the lodestar method needlessly increases judicial
 21 workload, creates disincentive for early settlement, and causes unpredictable results. The court
 22 agrees with these criticisms.” [internal citations omitted]).

23 Courts have long recognized that a percentage of recovery for attorneys’ fees is properly
 24 awarded on the basis of the total value rather than the claims payments made. *Boeing*, 444 U.S.
 25 at 478, 480-81 (fees of approximately \$2,000,000 approved on settlement value of \$7,000,000
 26 where claims totaled \$706,600 or 47% of the total available); *Williams v. MGM-Pathe*
 27 *Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (attorney fee award should be based
 28 on 33.3% as agreed by the parties based on total recovery value of \$4.5 million, though actual

payout totaled less; “court abused its discretion by basing the fee on the class members’ claims against the fund rather than on the percentage of the entire fund or on the lodestar”); *Vizcaino*, 290 F.3d at 1049-50 (no abuse of discretion in awarding percentage of the common fund). Accordingly, basing the fee award on the total settlement amount is appropriate and justified under the circumstances.

2. Class Counsel’s Request for 25% of the Common Fund is Reasonable

Class counsel requests \$229,500 in attorneys’ fees, which constitutes 25% of the Gross Settlement Amount created by their efforts. Historically, attorneys’ fee awards in common fund cases range from 20% to 50% of the fund, depending on the circumstances of the case. Newberg on Class Actions (3rd Ed. 1992), § 14.03; *c.f. In Re Cendant Corp. PRIDES Litigation*, 243 F.3d 722, 736 (3rd Cir. 2001) (finding that “most fee award range ‘from nineteen percent to forty-five percent of the settlement fund.’”).

According to Newberg:

No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.

Newberg, § 14.03.

A 25% fee award of the Gross Settlement Amount is appropriate in this case. Courts in the Ninth Circuit have ruled that 25% is the benchmark courts should use as a starting point to determine the percentage of attorneys’ fees to award from a common fund (*see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (1998)), with 20%-30% being “the usual range.” *See Black v. T-Mobile USA, INC.*, 219 WL 3323087, *6 (N.D. Cal July 24, 2019), *citing Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Courts can adjust this 25% upward based on the following factors: (1) the results achieved; (2) the risk of litigation; (3) the skill required and quality of the work; (4) the contingent nature of the fee and the financial burden carried by the plaintiff; and (5) awards in similar cases. *Id.*, *citing Vizcaino*, 290 F.3d at 1048-1050. Moreover, courts have recognized that “[f]ee award percentages generally are higher in cases where the common fund is below \$10 million.” *Alvarez v. Farmers Ins. Exch.*, No. 2017

1 WL 2214585, at *3 (N.D. Cal. Jan. 18, 2017).

2 Skill Required and Result Achieved. The Settlement achieved here represents a
3 considerable result for the class. The net amount from the \$918,000 to be paid to the Class
4 under the proposed Settlement (after payment of Class Counsel's attorneys' fees [\$229,500],
5 litigation costs [\$19,468.90], Settlement Administration Costs [\$17,270], the Service Awards
6 [\$10,000 * 4], and LWDA portion of the PAGA allocation [\$22,500]), would be \$581,761.10.
7 For the 618 Settlement Class Members, the average payout based on this amount would be
8 approximately \$941.36 per person. Thus, the Settlement avoids the risks of litigation while
9 ensuring that Settlement Class Members receive substantial consideration for the release of their
10 claims stemming from this suit. Notably, the Settlement also affords relief to Settlement Class
11 Members who likely would not have pursued individual claims against Defendants. Kizirian
12 Decl., ¶ 34.

13 Plaintiffs' Counsel are highly skilled and experienced in this type of independent
14 contractor misclassification litigation. In Plaintiffs' Counsel's opinion, based on the facts of
15 this suit and given the present state of the law, this settlement represents an excellent value for
16 the class. Where other attorneys may have declined to bring such litigation on a class basis, or
17 perhaps not attempted to challenge Defendants' formal classification of workers as independent
18 contractors, Plaintiffs' Counsel brought such a suit and successfully negotiated and secured a
19 \$918,000 settlement on behalf of the class. Kizirian Decl., ¶ 35.

20 Importantly, as set forth as part of the preliminary approval briefing, this settlement also
21 compares favorably to the settlements in the similar suits of *Matute v. Pilot Air Freight*,
22 Northern District of California Case No. 4:22-cv-00587-YGR, which resulted in a \$677.18 per
23 person net settlement award along with a 25% fee award to plaintiff's counsel, and *Henriquez v.*
24 *DSI Logistics*, Los Angeles County Superior Court Case No. BC714165, which resulted in a
25 \$480 per person net settlement award along with a 33% fee award to plaintiff's counsel. Based
26 on these two other results and the skill required of Plaintiffs' Counsel here to pursue litigation
27 such as this, a 25% award of the common fund here is reasonable and should be granted by this
28 Court. Kizirian Decl., ¶ 36.

1 Risk of Litigation. Plaintiffs allege that Defendants improperly misclassified the
 2 Settlement Class Members as independent contractors exempt from minimum wage, overtime,
 3 meal and rest period laws, and the wider protections of the California Labor Code and wage
 4 orders. Although Plaintiffs believe they have a strong case, further litigation carries numerous
 5 risks and obstacles for Plaintiffs and Settlement Class Members, as set forth in detail above in
 6 Section VII(A)(1) and incorporated herein. Kizirian Decl. ¶ 37.

7 Due to these aforementioned risks, Defendants' stance in this litigation may result in no
 8 recovery for Plaintiffs and the Putative Class Members, or protracted appeals and significant
 9 risks to meaningful recovery for the Settlement Class Members. Consequently, the substantial
 10 risk of continued litigation supports an award of the Ninth Circuit's benchmark of 25% of the
 11 gross settlement amount in attorneys' fees as Plaintiffs' Counsel have appropriately balanced
 12 the desire to keep pushing forward in the hope of a greater settlement with the very real risk that
 13 the litigation may develop in a negative way for the Plaintiff Class given the risks outlined
 14 above. Kizirian Decl. ¶ 38.

15 Contingency Fee and Advancement of Costs. In addition, Plaintiffs' counsel advanced all
 16 costs in this matter and their fees are entirely contingent in nature. Plaintiffs' counsel has not
 17 received any compensation for their services during the two years that this case has been
 18 pending. The fact that Plaintiffs' Counsel have received no compensation to date, and in fact
 19 even funded the litigation from their own accounts with no guarantee of reimbursement, greatly
 20 favors the award of the requested 25% of the common fund in attorney's fees. Kizirian Decl. ¶
 21 39.

22 Awards in Similar Cases. Finally, it is notable that California and federal courts have
 23 approved numerous attorneys' fee requests in similar cases seeking an equal or greater
 24 percentage of the settlement fund than that sought by Plaintiffs here. *Dawson v. Hitco Carbon*
 25 *Composites, Inc.*, 2019 WL 7842550, *9 (C.D. Cal. November 11, 2019) (awarding 35% of the
 26 common fund in a wage and hour action); *Bennett v. SimplexGrinnell LP*, 2015 WL 12932332, at
 27 *6 (N.D. Cal. Sept. 3, 2015) (awarding 38.8% of the common fund in a wage and hour action);
 28 *Rabin v. PricewaterhouseCoopers LLP*, 2021 WL 837626, at *7 (N.D. Cal. Feb. 4, 2021)

(awarding 35% of the settlement fund); *In re Ampicillian Antitrust Litigation*, 526 F. Supp. 494 (D.D.C. 1981) (awarding 45% of \$7.3 million settlement fund); *Van Gemert v. Boeing Co.*, 516 F. Supp. 412, 420 (S.D.N.Y. 1981) (awarding 36% of the settlement fund).

3. **The Lodestar Approach Demonstrates that Class Counsel’s Attorneys’ Fee Request is Fair, Reasonable and Justified Under the Facts of this Case**

The lodestar number is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the region and for the experience of the lawyer. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). The lodestar number is “presumably reasonable.” *Cunningham v. Cnty of L.A.*, 879 F.2d 481, 488 (9th Cir. 1988).

In *Laffitte v. Robert Half Intern, Inc.*, the California Supreme Court ruled that trial courts have the discretion – but are not required to – perform a lodestar cross check to determine the reasonableness of the attorneys’ fee award. *Laffitte*, 1 Cal.5th at 506. If the Court chooses to perform a lodestar analysis, case law is clear the Court is not required to “closely scrutinize each claimed attorney-hour, but ... instead ... ‘focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.’” *Id.* at 505, quoting 5 Rubenstein, Newberg on Class Actions (5th Ed. 2015), section 15:86, p. 331; *see also Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (“[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court”); *In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283, 342 (3d Cir. 1998) (agreeing with district court that **detailed time summaries were unnecessary where, as here, it was merely using the lodestar calculation to double check its fee award**) (emphasis added); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 451 (E.D. Cal. 2013) (“Where the lodestar method is used as a cross-check to the percentage method, it can be performed with a less exhaustive cataloguing and review of counsel’s hours.”).

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Here, the lodestar approach supports the conclusion that the fee award sought by Class Counsel is fair and reasonable. This is because Class Counsel's lodestar to date amounts to \$294,347.50. Declaration of Michael H. Boyamian ("Boyamian Decl."), ¶ 21. This amounts to a *negative* multiplier in that Class Counsel are foregoing fees for some of the time that they have expended in pursuit of this matter as Plaintiffs' Counsel's fee request is for \$229,500.

This is significant because routinely use a multiplier to substantially *increase* the underlying amount of fees billed for by counsel. *See, e.g., Vizcaino*, 290 F.3d at 1050-51 (upholding 28% fee award that constituted a 3.65 multiplier); *id.* at 1052-54 (noting district court cases in the Ninth Circuit approving multipliers as high as 6.2); *McKenzie v. Federal Exp. Corp.*, 2012 WL 2930201 at *10 (C.D. Cal. July 2, 2012) (in wage and hour action, approving percentage-based fee award that represented multiplier of 3.2); *Johnson v. Brennan*, 2011 WL 4357376, at *20 (S.D.N.Y. 2011) (in wage and hour action, noting that "[c]ourts regularly award lodestar multipliers from two to six times lodestar") (emphasis added); *Beckman v. KeyBank N.A.*, 293 F.R.D. 467, 481-82 (S.D.N.Y. 2013) (in wage and hour action, approving of 6.3 multiplier in lodestar cross-check analysis); citing *Ramirez v. Lovin' Oven Catering Suffolk, Inc.*, 2012 WL 651640, at *4 (S.D.N.Y. Feb. 24, 2012) (in wage and hour action, approving of 6.8 multiplier in lodestar cross-check analysis); *Davis v. J.P. Morgan Chase & Co.*, 827 F.Supp.2d 172, 184-86 (W.D.N.Y. 2011) (in wage and hour action, approving of 5.3 multiplier in lodestar cross-check analysis); *see also Zeltser v. Merrill Lynch & Co., Inc.*, 2014 WL 4816134, at *10 (S.D.N.Y. 2014) (in wage and hour action, approving of 5.1 multiplier in lodestar cross-check analysis and noting "[w]hile this multiplier is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing Plaintiffs' counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial."); *Maley v. Del Global Techs. Corp.*, 186 F.Supp.2d 358, 371 (S.D.N.Y. 2002) ("modest multiplier" of 4.65 in wage and hour class action was "fair and reasonable") (emphasis added).

These decisions further support Plaintiffs' contention that the amount of fees sought by Class Counsel are reasonable. Simply put, where courts routinely award multipliers tripling,

1 quadrupling, quintupling, even sometimes sextupling the underlying baseline fees, Class
 2 Counsel's request of 25% of the common fund here, in line with the Ninth Circuit's benchmark,
 3 represents a 0.78 *negative* multiplier, and therefore a discount on the fees that they are claiming
 4 in this litigation.

5 **a. The Total Number of Hours Claimed Is Reasonable**

6 The declarations of Class Counsel unequivocally demonstrate that the hours spent on this
 7 case in order to obtain the important benefits conferred upon Class Members are reasonable.
 8 Boyamian Decl., ¶¶ 17-21; Kizirian Decl., ¶¶ 11-17, 40-45; *see also Perkins v. Mobile Housing*
 9 *Board*, 847 F.2d 735, 738 (11th Cir. 1998) ("Sworn testimony that, in fact, it took the time
 10 claimed is evidence of considerable weight on the issue of time required in the usual case....").
 11 To deny compensation, "it must appear that the time claimed is obviously and convincingly
 12 excessive under the circumstances." *Id.* The applicant need not detail how each minute was
 13 expended; rather counsel should identify "the general subject matter of his time expenditures."
 14 *Hensley v. Eckerhart*, 461 U.S. 424, 437, n. 12 (1983).

15 The time Class Counsel expended in pursuit of this matter was necessary to furthering the
 16 interests of the class and securing the instant Settlement. Counsel spent significant amounts of
 17 time in investigating Plaintiffs' claims, researching the working conditions of Plaintiffs and the
 18 Settlement Class Members, and drafting Plaintiffs' pleadings in this matter. Moreover, Class
 19 Counsel spent significant time and resources researching the nature of Defendant Mattress Firm
 20 and Allegiant's operations, examining the amount of control Defendants exercise over the
 21 Settlement Class Members, and the nature of the work of the Settlement Class Members
 22 themselves. Plaintiffs' Counsel examined the current state of class action and independent
 23 contractor misclassification case and statutory law to see how best to tailor their suit to
 24 maximize the chances of success. Kizirian Decl. ¶ 40.

25 Once the litigation was initiated, Plaintiffs' Counsel worked with all four of the Plaintiffs
 26 to contact other putative class members to begin gathering evidence for their required motion
 27 for class certification. Moreover, with the information provided by Plaintiffs, Plaintiffs'
 28 Counsel vigorously opposed Defendant Allegiant's early motion to dismiss and strike portions

1 of Plaintiffs' complaint (Dkt. No. 8), researching the issues being raised by Allegiant in-depth,
2 and providing sufficient information to the Court to secure an opportunity to amend the
3 operative complaint and keep all of their claims in the suit. Kizirian Decl., ¶ 42.

4 When the Parties agreed to attend a mediation, Plaintiffs' Counsel worked to come up
5 with a list of documents and information they would need in order to have a credible mediation
6 from both Allegiant and Mattress Firm. Plaintiffs' Counsel spent much time working with and
7 interacting with Defense Counsel in determining what sorts of documents could be gathered and
8 exchanged. Plaintiffs' Counsel then marshaled the information they had learned in preparing a
9 detailed mediation brief and attending a mediation with Antonio Piazza, Esq. on January 16,
10 2024. Kizirian Decl., ¶ 44.

11 Finally, once the Parties reached a settlement in principle, Class Counsel negotiated with
12 Defense Counsel as to the terms of the Settlement Agreement. The Settlement Agreement itself
13 required substantial and protracted negotiations between the Parties as they worked through
14 issues and disagreed on a number of terms. Once the Settlement Agreement was finalized,
15 Plaintiffs' Counsel prepared a Motion for Preliminary Approval of Class Action Settlement and,
16 after preliminary approval was granted by the Court, have worked with the settlement
17 administrator in order to provide notice of the settlement to Class Members. Kizirian Decl. ¶
18 44.

19 Throughout this time, Plaintiffs' Counsel have worked with Defense Counsel and the
20 settlement administrator in addressing various issues that have arisen in the administration of
21 the settlement. In addition, Class Counsel's work in this matter is not done as they field
22 inquiries from Settlement Class Members who reach out for information about the settlement,
23 and as Class Counsel have prepared the instant Motion for Final Approval. Finally, Class
24 Counsel will attend the final approval hearing and, should the Court grant final approval, will be
25 responsible for shepherding the case through its conclusion by overseeing the disbursement,
26 providing the requisite updates to the Court and the LWDA, and fielding any final inquiries
27 from Class Members. Kizirian Decl., ¶ 45.

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1 All in all, given the course of this litigation, Class Counsel's work has been necessary
2 and reasonable in pursuit of the interests of the class, and Plaintiffs' Counsel request for 25% of
3 the common fund in compensation for attorney's fees is highly reasonable.

4 **b. Class Counsel Are Entitled to Local Market Rates and the Hourly**
5 **Rates Claimed Are Reasonable**

6 When determining the reasonable hourly rate, the court should consider the rate
7 prevailing in the community for similar work performed by attorneys of comparable skill,
8 experience and reputation. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir.
9 2008). For purposes of determining the rate prevailing in the community, the court generally
10 looks at the "forum in which the district court sits." *Id.*

11 The background of Class Counsel and the reasonableness of their hourly fees are set forth
12 in the declarations of Class Counsel submitted contemporaneously with this motion. These
13 declarations demonstrate that Class Counsel's hourly rates are well within the range for
14 comparable attorneys of their skill and experience. Boyamian Decl., ¶¶ 2-7, 17-21; Kizirian
15 Decl., ¶¶ 2-4, 40-45.

16 The hourly rates of Class Counsel are fully supported by their extensive experience and
17 reputation in litigating wage and hour class, collective, and representative actions in California,
18 as well as other complex actions. *Id.*; see also *MBNA America Bank, N.A. v. Gorman*, 147
19 Cal.App.4th Supp 1, 13 (2006); *Davis v. City of San Diego*, 106 Cal.App.4th 893, 903 (2003);
20 *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990)
21 ("Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the
22 community, and rate determinations in other cases, particularly those setting a rate for plaintiffs'
23 attorney, are satisfactory evidence of the prevailing market rate."). Class Counsel's hourly rates
24 commensurate with the prevailing market rates in the greater Los Angeles and Northern
25 California Bay Area for attorneys of comparable experience and skill. Class Counsel have also
26 been approved at the hourly rates requested by various state and federal courts. The hourly rates
27 requested are also comparable to the Laffey Matrix. Thus, the hourly rates requested are
28 reasonable and should be approved. Boyamian Decl., ¶ 20; Kizirian Decl., ¶ 41.

c. *The Substantial Risks and Contingent Nature of this Litigation*
Support the Requested Fee Award

Defendants vigorously contested liability, the scope and amount of the claimed damages and the propriety of class certification. While Plaintiffs and their attorneys believe that they would ultimately prevail on the merits in this litigation at trial, Plaintiffs and their counsel realize the risks in moving against Defendants' positions, as detailed above. Resolution of these issues through motion practice, at trial and/or on appeal present a risk at each juncture that the class would not be certified and, even if certified, would not recover at trial. These risks must be considered in assessing the fairness of the settlement, which guarantees a prompt and substantial recovery from Defendants. The settlement agreement in this case is therefore consistent with the "overriding public interest in settling and quieting litigation" that is particularly true in class action suits. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); Newberg on Class Actions (4th Ed., 2002), § 11.41 (citing cases).

Furthermore, Class Counsel risked not only a great deal of time but also a great deal of expense to ensure the successful litigation of this action on behalf of the entire Class. There was the prospect of the enormous cost inherent in class action litigation, as well as a long battle with two corporate defendants that had retained three premier defense firms. That prospect has become a reality in other class action litigation. The expense of protracted litigation is formidable and can run on the tens of thousands if not hundreds of thousands of dollars. Therefore, the risks of litigation undertaken by Class Counsel support the fee requested.

The public policy in favor of settlement of class actions and other complex cases applies with particular force in this case. Certainty of recovery is enhanced by an equitable settlement such as that under consideration in this case. Accordingly, consideration of the expense, time and risk associated with continued prosecution of this matter weigh in favor of settlement.

In addition, this litigation was initiated two years ago and the attorneys' fees were wholly contingent in nature. Class Counsel's attention to this complex case was undertaken in lieu of work on other cases. Kizirian Decl., ¶ 39. The delay Class Counsel has experienced in receiving any compensation in this case requires that Counsel be fairly compensated at the end

of the case; otherwise, Class Counsel would not take on such risky litigation. Indeed, the expectation in class action cases such as this is that Class Counsel would receive several times the amount of their actual lodestar – not just their lodestar. As that is not reasonable given the gross settlement amount, a request of 25% of the common fund, in line with the Ninth Circuit’s benchmark, is highly reasonable and fully warranted in order to fairly compensate Class Counsel for their work.

d. Plaintiffs’ Request for Reimbursement of Costs as Part of the Fee Award is Reasonable and Proper

It is well-established that an attorney who has created a common fund for the benefit of the class is to be reimbursed from the common fund for reasonable litigation expenses. *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014). In wage and hour class actions, courts typically award litigation costs and expenses – including reasonable travel expenses. *Acosta v. Frito-Lay, Inc.*, 2018 WL 2088278, at *14 (N.D. Cal. May 4, 2018).

In total, as set forth in the declarations of counsel to this Court, Class Counsel has incurred an aggregate of \$19,468.90 in unreimbursed costs and expenses in prosecuting this case. Boyamian Decl., ¶ 22.

Since the inception of the litigation, Class Counsel have incurred filing fees, travel expenses, etc. All of these costs and expenses were reasonable and necessary to bring this case to closure. *Id.* As one commentator noted, “the prevailing view is that expenses are awarded in addition to the fee percentage.” Conte, *Attorney Fee Awards*, (2d Ed. 1977) § 2.08 at pp. 50-51.

Courts routinely reimburse plaintiff’s counsel for the costs incurred in prosecuting cases on a contingent fee basis. *See In re Businessland Sec. Litig.*, 1991 WL 427887, at *2 (N.D. Cal. June 14, 1991) and cases cited therein; *In re Warner Communications Sec. Litig.*, 618 F.Supp. 735 (S.D.N.Y. 1985); *In re GNC Shareholder Litig.*, 668 F.Supp. 450, 452 (W.D. Pa. 1987). The recovery of costs is to include all out-of-pocket costs not part of overhead which are typically billed to a client. *Bussey v. Affleck*, 225 Cal.App.3d 1162, 1166 (1990), *overruled on other grounds*. Each of the expenses incurred are of the type that would normally be billed to and paid for by the client, such as filing fees, legal research, attorney services, litigation support,

mediation fees, travel, food and lodging, and other miscellaneous expenses. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

Since the expenses and costs were incurred by Class Counsel for the benefit of the Settlement Class, the requested Class Counsel Costs Award is reasonable and should be approved.

E. Settlement Administration Expenses are Reasonable

Courts regularly award administrative costs associated with providing notice to the class. *Acosta*, 2018 WL 2088278, at *14. The total costs of settlement administration are currently estimated at \$17,270. As the settlement notice period is still open, there is the possibility that the third-party administrator runs into an anticipated issue that may further raise this amount. Kizirian Decl., ¶ 46.

Based on Class Counsel's view and experience, this is a reasonable cost for claims administration given the size of the class and the type of case. Kizirian Decl., ¶ 46.

F. The Payment to the Class Representative Is Reasonable and Routinely Awarded by Courts

The Class Representatives in this matter seek an incentive award of \$10,000 each for bringing this suit, assisting Class Counsel, and agreeing to a broader release as part of the instant settlement. Class Counsel is of the opinion that the incentive award is reasonable and proper and supported by the particular circumstances of this case and the applicable case law. Defendants do not oppose this request.

Courts have long acknowledged that active litigants are entitled to be compensated for bearing the risk and time to represent others. *Lo Re v. Chase Manhattan Corp.*, 19 F.E.P. Cas. (BNA) 1366 (S.D.N.Y. 1979). Where class representatives are provided with special compensation as part of a class settlement, the Court should ensure that it is fair and reasonable. However, "[i]t is the complete package, taken as a whole, rather than the individual component parts, that must be examined." *Officers for Justice v. Civil Service Commission of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).

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1 Indeed, incentive awards “are not uncommon and can serve an important function in
2 promoting class action settlements.” *Sheppard v. Consol. Edison Co. of N.Y., Inc.* U.S.D.C. Case
3 No. 94-CV-0403 (JG), 2002 U.S. Dist. LEXIS 16314, *16 (S.D.N.Y. Aug. 1, 2002); *In re*
4 *Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272-273, fn. 3 (S.D. Ohio 1997) (“[c]ourts
5 routinely approve incentive awards to compensate named plaintiffs for the services they provided
6 and the risks they incurred during the course of the class action litigation”), and cases cited
7 therein.

8 The modest incentive payments to the Class Representatives are intended to recognize
9 their time and efforts on behalf of the Class. “Courts routinely approve incentive awards to
10 compensate named plaintiffs for the services they provide and the risks they incurred during the
11 course of the class action litigation.” *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.
12 Ga. 2001); *see also* Complex Manual § 30.42, n.763 (noting that such awards “may sometimes
13 be warranted for time spent meeting with class members or responding to discovery”). In the
14 *Coca-Cola* case, the court approved incentive awards of \$300,000 to each named plaintiff in
15 recognition of the services they provided to the class by responding to discovery, participating in
16 the mediation process and taking the risk of stepping forward on behalf of the class. *Ingram*, 200
17 F.R.D. at 694; *see also* *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (1995)
18 (approving \$50,000 participation award).

19 The incentive awards being sought here are justified. Plaintiffs were invaluable in
20 providing information about Defendants’ operations at Mattress Firm’s Livermore, California
21 warehouse, meeting with Class Counsel, educating Class Counsel about the nature of the work
22 he performed, and the nature of Defendants’ delivery operations. Plaintiffs cooperated with
23 Class Counsel in answering numerous questions over a series of phone calls, searching for and
24 providing documents to Class Counsel, assisting Class Counsel in understanding the contentions
25 being made by Defendants and analyzing various documents provided by Defendants. All in all,
26 the four Plaintiffs estimate that they have spent between 25 and 40 hours assisting with this
27 litigation. Declaration of Christian Decena (“Decena Decl.”), ¶¶ 12; Declaration of Hairon
28 Martinez (“Martinez Decl.”), ¶¶ 12; Declaration of Miguel Rios (“Rios Decl.”), ¶¶ 12;

1 Declaration of Rigoberto Godoy (“Godoy Decl.”), ¶¶ 12; see Boyamian Decl., ¶ 24.

2 Moreover, it should be noted that the Representative Plaintiffs came forward in order to
3 vindicate the rights of other Settlement Class Members despite personal fears of retaliation from
4 their future employers. In this age, it is not uncommon for employers to conduct background
5 investigations of prospective employees to determine if they have ever been involved in lawsuits
6 with previous employers. Thus, by stepping forward and lending their name to this lawsuit, the
7 Representative Plaintiffs have risked future employment opportunities and have borne risks that
8 absent Settlement Class Members have not. Decena Decl., ¶¶ 9-11, 14; Martinez Decl., ¶¶ 9-11,
9 14; Rios Decl., ¶¶ 9-11, 14; Godoy Decl., ¶¶ 9-11, 14.

10 Finally, as a condition of this settlement, the Class Representatives are being asked to
11 provide Defendants with a general release along with a waiver of all claims, known or unknown,
12 pursuant to California Civil Code Section 1542, which they may possess against them. As this
13 release is much broader than the release required of class members to participate in the
14 settlement, Class Counsel is of the opinion that this clause of the Settlement Agreement also
15 provides significant support for the requested \$10,000 service award for the named Plaintiffs.
16 Boyamian Decl., ¶¶ 23-24; Decena Decl., ¶ 15; Martinez Decl., ¶ 15; Rios Decl., ¶ 15; Godoy
17 Decl., ¶ 15; Settlement Agreement, Section VII.

18 **VII. CONCLUSION**

19 For all of the reasons set forth above, Plaintiffs respectfully request that this Court grant final
20 approval of the class and PAGA settlement, and grant the requested attorneys’ fees, costs, service
21 awards, and third-party administrator payment.

22
23 Dated January 24, 2025

BOYAMIAN LAW, INC.

24 By: /s/ Armand R. Kizirian

25 Armand R. Kizirian
26 Attorneys for Plaintiffs CHRISTIAN DECENA,
27 HAIRON MARTINEZ, MIGUEL RIOS, and
28 RIGOBERTO GODOY, and all others similarly
situated