

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 20 2023

BY 
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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]

**[PROPOSED] AMENDED ORDER
GRANTING FINAL APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND JUDGMENT**

Date: June 28, 2023

Time: 8:30 p.m.

Dept.: S-26

Complaint Filed: July 29, 2020

Trial Date: None

COPY

1 Plaintiff Andy Diaz (“Plaintiff”), and Defendant Acuity Brands Lighting, Inc.
2 (“Defendant”) (together, the “Parties”) have entered into the Joint Stipulation of Class and
3 Representative Action Settlement (“Settlement Agreement”) to settle the above-captioned class
4 action subject to the Court’s approval (the “Settlement”).

5 On March 14, 2022, this Court granted approval of Plaintiff’s Motion for Final Approval
6 of Class Action Settlement, including approval of the Enhancement Payment for Plaintiff and
7 Plaintiff’s Counsel’s application for a fee and expense award. The Court has reviewed the
8 Declaration of Jarrod Salinas Regarding Distribution of Settlement Funds and finds the
9 settlement disbursement process timely completed.

10 **I. BACKGROUND**

11 On July 29, 2020, Plaintiff filed a complaint on behalf of himself and all similarly
12 situated employees against Defendant in the Superior Court of the State of California for the
13 County of San Bernardino. The lawsuit alleged a class claim for violation of Labor Code section
14 226(a) and a derivative claim for PAGA penalties predicated on Labor Code section 226(a),
15 asserting that whenever shift differential wages were paid, the corresponding wage statements
16 provided to employees identified the incorrect total hours worked.

17 **A. Class Members**

18 The “Class” is defined as: “All current and former California non-exempt employees of
19 Defendant who received the payment of shift differential wages at any time during the Covered
20 Period (April 6, 2019 through May 31, 2021).”

21 **B. Operation of the Settlement**

22 Pursuant to the Preliminary Approval Order dated September 24, 2021, this Court
23 conditionally certified the Class and granted preliminary approval to the Settlement Agreement.
24 The Preliminary Approval Order also approved of the proposed forms of notice and notice plan.
25 The Court entered the Preliminary Approval Order after review and consideration of all of the
26 pleadings filed in connection herewith, and the oral presentations made by counsel at the hearing.

27 In compliance with the Preliminary Approval Order, the Notice of Class Action
28 Settlement (“Notice Packet”) was sent to all Class Members via first class mail. Follow-up

1 mailings were sent to 17 individuals and 2 Notice Packets remain undeliverable. The notice
2 process was timely completed.

3 On March 14, 2022, this Court granted final approval to the Settlement Agreement .
4 This Court found the Settlement to be the product of serious, informed, non-collusive
5 negotiations, to have no obvious deficiencies, and does not improperly grant preferential
6 treatment to any individuals. The Court found that the Settlement was entered into in good faith
7 pursuant to California Code of Civil Procedure section 877.6. The Court further finds that the
8 Settlement is fair, reasonable, and adequate and that Plaintiff has satisfied the standards for final
9 approval of a class action settlement under California law. Under the provisions of California
10 Code of Civil Procedure section 382 and Federal Rule of Civil Procedure 23, as approved for use
11 by the California state court in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial
12 court has discretion to certify a class where:

13 [Q]uestions of law or fact common to the members of the class
14 predominate over any questions affecting only individual
15 members, and that a class action is superior to the available
... Fed. R. Civ. Proc. 23.

16 Certification of a settlement class is the appropriate judicial device under these circumstances.

17 In compliance with the Final Approval Order, Defendant deposited the total
18 amount of \$335,346.64 into a “Qualified Settlement Fund” (QSF). From the QSF, the Settlement
19 Administrator issued and mailed checks to each valid Class Member, Class Counsel, Class
20 Representative, Phoenix Settlement Administrators, and the California Labor and Workforce
21 Development Agency. The deadline to cash the settlement checks was September 28, 2023. As
22 of February 22, 2023, one hundred twenty-six (26) checks totaling \$12,590.46 remain uncashed.

23 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
24 FOLLOWS:

25 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
26 Settlement Agreement filed in this case.

27 2. The Court has jurisdiction over the subject matter of the litigation, the Class
28 Representative, the other members of the Settlement Class, and Defendant.

1 3. The Court finds that the dissemination of the Notice Packet, as disseminated by
2 the appointed Settlement Administrator Phoenix Class Action Administration Solutions to the
3 Class Members, constituted the best notice practicable under the circumstances to all persons
4 within the definition of the Class, and fully met the requirements of California law and due
5 process under the United States Constitution.

6 4. The Court approves the settlement of the above-captioned action, as set forth in
7 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Parties. The Parties are
8 directed to perform in accordance with the terms set forth in the Settlement Agreement.

9 5. Except as otherwise provided in the Settlement Agreement, the Parties are to bear
10 their own costs and attorneys' fees.

11 6. The Court hereby certifies the following Class for settlement purposes only: All
12 current and former California non-exempt employees of Defendant who received the payment of
13 shift differential wages at any time during the Covered Period (April 6, 2019 through May 31,
14 2021).

15 7. With respect to the Class and for purposes of approving the settlement only and
16 for no other purpose, this Court finds and concludes that: (a) the members of the Class are
17 ascertainable and so numerous that joinder of all members is impracticable; (b) there are
18 questions of law or fact common to the Class, and there is a well-defined community of interest
19 among members of the Class with respect to the subject matter of the non-exempt claims in the
20 Action; (c) the claims of Class Representative is typical of the claims of the members of the
21 Class; (d) the Class Representative has fairly and adequately protected the interests of the
22 members of the Class; (e) a class action is superior to other available methods for an efficient
23 adjudication of this controversy; and (f) the counsel of record for the Class Representative, *i.e.*,
24 Class Counsel, are qualified to serve as counsel for the Plaintiff in his individual and
25 representative capacity and for the Class.

26 8. Pursuant to the terms of the Settlement Agreement, all uncashed settlement
27 checks expired one hundred twenty (120) days after the postmarked date of their initial mailing.
28 As of the check cashing deadline (September 28, 2022), a total of twenty-six (26) checks,

1 totaling \$12,590.46, remained uncashed. As dictated by the Settlement Agreement, the
2 Settlement Administrator remitted this amount to the *cy pres* recipient State Bar of California
3 Justice Gap Fund.

4 9. The Court hereby enters final judgment in this case in accordance with the terms
5 of the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of
6 the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction
7 over the action and the Parties, including all Settlement Class Members, for purposes of
8 enforcing and interpreting this Order and the Settlement.

9 IT IS SO ORDERED.

10 **DAVID COHN**

11 DATED: 6-20-23

12 HON. DAVID COHN
13 SUPERIOR COURT OF CALIFORNIA
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