UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SHAWN MCMINN, COREY JACKSON, and JUSTIN YOUNG, both individually and on behalf of all other similarly situated persons, Plaintiffs, v. ATP FLIGHT ACADEMY, LLC; ATP USA, INC.; and ATP FLIGHT ACADEMY OF ARIZONA, LLC, Defendants.	Case No.: 8:24-cv-01498-TPB-CPT

EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs, pursuant to Fed. R. Civ. P. 65 and Local Rules 6.01 and 6.02, and upon the attached sworn declarations of Karen Kithan Yau, Jose Anglada, and Opt-in Plaintiffs Christian Canterbury, Emerson Colarossi, Eric Ostrander, Issac Parks, and Jonathan Yonke, associated exhibits, the Amended Complaint [Doc. 25], and the accompanying Memorandum of Law, move the Honorable Thomas Barber for an Order restraining Defendants ATP Flight Academy, LLC; ATP USA, Inc.; and ATP Flight Academy of Arizona, LLC (together "ATP") from continuing their unlawful and retaliatory conduct against their workers, including firing them, which is firmly prohibited by the Fair Labor Standards Act ("FLSA), 29 U.S.C. §

216, and move the Court to immediately take any other steps to stop these actions and return this case to the position it was in before ATP engaged in its retaliatory conduct and improper communications with Plaintiffs. Plaintiffs respectfully request the Court to make a ruling within five (5) days.

Plaintiffs, who are current or former flight instructors for ATP, filed their Amended Complaint on September 4, 2024, alleging ATP misclassified them as independent contractors rather than employees, and seek relief under FLSA, 29 U.S.C. § 201 *et seq.,* and applicable state wage and hour laws to recover overtime and other unpaid wages. One business day after the service of the Amended Complaint upon ATP, ATP brazenly fired 13 then-still-employed Opt-in Plaintiffs because of their participation in this FLSA collective action. ATP escalated its retaliatory conduct and conditioned the Opt-in Plaintiffs' re-hiring only if they agreed to drop their claims and withdraw from this action.

Thus, Plaintiffs move this Court to grant equitable relief to effectuate the purposes of the FLSA, 29 U.S.C. § 215(a)(3). The Court should issue the TRO and subsequent preliminary injunction without security from Plaintiffs in this FLSA action. *See* Section III (D), *infra*.

WHEREFORE, until such time as the Court can hear the Parties and order appropriate injunctive relief to fully remedy ATP's improper conduct, Plaintiffs respectfully request that this Court restrain ATP by ordering Defendants to comply with the following provisions, which are fully justified:

(1) Require ATP to rescind all Termination Letters/Notices already issued to the Plaintiffs and all still-employed opt-in class members and putative Rule 23 class members (collectively, the "Plaintiff Class Members") and reinstate all Plaintiff Class Members it terminated as a result of their participation in this case.[1]

(2) Require ATP to lift any "flight holds" it placed on Plaintiff Class Members as a result of their participation in this case.[2]

(3) Prohibit ATP from firing Plaintiff Class Members or imposing "flight holds" on them as a result of their participation in this case.[3]

(4) Require ATP to email a Court-approved written statement to all Plaintiff Class Members who were employed as of September 9, 2024, that no individual is required to dismiss or otherwise withdraw any claim filed or in which such individual is participating under FLSA—in a form to be approved by the Court.[4]

(5) Require ATP to post a Court-approved written statement to all Plaintiff Class Members in a conspicuous location in each training facility, that no individual is required to dismiss or otherwise withdraw any wage and hour claim filed or in which such individual is participating under FLSA.[5]

(6) Prohibit ATP from communicating with Plaintiff Class Members concerning any matters related to this litigation, including the release, dismissal, or withdrawal of any claims or participation in this case, without prior approval of the Court.[6]

---

[1] *See Clincy v. Galardi S. Enterprises, Inc.*, No. 109-CV-2082-RWS, 2009 WL 2913208, at *2 (N.D. Ga. Sept. 2, 2009) (issuing a TRO ordering immediate reinstatement of plaintiffs terminated by defendant); 29 U.S.C. 216 (b) (stating that, "without limitation," reinstatement is an appropriate remedy for retaliation).

[2] *See* fn. 2, *supra*.

[3] *See Perez v. La Bella Vida ALF, Inc.*, No. 8:14-CV-2487-T-33TGW, 2015 WL 12765538, at *1 (M.D. Fla. June 30, 2015*)* ("Defendants and their agents are enjoined from retaliating or discriminating in any way against any current or former employee … or any potential witness in the instant litigation."); *Perez Gutierrez v. Mariscos El Puerto, Inc.*, No. 2:19-CV-1940 JCM(EJY), 2019 WL 6050727, at *4 (D. Nev. Nov. 15, 2019) ("[D]efendants are temporarily restrained from terminating or threatening to terminate… or retaliating or discriminating against their employees in any other way[.]").

[4] *See Scalia v. Unforgettable Coatings, Inc.*, 455 F. Supp. 3d 987, 993-4 (D. Nev. 2020) (ordering a corrective notice be sent to all employees via text and posted at defendant's worksites); *Perez*, 2015 WL 12765538 (ordering a corrective notice be sent to all employees).

[5] *See Perez Gutierrez*, 2019 WL 6050727, at *4 (ordering corrective notice be posted at each of defendant's worksites); Scalia, 455 F. Supp. 3d at 993-4 (ordering a corrective notice be sent to all employees via text and posted at defendant's worksites)

[6] *See Ojeda-Sanchez v. Bland Farms*, 600 F. Supp. 2d 1373, 1381 (S.D. Ga. 2009) (enjoining defendants from "further communications by telephone or in person with Plaintiffs, Opt-in

(7) Require ATP to fully disclose the identities of Plaintiff Class Members it had communications with concerning the matters related to this litigation following the filing of their consent-to-sue.[7]

(8) Require ATP to provide copies of all communications it had with Plaintiff Class Members concerning any matters related to this litigation.[8]

(9) Prohibit ATP from any effort by themselves or their counsel to chill participation in this case.

(10) Prohibit ATP from disclosing any information about the Termination Letters/Notices issued to Plaintiff Class Members in any public information system, including, but not limited to Pilot Records Database (PRD) required under the Pilot Records Improvement Act of 1996 (PRIA).

(11) Due to the coercive nature of ATP's actions, toll the FLSA statute of limitations for all putative class members as of September 9, 2024.[9]

(12) Require ATP to pay the Plaintiffs' lost wages as a result of Defendants' retaliatory action and an additional equal amount as liquidated damages.[10]

(13) Require ATP to pay the Plaintiffs' costs and attorneys' fees for the time spent associated with this motion.[11]

Plaintiffs, Potential Opt-in Plaintiffs, and their family members regarding this lawsuit, their decision to participate as plaintiffs in this lawsuit, or their representation by" plaintiffs' counsel).

[7] *See Rogers v. WEBstaurant Store, Inc.*, No. 4:18-CV-00074-JHM, 2018 WL 3058882, at *7 (W.D. Ky. June 20, 2018) (ordering disclosure of a list of employees who executed a waiver and release of their liability after coercive communications by defendant).

[8] *See Agerbrink v. Model Serv. LLC*, No. 14 Civ. 7841 (JPO)(JCF), 2015 WL 6473005, at *12 (S.D.N.Y. Oct. 27, 2015), *vacated sub nom.*; *Agerbrink v. MSA Models*, 14 Civ. 7841 (JPO)(JCF), 2017 WL 4876221 (S.D.N.Y. May 23, 2017) (ordering defendant to disclose correspondence between its Chief Operating Officer end employees relating to the litigation).

[9] *See Clincy*, 2009 WL 2913208, at *3 (equitably tolling the statute of limitations for potential opt-ins in light of defendants' retaliatory acts).

[10] *See Reich v. Davis*, 50 F.3d 962, 966 (11th Cir. 1995) (stating that if employees are fired for protected activities under the FLSA, "they are entitled to reinstatement and full back pay"); *Miller v. Paradise of Port Richey, Inc.*, 75 F. Supp. 2d 1342, 1345 (M.D. Fla. 1999) (finding that "an award of liquidated damages is mandatory" in FLSA retaliation claims); 29 U.S.C. 216 (b) (stating that, "without limitation," back pay and an equal amount in liquidated damages is an appropriate remedy for retaliation).

[11] *See Pacheco v. Aldeeb*, 127 F. Supp. 3d 694, 700 (W.D. Tex. 2015) (ordering attorney's fees for motion to enjoin coercive communications with FLSA class members); *Stransky v. HealthONE of Denver, Inc.*, 929 F. Supp. 2d 1100, 1114 (D. Colo. 2013) (awarding attorney's fees and costs incurred by plaintiffs as a result of defendants misleading communications with potential class members); 28 U.S.C. 216(b)(awarding attorney's fees and costs in FLSA retaliation action).

MEMORANDUM OF LAW

I. PRELIMINARY STATEMENT

Before the Court is an egregious case of blatantly unlawful retaliatory action taken by an employer. On Monday, September 9, 2024, ATP fired at least 13 Opt-in Plaintiffs for their participation in this nationwide collective action. ATP fired the plaintiffs one business day after being served with the Amended Complaint, and explicitly stated that the termination was because of their participation in the lawsuit. And ATP requires the Plaintiffs to withdraw from the case to be rehired. These illegal actions have subjected the Plaintiffs to immediate harm, as they are currently unable to meet their basic living expenses, support their families, or continue their careers in aviation. Just as egregiously, ATP's retaliation has already and will continue to deter other flight instructors from pursuing their unpaid overtime claims. ATP's conduct is contrary to the FLSA's remedial and humanitarian policies, undermines the Court's authority, and prejudices Plaintiffs and the putative class. Thus, Plaintiffs request the Court's immediate intervention to stop these abusive and coercive practices.

This Court has a broad duty and authority to exercise control over the conduct of the Parties in this collective action. To that end, this Court is empowered to order preliminary injunctive relief because Plaintiffs can demonstrate (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on ATP; and (4) that entry of the relief would serve

the public interest. Plaintiffs are substantially likely to succeed on the merits because ATP has committed the quintessential act of retaliation under the FLSA: firing workers because they have joined a lawsuit challenging ATP's failure to pay overtime and other wages. They explicitly connected their action to the participation in this lawsuit, only one business day after receiving notice of it.

Irreparable injury has already occurred and will continue if this Court does not act. At least 13 plaintiffs have been deprived of their livelihoods, and countless more will be deterred from pursuing their own claims against ATP. Enjoining their retaliatory conduct will cause no harm to ATP, as they have no right to engage in it. Relief is in the public interest as it serves the broad remedial purposes of the FLSA and prevents workers from quietly accepting illegal treatment for fear of economic retaliation. ATP's appalling retaliatory action has already chilled participation in this lawsuit.

The Court should swiftly grant Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction and stop ATP from retaliating against Plaintiffs who are suffering greatly from the illegal termination of their employment and the horrendous chilling effect casted upon the participation in this class and collective action.

II. STATEMENT OF FACTS

A. The Plaintiffs Filed a Collective Action under FLSA

On June 21, 2024, Named Plaintiff Shawn McMinn, both individually and on behalf of all other similarly situated persons, brought a collective action under

FLSA against ATP. *See* Doc. 1.

On September 4, 2024, Plaintiffs amended the Complaint, added Named Plaintiffs Corey Jackson and Justin Young, and additionally brought Rule 23 class actions, arising out of ATP's violations of state wage and hour laws in 27 states. The Amended Complaint now pleads four more causes of action, in addition to the original one under FLSA. *See* Doc. 25. Approximately 160 current and former ATP flight instructors have filed a Consent-to-Sue in the above-captioned case. Declaration of Karen Kithan Yau ("Yau Decl.") ¶ 3.

B. ATP Fires Plaintiffs for Participating in Protected Conduct

Immediately after Plaintiffs served ATP with the Amended Complaint last Friday (September 6th)[12], ATP began retaliating against the Opt-in Plaintiffs. Yau Decl. ¶¶ 4, 8. The next business day —Monday — ATP Exec. V.P. Jim Koziarski called at least 4 of the 14 Opt-in Plaintiffs that ATP still employed. *See* Declarations of Emerson Colarossi, Issac Parks, and Jonathan Yonke (hereafter "Colarossi Decl.", "Parks Decl.", "Yonke Decl.") ¶¶ 9-12, 9-10, 9-13. ATP Exec. V.P. Koziarski told at least one of them that they "were on a list for a lawsuit," and he wanted to verify that they were part of the case. Colarossi Decl. ¶¶10-12. In some discussions, ATP Exec. V.P. Koziarski specifically referenced a "class action," meaning this case. Colarossi Decl. ¶12; Parks Decl. ¶9.

After ATP confirmed that the Opt-in Plaintiffs had joined this lawsuit, ATP fired them. ATP placed them on a "flight hold," which prevents them from flying

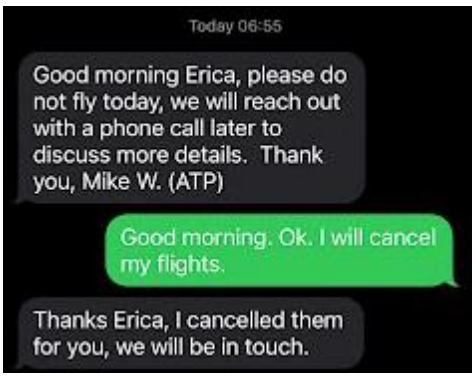
[12] Plaintiffs served one of the three ATP entities, ATP USA, Inc., last Friday.

planes, teaching their assigned students, or otherwise performing any work for ATP. Colarossi Decl. ¶¶12-13; Parks Decl. ¶¶10-11; Yonke Decl. ¶¶11-15.

Later the same day, ATP sent 10 of the 14 Opt-in still-employed Plaintiffs termination notices. Yau Decl. ¶ 13. The termination notice stated in part:

> This letter serves as formal notice that, pursuant to Section 10 of the Independent Contractor Agreement dated April 19, 2023, your engagement as an Independent Contractor with ATP USA, Inc., ATP Flight Academy of Arizona, LLC, and ATP Flight Academy, LLC (collectively "ATP") is hereby terminated effective September 9, 2024.

Another three received text messages.[13] Yau Decl. ¶ 13. The text message stated:



As a result, the 13 Opt-in Plaintiffs could not work or make any money unless and until ATP reinstated them. They were effectively fired.

C. ATP Refuses to Rehire Plaintiffs Unless They Drop Their FLSA Claims

After ATP fired the Plaintiffs, it demanded that they withdraw from the lawsuit to be rehired. The day after ATP fired plaintiffs — Tuesday, September 10, 2024 — ATP V.P. Philip Cooper emailed plaintiffs with a job offer. Yau Declaration ¶ 14. The offer required plaintiffs to travel to Jacksonville, Florida, and participate

[13] Our office has not been able to reach one of the 14 then-employed Opt-in Plaintiffs.

in a safety interview and a standardization flight. At least two fired Plaintiffs responded to ATP V.P. Cooper that they were willing to go through the re-hire process and gave ATP the dates that they were available for interviews and a flight. ATP stated that their interviews were "confirmed" or would be arranged. Canterbury Decl. ¶¶11-13; Ostrander Decl. ¶¶11-13.

Later that Tuesday, ATP Exec. V.P. Koziarski spoke with the two Plaintiffs who wanted to be rehired. Canterbury Decl. ¶15; Ostrander Decl. ¶14. He demanded that they drop out of the lawsuit to go through the re-hire process. Canterbury Decl. ¶¶15-16; Ostrander Decl. ¶¶14-18. He told Plaintiff Canterbury that ATP was not going to have anyone in the lawsuit working for ATP. Canterbury Decl. ¶15. To Plaintiff Ostrander, Koziarski said that "If you are a part of a lawsuit, it is obvious that you are disgruntled. . . You can say that you are not disgruntled, but you are disgruntled." Ostrander Decl. ¶ 14.

D. ATP Falsely Claims Plaintiffs Pose a Safety Risk

Before firing Plaintiffs on Monday, ATP did not raise any safety concerns with them. Yet after receiving notice of the lawsuit, Exec. V.P. Koziarski told Plaintiffs that they were placed on "flight hold" because their opting into the lawsuit had created "safety concerns." Colarossi Decl. ¶12; Ostrander Decl. ¶14; Yonke Decl. ¶11. ATP apparently reasoned that because these flight instructors had opted into the lawsuit, they must have been disgruntled and angry, and thus they posed safety risks. Ostrander Decl. ¶14. When challenged, Koziarski did not provide any justification for these baseless accusations. For example, when

Plaintiff Yonke asked Koziarski how joining a lawsuit for unpaid wages poses a "safety risk," he had no further explanation. Yonke Decl. ¶12.

Of the five Plaintiffs who submitted declarations, none of them had safety problems between the dates that they opted-into this lawsuit and the dates they were fired. Canterbury Decl. ¶17; Colarossi Decl. ¶14; Ostrander Decl. ¶ 16; Parks Decl. ¶12; Yonke Decl. ¶14. Of the two Plaintiffs out of the five Declarants who did experience safety-related incidents before joining the case, ATP kept them on or invited them back as its flight instructors, indicating that even some legitimate safety concerns did not warrant dismissal. Canterbury Decl. ¶7; Ostrander Decl. ¶¶7-8.

E. ATP's Illegal Actions Harm Plaintiffs

ATP's retaliatory action and termination of Plaintiffs' employment has already caused them tremendous hardship. The income from ATP's employment was for most of the Declarants their only source of income. Canterbury Decl. ¶19; Colarossi Decl. ¶19; Ostrander Decl. ¶20; Parks Decl. ¶17. Not only do they rely on it to pay their housing and living expenses, they rely on it to pay back the substantial loans that they took out to attend ATP as flight students. Yonke Decl. ¶¶5, 19. All of the Declarants borrowed more than $100,000.00 in order to attend ATP, and they must work to pay that money back. Canterbury Decl. ¶¶5, 19; Colarossi Decl. ¶¶5, 19; Ostrander Decl. ¶¶5, 19; Parks Decl. ¶¶5, 17; Yonke Decl. ¶¶5, 19.

Moreover, the Plaintiffs are losing valuable time to gain additional flight

hours to be licensed with an Airline Transport Pilot Certification, which is the entrée into meeting their professional goal of being a commercial airline pilot and earning substantial income. Canterbury Decl. ¶19; Colarossi Decl. ¶19; Ostrander Decl. ¶20; Parks Decl. ¶17; Yonke Decl. ¶19. For most of the Declarants, they were only months away from satisfying the requisite 1,500 flight hours to advance in their career. Colarossi Decl. ¶19; Ostrander Decl. ¶20; Parks Decl. ¶17; Yonke Decl. ¶19. One Declarant only needed a few more *days* to meet this requirement, but cannot do so after being fired. Parks Decl. ¶17. One Declarant already had a job offer from a commercial airline and received a sign-on bonus to accept it. Canterbury Decl. ¶19. The job offer, however, is contingent on meeting the requisite minimum number of flight hours. *Id.*

Additionally, Plaintiffs are deeply concerned about how ATP's termination of their employment will impact their future job opportunities and career in the close-knit airline industry. Canterbury Decl. ¶19; Colarossi Decl. ¶19; Ostrander Decl. ¶20; Parks Decl. ¶17; Yonke Decl. ¶19. For example, one Declarant became a "cadet," akin to a pre-hire for a commercial airline and receives some benefits from it. Ostrander Decl. ¶20. He was able to do so through a partnership between the commercial airline and ATP. *Id.* He is concerned that his firing will negatively impact his job opportunity with this commercial airline. *Id.*

ATP's retaliatory acts have already chilled participation in this lawsuit. Others are afraid to join it. At least one ATP current flight instructor decided not to join the lawsuit for fear of being fired after hearing of the firings of other Opt-in

Plaintiffs. Declaration of Jose Anglada ¶ 5.

III. LEGAL ARGUMENT

A. The Court Should Issue a Temporary Restraining Order And Preliminary Injunction to Remedy And Prevent Further Retaliation By Defendant.

ATP has violated the FLSA and retaliated against at least 13 flight instructors by firing them for their participation in a lawsuit challenging ATP's unlawful pay practices. And it will only rehire them if they withdraw their consent to sue. The FLSA prohibits an employer from terminating or discriminating against any employee in any manner "because such employee has filed any complaint or instituted … any proceeding under or related to this chapter." 29 U.S.C.A. § 215(a)(3).[14] Because of ATP's egregious and illegal behavior, this Court should issue a Temporary Restraining Order immediately and grant appropriate equitable and

[14] ATP has also violated a number of state anti-retaliation laws in the states where discharged flight instructors worked. *See, e.g.,* Cal. Lab. Code § 98.6 ("A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee … because the employee … has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner[.]"); Colo. Rev. Stat. Ann. § 8-4-120 ("An employer shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate or retaliate against any employee who has [f]iled any complaint or instituted or caused to be instituted any proceeding under this article 4 or any other law or rule related to wages or hours[.]"); Fla. Stat. Ann. § 448.102 (prohibiting an employer from taking "any retaliatory personnel action against an employee because the employee has … Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer."); 820 Ill. Comp. Stat. Ann. 115/14(c) (making it a misdemeanor for any "employer, or any agent of an employer, who discharges or in any other manner discriminates against any employee because … that employee has caused to be instituted any proceeding under or related to" the Illinois Wage Payment and Collection Act); N.C. Gen. Stat. Ann. § 95-241("No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does … [f]ile a complaint" under the North Carolina Wage and Hour Act); Wis. Stat. Ann. § 111.322(2m) (prohibiting the discharge of any individual for filing a claim or complaint to enforce rights under Wisconsin wage and hour laws).

injunctive relief as requested above.

A party is entitled to preliminary injunctive relief where it demonstrates "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). A party is further entitled to "a temporary restraining order without first giving notice to the enjoined parties if the movant provides: (A) specific facts in an affidavit or a verified complaint clearly show[ing] that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." *Frishberg v. Univ. of S. Florida's Bd. of Trustees*, No. 8:24-cv-22-TPB-NHA, 2024 WL 98206, at *2 (M.D. Fla. Jan. 9, 2024)) (J. Barber), citing Fed. R. Civ. P. 65(b)(1). Plaintiffs here squarely meet the tests for injunctive relief and a temporary restraining order.

"The antiretaliation provision [of the FLSA] was meant to 'foster a climate in which compliance with the substantive provisions of the Act would be enhanced' by protecting employees who come forward with complaints. Employees may be much less likely to stand up for their substantive rights under the statute if they know that months or years will pass before a court can act to halt prohibited intimidation by their employer." *Bailey v. Gulf Coast Transp., Inc.*, 280 F.3d 1333,

1337 (11th Cir. 2002)(internal citation omitted). This Court should uphold the underlying purposes of the FLSA and its retaliation provision, and issue immediate injunctive relief.

1. Plaintiffs are likely to succeed on the merits of their FLSA retaliation claim

Plaintiffs are substantially likely to succeed on the merits and prove a claim of retaliation. "Under the anti-retaliation provision of the [FLSA] … it is unlawful 'to discharge or in any other manner discriminate against any employee because such employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Act.'" *Prosser v. Thiele Kaolin Co.*, 135 F. Supp. 3d 1342, 1357 (M.D. Ga. 2015) (quoting 29 U.S.C. § 215(a)(3)). "To establish a *prima facie* retaliation claim, the plaintiff must establish that "(1) [s]he engaged in statutorily protected expression, (2) [s]he suffered an adverse employment act, and (3) some causal connection existed between the two events[.]" *Id.*, quoting *Godby v. Marsh USA, Inc.*, 346 Fed.Appx. 491, 493 (11th Cir. 2009). "[T]he substantial likelihood of success on the merits prong refers to the FLSA retaliation claim, not the underlying FLSA claim." *Espinoza v. Galardi S. Enterprises, Inc.*, No. 14-21244-CIV, 2014 WL 6473236, at *5 (S.D. Fla. Nov. 18, 2014).

Under the first prong, Opt-in Plaintiffs participated in a protected activity. They all filed Consents-to-Sue to formally join this nationwide FLSA collective action lawsuit. This action is explicitly protected under the FLSA. 29 U.S.C. § 215(a)(3); *Bryant v. Johnny Kynard Logging, Inc.,* 930 F. Supp. 2d 1272, 1291

(N.D. Ala. 2013) ("[B]y filing this lawsuit, which alleged FLSA overtime violations, Byrant engaged in protected activity.").

Under the second prong, ATP has taken multiple employment actions retaliating against the Plaintiffs. At least 13 of them have been fired as ATP terminated their contracts. *See Shannon v. Bellsouth Telecomm., Inc.*, 292 F.3d 712, 716 (11th Cir. 2002) (recognizing discharge of a worker as the "ultimate" "adverse employment action."). ATP subsequently sent the terminated Opt-in Plaintiffs "offers" of potential reinstatement, which would require them to travel to Jacksonville, Florida, and participate in a "safety interview" and "Standardization Flight." However, ATP will not allow them to complete the required activities for at least one week, resulting in lost wages and financial hardship. Even if the Opt-in Plaintiffs agree to go through the rehire process, ATP refuses to reinstate them unless they opt-out of this action and give up their unpaid overtime claims under the FLSA.

Under the third prong, there is a clear causal connection between the Opt-in Plaintiffs' protected activity and ATP's adverse employment actions. To prove causation, the plaintiff must show "(1) that the decisionmakers were aware of the protected conduct and (2) that the protected activity and the adverse act were not wholly unrelated." *Prosser,* 135 F. Supp. at 1357 (quoting *Godby*, 346 Fed. Appx. at 493). Here, Plaintiffs served the ATP with the Amended Complaint on Friday, September 6, 2024. One business day later, ATP started firing the Opt-in flight instructors. This alone is sufficient to establish a causal connection. *See Johnson*

v. Advertiser Co., 778 F. Supp. 2d 1270, 1279 (M.D. Ala. 2011) ("One common method of establishing the causal link element is close temporal proximity between the adverse employment action and the protected activity."); *Walton v. Neptune Tech. Grp., Inc.*, No. 2:08-cv-5–MEF, 2009 WL 3379912, at *15 (M.D.Ala. Oct. 20, 2009) (finding that the termination of an employee less than three months after the employee engaged in protected activity "is sufficient circumstantial evidence to satisfy" the causation element).

Plaintiffs' proof is even stronger. ATP Exe. V.P. Koziarski explicitly told Opt-in Plaintiffs that they could not work because of their involvement with the lawsuit, and Plaintiffs have submitted multiple declarations to that effect. Plaintiffs have done more than show that the terminations and other adverse employment actions were "not wholly unrelated" to the FLSA action – they have clearly shown that ATP retaliated against these Opt-in Plaintiffs.

Moreover, "the anti-discrimination provision of FLSA does not require a showing of intent. Rather, it is 'concerned with the *effect* of discrimination against employees who pursue their federal rights, not the motivation of the employer who discriminates.' Thus, good faith does not immunize a policy which discriminates on the basis of participation in an FLSA action." *Allen v. Suntrust Banks, Inc.*, 549 F. Supp. 2d 1379, 1382 (N.D. Ga. 2008) (citing 29 U.S.C. § 623(d)(emphasis in the original); *E.E.O.C. v. Bd. of Governors of State Colleges & Univ.*, 957 F.2d 424, 428 (7th Cir. 1992). Thus, even if ATP could somehow show it acted in good faith, it would not negate Plaintiffs' showing of retaliation.

Because at least 13 Plaintiffs who joined this lawsuit were terminated one business day after ATP was served the Amended Complaint and some were explicitly told that they were terminated for joining the lawsuit, Plaintiffs have clearly demonstrated a likelihood of success on the merits of their retaliation claim.

2. Plaintiffs and the Putative Class will Suffer Irreparable Injury Without Injunctive Relief

Plaintiffs are already suffering irreparable injury that will continue to occur if the Court does not grant immediate relief. Opt-in Plaintiffs have been terminated from their only form of employment and have lost their only income and means of support. They are suffering immediate and ongoing financial hardship. Moreover, they are no longer accumulating the flight hours required to move forward in their training to become commercial airline pilots, secure future employment, and face the prospect of losing significant future income. ATP has also made nebulous claims of "safety issues" based only on Opt-in Plaintiffs' participation in the lawsuit, causing a risk of reputational harm and possible difficulty securing a well-paying job with a respectable commercial airline.

If Plaintiffs concede to ATP's pressure, they risk jeopardizing their FLSA claims. Under the FLSA, the statute of limitations is tolled upon the filing of a Consent to Sue. 29 U.S.C. § 256(b). The statute of limitations is two years, unless the defendant acted willfully in which case the limitation period is extended to three years. 29 U.S.C. § 255. Further, because claims accrue on a pay period by pay period basis, FLSA claims expire with the passing of each pay period. *Knight v.*

Columbus, Ga., 19 F.3d 579, 581 (11th Cir. 1994). Thus, by dropping the lawsuit to preserve their employment, the Opt-in Plaintiffs risk losing substantial parts of their FLSA claims. Courts in this Circuit have held, "[f]orcing individuals with claims under the FLSA to choose between pursuing their claims or maintaining employment results in irreparable harm." *Clincy v. Galardi S. Enterprises, Inc.*, No. 1:09-CV-2082-RWS, 2009 WL 2913208, at *2 (N.D. Ga. Sept. 2, 2009).

Just as egregiously, ATP's retaliatory acts against the Opt-in Plaintiffs is deterring and will continue to deter others from preserving and pursuing their FLSA claims. ATP has created an irreparable injury because "retaliatory discharge carries with it the distinct risk that other employees may be deterred from protecting their rights under the Act or from providing testimony for the plaintiff in her effort to protect her own rights" *Holt v. Cont'l Grp., Inc.*, 708 F.2d 87, 91 (2d Cir. 1983). Other flight instructors "will likely be irreparably harmed by the chilling and deterrent effect that results from retaliation against those who seek to enforce their rights." *Scalia v. Unforgettable Coatings, Inc.*, 455 F. Supp. 3d 987, 992 (D. Nev. 2020). Thus, "[r]etaliatory termination also carries with it the risk that other similarly situated employees will be deterred from protecting their own rights." *Clincy,* 2009 WL 2913208, at *2. In this case, at least one similarly situated flight instructor has declined to opt into the lawsuit after hearing about the firings.

3. The Threatened Injury to Plaintiffs Outweighs any Possible Harm to Defendants.

The balance of the hardships weighs heavily in favor of injunctive relief. Not only are Plaintiffs suffering financial hardship as a consequence of ATP's retaliatory actions, but if ATP is allowed to continue, it is likely that other flight instructors will not bring or will even withdraw their claims, and others will not provide testimony. Such a result is contrary to the remedial and humanitarian goals of the FLSA. *See Morgan v. Fam. Dollar Stores, Inc.*, 551 F.3d 1233, 1265 (11th Cir. 2008) ("[T]he FLSA is a remedial statute that should be liberally construed."); *Bailey*, 280 F.3d at 1337 (noting that "[t]he antiretaliation provision was meant to foster a climate in which compliance with the substantive provisions of the Act would be enhanced by protecting employees who come forward with complaints.") (internal citations omitted). On the other hand, the Defendants suffer no hardship from being enjoined from engaging in retaliatory communications.

Indeed, they are not entitled to act in an illegal and retaliatory manner in the first place. In a similar case, the Court recognized that "without a temporary restraining order, plaintiffs will likely suffer significant hardship due to the irreparable harm that will likely result from defendants' continued violation of the FLSA. Further, defendants have no legitimate interest in threatening, intimidating, or otherwise retaliating against plaintiffs in direct contravention of their rights under the FLSA." *Perez Gutierrez,* 2019 WL 6050727, at *3 (granting a TRO against an employer in a FLSA action to prevent further retaliation, including termination, against plaintiffs and potential plaintiffs). The same is true here, and

this factor weighs in favor of the issuance of a temporary restraining order.

4. Granting relief will Serve the Public Interest

Granting the requested relief in this case will serve the public interest and the purposes of the FLSA. The FLSA "relies for enforcement of [substantive wage, hour, and overtime] standards, not upon 'continuing detailed federal supervision or inspection of payrolls,' but upon 'information and complaints received from employees seeking to vindicate rights claimed to have been denied.' And its antiretaliation provision makes this enforcement scheme effective by preventing 'fear of economic retaliation' from inducing workers 'quietly to accept substandard conditions.'" *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 11–12 (2011) (internal quotations and citations omitted).

Thus, courts have explicitly recognized that "the public interest [is] reflected in the FLSA's anti-retaliation provision," and that "[e]nforcement of the FLSA's anti-retaliation provisions serves the public interest by ensuring that a claimant is not punished for seeking the minimum and overtime guarantees provided under the FLSA." *Holden v. Bwell Healthcare, Inc.*, Civil Action No. ELH-19-760, 2019 WL 3208418, at *3 (D. Md. July 16, 2019). Indeed, the FLSA's anti-discrimination provisions are designed to prevent precisely the activity here: actions that create a fear of economic retaliation in ATP's workforce in order to chill their willingness to report violations of federal wage standards. Enforcing the antiretaliation provision of the FLSA with a temporary restraining order is in the public interest. *See also, Scalia,* 455 F. Supp. at 992 (weighing this factor in favor of plaintiffs

because "there is a strong public interest in favor of enforcement of the FLSA").

B. The Court Can Issue Injunctive Relief for ATP's Violations of the FLSA's Antiretaliation Provision, including Limits on ATP's Communications with Plaintiffs.

"[T]he FLSA permits employees to obtain preliminary injunctive relief to address violations of the Act's antiretaliation provision." *Bailey,* 280 F.3d at 1337. Any employer who violates the antiretaliation provisions of the FLSA "shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of [those provisions]." 29 U.S.C. § 216(b). Thus, "[a]n injunction reinstating employees to their former position and restraining further retaliation fits squarely within the relief available." *Bailey,* 280 F.3d at 1336. Courts in this circuit have granted relief similar to that requested by Plaintiffs. *See Bailey,* 280 F.3d at 1336; *Clincy,* 2009 WL 2913208, at *3 (reinstating terminated employees, prohibiting further retaliation for participation in the FLSA action, and tolling the statute of limitations).

Restrictions on a defendant's communications with opt-in plaintiffs and prospective class members are also proper. A district court has "both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and the parties" in the collective action context. *Hoffman Larouche v. Sperling*, 493 U.S. 165, 170-71 (1989). "These principles apply not only in the context of class actions governed by Rule 23 but also in collective actions brought under the FLSA." *Parrilla v. Allcom Const. & Installation Servs., LLC*, 688 F. Supp. 2d 1347, 1350 (M.D. Fla. 2010). In that vein,

the Eleventh Circuit has recognized that "[u]nsupervised, unilateral communications with the plaintiff class sabotage the goal of informed consent by urging exclusion on the basis of a one-sided presentation of the facts, without opportunity for rebuttal. The damage from these statements could well be irreparable." *Kleiner v. First Nat. Bank of Atlanta*, 751 F.2d 1193, 1203 (11th Cir. 1985). In recognition of this duty, courts in this circuit have enjoined defendants from coercive communications with potential collective action plaintiffs. *Perez,* 2015 WL 12765538, at *1 (enjoining defendants from improper communication with any potential witnesses in the case or suggesting they should not participate in the litigation); *Ojeda-Sanchez,* 600 F. Supp. 2d at 1381 (same).

C. The Court Should Issue a Temporary Restraining Order

As this Court has previously recognized, a federal court may issue a temporary restraining order without first giving notice to the enjoined parties if (1) the movant provides a specific affidavit showing immediate and irreparable injury before the adverse party can be heard in opposition and (2) the movant's attorney certifies in writing efforts made to give notice and why it should not be required. *Frishberg,* 2024 WL 98206, at *2 (quoting Fed. R. Civ. P. 65(b)(1). In this case, 5 Opt-in Plaintiffs have submitted declarations demonstrating the immediate risk of irreparable injury. Defendants were recently served with the Amended Complaint on Friday, September 6th, and immediately began retaliating against plaintiffs on Monday, September 9th. No counsel has yet entered an appearance in this matter or been in contact with Plaintiffs' counsel. On Monday, September 9th, attorney

Karen Kithan Yau left urgent messages for ATP's General Counsel's Office and reached out to ATP Exec. V.P. Koziarski and asked that his counsel contact her but received no response. Given ATP's clear retaliation, and their failure to respond to Plaintiffs' attempts at communication, the Court should issue a TRO in this matter, which should convert to a preliminary injunction after notice to ATP.

D. The Court Should Issue the TRO and Subsequent Preliminary Injunction without Security from Plaintiffs.

Fed. R. Civ. P. 65(c) states that the court "may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained;" *see also* Local Rule 6.01(a)(4) (requiring a motion for a temporary restraining order to include "a precise and verified explanation of the amount and form of the required security."). "When a district court sets an injunction bond pursuant to Federal Rule of Civil Procedure 65(c), '[t]he amount of [the] injunction bond'—and the choice of whether to set a bond at all—'is within the sound discretion of the district court.'" *Baldwin v. Express Oil Change, LLC*, 87 F.4th 1292, 1301 (11th Cir. 2023), quoting *Carillon Imps., Ltd. v. Frank Pesce Int'l Grp. Ltd.*, 112 F.3d 1125, 1127 (11th Cir. 1997). Further, a strong likelihood of success on the merits may favor "a minimal bond or no bond at all." *California v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1326 (9th Cir. 1985); *see also Hi-Tech Pharms., Inc. v. Nutrition Res. Servs., Inc.*, 1:23-cv-5536-TCB, 2024 WL 2158708, at *6 (N.D. Ga. Apr. 12, 2024) ("The

case law is also consistent that it is appropriate for a court to consider likelihood of success on the merits in evaluating setting a bond."); *Carvel Franchisor SPV LLC v. Chou*, 1:19-cv-02194-WMR, 2019 WL 4751866, at *1 (N.D. Ga. Aug. 6, 2019) ("In light of [Plaintiff]'s high probability of succeeding on the merits of its … claims, the Court finds that no bond is necessary.").

Where Plaintiffs, as here, are engaged in litigation that serves the public interest, that further weighs against the issuance of an injunction bond. *See Navarro v. Fla. Inst. of Tech., Inc.*, 6:22-cv-1950-CEM-EJK, 2023 WL 2078264, at *8 (M.D. Fla. Feb. 17, 2023) ("Because this lawsuit is a form of public interest litigation, the Court will exercise discretion in this case and elect to require no security at all."). Indeed, in FLSA retaliation cases, courts routinely do not require injunction bonds, or require only a minimal bond. *See, e.g., Brown v. Mustang Sally's Spirits & Grill, Inc.,* 12-CV-529S, 2012 WL 5928364, at *2 (W.D.N.Y. Nov. 26, 2012) (denying defendant's request for a security bond); *Perez Gutierrez,* 2019 WL 6050727, at *3 (issuing a TRO enjoining defendants from FLSA retaliation without requiring a security bond).

Given Plaintiffs' likely success on the merits, the lack of harm to the Defendants, and the remedial purposes of the FLSA, the Court should issue the TRO in this case without requiring a security bond from Plaintiffs.

CONCLUSION

For all of the foregoing reasons, this Court should immediately enter the proposed Order restraining ATP from its egregious retaliatory action and granting

Plaintiffs monetary, equitable, and injunctive relief.

Dated: September 13, 2024

Respectfully Submitted,

/s/ Karen Kithan Yau

Karen Kithan Yau, Esq. *(Pro Hac Vice)*
Emily J. Sullivan, Esq. *(Pro Hac Vice)*
Whitney Flanagan, Esq. (*Pro Hac Vice application to be filed*)
Getman, Sweeney & Dunn PLLC
260 Fair Street
Kingston, NY 12401
Tel: (845) 255-9370
Fax: (845)255-8649
Email: kyau@getmansweeney.com
Email: esullivan@getmansweeney.com

W. John Gadd, Esq.
Dean Burnetti Law
1937 East Edgewood Drive
Suite 102
Lakeland, FL 33803
Tel: (863) 287-6388
Email: wig@BurnettiLaw.com

Counsel for Plaintiffs