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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**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE §
226(a);
- (2) VIOLATION OF LABOR CODE §§ 201-
203; AND
- (3) VIOLATION OF LABOR CODE §§ 2698,
ET SEQ.

DEMAND OVER \$25,000

1 Plaintiff Jon Betterton (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendant Accenture Flex, LLC (“Defendant”), and Does 1-50
3 (collectively, “Defendants”), as an individual and on behalf of all other similarly situated current
4 and former employees of Defendants for penalties and/or damages under the California Labor
5 Code for failure to provide accurate itemized wage statements and failure to pay sick pay at the
6 regular rate of pay, as follows

7 **INTRODUCTION**

8 1. This Complaint is within the Court’s jurisdiction under California Labor Code
9 §§ 201-203, 226(a), 246, and 2698, *et seq.*, and the California Industrial Welfare Commission’s
10 (“IWC”) Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against employees of Defendants.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 jointly and severally have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to pay sick pay at the regular rate of pay and by
16 failing to keep accurate records as to Plaintiff and other employees.

17 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
18 engaged in, among other things a system of willful violations of the California Labor Code and
19 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
20 knowingly deny employees the above stated rights and benefits.

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of the California Labor Code
23 §§ 201-203, 226(a), 246, and 2698, *et seq.*

24 6. Venue is proper in Santa Clara County because Defendant operates a business
25 location in this County, and Plaintiff worked for Defendant in this County.

26 **PARTIES**

27 7. Plaintiff is a former employee of Defendant. From in or about September 2018 to
28 on or about November 23, 2019, Plaintiff worked for Defendant as a content moderator.

1 Throughout her employment with Defendant, Plaintiff was a non-exempt employee, and was
2 paid hourly.

3 8. During his employment with Defendant, Plaintiff was paid various non-
4 discretionary incentive wages, including without limitation, “ShiftDiff” and/or
5 “ShiftPremPercent” wages. During his employment with Defendant, Plaintiff was also paid
6 wages for sick time.

7 9. Plaintiff was and is the victim of the policies, practices, and customs of
8 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
9 by California Labor Code §§ 201-203, 226(a), 246, and 2698, *et seq.*, and the applicable IWC
10 Wage Orders.

11 10. Plaintiff is informed and believes and based thereon alleges that Defendant was
12 and is a Delaware limited liability company doing business in the State of California. Defendant
13 is in the business of providing professional and specialized staffing services to its clients across
14 the United States, including in the State of California and the County of Santa Clara.

15 11. Plaintiff is informed and believes and based thereon alleges that at all times herein
16 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
17 partnerships, licensed to do business and actually doing business in the State of California.

18 12. As such, and based upon all the facts and circumstances incident to Defendants’
19 business in California, Defendants are subject to California Labor Code §§ 201-203, 226(a), 246,
20 and 2698, *et seq.*, and the IWC Wage Orders.

21 13. Plaintiff does not know the true names or capacities, whether individual, partner
22 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
23 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
24 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
25 based thereon alleges that each of said fictitious Defendants were responsible in some way for
26 the matters alleged herein and proximately caused Plaintiff and members of the general public
27 and class to be subject to the illegal employment practices, wrongs and injuries complained of
28 herein.

1 14. At all times herein mentioned, each of said Defendants participated in the doing
2 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
3 Defendants, and each of them, were the agents, servants and employees of each of the other
4 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
5 acting within the course and scope of said agency and employment.

6 15. Plaintiff is informed and believes and based thereon alleges that at all times
7 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
8 joint venturer of, or working in concert with each of the other co-defendants and was acting
9 within the course and scope of such agency, employment, joint venture, or concerted activity.
10 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
11 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
12 Defendants.

13 16. At all times herein mentioned, Defendants, and each of them, were members of,
14 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
15 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16 17. At all times herein mentioned, the acts and omissions of various Defendants, and
17 each of them, concurred and contributed to the various acts and omissions of each and all of the
18 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
19 herein mentioned, Defendants, and each of them, ratified each and every act or omission
20 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
21 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
22 the damages as herein alleged.

23 **CLASS ACTION ALLEGATIONS**

24 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
25 California Code of Civil Procedure § 382. Plaintiff proposes the following Classes:

26 a. All current and former non-exempt employees of Defendant in the State of
27 California who were paid shift differential wages, including without limitation, “ShiftDiff”
28 wages, at any time during April 6, 2019, to the present (the “ShiftDiff Wage Statement Class”);

1 b. All current and former non-exempt employees of Defendant in the State of
2 California who were paid shift premium wages, including without limitation, “ShiftPremPerct”
3 wages, at any time during April 6, 2019, to the present (the “ShiftPrem Wage Statement Class”);
4 and

5 c. All non-exempt employees of Defendant in the State of California who
6 were paid non-discretionary incentive remuneration, including without limitation, “ShiftDiff”
7 and/or “ShiftPremPerct” wages, and sick pay in the same workweek, and whose employment
8 ended (either voluntarily or involuntarily) at any time from April 6, 2017, through the present
9 (the “Sick Pay Class”).

10 19. Plaintiff reserves the right to propose additional classes and/or subclasses, and or/
11 amend the above class definitions upon further discovery and investigation.

12 20. **Numerosity and Ascertainability:** The members of the Classes are so numerous
13 that joinder of all members would be impractical, if not impossible. The identity of the class
14 members is readily ascertainable by review of Defendants’ records, including payroll records.
15 Plaintiff alleges that Defendants: (a) failed to provide accurate itemized wage statements in
16 violation of Labor Code § 226(a); and (b) failed to pay employees sick pay at the regular rate of
17 pay, in violation of Labor Code §§ 201-203 and 246.

18 21. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
19 necessary steps to represent fairly and adequately the interests of the Classes defined above.
20 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the Classes and
21 individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
22 actions in the past and currently have a number of wage-and-hour class actions pending in
23 California state and federal courts.

24 22. Defendants uniformly administered a corporate policy and practice of: (a) failing
25 to provide employees with accurate itemized wage statements, in violation of Labor Code §
26 226(a); and (b) failing to pay employees sick pay at the regular rate of pay, in violation of Labor
27 Code §§ 201-203 and 246.

28 //

1 23. Plaintiff is informed and believes, and based thereon alleges, that this corporate
2 conduct is accomplished with the advance knowledge and designed intent to willfully and
3 intentionally fail to accurately record hourly rates of pay and hours worked.

4 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
5 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
6 Labor Code §§ 201-203, 226(a), 246, and the applicable IWC Wage Orders.

7 25. **Common Question of Law and Fact:** There are predominant common questions
8 of law and fact and a community of interest amongst Plaintiff and the claims of the Classes
9 concerning Defendants' policy and practice of: (a) failing to provide employees with accurate
10 itemized wage statements, in violation of Labor Code § 226(a); and (b) failing to pay employees
11 sick pay at the regular rate of pay, in violation of Labor Code §§ 201-203 and 246.

12 26. **Typicality:** The claims of Plaintiff are typical of the claims of all class members
13 in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner
14 as class members. As with all other Wage Statement Class Members, Plaintiff was a non-exempt
15 employee and was paid hourly. During his employment with Defendant, Plaintiff was also paid
16 shift differential wages, such as "ShiftDiff" and/or "ShiftPremPerct" wages. Whenever
17 Plaintiff was paid said "ShiftDiff" and/or "ShiftPremPerct" wages, the wage statements issued
18 by Defendants violated Labor Code § 226(a). Specifically, whenever "ShiftDiff" wages were
19 paid to Plaintiff, Defendants failed to identify both the applicable hourly rate of pay and hours
20 used to calculate such wages on Plaintiff's corresponding wage statements. Similarly, whenever
21 "ShiftPremPercent" wages were paid to Plaintiff, Defendants also failed to identify the
22 applicable hourly rate of pay for said wages on Plaintiff's corresponding wage statements. These
23 are direct violations of Labor Code § 226(a)(9). As a separate violation under the Labor Code,
24 Defendants also violated Labor Code §§ 201-203 and 246 as to Plaintiff. As with other Sick Pay
25 Class Members, Plaintiff routinely earned non-discretionary incentive wages, such as "ShiftDiff"
26 and/or "ShiftPremPerct" wages identified above, that increased Plaintiff's regular rate of pay.
27 However, whenever sick pay was paid to Plaintiff, it was paid at Plaintiff's base rate of pay
28 rather than the correct, higher regular rate of pay that included any non-discretionary incentive

1 wages. To date, Plaintiff has yet to receive the underpaid wages owed to him. As such, Plaintiff
2 is a member of the classes and has suffered the alleged violations of California Labor Code §§
3 201-203, 226(a), and 246.

4 27. The California Labor Code and upon which Plaintiff bases these claims is broadly
5 remedial in nature. These laws and labor standards serve an important public interest in
6 establishing minimum working conditions and standards in California. These laws and labor
7 standards protect the average working employee from exploitation by employers who may seek
8 to take advantage of superior economic and bargaining power in setting onerous terms and
9 conditions of employment.

10 28. The nature of this action and the format of laws available to Plaintiff and
11 members of the Classes identified herein make the class action format a particularly efficient and
12 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
13 file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable
14 advantage since it would be able to exploit and overwhelm the limited resources of each
15 individual Plaintiff with Defendant's vastly superior financial and legal resources. Requiring
16 each class member to pursue an individual remedy would also discourage the assertion of lawful
17 claims by employees who would be disinclined to file an action against their former and/or
18 current employer for real and justifiable fear of retaliation and permanent damage to their careers
19 at subsequent employment.

20 29. The prosecution of separate actions by the individual class members, even if
21 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
22 to individual class members against Defendants and which would establish potentially
23 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
24 individual class members which would, as a practical matter, be dispositive of the interest of the
25 other class members not parties to the adjudications or which would substantially impair or
26 impede the ability of the class members to protect their interests. Further, the claims of the
27 individual class members are not sufficiently large to warrant vigorous individual prosecution
28 considering all of the concomitant costs and expenses.

1 30. Such a pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation described herein is unlawful and creates an entitlement to
3 recovery by the Plaintiff and the Classes identified herein, in a civil action, for all applicable
4 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
5 of California Labor Code §§ 201-203, 218.5, 226, and 1194, and Code of Civil Procedure §
6 1021.5.

7 31. Proof of a common business practice or factual pattern, which the named Plaintiff
8 experienced and is representative of, will establish the right of each of the class members to
9 recovery on the causes of action alleged herein.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE § 226(a)**

12 **(BY PLAINTIFF AND THE SHIFTDIFF AND SHIFTPREM WAGE STATEMENT**
13 **CLASSES AGAINST ALL DEFENDANTS)**

14 32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 as
15 though fully set for herein.

16 33. Labor Code § 226(a) requires employers to provide itemized wage statements to
17 its employees that identify accurate information, including without limitation, all applicable
18 hourly rates of pay in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate. *See* Labor Code § 226(a)(9). Defendants, as a matter of policy and
20 practice, failed in its affirmative obligation to provide accurate itemized wage statements to
21 Plaintiff and Class Members, in violation of Labor Code § 226(a).

22 34. Specifically, Defendants violated Labor Code § 226(a)(9) by failing to identify
23 the applicable hourly rate of pay and corresponding hours worked whenever shift differential
24 wages, such as "ShiftDiff" and/or "ShiftPremPercent" wages, were paid. In particular,
25 whenever "ShiftDiff" wages were paid, Defendants blatantly omit both the applicable hourly
26 rate of pay and hours worked used to calculate those wages on the wage statements. Likewise,
27 whenever "ShiftPremPercent" wages were paid, Defendants do not identify the applicable
28 hourly rate of pay for said wages.

1 35. The issuance of inaccurate wage statements caused “injury” under Labor Code §
2 226(e) to Plaintiff and Class Members as they cannot accurately verify and/or calculate their
3 wages. Without identifying the hourly rates of pay and hours worked for shift differential
4 wages on the wage statements, Plaintiff and Class Members cannot determine whether they
5 were accurately paid those wages during each particular pay period based on information
6 provided in the four corners of the wage statements alone.

7 36. Such a pattern, practice and uniform administration of corporate policy as
8 described herein is unlawful and creates an entitlement to recovery by Plaintiff and Class
9 Members identified herein, in a civil action, for all damages or penalties pursuant to Labor
10 Code § 226, including interest thereon, attorneys’ fees, and costs of suit according to the
11 mandate of California Labor Code § 226.

12 **SECOND CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE §§ 201-203**

14 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

15 37. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 36 as
16 though fully set forth herein.

17 38. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees be
18 “calculated in the same manner as the regular rate of pay for the workweek in which the
19 employee uses paid sick time, whether or not the employee actually works overtime in that
20 workweek.”

21 39. Labor Code § 246(l)(2) further provides that paid sick time for non-exempt
22 employees be “calculated by dividing the employee’s total wages, not including overtime
23 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
24 of employment.”

25 40. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
26 rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive
27 remuneration, including without limitation, “ShiftDiff” and/or “ShiftPremPercnt” wages, thereby
28 increasing their regular rates of pay to amounts that were higher than their base rates of pay.

1 However, whenever sick pay was paid to Plaintiff and Class Members, it was paid at their base
2 rates of pay rather than the correct, higher regular rates of pay, as required under Labor Code §
3 246.

4 41. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
5 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor
6 Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such
7 failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class
8 Members whose employment has separated are entitled to waiting time penalties pursuant to
9 Labor Code §§ 201-203.

10 42. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation as described herein is unlawful and creates an entitlement to
12 recovery by the Plaintiff and Class Members identified herein, in a civil action, for the unpaid
13 balance of the full amount of damages and penalties, attorneys' fees, and costs of suit according
14 to the mandate of California Labor Code §§ 201-203, 218.5, and 1194.

15 **THIRD CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

17 **(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL**
18 **DEFENDANTS)**

19 43. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 as
20 though fully set forth herein.

21 44. Plaintiff brings this cause of action as a proxy for the State of California and in
22 this capacity, seeks penalties on behalf of all Aggrieved Employees from June 3, 2019, through
23 the present, for Defendants' violations of Labor Code §§ 201-203, 226(a), and 246, arising from
24 Defendants' following misconduct alleged above: (a) failure to provide accurate itemized wage
25 statements to Plaintiff and Aggrieved Employees, in violation of Labor Code § 226(a); and (b)
26 failure to pay Plaintiff and Aggrieved Employees sick pay at the regular rate of pay, in violation
27 of Labor Code §§ 201-203 and 246.

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45. Based on the above-stated Labor Code violations, Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause of action on behalf of the State of California for violations committed against all similarly situated Aggrieved Employees of Defendants.

46. On or about June 3, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-203, 226(a), and 246, pursuant to Labor Code § 2698, *et seq.* As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in Plaintiff’s written notice. In addition to the LWDA, Plaintiff also sent his written notice to Defendants via certified mail according to Labor Code § 2699.3.

47. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violations of Labor Code §§ 201-203, 226(a), and 246, for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others that this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Classes as described herein;
3. For an order appointing counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorneys' fees
5. Upon the Second Cause of Action, for unpaid wages and/or penalties pursuant to California Labor Code §§ 201-203, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for the full amount of civil penalties according to the PAGA, Labor Code § 2698, *et seq.*, and for costs and attorneys' fees;
7. On all causes of action, for attorneys' fees and costs as provided by California

1 Labor Code §§ 218.5, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

2 8. For such other and further relief as the Court may deem just and proper.

3
4 DATED: July 29, 2020

DIVERSITY LAW GROUP, P.C.

5 By: 

6 Larry W. Lee

Mai Tulyathan

7 Attorneys for Plaintiff, the Class, and Aggrieved
8 Employees