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Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT 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

NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: February 21, 2023

Time: 8:30 a.m.

Dept.: S31

Judge: John M. Pacheco

1 **TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT, on February 21, 2023 at 8:30 a.m. in Department S31 of
3 the above-captioned court, or as soon thereafter as this matter can be heard, Plaintiffs Devin Smith,
4 Myrica Smith, and Kevin Ochonma (collectively “Plaintiffs”) will bring on for hearing this
5 unopposed Motion for Preliminary Approval of Class Action Settlement (the “Motion”).¹ The
6 Motion respectfully requests the Court grant:

- 7 1. Preliminary and conditional certification of a Class consisting of “all current and
8 former non-exempt California employees of the DI Entities who worked at least one
9 shift from April 23, 2016 to December 31, 2021;
- 10 2. Preliminary approval of Plaintiffs as Class Representatives;
- 11 3. Preliminary approval of Mayall Hurley P.C., the Law Office of Ian Pancer, and the Law
12 Office of Thomas Rutledge as Class Counsel;
- 13 4. Preliminary approval of the Joint Stipulation of Class and PAGA Action Settlement and
14 Release (the “Settlement Agreement” or “SA”), a copy of which is attached as Exhibit
15 1 to the Declaration of Jenny D. Baysinger filed concurrently herewith, finding it to be
16 fair, reasonable, adequate, and in the collective best interest of the Class;
- 17 5. Approval as to the form and content of the proposed Class Notice, a copy of which is
18 attached as Exhibit B to the Settlement Agreement;
- 19 6. Approval as to the method of notice described in the Settlement Agreement;
- 20 7. Authorization for dissemination of the Class Notice pursuant to the terms of the
21 Settlement Agreement;
- 22 8. An order appointing and approving ILYM Group, Inc. as Settlement Administrator, and
23 for preliminary approval of the costs of administration as declared, not to exceed
24 \$25,000.
- 25 9. Preliminary approval of the proposed PAGA Settlement of \$60,000 and payment to the
26 LWDA of \$45,000;

27 _____
28 ¹ Defendants DI Logistics, LLC, DI Overnite, LLC, and DI Overnite Investments, LLC (collectively, “Defendants” or the
“DI Entities”) do not oppose the relief sought by the Motion.

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:

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

addressed to:

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(thomasrutledgelaw@gmail.com)
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☐ **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