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By /s/ Vanessa Jimenez
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

Case No.: 21-civ-06029

JOHN R. SCHOLZ, III, an individual, and
KEVIN E. BYBEE, an individual, on behalf
of themselves and others similarly situated,

Plaintiff,

vs.

UNITED AIRLINES, INC., a Delaware corp.,
and DOES 1 through 10, inclusive

Defendant.

CLASS ACTION

**VERIFIED AMENDED COMPLAINT FOR
DAMAGES FOR:**

- 1. Violation of Labor Code §§ 233 and 234;**
- 2. Violation of Business and Professions Code
§§ 17200 et seq (Unfair Business Practices);**
- 3. Declaratory Relief**
- 4. Enforcement of Civil Penalties Under
Public Attorney Generals Act of 2004, Labor
Code §§ 2698, et seq. ("PAGA")**

DEMAND FOR JURY TRIAL

Unlimited Civil Case

Plaintiffs John R. Scholz, III ("Plaintiff Scholz") and Kevin E. Bybee ("Plaintiff Bybee"),
on behalf of themselves, and all others similarly situated, complain and allege as follows:

INTRODUCTION

1. Plaintiffs Scholz and Bybee bring this class action for claims arising out of the sick leave
and attendance policies of United Airlines, Inc. ("Defendant United"), on behalf of themselves
and all California citizens currently or formerly employed as Technicians and Other Related
employees ("Technicians") by Defendant United within the applicable statutory periods.

1 2. The California Labor Code ("Labor Code") requires employers who provide sick leave
2 for employees to permit those employees to use the amount of sick leave those employees would
3 accrue over a 6-month period to care for specifically designated sick relatives. This is commonly
4 referred to as "kin care" sick leave. The Labor Code provides sole discretion to the employee to
5 designate whether the use of accrued sick leave is for kin care sick leave or for personnel sick
6 leave. And, the Labor Code prohibits employers from counting sick leave as an absence or
7 "occurrence" which could potentially lead to discipline for the employee.
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9 3. The present action arises out of Defendant United's sick leave and attendance policies.
10 Defendant United's sick leave policy auto-designates *every* use of sick leave as kin care sick
11 leave, even when it is not kin care sick leave, until kin care sick leave is exhausted. Defendant
12 United's attendance policies punish a Technician employee for using sick leave, in contravention
13 of California law. These illicit and unlawful policies of Defendant United discriminate against
14 Plaintiffs, and the Class, when applied in this manner. Moreover, Defendant United applies these
15 policies only to its Technician employees and not all of its employees in California.
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18 4. During the relevant period, and continuing to the present, Defendant United illegally
19 ignored, and continues to ignore, Plaintiffs', and other similarly situated Class members', right to
20 determine and designate the use of paid sick leave. And, despite multiple express requests by
21 Plaintiffs to Defendant United to cease this practice, and to correct wrongly designated kin care
22 sick leave to accurately reflect personal sick leave, Defendant United adamantly refused, and
23 continues to refuse, to do so. Moreover, Defendant United has disciplined Plaintiffs, and other
24 similarly situated Class members, for using paid sick leave.
25

26 5. As a result, Plaintiffs Scholz and Bybee bring this action seeking, among other relief, a
27 declaration Defendant United's sick leave and attendance policies are unlawful under California
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1 law; an injunction prohibiting use of, and enforcement of, the unlawful sick leave and attendance
2 policies; restitution; accountings; damages; and available penalties pursuant to California law.

3 These issues are apparent based on Defendant United's maintained records, as well as statements
4 made by Defendant United to Plaintiffs, and are amenable for adjudication on a collective basis.
5

6 6. On November 5, 2021, Plaintiffs gave written notice of the claims in Plaintiffs' complaint
7 to the California Labor and Workforce Development Agency ("LWDA"), and Defendant United
8 via certified mail, pursuant to the California Labor Code's Private Attorney General's Act, §§
9 2698 et seq. ("PAGA"), seeking intervention or, in the alternative, permission to proceed as
10 representative "aggrieved employees" for and on behalf of all other aggrieved employees and the
11 State of California in a representative capacity under PAGA regarding Plaintiffs' complaints, as
12 described in this Complaint, that Defendant United auto designates Plaintiffs, and other
13 aggrieved employee Technicians', sick leave and that Defendant United disciplines Plaintiffs,
14 and other aggrieved employee Technicians, for using accrued and available sick leave. A copy
15 of: Plaintiffs' PAGA Notice certified mail receipt is attached as Exhibit 1; LWDA's electronic
16 notice of case filing receipt for LWDA Case No. LWDA-CM-851410-21 is attached as Exhibit
17 2; and the \$75 filing fee receipt is attached as Exhibit 3. Additionally, more than sixty-five (65)
18 days have passed since Plaintiffs' notice was filed and served without Plaintiffs having received
19 notification of the LWDA's intent to investigate this matter. Accordingly, as permitted by PAGA,
20 Plaintiffs have fully complied with the pre-suit notice requirements of PAGA, and now seek
21 PAGA penalties for the violations set forth in this complaint.
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23
24

25 **JURISDICTION AND VENUE**

26 7. Jurisdiction of this action is proper in the Superior Court of California under Article VI,
27 §10 of the California Constitution because this action is a cause not given by statute to other trial
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1 courts. Additionally, the monetary damages, penalties and other amounts sought in this action
2 exceed the minimal jurisdictional limits of this Court.

3 8. This Court has jurisdiction over Defendant United because Defendant United has
4 sufficient minimum contacts with California and San Mateo County and because the claims in
5 this action arise out of Defendant United's contacts with California and California law. Moreover,
6 Defendant United's operation of its business activities out of multiple airports in California,
7 including San Francisco International Airport where Defendant United employs thousands of
8 Technician employees who reside in California, and Defendant United intentionally availing
9 itself of the California market, render Defendant United subject to the jurisdiction of this Court
10 in accordance with traditional notions of fair play and substantial justice.
11

12 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§
13 395(a) and 395.5 because the acts complained of in this Complaint giving rise to Defendant
14 United's liability, the violations of law, and the resultant injuries to Plaintiffs Scholz and Bybee,
15 and other similarly situated Class members, occurred, at least in part, in San Mateo County,
16 where Defendant United also maintains offices, transacts business, and/or has an agent(s).
17

18 **PARTIES**

19 10. Plaintiff Scholz is a California citizen and a resident of Alameda County. Plaintiff Scholz
20 has been employed by Defendant United at the San Francisco International Airport, located in
21 unincorporated San Mateo County, as a Technician since 1998. Plaintiff Scholz is 57-years old
22 and a father of two. Plaintiff Scholz monitors and rationes all paid sick leave days in order to have
23 paid sick leave days to provide the necessary and essential care for his family, particularly his
24 elderly and ailing in-laws, as permitted under California law, and himself.
25

26 11. Plaintiff Bybee is a California citizen and a resident of San Mateo County. Plaintiff
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28

1 Bybee has been employed by Defendant United, at the San Francisco International Airport,
2 located in unincorporated San Mateo County, as a Technician since 1989. Plaintiff Bybee, a 59-
3 years old father of two, is responsible for, and the primary caretaker for, his 88-years old mother
4 who is handicapped and suffers from multiple chronic, debilitating medical conditions requiring
5 medical attention. Plaintiff Bybee monitors and rationes all paid sick leave in order to have paid
6 sick leave days to provide the necessary and essential care for his ailing mother, as permitted
7 under California law. Plaintiff Bybee himself has medical conditions for which Plaintiff Bybee
8 takes sick leave.
9

10
11 12. On information and belief, Defendant United, is, and at all relevant times, was a Delaware
12 corporation, with its principal place of business in Illinois, authorized to do business under the
13 laws of the state of California and doing business within the state of California as an air carrier,
14 engaging in substantial business in at least nineteen airports in the state of California, including
15 in the counties of San Mateo, Sacramento, San Francisco, and Los Angeles.
16

17 13. On information and belief, one of Defendant United's major hubs of business activity is
18 located at the San Francisco International Airport, located in unincorporated San Mateo County,
19 in the state of California, where Defendant United employs approximately 1,500 Technicians.
20 On information and belief, Defendant United employs approximately 3,000 Technicians in total
21 at the many other airport facilities from which Defendant United operates out of in California.
22

23 14. Defendant United is, and at all material and relevant times, was an employer, and Plaintiff
24 Scholz' and Bybee's employer, within the meaning of Labor Code §§ 233 and 234, subject to the
25 Labor Code.

26 15. Defendants named as Does 1 through 10, inclusive, are persons or entities whose true
27 names and capacities, whether individual, corporate, or otherwise, are presently unknown to
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1 Plaintiffs Scholz and Bybee, who therefore sue said Doe defendants by fictitious name pursuant
2 to California Code of Civil Procedure § 474. Plaintiffs Scholz and Bybee are informed and
3 believe, and allege on that basis, each of the fictitiously named Doe Defendants perpetrated some
4 or all of the unlawful and wrongful acts alleged herein; is responsible in some manner for the
5 matters alleged herein; held executive positions with Defendant United and/or have acted on
6 behalf of Defendant United by exercising decision making responsibility for and by establishing
7 unlawful and unfair sick leave and attendance policies for Defendant United; and is jointly and
8 severally liable to Plaintiffs Scholz and Bybee. Plaintiffs Scholz and Bybee will amend the
9 Complaint to set forth the true names and capacities of Doe Defendants when such names are
10 ascertained.
11

12 **FACTUAL ALLEGATIONS**

13 **Allegations Common to All Claims and Relief Sought**

14
15 16. Defendant United employs numerous Technician employees throughout California. At
16 all times relevant and material, Defendant United conducted business and employed Plaintiffs,
17 and other similarly situated Technicians, in San Mateo County, and throughout California.
18

19 17. At all times relevant and material, Plaintiffs, and other similarly situated Technicians,
20 were non-exempt employees, covered by the California Labor Code; by Defendant United's
21 policies and practices; and by other orders, regulations and statutes.
22

23 18. Defendant United's Technician employees, pursuant to collective bargaining agreement,
24 accrue limited paid sick leave. Specifically, Technicians accrue 8-hours of paid sick leave for
25 each month the employee is in a paid status or 96-hours annually, and can accumulate sick leave
26 in a "sick bank" up to a maximum of 1,600-hours.
27
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1 19. Absent application of California law, Defendant United's paid sick leave may only be
2 used for the Technician employee's own sickness or non-occupational injury and/or for illness of
3 limited family members - a spouse or a dependent child. Defendant United's paid sick leave may
4 not be used for a parent or sibling. Defendant United's stated Technician sick leave policy also
5 imposes an "occurrence" for disciplinary purposes on an employee for the third time an employee
6 uses any paid sick leave to care for a spouse or dependent child in a 12-month period. There is
7 no way to mitigate an "occurrence" or assignment of reductive attendance point(s).
8

9 20. And, contrary to California law, Defendant United erroneously auto-designates all paid
10 sick leave as kin care sick leave regardless of whether the Technician is taking paid sick leave
11 for personal sick leave or kin care sick leave. Defendant United does not auto-designate all sick
12 leave as kin care sick leave for its other California employees, for example, its pilots.
13

14 21. Defendant United maintains an attendance policy applicable to its Technician employees.
15 Defendant United unilaterally adopted the attendance policy after ratification of the collective
16 bargaining agreement. The attendance policy is not, and was not, subsequently incorporated into
17 the collective bargaining agreement by agreement or ratification nor does the attendance policy
18 refer to, reject, or waive California state labor laws.
19

20 22. Under the original attendance policy, a Technician could be assigned a "point" for using
21 sick leave. A Technician who received a certain amount of points was subject to discipline up to
22 and including termination. In 2017, Defendant United allegedly modified the sick leave policy
23 by removing the assignment of a point for using accrued sick leave; however, Defendant United
24 continues to assign points to its Technician employees for using accrued sick leave.
25

26 23. Plaintiffs are informed and believe, and allege on that basis, Defendant United utilizes
27 the same sick leave and attendance policies in each airport facility in the state of California for
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its Technician employees and that Defendant United has acted knowingly, intentionally, and with deliberate indifference and conscious disregard to the rights of Plaintiffs, and other similarly situated members of the Class, in committing the abuses set forth above.

24. Moreover, Plaintiffs are informed and believe, and allege on that basis, Defendant United has engaged in systemic violations of the Labor Code and California Business and Professions Code by creating and maintaining policies, practices and customs that knowingly deny Plaintiffs, and other similarly situated members of the Class, certain employment rights and that all such violations are ongoing.

25. On November 5, 2021, Plaintiffs Scholz and Bybee filed notice with the California Labor and Workforce Development Agency ("LWDA"), sending a copy by certified mail to Defendant United, of the labor law violations set forth in this Complaint that Plaintiffs have suffered and, on information and belief, other Technicians at United have suffered. LWDA declined to investigate or otherwise did not respond within the statutory period, Plaintiffs amend this Complaint to seek penalties on behalf of all aggrieved employees who have been similarly harmed by the violations.

Individual Allegations of Plaintiff Scholz to All Claims and Relief Sought

26. At the start of the calendar year 2021, Plaintiff Scholz had approximately 90 hours of sick leave in his sick leave bank, which had accrued from his many years employed with Defendant United. According to Defendant United's sick leave policy, Plaintiff Scholz could expect to accrue an additional 96-hours of sick leave in 2021 or one sick day per month.

27. In 2021, Plaintiff Scholz took personal sick leave due to a personal illness; however, Defendant United auto-designated the sick leave as kin care sick leave to cover these absences without Plaintiff Scholz' authorization or permission. By February 23, 2021, Defendant United

1 had illicitly exhausted all of Plaintiff Scholz' kin care sick leave for 2021 through the erroneous
2 designations of personal sick leave as kin care sick leave.

3 28. On September 8, 2021, following the use of available paid sick leave on September 3,
4 2021, Defendant United assigned a discipline "point" to Plaintiff Scholz for using paid sick leave.

5 29. Based on past experiences, Plaintiff Scholz expects to have to take time off to care for his
6 family, particularly his failing 85-years old father-in-law, in addition to time off Plaintiff Scholz
7 may need to take off for his own personal illnesses.
8

9 **Individual Allegations of Plaintiff Bybee to All Claims and Relief Sought**

10 30. At the start of the calendar year 2021, Plaintiff Bybee had approximately 1,011 hours of
11 sick leave in his sick leave bank, accrued from his many years with Defendant United. Plaintiff
12 Bybee could expect to accrue a further 96-hours of sick leave in 2021 or one sick day per month.

13 31. On April 14, 2021, Plaintiff Bybee took authorized personal sick leave due to a personal
14 medical condition. This personal sick leave was for 60-days from April 14, 2021 through June
15 13, 2021. Defendant United auto-designated this personal sick leave as kin care sick leave to
16 cover Plaintiff Bybee's absences without Plaintiff Bybee's authorization or permission. By April
17 19, 2021, Defendant United had illicitly exhausted all of Plaintiff Bybee's kin care sick leave for
18 2021 through erroneously designating personal sick leave as kin care sick leave.
19

20 32. Upon his return from sick leave, Plaintiff Bybee submitted multiple requests to Defendant
21 United to correctly designate those absences and use of his paid sick leave as personal sick leave
22 rather than kin care sick leave; however, Defendant United refused to do so, stating the kin care
23 rules do not apply to Defendant United and it is only because of Defendant United's generosity
24 Plaintiff Bybee gets to use, and have absences designated, as kin care at all.
25
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27
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33. In addition to Defendant United's failure to correctly designate Plaintiff Bybee's sick leave, on June 13, 2021, Defendant United assigned a discipline "point" to Plaintiff Bybee for using his available paid sick leave for his medical condition.

34. Based on past experiences, Plaintiff Bybee expects to have to take time off to care for his mother in addition to the time off Plaintiff Bybee must take off for his own medical conditions.

CLASS ALLEGATIONS

35. Plaintiffs bring this action individually, and on behalf of all other similarly situated Technician employees of Defendant United, who are currently employed or were formerly employed by Defendant United in California at any time during the Class Period. Plaintiffs' claims are brought and may properly be maintained as a class action under California Code of Civil Procedure § 382 because there is a well-defined community of interest among the Class with respect to the claims asserted herein and the proposed Class is easily ascertainable.

36. Ascertainability and Numerosity. The members of the Class are ascertainable and sufficiently numerous that joinder of all members is impracticable. On information and belief, the Class includes approximately 3,000 individuals employed by or formerly employed by Defendant United in California, including in San Mateo County, as Technicians at any time since November 5, 2017 ("Class Period"). The Class Period also includes unknown future employees who will become employed as Technicians by Defendant United during the Class Period prior to Class certification. The names and addresses of Class members are available from Defendant United and notice can be provided to the Class using common techniques and customary notice used in class action lawsuits of this nature. Joinder of all such current and former Technicians individually would be impractical.

37. Commonality. There are questions of law and fact common to the Class, including but

1 not limited to whether Defendant United's sick leave and attendance policies violate the Labor
2 Code; whether Defendant United's conduct constitutes an unlawful, unfair, or deceptive business
3 act or practice; and what the appropriate remedies for Defendant United's conduct should be.
4 These questions predominate over individual questions.
5

6 38. Typicality. The claims of Plaintiffs Scholz and Bybee are typical of the claims of the
7 Class Plaintiffs seek to represent. As set forth herein, Defendant United's common course of
8 conduct caused Plaintiffs, and other similarly situated Class members, the same or similar injuries
9 and damages. Plaintiffs Scholz' and Bybee's claims are thereby representative of and coextensive
10 with the claims of the Class.
11

12 39. Adequacy. Plaintiffs Scholz and Bybee will fairly and adequately represent and protect
13 the interests of the Class because Plaintiffs are a member of the class Plaintiffs seek to represent
14 and because it is in Plaintiffs' best interests to prosecute the claims alleged herein to obtain
15 declaratory relief, injunctive relief, restitution, damages, and other relief for violations the Class
16 has already suffered. Plaintiffs Scholz and Bybee will prosecute the case vigorously on behalf
17 of the Class as demonstrated by having already devoted time and resources to initially
18 investigating these claims. Neither Plaintiff Scholz or Plaintiff Bybee have known conflicts of
19 interest with the Class. And, Counsel for Plaintiffs has the requisite resources, experience, and
20 ability to prosecute this action as a class action.
21

22 40. Superiority of Class Action. A class action is superior to other available methods for the
23 fair and efficient adjudication of this controversy. Specifically, because the damages suffered by
24 certain individual members of the Class may be relatively small, the expense and burden of
25 individual litigation make it impracticable for Class members to pursue claims separately. Class
26 action treatment will permit all those similarly situated, as well as all parties and the judicial
27
28

1 system, to litigate these claims efficiently and economically. Class action treatment will also
2 avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for
3 all Class members. Moreover, because Defendant United has implemented an unlawful policy
4 generally applicable to the Class, issuing injunctive relief and declaratory relief with respect to
5 the Class as a whole makes class action treatment appropriate. For all these and other reasons, a
6 class action is superior to other available methods for the fair and efficient adjudication of the
7 controversy set forth in this complaint.
8

9
10 **FIRST CAUSE OF ACTION**
11 **(Kin Care Violations Brought by Plaintiffs Against Defendant United and Does 1-10)**
12 **(Cal. Lab. Code §§ 233 and 234)**

13 41. Plaintiffs incorporate all paragraphs above as if fully set forth herein.

14 42. Labor Code § 233(a) requires "[a]ny employer who provides sick leave for employees
15 shall permit an employee to use in any calendar year the employee's accrued and available sick
16 leave entitlement, in an amount not less than the sick leave that would be accrued during six
17 months at the employee's then current rate of entitlement for the reasons specified in subdivision
18 (a) of § 246.5." Thus, Labor Code § 233 requires the employee be the party to designate the type
19 of use – kin care or personal care – for which accrued, paid sick leave is being taken.

20 43. Defendant United's practice and policy of auto-designating all paid sick leave as kin care
21 sick leave without permission or authorization violates Labor Code § 233.

22 44. Defendant United, by its erroneous designation, illicitly depletes available kin care, an
23 action the legislature specifically sought to prevent in drafting the kin care law, and actively
24 prevents the Technician employee, including Plaintiffs and the Class, from using accrued and
25 available paid sick leave as provided for by California law.
26

27 45. Moreover, Defendant United's practice and policy of requiring Technician employees,
28

1 including Plaintiffs and the Class, to use accrued and available paid sick leave as kin care sick
2 leave when the paid sick leave is being taken for personal sick leave or when a Technician
3 employee would not elect to use accrued and available paid sick leave as kin care sick leave even
4 if given the choice, denies the Technician, including Plaintiffs and the Class, the right to use
5 accrued and available paid sick leave for kin care sick leave for absences later in time to care for
6 covered family members, additionally violating Labor Code § 233.

8 46. The anti-retaliation provisions of Labor Code § 233 protect the employee from retaliation
9 for the employee's use of sick time for the employee's own needs. Labor Code § 233(c) forbids
10 any employer to "deny an employee the right to use sick leave or discharge, threaten to discharge,
11 demote, suspend, or in any manner discriminate against an employee for using, or attempting to
12 exercise the right to use, sick leave to attend to an illness or the preventive care of a family
13 member, or for any other reasons specified in subdivision (a) of § 246.5."

15 47. And, pursuant to Labor Code § 234, an employer absence control policy counting the use
16 of sick leave as an absence that may lead to or result in discipline, discharge, demotion, or
17 suspension is a per se violation of Labor Code § 233.

19 48. Together Labor Code §§ 233 and 234 provide if an employee has accrued and available
20 sick leave, and is using available accrued paid sick leave for a purpose as specified in the law, it
21 is not permissible for an employer to give the employee an "occurrence" for the absence under
22 such an attendance policy because such action would constitute a form of discipline against the
23 employee for using paid sick leave as allowed under the paid sick leave law.

25 49. Defendant United's practices and policies effectuate such a prohibited result because
26 Defendant United's attendance policy counts the use of paid sick leave as an absence that may
27 lead to discipline, which violates the Labor Code.

1 50. Defendant United's continuing violation of the laws pleaded herein will cause great and
2 irreparable damage to Plaintiffs and the Class unless Defendant United is immediately restrained
3 from committing further illegal acts.

4
5 51. Plaintiffs Scholz and Bybee have no plain, speedy, or adequate remedy at law.

6 **SECOND CAUSE OF ACTION**
7 **(Unfair Business Practices Brought by Plaintiffs Against Defendant United and Does 1-10)**
8 **(Cal. Bus. & Prof. Code §§ 17200 et seq.)**

9 52. Plaintiffs incorporate all paragraphs above as if fully set forth herein.

10 53. Plaintiffs Scholz and Bybee assert this cause of action for unfair, unlawful, and/or
11 deceptive business practices and the following against Defendant United and Does 1-10, who are
12 all "persons" within the meaning of § 17201 of the California Business and Professions Code.

13 54. California Business and Professions Code §§ 17200 et seq., ("Unfair Competition Law"),
14 prohibits any unlawful, unfair, fraudulent, or deceptive business act or practice.

15 55. The acts, policies, and practices alleged in this action by Plaintiffs Scholz and Bybee
16 against Defendant United, and Does 1-10, are willful violations of California law, including but
17 not limited to violation of Labor Code §§ 233 and 234, constituting unfair business practices as
18 defined by §§ 17200 et seq. of the California Business and Professions Code.

19
20 56. At all relevant times, Defendant United engaged in unlawful and unfair business practices
21 in violation of the Unfair Competition Law through common and systemic employment policies
22 and practices including unilaterally auto-designating sick leave as kin care sick leave, interfering
23 with sick leave, and disciplining employees for using paid sick leave as alleged in this Complaint,
24 in violation of the Labor Code.

25
26 57. By engaging in the above-described unfair business practices, Defendant United has
27 sought to avoid, and successfully avoided, obligations to meet minimum employee-protection
28

standards established by the California legislature, thereby shifting the burden properly imposed on Defendant United onto Plaintiffs and the Class, as well as other law-abiding businesses.

58. Defendant United's business practices deprived Plaintiffs Scholz and Bybee, and other similarly situated Class members, of employee protections and rights to which they are legally entitled, which constitutes unlawful and unfair fraudulent business practices and provides an unfair advantage to Defendant United over its competitors who have been or are currently in honest compliance with applicable employment laws.

59. Furthermore, on information and belief, Plaintiffs Scholz and Bybee allege Defendant United, by engaging in the aforementioned unfair, unlawful, and fraudulent business acts and practices complained of above, obtains competitive advantage over law-abiding employers with which Defendant United competes and is unjustly enriched as a result of such unlawful and unfair business practices.

60. As a direct and proximate result of the unfair, unlawful, and fraudulent business practices committed by Defendant United, by engaging in the aforementioned unfair and unlawful business practices, Defendant United has caused Plaintiffs and the Class to suffer injury and to lose money or property as a result of such unfair and unlawful business practices.

61. Defendant United, and all persons acting in concert with Defendant United, have engaged in, are currently engaging in, and will continue to engage in the aforementioned unfair and unlawful acts and practices unless restrained or enjoined by this Court. The aforementioned unlawful acts and practices violate public policy and will cause great and irreparable harm to Plaintiff Bybee and the Class, to Defendant United's competition, and to the general public unless Defendant United is restrained from committing such further unfair and unlawful business acts or practices.

62. Pursuant to California Business and Professions Code § 17203, Plaintiffs and the Class are entitled to seek injunctive relief prohibiting Defendant United's continuing unfair, unlawful, and deceptive business acts and practices alleged herein. Injunctive relief is necessary to prevent Defendant United from continuing the unfair, unlawful, and deceptive business acts and practices alleged herein. Moreover, Plaintiffs and the Class are entitled, pursuant to California Business and Professions Code §§ 17203 and 17208, to restitution for, among other things, any denied pay and/or benefits beginning four (4) years prior to filing this complaint to the present. Plaintiffs have no other adequate remedy at law.

63. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and those of the Class and to enforce important employment rights affecting the public interest. Plaintiffs have thereby incurred attorney fees and costs, which Plaintiffs are entitled to recover on all causes of action under California Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION
(Declaratory Relief Brought by Plaintiffs Against Defendant United and Does 1-10)
(Cal. Code of Civ. Proc. §§ 1060 et seq.)

64. Plaintiffs incorporate all paragraphs above as if fully set forth herein.

65. Plaintiffs Scholz and Bybee assert this cause of action for declaratory relief and the following against Defendant United and Does 1-10 in their official capacity as purported agents of Defendant United.

66. An actual controversy has arisen and now exists between Plaintiffs Scholz and Bybee and Defendant United concerning their respective rights, obligations, and duties. Plaintiffs Scholz and Bybee therefore seeks declaratory relief as set forth below.

67. Defendant United auto-designates all sick leave as kin care sick leave contrary to the dictates of Labor Code §§ 233 and 234.

68. Defendant United unequivocally and emphatically state Labor Code §§ 233 and 234 do not apply to Defendant United and, more importantly, Defendant United will not adhere to the dictates of Labor Code §§ 233 and 234.

69. Defendant United counts sick leave as an "occurrence" potentially leading to discipline, up to and including termination, for the Technician employee, including Plaintiffs and the Class.

70. Plaintiffs Scholz and Bybee contend Defendant United's designation of all sick leave absences as kin care sick leave absences, regardless of circumstances, violates Labor Code §§ 233 and 234.

71. Plaintiffs Scholz and Bybee contend Labor Code §§ 233 and 234 apply to Defendant United and Defendant United is required to adhere to the dictates of those Labor Code sections.

72. Plaintiffs Scholz and Bybee contend Defendant United's counting sick leave as an absence or "occurrence" which could potentially lead to discipline for a Technician employee, up to and including termination, including Plaintiffs and the Class, unfairly discriminates against Plaintiffs, and the Class, and therefore violates Labor Code §§ 233 and 234.

73. Declaratory relief pursuant to California Code of Civil Procedure § 1060 is necessary to resolve the controversies between Plaintiffs and Defendant United because the controversies are incapable of resolution without judicial intervention and adjudication.

FOURTH CAUSE OF ACTION
(Enforcement of Civil Penalties Under Public Attorney Generals Act of 2004 ("PAGA"))
Brought by Plaintiffs Against Defendant United and Does 1-10)
(Cal. Labor Code §§ 2698, et seq.)

74. Plaintiffs incorporate all paragraphs above as if fully set forth herein.

75. Plaintiffs, on behalf of themselves and all aggrieved employee Technicians presently or formerly employed by Defendant United, bring this representative action pursuant to PAGA seeking civil penalties for Defendant's violation of California Labor Code §§ 233 and 234.

1 76. PAGA permits an “aggrieved employee” to recover penalties on behalf of himself and
2 other current or former employees as a result of an employer’s violations of the California Labor
3 Code, including but not limited to violations alleged herein of Labor Code §§ 233 and 234.
4 Plaintiffs are aggrieved employees because Plaintiffs were, and are, employed by the violating
5 employer, Defendant United, during the applicable statutory period and suffered one or more of
6 the Labor Code violations alleged herein. As such, each of the Plaintiffs seek to recover, on behalf
7 of the State of California, themselves, and all other current and former Technician employees of
8 Defendants, the civil penalties provided by PAGA.
9

10 77. Plaintiffs seek to recover the PAGA civil penalties through a representative action as
11 permitted by PAGA. Therefore, Plaintiffs do not seek class certification of the PAGA claims
12 under California Code of Civil Procedure § 382.
13

14 78. Under PAGA, an aggrieved employee may bring a representative action as a private
15 attorney general to recover penalties for an employer’s certain violations of the California Labor
16 Code. Cal. Lab. Code § 2699.5. For each violation, Plaintiffs and all other aggrieved employees
17 are entitled to penalties in an amount to be shown at the time of trial subject to the following
18 formula: \$100 for the initial violation per employee per pay period; and \$200 for each subsequent
19 violation per employee per pay period. Cal. Lab. Code § 2699(f)(2). These penalties shall be
20 allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected
21 employees. Cal. Lab. Code § 2699(i)
22

23 79. Plaintiffs complied with the PAGA notice provision set forth in California Labor Code §
24 2699.3(a)(1) by providing written notice through online filing to LWDA, and by certified mail
25 to Defendant United, on November 5, 2021. Plaintiffs’ written notice included reference to
26 specific provisions of the California Labor Code alleged to have been violated, including facts
27
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1 and theories to support the alleged violations. Plaintiffs' written notice was accompanied by a
2 filing fee of seventy-five (\$75) dollars as required by the statute. While Plaintiffs have not
3 received notice from LWDA of its intent not to investigate the Labor Code violations identified
4 in the notice, pursuant to Labor Code § 2699.3, because 65-days have passed without response
5 from LWDA, Plaintiffs may commence a civil action pursuant to PAGA.
6

7 **PRAYER**

8 WHEREFORE, Plaintiffs pray for judgment against Defendant United as follows:

- 9 A. Certification of this action as a class action on behalf of the proposed class;
10
11 B. Designation of Plaintiffs as Representatives of the Class and designation of Plaintiffs'
12 counsel as Class counsel;
13
14 C. Declare Defendant United's paid sick leave practices and policies violate Labor Code §§
15 233 and 234;
16
17 D. Declare Defendant United's attendance practices and policies violate Labor Code §§ 233
18 and 234;
19
20 E. Permanently enjoin Defendant United from applying its paid sick leave practices and
21 policies in a manner that violates Labor Code §§ 233 and 234;
22
23 F. Permanently enjoin Defendant United from applying its attendance practices and policies
24 in a manner that violates Labor Code §§ 233 and 234;
25
26 G. Order an accounting of all paid sick leave designations, of all attendance policy point
27 designations, and of all resultant amounts unlawfully retained by Defendant and Does 1-10;
28
H. Award restitution for unfairly and unlawfully auto-designating sick leave;
I. Award of all damages, monetary relief, wages, premiums, reimbursements, and other
sums due to Plaintiffs and the Class by virtue of their claims;

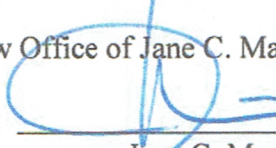
J. Award of all penalties due to Plaintiffs and all aggrieved employees by virtue of their
PAGA claims;

K. Award attorney's fees, expenses, and costs, as permitted by law;

L. Order a jury trial on all issues triable to a jury as a matter of right; and

M. For such other and further relief as this Court deems just and proper.

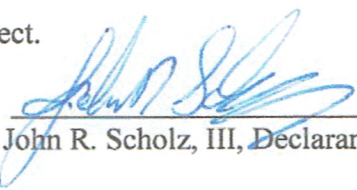
Dated: October 30 2022 Law Office of Jane C. Mariani

By: 
Jane C. Mariani,
Attorney for Plaintiffs

VERIFICATION

I, John R. Scholz, III, declare I am an individual plaintiff in this action. I declare I have read the foregoing complaint and know its contents. I declare the complaint is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the state of California the foregoing is true and correct.

Date: Oct 30 2022


John R. Scholz, III, Declarant Plaintiff

I, Kevin E. Bybee, declare I am an individual plaintiff in this action. I declare I have read the foregoing complaint and know its contents. I declare the complaint is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the state of California the foregoing is true and correct.

Date: OCT 30 2022

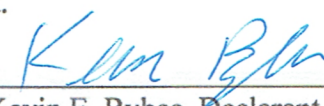

Kevin E. Bybee, Declarant Plaintiff

EXHIBIT 1



CPU DWNTWN DELRAY PSTL CNTR
305 NE 2ND AVE
DELRAY BEACH, FL 33444-9993
(800)275-8777

11/06/2021

11:41 AM

Product	Qty	Unit Price	Price
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Priority Mail® 2-Day 1			\$8.70
------------------------	--	--	--------

Flat Rate Env

San Bruno, CA 94066

Flat Rate

Expected Delivery Date

Tue 11/09/2021

Tracking #:

9505 5267 0031 1310 0897 55

Insurance

\$0.00

Up to \$50.00 included

Total			\$8.70
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Priority Mail® 2-Day 1			\$8.70
------------------------	--	--	--------

Flat Rate Env

Pleasanton, CA 94588

Flat Rate

Expected Delivery Date

Tue 11/09/2021

Tracking #:

9505 5267 0031 1310 0897 62

Insurance

\$0.00

Up to \$50.00 included

Total			\$8.70
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First-Class Mail® 1			\$1.96
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Large Envelope

Chicago, IL 60606

Weight: 0 lb 4.20 oz

Estimated Delivery Date

Fri 11/12/2021

Certified Mail®

\$3.75

Tracking #:

7021035000087151736

Return Receipt

\$3.05

Tracking #:

9590 9402 6731 1060 8222 08

Total			\$8.76
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Grand Total:			\$26.16
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USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit www.usps.com USPS Tracking or call 1-800-222-1811.

Save this receipt as evidence of insurance. For information on filing an insurance claim go to <https://www.usps.com/help/claims.htm>

All sales final on stamps and postage.
Thank you for your business.

7021 0350 0000 8715 1736

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



United Airlines, 11th Fl.
233 S. Walker Dr. WTR
Chicago, IL 60606

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

United Airlines, Inc.
233 S. Wacker Dr.
WHLQ LD, 11th Floor
Chicago, IL 60606



9590 9402 6731 1060 8222 08

2. Article Number (Transfer from service label)

7021 0350 0000 8715 1736

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery

sured Mail

sured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

USPS TRACKING #



9590 9402 6731 1060 8222 08



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

Jane C. Mariani
584 Castro St. #687
S.F., CA. 94114

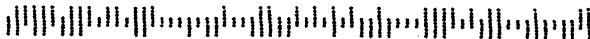


EXHIBIT 2



Jane Mariani <jane@marianiadvocacy.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "jcm@marianiadvocacy.com" <jcm@marianiadvocacy.com>

Fri, Nov 5, 2021 at 6:41 PM

11/5/2021

LWDA Case No. LWDA-CM-851410-21
Law Firm : Law Office of Jane C. Mariani
Plaintiff Name : John R. Scholz, III and Kevin E. Bybee
Employer: United Airlines, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 3



Jane Mariani <jane@marianiadvocacy.com>

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Fri, Nov 5, 2021 at 6:41 PM

To: "jcm@marianiadvocacy.com" <jcm@marianiadvocacy.com>

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-851410-21

Order Number: ORD-000141625

Total:\$75.00

Card Type: Visa

Date: 11/5/2021

Billing Information

Name: Jane Mariani

Email: jcm@marianiadvocacy.com

Billing Address:

584 Castro Street, #687

San Francisco, California

94114