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

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

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

Defendants.

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

[*The Honorable Yvonne Gonzalez Rogers*]

**CLASS ACTION**

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

[CONCURRENTLY FILED WITH THE  
DECLARATION OF ARMAND R. KIZIRIAN;  
DECLARATION OF ERIC SPRINGER;  
[PROPOSED] ORDER]

Date: October 1, 2024

Time: 2:00 p.m.

Courtroom: 1 (4th Floor), Oakland Courthouse

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

**PLEASE TAKE NOTICE** that on Tuesday, October 1, 2024 at 2:00 p.m., or as soon thereafter as the matter can be heard in Courtroom 1 of the United States District Courthouse located at 1301 Clay Street, Oakland, California 94612, before the Honorable Yvonne Gonzalez Rogers, Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy (“Plaintiffs”) will and hereby do move this Court for an Order Granting Preliminary Approval of Class Action Settlement. Plaintiffs’ Motion is based on this Notice and the accompanying Memorandum of Points and Authorities and exhibits thereto; the Declaration of Armand R. Kizirian, and the respective exhibits thereto; the Proposed Order; this Court’s files and records; and any other evidence, briefing, or argument properly before this Court.

Plaintiffs filed this class action lawsuit to address their claims that they, and the class they seek to represent, are employees of Allegiant Final Mile, LLC, erroneously sued as Allegiant Final Mile, Inc. (“Allegiant”), Diverse Logistics and Distribution, LLC, erroneously sued as Diverse Logistics and Distribution, Inc. (“Diverse”) and Mattress Firm, Inc. (“Mattress Firm”) (collectively “Defendants”), and that the Defendants consistently failed to pay the Plaintiffs and their fellow contract carriers, truck drivers, and helpers for all hours worked, including overtime, and that they were not provided meal and rest periods.

Defendants vehemently deny all allegations and deny that they are liable, in any way, to Plaintiffs or the class that they seek to represent. Defendants assert that Plaintiffs, and the putative class that they seek to represent, contracted with Allegiant or the businesses that Allegiant contracted with to provide delivery services and that Plaintiffs, and the putative class that they seek to represent, were not employed by either of the three Defendants.

Before agreeing to endorse the settlement, Class/PAGA Counsel reviewed a substantial number of documents exchanged with Defendants, conducted thorough legal analysis of the claims, interviewed witnesses, and sought the experience and expertise of respected mediator, Antonio Piazza, Esq.

///

Plaintiffs, who ask this Court to appoint them as Representative Plaintiffs for the Settlement Class, have negotiated a settlement that, if approved by the Court, will result in the payment of nine hundred thousand dollars (\$900,000.00) to settle the class and PAGA claims at issue here. Plaintiffs now seek preliminary approval of this class action settlement.

Plaintiffs believe the settlement is fair, reasonable, and adequate. Plaintiffs respectfully request that the Court review the Settlement Agreement attached as Exhibit “1” to the Declaration of Armand R. Kizirian (“Kizirian Decl.”), and enter an order:

- (1) granting preliminary approval of the proposed Settlement;
- (2) conditionally certifying the Settlement Class for settlement purposes only;
- (3) approving the form, content and method of distribution of the Notice of Class and PAGA Action Settlement and Payment Information Form;
- (4) appointing Michael H. Boyamian and Armand R. Kizirian of Boyamian Law, Inc. as Class/PAGA Counsel;
- (5) appointing plaintiffs Christian Decena, Hiron Martinez, Miguel Rios, and Rigoberto Godoy as Representative Plaintiffs for the Settlement Class;
- (6) appointing Simpluris, Inc. as Settlement Administrator;
- (7) setting a filing deadline for Class/PAGA Counsel’s motion requesting attorneys’ fees, costs, enhancement award to Plaintiffs, which Plaintiffs respectfully request occur prior to the deadline for Settlement Class Members to file objections; and
- (8) scheduling a hearing regarding Class/PAGA Counsel’s request for attorney’s fees and costs, enhancement award to Plaintiffs, and final approval of the proposed Settlement.

Dated: August 23, 2024

Respectfully Submitted,  
BOYAMIAN LAW, INC.

By: /s/ Armand R. Kizirian  
Armand R. Kizirian  
Attorneys for Plaintiffs CHRISTIAN DECENA,  
HAIRON MARTINEZ, MIGUEL RIOS, and  
RIGOBERTO GODOY, and all others similarly  
situated

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Christian Decena, Hairon Martinez, Miguel Rios, and Rigoberto Godoy (“Plaintiffs”) seeks preliminary approval of a settlement on behalf of themselves and the putative Class comprised of (a) all individuals who provided services to Allegiant Final Mile, LLC (“Allegiant”) delivering Mattress Firm, Inc. (“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 the date of preliminary approval (“Settlement Class” or “Settlement Class Members”).

Plaintiffs allege that they and the Class Members were misclassified as independent contractors while performing services for Defendants, and therefore were denied the protections of the California Labor Code and wage orders. Plaintiffs therefore alleged claims for unpaid wages, minimum wages, overtime pay, meal and rest break violations, failure to reimburse business expenses, wage statement and waiting time penalties, and other legal and equitable relief, as well as reasonable attorneys’ fees and costs.

The main terms of the Settlement are as follows:

- a. Allegiant agreed to pay the all-in, non-reversionary sum of nine hundred thousand dollars and zero cents (\$900,000.00) (“Gross Settlement Amount”) on behalf of Defendants to settle the Action, which shall include the amounts to be paid to Settlement Class Members, court-approved attorneys’ fees and costs, court-approved service and release awards to the representative plaintiffs, the PAGA Fund for the payment to the LWDA and PAGA Group Members, Mediation Cost Credit, and court-approved costs of settlement administration.
- b. Settlement Class Members will receive a portion of the Net Class Settlement Amount as long as they do not opt out of the Settlement by submitting valid and timely exclusion forms to the Settlement Administrator, as set forth below and as explained in the Notice of Class and PAGA Action Settlement (“Notice”). Class Members will also

be given the opportunity to submit a Payment Information Form in order to submit a tax identification number to ensure payment and to correct any errors as to the number of Qualifying Class and/or PAGA Workweeks during which a Class Member and/or 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 during the Class/PAGA periods covered by the Settlement.

The Settlement Agreement, including all exhibits, is attached as Exhibit “1” to the Declaration of Armand R. Kizirian in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Kizirian Decl.”), filed herewith.

### III. FACTUAL BACKGROUND AND THE PARTIES’ CONTENTIONS

Defendant Allegiant is a logistics company that contracts with retailers, such as Mattress Firm, to handle the logistics for consumer deliveries in California. Allegiant’s logistics work includes utilizing its property brokerage authority to place Mattress Firm goods with Contract Carriers that have the equipment (trucks) and labor (typically a driver and helper per truck) to physically deliver the goods.<sup>1</sup> The Contract Carriers and their workers—referred to here as “Drivers” and “Helpers”—are the focus of this suit. Information exchanged in the litigation shows that, while Defendant Diverse shares some common ownership with Allegiant, Diverse does not operate in California and does not have any employees or independent contractors in California. Kizirian Decl., ¶ 6.

This freight that putative Class Members moved were products provided by Defendant Mattress Firm. Along with Allegiant’s personnel, the warehouses that the Contract Carriers, Drivers,

---

<sup>1</sup> “Contract Carrier” is a term of art in the transportation industry for a motor carrier providing transportation service to meet the special needs of an individual shipper. *See, e.g.*, Freight Motor Carrier Oversight: Hearing Before the Subcomm. on Surface Transp. of the Comm. on Commerce, Sci., and Transp., 102d Cong. 10 (1991) (“Contract carrier authority allows carriers to tailor specific service standards to individual shippers and is considered an extremely important marketing tool in securing shipper business.”); *BML Stage Lighting, Inc. v. Mayflower Transit, Inc.*, 14 S.W.3d 395, 403 (Tx. Ct. App. 2000) (a “contract carrier provides transportation of “property for compensation under continuing agreements with one of more persons (i) by assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or (ii) designed to meet the distinct needs of each such person.”) (cleaned up).

1 and Helpers operated out of were also staffed by employees of Mattress Firm. Essentially, while  
2 Allegiant's role was focused more upon the logistics of planning the deliveries to Mattress Firm's  
3 customers, it is Plaintiffs' contention that Mattress Firm's role was in ensuring that the Contract  
4 Carriers, Drivers, and Helpers provided the appropriate customer experience while conducting the  
5 deliveries. Plaintiffs Christian Decena, Hairon Martinez, and Miguel Rios were Contract Carriers that  
6 contracted with Allegiant during the Class Period. Plaintiffs Christian Decena, Hairon Martinez,  
7 Miguel Rios, and Rigoberto Godoy all worked as Drivers for Contract Carriers that contracted with  
8 Allegiant during the Class Period. In addition, Plaintiff Rigoberto Godoy worked as a Helper for  
9 Contract Carriers that contracted with Allegiant during the Class Period. Kizirian Decl., ¶ 7.

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

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

23 There are approximately 600 putative Class Members who currently or formerly delivered  
24 Mattress Firm products as Contract Carriers, Drivers, and Helpers in the State of California. As noted,  
25 Plaintiffs claim that these Contract Carriers, Drivers, and Helpers were Defendants misclassified  
26 independent contractors who should have been treated as employees. However, because Defendants  
27 maintain that these Contract Carriers, Drivers, and Helpers were not their employees, Defendants  
28

cannot be liable for the allegedly unpaid wages, penalties, or other damages, that were sought in this action. Kizirian Decl., ¶ 10.

#### IV. PROCEDURAL BACKGROUND

On March 24, 2023, Plaintiffs filed this case in Alameda County Superior Court on behalf of all individuals who performed delivery services for Defendants as Contract Carriers, Drivers, and/or Helpers and worked in the State of California from September 27, 2018, and continuing while the action was pending. The Complaint included nine causes of action: (1) Failure to Pay Minimum Wages; (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 and Hour Statements; (8) Waiting Time Penalties; and (9) Unfair Competition. On June 6, 2023, Plaintiffs filed a First Amended Complaint which added a tenth cause of action under the Private Attorneys General Act of 2004. Kizirian Decl., ¶ 11.

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

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

From before they filed suit, but especially in the months leading up to mediation, Class/PAGA Counsel conducted a thorough investigation into the relevant facts and legal claims. Class/PAGA Counsel formulated a list of documents and data they would need from Defendants in order to conduct

1 a meaningful mediation. After meeting and conferring with Defendants' Counsel on this matter,  
2 Defendants informally produced substantial amounts of data and documentary evidence to Plaintiffs.  
3 With this data, Class/PAGA Counsel estimated the amount of damages potentially available to  
4 putative Class Members based on the scope of wage and hour violations, assuming Plaintiffs  
5 successfully established misclassification. Through the efforts of Plaintiffs themselves, Class/PAGA  
6 Counsel was also able to contact various other Contract Carriers, Drivers, and Helpers in the putative  
7 Class, thus allowing Class/PAGA Counsel to gain a better understanding of the strengths and  
8 weaknesses of the case before attending mediation. Kizirian Decl., ¶ 14.

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

16 In January 2024, following the Parties' mediation, Class/PAGA Counsel came to believe that  
17 the federal Department of Labor might initiate their own action against Defendant Allegiant for  
18 alleged wage and hour violations. Not wanting to inadvertently undermine a government enforcement  
19 action that could result in an objection to the Parties' settlement, Plaintiffs gave the Department of  
20 Labor time to initiate their own action with the idea of potentially taking such action into account in  
21 framing the scope of the Parties' settlement. As Plaintiffs are not aware of the Department of Labor  
22 initiating such an action, the Parties moved ahead with finalizing their Settlement. Kizirian Decl., ¶  
23 16.

24 Based on their independent investigation and evaluation, Class/PAGA Counsel are of the  
25 opinion that the Settlement with Defendants for the consideration and on the terms set forth in the  
26 Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of the Putative  
27 Settlement Class Members, in light of all known facts and circumstances, including the risk of  
28 significant delay, the risk that if this matter is litigated a class may not be certified by the Court or that

it may later be decertified, the risk that Defendants will prevail on their defenses, as well as potential appellate issues. Kizirian Decl., ¶ 17.

### **V. TERMS OF THE SETTLEMENT**

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

### **VI. THE PROPOSED SETTLEMENT COMPLIES WITH THE NORTHERN DISTRICT’S PROCEDURAL GUIDANCE FOR CLASS ACTION SETTLEMENTS**

#### **(1) Information About the Settlement**

##### *Scope of the Settlement Class*

The putative Class as defined in the operative Second Amended Complaint is defined as “All individuals who performed delivery services for Defendants as Contract Carriers, Drivers, and/or Helpers and worked in the State of California delivering goods from Defendant MFI from September 27, 2018 and continuing while this action is pending.” Second Amended Complaint, Dkt. No. 46, ¶ 39.

This is modestly different from the definition in the Settlement Agreement which defines the proposed class as “(a) all individuals who provided services to Allegiant delivering Mattress Firm products as contract carrier owners, drivers and/or helpers in the State of California; and (b) all contract carrier owners who owned or controlled an entity that contracted directly with Allegiant and provided delivery services delivering Mattress Firm products in the State of California, at any time during the Class Period”. Settlement Agreement, ¶ II(D). Class Period is itself defined as “the period from January 1, 2020 through the date the Court grants preliminary approval of this Settlement.” Settlement Agreement, ¶ II(H).

The shorter class period in the Settlement Agreement, i.e., beginning on January 1, 2020 instead of September 27, 2018, reflects the fact that Allegiant did not begin contracting with, and providing services to, Mattress Firm in the State of California until January 1, 2020. Moreover, while part (a) of the class definition in the Settlement Agreement mirrors the class definition as set forth in the Second Amended Complaint, part (b) was added by the Parties to ensure that any owners of a Contract Carrier who might not have directly driven themselves were included within the class

1 definition. Thus, the addition of part (b) was not meant by Plaintiffs to expand the scope of the class,  
 2 but was rather put into the Settlement Agreement to ensure that no owner of a Contract Carrier was  
 3 inadvertently excluded. Kizirian Decl., ¶ 18.

#### 4 Scope of the Release

5 While the released claims are broader than the claims asserted by Plaintiffs in the Second  
 6 Amended Complaint, they are appropriate here as the claims to be released limited to those claims that  
 7 were alleged or could have been alleged in this case and tied to the pled facts. Particularly, the release  
 8 specifies that it is based on those claims “...that arise from, were alleged, or could have been alleged  
 9 in the Action...”. Settlement Agreement, ¶ II(NN). Thus, the release is not strictly limited to the  
 10 claims asserted by Plaintiffs in the Complaints and PAGA Letters, the release is not overbroad  
 11 because it is tied to the alleged conduct of Defendants and prevents Defendants from facing litigation  
 12 from Settlement Class Members for essentially the same alleged conduct as asserted in this suit,  
 13 without being so broad as to foreclose *any* possible litigation against Defendants by Settlement Class  
 14 Members for an overlapping time period.

#### 15 Value of the Claims

16 Class/PAGA Counsel offers the following maximum theoretical value of claims. However, the  
 17 following analysis does not take into account discounting for the merits of certain claims and for  
 18 potential arguments Defendants may assert to limit liability.

19 Based on the data provided by Defendants’ Counsel and the outreach undertaken by  
 20 Class/PAGA Counsel, Plaintiffs calculate that Contract Carriers were paid approximately \$30.72 per  
 21 hour while Drivers and Helpers were paid about \$20.64 per hour. Plaintiffs further estimate that the  
 22 average shift length was approximately 9 hours in length. As the flat pay provided to Contract  
 23 Carriers, Drivers, and Helpers would not account for overtime, Plaintiffs estimate that each Contract  
 24 Carrier, Driver, and Helper experienced approximately one hour of off-the-clock time each day.  
 25 Moreover, Plaintiffs note that while unpaid minimum wages were a separate cause of action pled in  
 26 this suit, practically, because the unpaid time was entirely unpaid *overtime*, the unpaid minimum  
 27 wages are subsumed within the unpaid overtime hours. Similarly, while Plaintiffs asserted a separate  
 28 cause of action for unlawful deductions under Labor Code Sections 221 and 223, because Plaintiffs

1 would not be permitted to claim a double recovery, success on their unpaid wages claims would  
2 necessarily subsume the recoverable damages with their unlawful deductions cause of action. Kizirian  
3 Decl., ¶ 19.

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

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

17 As to meal and rest break claims, the Class Members damages would be based upon their  
18 regular rate of pay, not their overtime rate of pay. Thus, for Contract Carriers this figure is \$30.72,  
19 and for Drivers and Helpers it is \$20.64 as set forth above. An individual may only receive a single  
20 meal break and a single rest break penalty per day. Plaintiffs contend that Defendants did not have  
21 any meal and rest break policies in place due to the alleged independent contractor misclassification,  
22 and as Class Members reported regularly being in a state of hurry to Class/PAGA Counsel to go from  
23 delivery to delivery, Plaintiffs calculated the violation rate at just about 80%. In other words,  
24 Plaintiffs contend that Class Members experienced a meal or rest break violation on average of four  
25 out of every five days in a workweek. Kizirian Decl., ¶ 22.

26 With a meal break and rest break violation occurring on four out of the five days of each  
27 workweek, Contract Carriers would be entitled to \$122.88 in weekly meal and rest break penalties.  
28 Similarly, Drivers and Helpers would be owed \$82.56 per week in meal and rest break penalties.

1 Based upon Defendants' data, this would amount to \$242,810.88 for Contract Carriers for the  
 2 approximately 1,976 workweeks and \$652,719.36 for Drivers and Helpers for the approximately 7,906  
 3 workweeks. Combined, Plaintiffs estimate the Class's damages for meal and rest break penalties  
 4 totaled \$895,530.24. Kizirian Decl., ¶ 23.

5 In terms of waiting time penalties, based on Allegiant's data, Plaintiffs believe that turnover  
 6 was very high with up to 450 of the Settlement Class Members becoming former workers for  
 7 Defendants within the slightly shorter statutory period reaching back to March 23, 2020. Plaintiff also  
 8 believe that turnover was higher among Drivers and Helpers than with Contract Carriers. From these  
 9 450 former workers of Defendants, Plaintiffs estimate that 50 were Contract Carriers and 400 were  
 10 Drivers or Helpers. For Contract Carriers, based on a \$30.72 hourly wage, a nine-hour workday  
 11 would result in a daily wage of \$291.84 ( $[\$30.72 * 8 \text{ hours}] + [\$30.72 * 1.5 \text{ OT premium} * 1 \text{ hours}]$ ).  
 12 Multiplied by thirty days, for an estimated 50 Contract Carriers, this amounts to \$437,760. Kizirian  
 13 Decl., ¶ 24.

14 For 200 former Drivers and Helpers, based upon a \$20.64 hourly wage, a ten-hour workday  
 15 results in a daily wage of approximately \$196.08 ( $[\$20.64 * 8 \text{ hours}] + [\$20.64 * 1.5 \text{ OT premium} * 1$   
 16  $\text{hour}]$ ). Multiplied by thirty days, for an estimated 400 Drivers and Helpers, this amounts to  
 17 \$2,352,960. For all former Settlement Class Members, the waiting time penalties therefore amount to  
 18 \$2,790,720. Kizirian Decl., ¶ 25.

19 In terms of inaccurate wage statement penalties, the statutory period for this claim reaches back  
 20 one year prior to filing suit, i.e., to March 23, 2022. As this would cut the class period reaching back  
 21 to January 1, 2020 to about half, Plaintiffs estimate that about 4,941 of the 9,882 workweeks would  
 22 have occurred during the statutory period for this claim. Based upon a two-week pay period, Plaintiffs  
 23 estimate that there are therefore approximately 2,471 pay periods subject to the wage statement  
 24 penalty claim. To simplify the arithmetic, if the \$100 penalty amount from Labor Code Section 226(e)  
 25 is used for these 4,000 pay periods, then the amount owed to the Settlement Class in inaccurate wage  
 26 statement penalties totals \$247,100. Kizirian Decl., ¶ 26.

27 The unreimbursed business expense claim in this matter is also significant. The most notable  
 28 unreimbursed business expenses, e.g., fuel costs, truck leasing costs, and insurance costs, would have

1 been borne by the Contract Carriers as opposed to the Drivers and Helpers. Plaintiffs believe Contract  
 2 Carriers paid approximately \$1,000 for these charges per week that were not adequately compensated  
 3 for by Defendants in their payments to the Contract Carriers. For 1,976 workweeks, this therefore  
 4 totals \$988,000. With Drivers and Helpers, the main unreimbursed business expense would have been  
 5 for their cell phones. If this amounted to a weekly unreimbursed charge of \$12.50, then for 7,906  
 6 workweeks, this figure amounts to \$98,825. Altogether then, the Settlement Class's unreimbursed  
 7 business expense claim is worth approximately \$1,086,825. Kizirian Decl., ¶ 27.

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

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

23 As a *theoretical maximum accounting for no discounting*, the Settlement Class could claim  
 24 \$6,946,394.44 in damages. This is broken down as \$1,679,119.20 in unpaid wages, \$895,530.24 in  
 25 meal and rest break penalties, \$2,790,720 in waiting time penalties, \$247,100 in inaccurate wage  
 26 statement penalties, \$1,086,825 in unreimbursed business expenses, and \$247,100 in PAGA penalties.  
 27 Kizirian Decl., ¶ 30.

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1 Finally, the Unfair Competition Law (“UCL”) claim was alleged in Plaintiffs’ ninth cause of  
 2 action. Under the UCL’s statute of limitations provision, “[a]ny action to enforce any cause of action  
 3 pursuant to [the UCL] shall be commenced within four years after the cause of action accrued.” Cal.  
 4 Bus. & Prof. Code § 17208. Thus, the statute of limitations for claims seeking restitution, including  
 5 those claims in this case for unpaid wages, unpaid overtime, meal and rest period premiums, and  
 6 reimbursement of necessary business expenses, was extended to four years through the pleading of a  
 7 companion claim under the UCL. Notwithstanding, the start of the class period in the Settlement  
 8 begins on January 1, 2020 instead of September 27, 2018, given the fact that Allegiant did not begin  
 9 contracting with, and providing services to, Mattress Firm in the State of California until January 1,  
 10 2020. Plaintiffs specifically included the claim for violation of the UCL to extend the statute of  
 11 limitations from three to four years on the wage and hour claims and as an independent basis for  
 12 recovery; thus, the UCL claim is properly included in the release. Kizirian Decl., ¶ 31.

13 The \$900,000 settlement represents approximately 13% of the theoretical maximum recovery.  
 14 The discount applied here between the maximum possible damages of \$6,946,394.44 and the \$900,000  
 15 settlement amount is appropriate given the significant hurdles that this case faces if litigated through to  
 16 trial. First, and most prominently, Plaintiffs face a real risk they may not be able to establish  
 17 misclassification. Defendants maintain that Plaintiffs and the Contract Carriers, Drivers, and Helpers  
 18 were properly classified as independent contractors. To that end, Defendants were careful to impart a  
 19 degree of control to the Contract Carriers to not run afoul of the ‘control test’ as set forth in *S. G.*  
 20 *Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989). Notably, the  
 21 *Borello* test is likely applicable to Labor Code claims, most relevantly, to the unreimbursed business  
 22 expense claim which has no analogue under the wage orders. *See Bowerman v. Field Asset Servs.,*  
 23 *Inc.*, 60 F.4th 459, 472 (9th Cir. 2023); *Garcia v. Border Transportation Group, LLC*, 28 Cal.App.5th  
 24 558 (2018). Kizirian Decl., ¶ 32.

25 California’s ‘ABC test’ may not apply to Drivers and Helpers, because as they never  
 26 contracted with either Allegiant, Diverse, or Mattress Firm, California’s joint employment test as set  
 27 forth in *Martinez v. Combs*, 49 Cal. 4th 35 (2010), would apply instead. And Allegiant would  
 28 additionally argue that California’s ‘business-to-business’ exemption, Cal. Lab. Code § 2776, would

1 prevent the ‘ABC test’ from applying to Contract Carriers, which are organized as formal business  
2 entities and often hire their own workers and control significant fleets of trucks. Kizirian Decl., ¶ 33.

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

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

24 Finally, and perhaps most importantly, liability aside, Plaintiffs run the very real risk of not  
25 being able to secure class certification on a contested motion. While Plaintiffs contend that putative  
26 Class Members were misclassified, it is nevertheless true that the way each Contract Carrier conducted  
27 operations, including from the Drivers and Helpers it formally employed, varied to an extent between  
28 them. For the Contract Carriers themselves, the nature of their work was less consistent than with

1 Drivers and Helpers. Thus, even if most or all of the Contract Carriers, Drivers, and Helpers can be  
 2 said to have been misclassified, whether class certification outside of the settlement context under  
 3 Rule 23 would be granted is a very different question. Thus, while the \$900,000 gross settlement  
 4 amount appears at first glance to be a substantial discount on the maximum damages available. Given  
 5 the risks of this particular suit, the amount is extremely reasonable and results in a good settlement for  
 6 the putative class. Kizirian Decl., ¶ 36.

7 *Other Cases That Will be Affected by the Settlement*

8 Plaintiffs are not aware of any other suit that will be impacted by the instant settlement.  
 9 Kizirian Decl., ¶ 37.

10 *Allocation Plan*

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

as with the class claims, but with the major difference that the PAGA period will span from March 31, 2022 to the date of preliminary approval. Settlement Agreement, ¶¶ II(GG); IV(J)(2). Kizirian Decl., ¶ 38.

Claim Form

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

Any portion of the Net Class Settlement Amount and Net PAGA Settlement Amount that was allocated to Settlement Class Members or PAGA Group Members for whom there was no social 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 paid up to \$600 of their portion of the Net Class Settlement Amount or Net PAGA Settlement Amount, as applicable, in compliance with Internal Revenue Service rules. Any amount in excess of \$600 owed to such Settlement Class Members or PAGA Group Members, for whom the Settlement Administrator does not have a social security number or tax identification number and who did not submit valid Payment Information Forms, shall be reallocated on a pro rata basis to those Settlement Class Members and PAGA Group Members for whom social security or other tax identification numbers are available, or who submitted valid and timely Payment Information Forms. Settlement Agreement, ¶ IV(J)(5).

Non-Reversionary Settlement

This is a non-reversionary settlement. Settlement Agreement, ¶ II(S). Any uncashed funds will be sent to the California State Controller's Unclaimed Property Fund in the name of the Settlement Class Member. Settlement Agreement, ¶ IV(O).

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1                   **(2) Settlement Administration**

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

11           The Settlement Administrator has entered into a Data Privacy Agreement (attached to the  
12 Kizirian Declaration as Exhibit “7”) which governs the procedures for securely handling class member  
13 data, in accordance with the Northern District guidelines.

14           See Section VII(A)(6), The Settlement Administrator Costs are Reasonable, *infra* for Plaintiffs’  
15 showing with regard to the qualifications of the proposed Settlement Administrator, Simpluris, Inc.,  
16 and the selection process.

17                   **(3) Settlement Notice and Payment Information Form, Opt-Outs, and Objections**

18           The Parties have worked to ensure that the Notice of Class and PAGA Settlement and the  
19 Payment Information Form are in plain English and are easily understandable by the Settlement Class  
20 Members. These two documents are attached Exhibits “A” and “B” to the Settlement Agreement.  
21 Moreover, both of these documents shall be translated into Spanish for the Class Members and PAGA  
22 Group Members by the Settlement Administrator. Settlement Agreement, ¶ IV(C)(2).

23           The Notice of Class and PAGA Action Settlement contains contact information for  
24 Class/PAGA Counsel (page 3), the web address for a website maintained by the Settlement  
25 Administrator containing key information (page 8), instructions on how Settlement Class Members  
26 may access documents via PACER (page 1), the date and time of the final approval hearing (pages 1,  
27 8), and a note that the final approval hearing date and time are subject to change (page 8). Settlement  
28 Agreement, Exhibit “A”, Notice of Proposed Class and Representative PAGA Action Settlement.

The notice distribution plan is effective because it is the least burdensome process under the circumstances. Class Members will be notified of the settlement via First Class U.S. Mail. Settlement Agreement, ¶ IV(C). Importantly, this is not a claims-made settlement. However, Class Members are strongly encouraged to submit Payment Information Forms where they can provide their tax identification number. The Parties set up this process because Defendants do not have the tax identification number for all Settlement Class Members. By requesting, but not requiring, that all Settlement Class Members return the Payment Information Form, Plaintiffs believe that the number of Settlement Class Members who will be able to receive a settlement check will be maximized. Kizirian Decl., ¶ 42.

#### **(4) Opt-Outs**

Settlement Class Members who wish to exclude themselves from the class settlement may do so by submitting an opt-out to the Settlement Administrator. In order to opt-out, the class member must provide their name, address, telephone number, and the last four digits of their Social Security Number. Settlement Agreement, ¶ IV(E).

#### **(5) Objections**

Settlement Class Members are able to object to the settlement by informing the Settlement Administrator or filing directly with the Court. Settlement Agreement, ¶ IV(H)(1); Notice of Proposed Class and Representative PAGA Action Settlement, p. 7. The Notice of Proposed Class and Representative PAGA Action Settlement requests that the Settlement Class Member state the basis of their objection, include their full contact information, and provides to the Settlement Class Member the address for the clerk's office for submitting objections. *Id.*

#### **(6) Attorneys' Fees and Costs**

See Section VII(A)(4), Plaintiffs' Request for Attorneys' Fees and Costs is Reasonable, *infra*.

#### **(7) Representative Plaintiffs Service and Release Award**

See Section VII(A)(5), Plaintiffs' Proposed Enhancement Award is Reasonable, *infra*.

#### **(8) Cy Pres Awardees**

N/A – Any uncashed funds will be sent to the California State Controller's Unclaimed Property Fund in the name of the class member. Settlement Agreement, ¶ IV(O).

1           **(9) Timeline**

2           Settlement Class Members shall have 60 days to submit the optional Payment Information  
3 Form, opt-out, or object to the Settlement. Settlement Agreement, ¶ IV(E), (H)(1), (J)(2).

4           **(10) Class Action Fairness Act (CAFA)**

5           As the proffered settlement involves the resolution of class claims, notice under the Class  
6 Action Fairness Act of 2005 is required. *See* 28 U.S.C. Section 1715(b). It shall be the responsibility  
7 of the Settlement Administrator to provide the appropriate notices required by the Class Action  
8 Fairness Act. Settlement Agreement, ¶ IV(K)(1).

9           Plaintiffs are submitting notice of this settlement and the Motion for Preliminary Approval  
10 with California’s Labor and Workforce Development Agency contemporaneously with the filing of  
11 this Motion. Kizirian Decl., ¶ 43.

12           **(11) Comparable Outcomes**

13           *See* Section VII(A)(3), The Settlement Falls Within the Range of Possible Approval, *infra*.

14           **VII. LEGAL ARGUMENT**

15           **A. Preliminary Approval of the Settlement is Appropriate.**

16           The dismissal or compromise of a class action requires court approval. Fed. R. Civ. P. 23(e).  
17 A court should grant preliminary approval of a settlement if it “appears to be the product of serious,  
18 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant  
19 preferential treatment to class representatives or segments of the class, and falls within the range of  
20 possible approval.” *See In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007).  
21 A court should also apply its discretion in light of the judicial policy favoring settlement of complex  
22 class action litigation. *See, e.g., Officers for Justice v. CM! Serv. Comtnn of City & Cnty. of San*  
23 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (“[I]t must not be overlooked that voluntary conciliation  
24 and settlement are the preferred means of dispute resolution. This is especially true in complex class  
25 action litigation. . .”). As discussed below, application of the relevant factors to this case supports  
26 preliminary approval.

27           ///

28           ///

1                   1. The Settlement is the Product of Informed, Non-Collusive Negotiation.

2                   Adequate discovery and the use of an experienced mediator support the conclusion that  
3 settlement negotiations were informed and non-collusive. *See Villegas v. J.P. Morgan Chase & Co.*,  
4 2012 U.S. Dist. LEXIS 166704, at \*1546 (N.D. Cal. 2012). That is what happened here.

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

14                  Thus, here, the Settlement Agreement was reached through arm's-length negotiations by  
15 experienced counsel familiar with the applicable law, class action litigation, and the facts of this case.  
16 The settlement was the product of well-informed, non-collusive negotiations and mediation.

17                   2. The Risks of Further Litigation Support Preliminary Approval.

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

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

Even if Plaintiffs can show that Contract Carriers, Drivers, and Helpers were not independent contractors, Defendants can assert numerous defenses regarding liability and damages. For instance, Defendants contend that the Contract Carriers with which they contracted to perform delivery services employed Drivers and Helpers, creating both a conflict within the class if pursued, and also shifting liability away from Defendants. Moreover, Defendants may be able to successfully argue that Plaintiffs and Putative Class Members are not entitled to overtime pursuant to Cal. Code Regs tit. 8 § 11020(3)(J)(1), and that their California meal breaks or rest breaks claims are preempted by the FMSCA, significantly gutting the maximum damages at issue. Kizirian Decl., ¶ 47.

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

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

### 3. The Settlement Falls Within the Range of Possible Approval.

In deciding whether the proposed settlement is adequate and falls within the range of possible approval, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer", while taking into account the risks of continuing litigation. *See In re Tableware Antitrust Litig.* 484 F.Supp.2d at 1080. Courts should recognize that "the agreement reached normally embodies compromise; in exchange for the saving of cost and elimination of risk, the Parties each gave up something they might have won had they proceeded with litigation." *Officers for Justice*, 688 F.2d at 624, (internal quotations and citation omitted). "[I]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment." *Villegas*, 2012 -U.S. Dist. LEXIS 166704 at 96 (internal quotations and citations omitted).

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

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

In order to properly value the claims at issue, however, these figures must be reduced according to the likelihood that Plaintiffs will prevail on their motion for class certification. Moreover, even if class certification is granted, the figures must be further be reduced according to the likelihood that Plaintiffs will ultimately be able to prevail on the merits. As set forth above, for the purposes of settlement only, Plaintiffs acknowledge that this case may face significant hurdles at both the certification and the liability phases of the litigation, particularly with regard to FMCSA preemption. Kizirian Decl., ¶ 52.

Based on the foregoing, the Settlement will result in a fair and reasonable award to Settlement Class Members in light of the litigation risks. The net amount of the \$900,000 to be paid to the Class under the proposed Settlement (after payment of Class Counsel's attorneys' fees [\$297,000], litigation costs [\$25,000], Settlement Administration Costs [\$17,270], the Class Representative Enhancement [\$10,000 \* 4], and LWDA portion of the PAGA allocation [\$22,500]), will be at least \$498,230. For the 600 Putative Class Members, the payout under this amount would be approximately \$830 per Putative Class Member. Thus, the Settlement avoids the risks of litigation while ensuring that Settlement Class Members receive substantial consideration for a release of their claims. The

Settlement also affords relief to Settlement Class Members who likely would not have pursued individual claims. Kizirian Decl., ¶ 53.

Under the circumstances, the amount of the settlement is fair, adequate and reasonable. See *Scott v. Bimbo Bakeries USA* (E.D. Pa. 2014) No. 2:10cv03154 (ECF No. 174) (approving a settlement of wage and hour claims for payments of \$900 to each current driver and \$450 to each former driver, plus \$12,500 enhancement payments); *Vero v. Aaron Bros.*, (N.D. Cal. 2013) 2013 U.S. Dist. LEXIS 178511 (granting preliminary approval of settlement of wage and hour claims where the average recovery would be between approximately \$28 and \$45); *Bautista v. Harvest Management Sub*, (C.D. Cal. 2013) No. 2:12-cv-10004 (ECF No. 60) (preliminarily approving a \$2.2 million settlement of wage-and-hour violation claims of 14,000-member class).

Plaintiffs additionally provide the following chart comparing this settlement to two other similar cases, the settlement in *Henriquez v. DSI Logistics*, Los Angeles County Superior Court Case No. BC714165, and *Matute v. Pilot Air Freight*, Northern District of California Case No. 4:22-cv-00587-YGR. The Settlement Agreement of the *Henriquez* matter and the Declaration of Aaron C. Gundzik dated October 29, 2019 (without exhibits) in support thereof are attached as Exhibit “3” and Exhibit “4”, respectively, to the Kizirian Declaration. Similarly, the Final Approval Order, which incorporates the Settlement Agreement of the *Matute* matter, and the Declaration of Armand R. Kizirian re *Matute* dated May 16, 2023 (without exhibits) are attached as Exhibit “5” and Exhibit “6” to the Kizirian Declaration.

|                         | <i>Matute v. Pilot Air Freight</i>                                                                                                        | <i>Henriquez v. DSI Logistics</i>                                                                    | <i>Decena v. Allegiant</i>                                                                                        |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Claims being released   | All claims that “arise from or are reasonably related to the conduct alleged in the First Amended Complaint”. <i>Matute</i> SA, ¶ II(DD). | “...any and all claims... relating to the claims alleged in Action...” <i>Henriquez</i> SA, ¶ II(Z). | All claims that “arise from, were alleged, or could have been alleged in Action”. Settlement Agreement, ¶ II(NN). |
| Total settlement fund   | \$650,000<br><i>Matute</i> SA, ¶ II(U).                                                                                                   | \$2,000,000<br><i>Henriquez</i> SA, ¶ I.                                                             | \$900,000<br>Settlement Agreement, ¶ II(S).                                                                       |
| Number of class members | 624<br><i>Matute</i> Final Approval Order, p. 4.                                                                                          | 2,676<br><i>Henriquez</i> SA, ¶ I(F).                                                                | 600<br>Kizirian Decl., ¶ 10.                                                                                      |

|                                                    |                                                                                           |                                                                                               |                                                                                                   |
|----------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Method of notice                                   | U.S. Mail<br><i>Matute</i> SA, ¶ IV(C).                                                   | U.S. Mail<br><i>Henriquez</i> SA,<br>¶ IV(C).                                                 | U.S. Mail<br>Settlement<br>Agreement,<br>¶ IV(C)(2).                                              |
| Number/percentage<br>claim forms<br>submitted      | N/A                                                                                       | N/A                                                                                           | N/A                                                                                               |
| Average recovery per<br>class member               | \$677.18 (net amount)<br><i>Matute</i> Final Approval<br>Order, p. 4.                     | \$480 (net amount)<br><i>Henriquez</i> SA, ¶ I(F).                                            | \$830 (estimated net<br>amount)<br><i>Kizirian</i> Decl., ¶ 53.                                   |
| Amount distributed to<br><i>cy pres</i> recipients | None – Uncashed<br>amounts to unclaimed<br>property fund.<br><i>Matute</i> SA, ¶ IV(O).   | None – Uncashed<br>amounts to unclaimed<br>property fund.<br><i>Henriquez</i> SA,<br>¶ IV(O). | None – Uncashed<br>amounts to<br>unclaimed property<br>fund.<br>Settlement<br>Agreement, ¶ IV(O). |
| Administrative costs                               | \$12,550<br><i>Matute</i> Final Approval<br>Order, p. 3.                                  | \$20,000<br><i>Henriquez</i> SA, ¶ I(A).                                                      | \$17,270<br><i>Kizirian</i> Decl., ¶ 53.                                                          |
| Attorneys' fees and<br>costs                       | \$162,500 (fees),<br>\$18,460.45 (costs).<br><i>Matute</i> Final Approval<br>Order, p. 3. | \$666,666 (fees),<br>\$12,000 (costs)<br><i>Henriquez</i> SA, ¶¶ I(B),<br>(C).                | \$297,000 (estimated<br>fees), \$25,000<br>(estimated costs)<br><i>Kizirian</i> Decl., ¶ 53.      |
| Total possible expo                                | \$16,992,576.87 with<br>PAGA penalties.<br><i>Matute</i> <i>Kizirian</i> Decl.,<br>¶ 27.  | \$12,546,500 not<br>including PAGA (which<br>were pled).<br>10/29/19 <i>Gundzik</i> Decl.     | \$6,946,394.44 with<br>PAGA penalties.<br><i>Kizirian</i> Decl., ¶ 30.                            |

The plan of allocation in this matter is also fair and reasonable. The Settlement provides that the settlement fund shall be allocated based on the number of weeks Settlement Class Members worked during the Class Period. *See, e.g., Ching v. Siemens Indus.*, 2013 U.S. Dist. LEXIS 169279 at \*19 (N.D. Cal. 2013) (granting preliminary approval of settlement and finding that weeks worked was a reasonable basis for allocating individual payments). Those Settlement Class Members who return payment information forms will get paid in an amount of their pro rata share of the settlement fund based upon their total weeks of work as shown by Defendants' records. Even those who do nothing may also receive a share of the settlement fund if the Settlement Administrator has a taxpayer identification number on file for them as provided by Defendants. If no taxpayer identification number is on file, the Settlement Administrator shall nevertheless be able to pay that Class Member up to \$600 of the amount the Settlement Class Member is due in conformity with IRS rules. Settlement Agreement, ¶ IV(J)(5). If a Settlement Class Member disagrees with the number of workweeks they

1 have been allocated based upon Defendants' records, the settlement provides a mechanism to contest  
2 their allocation as set forth in the notice documents.

3 4. Plaintiffs' Request for Attorneys' Fees and Costs is Reasonable.

4 The Settlement provides that, prior to the final approval hearing, Class Counsel may petition  
5 the Court for an award of fees and litigant expenses. However, the Settlement does not specifically set  
6 forth an amount for the attorneys' fees and costs that Class Counsel may seek. Nevertheless,  
7 Class/PAGA Counsel does not intend to seek fees in excess of 33% of the \$900,000 gross settlement,  
8 i.e., \$297,000. Similarly, Class Counsel does not intend to seek litigant expenses in excess of \$25,000.  
9 Kizirian Decl., ¶ 54.

10 Class/PAGA Counsel submit that these amounts are fair and reasonable given their investment  
11 of time and expense in pursuing this action, their contingent fee risk, and the result that they have  
12 achieved for the Settlement Class Members. The fees that will be requested are based on the amount  
13 that will be paid out to the Settlement Class, and are within the range of reasonableness established by  
14 Ninth Circuit authority. *See, e.g., Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149 \*17  
15 (N.D. Cal. 2009) (observing that class action fee awards average around one-third of the recovery)  
16 (citations omitted); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (2002) ("exceptional  
17 results" in "absence of supporting precedents" is relevant to fee determination).

18 Class/PAGA Counsel have expended significant time litigating this matter, with a risk of no  
19 recovery. With their application for fees and costs, Class Counsel will provide the Court with a  
20 detailed breakdown of their hours worked and fees incurred for a lodestar cross-check. Many courts  
21 have found that an award of one third of the common fund is warranted under certain circumstances.  
22 *See, e.g., In re Heritage Bond Litig.*, No. 02-ML-1475-DT(RCX), 2005 WL 1594389, at \*8-\*17 (C.D.  
23 Cal. June 10, 2005); *Ogbuehi v. Comcast of California/Colorado/Florida/ Oregon, Inc.*, No. 2:13-CV-  
24 00672-KJM, 2015 WL 3622999, at \*11-\*12 (E.D. Cal. June 9, 2015); *Vasquez v. Coast Valley*  
25 *Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010); *In re Med. X-Ray Film Antitrust Litig.*, No. CV-  
26 93-5904, 1998 WL 661515, at \*6 (E.D.N.Y. Aug. 7, 1998). Class Counsel should be given the  
27 opportunity to make such a showing to this Court through their application for fees and costs.

28 ///

Class/PAGA Counsel shall file their application for fees and costs well in advance of the final approval hearing date so that Settlement Class Members can be fully informed of the fee request and have ample time to consider the request prior to the deadline for objecting and opting out. *See In re Mercury Interactive Securities Litigation*, 618 F.3d 988, 994 (9th Cir. 2010). The fee motion will be heard at the same time as the final approval motion.

5. Plaintiffs' Proposed Enhancement Award is Reasonable.

Service or incentive awards are typical in class action cases. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). In evaluating incentive awards, courts may consider “1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.” *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995). Here, Class Counsel believe that the Class Representative Enhancement award of \$10,000.00 for each Plaintiff is consistent with a fair, just and adequate settlement.

Plaintiffs initiated this case and sought counsel to represent the proposed Class. Plaintiffs met with Class/PAGA Counsel and provided documentary evidence relevant to the claims in the case. Plaintiffs also risked their own professional reputation by suing their alleged former employer. Any potential future employer who searches the internet or runs a background check on Plaintiffs will discover this fact. In a competitive job market, this factor may weigh heavily against them. Therefore, Plaintiffs have also undertaken risks with respect to his future employment prospects that other Settlement Class Members simply have not. Kizirian Decl., ¶ 55. Importantly, and unlike other Class Members, Plaintiffs will be providing a general release with a waiver of all known or unknown claims pursuant to California Civil Code Section 1542 as part of the Settlement Agreement. Settlement Agreement, ¶ VII.

Plaintiffs will be providing a supporting declaration at final approval describing their efforts in this case, the amount of time spent serving the class, and the risks they incurred.

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1                   6. The Settlement Administrator Costs are Reasonable.

2           Plaintiff proposes appointing Simpluris, Inc. (“Simpluris”) as the Settlement Administrator in  
3 this case. Class/PAGA Counsel has elected to use Simpluris given their substantial and longstanding  
4 experience in the field of class action settlement administration. Moreover, Simpluris has provided a  
5 very reasonable bid of \$17,270. Kizirian Decl., ¶ 56, Simpluris, Inc. proposal, attached as Exhibit “2”  
6 to the Kizirian Declaration.

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

13           In addition to Simpluris, the Parties also sought bids from Rust Consulting, Inc. and Epiq Class  
14 Action Administration. The Parties elected to move forward with Simpluris based upon Simpluris’  
15 low bid and the Parties prior experience with this settlement administrator. Kizirian Decl., ¶ 58.  
16 Class/PAGA Counsel has worked repeatedly with Simpluris over the last several years. Class/PAGA  
17 Counsel is well-acquainted with Simpluris and the high-quality of their administration services.  
18 Because Simpluris has performed very competently for Class/PAGA Counsel in the past, Plaintiffs  
19 sought to work with them on this matter as well. Moreover, in Class/PAGA Counsel’s view, a bid of  
20 \$17,270 for administering a settlement with approximately 600 putative class members is extremely  
21 reasonably, particularly as here the gross settlement amount is \$900,000.

22           As set forth in the declaration provided by the company, Simpluris has extensive experience in  
23 administering class action settlements. Moreover, Simpluris has numerous safeguards in place to  
24 protect confidential class member information. Specifically, Simpluris adheres to Service  
25 Organization Controls 2, a voluntary cybersecurity compliance standard meant to further protect  
26 sensitive information. Additionally, the Settlement Agreement requires Simpluris to enter into a Data  
27 Privacy Agreement with the Parties if it is to serve as the Settlement Administrator in this matter.  
28 Settlement Agreement, ¶¶ II(YY), Exhibit “C” to Settlement Agreement. Finally, Simpluris also

maintains errors and omissions insurance that would cover the administration of the instant settlement. Declaration of Eric Springer on Behalf of Simpluris, Inc., ¶¶ 5-7.

**B. The Class Should be Provisionally Certified For Settlement Purposes Only.**

Plaintiffs request that the Court provisionally certify the Rule 23(b)(3) class for settlement purposes. The purpose of provisional class certification for settlement purposes only is to facilitate distribution to proposed class members of a notice informing them of the terms of the proposed settlement, and the date and time of the final approval hearing. *See* Manual for Complex Litigation, Fourth §§ 21.632-33. For purposes of effectuating this Settlement only, Defendants do not oppose Plaintiffs' request to provisionally certify the Putative Class. Settlement Agreement, ¶ IV(A).

1. Standards Governing Approval of Settlement Classes.

When considering a motion for preliminary approval of a settlement, the Court must make a threshold determination as to whether the proposed settlement class meets Rule 23 requirements. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-20 (9th Cir. 1998). Specifically, under Rule 23(a), the Court must determine whether (1) the proposed class is so numerous that joinder would be impracticable; (2) there are questions of law or fact common to the class; (3) the named plaintiffs' claims are typical of the claims of the proposed class; and (4) plaintiffs and their counsel will adequately and fairly represent the interests of the class. *Id.* at 1019.

Additionally, the action must be maintainable under Fed. R. Civ. P. 23(b) (1), (2), or (3). *Id.* at 1022. Based on these standards, as further discussed below, the Court should certify the proposed Settlement Class for settlement purposes.

2. The Class Satisfies the Requirements of Rule 23(a).

The proposed Class satisfies all requirements of Rule 23(a). First, it is sufficiently numerous to satisfy Rule 23(a)(1). "While there is no set number of members required, courts have generally found classes numbering in the hundreds to be sufficient to satisfy the numerosity requirement." *Campbell v. Pricewater-houseCoopers*, 253 F.R.D. 586, 594 (E.D. Cal. 2008). In this case, the proposed class consists of approximately 600 Settlement Class Members who worked for Defendants during the Class Period. Kizirian Decl., ¶ 10. This will easily satisfy the numerosity requirement.

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Second, Rule 23(a)(2) is satisfied because there are questions of law and fact common to the proposed Class. *See Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 589 (9th Cir. 2012) (“Commonality only requires a single significant question of law or fact.”). The showing required to satisfy commonality is minimal. *Hanlon*, 150 F. 3d at 1020. The presence of a single common question that will “drive the resolution of the litigation” is sufficient *Campbell v. PricewaterhouseCoopers, LLP*, 287 F.R.D. 615, 620 (E.D. Cal. 2012). Here, common factual and legal issues include whether Putative Class Members are employees that were improperly classified independent contractors. That issue, alone, satisfies the commonality requirement of Rule 23(a)(2). Kizirian Decl., ¶¶ 6-10.

Third, the typicality requirement of Rule 23(a)(3) is satisfied because Plaintiffs’ claims are typical of the claims held by the Putative Class. Typicality is established if representative claims are “reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. Plaintiffs’ claims arise out of the same factual and legal circumstances as the claims of Settlement Class Members. Plaintiffs contend that, like all Putative Class Members, they were unlawfully classified as an independent contractor, regularly worked unpaid overtime hours, was deprived meal and rest period breaks and premiums, was not given accurate wage statements, and is an ‘aggrieved employee’ under PAGA. Because Defendants’ business practices, about which Plaintiffs complain, were uniform and impacted all Putative Class Members, Plaintiffs’ claims against Defendants are typical of those of the Class. Kizirian Decl., ¶¶ 6-10.

Fourth, Class/PAGA Counsel satisfies the adequacy requirement of Rule 23(a)(4), as well as the requirements of Rule 23(g). Rule 23(a)(4) requires that the Parties fairly and adequately protect the interests of the class. The adequacy requirement is met where the named plaintiffs and their counsel do not have conflicts of interest with other putative class members, and the named plaintiffs and their counsel will vigorously prosecute the interests of the class. *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs and their experienced class counsel will more than adequately represent the Putative Class. There are no conflicts and the Class Representatives have claims that are in line with those of the

Class. Plaintiffs have diligently participated in the litigation by communicating regularly with counsel and providing documents and information about the Class claims. Kizirian Decl., ¶¶ 2-4, 59.

Rule 23(g)(1) requires courts, when appointing class counsel, to consider: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation and the type of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to its representation. Here, Class Counsel have investigated and prosecuted the claims; have extensive experience in class action litigation, including wage-and-hour claims, and have been appointed Class Counsel in numerous other cases; and have demonstrated that they have the ability and resources to vigorously pursue the claims. Kizirian Decl., ¶¶ 2-4. For these reasons, Class/PAGA Counsel and Plaintiffs meet the adequacy requirement of Rule 23(a)(4). Class/PAGA Counsel should be appointed as Class Counsel pursuant to Rule 23(g).

### 3. The Class Meets the Requirements of Rule 23(b)(3).

The Putative Class meets the requirements of Rule 23(b)(3) because common questions “predominate over any questions affecting only individual members,” and class resolution is “superior to other available methods for the fair and efficient adjudication of the controversy.”

First, the Putative Class satisfies the predominance requirement, which examines whether the proposed classes are “sufficiently cohesive to warrant adjudication by representation.” *Hanlon*, 150 F.3d at 1022. “When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis.” *Id.* Here, common issues predominate because Plaintiffs' claims turn on a common liability issue suited to class-wide adjudication: whether or not the Putative Class Members are employees or properly classified as independent contractors under California law, based on their job duties and expectations applicable to all Contract Carriers, Drivers, and Helpers. Whether or not Contract Carriers, Drivers, and Helpers are considered independent contractors under California law is an inherently common question that predominates over any individualized issues. Liability for Plaintiffs' state law claims stem from this threshold question and thus depend upon common proof. Kizirian Decl., ¶¶ 6-10, 32-26, 45-49.

Second, Rule 23(b)(3) is satisfied because resolution of the issues in this case on a class-wide basis is “superior to other available methods for the fair and efficient adjudication of the controversy.” *See Hanlon*, 150 F.3d at 1023. The alternative to a single class action—numerous individual actions—would be inefficient and unfair. *See, e.g., Custom LED, LLC v. eBay, Inc.*, 2013 U.S. Dist. LEX1S 122022 (N.D. Cal. 2013) (superiority established because a “class action would achieve the resolution of the putative class members’ claims at a lower cost and would reduce the likelihood of inconsistent determinations”). Class actions are generally found to be superior where individual claims are relatively small, there is a large volume of individual claims, individuals lack a compelling interest in controlling their own litigation, and there would be a strain on judicial resources if individual claims were filed. *See Wang v. Chinese Daily News, Inc.*, 231 F.R.D. 602, 614 (C.D. Cal. 2005).

#### VIII. CONCLUSION

For all of the reasons set forth above, Plaintiffs respectfully request that this Court certify the proposed class for settlement and grants preliminary approval of the proffered class action settlement.

Dated August 23, 2024

BOYAMIAN LAW, INC.

By: /s/ Armand R. Kizirian  
 Armand R. Kizirian  
 Attorneys for Plaintiffs CHRISTIAN DECENA,  
 HAIRON MARTINEZ, MIGUEL RIOS, and  
 RIGOBERTO GODOY, and all others similarly  
 situated