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Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

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

Plaintiff,

vs.

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

Defendants.

Case No. 20CV368771

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

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

Date: August 12, 2021

Time: 1:30 pm

Dept.: 1

Complaint Filed: July 29, 2020

Trial Date: None

1 Plaintiff Jon Betterton's ("Plaintiff") application for an Order Granting Preliminary  
2 Approval of Class Action Settlement was filed with the Court on July 21, 2021, and a hearing  
3 was held before this Court on August 12, 2021. Plaintiff's counsel, Larry W. Lee and Mai  
4 Tulyathan of Diversity Law Group, P.C., appeared on behalf of Plaintiff, and Defendant's  
5 counsel, Sophia Behnia and Anthony G. Ly, appeared on behalf of Defendant Accenture Flex,  
6 LLC ("Defendant").

7 Having considered the Joint Stipulation of Class Action and PAGA Settlement and  
8 Release ("Stipulation" or "Settlement Agreement") and all other papers filed in this action, the  
9 Court HEREBY FINDS AND ORDERS as follows:

10 1. This Court grants preliminary approval of the Settlement Agreement between  
11 Plaintiff and Defendant filed herewith. The Settlement Agreement appears to be fair, adequate,  
12 and reasonable to the Class.

13 2. The Class Representative and Defendant (hereafter, "Settling Parties"), through  
14 their counsel of record, have reached an agreement to settle the class and PAGA claims in the  
15 case as set forth in the Settlement Agreement, on behalf of the Class (as defined below and in the  
16 Settlement Agreement).

17 a. All current and former non-exempt employees of Defendant in the State of  
18 California who were paid shift differential and/or shift premium wages, including without  
19 limitation "ShiftDiff" and/or "ShiftPremPerct" wages, at any time during April 6, 2019, to and  
20 including February 6, 2021 (the "Wage Statement Class"); and

21 b. All non-exempt employees of Defendant in the State of California who  
22 were paid non-discretionary incentive remuneration, including without limitation "ShiftDiff"  
23 and/or "ShiftPremPerct" wages, and sick pay in the same pay period, and whose employment  
24 ended (either voluntarily or involuntarily) at any time from April 6, 2017, through and including  
25 July 31, 2021, or the date the Court grants preliminary approval of the settlement, whichever is  
26 the earlier date (the "Sick Pay Class");<sup>1</sup>

27 3. Should for whatever reason the Settlement Agreement not become Final, the fact  
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<sup>1</sup> The Wage Statement Class and Sick Pay Class are collectively referred to as the "Class."

that the Parties were willing to stipulate to certification of a class as part of the Settlement Agreement shall have no bearing on, or be admissible in connection with, the case or the issue of whether a class should be certified in a non-settlement context.

4. The Court appoints and designates: (a) Plaintiff Jon Betterton as the Class Representative and (b) Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with respect to all acts or consents required by, or which may be given, pursuant to the Settlement Agreement, and such other acts reasonably necessary to finalize the Settlement Agreement and its terms. Any Class Member may enter an appearance through his or her own counsel at such Class Member's own expense. Any Class Member who does not enter an appearance or appear on his or her own behalf will be represented by Class Counsel.

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

6. The Court hereby approves the following dates:

| Description                        | Date                                                         |
|------------------------------------|--------------------------------------------------------------|
| Class Information to Administrator | 14 calendar days after the Court grants preliminary approval |

|                                                            |                                                          |
|------------------------------------------------------------|----------------------------------------------------------|
| Class Notice Distribution                                  | 5 business days after receiving Class Information        |
| Opt Out/Written Objection Deadline                         | 60 calendar days after initial Class Notice distribution |
| Opt Out/Written Objection Deadline (for re-mailed notices) | 15 calendar days extension for re-mailed notices         |
| Final Approval Filing Deadline                             | 16 court days before the Final Approval Hearing          |
| <b>Final Approval Hearing</b>                              | <b>December 16, 2021 at 1.30 PM</b>                      |

A final fairness hearing on the question of whether the proposed Settlement Agreement, the allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, the payment to the Settlement Administrator, the payment to the Labor Workforce & Development Agency, and the service payment to the Class Representative should be finally approved as fair, reasonable, and adequate as to the members of the Class is hereby set for December 16, 2021, at 1:30 p.m. in this Court. The Motion for Final Approval shall be filed by the Class Representative no later than sixteen (16) court days before the final fairness hearing.

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

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

9. Any Class Member may choose to opt out of and be excluded from the Settlement as provided in the Settlement Agreement and Class Notice, and by following the instructions for requesting exclusion. Any person who timely and properly opts out of the Settlement will not be bound by the Settlement Agreement or have any right to object, appeal, or comment thereon. Any requests for exclusion must be in writing and signed by each such Class Member opting out and must otherwise comply with the requirements delineated in the Class Notice. Class

1 Members who have not requested exclusion by submitting a valid and timely request by the  
2 deadline shall be bound by all determinations of the Court, the Settlement Agreement, and  
3 Judgment.

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

8 11. The Court reserves the right to adjourn or continue the date of the Settlement  
9 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to  
10 the Class, and retains jurisdiction to consider all further applications arising out of or connected  
11 with the Class Settlement Agreement.

12 IT IS SO ORDERED.

13  
14 DATED: \_\_\_\_\_

\_\_\_\_\_  
HON. SUNIL KULKARNI  
SUPERIOR COURT OF CALIFORNIA

# EXHIBIT A

**[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 "ShiftPremPercent" wages is [REDACTED].

According to Accenture Flex's records, you [are/are not] a former employee of Accenture Flex who received "ShiftDiff" and/or "ShiftPremPercent" 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  
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William L. Marder (State Bar No. 170131)  
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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.**