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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
18 situated,

19 Plaintiff,

20 v.

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

23 Defendants.

CASE NO. 20STCV35875

**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 Total Settlement Amount (i.e., \$116,667.00). The Class Counsel
28 Fees Award shall be paid to Class Counsel out of the Total Settlement Amount.

1 1.7 **“Class Information”** means information regarding Class Members that Defendant
2 will compile in good faith from its records and provide, confidentially, to the Settlement
3 Administrator. Class Information shall be provided in a confidential Excel spreadsheet and shall
4 include, for each Class Member: full name, last known address, social security number, and the
5 number of Workweeks each Class Member worked for Defendant during the Class Period and
6 PAGA Period. Because Class Members’ sensitive personal information is included in the Class
7 Information, the Settlement Administrator shall maintain the Class Information securely and in
8 confidence. Access to such Class Information shall be limited to employees of the Settlement
9 Administrator with a need to use the Class Information for administration of the Settlement.

10 1.8 **“Class Period”** means the period from September 18, 2016 through and including
11 September 30, 2021.

12 1.9 **“Class Representative”** means Plaintiff Eduardo Diaz Galan.

13 1.10 **“Complaint”** means the operative first amended complaint in the above-captioned
14 Action, which was filed by Plaintiff on December 22, 2020.

15 1.11 **“Complete and General Release”** means an irrevocable and unconditional release
16 given by the Class Representative, releasing the Released Parties from any and all charges,
17 complaints, claims, causes of action, debts, penalties, wages, sums of money, controversies,
18 agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and
19 equity, known or unknown, suspected or unsuspected, arising from conduct occurring on or
20 before the date the Class Representative signs this Settlement Agreement, related to or arising out
21 of his employment with Defendant and/or this lawsuit, including but not limited to all of the
22 Claims defined in Section 1.2. This provision is intended by the Parties to be all encompassing
23 and to act as a full and total release of any employment-related claims, whether specifically
24 enumerated herein or not, that the Class Representative might now have or had, that exists or ever
25 has existed, on or prior to the date this Settlement Agreement is signed. The words “claim” or
26 “claims” in this context includes without limitation all actions, claims and grievances, whether
27 actual or potential, known or unknown, related, incidental to or arising out of any act or omission
28 committed or omitted by the Released Parties through the date the Class Representative sign this

1 Settlement Agreement and/or arising out of their employment relationship with Defendant and/or
2 the cessation thereof, including a 1542 Waiver (defined below).

3 1.12 “**Court**” means the Superior Court of California for the County of Los Angeles.

4 1.13 “**Defendant**” means Elite Comfort Solutions, LLC.

5 1.14 “**Defense Counsel**” means James M. Peterson and Derek W. Paradis of Higgs
6 Fletcher & Mack, LLP.

7 1.15 “**Effective Date**” means the date by which this Settlement is finally approved as
8 provided herein and the Court’s Final Approval Order becomes binding. For purposes of this
9 Settlement Agreement, the Final Approval Order becomes binding: (1) if no Class Member
10 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
11 Procedure § 663 before the entry of Judgment, then the date of final approval by the Court; (2) if
12 a Class Member timely intervenes or files a motion to vacate the Judgment before the entry of
13 Judgment, then the later of (a) the day after the deadline by which a notice of appeal to the Court
14 of Appeals of the Final Approval Order and/or of an order rejecting any motion to intervene may
15 be timely filed, and none is filed; (b) if such an appeal is filed, and the appeal is finally disposed
16 of by ruling, dismissal, denial or otherwise, the day after the deadline for filing a request for
17 further review of the Court of Appeals’ decision passes and no further review is requested; (c) if
18 an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the
19 Court of Appeals and further review of the Court of Appeals’ decision is requested, the day after
20 the request for review is denied with prejudice and/or no further review of the decision can be
21 requested; or (d) if review is accepted, the day after the Supreme Court of California affirms the
22 Settlement. Defendant will not be obligated to fund this Settlement until and unless the Effective
23 Date is reached.

24 1.16 “**Final Approval Hearing**” means the hearing held to determine whether the
25 Court will enter a Final Approval Order finally approving this Settlement.

26 1.17 “**Final Approval Order**” means the Court’s entry of an order granting the Parties’
27 motion for final approval of and entering a final judgment in accordance with this Settlement.

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1.18 **“Individual Settlement Payment”** means the amount payable to Class Members, as calculated pursuant to Paragraph 3.11.4, below, and excludes any amounts distributed to Settlement Class Members pursuant to PAGA.

1.19 **“Net Distribution Fund”** means the Total Settlement Amount, less the amount that the Court awards for Plaintiff’s Service Award, Class Counsel Fees Award, PAGA Settlement, Class Counsel Costs Award, Settlement Administration Costs, and any Payroll Taxes.

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

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

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

1.23 **“PAGA Payment Ratio”** means the respective Workweeks during the PAGA Period for each Aggrieved Employee divided by the sum total of the Workweeks for all Aggrieved Employees during the PAGA Period.

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

1.25 **“PAGA Settlement”** shall mean Ten Thousand Dollars (\$10,000.00) to be allocated from the Total Settlement Amount.

1.26 **“Payroll Taxes”** means the Defendant’s portion of FICA, FUTA, and all other state and federal employer payroll taxes, which shall be paid out of Total Settlement Amount.

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

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1 1.28 **“Released Claims”** means the Claims that Class Members are fully releasing in
2 exchange for the consideration provided by this Settlement Agreement, whether arising at law, in
3 contract or in equity, and whether for economic or non-economic damages, restitution, injunctive
4 relief, penalties or liquidated damages as specified below. Released Claims means all claims
5 actually asserted or which could have been asserted in the Action by the Class Members against
6 the Released Parties, arising during the Class Period, based on the facts alleged in the operative
7 Complaint, including but not limited to claims for: (1) failure to pay minimum wages in violation
8 of Labor Code §§ 201-204, 1194, 1194.2 1197, 1197.1, and the applicable Wage Order; (2)
9 failure to pay wages and overtime in violation of Labor Code §§ 201-204, 510, 558, 1194, 1198,
10 1199, and the applicable Wage Order; (3) failure to authorize and permit meal breaks in violation
11 of Labor Code §§ 226.7, 512, and the applicable Wage Order; (4) failure to authorize and permit
12 rest breaks in violation of Labor Code §§ 226.7, 512, and the applicable Wage Order; (5) failure
13 to provide accurate, itemized wage statements in violation of Labor Code § 226(a); (6) unlawful
14 wage deductions in violation of Labor Code § 221; (7) failure to pay all wages owed under Labor
15 Code §§ 204, 210, 218.5, 1194, 1198, and the applicable wage order; (8) failure to pay all wages
16 due upon separation of employment in violation of Labor Code § 203; (9) failure to reimburse for
17 necessary business expenses in violation of Labor Code § 2802; (10) violations of the Business
18 and Professions Code section 17200 *et seq.*; and (11) penalties under PAGA, Labor Code § 2698
19 *et seq.* Released Claims also includes all claims that were or that could have been alleged in the
20 Action based on the facts stated in the Complaint, including but not limited to any claims for civil
21 penalties under the PAGA, for violations of the Fair Labor Standards Act, the California Labor
22 Code, and the relevant Wage Order. The term “Released Claims” also includes Plaintiff’s claim
23 that Defendant is liable for the attorneys’ fees incurred to prosecute this Action on behalf of Class
24 Members, including fees incurred for the services of Class Counsel, and any claim that Defendant
25 is liable for any other remedies, civil penalties, statutory penalties, or interest under California
26 law based on the facts alleged in the operative Complaint. The term “Released Claims” also
27 includes all claims that the Class Members may have against the Released Parties relating to (i)
28 the payment, taxation and allocation of attorneys’ fees and costs to Class Counsel pursuant to this

1 Settlement Agreement, and (ii) the payment, taxation and allocation of Plaintiff's Service Award
2 pursuant to this Settlement Agreement.

3 1.29 "Released PAGA Claims": Upon the Effective Date, the Released Parties shall be
4 entitled to a release from the State of California and the Aggrieved Employees only as to all PAGA
5 claims based on the alleged facts and legal claims arising during the PAGA Period at the time of
6 final approval by Plaintiff in the Action and Plaintiff's notice letter to the LWDA including, but
7 not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7,
8 351, 510, 512, 558, 1174, 1174.5, 1185 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802,
9 2804, and 2698 et seq., and the applicable IWC Wage Orders, and any resulting claim for attorneys'
10 fees and costs under PAGA, which occurred during the PAGA The PAGA Released Claims
11 expressly exclude all PAGA claims outside the PAGA Period, all PAGA claims not alleged in the
12 operative complaints in the Actions, all claims under Cal. Labor Code § 558(a)(3), and all non-
13 PAGA claims. In no event shall the release of the Released PAGA Claims in this Settlement
14 Agreement release any individual claims of any individuals other than Plaintiff.

15 1.30 "**Released Parties**" means Elite Comfort Solutions, LLC, including its respective
16 subsidiaries, affiliates, parents, divisions, predecessors, employee benefit plans sponsored or
17 maintained by it, its attorneys, and its respective successors and assigns; all of its past, present,
18 and future respective officers, directors, board members, employees, members, administrators,
19 fiduciaries, trustees, principals, heirs, representatives, accountants, auditors, consultants,
20 attorneys, insurers and reinsurers, beneficiaries and agents, and other persons acting on its behalf.

21 1.31 "**Request for Exclusion**" means a timely written request by a Class Member to
22 exclude himself/herself from the Settlement, which must be completed and mailed in the times
23 and manner set forth in Section 3.10.6 of this Settlement Agreement and the Notice of Settlement.

24 1.32 "**Response Deadline**" means the date forty-five (45) calendar days after the
25 Settlement Administrator mails the Notice of Settlement to Class Members and the last date on
26 which Class Members may postmark and/or file, as applicable, Requests for Exclusion or Notices
27 of Objection to the Settlement.
28

1 1.33 “**Service Award**” means the amount that the Court may award to the Class
2 Representative for his effort in assisting with the prosecution of the Action and as consideration
3 for his execution of this Settlement Agreement and releasing his claims, as specified herein.

4 1.34 “**Settlement**” or “**Settlement Agreement**” means the disposition of the Action
5 pursuant to this Agreement.

6 1.35 “**Settlement Administration Costs**” means the costs incurred by the Settlement
7 Administrator in connection with the administration, currently estimated to be \$12,500.

8 1.36 “**Settlement Administrator**” means ILYM Group, Inc.

9 1.37 “**Settlement Fund Account**” means the qualified bank account to be established
10 by the Settlement Administrator pursuant to the terms of this Settlement Agreement, from which
11 all monies payable under the terms of this Settlement shall be paid. The Parties agree to treat this
12 account as a “Qualified Settlement Fund,” and the Settlement Administrator shall treat the
13 Settlement Fund Account as the “employer” for purposes of federal and state income and
14 employment tax withholding and reporting with respect to the Individual Settlement Payments.

15 1.38 “**Total Settlement Amount**” means Three Hundred and Fifty Thousand Dollars
16 (\$350,000), which is the maximum amount that Defendant shall be obligated to pay under this
17 Settlement Agreement in order to settle this Action, subject to the Court’s approval.

18 1.39 “**Void Date**” means the date by which any checks issued to Class Members shall
19 become void, *i.e.*, on the 121st day after mailing.

20 1.40 “**Workweeks**” means the number of weeks of employment that each Class
21 Member worked for Defendant during the Class Period. For purposes of distributing the PAGA
22 Settlement to the Settlement Class, Workweeks means the number of weeks of employment for
23 each Settlement Class Member during the PAGA Period.

24 1.41 “**1542 Waiver**” means an express and complete waiver, to the fullest extent
25 permitted by law, of the provisions, rights and benefits of Section 1542 of the California Civil
26 Code, or any other similar provision under federal or state law, which Section provides: “A
27 general release does not extend to claims that the creditor or releasing party does not know or
28

1 suspect to exist in his or her favor at the time of executing the release and that, if known by him
2 or her, would have materially affected his or her settlement with the debtor or released party.”

3 **2. RECITALS.**

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

18 2.2 Mediation. On June 15, 2021, the Parties participated a full-day, private mediation
19 with Tripper Ortman, Esq., an experienced mediator who is well-versed in putative class and
20 representative actions. Through that process Mr. Ortman made a mediator’s proposal which was
21 accepted by the Parties, and with Mr. Ortman’s assistance, the Parties reached an agreement to
22 resolve this Action. At all times, each Party was represented by experienced counsel during the
23 arms-length, good-faith negotiations facilitated by Mr. Ortman.

24 2.3 Discovery and Analysis. The Parties have engaged in a thorough investigation and
25 analysis of the claims made in this Action. The parties informally exchanged information and
26 documents and the Parties exchanged a sampling of time and payroll information, allowing each
27 side with a reasonable opportunity to assess the respective strengths and weaknesses of their
28 claims and defenses.

1 2.4 Plaintiff's Reasons for Settlement. The Class Representative and Class Counsel
2 recognize the expense and length of continued proceedings necessary to litigate this Action
3 through trial, and the likelihood of protracted and expensive appellate review. They have also
4 taken into account the uncertainty and risk of the outcome of further litigation, as well as the
5 difficulties and delays inherent in such litigation. The Class Representative and Class Counsel are
6 likewise aware of the burdens of proof necessary to establish liability for the Claims asserted in
7 the Action, which claims have been, and remain, highly disputed by Defendant, and the
8 difficulties in establishing damages or justifiable penalties for Class Members under the theories
9 asserted in this action. Based on the foregoing, the Class Representative and Class Counsel have
10 determined that the Settlement set forth in this Settlement Agreement is a fair, adequate and
11 reasonable Settlement and is in the best interests of themselves and the Class Members.

12 2.5 Defendant's Reasons for Settlement. Defendant has concluded that any further
13 defense of this litigation would be protracted and expensive for all Parties. Defendant has
14 incurred substantial amounts of time, energy and resources in connection with this Action and,
15 unless this Settlement is made, will continue to be devoted to the defense of the Claims.
16 Defendant has also taken into account the risks of further litigation in reaching its decision to
17 enter into this Settlement. Although Defendant vehemently denies and strongly disputes the
18 Claims and continues to contend it is not liable for any of the causes of action asserted in the
19 Action, Defendant has nonetheless agreed to settle in the manner and upon the terms set forth in
20 this Settlement Agreement to put to rest the Claims and avoid further protracted litigation.
21 Defendant agrees that the Settlement set forth in this Settlement Agreement is fair, adequate and
22 reasonable to and for the Class Members, even though Defendant makes no concessions or
23 admissions of wrongdoing or liability of any kind whatsoever.

24 2.6 Defendant has claimed, and continues to claim, that the Claims have no merit and
25 do not give rise to liability. Defendant specifically denies all of the allegations in the operative
26 Complaint. This Settlement Agreement is a compromise of such disputed claims. Nothing
27 contained in this Settlement Agreement and no documents referred to herein and no action taken
28 to carry out this Settlement Agreement may be construed or used as an admission by or against

1 Defendant of any fault, wrongdoing or liability whatsoever. The Parties acknowledge and agree
2 that this Agreement, including the consideration provided herein, has been, and is, made and
3 received solely based on a compromise of disputed claims and that this Agreement is not, and
4 shall not be construed as an admission by Defendant of any liability.

5 2.7 The Parties also understand and agree that, pursuant to California Evidence Code
6 section 1152, and any other analogous rules of evidence that are applicable (including, but not
7 limited to, analogous rules of evidence applicable in other courts and other jurisdictions, such as,
8 for example, Federal Rule of Evidence 408), neither this Agreement, the settlement memorialized
9 therein, nor any act performed or document executed pursuant to or in furtherance of this
10 Agreement, is to be (or may be deemed to be) used in any civil, criminal, or administrative
11 proceeding in any court, administrative agency, or other tribunal as: (a) an admission of the
12 validity of any Released Claims or of any wrongdoing or liability of any of the Released Parties;
13 (b) evidence of the validity of any Released Claims or of any wrongdoing or liability of any of the
14 Released Parties; (c) an admission of any fault or omission of any of the Released Parties; or (d)
15 evidence of any fault or omission of any of the Released Parties.

16 **3. SETTLEMENT TERMS.**

17 The Parties agree as follows:

18 3.1 Certification of Settlement Class. Solely for the purposes of this Settlement, the
19 Parties stipulate and agree that, in order for this Settlement to occur, the Court should certify the
20 Settlement Class.

21 3.2 Appointment of Class Representative. The Parties agree that Plaintiff Eduardo
22 Diaz Galan should be appointed as a representative of the Settlement Class.

23 3.3 Appointment of Class Counsel. The Parties agree that David Yeremian and Alvin
24 B. Lindsay of David Yeremian & Associates should be appointed as Class Counsel for the
25 Settlement Class.

26 3.4 Appointment of Settlement Administrator. Solely for the purposes of this
27 Settlement, the Parties agree ILYM Group, Inc. shall be retained to serve as the Settlement
28 Administrator. The Settlement Administrator shall be responsible for establishing the Settlement

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

23 3.5 Maximum Amount Payable by Defendant. Under the terms of this Settlement, and
24 in consideration for the entry of the Final Approval Order and judgment, as well as the various
25 releases, acts, and benefits delineated herein, the maximum monetary amount payable by
26 Defendant shall not exceed the Total Settlement Amount of Three Hundred and Fifty Thousand
27 Dollars (\$350,000). This Total Settlement Amount represents the maximum monetary payment
28 Defendant may be required to make to, or for the benefit of, the named Plaintiff, Class Members,

1 the taxing authorities, the State of California, and Class Counsel for the Settlement of this action,
2 and this Total Settlement Amount shall be used to cover all Individual Settlement Payments to
3 Class Members, the Service Award to Plaintiff, PAGA Settlement, the Class Counsel Fees
4 Award, the Class Counsel Costs Award, Settlement Administration Costs, all Payroll Taxes, and
5 any and all other costs or consideration associated with this Settlement.

6 3.6 Release as to All Class Members. As of the Effective Date, all Class Members
7 who do not timely submit a Request for Exclusion will forever and finally release the Released
8 Parties from all of the Released Claims. All Released Claims shall be released during the entirety
9 of the Class Period. Class Members may discover facts in addition to or different from those they
10 now know or believe to be true with respect to the subject matter of the Released Claims, but
11 upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order
12 shall have, fully, finally, and forever settled and released any and all of the Released Claims,
13 whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now
14 exist or have existed, upon any theory of law or equity now existing, including but not limited to,
15 conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule,
16 without regard to the subsequent discovery or existence of such different or additional facts. Class
17 Members agree not to sue or otherwise make any claim against the Released Parties that seeks
18 recovery for any of the Released Claims. It is the intent of the Parties that the Final Approval
19 Order entered by the Court shall have full *res judicata* and collateral estoppel effect and be final
20 and binding upon Class Members regarding the Released Claims. If the Settlement Agreement is
21 approved by the Court and not otherwise terminated, the Parties will request that the Court enter
22 an Order dismissing the Action with prejudice, barring and permanently enjoining Plaintiff and
23 all Class Members who do not submit a Request for Exclusion, from filing, prosecuting, or
24 participating in any claims, suits, or administrative proceedings for any Released Claims against
25 the Released Parties.

26 3.7 Complete and General Release by Class Representative. In consideration for the
27 promises and payments set forth in this Settlement Agreement, to which the Class Representative
28 is otherwise not entitled, the Class Representative agrees to provide a Complete and General

1 Release and a 1542 Waiver to the Released Parties, which shall release all claims and damages of
2 every kind and nature, actual or potential, known and unknown, which exist or could arise out of
3 his employment and/or the end of his employment with Defendant, through and including the date
4 of execution of this Settlement Agreement. With respect to the General Release, the Class
5 Representative stipulates and agrees that, upon the Effective Date, he shall be deemed to have,
6 and by operation of the Court's Final Approval Order, shall have, expressly waived and
7 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
8 1542 of the California Civil Code, or any other similar provision under federal or state law, which
9 provides:

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

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

1 includes, but is not limited to, any rights or claims arising under the California Constitution; the
2 California Labor Code; the California Business & Professions Code; the California Code of
3 Regulations; the California Fair Employment and Housing Act; the Fair Labor Standards Act;
4 Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; federal and state
5 family leave statutes; and any and all other federal, state and local laws, statutes, executive orders,
6 regulations and common law, including contract, employment and tort law.

7 3.8 Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
8 consideration set forth in this Agreement, the Plaintiff, the LWDA and the Aggrieved Employees
9 release the Released Parties from the PAGA Released Claims for the PAGA Period.

10 3.9 No Pending or Future Lawsuits. Other than this Action, the Class Representative
11 represents that he does not have any pending lawsuits, administrative complaints or charges
12 against the Released Parties in any local, state or federal court or administrative agency. The
13 Class Representative further acknowledges that all claims raised therein, if any, shall be fully and
14 finally extinguished by virtue of this Settlement Agreement and the Court's Final Approval
15 Order, and that he will not bring any action in the future in which he seeks to recover any
16 damages from the Released Parties relating to or arising from his employment with Defendant,
17 existing as of the date of the execution of this Agreement, other than an action to enforce his
18 rights under this Settlement Agreement. The Class Representative further acknowledges and
19 agrees that, consistent with the terms of his Complete and General Release, he shall not
20 participate in any currently pending or future-filed class or representative action against the
21 Released Parties, in any manner seeking relief for claims arising on or before the date of Final
22 Approval. In the event a class action is certified or a collective action is commenced against the
23 Released Parties, the Class Representative agrees that he shall opt-out of any and all relief
24 obtained thereby, including without limitation any settlements, judgments, or relief of whatsoever
25 kind or character obtained for the class or group to the extent he receives notice of the same, and
26 he shall otherwise have the affirmative obligation to decline participation in any and all such class
27 action or representative action cases, settlements, judgments, or relief of whatsoever kind or
28 character seeking relief for claims arising on or before the date of Final Approval.

1 3.10 Settlement Approval and Implementation Procedures. As part of this Settlement,
2 the Parties agree to the following procedures for obtaining the Court's Preliminary Approval of
3 the Settlement, notifying Class Members of the Settlement, obtaining the Court's Final Approval
4 of the Settlement and processing Individual Settlement Payments.

5 3.10.1 Preliminary Approval. Promptly after execution of this Settlement
6 Agreement, Class Counsel will submit this Agreement to the Court and shall move the Court for
7 Preliminary Approval of the settlement set forth in this Agreement, certification of the Class for
8 settlement purposes only, appointment of Class Counsel and the Class Representative, and entry
9 of the Preliminary Approval Order, which shall set a Final Approval hearing date and approve the
10 Notice for dissemination to the Class. Class Counsel shall provide drafts of the motions for
11 preliminary approval and final approval to Defense Counsel for review and input no less than four
12 (4) days prior to filing the same.

13 3.10.2 Class Information. No more than ten (10) calendar days after entry of the
14 Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class
15 Information for purposes of mailing the Notice Packet to Class Members.

16 3.10.3 Notice by First Class U.S. Mail. Upon receipt of the Class Information, the
17 Settlement Administrator will conduct a national change of address search for the most current
18 address of all former employee Class Members and will update such Class Members' addresses
19 as necessary. Fourteen (14) calendar days after receipt of the Class Information, the Settlement
20 Administrator shall mail the Notice Packet to all Class Members by First Class U.S. Mail. The
21 address identified by the Settlement Administrator as the current mailing address shall be
22 presumed to be the best mailing address for each Class Member.

23 3.10.4 Undeliverable Notices. Any Notice Packet that is returned to the
24 Settlement Administrator as non-deliverable on or before a date fourteen (14) calendar days
25 before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If
26 received less than fourteen (14) calendar days before the Response Deadline, no action needs to
27 be taken by the Settlement Administrator. If no forwarding address is provided, the Settlement
28 Administrator shall make reasonable efforts to obtain an updated mailing address, including

1 performing a skip trace. If an updated address is identified, the Settlement Administrator shall
2 resend the Notice Packet to the Class Member within seven (7) calendar days of the date of the
3 return of the original mailing. Class Members to whom the Notice Packet is resent, after having
4 been returned as non-deliverable to the Settlement Administrator, shall have fourteen (14)
5 calendar days thereafter or until the Response Deadline has expired, whichever is later, to submit
6 a Request for Exclusion and/or file the Notice of Objection. The date of the postmark on the
7 return envelope shall be the exclusive means used to determine whether a Class Member has
8 timely mailed his/her Request for Exclusion or Notice of Objection on or before the relevant
9 deadline. If a Class Member's Notice Packet is returned to the Settlement Administrator more
10 than once as non-deliverable, then an additional Notice Packet shall not be re-mailed. If, for any
11 reason, a Notice of Settlement is non-deliverable, the Settlement Administrator will not mail an
12 Individual Settlement Payment to the Class Member but will hold the Individual Settlement
13 Payment until the Void Date, at which time the funds shall be tendered to the California
14 Department of Industrial Relations Unpaid Wage Fund in the name of the Class Member.

15 3.10.5 Notice Satisfies Due Process. Compliance with the notice procedures
16 specified herein shall constitute due and sufficient notice to Class Members of this Settlement and
17 shall satisfy the requirements of due process. Nothing else shall be required of, or done by, the
18 Parties, Class Counsel or Defense Counsel to provide notice of the proposed Settlement. In the
19 event the procedures in this Settlement Agreement are followed and the intended recipient of a
20 Notice Packet still does not receive the Notice Packet, the intended recipient shall remain a Class
21 Member and will be bound by all terms of the Settlement and any Final Approval Order entered
22 by the Court if the Settlement becomes effective.

23 3.10.6 Requests for Exclusion (Opt-Outs). The Notice of Settlement shall state
24 that Class Members who wish to exclude themselves from the Settlement must submit a written
25 Request for Exclusion to the Settlement Administrator by the Response Deadline. To be valid, the
26 Request for Exclusion: (1) must contain the full name, address and last four digits of the social
27 security number of the Class Member requesting exclusion; (2) must be signed by the Class
28 Member requesting exclusion; and (3) must state, in substance: "I wish to exclude myself from

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

19 3.10.7 Objections. The Notice of Settlement shall state that Class Members who
20 wish to object to the Settlement must submit a written Notice of Objection to the Settlement
21 Administrator by the Response Deadline. The Settlement Administrator shall forward any Notices
22 of Objection received to counsel for the Parties. To be valid, the Notice of Objection must
23 include: (1) the objector’s full name, signature, address, and telephone number, (2) a written
24 statement of all grounds for the objection accompanied by any legal support, if any, for such
25 objection; (2) copies of any papers, briefs, or other documents upon which the objection is based,
26 if any; (4) must state the case name and case number, *Eduardo Diaz Galan, et al. v. Elite Comfort*
27 *Solutions, LLC, et al.*, Case No. 20STCV35875; and (5) state whether the Class Member or
28 his/her representative intends to appear at the Final Approval Hearing. If the Notice of Objection

1 does not contain the information listed in (1)-(5) or is not filed or timely postmarked and returned
2 to the Settlement Administrator at the specified address, it will not be deemed a timely or valid
3 Notice of Objection to this Settlement. As applicable, the date of the filing or the date of the
4 postmark on the return mailing envelope shall be the exclusive means used to determine whether
5 a Notice of Objection has been timely submitted. Class Members who fail to file or submit a
6 timely and valid Notice of Objection may be deemed by the Court to have waived any objections.
7 Class Members who file or submit a timely and valid Notice of Objection will have a right to
8 appear at the Final Approval Hearing to have their objections heard by the Court. Class Members
9 who timely submit both a Notice of Objection and a Request for Exclusion will be deemed to
10 have excluded themselves and their Notice of Objection shall not be considered.

11 3.10.8 No Solicitation of Exclusions or Objections. The Parties agree to use their
12 best efforts to carry out the terms of this Settlement. At no time shall the Parties or their counsel
13 seek to solicit or otherwise encourage Class Members to submit a Notice of Objection or a
14 Request for Exclusion from the Settlement or to appeal from the Court's Final Approval Order.
15 Class Counsel shall not represent Class Members with respect to any objections or appeals to this
16 Settlement. The Parties are not precluded from contacting Class Members in an effort to
17 encourage them to participate in the Settlement.

18 3.10.9 Option to Terminate Settlement. If, before the Final Approval Hearing,
19 more than five percent (5%) of Class Members have submitted timely and valid Requests for
20 Exclusion, Defendant shall have, in its sole discretion, the option to terminate this Settlement. In
21 the event Defendant elects to so terminate this settlement, Defendant shall be responsible for the
22 costs of the Settlement Administrator incurred between the date this Settlement Agreement was
23 executed and the date of the termination of the Settlement Agreement. Defendant's right to
24 terminate the Settlement pursuant to this section shall begin upon email confirmation from the
25 Settlement Administrator that more than five (5%) of the Class Members (e.g., 15 out of 305)
26 have submitted timely and valid Requests for Exclusion. Defendant shall then have fourteen (14)
27 calendar days in which to exercise its right to terminate the Settlement, after which Defendant
28 forfeits said right.

1 3.10.10 Declaration in Support of Final Approval. No fewer than thirty (30)
2 calendar days prior to the Final Approval Hearing, the Settlement Administrator shall provide the
3 Parties with a statement detailing the actions taken by the Settlement Administrator to administer
4 the Settlement to date, along with all incurred and anticipated Settlement Administration Costs,
5 and shall provide any additional information as the Parties' desire.

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

14 3.10.12 Entry of Final Approval Order. If the Court approves this Settlement at
15 the Final Approval Hearing, Class Counsel shall request that the Court enter a Final Approval
16 Order and shall obtain a Judgment from the Court. The Judgment shall, among other things, (a)
17 find that the Court has personal jurisdiction over all Class Members and that the Court has subject
18 matter jurisdiction to approve the Agreement; (b) approve the Agreement as fair, reasonable, and
19 adequate to, and in the best interests of the Class Members, direct the parties to implement and
20 consummate the Agreement according to its terms; (c) find that the Notice provisions continued
21 herein are reasonably calculated to apprise the Class Members of the pendency of the action, the
22 terms of this Agreement, their right to object or exclude themselves, that the notice provisions are
23 reasonable and constitute due, adequate, and sufficient notice to all Class Members; (d) find that
24 the Class Representative and Class Counsel fairly and adequately represented the Class for the
25 purpose of this Agreement; (e) incorporate the Releases set forth herein, and forever discharge the
26 Released Parties as set forth herein; (f) permanently bar and enjoin all Class Members who have
27 not been excluded from the Class, from filing, commencing, prosecuting, or participating in any
28 lawsuit or other action, in any jurisdiction, based on the Released Claims. After granting final

1 approval of the Settlement and entering judgment, the Court shall retain jurisdiction over the
2 Parties to enforce and implement the terms of the judgment.

3 3.11 Funding and Allocation of Settlement.

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

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

15 3.11.3 Individual Settlement Payments. Individual Settlement Payments will be
16 paid from the Net Distribution Fund and mailed by First Class U.S. Mail to Class Members' last
17 known mailing address within thirty (30) calendar days following the Effective Date of the
18 Settlement. Any checks issued to Class Members shall remain valid and negotiable for one
19 hundred and twenty (120) calendar days from the date of their issuance and shall become void on
20 the 121st day after mailing, *i.e.*, the Void Date. The Parties agree that any unclaimed funds as a
21 result of the failure to cash Individual Settlement Payment checks by the Void Date shall escheat
22 to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the
23 name of the Class Member.

24 3.11.4 Calculation of Individual Settlement Payments. All Class Members who
25 do not submit a timely and valid Request for Exclusion will receive an Individual Settlement
26 Payment. Class Members are not eligible to receive any compensation other than an Individual
27 Settlement Payment. The Individual Settlement Payment shall be calculated and apportioned

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1 based on the number of Workweeks each Class Member worked during the Class Period as an
2 employee of Defendant. Specific calculations will be made as follows:

3 3.11.4.1 Using the workweek information to be provided by Defendant,
4 the Settlement Administrator will calculate the number of individual Workweeks that each Class
5 Member worked during the Class Period. For each Class Member who is a former employee,
6 their total number of Workweeks will be multiplied by 1.25 to come up with an adjusted number
7 of Workweeks (“Adjusted Workweeks”). For each Class Member who is a current employee, no
8 multiplier will be added to their total number of Workweeks.

9 3.11.4.2 The Settlement Administrator will then add the total number of
10 Workweeks worked by Class Members who are current employees during the Class Period and
11 the total number of Adjusted Workweeks worked by Class Members who are former employees
12 during the Class Period to come up with a total number of Workweeks (“Class Workweeks”).

13 3.11.4.3 Individual Settlement Payments will be allocated and paid
14 proportionately based on the number of Workweeks or Adjusted Workweeks each Class Member
15 worked during the Class Period. For Class Members who are current employees, the Individual
16 Settlement Payment will be calculated as follows: $\text{Individual Settlement Payment} = (\text{Individual Workweeks} \div \text{Class Workweeks}) \times \text{Net Settlement Amount}$. For Class Members who are former
17 employees, the Individual Settlement Payment will be calculated as follows: $\text{Individual Settlement Payment} = (\text{Individual Adjusted Workweeks} \div \text{Class Workweeks}) \times \text{Net Settlement Amount}$.
18
19
20

21 3.11.4.4 The Settlement Administrator shall calculate and deduct from
22 those amounts the employee’s share of any applicable taxes and/or other required withholdings,
23 and then will pay the resulting amount to Class Members in the manner set forth herein.

24 3.11.5 Tax Treatment of Individual Settlement Payments. Each Individual
25 Settlement Payment shall be allocated as follows: twenty percent (20%) will be considered wages
26 subject to withholding of all applicable local, state and federal taxes, and eighty percent (80%)
27 will be paid non-wages, i.e., as interest and penalties, from which no taxes will be withheld. The
28 Settlement Administrator will issue to each Class Member an IRS Form W-2 and comparable

1 state forms with respect to the wage allocation and an IRS Form 1099 with respect to the
2 penalties and interest allocation.

3 3.11.6 Calculation of Individual Payments to the Aggrieved Employees. Using the
4 Class Data, the Settlement Administrator shall add up the total number of Workweeks for all
5 Aggrieved Employees during the PAGA Period. The respective Workweeks for each Aggrieved
6 Employee will be divided by the total Workweeks for all Aggrieved Employees, resulting in the
7 “PAGA Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s PAGA
8 Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each
9 Aggrieved Employee’s estimated Individual PAGA Settlement payment.

10 3.11.7 PAGA Settlement. Ten Thousand Dollars (\$10,000) shall be allocated from
11 the Total Settlement Amount for settlement of claims for civil penalties under the Private Attorneys
12 General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay seventy-five
13 percent (75%) of the PAGA Settlement (\$7,500) to the California Labor and Workforce
14 Development Agency no later than twenty-five (25) calendar days after the Funding Date
15 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement (\$2,500) will be
16 distributed to the Aggrieved Employees as described in this Agreement (hereinafter “Aggrieved
17 Employee Payment”). For purposes of distributing the PAGA Settlement to the Aggrieved
18 Employees, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee
19 Payment using the PAGA Payment Ratio as defined above.

20 3.11.8 Administration of Taxes by Settlement Administrator. The Settlement
21 Administrator shall be responsible for issuing to the Class Representative, Class Members, and
22 Class Counsel any W-2, 1099 or other tax forms as may be required by law for all amounts paid
23 pursuant to this Agreement. The Settlement Administrator shall also be responsible for
24 forwarding the Payroll Taxes and any applicable withholdings/deductions to the appropriate
25 governmental authorities.

26 3.11.9 Tax Liability. Defendant and Class Counsel make no representation as to
27 the tax treatment or legal effect of the payments called for hereunder, and Class Representative
28 and Class Members are not relying on any statement, representation, or calculation by Defendant,

1 Class Counsel or by the Settlement Administrator in this regard. The Class Representative and
2 Class Members understand and agree that, except for the Settlement Administrator's payment of
3 the employer's portion and employee's portion of any applicable payroll taxes, the Class
4 Representative and Class Members will be solely responsible for reporting and paying any taxes
5 or penalties assessed based on the payments described herein.

6 3.11.10 Class Representative Service Award. Defendant agrees not to oppose any
7 application by the Class Representative for a Service Award not to exceed Ten Thousand Dollars
8 (\$10,000), as consideration for his Complete and General Release of Claims and for his time and
9 effort in prosecuting this matter. While Defendant does not object to the enhancement award, it
10 does not endorse an enhancement award, and leaves the amount to be awarded to the court's
11 discretion. Any Service Awards approved by the Court shall be paid to the Class Representative
12 within twenty (20) calendar days following the Effective Date of the Settlement. The Class
13 Representative agrees to provide the Settlement Administrator with an updated IRS Form W-9
14 before the Service Award is issued. The Settlement Administrator shall issue an IRS Form 1099
15 to the Class Representative for this payment. The Class Representative shall be solely and legally
16 responsible for paying any and all applicable taxes on his Service Award and shall hold
17 Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result
18 of the Service Award. The Service Award shall be in addition to the Class Representative's
19 Individual Settlement Payment. In the event the Court awards less than the full amount requested
20 for the Service Award, the difference between the requested amount and the awarded amount will
21 be made available for distribution to Class Members as part of the Net Distribution Fund. Plaintiff
22 and the Class Representative shall not have the right to revoke their agreement to the Settlement
23 on the grounds the Court does not approve any or all of the requested Service Award.

24 3.11.11 Class Counsel Fees Award and Class Counsel Costs Award. Defendant
25 agrees not to oppose any application by Class Counsel for a Class Counsel Fees Award not to
26 exceed one-third of the gross Settlement (i.e.\$116,667.00). Defendant further agrees not to oppose
27 any application by Class Counsel for a Class Counsel Costs Award not to exceed \$12,000.00. Class
28 Counsel agrees they will not seek a Class Counsel Fee Award or Class Counsel Costs Award in

1 excess of these amounts. The Class Counsel Fee Award and Class Counsel Costs Award shall be
2 deemed to cover all work performed, costs, and expenses related to the investigation, prosecution,
3 and settlement of the Action incurred through the Effective Date and distribution date. The
4 Settlement Administrator shall pay the Court-approved Class Counsel Fees Award and Class
5 Counsel Costs Award within twenty (20) calendar days following the Effective Date of the
6 Settlement. Class Counsel agrees to provide the Settlement Administrator with an executed IRS
7 Form W-9 before the Class Counsel Fees Award and Class Counsel Costs Award are issued. The
8 Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the payments made
9 pursuant to this Paragraph. In the event the Court awards less than the full amount requested for
10 the Class Counsel Fees Award and Class Counsel Costs Award, the difference between the
11 requested amount and the awarded amount will be made available for distribution to Class Members
12 as part of the Net Distribution Fund. This Settlement is not contingent upon the Court's decision to
13 award Class Counsel any particular amount, or any amount, for Class Counsel's attorneys' fees and
14 costs. Class Counsel shall be solely responsible for the division and distribution of any and all
15 Court-approved Class Counsel Fees Award and Class Counsel Costs Award. Class Counsel agrees
16 to release Defendant and the Released Parties from any responsibility for and liability arising out
17 of or related to the division and distribution of any Court-approved Class Counsel Award. Class
18 Counsel agrees to assume all responsibility for the payment of any liens asserted by any former
19 attorneys in its firm and agrees to indemnify and hold harmless Defendants for any such lien.

20 3.12 Settlement Administration Costs. The Settlement Administration Costs shall be
21 paid to the Settlement Administrator from the Total Settlement Amount, in an amount currently
22 estimated not to exceed \$12,500. The Settlement Administration Costs shall be paid the
23 Settlement Administration Costs within forty-five (45) calendar days following the Effective Date
24 of the Settlement, unless the Settlement Administrator requires payment before then, in which
25 case Defendant shall provide payment when requested. In the event the Court awards less than
26 the Settlement Administration Costs outlined herein, the difference between the requested amount
27 and the awarded amount will be available for distribution to Class Members as part of the Net
28 Distribution Fund.

1 3.13 No Effect on Employee Benefits. Amounts paid to Plaintiff, the Class
2 Representative, or Class Members pursuant to this Settlement Agreement do not count as
3 earnings or compensation for purposes of any benefits provided or sponsored by Defendant.

4 3.14 Nullification of Settlement Agreement. In the event: (1) the Court does not enter
5 the Preliminary Approval Order as provided herein; (2) the Court does not enter a Final Approval
6 Order as provided herein; or (3) the Settlement does not become final, for any other reason, this
7 Settlement Agreement shall be null and void, and any order entered by the Court in furtherance of
8 this Settlement shall be treated as void from the beginning. In such case, any funds to be awarded
9 under this Settlement shall be returned to their respective statuses as of the date and time
10 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in
11 all respects as if this Settlement Agreement had not been executed, except that any Settlement
12 Administration Costs already incurred by the Settlement Administrator shall be paid by the
13 Parties in equal shares. In the event an appeal is filed from the Court's Final Approval Order or
14 from an order rejecting any motion to intervene, or any other appellate review is sought, the
15 administration of the settlement shall be stayed pending final resolution and Defendant will not be
16 required to fund this Settlement until and unless the Effective Date is reached.

17 3.15 Exhibits and Headings. The terms of this Settlement Agreement include the terms
18 set forth herein and in any Exhibits attached hereto, which are incorporated by this reference as
19 though fully set forth herein. The descriptive headings of any paragraphs or sections of this
20 Settlement Agreement are inserted for convenience only and do not constitute a part of this
21 Settlement Agreement.

22 3.16 Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
23 Action, except such proceedings necessary to implement and complete the Settlement, pending
24 the Final Approval Hearing to be conducted by the Court.

25 3.17 Amendment or Modification. This Settlement Agreement may be amended or
26 modified only by a written instrument signed by Defense Counsel and Class Counsel or their
27 successors-in-interest.

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1 3.18 Entire Agreement. This Settlement Agreement and any Exhibits thereto constitute
2 the entire agreement among the Parties, and no oral or written representations, warranties or
3 inducements have been made to any Party concerning this Settlement Agreement or its Exhibit
4 other than the representations, warranties and covenants contained and memorialized in the
5 Settlement Agreement and its Exhibits.

6 3.19 Authorization to Enter into Settlement Agreement. Defense Counsel and Class
7 Counsel warrant and represent they are expressly authorized by the Parties whom they represent
8 to negotiate this Settlement Agreement and to take all appropriate actions required or permitted to
9 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms. The person
10 or persons signing this Settlement Agreement on behalf of Defendant represents and warrants that
11 he/she/they are authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff
12 and Class Representative represent and warrant that they are authorized to sign this Settlement
13 Agreement and that they have not assigned any Claims covered by this Settlement to a third-
14 party. The Parties and their counsel agree to cooperate with each other fully and to use their best
15 efforts to effectuate the implementation of the Settlement. Such cooperation includes, but is not
16 limited to, execution of such other documents and the taking of such other actions as may be
17 reasonably necessary to fulfill the terms of this Settlement. In the event the Parties are unable to
18 reach agreement on the form or content of any document needed to implement the Settlement or
19 on any supplemental provisions that may become necessary to effectuate the terms of this
20 Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

21 3.20 Binding on Successors and Assigns. This Settlement Agreement shall be binding
22 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
23 defined.

24 3.21 California Law Governs. All terms of this Settlement shall be governed by and
25 interpreted according to the laws of the State of California.

26 3.22 Invalidity of Any Provision. Before declaring any provision of this Settlement
27 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest

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1 extent possible consistent with applicable precedent so as to define all provisions of this
2 Settlement Agreement as valid and enforceable.

3 3.23 Publicity. The Class Representative and Class Counsel agree that they will not
4 issue any press releases, initiate any contact with the press, respond to any inquiry from the press
5 about this case, or otherwise publicize this Action or the Settlement, the facts of this Action or the
6 Settlement, or the outcome of the Action.

7 3.24 Notices. Unless otherwise specifically provided, all notices, demands or other
8 communications in connection with this Settlement Agreement shall be made: (1) in writing; (2)
9 deemed given on the third business day after mailing; and (3) sent via United States registered or
10 certified mail, return receipt requested, addressed as follows:

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

17 3.26 Execution by Class Members. It is agreed that it is impossible or impractical to
18 have each Class Member execute this Settlement Agreement. The Notice of Settlement will
19 therefore advise all Class Members of the binding nature of the Settlement and its Released
20 Claims, which release shall have the same force and effect as if each Class Member executed this
21 Settlement Agreement individually (excepting only those Class Members who return a timely and
22 valid Request for Exclusion).

23 3.27 Execution by Plaintiff. Plaintiff, by signing this Settlement Agreement, is bound
24 by the terms herein and further agrees not to submit any Request for Exclusion from or Notice of
25 Objection to the Settlement. Any such Request for Exclusion or Notice of Objection from
26 Plaintiff shall therefore be void and of no force or effect.

27 ///

28 ///

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

IT IS SO STIPULATED AND AGREED:

DATED: September 25, 2021

DocuSigned by:
Eduardo Diaz
Eduardo Diaz Galan

DATED: September 28, 2021

Elite Comfort Solutions, LLC

By: Jennifer J Coleman

Title: VP - Deputy General Counsel
Asst. Secretary

APPROVED AS TO FORM:

DATED: September 27, 2021

YEREMIAN & ASSOCIATES

By: [Signature]
David Yeremian, Esq.
Alvin B. Lindsay, Esq.
Attorneys for Plaintiff
EDUARDO DIAZ GALAN

DATED: September 27, 2021

HIGGS FLETCHER & MACK, LLP

By: [Signature]
James M. Peterson, Esq.
Derek W. Paradis, Esq.
Attorneys for Defendant
ELITE COMFORT
SOLUTIONS, LLC