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11 MICHELLE NOURIAN MARTINEZ

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 MICHELLE NOURIAN MARTINEZ, on
15 behalf of herself and all others similarly
16 situated,

17 Plaintiff,

18 vs.

19 HELZBERG'S DIAMOND SHOPS,
20 INC., and DOES 1-25 inclusive,

21 Defendant.

Case No. 5:20-cv-01085-PSG-SHK

**[PROPOSED] ORDER
GRANTING MOTION FOR FINAL
APPROVAL OF CLASS
SETTLEMENT AND AWARDED
ATTORNEYS' FEES, COSTS,
AND SERVICE AWARD**

Date: September 10, 2021
Time: 1:30 p.m.
Courtroom: 6A (6th Floor)
Judge: Hon. Philip S.
Gutierrez

22 The Unopposed Motions for Final Approval of Settlement and for
23 Attorneys' Fees, Costs, and Service Awards, filed by Plaintiff Michelle Nourian
24 Martinez came on for hearing on September 10, 2021, at 1:30 p.m. in
25 Courtroom 6A of the above captioned court, the Honorable Philip S.
26 Gutierrez presiding. Defendant Helzberg Diamond Shops, Inc. ("Defendant")
27 did not oppose the motions.

28 Plaintiff filed the initial complaint in this Court on May 26, 2020. (Dkt. #1).
That same day, Plaintiff submitted a PAGA notice to the Labor and Workforce
Development Agency ("LWDA"). (Dkt #__-1 ("Hoyer Dec.") at ¶12). Following

[PROPOSED] ORDER GRANTING MOTIONS FOR FINAL APPROVAL OF CLASS SETTLEMENT,
ATTORNEYS' FEES, COSTS, AND SERVICE AWARD.

1 the expiration of the LWDA 65-day response period, on August 7, 2020,
2 Plaintiff filed the operative Amended Complaint, adding a claim for PAGA
3 penalties. (Dkt. # 20). Defendant timely answered on September 1, 2020. (Dkt.
4 # 26). The parties exchanged their initial disclosures, and Plaintiff propounded
5 a full set of discovery requests. (Dkt. #__-1. at ¶ 14). Shortly thereafter, the
6 Parties agreed to mediate the case. *Id.* In addition to the informal discovery,
7 the Parties agreed to a *Belaire* notice process completed in December 2020.
8 *Id.* at ¶12.

9 The substantial informal discovery that occurred prior to the mediation
10 included aggregate information regarding the total workweeks, wage rates,
11 pay periods and class members, as well as actual timekeeping data, payroll
12 documents, and internal store staffing data for an audit sample of employees
13 to confirm the other class wide data provided. *Id.* at ¶¶14-19. The Parties
14 agreed to stay all formal proceedings pending the mediation. *Id.* at ¶14.

15 In addition to the extensive pre-certification, voluntary exchange of
16 information, the Parties each conducted independent investigations and fact-
17 finding. *Id.* Plaintiff's counsel interviewed ten (10) CMs, two (2) of whom
18 executed sworn declarations, four (4) of whom were willing only to provide
19 anonymous written statements, and one of whom (1) eventually changed their
20 mind and retracted their statement out of fear of retaliation. *Id.* at ¶15.

21 On February 5, 2021, the Parties participated in an exhaustive full-day
22 mediation session via Zoom before Steve Pearl, Esq., a highly respected
23 neutral mediator out of the Los Angeles area, who specializes in wage and
24 hour mediations. *Id.* at ¶22. Plaintiff submitted a mediation brief summarizing
25 the evidence that counsel had marshalled and synthesized, the state of the
26 applicable law, and potential individual and class-wide exposure. *Id.*
27 Defendant submitted its own brief arguing that no class could be certified and

1 that they would also prevail on the merits against the individual Plaintiff and
2 any other PCMs, and brought fifteen (15) supporting declarations, constituting
3 roughly 48% of the putative class. *Id.* at ¶¶39, 46. With Mediator Pearl's
4 assistance, the Parties agreed, subject to approval by this Court, to a
5 Settlement of the Actions. *Id.* The Parties executed the Settlement Agreement
6 on March 2, 2021. *Id.* at ¶22; Ex. 1.

7 The August 7, 2020 operative Amended Complaint asserts six causes of
8 action under the California Labor Code, applicable Industrial Welfare
9 Commission ("IWC") Wage Orders, and Bus. and Profs. Code §§ 17200, *et*
10 *seq.* ("UCL"). Plaintiff alleges class and collective violations on behalf of
11 herself and the Class for: (1) failure to provide minimum, straight time, and
12 overtime wages; (2) failure to authorize, permit, and/or make available meal
13 and rest periods; (3) waiting time penalties; (4) failure to provide accurate
14 wage statements; (5) violation of the UCL for unlawful, unfair, and/or
15 fraudulent business acts or practices; and (6) penalties pursuant to the
16 California Private Attorney General Act ("PAGA"). (Dkt. # 20).

17 On March 5, 2021, Plaintiff filed her unopposed motion for preliminary
18 approval of the Settlement, which this Court granted on April 12, 2021. (Dkt.
19 No. 31.) Before the Court is the last stage of the settlement approval process:
20 final approval of the settlement, including approval of attorneys' fees, costs,
21 and service awards.

22 Appearing at the final approval hearing was counsel for Defendant as
23 noted in the record and Ryan L. Hicks of Hoyer & Hicks on behalf of Plaintiff
24 and the Class.

25 Having reviewed the papers and documents presented, having heard
26 the statements of counsel, having considered the matter, the Court HEREBY
27 ORDERS as follows:

28 [PROPOSED] ORDER GRANTING MOTIONS FOR FINAL APPROVAL OF CLASS SETTLEMENT,
ATTORNEYS' FEES, COSTS, AND SERVICE AWARD.

1 1. All terms used herein shall have the same meaning as defined in the
2 Settlement Agreement. (Dkt. #30-1, Exhibit 1: "the Settlement Agreement").

3 2. This Court has jurisdiction over the subject matter of this litigation and
4 over the Parties to this litigation, including all Class Members.

5 3. Final approval shall be with respect to the Class. The Class is defined
6 as all employees of Defendant who worked as a Store Manager in California
7 at any time during the period from April 6, 2016 through April 12, 2021.

8 4. The Court has jurisdiction over the claims of the Class Members
9 asserted in this proceeding and over all Parties to the action.

10 5. The Court finds that zero (0) Class Members have objected to the
11 Settlement and zero (0) Class Members have requested exclusion from the
12 Settlement.

13 6. The Court hereby GRANTS FINAL APPROVAL of the terms and
14 conditions contained in the Settlement as to the California Class, originally
15 filed at Dkt. #30-1, Ex. 1. The Court finds that the terms of the Settlement are
16 within the range of approval, pursuant to Federal Rule of Civil Procedure 23
17 and applicable law.

18 7. The Court finds that: (1) the settlement amount is fair and reasonable to
19 the Class Members when balanced against the probable outcome of further
20 litigation relating to class certification, liability and damages issues, and
21 potential appeals; (2) significant informal discovery, investigation, research,
22 and litigation have been conducted such that counsel for the Parties at this
23 time are able to reasonably evaluate their respective positions; (3) settlement
24 at this time will avoid substantial costs, delay, and risks that would be
25 presented by the further prosecution of the litigation; and (4) the proposed
26 Settlement has been reached as the result of intensive, serious, and non-

1 collusive negotiations between the Parties. Accordingly, the Court preliminarily
2 finds that the Stipulation of Settlement was entered into in good faith.

3 8. The Court hereby makes final its earlier conditional certification of the
4 Class, in accordance with the Settlement, for the purposes of this Settlement
5 only. The Class is defined as “all individuals who work or worked in a Covered
6 Position (as defined in the Settlement Agreement) during the Covered Time
7 Frame (as defined in the Settlement Agreement) and who do not validly
8 exclude themselves from this settlement”

9 9. The Court hereby confirms the appointment of Simpluris, Inc. as
10 Settlement Administrator for the purpose of the Settlement, and approves its
11 reasonable administration costs not to exceed \$3,750.00 which are to be paid
12 from the total Settlement.

13 10. The Court hereby FINALLY APPOINTS Hoyer & Hicks, Richard A Hoyer
14 and Ryan L. Hicks as Counsel for the Class, and Plaintiff as class
15 representative for the Class.

16 11. The Court finds that the approved Class Notice (originally submitted to
17 the Court at Dkt. #30-1, Ex. 1 to the Settlement Agreement) constituted the
18 best notice practicable under the circumstances and are is in full compliance
19 with the applicable laws and the requirements of due process. The Court
20 further finds that the Class Notice fully and accurately informed the Class
21 Members of all material elements of the proposed Settlement, of the Class
22 Members’ right to be excluded from the Settlement, and of each Class
23 Member’s right and opportunity to object to the Settlement. The Court has also
24 been advised that Plaintiff has given all of the notices required by the PAGA,
25 and the LWDA has not provided any comment to the Court regarding any
26 objection to the Settlement. A full opportunity has been afforded to the Class
27 Members to participate in this hearing and all Class Members and other

1 persons wishing to be heard have been heard. Accordingly, the Court
2 determines that all Class Members, since none timely and properly executed a
3 request for exclusion, are bound by this Order and the Judgment.

4 12. The Court FINALLY APPROVES Class Counsel's request for attorneys'
5 fees of one-third of the Gross Settlement Amount, for a total of \$158,333.33 in
6 fees. This amount is justified under the common fund doctrine, the range of
7 awards ordered in this District and Circuit, the excellent results obtained,
8 substantial risk borne by Class Counsel in litigating this matter, the high
9 degree of skill and quality of work performed, financial burden imposed by the
10 contingency basis of Class Counsel' representation of Plaintiffs and the Class,
11 and additional work required of them to bring this Settlement to conclusion.
12 The Court further finds the fees award further supported by the lodestar
13 crosscheck, whereby it finds that Hoyer & Hicks's hourly rates are
14 reasonable,¹ the estimated hours expended are reasonable, and the
15 application of a multiplier is reasonable.

16 13. The Court FINALLY APPROVES Class Counsel's request for costs in
17 the amount of \$6,715.00.

18 14. The Court FINALLY APPROVES a service award of \$10,000 for Plaintiff
19 and finds that the award is fair and reasonable for the work Plaintiff provided
20 to the Class and the broader release she executed than the Class Members.

21 15. Defendant and the other Class Members' Released Parties shall have
22 no further liability for costs, expenses, interest, attorneys' fees, or for any
23 other charge, expense, or liability, except as provided in the Settlement
24 Agreement.

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27 ¹ The Court hereby approves the hourly rates of Richard A. Hoyer of \$725,
28 Ryan L. Hicks of \$525, Eisha Perry of \$350, and \$150 for paralegal/law clerk
work.

16. The Court further orders, adjudges and decrees that the Class Members, and each of them, fully and finally release and forever discharge Defendant and the Released Parties, as described in the Settlement Agreement.

17. The Court further orders, adjudges and decrees that, in consideration of their awarded attorneys' fees and expenses, Class Counsel waive any and all claims to any further attorneys' fees and expenses in connection with the Lawsuit and the Settlement.

18. Accordingly, GOOD CAUSE APPEARING, the Court hereby APPROVES following implementation schedule:

Final Approval Hearing	September 30, 2021
Effective Date	(a) if no objections to the settlement are filed, then the Effective Date shall be the date of final court approval; or (b) if objections to the settlement are filed, the date of final court approval of the Settlement and the expiration of the time to file appeals or the resolution of any appeals filed.
Defendant to provide Maximum Settlement Amount to Simpluris	20 Calendar days after Settlement Calculation or 10 calendar days after Effective Date, whichever is later.
Fees and costs, Class Representative Award, Class awards, LWDA payment to be paid by Simpluris	No later than 14 calendar days after Defendant deposits Settlement Fund Deposit Amount into QSF.
Simpluris to stop payment on checks for CMs that do not timely opt-out and so receive a payment, but do not cash settlement check and transmit funds to the California State Controller's Office Unclaimed Property Fund	180 days after issuance of awards

1 19. The Court further ORDERS that, pending further order of this Court, all
2 proceedings in this Lawsuit, except those contemplated herein and in the
3 Settlement, are stayed.

4 20. With this final approval of the Settlement, it is hereby ordered that all
5 claims that are released as set forth above and in the Settlement are hereby
6 barred.

7 21. The Court shall retain jurisdiction to enforce the terms of the Settlement.
8 IT IS SO ORDERED.

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11 Date: _____

12 _____
13 Hon. Philip S. Gutierrez
14 U.S. District Court Judge
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