

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Jeffrey S. Herman (State Bar #280058)

jeffrey@bamlawca.com

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

24CV430891

Case No. _____

STEPHANIE LA GROW, an individual, and
on behalf of the State of California, as a
private attorney general,

Plaintiff,

vs.

JETBLUE AIRWAYS CORPORATION, a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 246, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 1 1070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s); and,

2. Retaliation in Violation of Labor Code
§ 1102.5, *et seq.*, and,

3. Discrimination and Retaliation in
Violation of FEHA.

DEMAND FOR A JURY TRIAL

1 Plaintiff Stephanie La Grow (“PLAINTIFF”), an individual, and on behalf of the people
2 of the State of California and as an “aggrieved employee” acting as a private attorney general
3 under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”), alleges
4 on information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Jetblue Airways Corporation
8 (referred to as “DEFENDANT”) seeking to recover PAGA civil penalties for herself, and on
9 behalf of all current and former aggrieved employees that worked for DEFENDANT. As to the
10 First Cause of Action PLAINTIFF does **not seek to recover anything other than penalties**
11 **as permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA.

20 THE PARTIES

21 4. Jetblue Airways Corporation (“DEFENDANT”) is a Corporation that at all
22 relevant times mentioned herein conducted and continues to conduct substantial business in
23 California.
24

25 5. DEFENDANT is a United States low-cost airline that operates flights in
26 California.

27 6. PLAINTIFF is currently employed by DEFENDANT in California. PLAINTIFF’s
28 employment started in September of 2018 with DEFENDANT. PLAINTIFF has at all times

1 been classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and
2 entitled to the legally required meal and rest periods and payment of minimum and overtime
3 wages due for all time worked.

4 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, brings this Representative Action on behalf of the State of California with respect to herself
7 and all individuals who are or previously were employed by DEFENDANT in California,
8 including any employees staffed with DEFENDANT by a third party, and classified as non-
9 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of November 27,
10 2022 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES
12 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
13 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
14 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
15 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
16 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
17 Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the
18 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
19 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
22 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
23 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
24 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
25 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
26 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
27
28

1 50, inclusive, are responsible in some manner for one or more of the events and happenings
2 that proximately caused the injuries and damages hereinafter alleged.

3 10. The agents, servants and/or employees of the Defendants and each of them
4 acting on behalf of the Defendants acted within the course and scope of his, her or its
5 authority as the agent, servant and/or employee of the Defendants, and personally
6 participated in the conduct alleged herein on behalf of the Defendants with respect to the
7 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
8 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
9 all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the
10 conduct of the Defendants' agents, servants and/or employees.

11 THE CONDUCT

12
13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
14 was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time
15 worked, meaning the time during which an employee is subject to the control of an
16 employer, including all the time the employee is suffered or permitted to work.
17 DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without
18 paying them for all the time they are under DEFENDANT's control. Among other things,
19 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
20 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
21 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
22 break. DEFENDANT, as a matter of established company policy and procedure,
23 administers a uniform practice of rounding the actual time worked and recorded by
24 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
25 so that during the course of their employment, PLAINTIFF and the AGGRIEVED
26 EMPLOYEES are paid less than they would have been paid had they been paid for actual
27 recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the
28 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off

1 the clock in that DEFENDANT, as a condition of employment, required these employees to
2 submit to mandatory temperature checks and symptom questionnaires for COVID-19
3 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a
4 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
5 wage compensation, and off-duty meal breaks by working without their time being correctly
6 recorded and without compensation at the applicable rates. DEFENDANT's policy and
7 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is
8 evidenced by DEFENDANT's business records.

9 12. State law provides that employees must be paid overtime and meal and rest
10 break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
11 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
12 tied to specific elements of an employee's performance.

13 13. The second component of PLAINTIFF's and the AGGRIEVED
14 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that
15 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
16 performance for DEFENDANT. The non-discretionary incentive program provided all
17 employees paid on an hourly basis with incentive compensation when the employees met the
18 various performance goals set by DEFENDANT. However, when calculating the regular
19 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
20 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
21 compensation as part of the employees' "regular rate of pay" for purposes of calculating
22 overtime pay and meal and rest break premium pay. Management and supervisors described
23 the incentive program to potential and new employees as part of the compensation package.
24 As a matter of law, the incentive compensation received by PLAINTIFF and the
25 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to
26 do so has resulted in a underpayment of overtime compensation and meal and rest break
27 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.
28

1 14. As a result of their rigorous work schedules, PLAINTIFF and the
2 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
3 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
4 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
5 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
6 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
7 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
8 which these employees were required by DEFENDANT to work ten (10) hours of work.
9 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
10 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
11 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
12 and in accordance with DEFENDANT's corporate policy and practice.

13 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
14 EMPLOYEES were also required from time to time to work in excess of four (4) hours
15 without being provided ten (10) minute rest periods. Further, these employees were denied
16 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
17 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
18 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
19 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
20 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
21 also not provided with one hour wages in lieu thereof. Additionally, the applicable
22 California Wage Order requires employers to provide employees with off-duty rest periods,
23 which the California Supreme Court defined as time during which an employee is relieved
24 from all work related duties and free from employer control. In so doing, the Court held that
25 the requirement under California law that employers authorize and permit all employees to
26 take rest period means that employers must relieve employees of all duties and relinquish
27 control over how employees spend their time which includes control over the locations
28 where employees may take their rest period. Employers cannot impose controls that prohibit

1 an employee from taking a brief walk - five minutes out, five minutes back. Here,
2 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
3 unconstrained walks and is unlawful based on DEFENDANT's rule which states
4 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
5 their rest period.

6 16. During the PAGA PERIOD, DEFENDANT failed to accurately record and
7 pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
8 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
9 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
10 all time worked, meaning the time during which an employee was subject to the control of
11 an employer, including all the time the employee was permitted or suffered to permit this
12 work. DEFENDANT required these employees to work off the clock without paying them
13 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
14 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
15 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
16 EMPLOYEES forfeited time worked by working without their time being accurately
17 recorded and without compensation at the applicable minimum wage and overtime wage
18 rates. To the extent that the time worked off the clock does not qualify for overtime
19 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-
20 the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

21 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
22 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
23 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
24 provides that every employer shall furnish each of his or her employees with an accurate
25 itemized wage statement in writing showing, among other things, gross wages earned and all
26 applicable hourly rates in effect during the pay period and the corresponding amount of time
27 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
28 an hourly basis. As such, the wage statements should reflect all applicable hourly rates

1 during the pay period and the total hours worked, and the applicable pay period in which the
2 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
3 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
4 identify such information. More specifically, the wage statements failed to identify the
5 accurate total hours worked each pay period. When the hours shown on the wage statements
6 were added up, they did not equal the actual total hours worked during the pay period in
7 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
8 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
9 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
10 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
11 statements which violated Cal. Lab. Code § 226.

12 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
13 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
14 the wages are paid not more than seven (7) calendar days following the close of the payroll
15 period. Cal. Lab. Code § 210 provides:

16 in [I]n addition to, and entirely independent and apart from, any other penalty provided
17 this article, every person who fails to pay the wages of each employee as provided in
18 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
19 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

20 19. DEFENDANT from time to time failed to pay PLAINTIFF and the
21 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
22 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly”
23 regular wage payments.

24 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
25 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
26 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
27 employees earn non-discretionary remuneration, including, but not limited to, incentives,
28 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,

1 DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at
2 their base rates of pay.

3 21. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
4 employees be calculated by dividing the employee's total wages, not including overtime
5 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
6 days of employment.

7 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
8 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
9 earned non-discretionary incentive wages which increased their regular rate of pay.
10 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
11 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
12 required under Cal. Lab. Code Section 246.

13 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
14 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
15 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
16 believes and based thereon alleges that such failure to pay sick pay at regular rate was
17 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
18 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

19 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
20 to collect or receive from an employee any part of wages theretofore paid by said employer
21 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
22 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
23 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
24 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
25 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
26 pay period and upon termination.

27 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred

1 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
2 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
3 2802, employers are required to indemnify employees for all expenses incurred in the course
4 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
5 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
6 employee in direct consequence of the discharge of his or her duties, or of his or her
7 obedience to the directions of the employer, even though unlawful, unless the employee, at
8 the time of obeying the directions, believed them to be unlawful."

9 26. In the course of their employment PLAINTIFF and the AGGRIEVED
10 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
11 personal cellular phones as a result of and in furtherance of their job duties as employees for
12 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
13 associated with the use of their personal cellular phones for DEFENDANT's benefit.
14 Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by
15 DEFENDANT to use their personal cellular phones. As a result, in the course of their
16 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES
17 incurred unreimbursed business expenses which included, but were not limited to, costs
18 related to the use of their personal cellular phones all on behalf of and for the benefit of
19 DEFENDANT.

20 27. In violation of the applicable sections of the California Labor Code and the
21 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
22 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
23 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES suitable seating when the nature of these employees' work reasonably
25 permitted sitting.

26 28. DEFENDANT knew or should have known that PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
28 when it did not interfere with the performance of their duties, and that DEFENDANT did

1 not provide suitable seating and/or did not allow them to sit when it did not interfere with
2 the performance of their duties.

3 29. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
4 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
5 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
6 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
7 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
8 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
9 California Labor Code and regulations promulgated thereunder as herein alleged.

10 30. The employment of some AGGRIEVED EMPLOYEES has terminated and
11 DEFENDANT has not tendered payment of all wages owed as required by law.
12 Additionally, at all times during the term of PLAINTIFF's employment with DEFENDANT,
13 AGGRIEVED EMPLOYEES earned and accrued vested vacation and holiday time on the
14 date of their termination pursuant to DEFENDANT's uniform vacation policies and
15 applicable California law. The amount of vacation pay AGGRIEVED EMPLOYEES earned
16 and accumulated is evidenced by DEFENDANT's business records. Additionally,
17 DEFENDANT also underpaid accrued vested vacation wages to AGGRIEVED
18 EMPLOYEES by failing to pay such wages at the regular rate of pay and more specifically
19 the final rate of pay that included all non-discretionary incentive compensation. Rather than
20 pay vacation wages at the regular rate of pay, DEFENDANT underpaid vacation wages to
21 AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of the
22 AGGRIEVED EMPLOYEES' non-discretionary incentive compensation into the vacation
23 wage payment calculations. DEFENDANT failed to specify in DEFENDANT's written
24 vacation policy the rate at which AGGRIEVED EMPLOYEES would be paid vacation upon
25 leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful practice,
26 policy and procedure to deny paying the AGGRIEVED EMPLOYEES all of their vested
27 vacation and holiday time, DEFENDANT failed to pay AGGRIEVED EMPLOYEES all
28 vested vacation time as wages due upon employment termination, in violation of the

1 California Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT
2 underpaid waiting time penalties to AGGRIEVED EMPLOYEES at their base rates of pay,
3 instead of including all of the AGGRIEVED EMPLOYEES' non-discretionary
4 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
5 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
6 provide compensation for earned, accrued and vested vacation and holiday time, as well as
7 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
8 unlawful, unfair and deceptive practice to the detriment of AGGRIEVED EMPLOYEES.
9 DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
10 EMPLOYEES for all vested vacation and holiday time accumulated at employment
11 termination violated and continues to violate Section 227.3 of the California Labor Code.

12 31. All of the conduct and violations alleged herein occurred during the PAGA
13 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
14 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
15 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
16 2018 AJDAR 12157 (Certified for Publication 12/19/18).

17 **JURISDICTION AND VENUE**

18
19 32. This Court has jurisdiction over this Action pursuant to California Code of
20 Civil Procedure, Section 410.10.

21 33. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
23 employs AGGRIEVED EMPLOYEES across California, including in this County, and
24 committed the wrongful conduct herein alleged in this County against AGGRIEVED
25 EMPLOYEES.

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFF and Against All Defendants)**

5 34. PLAINTIFF realleges and incorporates by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

7 35. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
9 the state's labor law enforcement agencies. An action to recover civil penalties under
10 PAGA is fundamentally a law enforcement action designed to protect the public and not to
11 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
12 but to create a means of "deputizing" citizens as private attorneys general to enforce the
13 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
14 public interest to allow aggrieved employees, acting as private attorneys general to recover
15 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
16 claims cannot be subject to arbitration.

17 36. PLAINTIFF, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, brings this Representative Action on behalf of the State of California
20 with respect to herself and all individuals who are or previously were employed by
21 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
22 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
23 time period of November 27, 2022 until a date as determined by the Court (the "PAGA
24 PERIOD").

25 37. On November 27, 2023, PLAINTIFF gave written notice by electronic mail to
26 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
28 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference

1 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
2 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
3 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
4 pursuant to Section 2699 as the proxy of the State of California with respect to all
5 AGGRIEVED EMPLOYEES as herein defined.

6 38. The policies, acts and practices heretofore described were and are an unlawful
7 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
8 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
9 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
10 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
11 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
12 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
13 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2),
14 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
15 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure
16 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
17 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties
18 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative
19 of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
20 AGGRIEVED EMPLOYEES.

21 ///

22 ///

23 ///

24 ///

25 ///

27 ¹As to the First Cause of Action alleging violations of the PAGA, Plaintiff specifically
28 excludes and/or does not allege any claims under California Labor Code §558(a)(3).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7

3

4

5
6

7
8
9
0

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16

27
28

1 humiliation, emotional distress, and mental and physical pain and anguish, all to her damage
2 in a sum according to proof.

3 43. As a result of DEFENDANT’S adverse employment actions against
4 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
5 proof.

6 44. DEFENDANT’s misconduct was committed intentionally, in a malicious,
7 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
8 against defendants.

9 **THIRD CAUSE OF ACTION**

10 **[Discrimination and Retaliation For the Exercise of Rights Guaranteed Under the**
11 **FEHA, Participating in Protected Activities, and/or Opposing DEFENDANT’s Failure**
12 **to Provide Such Rights]**

13 **Violation of FEHA Government Section 12900, *et. seq.***

14 **(By PLAINTIFF Against All Defendants)**

15 45. PLAINTIFF realleges and incorporates by reference, as though fully set forth
16 herein, the prior paragraphs of this Complaint. Prior to filing this action PLAINTIFF
17 exhausted her administrative remedies by filing a timely administrative complaint with the
18 Department of Fair Employment and Housing (“DFEH”) and received a DFEH Right to Sue
19 letter on November 21, 2023.

20 46. DEFENDANT’s conduct, as alleged, violated FEHA, Government Code
21 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
22 including the following bases for liability:

23 a. Taking adverse employment actions against PLAINTIFF, including
24 paying lower wages, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
25 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
26 PLAINTIFF’s gender in violation of Government Code Section 12940(a);

27 b. Harassing PLAINTIFF and/or creating a hostile work environment, in
28 whole or in part on the basis of PLAINTIFF’s gender;

1 c. Failing to take all reasonable steps to prevent discrimination and
2 harassment based on gender in violation of Government Code section 12940(k);

3 d. Retaliating against PLAINTIFF for seeking to exercise rights
4 guaranteed under FEHA, participating in protected activities, and/or opposing
5 DEFENDANT's failure to provide such rights, in violation of Government Code Section
6 12940(h).

7 47. As a result of the good faith complaints PLAINTIFF made to DEFENDANT
8 regarding the discriminatory practices stated above and also as a result of PLAINTIFF's
9 gender, DEFENDANT paid Plaintiff lower wages, and in direct retaliation for those
10 complaints, DEFENDANT denied PLAINTIFF employment benefits, including but not
11 limited to, higher wages in her position with the company.

12 48. As a proximate result of DEFENDANT's willful, knowing, and intentional
13 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
14 substantial losses of earnings and other employment benefits.

15 49. As a proximate result of DEFENDANT's willful, knowing, and intentional
16 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
17 humiliation, emotional distress, and physical and mental pain and anguish, all to
18 PLAINTIFF's damage in a sum according to proof.

19 50. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
20 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
21 reasonable attorneys' fees and costs (including expert costs) in an amount according to
22 proof.

23 51. DEFENDANT's misconduct was committed intentionally, in a malicious,
24 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
25 against DEFENDANT.
26
27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

- 4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:
- 6 A) Recovery of civil penalties as prescribed by the Labor Code Private
7 Attorneys General Act of 2004; and,
- 8 B) An award of attorneys' fees and cost of suit, as allowable under the law,
9 including, but not limited to, pursuant to Labor Code §2699; and,
- 10 2. On behalf of the Second and Third Causes of Action:
- 11 A) For all special damages which were sustained as a result of DEFENDANT's
12 conduct, including, but not limited to, back pay, front pay, lost compensation
13 and job benefits that PLAINTIFF would have received but for the retaliatory
14 practices of DEFENDANT; and,
- 15 B) For all exemplary damages, according to proof, which were sustained as a
16 result of DEFENDANT's conduct.

17
18 Dated: February 14, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

19
20 By: /s/ Nicholas De Blouw

21 Norman B. Blumenthal
22 Nicholas J. De Blouw

23 *Attorneys for Plaintiff*
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: February 14, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: /s/ Nicholas De Blouw

Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

**WRITERS E-MAIL:
Nick@bamlawca.com**

**WRITERS EXT:
1004**

November 27, 2023
CA3137

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Jetblue Airways Corporation
Certified Mail #9589071052701316528025
CSC - LAWYERS INCORPORATING
SERVICE
BECKY DEGEORGE
2710 GATEWAY OAKS DRIVE, Suite
150N
SACRAMENTO, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Jetblue Airways Corporation (“Defendant”) in California, including any employees staffed with Jetblue Airways Corporation by a third party, and classified as non-exempt employees, during the time period of November 27, 2022 until a date as determined by the Court. Our offices represent Plaintiff Stephanie La Grow (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Jetblue Airways Corporation. Plaintiff has been employed by Defendant in California since September of 2018. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and

Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw
Nicholas J. De Blouw, Esq.