

Envelope: 7716122

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
ktulyathan@diversitylaw.com

William L. Marder (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile
bill@polarislawgroup.com

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JON BETTERTON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ACCENTURE FLEX, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20CV368771

(Assigned to the Honorable Sunil R. Kulkarni,
Department 1)

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: December 16, 2021
Time: 1:30 pm
Dept.: 1

Complaint Filed: July 29, 2020
Trial Date: None Set

1 Plaintiff Jon Betterton (“Plaintiff”) and Defendant Accenture Flex, LLC (“Defendant”)
2 (collectively, the “Settling Parties”) have entered into the Joint Stipulation of Class Action
3 Settlement and Release of Claims (“Stipulation” or “Settlement Agreement”) to settle the above-
4 captioned class action subject to the Court’s approval (the “Settlement”).

5 This matter is now before the Court on Plaintiff’s Motion for Final Approval of Class
6 Action Settlement. The Court has read, heard, and considered all the pleadings and documents
7 submitted, and the presentations made in connection with the Motion which came on for hearing
8 on December 16, 2021.

9 **I. BACKGROUND**

10 On July 29, 2020, Plaintiff initiated this action in the Santa Clara County Superior Court,
11 alleging the following class and representative action claims: (1) violation of Labor Code §
12 226(a), (2) violation of Labor Code §§ 201-203, and (3) violation of Labor Code § 2698, *et seq.*,
13 the California Labor Code Private Attorneys General Act (the “PAGA”).

14 **A. Class Members**

15 The “Settlement Class” or “Class Members” is comprised of two classes—the Wage
16 Statement Class and the Sick Pay Class. The Wage Statement Class is defined as all current and
17 former non-exempt employees of Defendant in California who were paid shift differential and/or
18 shift premium wages, including without limitation, “ShiftDiff” and/or “ShiftPremPercent” wages,
19 at any time during April 6, 2019, to and including February 6, 2021. The Sick Pay Class is
20 defined as all non-exempt employees of Defendant in California who were paid non-
21 discretionary incentive remuneration, including without limitation, “ShiftDiff” and/or
22 “ShiftPremPercent” wages, and sick pay in the same pay period, and whose employment ended
23 (either voluntarily or involuntarily) at any time from April 6, 2017, through and including July
24 31, 2021.

25 **B. Operation of the Settlement**

26 Pursuant to the Preliminary Approval Order, this Court conditionally certified the
27 Settlement Class and granted preliminary approval of the Settlement. The Preliminary Approval
28 Order also approved of the proposed form of class notice and notice plan. The Court entered the

1 Preliminary Approval Order on August 13, 2021, after review and consideration of the pleadings
2 filed in connection herewith.

3 In compliance with the Preliminary Approval Order, the Notice of Class Action
4 Settlement (“Class Notice”) was modified as requested by the Court and was sent to all Class
5 Members via first class mail. The notice dissemination process was timely completed.

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

15 [Q]uestions of law or fact common to the members of the class
16 predominate over any questions affecting only individual
17 members, and that a class action is superior to the available
18 methods for the fair and efficient adjudication of the controversy
... Fed. R. Civ. Proc. 23.

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

20 Based on the foregoing, IT IS HEREBY ORDERED AS FOLLOWS:

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

23 2. The Court has jurisdiction over the subject matter of the litigation, the Class
24 Representative, the Participating Class Members, and Defendant.

25 3. The Court finds that the dissemination of the Class Notice disseminated to the
26 Class Members, constituted the best notice practicable under the circumstances to all Persons
27 within the definition of the Class, and fully met the requirements of California law and due
28 process under the United States Constitution. No objections were received by the Parties or the

1 Court through the date of this Order. The Court finds that no Class Member submitted a request
2 for exclusion from the Settlement as determined by the Settlement Administrator.

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

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

9 6. The Court hereby certifies the following Settlement Class for settlement purposes
10 only: (1) all current and former non-exempt employees of Defendant in California who were
11 paid shift differential and/or shift premium wages, including without limitation, "ShiftDiff"
12 and/or "ShiftPremPerct" wages, at any time during April 6, 2019, to and including February 6,
13 2021; and (2) all non-exempt employees of Defendant in California who were paid non-
14 discretionary incentive remuneration, including without limitation, "ShiftDiff" and/or
15 "ShiftPremPerct" wages, and sick pay in the same pay period, and whose employment ended
16 (either voluntarily or involuntarily) at any time from April 6, 2017, through and including July
17 31, 2021.

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

1 8. Defendant shall fund \$1,500,000.00 of the total Gross Settlement Amount
2 pursuant to the terms of the Settlement Agreement.

3 9. The Court approves the individual settlement payment amounts, which shall be
4 distributed pursuant to the terms of the Settlement Agreement.

5 10. The \$1,500,000.00 Gross Settlement Amount shall be used to pay (a) Class
6 Counsel attorneys' fees in the amount of \$500,000.00 and reimbursement of costs in the amount
7 of \$8,341.03; (b) a service award to the Class Representative Jon Betterton to reimburse him for
8 his unique services in the following amount: \$10,000.00; (c) the sum of \$75,000.00 to be paid to
9 the State of California Labor & Workforce Development Agency for PAGA Penalties; and (d)
10 \$9,950.00 to the administrator Phoenix Settlement Administrators (the "Settlement
11 Administrator") for its fees and costs relating to the settlement administration process. The
12 Court finds that these amounts are fair and reasonable. Defendant is directed to make such
13 payments in accordance with the terms of the Settlement Agreement. The allocation and
14 distribution of these amounts shall be performed by Settlement Administrator.

15 11. As of the date of this Order, all Participating Class Members are hereby deemed
16 to have waived and released all Released Claims and are forever barred and enjoined from
17 prosecuting the Released Claims against the Released Parties as these terms are defined and fully
18 set forth in the Settlement Agreement. The Settlement is not an admission of liability or
19 wrongdoing by Defendant, nor is this Order a finding of the validity of any claims in the Action,
20 as defined in the Settlement Agreement, or of any fault, omission or wrongdoing by Defendant.
21 Neither the Settlement Agreement, nor any document referenced therein, nor action taken to
22 carry out the Settlement, will be (a) construed or used as an admission, concession, or indication
23 by or against Defendant of any fault, wrongdoing, or liability, including any concession that
24 certification of a class other than for purposes of settlement would be appropriate in the Action
25 or in any other case or an admission that any of Defendant's defenses in the Action are without
26 merit, or (b) disclosed, referred to, or offered in evidence against Defendant in any further
27 proceeding except for purposes of effectuating the Settlement. However, the Settlement
28 Agreement may be used in any proceeding to enforce its terms, or in defense of any claims

1 released or barred by the Settlement.

2 12. Without affecting the finality of the Settlement or Judgment entered, this Court
3 shall retain exclusive and continuing jurisdiction over the action and the Parties, including all
4 Settlement Class Members, for purposes of enforcing and interpreting this Order and the
5 Settlement.

6 IT IS SO ORDERED AND ADJUDGED.

7
8 DATED: _____

9 HON. SUNIL R. KULKARNI
10 SUPERIOR COURT OF CALIFORNIA
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28