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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

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

Plaintiffs,

vs.

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

Defendants.

Case No. 21CV003531

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: August 15, 2023
Time: 3:00 p.m.

Judge: Hon. Brad Seligman
Dept.: 23

1 Plaintiff's motion for an order finally approving the First Amended Joint Stipulation of
2 Class and Representative Action Settlement Agreement ("Agreement") and Motion for Class
3 Counsel Fees and Litigation Expenses Payment and Class Representative Service Payment duly
4 came on for hearing on August 15, 2023, before the above-entitled Court. Zakay Law Group,
5 APLC, and the JCL Law Firm, APC, appeared on behalf of Plaintiff EDUARDO YBARRA
6 ("Plaintiff"). Ogletree, Deakins, Nash, Smoak & Stewart, P.C. appeared on behalf of Defendant
7 HELZBERG'S DIAMOND SHOPS, LLC, a Missouri Limited Liability Company (hereinafter
8 "Defendant").

9 **I.**

10 **FINDINGS**

11 Based on the oral and written argument and evidence presented in connection with the
12 motion, the Court makes the following findings:

13 1. All capitalized terms used herein shall have the same meaning as defined in
14 the Agreement.

15 2. This Court has jurisdiction over the subject matter of this litigation pending
16 in the California Superior Court for the County of Alameda ("Court"), Case No. 21CV003531,
17 entitled *Ybarra v. Helzberg's Diamond Shops, LLC* and over all Parties to this litigation, including
18 the Class.

19 **Preliminary Approval of the Settlement**

20 3. On October 24, 2022, the Court granted preliminary approval of a class-
21 wide settlement. At this same time the court approved certification of a provisional settlement
22 class for settlement purposes only. The Court confirms this Order and finally approves the
23 settlement and the certification of the Class.

24 **Notice to the Class**

25 4. In compliance with the Preliminary Approval Order, the Class Notice was
26 mailed by first class mail to the Class Members at their last known addresses on February 2, 2023.
27 After the Notices were mailed, it was found that the Notice contained inaccurate information with
28 respect to the workweek count. Additionally, the Notice was erroneously mailed to some of

1 Defendant's employees who did not work for Defendant during the Class Period and are therefore
2 not Class Members in this Action.

3 5. On May 24, 2023, revised Class Notices with accurate information were
4 mailed to each Class Member via U.S First Class Mail. Mailing of the Class Notice to their last
5 known addresses was the best notice practicable under the circumstances and was reasonably
6 calculated to communicate actual notice of the litigation and the proposed settlement to the
7 members of the Class Members. The Court finds that the Class Notice provided fully satisfies the
8 requirements of California Rules of Court, rule 3.769.

9 6. The Response Deadline for opting out or objecting was July 8, 2023. There
10 was an adequate interval between notice and deadline to permit Class Members to choose what to
11 do and act on their decision. No Class Members objected. No Class Members requested
12 exclusion.

13 **Fairness Of The Settlement**

14 7. The Agreement provides for a Gross Settlement Amount of \$660,000.00.
15 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
16 Cal.App.4th 1794, 1801.)

17 a. The settlement was reached through arms-length bargaining between
18 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
19 settlement.

20 b. The Parties' investigation and discovery have been sufficient to
21 allow the Court and counsel to act intelligently.

22 c. Counsel for all parties are experienced in similar employment class
23 action litigation and have previously settled similar class claims on behalf of employees claiming
24 compensation. All counsel recommended approval of the Settlement.

25 d. No objections were received. No requests for exclusion were
26 received.

27 e. The participation rate is high. All Class Members will be
28 participating in the Settlement and will be sent settlement payments.

1 8. The consideration to be given to the Class Members under the terms of the
2 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the
3 claims asserted in this Action and is fair, reasonable, and adequate compensation for the release of
4 the Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
5 litigation and the delays which would ensue from continued prosecution of the Action.

6 9. The Agreement is finally approved as fair, adequate, and reasonable and in
7 the best interests of the Participating Class Members.

8 **PAGA Civil Penalty Payment**

9 10. The Agreement provides for a payment of PAGA Civil Penalty Payment in
10 the amount of \$40,000.00. The Court has reviewed the PAGA Civil Penalty Payment and finds
11 and determines that the PAGA Civil Penalty Payment and the allocation of \$30,000.00 to LWDA
12 and \$10,000.00 of the PAGA Civil Penalty Payment to PAGA Members is fair and reasonable and
13 complies with the requirements set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

14 **Class Counsel Fees and Litigation Expenses**

15 11. The Agreement provides for a Class Counsel Fees and Litigation Expenses
16 Payment in the amount of up to Two Hundred, Thirty-Six Thousand, Six Hundred Forty-Five
17 Dollars and Fifty-Nine Cents (\$236,645.59). Subject to Court approval, the Class Counsel Fees
18 and Litigation Expenses consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement
19 Amount, or Two Hundred Twenty Thousand Dollars and Zero Cents (\$220,000.00) and
20 reimbursement of costs and expenses in the amount of Sixteen Thousand, Six Hundred Forty-Five
21 Dollars and Fifty-Nine Cents (\$16,645.59).

22 12. A Class Counsel Fees and Litigation Expenses of Two Hundred, Thirty-Six
23 Thousand, Six Hundred Forty-Five Dollars and Fifty-Nine Cents (\$236,645.59) comprised of
24 attorneys' fees in the amount of Two Hundred Twenty Thousand Dollars and Zero Cents
25 (\$220,000.00) and reimbursement of costs and expenses in the amount of Sixteen Thousand, Six
26 Hundred Forty-Five Dollars and Fifty-Nine Cents (\$16,645.59) is reasonable in light of the
27 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
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1 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common
2 fund, which is reasonable, and is supported by Class Counsel's lodestar.

3 **Class Representative Service Payment**

4 13. The Agreement provides for a Class Representative Service Payment of up
5 to Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff, Eduardo Ybarra, subject to the
6 Court's approval. The Court finds that the amount of Ten Thousand Dollars and Zero Cents
7 (\$10,000.00) is reasonable in light of the risks and burdens undertaken by the Plaintiff in this class
8 action litigation.

9 **Administration Expenses**

10 14. The Agreement provides for Administration Expenses to be paid in an
11 amount not to exceed \$10,000.00. The Declaration of the Settlement Administrator provides that
12 the actual claims administration expenses were \$10,000.00. The amount of this payment is
13 reasonable in light of the work performed by the Settlement Administrator.

14 **II.**

15 **ORDERS**

16 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

17 1. The Class is certified for the purposes of settlement only. The Settlement
18 Class is hereby defined to include:

19 All persons who are or previously were employed by Defendant in California and
20 classified as non-exempt employees from December 3, 2017, to June 19, 2022.

21 2. There are 352 members of the Class. Every person in the Class who did not
22 opt out is a Participating Class Member. After providing Notice to the Class, there are zero opt-
23 outs to the Settlement.

24 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
25 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
26 this Order and the terms of the Agreement.

27 4. Defendant shall fund the Gross Settlement Amount on the Funding Date. In
28 exchange the Class Members shall release the "Released Parties" from the "Released Class

1 Claims” and the “PAGA Members” shall release the “Released Parties” from the “Released
2 PAGA Claims.”

3 a. The “Released Parties” means Helzberg Diamond Shops, LLC and
4 its past, present and/or future, direct and/or indirect, owners, officers, directors, members,
5 managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries,
6 affiliates, successors, and assigns.

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

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

7 d. The “Released PAGA Claims” are defined as all claims and causes
8 of action for civil penalties under PAGA as alleged in, and that could have been alleged based on
9 the facts of the PAGA Letters and in the Action, and that seek civil penalties pursuant to PAGA
10 and other relief available pursuant to the PAGA against the Released Parties. Regardless of
11 whether any Class Member opts out of the Class Settlement, they will still be bound by the PAGA
12 Release if they are PAGA Members. The period of the PAGA Release is the PAGA Period. The
13 Released PAGA claims include claims for civil penalties pursuant to PAGA as a result of the
14 following categories of allegations, to the fullest extent such claims are fully and forever
15 releasable by law: (a) all claims for failure to pay minimum wages, including for all alleged off the
16 clock work; (b) all claims for failure to pay overtime wages, including all claims for the alleged
17 omission of any kind of remuneration when calculating an employee’s regular rate of pay, and all
18 alleged claims of off the clock work; (c) all claims for the failure to provide suitable seating; (d)
19 all claims for failure to provide reporting time pay; (e) all claims for failure to pay the regular rate
20 of pay, including for meal and rest break premiums and paid sick leave, as well as all claims for
21 failure to provide paid sick leave; (f) all claims for failure to maintain employment records,
22 including timekeeping and payroll records; (g) all claims for failure to provide compliant meal
23 periods and pay related premiums at the regular rate; (h) all claims for failure to provide compliant
24 rest periods and pay related premiums at the regular rate; (i) all claims for failure to reimburse
25 business expenses; (j) all claims for failure to pay timely current wages and associated penalties;
26 (k) all claims for failure to pay final wages; and (l) all claims for failure to provide accurate wages
27 statements.

1 5. Class Counsel are awarded attorneys' fees in the amount of \$236,645.59
2 comprised of attorneys' fees in the amount of Two Hundred Twenty Thousand Dollars and Zero
3 Cents (\$220,000.00) and reimbursement of costs and expenses in the amount of Sixteen Thousand,
4 Six Hundred Forty-Five Dollars and Fifty-Nine Cents (\$16,645.59). Class Counsel shall not seek
5 or obtain any other compensation or reimbursement from Defendants, Plaintiff, or members of the
6 Class.

7 6. The payment of the Class Representative Service Payment to the Plaintiff in
8 the amount of \$10,000.00 is approved.

9 7. The payment of \$10,000.00 to the Settlement Administrator for
10 Administration Expenses is approved.

11 8. The PAGA Civil Penalty Payment of \$40,000.00 is hereby approved as fair,
12 reasonable, adequate, and adequately protects the interests of the public and the LWDA. Further,
13 the Court finds that Plaintiff and Class Counsel negotiated the PAGA Civil Penalty Payment at
14 arms-length, absent of any fraud or collusion.

15 9. Final Judgment is hereby entered in this action. The Final Judgment shall
16 bind each Participating Class Member.

17 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
18 California and all PAGA Members, pursuant to the California Private Attorneys' General Act
19 ("PAGA").

20 11. The Court further finds and determines that Class Counsel satisfied
21 California Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of
22 claims arising under the Private Attorney General Act ("PAGA") on September 8, 2022, and again
23 on July 21, 2023.

24 12. The Court orders Class Counsel to comply with California Labor Code §
25 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the
26 Court's entry of this Order.

27 13. The Agreement is not an admission by Defendant, nor is this Final
28 Approval Order and Judgment, a finding of the validity of any claims in the Action or of any

1 wrongdoing by Defendant. Neither this Final Approval Order, the Settlement, nor any document
2 referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may
3 be used as an admission by or against Defendant of any fault, wrongdoing, or liability whatsoever.
4 The entering into or carrying out of the Agreement, and any negotiations or proceedings related
5 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
6 concession with regard to the denials or defenses by Defendant and shall not be offered in
7 evidence in any action or proceeding against Defendant in any court, administrative agency or
8 other tribunal for any purpose as an admission whatsoever other than to enforce the provisions of
9 this Final Approval Order and Judgment, the Settlement, or any related agreement or release.
10 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
11 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
12 records on file in the Action as evidence of the Settlement to support a defense of res judicata,
13 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
14 claims being released by the Settlement.

15 14. Notice of entry of this Final Approval Order and Judgment shall be given to
16 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send
17 notice of entry of this Final Approval Order and Judgment to individual Class Members and the
18 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
19 indicated in the Class Notice.

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

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1 16. If the Settlement does not become final and effective in accordance with the
2 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
3 Defendant consistent with the terms of the Settlement, then this Final Approval Order and
4 Judgment, and all orders entered in connection herewith shall be rendered null and void and shall
5 be vacated.

6 **IT IS SO ORDERED.**

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8 DATED: _____, 2023

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10 _____
11 Hon. Brad Seligman
12 JUDGE OF THE SUPERIOR COURT
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