

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**CHRISTIAN DECENA, HAIRON MARTINEZ,
MIGUEL RIOS, AND RIGOBERTO GODOY ON
BEHALF OF THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,**

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**

**ORDER GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT AND SETTING
DEADLINES FOR NOTICE, OBJECTION,
EXCLUSION, AND FINAL FAIRNESS
HEARING**

Dkt. No. 54

On October 1, 2024, the Court held a hearing on the motion of plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy for conditional certification of a settlement class in this action; preliminary approval of the parties' proposed settlement; approval of the Class Notice Packet; appointing Class Representatives, Class Counsel and the proposed Settlement Administrator; and setting a date for the hearing on final approval of the settlement. (Dkt. No. 56.) Armand Kizirian appeared for plaintiffs; and Andrew J Butcher appeared for defendants.

Having considered the motion briefing, the arguments of counsel, the relevant law, the terms of the settlement agreement and the class notice, as well as the record in this case, and based on the reasons and terms set forth herein, the Court **GRANTS** the parties' motion for preliminary approval of class action settlement.

I. BACKGROUND

On March 24, 2023, plaintiffs filed the putative class action complaint against defendants in the Superior Court of California for Alameda County. Plaintiffs, bringing the suit on behalf of "Drivers," "Helpers," and "Contract Carriers" (together, "Delivery Drivers") who performed

1 delivery services for defendants, alleged defendants misclassified its Delivery Drivers as
 2 independent contractors. (Dkt. No. 1-1.) Plaintiffs alleged nine causes of action under California
 3 state law arising out of this misclassification, including failure to pay minimum wage and overtime
 4 compensation. (*Id.*) On June 6, 2023, plaintiffs filed a first amended complaint adding a tenth cause
 5 of action under California's Private Attorneys General Act. Defendant Mattress Firm removed the
 6 case to the U.S. District Court for the Northern District of California on July 21, 2023. (Dkt. No. 1.)
 7 Plaintiffs' operative second amended complaint, filed on June 16, 2024, alleges the following causes
 8 of action:

- 9 (i) failure to pay minimum wage under California Labor Code sections 1182.11, 1194 *et seq*;
- 10 Industrial Wage Commission ("IWC") Wage Order No. 9; and the Minimum Wage Order
- 11 (ii) failure to pay overtime compensation under California Labor Code sections 510, 1194 *et*
- 12 *seq*, and IWC Wage Order No. 9
- 13 (iii) reimbursement of employment expenses under California Labor Code section 2802
- 14 (iv) unlawful deductions from wages under California Labor Code sections 221, 223, and
- 15 IWC Wage Order No. 9
- 16 (v) failure to provide meal periods under California Labor Code sections 226.7, 512, and
- 17 IWC Wage Order No. 9
- 18 (vi) failure to authorize and permit rest periods under California Labor Code section 226.7
- 19 and IWC Wage Order No. 9
- 20 (vii) failure to furnish accurate wage statements under California Labor Code sections 226,
- 21 226.3, and IWC Wage Order No. 9
- 22 (viii) waiting time penalties under California Labor Code sections 201-03
- 23 (ix) unfair business practices under California Business and Professions Code sections
- 24 17200-09

25 Plaintiffs' tenth cause of action realleges and incorporates by reference all the above claims under
 26 the Private Attorneys General Act ("PAGA"), California Labor Code sections 2698 *et seq.* (Dkt.
 27 No. 46.)
 28

Prior to class certification, the parties reached an agreement as to a settlement amount on January 16, 2024, with the assistance of an experienced mediator, Antonio Piazza, Esq. However, the parties continued negotiations regarding specific terms into June 2024. (Dkt. No. 54, Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (hereafter, the "Motion"), at 5.)

On August 23, 2024, plaintiffs filed their motion requesting preliminary approval of a settlement agreement (hereafter, the "Settlement Agreement"). (Dkt. No. 54-1.)

A. Terms of the Settlement Agreement

Under the terms of the Settlement Agreement, defendant Allegiant will pay \$900,000 into a common settlement fund, without admitting liability. This amount includes attorneys' fees and costs, the cost of class notice and settlement administration, the class representatives' service award, and PAGA penalties.

1. Attorneys' Fees and Costs

Under the Settlement Agreement, Plaintiff's counsel agreed to seek up to \$297,000 in attorneys' fees and no more than \$25,000 in litigation costs. The common settlement fund also includes a provision for \$17,270 in settlement administration costs; \$22,500 for PAGA payments to the California Labor and Workforce Agency ("LWDA"); and up to \$10,000 to be paid to each plaintiff, namely Christian Decena, Hiron Martinez, Miguel Rios, and Rigoberto Godoy, as an incentive award in exchange for a general release of all claims against defendant.

2. Class Relief

After deductions from the common fund for fees, costs, payments to the LWDA, and service incentive awards, approximately \$498,230 will remain to be distributed among the participating Settlement Class Members and PAGA Group Members.¹ Settlement Class Members and PAGA Group Members will be paid pro rata based on the number of qualifying workweeks worked. Dividing this amount across the roughly 600 participating class members yields an average recovery

¹ In addition to paying Settlement Class Members, the Settlement Agreement allocates \$7,500 for PAGA Group Members in connection with the resolution of all claims under PAGA. The PAGA Group covers claims arising out of a shorter time period than the Settlement Class and allocates funds according to a separate payment rate for qualifying workweeks.

of approximately \$830 per class member. The Settlement Agreement provides that no amount will revert to defendant.

3. *Cy Pres/Remainder*

The Settlement Agreement provides that when checks mailed to participating class members are not redeemed or deposited within 180 days of disbursement, such funds will be tendered to the California State Controller's Unclaimed Property Fund in the name of the individual Settlement Class Member or PAGA Group Member who did not cash the check.

II. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

A. Legal Standard

A court may approve a proposed class action settlement of a certified class only "after a hearing and on finding that it is fair, reasonable, and adequate," and that it meets the requirements for class certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court need not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to assessing a settlement proposal: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at 1026 (citation omitted); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

Settlements that occur before formal class certification also "require a higher standard of fairness." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such settlements, in addition to considering the above factors, a court also must ensure that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

B. Class Definition and Basis for Conditional Certification

The Settlement Agreement, attached hereto as **Exhibit A**, defines two classes:

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.²

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.³

The proposed class is different from that alleged in the complaint.⁴

The Court finds that, for purposes of settlement, plaintiffs have satisfied the requirements of Rule 23(a) as well as the requirements for certification under one or more subsections of Rule 23(b).

With respect to numerosity under Rule 23(a)(1), the Settlement Class includes approximately 600 members, making it so numerous that joinder of all members is impracticable.

Rule 23(a)(2) commonality requires “questions of fact or law common to the class,” though all questions of fact and law need not be in common. *Hanlon*, 150 F.3d at 1026. The focus of this action—whether defendants misclassified their Delivery Drivers as independent contractors—is common to all class members.

Rule 23(a)(3) requires that the plaintiff show that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Plaintiffs, like all members

² The Settlement Agreement defines “Class Period” as “the period from January 1, 2020 through the date the Court grants preliminary approval of this Settlement.”

³ The Settlement Agreement defines “PAGA Period” as “the period from March 31, 2022 through the date the Court grants preliminary approval of this Settlement.”

⁴ Plaintiffs’ second amended complaint defines the class as: “All individuals who performed delivery services for Defendants as Contract Carriers, Drivers, and/or Helpers and worked in the State of California delivering goods from Defendant MFI from September 27, 2018 and continuing while this action is pending.” (Dkt. No. 46, at 10.) The parties shortened the class period in the Settlement Agreement to “reflect[] the fact that Allegiant did not begin contracting with, and providing services to, Mattress Firm in the State of California until January 1, 2020.” (Motion, at 6.)

of the Settlement Class and PAGA Class, were Contract Carriers, Drivers, or Helpers in the state of California working for defendants as independent contractors, making plaintiffs' claims typical of other class members.

With respect to Rule 23(a)(4), the Court finds the representative parties and class counsel have fairly and adequately represented the interests of the Class. No conflicts of interest appear as between plaintiffs and the members of the Settlement Class. Class Counsel have demonstrated that they are experienced and competent counsel with substantial experience litigating independent contractor misclassification suits, and therefore adequate to represent the Settlement Class as well.

The Settlement Class further satisfies Rule 23(b)(3) in that common issues predominate and "a class action is superior to other available methods for fairly and efficiently adjudicating" the claims here.

Based on the foregoing, the proposed class is conditionally certified pursuant to Rule 23(c).

C. Settlement Agreement Appears Fair and Reasonable

The settlement agreement, a copy of which is attached hereto as Exhibit A ("Settlement Agreement"), is granted preliminary approval pursuant to Rule 23(e)(2). Based upon the information before the Court, the Settlement Agreement falls within the range of possible approval as fair, adequate and reasonable, and there is a sufficient basis for notifying the Class and for setting a Fairness and Final Approval Hearing.

As to the *Hanlon* factors, the Court finds that they indicate the settlement here is fair and reasonable. Plaintiffs "face a real risk they may not be able to establish [independent contractor] misclassification" under California law for a variety of reasons. (Motion, at 11). First, defendants could have imparted the degree of control necessary over its Contract Carriers to make the independent contractor classification proper under California law. (*Id.*) Second, a joint employment test,⁵ as opposed to a more favorable California "ABC test" could apply to Drivers and Helpers hired by defendant during the relevant period. (*Id.*) Third, plaintiffs contend that

⁵ The joint employment test as set forth in *Martinez v. Combs*, 49 Cal. 4th 35 (2010).

defendants carefully conformed their operations to meet the “ABC test” prior to filing of the suit.⁶ (*Id.* at 12.) Even if plaintiffs were able to establish misclassification, several issues would have been difficult to resolve absent settlement, including valuing plaintiffs’ claims as to violations of California wage and hour laws; unreimbursed business expenses; and derivative penalties. (*Id.* at 20.) Furthermore, federal law may have preempted plaintiffs’ California state law meal and rest break claims. (*Id.* at 12.) Notably, plaintiffs also “[ran] the very real risk of not being able to secure class certification on a contested motion[,]” as defendants’ Contract Carriers, Drivers, and Helpers conducted varied operations. (*Id.* at 12-13.) Proceeding to trial would have been costly; recovery was not guaranteed; and there was the possibility of protracted appeals. Even if plaintiffs prevailed, the best-case recovery after trial was less than the amount offered in settlement. The settlement occurred only after extensive litigation including: motions to dismiss and strike, motions to amend plaintiffs’ complaint, months-long discovery, and mediation proceedings. Counsel for both parties are highly experienced. The record does not indicate collusion or self-dealing. *See In re Bluetooth*, 654 F.3d at 946-47.

The Settlement Agreement appears to have been the product of arm’s length and informed negotiations. The relief provided for the Class appears to be adequate, taking into account:

- (i) the costs, risks, and delay of trial and appeal;
- (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
- (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
- (iv) any agreements required to be identified under Rule 23(e)(3)

Moreover, the Settlement Agreement appears to treat Class members equitably relative to each other.

At the October 1 preliminary approval hearing, the Court expressed concerns with the first page of the parties’ proposed long-form notice and the payment form. The notice form was not

⁶ Plaintiffs’ motion states: “Allegiant was careful to calibrate operations to allow Contract Carriers flexibility in their work outside of deliveries for Mattress Firm, and utilized a business model that directly contracted only with independent and formally-established businesses with their own fleets of trucks.” (Motion, at 12.)

sufficiently easy to understand and the payment form was unnecessarily convoluted. (Dkt. No. 56.) The parties subsequently submitted revised forms on October 9, 2024, which the Court finds sufficient.

Based on the foregoing, the Court conditionally certifies the class and provisionally appoints Michael H. Boyamian and Armand R. Kizirian as Class Counsel and plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy as class representatives.

III. PLAN OF NOTICE, ALLOCATION, AND ADMINISTRATION

A. Notice Plan

A court must “direct notice [of a proposed class settlement] in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must be notified of a proposed settlement in a manner that does not systematically leave any group without notice.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate notice requires: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The parties’ proposed notice plan appears to be constitutionally sound in that plaintiffs have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

The Court approves form of the long-form Notice of Class and Representative PAGA Action Settlement attached as Exhibit B to this Order. The Court also approves the Payment Information Form attached hereto as Exhibit C. Taken together these notices are sufficient to inform Class members of the terms of the Settlement Agreement, their rights under the Settlement Agreement, their rights to object to or comment on the Settlement Agreement, their right to receive a payment or opt out of the Settlement Agreement, the process for doing so, and the date and location of the Fairness and Final Approval hearing. The forms of plan of notice are therefore **APPROVED.**

B. Plan of Allocation

The Court preliminarily approves the proposed plan of allocation set forth in the Motion and the class notices. Class members will receive a Settlement Share unless they send the Settlement Administrator a written request for exclusion.⁷

C. Settlement Administrator

Simpluris, Inc. is appointed to act as the Settlement Administrator, pursuant to the terms set forth in the Settlement Agreement.

The Settlement Administrator shall distribute the Class Notice according to the notice plan described in the Settlement Agreement and substantially in the form approved herein, no later than November 22, 2024 (“Notice Date”). Proof of distribution of the Class Notice shall be filed by the parties in conjunction with the motion for final approval.

Defendant Allegiant is directed to provide to the Settlement Administrator the Class members’ contact data as specified by the Settlement Agreement no later than October 25, 2024,

⁷ The Settlement Agreement specifies:
 “To be valid, the written Request for Exclusion must: (1) include the Class Member’s name (and former names, if any), current address, telephone number, and last four numbers of the Class Member’s social security number; (2) include a clear statement of intention to be excluded from the settlement; (3) be signed by the Class Member or his or her lawful representative; (4) be returned to the Settlement Administrator at the specified address; and (5) be postmarked by the Response Deadline no later than sixty (60) days after the original date of the Settlement Administrator’s mailing of the Notice of Settlement or ten (10) calendar days after the date of re-mailing of the Notice of Settlement (whichever is later).”
 (Settlement Agreement, at 20.)

subject to the Settlement Administrator providing adequate and contractual assurances as to confidentiality and data security.

D. Exclusion/Opt-Out

Any Class Member shall have the right to be excluded from the Class by mailing a request for exclusion to the Settlement Administrator no later than February 21, 2025. Requests for exclusion must be in writing and set forth the following information about the person wishing to be excluded: their name, and former names, if any; address; telephone number; and last four digits of their social security number. The request for exclusion must be signed by the class member seeking exclusion. No later than March 4, 2025, Class Counsel shall file with the Court a list of all persons or entities who have timely requested exclusion from the Class as provided in the Settlement Agreement.

Any Class Member who does not request exclusion from the settlement class as provided above shall be bound by the terms and provisions of the Settlement Agreement upon its final approval, including but not limited to the releases, waivers, and covenants described in the Settlement Agreement, whether or not such person or entity objected to the Settlement Agreement and whether or not such person or entity makes a claim upon the settlement funds.

E. Objections

Any Class Member who has not submitted a timely request for exclusion from the Settlement Agreement shall have the right to object to (1) the Settlement Agreement, (2) the plan of allocation; and/or Class Counsel's motion for attorneys' fees and Class Representative Awards by: (i) appearance at the Final Fairness and Approval Hearing on Tuesday, March 18, 2025 in person, telephonically, or through an attorney, or (ii) a written statement sent to the Court by mail, as set forth in the Class Notice.⁸ Failure to submit a timely written objection will preclude consideration of the Class Member's later objection at the time of the Fairness Hearing.

⁸ The Class Notice states:

To object, you may appear at the Final Fairness and Approval Hearing in person or telephonically, have an attorney object for you, or submit a written brief or statement of objection ("Objection") to the Court by Mail at the following address: United States District Court for the Northern District of California, San Francisco Courthouse, Attn: Class Action Clerk, 450 Golden Gate Avenue, San Francisco,

F. Attorneys' Fees and Class Representative Awards

Plaintiffs and their counsel shall file their motion for attorneys' fees and for Class Representative awards no later January 10, 2025. Each settlement class member shall have the right to object to the motion for attorneys' fees and Class Representative awards by filing a written objection with the Court no later than February 21, 2025, as stated in paragraph 8 above.

Plaintiffs shall file a reply brief responding to any timely objection no later than March 4, 2025.

G. Fairness and Final Approval Hearing

All briefs, memoranda and papers in support of final approval of the settlement shall be filed no later than January 10, 2025.

The Court will conduct a Fairness and Final Approval Hearing on Tuesday, March 18, 2025, at 2:00 p.m., to determine whether the Settlement Agreement should be granted final approval as fair, reasonable, and adequate as to the Class. The Court will hear all evidence and argument necessary to evaluate the Settlement Agreement and will consider Class Counsel's motion for attorneys' fees and for Class Representative awards.

Class members may appear, by counsel or on their own behalf, to be heard in support of or opposition to the Settlement Agreement and Class Counsel's Motion for attorneys' fees and Class Representative awards by filing a Notice of Intention to Appear no later than February 21, 2025.

The Court reserves the right to continue the date of the final approval hearing without further notice to Class members.

The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement.

CA 94102. You can also submit your written objection electronically through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>. You can also submit your written objection in person at the office of the Clerk of the Court for the United States District Court for the Northern District of California at the address listed above or any location of the United States District Court for the Northern District of California. (Dkt. No. 54, Exhibit "A", at 7.)

H. Post-Distribution Accounting

If final approval is granted, the parties will be required to file a Post-Distribution Accounting in accordance with this District's Procedural Guidance for Class Action Settlements and at a date set by the Court at the time of the final approval hearing. Counsel should prepare accordingly.

Summary of Key Dates	
Event	Date
Class data to be provided to Settlement Administrator	October 25, 2024
Class Notice to be sent by	November 22, 2024
Class Counsel to file their motion for fees and costs and Class Representative awards	January 10, 2025
Motion for Final Approval to be filed by	January 10, 2025
Postmark deadline to submit objection or request for exclusion	February 21, 2025
Class counsel and settlement administrator to submit supplemental statements regarding status of notice program, objections, opt-outs	March 4, 2025
Fairness and Final Approval Hearing	Tuesday, March 18, 2025 NOTE: Subject to change without further notice to the Class.

IT IS SO ORDERED.

This terminates Docket No. 54.

Dated: October 10, 2024


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

Exhibit A

BOYAMIAN LAW, INC.
MICHAEL H. BOYAMIAN, SBN 256107
michael@boyamianlaw.com
ARMAND R. KIZIRIAN, SBN 293992
armand@boyamianlaw.com
550 North Brand Boulevard, Suite 1500
Glendale, CA 91203
Phone: 818.547.5300
Fax: 818.547.5678

Attorneys for Plaintiffs

Michele Finkel Ferber (SBN 149929)
mferber@ferberlaw.com
Jonathan R. Babione (SBN 270053)
jbabione@ferberlaw.com
Jennifer R. Lucas (SBN 227505)
jlucas@ferberlaw.com
Adam Nathaniel Arce (SBN 328732)
aarce@ferberlaw.com
FERBER LAW, A Professional Corporation
2603 Camino Ramon, Suite 385
San Ramon, California 94583
(925) 355-9800

Attorneys for Defendants

ALLEGiant FINAL MILE, LLC (erroneously sued herein as Allegiant Final Mile, Inc.) and
DIVERSE LOGISTICS & DISTRIBUTION, LLC (erroneously sued herein as Diverse Logistics &
Distribution, Inc.) (Additional Counsel Listed on Following Page)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

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. 23-cv-03633-YGR

**CLASS AND REPRESENTATIVE PAGA
ACTION SETTLEMENT AGREEMENT**

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
ANDREW J. BUTCHER, *pro hac vice*
abutcher@scopelitis.com
30 West Monroe St., Suite 1600
Chicago, IL 60603
Phone: 312.255.7200
Fax: 312.422.1224

Attorneys for Defendant Allegiant Final Mile, LLC and Diverse Logistics & Distribution, LLC

REED SMITH LLP
Mara D. Curtis
mcurtis@reedsmith.com
Brittany M. Hernandez
bmherhandez@reedsmith.com
Tanner J. Hendershot
thendershot@reedsmith.com
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071
Phone: 213-457-8216
Fax: 213-457-8080

Attorneys for Defendant Mattress Firm, Inc.

I. INTRODUCTION AND SUMMARY OF SETTLEMENT TERMS

This action was brought by Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy (“Plaintiffs”), individually and on behalf of all individuals who provided services to Defendant Allegiant Final Mile, LLC (“Allegiant”) (erroneously sued as Allegiant Final Mile, Inc.) as contract carriers owners, drivers, and/or helpers, and all contract carrier owners who owned or controlled an entity that contracted directly with Allegiant delivering Defendant Mattress Firm, Inc.’s (“Mattress Firm”) products in the state of California during the Class Period, as defined below. Diverse Logistics & Distribution, LLC (“Diverse”) (erroneously sued as Diverse Logistics & Distribution, Inc.) was also named as a Defendant (Plaintiffs and Defendants collectively, “the Parties”). In their Second Amended Complaint, Plaintiffs alleged causes of action for (1) failure to pay minimum wage, (2) failure to pay overtime compensation, (3) reimbursement of employment expenses, (4) unlawful deduction from wages, (5) failure to provide meal periods, (6) failure to authorize and permit rest periods, (7) failure to furnish accurate wage statements, (8) waiting time penalties, (9) unfair competition, and (10) violation of the Private Attorneys’ General Act (Labor Code § 2698 *et seq.*).

On January 16, 2024, counsel for the Parties participated in mediation before Antonio Piazza. The mediation was a successful, arms-length negotiation, and resulted in the Parties agreeing to resolve all claims through this Settlement.

Under the terms of the Settlement and after the Effective Date, Allegiant will pay an all-inclusive Gross Settlement Amount of \$900,000.00. The Settlement will be administered by a third-party settlement administrator with experience administering class action settlements of this type. Until distribution, the Gross Settlement Amount will be held in a Qualified Settlement Fund established by the Settlement Administrator. Settlement Class Members (as defined in Section II) will release all Released Class Claims (as defined in Section II) and PAGA Group Members (as defined in Section II) will release all Released PAGA Claims.

II. DEFINITIONS

Unless otherwise defined herein, the following capitalized terms used in this Agreement shall have the meanings set forth below:

1 A. “**Action**” means the lawsuit filed against Defendants in the putative class and
2 representative action, that is currently pending in the United States District Court for the Northern
3 District of California titled *Christian Decena et al. v. Allegiant Final Mile Inc. et al.*, Case Number 23-
4 cv-03633-YGR.

5 B. “**Agreement**” means this Class and Representative PAGA Action Settlement
6 Agreement.

7 C. “**Allegiant**” means Defendant Allegiant Final Mile, LLC (erroneously sued as Allegiant
8 Final Mile, Inc.).

9 D. “**Class**”, “**Class Member**”, or “**Class Members**” means (a) all individuals who
10 provided services to Allegiant delivering Mattress Firm products as contract carrier owners, drivers
11 and/or helpers in the State of California; and (b) all contract carrier owners who owned or controlled
12 an entity that contracted directly with Allegiant and provided delivery services delivering Mattress
13 Firm products in the State of California, at any time during the Class Period.

14 E. “**Class/PAGA Counsel**” means Michael H. Boyamian and Armand R. Kizirian of
15 Boyamian Law, Inc., 550 North Brand Boulevard, Suite 1500, Glendale, CA 91203, (818) 547-5300.

16 F. “**Class/PAGA Counsel’s Attorneys’ Fees**” means the amount to be paid to
17 Class/PAGA Counsel for attorneys’ fees, subject to Court approval at the Final Fairness and Approval
18 Hearing.

19 G. “**Class/PAGA Counsel’s Costs**” means the amount to be reimbursed to Class/PAGA
20 Counsel for their reasonable costs and expenses incurred in the Action, subject to Court approval at the
21 Final Fairness and Approval Hearing.

22 H. “**Class Period**” means the period from January 1, 2020 through the date the Court grants
23 preliminary approval of this Settlement.

24 I. “**Complaints**” means, collectively, the complaint filed on March 24, 2023 by Plaintiffs
25 against Allegiant and Diverse in the Superior Court of the State of California in and for the County of
26 Sacramento, entitled *Christian Decena, et al. v Allegiant Final Mile, Inc., et al.*, Case No.
27 23CV029993, the First Amended Complaint filed on June 6, 2023 by Plaintiffs against Allegiant,
28

Diverse, and Mattress Firm, and the Second Amended Complaint filed by Plaintiffs in the Action on June 14, 2024, currently pending in the United States District Court for the Northern District of California, entitled *Christian Decena, et al. v Allegiant Final Mile, Inc., et al.*, Case No. 23-CV-03633-YGR.

J. **“Court”** means the United States District Court for the Northern District of California, where the Action is pending.

K. **“Counsel for Allegiant and Diverse”** means Michele Finkel Ferber, Jonathan R. Babione, Jennifer R. Lucas, and Adam Nathaniel Arce, FERBER LAW, A Professional Corporation, 2603 Camino Ramon, Suite 385, San Ramon, California 94583, (925.355.9800); and Andrew J. Butcher from Scopelitis, Garvin, Light, Hanson & Feary, P.C., 30 West Monroe St., Suite 1600, Chicago, IL 60603, (312.255.7200).

L. **“Counsel for Mattress Firm”** means Mara D. Curtis, Brittany M. Hernandez, and Tanner J. Hendershot, Reed Smith, LLP, 355 South Grand Avenue, Suite 2900, Los Angeles, CA 90071, (213.457.8000).

M. **“Defendants”** means Allegiant, Diverse, and Mattress Firm.

N. **“Defendants’ Counsel”** means Counsel for Allegiant and Diverse, and Counsel for Mattress Firm.

O. **“Diverse”** means Defendant Diverse Logistics & Distribution, LLC (erroneously sued as Diverse Logistics & Distribution, Inc.).

P. **“Effective Date”** means the first date upon which all of the following have occurred:

- (i) this Agreement has been executed by all Parties and by Class/PAGA Counsel and Defendants’ Counsel; (ii) the Court has preliminarily approved the Settlement; (iii) notice has been properly given to the Class Members and PAGA Group Members, providing them notice of the Settlement and providing Class Members an opportunity to opt out of the settlement; (iv) the Court has held a Final Fairness and Approval Hearing and date of entry of a Final Approval Order and Judgment

1 which grants final approval of this Settlement; and (v) if no appeal is
2 filed, then thirty (30) days have passed after the notice of entry of the
3 Final Approval Order and Judgment, or, if an appeal, review or writ is
4 sought, the date on which the highest reviewing court renders its
5 decision denying any appeal or petition (where the immediately lower
6 court affirmed the final judgment) or affirming the final judgment or
7 the date of final dismissal with prejudice of the last pending appeal
8 from the Final Approval Order and Judgment. In this regard, it is the
9 intention of the Parties that the Settlement shall not become effective
10 until the Court's order approving the Settlement has become final, and
11 there is no timely recourse by an appellant or objector who seeks to
12 contest the Settlement.

13 Q. **"Final Approval Order and Judgment"** means the order and judgment to be entered
14 by the Court upon granting final approval of the Settlement and this Agreement as binding upon the
15 Parties, the Settlement Class Members, and the PAGA Group Members.

16 R. **"Final Fairness and Approval Hearing"** means the hearing on Plaintiffs' Motion for
17 Final Approval of Class Action Settlement after the filing by Plaintiffs of an appropriate motion and
18 following appropriate notice to Class Members and PAGA Group Members giving Class Members an
19 opportunity to opt out from the Class and Settlement or to object to the Settlement, at which time the
20 Court will be asked to give final approval to the Settlement terms and conditions set forth herein and
21 to enter the Final Approval Order and Judgment.

22 S. **"Gross Settlement Amount"** means the all-in, non-reversionary sum of Nine Hundred
23 Thousand Dollars and No Cents (\$900,000.00) which Allegiant will pay under this Settlement. The
24 Gross Settlement Amount will be paid on an all-in, common fund, and includes all compensation to be
25 paid by Allegiant to effectuate the Settlement.

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1 T. **“Individual Settlement Payment”** means the amount payable from the Net Class
2 Settlement Amount to each Settlement Class Member. The Individual Settlement Payment shall be
3 calculated pursuant to Section IV herein.

4 U. **“LWDA”** means the California Labor and Workforce Development Agency.

5 V. **“Mattress Firm”** means Defendant Mattress Firm, Inc.

6 W. **“Mediation Cost Credit”** means a \$20,000 credit to Allegiant to offset a portion of the
7 mediator’s fee Allegiant paid, subject to Court approval at the Final Fairness and Approval Hearing,
8 as described below in paragraph IV(H)(4). To the extent the Court does not approve all or part of the
9 Mediation Cost Credit, any amount disallowed by the Court will remain a portion of the Gross
10 Settlement Amount and be distributed in accordance with the terms of this Agreement and the Parties
11 agree that the Settlement shall remain in binding with such modification(s) and its terms will otherwise
12 be unchanged.

13 X. **“Net Class Settlement Amount”** means the amount remaining from the Gross
14 Settlement Amount after payment of Court-approved Class/PAGA Counsel’s Attorney’s Fees and
15 Costs, Service and Release Award(s) to the Representative Plaintiffs, Settlement Administration Costs,
16 Mediation Cost Credit, and the deduction of the PAGA Fund for the payment to the LWDA and PAGA
17 Group Members.

18 Y. **“Net PAGA Settlement Amount”** means the Seven Thousand Five Hundred Dollars
19 and No Cents (\$7,500.00) that will be disbursed to the PAGA Group Members from the PAGA Fund.

20 Z. **“Notice of Settlement”** means, collectively, the form attached hereto as Exhibit A or
21 whichever form is approved by the Court that shall be mailed to the Class Members and PAGA Group
22 Members to inform them of the terms of this Agreement and their rights and options thereto (“Notice
23 of Class and Representative PAGA Action Settlement”), and the form attached hereto as Exhibit B or
24 whichever form is approved the Court that shall be provided to each Class Member and PAGA Group
25 Member with the Notice of Class and Representative PAGA Action Settlement to inform them of their
26 total number of Qualifying Class Workweeks and/or Qualifying PAGA Workweeks and estimated
27 Individual Settlement Payment and/or PAGA Payment Share based on the allocation plan set forth in
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1 this Agreement (“Payment Information Form”). The Notice of Settlement shall confirm that Settlement
2 Class Members who opt-in to the Settlement by either: (1) signing and submitting a Payment
3 Information Form; and/or (2) cashing, depositing or endorsing his or her Individual Settlement Payment
4 check shall release individual wage and hour claims under the Fair Labor Standards Act (“FLSA”), to
5 the extent that such consent is required to release such FLSA claims through this Settlement pursuant
6 to 29 U.S.C. § 216(b), but the Settlement shall effect a full and complete release of all Released Class
7 Claims regardless of a Settlement Class Member’s returning the Payment Information Form or cashing,
8 depositing, or endorsing their Individual Settlement Payment check.

9 AA. **“Objection to Settlement”** means any timely written objection to this Settlement sent
10 by a Class Member to the Court in the form as specified herein in paragraph IV(H)(1) below, and in
11 the Notice of Settlement. Any Objection to Settlement must be sent to the Court within the time
12 limitations set forth in this Agreement.

13 BB. **“PAGA Fund”** means the amount that the Parties have agreed to pay to the LWDA and
14 the PAGA Group Members in connection with PAGA. The Parties agree that Thirty Thousand Dollars
15 and No Cents (\$30,000.00) of the Gross Settlement Amount shall be allocated to the resolution of all
16 claims under PAGA. Pursuant to Labor Code Section 2699(i), the PAGA Fund will be distributed as
17 follows: 25%, or Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00), to the PAGA Group
18 Members, and 75%, or Twenty-Two Thousand Five Hundred Dollars and No Cents (\$22,500.00), to
19 the LWDA.

20 CC. **“PAGA Group Member”** or **“PAGA Group Members”** means (a) all individuals who
21 provided services to Allegiant delivering Mattress Firm products as contract carrier owners, drivers
22 and/or helpers in the State of California; and (b) all contract carrier owners who owned or controlled
23 an entity that contracted directly with Allegiant and provided delivery services delivering Mattress
24 Firm products in the State of California, at any time during the PAGA Period.

25 DD. **“PAGA Letters”** means, collectively, the notice of alleged Labor Code violations that
26 Plaintiffs caused to be sent to the LWDA pursuant to Labor Code Section 2699.3(l) on or about March
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24, 2023, and amended notice of alleged Labor Code violations that Plaintiffs caused to be sent to the LWDA pursuant Labor Code Section 2699.3(l) on or about May 31, 2023.

EE. **“PAGA Payment Rate”** means the gross amount that a PAGA Group Member shall receive for each Qualifying PAGA Workweek, that shall be determined as described in paragraph IV(J)(2) below.

FF. **“PAGA Payment Share”** means the gross amount that shall be paid to each PAGA Group Member, as described in paragraph IV(J)(2) below.

GG. **“PAGA Period”** means the period from March 31, 2022 through the date the Court grants preliminary approval of this Settlement.

HH. **“Parties”** means the Plaintiffs on behalf of themselves and all Class Members and PAGA Group Members and Defendants.

II. **“Preliminary Approval Date”** is the date the Court grants preliminary approval of this Settlement.

JJ. **“Proof of Work”** means document(s) that a Class Member or PAGA Group Member may submit to the Settlement Administrator in order to show that he or she is entitled to payment based upon a different number of Qualifying Class Workweeks or Qualifying PAGA Workweeks than the number calculated by the Settlement Administrator based upon Defendants’ Settlement Data. To be accepted, Proof of Work must: (1) state the Class Member or PAGA Group Member’s full name, address, and the last four digits of his or her Social Security Number (for identification purposes only); (2) state, in writing, the reasons why he or she believes an additional amount is owed and include any documentations supporting that claim; (3) be signed by the Class Member or PAGA Group Member or his/her legal representative; and (4) be mailed to the Settlement Administrator and postmarked no later than the Response Deadline, or within the extended deadline as set forth in paragraph IV(D)(3) below, as applicable.

KK. **“Qualified Settlement Fund”** or **“QSF”** mean a federally insured bank account to be established by the Settlement Administrator into which all payments from Allegiant related to this

1 Settlement will be deposited and from which all payments authorized by the Court will be made. The
2 QSF will be established prior to Allegiant's deposit of the Gross Settlement Amount.

3 LL. **"Qualifying Class Workweeks"** means the total number of weeks during the Class
4 Period during which a Class Member was qualified to provide delivery services at least one day or
5 more as a helper, driver, or contract carrier owner for both Allegiant and Mattress Firm (as those entities
6 are defined herein) in connection with contracts Allegiant had with the contract carrier owners,
7 including any week credited to a Settlement Class Member as set forth below.

8 MM. **"Qualifying PAGA Workweeks"** means the total number of weeks during the PAGA
9 Period during which a PAGA Group Member was qualified to provide services at least one day or more
10 as a helper, driver, or contract carrier owner for both Allegiant and Mattress Firm (as those entities are
11 defined herein) in connection with contracts Allegiant had with the contract carrier owners.

12 NN. **"Released Class Claims"** means any and all claims, debts, liabilities, demands,
13 obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, and
14 liabilities of any nature whatsoever, whenever incurred, including costs, expenses, penalties, and
15 attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs and/or
16 any Settlement Class Member—individually and on behalf of any business entity that contracted with
17 Allegiant—had or now has, against any and all of the Defendants or the Released Parties, that arise
18 from, were alleged, or could have been alleged in the Action, the Complaints, under state, federal, or
19 local law, including, but not limited to, any and all claims pursuant to the Fair Labor Standards Act
20 ("FLSA"), 29 U.S.C. § 201, *et seq.*; California Labor Code sections 132a, 201-204, 206.5, 207, 208,
21 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351,
22 353, 432.4, 432.5, 450, 510-512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197,
23 1197.1, 1198, 2753, 2802, 2804, 3700 *et seq.*, and 4553 *et seq.*; California Code of Civil Procedure
24 section 1021.5; California Code of Regulations, title 8, sections 11010 and 11040; Industrial Welfare
25 Commission Wage Orders; California Business and Professions Code sections 17200 *et seq.*; and any
26 other similar municipal code or ordinance, state, federal, or common law, for misclassification, unpaid
27 wages, failure to pay minimum wages, failure to pay regular wages, failure to pay overtime wages,
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1 failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to
2 maintain records, payroll recordkeeping, reporting time, improper deduction of wages, failure to
3 provide workers' compensation insurance, failure to provide meal periods or to pay premiums in lieu
4 thereof, failure to provide rest breaks or to pay premiums in lieu thereof, failure to provide sick leave
5 and failure to pay sick wages at the regular rate, failure to timely pay wages during employment, failure
6 to timely pay final wages at termination, unfair business practices, all claims arising out of or that could
7 have been brought based on the statutory causes of action described herein, or claims for restitution,
8 interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages,
9 exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment
10 interest at any time during the Class Period. The Released Class Claims include all such claims
11 regardless of whether they are known or unknown, suspected or unsuspected that were or could have
12 been alleged against any of the Released Parties arising out of, in connection with, or based on the facts
13 alleged in the Complaints. Notwithstanding the foregoing, Released Class Claims do not include any
14 individual claim under Section 216(b) of the FLSA, 29 U.S.C. § 216(b), as to a Settlement Class
15 Member who does not opt-in to the Settlement by either signing the Payment Information Form and/or
16 cashing, depositing, or endorsing their Individual Settlement Payment check, to the extent that opting-
17 in is required to release such FLSA claims. This release shall extend to all such claims accrued during
18 the Class Period.

19 OO. "**Released PAGA Claims**" means any and all claims for civil penalties under PAGA that
20 arise from, were alleged or could have been alleged against any and all of the Defendants or Released
21 Parties in the Action, the Complaints, and PAGA Letters sent by Plaintiffs to the LWDA, under state,
22 federal, or local law, including, but not limited to, any and all claims for penalties pursuant to California
23 Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5,
24 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.4, 432.5, 450, 510-512, 551-552, 558,
25 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804, 3700 *et seq.*, and
26 4553 *et seq.*; California Code of Regulations, title 8, sections 11010 and 11040; Industrial Welfare
27 Commission Wage Orders; and any other similar municipal code or ordinance, state, federal, or
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common law, for misclassification, unpaid wages, failure to pay minimum wages, failure to pay regular wages, failure to pay overtime wages, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to maintain records, payroll recordkeeping, reporting time, improper deduction of wages, failure to provide workers' compensation insurance, failure to provide meal periods or to pay premiums in lieu thereof, failure to provide rest breaks or to pay premiums in lieu thereof, failure to provide sick leave and failure to pay sick wages at the regular rate, failure to timely pay wages during employment, failure to timely pay final wages at termination, unfair business practices, all claims arising out of or that could have been brought based on the statutory causes of action described herein, or claims for restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest at any time during the PAGA Period, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Letters that Plaintiffs sent to the LWDA. This release shall extend to all such claims accrued during the PAGA Period.

PP. **"Released Parties"** means Allegiant, Diverse, and Mattress Firm and each of their present, former and future controlling persons, parents, affiliates, subsidiaries, acquired companies, divisions, successors-in-interest, and each of their respective present and former benefit plans, owners, officers, directors, principals, shareholders, employees, agents, attorneys, insurers, managers, trustees, fiduciaries, representatives, predecessors, successors, and assigns, and any individual or entity who may be jointly liable with any of the foregoing with respect be to the Released Class Claims or Released PAGA Claims.

QQ. **"Representative Plaintiffs"** means Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy.

RR. **"Request for Exclusion"** means a written and signed request that a Class Member may submit to be excluded from the Class and the release of the Class Released Claims. Any Request for Exclusion to opt out shall be in the form as specified herein in paragraphs IV(E)(4) below, and in the

1 Notice of Settlement. PAGA Group Members shall release the Released PAGA Claims regardless of
2 whether they submit a valid Request for Exclusion.

3 SS. **“Response Deadline”** means the sixty (60) day period following the date the Settlement
4 Administrator mails the Notice of Settlement to the Class Members and PAGA Group Members within
5 which: (a) any Class Member may submit a written Request for Exclusion to be excluded from the
6 Class and the release of Released Class Claims; (b) any Class Member may submit an Objection to the
7 Settlement; and/or (c) any Class Member and/or PAGA Group Member may submit an optional Proof
8 of Work using the processes described herein. All Requests for Exclusion and Objections to Settlement
9 must be submitted before the end of the Response Deadline or within the extended deadline as set forth
10 in paragraph IV(D)(3) below, as applicable.

11 TT. **“Service and Release Award”** means the payment to be made to each of the
12 Representative Plaintiffs for their service to the Class and for the broader individual general release
13 that they are providing to Defendants as set forth in paragraph IV(Q), which is in addition to whatever
14 payments they otherwise would be entitled to receive as a Settlement Class Member and/or PAGA
15 Group Member. The Service and Release Award is subject to Court approval.

16 UU. **“Settlement”** means the final and complete disposition of the Action and all related
17 claims effectuated by this Agreement.

18 VV. **“Settlement Administration Costs”** means the fees and costs incurred or charged by
19 the Settlement Administrator in connection with the execution of its duties under this Agreement
20 including, but not limited to fees and costs associated with: (1) sending notices pursuant to the Class
21 Action Fairness Act; (2) establishing and maintaining the QSF; (3) preparing, issuing and/or monitoring
22 reports, filings, and notices (including the cost of printing and mailing all notices and other documents
23 to the Settlement Class Members) required to be prepared in the course of administering the Settlement;
24 (4) computing the amount of the settlement payments, taxes, and any other payments to be made under
25 this Agreement; (5) handling inquiries about the calculation of Individual Settlement Payments; (6)
26 establishing and operating a settlement payment center website, address, and phone number to receive
27 Settlement Class Members’ inquiries about the Settlement; (7) providing a due diligence declaration
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1 for submission to the Court prior to the final approval hearing; (8) printing and providing Settlement
2 Class Members and the Plaintiffs with 1099 forms as required under this Agreement and applicable
3 law; (9) preparing, issuing, and filing any tax documents or filings required by any governmental taxing
4 authority or other governmental agency; and (10) any other tasks as the Parties mutually agree or the
5 Court orders the Settlement Administrator to perform. Court-approved Settlement Administration
6 Costs will be paid out of the Gross Settlement Amount.

7 WW. “**Settlement Administrator**” refers to Simpluris, Inc.

8 XX. “**Settlement Class**” or “**Settlement Class Member**” means all Class Members who
9 have not timely submitted a valid and complete Request for Exclusion under the process described in
10 paragraphs IV(E).

11 YY. “**Settlement Data**” means information regarding the Class Members and PAGA Group
12 Members that Defendants will in good faith compile from their records and provide to the Settlement
13 Administrator, solely for purposes of the Settlement Administrator’s administration of the settlement,
14 and for no other purpose. Settlement Data shall include, if known, for each Class Member and PAGA
15 Group Member: full name, last known address, social security number, qualification date and, if
16 applicable, service end date during the Class Period and PAGA Period, based on Allegiant’s records.
17 Settlement Data shall be provided to the Settlement Administrator no later than thirty (30) days after
18 the Court grants preliminary approval of the Settlement. Settlement Data shall only be used by the
19 Settlement Administrator for the purpose of calculating Individual Settlement Payments and PAGA
20 Payment Shares and notifying Class Members and PAGA Group Members of the Settlement.
21 Settlement Data shall not be disclosed to Class/PAGA Counsel, Plaintiffs, or any other Class Members
22 or PAGA Group Members without the written consent of Defendants or by order of the Court. The
23 Settlement Administrator shall be responsible for following all privacy laws and taking appropriate
24 steps to ensure that Class Members’ and PAGA Group Members’ personal information is safeguarded
25 and protected from improper disclosure or use, including execution of a Data Privacy Agreement in
26 the form attached hereto as **Exhibit C**. The Settlement Administrator shall run the Settlement Data list
27 through the National Change of Address database, and shall use the most recent address for each Class
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1 Member and PAGA Group Members – either from Defendants’ records or the National Change of
2 Address database – before mailing the Notice of Settlement. The Settlement Administrator shall also
3 take reasonable steps to locate any Class Member or PAGA Group Member whose Notice of Settlement
4 is thereafter returned as undeliverable. Settlement Data shall be provided in a secure format to be
5 determined by the Settlement Administrator and Defendants.

6 ZZ. “**Settlement Payment Rate**” means the gross amount that a Settlement Class Member
7 shall receive for each Qualifying Class Workweek, that shall be determined as described in paragraph
8 IV(J)(1) below.

9 **III. BACKGROUND**

10 It is agreed by and among the Parties that this Agreement is made in compromise of and
11 embraces all Released Class Claims and Released PAGA Claim as defined herein. Because the settled
12 matter is a putative class and PAGA representative action, this Agreement must receive preliminary
13 and final approval by the Court. Accordingly, Plaintiffs and Defendants enter into this Agreement on
14 a conditional basis. Should the Court, or any other court taking jurisdiction of this matter, decline to
15 approve all material aspects of the Agreement or make any ruling substantially altering the material
16 terms of the Settlement, the Agreement shall be voidable and unenforceable as to Plaintiffs and
17 Defendants, at the option of any party. Subject to the requirements of the immediately preceding
18 sentence, any party may exercise their option to void this Agreement by giving notice, in writing, to
19 the other party and to the Court at any time before final approval by the Court of this Agreement. In
20 the event that the Effective Date, as defined herein, does not occur, this Agreement shall be deemed
21 null and void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to or
22 utilized for any purpose.

23 Defendants deny all of Plaintiffs’ class and representative claims as to liability and damages.
24 Defendants expressly reserve all rights to challenge any and all such claims and allegations upon all
25 procedural and factual grounds, including the assertion of all defenses, if the Effective Date of the
26 Agreement does not occur. Likewise, Plaintiffs expressly reserve all rights to pursue, amend, dismiss
27 or otherwise dispose of the claims covered under this Settlement, including but not limited to seeking
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1 damages, restitution, fees, expenses, interest and/or any other monetary amount for the claims included
2 in the Civil Action or for any other claims Plaintiffs may have against Defendants, in the event the
3 Effective Date of the Agreement does not occur.

4 Plaintiffs and Class/PAGA Counsel have concluded, after taking into account the sharply
5 disputed factual and legal issues involved in the Action, the risks attending further prosecution, and the
6 substantial benefits to be received pursuant to settlement as set forth in this Agreement, that settlement
7 on the terms set forth herein is in the best interest of Plaintiffs and the Class Members and PAGA
8 Group Members, and is fair and reasonable.

9 Similarly, Defendants have concluded, after taking into account the sharply disputed factual
10 and legal issues involved in the Action, the risks and expense attending further litigation, and their
11 desire to put the controversy to rest, that settlement on the terms set forth herein is in their best interest
12 and is fair and reasonable.

13 **IV. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

14 **A. Preliminary Approval of Settlement**

15 1. Once finalized, Class/PAGA Counsel shall promptly submit this Agreement to the
16 Court for preliminary approval and determination by the Court as to its fairness, adequacy, and
17 reasonableness. Within twenty-one (21) days after the execution of this Agreement, or by another
18 deadline ordered by the Court, Class/PAGA Counsel will file a motion for preliminary approval
19 seeking an order:

- 20 (a) Granting preliminary approval of the proposed Settlement as fair, reasonable, and
21 adequate as to Class Members;
- 22 (b) Granting approval as to form and content of the proposed Notice of Settlement;
- 23 (c) Granting approval of the plan of allocation of the Gross Settlement Amount;
- 24 (d) Directing the mailing of the Notice of Settlement by first-class mail to Class Members
25 and PAGA Group Members by the Settlement Administrator;
- 26 (e) Conditionally certifying the Class for settlement purposes only;
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(f) Appointing Class/PAGA Counsel, Plaintiffs as Representative Plaintiffs, and Simpluris, Inc. as Settlement Administrator; and

(g) Scheduling a Final Fairness and Approval Hearing for a determination as to whether the proposed settlement should be finally approved.

(h) The submission shall also include a proposed order granting preliminary approval of Settlement in the form attached hereto as **Exhibit D** and shall also include admissible evidence as may be required for the Court to determine that this Settlement is fair, adequate, and reasonable. Class/PAGA Counsel shall provide their motion for preliminary approval and all supporting papers to Defendants' Counsel for review at least ten (10) days prior to filing.

2. At the time Class/PAGA Counsel files the motion for preliminary approval, Class/PAGA Counsel will submit a copy of this Agreement to the LWDA. See Cal. Lab. Code § 2699(l)(2). Defendants will ensure that notice of this Agreement is timely submitted to the appropriate Federal and State officials pursuant to 28 U.S.C. § 1715.

3. The Parties have agreed to the certification of the Class for the sole purposes of effectuating this Settlement only. Should the Settlement be terminated for any reason, or should the Settlement not be approved by the Court or the judgment not become final, the fact that the Parties were willing to stipulate to class certification as part of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in this Action, and in any of those events, Defendants expressly reserve the right to oppose class certification. Additionally, if the Settlement does not become final, this Agreement and all negotiations, court orders, and proceedings related thereto shall be without prejudice to the rights of all Parties, and evidence relating to the Agreement and all negotiations shall not be admissible in the Action or otherwise. The Parties further agree that if, for any reason, the Settlement is not approved, the certification for purposes of this Settlement will have no force or effect and will be immediately revoked.

4. Should the Court decline to conditionally certify the Class or to preliminarily approve and give final approval to all material aspects of the Settlement, the Settlement will be null, and void

1 and the Parties will have no further obligations under it.

2 5. If the Court grants preliminary approval but does not grant final approval of the
3 Settlement, then the preliminary approval order shall be vacated in its entirety, unless the Court orders
4 otherwise.

5 **B. Cooperation**

6 The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement,
7 including, but not limited to taking any reasonably necessary actions to implement the terms of this
8 Agreement. No party, nor any of its attorneys or agents, shall solicit or encourage any Class Member
9 to opt out of or object to the Settlement.

10 **C. Notice of Settlement**

11 1. Within fifteen (15) days of the Preliminary Approval Date, but subject to the Settlement
12 Administrator providing adequate and contractual assurances with respect to confidentiality and data
13 security, Allegiant shall provide the Settlement Administrator with the Settlement Data. This
14 information will remain confidential and will not be disclosed to anyone, except as required to
15 applicable taxing authorities, pursuant to Defendants' express written authorization, by order of the
16 Court, or as otherwise provided for in this Agreement. The Settlement Data shall be used only for the
17 purpose of administering this Settlement.

18 2. The Settlement Administrator shall, within forty-five (45) days of the Preliminary
19 Approval Date, mail by First-Class United States mail the Notice of Settlement to each Class Member
20 and PAGA Group Member, all in English and Spanish, using the most recent address available to the
21 Settlement Administrator for mail delivery. Using the Settlement Data, the Settlement Administrator
22 will: (1) confirm and inform the Parties of the number of Class Members and PAGA Group Members;
23 (2) finalize and print the Notice of Settlement; (3) check all addresses against the National Change of
24 Address database; and (4) within thirty (30) days of receiving the Settlement Data, send to each Class
25 Member and PAGA Group Member via First-Class United States mail an English and Spanish version
26 of the Notice of Settlement to the most recent address known for each Class Member and PAGA Group
27 Member. It will be conclusively presumed that if an envelope so mailed has not been returned within
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1 fifteen (15) days of the mailing, the Settlement Class Member and PAGA Group Member received the
2 Notice of Settlement.

3 3. Any self-identified individual who did not receive the Notice of Settlement seeking to
4 be included in the Settlement shall provide the Settlement Administrator with their full name, date of
5 birth, Social Security number or tax identification number, the name of the contract carrier that the
6 individual worked for (if any), and written proof of their provision of services to Allegiant delivering
7 Mattress Firm products during the Class Period, with as much detail as feasible, such as dates of work,
8 to assist the Parties with establishing the individual's status as a Class Member and/or PAGA Group
9 Member. To the extent necessary to resolve disputes regarding the validation process, the Parties agree
10 to meet and confer in good faith. The Settlement Administrator, advised by the Parties, will determine
11 whether each such individual is to be treated as a Class Member and/or PAGA Group Member and the
12 number of Qualifying PAGA Workweeks and Qualifying Class Workweeks.

13 **D. Re-Sending Notices of Settlement**

14 1. In the event that Defendants' Counsel or Class/PAGA Counsel becomes aware of new
15 addresses for any Class Member or PAGA Group Member, on or before the Response Deadline, such
16 information must be communicated to the Settlement Administrator. The Settlement Administrator
17 will then promptly re-send a Notice of Settlement to the Class Member and/or PAGA Group Member
18 at the new mailing address, assuming another mailing address is identified on or before the Response
19 Deadline.

20 2. For any Notice of Settlement that is returned as undeliverable on or before the Response
21 Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is
22 provided, the Settlement Administrator will promptly attempt to determine a correct address by
23 performing a utility database search or other skip trace. The Settlement Administrator shall then
24 promptly perform a re-mailing to the Class Member and/or PAGA Group Member whose Notice of
25 Settlement was returned as non-delivered, assuming new mailing addresses were obtained for such
26 Class Members and/or PAGA Group Members.

27 3. For any Notice of Settlement that is mailed or re-mailed after the original mailing date,
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the Settlement Administrator shall include a brief letter stating that the recipient of the Notice of Settlement has until the original deadline set forth on the Notice of Settlement, or ten (10) calendar days after the date of re-mailing of the Notice of Settlement (whichever is later) to object or submit a Request for Exclusion. In no event shall this be later than ten (10) days prior to the Final Fairness and Approval Hearing. It will be conclusively presumed that if an envelope so re-mailed has not been returned within fifteen (15) days of re-mailing, the Settlement Class Member received the Notice of Settlement.

4. If the above-referenced procedures are followed, notice to Class Members and PAGA Group Members shall be deemed to have been fully satisfied, and if the intended recipient of the Notice of Settlement does not receive the Notice of Settlement, the intended recipient shall nevertheless remain a Settlement Class Member and/or PAGA Group Member, as applicable, and shall be bound by all terms of the Settlement and the Final Approval Order and Judgment.

E. Requests for Exclusion (Opt-Outs)

1. Any Class Member who wishes to be excluded from the Class and the Settlement must notify the Settlement Administrator in writing of his or her desire to be excluded by mailing his or her own written statement to the Settlement Administrator that clearly expresses such desire and is signed by such Settlement Class Member. To be valid, the written Request for Exclusion must: (1) include the Class Member's name (and former names, if any), current address, telephone number, and last four numbers of the Class Member's social security number; (2) include a clear statement of intention to be excluded from the settlement; (3) be signed by the Class Member or his or her lawful representative; (4) be returned to the Settlement Administrator at the specified address; and (5) be postmarked by the Response Deadline no later than sixty (60) days after the original date of the Settlement Administrator's mailing of the Notice of Settlement or ten (10) calendar days after the date of re-mailing of the Notice of Settlement (whichever is later) submit a Request for Exclusion. In no event shall this be later than ten (10) days prior to the Final Fairness and Approval Hearing. Any untimely or incomplete Request for Exclusion shall be considered null and void. The date of the postmark on the mailing envelope for any Request for Exclusion shall be the exclusive means used to determine whether the Request for

1 Exclusion has been timely submitted.

2 2. Any Class Member who submits a valid and timely request to be excluded from the
3 Class and Settlement shall no longer be a member of the Class, shall be barred from participating in
4 this Settlement, shall be barred from objecting to this Settlement, and shall receive no benefit from this
5 Settlement. If a Class Member submits both a completed, signed and timely Proof of Work and a
6 completed, signed, and timely Request for Exclusion, the Request for Exclusion shall be deemed
7 invalid, and the Class Member shall be a Settlement Class Member and participate in the Settlement.

8 3. Because this Settlement resolves claims and actions brought pursuant to PAGA by
9 Plaintiffs acting as a proxy and as Private Attorneys General of, and for, the State of California and the
10 LWDA, the Parties agree that no PAGA Group Member has a right to exclude himself or herself or opt
11 out from the release of the Released PAGA Claims regardless of whether he or she timely submits a
12 valid Request for Exclusion from the Settlement as a Class Member, and regardless of whether he or
13 she cashes a payment from the PAGA Fund. All PAGA Group Members will be bound by the
14 settlement and release of any Released PAGA Claims upon final judgment pursuant to *Arias v. Superior*
15 *Court*, 46 Cal. 4th 969 (2009), and shall receive a pro rata portion of the PAGA Fund allocated for
16 PAGA Group Member distribution. For the avoidance of doubt, Requests for Exclusion do not apply
17 to the release of Released PAGA Claims, and will not be effective to preclude the release of Released
18 PAGA Claims.

19 4. In furtherance of the foregoing, any Class Member who submits a valid and timely
20 Request for Exclusion from the Settlement shall be deemed to have waived all objections and
21 opposition to the fairness, reasonableness, and adequacy of this Settlement.

22 Any Class Member who fails to submit a timely, complete, and valid Request for Exclusion
23 shall be barred from opting out of the Settlement and shall be a Settlement Class Member. It shall be
24 conclusively presumed that, if a Request for Exclusion is not postmarked on or before the Response
25 Deadline or within the extended deadline as provided for within this Agreement if the Notice of
26 Settlement is returned as undeliverable with forwarding addresses provided by the United States Postal
27 Service, as applicable, the Class Member did not make the request in a timely manner. Under no
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1 circumstances shall the Settlement Administrator have the authority to extend the deadline for Class
2 Members to file a Request for Exclusion. The Settlement Administrator shall promptly provide via
3 email to all Class/PAGA Counsel and Defendants' Counsel with copies of all Requests for Exclusion
4 that it receives.

5 Unless a Class Member submits a timely, complete, and valid Request for Exclusion, he or she
6 shall be deemed a Settlement Class Member and shall be bound by the terms and conditions of this
7 Agreement. The releases provided for in this Agreement shall conclusively preclude any Settlement
8 Class Member from asserting any of the Released Class Claims against any of the Released Parties.

9 **F. Declaration of Compliance**

10 As soon as practicable following the close of the Response Deadline, but no later than twenty-
11 one (21) days before the Final Fairness and Approval Hearing, the Settlement Administrator shall
12 provide Class/PAGA Counsel and Defendants' Counsel with a declaration attesting to completion of
13 the notice process set forth in this Agreement at Section IV, including the number of notices sent and
14 returned, an explanation of efforts to resend undeliverable notices, summary of any disputes raised by
15 any Class Members or PAGA Group Members, and the number and names of all Requests for
16 Exclusion. This declaration shall be filed with the Court by Class/PAGA Counsel along with a motion
17 requesting final approval of the Settlement.

18 **G. Sufficient Notice**

19 The Parties agree that compliance with the procedures described in this Agreement at Section
20 IV shall constitute due and sufficient notice to Class Members and PAGA Group Members of this
21 Settlement and of the Final Fairness and Approval Hearing, shall satisfy the requirements of due
22 process, and nothing else shall be required of the Representative Plaintiffs, Class/PAGA Counsel,
23 Defendants, Defendants' Counsel, or the Settlement Administrator to provide notice of the Settlement
24 and the Final Fairness and Approval Hearing.

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H. Objections to Settlement

1. Deadline for Objections

Any Class Member wishing to object to the approval of this Settlement may appear at the Final Fairness and Approval Hearing in person or telephonically or submit a written brief or statement of objection that shall inform the Court in writing of his or her intent to object by following the procedure for written objections set forth in the Notice of Settlement no later than the Response Deadline, or extended Response Deadline as set forth above. Any Objection to Settlement must: (1) state the Class Member's full name, address, and the last four digits of his or her Social Security Number (for identification purposes only); (2) clearly identify the case name and number (Christian Decena, et al. v Allegiant Final Mile, Inc., et al., Case No. 23-CV-03633-YGR); (3) state with specificity the grounds for the objection; (4) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; (5) be signed by the Class Member or his or her or its lawful representative; and (6) be postmarked to the Clerk of the Court or filed with the Court (electronically through PACER or in person at the office of the Clerk of the Court or any location of the United States District Court for the Northern District of California) on or before the Response Deadline, which is 60 days after the mailing of the Notice of Settlement. All written objections must be submitted before the end of the Response Deadline or within the extended deadline if the Notice of Settlement is returned as undeliverable with forwarding address provided by the United States Postal Service, as applicable. The Court may, in its sole discretion, permit any Class Member to lodge objections to the Settlement at the Final Fairness and Approval Hearing, regardless of whether the Class Member has submitted a written objection.

Any Class Member who does not submit a valid and timely Request for Exclusion and who objects to the Settlement will still be considered a Settlement Class Member. A Class Member who submits both a timely Request for Exclusion and who attempts to object to the Settlement shall be deemed to have opted out of the Settlement. Any Class Member who does not object prior to or at the Final Fairness and Approval Hearing shall be foreclosed from objecting to this Settlement (including but not limited to by appeal), unless otherwise ordered by the Court.

1 2. **Responses to Objections**

2 Class/PAGA Counsel and Defendants' Counsel shall file any responses to any written
3 objections from Class Members submitted to the Court in accordance with this Agreement at least five
4 (5) court days before the Final Fairness and Approval Hearing.

5 3. **Waiver of Appeal**

6 Any Class Member who does not timely submit an objection to the Settlement and/or does not
7 comply with any other substantive or procedural obligations imposed by law, waives any and all rights
8 to appeal the Final Approval Order and Judgment, including all rights to any post-judgment proceeding
9 and appellate proceeding such as a motion to vacate the judgment or motion for reconsideration.
10 Moreover, because this Settlement resolves claims and actions brought pursuant to PAGA by the
11 Representative Plaintiffs acting as a proxy and as Private Attorneys General of, and for, the State of
12 California and the LWDA, the Parties agree that no PAGA Group Member has the right to object to
13 the terms of the Settlement in his or her capacity as a PAGA Group Member.

14 4. **Defendants' Right to Rescind**

15 Allegiant estimates that there are 577 Class Members. Any increase of over 5% from
16 Allegiant's estimate shall trigger an escalator to the Gross Settlement Amount on a pro rata basis (by
17 way of example, a 6% (35 Settlement Class Members) increase of the Settlement Class size would
18 result in a 1% increase to the Gross Settlement Amount). To the extent the Court does not approve all
19 or part of the Mediation Cost Credit, any amount disallowed by the Court will remain a portion of the
20 Gross Settlement Amount and be distributed in accordance with the terms of this Agreement and the
21 Parties agree that the Settlement shall remain in binding with such modification(s) and its terms will
22 otherwise be unchanged. Additionally, if 20 or more of the Class Members elect not to participate in
23 the Settlement, Defendants may, at their respective election, rescind the Settlement. In that event, all
24 actions taken in furtherance of the Settlement will be null and void. A Defendant must exercise this
25 right of rescission, in a writing to Class/PAGA Counsel, within twenty-one (21) calendar days of the
26 date that the Settlement Administrator notifies the Parties of the total number of Settlement Class
27 Members who have opted out of the Settlement. If a Defendant exercises this right of rescission, that

Defendant must pay all reasonable expenses incurred by the Settlement Administrator as of the date of the Defendant's notice of rescission.

I. Final Fairness and Approval Hearing

On the date set by the Court, the Final Fairness and Approval Hearing shall be held in order to: (1) determine whether the Court should give this Settlement final approval; (2) determine whether Class/PAGA Counsel's application for attorneys' fees and costs, and request for the Service and Release Award to the Representative Plaintiffs, should be granted; and (3) consider any timely Objections to Settlement, including Class/PAGA Counsel's and Defendants' Counsel's responses thereto. At the Final Fairness and Approval Hearing, the Representative Plaintiffs, Class/PAGA Counsel, and Defendants' Counsel shall ask the Court to give final approval to this Settlement. Class/PAGA Counsel shall provide the motion for final approval and all supporting papers to Defendants' Counsel at least ten (10) days prior to filing. Upon final approval, the Court shall enter a Final Approval Order and Judgment (in a form submitted by Class/PAGA Counsel and approved by Defendants' Counsel) which has the effect of granting final approval of the Settlement and this Agreement as binding upon the Parties, the Settlement Class Members, and the PAGA Group Members, as set forth in this Agreement. If the Court grants final approval of the Settlement, the Settlement Administrator shall post notice of final judgment on its website within seven (7) business days of entry of the Final Approval Order and Judgment. Class/PAGA Counsel shall submit a copy of the Final Approval Order and Judgment to the LWDA within ten (10) days after entry of the Final Approval Order and Judgment in accordance with California Labor Code section 2699(l)(3). Following the Effective Date and hearing following submission of the Parties' post-distribution accounting (if applicable), the Action shall be dismissed with prejudice.

J. Settlement Payment Procedures to Settlement Class Members and PAGA Group Members

Payments under this Agreement shall be made by the Settlement Administrator as follows, subject to Court approval at the Final Fairness and Approval Hearing.

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1 1. **Net Class Settlement Amount**

2 Each Settlement Class Member shall be entitled to a pro rata share of the Net Class Settlement
3 Amount based on the number of Qualifying Class Workweeks the Settlement Class Member worked
4 during the Class Period to the extent the Qualifying Class Workweeks can be determined from
5 Allegiant's records. Therefore, each Settlement Class Member for whom the Settlement Data shows
6 five (5) or more Qualifying Class Workweeks shall be credited with the number of Qualifying Class
7 Workweeks shown in the Settlement Data, subject to the process for disputes about Qualifying Class
8 Workweeks set forth below. Each Settlement Class Member for whom the Settlement Data shows less
9 than five (5) Qualifying Class Workweeks, including each Settlement Class Member for whom
10 Defendants do not have records indicating the number of Qualifying Class Workweeks, shall be
11 credited with five (5) Qualifying Class Workweeks, subject to the process for disputes about Qualifying
12 Class Workweeks set forth below.

13 The Parties agree that the formula for allocating Individual Settlement Payments to Settlement
14 Class Members provided herein is reasonable and that the Individual Settlement Payments are designed
15 to provide a fair settlement, despite the uncertainties of the amounts alleged to be owed to Settlement
16 Class Members and the calculation of them. Using this method of calculating Qualifying Class
17 Workweeks, the Net Class Settlement Amount shall be divided among individual Settlement Class
18 Members using the following formulas:

19 **(Net Class Settlement Amount ÷ Total Number of Qualifying Class Workweeks)**

20 **= Settlement Payment Rate**

21 **(Settlement Payment Rate x Settlement Class Member's Qualifying Class**

22 **Workweeks) = gross amount of each Settlement Class Member's Individual**

23 **Settlement Payment**

24 2. **Net PAGA Settlement Amount**

25 Each PAGA Group Member shall be entitled to a pro rata share of the Net PAGA Settlement
26 Amount based on the number of Qualifying PAGA Workweeks the PAGA Group Member worked
27 during the PAGA Period to the extent the Qualifying PAGA Workweeks can be determined from
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Allegiant's records. Therefore, each PAGA Group Member for whom the Settlement Data shows five (5) or more Qualifying PAGA Workweeks shall be credited with the number of Qualifying PAGA Workweeks shown in the Settlement Data, subject to the process for disputes about Qualifying PAGA Workweeks set forth below. Each PAGA Group Member for whom the Settlement Data shows less than five (5) Qualifying PAGA Workweeks, including each PAGA Group Member for whom Defendants do not have records indicating the number of Qualifying PAGA Workweeks, shall be credited with five (5) Qualifying PAGA Workweeks, subject to the process for disputes about Qualifying PAGA Workweeks set forth below.

The Parties agree that the formula for allocating PAGA Payment Shares to PAGA Group Members provided herein is reasonable and that the PAGA Payment Shares are designed to provide a fair settlement, despite the uncertainties of the amounts alleged to be owed to PAGA Group Members and the calculation of them. Using this method of calculating Qualifying PAGA Workweeks, the Net PAGA Settlement Amount shall be divided among individual PAGA Group Members using the following formula:

$$\text{(Net PAGA Settlement Amount} \div \text{Total Number of Qualifying PAGA Workweeks)} = \text{PAGA Payment Rate}$$

$$\text{(PAGA Payment Rate} \times \text{PAGA Group Member's Qualifying PAGA Workweeks)} = \text{gross amount of each PAGA Group Member's PAGA Payment Share}$$

Any Settlement Class Member and/or PAGA Group Member for whom the Settlement Administrator was provided a social security number or other tax identification number as part of the Settlement Data shall receive an Individual Settlement Payment from the Net Class Settlement Amount and/or PAGA Payment Share from the Net PAGA Settlement Amount. Any Settlement Class Member and/or PAGA Group Member for whom a social security number or other tax identification number was not available in the Settlement Data must timely submit a Payment Information Form or his/her Individual Settlement Payment and PAGA Payment Share may be reduced as set forth in Section (IV)(J)(5) below. A Payment Information Form is timely if it is postmarked within sixty (60) calendar days of the mailing of the Notice of Settlement. However, for any Notice of Settlement that is mailed

or re-mailed after the original mailing date the deadline to submit a Payment Information Form will be no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date is less than 60 days from the date of mailing or re- mailing. A Payment Information Form must be timely mailed to the Settlement Administrator at the address in the Notice of Settlement, or if it is submitted online to the Settlement Administrator, in accordance with the online submission instructions to be provided by the Settlement Administrator. The Payment Information Form must be signed (electronically, if submitted online) under penalty of perjury. To be valid, a Payment Information Form must be signed without any deletion or amendment to its language confirming the release of FLSA claims and without any deletion or amendment to any other portion. All Settlement Class Members and PAGA Group Members shall be bound by this Settlement, regardless of whether they submit a timely Payment Information Form.

The Settlement Administrator, on Defendants' and Class/PAGA Counsel's collective behalf, shall have the authority and obligation to make payments, credits, and disbursements, including payments and credits in the manner set forth herein, to Settlement Class Members and PAGA Group Members calculated in accordance with the methodology set out in this Agreement and orders of the Court.

3. Inclusion of Qualifying Class and PAGA Workweeks and Estimated Individual Settlement Payment and PAGA Payment Share Information in Notice of Settlement

The Notice of Settlement sent to each Class Member and PAGA Group Member shall state the amount of the Class Member's Qualifying Class Workweeks and PAGA Group Member's Qualifying PAGA Workweeks, as reflected in the Settlement Data. Each Notice of Settlement shall also include an estimate of the Individual Settlement Payment and PAGA Payment Share calculations for each Class Member and/or PAGA Group Member.

4. Disputes about Qualifying Workweeks

If a Settlement Class Member or PAGA Group Member disagrees with the number of Qualifying Class Workweeks or Qualifying PAGA Workweeks stated in his or her Notice of

Settlement, he or she may dispute that figure by informing the Settlement Administrator of the number of Qualifying Class Workweeks or Qualifying PAGA Workweeks in dispute by submitting Proof of Work including supporting documentation (such as, without limitation, timekeeping records, settlement statements, or pay stubs) prior to the Response Deadline. However, for any Notice of Settlement that is mailed or re-mailed after the original mailing date, the deadline to dispute information in the Notice of Settlement will be no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date is less than 60 days from the date of mailing or re-mailing. If there is a dispute, the Settlement Administrator will consult with Class/PAGA Counsel and Defendants' Counsel to determine whether an adjustment is warranted. However, the Settlement Administrator shall have the sole discretion to determine the outcome of any such disputes. The Settlement Data will be presumed determinative if there is a dispute over Qualifying Class Workweeks or Qualifying PAGA Workweeks, unless the Settlement Class Member has submitted valid and compelling documentation to support his or her claim to a different number of Qualifying Class Workweeks or Qualifying PAGA Workweeks than the number shown on the Notice of Settlement. As this is not a claims-made settlement, Class Members shall still be bound by this Agreement, regardless of any such submission, unless they submit a completed, signed, and timely Request for Exclusion. In no case shall a dispute result in a payment by Defendants in excess of the Gross Settlement Amount.

5. Disbursement of Payments

Within twenty-one (21) days of Allegiant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will transmit to Class/PAGA Counsel the attorneys' fees, costs and expenses approved by the Court, shall transmit to Plaintiffs their respective Service and Release Award approved by the Court, shall transmit to the LWDA the payment pursuant to PAGA, shall mail an Individual Settlement Payment to each Settlement Class Member and shall mail a PAGA Payment Share to each PAGA Group Member and make settlement payments to Settlement Class Members eligible for payment based on the payment formula set forth herein. However, any portion of the Net Class Settlement Amount and Net PAGA Settlement Amount that was allocated to Settlement Class Members or PAGA Group Members for whom there was no social

1 security or other tax identification numbers provided in the Settlement Class Data, and who did not
2 submit valid and timely Payment Information Forms, shall be paid up to \$600 of their portion of the
3 Net Class Settlement Amount or Net PAGA Settlement Amount, as applicable, in compliance with
4 Internal Revenue Service rules. Any amount in excess of \$600 owed to such Settlement Class Members
5 or PAGA Group Members, for whom the Settlement Administrator does not have a social security
6 number or tax identification number and who did not submit valid Payment Information Forms, shall
7 be reallocated on a pro rata basis to those Settlement Class Members and PAGA Group Members for
8 whom social security or other tax identification numbers are available, or who submitted valid and
9 timely Payment Information Forms.

10 Settlement Class Member payments paid from the Net Settlement Amount will not be reduced
11 by any employer or employee tax withholdings. For Settlement Class Members or PAGA Group
12 Members for whom a social security number or other tax identification number was either included in
13 the Settlement Class Data or provided by the Settlement Class Member or PAGA Group Member in
14 the Payment Information Form, the Settlement Administrator will issue a Form 1099 for the payments.
15 Each Settlement Class Member will be responsible for any federal, state, and/or local tax obligations
16 and/or consequences that may arise out of the Individual Settlement Payments agreed to in this
17 Agreement. Under no circumstances shall the Settlement Administrator distribute checks to Settlement
18 Class Members or PAGA Group Members until all timely disputes and Proof of Work have been
19 considered, calculated, and accounted for, and the Class/PAGA Counsel's fees and expenses, costs of
20 the Settlement Administrator, and Service and Release Awards, if any, have been calculated and
21 accounted for.

22 It is expressly understood and agreed that the receipt of an Individual Settlement Payment or
23 PAGA Payment Share shall not entitle any Settlement Class Member or PAGA Group Member to
24 compensation or benefits under any company bonus, contest, or other compensation or benefit plan or
25 agreement in place during the applicable Class Period or PAGA Period, nor shall it entitle any
26 Settlement Class Member or PAGA Group Member to any increased retirement, 401(k) or matching
27 benefits, or deferred compensation benefits. The Parties agree that any Individual Settlement Payments
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1 or PAGA Payment Shares made to Settlement Class Members and PAGA Group Member under the
2 terms of this Agreement shall not represent any modification of previously credited length of service
3 or other eligibility criteria under any bonus plan, employee pension benefit plan, or employee welfare
4 plan sponsored by any of the Released Parties, or to which any of the Released Parties are required to
5 make contributions. Further, any Individual Settlement Payments or PAGA Payment Shares made
6 under this Agreement shall not be considered compensation in any year for purposes of determining
7 eligibility for, or benefit accrual within, any employee pension benefit plan or employee welfare benefit
8 plan sponsored by any of the Released Parties or to which any of the Released Parties are required to
9 make contributions. It is the Parties' intent that the Individual Settlement Payments and PAGA
10 Payment Shares provided for in the Settlement are the sole payments to be made by Defendants to the
11 Settlement Class Members and PAGA Group Members, and that the Settlement Class Members and
12 PAGA Group Members are not entitled to any new or additional compensation or benefits as a result
13 of having received the Individual Settlement Payments or PAGA Payment Shares, notwithstanding any
14 contrary terms in any agreement, contract, benefit or compensation plan document that might have
15 been in effect during the applicable Class Period or PAGA Period.

16 **K. The Settlement Administrator**

17 1. The Settlement Administrator will perform the duties specified in this Agreement and
18 any other duties incidental to such obligations. The Settlement Administrator's duties shall include,
19 without limitation: establishing the QSF, preparing, translating and distributing the Notice of
20 Settlement and Payment Information Forms; calculating and directing the disbursement of payments
21 to Settlement Class Members and PAGA Group Members, Class/PAGA Counsel, the Representative
22 Plaintiffs and the LWDA; handling inquiries about the calculation of individual settlement payments;
23 preparing and filing any tax documents or filings required by any governmental taxing authority or
24 other governmental agency; sending notices pursuant to the Class Action Fairness Act; providing
25 requested status reports to the Parties' counsel; immediately advising Defendants' and Class/PAGA
26 Counsel of any Class Members who submit Requests for Exclusions from the Settlement; providing a
27 due diligence declaration for submission to the Court prior to the final approval hearing; printing and
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1 providing Settlement Class Members, PAGA Group Members, and the Representative Plaintiffs with
2 1099 forms as required under this Agreement and applicable law; arranging for and remitting funds
3 from any uncashed settlement payment to the designated recipient, as determined by the Court; and for
4 such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to
5 perform. The Settlement Administrator shall maintain commercially reasonable procedures for
6 securely handling Settlement Data, and shall accept responsibility for and maintain insurance in case
7 of errors in the administration of the Settlement.

8 2. Settlement administration fees in a reasonable amount shall be paid to the Settlement
9 Administrator from the Gross Settlement Amount. Settlement administration fees are estimated to be
10 approximately Seventeen Thousand Two Hundred Seventy Dollars and No Cents (\$17,270). If the
11 actual cost of settlement administration is less or more than the amount approved by the Court, those
12 funds shall be added to or subtracted from the Net Class Settlement Amount for allocation to Class
13 Members. All costs associated with settlement administration shall come out of the Gross Settlement
14 Amount.

15 3. The Settlement Administrator shall be authorized to establish a QSF pursuant to Internal
16 Revenue Service (“IRS”) rules and regulations in which the Gross Settlement Amount shall be placed
17 and from which payments required by the Settlement shall be made. One hundred percent (100%) of
18 the amount of each Individual Settlement Payment to each Settlement Class Member and one hundred
19 percent (100%) of the amount of each PAGA Payment Share to each PAGA Group Member shall be
20 paid pursuant to a Form 1099, and shall not be subject to withholding. Each Settlement Class Member,
21 PAGA Group Member, Class/PAGA Counsel, and Plaintiffs shall be responsible for remitting to state
22 and/or federal taxing authorities any applicable taxes which may be owed on the portion of any payment
23 received pursuant to this Agreement.

24 4. The Settlement Administrator shall establish a settlement payment center address,
25 telephone number, facsimile number, and email address to receive Settlement Class Members’ inquiries
26 about the Notice of Settlement and Payment Information Form, requests to be excluded from the
27 Settlement and settlement payments.

1 5. In addition, the Settlement Administrator shall establish a static website and post this
2 Agreement, the court-approved Notice of Settlement, any preliminary approval order, and the Final
3 Approval Order and Judgment.

4 6. The Parties confirm, and Class/PAGA Counsel and Defendants' Counsel confirm that
5 they do not have any financial interest in the Settlement Administrator or otherwise have a relationship
6 with the Settlement Administrator that could create a conflict of interest.

7 **L. Time for Payment by Allegiant**

8 Within thirty (30) days after the Effective Date, Allegiant shall provide the Gross Settlement
9 Amount to the Settlement Administrator, which the Settlement Administrator shall place in a Qualified
10 Settlement Fund.

11 **M. Class/PAGA Counsel, Mediation Cost Credit, and the Representative Plaintiffs**
12 **Payments**

13 Within twenty-one (21) days of Allegiant's deposit of the Gross Settlement Amount with the
14 Settlement Administrator, the Settlement Administrator shall make payments from the Qualified
15 Settlement Fund to: (1) Class/PAGA Counsel, both the Class/PAGA Counsel's Attorneys' Fees and
16 Costs, awarded to Class/PAGA Counsel by the Court; (2) Allegiant for the Mediation Cost Credit; and
17 (3) the Service and Release Award for the Representative Plaintiffs approved by the Court. These
18 payments will be reported on an IRS Form 1099.

19 **N. Payments to the California Labor and Workforce Development Agency**

20 Within twenty-one (21) days of Allegiant's deposit of the Gross Settlement Amount with the
21 Settlement Administrator, the Settlement Administrator will make the payment to the LWDA of
22 \$22,750.00, or such other amount as approved by the Court.

23 **O. Un-negotiated Settlement Payment Checks**

24 Any Individual Settlement Payment or PAGA Payment Share that cannot be sent or otherwise
25 remains uncashed sixty (60) days after disbursement, the Settlement Administrator shall attempt to
26 contact each Settlement Class Member and PAGA Group Member to advise them to cash their checks,
27 and to offer to replace any checks reported as either lost or stolen. In attempting to contact such
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1 persons, the Settlement Administrator will send correspondence by mail to the individuals' last known
2 addresses (as provided by Defendants) after first checking those addresses against the NCOA database
3 and utility database.

4 Any Individual Settlement Payment or PAGA Payment Share that remains uncashed after one
5 hundred and eighty (180) days of disbursement shall be void. The Parties agree that this disposition
6 results in no "unpaid cash residue," or "unclaimed or abandoned funds" under California Code of Civil
7 Procedure section 384, as amended effective June 27, 2018, as the entire Net Class Settlement Amount
8 and PAGA Fund will be paid out to the Settlement Class Members and PAGA Group Members,
9 whether or not they cash their payment checks. The entire amount of each Settlement Class Members'
10 or PAGA Group Members' uncashed settlement check(s) shall be turned over to the California State
11 Controller's Office in the name of the individual Settlement Class Member/PAGA Group Member.
12 The Parties acknowledge that California Civil Procedure Code section 384 and the Doctrine of Cy Pres
13 are not applicable to this Settlement because the terms of the Settlement expressly provide for the
14 disposition of the entire Net Class Settlement Amount and PAGA Fund, whether claimed or unclaimed.
15 None of the settlement funds from the Net Class Settlement Amount and PAGA Fund will revert back
16 to Defendants. Defendants shall not be liable for any additional amount due to this subsequent
17 distribution. In any event, the Settlement Class Member and PAGA Group Member nonetheless shall
18 be bound by the release of Released Class Claims and Released PAGA Claims and the terms of this
19 Agreement.

20 **P. Class/PAGA Counsel Attorneys' Fees and Costs**

21 Class/PAGA Counsel may move the Court for an order awarding attorneys' fees expressed as
22 a percentage of the Gross Settlement Amount, and for reimbursement of costs and expenses incurred
23 in the case. Any Class/PAGA Counsel's Attorneys' Fees and Settlement Class Counsel's Costs
24 awarded by the Court shall be paid from the Gross Settlement Amount.

25 To the extent the Court does not approve any or the entire amount Class/PAGA Counsel seeks
26 in Attorneys' Fees or Costs, such amounts shall remain part of the Gross Settlement Amount and
27 distributed in accordance with the provisions of this Agreement. If the Court approves a lesser amount
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1 for Class/PAGA Counsel's Attorney's Fees or Costs than those sought by Class/PAGA Counsel, any
2 amount disallowed by the Court shall be added to the Net Class Settlement Amount and allocated to
3 the Settlement Class Members and the Parties agree that the settlement shall remain binding with such
4 modification(s) and its terms will otherwise be unchanged.

5 Upon the payment of the Court-approved amount of Class/PAGA Counsel's Attorneys' Fees
6 and Class/PAGA Counsel's Costs, and except as otherwise provided by this Agreement, Class/PAGA
7 Counsel waives any claim to costs and attorneys' fees and expenses against Defendants arising from
8 or related to the Action, including but not limited to claims based on the California Labor Code or any
9 other statute or law.

10 **Q. Services and Release Award to Representative Plaintiffs**

11 Plaintiffs may move the Court for a Representative Plaintiffs' Service and Release Award not
12 to exceed \$10,000 for each Representative Plaintiff. Any Representative Plaintiffs' Service and
13 Release Award awarded by the Court shall be paid from the Gross Settlement Amount. The Service
14 and Release Awards are to compensate each of the Plaintiffs for the risk, time, and expense of his
15 involvement in the Action and securing the benefits of this Agreement for Class Members and the
16 general release of claims as set forth herein. The Service and Release Award is in addition to the
17 Individual Settlement Payment and/or PAGA Payment Share that Plaintiffs would otherwise be due
18 under the Settlement as a Class Member and/or PAGA Group Member.

19 As part of the consideration in exchange for each Representative Plaintiffs' agreement to
20 resolve their claims, Allegiant and Diverse forever discharge each of the Representative Plaintiffs and
21 their entities, agents, heirs, executors, assigns, attorneys, and related, affiliated, or owned entities, from
22 any and all claims, actions, causes of action, rights, suits, debts, contracts, obligations, agreements,
23 proceedings, damages, charges and demands of whatever kind or nature in law or in equity, under any
24 theory, whether common law, constitutional, statutory or other, of any jurisdiction, foreign or domestic,
25 whether known or unknown, anticipated or unanticipated, that Allegiant and Diverse ever had, may
26 have had, now has or that their heirs, assigns, executors or administrators hereinafter can, will or may
27 have, whether known or unknown, asserted or unasserted, suspected or unsuspected, as a result of any
28

act or omission between the Parties which has occurred at any time up to and including the date of the execution of this Agreement by each of the Representative Plaintiffs.

The Representative Plaintiffs will be responsible for any federal, state, and/or local tax obligations and/or consequences that may arise out of any Representative Plaintiffs' Service and Release Award. To the extent the Court does not approve any or all of the amount of the Service and Release Award sought by Class/PAGA Counsel, any amount disallowed by the Court will remain a portion of the Gross Settlement Amount and be distributed in accordance with the terms of this Agreement and the Parties agree that the Settlement shall remain in binding with such modification(s) and its terms will otherwise be unchanged.

V. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission of Liability

Neither the acceptance nor the performance by Defendants of the terms of this Agreement, nor any of the related negotiations or proceedings, nor any documents filed in support of the Settlement shall constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding, or evidence of: (i) any wrongdoing by any Defendant, (ii) any violation of any statute or law by any Defendant, (iii) any liability on the claims or allegations in the Action or any other proceeding, or (iv) the propriety of certifying a litigation class in the Action or any other proceeding, and shall not be used for any purpose whatsoever in any legal proceeding other than a proceeding to enforce the terms of the Settlement.

B. Nullification

If the Court for any reason does not finally approve this Settlement, this Agreement shall be null and void and all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

Invalidation of any material portion of this Agreement shall invalidate this Settlement in its entirety unless the Parties shall agree in writing that the remaining provisions shall remain in full force and effect.

///

VI. RELEASED CLASS CLAIMS AND RELEASED PAGA CLAIMS BY THE SETTLEMENT CLASS MEMBERS AND PAGA GROUP MEMBERS

Upon entry of the Final Approval Order and Judgment, all Settlement Class Members, on behalf of themselves, and each of their respective heirs, representatives, successors, assigns, executors, agents, personal representatives, affiliated business entities (if any) and attorneys, fully releases and forever discharges the Released Parties from any and all Released Class Claims that accrued during the Class Period.

Upon entry of the Final Approval Order and Judgment, all PAGA Group Members, Representative Plaintiffs, on behalf of themselves individuals, the aggrieved employees and the LWDA, on behalf of themselves, and each of their respective heirs, representatives, successors, assigns, executors, agents, personal representatives, affiliated business entities (if any) and attorneys, fully releases and forever discharges the Released Parties from any and all Released PAGA Claims that accrued during the PAGA Period.

VII. RELEASE BY THE REPRESENTATIVE PLAINTIFFS

Upon entry of the Final Approval Order and Judgment, the Representative Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy, for themselves individually, their respective successors, assigns, agents, executors, heirs and personal representatives, and/or affiliated business entities, spouse and attorneys, and any and all of them, voluntarily and with the advice of counsel, waive and fully releases and forever discharge the Released Parties from any and all claims, liabilities, agreements, obligations, losses, damages, costs, expenses, attorneys' fees, injuries, demands, indemnities and causes of action of every kind and nature in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or accrued, including but not limited to those arising out of or in any way connected with Plaintiffs' relationships with any of the Released Parties, or any other occurrences, actions, omissions or claims whatever, known or unknown, suspected or unsuspected, which the Representative Plaintiffs now own or hold or have at any time heretofore owned or held as against any of the Released Parties.

///

1 Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy each hereby
2 further release all unknown claims against any of the Released Parties, covered by California Civil
3 Code Section 1542 provides:

4 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
5 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
6 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
7 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
8 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
9 **DEBTOR OR RELEASED PARTY.”**

10 The Representative Plaintiffs expressly waive the provisions of Section 1542 with full
11 knowledge and with the specific intent to release all known or unknown, suspected or unsuspected,
12 claims arising on or before the Effective Date of the Settlement, and, therefore, specifically waives the
13 provisions of any statute, rule, decision, or other source of law of the United States or of any state of
14 the United States or any subdivision of a state which prevents release of unknown claims.

15 **VIII. REPRESENTATIONS OF CLASS/PAGA COUNSEL**

16 Class/PAGA Counsel affirm that, other than Christian Decena, Hairon Martinez, Miguel Rios,
17 and Rigoberto Godoy, they do not represent any other workers asserting claims against Defendants as
18 to the Released Class Claims and Released PAGA Claims. Class/PAGA Counsel warrant that they
19 have not been retained by and do not otherwise represent any other individual or entity who has notified
20 Class/PAGA Counsel of potential claims against Defendants as to the Released Class and/or PAGA
21 Claims.

22 **IX. MISCELLANEOUS PROVISIONS**

23 **A. Amendments**

24 This Agreement may only be modified or changed by a writing signed by the Parties or by their
25 counsel.

26 **B. Integrated Agreement**

27 After this Agreement is signed and delivered by all Parties to the Action and their counsel, this
28 Agreement and its exhibits will constitute the entire agreement between the Parties to the Action
relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants,

1 or inducements have been made to any Party concerning this Agreement or its exhibits other than the
2 representations, warranties, covenants, and inducements expressly stated in this Agreement and its
3 exhibits.

4 **C. No Inducements**

5 Plaintiffs and Defendants acknowledge that they are entering into this Agreement as a free and
6 voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and that
7 neither Plaintiffs nor Defendants have relied on any promises, representations, or warranties regarding
8 the subject matter hereof other than as set forth in this Agreement.

9 **D. No Prior Assignment**

10 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
11 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity
12 any portion of any liability, claim, demand, action, cause of action, or rights herein released and
13 discharged except as set forth herein.

14 **E. No Retaliation or Advice**

15 Defendants agree not to retaliate against any Settlement Class Member, and Defendants will
16 not induce or offer any advice to any Settlement Class Member to opt out of, or object to, the
17 Settlement.

18 **F. Attorneys' Fees**

19 To the extent that any Party institutes any legal action, arbitration, or other proceeding to
20 enforce the terms of the Settlement, the prevailing Party will be entitled to recover their reasonable
21 attorneys' fees and costs from the other Party or Parties.

22 **G. Applicable Law**

23 All terms and conditions of this Agreement and its exhibits will be governed by and interpreted
24 according to the laws of the State of California, without giving effect to any conflict of law principles
25 or choice of law principles.

26 ///

27 ///

H. Entry of Judgment Pursuant to Terms of Settlement

The Parties agree that upon the Settlement of this case, the Court may enter final judgment pursuant to the terms of this Settlement and the Court will retain jurisdiction over the Parties to enforce the Settlement until performance in full of the terms of the Settlement.

I. Continuing Jurisdiction of the Court

The Parties agree that the Court shall retain jurisdiction over the Parties, and over this Agreement, in order to: (i) monitor and enforce compliance with this Agreement, Final Approval Order and Judgment and/or any related order of this Court; and/or (ii) resolve any disputes over this Agreement or the administration of the benefits of this Settlement.

J. Notices

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered personally or by first class mail to the undersigned persons at their respective addresses as set forth below:

SETTLEMENT CLASS COUNSEL:

Michael H. Boyamian
Armand R. Kizirian
BOYAMIAN LAW, INC.
550 North Brand Boulevard, Suite 1500
Glendale, CA 91203
Phone: 818.547.5300

COUNSEL FOR DEFENDANT ALLEGIANT AND DIVERSE:

Michele Finkel Ferber (SBN 149929)
mferber@ferberlaw.com
Jonathan R. Babione (SBN 270053)
jbabione@ferberlaw.com
Jennifer R. Lucas (SBN 2275050)
jlucas@ferberlaw.com
Adam Nathaniel Arce (SBN 328732)
aarce@ferberlaw.com
FERBER LAW, A Professional Corporation
2603 Camino Ramon, Suite 385
San Ramon, California 94583
(925) 355-9800

///

Andrew J. Butcher
abutcher@scopelitis.com
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
30 West Monroe Street, Suite 1600
Chicago, IL 60603
Phone: (312) 255-7200

COUNSEL FOR DEFENDANT MATTRESS FIRM:

Mara D. Curtis
mcurtis@reedsmith.com
Brittany M. Hernandez
bmhernandez@reedsmith.com
Tanner J. Hendershot
thendershot@reedsmith.com
REED SMITH LLP
355 South Grand Avenue, Suite 2800
Los Angeles, CA 90071-1514
Phone: 213-457-8000

K. Binding on Successors

This Agreement shall be binding and shall inure to the benefit of the Parties to the Action and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

L. No Prevailing Party

No Party shall be considered a prevailing party for any purpose. Except as otherwise provided for in this Agreement, each Party shall bear its or their own attorney fees and costs.

M. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute the same instrument.

N. Warranties and Representations

With respect to themselves, each of the Parties to this Action and or their agent or counsel represents, covenants, and warrants that they have full power and authority to enter into and consummate all transactions contemplated by this Agreement and have duly authorized the execution, delivery, and performance of this Agreement.

///

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O. Representation by Counsel

The Parties to this Action acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel.

P. Parties' Authority

The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions of this Settlement.

Q. Limitations on Disclosure

Plaintiffs and Defendants agree that (except for purposes of enforcement) they shall not issue any press release regarding the Settlement. Plaintiffs, Defendants, and their respective counsel agree that they shall not respond substantively to any press inquiry or otherwise communicate with the press regarding this Settlement. Class/PAGA Counsel shall not utilize this Settlement in any way in their marketing or advertising materials or website. Notwithstanding the above, Class/PAGA Counsel may communicate to any court the terms of the Settlement for purposes of conditional class certification, and for preliminary approval and final approval of the Settlement.

This Agreement, the Settlement, and any proceedings or actions or negotiations in connection therewith shall be deemed settlement communications covered by California Evidence Code Sections 1115-1128, 1152-1154, Federal Rule of Evidence 408, and any other similar provisions or law, and shall not be construed as an admission of truth of any allegation or the validity of any cause of action or claim asserted or of any liability therein.

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1 **IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly**
2 **authorized attorneys, as of the day and year herein set forth.**

3
4
5 Dated: 6/25/2024

CHRISTIAN DECENA, HAIRON
MARTINEZ, MIGUEL RIOS, and
RIGOBERTO GOODY,

8 By: _____

Christian Decena

DocuSigned by:

10 By: _____

C7D2A5F3D6094FA...

Hairon Martinez

12 By: _____

Miguel Rios

14 By: _____

Rigoberto Godoy

16 Dated: _____

ALLEGIANT FINAL MILE, LLC

18 By: _____

19 Name: _____

21 Position: _____

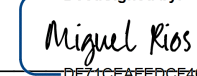
1 **IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly**
2 **authorized attorneys, as of the day and year herein set forth.**

3
4
5 Dated: 7/3/2024

CHRISTIAN DECENA, HAIRON
MARTINEZ, MIGUEL RIOS, and
RIGOBERTO GOODY,

8 By: _____
Christian Decena

10 By: _____
Hiron Martinez

11 
12 By: _____
Miguel Rios

14 By: _____
Rigoberto Godoy

16 Dated: _____

ALLEGiant FINAL MILE, LLC

18 By: _____

19 Name: _____

20 Position: _____

Dated: 7/8/2024

By: Miguel Rios
Rigoberto Godoy
 Rigoberto Godoy

Dated: _____

Position: _____

1 **IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly**
2 **authorized attorneys, as of the day and year herein set forth.**

3
4
5 Dated: _____

CHRISTIAN DECENA, HAIRON
MARTINEZ, MIGUEL RIOS, and
RIGOBERTO GOODY,

6
7
8 By: _____
Christian Decena

9
10 By: _____
Hairon Martinez

11
12 By: _____
Miguel Rios

13
14 By: _____
Rigoberto Godoy

15
16 Dated: 6/19/24

ALLEGIANT FINAL MILE, LLC

17
18 By:  _____

19 Name: Victor Meza

20 Position: COO

1 Dated: 6/19/24

DIVERSE LOGISTICS & DISTRIBUTION,
LLC

2
3 By: 

4 Name: John Ruska

5 Position: CEO

6
7
8 Dated: _____

MATTRESS FIRM, INC.

9
10 By: _____

11 Name: _____

12 Position: _____

13
14
15
16
17 4882-3433-6158, v. 9

1 Dated: _____

DIVERSE LOGISTICS & DISTRIBUTION,
LLC

2
3
4 By: _____

5 Name: _____

6 Position: _____

7
8 Dated: June 25, 2024

MATTRESS FIRM, INC.

9
10 By: [Signature]

11 Name: Kindel Nuno

12 Position: SRP, Legal + General Counsel

13
14
15
16
17 4882-3433-6158, v. 9

Exhibit B

NOTICE OF CLASS AND REPRESENTATIVE PAGA ACTION SETTLEMENT

Christian Decena, et al. v Allegiant Final Mile, Inc., et al.,
U.S. District Court for the Northern District of California Case No. Case No. 23-CV-03633-YGR

IF YOU PROVIDED SERVICES TO ALLEGiant FINAL MILE, LLC (“ALLEGiant”) DELIVERING MATTRESS FIRM, INC. (“MATTRESS FIRM”) PRODUCTS AS A CONTRACT CARRIER OWNER, DRIVER AND/OR HELPER IN THE STATE OF CALIFORNIA AT ANY TIME BETWEEN JANUARY 1, 2020 AND [**] THIS CLASS ACTION AND REPRESENTATIVE PAGA ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**

IF YOU ARE OR WERE A CONTRACT CARRIER OWNER WHO OWNED OR CONTROLLED AN ENTITY THAT DIRECTLY CONTRACTED WITH ALLEGiant AND PROVIDED DELIVERY SERVICES DELIVERING MATTRESS FIRM PRODUCTS IN THE STATE OF CALIFORNIA AT ANY TIME BETWEEN JANUARY 1, 2020 AND [**] THIS CLASS ACTION AND REPRESENTATIVE PAGA ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING AND AUTOMATICALLY RECEIVE PAYMENT	To receive a payment from the Settlement, you do NOT have to do anything. You will receive compensation, but lose rights to sue separately as described below in Sections 6 and 7.
ASK TO BE EXCLUDED FROM THE CLASS SETTLEMENT	You can ask to exclude yourself from the Class Settlement as described below in Section 8. If you exclude yourself from the Class portion of the Settlement, you will not be bound by it and you will not receive an Individual Settlement Payment. You cannot exclude yourself from the release of the Released PAGA Claims.
OBJECT	If you do not agree with the Settlement, you may object by submitting a written Objection to the Court as explained below in Section 9. You cannot object to the Settlement if you request to exclude yourself from the Class.

***DETAILED, IMPORTANT INFORMATION ABOUT THE SETTLEMENT MAY BE FOUND ON THE
SUBSEQUENT PAGES OF THIS NOTICE***

QUESTIONS? CALL *****

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1. Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class and representative action lawsuit entitled *Christian Decena, et al. v Allegiant Final Mile, Inc., et al.*, U.S. District Court for the Northern District of California Case No. 23-CV-03633-YGR (the “Action”). The purpose of this Notice of Class and Representative PAGA Action Settlement (“Notice”) is to briefly describe the Action, and to inform you of your rights and options in connection with it and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

This Notice summarizes the proposed Settlement. For the precise terms of the Settlement, please see the settlement agreement available online at [REDACTED], by contacting Class/PAGA counsel the phone numbers and email addresses listed below, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. The website listed above, lists key deadlines and has links to the notice, preliminary approval order, motions for preliminary and final approval and for attorneys’ fees (as they become available), and any other important documents in the case.

A hearing concerning the Settlement will be held on March 18, 2025 at 2:00 p.m. before the Honorable Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California, Oakland Courthouse, Courtroom 1 – 4th Floor, 1301 Clay Street, Oakland, CA 94612, via Zoom Video Conference, to determine whether the Settlement is fair, adequate, and reasonable. The proposed Settlement will resolve all claims that were alleged or could have been alleged in the Action. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

AS A CLASS MEMBER, YOU ARE ELIGIBLE TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT UNDER THE SETTLEMENT AND WILL BE BOUND BY THE RELEASED CLASS CLAIMS DESCRIBED IN THIS NOTICE AND THE SETTLEMENT AGREEMENT FILED WITH THE COURT, UNLESS YOU TIMELY REQUEST TO BE EXCLUDED FROM THE SETTLEMENT. IN ADDITION, THIS PROPOSED SETTLEMENT RELEASES CLAIMS UNDER THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”). IF YOU ARE A PAGA GROUP MEMBER, YOU WILL RECEIVE A PAGA PAYMENT SHARE UNDER THE SETTLEMENT AND WILL BE BOUND BY THE RELEASE OF RELEASED PAGA CLAIMS DESCRIBED IN THIS NOTICE AND THE SETTLEMENT AGREEMENT FILED WITH THE COURT. YOU CANNOT REQUEST TO BE EXCLUDED FROM THE RELEASED PAGA CLAIMS, REGARDLESS OF WHETHER YOU TIMELY REQUEST TO BE EXCLUDED FROM THE RELEASE OF RELEASED CLASS CLAIMS.

2. Who is affected by this proposed Settlement?

The Court has certified the following Class (the “Class,” “Class Member,” or “Class Members”) for settlement purposes: (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 between January 1, 2020 and [REDACTED] (the “Class Period”).

The Court has also approved the following “PAGA Group Members” definition for settlement purposes: (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 between March 31, 2022 and [REDACTED]. (the “PAGA Period”).

According to Allegiant’s records, you are a member of the Class [and a PAGA Group Member].

3. What is this Action¹ about?

In the Action, Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy (“Plaintiffs” or “Class Representative Plaintiffs”) alleged claims against Defendants Allegiant Final Mile, LLC (“Allegiant”), Diverse Logistics & Distribution, LLC (“Diverse”), and Mattress Firm, Inc. (“Mattress Firm”) for: failure to pay wages, including, but not limited to, overtime and minimum wages, failure to provide meal periods or to pay premiums in lieu thereof, failure to provide rest periods or to pay premiums in lieu thereof, failure to timely pay wages upon separation from employment, unlawful deduction from wages, failure to provide timely and accurate itemized wage statements, failure to maintain or provide records, failure to reimburse business expenses, improperly and unlawfully demanding a cash bond, failure to timely pay wages during employment, failure to provide sick leave, failure to maintain and provide workers’ compensation insurance and benefits, misclassification as independent contractors, unfair competition, as well as a representative claim for penalties pursuant to the California Labor Code Private Attorney General Act of 2004, Labor Code Sections 2698, *et seq.* (“PAGA”) based on the violations alleged above. Plaintiffs asserted these claims on behalf of the Class Members and PAGA Group Members. Plaintiffs sought damages, restitution, civil penalties, statutory penalties, pre-and post-judgment interest, costs, and attorneys’ fees.

Defendants deny all liability in the Action and are confident that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with litigation. Defendants contend that their conduct is and has been lawful at all times relevant and that Plaintiffs’ claims do not have merit and do not meet the requirements for class certification or to maintain a representative action.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiffs and Defendants (collectively, the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendants. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate, and reasonable. Plaintiffs also believe this Settlement is in the best interests of all Class Members and PAGA Group Members.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendants’ defenses.

4. Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class/PAGA Counsel

Michael H. Boyamian, Esq. (#256107)
Armand R. Kizirian, Esq. (#293992)

Defense Counsel

Andrew J. Butcher (*pro hac vice*)
abutcher@scopelitis.com

¹ “Action” means the lawsuit filed against Defendants in the putative class and representative action, that is currently pending in the United States District Court for the Northern District of California titled *Christian Decena et al. v. Allegiant Final Mile Inc. et al.*, Case Number 23-cv-03633-YGR.

Boyamian Law, Inc.

550 North Brand Boulevard, Suite 1500
Glendale, CA 91203
Tel.: (818) 547-5300
Fax: (818) 547-5678
Email: michael@boyamianlaw.com
Email: armand@boyamianlaw.com

Defense Counsel

Michele Finkel Ferber (SBN 149929)
mferber@ferberlaw.com
Jonathan R. Babione (SBN 270053)
jbabione@ferberlaw.com
Jennifer R. Lucas (SBN 227505)
jlucas@ferberlaw.com
Adam Nathaniel Arce (SBN 328732)
aarce@ferberlaw.com

Ferber Law, A Professional Corporation

2603 Camino Ramon, Suite 385
San Ramon, California 94583
Telephone: (925) 355-9800

Scopelitis, Garvin, Light, Hanson & Feary, P.C.

30 West Monroe St., Suite 1600
Chicago, IL 60603
Telephone: 312.255.7200
Facsimile: 312.422.1224

Mara D. Curtis (SBN 268869)

mcurtis@reedsmith.com

Brittany M. Hernandez (SBN 299044)

bmhernandez@reedsmith.com

Tanner J. Hendershot (SBN 346841)

thendershot@reedsmith.com

Reed Smith LLP

355 South Grand Avenue

Suite 2800

Los Angeles, CA 90071-1514

Telephone: +1 213 457 8000

Facsimile: +1 213 457 8080

5. What are the Settlement terms?

Subject to the Court's final approval, the key terms of the Settlement are as follows:

Gross Settlement Amount.

Subject to final Court approval, Allegiant will pay \$900,000.00 (the "Gross Settlement Amount"), which shall be inclusive of all payments to individual Class Members ("Individual Settlement Payments"), all attorneys' fees and expenses (including court costs) to be paid to Class/PAGA Counsel, any Service and Release Awards, settlement administration costs and expenses, and all payments to PAGA Group Members and the California Labor and Workforce Development Agency ("LWDA") for PAGA penalties. In no event will Defendants be required to pay more than the Gross Settlement Amount for the claims under the terms of the Settlement.

Net Settlement Amounts.

The "Net Class Settlement Amount" means the portion of the Gross Settlement Amount available for distribution to Class Members after the deduction of: (1) subject to Court approval, the Service and Release Awards to each of the Plaintiffs in an amount up to \$10,000.00 each for their services to the class as Representative Plaintiffs and individual releases for a total of \$40,000.00; (2) the settlement administration costs to the Settlement Administrator, Simpluris, Inc. estimated at approximately [REDACTED]; (3) \$30,000.00 for PAGA payments to the LWDA and the PAGA Group Members ("PAGA Fund") (75% or \$22,500.00 shall be paid to the LWDA and 25% or \$7,500.00 shall be distributed to the PAGA Group Members as discussed herein); and (4) Class/PAGA Counsel's attorneys' fees payment in an amount up to [REDACTED] and Class/PAGA Counsel's litigation costs payment in an amount up to [REDACTED]. All of these payments are subject to Court approval.

The "Net PAGA Settlement Amount" means the Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) that will be disbursed to the PAGA Group Members from the PAGA Fund. The remaining Twenty-Two Thousand Five Hundred Dollars and No Cents (\$22,500.00) of the PAGA Fund will be paid to the LWDA.

Settlement Distribution

If you disagree with the number of Qualifying Class Workweeks or Qualifying PAGA Workweeks written on the enclosed Payment Information Form, you must submit Proof of Work of why you believe the Qualifying Class and/or PAGA Workweeks are inaccurate. "Proof of Work" means document(s) that a Class Member or PAGA

Group Member may submit to the Settlement Administrator in order to show that that he or she is entitled to payment based upon a different number of Qualifying Class Workweeks or Qualifying PAGA Workweeks than the number calculated by the Settlement Administrator based upon Defendants' Settlement Data. To be accepted, the Proof of Work written explanation must be submitted to the Settlement Administrator and must: (1) contain your full name, address, and the last four digits of your Social Security Number (for identification purposes only); (2) state, in writing, the reasons why you believe an additional amount is owed and include any documentation supporting that claim; (3) be signed by you or your legal representative; and (4) be mailed to the Settlement Administrator at the address specified below and postmarked no later than the Response Deadline of [Response Deadline], which is 60 days after the mailing of this Notice of Class and PAGA Settlement and the enclosed Payment Information Form (collectively referred to as "Notice of Settlement"). ("Response Deadline"). If no postmark is indicated on the Proof of Work, the Settlement Administrator must receive the Proof of Work no later than 10 days after the Response Deadline for it to be deemed timely. All Proof of Work documents must be submitted before the end of the Response Deadline or within the extended deadline if the Notice of Settlement is returned as undeliverable with forwarding address provided by the United States Postal Service, as applicable.

If you wish to dispute the number of Qualifying Class Workweeks and/or Qualifying PAGA Workweeks allocated to you, the Settlement Administrator to whom your optional written explanation disputing the number of Qualifying Class Workweeks and/or Qualifying PAGA Workweeks allocated to you must be mailed is:

[Redacted]
[Address]

Do not use a postage meter because that may not result in a postmark appearing on the envelope containing your optional written explanation. The Settlement Administrator will review your written explanation and any supporting documentation that you provide, as well as Allegiant's records, to resolve any disputes regarding the accurate number of Qualifying Class and/or PAGA Workweeks. The calculation of your Qualifying Class Workweeks and/or Qualifying PAGA Workweeks (outlined in the enclosed Payment Information Form) will be presumed accurate unless you submit clear and compelling documentary evidence that establishes that a mistake was made regarding the number of Qualifying Class and/or PAGA Workweeks. The Settlement Administrator shall investigate the dispute, requesting information from Defendants as necessary and make the final determination of whether any additional amount is owed. All such challenges must be postmarked within the Response Deadline or within the extended deadline if the Notice of Settlement is returned as undeliverable with forwarding address provided by the United States Postal Service, as applicable. If no postmark is indicated on the dispute, the Settlement Administrator must receive the dispute no later than 10 days after the Response Deadline for it to be deemed timely.

If any Individual Settlement Payment or PAGA Payment Share check remains uncashed after 180 days from issuance, the Settlement Administrator will cancel those checks and shall pay the funds represented by such unredeemed checks to the California State Controller's Office, as unclaimed property, in the name of the individual Settlement Class Member and/or PAGA Group Member. In that event, the Settlement Class Member and/or PAGA Group Members nonetheless shall be bound by the terms of the Settlement.

Please refer to the Payment Information Form "Instructions To Submit Payment Information Form With Personal Information" to confirm that your social security number or tax identification number is available and for instructions regarding submitting the Payment Information Form with the requested information, if applicable. Any Settlement Class Member and/or PAGA Group Member for whom a social security number or other tax identification number was not available in the Settlement Data must submit a Payment Information Form to receive an Individual Settlement Payment and/or PAGA Payment Share from the Net Class Settlement Amount and/or Net PAGA Settlement Amount, as applicable.

If your social security or tax identification number is not available and you do not submit a valid and timely Payment Information Form with the requested information, you will still be eligible to receive payment from the Settlement of up to \$600.00 of your portion of the Net Class Settlement Amount and/or Net PAGA Settlement Amount, in compliance with Internal Revenue Service rules.

Any amount in excess of \$600.00 owed to Settlement Class Members or PAGA Group Members, for whom no social security or other tax identification numbers are available, shall be reallocated on a pro rata basis to those

Settlement Class Members and PAGA Group Members for whom a social security number or other tax identification number was included in the Settlement Class Data or provided by the individual in a valid and timely Payment Information Form. You will be bound to the release of Released Class Claims and Released PAGA Claims regardless of whether you submit such information on the Payment Information Form.

6. What claims are being released by the proposed Settlement?

Upon entry of the Final Approval Order and Judgment, all Settlement Class Members, on behalf of themselves, and each of their respective heirs, representatives, successors, assigns, executors, agents, personal representatives, affiliated business entities (if any) and attorneys, fully releases and forever discharges the Released Parties from any and all Released Class Claims that accrued during the Class Period.

“Released Class Claims,” means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action, and liabilities of any nature whatsoever, whenever incurred, including costs, expenses, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs and/or any Settlement Class Member, had or now has, against any and all of the Defendants or the Released Parties, that arise from, were alleged, or could have been alleged in the Action, the Complaints², under state, federal, or local law, including, but not limited to, any and all claims pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*; California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.4, 432.5, 450, 510-512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804, 3700 *et seq.*, and 4553 *et seq.*; California Code of Civil Procedure section 1021.5; California Code of Regulations, title 8, sections 11010 and 11040; Industrial Welfare Commission Wage Orders; California Business and Professions Code sections 17200 *et seq.*; and any other similar municipal code or ordinance, state, federal, or common law, for misclassification, unpaid wages, failure to pay minimum wages, failure to pay regular wages, failure to pay overtime wages, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to maintain records, payroll recordkeeping, reporting time, improper deduction of wages, failure to provide workers’ compensation insurance, failure to provide meal periods or to pay premiums in lieu thereof, failure to provide rest breaks or to pay premiums in lieu thereof, failure to provide sick leave and failure to pay sick wages at the regular rate, failure to timely pay wages during employment, failure to timely pay final wages at termination, unfair business practices, all claims arising out of or that could have been brought based on the statutory causes of action described herein, or claims for restitution, interest, costs and expenses, attorneys’ fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest at any time during the Class Period. The Released Class Claims include all such claims regardless of whether they are known or unknown, suspected or unsuspected that were or could have been alleged against any of the Released Parties arising out of, in connection with, or based on the facts alleged in the Complaints. Notwithstanding the foregoing, Released Class Claims do not include any individual claim under Section 216(b) of the FLSA, 29 U.S.C. § 216(b), as to a Settlement Class Member who does not opt-in to the Settlement by either signing the Payment Information Form and/or cashing, depositing, or endorsing their Individual Settlement Payment check, to the extent that opting-in is required to release such FLSA claims. This release shall extend to all such claims accrued during the Class Period.

Upon entry of the Final Approval Order and Judgment, all PAGA Group Members, Representative Plaintiffs, on behalf of themselves individuals, the aggrieved employees and the LWDA, on behalf of themselves, and each of their respective heirs, representatives, successors, assigns, executors, agents, personal representatives, affiliated business entities (if any) and attorneys, fully releases and forever discharges the Released Parties from any and all Released PAGA Claims that accrued during the PAGA Period.

“Released PAGA Claims” means any and all claims for civil penalties under PAGA under PAGA that arise from, were alleged or could have been alleged against any and all of the Defendants or Released Parties in the Action, the

² “Complaints” means, collectively, the complaint filed on March 24, 2023 by Plaintiffs against Allegiant and Diverse in the Superior Court of the State of California in and for the County of Sacramento, entitled Christian Decena, et al. v Allegiant Final Mile, Inc., et al., Case No. 23CV029993, the First Amended Complaint filed on June 6, 2023 by Plaintiffs against Allegiant, Diverse, and Mattress Firm, and the Second Amended Complaint filed by Plaintiffs in the Action on June 14, 2024, currently pending in the United States District Court for the Northern District of California, entitled Christian Decena, et al. v. Allegiant Final Mile, Inc., et al., Case No. 23-CV-03633-YGR..

Complaints, and PAGA Letters sent by Plaintiffs to the LWDA, under state, federal, or local law, including, but not limited to, any and all claims for penalties pursuant to California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.4, 432.5, 450, 510-512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804, 3700 et seq., and 4553 et seq.; California Code of Regulations, title 8, sections 11010 and 11040; Industrial Welfare Commission Wage Orders; and any other similar municipal code or ordinance, state, federal, or common law, for misclassification, unpaid wages, failure to pay minimum wages, failure to pay regular wages, failure to pay overtime wages, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to maintain records, payroll recordkeeping, reporting time, improper deduction of wages, failure to provide workers' compensation insurance, failure to provide meal periods or to pay premiums in lieu thereof, failure to provide rest breaks or to pay premiums in lieu thereof, failure to provide sick leave and failure to pay sick wages at the regular rate, failure to timely pay wages during employment, failure to timely pay final wages at termination, unfair business practices, all claims arising out of or that could have been brought based on the statutory causes of action described herein, or claims for restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest at any time during the PAGA Period, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Letters that Plaintiffs sent to the LWDA. This release shall extend to all such claims accrued during the PAGA Period.

The "Released Parties" means Allegiant, Diverse, and Mattress Firm and each of their present, former and future controlling persons, parents, affiliates, subsidiaries, acquired companies, divisions, successors-in-interest, and each of their respective present and former benefit plans, owners, officers, directors, principals, shareholders, employees, agents, attorneys, insurers, managers, trustees, fiduciaries, representatives, predecessors, successors, and assigns, and any individual or entity who may be jointly liable with any of the foregoing with respect be to the Released Class Claims or Released PAGA Claims.

7. How To Receive Your Settlement Payment?

You do not need to do anything to receive your Individual Settlement Payment and/or PAGA Payment Share. However, no settlement payments will be made unless and until the Court grants final approval of the Settlement.

If you do nothing, you will be considered a Settlement Class Member and will receive a proportionate share of the Settlement Amount. You will be bound by the terms of the Settlement and also give up any rights to pursue a separate legal action against Defendants and/or any of the Released Parties for the same or similar claims in this lawsuit as detailed in the Released Class Claims and Released PAGA Claims below.

8. TO REQUEST EXCLUSION FROM THE SETTLEMENT AND THE CLASS

If you do not want to be part of the Settlement and do not want to be bound by the release of the Released Class Claims, you must submit a written Request for Exclusion (Opt-Out) to the Settlement Administrator at the following address below, postmarked on or before the Response Deadline of **[Response Deadline]**:

[]
[add address]

In order to be valid, your written Request for Exclusion must: (1) contain your name, address, and the last four digits of your Social Security Number; (2) state your request to exclude yourself from the release of Released Class Claims; (3) be signed by you or your lawful representative; (4) be returned to the Settlement Administrator at the address specified above; and (5) be postmarked on or before the Response Deadline of **[Response Deadline]**, which is 60 days after mailing of the Notice of Settlement and returned to the Settlement Administrator at the specified address above, or within the extended deadline if the Notice of Settlement is returned as undeliverable with forwarding address provided by the United States Postal Service, as applicable. If no postmark is indicated on the Request for Exclusion, the Settlement Administrator must receive the Request for Exclusion no later than 10 days after the Response Deadline for it to be deemed timely. All Requests for Exclusion must be submitted before the end of the Response Deadline or within the extended deadline if the Notice of Settlement is returned as undeliverable with forwarding address provided by the United States Postal Service, as applicable. If you do not submit a timely and valid written Request for Exclusion, you will be bound by the release of Released Class Claims as described

above and all other terms of the Settlement. If you timely submit a valid, signed written Request for Exclusion, you will have no further role in the Action as to the Released Class Claims, and you will not be entitled to any benefit as a result of Settlement as a Class Member. Any untimely or incomplete Request for Exclusion shall be considered null and void. **You cannot object to the Settlement if you submit a valid Request for Exclusion.**

This Settlement also resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as a proxy and as Private Attorneys of, and for, the State of California and the LWDA. A PAGA Group Member will be bound by the release of the Released PAGA Claims upon approval of the Settlement by the Court at the Final Fairness and Approval Hearing, regardless of whether he or she submitted a Request for Exclusion as a Class Member, and regardless of whether he or she cashes a payment from the PAGA Fund.

9. TO OBJECT TO THE SETTLEMENT

If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. The Court can only approve or deny the settlement and cannot change the terms of the Settlement. To object, you may appear at the Final Fairness and Approval Hearing in person or telephonically, have an attorney object for you, or submit a written brief or statement of objection (“Objection”) to the Court by Mail at the following address: United States District Court for the Northern District of California, San Francisco Courthouse, Attn: Class Action Clerk, 450 Golden Gate Avenue, San Francisco, CA 94102. You can also submit your written objection electronically through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>. You can also submit your written objection in person at the office of the Clerk of the Court for the United States District Court for the Northern District of California at the address listed above or any location of the United States District Court for the Northern District of California.

If you submit a written objection, the Objection must: (1) state your full name, address, and the last four digits of your Social Security Number (for identification purposes only); (2) clearly identify the case name and number (*Christian Decena, et al. v Allegiant Final Mile, Inc., et al., Case No. 23-CV-03633-YGR*); (3) state the specific grounds for the objection and whether it applies only to you, to a specific subset of the class, or to the entire class; (4) be signed by you or your lawful representative; and (5) be postmarked to the Clerk of the Court at the address listed above or filed with the Court (electronically through PACER or in person at the office of the Clerk of the Court or any location of the United States District Court for the Northern District of California) on or before the Response Deadline of **[Response Deadline]**, which is 60 days after the mailing of the Notice of Settlement, or within the extended deadline if the Notice of Settlement is returned as undeliverable with forwarding address provided by the United States Postal Service, as applicable. All written objections must be submitted before the end of the Response Deadline or within the extended deadline if the Notice of Settlement is returned as undeliverable with forwarding address provided by the United States Postal Service, as applicable. If no postmark is indicated on the Objection, the Settlement Administrator must receive the Objection no later than 10 days after the Response Deadline for it to be deemed timely. You can also hire an attorney at your own expense to represent you in your objection. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Class Claims and Released PAGA Claims as set forth above, unless the Settlement is not finally approved by the Court.**

10. WHAT IF I DO NOTHING?

If you do nothing, you will receive an Individual Settlement Payment and PAGA Payment Share, as applicable, if the Court grants final approval of the Settlement. If you do nothing, you will be bound by the terms of the Settlement, including the release of Released Class Claims and Released PAGA Claims, and barred from suing Defendants or any of the other Released Parties on the Released Class Claims and Released PAGA Claims.

11. What is the next step in the approval of the Settlement?

The Final Fairness and Approval Hearing on the fairness and adequacy of the proposed Settlement, including the plan of distribution, the payment of attorneys’ fees and costs, the claims process, the Class Representative Enhancement Awards to the Class Representatives, if any, the PAGA Fund, or any other aspect of the Settlement will be held via Zoom Video Conference on March 18, 2025 at 2:00 p.m. in of the U.S. District Court for the

Northern District of California, Oakland Courthouse, Courtroom 1 – 4th Floor, 1301 Clay Street, Oakland, CA 94612. The Final Fairness and Approval Hearing may be moved or continued without further notice. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment or PAGA Payment Share. If you choose to attend the Final Approval Hearing, you may appear in person or remotely depending upon the Court's decision whether such a hearing will be held remotely or in person.

Please check the settlement website or the Court's PACER website to confirm that the date listed above has not changed. For instructions on how to access the case docket, please see the instructions above. If the Court grants final approval of the Settlement, the Final Approval Order and Judgment will be posted on a website created by the Settlement Administrator for this case for a period of at least 90 days following the entry of that order in the Court record. That website is: *****.

12. How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Class and Representative PAGA Action Settlement Agreement. You may also request a copy of the Class and Representative PAGA Action Settlement Agreement from Class/PAGA Counsel, at the address listed above. If you have questions regarding the Settlement, you may contact the Settlement Administrator at [REDACTED].

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE OR THE SETTLEMENT.

Exhibit C

PAYMENT INFORMATION FORM

Christian Decena, et al. v Allegiant Final Mile, Inc., et al.,
 U.S. District Court for the Northern District of California Case No. Case No. 23-CV-03633-YGR

Allegiant's records reflect that you are a: Class Member<<and_PAGA_Group_Member>>.

Settlement Formula.**(a) Net Class Settlement Amount (Individual Settlement Payment)**

Each Settlement Class Member shall be entitled to a pro rata share of the Net Class Settlement Amount based on the number of Qualifying Class Workweeks the Settlement Class Member worked during the Class Period as determined from Defendants' records ("Settlement Data") and for a minimum of five (5) weeks. Thus:

Where Settlement Data shows five (5) **or more** Qualifying Class Workweeks, the Settlement Class Member shall be credited with the number of Qualifying Class Workweeks shown in the Settlement Data.

Where the Settlement Data shows **less than five** (5) Qualifying Class Workweeks or where Defendants **do not have records** indicating the number of Qualifying Class Workweeks, the Settlement Class Member shall be credited with five (5) Qualifying Class Workweeks.

All payment determinations are subject to the process for disputes about Qualifying Class Workweeks set forth in the attached Notice of Class and Representative PAGA Action Settlement.

**Net Class Settlement Amount ÷ Total Number of Qualifying Class Workweeks =
 Settlement Payment Rate**

**Settlement Payment Rate x Settlement Class Member's Qualifying Class Workweeks =
 Gross amount of each Settlement Class Member's Individual Settlement Payment**

(b) PAGA Payment Share

Each PAGA Group Member shall be entitled to a pro rata share of the Net PAGA Settlement Amount based on the number of Qualifying PAGA Workweeks the PAGA Group Member worked during the PAGA Period as determined from Defendants' records and for a minimum of five (5) weeks. Thus:

Where Settlement Data shows five (5) **or more** Qualifying PAGA Workweeks, the PAGA Group Member shall be credited with the number of Qualifying PAGA Workweeks shown in the Settlement Data.

Where the Settlement Data shows **less than five** (5) Qualifying PAGA Workweeks or where Defendants **do not have records** indicating the number of Qualifying PAGA Workweeks, the PAGA Group Member shall be credited with five (5) Qualifying PAGA Workweeks.

**Net Class Settlement Amount ÷ Total Number of Qualifying Class Workweeks =
 Settlement Payment Rate**

Settlement Payment Rate x Settlement Class Member's Qualifying Class Workweeks =

Gross amount of each Settlement Class Member's Individual Settlement Payment**Your Estimated Payment.**

According to Allegiant's records, you are a Class Member and you worked during [] Qualifying Class Workweeks between January 1, 2020 through [] ("Class Period"). Based on your Qualifying Class Workweeks, the Settlement Administrator estimates that your Individual Settlement Payment would be approximately \$_____.

According to Allegiant's records, you are a PAGA Group Member and you worked during [] Qualifying PAGA Workweeks between March 31, 2022 through [] ("PAGA Period"). Based on your Qualifying PAGA Workweeks, the Settlement Administrator estimates that your PAGA Payment Share would be approximately \$_____.

If you disagree with the number of Qualifying Class Workweeks and/or Qualifying PAGA Workweeks listed above, please refer to the attached Notice of Class and Representative PAGA Action Settlement for instructions regarding submitting a Proof of Work. Please be advised that the number of Qualifying Class Workweeks and/or Qualifying PAGA Workweeks listed above will be deemed correct unless you challenge the workweeks as stated above.

INSTRUCTIONS TO SUBMIT PAYMENT INFORMATION FORM WITH PERSONAL INFORMATION

Any Settlement Class Member and/or PAGA Group Member for whom a social security number or other tax identification number was not available in the Settlement Data must submit a Payment Information Form to receive an Individual Settlement Payment and PAGA Payment Share from the Net Class Settlement Amount and/or PAGA Fund, as applicable.

A social security number or other tax identification number [is / is not] available. [To receive payment in this Settlement, this Payment Information Form must be submitted to the Settlement Administrator and must: (1) contain your social security number or other tax identification number; (2) be signed by you or your legal representative; and (3) be mailed to the Settlement Administrator at the address specified below and postmarked no later than the Response Deadline of [Response Deadline], which is 60 days after the mailing of the Notice of Settlement and or within the extended deadline if the Notice of Class and Representative PAGA Action Settlement is returned as undeliverable with forwarding address provided by the United States Postal Service, as applicable. If no postmark is indicated on the Payment Information Form, the Settlement Administrator must receive the Payment Information Form no later than 10 days after the Response Deadline for it to be deemed timely.

If your social security or tax identification number is not available and you do not submit a valid and timely Payment Information Form with the requested information, you will still be eligible to receive payment from the Settlement of up to \$600.00 of your portion of the Net Class Settlement Amount and/or Net PAGA Settlement Amount, in compliance with Internal Revenue Service rules. Any amount in excess of \$600.00 owed to Settlement Class Members or PAGA Group Members, for whom no social security or other tax identification numbers are not available, shall be reallocated on a pro rata basis to those Settlement Class Members and PAGA Group Members for whom a social security number or other tax identification number was included in the Settlement Class Data or provided by the individual in a valid and timely Payment Information Form. You will be bound to the release of Released Class Claims and Released PAGA Claims regardless of whether you submit such information on the Payment Information Form.

<<CLASS MEMBER Name>>

ID: <<ID>>

PERSONAL INFORMATION

Name

Address

Social Security Number / Tax
Identification Number (if applicable)

Date

Signature

IF YOU HAVE QUESTIONS ABOUT THE SETTLEMENT, YOU MAY CONTACT CLASS/PAGA COUNSEL ***BEFORE*** THE RESPONSE DEADLINE TO SUBMIT THIS FORM.

Class/PAGA Counsel are:

Class/PAGA Counsel

Michael H. Boyamian, Esq. (#256107)

Armand R. Kizirian, Esq. (#293992)

Boyamian Law, Inc.

550 North Brand Boulevard, Suite 1500

Glendale, CA 91203

Tel.: (818) 547-5300

Fax: (818) 547-5678

Email: michael@boyamianlaw.com

Email: armand@boyamianlaw.com