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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 FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; SUPPORTING
DECLARATIONS; [PROPOSED] ORDER]

Date: March 25, 2025

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 Final 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. *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 cc. *Markovic v. BBG SD4 LLC*, San Diego Sup. Ct. Case No. 37-2020-00016435-CU-OE-
 8 CTL (2023), wage and hour class action involving restaurant employees alleging
 9 violations of the California Labor Code (\$400,000 settlement);
- 10 dd. *Minnear, et al. v. Burke Williams, Inc., et al.*, Los Angeles Sup Ct. Case No.
 11 20STCV02154 (2023), representative class and PAGA action involving Labor Code
 12 violations for failure to pay for all hours worked, including overtime on behalf of
 13 California-based estheticians (\$235,000 settlement);
- 14 ee. *Foley, et al. v. Yuen's Enterprise One, Inc., et al.*, San Bernardino Sup. Ct., Case No.
 15 CIVDS1912925 (2024) wage and hour class action involving California Labor Code
 16 violations relating to restaurant workers (\$2,824,090.50 settlement);
- 17 ff. *Matute v. Pilot Air Freight LLC, et al.*, Northern District of California Case No. 4:22-
 18 cv-00587 (2024), wage and hour class action involving misclassification of independent
 19 contractors (\$650,000 settlement);
- 20 gg. *Mkhitarian, et al. v. Bank of the West*, Los Angeles Sup. Ct., Case No. BC (2024) wage
 21 and hour class action and PAGA representative action for retail bank employees
 22 alleging violations of the California Labor Code (\$3,479,681.21 settlement).
- 23 5. A true and correct copy of the Settlement Agreement negotiated between the Parties to
 24 resolve this matter in its entirety, including all exhibits, is attached as **Exhibit "1"**.
- 25 6. Defendant Allegiant is a logistics company that contracts with retailers, such as
 26 Mattress Firm, to handle the logistics for consumer deliveries in California. Allegiant's logistics work
 27 includes utilizing its property brokerage authority to place Mattress Firm goods with Contract Carriers
 28 that have the equipment (trucks) and labor (typically a driver and helper per truck) to physically deliver

1 the goods. The Contract Carriers and their workers—referred to here as “Drivers” and “Helpers”— are
2 the focus of this suit. Information exchanged in the litigation shows that, while Defendant Diverse
3 shares some common ownership with Allegiant, Diverse does not operate in California and does not
4 have any employees or independent contractors in California.

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

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

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

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

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

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

21 13. While the Parties were gearing up for their mediation, they did not stay this matter.
22 Instead, on July 28, 2023, Defendants Allegiant and Diverse filed a Motion to Dismiss the Second
23 (failure to pay overtime), Fifth (failure to provide meal breaks), and Sixth Causes of Action (failure to
24 provide rest breaks). Plaintiffs filed their opposition on August 25, 2023, with Defendants Allegiant
25 and Diverse submitting their reply on September 1, 2023. The Court thereafter issued its ruling on
26 January 2, 2024, granting Defendants' motion, but allowing Plaintiffs leave to amend. On June 16,
27 2024, Plaintiffs filed their operative Second Amended Complaint.

28 14. From before they filed suit, but especially in the months leading up to mediation,

1 Class/PAGA Counsel conducted a thorough investigation into the relevant facts and legal claims.
2 Class/PAGA Counsel formulated a list of documents and data they would need from Defendants in
3 order to conduct a meaningful mediation. After meeting and conferring with Defendants' Counsel on
4 this matter, Defendants informally produced substantial amounts of data and documentary evidence to
5 Plaintiffs. With this data, Class/PAGA Counsel estimated the amount of damages potentially available
6 to putative Class Members based on the scope of wage and hour violations, assuming Plaintiffs
7 successfully established misclassification. Through the efforts of Plaintiffs themselves, Class/PAGA
8 Counsel was also able to contact various other Contract Carriers, Drivers, and Helpers in the putative
9 Class, thus allowing Class/PAGA Counsel to gain a better understanding of the strengths and
10 weaknesses of the case before attending mediation.

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

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

26 17. Plaintiffs thereafter moved for preliminary approval of their class and PAGA settlement
27 on August 23, 2024 (Dkt. No. 54). The Motion for Preliminary Approval was unopposed. At the
28 hearing, the Court required changes to be made to the proposed settlement notice documents,

specifically the Notice of Class and PAGA Representative Settlement and the Payment Information Form, which were subsequently lodged thereafter (Dkt. No. 57). Preliminary approval was granted by the Court on October 10, 2024, setting the final approval hearing for March 18, 2025 (Dkt. No. 58). Due to the wildfires in the Los Angeles area in January 2025 impacting counsel for the Parties, the Court granted a stipulation submitted by the Parties to move the final approval hearing date, resetting it to March 25, 2025 at 2:00 p.m. (Dkt. No. 60).

18. Based on their independent investigation and evaluation, Class/PAGA Counsel are of the opinion that the Settlement with Defendants for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members, in light of all known facts and circumstances, including the risk of 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. Given the highly positive response of the Settlement Class Members to the proffered settlement, Plaintiffs believe that this Court should enter final approval of the Parties' class and PAGA settlement.

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

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

21. In particular, Plaintiffs contend that many Class Members such as Contract Carriers, were forced to cover the costs for truck insurance, fuel, vehicle maintenance, and cell phones used to

1 communicate with dispatch. Plaintiffs' investigation and the document exchange completed with
2 Defendants has shown that Defendants imposed common policies, whether formally or through a
3 course of conduct, where they and only they exerted significant control over the work of Class
4 Members. Nevertheless, Defendants disagree with this characterization, and if trial testimony reveals
5 that contract carrier Class Members were somewhat insulated from Defendants' control, and that the
6 truck owner Class Members were mostly exerting control over the contract carrier Class Members,
7 class treatment in such a scenario may become untenable.

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

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

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

22 25. Defendants' positions in this litigation may result in no recovery for Plaintiffs and the
23 Settlement Class Members, or protracted appeals and significant risks to meaningful recovery for the
24 Settlement Class Members. Consequently, the benefits of the settlement greatly outweigh the risks of
25 continuing to litigate the issues in this case.

26 26. Moreover, if this case ultimately reaches trial, the trial process itself is likely to be long
27 and complicated. As this is a misclassification case, Plaintiffs must present evidence on the issue of
28 whether Class Members are to be deemed the employees of Defendants. Only after presenting

1 evidence on the issue of employee or independent contractor status would Plaintiffs begin presenting
2 evidence on the asserted labor code violations. As Plaintiffs allege claims for numerous violations,
3 including unpaid overtime, meal break violations, rest break violations, unfair competition, and PAGA
4 penalties, the trial length would be significant.

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

17 28. As set forth in Plaintiffs' Motion for Preliminary Approval and based on the settlement
18 administrator's calculation of the projected individual recoveries as set forth in the Declaration of
19 Markus Bulthuis Regarding Notice and Settlement Administration, the amount in settlement here is
20 reasonable given the strength of Plaintiffs' claims and the risks, expenses, and complexity of continued
21 litigation as described above.

22 29. The plan of allocation is also fair and reasonable. The Settlement provides that the
23 settlement fund shall be allocated based, for all intents and purposes, the length of work of the
24 participating Class Member during the time period encompassed by the suit.

25 30. Prior to filing the complaint, Class Counsel was readily familiar with the business
26 model of Defendants, having filed similar wage and hour class action lawsuits against other retailers
27 and logistics providers with an analogous arrangement as that of Mattress Firm and Allegiant. From
28 before they filed suit, but especially in the months leading up to mediation, Plaintiffs' Counsel

1 conducted a thorough investigation into the relevant facts and legal claims. Plaintiffs' Counsel
2 formulated a list of documents and data they would need from Defendants in order to conduct a
3 meaningful mediation.

4 31. After meeting and conferring with Defense Counsel on this matter, Defendants
5 informally produced substantial amounts of data and documentary evidence to Plaintiffs. With this
6 data, Plaintiffs' Counsel calculated the damages potentially available to Putative Class Members based
7 on the scope of wage and hour violations, assuming Plaintiffs successfully established
8 misclassification. Through the efforts of Plaintiffs themselves, Plaintiffs' Counsel were also able to
9 contact various other Contract Carriers, Drivers, and Helpers of Defendants, thus allowing Plaintiffs'
10 Counsel to gain a better understanding of the strengths and weaknesses of the case before attending
11 mediation.

12 32. After a full day of mediation, with the extensive efforts and assistance of the mediator,
13 Antonio Piazza, the Parties were able to reach a settlement in principle on January 16, 2024.
14 Settlement Class Counsel's experience in litigating numerous independent contractor misclassification
15 suits and the documents and data exchanged by the Parties in the lead up to mediation informed
16 Plaintiffs' Counsel decision to endorse the \$918,000 gross settlement amount. Although the Parties
17 agreed upon a settlement figure on January 16, 2024, negotiations regarding the specific terms of the
18 agreement continued into May 2023.

19 33. The notice plan provided for in the Settlement and approved by the Court in its October
20 10, 2024 Order satisfies the notice standard for all persons who were mailed notice. Class Counsel
21 formatted this Notice in an easy-to-read manner. The Notice encouraged Class Members to contact the
22 Settlement Administrator or Class Counsel with any questions and provided their names, telephone
23 numbers, and mailing addresses.

24 34. The Settlement achieved here represents a considerable result for the class. The net
25 amount from the \$918,000 to be paid to the Class under the proposed Settlement (after payment of
26 Class Counsel's attorneys' fees [\$229,500], litigation costs [\$19,468.90], Settlement Administration
27 Costs [\$17,270], the Service Awards [\$10,000 * 4], and LWDA portion of the PAGA allocation
28 [\$22,500]), would be \$581,761.10. For the 618 Settlement Class Members, the average payout based

1 on this amount would be approximately \$941.36 per person. Thus, the Settlement avoids the risks of
2 litigation while ensuring that Settlement Class Members receive substantial consideration for the
3 release of their claims stemming from this suit. Notably, the Settlement also affords relief to
4 Settlement Class Members who likely would not have pursued individual claims against Defendants.

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

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

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

25 38. Due to these aforementioned risks, Defendants' stance in this litigation may result in no
26 recovery for Plaintiffs and the Putative Class Members, or protracted appeals and significant risks to
27 meaningful recovery for the Settlement Class Members. Consequently, the substantial risk of
28 continued litigation supports an award of the Ninth Circuit's benchmark of 25% of the gross settlement

1 amount in attorneys' fees as Plaintiffs' Counsel have appropriately balanced the desire to keep pushing
2 forward in the hope of a greater settlement with the very real risk that the litigation may develop in a
3 negative way for the Plaintiff Class given the risks outlined above.

4 39. In addition, Plaintiffs' Counsel advanced all costs in this matter and their fees are
5 entirely contingent in nature. Plaintiffs' Counsel has not received any compensation for their services
6 during the two years that this case has been pending. Moreover, Plaintiffs' Counsel's attention to this
7 complex case was undertaken in lieu of work on other cases. The fact that Plaintiffs' Counsel have
8 received no compensation to date, and in fact even funded the litigation from their own accounts with
9 no guarantee of reimbursement, greatly favors the award of the requested 25% of the common fund in
10 attorney's fees.

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

21 41. In this matter, I have incurred 257.3 hours to date in pursuit of the class's claims. I
22 expect my time in this matter to easily exceed 270 hours before the case reaches its conclusion,
23 assuming the Court is inclined to grant final approval, as I will likely travel to Oakland, California for
24 the final approval hearing. As an 11th year attorney, my hourly rate is \$575 per hour and I believe that
25 that is a reasonable rate for my home market of the Los Angeles area, the Northern California Bay
26 Area where this matter is venued, and based on the Laffey Matrix cited in Mr. Boyamian's declaration
27 which sets a \$829 hourly rate for attorneys in their 11th through 19th year of practice.

28 42. Once the litigation was initiated, Plaintiffs' Counsel worked with all four of the

1 Plaintiffs to contact other putative class members to begin gathering evidence for their required motion
2 for class certification. Moreover, with the information provided by Plaintiffs, Plaintiffs' Counsel
3 vigorously opposed Defendant Allegiant's early motion to dismiss and strike portions of Plaintiffs'
4 complaint (Dkt. No. 8), researching the issues being raised by Allegiant in-depth, and providing
5 sufficient information to the Court to secure an opportunity to amend the operative complaint and keep
6 all of their claims in the suit.

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

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

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

28 46. The total costs of settlement administration are currently estimated at \$17,270. As the

1 settlement notice period is still open, there is the possibility that the third-party administrator runs into
2 an anticipated issue that may further raise this amount. Based on Class Counsel's view and
3 experience, this is a reasonable cost for claims administration given the size of the class and the type of
4 case.

5 47. As shown by this Declaration and Plaintiffs' Motion, the settlement reached by the
6 Parties is eminently fair, reasonable, adequate, and an excellent result for Settlement Class Members.
7 For these reasons, the Court should grant final approval of the proposed settlement.

8 I declare under penalty of perjury that under the laws of the State of California and the United
9 States of America that the foregoing is true and correct.

10 Executed on January 24, 2025, in Glendale, California.

11
12 /s/ Armand R. Kizirian
Armand R. Kizirian

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**

1 SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
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3 abutcher@scopelitis.com
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4 Phone: 312.255.7200
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6 *Attorneys for Defendant Allegiant Final Mile, LLC and Diverse Logistics & Distribution, LLC*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **III. BACKGROUND**

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

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

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

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

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

14 **A. Preliminary Approval of Settlement**

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

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

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

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

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

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

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

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

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

5 **B. Cooperation**

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

10 **C. Notice of Settlement**

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

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

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

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

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

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

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

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

E. Requests for Exclusion (Opt-Outs)

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

1 Exclusion has been timely submitted.

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

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

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

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

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

9 **F. Declaration of Compliance**

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

18 **G. Sufficient Notice**

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

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H. Objections to Settlement

1. Deadline for Objections

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

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

1 2. **Responses to Objections**

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

5 3. **Waiver of Appeal**

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

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

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

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

I. Final Fairness and Approval Hearing

On the date set by the Court, the Final Fairness and Approval Hearing shall be held in order to:

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

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

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

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1 1. **Net Class Settlement Amount**

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

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

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

20 **= Settlement Payment Rate**

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

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

23 **Settlement Payment**

24 2. **Net PAGA Settlement Amount**

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

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

$$\begin{aligned} & \text{(Net PAGA Settlement Amount} \div \text{Total Number of Qualifying PAGA} \\ & \text{Workweeks)} = \text{PAGA Payment Rate} \\ & \text{(PAGA Payment Rate} \times \text{PAGA Group Member's Qualifying PAGA Workweeks)} = \text{gross} \\ & \text{amount of each PAGA Group Member's PAGA Payment Share} \end{aligned}$$

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

5. Disbursement of Payments

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

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

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

22 It is expressly understood and agreed that the receipt of an Individual Settlement Payment or
23 PAGA Payment Share shall not entitle any Settlement Class Member or PAGA Group Member to
24 compensation or benefits under any company bonus, contest, or other compensation or benefit plan or
25 agreement in place during the applicable Class Period or PAGA Period, nor shall it entitle any
26 Settlement Class Member or PAGA Group Member to any increased retirement, 401(k) or matching
27 benefits, or deferred compensation benefits. The Parties agree that any Individual Settlement Payments
28

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
28

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.

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

6. The Parties confirm, and Class/PAGA 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 Allegiant

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

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

Within twenty-one (21) days of Allegiant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator shall make payments from the Qualified Settlement Fund to: (1) Class/PAGA Counsel, both the Class/PAGA Counsel's Attorneys' Fees and Costs, awarded to Class/PAGA Counsel by the Court; (2) Allegiant for the Mediation Cost Credit; and (3) the Service and Release Award for the Representative Plaintiffs 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 twenty-one (21) days of Allegiant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will make the payment to the LWDA of \$22,750.00, or such other amount as approved by the Court.

O. Un-negotiated Settlement Payment Checks

Any Individual Settlement Payment or PAGA Payment Share that cannot be sent or otherwise remains uncashed sixty (60) days after disbursement, the Settlement Administrator shall attempt to contact each Settlement Class Member and PAGA 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

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
28

1 for Class/PAGA Counsel's Attorney's Fees or Costs than those sought by Class/PAGA Counsel, any
2 amount disallowed by the Court shall be added to the Net Class Settlement Amount and allocated to
3 the Settlement Class Members and the Parties agree that the settlement shall remain binding with such
4 modification(s) and its terms will otherwise be unchanged.

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

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

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

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

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

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

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

11 **A. No Admission of Liability**

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

20 **B. Nullification**

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

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

27 ///

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

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

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

VII. RELEASE BY THE REPRESENTATIVE PLAINTIFFS

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

///

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

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

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

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

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

22 **IX. MISCELLANEOUS PROVISIONS**

23 **A. Amendments**

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

26 **B. Integrated Agreement**

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

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

4 **C. No Inducements**

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

9 **D. No Prior Assignment**

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

14 **E. No Retaliation or Advice**

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

18 **F. Attorneys' Fees**

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

22 **G. Applicable Law**

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

26 ///

27 ///

H. Entry of Judgment Pursuant to Terms of Settlement

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

I. Continuing Jurisdiction of the Court

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

J. Notices

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

SETTLEMENT CLASS COUNSEL:

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

COUNSEL FOR DEFENDANT ALLEGIANT AND DIVERSE:

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

///

1 Andrew J. Butcher
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.

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O. Representation by Counsel

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

P. Parties' Authority

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

Q. Limitations on Disclosure

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

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

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

3
4
5 Dated: 6/24/2024

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

7 DocuSigned by:
8 
9 By: 82D4DE79B074487...
 Christian Decena

10 By: _____
 Hairon Martinez

11 By: _____
 Miguel Rios

12 By: _____
 Rigoberto Godoy

13
14
15
16 Dated: _____

ALLEGIANT FINAL MILE, LLC

17
18 By: _____

19 Name: _____

20 Position: _____
21
22
23
24
25
26
27
28

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: _____

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

3
4
5 Dated: 7/3/2024 _____

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

6
7
8 By: _____
 Christian Decena

9
10 By: _____
 Hairon Martinez

11 
12 By: _____
 Miguel Rios

13
14 By: _____
 Rigoberto Godoy

15
16 Dated: _____

ALLEGIANT FINAL MILE, LLC

17
18 By: _____

19 Name: _____

20 Position: _____

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

3
4
5 Dated: _____

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

6
7
8 By: _____
Christian Decena

9
10 By: _____
Hairon Martinez

11
12 By: _____
Miguel Rios

13
14 By: _____
Rigoberto Godoy

15
16 Dated: 6/19/24

ALLEGiant FINAL MILE, LLC

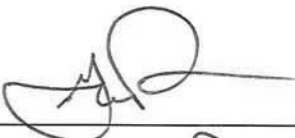
17
18 By:  _____

19 Name: Victor Meza

20 Position: COO

1 Dated: 6/19/24

DIVERSE LOGISTICS & DISTRIBUTION,
LLC

2
3 By: 

4 Name: John Ruzka

5 Position: CEO

6
7
8 Dated: _____

MATTRESS FIRM, INC.

9
10 By: _____

11 Name: _____

12 Position: _____

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

1 Dated: _____

DIVERSE LOGISTICS & DISTRIBUTION,
LLC

2
3
4 By: _____

5 Name: _____

6 Position: _____

7
8 Dated: June 25, 2024

MATTRESS FIRM, INC.

9
10 By: [Signature]

11 Name: Kindel Nuno

12 Position: SVP, 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 [] (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 []. (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

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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.

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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 [\$]; (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 [\$] and Class/PAGA Counsel's litigation costs payment in an amount up to [\$]. All of these payments are subject to Court approval.

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

Settlement Distribution

If you disagree with the number of Qualifying Class Workweeks or Qualifying PAGA Workweeks written on the enclosed Payment Information Form, you must submit Proof of Work of why you believe the Qualifying Class and/or PAGA Workweeks are inaccurate. "Proof of Work" means document(s) that a Class Member or PAGA Group Member may submit to the Settlement Administrator in order to show that that he or she is entitled to payment based upon a different number of Qualifying Class Workweeks or Qualifying PAGA Workweeks than the number calculated by the Settlement Administrator based upon Defendants' Settlement Data. To be accepted, the Proof of Work written explanation must be submitted to the Settlement Administrator and must: (1) contain your full name, address, and the last four digits of your Social Security Number (for identification purposes only); (2) state, in writing, the reasons why you believe an additional amount is owed and include any documentation supporting that claim; (3) be signed by you or your legal representative; and (4) be mailed to the Settlement Administrator at the address specified below and postmarked no later than the Response Deadline of [Response Deadline], which is 60 days after the mailing of this Notice of Class and PAGA Settlement and the enclosed Payment Information Form (collectively referred to as "Notice of Settlement"). ("Response Deadline"). 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:

[]
[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”

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 [] Qualifying Class Workweeks between January 1, 2020 through [] ("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 \$[]. 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.

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:

<<CLASS MEMBER Name>>

Class/PAGA Counsel

Michael H. Boyamian, Esq. (#256107)

Armand R. Kizirian, Esq. (#293992)

Boyamian Law, Inc.

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Glendale, CA 91203

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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

Exhibit “D”

1 Michael H. Boyamian (SBN 256107)
2 michael@boyamianlaw.com
3 Armand R. Kizirian (SBN 293992)
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7 Glendale, California 91203
8 Telephone: (818) 547-5300
9 Facsimile: (818) 547-5678
10
11 Attorneys for Plaintiffs CHRISTIAN
12 DECENA, HAIRON MARTINEZ,
13 MIGUEL RIOS, and RIGOBERTO
14 GODOY, and all others similarly situated
15
16 [Other Attorneys on the Following Page]

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

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

19 Plaintiffs,

20 v.

21 ALLEGIANT FINAL MILE INC., A
22 Florida Corporation; DIVERSE
23 LOGISTICS & DISTRIBUTION, INC., a
24 Florida corporation; MATTRESS FIRM,
25 INC., a Delaware corporation; and DOES
26 1 through 25, Inclusive,

27 Defendants.

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

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7
8 Attorneys for Defendants
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
11 Mara D. Curtis (SBN 268869)
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17 Attorneys for Defendant
MATTRESS FIRM, INC.
18
19
20
21
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24
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27

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

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

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

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

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

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

25
26 ¹ Capitalized terms herein shall have the same definitions as in the Agreement and those definitions
27 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
27

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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