

1 DAVID GLENN SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

5 PMB 42554

6 West Hollywood, CA 90069

7 Telephone: (213) 725-9094

8 Facsimile: (213) 634-2485

9 Attorneys for Plaintiffs,

10 NAOMI MOJADDIDI, KIA SPURNEY, and all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SACRAMENTO**

13 **(UNLIMITED JURISDICTION)**

14 NAOMI MOJADDIDI, KIA SPURNEY, and  
15 ANTOLIN NAJERA, on behalf of themselves  
16 and all others similarly situated, and as  
17 “aggrieved employees” on behalf of other  
18 “aggrieved employees” under the Labor Code  
19 Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 ELITE DINERS, LLC, a California limited  
23 liability company; ELITE DEVCO, LLC, a  
24 California limited liability company; ELITE  
25 SPORTS BAR GROUP, LLC, a California  
26 corporation; SOCAL DINERS, LLC, a  
27 California limited liability company; and ELITE  
28 BUSINESS ENTERPRISES, INC., a California  
corporation; and DOES 1–50, inclusive,

*Defendant(s).*

Case No. 34-2020-00273090-CU-OE-GDS  
Reservation # A-273090-001

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

Action filed: January 08, 2020  
Dept: 23, Hon. Jill H. Talley

**ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)**

WALTER L. HAINES (SBN 71075)

[walter@uelglaw.com](mailto:walter@uelglaw.com)

UNITED EMPLOYEES LAW GROUP

8605 Santa Monica Bl.

PMB 63354

West Hollywood, CA 90069

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),

NAOMI MOJADDIDI, KIA SPURNE, and all others similarly situated

DAVID D. BIBIYAN (SBN 287811)

[david@tomorrowlaw.com](mailto:david@tomorrowlaw.com)

VEDANG J. PATEL (SBN 328647)

[vedang@tomorrowlaw.com](mailto:vedang@tomorrowlaw.com)

BIBIYAN LAW GROUP, P.C.

1460 Westwood Boulevard

Los Angeles, CA 90024

Telephone: (310) 438-5555

Facsimile: (310) 300-1705

Attorneys for Plaintiff(s),

ANTOLIN NAJERA, and all others similarly situated

1 The Motion of Plaintiffs Naomi Mojaddidi, Elite Devco, LLC, and Elite Devco, LLC (hereafter  
2 referred to as “Plaintiffs”) for Preliminary Approval of a Class Action Settlement (the “Motion”)  
3 was considered by the Court, Hon. Jill H. Talley presiding. The Court having considered the  
4 Motion, the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or  
5 “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class  
7 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary  
8 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court  
9 has determined only that there is sufficient evidence to suggest that the proposed settlement  
10 might be fair, adequate, and reasonable, and that any final determination of those issues  
11 will be made at the final hearing. The Court will make a determination at the hearing on the  
12 motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether  
13 the Settlement is fair, adequate and reasonable to the Settlement Class.

14 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means  
15 Defendants’ current and former hourly, non-exempt California employees (collectively “Class  
16 Members”), who worked anytime during the Class Period. The “Class Period” shall mean the  
17 period of time from January 01, 2016 through December 31, 2024.

18 3. Based on its records, Defendants estimate that, as of the date of the Settlement  
19 Agreement, (1) there are 5,500 Class Members and 199,510 Total Work Weeks during the Class  
20 period and (2) there were 3,400 Aggrieved Employees who worked 71,110 Pay Periods during  
21 the PAGA Period. If the Work Weeks during the Class Period increases by more than 10.00%,  
22 then the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class  
23 Representative Service Payment, and the PAGA Penalties, will increase by the actual percentage  
24 of additional Work Weeks above 10%. For example, if the number of Work Weeks during the  
25 Class Period increases by 11%, then the Gross Settlement Amount shall be increased by 1%. In  
26 the alternative, if the number of workweeks increases by more than 10 percent (10%), Defendants,  
27 at their sole discretion, may adjust the end date of the Class Period and PAGA Period to the date  
28 the Workweeks do not exceed 199,510 Workweeks in order to avoid triggering an increase to the

1 Gross Settlement Amount.

2 4. “Effective Date” means the date by when both of the following have occurred: (a)  
3 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the  
4 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no  
5 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if  
6 one or more Participating Class Members objects to the Settlement, the day after the deadline for  
7 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the  
8 day after the appellate court affirms the Judgment and issues a remittitur.

9 5. This action is provisionally certified pursuant to section 382 of the California Code  
10 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for  
11 purposes of settlement only with respect to the proposed Settlement Class.

12 6. Not later than 15 days after the Court grants Preliminary Approval of the  
13 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the  
14 form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the  
15 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes  
16 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator  
17 employees who need access to the Class Data to effect and perform under the Settlement  
18 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they  
19 discover that the Class Data omitted class member identifying information and to provide  
20 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the  
21 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their  
22 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any  
23 issues related to missing or omitted Class Data.

24 7. No later than three (3) business days after receipt of the Class Data, the  
25 Administrator shall notify Class Counsel that the list has been received and state the number of  
26 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

27 8. Using best efforts to perform as soon as possible, and in no event later than 14  
28 days after receiving the Class Data, the Administrator will send to all Class Members identified

1 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet  
2 with Spanish translation, if applicable substantially in the forms attached to the settlement  
3 agreement as **Exhibits A, B, C, and D**. The first page of the Class Notice shall prominently  
4 estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment  
5 payable to the Class Member, and the number of Work Weeks and PAGA Pay Periods (if applicable)  
6 used to calculate these amounts. Before mailing Notice Packets, the Administrator shall update  
7 Class Member addresses using the National Change of Address database.

8 9. Not later than 3 business days after the Administrator’s receipt of any Notice  
9 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet  
10 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding  
11 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice  
12 Packet to the most current address obtained. The Administrator has no obligation to make further  
13 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by  
14 the USPS a second time.

15 10. Class Counsel’s contact information is David G. Spivak, Esq., The Spivak Law  
16 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069 and David D. Bibiyan,  
17 Esq., Bibiyan Law Group, P.C., 8484 Wilshire Bl., Ste 500, Beverly Hills, CA 90211. Defense  
18 Counsel’s contact information is Alden J. Parker, Esq., Fisher & Phillips LLP, 621 Capitol Mall,  
19 Suite 1400, Sacramento, CA 95814.

20 11. The deadlines for Class Members’ written objections, Challenges to Work Weeks  
21 and/or Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days  
22 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is  
23 re-mailed. The Administrator will inform the Class Member of the extended deadline with the  
24 re-mailed Notice Packet.

25 12. If the Administrator, Defendants or Class Counsel is contacted by or otherwise  
26 discovers any persons who believe they should have been included in the Class Data and should  
27 have received Notice Packet, the Parties will expeditiously meet and confer in person or by  
28 telephone, and in good faith. in an effort to agree on whether to include them as Class Members.

1 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class  
2 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet  
3 requiring them to exercise options under the Settlement Agreement not later than 14 days after  
4 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

5 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out  
6 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written  
7 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus  
8 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for  
9 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates  
10 the Class Member's election to be excluded from the Settlement and includes the Class Member's  
11 name, address and email address or telephone number. To be valid, a Request for Exclusion must  
12 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate  
13 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

14 14. The Administrator may not reject a Request for Exclusion as invalid because it  
15 fails to contain all the information specified in the Class Notice. The Administrator shall accept  
16 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of  
17 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's  
18 determination shall be final and not appealable or otherwise susceptible to challenge. If the  
19 Administrator has reason to question the authenticity of a Request for Exclusion, the  
20 Administrator may demand additional proof of the Class Member's identity. The Administrator's  
21 determination of authenticity shall be final and not appealable or otherwise susceptible to  
22 challenge.

23 15. Every Class Member who does not submit a timely and valid Request for Exclusion  
24 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all  
25 benefits and bound by all terms and conditions of the Settlement, including the Participating Class  
26 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the  
27 Participating Class Member actually receives the Class Notice or objects to the Settlement.

28 16. Every Class Member who submits a valid and timely Request for Exclusion is a

1 Non-Participating Class Member and shall not receive an Individual Class Payment or have the  
2 right to object to the class action components of the Settlement. Plaintiffs release all claims for  
3 civil penalties that could have been sought by the Labor Commissioner for the violations  
4 identified in Plaintiffs' pre-filing letter to the LWDA; Plaintiffs do not release the claim for wages  
5 or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class  
6 Member.

7 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days  
8 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members  
9 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay  
10 Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute.  
11 A Work Week Dispute form, attached as Exhibit C, may be used for this purpose but is not  
12 required. The Class Member may challenge the allocation by communicating with the  
13 Administrator via fax, email or mail. The Administrator must encourage the challenging Class  
14 Member to submit supporting documentation. In the absence of any contrary documentation, the  
15 Administrator is entitled to presume that the Work Weeks contained in the Class Notice are  
16 correct so long as they are consistent with the Class Data. The Administrator's determination of  
17 each Class Member's allocation of Work Weeks and/or Pay Periods shall be final and not  
18 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide  
19 copies of all challenges to calculation of Work Weeks and/or Pay Periods to Defense Counsel and  
20 Class Counsel and the Administrator's determination the challenges.

21 18. Objections to Settlement. Only Participating Class Members may object to the  
22 class action components of the Settlement and/or this Agreement, including contesting the  
23 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class  
24 Counsel Litigation Expenses Payment and/or Class Representative Service Payments.

25 19. Participating Class Members may send written objections to the Administrator, by  
26 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire  
27 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A  
28 Participating Class Member who elects to send a written objection to the Administrator must do

1 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional  
2 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached  
3 as Exhibit D may be used for this purpose but is not required.

4 20. Non-Participating Class Members have no right to object to any of the class action  
5 components of the Settlement.

6 21. Not later than 14 days before the date by which Plaintiffs are required to file the  
7 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and  
8 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and  
9 compliance with all of its obligations under the Settlement Agreement, including, but not limited  
10 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing  
11 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion  
12 from Settlement it received (both valid or invalid), the number of written objections and attach  
13 the Exclusion List. The Administrator will supplement its declaration as needed or requested by  
14 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's  
15 declaration(s) in Court.

16 22. The Court approves, as to form and content, the Class Notice in substantially the  
17 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in  
18 substantially the form attached as Exhibit B to this Order, the Work Weeks Dispute form in  
19 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially  
20 the form attached as Exhibit D to this Order.

21 23. The Court approves, for settlement purposes only, David G. Spivak of The Spivak  
22 Law Firm, Walter L. Haines of United Employees Law Group, and David D. Bibiyan and Vedang  
23 Patel of Bibiyan Law Group, P.C. as Class Counsel.

24 24. The Court approves, for settlement purposes only, Naomi Mojaddidi as the Class  
25 Representative.

26 25. The Court approves ILYM Group, Inc. as the Administrator.

27 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and  
28 costs subject to final review by the Court.

1           27.     The Court preliminarily approves the estimated Administrator costs payable to the  
2 Administrator subject to final review by the Court.

3           28.     The Court preliminarily approves Plaintiffs' Class Representative Service  
4 Payments subject to final review by the Court.

5           29.     A Final Approval Hearing shall be held on \_\_\_\_ at \_\_\_\_\_.m. in Department 23 of the  
6 Superior Court for the State of California, County of Sacramento, located at the Gordon D.  
7 Schaber Sacramento County Courthouse, Department 23, 720 Ninth Street, Sacramento, CA  
8 95814 to consider the fairness, adequacy and reasonableness of the proposed Settlement  
9 preliminarily approved by this Preliminary Approval Order, and to consider the application of  
10 Class Counsel for attorneys' fees and costs and the Class Representative Service Payments to the  
11 Class Representatives. The notice of motion and all briefs and materials in support of the motion  
12 for final approval of class action settlement and motion for attorneys' fees and litigation costs  
13 shall be served and filed with this Court on or before \_\_\_\_\_. Plaintiffs' counsel must give notice to  
14 any objecting party of any continuance of the hearing of the motion for final approval.

15           30.     If for any reason the Court does not execute and file a Final Approval Order and  
16 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the  
17 proposed Settlement that is the subject of this order, and all evidence and proceedings had in  
18 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the  
19 litigation, as more specifically set forth in the Settlement.

20           31.     The Court expressly reserves the right to adjourn or continue the Final Approval  
21 Hearing from time to time without further notice to members of the Class. The Plaintiffs shall  
22 give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

23           **IT IS SO ORDERED.**

24  
25  
26           \_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**HON. JILL H. TALLEY**