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A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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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

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.

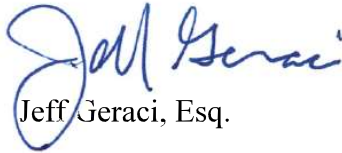
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As a result of its failure to pay all wages earned described above, SkyWest failed to pay all final wages due to Claimant and other aggrieved employees and violated Sections 201-203.

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.

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