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FILED
Superior Court of California
County of Los Angeles
03/08/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Flores Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MELINDA LEHAULI,

Plaintiff,

v.

ALL NIPPON AIRWAYS CO., LTD.;
and DOES 1 through 20, inclusive,

Defendants.

CASE NO.: 21STCV02847

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Accurate Wage Statements in Violation of Cal Lab. Code s. 226
2. Failure to Pay Timely Earned Wages (Cal Lab. Code ss. 210)
3. Failure to pay timely earned wages upon separation (Cal Lab. Code ss. 201, 203)
4. Failure to Pay Meal and Rest Period Compensation (LC 226.7, 512)
5. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§201, 202, 203, 204, 512, 226.7, and 226.

DEMAND FOR JURY TRIAL

Plaintiff MELINDA LEHAULI for her Complaint against Defendant ALL NIPPON AIRWAYS CO., LTD.; and DOES 1 through 20, inclusive, hereby complains and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff MELINDA LEHAULI was at all times relevant to the matters alleged in this complaint an individual with her residence in California.

2. Defendant ALL NIPPON AIRWAYS CO., LTD. is a Japan Corporation with its principal place of business in California and at all times relevant to this Complaint was doing business in California.

3. Plaintiff is informed and believes and thereon alleges that the fictitiously-named Defendants sued herein as Does 1 through 20 inclusive, and each of them, are in some manner responsible for the occurrences, acts, and omissions alleged herein and that Plaintiff's damages were proximately caused by their conduct. The true names and capacities of such fictitiously-named Doe Defendants, whether individual, corporate, partnership, associate or otherwise, are presently unknown to Plaintiff, and Plaintiff will seek leave of the Court to amend this Complaint to assert the true names and capacities of such fictitiously-named Defendants when the same have been ascertained. For convenience, each reference to the named Defendant herein shall also refer to Does 1 through 20, inclusive.

4. Plaintiff is informed and believes and thereon alleges that in committing certain acts herein as alleged, some or all of the Defendants herein named were acting as the agents, joint ventures, partners, representatives, subsidiaries, affiliates and/or employees of some or all of the other Defendants, and that some or all of the conduct of such Defendants, as complained of herein, was within the course and scope of such relationship.

5. Pursuant to Article VI, Section 10 of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, County of Los Angeles.

6. Pursuant to Section 395 of the California Code of Civil Procedure, venue is proper in the Superior Court of California for the County of Los Angeles, because the Defendant conducted business in Los Angeles County.

FACTUAL BACKGROUND

7. Defendant was Plaintiff's employer.

8. Defendant failed to provide Plaintiff with legally required meal and rest breaks and failed to pay Plaintiff premiums for missed meal and rest breaks.

1 9. Defendant failed to pay Plaintiff all wages due at the time of separation and provide
2 accurate wage statements.

3 10. Defendant terminated Plaintiff.

4 11. Plaintiff filed a PAGA claim with the LWDA and served notice of the claim via
5 certified mail, return receipt requested to Defendant on December 30, 2020. 65 days have elapsed
6 since the initial claim and Plaintiff has thus exhausted all administrative remedies.
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8 **FIRST CAUSE OF ACTION**
9 **(Penalties for Violations of California Labor Code § 226 for**
 Failure to Provide Accurate Wage Statements)

10 12. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
11 though fully set forth herein.
12

13 13. Labor Code § 226 subdivision (a) requires, in pertinent part, that “Every employer
14 shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees,
15 either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
16 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
17 (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from payment of overtime under
19 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the
20 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
21 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
23 for which the employee is paid, (7) the name of the employee and his or her social security number,
24 except that by January 1, 2008, only the last four digits of his or her social security number or an
25 employee identification number other than a social security number may be shown on the itemized
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1 statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at each
3 hourly rate by the employee. . .”

4 14. Plaintiff did not receive accurate wage statements with all of the required information
5 set forth under Labor Code § 226 because they did not include all hours worked, the unpaid wages,
6 overtime and meal or rest break premiums and as a result suffered monetary damages.

7
8 15. On numerous occasions, an exact amount by which will be proven at trial, Defendants
9 violated various provisions of § 226, including but not limited to subdivisions (a)(1), (a)(2), (a)(4),
10 (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) by failing to provide Plaintiff, and other employees, accurate
11 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee
12 (4) all deductions (5) net wages earned, (6) the inclusive dates of the period for which the employee
13 is paid, (7) the name of the employee (8) the name and address of the legal entity that is the employer,
14 and (9) all applicable hourly rates in effect during the pay period and the corresponding number of
15 hours worked at each hourly rate by the employee.
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18 16. Plaintiff seeks all statutory damages and penalties authorized under the Labor Code.

19 **SECOND CAUSE OF ACTION**
20 **(Failure to Pay Timely Earned Wages-Cal. Lab. Code Section 210)**

21 17. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
22 though fully set forth herein.

23 18. Labor Code Section 210 provides that every person who fails to pay the wages of an
24 employee as provided in Section 204 is subject to civil penalties of \$100 for the first violation and
25 \$200 for each additional violation plus 25% of the amount unlawfully withheld.

26
27 19. Defendants did not always provide Plaintiff her meal and rest breaks.
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20. Defendants did not pay Plaintiff wages due for Defendants' failure to provide meal periods and rest periods.

21. Plaintiff is informed and believes and thereon alleges that Defendant did this with the intent to secure for Defendants a discount on Defendants' indebtedness and/or with intent to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff.

22. Defendants are therefore liable to Plaintiffs for all unpaid wages and all statutory damages.

THIRD CAUSE OF ACTION
**(Failure to Pay Timely Earned Wages upon Separation of Employment in Violation of Cal.
 Lab. Code Sections 201 and 203)**

23. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

24. Pursuant to Labor Code Section 201: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

25. Labor Code Section 203 provides, in pertinent part: “If an employer willfully fails to pay, without abatement or reduction...any wages of an employee who is discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

26. Defendants willfully failed to pay Plaintiff her accrued wages at the time of separation. Plaintiff is informed and believes and thereon alleges that Defendant did this with the intent to secure for itself a discount on their indebtedness and/or with intent to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff.

27. Defendants are therefore liable to Plaintiff for Plaintiff's unpaid wages and all statutory damages.

FOURTH CAUSE OF ACTION
(Failure to Pay Meal and Rest Period Compensation)
(California Labor Code Sections 226.7 & 512)

28. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

29. Defendants failed to relieve Plaintiff for rest periods mandated by law among other codes, Cal Lab. Code Sections 226.7 and 512.

30. Defendants failed to compensate or provide premiums to Plaintiff for the missed rest periods.

31. Plaintiff seeks all statutory damages and penalties.

FIFTH CAUSE OF ACTION

Penalties Pursuant to Labor Code §2699, et seq. for Violations of Labor Codes §§201, 202, 203, 204, 512, 226.7, and 226.

32. Plaintiff realleges and incorporates by reference all previous paragraphs.

33. On a regular and consistent basis, for Plaintiff and all aggrieved employees employed by Defendant, Defendant has failed to comply with, and otherwise violated Labor Code §§ 201, 202, 203, 204, 226, 226.7 and 512.

34. For at least one (1) year prior to the date of Plaintiff's letter sent to the Labor & Workforce Development Agency and Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant has had a consistent policy of failing to inform Plaintiff and all aggrieved employees of their right to take meal periods and provide meal periods by way of a lawful policy and of failing to provide Plaintiff and all Aggrieved Employees with timely meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the Aggrieved Employees with a meal break within the first five hours of each shift; and (2) failed to pay such employees one

1 hour of pay at the employees regular rate of compensation for each workday that the first meal period
2 was not provided within the first hours of the shift, as required by California state wage and hour
3 laws.

4 35. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
5 Development Agency and Defendant giving notice of this claim pursuant to PAGA and continuing
6 to the present, Defendant has had a consistent policy of failing to inform Plaintiff and all Aggrieved
7 Employees of their right to take rest periods by way of a lawful policy and of failing to provide
8 Plaintiff and all Aggrieved Employees with rest periods of at least ten (10) minutes per four (4) hours
9 worked or major fraction thereof. Defendant has failed to pay such employees one (1) hour of pay at
10 the employee's regular rate of compensation for each workday that the rest period was not provided,
11 as required by California state wage and hour laws.

12 36. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
13 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
14 present, Defendant has failed to pay all wages due at the time of termination or resignation to
15 Plaintiff and all Aggrieved Employees.

16 37. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
17 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §201.
18 Labor Code section 201 provides that "If an employer discharges an employee, the wages earned and
19 unpaid at the time of discharge are due and payable immediately." Here, Defendant failed to pay
20 Plaintiff and all discharged Aggrieved Employees all wages earned and unpaid at the time of
21 discharge. These sums were due and payable immediately and Defendant is thus in violation of Labor
22 Code §201.

23 38. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
24 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §202.
25 Labor Code section 202 provides that if "an employer willfully fails to pay...any wages of an
26 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
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1 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
2 shall not continue for more than 30 days.” Here, Defendant failed to pay Plaintiff and all Aggrieved
3 Employees all wages due at the time of termination or within seventy-two (72) hours of their
4 resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor
5 Code §202.

6 39. As a result of Defendant’s failure to pay Plaintiff and the aggrieved employees at the
7 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §203.
8 Labor Code section 203 provides that if “an employer willfully fails to pay...any wages of an
9 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
10 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
11 shall not continue for more than 30 days.” Here, Defendant failed to pay Plaintiff and all Aggrieved
12 Employees all wages due at the time of termination or within seventy-two (72) hours of their
13 resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor
14 Code §203.

15 40. As a result of Defendant’s failure to pay Plaintiff and the aggrieved employees at the
16 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §204.

17 41. Defendant’s violation of Labor Code Labor Code §§201, 202, 203, 204, 226, 226.7
18 and 512, was all done on a regular and consistent basis.

19 42. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §2699,
20 et seq. because of Defendant’s violation of Labor Code §§201, 202, 203, 204, 226, 226.7, and 512.

21 43. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and all
22 other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial
23 subject to the following formula:
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- 25 a. \$100 for the initial violation per employee per pay period; and
26 b. \$200 for each subsequent violation per employee per pay period.

27 44. These penalties will be allocated 75% to the Labor & Workforce Development
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Agency and 25% to the Aggrieved Employees and Plaintiff is entitled to his attorney's fees and costs.

45. On December 30, 2020, Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency/Department of Industrial Relations website and mailed by certified mail, return receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged against Defendants, as prescribed by Labor Code §2698 et seq. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within 65 calendar days of the postmark date of the notice. Therefore, Plaintiff is entitled to commence a civil action as the LWDA has chosen not to investigate.

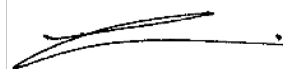
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For payment of earned wages, withheld earnings, and other damages according to proof in an amount to be ascertained at trial;
2. For penalties, statutory obligations, special damages, compensatory, and general damages in an amount to be proven at trial;
3. For punitive damages as allowed by law;
4. Loss of income incurred and to be incurred according to proof;
5. For reasonable attorneys' fees;
6. For costs of suit incurred herein;
7. For interest provided by law;
8. All damages and penalties pursuant to the California Labor Code;
9. For restitution and other equitable relief; and
10. For such other and further relief as the court deems just and proper.

Dated: March 8, 2021

By: FREIMAN LEGAL



Lawrence W. Freiman, Esq.

Counsel for Plaintiff Melinda Lehauli

DEMAND FOR JURY TRIAL

Plaintiff Melinda Lehauli demands a jury trial.

Dated: March 8, 2021

By: FREIMAN LEGAL



Lawrence W. Freiman, Esq.

Counsel for Plaintiff Melinda Lehauli

CERTIFICATE OF SERVICE

I, Mackenzie Clark, declare:

I am a resident of the State of California and over the age of eighteen years and represent the Plaintiff in the within action. My business address is 100 Wilshire Blvd., Suite 700, Santa Monica, CA 90401. On March 8, 2021 I served the within documents, entitled **FIRST AMENDED COMPLAINT** by emailing the documents addressed to:

Emily Camastra
Swerdlow Florence Sanchez Swerdlow & Wimmer
9401 Wilshire Blvd., Suite 828
Beverly Hills, CA 90212
ecamastra@swerdlowlaw.cmo

By: *Mackenzie Clark*
Mackenzie Clark