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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] ORDER GRANTING
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 Plaintiff Andy Diaz's ("Plaintiff") unopposed Motion for an Order Granting Preliminary
2 Approval of Class and Representative Action Settlement was filed with the Court on August __,
3 2021 and a hearing was held before this Court on September 17, 2021.

4 The Court has considered the Joint Stipulation of Class and Representative Action
5 Settlement ("Stipulation" or "Settlement Agreement") and all other papers filed in this action.

6 NOW THEREFORE, IT IS HEREBY ORDERED:

7 1. This Court grants preliminary approval of the Settlement Agreement between
8 Plaintiff and Defendant Acuity Brands Lighting, Inc. ("Defendant") filed herewith. The
9 Settlement Agreement appears to be fair, adequate, and reasonable to the Class.

10 2. The Class Representative and Defendant (the "Parties"), through their counsel of
11 record in the Action, have reached an agreement to settle the class and PAGA claims in the
12 Action as set forth in the Settlement Agreement, on behalf of the Class (as defined below and in
13 the Settlement Agreement).

14 3. The Court hereby conditionally certifies the following Class for settlement
15 purposes only:

16 All current and former California non-exempt employees of Defendant who
17 received shift differential wages, including, but not limited to "Shiff Diff Night"
18 payments, at any time during the Covered Period (April 6, 2019 through May 31,
2021).

19 Should for whatever reason the Settlement Agreement not become Final, the fact that the
20 Parties were willing to stipulate to certification of a class as part of the Settlement Agreement
21 shall have no bearing on, or be admissible in connection with, the Action or the issue of whether
22 a class should be certified in a non-settlement context.

23 4. The Court appoints and designates: (a) Plaintiff Andy Diaz as the Class
24 Representative and (b) Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity
25 Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel for the Class.
26 Class Counsel is authorized to act on behalf of the Class with respect to all acts or consents
27 required by, or which may be given, pursuant to the Settlement Agreement, and such other acts
28 reasonably necessary to finalize the Settlement Agreement and its terms. Any Class Member

1 may enter an appearance through his or her own counsel at such Class Member's own expense.
2 Any Class Member who does not enter an appearance or appear on his or her own behalf will be
3 represented by Class Counsel.

4 5. The Court hereby approves the terms and conditions provided for in the
5 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
6 falls within the range of reasonableness of a settlement, including the amount of the PAGA
7 penalties, and appears to be presumptively valid, subject only to any objections that may be
8 raised at the final fairness hearing and final approval by the Court. It appears to the Court on a
9 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class
10 Members when balanced against the probable outcome of further Action relating to liability and
11 damages issues. It also appears that investigation, research, and court proceedings have been
12 conducted so that counsel for the Parties are able to reasonably evaluate their respective
13 positions. It appears to the Court that settlement at this time will avoid substantial additional
14 costs by all Parties, as well as avoid the delay and risks that would be presented by the further
15 prosecution of the Action. It also appears that settlement has been reached as a result of
16 intensive, serious, and non-collusive arm's length negotiations.

17 6. A final fairness hearing on the question of whether the proposed Settlement
18 Agreement, the allocation of payments to Class Members and/or Settlement Class Members,
19 attorneys' fees and costs to Class Counsel, the payment to the Settlement Administrator, the
20 payment to the Labor Workforce & Development Agency, and the Class Representative Service
21 Award should be finally approved as fair, reasonable, and adequate as to the members of the
22 Class is hereby set for _____ at _____ in this Court.

23 7. The Court hereby approves, as to form and content, the Notice of Class Action
24 Settlement ("Notice Packet") to be sent to Class Members, which is attached as **Exhibit A** to the
25 Settlement Agreement. The Court finds that distribution of the Notice Packet to Class Members
26 substantially in the manner and form set forth in the Settlement Agreement and this Order meets
27 the requirements of due process and shall constitute due and sufficient notice to all parties
28 entitled thereto.

1 8. The Court appoints and designates Phoenix Settlement Administrators as the
2 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
3 approved Notice Packet to Class Members using the procedures set forth in the Settlement
4 Agreement.

5 9. Any Class Member may choose to opt out of and be excluded from the settlement
6 of the class claims as provided in the Settlement Agreement and Notice Packet, and by following
7 the instructions for requesting exclusion. Any person who timely and properly opts out of the
8 Settlement will not be bound by the Released Class Claims or have any right to object, appeal, or
9 comment thereon. Any requests for exclusion must be in writing and signed by each such Class
10 Member opting out and must otherwise comply with the requirements delineated in the Notice
11 Packet. Class Members who have not requested exclusion by submitting a valid and timely
12 request by the deadline shall be bound by all determinations of the Court, the Settlement
13 Agreement, and Judgment. Class Members, however, may not opt out of participating in the
14 settlement of the Released PAGA Claims and will receive an Individual PAGA Payment, even if
15 he or she opts out of the Settlement Class

16 10. Any Class Member may object to the Settlement Agreement or express his or her
17 views regarding the Settlement Agreement, and may present evidence and file briefs or other
18 papers that may be proper and relevant to the issues to be heard and determined by the Court as
19 provided in the Notice.

20 11. The Motion for Final Approval shall be filed by the Class Representative no later
21 than sixteen (16) court days before the Settlement Fairness Hearing.

22 12. The Court reserves the right to adjourn or continue the date of the Settlement
23 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to
24 the Class, and retains jurisdiction to consider all further applications arising out of or connected
25 with the Class Settlement Agreement.

26 IT IS SO ORDERED.

27 DATED: _____

HON. DAVID COHN
SUPERIOR COURT OF CALIFORNIA