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Attorneys for Plaintiff

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

AMENDED ~~PROPOSED~~ JUDGMENT

Date: September 24, 2024
Time: 3:00 p.m.

Judge: Hon. Tara Desautels
Dept.: 23

FILED
Superior Court of California
County of Alameda

09/20/2024

Clerk of the Court, Executive Officer / Clerk of the Court

By: A. Tumorong Deputy

1 Plaintiff's motion for an order finally approving the First Amended Joint Stipulation of
2 Class and Representative Action Settlement Agreement ("Agreement") and Motion for Class
3 Counsel Award and Class Representative Service Payment duly came on for hearing on August
4 15, 2023, before the above-entitled Court. The parties having settled this action and the Court
5 having entered an Order Granting Motion for Final Approval of Class Action and PAGA Civil
6 Penalty Payment and good cause appearing therefor,

7 **IT IS HEREBY ORDERED, ADJUDICATED and DECREED THAT:**

8 1. The certification of the Settlement Class is confirmed for the purposes of
9 settlement. The Class is defined as "all persons who are or previously were employed by
10 Defendant in California and classified as non-exempt employees from December 3, 2017, to June
11 19, 2022 ["Class Period"]."

12 2. All persons who meet the foregoing definition are Participating Class Members,
13 except for those individuals who filed a valid request for exclusion ("opt out") from the Class.

14 3. Except as set forth in the Agreement, the Order Granting Motion for Final
15 Approval of Class Action and PAGA Civil Penalty Payment and this Final Judgment, Plaintiff,
16 and all members of the Settlement Class, shall take nothing in the Action. Each party shall bear its
17 own attorneys' fees and costs, except as otherwise provided in the Agreement, the Order Granting
18 Motion for Final Approval of Class Action and PAGA Civil Penalty Payment and in this Final
19 Judgment.

20 4. The Court shall retain jurisdiction to construe, interpret, implement, and enforce the
21 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
22 supervise and adjudicate any dispute arising from or in connection with the distribution of
23 settlement benefits.

24 5. As of the date the Defendant funds the Gross Settlement Amount, Plaintiff and
25 each Class Member who has not validly opted out has released the "Released Parties" from the
26 "Released Class Claims" as set forth in the Agreement.

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1 6. As used in paragraph 5 above, the quoted terms have the meanings set forth below:

2 (a) The “Released Class Claims” are defined all claims and causes of action as
3 alleged in, and that could have been alleged based on the facts of, the Action, including, but not
4 limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid
5 costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys’ fees,
6 litigation costs, restitution, or equitable relief, arising out of or based upon any provision alleged
7 in the Action, including the California Labor Code, the California Industrial Welfare Commission
8 Wage Orders, and the California Business and Professions Code § 17200, et seq.; including,
9 without limitation, the following categories of allegations, to the fullest extent such claims are
10 fully and forever releasable by law: (a) all claims for failure to pay minimum wages, including for
11 all alleged off the clock work; (b) all claims for failure to pay overtime wages, including all claims
12 for the alleged omission of any kind of remuneration when calculating an employee’s regular rate
13 of pay, and all alleged claims of off the clock work; (c) all claims for failure to provide reporting
14 time pay; (d) all claims for failure to pay the regular rate of pay, including for meal and rest break
15 premiums and paid sick leave, as well as all claims for failure to provide paid sick leave; (e) all
16 claims for failure to maintain employment records, including timekeeping and payroll records; (f)
17 all claims for failure to provide compliant meal periods and pay related premiums at the regular
18 rate; (g) all claims for failure to provide compliant rest periods and pay related premiums at the
19 regular rate; (h) all claims for failure to reimburse business expenses; (i) all claims for failure to
20 pay timely current wages and associated penalties; (j) all claims for failure to pay final wages; (k)
21 all claims for failure to provide accurate wages statements; and (l) all claims for relief under
22 California Business and Professions Code § 17200, et seq. arising from violations of the Labor
23 Code released herein. The Class Members understand and agree that this release includes a good-
24 faith compromise of disputed wage claims.

25 (b) The “Released Parties” are defined as Helzberg Diamond Shops, LLC and
26 its past, present and/or future, direct and/or indirect, owners, officers, directors, members,
27 managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries,
28 affiliates, successors, and assigns.

1 7. As of the date the Defendant funds the Gross Settlement Amount, the Plaintiff, the
2 Labor and Workforce Development Agency (“LWDA”), the State of California, and each “PAGA
3 Member” have released the Released Parties from the “Released PAGA Claims” for the “PAGA
4 Period” as set forth in the Agreement.

5 8. As used in paragraph 7 above, the quoted terms have the meanings set forth below:

6 (a) The “PAGA Members” are defined as those Class Members employed
7 during the PAGA Period and who will be paid an Individual PAGA Payment, regardless of
8 whether they exclude themselves from the Class Settlement. The PAGA Period is defined as the
9 period from September 27, 2020, and June 19, 2022.

10 (b) The “Released PAGA Claims” are defined as all claims and causes of
11 action for civil penalties under PAGA as alleged in, and that could have been alleged based on the
12 facts of the PAGA Letters and in the Action, and that seek civil penalties pursuant to PAGA and
13 other relief available pursuant to the PAGA against the Released Parties. Regardless of whether
14 any Class Member opts out of the Class Settlement, they will still be bound by the PAGA Release
15 if they are PAGA Members. The period of the PAGA Release is the PAGA Period. The Released
16 PAGA claims include claims for civil penalties pursuant to PAGA as a result of the following
17 categories of allegations, to the fullest extent such claims are fully and forever releasable by law:

18 (a) all claims for failure to pay minimum wages, including for all alleged off the clock work; (b)
19 all claims for failure to pay overtime wages, including all claims for the alleged omission of any
20 kind of remuneration when calculating an employee’s regular rate of pay, and all alleged claims of
21 off the clock work; (c) all claims for the failure to provide suitable seating; (d) all claims for
22 failure to provide reporting time pay; (e) all claims for failure to pay the regular rate of pay,
23 including for meal and rest break premiums and paid sick leave, as well as all claims for failure to
24 provide paid sick leave; (f) all claims for failure to maintain employment records, including
25 timekeeping and payroll records; (g) all claims for failure to provide compliant meal periods and
26 pay related premiums at the regular rate; (h) all claims for failure to provide compliant rest periods
27 and pay related premiums at the regular rate; (i) all claims for failure to reimburse business
28 expenses; (j) all claims for failure to pay timely current wages and associated penalties; (k) all

1 claims for failure to pay final wages; and (l) all claims for failure to provide accurate wages
2 statements.

3 (c) The “PAGA Period” means the period from September 27, 2020, and June
4 19, 2022.

5 9. This Court hereby grants final approval and awards the following: (i) \$236,645.59
6 for the Class Counsel Fees and Litigation Expenses Payment comprised of one-third of the Gross
7 Settlement Amount, or Two Hundred Twenty Thousand Dollars and Zero Cents (\$220,000.00)
8 (“Class Counsel Fees Payment”) and litigation expenses in the amount of Sixteen Thousand, Six
9 Hundred Forty-Five Dollars and Fifty-Nine Cents (\$16,645.59) (“Class Counsel Litigation
10 Expenses”); (ii) the Class Representative Service Payment to Class Representative, Eduardo
11 Ybarra, in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) in exchange for a
12 general release; (iii) Settlement Administration Costs of Ten Thousand Dollars and Zero Cents
13 (\$10,000.00) to ILYM Group, Inc.; (iv) Thirty Thousand Dollars and Zero Cents (\$30,000.00)
14 (75% of the PAGA Civil Penalty Payment) to the Labor and Workforce Development Agency
15 (“LWDA Payment”); and Ten Thousand Dollars and Zero Cents (\$10,000.00) (25% of the PAGA
16 Civil Penalty Payment) allocated to the Individual PAGA Payments.

17 10. Pursuant to the Declaration of Makenna Snow of ILYM Group, Inc., a total of
18 \$14,883.94 remains uncashed after the June 3, 2024, check cashing deadline date. Within
19 thirty (30) days of entry of the Amended Final Judgement pursuant to C.C.P. § 384(b), the
20 Uncashed Settlement Funds will be distributed to the cy pres: The Community Law Project
21 at 225 Cedar Street, San Diego, CA 92101.

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1 11. Plaintiff shall give notice of this Judgment to the Labor and Workforce
2 Development Agency within ten (10) days after entry of the Judgment or order pursuant to
3 California Labor Code section 2699(1)(3).

4 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO**
5 **ORDERED.**

6 09/20/2024
7 DATED: _____, 2024

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10 ~~Hon. Tara Desautels~~
11 JUDGE OF THE SUPERIOR COURT
12 **Michael Marknan / Judge**
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SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612		FILED Superior Court of California County of Alameda 09/24/2024 Chad Finke, Executive Officer / Clerk of the Court By: <u>A. Tumonong</u> Deputy
PLAINTIFF/PETITIONER: Eduardo Ybarra		
DEFENDANT/RESPONDENT: HELZBERGS DIAMOND SHOPS, LLC, a Missouri Limited Liability Company		
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6		CASE NUMBER: 21CV003531

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Judgment entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Shani Zakay
Zakay Law Group, APLC
shani@zakaylaw.com

Dated: 09/24/2024

Chad Finke, Executive Officer / Clerk of the Court

By:



A. Tumonong, Deputy Clerk