

1 DAVID YEREMIAN, ESQ. (Bar No. 226337)  
david@yeremianlaw.com  
2 ALVIN B. LINDSAY, ESQ. (Bar No. 220236)  
alvin@yeremianlaw.com  
3 DAVID YEREMIAN & ASSOCIATES  
535 N. Brand Blvd., Suite 705  
4 Glendale, CA 91203  
TEL: 818.230.8380  
5 FAX: 818.230.0308

6 Attorneys for Plaintiff  
EDUARDO DIAZ GALAN

7 JAMES M. PETERSON, ESQ. (Bar No. 137837)  
peterson@higgslaw.com  
8 DEREK W. PARADIS, ESQ. (Bar No. 269556)  
paradisd@higgslaw.com  
9 HIGGS FLETCHER & MACK LLP  
401 West "A" Street, Suite 2600  
10 San Diego, CA 92101-7913  
TEL: 619.236.1551  
11 FAX: 619.696.1410

12 Attorneys for Defendant  
13 ELITE COMFORT SOLUTIONS, LLC

14 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

16 EDUARDO DIAZ GALAN, an individual,  
17 on behalf of himself and others similarly  
situated,

18 Plaintiff,

19 v.

20 ELITE COMFORT SOLUTIONS, LLC, a  
21 Delaware limited liability company, and  
DOES 1 through 50, inclusive,

22 Defendants.  
23

CASE NO. 20STCV35875

**AMENDED JOINT STIPULATION FOR  
CLASS ACTION SETTLEMENT AND  
RELEASE OF ALL CLAIMS**

DEPT: SS12  
IC JUDGE: Carolyn B. Kuhl

Complaint Filed: September 18, 2020  
Trial Date: N/A

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1 IT IS HEREBY STIPULATED, by Plaintiff EDUARDO DIAZ GALAN, individually,  
2 and on behalf of all others similarly situated, on the one hand, and Defendant ELITE COMFORT  
3 SOLUTIONS, LLC, on the other hand (collectively, the “Parties”), and subject to the approval of  
4 the Court, that the above-captioned action is hereby compromised and settled pursuant to the  
5 terms and conditions set forth below:

6 **1. DEFINITIONS.**

7 Unless otherwise defined, capitalized terms used in this Settlement Agreement shall have  
8 the meanings set forth below:

9 1.1 “**Action**” means the civil class action case entitled *Eduardo Diaz Galan, et al. v.*  
10 *Elite Comfort Solutions, LLC, et al.*, currently pending before the Superior Court of the State of  
11 California, County of Los Angeles, Case No. 20STCV35875.

12 1.2 “**Claims**” means all claims that were actually alleged or which could have been  
13 alleged in the Action by Plaintiff, on behalf of himself and the Class Members, based on the facts  
14 alleged in the operative Complaint, and occurring during the Class Period (defined below),  
15 including but not limited to: (1) failure to pay minimum wages in violation of Labor Code §§  
16 201-204, 1194, 1194.2 1197, 1197.1, and the applicable Wage Order; (2) failure to pay wages and  
17 overtime in violation of Labor Code §§ 201-204, 510, 558, 1194, 1198, 1199, and the applicable  
18 Wage Order; (3) failure to authorize and permit meal breaks in violation of Labor Code §§ 226.7,  
19 512, and the applicable Wage Order; (4) failure to authorize and permit rest breaks in violation of  
20 Labor Code §§ 226.7, 512, and the applicable Wage Order; (5) failure to provide accurate,  
21 itemized wage statements in violation of Labor Code § 226(a); (6) unlawful wage deductions in  
22 violation of Labor Code § 221; (7) failure to pay all wages owed under Labor Code §§ 204, 210,  
23 218.5, 1194, 1198, and the applicable wage order; (8) failure to pay all wages due upon  
24 separation of employment in violation of Labor Code § 203; (9) failure to reimburse for necessary  
25 business expenses in violation of Labor Code § 2802; (10) violations of the Business and  
26 Professions Code section 17200 *et seq.*; and (11) penalties under Private Attorney General Act  
27 (“PAGA”), Labor Code § 2698 *et seq.* The term “Claims” also includes Plaintiff’s claim that  
28 Defendant is liable for the attorneys’ fees incurred to prosecute this Action on behalf of Plaintiff

1 and the Class Members, including fees incurred for the services of Class Counsel, and any claim  
2 that Defendant is liable for any other remedies, civil penalties, statutory penalties, interest, or  
3 claims arising under California law based on the facts alleged in the operative Complaint. The  
4 term “Claims” also includes all claims that Plaintiff and/or the Class Members may have against  
5 the Released Parties relating to (i) the payment, taxation and allocation of attorneys’ fees and  
6 costs to Class Counsel pursuant to this Settlement Agreement, and (ii) the payment, taxation and  
7 allocation of Plaintiff’s Service Award pursuant to this Settlement Agreement.

8 1.3 “**Class,**” “**Settlement Class,**” or “**Class Members**” means all current and former  
9 employees of Defendant, classified as non-exempt or hourly-paid workers, who worked for  
10 Defendant in California for at least one shift at any time during the period starting four years  
11 before the commencement of this action (September 18, 2020) through and including September  
12 30, 2021. Notwithstanding the immediately preceding sentence, Defendant reserves the right to  
13 exclude any persons from the Class at any point if said person files a lawsuit, files a PAGA letter,  
14 or otherwise seeks relief, up to and including final approval, except the Class Representative. If  
15 excluded, such persons shall not be entitled to any benefits under this settlement, but also shall  
16 not be bound by or release any claims released by this Settlement. Defendant estimates and  
17 believes that as of March 15, 2021, there were a total of 305 Class Members (“Total Class  
18 Members”).

19 1.4 “**Class Counsel**” means David Yeremian and Alvin B. Lindsay of David Yeremian  
20 & Associates, who currently does business at 535 N. Brand Blvd., Suite 705, Glendale, CA 91203.

21 1.5 “**Class Counsel Costs Award**” means the expenses and costs incurred by Class  
22 Counsel for Class Counsel’s litigation and resolution of this Action, as awarded by the Court,  
23 which may not exceed \$12,000. The Class Counsel Costs Award shall be paid to Class Counsel  
24 out of the Total Settlement Amount.

25 1.6 “**Class Counsel Fees Award**” means the attorneys’ fees for Class Counsel’s  
26 litigation and resolution of this Action, as awarded by the Court, which the Parties agree may not  
27 exceed one third (33.33%) of the \$343,000.00 Total Settlement Amount (i.e., \$114,333.34 in  
28

attorneys' fees). The Class Counsel Fees Award shall be paid to Class Counsel out of the Total Settlement Amount.

1.7 **"Class Information"** means information regarding Class Members that Defendant will compile in good faith from its records and provide, confidentially, to the Settlement Administrator. Class Information shall be provided in a confidential Excel spreadsheet and shall include, for each Class Member: full name, last known address, social security number, and the number of Workweeks each Class Member worked for Defendant during the Class Period and PAGA Period. Because Class Members' sensitive personal information is included in the Class Information, the Settlement Administrator shall maintain the Class Information securely and in confidence. Access to such Class Information shall be limited to employees of the Settlement Administrator with a need to use the Class Information for administration of the Settlement. However, access will also be provided to Class Counsel if the Class Information is needed to respond to an inquiry from Class members or the Court.

1.8 **"Class Period"** means the period from September 18, 2016 through and including September 30, 2021.

1.9 **"Class Representative"** means Plaintiff Eduardo Diaz Galan.

1.10 **"Complaint"** means the operative first amended complaint in the above-captioned Action, which was filed by Plaintiff on December 22, 2020.

1.11 **"Complete and General Release"** means an irrevocable and unconditional release given by the Class Representative, releasing the Released Parties from any and all charges, complaints, claims, causes of action, debts, penalties, wages, sums of money, controversies, agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from conduct occurring on or before the date the Class Representative signs this Settlement Agreement, related to or arising out of his employment with Defendant and/or this lawsuit, including but not limited to all of the Claims defined in Section 1.2. This provision is intended by the Parties to be all encompassing and to act as a full and total release of any employment-related claims, whether specifically enumerated herein or not, that the Class Representative might now have or had, that exists or ever

1 has existed, on or prior to the date this Settlement Agreement is signed. The words “claim” or  
2 “claims” in this context includes without limitation all actions, claims and grievances, whether  
3 actual or potential, known or unknown, related, incidental to or arising out of any act or omission  
4 committed or omitted by the Released Parties through the date the Class Representative sign this  
5 Settlement Agreement and/or arising out of their employment relationship with Defendant and/or  
6 the cessation thereof, including a 1542 Waiver (defined below).

7 1.12 “**Court**” means the Superior Court of California for the County of Los Angeles.

8 1.13 “**Defendant**” means Elite Comfort Solutions, LLC.

9 1.14 “**Defense Counsel**” means James M. Peterson and Derek W. Paradis of Higgs  
10 Fletcher & Mack, LLP.

11 1.15 “**Effective Date**” means the date by which this Settlement is finally approved and  
12 fully funded as provided herein and the Court’s Final Approval Order becomes binding. For  
13 purposes of this Settlement Agreement, the Final Approval Order becomes binding: (1) if no  
14 Class Member timely and properly intervenes or files a motion to vacate the Judgment under  
15 Code of Civil Procedure § 663 before the entry of Judgment, then the date of funding by  
16 Defendant; (2) if a Class Member timely intervenes or files a motion to vacate the Judgment  
17 before the entry of Judgment, then the later of (a) the day after the deadline by which a notice of  
18 appeal to the Court of Appeals of the Final Approval Order and/or of an order rejecting any  
19 motion to intervene may be timely filed, and none is filed; (b) if such an appeal is filed, and the  
20 appeal is finally disposed of by ruling, dismissal, denial or otherwise, the day after the deadline  
21 for filing a request for further review of the Court of Appeals’ decision passes and no further  
22 review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal,  
23 denial, or otherwise by the Court of Appeals and further review of the Court of Appeals’ decision  
24 is requested, the day after the request for review is denied with prejudice and/or no further review  
25 of the decision can be requested; or (d) if review is accepted, the day after the Supreme Court of  
26 California affirms the Settlement. Defendant will not be obligated to fund this Settlement until  
27 and unless the Effective Date is reached.  
28

1           1.16    **“Final Approval Hearing”** means the hearing held to determine whether the  
2 Court will enter a Final Approval Order finally approving this Settlement.

3           1.17    **“Final Approval Order”** means the Court’s entry of an order granting the Parties’  
4 motion for final approval of and entering a final judgment in accordance with this Settlement.

5           1.18    **“Individual Settlement Payment”** means the amount payable to Class Members  
6 who do not request exclusion from the Settlement (**“Settlement Class Members”**), as calculated  
7 pursuant to Paragraph 3.11.4, below, and excludes any PAGA Settlement Payments distributed to  
8 Class Members pursuant to the PAGA.

9           1.19    **“Net Distribution Fund”** means the Total Settlement Amount, less the amount  
10 that the Court awards for Plaintiff’s Service Award, Class Counsel Fees Award, the PAGA  
11 Settlement Allocation, Class Counsel Costs Award, and any Settlement Administration Costs.  
12 Defendant is separately and solely responsible for any employer payroll taxes owed as a result of  
13 this Settlement Agreement which the Court requires be paid separately from the Settlement funds,  
14 and the parties estimate they will total approximately \$7,000.00 after consulting with the  
15 Administrator.

16          1.20    **“Notice of Objection”** means a timely written request by a Class Member to  
17 object to this Settlement, which must be filed or mailed in the manner and times set forth in this  
18 Settlement Agreement and the Notice of Settlement.

19          1.21    **“Notice of Settlement”** means the Notice of Pendency of Class Action and  
20 Proposed Class Settlement that will be mailed to Class Members to apprise them of this  
21 Settlement. The Notice of Settlement must be substantially similar to the form attached as Exhibit  
22 “A”.

23          1.22    **“PAGA”** means the California Labor Code Private Attorneys General Act of 2004,  
24 Labor Code § 2698 *et seq.*

25          1.23    **“PAGA Aggrieved Employees”** shall be comprised of all Class Members,  
26 irrespective of whether the Class Member files a Request for Exclusion from the Settlement Class,  
27 who were employed by Defendant during the PAGA Period.  
28

1           1.24    **“PAGA Payment Ratio”** means the respective Workweeks during the PAGA  
2 Period for each PAGA Aggrieved Employees divided by the sum total of the Workweeks for all  
3 PAGA Aggrieved Employees during the PAGA Period.

4           1.25    **“PAGA Period”** means the period between September 22, 2019 and September 30,  
5 2021.

6           1.26    **“PAGA Settlement Allocation”** shall mean Ten Thousand Dollars (\$10,000.00) to  
7 be allocated from the Total Settlement Amount for the payment of penalties under the PAGA. In  
8 accordance with the PAGA, the PAGA Settlement Allocation comprises payment to the LWDA  
9 for 75% of the total (i.e. \$7,500.00) and the PAGA Settlement fund, which is the 25% of the total  
10 (\$2,500.00) that will be paid to the Class Members satisfying the definition of PAGA Aggrieved  
11 Employees. Each PAGA Aggrieved Employee will be paid his or her proportionate share of PAGA  
12 Settlement Fund represented by the PAGA Payment Ratio without regard to whether he or she opts  
13 out of the class settlement.

14           1.27    **“PAGA Settlement Fund”** means and refers to the 25% portion of the PAGA  
15 Settlement Allocation that will be distributed to the PAGA Aggrieved Employee pursuant to their  
16 PAGA Payment Ratio.

17           1.28    **“PAGA Settlement Payment”** refers to the amount calculated by the Settlement  
18 Administrator using PAGA Payment Ratio to distribute to each PAGA Aggrieved Employee. Any  
19 Class Member who opts out of the Settlement Class will nonetheless receive their PAGA Settlement  
20 Payment from the PAGA Settlement Allocation that will be distributed to the PAGA Aggrieved  
21 Employees and be bound, to the extent allowed by law, by the LWDA’s release of its claims to  
22 PAGA penalties under this Agreement.

23           1.29    **“Payroll Taxes”** means the Defendant’s portion of FICA, FUTA, and all other  
24 state and federal employer payroll taxes, which shall be paid by Defendant separately from the  
25 Total Settlement Amount. After consultation with the Administrator, the parties estimate these  
26 will total approximately \$7,000.

1           1.30    **“Preliminary Approval”** means the preliminary approval of this Settlement, and  
2   **“Preliminary Approval Date”** means the date the Court enters an order granting preliminary  
3 approval of this Settlement.

4           1.31    **“Released Claims”** means the Claims that Class Members are fully releasing in  
5 exchange for the consideration provided by this Settlement Agreement, whether arising at law, in  
6 contract or in equity, and whether for economic or non-economic damages, restitution, injunctive  
7 relief, penalties or liquidated damages as specified below. Released Claims means all claims  
8 actually asserted or which could have been asserted in the Action by the Class Members against  
9 the Released Parties, arising during the Class Period, based on the facts alleged in the operative  
10 Complaint, including but not limited to claims for: (1) failure to pay minimum wages in violation  
11 of Labor Code §§ 201-204, 1194, 1194.2 1197, 1197.1, and the applicable Wage Order; (2)  
12 failure to pay wages and overtime in violation of Labor Code §§ 201-204, 510, 558, 1194, 1198,  
13 1199, and the applicable Wage Order; (3) failure to authorize and permit meal breaks in violation  
14 of Labor Code §§ 226.7, 512, and the applicable Wage Order; (4) failure to authorize and permit  
15 rest breaks in violation of Labor Code §§ 226.7, 512, and the applicable Wage Order; (5) failure  
16 to provide accurate, itemized wage statements in violation of Labor Code § 226(a); (6) unlawful  
17 wage deductions in violation of Labor Code § 221; (7) failure to pay all wages owed under Labor  
18 Code §§ 204, 210, 218.5, 1194, 1198, and the applicable wage order; (8) failure to pay all wages  
19 due upon separation of employment in violation of Labor Code § 203; (9) failure to reimburse for  
20 necessary business expenses in violation of Labor Code § 2802; and (10) violations of the  
21 Business and Professions Code section 17200 *et seq.* Released Claims also includes all claims  
22 that were or that could have been alleged in the Action based on the facts stated in the Complaint,  
23 including but not limited to any claims for violations of the Fair Labor Standards Act, the  
24 California Labor Code, and the relevant Wage Order. The term “Released Claims” also includes  
25 Plaintiff’s claim that Defendant is liable for the attorneys’ fees incurred to prosecute this Action  
26 on behalf of Class Members, including fees incurred for the services of Class Counsel, and any  
27 claim that Defendant is liable for any other remedies, civil penalties, statutory penalties, or  
28 interest under California law based on the facts alleged in the operative Complaint. The term

1 “Released Claims” also includes all claims that the Class Members may have against the  
2 Released Parties relating to (i) the payment, taxation and allocation of attorneys’ fees and costs to  
3 Class Counsel pursuant to this Settlement Agreement, and (ii) the payment, taxation and  
4 allocation of Plaintiff’s Service Award pursuant to this Settlement Agreement.

5 1.32 **“Released PAGA Claims”**: Upon the Effective Date, the Released Parties shall be  
6 entitled to a release from the State of California and the members of the PAGA Aggrieved  
7 Employees group only as to all PAGA claims based on the alleged facts and legal claims arising  
8 during the PAGA Period at the time of final approval by Plaintiff in the Action and Plaintiff’s notice  
9 letter to the LWDA including, but not limited to, Labor Code sections 201, 202, 203, 204, 210,  
10 218.5, 218.6, 226, 226.2, 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1185 1194, 1194.1,  
11 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, and 2698 et seq., and the applicable IWC Wage  
12 Orders, and any resulting claim for attorneys’ fees and costs under PAGA, which occurred during  
13 the PAGA The PAGA Released Claims expressly exclude all PAGA claims outside the PAGA  
14 Period, all PAGA claims not alleged in the operative complaints in the Actions, all claims under  
15 Cal. Labor Code § 558(a)(3), and all non-PAGA claims. In no event shall the release of the Released  
16 PAGA Claims in this Settlement Agreement release any individual claims of any individuals other  
17 than Plaintiff.

18 1.33 **“Released Parties”** means Elite Comfort Solutions, LLC, including its respective  
19 subsidiaries, affiliates, parents, divisions, predecessors, employee benefit plans sponsored or  
20 maintained by it, its attorneys, and its respective successors and assigns; all of its past, present,  
21 and future respective officers, directors, board members, employees, members, administrators,  
22 fiduciaries, trustees, principals, heirs, representatives, accountants, auditors, consultants,  
23 attorneys, insurers and reinsurers, beneficiaries and agents, and other persons acting on its behalf.

24 1.34 **“Request for Exclusion”** means a timely written request by a Class Member to  
25 exclude himself/herself from the Settlement, which must be completed and mailed in the times  
26 and manner set forth in Section 3.10.6 of this Settlement Agreement and the Notice of Settlement.

27 1.35 **“Response Deadline”** means the date forty-five (45) calendar days after the  
28 Settlement Administrator mails the Notice of Settlement to Class Members and the last date on

1 which Class Members may postmark and/or file, as applicable, Requests for Exclusion or Notices  
2 of Objection to the Settlement.

3 1.36 “**Service Award**” means the amount that the Court may award to the Class  
4 Representative for his effort in assisting with the prosecution of the Action and as consideration  
5 for his execution of this Settlement Agreement and releasing his claims, as specified herein.

6 1.37 “**Settlement**” or “**Settlement Agreement**” means the disposition of the Action  
7 pursuant to this Agreement.

8 1.38 “**Settlement Administration Costs**” means the costs incurred by the Settlement  
9 Administrator in connection with the administration, currently estimated to be \$13,300.00.

10 1.39 “**Settlement Administrator**” means ILYM Group, Inc.

11 1.40 “**Settlement Fund Account**” means the qualified bank account to be established  
12 by the Settlement Administrator pursuant to the terms of this Settlement Agreement, from which  
13 all monies payable under the terms of this Settlement shall be paid. The Parties agree to treat this  
14 account as a “Qualified Settlement Fund,” and the Settlement Administrator shall treat the  
15 Settlement Fund Account as the “employer” for purposes of federal and state income and  
16 employment tax withholding and reporting with respect to the Individual Settlement Payments.

17 1.41 “**Total Settlement Amount**” means Three Hundred and Forty-Three Thousand  
18 Dollars (\$343,000.00), which is the maximum amount that Defendant shall be obligated to pay  
19 under this Settlement Agreement in order to settle this Action, subject to the Court’s approval.  
20 Defendant will be responsible for paying any Employer share of payroll taxes on any individual  
21 settlement payments, estimated to be approximately \$7,000.00, separate and apart from the Total  
22 Settlement Amount.

23 1.42 “**Void Date**” means the date by which any checks issued to Class Members shall  
24 become void, *i.e.*, on the 121st day after mailing.

25 1.43 “**Workweeks**” means the number of weeks of employment that each Class  
26 Member worked for Defendant during the Class Period. For purposes of distributing the PAGA  
27 Settlement to the Settlement Class, Workweeks means the number of weeks of employment for  
28 each Settlement Class Member during the PAGA Period.

1.44 “**1542 Waiver**” means an express and complete waiver, to the fullest extent permitted by law, of the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which Section provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

**2. RECITALS.**

2.1 Procedural History. This Action was filed on September 18, 2020. In the Complaint, Plaintiff asserts putative class claims for: (1) failure to pay minimum wages in violation of Labor Code §§ 201-204, 1194, 1194.2 1197, 1197.1, and the applicable Wage Order; (2) failure to pay wages and overtime in violation of Labor Code §§ 201-204, 510, 558, 1194, 1198, 1199, and the applicable Wage Order; (3) failure to authorize and permit meal breaks in violation of Labor Code §§ 226.7, 512, and the applicable Wage Order; (4) failure to authorize and permit rest breaks in violation of Labor Code §§ 226.7, 512, and the applicable Wage Order; (5) failure to provide accurate, itemized wage statements in violation of Labor Code § 226(a); (6) unlawful wage deductions in violation of Labor Code § 221; (7) failure to pay all wages owed under Labor Code §§ 204, 210, 218.5, 1194, 1198, and the applicable wage order; (8) failure to pay all wages due upon separation of employment in violation of Labor Code § 203; (9) failure to reimburse for necessary business expenses in violation of Labor Code § 2802; (10) violations of the Business and Professions Code section 17200 *et seq.*; and (11) penalties under Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*

2.2 Mediation. On June 15, 2021, the Parties participated a full-day, private mediation with Tripper Ortman, Esq., an experienced mediator who is well-versed in putative class and representative actions. Through that process Mr. Ortman made a mediator’s proposal which was accepted by the Parties, and with Mr. Ortman’s assistance, the Parties reached an agreement to resolve this Action. At all times, each Party was represented by experienced counsel during the arms-length, good-faith negotiations facilitated by Mr. Ortman.

1           2.3     Discovery and Analysis. The Parties have engaged in a thorough investigation and  
2 analysis of the claims made in this Action. The parties informally exchanged information and  
3 documents and the Parties exchanged a sampling of time and payroll information, allowing each  
4 side with a reasonable opportunity to assess the respective strengths and weaknesses of their  
5 claims and defenses.

6           2.4     Plaintiff's Reasons for Settlement. The Class Representative and Class Counsel  
7 recognize the expense and length of continued proceedings necessary to litigate this Action  
8 through trial, and the likelihood of protracted and expensive appellate review. They have also  
9 taken into account the uncertainty and risk of the outcome of further litigation, as well as the  
10 difficulties and delays inherent in such litigation. The Class Representative and Class Counsel are  
11 likewise aware of the burdens of proof necessary to establish liability for the Claims asserted in  
12 the Action, which claims have been, and remain, highly disputed by Defendant, and the  
13 difficulties in establishing damages or justifiable penalties for Class Members under the theories  
14 asserted in this action. Based on the foregoing, the Class Representative and Class Counsel have  
15 determined that the Settlement set forth in this Settlement Agreement is a fair, adequate and  
16 reasonable Settlement and is in the best interests of themselves and the Class Members.

17           2.5     Defendant's Reasons for Settlement. Defendant has concluded that any further  
18 defense of this litigation would be protracted and expensive for all Parties. Defendant has  
19 incurred substantial amounts of time, energy and resources in connection with this Action and,  
20 unless this Settlement is made, will continue to be devoted to the defense of the Claims.  
21 Defendant has also taken into account the risks of further litigation in reaching its decision to  
22 enter into this Settlement. Although Defendant vehemently denies and strongly disputes the  
23 Claims and continues to contend it is not liable for any of the causes of action asserted in the  
24 Action, Defendant has nonetheless agreed to settle in the manner and upon the terms set forth in  
25 this Settlement Agreement to put to rest the Claims and avoid further protracted litigation.  
26 Defendant agrees that the Settlement set forth in this Settlement Agreement is fair, adequate and  
27 reasonable to and for the Class Members, even though Defendant makes no concessions or  
28 admissions of wrongdoing or liability of any kind whatsoever.

1           2.6     Defendant has claimed, and continues to claim, that the Claims have no merit and  
2 do not give rise to liability. Defendant specifically denies all of the allegations in the operative  
3 Complaint. This Settlement Agreement is a compromise of such disputed claims. Nothing  
4 contained in this Settlement Agreement and no documents referred to herein and no action taken  
5 to carry out this Settlement Agreement may be construed or used as an admission by or against  
6 Defendant of any fault, wrongdoing or liability whatsoever. The Parties acknowledge and agree  
7 that this Agreement, including the consideration provided herein, has been, and is, made and  
8 received solely based on a compromise of disputed claims and that this Agreement is not, and  
9 shall not be construed as an admission by Defendant of any liability.

10           2.7     The Parties also understand and agree that, pursuant to California Evidence Code  
11 section 1152, and any other analogous rules of evidence that are applicable (including, but not  
12 limited to, analogous rules of evidence applicable in other courts and other jurisdictions, such as,  
13 for example, Federal Rule of Evidence 408), neither this Agreement, the settlement memorialized  
14 therein, nor any act performed or document executed pursuant to or in furtherance of this  
15 Agreement, is to be (or may be deemed to be) used in any civil, criminal, or administrative  
16 proceeding in any court, administrative agency, or other tribunal as: (a) an admission of the  
17 validity of any Released Claims or of any wrongdoing or liability of any of the Released Parties;  
18 (b) evidence of the validity of any Released Claims or of any wrongdoing or liability of any of the  
19 Released Parties; (c) an admission of any fault or omission of any of the Released Parties; or (d)  
20 evidence of any fault or omission of any of the Released Parties.

21     **3.     SETTLEMENT TERMS.**

22           The Parties agree as follows:

23           3.1     Certification of Settlement Class. Solely for the purposes of this Settlement, the  
24 Parties stipulate and agree that, in order for this Settlement to occur, the Court should certify the  
25 Settlement Class.

26           3.2     Appointment of Class Representative. The Parties agree that Plaintiff Eduardo  
27 Diaz Galan should be appointed as a representative of the Settlement Class.  
28

1           3.3     Appointment of Class Counsel. The Parties agree that David Yeremian and Alvin  
2 B. Lindsay of David Yeremian & Associates should be appointed as Class Counsel for the  
3 Settlement Class.

4           3.4     Appointment of Settlement Administrator. Solely for the purposes of this  
5 Settlement, the Parties agree ILYM Group, Inc. shall be retained to serve as the Settlement  
6 Administrator. The Settlement Administrator shall be responsible for establishing the Settlement  
7 Fund Account, establishing an address for receipt of Class Member communications; preparing,  
8 printing and mailing the Notice Packet materials to Class Members; receiving, reviewing, and  
9 processing Requests for Exclusion, if any, submitted by Class Members; calculating Individual  
10 Settlement Payments; calculating and paying any and all Payroll Taxes and any required  
11 withholdings from the Individual Settlement Payments as required under applicable law, if any;  
12 providing weekly status reports to Defense Counsel and Class Counsel; providing a due diligence  
13 declaration for submission to the Court prior to the Final Approval Hearing; mailing Individual  
14 Settlement Payments and PAGA Settlement payments to Class Members; paying the Service  
15 Award, Class Counsel Fees Award and Class Counsel Costs Award to Plaintiff and Class  
16 Counsel, and Payroll Taxes to the appropriate authorities; printing and providing Class Members,  
17 Plaintiff, and Class Counsel with IRS Forms W-2 and/or 1099 as required by applicable law;  
18 providing a due diligence declaration for submission to the Court upon the completion of the  
19 Settlement; and for such other tasks as the Parties mutually agree. The Settlement Administrator  
20 shall keep the Parties timely apprised of the performance of all Settlement Administrator  
21 responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other tax documents  
22 required by administration of this Settlement Agreement shall be prepared by the Settlement  
23 Administrator. Any expenses incurred in connection with such preparation shall be a Settlement  
24 Administration Cost. The Parties agree to cooperate in the Settlement administration process and  
25 to make all reasonable efforts to control and minimize Settlement Administration Costs. The  
26 Parties each represent they do not have any financial interest in the Settlement Administrator or  
27 otherwise have a relationship with the Settlement Administrator that could create a conflict of  
28 interest.

1           3.5     Maximum Amount Payable by Defendant. Under the terms of this Settlement, and  
2 in consideration for the entry of the Final Approval Order and judgment, as well as the various  
3 releases, acts, and benefits delineated herein, the maximum monetary amount payable by  
4 Defendant shall not exceed payment of the Payroll Taxes (estimated at \$7,000) and the Total  
5 Settlement Amount of Three Hundred and Forty-Three Thousand Dollars (\$343,000). This Total  
6 Settlement Amount represents the maximum monetary payment Defendant may be required to  
7 make to, or for the benefit of, the named Plaintiff, Class Members, the taxing authorities, the State  
8 of California, and Class Counsel for the Settlement of this action, and this Total Settlement  
9 Amount shall be used to cover all Individual Settlement Payments to Class Members, the Service  
10 Award to Plaintiff, PAGA Settlement Allocation, the Class Counsel Fees Award, the Class  
11 Counsel Costs Award, Settlement Administration Costs, and any and all other costs or  
12 consideration associated with this Settlement. All Payroll Taxes will be paid by Defendant  
13 separately and apart from the Total Settlement Amount.

14           3.6     Release as to All Class Members. As of the Effective Date, all Class Members  
15 who do not timely submit a Request for Exclusion will forever and finally release the Released  
16 Parties from all of the Released Claims. All Released Claims shall be released during the entirety  
17 of the Class Period. Class Members may discover facts in addition to or different from those they  
18 now know or believe to be true with respect to the subject matter of the Released Claims, but  
19 upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order  
20 shall have, fully, finally, and forever settled and released any and all of the Released Claims,  
21 whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now  
22 exist or have existed, upon any theory of law or equity now existing. Class Members agree not to  
23 sue or otherwise make any claim against the Released Parties that seeks recovery for any of the  
24 Released Claims. It is the intent of the Parties that the Final Approval Order and Judgement  
25 entered by the Court shall have full *res judicata* and collateral estoppel effect and be final and  
26 binding upon Class Members regarding the Released Claims.

1           3.7     Complete and General Release by Class Representative. In consideration for the  
2 promises and payments set forth in this Settlement Agreement, to which the Class Representative  
3 is otherwise not entitled, the Class Representative agrees to provide a Complete and General  
4 Release and a 1542 Waiver to the Released Parties, which shall release all claims and damages of  
5 every kind and nature, actual or potential, known and unknown, which exist or could arise out of  
6 his employment and/or the end of his employment with Defendant, through and including the date  
7 of execution of this Settlement Agreement. With respect to the General Release, the Class  
8 Representative stipulates and agrees that, upon the Effective Date, he shall be deemed to have,  
9 and by operation of the Court's Final Approval Order, shall have, expressly waived and  
10 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section  
11 1542 of the California Civil Code, or any other similar provision under federal or state law, which  
12 provides:

13                   **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
14                   **THAT THE CREDITOR OR RELEASING PARTY DOES**  
15                   **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
16                   **FAVOR AT THE TIME OF EXECUTING THE RELEASE**  
17                   **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
                      **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
                      **WITH THE DEBTOR OR RELEASED PARTY.**

18           The Class Representative acknowledges that he may discover facts in addition to or  
19 different from those he now knows or believes to be true with respect to the subject matter of the  
20 Complete and General Release, but upon the Effective Date, shall be deemed to have, and by  
21 operation of the Final Approval Order shall have, fully, finally, and forever settled and released  
22 any and all of the claims covered by the Complete and General Release, whether known or  
23 unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or have  
24 existed, upon any theory of law or equity now existing, including, but not limited to, conduct that  
25 is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without  
26 regard to the subsequent discovery or existence of such different or additional facts. The Parties  
27 understand and agree that this includes all actions, group actions (including any pending or future  
28 collective, class, private attorney general or representative actions for which the Class

1 Representative may otherwise qualify as a putative class member, aggrieved employee, or  
2 represented party), complaints and grievances that could potentially be brought by him against the  
3 Released Parties. The Class Representative further agrees that this Complete and General Release  
4 includes, but is not limited to, any rights or claims arising under the California Constitution; the  
5 California Labor Code; the California Business & Professions Code; the California Code of  
6 Regulations; the California Fair Employment and Housing Act; the Fair Labor Standards Act;  
7 Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; federal and state  
8 family leave statutes; and any and all other federal, state and local laws, statutes, executive orders,  
9 regulations and common law, including contract, employment and tort law.

10 3.8 Release by the Aggrieved Employees. As of the Funding Date, in exchange for the  
11 consideration set forth in this Agreement, the Plaintiff, the LWDA and the PAGA Aggrieved  
12 Employees release the Released Parties from the PAGA Released Claims for the PAGA Period.

13 3.9 No Pending or Future Lawsuits. Other than this Action, the Class Representative  
14 represents that he does not have any pending lawsuits, administrative complaints or charges  
15 against the Released Parties in any local, state or federal court or administrative agency. The  
16 Class Representative further acknowledges that all claims raised therein, if any, shall be fully and  
17 finally extinguished by virtue of this Settlement Agreement and the Court's Final Approval  
18 Order, and that he will not bring any action in the future in which he seeks to recover any  
19 damages from the Released Parties relating to or arising from his employment with Defendant,  
20 existing as of the date of the execution of this Agreement, other than an action to enforce his  
21 rights under this Settlement Agreement. The Class Representative further acknowledges and  
22 agrees that, consistent with the terms of his Complete and General Release, he shall not  
23 participate in any currently pending or future-filed class or representative action against the  
24 Released Parties, in any manner seeking relief for claims arising on or before the date of Final  
25 Approval. In the event a class action is certified or a collective action is commenced against the  
26 Released Parties, the Class Representative agrees that he shall opt-out of any and all relief  
27 obtained thereby, including without limitation any settlements, judgments, or relief of whatsoever  
28 kind or character obtained for the class or group to the extent he receives notice of the same, and

1 he shall otherwise have the affirmative obligation to decline participation in any and all such class  
2 action or representative action cases, settlements, judgments, or relief of whatsoever kind or  
3 character seeking relief for claims arising on or before the date of Final Approval.

4 3.10 Settlement Approval and Implementation Procedures. As part of this Settlement,  
5 the Parties agree to the following procedures for obtaining the Court's Preliminary Approval of  
6 the Settlement, notifying Class Members of the Settlement, obtaining the Court's Final Approval  
7 of the Settlement and processing Individual Settlement Payments.

8 3.10.1 Preliminary Approval. Promptly after execution of this Settlement  
9 Agreement, Class Counsel will submit this Agreement to the Court and shall move the Court for  
10 Preliminary Approval of the settlement set forth in this Agreement, certification of the Class for  
11 settlement purposes only, appointment of Class Counsel and the Class Representative, and entry  
12 of the Preliminary Approval Order, which shall set a Final Approval hearing date and approve the  
13 Notice for dissemination to the Class. Class Counsel shall provide drafts of the motions for  
14 preliminary approval and final approval to Defense Counsel for review and input no less than four  
15 (4) days prior to filing the same.

16 3.10.2 Class Information. No more than ten (10) calendar days after entry of the  
17 Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class  
18 Information for purposes of mailing the Notice Packet to Class Members.

19 3.10.3 Notice by First Class U.S. Mail. Upon receipt of the Class Information, the  
20 Settlement Administrator will conduct a national change of address search for the most current  
21 address of all former employee Class Members and will update such Class Members' addresses  
22 as necessary. Fourteen (14) calendar days after receipt of the Class Information, the Settlement  
23 Administrator shall mail the Notice Packet to all Class Members by First Class U.S. Mail. The  
24 Notice Packet will include both English and Spanish translations of the Notice of Settlement to  
25 the Class Members. The address identified by the Settlement Administrator as the current mailing  
26 address shall be presumed to be the best mailing address for each Class Member.

1                   3.10.4 Undeliverable Notices. Any Notice Packet that is returned to the  
2 Settlement Administrator as non-deliverable on or before a date fourteen (14) calendar days  
3 before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If  
4 received less than fourteen (14) calendar days before the Response Deadline, no action needs to  
5 be taken by the Settlement Administrator. If no forwarding address is provided, the Settlement  
6 Administrator shall make reasonable efforts to obtain an updated mailing address, including  
7 performing a skip trace. If an updated address is identified, the Settlement Administrator shall  
8 resend the Notice Packet to the Class Member within seven (7) calendar days of the date of the  
9 return of the original mailing. Class Members to whom the Notice Packet is resent, after having  
10 been returned as non-deliverable to the Settlement Administrator, shall have fourteen (14)  
11 calendar days thereafter or until the Response Deadline has expired, whichever is later, to submit  
12 a Request for Exclusion and/or file the Notice of Objection. The date of the postmark on the  
13 return envelope shall be the exclusive means used to determine whether a Class Member has  
14 timely mailed his/her Request for Exclusion or Notice of Objection on or before the relevant  
15 deadline. If a Class Member's Notice Packet is returned to the Settlement Administrator more  
16 than once as non-deliverable, then an additional Notice Packet shall not be re-mailed. If, for any  
17 reason, a Notice of Settlement is non-deliverable, the Settlement Administrator will not mail an  
18 Individual Settlement Payment to the Class Member but will hold the Individual Settlement  
19 Payment until the Void Date, at which time the funds shall be tendered to the California State  
20 Controller's Office for deposit in the Unclaimed Property Fund, in the name of the Class  
21 Member.

22                   3.10.5 Notice Satisfies Due Process. Compliance with the notice procedures  
23 specified herein shall constitute due and sufficient notice to Class Members of this Settlement and  
24 shall satisfy the requirements of due process. Nothing else shall be required of, or done by, the  
25 Parties, Class Counsel or Defense Counsel to provide notice of the proposed Settlement. In the  
26 event the procedures in this Settlement Agreement are followed and the intended recipient of a  
27 Notice Packet still does not receive the Notice Packet, the intended recipient shall remain a Class  
28

1 Member and will be bound by all terms of the Settlement and any Final Approval Order entered  
2 by the Court if the Settlement becomes effective.

3           3.10.6 Requests for Exclusion (Opt-Outs). The Notice of Settlement shall state  
4 that Class Members who wish to exclude themselves from the Settlement must submit a written  
5 Request for Exclusion to the Settlement Administrator by the Response Deadline. To be valid, the  
6 Request for Exclusion: (1) must contain the full name, address and last four digits of the social  
7 security number of the Class Member requesting exclusion; (2) must be signed by the Class  
8 Member requesting exclusion; and (3) must state, in substance: “I wish to exclude myself from  
9 the Settlement in *Eduardo Diaz Galan, et al. v. Elite Comfort Solutions, LLC, et al.*, currently  
10 pending before the Superior Court of the State of California, County of Los Angeles, Case No.  
11 20STCV35875. I understand that by requesting to be excluded from the Settlement, I will receive  
12 no money from the Settlement.” If the Request for Exclusion does not contain the information  
13 listed in (1)-(3) or is not timely postmarked and returned to the Settlement Administrator at the  
14 specified address, it will not be deemed a timely or valid Request for Exclusion from the Class.  
15 The date of the postmark on the return mailing envelope shall be the exclusive means used to  
16 determine whether a Request for Exclusion has been timely submitted. Any Class Members who  
17 submit a timely and valid Request for Exclusion from the Class will not be entitled to any  
18 monetary recovery under the Settlement and will not be bound by the terms of the Settlement as it  
19 relates to the Released Claims. However, any Settlement Class Member that submits a timely  
20 request for exclusion that is also a member of the Aggrieved Employees will still receive their pro  
21 rata share of the PAGA Settlement, and in consideration, will be bound by the Release by the  
22 Aggrieved Employees as set forth herein. Any Class Member who submits a timely and valid  
23 Request for Exclusion will not have any right to object, appeal, or comment on the Settlement. No  
24 later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator  
25 shall provide Defense Counsel with a complete list of the names of all Class Members who have  
26 submitted timely and valid Requests for Exclusion.

1                   3.10.7 Objections. The Notice of Settlement shall state that Class Members who  
2 wish to object to the Settlement must submit a written Notice of Objection to the Settlement  
3 Administrator by the Response Deadline. The Settlement Administrator shall forward any Notices  
4 of Objection received to counsel for the Parties. To be valid, the Notice of Objection must  
5 include: (1) the objector's full name, signature, address, and telephone number, (2) a written  
6 statement of all grounds for the objection accompanied by any legal support, if any, for such  
7 objection; (2) copies of any papers, briefs, or other documents upon which the objection is based,  
8 if any; (4) must state the case name and case number, *Eduardo Diaz Galan, et al. v. Elite Comfort*  
9 *Solutions, LLC, et al.*, Case No. 20STCV35875; and (5) state whether the Class Member or  
10 his/her representative intends to appear at the Final Approval Hearing. If the Notice of Objection  
11 does not contain the information listed in (1)-(5) or is not filed or timely postmarked and returned  
12 to the Settlement Administrator at the specified address, it will not be deemed a timely or valid  
13 Notice of Objection to this Settlement. As applicable, the date of the filing or the date of the  
14 postmark on the return mailing envelope shall be the exclusive means used to determine whether  
15 a Notice of Objection has been timely submitted. Class Members who fail to file or submit a  
16 timely and valid Notice of Objection may be deemed by the Court to have waived any objections.  
17 Class Members who file or submit a timely and valid Notice of Objection will have a right to  
18 appear at the Final Approval Hearing in person or by audio or video to have their objections heard  
19 by the Court. Class Members who timely submit both a Notice of Objection and a Request for  
20 Exclusion will be deemed to have excluded themselves and their Notice of Objection shall not be  
21 considered.

22                   3.10.8 No Solicitation of Exclusions or Objections. The Parties agree to use their  
23 best efforts to carry out the terms of this Settlement. At no time shall the Parties or their counsel  
24 seek to solicit or otherwise encourage Class Members to submit a Notice of Objection or a  
25 Request for Exclusion from the Settlement or to appeal from the Court's Final Approval Order.  
26 Class Counsel shall not represent Class Members with respect to any objections or appeals to this  
27 Settlement. The Parties are not precluded from contacting Class Members in an effort to  
28 encourage them to participate in the Settlement.

1                   3.10.9 Option to Terminate Settlement. If, before the Final Approval Hearing,  
2 more than five percent (5%) of Class Members have submitted timely and valid Requests for  
3 Exclusion, Defendant shall have, in its sole discretion, the option to terminate this Settlement. In  
4 the event Defendant elects to so terminate this settlement, Defendant shall be responsible for the  
5 costs of the Settlement Administrator incurred between the date this Settlement Agreement was  
6 executed and the date of the termination of the Settlement Agreement. Defendant's right to  
7 terminate the Settlement pursuant to this section shall begin upon email confirmation from the  
8 Settlement Administrator that more than five (5%) of the Class Members (e.g., 15 out of 305)  
9 have submitted timely and valid Requests for Exclusion. Defendant shall then have fourteen (14)  
10 calendar days in which to exercise its right to terminate the Settlement, after which Defendant  
11 forfeits said right.

12                   3.10.10 Declaration in Support of Final Approval. No fewer than thirty (30)  
13 calendar days prior to the Final Approval Hearing, the Settlement Administrator shall provide the  
14 Parties with a statement detailing the actions taken by the Settlement Administrator to administer  
15 the Settlement to date, along with all incurred and anticipated Settlement Administration Costs,  
16 and shall provide any additional information as the Parties' desire.

17                   3.10.11 Final Approval Hearing. The Court shall hold a Final Approval Hearing,  
18 where objections, if any, may be heard and the Court shall determine whether the Settlement  
19 should be finally approved, and if so, the amounts payable for: (1) Individual Settlement  
20 Payments; (2) Plaintiff's Service Award; (3) the Class Counsel Fees Award; (4) the Class  
21 Counsel Costs Award; (5) Settlement Administration Costs; and (6) the PAGA Settlement. Class  
22 Counsel shall prepare and file any moving papers necessary to secure Final Approval of this  
23 Settlement and shall provide a draft of the same to Defense Counsel for review and comment at  
24 least three (3) business days before filing such papers.

25                   3.10.12 Entry of Final Approval Order. If the Court approves this Settlement at  
26 the Final Approval Hearing, Class Counsel shall request that the Court enter a Final Approval  
27 Order and shall obtain a Judgment from the Court. The Judgment shall, among other things, (a)  
28 find that the Court has personal jurisdiction over all Class Members and that the Court has subject

1 matter jurisdiction to approve the Agreement; (b) approve the Agreement as fair, reasonable, and  
2 adequate to, and in the best interests of the Class Members, direct the parties to implement and  
3 consummate the Agreement according to its terms; (c) find that the Notice provisions continued  
4 herein are reasonably calculated to apprise the Class Members of the pendency of the action, the  
5 terms of this Agreement, their right to object or exclude themselves, that the notice provisions are  
6 reasonable and constitute due, adequate, and sufficient notice to all Class Members; (d) find that  
7 the Class Representative and Class Counsel fairly and adequately represented the Class for the  
8 purpose of this Agreement; (e) incorporate the Releases set forth herein, and forever discharge the  
9 Released Parties as set forth herein; (f) permanently bar and enjoin all Class Members who have  
10 not been excluded from the Class, from filing, commencing, prosecuting, or participating in any  
11 lawsuit or other action, in any jurisdiction, based on the Released Claims. After granting final  
12 approval of the Settlement and entering judgment, the Court shall retain jurisdiction over the  
13 Parties to enforce and implement the terms of the judgment.

14       3.11 Funding and Allocation of Settlement.

15               3.11.1 Settlement Accounting. No more than five (5) calendar days after the  
16 Effective Date, the Settlement Administrator shall provide the Parties with an accounting of all  
17 anticipated payments from the Settlement Fund Account, including: (1) Individual Settlement  
18 Payments; (2) Plaintiff's Service Award; (3) the Class Counsel Fees Award; (4) the Class  
19 Counsel Costs Award; (5) PAGA Settlement payments; and (6) Settlement Administration Costs,  
20 all as specified in this Settlement Agreement and approved by the Court.

21               3.11.2 Funding the Settlement. Within ten (10) calendar days following the  
22 receipt of the Settlement Accounting referenced in section 3.11.1, Defendant shall fund the  
23 Settlement by providing the Total Settlement Amount to the Settlement Administrator. The  
24 Settlement Administrator shall deposit the funds in the Settlement Fund Account and will  
25 disburse the funds in the manner and at the times set forth in this Agreement.

26               3.11.3 Individual Settlement Payments. Individual Settlement Payments will be  
27 paid from the Net Distribution Fund and mailed by First Class U.S. Mail to Class Members' last  
28 known mailing address within thirty (30) calendar days following the Effective Date of the

1 Settlement. Any checks issued to Class Members shall remain valid and negotiable for one  
2 hundred and twenty (120) calendar days from the date of their issuance and shall become void on  
3 the 121<sup>st</sup> day after mailing, *i.e.*, the Void Date. The Parties agree that any unclaimed funds as a  
4 result of the failure to cash Individual Settlement Payment checks by the Void Date shall escheat  
5 to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the  
6 name of the Class Member.

7           3.11.4 Calculation of Individual Settlement Payments. All Class Members who  
8 do not submit a timely and valid Request for Exclusion will receive an Individual Settlement  
9 Payment. Class Members are not eligible to receive any compensation other than an Individual  
10 Settlement Payment. The Individual Settlement Payment shall be calculated and apportioned  
11 based on the number of Workweeks each Class Member worked during the Class Period as an  
12 employee of Defendant. Specific calculations will be made as follows:

13           3.11.4.1 Using the workweek information to be provided by Defendant,  
14 the Settlement Administrator will calculate the number of individual Workweeks that each Class  
15 Member worked during the Class Period. For each Class Member who is a former employee,  
16 their total number of Workweeks will be multiplied by 1.25 to come up with an adjusted number  
17 of Workweeks ("Adjusted Workweeks"). For each Class Member who is a current employee, no  
18 multiplier will be added to their total number of Workweeks.

19           3.11.4.2 The Settlement Administrator will then add the total number of  
20 Workweeks worked by Class Members who are current employees during the Class Period and  
21 the total number of Adjusted Workweeks worked by Class Members who are former employees  
22 during the Class Period to come up with a total number of Workweeks ("Class Workweeks").

23           3.11.4.3 Individual Settlement Payments will be allocated and paid  
24 proportionately based on the number of Workweeks or Adjusted Workweeks each Class Member  
25 worked during the Class Period. For Class Members who are current employees, the Individual  
26 Settlement Payment will be calculated as follows: Individual Settlement Payment = (Individual  
27 Workweeks ÷ Class Workweeks) × Net Settlement Amount. For Class Members who are former  
28 employees, the Individual Settlement Payment will be calculated as follows: Individual

1 Settlement Payment = (Individual Adjusted Workweeks ÷ Class Workweeks) × Net Settlement  
2 Amount.

3 3.11.4.4 The Settlement Administrator shall calculate and deduct from  
4 those amounts the employee's share of any applicable taxes and/or other required withholdings,  
5 and then will pay the resulting amount to Class Members in the manner set forth herein.

6 3.11.5 Tax Treatment of Individual Settlement Payments. Each Individual  
7 Settlement Payment shall be allocated as follows: twenty percent (20%) will be considered wages  
8 subject to withholding of all applicable local, state and federal taxes, and eighty percent (80%)  
9 will be paid non-wages, i.e., as interest and penalties, from which no taxes will be withheld. The  
10 Settlement Administrator will issue to each Class Member an IRS Form W-2 and comparable  
11 state forms with respect to the wage allocation and an IRS Form 1099 with respect to the  
12 penalties and interest allocation.

13 3.11.6 Calculation of Individual Payments to the Aggrieved Employees. Using the  
14 Class Data, the Settlement Administrator shall add up the total number of Workweeks for all  
15 Aggrieved Employees during the PAGA Period. The respective Workweeks for each Aggrieved  
16 Employee will be divided by the total Workweeks for all Aggrieved Employees, resulting in the  
17 "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA  
18 Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each  
19 Aggrieved Employee's estimated Individual PAGA Settlement payment.

20 3.11.7 PAGA Settlement Allocation. Ten Thousand Dollars (\$10,000) shall be  
21 allocated from the Total Settlement Amount for settlement of claims for civil penalties under the  
22 Private Attorneys General Act of 2004 ("PAGA Settlement"). The Settlement Administrator shall  
23 pay seventy-five percent (75%) of the PAGA Settlement (\$7,500) to the California Labor and  
24 Workforce Development Agency no later than twenty-five (25) calendar days after the Funding  
25 Date (hereinafter "LWDA Payment"). Twenty-five (25%) of the PAGA Settlement Allocation  
26 (\$2,500), which is referred to as the PAGA Settlement Fund, will be distributed as PAGA  
27 Settlement Payments to the members of the PAGA Aggrieved Employees. For purposes of  
28 distributing the PAGA Settlement Fund to the PAGA Aggrieved Employees, each Aggrieved

1 Employee shall receive a PAGA Settlement Payment calculated based on their pro-rata share of the  
2 PAGA Settlement Fund using the PAGA Payment Ratio as defined above.

3 3.11.8 Administration of Taxes by Settlement Administrator. The Settlement  
4 Administrator shall be responsible for issuing to the Class Representative, Class Members, and  
5 Class Counsel any W-2, 1099 or other tax forms as may be required by law for all amounts paid  
6 pursuant to this Agreement. The Settlement Administrator shall also be responsible for  
7 forwarding the Payroll Taxes and any applicable withholdings/deductions to the appropriate  
8 governmental authorities.

9 3.11.9 Tax Liability. Defendant and Class Counsel make no representation as to  
10 the tax treatment or legal effect of the payments called for hereunder, and Class Representative  
11 and Class Members are not relying on any statement, representation, or calculation by Defendant,  
12 Class Counsel or by the Settlement Administrator in this regard. The Class Representative and  
13 Class Members understand and agree that, except for the Settlement Administrator's payment of  
14 the employer's portion and employee's portion of any applicable payroll taxes, the Class  
15 Representative and Class Members will be solely responsible for reporting and paying any taxes  
16 or penalties assessed based on the payments described herein.

17 3.11.10 Class Representative Service Award. Defendant agrees not to oppose any  
18 application by the Class Representative for a Service Award not to exceed Ten Thousand Dollars  
19 (\$10,000), as consideration for his Complete and General Release of Claims and for his time and  
20 effort in prosecuting this matter. While Defendant does not object to the enhancement award, it  
21 does not endorse an enhancement award, and leaves the amount to be awarded to the court's  
22 discretion. Any Service Awards approved by the Court shall be paid to the Class Representative  
23 within twenty (20) calendar days following the Effective Date of the Settlement. The Class  
24 Representative agrees to provide the Settlement Administrator with an updated IRS Form W-9  
25 before the Service Award is issued. The Settlement Administrator shall issue an IRS Form 1099  
26 to the Class Representative for this payment. The Class Representative shall be solely and legally  
27 responsible for paying any and all applicable taxes on his Service Award and shall hold  
28 Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result

1 of the Service Award. The Service Award shall be in addition to the Class Representative's  
2 Individual Settlement Payment. In the event the Court awards less than the full amount requested  
3 for the Service Award, the difference between the requested amount and the awarded amount will  
4 be made available for distribution to Class Members as part of the Net Distribution Fund. Plaintiff  
5 and the Class Representative shall not have the right to revoke their agreement to the Settlement  
6 on the grounds the Court does not approve any or all of the requested Service Award.

7           3.11.11 Class Counsel Fees Award and Class Counsel Costs Award. Defendant  
8 agrees not to oppose any application by Class Counsel for a Class Counsel Fees Award not to  
9 exceed one-third of the Total Settlement Amount (i.e.\$114,333.34). Defendant further agrees not  
10 to oppose any application by Class Counsel for a Class Counsel Costs Award not to exceed  
11 \$12,000.00. Class Counsel agrees they will not seek a Class Counsel Fee Award or Class Counsel  
12 Costs Award in excess of these amounts. The Class Counsel Fee Award and Class Counsel Costs  
13 Award shall be deemed to cover all work performed, costs, and expenses related to the  
14 investigation, prosecution, and settlement of the Action incurred through the Effective Date and  
15 distribution date. The Settlement Administrator shall pay the Court-approved Class Counsel Fees  
16 Award and Class Counsel Costs Award within twenty (20) calendar days following the Effective  
17 Date of the Settlement. Class Counsel agrees to provide the Settlement Administrator with an  
18 executed IRS Form W-9 before the Class Counsel Fees Award and Class Counsel Costs Award are  
19 issued. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the  
20 payments made pursuant to this Paragraph. In the event the Court awards less than the full amount  
21 requested for the Class Counsel Fees Award and Class Counsel Costs Award, the difference  
22 between the requested amount and the awarded amount will be made available for distribution to  
23 Class Members as part of the Net Distribution Fund. This Settlement is not contingent upon the  
24 Court's decision to award Class Counsel any particular amount, or any amount, for Class Counsel's  
25 attorneys' fees and costs. Class Counsel shall be solely responsible for the division and distribution  
26 of any and all Court-approved Class Counsel Fees Award and Class Counsel Costs Award. Class  
27 Counsel agrees to release Defendant and the Released Parties from any responsibility for and  
28 liability arising out of or related to the division and distribution of any Court-approved Class

1 Counsel Award. Class Counsel agrees to assume all responsibility for the payment of any liens  
2 asserted by any former attorneys in its firm and agrees to indemnify and hold harmless Defendants  
3 for any such lien.

4 3.12 Settlement Administration Costs. The Settlement Administration Costs shall be  
5 paid to the Settlement Administrator from the Total Settlement Amount, in an amount currently  
6 estimated not to exceed \$13,300. The Settlement Administration Costs shall be paid the  
7 Settlement Administration Costs within forty-five (45) calendar days following the Effective Date  
8 of the Settlement, unless the Settlement Administrator requires payment before then, in which  
9 case Defendant shall provide payment when requested. In the event the Court awards less than  
10 the Settlement Administration Costs outlined herein, the difference between the requested amount  
11 and the awarded amount will be available for distribution to Class Members as part of the Net  
12 Distribution Fund.

13 3.13 No Effect on Employee Benefits. Amounts paid to Plaintiff, the Class  
14 Representative, or Class Members pursuant to this Settlement Agreement do not count as  
15 earnings or compensation for purposes of any benefits provided or sponsored by Defendant.

16 3.14 Nullification of Settlement Agreement. In the event: (1) the Court does not enter  
17 the Preliminary Approval Order as provided herein; (2) the Court does not enter a Final Approval  
18 Order as provided herein; or (3) the Settlement does not become final, for any other reason, this  
19 Settlement Agreement shall be null and void, and any order entered by the Court in furtherance of  
20 this Settlement shall be treated as void from the beginning. In such case, any funds to be awarded  
21 under this Settlement shall be returned to their respective statuses as of the date and time  
22 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in  
23 all respects as if this Settlement Agreement had not been executed, except that any Settlement  
24 Administration Costs already incurred by the Settlement Administrator shall be paid by the  
25 Parties in equal shares. In the event an appeal is filed from the Court's Final Approval Order or  
26 from an order rejecting any motion to intervene, or any other appellate review is sought, the  
27 administration of the settlement shall be stayed pending final resolution and Defendant will not be  
28 required to fund this Settlement until and unless the Effective Date is reached.

1           3.15   Exhibits and Headings. The terms of this Settlement Agreement include the terms  
2 set forth herein and in any Exhibits attached hereto, which are incorporated by this reference as  
3 though fully set forth herein. The descriptive headings of any paragraphs or sections of this  
4 Settlement Agreement are inserted for convenience only and do not constitute a part of this  
5 Settlement Agreement.

6           3.16   Interim Stay of Proceedings. The Parties agree to stay all proceedings in the  
7 Action, except such proceedings necessary to implement and complete the Settlement, pending  
8 the Final Approval Hearing to be conducted by the Court.

9           3.17   Amendment or Modification. This Settlement Agreement may be amended or  
10 modified only by a written instrument signed by Defense Counsel and Class Counsel or their  
11 successors-in-interest.

12           3.18   Entire Agreement. This Settlement Agreement and any Exhibits thereto constitute  
13 the entire agreement among the Parties, and no oral or written representations, warranties or  
14 inducements have been made to any Party concerning this Settlement Agreement or its Exhibit  
15 other than the representations, warranties and covenants contained and memorialized in the  
16 Settlement Agreement and its Exhibits.

17           3.19   Authorization to Enter into Settlement Agreement. Defense Counsel and Class  
18 Counsel warrant and represent they are expressly authorized by the Parties whom they represent  
19 to negotiate this Settlement Agreement and to take all appropriate actions required or permitted to  
20 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms. The person  
21 or persons signing this Settlement Agreement on behalf of Defendant represents and warrants that  
22 he/she/they are authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff  
23 and Class Representative represent and warrant that they are authorized to sign this Settlement  
24 Agreement and that they have not assigned any Claims covered by this Settlement to a third-  
25 party. The Parties and their counsel agree to cooperate with each other fully and to use their best  
26 efforts to effectuate the implementation of the Settlement. Such cooperation includes, but is not  
27 limited to, execution of such other documents and the taking of such other actions as may be  
28 reasonably necessary to fulfill the terms of this Settlement. In the event the Parties are unable to

1 reach agreement on the form or content of any document needed to implement the Settlement or  
2 on any supplemental provisions that may become necessary to effectuate the terms of this  
3 Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

4 3.20 Binding on Successors and Assigns. This Settlement Agreement shall be binding  
5 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously  
6 defined.

7 3.21 California Law Governs. All terms of this Settlement shall be governed by and  
8 interpreted according to the laws of the State of California.

9 3.22 Invalidity of Any Provision. Before declaring any provision of this Settlement  
10 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest  
11 extent possible consistent with applicable precedent so as to define all provisions of this  
12 Settlement Agreement as valid and enforceable.

13 3.23 Publicity. The Class Representative and Class Counsel agree that they will not  
14 issue any press releases, initiate any contact with the press, respond to any inquiry from the press  
15 about this case, or otherwise publicize this Action or the Settlement, the facts of this Action or the  
16 Settlement, or the outcome of the Action.

17 3.24 Notices. Unless otherwise specifically provided, all notices, demands or other  
18 communications in connection with this Settlement Agreement shall be made: (1) in writing; (2)  
19 deemed given on the third business day after mailing; and (3) sent via United States registered or  
20 certified mail, return receipt requested, addressed as follows:

| To Plaintiff:                                                                                                            | To Defendant:                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| DAVID YEREMIAN & ASSOCIATES<br>David Yeremian<br>Alvin B. Lindsay<br>535 N. Brand Blvd., Suite 705<br>Glendale, CA 91203 | HIGGS FLETCHER & MACK, LLP<br>James M. Peterson, Esq.<br>Derek W. Paradis, Esq.<br>401 West "A" Street, Suite 2600<br>San Diego, CA 92101 |

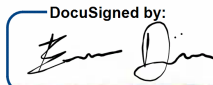
1           3.26 Execution by Class Members. It is agreed that it is impossible or impractical to  
 2 have each Class Member execute this Settlement Agreement. The Notice of Settlement will  
 3 therefore advise all Class Members of the binding nature of the Settlement and its Released  
 4 Claims, which release shall have the same force and effect as if each Class Member executed this  
 5 Settlement Agreement individually (excepting only those Class Members who return a timely and  
 6 valid Request for Exclusion).

7           3.27 Execution by Plaintiff. Plaintiff, by signing this Settlement Agreement, is bound  
 8 by the terms herein and further agrees not to submit any Request for Exclusion from or Notice of  
 9 Objection to the Settlement. Any such Request for Exclusion or Notice of Objection from  
 10 Plaintiff shall therefore be void and of no force or effect.

11           3.28 Counterparts. This Settlement Agreement shall become effective upon its  
 12 execution by all of the undersigned. The Agreement may be executed counterparts, which shall  
 13 have the same force and effect as if each had signed the same instrument. Copies of the executed  
 14 Settlement Agreement shall be effective for all purposes as though the signatures contained  
 15 therein were original signatures.

16           **IT IS SO STIPULATED AND AGREED:**

17  
 18 DATED: February 10, 2022

DocuSigned by:  
  
 Eduardo Diaz Galan  
 DFE72EAD4578452...

19  
 20 DATED: February 7, 2022

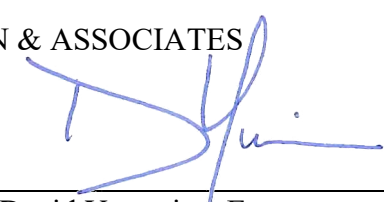
  
 Elite Comfort Solutions, LLC  
 By: Jennifer J. Coleman  
 Title: Assistant Secretary

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**APPROVED AS TO FORM:**

DATED: February 8, 2022

YEREMIAN & ASSOCIATES

By: 

David Yeremian, Esq.  
Alvin B. Lindsay, Esq.  
Attorneys for Plaintiff  
EDUARDO DIAZ GALAN

DATED: February 7, 2022

HIGGS FLETCHER & MACK, LLP

By: 

James M. Peterson, Esq.  
Derek W. Paradis, Esq.  
Attorneys for Defendant  
ELITE COMFORT  
SOLUTIONS, LLC