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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

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA ACTION
SETTLEMENT**

Date: October 4, 2022

Time: 3:00 p.m.

Reservation ID: 978588771577

Judge: Hon. Brad Seligman

Dept.: 23

I, Jean-Claude Lapuyade, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel of record for Plaintiff EDUARDO YBARRA (hereafter "Plaintiff") in this wage and hour class action filed against HELZBERG'S DIAMOND SHOPS, LLC (hereinafter "Defendant").

2. This declaration is being submitted in support of Plaintiff's motion for Preliminary Approval of Class Action Settlement.

I. EXHIBITS

3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Joint Stipulation of Class and Representative Action Settlement Agreement ("Agreement" or "Settlement Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class Notice.

4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement and Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class Counsel's compliance with California Labor Code Section 2699(l)(2).

5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement administration submitted by ILYM Group, Inc., in the amount of \$8,990.00.

II. INTRODUCTION

6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. Given that there are approximately 270 Class Members, the

1 average gross recovery is approximately \$1,314.81 (Net Settlement Amount divided by Class
2 Members).

3 7. As discussed below, the proposed Settlement satisfies all criteria for preliminary
4 settlement approval and falls within the range of reasonableness. The average Individual Class
5 Settlement Payment to the Participating Class Members meets or exceeds awards in similar wage and
6 hour class actions. Moreover, the proposed Class is appropriate for provisional certification.
7 Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement.

8 **III. FACTS AND PROCEDURE**

9 **A. Overview of the Litigation**

10 8. Defendant is a Missouri limited liability company that owns and operates a chain of
11 diamond and jewelry retail stores in California. This action asserts claims on behalf of Defendant's
12 non-exempt employees working in California. Plaintiff worked for Defendant as a non-exempt
13 employee in California between October of 2020 to July of 2021. At all times during his employment,
14 Plaintiff earned hourly wage, including overtime, and performance-based incentive compensation, and
15 was entitled to legally compliant meal and/or rest periods. Throughout his employment, Plaintiff was
16 subject to Defendant's written policies and procedures.

17 9. Generally, Plaintiff claims that Defendant failed to pay for all time worked, including,
18 time spent waiting for and undergoing mandatory loss prevention security checks, failed to provide
19 compliant meal and rest periods, failed to pay overtime, meal premiums, and sick pay, at the correct
20 regular rate of pay, failed to furnish accurate itemized wage statements, failed to pay all wages when
21 due and failed to reimburse employees for mandatory business expenses. Defendant forcefully denies
22 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
23 applicable employment laws and raised several other significant defenses to Plaintiff's claims, including
24 but not limited to, facially compliant meal and rest period policies, compliant wage statements, and
25 timely payment all wages due upon separation of employment.

26 10. On September 27, 2021, Plaintiff served Defendant and the Labor and Workforce
27 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA
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1 Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions
2 of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and
3 of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.
4 Code Sections 2698 et seq ("PAGA").

5 11. On December 3, 2021, Plaintiff filed a class action complaint in the Alameda Superior
6 Court, Case Number 21CV003531 ("Action"). The Action alleged nine causes of action against
7 Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§
8 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and
9 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4)
10 Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure
11 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to
12 Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide
13 Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Reimburse
14 Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; and (9) Violation of the
15 Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. On February 2, 2022, Defendant removed
16 the Action to the United States District Court, Northern District of California.

17 12. On April 13, 2022, Plaintiff filed a second PAGA Notice with the LWDA alleging several
18 additional wage and hour claims, including a new suitable seating claim, and seeking civil penalties and
19 other relief provided by PAGA.

20 13. Plaintiff and Defendant agreed to mediate the Action with Tripper Ortman, Esq., an
21 experienced wage and hour mediator. In anticipation of mediation, the Parties agreed to stay formal
22 discovery and continue deadlines for class certification in the Action. To prepare for mediation,
23 Defendant agreed to informally produce documents and data points subject to the mediation privilege,
24 including but not limited to, the Class Members' time data and certain payroll data points. As discussed
25 *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to
26 analyze Defendant's time and payroll data.

1 14. On April 19, 2022, the Parties participated in a full day mediation with Mr. Ortman. After
2 arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
3 Memorandum of Understanding. Subsequently, the Parties drafted and negotiated a long-form
4 settlement agreement, which is the subject of the instant motion. As part of the Agreement, the Parties
5 stipulated to remand the Action back to the Alameda Superior Court and Plaintiff filed a First Amended
6 Complaint adding the claims and causes of action included in both PAGA Notices and in the original
7 Complaint. The Parties now seek approval of the entire Agreement.

8 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

9 15. Months before filing the Action, Class Counsel began its pre-filing investigation into
10 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
11 Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,
12 including correspondence with Defendant, and time and payroll records. At the conclusion of the
13 interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry.

14 16. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In
15 response, Defendant produced hundreds of pages of documents, including but not limited to, copies of
16 Plaintiff's hiring documents, payroll and time records, various policies and separation documents. Class
17 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate
18 Plaintiff's claim that Defendant's failed to, among other things, pay for all time worked and to provide
19 compliant meal and rest periods.

20 17. Considering the many anticipated factual disputes, the Parties agreed, relatively early in
21 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
22 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and
23 Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant
24 produced the time records for the Class Members, aggregate workweek and pay period data for the
25 Class Members, average hourly rate for the Class Members, and copies of applicable handbooks,
26 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
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1 policies. In total, Defendant produced nearly 500 pages of pertinent policy documents and more than
2 1.1 million unique cells of time and payroll data for Class Counsel to analyze.

3 18. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
4 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
5 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
6 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
7 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data.

8 19. BCG analyzed Defendant's time and payroll data to assist in the development of various
9 damage models. Among other things, BCG determined the approximate number of work shifts,
10 workweeks, pay periods, average length of shift and average number of hours worked per week and pay
11 periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and
12 rest periods, the amount of paid missed meal period premiums paid during the Class Period, the amount
13 of underpayment of overtime, premiums, and sick time resulting from miscalculation of the regular rate
14 of pay, and the amount of off-the-clock work performed by the Class Members during the Class Period.

15 20. In advance of mediation, Class Counsel created a damage model predicated on the BCG
16 analysis. Class Counsel's model calculated Defendant's potential liability exposure while accounting
17 for the uncertainties of continued litigation. This damage model informed and guided Class Counsel
18 during the mediated settlement discussions.

19 21. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
20 determining Plaintiff's suitability as a putative class representative through interviews, background
21 investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims;
22 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
23 and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing
24 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
25 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
26 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
27 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
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1 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
2 independent assessment of the reasonableness of the terms to which the Parties have agreed.

3 **C. The Parties Settled at Mediation**

4 22. On April 19, 2022, the Parties conducted a full day of mediation with Tripper Ortman,
5 Esq., a highly regarded wage and hour mediator. Mediator Ortman helped manage the Parties'
6 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
7 made substantial progress with Mediator Ortman's assistance. Namely, the Parties exchanged
8 information regarding their respective claims and defense, including their respective evaluation of the
9 damages. After a full day of arm's length and adversarial negotiations, the mediation concluded in a
10 settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement.
11 Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of
12 the claims at issue.

13 23. Once the Parties reached a settlement, the Parties engaged in protracted negotiations
14 regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-
15 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement
16 is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate
17 and represent a reasonable compromise of the claims at issue.

18 **IV. ARGUMENT**

19 **A. The Court Should Preliminarily Approve the Proposed Class Action Settlement**

20 24. The Gross Settlement Amount of \$660,000 is fair and reasonable considering the nature
21 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
22 mediation, Class Counsel retained BCG to develop economic a damage model measuring Defendant's
23 liability exposure while accounting for the uncertainties of continued litigation. The model was
24 informed by Class Counsel's investigation, including the analysis of a significant sample of time and
25 payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA
26 Penalties) at approximately \$1,628,169 for actual damages (excluding interest and penalties), and
27 \$2,256,271 when also including interest and statutory penalties, if successful at trial. Thus, the Gross
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1 Settlement Amount of \$660,000 represents approximately 40% of Defendant's liability for damages,
2 and 29% of Defendant's *class-wide* liability exposure, as estimated by Class Counsel at the time of
3 mediation. The following summarizes Defendant's estimated exposure.

4 25. One of Plaintiff's primary claims in the Action was that Defendant failed to pay for all
5 hours worked. Specifically, Plaintiff asserted that Defendant failed to pay for all time spent waiting for
6 and undergoing mandatory loss prevention security checks. Recently, the California Supreme Court in
7 *Frlekin v. Apple, Inc.* 8 Cal.5th 1038 (2020) concluded that "[the] plaintiffs' time spent on [the
8 defendant's] premises waiting for, and undergoing, mandatory exit searches ... is compensable as
9 'hours worked.' " (*Id.* at 1058.) Plaintiff contends that Defendant maintained a similar policy at all of
10 its retail store locations in California during the Class Period.

11 26. Defendant vigorously denied liability for claim. Defendant asserted that its written
12 policies and procedures directed its California retail store managers to conduct all loss prevention
13 security checks while on-the-clock. Defendant asserted that any deviation from these written policies
14 were employee specific and, thus, created individualized issues of liability unsuitable for class
15 treatment.

16 27. Notwithstanding Defendant's arguments, Plaintiff perceived the off-the-clock as a strong
17 claim in the Action. Assuming fifteen (15) minutes of unpaid compensable time per shift worked by the
18 Class Members during the Class Period, made up of loss prevention security checks and other off-the-
19 clock tasks, BCG estimated Defendant's exposure for this claim at \$534,892, including interest.

20 28. Plaintiff also alleges that Defendant failed to provide compliant meal periods.
21 Specifically, Plaintiff contends that because of their rigorous work requirements and understaffing, the
22 Class Members were often denied complaint meal periods.

23 29. Conversely, Defendant asserted that it maintained facially compliant meal period policies
24 and practices throughout the Class Period. Thus, Defendant argued that there was no potential liability
25 for Plaintiff's alleged meal period violations.

26 30. Based on BCG's review of the Class Members' time records, Plaintiff estimated the
27 damages for this claim at approximately \$498,139, including interest.

1 31. Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
2 Plaintiff alleged that because of their rigorous work schedule, Class Members were not able to take timely
3 and duty-free rest periods.

4 32. Again, Defendant denied liability and asserted that it maintained legally compliant rest period
5 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens
6 establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class
7 Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely
8 would have argued that only a small number of Class Members missed their rest breaks. Certification likely
9 would have required depositions of Class Members who provided declarations, and Defendant surely would
10 have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily
11 waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because
12 of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written
13 rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United*
14 *Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own
15 evidence confirms that the written policy does not generate uniform practices."). Accordingly, the rest break
16 claim was heavily discounted in Plaintiff's valuation of the case at approximately \$528,977, including
17 interest.

18 33. Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses and
19 commissions when calculating the regular rate of pay when paying overtime wages, meal period
20 premiums and sick pay. Specifically, Defendant paid Class Members non-discretionary incentive
21 compensation in the form of "Commission," "Spiffs," and "TSI Team Incentive" payments, and had in
22 place the non-discretionary incentive programs, which were not properly calculated into the regular rate
23 of pay for purposes of overtime, meal period premiums, and sick pay.

24 34. Conversely, Defendant denied liability and asserted it paid Class Members at the correct
25 rate of pay for purposes of overtime wages, meal period premiums, and sick pay. Plaintiff estimated
26 Defendant's exposure for this claim at approximately \$55,713, including interest.

35. Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business expenses. Specifically, Plaintiff and Class Members, as business expenses, were required by Defendant to use their own personal cellular phones and their personal vehicles as a result of and in furtherance of their job duties as employees for Defendant but were not reimbursed or indemnified by Defendant for the cost associated with the use of their personal cellular phones or personal vehicles for Defendant's benefit.

36. Plaintiff estimated Defendant's exposure for this claim at approximately \$370,458, including interest.

37. Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Plaintiff would have to overcome precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's *maxim* exposure for these claims at approximately \$772,667 (approximately \$479,817 for waiting time and \$292,850 for wage statement).

38. Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$2,378,900.

39. In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor

Code by the defendant.”). Here, Plaintiff would need to prove that each PAGA Member suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the PAGA Members. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and manageability as to the rest period claims. In all, Plaintiff’s PAGA liability exposure is hotly contested.

B. Litigation Risks

40. Although Plaintiff is confident about the strength of his claims, it would be foolish to ignore the most immediate risk to continued litigation, i.e., class certification. Class certification is far from certain in this, in part, meal and rest period case. Class certification is routinely denied for meal and rest period claims based on an inability to establish predominance.

41. Plaintiff recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or substantially impair the value of Plaintiff’s lawsuit. Collectively, the examples cited in Plaintiff’s brief illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

42. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment.

43. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$660,000 that is roughly 29%-40% of Defendant’s maximum class wide liability exposure. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

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B. Proposed Notice Informs the Class About the Case and Settlement

44. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to request for exclusion or to object to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement.

45. As detailed in the Agreement, the method of disseminating the proposed Class Notice and contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

C. The Court Should Preliminarily Approve the Class Representative Service Payment

46. The 270 Class Members will share in the Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.

47. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Payment.

D. The Court Should Preliminary Approve the Class Counsel Fees Payment

48. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average

Individual Class Settlement Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Fees Payment is fair and reasonable.

49. Plaintiff will file a formal motion for the negotiated Class Counsel Fees Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

E. The Court Should Provisionally Certify the Settlement Class

50. For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate.

51. Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records.

52. The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class.

53. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, participating in mediation, and evaluating the proposed settlement to assure that it is fair.

54. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each

claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

F. Class Counsel's Experience

55. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Sydney Castillo-Johnson, Esq. (Associate), Tesla Stone (Paralegal), Maria Watters (Paralegal), Jennifer Heming (Administrative Assistant).

56. I am qualified to represent the Plaintiff, the State of California and the PAGA Members. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiff, the State of California and the PAGA Members throughout this action.

57. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 13 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

58. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

- a. *Nunes v. Home Depot U.S.A., Inc.* San Joaquin Superior Court Case No. Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross appointed the Jean-Claude Lapuyade, Esq. as Class Counsel and approved a \$1.5 million dollar wage and hour class and PAGA action settlement for, among things, unpaid off-the-clock work.

b. *Munoz v. AMTCR, Inc.*, San Bernardino Superior Court Case No. CIVDS2001914 (August 24, 2021 – Hon. David Cohn approved a \$1.85 million dollar wage and hour class and PAGA action for, among other things, inaccurate itemized wage statements, and appointed the JCL Law Firm, APC as Class Counsel.)

c. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

d. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

e. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)

f. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)

g. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

h. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL

Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

i. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)

j. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)

k. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)

l. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)

m. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

n. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

o. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)

p. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

q. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

r. *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

s. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

t. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

u. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law

Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

v. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

w. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

x. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

y. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

z. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

aa. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

59. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered in excess of \$75 million on behalf of the Firm’s clients.

60. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm’s clients.

61. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

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62. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 8th day of September 2022, at San Diego, California.

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorneys for Plaintiff

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.

EXHIBIT 2

EXHIBIT 3

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Ybarra v. Helzberg's

Tuesday, May 31, 2022

Requesting Attorney:

Eddie Garcia

Requesting Attorney's E-mail:

EGarcia@jcl-lawfirm.com

ILYM Contact

Sean Hartranft

E-Mail

Sean@ilymgroupclassaction.com

Contact Number

949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Estimated Number of Class Members	270
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	5	\$600.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	4	\$280.00
NCOA	Per Piece	\$70.50	1	\$70.50
Toll-Free Phone Support	Flat Fee	\$95.00	1	\$95.00
ILYM Group Static Website, Including Hosting	Flat Fee	\$750.00	1	\$750.00
Status Reports	Flat Fee	\$750.00	1	Waived

Subtotal \$2,005.50

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING

Initial Mailing, Fulfillment of Notices	Per Piece	\$2.00	270	\$540.00
USPS First Class Postage	Per Piece	\$0.55	270	\$148.50
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	54	\$135.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$1,123.50

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Check, Stub & Release - Print & Mail (including W2 and/or 1099)**	Per Check	\$2.00	270	\$540.00
Check Mailing Postage	Per Piece	\$0.55	270	\$148.50
Reminder Mailing, Includes Postage	Per Piece	\$2.50	27	\$67.50
Preparation of Taxes	Hourly	\$120.00	12	\$1,440.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$4,521.00

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$690.00

Total Case Estimate: \$8,990.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. **Attached here to is Exhibit D:** ILYM hereby incorporates the attached Exhibit D into the terms and conditions herein and Exhibit D shall be a part of this agreement. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.