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7 Attorneys for Plaintiff
MARVIN TOLEDO

8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 MARVIN TOLEDO, an individual, on behalf of
himself and all other similarly situated non-
12 exempt current and former employees,

13 Plaintiff(s),

14 v.

15 DELTA AIR LINES, INC., a Delaware
corporation; and DOES 1 through 50, inclusive,

16 Defendants.

Case No. 3:22-cv-00081-AMO

**DECLARATION OF SHAUN
SETAREH IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL**

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1. I am an attorney, duly licensed to practice law before this Court. The facts stated herein are of my own personal knowledge.

3. This Declaration is submitted in support of the Motion for Preliminary Approval of Class Action and PAGA Settlement.

4. Plaintiff Marvin Toledo initiated the Action in the Superior Court of the State of California, County of San Francisco, on December 3, 2021. Delta subsequently removed the Action to the United States District Court for the Northern District of California, where the Action is currently pending. Plaintiff has brought the Action on behalf of himself, other allegedly aggrieved employees and as proxy for the State of California, and the following individuals: all current and former non-exempt employees of Defendant in California from December 3, 2017 to the present. The Action alleges various wage and hour claims against Defendant, including claims for failure to provide meal/rest periods, failure to pay wages, failure to reimburse business expenses, failure to provide accurate written wage statements, failure to timely pay all final wages, unfair business practices under California Bus. & Prof. Code §§ 17200-17208, and civil penalties under Labor Code §§ 2699 *et seq.* The Action asserts claims for unpaid wages, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs. Prior to filing this Action, Plaintiff sent notice of alleged Labor Code violations to the LWDA pursuant to Labor Code §2699.3(1).

1
<i>Toledo v. Delta Air Lines,, Inc.</i> Setareh Decl.

1 reflecting and relating to employees' time worked, rates of pay, workweeks, wages paid, and meal
2 and rest break premiums paid during the Class Period, among other records. Both parties
3 propounded and responded to written discovery requests.

4 6. Prior to settlement, Plaintiff obtained class contact information, a sampling
5 of time-keeping and payroll data, and documents regarding Delta's wage and hour policies.

6 7. As part of pre-class certification discovery, Plaintiff's counsel interviewed a
7 number of putative class members as percipient witnesses in this action and obtained declarations
8 to be used in support of class certification.

9 8. Delta deposed Plaintiff Marvin Toledo and I attended the deposition as counsel for
10 Plaintiff.

11 9. Plaintiff's counsel retained two experts to create damages models. Sridhar
12 Srinivasan created damages for the first mediation and James Toney for the second mediation.

13 10. On May 12, 2023, the Parties attended a full-day mediation conducted by an
14 experienced wage and hour mediator, Michael Dickstein. Although the first mediation did not
15 result in settlement, the Parties continued to engage in settlement discussions after the mediation
16 session ended. Through these settlement discussions, the Parties agreed to participate in a further
17 mediation session. On August 13, 2024, the Parties attended a second full-day mediation
18 conducted by another experienced wage and hour mediator, Jeff Ross. Jeff Ross made a
19 mediator's proposal that resulted in this Settlement.

20 11. A true and correct copy of the Settlement Agreement in this matter is attached as
21 Exhibit 1.

22 12. At the mediation, the Parties debated their legal positions, the likelihood of
23 certification of Plaintiff's claims, and the legal bases for the claims and defenses. At all times, the
24 Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

25 **PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES**

13. Plaintiff alleges that while working as an hourly, non-exempt employee, Plaintiff and
putative class members were sometimes unable to take 30-minute uninterrupted meal breaks and 10-

1 minute uninterrupted rest breaks in part due to: (1) Defendant's policy of not scheduling breaks as
2 part of each shift; (2) understaffing; (3) imposing so much work on each employee such that it made
3 it unlikely that an employee would be able to take their breaks if they wanted to finish their work on
4 time; and (4) a flawed formal written meal and rest period policy that did not encourage employees
5 to take their breaks. (*See, generally*, First Amended Complaint, Exh. 3 to Settlement Agreement.)
6 Plaintiff further asserts that Plaintiff and putative class members were not paid for off-the-clock work
7 performed, such as time spent undergoing security checks and performing work after their shift ends,
8 for example when planes arrive late at the end of a shift. Plaintiff also alleges that Defendant failed
9 to correctly calculate the regular rate of pay to include all applicable remuneration, including non-
10 discretionary bonuses. Plaintiff also alleges that Plaintiff and putative class members were not
11 reimbursed for business expenses, such as personal protective equipment and cell phones. Finally,
12 Plaintiff alleged that Defendant maintained a policy or practice that provided for the unlawful
forfeiture of vested vacation pay.¹

13 14. Defendant denied all of Plaintiff's allegations. Defendant states that it had compliant
14 meal and rest policies. Defendant contended that this included an opportunity for meal periods of at
15 least 30 minutes within the first 5 hours of work, and 10-minute rest periods for every 3½ hours of
16 work. Defendant argued that this would defeat Plaintiff's claims because, under *Brinker Rest. Corp.*
17 *v. Superior Court*, 53 Cal. 4th 1004, 1040 (2012), while an employer must provide employees with
18 the opportunity to take meal and rest breaks, it need not ensure that the employees actually do so; an
19 employer satisfies its obligations if it relieves its employees of all duties, relinquishes control over
20 their activities, and permits them a reasonable opportunity to take uninterrupted breaks. They also
21 argued that Plaintiff's rest period claim is also not amenable to class treatment as there are too many
22 individualized issues for the same reasons. Defendant states that any time spent going through security
23 checks was extremely small. Defendant stated that it had policies prohibiting off-the-clock work and
24 required employees to report any off-the-clock work performed. Defendant stated that it properly

25 ¹ Upon review of Delta's vacation policies, Plaintiff's counsel determined that there was
no unlawful forfeiture of vacation pay.

1 calculated bonuses into the regular rate of pay. Defendant stated that it reimbursed employees for
2 business expenses as needed and did not require employees to forfeit vacation pay. Finally, Defendant
3 contended that because Plaintiff's wage statement, final pay, and UCL claims are entirely derivative
4 of the other claims in this matter, they too would fail for the same reasons.

5 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

6 15. Plaintiff and Setareh Law Group have diligently investigated the claims of the
7 members of the settlement class. Plaintiff and Class Counsel concluded, after taking into account the
8 disputed factual and legal issues involved in this Action, the substantial risks attending further
9 prosecution, including risks related to the outcome of certification and possible summary judgment
10 efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the
11 Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of
12 Plaintiff and the putative class and are fair and reasonable. Plaintiff's counsel brought to bear a great
13 deal of experience with class actions in negotiating the settlement of this case.

14 16. One fundamental purpose of the class action device is to promote efficiency.
15 Resolution at this time will forestall the need for additional expensive and time-consuming litigation
16 that could very well result in an outcome less satisfactory than that proposed under this settlement.
17 But, before any other consideration, we have agreed to this Settlement because it is objectively
18 reasonable. The potential for resolution benefits the class members, since they do not have to wait
19 additional years for a similar recovery. The efficiency of this litigation benefits the Court, the Parties
20 and their counsel. A class-wide resolution is the most realistic method for addressing the claims raised
21 in this matter.

22 17. We have engaged in the necessary investigation in this case that made it possible for
23 us to exercise informed judgment in those aspects of the settlement process in which we were
24 involved. The exchange of voluminous timeclock and payroll information, wage and hour policy
25 documents, and speaking with putative class members, were sufficient to permit Plaintiff's counsel to
adequately evaluate the settlement. Plaintiff had more than enough information upon which to
evaluate a fair and reasonable settlement amount.

1 18. In addition to disputing the merits of Plaintiff's claims at trial, Defendant intended to
2 aggressively challenge Plaintiff's case at the certification stage. Defendant believes that Plaintiff
3 could not prevail on a certification motion, while Plaintiff believes the case was viable through to a
4 trial. However, while Plaintiff asserts that this is a viable case for trial, Plaintiff realizes that there are
5 always significant risks associated with certification and trials, and those risks cannot be eliminated
6 in this case. The risks associated with this matter include:

7 (i) The risk that Plaintiff would not be able to prove liability for alleged failure to provide
8 compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant
9 meal periods and rest breaks would require an individualized inquiry that would prevent these issues
10 from being resolved on a class and/or collective basis. For example, Plaintiff alleged that Defendant
11 did not maintain accurate records of the start and end times for meal periods taken by employees,
12 instead, Plaintiff alleged employees regularly worked through their meal periods (and rest breaks) in
13 order to complete their job duties within the timeframe allotted by Defendant. Defendant countered
14 with proof that many employees took their meal periods and rest breaks, and that any inquiry into
15 why some employees might have missed meal and rest breaks would necessarily require an
16 individualized inquiry that would prevent this issue from being resolved on a class and/or collective
17 basis. Defendant states that it had compliant meal and rest policies. Defendant also argued that
employees had freedom to take breaks at their convenience, stating that they had much down time.

18 (ii) The risk that Plaintiff would be unable to establish liability for alleged unpaid straight
19 time and overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39, n. 33 (2014), *citing*
20 *Dilts v. Penske Logistics, LLC*, No. 08-cv-218-CAB (BLM), 2014 WL 305039 (S.D. Cal. Jan. 21,
21 2014) (dismissing certified off-the-clock claims based on proof at trial). Defendant has contended,
22 for example, that Plaintiff's allegations for unpaid wages are not subject to common proof since they
23 are based on Plaintiff's allegation that employees worked through meal breaks. Defendant stated that
24 it had policies prohibiting off-the-clock work and relied on employees to keep accurate time.

25 (iii) The risk that Defendant's challenged employment policies and practices might not
ultimately support class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 &

1 n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing
2 opinion as to ultimate viability of proposition). Defendant contended, for example, that it did not have
3 a purported policy of not paying required compensation, but rather a policy of paying compensation
4 and of requiring employees to report any unpaid compensable time, and that any failures to report by
5 employees cannot be legally charged to Defendant and in any event involve such highly
6 individualized circumstances as to prevent class and collective certification should this case be
7 litigated. *See, e.g., Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 585 (2000) (employer not
8 required to pay employees for time spent performing work of which the employer had no knowledge).

9 (iv) For the same reasons, liability, damages recovery, and certification risks are
10 heightened given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant's
11 policies and practices could preclude class-wide awards of statutory penalties under Labor Code
12 section 226(e); (2) the risk that individual differences between settlement Class Members could be
13 construed as pertaining to liability, and not solely to damages, *see, Duran*, 59 Cal. 4th at 19; and (3)
14 the risk that class or collective treatment could be deemed improper as to one or more claims except
15 for settlement purposes.

16 (v) The risk that lengthy appellate litigation could ensue as to both liability and
17 certification issues, with associated litigation risk and costs, further enhances the value of a confirmed
18 settlement as opposed to unpredictable litigation.

19 In these respects, Defendant strongly deny any liability and the propriety of class certification
20 for any reason other than settlement. Continued litigation of this lawsuit presented Plaintiff and
21 Defendant with substantial legal risks that were (and continue to be) very difficult to assess. In these
22 respects, Defendant strongly denies any liability and the propriety of class certification for any reason
23 other than settlement.

24 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
25 reasonable recovery for the settlement Class Members. The Settlement amount is, of course, a
compromise figure. By necessity, it took into account risks related to liability, damages, class action
certification, and all the defenses asserted by the Defendant as to all such matters. Moreover, each

Class Member will be given the opportunity to opt out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims.

19. The following chart provides the estimated potential recovery on a class basis that Plaintiff believes he could reasonably achieve *if Plaintiff were to prevail on all claims*²:

<u>Plaintiff's Estimated Potential Recovery</u> Putative Class Members: 5,000; Total Workweeks: 700,000; Avg. Reg. Rate: \$28		
Claim	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Off-the-Clock Work	\$9,800,000	700,000 workweeks x 30 min./week off-the-clock x \$28/hr. Avg. Reg. rate
Meal Period Premiums	\$12,592,932	2,248,738 meal period eligible shifts x \$28/hr. Avg. Reg. rate x 20% viol. rate
Rest Period Premiums	\$15,464,164	2,761,458 rest period eligible shifts x \$28/hr. Avg. Reg. rate x 20% viol. rate
Regular Rate	\$2,010,551	Calculated by Plaintiff's expert based on sample data provided for mediation. Underpayment for overtime pay: \$1,989,178 Underpayment for sick pay: \$1,028 Underpayment for meal premium: \$20,345
Reimbursement for Business Expenses	\$300,000	5,000 putative class members assuming each incurred business expenses of \$60 on personal protective equipment and cell phones.
<i>Subtotal Damages for Labor Code Violations</i>	\$40,167,647	

² Civil penalties are estimated and interest is not included in this analysis. This is proper because, first, PAGA penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2000) 563 F.3d 948, 955; see also *Miller v. CEVA Logistics U.S.A., Inc.* (E.D. Cal. Feb. 19, 2015) 2015 WL 729638, at *7(court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).) Upon review of Delta's vacation policies, Plaintiff's counsel determined that there was no unlawful forfeiture of vacation pay and therefore the vacation claim is being valued at \$0.

Late Pay (Labor Code § 203) Penalties	\$9,723,840	1,447 terminated during class period x \$28/hr. Avg. Reg. rate x 8 hours x 30 days
Wage Statement (Labor Code § 226) Penalties	\$9,710,300	194,206 pay periods x \$50 penalty x 100% violation rate
Sub-Total Potential Including Derivative Penalties (Excluding PAGA)	\$59,601,787	
PAGA Penalties	\$36,387,080	\$100 per pay period for violation of Labor Code section 226.7 (meal and rest breaks) with 194,206 pay periods assuming 20% of pay periods had a violation (violation rate includes both meal and rest breaks). \$3,884,120. \$100 per pay period for violation of Labor Code section 1194 for off the clock violations with 194,206 pay periods assuming 100% of pay periods had a violation. \$19,420,600. \$50 per pay period for violation of Labor Code section 510 for overtime / regular rate violations with 194,206 pay periods assuming 20% of pay periods had a violation. \$1,942,060. \$100 per pay period penalty for violation of Labor Code section 2802 for failure to reimburse for 14,300 pay periods (assuming each of the 2,860 PAGA members incurred unreimbursed business expenses on 5 pay periods). \$1,430,000. \$250 per pay period penalty for violation of Labor Code section 226(a) for failure to provide accurate wage statements with 194,206 pay periods assuming 20% of pay periods had a violation. \$9,710,300.
TOTAL	\$95,988,867	

1 Therefore, the MSA is approximately **29.87%** of the potential **\$40,167,647** labor code damages. This
2 is an excellent result, well above the amount of many settlements granted final approval by courts
3 within the Ninth Circuit. See e.g., *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS
4 78671, *12-13 (N.D. Cal. 2015) [7.3% of the “estimated trial award”]; *In re Toys R Us-Del., Inc.-Fair*
5 *& Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) [(3%];
6 *In re LDK Solar Secs. Litig.*, 2010 U.S. Dist. LEXIS 87168, *6 (N.D. Cal. 2010) [5% of “plaintiff’s
7 expert estimated damages”]. Of course, it should not be surprising that a settlement yields less than
8 what the class could theoretically have recovered at trial. *Linney v. Cellular Alaska P’ship*, 151 F.3d
9 1234, 1242 (9th Cir. 1998) [“the very essence of a settlement is compromise, a yielding of absolutes
10 and an abandoning of highest hopes”].

11 Plaintiff’s expert calculated the potential PAGA penalty exposure to be \$36,387,080. The
12 Agreement provides for payment to the LWDA of \$450,000 which is 75% of the PAGA allocation
13 under the settlement. (Agreement ¶ 5.7.1). Admittedly, the PAGA allocation of \$600,000 is a
14 small percentage of the possible \$36,387,080 PAGA exposure (1.64% of what might be awarded).
15 However, that is permissible in this case because the settlement of the underlying wage and hour
16 claims is robust, and that serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber*
17 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016): “By providing fair compensation
18 to the class members as employees and substantial monetary relief, a settlement not only
19 vindicates the rights of class members as employees but may have a deterrent effect upon the
20 defendant employee and other employers, an objective of PAGA.”

21 The Settlement should be approved because it confers a substantial benefit on Class Members,
22 while proceeding with litigation would impose significant risk with no guarantee of increased
23 benefits.

24 20. The Settlement is the product of arm’s-length negotiations between the Parties
25 occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state
of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible

1 recovery for the members of the settlement classes. The settlement amount is, of course, a
2 compromise figure. By necessity it took into account risks related to liability, damages, and all the
3 defenses asserted by the Defendant. Moreover, each California Class Member will be given the
4 opportunity to opt out of the Settlement, allowing those who feel they have claims that are greater
5 than the benefits they can receive under this Settlement, to pursue their own claims. With
6 approximately 5,000 persons in the settlement class the average gross recovery will be roughly **\$2,400**
7 per class member. These values of this amount fall well within the range of reasonableness. Given
8 the strong case that Defendant could bring to bear to challenge certification and liability, this is not an
9 inconsequential sum.

10 21. The Maximum Settlement Amount is fully consistent with any risk at this stage in the
11 litigation. While Plaintiff would certainly have preferred to recover even more (and Defendant would
12 have preferred to pay far less or zero), this outcome is in line with a carefully constructed estimate of
13 the current fair value of the case. On that basis, it would be unwise to pass up this settlement
14 opportunity.

CLASS CERTIFICATION

15 22. Plaintiff Mr. Toledo is typical of the Settlement Class. Plaintiff is a former direct hire
16 employee of Delta who worked in the airport. Plaintiff worked as a non-exempt employee in
17 California during the class period. Plaintiff's claims are typical of the Settlement Class proposed in
18 this settlement. Like other class members, Plaintiff experienced work under policies and procedures
19 impacting wage and hour compliance.

20 23. Common issues exist. Here, Class Members have shared a common interest in
21 determining whether Defendant violated wage and hour requirements. The factual and legal issues
22 are the same for all of the identified class members, including Plaintiff.

23 24. There are common issues that may predominate over individual issues in this
24 litigation. For example: (1) whether all meal periods and rest breaks were provided in accordance
25 with the requirements of California law; (2) whether employees were paid for all hours worked; and
(3) whether Defendant has any viable class-wide defenses to the class claims.

25. My declaration, in the paragraphs below, summarizes the firm's experience that establishes its adequacy to represent the settlement class. Plaintiff's counsel has no known conflicts of interest with absent Settlement Class Members. Plaintiff has demonstrated, through his participation in this action, his willingness to serve as a representative for the Class. Plaintiff has no known conflict of interest with absent Settlement Class Members and has agreed to place the class's interests above his own. Plaintiff's actions also demonstrate his adequacy.

26. By consolidating all of these potential individual actions into one proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but potentially meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. Moreover, in the context of settlement, superiority concerns are almost non-existent, since case management is controlled and a methodology for trial need not be identified.

**THE SETTLEMENT AGREEMENT IS THE ONLY AGREEMENT REGARDING THE
PROPOSED SETTLEMENT**

27. The Settlement Agreement attached hereto as Exhibit 1 is the only agreement concerning the proposed settlement.

OTHER CASES AFFECTED BY THE SETTLEMENT

28. Defendant filed a notice of pendency of other action on October 20, 2023. (ECF No. 40). The case of *Wilfred McCauley v. Delta Air Lines, Inc.*, Case No. 2:23-cv-07079-DSF-AS (C.D. Cal.) is stayed because the case here fully encompasses the claims and putative class alleged in the *McCauley* action.

29. Defendant also filed a notice of pendency of other action on April 29, 2024 regarding the case of *Mitchel Garnett v. Delta Air Lines, Inc.*, Case No. 24STCV01693 (Los Angeles Superior Court). (ECF No. 43). The *Garnett* case was dismissed on August 13, 2024.

30. Defendant represents that another putative wage and hour class action, which is encompassed by Plaintiff Toledo's claims and settlement, is *Rajdeep Sandhu v. Delta Air lines*,

1 *Inc.*, Case No. 24-CIV-05670 in San Mateo Superior Court. *Rajdeep* was filed on September 11,
2 2024.

3 **THE CLASS REPRESENTATIVE’S CONTRIBUTIONS TO THE CASE**

4 31. Here, Plaintiff Marvin Toledo seeks a Service Payment Award, not to exceed the sum
5 of \$10,000. This amount is very reasonable given the risks undertaken by Plaintiff Mr. Toledo and
6 his involvement in the Action. Taking the risk of filing a lawsuit against an employer, deserves
7 recognition, especially in light of the settlement achieved by Plaintiff. Additionally, Plaintiff was
8 actively involved in the litigation of this Action, expending considerable effort in advancing the
9 interests of the classes. He initiated the case, provided information and documents to counsel, and
10 spoke repeatedly with his counsel about the case. Plaintiff Marvin Toledo had his deposition taken in
11 this case, has responded to written discovery including searching for documents, was ready and
12 willing to appear at a trial, and has consistently been responsive to requests for information. Mr.
13 Toledo reviewed relevant documents and discussed the pending settlement with our firm. I estimate
14 that Plaintiff contributed more than 30 hours of his time to the prosecution of this matter. The Class
has significantly benefited from Plaintiff’s actions.

15 32. Plaintiff took the personal risks of disclosure to future employers that he sued a former
16 employer, making his future career prospects uncertain. There is now a public record of this lawsuit
17 and the fact that Plaintiff brought this lawsuit. Furthermore, in pursuing relief on behalf of the
18 Settlement Class, Plaintiff risked being ordered to pay Defendant’s costs and/or attorneys’ fees if this
19 action had been unsuccessful. Such costs could have exceeded any individual recovery for Plaintiff
20 in this case, including the amount of the enhancement award. This, in addition to Plaintiff’s significant
21 contributions to this case, justifies the \$10,000 class representative enhancement sought on behalf of
22 Plaintiff.

23 **SELECTION OF PROPOSED SETTLEMENT ADMINISTRATOR**

24 33. The Parties selected Phoenix Settlement Administrators as the Settlement
25 Administrator in this case. Plaintiff obtained three bids from administrators Simpluris, ILYM
Group, and Phoenix. Phoenix’s bid was the most comprehensive and very competitive. Further,

1 in my experience, Phoenix is a competent administrator who is responsive and diligent.

2 34. Phoenix's bid to administer the settlement is \$29,000.

3 **QUALIFICATIONS OF CLASS COUNSEL**

4 35. I am aware of no conflicts of interest between Plaintiff and Class Members, or
5 between myself and Class Members.

6 36. My firm and I, as principal of the Setareh Law Group, are well-experienced class
7 action attorneys. I, along with my senior attorney, Thomas Segal, have considerable experience in
8 class action litigation. I, along with my associates, do not have a conflict of interest with the class.
9 Therefore, we are qualified to serve as class counsel for the settlement class.

10 37. I received my undergraduate degree at UCLA in 1996 and my law degree from Loyola
11 Law School in 1999. Since being admitted to the State Bar of California in 1999, I have actively
12 practiced civil litigation for the entirety of that time period.

13 a. I, and the attorneys at Setareh Law Group, have been involved as lead class
14 counsel, co-lead class counsel, and other levels of involvement in over 100
15 wage-and-hour, and consumer class action cases.

16 b. I was lead counsel in *Troester v. Starbucks Corporation, et al.*, before the
17 California Supreme Court, Case No. S234969, in which the Court issued a
18 landmark decision that clarified and rejected the application of the widely
19 adopted federal *de minimis* doctrine to California's wage-and-hour laws.

20 c. For my work on that case, I received the California Lawyer of the Year or
21 "CLAY" award from the Daily Journal.

22 d. I represented the plaintiff in a Ninth Circuit victory involving the standards
23 for motions to remand under the Class Action Fairness Act. *Harris v. KM*
24 *Industrial, Inc.*, 980 F.3d 694 (9th Cir. 2020).

25 e. I am counsel of record in *Parsittie v. Schneider Logistics, Inc. et al.*, No. 20-
55470 (9th Cir. June 9, 2021) wherein we reversed the trial Court's Order
granting Defendants motion to dismiss in a wage and hour class action.

1 f. I am counsel of record in *Rodriguez v. U.S. Healthworks, Inc.*, 813 Fed.Appx.
2 315 (9th Cir. 2020) in which the Ninth Circuit reversed the trial court's order
3 granting summary judgment in a wage and hour class action.

4 g. I was also lead counsel in a landmark Ninth Circuit decision interpreting the
5 Fair Credit Reporting Act, *Gilberg v. California Check Cashing Stores, LLC*,
6 913 F.3d 1169 (9th Cir. 2019), reversing the District Court's granting of
7 Defendant's Summary Judgment.

8 h. My firm is responsible for more than 140 Westlaw-citable opinions.

9 38. As the above shows, I have substantial experience in wage-and-hour class action
10 litigation, including in actions alleging claims similar to the claims alleged in this case. I am
11 knowledgeable about the applicable law, have diligently worked to investigate and identify the
12 potential claims in this action, and will continue to commit the resources of my firm to further the
13 interests of the Class.

14 **ATTORNEY FEES AND EXPENSES**

15 39. Attorneys at Setareh Law Group have spent many hours on this case from its inception
16 through the present. This includes but is not limited to defending Plaintiff's deposition, propounding
17 and responding to written discovery, interviewing percipient witnesses, obtaining declarations from
18 percipient witnesses, reviewing documents produced by Defendant, working with Plaintiff's expert,
19 beginning to draft the motion for class certification, drafting mediation briefs and preparing
20 extensively for two mediations, and monitoring other litigation involving Defendant with potentially
21 overlapping claims.

22 40. At least seven attorneys at Setareh Law Group worked on this case, including
23 myself, Thomas Segal, Farrah Grant, Tyson Gibb, Julianna Gesiotto, Rehatjit Kaur, and Brian
24 Louis.

25 41. When this case was taken on a contingent fee basis, with the firm agreeing to assume
responsibility for litigation costs, the ultimate result was far from certain. In the course of this
litigation, Setareh Law Group paid filing fees, expert costs, and mediation costs. Setareh Law Group

1 has incurred over \$43,000 in costs in this case to date, including expert costs of over \$13,000. There
2 was never a guarantee that Setareh Law Group would recoup those expenditures. The firm took on
3 this case, which necessarily required the firm to forego other opportunities, given finite resources to
4 devote to cases.

5 42. Because of the uncertainty of the outcome in this and other wage and hour litigation
6 undertaken by Setareh Law Group, we took this case with the expectation that a risk enhancement,
7 either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would
8 be available if we prevailed. This expectation stems from the fact that many cases we undertake as
9 putative class actions do not resolve successfully. Several examples of cases where long delays,
10 individual arbitration orders, or outright failures precluded a recovery are as follows:

- 11 a. *Jefferson v. ABM Janitorial Services-South Central, Inc.*, Case No RG16832708
12 (Alameda County Superior Court): Motion to compel individual arbitration granted
13 in putative wage and hour class action on March 14, 2017;
- 14 b. *Solis v. Ameri-Force Management Services, Inc.*, Case No. 37-2014-00013506-CU-
15 OE-CTL (San Diego Superior Court): Motion for class certification denied and
16 appeal decided adversely to Plaintiff;
- 17 c. *Castro v. Cedars-Sinai Health System*, Case No. BC675795 (Los Angeles Superior
18 Court): Putative class action Ordered to individual arbitration;
- 19 d. *Troester v. Starbucks Corporation*, Case No. 2:12-CV-07677-GAF-PJW (Central
20 District): Filed in **2012**, the District Court granted summary judgment for Defendants,
21 plaintiff appealed, and the Ninth Circuit certified a question of law to the California
22 Supreme Court, which accepted the question and recently decided that matter nearly
23 six years later;
- 24 e. *Rodriquez v. Taco Bell Corp.*, Case No. 1:13-CV-01498-SAB (Eastern District):
25 Filed in **2013**, the District Court granted summary judgment, which plaintiff
appealed. The matter was recently decided adversely to Plaintiff after argument;
- f. *Nichols v. Northrop Grumman Systems Corporation*, Case No. 17CV317207 (Santa

1 Clara Superior Court): Defendants' request to compel individual arbitration was
2 stayed pending outcome of *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir.
3 2016);

4 g. *Perry v. John Stewart Company*, Case No. CGC-17-558785 (San Francisco Superior
5 Court): Ordered to individual arbitration;

6 h. *Gilberg v. California Check Cashing Stores, Inc.*, Case No. 2:15-CV-02309-JAM-
7 AC (Eastern District): After motion for summary judgment by defendants granted in
8 putative class action, matter was decided in the Ninth Circuit after appeal by plaintiff;
9 and,

10 i. *Watterson v. Garfield Beach CVS LLC*, Case No. 14-cv-01721-HSG (Northern
11 District): Summary judgment granted in putative wage and hour class action, and
12 subsequently affirmed on appeal to the Ninth Circuit.

13 43. In the past 5 years, Setareh Law Group has settled many dozens of wage & hour class
14 actions. Here, Class Counsel seeks no more than 33 1/3% of the settlement amount in fees. This is
15 consistent with common practice, consistent with Ninth Circuit practice, consistent with analogous
16 California law approving the percentage of the fund method to award fees from a common fund,
17 *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503 (2016), and not inappropriate in light of
18 the many hours expended by attorneys performing work for Plaintiff before and after the filing of this
19 matter.

20 **CLASS SIZE**

21 44. Defendant estimates there are 5,000 Class Members.

22 **CY PRES**

23 45. Class Counsel does not have a relationship with the proposed cy pres University of
24 California Berkeley's Institute for Research on Labor and Employment.

25 **NOTICE TO LWDA**

46. Concurrently with the filing of this motion, my office uploaded the motion
and all exhibits to the website of the Labor Workforce Development Agency.

1
2 I declare under penalty of perjury under the laws of the United States that the foregoing is true
3 and correct.

4 Executed on November 22, 2024, in Beverly Hills, California.

5 By: 
6 ID v42mdnW87AS66Cnv5GZE3APd
7 **SHAUN SETAREH**
8 Declarant
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eSignature Details

Signer ID:	v42mdnW87AS66Cnv5GZE3APd
Signed by:	Shaun Setareh
Sent to email:	shaun@setarehlaw.com
IP Address:	12.160.160.211
Signed at:	Nov 22 2024, 3:09 pm PST

EXHIBIT 1

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28 Attorneys for Defendant
DELTA AIR LINES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARVIN TOLEDO, an individual, on behalf
of himself and all other similarly situated non-
exempt current and former employees,

Plaintiff(s),

v.

DELTA AIR LINES, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 3:22-cv-00081-AMO

[Assigned to Hon. Araceli Martinez-Olguin]

**STIPULATION OF CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

1 This Stipulation of Class Action and Representative Action Settlement and Release
2 (“Stipulation” or “Settlement”) is made and entered into, as of the date set forth below, between
3 Plaintiff Marvin Toledo (“Plaintiff”)—on behalf of himself, as representative of the proposed
4 Class described herein, and as the authorized proxy and agent for the State of California—and
5 Defendant Delta Air Lines, Inc. (“Defendant” or “Delta”) (collectively, the “Parties”).

6 **1. THE CONDITIONAL NATURE OF THIS STIPULATION**

7 1.1 This Stipulation and all associated exhibits or attachments are made for the sole
8 purpose of settling the above-captioned action. This Stipulation and the Settlement it evidences
9 are made in compromise of disputed claims. Because this action was pled as a class action, this
10 Settlement must receive preliminary and final approval by the Court. Accordingly, the Parties
11 enter into this Stipulation and associated Settlement on a conditional basis. If the Court does not
12 enter the Judgment, the proposed Judgment does not become a Final Judgment for any reason,
13 and/or the Effective Date does not occur, this Stipulation shall be deemed null and void ab initio;
14 it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose
15 whatsoever; and the negotiation, terms and entry of the Stipulation shall remain subject to the
16 provisions of Federal Rule of Evidence 408, California Evidence Code sections 1119 and 1152,
17 and any other analogous rules of evidence that are applicable.

18 1.2 Defendant denies all claims as to liability, damages, penalties, interest, fees,
19 restitution, injunctive relief and all other forms of relief as well as the class and representative
20 allegations asserted in the Action, as that term is defined below. Defendant has agreed to resolve
21 the Action via this Stipulation, but to the extent this Stipulation is deemed void or the Effective
22 Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to
23 challenge all such claims and allegations in the Action upon all procedural, merit, and factual
24 grounds, including, without limitation, the ability to challenge class treatment on any grounds, as
25 well as asserting any and all other privileges and potential defenses. Plaintiff agrees not to argue
26 or present any argument, and hereby waives any argument that, based on this Stipulation,
27 Defendant cannot contest class certification on any grounds whatsoever, or assert any and all
28 other privileges or potential defenses if this Action were to proceed. Similarly, to the extent this

1 Stipulation is deemed void or the Effective Date does not occur, Plaintiff does not waive, but
2 rather expressly reserves, all rights to move and argue for class certification and all merits
3 determinations in his favor, in favor of the class, aggrieved employees and the State of California.
4 To the extent this Stipulation is deemed void or the Effective Date does not occur, Defendant
5 agrees not to argue or present any argument, and hereby waives any argument that, based on this
6 Stipulation, Plaintiff cannot seek certification or assert any arguments in support of the merits of
7 the claims alleged in this Action.

8 **2. DEFINITIONS**

9 The following terms, when used in this Stipulation of Settlement, shall have the following
10 meanings:

11 2.1 “Action” means the above captioned action, identified as *Marvin Toledo v. Delta*
12 *Air Lines, Inc.*, United States District Court, Northern District of California, Case No. 3:22-cv-
13 00081-AMO.

14 2.2 “Attorneys’ Fees and Costs” means attorneys’ fees for Class Counsel’s litigation
15 and resolution of the Action and all actual costs incurred and to be incurred by Class Counsel in
16 the Action, as set forth in Section 5.4.

17 2.3 “Class” means all persons employed by Delta in non-exempt positions in
18 California at any time during the Class Period, but excluding flight attendants, pilots, and those
19 persons who participated in Delta’s Enhanced Retirement or Voluntary Opt-Out Programs in
20 2020 and who did not thereafter work for Delta in a non-exempt position in California during the
21 Class Period.

22 2.4 “Class Counsel” means Setareh Law Group.

23 2.5 “Class Member” means any individual who is a member of the Class.

24 2.6 “Class Period” means the period of time from December 3, 2017, through the
25 Preliminary Approval Date, subject to Section 5.2.2.

26 2.7 “Class Representative” means Plaintiff Marvin Toledo.

27 2.8 “Class Representative Released Claims” means any and all claims, obligations,
28 demands, actions, rights, causes of action, and liabilities against the Releasees, of whatever kind

1 and nature, character, and description, whether in law or equity, whether sounding in tort,
2 contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other
3 source of law or contract, whether known or unknown, and whether anticipated or unanticipated,
4 including all unknown claims covered by California Civil Code section 1542, as quoted in
5 Section 5.8.3 below, that could be or are asserted based on the Class Representative's
6 employment by or termination from Defendant, arising at any time up to and including the
7 Preliminary Approval Date, for any type of relief, including, without limitation, claims for
8 minimum or overtime wages, premium pay, business expenses, other damages, penalties
9 (including, but not limited to, waiting time penalties), liquidated damages, punitive damages,
10 interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and
11 declaratory relief. The Class Representative Released Claims include, but are not limited to, the
12 Released Claims, as well as any other claims under any provision of the FLSA, the California
13 Labor Code, any applicable California Industrial Welfare Commission Wage Order, or any city
14 or county Living Wage Ordinances.

15 2.9 "Class Settlement" means the settlement and resolution of the Released Class
16 Claims.

17 2.10 "Complaint" means the Complaint filed on December 3, 2021 and any amended
18 complaint(s) filed thereafter in this Action.

19 2.11 "Court" or "District Court" shall mean the U.S. District Court, Northern District
20 of California.

21 2.12 "Covered Class Workweeks" means workweeks between December 3, 2017 and
22 the Preliminary Approval Date, subject to Section 5.2.2, in which a Class Member worked for
23 Defendant as a non-exempt employee in California.

24 2.13 "Covered PAGA Pay Periods" means pay periods between September 29, 2020
25 and the Preliminary Approval Date, subject to Section 5.2.2, in which a PAGA Member worked
26 for Defendant as a non-exempt employee in California.

27 2.14 "Database" means a complete list of all Class Members that Defendant will
28 diligently and in good faith compile from its records and provide to the Settlement Administrator,

1 which will include each Class Member's full name, last known mailing address, Social Security
2 number, and number of Covered Class Workweeks and Covered PAGA Pay Periods (if
3 applicable).

4 2.15 "Defendant" or "Delta" means Delta Air Lines, Inc.

5 2.16 "Defendant's Counsel" means Morgan, Lewis & Bockius LLP.

6 2.17 "Effective Date" means the date on which the Judgment becomes a Final
7 Judgment.

8 2.18 "Final Approval Date" means the date on which the Court enters the Judgment.

9 2.19 "Final Approval Hearing" means a hearing set by the Court, to take place on a
10 date after the 90 day period for CAFA notice has run, for the purpose of (i) determining the
11 fairness, adequacy, and reasonableness of the Stipulation terms and associated Settlement
12 pursuant to class action procedures and requirements; (ii) determining the amount of the award of
13 attorneys' fees and costs to Class Counsel; (iii) determining the amount of the Service Payment
14 to the Class Representative; and (iv) entering the Judgment.

15 2.20 "Final Judgment" means the latest of the following dates: (i) if no Class Member
16 files an objection to the Settlement, then the date the Court enters Judgment; (ii) if a Class
17 Member files an objection to the Settlement that is not withdrawn, then the date immediately
18 after the applicable date for seeking appellate review of the District Court's order of final
19 approval of the Settlement has expired, assuming no appeal or request for review is filed; and (iii)
20 if a Class Member files an appeal or petition for review following disposition of an objection, the
21 date of the final resolution of that appeal or request for review (including any requests for
22 rehearing and/or petitions for writ of certiorari) resulting in the final judicial approval of the
23 Settlement. Notwithstanding the foregoing, any proceeding, order, or appeal pertaining solely to
24 the award of attorneys' fees, attorneys' costs, or any Service Payment shall not by itself in any
25 way delay or preclude the Judgment from becoming a Final Judgment or the Settlement from
26 becoming "Effective."

27 2.21 "FLSA" means the Fair Labor Standards Act.
28

1 2.22 “Individual PAGA Payment” means a PAGA Member’s *pro rata* share of the
2 PAGA Member Amount that a PAGA Member is eligible to receive for the PAGA Settlement.

3 2.23 “Individual Settlement Payment” means the net payment of each Settlement Class
4 Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and
5 withholdings with respect to the wages portion of the Individual Settlement Share.

6 2.24 “Individual Settlement Share” means the *pro rata* share of the Net Settlement
7 Amount that a Class Member may be eligible to receive for the Class Settlement.

8 2.25 “Judgment” means the judgment and order of final approval to be executed and
9 filed by the Court pursuant to this Stipulation following the Final Approval Hearing.

10 2.26 “LWDA” means the State of California Labor & Workforce Development
11 Agency.

12 2.27 “LWDA Payment” means the seventy-five percent (75%) portion of the PAGA
13 Allocation—*i.e.*, Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00)—that the
14 Parties have agreed to pay to the LWDA for the PAGA Settlement.

15 2.28 “Maximum Settlement Amount” is the gross sum of Twelve Million Dollars and
16 Zero Cents (\$12,000,000.00), which represents the total maximum amount payable in this
17 Settlement by Defendant. The Maximum Settlement Amount, as approved by the Court, is
18 inclusive of the Attorneys’ Fees and Costs, Service Payment, Settlement Administration Costs,
19 PAGA Allocation, the Individual Settlement Shares, and all taxes except for Defendant’s share of
20 payroll taxes on Individual Settlement Shares. Defendant shall not be required to pay anything
21 above or beyond the Maximum Settlement Amount, under any circumstance, as a result of this
22 Settlement, except as provided for in Section 5.2.2.

23 2.29 “Net Settlement Amount” means the portion of the Maximum Settlement Amount
24 that is available for distribution to Settlement Class Members, which is the Maximum Settlement
25 Amount less the Court-approved Attorneys’ Fees and Costs, Service Payment, Settlement
26 Administration Costs, PAGA Allocation, and all taxes except Defendant’s share of payroll taxes
27 on class member settlement payments.

28

1 2.30 “Notice of Class Action Settlement” means the document provided to Class
2 Members to notify them of the Settlement, substantially in the form attached as **Exhibit 1**,
3 subject to Court approval.

4 2.31 “Opt-Out Period” shall mean the period of forty-five (45) days following the
5 mailing of the Notice of Class Action Settlement by the Settlement Administrator. If the 45th
6 day falls on a Sunday or holiday, the Opt-Out Period shall end on the next business day that is not
7 a Sunday or holiday.

8 2.32 “Opt-Out Request” means a signed written request to be excluded from the
9 Settlement.

10 2.33 “PAGA” means the California Labor Code Private Attorneys General Act.

11 2.34 “PAGA Allocation” means the allocation of Six Hundred Thousand Dollars and
12 Zero Cents (\$600,000.00) from the Maximum Settlement Amount for the settlement and
13 resolution of the Released PAGA Claims. Pursuant to PAGA, seventy-five percent (75%) of the
14 PAGA Allocation, or Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00) (*i.e.*,
15 the LWDA Payment), will be paid to the LWDA, and the remaining twenty-five percent (25%),
16 or One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) (*i.e.*, PAGA Member
17 Amount), will be distributed to PAGA Members on a *pro rata* basis based on their Covered
18 PAGA Pay Periods during the PAGA Period.

19 2.35 “PAGA Member Amount” means the twenty-five percent (25%) portion of the
20 PAGA Allocation, or One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), to be
21 distributed to PAGA Members on a *pro rata* basis based on their Covered PAGA Pay Periods
22 during the PAGA Period.

23 2.36 “PAGA Members” means all persons employed by Defendant as non-exempt
24 employees in California at any time during the PAGA Period, but excluding flight attendants and
25 pilots.

26 2.37 “PAGA Period” means the period from June 8, 2020, through the Preliminary
27 Approval Date, subject to Section 5.2.2.

28

2.38 “Preliminary Approval Date” means the date the Court enters the Preliminary Approval Order.

2.39 “Preliminary Approval Order” means an order of the Court preliminarily approving the Stipulation and the exhibits thereto, and providing for notice to the Class, an opportunity to opt out of the Class, an opportunity to submit timely objections to the settlement, and setting a hearing on the final fairness of the terms of settlement, including approval of the Service Payment and Attorneys’ Fees and Costs. A copy of the Parties’ proposed Preliminary Approval Order is attached hereto as **Exhibit 2**.

2.40 “Qualified Settlement Fund” means a qualified settlement fund under Section 468B of the Internal Revenue Code established by the Settlement Administrator for the purpose of administering this Settlement.

2.41 “Released Class Claims” means any and all claims, obligations, demands, rights, causes of action, and liabilities that have been asserted or that reasonably could have been asserted in the Complaint, and any amendments thereto, based on the facts and/or allegations pled therein, arising during the Class Period. Released Class Claims include, but are not limited to, claims for the failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to pay wages, including minimum wages, straight time wages, overtime wages, wages for vested vacation time, sick pay, and premium pay, failure to include all remuneration into the calculation of the regular rate of pay, failure to provide accurate, itemized wage statements, failure to timely pay wages during employment, failure to timely pay wages upon termination of employment, failure to maintain requisite payroll records, failure to reimburse for necessary business-related expenses, unfair or unlawful business practices pursuant to California Business and Professions Code §§ 17200, *et seq.* and 17203, any violation of the California Labor Code, including, but not limited to, California Labor Code sections 201, 202, 203, 204, 210, 215, 216, 218.6, 223, 225, 225.5, 226, 226(a), 226.7, 227.3, 246, 256, 510, 512, 516, 553, 558, 1174, 1174.5, 1175, 1182, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, any violation of the Industrial Welfare Commission Wage Orders, including, but not limited to, Industrial Welfare Commission Wage Order 9-2001, any

1 violations of local, city, and/or county laws, and/or any violations of the FLSA, including, but not
2 limited to, 29 U.S.C. § 207 and associated regulations, including, but not limited to, 29 C.F.R. §§
3 778.108, 778.109, and 778.208.

4 2.42 “Released PAGA Claims” means all claims for civil penalties under PAGA that
5 have been asserted or that reasonably could have been asserted in the Complaint, the LWDA
6 Notice, and any amendments thereto, based on the facts and/or allegations pled therein, arising
7 during the PAGA Period. Released PAGA Claims include, but are not limited to, claims for the
8 failure to provide compliant meal periods and associated premium pay, failure to provide
9 compliant rest periods and associated premium pay, failure to pay wages, including minimum
10 wages, straight time wages, overtime wages, wages for vested vacation time, sick pay, and
11 premium pay, failure to include all remuneration into the calculation of the regular rate of pay,
12 failure to provide compliant wage statements, failure to timely pay wages during employment,
13 failure to timely pay wages upon termination of employment, failure to maintain requisite payroll
14 records, failure to reimburse for necessary business-related expenses, any violation of the
15 California Labor Code based on the aforementioned, including, but not limited to, California
16 Labor Code sections 201, 202, 203, 204, 210, 215, 216, 218.6, 223, 225, 225.5, 226, 226(a),
17 226.7, 227.3, 246, 256, 510, 512, 516, 553, 558, 1174, 1174.5, 1175, 1182, 1194, 1194.2, 1197,
18 1197.1, 1198, 1199, and 2802, and any violation of the Industrial Welfare Commission Wage
19 Orders, including, but not limited to, Industrial Welfare Commission Wage Order 9-2001.

20 2.43 “Releasees” mean Defendant and each of its past, present and/or future, direct
21 and/or indirect, officers, directors, managers, employees, agents, representatives, attorneys,
22 insurers, partners, investors, shareholders, members, administrators, parent companies,
23 subsidiaries, affiliates, divisions, predecessors, successors, and/or assigns, in their personal,
24 individual, official, and/or corporate capacities.

25 2.44 “Service Payment” means the amount approved by the Court to be paid to the
26 Class Representative in recognition of the Class Representative’s efforts in coming forward as
27 Class Representative and participating in the Action, including responding to discovery and
28 attending his deposition.

1 2.45 “Settlement Administrator” means Phoenix Settlement Administrators.

2 2.46 “Settlement Administration Costs” means the fees and expenses reasonably
3 incurred by the Settlement Administrator as a result of the procedures and processes expressly
4 required by this Stipulation.

5 2.47 “Settlement Class” or “Settlement Class Members” means all Class Members
6 who do not timely submit a timely and valid Opt-Out Request.

7 2.48 “Stipulation” or “Settlement” shall mean this Joint Motion/Stipulation of
8 Settlement, signed by all the Parties and their counsel.

9 **3. DESCRIPTION OF THE LITIGATION**

10 3.1 Plaintiff Marvin Toledo initiated the Action in the Superior Court of the State of
11 California, County of San Francisco, on December 3, 2021. Delta subsequently removed the
12 Action to the United States District Court for the Northern District of California, where the
13 Action is currently pending. Plaintiff has brought the Action on behalf of himself, other
14 allegedly aggrieved employees and as proxy for the State of California, and the following
15 individuals: all current and former non-exempt employees of Defendant in California from
16 December 3, 2017 to the present. The Action alleges various wage and hour claims against
17 Defendant, including claims for failure to provide meal/rest periods, failure to pay wages, failure
18 to reimburse business expenses, failure to provide accurate written wage statements, failure to
19 timely pay all final wages, unfair business practices under California Bus. & Prof. Code §§
20 17200-17208, and civil penalties under Labor Code §§ 2699 *et seq.* The Action asserts claims for
21 unpaid wages, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’
22 fees, and costs. Prior to filing this Action, Plaintiffs sent notice of alleged Labor Code violations
23 to the LWDA pursuant to Labor Code §2699.3(1).

24 3.2 Through substantial and extensive formal and informal discovery, Defendant
25 provided Plaintiff’s counsel with company documents and records, data, and written policies
26 reflecting and relating to employees’ time worked, rates of pay, workweeks, wages paid, and
27 meal and rest break premiums paid during the Class Period, among other records.

28

1 3.3 On May 12, 2023, the Parties attended a full-day mediation conducted by an
2 experienced wage and hour mediator, Michael Dickstein. Although the first mediation did not
3 result in settlement, the Parties continued to engage in settlement discussions after the mediation
4 session ended. Through these settlement discussions, the Parties agreed to participate in a further
5 mediation session. On August 13, 2024, the Parties attended a second full-day mediation
6 conducted by an experienced wage and hour mediator, Jeff Ross, that resulted in this Settlement.
7 At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at
8 arm's length.

9 **4. POSITION OF THE PARTIES**

10 4.1 As set forth in the Complaint, Plaintiff contends that Defendant failed to provide
11 its nonexempt employees in California with all required meal and rest breaks, failed to pay them
12 all wages, failed to calculate the regular rate of pay correctly, failed to timely pay them wages
13 during their employment and upon separation, failed to reimburse them for work-related
14 expenses, and failed to provide them with accurate written wage statements. Plaintiff also
15 contends that his claims are suitable to meet the class certification requirements of Rule 23 and
16 may be pursued on a representative basis under PAGA.

17 4.2 Defendant contends that its wage and hour policies and practices are lawful and
18 have been lawful throughout the Class Period. Defendant further contends that Plaintiff's claims
19 do not meet the requirements for class certification under Rule 23 and may not be pursued on a
20 representative basis under PAGA.

21 4.3 Each party vigorously disputes the other party's contentions, but these contentions
22 have been taken into account in assessing the risks of litigation and the benefits of reaching a
23 settlement.

24 4.4 The Parties agree that the above-described discovery, exchange of information,
25 and evaluation are sufficient to assess the merits of the respective Parties' positions and to
26 compromise the claims on a fair and equitable basis. Based on their own independent
27 investigations and evaluations, Class Counsel is of the opinion that the Settlement with
28 Defendant for the consideration and under the terms set forth below, considering the strengths

1 and weaknesses of the claims on the merits is fair, reasonable, and adequate in light of all known
2 facts and circumstances, and is in the best interests of the Class.

3 4.5 Class Counsel has also weighed the monetary benefit under the Settlement to the
4 Class against the expenses and length of continued proceedings that would be necessary to
5 prosecute the Action against Defendant through trial and possible appeals. Class Counsel has
6 also taken into account the uncertain outcome and risk of any litigation, especially in complex
7 actions such as class and PAGA actions, as well as the difficulties and delay inherent in such
8 litigation. Therefore, Class Counsel has determined that the settlement set forth in this
9 Stipulation is in the best interests of the Class, PAGA Members, and the State of California.

10 **5. OPERATIVE TERMS OF SETTLEMENT**

11 The Parties agree as follows:

12 5.1 Class Certification for Settlement Purposes

13 5.1.1 The Parties stipulate, for settlement purposes only, to the conditional
14 certification by the Court of the Class, as defined above.

15 5.1.2 If, for any reason, the Court does not approve this Stipulation, fails to enter
16 the Judgment, or if this Stipulation is terminated for any other reason, no class will have been
17 certified and Defendant shall retain the right to dispute the appropriateness of class certification.
18 This Stipulation shall not be construed as an admission that Plaintiff could meet any of the class
19 action requirements contained in Rule 23 of the Federal Rules of Civil Procedure.

20 5.2 Maximum Settlement Amount

21 5.2.1 Defendant shall pay a non-reversionary amount not to exceed Twelve
22 Million Dollars and Zero Cents (\$12,000,000.00) as the Maximum Settlement Amount to resolve
23 the Action on a class and representative basis, subject to Section 5.2.2 below. The Maximum
24 Settlement Amount, as approved by the Court, is inclusive of the Attorneys' Fees and Costs,
25 Service Payment, Settlement Administration Costs, PAGA Allocation, the Individual Settlement
26 Shares, and all taxes except for Defendant's share of payroll taxes on Individual Settlement
27 Shares.

1 5.2.2 This Settlement is based on an estimated count of approximately 700,000
2 Covered Class Workweeks from December 3, 2017 through August 13, 2024. If the total number
3 of Covered Class Workweeks exceeds this estimated count by five percent (5%) (*i.e.*, 735,000
4 Covered Class Workweeks), then Defendant will have the choice to either (a) increase the
5 Maximum Settlement Amount on a *pro rata* basis equal to a percentage in the number of
6 Covered Class Workweeks in excess of 735,000; or (b) cut off the Class Period and PAGA
7 Period as of the last date that the total number of Covered Class Workweeks does not exceed
8 735,000. With respect to option (a) and for illustrative purposes only, if the number of Covered
9 Class Workweeks increases by 6% to 779,100 Covered Class Workweeks, the Maximum
10 Settlement Amount will increase by one percent (1%).

11 5.3 Service Payment to Class Representative

12 5.3.1 The Class Representative's Service Payment, which is in addition to his
13 individual settlement payment, and subject to Court approval, is to be paid out of the Maximum
14 Settlement Amount and will not exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) for
15 his services and assistance in the Action. For purposes of tax withholding, the Service Payment
16 will be reported on an IRS Form 1099. The Class Representative shall be solely and legally
17 responsible for paying any and all applicable taxes on his Service Payment and shall indemnify,
18 defend, and hold Releasees harmless from any claim or liability for taxes, penalties or interest
19 arising as a result of the Service Payment. Neither Class Counsel nor the Class Representative
20 can rescind or back out of the Settlement if the Court awards less than the requested Service
21 Payment. Any amount of the Service Payment that is not awarded by the Court shall revert to the
22 Net Settlement Amount for the benefit of the Settlement Class Members.

23 5.4 Attorneys' Fees and Costs

24 5.4.1 Class Counsel shall apply to the Court for an award of reasonable
25 attorneys' fees not to exceed 33 1/3% of the Maximum Settlement Amount, which is an amount
26 of Three Million Nine Hundred Ninety-Nine Thousand Nine Hundred Sixty Dollars and Zero
27 Cents (\$3,999,960.00), and will seek an award of costs for reimbursement of Class Counsel's
28 out-of-pocket costs and expenses incurred in the Action up to an additional estimated amount of

1 Seventy Thousand Dollars and Zero Cents (\$70,000.00), to be paid out of the Maximum
2 Settlement Amount. Defendant will not oppose an application by Class Counsel in accordance
3 with the terms of this Settlement. The Settlement Administrator shall issue IRS Forms 1099 to
4 Class Counsel for the payments made pursuant to this Section. Class Counsel shall be solely and
5 legally responsible for paying any and all applicable taxes on their Attorneys' Fees and Costs
6 award and shall indemnify, defend, and hold Releasees harmless from any claim or liability for
7 taxes, penalties or interest arising as a result of any payments received by Class Counsel pursuant
8 to this Agreement. Neither Class Counsel nor the Class Representative can rescind or back out of
9 the Settlement if the Court awards less than the requested amount in Attorneys' Fees and Costs.
10 Any amount of Class Counsel's requested Attorneys' Fees and Costs that is not awarded by the
11 Court shall revert to the Net Settlement Amount for the benefit of the Settlement Class Members.

12 5.5 Settlement Administrator

13 5.5.1 The Settlement Administration Costs incurred by the Settlement
14 Administrator as a result of the procedures and processes expressly required by this Settlement
15 shall be paid out of the Maximum Settlement Amount and are estimated not to exceed Twenty-
16 Nine Thousand Dollars and Zero Cents (\$29,000.00). In the event that the Settlement
17 Administration Costs exceed this estimated amount, any additional Settlement Administration
18 Costs will be paid from the Maximum Settlement Amount. Under no circumstances will
19 Defendant be required to contribute additional funds, above and in addition to the Maximum
20 Settlement Amount, to cover any additional Settlement Administration Costs. The Settlement
21 Administration Costs shall include: all costs of administering the Settlement, including all tax
22 document preparation, custodial fees, and accounting fees incurred by the Settlement
23 Administrator; all costs and fees associated with establishing and maintaining a Qualified
24 Settlement Fund; all costs and fees associated with preparing, issuing, and mailing the Notice of
25 Class Action Settlement and other correspondence to Class Members; all costs and fees
26 associated with communicating with Class Members, Class Counsel, and Defendant's Counsel;
27 all costs and fees associated with computing, processing, reviewing, and paying the payments due
28 under this Settlement, and resolving disputed claims; all costs and fees associated with

1 calculating tax withholdings and payroll taxes, making related payment to federal and state tax
2 authorities, and issuing tax forms relating to payments made under the Settlement; all costs and
3 fees associated with preparing any tax returns and any other filings required by any governmental
4 taxing authority or agency; all costs and fees associated with preparing any other notices, reports,
5 or filings to be prepared in the course of administering payments due under this Settlement;
6 maintaining a case website; all costs and fees associated with securely handling class member
7 data; and any other costs and fees incurred and/or charged by the Settlement Administrator in
8 connection with the execution of its duties under this Settlement. The Settlement Administrator
9 will also post the Settlement Agreement (and any amendment(s) thereto), Preliminary Approval
10 Order, Final Approval Order and Judgment, and a copy of the Notice of Class Action Settlement
11 to its website. The Settlement Administrator will keep these documents on its website for sixty
12 (60) calendar days after the Effective Date at which time they will be taken down.

13 5.5.2 The actions of the Settlement Administrator shall be governed by the
14 terms of this Stipulation and any orders of the Court. Communications from the Settlement
15 Administrator shall include both Class Counsel and Defendant's Counsel.

16 5.5.3 In the event that either Defendant's Counsel or Class Counsel take the
17 position that the Settlement Administrator is not acting in accordance with the terms of the
18 Stipulation, such party shall meet and confer first with opposing counsel and/or, if necessary with
19 the Settlement Administrator to attempt to resolve the issue. Should those efforts fail, counsel
20 shall jointly approach the Court.

21 5.5.4 The Settlement Administrator shall take appropriate steps to ensure the
22 secure handling of Class Members' data, which includes implementing feasible technical,
23 administrative, and physical controls; appropriate retention and destruction of data; and audits
24 and crisis response as needed. Plaintiff will address the settlement administrator's procedures for
25 securely handling this data in his motion for preliminary approval of the Settlement.

26 5.6 Calculation of Individual Settlement Shares

27 5.6.1 There is no need for a Settlement Class Member to submit a claim form in
28 order to be eligible for and be issued an Individual Settlement Payment.

1 5.6.2 To determine each Class Member's Individual Settlement Share, the
2 Settlement Administrator will multiply the Net Settlement Amount by a fraction, the numerator
3 of which is the Class Member's individual number of Covered Class Workweeks, and the
4 denominator of which is the total number of Covered Class Workweeks of all Class Members.

5 5.6.3 All Individual Settlement Shares shall be allocated as follows: one-third
6 (1/3) as wages, to be reported on an IRS Form W-2, and two-thirds (2/3) as interest, penalties,
7 and non-wage damages, to be reported on an IRS Form 1099 (if applicable). The Settlement
8 Administrator will withhold (and remit to the appropriate taxing authorities) the employee's and
9 employer's share of taxes and withholdings with respect to the wages portion of the Individual
10 Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement
11 Payment (*i.e.*, payment of their Individual Settlement Share net of these taxes and withholdings).
12 Participating Class Members will be responsible for paying personal income taxes, if any, owed
13 on the amounts they receive. Other than as set forth above, the Settlement Administrator will
14 not make any deductions, withholdings, or additional payments, including without limitation,
15 medical or other insurance payments or premiums, employee 401(k) contributions or matching
16 employer contributions, wage garnishments to the extent permitted by law, or charity
17 withholdings, from or with respect to the Individual Settlement Shares.

18 5.6.4 The Parties recognize that the Settlement Payments to be paid to Class
19 Members reflect the settlement of a dispute over claimed wages, interest, penalties, and other
20 alleged damages.

21 5.6.5 The Settlement Payments and the Service Payment will not count or be
22 counted for determination of eligibility for, or calculation of, any employee benefits (for
23 example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans,
24 etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or
25 employee welfare plan sponsored by Releasees, unless otherwise required by law.

26 5.7 PAGA Allocation

27 5.7.1 A total amount of Six Hundred Thousand Dollars and Zero Cents
28 (\$600,000.00) from the Maximum Settlement Amount will be allocated as the PAGA Allocation

1 to be paid as penalties under PAGA, of which seventy-five percent (75%), or \$450,000.00, will
2 be distributed to the LWDA (*i.e.*, LWDA Payment) and the remaining twenty-five (25%), or
3 \$150,000.00, will be distributed to the PAGA Members (*i.e.*, PAGA Member Amount) on a *pro*
4 *rata* basis based on their Covered PAGA Pay Periods during the PAGA Period (*i.e.*, Individual
5 PAGA Payment). Any portion of the PAGA Allocation not approved by the Court shall revert to
6 the Net Settlement Amount for the benefit of the Settlement Class Members.

7 5.7.2 To determine each PAGA Member's Individual PAGA Payment, the
8 Settlement Administrator will multiply the PAGA Member Amount by a fraction, the numerator
9 of which is the PAGA Member's individual number of Covered PAGA Pay Periods, and the
10 denominator of which is the total number of Covered PAGA Pay Periods of all PAGA Members.

11 5.7.3 All Individual PAGA Payments shall be allocated as one hundred percent
12 (100%) penalties, to be reported on an IRS Form 1099 (if applicable). PAGA Members will be
13 responsible for paying all taxes due on their Individual PAGA Payments. The Settlement
14 Administrator will not make any deductions, withholdings, or additional payments, including
15 without limitation, medical or other insurance payments or premiums, employee 401(k)
16 contributions or matching employer contributions, wage garnishments to the extent permitted by
17 law, or charity withholdings, from or with respect to the Individual PAGA Payments.

18 5.7.4 At the same time as they submit this Settlement to the Court for
19 preliminary approval, Class Counsel shall submit a copy of this Settlement to the LWDA, as
20 required by California Labor Code § 2699(l)(2).

21 5.7.5 Within ten (10) calendar days of the Final Approval Date, Class Counsel
22 shall submit a copy of the Final Approval Order and Judgment entered by the Court to the
23 LWDA, as required by California Labor Code § 2699(l)(3).

24 5.8 Releases

25 5.8.1 Class Settlement Release. Upon the Effective Date, the Settlement Class
26 Members shall be deemed to have fully, finally, and forever released the Releasees from the
27 Released Class Claims.

1 5.8.2 PAGA Settlement Release. Upon the Effective Date, all PAGA Members
2 and the State of California on behalf of all PAGA Members shall be deemed to have fully,
3 finally, and forever released the Releasees from the Released PAGA Claims. All PAGA
4 Members shall be bound by the release as to any Released PAGA Claims even if they have opted
5 out of the Settlement Class.

6 5.8.3 Class Representative Release. Upon the Effective Date, the Class
7 Representative shall be deemed to have fully, finally, and forever released the Releasees from all
8 Class Representative Released Claims. The Class Representative may hereafter discover claims
9 or facts in addition to, or different from, those which he now knows or believes to exist, but the
10 Class Representative expressly agrees to fully, finally, and forever settle and release any and all
11 claims against the Releasees, known or unknown, suspected or unsuspected, which exist or may
12 exist on behalf of or against the other through the Preliminary Approval Date. The Class
13 Representative shall be deemed to have expressly waived and relinquished, to the fullest extent
14 permitted by law, the provisions, rights, and benefits he may otherwise have had relating to the
15 Class Representative's Released Claims pursuant to Section 1542 of the California Civil Code,
16 which provides as follows:

17 A general release does not extend to claims that the creditor or releasing party does not
18 know or suspect to exist in his or her favor at the time of executing the release and that,
19 if known by him or her, would have materially affected his or her settlement with the
20 debtor or released party.

21 5.9 First Amended Complaint

22 5.9.1 At the same time that Plaintiff files his Motion for Preliminary Approval,
23 the Parties will file a stipulation with the Court requesting leave for Plaintiff to file the proposed
24 First Amended Complaint, attached as **Exhibit 3**, which adds certain factual allegations and
25 claims comporting with the scope of the Released Class and PAGA Claims and Plaintiff's
26 LWDA Notice.

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1 6. **NOTICE TO CLASS**

2 6.1 Preliminary Approval

3 6.1.1 Plaintiff and Class Counsel will file with the Court a Motion for
4 Preliminary Approval of this Settlement, which will be unopposed by Defendant. Plaintiff and
5 Class Counsel will be responsible for drafting and filing the Motion for Preliminary Approval.
6 Plaintiff and Class Counsel will provide Defendant and Defendant's Counsel with a copy of the
7 draft Motion for Preliminary Approval at least five (5) business days before the filing of the
8 motion. The Court's preliminary approval of this Settlement will be embodied in a Preliminary
9 Approval Order certifying the Class, preliminarily approving the Settlement and providing for
10 Notice of Class Action Settlement to be mailed to the Class in the general form attached hereto as
11 **Exhibit 1**, and which will also set the date for the Final Approval Hearing.

12 6.2 Notice

13 6.2.1 Within thirty (30) calendar days after the Court issues the Preliminary
14 Approval Order, Defendant shall provide the Database to the Settlement Administrator in
15 electronic form. The Settlement Administrator shall maintain the Class Member data as private
16 and confidential and shall not disclose such data to any persons or entities other than Defendant's
17 Counsel, except that relevant information may be provided to Class Counsel to the extent
18 necessary to address a disputed claim or to respond to a specific inquiry from a Class Member.
19 This data is being supplied solely for purposes of the administration of the Settlement and hence
20 cannot be used by the Settlement Administrator or Class Counsel for any purpose other than to
21 administer the Settlement. The Parties agree that the information in the Database will not be used
22 to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against
23 Defendant, or for any other purpose other than to administer the Settlement as provided herein.
24 Upon receipt of the Database, the Settlement Administrator shall check with the U.S. Postal
25 Service National Change of Address Database and update any addresses with any new
26 information found regarding the location of Class Members.

27 6.2.2 Class Members shall not be required to file claim forms.
28

1 6.2.3 The Settlement Administrator will mail via first class mail the Notice of
2 Class Action Settlement directly to the last known address of each Class Member within fourteen
3 (14) days of receiving the Database. The Settlement Administrator will also establish a
4 settlement website which will include the Settlement Agreement and a summary of the settlement
5 terms within fourteen (14) days of receiving the Database.

6 6.2.4 Unless the Settlement Administrator receives the Notice of Class Action
7 Settlement returned as undeliverable from the U.S. Postal Service, the Notice Packet shall be
8 deemed received by the Class Member to whom it was sent.

9 6.2.5 In the event that after the first mailing of the Notice and prior to the Final
10 Approval Hearing, any Notice is returned to the Settlement Administrator by the U.S. Postal
11 Service with a forwarding address for the recipient, the Settlement Administrator shall remail
12 such notice to that forwarding address within three (3) days.

13 6.2.6 In the event that after the first mailing of the Notice and prior to the Final
14 Approval Hearing, any Notice is returned to the Settlement Administrator by the U.S. Postal
15 Service without a forwarding address, the Settlement Administrator shall perform a standard
16 skip-trace using the Class Member's social security number, address, and/or telephone number in
17 an effort to ascertain the current address and/or telephone number of the Class Member. If a
18 current address is ascertained, the Settlement Administrator shall remail the Notice within three
19 (3) days.

20 6.2.7 Class Members who wish to "opt out" of and be excluded from the non-
21 PAGA portion of this Settlement must submit a written Request for Exclusion from the
22 Settlement bearing a postmark from a date within the Opt-Out Period. Class Members are still
23 bound by the release of PAGA claims even if they submit a valid Request for Exclusion and will
24 receive a check with his or her individual payment from the PAGA Allocation if they are a
25 PAGA Member. The Request for Exclusion must include: (a) the Class Member's name; (b) a
26 statement that the Class Member desires to exclude himself or herself from the case; and (c) the
27 last four digits of the Class Member's social security number. If a Class Member submits a
28 deficient Request for Exclusion, the Settlement Administrator shall notify the Class Member of

1 the deficiency within five (5) business days of receipt. The Class Member shall have until the
2 end of the Opt-Out Period or five (5) business days after the close of the Opt-Out Period if the
3 notice of deficiency is sent by the Settlement Administrator within (5) business days of the end of
4 the Opt-Out Period to cure said deficiencies, at which point his or her Request for Exclusion will
5 be rejected if not received. Class Members submitting untimely or Deficient Requests for
6 Exclusion shall be bound by the Settlement and its releases and will be considered Settlement
7 Class Members for settlement distribution purposes. Class Members shall be permitted to rescind
8 their Request for Exclusion in writing by submitting a rescission statement to the Settlement
9 Administrator not later than one (1) business day prior to the Final Approval Hearing, or as
10 otherwise ordered by the Court. The Settlement Administrator shall not accept Late Requests for
11 Exclusion without the written authorization of Delta.

12 6.2.8 The Notice will instruct Settlement Class Members who wish to object to
13 the Settlement to send their written objection only to the Court, such notice will make clear that
14 the Court can only approve or deny the Settlement and cannot change the terms of the Settlement,
15 and will clearly advise Settlement Class Members of the deadline for submission of any
16 objections. Only Settlement Class Members who do not opt out may object to the non-PAGA
17 portion of the Settlement. Class Members who opt out of the Settlement are not eligible to
18 object. All objections must be sent no later than forty-five (45) days after the mailing of the
19 Class Notice, and such deadline applies notwithstanding any argument regarding non-receipt of
20 the notice. Failure to send timely written objections in this manner will not foreclose a Class
21 Member's right to have their objection heard at the Final Approval Hearing. A Class Member
22 who fails to send a timely written objection, or appear at the Final Approval Hearing to have their
23 objection heard, shall be deemed to have waived any objections and shall be foreclosed from
24 filing any appeal from any Final Approval Order issued by the Court. The Parties may file a
25 response to any objections submitted by objecting Class Members at or prior to the Final
26 Approval Hearing. Class Members shall be permitted to withdraw their objections in writing by
27 submitting a withdrawal statement to the Settlement Administrator not later than one (1) business
28 day prior to the Final Approval Hearing, or as otherwise ordered by the Court.

1 6.2.9 Disputes of Covered Class Workweeks and/or Covered PAGA Pay
2 Periods. Class/PAGA Members will have an opportunity to dispute the number of Covered Class
3 Workweeks and/or Covered PAGA Pay Periods to which they have been credited, as reflected in
4 their respective Class Notices. In order to dispute Covered Class Workweeks and/or Covered
5 PAGA Pay Periods, Class/PAGA Members must submit a written letter to the Settlement
6 Administrator, which must: (a) contain the case name and number of the Action; (b) contain the
7 full name, signature, mailing address, telephone number, and the last four digits of the Social
8 Security number of the disputing Class/PAGA Member; (c) clearly state that the Class/PAGA
9 Member disputes the number of Covered Class Workweeks and/or Covered PAGA Pay Periods
10 credited to them and what they contend is the correct number to be credited to them; (d) include
11 information and/or attach documentation demonstrating that the number(s) of Covered Class
12 Workweeks and/or Covered PAGA Pay Periods that they contend should be credited to them are
13 correct; and (e) be submitted by mail to the Settlement Administrator at the specified address,
14 postmarked on or before the Response Deadline. Absent information and/or documentation
15 demonstrating that Defendant's records and data are inaccurate as they pertain to the number of
16 Covered Class Workweeks and/or Covered PAGA Pay Periods to be credited to a disputing Class
17 / PAGA Member, Defendant's records will be presumed correct and determinative of the dispute.
18 However, if a Class /PAGA Member produces information and/or documents demonstrating that
19 Defendant's records and data are inaccurate as they pertain to the number of Covered Class
20 Workweeks and/or Covered PAGA Pay Periods to be credited to a disputing Class/PAGA
21 Member, the Settlement Administrator will evaluate the materials submitted by the Class/PAGA
22 Member and the Settlement Administrator will resolve and determine the number of Covered
23 Class Workweeks and/or Covered PAGA Pay Periods that the disputing Class/PAGA Member
24 should be credited with under the Settlement. The Settlement Administrator's determination
25 regarding any such dispute shall be final.

26 6.2.10 Beginning two weeks after the date the Notices of Class Action Settlement
27 are mailed, the Settlement Administrator shall provide to Class Counsel and Defendant's Counsel
28 a weekly status report which will be cumulative, reflecting the names and the number of Class

1 Members who have filed Request for Exclusion, as well as information about how many Notices
2 have been mailed to forwarding addresses, returned as undeliverable, and/or remailed.

3 6.2.11 If more than five percent (5%) of the total number of Class Members
4 submit timely and valid Requests for Exclusion, then Defendant shall have the option to void the
5 Settlement in its sole discretion. To exercise this option, Defendant must send written
6 notification to Class Counsel within fourteen (14) days of receiving a report from the Settlement
7 Administrator informing Defendant that the total number of timely and valid Requests for
8 Exclusion is more than five percent (5%). If Defendant chooses to exercise this option, the effect
9 will be precisely the same as if Final Judgment did not occur, as discussed herein, and all
10 Settlement Administration Costs incurred by the Settlement Administrator through that date will
11 be paid by Defendant.

12 6.2.12 At least seven (7) days prior to the deadline for filing the motion for final
13 approval of the Settlement, the Settlement Administrator shall provide Class Counsel and
14 Defendant's Counsel a declaration of due diligence and proof of mailing with regard to the
15 mailing of the Notice and the number of completed Requests for Exclusion.

16 6.3 Final Approval

17 6.3.1 Prior to the Final Approval Hearing, Plaintiff and Class Counsel will move
18 the Court for entry of the Final Approval Order and Judgment, which will provide for, in
19 substantial part, the following: (a) certifying the Class for settlement purposes only, (b) finding
20 the Settlement fair, reasonable, adequate, and in the best interests of the Class Members, PAGA
21 Members, and the State of California, (c) approving the PAGA Allocation to the LWDA and the
22 PAGA Members; (d) approving Class Counsel's application for an award of Attorneys' Fees and
23 Costs, (e) approving the Class Representative's application for a Service Payment, (f) approving
24 the payment of reasonable Settlement Administration Costs, and (g) releasing and barring any
25 Released Class Claims by Settlement Class Members and Released PAGA Claims by the State of
26 California with respect to PAGA Members and the PAGA Members. The Parties and their
27 respective counsel shall make all reasonable efforts to secure entry of the Final Approval Order
28 and Judgment. The proposed Final Approval Order and Judgment shall be filed with the Court

1 with the motion for final approval, or as otherwise directed by the Court. Plaintiff and Class
2 Counsel will be responsible for drafting and filing the motion for Final Approval and for entry of
3 the Judgment. Plaintiff and Class Counsel will provide Defendant and Defendant's Counsel with
4 a copy of the draft motion at least five (5) business days before the filing of the motion.

5 6.3.2 The Class Representative and Class Counsel agree that they shall be
6 responsible for justifying the amount of the Service Payment and Attorneys' Fees and Costs to
7 the Court, and they agree to submit, as appropriate, the necessary materials to justify these
8 payments. If the Court (or any appellate court) awards less than the amount requested for
9 Attorneys' Fees and Costs, or less than the amount requested for the Service Payment for the
10 Class Representative, only the awarded amounts shall be paid and shall constitute satisfaction of
11 the obligations of Defendant to pay the Attorneys' Fees and Costs and Service Payment under
12 this Settlement. If Class Counsel file a timely appeal regarding the amount of Attorneys' Fees
13 and Costs or the Service Payment approved by the Court, the Settlement Administrator shall hold
14 the difference between the amount requested and the amount awarded in escrow, in an interest-
15 bearing account until such appeal has been fully resolved. Any unawarded amounts shall be
16 added to the Net Settlement Amount for distribution to Settlement Class Members.

17 6.3.3 If an appeal results in an order materially modifying, setting aside, or
18 vacating any portion of the Stipulation, with the exception of any modification of the amount of
19 Attorneys' Fees and Costs to be paid to Class Counsel, or the amount of the Service Payment
20 paid to the Class Representative, each party adversely impacted by the order shall have the
21 absolute right, at its sole discretion, to treat such order as an event permanently preventing the
22 occurrence of Final Judgment pursuant to the Settlement. To exercise this right, the party must
23 inform the other party and the Settlement Administrator, in writing, of the exercise of this right,
24 within fourteen (14) days of receiving notice of any order modifying, setting aside, or vacating
25 any portion of the Stipulation. Before either Party elects to exercise its right to treat such order as
26 an event permanently preventing the occurrence of Final Judgment (pursuant to the Settlement)
27 that Party must meet and confer in good faith with the other Party to determine if an agreement
28 can be reached modifying this Settlement to the mutual satisfaction of the Parties.

1 6.3.4 If Final Judgment does not occur, or if this Stipulation is terminated or
2 canceled pursuant to its terms, the Parties to this Stipulation shall be deemed to have reverted to
3 their respective status as of the date and time immediately prior to the execution of this
4 Stipulation. Notwithstanding any other provision of this Stipulation, no order of the Court, or
5 modification or reversal on appeal of any order of the Court, reducing the amount of any
6 Attorneys' Fees and Costs to be paid by Defendant to Class Counsel, or reducing the amount of
7 the Service Payment paid to the Class Representative, shall constitute grounds for cancellation or
8 termination of the Stipulation, or grounds for limiting any other provision of the Judgment.

9 6.4 Funding and Distribution of the Settlement Proceeds

10 6.4.1 Within twenty-one (21) calendar days after the Effective Date, Defendant
11 shall pay the Maximum Settlement Amount of Twelve Million Dollars and Zero Cents
12 (\$12,000,000.00) into the Qualified Settlement Fund. The Maximum Settlement Amount is fully
13 non-reversionary.

14 6.4.2 Within fourteen (14) calendar days of the funding of the Maximum
15 Settlement Amount, the Settlement Administrator shall issue payments due under the Settlement
16 and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class
17 Members; (b) Individual PAGA Payments to PAGA Members; (c) LWDA Payment to the
18 LWDA; (d) Service Payment to Plaintiff; (e) Attorneys' Fees and Costs to Class Counsel; and (f)
19 Settlement Administration Costs to itself (the Settlement Administrator).

20 6.4.3 The Settlement Administrator will be responsible for undertaking
21 appropriate deductions, required tax reporting, and issuing Individual Settlement Payments by
22 way of check to the Settlement Class Members and the Individual PAGA Payments by way of
23 check to the PAGA Members in accordance with this Settlement Agreement. The Settlement
24 Administrator may, at its discretion, distribute the Individual Settlement Payment and Individual
25 PAGA Payment by way of a single check that combines both payments (if applicable). Each
26 Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable
27 for one hundred and eighty (180) calendar days from the date the checks are issued, and
28 thereafter, shall be canceled. Even if a Settlement Class Member and/or PAGA Member does not

1 receive, cash, deposit, and/or otherwise negotiate their settlement check, the Settlement,
2 including its releases, will be binding on them. In the event that a Settlement Payment is returned
3 by the U.S. Postal Service with a forwarding address, the Settlement Administrator shall remail
4 the check within three (3) days. In the event that a Settlement Payment is returned by the U.S.
5 Postal Service as undeliverable, the Settlement Administrator shall perform a standard skip-trace
6 and shall remail the check within three (3) days if a current address can be ascertained.

7 6.4.4 The amount of uncashed/undeposited settlement checks will revert back to
8 the Qualified Settlement Fund and will be paid as a *cy pres* award to the University of California
9 Berkeley's Institute for Research on Labor and Employment. During the 180-day check-cashing
10 period, the Settlement Administrator shall provide weekly reports to Class Counsel and
11 Defendant's Counsel regarding the number of checks cashed and the total value of Settlement
12 Payments remaining uncashed.

13 6.4.5 Within 21 days of the residual settlement amount being paid to the *cy pres*
14 recipient, the Settlement Administrator will provide to Class Counsel and Defendant's Counsel a
15 Post-Distribution Accounting (and post it on the settlement website), which provides the total
16 settlement fund, the total number of class members, the total number of class members to whom
17 notice was sent and not returned as undeliverable, the number and percentage of opt-outs, the
18 number and percentage of objections, the average, median, maximum, and minimum recovery
19 per claimant, the method(s) of notice and the method(s) of payment to class members, the
20 percentage of success for each method of notice and payment (if known), the number and value
21 of checks not cashed, the amounts distributed to the *cy pres* recipient, the administrative costs,
22 the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund,
23 plaintiffs' counsel's updated lodestar total, and the lodestar multiplier.

24 7. MISCELLANEOUS PROVISIONS

25 7.1 Neither the acceptance nor the performance by Defendant of the terms of this
26 Settlement, nor any of the related negotiations or proceedings, is or shall be claimed to be,
27 construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in
28 the Complaint, the representative character of the Action, the validity of any of the claims that

1 were or could have been asserted by Plaintiff, Class Members, and/or PAGA Members in the
2 Action, or of any liability or guilt of Defendant in the Action. Nothing in this Settlement shall be
3 construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or
4 wrongdoing toward Plaintiff, the Class, PAGA Members, or any other person, and Defendant
5 specifically disclaims any liability, culpability, negligence, or wrongdoing toward Plaintiff, the
6 Class, PAGA Members, and any other person. Each Party has entered into this Settlement with
7 the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
8 and contingencies.

9 7.2 Circular 230 Disclaimer. Each Party to this Settlement (for purposes of this
10 Section, the “acknowledging party” and each Party to this Settlement other than the
11 acknowledging party, an “other party”) acknowledges and agrees that (1) no provision of this
12 Settlement, and no written communication or disclosure between or among the Parties or their
13 attorneys and other advisers, is or was intended to be, nor shall any such communication or
14 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of
15 United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the
16 acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and
17 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
18 entered into this Settlement based upon the recommendation of any other party or any attorney or
19 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by
20 any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
21 acknowledging party; and (3) no attorney or adviser to any other party has imposed any
22 limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
23 (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging
24 party of the tax treatment or tax structure of any transaction, including any transaction
25 contemplated by this Settlement.

26 7.3 The Parties agree to cooperate fully with one another to accomplish and
27 implement the terms of this Settlement. Such cooperation shall include, but not be limited to,
28 execution of such other documents and the taking of such other action as may reasonably be

1 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall exercise
2 reasonable efforts, including all efforts contemplated by this Settlement and any other efforts that
3 may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms
4 set forth herein.

5 7.4 The Parties hereto agree that the terms and conditions of this Stipulation are the
6 result of lengthy, intensive, arm's-length negotiations between the Parties and that this
7 Stipulation shall not be construed in favor of or against any party by reason of the extent to which
8 any party or its counsel participated in the drafting of this Stipulation.

9 7.5 Plaintiff, Class Counsel, and all attorneys associated with Class Counsel agree that
10 they will not issue any press releases, initiate any contact with the press, provide any information
11 to the press, or otherwise publicize or cause to be publicized the Action, this Settlement, or the
12 facts leading up to the Action or Settlement, and represent that they have not done so prior to
13 signing this Agreement. As an absolute condition of this Agreement, Class Counsel will not post
14 anything relating to this matter on any website or other form of social media. Any
15 communication about the Settlement to Class Members other than Plaintiff prior to the Court-
16 approved mailing of the Notice of Class Settlement will be limited to a statement that a
17 settlement has been reached and the details will be communicated in a forthcoming Court-
18 approved class notice. Nothing herein will restrict Class Counsel from including publicly
19 available information regarding this Settlement in future judicial submissions regarding Class
20 Counsel's qualifications and experience. Furthermore, Plaintiff and Class Counsel will undertake
21 any and all disclosures required to be made to the LWDA in conformity with PAGA.

22 7.6 Plaintiff, by signing this Stipulation, is bound by the terms herein and further
23 agrees not to request to be excluded from the Settlement and not to object to any terms of this
24 Stipulation. Any such request for exclusion or objection shall therefore be void and of no force
25 or effect. Defendant and Plaintiff waive their rights to file an appeal, writ, or any challenge
26 whatsoever to the terms of this Stipulation, except Plaintiff and Class Counsel have the right to
27 appeal any order denying, in whole or in part, their application for the award of attorneys' fees
28 and costs and/or the Service Payment.

1 7.7 Neither Class Counsel nor any other attorneys acting for, or purporting to act for,
2 the Class, Class Members, or Plaintiff, may recover or seek to recover amounts for fees, costs, or
3 disbursements from the Releasees or from the Maximum Settlement Amount as related to the
4 released claims except as expressly provided herein.

5 7.8 This Stipulation may not be changed, altered, or modified, except in writing
6 signed by the Parties hereto and approved by the Court. This Stipulation may not be discharged
7 except by performance in accordance with its terms or by a writing used by the Parties hereto.

8 7.9 This Stipulation shall be binding upon and inure to the benefit of the Parties hereto
9 and their respective heirs, trustees, executors, administrators, successors, and assigns.

10 7.10 The signatories hereto represent that they are fully authorized to enter into this
11 Stipulation and bind the Parties hereto to the terms and conditions hereof.

12 7.11 The Parties hereto represent, covenant, and warrant that they have not directly or
13 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
14 person or entity any portion of any liability, claim, demand, action, cause of action or rights
15 released and discharged by this Stipulation.

16 7.12 Because the members of the proposed Class are so numerous, the Parties agree
17 that it is impossible or impractical to have each Class Member sign this Stipulation. It is agreed
18 that, for purposes of seeking approval of the Class Settlement, this Stipulation may be executed
19 on behalf of the proposed Class by Class Counsel.

20 7.13 This Stipulation shall become effective upon its execution by all of the
21 undersigned. The Parties may execute this Stipulation in counterparts, and execution of
22 counterparts shall have the same force and effect as if all Parties had signed the same instrument.

23 7.14 The Court shall retain jurisdiction with respect to the implementation and
24 enforcement of the terms of the Stipulation, and all Parties hereto submit to the jurisdiction of the
25 Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.
26 Any action to enforce this Stipulation shall be commenced and maintained only in the Court.

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1 7.15 Paragraph titles or captions contained in the Stipulation are inserted as a matter of
2 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
3 Stipulation, or any provision thereof.

4 7.16 This Stipulation contains the entire agreement between the Parties relating to the
5 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
6 understandings, representations, and statements, whether oral or written and whether by a party
7 or such party's legal counsel, are merged herein. No rights hereunder may be waived except in
8 writing.

9 IN WITNESS WHEREOF, this Stipulation is executed by the Parties and their duly
10 authorized attorneys, as of the day and year herein set forth.

11 DATED: 11/15/2024, 2024


ID eXnbVkBzQrzUdPA6oAizphS

Marvin Toledo, Plaintiff

14 DATED: 11/15/2024, 2024

13
14 SETAREH LAW GROUP
By: 
ID qmkHWZbvHAUdcyS6F8uewwr

Shaun Setareh
Thomas Segal
Attorneys for Plaintiff and the Class

18 DATED: _____, 2024

DELTA AIR LINES, INC.

19 By: _____
20 Title: _____

21 DATED: _____, 2024

MORGAN, LEWIS & BOCKIUS LLP

22
23 By: _____
24 Carrie S. Gonell
25 Andrew P. Frederick
26 Attorneys for Defendant
27
28

7.15 Paragraph titles or captions contained in the Stipulation are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation, or any provision thereof.

7.16 This Stipulation contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

IN WITNESS WHEREOF, this Stipulation is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

DATED: _____, 2024

Marvin Toledo, Plaintiff

SETAREH LAW GROUP

DATED: _____, 2024

By:

Shaun Setareh
Thomas Segal
Attorneys for Plaintiff and the Class

DATED: November 18, 2024

DELTA AIR LINES, INC.

By: Marguerite H. Taylor
Title: Deputy General Counsel & Chief
Litigation Counsel

DATED: November 21, 2024

MORGAN, LEWIS & BOCKIUS LLP

By:

Carrie S. Gonell
Andrew P. Frederick
Attorneys for Defendant

EXHIBIT 1

NOTICE OF CLASS ACTION SETTLEMENT

Toledo v. Delta Air Lines, Inc.
Case No. 3:22-cv-00081-AMO

TO: All persons employed by Delta Air Lines, Inc. (“Delta” or “Defendant”) in non-exempt positions in California from December 3, 2017 through [date of preliminary approval] (“Class Period”), except flight attendants, pilots, and those persons who participated in Delta’s Enhanced Retirement or Voluntary Opt-Out Programs in 2020 and who did not thereafter work for Delta in a non-exempt position in California during the Class Period.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit in *Toledo v. Delta Air Lines, Inc.*, U.S. District Court, N.D. Cal., Case No. 3:22-cv-00081-AMO (the “Action”). The purpose of this Notice of Settlement (“Notice”) is to describe the case and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

A hearing concerning the fairness of the Settlement will be held before the Hon. Araceli Martinez-Olguin on [redacted] at 2:00 p.m. at the following address: San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Courtroom 10, 19th Floor, to determine, among other things, whether the Court should grant final approval to the proposed Settlement. The date and time of the Final Fairness Hearing may change without further notice to the Class. Updated information regarding the date and time of the hearing will be posted on the case website at [URL].

AS A CLASS MEMBER, YOU ARE ELIGIBLE TO RECEIVE A PAYMENT UNDER THE SETTLEMENT AND WILL BE BOUND BY THE RELEASE OF CLAIMS DESCRIBED IN THIS NOTICE, UNLESS YOU REQUEST TO BE EXCLUDED FROM THE SETTLEMENT, AS EXPLAINED BELOW.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes, the following class (the “Class”):

“All persons employed by Delta in non-exempt positions in California at any time during the Class Period, but excluding flight attendants, pilots, and those persons who participated in Delta’s Enhanced Retirement or Voluntary Opt-Out Programs in 2020 and who did not thereafter work for Delta in a non-exempt position in California during the Class Period.”

According to the records of Defendant, you are a member of the Class (“Class Member”).

What is this case about?

Plaintiff has brought this Action on behalf of himself, other allegedly aggrieved employees and as proxy for the State of California, and the following individuals: all current and former non-exempt employees of Defendant in California from December 3, 2017 to the present. The Action alleges various wage and hour claims against Defendant, including claims for failure to provide meal/rest periods, failure to pay wages, failure to reimburse business expenses, failure to provide accurate written wage statements, failure to timely pay all final wages, unfair business practices under California Bus. & Prof. Code §§ 17200-17208, and civil penalties under Labor Code §§ 2699 *et seq.* The Action asserts claims for unpaid wages, statutory penalties, civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), restitution, interest, attorneys’ fees, and costs.

Defendant believes that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Delta agreed to settle this lawsuit to avoid these issues and because Delta believes it is in the best interests of the Company to put the matter behind us. The settlement means

Delta does not have to keep spending time and legal fees on defending the lawsuit and can continue to focus on its business objectives.

This Settlement is the result of good faith, arm's length negotiations between Plaintiff and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members. The Settlement is a compromise and is not an admission of liability on the part of Defendant.

Who are the attorneys representing the Parties?

The attorneys for the Class Representative in the Action ("Class Counsel") are:

SETAREH LAW GROUP
Shaun Setareh, Bar No. 204514
shaun@setarehlaw.com
Thomas Segal, Bar No. 222791
thomas@setarehlaw.com
420 N Camden Drive, Suite 100
Beverly Hills, CA 90210
Tel: +1.310.888.7771
Fax: +1.310.888.0109

The attorneys for Defendant are:

Carrie S. Gonell, SBN 257163
carrie.gonell@morganlewis.com
600 Anton Boulevard, Suite 1800
Costa Mesa, CA 92626-7653
Tel: +1.714.830.0600
Fax: +1.714.830.0700

Andrew P. Frederick, SBN 284832
andrew.frederick@morganlewis.com
Nicole L. Antonopoulos, SBN 306882
nicole.antonopoulos@morganlewis.com
1400 Page Mill Road
Palo Alto, CA 94304
Tel: +1.650.843.4000
Fax: +1.650.843.4001

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$12,000,000 (the "Maximum Settlement Amount") for: (a) settlement payments to Class Members; (b) the Court-approved service payment to the Class Representative; (c) the Court-approved Class Counsel's fees and costs; (d) the costs of administering the Settlement; (e) the payments to the California Labor Workforce Development Agency ("LWDA") and PAGA Members to settle claims alleged under PAGA (the "PAGA Allocation"); and (f) all taxes except for Defendant's share of payroll taxes on settlement payments to Class Members.

Class Members' Settlement Payments. After deductions from the Maximum Settlement Amount for the service payment to the Class Representative, attorneys' fees and costs, the costs of administering the Settlement, the payment for the PAGA Allocation, and all taxes except for Defendant's share of payroll taxes on settlement payments to Class Members, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendant will make a payment ("Settlement Payment") to each Class Member who does not opt out of the Settlement Class as follows: Class Member distributions shall be divided among all Class Members on a pro rata basis, based on the ratio of the number of weeks worked by each Class Member from December 3, 2017, through [preliminary approval date] to the total number of weeks worked by all Class Members during this same time period. Any payments which are not cashed shall be paid as a cy pres award to agreed-upon charitable organization(s).

For tax reporting purposes, Settlement Payments to Class Members will be allocated as one-third (1/3) as wages and two-thirds (2/3) as interest and penalties. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

If this Notice mailed to a Class Member is returned as undeliverable, and if the Settlement Administrator cannot locate a valid address for the Class Member with reasonable efforts, that Class Member will not be mailed a check, and the money that would have gone to that Class Member will be paid as a cy pres award to agreed-upon charitable organization(s).

PAGA Allocation to PAGA Members and LWDA. PAGA Members means all persons employed by Defendant as non-exempt employees in California at any time from June 8, 2020 through [the preliminary approval date], but excluding flight attendants and pilots. A total amount of \$600,000.00 from the Maximum Settlement Amount will be allocated as the PAGA Allocation to be paid as penalties under PAGA, of which seventy-five percent (75%), or \$450,000.00, will be distributed to the LWDA and the remaining twenty-five (25%), or \$150,000.00, will be distributed to the PAGA Members. The payment for the PAGA Allocation to each PAGA Member will be made as follows: PAGA Member distributions shall be divided among all PAGA Members on a pro rata basis, based on the ratio of the number of pay periods between June 8, 2020 through [preliminary approval date] in which a PAGA Member worked for Defendant as a non-exempt employee in California to the total number of pay periods for all PAGA Members during this same time period.

For tax reporting purposes, Settlement Payments to PAGA Members will be allocated as one hundred percent (100%) penalties. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. PAGA Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any PAGA Member.

Class Counsel Attorneys' Fees and Costs, Class Representative Service Payment, and Administrative Costs. Class Counsel will ask the Court to award attorneys' fees up to 33-1/3% of the Gross Settlement Amount, and reasonable litigation costs. In addition, Class Counsel will ask the Court to authorize a service payment of up to \$10,000 for Class Representative Toledo in addition to Class Representative Toledo's portion of the Net Settlement Amount. The Parties estimate the cost of administering the Settlement will not be higher than \$29,000.

What is my estimated Settlement Payment?

The settlement covers all workweeks from December 3, 2017 through [preliminary approval date] in which a Class Member worked for Delta as a non-exempt employee in California. According to Delta's records, you worked as a non-exempt employee in California for approximately [redacted] workweeks during the Class Period. Accordingly, the approximate amount of your Individual Settlement Share is: \$ [redacted]. This is an estimated amount, and the final amount may change—i.e., the final amount could be higher or lower.

The PAGA portion of the settlement covers all pay periods from June 8, 2020 through [preliminary approval date] in which a PAGA Member worked for Delta as a non-exempt employee in California. According to Delta's records, you worked as a non-exempt employee in California for approximately [redacted] pay periods during the PAGA Period. If you are a PAGA Member, your estimated recovery for the Individual PAGA Payment of the settlement is: \$ [redacted]. This is an estimated amount, and the final amount may change—i.e., the final amount could be higher or lower.

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What claims are being released by the proposed Settlement?

Release by Class Members

Upon the Effective Date of the Settlement, Plaintiff and each member of the Settlement Class shall be deemed to have fully, finally, and forever released the Releasees from all Released Class Claims arising from December 3, 2017 through [Preliminary Approval Date]. “Settlement Class” shall mean all Class Members who do not timely submit a timely and valid Opt-Out Request that is received by the Settlement Administrator. “Releasees” shall mean Defendant and each of its past, present and/or future, direct and/or indirect, officers, directors, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, members, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, and/or assigns, in their personal, individual, official, and/or corporate capacities. “Released Class Claims” means any and all claims, obligations, demands, rights, causes of action, and liabilities that have been asserted or that reasonably could have been asserted in the Complaint, and any amendments thereto, based on the facts and/or allegations pled therein, arising during the period of time from December 3, 2017 through [Preliminary Approval Date]. “Released Class Claims” include, but are not limited to, claims for the failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to pay wages, including minimum wages, straight time wages, overtime wages, wages for vested vacation time, sick pay, and premium pay, failure to include all remuneration into the calculation of the regular rate of pay, failure to provide accurate, itemized wage statements, failure to timely pay wages during employment, failure to timely pay wages upon termination of employment, failure to maintain requisite payroll records, failure to reimburse for necessary business-related expenses, unfair or unlawful business practices pursuant to California Business and Professions Code §§ 17200, *et seq.* and 17203, any violation of the California Labor Code, including, but not limited to, California Labor Code sections 201, 202, 203, 204, 210, 215, 216, 218.6, 223, 225, 225.5, 226, 226(a), 226.7, 227.3, 246, 256, 510, 512, 516, 553, 558, 1174, 1174.5, 1175, 1182, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, any violation of the Industrial Welfare Commission Wage Orders, including, but not limited to, Industrial Welfare Commission Wage Order 9-2001, any violations of local, city, and/or county laws, and/or any violations of the FLSA, including, but not limited to, 29 U.S.C. § 207 and associated regulations, including, but not limited to, 29 C.F.R. §§ 778.108, 778.109, and 778.208.

Release by PAGA Members

Upon the Effective Date of the Settlement, all PAGA Members and the State of California on behalf of all PAGA Members shall be deemed to have fully, finally, and forever released the Releasees from the Released PAGA Claims arising from June 8, 2020 through [preliminary approval date]. All PAGA Members shall be bound by the release as to any Released PAGA Claims even if they have opted out of the Settlement Class. “Releasees” shall mean Defendant and each of its past, present and/or future, direct and/or indirect, officers, directors, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, members, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, and/or assigns, in their personal, individual, official, and/or corporate capacities. “Released PAGA Claims” means all claims for civil penalties under PAGA that have been asserted or that reasonably could have been asserted in the Complaint, the LWDA Notice, and any amendments thereto, based on the facts and/or allegations pled therein, arising from June 8, 2020 through [preliminary approval date]. Released PAGA Claims include, but are not limited to, claims for the failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to pay wages, including minimum wages, straight time wages, overtime wages, wages for vested vacation time, sick pay, and premium pay, failure to include all remuneration into the calculation of the regular rate of pay, failure to provide compliant wage statements, failure to timely pay wages during employment, failure to timely pay wages upon termination of employment, failure to maintain

requisite payroll records, failure to reimburse for necessary business-related expenses, any violation of the California Labor Code based on the aforementioned, including, but not limited to, California Labor Code sections 201, 202, 203, 204, 210, 215, 216, 218.6, 223, 225, 225.5, 226, 226(a), 226.7, 227.3, 246, 256, 510, 512, 516, 553, 558, 1174, 1174.5, 1175, 1182, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, and any violation of the Industrial Welfare Commission Wage Orders, including, but not limited to, Industrial Welfare Commission Wage Order 9-2001.

What are my options in this matter?

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
DO NOTHING	If you do nothing, you will automatically receive your share of the settlement if the Settlement receives final approval by the Court, and will be bound by the terms of the Settlement and releases described in this Notice.
EXCLUDE YOURSELF	If you do not wish to receive money from the Settlement as a Class Member and wish to retain your rights to pursue the non-PAGA claims at issue in this lawsuit, you may submit a written Request for Exclusion to the Settlement Administrator, postmarked no later than [DATE]. The written Request for Exclusion must include: (a) the Class Member's name; (b) a statement that the Class Member desires to exclude himself or herself from the case; and (c) the last four digits of the Class Member's social security number. If you submit a timely and valid Request for Exclusion, you will no longer be a Class Member, and you will not be eligible to receive any of the Class Member benefits under the Settlement or object to the terms of the Settlement. You will not be bound by any of the non-PAGA terms of the Settlement, and you will not release any of your non-PAGA legal claims against Delta. NOTE: If you are a PAGA Member, as defined above, you cannot opt out of the PAGA Member group, even if you opt out of the Settlement as a Class Member. If the Settlement is approved, you will receive a check for your allocation of the PAGA portion of the Settlement, and you will be bound by the PAGA portion of the release whether you cash the check or not. Requests for Exclusion that do not include all required information or that are not timely submitted are ineffective. If you do not submit a valid and timely Request for Exclusion on or before [DATE], and if the Court grants final approval of the settlement, you will be bound by the Settlement and its releases of the Released Class Claims and you will be considered a Class Member for settlement distribution purposes.

OBJECT	You can ask the Court to deny approval by filing an objection. This option is available only if you do <u>not</u> exclude yourself from the Settlement as a Class Member. All PAGA Members will be bound by the Released PAGA Claims and may not object to the Settlement as to the Released PAGA Claims. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. Any objection to the proposed Settlement must be in writing and sent only to the Court. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (<i>Toledo v. Delta Air Lines, Inc.</i> Case No. 3:22-cv-00081-AMO), (b) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, and (c) be filed or postmarked on or before DATE. Failure to send timely written objections in this manner will not foreclose a Class Member's right to have their objection heard at the Final Approval Hearing. If you do not object in the manner described above, you shall be deemed to have waived any objections to the proposed Settlement, including its fairness or adequacy, the payment of attorneys' fees or litigation costs to Class Counsel, the Service Enhancement award to Plaintiff, and any and all other aspects of the Settlement.
PARTICIPATE IN THE FINAL APPROVAL HEARING	The Court's Final Approval Hearing is scheduled to take place on DATE. You don't have to attend but you do have the right to appear in person (or hire an attorney to appear on your behalf at your own cost). Participating Class Members can verbally object to the Settlement at the Final Approval Hearing.
CHALLENGE THE CALCULATION OF YOUR WORKWEEKS/PAY PERIODS	The amount of your Individual Settlement Share and Individual PAGA Payment (if any) depend on how many workweeks you worked during the Class Period and how many pay periods you worked during the PAGA Period, respectively. You have the right to challenge your workweeks and pay periods as stated on the third page of this Notice. If you disagree with either of these numbers, you must challenge it by DATE.

Settlement payments only will be issued if the Court grants final approval of the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the PAGA Allocation, the settlement administration costs, and the service payment to the Class Representative on **DATE**, at **LOCATION** in Courtroom 10, 19th Floor of the United States District Court, Northern District of California, located at the 450 Golden Gate Avenue, San Francisco, CA 94102. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive a share of the Settlement.

How can I get additional information?

This Notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at www. .com, by the Settlement Administrator toll-free at [NUMBER], contacting class counsel at the address listed above, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

What should I do if my address changes?

If you received this Notice at an address other than the address shown on the Notice, or if your address changes, please promptly contact the Settlement Administrator toll-free at [NUMBER]. This will ensure that you receive further notices about this settlement, and that you receive your Settlement Payment if the settlement is approved by the Court.

**PLEASE DO NOT CALL OR WRITE THE COURT OR THE ATTORNEYS FOR THE DEFENDANT
ABOUT THIS NOTICE**

BY ORDER OF THE U.S. DISTRICT COURT

EXHIBIT 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARVIN TOLEDO, an individual, on
behalf of himself and all other similarly
situated non-exempt current and former
employees,

Plaintiff(s),

v.

DELTA AIR LINES, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 3:22-cv-00081-AMO

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date:
Time:
Courtroom: 10, 19th Floor
Judge: Hon. Araceli Martinez-
Olguín

1 Plaintiff's Motion for Preliminary Approval of Class and Representative Action
2 Settlement came before this Court for hearing on _____. The Court, having fully
3 reviewed Plaintiff's Motion for Preliminary Approval of Class and Representative Action
4 Settlement, the supporting Memorandum of Points and Authorities and Declarations filed in
5 support thereof, including the Stipulation of Class Action and Representative Action Settlement
6 and Release ("Settlement Agreement") and Notice of Settlement ("Notice"), and for good cause
7 appearing, HEREBY MAKES THE FOLLOWING ORDERS:

8 1. The Court grants preliminary approval of the settlement based upon the terms set
9 forth in the Settlement Agreement, which is attached as Exhibit 1 to the Declaration of
10 _____, and is incorporated in full by this reference and made a part of this Order.
11 The Settlement appears to be fair, adequate, and reasonable to the Class.

12 2. All capitalized terms defined in the Settlement Agreement shall have the same
13 meaning when used in this Order.

14 3. The Settlement falls within the range of reasonableness of a settlement which
15 could ultimately be given final approval by this Court, and appears to be presumptively valid,
16 subject only to any objections that may be raised at the Final Approval Hearing. The Court notes
17 that Defendant Delta Air Lines, Inc. ("Delta" or "Defendant") has agreed to create a common
18 fund of \$12,000,000.00 to cover (a) the Individual Settlement Shares; (b) the \$450,000.00
19 payment to the State of California, Labor & Workforce Development Agency for its share of the
20 settlement of the Released Private Attorneys General Act ("PAGA") Claims; (c) the \$150,000.00
21 payment to the PAGA Members; (d) a Class Representative Service Payment of up to \$10,000.00
22 for Class Representative Marvin Toledo; (e) Class Counsel's attorneys' fees, not to exceed 33-
23 1/3% of the Maximum Settlement Amount, and actual litigation expenses incurred by Class
24 Counsel up to \$70,000.00; (f) Settlement Administration Costs estimated to be \$29,000.00; and
25 (g) all taxes except for Defendant's share of payroll taxes on Individual Settlement Shares.
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1 4. The Court finds and concludes that the Settlement is the result of arms-length
2 negotiations between the parties and a mediation conducted after Class Counsel had adequately
3 investigated Plaintiff's claims and become familiar with their strengths and weaknesses. The
4 assistance of an experienced mediator in the settlement process further confirms that the
5 Settlement is non-collusive. The Court further finds that the settlement of Plaintiff's
6 representative claims under the PAGA is fair and reasonable and is approved.

7 5. In accordance with the Settlement Agreement, the Court hereby certifies the
8 following class for purposes of settlement: All persons employed by Delta in non-exempt
9 positions in California at any time during the Class Period, but excluding flight attendants, pilots,
10 and those persons who participated in Delta's Enhanced Retirement or Voluntary Opt-Out
11 Programs in 2020 and who did not thereafter work for Delta in a non-exempt position in
12 California during the Class Period. The Court hereby finds and concludes that the Class satisfies
13 all of the requirements for certification under Fed. R. Civ. P. 23(a) and 23(b)(3), except
14 manageability. Because certification of the Class is proposed in the context of a settlement, the
15 Court need not inquire whether the case, if tried as a class action, would present intractable
16 management problems.

17 6. With respect to the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), the Court
18 makes the following findings:

19 a. The Class, which has approximately 5,000 members, satisfies the standard for
20 numerosity in Fed. R. Civ. P. 23(a)(1).

21 b. There are many questions of fact and law that are common to the Class regarding
22 the policies and practices that applied to Class Members' employment with Defendant, thereby
23 satisfying the standard for commonality in Fed. R. Civ. P. 23(a)(2).

24 c. Plaintiff Marvin Toledo's claims meet the typicality requirement because he was a
25 non-exempt employee of Defendant and his claims arise from the same alleged events and course
26 of conduct as those alleged on behalf of the Class, thereby satisfying Fed. R. Civ. P. 23(a)(3).

1 d. The Court finds that Setareh Law Group will fairly and adequately represent the
2 Class and appoints this firm as Class Counsel.

3 e. The Court finds that Plaintiff Marvin Toledo will fairly and adequately represent
4 the Class, and appointments him as Class Representative.

5 f. The Court finds that for purposes of settlement only, common questions of law and
6 fact predominate over individualized issues, because the claims arise from Defendant's policies
7 and widespread practices, and further finds that the superiority requirement is satisfied because it
8 is likely that recovery on an individual basis would be dwarfed by the cost of litigating on an
9 individual basis.

10 7. The Court approves Phoenix Settlement Administrators ("Settlement
11 Administrator") to perform the duties of the Settlement Administrator as set forth in this Order
12 and the Settlement Agreement.

13 8. The Court finds that the Notice, which is attached as Exhibit 1 to the Settlement
14 Agreement, comports with Fed. R. Civ. P. 23 and all Constitutional requirements including those
15 of due process. The Court further finds that the Notice adequately advises the Class about the
16 class action; the terms of the proposed settlement, the benefits available to each Class Member,
17 and the proposed fees and costs to Class Counsel; each Class Member's right to object or opt out
18 of the settlement, and the timing and procedures for doing so; preliminary Court approval of the
19 proposed settlement; and the date of the Final Approval hearing as well as the rights of Class
20 Members to file documentation in support of or in opposition to and appear in connection with
21 said hearing. The Court further finds that the mailing of the Notice to each Class Member's last
22 known address, with appropriate skip tracing and mail forwarding for Notices returned as
23 undeliverable, as specifically described in the Settlement Agreement, constitutes reasonable
24 notice to Class Members of their rights with respect to the class action and proposed settlement.
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1 9. Within thirty (30) days of the issuance of this Order, Defendant shall provide the
2 Settlement Administrator with the Class Member Database, as specified in the Settlement
3 Agreement.

4 10. Within 14 days after receipt of the Database, the Settlement Administrator shall
5 mail the Notice in the manner specified in the Settlement Agreement.

6 11. The Court orders that any Request for Exclusion from the non-PAGA portion of
7 the Settlement must be postmarked no later than 45 days after the Notice is initially mailed to
8 Class Members and must be received by the Settlement Administrator. To be valid, the Request
9 for Exclusion must be timely and include: (a) the Class Member's name; (b) a statement that the
10 Class Member desires to exclude himself or herself from the case; and (c) the last four digits of
11 the Class Member's social security number. Class Members are still bound by the release of
12 PAGA claims even if they submit a valid Request for Exclusion and will receive a check with his
13 or her individual payment from the PAGA Allocation if they are a PAGA Member.

14 12. If more than five percent (5%) of the total number of Class Members submit
15 timely and valid Requests for Exclusion, then Defendant shall have the option to void the
16 Settlement in its sole discretion. To exercise this option, Defendant must send written
17 notification to Class Counsel within fourteen (14) days of receiving a report from the Settlement
18 Administrator informing Defendant that the total number of timely and valid Requests for
19 Exclusion is more than five percent (5%).

20 13. Only Settlement Class Members who do not opt out may object to the non-PAGA
21 portion of the Settlement. Class Members who opt out of the Settlement are not eligible to object.
22 All objections must be sent no later than forty-five (45) days after the mailing of the Class Notice,
23 and such deadline applies notwithstanding any argument regarding non-receipt of the notice.
24 Failure to send timely written objections in this manner will not foreclose a Class Member's right
25 to have their objection heard at the Final Approval Hearing. A Class Member who fails to send a
26 timely written objection, or appear at the Final Approval Hearing to have their objection heard,
27

1 shall be deemed to have waived any objections and shall be foreclosed from filing any appeal
2 from any Final Approval Order issued by the Court. The Parties may file a response to any
3 objections submitted by objecting Class Members at or prior to the Final Approval Hearing.
4 Class Members shall be permitted to withdraw their objections in writing by submitting a
5 withdrawal statement to the Settlement Administrator not later than one (1) business day prior to
6 the Final Approval Hearing.

7 14. The Final Approval Hearing shall be held before this Court on _____, 2025
8 at 2:00 p.m. in Courtroom 10, to consider the fairness, adequacy, and reasonableness of the
9 proposed settlement preliminarily approved by this Order, and to consider the motion of Class
10 Counsel for an award of reasonable attorneys' fees and costs and a Class Representative service
11 payment.

12 15. Any party to this case, including any Class Member, may be heard in person or by
13 counsel, to the extent allowed by the Court, in support of, or in opposition to, the Court's
14 determination of the good faith, fairness, reasonableness, and adequacy of the proposed
15 settlement, the requested attorneys' fees and costs, the requested Class Representative service
16 payment, and any order of final approval and Judgment regarding such settlement, fees, costs, and
17 payments; provided however, that no person shall be heard in opposition to such matters unless
18 such person has complied with the conditions set forth in the Notice.

19 17. The Court orders that if for any reason the Court does not execute and file an order
20 of final approval and judgment, or if such a final approval order is reversed, the Settlement
21 Agreement and the proposed settlement which is the subject of this Order and all evidence and
22 proceedings had in connection therewith, shall be without prejudice to the status quo ante rights
23 of the Parties to the litigation as more specifically set forth in the Settlement Agreement.

24 18. The Court orders that the Settlement Agreement shall not be construed as an
25 admission or evidence of liability.
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19. Pending further order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are stayed.

20. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing without further notice to Class Members.

IT IS SO ORDERED.

Dated:

By:

The Hon. Araceli Martinez-Olguín
District Court Judge

EXHIBIT 3

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7 Attorneys for Plaintiff MARVIN TOLEDO

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 MARVIN TOLEDO, on behalf of himself and
13 all others similarly situated, and the general
public,

14 *Plaintiff,*

15 v.

16 DELTA AIR LINES, INC., a Delaware
17 corporation; and DOES 1 through 50,
inclusive,

18 *Defendants.*
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Case No. 3:22-cv-00081-AMO

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Indemnify (Lab. Code § 2802);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Failure to Pay All Earned Vacation Time (Lab. Code § 227.3);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff MARVIN TOLEDO (“Plaintiff”), on behalf of himself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendants DELTA AIR
5 LINES, INC., a Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred to
6 as “Defendants”) for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
7 Defendants have

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;
- 14 (5) failed to pay them overtime wages at the correct rate;
- 15 (6) failed to pay them double time wages at the correct rate;
- 16 (7) failed to pay them overtime and/or double time wages and/or sick pay by failing to
17 include all applicable remuneration in calculating the regular rate of pay;
- 18 (8) failed to pay them at least minimum wage for all hours worked;
- 19 (9) failed to reimburse them for all necessary business expenses;
- 20 (10) failed to provide them with accurate written wage statements;
- 21 (11) failed to pay them all of their final wages following separation of employment; and
- 22 (12) failed to pay them for all earned vacation time following separation of employment;

23 Based on these alleged violations, Plaintiff now brings this class and representative action to
24 recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of
25 himself and all others similarly situated, all other aggrieved employees, and the State of California.

26 **JURISDICTION AND VENUE**

27 2. Defendant removed this case to federal court asserting jurisdiction under 28 U.S.C.
28 Sections 1332, 1441, 1446 and 1453.

1 **PARTIES**

2 3. Plaintiff is and was, and at all relevant times mentioned herein, an individual
3 residing in the State of California.

4 4. Plaintiff is informed and believes, and thereupon alleges, that Defendant DELTA
5 AIR LINES, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing
6 business in the State of California.

7 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
8 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
9 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
10 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
11 fictitiously named defendants are responsible in some manner for the occurrences, acts and
12 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
13 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
14 capacities of the DOE defendants when ascertained.

15 6. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
16 mentioned herein, some or all of the defendants were the representatives, agents, employees,
17 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
18 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
19 and scope of such relationship and with the full knowledge, consent, and ratification by such other
20 defendants.

21 **CLASS ALLEGATIONS**

22 7. This action has been brought and may be maintained as a class action pursuant to
23 Federal Rules of Civil Procedure 23, because there is a well-defined community of interest among
24 the persons who comprise the readily ascertainable classes defined below and because Plaintiff is
25 unaware of any difficulties likely to be encountered in managing this case as a class action.

26 8. **Relevant Time Period:** The relevant time period is defined as the time period
27 beginning four years prior to the filing of this action until judgment is entered.

28 ///

Hourly Employee Class: All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

Vacation Time Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the **Relevant Time Period**.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

Regular Rate Class: All of Defendants' hourly, non-exempt employees who were not paid overtime wages for all overtime hours worked and/or premiums for meal and/or rest break violations and/or sick pay as a result of not correctly calculating their regular rate of pay to include all applicable remuneration, including, but not limited to, commissions, afternoon shift premiums, night premiums, temporary duty override, shared rewards, incentive-All About Cust, award, pay card value, premium override, non-discretionary bonuses and/or other applicable remuneration.

Expense Reimbursement Class: All persons employed by Defendants in California who were not reimbursed for required personal cell phone expenses and personal protective equipment, including steel toed boots, safety vests, marshaling wands, knee pads, earmuffs, and/or gloves during the **Relevant Time Period**.

9. **Reservation of Rights:** Pursuant to Federal Rule of Civil Procedure 23, Plaintiff reserves the right to amend or modify the class definitions with greater specificity by further division into sub-classes and/or by limitation to particular issues.

10. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number exceeds the minimum required for numerosity under California law.

1 11. **Commonality and Predominance:** Common questions of law and fact exist as to all
2 class members and predominate over any questions that affect only individual class members. These
3 common questions include, but are not limited to:

- 4 i. Whether Defendants maintained a policy or practice of failing to provide employees
5 with their meal periods;
- 6 ii. Whether Defendants maintained a policy or practice of failing to provide employees
7 with their rest periods;
- 8 iii. Whether Defendants failed to pay premium wages to class members when they have
9 not been provided with required meal and/or rest periods;
- 10 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
11 as a result of policies that fail to provide meal periods in accordance with California
12 law;
- 13 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
14 for all time worked;
- 15 vi. Whether Defendants used payroll formulas that systematically fail to account for
16 non-discretionary bonuses and/or other applicable remuneration when calculating
17 regular rates of pay for class members;
- 18 vii. Whether Defendants failed to pay overtime wages and/or sick pay to class members
19 as a result of incorrectly calculating their regular rates of pay;
- 20 viii. Whether Defendants failed to pay premium wages to class members based on their
21 respective “regular rates of compensation” by not including commissions and/or
22 other applicable remuneration in calculating the rates at which those wages are paid;
- 23 ix. Whether Defendants failed to reimburse class members for all necessary business
24 expenses incurred during the discharge of their duties;
- 25 x. Whether Defendants failed to provide class members with accurate written wage
26 statements as a result of providing them with written wage statements with
27 inaccurate entries for, among other things, amounts of gross and net wages, and total
28 hours worked;

- 1 xi. Whether Defendants applied policies or practices that result in late and/or incomplete
2 final wage payments;
3 xii. Whether Defendants applied policies or practices that result in an unlawful forfeiture
4 of vested vacation pay;
5 xiii. Whether Defendants are liable to class members for waiting time penalties under
6 Labor Code section 203;
7 xiv. Whether class members are entitled to restitution of money or property that
8 Defendants may have acquired from them through unfair competition;

9 12. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
10 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing
11 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

12 13. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
13 that he has no interests that are adverse to or otherwise conflict with the interests of absent class
14 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
15 and adequately represent and protect the interests of the other class members.

16 14. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
17 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
18 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
19 behalf of Plaintiff and absent class members.

20 15. **Superiority:** A class action is vastly superior to other available means for fair and
21 efficient adjudication of the class members' claims and would be beneficial to the parties and the
22 Court. Class action treatment will allow a number of similarly situated persons to prosecute their
23 common claims simultaneously and efficiently in a single forum without the unnecessary
24 duplication of effort and expense that numerous individual actions would entail. In addition, the
25 monetary amounts due to many individual class members are likely to be relatively small and would
26 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
27 Moreover, a class action will serve an important public interest by permitting class members to
28 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the

1 potential for inconsistent or contradictory judgments inherent in individual litigation.

2 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

3 16. Plaintiff worked for Defendants as an hourly, non-exempt employee during the
4 applicable statutory period.

5 **Security Check and Off-the-Clock**

6 17. Plaintiff and the putative class were required to go through a security check at the
7 time of entering and leaving the premises on which they worked. The security check required
8 Plaintiff and the putative class to first wait in a general purpose line to go through a security
9 screening. Delta provided specific requirements for how those checks were to be conducted,
10 including which clothing items were subject to search.

11 18. Plaintiff and the putative class were required to stand through long lines to be fully
12 inspected and cleared to enter the premises. Getting through security took on average 35 minutes,
13 but at times could be longer. All of this time was considered Plaintiff and the putative class' own
14 personal time for which they were not compensated, although the security checks were done for the
15 benefit of Defendants and as an everyday work requirement. Defendants exert control over the
16 extent to which employees were subject to security checks as exemplified by their SkyPriority
17 Access program which offers expedited security lines. Some of the security checks were manned
18 and controlled by Delta employees, not by government or airport employees.

19 19. Plaintiff and the putative class were required to spend at least five to fifteen minutes
20 each time they went through the security check—time that was not paid by Defendants.

21 20. Plaintiff and the putative class were required to go through the security check prior
22 to clocking in at the beginning of each work shift and were required to clock out first at the end of
23 each work shift prior to going through the security check.

24 21. Additionally, after getting through long security lines, Plaintiff and the putative
25 class would walk to their designated wall machine for clocking in and/or clocking out, and there
26 would be another line of employees which would take approximately five minutes to get through
27 so that they could punch in and start their recorded hours for pay.

1 22. After going through security checks but before clocking in, Defendants required
2 Plaintiff and the putative class to don personal protective equipment which typically took around ten
3 minutes. Plaintiff and putative class members were not reimbursed for the off-the-clock work donning
4 and doffing of personal protective equipment including safety vests, gloves and ear muffs, which are
5 kept on the premises and which employees cannot take home.

6 23. Defendants had a time clock policy that results in underpayment of wages to Plaintiff
7 and putative class members. Defendants' time clock policy pays putative class members based on
8 their scheduled shift time, even if the putative class member clocks in six minutes early or late, or
9 clock out six minutes early or late. However, the policy also provides that an employee who clocks
10 in after the start time of the shift will be considered late (even within the six minute window) and that
11 an employee who clocks out before the end time of the shift (even within the six minute window)
12 may be considered to have left work early. Therefore, the effect of Defendants' policy is that the
13 putative class members have to clock in so that the clock in time will be at or before the start of their
14 shift, and clock out so that the clock out time will be at or after the end of their shift. And they do not
15 get paid for the time pre and post shift that they spend waiting to clock in. Thus, Defendants' policy
16 requires putative class members to work-off-the-clock.

17 24. Finally, Plaintiff and the putative class were constantly having to stay late and work
18 "off-the-clock." Because people would leave but there would still be pressing work requirements,
19 Plaintiff and the putative class were required to stay after their shift had ended and pick up other
20 employees' duties so that Defendant could maintain their schedule. Plaintiff and putative class
21 members were required to perform off-the-clock work at the end of shifts when planes arrive late at
22 the end of their shift.

23 25. Based on the above, Defendants' security check practices and timeclock procedures
24 have resulted in substantial amounts of time not recorded as hours worked therefore resulting in
25 substantial amounts of wages not paid to Plaintiff and the putative class.

26 26. Defendants knew or should have known that Plaintiff and the putative class were
27 performing work before and after their scheduled work shifts and failed to pay Plaintiff and the
28 putative class for these hours.

1 27. Defendants were aware of this practice and directed, permitted, or otherwise
2 encouraged Plaintiff and the putative class to perform off-the-clock work.

3 28. As a result of Defendants' policies and practices, Plaintiff and the putative class were
4 not paid for all hours worked.

5 **Missed, Shortened, and/or Interrupted Meal Periods and Policy of Deducting 30 Minutes**

6 29. During their employment with Defendants, Plaintiff and the putative class regularly
7 worked shifts of eight to twelve hours per day, without being afforded a meal break during the first
8 five hours, and/or a second meal break after ten hours, as required by California law. Defendants
9 had a policy of deducting thirty minutes from Plaintiff's and the putative class' paychecks,
10 regardless of whether Plaintiff and the putative class received a meal period or not.

11 30. Plaintiffs and the putative class members were not provided with meal periods of at
12 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
13 scheduling each meal period as part of each work shift; (2) chronically understaffing each work
14 shift with not enough workers; (3) imposing so much work on each employee such that it made it
15 unlikely that an employee would be able to take their breaks if they wanted to finish their work on
16 time; and (4) a flawed formal written meal and rest period policy that did not encourage employees
17 to take their meal periods. Defendants' have a defective meal break policy which provides that
employees have waived the right to a meal break unless they affirmatively ask for one.

18 31. Plaintiff and the putative class were directed by their managers and supervisors to
19 clock out for meal periods even though they continued to perform work with the full knowledge of
20 their supervisors. Plaintiff and the putative class would be forced to clock out for lunch even
21 though they did not actually go to lunch and continued working. Additionally, there were three
22 security checks required when entering or leaving the work premises which would take
23 approximately 35 minutes to get through, so it was impossible to leave the premises. Plaintiff and
24 the putative class clocked out with a wall machine, and there was a line of employees looking to
25 clock in and out at the same time. Therefore, their meal periods were regularly shortened because
26 they were required to be timely clocked in to report to their stations. Additionally, if a flight
27 arrived early or other work popped up suddenly, Plaintiff and the putative class were required by
28 their managers and supervisors to attend to pressing tasks regardless of whether they were

1 supposedly taking a meal period or not.

2 32. Defendants' failed to provide compliant meal and rest breaks due to Defendants'
3 requirement that Plaintiff and putative class members be at the gate within fifteen minutes of each
4 arriving and departing aircraft. Due to the frequency of incoming planes, this meant that Plaintiff
5 and putative class members would always have to be at the gate, even during their meal and rest
6 breaks.

7 33. Defendants' failed to provide compliant meal and rest breaks due to Defendants'
8 prohibiting Plaintiff and putative class members from going to the terminal during their breaks.

9 34. As a result of Defendants' policy, Plaintiffs and the putative class were regularly not
10 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
11 worked due to complying with Defendants' productivity requirements that required Plaintiff and
12 the putative class to work through their meal periods in order to complete their assignments on
13 time.

13 **Missed Rest Periods**

14 35. Plaintiff and the putative class were not provided with rest periods of at least ten
15 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
16 policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing
17 each work shift with not enough workers; (3) imposing so much work on each employee such that
18 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
19 work on time; and (4) a flawed formal written rest period policy that did not encourage employees
20 to take their rest periods. Defendants have a defective rest break policy which fails to permit
21 Plaintiff and putative class members to leave the premises during rest breaks

22 36. There were three security checks required when entering or leaving the work
23 premises which would take approximately 35 minutes to get through, so it was impossible to leave
24 the premises for rest breaks.

25 37. Plaintiff and the putative class were required to stay on the premises at all times. No
26 set time was scheduled for rest breaks, and a majority of their shifts Plaintiff and the putative class
27 were unable to take any rest breaks as they were required to continuously work through the
28

1 duration of their shifts.

2 38. Defendants' failed to provide compliant meal and rest breaks due to Defendants'
3 requirement that Plaintiff and putative class members be at the gate within fifteen minutes of each
4 arriving and departing aircraft. Due to the frequency of incoming planes, this meant that Plaintiff
5 and putative class members would always have to be at the gate, even during their meal and rest
6 breaks.

7 39. Defendants' failed to provide compliant meal and rest breaks due to Defendants'
8 prohibiting Plaintiff and putative class members from going to the terminal during their breaks.

9 40. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
10 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
11 due to complying with Defendants' productivity requirements that required Plaintiff and the
12 putative class to work through their rest periods in order to complete their assignments on time.

13 **Regular Rate of Pay**

14 41. The regular rate of pay under California law includes all remuneration for
15 employment paid, on behalf of the employer, to the employee. This requirement includes, but is
16 not limited, to, commissions and non-discretionary bonuses.

17 42. During the applicable limitations period, Defendants violated the rights of Plaintiff
18 and the putative class under the above-referenced Labor Code sections by failing to pay them meal
19 and/or rest break premiums and/or overtime wages and/or sick pay for all overtime hours worked
20 in violation of Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating their
21 regular rate of pay to include all applicable remuneration, including, but not limited to,
22 commissions, afternoon shift premiums, night premiums, temporary duty override, shared rewards,
23 incentive-All About Cust, award, pay card value, premium override, non-discretionary bonuses
24 and/or other applicable remuneration.

25 **Expense Reimbursement**

26 43. Plaintiff and the putative class members were required to purchase personal
27 protective equipment, including steel toed boots, safety vests, marshaling wands, knee pads,
28 earmuffs, and gloves to perform their job duties.

44. Plaintiff and the putative class members were not fully reimbursed for business expenses incurred in purchasing these aspects of their uniform and their personal protective equipment.

45. In addition to the personal protective equipment, Plaintiff and the putative class members were required to use their personal cell phone for work purposes. Defendants required Plaintiff and the putative class members to use their personal cell phones to communicate with their supervisors, and they were required to respond to all work-related cell phone calls and text messages from Defendants. Defendants did not provide Plaintiff or the putative class members with company cell phones or alternative means of communication for these general work-related communications. Additionally, Defendants did not reimburse Plaintiff or the putative class members for a reasonable percentage of those phone expenses incurred.

46. Defendants failed to reimburse Plaintiff and the putative class for such necessary business expenses incurred by them.

Wage Statements

47. Plaintiff and the putative class were not provided with accurate wage statements as mandated by law pursuant to Labor Code § 226.

48. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

49. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

50. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

51. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including

overtime and “off-the-clock” work were not included.

Vacation Pay

52. Vacation pay is considered a form of wages under California law. Vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law.

53. At all relevant times during the applicable limitations period, Defendants maintained a policy or practice that provided for the unlawful forfeiture of vested vacation pay.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 204, 223, 226.7, 512 and 1198)

(Plaintiff and Meal Period Sub-Class)

54. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

55. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

56. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

57. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

58. Compensation for missed meal periods constitutes wages within the meaning of Labor Code § 200.

59. Labor Code § 1198 makes it unlawful to employ a person under conditions that

1 violate the applicable Wage Order.

2 60. Section 11 of the applicable Wage Order states:

3 “No employer shall employ any person for a work period of more than five (5)
4 hours without a meal period of not less than 30 minutes, except that when a
5 work period of not more than six (6) hours will complete the day’s work the
6 meal period may be waived by mutual consent of the employer and employee.
7 Unless the employee is relieved of all duty during a 30 minute meal period, the
8 meal period shall be considered an ‘on duty’ meal period and counted as time
worked. An ‘on duty’ meal period shall be permitted only when the nature of
the work prevents an employee from being relieved of all duty and when by
written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.”

9 61. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
10 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
11 members were not subject to valid on-duty meal period agreements with Defendants.

12 62. Plaintiff alleges that, at all relevant times during the applicable limitations period,
13 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
14 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
15 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

16 63. Plaintiff alleges that, at all relevant times during the applicable limitations period,
17 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
18 **Class** members when they worked five (5) hours without clocking out for any meal period.

19 64. Plaintiff alleges that, at all relevant times during the applicable limitations period,
20 Defendants maintained a policy or practice of deducting one-half hour for a meal period from the
21 paychecks of **Meal Period Sub-Class** members on each day they worked, regardless of whether or
22 not they were able to take an uninterrupted, duty-free meal period.

23 65. Plaintiff alleges that, at all relevant times during the applicable limitations period,
24 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
25 **Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and
26 failed to pay them premium wages as required by Labor Code § 512 and the applicable Wage
27 Order.

28 66. Moreover, Defendants’ written policies do not provide that employees must take

1 their first meal period before the end of the fifth hour of work, that employees are entitled to a
2 second meal period if they work a shift of over ten hours, or that the second meal period must
3 commence before the end of the tenth hour of work, unless waived.

4 67. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
5 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
6 regular rates of pay when required meal periods were not provided.

7 68. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and
8 the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
9 costs of suit.

10 69. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
11 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal**
12 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS**

15 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

16 **(Plaintiff and Rest Period Sub-Class)**

17 70. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

18 71. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
19 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
20 Code and the applicable Wage Order.

21 72. Section 12 of the applicable Wage Order imposes an affirmative obligation on
22 employers to permit and authorize employees to take required rest periods at a rate of no less than
23 ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be
24 in the middle of each work period insofar as practicable.

25 73. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
26 from requiring employees to work during required rest periods and require employers to pay non-
27 exempt employees an hour of premium wages at the employees' regular rates of pay, on each
28 workday that the employee is not provided with the required rest period(s).

1 74. Compensation for missed rest periods constitutes wages within the meaning of Labor
2 Code § 200.

3 75. Labor Code § 1198 makes it unlawful to employ a person under conditions that
4 violate the Wage Order.

5 76. Plaintiff alleges that, at all relevant times during the applicable limitations period,
6 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
7 with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof,
8 as required by the applicable Wage Order.

9 77. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-**
10 **Class** members additional premium wages when required rest periods were not provided.

11 78. Specifically, Defendants written policies do not provide that employees may take a
12 rest period for each four hours worked, or major fraction thereof, nor that rest periods should be
13 taken in the middle of each work period insofar as practicable.

14 79. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and
15 **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and
16 costs of suit.

17 80. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
18 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest Period**
19 **Sub-Class** members, seeks to recover reasonable attorneys' fees.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

22 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

23 **(Plaintiff and Hourly Employee Class)**

24 81. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

25 82. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have
26 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
27 applicable Wage Order.

28 83. Section 2 of the applicable Wage Order defines "hours worked" as "the time during

1 which an employee is subject to the control of the employer, and includes all the time the employee
2 is suffered or permitted to work, whether or not required to do so.”

3 84. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
4 employees at least the minimum wage set forth therein for all hours worked, which consists of all
5 hours that an employer has actual or constructive knowledge that employees are working.

6 85. Labor Code § 1194 invalidates any agreement between an employer and an
7 employee to work for less than the minimum or overtime wage required under the applicable Wage
8 Order.

9 86. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
10 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
11 underlying unpaid minimum wages and interest thereon.

12 87. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
13 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
14 period.

15 88. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
16 person acting either individually or as an officer, agent, or employee of another person to pay an
17 employee, or cause an employee to be paid, less than the applicable minimum wage.

18 89. Labor Code § 1198 makes it unlawful for employers to employ employees under
19 conditions that violate the applicable Wage Order.

20 90. Labor Code § 204 requires employers to pay non-exempt employees their earned
21 wages for the normal work period at least twice during each calendar month on days the employer
22 designates in advance and to pay non-exempt employees their earned wages for labor performed in
23 excess of the normal work period by no later than the next regular payday.

24 91. Labor Code § 223 makes it unlawful for employers to pay their employees lower
25 wages than required by contract or statute while purporting to pay them legal wages.

26 92. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
27 non-exempt employees overtime wages of no less than one and one-half times the employees’
28 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all

1 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
2 seventh consecutive day of one workweek.

3 93. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
4 pay non-exempt employees overtime wages of no less than two times the employees' respective
5 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
6 worked in excess of eight hours on a seventh consecutive workday during the workweek.

7 94. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
8 centrally devised policies and practices to him and **Hourly Employee Class** members with respect
9 to working conditions and compensation arrangements.

10 95. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
11 **Employee Class** members for all time worked, including but not limited to, overtime hours at
12 statutory and/or agreed rates.

13 96. At all relevant times during the applicable limitations period, Defendants maintained
14 a policy or practice of deducting one-half hour from Plaintiff's recorded hours on every workday for
15 a meal period, regardless of whether or not Plaintiff was provided with a meal period.

16 97. Plaintiff is informed and believes that, at all relevant times during the applicable
17 limitations period, Defendants maintained a policy or practice of deducting one-half hour from
18 **Hourly Employee Class** members' recorded hours on every workday for a meal period, regardless
19 of whether or not **Hourly Employee Class** members were provided with a meal period.

20 98. At all relevant times, Defendants failed to pay hourly wages to Plaintiff for all time
21 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or
22 permitting her to work during unpaid meal periods and/or failing to properly pay Plaintiff for all
23 overtime hours worked.

24 99. Plaintiff is informed and believes that, at all relevant times during the applicable
25 limitations period, Defendants maintained a policy or practice of not paying hourly wages to
26 **Hourly Employee Class** members for all time worked, including but not limited to, overtime hours
27 at statutory and/or agreed rates by suffering or permitting them to work during unpaid meal periods.

28 100. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**

1 **Employee Class** members all earned wages every pay period at the correct rates, including
2 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
3 **Hourly Employee Class** members to perform off-the-clock work.

4 101. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
5 members have suffered damages in an amount subject to proof, to the extent they were not paid the
6 full amount of wages earned during each pay period during the applicable limitations period,
7 including overtime wages.

8 102. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
9 behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
10 overtime wages, interest thereon, and costs of suit.

11 103. The regular rate of pay under California law includes all remuneration for
12 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
13 limited to, commissions, afternoon shift premiums, night premiums, temporary duty override,
14 shared rewards, incentive-All About Cust, award, pay card value, premium override, non-
15 discretionary bonuses and/or other applicable remuneration.

16 104. During the applicable limitations period, Defendants violated the rights of Plaintiff
17 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
18 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194
19 and 1198 by not correctly calculating their regular rate of pay to include all applicable
20 remuneration, including but not limited to, commissions, afternoon shift premiums, night premiums,
21 temporary duty override, shared rewards, incentive-All About Cust, award, pay card value,
22 premium override, non-discretionary bonuses and/or other applicable remuneration.

23 105. California law uses the terms "compensation" and "pay" interchangeably and
24 requires that all applicable remuneration, including but not limited to, commissions, afternoon shift
25 premiums, night premiums, temporary duty override, shared rewards, incentive-All About Cust,
26 award, pay card value, premium override, non-discretionary bonuses and/or other applicable
27 remuneration, be included when calculating an employee's regular rate of pay.

28 106. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of

1 compensation that did not reflect, among other things, commissions, afternoon shift premiums,
2 night premiums, temporary duty override, shared rewards, incentive-All About Cust, award, pay
3 card value, premium override, non-discretionary bonuses and/or other applicable remuneration as
4 required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions
5 when Defendants paid him premium wages in lieu of meal and/or rest periods.

6 107. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times
7 during the applicable limitations period, Defendants maintained a policy or practice of paying
8 **Hourly Employee Class** members premium wages based on rates of compensation that have not
9 reflected commissions, afternoon shift premiums, night premiums, temporary duty override, shared
10 rewards, incentive-All About Cust, award, pay card value, premium override, non-discretionary
11 bonuses and/or other applicable remuneration as required by Labor Code § 226.7(b) and §§ 11 and
12 12 of the applicable Wage Order on the occasions when Defendants paid them premium wages in
13 lieu of meal and/or rest periods.

14 108. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
15 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Hourly**
16 **Employee Class** members, seeks to recover reasonable attorneys' fees.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO INDEMNIFY**

19 **(Lab. Code § 2802)**

20 **(Plaintiff and Expense Reimbursement Class)**

21 109. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

22 110. Labor Code section 2802(a) states:

23 An employer shall indemnify his or her employee for all necessary expenditures or
24 losses incurred by the employee in direct consequence of the discharge of his or her
25 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.

26 111. At all relevant times during the applicable limitations period, Plaintiff and the
27 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,
28 including but not limited to, personal cell phone expenses and personal protective equipment,

1 including steel toed boots, safety vests, marshaling wands, knee pads, earmuffs, and gloves that
2 were part of their uniform.

3 112. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
4 by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the
5 discharge of their duties.

6 113. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
7 by Defendants was insufficient to indemnify **Expense Reimbursement Class** members for all
8 necessary business expenses incurred in the discharge of their duties.

9 114. At all relevant times during the applicable limitations period, Defendants required
10 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused
11 by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**
12 **Reimbursement Class** members for all such expenditures.

13 115. At all relevant times during the applicable limitations period, Defendants required
14 Plaintiff and **Expense Reimbursement Class** members to purchase and maintain personal
15 protective equipment and/or uniforms and apparel unique to Defendants at Plaintiff's and **Expense**
16 **Reimbursement Class** members' expense. Defendants failed to indemnify Plaintiff and **Expense**
17 **Reimbursement Class** members for all such expenditures.

18 116. At all relevant times during the applicable limitations period, Defendants required
19 Plaintiff and **Expense Reimbursement Class** members to pay for expenses as a result of the use of
20 their personal cell phones for work purposes for the benefit of Defendants and at Plaintiff's and
21 **Expense Reimbursement Class** members' expense. Defendants failed to indemnify Plaintiff and
22 **Expense Reimbursement Class** members for all such expenditures.

23 117. Plaintiff is informed and believes that, during the applicable limitations period,
24 Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense**
25 **Reimbursement Class** members for all necessary business expenses.

26 118. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
27 restitution for all unpaid amounts due and owing within four years of the date of the filing of the
28 original Complaint and until the date of entry of judgment.

1 119. Plaintiff, on behalf of himself , and **Expense Reimbursement Class** members, seeks
2 interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys’ fees pursuant to
3 Code of Civil Procedure § 1021.5.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

6 **(Lab. Code § 226)**

7 **(Plaintiff and Wage Statement Penalties Sub-Class)**

8 120. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

9 121. Labor Code § 226(a) states:

10 An employer, semimonthly or at the time of each payment of wages, shall furnish to
11 his or her employee, either as a detachable part of the check, draft, or voucher paying
12 the employee’s wages, or separately if wages are paid by personal check or cash, an
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
14 worked by the employee, except as provided in subdivision (j), (3) the number of
15 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
16 rate basis, (4) all deductions, provided that all deductions made on written orders of
17 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
18 inclusive dates of the period for which the employee is paid, (7) the name of the
19 employee and only the last four digits of his or her social security number or an
20 employee identification number other than a social security number, (8) the name and
21 address of the legal entity that is the employer and, if the employer is a farm labor
22 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
23 legal entity that secured the services of the employer, and (9) all applicable hourly
24 rates in effect during the pay period and the corresponding number of hours worked
25 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
26 temporary services employer as defined in Section 201.3, the rate of pay and the total
27 hours worked for each temporary services assignment. The deductions made from
28 payment of wages shall be recorded in ink or other indelible form, properly dated,
showing the month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For purposes of
this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an
employee or a computer-generated record that accurately shows all of the information
required by this subdivision.

122. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize
the “detachable part of the check” provision and the “accurate itemized statement in writing”
provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
employee retains the right to elect to receive a written paper stub or record and that those who are
provided with electronic wage statements retain the ability to easily access the information and
convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion

1 Letter July 6, 2006.) Defendants provided Plaintiff and putative class members with electronic wage
2 statements. But as the Division of Labor Standards Enforcement has advised employers, this is only
3 permissible if the employer gives the employees the ability to elect to receive paper wage
4 statements, which Defendants did not do.

5 123. Plaintiff is informed and believes that, at all relevant times during the applicable
6 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
7 members with written wage statements as described above.

8 124. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**
9 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
10 that Defendants had the ability to provide them with accurate wage statements but had intentionally
11 provided them with written wage statements that Defendants knew do not comply with Labor Code
12 § 226(a).

13 125. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
14 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
15 legal rights to receive accurate wage statements and have misled them about their actual rates of pay
16 and wages earned. In addition, inaccurate information on their wage statements have prevented
17 immediate challenges to Defendants' unlawful pay practices, has required discovery and
18 mathematical computations to determine the amount of wages owed, has caused difficulty and
19 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
20 inaccurate information about wages and deductions to federal and state government agencies.

21 126. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and **Wage**
22 **Statement Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars
23 (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and
24 one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code §
25 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class
26 member.

27 127. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
28 the common fund doctrine, Plaintiff, on behalf of himself and **Wage Statement Penalties Sub-**

1 **Class** members, seek awards of reasonable attorneys' fees and costs.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

4 **(Lab. Code §§ 201–203)**

5 **(Plaintiff and Waiting Time Penalties Sub-Class)**

6 128. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

7 129. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members
8 have been entitled, upon the end of their employment with Defendants, to timely payment of all
9 wages earned and unpaid before termination or resignation.

10 130. At all relevant times, pursuant to Labor Code § 201, employees who have been
11 discharged have been entitled to payment of all final wages immediately upon termination.

12 131. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
13 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
14 all final wages at the time of resignation.

15 132. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
16 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
17 all final wages within seventy-two (72) hours' of giving notice of resignation.

18 133. During the applicable limitations period, Defendants failed to pay Plaintiff all of his
19 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

20 134. Plaintiff is informed and believes that, at all relevant times during the applicable
21 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
22 members all of their final wages in accordance with the Labor Code.

23 135. Plaintiff is informed and believes that, at all relevant times during the applicable
24 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
25 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
26 §§ 201 or 202 by failing to timely pay them all final wages.

27 136. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
28 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members have been

1 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201
2 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
3 requirements.

4 137. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of himself and
5 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the respective
6 dates that their final wages had first become due until paid, up to a maximum of thirty days, and
7 interest thereon.

8 138. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
9 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time**
10 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

11 SEVENTH CAUSE OF ACTION

12 **FAILURE TO PAY ALL EARNED VACATION TIME**

13 **(Lab. Code §§ 201, 203, 227.3)**

14 **(Plaintiff and Vacation Time Sub-Class)**

15 139. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 140. At all relevant times, Plaintiff and **Vacation Time Sub-Class** members have been
17 entitled, upon the end of their employment with Defendants, to payment of all vested vacation time.

18 141. Vacation pay is considered a form of wages under Labor Code section 200. Pursuant
19 to the California Supreme Court's decision in *Suastez v. Plastic Dress Up Co.*, 31 Cal. 3d 774
20 (1982) and Labor Code section 227.3, vested vacation pay and other similar forms of paid time off
21 earned based on labor performed are considered wages that cannot be subject to forfeiture without
22 compensation for forfeited days at the applicable rates required by law.

23 142. Labor Code section 227.3 states, in relevant part: "Unless otherwise provided by a
24 collective-bargaining agreement, whenever a contract of employment or employer policy provides
25 for paid vacations, and an employee is terminated without having taken off his vested vacation time,
26 all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of
27 employment or employer policy respecting eligibility or time served; provided, however, that an
28 employment contract or employer policy shall not provide for forfeiture of vested vacation time

1 upon termination. The Labor Commissioner or a designated representative, in the resolution of any
2 dispute with regard to vested vacation time shall apply the principles of equity and fairness.”

3 143. At all relevant times during the applicable limitations period, Defendants maintained
4 a policy or practice that provided for the unlawful forfeiture of vested vacation pay in violation of
5 *Suastez* and Labor Code section 227.3.

6 144. Pursuant to Labor Code §§ 201 and 227.3, Plaintiff, on behalf of himself and
7 **Vacation Time Sub-Class** members, seeks all unpaid wages for earned vacation time, interest
8 thereon.

9 145. Pursuant to Labor Code § 218.5, Plaintiff, on behalf of himself and **Vacation Time**
10 **Sub-Class** members, seeks to recover reasonable attorneys’ fees and costs.

11 **SEVENTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

14 **(Plaintiff and UCL Class)**

15 146. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 147. Business and Professions Code § 17200 defines “unfair competition” to include any
17 unlawful business practice.

18 148. Business and Professions Code §§ 17203–17204 allow a person who has lost money
19 or property as a result of unfair competition to bring a class action in accordance with Federal Rules
20 of Civil Procedure 23 to recover money or property that may have been acquired from similarly
21 situated persons by means of unfair competition.

22 149. California law requires employers to pay hourly, non-exempt employees for all hours
23 they are permitted or suffered to work, including hours that the employer knows or reasonably
24 should know that employees have worked.

25 150. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and
26 incorporates the FIRST, SECOND, and THIRD causes of action herein.

27 151. Plaintiff lost money and/or property as a result of the aforementioned unfair
28 competition.

1 152. Defendants have or may have acquired money by means of unfair competition.

2 153. Plaintiff is informed and believes and thereupon alleges that, by committing the
3 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
4 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by
5 violating the Labor Code as alleged herein.

6 154. Defendants have committed criminal conduct through their policies and practices of,
7 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
8 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
9 work period of five or more hours, by failing to pay non-exempt employees for all hours worked,
10 and by failing to reimburse them for all expenses.

11 155. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
12 employees and entitled to the full protections of both the Labor Code and the applicable Wage
13 Order.

14 156. Defendants' unlawful conduct as alleged in this Complaint amounts to and
15 constitutes unfair competition within the meaning of Business and Professions Code section 17200
16 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
17 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
18 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of himself and on
19 behalf of similarly situated persons in a class-action proceeding.

20 157. As a result of Defendants' violations of the Labor Code during the applicable
21 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
22 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
23 conduct.

24 158. Plaintiff is informed and believes that other similarly situated persons have been
25 subject to the same unlawful policies or practices of Defendants.

26 159. Due to the unfair and unlawful business practices in violation of the Labor Code,
27 Defendants have gained a competitive advantage over other comparable companies doing business
28 in the State of California that comply with their legal obligations.

160. California’s Unfair Competition Law (“UCL”) permits civil recovery and injunctive relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act that violates, or is considered unlawful under, any other state or federal law.

161. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203, Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining Defendants, and each of them, and their agents and employees, from further violations of the Labor Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an order permanently enjoining Defendants, and each of them, and their respective agents and employees, from further violations of the Labor Code and applicable Industrial Welfare Commission Wage Orders.

162. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of himself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

163. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

164. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

165. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 246, 510, 512, 1194, 1197, 1198, and 2802.

166. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Federal Rules of Civil Procedure 23.

167. Plaintiff, a former employee against whom Defendants committed one or more of the

1 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
2 within the meaning of Labor Code § 2699(c).

3 168. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
4 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
5 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
6 intent to investigate.

7 169. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
8 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
9 227.3, 246, 510, 512, 1194, 1197, 1198 and 2802:

- 10 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 246, 1194,
11 1198 and 2802, one hundred dollars (\$100) for each employee per pay period
12 for each initial violation and two hundred dollars (\$200) for each employee
13 per pay period for each subsequent violation (penalties set by Labor Code §
14 2699(f)(2));
- 15 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
16 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 17 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
18 employee for each initial violation that was neither willful nor intentional,
19 two hundred dollars (\$200) for each employee, plus 25% of the amount
20 unlawfully withheld from each employee, for each initial violation that was
21 either willful or intentional, and two hundred dollars (\$200) for each
22 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
23 from each employee, for each subsequent violation, regardless of whether the
24 subsequent violation was either willful or intentional (penalties set by Labor
25 Code § 210);
- 26 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
27 employee for each initial violation that was neither willful nor intentional,
28 two hundred dollars (\$200) for each employee, plus twenty-five percent

(25%) of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 225.5);

v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);

vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);

vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;
- (11) Civil penalties;
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: November 15, 2024

SETAREH LAW GROUP

SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
Attorneys for Plaintiff
MARVIN TOLEDO

eSignature Details

Signer ID: eXnbVkVBzQrzUdPA6oAizphS
Signed by: Marvin Toledo
Sent to email: sfctoledo415@hotmail.com
IP Address: 24.4.225.111
Signed at: Nov 15 2024, 2:24 pm PST

Signer ID: qmkHWZbvHAUdcdyS6F8uewwr
Signed by: Shaun Setareh
Sent to email: shaun@setarehlaw.com
IP Address: 12.160.160.211
Signed at: Nov 15 2024, 3:33 pm PST