

SHEGERIAN & ASSOCIATES, INC.

January 15, 2020

VIA ONLINE SUBMISSION

David M. Lanier, Secretary
California Labor & Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Delta Airlines, Inc.
1030 Delta Blvd., Dept 982
Atlanta, GA 30354

NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO CALIFORNIA LABOR CODE SECTION 2698, *ET SEQ.*

To: The California Labor and Workforce Development Agency; Delta Airlines, Inc.

From: Ikechi Amadi, on behalf of himself and all other current and former hourly nonexempt airport employees for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by employee Ikechi Amadi (“Mr. Amadi”) to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively, with Mr. Amadi, “Claimants”) who have been injured by violations of the California Labor Code. Mr. Amadi, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt airport employees of Delta Airlines, Inc. (“Delta Airlines”), intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Delta Airlines, Inc. ("Delta Airlines") provides passenger and cargo flight transportation to customer-passengers arriving and departing in California as well as nationwide and internationally. Claimant Mr. Amadi worked for Delta Airlines as an hourly nonexempt airport employee of Delta Airlines in the position of Ramp Agent, earning \$18.99 per hour at the time of separation. Mr. Amadi, on behalf of himself and all other similarly aggrieved current and former airport employees in various positions including Ramp Agent for Delta Airlines are or were hourly nonexempt airport employees who are or were engaged in ensuring Delta Airlines' customer-passengers and their luggage/cargo who are originating in, departing from, or passing through California safely get to and from their destinations without issue. As part of their employment with Delta Airlines, Claimant and other nonexempt, hourly airport employees, collectively, "hourly nonexempt airport employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to: unloading luggage/cargo from airplanes and placing them on the correct conveyor belts for arriving and connecting flights and loading airplanes with luggage/cargo for departing and connecting flights; loading and unloading gate-checked luggage/cargo; driving tugs with or without luggage/cargo; monitoring and responding to the flight information and instructions posted on the digital information boards; and sorting and organizing checked luggage/cargo on carousels designated for departure to ensure the luggage/cargo are routed for loading onto the correct flights.

Claimant Mr. Amadi regularly worked five (5) days per week for eight (8) to ten (10) hours or more per day. During the entire course of his employment, Delta Airlines has failed and continues to fail to provide Mr. Amadi and those similarly aggrieved with all overtime pay and compliant meal periods and rest breaks. As a consequence, Delta Airlines failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of Industrial Welfare Commission ("IWC") Wage Order No. 9-2001 and all other applicable IWC Wage Orders. Delta Airlines has also failed to pay minimum wages to Mr. Amadi and other hourly nonexempt airport employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and all applicable IWC Wage Orders, including IWC Wage Order No. 9-2001, section 4. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Delta Airlines has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Delta Airlines has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Delta Airlines has failed and

continues to fail to provide timely, accurate wage statements to Mr. Amadi and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Delta Airlines, including Mr. Amadi, Delta Airlines violated Labor Code section 203 by failing to pay all wages due upon separation. Mr. Amadi is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Amadi intends to bring an action against Delta Airlines under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

Claimant Mr. Amadi was employed continuously by Delta Airlines as a Ramp Agent from approximately March 2, 2015 to approximately January 30, 2019. The position of Ramp Agent generally entails unloading luggage/cargo from airplanes and placing them on the correct conveyor belts for arriving and connecting flights and loading airplanes with luggage/cargo for departing and connecting flights; loading and unloading gate-checked luggage/cargo; driving tugs with or without luggage/cargo; monitoring and responding to the flight information and instructions posted on the digital information boards; and sorting and organizing checked luggage/cargo on carousels designated for departure to ensure the luggage/cargo are routed for loading onto the correct flights. For a period of at least four (4) years prior to January 2020, but for our purposes here, one (1) year prior, Delta Airlines has failed and continues to fail to pay such employees all overtime wages, yet regularly requires and has required hourly, nonexempt airport employees to work in excess of eight (8) hours per workday and/or forty (40) hours per workweek without adequate pay under Labor Code section 1194.

¹ Without limitation, Mr. Amadi, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Claimants were at all times entitled to payment of minimum wages. Delta Airlines has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and all applicable IWC Wage Orders, including section 4 of IWC Wage Order No. 9-2001. For instance, due to understaffing, Claimants were either too busy, not authorized to take, or else were frequently interrupted during their meal periods and rest breaks. Claimants' meal periods and rest breaks were frequently not taken or else interrupted by flights arriving early that required them to end their meal periods and rest breaks early so they could immediately report to the arriving plane to unload the luggage/cargo. Claimants remained on duty during meal periods and rest breaks, because they were instructed to monitor and did monitor the information boards with constantly changing flight information and instructions at all times. Similarly, nonexempt shift leads carry walkie talkies that not only interrupt their own meal and rest periods but also require them to interrupt others' when they communicate changes to ramp agents and others who are on their meal periods or rest breaks. These policies and practices cause Claimants to remain on duty during meal periods and rest breaks, and therefore, constitute a failure on Delta Airlines' part to provide compliant meal periods and rest breaks. With that, Delta Airlines' corresponding failure to provide premium pay in lieu of compliant meal periods and rest breaks constitutes Delta Airlines' failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Delta Airlines' failure to pay Claimants meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Next, Claimants worked a substantial amount of time while off-the-clock, meaning they were not punched in for work, and therefore, those working hours were not recorded and then compensated. Mr. Amadi and other Claimants spent a substantial amount of time working off-the-clock each shift, during which they spent working while punched out for their meal periods. Claimants' off-the-clock time was never subsequently added and compensated. Accordingly, Claimants were not paid for that time spent working off the clock.

Claimants were at all times entitled to off-duty, uninterrupted unpaid meal periods. As explained in the preceding paragraph, Delta Airlines failed to authorize and permit meal periods for Mr. Amadi, and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and all applicable IWC Wage Orders, including section 11 of IWC Wage Order No. 9-2001. Mr. Amadi and all similarly aggrieved persons were required to perform work during their meal periods. Delta Airlines did not compensate Claimants with an extra hour of pay for noncompliant meal periods for each workday on which they occurred. Accordingly, since Delta Airlines required Mr. Amadi and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections

558, all other applicable IWC Wage Orders, including section 20 of IWC Wage Order No. 9-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute rest breaks. However, Delta Airlines failed to authorize and permit Claimants from taking off duty rest breaks as required by Labor Code sections 226.7 and all applicable IWC Wage Orders, including IWC Wage Order No. 9-2001, section 12. As explained above, Mr. Amadi and all similarly aggrieved persons were required to perform work during their rest breaks by either taking no break or else taking a rest break that was shorter than 10 minutes due to interruption causing Claimants to have to return to work early. Delta Airlines did not compensate Claimants with an extra hour of pay for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and all applicable IWC Wage Orders, including IWC Wage Order No. 9-2001, section 20. Furthermore, since Delta Airlines required their hourly nonexempt airport employees to work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of overtime. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Delta Airlines was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Delta Airlines has failed to and continues to fail to pay Claimants all overtime wages owed, yet regularly required them to work in excess of eight (8) hours per day and/or forty (40) hours per week without premium pay under Labor Code section 1194. Delta Airlines paid Claimants bonuses, however, it failed to properly calculate the regular rate by factoring in those bonuses. As a result, Delta Airlines did not properly compensate Claimants for overtime during those applicable pay periods. Claimant Mr. Amadi regularly worked five (5) days per week for over eight (8) hours per day but did not receive all overtime wages owed. In short, during the entire course of their employment, Delta Airlines failed to provide and continues to fail to provide Claimants with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including IWC Wage Order 9-2001, section 3.

Pursuant to Labor Code section 204, Claimants were entitled to be paid all wages owed every pay period. As explained above, by failing to pay Claimants all meal period and rest period premiums for every instance of noncompliance and by failing to pay all minimum wages and overtime wages every pay period, Delta Airlines has failed and

continue to fail to pay all wages owed every pay period in violation of Labor Code section 204.

Likewise, pursuant to Labor Code sections 201–203, Claimants who have since separated from Delta Airlines, including Mr. Amadi, were entitled to be paid all wages owed upon separation within the statutorily allotted time—immediately (upon separation by resignation with requisite notice and by termination) or within seventy-two (72) hours (upon resignation without notice). Claimants did not receive all wages owed upon separation based on Delta Airlines’ prior failings to pay all wages owed every pay period, as explained in the preceding paragraph.

Claimants were at all times entitled to be provided timely and accurate wage statements by Delta Airlines pursuant to Labor Code section 226. Because Delta Airlines failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants’ wage statements were inaccurate in reflecting meal period and rest break premium compensation owed, the amount and correct calculation of overtime, the correct number of hours to calculate minimum wages, and all hours worked every pay period. As a consequence, Claimants’ wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Delta Airlines’ uniform failure to pay overtime and minimum wages, failure to authorize and permit off duty rest breaks and meal periods or pay Claimants adequate premium compensation in lieu thereof, failure to pay all wages owed every pay period and upon separation, and failure to furnish timely and accurate wage statements violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 1182.12, 1194, and 1197, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys’ fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Amadi, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other

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aggrieved employees, and the State of California against Delta Airlines for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Should you require any additional information, please feel free to contact me.

Very truly yours,

SHEGERIAN & ASSOCIATES, INC.

A handwritten signature in black ink, reading "Carney R. Shegerian". The signature is written in a cursive, flowing style with a large initial "C".

Carney R. Shegerian

CRS/ck