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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT (SPRING STREET COURTHOUSE)

ZACHARY GURZENSKI, an individual, on
behalf of himself and all other similarly situated
non-exempt current and former employees,

Plaintiffs,

vs.

DELTA AIR LINES, INC., a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 21STCV19287
[ASSIGNED FOR ALL PURPOSES TO
HON. ELIHU M. BERLE, DEPT. 6]

CLASS ACTION

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Filed Concurrently with Declaration of Grant
Joseph Savoy, Esq.; Declaration of Zachary
Gurzenski; and [Proposed] Order]*

Date: January 30, 2023

Time: 9:00am

Dept.: 6

Judge: Hon. Elihu M. Berle

Action Filed: May 20, 2021

Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 30, 2023, at 9:00 AM, or as soon thereafter as this
3 matter may be heard, in Department 6 of the Los Angeles County Superior Court, located at 312 N.
4 Spring Street, Los Angeles, CA 90012, Plaintiff Zachary Gurzenski (“Gurzenski” or “Plaintiff”), will,
5 and hereby does, move this Court for preliminary approval of the Joint Stipulation and Settlement of
6 Class Action and PAGA Settlement reached by the parties in the above-captioned litigation.

7 The motion will be based upon this Notice, the attached Memorandum of Points and Authorities,
8 the accompanying Declarations of Grant Joseph Savoy and Zachary Gurzenski, the Joint Stipulation and
9 Settlement of Class Action and PAGA Settlement, the Notice of Class Settlement, the complete files and
10 records of this case, and any other evidence or oral argument which may be considered by the Court at
11 the time of the hearing.

12 **SOLOUKI | SAVOY, LLP**

13 Dated: January 23, 2023

14 _____
15 Grant Joseph Savoy, Esq.
16 Shoham J. Solouki, Esq.
17 *Attorneys for Plaintiff ZACHARY*
18 *GURZENSKI, And Those Similarly Situated*
19 *Current and Former Employees*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion is brought by Plaintiff Zachary Gurzenski (“Gurzenski” or “Plaintiff”), an individual
4 on behalf of himself and all others similarly situated, seeking approval of the Joint Stipulation and
5 Settlement of Class Action and Representative Action Settlement and Release entered into by Plaintiff, on
6 the one hand, and Defendant Delta Air Lines, Inc. (“Delta” or “Defendant”), on the other, seeking to settle
7 all class claims and Private Attorney General Act (“PAGA”) representative claims brought by Plaintiff on
8 behalf of all current and former hourly employees of Defendant in the above-captioned Action.

9 The instant action (*Gurzenski, et al. v. Delta Air Lines, Inc., et al.*) 21STCV19287 (the “Action”) is
10 a wage and hour class action and Private Attorney General Act representative action brought on behalf of
11 all current and former hourly non-exempt employees of Defendant, employed by Defendant in Department
12 120 at Los Angeles International Airport (“LAX”) at any point during the class period.

13 The Action primarily alleges that Defendant failed to indemnify Plaintiff and the class he seeks to
14 represent for necessary expenditures incurred in the discharge of their duties for Defendant, and failed to
15 timely compensate former employees for all wages owed upon separation of employment. As mentioned
16 above, Plaintiff and Defendant (collectively, the “Parties”) have entered into a Joint Stipulation and
17 Settlement of Class Action and PAGA Settlement¹ (“Settlement” or “Agreement” or “Stipulation”), which
18 provides for a Maximum Settlement Amount of Two Hundred Thousand Dollars (\$200,000.00). Pursuant
19 to the Settlement, Plaintiff now moves for (1) preliminary approval of the Settlement, and (2) conditional
20 certification of the Settlement Class.

21 The Settlement Class is composed of approximately One Thousand Three Hundred Forty-Five
22 (1,345) current and former employees of Defendant working as hourly non-exempt employees working in
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24
25 ¹ The stipulations and concessions contained in the Stipulation and in this Motion,
26 whether express or implied, are made closely and exclusively for the purpose of
27 resolving this lawsuit and facilitating this settlement. Should this settlement not
28 be preliminarily and/or finally approved by the Court for any reason, or is otherwise
terminated for any reason, the stipulations and other concessions made by each Party
individually or collectively shall be null and void and the lawsuit shall revert to

1 Department 120 at LAX at any time from July 1, 2017 through the date of preliminary approval
2 (“Settlement Class” or “Class Members”). The proposed settlement is fair, adequate, and reasonable, and
3 conditional certification of the Settlement Class is appropriate because the requirements of California Code
4 of Civil Procedure § 382 are satisfied. Plaintiff respectfully requests that the Court preliminarily approve
5 this settlement and set a hearing date to consider whether to grant final approval of the Settlement, at which
6 time the Court will consider the request for attorney fees, costs, and the Class Representative Service
7 Award.

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 The Action was filed on May 20, 2021, and originally alleged the following causes of action: (1)
10 Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (2) Failure to
11 Pay All Wages Due to Discharged and Quitting Employees; and (3) Unfair and Unlawful Business
12 Practices. On or about December 7, 2022, via joint stipulation, Plaintiff filed a First Amended Complaint
13 adding an additional 4th cause of action under the California Private Attorneys General Act of 2004
14 (“FAC,” “Complaint,” or “Operative Complaint”). (*Declaration of Grant Joseph Savoy, Esq.* (“Savoy
15 *Decl.*”), at ¶ 3, 4.)

16 Plaintiff Gurzenski is a former non-exempt employee of Defendant, who worked for Defendant as
17 an hourly Ramp Agent in Defendant’s Department 120 of its LAX facility. Plaintiff asserts that he and
18 the Class Members were routinely required to purchase their own mandatory personal protective
19 equipment, mandatory safety equipment and tools, and personal cell phone data and minutes as a direct
20 consequent of the discharge of their employment duties. (*Savoy Decl.*, at ¶ 5.)

21 Defendant Delta engages in the business of airline travel and shipping, both nationally and
22 internationally. There are approximately One Thousand Three Hundred Forty-Five (1,345) current and
23 former employees Defendant who are eligible to participate in the Settlement. (*Savoy Decl.*, at ¶ 6.)
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its status with respect to any and all matters encompassed or embraced in the
28 Stipulation as they existed prior to the Parties entering into the Stipulation.

1 **III. SUMMARY OF THE SETTLEMENT²**

2 **A. Settlement Negotiations**

3 On September 27, 2022, the Parties attended a mediation session with mediator Steve Pearl,
4 Esq., an experienced class action mediator. In anticipation of the mediation, the Parties represent that they
5 conducted significant investigation and discovery of the facts and law. Defendant informally and formally
6 produced, among other things, hundreds of pages class data, Defendant's relevant policies and procedures
7 pertaining to the claims raised in the Complaint, and Plaintiff's personnel file (inclusive of Plaintiff's time
8 and payroll records). As part of Defendant's production, Class Counsel represents it also reviewed
9 information relating to the size and scope of the Class, as well as data permitting Class Counsel to
10 understand the number of workweeks and pay periods in the Class Period. The Parties agree that the above-
11 described investigation and evaluation, formal discovery, as well as the information exchanged during the
12 settlement negotiations, were more than sufficient to assess the merits of the respective Parties' positions
13 and to compromise the issues on a fair and equitable basis. (*Savoy Decl.*, at ¶ 8.)

14 At this mediation, the Parties discussed Plaintiff's claims, theories for class certification and
15 Defendant's defenses thereto. The Parties also analyzed the potential exposure of Defendant on Plaintiff's
16 claims, Defendant's potential liability for penalties and interest, as well as the potential risks associated
17 with litigating this Action through a contested class certification, trial, and potential appeal(s). The
18 mediation lasted the entire day and allowed the Parties to better understand each other's respective
19 positions as to the claims, defenses, and Defendant's potential exposure to liability. The parties'
20 negotiations resulted in an agreement to resolve the Action based on the terms set forth herein for the
21 Maximum Settlement Amount of Two Hundred Thousand U.S. Dollars (\$200,000.00). (*Savoy Decl.*, at ¶
22 9.) A true and accurate copy of the Agreement is attached to the Declaration of Grant Joseph Savoy, Esq.
23 as **Exhibit "A"** thereto.

24 **B. Definition of Settlement Class**

25 "Settlement Class" or "Class" or "Class Members" means all persons employed by Delta as non-
26 exempt employees working in Department 120 at LAX at any time from July 1, 2017, through the
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1 Preliminary Approval Date. The Class is estimated to consist of One Thousand Three Hundred Forty-Five
2 (1,345) persons with an estimated 163,607 workweeks, and includes 1,028 “PAGA Members” or
3 “Aggrieved Employees,” defined as all persons employed by Delta as non-exempt employees working in
4 Department 120 at LAX in California at any time from March 16, 2020, through the Preliminary Approval
5 Date., who worked an estimated 32,191 PAGA pay periods. (*Settlement*, paragraphs 4, 28.)

6 **C. Settlement Terms**

7 In exchange for a release of claims against Defendant, as set forth in the Settlement, the payment
8 terms of the Settlement are as follows:

9 1. The “Maximum Settlement Amount” or “MSA” is the sum of Two Hundred
10 Thousand U.S. Dollars (\$200,000), which represents the maximum amount payable in this Settlement by
11 Delta, and includes all attorneys’ fees, litigation costs, the Settlement Administration Expenses, the Service
12 Enhancement award to the Plaintiff, and all settlement payments to the LWDA and the Class and PAGA
13 Members. (*Settlement*, ¶24.) Subject to Court approval, this amount shall be allocated as follows:

14 2. The “Net Settlement Amount” or “NSA” is the portion of the Maximum Settlement
15 Amount eligible for distribution to Settlement Class Members. It equals the Maximum Settlement amount
16 less Class Counsel’s attorneys’ fees and actual litigation costs as ordered to be paid by this Court, the
17 Settlement Administration Expenses, the LWDA PAGA Penalty Amount, the PAGA Group Payment, and
18 the Service Enhancement to the Class Representative. (*Settlement*, ¶ 25.)

19 a. The parties specifically agree, subject to Court approval, to the following
20 allocations to be paid from the Maximum Settlement Amount:

21 (a) From the Maximum Settlement Amount, Plaintiff’s Counsel may seek from the Court
22 attorneys’ fees up to 1/3 of the Maximum Settlement Amount, and actual litigation costs and
23 expenses up to \$20,000. Delta will not oppose Plaintiff’s application up to these amounts so
24 long as Plaintiff and Plaintiff’s counsel are not in breach of the Settlement Agreement.

25 (b) From the Maximum Settlement Amount, Plaintiff’s Counsel may seek from the Court a
26 Service Enhancement award to Plaintiff not to exceed \$10,000, which Delta will not oppose
27 so long as Plaintiff and Plaintiff’s counsel are not in breach of the Settlement Agreement.
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- (c) From the Maximum Settlement Amount, Settlement Administration Expenses in a reasonable amount currently estimated at \$11,500.
- (d) From the Maximum Settlement Amount, a payment of \$18,750 to the LWDA (the LWDA PAGA Penalty Amount), representing the LWDA's 75% share of the settlement attributable to PAGA penalties.
- (e) From the Maximum Settlement Amount, a payment of \$6,250 to be allocated among PAGA Members based on PAGA Members' eligible employee service time for Covered PAGA Pay Periods, as reflected on Delta's internal records (the PAGA Group Payment). Individual PAGA Group Payments will be calculated as follows: the numerator shall be the number of the PAGA Member's individual Covered PAGA Pay Periods; the denominator shall be the total Covered PAGA Pay Periods for all PAGA Members; this fraction shall be multiplied by the total PAGA Group Payment amount.
- (f) From the Net Settlement Amount (*i.e.*, the remainder of the Maximum Settlement Amount, including interest accruing to it, after payments have been made for attorneys' fees and litigation expenses, the Service Enhancement, the Settlement Administration Expenses, the LWDA PAGA Penalty Amount, and the PAGA Group Payment), Class Settlement Payments will be calculated based on Class Members' eligible employee service time for Covered Class Workweeks, as reflected on Delta's internal records. Individual Class Settlement Payments will be calculated as follows: the numerator shall be the number of the Class Member's individual Covered Class Workweeks; the denominator shall be the total Covered Class Workweeks for all Class Members; this fraction shall be multiplied by the Net Settlement Amount.
- (g) If the Court approves a lesser amount of attorneys' fees and litigation costs or the Service Enhancement, than the amount sought by Plaintiff and Plaintiff's Counsel, any amount disallowed by the Court will be added to the Net Settlement Amount to be distributed in pro rata shares to the Settlement Class Members. The Parties agree that the Settlement Agreement will remain binding with such modification(s) as ordered by the Court, and its

terms will be otherwise unchanged. This Settlement is not conditioned upon the Court's approval of Plaintiff's Counsel's petition for attorneys' fees and litigation costs or the amount of any Service Enhancement awards. Plaintiff's Counsel agrees not to appeal any reduction in the award of attorney's fees, litigation costs, and/or the Service Enhancement awards.

(h) The Settlement Administrator will disburse monies from the Maximum Settlement Amount as and when authorized in this Settlement Agreement and by order of the Court, will file and issue any necessary tax reporting documents, and will inform the Parties and (as required) the Court of its fulfillment of the duties imposed by this Settlement Agreement.

(i) The Settlement Administrator will issue settlement checks to the Settlement Class Members, PAGA Members, and the LWDA under this Settlement Agreement, as well as the Service Enhancement to the Plaintiff and attorneys' fees and costs awarded to Plaintiff's Counsel, by sending such payments by mail or other reliable means to the respective recipients as specified below.

(Settlement, ¶ 55.)

3. Because the Class Settlement Payments and PAGA Group Payments are payment in compromise and settlement of a claim for alleged penalties, interests, and other non-wage damages, these payments will be treated as non-wage income with no tax withholdings to be made, and will be reported, if required by applicable tax laws, by the Settlement Administrator on IRS Form 1099s to the respective Settlement Class Members and applicable governmental authorities. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff's Counsel and applicable governmental authorities for the payment of attorneys' fees and costs in the amount approved by the Court. Plaintiff and Plaintiff's Counsel each agree to hold Delta harmless from and against any damage or penalty incurred by Delta as a result of any taxing authority assessing any tax or penalty upon Delta as a consequence of any tax being due and unpaid on each of their portions of the Maximum Settlement Amount.

(Settlement, ¶ 65.)

4. Settlement Class Members who are sent Class Settlement Payments and PAGA Members who are sent PAGA Group Payments will have 180 calendar days after mailing by the Settlement

1 Administrator to cash settlement checks and will be so advised of such deadline. If such Settlement Class
2 Members and/or PAGA Members do not cash their checks within that period, those checks will become
3 void and a stop payment will be placed on the uncashed checks. Within thirty (30) days after the expiration
4 date of the settlement checks, the Settlement Administrator shall provide to Class Counsel and Delta's
5 Counsel a verification/declaration signed under penalty of perjury that it has mailed the settlement checks
6 to Settlement Class Members and/or PAGA Members, and if uncashed, that such amounts have been sent
7 to the California Controller's Unclaimed Property Fund in the name of the Settlement Class Member
8 and/or PAGA Member thereby leaving no "unpaid residue" subject to the requirements of California Code
9 of Civil Procedure Section 384, subd. (b). (*Settlement*, ¶ 85.)

10 **D. Settlement Administrator Notice to Class Members, Objections, Opt-Out Rights**

11 **1. Settlement Administrator**

12 "Settlement Administrator" means and refers to Phoenix Settlement Administrators, the entity that
13 will be responsible for the administration of the Settlement and related matters as described in this
14 Settlement. (*Settlement*, ¶ 37.)

15 Subsequent to entering into the Settlement Agreement, Class Counsel received quotes for class
16 settlement administration and determined the quote and services provided by Phoenix Class Action
17 Administrators ("Phoenix") to be the most reasonable. (*Savoy Decl.* ¶ 10.) A true and accurate copy of the
18 Phoenix settlement administration quote and associated services is attached to the *Declaration of Grant*
19 *Joseph Savoy, Esq.*, as Exhibit "B."

20 In addition to providing Notice of Settlement ("Notice;" **Exhibit A** to the Settlement Agreement) to
21 Class Members, as described in paragraphs 69 through 72 of the Agreement, the Settlement Administrator
22 will be responsible for the administration of the Settlement, which shall also include: (a) Setting up the
23 Qualified Settlement Fund ("QSF") for the benefit of the Settlement Class members and from which the
24 Settlement payments shall be made, (b) satisfy all federal, state and local and income and other tax
25 reporting, return, and filing requirements with respect to the QSF and any interest or other income earned
26 by the QSF; and (c) satisfy out of the QSF all fees, expenses and costs incurred in connection with the
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opening and administration of the QSF and the performance of its duties and functions as described in this Settlement Agreement. (*Settlement*, ¶ 61).

After all payments have been disbursed from the QSF, the Settlement Administrator shall dissolve the QSF and file a return (SF-1120) with the IRS. (*Settlement*, ¶ 68).

2. Notice to the Settlement Class Members

Within thirty (30) days after the Preliminary Approval Date, Delta shall provide to the Settlement Administrator information in electronic format regarding all Class Members, including name(s), last known residence addresses, Social Security numbers, and dates worked for Covered Class Workweeks. Class Member data shall only be used by the Settlement Administrator for the purpose of calculating settlement shares and finding and notifying Class Members of the settlement. Class Member data will be subject to the Settlement Administrator's confidentiality agreement and shall not be disclosed to the Named Plaintiff, Class Counsel, or any other Class Members without the written consent of Delta, except that Delta will authorize the Settlement Administrator on a case-by-case basis to provide to Plaintiff's Counsel information necessary to field any questions or address any challenges raised by a specific Class Member. (*Settlement*, ¶ 69).

Prior to mailing the Class Notice, the Settlement Administrator will update the addresses for the Class Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. Any returned envelopes from the initial mailing with forwarding addresses will be used by the Settlement Administrator to locate Class Members and re-mail the Class Notice to the correct or updated address. The Settlement Administrator will use all appropriate tracing methods, including skip tracing, to ensure that the Class Notice is received by Class Members. The Settlement Administrator shall also take reasonable steps including skip tracing to locate any Class Member whose Class Notice is returned as undeliverable. (*Settlement*, ¶ 70).

Within fourteen (14) days of receiving the Class Member data from Delta and after it has completed all of the address updates for Class Members, the Settlement Administrator shall mail the Class Notice to Class Members. At least five (5) business days prior to this mailing, the Settlement Administrator shall provide Delta with a report listing the estimated settlement payment amounts to each Class Member. (*Settlement*, ¶ 71).

1 Class Members shall have sixty (60) days from the date of mailing of the Class Notice to opt out of
2 the Class or object to the Settlement. If the 60th day falls on a Sunday or holiday, the deadline will be the
3 next business day that is not a Sunday or holiday. After recalculating estimated settlement allocations to
4 account for opt-outs, Settlement Class Members and PAGA Members will receive their allocation from the
5 settlement fund agreed upon pursuant to this Settlement Agreement and calculated by the Settlement
6 Administrator. (*Settlement*, ¶ 72). All Settlement Administration Expenses shall come out of the MSA.
7 (*Settlement*, ¶ 73).

8 **3. Responses to Notice and Eligibility for Settlement Payments**

9 As noted, Class Members shall have sixty (60) days from the date of mailing of the Class Notice to
10 opt out of the Class or object to the Settlement. (*Settlement*, ¶ 72). Class Members who have not opted out
11 of the settlement will be considered Settlement Class Members eligible to receive a Class Settlement
12 Payment. Only Settlement Class Members will be eligible to receive a Class Settlement Payment.
13 (*Settlement*, ¶ 76).

14 Each Class Notice mailed to a Class Member will identify his or her dates of employment for the
15 Covered Class Workweeks and Covered PAGA Pay Periods that Delta's records indicate the individual
16 worked as a Class Member and PAGA Member, and will estimate each Class Member's pro rata share of
17 the Net Settlement Amount including their share of the PAGA Group Payment as PAGA Members.
18 (*Settlement*, ¶ 77).

19 **a. Workweek and PAGA Pay Period Disputes**

20 Settlement Class Members will have the right to challenge only their dates of employment for the
21 Covered Class Workweeks or for the Covered PAGA Pay Periods as shown on the Class Notice.
22 Settlement Class Members' challenges to their dates of employment for the Covered Class Workweeks or
23 for the Covered PAGA Pay Periods listed on the Class Notice shall be sent directly to the Settlement
24 Administrator at the address indicated on the Class Notice. Any challenge must be made during the Claims
25 Period. The Settlement Administrator will inform Class Counsel and Delta's Counsel in writing of any
26 timely filed challenges. Delta's records are presumed to be accurate unless the Settlement Class Member
27 submits documentation demonstrating otherwise, *i.e.*, a Settlement Class Member who fails to provide
28 written proof will have his or her challenge denied. In the event of any dispute over an individual's
workweeks, Delta's Counsel will investigate the challenge and determine whether any additional

workweeks should be credited to the Settlement Class Member making the challenge. Delta will decide whether the Settlement Class Member's challenge shall be accepted. Delta's decision is final and binding without a right of appeal. (*Settlement*, ¶ 78).

b. Objections

Only Settlement Class Members who do not opt-out may object to the non-PAGA portion of the Settlement. Class Members who opt-out of the Settlement and PAGA Members are not eligible to object. All objections are to be sent no later than sixty (60) days after the mailing of the Class Notice, and such deadline applies notwithstanding any argument regarding non-receipt of the notice. However, failure to send timely written objections in this manner will not foreclose a Class Members' right to have their objection heard at the Final Approval Hearing. A Class Member that fails to send a timely written objection, or appear at the Final Approval Hearing to have their objection heard, shall be deemed to have waived any objections and shall be foreclosed from filing any appeal from any Final Approval Order issued by the Court. The Parties may file a response to any objections submitted by objecting Class Members at or prior to the Final Approval Hearing. Class Members shall be permitted to withdraw their objections in writing by submitting a withdrawal statement to the Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing, or as otherwise ordered by the Court. (*Settlement*, ¶ 56).

c. Opt-Outs/Requests for Exclusion

57. Class Members who wish to "opt out" of and be excluded from the non-PAGA portion of this settlement must submit a written Request for Exclusion from the Settlement bearing a post-mark from a date within the Claims Period. Class Members are still bound by the release of PAGA claims even if they submit a valid Request for Exclusion and will receive a check with his or her individual payment from the PAGA Group Payment. The Request for Exclusion must include: (a) the Class Member's name; (b) a statement that the Class Member desires to exclude himself or herself from the case; and (c) the last four digits of the Class Member's social security number. If a Class Member submits a Deficient Request for Exclusion, the Settlement Administrator shall notify the Class Member of the deficiency within five (5) business days of receipt. The Class Member shall have until the end of the Claims Period or five (5) business days after the close of the Claims Period if the notice of deficiency is sent by the Settlement Administrator within (5) business days of the end of the Claims Period to cure said deficiencies, at which point his or her Request for Exclusion will be rejected if not received. Class Members submitting untimely

1 or Deficient Requests for Exclusion shall be bound by the Settlement and its releases and will be
2 considered Settlement Class Members for settlement distribution purposes. Class Members shall be
3 permitted to rescind their Request for Exclusion in writing by submitting a rescission statement to the
4 Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing, or as
5 otherwise ordered by the Court. The Settlement Administrator shall not accept Late Requests for
6 Exclusion without the written authorization of Delta. (*Settlement*, ¶ 58).

7 **4. Final Approval and Duties of the Parties After Preliminary Approval**

8 In accordance with the Settlement Agreement, Plaintiff seeks the following orders of the Court:

- 9 (a) Preliminarily approving the Settlement;
- 10 (b) Approving as to form and content the proposed Class Notice;
- 11 (c) Directing the mailing of the Class Notice to Class Members;
- 12 (d) Preliminarily certifying the Settlement Class for purposes of settlement and preliminarily
13 appointing Named Plaintiff and Plaintiff's Counsel as representatives of the Settlement
14 Class;
- 15 (e) Preliminarily approving settlement administration services to be provided by the Settlement
16 Administrator;
- 17 (f) Preliminarily approving the Service Enhancement payment to Named Plaintiff as Class
18 Representative;
- 19 (g) Preliminarily approving the application for payment of reasonable attorneys' fees and costs
20 to Plaintiff's Counsel;
- 21 (h) Pending the Final Approval Hearing, enjoining Plaintiff and all Class Members and anyone
22 acting on behalf of any Class Member, until the Class Member opts out, from: further
23 prosecution of the Action; filing, or taking any action directly or indirectly, to commence,
24 prosecute, pursue or participate on a class action basis any action, claim or proceeding
25 against Delta in any forum in which any of the claims subject to the Settlement are asserted,
26 or which in any way would prevent any such claims from being extinguished; or seeking
27 certification of a class action that involves any such claims; and
- 28 (i) Scheduling a Final Approval Hearing on the question of whether the proposed settlement

1 should be finally approved as fair, reasonable and adequate as to the members of the
2 Settlement Class.

3 (*Settlement*, ¶ 95.)

4 Delta shall provide to the Settlement Administrator within 30 days after the Preliminary Approval
5 Date the Class Member data as set forth in Paragraph 0 of the Settlement. Delta shall submit this
6 information in electronic format as specified by the Settlement Administrator and shall thereafter, during
7 the notice, approval, opt out, and payment processes, assist the Settlement Administrator as necessary or as
8 requested to use, correct, or update this information in order to enable the Settlement Administrator to
9 locate and contact Class Members, and to provide information needed or requested by the Settlement
10 Administrator in order to make determinations on Class Members' challenges. (*Settlement*, ¶ 98.)

11 Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in
12 Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA
13 settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed
14 Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to
15 Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and
16 Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve
17 any disagreements concerning the Motion for Final Approval. Also, Plaintiff's Counsel shall provide the
18 Court at least five days prior to the Final Approval Hearing a declaration by the Settlement Administrator
19 (i) of due diligence and proof of mailing of the Class Notice required to be mailed to Class Members by
20 this Settlement Agreement, (ii) of the delivery results of the Settlement Administrator's mailings including
21 tracing and re-mailing efforts, and (iii) attaching as exhibits all date-stamped Requests for Exclusion and
22 date-stamped rescissions of Requests for Exclusion received from Class Members. (*Settlement*, ¶ 100.)

23 5. Release of Claims

24 Releasees:

25 "Delta Releasees" means Delta and each of its past, present, and/or future, direct and/or indirect,
26 officers, directors, managers, employees, agents, representatives, attorneys, insurers, partners, investors,
27 shareholders, members, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
28 successors, and/or assigns, in their personal, individual, official, and/or corporate capacities.

1 “General Release” by Plaintiff:

2 For and in accepting the consideration of the Service Enhancement awarded, Plaintiff further will
3 make a general release (the “General Release”) on behalf of himself and his heirs, executors,
4 administrators, representatives, successors and assigns, of the Delta Releasees, to the full extent permitted
5 by law, of and from any and all claims, obligations, demands, actions, rights, causes of action, and
6 liabilities against the Delta Releasees, whether or not acting in the course and scope of employment, and all
7 persons acting by, through, under, or in concert with any of them, of any and every kind, nature and
8 character whatsoever, known or unknown, suspected or unsuspected, whether based on a tort, contract,
9 statute, or any other theory of recovery, and whether for compensatory or punitive damages which Plaintiff
10 had at any time heretofore or claimed to have or which Plaintiff may have or claims to have regarding
11 events that have occurred relating to any work performed for the Delta Releasees as of the Preliminary
12 Approval Date. This includes all of Plaintiff’s claims against the Delta Releasees related to or arising out
13 of Plaintiff’s employment with the Delta Releasees, and/or the cessation of employment or purported
14 employment therefrom. These claims expressly include, but are not limited to, those arising under the
15 Americans With Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), the Employee Retirement Income
16 Security Act (29 U.S.C. § 1000, *et seq.*), the Family and Medical Leave Act, the Fair Labor Standards Act
17 (“FLSA”) (29 U.S.C. §§ 201 *et seq.*), the Lily Ledbetter Act, Title VII of the Civil Rights Act of 1964 (42
18 U.S.C. § 2000, *et seq.*), the California Family Rights Act, California Equal Pay Law, California
19 Whistleblower Protection Laws, California Pregnancy Disability Leave Law, the California Fair
20 Employment and Housing Act (Cal. Government Code § 12900, *et seq.*), and any and all claims related to
21 the following: unpaid wages; unpaid overtime; failure to pay all compensation on termination of
22 employment; missed meal periods; missed rest periods; reimbursement of expenses; inaccurate wage
23 statements; deductions and/or chargebacks from wages; any alleged violations of the California Labor
24 Code; any alleged violations of applicable federal law including, but not limited to, the FLSA; any alleged
25 violation of and/or any remedy provided by the California Civil Code and/or the California Code of Civil
26 Procedure including, but not limited to, section 1021.5; any claims for penalties under the California Labor
27 Code and/or the California Private Attorneys General Act, California Labor Code section 2698 *et seq.*
28 (“PAGA”); any and all claims for relief under California Business and Professions Code section 17200 *et*
seq., including any and all claims for injunctive relief; and any and all other claims for relief, including any

1 associated prayers for compensatory damages, indemnification, injunctive relief, punitive damages,
2 liquidated damages, penalties, interest, attorneys' fees or costs; any claims arising under the California
3 Constitution; and any of Plaintiff's claims or allegations that Delta Releasees deprived Plaintiff of any pay
4 or other benefits or legal protections to which Plaintiff alleges Plaintiff is or was entitled. The Plaintiff and
5 Delta Releasees intend for this definition to be all encompassing and to act as a full and total release of any
6 of Plaintiff's claims that Plaintiff may legally waive or release against Delta Releasees arising from any
7 work Plaintiff performed for Delta Releasees, whether specifically enumerated herein or not, that the
8 Plaintiff might have or had, that exists or ever has existed on or to the Preliminary Approval Date.
9 Plaintiff's General Release also includes the waiver of any right to bring, maintain, or participate in a class,
10 collective, or representative action against the Delta Releasees to the maximum extent permitted by law.
11 Plaintiff's General Release, however, shall not constitute a release of any claims that may not lawfully be
12 waived; further, Plaintiff does not waive any right to file an administrative charge with the Equal
13 Employment Opportunity Commission ("EEOC") or the National Labor Relations Board ("NLRB"),
14 subject to the confidentiality provisions of the Settlement Agreement, and subject to the condition that
15 Plaintiff not seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom
16 and understands that such limitation does not in any way restrict his ability to file and pursue such charge
17 consistent with the confidentiality obligations set forth in this Settlement Agreement; and further, Plaintiff
18 does not waive any rights with respect to, or release Delta Releasees from, any claims for unemployment
insurance. (*Settlement*, ¶ 88.)

19 It is further understood and agreed that as a condition of the General Release, and to effect a full
20 and complete general release as described above, Plaintiff also expressly waives and relinquishes any and
21 all claims, rights or benefits that he may have under California Civil Code Section 1542. (*Settlement*, ¶ 91.)

22 Released Class Claims:

23 "Released Class Claims" means any and all claims, obligations, demands, rights, causes of action,
24 and liabilities against Delta, whether in law or equity, that have been asserted or that reasonably could have
25 been asserted in the First Amended Complaint, and any amendments thereto; or that reasonably could have
26 been asserted in the First Amended Complaint, and any amendments thereto, based on the facts, claims
27 and/or allegations pled therein. Released Class Claims include, but are not limited to, claims for (i) failure
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1 to pay or reimburse business expenses under Labor Code section 2802, including but not limited to
2 expenses for use of a personal mobile device and/or cell phone for work-related purposes, expenses for
3 protective footwear, such as steel-toed shoes or boots, expenses for other personal protective equipment
4 such as earmuffs, marshaling wands, knee pads, and expenses for work-related safety equipment and tools;
5 (ii) failure to pay all final wages under Labor Code section 203; and (iii) claims derivative and/or related to
6 those claims, including those under the California Business & Professions Code and PAGA related to
7 released claims, as well as associated claims for attorneys' fees and costs, from July 1, 2017 through the
8 Preliminary Approval Date. (*Settlement*, ¶ 32.)

9 Released PAGA Claims:

10 "Released PAGA Claims" means any and all claims, obligations, demands, rights, causes of action,
11 and liabilities against Delta, under PAGA that have been asserted or that reasonably could have been
12 asserted in the First Amended Complaint, the LWDA Notice, and any amendments thereto; or that
13 reasonably could have been asserted in the First Amended Complaint, and any amendments thereto, based
14 on the facts, claims and/or allegations pled therein. Released PAGA Claims include, but are not limited to,
15 claims for civil penalties under the PAGA based on (i) alleged violations of Labor Code section 2802,
16 including but not limited to expenses for use of a personal mobile device and/or cell phone for work-related
17 purposes, expenses for protective footwear, such as steel-toed shoes or boots, expenses for other personal
18 protective equipment such as earmuffs, marshaling wands, knee pads, and expenses for work-related
19 safety equipment and tools, (ii) failure to pay all final wages under Labor Code section 203, and (iii)
20 claims derivative and/or related to those claims, as well as associated claims for attorneys' fees and costs,
21 from March 16, 2020 through the Preliminary Approval Date. (*Settlement*, ¶ 33.)

22 **E. Plaintiff's Individual Settlement Agreement**

23 On April 27, 2021, before Plaintiff filed the instant lawsuit, Plaintiff filed a Charge with the
24 Department of Fair Employment Housing ("DFEH") alleging disability-related claims against Delta
25 pursuant to the Fair Employment and Housing Act ("FEHA"), including disability discrimination,
26 harassment, retaliation, and failure to accommodate disability. Delta has agreed to pay Plaintiff an
27 individual settlement payment pursuant to a separate individual agreement in exchange for a general
28 release of all claims arising out of his employment, including all claims related to his DFEH Charge. The

1 consideration for the individual settlement payment is unrelated to and separate from the settlement of
2 Plaintiff's PAGA and class claims in this action. (*Savoy Decl.*, at ¶ 9.)

3 **IV. LEGAL ARGUMENT**

4 Any settlement of class litigation must be reviewed and approved by the Court. (Cal. R. Ct. 3.769;
5 Fed. R. Civ. P. 23(e).)³ This is done in two steps: (1) an early (preliminary) review by the trial court, and
6 (2) a final review after notice has been distributed to the Class Members informing them of the terms of the
7 settlement and allowing them to exclude themselves from, participate in and/or object to the settlement.
8 The Manual for Complex Litigation (Third) § 30.41 states:

9
10 If the preliminary evaluation of the proposed settlement does not disclose grounds
11 to doubt its fairness or other obvious deficiencies, such as unduly preferential
12 treatment of class representatives or of segments of the class, or excessive
13 compensation for attorneys, and appears to fall within the range of possible
approval, the court should direct that notice ... be given to the class members of a
formal fairness hearing, at which arguments and evidence may be presented in
support of and in opposition to the settlement.

14 Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement
15 appears to be within the range of acceptable settlements. (*See Wershba v. Apple Computer* (2001) 91
16 Cal.App.4th 224, 234-35.) "The strength of the findings made by a judge at a preliminary hearing or
17 conference concerning a tentative settlement proposal may vary. The court may find that the settlement
18 proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is
19 presumptively valid subject only to any objections that may be raised at a final hearing." (4 Alba Conte &
20 Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).)

21 The law favors settlement, particularly in class actions and other complex cases in which substantial
22 resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*City of Seattle*, 955
23 F.2d at 1276; *Potter v Pacific Coast Lumber Company* (1951) 37 Cal. 2d. 592, 602-603.; 4 *Newberg on*
24 *Class Actions* § 11.41.) To grant preliminary approval of this Class Action Settlement, the Court need find

25 _____
26 ³ The California Supreme Court has authorized California's trial courts to use Federal
27 Rule 23 and cases applying it for guidance in considering class issues. (*See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d
28 126, 145-146.) Where appropriate, therefore, Plaintiff cites Federal Rule 23 and
federal case law in addition to California law.

only that the settlement falls within the “range of reasonableness.” (*North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal. App. 4th 1085, 1089-1090.)

In determining whether a class settlement is fair, adequate and reasonable, courts must consider the following relevant factors: the strength of the plaintiff’s case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; the amount of offered settlement; the extent of discovery completed and the range of the proceedings; and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th. 785,799.) The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case. (*Clark*, 175 Cal. App. 4th at 799; *Wershba*, 91 Cal. App. 4th at 245.)

Furthermore, courts must give “proper deference to the private consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998), 150 F.3d 1011, 1027.)

A. The Terms Of The Proposed Settlement Are Fair

A preliminary review of the terms of the Settlement provides no reason to doubt its fairness. Indeed, this Court should begin its analysis with a presumption that the proposed settlement is fair. A presumption of fairness exists where: “1) the settlement is reached through arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small.” (*Dunk v. Ford Motor Co.*, *supra*, at 1802.) The first three of these factors apply at the preliminary approval stage; the percentage of objectors is determinable only at the final approval stage.

1. The Settlement Was Reached Through Arm’s-Length Bargaining, Not Through Fraud or Collusion

The Settlement was reached following extensive negotiations during and after a private mediation with professional mediator Steve Pearl, Esq. The settlement negotiations were at arm’s length and,

1 although conducted in a professional manner, were adversarial. The parties went into the mediation
2 session willing to explore the potential for a settlement of the dispute, but each side was also prepared to
3 litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* ¶¶ 8, 9, 23,
4 28.)

5 During mediation, Plaintiff strongly asserted the validity of his arguments and his assessment that
6 this case could be worth a substantial amount of money. However, as the mediation progressed, Defendant
7 presented their arguments as to various issues, and it became apparent that many issues would be highly
8 disputed and could pose a risk to both parties in going forward with litigation. As a result, the parties
9 agreed to resolve this matter. (*Savoy Decl.* ¶ 18.)

10 Moreover, Mr. Pearl presided over the back and forth exchange of information, and helped guide
11 the parties towards what he believed, based on his experience, was a reasonable resolution given the
12 disputed issues of liability. (*Savoy Decl.* ¶ 19.)

13 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence
14 to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*
15 *Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust*
16 *Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the
17 proponents, particularly where, as here, settlement has been reached with the participation of experienced
18 counsel familiar with the litigation. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004)
19 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey*
20 (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp.
1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.)

21 **2. Investigation and Discovery Were Sufficient For The Parties To Evaluate The Risks**
22 **Intelligently**

23 Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by
24 Plaintiff, conducted legal research, and engaged in extensive formal and informal discovery. Prior to
25 mediation, the Parties met and conferred regarding the scope of discovery necessary for the Parties to
26 engage in a productive mediation. It was agreed that the Parties would exchange agreed upon documents
27 and class records/data prior to mediation. (*Savoy Decl.*, at ¶ 29.)

1 Defendant Delta produced numerous documents relating to its policies, practices, and procedures
2 regarding its wage and hour practices, specifically as they relate to the reimbursement of necessary
3 business expenditures incurred by its employees during the Class Period. As part of Defendant's
4 production, Class Counsel represents it also reviewed class time records, payroll records, and other
5 information relating to the size and scope of the Class, as well as data permitting Class Counsel to
6 understand the number of workweeks and pay periods in the Class Period. The Parties agree that the above-
7 described investigation and evaluation, as well as the information exchanged during the settlement
8 negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to
9 compromise the issues on a fair and equitable basis. (*Savoy Decl.*, at ¶ 8, 30.)

10 Through discovery and investigation, my office was able to identify multiple current and former
11 employees of Defendant that provided valuable information that allowed my office and our expert to clarify
12 any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 31.) This information
13 gained directly from Plaintiff and his former co-worker employees of Defendant was extremely important
14 to the calculation of Class Damages, as the main non-derivative cause of action asserted by Plaintiff on a
15 class basis is for Failure to Indemnify Employees for Necessary Expenditures Incurred in the Discharge of
16 Duties, in violation of Cal. Labor Code section 2802. Absent information provided by Defendant regarding
17 the amount of reimbursements paid to each Class Member during the Class and PAGA periods, the only
18 way to determine how much each Class Member was required to spend on necessary business expenditures
19 while employed by Defendant, as well as how much, if any, they received in reimbursements, was via
20 evidence provided directly by the class members themselves. Without this information gained directly
21 from Class Members, it would have been impossible to calculate Class damages and penalties. This
22 information could not have been gleaned from the face of the payroll and timekeeping records themselves.
23 (*Savoy Decl.*, at ¶ 32.)

24 Plaintiff's statistical experts analyzed this information, as well as data for approximately 20,000
25 unique workweeks, and Plaintiff's counsel evaluated the potential liability and damages for the Class
26 Members. Based upon this information, Plaintiff's counsel was able to act intelligently and effectively in
27 negotiating the proposed Settlement. (*Savoy Decl.*, at ¶ 33.)
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1 **3. Counsel Is Experienced In Similar Litigation**

2 Furthermore, the settlement negotiations were conducted by highly capable and experienced
3 counsel. Plaintiff's counsel are respected members of the bar with a strong record of vigorous and
4 effective advocacy for their clients, and they are experienced in handling complex wage and hour class
5 action litigation. (*Savoy Decl.*, at ¶ 42-49.) Although Plaintiff and Class Counsel were prepared to litigate
6 the claims in this action, they support the proposed Settlement as being in the best interests of the Class
7 Members. (*Savoy Decl.*, at ¶ 28.)

8 **B. The Settlement Falls Well Within The "Ballpark" of Reasonableness**

9 The Court must make an "independent assessment of the reasonableness of the terms of the
10 settlement" prior to granting preliminary and final approval. (*Clark v. American Residential Services LLC*
11 (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 127-28,
12 130, 133.) To do so requires the Parties to submit "basic information about the nature and magnitude of the
13 claims in question and the basis for concluding that the consideration being paid for the release of those
14 claims represents a reasonable compromise." (*Clark, supra*, 175 Cal.App.4th at 800.) However, the Court
15 should *not* "attempt to decide the merits of the case or to substitute its evaluation of the most appropriate
16 settlement for that of the attorneys." (*Kullar, supra*, 168 Cal.App.4th at 133.)

17 **1. Settlement Amount Is Fair, Just, and Reasonable**

18 Plaintiff and Plaintiff's counsel remain confident of the merits of Plaintiff's claims. Plaintiff and
19 Plaintiff's counsel considered several factors in reaching the decision to settle at this point in the litigation.
20 Plaintiff's counsel has calculated the maximum damages of the Class Members, excluding solely derivative
21 claims, to be approximately Four Hundred Ninety-One Thousand Three Hundred and Seven Dollars,
22 Eighty-Five Cents (\$491,307.85), inclusive of interest, and believes this amount would be the maximum
23 damage potential should the case proceed to trial. (*Savoy Decl.*, at ¶ 12.)

24 Given the maximum potential damages, the settlement sum of Two Hundred Thousand Dollars
25 (\$200,000.00) is approximately Forty-One Percent (41%) of the maximum damage exposure, and is
26 reasonable considering the substantial risks entailed by this case. My firm estimates a Sixty Percent (60%)
27 likelihood of obtaining and maintaining certification of Plaintiff's claims, which reduces the value of these
28

1 claims. My office further estimates that there is a Sixty Percent (60%) chance that Plaintiff will prevail at
2 trial on his individual and class claims, further reducing the value of the claims. Taking these two risk
3 factors into account, a more realistic damages recovery analysis brings values the instant action at
4 approximately \$176,870.83. The MSA is approximately One Hundred and Thirteen Percent (113%) of the
5 revised and reduced total damages exposure. The significant risk that this Court may deny class
6 certification is obviated by the Settlement. Moreover, continued litigation would very likely reduce and
7 substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class
8 Members will receive timely relief and avoid the risk of an unfavorable judgment and avoids the possibility
9 of having all, or a portion, of the class and representative claims lost to dispositive motion, which was not
10 included as a factor in reaching the above reduced damages amount. (*Savoy Decl.*, at ¶ 14.)

11 Defendant, on the other hand, strongly contends that its policies and practices do not violate any
12 laws and that it complied with the applicable indemnification laws. Specifically, Defendant maintains that
13 Plaintiff's claims that he and class members were not provided with the necessary equipment required to
14 complete their jobs is factually incorrect, as it provided protective footwear, personal protective equipment,
15 such as earmuffs, earplugs, marshaling wands, and knee pads. Additionally, Defendant asserts that they
16 never required Plaintiff or any of its other Ramp Agent employees at LAX to use their personal cell phones
17 to conduct work-related duties and communications. Therefore, it is Defendant's position that there would
18 be no liability for failure to reimburse Plaintiff and the Class Members for necessary business expenditures,
19 and therefore, the derivative claims of waiting time penalties and unlawful business practices likewise fail.
20 (*Savoy Decl.*, at ¶ 16.)

21 Additionally, Defendant contends that Plaintiff would not obtain class certification on his claims,
22 particularly because the claims would require an individualized inquiry, as the evidence tended to show
23 that Defendant's reimbursement and indemnification policies were legally compliant and each Class
24 Member's necessary expenditures were greatly varied. (*Savoy Decl.*, at ¶ 16.) (*See Koval v. Pacific Bell*
25 *Telephone Co.*, 232 Cal. App. 4th 1050, 1062 (2014) (denying certification and holding that plaintiff's
26 failure to demonstrate that allegedly unlawful policies were consistently applied "create[d] a shifting
27 kaleidoscope of liability determinations that render this case unsuitable for class action treatment"); *Dailey*
28

1 v. *Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1002 (2013) (denying class certification of meal period
2 and rest break claims of employees alleging that they did not regularly take uninterrupted meal and rest
3 breaks where there was no evidence of a uniform policy showing that the Company required the employees
4 to forego breaks).) In such an event, there would be no recovery for Class Members at all. A discount was
5 required at this stage of the litigation for settlement purposes based on these risk factors.

6 The significant risks that this Court may deny class certification or rule against Plaintiff on the
7 merits are obviated by the Settlement, as is any risk associated with trial. Moreover, continued litigation
8 would very likely reduce and substantially delay recovery by Class Members. In contrast, because of the
9 proposed Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable
10 judgment.

11 Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as
12 to each cause of action. It must be noted that the sole non-derivative and non-penalty cause of action is for
13 Failure to Indemnify, in violation of Labor Code section 2802, therefore, if Plaintiff's 2802 claim fails,
14 then the entirety of the case follows suit. As noted above, the evidence presented in the Action to this point
15 tended to show that Defendant's reimbursement and indemnification policies were legally compliant and
16 each Class Member's necessary expenditures, if any, were varied. (*Savoy Decl.*, at ¶ 15.)

17 Plaintiff also recognizes that proving the amount of reimbursement due to each individual Class
18 Member, while feasible, would be an expensive, time-consuming, and extremely uncertain proposition.
19 (*Savoy Decl.*, at ¶ 15.)

20 Assuming full participation of all 1,345 Class Members in the settlement, we estimate that each
21 class member will recover on average approximately Fifty Dollars (\$50.00). (\$66,833.34 Net Settlement /
22 1,345 Class members ~ \$49.69). The average workweek recovery from the NSF is approximately Thirty-
23 Seven Cents (\$00.37). The maximum recovery for a class member is approximately Eighty-Five Dollars
24 and Twenty-Eight Cents (\$85.28) (class member(s) who worked the maximum 208 workweeks). The
25 minimum recovery for a class member is approximately Forty-One Cents (\$00.41) (class member(s) who
26 worked 1 workweek out of the total class period). While this amounts, at first glance, appears smaller than
27 the average wage and hour settlement, it must be noted that this case involves only one (1) non-derivative
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1 cause of action, which did not carry a significant amount of damages. When the limited nature of this
2 Action and the limited damages associated therewith are taken into account, this amount is not
3 insignificant, especially because most class members will never pursue their individual reimbursement
4 claims. Moreover, the Class Members are longer-term employees of Defendant, working on average 136
5 of the eligible workweeks and will receive approximately Fifty-Five Dollars and Thirty-Seven-Six Cents
6 (\$55.76). (*Savoy Decl.*, at ¶ 22.)

7 In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the
8 burdens of proof necessary to establish liability, the limited nature and damages exposure of this Action,
9 and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims,
10 it is clear that the Maximum settlement amount is fair, adequate, and reasonable. (*Savoy Decl.*, at ¶ 17.)

11 **2. Settlement Amount Allocated to PAGA Claim Is Fair, Just, and Reasonable**

12 The Parties have calculated the number of unique PAGA pay periods to be 32,191. At a 100%
13 violation rate (i.e. one Labor Code violation per unique pay period), the Defendant's maximum PAGA
14 penalty exposure is approximately Three Million, Two Hundred and Nineteen Thousand, One Hundred
15 Dollars (\$3,219,100.00). As noted above, wage and hour violations, as set forth in Plaintiff's operative
16 complaint, did not occur on a weekly basis. In fact, the most prevalent of the violations, personal
17 protective equipment vending machine purchases were only made an approximate eighteen (18) times
18 during the class period, which amounts to an approximately four and a half (4.5) violations per year, or
19 an approximate nine percent (9%) violation rate (4.5 purchases per 50 weeks = 9%). When combined
20 with the approximate two percent (2%) protective footwear violation rate (1 purchase per 50 weeks =
21 2%), the total actual estimated violation rate comes out to eleven percent (11%), assuming that there is
22 no stacking or overlap between the vending machine purchase violations and the protective footwear
23 violations. An overall eleven percent (11%) violation rate brings the total potential PAGA penalty
24 exposure down to Three Hundred, Fifty Four Thousand, One Hundred and One Dollars (\$354,101.00).
25 (*Savoy Decl.*, 24.)

26 As noted above, Plaintiff estimates a sixty percent (60%) chance of beating a motion for summary
27 judgment/adjudication on the underlying Labor Code causes of action, as well as a 60% chance of a
28

1 favorable outcome at trial. This reduces Defendant's potential PAGA penalty exposure to One Hundred
2 Twenty-Seven Thousand, Four Hundred Seventy-Six Dollars and Thirty-Six Cents (\$127,476.36).
3 However, as explained below, this number must be greatly reduced when the facts and evidence
4 presented during litigation and mediation are taken into account. Plaintiff asserts that the Twenty-Five
5 Thousand Dollars (\$25,000.00) attributed to PAGA penalties, which is approximately Twenty Percent
6 (specifically 19.61%) of the reduced/adjusted PAGA exposure, is more than fair, just, and reasonable.
7 (*Savoy Decl.*, 24.)

8 Through discovery and investigation, as well as further evidence presented at mediation, it
9 became abundantly clear that the majority of all Labor Code violations occurred within the first three (3)
10 years of the alleged class period, as Defendant began to provide all class members with "Zappos
11 Voucher" for protective footwear on a yearly basis, at the beginning 2021, eliminating all damages
12 related to protective footwear reimbursement claims from that point forward, the largest set of
13 reimbursement damages for the Class. Additionally, Defendant's written policies regarding
14 reimbursement for necessary expenditures for the class period appear facially valid. Given the compliant
15 policies, the PAGA Period beginning midway through March of 2020, and the majority of the
16 reimbursement damages for protective footwear reimbursement occurred during the first few years of the
17 Class Period, the amount allocated to PAGA Penalties is adequate and appropriate. (*Savoy Decl.*, 25.)

18 Based on this information and information obtained from Plaintiff and other aggrieved
19 employees, Plaintiff was required to reduce alleged penalties associated with the sole cause of action for
20 the PAGA period. (*Savoy Decl.*, at ¶ 26.)

21 Due to the violation rate and trouble in proving the underlying reimbursement violations during
22 the applicable PAGA period, Plaintiff believes it is proper to attribute almost Thirteen Percent
23 (specifically 12.5%) of the Gross Settlement Amount to PAGA penalties. Moreover, attributing a
24 larger portion of the settlement to non-PAGA penalties insures that a greater amount of the Net
25 Settlement Amount will go to the putative class. (*Savoy Decl.*, at ¶ 27.)

26 ///

27 ///

1 **C. The Court Should Issue an Order Conditionally Certifying the Settlement Class**

2 **1. *The Criteria for Conditional Certification of a Settlement Class Are Met***

3 California Code of Civil Procedure § 382 provides that three basic requirements must be met in
4 order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
5 community of interest in the question of law or fact affecting the parties to be represented; and (3)
6 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is
7 superior to other methods. (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; *see also, Sav-*
8 *On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326; *Dunk v. Ford Motor Co.* (1996) 48
9 Cal.App.4th 1794, 1806; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704.) Any doubts as to the
10 appropriateness of class treatment must be resolved in favor of certification, subject to later modification.
11 (*Richmond v. Dart Indus. Inc.* (1981) 29 Cal.3d 462, 473-475.) For purposes of this Settlement only,
12 Defendant has stipulated to conditional certification of the proposed class action. (*Settlement*, section 2.)

13 **2. *There Is an Ascertainable Class***

14 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
15 the class, and (3) the means of identifying the class members. (*See Miller v. Woods* (1983) 148 Cal.App.3d
16 862, 873.) In this case, Plaintiff contends that all three considerations strongly favor class certification.

17 **a. *The Settlement Class Is Precisely Defined***

18 The proposed class consists of “all persons employed by Delta as non-exempt employees working
19 in Department 120 at the Los Angeles International Airport (“LAX”) in California at any time from July 1,
20 2017, through the Preliminary Approval Date.” The Class is estimated to consist of 1,345 persons with an
21 estimated 163,607 workweeks, and includes 1,028 PAGA Aggrieved Employees. (*Settlement*, ¶ 4.) The
22 class definition is sufficiently specific to enable the parties, potential class members, and the Court to
23 readily determine the parameters of the class. (*See Clothesrigger, Inc. v. GTE Corp.* (1987) 191
24 Cal.App.3d 605, 617 (proposed class defined as all persons nationwide subscribing to telephone service
25 since January 1, 1981, who were charged for one or more unanswered long distance calls, deemed
26 “plainly” ascertainable).) Indeed, the Class Members are readily ascertainable from Defendant’s records.
27 (*Savoy Decl.*, at ¶ 34.)

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The question of whether class members are easily identifiable turns on whether a plaintiff can establish “the existence of an ascertainable class,” not whether the plaintiff can “identify the individual members of such class as prerequisite to the class suit.” (*Daar*, 67 Cal.2d at 706; *see also, Reyes v. San Diego County Bd. of Supervisors* (1987)196 Cal.App.3d 1263, 1275.) Here, the existence of an ascertainable class can be established through Defendant’s records. (*Savoy Decl.*, ¶ 34.)

The community of interest requirement embodies three factors: (1) predominant questions of law; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806; *Richmond*, 29 Cal.3d at 473-75.) In this case, Plaintiff's claims satisfy all three factors.

The commonality criterion requires the existence of common questions of law or fact and is generally established with the issues of predominance and typicality. (See *Daar*, 67 Cal.2d at 695; *In re United Energy Corp. Solar Power Modules Tax Shelter Investment Securities Lit.* (C.D. Cal. 1988) 122 F.R.D. 251, 254.) All that is required is that a common question of fact or law exists which predominates over issues unique to the plaintiff. The existence of individual issues or facts is not a bar to class

1 certification as long as they do not render class litigation unmanageable or predominate over the common
2 issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1354 (“presence
3 of individual damages issues cannot bar certification”).)

4 In the Action, Plaintiff’s claims present sufficient common issues of law and fact that predominate
5 over individual issues and warrant class certification. Plaintiff alleges that Defendant failed to indemnify
6 Plaintiff and the Class Members for necessary expenditures incurred in discharge of their employment
7 duties for Delta as Ramp Agents. Plaintiff further asserts a derivative cause of action that Defendant failed
8 to adequately compensate its former employees, including Plaintiff, for these necessary expenditures at the
9 time of their separation from employment. Plaintiff alleges that Defendant’s practices of not adequately
10 reimbursing Plaintiff and Class Members for necessary expenditures were uniform as to all Class
11 Members, and that all class members were indeed subjected to the same workplace experiences as Plaintiff.
12 Thus, class treatment is appropriate.

13 **b. *Plaintiff’s Claims Are Typical of the Claims of the Settlement Class***

14 To satisfy the typicality requirement, California law does not require that a plaintiff have claims
15 identical to the other class members. Rather, the test of typicality for a class representative is whether other
16 members have the same or similar injury, whether the action is based on conduct which is not unique to the
17 named plaintiff, and whether other class members have been injured by the same course of conduct.
18 (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) The typicality requirement for a class
19 representative refers to the nature of the claim or defense of the representative, and not to the specific facts
20 from which it arose or the relief sought. (*Id.*)

21 Here, Plaintiff alleges that his claims are similar to those of the other Class Members. All of
22 Plaintiff’s claims arise out of the same alleged facts and course of conduct giving rise to the claims of the
23 other Class Members, as they all worked together for Defendant, at Defendant’s LAX facility, in the
24 capacity of Ramp Agents, and were subjected to identical workplace policies and practices. Finally,
25 Plaintiff’s claims are typical of the other class members because they seek the exact same relief for alleged
26 Labor Code violations. Because Plaintiff’s claims are based upon the same alleged conduct and business
27 practices as those of the potential Class Members, the typicality requirement has been satisfied.

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Additionally, Plaintiff Gurzenski understands the obligations of being an adequate class representative, the details of what he has done to demonstrate the adequacy of his representation, and the substantial burden he will and has undertaken in order to represent the putative class. (See *Declaration of Plaintiff Michael Garcia Juarez* (“*Garcia Decl.*”), filed concurrently herewith.)

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1 Administrator; and (7) schedule a hearing on final approval of the Settlement.

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4 Dated: January 23, 2023

SOLOUKI | SAVOY, LLP

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And Those Similarly Situated Current and
Former Employees*