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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

DECLARATION OF JENNY D.
BAYSINGER IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: February 21, 2023
Time: 8:30 a.m.
Dept.: S31
Judge: John M. Pacheco

1 I, Jenny D. Baysinger, declare:

2 1. I am an attorney duly licensed to practice before all the courts of this state and am a
3 shareholder of Mayall Hurley P.C., attorneys for Plaintiffs Myrica Smith, Devin Smith, and Kevin
4 Ochonma, individually, on behalf of all others similarly situated, and as proxy for the LWDA
5 (collectively, “Plaintiffs”).

6 2. I have personal knowledge of the matters set forth herein and, if called upon to do so,
7 could and would competently testify thereto under oath.

8 **Pre-Mediation Procedural History**

9 3. My office began investigating Myrica Smith’s claims in March 2020 and undertook
10 formal representation of her in April 2020. Myrica Smith had worked as a delivery driver for
11 Defendants from August 2018 through March 14, 2019.

12 4. On April 23, 2020, my office filed a Class Action Complaint on behalf of Myrica Smith
13 and all others similarly situated in the United States District Court, Central District of California Case
14 No. 2:20-cv-03734 (the “Federal Class Action”). Through the initial complaint in the Federal Action,
15 Myrica Smith asserted class action claims for 1) failure to pay minimum wage, 2) failure to pay
16 overtime, 3) failure to pay wages pursuant to Labor Code 218, 4) failure to provide meal periods, 5)
17 failure to provide rest periods, 6) failure to properly calculate and pay sick leave, 7) failure to properly
18 reimburse business expenses, 8) failure to pay all wages on separation, and 9) violation of the UCL.
19 Myrica Smith initially identified only DI Logistics, LLC (“Logistics”) as the lone named Defendant.

20 5. My office did not then assert a claim on behalf of Myrica Smith to assess and collect
21 civil penalties pursuant to the PAGA because Ms. Smith’s employment with Defendants had ended
22 more than one year prior to my office’s representation.

23 6. On May 19, 2020, Logistics filed its initial Answer.

24 7. In researching and evaluating Myrica Smith’s claims, she referred my office to Plaintiff
25 Kevin Ochonma. Mr. Ochonma also worked for Defendants as a delivery driver and was still
26 employed as of April 2020. My office began evaluating Ochonma’s potential claims in May 2020 and
27 undertook representation of him in June 2020.

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8. On June 11, 2020, Plaintiff Devin Smith filed a Representative Action asserting a single claim seeking to assess and collect civil penalties pursuant to the PAGA in the instant Superior Court of California, County of San Bernardino Case No. CIVDS2011469 (the “California Action”). The California Action identified Logistics as the lone named Defendant.

9. On June 17, 2020 my office provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant Logistics, on behalf of Ochonma, regarding specific provisions of the Labor Code alleged to have been violated by Logistics including the facts and theories to support those alleged violations.

10. On June 25, 2020, per stipulation between Myrica Smith, Ochonma, and Logistics, my office filed a First Amended Class Action Complaint (“FAC”) adding Ochonma as an additional named Plaintiff and putative class representative in the Federal Class Action. On July 14, 2020, Logistics filed its Answer to the FAC in the Federal Class Action.

11. On July 22, 2020, United State District Court Judge Phillip Gutierrez referred the Parties in the Federal Class Action to private mediation.

12. After the statutory notice period pursuant to Labor Code section 2699.3 had passed, the Parties in the Federal Class Action stipulated to the filing of a Second Amended Class, Collective, and Representative Action Complaint (“SAC”) on behalf of Myrica Smith and Ochonma and adding an eleventh claim seeking to assess and collect civil penalties pursuant to the PAGA. The SAC in the Federal Class Action was filed September 3, 2020.

13. After being ordered to participate in private mediation in July 2020, the Parties in the Federal Class Action began discussing potential mediators. In light of the agreement to mediate, the Parties stayed formal discovery in favor of informal pre-mediation information exchange.

Investigation, Discovery

14. Through independent inquiry, research, and informal discovery, Class Counsel thoroughly and diligently investigated and pursued the Class Claims. This process has included, but not been limited to, (1) obtaining and reviewing Plaintiffs' personnel files, payroll records, and time records through formal and informal discovery; (2) researching Defendants, the scope of their operations (both within and outside of California) and their relationship with one another; (3)

1 identifying, researching, and pleading the appropriate claims, including amending the Lawsuit to assert
2 additional claims as they ripened and/or were discovered and to add additional Defendants as they
3 were discovered; (4) exhausting administrative remedies; (5) identifying, requesting, securing, and
4 reviewing pertinent policies, practices, and procedures; (6) identifying, requesting, and securing the
5 payroll and time records for a statistically significant sampling of 20% of the Class; (7) propounding
6 formal and informal discovery to secure relevant policy documents and numerical information
7 regarding the size of the class and the scope of the claims, (8) retaining an expert to analyze the
8 payroll and time data provided by Defendants and personally conducting spot checks to ensure the
9 accuracy of the damages calculations; (9) researching and evaluating the scope of additional and/or
10 previous actions and their potential impact on the Class Claims; (10) creating a reliable damages
11 model; (11) developing and implementing a strategy for mediation and settlement; and (12) reviewing
12 and evaluating financial documents provided by Defendants with an internal expert.

13 15. In late July 2020, the Parties in the Federal Class Action exchanged initial disclosures.

14 16. On August 3, 2020, my office propounded an initial set of written discovery on
15 Logistics in the Federal Class Action. This initial formal discovery consisted of Interrogatories (19),
16 Requests for Production of Documents (41), and Requests for Admission (10) (the “Initial Written
17 Discovery”).

18 17. Between August 2020 and execution of the Joint Stipulation of Class and Private
19 Attorney General Act (“PAGA”) Action Settlement Agreement and Release (“Settlement”,
20 “Settlement Agreement” or “SA”) in August 2022, the Parties exchanged initial disclosures,
21 propounded formal discovery, engaged in an informal pre-mediation information/data exchange, and
22 Defendants provided Plaintiffs with substantial post-mediation documentation relating to their
23 financial condition. In total, Defendants provided Class Counsel with over 1,200 pages of policy
24 documents and documents relating to Plaintiffs, 600 pages of financial documents, and 40,000 line
25 items of data (each consisting of multiple data points) relating to the time entries and payroll of a
26 sampling of Class Members

27 18. In advance of mediation, in June/July 2021 Defendants provided Class Counsel with
28 numerical information identifying the number of Class Members, the number of workweeks in the

1 Class Period, the number of PAGA Members, the number of pay periods in the PAGA Period, the
2 number of meal period premiums paid, the average hourly rate for Class Members, and the number of
3 employees whose employment ended April 23, 2017 or later. At that time Defendants also provided
4 an agreed upon sampling of time and wage records for Class Members, consisting of all time and wage
5 records, including specific mileage reimbursement records, for a random sampling of 20% of the
6 Class. In addition, the Parties spoke at length about the strengths and weaknesses of each sides'
7 claims and defenses, the certifiability of the claims, and the scope of Defendants' potential liability.

8 19. My office retained a qualified and experienced expert to analyze the data and create a
9 damages model for use during the mediation. This included providing full evaluation of all of the data
10 furnished by Defendants and then extrapolating to determine potential exposure over the entire Class
11 Period.

12 20. Prior to the mediation, I had multiple discussions with Plaintiffs' retained expert to
13 ensure the parameters of the analysis were appropriate and accurate, the data provided was usable and
14 reliable (including cross-checking with Plaintiff's time records to ensure accuracy), and the reliability
15 of the damages model. I also personally spot-checked a number of calculations to ensure their
16 accuracy.

17 **Settlement Negotiations and Mediation**

18 21. The Parties initially agreed to mediate with Jeffrey Krivis. Due to difficulties in
19 Defendants being able to provide data (because of trouble securing data from their prior payroll
20 provider), the mediation had to be rescheduled to January 2021 with the Hon. Peter Lichtman (ret.)
21 serving as mediator. That mediation then had to be postponed multiple times due to ongoing data
22 provision difficulties faced by Defendants. Mediation with Judge Lichtman was rescheduled four
23 times through April 2021. When the April mediation had to again be rescheduled, and because of
24 Judge Lichtman's impacted schedule after April 2021, the Parties agreed to respected wage and hour
25 class action mediator David Rotman, Esq. as an alternative.

26 22. The Parties to the Federal Class Action ultimately participated in a full-day mediation
27 with Mr. Rotman on July 30, 2021.

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1 23. Just before the July 30, 2021, mediation session, Defendants advised Plaintiffs in the
2 Federal Class Action of prior actions previously settled and additional actions pending against them.
3 This was the first time my office became aware of the instant State Court Action.

4 24. In addition to the State Court Action, just before mediation, my office was informed of
5 a previous class action matter titled *Phillips v. DI Overnite, LLC*, Superior Court of California, County
6 of San Diego Case No. 37-2016-00016800-CU-OE-CTL (the “Phillips Class Action”) that had been
7 settled and finally approved on April 24, 2018. The Class in the Phillips Class Action consisted of “all
8 individuals who worked for Defendant DI Overnite, LLC in California as a driver, messenger, or
9 dispatcher during the time period of May 18, 2012 through October 10, 2017” (the “Phillips Class”).
10 The Phillips Class Action was settled in exchange for payment of \$460,000 to the Phillips Class,
11 which consisted of 626 total Class Members.

12 25. Despite their best efforts, the Parties were unable to reach an agreed upon resolution at
13 the mediation. During the mediation session, Defendants raised the issue of financial constraints for
14 the first time and the Parties agreed that informed substantive discussions could not occur until
15 documentation reflecting the financial concerns Defendants were raising was provided.

16 **Post-Mediation Procedural History**

17 26. Following the mediation, and in light of information learned through records produced
18 in advance of the mediation, on November 12, 2021, Plaintiffs in the Federal Class Action sought
19 leave to file a Third Amended Complaint to add Logistics’ related entities DI Overnite, LLC
20 (“Overnite”) and DI Overnight Investments, LLC (“Investments”) (collectively with Logistics,
21 “Defendants”) as additional named Defendants.

22 27. The federal court ultimately granted Plaintiffs’ motion and authorized a Third Amended
23 Complaint naming all Defendants and including joint employer allegations. The Third Amended
24 Complaint in the Federal Class Action was filed January 4, 2022.

25 **Ongoing Settlement Discussions and Resolution**

26 28. Substantial financial information, including audited financial statements of Defendants
27 and tax returns, were furnished (confidentially) to Class Counsel for review/consideration in the wake
28 of the July 30, 2021, failed mediation.

1 29. From July 30, 2021, until a resolution was ultimately negotiated, ongoing settlement
2 discussions continued simultaneously with litigation in the Federal Class Action. In October 2021, my
3 office reached out to counsel for Plaintiff in the State Court Action, Thomas Rutledge and Ian Pancer
4 (“Co-Counsel”), to discuss the prospect of potentially working together. To that end in October 2021
5 my office and Co-Counsel entered into a Joint Representation Agreement.

6 30. Thereafter, the Parties to both the State Court Action and the Federal Class Action
7 continued engaging in settlement discussions, both independently and with the assistance of mediator
8 Rotman.

9 31. In February 2022, the Parties reached a settlement in principle. The Parties executed a
10 Memorandum of Understanding memorializing the general terms of their negotiated agreement in
11 March 2022.

12 32. After months of additional negotiations regarding the terms of a long-form settlement
13 agreement, the Settlement Agreement was executed in August 2022. A true and correct, fully
14 executed copy of the Settlement Agreement is attached as **Exhibit 1** hereto.

15 33. There was no fraud or collusion at the mediation with Mr. Rotman or in the subsequent
16 settlement negotiations, all of which were adversarial and conducted at arms’ length with the Class’
17 interests being advocated and protected by both my office and Co-Counsel.

18 34. After the SA was executed, the Parties in the Federal Class Action informed Judge
19 Gutierrez of the settlement and the Parties’ intention to amend the State Court Action in order to
20 consolidate both actions and seek approval of the Settlement from this Court. Judge Gutierrez
21 dismissed the Federal Class Action on April 5, 2022, based on the understanding the Parties would
22 seek approval of the Settlement in the instant case.

23 35. In order to facilitate the Settlement, the Parties submitted a stipulation to file a First
24 Amended Class, Collective, and Representative Action Complaint in the State Court Action in May
25 2022. That Stipulation was ultimately granted on October 10, 2022. The FAC in the State Court
26 Action identifies Myrica Smith, Devin Smith, and Ochonma as named Plaintiffs and putative Class
27 Representatives and incorporates all of the allegations that were pending in the Federal Class Action
28 into this case.

1 36. The FAC in the State Court Action was filed on October 31, 2022 and is the operative
2 pleading for purposes of the Settlement.

3 **Summary of General Settlement Terms**

4 37. The Settlement provides for payment of a total Maximum Settlement Amount of
5 \$1,000,000 (“MSA”); \$60,000 allocated to resolve PAGA Claims and \$940,000 allocated to resolve
6 the claims of a Class believed to consist of 1,859 total “current and former non-exempt California
7 employees of the DI Entities who worked at least one shift from April 23, 2016 to December 31,
8 2021” (the “Class”). SA ¶ 17. The Class is believed to have worked 131,458 workweeks during the
9 Class Period.

10 38. During the course of negotiations, Defendants provided substantial evidence of their
11 financial condition to Class Counsel. This included audited consolidated financial statements for 2017
12 through 2020, tax returns, and bank statements through October 2021. My partner, Steven A.
13 Malcoun, who has both a J.D. and an LLM in taxation, reviewed and evaluated the comprehensive
14 records to substantiate Defendants’ representations as to their limited assets, substantial liabilities, and
15 cash flow expectations. The records reflect that Defendants’ business generally does not generate net
16 income of more than \$300,000/year and often has negative cash flow at the end of the year (such has
17 been the case in 2 of the previous 4 annual periods). Based on the information provided, and
18 representations made by Defendants, there was serious risk that Defendants would seek bankruptcy
19 relief rather than continue in adversarial litigation—bankruptcy was a veritable certainty if an adverse
20 judgment were obtained after trial.

21 39. Absent the negotiated resolution, it is my strong belief that Class Members would not
22 realize any monetary recovery from the claims asserted through this matter.

23 40. Because of the financial difficulties facing Defendants, the MSA is to be paid over 34
24 months following the effective date. An initial deposit of \$175,000 will be provided within 30 days of
25 the Effective Date and Defendants will remit subsequent monthly payments of \$25,000/month for next
26 33 months.

27 41. It is anticipated the Settlement funds will be distributed, on a pro rata basis, to Class
28 Members, Class Counsel, and Class Representatives in two distributions. The initial distribution is

1 approximated to occur after Defendants have remitted \$500,000 of the MSA (i.e. after the initial
2 \$175,000 payment is made and thirteen (13) of the monthly installments have been made). Full
3 remaining distribution will be made after the entirety of the MSA has been remitted (i.e. 34 months
4 after the Effective Date).

5 42. In an effort to protect the interests of the Class, Class Counsel negotiated an escalator
6 clause providing that if *either* the number of Class Members or the number of Workweeks increases
7 by more than 5%, the MSA will increase by a proportional amount (i.e. increase of 6% will cause an
8 MSA increase of 1%). SA ¶ 55.

9 43. Each Class Member's individual settlement share will be calculated based on the
10 number of Workweeks he/she worked during the Class Period, with former employees receiving credit
11 for an additional ten (10) Workweeks in order to account for the additional Labor Code section 203
12 claim those individuals are releasing. These additional Workweeks will not be counted when
13 evaluating whether the Escalator Clause is triggered.

14 **Class Counsel's Damages Analysis and Valuation of the Class Claims**

15 44. The Settlement Agreement represents a compromise of highly disputed claims.
16 Defendants vigorously deny Plaintiffs' allegations in their entirety, deny that certification is
17 appropriate (except for settlement purposes), contend they have complied with the law, and assert
18 numerous affirmative defenses, both legal and factual.

19 45. The FAC and Settlement have and will result in substantial benefits to all Class
20 Members and is in the collective best interest of the Class.

21 46. Reviewing and analyzing the payroll/time data sampling, Class Counsel and their
22 expert developed a damages model illustrating Defendants' maximum exposure. Class Counsel also
23 evaluated the maximum damages against the defenses asserted by Defendants, including the alleged
24 existence of arbitration agreements signed by Devin Smith and Ochonma and the contention Myrica
25 Smith was included within the Phillips Class and thus cannot represent others on some of the asserted
26 Class Claims, and the likelihood of success of some of Defendants' arguments to determine a more
27 realistic and reasonable anticipated damages exposure. This damages model, considered in the context
28 of Defendants' financial condition, informed the litigation and the settlement negotiations.

Maximum Damages Analysis

Unpaid Minimum Wages

47. The crux of the Class' claim for unpaid wages is based on an off-the-clock theory. More specifically, Plaintiffs allege that they were not paid for all of the time they spent traveling between Defendants' facilities and not paid for all time for which they were on-duty for the Defendants.

48. Unfortunately, there are no records of time potentially spent working off the clock (other than the auto-deducted lunch time) and that claim is, thus, difficult to quantify.

49. Pay periods during the Class Period were bi-monthly and assuming that all presumptively denied meal periods that were auto-deducted were actually time worked and that Class Members had an average of an additional 10 minutes *per shift* that was worked off-the-clock, the total unpaid wage exposure is **\$3,277,375.95** (\$2,104,370.96 for in auto-deducted work time and \$1,173,004.99)

Regular Rate Deficiencies (OT and Sick Pay)

50. The overtime claim is based on a regular rate theory. Plaintiffs contend Defendants failed to include/consider remuneration they received in addition to hourly pay when calculating the "regular rate of pay" at which they were compensated for overtime and doubletime work. Plaintiffs' received additional remuneration such as "bonuses", incentives to continue working during COVID, and other items. See Exhs. 2-3.

51. Sick pay was also underpaid due to Defendants' failures to include certain other remuneration in the rate—Defendants had a pattern and practice of only paying for redeemed sick leave at the employee's base hourly rate.

52. The expert retained by my office reviewed the sampling of wage records provided by Defendants and calculated the actual underpaid OT/DT and sick pay due to regular rate miscalculations for the sampled Class Members. That amount was then extrapolated across the entire Class. Based on the analysis, the total amount of underpaid wages due to regular rate miscalculation is **\$71,816.00**.

Meal Period Damages

53. Plaintiffs' meal period claim is based, primarily, on an auto-deduction policy/practice Defendants engaged in during a substantial portion of the Class Period.

1 54. Based on the time records for the Class, the actual violation rate of presumptively
2 missed meal periods (i.e. meal periods that were not recorded in the time records for eligible shifts) was
3 a substantial 77.9% (20,712 deficient meal periods out of the 26,604 eligible shifts in the sampling).

4 55. The resulting amount of outstanding unpaid meal period premiums presumptively owed,
5 extrapolated over the entire Class Period and all Class Members, was calculated by our expert to be
6 **\$5,201,109.00.**

7 Rest Period Damages

8 56. Since rest breaks are not recorded, but are rather time worked, the time record sampling
9 does not, itself, reflect any missed rest periods. Plaintiffs, however, indicate they were forced to work
10 through and/or otherwise forego uninterrupted rest periods in order to about one shift in every 5 (i.e.
11 20%). Using that violation rate, which seems appropriate because most of the Class Members worked
12 away from Defendants' facilities and thus were subject to less stringent control by the employer,
13 Defendants face **\$1,335,330** in unpaid rest period premiums.

14 Waiting Time Penalties

15 57. According to data provided by Defendants, and confirmed by Plaintiff's expert, it is
16 expected that 964 Class Members had their employment with Defendant end between April 23, 2017
17 and the end of the Class Period. The average hourly rate determined through the sampling is \$13.02.
18 The *maximum* waiting time penalty exposure is thus **\$3,012,307.20.**

19 Wage Statement Damages

20 58. Plaintiffs asserted both derivative wage statement violations, based upon the
21 inaccuracies outlined above, and two stand-alone wage statement violations. The stand-alone
22 violations are founded on 226(a)(2) and 226(a)(9). Specifically, when Plaintiffs and Class Members
23 were paid for hours *other than* regular/OT/DT, those hours were included in the column titled "total
24 hours worked" rendering that column inaccurate.

25 59. In addition, when Class Members were paid OT/DT, the wage statements did not
26 correctly identify the rate paid for such hours. Instead, for example, Ochonma's wage statements
27 reflected that he was paid at the rate of \$15.00/hr for regular hours, OT hours, and DT hours, even
28 though he was actually paid at more than \$15.00 for OT and DT. See Exh. 4.

1 60. Our expert identified the wage statements that would produce inaccuracies, both
2 derivative and stand-alone, and determined the maximum statutory penalty exposure for wage
3 statement violations is **\$1,622,456**.

4 Unreimbursed Expenses

5 61. Plaintiffs contend they were not adequately reimbursed for expenses, primarily
6 mileage/vehicle wear & tear expenses incurred because they were required to use their personal
7 vehicles for deliveries and provided inadequate (lower than the IRS rate) reimbursement rates.

8 62. Our expert calculated the exposure based on allegedly unreimbursed expenses to be
9 **\$1,229,900**.

10 63. In total, Defendants' exposure for damages and statutory penalties based on the Class
11 Claims was calculated at **\$15,750,294.20**. Notably, this maximum recovery reflects a relatively small
12 average individual recovery less than \$10,000 (\$8,472.45).

13 64. The Settlement amount allocated to Class Claims (\$940,000) constitutes 6% of the
14 maximum potential recovery available to the Class if they prevailed entirely on each of the legal
15 theories *and* proved all of the damages actually occurred. While this is a relatively low percentage
16 recovery, such is entirely appropriate under the circumstances in light of the risks implicated in
17 continuing litigation and Defendant's financial condition.

18 65. These all-in figures assume a 100% probability of prevailing at certification, defeating
19 Defendants' planned motion for summary judgment and/or motion to compel arbitration and enforce
20 class action waivers as to Ochonma and Devin Smith, maintaining certification through trial,
21 prevailing completely after a trial on the merits, and having available avenues to collect the judgment
22 in light of Defendants' precarious financial position. *Cavazos v. Salas Concrete* (E.D. Cal. 2022)
23 2022 WL 2918361 *6 (approving settlement representing 5.8% of maximum exposure due, in large
24 part, to Defendant's financial condition).

25 66. Additionally underscoring the reasonableness of the Settlement is its comparability to
26 the settlement approved in the *Phillips Class Action*. That case resolved in exchange for payment of
27 \$460,000 (\$450,000 allocated to resolve Class Claims) to 626 Class Members paid over 35 months.

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1 67. Under the circumstances, and considering the legal and factual defenses asserted by
2 Defendants in the context of their financial state, 100% success and collection is unlikely.

3 **Defendant's Defenses and Realistic Liability**

4 68. Because 100% success in litigation is unrealistic, Class Counsel also determined a
5 much more realistic estimate for the potential recovery of the Class. Under this more measured
6 approach, Class Counsel (1) applied a 25% discount to the off-the-clock claim due to the inherent
7 difficulty in demonstrating that off-the-clock work has occurred and certifying such claims, leaving
8 \$2,458,031.96. *Vasquez v. Crane Cartage* (E.D. Cal. 2020) *LLC*, 2020 WL 4547444 *3; *In re Wells*
9 *Fargo Loan Processor Overtime Pay Litigation* (N.D. Cal. 2011) 2011 WL 3352460 *6; (2) applied
10 no discount to the regular rate claim, leaving \$71,816.00; (3) applied a 50% discount to the meal
11 period claim to account for the likelihood that some of the auto-deducted meal periods were actually
12 taken by Class Members who were offsite and had substantial control over their own schedules,
13 leaving \$2,600,554.50; (4) applied a 50% discount to the rest period claim to account for the likely
14 event that some of the breaks that were missed were voluntarily foregone by Class Members, resulting
15 in \$667,665, (5) applied a 50% discount to the waiting time penalty claim to account for the potential
16 that some of the Class Members who are also former employees would be unable to demonstrate any
17 compensable wages that were actually unpaid during employment and Defendant's anticipated
18 argument that its failure to pay any meal premium wages was not willful and the law was unsettled at
19 the time of the non-payments (*Naranjo v. Spectrum Security Svcs., Inc.* (Cal. 2022) 13 Cal.5th 93, 102)
20 leaving \$1,506,153.60, (6) applied a 25% discount to the wage statement claim to account for the
21 potential that injury could not be demonstrated for derivative violations and due to the technical nature
22 of the alleged stand-alone deficiencies in the wage statements, leaving \$1,216,842, and (7) applied a
23 50% discount to the reimbursement claim to reflect the cognizable risks that 1) certification would not
24 be obtained and/or maintained and 2) that the IRS rate provides for more than the *actual* costs incurred
25 and thus is not an appropriate or reliable measure of damages, resulting in \$614,950.

26 69. In addition to the reductions because of the specific risks for each claim, an overall
27 discount of 50% is appropriate because of the existence of arbitration agreements, including class
28 waivers, signed by Ochonma and Devin Smith. See *O'Conner v. Uber Technologies, Inc.* (N.D. Cal.

1 2016) 201 F.Supp.3d 1110, 1132; *Galvan v. Superior Tank Co, Inc.* (N.D. Cal. 2016) 2016 WL
2 11502115 * 6-7 (substantial reduction of more than 65% appropriate in light of risk employer could
3 compel individual arbitrations); *Lee v. JPMorgan Chase & Co.* (C.D. Cal. 2015) 2015 WL 12711659
4 * 4. While Myrica Smith did not sign an arbitration agreement, it is believed a substantial portion of
5 Class Members (i.e. at least 2/3) did. If the arbitration agreements are enforced, the Class would likely
6 be eviscerated. While Class Members could still pursue individual claims in arbitration, it is a
7 recognized reality that most would not and the vast majority of Class Members would end up with no
8 recovery absent the negotiated settlement. *Shroyer v. New Singular Wireless Svcs., Inc.* (9th Cir.
9 2007) 498 F.3d 976, 986 (recognizing that few individuals will pursue arbitration when the likely
10 recovery is small).

11 70. Under this more measured approach, I determined the Class' realistic expectations as to
12 a damages/statutory penalty award after trial would be \$4,568,006.53.

13 71. The portion of the MSA allocated to Class claims, \$940,000 (\$1,000,000 - \$60,000
14 allocated to resolve PAGA Claims), represents 20.5% of this realistic recovery. Considering all of the
15 risks, most notably that Defendants could compel some Class Members to individual arbitration (and a
16 substantial number would thus never actually realize recovery, either because they would not pursue
17 their claims or would be unsuccessful in a less favorable arbitral forum) and/or that Defendants would
18 seek bankruptcy protection and Class Members would never realize any actual recovery, I believe this
19 recovery is fair, adequate, and reasonable. The gross MSA allocated to Class Claims equates to an
20 average recovery of more than \$500 (\$505.65) per Class Member and just over \$7.00 (\$7.15) per
21 workweek.

22 72. The Net Class Settlement Amount, after deducting attorneys' fees and costs
23 (\$330,000.00 & \$25,000), the Class Representative Enhancement Payments (\$15,000 total), the
24 amount allocated to resolve PAGA Claims (\$60,000), and the expected administration costs (\$25,000),
25 is expected to be \$545,000. Each Participating Class Member is slated to receive a cognizable
26 payment of nearly \$300 (\$293.17) on average; the Settlement is expected to actually distribute more
27 than \$4.00 (\$4.15) per workweek to Participating Class Members.

28 ///

1 73. Overall, Defendants raised a number of legitimate substantive arguments against the
2 Class Claims, which have the potential to substantially limit and/or potentially eviscerate the Class'
3 recovery. At the very least, the defenses would have resulted in substantial motion practice,
4 particularly on Defendants' likely pursuit of compelled arbitration as to Ochonma and Devin Smith,
5 pursuit of summary judgment as to Class Members who were also alleged to have signed arbitration
6 agreements, and challenges to class certification (particularly of meal/rest break and reimbursement
7 claims), along with Defendants' continued contentions they never violated any applicable laws and
8 always appropriately compensated their employees.

9 74. Defendants were expected to vigorously challenge the substantive validity of both the
10 off-the-clock claims and the meal/rest break claims, as well as their certifiability.

11 75. With respect to the off-the-clock claims, the Class would be challenged at the
12 certification stage in that there is no facially invalid written policy upon which the claim is based.
13 Rather, the written policies provide that employees accurately record all time worked. The claim,
14 thus, is based on a practice Plaintiffs contend was facilitated and approved across Defendants'
15 California locations through which Defendants failed to credit employees for time spent travelling
16 between facilities for pick-ups/deliveries *and* failed to compensate employees for time spent working
17 that was auto-deducted from their time worked as meal periods. While such a common practice could
18 certainly support certification, there is cognizable risk to the Class. *Jimenez v. Allstate Ins. Co.* (9th
19 Cir. 2014) 765 F.3d 1161, 1165-1166; *Wren v. RGIS Inventory Specialists* (N.D. Cal. 2009) 256
20 F.R.D. 180, 205-206; but see *Clemens v. Hair Club for Men, LLC* (N.D. Cal. 2016) 2016 WL 1461944
21 * 6.

22 76. Even if the certification hurdle were cleared, damages on the off-the-clock claims are
23 somewhat unpredictable and implicate some risk. Since there are generally no records of off-the-clock
24 work, establishing damages is challenging though not impossible. Compare *Espinoza v. West Coast*
25 *Tomato Growers, LLC* (S.D. Cal. 2016) 2016 W 4468175 * 4; *Valladon v. City of Oakland* (N.D. Cal.
26 2009) 2009 WL 2591346 * 3 with *Smith v. Ceva Logistics U.S., Inc.* (C.D. Cal. 2010) 2010 WL
27 11506874 * 12.

28 ///

1 77. Meal period claims are often difficult to certify. Here, the claims are founded on
2 written policies Plaintiffs contend were facially deficient in a number of respects, at least for
3 substantial portions of the Class Period (See Exh. 5). In particular, the written policies that were in
4 place through March 2021 misadvise Class Members that they are only entitled to meal periods if they
5 work shifts less than six (6) hours, effectively imposing a mandatory waiver for shifts between 5 and 6
6 hours. In addition, the time records provided pre-mediation reflect that Defendants employed an auto-
7 deduct practice through which employees did not record meal periods, but Defendants simply
8 deducted 30 minutes from each shift worked that was more than 5 hours. By way of specific example,
9 the time records reflected an employee clocked in at 6:57 on January 24, 2019 and clocked out at
10 14:10, but was only credited for working 6.7 hours that day (instead of the 7 hours and 13 minutes
11 he/she was actually clocked in for).

12 78. The existence of the auto-deduct practice, and common policies relating to meal periods
13 across Defendants' California employees, strongly supports certification on the meal break claims.
14 *Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. 2018) 2018 WL 1989537 * 3; *Dilts v. Penske*
15 (S.D. Cal. 2010) 267 F.R.D. 625, 636-639.

16 79. While the above facts tend to support certification of meal period claims, Defendants
17 represented that employees generally worked offsite and thus were free to take meal periods as they
18 chose and either 1) actually received the meal periods auto-deducted or 2) voluntarily waived any that
19 were not provided. *Ruiz v. Affinity Logistics Corp.* (S.D. Cal. 2009) 2009 WL 648973 * 6 (where
20 individualized inquiries as to reason breaks were not taken is required, certification may be improper).
21 Although I believe certification of this claim is likely, establishing damages poses a further hurdle as
22 Defendants' obligation is only to make meal periods "available" and not to "police" that they were
23 actually being taken by employees (most of whom worked almost exclusively off-site). While
24 Defendants prevailing on such an argument would undermine the meal period claims, Class Members
25 would still be owed unpaid wages for auto-deducted time that corresponded with a "waived" or
26 "foregone" meal period.

27 80. The rest period claim is similarly certifiable, in that Defendants' policies were facially
28 unlawful (at least until March 2021, one year *after* the Federal Class Action was commenced) as theyh

1 do not give effect to the “major fraction thereof” language of the applicable wage order. See *Brinker*
2 *Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1032. Instead, Defendants’ pre-2021 written policies
3 simply provide (unlawfully) that employees would be given 15 minute rest breaks during “each half of
4 their shift.” See Exh. 5. This language does not give effect to the law’s requirement that at least a 10
5 minute rest period be given for every 4 hours worked “or major fraction thereof” or the fact that more
6 than two (2) rest periods may be required during a workday (i.e. for shifts over 10 hours). That said,
7 demonstrating damages has challenges in light of the fact that rest periods are generally not recorded
8 so presumptions are more problematic to establish.

9 81. The Class’ claims for unreimbursed expenses resulting from Defendants’ payment of
10 amounts that are less than the presumptively sufficient IRS rates faces certification difficulties as well.
11 Under applicable California law, an employer is obligated to reimburse for the “actual expenses”
12 incurred by employees. *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 569. The IRS
13 rate is “presumptively reasonable” and payment of an amount less than the IRS rate is “presumptively
14 unreasonable”, though the relation of any mileage reimbursement rate paid to the IRS rate is not
15 determinative as to the legal propriety of the rate. *Id.* at pp. 566. In light of this reality, commonality
16 is an inherently difficult element to establish with respect to mileage reimbursement class claims based
17 on the provision of an allegedly inadequate rate. E.g. *Ortiz v. CVS Caremark* (N.D. Cal.2013) 2013
18 WL 6236743 * 12.

19 82. Even with the challenges imposed by the state of the law with respect to mileage
20 reimbursement rates, Plaintiffs believe they could clear the certification hurdle. Specifically, Plaintiffs
21 believe they could demonstrate Defendants did not undertake any evaluation of whether the below IRS
22 rates it provided to Class Members would fully compensate them for expenses. In a state such as
23 California, where both insurance and gasoline process are generally *greater* than the rest of the county,
24 use of a rate less than the IRS rate (which is simply an averaging of costs across the U.S.) without any
25 evaluation/analysis as to its propriety is (itself) a common policy. Application of this policy is
26 particularly likely to result in injury to Class Members and thus be unlawful. While the scope of the
27 damages incurred by each Class Member may require individualized inquiry, such should have no

28 ///

1 detrimental impact on certification. *Stuart v. Radioshack Corp.* (N.D. Cal. 2009) 2009 WL 281941 *
2 17-18.

3 83. The certifiability of the derivative wage statement claims are tied to the certifiability of
4 the underlying claims and are thus subject to the risks outlined in the preceding sections. E.g. *Dawson*
5 *v. Hertz Transporting, Inc.* (C.D. Cal. 2018) 2018 WL 6112623 * 9; *Lampe v. Queen of the Valley*
6 *Med. Ctr.* (2018) 19 Cal.App.5th 832, 852. In addition, the wage statement claim is subject to the
7 substantive challenge that requisite injury is lacking because of the wholly derivative nature of the
8 claims and the wage statements accurately outlined the amounts *actually paid* to Class Members.
9 *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336-1337. While I believe the
10 wage statement claim is viable because the wage statements did not accurately reflect the hours
11 Plaintiff and Class Members actually worked (primarily due to the failure to record off-the-clock
12 hours), the case law presents a risk. *Castillo v. Bank of Am. Nat. Assn.* (C.D. Cal. 2019) 2019 WL
13 7166055 * 8.

14 84. Considering all of the circumstances, and the inherent risks in further litigation that
15 would undoubtedly have included multi-pronged legal attacks in the Class Claims, the Settlement,
16 which is expected to provide an average net recovery of more than \$300 to each Participating Class
17 Member, presents a fair, adequate, and reasonable result and the *most* viable avenue to actually
18 receiving monetary redress for the alleged misconduct of Defendants.

19 85. While I am confident that certification and success on the merits could have been
20 attained, continued litigation was guaranteed to be costly, time consuming, and uncertain in outcome.
21 Appellate proceedings would only further delay and jeopardize recovery by Class Members. Shifting
22 sentiment regarding PAGA claims and potential standing issues add yet another layer of concern to
23 continued litigation. By contrast, the proposed Settlement ensures timely relief and substantial
24 recovery for the Class.

25 86. The Released Claims, defined in Paragraph 82 of the Settlement, were narrowly
26 tailored to track the factual allegations underlying the claims advanced on behalf of the Class and do
27 not include a Civil Code section 1542 waiver.

28 ///

PAGA Penalty Exposure Calculations

87. Defendants maximum exposure for civil penalties pursuant to the PAGA was calculated to be \$755,143, only 25% of which would have been payable to PAGA Members.¹

88. Because PAGA penalties are discretionary, often reduced significantly by courts, and because the propriety of imposing the heightened 226.3 civil penalty is questionable , a steep discount of 90% or more is appropriate, leaving \$75,514.30

89. The Settlement allocates \$60,000 to resolution of claims for PAGA civil penalties arising out of the alleged violations of the Labor Code committed against the Class. This equates to 7.95% of the maximum and 79.5% of the realistic PAGA exposure, which is an appropriate resolution under the circumstances because the punitive and deterrent purposes of the PAGA are being served by the substantial damages and statutory penalties being paid to the Class in resolution of substantive Class Claims. *Jennings v. Open Door Marketing, LLC* (N.D. Cal. 2018) 2018 WL 4773057 *8-9 (approving PAGA recovery of 0.6% of maximum); *Ahmed v. Beverly Health & Rehabilitation Svcs.* (E.D. Cal. 2018) *Inc.*, 2018 WL 746393 *10.

90. After deduction of administrative costs, attorneys' fees and costs, a service payment to Gonzalez, and the LWDA's portion of the PAGA allocation, it is expected that \$545,000 will remain to be distributed to Participating Class Members and an additional \$15,000 will be distributed to PAGA Members (regardless of whether he/she opts out of the Settlement).

91. This is substantial and cognizable monetary recovery, particularly considering the nature and inherent risks of further litigation and Defendants' financial condition and cash flow difficulties.

¹ 75% of any civil penalties recovered shall be paid to the LWDA and 25% to the aggrieved employees. Section 2699(i).

There is a definite split of authority regarding whether the \$250 penalty in Labor Code section 226.3 or the default \$100 penalty provision applies to wage statement claims. *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355-356 (holding default PAGA penalty controls in claims for wage statement violations); *Raines v. Coastal Pac. Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section 226.3 provides the civil penalty for failure to comply. In our view, LWDA would not be prohibited from seeking civil penalties for a grossly inadequate wage statement simply because the employer did provide a statement. Otherwise, the purpose of the statute would be thwarted."). Labor Code section 226.3 provides a civil penalty of "two hundred fifty dollars (\$250) per employee per violation. Under *Raines*, Defendants would owe \$1,669,000 (\$250 x 6,676 deficient wage statements). If the \$100 penalty is used, Xtreme's total PAGA exposure for failing to provide accurate itemized wage statements would plummet to only \$667,600 (6,676 deficient wage statements x \$100).

1 **The Class Notice and Notice Plan Comply with Rule 23 and Satisfy Due Process**

2 92. Attached as **Exhibit B** to the Settlement Agreement is true and correct copy of the
3 proposed Class Notice which has been reviewed and approved by the Parties.

4 93. The Class Notice meets all of the requirements of procedural due process and Rule
5 23(e) by identifying the Plaintiff and Defendant and describing the claims and the Class Action in a
6 straightforward manner; succinctly describing the essential terms of the proposed Settlement,
7 including the Class Representative's proposed Service Payment and the amount Class Counsel will
8 request for attorney's fees and costs; identifying the claims that are being released by the Class;
9 identifying all parties against whom claims are being released; providing Class Members with
10 information on how to participate in, exclude themselves from, or object to the Settlement; clearly
11 providing all applicable deadlines for such action; informing Class Members of the consequences if
12 they decide to exclude themselves from the Settlement; and advising them that, if they choose to
13 participate and the Settlement is approved, they will be bound by the resulting judgment. Further, the
14 Class Notice clearly explains the manner in which Class Members can obtain further information (e.g.,
15 through the Court's website or contacting the Court or Administrator) and that the Final Approval
16 Hearing may be moved without further notice.

17 94. Because all Class Members are current or former employees of Defendants, for whom
18 Defendant has current or last known addresses as well as SSNs, notice here is simpler and more
19 reliable than in other types of class actions that require published notice to reach unidentifiable class
20 members.

21 **ILYM Should be Approved as Claims Administrator**

22 95. My office solicited bids from several national settlement administrators, including
23 ILYM, Simpluris, Inc., and Phoenix Class Action Administration Solutions. After negotiating in an
24 effort to obtain the most reliable and cost-effective service possible, the Parties have selected ILYM to
25 serve as Administrator.

26 96. I have experience with ILYM and have found their fees fair and competitive amongst
27 other administrators in the industry. I believe ILYM's bid of \$25,000, which was comparable to all of
28 the other bids received, is reasonable in relation to a class of this size, the work to be performed, and

1 as compared to estimates received from other administrators. ILYM had previously been retained to
2 complete the *Belaire-West* Notice process and, once settlement was negotiated instead, was in the best
3 position to provide comprehensive settlement administration because of its previous involvement.

4 **Notice to the Labor and Workforce Development Agency**

5 97. The Parties have agreed that \$60,000 will be allocated to settle claims to assess and
6 collect civil penalties brought pursuant to the PAGA. Labor Code § 2699(i) affirmatively mandates
7 that 75 percent of the apportioned PAGA Settlement Amount – or \$45,000 – shall be payable to the
8 LWDA. The remaining 25 percent, or \$15,000, will be distributed to the PAGA Members (Class
9 Members who were employed between March 12, 2019 to December 31, 2021). Under the
10 circumstances, I believe such amount is reasonable and sufficiently and serves the deterrent and
11 punitive purposes of the PAGA. The Parties expect that at least \$545,000 will ultimately be
12 distributed to Class Members, which will provide a cognizable average recovery of nearly \$300 to
13 each Class Member (\$293.17).

14 98. I transmitted the Settlement Agreement in compliance with Labor Code § 2699(l)(2).
15 See **Exhibit 6**. I will transmit a copy of the moving papers associated with the motion for preliminary
16 approval to the LWDA once they are filed.

17 **Plaintiff Has and Will Serve the Class Well**

18 99. Plaintiffs' interests in prosecuting this Class Action and obtaining the most beneficial
19 recovery possible fully comport with the collective interests of the Class Members. Plaintiffs
20 understand the claims and theories that are being advanced, have been involved through the litigation
21 and have no conflicts with the other members of the Class they seek to jointly represent. Plaintiffs
22 were each subjected to the same unlawful policies, practices, and procedures, having been 1)
23 underpaid because of Defendants' failures to pay for all hours actually worked (primarily because of
24 time entry edits), 2) denied meal and rest periods and associated premiums, 3) furnished inaccurate
25 itemized wage statements, 4) not timely paid all wages due and owing upon separation, and 5) not
26 reimbursed all business expenses. Were each not serving as Class Representative, Plaintiffs would
27 each be a Class Member.

28 ///

100. Plaintiffs Myrica Smith and Ochonma have and are prepared to continue adequately representing the interests of the Class Members. Plaintiffs have demonstrated their commitment to prosecuting this Class Action on behalf of the Class Members by, amongst other things, locating and retaining attorneys, participating in discovery and investigation, filing this action and willingly exposing their names and reputations to detriment by filing the Class Action, and helping to facilitate the Settlement for which approval is now sought, including participating in and being available throughout the entire remote mediation process and subsequent protracted settlement negotiations.

101. Plaintiffs, who have each worked diligently with Class Counsel throughout this entire litigation, including taking numerous calls with Class Counsel, participating in responding to the Parties' formal and informal information exchange, and participating in the mediation and settlement negotiations, should be rewarded for taking the initiative to pursue these claims on behalf of their former coworkers, and for their role in reaching a settlement providing for valuable monetary relief to the Class.

102. Plaintiff s will each apply for a service payment in the amount \$5,000, or 0.5% of the \$1,000,000 MSA, \$15,000 total to all Plaintiffs, in consideration for their service as Class Representatives. I believe this to be fair, reasonable and appropriate.

103. Class Members will be apprised of Plaintiffs' requests as well as their ability to review the moving papers on the Court's website, or through the Administrator, and to object to the request if they so desire.

Experience of Class Counsel

104. In May, 2004, I received a B.A. from California State University, Sacramento. In May 2007, I received a J.D. with distinction from the University of the Pacific, McGeorge School of Law. In November, 2007, I became a member of the State Bar of California. I have been an attorney with Mayall Hurley P.C. since 2013. I became a Shareholder in March 2019 and have been a member of the management team as the Human Resources Director since 2020. Prior to joining Mayall Hurley, I spent two (2) years as a Deputy District Attorney, and an additional three (3) years as a litigation associate for the Sacramento law firm of Downey Brand, LLP. I have been focusing my practice

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1 almost exclusively on employment litigation, representing both employees and employers, for the past
2 ten (10) years.

3 105. My law firm, Mayall Hurley P.C., primarily through attorneys Robert J. Wasserman
4 and me, has pursued this action aggressively, and many other similar class, collective, and
5 representative actions. For instance, Mayall Hurley P.C. has recently been approved as class counsel
6 in *Jaques v. Mike's Mobile, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-
7 2329; *Patterson v. Schell & Kampeter*, San Joaquin County Superior Court Case Nos. STK-CV-2020-
8 9269/STK-CV-UOE-2021-4845; *Schmeirer v. ARC Document Solutions, LLC*, San Joaquin County
9 Superior Court Case No. STK-CV-UOE-2019-2008; *Markson, et al. v. CRST International, Inc., et al*,
10 Central District of California Case No. 5:17-cv-01261-SB; *Espinoza/Renteria v. Love's Country*
11 *Stores, Inc.*, San Bernardino County Superior Court Case No. CIVDS2016581; *Rodriguez v. Allen*
12 *Distribution, L.P.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2020-000; *McGee v.*
13 *Brosnan Risk West Coast*, San Mateo County Superior Court Case No. 19-CV-04464; *Botti v. SAFE*
14 *Credit Union*, Sacramento County Superior Court Case No. 34-2019-00261736; *Mediodia v. SoCal Jet*
15 *Services, Inc.*, Los Angeles County Superior Court Case No. 18STCCV09751; *Flores v. Dart*
16 *Container Corp., et al*, Eastern District of California Case No. 2:19-cv-00083-WBS-EFB; *Rodriguez*
17 *v. J-M Manufacturing, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2019-6065;
18 *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County Superior Court Case No. STK-CV-UOE-
19 2020-1774; *Modica v. Iron Mountain Information Management Svcs., Inc.*, United States District
20 Court, Eastern District of California Case No. 2:19-cv-00370-TLN-JDP; *Magee v. Thyssenkrupp*
21 *Materials, N.A., et al.*, Alameda County Superior Court Case No. RG19027231; *Basinger v. Il Palio*
22 *Restaurant Group, Inc.*, San Diego County Superior Court Case No. 37-2018-00004296-CU-OE-CTL;
23 *Pacheco v. Bushfire Grill, Inc., et al*, United States District Court, Southern District of California,
24 Case No. 3:18-cv-01696-JAH-WVG; *Wise v. ULTA Salon, Cosmetics & Fragrance, Inc.*, United
25 States District Court, Eastern District of California, Case No. 1:17-cv-00853-DAD-EPG; *Fernando*
26 *and Kalaveras v. Burroughs, Inc.*, Alameda County Superior Court, Case No. RG18906875; *Mansur*
27 *v. Owens-Brockway Glass Container, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-
28 UOW-2018-14631; *Alderson v. Alameda County Agricultural Fair Association*, Alameda County

1 Superior Court, Case No. RG18912654; *Terry v. Mare Island Dry Dock, LLC*, Solano County Superior
2 Court, Case No. FCS051650; *Mettler, Bender, and Rojas v. Les Schwab Tire Centers of California,*
3 *Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476; *Escalera v. La Tapatia*
4 *Mexican Market, Inc.*, San Joaquin County Superior Court, Case No., ST-CV-UOE-2017-5296;
5 *Garcia, et al. v. HMS Host USA, Inc.*, United States District Court, Northern District of California,
6 Case No. 17-cv-03069-RS; *Ali v. Sutter Valley Medical Foundation, Inc.*, Sacramento County Superior
7 Court, Case No. 34-2017-00217486; *Grady, et al. v. People 2.0 dba The Hire Source, et al.*, San
8 Joaquin County Case No. STK-CV-UOE-2017-13867; *Kumar v. Forty Niners Stadium Management*
9 *Company*, Santa Clara County Superior Court, Case No. 17CV3121427; *Gast v. Flooring Liquidators,*
10 *Inc.*, Stanislaus County Superior Court, Case No. 2026223; *Russell v. KeHe Distributors, Inc.*, United
11 States District Court, Eastern District of California, Case No. 2:17-at-00592; *Smith v. Wal-Mart*
12 *Stores, Inc. et al.*, United States District Court, Northern District of California, Case No. 3:16-cv-
13 02832-JD; *Titus v. The Martin-Brower, LLC*, United States District Court, Eastern District of
14 California, Case No. 2:17-cv-00558-JAM-GGH; *Hugues v. The Morning Star Trucking Company,*
15 *LLC, et al.*, Yolo County Superior Court Case No. CV16-1215; *Ahmed v. Beverly Health and*
16 *Rehabilitation Services, Inc., et al.*, United States District Court, Eastern District of California, Case
17 No. 2:16-cv-01747-WBS-KJN; *Guzman-Padilla, et al. v. Gerard Van De Pol, et al.*, United States
18 District Court, Eastern District of California, Case No. 2:17-cv-00196-JAM-KJN; *Jaime v. Walt*
19 *Disney Parks and Resorts U.S., Inc.*, United States District Court, Central District of California, Case
20 No. SACV 15-01618-CJC(DFMx); *Stevens v. Suncrest Solar, Inc.*, Fresno County Superior Court,
21 Case No. 16CECG03355; *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda County Superior
22 Court Case No. RG17866256; *Maasrani v. Waterton Hospitality Management*, San Mateo County
23 Superior Court, Case No. 17CIV05470; *Huynh v. Parker-Hannifin Corporation*, Stanislaus County
24 Superior Court, Case No. 2022325; *Moser v. O'Connor Woods Housing Corporation*, San Joaquin
25 County Superior Court, Case No. STK-CV-UOE-2014-0009861; *Bastami v. Semiconductor*
26 *Components Industries, LLC*, Santa Clara County Superior Court, Case No. 16cv297447; *Davis v.*
27 *Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court, Case No. BC592580; *Van*
28 *Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District Court, Eastern District of

1 California, Case No. 1-16-cv-00066-SKO; *Clark v. Arrow Sign Co.*, San Joaquin County Superior
2 Court, Case No. STK-CV-UOE-2016-6457, and *Moreno v. B.R. Funsten & Co.*, Solano County
3 Superior Court Case No. FCS046149, all wage-and-hour class actions with claims similar to the
4 instant matter. Not including this matter, we have several other wage-and-hour class actions currently
5 pending final approval in which we have been preliminarily approved as class counsel. My law firm
6 and I have also represented plaintiffs in numerous representative employment actions, settlements in
7 which have been approved by multiple California and federal courts, and are currently prosecuting
8 dozens more.

9 106. Mayall Hurley, P.C. has also obtained class and/or conditional certification (outside of
10 the settlement context) in a number of cases, including *Liu v. QNAP, Inc.*, Los Angeles County
11 Superior Court Case No. 19PSCV00668; *Bice v. Vensure HR, Inc., et al.*, San Joaquin County
12 Superior Court, Case No. STK-CU-UOE-2016-1264; *Perez et al. v. Abbate Family Farms Limited
13 Partnership et al.*, San Joaquin County Superior Court, Case No. 39-2012-00288653-CU-OE-STK,
14 *Wilk v. Skechers U.S.A., Inc.*, United States District court, Central District of California, Case No. 5-
15 18-CV-01921-JGB-SP; *Titus v. Paramount Equity Mortgage, LLC*, United States District Court,
16 Eastern District of California, Case No. 2:17-cv-00349-MCE-KJN; and *Solati v. RPM Mortgage, LLC*,
17 Solano County Superior Court Case No. FCS048401.

18 107. I am also currently lead counsel or co-lead counsel in approximately 5 employment
19 class action cases and a handful of PAGA representative cases.

20 I declare under penalty of perjury under the laws of the State of California and the United
21 States of America that the foregoing is true and correct. Executed on this 8th day of December, 2022,
22 in Lodi, California.

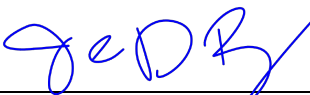
23
24 
25 JENNY D. BAYSINGER

EXHIBIT 1

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Attorneys for Defendants

1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SAN BERNARDINO

3
4 DEVIN SMITH, individually and on
5 behalf of all others similarly situated,
6 and as a proxy for the LWDA;
7 MYRICA SMITH, individually and on
8 behalf of all others similarly situated;
9 and KEVIN OCHONMA, individually
10 and on behalf of all others similarly
11 situated and as a proxy for the LWDA,

12 Plaintiffs,

13 vs.

14 DI LOGISTICS, LLC, a California
15 limited-liability corporation; DI
16 OVERNITE, LLC, a Nevada limited
17 liability company; DI OVERNITE
18 INVESTMENTS, LLC, a California
19 limited liability company,
20 Defendants.

Case No.: CIV DS 2011469

**JOINT STIPULATION OF CLASS AND
PRIVATE ATTORNEY GENERAL ACT
("PAGA") ACTION SETTLEMENT
AGREEMENT AND RELEASE**

**JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT
AND RELEASE**

21 This Joint Stipulation of Class and PAGA Action Settlement and Release
22 ("Agreement" or "Settlement Agreement") is made and entered into by and
23 between Plaintiffs MYRICA SMITH, KEVIN OCHONMA, and DEVIN SMITH
24 ("Plaintiffs" or "Class Representatives"), as individuals and on behalf of all others
25 similarly situated, and DI LOGISTICS, LLC, DI OVERNITE, LLC, and DI
26 OVERNITE INVESTMENTS, LLC ("Defendants" or collectively the "DI
27 Entities") (collectively, the "Parties"). In consideration of the promises and mutual
covenants and agreements herein contained, the Parties hereby covenant and agree as

1 follows:

2 **RECITALS**

3 1. Devin Smith PAGA Letter: On March 12, 2020, Plaintiff Devin Smith
4 filed a PAGA letter with the Labor and Workforce Development Agency (the “Devin
5 Smith PAGA Letter”) alleging several wage and hour claims, including the failure to
6 reimburse for all business expenses and the failure to provide accurate itemized wage
7 statements (collectively the “Devin Smith Initial PAGA Claims”).

8 2. Smith/Ochonma Complaint. On April 23, 2020, Plaintiff Myrica Smith
9 filed a Class Action Complaint in the United State District Court, Central District of
10 California Case No. 2:20-CV-03734-PSG-AGR (the “Federal Court Class Action”)
11 alleging several wage and hour claims, including the failure to pay minimum wage, the
12 failure to pay overtime wages, the failure to pay wages in violation of Labor Code
13 section 218, the failure to provide meal and rest breaks, the failure to pay sick leave,
14 the failure to reimburse for all business expenses, the failure to pay all wages due and
15 owing at the end of employment, and unlawful business practices.

16 3. Devin Smith Complaint: On June 11, 2020, Plaintiff Devin Smith filed a
17 Complaint for Violations of the PAGA in the Superior Court of California, County of
18 San Bernardino Case No. CIVDS2011469 (the “State Court Action”) seeking to assess
19 and collect civil penalties arising out of the Devin Smith Initial PAGA Claims.

20 4. Ochonma PAGA Letter: On June 17, 2020, Plaintiff Kevin Ochonma filed
21 a PAGA letter with the Labor and Workforce Development Agency (the “Ochonma
22 PAGA Letter”) alleging several wage and hour claims, including the failure to pay
23 minimum wage, the failure to pay overtime wages, the failure to reimburse for all
24 business expenses, the failure to provide meal and rest periods or appropriately
25 calculate and pay meal/rest period premiums, the failure to appropriately provide and
26 pay for sick leave, the failure to provide accurate itemized wage statements, and the
27

1 failure to pay all wages due and owing at the time of separation (collectively the
2 “Ochonma PAGA Claims”).

3 5. Smith/Ochonma First Amended Complaint. On June 25, 2020, Plaintiffs
4 Smith and Ochonma filed a First Amended Class Action Complaint in the Federal
5 Court Class Action (“FAC”). The FAC added Plaintiff Kevin Ochonma as a named
6 Plaintiff and putative class representative and added a claim for failure to provide
7 accurate itemized wage statements.

8 6. Smith/Ochonma Second Amended Complaint. On September 3, 2020,
9 Plaintiffs Smith and Ochonma filed a Second Amended Class and Representative
10 Action Complaint in the Federal Court Class Action (“SAC”). The SAC added a claim
11 to assess and collect civil penalties pursuant to the PAGA arising out of the Ochonma
12 PAGA Claims.

13 7. Smith/Ochonma Third Amended Complaint: On January 7, 2022,
14 Plaintiffs Smith and Ochonma filed a Third Amended Class and Representative Action
15 Complaint in the Federal Court Class Action (“TAC”). The TAC added Defendants
16 D.I. Overnite, LLC and D.I. Overnite Investments, LLC as named parties. The TAC is
17 the operative Complaint in the Federal Court Class Action.

18 8. First Amended Complaint in the State Court Action: To facilitate the
19 instant settlement, the Parties agree that the First Amended Class, Collective, and
20 Representative Action Complaint (“FAC”), attached as Exhibit A, will be filed via
21 stipulation in the State Court Action, Superior Court of California, County of San
22 Bernardino Case No. CIVDS2011469. Class Counsel submitted the stipulation to the
23 Court on May 26, 2022 and will file the FAC within ten (10) court days of the Court’s
24 execution of the Order authorizing filing of the FAC.

25 9. The Action. All claims alleged in the Devin Smith PAGA Letter, the State
26 Court Action, the Ochonma PAGA Letter, and the Federal Court Class Action are
27 collectively referred to herein as the “Action.”

1 10. The Action currently asserts the following causes of action: (1) Failure To
2 Pay Minimum Wage; (2) Failure To Pay Overtime; (3) Failure To Pay Wages; (4)
3 Failure To Provide Meal Periods; (5) Failure To Provide Rest Periods; (6) Failure To
4 Properly Pay Sick Leave; (7) Failure To Reimburse For All Business Expenses; (8)
5 Failure To Pay All Wages Due And Owing At End Of Employment; (9) Failure To
6 Provide Accurate Itemized Wage Statements; (10) Unlawful Business Practices; (11)
7 Violation of Private Attorneys General Act (the “Operative Complaint”).

8 11. Defendants deny all material allegations set forth in the Operative
9 Complaint and this Action and has asserted numerous affirmative defenses.

10 12. The Parties have investigated the facts and analyzed the relevant legal
11 issues regarding the claims and defenses in the Action. Plaintiffs’ investigation
12 included, *inter alia*, the exchange of information pursuant to informal discovery
13 methods, formal discovery methods, and review of numerous corporate policies and
14 practices. Based on their investigation and analysis, Plaintiffs believe the Action has
15 merit, while Defendants believe the Action has no merit.

16 13. On July 30, 2021, Plaintiffs Myrica Smith and Kevin Ochonma and the DI
17 Entities, participated in a mediation with David Rotman, Esq., a prominent mediator
18 experienced in resolving wage and hour class and collective actions. Plaintiffs’
19 Counsel and defense counsel for DI Entities continued negotiations, both with the
20 assistance of the mediator and independently, through March 15, 2022. As a result of
21 the mediation, and the subsequent negotiations, the Parties reached an agreement to
22 settle all causes of action alleged by the Plaintiffs under the California Labor Code,
23 California Business and Professionals Code, and under the Private Attorneys General
24 Act (the “PAGA”) in the lawsuits entitled *Smith/Ochonma v. DI Logistics, LLC, et al.*
25 (U.S. District Court, Central District of California, Case No. 2:20-CV-03734-PSG-
26 AGR) and *Devin Smith v. DI Logistics, LLC* (Superior Court of California, County of
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1 San Bernardino Case No. CIVDS2011469), as well as all claims which could have
2 been raised based on the factual allegations asserted therein.

3 14. Based on the documents produced, information exchanged for the
4 purposes of mediation, as well as the Parties' own independent investigation and
5 evaluation, Plaintiffs' Counsels believe this settlement with DI Entities for the
6 consideration and on the terms set forth in this Settlement Agreement is fair,
7 reasonable, and adequate, and is in the best interest of the putative Class Members in
8 light of all known facts and circumstances, including the risk of significant delay and
9 uncertainty associated with litigation, financial conditions of the DI Entities, and
10 various defenses asserted by Defendants.

11 15. In the interest of avoiding further litigation, the Parties agree to fully and
12 finally and forever settle and dispose of all actual or potential claims by the putative
13 Class Members and individual class representatives which were raised in the Action or
14 which could have been raised based on the factual allegations asserted therein. This
15 Settlement Agreement is made and entered into by and between Plaintiffs, individually
16 and on behalf of all others similarly situated, and Defendants, and is subject to the
17 terms and conditions hereof, and to the Court's approval. The Parties expressly
18 acknowledge this Settlement Agreement is entered into solely for the purpose of
19 compromising significantly disputed claims and that nothing herein is an admission of
20 liability or wrongdoing by Defendants. If for any reason the Settlement Agreement is
21 disapproved, it will be of no force or effect, and the Parties shall be returned to their
22 original respective positions.

23 **DEFINITIONS**

24 16. The following definitions are applicable to this Settlement Agreement.
25 Definitions contained elsewhere in this Settlement Agreement will also be effective:
26
27

1 17. “Class Members” means all current and former non-exempt California
2 employees of the DI Entities who worked at least one shift from April 23, 2016 to
3 December 31, 2021.

4 18. “Settlement Class Members” means all Class Members who do not opt
5 out of the settlement.

6 19. “The Action” means all claims alleged in the Devin Smith PAGA Letter,
7 the State Court PAGA Action, the Ochonma PAGA Letter, and the Federal Court
8 Class Action, collectively.

9 20. “Class Counsel” means Mayall Hurley, P.C., The Law Office of Ian
10 Pancer, and Thomas D. Rutledge, each of whom will request appointment as Class
11 Counsel.

12 21. “Class List” means a complete list of all putative Class Members that
13 Defendants have diligently and in good faith compiled from its records and provided to
14 the Settlement Administrator. The Class List is formatted in a readable Microsoft
15 Excel spreadsheet and includes each putative Class Member’s full name; last known
16 address; last known phone number; last known email address; Social Security Number;
17 dates of employment; and calculated workweeks within the class period.

18 22. “Class Period” means the period from April 23, 2016 to December 31,
19 2021.

20 23. The “PAGA Period” is defined as March 12, 2019 to December 31, 2021

21 24. “Class Representatives” means Plaintiffs MYRICA SMITH, KEVIN
22 OCHONMA, and DEVIN SMITH, each of whom seek appointment as Class
23 Representatives.

24 25. “Defendants” means the DI Entities and their past, present and/or future,
25 direct and/or indirect, owners, officers, directors, members, managers, employees,
26 agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates,
27 successors, and assigns.

1 26. “Effective Date” means either (a) the date the entry of Final Judgment and
2 Order Approving Settlement, if no motions for reconsideration and no appeals or other
3 efforts to obtain review have been filed, or (b) in the event a motion for
4 reconsideration, an appeal or other effort to obtain review of the Final Judgment and
5 Order Approving Settlement, the date sixty (60) calendar days after such
6 reconsideration, appeal or review has been finally concluded and is no longer subject
7 to review, whether by appeal, petition for rehearing, petition for review or otherwise.

8 27. “Maximum Settlement Amount” or “MSA” means the maximum
9 settlement amount of One Million Dollars (\$1,000,000.00) to be paid by Defendants in
10 full satisfaction of all claims arising from the Action, which includes all attorneys’
11 fees, costs, the costs of settlement administration, the PAGA Payment of \$60,000, of
12 which \$45,000 (75%) will be paid to the LWDA (the “LWDA Payment”) and \$15,000
13 (25%) (the “Employee PAGA Payment”) will be distributed to eligible Class Members
14 who were employed during the PAGA Period. In no event will Defendants be liable
15 for more than the Maximum Settlement Amount, unless the escalator clause, described
16 in Paragraph 55 is triggered. No portion of the Maximum Settlement Amount shall
17 revert to Defendants. Defendants’ share of any employer payroll taxes to be paid in
18 connection with the settlement (e.g., FICA, FUTA, payroll taxes, and/or any similar
19 tax or charge – collectively “Employer Taxes”) shall be paid in addition to the
20 Maximum Settlement Amount. The Settlement Administrator will then be responsible
21 for making appropriate deductions, reporting obligations, and issuing the individual
22 settlement awards.

23 28. “LWDA Payment” means the amount the Parties have agreed to pay to
24 the California Labor and Workforce Development Agency (“LWDA”) for resolution of
25 the claims for civil penalties alleged pursuant to the PAGA, and which are included in
26 the Released Claims. This amount is \$60,000, of which \$45,000 (75%) will be paid to
27

1 the LWDA and \$15,000 (25%) (the “Employee PAGA Payment”) will be distributed to
2 eligible Class Members who were employed during the PAGA Period.

3 29. “Net Settlement Amount” means a portion of the MSA which will be
4 determined by the following: from the full amount of the MSA, all payments will be
5 subtracted for court-approved attorney’s fees and costs, the enhancement payment to
6 Plaintiffs, settlement administration costs, and the LWDA Payment. The Net
7 Settlement Amount and the Employee PAGA Payment will be distributed on a pro rata
8 basis to the Class Members based on the number of workweeks (full or partial) worked
9 by each individual Class Member during the Class Period and the PAGA Period,
10 respectively. Employer-side payroll taxes shall be paid by the DI Entities separately
11 from and in addition to the MSA. Any Class Member who opts out of the Settlement
12 will still receive his/her pro rata portion of the Employee PAGA Payment based on the
13 number of pay periods he/she was employed during the PAGA Period.

14 30. “Notice of Objection” means a Participating Class Member’s valid and
15 timely written objection to the Settlement Agreement. For the Notice of Objection to
16 be valid it must include: (a) the case name and number; (b) the objector’s full name,
17 signature, address, telephone number and the last four digits of the objector’s Social
18 Security number; (c) a written statement of all grounds for the objection accompanied
19 by any legal support for such objection; (d) copies of any papers, briefs, or other
20 documents upon which the objection is based; (e) the identity of the objector’s counsel
21 if the objector is represented by counsel; and (f) whether the objector wishes to be
22 heard at the Final Approval Hearing.

23 31. “Notice Packet” means the Notice of Class Action Settlement and Mailing
24 Envelope.

25 32. “Preliminary Approval” means the Court order granting preliminary
26 approval of the Settlement Agreement.

1 33. “Qualified Settlement Account” means a qualified settlement fund
2 account established by the Settlement Administrator into which Defendants will make
3 a one-time deposit of One Hundred Seventy-Five Thousand Dollars (\$175,000.00)
4 within thirty (30) calendar days of the Effective Date, and thirty-three (33) subsequent
5 payments of Twenty-Five Thousand Dollars (\$25,000.00) on or before the 15th of
6 every month, following the month in which the one-time deposit is made, thirty (30)
7 calendar days after the Effective Date.

8 34. “Released Claims” include all claims, debts, liabilities, demands,
9 obligations, damages, and actions or causes of action of any kind, arising under state,
10 federal or local law, whether statutory, common law, or administrative law, at any time
11 during the Class Period, that were or could have been asserted based on the factual
12 allegations in the Action, or Complaints described herein, or based on any facts
13 discovered in the course of the Action, including (without limitation), claims for failure
14 to pay minimum wage, failure to pay overtime, failure to pay all wages, failure to
15 provide meal periods, failure to provide rest periods, failure to properly pay sick leave,
16 failure to reimburse for all business expenses, failure to pay all wages due and owing at
17 end of employment, failure to provide accurate itemized wage statements, unlawful
18 business practices, private attorneys general act, claims under California Labor Code
19 sections 201 to 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,
20 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2802, and the Wage Orders
21 promulgated thereunder, California Business and Professions Code section 17200, *et*
22 *seq.*, and the federal Fair Labor Standards Act (“FLSA,” 29 U.S.C. § 201, *et seq.*); and
23 claims for injunctive relief, punitive damages, penalties of any nature (including
24 PAGA civil penalties and statutory penalties), interest, fees, and costs. As to federal
25 claims arising under the FLSA that could have been pleaded based on the facts pleaded
26 in the Federal Complaint, such claims shall not be released unless and until a
27 Participating Class Member signs their settlement check, which will constitute consent

1 to opt into the release of all FLSA claims that could have been pleaded based on the
2 facts pleaded in the Federal Complaint.

3 35. "Released Claims Period" means the period from April 23, 2016 to
4 December 31, 2021, or to the date where the Court preliminarily approves the
5 settlement, whichever is sooner.

6 36. "Released Parties" means Defendants, each of the DI Entities, and its past,
7 present, and future parents, subsidiaries, divisions, affiliates, predecessors, successors,
8 and assigns, and each of their past, present, and future shareholders, owners, officers,
9 directors, employees, agents, trustees, attorneys, representatives, administrators,
10 fiduciaries, beneficiaries, subrogees, executors, partners, privies, and any other
11 individual or entity which could be liable for any of the Released Claims.

12 37. "Request for Exclusion" means a timely letter submitted by a Class
13 Member indicating a request to be excluded from the settlement. The Request for
14 Exclusion must: (a) include the case name and number; (b) contain the full name,
15 address, telephone number, and the last four digits of the Social Security Number of
16 the Class Member requesting exclusion; (c) clearly state the Class Member requests to
17 be excluded from the settlement; (d) be signed by the Class Member; (e) be returned by
18 fax, email or mail to the Settlement Administrator at the specified address and/or
19 facsimile number provided in the Notice; and (f) be postmarked, emailed or faxed on
20 or before the Response Deadline. The date of the fax, email or postmark on the return
21 mailing envelope will be the exclusive means to determine whether a Request for
22 Exclusion has been timely submitted. A Class Member who does not request
23 exclusion from the settlement will be deemed a Participating Class Member and will be
24 bound by all terms of the settlement, if the settlement is granted final approval by the
25 Court.

26 38. "Response Deadline" means the deadline by which Class Members must
27 postmark to the Settlement Administrator a valid Request for Exclusion or Notice of
28

1 Objection. The Response Deadline will be forty-five (45) calendar days from the
2 initial mailing of the Notice Packet by the Settlement Administrator, unless the 45th
3 falls on a Sunday or Federal holiday, in which case the Response Deadline will be
4 extended to the next day on which the U.S. Postal Service is open. Under no
5 circumstances, other than circumstances described in Paragraph 69 will the Settlement
6 Administrator have the authority to extend the deadline for Class Members to submit a
7 Request for Exclusion or Notice of Objection to the Settlement.

8 39. "Settlement Administrator" means ILYM Group, Inc. or any other third-
9 party class action settlement administrator agreed to by the Parties and approved by the
10 Court for purposes of administering this Settlement pursuant to the terms of this
11 Agreement, the Class Notice, the Preliminary Approval Order, and the Judgment,
12 including, without limitation, printing, distributing, and tracking documents for this
13 Settlement, calculating estimated amounts per Class Member, tax reporting,
14 distributing the appropriate settlement amounts, and providing necessary reports and
15 declarations, and other duties and responsibilities set forth herein to process this
16 Settlement, and as requested by the Parties. The Settlement Administrator shall agree
17 to confidentiality terms as may be required by Defendants regarding personnel and
18 payroll data provided to the Settlement Administrator and shall work with Class
19 Counsel and Counsel for Defendants to implement and administer appropriate fraud-
20 prevention policies. The Parties each represent they do not have any financial interest
21 in the Settlement Administrator or otherwise have a relationship with the Settlement
22 Administrator that could create a conflict of interest.

23 40. "Settlement Administration Costs" means the costs approved by the Court
24 to be paid to the Settlement Administrator for administering this Settlement. The
25 Settlement Administration Costs will be paid from the Maximum Settlement Amount,
26 including, if necessary, any such costs in excess of the amount represented by the
27 Settlement Administrator as being the maximum costs necessary to administer the

1 settlement. The Settlement Administration Costs are currently estimated to be
2 \$25,000.00.

3 41. "Work Weeks" means the number of weeks worked by all Class Members
4 in California during the Class Period, which has been calculated by Defendants and
5 provided to the Settlement Administrator based on the start and end dates of each
6 individual's employment during the Class Period as maintained by Defendants. Class
7 Members may dispute the number of Work Weeks they worked during the Class
8 Period by submitting a written Work Weeks dispute to the Settlement Administrator,
9 which should include the Class Member's (a) full name, signature, address, telephone
10 number, and the last four digits of the Class Member's Social Security number; (b) the
11 number of Work Weeks the Class Member contends is correct; and (c) any evidence
12 supporting the Class Member's contention.

13 42. "Work Week Value" means the value of each compensable Work Week,
14 as determined by the formula set forth herein.

15 **STIPULATION OF CLASS CERTIFICATION**

16 43. The Parties stipulate to the certification of this Settlement Class for
17 settlement purposes only. This Agreement is contingent upon preliminary and final
18 approval by the Court, and certification of the Settlement Class is only for purposes of
19 Settlement. If, for any reason, the Settlement does not become final, any certification
20 of any Settlement Class will be vacated and the Parties will be returned to their
21 positions with respect to the Action as if the Agreement had not been entered into.
22 Should the Settlement not become final, for whatever reason, information concerning
23 the Parties' willingness to stipulate provisionally to class certification as part of the
24 Settlement shall have no bearing on, and shall not be admissible in connection with the
25 issue of whether a class should be certified in a non-settlement context. Defendants
26 expressly reserve the right to oppose class certification and/or proactively move to
27 deny certification should this Settlement be reversed on appeal or otherwise not

1 become final. Defendants do not consent to certification of the Settlement Class or any
2 class for any purpose other than to effectuate the Settlement of this Action.

3 **TERMS OF AGREEMENT**

4 44. NOW, THEREFORE, in consideration of the mutual covenants, promises
5 and agreements set forth herein, the Parties agree, subject to the Court's approval, as
6 follows:

7 45. Funding of the Settlement Amount. Within ten (10) business days after
8 the Effective Date, the Settlement Administrator will provide the Parties with an
9 accounting of the amounts to be paid by Defendants pursuant to the terms of the
10 Settlement. Within thirty (30) business days of the Effective Date, Defendants will
11 make a one-time deposit of One Hundred Seventy-Five Thousand Dollars
12 (\$175,000.00), plus applicable payroll taxes, for payment of all Court-approved and
13 claimed amounts from the Maximum Settlement Amount into a Qualified Settlement
14 Account to be established by the Settlement Administrator. Defendants will then make
15 and thirty-three (33) subsequent payments of Twenty-Five Thousand Dollars
16 (\$25,000.00) on or before the 15th of every month, following the month in which the
17 one-time deposit is made, thirty (30) calendar days after the Effective Date. Within five
18 (5) business days of the funding of Maximum Settlement Amount, the Settlement
19 Administrator will issue payments to (a) Participating Class Members; (b) the LWDA;
20 (c) Plaintiffs; and (d) Class Counsel. The Settlement Administrator will also issue a
21 payment to itself for Court-approved services performed in connection with the
22 settlement.

23 46. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any
24 application or motion by Class Counsel for Attorneys' Fees up to 33% of the
25 Maximum Settlement Amount, or Three Hundred Thirty Three Thousand Dollars and
26 (\$330,000.00) and reasonable Costs and expenses not to exceed Twenty-Five
27 Thousand Dollars (\$25,000.00), subject to Court approval. The Attorneys' Fees and

Costs Award shall represent payment for all claims for Class Counsels' attorneys' fees and costs, past and future, incurred in the Action. The Attorneys' Fees and Costs Award shall be paid from the Maximum Settlement Amount, and Defendants shall not otherwise be required to pay for any portion of Plaintiffs' or the Class Members' attorneys' fees, costs, or expenses. The Attorneys' Fees and Costs Award shall be paid to Class Counsel following the Effective Date. Any amounts of attorneys' fees and costs applied for but not awarded by the Court to Class Counsel shall revert back into the Net Settlement Amount. An award by the Court of attorneys' fees or costs that is less than the amounts applied for will not be grounds for Plaintiff or Class Counsel to challenge or withdraw from the Settlement. Class Counsel, all, one, or some, may elect to have the Settlement Administrator, directly or indirectly, disperse all or part of his attorneys' fees award paid to him/her in periodic payments, through a structured settlement and/or to an assignee. Class Counsel that makes such election will independently bear any and all costs, fees, and expenses of administration for any periodic payments of such award and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments, including without limitation, any such issues, claims, and/or disputes brought by the state or federal government concerning the payment of taxes thereon. Class Counsel that makes such election shall indemnify, defend, and hold Defendants harmless for any and all taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments. Any other Class Counsel that does not make an election outlined above will not have any obligation to pay fees associated with administration of periodic payments or any indemnification obligations, such obligations will only flow to the individual Class Counsel's office that makes the election. To the extent the Court approves any award for attorneys' fees that does not

1 equal 1/3rd of the Total Settlement Amount, Class Counsel retains the right to appeal
2 the Court's award. Should Class Counsel appeal the Court's award, the difference
3 between the amount awarded and the amount disputed on appeal shall be retained by
4 the Settlement Administrator pending Class Counsel's appeal. After resolution of any
5 appeal, any funds not awarded to Class Counsel then in possession of the Settlement
6 Administrator will be added to the Net Settlement Fund for distribution to Settlement
7 Class Members by the Settlement Administrator on a proportional basis relative to the
8 size of their Settlement Shares, in accordance with other administration and
9 distribution requirements hereunder, and Class Counsel shall pay any additional costs
10 incurred by the Settlement Administrator for this purpose.

11 47. Class Representative Enhancement Payment. In exchange for a general
12 release of all claims, and in recognition of their effort and work in prosecuting the
13 Action on behalf of Class Members and negotiating the Settlement, Defendants agree
14 not to oppose or impede any application or motion by Plaintiffs for a Class
15 Representative Enhancement Payment up to Five Thousand Dollars (\$5,000.00) each,
16 subject to Court approval. The Class Representative Enhancement Payments will be in
17 addition to Plaintiffs' Individual Settlement Payment as a Participating Class Members
18 paid pursuant to the Settlement.

19 48. **Plaintiffs' General Release.** Plaintiffs hereby fully and finally releases
20 and discharges the Released Parties from any and all of the Released Claims and from
21 any and all claims, charges, complaints, liens, demands, causes of action, obligations,
22 damages and liabilities, known or unknown, suspected or unsuspected, that Plaintiffs
23 had, now has, or may hereafter claim to have against the Released Parties arising out
24 of, or relating in any way to, the Plaintiffs' hiring by, employment with, separation of
25 employment with, or otherwise relating to the Released Parties (collectively with
26 Released Claims, "Plaintiff's Released Claims"), arising or accruing through the
27 Released Claims Period. The Plaintiffs' Released Claims include, but are not limited

1 to, claims arising from or dependent on the California Labor Code; the Wage Orders of
2 the California Industrial Welfare Commission; California Business and Professions
3 Code § 17200, *et seq.*; the California Fair Employment and Housing Act, Cal. Gov't
4 Code § 12900, *et seq.*; the California common law of contract and tort; Title VII of the
5 Civil Rights Act of 1964; the Americans with Disabilities Act, 42 U.S.C. § 12101, *et*
6 *seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*;
7 the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* and the Portal to Portal Act, 29
8 U.S.C. § 251, *et seq.*

9 49. To effect a full and complete general release as described above, Plaintiffs
10 expressly waive and relinquish all rights and benefits of section 1542 of the Civil Code
11 of the State of California, and do so understanding and acknowledging the significance
12 and consequence of specifically waiving section 1542. Section 1542 of the Civil Code
13 of the State of California states as follows:

14 **A general release does not extend to claims that the creditor**
15 **or releasing party does not know or suspect to exist in his or**
16 **her favor at the time of executing the release and that, if**
17 **known by him or her, would have materially affected his or**
18 **her settlement with the debtor or released party.**

19 50. Thus, notwithstanding the provisions of section 1542, and to implement
20 a full and complete release and discharge of the Released Parties, Plaintiffs expressly
21 acknowledge this Settlement Agreement is intended to include in its effect, without
22 limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at the
23 time of signing this Settlement Agreement, and this Settlement Agreement
24 extinguishes any such claims.

25 51. The Settlement Administrator will issue an IRS Form 1099 for the
26 Class Representative Enhancement Payment to the Plaintiffs, and Plaintiffs shall be
27 solely and legally responsible for correctly characterizing this compensation for tax

1 purposes and for paying any taxes on the amounts received. The Plaintiffs agree to
2 indemnify and hold Defendants harmless from any claim or liability for taxes,
3 penalties, or interest arising as a result of the Class Representative Enhancement
4 Payment. No benefit, including but not limited to 401K benefits, shall increase or
5 accrue as a result of any payment as a result of this Settlement. Any portion of the
6 Class Representative Enhancement Payment applied for but not awarded by the Court
7 to Plaintiffs shall be added to the Net Settlement Amount for the benefit of
8 Participating Class Members. An award by the Court of a Class Representative
9 Enhancement Payment that is less than the amount applied for will not be grounds for
10 Plaintiffs or Class Counsel to challenge or withdraw from the Settlement.

11 52. Settlement Administration Costs. The Settlement Administrator will be
12 paid for the reasonable costs of administration of the Settlement and distribution of
13 payments from the Maximum Settlement Amount, which is currently estimated to be
14 \$25,000. These costs, which will be paid from the Maximum Settlement Amount, will
15 include, *inter alia*, the required tax reporting on the Individual Settlement Payments,
16 the issuing of 1099 and W-2 IRS Forms, distributing the Notice Packet, calculating and
17 distributing the Maximum Settlement Amount and Attorneys' Fees and Costs, and
18 providing necessary reports and declarations.

19 53. Labor and Workforce Development Agency Payment. Subject to Court
20 approval, the Parties agree the amount of Sixty Thousand Dollars (\$60,000.00) from
21 the Maximum Settlement Amount will be designated for satisfaction of Plaintiffs' and
22 Class Members' PAGA claims. Of this amount, \$45,000 (75%) will be paid to the
23 LWDA (the "LWDA Payment") and \$15,000 (25%) (the "Employee PAGA Payment")
24 will be distributed to eligible Class Members who were employed during the PAGA
25 Period, which will be distributed to Participating Class Members as part of the Net
26 Settlement Amount. For purposes of this Settlement Agreement only, and not as an
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1 admission of liability otherwise, the Parties stipulate that all Participating Class
2 Members are “aggrieved employees” for purposes of distributing the \$15,000.00.

3 54. Net Settlement Amount. The Net Settlement Amount will be used to
4 satisfy Individual Settlement Payments to Participating Class Members from the
5 Settlement Class in accordance with the terms of this Agreement.

6 55. Escalator Clause. Parties agree that, as of the date this Agreement is
7 signed, there are approximately 1,859 Class Members who worked 131,458
8 workweeks during the Class Period. If either of these numbers increases by more than
9 5% through the end of the Class Period, the Maximum Settlement Amount shall
10 increase pro rata with a 5% grace margin (i.e., if the number of Class Members
11 increases by 6%, the Maximum Settlement Amount shall increase by 1%). If both the
12 number of Class Members and the number of Workweeks increases by more than 5%,
13 the greater percentage increase will control (i.e., if the number of Class Members
14 increases by 6% and the number of Workweeks increases by 8%, the Maximum
15 Settlement Amount will increase by 3%).

16 56. Non-reversionary Settlement. No portion of the Maximum Settlement
17 Amount will revert to Defendants.

18 57. Individual Settlement Payment Calculations. Individual Settlement
19 Payments will be calculated and apportioned from the Net Settlement Amount based
20 on the number of Work Weeks a Participating Class Member worked during the Class
21 Period. Specific calculations of Individual Settlement Payments will be made as
22 follows:

23 58. The Settlement Administrator will calculate the number of Work
24 Weeks worked by each Participating Class Member (“Individual Work Weeks”) during
25 the Class Period, the amount to be paid per Work Week, and the individual settlement
26 awards to eligible Participating Class Members.

1 59. Defendants' employee data will be presumed to be correct, unless a
2 particular Class Member proves otherwise to the Settlement Administrator by credible
3 evidence. All Work Week disputes will be resolved and decided by the Settlement
4 Administrator, and the Settlement Administrator's decision on all Work Week disputes
5 will be final and non-appealable.

6 60. The individual settlement awards will be determined by dividing the
7 Net Settlement Amount by the total number of Work Weeks for all Participating Class
8 Members, resulting in the Work Week Value, and then multiplying the Work Week
9 Value by the number of Work Weeks worked by each Participating Class Member.
10 For purpose of determining the individual settlement awards an, each Participating
11 Class Member who is a former employee no longer working for Defendants will be
12 assigned ten (10) additional Workweeks. These additional Workweeks will increase
13 the individual settlement awards of Participating Class Members who no longer work
14 for Defendants, but will not be included in the Workweek count when evaluating
15 whether the Escalator Clause is applicable.

16 61. Prior Class Action Effect: Workweeks encompassed in the prior action
17 titled *Wesley Phillips v. DI Overnite, LLC, et al.*, San Diego County Superior Court
18 Case No. 37-2016-00016800-CU-OE-CTL, and its settlement, will not be included in
19 the resolution of this matter or the workweek calculations relating thereto. Defendants
20 have provided a list of Class Members to the Settlement Administrator whom have
21 some degree of overlapping employment between the current Class Period and the
22 *Wesley Phillips* class period. To the extent that a Class Member's employment
23 overlaps with that prior class period, that Class Member's workweek calculation will
24 be adjusted proportionally to avoid unjust enrichment or double payment for work
25 weeks which should have been compensated for under the *Wesley Phillips* class
26 settlement.

1 62. Settlement Awards Do Not Trigger Additional Benefits. Defendants
2 shall fully discharge its obligations to Plaintiffs and the Participating Class Members
3 through the remittance of the Maximum Settlement Amount to the Settlement
4 Administrator, regardless of whether the checks representing individual settlement
5 awards are actually received and/or negotiated by Participating Class Members. Once
6 Defendants have paid the Maximum Settlement Amount in accordance with this
7 Settlement Agreement, it will be deemed to have satisfied all terms and conditions
8 under this Agreement, shall afford the Defendants to all protections provided under this
9 Settlement Agreement, and shall have no further obligations under the terms of the
10 Agreement, regardless of what occurs with respect to the further administration of the
11 Settlement. It is expressly understood and agreed that receipt of such individual
12 settlement awards will not provide the right any Participating Class Member to
13 additional compensation or benefits under any company bonus, contest or other
14 compensation or benefit plan or agreement in place during the period covered by the
15 Settlement, nor will any Participating Class Member have the right to any increased
16 retirement, 401K benefits or matching benefits, or deferred compensation benefits. It
17 is the intent of this Settlement that individual settlement awards provided for in this
18 Settlement are the sole payments to be made by Defendants to the Participating Class
19 Members, and that Participating Class Members do not have the right to any new or
20 additional compensation or benefits as a result of having received the individual
21 settlement awards (notwithstanding any contrary language or agreement in any benefit
22 or compensation plan document that might have been in effect during the period
23 covered by this Settlement).

24 63. Settlement Administration Process. The Parties agree to cooperate in
25 the administration of the settlement and to make all reasonable efforts to control and
26 minimize the costs and expenses incurred in administration of the Settlement. Without
27 prejudice to any other remedies, the Settlement Administrator shall hold Defendants

1 harmless from and against all liabilities, claims, causes of action, costs, and expenses
2 (including legal fees and expenses) arising out of any failure to timely or properly
3 compensate Participating Class Members as provided in this Agreement. No person
4 shall have any claim against any of the Released Parties, Counsel for Defendants,
5 Plaintiffs, the Class Members, Class Counsel, or the Settlement Administrator based on
6 mailings, distributions, and payments made in accordance with or pursuant to this
7 Agreement.

8 64. Delivery of the Class List. Defendants have already provided the Class
9 List to the Settlement Administrator. The information Defendants provided to the
10 Settlement Administrator shall be used solely to administer the terms of the Agreement
11 as described herein, shall remain confidential, and shall not be disclosed to anyone,
12 except pursuant to the express written authorization of Defendants or the individual in
13 question, by order of the Court, or to the extent necessary to fulfill the Settlement
14 Administrator's reporting obligations hereunder.

15 65. Notice by First-Class U.S. Mail. Within twenty (20) business days of
16 receiving the Class List, the Settlement Administrator will perform an NCOA check
17 and shall mail a Notice Packet in Spanish and English to all Class Members via regular
18 First-Class U.S. Mail, using the most current, known mailing addresses identified in
19 the Class List. There will not be a claim process requirement and, as such, Class
20 Members will not receive nor will they be required to submit a claim form to receive
21 their individual settlements.

22 66. Confirmation of Contact Information in the Class List. Before mailing,
23 the Settlement Administrator will perform a search based on the National Change of
24 Address Database or any other similar services available, such as provided by
25 Experian, for information to update and correct for any known or identifiable address
26 changes.

1 67. Time for Objections. The Class Members will then have forty-five (45)
2 days in which they must postmark and send written notice to the Settlement
3 Administrator of their decision to object in writing to the Settlement.

4 68. Notice Packets. All Class Members will be mailed a Notice Packet in
5 English and Spanish, which shall be translated into Spanish by the Settlement
6 Administrator. Each Notice Packet will provide: (a) information regarding the nature
7 of the Action; (b) a summary of the Settlement's principal terms; (c) the Settlement
8 Class definition; (d) the total number of Work Weeks each respective Class Member
9 worked for Defendants during the Class Period; (e) each Class Member's estimated
10 Individual Settlement Payment and the formula for calculating Individual Settlement
11 Payments; (f) the dates which comprise the Class Period; (g) information regarding
12 disputing Work Weeks, Requests for Exclusion, or Notice of Objections; (h) the
13 deadlines by which the Class Member must fax or postmark dispute of Work Weeks,
14 Requests for Exclusions, or Notice of Objections to the Settlement; (i) the claims to be
15 released, as set forth herein; and (j) the date for the Final Approval Hearing. For every
16 Class Member where the Notice Packet is returned after mailing with a forwarding
17 address, the Settlement Administrator shall re-mail the Notice Packet to the forwarding
18 address. For every Class Members where the Notice Packet is returned after mailing
19 without a forwarding address, the Settlement Administrator shall perform one "skip
20 trace" search in a consumer information database comparable to Accurint in an effort
21 to locate a current address. It shall be presumed that each Class Member whose Notice
22 Packet is not returned to the Settlement Administrator as undeliverable within the 60-
23 day notice period has actually received the Notice Packet. The Response Deadline for
24 any Settlement Class Member who is re-mailed a Notice Packet shall be extended
25 fifteen (15) calendar days from the date of the re-mailing or the original sixty (60)
26 calendar day deadline, whichever is later. If the Response Deadline for any Class
27 Member is later than the original 60-day notice period, the Settlement Administrator

1 shall include a letter with the Notice Packet advising the Class Member of the
2 adjustment to the Response Deadline.

3 69. Disputed Information on Notice Packets. Class Members will have an
4 opportunity to dispute the information provided in their Notice Packets. To the extent
5 Class Members dispute the number of Work Weeks to which they have been credited
6 or the amount of their Individual Settlement Payment, Class Members may produce
7 evidence to the Settlement Administrator showing that such information is inaccurate.
8 Absent evidence rebutting Defendants' records, Defendants' records will be presumed
9 determinative. If a Class Member produces evidence to the contrary, however, the
10 Parties will evaluate the evidence submitted by the Class Member and the Settlement
11 Administrator will make the final decision as to the number of eligible Work Weeks
12 that should be applied and/or the Individual Settlement Payment to which the Class
13 Member may have the right to receive. Class Members shall have until the Response
14 Deadline to provide evidence to the Settlement Administrator demonstrating the
15 number of Work Weeks to which they have been credited is incorrect.

16 70. Settlement Checks. The expiration date on the settlement checks will be
17 one hundred and eighty (180) calendar days from the date the settlement checks are
18 issued. If a Participating Class Member or PAGA Member does not cash his or her
19 check within 180 days, the check will be cancelled. Pursuant to California Code of
20 Civil Procedure Section 384, all funds associated with such cancelled checks will be
21 paid to Legal Aid for Work. The Parties each represent they do not have any
22 significant affiliation or involvement with the proposed *cy pres* recipient. The
23 Settlement Administrator may, as necessary, undertake amended and/or supplemental
24 tax filings and reporting, required under applicable local, state, and federal tax laws,
25 that are necessitated due to the cancellation of any Individual Settlement Payment
26 checks. To the extent the Settlement Administrator is able to obtain or receive the
27 return or refund of the amounts that were transmitted to taxing authorities for the

1 employer's and employees' share of taxes, contributions, and/or withholding
2 associated with cancelled Individual Settlement Payments, all such amounts shall also
3 be paid to Legal Aid for Work. Settlement Class Members whose Individual
4 Settlement Payment checks are cancelled shall, nevertheless, be bound by this
5 Settlement Agreement.

6 71. Request for Exclusion Procedures. Any Class Member wishing to be
7 excluded from the Settlement Agreement must sign and postmark, email or fax a
8 written Request for Exclusion to the Settlement Administrator within the Response
9 Deadline. The date of fax, email or the postmark on the return mailing envelope will
10 be the exclusive means to determine whether a Request for Exclusion has been timely
11 submitted. All Requests for Exclusion will be submitted to the Settlement
12 Administrator, who will certify jointly to Class Counsel and Defendants' Counsel the
13 Requests for Exclusion that were timely submitted. Any Class Member who submits a
14 Request for Exclusion is prohibited from making any objection to the Settlement
15 Agreement.

16 72. Settlement Terms Bind All Class Members Who Do Not Request
17 Exclusion. Any Class Member who does not affirmatively Request Exclusion from the
18 Settlement Agreement by submitting a timely and valid Request for Exclusion will be
19 bound by all of its terms, including those pertaining to the Released Claims, as well as
20 any Judgment that may be entered by the Court if it grants final approval to the
21 Settlement. The entry of a final order approving settlement of this Action and
22 Judgment which discharges Defendants and Released Parties from liability for any and
23 all of the Released Claims shall have a *res judicata* effect and bar Class Members who
24 did not submit a timely and valid Request for Exclusion from bringing any actions or
25 claims asserting the Released Claims.

26 73. Written Objection Procedures. To object to the Settlement Agreement
27 in writing, a Class Member must mail, email or fax a valid Notice of Objection to the

1 Settlement Administrator on or before the Response Deadline. The Notice of
2 Objection must be signed by the Class Member and contain all information required by
3 this Settlement Agreement. The postmark, email or fax date will be deemed the
4 exclusive means for determining if the Notice of Objection is timely. Class Members
5 who fail to object in writing in the specific and technical manner specified above will
6 be deemed to have waived all written objections to the Settlement, and will be
7 foreclosed from making written objections and seeking any adjudication or review of
8 such written objections, whether by appeal or otherwise, to the Settlement Agreement.
9 Aside from these procedures governing written objections, the Court will otherwise
10 control the acceptance of objections before or at the final approval hearing. At no time
11 will any of the Parties or their counsel seek to solicit or otherwise encourage Class
12 Members to submit written objections to the Settlement Agreement or appeal from the
13 Order and Judgment. Class Counsel will not represent any Class Members with
14 respect to any such objections to this Settlement.

15 74. Certification Reports Regarding Individual Settlement Payment
16 Calculations. The Settlement Administrator will provide Defendants' counsel and
17 Class Counsels a weekly report which certifies: (a) the number of Participating Class
18 Members from the Settlement Class who have submitted a dispute of Work Weeks; (b)
19 the number of Class Members who have submitted valid Requests for Exclusion or
20 Notice of Objections; and (c) whether any Class Member has submitted a challenge to
21 any information contained in their Notice Packet. Additionally, the Settlement
22 Administrator will provide to counsel for both Parties any updated reports regarding
23 the administration of the Settlement Agreement as needed or requested.

24 75. Payroll Taxes. In accordance with this Settlement, the transfer of the
25 Gross Settlement approved by the Court shall, to the fullest extent possible, resolve,
26 satisfy and completely extinguish all of Defendants' liability with respect to the
27 Settlement Class except that Defendants shall solely be responsible for the employer

1 portion of the payroll taxes. Upon the transfer of funds to the Settlement
2 Administrator, Defendants shall have no further payment or defense obligation
3 whatsoever with respect to any claims covered by this Settlement made or asserted by
4 any person or entity anywhere in the world in connection with the Settlement Class.

5 76. Certification of Completion. Upon completion of administration of the
6 Settlement, the Settlement Administrator will provide a written declaration under oath
7 to certify such completion to the Court and counsel for all Parties. Plaintiffs via Class
8 Counsel will file a Satisfaction of Judgment within ten (10) calendar days of the
9 submission of said declaration.

10 77. Treatment of Individual Settlement Payments. All Individual
11 Settlement Payments will be allocated as follows: 20% of each Individual Settlement
12 Payment will be allocated as alleged unpaid wages, 40% will be allocated as alleged
13 unpaid interest, and the remaining 40% will be allocated as alleged unpaid penalties.
14 The portion allocated to wages will be reported on an IRS Form W-2 and the portions
15 allocated to interest and penalties will be reported on an IRS Form-1099 by the
16 Settlement Administrator.

17 78. Administration of Taxes by the Settlement Administrator. The
18 Settlement Administrator will be responsible for issuing to Plaintiffs, Participating
19 Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be
20 required by law for all amounts paid pursuant to this Agreement. The Settlement
21 Administrator will also be responsible for forwarding all payroll taxes and penalties to
22 the appropriate government authorities.

23 79. Tax Liability. Defendants makes no representation as to the tax
24 treatment or legal effect of the payments called for hereunder, and Plaintiffs and
25 Participating Class Members are not relying on any statement, representation, or
26 calculation by Defendants or by the Administrator in this regard. Plaintiff and
27 Participating Class Members understand and agree that except for Defendants'

1 payment of the employer's portion of any payroll taxes, they will be solely responsible
2 for the payment of any taxes and penalties assessed on the payments described herein.

3 80. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT
4 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND
5 EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
6 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
7 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION
8 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
9 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
10 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
11 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
12 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
13 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
14 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN,
15 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
16 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
17 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION
18 OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER
19 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION
20 OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY
21 TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
22 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
23 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
24 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
25 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
26 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE
27

1 TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION,
2 INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

3 81. No Prior Assignments. The Parties and their counsel represent, covenant,
4 and warrant they have not directly or indirectly assigned, transferred, encumbered, or
5 purported to assign, transfer, or encumber to any person or entity any portion of any
6 liability, claim, demand, action, cause of action or right herein released and discharged.

7 82. Release of Claims by Class Members. Upon the date upon which
8 Defendants transfer the Maximum Settlement Amount to the Settlement Administrator,
9 Plaintiff and all Class Members who do not Request Exclusion will be deemed to have
10 fully, finally, and forever released, settled, compromised, relinquished, and discharged
11 with respect to all the Released Parties for any and all Released Claims that accrued
12 during the Released Claims Period. The release of Released Claims will have a *res*
13 *judicata* effect against any Class Members who make a claim against any of the
14 Released Parties for any of the Released claims, file any actions, claims, complaints or
15 proceedings regarding the Released Claims with the California Division of Labor
16 Standards Enforcement, initiate any other proceedings against any of the Released
17 Parties regarding any of the Released Claims, or seek to participate in any judgment or
18 settlement of claims that are the subject of the Released Claims in any other class,
19 collective, or representative action against any of the Released Parties.

20 83. Inability to Object/Opt Out of the PAGA Settlement. The Parties agree
21 there is no statutory right for any Class Member to object to, opt out of, or otherwise
22 exclude himself or herself from the settlement of the PAGA claims. Accordingly, any
23 timely objection or exclusion from the Settlement submitted by a Class Member shall
24 be construed as relating only to the putative class action claims and shall have no effect
25 whatsoever on the settlement of the PAGA claims.

26 84. Duties of the Parties Before Court Approval. The Parties shall promptly
27 submit this Settlement Agreement to the Court in support of Plaintiffs' Motion for
28

1 Preliminary Approval and determination by the Court as to its fairness, adequacy, and
2 reasonableness. Promptly upon execution of this Settlement Agreement, the Parties
3 shall apply to the Court for the entry of an order:

4 (a) Scheduling a fairness hearing on the question of whether the
5 proposed settlement, including payment of attorneys' fees and
6 costs, and the Class Representative's enhancement payment,
7 should be finally approved as fair, reasonable and adequate as
8 to the members of the Settlement Class;

9 (b) Conditionally certifying the Settlement Class for settlement
10 purposes only;

11 (c) Approving, as to form and content, the proposed Notice of
12 Pendency of Class Action and Proposed Settlement;

13 (d) Approving as to form and content the proposed Notice
14 Packet;

15 (e) Approving the manner and method for Class Members to
16 request exclusion from the Settlement as contained herein and
17 within the Notice of Pendency of Class Action and Proposed
18 Settlement;

19 (f) Directing the mailing of the Notice of Pendency of Class
20 Action and Proposed Settlement and Class Action Settlement,
21 by first class mail to the Class Members; and

22 (g) Preliminarily approving the Settlement subject only to the
23 objections of Class Members and final review by the Court.

24 85. Duties of the Parties Following Final Court Approval. Following final
25 approval by the Court of the Settlement provided for in this Settlement Agreement,
26 Class Counsel will submit a proposed final order of approval and judgment:
27

1 (a) Approving the Settlement, adjudging the terms thereof to be
2 fair, reasonable and adequate, and directing consummation of
3 its terms and provisions;

4 (b) Approving Class Counsels' application for an award of
5 attorneys' fees and costs;

6 (c) Approving the Class Representative Enhancement Payment
7 to the Class Representative;

8 (d) Setting a date when the Parties shall report to the court the
9 total amount that was actually paid to the Class Members;

10 (e) Entering judgment in this Action encompassing Defendants
11 and all members of the Settlement Class, with a reservation of
12 continuing jurisdiction by the Court over the Settlement

13 Agreement and its implementation; and

14 (f) Posting the judgment on the Settlement Administrator's
15 website for at least 90 days after entry by the Court.

16 86. Nullification of Settlement Agreement. In the event the Settlement is
17 barred by operation of law, or invalidated, or ordered not to be carried out by a court of
18 competent jurisdiction, this Settlement Agreement, and any documents generated to
19 bring it into effect, will be null and void. Any order of judgment entered by the Court
20 in furtherance of this Settlement Agreement will likewise be treated as void from the
21 beginning, and all Parties to this Agreement shall stand in the same position, without
22 prejudice, as if the Agreement had been neither entered into nor filed with the Court.
23 Defendants will cease to have any obligation to pay any portion of the Maximum
24 Settlement Amount to the Qualified Settlement Account, or any other party under the
25 terms of this Agreement and all previous disbursements made from Defendants to the
26 Qualified Settlement Account will immediately revert back to Defendants. Any
27 Settlement Administration Costs incurred will be split equally between the Parties.

1 87. Rescission of Settlement Agreement (by Defendants). If more than ten
2 percent (10%) of the Class Members opt out of the Settlement, Defendants may, at its
3 election, rescind the Settlement and all actions taken in furtherance of it will thereby be
4 null and void. Defendants must exercise this right of rescission, in writing, to Class
5 Counsel and with a copy to the Settlement Administrator within ten (10) business days
6 after the Settlement Administrator notifies the Parties of a greater than ten percent
7 (10%) opt-out rate. If the option to rescind is exercised, then Defendants shall be
8 solely responsible for all costs of the claims administration accrued to that point, not to
9 exceed the amount approved by the Court in the Preliminary Approval Order. If
10 Defendants exercise this option, the Parties shall return to their respective positions
11 that existed before the execution of this Agreement, and no term of this Agreement or
12 any draft thereof, or the negotiation, documentation, or other part or aspect of the
13 Parties' settlement discussions, shall have any effect or be admissible as evidence for
14 any purpose in the Action, or in any other proceeding.

15 88. Termination of Settlement. Either Party may terminate this Settlement if
16 the Court declines to enter the Preliminary Approval Order, the Final Approval Order
17 or final judgment in substantially the form submitted by the Parties, or the Settlement
18 Agreement as agreed does not become final because of appellate court action. The
19 terminating Party shall give to the other Party (through its counsel) written notice of its
20 decision to terminate no later than ten (10) calendar days after receiving notice that one
21 of the enumerated events has occurred. Termination shall have the following effects:

22 (a) The Settlement Agreement shall be terminated and shall
23 have no force or effect, and no Party shall be bound by any of
24 its terms;

25 (b) In the event the Settlement is terminated, Defendants shall
26 have no obligation to make any payments to any party, Class
27 Member, or attorney, except the terminating Party shall pay the

1 Settlement Administrator for services rendered up to the date
2 the Settlement Administrator is notified that the settlement has
3 been terminated to the extent required under the parties'
4 agreement with the Settlement Administrator;

5 (c) The Preliminary Approval Order, Final Approval Order and
6 Judgment, including any order of class certification, shall be
7 vacated;

8 (d) The Settlement Agreement and all negotiations, statements
9 and proceedings relating thereto shall be without prejudice to
10 the rights of any of the Parties, all of whom shall be restored to
11 their respective positions in the Action before the settlement;
12 and

13 (e) Neither this Stipulated Settlement, nor any ancillary
14 documents, actions, statements or filings in furtherance of
15 settlement (including all matters associated with the mediation)
16 shall be admissible or offered into evidence in the Action or any
17 other action for any purpose whatsoever.

18 89. Public Statements. Plaintiffs and Class Counsel shall not hold any press
19 conferences or issue any press releases with respect to this Settlement at any time.
20 Until the Parties submit a request for preliminary approval from the Court, Plaintiffs
21 and Class Counsel will keep the terms of this Agreement confidential. Prior to final
22 approval of this Settlement, Plaintiffs and Class Counsel will not discuss this Action or
23 the Settlement or otherwise disclose the terms of this Agreement with third parties
24 other than Class Members and the Settlement Administrator, except (1) as required by
25 the PAGA statute, (2) as necessary to effectuate this Agreement, and (3) to the Parties'
26 tax advisors. After final approval of this Settlement, Plaintiffs, Defendants, and their
27 respective counsel shall not issue any public statements with respect to the Action or

1 Settlement, except as required by law. The Parties and their counsel shall not engage
2 in any publicity, including website or social media postings, of any type related to the
3 Action, Settlement, or litigation against Defendants. Notwithstanding the specific
4 limitations to public disclosure identified herein, Class Counsel shall not be precluded
5 from disclosing information concerning the settlement of this lawsuit to a Court or
6 other tribunal. Furthermore, nothing herein limits Plaintiffs' or any Class Member's
7 ability to communicate with any government agency or otherwise cooperate in any
8 investigation or proceeding that may be conducted by any government agency.

9 90. Judgment and Continued Jurisdiction. Upon final approval of the
10 Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the
11 Parties will present the Judgment to the Court for its approval, pursuant to Rule 3.770
12 of the California Rules of Court. After entry of the Judgment, the Court will have
13 continuing jurisdiction under California Code of Civil Procedure section 664.6.

14 91. Exhibits Incorporated by Reference. The terms of this Agreement include
15 the terms set forth in any attached Exhibits, which are incorporated by this reference as
16 though fully set forth herein. Any Exhibits to this Agreement are an integral part of the
17 Settlement.

18 92. Entire Agreement. This Settlement Agreement and any attached Exhibits
19 constitute the entirety of the Parties' settlement terms. No other prior or
20 contemporaneous written or oral agreements may be deemed binding on the Parties.
21 The Parties expressly recognize California Civil Code section 1625 and California
22 Code of Civil Procedure section 1856(a), which provide that a written agreement is to
23 be construed according to its terms and may not be varied or contradicted by extrinsic
24 evidence, and the Parties agree that no such extrinsic oral or written representations or
25 terms will modify, vary, or contradict the terms of this Agreement.

26 93. Amendment or Modification. This Settlement Agreement may be
27 amended or modified only by a written instrument signed by the named Parties and
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1 counsel for all Parties or their successors-in-interest. Immaterial modifications to the
2 Settlement Agreement, i.e., changes that do not materially affect the named Plaintiffs'
3 net recovery or increase the amount Defendants must pay, may be authorized
4 exclusively by Parties' counsel, however.

5 94. Authorization to Enter Into the Settlement Agreement. Counsel for all
6 Parties warrant and represent they are expressly authorized by the Parties whom they
7 represent to negotiate this Settlement Agreement and to take all appropriate action
8 required or permitted to be taken by such Parties pursuant to this Settlement
9 Agreement to effectuate its terms and to execute any other documents required to
10 effectuate the terms of this Settlement Agreement. The Parties and their counsel will
11 cooperate with each other and use their best efforts to effect the implementation of the
12 Settlement. If the Parties are unable to reach agreement on the form or content of any
13 document needed to implement the Settlement, or on any supplemental provisions that
14 may become necessary to effectuate the terms of this Settlement, the Parties may seek
15 the assistance of the Court to resolve such disagreement.

16 95. Notice of Pendency of Class Action. It is agreed that because the
17 members of the Class are so numerous, it is impossible or impractical to have each
18 member of the Class execute this Settlement Agreement. The Notice of Pendency of
19 Class Action and Proposed Settlement, attached hereto as Exhibit "B," is the form the
20 Settlement Administrator will use to advise all Class Members of the binding nature of
21 the release, and the release shall have the same force and effect as if this Settlement
22 Agreement were executed by each member of the Class.

23 96. Binding on Successors and Assigns. This Settlement Agreement will be
24 binding upon, and inure to the benefit of, the successors or assigns of the Parties
25 hereto, as previously defined.

1 97. California Law Governs. All terms of this Settlement Agreement and
2 Exhibits hereto will be governed by and interpreted according to the laws of the State
3 of California.

4 98. Execution and Counterparts. This Settlement Agreement is subject only
5 to the execution of all Parties. However, the Agreement may be executed in one or
6 more counterparts. All executed counterparts and each of them, including facsimile
7 and scanned copies of the signature page, will be deemed to be one and the same
8 instrument provided that counsel for the Parties will exchange among themselves
9 original signed counterparts.

10 99. Acknowledgement that the Settlement is Fair and Reasonable. The
11 Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement
12 of the Action and have arrived at this Settlement after arm's-length negotiations and in
13 the context of adversarial litigation, taking into account all relevant factors, present and
14 potential. The Parties further acknowledge they are each represented by competent
15 counsel and they have had an opportunity to consult with their counsel regarding the
16 fairness and reasonableness of this Agreement. In addition, the Mediator may execute
17 a declaration supporting the Settlement and the reasonableness of the Settlement and
18 the Court may, in its discretion, contact the Mediator to discuss the Settlement and
19 whether or not the Settlement is objectively fair and reasonable.

20 100. Invalidity of Any Provision. Before declaring any provision of this
21 Settlement Agreement invalid, the Court will first attempt to construe the provision as
22 valid to the fullest extent possible consistent with applicable precedents so as to define
23 all provisions of this Settlement Agreement valid and enforceable.

24 101. Plaintiffs' Waiver of Right to Be Excluded and Object. Plaintiffs agree to
25 sign this Settlement Agreement and, by signing this Settlement Agreement, are hereby
26 bound by the terms herein.

1 102. Non-Admission of Liability. The Parties enter into this Agreement to
2 resolve the dispute that has arisen between them and to avoid the burden, expense and
3 risk of continued litigation. In entering into this Agreement, Defendants do not admit,
4 and specifically denies, it has violated any state, federal, or local law; violated any
5 regulations or guidelines promulgated pursuant to any statute or any other applicable
6 laws, regulations or legal requirements; breached any contract; violated or breached
7 any duty; engaged in any misrepresentation or deception; or engaged in any other
8 unlawful conduct with respect to its employees. Neither this Agreement, nor any of its
9 terms or provisions, nor any of the negotiations connected with it, shall be construed as
10 an admission or concession by Defendants of any such violations or failures to comply
11 with any applicable law. Except as necessary in a proceeding to enforce the terms of
12 this Agreement, this Agreement and its terms and provisions shall not be offered or
13 received as evidence in any action or proceeding to establish any liability or admission
14 on the part of Defendants or to establish the existence of any condition constituting a
15 violation of, or a non-compliance with state, federal, local or other applicable law.

16 103. Captions. The captions and section numbers in this Agreement are
17 inserted for the reader's convenience, and in no way define, limit, construe or describe
18 the scope or intent of the provisions of this Agreement.

19 104. Waiver. No waiver of any condition or covenant contained in this
20 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
21 considered to imply or constitute a further waiver by such party of the same or any
22 other condition, covenant, right or remedy.

23 105. Enforcement Actions. In the event that one or more of the Parties
24 institutes any legal action or other proceeding against any other Party or Parties to
25 enforce the provisions of this Settlement or to declare rights and/or obligations under
26 this Settlement, the successful Party or Parties will have the right to recover from the
27

1 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
2 witness fees incurred in connection with any enforcement actions.

3 106. Mutual Preparation. The Parties have had a full opportunity to negotiate
4 the terms and conditions of this Agreement. Accordingly, this Agreement will not be
5 construed more strictly against one party than another merely by virtue of the fact that
6 it may have been prepared by counsel for one of the Parties, it being recognized that,
7 because of the arm's-length negotiations between the Parties, all Parties have
8 contributed equally to the preparation of this Agreement.

9 107. Representation By Counsel. The Parties acknowledge they have been
10 represented by counsel throughout all negotiations that preceded the execution of this
11 Agreement, and this Agreement has been executed with the consent and advice of
12 counsel, and reviewed in full. Further, Plaintiffs and Class Counsel warrant and
13 represent there are no liens on the Settlement Agreement.

14 108. All Terms Subject to Final Court Approval. All amounts and procedures
15 described in this Settlement Agreement herein will be subject to final Court approval.

16 109. Cooperation and Execution of Necessary Documents. All Parties will
17 cooperate in good faith and execute all documents to the extent reasonably necessary to
18 effectuate the terms of this Settlement Agreement.

19 110. Integration Clause. This Settlement Agreement contains the entire
20 agreement between the Parties relating to the settlement and transaction contemplated
21 hereby, and all prior or contemporaneous agreements, understandings, representations,
22 and statements, whether oral or written and whether by a party or such party's legal
23 counsel, are merged herein. No rights hereunder may be waived except in writing.

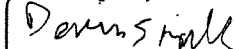
24 111. Binding Agreement. The Parties warrant they understand and have full
25 authority to enter into this Agreement, and further intend this Agreement will be fully
26 enforceable and binding on all parties, and agree that it will be admissible and subject
27

1 to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
2 confidentiality provisions that otherwise might apply under state or federal law.

3 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
4 Joint Stipulation of Class Settlement and Release between Plaintiffs and Defendants as
5 of the date(s) set forth below:

6
7 DATED: 7/23/2022, 2022

DocuSigned by:



8 Devin Smith, Plaintiff

9
10 DATED: 7/25/2022, 2022

DocuSigned by:



11 Myrica Smith, Plaintiff

12
13 DATED: 7/26/2022, 2022

DocuSigned by:



14 Kevin Ochooma, Plaintiff

15
16
17 DATED: 8/8, 2022

18 Authorized Agent for Defendant, DI Logistics, LLC
19 Joseph Varraveto

20 DATED: 8/8, 2022

21 Authorized Agent for Defendant, DI Overnite, LLC
22 Joseph Varraveto

23
24 DATED: 8/8/21, 2022

25 Authorized Agent for Defendants, DI Overnite
26 Investments, LLC Joseph Varraveto

1 **APPROVED AS TO FORM:**

2
3
4 DATED: 7/25/2022, 2022

DocuSigned by:

Robert Wasserman

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Robert J. Wasserman

Jenny D. Baysinger

5
6 DATED: 7/11/2022, 2022

DocuSigned by:

Ian Pancer

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Ian Pancer

7
8
9
10 DATED: 8/8/2022, 2022

Justin Odell

Julie W. O'Dell

Justin Odell

Counsel for Defendants

EXHIBIT A

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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,

Plaintiff,

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

FIRSTAMENDED CLASS, COLLECTIVE,
AND REPRESENTATIVE ACTION
COMPLAINT

1. FAILURE TO PAY MINIMUM WAGE
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PAY WAGES
4. FAILURE TO PROVIDE MEAL PERIODS
5. FAILURE TO PROVIDE REST PERIODS
6. FAILURE TO PROPERLY PAY SICK LEAVE
7. FAILURE TO REIMBURSE FOR ALL BUSINESS EXPENSES
8. FAILURE TO PAY ALL WAGES DUE AND OWING AT END OF

EMPLOYMENT
9. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
10. UNLAWFUL BUSINESS PRACTICES
11. PRIVATE ATTORNEYS GENERAL ACT

Plaintiffs Devin Smith, Myrica Smith, and Kevin Ochonma (collectively, “Plaintiffs”) bring this class and PAGA representative action against DI Logistics, LLC, DI Overnite, LLC, and DI Overnite Investments, LLC for violations of the California Labor Code, Fair Labor Standards Act, and the Business and Professions Code.

PARTIES

1. Plaintiff Devin K. Smith is an individual over the age of 18, and at all times relevant herein was a resident of the County of San Bernardino, California.

2. Myrica Smith (“Smith”) is and at all times relevant herein was employed in Stanislaus County, California, and was an “employee” as defined by the California Labor Code (“Labor Code”), the Fair Labor Standards Act, and the applicable California Industrial Wage Commission (“IWC”) Order(s).

3. Kevin Ochonma (“Ochonma”) is and at all times relevant herein was employed in Stanislaus County, California, and was an “employee” as defined by the California Labor Code (“Labor Code”) and the applicable California Industrial Wage Commission (“IWC”) Order(s).

4. DI Logistics, LLC (“Logistics”) is a California limited-liability company with its principal place of business located at 14043 Stage Road, Santa Fe Springs, California and which does business in California and throughout the United States.

5. At all times relevant herein, Logistics has been an “employer” and employed Plaintiffs as defined by the Labor Code, the Fair Labor Standards Act, and the applicable IWC Order(s).

6. DI Overnite, LLC (“Overnite”) is a limited-liability company organized and existing under the laws of the state of Nevada, with its principal place of business located at 12612 Alondra Blvd. Cerritos, California and which does business in California and throughout the United States.

7. At all times relevant herein, Overnite has been an “employer” and employed Plaintiffs as defined by the Labor Code, the Fair Labor Standards Act, and the applicable IWC Order(s).

8. DI Overnight Investments, LLC (“Investments”) is a limited-liability company organized and existing under the laws of the state of California, with its principal place of business located at 12612 Alondra Blvd. Cerritos, California and which does business in California and throughout the United States.

9. At all times relevant herein, Investments has been an “employer” and employed Plaintiffs as defined by the Labor Code, the Fair Labor Standards Act, and the applicable IWC Order(s).

10. Devin Smith, Myrica Smith, and Ochonma are collectively referred to as Plaintiffs.

11. Logistics, Overnite, and Investments are collectively referred to as Defendants.

12. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiffs' injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

13. Plaintiffs are informed and believe and thereupon allege that at all times mentioned herein, each of the Defendants was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

14. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the Superior Court of California for the County of San Bernardino because this is where Plaintiff Devin Smith resides and is where a substantial amount of the misconduct alleged occurred.

15. Plaintiffs hereby demand a jury trial.

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GENERAL ALLEGATIONS

16. Myrica Smith was hired by Logistics in or around August 2018. Throughout her employment, Myrica Smith typically reported to either Logistics' Manteca or Dublin facility to start her day. Logistics was the entity identified on all of Myrica Smith's wage statements.

17. Throughout her employment, Myrica Smith was a non-exempt employee. As such, she was entitled to be paid for every hour worked and overtime as appropriate. See **Exhibit 1**.¹

18. Devin Smith was hired by Logistics on or around May 22, 2019. Throughout his employment he was a distribution driver and was a non-exempt employee entitled to be paid for every hour worked and overtime as appropriate.

19. Ochonma was hired by Logistics in or around February 2018. Throughout his employment, Ochonma typically reported to either Logistics' Manteca or Dublin facility to start his day. Logistics was the entity identified on all of Ochonma's wage statements as well.

20. At or near the time he was hired, however, Ochonma was issued a Notice to Employer as required by California Labor Code section 2810.5. That notice specifically and expressly identified "DI Overnite" as the "legal name of hiring employee."

21. In December 2018, Ochonma was asked to sign an Employee Handbook Acknowledgment that specifically identifies Ochonma as "an employee of Deliver-It Overnite, LLC." There is no registered LLC with the name "Deliver-It Overnite, LLC", but Plaintiffs are informed and believe that "DI" is an abbreviation for "Deliver-It" and thus DI Overnite, LLC is simply another way of saying Deliver-It Overnite, LLC.

22. Ochonma was also asked to sign an Employee Handbook Acknowledgment in April 2019 that identified him as an employee of Logistics. He was further given a number of policy documents, including attendance policies, uniform and appearance policies, and various other policies identifying the name Logistics.

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¹ **Exhibits 1-6** are incorporated by this reference as though fully set forth herein. Some Exhibits have been reduced and/or redacted due to their size and content.

1 23. Plaintiffs are informed and believe that Overnite is the parent company of Logistics and
2 that Logistics is Overnite’s wholly owned subsidiary. Overnite facilitates the payment of wages to all
3 of its and Logistics’ employees.

4 24. In an around April 2020 Investments applied for, and was granted, a Paycheck
5 Protection Program (“PPP”) loan that was used for the sole purpose of paying the salary and wages of
6 the employees of Logistics and Overnite.

7 25. Plaintiffs are informed and believe Investments held itself out as the “employer” of
8 Plaintiffs and other Class Members in order to obtain the PPP loan.

9 26. Plaintiffs are informed and believe that Logistics, Overnite, and Investments were joint
10 employers of them and other Class Members at all relevant times.

11 27. In addition, Overnite, Investments, and Logistics all have common management, namely
12 Michael Martin and Philip Nader, and are believed to operate from the same physical facilities

13 28. Throughout his employment, like Plaintiffs Devin Smith and Myrica Smith, Ochonma
14 was a non-exempt employee. As such, he was entitled to be paid for every hour worked and overtime
15 as appropriate.

16 29. Throughout their employment, however, Plaintiffs and Defendants’ other non-exempt
17 California employees were not properly paid for all hours worked, including overtime.

18 30. Specifically, because of issues with Defendants’ timekeeping practices, Plaintiffs and
19 Defendants’ other non-exempt California employees were routinely credited for less hours than they
20 actually worked.

21 31. Additionally, when required to travel to different facilities, Plaintiffs and Defendants’
22 other non-exempt California employees were often not paid for all of the time spent traveling between
23 those facilities.

24 32. Smith and Defendants’ other non-exempt California employees were also eligible for
25 and at times received non-discretionary bonuses, commissions, and other items of compensation. See
26 **Exhibits 1 and 2.**

27 ///

28 ///

1 33. Pursuant to Defendants' standard employment agreement, Plaintiffs and Defendants'
2 other non-exempt California employees were entitled to earn, among other things, "per-stop" pay.

3 **Exhibit 1.**

4 34. Nonetheless, Plaintiffs and Defendants' other non-exempt California employees did not
5 receive per-stop pay. **Exhibit 2.**

6 35. The non-discretionary bonuses, commissions, and other items of compensation to which
7 Plaintiffs and Defendants' other non-exempt California employees were entitled included, but were not
8 limited to, additional pay for certain stops and deliveries made and "STEM" payments.

9 36. Defendants failed to include these non-discretionary bonuses, commissions, and other
10 items of compensation when calculating Smith and its other non-exempt California employees' regular
11 rate of pay for purposes of overtime. See **Exhibit 2.**

12 37. Plaintiffs and Defendants' other non-exempt California employees were also entitled for
13 reimbursement of business expenses they incurred performing their job duties. These reimbursements
14 included, but were not limited to mileage, costs associated with cellular telephones, toll charges, and
15 automobile insurance. See **Exhibit 3.**

16 38. Notwithstanding the foregoing, Defendants failed and refused to reimburse Plaintiffs
17 and its other non-exempt California employees for all of their business expenses.

18 39. For instance, at times Defendants deducted Plaintiffs' and their other non-exempt
19 California employees' non-discretionary bonuses, commissions, and other items of compensation from
20 their reimbursable expenses.

21 40. Defendants also failed and refused to reimburse Plaintiffs and their other non-exempt
22 California employees for all of their mileage when they had to travel to different facilities, even though
23 they were required to use their personal vehicles.

24 41. Further, those mileage reimbursements paid by Defendants were paid at rates which
25 were insufficient to adequately compensate Plaintiffs and its other non-exempt California employees
26 for the expenses they actually incurred. See **Exhibits 3 and 4.**

27 42. Defendants required Plaintiffs and their other non-exempt California employees to use
28 personal cellular telephones to perform their job duties, including communicating with Defendants,

1 navigating to and from warehouse locations, pickup points, and drop off points, photographing
2 delivered items to document deliveries, and transmitting photographs to Defendants.

3 43. Plaintiffs and Defendants' other non-exempt California employees were also not
4 consistently authorized or permitted to take meal and rest breaks as required by California law.

5 44. Defendants required Plaintiffs and their other non-exempt California employees to work
6 through meal and rest breaks due to understaffing and work demands.

7 45. On the occasions that Plaintiffs and Defendants' other non-exempt California employees
8 were able to take their meal breaks, they routinely occurred after 5 hours of work.

9 46. Further, Defendants frequently failed to relieve Plaintiffs and their other non-exempt
10 California employees of employer control during their meal and rest breaks.

11 47. When Plaintiffs and Defendants' other non-exempt California employees were not
12 provided compliant meal and rest breaks, Defendants did not pay premiums as required by California
13 law. Specifically, Defendants either (a) failed to pay the premiums in their entirety or (b) paid the
14 premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without
15 accounting for non-discretionary bonuses, commissions, and/or other items of compensation (including
16 shift premiums and differentials).

17 48. Defendants also failed and refused to allow Plaintiffs and their other non-exempt
18 California employees to use their sick pay.

19 49. Further, Defendants failed to incorporate non-discretionary bonuses, commissions, and
20 other items of compensation into its non-exempt California employees' regular rate of pay when paying
21 sick pay.

22 50. Because of the violations set forth above, and as evidenced in the sample of Plaintiffs'
23 wage statement attached hereto as **Exhibits 2-4, 6** the wage statements furnished by Defendants to its
24 non-exempt California employees violate California Labor Code section 226(a) insofar as they fail to
25 accurately show:

- 26 a. The gross wages earned, in violation of section 226(a)(1);
27 b. The total hours worked, in violation of section 226(a)(2)
28 c. The net wages earned, in violation of section 226(a)(5); and
d. All applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate in violation of section 226(a)(9).

51. Separate and independent of the foregoing allegations, the wage statements that Defendants furnish to their California employees violate California Labor Code section 226(a)(8) insofar as they fail to accurately show the name and address of the entity that is the employer. See **Exhibits 2 and 5.**

52. Because Defendants fail to pay their non-exempt California employees for all the hours they worked, overtime at the correct rate of pay, sick pay at the correct rate of pay, and because they are not provided compliant meal and rest breaks, or the premiums associated with missing the same, they are not timely paid all wages due and owing to them during each pay period and at the end of their employment.

53. Plaintiffs and Defendants other former non-exempt California employees have not been paid all such wages due and owing to them when their employment with Defendants ended.

54. From at least April 23, 2016, Defendants have adopted and employed unfair business practices. These unfair business practices include, but are not limited to, failing to properly pay all minimum and overtime wages due, failing to provide compliant meal and rest breaks, failing to properly compensate employees for statutorily required sick leave, and failing to reimburse employees for all business expresses.

CLASS ACTION ALLEGATIONS

55. Plaintiffs seek to maintain this action as a class action as to the First through Tenth Causes of Action. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a class action pursuant to Code of Civil Procedure 382. The putative classes which Plaintiffs seek to represent consist of the following:

- a. All current and former non-exempt California employees of Defendants who worked from April 23, 2016 through the date of trial (the “Minimum Wage Class”);
- b. All current and former non-exempt California employees of Defendants who worked overtime during one or more pay periods from April 23, 2016 through the date of trial (the “Overtime Class”);
- c. All current and former non-exempt California employees of Defendants who worked from April 23, 2016 through the date of trial (the “Unpaid Wage Class”);

- 1 d. All current and former non-exempt California employees of Defendants who worked
2 one or more shift of longer than five hours from April 23, 2016 through the date of
3 trial (the “Meal Break Class”);
- 4 e. All current and former non-exempt California employees of Defendants who worked
5 one or more shift of longer than three and one-half hours from April 23, 2016
6 through the date of trial (the “Rest Break Class”);
- 7 f. All current and former non-exempt California employees of Defendants who (a)
8 were prevented from using their sick leave or (b) received commissions, non-
9 discretionary bonuses and/or other items of compensation and used sick leave during
10 at least one pay period from April 23, 2016 through the date of trial (the “Sick Pay
11 Class”)
- 12 g. All current and former non-exempt California employees of Defendants who
13 incurred business expenses in the performance of their duties from April 23, 2016
14 through the date of trial (“Business Expense Class”);
- 15 h. All current and former non-exempt California employees of Defendants who worked
16 from June 17, 2019 through the date of trial (the “Wage Statement Class”);
- 17 i. All current and former California employees of Defendants who worked from June
18 17, 2019 through the date of trial (the “226(a)(8) Class”); and
- 19 j. All members of the Minimum Wage Class, Overtime Class, Unpaid Wage Class,
20 Meal Break Class, Rest Break Class, and Sick Pay Class whose employment ended
21 April 23, 2017 through the date of trial (the “Waiting Time Penalty Class”)

22 The Minimum Wage Class, Overtime Class, Unpaid Wage Class, Meal Break Class, Rest
23 Break Class, Business Expense Class, Sick Pay Class, Wage Statement Class, 226(a)(8) Class,
24 and Waiting Time Penalty Class are collectively referred to as the “Class”.

25 56. The class of persons is so numerous that joinder of all members is impracticable, and the
26 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
27 informed and believes, and based thereon alleges, that Defendants employ more than 600 employees
28 who satisfy the class definition. Although the exact number and identity of class members is not

1 presently known, they can be identified in Defendants' records through coordinated discovery pursuant
2 to this class action.

3 57. This action may be maintained as a class because the questions of law and fact which are
4 common to class members clearly predominate over any questions affecting only individual members
5 and because a class action is superior to other available methods for adjudicating the controversy.

6 58. There are numerous common questions of law and fact arising out of Defendants'
7 conduct. This class action focuses on Defendants': (a) systematic failure to properly pay employees for
8 all hours worked, including overtime; (b) systemic failure to authorize and permit meal and rest breaks
9 or to pay the requisite premiums in lieu of providing said breaks; (c) systematic failure to properly pay
10 sick pay; (d) systematic failure to reimburse employees for all business expenses; (e) systematic failure
11 to provide accurate itemized wage statements, and (f) systematic failure to pay all wages due and owing
12 at the end of employment.

13 59. Furthermore, common questions of fact and law predominate over any questions
14 affecting only individual members of the class. The predominating common or class-wide questions of
15 law and fact include the following:

- 16 a. Whether Defendants failed to pay all their non-exempt California employees for
17 all hours worked;
- 18 b. Whether Defendants failed to pay their non-exempt California employees for all
19 overtime worked;
- 20 c. Whether Defendants failed to properly calculate and pay their non-exempt
21 California employees' overtime pay;
- 22 d. Whether Defendants failed to properly calculate and pay their non-exempt
23 California employees' sick pay;
- 24 e. Whether Defendants failed to provide compliant meal and breaks to their non-
25 exempt California employees;
- 26 f. Whether Defendants failed to pay all earned wages to their non-exempt
27 California employees;

- g. Whether Defendants failed to pay premiums to their non-exempt California employees as a result of non-compliant meal and rest breaks;
- h. Whether Defendants failed to reimburse their non-exempt California employees for business expenses incurred in the performance of their duties;
- i. Whether the Defendants failed to furnish accurate itemized wage statements;
- j. Whether Defendants failed to pay all wages due and owing at end of their non-exempt California employees' employment;
- k. Whether the alleged violations constitute unfair business practices;
- l. Whether the Class is entitled to injunctive relief; and
- m. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief, and the amount of the same.

60. Plaintiffs' claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants. Plaintiffs' claims are typical of those of the Class because Defendants subjected Plaintiffs and each member of the Class to the same violations alleged herein.

61. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

62. Plaintiffs will fairly and adequately protect the interests of all members of the Class, and have retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiffs have no interests that conflict with those of the Class. Plaintiffs are able to fairly and adequately protect the interests of all members of the class because it is in her best interest to prosecute the claims alleged herein in order to obtain the full compensation due herself and the other class members.

63. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for

1 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
2 bring individual claims, 5) class members would be discouraged from pursuing individual claims
3 because the damages available to them are relatively small, and 6) public policy encourages the use of
4 the class actions to enforce employment laws and protect individuals who, by virtue of their
5 subordinate position, are particularly vulnerable.

6 64. Judicial economy will be served by maintenance of this lawsuit as a class action. To
7 process numerous virtually identical individual cases will significantly increase the expense on the
8 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
9 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
10 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
11 to, efficiency, economy, and uniform adjudication with consistent results.

12 65. Notice of a certified class action and any result or resolution of the litigation can be
13 provided to class members by mail, email, publication, or such other methods of notice as deemed
14 appropriate by the Court.

15 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

16 66. The Private Attorney General Act (“PAGA”), as set forth at California Labor Code
17 § 2698 et seq., is and at all times relevant herein was applicable to Rodriguez’s employment by
18 Defendants.

19 67. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides
20 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
21 (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil
22 action brought by an aggrieved employee on behalf of himself or herself and other current or
23 former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor
24 Code § 2699(a).

25 68. Pursuant to PAGA, an “aggrieved employee” is “any person who was employed by
26 the alleged violator and against whom one or more of the alleged violations was committed.”
27 Labor Code § 2699(c).

28 ///

1 69. Plaintiffs Devin Smith and Ochonma were employed by Defendants and the alleged
2 violations were committed against them during their time of employment. Devin Smith and
3 Ochonma are both therefore aggrieved employees as defined by Labor Code § 2699(c). Other
4 current and former employees are also aggrieved employees in that one or more of the alleged
5 violations were also committed against them during their time of employment with Defendants.

6 70. As is outlined herein, Defendants violated the Labor Code as to Devin Smith,
7 Ochonma and other current and former employees it employed and/or employs within California.
8 Specifically, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 233, 246,
9 510, 512, 1182.12 et seq., 1194, 1197, 1198, 2802 and the applicable IWC Wage Orders.

10 71. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is
11 that which is provided for by the by the Labor Code. When the Labor Code does not provide a
12 civil penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay
13 period and \$200 for each subsequent violation per employee per pay period.

14 72. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee
15 may recover the civil penalty on behalf of himself or herself and other current or former employees
16 against whom one or more of the alleged violations was committed. Furthermore, any employee
17 who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

18 73. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Ochonma, may
19 pursue a civil action arising under PAGA after the following requirements have been met:

- 20 a. The aggrieved employee shall give written notice by certified mail to the LWDA
21 and the employer (hereinafter "Employee's Notice") of the specific provisions
22 of California Labor Code alleged to have been violated, including the facts and
23 theories to support the alleged violations;
- 24 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
25 employer and the aggrieved employee by certified mail that it does not intend to
26 investigate the alleged violation within 60 days of the postmark date of the
27 Employee's Notice. Upon receipt of the LWDA's Notice, or if the LWDA does
28 not provide notice with 65 calendar days of the postmark date of the Employee's

1 Notice, the aggrieved employee may commence a civil action pursuant to
2 California Labor Code § 2699 to recover civil penalties in addition to any other
3 penalties to which the employee may be entitled.

- 4 c. For all alleged violations not enumerated in Labor Code § 2699.5, the employer
5 is given thirty-three (33) days to cure and notify the aggrieved employee by
6 certified mail that the violation has been cured. If the violation is not cured, the
7 aggrieved employee may commence a civil action pursuant to California Labor
8 Code § 2699 to recover civil penalties in addition to any other penalties to which
9 the employee may be entitled.

10 74. On March 12, 2020, Devin Smith provided written notice by certified mail to
11 Defendants and by online filing to the LWDA of the specific provisions of the Labor Code alleged
12 to have been violated as to him, including the facts and theories to support the alleged violations.

13 75. On May 11, 2020, Devin Smith sent an amended notice to the LWDA and
14 Defendants adding specific violations of the California Labor Code Defendants violated and
15 continue to violate.

16 76. On June 17, 2020, Ochonma provided written notice by certified mail to DI
17 Logistics and by online filing to the LWDA of the specific provisions of the Labor Code alleged to
18 have been violated as to him, including the facts and theories to support the alleged violations.

19 77. Plaintiffs Devin Smith and Ochonma have satisfied the administrative prerequisites
20 under Labor Code § 2699.3 to bring a civil action to recover penalties against Defendants, in
21 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204,
22 226, 226.7, 233, 246, 510, 512, 1182.12 et seq., 1194, 1197, 1198, 2802 and the applicable IWC
23 Wage Orders.

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FIRST CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE § 1128.12 et seq.
(Failure to Pay Minimum Wage)
Against Defendants

78. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

79. California Labor Code section 1182.12 establishes the minimum wage for California employees from July 1, 2014, to present.

80. Labor Code Section 1194 provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ... including interest thereon, reasonable attorney's fees, and costs of suit.

81. Labor Code section 1194.2 provides, in relevant part:

In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

82. Labor Code section 1197 provides that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is unlawful.

83. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

84. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and the other members of the Minimum Wage Class for every hour worked.

85. Wherefore, Plaintiffs and the other members of the Minimum Wage Class have been injured as set forth above and request relief as hereafter provided.

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SECOND CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198 AND THE FAIR LABOR
STANDARDS ACT
(Failure to Pay Overtime)
Against Defendants

86. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

87. Pursuant to California Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

88. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

89. The Fair Labor Standards Act, 29 USC §§ 201 et seq. and 29 CFR §§ 778 et seq., requires time-and-a-half pay for the time an employee works over forty hours a week.

90. The “regular rate of pay” includes all remuneration for employment paid to the employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

91. During the relevant time period, Plaintiffs and Defendants’ other non-exempt California employees regularly worked overtime.

92. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and other members of the Overtime Class the proper overtime wages due to them.

1 93. During the relevant time period, Defendants intentionally and will fully failed to
2 properly calculate and pay overtime wages due to Plaintiffs and the other members of the Overtime
3 Class.

4 94. Wherefore, Plaintiffs and the other members of the other members of the Overtime Class
5 have been injured as set forth above and request relief as hereafter provided.

6 **THIRD CAUSE OF ACTION**
7 **LABOR CODE § 218**
8 **(Failure to Pay Wages)**
9 **Against Defendants**

10 95. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
11 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
12 allegations of this cause of action.

13 96. Labor Code section 218 permits an individual to bring an action to recover unpaid
14 wages, which include any and all compensation owed for labor performed by an employee, whether
15 that amount is calculated by time, task, piece, commission, or some other method and additionally
16 includes bonuses, profit-sharing, and commissions. *Davis v. Farmers Ins. Exchange* (2016) 245
17 Cal.App.4th 1302.

18 97. As set forth above, during the relevant time period, Defendants failed to pay Plaintiffs
19 and the members of the Unpaid Wage Class all wages earned by them, including all wages earned for
20 all time they worked for Defendants, including earned overtime wages, all bonuses earned, all piece-
21 rates earned (such as per-stop pay), and all sick pay owed.

22 98. Wherefore, Plaintiffs and the other members of the Unpaid Wage Class have been
23 harmed and request relief as hereafter provided.

24 **FOURTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS**
26 **(Failure to Provide Meal Periods)**
27 **Against Defendants**

28 99. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

1 100. Labor Code § 226.7 requires employers to provide employees meal breaks as
2 mandated by Order of the Industrial Welfare Commission. It states:

- 3 a. No employer shall require any employee to work during any meal or rest
4 period mandated by an applicable order of the Industrial Welfare
5 Commission.
6 b. If an employer fails to provide an employee a meal period or rest period in
7 accordance with an applicable order of the Industrial Welfare Commission,
8 the employer shall pay the employee 1 additional hour of pay at the
9 employee's regular rate of compensation for each work day that the meal or
rest period is not provided.

10 101. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer
11 may not employ a person for a work period of more than 5 hours per day without providing that
12 employee a meal period of not less than 30 minutes, except that if the total work period per day is
13 no more than six hours, the meal period may be waived by mutual consent of both the employer
14 and employee. An employer may not employ a person for a work period of more than 10 hours per
15 day without providing an employee with a second meal period of not less than 30 minutes, except
16 that if the total work period per day of the employee is no more than twelve 12 hours, the meal
17 period may be waived by mutual consent of both the employer and the employee, and if the first
18 meal period was not waived.

19 102. During the relevant time period, Plaintiffs and the other members of the Meal Break
20 Class were not provided with compliant meal breaks, nor did they receive an additional hour of
21 premium pay for each missed meal break.

22 103. Wherefore, Plaintiffs and the other members of the Meal Break Class have been
23 injured as set forth above and request relief as hereafter provided.

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Rest Periods)
Against Defendants

104. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

105. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided

106. The applicable Wage Order(s) provides that every "employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof..." The applicable Wage Order further provides that "[i]f an employer fails to provide an employee rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

107. During the relevant time period, Plaintiffs and other members of the Rest Break Class were not provided with compliant rest breaks, nor did they receive an additional hour of premium pay for each missed rest break

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1 108. Wherefore, Plaintiffs and the other members of the Rest Break Class have been injured
2 as set forth above and request relief as hereafter provided.

3 **SIXTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE §§ 218, 233, 246 et seq.**
5 **(Failure to Properly Pay Sick Leave)**
6 **Against Defendants**

7 109. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 110. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
11 employees at that employee's "regular rate of pay."

12 111. The "regular rate of pay" includes all remuneration for employment paid to the
13 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift
14 differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29
15 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

16 112. During the relevant time period, Defendants failed to include commissions,
17 incentive payments, non-discretionary bonuses, and/or other items of compensation when
18 determining the "regular rate of pay" for Smith and their other non-exempt California employees
19 for purposes of sick time pay.

20 113. According to the California Supreme Court, sick pay is a form of wages. *Murphy v.*
21 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

22 114. Labor Code section 233 provides that "any employer who provides sick leave for
23 employees shall permit an employee to use in any calendar year the employee's accrued and
24 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
25 during six months at the employee's then current rate of entitlement, for the reasons specified in
26 subdivision (a) of Section 246.5."

27 115. During the relevant time period, Defendants intentionally and willfully failed and
28 refused to allow Plaintiffs and the other members of the Sick Pay Class to use their sick pay.

///

1 116. During the relevant time period, Defendants also intentionally and willfully failed to
2 pay Smith and the other members of the Sick Pay Class their sick pay at the rate of pay required by
3 law. Accordingly, Smith and the other members of the Sick Pay Class did not receive the full
4 amount of paid sick time that they were entitled to receive by law, and were therefore denied the
5 right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

6 117. Any employer who violates Labor Code section 233 is liable to employees for the
7 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
8 fees and costs. Labor Code §233(d), (e).

9 118. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
10 wages.

11 119. Wherefore, Smith and the other members of the Sick Pay Class have been injured as set
12 forth above and request relief as hereafter provided.

13 **SEVENTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 2802**
15 **(Failure to Reimburse Business Expenses)**
 Against Defendants

16 120. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 121. Pursuant to California Labor Code § 2802(a), "an employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
22 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
23 unlawful."

24 122. As set forth above, Defendants intentionally and willfully failed to reimburse Plaintiffs
25 and the other members of the Business Expense Class for all necessary expenditures or losses incurred
26 in the direct consequence of the discharge of their job duties in violation of Labor Code section 2802.

27 123. Wherefore, Plaintiffs and the other members of the Business Expense Class have been
28 injured as set forth above and request relief as hereafter provided.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 201, ET SEQ.
(Failure to Pay All Wages Due and Owing at End of Employment)
Against Defendants

124. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

125. California Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

126. California Labor Code section 202 requires an employer to pay an employee all earned wages within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting if the employee has given 72 hours previous notice of his or her intention to quit.

127. As set forth above, Smith and the other members of the Waiting Time Penalty Class Class were not timely paid all of their earned but unpaid wages, including minimum wage, overtime, meal and rest break premiums and improperly compensated sick pay, when their employment with Defendants ended

128. Wherefore, Smith and the other members of the Waiting Time Penalty Class have been injured as set forth above and request relief as hereafter provided.

NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendants

129. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

130. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any

1 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
2 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and only the last four digits of his or her social security number or an employee identification
4 number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly
5 rates in effect during the pay period and corresponding number of hours worked at each hourly rate by
6 the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total
7 hours worked for each temporary services assignment.”

8 131. An employee suffering injury as a result of the knowing and intentional failure by an
9 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
10 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
11 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
12 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s
13 fees. Labor Code § 226(e)(1).

14 132. An employee is deemed to suffer injury if the employer fails to provide a wage
15 statement or if the employer fails to provide accurate and complete information as required by any one
16 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
17 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
18 during the pay period or any of the other information required to be provided pursuant to Labor Code
19 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
20 and address of the employer and iv) the name of the employee and the last four digits of his or her
21 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
22 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
23 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

24 133. As set forth above, Defendants intentionally and willfully failed to furnish accurate
25 itemized wage statements which complied with Labor Code section 226.

26 134. Wherefore, Ochonma and the other members of the Waiting Time Penalty Class have
27 been injured as set forth above and request relief as hereafter provided.

28 ///

1 **TENTH CAUSE OF ACTION**
2 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.***
3 **(Unfair Business Practices)**
4 **Against Defendants**

5 135. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
6 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
7 allegations of this cause of action.

8 136. The statutory violations, as alleged above, are unfair business practices within the
9 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and
10 include, but are not limited to failing to properly pay minimum and overtime wages, failing to pay meal
11 and rest break premiums, failing to properly compensate employees for statutorily required sick leave,
12 and failing to reimburse employees for business expenses incurred while performing their duties.

13 137. Wherefore, Plaintiffs and the other members of the Class have been damaged as set forth
14 above and request relief as hereafter provided.

15 **ELEVENTH CAUSE OF ACTION**
16 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT**
17 **(“PAGA”)**
18 **Against Defendants**

19 138. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
20 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
21 allegations of this cause of action.

22 139. Plaintiffs Devin Smith and Ochonma are “aggrieved employees” under the PAGA as
23 each was employed by Defendants during the applicable statutory period and suffered one or more of
24 the Labor Code violations outlined herein. Other current and former employees are also aggrieved
25 employees in that one or more of the alleged violations were also committed against them during their
26 time of employment with Defendants.

27 140. Devin Smith and Ochonma seek to recover, on behalf of and as a proxy for the Labor
28 and Workforce Development Agency (the “LWDA”), the civil penalties provided by the PAGA
29 through a representative action permitted by the PAGA and *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969.
30 Class certification of the PAGA claims is not required.

141. Devin Smith and Ochonma seek to enforce the California Labor Code and related regulations and Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of violations which include, but are not limited to, all of the following: Labor Code 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 1182.12 et seq., 1194, 1197, 1198, 2802 and the applicable IWC Wage Orders.

142. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

143. Pursuant to California Labor Code section 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs

144. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set forth above, Devin Smith and Ochonma seek recovery of civil penalties, attorneys' fees and costs pursuant to the PAGA as set forth below

145. Wherefore, Devin Smith, Ochonma, and the other members of the Class who are also Aggrieved Employees (employed within California between March 12, 2019 and the date judgment is entered) have been damaged as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays judgment against Defendants as follows:

As to the First through Tenth Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Plaintiffs as representatives of the Class;
3. That this Court appoint Mayall Hurley, P.C, Thomas Rutledge, and Ian Pancer, as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiffs and the members of the Class;

5. That this Court award injunctive relief, including that available under 29 U.S.C. § 217, Labor Code sections 226(h) and 248.5(e), as well as Business and Professions Code Section 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code sections 203, 226, 226.7, 512 and 1194.2, as well as 29 U.S.C. § 216;
7. That this Court award statutory attorneys' fees and costs, including those available under 29 U.S.C. § 216(b), Labor Code sections 218.5, 226(e)(1), 248.5(e), 1194, and 2802, 29 U.S.C. § 216, as well as Code of Civil Procedure section 1021.5;
8. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
9. That this Court award such other and further relief as the court deems just and proper.

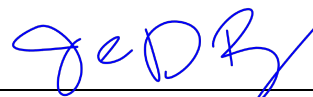
As to the Eleventh Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code §§ 226.3, 256, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper.

DATED: May 25, 2022

MAYALL HURLEY P.C.

By



ROBERT J. WASSERMAN

JENNY D. BAYSINGER

Attorneys for Plaintiffs and the Putative Class

EXHIBIT 1



Date: 2/6/2019

Dear Myrica Smith

On behalf of Deliver-It Overnite, I am pleased to offer you a position as a distribution route driver for CEN525. Which covers the greater Tracy area. As we discussed, in this position your starting compensation will be \$2.25/stop. The route also includes a \$15.00 STEM per day for as long as you are in this specific area. This position is considered a non-exempt position for purposes of federal wage-hour law, which means that you will be eligible for overtime time pay for hours actually worked in excess of 40 hour in a week, more than 8 hours a day, and the first 8 hours on the seventh (7th) consecutive day worked.

In addition to your compensation, you may be eligible to receive the benefits which are offered to eligible employees. Please reference company handbook for further details. We also have enclosed a copy of the employee handbook, which describes the Company's policies and procedures that will govern certain aspects of your employment. Please be sure to review the handbook and sign and return the acknowledgement of receipt page at the end of the handbook.

This offer of employment, if not previously accepted by you, will expire seven days from the date of this letter, although additional time for consideration of the offer can be made available if you find it necessary. If you wish to accept the offer, please sign in the place provided below and return it to me within the prescribed time.

We greatly look forward to having you join our Company and become a member of our team. However, we recognize that you retain the option, as does the Company, of ending your employment with the Company at any time, with or without notice and with or without cause. As such, your employment with the Company is at-will and neither this letter nor any other oral or written representations may be considered a contract for any specific period of time.

Should you have any questions about starting with the Company, please do not hesitate to contact me or a representative from the Human Resources Department.

The provisions of this offer of employment have been read, are understood, and the offer is herewith accepted. I understand that my employment is contingent upon a clear background check, drug test, and execution of an employment agreement.

Sincerely,

Shannon Butler

I agree to the terms of the employment set forth above.

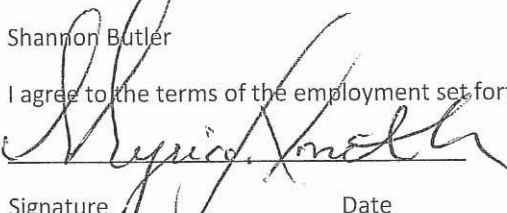

Signature _____ Date _____

EXHIBIT 2

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE	10903	
U04915	Myrica Smith			2/1/19 - 2/15/19	2/25/19		
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE	
Regular	13.00	47.62	619.06	Gross	622.96	3,595.55	
Overtime	19.50	0.20	3.90	MileageReim	535.68	1,663.68	
Doubletime	26.00			Fed_Income	-11.46	-127.78	
Bonus	1.00			Soc_Sec	-38.62	-222.93	
				MEDICARE	-9.03	-52.14	
				St_Dis_Ins	-6.23	-35.96	
				SICK_Accrue		48.00	
				SICK_Remain		48.00	
				1270			
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD		GROSS YEAR TO DATE	NET CHECK	CHECK NO.	
2	47.82	622.96		3,595.55	\$1,093.30	10903	

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE	
U04915	Myrica Smith			2/16/19 - 2/28/19	3/8/19	
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	12.00	39.37	472.44	Gross	472.44	4,067.99
Overtime	18.00			MileageReim	503.04	2,166.72
Doubletime	24.00			Fed_Income		-127.78
Bonus	1.00			Soc_Sec	-29.29	-252.22
				MEDICARE	-6.85	-58.99
				St_Dis_Ins	-4.72	-40.68
				SICK_Accrue		48.00
				SICK_Remain		48.00
				1270		
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD		GROSS YEAR TO DATE	NET CHECK	CHECK NO.
2	39.37	472.44		4,067.99	\$934.62	11096

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME			SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE
U04915	Myrica Smith				3/1/19 - 3/15/19	3/14/19
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	13.00	16.43	213.59	Gross	213.59	1,257.62
Overtime	19.50			MileageReim	264.16	264.16
Doubletime	26.00			Fed_Income		-56.20
				Soc_Sec	-13.24	-77.97
				MEDICARE	-3.10	-18.24
				St_Dis_Ins	-2.14	-12.58
				SICK_Accrue		48.00
				SICK_Remain		48.00

EXHIBIT 3



Employee Driver Agreement

Vehicle Requirements

DI Logistics dba Deliver-It (hereinafter called the Company) is in the package delivery business. As an employee driver you are required to provide a dependable and reliable vehicle to utilize for deliveries.

Your vehicle registration must be current and in good standing with the Department of Motor Vehicles including state smog emissions certification now and in the future. Vehicles with temporary non-operational registration may not be used to perform your job duties. Vehicles that have been issued a Salvage or Nonrepairable Vehicle Certificate as ownership documents are not allowed.

All vehicles utilized during business must be well maintained and in safe operating condition. No motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order. You are responsible for regular and scheduled service as well as any repairs resulting from malfunction and/or accident damage. Each driver is advised to set up a preventative maintenance program and inspect your vehicle before every trip. All vehicles will be maintained in accordance with the U.S. Department of Transportation Federal Motor Carrier Safety Administration Part 396.

No motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order:

- a. Brakes
- b. Steering mechanism
- c. Lighting devices and reflectors
- d. Tires
- e. Horn
- f. Windshield wipers
- g. Rear view mirrors
- h. Hoses
- i. Security of load including windows, doors, hatches, trunks, and/or storage boxes.
- j. Fluid levels such as oil, transmission, battery, alternator, brakes, and power.

Tires must be inspected regularly and maintained in compliance with the inflation guidelines. Tread wear must be monitored closely and excessively worn tires must be replaced promptly. All vehicle lights and signaling devices must be operational. Proper restraint systems such as safety belts and air bags and locking mechanisms must be operational and used properly. The vehicle must remain clean and orderly inside and out while performing your route.

Fueling your vehicle sufficiently to perform your route is your responsibility. The Company may provide some assistance through the WEX Fuel Program. Please see the WEX Fuel Program Policy or speak to your supervisor for more information.

Insurance Requirements

Each driver must maintain adequate insurance acceptable to the Company. This insurance must have a minimum liability limit of \$300,000 single limit or \$100,000/300,000/50,000 split limits. All drivers must obtain their insurance from an "A" rated insurance company. Proof of insurance must be presented at time of hire and subsequently at renewal time and/or upon request of verification. Failure to obtain or maintain adequate insurance with the proper carrier will result in disciplinary action up to and including termination.

License Requirements

Employee drivers operating their personal vehicle are required to maintain a valid, unrestricted and current Class C driver's license in good standing with the Department of Motor Vehicles. Those that operate Company vehicles may be required to have a Class B license.

Motor vehicle reports will be pulled periodically to verify the status of your license. Drivers with 3 or more points on their record may be subject to disciplinary action. A DUI or DWI conviction and subsequent license suspension or revocation will result in immediate termination. A single at fault accident resulting in severe property damage, bodily injury or death is enough for grounds for dismissal.

Safety and Security

The Company places the utmost importance on the safety and security of our work force and our clients' shipments. We encourage safe habits and defensive driving tactics. No delivery is so important as to jeopardize safety and/or security. It is expected that employees will utilize smart driving techniques such as keeping abreast of the traffic situation and taking alternate, less busy or congested routes to reach destinations. It is the intent of the Company to ensure that the driver's vehicle is operated in a manner to provide proper service to our customers without imposing a threat or loss to our clients, employees or general public.

The Company reviews safety and security activities and conducts required education at a minimum, annually.

Sound business practice requires the elimination of accidents or theft causing injury or loss to persons or property or causing damage or loss of equipment or cargo. These activities should concern all members of our organization. Following are the Company's requirements.

1. Wear safety belts at all times.
2. Observe and obey all local traffic laws.
3. Locate your next delivery address and enter into mapping systems before leaving the previous stop.
4. Physically inspect your auto regularly as outlined above in the Vehicle Requirements section.
5. Do not talk on the phone, text, use social media or search the Internet while driving. Pull to a complete stop in a safe place before answering or placing a call or text.
6. Place cargo in safe and secure compartments in your vehicle and comply with all security requirements as outlined in the Theft and Security Policy.
7. Only lift what you are physically able to handle. Ask for assistance when needed.
8. Obey parking and other traffic laws. Do not park in restricted areas, block driveways or double park at any time.
9. You must secure and lock your vehicle while it is unattended. Never leave your vehicle running while unattended.
10. No unauthorized persons may ride in your vehicle during business hours.
11. You may not pick up, carry or deliver packages, people or other items while performing your route for DI Logistics. Performing work for other package delivery or other transportation companies simultaneously is considered a conflict of interest and is grounds for dismissal.

Duties and Responsibilities

Drivers are required to execute pick up and deliveries in accordance with the Company's policies and procedures. Providing quality service to our customers is a top priority. You are required to maintain the highest level of professionalism and courtesy on the road and during face to face interaction with the public. You are expected to behave respectfully and courteously when engaging with internal and external customers. You will be trained on DI Logistics standard operating procedures or SOPs and best practices and are expected to follow them.

On-time delivery percentage goals will be established by the organization and communicated to you by your supervisor. You will be required to consistently meet and/or exceed the on-time delivery percentage goals while complying with the shippers' delivery instructions. All shipments must be scanned to route as out for delivery each day. You are expected to attempt each shipment and pick up assigned to your route. Do not leave packages behind or miss a pick up without discussing it with your dispatcher or supervisor.

Proof of Delivery photos (VPODs) must be obtained for all shipments. You must collect the recipient's signature on each package for signature required shipments. Then enter the

recipient's full name and take a picture of the shipment and transmit. For okay to leave or OTL shipments, you must follow the directions provided such as leave under the mat or in the mail slot. The package must be visible in the VPOD and the picture must clearly demonstrate that the shipment was left at the correct address. The quality of your VPODs will be measured regularly and feedback provided. It is your responsibility to maintain the proper VPOD quality.

All shipments scanned out for delivery must be attempted properly each day. There may be some shipments that you are unable to execute delivery due to an address, access or signature requirement issue. When this happens, you must scan and enter the proper reason for the service problem and report the attempt to your dispatcher. If your dispatcher can resolve the issue you may be required to re-attempt the same day. All attempted shipments must be returned to the hub at the end of your route.

Additional duties may be assigned by management. Management reserves the right to change routes as detailed the Route Assignment Policy. Drivers are required to cooperate with route changes in support of the business needs. Failure to perform the job duties and responsibilities as outlined above will result in disciplinary action up to and including termination.

Time Off and Reliability

Attendance requirements are outlined in the Attendance Policy. An unreasonable amount of unscheduled days off will not be tolerated. All scheduled requests for time off must be submitted in compliance with the policy and are subject to approval. The Company will make every effort honor time off requests however our ability to approve will be determined by customer need and staffing levels. Poor attendance and/or a pattern of unreliability are sufficient reasons for dismissal.

Uniform and Appearance

Drivers sell business every time they walk into someone's door. Clean, well groomed, and professional appearance is required. Uniform requirements are detailed in the Uniform and Appearance Policy. Compliance with the policy is a requirement of the job and failure meet the requirements will result in disciplinary action up to and including termination.

Payroll and Mileage Reimbursement

Drivers will be compensated bi-monthly. You will be paid for deliveries made between the 1st through the 15th of the month on the 25th and for the 16th through the last day of the month on the 10th of the following month. If a pay date falls on a weekend checks will be distributed on the previous Friday. For example, 1/1/19-1/15/19 will be paid on 1/25/19 and 1/16/19-1/31/19 will be paid 2/8/18.

Mileage reimbursement may be paid as part of your distribution route pay or in addition to an hourly rate for rover drivers only. Details are outlined in your Employment Offer Letter and the

Driver Pay Plan Worksheet. You must record your mileage daily. Rover drivers must submit mileage reports to their supervisor for approval at the end of each pay period. Approved mileage reports will be submitted to the Payroll Department for reimbursement. Failure to turn in mileage reports or late mileage reports will result in delayed payments.

Direct deposit may be available to you. The process requires that you submit banking information along with properly completed and authorized forms. It may take up to three pay cycles for direct deposit to be effective and you will be issued a live paycheck until then.

Pay discrepancies must be submitted in writing to the Driver Management Department. Discrepancies will be reviewed and confirmed errors will be corrected in a timely manner. A live check will be issued for payroll corrections.

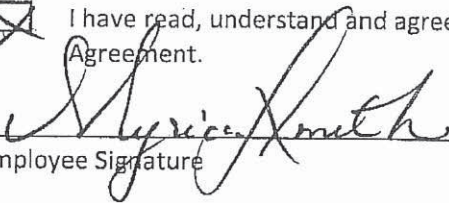
Hold Harmless

Driver will indemnify and hold harmless Company and any customers of Company, from and against any and all liability, by reason of accident, injuries, or negligence of any kind that may result from the act of Courier driver while making deliveries for or on behalf of Company.



I have read, understand and agree to the provisions outlined in the DI Logistics Driver Agreement.

Employee Signature



Date

10/02/2018

EXHIBIT 4

D.I. Logistics

15012

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE
M03637	Ochonma, Kevin		xxx-xx-1798	7/1/19 - 7/15/19	7/25/19

ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	67.67	1,015.05	Gross	1,197.98	13,889.72
Overtime	22.50	8.13	182.93	MileageReim	672.00	7,886.00
				Fed Income	-116.67	-1,382.48
				Soc_Sec	-74.27	-861.17
				MEDICARE	-17.37	-201.40
				St_Income	-22.16	-288.12
				St_Dis_Ins	-11.98	-138.91
				SICK_Accrue		48.00
				SICK_Remain		48.00

DI Logistics
14043 Stage Rd
Santa Fe Springs, CA 90670

1292 miles @ .52

WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET <i>wages</i>	CHECK NO.
2	75.80	1,197.98	13,889.72	\$1,627.53	15012

PRODUCT SSLM341

USE WITH 91584 ENVELOPE

Deluxe Corporation 1-800-328-0304 or www.deluxe.com/shop

PRINTED IN U.S.A.

88505119001

D.I. Logistics

15958

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE
M03637	Ochonma, Kevin		xxx-xx-1798	8/1/19 - 8/15/19	8/23/19

ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	62.43	936.45	Gross	1,110.53	16,326.33
Overtime	22.50	7.07	159.08	MileageReim	692.00	9,520.00
Training	15.00	1.00	15.00	Fed Income	-106.18	-1,620.71
				Soc_Sec	-68.85	-1,012.24
				MEDICARE	-16.10	-236.73
				St_Income	-18.31	-334.23
				St_Dis_Ins	-11.11	-163.28
				SICK_Accrue		48.00
				SICK_Remain		48.00

DI Logistics
14043 Stage Rd
Santa Fe Springs, CA 90670

1331 miles @ .52

WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET <i>wages</i>	CHECK NO.
2	70.50	1,110.53	16,326.33	\$1,581.98	15958

PRODUCT SSLM341

USE WITH 91584 ENVELOPE

Deluxe Corporation 1-800-328-0304 or www.deluxe.com/shop

PRINTED IN U.S.A.

88505119001

7/1/19

Sick Time: Allocated	Used	Balance
Hours: 48	0	6
Vacation: Accrued	Used	Balance
Hours: n/a		

8/1/19

Sick Time: Allocated	Used	Balance
Hours: 48	0	6
Vacation: Accrued	Used	Balance
Hours: n/a		

EXHIBIT 5

Kevin C. Ochonma

DATE

1/24/2020

AMOUNT

*****1,813.86*

*ONE THOUSAND EIGHT HUNDRED THIRTEEN AND 86 / 100

Employee		Time Off	Accrued	Taken	Balance	Period End	Pay Rate	Check Number
20-M03637 Ochonma, K		Vacation:	0.00	0.00	0.00	1/15/2020	\$15.00 HS	021882
Social Security Number		Sick Time:	3.60	0.00	3.60			
***-**-1798								
Earnings		Hours	Pay Rate	Amount	YTD Deduction	Amount	YTD	
Regular		63.98	\$15.00	959.70	1,622.40 Federal W/H	103.28	156.03	
Overtime		1.33	\$15.00	29.93	33.76 Social Security Tax	67.43	108.75	
Mileage-Reimb - Dist		0.00	\$15.00	940.00	1,584.00 Medicare Tax	15.77	25.43	
Parkin/Toll Reim		0.00	\$15.00	0.00	11.00 CA State W/H	16.36	22.83	
Holiday		6.53	\$15.00	97.95	97.95 CA Disability Tax	10.88	17.55	
Cellphone Reim		0.00	\$15.00	0.00	10.00			
Fuel Offset		0.00	\$15.00	0.00	20.00			

Name: Ochonma, Kevin

Amount: \$4.00

Days worked: 10

Total pay: \$40.00

Period: 1/1/20-1/15/20

Date paid: 1/25/20

DI Logistics
14043 Stage Rd
Santa Fe Springs, CA 90670

Gross Earnings:	2,027.58	3,379.11	Total Deductions:	213.72	330.59
Net Wages	1,813.86				

Ochoma, Kevin
Miles: 2350 Rate Paid @ .40 = 940.00

EXHIBIT 6

EMPLOYEE NO.	EMPLOYEE NAME	SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE		
M03637	Ochonma, Kevin	xxx-xx-1798	7/16/19 - 7/31/19	8/9/19		
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	79.48	1,192.20	Gross	1,326.08	15,215.80
Overtime	22.50	5.95	133.88	MileageReim	942.00	8,828.00
				Fed_Income	-132.05	-1,514.53
				Soc_Sec	-82.22	-943.39
				MEDICARE	-19.23	-220.63
				St_Income	-27.80	-315.92
				St_Dis_Ins	-13.26	-152.17
				SICK_Accrue		48.00
				SICK_Remain		48.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET CHECK	CHECK NO.	
2	85.43	1,326.08	15,215.80	\$1,993.52	15440	

D.I. Logistics

16334

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE	
M03637	Ochonma, Kevin		xxx-xx-1798	8/16/19 - 8/31/19	9/10/19	
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	85.42	1,281.30	Gross	1,811.78	18,138.11
Overtime	22.50	22.95	516.38	MileageReim	1,080.00	10,600.00
Doubletime	30.00	0.47	14.10	Fed_Income	-191.20	-1,811.91
Training	15.00			Soc_Sec	-112.33	-1,124.57
				MEDICARE	-26.27	-263.00
				St_Income	-55.69	-389.92
				St_Dis_Ins	-18.12	-181.40
				SICK_Accrue		48.00
				SICK_Remain		48.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD		GROSS YEAR TO DATE	NET CHECK	CHECK NO.
2	108.84	1,811.78		18,138.11	\$2,488.17	16334

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME		SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE	
M03637	Ochonma, Kevin		xxx-xx-1798	9/1/19 - 9/15/19	9/25/19	
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	68.52	1,027.80	Gross	1,438.88	19,576.99
Overtime	22.50	18.27	411.08	MileageReim	810.00	11,410.00
Doubletime	30.00			Fed_Income	-145.58	-1,957.49
Training	15.00			Soc_Sec	-89.21	-1,213.78
				MEDICARE	-20.86	-283.86
				St_Income	-32.76	-422.68
				St_Dis_Ins	-14.39	-195.79
				SICK_Accrue		48.00
				SICK_Remain		43.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD		GROSS YEAR TO DATE	NET CHECK	CHECK NO.
2	86.79	1,438.88		19,576.99	\$1,946.08	16841

D.I. Logistics

D.I. Logistics

EMPLOYEE NO.	EMPLOYEE NAME	SOCIAL SECURITY NO.	PAY PERIOD BEGIN/ENDING	CHECK DATE		
M03637	Ochonma, Kevin	xxx-xx-1798	8/1/19 - 8/15/19	8/23/19		
ITEM	RATE	HOURS	TOTAL	ITEM	THIS CHECK	YEAR TO DATE
Regular	15.00	62.43	936.45	Gross	1,110.53	16,326.33
Overtime	22.50	7.07	159.08	MileageReim	692.00	9,520.00
Training	15.00	1.00	15.00	Fed_Income	-106.18	-1,620.71
				Soc_Sec	-68.85	-1,012.24
				MEDICARE	-16.10	-236.73
				St_Income	-18.31	-334.23
				St_Dis_Ins	-11.11	-163.28
				SICK_Accrue		48.00
				SICK_Remain		48.00
WEEKS WORKED	HOURS WORKED	GROSS THIS PAY PERIOD	GROSS YEAR TO DATE	NET CHECK	CHECK NO.	
	70.50	1,110.53	16,326.33	\$1,581.98	15958	

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 October 28, 2022, I served the following document:

FIRSTAMENDED CLASS, COLLECTIVE, AND REPRESENTATIVE ACTION COMPLAINT
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 rmogan@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 October 28, 2022, at Stockton, California.


RACHELLE M. MOGAN

EXHIBIT B

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Smith, et al v. DI Logistics, LLC, et al., Superior Court of California, County of San Bernardino, Case No. CIVDS2011469)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, and Defendants' deposit of the Maximum Settlement Amount ("MSA") the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement except the portion attributed to you as part of the Private Attorney General Act (PAGA) settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of this lawsuit pending in the Superior Court for the State of California, County of San Bernardino (the "Court") has been reached between Plaintiffs Devin Smith, Myrica Smith, and Kevin Ochonma (collectively "Plaintiffs") and Defendants DI Logistics, LLC, DI Overnite, LLC, and DI Overnite Investments, LLC (collectively "Defendants"). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

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

The "Class Period" is the period of time running from April 23, 2016 to December 31, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On April 23, 2020, Plaintiff Myrica Smith filed a Class Action Complaint in the United States District Court, Central District of California Case No. 2:20-CV-03734-PSG-AGR (the “Federal Action”). On June 11, 2020, Plaintiff Devin Smith filed this action. On June 25, 2020, Plaintiff Myrica Smith filed a First Amended Class Action Complaint which added Plaintiff Kevin Ochonma as a named Plaintiff. The instant action and the Federal Action are collectively referred to as the “Actions.” Plaintiffs allege several wage and hour claims, including the following: the failure to pay minimum wage, the failure to pay overtime wages, the failure to reimburse for all business expenses, the failure to provide meal and rest periods or appropriately calculate and pay meal/rest period premiums, the failure to appropriately provide and pay for sick leave, the failure to provide accurate itemized wage statements, and the failure to pay all wages due and owing at the time of separation. Plaintiffs also allege related violations of the Business and Professions Code and the Private Attorneys General Act.

Defendants deny and dispute all claims asserted by Plaintiffs. Specifically, Defendants contend that Plaintiffs’ claims cannot be properly be maintained as a class action; that Defendants at all times properly paid class members; that Defendants reimbursed class members for all business expenses; that Defendants provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants provided accurate, itemized wage statements to members of the class; that Defendants did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendants is not liable for any of the penalties claimed.

On July 30, 2021, Plaintiffs Myrica Smith and Kevin Ochonma and Defendants participated in a mediation with David Rotman, Esq., a prominent mediator experienced in resolving wage and hour class and collective actions. Although no resolution was reached, the Parties continued negotiations, both with the assistance of the mediator and independently. On March 15, 2022, as a result of the mediation, and the subsequent negotiations, the Parties reached an agreement to settle all causes of action alleged by the Plaintiffs. To facilitate the Settlement, a First Amended Complaint has been filed in the instant case in order to add Myrica Smith and Kevin Ochonma as Plaintiffs and consolidate/incorporate the claims that were pending in the Federal Action into the instant case. The San Bernardino County Superior Court granted preliminary approval of the Settlement on _____, 2022. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of Mayall Hurley, P.C., The Law Office of Ian Pancer, and Thomas D. Rutledge, Esq. to serve as Class Counsel and authorized mailing of this Notice.

3. What are the terms of the Settlement?

Maximum Settlement Amount. Defendants have agreed to pay an “all in” amount of One Million Dollars (\$1,000,000) (the “Maximum Settlement Amount” or “MSA”) to fund the settlement. The MSA includes the payment of all Individual Settlement Awards to participating Settlement Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Costs, the PAGA Settlement, and the Class Representative Service Awards to the Plaintiffs.

After the Judgment becomes Final, Defendants will pay the MSA by depositing the money with the Settlement Administrator. Specifically, Defendants will deposit One Hundred Seventy-Five Thousand Dollars (\$175,000.00) within thirty (30) calendar days of the Effective Date, and then make thirty-three (33) subsequent payments of Twenty-Five Thousand Dollars (\$25,000.00) on or before the 15th of every month, following the month in which the one-time deposit is made.

Amounts to be Paid From the MSA. The Settlement provides for certain payments to be made from the MSA, which will be subject to final Court approval, and which will be deducted from the MSA before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, ILYM Group, Inc., estimated not to exceed \$25,000, for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments. It is anticipated that settlement payments will be made in two (2) distributions; the first approximately 13 months from the Effective Date and the second after all of the MSA has been remitted.
- Attorneys' Fees and Costs. Payment to Class Counsel of an award of attorneys' fees of no more than thirty-three percent of the MSA (currently \$330,000) and costs of not more than \$25,000 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Awards. Class Representative Service Awards of up to Five Thousand Dollars (\$5,000.00) to each Plaintiff, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Payment. A payment of \$60,000 relating to Plaintiffs' claim under the Private Attorneys General Act ("PAGA"), \$45,000 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$15,000 will be distributed to Aggrieved Employees in proportional shares based on the number of workweeks worked between March 12, 2019 and December 31, 2021 (the "PAGA Period").
- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Class Counsel Award (including fees and costs), the Class Representative Service Payments, the PAGA Payment, and the Settlement Administration Expenses are deducted from the MSA, the remaining portion, called the "Net Class Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Settlement Class Members"). The individual settlement awards will be determined by dividing the Net Settlement Amount by the total number of Work Weeks for all Participating Class Members, resulting in the Work Week Value, and then multiplying the Work Week Value by the number of Work Weeks worked by each Participating Class Member. For purpose of determining the individual settlement awards, each Participating Class Member whose employment with Defendant ended during the Class Period will be assigned ten (10) additional Workweeks in order to compensate for the potential additional claim for waiting time penalties those individuals may have.
- Calculation of PAGA Penalties Payments to Aggrieved Employees. The Employee PAGA Payment of \$15,000 shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out of the Settlement. The Employee PAGA Payment will be divided by the total number of Workweeks worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of Workweeks worked by each respective Aggrieved Employee during the PAGA Period. All Class Members are "Aggrieved Employees", but they will only receive a portion of the Employee PAGA Payment if they worked during the PAGA Period.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. Twenty percent of each Individual Settlement Award is allocated to wages. Taxes will be withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent of each Individual Settlement Payment is allocated to interest, penalties and other non-wage payments, no taxes will be withheld, and each Participating Class Member will be issued an Internal

Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the Aggrieved Employee Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon entry of final judgment, Plaintiffs and the Participating Class Members shall release all Released Claims that occurred during the Released Claims Period as to the Released Parties. Released Claims include all claims, debts, liabilities, demands, obligations, damages, and actions or causes of action of any kind, arising under state, federal or local law, whether statutory, common law, or administrative law, at any time during the Class Period, that were or could have been asserted based on the factual allegations in the Action, or Complaints described herein, or based on any facts discovered in the course of the Action, including (without limitation), claims for failure to pay minimum wage, failure to pay overtime, failure to pay all wages, failure to provide meal periods, failure to provide rest periods, failure to properly pay sick leave, failure to reimburse for all business expenses, failure to pay all wages due and owing at end of employment, failure to provide accurate itemized wage statements, unlawful business practices, private attorneys general act, claims under California Labor Code sections 201 to 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2802, and the Wage Orders promulgated thereunder, California Business and Professions Code section 17200, *et seq.*, and the federal Fair Labor Standards Act ("FLSA," 29 U.S.C. § 201, *et seq.*); and claims for injunctive relief, punitive damages, penalties of any nature (including PAGA civil penalties and statutory penalties during the PAGA Period), interest, fees, and costs.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants involving any of the Released Claims. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendants' records reflect that you have << [REDACTED] >> Workweeks worked during the Class Period (April 23, 2016 to December 31, 2021).

Based on this information, your estimated Individual Settlement Payment is << [REDACTED] >>.

If you wish to challenge the information set forth in the preceding paragraph, then you must submit a written, signed dispute challenging the information along with supporting documents to the Settlement Administrator at the address provided in this Notice no later than [REDACTED] [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: ILYM Group, Inc., [REDACTED], Tel.: (209) 867-5309.

The Court will hold a hearing on [REDACTED], 2023 at [REDACTED] a.m. / p.m. to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments

will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www. .com.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than . The address for the Settlement Administrator is . The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Smith, et al. v. DI Logistics, LLC, et al.*, Superior Court of California, County of San Bernardino, Case No. CIV-DS-2011469." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after , 2022, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the releases described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which are *Smith et al. v. DI Logistics, LLC et al.*, Superior Court of California, County of San Bernardino, Case No. CIV-DS-2011469. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than , 2022. The address for the Settlement Administrator is

The addresses for the Parties' counsel are as follows:

<u>Class Counsel:</u> Robert J. Wasserman, Esq. Jenny D. Baysinger, Esq. Mayall Hurley, P.C. 2453 Grand Canal Blvd. Stockton, CA 95207	<u>Class Counsel:</u> Thomas D. Rutledge, Esq. The Law Office of Thomas D. Rutledge 16956 Via De Santa Fe, Suite 1847 Rancho Santa Fe, CA 92067 Tel: (619) 886-7224	<u>Class Counsel:</u> Ian Pancer, Esq. The Law Office of Ian Pancer 105 West F Street, Suite 400 San Diego, CA 92101 Tel: (619) 955-6653
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Tel: (209) 477-3833 Email: rwasserman@mayallaw.com jbaysinger@mayallaw.com Website: www.mayallaw.com	Email: thomasrutledgelaw@gmail.com Website: www.thomasrutledgelaw.com	Email: ian@sandiegolegal.net Website: www.ianpancer.com
Counsel for Defendant: Julie W. O'Dell, Esq. Justin M. Odell, Esq. Lewis Brisbois Bisgaard & Smith LLP 650 Town Center Drive, Suite 1400 Costa Mesa, CA 92626 Tel: (714) 545-9200 Email: julie.odell@lewisbrisbois.com justin.odell@lewisbrisbois.com		

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on _____, 2022 at ____ a.m. / p.m., at the Superior Court of California, County of San Bernardino, located at 247 West 3rd St., San Bernardino, CA 92415 in Department _____ before Judge _____. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at (209) 867-5309, email the Settlement Administrator at _____, or write to *Smith et al. v. DI Logistics, LLC et al., Superior Court of California, County of San Bernardino, Case No. CIV-DS-2011469*, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Motion for Preliminary Approval, the Preliminary Approval Order, or other Settlement documents by visiting the Court's website at cap.sb-court.org or contacting Class Counsel or the Settlement Administrator at [address].

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to Legal Aid for Work. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2



Payroll Register
DELIVER IT

Pay Dates from 01/01/2018 to 12/31/2018 – Sorted by Project by Employee Name

DEF0622

Smith, Myrica Eunice			Net Amt: 902.86		DD Amt: 0.00		Check Amt: 902.86		Voucher: 084761		Check Dt: 12/10/2018		
Emp ID : U04915		Proj:(None)				EE Number:		Check No: 12682		Period: 11/16/2018–11/30/2018			
Pay Type	Hours/Units	Rate	Pay	YTD Hrs	YTD Pay	Taxes	Curr Tax	YTD Tax	Deductions	Curr EE	YTD EE	Curr ER	YTD ER
BONUS	0.00		0.00	1.00	250.00	FEDERAL INC	82.21	506.61					
DOUBLETIME	0.00		0.00	1.37	35.62	FICA – MEDIC	15.64	101.12					
OVERTIME	10.64	19.5000	207.48	37.87	718.22	FICA – OASDI	66.86	432.36					
REGULAR PAY	66.99	13.0000	870.87	478.73	5,969.67	CA INCOME T/	0.00	9.18					
						CA DISABILIT	10.78	69.73					
Total Pay	77.63		1,078.35	518.97	6,973.51	Total Taxes	175.49	1,119.00	Total Deds				

Smith, Myrica Eunice			Net Amt: 838.31		DD Amt: 0.00		Check Amt: 838.31		Voucher: 086463		Check Dt: 12/24/2018		
Emp ID : U04915		Proj:(None)				EE Number:		Check No: 13093		Period: 12/01/2018–12/15/2018			
Pay Type	Hours/Units	Rate	Pay	YTD Hrs	YTD Pay	Taxes	Curr Tax	YTD Tax	Deductions	Curr EE	YTD EE	Curr ER	YTD ER
BONUS	0.00		0.00	1.00	250.00	FEDERAL INC	48.56	555.17					
DOUBLETIME	0.18	26.0000	4.68	1.55	40.30	FICA – MEDIC	14.07	115.19					
MILEAGE REIME	0.00		0.00	0.00	0.00	FICA – OASDI	60.19	492.55					
OVERTIME	4.46	19.5000	86.97	42.33	805.19	CA INCOME T/	0.00	9.18					
REGULAR PAY	67.63	13.0000	879.19	546.36	6,848.86	CA DISABILIT	9.71	79.44					
Total Pay	72.27		970.84	591.24	7,944.35	Total Taxes	132.53	1,251.53	Total Deds				

EXHIBIT 3

D.I. LOGISTICS
14043 STAGE RD
SANTA FE SPRINGS, CA 90670
877 997 7447

AVIDBANK
437 LYTTON AVENUE SUITE 100
PALO ALTO, CA 94301
026615

26615
90-4362/1211
CHECK ARMOR
FRAUD PROTECTION

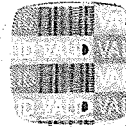
PAY TO THE
ORDER OF

Kevin C. Ochonma
3701 Crowell Rd # 53
Turlock, CA 95382

DATE
6/10/2020
\$ *****829.88*
DOLLARS

*EIGHT HUNDRED TWENTY-NINE AND 88 / 100

MEMO



AUTHORIZED SIGNATURE

[Handwritten Signature]

⑈026615⑈ ⑆121143626⑆0140030941⑈

26615

D.I. LOGISTICS

Employee	Time Off	Accrued	Taken	Balance	Period End	Pay Rate	Check Number
20-M03637 Ochonma, K	Vacation:	0.00	0.00	0.00	5/31/2020	\$15.00 HS	026615
Social Security Number	Sick Time:	24.38	8.00	16.38			
***-**-1798							
Earnings	Hours	Pay Rate	Amount	YTD	Deduction	Amount	YTD
Regular	55.08	\$15.00	826.20	10,972.95	Federal W/H	96.34	1,247.33
Overtime	1.58	\$15.00	35.55	1,212.32	Social Security Tax	63.84	797.58
Doubletime	0.00	\$15.00	0.00	110.40	Medicare Tax	14.93	186.53
Sick Time	8.00	\$15.00	120.00	120.00	CA State W/H	14.46	236.46
COVID19	0.00	\$15.00	48.00	306.00	CA Disability Tax	10.30	128.65
Mileage-Reimb - Dist	0.00	\$15.00	0.00	4,500.00			
Mileage Reim - Rovers/Office	0.00	\$15.00	0.00	950.00			
Holiday	0.00	\$15.00	0.00	97.95			
Bonus	0.00	\$15.00	0.00	44.70			
Cellphone Reim	0.00	\$15.00	0.00	30.00			
Fuel Offset	0.00	\$15.00	0.00	20.00			

26615

D.I. LOGISTICS

DI Logistics
14043 Stage Rd
Santa Fe Springs, CA 90670

Gross Wages:	1,029.75	18,364.32	Total Deductions:	199.87	2,596.55
Net Wages:	829.88				

DEF0581



EXHIBIT 4

DATE

AMOUNT

3/25/2020

*****1,974.63*

Kevin C. Ochonma
 3701 Crowell Rd # 53
 Turlock, CA 95382

*ONE THOUSAND NINE HUNDRED SEVENTY-FOUR AND 63 / 100

Employee	Time Off	Accrued	Taken	Balance	Period End	Pay Rate	Check Number
20-M03637 Ochonma, K	Vacation:	0.00	0.00	0.00	3/15/2020	\$15.00 HS	023736
Social Security Number	Sick Time:	13.30	0.00	13.30			
***_**-1798							
Earnings	Hours	Pay Rate	Amount	YTD	Deduction	Amount	YTD
Regular	70.62	\$15.00	1,059.30	5,986.95	Federal W/H	136.38	719.43
Overtime	11.53	\$15.00	259.43	1,090.59	Social Security Tax	84.53	454.49
Doubletime	0.00	\$15.00	0.00	110.40	Medicare Tax	19.77	106.29
Mileage-Reimb - Dist	0.00	\$15.00	0.00	4,500.00	CA State W/H	28.49	149.82
Mileage Reim - Rovers/Office	0.00	\$15.00	894.00	950.00	CA Disability Tax	13.63	73.31
Holiday	0.00	\$15.00	0.00	97.95			
Bonus	0.00	\$15.00	44.70	44.70			
Cellphone Reim	0.00	\$15.00	0.00	30.00			
Fuel Offset	0.00	\$15.00	0.00	20.00			

DI Logistics
14043 Stage Rd
Santa Fe Springs, CA 90670

Gross Earnings:	2,257.43	12,830.59	Total Deductions:	282.80	1,503.34
Net Wages	1,974.63				

EXHIBIT 5

following the bank holiday. The Company management will notify employees when the pay date has been changed to the workday after a recognized bank holiday.

Every effort is made to avoid errors in your paycheck. In the event that there is an error on your check, please report it immediately to Human Resources (801) 566-3084 so corrections can be made as quickly as possible.

Meal and Rest Periods

Employees are permitted a fifteen (15) minute rest break during each half of their shift and a thirty (30) minute unpaid, uninterrupted meal period break after 5 hours of work (unless the employee's workday is completed within 6 hours). Employees who work more than ten (10) hours per day, except that if the total hours worked is no more than twelve (12) hours, are entitled to a second meal period of not less than thirty (30) minutes. The second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived.

Your supervisor will provide you with information on the amount of time allowed for breaks and the time of your scheduled breaks. If your break time is not scheduled by your supervisor, please coordinate with your co-workers to maintain adequate coverage at all times. You are expected to observe your assigned working hours and the time allowed for meal and rest periods.

Rest and meal breaks are mandatory for non-exempt employees. Failure by non-exempt employees to follow this policy and take required breaks/rest periods will result in disciplinary action, up to and including termination.

Overtime

When operating requirements or other needs cannot be met during regular working hours, employees may be scheduled to work overtime. When possible, advance notification of these mandatory assignments will be provided. All overtime work must be authorized in advance by a supervisor. The Company will attempt to distribute overtime evenly and accommodate individual schedules.

The Company provides compensation for all overtime hours worked by non-exempt employees in accordance with *California Labor Code §§ 500-511; Cal. Code Regs. title 8, §§11010*. In California, the general overtime provisions are that a nonexempt employee working more than eight hours in any workday or more than 40 hours in a work week receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday and over 40 hours in the workweek. Eight hours of labor constitutes a day's work, and employment beyond eight hours in any workday

Meal and Rest Periods

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The Company provides compensation for all overtime hours worked by non-exempt employees in accordance with *California Labor Code §§ 500-511; Cal. Code Regs. title 8, §§11010*. In California, the general overtime provisions are that a nonexempt employee working more than eight hours in any workday or more than 40 hours in a work week receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday and over 40 hours in the workweek. Eight hours of labor constitutes a day's work, and employment beyond eight hours in any workday or more than six days in any workweek is permissible provided the employee is compensated for the overtime at not less than:

1. One and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and

EXHIBIT 6

Jenny Baysinger

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Thursday, December 8, 2022 10:25 AM
To: Jenny Baysinger
Subject: Thank you for your Proposed Settlement Submission

12/08/2022 10:23:44 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Cjbaysinger%40mayallaw.com%7Cd50e4ed0a2064d549e3308dad949754b%7C05d52ced3a0f41ca99a7a9f9e83f079b%7C0%7C0%7C638061206787236126%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=%2F1hcfmtER%2BMNKryVLuEkHh2zAVmYeUp0WRpV5XHU8CE%3D&reserved=0

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:

DECLARATION OF JENNY D. BAYSINGER IN SUPPORT OF PLAINTIFF'S 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