

**Electronically Filed  
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County of Santa Clara,  
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Case #20CV368771  
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**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)

**DECLARATION OF MAI TULYATHAN  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: August 12, 2021

Time: 1:30 pm

Dept.: 1

Complaint Filed: July 29, 2020

Trial Date: None

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I, Mai Tulyathan, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Named Plaintiff Marten (‘‘Plaintiff’’). I have personal knowledge of the facts set forth below and if called upon I could and would do so competently.

2. On June 3, 2020, Plaintiff filed his written notice with the California Labor & Force Development Agency (“LWDA”), alleging violations of Labor Code §§ 201-203, and 246 and pursuant to the PAGA, Labor Code § 2699. Thereafter, on July 29, 2020, Plaintiff filed his class and PAGA action Complaint against Defendant Accenture Flex, LLC (Defendant”) in Santa Clara County Superior Court, alleging causes of action for (1) violation of Labor Code § 226(a), (2) violation of Labor Code §§ 201-203, and (3) violation of the PAGA, Labor Code § 2698, *et seq.*

3. Plaintiff's class and PAGA claims as pled in the Complaint are predicated upon the following allegations. With respect to Plaintiff's wage statement claims, Plaintiff contends that Defendant issued deficient wage statements whenever shift differential wages, such as "NightDiff" and/or "ShiftPremPerct" wages, were paid. In this regard, Plaintiff contends that the wage statements do not correctly identify the applicable hourly rates of pay and number of hours worked used to calculate said wages. With respect to Plaintiff's sick pay regular rate claim, Plaintiff contends that Defendant failed to factor non-discretionary incentives, including "NightDiff" and/or "ShiftPremPerct" wages, into the calculation of the regular rate for purposes of calculating sick pay wages, and thus Plaintiff and employees were underpaid sick pay. As a result of the alleged violations above, Plaintiff seeks statutory and civil penalties under the California Labor Code and the PAGA, as well as attorneys' fees and costs.

4. After the filing of the Complaint, Defendant's counsel informed Plaintiff about the existence of an arbitration agreement executed by the Parties. During the Parties' meet and discuss discussions regarding the enforceability of the arbitration agreement, the Parties agreed to participate in private mediation.

1           5.       In connection with mediation, the Parties engaged in informal discovery to allow  
2 Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of damages  
3 and penalties. Defendant provided Plaintiff's counsel with informal data and information  
4 pertaining to the number of putative class members, the number of pay periods at issue, the  
5 hourly rates of pay for the putative class, as well as documents and information pertaining to  
6 Defendant's policies and practices regarding payment of sick pay wages and Defendant's  
7 policies and practices pertaining to its wage statements. Based on the data provided by  
8 Defendant, Plaintiff's counsel conducted an analysis of liability and potential maximum  
9 exposure for the class and PAGA penalties.

10           6.       On April 26, 2021, the Parties engaged in a full-day mediation with mediator Joel  
11 Grossman, Esq. After thorough investigation and evaluation of the facts and claims, and as a  
12 result of the arm's-length negotiations facilitated by Mr. Grossman, the Parties ultimately  
13 reached the current settlement. Attached as **Exhibit A** is a true and correct copy of the Parties'  
14 Joint Stipulation of Class Action Settlement and Release of Claims.

15           7.       The Parties recognize the risk, expense, and delay in continuing litigation with the  
16 class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate.

17           8.       Each side has apprised the other of their respective factual contentions, legal  
18 theories and defenses, resulting in negotiations taking place between the Parties.

19           9.       Based on the class data provided by Defendant, Plaintiff estimated that Defendant  
20 would face potential liability of up to approximately \$1,599,618.00 for Plaintiff's wage  
21 statement and sick pay regular rate class claims if Plaintiff succeeded at trial. Specifically,  
22 Plaintiff calculated the amount of Labor Code § 226(e) penalties based on 8,723 pay periods with  
23 wage statement violations during the relevant class period. With respect to Plaintiff's sick pay  
24 regular rate claim, Plaintiff calculated waiting time penalties under Labor Code § 203 based on  
25 144 putative class members and their average hourly rates of pay.

26           10.      With respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated  
27 that Defendant could face civil penalties of up to a maximum of \$2,194,150.00 if Plaintiff were  
28 to succeed at trial.

1           11.     The total amount of class and PAGA penalties amount to approximately  
2 \$3,793,768.00, without discounting for potentially losing on any of the causes of action. The  
3 Gross Settlement Amount is \$1,500,000, which is approximately **39.54%** of the maximum class  
4 and PAGA penalties.

5           12.     Although Plaintiff believes in the merits of the alleged claims and maintains that  
6 there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise  
7 defenses to the claims and further with respect to the reduction of PAGA penalties and that it  
8 could be persuasive to the Court. The Gross Settlement Amount was premised with this risk in  
9 mind, associated with the possibility of the Court significantly reducing Plaintiff's PAGA  
10 penalties, along with other attendant risks, even if Plaintiff was to prevail at trial.

11           13.     Although Plaintiff believes that both classes can be certified, Plaintiff also  
12 believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to  
13 Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in  
14 the operative Complaint, the possibility of non-certification, and the potential for appeals.

15           14.     On a raw average, each Wage Statement Class Member who does not opt out may  
16 potentially recover approximately **\$1,212.40**. The amount actually paid to each Wage Statement  
17 Class Member will increase or decrease depending on the number of pay periods each class  
18 member was paid shift differential and/or shift premium wages between April 6, 2019, through  
19 and including February 6, 2021.

20           15.     On a raw average, each Sick Pay Class Member may potentially recover  
21 approximately **\$1,180.07**. Since the portion of the Net Settlement Fund to be distributed among  
22 Sick Pay Class Members is to be distributed on a per capita basis, the amount actually paid to  
23 each Sick Pay Class Member may fluctuate depending on the number of opt-outs received.

24           16.     Attached as **Exhibit B** is a true and correct copy of the proposed "Notice of Class  
25 Action Settlement" ("Class Notice") to be sent to Class Members.

26           17.     From the inception of the case, Class Counsel has zealously represented the  
27 interests of the Class. Class Counsel engaged in significant discussions with opposing counsel to  
28 obtain informal data on behalf of the Class. This Settlement was obtained for the benefit of the

1 Class, as opposed to the individual Class Representative.

2 18. I have spent significant time researching and pursuing the claims that have been  
3 alleged in this action. The Parties engaged in informal discovery in connection with mediation,  
4 and participated in the exchange of class data and Defendant's pertinent policies and practices.  
5 Based on my review of all the documents and information, and based on my experience in class  
6 action litigation, I believe this settlement to be fair, adequate, and reasonable.

7 19. I was retained based upon a contingency fee arrangement wherein Plaintiff's  
8 counsel agreed to advance all costs and receive no fee unless a recovery was accomplished.  
9 Specifically, had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a  
10 significant amount of time, money and other resources without any benefit or return. In addition,  
11 had Plaintiff also failed to prevail in the present case, Defendant would have been able to seek  
12 costs in connection with their defense of the case.

13 20. I am one of the primary attorneys on this matter. My qualifications are as  
14 follows: I received my JD from Loyola Law School in 2017. I received the First Honors Award  
15 in Legal Research and Writing, First Honors Award in Appellate Advocacy, and First Honors  
16 Award in Civil Litigation Practicum I for achieving the highest grade in those classes. During  
17 law school, I was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District  
18 Court, Central District of California, for the Honorable Christina A. Snyder, and a certified law  
19 clerk at the San Diego County District Attorney's Office, Collaborative Courts Division, and the  
20 Los Angeles County District Attorney's Office, Consumer Protection and Environmental Crimes  
21 Division. In 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I  
22 placed Top 16 and was awarded the Top Ten Brief Award. In 2017, I participated in the  
23 Employment Rights Clinic, an extension of the Division of Labor Standards Enforcement created  
24 to investigate retaliation complaints. Upon graduation from law school, I was admitted to the  
25 California Bar in December 2017.

26 21. I am currently an associate at the law firm Diversity Law Group, P.C., an  
27 employment law firm that has handled numerous wage and hour class and individual actions, on  
28 both plaintiff and defense sides. The firm currently has cases in numerous state courts, including

1 the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San  
2 Diego County Superior Court, Monterey County Superior Court, as well as the United States  
3 District Courts for the Central, Northern, Southern, and Eastern Districts of California.

4 22. I am currently handling and/or have handled numerous wage and hour class action  
5 and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-  
6 cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-  
7 MDD); *Hernandez v. Wells Fargo Bank, N.A.* (Case Number 16CV299319); *Lao v. H & M*  
8 *Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD); *Arroyo v. Int'l Paper Company* (Case  
9 Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial  
10 Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); and *Garcia v. Apex*  
11 *Systems, LLC, et al.* (Case Number RG19014709).

12 23. In 2018, I argued before the California Court of Appeal, Second Appellate  
13 District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case  
14 Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.*  
15 (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In  
16 that same year, I also assisted the firm in successfully obtaining class certification and partial  
17 summary judgment by the United States District Court, Central District of California in the case  
18 of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the  
19 bench trial in that same case in December 2018.

20 24. I have also been approved as class counsel in numerous other wage/hour class  
21 actions. Most recently, I was approved as class counsel in the cases *Garcia v. Wal-Mart*  
22 *Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan, LLC, et al.*  
23 (Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (Case No. 8-17-cv-965-JLS  
24 (DFM)), and *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-CV-299319).  
25 Moreover, I was granted final approval as class counsel in *California Forensic Medical Group*  
26 *Wage and Hour Cases* (Case No. JCCP4999), *Valles v. Community Hospital of the Monterey*  
27 *Peninsula* (Case No. 17CV003452), *Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644),  
28 *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-CV-299319), *Mendez v.*

1 *Falcon Trading Company* (Case No. 19CV004512), and *Khan v. Amy's Kitchen, Inc.* (Case No.  
2 SCV-266127). I acted as lead counsel in these cases listed above.

3 25. My co-counsel and I will adequately represent the Class Members in this action.  
4 Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this  
5 lawsuit to its conclusion. I have no conflicts with the Class and will adequately represent the  
6 Class.

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

9 Executed on this 21<sup>st</sup> day of July, 2021, at Los Angeles, California.

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12 Mai Tulyathan  
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# EXHIBIT A

*(Counsel for the parties listed on the following page)*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

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

Plaintiff,

v.

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

Defendants.

Case No. 20CV368771

ASSIGNED FOR ALL PURPOSES TO  
HON. SUNIL R. KULKARNI

**JOINT STIPULATION OF CLASS  
ACTION SETTLEMENT AND  
RELEASE OF CLAIMS**

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

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19 Attorneys for Plaintiff, the Class, and Aggrieved Employees  
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This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by and between Plaintiff Jon Betterton (“Plaintiff”), individually and on behalf of the proposed Settlement Class, on the one hand, and Defendant Accenture Flex, LLC (“Defendant”), on the other hand. This Joint Stipulation of Class Action Settlement and Release of Claims shall be binding on Plaintiff, the current and former employees he seeks to represent, the Settlement Class, and on Defendant, subject to the terms set forth herein, and the approval of the Court.

## **I. DEFINITIONS**

### **1. Action.**

“Action” or “Lawsuit” means the putative class action pending in the Superior Court of the State of California for the County of Santa Clara entitled *Jon Betterton v. Accenture Flex, LLC, a Delaware limited liability company, and DOES 1 to 50, inclusive*, Case No. 20CV368771, filed on July 29, 2020.

### **2. Class Counsel.**

“Class Counsel” means Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group, who, subject to Court approval, shall act as counsel for the Settlement Class.

### **3. Class Counsel Award.**

“Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of this Lawsuit (not to exceed one-third of the Gross Settlement Amount, or \$1,500,000.00), and Class Counsel’s expenses and legal costs incurred in connection with this Lawsuit (not to exceed \$20,000.00 from the Gross Settlement Amount).

### **4. Class Information.**

“Class Information” or “Class Data” means information regarding Settlement Class Members that Defendant will in good faith compile from their records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include each Settlement Class Member’s: (1) full name; (2) last known address; (3) social security number; and (4) date of separation (if applicable) of all Class Members. Additionally, for Wage Statement Class Members, the number of pay periods worked during the Class Period when Class Members received

“ShiftDiff” and/or “ShiftPremPerct” pay; and for Sick Pay Class Members, confirmation of whether a Class Member whose employment with Defendant has ended received “ShiftDiff” and/or “ShiftPremPerct” wages and sick pay in the same pay period during the Class Period.

**5. Class Members or Settlement Class Members.**

“Class Members” or “Settlement Class Members” means all current and former non-exempt employees of Defendant in the State of California:

a. who were paid shift differential and/or shift premium wages, including without limitation “ShiftDiff” and/or “ShiftPremPerct” wages, at any time during April 6, 2019, to and including February 6, 2021 (“Wage Statement Class”); and

b. who were paid non-discretionary incentive remuneration, including without limitation “ShiftDiff” and/or “ShiftPremPerct” wages, and sick pay in the same pay period, and whose employment ended (either voluntarily or involuntarily) at any time from April 6, 2017, through and including July 31, 2021 or the date the Court grants preliminary approval of the settlement, whichever is the earlier date (“Sick Pay Class”).

The Wage Statement Class shall not exceed 584 individuals who worked approximately 8,723 pay periods with payment for shift differential and/or shift premium wages during April 6, 2019, to and including February 6, 2021. The Sick Pay Class is estimated to include approximately 150 individuals.

**6. Class Period.**

“Class Period” for the Wage Statement Class is defined as April 6, 2019, through and including February 6, 2021. The Class Period for the Sick Pay Class is defined as April 6, 2017, through and including July 31, 2021 or the date the Court grants preliminary approval of the settlement, whichever is the earlier date.

**7. Class Representative.**

“Class Representative” means Plaintiff Jon Betterton.

**8. Class Representative Service Award.**

“Class Representative Service Award” means the amount that the Court authorizes to be paid to Plaintiff (a maximum of \$10,000 from the Gross Settlement Amount), in recognition of

Plaintiff's efforts and risks in assisting with the prosecution of the Lawsuit and as consideration for executing this Settlement Agreement and providing a complete and general release to the Released Parties as set forth in Paragraph III.2.

**9. Complaint.**

"Complaint" means the operative complaint filed in the Action.

**10. Court.**

"Court" means the Superior Court for the County of Santa Clara, State of California.

**11. Defendant.**

"Defendant" means Defendant Accenture Flex, LLC.

**12. Defense Counsel.**

"Defense Counsel" means Sophia Behnia, Anthony Ly, and Blair Senesi of Littler Mendelson, P.C.

**13. Effective Date.**

"Effective Date" means, if there are no objections to the Settlement, the date on which the Court enters its final approval order and judgment approving the settlement without material modification. However, if there are any timely objection(s) submitted that are not withdrawn, the "Effective Date" shall be the date the Settlement is finally approved and the later of: (a) the day after the last day by which a notice of appeal of the Final Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and none is filed; (b) if such an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal's decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal and further review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the decision can be requested; or (d) if review is accepted, the day after the California Supreme Court affirms the Settlement.

**14. Final Approval Hearing.**

"Final Approval Hearing" means the hearing to be conducted by the Court after the filing

1 by Plaintiff of an appropriate motion and following appropriate notice to Class Members giving  
2 Class Members an opportunity to request exclusion from the class and Settlement and/or to object  
3 to the Settlement, at which time Plaintiff shall request that the Court finally approve the Settlement,  
4 enter the Final Approval Order and Final Judgment, and take other appropriate action.

5 **15. Final Approval Order.**

6 “Final Approval Order” means the order to be entered by the Court upon granting final  
7 approval of the Settlement and this Stipulation as binding upon the Parties and Participating Class  
8 Members.

9 **16. Final Judgment.**

10 “Final Judgment” means a judgment issued by the Court approving this Settlement  
11 Agreement as binding upon the Parties. The Final Judgment shall constitute a judgment respecting  
12 the Parties within the meaning and for purposes of California Code of Civil Procedure sections 577,  
13 581d, and 904.1(a).

14 **17. Gross Settlement Amount.**

15 “Gross Settlement Amount” means the agreed upon settlement amount, subject to Court  
16 approval, totaling One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) to  
17 be paid by Defendant in full settlement of the Released Claims. This is an all-inclusive settlement  
18 and includes without limitation the Class Counsel Award, Individual Settlement Payments, Class  
19 Representative Service Award, PAGA Payment, and Settlement Administrator Costs. This is the  
20 maximum amount that Defendant is obligated to pay under this Settlement Agreement in order to  
21 settle the Action, subject to the Court’s approval of the Settlement.

22 **18. Individual Settlement Payment.**

23 “Individual Settlement Payment” means the amount paid from the Net Settlement Fund to  
24 a Participating Class Member.

25 **19. Net Settlement Fund.**

26 “Net Settlement Fund” means the Gross Settlement Amount, less Court-approved Class  
27 Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement  
28 Administrator Costs.

1           **20. Notice of Class Action Settlement.**

2           “Notice of Class Action Settlement” means the Notice of Pendency of Class Action  
3 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as *Exhibit*  
4 *A*, which shall include an approximation of each Settlement Class Member’s anticipated Individual  
5 Settlement Payment. It is the notice approved by the Parties and subject to Court approval  
6 explaining the terms of this Agreement and the settlement process, which the Settlement  
7 Administrator will mail to each Settlement Class Member.

8           **21. PAGA Payment.**

9           “PAGA Payment” means the payment made to the Labor & Workforce Development  
10 Agency (“LWDA”) under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), which  
11 shall be One Hundred Thousand Dollars and No Cents (\$100,000.00), 25% of which will be  
12 included as part of the Net Settlement Fund to be distributed to Class Members and 75% of which  
13 will be paid to the LWDA.

14           **22. PAGA Notice.**

15           “PAGA Notice” means the letter submitted by Plaintiff to the LWDA, dated June 2, 2020,  
16 which is incorporated by reference in paragraph 46 of Plaintiff’s Complaint filed on July 29, 2020.

17           **23. Participating Class Members.**

18           “Participating Class Members” means those Class Members who do not file a valid and  
19 timely Request for Exclusion (*i.e.*, opt-out), and therefore, are entitled to receive an Individual  
20 Settlement Payment.

21           **24. Parties.**

22           “Parties” means Plaintiff and Defendant, collectively. “Party” shall mean either Plaintiff or  
23 Defendant, individually.

24           **25. Pay Period.**

25           “Pay Period” means the pay period(s) worked by each Wage Statement Class Member  
26 during the Class Period.

27           **26. Plaintiff.**

28           “Plaintiff” means Plaintiff Jon Betterton.

1           **27. Preliminary Approval Date.**

2           “Preliminary Approval Date” means the date on which the Court issues an order granting  
3 preliminary approval of the proposed Settlement.

4           **28. Released Claims.**

5           “Released Claims” means:

6           a.       For Wage Statement Class Members, all claims based on the facts in the Complaint  
7 or in Plaintiff’s PAGA Notice against the Released Parties, that accrued during the Class Period for  
8 the Wage Statement Class, arising out of any violation of Labor Code section 226, including: (a)  
9 any and all claims for failure to furnish accurate itemized wage statements; (b) all derivative claims  
10 for statutory penalties and/or civil penalties under PAGA, Labor Code §§ 2698, *et seq.*, premised  
11 on any violation of Labor Code section 226; and (c) pre-judgment interest and claims for attorneys’  
12 fees and costs.

13           b.       For Sick Pay Class Members, all claims based on the facts in the Complaint or in  
14 Plaintiff’s PAGA Notice against the Released Parties, that accrued during the Class Period for the  
15 Sick Pay Class, arising out of any violation for failure to pay sick pay, including: (a) any claims for  
16 waiting time penalties under Labor Code section 203; (b) all derivative claims for statutory  
17 penalties and/or civil penalties under PAGA, Labor Code §§ 2698, *et seq.*, premised on any  
18 violation of Labor Code sections 201, 202, 203 and/or 246; and (c) pre-judgment interest and claims  
19 for attorneys’ fees and costs.

20           **29. Released Parties.**

21           “Released Parties” means Defendant and its present and former parent companies, present  
22 owners, former owners, subsidiaries, shareholders, officers, directors, employees, agents, attorneys,  
23 insurers, successors, and assigns, and any individual or entity which could be jointly liable with  
24 Defendant, or any of them.

25           **30. Request for Exclusion.**

26           “Request for Exclusion” means a written request by a Class Member electing to opt out of  
27 or be excluded from the Settlement. The Request for Exclusion shall include the Class Member’s  
28 name, present address, telephone number, and statement setting forth his/her request to opt out of

or be excluded from the Settlement. However, a Request for Exclusion will not exclude a Class Member from the release of claims under PAGA, Labor Code §§ 2698, *et seq.*, premised on any violation of Labor Code sections 201, 202, 203, 226 and/or 246, or from receiving his/her PAGA Payment.

**31. Response Deadline.**

“Response Deadline” means sixty (60) days after the Settlement Administrator mails the Notice of Class Action Settlement to Settlement Class Members, which is the last date on which Settlement Class Members may: (a) submit a Request for Exclusion; (b) submit written objections to the Settlement; or (c) dispute the information contained in the Notice of Class Action Settlement.

**32. Settlement.**

“Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to this Joint Stipulation of Class Action Settlement and Release of Claims.

**33. Settlement Administrator.**

“Settlement Administrator” means Phoenix Settlement Administrators, the third-party company that the Parties have selected to administer the Settlement.

**34. Settlement Administrator Costs.**

“Settlement Administrator Costs” means the amount to be paid to the Settlement Administrator from the Gross Settlement Amount for administration of this Settlement (a maximum of Nine Thousand Nine Hundred and Fifty Dollars and No Cents (\$9,950.00)). This amount will be the maximum amount Defendant shall pay for administration of the Settlement.

**35. 1542 Waiver.**

“1542 Waiver” means an express waiver, to the fullest extent permitted by law, of the provisions, rights, and benefits of California Civil Code section 1542, or any other similar provision under federal or state law, which Section provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

## II. RECITALS

### 1. Class Certification.

The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this Settlement, the Parties agree that this stipulation regarding class certification will be revoked and the Parties will return to the point in litigation immediately prior to the execution of this Agreement.

### 2. Procedural History.

On July 29, 2020, Plaintiff filed a Class Action Complaint in Santa Clara County alleging (1) Violation of Labor Code § 226(a); (2) Violation of Labor Code §§ 201-203; and (3) Violation of Labor Code §§ 2698, et seq. (PAGA).

After the matter was at issue, the Parties agreed to participate in a full-day private mediation and thereafter, engaged in informal discovery to understand the nature of the allegations and the scope of potential liability. On April 26, 2020, the Parties attended mediation with experienced mediator Joel Grossman and were successful in reaching a settlement of the Action.

Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in Plaintiff's Complaint and PAGA Notice, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. This Stipulation is a compromise of disputed claims. Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry out this Stipulation, shall be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other things, that, at all times, it has complied with all applicable state, federal and local laws related to the Settlement Class Members' employment.

The Class Representative is represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Lawsuit, including reviewing documents and information provided by Defendant. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including

1 the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a class trial,  
2 and numerous potential appellate issues. Although Defendant denies any liability, Defendant is  
3 agreeing to this Settlement solely to avoid the cost of further litigation. Accordingly, the Parties  
4 and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes  
5 and claims arising from or relating to the Action on the terms set forth herein.

6 **3. Benefits of Settlement to Class Members.**

7 Plaintiff and Class Counsel recognize the expense and length of continued proceedings  
8 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also  
9 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties  
10 and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of  
11 proof necessary for Plaintiff to establish liability and damages and for Defendant to establish its  
12 affirmative defenses to liability for the claims asserted in the Lawsuit and the potential difficulties  
13 in establishing damages for the Settlement Class Members. Plaintiff and Class Counsel have also  
14 taken into account Defendant's agreement to enter into a settlement that confers substantial relief  
15 upon the members of the Settlement Class. Even though Plaintiff is confident that Defendant would  
16 not be able to prove its affirmative defenses and that Plaintiff would be able to establish that  
17 Defendant owes the class substantial damages, based on the foregoing, Class Counsel have  
18 concluded that settlement for the consideration and on the terms set forth in this Settlement  
19 Agreement, is fair, reasonable, and adequate and is in the best interest of the putative class in light  
20 of all known facts and circumstances, including the risk of significant delay, defenses asserted by  
21 Defendant, Defendant's financial condition, numerous potential appellate issues, and other risks  
22 inherent in litigation.

23 **4. Defendant's Reasons for Settlement.**

24 Defendant has concluded that any further defense of this litigation would be protracted and  
25 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have  
26 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the  
27 claims asserted by Plaintiff and Settlement Class Members. Defendant has also taken into account  
28 the risks of further litigation in reaching its decision to enter into this Settlement. Even though

Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in this Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has complied with all applicable state, federal, and local laws.

**5. No Admission of Liability; Settlement of Disputed Claims.**

This Agreement is a compromise of disputed claims. Defendant has claimed and continues to claim that the Released Claims have no merit and do not give rise to liability. Settlement Class Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Nothing contained in this Agreement, no documents referred to herein, and no action taken to carry out this Agreement, may be construed or used as an admission by or against the Defendant, the Settlement Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

**III. TERMS OF AGREEMENT**

**1. Release as to All Participating Class Members.**

As of the Effective Date, the Participating Class Members, including Plaintiff, release the Released Parties from the Released Claims for the respective Class Periods, as defined above. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties that seeks recovery for any of the Released Claims. It is the intent of the Parties that the Final Approval Order and Final Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Claims.

**2. Release of Claims by Plaintiff.**

In addition to his release of the Released Claims, Plaintiff further agrees to release, and does hereby acknowledge full and complete satisfaction of and does hereby forever release, absolve and discharge Released Parties from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, grievances, wages, vacation payments, severance payments, obligations, commissions, overtime payments, meal and rest period premiums, debts, profit sharing claims, expenses, damages, judgments, orders and liabilities of whatever kind or nature in state or federal law, equity or otherwise, whether known or unknown to Plaintiff, which

1 Plaintiff now owns or holds or has at any time owned or held as against the Released Parties, or  
2 any of them, including specifically but not exclusively and without limiting the generality of the  
3 foregoing, any and all claims known or unknown, suspected or unsuspected: (1) arising out of or  
4 related to Plaintiff's employment with Defendant or termination of that employment; or (2) arising  
5 out of or in any way connected with any claim, loss, damage or injury whatsoever, known or  
6 unknown, suspected or unsuspected, resulting from any act or omission by or on the part of the  
7 Released Parties, or any of them, committed or omitted on or before the Effective Date. This release  
8 includes all claims arising under any and all laws, statutes, orders, regulations, or any other claim  
9 of right(s), including without limitation, any claim under the laws of the United States of America  
10 and the State of California, including but not limited to the California Constitution, the California  
11 Labor Code (including, but not limited to, Labor Code sections 500 through 558), the Private  
12 Attorneys' General Act, and the Industrial Welfare Commission Wage Orders. Plaintiff also  
13 specifically agrees and acknowledges Plaintiff is waiving any right to recovery based on state or  
14 federal age, sex, race, color, national origin, marital status, religion, veteran status, disability, sexual  
15 orientation, medical condition or other anti-discrimination laws, including, without limitation, Title  
16 VII of the Civil Rights Act of 1964, the Equal Pay Act, the Americans with Disabilities Act, the  
17 Employee Retirement Income Security Act, the Worker Adjustment and Retraining Notification  
18 Act, the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*),  
19 the California Family Rights Act (Cal. Government Code § 12945.1, *et seq.*), and all other state  
20 laws and local ordinances, all as amended, whether such claim be based upon an action filed by  
21 Plaintiff or by a governmental agency.

22       Nothing in this Agreement is intended to waive claims that may arise after the Effective  
23 Date or which cannot be released by private agreement. In addition, nothing in this Agreement  
24 including but not limited to the indemnification, release of claims, confidentiality, and no publicity  
25 provisions, (1) shall be construed to prevent the disclosure of factual information related to any acts  
26 of sexual assault, sexual harassment, workplace harassment or discrimination based on sex, failure  
27 to prevent an act of workplace harassment or discrimination based on sex, or act of retaliation  
28 against a person for reporting harassment or discrimination related to the Lawsuit or waives

1 Plaintiff's right to testify in an administrative, legislative, or judicial proceeding concerning alleged  
2 criminal conduct or alleged sexual harassment on the part of the Defendant, or on the part of the  
3 agents or employees of the Defendant, when Plaintiff has been required or requested to attend such  
4 a proceeding pursuant to a court order, subpoena, or written request from an administrative agency  
5 or the legislature, (2) prevents Plaintiff from communicating with, filing a charge or complaint  
6 with, or from participating in an investigation or proceeding conducted by the Equal Employment  
7 Opportunity Commission, National Labor Relations Board, the Securities and Exchange  
8 Commission, or any other any federal, state or local agency charged with the enforcement of any  
9 laws, including providing documents or any other information, or (3) limits Plaintiff from  
10 exercising rights under Section 7 of the National Labor Relations Act to engage in protected,  
11 concerted activity with other employees, although by signing this Settlement Agreement Plaintiff  
12 is waiving rights to individual relief (including backpay, frontpay, reinstatement or other legal or  
13 equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff or on  
14 Plaintiff's behalf by any third party, except for any right Plaintiff may have to receive a payment  
15 or an award from a government agency (and not the Defendant) for information provided to the  
16 government agency or otherwise where prohibited.

17 a. Waiver of Civil Code Section 1542.

18 It is the intention of the Parties in executing this instrument that it will be effective as a bar  
19 to each and every claim specified in the Settlement Agreement. In furtherance of this intention,  
20 Plaintiff hereby expressly waives any and all rights and benefits conferred upon Plaintiff by the  
21 provisions of Section 1542 of the California Civil Code, and expressly consents that the Settlement  
22 Agreement will be given full force and effect according to each and all of its express terms and  
23 provisions, including those relating to unknown and unsuspected claims, if any, as well as those  
24 relating to any other claims hereinabove specified. Section 1542 provides:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**  
26 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**  
27 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
28 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**

**HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Having been so apprised, Plaintiff nevertheless hereby voluntarily elects to and does waive the rights described in Civil Code Section 1542, and elects to assume all risks for claims that now exist in his favor, known or unknown.

**3. Tax Liability and Medicare.**

The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class Members are not relying on any statement or representation by the Parties in this regard. Participating Class Members understand and agree that they will be responsible for the payment of taxes and penalties assessed on the payments described herein and will hold the Parties free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. section 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. Plaintiff warrants that he is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff is not a Medicare recipient as of the date of this Agreement, no conditional payments have been made by Medicare.

**4. Circular 230 Disclaimer.**

Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as

1 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,  
2 independent legal and tax counsel for advice (including tax advice) in connection with this  
3 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other  
4 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any  
5 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty  
6 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party  
7 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax  
8 strategies (regardless of whether such limitation is legally binding) upon disclosure by the  
9 acknowledging party of the tax treatment or tax structure of any transaction, including any  
10 transaction contemplated by this Agreement.

11 **5. Preliminary Approval of Settlement.**

12 Solely for the purposes of this Settlement, the Parties stipulate and agree that in order for  
13 this Settlement to occur, the Court must certify a class comprised of the Settlement Class Members.  
14 Settlement Class Members can exclude themselves from the class as explained in Paragraph III.7.f.  
15 below. Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying the  
16 Settlement Class for settlement purposes only and setting a date for a final approval hearing.  
17 Defendant agrees not to oppose Plaintiff's motion for a preliminary approval of this Settlement  
18 unless the motion is inconsistent with the terms set forth in this Settlement Agreement. All Parties  
19 agree to work diligently and cooperatively to have this Settlement presented to the Court for  
20 preliminary approval. The proposed preliminary approval order shall provide for the Notice of  
21 Class Action Settlement to be sent to Settlement Class Members as specified herein.

22 **6. Conditional Nature of Stipulation for Certification.**

23 Solely for the purposes of this Settlement, the Parties stipulate and agree to the certification  
24 of the Released Claims asserted on behalf of Settlement Class Members. Should for whatever  
25 reason the Settlement not become effective, the fact that the Parties were willing to stipulate to  
26 certification as part of the Settlement shall have no bearing on, and shall not be admissible in  
27 connection with, the issue of whether the Released Claims or Settlement Class Members should be  
28 certified in a non-settlement context in the Action or in any other lawsuit. Defendant expressly

1 reserves its right to oppose claim or class certification in the Action or any other action should this  
2 Settlement not become effective.

3 **7. Settlement Administration.**

4 a. Class Information to Settlement Administrator.

5 Within fourteen (14) calendar days of the Court granting preliminary approval of this  
6 Agreement, Defendant shall provide the Settlement Administrator with the Class Information for  
7 purposes of mailing the Notice of Class Action Settlement to the Settlement Class Members. No  
8 later than three (3) business days after receipt of the Class Information, the Settlement  
9 Administrator shall notify counsel for the Parties that the list has been received and state: (1) the  
10 number of Wage Statement Class Members and the number of pay periods they worked during the  
11 Class Period; and (2) confirmation of which Settlement Class Members are included in the Sick  
12 Pay Class Members during the Class Period.

13 Because employees' sensitive personal information is included in the Class Information,  
14 the Settlement Administrator shall maintain the Class Information securely and in confidence.  
15 Access to such Class Information shall be limited to employees of the Settlement Administrator  
16 with a need to use the Class Information for administration of the Settlement.

17 b. Notice by First Class U.S. Mail.

18 Within five (5) business days of receipt of the Class Information from Defendant, the  
19 Settlement Administrator will mail copies of the Notice of Class Action Settlement to all Settlement  
20 Class Members via regular First-Class U.S. Mail.

21 c. Undeliverable Notices.

22 Any Notice of Class Action Settlement returned to the Settlement Administrator as  
23 undeliverable before the Response Deadline, the Settlement Administrator shall: (1) conduct a skip  
24 trace to locate a correct address based on the National Change of Address Database to update and  
25 correct any known or identifiable address changes; and (2) if an updated or correct address is  
26 obtained using this method, re-mail the returned Notice of Class Action Settlement within five (5)  
27 calendar days of receiving notice that a notice was undeliverable. Settlement Class Members who  
28 receive a re-mailed Notice of Class Action Settlement shall have their Response Deadline extended

1 fifteen (15) calendar days from the original Response Deadline.

2 d. Disputes Regarding Individual Settlement Payments.

3 Settlement Class Members will have the opportunity to provide documentation and/or an  
4 explanation to the Settlement Administrator to show contrary information by the Response  
5 Deadline should they disagree with Defendant's records regarding the following information stated  
6 on their Notice of Class Action Settlement: (1) for Wage Statement Class Members, the number of  
7 Pay Periods; and/or (2) for Sick Pay Class Members, the confirmation of whether their employment  
8 has ended and they received "ShiftDiff" and/or "ShiftPremPercent" wages and sick pay in the same  
9 Pay Period during the Class Period. If there is a dispute, the Settlement Administrator will consult  
10 with the Parties to determine whether an adjustment is warranted. The Settlement Administrator  
11 shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under  
12 the terms of this Agreement. The disputes regarding Individual Settlement Payments will be  
13 resolved initially by the Settlement Administrator, subject to final resolution by the Court if the  
14 Court decides to rule on the dispute prior to or concurrently with its Final Approval Order. If the  
15 Court does not issue a ruling on the dispute, the Settlement Administrator's determination of the  
16 eligibility for and amount of any Individual Settlement Payment will be binding upon the  
17 Settlement Class Members and the Parties. In the absence of circumstances indicating fraud,  
18 manipulation or destruction, Defendant's records will be given a rebuttable presumption of  
19 accuracy.

20 e. Disputes Regarding Administration of Settlement.

21 Any disputes not resolved by the Settlement Administrator concerning the administration  
22 of the Settlement will be resolved by the Court under the laws of the State of California. Prior to  
23 any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the  
24 disputes without the necessity of involving the Court.

25 f. Exclusions.

26 The Notice of Class Action Settlement shall state that Settlement Class Members who wish  
27 to exclude themselves from the Settlement must submit a Request for Exclusion by the Response  
28 Deadline. The Request for Exclusion must: (1) contain the name, address, and telephone number

1 of the Settlement Class Member requesting exclusion; (2) contain a statement expressing that the  
2 Settlement Class Member elects to be excluded from the Settlement; (3) be signed by the Settlement  
3 Class Member; and (4) be postmarked or fax stamped by the Response Deadline and returned to  
4 the Settlement Administrator at the specified address or fax number. The date of the postmark on  
5 the return mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means  
6 used to determine whether a Request for Exclusion has been timely submitted. Except as stated  
7 herein, any Settlement Class Member who requests to be excluded from the Settlement Class will  
8 not be entitled to any recovery under the Settlement and will not be bound by the terms of the  
9 Settlement or have any right to object, appeal, or comment thereon. However, she/he will still be  
10 bound by the release of claims under Labor Code sections 2698, *et seq.* and will still receive his/her  
11 PAGA Payment. Settlement Class Members who fail to submit a valid and timely Request for  
12 Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and  
13 any Final Judgment entered in this Action.

14 No later than seven (7) calendar days after the Response Deadline, the Settlement  
15 Administrator will provide counsel for the Parties with a complete list of all members of the  
16 Settlement Class who have timely submitted a Request for Exclusion.

17 g. Objections.

18 The Notice of Class Action Settlement shall state that Settlement Class Members who wish  
19 to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing.  
20 Any written objection ("Notice of Objection") must be mailed or faxed to the Settlement  
21 Administrator by the Response Deadline. The date of mailing on the envelope or the fax stamp  
22 shall be deemed the exclusive means for determining that a Notice of Objection was timely  
23 received. The Notice of Objection must be signed by the Settlement Class Member and state: (1)  
24 the full name of the Settlement Class Member; (2) the basis for the objection; and (3) if the  
25 Settlement Class Member intends to appear at the final approval hearing. Class Counsel will ensure  
26 that any Notice of Objection received by the Settlement Administrator by the Response Deadline  
27 is filed with the Court along with the Motion for Final Approval. Either of the Parties may file a  
28 response to any objection before the Final Approval Hearing. However, any Settlement Class

Member who does not submit a Notice of Objection in compliance with this section may nevertheless appear at the final approval hearing and present an oral objection to the Settlement. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant with this notice no later than the Response Period Deadline.

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

h. Funding of Gross Settlement Amount.

Within thirty (30) calendar days of the Effective Date, Defendant shall deposit into an escrow account set up by the Settlement Administrator the Gross Settlement Amount as finally approved by the Court.

**8. No Solicitation of Settlement Objections or Exclusions.**

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit either written objections to the Settlement or Requests for Exclusion, or to appeal from the Court's Final Judgment.

**9. Net Settlement Fund.**

The Net Settlement Fund will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement Administrator Costs from the Gross Settlement Amount. The anticipated Net Settlement Fund is \$885,050.00. This amount may change due to any change in the amount of the Class Counsel Award, Class Representative Service Award, and Settlement Administrator Costs as ordered by the Court and in accordance with the terms of this Settlement Agreement. The Parties estimate the amount of the Net Settlement Fund as follows:

|                          |                 |
|--------------------------|-----------------|
| Gross Settlement Amount: | \$ 1,500,000.00 |
|--------------------------|-----------------|

|                           |              |
|---------------------------|--------------|
| Class Rep. Service Award: | \$ 10,000.00 |
|---------------------------|--------------|

|                                 |           |                   |
|---------------------------------|-----------|-------------------|
| Class Counsel Fees:             | \$        | 500,000.00        |
| Class Counsel Costs:            | \$        | 20,000.00         |
| 75% of PAGA Payment to the LWDA | \$        | 75,000.00         |
| Settlement Administrator Costs  | \$        | 9,950.00          |
| <b>Net Settlement Fund</b>      | <b>\$</b> | <b>885,050.00</b> |

This is a non-reversionary Settlement in which Defendant will pay the entire Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant.

a. Individual Settlement Payments.

Individual Settlement Payments will be paid from the Net Settlement Fund and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing address within ten (10) calendar days of Defendant's funding of the Gross Settlement Amount into the escrow account set up by the Settlement Administrator. All Individual Settlement Payments will be treated as penalties. The amounts paid as penalties and interest shall not be subject to withholding of employment taxes and shall be reported by IRS 1099 forms.

b. Class Members' Payment Ratio.

Participating Class Members will be paid as follows:

(i) Eighty percent (80%) of the Net Settlement Amount will be apportioned among Wage Statement Class Members on a pro rata, per pay period basis, based on the number of pay periods with payment for shift differential and/or shift premium wages between April 6, 2019, through and including February 6, 2021.

(ii) Twenty percent (20%) of the Net Settlement Amount will be apportioned proportionally among Sick Pay Class Members on a per capita basis.

**10. Unclaimed Settlement Payment(s).**

After one hundred and eighty (180) days of the mailing of the Individual Settlement Payment checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment checks will be redistributed among the Participating Class Members who cashed their

1 Individual Settlement Payment check during the first distribution. After ninety (90) days of the  
2 mailing of the re-distributed Individual Settlement Payment checks, funds attributable to  
3 unclaimed, undeliverable, or expired re-distributed Individual Settlement Payment checks shall be  
4 deposited with the State of California unclaimed property fund in the name of the class member  
5 who received the re-distribution.

6 **11. Notice Satisfies Due Process.**

7 Compliance with the notice procedures specified in this Settlement Agreement shall  
8 constitute due and sufficient notice to Class Members of this Settlement and shall satisfy the  
9 requirements of due process. Nothing else shall be required of, or done by, the Parties, Class  
10 Counsel, or Defense Counsel to provide notice of the proposed Settlement. In the event the  
11 procedures in this Settlement Agreement are followed and the intended recipient of a Notice of  
12 Class Action Settlement still does not receive the Notice of Class Action Settlement, the intended  
13 recipient shall remain a Participating Class Member and will be bound by all terms of the Settlement  
14 and any Final Approval Order and Final Judgment entered by the Court upon the Effective Date.

15 **12. Class Representative Service Award.**

16 Defendant agrees not to oppose or object to Plaintiff's application to the Court for a Class  
17 Representative Service Award of up to Ten Thousand Dollars and No Cents (\$10,000.00). The  
18 Class Representative Service Award shall be paid to Plaintiff only from the Gross Settlement  
19 Amount no later than ten (10) calendar days of Defendant's funding of the Gross Settlement  
20 Amount. The Class Representative Service Award shall be in addition to the Plaintiff's Individual  
21 Settlement Payment as a Settlement Class Member. Any amount requested by Plaintiff for the Class  
22 Representative Service Award and not granted by the Court shall return to the Net Settlement Fund  
23 and be distributed to Participating Class Members as provided in this Agreement. Plaintiff shall not  
24 have the right to revoke his agreement to the Settlement on the grounds the Court does not approve  
25 the requested Class Representative Service Award.

26 **13. Class Counsel Award.**

27 Defendant agrees not to oppose or object to any application or motion by Class Counsel for  
28 attorneys' fees in the amount of up to one-third of the Gross Settlement Amount, or \$500,000.00.

1 Defendant further agrees not to oppose any application or motion by Class Counsel for the  
2 reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of  
3 this matter from the Gross Settlement Amount not to exceed \$20,000.00. Class Counsel shall be  
4 paid any Court-approved fees and costs no later than ten (10) calendar days of Defendant's funding  
5 of the Gross Settlement Amount. Any amount requested by Class Counsel for the Class Counsel  
6 Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to  
7 Participating Class Members as provided in this Agreement. This Settlement is not contingent upon  
8 the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Class Counsel  
9 each agree to provide the Settlement Administrator with an executed IRS Form W-9 before the  
10 Class Award is issued. The Settlement Administrator shall issue an IRS Form 1099 to each Class  
11 Counsel for the payments made pursuant to this Paragraph.

12 Neither Class Counsel nor any other current or past counsel for Plaintiff shall be permitted  
13 to petition the Court for, or to accept, any additional payments for attorneys' fees, costs, interest,  
14 or any other amount from Defendant except as specified above. Defendant's payment of the Class  
15 Counsel Award shall constitute full satisfaction of the obligation to pay any amounts to any person,  
16 attorney, or law firm, including but not limited to Settlement Class Members, or attorneys' fees,  
17 expenses, or costs in the Action incurred by any other attorney or law firm for attorneys' fees,  
18 expenses, and/or costs to which any of them may claim to be entitled on behalf of Plaintiff or  
19 Settlement Class Members. The Parties further agree that the Class Counsel Award shall be for all  
20 attorneys' fees, expenses, and costs, present and future, incurred in the Action by all attorneys  
21 working on behalf of the Plaintiff and Settlement Class Members.

22 **14. Settlement Administrator Costs.**

23 The Parties agree to allocate up to \$9,950.00 of the Gross Settlement Amount for Settlement  
24 Administrator Costs. This amount will be the maximum amount Defendant shall pay for  
25 administration of the Settlement. The Settlement Administrator shall have the authority and  
26 obligation to make payments, credits and disbursements to Settlement Class Members in the  
27 manner set forth herein, calculated in accordance with the methodology set out in this Agreement  
28 and orders of the Court. The Parties agree to cooperate in the Settlement administration process and

1 to make all reasonable efforts to control and minimize the cost and expenses incurred in  
2 administration of the Settlement. The Settlement Administrator shall be paid the Settlement  
3 Administrator Costs no later than five (5) days of Defendant's funding of the Gross Settlement  
4 Amount.

5 **1. Responsibilities of the Settlement Administrator.**

6 The Settlement Administrator shall be responsible for the following: preparing, printing,  
7 and mailing the Notice of Class Action Settlement and tax forms to the Settlement Class Members  
8 as directed by the Court; receiving and reporting requests for exclusion and objections; processing  
9 payments from the Gross Settlement Amount; providing weekly status reports to Defense Counsel  
10 and Class Counsel; mailing Individual Settlement Payments to Participating Class Members, Class  
11 Representative Service Award to Plaintiff, Class Counsel Award to Class Counsel and seventy-five  
12 percent (75%) of the PAGA Payment to the LWDA; printing and providing Participating Class  
13 Members, Plaintiff, and Class Counsel with IRS Forms 1099 as required under this Settlement  
14 Agreement and applicable law; providing a due diligence declaration for submission to the Court  
15 upon the completion of the administration of the Settlement; and for such other tasks as the Parties  
16 mutually agree or the Court orders the Settlement Administrator to perform. The Settlement  
17 Administrator shall keep the Parties timely apprised of the performance of all Settlement  
18 Administrator responsibilities. Any expenses incurred in connection with such preparation shall be  
19 a Settlement Administrator Cost. The Parties each represent that they do not have any financial  
20 interest in the Settlement Administrator or otherwise have a relationship with the Settlement  
21 Administrator that could create a conflict of interest.

22 **15. Final Approval Hearing and Entry of Final Judgment.**

23 Upon expiration of the Response Deadline, with the Court's permission, a final approval  
24 hearing shall be conducted to determine final approval of the Settlement along with the amount  
25 properly payable for: (i) the Class Counsel Award; (ii) the Class Representative Service Award;  
26 (iii) Individual Settlement Payments; and (iv) Settlement Administrator Costs.

27 **16. Final Approval Order.**

28 Plaintiff will request, and Defendant will concur in said request, that the Court enter, after

1 the Final Approval Hearing, a Final Approval Order. Plaintiff will request that the Final Approval  
2 Order certify the Settlement Class; find that this Agreement is fair, just, adequate, and in the best  
3 interests of the Class; and require the Parties to carry out the provisions of this Agreement.

4 **17. Nullification of Settlement Agreement.**

5 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court  
6 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as  
7 provided herein; or (iv) the Settlement, according to the terms set forth herein, does not become  
8 final for any other reason, this Settlement Agreement shall be null and void and any order or  
9 judgement entered by the Court in furtherance of this Settlement shall be treated as void from the  
10 beginning.

11 To the extent that more than seven-and-a-half percent (7.5%) of the Settlement Class  
12 Members submit valid Requests for Exclusion, Defendant has the option to nullify this settlement  
13 within ten (10) business days of when the Settlement Administrator provides the final report of opt  
14 outs via a written notice to Class Counsel and Defense Counsel. If one or more of such events  
15 occur causing the Settlement Agreement to become null and void, the Parties shall proceed in all  
16 respects as if this Agreement had not been executed, except that any fees already incurred by the  
17 Settlement Administrator shall be paid by the party terminating the Settlement pursuant to this  
18 Agreement.

19 **18. Increase in Class Members.**

20 Defendant has represented that the Wage Statement Class is estimated to contain 584  
21 individuals and that the Sick Pay Class is estimated to contain approximately 150 individuals.  
22 Defendant has also represented that the 584 individuals in the Wage Statement Class worked 8,723  
23 Pay Periods with payment for shift differential and/or shift premium wages during April 6, 2019,  
24 to and including February 6, 2021. Upon receipt of the Class Data, the Settlement Administrator  
25 shall confirm to Class Counsel that the Class Data is consistent with these representations.

26 **19. No Effect on Employee Benefits.**

27 Amounts paid to Plaintiff or other Settlement Class Members pursuant to this Agreement  
28 shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,

1 or calculation of, any of the employee benefits (*e.g.*, vacations, holiday pay, retirement plans, etc.)  
2 of Plaintiff or Settlement Class Members.

3 **20. Confidentiality.**

4 Neither Plaintiff nor Class Counsel shall disclose the terms of this Settlement Agreement to  
5 any other entity or individual, except as required by law, such as any requirement by the Court to  
6 provide information related to the Settlement in order to obtain approval of the Parties' Settlement  
7 Agreement, any requirement by counsel for Plaintiff to advise Class Members regarding the  
8 Settlement, or any requirement by Class Counsel to work with a class settlement administrator to  
9 effectuate the Parties' Settlement.

10 **21. No Publicity.**

11 Plaintiff and Class Counsel agree not to issue a press release or otherwise notify the media  
12 about the terms of the Settlement or advertise or market any of the terms of the Settlement through  
13 written, recorded or electronic communications. Plaintiff and Class Counsel further agree that if  
14 contacted regarding this Action, they will state only that the Action exists and has been resolved.  
15 This provision is not intended to and does not limit Class Counsel to respond to questions from and  
16 provide advice to Class Members regarding the Settlement.

17 **22. No Admission by Defendant.**

18 Defendant denies any and all claims alleged in this Lawsuit and denies all wrongdoing  
19 whatsoever. This Agreement is not a concession or admission, and shall not be used against  
20 Defendant as an admission or indication with respect to any claim of any fault, concession, or  
21 omission by Defendant.

22 **23. Exhibits and Headings.**

23 The terms of this Agreement include the terms set forth in any attached Exhibits, which are  
24 incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are  
25 an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this  
26 Agreement are inserted for convenience of reference only and do not constitute a part of this  
27 Agreement.

28 **24. Interim Stay of Proceedings.**

1           Upon full execution of this Agreement, the Parties agree that based upon Code of Civil  
2 Procedure § 583.310 (“the 5 year rule”), the Lawsuit shall be stayed in its entirety except for the  
3 proceedings necessary to implement and complete the Settlement.

4           **25. No Pending or Future Lawsuits by Plaintiff.**

5           Other than the Action, Plaintiff represents that he does not have any pending lawsuits,  
6 administrative complaints, or charges against Defendant or any of the Released Parties in any local,  
7 state, or federal court or administrative agency. Plaintiff further acknowledges that all claims raised  
8 therein, if any, shall be fully and finally extinguished by virtue of this Settlement Agreement and  
9 the Court’s Final Approval Order and Final Judgment.

10          **26. Amendment or Modification.**

11          This Agreement may be amended or modified only by a written instrument signed by  
12 counsel for all Parties or their successors-in-interest.

13          **27. Entire Agreement.**

14          This Agreement and any attached Exhibits constitute the entire Agreement among these  
15 Parties, and no oral or written representations, warranties, or inducements have been made to any  
16 Party concerning this Agreement or its Exhibits other than the representations, warranties, and  
17 covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering  
18 in to this Agreement based solely on the representations and warranties herein and not based on  
19 any promises, representation, and/or warranties not found herein.

20          **28. Authorization to Enter into Settlement Agreement.**

21          Class Counsel warrants and represents they are expressly authorized by Plaintiff to negotiate  
22 this Agreement and to take all appropriate actions required or permitted to be taken by Plaintiff  
23 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to  
24 effectuate the terms of this Agreement. The Parties will cooperate with each other and use their  
25 best efforts to effect the implementation of the Settlement. In the event the Parties are unable to  
26 reach agreement on the form or content of any document needed to implement the Settlement, or  
27 on any supplemental provisions that may become necessary to effectuate the terms of this  
28 Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. Plaintiff

1 represents and warrants that he is authorized to sign this Agreement and that he has not assigned  
2 any claim, or part of a claim, covered by this Settlement to a third-party.

3 **29. Binding on Successors and Assigns.**

4 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns  
5 of the Parties hereto, as previously defined.

6 **30. California Law Governs.**

7 All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted  
8 according to the laws of the State of California, excluding choice of law rules.

9 **31. Counterparts.**

10 This Agreement may be executed in one or more counterparts and delivered by electronic  
11 scan, pdf, or DocuSign. All executed counterparts and each of them shall be deemed to be one and  
12 the same instrument.

13 **32. Jurisdiction of the Court.**

14 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain  
15 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this  
16 Agreement and all orders and judgments entered in connection therewith, and the Parties and their  
17 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing,  
18 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in  
19 connection therewith. All terms of this Agreement are subject to approval by the Court. In the  
20 event that one or more of the Parties institutes any legal action or other proceeding against any  
21 other Party or Parties to enforce the provisions of this Agreement, or to declare rights and/or  
22 obligations under this Agreement, the prevailing Party or Parties shall be entitled to recover from  
23 the non-prevailing Party or Parties reasonable attorneys' fees and costs, including expert witness  
24 fees incurred in connection with any enforcement actions.

25 **33. Invalidity of Any Provision.**

26 Before declaring any provision of this Agreement invalid, the Court shall first attempt to  
27 construe the provisions valid to the fullest extent possible consistent with applicable precedents so  
28 as to define all provisions of this Agreement valid and enforceable.

**34. Execution by Class Members.**

It is agreed that it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Notice of Class Action Settlement will therefore advise all Class Members of the binding nature of the Settlement and its Released Claims, which releases shall have the same force and effect as if each Class Member executed this Settlement Agreement individually (excepting only those Class Members from the Individual Settlement Payment who return a timely and valid Request for Exclusion).

**35. Execution by Plaintiff.**

Plaintiff, by signing this Settlement Agreement, is bound by the terms herein and further agrees not to submit any Request for Exclusion from or Notice of Objection to the Settlement. Any such Request for Exclusion or Notice of Objection shall therefore be void and of no force or effect.

WHEREFORE, Plaintiff, on behalf of himself and the Class Members, and Defendant have executed this Agreement as of the dates set forth below.

DATED: June <sup>18</sup> \_\_, 2021

DocuSigned by:

*Jon Betterton*

5651996B1164455...

PLAINTIFF JON BETTERTON

DATED: June \_\_, 2021

By: \_\_\_\_\_

ACCENTURE FLEX, LLC

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1 DATED: June 21, 2021



LARRY W. LEE  
MAI TULYATHAN  
DIVERSITY LAW GROUP, P.C.

WILLIAM L. MARDER  
POLARIS LAW GROUP LLP

Attorneys for Plaintiff  
JON BETTERTON

18 4838-4226-9167.1 / 097294-1002

# EXHIBIT B

**[CLASS MEMBER NAME]**

**Jon Betterton v. Accenture Flex, LLC**

**Superior Court of the State of California, County of Santa Clara**

**Case No.: 20CV368771**

If you are a current or former employee of Accenture Flex, LLC (“Accenture Flex”) or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

**YOUR ESTIMATED TOTAL INDIVIDUAL SETTLEMENT PAYMENT AMOUNT**

**FROM THIS CLASS ACTION SETTLEMENT IS \$ [REDACTED].**

According to Accenture Flex’s records, the total number of pay periods that you worked as an employee in California between April 6, 2019 through and including February 6, 2021, wherein you were paid “ShiftDiff” and/or “ShiftPremPercent” wages is [REDACTED]. Based on this number, your Individual Settlement Payment Amount as a member of the Wage Statement Class is estimated to be \$[REDACTED].

According to Accenture Flex’s records, you [are] [are not] eligible for a settlement payment as a member of the Sick Pay Class. [Your Individual Settlement Payment Amount as a member of the Sick Pay Class is estimated to be \$ [REDACTED].]

- This lawsuit involves a class defined as: all current and former non-exempt employees of Defendant in the State of California:
  - Who were paid shift differential and/or shift premium wages, including without limitation “ShiftDiff” and/or “ShiftPremPercent” wages, at any time during April 6, 2019, to and including February 6, 2021 (“Wage Statement Class”); and/or
  - Who were paid non-discretionary incentive remuneration, including without limitation “ShiftDiff” and/or “ShiftPremPercent” wages, and sick pay in the same workweek, and whose employment ended (either voluntarily or involuntarily) at any time from April 6, 2017, through and including [TBD] (“Sick Pay Class”).
- You are receiving this Notice because the records reflect that you may be a class member.

- Plaintiff Jon Betterton (“Plaintiff”) alleges that Defendant paid shift differential wages, including without limitation, “ShiftDiff” and/or “ShiftPremPerct” wages, but failed to identify the applicable hourly rate and hours used to calculate such wages in corresponding wage statements. Plaintiff also alleges that Defendant failed to pay sick pay at the regular rate of pay that factored in non-discretionary incentive renumeration, including without limitation, “ShiftDiff” and/or “ShiftPremPerct” wages, allegedly resulting in the failure to pay all wages owed at the time of separation of employment.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Accenture Flex’s defenses.
- You will not be penalized or retaliated against by Accenture Flex for participating in this settlement. If you are currently employed by Accenture Flex, your employment will not be affected in any way. Current employees of Accenture Flex who choose to participate in the settlement will not be required to resign and can continue to work for Accenture Flex.
- You have several options available to you:

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DO NOTHING</b>                   | <p>By doing nothing, you <u>will</u> receive a share of the settlement proceeds. In exchange for the settlement proceeds, you will give up any rights to sue Accenture Flex separately for claims based on the facts pled in the Complaint or Plaintiff’s June 2, 2020 letter to the Labor &amp; Workforce Development Agency (“PAGA Notice”), which are or could be the basis of claims that Accenture Flex failed to furnish accurate itemized wage statements and failed to pay sick pay during the Class Period, including a claim under the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698, <i>et seq.</i> (“PAGA”) (See Section 8 below for an explanation of the claims you are giving up).</p> <p>If you move, you must notify the Settlement Administrator of your new address.</p> |
| <b>ASK TO BE EXCLUDED (OPT OUT)</b> | <p>You can exclude yourself from this lawsuit. If you ask to be excluded, you <u>will not</u> receive a share of the settlement proceeds, but you keep any rights you may have to bring your own separate suit against Accenture Flex for the same legal claims in this lawsuit that are released in this settlement except for the PAGA claim, which is released upon court approval of the PAGA Settlement. You will still receive a share of the PAGA Payment.</p> <p>You cannot ask to be excluded <u>and</u> still get a settlement payment for the claims aside from the PAGA claim. If you ask to be excluded from the settlement, you cannot object to the settlement.</p>                                                                                                                                                 |

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>OBJECT</b>                            | <p>If you do not agree with the settlement, you can object to the terms of this Settlement. The Court may or may not agree with your objection. If you object to the Settlement and the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment.</p> <p>Objecting to the settlement will <b><u>not</u></b> exclude you from the settlement.</p> |
| <b>ATTEND THE FINAL APPROVAL HEARING</b> | <p>You can ask to speak in Court about the fairness of the settlement at the Final Approval Hearing. The Court will hold a Final Approval Hearing to determine whether the settlement is fair, reasonable, and adequate on <b>[DATE]</b>, 2021 at <b>[TIME]</b>. More information regarding this hearing is set forth in section 10.</p>                                                                                       |

**Your options are explained in this notice.**  
**To opt out or object, you must act by **XXXXX**.**

### **1. Why did I get this notice?**

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Accenture Flex's non-exempt employees. You have received this notice because Accenture Flex's records indicate that you are a member of the settlement class.

### **2. What is this lawsuit about?**

This lawsuit was filed on July 29, 2020 on behalf of individuals who are employed or have been employed by Accenture Flex as non-exempt employees in the State of California, during the Class Period. "Class Period" is defined as 1) for the Wage Statement Class, the period from April 6, 2019, through and including February 6, 2021; and 2) for the Sick Pay Class, the period from April 6, 2017, through and including **[TBD]**. The operative complaint alleges class and representative PAGA claims against Accenture Flex for failing to provide wage statements that complied with Labor Code section 226 and failing to pay sick pay at the regular rate of pay that resulted in the failure to pay all wages owed at the time of separation of employment in violation of Labor Code section 246, 201, 202 and 203. The complaint also alleges a claim for civil penalties under PAGA for the same underlying violations.

### **3. Has the Court decided who is right?**

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Accenture Flex's defenses.

### **4. Why did this case settle?**

The Parties reached a settlement in order to avoid the risk, inconvenience, and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the

best interest of the class members to whom it applies given the outcome of their investigation, and the consumption of time and resources required in connection with further litigation. Although Accenture Flex disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be expensive and would divert management and employee time.

## **5. What are the terms of the settlement and how much will I receive?**

The Gross Settlement Amount is \$1,500,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$500,000.00
- Litigation Costs: \$20,000.00
- Claims Administration Costs: \$9,950.00
- Class Representative Service Award to Class Representative: \$10,000.00
- PAGA Payment to the Labor and Workforce Development Agency ("LWDA"): \$75,000.00, representing its share of the settlement payment for the PAGA claims made pursuant to Labor Code § 2699.

After these deductions, and to the extent that the Court approves these amounts, approximately \$885,050.00 is estimated to be available for payment to the class members receiving this notice ("Net Settlement Fund"). These amounts may change and are subject to Court approval.

Each class member's Individual Settlement Payment shall be determined as follows:

- Eighty percent (80%) of the Net Settlement Amount will be apportioned among Wage Statement Class Members on a pro rata, per pay period basis, based on the number of pay periods with payment for shift differential and/or shift premium wages between April 6, 2019, through and including February 6, 2021.
- Twenty percent (20%) of the Net Settlement Amount will be apportioned proportionally among Sick Pay Class Members on a per capita basis.

All Individual Settlement Payments will be treated as penalties and shall not be subject to withholding of employment taxes and shall be reported by IRS 1099 forms.

According to Accenture Flex's records, the total number of Pay Periods that you worked as an employee in California during the Class Period wherein you were paid "ShiftDiff" and/or "ShiftPremPerct" wages is [REDACTED].

According to Accenture Flex's records, you [are/are not] a former employee of Accenture Flex who received "ShiftDiff" and/or "ShiftPremPerct" wages and sick pay in the same pay period during the Class Period.

If you disagree with the above information and would like someone to look into the matter, please

follow the procedure below. Based on the above information, your estimated settlement amount is [REDACTED].

**6. What if I disagree with information or the number of pay periods shown above?**

If you believe the information in the notice is incorrect regarding the number of pay periods for Wage Statement Class Members, or regarding whether you should be considered as a Sick Pay Class Member, you can provide documentation or explanation to the Settlement Administrator to show contrary information. For Wage Statement Class Members, you can write a letter setting forth the number of pay periods that you worked as an employee in California during the Class Period wherein you were paid “ShiftDiff” and/or “ShiftPremPercnt” wages that you believe are correct. If you believe you should be considered as a Sick Pay Class Member, you can write a letter explaining your eligibility as a member of the Sick Pay Class. You may attach any relevant documentation in support thereof. You must mail or fax your letter to:

[INSERT CLAIMS ADMINISTRATION INFORMATION]

You must submit such information by [REDACTED]. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

**7. What do I have to do to receive a share of the settlement?**

If you would like to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. If you move, you must notify the Settlement Administrator of your new address. You will be covered by the release summarized in Section 8, below.

**8. What rights am I giving up?**

The claims you will release by doing nothing and participating in the settlement are as follows:

If you are a class member of the Wage Statement Class, all claims based on the facts in the Complaint or in Plaintiff’s PAGA Notice against the Released Parties, that accrued during the Class Period for the Wage Statement Class, arising out of any violation of Labor Code section 226, including: (a) any and all claims for failure to furnish accurate itemized wage statements; (b) all derivative claims for statutory penalties and/or civil penalties under PAGA premised on any violation of Labor Code section 226; and (c) pre-judgment interest and claims for attorneys’ fees and costs.

If you are a class member of the Sick Pay Class, all claims based on the facts in the Complaint or in Plaintiff’s PAGA Notice against the Released Parties, that accrued during the Class Period for the Sick Pay Class, arising out of any violation for failure to pay sick pay, including: (a) any claims

for waiting time penalties under Labor Code section 203; (b) all derivative claims for statutory penalties and/or civil penalties under PAGA premised on any violation of Labor Code sections 201, 202, 203 and/or 246; and (c) pre-judgment interest and claims for attorneys' fees and costs.

## **9. What if I do not wish to be involved?**

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, [insert name of administrator], at the following address by XXXX.

### **[INSERT CLAIMS ADMINISTRATION INFORMATION]**

Your letter must include (1) your name, present address, and telephone number; (2) a statement indicating your request to opt out of or be excluded from the settlement; (3) your signature; and (4) be postmarked or fax stamped on or before XXX.

If your Request for Exclusion is postmarked or fax stamped after XXX, it will be rejected as untimely, and you will be a Settlement Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Settlement Class Member and will not receive any payment as part of this settlement. Such individuals will keep any right to sue Accenture Flex separately about the claims made in this lawsuit, with the exception of the PAGA claim, which will be released upon court approval of the PAGA Settlement.

## **10. What if I have an objection?**

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator by mail or fax no later than XXXX. The Court will decide on the objections at the Final Approval Hearing. If your objection is overruled at the Final Approval Hearing, you will still be bound by the terms of this settlement and will receive a settlement payment.

For written objections to be valid, you must state your full name and the basis of your objection. Any class member may make an objection at the Final Approval Hearing with or without submitting any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Judge and serve Class Counsel and Defense Counsel no later than [redacted]. The Final Approval and Fairness Hearing will be held in Dept. 1 of the Santa Clara County Superior Court, Downtown Courthouse, located at 191 N. 1st Street, San Jose, California on [redacted], 2021, at XXX (Pacific Time).

## **11. Do I need a lawyer? Who are the lawyers in this case?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf.

However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel:

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

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

## **12. What happens next in the case?**

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 1 of the Santa Clara County Superior Court, Downtown Courthouse, located at 191 N. 1st Street, San Jose, California at \_\_\_\_\_, 2021, at XXX (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's service award, and the costs of claims administration. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

Due to the ongoing COVID-19 pandemic, hearings before the judge overseeing this case are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. If that remains the case at the time of the Final Approval Hearing, class members who wish to appear at the Final Approval Hearing should contact class counsel to arrange a remote appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member shall be paid by class counsel.

## **13. How can I receive more information?**

This notice is a summary of the basic terms of the settlement. For further information, you may telephone the [INSERT CLAIMS ADMINISTRATION INFORMATION], or Class Counsel (listed above). You may also review the settlement agreement, which is on file with the Clerk of the Santa Clara Superior Court, 191 N. First Street, San Jose, CA 95113, and may also be reviewed online at [insert court website link].

**ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S ATTORNEYS:** Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Phone: (213) 488-6555; and William L. Marder of Polaris Law Group LLP, 501 San Benito Street, Suite 200, Hollister, CA 95023, Phone: (831) 531-4214.

**Please do not telephone the Court, the Office of the Clerk, or Accenture Flex's counsel for**

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**information regarding this settlement.**