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Attorneys for Plaintiff Gregory Horowitz, on behalf of himself
and all others similarly situated**SUPERIOR COURT OF CALIFORNIA****COUNTY OF ALAMEDA**GREGORY HOROWITZ, on behalf of
himself and all others similarly situated

Plaintiff,

v.

SKYWEST AIRLINES, INC., a Utah
Corporation; and DOES 1 Through 10,
inclusive,

Defendants.

Case No. RG21092756

**FIRST AMENDED CLASS ACTION and
PRIVATE ATTORNEYS GENERAL ACT
("PAGA") COMPLAINT**

1. **FAILURE TO PAY MINIMUM WAGES**
(Labor Code §§ 1194 and 1194.2, and
IWC Wage Order 9-2001, § 4)
2. **FAILURE TO PAY OVERTIME WAGES**
(Lab. Code §§ 510 and 1194, and IWC
Wage Order 9-2001, § 3)
3. **FAILURE TO PROVIDE MEAL
PERIODS** (Lab. Code §§ 226.7 and 512,
and IWC Wage Order 9-2001, § 11)
4. **FAILURE TO AUTHORIZE OR
PERMIT PAID REST PERIODS** (Lab.
Code § 226.7 and IWC Wage Order 9-
2001, § 12)

FILED
ALAMEDA COUNTY**MAY 10 2021****CLERK OF THE SUPERIOR COURT**By *Margaret J. [Signature]* Deputy

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5. FAILURE TO REIMBURSE BUSINESS EXPENSES (Lab. Code § 2802)
6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Lab. Code §§ 226 and 1174)
7. FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION (Lab. Code §§ 201-203)
8. VIOLATIONS OF THE UNFAIR COMPETITION LAW (Bus. & Prof. Code §§ 17200, *et seq.*)
9. PAGA CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM AND OVERTIME WAGES
10. PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS
11. PAGA CIVIL PENALTIES FOR FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS
12. PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES
13. PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS
14. PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE UPON SEPARATION OF EMPLOYMENT

DEMAND FOR JURY TRIAL

1. Plaintiff GREGORY HOROWITZ (“Plaintiff”) brings this action on behalf of himself and a proposed Class of all California-based Pilots against Defendant SKYWEST AIRLINES, INC. (“SkyWest”) and Does 1 through 10 (collectively, “Defendants”) for unlawful employment policies that denied, and continue to deny, proposed Class Members the wages and benefits to which they are lawfully entitled.

2. Plaintiff also brings this action as a representative action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, against Defendants to recover civil penalties arising out of Defendants’ failure to: pay minimum and overtime wages; provide meal periods; authorize and permit paid rest periods; reimburse business-related expenses; provide accurate itemized wage statements; and timely pay wages due upon separation of employment.

3. Plaintiff gave written notice of these claims to the California Labor and Workforce Development Agency (“LWDA”) on March 4, 2021 per Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of his notice. A true and correct copy of Plaintiff’s Notice is attached as **Exhibit 1**. Plaintiff seeks civil penalties under the PAGA as a representative of the State of California and has standing as an aggrieved non-exempt employee. Plaintiff seeks to represent all current and former non-exempt employees of Defendants who suffered one or more of the violations alleged (“aggrieved employees”) during the “PAGA Period” (one year and 65 days before this complaint filing date until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

4. Plaintiff, on behalf of himself and all Class Members, brings this action pursuant to Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1194.2, and 2802; Industrial Welfare Commission (“IWC”) Wage Order 9-2001 sections 3, 4, 11, and 12; and Business and Professions Code sections 17200 *et seq.*, seeking unpaid wages, liquidated damages, equitable relief, prejudgment interest, reasonable attorneys’ fees and costs, and any other relief this Court deems proper.

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PARTIES

5. Plaintiff GREGORY HOROWITZ is a resident of Los Angeles, California. Plaintiff worked as a Pilot for Defendant while based at Los Angeles International Airport ("LAX") for over four years until his employment ended in August of 2020.

6. Defendant SKYWEST AIRLINES, INC. ("SkyWest") is a corporation registered in Utah and doing business throughout the State of California. SkyWest operates through partnerships with United Airlines, Delta Air Lines, American Airlines, and Alaska Airlines and carried more than 21 million passengers in 2020. SkyWest has a fleet of over 450 aircrafts which carry passengers to 236 destinations throughout North America.

7. Does 1 through 10, inclusive, are persons or entities whose true names and identities are now unknown to Plaintiff, and who are sued by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when known. Plaintiff is informed and believes each of Doe defendant is the agent, representative, or parent or subsidiary corporation of SkyWest, is responsible in some manner for the occurrences, events, transactions, and injuries alleged, and that harm suffered by Plaintiff and the proposed Class was proximately caused by them in addition to SkyWest.

8. Plaintiff is informed and believes and alleges each of the Defendants, including the Doe defendants, acted in concert with each and every other Defendant, intended to and did participate in the events, acts, practices, and courses of conduct alleged, and was a proximate cause of damage and injury to Plaintiff.

9. At all relevant times each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

JURISDICTION AND VENUE

10. Venue as to each Defendant is proper in this judicial district, as Skywest is a foreign corporation that has not designated a principal place of business in California. Code of Civil Procedure § 395.5.

11. No federal jurisdiction exists to remove this action to federal court. No federal question is at issue, as the issues are based solely on California law, including the Labor Code,

1 IWC Wage Orders, Code of Civil Procedure, and Business and Professions Code. No diversity
2 jurisdiction exists sufficient for removal to federal court under 28. U.S.C. sections 1332(a) or
3 1332(d) because Class Members' individual amounts in controversy do not exceed \$75,000 and
4 the class amount in controversy does not exceed \$5,000,000.

5 12. Further, as a representative action under the PAGA, the matter is not subject to
6 removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to
7 federal jurisdiction.

8 **CLASS ACTION ALLEGATIONS**

9 13. Plaintiff seeks to represent Classes defined as:

10 **Plaintiff Class**

11 All Defendants' California-based Pilots, at any time during the four years
12 before the filing of this Complaint through the date of trial.

13 14. Plaintiff seeks to certify a subclass of employees defined as:

14 **Plaintiff "Minimum Wages Subclass"**

15 All Class Members who performed work or remained under Defendants'
16 control before clocking in for a duty period or after clocking out from a
17 duty period.

18 15. Plaintiff seeks to certify a subclass of employees defined as:

19 **Plaintiff "Overtime Wages Subclass"**

20 All Plaintiff Class Members who worked in excess of eight (8) hours in
21 one day or forty (40) hours in one week and were not paid all overtime
22 wages.

23 16. Plaintiff seeks to certify a subclass of employees defined as:

24 **Plaintiff "First Meal Period Subclass"**

25 All Plaintiff Class Members who worked one or more period(s) in excess
26 of five (5) hours.

27 17. Plaintiff seeks to certify a subclass of employees defined as:

28 **Plaintiff "Second Meal Period Subclass"**

All Plaintiff Class Members who worked one or more period(s) in excess
of ten (10) hours.

18. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff "Rest Period Subclass"

All Plaintiff Class Members who worked one or more period(s) in excess
of three and one-half (3.5) hours.

19. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff "Expense Reimbursement Subclass"

All Plaintiff Class Members who incurred business-related expenses, including but not limited to cell phone expenses.

20. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff "Wage Statement Subclass"

All Plaintiff Class Members who received one or more itemized wage statements during the one year preceding the filing of this Complaint.

21. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff "Waiting Time Subclass"

All Plaintiff Class Members whose employment ended at any time during the three years preceding the filing of this Complaint.

22. Plaintiff seeks to certify a subclass of employees defined as:

Plaintiff "UCL Subclass"

All Plaintiff Class and Subclass Members who were subject to Defendants' unlawful or unfair business acts or practices.

23. Plaintiff reserves the right to amend or modify the Class description, including by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

24. **Commonality**: This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

25. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

26. **Numerosity**: The potential members of the Class and Subclasses as defined are so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit the parties and this Court. The number of members of the Class and Subclasses is unknown to Plaintiff, but is estimated to be in excess of 100 individuals. The number and identity of members can be readily ascertained using Defendants' records.

27. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses because all members of the Class and Subclasses sustained similar injuries and damages caused by Defendants' common course of conduct in violation of law.

1 28. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses,
2 will fairly protect the interests of the Class and Subclass members and has no interests
3 antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent,
4 skilled, and experienced in litigating large employment law class actions.

5 29. **Superiority**: A class action is superior to other available means for the fair and
6 efficient adjudication of this controversy. Individual joinder of all Class Members is not
7 practicable, and questions of law and fact common to the Class predominate over questions
8 affecting only individual Class Members. A Class action will allow those similarly situated to
9 litigate their claims in the most efficient and economical manner for the parties and the judicial
10 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of
11 this action that precludes its maintenance as a class action.

12 30. The predominating common questions of law and fact include:

- 13 a. Whether Defendants have a policy and practice of failing to pay minimum
14 wages or other compensation for work performed outside of duty hours;
- 15 b. Whether Defendants have a policy or practice of failing to fully pay
16 overtime compensation for hours worked in excess of eight per day or forty
17 per week;
- 18 c. Whether Defendants have a policy or practice of failing to pay overtime
19 compensation at the correct overtime rate;
- 20 d. Whether Defendants have a policy or practice of failing to provide
21 compliant meal periods;
- 22 e. Whether Defendants have a policy or practice of failing to authorize or
23 permit compliant rest periods;
- 24 f. Whether Defendants have a policy or practice of failing to reimburse for
25 necessary business-related expenses, including cell phone expenses;
- 26 g. Whether Defendants have a policy or practice of failing to provide accurate
27 itemized wage statements;
- 28 h. Whether the Plaintiff Class and Waiting Time Subclass Members are

entitled to waiting time penalties under Section 203;

i. Whether Defendants violated Sections 17200, *et seq.* of the Business and Professions Code; and

j. Whether Plaintiff Class and Subclasses are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

FACTUAL ALLEGATIONS

31. At all relevant times, Plaintiff and each member of the Plaintiff Class were employed by Defendants in California, and Defendants conducted business in California.

32. Plaintiff's and other Class Members and aggrieved employees' compensated work time was denominated "duty time," defined by Defendants as "[t]he time beginning at the report for duty time and terminating at the release from duty time." Duty time began when Plaintiff and Class Members and aggrieved employees arrived at the airport and clocked in using their personal cell phones and ended when Plaintiff and Class Members and aggrieved employees left the airport and clocked out using their personal cell phones. Within Plaintiff's duty time there were "block times" which started when the airplane's brakes released and pushback began and ended when the airplane's parking break was set and the doors opened for deplaning. Defendants compensated Plaintiff and Class Members and aggrieved employees for block time at their hourly rate.

33. Defendants had a consistent policy and practice of failing to pay minimum wages for all hours worked before and after duty time periods. Defendants paid no compensation to Plaintiff and other Class Members and aggrieved employees for time worked before they clocked in for duty time nor after they clocked out from duty time. Work tasks which Plaintiff and other Class Members and aggrieved employees performed before and after duty times without being compensated include but are not limited to: bidding on flights and reserve times; making and receiving phone calls to and from maintenance, dispatch, and other crew members regarding plane issues, delays, transportation, and other work-related matters; writing incident reports about disruptive passengers and medical emergencies; and submitting to random drug testing.

1 34. Defendants had a consistent policy and practice of refusing to pay properly-
2 calculated overtime wages when Plaintiff or other Class Members and aggrieved employees
3 worked in excess of eight (8) hours in a day or forty (40) hours in a week. Defendants paid
4 "overtime" wages only for time worked during certain categories of flights, including flights
5 scheduled on a pilot's scheduled day off, flights piloted before or after scheduled duty times,
6 and flights for which pilots volunteered when the flight was still unpicked 120 hours before the
7 report for duty time. Other than for these flight categories, Plaintiff and other Class Members
8 and aggrieved employees were paid only their straight hourly wage for hours worked in excess
9 of eight in one day or forty in one week. When Defendants did pay overtime wages, they were
10 incorrectly calculated because they did not incorporate non-discretionary bonuses and other
11 applicable forms of compensation. Plaintiff and Class Members and aggrieved employees
12 earned non-discretionary bonuses through a "Total Rewards" program. These bonuses
13 included: Operational Performance Rewards, paid quarterly to Plaintiff and Class Members and
14 aggrieved employees who worked 12 consecutive months by the last day of the quarter and met
15 monthly goals regarding on-time departures and arrivals, "adjusted completion," and customer
16 experience; Financial Performance Rewards, paid quarterly to Plaintiff and Class Members and
17 aggrieved employees who worked two consecutive years by the last day of the quarter and met
18 monthly goals regarding on-time departures and arrivals, "adjusted completion," and customer
19 experience; and Pilot Bonuses. These non-discretionary bonuses were not factored into Plaintiff
20 and Class Members and aggrieved employees' regular rate of pay for the purpose of calculating
21 overtime. Defendants' policy and practice of not paying overtime wages correctly was and is
22 willful and deliberate.

23 35. Defendants had a consistent policy which did not provide Plaintiff and Class
24 Members and aggrieved employees with duty-free meal periods of at least thirty (30) minutes
25 for shifts of five hours or more, which began before the end of the fifth hour of work, and failed
26 to pay such employees one (1) hour of pay at their regular rate of compensation for each
27 workday a meal period was not authorized or permitted, as required by California wage and
28 hour laws. Plaintiff and other members of the Plaintiff Class regularly worked shifts of more

1 than 10 hours per day and were not provided with a second off-duty meal period of 30 minutes
2 for each shift of more than 10 hours, which began before the end of the tenth hour of work. On
3 information and belief, Plaintiff and other Class Members and aggrieved employees did not
4 waive their right to receive meal periods, including their right to a second meal period on
5 eligible workdays. Defendants did not provide Plaintiff and other Class Members and
6 aggrieved employees with any written meal period policy.

7 36. Defendants had a consistent policy which did not authorize or permit Plaintiff
8 and Class Members and aggrieved employees to receive duty-free rest periods of at least ten
9 (10) minutes per four (4) hours, or major fraction, worked, and failed to pay such employees
10 one (1) hour of pay at their regular rate of compensation for each workday a rest period was not
11 authorized or permitted, as required by California wage and hour laws. Furthermore, Plaintiff
12 and Class Members and aggrieved employees regularly worked shifts of more than 10 hours
13 per day and were not provided with a third duty-free rest period of 10-minutes for each shifts of
14 more than 10 hours. Defendants did not provide Plaintiff and other Class Members and
15 aggrieved employees with any written rest period policy.

16 37. Defendants had a consistent policy of failing to reimburse Plaintiff and members
17 of the Plaintiff Class for all necessary and reasonable business expenses, including those
18 incurred by the requirement to use personal cell phones for work-related purposes, in violation
19 of California state wage and hour laws. Plaintiff and Class Members and aggrieved employees
20 were required by Defendants to use their personal cell phones regularly to clock in when
21 arriving at the airport; clock out when leaving the airport; and make calls to, and receive calls
22 from, traffic controllers, maintenance crews, and dispatch. Defendants did not provide Plaintiff
23 and Class Members and aggrieved employees with any reimbursement for this necessary and
24 reasonable business-related use of their personal cell phones.

25 38. Defendants knowingly and willfully failed to provide accurate itemized wage
26 statements to Plaintiff and other members of the Plaintiff Class, which did not include, among
27 other things, the total number of hours worked nor the name of the legal entity that is the
28 employer. Additionally, because Defendants failed to compensate Plaintiff and other members

1 of the Plaintiff Class for all hours worked and for any non-compliant meal or rest periods, the
2 itemized wage statements provided by Defendants to Plaintiff and other members of the
3 Plaintiff Class were inaccurate. As a result, the wage statements that Defendants furnished to
4 Plaintiff and other members of the Plaintiff Class were incomplete and inaccurate and fail to
5 comply with the requirements of Labor Code section 226(a).

6 39. Defendants had a consistent policy of failing to pay Plaintiff and members of the
7 Plaintiff Class all wages due upon separation, in violation of California state wage and hour
8 laws. Because Defendants failed to pay all minimum and overtime wages and meal and rest
9 period premiums owed during Plaintiff's and Class Members and aggrieved employees'
10 employment, final wages paid to Plaintiff and Class Members and aggrieved employees were
11 underpaid, as they did not include these amounts.

12 40. Defendants' failure to: pay minimum wages for times worked before and after
13 duty times; pay overtime wages at the correct rate for hours worked in excess of eight in one
14 day or forty in one week; provide compliant meal and rest breaks or compensation in lieu
15 thereof; reimburse necessary business expenses; provide accurate, itemized wage statements;
16 and timely provide payment of wages to Plaintiffs and Class Members and aggrieved
17 employees upon separation all stem from SkyWest's centrally devised and uniformly
18 implemented unlawful and unfair policies and practices.

19 41. Plaintiff, on behalf of himself and Class Members, seeks injunctive relief,
20 restitution, and disgorgement of all benefits obtained by Defendants as a result of violations
21 alleged. Business and Professions Code §§ 17200, *et seq.*

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **Failure to Pay Minimum Wages**

25 **Labor Code §§ 1194 and 1194.2, and IWC Wage Order 9-2001, § 4**
(By Plaintiff and each Member of the Minimum Wages Subclass)

26 42. Plaintiff incorporates the preceding paragraphs of this Complaint.

27 43. By failing to pay at least minimum wages for all hours worked outside of "duty
28 time," Defendants violated Labor Code section 1194 and IWC Wage Order 9-2001.

45. Defendants' unlawful acts deprived Plaintiff, the Plaintiff Class, and the Minimum Wages Subclass of minimum wages in amounts to be determined at trial, and they are entitled to recover these wages, and liquidated damages, interest, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

Labor Code §§ 510 and 1194 and IWC Wage Order 9-2001, § 3

(By Plaintiff and each Member of the Overtime Wages Subclass)

46. Plaintiff incorporates the preceding paragraphs of this Complaint.

47. Defendants failed to pay overtime wages for hours worked in excess of eight (8) in one day or forty (40) in one week. Overtime wages that were paid by Defendants were underpaid because non-discretionary bonuses were not incorporated into the regular rate of pay for the purpose of calculating overtime. By failing to pay overtime wages at the correct rate, Defendants violated Labor Code sections 510 and 1194, and IWC Wage Order 9-2001.

48. Defendants' unlawful acts deprived Plaintiff, the Plaintiff Class, and the Overtime Wages Subclass of overtime wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys' fees, and costs.

THIRD CAUSE OF ACTION

Failure to Provide Required Meal Periods

Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9-2001, § 11

(By Plaintiff and each Member of the First and Second Meal Period Subclasses)

49. Plaintiff incorporates the preceding paragraphs of this Complaint.

50. By failing to: provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work; provide second duty-free meal periods of at least thirty (30) minutes for shifts of ten hours or more, which began before the tenth hour of work; and pay premium wages of one (1) hour of pay at employees' regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated the provisions of Labor Code sections 226.7 and 512, and IWC Wage Order No. 9-2001.

1 51. Defendants' unlawful acts deprived Plaintiff, the Plaintiff Class, and the First
2 and Second Meal Period Subclasses of premium wages in amounts to be determined at trial,
3 and they are entitled to recover these amounts, along with interest, attorneys' fees, and costs.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Provide Required Rest Periods**

6 **Labor Code § 226.7 and IWC Wage Order No. 9-2001, § 12**

7 **(By Plaintiff and each Member of the Rest Period Subclass)**

8 52. Plaintiff incorporates the preceding paragraphs of this Complaint.

9 53. By failing to authorize and permit Plaintiff and Class Members a paid rest
10 period of at least 10 minutes for every four hours or major fraction worked per day, and by
11 failing to provide premium wages at the regular rate of pay when not permitted or authorized,
12 Defendants willfully violated the provisions of Labor Code section 226.7 and IWC Wage Order
13 No. 9-2001.

14 54. Defendants' unlawful acts deprived Plaintiff, the Plaintiff Class, and the Rest
15 Period Subclass of premium wages in amounts to be determined at trial, and they are entitled to
16 recover these amounts, along with interest, attorneys' fees, and costs.

17 **FIFTH CAUSE OF ACTION**

18 **Failure to Reimburse Expenses**

19 **Labor Code § 2802**

20 **(By Plaintiff and each Member of the Expense Reimbursement Subclass)**

21 55. Plaintiff incorporates the preceding paragraphs of this Complaint.

22 56. By failing to reimburse Plaintiff and Class Members for necessary business-
23 related expenses they incurred, including cell phone expenses, Defendants willfully violated the
24 provisions of Labor Code section 2802.

25 57. Defendants' unlawful acts deprived Plaintiff, the Plaintiff Class, and the
26 Expense Reimbursement Subclass Plaintiff seeks to represent of expense reimbursements in
27 amounts to be determined at trial, and they are entitled to recover these amounts, with interest,
28 attorneys' fees, and costs.

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SIXTH CAUSE OF ACTION

**Failure to Provide Accurate Wage Statements
Labor Code §§ 226 and 1174**

(By Plaintiff and each Member of the Wage Statement Subclass)

58. Plaintiff incorporates the preceding paragraphs of this Complaint.

59. All employers must maintain accurate records of each employee's hours of work and meal breaks each workday for a period of at least three (3) years, and provide employees accurate, itemized wage statements showing, among other things, total hours worked and the name of the legal entity employing them. Labor Code §§ 226 and 1174.

60. Defendants knowingly failed to comply with these provisions by, among other things, failing to provide accurate itemized wage statements showing total number of hours worked and the name of the legal entity that is the employer. Because Defendants failed to compensate Plaintiff and members of the Plaintiff Class for all hours worked and for any non-compliant meal or rest periods, the itemized wage statements provided by Defendants to Plaintiff and other members of the Plaintiff Class were inaccurate.

61. Any employee suffering injury due to a willful violation of Labor Code section 226(e) may collect the greater of actual damages or \$50 for the first inadequate pay statement and \$100 for each inadequate statement thereafter. Defendants consistently failed to provide Plaintiff and Class Members with required adequate wage statements. Labor Code § 226.

62. As a consequence of Defendants' knowing and intentional failure to comply with Labor Code section 226(a), Plaintiff and the members of the Wage Statement Subclass are entitled to recover the greater of actual damages or penalties not to exceed \$4,000 for each employee with interest and attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

**Failure to Timely Pay Wages Due at Separation
Labor Code §§ 201-203**

(By Plaintiff and each Member of the Waiting Time Subclass)

63. Plaintiff incorporates the preceding paragraphs of this Complaint.

64. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all

1 compensation due to an employee who quits within 72 hours. Labor Code § 201.

2 65. Defendants had a consistent and uniform policy of willfully failing to timely pay
3 earned wages to former employees. If an employer willfully fails to timely pay such wages the
4 employer must, as a penalty, continue to pay the subject employee's wages until paid or until
5 an action is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

6 66. Members of the Waiting Time Subclass are no longer employed by Defendants.

7 67. Defendants willfully failed to pay Waiting Time Subclass Members the sum due
8 at the time of their termination or within seventy-two (72) hours of their resignation, and failed
9 to pay those sums for thirty (30) days thereafter.

10 **EIGHTH CAUSE OF ACTION**

11 **Violation of the Unfair Competition Law**

12 **Bus. & Prof. Code §§ 17200 *et seq.***

13 **(By Plaintiff and each Member of the UCL Subclass)**

14 68. Plaintiff incorporates the preceding paragraphs of this Complaint.

15 69. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
16 sections 17200, *et seq.*, defines unfair competition to include any "unlawful," "unfair," or
17 "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

18 70. Defendants' conduct as described above constitutes unlawful business practices
19 because Defendants violated: the California Labor Code, including but not limited to sections
20 226.7 (meal and rest), 510 and 1194 (minimum and overtime wages), and 2802 (reimbursement
21 of business expenses); and sections of Wage Order 9-2001.

22 71. Defendants' conduct as described above constitutes unfair business practices
23 because their denial of lawfully earned wages outweighs any utility of such practices.

24 72. As a result of Defendants' unlawful and unfair conduct, Plaintiff and members
25 of the Plaintiff Class suffered injury in fact.

26 73. Plaintiff and members of the Plaintiff Class seek declaratory and injunctive
27 relief, restitution, and other appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203,
28 17204.

74. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and

1 members of the Plaintiff Class are entitled to recover reasonable attorneys' fees, costs, and
2 expenses incurred in bringing this action.

3 75. This cause of action is brought as a cumulative remedy and is intended as an
4 alternative remedy for restitution for Plaintiff, and each Subclass Member, for the four (4) year
5 period before the filing of this Complaint, and as the primary remedy during the fourth year
6 before the filing of this Complaint. Business and Professions Code § 17205.

7 **NINTH CAUSE OF ACTION**

8 **PAGA Civil Penalties for Failure to Pay Minimum and Overtime Wages**
9 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

10 76. Plaintiff incorporates the preceding paragraphs of this Complaint.

11 77. "Notwithstanding any agreement to work for a lesser wage, any employee
12 receiving less than the legal minimum wage or the legal overtime compensation applicable to
13 the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
14 minimum wage or overtime compensation, including interest thereon, reasonable attorney's
15 fees, and costs of suit." Labor Code § 1194(a).

16 78. "[A]ny provision of this code that provides for a civil penalty to be assessed and
17 collected by the Labor and Workforce Development Agency or any of its departments,
18 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an
19 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
20 himself or herself and other current or former employees pursuant to the procedures specified
21 in Section 2699.3." Labor Code § 2699(a).

22 79. "For all provisions of this code except those for which a civil penalty is
23 specifically provided, there is established a civil penalty for a violation of these provisions []
24 (2) If, at the time of the alleged violation, the person employs one or more employees, the civil
25 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
26 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
27 subsequent violation." Labor Code § 2699(f)(2).

28 80. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510,
1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

1 81. Defendants failed to pay minimum and overtime wages during the PAGA
2 Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200
3 for each subsequent violation.

4 82. Defendants' conduct violates the applicable Wage Order(s) by failing to pay
5 minimum wages to employees. Plaintiff will also seek \$50 for the initial pay period an
6 employee was underpaid, and \$100 for each subsequent violation.

7 **TENTH CAUSE OF ACTION**

8 **PAGA Civil Penalties for Failure to Provide Meal Periods**
9 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

10 83. Plaintiff incorporates the preceding paragraphs of this Complaint.

11 84. By failing to provide uninterrupted meal periods of at least 30 minutes for shifts
12 of five hours or more, which began before the end of the fifth hour of work, and a second meal
13 period at least 30 minutes for shifts of ten hours or more, which began before the end of the
14 tenth hour of work, Defendants willfully violated Labor Code sections 226.7 and 512 and the
15 applicable Wage Order(s).

16 85. By failing to pay employees one hour of pay at their regular rate of
17 compensation for each workday a meal period was not provided, Defendants willfully violated
18 Labor Code sections 226.7 and 512, and the applicable Wage Order(s).

19 86. During the PAGA Period, Defendants failed to provide compliant meal periods.
20 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
21 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

22 **ELEVENTH CAUSE OF ACTION**

23 **PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods**
24 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

25 87. Plaintiff incorporates the preceding paragraphs of this Complaint.

26 88. By failing to authorize and permit a rest period of at least 10 minutes for every
27 four (4) hours or major fraction thereof worked per day, Defendants willfully violated
28 provisions of Labor Code section 226.7 and the applicable Wage Order(s).

89. By failing to pay employees one hour of pay at their regular rate of
compensation for each day a compliant rest period was not authorized and permitted,

1 Defendants willfully violated the provisions of Labor Code section 226.7 and the applicable
2 Wage Order(s).

3 90. During the applicable statutory period, Defendants failed to provide rest periods.
4 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
5 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

6 **TWELFTH CAUSE OF ACTION**

7 **PAGA Civil Penalties for Failure to Reimburse Business-Related Expenses**
8 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

9 91. Plaintiff incorporates the preceding paragraphs of this Complaint.

10 92. By failing to reimburse Plaintiff and other aggrieved employees for their
11 business-related expenses, including personal cell phone expenses, Defendants willfully
12 violation Labor Code section 2802.

13 93. During the applicable statutory period, Defendants failed to reimburse business-
14 related expenses. Plaintiff will seek penalties of \$100 for the initial pay period an employee
15 was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

16 **THIRTEENTH CAUSE OF ACTION**

17 **PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements**
18 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

19 94. Plaintiff incorporates the preceding paragraphs of this Complaint.

20 95. Every employer must, semimonthly or at the time of each payment of wages,
21 furnish each of its employees an accurate itemized statement in writing showing, among other
22 things, total hours worked and the name of the legal entity that is the employer. Labor Code §
23 226(a).

24 96. Defendants intentionally and willfully violated Section 226 by providing wage
25 statements to employees that did not accurately reflect all required information, including but
26 not limited to total hours worked and the name of the legal entity that is the employer.

27 97. Labor Code section 226.3 provides for civil penalties for violations of Section
28 226. Plaintiff seeks civil penalties of \$250 for the initial violation and \$1,000 for each
subsequent violation. Labor Code § 226.3.

///

FOURTEENTH CAUSE OF ACTION
**PAGA Civil Penalties for Failure to Timely Pay Wages Due Upon Separation of
Employment**
(By Plaintiff and Aggrieved Employees against Each Defendant)

98. Plaintiff incorporates the preceding paragraphs of this Complaint.

99. Labor Code sections 201-202 require employers to pay wages earned by employees within certain times. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' former employees. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee's wages for 30 days, or until back wages are paid in full. Labor Code section 203.

100. Defendants failed to pay Plaintiff and other aggrieved employees all final wages, including minimum and overtime wages, and meal and rest period premium wages, as required by Labor Code sections 201-202.

101. Defendants failed to pay Plaintiff and other aggrieved employees penalties due them based on Defendants' failure to pay all final wages in a timely manner as required by Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief on behalf of himself and the Plaintiff Class against Defendants:

1. Certification of this action as a class action and appointment of Plaintiff and Plaintiff's counsel to represent the Plaintiff Class;
2. Provision of class notice to members of the Plaintiff Class as defined above;
3. A declaratory judgment that Defendants knowingly and intentionally violated:
 - a. California Labor Code sections 510 and 1194 by failing to pay minimum and overtime wages;
 - b. California Labor Code sections 226.7 and 512 by failing to provide meal and rest periods;
 - c. California Labor Code section 2802 by failing to reimburse necessary

business-related expenses;

d. California Labor Code section 226 by failing to provide accurate, itemized wage statements;

e. California Labor Code section 203 by failing to pay waiting time penalties; and

f. California Business and Professions Code sections 17200, *et seq.* by engaging in unlawful or unfair business practices.

4. That Defendants be permanently enjoined from engaging in the unlawful or unfair acts and practices alleged;

5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff and members of the Plaintiff Class, in an amount according to proof, pursuant to California Business and Professions Code section 17203;

6. That this action be maintained as a Representative Action under the PAGA, and Plaintiff and his counsel be provided with all enforcement capability as if the action were brought by the California Division of Labor Standards Enforcement;

7. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid minimum and overtime wages pursuant to Labor Code section 1194, according to proof;

8. For recovery of civil penalties permitted by Labor Code section 2699, for unpaid meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

9. For recovery of civil penalties permitted by Labor Code section 2699 for unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

10. For recovery of all civil penalties as permitted by Labor Code section 2699, for failing to reimburse all necessary business-related expenses incurred, pursuant to Labor Code section 2802;

11. For recovery of civil penalties permitted by Labor Code section 2699, for inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;

12. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for

1 failing to timely pay all final wages due pursuant to Labor Code sections 201-202;

2 13. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for
3 failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;

4 14. For the Plaintiff to be recognized by the Court as serving as a Representative of
5 the LWDA, that he be deemed an "aggrieved employee," and that he be awarded some form of
6 enhanced compensation for bringing this action should he prevail and provide benefit to the
7 State of California or other "aggrieved employees," subject to the Court's discretion

8 15. Compensatory damages according to proof;

9 16. Statutory damages as provided under the Labor Code;

10 17. Liquidated damages as provided under the Labor Code;

11 18. Pre-judgment interest on all sums collected;

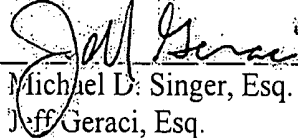
12 19. Reasonable attorneys' fees and costs, pursuant to California Code of Civil
13 Procedure section 1021.5, and the California Labor Code, or other applicable law;

14 20. Costs of suit; and,

15 21. Such other relief as the Court may deem appropriate.

16 Dated: May 10, 2021

COHELAN KHOURY & SINGER

17 By: 
18 Michael D. Singer, Esq.
19 Jeff Geraci, Esq.
20 Rosemary C. Khoury, Esq.

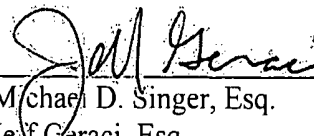
Attorneys for Plaintiff Gregory Horowitz, on
behalf of himself and all others similarly situated

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff demands a jury trial of all claims triable as of right by jury.

23 Dated: May 10, 2021

COHELAN KHOURY & SINGER

24 By: 
25 Michael D. Singer, Esq.
26 Jeff Geraci, Esq.
27 Rosemary C. Khoury, Esq.

28 Attorneys for Plaintiff Gregory Horowitz, on
behalf of himself and all others similarly situated

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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J. JASON HILL†
KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

(† Also admitted in Illinois)

March 4, 2021

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified U.S. Mail with Return Receipt

SkyWest Airlines, Inc.
444 S. River Rd.
St. George, UT 84790

SkyWest Airlines, Inc.
c/o Corporate Creations Network, Inc.
4640 Admiralty Way, 5th Floor
Marina Del Rey, CA 90292

Re: Notice by Gregory Horowitz, on behalf of himself and all similarly-aggrieved California employees of SkyWest Airlines, Inc., as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator:

Gregory Horowitz ("Claimant") intends to bring a Private Attorneys General Act ("PAGA") action against SkyWest Airlines, Inc. ("SkyWest") on behalf of all other aggrieved employees. In this notice, "aggrieved employees" means all non-exempt California employees subject to the policies and practices described below, including, but not limited to, pilots.

Factual Statement

Gregory Horowitz was a commercial airline pilot for SkyWest based at Los Angeles International Airport ("LAX") for over four years until his employment ended in August of 2020. Claimant's work time was denominated "duty time," defined by SkyWest as "[t]he time beginning at the report for duty time and terminating at the release from duty time." Duty time began when Claimant arrived at the airport and clocked in using his cell phone and ended when Claimant left the airport and clocked out using his cell phone. Within Claimant's duty time there were "block times," essentially his actual flight times. Block time began when the brakes of the airplane released and pushback began and ended when the airplane's parking break was set and the doors opened for deplaning.

In 2019, as a "First Officer ERJ," Claimant's block time was compensated at roughly \$60 per hour. In 2020, as a "Captain ERJ," Claimant's block time was compensated at roughly \$110 per hour. Claimant also received reserve pay when "on-call." All other time under SkyWest's control, including time going through TSA security checks, was not compensated.

Claimant was paid overtime when his actual block time exceeded his scheduled block time. For example, if Claimant was scheduled for six hours of block time, but his block time was actually seven hours due to flight delays, circling, or bad weather conditions, he would be paid one hour of overtime. Claimant's overtime was paid at less than one and one-half times his base hourly rate for block time. In addition, Claimant and other aggrieved employees were not paid overtime based on all duty hours worked in excess of eight per day or forty per week. Although Claimant and other aggrieved employees received non-discretionary bonuses, these were not included in the regular rate when calculating overtime pay.

SkyWest did not provide off-duty meal periods of 30 minutes before the end of the fifth hour of Claimant's and other aggrieved employees' shifts. For example, Claimant often had to rush from one scheduled flight to the next. Claimant could usually eat something quickly between flights, but could not take a 30-minute meal break. It was also not possible for Claimant and aggrieved employees to be relieved of all duties for full 10-minute rest periods.

Claimant was required to use his personal cell phone regularly to: clock in when arriving at the airport; clock out when leaving the airport; and, make and receive calls from air traffic controllers, maintenance crews, and dispatch. Claimant and aggrieved employees were not reimbursed for cell phone expenses.

Wage statements issued to Claimant and aggrieved employees by SkyWest did not display the correct number of hours worked, all hourly rates in effect each pay period and the number of hours worked at each rate, nor the name of the legal entity that was the employer.

Summarizing the claims on behalf of Mr. Horowitz and all other aggrieved employees of SkyWest, SkyWest failed to:

1. Pay at least minimum wages for all hours worked;
2. Pay overtime premium wages for all hours worked in excess of eight hours per day or forty hours per week;
3. Pay the correct overtime rate for all overtime hours worked;
4. Provide meal periods;
5. Authorize and permit rest periods;
6. Reimburse for necessary work-related cell phone expenses;
7. Provide compliant wage statements; and
8. Timely pay all wages owed at separation from employment.

Labor Code §§ 218.5, 510, and 1194 (Minimum, Regular, and Overtime Wages)

Labor Code sections 218.5, 510, and 1194 require employers to pay at least minimum wage for all hours worked, overtime wages for hours worked over eight per day or forty per week, and double time wages for hours over twelve per day. Overtime wages must be paid at

CA Labor & Workforce Development Agency
SkyWest Airlines, Inc.
Re: Gregory Horowitz
March 4, 2021
Page 3

one-and-one half times the employees' regular rate, which must incorporate non-discretionary bonuses.

Because of SkyWest's policies and practices, Claimant and other aggrieved employees were not paid wages for hours worked outside of block time and were not paid overtime wages at one and one-half times the regular rates of pay, as set forth above.

Labor Code §§ 512 and 226.7 (Meal and Rest Periods and Premium Wages)

Employers must provide employees a 30-minute, uninterrupted meal period "after no more than five hours of work," and "a second meal period after no more than 10 hours work." *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1049 (2012). If meal breaks are late, missed, or short, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7. Likewise, employers must authorize and permit a 10-minute, uninterrupted rest period for every 4 hours, or major fraction thereof, that an employee works; if the rest period is too short, interrupted, or not authorized or permitted, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7.

Because of SkyWest's policies and practices, Claimant and other aggrieved employees did not receive compliant meal and rest periods, including second meal periods and third rest periods where applicable. Premium wages were not paid for non-compliant breaks.

Labor Code § 2802 (Business Expense Reimbursement)

An employer must reimburse its employees for necessary business-related expenses. Labor Code § 2802. SkyWest had a policy and practice not to reimburse Claimant and other aggrieved employees for necessary use of their personal cell phones for work.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, "total hours worked by the employee," "the name and address of the legal entity that is the employer," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Labor Code §§ 226(a)(2), (8), (9).

SkyWest had a policy and practice to provide wage statements that did not show the correct number of hours worked, all hourly rates in effect each pay period and the number of hours worked at each rate, nor the name of the legal entity that is the employer.

Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Labor Code § 201. If an employer willfully fails to timely pay all final wages, the wages continue at the same rate for up to 30 days, until paid.

CA Labor & Workforce Development Agency
SkyWest Airlines, Inc.
Re: Gregory Horowitz
March 4, 2021
Page 4

As a result of its failure to pay all wages earned described above, SkyWest failed to pay all final wages due to Claimant and other aggrieved employees and violated Sections 201-203.

Conclusion

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above against SkyWest. If the LWDA does not pursue enforcement, Mr. Horowitz will pursue claims for statutory penalties and seek all remedies available for SkyWest's violations of the Labor Code and applicable Industrial Welfare Commission Wage Order, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER


Jeff Geraci, Esq.

cc (via email only):
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Glendale, CA 91205
Emil@DavtyanLaw.com