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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

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF 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;
the Declarations of Alvin Lindsay, and Eduardo
Diaz Galan; and [Proposed] Order]*

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

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1 2010, 2012-2015. I have been named honored as a Super Lawyer since 2016.

2 5. I have been practicing law since 2003. Since 2007, I have focused almost
3 exclusively on representing employees, including in wage-and-hour class actions. During my
4 career I have represented employees in over 100 wage-and-hour class action lawsuits as lead or
5 co-lead counsel (including in the Central, Southern, Eastern and Northern Districts of California),
6 and I have obtained six and seven figure settlements against a range of defendants, including
7 Fortune 500 companies. These cases have involved the gamut of wage-and-hour claims, including
8 claims for failure to pay minimum wages, unpaid wages and overtime, failure to provide meal and
9 rest breaks, failure to reimburse necessary business expenses, inaccurate pay statements, failure to
10 pay timely wages—similar to claims at issue in the present matter.

11 6. I am experienced in prosecuting employment matters, particularly class actions. In
12 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
13 class-action lawsuits pending in various state and federal jurisdictions throughout California.

14 7. My extensive experience in litigating employment wage and hour matters has been
15 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
16 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
17 wage and hour litigation requires skill and knowledge concerning the constantly evolving
18 substantive law (state and federal), as well as the procedural law of class action litigation. In this
19 action, I am fully equipped to use the skills and knowledge I have developed through more than a
20 decade of prosecuting and defending wage and hour class actions to represent the interests of the
21 Class fairly and adequately. Therefore, on the account of my resources, experience, and
22 knowledge, I am well qualified to act as class counsel and represent Plaintiff and the putative class
23 members in this action.

24 8. In the last several years I have had several contested class cases certified. When
25 necessary we pursue cases on appeal. Owing to my experience, I am well-qualified to evaluate the
26 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
27 over 100 class action settlements, including many involving the same issues presented in this case.
28 A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis v.*

1 *Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);
2 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead
3 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size
4 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;
5 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead
6 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx. 860;
7 lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead counsel);
8 *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600; lead
9 counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx. 300;
10 lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead
11 counsel); *Utley v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
12 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead
13 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead
14 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);
15 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);
16 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead
17 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);
18 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479; class
19 size approx. 60; lead counsel).

20 9. For purposes of this motion, the “Class” is defined as: “all current and former
21 employees of Defendant, classified as non-exempt or hourly-paid workers, who worked for
22 Defendant in California for at least one shift at any time during the period starting four years
23 before the commencement of this action (September 18, 2016) through and including September
24 30, 2021.” Defendant estimates and believes that as of March 15, 2021, there were a total of **305**
25 Class Members (“Total Class Members”). The Settlement further defines the Released PAGA
26 Claims and the PAGA Period. (Exhibit A, Settlement, ¶¶ 1.3, 1.22-1.25, 1.29). I do not believe
27 that I have any conflicts of interest with the Class or with the Class Representative. I am not
28 related to the Class Representative. I have not previously represented Defendants in any matter. I

1 respectfully submit that I and David Yeremian & Associates, Inc., along with our other attorneys,
2 are well suited to act as Class Counsel in this action. We have and will continue to vigorously
3 represent the interests of the Class.

4 **PROCEDURAL HISTORY AND BACKGROUND**

5 10. Defendant custom designs polyurethane foam technology, such as is used in
6 mattresses and couches, and maintains manufacturing, warehousing and shipping facilities in
7 California. Plaintiff was employed in the shipping and receiving department and as a fork lift
8 operator at Defendant's facilities in Commerce, California. Plaintiff and the Class members served
9 in non-exempt, hourly positions related to manufacturing, cutting, packaging, shipping, and
10 receiving and other related facility operations.

11 11. In his Class Action Complaint filed September 18, 2020, Plaintiff asserts putative
12 class claims for: (1) failure to pay minimum wages in violation of Labor Code §§ 201-204, 1194,
13 1194.2 1197, 1197.1, and the applicable Wage Order; (2) failure to pay wages and overtime in
14 violation of Labor Code §§ 201-204, 510, 558, 1194, 1198, 1199, and the applicable Wage Order;
15 (3) failure to authorize and permit meal breaks in violation of Labor Code §§ 226.7, 512, and the
16 applicable Wage Order; (4) failure to authorize and permit rest breaks in violation of Labor Code
17 §§ 226.7, 512, and the applicable Wage Order; (5) failure to provide accurate, itemized wage
18 statements in violation of Labor Code § 226(a); (6) unlawful wage deductions in violation of
19 Labor Code § 221; (7) failure to pay all wages owed under Labor Code §§ 204, 210, 218.5, 1194,
20 1198, and the applicable wage order; (8) failure to pay all wages due upon separation of
21 employment in violation of Labor Code § 203; (9) failure to reimburse for necessary business
22 expenses in violation of Labor Code § 2802; and (10) violations of the Business and Professions
23 Code section 17200 *et seq.* (Exhibit A, Settlement, ¶¶ 2.1).

24 12. On December 22, 2020, Plaintiff filed a First Amended Class Action Complaint
25 ("FAC") adding an eleventh cause of action for PAGA penalties under Labor Code §§ 2698 *et seq.*
26 In preparing for the initial conference, the parties counsel agreed to informal discovery in advance
27 of a mediation. Class counsel provided Defendant's counsel with a comprehensive listing of
28 informal discovery items and numbers and data required for conducting a meaningful mediation,

1 including requesting all relevant policy documents and a sampling of timekeeping and
2 corresponding payroll records. (Exhibit A, Settlement, ¶¶ 2.3).

3 13. On June 15, 2021, the Parties participated a full-day, private mediation with
4 Tripper Ortman, Esq., an experienced mediator who is well-versed in putative class and
5 representative actions. Through that process Mr. Ortman made a mediator's proposal which was
6 accepted by the parties, and with Mr. Ortman's assistance, the parties reached an agreement to
7 resolve this Action. (Exhibit A, Settlement, ¶¶ 2.2).

8 14. The Parties reached a settlement at mediation and memorialized the basic terms of
9 the settlement in a Memorandum of Understanding, and worked thereafter to finalize and execute
10 their long form Settlement Agreement now before the Court for preliminary approval. The Court
11 set a further conference and set the present hearing date

12 15. To facilitate approval of the Settlement as to the PAGA claims, Class Counsel will
13 be submitting the Settlement Agreement to the LWDA concurrently with the filing of this motion
14 pursuant to Labor Code § 2699(1)(2), and can provide proof of submission in advance of the
15 motion for preliminary approval hearing should the Court wish to receive it.

16 16. This is a class and PAGA action. Defendant Elite Comfort Solutions touts itself as
17 a global leader in custom design polyurethane foam technology, such as is used in mattresses and
18 couches, and maintains and operates manufacturing, warehousing and shipping facilities in
19 California. Plaintiff was employed in the shipping and receiving department and as a fork lift
20 operator at Defendant's facilities in Commerce, California. Defendant also operated other facilities
21 in California, including in Ontario. Plaintiff and the Class members served in non-exempt, hourly
22 positions related to manufacturing, cutting, packaging, shipping, and receiving and other related
23 facility operations.

24 17. Plaintiff's Original and Amended Complaints have alleged that Plaintiff generally
25 worked shifts from Monday through Friday or Saturdays, with work weeks totaling from 40 to 60
26 hours. Defendant regularly required Plaintiff and the Class members to work shifts of ten hours,
27 and Defendant also frequently required shifts of twelve or more hours. Plaintiff has also alleged he
28 was scheduled to start his shifts at certain times, but was required to clock out only after his

1 assigned tasks for the work shift were completed. Defendant utilized finger print scanners in its
2 timekeeping systems for employee Class members to record timekeeping entries. These systems
3 were capable of recording hours worked to the minute, but Defendant instead followed a uniform
4 policy and practice of rounding down timekeeping entries to at least the nearest quarter hour to the
5 substantial detriment of Plaintiff and the employee Class members, at least as to the regular hours
6 recorded.

7 18. Plaintiff alleged Defendant utilized timekeeping systems and procedures which
8 resulted in inaccurate or incomplete records of clock in and out times for work shifts and meal
9 periods, including by rounding hours down to the detriment of the Employees in the Class. Also,
10 Plaintiff and the Class members were required to wait in line when entering the facilities to pass
11 through a mandatory health screening including having their temperatures taken. Plaintiff alleged
12 they were required to do so before clocking in, and therefore were under Defendant's control
13 while waiting for and undergoing screenings before they could enter the facilities for each shift.
14 Plaintiff also asserted the above off the clock work and rounding impacted when employees
15 should have been paid at the applicable hourly overtime and double time rates, as they began
16 incurring overtime and double time later than they should have during a work shift.

17 19. The operative Complaint further claims that Class members worked shifts over 10
18 hours on many occasions, which required first and second meal periods, and first, second, and
19 third required rest breaks. Class members were therefore compelled to take their breaks when
20 work permitted. There were many occasions when job demands and work requirements and
21 management pressure required Plaintiff to work through long shifts without taking a meal break,
22 and when he was able to do so, they were often shortened to less than 30 minutes or were
23 otherwise interrupted by work demands or commenced after five hours into a work shift. Plaintiff
24 also asserted Defendant failed to provide them with second meal periods shifts of over ten hours.
25 Plaintiff further alleged that Defendant failed to authorize and permit 10 minute rest breaks, and
26 when it did provide any such breaks, there was only one during extended shifts or they were
27 provided late or interrupted by work demands and the requirement to remain under Defendant's
28 control.

1 20. Plaintiff further alleged derivative claims for failure to provide accurate wage
2 statements, failure to pay all wages upon separation from employment, unlawful deductions,
3 unfair competition, and for civil penalties and wages under the PAGA. In addition to the
4 derivative Labor Code § 226 violations for inaccurate wage statements, it is believed that
5 Defendants issued wage statements that did not list the total hours worked or were otherwise
6 missing information required under Section 226(a).

7 21. Defendant contends, among other things, that it has complied at all times with all
8 applicable laws and assert that Plaintiff and the Class Members were properly compensated for all
9 time worked, and otherwise treated at all times in compliance with all applicable laws. Defendant
10 denies and continues to dispute the claims and continues to contend it is not liable for any of the
11 causes of action asserted in the Action. (Exhibit A, Settlement, ¶ 2.5).

12 22. Despite consistently denying the claimed liability it is facing, and after considering
13 the risks of further litigation, Defendant has concluded that any further defense of this litigation
14 would be protracted and expensive for all parties, and will require substantial investment of
15 Defendant's time, energy, and resources unless this Settlement is approved. Defendant has
16 therefore agreed to settle in the manner and upon the terms set forth in this Settlement Agreement
17 to put to rest the claims and avoid further protracted litigation. (Exhibit A, Settlement, ¶¶ 2.5, 2.6).
18 With their diverging positions as to liability in mind, both parties agree the Settlement at hand is
19 fair and reasonable and deserving of preliminary approval. (Exhibit A, Settlement, ¶¶ 2.4, 2.5).

20 **INVESTIGATION AND DISCOVERY**

21 23. Before filing and throughout the pendency of this action, Class Counsel
22 investigated and researched the facts and circumstances underlying the pertinent issues and the
23 law applicable thereto. This required thorough discussions and interviews between Class Counsel
24 and Plaintiff, as well as preliminary research into the various legal issues involved in the case,
25 after conducting their initial investigation. Class Counsel determined that Plaintiff's claims were
26 well-suited for class action adjudication based on what appeared to be a common course of
27 conduct affecting a similarly situated group of employees. (Exhibit A, Settlement, ¶¶ 2.2, 2.3, 2.4).

1 24. After filing the lawsuit and in advance of the mediation, Class Counsel conducted a
2 thorough investigation of the facts and claims giving rise to the action, including: (1) conducting
3 formal and informal discovery and meeting and conferring with defense counsel about same; (2)
4 reviewing and analyzing time and pay records as well as employment related policies; (3)
5 Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff and potential Class
6 members; (5) researching the applicable law and potential defenses; (6) constructing damage
7 models based on interpretations of California law; and (7) reviewing information provided by
8 Defendants in response to discovery and in advance of the mediation. (*See also* Exhibit A,
9 Settlement, ¶ 2.3).

10 25. The Class enumerated in this action is ascertainable because the Class Members
11 may be readily identified by reference to Defendant's records, and Defendant has agreed to share
12 the information from these records with the Settlement Administrator in order to identify and
13 contact the Class members during the administration process. According to Defendant's records,
14 as of March 15, 2021, there were a total of 305 Settlement Class Members. (Exhibit A, Settlement,
15 ¶¶ 1.3, 3.10.8). This number will be confirmed following preliminary approval filing when
16 Defendant provides the Class list to the Administrator (i.e. ILYM Group, Inc.). (Exhibit A,
17 Settlement, ¶¶ 1.36, 3.4). To prevent the Class numbers from continuing to increase, the parties
18 agreed the end of the Class Period and the PAGA Period would be September 30, 2021. (Exhibit
19 A, Settlement, ¶¶ 1.8, 1.24).

20 26. Defendants vigorously contested liability, the amount of claimed damages, and the
21 propriety of class certification. (Exhibit A, Settlement, ¶¶ 2.5, 2.6). After Class Counsel analyzed
22 the relevant documents and other gathered data, and conferred regarding the Class data with its
23 statistical analysis expert for review and analysis, Class Counsel believed that this case was
24 appropriate for resolution *via* mediation. Given the high level of risk present for both sides, the
25 parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (Exhibit A,
26 Settlement, ¶¶ 2.2 – 2.7).

27 27. Upon agreeing to schedule mediation, and leading up to their agreement, the parties
28 conducted informal discovery and exchanged details regarding the claims and defenses and the

1 items Plaintiff believed were required to file a motion for class certification or a motion for
2 summary judgment for the PAGA claim and to complete a constructive and meaningful mediation.
3 This data, along with Plaintiff's expert's analysis of it and conclusions drawn from it, also
4 permitted Class counsel to objectively assess the strength and weaknesses of the PAGA and class-
5 wide claims and to value them appropriately and realistically. (*See also*, Exhibit A, Settlement, ¶
6 2.4).

7 28. Defendant's counsel and Plaintiff's counsel also worked together to agree on terms
8 for informal discovery in advance of mediation. Plaintiff's counsel provided Defendant with a
9 comprehensive listing of informal discovery items and numbers and data points Plaintiff requested
10 to receive sufficiently in advance of mediation. Defendant's counsel provided substantive
11 responses and a sufficient sampling to ensure the parties could focus with the mediator on valuing
12 the claims and addressing their merits, or lack thereof.

13 29. The informal production included thousands of pages of documents, including the
14 following: the Employee Handbook, a Meal Break Waiver Agreement form, meal and rest policies
15 and acknowledgement, photographs of postings on company boards, documents regarding breaks
16 and scheduling, EDD documents, performance evaluations, absence requests, handwritten letter
17 from Plaintiff, new hire and background check documents, and other personnel and HR related
18 documents for Plaintiff, and Earnings Statements for Plaintiff.

19 30. There was also an agreed upon sampling of timekeeping records for employee
20 Class Members, and an agreed upon sampling of payroll records (i.e. earnings statements).
21 Defendant also produced a separate listing of employees for the random sampling, including a
22 listing of 40 employees and their status and employment hire and termination/separation dates. As
23 agreed, the listing includes 10 employees per each of the four facilities (Champagne, Commerce,
24 Francis, and Vintage). Defendant's counsel also graciously produced a class data summary table
25 listing employee numbers for current, former, and total for various periods by facility, workweeks,
26 hours worked, shifts worked, total compensation paid, average hourly rate, average shift length,
27 average number of shifts per work week, PAGA numbers for employees, pay periods, currents,
28 formers, number of pay periods worked, and number of shifts over 10 hours. Defendant also

provided information responding to each of the informal discovery items Plaintiff's counsel requested, including addressing facilities and locations, shift scheduling procedures, wage statements and frequency, work shift and work week details and numbers, Timekeeping system description and summary, explanation of rounding and times when rounded, a description of policy documents, waivers, etc., and information regarding meal premiums paid.

31. These numbers and key data points the parties relied upon at mediation are summarized below:

Total Employee Numbers (4 year SOL)

- 305 = total employees September 18, 2016 – March 15, 2021
- 104 = total former employees September 18, 2016 – March 15, 2021
- 201 = total current employees September 18, 2016 – March 15, 2021

Total Employee Numbers (3 year SOL)

- 302 = total employees September 18, 2017 – March 15, 2021
- 101 = total former employees September 18, 2017 – March 15, 2021
- 201 = total current employees September 18, 2017 – March 15, 2021
 - Therefore use 201 for Section 203 analysis.

Workweeks and Work Shift Numbers

- 32,833 = total workweeks September 18, 2016 – March 15, 2021
- 164,165 = total work shifts September 18, 2016 – March 15, 2021
- 1,402,126.47 = total hours worked September 18, 2016 – March 15, 2021
- 86,363 = total number of shifts over ten hours September 18, 2016 – March 15, 2021

PAGA and Pay Period Numbers

- 11,989 = total Pay Periods in PAGA period (September 22, 2019 – March 15, 2021)
- 283 = total employees September 22, 2019 – March 15, 2021
- 82 = total former employees September 22, 2019 – March 15, 2021
- 201 = total current employees September 22, 2019 – March 15, 2021

Other Key Data Points

- \$18.55 = Average hourly pay rate
- 8.54 hours = Average shift length
 - Commerce and Vintage = 9.68 and 9.91 – so some way more than others
 - Champagne is the outlier – at 6.88 hours/shift
- 5 shifts = Average number of shifts per workweek

32. The parties participated in a private mediation session with a respected class action mediator, Tripper Ortman, Esq., on June 15, 2021. 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

1 resolve this Action. At all times, each party was represented by experienced counsel during the
2 arms-length, good-faith negotiations facilitated by Mr. Ortman. (Exhibit A, Settlement, ¶ 2.2).

3 33. From Class Counsel’s review of the facts, strengths, and weaknesses of the case,
4 the risks and delays posed by further litigation, and Class Counsel’s own prior litigation
5 experience, Class Counsel believes that the recovery for each Class Member is fair and reasonable
6 taking into consideration the amounts received in other wage and hour class actions, the risks
7 inherent in litigation of this genre, and the reasonable tailoring of each class member’s claim to the
8 settlement award he or she will receive. Further, and based on the settlement negotiations, which
9 were extensive and conducted in good faith and at arm’s length between attorneys with substantial
10 experience litigating class actions and wage and hour cases, the Settlement Agreement was the
11 product of a non-collusive settlement process in which the parties made significant compromises
12 in the interest of reaching a full and complete settlement of the lawsuit. (*See, e.g.*, Exhibit A,
13 Settlement, ¶ 2.2, 2.4, 2.5).

14 **SUMMARY OF SETTLEMENT**

15 34. The parties have executed their Settlement Agreement attached hereto and
16 incorporated herein as **Exhibit A**. Defendant has agreed to settlement on a non-reversionary basis,
17 such that Defendants will pay the entirety of the agreed upon Total Settlement Amount, which is
18 \$350,000.00. This amount includes the Class Counsel Fees Award and Class Counsel Costs
19 Award (i.e. fees of \$116,667.00 and costs not to exceed \$12,000), Settlement Administration
20 Costs to ILYM Group (\$12,500.00), payment of the PAGA Settlement for the alleged PAGA
21 penalties (\$10,000.00), and the Class Representative Service Award (\$10,000.00), along with the
22 remaining funds to pay all individual settlement payments to the Settlement Class Members. In
23 addition to these amounts, the Total Settlement Amount includes Defendant’s Payroll Taxes,
24 which will also be paid from it by ILYM Group. (Exhibit A, Settlement, ¶¶ 1.5, 1.6, 1.25, 1.26,
25 1.33, 1.38, 3.2 – 3.5, 3.11.7, 3.11.10, 3.11.11, 3.12).

26 35. “Net Distribution Fund” means the Total Settlement Amount, less the amount that
27 the Court awards for Plaintiff’s Service Award (\$10,000), Class Counsel Fees Award (\$116,667),
28 PAGA Settlement (\$10,000), Class Counsel Costs Award (\$12,000), Settlement Administration

Costs (\$12,500), and any Payroll Taxes. (Exhibit A, Settlement, ¶ 1.19).

36. The “Class,” “Settlement Class,” or “Class Members” means 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 (i.e. September 18, 2016) through and including September 30, 2021 (“Class Period”). Defendant disclosed that as of March 15, 2021, there were a total of 305 Class Members (“Total Class Members”). (Exhibit A, Settlement, ¶¶ 1.3, 1.8). The Aggrieved Employees are those Class members employed during the period of September 18, 2019 through September 30, 2021. The “Aggrieved Employee Payment” is 25% of the \$10,000 PAGA Settlement, meaning that \$2,500 will be divided amongst the aggrieved employees according to their PAGA Payment Ratio. (Exhibit A, Settlement, ¶¶ 1.23, 1.24, 1.25, 3.11.6, 3.11.7).

37. “Individual Settlement Payment” is the amount payable to Class Members from the Net Distribution Fund, and excludes any amounts distributed to Settlement Class Members pursuant to PAGA. All Class Members who do not submit a timely and valid Request for Exclusion will receive an Individual Settlement Payment. Class Members are not eligible to receive any compensation other than an Individual Settlement Payment. The Individual Settlement Payment shall be calculated and apportioned based on the number of Workweeks each Class Member worked during the Class Period as an employee of Defendant. (Exhibit A, Settlement, ¶¶ 1.18, 3.11.3, 3.11.4, 3.11.4.1 – 3.11.4.4).

38. Similarly the “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. The Individual Payments to the Aggrieved Employees from the \$2,500 Aggrieved Employee Payment allocated to them under the PAGA Settlement will be paid to each based on their PAGA Payment Ratio. (Exhibit A, Settlement, ¶¶ 1.23, 3.11.6, 3.11.7). In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, Aggrieved Employees cannot opt-out of the PAGA

Released Claims and will automatically receive a payment for the amount of each individual's
PAGA Settlement Payment.

39. If the Court approves all requested allocations and awards above, the Net
Distribution Fund is estimated to be **\$188,833.00**. For the approximately **305** estimated Class
Members (if no exclusions), the average gross individual settlement payment share, using a
straight average, is **\$619.12**. Any amounts not approved by the Court as a Class Representative
Payment, or Class Counsel Fees and Costs, or Settlement Administration costs or for the PAGA
claim will be added back to Net Settlement Fund to be distributed to the Settlement Class
Members who are Class participants. The parties have selected ILYM Group, Inc. as the
Settlement Administrator. (Exhibit A, Settlement, ¶ 1.36; *see also* Exhibit A thereto, Class
Notice).

40. The Settlement Administrator shall calculate and deduct from the Individual
Settlement Payments the employee's share of any applicable taxes and/or other required
withholdings, and then will pay the resulting amount to Class Members. Each Individual
Settlement Payment will be allocated as twenty percent (20%) representing unpaid wages subject
to withholdings and the remaining eighty percent (80%) representing penalties and interest, from
which no taxes will be withheld. As for the PAGA claims, 100% of each PAGA Payment Share
will represent civil penalties and will be paid in full without deductions or withholdings. (Exhibit
A, Settlement, ¶¶ 3.11.4.4, 3.11.5, 3.11.6, 3.11.7).

41. The Effective Date of the Agreement is defined as the date by which this
Settlement is finally approved and the Court's Final Approval Order becomes binding. For
purposes of this Settlement Agreement, the Final Approval Order becomes binding on the date of
final approval by the Court if no Class Member timely and properly intervenes or files a motion to
vacate the Judgment under Code of Civil Procedure § 663 before the entry of Judgment. The
Settlement further addresses the effective date in the event there is a successful intervention or
appeal. (Exhibit A, Settlement, ¶ 1.15).

42. Any checks issued to Class Members and Aggrieved Employees shall remain valid
and negotiable for one hundred and twenty (120) calendar days from the date of their issuance and

1 will become void on the 121st day after mailing, i.e., the Void Date. (Exhibit A, Settlement, ¶
2 3.11.3). The Parties agree that any unclaimed funds as a result of the failure to cash Individual
3 Settlement Payment checks by the Void Date shall escheat to the California State Controller's
4 Office for deposit in the Unclaimed Property Fund, in the name of the Class Member. (*Id.*). The
5 parties submit that this disposition results in no "unpaid residue" under California Civil Procedure
6 Code § 384, as the entire Net Settlement Fund will be paid out to Settlement Class Members who
7 do not opt-out.

8 43. Released Claims: is defined in the Settlement to mean "all claims actually asserted
9 or which could have been asserted in the Action by the Class Members against the Released
10 Parties, arising during the Class Period, based on the facts alleged in the operative Complaint,
11 including but not limited to claims for: (1) failure to pay minimum wages in violation of Labor
12 Code §§ 201-204, 1194, 1194.2 1197, 1197.1, and the applicable Wage Order; (2) failure to pay
13 wages and overtime in violation of Labor Code §§ 201-204, 510, 558, 1194, 1198, 1199, and the
14 applicable Wage Order; (3) failure to authorize and permit meal breaks in violation of Labor Code
15 §§ 226.7, 512, and the applicable Wage Order; (4) failure to authorize and permit rest breaks in
16 violation of Labor Code §§ 226.7, 512, and the applicable Wage Order; (5) failure to provide
17 accurate, itemized wage statements in violation of Labor Code § 226(a); (6) unlawful wage
18 deductions in violation of Labor Code § 221; (7) failure to pay all wages owed under Labor Code
19 §§ 204, 210, 218.5, 1194, 1198, and the applicable wage order; (8) failure to pay all wages due
20 upon separation of employment in violation of Labor Code § 203; (9) failure to reimburse for
21 necessary business expenses in violation of Labor Code § 2802; (10) violations of the Business
22 and Professions Code section 17200 et seq.; and (11) penalties under PAGA, Labor Code § 2698
23 et seq. Released Claims also includes all claims that were or that could have been alleged in the
24 Action based on the facts stated in the Complaint, including but not limited to any claims for civil
25 penalties under the PAGA, for violations of the Fair Labor Standards Act, the California Labor
26 Code, and the relevant Wage Order." The Settlement Agreement provides further details defining
27 the Released Claims. (Exhibit A, Settlement, ¶ 1.28). The "Released Parties" means Elite Comfort
28 Solutions, LLC, including its respective subsidiaries, affiliates, parents, divisions, predecessors,

1 employee benefit plans sponsored or maintained by it, its attorneys, and its respective successors
2 and assigns. (*Id.* at ¶ 1.28).

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

16 45. The settlement amount was a compromise figure, factoring in the inherent risks
17 related to certification, liability and damages. However, considering all of the circumstances of the
18 action and the defenses raised by Defendants against certification, liability and damages, Class
19 Counsel believes that the settlement is fair and reasonable. (Exhibit A, Settlement, ¶ 2.4). Notice
20 of the Settlement Agreement will be provided to the Class Members in the form of the **Class**
21 **Notice** attached to the Settlement Agreement as **Exhibit A**. (See Exhibit A, Settlement, ¶ 1.21; and
22 Class Notice at Exhibit A thereto). The Class Notice includes a summary of the case and
23 settlement terms and provides Class Members with instructions on how to exclude themselves,
24 dispute the amount of pay periods, and object to the settlement.

25 46. Requests for Exclusion: The Class Notice mailed to all Class Members will advise
26 them of their right to opt-out of the Settlement Agreement by requesting exclusion. Any
27 Settlement Class Member who wishes to opt-out from the Settlement Agreement must submit a
28 Request for Exclusion, in writing to the Settlement Administrator postmarked no later than the

1 Response Deadline. (Exhibit A, Settlement, ¶¶ 1.31, 3.10.6). The Settlement Agreement and Class
2 Notice provide further details on the procedures for opting out of the Settlement.

3 47. Objections: The Notice of Settlement shall state that Class Members who wish to
4 object to the Settlement must submit a written Notice of Objection to the Settlement Administrator
5 by the Response Deadline. The Settlement Administrator will forward any Notices of Objection
6 received to counsel for the Parties. (Exhibit A, Settlement, ¶ 3.10.7). Class Members who fail to
7 file or submit a timely and valid Notice of Objection may be deemed by the Court to have waived
8 any objections. Class Members who file or submit a timely and valid Notice of Objection will
9 have a right to appear at the Final Approval Hearing to have their objections heard by the Court.
10 Class Members who timely submit both a Notice of Objection and a Request for Exclusion will be
11 deemed to have excluded themselves and their Notice of Objection shall not be considered. (*Id.*).
12 The Settlement Agreement and Class Notice provide further details on the procedures for
13 objecting to the Settlement.

14 **STRENGTH OF PLAINTIFF'S CASE BASED ON THE SETTLEMENT AMOUNT**

15 48. Because the Class consists of numerous employees, it was unlikely that the
16 potential monetary claims of individual Class members would have proved viable without the
17 class-action mechanism. The Settlement should be approved in light of two California appellate
18 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
19 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

20 49. The strength of the plaintiff's case in light of the settlement amount is deemed by
21 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
22 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to provide
23 proper meal and rest breaks or provide premium pay in lieu thereof, failed to pay all wages and
24 overtime, failed to provide accurate wage statements, failed to pay minimum wages and overtime,
25 and failed to pay all wages upon termination, all in violation of California law. Plaintiff seeks
26 related violations of California's Business & Professions Code, and penalties pursuant to Labor
27 Code § 2698 *et seq.* Summary calculations for estimated liability for each of these claims follows.

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1 Orders. Plaintiff also argued that second meal periods were not provided on shifts over ten hours.

2 53. For each meal period allegedly missed, of less than 30 minutes, or taken late for
3 which the employee was not provided a reasonable opportunity to take a complete and timely meal
4 period, an employer must pay the employee an additional one hour of compensation. Labor Code
5 §226.7. This additional hour of compensation is referred to as “premium pay.” To comply with
6 these laws, every employer must keep, for each employee, accurate time records showing when
7 the employee begins and ends each work period and takes his or her meal periods.

8 54. Plaintiff alleged that Defendant consistently failed to provide timely and
9 uninterrupted and complete meal breaks to class members by exerting control over them by
10 requiring them to respond to work requirements. Moreover, Plaintiff alleges that what meal
11 periods the California Class Members did receive were often untimely or shortened, all in
12 violation of Labor Code and applicable Wage Orders.

13 55. Defendant maintained that during the relevant period, it regularly provided Plaintiff
14 and other employees opportunities to take compliant meal breaks and that they maintained lawful
15 meal break policies. Defendant also again contended that differences in how the various
16 employees performed their daily duties would have led to individualized issues predominating and
17 would have defeated class certification. Using Defendant’s numbers, and a conservative estimate
18 of two meal period violations per work week (i.e. a violation rate of approx. 40%), resulted in the
19 following calculation for estimated meal period liability resulted: 32,833 workweeks x 2
20 violations/week x \$18.55/violation = **\$1,218,104.30**.

21 56. As for rest periods, Plaintiff also estimated the Class members endured a rest break
22 violation on 40% of the shifts they worked in a work week for every work week they worked,
23 including due to the on-duty nature of any breaks that were taken or the control exerted. Plaintiff
24 alleged that Class members were and are under Defendant’s control when they are required by
25 policy to respond to job requirements and demands at the expense of their breaks. Defendant
26 denied these allegations, argued the records established compliance, and that they were free to take
27 breaks without interruption. This results in the following estimated liability exposure on the Class
28 claims for failure to authorize and permit Class members to take rest periods, which is the same

analysis as for the meal period violations: 32,833 workweeks x 2 violations/week x \$18.55/violation = \$1,218,104.30.

Inaccurate Wage Statement Violations

57. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover \$50 for initial violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of \$4,000 per employee. Plaintiff alleged Defendants issued wage statements to Plaintiff and the Class members that did not accurately list all hours worked by omitting off the clock work and by unlawful rounding and inaccurately listing applicable hourly rates.

58. Defendant challenged Plaintiff's claim for Labor Code § 226(e) penalties, including by arguing they were merely derivative of the other claims that lacked merit, and Plaintiff's failure to prove the underlying claims could result in the dismissal of these derivative claims. Defendant also argued that it did not knowingly and intentionally commit these alleged violations. *See, e.g.*, Labor Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional failure by an employer").

59. From Defendant's numbers, the Class members in the one year SOL for Section 226 claims worked a total of 11,989 pay periods. By using the conservative number of \$50/violation with no subsequent violations, the following calculation resulted: 11,989 pay periods x \$50/pay period = **\$599,450.00**. Given the fact that the wage statement claims were derivative of the wage and meal and rest claims, we reduced the estimated liability by 50% to **\$299,725.00**.

Failure to Pay Final Wages at Termination or Separation

60. In allegedly failing to pay the Class Members their minimum wages, overtime wages, and premium pay for deficiently provided meal periods and rest breaks, all discussed above, Plaintiff alleged that Defendant willfully failed to pay these the California Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.

61. Section 203 further provides that if an employer willfully fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages shall

1 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
2 Because class members stopped working for Defendant but again, allegedly were not paid their
3 full compensation for the reasons discussed above, Plaintiff alleged that Class members did not
4 receive all wages due upon termination of employment.

5 62. Defendants challenged this claim under Labor Code § 203 with several arguments,
6 including that under Labor Code § 203, employers are only obligated to pay waiting-time penalties
7 if they “willfully” fail to pay wages due and owing at the time of termination or resignation. As
8 Title 8, California Code of Regulations, § 13520 states: “A willful failure to pay wages within the
9 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to
10 an employee when those wages are due. However, a good faith dispute that any wages are due will
11 preclude imposition of waiting time penalties under Section 203.” Defendants argued its good
12 faith disputes and lack of willfulness would excuse its violations. Defendants maintained that
13 because they had viable defenses in both law and fact, such penalties were subject to a three-year
14 limitations period under Labor Code § 203(b). Defendants also argued that there is no liability
15 under Labor Code § 203 for violations of meal and rest break requirements alone.

16 63. For the employees who departed from Defendants’ employment during the relevant
17 time period, Plaintiff alleged that Defendants have failed to provide all wages due to those
18 employees at the time of their termination or resignation. Therefore, Class Counsel argued
19 waiting-time penalties were triggered and employees are entitled to 30 days of wages at their
20 regular rates of pay. Defendants disclosed 101 total class members who were former employees in
21 the three-year SOL for Section 203 claims at the time of mediation. We also conservatively
22 figured Class members worked 8 hour shifts for calculation purposes. The average regular hourly
23 rate was \$18.55/hr, and the following calculation resulted. The 203 penalty was calculated by
24 multiplying the number of terminated employees in the 3-year SOL by 30 days and by the average
25 daily hours and by the average rate of pay as follows: 101 employees x 8 hours/day x 30 days x
26 \$18.44/hr = **\$449,652.00**. Given the above addressed arguments against liability, we reduced this
27 estimated number by 50% to **\$224,826.00**.

PAGA Penalties

64. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows Plaintiff to obtain civil penalties on behalf of herself and other aggrieved employees for Defendants' violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees. The limitations period as for all penalties is one year prior to the filing of the complaint.

65. The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA penalties are not mandatory, and are instead permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendants contested Plaintiff's claim for PAGA penalties.

66. PAGA penalties are also derivative of each and every other claim, and Defendants argued the PAGA claims would be subject to the same defenses as the underlying claims, and as well as additional equitable defenses, including substantial compliance. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, Defendants asserted that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendants had never been notified of the alleged violations. *Id.* at 1208-1209. Class counsel therefore calculated a representative PAGA penalty calculation for each type of violation as follows: 11,989 pay periods x \$100/pay period = **\$1,198,900.00** per violation.

67. However, Class Counsel also estimated any PAGA recovery would be substantially reduced, and applied discounts in light of the countervailing arguments with regard to the other causes of action, and the Court's power to award "a lesser amount than the maximum civil liability." The PAGA allocation agreed upon by the parties therefore was **\$10,000.00**, subject to the Court's final approval. 75% of that amount (\$7,500.00) will be paid to the LWDA out of the Total Settlement Amount, and the remaining 25% (\$2,500.00) will become part of the Net Distribution Fund for distribution to Settlement Class Members. (Exhibit A, Settlement, ¶ 1.25, 3.11.7). For purposes of distributing the PAGA Settlement to the Aggrieved Employees, each Aggrieved Employee will receive their pro-rata share of the Aggrieved Employee Payment (\$2,500.00) using the PAGA Payment Ratio. (*Id.*).

Unfair Business Practices

68. Plaintiff pled this cause of action in order to augment his other causes of action and aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations on Plaintiff's wage claims, which qualify as unfair business practices, to four years rather than the three years provided by statute.

Summary

69. The foregoing discussion establishes why the settlement amount is adequate in light of the merits of Plaintiff's case. It does so by explaining the legal basis for each of Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of those causes of action, and relating to Defendant's legal and factual arguments that worked to detract from the strength of Plaintiff's case.

70. Class Counsel had to apply appropriate discounts in light of the facts and law as discussed above. In addition, meal period liability exposure is limited by the fact that not all class members worked on the same schedule and under the same supervisors making the certification of all class members less than a certainty. This settlement, like most others, was the product of compromise.

71. In light of the above described risks, and those inherent in any contested litigation, a gross recovery of **\$350,000** under the Settlement Agreement is an excellent result. If the Court

1 approves all requested allocations and awards above, the Net Distribution Fund is estimated to be
2 **\$188,833.00**. For the approximately **305** estimated Class Members (if no exclusions), the average
3 gross individual settlement payment share, using a straight average, is **\$619.12**. Additionally, by
4 summarizing the potential liability exposure numbers estimated for Plaintiff's main claims as
5 addressed above and the PAGA Settlement, Class Counsel estimated **\$3,072,268.29** in potential
6 liability exposure to Defendants for Plaintiff's main claims for damages and penalties.

7 72. The Gross Fund Value of \$350,000.00 therefore represents a recovery for the Class
8 members of approximately **11.39%** of the total maximum liability exposure (\$3,072,268.29)
9 Plaintiff estimated Defendant could face on these class-wide claims. Plaintiff and Class Counsel
10 submits this is an excellent result in the face of uncertainty and the prospects of protracted and
11 contested litigation through class certification, summary judgment, and trial, and this is especially
12 true in light of the operational challenges employers such as Defendant faced in the wake of the
13 coronavirus pandemic.

14 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**
15 **RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL**

16 73. The *Clark/Kullar* factors recognize that settlements take into consideration the risks
17 and expenses posed by further litigation and, in the class-action context, the risk of non-
18 certification. Consequently, it is proper that trial courts should keep these considerations in mind
19 when judging the adequacy of class action settlements.

20 74. Further litigation of this case posed real risks for a number of reasons. First, there
21 were the risks of unfavorable rulings on the merits of the various indeterminate legal issues
22 outlined in the previous section. Each of Plaintiff's causes of action was subject to some unique
23 indeterminacy, and the derivative causes of action were doubly indeterminate on their own and
24 based on the claims from which they derive.

25 75. The parties disputed the effect of these and other issues on class certification and
26 decertification. Class Counsel maintained that there were several legal and factual questions at
27 issue in the case that could best be decided on a class wide basis. Plaintiff contended that the same
28 policies and practices applied to all class members and therefore common questions were likely to

1 predominate over individual inquiries, especially regarding rounding and off the clock work and
2 meal and rest break claims founded upon a control argument. Defendant disputed these
3 contentions and argued that individualized issues would predominate in the putative class to
4 preclude certification, as differences from restaurant to restaurant or shift to shift gave rise to
5 individualized issues. Defendant also argued that its policies were compliant with the law. Plaintiff
6 disputed that argument, asserting that the lawfulness of such policies give rise to common
7 questions amenable to certification. These disputes weighed in favor of entering into this
8 Settlement.

9 76. Finally, it is always preferable to reach a relatively early resolution of a dispute that
10 saves time and money that would otherwise go towards continuing contested litigation. If this case
11 ended up settling after further litigation, the settlement amount would have to account for the
12 additional costs incurred, and there likely would be less amounts available for Class members
13 when a settlement was finalized. This is not just an abstract contention. The parties were moving
14 into the phase of this litigation where they would have had to depose managers, supervisors, and
15 employees in order to establish class certification and then liability for trial. Calling to Class
16 members and gathering of Declarations would have continued in earnest. Potentially, there would
17 have been discovery disputes. The parties were also aware that a class action trial would be a
18 complicated and expensive proceeding, as well as the likelihood of a long, drawn-out appeal
19 process. The settlement provides real and tangible benefits for Class members in the immediate
20 future. In fact, the estimated average recovery for the Settlement Class members in this action over
21 **\$619.00**. The benefits of this Settlement are not insignificant for anyone, especially given the
22 current economic climate. Consequently, the risk and expense of further litigation outweighed the
23 potential benefit that might have otherwise been gained.

24 **NOTICE TO AND REACTION OF CLASS MEMBERS**
25 **TO THE PROPOSED SETTLEMENT**

26 77. It is premature to address this factor now, at the preliminary approval stage, but
27 some observations are in order. First, the notification procedure set out in the Settlement
28 Agreement (at Exhibit A) provides the greatest likelihood that each and every class member will

1 receive the Class Notice (the “Notice”), attached to the Settlement as Exhibit A. Under the
2 Settlement, the Settlement Administrator (ILYM Group) will send the Class Notice to each class
3 member via First Class U.S. mail. (Exhibit A, Settlement, ¶ 1.35, 1.36, 3.4, 3.10.3). If any Notice
4 Packets are returned undeliverable, the Settlement Administrator will forward them to any address
5 appearing on the returned envelope or, if there is no forwarding address, perform a skip trace
6 before mailing them to any addresses thereby identified. (*Id.* at ¶ 3.10.3). This is the best and most
7 practicable way to ensure the greatest possible number of class members will receive the Notice.

8 78. The Class Notice itself fully apprises class members of the nature of the lawsuit,
9 the claims involved, the terms of the settlement, and their options thereunder. It provides for a
10 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.
11 (Exhibit A, Settlement, ¶¶ 3.10.5, 3.10.6, 3.10.7; Exhibit A thereto, Class Notice). In the Class
12 Notice, Class members will also receive Class Counsel’s contact information, so they can speak to
13 attorneys conversant with the legal and factual issues involved in this case, as well as the contact
14 information for the Settlement Administrator. The efforts taken to ensure that Class members
15 receive the Class Notice and are well informed about the settlement are reasonable and the best
16 notice practicable under the facts.

17 **CONCLUSION AS TO THE *CLARK/KULLAR* ANALYSIS**

18 79. The foregoing discussion establishes the fairness of the class-action settlement in
19 the instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. This analysis
20 compels a conclusion that the settlement is fair, reasonable, and adequate. Class Counsel
21 conducted a thorough investigation of the subject wage-and-hour practices and engaged in non-
22 collusive, arm’s-length negotiations in order to reach a settlement. Defendants have agreed to pay
23 fair value to settle Plaintiff’s claims given the existence of legal uncertainty. From Class Counsel’s
24 substantial experience with wage-and-hour class action lawsuits, Class Counsel believes that this
25 case could not have settled on better terms under the circumstances. Request therefore is made that
26 the Settlement be granted preliminary approval so that those persons whom it was intended to
27 benefit will be afforded the opportunity to determine its adequacy for themselves. (Exhibit A,
28 Settlement, ¶¶ 2.4, 2.5).

REQUEST FOR ATTORNEYS' FEES

80. Under the Settlement, Class Counsel also requests, without opposition from Defendant, an award of attorneys' fees and costs and expenses incurred in connection with the prosecution of this action, and all of the work remaining to be performed by Class Counsel in documenting the Settlement, securing Court approval of the Settlement, carrying out their duties to see that the Settlement is fairly administered and implemented, and obtaining dismissal of the Lawsuit, as the Class Counsel Fees Award in an amount not to exceed one-third of the Maximum Settlement Amount (i.e. up to **\$116,667.00**), and for an awarded Class Counsel Costs Award of reasonable costs and expenses in an amount not to exceed **\$12,000.00**, subject to approval by the Court. (Exhibit A, Settlement, ¶¶ 1.3, 1.5).

81. This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to class members, communicating with class members regarding their claims, and assisting in the administration of the settlement if it is preliminarily approved.

82. My firm took this case on a contingent-fee basis against a business represented by a reputable defense firm. When we take contingent cases, we must pay careful attention to the economics involved or one bad case can destroy years of work. Accordingly, when we take contingency cases, we anticipate that we will, if successful, receive a fee that exceeds our normal hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the number of hours in a day is limited. Because of this, when we take on one particular matter, we are unable to take on all of the other matters we would otherwise be able to undertake. When Class Counsel became involved in this case, we realized the time commitment that it would entail and we were forced to turn down matters that we otherwise should have been able to handle. In sum, this case claimed a significant portion of Class Counsel's time and attention throughout its pendency.

1 83. The requested fees are reasonable for the services provided to Class Members and
2 for the benefits they are to receive. Indeed, even with a requested multiplier under the lodestar
3 theory, which counsel does not anticipate will be required, Class Counsel's fees will remain
4 justified. Class Counsel will more fully brief the Court on its lodestar in the motion for final
5 approval. My hourly rate, approved before other Courts, has been \$700 per hour starting in 2020.
6 Alvin B. Lindsay is our firm's senior counsel, and his hourly rate has also been \$700 starting in
7 2020. These rates have now also been approved in several matters. (See concurrently filed
8 Declaration of Alvin B. Lindsay in support of preliminary approval ("Lindsay Decl.")). Our firm
9 attorneys, paralegals, and staff have incurred substantial hours in prosecuting this action, and
10 counsel estimates that no lodestar multiplier will be necessary in cross-check to confirm the
11 reasonableness of the requested fee award. With the additional hours we will incur in taking this
12 action through preliminary approval, claims administration, and final approval, and the time
13 invested by other firm employees, an award of full attorneys' fees requested of **\$116,667.00** is fair
14 and reasonable, subject to further documentation and discussion in connection with final approval.

15 84. Class Counsel's Costs/Expenses reimbursement request at final approval will not
16 exceed twelve thousand dollars (\$12,000.00). (Exhibit A, Settlement, ¶ 1.5). Counsel will provide
17 a detailed invoice of its costs at final approval, and will request only reimbursement of reasonably
18 incurred and documented costs specific to litigating this action. Any amounts not approved by the
19 Court as Attorneys' Fees and Costs will be added back to the Net Distribution Fund to be
20 distributed to the Class Members who do not opt-out. Through the filing of this motion, Class
21 Counsel has incurred approximately \$9,216.00 in litigation costs. Class Counsel will incur
22 additional costs in taking this action through administration, final approval, disbursement, and
23 post-distribution accounting, that will likely approach the **\$12,000.00** requested.

24 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

25 85. Plaintiff herein submits he is entitled to a reasonable service payment for his efforts
26 and initiative in bringing and helping to prosecute this action. Plaintiff spent a considerable
27 amount of time better apprising himself of his rights, deciding whether remedial action should be
28 taken, how it should be taken, searching for attorneys, and finally contacting Class Counsel, who

1 spent many hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to
2 vindicate not only his own rights but also those of his co-workers by filing a class action lawsuit.

3 86. Subject to Court approval and in exchange for an individual general release and his
4 efforts in bringing and prosecuting the class claims, and in addition to his Individual Settlement
5 Payment as a member of the Settlement Class, Plaintiff will request in connection with final
6 approval and without opposition from Defendant, a Class Representative Service Award of up to
7 **\$10,000.00.** (Exhibit A, Settlement, ¶ 1.32). Plaintiff has also provided a Declaration in support of
8 preliminary and final approval and the award of his requested Service Award in connection with
9 Plaintiff's present motion. (*See* Declaration of Eduardo Diaz Galan ("Diaz Decl."), ¶¶ 3-18).

10 87. By suing Defendants, Plaintiff increased his risk of retaliation by not only
11 prospective employers, but also from Defendant. Plaintiff's lawsuit has now required Defendant to
12 expend considerable resources and has gained notoriety in the community and amongst Plaintiff's
13 co-workers, and Plaintiff justifiably fears the fact that he served as a class representative in a wage
14 and hour class action will not be lost on a prospective employer who has to choose between an
15 applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is
16 particularly real in the information age, where employers can, more easily than ever, perform
17 background checks of prospective employees, sometimes with the stroke of a key.

18 88. But Plaintiff did not allow his fears of the potential repercussions of being class
19 representative deter him from acting for the benefit of Class Members. To the contrary, Plaintiff
20 has been intimately involved in this case since its inception. He has devoted a substantial amount
21 of time to helping Class Counsel effectively develop and prosecute this action at every stage of the
22 litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on
23 numerous occasions to discuss every aspect of this case. Plaintiff provided Class Counsel with
24 information about Defendant and about its policies and practices generally, reviewed
25 documents, identified witnesses, responded to inquiries from fellow Class members about the case
26 and its status, consulted Class Counsel throughout the litigation at length, responded to informal
27 discovery inquiries and produced documents, met with counsel and participated in the mediation
28 process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the

1 Settlement Agreement and provided his supporting declaration. Plaintiff estimates he has invested
2 approximately 42 hours in this litigation. (Diaz Decl., ¶12).

3 89. Class Counsel and Plaintiff submit he has diligently, adequately, and fairly
4 represented the Class Members, and has not placed his interests above any member of the putative
5 Class. The payment to Plaintiff is intended to recognize his time and effort on behalf of the Class.
6 The amount requested is fair and appropriate based on his contribution and involvement. For
7 example, Plaintiff instigated the Lawsuit by bringing these violations to the attention of Class
8 Counsel. He spent several hours answering questions and providing information to Class Counsel
9 throughout the pendency of this action. He identified potential witnesses, explained to Class
10 Counsel day to day business practices of Defendant with regard to work schedules and rounding
11 and off the clock work and overtime payments and meal and rest breaks, etc. The parties agree that
12 Plaintiff is entitled to an enhancement for his time and effort in this matter. This sort of payment to
13 a class representative has been a common feature of settlements negotiated by Class Counsel and
14 has been routinely approved by trial courts. This is especially true when the Plaintiff and Class
15 Representative is also providing a general release broader than that of the Class members.

16 90. In light of the foregoing, Plaintiff and Class Counsel believe that the Class Service
17 Award in the amount of \$10,000.00 is fair and reasonable. Although Class Counsel appreciates the
18 Court's duty to ensure that class representatives are not overcompensated at the expense of the
19 Class, modest incentive awards in employment class actions, such as the one here, are necessary
20 not only to compensate class representatives for the time they spend in the case, but also, and more
21 importantly, to encourage aggrieved employees to challenge questionable employment practices
22 notwithstanding the very real consequences they may face.

23 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

24 91. Plaintiff alleges that the proposed Class satisfy the criteria for certification of a
25 settlement class under California law, as embodied in California Code of Civil Procedure § 382.
26 Defendants have agreed to the conditional certification of the class for settlement purposes only.
27 Defendants do not concede that certification is appropriate outside of this Settlement and preserves
28 all rights to oppose certification if, for any reason, the settlement does not become effective.

(Exhibit A, Settlement Agreement, ¶¶ 2.6). In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore the Court should take into consideration the fact that the parties have settled their claims and stipulated to certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

92. Numerosity. The putative Class is so numerous that joinder of all members is impractical. Class members are all current and former non-exempt employees of Defendant and Defendant’s records establish at least 305 Class Members. Thus, there are a sufficient number of Class Members to warrant conditionally certifying these proceedings as a class action for settlement purposes.

93. Ascertainability. Plaintiff alleges that the putative Class is defined in a manner that is precise, objective, and ascertainable. The at least 305 Class Members have already been identified by reference to Defendant’s payroll and personnel records.

94. Typicality. A class representative’s claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative’s claims must be “typical” but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class representative must have identical interests with the class members.”). It is unnecessary that class representative has personally incurred all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

95. Plaintiff alleges that his claims are typical of class members’ claims because they arose from the same factual basis and are based on the same legal theories. Plaintiff was employed by Defendant during the Class Period subject to the allegedly unlawful meal and rest policies and pay practices at issue in this litigation. Accordingly, Plaintiff is a member of the Class. The central

1 issues of this litigation (whether Defendants failed to provide meal periods and rest breaks,
2 whether off the clock work was required, whether Defendants paid employees for time under its
3 control or paid overtime correctly, etc.), which would arise if this were an individual action
4 brought by Plaintiff, apply to the other Class members as well, and the answers to these questions
5 would determine Defendant's liability as to the entire putative Class. Plaintiff alleges that his
6 claims are typical of the claims of the putative Class, and that the typicality requirement is
7 satisfied.

8 96. Adequacy. A class representative must possess the same interest and suffer the
9 same injury as the class members. "To assure 'adequate' representation, the class representative's
10 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
11 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
12 the adequacy requirement is satisfied when the class representative's interests are not antagonistic
13 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

14 97. Plaintiff has no conflicts with the Class and his interests are aligned with those of
15 the Class. Plaintiff alleges that his claims are identical to those that would be asserted by the
16 unnamed Class Members. Plaintiff alleges that he has every interest in zealously representing the
17 unnamed Class members. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has
18 devoted a substantial amount of time and energy to litigating this action and effecting a settlement.
19 Furthermore, as detailed above, Class Counsel are experienced in wage-and-hour litigation,
20 especially class actions, and have zealously represented the interests of the class in litigating this
21 case. *See supra*, ¶¶ 3-9; *see also* Lindsay Decl. filed concurrently herewith. Accordingly, the
22 adequacy requirement is satisfied.

23 98. Commonality. Plaintiff alleges that common questions of law or fact in this case
24 predominate over individual questions. This action involves, *inter alia*, a determination about
25 Defendant's alleged failure to provide meal and rest periods, failure to pay all wages due to
26 allegedly common and unlawful policies, the resulting failure to pay final wages when required,
27 the failure to provide accurate paystubs, and largely derivative claims under the Business &
28 Professions Code and PAGA. Plaintiff contends these practices, including an alleged practice of

1 failing to provide complete meal and rest periods, related meal and rest period policies applicable
2 to the class, an alleged systemic policy of off the clock work, and the alleged failure to provide
3 corresponding premium and overtime payments, that affected Class members in the same way. All
4 Class members were employed during the Class Period. Plaintiff alleges that the operative
5 complaint delineates a common course of conduct applicable to all Class members. Therefore,
6 based on Class Counsel's investigation, the review of the discovery produced by Defendants, and
7 their discussions with Plaintiff, Plaintiff contends the evidence supports his position that the
8 employment practices and policies of Defendant were consistent and uniform.

9 99. Predominance. Plaintiff alleges that individualized issues do not predominate over
10 the issues of law and fact that are common to the Class as a whole. Plaintiff alleges that the
11 principal issues in controversy are whether Class Members were paid for all hours worked and
12 provided meal and rest breaks. As explained, *supra*, Plaintiff alleges there are common issues of
13 law and fact given that Plaintiff and all Class Members were subjected to the same policies and
14 pay practices during the relevant time period. Plaintiff and Class Members seek meal and rest
15 premiums, unpaid wages and overtime, and penalties for work performed as non-exempt
16 employees for Defendants. Plaintiff alleges that these issues are suitable for common adjudication
17 because all Class Members were allegedly subject to the same employment policies and Plaintiff
18 contends the practices applied uniformly to all Class Members.

19 100. Superiority. Plaintiff alleges that class resolution is superior to other available
20 methods for the fair and efficient adjudication of the controversy. Plaintiff alleges that there is
21 little interest or incentive for Class Members to individually control the prosecution of separate
22 actions. Although the alleged injury resulting from Defendants' policies and practices are
23 allegedly real and significant, the cost of individually litigating each such case against Defendants
24 would easily exceed the value of any relief that could be obtained by any one Class member
25 individually. If Class members are forced to litigate their claims individually this would result in
26 over 300 individual actions against Defendant. Here, the alternative methods of resolution are
27 individual suits for relatively small amounts. Hence, an individual suit would prove uneconomical
28 for potential plaintiffs because litigation costs would dwarf a potential recovery.

1 101. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
2 actions by Class Members against Defendant asserting similar claims. Los Angeles County is an
3 appropriate forum for this action given that Defendant employed Class members at its facilities
4 here.

5 102. Plaintiff alleges there are no serious manageability difficulties presented by
6 preliminarily approving the case for settlement purposes. As this case will not go to trial if finally
7 approved, all that would remain is claims administration and responding to possible objectors.
8 Class Counsel respectfully submits the Settlement is within the range of reasonableness to justify
9 granting it preliminary approval so the parties can proceed with the sending the Class Notice and
10 administering the Settlement.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed 17th day of December 2021, at Glendale, California.

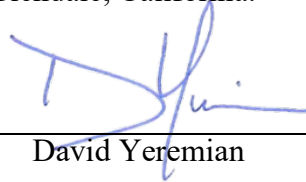
14 
15 _____
16 David Yeremian

EXHIBIT A

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12 Attorneys for Defendant
13 ELITE COMFORT SOLUTIONS, LLC

14 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**
15

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

24 ///

25 ///

26 ///

27 ///

28 ///

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.

28 ///

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.

///

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.

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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

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT
AND FINAL HEARING DATE**

***Eduardo Diaz Galan, et al. v. Elite Comfort Solutions, LLC, et al.*, currently pending before the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV35875**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<< [REDACTED] >>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below, except that you will still receive your Aggrieved Employee Payment.
Object	You may write to the Court about why you do not like the settlement. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit entitled *Eduardo Diaz Galan, et al. v. Elite Comfort Solutions, LLC, et al.*, Case No. 20STCV35875 (the “Action”), currently pending before the Superior Court of the State of California, County of Los Angeles (the “Court”) has been reached between EDUARDO DIAZ GALAN (“Plaintiff”) and ELITE COMFORT SOLUTIONS, LLC (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a Settlement Class Member, which is defined as:

All of Defendant’s current and former non-exempt employees employed in California between September 18, 2016 and September 30, 2021.

The “Class Period” is the period of time running from September 18, 2016 to September 30, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

This Action was filed on September 18, 2020. Thereafter, on December 22, 2020, Plaintiff filed an amended complaint asserting 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.*

On June 15, 2021, the Parties participated in mediation presided over by Tripper Ortman, a respected mediator. At the mediation, each side, represented by its respective counsel, was able to agree to settle the Action based on a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representatives, and the law firm of David Yeremian & Associates to serve as Class Counsel.

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class at least minimum wage for all hours worked, paid all overtime owed, and paid all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; that Defendant reimbursed members of the class for all reasonably necessary business expenses; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

3. What are the terms of the Settlement?

Total Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred and Fifty Thousand Dollars (\$350,000) (the “Total Settlement Amount”) to fund the settlement. The Total Settlement Amount includes the payment of all Individual Settlement Payments to participating Settlement Class Members, the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, Payroll Taxes, and the Class Representative Service Award to the Plaintiff.

Within ten (10) calendar days following the receipt of the Settlement Accounting from the Settlement Administrator, Defendant will fund the Total Settlement Amount by depositing the money into Settlement Fund Account maintained by the third party Settlement Administrator.

Amounts to be Paid from the Total Settlement Amount. The Settlement provides for certain payments to be made from the Total Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Total Settlement Amount before settlement payments are made to Settlement Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$12,500, for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Subject to Court approval, Class Counsel shall seek a Class Counsel Award in an amount equal to one-third of the Total Settlement Amount currently estimated to be \$116,667.00 for reasonable attorneys' fees, plus costs and expenses supported by declaration not to exceed \$12,000.00. The Class Counsel Award is intended to compensate and reimburse Class Counsel for all of the work already performed and all of the work remaining to be performed by Class Counsel in documenting the settlement, securing Court approval of the settlement, administering the settlement, and making sure that the settlement is fairly administered and implemented.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Settlement. A payment of \$10,000 relating to Plaintiff's claim under the Private Attorney General's Act ("PAGA"), \$7,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$2,500 will be distributed to Aggrieved Employees which are all of Defendant's current and former non-exempt employees employed in California between September 22, 2019 and September 30, 2021.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Settlement Administration Expenses, Class Counsel Award, Payroll Taxes, the Class Representative Service Award and the PAGA Settlement are deducted from the Total Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Settlement Class Members"). The Individual Settlement Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's workweeks worked that occurred during the Class Period. For each Class Member who is a former employee, their total number of Workweeks will be multiplied by 1.25 to come up with an adjusted number of Workweeks. For each Class Member who is a current employee, no multiplier will be added to their total number of Workweeks.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. 20% of each Settlement Share constitutes wages in the form of back-pay (and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment) and 80% of each Settlement Share constitutes interest, penalties and other non-wage payments (and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment). Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon the Funding Date, each of the Participating Class Members shall release all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are asserted in the Action, or could have been asserted in the Action based on the claims and theories plead in the operative complaint on file at the time of final approval, or raised during the mediation of this dispute, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1185 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, and the applicable IWC Wage Orders which occurred during the Class Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. Upon the Funding Date, each Aggrieved Employee, the LWDA and Plaintiff shall release any and all claims for relief under PAGA, of whatever kind or nature,

Upon final approval by the Court of this Settlement Agreement and upon funding of the Gross Settlement Amount, the PAGA Representative, on behalf of himself and the State of California, and the Aggrieved Employees from any and all claims for relief under PAGA, based on the claims for penalties that could have been sought by the Labor Commissioner or Plaintiff based on the facts and legal claims as alleged in the operative complaint at the time of final approval by Plaintiff in the Action and Plaintiff's notice letters to the LWDA arising during the PAGA Period, including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1185 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, and 2698 et seq., and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Periods.

5. How much will my payment be?

Defendant's records reflect that you have << [REDACTED] >> work-weeks/work-days worked during the Class Period.

Based on this information, your estimated Individual Settlement Payment is << [REDACTED] >>.

Defendant's records reflect that you have << [REDACTED] >> work-weeks/work-days worked during the PAGA Period.

Based on this information, your estimated Individual PAGA Settlement Payment is << [REDACTED] >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____, 2021 [forty-five (45) days after the Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to approve the Settlement. If the Court

approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms.**

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____, 2021. The request for exclusion must state in substance: "I wish to exclude myself from the Settlement in *Eduardo Diaz Galan, et al. v. Elite Comfort Solutions, LLC, et al.*, currently pending before the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV35875. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, 2021, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don't like the Settlement?

Any Class Member, who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Eduardo Diaz Galan, et al. v. Elite Comfort Solutions, LLC, et al.*, currently pending before the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV35875.

To object to the Settlement, you must not opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The objections must be delivered or mailed to the Settlement Administrator no later than _____, 2021 with copies to the Parties' counsel. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are 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

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the Los Angeles County Superior Court, located at 312 N Spring St., Los Angeles, CA 90012 in Department 12 before Hon. Carolyn B. Kuhl. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Eduardo Diaz Galan, et al. v. Elite Comfort Solutions, LLC, et al.*, currently pending before the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV35875, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to the Plaintiff's counsel.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 120 days after issuance if not deposited or cashed. Any unclaimed funds as a result of the failure to cash Individual Settlement Payment checks by the Void Date shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the name of the Class Member. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.