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

8 [Other Attorneys on the Following Page]

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
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13 CHRISTIAN DECENA, an Individual,
HAIRON MARTINEZ, an Individual, an
14 Individual; MIGUEL RIOS, an Individual;
RIGOBERTO GODOY, an Individual;
15 Individually, and on Behalf of all
Similarly Situated Individuals,

16 Plaintiffs,

17 v.

18 ALLEGIANT FINAL MILE INC., A
Florida Corporation; DIVERSE
19 LOGISTICS & DISTRIBUTION, INC., a
Florida corporation; MATTRESS FIRM,
20 INC., a Delaware corporation; and DOES
1 through 25, Inclusive,

21 Defendants.
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Case No. 4:23-cv-03633-YGR

[Assigned for All Purposes to the
Honorable Yvonne Gonzalez Rogers]

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION AND PAGA
SETTLEMENT**

Date: October 1, 2024

Time: 2:00 p.m.

Courtroom: 1 (4th Floor), Oakland
Courthouse

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8 ALLEGIANT FINAL MILE, LLC (erroneously sued herein as Allegiant Final Mile,
Inc.) and DIVERSE LOGISTICS & DISTRIBUTION, LLC (erroneously sued herein
9 as Diverse Logistics & Distribution, Inc.)

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16 Attorneys for Defendant
17 MATTRESS FIRM, INC.

Before the Court is Plaintiffs Christian Decena, Hiron Martinez, Miguel Rios, and Rigoberto Godoy (“Plaintiffs”) Unopposed Motion for Preliminary Approval of Class Action and Representative PAGA Action Settlement (“Motion”). Plaintiffs and Defendants Allegiant Final Mile, LLC (“Allegiant”), Diverse Logistics & Distribution, LLC (“Diverse Logistics”), and Mattress Firm, Inc. (“Mattress Firm”) (collectively, “Defendants”) are collectively referred to herein as the “Parties.”

The Parties have agreed to a settlement upon the terms and conditions set forth in the Class and Representative PAGA Action Settlement Agreement (“Agreement”).¹ If the settlement receives final approval, then there would be full and final resolution of this action pursuant to the terms of the Agreement.

Having reviewed Plaintiffs’ Motion and all papers submitted in support thereof, including the Agreement and the Exhibits thereto, the Declarations of Armand R. Kizirian and Eric Springer on Behalf of Simpluris, Inc., and the Exhibits thereto, and good cause appearing, IT IS HEREBY ORDERED THAT:

1. The Court hereby GRANTS preliminary approval of the class action and representative action settlement upon the terms and conditions set forth in the Agreement. The Court preliminary finds that the terms of the settlement are fair, reasonable, and adequate, subject to further consideration at the Final Fairness and Approval Hearing described below.

2. For purposes of this Preliminary Approval Order (“Order”), the Court hereby adopts and incorporates all definitions set forth in the Agreement.

3. The Court preliminary finds that the settlement is the product of informed, non-collusive negotiations conducted at arms’ length by the Parties. The Court has considered the alleged merit of Plaintiffs’ claims, Defendants’ potential liability and

¹ Capitalized terms herein shall have the same definitions as in the Agreement and those definitions are incorporated herein by reference.

defenses, the allocation of settlement proceeds among the Class Members and PAGA Group Members, and the fact that the settlement represents a compromise of the Parties' respective positions.

4. Solely for the purpose of settlement in accordance with the Agreement, the Court finds that the requirements of Rule 23 of the Federal Rules of Civil Procedure and other laws applicable to preliminary settlement approval of class actions have been satisfied, and the Court hereby certifies, for settlement purposes only, the following class (collectively, the "Class"):

Class: (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 entities owned and controlled by contract carriers which contracted directly with Allegiant and provided delivery services delivering Mattress Firm products in the State of California, at any time from January 1, 2020 through the date the Court grants preliminary approval of this Settlement.

5. Pursuant to the Agreement, and for settlement purposes only, the Court further finds that:

- a. The Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Class, which predominate over the questions affecting only individual members;
- c. Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy will fairly and adequately protect the interests of the Class and are, therefore, appointed as the representatives of the Class ("Representative Plaintiffs");
- d. The claims of the Representative Plaintiffs are typical of the claims of the Class;
- e. Class/PAGA Counsel – *i.e.*, Michael H. Boyamian and Armand R. Kizirian of Boyamian Law, Inc. – will fairly and adequately protect

1 the interests of the Class, are qualified to represent the Class, and are,
 2 therefore, appointed as attorneys for the Class for purposes of
 3 settlement; and

4 f. Certification of the Class is superior to other available methods for fair
 5 and efficient adjudication of the controversy.

6 6. The PAGA Group Members are defined as: “(a) all individuals who
 7 provided services to Allegiant delivering Mattress Firm products as contract carrier
 8 owners, drivers and/or helpers in the State of California; and (b) all entities owned and
 9 controlled by contract carriers which contracted directly with Allegiant and provided
 10 delivery services delivering Mattress Firm products in the State of California, at any
 11 time from March 31, 2022 through the date the Court grants preliminary approval of
 12 this Settlement.”

13 7. Simpluris, Inc. is hereby appointed to serve as the Settlement
 14 Administrator. The Settlement Administrator will administer the applicable provisions
 15 of the Agreement, including but not limited to: (i) translating the Notices of Settlement
 16 into Spanish; (ii) printing, mailing, and re-mailing (if necessary), in both English and
 17 Spanish, the Notice of Settlement, and receiving Opt Outs from Class Members; (iii)
 18 preparing and submitting to Settlement Class Members and PAGA Group Members and
 19 government entities all appropriate tax filings and forms; (iv) computing the amount of
 20 and distributing Individual Settlement Payments, PAGA Payment Shares, Service and
 21 Release Awards, and Class/PAGA Counsel attorneys’ fees and costs; (v) processing
 22 and validating Proof of Work forms and Opt Outs; (vi) establishing a qualified
 23 settlement fund, as defined by the Internal Revenue Code; (vii) sending appropriate
 24 notices pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715; and (viii) any other
 25 tasks as the Parties mutually agree of the Court orders the Settlement Administrator to
 26 perform.

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2 8. Pursuant to the terms of the Agreement, Defendants are hereby directed to
3 prepare and provide the Settlement Data to the Settlement Administrator within thirty
4 (30) days of entry of this Order.

5 9. Pursuant to the terms of the Agreement, Simpluris, Inc. is hereby directed
6 to mail the Notice of Settlement to all Class Members and PAGA Group Members via
7 first-class regular U.S. Mail within forty-five (45) days of entry of this Order.

8 10. Pursuant to the terms of the Agreement and the notice requirements
9 articulated in Labor Code Section 2699(l)(2), Plaintiffs submitted the proposed
10 settlement to the Labor and Workforce Development Agency (LWDA) at the time this
11 Motion was submitted to this Court for approval.

12 11. The Settlement Administrator has already sent notice pursuant to the Class
13 Action Fairness Act, 28 U.S.C. § 1715.

14 12. The Court approves as to form and content the Notice of Settlement
15 (“Notice”) and Payment Information Form attached as Exhibits 1 and 2 to the
16 Agreement. The Court finds that the distribution of the Notice in the manner set forth
17 in this Order and the Agreement is the best notice practicable under the circumstances,
18 and constitutes valid, due, and sufficient notice to all members of the Class and the
19 PAGA Group Members, complying fully with the requirements of Rule 23 of the
20 Federal Rules of Civil Procedure, the United States Constitution, and any other
21 applicable law, and shall constitute due and sufficient notice to all Class Members and
22 PAGA Group Members entitled thereto.

23 13. Any Class Members may request to be excluded from the Class and the
24 Released Class Claims by submitting a written Request for Exclusion in accordance
25 with Paragraphs IV(E)(1) in the Agreement. Any such request to Request for Exclusion
26 to opt out will be timely only if postmarked no later than the Response Deadline, which
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1 is sixty (60) days after the Notice is initially mailed to the Class Members. Any Class
2 Member who submits a completed, signed and timely written Request for Exclusion to
3 opt out shall not be a member of the Settlement Class, shall be barred from participating
4 in this settlement, shall be barred from objecting to this settlement, and shall receive no
5 benefit from this settlement, except that Class Members who are in the group of PAGA
6 Group Members will still receive their PAGA Payment Share and will release the
7 Released PAGA Claims. Class Members shall be bound by this Agreement and shall
8 release all Released Class Claims and Released PAGA Claims unless they submit a
9 completed, signed, and timely Request for Exclusion to opt out.

10 14. Because this settlement resolves claims and actions brought pursuant to
11 PAGA by Plaintiffs acting as a proxy and as Private Attorneys General of, and for, the
12 State of California and the LWDA, no PAGA Group Member has the right to exclude
13 himself or herself or request exclusion from the release of the Released PAGA Claims.
14 The Released PAGA Claims were properly noticed to the LWDA pursuant to Section
15 2698, et seq., and, therefore, are properly released in the Settlement. PAGA Group
16 Members will be bound by the release of the Released PAGA Claims upon the approval
17 of the Agreement by the Court at the Final Fairness and Approval Hearing, regardless
18 of whether he or she requested to opt out by submitting a Request for Exclusion as a
19 Class Member, and regardless of whether he or she cashes a payment from the PAGA
20 Fund.

21 15. Any Class Member wishing to object to this settlement shall inform the
22 Court, Class/PAGA Counsel, and Defendants' Counsel in writing of his or her intent to
23 object by following the procedure set forth in the Notice and prescribed by Paragraphs
24 IV(H)(1) of the Agreement. Any Class Member who intends to object to the Agreement
25 must submit his or her objection to the Court within the time limitations set forth in the
26 Agreement and in the Notice.

1 16. Any Class Member who has submitted such written objections may, but is
2 not required to, appear himself or herself, or through counsel, at the Final Fairness and
3 Approval Hearing and object to the approval of the settlement or the award of attorneys'
4 fees and reimbursement of costs to counsel. The Parties may file any response to the
5 objections submitted by objecting Class Members, if any, at least five (5) court days
6 before the Final Fairness and Approval Hearing.

7 17. Any Class Member who does not make his or her objection(s) in the
8 manner so provided herein and in the Notice shall be deemed to have waived such
9 objection(s) and shall forever be foreclosed from making any objection(s) to the fairness
10 or adequacy of the proposed settlement as incorporated in the Agreement, making
11 objection(s) to the award of attorneys' fees and reimbursement of expenses to counsel,
12 and the right to appeal any orders that are entered relating thereto.

13 18. The Final Fairness and Approval Hearing shall be held on
14 _____ at 2:00 p.m., before the Honorable Yvonne Gonzalez Rogers, of
15 the United States District Court for the Northern District of California, located at
16 Courtroom 1 of the United States District Courthouse located at 1301 Clay Street,
17 Oakland, California 94612. At that time, the Court shall determine: (a) whether the
18 proposed settlement of the Action on the terms and conditions provided for in the
19 Agreement is fair, just, reasonable, and adequate and should be finally approved; (b)
20 whether judgment as provided in the Agreement should be entered herein; (c) whether
21 to approve Class/PAGA Counsel's application for an award of attorneys' fees and costs,
22 and any Service and Release Award to Plaintiffs; and (d) to hear any timely objections
23 to the settlement.

24 19. The Court reserves the right to adjourn the date of the Final Fairness and
25 Approval Hearing and any adjournment thereof without further notice to the Class
26 Members or the PAGA Group Members, and retains jurisdiction to consider all further
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1 applications arising out of or connected with the settlement. The Court may approve the
2 settlement, with such modifications as may be agreed to by the Parties to the settlement,
3 if appropriate, without further notice to the Class Members or the PAGA Group
4 Members.

5 20. All proceedings in this matter except those contemplated herein and in the
6 Agreement are stayed and suspended until further order of this Court.

7 21. Pending the Final Fairness and Approval Hearing, Plaintiffs, the Class
8 Members, and the PAGA Group Members are hereby enjoined from prosecuting the
9 Released Class Claims and Released PAGA Claims against Defendants and/or the
10 Released Parties.

11 22. Certification under this Order is for settlement purposes only, and shall not
12 constitute or be construed as a finding by the Court, or an admission on the part of
13 Defendants or any of the Released Parties, of any fault or omission with respect to any
14 claim or that this action is appropriate for class treatment for litigation purposes. Entry
15 of this Order is without prejudice to the rights of Defendants or any of the Released
16 Parties to oppose class certification in this action should the proposed settlement not be
17 granted final approval.

18 23. If for any reason the Court does not execute and file a Final Order and
19 Judgment, or if the Effective Date of the settlement, as defined in the Agreement, does
20 not occur for any reason whatsoever, the Agreement and the proposed settlement that
21 is the subject of this Order, and all evidence and proceedings had in connections
22 therewith, shall be without prejudice to the *status quo ante* rights of the Parties to the
23 litigation, as more specifically set forth in the settlement.

1 **IT IS SO ORDERED.**

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3 DATED: _____

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6 The Honorable Yvonne Gonzalez Rogers
7 United States District Judge
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