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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

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

[The Honorable Yvonne Gonzalez Rogers]

CLASS ACTION

**DECLARATION OF ARMAND R.
KIZIRIAN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[CONCURRENTLY FILED WITH MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
[PROPOSED] ORDER]

Date: October 1, 2024

Time: 2:00 p.m.

Courtroom: 1 (4th Floor), Oakland Courthouse

DECLARATION OF ARMAND R. KIZIRIAN

I, Armand R. Kizirian, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a member in good standing of the State Bar of California. I am one of the attorneys of record in the instant litigation, and I make this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. All of the information set forth herein is based on my personal and firsthand knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. I am of counsel to Boyamian Law, Inc. I graduated from the U.C.L.A. School of Law in 2013 and was admitted to practice in California that year. I have been named a Super Lawyer Rising Star for 2019-2023 by Thomson Reuters. I am also a member of the California Employment Lawyers Association and the Consumer Attorneys Association of Los Angeles.

3. Since my admission to the bar, my practice has focused upon plaintiffs-side employment matters, especially wage and hour class and representative actions. I have litigated numerous off-the-clock, unpaid overtime, meal break, rest break, misclassification, and piece-rate cases. In addition, my practice has also encompassed individual employment actions such as for wrongful termination and retaliation.

4. I have been closely involved in a significant number of wage and hour and consumer class and representative matters since I began practicing several years ago. Many of these cases have resulted in substantial recoveries for employees and consumers across California. Examples of these recoveries include the following matters:

- a. *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley Foods*, Case No. BC524915 (Los Angeles County Superior Court, 2015), wage and hour class action involving California Labor Code violations relating to restaurant workers, settled for \$2.2 million.
- b. *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV 14-00790-ODW (FFMx) (C.D. Cal 2015) wage and hour class action involving misclassification of independent contractors, which settled for \$4 million.

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- c. *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a class action for unpaid wages pursuant to the Living Wage Ordinance, settled for \$385,000.
- d. *Timothy J. Connell, et al, Klara Paksy, et al and Dale Bystrom, et al v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC523172, BC523491, BC525991 (2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$7,461,600 settlement).
- e. *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No. 2:13-cv-09426-GHK-FFM (C.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$2,937,600 settlement).
- f. *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No. 3:14-cv-02629-VC (N.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$2,350,800 settlement).
- g. *Ian H. Stark, et al. v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC476431, BC489738, BC501118, BC502723, BC526977, BC570812 (2016) wage and hour class action involving Labor Code travel time violations on behalf of pharmacists (\$2,000,000 settlement).
- h. *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017) wage and hour class action involving Labor Code overtime violation on behalf of home health nurses and other home health professionals (\$1,500,000.00).
- i. *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017) wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest break, and unreimbursed business expense violations on behalf of restaurant servers (\$1,300,000).
- j. *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage and hour class action involving Labor Code overtime violation on behalf of Car Haulers (\$2,900,000).
- k. *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour class action involving Labor Code overtime violations on behalf of school bus drivers (\$475,000 settlement).

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- 1 l. *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017) wage and hour
2 class action involving Labor Code overtime, meal and rest break, and unreimbursed
3 business expense violations on behalf of home-based service technicians (\$1,500,000).
- 4 m. *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-WHO (N.D. Cal.
5 2017) wage and hour class action involving misclassification of independent contractors
6 (\$1,550,000 partial settlement).
- 7 n. *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK (C.D. Cal. 2018)
8 wage and hour class action involving misclassification of independent contractor
9 newspaper carriers (\$500,000 settlement).
- 10 o. *Patrick Malone, et al. v. KAG West, LLC, et al.*, Alameda County Superior Court Case
11 Nos. RG15784137 and RG16814354 (2019) wage and hour class and PAGA actions
12 involving overtime and meal and rest break violations for truck drivers (\$1,600,000
13 settlement).
- 14 p. *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San Bernardino County Superior
15 Court Case No. CIVDS1809319 (2019), wage and hour class action concerning
16 overtime and meal and rest break violations in re a commission-only compensation plan
17 (\$2,000,000).
- 18 q. *Pae, et al. v. Fox Restaurant Concepts, LLC, et al.*, Case No. 2:16-CV-06965-DSF-
19 FFM (C.D. Cal. 2019) wage and hour class action involving Labor Code off-the-
20 clock, overtime, meal and rest break, and unreimbursed business expense violations
21 on behalf of restaurant servers (\$900,000).
- 22 r. *Miranda, et al. v. R&L Carriers Shared Services, LLC*, Case No. 2:18-cv-10063-
23 SVW-JC (C.D. Cal. 2020), wage and hour class and PAGA action involving failure to
24 provide meal and rest breaks and reimbursement of necessary expenditures to
25 California-based truck drivers (\$375,000).
- 26 s. *Delores Humes, et al. v. First Student, Inc.*, Eastern District of California Case No.
27 1:15-cv-01861-BAM (2020), wage and hour class action involving Labor Code
28 wage statement violations on behalf of school bus drivers (\$650,000 settlement);

1 additionally obtained reversal of denial of class certification via appeal to Ninth
2 Circuit, *Humes v. First Student, Inc.*, 758 F. App'x 593 (9th Cir. 2019).

3 t. *Rita Khatchadourian, et al. v. Sterling Bank and Trust, FSB*, Alameda County
4 Superior Court Case No. RG19003028 (2020), wage and hour PAGA action
5 concerning overtime, meal break, rest break, and commission agreement violations
6 for bank employees (\$300,000 settlement).

7 u. *Mejia v. Dunn-Edwards Corp.*, Los Angeles County Case No. BC640070 (2020),
8 wage and hour PAGA action concerning off-the-clock work and meal and rest break
9 violations for paint store employees (\$250,000 settlement).

10 v. *Garcia v. Macy's West Stores, Inc., et al. ("Garcia II")*, Case No. 3:16-cv-04440-
11 WHO (N.D. Cal. 2020) wage and hour class action involving misclassification of
12 independent contractors (\$3,500,000 partial settlement).

13 w. *Perez v. The Roman Catholic Archbishop of Los Angeles*, Los Angeles County Superior
14 Court Case No. BC714614 (2021) wage and hour class action on behalf cemetery
15 workers concerning unpaid overtime, meal and rest break violations (\$1,300,000
16 settlement).

17 x. *Espinoza v. Williams Sonoma, Inc., et al.*, Los Angeles County Superior Court Case No.
18 BC693245 (2021) wage and hour class action involving misclassification of
19 independent contractors (\$2,250,000 settlement).

20 y. *Gonzales v. San Gabriel Transit, Inc.*, Los Angeles County Superior Court Case No.
21 BC536584, California Court of Appeal Case No. B282377, California Supreme Court
22 Case No. S259027 – denial of class of misclassified taxi cab drivers reversed by Court
23 of Appeal after published opinion, *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal. App.
24 5th 1131, 1149 (2019), *review dismissed, cause remanded sub nom.*, 481 P.3d 1144
25 (Cal. 2021).

26 z. *Ornelas v. Tapestry, Inc.*, Northern District of California Case No. 3:18-cv-06453-
27 WHA (2022), wage and hour class action involving employee security inspections
28 (\$342,500 settlement).

1 aa. *Caballero v. Fidelitone Last Mile, Inc.*, San Bernardino County Superior Court Case
2 No. CIVSB2102002 (2022), wage and hour class action involving misclassification of
3 independent contractors (\$1,000,000 settlement).

4 bb. *Whitten v. Rite-Aid*, Los Angeles County Superior Court Case No. BC646398 (2022),
5 wage and hour class action involving security checks for warehouse employees
6 (\$1,762,424 settlement).

7 5. A true and correct copy of the Settlement Agreement negotiated between the Parties to
8 resolve this matter in its entirety, including all exhibits, is attached as **Exhibit “1”**.

9 6. Defendant Allegiant is a logistics company that contracts with retailers, such as
10 Mattress Firm, to handle the logistics for consumer deliveries in California. Allegiant’s logistics work
11 includes utilizing its property brokerage authority to place Mattress Firm goods with Contract Carriers
12 that have the equipment (trucks) and labor (typically a driver and helper per truck) to physically deliver
13 the goods. The Contract Carriers and their workers—referred to here as “Drivers” and “Helpers”—
14 are the focus of this suit. Information exchanged in the litigation shows that, while Defendant Diverse
15 shares some common ownership with Allegiant, Diverse does not operate in California and does not
16 have any employees or independent contractors in California.

17 7. This freight that putative Class Members moved were products provided by Defendant
18 Mattress Firm. Along with Allegiant’s personnel, the warehouses that the Contract Carriers, Drivers,
19 and Helpers operated out of were also staffed by employees of Mattress Firm. Essentially, while
20 Allegiant’s role was focused more upon the logistics of planning the deliveries to Mattress Firm’s
21 customers, it is Plaintiffs’ contention that Mattress Firm’s role was in ensuring that the Contract
22 Carriers, Drivers, and Helpers provided the appropriate customer experience while conducting the
23 deliveries. Plaintiffs Christian Decena, Hairon Martinez, and Miguel Rios were Contract Carriers that
24 contracted with Allegiant during the Class Period. Plaintiffs Christian Decena, Hairon Martinez,
25 Miguel Rios, and Rigoberto Godoy all worked as Drivers for Contract Carriers that contracted with
26 Allegiant during the Class Period. In addition, Plaintiff Rigoberto Godoy worked as a Helper for
27 Contract Carriers that contracted with Allegiant during the Class Period.

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1 8. Plaintiffs contend that the Contract Carriers, Drivers, and Helpers, are misclassified as
2 independent contractors when they are really employees. Defendants deny that any of the Contract
3 Carriers, Drivers, or Helpers have been misclassified. If Plaintiffs were to establish the employment
4 relationship between Defendants and the putative Class, Plaintiffs contend that Defendants would owe
5 the Contract Carriers, Drivers, and Helpers substantial compensation for violation of California's wage
6 and hour laws as no attempt is made by Defendants to track the putative Class's hours of work, ability
7 to take meal and rest breaks, or reimbursement of the Class's work expenses.

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

14 10. There are approximately 600 putative Class Members who currently or formerly
15 delivered Mattress Firm products as Contract Carriers, Drivers, and Helpers in the State of California.
16 As noted, Plaintiffs claim that these Contract Carriers, Drivers, and Helpers were Defendants
17 misclassified independent contractors who should have been treated as employees. However, because
18 Defendants maintain that these Contract Carriers, Drivers, and Helpers were not their employees,
19 Defendants cannot be liable for the allegedly unpaid wages, penalties, or other damages, that were
20 sought in this action.

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

1 which added a tenth cause of action under the Private Attorneys General Act of 2004.

2 12. On July 21, 2023, Defendant Mattress Firm removed this action to the United States
3 District Court for the Northern District of California. The case was ultimately assigned to the
4 Honorable Yvonne Gonzalez Rogers. In August 2023, Counsel discussed the possibility of attending
5 an early mediation. The Parties agreed to attend a mediation with Antonio Piazza, Esq., which was
6 scheduled for January 16, 2024.

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

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

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

1 endorse the \$900,000 gross settlement amount. Although the Parties agreed upon a settlement figure
2 on January 16, 2024, negotiations regarding the specific terms of the agreement continued into June
3 2024.

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

12 17. Based on their independent investigation and evaluation, Class/PAGA Counsel are of
13 the opinion that the Settlement with Defendants for the consideration and on the terms set forth in the
14 Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of the Putative
15 Settlement Class Members, in light of all known facts and circumstances, including the risk of
16 significant delay, the risk that if this matter is litigated a class may not be certified by the Court or that
17 it may later be decertified, the risk that Defendants will prevail on their defenses, as well as potential
18 appellate issues.

19 18. The shorter class period in the Settlement Agreement, i.e., beginning on January 1, 2020
20 instead of September 27, 2018, reflects the fact that Allegiant did not begin contracting with, and
21 providing services to, Mattress Firm in the State of California until January 1, 2020. Moreover, while
22 part (a) of the class definition in the Settlement Agreement mirrors the class definition as set forth in
23 the Second Amended Complaint, part (b) was added by the Parties to ensure that any owners of a
24 Contract Carrier who might not have directly driven themselves were included within the class
25 definition. Thus, the addition of part (b) was not meant by Plaintiffs to expand the scope of the class,
26 but was rather put into the Settlement Agreement to ensure that no owner of a Contract Carrier was
27 inadvertently excluded.

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1 19. Based on the data provided by Defendants' Counsel and the outreach undertaken by
2 Class/PAGA Counsel, Plaintiffs calculate that Contract Carriers were paid approximately \$30.72 per
3 hour while Drivers and Helpers were paid about \$20.64 per hour. Plaintiffs further estimate that the
4 average shift length was approximately 9 hours in length. As the flat pay provided to Contract
5 Carriers, Drivers, and Helpers would not account for overtime, Plaintiffs estimate that each Contract
6 Carrier, Driver, and Helper experienced approximately one hour of off-the-clock time each day.
7 Moreover, Plaintiffs note that while unpaid minimum wages were a separate cause of action pled in
8 this suit, practically, because the unpaid time was entirely unpaid overtime, the unpaid minimum
9 wages are subsumed within the unpaid overtime hours. Similarly, while Plaintiffs asserted a separate
10 cause of action for unlawful deductions under Labor Code Sections 221 and 223, because Plaintiffs
11 would not be permitted to claim a double recovery, success on their unpaid wages claims would
12 necessarily subsume the recoverable damages with their unlawful deductions cause of action.

13 20. Projected from their base rates, Plaintiffs calculated that the overtime rate for Contract
14 Carriers was \$46.08 per hour. Similarly, Plaintiffs calculated that the overtime rate for Drivers and
15 Helpers was \$30.96 per hour. Across the putative class, Plaintiffs' outreach showed that the average
16 Contract Carrier, Driver, and Helper worked on average five days a week. Thus, Plaintiffs estimated
17 that the average Class Member had 5 hours of unpaid overtime wages per week. In the case of
18 Contract Carriers, this resulted in \$230.40 of estimated unpaid wages, while the analogous amount for
19 Drivers and Helpers was \$154.80.

20 21. The data provided by Defendants in advance of mediation showed approximately 9,882
21 workweeks for the Class as a whole, which Plaintiffs estimate broke down as 1,976 workweeks for
22 Contract Carriers and 7,906 workweeks for Drivers and Helpers. Based upon the weekly unpaid
23 wages amount, this results in \$455,270.40 in unpaid overtime for Contract Carriers and \$1,223,848.80
24 for Drivers and Helpers. For the Settlement Class, the total unpaid wages amount is \$1,679,119.20.

25 22. As to meal and rest break claims, the Class Members damages would be based upon
26 their regular rate of pay, not their overtime rate of pay. Thus, for Contract Carriers this figure is
27 \$30.72, and for Drivers and Helpers it is \$20.64 as set forth above. An individual may only receive a
28 single meal break and a single rest break penalty per day. Plaintiffs contend that Defendants did not

1 have any meal and rest break policies in place due to the alleged independent contractor
2 misclassification, and as Class Members reported regularly being in a state of hurry to Class/PAGA
3 Counsel to go from delivery to delivery, Plaintiffs calculated the violation rate at just about 80%. In
4 other words, Plaintiffs contend that Class Members experienced a meal or rest break violation on
5 average of four out of every five days in a workweek.

6 23. With a meal break and rest break violation occurring on four out of the five days of
7 each workweek, Contract Carriers would be entitled to \$122.88 in weekly meal and rest break
8 penalties. Similarly, Drivers and Helpers would be owed \$82.56 per week in meal and rest break
9 penalties. Based upon Defendants' data, this would amount to \$242,810.88 for Contract Carriers for
10 the approximately 1,976 workweeks and \$652,719.36 for Drivers and Helpers for the approximately
11 7,906 workweeks. Combined, Plaintiffs estimate the Class's damages for meal and rest break penalties
12 totaled \$895,530.24.

13 24. In terms of waiting time penalties, based on Allegiant's data, Plaintiffs believe that
14 turnover was very high with up to 450 of the Settlement Class Members becoming former workers for
15 Defendants within the slightly shorter statutory period reaching back to March 23, 2020. Plaintiff also
16 believe that turnover was higher among Drivers and Helpers than with Contract Carriers. From these
17 450 former workers of Defendants, Plaintiffs estimate that 50 were Contract Carriers and 400 were
18 Drivers or Helpers. For Contract Carriers, based on a \$30.72 hourly wage, a nine-hour workday would
19 result in a daily wage of \$291.84 ($[\$30.72 * 8 \text{ hours}] + [\$30.72 * 1.5 \text{ OT premium} * 1 \text{ hours}]$).
20 Multiplied by thirty days, for an estimated 50 Contract Carriers, this amounts to \$437,760.

21 25. For 200 former Drivers and Helpers, based upon a \$20.64 hourly wage, a ten-hour
22 workday results in a daily wage of approximately \$196.08 ($[\$20.64 * 8 \text{ hours}] + [\$20.64 * 1.5 \text{ OT}$
23 $\text{premium} * 1 \text{ hour}]$). Multiplied by thirty days, for an estimated 400 Drivers and Helpers, this amounts
24 to \$2,352,960. For all former Settlement Class Members, the waiting time penalties therefore amount
25 to \$2,790,720.

26 26. In terms of inaccurate wage statement penalties, the statutory period for this claim
27 reaches back one year prior to filing suit, i.e., to March 23, 2022. As this would cut the class period
28 reaching back to January 1, 2020 to about half, Plaintiffs estimate that about 4,941 of the 9,882

workweeks would have occurred during the statutory period for this claim. Based upon a two-week pay period, Plaintiffs estimate that there are therefore approximately 2,471 pay periods subject to the wage statement penalty claim. To simplify the arithmetic, if the \$100 penalty amount from Labor Code Section 226(e) is used for these 4,000 pay periods, then the amount owed to the Settlement Class in inaccurate wage statement penalties totals \$247,100.

27. The unreimbursed business expense claim in this matter is also significant. The most notable unreimbursed business expenses, e.g., fuel costs, truck leasing costs, and insurance costs, would have been borne by the Contract Carriers as opposed to the Drivers and Helpers. Plaintiffs believe Contract Carriers paid approximately \$1,000 for these charges per week that were not adequately compensated for by Defendants in their payments to the Contract Carriers. For 1,976 workweeks, this therefore totals \$988,000. With Drivers and Helpers, the main unreimbursed business expense would have been for their cell phones. If this amounted to a weekly unreimbursed charge of \$12.50, then for 7,906 workweeks, this figure amounts to \$98,825. Altogether then, the Settlement Class's unreimbursed business expense claim is worth approximately \$1,086,825.

28. As for the PAGA penalties, the amount at issue would depend on whether this Court would permit the 'stacking' of such penalties. See *Smith v. Lux Retail N. Am., Inc.*, 2013 WL 2932243 at *3 (N.D. Cal. June 13, 2013) ("Another necessary but equally flawed assumption undergirding the Luxottica calculation is the stacking of penalties. For the single mistake of failing to include commissions in the overtime base, plaintiff has asserted five (count them, five) separate labor code violations that could lead to statutory penalties.... But is it plausible that we would really pile one penalty on another for a single substantive wrong?"). If the Court did not permit stacking, then the class would be entitled to approximately \$100 per pay period as a maximum for PAGA penalties.

29. Plaintiff estimates that like with the inaccurate wage statement claim, of the 9,882 workweeks in the class period, approximately half of them fall within the PAGA period, which goes back to one year prior to the filing of this action. Thus, the approximately 4,941 workweeks in the PAGA period become 2,471 pay periods. With a \$100 per pay period violation rate, the PAGA penalties would amount to \$247,100 at the highest end. If the Court did permit stacking, this amount would be many multiples higher.

30. As a *theoretical maximum accounting for no discounting*, the Settlement Class could claim \$6,946,394.44 in damages. This is broken down as \$1,679,119.20 in unpaid wages, \$895,530.24 in meal and rest break penalties, \$2,790,720 in waiting time penalties, \$247,100 in inaccurate wage statement penalties, \$1,086,825 in unreimbursed business expenses, and \$247,100 in PAGA penalties.

31. Finally, the Unfair Competition Law (“UCL”) claim was alleged in Plaintiffs’ ninth cause of action. Under the UCL’s statute of limitations provision, “[a]ny action to enforce any cause of action pursuant to [the UCL] shall be commenced within four years after the cause of action accrued.” Cal. Bus. & Prof. Code § 17208. Thus, the statute of limitations for claims seeking restitution, including those claims in this case for unpaid wages, unpaid overtime, meal and rest period premiums, and reimbursement of necessary business expenses, was extended to four years through the pleading of a companion claim under the UCL. Notwithstanding, the start of the class period in the Settlement begins on January 1, 2020 instead of September 27, 2018, given the fact that Allegiant did not begin contracting with, and providing services to, Mattress Firm in the State of California until January 1, 2020. Plaintiffs specifically included the claim for violation of the UCL to extend the statute of limitations from three to four years on the wage and hour claims and as an independent basis for recovery; thus, the UCL claim is properly included in the release.

32. The \$900,000 settlement represents approximately 13% of the theoretical maximum recovery. The discount applied here between the maximum possible damages of \$6,946,394.44 and the \$900,000 settlement amount is appropriate given the significant hurdles that this case faces if litigated through to trial. First, and most prominently, Plaintiffs face a real risk they may not be able to establish misclassification. Defendants maintain that Plaintiffs and the Contract Carriers, Drivers, and Helpers were properly classified as independent contractors. To that end, Defendants were careful to impart a degree of control to the Contract Carriers to not run afoul of the ‘control test’ as set forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989). Notably, the Borello test is likely applicable to Labor Code claims, most relevantly, to the unreimbursed business expense claim which has no analogue under the wage orders. See *Bowerman v. Field Asset Servs., Inc.*, 60 F.4th 459, 472 (9th Cir. 2023); *Garcia v. Border Transportation Group, LLC*, 28 Cal.App.5th 558 (2018).

1 33. California’s ‘ABC test’ may not apply to Drivers and Helpers, because as they never
2 contracted with either Allegiant, Diverse, or Mattress Firm, California’s joint employment test as set
3 forth in *Martinez v. Combs*, 49 Cal. 4th 35 (2010), would apply instead. And Allegiant would
4 additionally argue that California’s ‘business-to-business’ exemption, Cal. Lab. Code § 2776, would
5 prevent the ‘ABC test’ from applying to Contract Carriers, which are organized as formal business
6 entities and often hire their own workers and control significant fleets of trucks.

7 34. Moreover, even under the more favorable standard for determining misclassification
8 that was set forth in *Dynamex Operations West v. Superior Court*, 4 Cal. 5th 903 (2018), Defendants
9 had several years before this suit was filed to conform their operations to that decision and ensure that
10 their operations met the tenets of the ‘ABC’ test. Class Counsel judges that with the arrangement
11 implemented by Allegiant, it would be difficult to establish misclassification as it appears Allegiant
12 was careful to calibrate operations to allow Contract Carriers flexibility in their work outside of
13 deliveries for Mattress Firm, and utilized a business model that directly contracted only with
14 independent and formally-established businesses with their own fleets of trucks.

15 35. In addition, should this case be litigated, Plaintiffs anticipates that Defendants Allegiant
16 and Diverse will move to strike portions of the Second Amended Complaint on the basis that the
17 Federal Motor Carrier Safety Administration’s (“FMCSA”) December 21, 2018 decision preempted
18 California’s meal and rest break laws for drivers falling within its scope. While Plaintiffs would
19 certainly oppose this, and believe they may be able to show that Plaintiffs and the Class fall within
20 either of the two short haul driver exemptions (see 49 C.F.R. § 395.1(e)(1), (2)), the Ninth Circuit has
21 upheld the FMCSA’s December 21, 2018 decision affirming the FMCSA’s preemption of California’s
22 meal and rest break laws. *See Int’l Bhd. of Teamsters, Local 2785 v. FMCSA*, 986 F.3d 841 (9th Cir.
23 2021). The result would be the same as to overtime if the Court were to follow the California Court of
24 Appeal in *Espinoza v. Hepta Run, Inc.*, 74 Cal.App.5th 44 (2022), as Defendants Allegiant and Diverse
25 have previously argued with their Motion to Dismiss. Thus, barring a change in the law, the entirety of
26 Plaintiffs’ meal break, rest break, and overtime claims are subject to 100% discounting independent of
27 the threshold classification issue.

28 ///

1 36. Finally, and perhaps most importantly, liability aside, Plaintiffs run the very real risk of
2 not being able to secure class certification on a contested motion. While Plaintiffs contend that
3 putative Class Members were misclassified, it is nevertheless true that the way each Contract Carrier
4 conducted operations, including from the Drivers and Helpers it formally employed, varied to an extent
5 between them. For the Contract Carriers themselves, the nature of their work was less consistent than
6 with Drivers and Helpers. Thus, even if most or all of the Contract Carriers, Drivers, and Helpers can
7 be said to have been misclassified, whether class certification outside of the settlement context under
8 Rule 23 would be granted is a very different question. Thus, while the \$900,000 gross settlement
9 amount appears at first glance to be a substantial discount on the maximum damages available. Given
10 the risks of this particular suit, the amount is extremely reasonable and results in a good settlement for
11 the putative class.

12 37. Plaintiffs are not aware of any other suit that will be impacted by the instant settlement.

13 38. The settlement funds for the class claims will be allocated based upon the total number
14 of weeks during the Class Period and total number of workweeks during the PAGA Period during
15 which a Class Member and PAGA Group Member was qualified to provide delivery services at least
16 one day or more as a helper, driver, or contract carrier owner for both Allegiant and Mattress Firm in
17 connection with contracts Allegiant had with the contract carrier owners, including any week credited
18 to Settlement Class Members. Settlement Agreement, ¶ IV(J)(1). While there are differences in
19 damages between Contract Carriers on the one hand, and Drivers and Helpers on the other,
20 Class/PAGA Counsel believes unified allocation plan of the Net Class Settlement Amount is fair and
21 reasonable because while the damages are higher for the Contract Carriers, liability and class
22 certification would be more difficult to establish on behalf of the Contract Carriers. Moreover, each
23 Settlement Class Member for whom the Settlement Data shows five (5) or more Qualifying Class
24 Workweeks shall be credited with the number of Qualifying Class Workweeks shown in the Settlement
25 Data, subject to the process for disputes about Qualifying Class Workweeks. Each Settlement Class
26 Member for whom the Settlement Data shows less than five (5) Qualifying Class Workweeks,
27 including each Settlement Class Member for whom Defendants do not have records indicating the
28 number of Qualifying Class Workweeks, shall be credited with five (5) Qualifying Class Workweeks,

1 subject to the process for disputes about Qualifying Class Workweeks. For similar reasons, the Net
2 PAGA Settlement Amount for the PAGA claims will be allocated in the same manner as with the class
3 claims, but with the major difference that the PAGA period will span from March 31, 2022 to the date
4 of preliminary approval. Settlement Agreement, ¶¶ II(GG); IV(J)(2).

5 39. No claim form is required. However, the settlement does provide for a Payment
6 Information Form. The Payment Information Form will be used to allow Settlement Class Members to
7 provide their social security number or other tax identification number to the Settlement Administrator.
8 Settlement Agreement, ¶ IV(J). Because Defendants do not have the tax identification number for all
9 Settlement Class Members (as they did not directly contract with all Settlement Class Members), the
10 Parties will encourage Settlement Class Members to submit this form to the Settlement Administrator
11 to ensure that they can receive payment.

12 40. The notice and claims payment process was negotiated by the Parties and is set forth in
13 the Settlement Agreement. Specifically, the Parties agreed that the settlement administrator would “(1)
14 confirm and inform the Parties of the number of Class Members and PAGA Group Members; (2)
15 finalize and print the Notice of Settlement; (3) check all addresses against the National Change of
16 Address database; and (4) within thirty (30) days of receiving the Settlement Data, send to each Class
17 Member and PAGA Group Member via First-Class United States mail an English and Spanish version
18 of the Notice of Settlement to the most recent address known for each Class Member and PAGA
19 Group Member.” Settlement Agreement, ¶ IV(C). The Parties expect the settlement administrator to
20 follow the Parties’ proposed process.

21 41. The Settlement Administrator has entered into a Data Privacy Agreement which
22 governs the procedures for securely handling class member data, in accordance with the Northern
23 District guidelines. A true and correct copy of the Data Privacy Agreement signed by a representative
24 of Simpluris, Inc. is attached hereto as **Exhibit “7”**.

25 42. The notice distribution plan is effective because it is the least burdensome process under
26 the circumstances. Class Members will be notified of the settlement via First Class U.S. Mail.
27 Settlement Agreement, ¶ IV(C). Importantly, this is not a claims-made settlement. However, Class
28 Members are strongly encouraged to submit Payment Information Forms where they can provide their

1 tax identification number. The Parties set up this process because Defendants do not have the tax
2 identification number for all Settlement Class Members. By requesting, but not requiring, that all
3 Settlement Class Members return the Payment Information Form, Plaintiffs believe that the number of
4 Settlement Class Members who will be able to receive a settlement check will be maximized.

5 43. On behalf of Plaintiffs, I am submitting notice of this settlement and the Motion for
6 Preliminary Approval with California's Labor and Workforce Development Agency
7 contemporaneously with the filing of this Motion.

8 44. In preparation for and during the mediation, the Parties apprised the other of their
9 respective factual contentions, legal theories and defenses. Consequently, extensive and informed,
10 arms-length negotiations occurred during the full-day mediation session with experienced mediator,
11 Antonio Piazza, Esq. The mediation was held on January 16, 2024. The Parties were able to reach a
12 Settlement that was based upon the mediator's advice and guidance, Class Counsel's experience in
13 litigating numerous independent contractor misclassification suits, and the exchange of information by
14 the Parties in the lead up to mediation. Although the Parties agreed upon a settlement figure on
15 January 16, 2024, negotiations regarding the specific terms of the agreement continued into June 2024.

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

21 46. First, Plaintiffs may not be able to certify the Putative Class under Rule 23(b).
22 Plaintiffs largely rely on the Defendants' uniform business practices that treat the Putative Class
23 Members as non-employees or independent contractors to establish both commonality and
24 predominance. Plaintiffs will also argue that other common issues also predominate, such as whether
25 the job expectations and degree of control exercised by Defendants upon the Contract Carriers,
26 Drivers, and Helpers are uniform across the Class.

27 47. Even if Plaintiffs can show that Contract Carriers, Drivers, and Helpers were not
28 independent contractors, Defendants can assert numerous defenses regarding liability and damages.

1 For instance, Defendants contend that the Contract Carriers with which they contracted to perform
2 delivery services employed Drivers and Helpers, creating both a conflict within the class if pursued,
3 and also shifting liability away from Defendants. Moreover, Defendants may be able to successfully
4 argue that Plaintiffs and Putative Class Members are not entitled to overtime pursuant to Cal. Code
5 Regs tit. 8 § 11020(3)(J)(1), and that their California meal breaks or rest breaks claims are preempted
6 by the FMSCA, significantly gutting the maximum damages at issue.

7 48. With regard to Plaintiffs' claims for wage statement and waiting time penalties, both
8 claims are derivative of Plaintiffs' primary wage claims. Thus, Plaintiffs would recover nothing for
9 themselves, or the Class, if the underlying claims are unsuccessful.

10 49. The Defendants' positions in this litigation may result in no recovery for Plaintiffs and
11 the putative Class Members, or protracted appeals and significant risks to meaningful recovery for the
12 putative Class Members. Consequently, the benefits of the settlement greatly outweigh the risks of
13 continuing to litigate the issues in this case.

14 50. The Settlement is fair, adequate, and well within the range of possible approval.
15 Without conceding that any adverse rulings would be justified, Plaintiffs recognize the risk of such
16 outcomes as described above. If Defendants were able to prove that the Putative Settlement Class
17 Members are not employees or properly classified as independent contractors, then the value of the
18 case would be zero. All of Plaintiffs' claims and damages rely upon this threshold issue.

19 51. If Plaintiffs are able to demonstrate that Contract Carriers, Drivers, and Helpers are
20 employees, not independent contractors, then the value of Plaintiffs' claims depend principally on the
21 number of hours worked by Putative Class Members, the frequency at which meal and rest breaks were
22 missed (and the application of FMCSA preemption), unreimbursed business expenses, and derivative
23 penalties. Plaintiffs calculate damages as ranging from \$0, if they cannot prevail on the threshold
24 independent contractor versus employee issue, to approximately \$6,946,394.44, if Plaintiffs are able to
25 secure class certification and prevail on all claims.

26 52. In order to properly value the claims at issue, however, these figures must be reduced
27 according to the likelihood that Plaintiffs will prevail on their motion for class certification. Moreover,
28 even if class certification is granted, the figures must be further be reduced according to the likelihood

1 that Plaintiffs will ultimately be able to prevail on the merits. As set forth above, for the purposes of
2 settlement only, Plaintiffs acknowledge that this case may face significant hurdles at both the
3 certification and the liability phases of the litigation, particularly with regard to FMCSA preemption.

4 53. Based on the foregoing, the Settlement will result in a fair and reasonable award to
5 Settlement Class Members in light of the litigation risks. The net amount of the \$900,000 to be paid to
6 the Class under the proposed Settlement (after payment of Class Counsel's attorneys' fees [\$297,000],
7 litigation costs [\$25,000], Settlement Administration Costs [\$17,270], the Class Representative
8 Enhancement [\$10,000 * 4], and LWDA portion of the PAGA allocation [\$22,500]), will be at least
9 \$498,230. For the 600 Putative Class Members, the payout under this amount would be approximately
10 \$830 per Putative Class Member. Thus, the Settlement avoids the risks of litigation while ensuring
11 that Settlement Class Members receive substantial consideration for a release of their claims. The
12 Settlement also affords relief to Settlement Class Members who likely would not have pursued
13 individual claims.

14 54. The Settlement provides that, prior to the final approval hearing, Class Counsel may
15 petition the Court for an award of fees and litigant expenses. However, the Settlement does not
16 specifically set forth an amount for the attorneys' fees and costs that Class Counsel may seek.
17 Nevertheless, Class/PAGA Counsel does not intend to seek fees in excess of 33% of the \$900,000
18 gross settlement, i.e., \$297,000. Similarly, Class Counsel does not intend to seek litigant expenses in
19 excess of \$25,000.

20 55. Plaintiffs initiated this case and sought counsel to represent the proposed Class.
21 Plaintiffs met with Class/PAGA Counsel and provided documentary evidence relevant to the claims in
22 the case. Plaintiffs also risked their own professional reputation by suing their alleged former
23 employer. Any potential future employer who searches the internet or runs a background check on
24 Plaintiffs will discover this fact. In a competitive job market, this factor may weigh heavily against
25 them. Therefore, Plaintiffs have also undertaken risks with respect to his future employment prospects
26 that other Settlement Class Members simply have not.

27 56. Plaintiff proposes appointing Simpluris, Inc. ("Simpluris") as the Settlement
28 Administrator in this case. Class/PAGA Counsel has elected to use Simpluris given their substantial

1 and longstanding experience in the field of class action settlement administration. Moreover,
2 Simpluris has provided a very reasonable bid of \$17,270. A true and correct copy of the bid by
3 Simpluris, Inc. is attached hereto as **Exhibit “2”**.

4 57. The Settlement Administration Costs will be paid from the Gross Settlement Amount.
5 The estimate from Simpluris provides that the settlement administration costs will be approximately
6 \$17,270. The final settlement costs and supporting documentation will be submitted to the Court prior
7 to the final approval hearing. The Settlement Administration Costs here are reasonable as compared to
8 the value of the settlement and the work that needs to be performed to administer the Settlement
9 properly.

10 58. In addition to Simpluris, the Parties also sought bids from Rust Consulting, Inc. and
11 Epiq Class Action Administration. The Parties elected to move forward with Simpluris based upon
12 Simpluris’ low bid and the Parties prior experience with this settlement administrator.

13 59. Plaintiffs and their experienced class counsel will more than adequately represent the
14 Putative Class. There are no conflicts and the Class Representatives have claims that are in line with
15 those of the Class. Plaintiffs have diligently participated in the litigation by communicating regularly
16 with counsel and providing documents and information about the Class claims.

17 60. In Plaintiffs’ moving papers, Plaintiffs provide a chart comparing the instant settlement
18 to two other similar settlements in class action cases. The first is the settlement in *Henriquez v. DSI*
19 *Logistics*, Los Angeles County Superior Court Case No. BC714165, and the second is *Matute v. Pilot*
20 *Air Freight*, Northern District of California Case No. 4:22-cv-00587-YGR. True and correct copies of
21 the Settlement Agreement of the *Henriquez* matter and the Declaration of Aaron C. Gundzik dated
22 October 29, 2019 (without exhibits) in support thereof are attached hereto as **Exhibit “3”** and **Exhibit**
23 **“4”**, respectively. Similarly, the Final Approval Order, which incorporates the Settlement Agreement
24 of the *Matute* matter, and my declaration in that matter, dated May 16, 2023 (without exhibits), are
25 attached hereto as **Exhibit “5”** and **Exhibit “6”**, respectively.

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Executed on August 23, 2024, in Glendale, California.

20

DECLARATION OF ARMAND R. KIZIRIAN ISO MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Exhibit “1”

BOYAMIAN LAW, INC.
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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.
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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
28

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
27
28

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.

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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

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

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

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

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

25 **4. Disputes about Qualifying Workweeks**

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

18 5. Disbursement of Payments

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

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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.

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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.

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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:

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2 abutcher@scopelitis.com
3 SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
4 30 West Monroe Street, Suite 1600
5 Chicago, IL 60603
6 Phone: (312) 255-7200

7 COUNSEL FOR DEFENDANT MATTRESS FIRM:

8 Mara D. Curtis
9 mcurtis@reedsmith.com
10 Brittany M. Hernandez
11 bmhernandez@reedsmith.com
12 Tanner J. Hendershot
13 thendershot@reedsmith.com
14 REED SMITH LLP
15 355 South Grand Avenue, Suite 2800
16 Los Angeles, CA 90071-1514
17 Phone: 213-457-8000

18 **K. Binding on Successors**

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

21 **L. No Prevailing Party**

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

24 **M. Counterparts**

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

28 **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.

///

///

1 **O. Representation by Counsel**

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

5 **P. Parties' Authority**

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

8 **Q. Limitations on Disclosure**

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

16 This Agreement, the Settlement, and any proceedings or actions or negotiations in connection
17 therewith shall be deemed settlement communications covered by California Evidence Code Sections
18 1115-1128, 1152-1154, Federal Rule of Evidence 408, and any other similar provisions or law, and
19 shall not be construed as an admission of truth of any allegation or the validity of any cause of action
20 or claim asserted or of any liability therein.

21 ///

22 ///

23 ///

24 ///

25 ///

Dated: 6/24/2024

- DocuSigned by:

By: _____
Rigoberto Godoy

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: 6/25/2024

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

8 By: _____

Christian Decena

DocuSigned by:

10 By: _____

Hairon Martinez

12 By: _____

Miguel Rios

14 By: _____

Rigoberto Godoy

16 Dated: _____

ALLEGIANT FINAL MILE, LLC

18 By: _____

19 Name: _____

21 Position: _____

Dated: 7/8/2024

By: _____

Miguel Rios

By: Miguel Rios
Rigoberto Godoy
 C46C7EF85C4241B...

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
2
3

DIVERSE LOGISTICS & DISTRIBUTION,
LLC

4 By: 

5 Name: John Ruska

6 Position: CEO
7

8 Dated: _____
9

MATTRESS FIRM, INC.

10 By: _____
11

12 Name: _____

13 Position: _____
14
15
16

17 4882-3433-6158, v. 9
18
19
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21
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23
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25
26
27
28

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: EMP, Legal + General Counsel

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

Exhibit “A”

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.

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 before the Honorable Yvonne Gonzalez Rogers on [REDACTED], at [REDACTED] in [REDACTED] 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.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING AND AUTOMATICALLY RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT AND PAGA PAYMENT SHARE, AS APPLICABLE	To receive a payment from the Settlement, you do NOT have to do anything. You will receive compensation, but lose rights to sue separately. If you do nothing, as explained more fully below, you will be considered a Settlement Class Member and will receive a proportionate share of the Net Class Settlement Amount. If you are a PAGA Group Member you will also receive a proportionate share of the Net PAGA Settlement Amount. You will be bound by the terms of the Settlement and also give up the right 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 further below in the section describing the Released Class Claims and Released PAGA Claims.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	You have the option to pursue separate legal action against Defendants with respect to the claims in this lawsuit except for the Released PAGA Claims (defined below). If you would like to retain the option to do so, you must submit a written request to be excluded from the Class and the release of Released Class Claims (“Request for Exclusion”). If you elect to be excluded as such, you will not receive any benefits under the Settlement apart from the benefits that are allotted to you as a PAGA Group Member, if any. As discussed below, please also be aware that the Released PAGA Claims are binding on the PAGA Group Members regardless of whether an individual has submitted a valid request to be excluded from the release of the Released Class Claims. If you are a PAGA Group Member who has requested to be excluded from the release of the Released Class Claims, you will still receive your PAGA Payment Share and will still release the Released PAGA Claims.
OBJECT	To object to the Settlement, you must set forth why you oppose the Settlement by submitting a written Objection to the Court as explained below. This option is available only if you do not exclude yourself from the Settlement. You must remain a member of the lawsuit to object to the Settlement.

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].

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.

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)

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)

jluucas@ferberlaw.com

Defense Counsel

Andrew J. Butcher (*pro hac vice*)

abutcher@scopelitis.com

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

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.

Adam Nathaniel Arce (SBN 328732)
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Ferber Law, A Professional Corporation
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Telephone: (925) 355-9800

Los Angeles, CA 90071-1514
Telephone: +1 213 457 8000
Facsimile: +1 213 457 8080

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 [REDACTED], 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"). 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 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.

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

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

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 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

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 [REDACTED], 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..

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.

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.

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. 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.

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. 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.**

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.

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 _____, at _____**, 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: *********.

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 [_____]**.

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

Exhibit “B”

<<CLASS MEMBER Name>>

ID: <<ID>>

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)**

If you are a Class Member and do not submit a valid and timely Request for Exclusion, you will receive an Individual Settlement Payment determined based on the number of other Class Members that do not submit a valid and timely Request for Exclusion (the "Settlement Class Members") and your Qualifying Class Workweeks.

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 to the extent the Qualifying Class Workweeks can be determined from Defendants' records. Therefore, each Settlement Class Member for whom the Settlement Data shows five (5) or more Qualifying Class Workweeks shall be credited with the number of Qualifying Class Workweeks shown in the Settlement Data, subject to the process for disputes about Qualifying Class Workweeks set forth below. Each Settlement Class Member for whom the Settlement Data shows less than five (5) Qualifying Class Workweeks, including each Settlement Class Member for whom Defendants do not have records indicating the number of Qualifying Class Workweeks, shall be credited with five (5) Qualifying Class Workweeks, subject to the process for disputes about Qualifying Class Workweeks set forth in the attached Notice of Class and Representative PAGA Action Settlement.

Using this method of calculating Qualifying Class Workweeks, the Net Class Settlement Amount shall be divided among individual Settlement Class Members using the following formulas:

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

$$(\text{Settlement Payment Rate} \times \text{Settlement Class Member's Qualifying Class Workweeks}) = \text{gross amount of each Settlement Class Member's Individual Settlement Payment}$$

According to Allegiant's records, you are a Class Member and you worked during [REDACTED] Qualifying Class Workweeks between January 1, 2020 through [REDACTED] ("Class Period"). "Qualifying Class Workweeks" means the total number of weeks during the Class Period during which a Class Member was qualified to provide delivery services at least one day or more as a helper, driver, or contract carrier owner for both Allegiant and Mattress Firm in connection with contracts Allegiant had with the contract carrier owners, including any week credited to a Settlement Class Member as set forth above.

Pursuant to these calculations, your projected Individual Settlement Payment under the Settlement based on your membership in the Class would be approximately \$[REDACTED]. Taxes will not be deducted from your Individual Settlement Payment. The Individual Settlement Payments and PAGA Payment Shares will be included on an IRS Form 1099 to the Settlement Class Members and PAGA Group Members. Nothing in this Payment Information Form or the attached Notice of Class and Representative PAGA Action Settlement is intended to be tax advice. You should consult your own tax advisor for such advice in connection with any Individual Settlement Payment. In addition, if additional Class Members are identified, your Individual Settlement Payment may be reduced based on the above formula.

(b) PAGA Payment Share

As noted above, the PAGA Fund in this case is Thirty Thousand Dollars and No Cents (\$30,000.00). Twenty-Two Thousand Five Hundred Dollars and No Cents (\$22,500.00) of the PAGA Fund, if approved, shall be issued to the California Labor and Workforce Development Agency ("LWDA"). The Net PAGA Settlement Amount, or Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00), if approved, shall be divided among the PAGA Group Members proportionally ("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 to the extent the Qualifying PAGA Workweeks can be determined from Defendants' 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 in the attached Notice of Class and Representative PAGA Action Settlement.

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:

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

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

According to Allegiant's records, you are a PAGA Group Member and you worked during [REDACTED] Qualifying PAGA Workweeks between March 31, 2022 through [REDACTED] ("PAGA Period"). "Qualifying PAGA Workweeks" means the total number of weeks during the PAGA Period during which a PAGA Group Member was qualified to provide services at least one day or more as a helper, driver, or contract carrier owner for both Allegiant and Mattress Firm in connection with contracts Allegiant had with the contract carrier owners.

Pursuant to these calculations, your projected PAGA Payment Share based on your being a PAGA Group Member would be approximately \$[REDACTED]. Taxes will not be deducted from your PAGA Payment Share. Nothing in this Payment Information Form or the attached Notice of Settlement is intended to be tax advice. You should consult your own tax advisor for such advice in connection with the PAGA Payment Share. In addition, if additional PAGA Group Members are identified, your PAGA Payment Share may be reduced based on the above formula. Further, a PAGA Group Member cannot opt out of the release of Released PAGA Claims, as set forth in the attached Notice of Settlement.

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.

<<CLASS MEMBER Name>>

ID: <<ID>>

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 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.

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:

-3-

QUESTIONS? CALL []

<<CLASS MEMBER Name>>

ID: <<ID>>

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

4856-2488-2887, v. 1

Exhibit “C”

Allegiant Final Mile, LLC, Diverse Logistics & Distribution, LLC, and Mattress Firm, Inc.**Data Security Requirements and Agreement**

Simpluris, Inc. (referred to hereinafter as “Settlement Administrator”) has been approved to serve as the Settlement Administrator in connection with the class action settlement administration of the class and representative action styled, *Christian Decena, et al. v. Allegiant Final Mile, Inc., et al.*, Case No. 23-CV-03633-YGR (“Decena Class Action”), which is currently pending in the United States District Court for the Northern District of California. In connection with the administration of the Decena Class Action settlement in accordance with the terms of the Settlement Agreement and court order, the Settlement Administrator shall do and agrees to the following:

Implement and maintain a written Data Security program that contains administrative, technical, and physical safeguards to protect Personal Information, as that term is defined herein, from loss, misuse, unauthorized access, disclosure, alteration or destruction. In the event of a Data Breach, as further defined, Settlement Administrator shall notify Allegiant, Diverse Logistics, and Mattress Firm in accordance with these Data Security Requirements (“Requirements”) and comply with federal, state, and local laws applicable to Settlement Administrator.

1.1 Definitions

“Allegiant” means Allegiant Final Mile, LLC, erroneously sued in the Decena Class Action as Allegiant Final Mile, Inc. and/or their respective affiliate(s) on behalf of which Settlement Administrator Processes Personal Information pursuant to these Data Security Requirements (“Requirements”).

“Computer Security System” means, at a minimum, and to the extent technically feasible: (i) Secure User Authentication Protocols including (a) control of user IDs and other identifiers, (b) reasonably secure methods of assigning and selecting passwords or use of unique identifier technologies such as token devices, and (c) control of data security passwords to ensure such passwords are retained in a format and location that does not compromise the security of the data they protect; (ii) Secure Access Control measures that (a) restrict access to records and files containing Personal Information to those who need such information to perform their job duties, and (b) assign unique identification numbers with passwords to each person with computer access and that are designed to maintain the integrity and security of Access Controls; (iii) Encryption, as that term is defined herein, of (a) all transmitted records and files containing Personal Information that will travel wirelessly and across public networks, and (b) all Personal Information stored on laptops or other portable devices; (iv) up-to-date firewall protection and operating system security patches reasonably designed to maintain the integrity of Personal Information; (v) up-to-date system security agent software that includes malware protection, up-to-date patches and virus definitions, and is regularly set to receive and deploy the most current security updates; and (vi) a written information security program documenting compliance with all applicable federal, state and local laws and the Requirements contained herein.

“Data Breach” means the unlawful or unauthorized access, acquisition, destruction, use, modification or disclosure of Personal Information.

“Encryption” means the protection of data in electronic or optical form, in storage or in transmission using (i) an encryption technology that has been adopted by an established standards setting body, including, but not limited to, the Federal Information Processing Standards issued by the National Institute of Standards and Technology, which renders such data indecipherable in the absence of associated cryptographic keys necessary to enable decryptions of such data; and (ii) appropriate management and safeguards of cryptographic keys to protect the integrity of the encryption using guidelines promulgated by an established standards setting body, including, but not limited to, the National Institute of Standards and Technology.

“Decena Class Action” means the class action and representative action titled *Christian Decena, et al. v. Allegiant Final Mile, Inc., et al.*, Case No. 23-CV-03633-YGR, which is currently pending in the United States District Court for the Northern District of California.

“Decena Settlement” refers to the settlement agreement covering the Decena Class Action.

“Diverse Logistics” means Diverse Logistics & Distribution, LLC, erroneously sued in the Decena Class Action as Diverse Logistics & Distribution, Inc, and/or their respective affiliate(s) on behalf of which Settlement Administrator Processes Personal Information pursuant to these Data Security Requirements.

“Mattress Firm” means Mattress Firm, Inc. and/or their respective affiliate(s) on behalf of which Settlement Administrator Processes Personal Information pursuant to these Data Security Requirements.

“Personal Information” means a natural person’s first name and last name or first initial and last name, in combination with one or more of the following data elements that relate to such person: (i) social security number; (ii) date of birth; (iii) taxpayer ID; (iv) mother’s maiden name; (v) home address; (vi) driver’s license number or government-issued identification card number; (vii) medical information (including but not limited to a person’s medical history, treatment, or diagnosis by a treatment provider); or (viii) financial account number, credit or debit card number with or without any required security code, access code, personal identification number or password that would permit access to such person’s financial account(s) information.

“Processing” (including its cognate, “process”) means receiving, storing, maintaining, handling, collecting, transferring, transmitting, destroying, altering, using, or accessing Personal Information, whether or not by automatic means, in any form including but not limited to electrical, digital, wireless, electromagnetic technology, or written form.

“*****” means [Settlement Administrator].

“Technical and Organizational Security Measures” (“TOSMs”) means the administrative, technical and physical measures designed and implemented to prevent a Data Breach arising out of Processing by Settlement Administrator, including but not limited to (i) maintaining data security policies and reasonable restrictions on employees’ and contractors’ processing of Personal Information within and outside of business premises; (ii) ongoing training of employees and subcontractors; (iii) maintaining technology and other means to monitor and detect a Data Breach and prevent access of Personal Information by terminated employees or contractors; (iv) documenting actions taken in response to annual reviews of TOSMs or a Data Breach; and (v) if applicable, a Computer Security System.

1.2 Settlement Administrator's Obligations

1. Settlement Administrator shall Process Personal Information in accordance with these Requirements and applicable federal, state and local privacy and data security laws. Settlement Administrator hereby agrees, to Process Personal Information as necessary to serve as the court approved Settlement Administrator in connection with the Decena Class Action.

2. Settlement Administrator and its subcontractors shall implement TOSMs necessary to perform Settlement Administrator's obligations under the agreement to administer the Decena Class Action Settlement. Settlement Administrator shall provide Allegiant, Diverse Logistics, and Mattress Firm with copies of and/or information concerning Settlement Administrator's TOSMs upon request. Allegiant, Diverse Logistics, and Mattress Firm shall have the right to conduct onsite inspections and/or audits (upon advance notice) of its TOSMs, and Settlement Administrator agrees to cooperate with such inspections or audits.

3. If Settlement Administrator or its subcontractors electronically store or transmit Personal Information or data that includes Personal Information, Settlement Administrator shall implement and maintain a Computer Security System.

(a) Settlement Administrator shall notify Allegiant, Diverse Logistics, and Mattress Firm immediately of a Data Breach and, at Settlement Administrator's cost and expense, assist and cooperate with Allegiant, Diverse Logistics, and Mattress Firm concerning any legally-required notifications or disclosures to affected persons, entities and/or government authorities.

(b) Settlement Administrator shall not transfer any Personal Information through an electronic, non-voice transmission to a person outside of the secure system of Settlement Administrator unless Settlement Administrator uses Encryption to ensure the security of such electronic submission and the recipient of the information is authorized by this Agreement to receive the information and executes the "Acknowledgment and Agreement to be Bound" that is attached hereto as Exhibit A.

(c) Settlement Administrator shall notify Allegiant, Diverse Logistics, and Mattress Firm at least thirty (30) days prior to Settlement Administrator's movement of any data storage device containing Personal Information beyond the physical controls of Settlement Administrator or its subcontractor who is bound to these Requirements.

(d) Settlement Administrator shall bind each of its subcontractors who handle Personal Information to these Requirements in a binding written agreement.

(e) Settlement Administrator agrees not to share or disclose the Personal Information with any third parties as more fully set forth in Section III(D) and (E)(2) of the Decena Class Action Settlement Agreement incorporated herein and considered a part of these Requirements for all purposes.

(f) Settlement Administrator shall return or destroy (at Allegiant, Diverse Logistics, and/or Mattress Firm's election), or cause or arrange for the return or destruction of all Personal Information, including all originals and copies in any medium and any materials derived from or incorporating such Personal Information, within fifteen (15) business days after final disbursement of all funds from the Gross Settlement Amount and declaration proving a final report on disbursements of all funds from the Gross Settlement Amount.

4. Settlement Administrator understands and agrees these Requirements are an integral part of its retention agreement to serve as the Settlement Administrator in connection with the Administration of the Class Action Settlement in the Decena Class Action and, therefore, a violation of any of these Requirements shall be considered a material breach by Settlement Administrator entitling Allegiant, Diverse Logistics, and Mattress Firm to remedies, including but not limited to, immediate termination of the Decena Class Action Settlement Administration agreement without penalty.

5. Settlement Administrator agrees that it shall fully defend, indemnify, and hold harmless Allegiant, Diverse Logistics, and Mattress Firm and each of its parents, subsidiaries, affiliates, employees, directors, officers, agents or other representatives from and against any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, rights of setoff, obligations, costs, expenses, expert fees, and attorney fees relating to, arising out of, or resulting from any breach or claimed breach by the Settlement Administrator of any representation, warranty, or covenant set forth in this Agreement. Allegiant, Diverse Logistics, and Mattress Firm shall have approval over outside counsel retained for an indemnified matter, which approval will not be unreasonably withheld.

5. These Requirements are incorporated into and made a part of the Decena Class Action Settlement Administration agreement between the Settlement Administrator and Allegiant, Diverse Logistics, and Mattress Firm to provide services in accordance with the Settlement Agreement.

Settlement Administrator hereby acknowledges and accepts these Data Security Requirements.

DATED: _____

[*****].

By: _____

Name: _____

Its: _____

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____[type of print full name], of _____[type of print full address], acknowledge that I have read in its entirety and understand the Allegiant Final Mile, LLC, Diverse Logistics & Distribution, LLC and Mattress Firm, Inc. Data Security Requirements and Agreement (“Agreement”) and that I agree to comply with it and to be bound by the terms and conditions of the Agreement.

Date:

Signature

Print Name

4854-7441-2487, v. 1

Exhibit “D”

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 Michael H. Boyamian (SBN 256107)
michael@boyamianlaw.com
2 Armand R. Kizirian (SBN 293992)
Armand@boyamianlaw.com
3 **BOYAMIAN LAW, INC.**
550 North Brand Blvd, Suite 1500
4 Glendale, California 91203
Telephone: (818) 547-5300
5 Facsimile: (818) 547-5678

6 Attorneys for Plaintiffs CHRISTIAN
DECENA, HAIRON MARTINEZ,
7 MIGUEL RIOS, and RIGOBERTO
GODOY, and all others similarly situated
8
9 [Other Attorneys on the Following Page]

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

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

16 Plaintiffs,

17 v.

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

21 Defendants.
22
23
24
25
26
27

Case No. 23-CV-03633-YGR

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

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

FAC Filed: June 6, 2023

SAC Filed: June 14, 2024 _____

Trial Date: None

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 Michele Finkel Ferber (SBN 149929)
mferber@ferberlaw.com

2 Jonathan R. Babione (SBN 270053)
jbabione@ferberlaw.com

3 Jennifer R. Lucas (SBN 2275050)
jlucas@ferberlaw.com

4 Adam Nathaniel Arce (SBN 328732)
aarce@ferberlaw.com

5 FERBER LAW, A Professional Corporation
2603 Camino Ramon, Suite 385
6 San Ramon, California 94583
(925) 355-9800

7 Attorneys for Defendants

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

10 Mara D. Curtis (SBN 268869)

11 Brittany M. Hernandez (SBN 299044)

Tanner J. Hendershot (SBN 346841)

12 REED SMITH LLP

355 South Grand Avenue, Suite 2900

13 Los Angeles, CA 90071-1514

Telephone: +1 213 457 8000

14 Facsimile: +1 213 457 8080

Email: mcurtis@reedsmith.com

15 bmhernandez@reedsmith.com

thendershot@reedsmith.com

16 Attorneys for Defendant

17 MATTRESS FIRM, INC.

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

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

Having reviewed Plaintiffs’ Motion and all papers submitted in support thereof, including the Agreement and the Exhibits thereto, the Declarations of [*****] and the Exhibits thereto, and good cause appearing, IT IS HEREBY ORDERED THAT:

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

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

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

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

1 Group Members, and the fact that the settlement represents a compromise of the Parties’
2 respective positions.

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

8 **Class:** (a) all individuals who provided services to Allegiant delivering
9 Mattress Firm products as contract carrier owners, drivers and/or helpers
10 in the State of California; and (b) all contract carrier owners who owned
11 or controlled an entity that contracted directly with Allegiant and provided
12 delivery services delivering Mattress Firm products in the State of
California, at any time from January 1, 2020 through the date of this Order.

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

- 15 a. The Class is so numerous that joinder of all members is impracticable;
16 b. There are questions of law or fact common to the Class, which
17 predominate over the questions affecting only individual members;
18 c. Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and
19 Rigoberto Godoy will fairly and adequately protect the interests of the
20 Class and are, therefore, appointed as the representatives of the Class
21 (“Representative Plaintiffs”);
22 d. The claims of the Representative Plaintiffs are typical of the claims of
23 the Class;
24 e. Class/PAGA Counsel – *i.e.*, Boyamian Law, Inc. – will fairly and
25 adequately protect the interests of the Class, are qualified to represent
26
27

1 the Class, and are, therefore, appointed as attorneys for the Class for
2 purposes of settlement; and

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

5 6. The PAGA Group Members are defined as: (a) all individuals who
6 provided services to Allegiant delivering Mattress Firm products as contract carrier
7 owners, drivers and/or helpers in the State of California; and (b) all contract carrier
8 owners who owned or controlled an entity that contracted directly with Allegiant and
9 provided delivery services delivering Mattress Firm products in the State of California,
10 at any time from March 31, 2022 through the date the date of this Order.

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

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

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

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

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

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

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

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

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

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

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

13 18. The Final Fairness and Approval Hearing shall be held on
14 _____, 2024 at _____ a.m./p.m., before the Honorable Yvonne
15 Gonzalez Rogers, of the United States District Court for the Northern District of
16 California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, via Zoom
17 Video Conference. At that time, the Court shall determine: (a) whether the proposed
18 settlement of the Action on the terms and conditions provided for in the Agreement is
19 fair, just, reasonable, and adequate and should be finally approved; (b) whether
20 judgment as provided in the Agreement should be entered herein; (c) whether to approve
21 Class/PAGA Counsel's application for an award of attorneys' fees and costs, and any
22 Service and Release Award to Plaintiffs; and (d) to hear any timely objections to the
23 settlement.

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

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

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

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

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

1 **IT IS SO ORDERED.**

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3 DATED: _____

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5 _____
6 The Honorable Yvonne Gonzalez Rogers
7 United States District Judge
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Exhibit “2”



Reference No. 20240529-PJI-04

May 31, 2024

Andrew J. Butcher, Esq.
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
30 West Monroe Street, Suite 1600
Chicago, IL 60603

Armand R. Kizirian, Esq.
Boyamian Law, Inc.
550 North Brand Boulevard | Suite 1500
Glendale, California 91203-1922

RE: *Decena et al. v. Allegiant Final Mile, LLC*

Dear Andrew and Armand,

Thank you for this opportunity to provide an updated quote for your settlement. Using the parameters you described, Simpluris' total estimated cost is \$19,449. As a courtesy, we are applying a \$2,179 discount for a total estimated cost with discount of \$17,270.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Patrick J. Ivie". The signature is fluid and cursive, with the first name "Patrick" being more prominent.

PATRICK J. IVIE
Chief Revenue Officer

m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com



3194-C Airport Loop Drive, Costa Mesa, CA 92626
www.simpluris.com | 1 (800) 779 - 2104



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104
www.simpluris.com

Estimate Number:	202404529-PJI-04	Prepared By:	Patrick J. Ivie
Estimate Date:	5/30/2024	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	8/28/2024	Email:	pivie@simpluris.com

Attorney Contact
Attorney: **Andrew J. Butcher, Esq.**
Firm: Scopelitis, Garvin, Light, Hanson & Feary, P.C.
Email: abutcher@scopelitis.com

Opposing Counsel Contact
Attorney: **Armand Kizirian, Esq.**
Firm: Boyamian Law, Inc.
Email: armand@boyamianlaw.com

Case Name: *Decena et al. v. Allegiant Final Mile, LLC*

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate; (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	577	Undeliverable Rate:	10%
Dispute Form Response Rate:	5%	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	3%
Language(s) for Communication	EN/SP	Average Call Length:	4 Minutes
Reminder Mailing:	N/A	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months	Fund:	\$900,000

Case Setup

- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$90.00	2	\$180.00
Database Manager - Initial Data Analysis	\$105.00	2	\$210.00
Total:			\$390.00

Notice and Communications

- Three separate multi-state CAFA notice mailings for the three defendants
- 10-page class Notice, 2-page Payment Form, sent by First Class US Mail in English and Spanish

Category	Unit Value	# of Units	Total
Muti-State CAFA Notice Mailings	\$2,000.00	3	\$6,000.00
Spanish Translation assuming 6,000 words	\$0.20	6,000	\$1,200.00
Bilingual Notice Packet - assuming 24 images	\$6.00	577	\$3,462.00
Postage	\$0.62	577	\$357.74
NCOA/CASS/LACS	\$0.14	577	\$80.78
Undeliverable Processing and Skip Trace	\$0.22	58	\$12.76
Remail Notice (assuming 85% skip trace success)	\$7.00	49	\$345.10
Remail Postage	\$0.62	49	\$30.57
Mailing Supervisor	\$45.50	2	\$91.00
Total:			\$11,579.95

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 4-minute calls

Category	Unit Value	# of Units	Total
Call Center Set Up	\$400.00	1	\$400.00
Toll Free Monthly Maintenance	\$90.00	9 Months	\$810.00
IVR (includes toll-free number charges)	\$15.00	2	\$30.00
Subtotal			\$1,240.00

Administration

- Process incoming class and counsel communications, opt-outs, disputes, and objections

Category	Unit Value	# of Units	Total
Database Manager	\$105.00	2	\$210.00
Project Manager	\$90.00	2	\$180.00
Payment Form Processing	\$2.45	29	\$70.68
Opt-out Processing	\$2.45	6	\$14.70
Reporting to Counsel (hours)	\$100.00	8	\$800.00
Total:			\$1,275.38

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Check Cashing Reminder Postcard
- Uncashed funds will be sent to the California Controller's Unclaimed Property Fund
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	3	\$375.00
Disbursement Manager - Data Validation	\$80.00	2	\$160.00
Setup Banking Account/QSF	\$350.00	1	\$350.00
QSF Monthly Reconciliation and Maintenance	\$75.00	9	\$675.00
Print & Mail Distribution Check and Tax Docs less opt outs	\$0.45	571	\$256.95
Postage	\$0.62	571	\$354.02
Process Returned Checks (assuming 5%)	\$0.10	29	\$2.90
Skip Trace Search Undeliverable Checks	\$0.12	29	\$3.48
Remail Checks (includes postage)	\$1.60	29	\$46.40
Check Cashing Reminder Postcard	\$0.16	571	\$91.36
Postcard Postage	\$0.47	571	\$268.37
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$750.00	1	\$750.00
Distribution Manager	\$80.00	2	\$160.00
Total:			\$4,493.48

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$105.00	2	\$210.00
Clerical-Clean Up Any Misc.	\$40.00	2	\$80.00
Project Manager-Wrap-up Final Issues	\$90.00	2	\$180.00
Total:			\$470.00

Total Estimated Cost of Administration:	\$19,449
Less Client Courtesy Discount:	-\$2,179
Discounted Total:	\$17,270

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

Exhibit “3”

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 DANIEL M. HOLZMAN (State Bar No. 176663)
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Attorneys for Plaintiff Jason Henriquez, individually
 and on behalf of all others similarly situated

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Attorneys for Defendant DSI Logistics, Inc.

LAURIE M. CORTEZ (State Bar No. 289902)
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Attorneys for Defendant NGU Transport, LLC

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

JASON HENRIQUEZ, individually and on
 behalf of all others similarly situated,

Plaintiff,

vs.

NGU TRANSPORT LLC, a California limited
 liability company; DSI LOGISTICS, INC., a
 Nevada corporation, and DOES 1 through 25,

Defendants.

Case No.: BC714165

Assigned to Hon. Daniel J. Buckley
Dept. SSC-1

**STIPULATION OF CLASS ACTION
 SETTLEMENT**

Case Filed: July 19, 2018

I. INTRODUCTION AND SUMMARY OF SETTLEMENT TERMS

This action was brought by Plaintiff Jason Henriquez ("Plaintiff"), individually and on behalf of all persons who worked as a helper, driver, independent hauler, or employee of an independent hauler for DSI Logistics, Inc. ("DSI") and/or NGU Transport, LLC ("NGU") (DSI and NGU shall be referred to collectively as "Defendants") in California during the Class Period, as defined below. In his First Amended Complaint, Plaintiff alleges causes of action against Defendants for (1) failure to pay minimum wages earned, (2) failure to pay overtime, (3) failure to provide meal and rest breaks, (4) noncompliant wage statements, (5) failure to pay wages due at time of discharge, (6) failure to reimburse necessary expenditures, (7) failure to provide employment records, (8) unfair business practices, and (9) violation of the Private Attorneys' General Act (PAGA).

Under the terms of the Settlement and after final approval and entry of judgment pursuant to California Rule of Court 3.769, Defendants will pay a gross settlement amount of two million dollars (\$2,000,000) ("Gross Settlement Amount"), plus the employer's share of payroll taxes. 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. This is an opt-out settlement, and Class Members (as defined in Section II) will receive a settlement payment unless they opt-out of the Settlement. Class Members shall not be required to submit a claim form.

The Parties agree that the following disbursements will be made from the Gross Settlement Amount, subject to Court approval at the Final Fairness and Approval Hearing:

- A. Settlement Administration Costs in an amount not to exceed \$20,000.
- B. Class Counsel's Attorneys' Fees, to be approved by the Court, in an amount not to exceed six hundred sixty-six thousand six hundred sixty-six dollars (\$666,666), which is one-third of the Gross Settlement Amount;
- C. Class Counsel's Costs, as approved by the Court, in an amount not to exceed \$12,000;

D. A Service and Release Award to the Representative Plaintiff in an amount not to exceed \$10,000 as payment for his time and efforts in pursuing this Action and for the broader release that he will be providing to Defendants;

E. A payment in settlement of all of Plaintiff's PAGA claims in the amount of \$10,000, of which \$7,500 will be paid to the California Labor and Workforce Development Agency ("LWDA").

F. The remainder of the Gross Settlement Amount (the "Net Settlement Amount") will be distributed to Settlement Class Members based on the methodology discussed in section IV.J.1, below. It is estimated that the Net Settlement Amount will be approximately \$1,283,834, after deductions for Class Counsel's Attorneys' Fees, Class Counsel's Costs, Settlement Administration Costs, the Service and Release Award, and the payment to the LWDA.

Defendants represent that the Class consists of approximately 2,676 drivers.

II. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings set forth below:

A. "Action" means this putative class and representative action pending in Los Angeles County Superior Court titled *Jason Henriquez v. NGU Transport, LLC, DSI Logistics, Inc.*, Los Angeles Superior Court Case Number BC714165.

B. "Agreement" or "Stipulation" means this Stipulation of Class Action Settlement.

C. "Class" means all individuals who worked at least one day during the Settlement Class Period as a helper, driver, independent hauler, or employee of an independent hauler for any of the "DSI Entities" (as defined in Section II.M below). The Class shall not include NGU, its owners, or any family members of its owners.

D. "Class Counsel" means Aaron C. Gundzik and Rebecca G. Gundzik, Gartenberg Gelfand Hayton LLP, 15260 Ventura Blvd, Suite 1920, Sherman Oaks, CA 91403,

(213) 542-2100, and Daniel M. Holzman, Caskey & Holzman, 24025 Park Sorrento, Ste. 400, Calabasas, CA 91302, (818) 657-1070.

E. "Class Counsel's Attorneys' Fees" means the amount to be paid to Class Counsel for attorneys' fees, subject to Court approval at the Final Fairness and Approval Hearing.

F. "Class Counsel's Costs" means the amount to be reimbursed to Class Counsel for their reasonable costs and expenses incurred in the Action, subject to Court approval at the Final Fairness and Approval Hearing.

G. "Class Data" means each Class Member's full name, last known address, telephone number (if known), social security number (if known), the number of Qualifying Workweeks worked by such Class Member and whether the Class Member was also one of the DSI Entities' designated independent haulers.

H. "Class Member" is a person who is a member of the Class.

I. "Class Period" means the period from July 19, 2014 through the earlier of April 17, 2019 or the date the Court grants preliminary approval of this Settlement.

J. "Complaint" means the First Amended Complaint on file in the Action.

K. "Court" means the Superior Court of the State of California, in and for the County of Los Angeles, where the Action is pending.

L. "Defendants' Counsel" means Lonnie D. Giamela and John A. Mavros of Fisher & Phillips LLP, 2050 Main Street, Suite 1000, Irvine, California 92614, (949) 851-2424, who are counsel for DSI and Laurie M. Cortez and Justin G. Schmidt of Emilio Law Group, 12832 Valley View Street, Suite 106, Garden Grove, California 92845, (714) 379-6239, who are counsel for NGU.

M. The "DSI Entities" means and includes any of the following: Defendant DSI Logistics, Inc., or non-parties DSI Delivery South, Inc., DSI Delivery North, Inc., and Delivery Solutions, Inc.

N. "Effective Date" means the date of entry of a final judgment which grants final approval of this Settlement, if no Objection to Settlement is filed and Plaintiff and Class

1 Counsel waive their rights to appeal the final judgment. If a timely Objection to Settlement is
 2 filed and/or Plaintiff and Class Counsel do not waive their rights to appeal the final judgment,
 3 "Effective Date" shall be the later of: (a) the date on which the time for all appeals relating to
 4 Objections to Settlement and the Final Approval Order has expired; or (b) if an appeal, review
 5 or writ is sought, the date on which the highest reviewing court renders its decision denying
 6 any petition (where the immediately lower court affirmed the final judgment) or affirming the
 7 final judgment or the date of final dismissal with prejudice of the last pending appeal from the
 8 Final Approval Order.

9 O. "Employer's Withholding Share" means Defendants' share of all federal, state,
 10 and local taxes and required withholdings, including without limitation, FICA, Medicare tax,
 11 FUTA, and state unemployment taxes.

12 P. "Qualified Settlement Fund" or QSF means a federally insured bank account
 13 to be established by the Settlement Administrator into which all payments from Defendants
 14 related to this Settlement will be deposited and from which all payments authorized by the
 15 Court will be made. The QSF will be established prior to Defendants' deposit of the Gross
 16 Settlement Amount.

17 Q. "Final Approval Order" means the Order Granting Final Approval of Class
 18 Action Settlement and Judgment entered by the Court.

19 R. "Final Fairness and Approval Hearing" means the hearing on Plaintiff's
 20 Motion for Final Approval of Class Action Settlement at which the Court will be asked to give
 21 final approval to the settlement terms set forth herein and to enter judgment.

22 S. "Gross Settlement Amount" means the two million dollars (\$2,000,000) which
 23 Defendants will pay under this Settlement. If the Settlement Administrator determines that
 24 the number of class members exceeds 2,809, then the Gross Settlement Amount shall increase
 25 proportionally such that for every additional class member over 2,809, the Gross Settlement
 26 Amount shall increase by \$712.

27 T. "Net Settlement Amount" means the amount remaining from the Gross
 28 Settlement Amount after payments of Court-approved Class Counsel's Attorney's Fees and

1 Class Counsel's Costs, Service and Release Award to the Representative Plaintiff, Settlement
2 Administration Costs, and payment to the LWDA.

3 U. "Notice of Settlement" means the "Notice of Proposed Class Action Settlement
4 and Final Approval Hearing," the form of which is attached hereto as Exhibit A.

5 V. "Objection to Settlement" means any written objection to this Settlement sent
6 by a Settlement Class Member to the Settlement Administrator as specified herein and in the
7 Notice of Settlement. An Objection to Settlement must be sent to the Settlement Administrator
8 within the time limitations set forth in this Stipulation.

9 W. "Parties" means the Representative Plaintiff on behalf of himself and all
10 Settlement Class Members and Defendants.

11 X. "Preliminary Approval Date" is the date the Court grants preliminary approval
12 of this Settlement pursuant to California Rule of Court 3.769(c).

13 Y. "Qualifying Workweeks" means a week during the Class Period during which
14 a Class Member worked three days or more as a helper, driver, or independent hauler for any
15 of the DSI Entities (as defined in Section II.M above).

16 Z. "Released Claims" means any and all claims, debts, liabilities, demands,
17 obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action,
18 and liabilities of any nature whatsoever, whenever incurred, including costs, expenses,
19 penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity,
20 that Plaintiff and/or any member of the Settlement Class, had or now has, relating to the claims
21 alleged in the Action, including but not limited to any common law, California IWC Wage
22 Order, and statutory claims for failure to pay minimum wage, failure to pay overtime, failure
23 to provide compliant meal and rest breaks, failure to provide compliant wage statements,
24 failure to pay final wages, failure to reimburse for necessary business expenses, failure to
25 provide employment records, unfair business practices, and penalties pursuant to the Private
26 Attorneys General Act arising from the claims described above, as well as civil penalties for
27 alleged misclassification, failure to provide notices pursuant to Labor Code section 2810.5,
28 and failure to provide legally compliant sick pay, whether such claims are known or unknown,

1 suspected or unsuspected, and shall run from July 19, 2014 through the Preliminary Approval
2 Date.

3 AA. "Released Parties" means the DSI Entities, NGU Transport, LLC, and any of
4 their former or present parents, subsidiaries, affiliates, investors, partners, owners, related
5 organizations, predecessors or successors, and all agents, employees, officers, directors,
6 members, managers, holding companies, insurers, and attorneys thereof, but only as to the
7 Released Claims.

8 BB. "Representative Plaintiff" means Jason Henriquez.

9 CC. "Request for Exclusion" means a written and signed request by a Class
10 Member to be excluded from the Settlement Class that is submitted in accordance with the
11 procedure set forth herein, also known as an "opt-out request."

12 DD. "Service and Release Award" means the payment to be made to the
13 Representative Plaintiff for his service to the Class and for the broader general release that he
14 is providing to Defendants, which is in addition to whatever payment he otherwise would be
15 entitled to receive as a Settlement Class Member. The Service and Release Award is subject
16 to Court approval.

17 EE. "Settlement" means the disposition of the Action and all related claims
18 effectuated by this Agreement.

19 FF. "Settlement Administration Costs" means the fees and costs incurred or
20 charged by the Settlement Administrator in connection with the execution of its duties under
21 this Agreement including, but not limited to fees and costs associated with: (1) establishing
22 and maintaining the QSF; (2) preparing, issuing and/or monitoring reports, filings, and notices
23 (including the cost of printing and mailing all notices and other documents to the Class
24 Members) required to be prepared in the course of administering the Settlement; (3)
25 computing the amount of the settlement payments, taxes, and any other payments to be made
26 under this Agreement; (4) handling inquiries about the calculation of individual settlement
27 payments; (5) establishing and operating a settlement payment center website, address, and
28 phone number to receive Class Members' inquiries about the Settlement; (6) providing a due

diligence declaration for submission to the Court prior to the final approval hearing; (7) printing and providing Settlement Class Members and the Plaintiff with W-2 and 1099 forms as required under this Agreement and applicable law; (8) preparing, issuing, and filing any tax returns and information returns and any other filings required by any governmental taxing authority or other governmental agency; and (9) for such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. Settlement Administration Costs will be paid out of the Gross Settlement Amount.

GG. "Settlement Administrator" refers to Rust Consulting, Inc.

HH. "Settlement Class" means all Class Members who have not timely submitted a valid and complete Request for Exclusion.

II. "Settlement Class Member" is a person who is a member of the Settlement Class.

III. BACKGROUND

During the Class Period, the DSI Entities have operated a delivery and distribution service and have utilized independent haulers and drivers to perform delivery services. Defendant NGU is one of the independent haulers who contracted with the DSI Entities to provide services. Class Members are helpers, drivers, independent haulers, and employees of independent haulers who performed delivery services for one or more of the DSI Entities during the Class Period, other than NGU. Plaintiff contends that Class Members were misclassified as independent contractors, were not paid for all time they worked, were not paid overtime, were denied compliant meal and rest breaks, were not reimbursed for expenses, were not provided with compliant wage statements and were not paid all wages due at separation. Defendants deny all of Plaintiff's claims and contend, among other things, that all Class Members were properly paid for all work within the required time frame, that all expenses incurred by Class Members were reimbursed and that Class Members were provided with compliant meal and rest breaks. The DSI Entities further claim that no Class Member was ever employed by the DSI Entities.

The Parties have undertaken significant investigation and informal discovery during

1 the prosecution of this Action. Such discovery and investigation include extensively
2 interviewing the Representative Plaintiff, Defendants' production and Plaintiff's counsel's
3 review of personnel records, policies, as well as time records for a sample of work days during
4 the Class Period, and other detailed information relevant to the Class Members' claims.
5 Counsel for the Parties have investigated the law as applied to the facts discovered regarding
6 the alleged claims of the Class and potential defenses thereto, and the potential damages
7 claimed by the Class, including the review of the records produced by Defendants to Class
8 Counsel for the purposes of mediation and with an eye towards class certification.

9 The Parties' attorneys have engaged in extensive discussions about the strengths and
10 weaknesses of the claims and defenses in the Action. On January 17, 2019, the Representative
11 Plaintiff and Class Counsel, and Defendants and Defendants' Counsel, attended a mediation
12 session before an experienced and well-regarded mediator, Gig Kyriacou. The mediation
13 resulted in the principle elements of this Agreement.

14 Plaintiff and Class Counsel have concluded, after considering the sharply disputed
15 factual and legal issues involved in this Action, the risks attending further prosecution, and
16 the substantial benefits to be received pursuant to the compromise and settlement of the Action
17 as set forth in this Agreement, that this Settlement is in the best interests of the Representative
18 Plaintiff and the Settlement Class and is fair and reasonable.

19 Similarly, Defendants have concluded that there are benefits associated with settling
20 this Action. After considering the sharply disputed factual and legal issues involved in the
21 Action, the expense and burden of protracted litigation, and its desire to put the controversy
22 to rest, Defendants believe that this Settlement is in Defendants' best interests and is fair and
23 reasonable.

24 This Settlement contemplates: (i) entry of an order preliminarily approving the
25 Settlement and approving certification of a provisional Class for settlement purposes only,
26 contingent upon final approval of the Settlement; (ii) dissemination of a notice to Class
27 Members about the settlement; (iii) entry of a Final Approval Order granting final approval
28 of the Settlement; and (iv) entry of final judgment.

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

2 **A. Preliminary Approval of Settlement**

3 As soon as practicable, Class Counsel and Defendants' Counsel will submit this
 4 Stipulation to the Court for preliminary approval. Such submission will include such motions,
 5 pleadings, and evidence as may be required for the Court to determine that this Agreement is
 6 fair and reasonable, as required by California Code of Civil Procedure section 382 and
 7 California Rule of Court 3.769, including a motion filed by Class Counsel requesting that the
 8 Court enter a preliminary approval order. Such submission will also include a proposed order.
 9 Defendants shall not oppose Class Counsel's motion for preliminary approval of the
 10 settlement to the extent it is consistent with the terms and conditions of this Agreement.
 11 Defendants may, however, provide a written response to any characterization of the law or
 12 facts contained in the motion for preliminary approval.

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

25 Should the Court decline to conditionally certify the Class or to preliminarily approve
 26 all material aspects of the Settlement, the Settlement will be null, and void and the Parties will
 27 have no further obligations under it.

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

4 **B. Cooperation**

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

10 **C. Notice of Settlement**

11 As soon as practicable, but no later than ten (10) calendar days after the Preliminary
12 Approval Date, Defendants will provide the Settlement Administrator with the Class Data in
13 an electronic format acceptable to the Settlement Administrator. Defendants will only provide
14 those Class Member telephone numbers that either of the Defendants maintains in a
15 centralized location. This information will remain confidential and will not be disclosed to
16 anyone, except as required to applicable taxing authorities, pursuant to Defendants' express
17 written authorization, by order of the Court, or as otherwise provided for in this Agreement.

18 Using the Class Data, the Settlement Administrator will: (1) confirm the number of
19 class members, (2) finalize and print the Notice of Settlement; (3) check all addresses against
20 the National Change of Address database; and (4) within ten (10) calendar days of receiving
21 the Class Members' information, send to each Class Member via First-Class United States
22 mail an English and Spanish version of the Notice of Settlement to the most recent address
23 known for each Class Member. It will be conclusively presumed that if an envelope so mailed
24 has not been returned within fifteen (15) calendar days of the mailing, the Class Member
25 received the Notice of Settlement. In addition to mailing, the Settlement Administrator will
26 provide a copy of the Notice of Settlement to Class Members using any email addresses that
27 have been provided Defendant.

28 //

D. Re-Sending Class Notices

In the event that Defendants' Counsel or Class Counsel becomes aware of new addresses for any Class Member, prior to the filing of the motion for final approval, such information must immediately be communicated to the Settlement Administrator. The Settlement Administrator will then re-send a Notice of Settlement to the Class Member(s) at the new address.

For any Notice of Settlement that is returned as undeliverable, the Settlement Administrator will perform a utility database search or other skip trace. The returned Notices of Settlement will be re-mailed to the new addresses obtained for such Class Members. Such searching and re-mailing will be completed within fifteen (15) calendar days of the date that Notices of Settlement were originally returned as undeliverable. Notwithstanding anything to the contrary in this Stipulation and absent approval from the Parties, through their counsel, any Notice of Settlement that is mailed or re-mailed after the original mailing date will provide for a response deadline that is no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date is less than 45 days from the date of mailing or re-mailing. It will be conclusively presumed that if an envelope so re-mailed has not been returned within fifteen (15) calendar days of re-mailing, the Class Member received the Notice of Settlement.

E. Requests for Exclusion (Opt-Outs)

Any Class Member who wishes to be excluded from 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 Class Member. Any such statement shall 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. To be valid, the Request for Exclusion must be postmarked no later than forty-five (45) days after the original date of the Settlement Administrator's mailing of the Notice of Settlement or re-mailing for Class Members whose Notices of Settlement were re-mailed. Provided, however, for any Notice of Settlement that is mailed or re-mailed after the original mailing date the deadline to request exclusion will be

1 no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date
2 is less than 45 days from the date of mailing or re-mailing. Any Class Member who submits
3 a valid and timely request to be excluded from the Settlement shall be barred from
4 participating in this Settlement, shall be barred from objecting to this Settlement, and shall
5 receive no benefit from this Settlement. In furtherance of the foregoing, any Class Members
6 who submits a valid and timely request to be excluded from the Settlement shall be deemed
7 to have waived all objections and opposition to the fairness, reasonableness, and adequacy of
8 this Settlement.

9 Any Class Member who fails to submit a timely, complete, and valid Request for
10 Exclusion shall be barred from opting out of the Settlement. It shall be conclusively presumed
11 that, if a Request for Exclusion is not postmarked on or before the expiration of the period to
12 submit a Request for Exclusion, the Class Member did not make the request in a timely
13 manner. Under no circumstances shall the Settlement Administrator have the authority to
14 extend the deadline for Class Members to file a Request for Exclusion.

15 Unless a Class Member submits a timely, complete, and valid Request for Exclusion,
16 he or she shall be deemed a Settlement Class Member and shall be bound by the terms and
17 conditions of this Agreement. The releases provided for in this Agreement shall conclusively
18 preclude any Settlement Class Member from asserting any of the Released Claims against any
19 of the Released Parties in any judicial, administrative, or arbitral forum.

20 The Settlement Administrator shall promptly provide Class Counsel and Defendants'
21 Counsel with copies of all Requests for Exclusion that it receives.

22 **F. Declaration of Compliance**

23 As soon as practicable following the Preliminary Approval Date, the Settlement
24 Administrator shall provide Class Counsel and Defendants' Counsel with a declaration
25 attesting to completion of the notice process set forth in this Section IV, including the number
26 of notices sent and returned, an explanation of efforts to resend undeliverable notices, and
27 copies of all Requests for Exclusion, which declaration shall be filed with the Court by Class
28 Counsel along with their papers requesting final approval of the Settlement.

1 **G. Sufficient Notice**

2 Compliance with the procedures described in this Section IV shall constitute due and
3 sufficient notice to Class Members of this Settlement and of the Final Fairness and Approval
4 Hearing, shall satisfy the requirements of due process, and nothing else shall be required of
5 the Representative Plaintiff, Class Counsel, Defendants, Defendants' Counsel, or the
6 Settlement Administrator to provide notice of the Settlement and the Final Fairness and
7 Approval Hearing.

8 **H. Objections to Settlement**

9 **1. Deadline for Objections**

10 Any Class Member wishing to object to the approval of this Settlement shall inform
11 the Settlement Administrator in writing of his or her intent to object by following the
12 procedure set forth in the Notice of Settlement within forty-five (45) calendar days of mailing.
13 Provided, however, for any Notice of Settlement that is mailed or re-mailed after the original
14 mailing date the deadline to object will be no later than ten (10) days prior to the Final Fairness
15 and Approval Hearing even if such date is less than 45 days from the date of mailing or re-
16 mailing. A Class Member who does not submit a valid and timely Request for Exclusion and
17 who objects to the Settlement will still be considered a Settlement Class Member.

18 **2. Responses to Objections**

19 Class Counsel and Defendants' Counsel shall file any written objections from Class
20 Members submitted to the Settlement Administrator in accordance with this Agreement, and
21 Class Counsel's and Defendants' Counsel's responses to such objections, at least five (5) court
22 days before the Final Fairness and Approval Hearing.

23 **3. Waiver of Appeal**

24 Any Class Member who does not timely submit an objection to the Settlement and/or
25 does not comply with any other substantive or procedural obligations imposed by law, waives
26 any and all rights to appeal the Final Approval Order and Judgment, including all rights to
27 any post-judgment proceeding and appellate proceeding such as a motion to vacate the
28 judgment, motion for new trial, and extraordinary writs.

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

2 If five percent (5%) or more of the Settlement Class Members elect not to participate
3 in the Settlement, Defendants may, at their election, jointly rescind the Settlement. In that
4 event, all actions taken in furtherance of the Settlement will be null and void. Defendants
5 must jointly exercise this right of rescission, in a writing to Class Counsel, within fourteen
6 (14) calendar days of the date that the Settlement Administrator notifies the Parties of the total
7 number of Class Members who have opted out of the Settlement. If Defendants exercise this
8 right of rescission, Defendants must pay the all expenses incurred by the Settlement
9 Administrator as of the date of Defendants' notice of rescission.

10 **I. Final Fairness and Approval Hearing**

11 On the date set by the Court, the Final Fairness and Approval Hearing shall be held
12 before the Court in order to: (1) determine whether the Court should give this Stipulation final
13 approval; (2) determine whether Class Counsel's application for attorneys' fees and costs, and
14 request for the Service and Release Payment to the Representative Plaintiff, should be granted;
15 and (3) consider any timely Objections to Settlement, including Class Counsel's and
16 Defendants' Counsel's responses thereto. At the Final Fairness and Approval Hearing, the
17 Representative Plaintiff, Class Counsel, and Defendants' Counsel shall ask the Court to give
18 final approval to this Settlement. Upon final approval, the Court shall enter a Final Approval
19 Order (in a form submitted by Class Counsel and approved by Defendants' Counsel) which
20 has the effect of adjudicating all claims set forth in the Complaint and implementing the
21 release of Released Claims, as set forth in this Agreement. The Final Approval Order will be
22 posted on the Settlement Administrator's website. The posting of the Final Approval Order
23 on the Settlement Administrator's website will constitute notice of entry of the judgment, as
24 required by California Rule of Court 3.771(b).

25 **J. Settlement Payments to Participating Settlement Class Members**

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

Each Settlement Class Member who is or was designated by DSI as an independent hauler and who, in turn, employed and/or paid one or more other Settlement Class Members to perform work for one or more of the DSI Entities during the Settlement Class Period shall receive credit for .5 Qualifying Workweeks for each Qualifying Workweek the Settlement Class Member worked during the Settlement Class Period. All other Settlement Class Members shall receive credit for 1 Qualifying Workweek for each Qualifying Workweek the Settlement Class Member worked during the Settlement Class Period. Using this method of calculating Qualifying Workweeks, the Net Settlement Amount shall be divided among and distributed to individual Settlement Class Members using the following formula:

(Settlement Class Member's Qualifying Workweeks ÷ (divided by) All Settlement Class Members' Qualifying Workweeks) x (multiplied by) Net Settlement Amount

The Settlement Administrator, on Defendants' and Class 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 calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties acknowledge and agree that the formula used to calculate individual settlement payments does not imply that all the elements of damages alleged in the Action are not being considered. The above formula was devised as a practical and logistical tool to simplify the settlement process while recognizing that those Settlement Class Members who employed and/or contracted with and/or paid other Settlement Class Members to perform services for one or more of the DSI Entities may have potential liability with respect to their conduct in utilizing others to perform work for the DSI Entities.

2. Inclusion of Qualifying Workweeks and Estimated Settlement Payment Information in Notice of Settlement

The Notice of Settlement sent to each Class Member shall state the amount of the Class Member's Qualifying Workweeks, as reflected in the Class Data and indicate whether the Class Member employed and/or contracted with and/or paid one or more other Settlement

1 Class Members to perform work for DSI during the Settlement Class Period and therefore is
2 only receiving credit for .5 Qualifying Workweeks for each Qualifying Workweek the
3 Settlement Class Member worked during the Settlement Class Period. Each Notice of
4 Settlement shall also include an estimate of the Class Member's settlement payment as a
5 member of the Settlement Class, as calculated by the Settlement Administrator. The estimated
6 settlement payment included in the Notice of Settlement will be calculated by assuming that
7 no Class Members will be excluded from the Settlement.

8 **3. Eligibility**

9 Settlement Class Members (but not Class Members who exclude themselves (or opt-
10 out) of the Settlement), will become eligible to receive a settlement payment from Defendants,
11 distributed through the Settlement Administrator.

12 Should any question arise regarding the determination of eligibility for, or the amounts
13 of, any settlement payments under the terms of this Agreement, Class Counsel and
14 Defendants' Counsel shall meet and confer in an attempt to reach agreement and, if they are
15 unable to do so, the issue shall be submitted to the Court for determination on an expedited
16 basis, through the submission of letter briefs of no more than three pages.

17 **4. Disputes about Qualifying Workweeks**

18 If a Class Member disagrees with the number of Qualifying Workweeks, as stated in
19 his or her Notice of Settlement, he or she may dispute that figure by informing the Settlement
20 Administrator of the number of Qualifying Workweeks in dispute by submitting supporting
21 documentation (such as, without limitation, payroll or time keeping records, and paycheck
22 stubs) prior to the deadline for objecting to the Settlement. Class Members must notify the
23 Settlement Administrator of any such dispute within forty-five (45) days of mailing the Notice
24 of Settlement. Provided, however, for any Notice of Settlement that is mailed or re-mailed
25 after the original mailing date the deadline to dispute information in the Notice of Settlement
26 will be no later than ten (10) days prior to the Final Fairness and Approval Hearing even if
27 such date is less than 45 days from the date of mailing or re-mailing. If there is a dispute, the
28 Settlement Administrator will consult with Class Counsel and Defendants' Counsel to

1 determine whether an adjustment is warranted. However, the Settlement Administrator shall
2 have the sole discretion to determine any such disputes.

3 **5. Allocation of Settlement Payments**

4 Payment to each Settlement Class Member shall be allocated as follows: twenty
5 percent (20%) shall be attributed to wages, to be reported on a W-2 form; twenty-five percent
6 (25%) as reimbursement of expenses, thirty percent (30%) as penalties; and twenty-five (25%)
7 percent as interest. The amount of expense reimbursement, interest, and penalties will be
8 reported on an IRS Form 1099.

9 **6. Payment of Payroll Taxes**

10 The amount paid to each participating Settlement Class Member attributable to wages
11 shall be subject to all applicable taxes and other withholdings and shall be net of the
12 participating Settlement Class Member's share of all federal, state, and local taxes and
13 required withholdings, including without limitation, FICA, Medicare tax, FUTA, and state
14 unemployment taxes. The Employer's Withholding Share shall be paid by Defendants
15 separately and in addition to Defendants' payment of the Gross Settlement Amount.

16 For each participating Settlement Class Member, the Settlement Administrator shall
17 determine the Employer's Withholding Share. Information related to the Employer's
18 Withholding Share for each participating Settlement Class Member shall be provided to
19 Defendants by the Settlement Administrator. If one or more of the Defendants disagrees with
20 the Settlement Administrator's determination of the Employer's Withholding Share, it will
21 communicate with and share information reasonably necessary to reach a good faith
22 determination of the correct Employer's Withholding Share.

23 **7. Payments to Participating Settlement Class Members**

24 Within ten (10) days of Defendants' deposit of the Gross Settlement Amount with the
25 Settlement Administrator, the Settlement Administrator will make the settlement payments to
26 Settlement Class Members based on the payment formula set forth herein.

27 **K. The Settlement Administrator**

28 The Settlement Administrator will perform the duties specified in this Stipulation and

1 any other duties incidental to such obligations. The Settlement Administrator's duties shall
2 include, without limitation: establishing the QSF, preparing, translating and distributing the
3 Notice of Settlement; calculating and directing the disbursement of payments to Settlement
4 Class Members, Class Counsel, the Class Representative and the LWDA; calculating and
5 timely paying any and all payroll taxes from the wages portion of the Net Settlement Amount
6 to the appropriate tax authorities, as required under this Agreement and applicable law;
7 handling inquiries about the calculation of individual settlement payments; preparing and
8 filing any tax returns and information returns and any other filings required by any
9 governmental taxing authority or other governmental agency; providing weekly status reports
10 to the Parties' counsel; advising Defendants and Class Counsel of any Class Members who
11 submit objections and/or requests for exclusions from the Settlement; providing a due
12 diligence declaration for submission to the Court prior to the final approval hearing; printing
13 and providing Settlement Class Members and Plaintiff with W-2 and 1099 forms as required
14 under this Agreement and applicable law; arranging for and remitting funds from any
15 uncashed settlement payment to the designated recipient, as determined by the Court; and for
16 such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator
17 to perform.

18 The Settlement Administrator shall establish a settlement payment center address,
19 telephone number, facsimile number, and email address to receive Class Members' inquiries
20 about the Notice of Settlement, requests to be excluded from the Settlement and settlement
21 payments.

22 In addition, the Settlement Administrator shall establish a static website and post this
23 stipulation, any preliminary approval order and the Final Approval Order and Judgment.
24 Posting of the Final Approval Order and Judgment on such website shall constitute notice of
25 judgment to the Class, as required by California Rule of Court 3.771(b).

26 The Parties confirm, and Class Counsel and Defendants' Counsel confirm that they do
27 not have any financial interest in the Settlement Administrator or otherwise have a relationship
28 with the Settlement Administrator that could create a conflict of interest.

L. Time for Payment by Defendants

Within ten (10) business days after the Effective Date, Defendants shall wire the Gross Settlement Amount and Employer's Withholding Share to the Escrow Account.

Defendants shall be jointly and severally liable for wiring the Gross Settlement Amount and Employer's Withholding Share to the Escrow Account. If, after the Court enters a Final Approval Order, Defendants fail to timely pay the amount required to satisfy its payment obligation under this Stipulation, Plaintiff, at his option, may either (1) declare the settlement terminated, in which case, the Parties agree that the Court will nullify the Final Approval Order and Judgment and all liability releases provided for in this Stipulation and Plaintiff may continue to prosecute his claims against Defendants, or (2) seek to collect all amounts owed under the Final Approval Order and Judgment against either and/or both of the Defendants.

M. Payments to Class Counsel and the Representative Plaintiff

Within ten (10) days of Defendants' deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator shall make payment from the Escrow Account to: (1) Class Counsel, both the Class Counsel's Attorneys' Fees and Class Counsel's Costs, awarded to Class Counsel by the Court; and (2) Plaintiff Jason Henriquez, the Service and Release Award approved by the Court. These payments will be reported on an IRS Form 1099.

N. Payments to the California Labor and Workforce Development Agency

Within ten (10) days of Defendants' deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will make the payment to the LWDA of \$7,500, or such other amount as approved by the Court.

O. Un-negotiated Settlement Payment Checks

If any Class Member's settlement payment check cannot be sent or otherwise has not been negotiated sixty (60) days after disbursement, the Settlement Administrator shall attempt to contact each individual to advise them to cash their checks, and to offer to replace any checks reported as either lost or stolen. In attempting to contact such persons, the Settlement

1 Administrator will send notices by mail to the individuals' last known addresses (as provided
2 by Defendants) after first checking those addresses against the NCOA database and utility
3 database and by telephoning or emailing such persons, in the event that Defendants provide
4 telephone numbers and/or email addresses for such persons.

5 If a Class Member's check is not cashed within 180 days, the check will be void and
6 a stop payment order may be placed on the check. In such event, the Settlement nevertheless
7 will be binding upon the Settlement Class Member. The funds represented by all uncashed
8 settlement checks will be transmitted by the Settlement Administrator to the California State
9 Controller's Office Unclaimed Property Fund.

10 **P. Class Counsel Attorneys' Fees and Costs**

11 Defendants will not oppose Class Counsel's application for an award of attorneys' fees
12 of up to six hundred sixty-six thousand six hundred sixty-six dollars (\$666,666), which is one-
13 third of the Gross Settlement Amount.

14 Defendants will not oppose Class Counsel's application for an award of their
15 reasonable litigation expenses and costs in an amount not to exceed \$12,000.

16 Class Counsel's Attorney's Fees and Class Counsel's Costs, as awarded by the Court,
17 shall be paid from the Gross Settlement Amount.

18 To the extent the Court does not approve any or the entire amount of Class Counsel's
19 Attorney's Fees or Class Counsel's Costs, such amounts shall remain part of the Gross
20 Settlement Amount and distributed in accordance with the provisions of this Stipulation. If
21 the Court approves a lesser amount for Class Counsel's Attorney's Fees or Class Counsel's
22 Costs than those sought by Class Counsel, any amount disallowed by the Court shall be
23 reallocated to the Settlement Class Members and the Parties agree that the settlement shall
24 remain binding with such modification(s) and its terms will otherwise be unchanged.

25 Upon the payment of the Court-approved amount of Class Counsel's Attorneys' Fees
26 and Class Counsel's Costs, and except as otherwise provided by this Stipulation, Class
27 Counsel waives any claim to costs and attorneys' fees and expenses against Defendants arising
28 from or related to the Action, including but not limited to claims based on the California Labor

1 Code, the California Code of Civil Procedure, or any other statute or law. Provided, however,
 2 nothing in this Agreement shall prevent Class Counsel from seeking additional fees for
 3 enforcing the terms of this Stipulation and investigating and recovering amounts owed under
 4 this Agreement.

5 **Q. Services and Release Award to Representative Plaintiff**

6 Representative Plaintiff's Service and Release Award, as awarded by the Court, shall
 7 be paid from the Gross Settlement Amount.

8 The Representative Plaintiff shall be responsible for all portions of federal, state, and
 9 local tax liabilities that may result from the payment of the Service and Release Award and
 10 shall agree that Defendants shall bear no responsibility for any such tax liabilities. To the
 11 extent the Court does not approve any or all of the amount of the Service and Release Award
 12 sought by Class Counsel, any amount disallowed by the Court will remain a portion of the
 13 Gross Settlement Amount and be distributed in accordance with the terms of this Stipulation
 14 and the Parties agree that the settlement shall remain in binding with such modification(s) and
 15 its terms will otherwise be unchanged.

16 **R. LWDA Payment**

17 Subject to Court approval, from the Gross Settlement Amount, ten thousand dollars
 18 (\$10,000) shall be allocated as payment for penalties under PAGA, from which twenty-five
 19 percent (25%) or \$2,500, shall be distributed to Settlement Class Members as part of the Net
 20 Settlement Amount and seventy-five percent (75%), which is \$7,500, shall be payable to the
 21 LWDA, representing the LWDA's share of PAGA penalties. To the extent the Court does not
 22 approve any or all of the PAGA payment sought by Class Counsel, any amount disallowed by
 23 the Court will remain a portion of the Gross Settlement Amount to be distributed in accordance
 24 with the terms of this Stipulation.

25 If the Court approves a lesser amount for the PAGA payment than those sought by
 26 Class Counsel, any amount disallowed by the Court shall be reallocated to the Settlement
 27
 28

1 Class Members and the Parties agree that the settlement shall remain binding with such
2 modification(s) and its terms will be otherwise unchanged.

3 **S. Taxes**

4 **1. Withholding and Reporting Requirements**

5 The Settlement Administrator shall be responsible for ensuring that all taxes owed by
6 Settlement Class Members for amounts received pursuant to this Settlement are timely paid
7 to the appropriate tax authorities. The Settlement Administrator's responsibilities include the
8 following: (a) filing all Federal, state, and local employment tax returns, tax withholding
9 returns, and any other tax returns associated with the taxes, (b) timely and proper filing of all
10 required Federal, state, and local information returns (e.g., 1099s, W-2s, etc.) with the
11 appropriate taxing authorities, and (c) completion of any other steps necessary for compliance
12 with any tax obligations of the settlement fund under Federal, state and/or local law. To verify
13 the Settlement Administrator's compliance with the foregoing withholding and reporting
14 requirements, as soon as administratively practicable, the Settlement Administrator shall
15 furnish Class Counsel and Defendants' Counsel with copies of all filed tax returns and
16 information returns (including all 1099 and W-2 information returns), and a final accounting
17 adequate to demonstrate full compliance with all tax withholding, payment and reporting
18 obligations.

19 **2. Circular 230 Disclaimer**

20 Each party to this Agreement (for purposes of this section, the "Acknowledging
21 Party"; and each party to this Agreement other than the Acknowledging Party, and "Other
22 Party") acknowledges and agrees that: (1) no provision of this Agreement, and no written
23 communication or disclosure between or among the Parties or their attorneys and other
24 advisers, is or was intended to be, nor shall any such communication or disclosure constitute
25 or be construed or be relied upon as, tax advice within the meaning of United States Treasury
26 Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has
27 relied exclusively upon his, her, or its own, independent legal and tax advisers for advice
28 (including tax advice) in connection with this Agreement, (b) has not entered into this

1 Agreement based upon the recommendation of any other party or any attorney or advisor to
 2 any other party, and (c) is not entitled to rely upon any communication or disclosure by any
 3 attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
 4 Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any
 5 limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
 6 (regardless of whether such limitation is legally binding) upon disclosure by the
 7 Acknowledging Party of the tax treatment or tax structure of any transaction, including any
 8 transaction contemplated by this Agreement.

9 **V. LIMITATIONS ON USE OF THIS SETTLEMENT**

10 **A. No Admission of Liability**

11 Neither the acceptance nor the performance by Defendants of the terms of this
 12 Stipulation nor any of the related negotiations or proceedings is or shall be claimed to be,
 13 construed as, or deemed a precedent or an admission by Defendants of the truth or merit of
 14 any allegations in the Complaint, or that they have any liability to the Representative Plaintiff
 15 or the Class Members on their claims. Defendants deny that they have engaged in any
 16 unlawful activity, have failed to comply with the law in any respect, or have any liability to
 17 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
 18 purpose of compromising highly disputed claims.

19 **B. Nullification**

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

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

26 **VI. RELEASE**

27 It is the desire of the Representative Plaintiff, Class Members (except those who
 28 exclude themselves from the Settlement), and Defendants to fully, finally, and forever settle,
 24

1 compromise, and discharge the Released Claims. Upon entry of the Final Approval Order and
 2 Defendants' payment of the Gross Settlement Amount and Employer's Withholding Share,
 3 and except as to such rights or claims as may be created by this Settlement Agreement, the
 4 Class Members, on behalf of themselves, and each of their heirs, representatives, successors,
 5 assigns, and attorneys, shall be deemed to have, and by operation of the final judgment shall
 6 have, fully released and discharged the Released Parties from any and all Released Claims
 7 that accrued during the Class Period. This release shall be binding on all Class Members who
 8 have not timely submitted a valid and complete Request for Exclusion, including each of their
 9 respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs,
 10 successors, and assigns, and shall inure to the benefit of the Released Parties.

VII. RELEASE BY THE REPRESENTATIVE PLAINTIFF

12 Upon entry of the Final Approval Order and Defendants' payment of the Gross
 13 Settlement Amount and Employer's Withholding Share, and except as to such rights or claims
 14 as may be created by this Settlement Agreement, the Representative Plaintiff fully releases
 15 and forever discharges Defendants, the Released Parties, and Defendants' respective present
 16 and former officers, directors, employees, shareholders, members, agents, trustees,
 17 representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates,
 18 predecessors, successors, assigns, and any individual or entity that could be jointly liable with
 19 Defendants, from any and all claims, causes of action, damages, wages, benefits, expenses,
 20 penalties, debts, liabilities, demands, obligations, attorney's fees, costs, and any other form of
 21 relief or remedy in law, equity, or whatever kind or nature, whether known or unknown,
 22 suspected or unsuspected, exclusive of any workers compensation claims, including but not
 23 limited to (1) all Released Claims, (2) the Action and any claims arising out of or related to
 24 the Action, (3) any claims under federal, state or local law for or relating to wages, benefits,
 25 compensation, vacation or other paid time off, and claims for liquidated damages, penalties,
 26 or costs and fees associated therewith, (4) wrongful termination, discrimination, harassment,
 27 and/or retaliation, (5) any act, omission, or occurrence or claim arising out of or related to the
 28 Action or Plaintiff's employment or secession of employment with Defendants taking place

1 on or before the Effective Date of the Settlement, and (6) and any other form of relief or
 2 remedy of any kind, nature, or description whatsoever, whether premised on statute, contract,
 3 tort, or other theory of liability under state, federal, or local law.

4 The Representative Plaintiff hereby agrees that, notwithstanding § 1542 of the
 5 California Civil Code, all claims that the Representative Plaintiff may have, known or
 6 unknown, suspected or unsuspected, are hereby released. Section 1542 provides:

7 **"A general release does not extend to claims that the creditor or releasing**
 8 **party does not know or suspect to exist in his or her favor at the time of**
 9 **executing the release and that, if known by him or her, would have**
 10 **materially affected his or her settlement with the debtor or released**
 11 **party."**

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

18 **VIII. MISCELLANEOUS PROVISIONS**

19 **A. Amendments**

20 This Settlement Agreement may only be modified or changed by a writing signed by
 21 the Parties or by their counsel.

22 **B. Integrated Agreement**

23 After this Stipulation is signed and delivered by all Parties to the Action and their
 24 counsel, this Stipulation and its exhibits will constitute the entire agreement between the
 25 Parties to the Action relating to the Settlement, and it will then be deemed that no oral
 26 representations, warranties, covenants, or inducements have been made to any Party
 27 concerning this Stipulation or its exhibits other than the representations, warranties,
 28 covenants, and inducements expressly stated in this Stipulation and its exhibits.

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C. No Inducements

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

D. No Prior Assignment

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

E. No Retaliation or Advice

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

F. Attorney's Fees

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

G. Applicable Law

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

H. Entry of Judgment Pursuant to Terms of Settlement

The Parties agree that upon the Settlement of this case, the Court may enter 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.

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I. 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:

CLASS COUNSEL:

Aaron C. Gundzik
Rebecca G. Gundzik
Gartenberg Gelfand Hayton LLP
15260 Ventura Blvd, Suite 1920
Sherman Oaks, CA 91403
Telephone: (213) 542-2100
Facsimile: (213) 542-2101

Daniel M. Holzman
Caskey & Holzman
24025 Park Sorrento, Ste. 400
Calabasas, CA 91302
Telephone: (818) 657-1070
Facsimile: (818) 297-1775

COUNSEL FOR DEFENDANT DSI:

Lonnie D. Giamela
John A. Mavros
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

COUNSEL FOR DEFENDANT NGU:

Laurie M. Cortez
Justin G. Schmidt
Emilio Law Group
12832 Valley View Street, Suite 106
Garden Grove, California 92845
Telephone: (714) 379-6239
Facsimile: (714) 379-5444

J. 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.

K. Counterparts

This Stipulation, 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.

1 **L. Warranties and Representations**

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

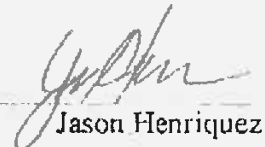
6 **M. Representation by Counsel**

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

10 **N. Signatories**

11 It is agreed that because the Class Members are so numerous, it is impossible or
12 impractical to have each Class Member execute this Stipulation. The Notice of Settlement
13 will advise all Class Members of the binding nature of the release, and the release shall have
14 the same force and effect as if this Stipulation was executed by each member of the Settlement
15 Class.

16
17 Dated: Feb 28, 2019


Jason Henriquez

18
19 Dated: _____, 2019

DSI Logistics, Inc.

20 By: _____

21 Its: _____

22
23 Dated: _____, 2019

NGU Transport, LLC

24 By: _____

25 Its: _____

1 **L. Warranties and Representations**

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

6 **M. Representation by Counsel**

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

10 **N. Signatories**

11 It is agreed that because the Class Members are so numerous, it is impossible or
12 impractical to have each Class Member execute this Stipulation. The Notice of Settlement
13 will advise all Class Members of the binding nature of the release, and the release shall have
14 the same force and effect as if this Stipulation was executed by each member of the Settlement
15 Class.

16
17 Dated: _____, 2019

Jason Henriquez

18
19 Dated: March 1st, 2019

DSI Logistics Inc.

20 By: [Signature]

21 Its: [Signature]

22
23 Dated: _____, 2019

NGU Transport, LLC

24 By: _____

25 Its: _____

L. 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 Stipulation and have duly authorized the execution, delivery, and performance of this Stipulation.

M. 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 Stipulation, and that this Stipulation has been executed with the consent and advice of counsel.

N. Signatories

It is agreed that because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute this Stipulation. The Notice of Settlement will advise all Class Members of the binding nature of the release, and the release shall have the same force and effect as if this Stipulation was executed by each member of the Settlement Class.

Dated: _____, 2019

Jason Henriquez

Dated: _____, 2019

DSI Logistics, Inc.

By: _____

Its: _____

Dated: 3/11, 2019

NGU Transport, LLC

By: [Signature]

Its: Owner NGU Transport LLC

1 Approved as to form:

2 Dated: 3/1, 2019

FISHER & PHILLIPS LLP

3
4 By: 

Lonnie D. Grameln

John A. Mayros

Attorneys for Defendant DSI Logistics, Inc.

6
7 Dated: _____, 2019

EMILIO LAW GROUP

8
9 By: _____

Laurie M. Cortez

Attorneys for Defendant NGU Transport, LLC

10
11 Dated: 2/28, 2019

GARTENBERG GELFAND HAYTON LLP

12
13 

Aaron C. Gundzik

Attorneys for Plaintiff Jason Henriquez, individually
and on behalf of all others similarly situated

14
15
16 Dated: 2/28, 2019

CASKEY & HOLZMAN

17
18 

Daniel M. Holzman

Attorneys for Plaintiff Jason Henriquez, individually
and on behalf of all others similarly situated

1 Approved as to form:

2 Dated: _____, 2019

FISHER & PHILLIPS LLP

By: _____

Lonnie D. Giamela

John A. Mavros

Attorneys for Defendant DSI Logistics, Inc.

6 Dated: 3/12, 2019

EMILIO LAW GROUP

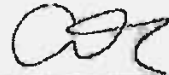
By: _____

Laura M. Cortez

Attorneys for Defendant NGU Transport, LLC

11 Dated: 2/28, 2019

GARTENBERG GELFAND HAYTON LLP



Aaron C. Gundzik

Attorneys for Plaintiff Jason Henriquez, individually
and on behalf of all others similarly situated

16 Dated: 2/28, 2019

CASKEY & HOLZMAN



Daniel M. Holzman

Attorneys for Plaintiff Jason Henriquez, individually
and on behalf of all others similarly situated

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL

Jason Henriquez v. NGU Transport, LLC, DSI Logistics, Inc.

Los Angeles Superior Court Case Number BC714165

If you are a current or former helper, driver, independent hauler, or employee of an independent hauler of DSI Logistics, Inc., DSI Delivery South, Inc., DSI Delivery North, Inc., or Delivery Solutions, Inc., you may be entitled to receive money from a class action settlement.

The California Superior Court, County of Los Angeles authorized this notice.

This is not a solicitation from a lawyer.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

You are receiving this Notice because the Court has preliminarily approved a proposed settlement in a class action filed on behalf of individuals who have worked as helpers, drivers, independent haulers, or employees of independent haulers for DSI Logistics, Inc. DSI Delivery South, Inc., DSI Delivery North, Inc., and Delivery Solutions, Inc. ("DSI Entities"). The proposed settlement will resolve all Released Claims (defined below) against the DSI Entities and Defendant NGU Transport, LLC ("NGU") (The DSI Entities and NGU shall be referred to collectively as "Defendants"). A hearing addressing the fairness, adequacy, and reasonableness of the settlement will be held on _____ at _____.m. to determine whether the settlement should receive the Court's final approval.

If you are a member of the settlement class, you will receive a settlement payment and will be bound by the terms of the release described below, unless you properly submit a timely Request for Exclusion from the settlement (described below). This Notice explains the proposed settlement and provides an estimate of how much money you will receive as a settlement payment if you do not exclude yourself from the settlement. If you do not want to be part of the settlement class, then you must submit a Request for Exclusion (described below) no later than [45 days from mailing] otherwise you will be bound by the terms of the settlement.

1. PURPOSE OF THIS NOTICE

The Court has ordered that this Notice be sent to you because you have been identified as a member of the class by Defendants' records. The purpose of this notice is to provide you with information about the lawsuit and the proposed settlement and to advise you of your options.

2. PERSON ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT

The people eligible to receive a settlement payment are all individuals who worked at least one day during the Settlement Class Period as a helper, driver, independent hauler, or employee of an independent hauler for any of the DSI Entities, but shall not include NGU, its owners, or any family members of its owners. The Class Period is from July 19, 2014 through [the earlier of April 17, 2019 or the date the Court grants preliminary approval].

3. DESCRIPTION OF THE ACTION

A former driver who performed services for NGU and DSI, Jason Henriquez ("Plaintiff"), filed a class action complaint against Defendants in the Los Angeles County Superior Court on July 19, 2018 and a First Amended Complaint on January 23, 2019. His First Amended Complaint alleges that he and others who performed work for Defendants were misclassified as independent contractors and were not paid for all of the time they worked, were not paid overtime, were not provided with compliant meal and rest breaks, were not paid all amounts due at separation, were not provided compliant wage statements, and were not reimbursed for expenses incurred. Based on these facts and others, Plaintiff's First Amended Complaint alleges causes of action for: (1) failure to pay minimum wages earned, (2) failure to pay overtime, (3) failure to provide meal and rest breaks, (4) noncompliant wage statements, (5) failure to pay wages due at time of discharge, (6)

FOR MORE INFORMATION CALL 1-800-_____

failure to reimburse necessary expenditures, (7) failure to provide employment records, (8) unfair business practices, and (9) violation of the Private Attorneys' General Act (PAGA).

Defendants deny all of Plaintiff's allegations. Among other things, Defendants contend that all individuals who performed delivery services for them were not misclassified and have been properly compensated and that Defendants complied with all applicable California labor laws.

The Court has made no ruling on the merits of the alleged claims or the defenses asserted by Defendants. The Court has preliminarily approved the proposed settlement. The Court will decide whether to give final approval to the settlement at a hearing scheduled for _____, 2019 at _____.m. (the "Final Approval Hearing").

4. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

Attorneys representing the class ("Class Counsel") are:

Aaron C. Gundzik Rebecca G. Gundzik Gartenberg Gelfand Hayton LLP 15260 Ventura Blvd., Suite 1920 Sherman Oaks, CA 91403 Telephone: (213) 542-2100 Facsimile: (213) 542-2101	Daniel M. Holzman Caskey & Holzman 24025 Park Sorrento, Ste. 400 Calabasas, CA 91302 Telephone: (818) 657-1070 Facsimile: (818) 297-1775
--	---

Attorneys representing Defendants are:

<u>COUNSEL FOR DEFENDANT DSI:</u> Lonnie D. Giamela John A. Mavros Fisher & Phillips LLP 2050 Main Street, Suite 1000 Irvine, California 92614 Telephone: (949) 851-2424 Facsimile: (949) 851-0152	<u>COUNSEL FOR DEFENDANT NGU:</u> Laurie M. Cortez Justin G. Schmidt Emilio Law Group 12832 Valley View Street, Suite 106 Garden Grove, California 92845 Telephone: (714) 379-6239 Facsimile: (714) 379-5444
--	--

5. THE TERMS OF THE PROPOSED SETTLEMENT

The following is a summary of the settlement. The specific and complete terms of the proposed Settlement are stated in the Stipulation of Class Action Settlement ("Settlement Agreement"), a copy of which is filed with the Court. You can also obtain a copy of the Settlement Agreement from Class Counsel (see contact information in Section 4 above) or review it on the following website: www._____.

Defendants have agreed to pay \$2,000,000.00 to settle any and all obligations for the claims alleged in the lawsuit. This amount is called the Gross Settlement Amount. The Gross Settlement Amount will be used to cover all payments to the settlement class, settlement administration costs, attorneys' fees and costs, a service and release payment to the Plaintiff and funds owed to the state of California in settlement of penalties. All of these payments will be deducted from the Gross Settlement Amount. The remaining amount (called the Net Settlement Amount) will be distributed to class members who do not timely submit Requests for Exclusion, as discussed below.

(a) **Attorneys' Fees and Costs:** Class Counsel has worked on this matter without compensation and has advanced funds to pay for expenses necessary to prosecute the class action. Accordingly, under the settlement, Class Counsel may request an amount not to exceed \$666,666 to compensate them for their work on the case, plus their reasonable costs and expenses incurred in the litigation not to exceed \$12,000. Subject to court approval, the attorneys' fees and costs will be deducted from the Gross Settlement Amount.

(b) **Service and Release Payment:** The Plaintiff is requesting a service and release payment not to exceed \$10,000, in addition to the amount he will receive as a member of the class, to compensate him for undergoing the burden and expense of bringing and prosecuting the action, and for the broader release of claims he is required to execute. Subject to court approval, the service and release payment will be deducted from the Gross Settlement Amount.

FOR MORE INFORMATION CALL 1-800-_____

(c) **Settlement Administration Costs:** The Settlement Administrator, _____, has advised the parties that the settlement administration costs will not exceed \$20,000. Subject to court approval, the settlement administration costs will be deducted from the Gross Settlement Amount.

(d) **Payment to State of California:** A total of \$10,000 of the Gross Settlement Amount will be allocated to settle allegations that Defendants owe penalties to the state for alleged violations of the California Labor Code. Of this amount, \$7,500 (75%) will be paid to the California Labor & Workforce Development Agency ("LWDA"). Subject to court approval, the \$7,500 payment to the LWDA will also be deducted from the Gross Settlement Amount. The other 25%, which is \$2,500 (25%), will distributed to class members as part of the Net Settlement amount discussed below.

(e) **Payments to Settlement Class Members:** The remainder of the Gross Settlement Amount (called the Net Settlement Amount) will be distributed to class members who do not exclude themselves from the settlement (called Settlement Class Members). The amount of each Settlement Class Member's share of the Net Settlement Amount will be calculated by dividing the individual's total workweeks during the Class Period by the total workweeks for all Settlement Class Members during the Class Period and multiplying that fraction by the Net Settlement Amount. Each Settlement Class Member who employed and/or contracted with and/or paid one or more other Settlement Class Members to perform work for one or more of the DSI Entities during the Class Period will receive credit for .5 workweeks for each week he or she worked for Defendants during the Class Period. All other Settlement Class members will receive credit for 1 workweek for each week he or she worked for Defendants during the Class Period.

6. WHAT YOU WILL RECEIVE UNDER THE SETTLEMENT

According to Defendants' records, you worked a total of ___ weeks during the Class Period. Defendants' records also indicate that you did ___/ did not ___ employ and/or contract with and/or pay one or more other Settlement Class Members to perform work for one or more of the DSI Entities during the Class Period and therefore each week you worked shall be counted as ___ 1/ __.5 workweeks. Under the settlement, you will receive approximately \$ _____. This amount may increase or decrease based on various factors, including the number of class members who submit Requests for Exclusion, the amounts approved by the Court for attorneys' fees and costs, settlement administration costs, service and release payment to Plaintiff, payments to the LWDA, and disputes by other class members regarding their work weeks during the Class Period. To receive your settlement payment, you do not need to do anything. You will receive a settlement payment unless you exclude yourself from the settlement.

7. PAYMENT SCHEDULE

The Settlement Administrator will send out settlement checks to class members after the settlement is finally approved. You will have 180 days after the Settlement Administrator mails your settlement check to cash it; otherwise it will be voided and the amount of your settlement payment will be sent to the California State Controller's Office Unclaimed Property Fund in your name and you will need to contact that agency to obtain your funds. For tax purposes, twenty percent (20%) of your settlement payment shall be attributed to wages and reported on a W-2 form; twenty-five percent (25%) as reimbursement of expenses; thirty percent (30%) as penalties; and twenty-five (25%) percent as interest. The amount of expense reimbursement, interest, and penalties will be reported on an IRS Form 1099. Nothing in this Notice should be construed as providing you with tax advice. You should consult with your tax advisor concerning the tax consequences of the payment you receive.

8. RELEASE OF CLAIMS

Unless you submit a valid Request for Exclusion (described below), you will release the DSI Entities, NGU Transport, LLC, and any of their former or present parents, subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or, successors, and all agents, employees, officers, directors, members, managers, holding companies, insurers, and attorneys thereof, from 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 Plaintiff and/or any member of the Settlement Class, had or, now has, or hereafter can, shall, relating to the claims alleged in the Action, including but not limited to any claim under California common law, a claim under any California IWC Wage Order, and statutory claims for failure to pay minimum wage, failure to pay overtime, failure to provide compliant meal and rest breaks, failure to provide compliant wage statements, failure to pay final wages, failure to reimburse for necessary

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business expenses, failure to provide employment records, unfair business practices, and penalties pursuant to the Private Attorney General Act arising from the claims described above, as well as civil penalties for alleged misclassification, failure to provide notices pursuant to Labor Code 2810.5, and failure to provide legally compliant sick pay, whether such claims are known or unknown, suspected or unsuspected. This release is for conduct occurring from July 19, 2014 through [the preliminary approval date]. The claims covered by this release are referred as the "Released Claims."

9. YOUR OPTIONS

As a member of the settlement class you have four options. Each option will affect your rights, which you should understand before making your decision. Your rights regarding each option, and the procedure you must follow to select each option, are explained below:

(a) You Can Do Nothing.

If you do nothing, you will remain a member of the settlement class and will receive a settlement payment. You will also be bound by the release of claims set forth in Section 8 above. The payment will remain valid and negotiable for one hundred eighty (180) days from the date of the issuance. This deadline to cash the payment shall not be extended for you absent Court Order.

(b) You Can Contest the Calculation of Your Settlement Payment as Stated in this Notice.

You can contest the number of workweeks you worked and/or the amount of the settlement payment already paid to you which are identified for you in Section 6 above. To do so, you must provide the Settlement Administrator with a written explanation of your position. The statement must also include your full name, current address and telephone number, and must identify this case (*Jason Henriquez v. NGU Transport, LLC, DSI Logistics, Inc.*, Case No. BC714165). You must provide written documentation supporting the number of weeks you believe that you worked; otherwise, the number listed above will be presumed correct. You must postmark your written statement no later than [45 days from mailing]. The Settlement Administrator will consider the documentation you submit and will communicate with you and the parties as necessary regarding the dispute to determine whether an adjustment is warranted before making a final determination regarding your settlement payment. The Settlement Administrator will mail you its final determination.

(c) You Can Exclude Yourself from the Settlement Class.

If you do not want to remain a member of the settlement class, you can request exclusion (i.e., opt out) by sending the Settlement Administrator a written Request for Exclusion at the address specified in Section 11 below. The deadline to postmark a Request for Exclusion is [45 days from mailing]. A Request for Exclusion is a written statement unambiguously requesting to be excluded from the settlement class. The Request for Exclusion must include the case name (*Jason Henriquez v. NGU Transport, LLC, DSI Logistics, Inc.*, Case No. BC714165), your name, current address and telephone number, and the last four digits of your social security number (for verification purposes). You must also sign the Request for Exclusion. You should keep a copy of your Request for Exclusion. Moreover, to demonstrate receipt by the Settlement Administrator, you may elect to send your Request for Exclusion via certified mail. Requests for Exclusion that do not include all required information, or that are not postmarked on or before the deadline, will not be valid.

If you submit a valid and timely Request for Exclusion, you will not be bound by the settlement or the release of claims in Section 8 above; however, you will not receive any money under the settlement. You will also be barred from objecting to this settlement. By opting out of the settlement class, you will retain whatever rights or claims you may have against Defendant.

If you do not submit a timely and valid Request for Exclusion from the settlement class by the deadline specified above, then you will be bound by all terms and conditions of the settlement if it is approved by the Court and by the judgment, and you will receive a settlement payment.

(d) You Can Object to the Settlement.

If you are a member of the settlement class who does not submit a Request for Exclusion from the settlement, you may object to the settlement by sending your written objections to the Settlement Administrator at the address specified in Section 11 below. The deadline to file and postmark objections is [45 days from mailing]. Only class members who have not requested exclusion may object to the settlement.

FOR MORE INFORMATION CALL 1-800-_____.

Your objection must state the basis of your objection and include any papers and briefs in support of your position. Your objection must be signed and must contain your current address and telephone number (or that of your attorney) and refer to this case (*Jason Henriquez v. NGU Transport, LLC, DSI Logistics, Inc.*, Case No. BC714165).

If you object to the settlement and if the Court approves the settlement notwithstanding your objections, you will be bound by the terms of the settlement and be deemed to have released all of the Released Claims as set forth in Section 8 above, and you will not be permitted to file a Request for Exclusion.

10. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Final Approval Hearing on the fairness and adequacy of the proposed settlement, the plan of distribution, the service and release payment to the Plaintiff, and Class Counsel's request for attorneys' fees and costs, and other issues will be held on _____, 2019 at _____.m., in Department 1 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 N. Spring Street, Los Angeles, CA 90012. You may attend the Final Approval Hearing and be heard even if you do not submit an objection to the settlement. The Final Approval Hearing may be continued to another date without further notice. If you plan to attend the Final Approval Hearing, it is recommended that you contact the Settlement Administrator to confirm the date and time.

11. NON-RETALIATION

Defendants will not retaliate or take any adverse action against a class member for participating in the settlement.

12. ADDITIONAL INFORMATION.

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file at the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 N. Spring Street, Los Angeles, CA 90012. You may also review the settlement agreement and other documents related or you may also contact the Settlement Administrator as follows:

Rust Consulting, 777 S. Figueroa Street, Suite 4600, Los Angeles, CA 90017

Telephone: _____
Facsimile: _____
Email: _____
Website: _____

You may also contact Class Counsel at the address and telephone number provided in Section 4 above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

FOR MORE INFORMATION CALL 1-800-_____

Exhibit 2

AGREEMENT REGARDING THE DIVISION OF ATTORNEYS' FEES

Client Jason Henriquez entered into engagement agreement with the law firms of Gartenberg Gelfand Hayton LLP and Caskey & Holzman ("Attorneys") for the purpose of representing Client in a class or other action against NGU LLC.

Attorneys and Clients agree and acknowledge that any attorneys' fees recovered in connection with such representation will be divided between Attorneys as follows: sixty percent (60%) will be paid to Gartenberg Gelfand Hayton LLP and forty percent (40%) will be paid to Caskey & Holzman.

Dated: May 4, 2018

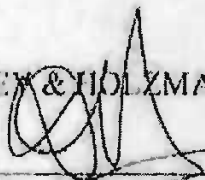
GARTENBERG GELFAND HAYTON LLP



Aaron C. Gundzik

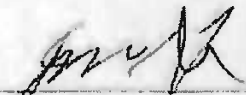
Dated: May 4, 2018

CASKEY & HOLZMAN



Daniel Holzman

Dated: May 4, 2018



Jason Henriquez

Exhibit “4”

ORIGINAL

1 AARON C. GUNDZIK (State Bar No. 132137)
2 REBECCA G. GUNDZIK (State Bar No. 138446)
3 GARTENBERG GELFAND HAYTON LLP
4 15260 Ventura Blvd., Suite 1920
5 Sherman Oaks, CA 91403
6 Telephone: (213) 542-2100
7 Facsimile: (213) 542-2101

FILED
Superior Court of California
County of Los Angeles

OCT 29 2019

Sherri R. Carter, Executive Officer/Clerk
By Steven Drew, Deputy
Steven Drew

5 MARSHALL A. CASKEY (State Bar No. 65410)
6 DANIEL M. HOLZMAN (State Bar No. 176663)
7 N. CORY BARARI (State Bar No. 295306)
8 CASKEY & HOLZMAN
9 24025 Park Sorrento, Ste. 400
10 Calabasas, CA 91302
11 Telephone: (818) 657-1070
12 Facsimile: (818) 297-1775

13 Attorneys for Plaintiff Jason Henriquez, individually
14 and on behalf of all others similarly situated

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 JASON HENRIQUEZ, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 NGU TRANSPORT LLC, a California limited
19 liability company; DSI LOGISTICS, INC., a
20 Nevada corporation, and DOES 1 through 25,

21 Defendants.

Case No.: BC714165

Assigned to Hon. Daniel J. Buckley
Dept. SSC-1

**DECLARATION OF AARON C.
GUNDZIK IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 25, 2019

Time: 10:30 a.m.

Dept.: SSC 1

Complaint Filed: July 19, 2018

1 I, Aaron C. Gundzik, declare as follows:

2 1. I am admitted to practice law in the state of California. I have personal
3 knowledge of the matters set forth herein, and, if called as a witness, could competently
4 testify thereto.

5 2. I am a partner at Gartenberg Gelfand Hayton LLP, co-counsel for Plaintiff
6 Jason Henriquez. This Declaration is submitted in support of Plaintiff's Motion for Final
7 Approval of Class Action Settlement.

8 3. I have been practicing law in Southern California for more than 30 years. I
9 graduated from the University of Southern California Law School in 1987 and have been a
10 member of the California bar since 1987. For my first 14 years of practice, I worked in the
11 Los Angeles office of a large international law firm, then known as LeBoeuf, Lamb, Greene
12 & MacRae, first as an associate and then as an equity partner. I left that firm in 2001 and
13 formed Cotton & Gundzik LLP. In 2012, I joined GGH. Throughout my career, I have been
14 involved in the litigation of complex cases, including securities, consumer and wage and
15 hour class actions. Presently, I am Plaintiff's counsel in approximately eighteen class actions
16 in various stages of litigation. I have served as class counsel in numerous wage and hour
17 class actions that have already settled. And, I successfully represented a class of service
18 technicians at trial and through appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.
19 App. 4th 36 (2013), which helped establish the law regarding an employee's right to be paid
20 for all time under an employer's control, including nonproductive time, and was one of the
21 basis for Labor Code section 226.2.

22 4. Rebecca Gundzik, who is Of Counsel at GGH, worked with me extensively
23 on this case. Ms. Gundzik graduated from the University of Southern California Law School
24 in 1988 and has been a member of the California bar since 1988. In her 30-year legal career,
25 Ms. Gundzik worked at Loeb & Loeb and worked at Allen Matkins Leck Gamble Mallory &
26 Natsis LLP for fifteen years. Ms. Gundzik has also had significant experience with complex
27 cases, including real estate, business, and consumer and wage and hour class actions. She
28

1 works with me on all of my class action matters and was my co-counsel at the trial of
2 *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th at 36.

3 5. I am familiar with California law governing wages owed to employees,
4 including but not limited to California Labor Code Sections 1197, 226(a), 510, 226.7,
5 512(a), 201, 202, 2802, 2699, California Business and Profession Codes 17200 *et seq.*, and
6 the Wage Orders of the Industrial Welfare Commission.

7 6. There are no conflicts that would prevent me from serving as Class Counsel
8 in this matter.

9 **Case History**

10 7. Plaintiff filed his initial complaint against Defendants NGU Transport LLC
11 and DSI Logistics, Inc. on July 19, 2018, and pursuant to a stipulation of the parties, filed a
12 First Amended Complaint on January 23, 2019, which asserted causes of action for: (1)
13 failure to pay minimum wages, (2) failure to pay overtime, (3) failure to provide compliant
14 meal and rest breaks, (4) failure to provide compliant wage statements, (5) failure to pay
15 final wages, (6) failure to reimburse for necessary expenses, (7) failure to provide
16 employment records, (8) unfair business practices; and (9) recovery of civil penalties
17 pursuant to the Private Attorneys General Act, Cal. Lab. Code §§2698-2699.5. In the
18 pleading, Plaintiff is claiming the same injuries based upon the same alleged wage and hour
19 policies as are the Settlement Class Members.

20 **Discovery and Investigation Prior to Settlement**

21 8. Rebecca Gundzik and I, and our co-counsel Daniel Holzman, have been
22 directly involved in all aspects of this case on behalf of Plaintiff. In that regard, we initially
23 drafted discovery before the parties agreed to mediate. We have extensively investigated
24 Plaintiff's claims against Defendants. We have reviewed and analyzed numerous pay
25 documents, including records and information produced by Defendant, worked to develop
26 information on potential damages, and interviewed the named Plaintiff about his
27 employment experiences with Defendants. We have investigated and compiled publicly-
28 available information about Defendants and their businesses. In addition, we have engaged

1 in informal discovery in connection with the mediation, and negotiated extensively with
2 Defendants regarding the mediation, its scope, and the information to be exchanged in
3 connection with the mediation.

4 9. In connection with Plaintiff's informal discovery, I obtained Plaintiff's wage
5 records and personnel records. Because Defendants refused to provide us with contact
6 information for putative class members, we interviewed Plaintiff extensively. I also met and
7 conferred extensively with Defendants' counsel regarding the scope and type of additional
8 documents Plaintiff was seeking in advance of the mediation. As a result of these
9 negotiations, Defendants produced information regarding the number of employees in the
10 Class. We also received workweek and employment data and information on Plaintiff's and
11 other class members' work activities from Defendants.

12 10. I and my litigation team have reviewed and analyzed the records produced by
13 Defendants, together with the information provided by our client, to provide an estimate of
14 the damages incurred by the Class. In conducting our analysis, we reviewed and analyzed all
15 of the records that had been produced by Defendants in order to arrive at our damages
16 estimates.

17 11. Based upon our investigation, we made the following contentions: Defendant
18 DSI provides delivery services to large retailers. To provide those services, DSI contracts
19 with "haulers" in local markets. In total, DSI has approximately 425 haulers, whom DSI
20 contends operate separate and independent businesses. Defendant NGU is one such hauler.
21 These haulers, in turn, hire drivers and other workers to perform the actual delivery work.
22 During the relevant period approximately 2,620 such individuals worked for Defendants.
23 These workers are often treated by the haulers as independent contractors. Further, though
24 haulers hire individual workers, the workers' daily activities are guided in large part by DSI.
25 DSI also provides employment applications for workers and provides a mobile phone
26 application that workers must use to perform their work. Due to DSI's involvement in
27 directing their work, Plaintiff contends that DSI, along with DSI's haulers (like NGU), are
28 joint employers of the workers.

1 12. Plaintiff worked for Defendants NGU and DSI in 2018. He was a driver and
2 was assigned to deliver merchandise for Lowe's to Lowe's customers. He drove trucks that
3 were owned by NGU and by DSI. At all times, he was treated as an independent contractor.
4 He was paid a flat rate for each day that he worked, regardless of the number of hours he
5 logged. He worked twelve to fifteen hours each day. Plaintiff contends that he never
6 received meal or rest breaks while working for Defendants and never received hourly or
7 overtime pay. Also, Plaintiff contends that his pay checks did not comply with the
8 requirements of Labor Code section 226(a). DSI contends that it was not a joint employer as
9 it did not exercise sufficient control over, or direct the work of, individuals retained by its
10 independent haulers. Defendants further contended that Defendants always properly
11 classified and compensated class members for all hours worked, provided all required meal
12 and rest breaks in compliance with the law, reimbursed class members for all necessary and
13 reasonable business expenses, and issued accurate pay statements.

14 13. I and my co-counsel consulted with Plaintiff extensively in order to
15 investigate the facts before filing the Complaint and First Amended Complaint. We
16 continued to consult with him prior and subsequent to the mediation regarding the forgoing
17 issues. Mr. Henriquez also provided us with details about his experience working for
18 Defendants. Mr. Henriquez also missed a day of work to attend the full-day mediation. He
19 contributed a substantial amount of time meeting with us, reviewing documents, producing
20 documents, attending the mediation, monitoring the progress of the litigation with counsel,
21 and reviewing and signing the Memorandum of Understanding and Settlement Agreement.

22 14. On January 17, 2019, I, Rebecca Gundzik of my office, our co-counsel
23 Daniel Holzman, Mr. Henriquez, as well as Defendants and Defendants' counsel, attended a
24 mediation session with Gig Kyriacou. Mr. Kyriacou has substantial experience mediating
25 wage and hour class actions like this one. The case settled at the end of the mediation
26 pursuant to a mediator's proposal.

27 15. I, Ms. Gundzik, our co-counsel and our client concluded, after taking into
28 account the sharply disputed factual and legal issues involved in the lawsuit, the risks

1 attending further prosecution, and the substantial benefits to be received pursuant to the
2 compromise and settlement of the action, that the settlement is in the best interests of the
3 Settlement Class and is fair and reasonable. We also considered the possibility that the Class
4 would not be certified and factored in the additional delay in recovery for Class members if
5 the settlement were rejected and the case went to trial.

6 16. The terms of the Settlement were subsequently memorialized in the
7 Stipulation of Class Action Settlement (Settlement Agreement”), which is attached hereto as
8 **Exhibit “A.”** The settlement was negotiated at arms’ length and was in no sense collusive.

9 17. Pursuant to the terms of the proposed settlement, Defendants will pay a Gross
10 Settlement Amount of \$2,000,000, plus the employer’s share of withholding taxes. After
11 proposed deductions, as approved by the Court, the Net Settlement Amount of
12 approximately \$1,283,834 will be available to distribute to settlement Class members.

13 18. As compensation for his efforts, the Settlement Agreement provides that a
14 Class Representative Service and Release Award in the amount of \$10,000 will be requested
15 for the representative Plaintiff, Jason Henriquez. This award is in recognition of the
16 significant time he expended pursuing this action and assisting our efforts with the case, and
17 in recognition of the expanded general release that he is required to provide, as part of the
18 Settlement. As an additional requirement to receiving the proposed Class Representative
19 Service and Release Award, Plaintiff is required to sign a broad general release which
20 includes a waiver of Section 1542 of the California Civil Code.

21 19. In assessing the fairness of this settlement, it is important to understand that
22 other than drivers who worked for Defendant NGU, class members will only be releasing
23 claims that they may have against DSI. Class members will not be releasing claims that they
24 may have against the haulers that they worked for. As a result, in assessing the value of
25 Plaintiff’s class claims, we considered the fact that we may not be able to prevail on any
26 claims against Defendant DSI because it could successfully argue that it was not a joint
27 employer of any of the Class members.

1 20. The First Cause of Action is for failure to pay minimum wage. After further
2 investigating this claim, we determined that Plaintiff was paid at least minimum wage for his
3 straight time hours that he worked. And we found no evidence that other class members
4 were not paid at least minimum wage. As a result, we did not assign any value to this claim.

5 21. The Second Cause of Action is for failure to pay overtime. Plaintiff and
6 worked long days and data that we obtained from Defendants indicates that other drivers
7 also worked significant overtime. We estimated that drivers worked a total of 38,808 work
8 days during the class period. Defendants did not maintain time records for drivers. However,
9 we received a sampling of driver delivery times. These records indicate that drivers in this
10 sample worked overtime about 27% of working days. About 13% of working days included
11 about one hour of overtime and about 14% of working days included about three hours of
12 overtime. Extrapolating this sample to rest of the class, I concluded that the maximum value
13 of this claim is about \$788,000. However, in light of the lack of time records, this overtime
14 work might be difficult to prove on a class basis and might prevent certification of the class.
15 As a result, this claim has a minimum value of \$0.

16 22. The Third Cause of Action is for failure to provide meal and rest breaks.
17 Plaintiff contends that because drivers were treated as independent contractors they were not
18 provided with meal and rest breaks at all. In addition, the tight delivery schedules that they
19 were given made it difficult for drivers to take a meal or rest break. And if they were able to
20 do so, the break would not be duty free because drivers were always required to remain in
21 touch with dispatchers. Defendants contended that not all drivers were treated as
22 independent contractors and that some haulers maintained compliant break policies. Based
23 on the data that we reviewed, we determined that 91% of working days were five or more
24 hours long and therefore required a meal break and 100% of working days were more than
25 3.5 hours long and therefore required a rest break. Conservatively assuming that meal breaks
26 and rest breaks were not compliant for 65% of these days, we calculated that maximum
27 potential damages to be about \$565,000 for non-compliant or missed meal breaks and
28

1 \$621,000 for non-compliant or missed rest breaks. However, due to the difficulty in proving
2 the claim on a class-wide basis, we estimated the minimum value of this claim to be \$0.

3 23. The Fourth Cause of Action is for failure to provide compliant wage
4 statements. This claim is based on the fact that the paychecks that Plaintiff received were
5 simply business checks with no paystub and very little of the information required by Labor
6 Code section 226(a). Plaintiff was paid weekly, and we assumed that all drivers were paid
7 weekly. We determined that approximately 2,000 drivers worked during the one-year
8 limitations period applicable to this claim. Defendants contended that some haulers issued
9 compliant wage statements and that some haulers paid drivers twice monthly or bi-weekly.
10 Defendants also contended that many of the 2,000 drivers worked sporadically and therefore
11 did not receive regular pay checks. In estimating damages, we assumed that half of the 2,000
12 drivers were entitled to the maximum per-employee penalty of \$4,000. This results in
13 maximum damages of \$4,000,000. However, for the reasons discussed above, including the
14 possibility that Defendant DSI might not be the joint employer of Class members, we
15 determined that this claim has a minimum value of \$0.

16 24. The Fifth Cause of Action is for failure to pay separated employees all wages
17 due at the time of separation, which was based on Defendants' failure to pay overtime and
18 meal and rest period premiums. The statute of limitations on this claim is three years. Only
19 former employees could potentially recover under section 203(a). We determined that
20 approximately 1,300 class members separated from Defendants within the three-year
21 limitations period. Due to the possibility that some of these class members may not have
22 experienced any of the violations identified herein, we reduced this number by 25%, to 975.
23 Assuming that these class members would have been entitled to 30 days of wages at a daily
24 rate of \$197, the maximum damages would be about \$5,762,250. However, in light of the
25 concerns identified above, and others, the minimum value of this claim is also \$0.

26 25. The Sixth Cause of Action is for failure to reimburse employees for expenses.
27 This claim is based upon the fact that Class members were required to use Defendant DSI's
28 application on their cell phones in order to work. Assuming that all 2700 employees were

1 required to use the application and that they were entitled to a reimbursement of up to \$50
2 per month, the maximum damages for this claim is \$810,000. We believe that the minimum
3 value of this claim is about \$400,000.

4 26. The Seventh Cause of Action is for failure to provide employee records when
5 requested. This claim is based on the fact that Defendant NGU did not respond when asked,
6 pre-litigation, to provide copies of Plaintiff's employment records. We did not find any
7 evidence that this failure was a common practice. Accordingly, we assigned no value to this
8 claim.

9 27. The Eighth Cause of Action is for violation of Business & Professions Code
10 section 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of
11 limitations that is available under the UCL for the meal period violations. This cause of
12 action is derivative of the other claims that have already been analyzed. Accordingly, the
13 damages available under this cause of action have already been analyzed or are duplicative
14 of damages discussed above.

15 28. The Ninth Cause of Action is for violations of the Private Attorneys General
16 Act (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA
17 claim would be impacted by the factors discussed above for the non-PAGA claims. Based
18 on recent PAGA decisions, I concluded that even if Plaintiff was successful on this claim
19 through trial, the Court may well have exercised its discretion under PAGA and significantly
20 reduced the penalties. Cal. Labor Code §2699(e)(2). In addition, the settlement was
21 primarily directed at recovering wages and unpaid premiums owed to class members and the
22 bulk of the settlement funds were intended to compensate for these wages. Based on these
23 factors, I believe that the maximum value of the PAGA claim is approximately \$3 million
24 and the minimum value is nothing. I therefore concluded that the \$10,000 that the parties
25 allocated to PAGA, \$7,500 of which will be paid to the LWDA, is a reasonable settlement of
26 that claim.

27 29. Based upon the forgoing, I determined that this case had a minimum value of
28 \$400,000 and a maximum estimated value of about \$12,546,500, not including the PAGA

1 penalties. Based on a Class size of approximately 2,620, the reasonable estimate of the
2 average amount that Class members could have obtained if Plaintiff prevailed at trial on
3 behalf of the entire Class, if the Class was certified, would be a minimum of \$153 and a
4 maximum of about \$4,788. However, the maximum amount is almost never recovered at
5 trial and never in a settlement. Settlements, by their nature, must account for the weaknesses
6 in a plaintiff's case, which are discussed above. Indeed, because Defendants raised a
7 colorable legal or factual defense to each of the claims Plaintiff alleged, it is possible that,
8 after trial, the Class would recover nothing.

9 30. If the settlement is not approved, Plaintiff would need to move forward with
10 discovery and then move for class certification. Defendants will oppose certification on the
11 grounds that numerous individualized fact issues allegedly exist. Defendants will argue and
12 could succeed in claiming that these individualized issues overwhelm common issues,
13 and/or that the action is not manageable on a class wide basis. Defendant DSI could also
14 successfully establish that it was not a joint employer of the class members. The result could
15 be that the case would not be certifiable as a class action. And, even if the class is certified,
16 at trial Defendants could interpose a successful defense which could either cause the jury to
17 reject Plaintiff's claims or award the Class only a small amount of the unpaid wages and
18 other damages sought.

19 31. After analyzing and weighing the evidence discussed above as well as the
20 legal issues, we concluded that the settlement of \$2,000,000 represents a fair and reasonable
21 discount from the realistic recovery. We firmly believe that amount is the most that
22 Defendants were willing to pay at this stage of the case and that if we had rejected that
23 amount, we would have been forced to seek class certification and subject the Class to the
24 risk of losing at that stage. The settlement will allow the parties to avoid the expense and
25 time commitments of continued litigation and provides a significant benefit for the Class
26 which would not otherwise have been available unless a settlement was reached. Based on
27 my experience, I am of the opinion that a gross settlement of \$2,000,000 is within the
28 "ballpark" of a fair, reasonable and adequate settlement.

34. The Court granted Plaintiff's motion for preliminary approval on July 8, 2019, but requested that the parties amend the provisions for the mailing and re-mailing of the Notice of Settlement that were in the Stipulation of Class Action Settlement. On July 9, 2019, the parties entered into an Amendment to Stipulation of Class Action Settlement as requested by the Court, a true and copy of which is attached hereto in **Exhibit "D."** A true and correct copy of the Court's Order granting preliminary approval of the parties' class action settlement is attached hereto in **Exhibit "E."**

35. The settlement will be administered by Rust Consulting ("Rust" or "Settlement Administrator"). Until distribution, the Gross Settlement Amount will be held in a Qualified Settlement Fund established by the Settlement Administrator. Rust's estimate for the costs of administration of the settlement is \$20,000.

37. As set forth in Ms. Mill's Declaration, as of October 11, 2019, which is after the September 16, 2019 opt-out deadline, Rust had not received any opt-outs or objections to the settlement. Rust received two disputes, but they have been resolved. Class Counsel have

1 not received any objections or opt out notices from any Class Members. Because this is an
 2 opt-out Class, all 2,620 Class Members will receive a settlement payment, which represents
 3 a 100% participation rate. That participation rate, together with the absence of any objectors,
 4 provides a strong indication that the settlement is fair and adequate, and that Class Members
 5 believe it to be so.

6 **Request for Attorneys' Fees and Costs**

7 38. The preliminarily-approved settlement provides for the payment of up to one
 8 third of the gross settlement amount (\$666,666) to Class Counsel for attorneys' fees and for
 9 class counsel's reasonable costs and expenses, in an amount not to exceed \$12,000. This
 10 request is fair, reasonable and adequate to compensate Class Counsel for the substantial
 11 work we have put into this case and the risk we assumed by taking it. The attorneys' fees
 12 award is intended to reimburse Class Counsel for all the uncompensated work that we have
 13 already done and for all the work we will continue to do in carrying out and overseeing the
 14 administration of the settlement. We are requesting that the Court compensate Class Counsel
 15 on a contingency basis in light of the benefit provided to the Class and because a loadstar
 16 analysis confirms the reasonableness of the contingency fee.

17 39. I have been appointed as class counsel in the following wage and hour class
 18 actions:

- 19 a. *Gonzalez v. Downtown LA Motors*, 215 Cal. App. 4th 35 (2013)
- 20 b. *Aboyte v. Sunrise Ford, Inc.*, BC521274
- 21 c. *Alshamri v. Ford of Santa Monica, Inc.*, BC529007
- 22 d. *Kaelberer v. Long Beach Eurocars LLC*, BC521275
- 23 e. *Blatcher v. Cypress Security LLC*, BC672405 (Judicial Council Coordination
 24 Proceeding Number 4963)
- 25 f. *Bromberg v. Fidelity National Information Services*, C.D. Cal. No. 2:15-CV-
 26 7930
- 27 g. *Burciaga v. Superior Thread Rolling Company*, BC585143
- 28 h. *Dittmar v. Costco*, S.D. Cal. No. 3-14-CV-1156

- i. *Franco v. Gentry Brothers, Inc.*, BC586571
- j. *Gallegos v. EC Holdings Inc.*, BC616867
- k. *Grieg v. Food on Time, Inc.*, at al., BC684566
- l. *Gonzales v. Manrika, Inc.*, BC570534
- m. *Hernandez v. The Bicycle Casino LP*, BC628414
- n. *Hamilton v. BlueMercury, Inc.*, BC625829
- o. *Honeine v. PMB Motorcars, LLC*, BC530827
- p. *Jimenez v. PPG Industries, Inc.*, BC613324
- q. *Kuenstle v. Childrens Hospital Los Angeles Medical Group, Inc.*, BC653858
- r. *Medina v. Kaweah Pump, Inc.*, Tulare County Superior Court No. 265579
- s. *Mendoza v. Quanta Computer, USA, Inc.*, Alameda County Superior Court No. RG11589781
- t. *Munoz v. Dependable Highway Express, Inc.*, BC535931
- u. *Ortiz v. Roberts Tool Co., Inc.*, BC626244
- v. *Poland v. Glen Ivy Hot Springs, Inc.*, Riverside County Superior Court No. RIC1312130
- w. *Saavedra v. Cliff View Terrace, Inc.*, Santa Barbara Superior Court Case No. 17CV02531
- x. *Schneider v. Inner City Education Foundation*, BC617827
- y. *Vatralava v. Sears, Roebuck and Co.*, BC515650
- z. *Watson v. Aegis Security & Investigations Inc.*, BC695411
- aa. *Wysocki v. Color Spot Nurseries, Inc.*, San Luis Obispo County Superior Court No. 14CVPO138
- bb. *Yoo v. South Coast Transportation & Distribution, Inc.*, BC682120

40. Ms. Gundzik and I have performed significant legal work in this case on behalf of Plaintiff. This work includes preparing pleadings and other documents filed with the Court, drafting formal discovery, meeting and conferring extensively with opposing counsel regarding the documents and information to be exchanged in conjunction with the

1 mediation, reviewing and analyzing the documents produced by Defendants, reviewing and
2 analyzing numerous time and pay records and policies in advance of the mediation,
3 preparing for and engaging in a successful mediation, and then negotiating and drafting the
4 settlement documents drafting the motion for preliminary approval of the settlement and
5 related documents, and drafting the motion for final approval and related documents.
6 Additionally, in preparation for the mediation, I worked extensively to develop information
7 on potential damages. Mr. Henriquez also worked with us to provide information about the
8 Class' working conditions and Defendants' payment practices. This information was also
9 invaluable to us in determining what claims to bring and the information that Defendants
10 had to support those claims.

11 41. I and Ms. Gundzik drafted the initial complaint and the First Amended
12 Complaint. Prior to agreeing to mediate the dispute, we drafted written discovery requests.
13 We spent significant time researching case law, reviewing and analyzing the mediation data
14 and wage information provided by Defendant, and preparing a detailed damages assessment
15 in connection with the mediation. We prepared extensively for mediation and attended the
16 January 17, 2019 mediation. After the parties reached the terms of a settlement in principle,
17 we drafted a lengthy settlement stipulation and participated in numerous conversations and
18 other communications about those documents with opposing counsel and our client.

19 42. After the parties reached agreement on the details of the settlement
20 stipulation, we prepared the motion for preliminary approval and the supporting declarations
21 and proposed order. We prepared a supplemental brief regarding the motion for preliminary
22 approval, as well as an amendment to the Stipulation of Class Action Settlement. After the
23 Court preliminarily-approved the settlement, we worked with the settlement administrator to
24 effectuate the notice to Class Members. Finally, we worked on this Motion and the
25 supporting declarations and other documents.

26 43. During the class action, I and Ms. Gundzik spent a total of 528.2 hours
27 working on this lawsuit. In addition, I estimate that we will spend an additional 40-50 hours
28 finalizing this Motion and the related declarations, attending the hearing on this Motion,

1 working with Rust and Defendants to implement the settlement, fielding calls and conferring
 2 with Class Members, and reporting to the Court on such activities as well as preparing the
 3 final compliance report. My billing rate for this case is \$700 per hour, and Ms. Gundzik's
 4 rate is \$650 per hour, both of which are consistent with prevailing market rates in the Los
 5 Angeles area and the National Law Journal's sampling of billing rates for partners in the
 6 Southern California area. Our requested billable rates have been awarded in all of the cases
 7 listed in paragraph 39 of this Declaration.

8 44. Our time was spent on numerous tasks such as: extensively interviewing the
 9 Plaintiff, researching and analyzing the claims in the lawsuit, drafting the complaint,
 10 drafting formal discovery, negotiating regarding the parameters of a mediation and
 11 documents to be produced, reviewing numerous pages of documents, working to determine
 12 key facts regarding Defendants' pay practices, preparing for and attending the mediation,
 13 drafting and negotiating a Memorandum of Understanding, drafting and negotiating the
 14 Stipulation of Class Action Settlement, conferring with settlement administrators, preparing
 15 the Motion for Preliminary Approval and supporting declarations, preparing a supplemental
 16 brief in support of the motion for preliminary approval, preparing an amendment to the
 17 Stipulation of Class Action Settlement, and preparing the Motion for Final Approval of
 18 Class Action Settlement and supporting declarations.

19 45. The actual attorney time Rebecca Gundzik and I expended in litigating this
 20 matter is itemized in detail in our time sheets through October 16, 2019, a true and correct
 21 copy of which are attached hereto in Exhibit "F." As shown on Exhibit "F," my firm has
 22 incurred attorneys' fees through October 16, 2019 on this case in the amount of
 23 \$353,190.00. For ease of reference, these time entries include the following amounts of
 24 time spent on the following activities:

<u>ATTORNEY ACTIVITY</u>	<u>TIME EXPENDED:</u>
initial client meetings and review of claims, communications with client, pre-filing investigation, interviews of Class	32.1

<u>ATTORNEY ACTIVITY</u>	<u>TIME EXPENDED:</u>
Members and ongoing communications with client; prepare interview summaries	
Strategy, research and analysis regarding claims and issues (including communications/conferences with co-counsel and opposing counsel)	52.7 hours
settlement matters (including negotiation with opposing counsel after mediation, communications with co-counsel, preparing and reviewing the Memorandum of Understanding, settlement stipulation and the class notice, amendment to settlement stipulation, and communications with the settlement administrator)	88.4 hours
prepare for/attend Court hearings	19.2 hours
performing review analysis of time records and other documents and working to determine key facts; prepare detailed time report spreadsheets to determine violation rates	45.2 hours
prepare for and attend mediation (includes working to prepare damages analysis, mediation strategy, drafting mediation brief, post-mediation settlement negotiations and analysis)	87.7 hours
drafting pleadings and Court documents and related communications and discovery (includes complaint, written discovery, amended complaint, motion for preliminary approval and supporting declarations, supplemental brief in support of motion for preliminary approval, joint reports, stipulations, and motion for final approval and supporting declarations):	190.5 hours
Meet and confer with opposing counsel	12.4 hours
<u>Total Hours:</u>	528.2 hours

1 This does not include an estimated 40-50 hours to finalize this Motion, prepare for and
2 attend the hearing on this Motion, and time that that I or Ms. Gundzik will spend working
3 with Rust and Defendants to implement the settlement and communicate with Class
4 Members regarding the disbursement of the settlement funds. As set forth in the Declaration
5 of Daniel M. Holzman, his office has expended 91.5 hours on the case, which equates to
6 fees in the amount of \$59,475. Accordingly, in total Class Counsel has expended 619.7
7 hours and have incurred attorneys' fees in the amount of \$412,665 to date, not including the
8 additional 40-50 hours estimated above, which would add an additional \$33,750, which
9 equates to total anticipated hours of approximately 669.7 and total attorneys' fees in the
10 amount of \$449,415.

11 46. My firm also incurred costs in this case that I have paid which include but are
12 not limited to fees and expenses for filing, copies, service of process, mediation, Case
13 Anywhere and postage and delivery. My firm incurred costs and expenses of \$6,385.42 and
14 will incur additional filing fees in connection with this Motion in the approximate amount of
15 \$165.00, for total expenses in the amount of \$6,550.42. As set forth in the Declaration of
16 Daniel M. Holzman, he incurred costs and expenses in the amount of \$3,184.50. In total, we
17 are seeking reimbursement of costs in the amount of \$9,734.92. The largest of these
18 expenses was \$6,300 for the costs of the mediation.

19 47. Despite the risks presented by Defendants' various arguments and defenses,
20 I, Ms. Gundzik and Mr. Holzman invested our time and litigation costs and expenses, with
21 no guarantee of compensation or reimbursement. In addition, we were precluded from
22 spending time on other matters so that we could devote our attention to this case. My firm
23 took this case on a contingent-fee basis against a corporation represented by a reputable
24 defense firm. We are a small firm with few attorneys and staff. As such, when we take
25 contingent cases we must pay careful attention to the economics involved, because there are
26 some cases we expend a great deal of time on, but which produce little or no fees.

27 48. Contingent-fee cases present the very real risk of working hundreds if not
28 thousands of hours that may never be entirely compensated. Moreover, while the case is

1 being litigated, counsel must pay overhead (salaries, rent, etc.), pay their expenses and pay
2 out-of-pocket expenses on the plaintiff's behalf. The prospect of a court-awarded fee does
3 not greatly reduce the risk posed by these cases. One must prevail to receive a court-
4 awarded fee, and even the best cases can be lost at trial. There are also often unseen
5 obstacles that arise during a case, such as a change in the law, documents which do not
6 comport with a client's recollection of the facts, or a client's acceptance of a settlement offer
7 that does not compensate us for our reasonable fees.

8 49. Defendants have no objection to the fees and costs being requested in this
9 case. Moreover, the Notice of Settlement mailed to Class Members stated the amount of fees
10 being requested by Class Counsel. Not a single Class Member objected to an award of fees
11 in the amount requested.

12 50. The loadstar cross-check against the percentage of the benefit analysis (or
13 common fund approach) supports the requested contingency-fee percentage. A loadstar
14 cross-check analysis typically happens in three steps. First, a trial court must determine a
15 baseline guide or "loadstar" figure based on the time spent and reasonable hourly
16 compensation for each attorney involved in the case. *Serrano v. Priest*, 20 Cal.3d 25, 48
17 (1975). Second, a court sets an hourly fee to apply to the time expended, with reference to
18 the prevailing rates in the geographic area in which the action is pending. *Bihun v. AT&T*
19 *Information Systems*, 13 Cal.App.4th 976, 997 (1993). Third, a multiplier is selected with
20 reference to factors substantially similar to the common-fund analysis: (1) the novelty and
21 difficulty of the issues involved, (2) the skill displayed in presenting them, (3) the extent to
22 which the nature of the litigation precluded other employment by the attorneys, and (4) the
23 contingent nature of the award, based on the uncertainty of prevailing on the merits and of
24 establishing eligibility for the award, (5) the amount involved and the results obtained on
25 behalf of the class by plaintiffs' counsel, and (6) the reaction of the class members. *Serrano*
26 *v. Priest*, 20 Cal.3d at 49.

27 51. I am familiar with the hourly rates charged by attorneys with similar
28 experience and expertise. My hourly rate of \$700 and Ms. Gundzik's rate of \$650 are well

1 within the range of rates charged by attorneys with similar expertise and experience. These
 2 rates are comparable to those judicially approved for other plaintiffs' firms, such as Baron &
 3 Budd (\$775 for the requested partner), Wasserman Comden Casselman & Essensten (rates
 4 ranging from \$670-750 for partners), and Blood Hurst & Reardon (\$510-695 for partners).
 5 See *Aarons v. BMW of North America*, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442,
 6 *40-41 (C.D. Cal. Apr. 29, 2014). Other courts have approved hourly rates in this range for
 7 plaintiffs' side law firms in the Southern California area. See, e.g., *Kearney v. Hyundai*
 8 *Motor Am.*, 2013 U.S. Dist. LEXIS 91636, *24 (C.D. Cal. June 28, 2013) (approving hourly
 9 rates of \$650-\$800 for senior attorneys in consumer class action); *Richard v. Ameri-Force*
 10 *Mgmt. Servs., Inc.*, No. 37-2008-00096019 (San Diego Super. Ct., Aug. 27, 2010) (\$695 to
 11 \$750 an hour for partners); *Barrera v. Gamestop Corp.*, No. CV 09-1399 (C.D. Cal. Nov.
 12 29, 2010) (\$700 an hour for partners); *Anderson v. Nextel Retail Stores, LLC*, No. CV 07-
 13 4480 (C.D. Cal. June 20, 2010) (\$655 to \$750 an hour for partners); *Luquetta v. Regents of*
 14 *Cal.*, CGC-05-443007 (San Francisco Super. Ct.) (approving partner rates between \$550 and
 15 \$850 per hour); and *Holloway v. Best Buy Co.*, C-05-5056-PJH (MEJ) (N.D. Cal.)
 16 (approving 2011 partner rates of \$700 to \$825 an hour).

17 52. A recent fee award discussed the range of rates at the country's largest firms,
 18 based on the National Law Journal, which I provide below in order to demonstrate that the
 19 average rates for commercial work at large firms are considerably above the rates being
 20 requested.¹ The following is a table of hourly rates which was prepared by a Federal Court
 21 in a recent case (*Xu v. Yamanaka*, No. 13-CV-3240 YGR, 2014 WL 3840105, at *4 (N.D.
 22 Cal. Aug. 1, 2014):

23 _____
 24 ¹ See also, e.g., "Top Law Firms Still Tops in Rates, Billable Hours", Hildebrandt Institute,
 25 January 10, 2013, 22. [http://hildebrandtblog.com/2013/01/10/top-law-firms-still-tops-in-](http://hildebrandtblog.com/2013/01/10/top-law-firms-still-tops-in-rates-billable-hours)
 26 [rates-billable-hours](http://hildebrandtblog.com/2013/01/10/top-law-firms-still-tops-in-rates-billable-hours): "A survey from The National Law Journal (NLJ) (registration required)
 27 found that median partner rates were up 4.5 percent from 2011 to \$517 an hour in 2012, and
 28 the median associate rate rose 3.5 percent to \$323, with hourly rates ranging from \$130 to
 \$1,285 and a median hourly rate of \$432. This gibes with the findings of the Major Lindsey
 & Africa (MLA) "Partner Compensation Survey 2012," which recorded an average hourly
 rate increase from \$555 to \$584 between 2010 and 2012, which is an increase of over 5%.

	Firm	Number of Attys	Partner Range	Partner Average	Associate Range	Associate Avg.
1						
2	Weil	1220		\$927 (2012)	\$450–790	\$581 (2012)
3	Latham & Watkins	2033	\$895– 1110	\$990	\$465–725	\$605
4	Paul Weiss	803	\$760– 1120	\$1040	\$250–760	\$600
5	Skadden	1735	\$845– 1150	\$1035	\$340–845	\$620
6	Arps Willkie	540	\$790– 1090	\$950	\$350–790	\$580
7	Farr					

8 These rates for partners include many who have less years of legal experience than Class
9 counsel, as partnership positions usually begin after eight or nine years of work. I became a
10 partner at the national firm formerly known as LeBoeuf Lamb Greene & MacRae in 1995
11 but have been working in the legal field for more than twenty years since that time. It is
12 therefore reasonable to assume that these average rates certainly apply to partners at these
13 firms with twenty plus years of experience. Most of my former partners charge hourly rates
14 in excess of the hourly rate I am seeking. Further, according to the National Law Journal, in
15 Los Angeles, as of 2014, at Irell & Manella, the average hourly partner rate is \$890; at
16 Mannatt, Phelps & Phillips, the average hourly partner rate is \$740; at O'Melveny &
17 Meyers, the average hourly partner rate is \$715; and at Jeffer Mangels Butler & Mitchell,
18 the average hourly partner rate is \$690. (*Sloan, \$1,000 Per Hour Isn't Rare Anymore;
19 Nominal Billing Levels Rise, But Discounts Ease Blow* (2014) Nat. Law Journal.)

20 53. The fees we are requesting comport with the attorneys' fee agreements in the
21 lawsuit. Pursuant to the Settlement Agreement, the parties agreed that Class Counsel could
22 seek their attorneys' fees in an amount of up to one-third of the Gross Settlement Amount,
23 which is identified in the Settlement Agreement as being \$666,666. The engagement
24 agreements I and Caskey & Holzman entered into with the Plaintiff also provide for a fee
25 award in this amount. In each of those agreements, Mr. Henriquez agreed that GGH &
26 Caskey & Holzman would be paid the greater of (1) one-third of all amounts obtained or
27 received in the lawsuit, or (2) the hours worked multiplied by the hourly rates of the
28 attorneys working on the case, plus any additional multiplier awarded by the Court. Our

1 engagement agreements with the named Plaintiff also specifies that our attorneys' hourly
2 rates range between \$400 for associates to \$700 for senior partners. Mr. Henriquez also
3 signed an Agreement Regarding the Division of Fees, a true and correct copy of which is
4 attached hereto in Exhibit "G," in which he agreed that sixty percent (60%) of the Court-
5 approved fees may be awarded to GGH and forty percent (40%) may be awarded to Caskey
6 & Holzman.

7 54. The fees accrued by my firm are broken down at the end of my firm's billing
8 records, which are attached in Exhibit "F." The fees incurred by my co-counsel, Daniel M.
9 Holzman, are itemized in his declaration. Based on these rates, and total hours of 669.7
10 (including an additional 40-50 hours not yet billed), our total loadstar is \$449,415. Applying
11 a multiplier of about 1.48 results in the requested fee of \$666,666.

12 55. The *Serrano* factors strongly favor the requested multiplier of about 1.48.
13 This case raised a number of complex and contested issues regarding the classification of
14 independent contractors and joint liability for the alleged misclassification. We had to
15 research these issues and the applicability of the decision in *Dynamex Operations West v.*
16 *Superior Court*, 4 Cal. 5th 903 (April 2018), the implications of which had not yet been
17 determined at the time of the mediation. We also had to analyze the other central issues in
18 the underlying case, which involved Defendants' practices as to both meal periods and the
19 information included on its wage statements. In order to determine the extent of Defendants'
20 practices, and the extent to which we could contend that they were non-compliant, we were
21 required to review and research the standards applied in recent wage statement proceedings
22 and meal and rest break cases. Because of our experience trying and pursuing wage and hour
23 class action lawsuits, we were able to look for and analogize recent misclassification and
24 meal and rest break decisions to support our contention that Defendants' practices did not
25 comply with the legal requirements.

26 56. The case was also factually complex. We had to review voluminous time
27 records, analyze numerous individual time entries to determine violation rates, and create
28 extensive damages models. We extensively reviewed the online information Defendants

1 posted regarding their practices, as we contended that this information supported our
2 contention that DSI had misclassified its drivers. And, we had to review Defendants'
3 policies and practices in light of recent DLSE standards and recent caselaw.

4 57. Our past experience gave us knowledge as to the timekeeping methods used
5 by employers and how trucking companies operate, and we knew how to seek, and calculate,
6 the extent of the meal period and wage statement violations at issue. We were able to do so
7 because of our creative approach in the seeking, sampling and review of records.

8 58. We also had to be creative in our approach to settlement. We were well-
9 aware of the value of the case, and we relied upon our extensive review of class member
10 records and the damages assessment we created based on that analysis. And, we certainly
11 risked the possibility of not arriving at a settlement, as we did so only after protracted
12 negotiations.

13 59. In sum, we had to come up with creative approaches to litigating the case
14 and, ultimately, negotiating and crafting the Settlement Agreement. To this end, we have
15 devoted a tremendous amount of time and energy. As set forth in the attached invoices and
16 Mr. Holzman's declaration, we have spent a substantial number of hours working on this
17 case. This time commitment was necessary in order to research and construct viable legal
18 claims in the face of stiff opposition. But it has come at a cost, as the time we devoted to this
19 case has precluded us from taking on other cases, including hourly work for which
20 compensation for work done would have been more certain.

21 60. Fortunately, by means of our approach and hard work, we were able to obtain
22 a successful outcome for the Class. Yet this is not always true. We have invested time into
23 other cases that have not been successful, leaving us without any compensation for our
24 efforts. Although we were able to achieve a good outcome for the Class in this case, this was
25 by no means a forgone conclusion when we agreed to represent the named Plaintiff. We
26 were concerned that Defendants would not have sufficient funds to satisfy a judgment, even
27 if we were successful in moving for certification and at trial.
28

1 61. The results obtained support the requested multiplier. The settlement is very
2 good for the Class, as 2,620 people will be receiving a settlement payment averaging \$490.
3 It is not likely that many Class Members would have expended the time or effort to take the
4 necessary steps to attempt to recover their unpaid wages. Indeed, in our communications
5 with Class Members we have been thanked for and complimented about our work on this
6 case on behalf of the Class.

7 62. The Class' reaction to the settlement also supports the requested multiplier.
8 To date, no Class Member has objected to the settlement.

9 63. Therefore, the requested multiplier of approximately 1.48 is warranted. This
10 multiplier is within even the most modest multipliers that are approved by California courts.
11 Multipliers typically range from three to five, and it is not uncommon that multipliers of
12 between five and ten, or even higher, are applied. See, e.g., *Wilson v. Bank of Am. Nat'l*
13 *Trust & Savs. Assn.*, California Superior Court Case No. 643872 (Aug. 16, 1982) (multiplier
14 of 10); *Glendora Comm. Redev. Agency v. Demeter*, 155 Cal.App.3d 465, 476 (1984)
15 (affirming multiplier of 12); see also *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th
16 Cir. 2002) (multiplier of 3.65 awarded); see also *Craft v. Cnty. of San Bernardino*, 624 F.
17 Supp. 2d 1113, 1125 (C.D. Cal. 2008) (multiplier of 5.2 awarded and identifying cases with
18 multiples of 19.6, 15.6, 15, 8.5, 7, 6.96, 6.2, 6, 5.61, 5.5, and 5.3). And, this multiplier is
19 well-deserved, given the novelty and difficulty of the issues involved in the case, the results
20 achieved, the positive reaction of the Class, the skill we were required to utilize in order to
21 achieve a large settlement with a substantial benefit for the Class, the fact that our work on
22 the case consumed a great deal of attorney time, and the fact that we performed this work
23 without any certainty that we would be paid for it.

24 **THE PROPOSED SERVICE AND RELEASE PAYMENT TO THE**
25 **NAMED PLAINTIFF IS REASONABLE**

26 64. As compensation for his efforts, the Settlement Agreement provides that the
27 Representative Plaintiff will receive a service and release payment in the amount of \$10,000
28 as payment for his time and efforts in pursuing this action and as additional compensation

1 for the expanded release he is providing. In addition to the time he spent on this matter, as
2 an additional requirement to receiving his service and release payment, Plaintiff is being
3 required to sign a broad general release which includes a waiver of Section 1542 of the
4 California Civil Code.

5 65. It is important that Plaintiff be paid a fair amount for his services to the Class.
6 If it wasn't for him, the settlement, pursuant to which approximately \$1,283,834 will be
7 paid to Class Members, with the average Class Member receiving approximately \$490,
8 would not have been obtained for the Class. Although Defendants had been engaged in an
9 unlawful pay policy for many years, only the named Plaintiff was willing to come forward
10 and seek compensation for all of Defendants' non-exempt hourly employees.

11 66. If Plaintiff had gone to the Department of Labor, he may have received some
12 compensation, but the Class would have received nothing. That would have negated
13 2,620 people who will be receiving a settlement payment.

14 I declare under penalty of perjury under the laws of the state of California that the
15 foregoing is true and correct.

16 Dated: October 28, 2019



Aaron C. Gundzik

Exhibit “5”

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

CHRISTIAN MATUTE, INDIVIDUALLY AND ON
BEHALF OF ALL SIMILARLY SITUATED
INDIVIDUALS,

Plaintiff,

vs.

PILOT AIR FREIGHT LLC DBA **PILOT
FREIGHT SERVICES**, A PENNSYLVANIA LLC;
BEST BUY CO., INC., A MINNESOTA
CORPORATION, ET AL.,

Defendants.

CASE NO. **22-cv-00587-YGR**

**ORDER
GRANTING MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;**

**MOTION FOR ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS; AND**

JUDGMENT

Dkt. Nos. 55, 56

The Court previously granted a motion for preliminary approval of the Class Action Settlement between plaintiff Christian Matute and defendants Pilot Air Freight LLC d/b/a Pilot Freight Services ("Pilot") and Best Buy Co., Inc. ("Best Buy") (collectively "Defendants"), on August 15, 2023. (Dkt. No. 53.) As directed by the Court's preliminary approval order, on November 29, 2023, plaintiffs filed their unopposed motion for attorneys' fees, costs, and service awards. (Dkt. No. 55.) Thereafter, plaintiff Matute filed his unopposed motion for final settlement approval on December 19, 2023. (Dkt. No. 56.) The Court held a hearing and took arguments from the parties on February 27, 2024.

Having considered the motion briefing, the terms of the Settlement Agreement, the response thereto, the arguments of counsel, and the other matters on file in this action, the Court **GRANTS** the motion for final approval. The Court finds the settlement fair, adequate, and reasonable. The provisional appointments of the class representative and class counsel are confirmed.

The Motion for Attorneys' Fees, Costs, and Incentive Awards is **GRANTED**. The Court

ORDERS that class counsel shall be paid \$162,500 in attorneys’ fees and \$18,460.45 in litigation costs and class representative and named plaintiff Christian Matute shall be paid \$10,000 incentive award.

I. BACKGROUND

A. Procedural History

Plaintiff filed this class action lawsuit to address his claim that he and the class he seeks to represent are employees of defendants, and the defendants consistently failed to pay plaintiff and contract carriers, truck drivers, and helpers for all hours worked, including overtime, and that they were not provided meal and rest periods.

Plaintiff’s claims stem from the allegation that he and class members were employees improperly classified by defendants as independent contractors. Plaintiff alleges claims for failure to pay minimum wage, failure to pay overtime, failure to reimburse employment expenses, unlawful deduction from wages, failure to provide meal periods, failure to allow rest periods, failure to furnish accurate wage statements, waiting time penalties, and unfair competition, as well as a PAGA action. (See Dkt. No. 1-1, Complaint (“Comp.”))

Defendants removed this case from Alameda County Superior Court on January 28, 2022. (Dkt. No. 1.) Parties then attended an early mediation before Francis J. Ortman III. (Dkt. No. 37-1, Kizirian Decl., ¶ 12.) As has become common practice, in preparation for mediation, defendants disclosed to plaintiff substantial documentation and data. Plaintiff also consulted with an expert in advance of mediation to determine the amount of damages potentially available to putative class members based on the scope of wage and hour violations, assuming plaintiff successfully established misclassification. Counsel also communicated with plaintiff and various class members. Parties reached a settlement in principle with the assistance of an experienced mediator on December 2, 2022, but continued to work out details through May 2023. (*Id.* at ¶ 14.) The Settlement Agreement, attached hereto as **Exhibit 1**, defines the class as:

(a) all individuals who provided services for Pilot and Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California and (b) all entities owned and controlled by contract carriers which contracted directly with Pilot and

provided delivery services for Best Buy (as those entities are defined below) from March 28, 2017 through the date of preliminary approval of the Settlement. However, the Settlement Class shall exclude all individuals and entities who provided delivery services for Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

Settlement Agreement sec. II.C. This class excludes:

... all individuals and entities who provided delivery services for Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

*Id.*¹ (“the Settlement Class”). In its preliminary approval order, the Court conditionally certified the Settlement Class and provisionally appointed Michael H. Boyamian and Armand R. Kizirian of Boyamian Law, Inc. as Class Counsel, plaintiff Matute as class representative, and ILYM Group, Inc. (“ILYM”) as the settlement administrator. (Dkt. No. 53 at 4, 6.)

B. Terms of the Settlement Agreement

Under the terms of the Settlement Agreement, defendant will pay \$650,000 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 representative’s service award, and payroll taxes on the portion of the settlement payments deemed wages.

1. Attorneys’ Fees and Costs

Under the Settlement Agreement, Plaintiff’s counsel agreed to seek up to \$162,500 in attorneys’ fees and \$18,460.45 in costs. The common settlement fund also includes a provision for \$12,550 in settlement administration costs; and up to \$10,000 to be paid to plaintiff Christian Matute as an incentive award in exchange for a general release of all claims against defendant.

2. Class Relief

¹ This class definition is essentially the same as that in the complaint, but for the addition of the *Henriquez* exception.

After deductions from the common fund for fees, costs, and service incentive awards, approximately \$422,562.83 will remain to be distributed among the participating class members. Class members will be paid according to the amount of time they spent as members of the class. Dividing this amount across the 624 participating class members yields an average recovery of approximately \$677.18 per class member. The 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, the check will be void and a stop payment order may be placed on the check. After 180 days, any funds from any unredeemed checks will be paid to the *cy pres* recipient, the Settlement Administrator to the California State Controller's Office Unclaimed Property Fund. In exchange for the settlement awards, class members will release claims against defendants as set forth in the Settlement Agreement at section VI.

C. **Class Notice and Claims Administration**

The Settlement Agreement is being administered by ILYM Following the Court's preliminary approval and conditional certification of the settlement, ILYM mailed the notice to 624 class members.

The Class Administrator also established a settlement website (the "Settlement Website") at [www.https://ilymgroup.com/Pilot](https://ilymgroup.com/Pilot), including the settlement notices, the procedures for class members to submit claims or exclude themselves, a contact information page that includes address and telephone numbers for the claim administrator and the parties, the Settlement Agreement, and the signed order of preliminary approval. The Class Administrator also operated a toll-free number for class member inquiries.

Class members were given until December 29, 2023, to object to or exclude themselves from the Settlement Agreement. Out of 624 total class members zero persons filed timely requests to opt out of the Settlement Class, as of December 19, 2023, when parties moved for final approval of class action settlement.

II. FINAL APPROVAL OF SETTLEMENT

A. Legal Standard

A court may approve a proposed class action settlement of a 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. Analysis

1. *The Settlement Class Meets the Prerequisites for Certification*

As the Court found in its order granting preliminary approval and conditional certification of the settlement class herein, the prerequisites of Rule 23 have been satisfied purposes of certification of the Settlement Class. (See Dkt. No. 53 at 2-4.)

2. *Adequacy of Notice*

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

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

12 The Court requested changes to the parties’ initial proposed notice. It thereafter found the
13 parties’ modified proposed notice procedures provided the best notice practicable and reasonably
14 calculated to apprise Class members of the settlement and their rights to object or exclude
15 themselves. (Dkt. No. 53 at 5.) Pursuant to those procedures, the Class Administrator carried out
16 that program by causing the approved notice to be mailed to addresses associated with the 624 class
17 members. (Dkt. No. 56 at 4.) The Class Administrator reports that 52 notices were returned as
18 bearing undeliverable addresses. (*Id.*) The Class Administrator performed a computerized skip
19 trace on those 52 returned notices to obtain updated addresses for the class members associated with
20 those returned notices. (Dkt. No. 56-2 at ¶ 8.) As a result of that skip trace, the Class Administrator
21 obtained 22 updated addresses and re-mailed the notice to the class members associated with those
22 addresses. (*Id.* at ¶ 9.)

23 Based upon the foregoing, the Court finds that the Settlement Class has been provided
24 adequate notice.

25 **3. The Settlement Is Fair And Reasonable**

26 As the Court previously found in its order granting preliminary approval, the *Hanlon*
27 factors indicate the settlement here is fair and reasonable and treats class members equitably
28 relative to one another. (Dkt. No. 53 at 1, 5.)

1 The reaction of the class was overwhelmingly positive. The Court received no objections
2 and no opt-outs as of the filing of the motion for final approval, submitted on December 19, 2023.
3 The deadline for objecting or opting out was December 29, 2023. (Dkt. No. 56 at 1.) “[T]he
4 absence of a large number of objections to a proposed class action settlement raises a strong
5 presumption that the terms of a proposed class settlement action are favorable to the class
6 members.” *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008) (citation
7 omitted); *see also Churchill Vill.*, 361 F.3d at 577 (holding that approval of a settlement that
8 received 45 objections (0.05%) and 500 opt-outs (0.56%) out of 90,000 class members was
9 proper).

10 In its preliminary approval order, the Court approved the proposed plan of allocation.
11 (Dkt. No. 53. at 5.) That plan is to allocate the settlement based upon the number of workweeks
12 that Settlement Class Members worked in the statutory period. (*Id.*) The Court finds the plan of
13 allocation to be fair and reasonable and to treat class members equitably and therefore approves
14 that plan of allocation.

15 4. Objections

16 Zero individuals submitted objections. (Dkt. No. 56 at 1.)

17 5. Certification Is Granted and the Settlement Is Approved

18 After reviewing all of the required factors, the Court finds the Settlement Agreement to be
19 fair, reasonable, and adequate, and certification of the Settlement Class as defined therein to be
20 proper. The following persons are excluded from the Settlement Class: All individuals and
21 entities who provided delivery services for Best Buy (as those entities are defined below) as
22 contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18,
23 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI*
24 *Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

25 The *cy pres* recipient, the California State Controller’s Office Unclaimed Property Fund, is
26 **APPROVED.**

27 6. Settlement Agreement Modification

28 Paragraph IV(J)(3) of the Settlement Agreement requires the settlement administrator to

1 pay Settlement Shares (as defined in the Settlement Agreement) only to those class members for
2 whom the settlement administrator has a tax identification number. However, with the agreement
3 of the parties, the Court finds and determines that, in order to maximize the recovery to as many
4 class members as possible, the settlement administrator shall issue Settlement Shares of up to \$600
5 to all class members even if the settlement administrator has no tax identification number on file
6 for a class member, in compliance with Internal Revenue Service rules. In all other respects,
7 Paragraph IV(J)(3) of the Settlement Agreement shall remain in full force and effect.

8 **III. MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE AWARDS**

9 Attorneys' fees and costs may be awarded in a certified class action under Federal Rule of
10 Civil Procedure 23(h). Such fees must be found "fair, reasonable, and adequate" in order to be
11 approved. Fed. R. Civ. P. 23(e); *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). To "avoid
12 abdicating its responsibility to review the agreement for the protection of the class, a district court
13 must carefully assess the reasonableness of a fee amount spelled out in a class action settlement
14 agreement." *Id.* at 963. "[T]he members of the class retain an interest in assuring that the fees to be
15 paid class counsel are not unreasonably high," since unreasonably high fees are a likely indicator
16 that the class has obtained less monetary or injunctive relief than they might otherwise. *Id.* at 964.

17 Class counsel requests an attorneys' fee award of \$162,500. The attorneys' fees sought
18 amount to 25% of the gross settlement amount. Defendants do not oppose the fee request.

19 The Court analyzes an attorneys' fee request based on either the "lodestar" method or a
20 percentage of the total settlement fund made available to the class, including costs, fees, and
21 injunctive relief. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The Ninth
22 Circuit encourages courts to use another method as a cross-check in order to avoid a "mechanical
23 or formulaic approach that results in an unreasonable reward." *In re Bluetooth*, 654 F.3d at 944–
24 45 (citing *Vizcaino*, 290 F.3d at 1050–51.)

25 Under the lodestar approach, a court multiplies the number of hours reasonably expended
26 by the reasonable hourly rate. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016) ("[A] court
27 calculates the lodestar figure by multiplying the number of hours reasonably expended on a case
28 by a reasonable hourly rate. A reasonable hourly rate is ordinarily the 'prevailing market rate [] in

the relevant community.”). Under the percentage-of-the-fund method, courts in the Ninth Circuit “typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a departure.” *In re Bluetooth*, 654 F.3d at 942 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)). The benchmark should be adjusted when the percentage recovery would be “either too small or too large in light of the hours devoted to the case or other relevant factors.” *Six (6) Mexican Workers*, 904 F.2d at 1311. When using the percentage-of-recovery method, courts consider a number of factors, including whether class counsel “ ‘achieved exceptional results for the class,’ whether the case was risky for class counsel, whether counsel’s performance ‘generated benefits beyond the cash settlement fund,’ the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (quoting *Vizcaino*, 290 F.3d at 1047-50. “[T]he most critical factor [in determining appropriate attorney’s fee awards] is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

No objector has challenged any of counsel’s hour or rates.

Using the percentage-of-the-fund method, the Court finds the attorneys’ fees sought to be reasonable. The Court has also considered a cross-check using the lodestar method.

Here, the parties estimated the total settlement value to be \$162,500 based on the percentage-of-recovery method. The attorneys’ fees requested would come to 25% of this total. This amount matches the 25% benchmark.

Based on the foregoing, the Court finds an award of attorneys’ fees in the amount of \$162,500 to be fair, reasonable, and adequate. By way of cross-check, plaintiffs indicate that they have expended \$196,385 which is higher than their fee request of \$162,500. (Dkt. No. 55 at 14.) One lead attorney for the class incurred 124 hours at an hourly rate of \$750, equaling \$93,000. (Dkt. No. 55-1, ¶ 21.) The other lead attorney spent 179.8 hours at a rate of \$575 per hour, equaling \$103,385. (*Id.*). On the basis of these reasonable hourly rates and amounts, class

counsel calculate the lodestar to be \$196,385. The Court finds that the hours claimed were reasonably incurred and that the rates charged are reasonable and commensurate with those charged by attorneys with similar experience in the market. The Court also finds that Class Counsel represented their clients with skill and diligence and obtained an excellent result for the class, taking into account the possible outcomes and risks of proceeding trial.

B. Costs Award

Class counsel is entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R. Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters). Costs compensable under Rule 23(h) include “nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Here, class counsel seeks reimbursement for litigation expenses, and provides records documenting those expenses, in the amount of \$18,460.45. The Court finds this amount reasonable, fair, and adequate.

C. Incentive Award

The district court must evaluate named plaintiff’s requested award using relevant factors including “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions . . . [and] the amount of time and effort the plaintiff expended in pursuing the litigation.” *Staton*, 327 F.3d at 977. “Such awards are discretionary . . . and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009). The Ninth Circuit has emphasized that district courts must “scrutiniz[e] all incentive awards to determine whether they destroy the adequacy of the class representatives.” *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013).

Here, the plaintiff came forward to represent the interests of 624 others, with very little personally to gain, as the class’s average individual alleged damages were \$677.18. Plaintiff compiled documents, signed a broader release than the other class members, helped class counsel

understand the work he performed and the nature of defendants' delivery operations, and took the substantial risk of litigation which, at a minimum, involves a risk of losing and paying the other side's costs. Because the laws are not self-enforcing, it is appropriate to give incentives to those who come forward with little to gain and at personal risk and who work to achieve a settlement that confers substantial benefits on others. Thus, the Court approves the requested incentive award payment for plaintiff \$10,000.

IV. CONCLUSION

Based upon the foregoing, the motion for final approval of class settlement is **GRANTED**. The motion for attorneys' fees, costs, and service awards is **GRANTED IN PART** as follows: Class Counsel is awarded \$162,500 in attorneys' fees and \$18,460.45 in litigation costs. Plaintiff Christian Matute is granted an incentive award of \$10,000.

Without affecting the finality of this order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this order and the Settlement.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that final judgment is **ENTERED** in accordance with the terms of the Settlement, the Order Granting Preliminary Approval of Class Action Settlement filed on August 18, 2023, and this order. This document will constitute a final judgment (and a separate document constituting the judgment) for purposes of Rule 58, Federal Rules of Civil Procedure.

The parties shall file a post-distribution accounting in accordance with this District's Procedural Guidance for Class Action Settlements no later than October 4, 2024. The Court **SETS** a compliance deadline on **October 11, 2024** on the Court's 9:01 a.m. calendar to verify timely filing of the post-distribution accounting.

IT IS SO ORDERED.

This terminates Docket Nos. 55 and 56.

Dated: April 5, 2024


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

Exhibit “1”

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(Additional Counsel Listed on Following Page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN MATUTE, an individual;
Individually and on Behalf of All Similarly
Situated Individuals,

Plaintiff,

v.

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES, a Pennsylvania Limited
Liability Company; BEST BUY CO., INC., a
Minnesota Corporation; and DOES 1 through
25, Inclusive,

Defendants.

CASE NO. 4:22-cv-00587-YGR

**STIPULATION OF CLASS ACTION
SETTLEMENT**

Action Filed: November 5, 2021

Honorable Judge Yvonne Gonzalez Rogers

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I. INTRODUCTION AND SUMMARY OF SETTLEMENT TERMS

This action was brought by Plaintiff Christian Matute (“Plaintiff”), individually and on behalf of all current and former individuals who performed delivery services for Pilot Air Freight LLC dba Pilot Freight Services and/or DSI Logistics, Inc. (“Pilot”) and Best Buy Co., Inc. (“Best Buy”) (collectively, “Defendants”) as contract carriers, drivers, and/or helpers in the state of California during the Class Period, as defined below. In his First Amended Complaint, Plaintiff alleges causes of action against Defendants 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 December 2, 2022, Plaintiff and Defendants participated in mediation before Tripper Ortman. 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 final approval and entry of judgment, Pilot will pay an all-inclusive gross settlement amount of six hundred and fifty thousand dollars (\$650,000) (“Gross Settlement Amount”). 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 Group Members (as defined in Section II) will release all Released Claims (as defined in Section II) unless they opt-out of the Settlement.

II. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings set forth below:

A. “Action” means this putative class and representative action pending in the United States District Court for the Northern District of California titled *Christian Matute v. Pilot Air Freight, LLC, et al.*, Case Number 22-cv-00587-TSH.

B. “Agreement” or “Stipulation” means this Stipulation of Class Action Settlement.

C. “Settlement Class” means (a) all individuals who provided services for Pilot and Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California and (b) all entities owned and controlled by contract carriers which contracted directly with Pilot and provided delivery services for Best Buy (as those entities are defined below) from March 28, 2017 through the date of preliminary approval of the Settlement. However, the Settlement Class shall exclude all individuals and entities who provided delivery services for Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

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

E. “Settlement Class Counsel’s Attorneys’ Fees” means the amount to be paid to Settlement Class Counsel for attorneys’ fees, subject to Court approval at the Final Fairness and Approval Hearing.

F. “Settlement Class Counsel’s Costs” means the amount to be reimbursed to Settlement Class Counsel for their reasonable costs and expenses incurred in the Action, subject to Court approval at the Final Fairness and Approval Hearing.

G. “Settlement Class Data” means information regarding Settlement Class Members that Defendants will in good faith compile from their records and provide to the Settlement Administrator, solely for purposes of the Settlement Administrator’s administration of the settlement, and for no other purpose. Settlement Class Data shall include, if known, for each Settlement Class Member: full name, last known address, social security number and/or tax identification number, email address, and the number of Qualifying Workweeks each Settlement Class Member worked during the Settlement Class Period, based on Defendants’ records.

H. “Settlement Class Member” is a person or entity who is a member of the Settlement Class.

I. “Settlement Class Period” means the period from March 28, 2017 through the date the Court grants preliminary approval of this Settlement.

J. “Complaint” means the First Amended Complaint on file in the Action.

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

L. “Counsel for Pilot” means Dhananjay Manthripragada and Thomas Cochrane of Gibson, Dunn & Crutcher, LLP, 333 South Grand Avenue, Los Angeles, California 90071, (213) 229-7000, and Christopher C. McNatt, Andrew J. Butcher, Angela S. Cash, and James A. Eckhart of Scopelitis, Garvin, Light, Hanson & Feary, P.C., 2 North Lake Avenue, Suite 560, Pasadena, California 91101, (626) 795-4700.

M. “Counsel for Best Buy” means Barbara J. Miller, Kimberli A. Williams, Christopher J. Taylor, and Taylor D. Horn of Morgan, Lewis & Bockius LLP, 600 Anton Boulevard, Suite 1800, Costa Mesa, California 92626, (714) 830-0600.

N. “Defendants’ Counsel” means counsel for Pilot and counsel for Best Buy, as defined above.

O. “Pilot” means and includes Defendant Pilot Air Freight LLC dba Pilot Freight Services, and its parents, owners, predecessors, successors, assigns, subsidiaries, and affiliates (including but not limited to DSI Logistics, Inc.), and each of its and their past, present, and future officers, directors, trustees, agents, and/or employees.

P. “Best Buy” means and includes Defendant Best Buy Co., Inc. and its parents, owners, predecessors, successors, assigns, subsidiaries, and affiliates, and each of its and their past, present, and future officers, directors, trustees, agents, and/or employees.

Q. “Effective Date” means the date of entry of a final judgment which grants final approval of this Settlement, if no Objection to Settlement is filed and Plaintiff and Class Counsel waive their rights to appeal the final judgment. If a timely Objection to Settlement is filed, Plaintiff and Class Counsel do not waive their rights to appeal the final judgment, and/or if another party appeals the final judgment, “Effective Date” shall be the later of: (a) the date on which the time for all appeals relating

1 to the Settlement and the Final Approval Order has expired; or (b) if an appeal, review or writ is sought,
2 the date on which the highest reviewing court renders its decision denying any appeal or petition (where
3 the immediately lower court affirmed the final judgment) or affirming the final judgment or the date of
4 final dismissal with prejudice of the last pending appeal from the Final Approval Order.

5 R. “Qualified Settlement Fund” or “QSF” mean a federally insured bank account to be
6 established by the Settlement Administrator into which all payments from Defendants related to this
7 Settlement will be deposited and from which all payments authorized by the Court will be made. The
8 QSF will be established prior to Pilot’s deposit of the Gross Settlement Amount.

9 S. “Final Approval Order” means the Order Granting Final Approval of Class Action
10 Settlement and Judgment entered by the Court.

11 T. “Final Fairness and Approval Hearing” means the hearing on Plaintiff’s Motion for
12 Final Approval of Class Action Settlement at which the Court will be asked to give final approval to
13 the settlement terms set forth herein and to enter judgment.

14 U. “Gross Settlement Amount” means the all-in, non-reversionary sum of six hundred fifty
15 thousand dollars (\$650,000) which Pilot will pay under this Settlement. The Gross Settlement Amount
16 will be paid on an all-in, common fund, non-reversionary basis, and includes all compensation to be
17 paid by Pilot to effectuate the Settlement.

18 V. “Net Settlement Amount” means the amount remaining from the Gross Settlement
19 Amount after payments of Court-approved Settlement Class Counsel’s Attorney’s Fees and Settlement
20 Class Counsel’s Costs, Service and Release Award to the Representative Plaintiff, Settlement
21 Administration Costs, and payment to the LWDA.

22 W. “Individual Settlement Payment” means the amount payable from the Net Settlement
23 Amount to each Settlement Group Member. The Individual Settlement Payment shall be calculated
24 pursuant to Section IV herein.

25 X. “Notice of Settlement” means the “Notice of Proposed Class Action Settlement and
26 Final Approval Hearing,” the form of which is attached hereto as Exhibit A.

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Y. “Payment Information Form” means the document included in the Notice of Settlement, the form of which is attached hereto as Exhibit B. The Payment Information Form shall be provided to each Settlement Class Member with the Notice of Settlement and shall inform the Settlement Class Member of the number of Qualifying Workweeks as reflected for the Settlement Class Member in the Settlement Class Data, and shall estimate the Settlement Class Member’s share of the Net Settlement Fund based on the allocation plan set forth in this Stipulation. If signed by a Settlement Group Member and timely and validly submitted to the Settlement Administrator, a Payment Information Form shall confirm that Settlement Group Member’s consent to release FLSA claims through this settlement pursuant to 29 U.S.C. § 216(b), but the Settlement shall effect a full and complete release of all claims under the FLSA based on or reasonably related to the claims asserted in this Action regardless of a Settlement group Member’s submission of a Payment Information Form.

Z. “Objection to Settlement” means any timely written objection to this Settlement sent by a Settlement Class Member to the Settlement Administrator as specified herein and in the Notice of Settlement. Any Objection to Settlement must be sent to the Settlement Administrator within the time limitations set forth in this Stipulation.

AA. “Parties” means the Plaintiff on behalf of himself and all Settlement Class Members and Defendants.

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

CC. “Qualifying Workweeks” means a week during the Settlement Class Period during which a Settlement Class Member provided services at least one day or more as a helper, driver, or independent hauler for both Pilot and Best Buy (as those entities are defined herein) including any week credited to a Settlement Class Member as set forth below, except for weeks for which the Settlement Class Member previously released claims via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

DD. “Released 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

1 nature whatsoever, whenever incurred, including costs, expenses, penalties, and attorneys' fees, known
2 or unknown, suspected or unsuspected, in law or equity, that Plaintiff and/or any Settlement Class
3 Member, had or now has, against Pilot and/or Best Buy (as those entities are defined herein) that arise
4 could have been brought based on
5 from or are reasonably related to the conduct alleged in the First Amended Complaint, including but
6 not limited to any and all claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201,
7 *et seq.*; California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5,
8 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.4, 432.5, 450, 510-
9 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802,
10 2804, 3700 *et seq.*, and 4553 *et seq.*; the Private Attorneys General Act ("PAGA"), California Labor
11 Code section 2698 *et seq.*; California Code of Civil Procedure section 1021.5; California Code of
12 Regulations, title 8, sections 11010 and 11040; Industrial Welfare Commission Wage Orders;
13 California Business and Professions Code sections 17200 *et seq.*; and any other similar municipal code
14 or ordinance, state, federal, or common law, for unpaid wages, minimum wages, regular wages,
15 overtime wages, expense reimbursement, wage statements, payroll recordkeeping, reporting time,
16 improper deduction of wages, failure to provide workers' compensation insurance, meal periods, rest
17 breaks, sick leave, final pay, penalties for timely payment of wages upon discharge, waiting time
18 penalties, PAGA penalties, unfair business practices, all claims arising out of or relating to the statutory
19 causes of action described herein, restitution, interest, costs and expenses, attorneys' fees, declaratory
20 relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable
21 remedies, and/or pre- or post-judgment interest at any time during the Settlement Class Period.
22 Released Claims include all such claims regardless of whether they are known or unknown, suspected
or unsuspected, and shall run from March 28, 2017 through the Preliminary Approval Date.

23 EE. "Released Parties" means Pilot and Best Buy, as those entities are defined herein.

24 FF. "Representative Plaintiff" means Christian Matute.

25 GG. "Request for Exclusion" or "Opt-Out Request" mean a written and signed request by a
26 Settlement Class Member to be excluded from the Settlement Class that is submitted in accordance
27 with the procedure set forth herein.

1 HH. "Service and Release Award" means the payment to be made to the Representative
2 Plaintiff for his service to the Settlement Class and for the broader general release that he is providing
3 to Defendants, which is in addition to whatever payment he otherwise would be entitled to receive as
4 a Settlement Class Member. The Service and Release Award is subject to Court approval.

5 II. "Settlement" means the disposition of the Action and all related claims effectuated by
6 this Agreement.

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

22 KK. "Settlement Administrator" refers to ILYM Group, Inc.

23 LL. "Settlement Group" means all Settlement Class Members who have not timely
24 submitted a valid and complete Request for Exclusion.

25 MM. "Settlement Group Member" is a person who is a member of the Settlement Group.

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III. BACKGROUND

It is agreed by and among the Parties that the Action, including any and all allegations in the First Amended Complaint and any and all claims, damages, remedies sought or causes of action alleged in the First Amended Complaint or that could have been alleged based on the factual allegations of the First Amended Complaint, shall be settled and compromised as between the Settlement Group and Defendants, as well as between the California Labor and Workforce Development Agency in connection with the claims asserted under California Labor Code section 2698 *et seq.*, subject to the terms and conditions set forth in this Stipulation of Class Action Settlement and the approval of the Court.

IV. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE

A. Preliminary Approval of Settlement

Once finalized, the Parties shall promptly submit this Stipulation of Settlement to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Within 21 days after the execution of this Settlement Stipulation, or by another deadline ordered by the Court, Settlement Class Counsel will file a Motion for Preliminary Approval seeking an order:

- (a) Granting preliminary approval of the proposed settlement as fair, reasonable, and adequate as to Settlement Group Members;
- (b) Granting approval as to form and content of the proposed Notice of Settlement;
- (c) Granting approval of the plan of allocation of the Gross Settlement Fund;
- (d) Directing the mailing of the Notice of Settlement by first-class mail to Settlement Class Members by the Settlement Administrator;
- (e) Conditionally certifying the Settlement Class for settlement purposes only;

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(f) Appointing Settlement Class Counsel, Plaintiff as Settlement Class representative, and ILYM Group, Inc. as Settlement Administrator; and

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

At the time Settlement Class Counsel files the Motion for Preliminary Approval, Settlement Class Counsel will submit this Settlement Stipulation to the LWDA. *See* Cal. Lab. Code § 2699(l)(2). Defendants will ensure that notice of this Settlement Stipulation is timely submitted to the appropriate Federal and State officials pursuant to 28 U.S.C. § 1715.

The Parties have agreed to the certification of the Settlement Class for the sole purposes of effectuating this Settlement. 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 hereto, 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.

Should the Court decline to conditionally certify the Settlement Class or to preliminarily approve all material aspects of the Settlement, the Settlement will be null, and void and the Parties will have no further obligations under it.

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

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1 **B. Cooperation**

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

6 **C. Notice of Settlement**

7 Within sixty (60) days of the Preliminary Approval Date, but subject to the Settlement
8 Administrator providing adequate and contractual assurances with respect to confidentiality and data
9 security, Defendants shall provide the Settlement Administrator with the Settlement Class Data. This
10 information will remain confidential and will not be disclosed to anyone, except as required to
11 applicable taxing authorities, pursuant to Defendants' express written authorization, by order of the
12 Court, or as otherwise provided for in this Agreement. The Settlement Class Data shall be used only
13 for the purpose of administering this Settlement Stipulation.

14 Using the Settlement Class Data, the Settlement Administrator will: (1) confirm and inform
15 the number of Settlement Class Members, (2) finalize and print the Notice of Settlement; (3) check all
16 addresses against the National Change of Address database; and (4) within fourteen (14) calendar days
17 of receiving the Settlement Class Data, send to each Settlement Class Member via First-Class United
18 States mail an English and Spanish version of the Notice of Settlement to the most recent address
19 known for each Settlement Class Member. It will be conclusively presumed that if an envelope so
20 mailed has not been returned within fifteen (15) calendar days of the mailing, the Settlement Class
21 Member received the Notice of Settlement.

22 Any individual who did not receive the Notice of the Settlement seeking to be included in the
23 Settlement shall provide the Settlement Administrator with their full name, date of birth, Social
24 Security number or tax identification number, the name of the contract carrier that the individual
25 worked for (if any), and written proof of their provision of services to Defendants during the Settlement
26 Class Period, with as much detail as feasible, such as dates of work, to assist the Parties with
27 establishing the individual's status as a Settlement Class Member. Upon receipt of the written proof
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from such an individual, Pilot will make a good-faith effort to promptly confirm their work dates, and will promptly provide such information to the Settlement Administrator. To the extent necessary to resolve disputes regarding the validation process, the Parties agree to meet and confer in good faith. The Settlement Administrator, advised by the Parties, will determine whether each such individual is to be treated as a Settlement Class Member.

D. Re-Sending Settlement Class Notices

In the event that Defendants' Counsel or Settlement Class Counsel becomes aware of new addresses for any Settlement Class Member, prior to the filing of the motion for final approval, such information must be communicated to the Settlement Administrator. The Settlement Administrator will then re-send a Notice of Settlement to the Settlement Class Member(s) at the new address.

For any Notice of Settlement that is returned as undeliverable, the Settlement Administrator will perform a utility database search or other skip trace. The returned Notices of Settlement will be re-mailed to the new addresses obtained for such Settlement Class Members. Such searching and re-mailing will be completed within fifteen (15) days of the date that Notices of Settlement were originally returned as undeliverable. Notwithstanding anything to the contrary in this Stipulation and absent approval from the Parties, through their counsel, any Notice of Settlement that is mailed or re-mailed after the original mailing date will provide for a response deadline that is 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. 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.

E. Requests for Exclusion (Opt-Outs)

Any Settlement Class Member who wishes to be excluded from 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. Any such statement shall include the Settlement Class Member's name (and former names, if any), current address, telephone number, and last four numbers of the Settlement

1 Class Member's social security number. To be valid, the Request for Exclusion must (1) include a
2 clear statement of intention to be excluded from the settlement; (2) include the full name, address,
3 telephone number, and last four digits of the Social Security Number of the Settlement Class Member
4 requesting exclusion; (3) be signed by the Settlement Class Member; (4) be returned by U.S. Mail to
5 the Settlement Administrator at the specified address; and (5) be postmarked no later than sixty (60)
6 days after the original date of the Settlement Administrator's mailing of the Notice of Settlement or re-
7 mailing for Settlement Class Members whose Notices of Settlement were re-mailed, provided,
8 however, for any Notice of Settlement that is mailed or re-mailed after the original mailing date the
9 deadline to request exclusion will be no later than ten (10) days prior to the Final Fairness and Approval
10 Hearing even if such date is less than 60 days from the date of mailing or re-mailing. Any disputes
11 regarding the timeliness, validity or effectiveness of a Request for Exclusion shall be decided by the
12 Settlement Administrator, with the Parties' input, if appropriate. The date of the postmark on the
13 mailing envelope for any Request for Exclusion shall be the exclusive means used to determine whether
14 the Request for Exclusion has been timely submitted.

15 Any Settlement Class Member who submits a valid and timely request to be excluded from the
16 Settlement shall be barred from participating in this Settlement, shall be barred from objecting to this
17 Settlement, and shall receive no benefit from this Settlement, provided, however, that regardless of
18 whether any Settlement Class Member timely submits a Request for Exclusion from the Settlement, all
19 Settlement Class Members will still be bound by the settlement and release of any PAGA Claims upon
20 Final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), and shall receive a pro
21 rata portion of the PAGA Payment allocated for Settlement Class Member distribution. For the
22 avoidance of doubt, Requests for Exclusion do not apply to PAGA Claims, and will not be effective to
23 preclude the release of PAGA Claims. In furtherance of the foregoing, any Settlement Class Member
24 who submits a valid and timely request to be excluded from the Settlement shall be deemed to have
25 waived all objections and opposition to the fairness, reasonableness, and adequacy of this Settlement,
26 except as to the settlement's release of PAGA Claims.

27 Any Settlement Class Member who fails to submit a timely, complete, and valid Request for
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1 Exclusion shall be barred from opting out of the Settlement and shall be a Settlement Group Member.
2 It shall be conclusively presumed that, if a Request for Exclusion is not postmarked on or before the
3 expiration of the period to submit a Request for Exclusion, the Settlement Class Member did not make
4 the request in a timely manner. Under no circumstances shall the Settlement Administrator have the
5 authority to extend the deadline for Settlement Class Members to file a Request for Exclusion. The
6 Settlement Administrator shall promptly provide Settlement Class Counsel and Defendants' Counsel
7 with copies of all Requests for Exclusion that it receives.

8 Unless a Settlement Class Member submits a timely, complete, and valid Request for Exclusion,
9 he or she shall be deemed a Settlement Group Member and shall be bound by the terms and conditions
10 of this Agreement. The releases provided for in this Agreement shall conclusively preclude any
11 Settlement Group Member from asserting any of the Released Claims against any of the Released
12 Parties in any judicial, administrative, or arbitral forum. Notwithstanding the submission of a timely
13 request for exclusion from the Settlement, Settlement Class Members will still be bound by the
14 settlement and release of any PAGA Claims upon Final Judgment pursuant to *Arias v. Superior Court*,
15 46 Cal. 4th 969 (2009).

16 **F. Declaration of Compliance**

17 As soon as practicable following the Preliminary Approval Date, and at least twenty-one (21)
18 days before the Final Approval Hearing, the Settlement Administrator shall provide Settlement Class
19 Counsel and Defendants' Counsel with a declaration attesting to completion of the notice process set
20 forth in this Section IV, including the number of notices sent and returned, an explanation of efforts to
21 resend undeliverable notices, and copies of all Requests for Exclusion, which declaration shall be filed
22 with the Court by Settlement Class Counsel.

23 **G. Sufficient Notice**

24 Compliance with the procedures described in this Section IV shall constitute due and sufficient
25 notice to Settlement Class Members of this Settlement and of the Final Fairness and Approval Hearing,
26 shall satisfy the requirements of due process, and nothing else shall be required of the Representative
27 Plaintiff, Settlement Class Counsel, Defendants, Defendants' Counsel, or the Settlement Administrator
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1 to provide notice of the Settlement and the Final Fairness and Approval Hearing.

2 **H. Objections to Settlement**

3 **1. Deadline for Objections**

4 Any Settlement Class Member wishing to object to the approval of this Settlement shall inform
5 the Settlement Administrator in writing of his or her intent to object by following the procedure set
6 forth in the Notice of Settlement within sixty (60) calendar days of mailing. However, for any Notice
7 of Settlement that is mailed or re-mailed after the original mailing date the deadline to object will be
8 no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date is less
9 than 60 days from the date of mailing or re- mailing. A Settlement Class Member who does not submit
10 a valid and timely Request for Exclusion and who objects to the Settlement will still be considered a
11 Settlement Group Member. A Settlement Class Member who submits both a timely Request for
12 Exclusion and who attempts to object to the Settlement shall be deemed to have opted out of the
13 Settlement.

14 **2. Responses to Objections**

15 Settlement Class Counsel and Defendants' Counsel shall file any written objections from
16 Settlement Class Members submitted to the Settlement Administrator in accordance with this
17 Agreement, and Settlement Class Counsel's and Defendants' Counsel's responses to such objections,
18 at least five (5) court days before the Final Fairness and Approval Hearing.

19 **3. Waiver of Appeal**

20 Any Settlement Class Member who does not timely submit an objection to the Settlement and/or
21 does not comply with any other substantive or procedural obligations imposed by law, waives any and
22 all rights to appeal the Final Approval Order and Judgment, including all rights to any post-judgment
23 proceeding and appellate proceeding such as a motion to vacate the judgment or motion for
24 reconsideration.

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

26 Defendants estimate that there are 567 Settlement Class Members, and any dispute regarding
27 any increase of at least 15% from Defendants' estimate shall be brought to Tripper Ortman for
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mediation. Additionally, if five percent (5%) or more of the Settlement Class Members elect not to participate in the Settlement, Defendants may, at their election, rescind the Settlement. In that event, all actions taken in furtherance of the Settlement will be null and void. Defendants must jointly exercise this right of rescission, in a writing to Settlement Class Counsel, within twenty-one (21) calendar days of the date that the Settlement Administrator notifies the Parties of the total number of Settlement Class Members who have opted out of the Settlement. If Defendants exercise this right of rescission, Defendants must pay all reasonable expenses incurred by the Settlement Administrator as of the date of Defendants' 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 Stipulation final approval; (2) determine whether Settlement Class Counsel's application for attorneys' fees and costs, and request for the Service and Release Payment to the Representative Plaintiff, should be granted; and (3) consider any timely Objections to Settlement, including Settlement Class Counsel's and Defendants' Counsel's responses thereto. At the Final Fairness and Approval Hearing, the Representative Plaintiff, Settlement Class Counsel, and Defendants' Counsel shall ask the Court to give final approval to this Settlement. Upon final approval, the Court shall enter a Final Approval Order (in a form submitted by Settlement Class Counsel and approved by Defendants' Counsel) which has the effect of adjudicating all claims set forth in the Complaint and implementing the release of Released Claims, as set forth in this Agreement. Upon the Court's final approval of this Stipulation of Settlement, the Action shall be dismissed with prejudice.

J. Settlement Payments to Settlement Group Members

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

Each Settlement Group Member shall be entitled to a pro rata share of the Net Settlement Fund based on the number of Qualifying Workweeks the Settlement Group Member worked during the Settlement Class Period to the extent the Qualifying Workweeks can be determined from Defendants'

records. However, Defendants do not have records indicating the number of Qualifying Workweeks worked by helpers employed by contract carriers during the Settlement Class Period. Therefore, each Settlement Group Member for whom the Settlement Class Data shows five (5) or more Qualifying Workweeks shall be credited with the number of Qualifying Workweeks shown in the Settlement Class Data, subject to the process for disputes about Qualifying Workweeks set forth below. Each Settlement Group Member for whom the Settlement Class Data shows less than five (5) Qualifying Workweeks, including each Settlement Group Member for whom Defendants do not have records indicating the number of Qualifying Workweeks, shall be credited with five (5) Qualifying Workweeks, subject to the process for disputes about Qualified Workweeks set forth below.

Using this method of calculating Qualifying Workweeks, the Net Settlement Amount shall be divided among individual Settlement Group Members using the following formula:

$$\text{(Settlement Group Member's Credited Qualifying Workweeks} \div \text{All Settlement Group Members' Credited Qualifying Workweeks)} \times \text{Net Settlement Amount}$$

Any Settlement Group Member for whom the Settlement Administrator was provided a social security number or other tax identification number as part of the Settlement Class Data shall receive an Individual Settlement Payment from the Net Settlement Fund. Any Settlement Group Member for whom a social security number or other tax identification number was not available in the Settlement Class Data must timely submit a Payment Information Form to receive an Individual Settlement Payment from the Net Settlement Fund. 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 Group Members who do not submit a timely Request for Exclusion shall be bound by this Settlement, regardless of whether they submit a timely Payment Information Form.

Settlement Group Members entitled to payment as described above will receive a proportionate share of the Total Settlement Amount. The Settlement Administrator, on Defendants' and Settlement Class 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 Group Members calculated in accordance with the methodology set out in this Agreement and orders of the Court.

1. Inclusion of Qualifying Workweeks and Estimated Settlement Payment Information in Notice of Settlement

The Notice of Settlement sent to each Settlement Class Member shall state the amount of the Settlement Class Member's Qualifying Workweeks, as reflected in the Settlement Class Data. Each Notice of Settlement shall also include an estimate of the Settlement Class Member's settlement payment as a member of the Settlement Group, as calculated by the Settlement Administrator. The estimated settlement payment included in the Notice of Settlement will be calculated by assuming that no Settlement Class Members will be excluded from the Settlement Group.

2. Disputes about Qualifying Workweeks

If a Settlement Class Member disagrees with the number of Qualifying 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 Workweeks in dispute by submitting supporting documentation (such as, without limitation, timekeeping records, settlement statements, or pay stubs) prior to the deadline for objecting to the Settlement. Settlement Class Members must notify the Settlement Administrator of any such dispute within sixty (60) days of mailing the Notice of Settlement. 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 Settlement Class 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 Class Data will be presumed determinative if there is a dispute over Qualifying Workweeks, unless the Settlement Class Member has submitted valid and compelling documentation to support his or her claim to a different number of Qualifying Workweeks than the number shown on the Settlement Class Notice.

3. Payments to Participating Settlement Group Members

Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will make settlement payments to Settlement Group Members eligible for payment based on the payment formula set forth herein. However, any portion of the Net Settlement Fund that was allocated to Settlement Group Members for whom there was no social security or other tax identification numbers provided in the Settlement Class Data, and who did not submit valid and timely Payment Information Forms shall be reallocated on a pro rata basis to those Settlement Group Members for whom social security or other tax identification numbers are available, or who submitted valid and timely Payment Information Forms.

Settlement Group Member payments paid from the Net Settlement Amount will not be reduced by any employer or employee tax withholdings. For Settlement Group Members for whom a social security number or other tax identification number was either included in the Settlement Class Data or provided by the Settlement Group Member in the Payment Information Form, the Settlement Administrator will issue a Form 1099 for the payments. Each Settlement Group Member will be responsible for any federal, state, and/or local tax obligations and/or consequences that may arise out of the Individual Settlement Payments agreed to in this Agreement.

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**4. Settlement of PAGA Claims and Payment of Settlement Class Members
for PAGA Release**

In consideration for settlement and dismissal of all claims arising under the California Private Attorneys General Act, Cal. Labor Code § 2698, *et seq.* (“PAGA”) by the Settlement Class Members and in exchange for the release of all PAGA claims within the scope of the Released Claims, the Parties agree that, subject to Court approval, \$32,500 shall be allocated from the Gross Settlement Amount as payment for penalties under PAGA (the “PAGA Payment”). Twenty-five percent (\$8,125) of the PAGA Payment shall be distributed to Settlement Class Members (including Settlement Class Members who have opted out of the Settlement Group) as part of the Net Settlement Amount on a pro rata basis. The remaining seventy-five percent (\$24,375) of the PAGA Payment shall be payable to the LWDA, representing the LWDA’s share of PAGA penalties. To the extent the Court does not approve any or all of the PAGA Payment sought by Settlement Class Counsel, any amount disallowed by the Court will remain a portion of the Gross Settlement Amount to be distributed in accordance with the terms of this Stipulation.

K. The Settlement Administrator

The Settlement Administrator will perform the duties specified in this Stipulation and any other duties incidental to such obligations. The Settlement Administrator’s duties shall include, without limitation: establishing the QSF, preparing, translating and distributing the Notice of Settlement and Payment Information Forms; calculating and directing the disbursement of payments to Settlement Class Members, Settlement Class Counsel, the Settlement Class Representative and the LWDA; handling inquiries about the calculation of individual settlement payments; preparing and filing any tax documents or filings required by any governmental taxing authority or other governmental agency; providing requested status reports to the Parties’ counsel; immediately advising Defendants and Settlement Class Counsel of any Settlement Class Members who submit objections and/or requests for exclusions from the Settlement; providing a due diligence declaration for submission to the Court prior to the final approval hearing; printing and providing Settlement Class Members and Plaintiff with 1099 forms as required under this Agreement and applicable law; arranging for and remitting funds from

any uncashed settlement payment to the designated recipient, as determined by the Court; and for such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall maintain commercially reasonable procedures for securely handling Settlement Class Data, and shall accept responsibility for and maintain insurance in case of errors in the administration of the Settlement.

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

In addition, the Settlement Administrator shall establish a static website and post this stipulation, the court-approved Notice, any preliminary approval order, and the Final Approval Order and Judgment.

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

L. Time for Payment by Pilot

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

M. Payments to Settlement Class Counsel and the Representative Plaintiff

Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator shall make payments from the Qualified Settlement Fund to: (1) Settlement Class Counsel, both the Settlement Class Counsel's Attorneys' Fees and Settlement Class Counsel's Costs, awarded to Settlement Class Counsel by the Court; and (2) Plaintiff Christian Matute, the Service and Release Award approved by the Court. These payments will be reported on an IRS Form 1099.

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N. Payments to the California Labor and Workforce Development Agency

Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will make the payment to the LWDA of \$24,375, or such other amount as approved by the Court.

O. Un-negotiated Settlement Payment Checks

If any Settlement Group Member's settlement payment check cannot be sent or otherwise has not been negotiated sixty (60) days after disbursement, the Settlement Administrator shall attempt to contact each Settlement Group Member to advise them to cash their checks, and to offer to replace any checks reported as either lost or stolen. In attempting to contact such persons, the Settlement Administrator will send notices by mail to the individuals' last known addresses (as provided by Defendants) after first checking those addresses against the NCOA database and utility database.

If a Settlement Group Member's check is not cashed within 180 days, the check will be void and a stop payment order may be placed on the check. In such event, the Settlement nevertheless will be binding upon the Settlement Group Member. The funds represented by all uncashed settlement checks will be transmitted by the Settlement Administrator to the California State Controller's Office Unclaimed Property Fund.

P. Settlement Class Counsel Attorneys' Fees and Costs

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

To the extent the Court does not approve any or the entire amount Settlement Class Counsel seeks in Attorneys' Fees or Costs, such amounts shall remain part of the Gross Settlement Amount and distributed in accordance with the provisions of this Stipulation. If the Court approves a lesser amount for Settlement Class Counsel's Attorney's Fees or Settlement Class Counsel's Costs than those sought by Settlement Class Counsel, any amount disallowed by the Court shall be reallocated to the Settlement Group Members and the Parties agree that the settlement shall remain binding with such

modification(s) and its terms will otherwise be unchanged.

Upon the payment of the Court-approved amount of Settlement Class Counsel's Attorneys' Fees and Settlement Class Counsel's Costs, and except as otherwise provided by this Stipulation, Settlement Class Counsel waives any claim to costs and attorneys' fees and expenses against Defendants arising from or related to the Action, including but not limited to claims based on the California Labor Code or any other statute or law. Provided, however, nothing in this Agreement shall prevent Settlement Class Counsel from seeking additional fees for enforcing the terms of this Stipulation and investigating and recovering amounts owed under this Agreement.

Q. Services and Release Award to Representative Plaintiff

Plaintiff may move the Court for a Representative Plaintiff's Service and Release Award not to exceed \$10,000. Any Representative Plaintiff's Service and Release Award awarded by the Court shall be paid from the Gross Settlement Amount.

The Representative Plaintiff will be responsible for any federal, state, and/or local tax obligations and/or consequences that may arise out of any Representative Plaintiff's 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 Settlement Class 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 Stipulation 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 Stipulation of Settlement, 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 Stipulation 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 Stipulation 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. RELEASE BY THE SETTLEMENT GROUP MEMBERS

It is the desire of the Representative Plaintiff, Settlement Group Members, and Defendants to fully, finally, and forever settle, compromise, and discharge the Released Claims. Upon entry of the Final Approval Order, all Settlement Group Members, on behalf of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, fully releases and forever discharges the Released Parties from any and all Released Claims that accrued during the Settlement Class Period. This release shall be binding on all Settlement Group Members who have not timely submitted a valid and complete Request for Exclusion, including each of their respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the Released Parties. In addition, the release shall be binding as to all claims arising under PAGA for all Settlement Class Members regardless of whether they opted out of the Settlement Group.

VII. RELEASE BY THE REPRESENTATIVE PLAINTIFF

Upon entry of the Final Approval Order, the Representative Plaintiff fully releases and forever discharges 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 Plaintiff's relationships with any Released Party, or any other occurrences, actions,

omissions or claims whatever, known or unknown, suspected or unsuspected, which Plaintiff now owns or holds or has at any time heretofore owned or held as against any of the Released Parties.

The Representative Plaintiff hereby agrees that, notwithstanding § 1542 of the California Civil Code, all claims that the Representative Plaintiff may have, known or unknown, suspected or unsuspected, are hereby released. Section 1542 provides:

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

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

VIII. REPRESENTATIONS OF SETTLEMENT CLASS COUNSEL

Settlement Class Counsel affirm that, other than Christian Matute, they do not represent any other workers asserting claims against Defendants as to the Released Claims. Settlement Class Counsel warrant that they have not been retained by and do not otherwise represent any other individual or entity who has notified Settlement Class Counsel of potential claims against Defendants as to the Released Claims.

IX. MISCELLANEOUS PROVISIONS

A. Amendments

This Stipulation of Settlement may only be modified or changed by a writing signed by the Parties or by their counsel.

B. Integrated Agreement

After this Stipulation is signed and delivered by all Parties to the Action and their counsel, this Stipulation and its exhibits will constitute the entire agreement between the Parties to the Action

1 relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants,
2 or inducements have been made to any Party concerning this Stipulation or its exhibits other than the
3 representations, warranties, covenants, and inducements expressly stated in this Stipulation and its
4 exhibits.

5 **C. No Inducements**

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

10 **D. No Prior Assignment**

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

15 **E. No Retaliation or Advice**

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

19 **F. Attorneys' Fees**

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

23 **G. Applicable Law**

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

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 Stipulation of Settlement, in order to: (i) monitor and enforce compliance with this Settlement Stipulation, Final Approval and/or any related order of this Court; and/or (ii) resolve any disputes over this Settlement Stipulation 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 PILOT:

Dhananjay S. Manthripragada
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Phone: 213.229.7000

COUNSEL FOR DEFENDANT BEST BUY:

Barbara J. Miller
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Blvd., Suite 1800
Costa Mesa, CA 92626
Phone: 714.830.0600

///

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. Counterparts

This Stipulation, 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.

M. 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 Stipulation and have duly authorized the execution, delivery, and performance of this Stipulation.

N. 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 Stipulation, and that this Stipulation has been executed with the consent and advice of counsel.

O. Parties' Authority

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

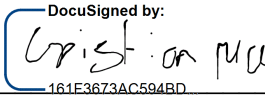
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1
2 Dated: May 17.00, 2023

CHRISTIAN MATUTE, on behalf of himself
and all others similarly situated

3
4 By: 
5 Christian Matute
6

7 Dated: May __, 2023

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES

10 By: _____

11 Name: _____

12 Position: _____

14 Dated: May __, 2023

BEST BUY CO., INC.

17 By: _____

18 Name: _____

19 Position: _____

1
2 Dated: May __, 2023

CHRISTIAN MATUTE, on behalf of himself
and all others similarly situated

3
4
5 By: _____
Christian Matute

6
7 Dated: May 16, 2023

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES

8
9
10 By:  _____

11 Name: Michael Scott

12 Position: U.S Head of Labor & Employment

13
14 Dated: May __, 2023

BEST BUY CO., INC.

15
16
17 By: _____

18 Name: _____

19 Position: _____

1
2 Dated: May __, 2023

CHRISTIAN MATUTE, on behalf of himself
and all others similarly situated

3
4
5 By: _____
Christian Matute

6
7 Dated: May __, 2023

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES

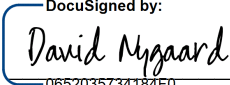
8
9
10 By: _____

11 Name: _____

12 Position: _____

13
14 Dated: May 17, 2023

BEST BUY CO., INC.

15
16
17 By:  _____
0652035734184F0...

18 Name: David Nygaard

19 Position: Senior Vice President

Exhibit “6”

BOYAMIAN LAW, INC.

Michael H. Boyamian (SBN 256107)
Armand R. Kizirian (SBN 293992)
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: 818.547.5300
Facsimile: 818.547.5678
Email(s): michael@boyamianlaw.com,
armand@boyamianlaw.com

Attorneys for Plaintiff CHRISTIAN MATUTE,
Individually and On Behalf of All Others Similarly Situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN MATUTE, an individual;
Individually and on Behalf of All Similarly
Situated Individuals,

Plaintiff,

v.

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES, a Pennsylvania
Limited Liability Company; BEST BUY CO.,
INC., a Minnesota Corporation; and DOES 1
through 25, Inclusive,

Defendants.

Case No: 4:22-cv-00587-YGR

[*The Honorable Yvonne Gonzalez Rogers*]

CLASS ACTION

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

[CONCURRENTLY FILED WITH MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
[PROPOSED] ORDER]

Date: June 20, 2023

Time: 2:00 p.m.

Courtroom: 1 (4th Floor), Oakland Courthouse

DECLARATION OF ARMAND R. KIZIRIAN

I, Armand R. Kizirian, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a member in good standing of the State Bar of California. I am one of the attorneys of record in the instant litigation, and I make this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. All of the information set forth herein is based on my personal and firsthand knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. I am of counsel to Boyamian Law, Inc. I graduated from the U.C.L.A. School of Law in 2013 and was admitted to practice in California that year. I have been named a Super Lawyer Rising Star for 2019-2023 by Thomson Reuters. I am also a member of the California Employment Lawyers Association and the Consumer Attorneys Association of Los Angeles.

3. Since my admission to the bar, my practice has focused upon plaintiffs-side employment matters, especially wage and hour class and representative actions. I have litigated numerous off-the-clock, unpaid overtime, meal break, rest break, misclassification, and piece-rate cases. In addition, my practice has also encompassed individual employment actions such as for wrongful termination and retaliation.

4. I have been closely involved in a significant number of wage and hour and consumer class and representative matters since I began practicing several years ago. Many of these cases have resulted in substantial recoveries for employees and consumers across California. Examples of these recoveries include the following matters:

- a. *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley Foods*, Case No. BC524915 (Los Angeles County Superior Court, 2015), wage and hour class action involving California Labor Code violations relating to restaurant workers, settled for \$2.2 million.
- b. *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV 14-00790-ODW (FFMx) (C.D. Cal 2015) wage and hour class action involving misclassification of independent contractors, which settled for \$4 million.

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- c. *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a class action for unpaid wages pursuant to the Living Wage Ordinance, settled for \$385,000.
- d. *Timothy J. Connell, et al, Klara Paksy, et al and Dale Bystrom, et al v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC523172, BC523491, BC525991 (2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$7,461,600 settlement).
- e. *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No. 2:13-cv-09426-GHK-FFM (C.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$2,937,600 settlement).
- f. *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No. 3:14-cv-02629-VC (N.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$2,350,800 settlement).
- g. *Ian H. Stark, et al. v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC476431, BC489738, BC501118, BC502723, BC526977, BC570812 (2016) wage and hour class action involving Labor Code travel time violations on behalf of pharmacists (\$2,000,000 settlement).
- h. *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017) wage and hour class action involving Labor Code overtime violation on behalf of home health nurses and other home health professionals (\$1,500,000.00).
- i. *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017) wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest break, and unreimbursed business expense violations on behalf of restaurant servers (\$1,300,000).
- j. *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage and hour class action involving Labor Code overtime violation on behalf of Car Haulers (\$2,900,000).
- k. *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour class action involving Labor Code overtime violations on behalf of school bus drivers (\$475,000 settlement).

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- l. *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017) wage and hour class action involving Labor Code overtime, meal and rest break, and unreimbursed business expense violations on behalf of home-based service technicians (\$1,500,000).
- m. *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-WHO (N.D. Cal. 2017) wage and hour class action involving misclassification of independent contractors (\$1,550,000 partial settlement).
- n. *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK (C.D. Cal. 2018) wage and hour class action involving misclassification of independent contractor newspaper carriers (\$500,000 settlement).
- o. *Patrick Malone, et al. v. KAG West, LLC, et al.*, Alameda County Superior Court Case Nos. RG15784137 and RG16814354 (2019) wage and hour class and PAGA actions involving overtime and meal and rest break violations for truck drivers (\$1,600,000 settlement).
- p. *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1809319 (2019), wage and hour class action concerning overtime and meal and rest break violations in re a commission-only compensation plan (\$2,000,000).
- q. *Pae, et al. v. Fox Restaurant Concepts, LLC, et al.*, Case No. 2:16-CV-06965-DSF-FFM (C.D. Cal. 2019) wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest break, and unreimbursed business expense violations on behalf of restaurant servers (\$900,000).
- r. *Miranda, et al. v. R&L Carriers Shared Services, LLC*, Case No. 2:18-cv-10063-SVW-JC (C.D. Cal. 2020), wage and hour class and PAGA action involving failure to provide meal and rest breaks and reimbursement of necessary expenditures to California-based truck drivers (\$375,000).
- s. *Delores Humes, et al. v. First Student, Inc.*, Eastern District of California Case No. 1:15-cv-01861-BAM (2020), wage and hour class action involving Labor Code wage statement violations on behalf of school bus drivers (\$650,000 settlement);

1 additionally obtained reversal of denial of class certification via appeal to Ninth
2 Circuit, *Humes v. First Student, Inc.*, 758 F. App'x 593 (9th Cir. 2019).

3 t. *Rita Khatchadourian, et al. v. Sterling Bank and Trust, FSB*, Alameda County
4 Superior Court Case No. RG19003028 (2020), wage and hour PAGA action
5 concerning overtime, meal break, rest break, and commission agreement violations
6 for bank employees (\$300,000 settlement).

7 u. *Mejia v. Dunn-Edwards Corp.*, Los Angeles County Case No. BC640070 (2020),
8 wage and hour PAGA action concerning off-the-clock work and meal and rest break
9 violations for paint store employees (\$250,000 settlement).

10 v. *Garcia v. Macy's West Stores, Inc., et al. ("Garcia II")*, Case No. 3:16-cv-04440-
11 WHO (N.D. Cal. 2020) wage and hour class action involving misclassification of
12 independent contractors (\$3,500,000 partial settlement).

13 w. *Perez v. The Roman Catholic Archbishop of Los Angeles*, Los Angeles County Superior
14 Court Case No. BC714614 (2021) wage and hour class action on behalf cemetery
15 workers concerning unpaid overtime, meal and rest break violations (\$1,300,000
16 settlement).

17 x. *Espinoza v. Williams Sonoma, Inc., et al.*, Los Angeles County Superior Court Case No.
18 BC693245 (2021) wage and hour class action involving misclassification of
19 independent contractors (\$2,250,000 settlement).

20 y. *Gonzales v. San Gabriel Transit, Inc.*, Los Angeles County Superior Court Case No.
21 BC536584, California Court of Appeal Case No. B282377, California Supreme Court
22 Case No. S259027 – denial of class of misclassified taxi cab drivers reversed by Court
23 of Appeal after published opinion, *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal. App.
24 5th 1131, 1149 (2019), *review dismissed, cause remanded sub nom.*, 481 P.3d 1144
25 (Cal. 2021).

26 z. *Ornelas v. Tapestry, Inc.*, Northern District of California Case No. 3:18-cv-06453-
27 WHA (2022), wage and hour class action involving employee security inspections
28 (\$342,500 settlement).

1 aa. *Caballero v. Fidelitone Last Mile, Inc.*, San Bernardino County Superior Court Case
2 No. CIVSB2102002 (2022), wage and hour class action involving misclassification of
3 independent contractors (\$1,000,000 settlement).

4 bb. *Whitten v. Rite-Aid*, Los Angeles County Superior Court Case No. BC646398 (2022),
5 wage and hour class action involving security checks for warehouse employees
6 (\$1,762,424 settlement).

7 5. A true and correct copy of the Settlement Agreement negotiated between the Parties to
8 resolve this matter in its entirety, including all exhibits, is attached as **Exhibit “1”**.

9 6. Defendant Pilot is a logistics company that partners with third-party subhaulers who
10 transport goods, including mile deliveries, which are the focus of this suit. Pilot contracts directly with
11 licensed motor carrier Contract Carriers who enter into Subhauler Agreements with Defendants
12 (“primaries”) to take responsibility for transportation and to provide the trucks and equipment to
13 facilitate transport. Subhaulers then contract with drivers and helpers who do not contract with Pilot
14 directly, but who are tendered freight by subhaulers (“secondaries”).

15 7. This freight that Putative Settlement Class Members moved was provided by Defendant
16 Best Buy. Along with Pilot’s personnel, the warehouses that the Contract Carriers, Drivers, and
17 Helpers operated out of were also staffed by employees of Best Buy. Essentially, while Pilot’s role
18 was focused more upon the logistics of planning the deliveries to Best Buy’s customers, it is Plaintiff’s
19 contention that Best Buy’s role was in ensuring that the Contract Carriers, Drivers, and Helpers
20 provided the appropriate customer experience while conducting the deliveries. Plaintiff Christian
21 Matute drove as a secondary in the form of a Driver and Helper.

22 8. Plaintiff contends that primaries and secondaries, i.e., the Contract Carriers, Drivers,
23 and Helpers, are misclassified as independent contractors when they are really employees. Defendants
24 deny that any of the Contract Carriers, Drivers, or Helpers have been misclassified. If Plaintiff were to
25 establish the employment relationship between Defendants and the Putative Class, Plaintiff contends
26 that Defendants would owe the Contract Carriers, Drivers, and Helpers substantial compensation for
27 violation of California’s wage and hour laws as no attempt is made by Defendants to track the Putative
28 Class’s hours of work, ability to take meal and rest breaks, or reimbursement of the Class’s work

1 expenses.

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

8 10. There are approximately 567 Putative Settlement Class Members who currently or
9 formerly delivered Best Buy products as Contract Carriers, Drivers, and Helpers via warehouses
10 managed by Defendant Pilot in the State of California. As noted, Plaintiff claims that these Contract
11 Carriers, Drivers, and Helpers were Defendants misclassified independent contractors who should have
12 been treated as employees. However, because Defendants maintain that these Contract Carriers,
13 Drivers, and Helpers were not their employees, Defendants cannot be liable for the allegedly unpaid
14 wages, penalties, or other damages, that were sought in this action.

15 11. On September 23, 2021, Plaintiff filed this case in Alameda County Superior Court on
16 behalf of all current and former individuals who performed delivery services for Defendants as
17 Contract Carriers, Drivers, and/or Helpers in the State of California from March 28, 2017 and
18 continuing while this action was pending. The Complaint included nine causes of action: (1) Failure to
19 Pay Minimum Wages; (2) Failure to Pay Overtime Compensation; (3) Reimbursement of Employment
20 Expenses; (4) Unlawful Deduction from Wages; (5) Failure to Provide Meal Periods; (6) Failure to
21 Authorize and Permit Rest Periods; (7) Failure to Furnish Accurate Wage and Hour Statements; (8)
22 Waiting Time Penalties; and (9) Unfair Competition. On January 27, 2022, Plaintiff filed the operative
23 First Amended Complaint which added a tenth cause of action under the Private Attorneys General Act
24 of 2004.

25 12. On January 28, 2022, Defendant Pilot removed this action to the United States District
26 Court for the Northern District of California. The case was ultimately assigned to the Honorable
27 Yvonne Gonzalez Rogers. As the Parties held their early meeting of counsel pursuant to Rule 26(f) in
28 the spring of 2023, Counsel discussed the possibility of attending an early mediation. The Parties

1 agreed to attend a mediation with Francis J. Ortman III, which was scheduled for December 2, 2022.

2 13. From before they filed suit, but especially in the months leading up to mediation,
3 Plaintiff's Counsel conducted a thorough investigation into the relevant facts and legal claims.
4 Plaintiff's Counsel formulated a list of documents and data they would need from Defendants in order
5 to conduct a meaningful mediation. After meeting and conferring with Defense Counsel on this
6 matter, Defendants informally produced substantial amounts of data and documentary evidence to
7 Plaintiff. With this data, Plaintiff's Counsel consulted with an expert in advance of mediation to
8 determine the amount of damages potentially available to Putative Class Members based on the scope
9 of wage and hour violations, assuming Plaintiff successfully established misclassification. Through
10 the efforts of Plaintiff himself, Plaintiff's Counsel was also able to contact various other Contract
11 Carriers, Drivers, and Helpers of Defendants, thus allowing Plaintiff's Counsel to gain a better
12 understanding of the strengths and weaknesses of the case before attending mediation.

13 14. After a full day of mediation, with the extensive efforts and assistance of Mr. Ortman,
14 the Parties were able to reach a settlement in principle on December 2, 2022. Settlement Class
15 Counsel's experience in litigating numerous independent contractor misclassification suits and the
16 documents and data exchanged by the Parties in the lead up to mediation informed Plaintiff's Counsel
17 decision to endorse the \$650,000 gross settlement amount. Although the Parties agreed upon a
18 settlement figure on December 2, 2022, negotiations regarding the specific terms of the agreement
19 continued into May 2023.

20 15. Based on their independent investigation and evaluation, Plaintiff's Counsel are of the
21 opinion that the Settlement with Defendants for the consideration and on the terms set forth in the
22 Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of the Putative
23 Settlement Class Members, in light of all known facts and circumstances, including the risk of
24 significant delay, the risk that if this matter is litigated a class may not be certified by the Court or that
25 it may later be decertified, the risk that Defendants will prevail on their defenses, as well as potential
26 appellate issues.

27 16. Based on the data provided by Defense Counsel and the outreach undertaken by
28 Plaintiff's Counsel, Plaintiff calculates that Contract Carriers were paid approximately \$32.62 per hour

1 while Drivers and Helpers were paid about \$21.25 per hour. Plaintiff further estimates that the average
2 shift length was approximately 10 hours in length. As the flat pay provided to Contract Carriers,
3 Drivers, and Helpers would not account for overtime, Plaintiff estimates that each Contract Carrier,
4 Driver, and Helper experienced approximately two hours of off-the-clock time each day. Moreover,
5 Plaintiff notes that while unpaid minimum wages were a separate cause of action plead in this suit,
6 practically, because the unpaid time was entirely unpaid *overtime*, the unpaid minimum wages are
7 subsumed within the unpaid overtime hours.

8 17. Projected from their base rates, Plaintiff calculated that the overtime rate for Contract
9 Carriers was \$48.93 per hour. Similarly, the overtime rate for Drivers and Helpers was \$31.88 per
10 hour. Across the putative class, Plaintiff's outreach showed that the average Contract Carrier, Driver,
11 and Helper worked on average five days a week. Thus, the average Settlement Class Member had 10
12 hours of unpaid overtime wages per week. In the case of Contract Carriers, this resulted in \$489.30 of
13 unpaid wages, while the analogous amount for Drivers and Helpers was \$318.80.

14 18. The data provided by Defendant shows approximately 4,371 workweeks for Contract
15 Carriers and 11,615 for Drivers and Helpers. Based upon the weekly unpaid wages amount, this
16 results in \$2,138,730.30 in unpaid overtime for Contract Carriers and \$3,702,862 for Drivers and
17 Helpers. For the Settlement Class, the total unpaid wages amount is \$5,841,592.30.

18 19. As to meal and rest break penalties, the Settlement Class Members damages would be
19 based upon their regular rate of pay, not their overtime rate of pay. Thus, for Contract Carriers this
20 figure is \$32.62, and for Drivers and Helpers it is \$21.25 as set forth above. An individual may only
21 receive a single meal break and a single rest break penalty per day. As Defendants did not have any
22 meal and rest break policies in place due to the alleged independent contractor misclassification, and as
23 Settlement Class Members reported constantly being in a state of hurry to Class Counsel to go from
24 delivery to delivery, Plaintiff believes that the violation rate must be at just about 100%.

25 20. Based upon a five-day a week schedule, Contract Carriers would be entitled to \$326.20
26 in weekly meal and rest break penalties. Similarly, Drivers and Helpers would be owed \$212.50 per
27 week in meal and rest break penalties. Based upon Defendants' data, this would amount to
28 \$1,425,820.20 for Contract Carriers for the 4,371 workweeks and \$2,468,187.50 for Drivers and

1 Helpers for the 11,615 workweeks. Combined, Plaintiff estimates the Class's damages for meal and
2 rest break penalties totaled \$3,894,007.07.

3 21. In terms of waiting time penalties, Plaintiff estimates that up to 250 of the Settlement
4 Class Members became former workers for Defendants within the somewhat shorter statutory period
5 reaching back to March 28, 2018, with turnover being much higher among Drivers and Helpers than
6 with Contract Carriers. For Contract Carriers, based on a \$32.62 hourly wage, a ten-hour workday
7 would result in a daily wage of \$358.82 ($[\$32.62 * 8 \text{ hours}] + [\$32.62 * 1.5 \text{ OT premium} * 2 \text{ hours}]$).
8 Multiplied by thirty days, for an estimated 50 Contract Carriers, this amounts to \$538,230.

9 22. For 200 former Drivers and Helpers, based upon a \$21.25 hourly wage, a ten-hour
10 workday results in a daily wage of approximately \$233.76 ($[\$21.25 * 8 \text{ hours}] + [\$21.25 * 1.5 \text{ OT}$
11 $\text{premium} * 2 \text{ hours}]$). Multiplied by thirty days, for an estimated 200 Drivers and Helpers, this
12 amounts to \$1,402,560. For all former Settlement Class Members, the waiting time penalties therefore
13 amount to \$1,940,790.

14 23. In terms of inaccurate wage statement penalties, the statutory period for this claim
15 reaches back one year prior to filing suit, i.e., to March 28, 2020. The 15,986 total workweeks
16 reported by Defendants for Contract Carriers, Drivers, and Helpers reach back to March 17, 2017.
17 Plaintiff estimates that about half of these workweeks would have occurred during the statutory period
18 for this claim, i.e., 7,993 workweeks. Based upon a two-week pay period, Plaintiff estimates that there
19 are therefore approximately 4,000 pay periods subject to the wage statement penalty claim. To
20 simplify the arithmetic, if the \$100 penalty amount from Labor Code Section 226(e) is used for these
21 4,000 pay periods, then the amount owed to the Settlement Class in inaccurate wage statement
22 penalties totals \$400,000.

23 24. The unreimbursed business expense claim in this matter is also significant. The most
24 notable unreimbursed business expenses, e.g., fuel costs, truck leasing costs, and insurance costs,
25 would have been borne by the Contract Carriers as opposed to the Drivers and Helpers. Plaintiff
26 believes Contract Carriers paid approximately \$1,000 for these charges per week that were not
27 adequately compensated for by Defendants in their payments to the Contract Carriers. For 4,371
28 workweeks, this therefore totals \$4,371,000. With Drivers and Helpers, the main unreimbursed

business expense would have been for their cell phones. If this amounted to a weekly unreimbursed charge of \$12.50, then for 11,615 workweeks, this figure amounts to \$145,187.50. Altogether then, the Settlement Class's unreimbursed business expense claim is worth approximately \$4,516,187.50.

25. Finally, as for the PAGA penalties, the amount at issue would depend on whether this Court would permit the 'stacking' of such penalties. *See Smith v. Lux Retail N. Am., Inc.*, 2013 WL 2932243 at *3 (N.D. Cal. June 13, 2013) ("Another necessary but equally flawed assumption undergirding the Luxottica calculation is the stacking of penalties. For the single mistake of failing to include commissions in the overtime base, plaintiff has asserted five (count them, five) separate labor code violations that could lead to statutory penalties.... But is it plausible that we would really pile one penalty on another for a single substantive wrong?"). If the Court did not permit stacking, then the class would be entitled to approximately \$100 per pay period as a maximum for PAGA penalties.

26. Plaintiff estimates that of the 15,986 workweeks in the class period, approximately half of them fall within the PAGA period, which goes back to one year prior to the filing of this action. Thus, the approximately 8,000 workweeks in the PAGA period becomes 4,000 pay periods. With a \$100 per pay period violation rate, the PAGA penalties would amount to \$400,000 at the highest end. If the Court did permit stacking, this amount would be many multiples higher.

27. As a *theoretical maximum accounting for no discounting*, the Settlement Class could claim \$16,992,576.87 in damages. This is broken down as \$5,841,592.30 in unpaid wages, \$3,894,007.07 in meal and rest break penalties, \$1,940,790 in waiting time penalties, \$400,000 in inaccurate wage statement penalties, \$4,516,187.50 in unreimbursed business expenses, and \$400,000 in PAGA penalties.

28. The discount applied here between the maximum possible damages and the \$650,000 settlement amount is appropriate given the significant hurdles that this case faces if litigated through to trial. First, and most prominently, Plaintiff faces a real risk that he may not be able to establish misclassification. Defendants maintain that Plaintiff and the Contract Carriers, Drivers, and Helpers were properly classified as independent contractors. To that end, Defendants were careful to impart a degree of control to the Contract Carriers to not run afoul of the 'control test' as set forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989). Notably, the

1 *Borello* test is likely applicable to Labor Code claims, most relevantly, to the unreimbursed business
2 expense claim which has no analogue under the wage orders. *See Bowerman v. Field Asset Servs.,*
3 *Inc.*, 60 F.4th 459, 472 (9th Cir. 2023); *Garcia v. Border Transportation Group, LLC*, 28 Cal.App.5th
4 558 (2018).

5 29. California’s ‘ABC test’ would not apply to Drivers and Helpers, because as they never
6 contracted with either Pilot or Best Buy, California’s joint employment test as set forth in *Martinez v.*
7 *Combs*, 49 Cal. 4th 35 (2010), would apply instead. And Pilot would additionally argue that
8 California’s ‘business-to-business’ exemption, Cal. Lab. Code § 2776, would prevent the ‘ABC test’
9 from applying to Contract Carriers, which are organized as formal business entities and often hire their
10 own workers and control significant fleets of trucks.

11 30. Moreover, even under the more favorable standard for determining misclassification
12 that was set forth in *Dynamex Operations West v. Superior Court*, 4 Cal. 5th 903 (2018), Defendants
13 had essentially two years before this suit was filed to conform their operations to that decision and
14 ensure that their operations met the tenets of the ‘ABC’ test. Class Counsel judges that with this case,
15 it would be more difficult to establish misclassification than in other similar cases, as it appears
16 Defendant Pilot in particular was careful to calibrate operations to allow Contract Carriers greater
17 flexibility in their work outside of deliveries for Best Buy, and utilized a business model that directly
18 contracted only with independent and formally-established businesses with their own fleets of trucks.

19 31. In addition, should this case be litigated, Plaintiff anticipates that Defendants will rely
20 on the Federal Motor Carrier Safety Administration’s (“FMCSA”) December 21, 2018 decision, which
21 preempted California’s meal and rest break laws, to defeat those claims in this suit. While Plaintiff
22 would certainly oppose this, the Ninth Circuit has upheld the FMCSA’s December 21, 2018 decision
23 affirming the FMCSA’s preemption of meal and rest break laws. *See Int’l Bhd. of Teamsters, Local*
24 *2785 v. FMCSA*, 986 F.3d 841 (9th Cir. 2021). Thus, barring a change in the law, those claims are
25 subject to 100% discounting independent of the threshold classification issue.

26 32. Finally, and perhaps most importantly, liability aside, Plaintiff runs the very real risk of
27 not being able to secure class certification on a contested motion. While Plaintiff contends that
28 Settlement Class Members were misclassified, it is nevertheless true that the way each Contract Carrier

1 conducted operations, including from the Drivers and Helpers it formally employed, varied to an extent
2 between them. For the Contract Carriers themselves, the nature of their work was less consistent than
3 with Drivers and Helpers. Thus, even if most or all of the Contract Carriers, Drivers, and Helpers can
4 be said to have been misclassified, whether class certification outside of the settlement context under
5 Rule 23 would be granted is a very different question. Thus, while the \$650,000 gross settlement
6 amount appears at first glance to be a substantial discount on the maximum damages available. Given
7 the risks of this particular suit, the amount is extremely reasonable and results in a good settlement for
8 the putative class.

9 33. Plaintiff is aware of one other suit that could potentially be affected by the instant
10 settlement. That suit is entitled *David Venegas, et al. v. Pilot Air Freight, LLC, et al.*, Los Angeles
11 County Superior Court Case No. 22STCV14263. The *Venegas* action had a broader class definition
12 than this matter involving all workers who drove for Pilot in California with respect to any of Pilot's
13 customers (not just Best Buy). The *Venegas* action was filed on April 28, 2022, several months after
14 this matter was initiated on September 23, 2021. However, *Venegas* was compelled to individual
15 arbitration and the PAGA representative claims dismissed on February 10, 2023. Thus, while *Venegas*
16 initially appeared to overlap with this matter to some extent, the *Venegas* case is now an individual
17 action.

18 34. The settlement funds will be allocated based upon the number of workweeks that
19 Settlement Class Members worked in the statutory period. Settlement Agreement, ¶ IV(J). While
20 there are differences in damages between Contract Carriers on the one hand, and Drivers and Helpers
21 on the other, Class Counsel believes unified allocation plan is fair and reasonable because while the
22 damages are higher for the Contract Carriers, liability and class certification would be more difficult to
23 establish on behalf of the Contract Carriers.

24 35. No claim form is required. However, the settlement does provide for a Claimant
25 Information Form. The Claimant Information Form will be used to allow Settlement Class Members
26 to provide their tax identification number to the Settlement Administrator. Settlement Agreement, ¶
27 IV(J). Because Defendants do not have the tax identification number for all Settlement Class Members
28 (as they did not directly contract with all Settlement Class Members), the Parties will encourage

1 Settlement Class Members to submit this form to the Settlement Administrator to ensure that they can
2 receive payment.

3 36. The notice distribution plan is effective because it is the least burdensome process under
4 the circumstances. Class Members will be notified of the settlement via First Class U.S. Mail.
5 Settlement Agreement, ¶ IV(C). Importantly, this is not a claims-made settlement. However,
6 Settlement Class Members are strongly encouraged to submit Payment Information Forms where they
7 can provide their tax identification number. The Parties set up this process because Defendants do not
8 have the tax identification number for all Settlement Class Members. By requesting, but not requiring,
9 that all Settlement Class Members return the Payment Information Form, Plaintiff believes that the
10 number of Settlement Class Members who will be able to receive a settlement check will be
11 maximized.

12 37. Plaintiff is submitting notice of this settlement and the Motion for Preliminary Approval
13 with California's Labor and Workforce Development Agency contemporaneously with the filing of
14 this Motion.

15 38. In preparation for and during the mediation, the Parties apprised the other of their
16 respective factual contentions, legal theories and defenses. Consequently, extensive and informed,
17 arms-length negotiations occurred during the full-day mediation session with experienced mediator,
18 Francis J. Ortman III, Esq. The mediation was held on December 2, 2022. The Parties were able to
19 reach a Settlement that was based upon the mediator's advice and guidance, Class Counsel's
20 experience in litigating numerous independent contractor misclassification suits, and the exchange of
21 information by the Parties in the lead up to mediation. Although the Parties agreed upon a settlement
22 figure on December 2, 2022, negotiations regarding the specific terms of the agreement continued into
23 May 2023.

24 39. Plaintiff alleges that Defendants improperly misclassified the Putative Class Members
25 as independent contractors exempt from minimum wage, overtime, meal and rest period laws, and the
26 wider protections of the California Labor Code and wage orders. Although Plaintiff believes they have
27 a strong case, further litigation carries numerous risks and obstacles for Plaintiff and Putative Class
28 Members, as described below.

1 40. First, Plaintiff may not be able to certify the Putative Class under Rule 23(b). Plaintiff
2 largely relies on the Defendants' uniform business practices that treat the Putative Class Members as
3 non-employees or independent contractors to establish both commonality and predominance. Plaintiff
4 will also argue that other common issues also predominate, such as whether the job expectations and
5 degree of control exercised by Defendants upon the Contract Carriers, Drivers, and Helpers are
6 uniform across the Class.

7 41. Even if Plaintiff can show that Contract Carriers, Drivers, and Helpers were not
8 independent contractors, Defendants can assert numerous defenses regarding liability and damages.
9 For instance, Defendants contend that the Contract Carriers with which they contracted to perform
10 delivery services employed Drivers and Helpers, creating both a conflict within the class if pursued,
11 and also shifting liability away from Defendants.

12 42. With regard to Plaintiff's claims for wage statement and waiting time penalties, both
13 claims are derivative of Plaintiff's primary wage claims. Thus, Plaintiff would recover nothing for
14 himself, or the Class, if the underlying claims are unsuccessful.

15 43. The Defendants' positions in this litigation may result in no recovery for Plaintiff and
16 the Putative Class Members, or protracted appeals and significant risks to meaningful recovery for the
17 Putative Class Members. Consequently, the benefits of the settlement greatly outweigh the risks of
18 continuing to litigate the issues in this case.

19 44. The Settlement is fair, adequate, and well within the range of possible approval.
20 Without conceding that any adverse rulings would be justified, Plaintiff recognizes the risk of such
21 outcomes as described above. If Defendants were able to prove that the Putative Settlement Class
22 Members are not employees or properly classified as independent contractors, then the value of the
23 case would be zero. All of Plaintiff's claims and damages rely upon this threshold issue.

24 45. If Plaintiff is able to demonstrate that Contract Carriers, Drivers, and Helpers are
25 employees, not independent contractors, then the value of Plaintiff's claims depend principally on the
26 number of hours worked by Putative Class Members, the frequency at which meal and rest breaks were
27 missed (and the application of FMCSA preemption), unreimbursed business expenses, and derivative
28 penalties. Plaintiff calculates damages as ranging from \$0, if he cannot prevail on the threshold

1 independent contractor versus employee issue, to approximately \$16,992,576.87, if Plaintiff is able to
2 secure class certification and prevail on all claims.

3 46. In order to properly value the claims at issue, however, these figures must be reduced
4 according to the likelihood that Plaintiff will prevail on his motion for class certification. Moreover,
5 even if class certification is granted, the figures must be further be reduced according to the likelihood
6 that Plaintiff will ultimately be able to prevail on the merits. As set forth above, for the purposes of
7 settlement only, Plaintiff acknowledges that this case may face significant hurdles at both the
8 certification and the liability phases of the litigation.

9 47. Based on the foregoing, the Settlement will result in a fair and reasonable award to
10 Settlement Class Members in light of the litigation risks. The net amount of the \$650,000 to be paid to
11 the Class under the proposed Settlement (after payment of Class Counsel's attorneys' fees [\$214,500],
12 litigation costs [\$20,000], Settlement Administration Costs [\$12,550], the Class Representative
13 Enhancement [\$10,000], and LWDA portion of the PAGA allocation [\$24,375]), will be at least
14 \$368,575. For the 567 Putative Class Members, the payout under this amount would be approximately
15 \$650. Thus, the Settlement avoids the risks of litigation while ensuring that Settlement Class Members
16 receive substantial consideration for a release of their claims. The Settlement also affords relief to
17 Settlement Class Members who likely would not have pursued individual claims.

18 48. The Settlement provides that, prior to the final approval hearing, Class Counsel may
19 petition the Court for an award of fees and litigant expenses. However, the Settlement does not
20 specifically set forth an amount for the attorneys' fees and costs that Class Counsel may seek.
21 Nevertheless, Class Counsel does not intend to seek fees in excess of 33% of the \$650,000 gross
22 settlement, i.e., \$214,500. Similarly, Class Counsel does not intend to seek litigant expenses in excess
23 of \$20,000.

24 49. Plaintiff Christian Matute initiated this case and sought counsel to represent the
25 proposed Class. Plaintiff met with Settlement Class Counsel and provided documentary evidence
26 relevant to the claims in the case. Plaintiff also risked his own professional reputation by suing his
27 alleged former employer. Any potential future employer who searches the internet or runs a
28 background check on Plaintiff will discover this fact. In a competitive job market, this factor may

weigh heavily against him. Therefore, Plaintiff has also undertaken risks with respect to his future employment prospects that other Settlement Class Members simply have not.

50. Plaintiff proposes appointing ILYM Group, Inc. (“ILYM”) as the Settlement Administrator in this case. Settlement Class Counsel has elected to use ILYM given their substantial and longstanding experience in the field of class action settlement administration. Moreover, ILYM has provided a very reasonable bid of \$12,550. A true and correct copy of the proposal provided by ILYM Group, Inc. is attached hereto as **Exhibit “2”**.

51. The Settlement Administration Costs will be paid from the Gross Settlement Amount. The estimate from ILYM provides that the settlement administration costs will be approximately \$12,550. The final settlement costs and supporting documentation will be submitted to the Court prior to the final approval hearing. The Settlement Administration Costs here are reasonable as compared to the value of the settlement and the work that needs to be performed to administer the Settlement properly.

52. The settlement reached by the Parties is eminently fair, reasonable, adequate, and an excellent result for Settlement Class Members. For these reasons, the Court should grant preliminary approval of the proposed settlement

I declare under penalty of perjury that under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on May 16, 2023, in Glendale, California.

/s/ Armand R. Kizirian
Armand R. Kizirian

Exhibit “7”

Allegiant Final Mile, LLC, Diverse Logistics & Distribution, LLC, and Mattress Firm, Inc.

Data Security Requirements and Agreement

Simpluris, Inc. (referred to hereinafter as “Settlement Administrator”) has been approved to serve as the Settlement Administrator in connection with the class action settlement administration of the class and representative action styled, *Christian Decena, et al. v. Allegiant Final Mile, Inc., et al.*, Case No. 23-CV-03633-YGR (“Decena Class Action”), which is currently pending in the United States District Court for the Northern District of California. In connection with the administration of the Decena Class Action settlement in accordance with the terms of the Settlement Agreement and court order, the Settlement Administrator shall do and agrees to the following:

Implement and maintain a written Data Security program that contains administrative, technical, and physical safeguards to protect Personal Information, as that term is defined herein, from loss, misuse, unauthorized access, disclosure, alteration or destruction. In the event of a Data Breach, as further defined, Settlement Administrator shall notify Allegiant, Diverse Logistics, and Mattress Firm in accordance with these Data Security Requirements (“Requirements”) and comply with federal, state, and local laws applicable to Settlement Administrator.

1.1 Definitions

“Allegiant” means Allegiant Final Mile, LLC, erroneously sued in the Decena Class Action as Allegiant Final Mile, Inc. and/or their respective affiliate(s) on behalf of which Settlement Administrator Processes Personal Information pursuant to these Data Security Requirements (“Requirements”).

“Computer Security System” means, at a minimum, and to the extent technically feasible: (i) Secure User Authentication Protocols including (a) control of user IDs and other identifiers, (b) reasonably secure methods of assigning and selecting passwords or use of unique identifier technologies such as token devices, and (c) control of data security passwords to ensure such passwords are retained in a format and location that does not compromise the security of the data they protect; (ii) Secure Access Control measures that (a) restrict access to records and files containing Personal Information to those who need such information to perform their job duties, and (b) assign unique identification numbers with passwords to each person with computer access and that are designed to maintain the integrity and security of Access Controls; (iii) Encryption, as that term is defined herein, of (a) all transmitted records and files containing Personal Information that will travel wirelessly and across public networks, and (b) all Personal Information stored on laptops or other portable devices; (iv) up-to-date firewall protection and operating system security patches reasonably designed to maintain the integrity of Personal Information; (v) up-to-date system security agent software that includes malware protection, up-to-date patches and virus definitions, and is regularly set to receive and deploy the most current security updates; and (vi) a written information security program documenting compliance with all applicable federal, state and local laws and the Requirements contained herein.

“Data Breach” means the unlawful or unauthorized access, acquisition, destruction, use, modification or disclosure of Personal Information.

“Encryption” means the protection of data in electronic or optical form, in storage or in transmission using (i) an encryption technology that has been adopted by an established standards setting body, including, but not limited to, the Federal Information Processing Standards issued by the National Institute of Standards and Technology, which renders such data indecipherable in the absence of associated cryptographic keys necessary to enable decryptions of such data; and (ii) appropriate management and safeguards of cryptographic keys to protect the integrity of the encryption using guidelines promulgated by an established standards setting body, including, but not limited to, the National Institute of Standards and Technology.

“Decena Class Action” means the class action and representative action titled *Christian Decena, et al. v. Allegiant Final Mile, Inc., et al.*, Case No. 23-CV-03633-YGR, which is currently pending in the United States District Court for the Northern District of California.

“Decena Settlement” refers to the settlement agreement covering the Decena Class Action.

“Diverse Logistics” means Diverse Logistics & Distribution, LLC, erroneously sued in the Decena Class Action as Diverse Logistics & Distribution, Inc, and/or their respective affiliate(s) on behalf of which Settlement Administrator Processes Personal Information pursuant to these Data Security Requirements.

“Mattress Firm” means Mattress Firm, Inc. and/or their respective affiliate(s) on behalf of which Settlement Administrator Processes Personal Information pursuant to these Data Security Requirements.

“Personal Information” means a natural person’s first name and last name or first initial and last name, in combination with one or more of the following data elements that relate to such person: (i) social security number; (ii) date of birth; (iii) taxpayer ID; (iv) mother’s maiden name; (v) home address; (vi) driver’s license number or government-issued identification card number; (vii) medical information (including but not limited to a person’s medical history, treatment, or diagnosis by a treatment provider); or (viii) financial account number, credit or debit card number with or without any required security code, access code, personal identification number or password that would permit access to such person’s financial account(s) information.

“Processing” (including its cognate, “process”) means receiving, storing, maintaining, handling, collecting, transferring, transmitting, destroying, altering, using, or accessing Personal Information, whether or not by automatic means, in any form including but not limited to electrical, digital, wireless, electromagnetic technology, or written form.

“Simpluris, Inc.” means Settlement Administrator.

“Technical and Organizational Security Measures” (“TOSMs”) means the administrative, technical and physical measures designed and implemented to prevent a Data Breach arising out of Processing by Settlement Administrator, including but not limited to (i) maintaining data security policies and reasonable restrictions on employees’ and contractors’ processing of Personal Information within and outside of business premises; (ii) ongoing training of employees and subcontractors; (iii) maintaining technology and other means to monitor and detect a Data Breach and prevent access of Personal Information by terminated employees or contractors; (iv) documenting actions taken in response to annual reviews of TOSMs or a Data Breach; and (v) if applicable, a Computer Security System.

1.2 Settlement Administrator's Obligations

1. Settlement Administrator shall Process Personal Information in accordance with these Requirements and applicable federal, state and local privacy and data security laws. Settlement Administrator hereby agrees, to Process Personal Information as necessary to serve as the court approved Settlement Administrator in connection with the Decena Class Action.

2. Settlement Administrator and its subcontractors shall implement TOSMs necessary to perform Settlement Administrator's obligations under the agreement to administer the Decena Class Action Settlement. Settlement Administrator shall provide Allegiant, Diverse Logistics, and Mattress Firm with copies of and/or information concerning Settlement Administrator's TOSMs upon request. Allegiant, Diverse Logistics, and Mattress Firm shall have the right to conduct onsite inspections and/or audits (upon advance notice) of its TOSMs, and Settlement Administrator agrees to cooperate with such inspections or audits.

3. If Settlement Administrator or its subcontractors electronically store or transmit Personal Information or data that includes Personal Information, Settlement Administrator shall implement and maintain a Computer Security System.

(a) Settlement Administrator shall notify Allegiant, Diverse Logistics, and Mattress Firm immediately of a Data Breach and, at Settlement Administrator's cost and expense, assist and cooperate with Allegiant, Diverse Logistics, and Mattress Firm concerning any legally-required notifications or disclosures to affected persons, entities and/or government authorities.

(b) Settlement Administrator shall not transfer any Personal Information through an electronic, non-voice transmission to a person outside of the secure system of Settlement Administrator unless Settlement Administrator uses Encryption to ensure the security of such electronic submission and the recipient of the information is authorized by this Agreement to receive the information and executes the "Acknowledgment and Agreement to be Bound" that is attached hereto as Exhibit A.

(c) Settlement Administrator shall notify Allegiant, Diverse Logistics, and Mattress Firm at least thirty (30) days prior to Settlement Administrator's movement of any data storage device containing Personal Information beyond the physical controls of Settlement Administrator or its subcontractor who is bound to these Requirements.

(d) Settlement Administrator shall bind each of its subcontractors who handle Personal Information to these Requirements in a binding written agreement.

(e) Settlement Administrator agrees not to share or disclose the Personal Information with any third parties as more fully set forth in Section III(D) and (E)(2) of the Decena Class Action Settlement Agreement incorporated herein and considered a part of these Requirements for all purposes.

(f) Settlement Administrator shall return or destroy (at Allegiant, Diverse Logistics, and/or Mattress Firm's election), or cause or arrange for the return or destruction of all Personal Information, including all originals and copies in any medium and any materials derived from or incorporating such Personal Information, within fifteen (15) business days after final disbursement of all funds from the Gross Settlement Amount and declaration proving a final report on disbursements of all funds from the Gross Settlement Amount.

4. Settlement Administrator understands and agrees these Requirements are an integral part of its retention agreement to serve as the Settlement Administrator in connection with the Administration of the Class Action Settlement in the Decena Class Action and, therefore, a violation of any of these Requirements shall be considered a material breach by Settlement Administrator entitling Allegiant, Diverse Logistics, and Mattress Firm to remedies, including but not limited to, immediate termination of the Decena Class Action Settlement Administration agreement without penalty.

5. Settlement Administrator agrees that it shall fully defend, indemnify, and hold harmless Allegiant, Diverse Logistics, and Mattress Firm and each of its parents, subsidiaries, affiliates, employees, directors, officers, agents or other representatives from and against any and all claims, demands, liabilities, actions, causes of action, suits, proceedings, controversies, disputes, damages, remedies, debts, rights of setoff, obligations, costs, expenses, expert fees, and attorney fees relating to, arising out of, or resulting from any breach or claimed breach by the Settlement Administrator of any representation, warranty, or covenant set forth in this Agreement. Allegiant, Diverse Logistics, and Mattress Firm shall have approval over outside counsel retained for an indemnified matter, which approval will not be unreasonably withheld.

5. These Requirements are incorporated into and made a part of the Decena Class Action Settlement Administration agreement between the Settlement Administrator and Allegiant, Diverse Logistics, and Mattress Firm to provide services in accordance with the Settlement Agreement.

Settlement Administrator hereby acknowledges and accepts these Data Security Requirements.

Simpluris, Inc.

DATED: 8/19/24_____

By:

A handwritten signature in blue ink, appearing to read "Doug S. Norman".

Name: Douglas S. Norman

Its: SVP Business Operations

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____[type of print full name], of Simpluris, Inc., 3194-C Airport Loop Dr, Costa Mesa, CA 92626, acknowledge that I have read in its entirety and understand the Allegiant Final Mile, LLC, Diverse Logistics & Distribution, LLC and Mattress Firm, Inc. Data Security Requirements and Agreement (“Agreement”) and that I agree to comply with it and to be bound by the terms and conditions of the Agreement.

Date:

Signature

Print Name