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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

11 WESLEY PHILLIPS, an individual, on
12 behalf of himself and on behalf of all
13 persons similarly situated,

14 Plaintiffs,

15 v.

16 DI OVERNITE LLC, a Limited Liability
17 Company; and Does 1 through 50,
18 Inclusive,

19 Defendant.

Case No. **37-2016-00016800-CU-OE-CTL**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: December 15, 2017

Hearing Time: 10:30 a.m.

Judge: Hon. Judith F. Hayes
Dept.: 68

Date Action Filed: May 18, 2016
Trial Date: None Set

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21 This matter, having come before the Superior Court of the State of California, in and for
22 the County of San Diego, at 10:30 a.m. on December 15, 2017, with Blumenthal, Nordrehaug &
23 Bhowmik appearing as counsel for Plaintiffs Wesley Phillips, Thomas Harrington, Mario Lopez,
24 and Insinia Lesa ("Plaintiffs"), individually and on behalf of the putative class, and McMillion &
25 Hirtensteiner, LLP appearing as counsel for Defendant DI Overnite, LLC ("Defendant"). The
26 Court, having carefully considered the briefs, argument of counsel and all matters presented to
27

28 PRELIMINARY APPROVAL ORDER

the Court and good cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

IT IS HEREBY ORDERED:

1. The Court preliminarily approves the Class Action Settlement Agreement (“Agreement”) attached as Exhibit #1 to the Declaration of Norman Blumenthal in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is based on the Court’s determination that the terms within the Agreement are within the range of possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure and Rule 3.769 of the California Rules of Court.

2. This Order incorporates by reference the definitions in the Agreement, and all terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

3. It appears to the Court on a preliminary basis that the Gross Settlement Amount of \$460,000 and the terms of the Settlement are fair, adequate and reasonable as to all potential Class Members when balanced against the probable outcome of further litigation relating to certification, liability and damages issues. It further appears that investigation and research have been conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the Action. It further appears that the Settlement has been reached as the result of intensive, serious and non-collusive, arms-length negotiations.

4. The Court preliminarily finds that the Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to Class Members is fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

1 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
2 certification of a class for settlement purposes only. This stipulation will not be deemed
3 admissible in this or any other proceeding should this Settlement not become final. For
4 settlement purposes only, the Court conditionally certifies the following Class: “individuals who
5 worked for Defendant DI Overnite, LLC in California as a driver, messenger, or dispatcher
6 during the time period of May 18, 2012 through October 10, 2017 (the “Class Period”).”

7 6. The Court concludes that, for settlement purposes only, the Class meets the
8 requirements for certification under section 382 of the California Code of Civil Procedure in that:
9 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
10 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
11 community of interest amongst the members of the Class with respect to the subject matter of the
12 litigation; (c) the claims of the named plaintiffs are typical of the claims of the members of the
13 Class; (d) the Class Representatives will fairly and adequately protect the interests of the
14 members of the Class; (e) a class action is superior to other available methods for the efficient
15 adjudication of this controversy; and (f) counsel for the Class is qualified to act as counsel for the
16 Class Representatives in their individual capacities and as the representatives of the Class.

17 7. The Court provisionally appoints Plaintiffs as the Class Representatives for the
18 Class.

19 8. The Court provisionally appoints Blumenthal, Nordrehaug & Bhowmik as class
20 counsel for the Class ("Class Counsel").

21 9. The Court hereby approves, as to form and content, the Class Notice attached to
22 the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
23 accurately inform the Class Members of all material elements of the proposed Settlement, of the
24 Class Members’ right to be excluded from the Class by submitting a written opt-out request, and
25 of each Class Members’ right and opportunity to object to the Settlement. The Court further
26 finds that the distribution of the Class Notice substantially in the manner and form set forth in the
27 Agreement and this Order meets the requirements of due process, is the best notice practicable

under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in the Agreement.

10. The Court hereby appoints Simpluris as Settlement Administrator.

11. The Court hereby preliminarily approves the proposed procedure for exclusion from the Settlement. Any Class Member may choose to opt out of and be excluded from the Class as provided in the Class Notice by following the instructions for requesting exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be postmarked or received by the deadline set forth in the Class Notice. Any such person who chooses to opt out of and be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal or comment thereon. Class Members who have not requested exclusion will become Participating Class Members, will be mailed their Settlement Share, and will be bound by all determinations of the Court, the Agreement and Judgment.

12. A final approval hearing shall be held before this Court on _____, 2018 at _____ in Department 68 of the San Diego County Superior Court, to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Litigation on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether an Order Granting Final Approval and Judgment should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Class Members; and to finally approve Class Counsel's fees and litigation costs, Plaintiffs' service awards, and the claims administration expenses.

13. No Class Member shall be entitled to be heard at the final approval hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Superior Court at the final approval hearing, unless written notice of the Class Member's

intention to appear at the final approval hearing were timely submitted as provided in the Class Notice. Class Members who fail to timely submit written objections in the manner specified in the Notice shall be deemed to have waived any objections and shall be foreclosed from making any written objection to the Settlement.

14. The Settlement is not a concession or admission, and shall not be used against Defendant as an admission or indication with respect to any claim of any fault or omission by Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or damage.

15. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement.

16. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Dated: _____

HON. JUDITH F. HAYES
JUDGE, SUPERIOR COURT OF CALIFORNIA

PRELIMINARY APPROVAL ORDER