

FEB 21 2023

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

DEVIN SMITH, individually and on behalf of all others similarly situated, and as a proxy for the LWDA; MYRICA SMITH, individually and on behalf of all others similarly situated; and KEVIN OCHONMA, individually and on behalf of all others similarly situated and as a proxy for the LWDA,

Plaintiffs,

vs.

DI LOGISTICS, LLC, a California limited-liability corporation; DI OVERNITE, LLC, a Nevada limited liability company; DI OVERNITE INVESTMENTS, LLC, a California limited liability company,

Defendants.

Case No.: CIV DS 2011469

Arlene Guardado
ARLENE GUARDADO, Deputy

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

Plaintiffs Devin Smith, Myrica Smith, and Kevin Ochonma's (collectively "Plaintiffs") unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") came on regularly for hearing on February 21, 2023 at 8:30 a.m. in Department S31 of the above-captioned court before the Honorable John M. Pacheco. The hearing was conducted telephonically. Attorney Jenny Baysinger appeared on behalf of Plaintiffs and no one appeared on behalf of Defendants DI Logistics, LLC, DI Overnite, LLC, and DI Overnite Investments, LLC (collectively "Defendants" or the "DI Entities"). The Court, having fully and carefully reviewed Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, the memorandum and declarations in support thereof, the Joint Stipulation of Class and PAGA Action Settlement Agreement and Release ("Settlement Agreement"), including the proposed Class Notice, hereby makes the following determinations and orders¹:

¹ All terms used in this Order Preliminary Approval of Class Action Settlement shall have the same meanings given those terms in the Parties' Joint Stipulation of Class and PAGA Action Settlement Agreement and Release ("Settlement Agreement", "Settlement", or "SA"), a copy which is attached as **Exhibit 1** to the Declaration of Jenny D. Baysinger submitted in support of preliminary approval.

1 1. Plaintiffs Devin Smith, Myrica Smith, and Kevin Ochonma are preliminarily appointed
2 as Class Representatives.

3 2. Mayall Hurley P.C., the Law Office of Ian Pancer, and the Law Office of Thomas
4 Rutledge are preliminarily approved and appointed as Class Counsel.

5 3. ILYM Group, Inc. is appointed as the Settlement Administrator and shall administer the
6 Settlement in accordance with the terms set forth in the Settlement Agreement and perform the
7 functions set forth therein. The Court also preliminarily approves declared fees and costs of
8 administering the Settlement of up to \$25,000.

9 4. The Class of employees covered by the Parties' Settlement consists of all current and
10 former non-exempt California employees of the DI Entities who worked at least one shift from April
11 23, 2016 to December 31, 2021 (the "Class").

12 5. Pursuant to California Civil Procedure section 382, and for purposes of settlement only,
13 the Class is preliminarily and conditionally certified. The Class is estimated to include approximately
14 1,859 individuals who worked 131,458 Workweeks within the Class Period.

15 6. The Court grants preliminary approval of the Settlement between Plaintiffs and
16 Defendants, based upon the terms set forth in the Settlement Agreement.

17 a. As to the Class, the Settlement Agreement appears to be fair, adequate and
18 reasonable, and the Court preliminarily approves the terms of the Settlement
19 Agreement.

20 b. The Court approves, as to form and content, the Class Notice, in substantially the
21 form attached as **Exhibit B** to the Settlement Agreement. The Court further
22 approves the procedure by which Class Members may opt out of, and object to, the
23 Settlement as set forth in the Settlement Agreement and the Class Notice.

24 7. The Court directs mailing of the Class Notice in accordance with the terms of the
25 Settlement Agreement and on the schedule set forth below. The Court finds the dates selected for the
26 mailing and distribution of the Class Notice, as set forth below, meet the requirements of due process
27 and provide the best notice practicable under the circumstances and shall constitute due and sufficient
28 notice to all persons entitled thereto.

1 8. Subject to further consideration by the Court at the time of the Final Approval Hearing,
2 the proposed PAGA allocation of \$60,000 and payment to the LWDA of \$45,000 is preliminarily
3 approved. Distribution of \$15,000 to the Aggrieved Employees based on the formula outlined in the
4 Settlement Agreement is also approved.

5 9. Subject to further consideration by the Court at the time of the Final Approval Hearing,
6 the proposed Class Representative Service Awards of \$5,000 each, 0.05% of the Maximum Settlement
7 Amount each (\$15,000 or 1.5% of the MSA, total), to Plaintiffs for each's respective service as Class
8 Representative is preliminarily approved.

9 10. Subject to further consideration by the Court at the time of the Final Approval Hearing,
10 Class Counsel's request of attorneys' fees in the amount of 30% of the Maximum Settlement Amount,
11 presently expected to be \$330,000, allocated \$195,000 to Mayall Hurley, P.C. and \$105,000 to be
12 shared between the Law Office of Ian Pancer and the Law Office of Thomas Rutledge², and declared
13 costs of up to \$25,000, are preliminarily approved.

14 11. The Court adopts the following dates and deadlines:

15 Administrator to mail Class Notice	Within 20 calendar days of the POA
16 Deadline for Class Members to object or opt out	Within 45 calendar days after Notice mailed.
17 Plaintiff to file Motion for Attorneys' Fees, Costs and Service Payment.	Not less than 16 court days before the Final Approval hearing.
18 Deadline for Plaintiff to file Motion for Final Approval.	Not less than 16 court days before the Final Approval hearing.
19 Final Approval Hearing.	Not less than 100 days after the POA

20
21 12. A Final Approval hearing on the question of whether the proposed Settlement,
22 attorneys' fees to Class Counsel, and the Class Representatives' Service Payments should be finally
23 approved as fair, reasonable and adequate is scheduled in for 6/22/, 2023 at

24 /// 8:30 AM in 531

25 ///

26
27 ² Class Counsel has an agreement to split the fees associated with the first \$400,000 of any settlement amount 50% to
28 Mayall Hurley and 50% jointly to the Law Office of Ian Pancer and the Law Office of Thomas Rutledge, and to split the fees associated with any settlement amount over \$400,000 75% to Mayall Hurley, P.C. and 25% jointly to the Law Office of Ian Pancer and the Law Office of Thomas Rutledge.

1 8:30 a.m. ~~4 p.m.~~ The parties to the Agreement are directed to carry out their obligations under
2 the Settlement Agreement.

3
4 Dated: 2/21/23

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6 
HON. JOHN M. PACHECO
SUPERIOR COURT JUDGE

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On December 8, 2022, I served the following document:

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

addressed to:

Thomas D. Rutledge
(thomasrutledgelaw@gmail.com)
The Law Office of Thomas D. Rutledge
16956 Via De Santa Fe, Suite 1847
Rancho Santa Fe, California 9206

Ian M. Pancer (ian@sandiegolegal.net)
The Law Office of Ian Pancer
105 West F Street, Suite 400
San Diego, California 92101

John L. Barber (John.barber@lewisbrisbois.com)
Julie W. O'Dell (Julie.odell@lewisbrisbois.com)
Cynthia Cruz (Cynthia.cruz@lewisbrisbois.com)
Justin M. Odell (Justin.odell@lewisbrisbois.com)
Lewis Brisbois Bisgaard & Smith LLP
650 Town Center Drive, Suite 1400
Costa Mesa, CA 926264

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 8, 2022, at Lodi, California.

Lindsay Riley Shields
LINDSAY RILEY SHIELDS