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FILED
ALAMEDA COUNTY

MAR 19 2021

CLERK OF THE SUPERIOR COURT

By _____ Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

JUSTIN TOURCHETTE, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

JOHANSON DIELECTRICS, INC., a
California Corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No. RG19022885

Honorable Frank Roesch
Department 17

CLASS ACTION

**PROPOSED REVISED ORDER OF FINAL
APPROVAL AND JUDGMENT**

[Reservation ID: R-2238298]

Hearing Date: March 11, 2021
Hearing Time: 3:30 p.m.
Hearing Place: Dept. 17

Filed: June 13, 2019
FAC Filed: June 26, 2020
Trial: None Set

1 The Court, having read the papers filed with regard to Plaintiff's motion for final approval of a
2 class action settlement and Attorney Fee Award, Cost Award, and Class Representative Enhancement
3 Payment, and after considering the papers submitted in support of the motion, including the Amended
4 Joint Stipulation and Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"),
5 hereby FINDS AND ORDERS as follows:

6 This is a putative class action. Plaintiff Justin Tournette ("Plaintiff") is a former employee of
7 Defendant Finelite, Inc. ("Defendant"). The operative complaint in the action asserts nine (9) causes of
8 action for wage and hour violations. Plaintiff has brought this action on behalf of all hourly non-exempt
9 and salaried non-exempt employees employed by Defendant within the State of California during the
10 time period from June 15, 2015 to September 1, 2020 ("Class" and "Class Period"). There are six
11 hundred sixty-seven (667) members in the Class.

12 On September 10, 2020, the Court preliminarily approved the proposed class action settlement.
13 Plaintiff now moves for Final Approval of class action settlement.

14 The terms used in this Order of Final Approval and Judgment shall have the same meaning as
15 defined in the Settlement Agreement except as may otherwise be ordered.

16 The following Class is certified for purposes of settlement only: all hourly non-exempt and
17 salaried non-exempt employees employed by Defendant within the State of California during the Class
18 Period, which is from June 13, 2015 to September 1, 2020.

19 Generally, "questions whether a settlement was fair and reasonable, whether notice to the class
20 was adequate, whether certification of the class was proper, and whether the attorney fee award was
21 proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*
22 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

23
24 In determining whether a class settlement is fair, adequate and reasonable, the
25 trial court should consider relevant factors, such as "the strength of plaintiffs'
26 case, the risk, expense, complexity and likely duration of further litigation, the
27 risk of maintaining class action status through trial, the amount offered in
28 settlement, the extent of discovery completed and the stage of the proceedings,
and the experience and views of counsel, the presence of a governmental participant,
and the reaction of the class members to the proposed settlement.

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1 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, *citing Dunk*, *supra*, 48
2 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d
3 615, 624.)

4 "The list of factors is not exclusive and the court is free to engage in a balancing and weighing
5 of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.*, *supra*, 91
6 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent
7 necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
8 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
9 reasonable and adequate to all concerned." (*Ibid.*, *quoting Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and
10 *Officers for Justice v. Civil Service Com'n, etc.*, *supra*, 688 F.2d at p. 625, internal quotation marks
11 omitted.)

12 The burden is on the proponent of the settlement to show that it is fair and
13 reasonable. However "a presumption of fairness exists where: (1) the settlement
14 is reached through arm's-length bargaining; (2) investigation and discovery are
15 sufficient to allow counsel and the court to act intelligently; (3) counsel is
16 experienced in similar litigation; and (4) the percentage of objectors is small."
17 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, *citing Dunk*, *supra*, 48 Cal.App.4th
18 at p. 1802.)

19 Although [t]here is usually an initial presumption of fairness when a proposed
20 class settlement ... was negotiated at arm's length by counsel for the class, ... it
21 is clear that the court should not give rubber-stamp approval. Rather, to protect
22 the interests of absent class members, the court must independently and
23 objectively analyze the evidence and circumstances before it in order to
24 determine whether the settlement is in the best interests of those whose claims
25 will be extinguished. To make this determination, the factual record before the
26 ... court must be sufficiently developed... . The proposed settlement cannot be
27 judged without reference to the strength of plaintiffs' claims. The most important
28 factor is the strength of the case for plaintiffs on the merits, balanced against the
amount offered in settlement. The court must stop short of the detailed and
thorough investigation that it would undertake if it were actually trying the case,
but nonetheless it must eschew any rubber stamp approval in favor of an
independent evaluation.

(*Kullar*, *supra*, 168 Cal.App.4th at p. 130, internal citations and quotation marks omitted.)

/ / /

1 Defendant will pay the Gross Settlement Amount of \$1,850,000, which includes (a) the Net
2 Settlement Amount to be paid to class members who do not submit a valid and timely request to exclude
3 themselves from the Settlement ("Participating Class Members"); (b) Administration Costs of \$10,000;
4 (c) Private Attorneys General Act ("PAGA") Payment in the amount of \$100,000, seventy-five percent
5 (75%) of which (\$75,000) shall be paid to the California Labor and Workforce Development Agency
6 ("LWDA"), and twenty-five percent (25%) of which (\$25,000) shall be part of the Net Settlement
7 Amount to be distributed to all non-exempt hourly and salaried employees who worked for Defendant
8 within the State of California between June 5, 2019, through September 1, 2020 ("Eligible Aggrieved
9 Employees"), on a pro rata basis; (d) a Class Representative Enhancement Payment of \$7,500 to Named
10 Plaintiff Justin Tourchette; (e) Attorney Fee Award in the amount of \$616,666.67 (one-third) of the
11 Gross Settlement Amount); and (f) Cost Award in the amount of \$17,264.80. This is not a claims-made
12 settlement, and Individual Settlement Shares will be made automatically to Class Members. There is no
13 reversion. Funding of the Class Settlement will be made as follows:

14 No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant
15 shall deposit the Gross Settlement Amount (\$1,850,000) needed to pay the entire Gross Settlement
16 Amount by wiring the funds to the Settlement Administrator. Within fourteen (14) calendar days after
17 the Funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due
18 under the Settlement Agreement

19 As noted in the Preliminary Approval Order, the Proposed Settlement is entitled to a presumption
20 of fairness. In his moving papers, Plaintiff contend that the proposed Settlement was the product of
21 arms-length negotiations following extensive litigation and following extensive discovery and exchange
22 of documentation relating to the claims made by Plaintiff. Moreover, the negotiations were facilitated
23 with the assistance of a skilled and experienced mediator, Lynn S. Frank.

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1 With respect to the benefit to the Class Members, Plaintiff's moving papers indicate that the
2 average settlement award will be approximately \$1,650.66 under the proposed allocation, which is based
3 on the number of weeks individual Class Members worked. If any checks are not redeemed or deposited
4 within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder
5 postcard. If any checks remain uncashed or not deposited by the expiration of the 90-day period after
6 mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days
7 after the checks are mailed, pay the amount of the Individual Settlement Share to the California State
8 Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so
9 that the Participating Class Member will have his or her Individual Settlement Share available to him or
10 her per the applicable claim procedure to request that money California.

11 The Plaintiff has explained the risks and costs associated with continuing with the litigation and
12 the benefits conferred upon Class Members in the form of immediate compensation. Plaintiff has
13 satisfactorily assessed the maximum value of the claims and of the reasonableness of the discount
14 accepted in the settlement in light of these risks. Finally, the Declaration of the Settlement Administrator,
15 Norman Alcantara, states that Notices of Class Action Settlement ("Class Notice") and Elections Not
16 To Participate or Opt-out Forms ("Exclusion Form") (collectively, the "Notice Packet") were sent to six
17 hundred sixty-seven (667) Class Members, and there were no objections to the Settlement, no disputes
18 to the Settlement, and only nine (9) requests for exclusion. This is further proof of the fairness of the
19 Settlement. The Declaration of Class Counsel provides sufficient information about counsel's
20 experience in litigating class action lawsuits.

21 The Court also has an independent right and responsibility to review the requested attorneys'
22 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
23 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) According to the Declaration of Douglas Han,
24 Class Counsel collectively expended 876.2 hours with a total lodestar figure of \$487,167.50.
25 Considering the contingent nature of the representation and the ongoing monitoring of the Settlement
26 Administration, the Court grants \$616,666.67 in Attorney Fee Award.

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1 Consistent with the Court's custom and practice, Settlement Administrator shall withhold 10%
2 of the attorneys' fees granted in the amount of \$61,666.67 in an interest-bearing account, pending the
3 submission and approval of a final compliance status report after completion of the distribution process.

4 The Court has also reviewed Class Counsel's declarations regarding the Cost Award, the actual
5 litigation costs expended in the prosecution of this litigation. Under the terms of the Settlement, Plaintiff
6 may seek reimbursement of up to \$25,000 in actual litigation costs. The Court finds that Plaintiff has
7 expended \$17,264.80 in actual litigation costs, and that such costs were reasonable. Therefore, the Court
8 approves the Cost Award payment of \$17,264.80 from the Net Settlement Amount for the
9 reimbursement of Class Counsel's actual litigation costs.

10 The rationale for making the Class Representative Enhancement Payment is that he should be
11 compensated for the expense or risk he has incurred in conferring a benefit on other members of the
12 Class. Such an enhancement payment is appropriate if it is necessary to induce an individual to
13 participate in the suit. Criteria courts may consider in determining whether to make an enhancement
14 payment include: 1) the risk to the class representative in commencing suit, both financial and otherwise;
15 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time
16 and effort spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit
17 (or lack thereof) enjoyed by the class representative as a result of the litigation.

18 The Court has reviewed the Declaration of Plaintiff, which outlines his involvement in the
19 lawsuit. Given the risks inherent in service as Class Representative, the duration of the case and time
20 involved, and the benefits created for the Class, the Court approves a Class Representative Enhancement
21 Payment in the amount of \$7,500 to Plaintiff.

22 The Court has reviewed the Declaration of Norman Alcantara, the Settlement Administrator
23 from Simpluris, Inc. ("Simpluris"), the Court-approved Settlement Administrator. The Court finds that
24 notice was provided to the Class pursuant to the preliminary approval order, and that notice was
25 sufficient and that it satisfies due process. Simpluris has discharged its duties to provide notice to the
26 Class and approves a payment of \$10,000 for its services in administering this settlement, including the
27 mailing of settlement awards according to the terms of the Settlement Agreement.

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1 Upon Defendant's fulfillment of its payment obligations under Section III (K)(8)(a), the claims
2 that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration
3 provided for by the Agreement are all claims, demands, rights, liabilities and causes of action that were
4 asserted in the Complaint or that could have been asserted based on the factual allegations in the
5 Complaint, including but not limited to claims for 1) failure to pay all wages due including minimum
6 wage and/or overtime; 2) failure to provide meal period premiums; 3) failure to provide rest breaks
7 premiums; 4) failure to pay minimum wages; 5) failure to timely pay final wages to terminated
8 employees; 6) failure to comply with employee wage statement provisions of the California Labor Code;
9 7) failure to reimburse business expenses; 8) violations of the Labor Code Private Attorneys General
10 Act of 2004; and 9) a violation of the Unfair Competition Law ("Released Claims"). This release only
11 applies to claims that arose during the Class Periods when Class Members were employed by Defendant
12 in a non-exempt position.

13 The Settlement Agreement will be binding upon, and inure to the benefit of, the successors and
14 assigns of the Parties

15 This Order of Final Approval and Judgment, the Settlement Agreement, the settlement which
16 the Settlement Agreement reflects, and any and all acts, statements, documents or proceedings relating
17 to the settlement are not, and shall not be construed as, or used as an admission by or against Defendant
18 and its past or present officers, directors, shareholders, employees, agents, principals, heirs,
19 representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective
20 successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys ("Released
21 Parties") of any fault, wrongdoing, or liability on their part, or of the validity of any Released Claim or
22 of the existence or amount of damages.

23 Except as otherwise provided in this Order of Final Approval and Judgment, the parties shall
24 bear their own costs and attorney's fees.

25 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
26 Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment is GRANTED. The
27 Settlement Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

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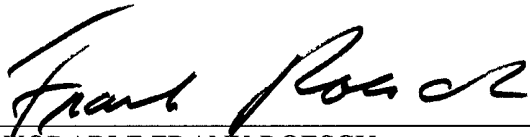
1 Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator
2 will serve on the Parties a declaration providing a final report on the disbursements of all funds.

3 The Court sets a final accounting and compliance date for November 11, 2021 at 3:00 p.m. in
4 Department 17. Plaintiff shall file a declaration of compliance and accounting from the Settlement
5 Administrator at least five (5) court days prior to the compliance date.

6 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
7 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
8 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
9 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
10 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
11 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

12 IT IS SO ORDERED.

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14 DATED: March 19, 2021



HONORABLE FRANK ROESCH
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is arivera@justicelawcorp.com

On March 29, 21, I served the foregoing document described as

FINAL APPROVAL AND JUDGMENT

for the following case: **Tourchette v. Finelite, Inc.**
LWDA/Court Case No.: **LWDA-CM-792478-20**
RG19022885
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

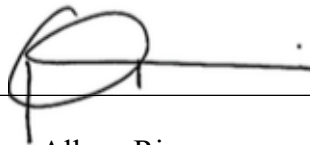
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on March 29, 2021, at Pasadena, California.



Allana Rivera