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13 individually and on behalf of all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ORANGE**

16 JULIAN STITES -TRACY, individually and
17 on behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 DRIVELINE RETAIL MERCHANDISING,
21 INC., an Illinois Corporation, and DOES 1-50,
22 inclusive,

23 Defendant.

CASE NO.: 30-2020-01122295-CU-OE-CXC
Hon. Randall J. Sherman

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

Date: January 26, 2024
Time: 10:00 a.m.
Dept.: CX105

Reservation Number: 74054389

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ORDER

This matter came on for hearing on January 26, 2024 at 10:00 a.m. in Department CX105 of the above-captioned court on the Motion for Preliminary Approval of Class Action Settlement, on the terms and conditions set forth in the Stipulation for Class Action Settlement, as amended (hereinafter "Settlement Agreement").

The Court, having fully reviewed the Motion for Preliminary Approval of Class Action Settlement, the Memorandum of Points and Authorities and Declarations filed in support thereof, the Settlement Agreement, including the proposed Notice of Proposed Settlement Class Action Settlement, and in recognition of the Court's duty to make a preliminary determination as to the reasonableness of any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure proper notice is provided to Settlement Class Members in accordance with due process requirements, and to set a Final Approval Hearing to consider the proposed Settlement Agreement as to the good faith, fairness, adequacy and reasonableness of any proposed settlement, and having heard the argument of Counsel for the respective parties, the Court **HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:**

It appears to the Court on a preliminary basis that the Gross Fund Value Amount ("GFVA") is fair and reasonable to the Class Members when balanced against the probable outcome of further litigation relating to class certification, the liability and damages issues involved, and the potential for appeals. It further appears that sufficient investigation, research, and litigation have been conducted such that counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears that settlement at this time will avoid substantial costs, delay and risks that would be presented by the further prosecution of the litigation. It further appears that the proposed Settlement has been reached as the result of intensive, serious and non-collusive negotiations between the Parties. Accordingly, good cause appearing, the motion for preliminary approval of class action settlement is hereby granted, and as a part of the preliminary approval, the court hereby orders that the settlement class be conditionally certified for settlement purposes only, and that James Hawkins, APLC be

1 conditionally and preliminarily appointed class counsel. More specifically, the court finds as
2 follows:

3 The Court finds on a preliminary basis that the Settlement between Plaintiff and Defendant
4 appear to be within the range of reasonableness of a settlement which could ultimately be given
5 final approval by this Court. The Court preliminarily finds that the terms of the Settlement are
6 fair, reasonable, and adequate, pursuant to Section 382 of the California Code of Civil Procedure.

7 The Court hereby preliminarily approves the definition and disposition of the Settlement
8 Amount of one hundred fifty thousand dollars (\$150,000.00), which is inclusive of the payment of
9 attorney's fees, costs, service award payment to the named plaintiff, and costs of administration.

10 The Court finds that the elements of numerosity, commonality, typicality and adequacy
11 have been established to support conditional certification of the Settlement Class for settlement
12 purposes, with Plaintiff acting as the Class Representative.

13 The Court hereby appoints, for settlement purposes, Plaintiff Julian Stites-Tracy as the
14 Class Representative and finds Plaintiff is an adequate representative for the Settlement Class for
15 settlement purposes. The Court further finds that James Hawkins APLC has preliminarily
16 established adequacy to be appointed as Class Counsel and appoints them as Class Counsel.

17 The Class as identified in the Settlement is provisionally certified by this Order.

18 The Court finds that the proposed manner of class notice is adequate.

19 The Court approves ILYM Group, Inc. to serve as the Settlement Administrator.

20 The Court further hereby approves the proposed Notice of Class Action Settlement, as
21 amended, and Orders to the notice to be mailed to the Settlement Class.

22 The Court finds that the Notice of Class Action Settlement constitutes the best notice
23 practicable under the circumstances, is in full compliance with the laws of the State of California
24 and, to the extent applicable, the United States Constitution and the requirements of due process.
25 The Court further finds that the Notice of Class Action Settlement fully and accurately informs
26 Settlement Class Members of all material elements of the proposed Settlement, of each Settlement
27 Class Member's right to be excluded from the Settlement Class, and each Settlement Class
28 Member's right and opportunity to object to the proposed Settlement. The Notice of Class Action

1 Settlement adequately advises the Class about: the Class Action; the terms of the proposed
2 Settlement and the benefits available to each Settlement Class Member; each Settlement Class
3 Member's right to participate, submit an exclusion/Opt-Out, or Objection to the proposed
4 Settlement, and the timing and procedures for doing so; the temporary and conditional certification
5 of the Settlement Class for settlement purposes only; preliminary Court approval of the proposed
6 Settlement; timing and procedures for distributing the Gross Settlement and the Individual
7 Settlement Payments to the Participating Class Members; and the date of the Final Approval
8 Hearing as well as the rights of the Settlement Class to file documentation in support of or in
9 opposition to and appear in connection with the hearing.

10 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES
11 THE PROPOSED CLASS NOTICE PACKET TO THE CLASS AND FINDS that mailing to the
12 last known address of the Settlement Class Members, as specifically described within the
13 Settlement Agreement, constitutes an effective method of notifying Settlement Class Members of
14 their rights with respect to the proposed Settlement. ACCORDINGLY, IT IS HEREBY
15 ORDERED that:

16 Within thirty (10) court days of the Court granting preliminary approval of the Settlement,
17 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
18 mailing the Class Notice. The Settlement Administrator shall maintain the Class Information as
19 private and confidential and shall not disclose such data to any persons or entities other than
20 Counsel for Defendant, except that, subject to Defendant's approval, relevant information may be
21 provided to Class Counsel if necessary for Class Counsel to respond to inquiries or requests from
22 Class Members. The Class Information is being supplied solely for purposes of the administration
23 of the Settlement set forth in this Agreement and may not be used by the Settlement Administrator
24 or Class Counsel for any other purpose. The Parties agree that the Class Information will not be
25 used to solicit Class Members to file any claim, charge, or complaint of any kind whatsoever
26 against the Defendant and/or the Released Parties and will only be used to administer the
27 Settlement under the terms provided herein.

28 IT IS FURTHER ORDERED that Promptly upon receipt of the Class Member information

1 from Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class
2 Members from the U.S. Postal Service and Accurant. Within fourteen (14) calendar days after
3 receipt of the Class Member information from Defendant, or receipt of any updated addresses
4 from the U.S. Postal Service, whichever is later, the Claims Administrator shall mail the Class
5 Notice to all Class Members via first-class mail using the updated address information. With
6 respect to each Class Notice that is returned as undeliverable, the Claims Administrator shall
7 promptly attempt to determine a correct address using an additional skip trace service such as
8 Experian and shall re-send the Class Notice via first-class mail to any new address thereby
9 determined within 10 days of receiving the notice that the Class Notice was undeliverable.

10 IT IS FURTHER ORDERED that for any Class Member other than the Representative
11 Plaintiff to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly
12 opt-out), a written request for exclusion must be signed by the Class Member or his or her
13 authorized representative, and must be sent to the Claims Administrator, postmarked by no later
14 than thirty (30) days after the date the Claims Administrator initially mails the Class Notice to the
15 Class Members. For Notices re-mailed by the Claims Administrator pursuant to section 5.03.b,
16 the written request for exclusion must be postmarked by no later than thirty (30) days of the initial
17 mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The Class
18 Notice shall contain individualized estimated payments, set forth instructions on how to opt-out
19 and include the language to be used in a request for exclusion. The date of the initial mailing (or
20 re-mailing for Class Notices re-mailed) of the Class Notice and the date the signed request for
21 exclusion was postmarked, shall be conclusively determined according to the records of the
22 Claims Administrator. Any Class Member who timely and validly requests exclusion from the
23 Class and this Settlement shall become a Non-Participating Class Member and shall not be entitled
24 to any Individual Settlement Payment, shall not be bound by the terms and conditions of this
25 Agreement, and shall not have any right to object, appeal, or comment thereon.

26 IT IS FURTHER ORDERED that every Class Member who does not validly and timely
27 exclude themselves shall be deemed a Participating Class Member. The Parties' counsel shall
28 receive a copy of all valid Requests for Exclusion from the Settlement Administrator within ten

1 (10) calendar days after the Response Deadline.

2 IT IS FURTHER ORDERED that for any Class Member to object to this Agreement, or
3 any term of it, in writing, the person making the objection must not submit a request for exclusion
4 (i.e., must not opt-out), and must, by no later than thirty (30) days after the Class Notice was
5 initially mailed to the Class Members, file with the Court and serve on Class Counsel and Defense
6 Counsel, a written statement of the grounds of objection, signed by the objecting Class Member or
7 his or her attorney, along with all supporting papers. For Class Notices re-mailed by the Claims
8 Administrator pursuant to section 5.03.b, written statements of the grounds for objection must be
9 filed and served no later than thirty (30) days after the initial mailing of the Class.

10 IT IS FURTHER ORDERED that the Class Notice shall state that Class Members who
11 wish to object to the Settlement may do so in person at the Final Approval Hearing and/or in
12 writing. Counsel for the Parties shall file any response to the objections submitted by objecting
13 Class Members at least ten (10) court days before the date of the Final Fairness and Approval
14 Hearing or ten (10) days after the receipt of the notice of objection, whichever is later. Class
15 Counsel will ensure that any Notice of Objection received by the Settlement Administrator by the
16 Response Deadline is filed with the Court along with the Motion for Final Approval. Any of the
17 Parties may file a response to any objection before the Final Approval Hearing. Any attorney who
18 will represent an individual objecting to this Settlement who has not filed a written objection may
19 ~~must~~ file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant
20 with this notice no later than the Response Deadline. It will also inform Class Members that if
21 they first request exclusion from, and opt out of, the Class and then object, the objections would
22 not be considered valid and that if the Class Members object and then request exclusion from, and
23 opt out of the Class, the Class Members would be deemed to have waived their objection.

24 IT IS FURTHER ORDERED that any disputes not resolved by the Settlement
25 Administrator concerning the administration of the Settlement will be resolved by the Court under
26 the laws of the State of California. Prior to any such involvement of the Court, counsel for the
27 Parties will confer in good faith to attempt to resolve the dispute without involving the Court.

28 IT IS FURTHER ORDERED that the Final Approval Hearing shall be held on May 31,

1 2024 at 10:00 a.m. in Department CX105 of the above captioned Court to consider the fairness,
2 adequacy and reasonableness of the proposed Settlement preliminarily approved by this Order
3 Granting Preliminary Approval, and to consider the application of Class Counsel for an award of
4 attorneys' fees, costs, and class representative enhancement. The Court may continue the Final
5 Approval Hearing to another date at its discretion.

6 IT IS FURTHER ORDERED that all briefs and materials in support of an Order Granting
7 Final Approval and application for attorneys' fees and costs and class representative service award
8 shall be filed with this Court no later than sixteen (16) court days before the date set for the Final
9 Approval Hearing.

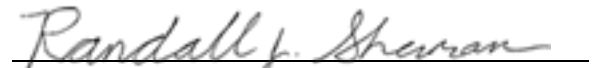
10 IT IS FURTHER ORDERED that, if for any reason the Court does not execute and file an
11 Order Granting Final Approval and Judgment, or if the Effective Date does not occur for any
12 reason whatsoever, the Settlement Agreement and the proposed Settlement which are the subject
13 of this Order and all evidence and proceedings had in connection therewith shall be without
14 prejudice to the status quo ante rights of the Parties to the litigation as more specifically set forth
15 in the Settlement Agreement.

16 IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in
17 this matter except those contemplated herein and in the Settlement Agreement are stayed.

18 The Court expressly reserves the right to adjourn or continue the Final Approval Hearing
19 from time to time without further notice to the Class.

20 **IT IS SO ORDERED.**

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22 Dated: **January 26, 2024**


Honorable Randall J. Sherman
JUDGE OF THE SUPERIOR COURT

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