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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DONNA DOSIK, an individual, on behalf of
herself and the State of California, as a private
attorney general,

Plaintiff,

v.

DELTA AIR LINES INC., a Delaware
Corporation; and DOES 1 TO 50,

Defendants.

Case Number: 30-2023-01356717-CU-OE-CXC

**First Amended Representative Action
Complaint For:**

1. Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
("PAGA") for Violations of California
Labor Code Sections 1198

1 Plaintiff Donna Dosik (“Plaintiff”), on behalf of herself and the State of California, as a private
2 attorney general, complains and alleges of defendants Delta Air Lines Inc. and Does 1 to 50
3 (collectively, “Defendants”), and each of them, as follows:

4 **I. INTRODUCTION**

5 1. This action is a representative action brought pursuant to the California Labor Code
6 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
7 through 2699.6.

8 2. The “PAGA Period” as used herein, is defined as the period from August 3, 2022, and
9 continuing into the present and ongoing.

10 3. This PAGA action is brought on behalf of Plaintiff, the State of California as private
11 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
12 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
13 “Aggrieved Employees”).

14 4. Plaintiff is informed and believes and thereon alleges that the California Industrial
15 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 9-
16 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
17 tit. 8, § 11090.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
18 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
19 are discovered in litigation.

20 **II. JURISDICTION & VENUE**

21 5. This Court has subject matter jurisdiction over all causes of action asserted herein
22 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
23 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
24 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
25 is subject to adjudication in the courts of the State of California.

26 6. This Court has personal jurisdiction over Defendants because Defendants have caused
27 injuries in the County of Orange and the State of California through their acts, and by their violation
28 of the California Labor Code and California state common law. Defendants transact millions of dollars

1 of business within the State of California. Defendants own, maintain offices, transact business, have an
2 agent or agents within the County of Orange, and/or otherwise are found within the County of Orange,
3 and Defendants are within the jurisdiction of this Court for purposes of service of process.

4 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
5 Code of Civil Procedure. Defendants operate within California and do business within Orange County,
6 California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants’
7 employees identified above within Orange County and surrounding counties where Defendants may
8 remotely operate. (See *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County* (2021)
9 60 Cal.App.5th 1069, 1075 [“We hold that venue is proper in any county in which an aggrieved
10 employee worked and Labor Code violations allegedly occurred.”].)

11 **III. THE PARTIES**

12 **A. PLAINTIFF**

13 8. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
14 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
15 employee in the County of Orange.

16 9. Plaintiff brings this action on behalf of herself and the State of California, as a private
17 attorney general, and on behalf of the following group of aggrieved employees: *All individuals who*
18 *are or were employed by Defendants as non-exempt employees in California during the PAGA Period*
19 (the “Aggrieved Employees”).

20 10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
21 Defendants during the relevant statutory period.

22 **B. DEFENDANTS**

23 11. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
24 to and doing business in Orange County and is and/or was the legal employer of Plaintiff and the other
25 Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved
26 Employees were, and are, subject to Defendants’ policies and/or practices complained of herein and
27 have been deprived of the rights guaranteed to them by: California Labor Code sections 1198, and
28

1 others that may be applicable; California Business and Professions Code sections 17200 through 17210
2 (“UCL”); and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11090).

3 12. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA
4 Period, Defendants did (and continue to do) business in the State of California, County of Orange.

5 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
7 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
8 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
9 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
10 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
11 and the other Aggrieved Employees to be subject to the unlawful employment practices, wrongs,
12 injuries, and damages complained of herein.

13 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and/or are the employers of Plaintiff and the other Aggrieved Employees. At
15 all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
16 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
17 were the agents, servants, and employees of each and every one of the other Defendants, as well as the
18 agents of all Defendants, and at all times herein mentioned were acting within the course and scope of
19 said agency and employment. Defendants, and each of them, approved of, condoned, or otherwise
20 ratified every one of the acts or omissions complained of herein.

21 15. At all relevant times, Defendants, and each of them, were members of and engaged in a
22 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
23 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and
24 believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff and
25 the other Aggrieved Employees.

26 **IV. COMMON FACTS & ALLEGATIONS**

27 16. Plaintiff and the other Aggrieved Employees (collectively, the “Aggrieved Employees”)
28 are, and were at all relevant times, employed by the Defendants within the State of California.

1 17. The Aggrieved Employees are, and were, at all relevant times, non-exempt employees
2 for the purposes of the claims alleged in this complaint.

3 18. Specifically, Plaintiff was employed by Defendants within the statutory PAGA Period,
4 working as an hourly, non-exempt Customer Service Agent for Defendants. Plaintiff's duties included
5 customer relations for airport operations.

6 19. IWC Wage Order No. 9 provides:

7 (A) All working employees shall be provided with suitable seats when
8 the nature of the work reasonably permits the use of seats.

9 (B) When employees are not engaged in the active duties of their
10 employment and the nature of the work requires standing, an
11 adequate number of suitable seats shall be placed in reasonable
12 proximity to the work area and employees shall be permitted to use
such seats when it does not interfere with the performance of their
duties.

13 20. Labor Code section 1198 provides that: "[t]he maximum hours of work and the standard
14 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
15 conditions of labor for employees. The employment of any employee for longer hours than those fixed
16 by the order or under conditions of labor prohibited by the order is unlawful."

17 21. The California Court of Appeal has held that PAGA penalties under Labor Code section
18 2698 *et seq.*, for suitable seating violations are authorized via Labor Code section 1198. *Bright v. 99¢*
19 *Only Stores*, 189 Cal. App. 4th 1472, 1476 (2010).

20 **A. SEATING VIOLATIONS**

21 22. The Applicable Wage Order requires all working employees to be provided with
22 suitable seats when the nature of the work reasonably permits the use of seats. (Cal. Code of Regs., tit.
23 8, § 11090.) They further require that, even when the nature of the work requires standing, if employees
24 are not engaged in the active duties of their employment an adequate number of suitable seats shall be
25 placed in a reasonable proximity to the work area and employees shall be permitted to use such seats
26 when it does not interfere with the performance of their duties. (Cal. Code of Regs., tit. 8, § 11090.)

27 23. Here, Plaintiff's and the Aggrieved Employees' work reasonably permitted (and
28 continues to permit) the use of seats, and sitting would not interfere with performance of any other

1 tasks that may require standing. Therefore, “a seat is called for.” (*Kilby v. CVS Pharmacy, Inc.* (2016)
2 63 Cal.4th 1, 8.) Plaintiff and the Aggrieved Employees were required to work without suitable seating
3 even though the provision of such seats would not interfere with the performance of other tasks
4 requiring standing.

5 24. Specifically, Plaintiff and the Aggrieved Employees worked for Defendants as
6 Customer Service Agents assisting customers with their flight needs. Their workstations are made up
7 of rows of employees who are stationed at specific locations throughout the airport. Plaintiff and the
8 Aggrieved Employees were “stationed” in these specific locations and typically did not do anything
9 that would prevent the reasonable use of seats (i.e., such as walk to another location to perform their
10 basic job functions). Yet, Defendants removed all seats and/or leaning stools within the customer
11 service area so that the customer service agents were required to stand at all times, including at times
12 when they were not helping any customers.

13 25. As the California Supreme Court explained in *Kilby v. CVS Pharmacy, Inc., supra*, 63
14 Cal.4th 1: “There is no principled reason for denying an employee a seat when he spends a substantial
15 part of his workday at a single location performing tasks that could reasonably be done while seated,
16 merely because his job duties include other tasks that must be done standing.” (*Id.* at p. 17.) Further,
17 “[a]n employer seeking to be excused from the requirement bears the burden of showing compliance
18 is infeasible because no suitable seating exists.” (*Id.* at p. 24.) Here, Defendants have failed to meet
19 that burden and have thus violated the Applicable Wage Order, and by extension the Labor Code.

20 **CAUSES OF ACTION**

21 **First Cause of Action**

22 *Penalties Pursuant to PAGA for Violations of Labor Code Sections 1198*

23 *(Against All Defendants)*

24 26. Plaintiff realleges and incorporates by reference all previous paragraphs.

25 27. Based on the above allegations incorporated by reference, Defendants violated Labor
26 Code sections 1198 and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11090), and others
27 that may be applicable.
28

1 28. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
2 2698 through 2699.6 because of Defendants' violation of Labor Code sections 1198 and the Applicable
3 Wage Order (Cal. Code of Regs., tit. 8, § 11090), and others that may be applicable.

4 29. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
5 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
6 of trial subject to the following formula:

7 A. \$100 for the initial violation per employee per pay period; and

8 B. \$200 for each subsequent violation per employee per pay period.

9 30. These penalties must be allocated seventy-five percent to the Labor and Workforce
10 Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties
11 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
12 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
13 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
14 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
15 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
16 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
17 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that "PAGA
18 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
19 different Labor Code violations."], internal quotation marks omitted).

20 31. Plaintiff was compelled to retain the services of counsel to file this action to protect her
21 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
22 by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled
23 to recover under Labor Code section 2699, subdivision (g)(1).

24 **V. PRAYER FOR RELIEF**

25 Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought
26 against Defendants, as follows:

- 27 1. For the claim of penalties pursuant to PAGA and other provisions of the California
28 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for

1 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
2 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
3 pursuant the Labor Code Private Attorneys General Act of 2004;

4 2. On all causes of action for which attorneys' fees may be available, for attorneys' fees
5 and costs as provided by Code of Civil Procedure section 1021.5, and others as may be
6 applicable;

7 3. For an order enjoining Defendants, and each of them, and their agents, servants, and
8 employees, and all persons acting under, in concert with, or for them, from acting in
9 derogation of any rights or duties adumbrated in this complaint; and

10 4. For such other and further relief, this Court may deem just and proper.

11 Dated: April 17, 2024

MELMED LAW GROUP P.C.

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14 **JONATHAN MELMED**

15 Attorneys for Plaintiff and the Aggrieved
16 Employees
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, April 22, 2024, I served the foregoing document(s) described as:

- **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT**

By causing a true copy thereof to be served on the following parties and/or individuals:

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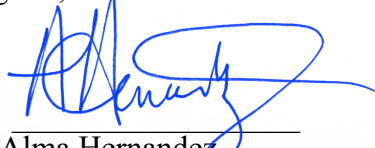
Phone: (949) 622-1661

Attorneys for Delta Air Lines, Inc.

[XX]BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused sue document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 22, 2024, in Los Angeles, California.


Alma Hernandez