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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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11 JON BETTERTON,

12 Plaintiff,

13 vs.
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15 ACCENTURE FLEX, LLC, et al.,

16 Defendants.
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Case No.: 20CV368771

**ORDER CONCERNING
PLAINTIFF’S MOTION FOR FINAL
APPROVAL OF CLASS/PAGA
SETTLEMENT AND JUDGMENT**

18 This is a putative class and Private Attorneys General Act (“PAGA”) action on behalf of
19 employees of Defendant Accenture Flex, LLC. Plaintiff alleges that Defendant failed to include
20 shift differentials in employees’ regular rates of pay, including for purposes of cashing out sick
21 leave. The parties reached a settlement, which the Court preliminarily approved in an order filed
22 on August 13, 2021. The factual and procedural background of the action and the Court’s
23 analysis of the settlement and settlement class are set forth in that order.

24 Before the Court is Plaintiff’s motion for final approval of the settlement and for approval
25 of his attorney fees, costs, and service award. The motion is unopposed. The Court issued a
26 tentative ruling on December 14, 2021, and no one appeared at the hearing on December 16 to
27 contest it. The Court now issues its final order, which GRANTS final approval.
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1 **I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

2 **A. Class Action**

3 Generally, “questions whether a [class action] settlement was fair and reasonable,
4 whether notice to the class was adequate, whether certification of the class was proper, and
5 whether the attorney fee award was proper are matters addressed to the trial court’s broad
6 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
7 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
8 260.)

9 In determining whether a class settlement is fair, adequate and reasonable, the
10 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
11 the risk, expense, complexity and likely duration of further litigation, the risk of
12 maintaining class action status through trial, the amount offered in settlement, the
13 extent of discovery completed and the stage of the proceedings, the experience
14 and views of counsel, the presence of a governmental participant, and the reaction
15 of the class members to the proposed settlement.
16 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

17 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
18 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
19 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
20 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
21 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
22 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
23 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
24 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
25 marks omitted.)

26 The burden is on the proponent of the settlement to show that it is fair and
27 reasonable. However “a presumption of fairness exists where: (1) the settlement
28 is reached through arm’s-length bargaining; (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently; (3) counsel is
2 experienced in similar litigation; and (4) the percentage of objectors is small.”
3 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
4 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
5 and objectively analyze the evidence and circumstances before it in order to determine whether
6 the settlement is in the best interests of those whose claims will be extinguished,” based on a
7 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

8 **B. PAGA**

9 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
10 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
11 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
12 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
13 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
14 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
15 (2014) 59 Cal.4th 348, 380.)

16 Similar to its review of class action settlements, the Court must “determine independently
17 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
18 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco United States* (Nov. 30, 2021,
19 Nos. A159410, A160133, A159978) ___Cal.App.5th___ [2021 Cal. App. LEXIS 1005, at *25–
20 26].) It must make this assessment “in view of PAGA’s purposes to remediate present labor law
21 violations, deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at *27; see
22 also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [“when a
23 PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and
24 meaningful, consistent with the underlying purpose of the statute to benefit the public”],
25 quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
26 201 F.Supp.3d 1110 (*O’Connor*).) The settlement must be reasonable in light of the potential
27 verdict value. (See *O’Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than
28 one percent of the potential verdict].) But a permissible settlement may be substantially

discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

II. TERMS AND ADMINISTRATION OF SETTLEMENT

The non-reversionary gross settlement amount is \$1,500,000. Attorney fees of up to \$500,000 (one-third of the gross settlement), litigation costs not to exceed \$20,000, and administration costs of up to \$9,950 will be paid from the gross settlement. \$100,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named plaintiff will also seek an enhancement award of \$10,000.

The net settlement will be apportioned 80 percent to the Wage Statement Class and 20 percent to the Sick Pay Class and distributed to Wage Statement Class members pro rata based on their weeks worked during the applicable class period and to Sick Pay Class Members on a per capita basis. The average payment will be \$1,212.40 to each Wage Statement Class member and \$1,180.07 to each Sick Pay Class member. Class members will not be required to submit a claim to receive their payments. Settlement payments will be allocated 100 percent to penalties for tax purposes. Funds associated with checks uncashed after 180 days will be redistributed to the class; after an additional 90 days, remaining funds will be deposited with the State of California’s unclaimed property fund in the name of the appropriate class member.

Wage Statement Class members who do not opt out of the settlement will release 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 specified claims. Sick Pay Class members will release all such claims “arising out of any violation for failure to pay sick pay”

The notice process has now been completed. There were no objections to the settlement or requests for exclusion from the class. Of 621 notice packets, 12 were re-mailed to updated addresses and 2 were ultimately undeliverable. The administrator estimates that the average payment to class members will be \$1,443.98, with a maximum payment of \$4,288.26 and a minimum payment of \$82.24.

1 At preliminary approval, the Court found that the proposed settlement provides a fair and
2 reasonable compromise to Plaintiff's claims, and that the PAGA settlement is genuine,
3 meaningful, and fair to those affected. It finds no reason to deviate from these findings now,
4 especially considering that there are no objections. The Court thus finds that the settlement is
5 fair and reasonable for purposes of final approval.

6 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

7 Plaintiff seeks a fee award of \$500,000, or one-third of the gross settlement, which is not
8 an uncommon contingency fee allocation in a wage and hour class action. This award is facially
9 reasonable under the "common fund" doctrine, which allows a party recovering a fund for the
10 benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar
11 figure of \$229,975, based on 349.9 hours spent on the case by counsel billing at \$500–750 per
12 hour. Plaintiff's request results in a reasonable multiplier of 2.17. The lodestar cross-check
13 supports the percentage fee requested, particularly given the lack of objections to the attorney fee
14 request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court
15 did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked
16 against a lodestar resulting in a multiplier of 2.03 to 2.13].)

17 Plaintiff's counsel also requests \$8,341.03 in costs, below the estimate provided at
18 preliminary approval. Plaintiff's costs appear reasonable based on the summary provided and
19 are approved. The \$9,950 in administrative costs are also approved.

20 Finally, Plaintiff requests a service award of \$10,000. To support his request, he submits
21 a declaration describing his efforts on the case. The Court finds that the class representative is
22 entitled to an enhancement award and the amount requested is reasonable.

23 **IV. ORDER AND JUDGMENT**

24 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
25 DECREED THAT:

26 The motion for final approval is GRANTED. The following classes are certified for
27 settlement purposes:
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- The Wage Statement Class of “all current and former non-exempt employees of Defendant in California 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.
- The Sick Pay Class of “all non-exempt employees of Defendant in California 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 of preliminary approval, whichever is earlier.

No one is excluded from the class.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **October 20, 2022 at 2:30 P.M.** in Department 1. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted to the State of California’s unclaimed property fund; the status of any unresolved issues; and any other matters appropriate to bring to the Court’s attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the

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2 compliance hearing remotely.

3 **IT IS SO ORDERED.**

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5 Date: December 17, 2021



6 The Honorable Sunil R. Kulkarni
7 Judge of the Superior Court
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