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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

SAUL ELIZARRARAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FUTURE FOAM, INC., a Nebraska
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 30-2020-01152286-CU-OE-CXC
[Assigned to Hon. Glenda Sanders, CX101]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT**

Complaint filed: May 8, 2019

The Motion for Final Approval of the Settlement (the “Final Approval Motion”) as set forth in the Class Action Settlement Agreement and Release of Claims¹ (the “Settlement Agreement”) came for hearing in Department CX101 of the above-entitled court on August 5, 2022. The Final Approval Motion was unopposed by Defendant Future Foam, Inc. Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials properly before the Court and having conducted an inquiry pursuant to California Rules of Court, Rule 3.769(g), the Court finds that the Settlement Agreement was entered by all parties in good faith, and the Settlement Agreement is approved. Due and adequate notice

¹ See Exhibit A to the Declaration of Brian Mankin in Support of Motion for Final Approval.

1 having been given to the Class, and the Court having considered the Settlement Agreement, all
2 papers filed and proceedings had herein and all oral and written comments received regarding the
3 proposed settlement, and having reviewed the record in this Litigation, and good cause
4 appearing,

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

6 1. The Court, for purposes of this Judgment and Order (“Judgment”), refers to all
7 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

8 2. The Court has jurisdiction over the subject matter over this Action, the Class
9 Representative, the Class Members, the Aggrieved Employees, the Labor and Workforce
10 Development Agency (“LWDA”), and Defendant.

11 3. The Court finds that the distribution of the Class Notice, as provided for in the
12 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
13 under the circumstances to all Class Members and fully met the requirements of California law
14 and due process under the California and United States Constitution. Based on evidence and
15 other material submitted, the actual notice to the class was adequate. The Court further finds that
16 Plaintiff properly gave notice of this Settlement to the LWDA .

17 4. The Court finds that the instant Action presented a good faith dispute of the
18 claims alleged, and the Court finds in favor of settlement approval. Specifically, as defined in
19 the Settlement Agreement, the Released Claims on behalf of the Class included (1) failure to pay
20 minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal
21 periods, (4) failure to provide rest breaks, (5) failure to timely pay wages each period and upon
22 separation of employment, (6) failure to provide accurate itemized wage statements, (7) failure to
23 pay sick pay at the proper rate, and (8) unfair and unlawful competition. Additionally, Plaintiff
24 brought the PAGA Released Claims on behalf of the State of California and Aggrieved
25 Employees, which included claims seeking civil penalties based on or arising from alleged
26 violations of the California Labor Code for (a) failure to pay minimum and regular wages, (b)
27 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
28 breaks, (e) failure to failure to timely pay wages each period and upon separation of

1 employment, (f) failure to provide accurate itemized wage statements, (g) failure to provide
2 suitable seating; and (h) failure to pay sick pay at the proper rate.

3 5. There were two valid Requests for Exclusion from the Settlement: Kianoosh J
4 Baher and Joseph V Amaya. Except for these individuals, all Participating Class Members are
5 entitled to payment pursuant to the Settlement and this Judgment. Furthermore, all Aggrieved
6 Employees are entitled to payment pursuant to this Settlement and Judgment.

7 6. There are no objections to the Settlement.

8 7. The Court approves the Settlement, as set forth in the Settlement Agreement and
9 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling
10 Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the
11 Settlement Agreement and this Order and Judgment.

12 8. The Settling Parties are to bear their own costs, except as otherwise provided in
13 the Settlement Agreement and this Order and Judgment.

14 9. For purposes of effectuating this Order and Judgment, this Court has certified the
15 following the class:

16 a. "Settlement Class" is defined as all current and former non-exempt
17 employees of Defendant who worked in California at any time during the Class Period.
18 The Class Period is July 31, 2016, through April 18, 2022.

19 b. The Court deems this definition sufficient for purposes of California Rules
20 of Court, rule 3.765(a).

21 c. "Aggrieved Employees" is defined as all current and former non-exempt
22 employees of Defendant who worked in California at any time during the PAGA Period.
23 The PAGA Period is July 31, 2019, through April 18, 2022.

24 10. With respect to the Settlement Class and for purposes of approving this
25 Settlement, this Court finds and concludes as follows: (a) the Class Members are ascertainable
26 and so numerous that joinder of all members is impracticable; (b) there are questions of law or
27 fact common to the Settlement Class Members, and there is a well-defined community of interest
28 among the Settlement Class Members with respect to the subject matter of the Action; (c) the

1 claims of the Class Representative are typical of the claims of the Class Members; (d) the Class
2 Representative has fairly and adequately protected the interests of the Class Members; (e) a class
3 action is superior to other available methods for an efficient adjudication of this controversy; and
4 (f) the counsel of record for the Class Representative, *i.e.*, Class Counsel, are qualified to serve
5 as counsel for the Plaintiff in their individual and representative capacity and for the Settlement
6 Class.

7 11. By this Judgment, the Class Representatives shall release, relinquish, and
8 discharge the Released Class Claims and the PAGA Released Claims, as defined in the
9 Settlement Agreement. Additionally, by this Judgment, each of the Participating Class Members
10 shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever
11 released, relinquished, and discharged all Released Class Claims. Additionally, by this
12 Judgment, each of the Aggrieved Employees shall be deemed to have, and by operation of the
13 Judgment shall have, fully, finally, and forever released, relinquished, and discharged all PAGA
14 Released Claims.

15 12. Neither the Settlement Agreement nor the Settlement contained therein, nor any
16 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
17 or the Settlement (i) is or may be deemed to be or may be used by plaintiff or Participating Class
18 Members as an admission of, or evidence of, the validity of any of the Released Class Claims, or
19 of any wrongdoing or liability of Defendant or any of the other Released Parties; or (ii) is or may
20 be deemed to be or may be used by plaintiff or Aggrieved Employees as an admission of, or
21 evidence of, the validity of any of the PAGA Released Claims, or of any wrongdoing or liability
22 of Defendant or any of the other Released Parties; or (iii) is or may be deemed to be or may be
23 used by plaintiff, Participating Class Members, or Aggrieved Employees as an admission of, or
24 evidence of, any fault or omission of Defendant or any of the other Released Parties in any civil,
25 criminal, or administrative proceeding in any court, administrative agency, or other tribunal.
26 Defendant or any of the other Released Parties may file the Settlement Agreement and/or the
27 Judgment from this Action in any other action that may be brought against it or them in order to
28 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,

1 good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue
2 preclusion or similar defense or counterclaim.

3 13. The "Settlement Amount" to be paid under the Settlement Agreement is
4 \$1,200,000. From this amount, Class Counsel *sought* an award of attorney's fees of \$400,000,
5 litigation expenses of \$11,052.88, Service Payment of \$10,000 for Class Representative Saul
6 Elizarraras, \$6,000 to the Settlement Administrator, ILYM Group, and \$37,500 to the LWDA for
7 PAGA penalties and \$12,500 to the Aggrieved Employees. Defendant does not oppose these
8 requests. The Court finds that the Settlement Amount is fair, reasonable and adequate, and
9 approves the following payments from the Settlement Amount:

- 10 A) \$400,000 to Class Counsel for attorneys' fees;
11 B) \$11,052.88 to Class Counsel for costs/expenses;
12 C) \$10,000 as a Service Award for Class Representative Elizarraras;
13 D) \$6,000 to the Settlement Administrator, ILYM Group;
14 E) \$37,500 to the LWDA;
15 F) \$12,500 to the Aggrieved Employees;
16 F) After deducting the foregoing payments from the Settlement Amount, the
17 remainder shall form the Net Settlement Amount payable to the Participating Class
18 Members as set forth in the Settlement Agreement and as calculated by the Settlement
19 Administrator.

20 14. Defendant is directed to fund the Settlement Amount in accordance with the
21 Settlement Agreement and the timeline set forth below. The Settlement Administrator is directed
22 to calculate the Participating Class Member's Individual Settlement Payments from the Net
23 Settlement Amount, as well as the Aggrieved Employees' individual payments, and issue all
24 payments in accordance with the Settlement Agreement and the timeline set forth below:

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61 days following the date this Order is entered (if no timely appeal is filed)	The Effective Date occurs.
15 calendar days after the Effective Date	Defendant is directed to issue the Settlement Amount to the Settlement Administrator, plus pay its share of payroll taxes as calculated by the Settlement Administrator.
10 days after receipt of Payment	Settlement Administrator to issue all payments.
180 days after payment is issued	Deadline for Participating Class Members and Aggrieved Employees to cash checks.
June 15, 2023	Counsel to file a declaration from the Settlement Administrator setting forth the disbursements that were actually made, including status of issuing any uncashed funds to the State Controller.

15. The envelope transmitting the settlement checks shall bear the notation “YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED.” Concurrently with mailing the settlement checks to the Participating Class Members and Aggrieved Employees, the Settlement Administrator shall include a Notice of Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the check for the Participating Class Members, noting the following: “Please be advised that on [INSERT DATE] the Superior Court of California for the County of Orange entered Judgment in the case entitled *Elizarraras v. Future Foam, Inc.*, Case No. 30-2020-01152286-CU-OE-CXC, on behalf of the Settlement Class and the Aggrieved Employees, which includes all current and former non-exempt employees of Defendant who worked in California at any time during the Class Period or the PAGA Period, respectively. The Class Period is July 31, 2016, through April 18, 2022. The PAGA Period is July 31, 2019, through April 18, 2022.”

16. Participating Class Members and Aggrieved Employees shall have 180 days to negotiate the settlement check from the date of issuance by the Settlement Administrator. If a check has not been cashed within 90 days after issuance, the Settlement Administrator shall mail

1 a reminder postcard within 10 days thereafter and provide the Participating Class Member and
2 Aggrieved Employees with the deadline to cash the check. In the event that a Participating Class
3 Member and/or Aggrieved Employee does not negotiate his/her check within this time period,
4 the check will be canceled. The value of the unclaimed funds in the Settlement Administrator's
5 account as a result of a failure to timely cash a settlement check shall be issued to the State
6 Controller's Office in the person's name.

7 17. This document shall constitute a Judgment for purposes of California Rule of
8 Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the
9 Class Representative, the Class Members, the Aggrieved Employees, the LWDA, and Defendant
10 for the purposes of supervising the implementation, enforcement, construction, administration,
11 and interpretation of the Settlement Agreement and this Judgment.

12 IT IS SO ORDERED.

13 Dated: _____

14 _____
Hon. Glenda Sanders