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VIA ONLINE ELECTRONIC SUBMISSION

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102
SUBMITTED ONLINE

Re: Pursuant to California Labor Code § 2699.3 re USAC Airways 695 LLC dba Aero Air

Pursuant to the Private Attorneys General Act of 2004 ("**PAGA**"), Cal. Labor Code sections 2698, *et seq*., Mr. Thomas Ochoa provides this notice on behalf of himself and other aggrieved employees in the State of California to the Labor and Workforce Development Agency ("**LWDA**") and USAC Airways 695 LLC dba Aero Air ("**Aero Air**") of Labor Code and Industrial Welfare Commission ("**IWC**") Wage Order violations committed by Aero Air and personally experienced by Mr. Ochoa. Please allow this letter to serve as a notice and a request pursuant to Section 2699.3 of the California Labor Code that your agency investigate the claims described below. If the agency does not intend to investigate the alleged violations, we ask that you please notify us of that fact. If your agency decides not to investigate the below-described claims, Mr. Ochoa intends to pursue civil penalties and injunctive relief through a court action and/or in arbitration, on behalf of himself and the other aggrieved employees against whom Labor Code and Wage Order violations were committed by Aero Air.

Introduction

Aero Air is headquartered in Los Angeles County, California. Mr. Ochoa has been working for Aero Air as a flight attendant since November 2022 in Los Angeles County, California. Since Mr. Ochoa started working for Aero Air, he has been under the company's control in accordance with strict guidelines.

Unless the agency decides to investigate and issue citations for Aero Air's numerous Labor Code and Wage Order violations, Mr. Ochoa intends to bring a representative action in court and/or in arbitration seeking civil penalties for violations of the Labor Code that are recoverable under PAGA on behalf of the State of California and all other aggrieved employees. The aggrieved employees on whose behalf Mr. Ochoa will file a PAGA civil action include All current and former individuals who worked for Aero Air in California as Flight Attendants, Experience Leads, or other materially similar positions.

As set forth below, Aero Air has violated and/or continues to violate, among other provisions of the California Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1194, 1997, 1997.1, 1198, 2802, and IWC Wage Orders, including inter alia, Wage Order No. 9, and Mr. Ochoa has personally experienced each of these violations.

Willful Misclassification

Aero Air classified Mr. Ochoa and other aggrieved employees as exempt. However, Mr. Ochoa and the aggrieved employees do not meet the requirements for any salary-based exemption categories under California law. As such, Plaintiff and other aggrieved employees were entitled to the protections and rights of non-exempt employees including, but not limited to overtime, compliant meal and rest breaks, and payment for all hours worked. Aero Air violated California law by failing to provide Mr. Ochoa and the aggrieved employees with these protections.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a); Wage Order No. 9. A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a); Wage Order No. 9. Further, an employer must provide an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7; Wage Order No. 9. When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Aero Air failed to provide Mr. Ochoa or the other aggrieved employees with an opportunity to take timely, uninterrupted meal and rest periods of the requisite length, free from employer control. Aero Air also failed to compensate Mr. Ochoa and the other aggrieved employees properly for the non-compliant meal and rest periods including, inter alia, missed, short, late, and/or interrupted meal and rest periods. Aero Air also failed to pay all premium wages for the many meals and rest breaks that Mr. Ochoa and the aggrieved employees were deprived of. Indeed, Aero Air did not provide any meal or rest breaks or premium compensation for missed breaks to Mr. Ochoa or other aggrieved employees.

Failure to Pay Minimum Wages and Failure to Pay Overtime Wages

Aero Air violated California Labor Code sections 1194, 1197, and 1197.1 and Wage Order No. 9 by failing to pay Mr. Ochoa and other aggrieved employees at least minimum wages for all hours worked. Mr. Ochoa and other aggrieved employees were required or knowingly permitted to perform work "off-the-clock," uncompensated, by, for example, requiring Plaintiff and the Class to perform work before clocking-in for the day, during unpaid meal breaks, and after clocking-out for the day. By failing to pay Mr. Ochoa and other aggrieved employees any wages for their time spent performing work duties for Aero Air, Aero Air violated Labor Code sections 1194, 1197, and 1197.1 and Wage Order No. 9, which require employers to pay at least the legal minimum wage to their employees.

California Labor Code section 510 and Wage Order No. 9 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Mr. Ochoa and other aggrieved employees worked over 8 hours in a day and/or 40 hours in a week without overtime compensation because Aero Air failed to pay them for their work duties, as described above. On occasions when Mr. Ochoa and other aggrieved employees had already worked eight hours in one day, Aero Air failed to pay them all overtime compensation due. Therefore, Mr. Ochoa and the other aggrieved employees were entitled to receive overtime compensation from Aero Air that Aero Air failed to pay, violating Labor Code section 510 and Wage Order No. 9.

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor more than the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant period, Aero Air failed to pay Mr. Ochoa and other aggrieved employees all wages due to them, including minimum wages, overtime wages, meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep at a central location in the state or at the establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant period, Aero Air failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid to Mr. Ochoa and other aggrieved employees.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) and Wage Order No. 9 require an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, inter alia, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Aero Air failed to provide compliant wage statements to Mr. Ochoa and other aggrieved employees, despite being required to do so. Accordingly, Aero Air is subject to civil penalties under Labor Code section 226.3.

Failure to Reimburse Necessary Business Expenses

Labor Code section 2802 and Wage Order No. 9 require employers to indemnify their employees for all necessary business expenses that they incur in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant period, Mr. Ochoa and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Aero Air. These costs include, but are not limited to, costs related to the use of personal phones. Indeed, Mr. Ochoa and the other aggrieved employees absorbed all the costs at their own expense and without reimbursement by Aero Air. Mr. Ochoa and the aggrieved employees are entitled to reimbursement for all such expenses.

* * *

Aero Air has violated, caused to be violated, or is currently violating, numerous provisions of the California Labor Code, as described above. Mr. Ochoa respectfully requests that the agency investigate the above allegations, and, in any event, provide notice regarding its intent to investigate pursuant to Labor Code section 2699.3. If the agency does not intend to investigate the alleged violations, Mr. Ochoa respectfully requests a letter confirming the same so that we may bring a civil action seeking civil penalties and injunctive relief under PAGA against Aero Air for the violations described in this letter. Please know that we intend to file a civil complaint and to bring the appropriate claims under Labor Code section 2699 should your office decline to investigate, or investigate but decline to issue citations, within the time frames set out in Labor Code section 2699.3. Should you require anything further or have questions, please do not hesitate to contact me. Thank you for your consideration.

Respectfully Submitted,
CLARKSON LAW FIRM, P.C.

Christina M. Le, Esq.

Via certified mail with return receipt:

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