

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Robert J. Wassermann (258538); Jenny D. Baysinger (251014)

MAYALL HURLEY, P.C.

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Lodi, CA 95240

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ATTORNEY FOR (Name): Plaintiff Myrica Smith

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

STREET ADDRESS: 247 West 3rd Street

MAILING ADDRESS: 247 West 3rd Street

CITY AND ZIP CODE: San Bernardino 92415

BRANCH NAME:

PLAINTIFF/PETITIONER: Myrica Smith, et al.

DEFENDANT/RESPONDENT: DI Logistics, LLC, et al.

NOTICE OF ENTRY OF JUDGMENT
OR ORDER

(Check one):



UNLIMITED CASE

(Amount demanded
exceeded \$25,000)

LIMITED CASE

(Amount demanded was
\$25,000 or less)

CASE NUMBER:

CIV DS 2011469

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): June 26, 2023

2. A copy of the judgment, decree, or order is attached to this notice.

Date: July 6, 2023

Jenny D. Baysinger

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

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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

[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND RELEASE AND MOTION FOR ATTORNEYS' FEES, COSTS, AND ENHANCEMENT PAYMENTS AND JUDGMENT

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION
JUN 26 2023
BY VERONICA GONZALEZ, DEPUTY

Plaintiffs Devin Smith, Myrica Smith, and Kevin Ochonma's ("Plaintiffs") Unopposed Motion for Final Approval of Class and Representative Action Settlement ("Motion for Final Approval") and Motion for Attorneys' Fees, Costs, and Service ("Fee Motion") came on regularly for hearing on June 22, 2023, at 8:30 a.m. in Department S-31 of the above-entitled Court. At the scheduled hearing time, Jenny D. Baysinger appeared on behalf of Plaintiffs and _____ appeared on behalf of Defendants DI Logistics, LLC, DI Overnite, LLC, and DI Overnite Investments, LLC (the "DI Entities"). The Court, having fully and carefully considered Plaintiff's Motion for Final Approval and Fee Motion, the memoranda and declarations in support thereof, the Parties' Joint Stipulation of Class and Private Attorney General Act ("PAGA") Action Settlement Agreement and Release and the oral arguments made at the hearing, hereby makes the following determinations and orders¹:

¹ All terms used in this Order Granting Final Approval of Class Action Settlement (the "Order") shall have the same meanings given those terms in the Parties' Joint Stipulation of Class and Private Attorney General Act ("PAGA") Action Settlement Agreement and Release ("Settlement Agreement" or "Settlement"), a copy which is attached as **Exhibit 1** to the Declaration of Jenny D. Baysinger in Support of Plaintiff's Unopposed Motion for Final Approval and Fee Motion.

1 1. Plaintiffs' Motion for Preliminary Approval was granted on February 21, 2023.
2 Plaintiff's Motion for Final Approval and Fee Motion were timely filed. No objections were filed by
3 any Class Members.

4 2. The Court finds that the Settlement was reached after arm's-length negotiations
5 between the Parties, including a mediation; the proposed Settlement was concluded only after
6 counsel for the Parties conducted adequate investigation consisting of both formal and informal
7 discovery; and the Settlement of this action, as embodied in the terms of the Settlement, is finally
8 approved as fair, reasonable, and adequate and in compliance with all applicable requirements of the
9 California Code of Civil Procedure and the Federal Rules of Civil Procedure and any other
10 applicable law, and in the best interests of the Class Members.

11 3. Plaintiffs Devin Smith, Myrica Smith, and Kevin Ochonma are confirmed as Class
12 Representatives.

13 4. Mayall Hurley P.C., by and through lead counsel Robert J. Wasserman and Jenny D.
14 Baysinger, The Law Office of Ian Pancer, and Thomas D. Rutledge are appointed as Class Counsel.

15 5. ILYM Group, Inc. is confirmed as Settlement Administrator of the Settlement.

16 6. Prior to granting preliminary approval, the Court evaluated the standards for class
17 certification. Nothing has been raised subsequently that might affect the Court's prior analysis as to
18 whether certification is appropriate here, and the Court has no cause to revisit that analysis. The
19 Court finds that final certification as the Class is appropriate under California Rules of Court, Rule
20 3.769 and California Code of Civil Procedure section 382 and certifies the following Class:

21 All current and former non-exempt California employees of the DI
22 Entities who worked at least one shift from April 23, 2016 to December
23 31, 2021.

24 7. The Class Notice mailed to Class Members informed the Class Members of the
25 Settlement terms, their right to opt out from the Settlement, object to the Settlement, or do nothing,
26 and the implications of each such action. The Class Notice also advised Class Members of
27 applicable deadlines and other events, including the Final Approval Hearing, and how Class
28 Members can obtain additional information. A dedicated toll-free phone number was created and

1 maintained, which provided Class Members the ability to obtain additional information regarding the
2 Settlement.

3 8. No objection to any component of the Settlement was raised by any Class Member.

4 9. The Claims Administrator sent Notice to 1,739 individuals on March 22, 2023; 56
5 Notices were ultimately deemed undeliverable. Notice was effectuated on 96.78% of the Class. See
6 Declaration of Nathalie Hernandez of ILYM Group, Inc. in Support of Motion for Final Approval of
7 Class Action Settlement (“Admin. Declaration”).

8 10. The Court concludes that adequate notice was provided to the Class. *Silber v.*
9 *Mabon*, 18 F.3d 1449, 1453–54 (9th Cir. 1994) (noting the court need not ensure all class members
10 receive actual notice, only that “best practicable notice” is given); *Winans v. Emeritus Corp.*, No. 13-
11 cv-03962-HSG, 2016 WL 107574, at *3 (N.D. Cal. Jan. 11, 2016) (“While Rule 23 requires that
12 ‘reasonable effort’ be made to reach all class members, it does not require that each individual
13 actually receive notice.”). The Court accepts the Administrator’s Declaration, and finds sufficient
14 notice has been provided so as to satisfy due process.

15 11. Only 1 individual elected to exclude herself from the Settlement. As such, the
16 following individual is not included in the Class and this Settlement has no impact on their rights:

17 a. Deborah Rybski;

18 12. The Court approves payment to the Administrator in the amount of \$25,000.

19 13. The Court approves of the proposed Enhancement Payments of \$5,000 to each
20 Plaintiff for their service as Class Representatives (\$15,000 total).

21 14. Class Counsel’s request of attorneys’ fees in the amount of 33% of the Maximum
22 Settlement Amount, or \$330,000 (\$214,500 to Mayall Hurley and \$115,500 to the Law Office of Ian
23 Pancer and Thomas Rutledge) and declared costs of \$18,280.06 are approved. Class Counsel also
24 provided the Court with the materials necessary to perform a lodestar cross-check. Class Counsel
25 calculate their lodestar fee to be \$443,312.30, based on reasonable hours worked and reasonable
26 hourly rates—the fees requested are *less* than the lodestar. Because the fees requested are
27 appropriate under both the common fund and lodestar methods, this Court grants this request.
28

15. In accordance with the terms of the , upon full funding of the MSA, Participating Class Members will forever and completely release and discharge Defendant and Released Parties from the Released Claims. SA ¶ 82.

16. Participating Class Members shall be permanently enjoined and restrained from and against initiating or pursuing against Defendants any individual, representative, or class claims released by this Settlement once the release becomes final as outlined above.

17. Final Judgment is hereby entered based on the Parties' Settlement. The Court retains jurisdiction, however, to enforce the terms of the Settlement, and ensure that its terms and this Order are carried out.

Dated: 6/26/23

SUPERIOR COURT JUDGE
JOHN M. PACHECO

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 112 S. Church Street, Lodi, California 95240 that is located in the county where the mailing and/or delivery below took place.

On May 30, 2023, I served the following document:

[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND RELEASE AND MOTION FOR ATTORNEYS' FEES, COSTS, AND ENHANCEMENT PAYMENTS AND JUDGMENT

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
**By personal service*

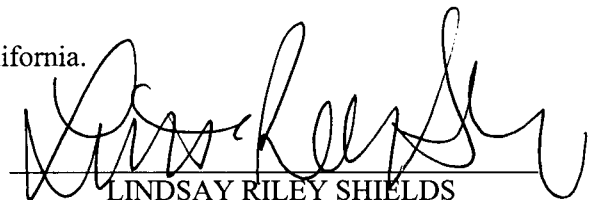
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street
Suite 4000
Los Angeles, CA 90071
**By personal service*

☒ **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.

☒ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the offices of the addressee.

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 May 30, 2023, at Lodi, California.


LINDSAY RILEY SHIELDS

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 112 S. Church Street, Lodi, California 95240 that is located in the county where the mailing and/or delivery below took place.

On July 7, 2023, I served the following document:

NOTICE OF ENTRY OF ORDER

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

Steven G. Gatley (Steven.Gatley@lewisbrisbois.com)
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071

☒ **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 July 7, 2023, at Lodi, California.


LINDSAY RILEY SHIELDS