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and as a representative of aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LOS ANGELES**

DIVYA K. PURSLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SLING FLYING CLUB, LLC, a California
Limited Liability Company; and DOES 1
through 25,

Defendants.

Case No.: 23STCV27865
Assigned to Hon. Lawrence P. Riff

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with Declarations of
Aaron Gundzik, Daniel Holzman,
Plaintiff Divya Pursley and Jodey
Lawrence of Phoenix Settlement
Administrators; [Proposed] Order]

Date: December 11, 2024
Time: 10:00 a.m.
Place: SSC-7

Complaint Filed: November 14, 2023

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 11, 2024, at 10:00 a.m. in Department
7 of the above-entitled Court, located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff

1 Divya Pursley will and, by this Notice of Motion and Motion, hereby does, move for an
2 Order as follows:

3 1. Granting preliminary approval of a class action settlement in the gross
4 amount of \$630,000, pursuant to Rules of Court 3.766 and 3.769;

5 2. Provisionally certifying the proposed class for settlement purposes only as an
6 opt-out class action under Section 382 of the Code of Civil Procedure, with the Class
7 defined as all persons who worked for Defendant Sling Flying Club, LLC as Flight
8 Instructors in California at any time during the Class Period (November 14, 2019 through
9 September 16, 2024);

10 3. Appointing Plaintiff Divya Pursley as the Class Representative for the Class;

11 4. Appointing Aaron C. Gundzik, Rebecca G. Gundzik and Daniel Holzman as
12 Class Counsel;

13 5. Approving Phoenix Settlement Administrators (“Phoenix”) as the
14 Administrator;

15 6. Approving the form of the Class Notice to be sent to the Class and
16 authorizing its dissemination;

17 7. Scheduling a subsequent hearing for final approval of the settlement
18 including approval of a Class Representative Service Payment in an amount not to exceed
19 \$10,000, an Administration Expenses Payment in an amount not to exceed \$6,700, a Class
20 Counsel Litigation Expenses Payment in an amount not to exceed \$25,000, a Class Counsel
21 Fees Payment in an amount not to exceed \$210,000, a related PAGA settlement of \$20,000;
22 and

23 8. Granting such other and further relief as the Court may deem just and proper.

24 Plaintiff’s motion is based on this Notice of Motion and Motion, the attached
25 Memorandum of Points and Authorities, the [Proposed] Preliminary Approval Order, the
26 Declarations of the proposed Class Counsel, Aaron C. Gundzik and Daniel Holzman, the
27 Declaration of the proposed Class Representative, Divya Pursley, the Declaration of Jodey
28 Lawrence of Phoenix Settlement Administrators, the pleadings and other papers filed in this

1 action, and such further argument or evidence as may be considered at the hearing on the
2 motion.

3 As this Motion will be unopposed, Plaintiff respectfully requests relief from the page
4 limit requirement set by California Rules of Court, Rule 3.1113(d).

5 DATED: October 29, 2024

GUNDZIK GUNDZIK HEEGER LLP

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By: 

Rebecca Gundzik
Attorneys for Plaintiff Divya Pursley,
individually and on behalf of all others
similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a class action filed by Plaintiff Divya Pursley against her employer Defendant
4 Sling Flying Club, LLC (“Defendant” or “Sling”) on behalf of a class consisting of all
5 persons employed by Sling in California and classified as Flight Instructors who worked for
6 Sling during the Class Period. Plaintiff’s operative complaint alleges causes of action against
7 Sling for: (1) failure to pay wages for all work performed; (2) failure to pay overtime; (3)
8 failure to provide compliant meal and rest breaks; (4) inaccurate wage statements; (5)
9 failure to reimburse necessary expenses; (6) unfair business practices; (7) failure to pay
10 unpaid wages at separation; and (8) recovery of civil penalties pursuant to the Private
11 Attorneys General Act, Cal. Lab. Code §§2698-2699.5 (“PAGA”). No class has been
12 certified by the Court.

13 Defendant denies that it has violated California law and denies that it owes Plaintiff
14 and the other employees on whose behalf the lawsuit was filed any additional wages,
15 penalties, or other relief.

16 Plaintiff and Defendant have reached a proposed settlement of Plaintiff’s Class and
17 PAGA claims whereby Defendant will pay a gross settlement amount of \$630,000. As
18 explained below, although Defendant denies that it has any liability whatsoever, this gross
19 settlement value is within the range of Defendant’s potential liability, as estimated by
20 Plaintiff’s Counsel. The settlement is advantageous to Plaintiff and the Class in that it
21 provides them prompt compensation and eliminates the uncertainty and risk of continued
22 litigation against Defendant. The proposed settlement is memorialized in the “Class Action
23 and PAGA Settlement Agreement”¹ (hereafter referred to as the “Settlement Agreement”), a
24 true and correct copy of which is attached as Ex. 1 to the Declaration of Aaron C. Gundzik
25 (“Gundzik Decl.”), ¶ 43.

26
27 ¹ The parties used the Court’s model form to create the Settlement Agreement. A red-lined
28 comparison of the model form to the parties’ Settlement Agreement is attached to the
Gundzik Declaration as Exhibit 3. Gundzik Decl., ¶ 43.

1 Under the terms of the Settlement Agreement, the proposed Class consists of
2 approximately 141 persons employed by Defendant in California as flight instructors at any
3 time during the Class Period (“Class”). Gundzik Decl., ¶ 44, Ex. 1, § 1.5. The proposed
4 Class Period is from November 14, 2019 to September 16, 2024. (“Class Period”). Gundzik
5 Decl., ¶¶ 43, 45, Ex. 1, § 1.12. Pursuant to the terms of the proposed settlement, Defendant
6 will pay a Gross Settlement Amount of \$630,000. After proposed deductions, as approved
7 by the Court, the Net Settlement Amount of approximately \$358,300 will be available to
8 distribute to Participating Class Members, resulting in an average payment of about \$2,541
9 per class member. Gundzik Decl., ¶¶ 55, 62.

10 Given the comparative strengths and weaknesses of Plaintiff’s claims and
11 Defendant’s defenses, as well as the inherent uncertainties of litigation, this settlement is
12 well within the scope of what is fair, reasonable and adequate for the Class and should be
13 approved by the Court. Accordingly, Plaintiff, on behalf of herself and the Class, now seeks
14 an order:

- 15 • Granting preliminary approval of the settlement as being fair, reasonable and
16 adequate;
- 17 • Provisionally certifying the Class on an opt-out basis and for settlement purposes
18 only, and appointing Plaintiff Divya Pursley as the Class Representative and
19 Aaron C. Gundzik, Rebecca G. Gundzik and Daniel Holzman as Class Counsel;
- 20 • Entering the proposed Preliminary Approval Order, which is filed concurrently
21 herewith, and directing that the Class Notice be mailed to the Class Members;
- 22 • Appointing Phoenix Settlement Administrators (“Phoenix”) as the Administrator;
- 23 • Finding that the proposed form and method of the Class Notice constitutes the
24 best notice practicable under the circumstances and complies with the
25 requirements of Code of Civil Procedure Section 382 and due process;
26 and
- 27 • Scheduling a final approval hearing approximately 120 days after the preliminary
28 approval hearing to decide, among other things, (i) whether the settlement should

1 be granted final approval; (ii) whether the proposed Order and Final Judgment
2 should be entered; (iii) the amount of Class Counsel Fees Payment and Class
3 Counsel Litigation Expenses Payment; (iv) the amount of the Class
4 Representative Service Payment; (v) approving the Administrator's proposed fee;
5 and (vi) approving the proposed PAGA Penalties and the distribution of 75% of
6 such amount to the LWDA and 25% to the Aggrieved Employees.

7 **II. RELEVANT AND KEY FACTS**

8 **A. Relevant Facts Showing Settlement is Fair, Adequate and Reasonable**

9 **1. Investigation and Discovery**

10 Plaintiff's counsel have been directly involved in all aspects of this case on behalf of
11 Plaintiff. They have thoroughly investigated Plaintiff's claims, reviewed and analyzed
12 records and information produced by Defendant, and worked to develop information on
13 potential damages. Gundzik Decl., ¶¶ 7-10. They engaged in informal discovery and
14 exchanged additional information and documents for the mediation. Gundzik Decl., ¶ 7.
15 Among other things, Plaintiff's counsel has obtained from Defendant, and then reviewed
16 and analyzed policy documents and pay records for about 20% of the class's total pay
17 periods, as well as other information concerning class member wages and work activities.
18 Plaintiff's counsel also obtained class member contact information and have interviewed a
19 number of class members. *Id.* In connection with the mediation, Defendant provided
20 information on the number of Class Members and PAGA Aggrieved Employees, total Class
21 Member workweeks, total PAGA Aggrieved Employee pay periods and other data
22 concerning the class. Gundzik Decl., ¶ 8. Plaintiff's counsel also investigated and compiled
23 publicly available information about Defendant and its business. Gundzik Decl., ¶ 9. Based
24 on this information, as well as information provided by the Plaintiff, Plaintiff's counsel was
25 able to assess Defendant's potential liability and prepare an estimate the damages incurred
26 by the Class. Gundzik Decl., ¶ 9.

27 //

28 //

1 **2. Summary of Settlement Negotiations**

2 On July 18, 2024, Plaintiff Divya Pursley, Plaintiff’s counsel, Defendant and
3 Defendant’s counsel attended a mediation session with well-respected mediator, Michael
4 Loeb, Esq. Ms. Pursley participated in the mediation. The case settled after a full day of
5 negotiation pursuant to a mediator’s proposal. Gundzik Decl., ¶ 11.

6 **3. Summary of Class Counsel’s Experience**

7 Plaintiff’s counsel, Aaron Gundzik, graduated from the University of Southern
8 California Law School in 1987 and has been a member of the California bar since 1987.
9 Gundzik Decl., ¶ 12. He has been involved in the litigation of complex cases, including
10 securities, consumer and wage and hour class actions, and is currently plaintiff’s counsel in
11 approximately ten class and representative actions in various stages of litigation. He has
12 served as class counsel in numerous wage and hour class actions that have already settled
13 and successfully represented a class of service technicians at trial and through appeal in
14 *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶¶ 12,
15 14. Many of these cases involve wage and hour issues similar to the legal and factual issues
16 involved in this case. Gundzik Decl., ¶ 15. His partner, Rebecca Gundzik, graduated from
17 the University of Southern California Law School in 1988, has been a member of the
18 California bar since 1988, and was co-counsel at the trial of *Gonzalez v. Downtown LA*
19 *Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶ 13.

20 **4. Summary of Legal and Factual Bases for Plaintiff’s Claims**

21 Based upon counsel’s investigation and discovery, Plaintiff contends as follows.
22 Defendant Sling Flying Club LLC, is a flight school, located in Torrance, California.
23 Plaintiff Pursley worked as a flight instructor for Sling. Gundzik Decl., ¶ 16; Declaration of
24 Divya Pursley (“Pursley Decl.”), ¶ 2. While working, Plaintiff and Class Members
25 contended that due to their work obligations, they did not have sufficient time to take
26 compliant meal and rest breaks. Gundzik Decl., ¶ 17; Pursley Decl., ¶ 3. Plaintiff and Class
27 Members also contended that they were not paid for all hours that they were required to be
28 at work but were paid only for time spent teaching students. Gundzik Decl., ¶ 18; Pursley

1 Decl., ¶ 3. Plaintiff and Class Members further contended that they did not receive overtime
2 premium pay when they were required to work overtime hours. Gundzik Decl., ¶ 19; Pursley
3 Decl., ¶ 3. Plaintiff and the Class Members also contended that Defendant did not maintain
4 time records at all for flight instructors. Gundzik Decl., ¶ 20; Pursley Decl., ¶ 3. Plaintiff
5 and Class Members contended that they had to use their personal cell phones to
6 communicate with their supervisors, students and other employees, but that Defendant did
7 not reimburse employees for these expenses. Gundzik Decl., ¶ 21; Pursley Decl., ¶ 3. And,
8 Plaintiff contended that she and class members were not provided with compliant wage
9 statements or paid all wages owed to them upon separation from Sling. Gundzik Decl., ¶ 22;
10 Pursley Decl., ¶ 3.

11 **5. Risks, Expenses, Complexity and Duration if Settlement Not**
12 **Approved**

13 After taking into account the sharply disputed factual and legal issues involved in the
14 lawsuit, the risks attending further prosecution, and the substantial benefits to be received
15 pursuant to the compromise and settlement of the action, Plaintiff’s counsel concluded that
16 the settlement is in the best interests of the Class and is fair and reasonable. Gundzik Decl., ¶
17 23; Declaration of Daniel Holzman (“Holzman Decl.”), ¶ 8. They also considered the
18 possibility that the Class would not be certified and factored in the additional delay in
19 recovery for Class members if the settlement were rejected and the case went to trial. *Id.*

20 If the settlement is not approved, Plaintiff would need to move forward with
21 discovery and then move for class certification. Gundzik Decl., ¶ 24. Defendant will oppose
22 certification on the grounds that numerous individualized fact issues exist. *Id.* Defendant
23 will argue and could succeed in claiming that these individualized issues overwhelm
24 common issues, and/or that the action is not manageable on a class wide basis. *Id.* The result
25 could be that the case would not be certifiable as a class action. *Id.*

26 **6. Risks of Maintaining Class Action Status**

27 Even if Plaintiff proceeded with the case and the Class was certified, significant risks
28 would remain. At trial Defendant could interpose a successful defense which could either

1 cause the jury to reject Plaintiff's claims or award the Class only a small amount of the
2 damages sought. Gundzik Decl., ¶ 25. And, even if the Class ultimately prevailed, Class
3 Members would have to wait years before they received any payment from the lawsuit. *Id.*

4 Plaintiff's counsel concluded that the settlement of \$630,000 represents a fair and
5 reasonable discount from the realistic recovery. Gundzik Decl., ¶ 26. The settlement
6 provides a significant benefit for the Class which would not otherwise have been available
7 unless a settlement was reached. Plaintiff's counsel, who have significant experience
8 litigating these types of claims, are of the opinion that a gross settlement of \$630,000 is
9 within the "ballpark" of a fair, reasonable and adequate settlement. *Id.*; Holzman Decl., ¶ 8.

10 **7. Information Regarding Strengths, Weaknesses, and Range of**
11 **Value of Each Claim**

12 The First Cause of Action is for failure to pay for work performed. This claim was
13 based on the contention that Defendant failed to pay flight instructors for all of the time that
14 they worked. Gundzik Decl., ¶ 28. Class Members were not paid by the hour. Instead, they
15 were paid for some, but not all, tasks performed during a workday. *Id.* For example, Class
16 Members were not paid for time that they waited between lessons or for the time between
17 their arrival at work and the beginning of their first paid lesson. *Id.* Defendant did not
18 provide a mechanism for Class Members to record their working hours and breaks. So, it
19 was difficult to precisely determine the amount of unpaid time. *Id.* Based on Class Member
20 interviews and other data, Plaintiff's counsel estimated that Class Members worked about
21 1.5 unpaid hours per shift, and that about 10% of these hours were overtime hours. *Id.* On
22 average, Class Members worked about 3.5 shifts per week. *Id.* Using these numbers,
23 Plaintiff's counsel estimated that the maximum value of this claim to be \$555,640. *Id.*
24 However, certifying this claim would be challenging because there is no data to support
25 these instances of unpaid time, and it is based solely on class member statements. *Id.*
26 Moreover, Defendant could successfully contend that there are manageability issues and
27 individualized issues as to whether and to what extent Class Members worked off the clock.
28 *Id.* Plaintiff's counsel therefore determined that the minimum value of this claim is \$0. *Id.*

1 The Second Cause of Action is for failure to pay for overtime work at overtime rates
2 of pay. This claim was based on Defendant's failure to pay Plaintiff and the other Class
3 Members overtime rates of pay for overtime hours. Gundzik Decl., ¶ 29. After reviewing
4 work logs, Plaintiff's counsel concluded that about 10% of the unpaid time represented
5 overtime. *Id.* Using this estimate and the other numbers discussed in the preceding
6 paragraph, Plaintiff's counsel estimated the maximum value of this claim to be \$123,475. *Id.*
7 However, for the reasons discussed above, this claim, too, would be challenging.
8 Accordingly, Plaintiff's counsel concluded that the minimum value of this claim is \$0. *Id.*

9 The Third Cause of Action is for failure to provide compliant meal and rest periods.
10 This claim was based on Defendant's failure to provide compliant meal and rest breaks as
11 well as its failure to pay Class Members meal and rest break premiums. Gundzik Decl., ¶ 30.
12 Defendant's records revealed that Class Members were often denied compliant breaks. *Id.*
13 Based on the records they reviewed, Plaintiff's counsel determined that the maximum value
14 of the meal break portion of this claim is \$203,049. *Id.* This is based on an estimated total of
15 27,439 shifts and a 37% violation rate. (27,439 shifts x 37% violation rate x \$20 regular rate
16 = \$203,049.) *Id.* Plaintiff's counsel estimated that the maximum value of the rest break
17 portion of this claim is about \$323,780. *Id.* This is based on an assumed violation rate of
18 59% (27,439 shifts x 59% violation rate x \$20 regular rate = \$323,780.) *Id.* However,
19 because of the lack of documentary evidence regarding rest break violations, and the
20 possibility that Defendant could successfully contend that the meal and rest break violations
21 were individualized incidents which did not support a class award, Plaintiff's counsel
22 concluded that the minimum value of this claim is \$0. *Id.*

23 The Fourth Cause of Action is for failure to provide compliant wage statements. The
24 statute of limitations on such a claim is one year. This claim is based on the fact that the
25 wage statements issued to Plaintiff and the Class are incorrect in that they did not include all
26 of the unpaid hours worked and do not reflect meal and rest break wage premiums that
27 should have been paid. Gundzik Decl., ¶ 31. The penalties for inaccurate wage statements
28 are \$50 per employee for the first violation and \$100 per employee per violation for all

1 subsequent violations. Penalties per employee are limited to \$4,000. Prior to mediation,
2 Defendant disclosed that a total of 103 employees worked a total of about 3,551 pay periods
3 during the PAGA Period. *Id.* Based upon the number of wage statements, Plaintiff's counsel
4 estimated that the maximum value of this claim is approximately \$349,950 ((3,551 pay
5 periods x \$100) – (103 employees x \$50) = \$349,950) and that that this claim has a
6 minimum value of \$0. *Id.*

7 The Fifth Cause of Action is for failure to reimburse employees for all necessary
8 expenditures. This claim was based upon Plaintiff's contention that Class Members were
9 required to use their personal cell phones to communicate with their supervisors, students
10 and coworkers. Gundzik Decl., ¶ 32. Plaintiff's counsel determined that the maximum value
11 of this claim is approximately \$84,175, which assumes a reimbursement rate of \$50 per
12 month and about 1,683 employee months worked during the class period. *Id.* Plaintiff's
13 counsel estimated that the minimum value is \$0. *Id.*

14 The Seventh Cause of Action is for failure to pay separated employees all wages due
15 at the time of separation. This claim is based on Defendant's alleged failure to pay Class
16 Members all wages due when they separated, as their final pay did not include amounts due
17 for meal or rest period premiums, non-productive time or for all of their overtime work.
18 Gundzik Decl., ¶ 33. There are about 73 Class Members who were separated during the
19 relevant statutory period. *Id.* At an average daily rate of \$140, Plaintiff's counsel determined
20 that the maximum value of this claims is approximately \$306,600 and that the minimum
21 value is \$0. *Id.*

22 The Sixth Cause of Action is for violation of Business & Professions Code section
23 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of limitations that
24 is available under the UCL for certain violations. This cause of action is derivative of the
25 other claims that have already been analyzed. Gundzik Decl., ¶ 34. Accordingly, the
26 damages available under this cause of action have already been analyzed or are duplicative
27 of the damages discussed.

1 The Eighth Cause of Action is for violations of the Private Attorneys General Act
2 (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim
3 would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl.,
4 ¶ 35. Based on recent PAGA decisions, Plaintiff's counsel concluded that even if Plaintiff
5 was successful on this claim through trial, the Court may well have exercised its discretion
6 under PAGA and significantly reduced the penalties. *Id.*; Cal. Labor Code §2699(e)(2). In
7 addition, the settlement was primarily directed at recovering wages and unpaid premiums
8 owed to Class Members and the bulk of the settlement funds were intended to compensate
9 for these wages. *Id.* Based on these factors, Plaintiff's counsel opined that the maximum
10 reasonable value of the PAGA claim is approximately \$350,000, and the minimum value is
11 nothing. *Id.* Plaintiff's counsel therefore concluded that the \$20,000 that the parties allocated
12 to PAGA, 75% of which will be paid to the LWDA, is a reasonable settlement of that claim.
13 *Id.*

14 Based upon the forgoing, Plaintiff's counsel determined that the class claims in this
15 case had a minimum value of \$0 and a maximum estimated value of about \$1.9 million, not
16 including the PAGA penalties. Gundzik Decl., ¶ 36. Based on a Class size of approximately
17 141, the reasonable estimate of the average net amount that Class Members could have
18 obtained if Plaintiff prevailed at trial on behalf of the entire Class, if the Class was certified,
19 would be a minimum of \$0 and a maximum of about \$13,806. *Id.* However, the maximum
20 amount is almost never recovered at trial and never in a settlement. *Id.* Settlements, by their
21 nature, must account for the weaknesses in a plaintiff's case, which are discussed above. *Id.*
22 Indeed, because Defendant raised a colorable legal or factual defense to each of the claims
23 Plaintiff alleged, it is possible that, after trial, the Class would recover nothing. *Id.*
24 Defendant also is a relatively small company with limited finances, and Plaintiff and her
25 counsel were concerned that it would not be able to satisfy a judgment in excess of the
26 settlement amount and that if the litigation continued, it may not have been able to remain
27 a viable business (which would have meant that the Class Members would not receive any
28 amounts whatsoever). *Id.*

1 The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.* 72 Cal.
2 App. 5th 56, 77 (2021), because “it is fair, reasonable, and adequate in view of PAGA’s
3 purposes to remediate present labor law violations, deter future ones, and to maximize
4 enforcement of state labor laws.” Gundzik Decl., ¶ 37. In the settlement, \$20,000 is
5 allocated to Plaintiffs’ PAGA claim, which is approximately 3% of the Gross Settlement
6 Amount. *Id.* In conjunction with the class settlement, pursuant to which Class Members will
7 receive a total of approximately \$358,300, not including the PAGA payment, this settlement
8 will serve to remediate Defendant’s labor law violations. *Id.* Given that Defendant will be
9 paying \$630,000 as a result of the alleged violations, the Class and PAGA settlement is a
10 large disincentive for Defendant to engage in similar Labor Code violations in the future. *Id.*
11 And, because all Class Members will receive a notice of settlement with contact information
12 for Plaintiff’s counsel, those employees will know to contact them in the future if Defendant
13 attempts to engage in similar practices. *Id.* These factors—the payment of a large sum and
14 employee notice of violations and potential violations—serve to maximize enforcement of
15 state labor laws. *Id.* Also, unlike in *Moniz*, here there is no unsubstantiated and
16 disproportionate allocation of civil penalties between different groups of employees. *Id.* All
17 aggrieved employees will receive an allocation of PAGA civil penalties based on the
18 number of qualifying pay periods that they worked for Defendant. *Id.*

19 **B. Facts Relevant to Class Certification (Numerosity, Ascertainability and**
20 **Community of Interest)**

21 There are approximately 141 Class Members. Gundzik Decl., ¶ 38. The exact
22 number and identity of Class Members will be provided by Defendant in connection with its
23 duty to provide Class Data to the Administrator within 15 days after the Court preliminarily
24 approves the settlement. Gundzik Decl., ¶ 39, Ex. 1, § 4.2. And, a community of interest
25 exists, as in the pleading, Plaintiff is claiming the same injuries based upon the same alleged
26 wage and hour policies as are the Class Members. Gundzik Decl., ¶ 40; Pursley Decl., ¶¶ 3-
27 4.

1 **C. Facts Relevant to Other Concerns**

2 Plaintiff’s counsel has conferred with Defendant’s counsel, and Defendant has
3 advised that all Class Members are proficient in English. Gundzik Decl., ¶ 41. For that
4 reason, the Class Notice will be printed only in English. *Id.*

5 Gundzik Gundzik Heeger LLP (“GGH”) and Caskey & Holzman have entered into a
6 written retention agreement with the Class Representative and have agreed therein to divide
7 any attorney’s fees awarded in this case. Gundzik Decl., ¶ 42, Ex. 2. Plaintiff has consented
8 to the division of fees. *Id.*

9 **III. The Settlement Agreement**

10 **A. Class Definition and Class and Release Period**

11 The Class consists of all individuals who were employed by Defendant Sling in
12 California as flight instructors during the Class Period. Gundzik Decl., ¶ 43, Ex. 1, § 1.5.
13 The Class Period and the Class Release Period both begin November 14, 2019, and end on
14 September 16, 2024. Gundzik Decl., ¶ 45, Ex. 1, § 1.12. The Settlement Agreement provides
15 that if the total class member workweeks is more than 110% of 6,928 (which is the number
16 of workweeks reported prior to mediation), Defendant will increase the Gross Settlement
17 Amount by the same percentage that the total workweeks exceed 6,928 or alternatively
18 Defendant can end the Class Period and PAGA Period on a date prior to September 16, 2024
19 in order to limit the Represented Workweeks to a number lower than 110% of the amount
20 above. Gundzik Decl., ¶ 43, Ex. 1, § 8.

21 **B. Release of Claims**

22 Members of the Class, Plaintiff and the Aggrieved Employees will provide releases
23 to Defendant and its related entities. Gundzik Decl., ¶ 43, Ex. 1, § 5. All releases will be
24 effective upon Defendant’s payment to the administrator of all funds owed under the
25 Settlement Agreement. Gundzik Decl., ¶ 43, Ex. 1, § 5. The scope of the release will be
26 disclosed to the Class in the proposed Class Notice. See Gundzik Decl., ¶ 43, Ex. 1, pp. 23-
27 32. Any member of the Class who does not like the scope of the release (or the Settlement in
28

1 general) can preserve his or her individual claims by timely submitting a written request to
2 be excluded from the Settlement and class.

3 The Release applicable to the Class Members who are not Aggrieved Employee
4 provides:

5 All Participating Class Members, on behalf of themselves and their respective former
6 and present representatives, agents, attorneys, heirs, administrators, successors and
7 assigns, release Released Parties from (i) all claims that were alleged, or reasonably
8 could have been alleged, based on the Class Period facts stated in the Operative
9 Complaint including, any and all claims involving any alleged (a) failure to pay
10 wages; (b) failure to pay minimum wages; (c) failure to provide meal and/or rest
11 breaks; (d) failure to provide legally compliant wage statements; (e) failure to
12 reimburse employees for necessary expenditures; (f) failure to pay all wages owed at
13 time of discharge. Except as set forth in Section 5.3 of this Agreement, Participating
14 Class Members do not release any other claims, including claims for vested benefits,
15 wrongful termination, violation of the Fair Employment and Housing Act,
16 unemployment insurance, disability, social security, workers' compensation or
17 claims based on facts occurring outside the Class Period.

18 Gundzik Decl., ¶ 43, Ex. 1, § 5.2.

19 The Release applicable to Aggrieved Employees provides:

20 All Non-Participating Class Members who are Aggrieved Employees are deemed to
21 release, on behalf of themselves and their respective former and present
22 representatives, agents, attorneys, heirs, administrators, successors and assigns, the
23 Released Parties from all claims for PAGA penalties that were alleged, or
24 reasonably could have been alleged, based on the PAGA Period facts stated in the
25 Operative Complaint and the PAGA Notice.

26 Gundzik Decl., ¶ 43, Ex. 1, § 5.3.

1 The release to be provided by the named Plaintiff will be broader and encompass
2 most claims that she might have against Defendant and will include a waiver of Civil Code
3 section 1542. Gundzik Decl., ¶ 43, Ex. 1, § 5.1.

4 **C. Class Data**

5 Within fifteen days following the Court's order granting preliminary approval of the
6 Settlement, Defendant will provide the Administrator with the Class Data and at the same
7 time, will provide the Class Data, without Class Member names, contact information or
8 social security numbers, to Class Counsel. Gundzik Decl., ¶ 43, Ex. 1, § 4.2. This
9 information will remain confidential. *Id.* Because Plaintiff's counsel will be provided
10 anonymized Class Data, they will be able to confirm that the Net Settlement Amount has
11 been divided correctly, based on the data provided by Defendant. Gundzik Decl., ¶ 53.

12 **D. Monetary Terms**

13 Defendant will pay a Gross Settlement Amount of \$630,000 to the Administrator
14 plus the employer's share of all payroll taxes owed on the wage portion of all individual
15 settlement checks. Gundzik Decl., ¶ 43, Ex. 1, § 3.8. An escalator clause may result in an
16 increase in the Gross Settlement Amount if total Class Workweeks exceed 110% of 6,928.
17 Gundzik Decl., ¶ 43, Ex. 1, § 8.

18 After proposed deductions, as approved by the Court, and assuming that the escalator
19 clause does not result in an increase in the Gross Settlement Amount, the Net Settlement
20 Amount will be approximately \$358,300, all of which will be available to distribute to
21 Participating Class Members. Gundzik Decl., ¶ 55.

22 If the Court grants final approval of the Settlement, within sixty calendar days after
23 the Effective Date (which is the date of the Final Approval Order, if no objections are
24 submitted), Defendant shall deliver 50% of the Gross Settlement Amount to the QSF.
25 Gundzik Decl., ¶ 56, Ex. 1, § 4.3. Defendant shall deliver the other 50% of the Gross
26 Settlement Amount plus the Employer's Withholding Share to the Administrator within 180
27 days of the first payment. *Id.* Within ten calendar days of Defendant's deposit of funds, the
28 Administrator will pay settlement payments to Participating Class Members and Aggrieved

1 Employees, the Court-approved Class Representative Service Payment, the Court-approved
2 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, the LWDA
3 PAGA Payment, and the Administration Expenses Payment. Gundzik Decl., ¶ 56, Ex. 1, §
4 4.4.

5 At the final approval hearing, the Court will be asked to grant final approval to the
6 settlement and approve the following deductions from the Gross Settlement Amount: (a)
7 Class Counsel’s attorneys’ fees of \$210,000; (b) Class Counsel’s actual litigation costs and
8 expenses, not to exceed \$25,000; (c) a Service and Release Awards to Representative
9 Plaintiff Divya Pursley not to exceed \$10,000; (d) an amount not to exceed \$6,700 to the
10 Administrator for administering the settlement; (e) An allocation of \$20,000 to Plaintiff’s
11 PAGA claims (the “PAGA Penalties”), seventy-five percent (75%) of which will be paid to
12 the California Labor and Workforce Development Agency (the “LWDA PAGA Payment”),
13 and the remaining twenty-five percent (25%) of which will be distributed to the Aggrieved
14 Employees (“Individual PAGA Payments”). Gundzik Decl., ¶ 567 Ex. 1, § 3.2; Declaration
15 of Jodey Lawrence (“Lawrence Decl.”), ¶ 9.

16 The Settlement Agreement provides for up to a \$10,000 Class Representative
17 Service Payment. Gundzik Decl., ¶ 58, Ex. 1, § 3.2.1. This requested award is in recognition
18 of the significant time that Plaintiff Divya Pursley expended pursuing this action and assisting
19 her attorneys’ efforts with the case, the risks she took in agreeing to file this action and in
20 recognition of the expanded general release that she is required to provide, as part of the
21 Settlement. Gundzik Decl., ¶ 58. Plaintiff is required to provide Defendant with a broad
22 general release which includes a waiver of Section 1542 of the California Civil Code.
23 Gundzik Decl., ¶ 58, Ex. 1, § 5.1.

24 Plaintiff will be supporting the request for attorneys’ fees in several ways. Plaintiff’s
25 counsel will provide a chart which will specify the number of hours spent on each type of
26 task that was required in connection with the case and will make their billing records
27 available to the Court. Gundzik Decl., ¶ 59. Plaintiff’s counsel will be applying the
28 percentage method and supporting it with a lodestar cross-check. *Id.* And, if Plaintiff’s

counsel are requesting a multiplier, they will provide sufficient grounds for the application of the multiplier being requested. *Id.*

The Net Settlement Amount of approximately \$358,300 will be distributed to Participating Class Members based on each Class Member's gross pay from Defendant during the Class Period. The following formula will be used to calculate the settlement payments to be made to Participating Class Members: (Net Settlement Amount ÷ All Participating Class Members' Compensation during the Class Period) x (Individual Participating Class Member's Compensation during the Class Period). Gundzik Decl., ¶ 43, Ex. 1, § 3.2.4. Based on a Class size of 141, the Participating Class Members will be paid, on average, about \$2,541.13. Gundzik Decl., ¶ 62. Individual Class Payments and Individual PAGA Payments will be paid to the Class Members within 10 days of Defendant's deposit of the Gross Settlement Amount with the Administrator. Gundzik Decl., ¶ 43, Ex. 1, § 4.4.

Participating Class Member's Individual Class Payments will be allocated 20% to wages, to be reported on a W-2 form and 80% to interest and penalties. The portion allocated to interest and penalties will be reported on an IRS Form 1099. Gundzik Decl., ¶ 63, Ex. 1, § 3.2.4.1. The wage portion of each Individual Class Payments shall be subject to wage withholdings and reported on a form W-2. *Id.* The interest and penalty portions will be reported on IRS 1099 Forms. *Id.*

Of the Net Settlement Amount, \$20,000 will be allocated to Plaintiff's PAGA claims (the "PAGA Penalties"), 75% (\$15,000) of which will be paid to the LWDA (the "LWDA PAGA Payment"), and the remaining 25% (\$5,000) of which will be distributed to the Aggrieved Employees based upon the number of PAGA Pay Periods that they worked during the PAGA Period. Gundzik Decl., ¶ 43, Ex. 1, § 3.2.5.1. The following formula will be used to calculate the Individual PAGA Payments to be made to Aggrieved Employees: (Individual PAGA Employee's PAGA Pay Periods ÷ All PAGA Employees' PAGA Pay Periods) x \$12,500. Gundzik Decl., ¶ 64, Ex. 1, § 3.2.5.1. Participating Class Members who are also Aggrieved Employees may receive their Individual PAGA Payment included in the same checks as their Individual Class Payment. *Id.* Class Members who exclude themselves

1 from the Class Settlement will still receive their Individual PAGA Payment and such Class
2 Members will still be bound by the Released PAGA Claims, notwithstanding their exclusion
3 from the Class. Gundzik Decl., ¶ 64, Ex. 1, § 7.5.4. Individual PAGA Payments will be
4 treated as penalties and reported on an IRS Form 1099. Gundzik Decl., ¶ 64, Ex. 1, § 3.2.5.2.

5 **E. Notice Administration**

6 The settlement will be administered by Phoenix Settlement Administrators
7 (“Phoenix” or “Administrator”). Gundzik Decl., ¶ 43, Ex. 1, § 1.2; Lawrence Decl., ¶¶ 9-11.
8 If the Court grants preliminary approval of the settlement, within 15 calendar days
9 Defendant will provide the Administrator with the names, social security numbers, last
10 known addresses for each Class Member, the number of workweeks worked and
11 compensation earned by each Class Member in a Class position during the Class Period and
12 number of pay periods worked by Aggrieved Employees during the PAGA Period. Gundzik
13 Decl., ¶ 66, Ex. 1, § 4.2. The Administrator will check all addresses against the National
14 Change of Address database and update the Class list as appropriate. Gundzik Decl., ¶ 67,
15 Ex. 1, § 7.4.2. Within ten days of receiving the Class Data, the Administrator will send to
16 each Class Member’s most recent address via First-Class United States mail an English
17 version of the Class Notice. *Id.* No submission of a claim form is necessary, and all Class
18 members are eligible to receive a settlement payment except those who follow the procedure
19 for requesting an exclusion. *Id.*

20 The proposed form of the Class Notice discloses the pendency of this litigation,
21 summarizes the allegations against Defendant, defines the Class, describes the consideration
22 that Defendant will provide in settlement along with an estimate of each Class Member’s
23 estimated recovery if they participate in the settlement. Gundzik Decl., ¶ 69, Ex. A to Ex. 1,
24 pp. 23-32. The Class Notice also describes the claims that will be released and explains the
25 procedures to be used by members of the class to be excluded from or object to the
26 settlement. *Id.* Because this is an opt-out settlement and Class Members who do nothing will
27 still receive a settlement payment, the notice provisions agreed to by the parties will
28 adequately serve the interests of the individual Class Members in receiving the relief

provided by the settlement and adequately comply with California Rules of Court, Rule 3.766(e). Gundzik Decl., ¶ 68.

All settlement checks will be valid for 180 days from issuance. The funds represented by all uncashed checks will be transmitted by the Administrator to the California State Controller's Office Unclaimed Property Fund. Gundzik Decl., ¶ 71, Ex. 1, § 4.4.3.

For any Class Notice that is returned as undeliverable, the Administrator will use a USPS forwarding or, if none exists, perform a skip trace. Gundzik Decl., ¶ 43, Ex. 1, § 7.4.3. The returned Class Notices will be re-mailed to the new addresses obtained for such Class Members. *Id.* Such searching and re-mailing will be completed within three business days of the date that Class Notices were originally returned as undeliverable. *Id.*

The Administrator will establish a website for this settlement and will post the settlement agreement and other relevant documents. Gundzik Decl., ¶ 43, Ex. 1, § 7.8.1. Additionally, in their individual Class Notices, Class Members will be provided with the phone number and email address for the Administrator, as well as the website specific to the Settlement and instructions on how to access the website. Gundzik Decl., ¶ 43, Ex. 1 at p. 32. If there is a change in the date or location of the Final Approval hearing, the Administrator will post this information on the website. Gundzik Decl., ¶ 72, Ex. 1, § 7.8.1. Notice of the Final Judgment and Final Approval Order will also be posted on the Administrator's website. Gundzik Decl., ¶ 73, Ex. 1, § 7.8.1. The posting of the final judgment in this manner is intended to satisfy the requirements of Rule of Court 3.771(b).

F. Responses to Notice

Any member of the Class who wishes to be excluded from the settlement must submit a written request to be excluded to the Administrator, which must be postmarked no later than forty-five (45) days after the Class Notice is mailed by the Administrator. Gundzik Decl., ¶ 43, Ex. 1, §§ 1.45 (Response Deadline); 7.5.1. Any Class Member wishing to object to the approval of the Settlement must send a written statement of objection to the Administrator no later than forty-five (45) days after the Class Notice is mailed by the Administrator. Gundzik Decl., ¶ 43, Ex. 1 at § 7.7.

All Class Notices returned as being undeliverable will be re-mailed within three business days of the date that Class Notices were originally returned as undeliverable. Gundzik Decl., ¶ 43, Ex. 1, § 7.4.3. For Class Notices that are re-mailed to a different address, the 45-day opt-out and objection deadline will be extended by an additional 14 calendar days. Gundzik Decl., ¶ 43, Ex. 1, § 7.4.4.

G. Proposed Schedule of Events

Based on the terms of the Settlement Agreement, the following sets forth the proposed schedule of events to occur with respect to the effectuation of the settlement:

Event	Date
Deadline for Defendant to provide Class data to Administrator	within 15 calendar days of preliminary approval
Deadline to mail Class Notice to Class Members	within 10 calendar days of receipt of class data from Defendant
Deadline to challenge PAGA Pay Periods, Class Member Compensation, opt out of or object to settlement	within forty-five (45) calendar days of mailing Class Notice
Deadline to file motion for final approval of the settlement and award of attorneys' fees and costs	16 court days before final approval hearing
Hearing on motion for final approval of the settlement, granting of final approval, and entry of judgment	TBD
Deadline for Defendant to deliver funds to Administrator	\$315,000 shall be funded no later than 60 days after the Effective Date, and \$315,000 plus the employer's withholding share shall be funded 180 days later
Deadline for Administrator to distribute settlement funds	within 10 calendar days of Defendant's delivery of funds to Administrator

IV. ARGUMENT

A. The Class Should be Certified for Settlement Purposes

The proposed class satisfies the criteria for certification of a settlement class under California law. Section 382 of the Code of Civil Procedure "authorizes class suits in

1 California when the question is one of a common or general interest, of many persons, or
2 when the parties are numerous, and it is impracticable to bring them all before the court.”
3 *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000). “To obtain certification, a party must
4 establish the existence of both an ascertainable class and a well-defined community of
5 interest among the class members. *Id.*, at 435, citing *Richmond v. Dart Industries, Inc.*, 29
6 Cal. 3d 462, 470 (1981); also citing *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971).
7 The community of interest requirement will be met when the following three factors exist:
8 “(1) predominant common questions of law or fact; (2) class representatives with claims or
9 defenses typical of the class; and (3) class representatives who can adequately represent the
10 class.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th at 435.

11 **1. An Ascertainable Class Exists that can easily be Determined from**
12 **Defendant’s Records**

13 “An ascertainable class exists when, based upon the class definition, it is possible to
14 give adequate notice to class members or to determine after the litigation has concluded who
15 is barred from re-litigating. (Citation omitted.) The goal in defining the class is to use
16 terminology that will convey sufficient meaning to enable persons hearing it to determine
17 whether they are members of the class plaintiff wishes to represent.” *Marler v. E.M.*
18 *Johansing, LLC*, 199 Cal. App. 4th 1450, 1459-1460 (2011). Thus, a class is generally
19 considered ascertainable when (i) under the class definition the members are clearly
20 identifiable and (ii) the members can be located and notified through a reasonable
21 expenditure of time and money. *See Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263,
22 1274-1275 (1987). Here, the Class definition is clear. The Class is defined as “all persons
23 employed by SLING in California and classified as Flight Instructors who worked for
24 SLING during the Class Period” Gundzik Decl., ¶ 43, Ex. 1, § 1.5. The Class Period is
25 defined as the period beginning on November 14, 2019, and ending on September 16, 2024.
26 Gundzik Decl., ¶ 43, Ex. 1, § 1.12.

1 **2. There is a Well-Defined Community of Interest among the Class**
2 **Members**

3 The community of interest requirement is met with respect to the Class and the
4 claims asserted in the pleading. There are common issues regarding Defendant’s treatment
5 of these employees as to meal and rest periods. Further, the claims of the named Plaintiff are
6 typical of the claims of all Class Members, and she can and does adequately represent the
7 Class. Gundzik Decl., ¶¶ 17-22, 40; Declaration of Divya Pursley (“Pursley Decl.”), ¶¶ 3-10.

8 **3. Common Issues of Law and Fact Predominate over any**
9 **Individual Issues**

10 To determine whether common issues predominate in a class action matter, “a court
11 must examine the plaintiff’s theory of recovery and assess the nature of the legal and factual
12 disputes *likely to be presented*...As a general rule if the defendant’s liability can be
13 determined by facts common to all members of the class, a class will be certified even if the
14 members must individually prove their damages.” *Benton v. Telecom Network Specialists,*
15 *Inc.*, 220 Cal. App. 4th 701, 716 (2013) (emphasis in original).

16 Here, Plaintiff maintains that common issues exist with respect to Defendant’s
17 policies and practices regarding overtime, meal and rest breaks, payment of related wage
18 premiums and unreimbursed expenses. Gundzik Decl., ¶¶ 17-22, 40. Plaintiff maintains that
19 the only individualized differences between Class members relate to the amount of
20 compensation each Class member would be entitled to receive. However, it is well-settled
21 that mere differences as to the amount of damages among Class members are not sufficient
22 to prevent certification. *Id.*; *Acree v. General Motors Acceptance Corp.*, 92 Cal. App. 4th
23 385, 387 (2001) (“A class action may be maintained even if each class member must at
24 some point individually show his or her eligibility for recovery or the amount of his or her
25 damages...”)

26 **4. Plaintiff’s Claims are typical of the Claims of the Class**

27 “To maintain a class action, the representative plaintiff must adequately represent
28 and protect the interests of other members of the class. (Citation omitted.) Therefore, a

1 class representative plaintiff must be situated similarly to the other class members united by
2 a common interest.” *CashCall, Inc. v. Superior Court*, 159 Cal. App. 4th 273, 284 (2008).
3 Thus, the typicality requirement focuses on whether the proposed representative’s claims are
4 typical of the claims of the rest of the class. *Id.*; see *Classen v. Weller*, 145 Cal. App. 3d 27,
5 47 (1983).

6 Here, Plaintiff is seeking relief for the same wage and hour violations as are the rest
7 of the Class Members. Gundzik Decl., ¶ 40; Pursley Decl., ¶¶ 3-7. She seeks to impose
8 liability on Defendant based on the same claims and theories, as well as the same alleged
9 injuries, which apply to the Class as a whole. Thus, the claims of the Class Representative
10 are typical of the claims of the Class.

11 **5. The Class Representative and Class Counsel Will Adequately**
12 **Protect the Interests of the Class**

13 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
14 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
15 interests of the class.” *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450
16 (1976). Here, the Class Representative retained attorneys with extensive experience in
17 prosecuting wage and hour class actions. Gundzik Decl., ¶¶ 12-15; Declaration of Daniel
18 Holzman (“Holzman Decl.”), ¶¶ 2-4.

19 Nor is there any conflict between the interests of the Class Representative and the
20 members of the Class. The Class Representative and the Class are claiming the same injuries
21 based upon the same alleged wage and hour policies existing while they were employed by
22 Defendant. Gundzik Decl., ¶ 40; Pursley Decl., ¶ 7.

23 **B. Preliminary Approval is Appropriate Because the Settlement is Fair and**
24 **Reasonable**

25 A trial court should approve a class action settlement agreement if it determines that
26 the agreement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
27 1794, 1801 (1996). In making this decision, a court “should consider relevant factors, which
28 may include, but are not limited to the strength of the plaintiffs’ case, the risk, expense,

1 complexity and duration of further litigation as a class action, the amount offered in
2 settlement, the extent of discovery completed and the stage of the proceedings, the
3 experience and views of counsel, the presence of a governmental participant, and the
4 reaction of class members to the proposed settlement.” *In re Microsoft I-V Cases*, 135 Cal.
5 App. 4th 706, 723 (2006).

6 “At the same time, the trial court should give due regard to what is otherwise a
7 private consensual agreement between the parties.” *Id.* Thus, the Court “limits its inquiry to
8 the extent necessary to reach a reasoned judgment that the agreement is not the product of
9 fraud or overreaching by, or collusion between, the negotiating parties, and that the
10 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *In re*
11 *Microsoft I-V Cases*, 135 Cal. App. 4th at 723, citing *Dunk v. Ford Motor Co.*, 48 Cal. App.
12 4th at 1801; also citing *Officers for Justice v. Civil Service Com’n, etc.*, 688 F.2d 615, 625
13 (9th Cir. 1982). Whether the settlement was reached through arms-length negotiations is
14 also a strong factor which weighs in favor of presuming that the settlement is fair and
15 reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801.

16 These factors, as applied to this matter and as set forth below, strongly favor granting
17 preliminary approval of the Settlement Agreement:

18 **The Strength of Plaintiff’s Case.** As set forth in the Section II above and the
19 Declaration of Aaron Gundzik, the parties have vigorously advocated the parties’ respective
20 positions in this matter, and Defendant have consistently disputed that they violated
21 California’s wage and hour laws. In fact, Defendant raised a colorable legal or factual
22 defense to each claim Plaintiff has alleged. Gundzik Decl., ¶¶ 23-36.

23 **The Risk, Expense, Complexity and Likely Duration of Further Litigation.** If the
24 settlement is not approved, the Class Representative would need to move forward with
25 discovery and then move for class certification. Defendant will oppose certification on the
26 grounds that numerous individualized fact issues allegedly exist. Defendant will argue and
27 could succeed in claiming that these individualized issues overwhelm common issues and
28

1 will also argue that the action is not manageable on a class wide basis. The result could be
2 that the case would not be certifiable as a class action. Gundzik Decl., ¶¶ 23-25.

3 **The Risk of Maintaining Class Action Status Through Trial.** If the settlement is
4 not approved, and the Class Representative is successful on her motion for certification of
5 the class, the Class would still be faced with significant risks in continuing with the
6 litigation. Defendant could interpose a successful defense which could either cause the jury
7 to reject Plaintiff’s claims or award the Class only a small amount of the unpaid wages and
8 other amounts due to them. And, even if the Class ultimately prevailed, most of the Class
9 Members would have to wait years or more before they received any payment from the
10 lawsuit. Gundzik Decl., ¶ 25. Further, the Court would still retain authority to de-certify the
11 case in the event the trial showed that common issues did not predominate. *See* Cal. Rule of
12 Court 3.764. *Id.* And, as set forth in Defendant’s declaration accompanying this motion,
13 Defendant may not have had sufficient funds to pay in excess of the settlement amount.
14 Gundzik Decl., ¶ 26.

15 **The Amount Offered in Settlement.** In the experience of Class counsel, a gross
16 settlement of \$630,000 for a class of approximately 141, with the claims described above,
17 with \$20,000 allocated to Plaintiff’s PAGA claim, is within the “ballpark” of a fair,
18 reasonable and adequate settlement. Gundzik Decl., ¶ 26; Holzman Decl., ¶ 8. Taking into
19 account the serious risks associated with proceeding— that the case might not be certified as
20 a class action, that Plaintiff might not succeed on the merits at trial or, if Plaintiff succeed at
21 trial, that the case is reversed on appeal – it becomes apparent that a settlement in this range
22 is fair to the Class.

23 **The Extent of Investigation and Discovery Completed and the Stage of the**
24 **Proceedings.** As set forth in Section II.A above and the Declaration of Aaron Gundzik, the
25 parties have engaged in extensive formal and informal discovery and factual investigation.
26 Gundzik Decl., ¶¶ 7-10.

27 **The Experience and Views of Counsel.** As set forth in the declaration of Aaron
28 Gundzik, Class Counsel has significant experience in wage and hour class actions. Gundzik

Decl., ¶¶ 12-15; Holzman Decl., ¶¶ 2-4. Aaron Gundzik and Rebecca Gundzik have practiced law and been members of the California State Bar collectively for over 35 years each. *Id.* Daniel Holzman has been practicing law for more than 25 years. *Id.* Based upon their vast experience in the area, when they arrived at a settlement with Defendant, Class Counsel had sufficient information to assess the strengths and weaknesses of the claims against Defendant, and the benefits of the settlement in light of the significant risks of continuing with the litigation.

Whether the Settlement Was Reached Through Arm’s-Length Bargaining or was a Product of Fraud or Overreaching. It is undisputed that the parties negotiated the settlement at arm’s length following a mediation before a well-respected neutral third-party mediator who had significant experience settling wage and hour class action lawsuits. Gundzik Decl., ¶ 11. The settlement was negotiated at arms’ length and was in no sense collusive. *Id.*

C. The Proposed Class Notice Fairly Apprises the Class of the Terms of the Settlement and Their Right to Object

“The principal purpose of notice to the class is the protection of the integrity of the class action process, one of the functions of which is to prevent burdening the courts with multiple claims where one will do.” *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal. App. 4th 734, 745-746 (2009). Thus, an appropriate notice is one which has a reasonable chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 974 (1975).

The proposed Class Notice addresses these concerns. It identifies the Class Representative and Defendant, provides a description of the lawsuit, the settlement amounts, the proposed plan of allocation and the attorneys’ fees and expense payments that Class counsel may receive. The proposed Class Notice provides information as to how to opt out of the Class and be excluded, how to object to the settlement, as well as the date of the final approval hearing. It also describes the Settlement Agreement with sufficient detail to allow Class Members to make an informed decision as to whether to accept or object to it. The

1 proposed Class Notice further provides that it will bind all Class Members who do not
2 request exclusion. Gundzik Decl., ¶ 43, Ex. 1 at p. 28, ¶ 9. As such, the proposed Class
3 Notice describes the settlement with enough specificity to allow Class Members to make an
4 informed decision as to whether to participate in it. See California Rule of Court 3.766(d).

5 Further, the manner of giving notice is to be done in such a way as to maximize its
6 reach. The Class Notice will be sent to members of the Class by First Class regular U.S.
7 mail by the Administrator. Gundzik Decl., ¶ 43, Ex. 1, § 7.4.2. Prior to mailing, the
8 Administrator shall check all addresses against the National Change of Address (NCOA)
9 database. *Id.* The Administrator will mail the Class Notice to the most current mailing
10 address identified through such means. Gundzik Decl., ¶ 43, Ex. 1, § 7.4.2.

11 Pursuant to California Rules of Court, Rule 3.766(e), in determining whether the
12 manner of giving notice is sufficient, a court considers (1) the interests of the class; (2) the
13 type of relief requested; (3) the stake of the individual class members; (4) the cost of
14 notifying class members; (5) the resources of the parties; (6) the possible prejudice to class
15 members who do not receive notice; and (7) the res judicata effect on class members. Here,
16 the interests of the Class members are in receiving notice of the lawsuit and settlement.
17 Class Counsel and Defendant's counsel have conferred and determined that disseminating
18 the Class Notice by mail to the Class Members is the best way to maximize its reach.
19 Gundzik Decl., ¶ 70.

20 Delivering the Notice by mail complies with California Rules of Court, Rule
21 3.766(e) and the purpose of the Notice. An appropriate notice is one which has a reasonable
22 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
23 50 Cal. App. 3d 960, 974 (1975). Because this is an opt-out settlement and Class Members
24 who do nothing will still receive a settlement payment, the notice provisions agreed to by
25 the parties will adequately serve the interests of the individual Class Members in receiving
26 the relief provided by the settlement.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff, on behalf of herself and the Class, respectfully
3 requests that the Court grant preliminary approval of the settlement and set a final approval
4 hearing to take place within approximately 120 days.

5 DATED: October 29, 2024

GUNDZIK GUNDZIK HEEGER LLP

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By: 

Rebecca Gundzik
Attorneys for Plaintiff Divya Pursley,
individually and on behalf of all others
similarly situated

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