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Attorneys for Plaintiff EDUARDO YBARRA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

EDUARDO YBARRA, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

HELZBERG'S DIAMOND SHOPS, LLC, a
Missouri Limited Liability Company; and
DOES 1-50, Inclusive;

Defendants.

Case No. 21CV003531

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: October 4, 2022

Time: 3:00 p.m.

Reservation ID: 978588771577

Judge: Hon. Brad Seligman

Dept.: 23

1 This matter having come before the Honorable Judge Brad Seligman of the Superior Court of
2 the State of California, in and for the County of Alameda, at 3:00 p.m. on October 4, 2022, with Jean-
3 Claude Lapuyade, Esq., of the JCL Law Firm, APC and Shani O. Zakay, Esq. of the Zakay Law Group,
4 APLC as counsel for plaintiff EDUARDO YBARRA (“Plaintiff”), and Maria Davis, Esq., Allison
5 Fernandez, Esq., and Michael Nader, Esq. of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
6 appearing for defendant HELZBERG’S DIAMOND SHOPS, LLC (hereinafter “Defendant”). The
7 Court, having carefully considered the brief, argument of counsel and all the matters presented to the
8 Court, and good cause appearing, hereby GRANTS Plaintiff’s Motion for Preliminary Approval of
9 Class Action Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Joint Stipulation of Class and Representative
12 Action Settlement Agreement (“Settlement Agreement” or “Agreement”), a true and correct copy of
13 which is attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the Settlement
14 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
15 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

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

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
19 Defendant shall pay is Six Hundred and Sixty Thousand Dollars (\$660,000). It appears to the Court on
20 a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as to all
21 Class Members when balanced against the probable outcome of further litigation relating to
22 certification, liability, and damages issues. It further appears that investigation and research have been
23 conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It
24 further appears to the Court that settlement at this time will avoid substantial additional costs by all
25 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the
26 litigation. It further appears that the Settlement has been reached as the result of intensive, serious, and
27 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 the Class Members are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

5. Plaintiff seeks an award of a Class Counsel Fees Payment the amount of up-to one-third of the Gross Settlement Amount for attorneys' fees, currently estimated at Two Hundred and Twenty Thousand Dollars (\$220,000), an award of a Class Counsel Litigation Expenses Payment not to exceed Twenty-Five Thousand Dollars (\$25,000), and proposed Class Representative Service Payment to the Class Representative, Eduardo Ybarra, in an amount not to exceed Ten Thousand Dollars (\$10,000). While these awards appear to be within the range of reasonableness, the Court will not approve the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment or Class Representative Service Payment until the Final Approval Hearing.

6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Class:

“All persons who are or previously were employed by defendant HELZBERG’S DIAMOND SHOPS, LLC, in California and classified as non-exempt employees during the period between December 3, 2017 and June 19, 2022.”

7. The Court concludes that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the

1 Class Representative are typical of the claims of the Class Members; (d) the Class Representative will
2 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other
3 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified
4 to act as counsel for the Class Representative in her individual capacity and as the representative of the
5 Class Members.

6 8. The Court provisionally appoints plaintiff EDUARDO YBARRA as the representative
7 of the Class.

8 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
9 A.P.C., and Shani Zakay, of the Zakay Law Group, APLC, as Class Counsel for the Class Members.

10 10. The Court hereby approves, as to form and content, the Proposed Notice of Settlement
11 of Class and Representative Action (“Class Notice”) attached to the Agreement as **Exhibit “A”**. The
12 Court finds that both notices appear to fully and accurately inform the Class Members and PAGA
13 Members of all material elements of the proposed Settlement, including right of any Class Member to
14 be excluded from the Class by submitting a written request for exclusion, and of each Class Member’s
15 right and opportunity to object to the Settlement. The Court further finds that the distribution of the
16 notices substantially in the manner and form set forth in the Agreement and this Order meets the
17 requirements of due process, is the most reasonable notice under the circumstances, and shall constitute
18 due and sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by
19 first class mail, pursuant to the terms set forth in the Agreement.

20 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. No later than
21 twenty (20) days after entry of this order, Defendant shall provide, to the Settlement Administrator the
22 Class Data, including information regarding Class Members that Defendant will in good faith compile
23 from its records, including each Class Member’s full name; last known address; telephone number;
24 Social Security Number; the number of Workweeks for each Class Members and the number of PAGA
25 Workweeks. No later than twenty-one (21) calendar days after receiving the Class Data from
26 Defendant, the Settlement Administrator shall mail the Class Notice to all identified, potential Class
27 Members via first class regular U.S. Mail using the most current mailing address information available.

12. The Court hereby preliminarily approves the proposed procedure for exclusion from the Settlement. Any Class Member may individually choose to opt out of and be excluded from the Settlement as provided in the Notice by following the instructions for requesting exclusion from the Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date the Class Notice is mailed to the Class Members or, in the case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual Class Settlement Payment 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 shall be bound by all determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of individuals is not permitted and will be deemed invalid.

13. Any Class Member who has not opted out may appear at the final approval hearing and may object or express the Class Member's views regarding the Settlement and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice. Class Members will have forty-five (45) days from the date the Settlement Administrator mails the Class Notice to postmark their written objections to the Settlement Administrator.

14. A final approval hearing shall be held before this Court on _____ at _____ AM in Department 23 of the Alameda County Superior Court to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action 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 should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Class; and to finally approve the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administration Expenses. All papers in

1 support of the motion for final approval and the motion for Attorneys' Fees and Costs and Class
2 Representative Service Payment shall be filed with the Court and served on all counsel no later than
3 sixteen (16) court days before the hearing.

4 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
5 shall be construed as a concession or admission by Defendant in any way, and shall not be used as
6 evidence of, or used against Defendant as, an admission or indication in any way, including with respect
7 to any claim of any liability, wrongdoing, fault or omission by Defendant or with respect to the truth
8 of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
9 Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor
10 any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
11 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
12 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
13 liability, fault, wrongdoing, omission, concession or damage.

14 16. In the event the Settlement does not become effective in accordance with the terms of the
15 Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become
16 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
17 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
18 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
19 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
20 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

21 17. Pending final determination of whether the Settlement should be approved, Class
22 Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting,
23 intervening in, instigating or in any way participating in the commencement or prosecution of any
24 lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting
25 any claims that are, or relate in any way to, the Released Claims, unless and until they submit a timely
26 request for exclusion pursuant to the Agreement.

18. 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: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT

This Joint Stipulation of Class and Representative Action Settlement Agreement and Release (“Agreement”) is between Plaintiff Eduardo Ybarra (“Plaintiff”) and Defendant Helzberg’s Diamond Shops, LLC (“Defendant”) (collectively, “the Parties”). This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the “Released Claims” (as defined below) on a class and representative action basis pertaining to the “Released Parties” (as defined below) upon and subject to the terms and conditions contained in this Agreement. This Agreement, which is contingent upon Final Court approval, contains the terms of the Parties’ agreement. Plaintiff and Class Counsel believe that the settlement set forth in this Agreement confers substantial benefits upon the Class Members.

DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

1. “Action” means all claims and causes of action alleged in the PAGA Letters and in the First Amended Complaint, as defined herein.
2. “Administrator” or “Settlement Administrator” means ILYM Group, the third-party administrator proposed by the Parties and appointed by the Court to administer the Settlement.
3. “Class” means all persons who are or previously were employed by Defendant in California and classified as non-exempt employees from December 3, 2017 to the earlier of preliminary approval or June 19, 2022 (the “Class Members”).
4. “Class Counsel” means the Zakay Law Group, APLC and the JCL Law Firm, APC.
5. “Class Counsel Fees Payment” means the amounts to be paid to Class Counsel as approved by the Court to compensate them for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures in an amount of up to 1/3 of the Gross Settlement Amount. Class Counsel Fees Payment shall be divided between Class Counsel as follows: 50% to Zakay Law Group, APLC and 50% to JCL Law Firm, APC.
6. “Class Counsel Litigation Expenses Payment” means the amount to reimburse Class Counsel for their litigation expenses of an estimated \$25,000, subject to proof and as approved by the Court.
7. “Class Data List” means information for each Class Member that Defendant will provide to the Settlement Administrator. To the extent available, the Class Data List will contain each Class Member’s full name; last-known mailing address; telephone number; Social Security number; number of workweeks (full or partial) worked by each individual Class Member during the Class

Period; and number of Pay Periods (full or partial) worked as a PAGA Member during the PAGA Period.

8. “Class Member” is a member of the defined putative class.
9. “Class Notice” or “Notice” means the Court-approved Notice of Class Action Settlement in a form substantively similar to **Exhibit A**, to be mailed to Class Members informing them of the settlement, including their rights to request exclusion or to object to the Settlement, the right to dispute their estimated workweeks/payment, of their estimated payment to be received without the need to return a claim form, and the date set for the Final Approval Hearing.
10. “Class Period” means the period from December 3, 2017 to the earlier of the following dates: (a) the date the Court grants preliminary approval of this Settlement, or (b) June 19, 2022.
11. “Class Representative Service Payment” means the payment approved by the Court to be made to the Plaintiff in his capacity as the Class Representative to compensate him for initiating the Action, performing work in support of the Action, and in undertaking the risk of liability for Defendant’s expenses in the event he failed in the prosecution of the Action.
12. “Complaint” means the Class Action Complaint filed by Plaintiff on December 3, 2021 alleging several wage and hour claims under the California Labor Code, the California Business and Professionals Code, the applicable Wage Order, and the PAGA.
13. “Court” means the Superior Court of the State of California for the County of Alameda.
14. “Defendant’s Counsel” means Michael J. Nader of Ogletree Deakins.
15. “Effective Date” means the date on which all of the following have occurred: (a) the Court grants final approval of this Agreement; and (b) the Judgment becomes Final as defined in this Agreement.
16. “Final” means the last of the following dates, as applicable: (a) after Judgment is entered, the day after the due date to appeal the Judgment when no appeal is filed (61 days after Judgment), or (b) after Judgment is entered and a timely appeal is filed, the date the Judgment is affirmed and is no longer subject to appeal.
17. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to finally approve the terms of this Agreement and enter the Judgment.
18. “First Amended Complaint” (or the “FAC”) means the First Amended Complaint that Plaintiff filed on July 11, 2022 that is the operative complaint for this Action (Eduardo Ybarra v. Helzberg Diamond Shops, LLC, Case No.

21CV003531). The FAC alleges all of the claims and causes of action asserted in both PAGA Letters and in the original Complaint.

19. “Gross Settlement Amount” or “GSA” means the non-reversionary sum of six hundred and sixty thousand dollars (\$660,000) which shall be inclusive of the Individual Class Settlement Payments to Participating Class Members, the Individual PAGA Payments to PAGA Members, Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payment and the LWDA Payment, but excluding any employer-side payroll taxes due on the portion of the Individual Settlement Payments allocated to wages which Defendant shall pay separately and in addition to the Gross Settlement Amount.
20. “Individual Class Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who submits a request for exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Class Settlement Payment.
21. “Individual PAGA Payment” means the pro rata share of the \$10,000 (25% of the total \$40,000 PAGA Civil Penalty Payment) amount allocated to alleged aggrieved employees out of the PAGA Civil Penalty Payment that each PAGA Member will receive.
22. “Judgment” means the Final Approval Order and Judgment entered by the Court.
23. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Civil Penalty Payment, and Administration Expenses. The Net Settlement Amount is the total amount that will be paid to Participating Class Members in the form of Individual Class Settlement Payments.
24. “Non-Participating Class Member” means a Class Member who submits a valid and timely request for exclusion from the Settlement in the manner described in the Notice of Class Action Settlement.
25. “Notice Packet” means the Class Notice, the Change of Address Form approved by the Parties and subject to Court approval, and the pre-printed return envelope, all of which the Settlement Administrator will mail to each Class Member.
26. “PAGA refers to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2699, *et seq.*
27. “PAGA Civil Penalty Payment” means the sum of \$40,000 to be paid out of the Gross Settlement Amount, designated by the Parties as PAGA civil penalties of which \$30,000 (75%) shall be paid pursuant to the PAGA to the Labor and Workforce Development Agency (“LWDA”), (“LWDA Payment”),

and the remaining \$10,000 (25%) shall be paid proportionately to all PAGA Members.

28. “PAGA Letters” means the letters, dated September 27, 2021 and April 13, 2022, that Plaintiff filed with the Labor and Workforce Development Agency alleging several wage and hour claims and seeking civil penalties and other relief provided by the PAGA.
29. “PAGA Members” are those Class Members employed during the PAGA Period and who will be paid an Individual PAGA Payment, regardless of whether they exclude themselves from the Class Settlement.¹
30. “PAGA Period” means that period from September 27, 2020 to the earlier of the following dates: (a) the date the Court grants preliminary approval of this Settlement, or (b) June 19, 2022.
31. “Participating Class Member” means a Class Member who does not submit a valid and timely request for exclusion from the Class Settlement.
32. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement.
33. “Released Class Claims” means all claims and causes of action as alleged in, and that could have been alleged based on the facts of, the Action, including, but not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, arising out of or based upon any provision alleged in the Action, including the California Labor Code, the California Industrial Welfare Commission Wage Orders, and the California Business and Professions Code § 17200, et seq.; including, without limitation, the following categories of allegations, to the fullest extent such claims are fully and forever releasable by law: (a) all claims for failure to pay minimum wages, including for all alleged off the clock work; (b) all claims for failure to pay overtime wages, including all claims for the alleged omission of any kind of remuneration when calculating an employee’s regular rate of pay, and all alleged claims of off the clock work; (c) all claims for failure to provide reporting time pay; (d) all claims for failure to pay the regular rate of pay, including for meal and rest break premiums and paid sick leave, as well as all claims for failure to provide paid sick leave; (e) all claims for failure to maintain employment records, including timekeeping and payroll records; (f) all claims for failure to provide compliant meal periods and pay related premiums at the regular rate; (g) all claims for failure to provide compliant rest periods and pay related

¹ In his notice to the LWDA, Plaintiff erroneously defined the PAGA Members as both non-exempt employees and exempt employees. This was a typo, as Plaintiff has never intended to allege claims on behalf of exempt employees. Plaintiff only intended, and the Parties agree, that the PAGA Members (the allegedly aggrieved employees) only include non-exempt employees. Plaintiff agrees to notify the LWDA of this mistake and the limited scope of the definition of the PAGA Members.

premiums at the regular rate; (h) all claims for failure to reimburse business expenses; (i) all claims for failure to pay timely current wages and associated penalties; (j) all claims for failure to pay final wages; (k) all claims for failure to provide accurate wages statements; and (l) all claims for relief under California Business and Professions Code § 17200, et seq. arising from violations of the Labor Code released herein. The Class Members understand and agree that this release includes a good-faith compromise of disputed wage claims.

34. “Released PAGA Claims” means all claims and causes of action for civil penalties under PAGA as alleged in, and that could have been alleged based on the facts of the PAGA Letters and in the Action, and that seek civil penalties pursuant to PAGA and other relief available pursuant to the PAGA against the Released Parties. Regardless of whether any Class Member opts out of the Class Settlement, they will still be bound by the PAGA Release if they are PAGA Members. The period of the PAGA Release is the PAGA Period. The Released PAGA claims include claims for civil penalties pursuant to PAGA as a result of the following categories of allegations, to the fullest extent such claims are fully and forever releasable by law: (a) all claims for failure to pay minimum wages, including for all alleged off the clock work; (b) all claims for failure to pay overtime wages, including all claims for the alleged omission of any kind of remuneration when calculating an employee’s regular rate of pay, and all alleged claims of off the clock work; (c) all claims for the failure to provide suitable seating; (d) all claims for failure to provide reporting time pay; (e) all claims for failure to pay the regular rate of pay, including for meal and rest break premiums and paid sick leave, as well as all claims for failure to provide paid sick leave; (f) all claims for failure to maintain employment records, including timekeeping and payroll records; (g) all claims for failure to provide compliant meal periods and pay related premiums at the regular rate; (h) all claims for failure to provide compliant rest periods and pay related premiums at the regular rate; (i) all claims for failure to reimburse business expenses; (j) all claims for failure to pay timely current wages and associated penalties; (k) all claims for failure to pay final wages; and (l) all claims for failure to provide accurate wages statements.
35. “Released Parties” means Helzberg Diamond Shops, LLC and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns.
36. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
37. “Qualified Settlement Fund” or “QSF” means the account established by the Administrator for the Gross Settlement Amount and employer-side payroll taxes and distribution as provided by this Agreement and as ordered by the Court.
38. “Workweeks” means any workweek (Sunday through Saturday) in which Settlement Class Members worked at any time at all during that workweek.

RECITALS

39. On September 27, 2021, Plaintiff filed a PAGA letter with the Labor and Workforce Development Agency (the “PAGA Letter”) alleging several wage and hour claims and seeking civil penalties and other relief provided by the PAGA.
40. On December 3, 2021, Plaintiff filed a Class Action Complaint with the Superior Court of the State of California, County of Alameda (Case No. 21CV003531), alleging several wage and hour claims under the California Labor Code, the California Business and Professionals Code, the applicable Wage Order, and the PAGA.
41. On or about February 2, 2022, the Complaint was removed to the Northern District of California, Case No. 3:22-cv-00696.
42. On April 13, 2022, Plaintiff filed a second PAGA letter with the Labor and Workforce Development Agency (the “PAGA Letter 2”) alleging several wage and hour claims, including a new suitable seating claim, and seeking civil penalties and other relief provided by the PAGA.
43. In advance of the mediation on April 19, 2022, Defendant produced a 20% random sample of the timekeeping and payroll data of all putative class members; plaintiff’s personnel, timekeeping, and payroll records and wage statements; hundreds of pages of policies and practices related to the claims in the Action; and relevant aggregate data points for the Action, including the numbers of current and former putative class members, current and former PAGA group members, class period workweeks, PAGA payroll periods, the average hourly rate earned by putative class members during the class period, and additional data points relevant to this Action.
44. On April 19, 2022, the Parties attended a private mediation with Tripper Ortman, Esq., which resulted in a settlement of Plaintiff’s class, representative, and individual claims.
45. On April 22, 2022, the Parties stipulated to remand the Complaint to the Superior Court of the State of California, County of Alameda. On April 25, 2022, the Northern District of California ordered the Complaint remanded back to the Alameda Superior Court.
46. On June 17, 2022, Plaintiff filed a First Amended Complaint in the Superior Court of the State of California, County of Alameda, alleging the claims and causes of action included in the PAGA Letters and in the original Complaint.
47. This Agreement represents a compromise and settlement of highly disputed claims. The Parties agree that nothing in this Agreement is an admission by the Defendant that the claims in the Action have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties stipulate to certification of the Class for purposes of this Settlement only.

If for any reason the Settlement does not become effective, the Parties agree that this stipulation regarding class certification will become null and void, and Defendant reserves the right to contest the certification of any class for any reason and reserves all available defenses to the claims in the Action. Defendant also reserves the right to remove the case to federal court.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

SETTLEMENT TERMS AND CONDITIONS

48. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is six hundred sixty thousand dollars (\$660,000), which is inclusive of all payments contemplated in this resolution. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant under any circumstances.
49. **Modification of Gross Settlement Amount.** Defendant has extrapolated the amount of 23,242 workweeks in the Class Period from December 3, 2017 to June 19, 2022. If, at the time the Court grants preliminary approval, the actual workweek count is more than a cap of 10% higher than 23,242 (or more than 25,566), then for each additional workweek in the Class Period above that cap, the settlement amount will increase by \$30.12. For example, if the actual workweek count is 25,576, then the GSA increase by \$301.20.
50. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Administrator will make the following payments from the Gross Settlement Amount:
 - a) **To Plaintiff:** Plaintiff will apply to the Court for a Service Payment of not more than \$10,000 in addition to his Individual Class Settlement Payment share. The Administrator will pay the Class Representative Service Payment approved by the Court. No payroll tax withholding and deductions will be taken from this payment. The Administrator shall issue an IRS Form 1099 to Plaintiff for the Class Representative Service Payment.
 - b) **To Class Counsel:** Class Counsel will apply to the Court for an award of up to 1/3 of the GSA as their Class Counsel Fees Payment and no more than \$25,000 for all costs and litigation expenses incurred, subject to proof, as the Class Counsel Litigation Expenses Payment. Defendant will not oppose requests for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. For these payments, the Administrator will issue one or more IRS Forms 1099.
 - c) **To the LWDA.** The Parties will seek approval from the Court for the PAGA Civil Penalty Payment of \$40,000, allocated 75% (\$30,000) for the LWDA Payment as its share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$10,000) to be

distributed to all PAGA Members based on their number of Pay Periods employed during the PAGA Period, in relation to the aggregate number of Pay Periods employed during the PAGA Period. Because there is no right to opt out of a PAGA settlement, all PAGA Members will receive a proportionate share of the 25% portion of the PAGA Civil Penalty Payment, i.e., their Individual PAGA Payment, irrespective of a valid and timely request for exclusion from the Class Settlement.

- d) **To the Administrator.** The Administrator will pay to itself its reasonable fees and expenses documented and approved by the Court in an amount not to exceed \$10,000. (“Administration Expenses”).
- e) If the Court approves any payment described in this section in an amount less than requested, the Parties agree to retain the remainder in the Net Settlement Amount for distribution to Class Members.

46. **Settlement Payments to the Class.** Following the deduction of the Court-approved sums from the Gross Settlement Amount for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, Administration Expenses, the LWDA Payment, and the collective Individual PAGA Payments, the remaining Net Settlement Amount, estimated at \$355,000 shall be distributed to Participating Class Members based upon the number of Workweeks employed during the Class Period in relation to the number of Workweeks employed by all Participating Class Members during the Class Period. The Net Settlement Amount is determined by deducting the anticipated Court-approved payments as follow:

Gross Settlement Amount: **\$ 660,000**

- Class Representative Service Payment \$10,000
- Class Counsel Fees Payment \$220,000
- Class Counsel Litigation Expenses \$25,000
- LWDA Payment \$30,000
- Individual PAGA Payments \$10,000
- Administration Expenses \$10,000

Net Settlement Amount: **\$ 355,000**

- a) **Individual Class Settlement Payment.** Individual Class Settlement Payments will be paid from the Net Settlement Amount and paid pursuant to the formula as follows: (i) First, using the Class Data List, the Administrator will compute the total number of Workweeks of all Participating Class Members collectively during the Class Period; this sum shall be known as the “Workweek Total;” (ii) Second, the Administrator will divide the Net Settlement Amount by the Workweek Total to determine the settlement value of each eligible Workweek; this shall be known as the “Workweek Value;” (iii) Third, the Administrator will multiply the number of Workweeks of a

Participating Class Member during the Class period by the Workweek Value to determine the Participating Class Member's Individual Class Settlement Payment.

- b) **Allocation of the Settlement Payment, and Tax Forms.** The Administrator shall allocate 20% of each Participating Class Member's Individual Class Settlement Payment to wages and 80% to penalties and interest allegedly due to employees, which shall also include the sum of the Individual PAGA Payments. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated to penalties and interest.
- c) **Effect of Non-Participating Class Members.** Non-Participating Class Members are those who returned a valid and timely request for exclusion, and they will not receive an Individual Class Settlement Payment share of the Net Settlement Amount. Their exclusion from the Class will neither affect the Gross Settlement Amount nor affect the Net Settlement Amount. Their respective Individual Class Settlement Payment shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Workweeks employed during the Class Period. However, since there is no right to opt out of a PAGA settlement, each Non-Participating Class Member who is also a PAGA Member shall receive a pro-rata share of the 25% portion of the PAGA Civil Penalty Payment allocated to them, and they will be bound to the release of all of the claims for civil penalties under the PAGA that are included in the Released Claims.

47. **Appointment of Administrator.** The Parties agree to use the ILYM Group to serve as the Administrator, which, as a condition of appointment, will agree to follow this Agreement with respect to the performance of its duties and its compensation. The Administrator's duties will include formatting, printing, and mailing the Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Notice Packets; re-mailing Notice Packets that are returned to the Class Member's new address as located upon skip-tracing or as provided by Counsel for the Parties; setting up a toll-free telephone number to receive calls from Class Members, and a post office box to receive communications from Class Members which include for instance, disputed claims, change of address forms, requests for exclusion, and objections; providing the Parties with weekly status reports; calculating Individual Class Settlement Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports and filings required under this Settlement and to administrate the Settlement, including, but not limited to, the DE 9, the DE 9C, 1099s, W-2s and W-3s; handling uncashed checks; providing declarations as requested by the Parties, and otherwise administering the Settlement pursuant to this Agreement. The Administrator will have the authority to resolve all disputes concerning the calculation of a

Participating Class Member's Individual Class Settlement Payment and/or Individual PAGA Payment. The Settlement Administration Expenses, including the cost of printing and mailing the Notice Packet, will come from the Gross Settlement Amount. Defendant and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendant and Defendant's Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Individual Settlement Payments or any other distribution of monies contemplated by this Settlement Agreement.

48. **Procedure for Approving Settlement.**

a. **Motion for Preliminary Approval of Settlement.**

- i. After execution of this Agreement, Plaintiff will file a Motion for Preliminary Approval seeking preliminary approval of the proposed Settlement, conditional class certification, approval of the Notice, appointment of Class Counsel, designation of Plaintiff as the Class Representative, and ILYM as the Administrator, and setting a date for the Final Approval Hearing. Class Counsel shall be responsible for preparing the Motion for Preliminary Approval, supporting declarations, and its exhibits. Class Counsel agrees to provide Defendant's Counsel with drafts of the Motion for Preliminary Approval and any other documents they intend to submit in support of their Motion for Preliminary Approval at least five (5) business days in advance of the filing of such documents to allow Defendant's Counsel reasonable time to review and comment on such papers. Class Counsel further agrees to reasonably incorporate the comments from Defendant's Counsel.
- ii. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Motion for Preliminary Approval, and submit an Order Granting Preliminary Approval of the Settlement.
- iii. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of the Released Claims, or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Agreement for the Court's approval.

49. **Notice to Class Members.** If the Court enters an Order Granting Preliminary Approval of the Settlement, the Notice Packet will be mailed to all members of the Class as follows:

- a. No later than twenty (20) days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will, to the extent possible, provide the Class Data List to the Administrator. The Administrator shall maintain the Class Data List as private and confidential and shall not disclose such data to any persons or entities other than Defendant's Counsel. The Class Data List is being supplied solely to be used for settlement notification and settlement administration purposes, and shall not be used for any other purpose by the Administrator or Class Counsel. The Parties agree that the Class Data List will not be used to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against Defendant or any other Released Parties, and will only be used to administer the Settlement under the terms provided herein. No later than three (3) days after receipt of the Class Data List, the Administrator shall notify counsel for the Parties that the information in the Class Data List has been received.
- b. Upon receipt of the Class Data List, the Administrator will perform a search of the United States Post Office's National Change of Address database to update and correct any known or identifiable changes to Class Member addresses before mailing the Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than twenty-one (21) calendar days following receipt of the Class Data List, the Administrator will mail the Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Administrator obtains in the course of administration of the Settlement. The Administrator shall exercise its best judgment to determine the current mailing address for each Class Member, including performing a skip-trace to identify any updated addresses. The content of the Notice Packet shall include a Notice of Class Action Settlement, a Change of Address form, and a pre-printed return envelope based on the Parties' agreement, and subject to Court approval and modification as necessary to fulfill the Parties' desire to resolve the case.
- c. The exterior of the mailing envelope containing the Notice Packet shall include the following language on the left side of the envelope below the Administrator's mailing address:

**IMPORTANT LEGAL DOCUMENT: You may
get Money from a Class Action Settlement; your
prompt reply to correct a bad address is required.**

- d. If a Notice Packet is returned because of an incorrect address, the Administrator will promptly, and not longer than five (5) days from receipt of the returned Notice Packet, search for a more current address and re-mail the Notice Packet to the Class Member. The Administrator will use the Class Data List and otherwise work with Defendant to find the most current address. The Administrator will be responsible for

taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Notice Packet is re-mailed, the Administrator will note for its own records and notify Counsel for the Parties of the date of each such re-mailing as part of a weekly status report provided to the Parties.

- e. As part of its weekly status report, the Administrator will inform Class Counsel and Defendant's Counsel of the number of requests for exclusions, number of disputed claims, and number of objections received, and will provide all written objections upon receipt to Class Counsel and Defendant's Counsel
- f. No later than ten (10) days before the date that the Plaintiff will file the Motion for Final Approval of the Settlement, the Administrator will provide its declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the requests for exclusions, disputed claims, and objections received. Prior to the Final Approval Hearing, the Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

50. **Objections to Settlement; Disputes as to the Number of Workweeks; and Requests for Exclusion.** Class Members may submit objections as to any term of the Settlement, dispute the number of Workweeks allocated to them, and request exclusion pursuant to the following procedures:

- a. **Object to Settlement.** The Class Notice will provide that only Participating Class Members may object to the Settlement. Participating Class Members may submit a written objection to the Administrator no later than forty-five (45) days after the Administrator mails the Notice Packets. The date of mailing on the envelope shall be deemed the exclusive means for determining if an objection was timely received. Written objections must be signed by the Class Member and should set forth: (1) the full name and address of the objecting Class Member; (2) the grounds for each objection made; and (3) whether the Class Member intends to appear at the Final Approval Hearing. Any of the Parties may file a response to any objection before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and Defendant's Counsel with this notice no later forty five (45) days after the Administrator mailed the Notice Packets. Class Members may also appear at the Final Approval Hearing to orally object, even if they have not submitted a written objection. Any Class Member who fails to submit a timely written objection or to present an objection at the Final

Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise. Class Members who receive a re-mailed Class Notice shall have an additional twenty (20) days from their original deadline to object in writing.

- b. **Dispute the Number of Workweeks.** Class Members may dispute the number of Workweeks the Class Notice allocates to them during the Class Period, and they must do so no later than forty five (45) days after the Administrator mails the Notice Packets. The date of mailing on the envelope shall be deemed the exclusive means for determining if a dispute was timely received. If there is a dispute, the Administrator shall consult with the Parties to determine whether an adjustment is warranted, and the Administrator shall resolve the dispute. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy. If a party further disputes the Administrator's decision, that party may submit the dispute to the Court, which shall have the ultimate authority to decide disputes. Class Members who receive a re-mailed Class Notice shall have an additional twenty (20) days from their original deadline to dispute in writing the number of Workweeks allocated to them during the Class Period.
- c. **Requests for Exclusion.** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must postmark and mail to the Administrator a written request for exclusion no later than forty five (45) days after the Administrator's mailing of the Notice Packets. The date of mailing on the envelope shall be deemed the exclusive means for determining if a request for exclusion was timely received. Class Members who receive a re-mailed Class Notice shall have an additional twenty (20) days from their original deadline to request in writing an exclusion from the Settlement.
 - i. To be valid, a request for exclusion must be timely and must comply with the instructions detailed in the Class Notice, including providing (1) the name and address of the Class Member requesting exclusion; (2) a statement expressing that the Class Member elects to be excluded from the Settlement; and (3) a signature by the Class Member. If a question is raised about the authenticity of a signed request for exclusion, the Administrator will have the right to demand additional proof of the Class Member's identity.
 - ii. A Non-Participating Class Member will not participate in or be bound by the Released Claims and the Judgment. However, a Non-Participating Class Member who is also a PAGA Member will be bound by the PAGA Release. Defendant will remain free to contest any claim brought by the Class Member that would have been barred by this Agreement, and nothing in this Agreement will

constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. However, even if a Class Member opts out of the Settlement, the Class Member will still receive a proportionate share of the PAGA Civil Penalty Payment allocated to the PAGA Members. The Administrator will determine the Individual PAGA Payment by comparing the number of Pay Periods the PAGA Member was employed during the PAGA Period to the total number of Pay Periods all PAGA Members were employed during the PAGA Period. In this instance, any Class Member who is also a PAGA Member will only be bound by the PAGA Release.

- iii. A Class Member who does not complete and mail a timely request for exclusion in the manner and by the deadline specified above will automatically become a Participating Class Member, will receive a Settlement Payment, and be bound by all terms and conditions of the Settlement, including the Released Claims if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or he has objected to the Settlement.
 - iv. Persons who submit a request for exclusion shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement because the Settlement no longer concerns them.
 - v. All Participating Class Members who do not submit a valid and timely request for exclusion will receive an Individual Class Settlement Payment without the need to file a claim form, and the terms of the Released Claims and Judgment will bind them.
- d. **Report.** No later than ten (10) days after the deadline for submission of requests for exclusions, the Administrator will provide Class Counsel and Defendant's Counsel with a complete and accurate count of Participating Class Members and Non-Participating Class Members.

51. **Right of Defendant to Reject Settlement.** If more than five percent (5%) of the Class Members return valid and timely requests for exclusion, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement. Defendant will notify Class Counsel and the Court whether it is exercising this right to void no later than ten (10) days after the Administrator notifies the Parties, for the final time, of the number of valid requests for exclusion received. If Defendant exercises this right, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed.

52. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
53. **Additional Briefing and Final Approval.**
- a. Upon the expiration of the deadline for submission of requests for exclusions, objections, and disputes, and with the Court's permission, a Final Approval Hearing shall be conducted.
 - b. As directed by the Court after preliminary approval, the Plaintiff will file with the Court a Motion for Final Approval of the Settlement, that shall include Class Counsel's application for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payments, and the Class Representative Service Payment, as well as the Administration Expenses and PAGA Civil Penalty Payment. Class Counsel shall be responsible for preparing the Motion for Final Approval, and any supporting declarations, and exhibits thereto. Class Counsel agrees to provide Defendant's Counsel with drafts of all documents they intend to submit in support of the Motion for Final Approval at least seven (7) days in advance of the filing to allow Defendant's Counsel reasonable time to review and comment on such papers and further agrees to reasonably incorporate the comments from Defendant's Counsel. The Parties must meet and confer and make all reasonable efforts to agree on any modifications to this Agreement that will result in entry of the Final Approval Order, including a good faith attempt to address and/or cure any issues identified by the Court as necessary for final approval.
 - c. If any opposition is filed, then no later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the Motion for Final Approval of the Settlement.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of the Released Claims), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Agreement for the Court's approval. But an award by the Court of lesser amounts than those sought by the Class Counsel for the Class Representative Service Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Agreement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, Class Counsel will present for the Court's approval and entry the Judgment. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement

administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

54. **Waiver of Right to Appeal.** Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement to the Administrator waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate the judgment, a motion for a new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If there is an appeal from the Judgment, it suspends the time for consummation of the Settlement (including making payments under the Settlement) until the appeal is finally resolved and the Judgment becomes final.
55. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of the Released Claims), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court no later than 21 days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
56. **Funding and Other Payments.** No later than ten (10) calendar days after the Judgment becomes Final as defined herein, the Administrator shall send Defendant's Counsel electronic wiring instructions for paying the Gross Settlement Amount (\$660,000) into the QSF (or additional amounts if applicable under the "Modification of Gross Settlement Amount" section herein). Defendant shall fund the QSF with the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes no later than thirty (30) calendar days after the Judgment becomes Final. Within fourteen (14) days after Defendant funds the QSF, the Administrator will pay to Participating Class Members their Individual Class Settlement Payments via first-class regular U.S. Mail; to all PAGA Members, their Individual PAGA Payments; to Plaintiff, the Class Representative Service Payment; to Class Counsel, the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; to the LWDA, their LWDA Payment; and to the Administrator, the Settlement Administration Expenses. The Judgment cannot become Final, and Defendant will not be obligated to fund the QSF,

unless and until there is no possibility of an appeal or further appeal (by anyone who has the right to, or claims to have the ability to, take an appeal) that could potentially prevent this Settlement from becoming final and binding.

57. **Uncashed Settlement Share Checks.** A Class Member must cash their Settlement Payment check within one-hundred and eighty (180) days of the Administrator's mailing of the checks. If the Administrator receives a returned check, it will make all reasonable efforts to re-mail it to the Class Member at their correct address. If a Class Member's Settlement Payment check is not cashed within ninety (90) days after its initial mailing, the Administrator will send a postcard notifying the Class Member that unless the check is cashed by the 180th day, it will expire and become non-negotiable, and the Administrator will offer to replace the check if it was lost or misplaced and not cashed. If the check remains uncashed after one-hundred and eighty (180) days since the Administrator's mailing of the checks, the Administrator will void the checks, and transmit the funds to the State of California's Controller, Unclaimed Property Division for further handling on behalf of the Class Member.
58. **Final Report by Administrator to Court.** Within ten (10) calendar days after final disbursement of all funds from the Gross Settlement Amount, the Administrator will serve on the Parties and file with the Court a declaration as a final report on the disbursements of all funds from the Gross Settlement Amount.
59. **Released Claims.**
- a. **Participating Class Members.** As of Effective Date and funding by Defendant of the GSA, the Released Parties shall be entitled to a full and final accord, satisfaction, settlement, and release of the Released Class Claims for the Class Period from Participating Class Members, including the Plaintiff.
 - b. **PAGA Members.** As of the Effective Date and funding by Defendant of the GSA, all PAGA Members are bound by the Released PAGA Claims for the PAGA Period.
 - c. **Class Counsel.** As of the Effective Date and funding by Defendant of the GSA, and except as otherwise provided by this Agreement and the Judgment, Class Counsel waives any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
60. **Limitation on Public Statements About Settlement.** Prior to final approval, the Parties agree not to disclose the terms of this Settlement except in court papers filed to seek approval and any other disclosures agreed to by the Parties that are necessary to effectuate the Settlement. Plaintiff and Class Counsel shall not issue any press releases, or hold any press conferences, or publish information about the settlement on any website, or otherwise publicize the settlement. However, Plaintiff counsel may (in future declarations submitted

in Court) refer to the fact that this matter settled on a class and representative action basis for purposes detailing the experience of counsel. Plaintiff and Plaintiff Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the Court.

61. **Representations.** Plaintiff represents that other than the instant Action, Plaintiff and Class Counsel have no intent to assert any other claims against Defendant in any judicial, arbitral, or administrative forum. Plaintiff's Counsel will further represent that they do not know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties acknowledge, understand, and agree that the representations described in this paragraph are essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.
62. **Additional Mediation.** If this matter is not approved by the Court for any reason, the Parties agree to attend mediation again in an effort to reach a settlement approved by the Court.
63. **Miscellaneous Terms.**
 - a. **No Admission of Liability or Class Certification for Other Purposes.**
 - i. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement).
 - ii. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or

administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

- iii. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.
62. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
63. **Plaintiff's Individual Settlement.** Plaintiff is entering into an individual settlement agreement which shall provide for an Individual Settlement Payment, and which shall provide for a broad release, including a waiver of Civil Code Section 1542. This release, waiver and discharge of all claims shall include, but will not be limited to, any and all claims arising out of the Action, as well as additional claims described in the Individual Settlement Agreement for retaliation and wrongful termination.
64. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by the Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach an agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court for resolution.
65. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
66. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within

the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

67. **Agreement Binding on Successors.** This Agreement is binding upon, and inures to the benefit of, the successors of each of the Parties. The Parties warrant that they understand and have full authority to enter this Agreement, and intend it to be fully enforceable and binding on all Parties, pursuant to California Code of Civil Procedure section 664.6, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any Settlement Conference confidentiality provisions which might otherwise apply under federal or state law.
68. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
69. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
70. **Fair and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations facilitated by an experienced and respected wage and hour class action mediator, taking into account all relevant factors, current and potential.
71. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within sixty (60) days after the Judgment becomes Final, Class Counsel will return or destroy all such documents and data, and provide written confirmation to Defendant of the destruction.
72. **Exhibits and Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement. The terms of this Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement.
73. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

ZAKAY LAW GROUP, APLC

Shani O. Zakay
Jackland K. Hom
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade
Eduardo Garcia
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

To Defendant:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Michael J. Nader, Esq.
Email: Michael.nader@ogletree.com
500 Capitol Mall, Suite 2500
Sacramento, CA 95814
Telephone: (916) 840-3150 / Fax: (916) 840-3159

73. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically, or by email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
74. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement, the Parties agree to jointly request the Court to stay all proceedings with this Action, except for such proceedings needed to secure approval of this settlement, and the time to bring the Action to trial shall be extended pending the outcome of the settlement process.
75. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement.

76. **Court Filings.** The Parties agree not to object to any Court filings consistent with this Settlement Agreement.
77. **Invalidity of Any Provision.** Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Jul 19, 2022, 2022

By: 
Eduardo Ybarra, Plaintiff

Dated: July 19, 2022

By: 
Authorized Agent
Helzberg's Diamond Shops, LLC

APPROVED AS TO FORM:

Dated: July 19, 2022

By: 
Shani O. Zakay, Plaintiff's Counsel

Dated: July 22, 2022

By: 
Michael J. Nader
Counsel for Defendant
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

EXHIBIT A

Superior Court of California, County of Alameda
***Eduardo Ybarra v. Helzberg's Diamond Shops, LLC* (California Superior Court, County of Alameda,**
Case No. 21CV003531).

A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

To: All persons who are or previously were employed by Defendant Helzberg's Diamond Shops, LLC in California and classified as non-exempt employees from December 3, 2017 to June 19, 2022 (the "Class Members").

All persons who are or previously were employed by Defendant Helzberg's Diamond Shops, LLC in California and classified as non-exempt employees from September 27, 2020 to June 19, 2022 (the "PAGA Members").

A putative class action and representative action under the California Private Attorneys General Act of 2004 ("PAGA"), which was brought on behalf of the Class and PAGA Members (defined above) and against Defendant Helzberg's Diamond Shops, LLC has been settled for \$660,000.00. As explained in this Notice, if the Court approves this class and PAGA Settlement then you may receive payments under this Settlement. You are receiving this Notice because based on Defendant's records, you are a Class Member and/or a PAGA Member.

If you are a Class Member and/or a PAGA Member, you are eligible for payment from the Settlement described in this Notice without the need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to participate and receive your share of the money from the class and PAGA settlement, you do <u>not</u> need to do anything. If you do nothing, you will be mailed a settlement payment and you will release certain claims. [You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check.]
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you ask to be excluded from the class portion of the settlement and money is later awarded, you will not receive any share from the class settlement money. But if you exclude yourself, you keep any rights as an individual to sue Defendant separately about the same legal claims that are being settled here. You may exclude yourself from the settlement by submitting a written Request for Exclusion according to the instructions contained in this Notice. The deadline to submit a Request for Exclusion is [45 calendar days from date of mailing]. If you are a PAGA Member, even if you exclude yourself from the class action, you will still receive a portion of the PAGA settlement money and be bound by the release of PAGA claims.

OBJECT	Object to the Settlement if you think the Settlement is not fair by sending your written objection to the Settlement Administrator and/or, if you wish, appear at the Final Approval Hearing. If you submit a Request for Exclusion from the Settlement, you cannot also object to it. The deadline to submit an objection is [45 calendar days from date of mailing].
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- **Your rights and options – and the deadlines to exercise them – are explained in this Notice.**
- **Defendant supports the settlement and will not retaliate in any manner against any class member who remains in the class and receives a settlement payment.**

BASIC INFORMATION

1. **Why was this notice issued**

A Court authorized this Notice because you have a right to know about a proposed Settlement of a class and representative PAGA action lawsuit, and about all of your options, before the Court decides whether to approve it. This notice explains the lawsuit, the Settlement, your legal rights, the payments that are available, who is eligible to receive them, and how to get them.

The Court in charge of the case is the Superior Court of the State of California, County of Alameda, and the case is known as Eduardo Ybarra v. Helzberg Diamond Shops, LLC, Case No. 21CV003531 (the “Action” or the “Lawsuit”).

2. **What is the Lawsuit about?**

On December 3, 2021, Plaintiff Eduardo Ybarra filed a Class Action Complaint with the Superior Court of the State of California, County of Alameda (Case No. 21CV003531), alleging several wage and hour claims under the California Labor Code, the California Business and Professionals Code, the applicable Wage Order, and the PAGA (the “Lawsuit”).

Defendant denies all of the claims in the Lawsuit. However, Defendant has agreed to settle the Lawsuit to avoid continued litigation. The Settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated.

3. **What is a class action?**

In a class action lawsuit, a Class Representatives (in this case, Eduardo Ybarra) sue on behalf of others who may have similar claims, who are called a class or class members.

4. **Why is there a Settlement?**

The Court did not decide in favor of the Plaintiff, nor did the Court decide in favor of Defendant. Instead, both sides agreed to a no-fault settlement of the Lawsuit (“Settlement”). That way, they avoid the cost of further litigation including a trial, and the people affected will get compensation from the Settlement.

5. **Who are the Parties in these Lawsuits?**

Plaintiff Eduardo Ybarra was an employee of the Defendant. The Defendant is Helzberg’s Diamonds, LLC.

6. **Who are the Attorneys representing the Plaintiff and the Class?**

ZAKAY LAW GROUP, APLC Shani O. Zakay Jackland K. Hom 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 Telephone: (619)255-9047 Facsimile: (858) 404-9203 shani@zakaylaw.com jackland@zakaylaw.com	JCL LAW FIRM, APC Jean-Claude Lapuyade Eduardo Garcia 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 Telephone: (619) 599-8292 Facsimile: (619) 599-8291 jlapuyade@jcl-lawfirm.com egarcia@jcl-lawfirm.com
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You also have the right to hire an attorney (at your own cost) to represent you, or to enter an appearance and represent yourself.

THE TERMS OF THE SETTLEMENT

7. **What is the Settlement Amount?**

The proposed Settlement provides for a maximum payment of \$660,000.00 to fully and finally resolve all claims in the Lawsuit (referred to as the “Total Settlement Amount”). Class Counsel will apply to the Court for attorneys’ fees of up to \$220,000; litigation costs estimated at \$25,000; a “Class Representative Service Payment” of up to \$10,000 to the Plaintiff for his work and effort in prosecuting this case, risks taken for the payment of costs in the event of loss, and a general release of all claims; settlement administration expenses to ILYM Group, estimated at \$10,000; and a “PAGA Payment” to the California Labor Workforce and Development Agency (“LWDA”) and PAGA Members in settlement of claims for penalties under PAGA. The exact amount of the attorneys’ fees, litigation costs, Class Representative service payments, and settlement administration expenses will be determined by the Court at the Final Approval hearing if the Settlement is approved.

Following the Court-approved deductions, the remaining portion of the Settlement, the Net Settlement Amount (“NSA”), is estimated to be \$355,000. The NSA will be apportioned and paid out entirely, automatically, to all “Participating Class Members,” who are the Settlement Class Members who do not ask to be excluded from the class action settlement, as “Individual Settlement Payments.”

No portion of the Total Settlement Amount will revert to Defendant under any circumstances.

8. **How will the Individual Settlement Payments be calculated and how much will my award be?**

Participating Class Members will receive a pro-rata share of the NSA based on the number of weeks they worked for Defendant during the time period of December 3, 2017 to June 19, 2022 (the “Class Settlement Period”).

Here’s how it works – the NSA will be entirely distributed to the Participating Class Members. The NSA allocated to each individual Participating Class Member will be based on the individual’s total number of weeks worked during the Class Settlement Period, in relation to the total number of weeks worked by all Participating Class Members. Weeks will be calculated according to Defendant’ records.

Based on Defendant’s records, you worked _____ work weeks during the Class Settlement Period and your estimated Individual Settlement Payment is \$ _____, before applicable tax withholdings, although the actual amount that is paid may be lower or higher than the amount estimated. If you wish to dispute your number of

workweeks during the Class Settlement Period, you must notify the Settlement Administrator in writing, no later than forty-five (45) days after the mailing of this Notice. Please provide any proof you may have that you were employed by Defendant for a different number of weeks during the Class Settlement Period.

Individual Settlement Payments shall be subject to applicable withholding taxes on that portion of the payment allocated to wages. Individual Settlement Payments will be allocated 20% to wages for which an IRS W-2 form will be issued, and 80% to penalties and interest for which an IRS 1099 form will be issued as required. You will be responsible for the tax consequences of your Individual Settlement Payments, for filing your own returns and reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due. You should consult with a tax advisor concerning the tax consequences of the Individual Settlement Payment you could receive under the Settlement.

9. How will the PAGA Payment be distributed?

The Parties will seek approval from the Court to designate \$40,000.00 of the Total Settlement Amount as penalties recoverable under the PAGA. 75% of this amount, or \$30,000.00, will be paid to the LWDA, as required by law. The remaining 25% of this amount, or \$10,000.00, will be distributed to the PAGA Members as “Individual PAGA Payments.” The Individual PAGA Payments are paid in addition to any Individual Settlement Payments (the Individual Settlement Payment and the Individual PAGA Payments are the “Settlement Payment”). 100% of the PAGA Payment will be treated as penalties and interest. You should consult with a tax advisor concerning the tax consequences of the Individual PAGA Payment you could receive under the Settlement.

Not all Class Members are PAGA Members entitled to an Individual PAGA Payment. You are only a PAGA Member if you worked for Defendant during the period September 27, 2020 to June 19, 2022 (the “PAGA Settlement Period”). The Individual PAGA Payments will be calculated on a pro-rata basis based on the number of pay periods that you worked during the PAGA Settlement Period. Based on Defendant’s records, your total pay periods during the PAGA Settlement Period is _____. Based on that, your anticipated approximate Individual PAGA Payment is \$ _____. If you wish to dispute your number of pay periods during the PAGA Settlement Period, you must notify the Settlement Administrator in writing, no later than forty-five (45) days after the mailing of this Notice. Please provide any proof you may have that you were employed by Defendant for a different number of pay periods during the PAGA Settlement Period.

HOW TO GET PAYMENT

10. How can I get my Settlement Payment?

If the Settlement is approved, you do not need to do anything to receive a Settlement Payment. If the Court approves the Settlement at a final approval hearing, your Settlement Payment will be mailed to the address on file with the Settlement Administrator. **It is your responsibility to keep the Settlement Administrator informed of any change in your address, as your Settlement Payment will be mailed to the last known address it has on file for you** if the Court approves the settlement.

11. When can I expect to receive my Settlement Payment?

If the Court approves the Settlement, and there are no pending objections, your share of the Settlement will be paid approximately **90 days** after the Court grants final approval of the Settlement. ***Your share of the Settlement will be mailed to the address on file for you.*** Again, if this address is not correct, or if you move after you receive

this Notice, you should notify the Settlement Administrator by mail or by calling the Settlement Administrator at 800-_____.

12. What am I giving up to get a Settlement Payment?

Participating Class Members will be giving up or “releasing” the claims described below:

Release of Class Claims: After the Court grants final approval of the Settlement, each Participating Settlement Class Member will be bound by the approval and judgment and thereby fully and forever release Defendant and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns (“Released Parties”) from all claims and causes of action as alleged in, and that could have been alleged based on the facts of, the Lawsuit, including, but not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, arising out of or based upon any provision alleged in the Action, including the California Labor Code, the California Industrial Welfare Commission Wage Orders, and the California Business and Professions Code § 17200, et seq.; including, without limitation, the following categories of allegations, to the fullest extent such claims are releasable by law: (a) all claims for failure to pay minimum wages, including for all alleged off the clock work; (b) all claims for failure to pay overtime wages, including all claims for the alleged omission of any kind of remuneration when calculating an employee’s regular rate of pay, and all alleged claims of off the clock work; (c) all claims for failure to provide reporting time pay; (d) all claims for failure to pay the regular rate of pay, including for meal and rest break premiums and paid sick leave, as well as all claims for failure to provide paid sick leave; (e) all claims for failure to maintain employment records, including timekeeping and payroll records; (f) all claims for failure to provide compliant meal periods and pay related premiums at the regular rate; (g) all claims for failure to provide compliant rest periods and pay related premiums at the regular rate; (h) all claims for failure to reimburse business expenses; (i) all claims for failure to pay timely current wages and associated penalties; (j) all claims for failure to pay final wages; (k) all claims for failure to provide accurate wages statements; and (l) all claims for relief under California Business and Professions Code § 17200, et seq. arising from violations of the Labor Code released herein. The Class Members understand and agree that this release includes a good-faith compromise of disputed wage claims.

PAGA Members and the State of California will be giving up or “releasing” claims for civil penalties under the PAGA:

Release of PAGA Claims: After the Court grants final approval of the Settlement, then Plaintiff, as a representative of the State of California and on behalf of the LWDA and the PAGA Members, will fully and forever release the Released Parties from all claims and causes of action for civil penalties under PAGA as alleged in, and that could have been alleged based on the facts of the PAGA Letters (that Plaintiff filed on September 27, 2021 and April 13, 2022) and in the Action, and that seek civil penalties pursuant to PAGA and other relief available pursuant to the PAGA against the Released Parties. Regardless of whether any Class Member opts out of the Class Settlement, they will still be bound by the PAGA Release if they are PAGA Members. The period of the PAGA Release is the PAGA Period. The Released PAGA claims include claims for civil penalties pursuant to PAGA as a result of the following categories of allegations, to the fullest extent such claims are releasable by law: (a) all claims for failure to pay minimum wages, including for all alleged off the clock work; (b) all claims for failure to pay overtime wages, including all claims for the alleged omission of any kind of remuneration when calculating an employee’s regular rate of pay, and all alleged claims of off the clock work; (c) all claims for the failure to provide suitable seating; (d) all claims for failure to provide reporting time pay; (e) all claims for failure to pay the regular rate of pay, including for meal and rest break premiums and paid sick leave, as well as all claims for failure to provide paid sick leave; (f) all claims for failure to maintain employment records, including timekeeping and payroll records; (g) all claims for failure to provide compliant meal periods and pay related premiums at the regular rate; (h) all claims for failure to provide compliant rest

periods and pay related premiums at the regular rate; (i) all claims for failure to reimburse business expenses; (j) all claims for failure to pay timely current wages and associated penalties; (k) all claims for failure to pay final wages; and (l) all claims for failure to provide accurate wages statements.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

13. Can I exclude myself from the class settlement?

If you do not wish to participate in the class settlement for whatever reason, you can exclude yourself from the class settlement (that is, “opt out” of the Settlement). If you opt out, you keep your right to sue the Defendant for the same claims on an individual basis. However, you cannot opt out of the PAGA portion of the Settlement. To opt out and exclude yourself from the Class and this Settlement so that you do not become a Participating Settlement Class Member, you must provide a signed and dated letter to the Administrator requesting to be excluded from the Class. The letter should state in substance that you have read and understand the Notice of Settlement of the Class and Representative Action and that you wish to exclude yourself from the Settlement described in the Notice.

Your letter requesting to exclude yourself must include the case name, Eduardo Ybarra v. Helzberg Diamond Shops, LLC, your full name, current address and telephone number. It must be addressed to the Administrator at [address], postmarked on or before _____, 2022. *[45 days from mailing of Notice]* Requests for exclusion postmarked after this date may be disregarded.

14. If I don’t exclude myself from the class settlement, can I sue Defendant for the same thing later?

No. Unless you exclude yourself from the class settlement, you give up any right to sue Defendant for the claims that this Settlement resolves. *If you have a separate arbitration or lawsuit already against any of the Defendant, you should speak to your lawyer in that case immediately.* You may need to exclude yourself from this Class and this case by the above deadline in order to continue your separate arbitration or lawsuit.

15. If I exclude myself from the class settlement, can I get money from this settlement?

Not from the Class Settlement. If you request to be excluded from the Settlement, you will not receive an Individual Settlement Payment. You also will not be able to object to the Settlement as explained below. Your Individual Settlement Payment will be redistributed to the Participating Class Members.

However, if you are a PAGA Member, you will receive an Individual PAGA Payment regardless of whether you exclude yourself from the class settlement.

No portion of the Total Settlement Amount will go back to Defendant as a result of any person opting out of the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don’t like the Settlement?

If you don’t think the Settlement is fair, and you don’t request to be excluded from the class settlement, you can object to the Settlement and tell the Court that you don’t agree with the Settlement or some part of it before the Court decides whether to grant final approval of the Settlement.

To object in writing, you must submit a timely written objection to the Administrator. Your objection should state that you object to the proposed Settlement of this case entitled Eduardo Ybarra v. Helzberg Diamond Shops, LLC, Case No. 21CV003531. Be sure to include your name, address, telephone number, and signature, and the specific reasons you object to the Settlement. You must mail your written objection to the Administrator at [address], postmarked on or before _____, 2022. [45 days from mailing of Notice Packet] Objections postmarked after this date may be disregarded.

If you have questions regarding this Settlement, you should contact attorneys for Plaintiffs and the Class (see Paragraph 6 above) or the Settlement Administrator. Please **DO NOT** contact attorneys for Defendant or any of the Defendant's managers and supervisors, or owners.

THE COURT'S FINAL FAIRNESS HEARING

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval hearing in Department __ of the Superior Court of California, County of Alameda located at the _____ on _____, 2022, at ____ a.m. At this hearing the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representatives' Enhancement Awards, and the Settlement Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted an objection and indicated an intention to speak at the Final Approval Hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions from the Judge. But you are welcome to come at your own expense to support or object to the settlement. If you send your timely written objection to the Settlement Administrator, you don't have to come to Court to object but you can if you wish to. As long as you mailed your written objection on time, the Court will consider it. You may also hire and if required pay your own lawyer to attend if you so desire.

19. May I speak at the hearing?

You may appear at the Final Approval Hearing and ask the Court for permission to speak, however, to be sure that any objection will be considered by the Court, you should submit a timely written objection, or a notice of intent to appear at the hearing. To do so, please timely submit the objection or notice of intent to appear to the Settlement Administrator listed in section 16 no later than [45 days after mailing of postcard.] Any notice of intent to appear should include a description of any arguments you intend to make. Even if you do not submit a written objection or notice of intent to appear, you may still appear and make your objection in person, with the Court's permission.

GETTING MORE INFORMATION

20. Who may I contact if I have questions about the settlement?

This Notice is only a summary of the Lawsuit and proposed Settlement. For more information, you may personally inspect the files and the Settlement Agreement at the Superior Court of California, County of Alameda located at the _____, during regular Court hours. You may also contact Class Counsel if you need

more information or have questions. You may also contact the Settlement Administrator by calling toll free 1-_____, or you can write to Settlement Administrator, at _____ **[insert address]**.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT OR ANY OF THEIR MANAGERS, SUPERVISORS, OWNERS OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

A. **It is your responsibility to ensure that the Settlement Administrator** has your current mailing address and telephone number on file, as this will be the address to which your Settlement Payment will be sent if the Settlement is approved.

B. **Settlement Payment checks should be cashed promptly upon receipt.** Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in the name of each Settlement Class Member and/or PAGA Member who did not cash his or her Settlement Payment check. If your Settlement Payment check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.