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on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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

Plaintiff,

vs.

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

Defendants.

Case No.: 20STCV35875

CLASS ACTION

Assigned for All Purposes To:
Hon. Carolyn B. Kuhl
Dept.: 12 Spring Street Courthouse

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
JOINT STIPULATION FOR CLASS
ACTION SETTLEMENT AND RELEASE**

*[Filed concurrently with Notice of Motion and
Motion; Memorandum of Points and Authorities;
and the Declarations of David Yeremian, Alvin
Lindsay, and Eduardo Diaz Galan]*

Date: January 12, 2022
Time: 10:00 a.m.
Location: Department 12

Complaint Filed: September 18, 2020
First Amended Complaint: December 23, 2020
Trial Date: None Set

ORDER

Plaintiff Eduardo Diaz Galan (“Plaintiff”), on behalf of himself and others similarly situated and employed by Defendant Elite Comfort Solutions, LLC (“Defendant”) (collectively, “the parties”) filed an unopposed Motion for Preliminary Approval of the parties’ Joint Stipulation for Class Action Settlement and Release of All Claims (“Settlement Agreement”). The Motion was set for hearing on **January 12, 2022** at 10:00 a.m. in Department 12, and Defendant does not oppose it. The Court, having considered the Settlement Agreement, and the proposed Class Notice at Exhibit A to the Settlement Agreement, the submissions of counsel, and all other papers filed in this litigation, and Defendant’s non-opposition to the Motion, hereby ORDERS as follows:

1. Plaintiff’s Motion for Preliminary Approval of the parties’ Settlement Agreement, which is attached at Exhibit A to the Declaration of Class Counsel, David Yeremian, Esq., is GRANTED;

2. This Order incorporates by reference the definitions in the Settlement Agreement and all terms defined therein shall have the same meaning as in this Order;

3. The Court conditionally certifies a Class consisting of “all current and former employees of Defendant, classified as non-exempt or hourly-paid workers, who worked for Defendant in California for at least one shift at any time during the period starting four years before the commencement of this action (September 18, 2020) through and including September 30, 2021.” The Settlement further defines the Aggrieved Employees, the Released PAGA Claims, and the PAGA Period. (Yeremian Decl., Exhibit A, Settlement, ¶¶ 1.3, 1.22-1.25, 1.29). Should the Settlement not be finally approved, this Order will be rendered null and void and shall be vacated, and the fact that the parties were willing to stipulate to class certification as part of the settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context. Should the settlement not become final, the parties shall revert to their respective positions prior to notifying the Court of the settlement of the action.

4. The class action settlement contemplated by the Settlement Agreement is preliminarily approved based upon the terms set forth in the Settlement Agreement, the

1 Settlement appears to be fair, adequate, and reasonable for the Class, and falls within the range of
2 reasonableness that could ultimately be granted final approval by the Court. The preliminary
3 approval of the class action settlement includes the approval for purposes of the settlement of
4 David Yeremian and Alvin B. Lindsay of David Yeremian & Associates, Inc. as Class Counsel,
5 Plaintiff Eduardo Diaz Galan as Class Representative, and ILYM Group, Inc. ("ILYM") as the
6 Settlement Administrator. Class Counsel is authorized to act on behalf of the Class members with
7 respect to all acts or consents required by or which may be given pursuant to the Settlement
8 Agreement and the class action settlement contemplated by the Settlement Agreement, and such
9 other acts reasonably necessary to consummate the settlement. The Settlement Administrator is
10 authorized to perform such acts as set forth in this Order and the Settlement Agreement.

11 5. The Court approves the parties' allocation of \$10,000.00 to settle claims under the
12 Labor Code Private Attorneys General Act of 2004 ("PAGA"). Pursuant to Labor Code § 2699(i),
13 75% of this amount, or \$7,500.00, shall be paid to the California Labor & Workforce
14 Development agency and the remaining 25%, or \$2,500.00, will be paid to the Aggrieved
15 Employees in the manner set forth in the Settlement Agreement.

16 6. The Class Notice (or the "Notice"), attached at Exhibit A to the Settlement
17 Agreement at Exhibit A to Class Counsel's Declaration, advises the Class of the material terms
18 and provisions of this Settlement, the procedure for approval thereof, and their rights with respect
19 thereto, and is approved as to form and content. The Court approves the procedures set forth in
20 the Settlement Agreement for Class Members to participate in, opt out of, and object to the
21 Settlement as set forth in the Notice.

22 7. The Notice shall be sent by first class mail to the Class in accordance with the
23 schedule set forth in the Settlement Agreement. The dates selected for the mailing and
24 distribution of the Class Notice, and the other dates as set forth below, meet the requirements of
25 due process and provide the best notice practicable under the circumstances, and shall constitute
26 due and sufficient notice to all persons entitled thereto:

1 a. Deadline for Defendant to provide to Settlement Administrator the Class Member
2 data and related information in electronic form: 10 calendar days after entry of the Court's Order
3 granting preliminary approval to the Settlement.

4 b. Deadline for Settlement Administrator to mail the Class Notice by first-class
5 regular U.S. mail: 14 calendar days after receiving the Class Member data and information.

6 c. Deadline for class members to mail objections or requests for exclusion to the
7 Settlement Administrator: 45 calendar days after the mailing of the Class Notice.

8 d. Deadline for Class Counsel to file a Motion for Final Approval of the Settlement
9 Agreement: 16 Court days before hearing on Plaintiff's Motion for Final Approval and Motion
10 for Attorneys' Fees and Costs and Representative Enhancement.

11 e. Deadline for Class Counsel to file Motion for Attorneys' Fees and Costs and
12 Representative Enhancement: 16 Court days before Final Settlement Fairness Hearing and
13 hearing on Plaintiff's Motion for Final Approval and Motion for Attorneys' Fees and Costs and
14 Representative Enhancement.

15 8. A Final Approval and Settlement Fairness Hearing on the question of whether the
16 proposed Settlement, attorneys' fees and costs to Class Counsel, and the class representative
17 enhancement should be approved as fair, reasonable, and adequate as to the Settlement Class and
18 whether the Settlement should be given final approval is scheduled on: _____, 2022
19 at ____ a.m. At the final approval hearing, Settlement Class Members may be heard orally in
20 support of the Settlement, or in opposition to the Settlement in the event there are objectors.

21 9. The Court reserves the right to adjourn or continue the date of the Settlement
22 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to
23 the Class, and retains jurisdiction to consider all further applications arising out of or connected
24 with the Settlement Agreement.

25 10. The Settlement Agreement shall not be construed as an admission or evidence of
26 either liability or the appropriateness of class certification in the non-settlement context, as more
27 specifically set forth in the Settlement Agreement. Entry of this Order is without prejudice to the
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1 rights of Defendant to oppose certification of a class in this action should the proposed Settlement
2 not be granted final approval.

3 11. As of the Effective Date, and in accordance with the Settlement Agreement, all
4 Class Members who do not timely submit a Request for Exclusion from the Settlement will be
5 deemed to have forever released and discharged the Released Claims as set forth in the Settlement
6 Agreement. The Released PAGA Claims will also be released by the Aggrieved Employees
7 following entry of Judgment and as of the funding date, as further addressed in the Settlement
8 Agreement. In the event the Effective Date does not occur for any reason, the Settlement
9 Agreement shall be deemed null and void and shall have no effect whatsoever.

10 12. All further proceedings in this action are stayed except such proceedings necessary
11 to review, approve, and implement this Settlement.

12 13. The Court finds that all required notifications and submissions to the California
13 Labor and Workforce Development Agency (LWDA) about the Settlement Agreement and
14 Motion have been made by Plaintiff in the time and manner specified under the PAGA.

15 **IT IS SO ORDERED.**

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17 Dated: _____, 2022

18 Hon. Carolyn B. Kuhl
19 Judge of the Superior Court
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