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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ANDY DIAZ, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

ACUITY BRANDS LIGHTING, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: CIVDS2015583

[Assigned for all purposes to the Hon. David
Cohn, Dept. S-26]

**DECLARATION OF KRISTEN M. AGNEW
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: September 17, 2021

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: July 29, 2020

Trial Date: None

1 I, Kristen Agnew, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff
4 Andy Diaz (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to
5 testify I could and would do so competently.

6 **PROCEDURAL HISTORY**

7 2. From the inception of the case, Plaintiff’s counsel has zealously represented the
8 interests of the putative class.

9 3. On July 1, 2020, Plaintiff sent notice to the Labor & Workforce Development
10 Agency (“LWDA”) and Defendant Acuity Brands Lighting, Inc. (“Defendant”) alleging that
11 Defendant violated Labor Code section 226(a), pursuant to Labor Code section 2699 (“PAGA
12 Notice”).

13 4. On July 29, 2020, Plaintiff initiated this class and representative PAGA action in
14 the Superior Court of California for the County of San Bernardino. In the Complaint, Plaintiff
15 asserts two causes of action for: (1) violation of Labor Code section 226(a); and (2) violation of
16 Labor Code section 2698, *et seq.* (“PAGA”) predicated on Defendant’s alleged violation of
17 Labor Code section 226(a).

18 5. As alleged in the Complaint, Plaintiff contends that Defendant failed to provide
19 employees with accurate itemized wage statements. Plaintiff alleges that, when shift differential
20 wages were paid, the corresponding wage statements identified the wrong total hours worked.
21 More specifically, Plaintiff alleges that these wage statements improperly list redundant hours
22 worked, such that an employee cannot simply add the hours listed on the wage statement and
23 arrive at the correct total hours worked during the pay period. Plaintiff further alleges that these
24 wage statements affirmatively state the incorrect total hours work. Plaintiff seeks statutory and
25 civil penalties under the California Labor Code and PAGA, as well as attorneys’ fees and costs.

26 6. In advance of the initial status conference, I met and conferred with counsel for
27 Defendant regarding the legal and factual bases for the parties’ respective claims and defenses.

28 //

1 **MEDIATION**

2 7. On or about February 16, 2021, the Parties agreed to participate in private
3 mediation with Michael Loeb, a well-regarded neutral with experience mediating wage and hour
4 matters.

5 8. In advance of the mediation, Defendant provided data relating to the number of
6 Class Members and wage statements reflecting the payment of shift differential wages issued to
7 each Class Member. Defendant also produced wage statements representative of those issued to
8 Class Members. Using the data provided by Defendant, I conducted a full damage analysis.

9 9. On May 18, 2021, the Parties participated in private mediation with Mr. Loeb.
10 During the mediation, counsel zealously advocated on behalf of their respective clients. The
11 Parties extensively discussed the merits of the alleged wage statement violation. The Parties
12 gained valuable insight and exchanged significant information about their respective positions, as
13 well as the independent views on all of these topics expressed by the neutral mediator.

14 10. After a full day of negotiation, the Parties were able to reach an agreement for
15 settlement and the key terms. The Parties thereafter worked to memorialize the terms of the
16 settlement in a long-form settlement agreement. The mediation and settlement were also
17 obtained for the benefit of the Class, not for the individual Plaintiff.

18 **SUMMARY OF THE MONETARY TERMS OF THE PROPOSED SETTLEMENT**

19 11. Attached hereto as **Exhibit A** is true and correct copy of the Joint Stipulation of
20 Class and Representative Action Settlement (the “Settlement Agreement” or “Settlement”).

21 12. As defined by the Settlement Agreement, the Class consists of “all current and
22 former California non-exempt employees of Defendant who received shift differential wages,
23 including, but not limited to “Shiff Diff Night” payments, at any time during the Covered Period
24 (April 6, 2019 through May 31, 2021).” *See* Joint Stip. §§ A-3, A-7. The Class is comprised of
25 approximately 250 individuals who received approximately 8,042 wage statements reflecting the
26 payment of shift differential wages during the Covered Period. *See* Joint Stip. § C-9.

27 13. The Settlement Agreement requires Defendant to pay the Maximum Settlement
28 Amount of Three Hundred Twenty-One Thousand Six Hundred Eighty Dollars (\$321,680). *See*

1 Joint Stip. § A-18. This is a non-reversionary settlement and the entirety of the Maximum
2 Settlement Amount will be fully paid out. *See* Joint Stip. § C-1.

3 14. The Settlement Agreement allocates Twenty Thousand Dollars (\$20,000.00) of
4 the Maximum Settlement Amount to PAGA penalties (the “PAGA Payment”). *See* Joint Stip. §
5 A-22. Pursuant to PAGA, seventy-five percent of the PAGA Payment, *i.e.* the sum of Fifteen
6 Thousand Dollars (\$15,000.00), shall be paid to the LWDA. *See* Joint Stip. § C-6. The remaining
7 twenty-five percent of the PAGA Payment, *i.e.* the sum of Five Thousand Dollars (\$5,000.00),
8 shall be distributed to Class Members (the “Net PAGA Settlement Amount”). *See id.* The Net
9 PAGA Settlement Amount will be allocated proportionally to Class Members on a pro rata basis.
10 *See* Joint Stip. § C-7.

11 15. As part of the Settlement Agreement, Defendant does not object to Plaintiff’s
12 request for an Enhancement Payment of Seven Thousand Five Hundred Dollars (\$7,500). *See*
13 Joint Stip. § C-4. This amount is to compensate Plaintiff for his efforts and work in prosecuting
14 this case, including meeting and communicating with his counsel, reviewing the PAGA Notice
15 and pleadings in this case, making himself available for mediation, and for executing a general
16 release under California Civil Code section 1542.

17 16. Pursuant to the Settlement Agreement, Defendant also agrees to not oppose Class
18 Counsel’s request for an award of attorney’s fees up to one-third (1/3) of the Maximum
19 Settlement Amount, *i.e.* the sum of One Hundred Seven Thousand Two Hundred Twenty-Six
20 Dollars and Sixty-Six Cents (\$107,226.66), plus up to Twenty Thousand Dollars (\$20,000.00)
21 for reimbursement of litigation costs, subject to the Court finally approving this Settlement. *See*
22 Joint Stip. § C-3. Any portion of the Class Counsel Award not awarded to Class Counsel shall be
23 added to the Net Settlement Amount. *Id.*

24 17. Both Plaintiff and Class Counsel expressly acknowledge that the Court has final
25 discretion in any fee award or Enhancement Payment. *See* Joint Stip. §§ C-3, C-4.

26 18. The Settlement Agreement provides for the payment of the fees and expenses
27 reasonably incurred by the Settlement Administrator. The Parties have received a quote from
28 Phoenix Settlement Administrators for a fee of approximately Six Thousand Dollars (\$6,000).

1 See Joint Stip. §§ A-31, A-32. Any portion of the Settlement Administration Costs not used or
2 approved by the Court shall be added to the Net Settlement Amount. See Joint Stip. § C-5. The
3 Parties believe that the administration fee is reasonable and should be approved.

4 19. The balance of the Maximum Settlement Amount remaining after deduction of
5 the approved Service Payment to Plaintiff, Settlement Administration Costs, the PAGA Payment,
6 and Class Counsel Award (“Net Settlement Amount”), will be available for distribution to
7 Settlement Class Members. See Joint Stip. § A-19.

8 20. The Individual Settlement Payments to Settlement Class Members will be
9 proportionally based upon the number of wage statements reflecting the payment of shift
10 differential wages Settlement Class Members received during the Covered Period. See Joint Stip.
11 § C-8. This is fair, as it directly allocates greater penalties to individual Class Members who have
12 allegedly suffered greater harm.

13 **PAYMENTS TO SETTLEMENT CLASS MEMBERS**

14 21. Assuming that the Court approves the Enhancement Payment (\$7,500), attorney’s
15 fees (\$107,226.66), estimated litigation costs (\$20,000), the PAGA Payment (\$20,000.00) and
16 the Settlement Administrator’s costs (\$6,000), I estimate that the Net Settlement Amount will
17 total \$160,953.34.

18 22. Based on the number of Class Members (250) and the number of wage statements
19 at issue (8,042), employees will be entitled to recover, on average, up to \$643.81 each or \$20.01
20 per wage statement reflecting the payment of shift differential wages issued during the Covered
21 Period. The amount any particular Class Member will be entitled to recover will be greater or
22 lower than this average, depending on the number of wage statements he or she received during
23 the Covered Period and the number of opt-outs received.

24 23. All Individual Settlement Payments to Class Members that remain un-cashed after
25 one hundred twenty (120) days of the mailing of settlement checks will be paid out pursuant to
26 California Code of Civil Procedure section 384 to the following *cy pres* recipient: the State Bar
27 of California Justice Gap Fund. See Joint Stip. § C-24. Neither I nor my firm have a relationship
28 with or connection to the State Bar of California Justice Gap Fund.

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25. The Section 226(e) penalty calculation assumes that Plaintiff will prevail both on class certification and the merits. However, Plaintiff's claims are contested. Indeed, Defendant maintains that under *Morgan v. United Retail, Inc.*, employers are not required to expressly list a total of hours worked to comply with Labor Code section 226. 186 Cal. App. 4th 1136, 1147 (2010). Furthermore, the maximum penalty calculation assumes that the Court would find that the Class suffered "injury" as a result of the alleged violation, and also that the violation was "knowing and intentional." Defendant, however, strongly disputes that Plaintiff can establish either on a class-wide basis. In this respect, Defendant contends that even if Plaintiff established a technical violation of the statute, the alleged violation was not a "knowing and intentional failure" by Defendant to comply with Labor Code section 226(a), and penalties are therefore unwarranted. As framed by Defendant, there was no injury because employees could promptly and easily determine from the wage statements alone the total hours worked, and no employees were underpaid for any hours worked. Defendant's defenses present legal questions that can be adjudicated through a motion for summary judgment. An adverse ruling on just one of these defense could have been dispositive on the claims alleged by Plaintiff.

27. However, courts have wide discretion to award less than the full civil penalty, 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.” Cal. Lab. Code § 2699(e)(2). Here, Defendant has articulated several arguments in support of its position that full PAGA penalties would not be award, including that the alleged violation is a technical one and did not result in the underpayment of wages to employees, and the award of both statutory and civil penalties for the same “technical” violation would be confiscatory. Based on the particular circumstances of this case, I appreciate the substantial risk that Defendant could present a persuasive argument to reduce the amount of PAGA penalties at trial.

28. I am also aware that Courts routinely award far less than the statutory maximum amount of civil penalties, even where an underlying violation of the Labor Code is found. For example, in *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while the plaintiff ultimately prevailed in a PAGA trial predicated on a violation of Labor Code section 226(a), *i.e.*, inaccurate wage statements, the Court assessed only 17% of the maximum penalties. Additionally, Judge Carville of the Alameda Superior Court in the matter of *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103, assessed PAGA penalties upon the defendant of approximately 7% of the total maximum penalties—again, this was only after plaintiff had prevailed at trial. Thus, the \$2,010,500 penalty calculation does not factor in the likelihood that the Court would reduce the amount of penalties at trial.

29. Based on the data provided by Defendant, I estimate that **Defendant’s maximum liability exposure is approximately \$2,802,200**. However, this number assumes that Section 226(e) statutory penalties and full PAGA penalties are awarded.

THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

30. The Maximum Settlement Amount is approximately 11.47% of the maximum recovery of the class and representative PAGA claims.

31. I strongly believe that a class can be certified and that Plaintiff can prevail at trial. However, after taking into account sharply disputed factual and legal issues involved in this litigation, the risks attending further prosecution and the substantial benefits to be received pursuant to the compromise and settlement of the litigation, I have concluded that settlement on the terms set forth in the Settlement Agreement is appropriate and in the best interests of Plaintiff

1 and the Class.

2 **ATTORNEY EXPERIENCE**

3 32. Class Counsel has a great deal of experience in wage and hour class action
4 litigation and has been approved as class counsel in a number of class actions. My co-counsel
5 and I can and will adequately represent the Class Members in this action. I have no conflicts with
6 the Class and will adequately represent the Class.

7 33. My qualifications are as follows: I was the 2003 recipient of the Spelman
8 Presidential Scholarship to Emory University School of Law. During law school, I was a summer
9 associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta
10 office of the Equal Employment Opportunity Commission. I received my J.D. from Emory
11 University in 2006 and was admitted to the California Bar in December 2006. Following law
12 school, I was an associate at Sonnenschein from September 2006 to May 2009.

13 34. Since 2009, my primary area of practice has been employment litigation. I have
14 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
15 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
16 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
17 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
18 companies in employment litigation in both state and federal courts, as well as before
19 government agencies, including the California Department of Labor. My practice included the
20 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
21 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
22 also handled a number of wage and hour class actions.

23 35. As an associate at Ogletree and Seyfarth, I served as the lead associate on a
24 number of wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles
25 County Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment*
26 *Corporation*, Los Angeles County Superior Court Case No. BC439428; *Christopher Williams v.*
27 *Allstate Insurance Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v.*
28 *Caltech*, Los Angeles County Superior Court Case No. BC464894; *Melissa Roberts v. Zale*

1 *Delaware, Inc.*, Los Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica*
2 *Minolta Business Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-
3 263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior
4 Court Case No CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006;
5 *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et*
6 *al v. Tesoro Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

7 36. I also second chaired two jury trials where I represented the prevailing defendant.
8 Both cases involved employees who brought claims against their former employers pursuant to
9 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
10 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*
11 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909.

12 37. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
13 handling employment cases. I primarily represent employees.

14 38. I have been approved as class counsel in numerous wage/hour class actions that
15 have been granted class certification and final approval, including: *Antonio Becerra-Mata v. PSC*
16 *Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Kosal*
17 *So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No.
18 BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-
19 16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara
20 County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara
21 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
22 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
23 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
24 *Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt*
25 *Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-
26 02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court
27 Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin
28 Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S.

1 District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v.*
2 *Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA;
3 *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court
4 Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court
5 Case No. 19CV341582.

6 **NOTICE TO THE LWDA**

7 39. Concurrent with the filing of the Motion for Preliminary Approval of Class and
8 Representative Action Settlement, my office uploaded the Motion, Settlement Agreement, and
9 proposed order to the LWDA's website.

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

12 Executed on this 23rd day of August 2021, at Los Angeles, California.

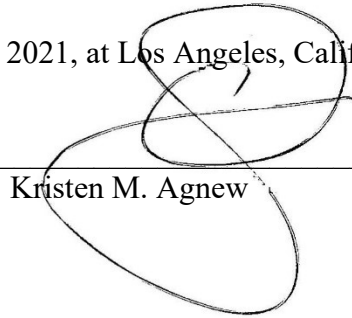
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EXHIBIT A

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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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ANDY DIAZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

ACUITY BRANDS LIGHTING, INC. a
Delaware corporation, and DOES 1
through 50, inclusive,
Defendant.

Case No.: CIV DS 2015583

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

This Joint Stipulation of Class and Representative Action Settlement (“Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Andy Diaz (“Plaintiff”) and Defendant Acuity Brands Lighting, Inc. (“Defendant” or “Acuity”). Plaintiff and Defendant collectively are referred to in the Agreement as “the Parties.”

A. DEFINITIONS

The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement shall also be effective:

1. “Action” means *Andy Diaz v. Acuity Brands Lighting, Inc.*, filed on July 29, 2020 in the Superior Court State of California, San Bernardino Superior Court Case No. CIV DS 2015583.

2. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class and Representative Action Settlement.

3. “Class” or “Class Member(s)” means all current and former California non-exempt employees of Defendant who received shift differential wages, including, but not limited to “Shift Diff Night” payments at any time during the Covered Period.

4. “Class Counsel” means Larry W. Lee, Kristen M. Agnew and Nicholas Rosenthal of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group.

5. “Class Counsel Award” means such award of fees and costs and expenses as the Court may authorize to be paid to Class Counsel for the services they have rendered and will render to Plaintiff and the Class in the Action. Defendant agrees not to oppose Class Counsel Award of up to one-third (33.33%) of the Maximum Settlement Amount (\$321,680.00), *i.e.* the sum of One Hundred Seven Thousand Two Hundred Twenty-Six Dollars and Sixty-Six Cents (\$107,226.66), and costs in the amount of up to Twenty Thousand Dollars (\$20,000.00), subject to the Court finally approving this Settlement.

6. “Class List and Data” means a true and complete list of all Class Members that Defendant will compile, based on its business records, and provide to the Settlement Administrator within ten (10) days after the Court grants preliminary approval of the Settlement.

1 The Class List shall be formatted in Microsoft Office Excel and shall include each employee's
2 full name, his or her last known home address, telephone number, social security number,
3 beginning and ending dates of employment, and number of wage statements reflecting the
4 payment of shift differential wages the employee received during the Covered Period.

5 7. "Class Representative" or "Plaintiff" means Plaintiff Andy Diaz.

6 8. "Complaint" means the Class and Representative Action Complaint filed by
7 Plaintiff in this Action.

8 9. "Counsel for Defendants" or "Defense Counsel" means Shannon Boyce of
9 Littler Mendelson, P.C.

10 10. "Court" means the Superior Court for the State of California, County of San
11 Bernardino, or any other court taking jurisdiction of the Action.

12 11. "Covered Period" means the period from April 6, 2019 through May 31, 2021.

13 12. "Defendant" or "Acuity" means Acuity Brands Lighting, Inc.

14 13. "Effective Date" shall be the latest of the following dates: (i) sixty-one (61)
15 calendar days following the date the Court enters an order granting final approval, assuming no
16 appeal is filed; or (ii) if a timely appeal is filed, then the date of final resolution of that appeal
17 (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial
18 approval of the Settlement.

19 14. "Enhancement Payment" or "Service Payment" means the amount that the Court
20 authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition
21 of his efforts and risks in assisting with the prosecution of the Action. Subject to the Court
22 granting final approval, the Parties agree that Plaintiff shall be paid up to Seven Thousand Five
23 Hundred Dollars (\$7,500.00) from the Maximum Settlement Amount.

24 15. "Final Approval" means that the Final Approval Order and Judgment have been
25 entered by the Court.

26 16. "Individual PAGA Payment" means each Class Member's portion of the PAGA
27 Payment calculated in accordance with the calculations described in Paragraph C-7 of this
28 Settlement.

1 17. “Individual Settlement Payment” means the amount payable from the Net Class
2 Settlement Amount to each Settlement Class Member.

3 18. “Maximum Settlement Amount” means the maximum settlement amount of Three
4 Hundred Twenty-One Thousand Six Hundred Eighty Dollars (\$321,680.00) to be paid by
5 Defendant as a result of this Stipulation. The Maximum Settlement Amount includes all
6 Individual Settlement Payments, the Service Payment to Plaintiff, Settlement Administration
7 Costs to the Settlement Administrator, the PAGA Payment and Class Counsel Award.

8 19. “Net Class Settlement Amount” means the balance of the Maximum Settlement
9 Amount remaining after deduction of the approved Service Payment to Plaintiff, Settlement
10 Administration Costs, the PAGA Payment, and Class Counsel Award. The entire Net Class
11 Settlement Amount is the maximum amount that will be available for distribution to Settlement
12 Class Members.

13 20. “Notice of Objection” means a Class Member’s valid and timely written objection
14 to the Settlement. For the Notice of Objection to be valid, it must include: (a) the objector’s full
15 name, signature, address, and telephone number; (b) a written statement of basis for the
16 objection; and (c) any copies of papers, briefs, or documents upon which the objection is based.
17 The Notice of Objection must be returned by mail to the Settlement Administrator at the
18 specified address indicated in the Notice Packet and must be postmarked by the Response
19 Deadline. Any Notice of Objection received shall apply solely to the Released Class Claims.
20 There is no right to object to the Released PAGA Claims.

21 21. “Notice Packet” means the Notice of Proposed Class Action Settlement,
22 substantially in the form attached as Exhibit A.

23 22. “PAGA Payment” means the portion of the Maximum Settlement Amount that
24 the Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the
25 Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, “PAGA”). Subject to
26 Court approval pursuant to California Labor Code section 2699(l), the Parties agree that the
27 PAGA Payment shall be Twenty Thousand Dollars (\$20,000). Per Labor Code section 2699(i),
28 75% of such penalties, or \$15,000.00, will be payable to the LWDA for its share of PAGA

1 penalties, and the remaining 25%, or \$5,000.00, will be payable to eligible Settlement Class
2 members as the “PAGA Amount.” Even if the Court reduces or increases the requested PAGA
3 civil penalties, Plaintiff and Settlement Class Members shall not have the right to revoke this
4 Settlement for that reason, and it will remain binding.

5 23. “Parties” means Plaintiff, on behalf of himself and Settlement Class Members,
6 and Defendant collectively.

7 24. “Preliminary Approval” means the Court’s order granting preliminary approval of
8 the Settlement.

9 25. “Released Class Claims” means any and all claims for statutory and civil
10 penalties and damages interest, fees and costs, action or causes of action and all other forms of
11 legal or equitable relief based on federal, state or local law, that are now recognized by law or
12 that may be created or recognized in the future by statute, regulation, judicial decision, or in any
13 other manner, that were alleged or could have been alleged, whether such forms of relief are
14 known or unknown, based upon the factual allegations in the Complaint, including but not
15 limited to all claims for violation of Cal. Labor Code sections 226 and 226.3 during the Covered
16 Period, and all recoverable statutory penalties related thereto, whether based on federal, state or
17 local law now existing or created in the future.

18 26. “Released PAGA Claims” means any and all claims, known and unknown, for
19 civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor
20 Code section 2698 *et seq.*, based upon the factual allegations in the Complaint for violation of
21 Labor Code sections 226 and 226.3 during the Covered Period.

22 27. “Released Parties” means Defendant and all of its past and present parent,
23 subsidiary, and affiliated corporations, entities, divisions, general and limited partners, joint
24 venturers and affiliates, and each of their respective current and former directors, officers,
25 managers, employees, principals, members, agents, insurers, reinsurers, shareholders, attorneys,
26 advisors, representatives, general partners, limited partners, joint venturers, and affiliated
27 companies, and each of their respective executors, predecessors, successors, assigns and legal
28 representatives.

1 28. “Request for Exclusion” means a timely letter submitted by a Class Member
2 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (1)
3 clearly state that the Class Member does not wish to be included in the Settlement; (2) set forth
4 the name, address, telephone number, and last four digits of the Social Security Number of the
5 Class Member requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail
6 to the Settlement Administrator at the specified address indicated in the Notice Packet; and (5)
7 be postmarked on or before the Response Deadline. Any Request for Exclusion received shall
8 apply solely to the Released Class Claims. There is no right to request exclusion from the
9 Released PAGA Claims.

10 29. “Response Deadline” means forty-five (45) days after the Settlement
11 Administrator initially mails the Notice Packet to Class Members, and the last date on which
12 Class Members may submit Requests for Exclusion or Notices of Objections to the Settlement.

13 30. “Settlement” means the agreement among the Parties to resolve the Action, as set
14 forth in this Stipulation.

15 31. “Settlement Administration Costs” means the fees and expenses reasonably
16 incurred by the Settlement Administrator as a result of the procedures and processes expressly
17 required by this Agreement, which are estimated at Six Thousand Dollars (\$6,000.00). Any
18 portion of the Settlement Administration Costs not used or approved by the Court shall be added
19 to the Net Class Settlement Amount.

20 32. “Settlement Administrator” means Phoenix Settlement Administrators.

21 33. “Settlement Class” or “Settlement Class Members” means all Class Members who
22 do not submit valid and timely Requests for Exclusion.

23 34. “Settlement Payment Check” means the payment of the Individual Settlement
24 Payment to Settlement Class Members and Individual PAGA Payment to Class Members.

25 **B. FACTUAL BACKGROUND**

26 1. On July 1, 2020, Plaintiff filed a written notice to the California Labor &
27 Workforce Development Agency (“LWDA”) alleging that Defendant violated Labor Code
28 section 226(a), pursuant to Labor Code section 2699 (“PAGA Notice”).

2. On July 29, 2020, Plaintiff initiated this action in San Bernardino County Superior Court. As alleged in the Complaint, Plaintiff contends that Defendant failed to provide proper and accurate itemized wage statements to Class Members. Specifically, Plaintiff alleges that, when shift differential wages were paid, the wage statements issued by Defendant did not identify the accurate total hours worked, in violation of Labor Code section 226(a)(2). As alleged in the Complaint, Plaintiff seeks to represent the Class and other Aggrieved Employees. Plaintiff further seeks damages, penalties, attorneys' fees, and costs.

3. On or about February 16, 2021, the Parties agreed to participate in private mediation. In connection with the mediation, Defendant produced data relating to the number of Class Members and wage statements reflecting the payment of shift differential wages issued to each Class Member, which allowed Plaintiff's counsel to conduct a full damage analysis.

4. On May 18, 2021, the Parties engaged in mediation with Michael Loeb, Esq., an experienced wage and hour class action mediator. After the exchange of further information and extended negotiations, Plaintiff and Defendant reached the present class and PAGA settlement. The settlement discussions were conducted at arm's-length.

5. The Parties recognize the risk, expense, and delay in continuing the Action, and therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the Action.

C. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

1. Settlement Consideration. Defendant shall pay the sum of the Maximum Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement Payments; (2) Class Counsel Award; (3) Enhancement Payment; (4) Settlement Administration Costs; and (5) the PAGA Payment. The Parties agree that this is a non-reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert to Defendant. In no event shall Defendant be required to pay more than the Maximum Settlement Amount as specified in this Agreement.

2. Funding of the Maximum Settlement Amount. On the Effective Date, Defendant

1 shall make a one-time deposit of the Maximum Settlement Amount into a Qualified Settlement
2 Fund to be established by the Settlement Administrator.

3 3. Class Counsel Award. Defendant agrees not to oppose or impede any application
4 or motion by Class Counsel for attorneys' fees of up to one-third (33.33%) of the Maximum
5 Settlement Amount (\$321,680.00), *i.e.* the sum of One Hundred Seven Thousand Two Hundred
6 Twenty-Six Dollars and Sixty-Six Cents (\$107,226.66), and costs in the amount of up to Twenty
7 Thousand Dollars (\$20,000.00), which shall be paid from the Maximum Settlement Amount. It is
8 understood by Class Counsel that the Court has final discretion in any fee award. The Settlement
9 Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys'
10 fees, costs, and expenses. Any portion of the Class Counsel Award not awarded to Class
11 Counsel shall be added to the Net Class Settlement Amount and shall be distributed to
12 Settlement Class Members as provided in this Agreement. Notwithstanding any other provision
13 of this Agreement, if the Court should fail to award attorneys' fees to Class Counsel in the full
14 amount provided for in this Agreement, no order of the Court or modification of any order of the
15 Court concerning the amount of any attorneys' fees to be paid by Defendant to Class Counsel
16 pursuant to this settlement shall constitute grounds for cancellation or termination of the
17 Agreement or grounds for limiting any other provision of the Judgment. It is agreed that no order
18 of the Court, including any order concerning attorneys' fees, may alter or otherwise increase the
19 Maximum Settlement Amount.

20 4. Class Representative Enhancement Payment. Defendant agrees not to oppose or
21 impede any application or motion by Plaintiff for an Enhancement Payment of up to Seven
22 Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff. The Enhancement Payment shall be
23 paid from the Maximum Settlement Amount, and shall be paid in addition to Plaintiff's
24 Individual Settlement Payment as a Settlement Class Member. It is understood by Class Counsel
25 and Plaintiff that the Court has final discretion in any Enhancement Payment. The Settlement
26 Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Enhancement Payment.
27 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his
28 Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes,

penalties, or interest arising as a result of the Enhancement Payment. Any portion of the Enhancement Payment not awarded to Plaintiff shall be added to the Net Class Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

5. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Maximum Settlement Amount, currently estimated at Six Thousand Dollars (\$6,000.00). These costs, which shall be paid from the Maximum Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Maximum Settlement Amount and Class Counsel Award, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the Net Class Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

6. PAGA Payment. Subject to Court approval, the Parties agree that the amount of Twenty Thousand Dollars (\$20,000.00) of the Maximum Settlement Amount shall be designated for satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall pay seventy-five percent (75%) of the PAGA Payment, *i.e.* the sum of Fifteen Thousand Dollars (\$15,000.00), to the LWDA. The remaining twenty-five percent (25%), *i.e.* the sum of Five Thousand Dollars (\$5,000.00), shall be distributed to Class Members ("Net PAGA Settlement Amount").

7. Individual PAGA Payment Calculation. The Net PAGA Settlement Amount shall be allocated proportionally to Class Members on a pro rata basis. Class Members are entitled to 100% of the Net PAGA Settlement Amount. Defendant maintains no reversionary right to any portion of the Net PAGA Settlement Amount.

8. Net Class Settlement Amount. The Net Class Settlement Amount shall be used to satisfy Individual Settlement Payments to Settlement Class Members in accordance with the terms of this Agreement. The Settlement Administrator will allocate the Individual Settlement Payments by first dividing the Net Class Settlement Amount by the total number of wage statements reflecting the payment of shift differential wages issued to Class Members during

1 the Covered Period. That value will then be multiplied by the number of wage statements
2 reflecting the payment of shift differential wages that each respective Class Member received
3 during the Covered Period. Settlement Class Members are entitled to 100% of the Net Class
4 Settlement Amount. Defendant maintains no reversionary right to any portion of the Net Class
5 Settlement Amount. If there are any timely submitted Requests for Exclusion, the Settlement
6 Administrator shall proportionately increase the Individual Settlement Payments for each
7 Settlement Class Member so that the amount actually distributed to Settlement Class Members
8 equals 100% of the Net Class Settlement Amount.

9 9. Calculation of Maximum Settlement Amount. The Maximum Settlement Amount
10 was calculated with, and is premised on, Defendant's representation that 250 Class Members
11 were issued 8,042 wage statements reflecting the payment of shift differential wages during the
12 Covered Period. In the event the number of wage statements at issue exceeds 8,450, the
13 Maximum Settlement Amount shall be increased proportionally to the amount of the total
14 increase.

15 10. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
16 Settlement Class Members, the Individual PAGA Payments made to Class Members, the
17 Enhancement Payment made to Plaintiff, as well as any other payments made pursuant to this
18 Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to
19 which any Class Members may be eligible, including, but not limited to: profit-sharing plans,
20 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
21 any other benefit plans. Rather, it is the Parties' intention that this Settlement will not affect any
22 rights, contributions, or amounts to which any Class Members may be entitled under any benefit
23 plans.

24 11. Settlement Administration Process. The Parties agree to cooperate in the
25 administration of the Settlement and to make all reasonable efforts to control and minimize the
26 costs and expenses incurred in the administration of the Settlement. The Settlement
27 Administrator shall provide the following services:

- 28 a. Establish and maintain a Qualified Settlement Fund account;

1 b. Calculate the amount of the Settlement each Class Member is eligible to
2 receive;

3 c. Verify the last known address for each Class Member through a generally
4 utilized, national address update database prior to mailing the Notice Packet;

5 d. Print and mail the Notice Packet;

6 e. Establish and maintain a toll-free informational telephone support line to
7 assist Class Members who have questions regarding the Notice Packet;

8 f. Conduct additional address searches for mailed Notice Packets that are
9 returned as undeliverable and, to the extent new and more current addresses are found, also
10 reprint and re-mail Notice Packets accordingly;

11 g. Calculate Settlement Class Members' settlement share, field inquiries
12 from Class Members, and administer any Requests for Exclusion. This service will include
13 settlement proceed calculations, printing and issuance of checks, and preparation of 1099 Forms;
14 and

15 h. Provide declarations and/or other information to the Court as requested.

16 12. Delivery of the Class List and Data. Within ten (10) business days of Preliminary
17 Approval, Defendant shall provide the Class List and Data to the Settlement Administrator.

18 13. Notice by First-Class U.S. Mail. Within five (5) business days after receiving the
19 Class List and Data from Defendants, the Settlement Administrator shall mail a Notice Packet to
20 all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
21 addresses identified in the Class List.

22 14. Confirmation of Contact Information in the Class List. Prior to mailing, the
23 Settlement Administrator shall perform a search based on the National Change of Address
24 Database for information to update and correct for any known or identifiable address changes.

25 15. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
26 Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the
27 Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated
28 Individual Settlement Payment and the formula for calculating Individual Settlement Payments,

1 if they do not request to be excluded; (5) each Class Member's estimated Individual PAGA
2 Payment and the formula for calculating Individual PAGA Payments; (6) the dates that comprise
3 the Covered Period; (7) instructions on how to submit valid Requests for Exclusion, or
4 objections; (8) the deadlines by which the Class Member must submit a Request for Exclusion or
5 Notice of Objection to the Settlement; (9) the date for the final approval hearing; and (10) the
6 claims to be released. The Notice Packet will also inform Class Members that, in order to receive
7 the Individual Settlement Payment and Individual PAGA Payment, they do not need to do
8 anything except keep the Settlement Administrator apprised of their current mailing addresses.

9 16. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
10 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly
11 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
12 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
13 address is provided, the Settlement Administrator shall promptly attempt to determine the correct
14 address using a skip-trace, or other search using the name, address and/or Social Security
15 Number of the Class Member involved and shall then perform a re-mailing. Those Class
16 Members who receive a re-mailed Notice Packet shall have their Response Deadline extended
17 fifteen (15) days from the original Response Deadline.

18 17. Request for Exclusion Procedures. Any Class Member, other than Plaintiff, may
19 opt-out from the Settlement by submitting a written Request for Exclusion to the Settlement
20 Administrator postmarked by the Response Deadline. A Request for Exclusion must: (1) clearly
21 state that the Class Member does not wish to be included in the Settlement; (2) set forth the
22 name, address, telephone number, and last four digits of the Social Security Number of the Class
23 Member requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the
24 Settlement Administrator at the specified address indicated in the Notice Packet; and (5) be
25 postmarked on or before the Response Deadline. The date of the postmark shall be the exclusive
26 means to determine whether a Request for Exclusion is timely. By submitting such a Request for
27 Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the
28 Settlement and not be bound by this Agreement. Provided, however, that no Class Member may

1 opt out of or be excluded from participating in the settlement of the Released PAGA Claims. At
2 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
3 Members to submit a Request for Exclusion. Class Counsel shall not represent any Class
4 Members with respect to any such request.

5 18. No PAGA Opt-Out. No Class Member may opt out of or be excluded from
6 participating in the settlement of the Released PAGA Claims. All Class Members shall be bound
7 by the judgment entered herein and will have released the Released PAGA Claims upon the final
8 approval of this Settlement and the payment of the Maximum Settlement Payment.

9 19. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
10 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
11 Request for Exclusion shall be bound by all terms of the Settlement to the fullest possible extent,
12 including those pertaining to the Released Class Claims and Released PAGA Claims, as well as
13 any Judgment that may be entered by the Court.

14 20. Objection Procedures. Any Class Member who does not opt-out of this Settlement
15 shall be entitled to object to the Settlement. To object to the Settlement, a Class Member must
16 return by mail a written statement of objection to the Settlement Administrator at the specified
17 address by the Response Deadline. The Notice of Objection must include: (1) the objector's full
18 name, signature, address, and telephone number; (2) a written statement of the basis for the
19 objection; and (3) any copies of papers, briefs, or documents upon which the objection is based.
20 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
21 Members to submit written objections to the Settlement or appeal from the Order and Judgment.
22 Class Counsel shall not represent any Class Members with respect to any such objections to this
23 Settlement. Any Class Member who submits a valid Request for Exclusion shall not be allowed
24 to object to this Settlement. No later than five (5) days after the Response Deadline, the
25 Settlement Administrator shall provide Defense Counsel with a complete list of all Class
26 Members who have timely and properly requested exclusion from the Class.

27 21. Defendant's Right to Rescind. If more than ten percent (10%) of the Class
28 Members submit a timely and valid Request for Exclusion, Defendant will have the right, but not

the obligation, to revoke and void this Agreement at its discretion. Defendant must exercise the option to rescind within ten (10) business days of Defense Counsel receiving notification from the Settlement Administrator that more than ten percent (10%) of the Class Members have submitted timely and valid Requests for Exclusion from the Settlement. If Defendant exercises this right to void the Agreement, then the Parties will have no further obligations under the Agreement, including, without limitation, any obligation by Defendant to pay the Maximum Settlement Amount, or any amounts that otherwise would have been owed under this Agreement. In the event the Settlement is terminated, the Parties shall proceed in all respects as if this Agreement had not been executed. The Parties agree that they will not encourage any Class Member to object to the Settlement or to opt out.

22. Settlement Administrator's Reports of Information. The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement as needed or requested. The Settlement Administrator shall also forward to Parties' counsel any Notices of Objection received immediately upon receipt. Further, the Settlement Administrator shall immediately forward any Request for Exclusion to the Parties' counsel so that they can determine whether the Request for Exclusion is valid and timely.

23. Distribution of Payments. Within fifteen (15) calendar days of Defendant funding the Maximum Settlement Amount, the Settlement Administrator shall pay: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Individual PAGA Payments to Class Members; (3) the Labor and Workforce Development Agency seventy-five percent (75%) of the PAGA Payment; (4) the Enhancement Payment to Plaintiff; and (5) Class Counsel Award to Class Counsel. The Settlement Administrator shall also issue a payment to itself for services performed in connection with the Settlement.

24. Non-Negotiated Settlement Checks. Any checks issued by the Settlement Administrator to Settlement Class Members and Class Members shall be negotiable for one

1 hundred and twenty (120) calendar days. Those funds represented by settlement checks returned
2 as undeliverable and the funds which correspond with the settlement checks that are not
3 negotiated within one hundred and twenty (120) calendar days after issuance shall be paid out
4 pursuant to California Code of Civil Procedure section 384 to the following *cy pres* recipient: the
5 State Bar of California Justice Gap Fund.

6 25. Certification of Completion. Upon completion of administration of the
7 Settlement, the Settlement Administrator shall provide a written declaration under oath to certify
8 such completion to the Court and counsel for all Parties.

9 26. Administration Costs if Settlement Fails or is Delayed. If an objection to the
10 Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if
11 the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall
12 be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

13 27. Tax Allocation of Individual Settlement Shares and Individual PAGA Payments.
14 All Individual Settlement Payments and Individual PAGA Payments shall be allocated as 100%
15 as penalties. The amount of payments shall be reported on an IRS Form 1099 by the Settlement
16 Administrator.

17 28. Administration of Taxes by the Settlement Administrator. The Settlement
18 Administrator shall be responsible for issuing to Plaintiff, Settlement Class Members, Class
19 Members and Class Counsel, 1099 forms or other tax forms as may be required by law for all
20 amounts paid pursuant to this Agreement.

21 29. Tax Liability. Defendant, Defense Counsel, the Settlement Administrator, and
22 Plaintiff's counsel make no representation as to the tax treatment or legal effect of the payments
23 called for hereunder, and Plaintiff, Settlement Class Members and Class Members are not relying
24 on any statement, representation, or calculation by Defendant, Defense Counsel, Plaintiff's
25 counsel, or by the Settlement Administrator in this regard. Plaintiff, Settlement Class Members
26 and Class Members understand and agree that they will be solely responsible for the payment of
27 any and all taxes and penalties assessed on their respective payments described herein and will
28 defend, indemnify, and hold Defendant, Defense Counsel, Plaintiff's counsel and the Settlement

1 Administrator free and harmless from and against any claims resulting from treatment of such
2 payments as non-taxable penalties/damages.

3 30. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
4 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
5 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
6 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
7 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
8 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
9 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
10 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
11 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
12 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
13 RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX
14 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
15 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
16 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
17 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
18 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
19 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
20 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
21 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
22 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
23 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
24 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
25 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
26 AGREEMENT.

27 31. No Prior Assignments. The Parties and their counsel represent, covenant, and
28 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported

1 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
2 demand, action, cause of action or right herein released and discharged.

3 32. Release of Claims by Plaintiff. As a condition to obtaining the Enhancement
4 Payment provided for herein, Plaintiff (on behalf of himself and his spouse, heirs, executors,
5 administrators, trustees, and/or permitted assigns) also agrees to a general release of any and all
6 claims against Defendants and the Releasees (as defined above)—which shall include without
7 limitation any and all claims which in any way relate to his employment with Defendants, under
8 State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the
9 Complaint or not, including but not limited to any claims under the FLSA, Title VII, ADA,
10 FEHA, ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission Wage
11 Order—now existing or arising in the future, based on any act, omission, event, occurrence, or
12 nonoccurrence from the beginning of time to the date of execution hereof. Plaintiff further
13 expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights
14 and benefits of Section 1542 of the California Civil Code, which provides: “**A general release**
15 **does not extend to claims that the creditor or releasing party does not know or suspect to**
16 **exist in his or her favor at the time of executing the release and that, if known by him or**
17 **her, would have materially affected his or her settlement with the debtor or released**
18 **party.**”

19 33. Release of Claims by Settlement Class Members. Upon the payment of the
20 Maximum Settlement Amount, Plaintiff and all Settlement Class Members, as well as their
21 spouses, heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall
22 be deemed to have fully, finally and forever released, settled, compromised, relinquished and
23 discharged, to the fullest extent possible, any and all of the Released Parties of and from any and
24 all Released Class Claims.

25 34. Release of Claims by Class Members. Upon the payment of the Maximum
26 Settlement Amount, Plaintiff and all Class Members, as well as their spouses, heirs, executors,
27 administrators, trustees, and/or permitted assigns, hereby do and shall be deemed to have fully,
28 finally and forever released, settled, compromised, relinquished and discharged, to the fullest

1 extent possible, any and all of the Released Parties of and from any and all Released PAGA
2 Claims.

3 35. Nullification of Settlement. In the event that the Settlement does not become final
4 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
5 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
6 likewise be treated as void from the beginning.

7 36. Disputes Regarding Individual Settlement Payments. In the event that Class
8 Members have a dispute as to the data provided by the Defendant, Class Members will have the
9 opportunity to provide documentation and/or an explanation. Absent evidence rebutting
10 Defendant's records, Defendant's records will be presumed determinative. If there is a dispute,
11 the Settlement Administrator will consult with the Parties to determine whether an adjustment is
12 warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of,
13 any Individual Settlement Payments or Individual PAGA Payments under the terms of this
14 Agreement, and that determination shall be binding.

15 37. Disputes Regarding Administration of Settlement. Any disputes not resolved by
16 the Settlement Administrator concerning the administration of the Settlement will be resolved by
17 the Court under the laws of the State of California. Prior to any such involvement of the Court,
18 counsel for the Parties will confer in good faith to resolve the disputes without the necessity of
19 involving the Court.

20 38. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to
21 request the Preliminary Approval of the Settlement, conditional certification of the Class, and the
22 entry of a Preliminary Approval Order: (i) approving of the proposed Settlement, and (ii) setting
23 a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall
24 provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction
25 with the Preliminary Approval hearing, Plaintiff shall submit this Agreement, which sets forth
26 the terms of this Settlement, and will include the proposed Notice Packet, attached to this
27 Agreement as Exhibit A.

28 39. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit

1 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
2 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
3 Final Approval of the Settlement along with the amounts properly payable for (i) Individual
4 Settlement Payments; (ii) the PAGA Payment; (ii) the Class Counsel Award; (iii) the
5 Enhancement Payment; and (iv) Settlement Administration Costs. Class Counsel will be
6 responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
7 be responsible for drafting the attorneys' fees and costs application to be heard at the Final
8 Approval Hearing.

9 40. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
10 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent
11 with the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
12 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
13 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as
14 may be appropriate under court rules or as set forth in this Agreement.

15 41. Exhibits Incorporated by Reference. The terms of this Agreement include the
16 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
17 set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

18 42. Confidentiality Preceding Preliminary Approval. The Parties and their counsel
19 agree that they will not issue any press releases, initiate any contact with the press, respond to
20 any press inquiry, post information on any social media or website, or have any communication
21 with the press about the fact, amount, or terms of the Settlement.

22 43. Entire Agreement. This Agreement and any attached Exhibits constitute the
23 entirety of the Parties' Settlement terms. No other prior or contemporaneous written or oral
24 negotiations or agreements may be deemed binding on the Parties.

25 44. Disputes Regarding Language of Final Settlement Agreement. If the Parties have
26 a dispute with regard to the language of the Agreement, the Parties agree to attempt to informally
27 resolve the dispute by engaging Michael Loeb to mediate such dispute.

28 45. Amendment or Modification. This Agreement may be amended or modified only

1 by a written instrument signed by the Parties or their successors-in-interest.

2 46. Authorization to Enter into Agreement. Counsel for all Parties warrant and
3 represent they are expressly authorized by the Parties whom they represent to negotiate this
4 Agreement and to take all appropriate actions required or permitted to be taken by the Parties
5 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
6 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
7 other and use their best and good-faith efforts to effect the implementation of the Settlement. If
8 the Parties are unable to reach agreement on the form or content of any document needed to
9 implement the Settlement, or on any supplemental provisions that may become necessary to
10 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
11 such disagreement.

12 47. Binding on Successors and Assigns. This Agreement shall be binding upon, and
13 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously
14 defined.

15 48. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
16 governed by and interpreted according to the laws of the State of California.

17 49. Execution and Counterparts. This Agreement is subject only to the execution of
18 all Parties. However, the Agreement may be executed in one or more counterparts. All executed
19 counterparts and each of them, including facsimile and scanned copies of the signature page,
20 shall be deemed to be one and the same instrument provided that counsel for the Parties shall
21 exchange among themselves original signed counterparts.

22 50. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
23 this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
24 this Settlement after arm's-length negotiations, mediation, and in the context of adversarial
25 litigation, taking into account all relevant factors, present and potential. The Parties further
26 acknowledge that they are each represented by competent counsel and that they have had an
27 opportunity to consult with their counsel regarding the fairness and reasonableness of this
28 Agreement.

1 51. Invalidity of Any Provision. Before declaring any provision of this Agreement
2 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent
3 possible consistent with applicable precedents so as to define all provisions of this Agreement
4 valid and enforceable. Any invalid, illegal, or unenforceable provision determined by the Court
5 shall in no way affect any other provision if Defendants and Class Counsel, on behalf of the
6 Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal,
7 or unenforceable provision had never been included in this Agreement.

8 52. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
9 that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Award below the
10 amount Class Counsel requests, and either Party may appeal any order that materially alters the
11 Agreement's terms.

12 53. Class Action Certification. The Parties are agreeing to class certification for
13 settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an
14 admission of any kind by Defendant, including without limitation, that certification of a class for
15 trial or any other purpose is appropriate or proper or that Plaintiff or any Class Member can
16 establish any of the requisite elements for class treatment of any of the claims in this Action. If,
17 for any reason, the Settlement is not finally approved, this Agreement will be void and the
18 Parties will be restored to their respective positions in the lawsuit as if they had not entered into
19 this Agreement. The Parties further agree that this Agreement or any documents or orders issued
20 related to this Settlement will not be admissible, other than according to the Settlement's terms,
21 in this or any other proceeding as evidence that either: (i) a class action should be certified, or (ii)
22 Defendants are liable to Plaintiff or any Class Member.

23 54. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
24 dispute that has arisen between them and to avoid the burden, expense and risk of continued
25 litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that
26 they have violated any federal, state, or local law; violated any regulations or guidelines
27 promulgated pursuant to any statute or any other applicable laws, regulations or legal
28 requirements; breached any contract; violated or breached any duty; engaged in any

misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law, regulation, or legal requirement. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission of any nature on the part of Defendants, or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

55. Captions. The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

56. Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

57. Enforcement Actions. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party or Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

58. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

59. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

60. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement.

61. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement shall be fully enforceable and binding on all Parties, and agree that it shall be admissible and subject to disclosure in any proceeding to enforce its terms.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement Between Plaintiff and Defendants as of the date(s) set forth below:

SIGNATURES

READ CAREFULLY BEFORE SIGNING

DATED: 8/12/2021

PLAINTIFF ANDY DIAZ

DocuSigned by:

Plaintiff Andy Diaz

DATED: August 17, 2021

**DEFENDANT ACUITY BRAND
LIGHTING, INC.**

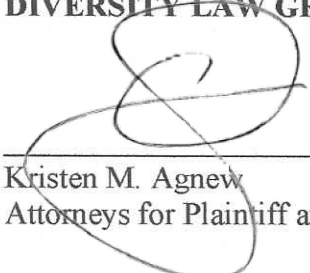


Erica Chmielewski, VP, Chief Compliance Officer

1
2 **APPROVED AS TO FORM**

3
4 DATED: August 16, 2021

DIVERSITY LAW GROUP, P.C.

5
6 
7 _____
8 Kristen M. Agnew
9 Attorneys for Plaintiff and the Class

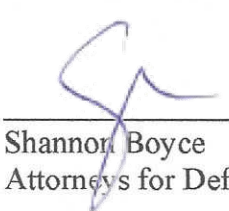
10 DATED: August 12, 2021

POLARIS LAW GROUP, P.C.

11
12 
13 _____
14 William L. Marder
15 Attorneys for Plaintiff and the Class

16
17 DATED: August 16, 2021

LITTLER MENDELSON, P.C.

18
19 
20 _____
21 Shannon Boyce
22 Attorneys for Defendant

23
24 4831-6277-1186.1 / 101655-1020

EXHIBIT A

Andy Diaz v. Acuity Brands Lighting, Inc.
Superior Court of California, County of San Bernardino
(Case No. CIV DS 2015583)

NOTICE OF CLASS-ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF ACUITY BRANDS LIGHTING, INC IN THE STATE OF CALIFORNIA AND WERE PAID SHIFT DIFFERENTIAL WAGES DURING THE PERIOD OF APRIL 6, 2019 THROUGH MAY 31, 2021, YOU MAY BE ABLE TO COLLECT MONEY FROM A CLASS ACTION SETTLEMENT.

The San Bernardino County Superior Court (“Court”) authorized this Notice to be sent by Phoenix Class Action Administration Solutions (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

DEFENDANT CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING IN THIS SETTLEMENT.

«BarcodeString»
SIMID «SIMID»

ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

YOU ARE ESTIMATED TO RECEIVE APPROXIMATELY

Individual PAGA Payment: \$ _____

Individual Settlement Payment: \$ _____

THROUGH THIS CLASS ACTION SETTLEMENT

- Andy Diaz (“Named Plaintiff”), has sued Acuity Brands Lighting, Inc. (“Defendant” or “Acuity”) on behalf of himself and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue Defendant separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
You Can ASK TO BE EXCLUDED FROM THE CLASS SETTLEMENT	If you ask to be excluded from the class settlement, you will get no payment from the class settlement, but you will keep any rights to sue Defendant separately for the same legal claims made in this lawsuit. However, you may not request exclusion from the settlement of the PAGA

(Deadline: _____, 2021)	claim. Important: You cannot ask to be excluded <u>and</u> still get a class settlement payment.
You Can OBJECT TO THE SETTLEMENT (Deadline: _____, 2021)	If you do not like the class settlement, you can send a written objection to the Settlement Administrator by the deadline. However, you may not object to the settlement of the PAGA claim. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also ask to be excluded.

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What Is This Lawsuit About?

In the lawsuit, the Named Plaintiff claimed that Defendant failed to provide accurate itemized wage statements to Class Members, in violation of California Labor Code sections 226(a) and 2698 *et seq.* (“PAGA”). Specifically, Plaintiff alleges that when shift differential wages were paid, the wage statements issued by Defendant did not identify the accurate total hours worked. Defendant denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. Defendant asserts that it complied with all legal requirements, but is resolving this action in order to avoid the costs of further legal proceedings.

3. Why Is This A Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Andy Diaz), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The San Bernardino County Superior Court is in charge of the case. The lawsuit is known as *Andy Diaz v. Acuity Brands Lighting, Inc.*, Case No. 2015583.

4. Why Is There A Settlement?

The Court did not decide in favor of Named Plaintiff or Defendant. Named Plaintiff thinks he could have won at trial. Defendant thinks that it would have won at trial. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. The class representative and the attorneys think the settlement is best for class members.

5. How Do I Know If I Am Part Of The Settlement?

The Court has decided that any current or former non-exempt employee of Acuity Brands Lighting, Inc. in the State of California who received the payment of shift differential wages at any time between April 6, 2019 through May 31, 2021 (the “Covered Period”), is a class member.

6. What Does The Settlement Provide?

The proposed settlement provides for a payment by Defendants of \$321,680.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Maximum Settlement Amount”). The total amount to be distributed to class members who can be located, and who do not exclude themselves from the class settlement, will be the value of the Maximum Settlement Amount after deducting the following (the “Net Settlement Amount”): (a) settlement-administration costs not to exceed \$6,000.00; (b) class-representative service award to Named Plaintiff not to exceed \$7,500.00 for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$107,226.66; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$20,000.00; and (f) payment of \$15,000.00 to the Labor and Workforce Development Agency. **Class Counsel’s attorneys’ fees and costs, and Named Plaintiff’s class-representative service award, remain subject to Court approval.**

No portion of the Net Settlement Amount will be returned to Defendants under any circumstances.

7. How Much Will My Payment Be?

Your estimated share of the settlement is shown above and is based on the number of wage statements reflecting the payment of shift differential wages you received from Defendant during the period of April 6, 2019 through May 31, 2021, as compared to the total number of wage statements reflecting the payment of shift differential wages received by all class members in that same period. Based upon Defendant’s records, the number of wage statements reflecting the payment of shift differential wages you received is determined to be **. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of wage statements with payment for wages, see below (Question 9).

8. How Do I Get A Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within approximately seventy-five days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

9. What If I Believe The Information Is Inaccurate?

If you believe the number of wage statements you received that included payment for shift differential wages during the period of April 6, 2019 through May 31, 2021 is inaccurate, you may dispute it by sending a letter to [ADMINISTRATOR’S ADDRESS] no later than _____, 2021. Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up To Get A Settlement Payment?

Unless you request to be excluded from the class settlement, you remain a part of the settlement class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant for any legal claims that are based on the facts alleged by Named Plaintiff in the lawsuit, or any claims that could have been brought under the facts and allegations made in the lawsuit. Specifically, you will be giving up or “releasing” Defendant from the claims described below:

- a) Any and all claims for statutory and civil penalties and damages interest, fees and costs, action or causes of action and all other forms of legal or equitable relief based on federal, state or local law, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, that were alleged or could have been alleged, whether such forms of relief are known or unknown, based upon the factual allegations in the Complaint, including but not limited to all claims for violation of Cal. Labor Code sections 226 and 226.3 during the Covered Period, and all recoverable statutory penalties related thereto, whether based on federal, state or local law now existing or created in the future.
- b) Any and all claims, known and unknown, for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, based upon the factual allegations in the Complaint for violation of Labor Code sections 226 and 226.3 during the Covered Period.

11. How Do I Exclude Myself From The Settlement?

To exclude yourself from the class settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Andy Diaz v. Acuity Brands Lighting, Inc.* settlement.

Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and your signature. You must mail your exclusion letter postmarked no later than _____, 2021, to the Settlement Administrator at *****.

If you submit a timely and valid “opt-out” request, you will no longer be a member of the class and you will not receive any money from the class portion of the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens regarding the class action portion of this lawsuit. You will keep any rights to sue (or continue to sue) Defendant in the future for the class claims made in this lawsuit, at your own expense.

You may not opt-out, or request to be excluded, from the settlement of the PAGA claim. Thus, even if you submit a timely and valid “opt-out” request, you will still receive an Individual PAGA Payment and will be deemed to have released the PAGA claims. Your estimated Individual PAGA Payment is shown above.

12. If I Don’t Exclude Myself, Can I Sue Defendants Or Get Money From The Settlement?

If you do not exclude yourself from the settlement, you cannot sue Defendants for any of the claims that this settlement resolves. If you have a pending lawsuit against Defendants, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue on with your own lawsuit. Remember, the exclusion deadline is _____, 2021.

If you exclude yourself from the Settlement, you will not receive any money from the settlement of the class action claims in this matter.

13. How Do I Tell The Court That I Don’t Believe That The Settlement Is Fair?

If you are a class member and you do not exclude yourself from the class settlement, you can object to the settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court

should not approve the settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you must do so in writing. Upon the submission of your objection, you may then also appear at the final approval hearing for the settlement (see section 17 below for details as to when this hearing will take place), either in person or through an attorney at your own expense.

All objections must be signed by you and must include: (1) your full name, signature, address, and telephone number; (2) a written statement of the basis for your objection; and (3) any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than _____, 2021, to the Settlement Administrator at ****.*.

There is no right to object to the settlement of the PAGA claim. Thus, even if you submit a timely objection to the class settlement, you will still receive an Individual PAGA Payment and will be deemed to have released the PAGA claims. Your estimated Individual PAGA Payment is shown above.

14. What Is The Difference Between Objecting And Excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court. **Do not submit both an Objection and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

15. Do I Have A Lawyer In This Case?

The Court decided that the law firms of Diversity Law Group and Polaris Law Group, both of which represent the Named Plaintiff, are also qualified to represent you and all class members. You will not be charged for these lawyers. These law firms are referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How Will The Attorneys For The Class And The Class Representative Be Paid?

The attorneys for the Named Plaintiff and the class will be paid from the Maximum Settlement Amount. Class Counsel will ask for up to \$107,226.66 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$20,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 17 below for details as to when this hearing will take place). Class members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, a service payment for the Named Plaintiff of an amount up to \$7,500.00 will be paid from the Maximum Settlement Amount for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

17. Notice Of Hearing On Final Approval And Objections To Class-Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to

give final approval to the settlement. This hearing will be held before the Honorable David Cohn on _____, 2021, at ____ a.m., in Department S-26 of the Superior Court of California for the County of San Bernardino, located at 7247 W. Third Street, San Bernardino, California 92415, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment against Defendants, and all class members who have not requested exclusion will be deemed to have waived the Released Claims set forth above.

18. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

19. What Is The Contact Information For The Court and Class Counsel?

The addresses for the Court and Class Counsel are as follows:

COURT	CLASS COUNSEL
Clerk of Court San Bernardino County Superior Court 247 W. Third Street San Bernardino, California 92415	DIVERSITY LAW GROUP, P.C. Larry W. Lee Kristen M. Agnew Nicholas Rosenthal 515 South Figueroa Street Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555 Facsimile: (213) 488-6554 POLARIS LAW GROUP William L. Marder 501 San Benito Street Suite 200 Hollister, California 95023 Telephone: (831) 531-4214 Facsimile: (831) 634-0333

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Andy Diaz v. Acuity Brands Lighting, Inc
c/o Phoenix Class Action Administration Solutions
Address

City, CA, Zip
Toll-Free Phone Number: [insert]

PLEASE DO NOT TELEPHONE DEFENSE COUNSEL, THE COURT, OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.