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12 United Airlines, Inc.

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15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17  
18 ELLA BROWN, an individual, on  
behalf of herself and on behalf of all  
19 persons similarly situated,

20 Plaintiff,

21 v.

22 UNITED AIRLINES, INC., a  
Corporation; and DOES 1 through  
23 50, inclusive,

24 Defendants.

Case No. CV '19CV537 MMAJLB

**NOTICE OF REMOVAL OF  
DEFENDANT UNITED AIRLINES,  
INC.**

(28 U.S.C. §§ 1332(d), 1441(a))

(San Diego County Superior Court Case  
No. 37-2019-00008533-CU-OE-CTL)

1 **TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT**  
2 **COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA AND TO**  
3 **PLAINTIFF ELLA BROWN AND PLAINTIFF’S ATTORNEYS OF**  
4 **RECORD:**

5 Pursuant to 28 U.S.C. §§ 1332(d), 1441(1) and 1446, Defendant United  
6 Airlines, Inc. (“United”) hereby files this Notice of Removal, removing this action  
7 brought by Plaintiff Ella Brown (“Plaintiff”) from the Superior Court of the State of  
8 California, County of San Diego, where the action is currently pending, to this  
9 Court pursuant to 28 U.S.C. § 1332(d), as amended by the Class Action Fairness  
10 Act of 2005. United states the following grounds for removal:

11 **PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL**

12 1. On February 19, 2019, United received a Summons and Complaint  
13 that had been filed on February 14, 2019, a true and correct copy of which is  
14 attached hereto collectively as **Exhibit A**. The action was brought as a putative  
15 class action in the Superior Court of the State of California, County of San Diego,  
16 styled and captioned exactly as above, and assigned Case No. 37-2019-00008533-  
17 CU-OE-CTL. On March 19, 2019, United filed an Answer to the Complaint in the  
18 Superior Court of the State of California, County of San Diego, a copy of which is  
19 attached hereto as **Exhibit B**. No other process, pleadings or orders have been filed  
20 and served in this action, and no other defendant has been named or served.

21 2. The Complaint asserts six causes of action, predicated on alleged  
22 violations of California’s minimum wage, overtime, meal and rest break, and  
23 recordkeeping laws. Plaintiff seeks to bring her first claim for violation of  
24 California’s Unfair Competition Law, California Business & Professions Code §  
25 17200 *et seq.*, on behalf of a putative “California Class” defined as “all individuals  
26 who are or previously were employed by Defendant in California and classified as  
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1 non-exempt employees.” (Ex. A ¶ 20.)<sup>1</sup> Plaintiff seeks to bring her second through  
2 sixth claims for alleged violation of California minimum wage law, overtime law,  
3 meal break law, rest break law, and wage statement law on behalf of a putative  
4 “California Labor Sub-Class” defined as “all members of the California Class  
5 classified as non-exempt employees.” (Ex. A. ¶ 32.)<sup>2</sup>

6 3. In the First Cause of Action, Plaintiff alleges that United engaged in  
7 unfair business practices by engaging in “the conduct alleged herein.” (Compl. ¶  
8 45.) Plaintiff seeks for herself and for every member of the California Class one  
9 hour of pay for each workday in which an off-duty meal and/or rest period was not  
10 timely provided. (*Id.* ¶¶ 50, 51.) Plaintiff also seeks restitution of all money  
11 acquired by United as a result of these allegedly unfair practices according to  
12 California Business & Professions Code § 17200 *et seq.*, as well as a declaration  
13 that United’s practices are unlawful. (*Id.* ¶¶ 54, 55.)

14 4. In the Second Cause of Action, Plaintiff alleges that United failed to  
15 pay Plaintiff and the putative class members of the California Labor Sub-Class  
16 minimum wage in accordance with California Labor Code §§ 1194, 1197, and  
17 1197.1. (Compl. ¶¶ 60, 61.) Plaintiff also alleges that she and the putative class  
18 members of the California Labor Sub-Class were not timely paid their wages in  
19 accordance with California Labor Code §§ 201, 202, and 203. (*Id.* ¶¶ 62, 70.)  
20 Plaintiff seeks recovery of all unpaid wages, interest, statutory costs, and statutory  
21 penalties. (*Id.* ¶ 70.)

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22 <sup>1</sup> Plaintiff excludes from this definition “all persons that are or were employed by  
23 Defendant in the position of flight attendant (the “California Class”) at any time  
24 during the period beginning on the date four (4) years prior to the filing of this  
25 Complaint and ending on the date as determined by the Court (the “California Class  
26 Period”).” (Ex. A. ¶ 20.)

26 <sup>2</sup> Plaintiff also excludes from this definition “all persons that are or were employed  
27 by Defendant in the position of Flight Attendant (the “California Labor Sub-Class”) at  
28 any time during the period beginning on the date three (3) years prior to the filing  
of the complaint and ending on the date as determined by the Court (the “California  
Labor Sub-Class Period”) pursuant to Cal. Code of Civ. Proc. § 382.” (Ex. A. ¶  
32.)

1           5.       In the Third Cause of Action, Plaintiff alleges that United failed to pay  
2 Plaintiff and the putative members of the California Labor Sub-Class overtime  
3 wages in accordance with California Labor Code § 510, 1194, and 1998. (Compl.  
4 ¶¶ 74, 75.) Plaintiff also alleges that United failed to pay overtime wages in a  
5 timely manner, and thus violated California Labor Code § 204. (*Id.* ¶ 73.) Plaintiff  
6 seeks recovery of all unpaid overtime wages, interest, statutory costs, and statutory  
7 penalties. (*Id.* ¶ 85.)

8           6.       In the Fourth Cause of Action, Plaintiff alleges that United failed to  
9 provide Plaintiff and the putative members of the California Labor Sub-Class off-  
10 duty meal periods in accordance with California Labor Code §§ 226.7 and 512.  
11 (Compl. ¶¶ 88, 89.) Plaintiff seeks all wages earned and due, interest, penalties,  
12 and costs. (*Id.* ¶ 90.)

13           7.       In the Fifth Cause of Action, Plaintiff alleges that United failed to  
14 provide Plaintiff and the putative members of the California Labor Sub-Class off-  
15 duty rest periods in accordance with California Labor Code §§ 226.7 and 512.  
16 (Compl. ¶¶ 88, 89.) Plaintiff seeks all wages earned and due, interest, penalties,  
17 and costs. (*Id.* ¶ 94.)

18           8.       In the Sixth Cause of Action, Plaintiff alleges that United failed to  
19 provide accurate itemized wage statements to Plaintiff and the putative class  
20 members of the California Labor Sub-Class. (Compl. ¶ 97.) Plaintiff seeks  
21 penalties pursuant to Labor Code § 226, attorney's fees, and costs. (*Id.* ¶ 98.)

22           9.       This Notice of Removal has been filed within thirty (30) days of  
23 service of United, and, as no other defendant has been named or served, the  
24 requirement of 28 U.S.C. § 1446(b) requiring removal within thirty (30) days of  
25 service of the first defendant has been satisfied. Therefore, this Notice of Removal  
26 has been timely filed.

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**BASIS FOR REMOVAL: CLASS ACTION FAIRNESS ACT OF 2005**  
**“CAFA”**

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), which provides that the United States District Courts have original jurisdiction over any class action: (i) involving a plaintiff class of 100 or more members, (ii) where at least one member of the plaintiff class is a citizen of a State different from any defendant, and (iii) in which the matter in controversy exceeds (in the aggregate) the sum or value of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2)(A) & (5)(B); *see also Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014) (explaining that “CAFA’s provisions should be read broadly, with a strong preference that interstate class actions should be heard in federal court if properly removed by any defendant.” (internal quotation marks omitted)).<sup>3</sup>

11. These three conditions are satisfied here. First, Plaintiff filed this action as a “class action” within the meaning of 28 U.S.C. § 1332(d)(1)(b) because Plaintiff pleads that this civil action should be considered a class action under California law. (Compl. ¶¶ 20, 32.) According to United’s records, there are approximately 2,182 ramp agents currently working for United in California. (Declaration of Dorota Karpierz i/s/o Notice of Removal, dated March 19, 2019 (“Karpierz Decl.”) ¶ 3.) The requirement that the class consist of at least 100 members is therefore satisfied.

12. Second, Plaintiff is a citizen of the state of California. (*Id.* ¶ 2.) United is incorporated in the State of Delaware, with its principal place of business in Chicago, Illinois, and is therefore for removal purposes a citizen of the State of Delaware and of the State of Illinois. *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-

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<sup>3</sup> United does not waive, and expressly reserves, all arguments that this matter is improper for both class certification and as a non-class representative action.

1 93 (2010); Karpierz Decl. ¶ 5. Thus, Plaintiff is a citizen of a state different from  
 2 United within the meaning of 28 U.S.C. § 1332(d)(2)(A).

3 13. Third, the claims asserted by the plaintiff class, aggregated as required  
 4 by 28 U.S.C. § 1332(d)(2), exceed the necessary sum of \$5,000,000 “in  
 5 controversy” within the meaning of 28 U.S.C. § 1332(d)(2). Although United  
 6 denies that Plaintiff and/or any putative class member is entitled to any relief based  
 7 on the allegations in the Complaint, given the size of the proposed class, the breadth  
 8 of the claims alleged and relief sought, and the specific allegations in the  
 9 Complaint, the amount put “in controversy” by this litigation is in excess of  
 10 \$10,000,000, far exceeding the threshold requirement of \$5,000,000<sup>4</sup>:

- 11 a. Plaintiff’s Fourth and Fifth Causes of Action allege that United  
 12 “often” required employees to work through their meal periods  
 13 and “periodically” denied their rest periods, Compl. ¶¶ 88, 92,  
 14 and therefore she and the putative class members are entitled to  
 15 missed meal and rest period premiums pursuant to Labor Code §  
 16 226.7 going back four years to February 14, 2015.
- 17 b. There are approximately 2,182 individuals currently working for  
 18 United as ramp agents in California. (Karpierz Decl. ¶ 3.)  
 19 According to the applicable collective bargaining agreement, the  
 20 current lowest hourly rate for ramp agents is \$14.38 per hour.  
 21 (*Id.* ¶ 4.) Labor Code § 226.7 provides that if an employer fails  
 22 to provide a meal or rest period in accordance with the law, “the

23  
 24 <sup>4</sup> Although Plaintiff alleges that the amount in controversy is under five million  
 25 dollars, Compl. ¶ 4, this Court is not bound to plaintiff’s allegation. *See Sanders v.*  
 26 *Old Dominion Freight Line, Inc.*, 2018 WL 1193836, at \*4-6 (S.D. Cal. Mar. 8,  
 27 2018) (finding CAFA amount in controversy satisfied even though plaintiff alleged  
 28 that the amount in controversy was less than five million dollars); *see also*  
*Rodriguez v. At&T Mobility Servs. LLC*, 728 F.3d 975, 977-78 (9th Cir. 2013) (“A  
 defendant seeking removal of a putative class action must demonstrate, by a  
 preponderance of evidence, that the aggregate amount in controversy exceeds the  
 jurisdictional minimum.”).

1 employer shall pay the employee one additional hour of pay at  
 2 the employee’s regular rate of compensation for each workday  
 3 that the meal or rest or recovery period is not provided.” Cal.  
 4 Lab. Code § 226.7(c).

5 c. Reducing the number of putative class members by  
 6 approximately 50% (1,091) to account for attrition, and  
 7 assuming each class member was paid at \$14.38 per hour and  
 8 missed one meal and one rest break each week for the 4 years  
 9 (or 208 weeks) at issue in this action, the amount in controversy  
 10 for Plaintiff’s Fourth and Fifth Causes of Action is  
 11 approximately:

12 i.  $(14.38 \times 208 \text{ weeks} \times 1091) + (14.38 \times 208 \text{ weeks} \times 1091)$   
 13  $= \$6,526,449.20$ .

14 d. Although United contends that the claims are meritless, and that  
 15 no monies are owed, relative to the claims in the Complaint, this  
 16 calculation uses low assumptions regarding the putative class  
 17 members’ regular hourly rate and the number of missed meal  
 18 and rest periods per week.

19 14. This calculation only values the Fourth and Fifth Causes of Action and  
 20 only considers ramp agents—accordingly, the actual amount in controversy is  
 21 significantly higher.

22 15. In addition, Plaintiff seeks to recover attorney’s fees, which further  
 23 increases the alleged amount “in controversy” beyond \$5,000,000. (Prayer for  
 24 Relief ¶ 3.); *see Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994 (9th Cir. 2007)  
 25 (including attorneys’ fees in calculating amount in controversy), *overruled on other*  
 26 *grounds by Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013); *see also*  
 27 *Gibson v. Chrysler Corp.*, 261 F.3d 927 (9th Cir. 2001) (holding that attorneys’ fees  
 28 were properly included in the amount in controversy requirement in a class action);



1 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150 (9th Cir. 1998) (including attorneys’  
2 fees in calculating the amount in controversy requirement for traditional diversity  
3 jurisdiction).

4 16. Thus, based on the reasonable assumptions set forth herein, the  
5 potential compensatory damages, together with the statutory penalties and  
6 attorney’s fees, exceed the \$5,000,000 aggregate amount in controversy  
7 requirement set forth under 28 U.S.C. § 1332(d)(2). *Dart Cherokee*, 135 S.Ct. at  
8 554 (“a defendant's notice of removal need include only a plausible allegation that  
9 the amount in controversy exceeds the jurisdictional threshold.”).

10 **VENUE**

11 17. Plaintiff’s state court action was commenced in the Superior Court of  
12 the State of California for the County of San Diego and, pursuant to 28 U.S.C.  
13 §§ 84(a), 1441(a), & 1446(a) may be removed to this United States District Court  
14 for the Southern District of California, which embraces San Diego County within  
15 its jurisdiction.

16 **CONCLUSION**

17 18. For the reasons discussed herein, pursuant to 28 U.S.C. §§ 1332(d),  
18 1441(a) & 1446, this state court action may be removed to this Federal District  
19 Court.

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**WHEREFORE**, Defendant requests that this action be brought to this Court, and that this Court exercise its jurisdiction in the premises.

Dated: March 21, 2019

O'MELVENY & MYERS LLP  
ROBERT A. SIEGEL  
ADAM P. KOHSWEENEY  
SUSANNAH K. HOWARD

By:           /s/ Adam P. KohSweeney            
Adam P. KohSweeney  
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# EXHIBIT A

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

ELLA BROWN, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

UNITED AIRLINES, INC., a Corporation; and Does 1 through 50, Inclusive,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER; and,
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Ella Brown (“PLAINTIFF”), an individual, on behalf of herself and all other  
2 similarly situated current and former employees, alleges on information and belief, except for  
3 her own acts and knowledge which are based on personal knowledge, the following:  
4

5 **THE PARTIES**

6 1. Defendant United Airlines, Inc. (“DEFENDANT”) is a corporation and at all  
7 relevant times mentioned herein conducted and continues to conduct substantial and regular  
8 business throughout California.

9 2. DEFENDANT provides air transportation services., the Asia-Pacific, Europe, the  
10 Middle East, and Latin America. DEFENDANT transports people and cargo through its  
11 mainline and regional operations. DEFENDANT also sells fuel and offers catering, ground  
12 handling, and maintenance services for third parties. The company was founded in 1934.

13 3. PLAINTIFF has been employed by DEFENDANT in California as a Ramp Agent  
14 and classified as a non-exempt employee entitled to overtime pay and meal and rest periods  
15 since September of 2016. PLAINTIFF has been at all times relevant mentioned herein  
16 classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly  
17 basis and received additional compensation from DEFENDANT in the form of non-  
18 discretionary incentive wages, including but not limited to shift differential wages for working  
19 undesirable shifts and quarterly performance based incentive wages.

20 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
21 defined as all individuals who are or previously were employed by DEFENDANT in California  
22 and classified as non-exempt employees. Excluded from this class definition are all persons that  
23 are or were employed by DEFENDANT in the position of Flight Attendant (the “CALIFORNIA  
24 CLASS”) at any time during the period beginning on the date four (4) years prior to the filing  
25 of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA  
26 CLASS PERIOD”).The amount in controversy for the aggregate claim of CALIFORNIA  
27 CLASS Members is under five million dollars (\$5,000,000.00).  
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1           5.       PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA  
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy and practice  
4 which failed to lawfully compensate these employees for all their overtime worked.  
5 DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and deceptive  
6 business practice whereby DEFENDANT retained and continues to retain wages due  
7 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other  
8 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by  
9 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the  
10 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and  
11 current unlawful conduct, and all other appropriate legal and equitable relief.

12           6.       The true names and capacities, whether individual, corporate, subsidiary,  
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
14 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant  
15 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege  
16 the true names and capacities of Does 1 through 50, inclusive, when they were ascertained.  
17 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that  
18 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are  
19 responsible in some manner for one or more of the events and happenings that proximately  
20 caused the injuries and damages hereinafter alleged.

21           7.       The agents, servants and/or employees of the Defendants and each of them acting  
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the  
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct  
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
25 Consequently, the acts of each Defendant are legally attributable to the other Defendants and  
26 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
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1 Defendants' agents, servants and/or employees.  
2

3 **THE CONDUCT**

4 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues  
5 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
6 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally fails to  
7 accurately calculate minimum wages and overtime wages for overtime worked by PLAINTIFF  
8 and other members of the CALIFORNIA CLASS in order to avoid paying these employees the  
9 correct overtime compensation. As a result, PLAINTIFF and the other members of the  
10 CALIFORNIA CLASS forfeit wages due them for working overtime without compensation at  
11 the correct overtime rates. DEFENDANT's uniform policy and practice to not pay the members  
12 of the CALIFORNIA CLASS the correct overtime rate for all overtime worked in accordance  
13 with applicable law is evidenced by DEFENDANT's business records.

14 9. State and federal law provides that employees must be paid overtime at one-and-  
15 one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS  
16 Members are compensated at an hourly rate plus incentive pay that was tied to specific elements  
17 of an employee's performance.

18 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
19 Members' compensation is DEFENDANT's non-discretionary incentive program that pays  
20 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
21 performance for DEFENDANT, including but not limited to shift differential wages for working  
22 undesirable shifts and quarterly performance based incentive wages. The non-discretionary  
23 incentive program provided all employees paid on an hourly basis with incentive compensation  
24 when the employees met the various performance goals set by DEFENDANT. However, when  
25 calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other  
26 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation  
27 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay.  
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1 Management and supervisors described the incentive program to potential and new employees  
2 as part of the compensation package. As a matter of law, the incentive compensation received  
3 by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the “regular  
4 rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime  
5 compensation to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

6 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is  
7 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
8 meaning the time during which an employee is subject to the control of an employer, including  
9 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF  
10 and CALIFORNIA CLASS Members to work off the clock without paying them for all the time  
11 they were under DEFENDANT’s control. Specifically, PLAINTIFF and the CALIFORNIA  
12 CLASS Members are instructed to be prepared and ready to work at the time the morning  
13 briefing starts. In order to be ready for the morning briefing, PLAINTIFF and other  
14 CALIFORNIA CLASS Members have to arrive and clock into DEFENDANT’s timekeeping  
15 system at DEFENDANT’s designated work site at the airport. After clocking in, PLAINTIFF  
16 and other CALIFORNIA CLASS Members then have to get all their equipment ready including  
17 but not limited to picking up bag scanners and headsets, getting their baggage tractors ready,  
18 and also logging into DEFENDANT’s “unimatic” computer system to check the incoming and  
19 outgoing flights for the work day. PLAINTIFF and other CALIFORNIA CLASS Members also  
20 perform “DSTG” inventory checks while off the clock during this pre-shift time.  
21 DEFENDANT knew or should know PLAINTIFF and other CALIFORNIA CLASS Members  
22 are working off the clock because DEFENDANT’s own timekeeping system shows the “actual  
23 start” start time and “scheduled start” time for PLAINTIFF and CALIFORNIA CLASS  
24 Members. It is mandatory that PLAINTIFF and other CALIFORNIA CLASS Members arrive  
25 at DEFENDANT’s pre-designated clock in stations in order to be ready for the morning  
26 briefing. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit time  
27 worked by regularly working without their time being accurately recorded and without  
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1 minimum wage compensation at the applicable rate. DEFENDANT's uniform policy and  
2 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked  
3 is evidenced by DEFENDANT's business records.

4 12. In violation of the applicable sections of the California Labor Code and the  
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as  
6 a matter of company policy, practice and procedure, intentionally and knowingly fails to  
7 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct  
8 rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT is  
9 intended to purposefully avoid the payment of the correct overtime compensation as required  
10 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage  
11 over competitors who complied with the law. To the extent equitable tolling operates to toll  
12 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS  
13 PERIOD should be adjusted accordingly.

14 13. As a result of their rigorous work schedules, PLAINTIFF and other  
15 CALIFORNIA CLASS Member are also from time to time unable to take off duty meal breaks  
16 and are not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA  
17 CLASS Members are required to perform work as ordered by DEFENDANT for more than five  
18 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT  
19 failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty  
20 meal period from time to time in which these employees are required by DEFENDANT to work  
21 ten (10) hours of work. Specifically, PLAINTIFF and CALIFORNIA CLASS allege that the  
22 demands of working in the airline industry result in DEFENDANT violating the California  
23 Labor Code. Flights have to depart safely, otherwise an accident can lead to death. Details like  
24 how luggage is arranged matter because an unbalanced aircraft will affect operability. Weather  
25 also plays a large role in the safety of flights and their timeliness. PLAINTIFF and  
26 CALIFORNIA CLASS Members need to be mindful of safety while at the same time they have  
27 to make sure that flights arrive and depart on time, as a delay on one flight can cascade to delays  
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1 in other flights. In light of their work responsibilities, PLAINTIFF and other CALIFORNIA  
2 CLASS Members were not always able to take legally compliant meal periods as a result of the  
3 demands placed on them by DEFENDANT's workload and commitment to safety and  
4 timeliness. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited  
5 meal breaks without additional compensation and in accordance with DEFENDANT's strict  
6 corporate policy and practice.

7 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
8 CALIFORNIA CLASS Members are also required to work in excess of four (4) hours without  
9 being provided ten (10) minute rest periods. Further, these employees are denied their first rest  
10 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,  
11 a first and second rest period of at least ten (10) minutes for some shifts worked of between six  
12 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for  
13 some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS  
14 Members are also not provided with one hour wages in lieu thereof. As a result of their  
15 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members are  
16 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

17 15. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime  
18 in the same pay period they earned incentive wages and/or missed meal and rest breaks,  
19 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
20 CLASS with complete and accurate wage statements which failed to show, among other things,  
21 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)  
22 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments  
23 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall  
24 furnish each of his or her employees with an accurate itemized wage statement in writing  
25 showing, among other things, gross wages earned and all applicable hourly rates in effect during  
26 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from  
27 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an  
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1 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*  
2 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of  
3 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

4 16. By reason of this uniform conduct applicable to PLAINTIFF and all  
5 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
6 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
7 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately  
8 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other  
9 CALIFORNIA CLASS Members. The proper calculation of these employees’ overtime hour  
10 rates is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of  
11 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all  
12 required overtime compensation for work performed by the members of the CALIFORNIA  
13 CLASS and violated the California Labor Code and regulations promulgated thereunder as  
14 herein alleged.

15 17. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to  
16 her in the form of two components. One component of PLAINTIFF’s compensation was a base  
17 hourly wage. The second component of PLAINTIFF’s compensation are non-discretionary  
18 incentive wages described herein. DEFENDANT paid the incentive wages, so long as  
19 PLAINTIFF met certain predefined performance requirements. PLAINTIFF met  
20 DEFENDANT’s predefined eligibility performance requirements in various pay periods  
21 throughout her employment with DEFENDANT and DEFENDANT paid PLAINTIFF the  
22 incentive wages. During these pay periods in which PLAINTIFF was paid the non-  
23 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for  
24 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF’s  
25 regular rate of pay for the purposes of calculating what should have been PLAINTIFF’s  
26 accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout her  
27 employment with DEFENDANT. The incentive compensation paid by DEFENDANT  
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1 constituted wages within the meaning of the California Labor Code and thereby should have  
2 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time  
3 unable to take off duty meal and rest breaks and was not fully relieved of duty for her meal  
4 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than  
5 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT  
6 failed to provide PLAINTIFF with a second off-duty meal period from time to time in which  
7 she was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore  
8 forfeited meal and rest breaks without additional compensation and in accordance with  
9 DEFENDANT's strict corporate policy and practice. DEFENDANT also provided  
10 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's correct rates of  
11 overtime pay and payments for missed meal and rest periods for certain pay periods in violation  
12 of Cal. Lab. Code § 226(a). The amount in controversy for PLAINTIFF individually does not  
13 exceed the sum or value of \$75,000.

14  
15 **JURISDICTION AND VENUE**

16 18. This Court has jurisdiction over this Action pursuant to California Code of Civil  
17 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
18 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees  
19 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

20 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
21 Sections 395 and 395.5, because PLAINTIFF works in this County for DEFENDANT and  
22 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
23 in this County and/or conducts substantial business in this County, and (ii) committed the  
24 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS  
25 and CALIFORNIA LABOR SUB-CLASS.

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1 THE CALIFORNIA CLASS

2 20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
3 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
4 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as  
5 all individuals who are or previously were employed by DEFENDANT in California and  
6 classified as non-exempt employees. Excluded from this class definition are all persons that  
7 are or were employed by DEFENDANT in the position of Flight Attendant (the "CALIFORNIA  
8 CLASS") at any time during the period beginning on the date four (4) years prior to the filing  
9 of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA  
10 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA  
11 CLASS Members is under five million dollars (\$5,000,000.00).

12 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
13 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
14 accordingly.

15 22. The California Legislature has commanded that "all wages... ..earned by any  
16 person in any employment are due and payable twice during each calendar month, on days  
17 designated in advance by the employer as the regular paydays", and further that "[a]ny work  
18 in excess of eight hours in one workday and any work in excess of 40 hours in any one  
19 workweek . . . shall be compensated at the rate of no less than one and one-half times the  
20 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare  
21 Commission (IWC), however, is statutorily authorized to "establish exemptions from the  
22 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and  
23 professional employees, provided [inter alia] that the employee is primarily engaged in duties  
24 that meet the test of the exemption, [and] customarily and regularly exercises discretion and  
25 independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the  
26 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA  
27 LABOR SUB-CLASS qualify for exemption from the above requirements.

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1           23.     DEFENDANT, as a matter of company policy, practice and procedure, and in  
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
4 wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly  
5 calculate and record overtime compensation for overtime worked by PLAINTIFF and the other  
6 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this  
7 work, required employees to perform this work and permitted or suffered to permit this  
8 overtime work.

9           24.     DEFENDANT has the legal burden to establish that each and every  
10 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to  
11 accurately calculate the “regular rate of pay” by including the incentive compensation that  
12 PLAINTIFF and members of the CALIFORNIA CLASS are awarded by DEFENDANT.  
13 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to  
14 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy  
15 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable  
16 overtime rate for all overtime worked, so as to satisfy their burden. This common business  
17 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on  
18 a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code  
19 §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this  
20 claim.

21           25.     At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
22 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the  
23 employee for all overtime worked at the applicable rate, as required by California Labor Code  
24 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the  
25 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so  
26 as to include all earnings in the overtime compensation calculation as required by California  
27 Labor Code §§ 510, *et seq.*

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1           26.    The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
2 CLASS Members is impracticable.

3           27.    DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
4 California law by:

5           (a)    Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code  
6                §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in  
7                place company policies, practices and procedures that failed to pay all  
8                wages due the CALIFORNIA CLASS for all overtime worked, and failed  
9                to accurately record the applicable rates of all overtime worked by the  
10              CALIFORNIA CLASS;

11           (b)    Committing an act of unfair competition in violation of the California  
12                Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
13                unlawfully, unfairly, and/or deceptively having in place a company policy,  
14                practice and procedure that failed to correctly calculate overtime  
15                compensation due to PLAINTIFF and the members of the CALIFORNIA  
16                CLASS;

17           (c)    Committing an act of unfair competition in violation of the California  
18                Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
19                violating §§ 1194, 1197 & 1197.1 by unlawfully, unfairly and/or  
20                deceptively having in place company policies, practices and procedures  
21                that failed to pay all minimum wages due the CALIFORNIA CLASS for  
22                all time worked;

23           (d)    Committing an act of unfair competition in violation of the California  
24                Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
25                violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et*  
26                *seq.*, by failing to pay the correct federal overtime wages to the  
27                PLAINTIFF and the members of the CALIFORNIA CLASS as legally  
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- 1 required by the FLSA, and retaining the unpaid federal overtime to the  
2 benefit of DEFENDANT; and
- 3 (e) Committing an act of unfair competition in violation of the California  
4 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
5 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and  
6 the CALIFORNIA CLASS members.

7 28. This Class Action meets the statutory prerequisites for the maintenance of a Class  
8 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 9 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
10 that the joinder of all such persons is impracticable and the disposition of  
11 their claims as a class will benefit the parties and the Court;
- 12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
13 that are raised in this Complaint are common to the CALIFORNIA  
14 CLASS will apply uniformly to every member of the CALIFORNIA  
15 CLASS;
- 16 (c) The claims of the representative PLAINTIFF are typical of the claims of  
17 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the  
18 other members of the CALIFORNIA CLASS, was subjected to the  
19 uniform employment practices of DEFENDANT and was a non-exempt  
20 employee paid on an hourly basis and paid additional non-discretionary  
21 incentive wages who was subjected to the DEFENDANT's practice and  
22 policy which fails to pay the correct rate of overtime wages due to the  
23 CALIFORNIA CLASS for all overtime worked by the CALIFORNIA  
24 CLASS and thereby systematically underpays overtime compensation to  
25 the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a  
26 result of DEFENDANT's employment practices. PLAINTIFF and the  
27 members of the CALIFORNIA CLASS are and are similarly or identically  
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1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
2 misconduct engaged in by DEFENDANT; and,

- 3 (d) The representative PLAINTIFF will fairly and adequately represent and  
4 protect the interest of the CALIFORNIA CLASS, and has retained  
5 counsel who are competent and experienced in Class Action litigation.  
6 There are no material conflicts between the claims of the representative  
7 PLAINTIFF and the members of the CALIFORNIA CLASS that would  
8 make class certification inappropriate. Counsel for the CALIFORNIA  
9 CLASS will vigorously assert the claims of all CALIFORNIA CLASS  
10 Members.

11 29. In addition to meeting the statutory prerequisites to a Class Action, this action  
12 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 13 (a) Without class certification and determination of declaratory, injunctive,  
14 statutory and other legal questions within the class format, prosecution of  
15 separate actions by individual members of the CALIFORNIA CLASS will  
16 create the risk of:

- 17 1) Inconsistent or varying adjudications with respect to individual  
18 members of the CALIFORNIA CLASS which would establish  
19 incompatible standards of conduct for the parties opposing the  
20 CALIFORNIA CLASS; and/or,  
21 2) Adjudication with respect to individual members of the  
22 CALIFORNIA CLASS which would as a practical matter be  
23 dispositive of interests of the other members not party to the  
24 adjudication or substantially impair or impede their ability to  
25 protect their interests.

- 26 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to  
27 act on grounds generally applicable to the CALIFORNIA CLASS, making  
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appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due. Including the correct overtime rate, for all worked by the members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

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A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

30. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;

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- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour

1 related claims arising out of the conduct of DEFENDANT as to the  
2 members of the CALIFORNIA CLASS.

3 31. DEFENDANT maintains records from which the Court can ascertain and identify  
4 by job title each of DEFENDANT's employees who as have been systematically, intentionally  
5 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein  
6 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles  
7 of similarly situated employees when they have been identified.

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9 **THE CALIFORNIA LABOR SUB-CLASS**

10 32. PLAINTIFF further brings the Second, Third, Fourth, Fifth and Sixth causes of  
11 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
12 CLASS classified as non-exempt employees. Excluded from this class definition are all persons  
13 that are or were employed by DEFENDANT in the position of Flight Attendant (the  
14 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning on the date  
15 three (3) years prior to the filing of the complaint and ending on the date as determined by the  
16 Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ.  
17 Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR  
18 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

19 33. DEFENDANT, as a matter of company policy, practice and procedure, and in  
20 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
21 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
22 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime  
23 compensation for the overtime worked by PLAINTIFF and the other members of the  
24 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this  
25 work, required employees to perform this work and permitted or suffered to permit this  
26 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-  
27 CLASS Members overtime wages at the correct amount to which these employees are entitled

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1 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling  
2 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the  
3 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

4 34. DEFENDANT maintains records from which the Court can ascertain and identify  
5 by name and job title, each of DEFENDANT's employees who have been systematically,  
6 intentionally and uniformly subjected to DEFENDANT's company policy, practices and  
7 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include  
8 any additional job titles of similarly situated employees when they have been identified.

9 35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
10 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

11 36. Common questions of law and fact exist as to members of the CALIFORNIA  
12 LABOR SUB-CLASS, including, but not limited, to the following:

- 13 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay  
14 overtime compensation to members of the CALIFORNIA LABOR SUB-  
15 CLASS in violation of the California Labor Code and California  
16 regulations and the applicable California Wage Order;
- 17 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are  
18 entitled to overtime compensation for overtime worked under the overtime  
19 pay requirements of California law;
- 20 (c) Whether DEFENDANT failed to accurately record the applicable  
21 overtime rates for all overtime worked PLAINTIFF and the other  
22 members of the CALIFORNIA LABOR SUB-CLASS;
- 23 (d) Whether DEFENDANT failed to provide PLAINTIFF and the other  
24 members of the CALIFORNIA LABOR SUB-CLASS with legally  
25 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 26 (e) Whether DEFENDANT failed to provide PLAINTIFF and the other  
27 members of the CALIFORNIA LABOR SUB-CLASS with accurate  
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- 1 itemized wage statements;
- 2 (f) Whether DEFENDANT has engaged in unfair competition by the
- 3 above-listed conduct;
- 4 (g) The proper measure of damages and penalties owed to the members of the
- 5 CALIFORNIA LABOR SUB-CLASS; and,
- 6 (h) Whether DEFENDANT's conduct was willful.

7 37. DEFENDANT, as a matter of company policy, practice and procedure, failed to  
8 accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS  
9 Members and failed to provide accurate records of the applicable overtime rates for the  
10 overtime worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS  
11 Members, including PLAINTIFF, are non-exempt employees who are paid on an hourly basis  
12 by DEFENDANT according to uniform and systematic company procedures as alleged herein  
13 above. This business practice was uniformly applied to each and every member of the  
14 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be  
15 adjudicated on a class-wide basis.

16 38. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
17 under California law by:

- 18 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
- 19 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
- 20 CLASS the correct overtime pay for which DEFENDANT is liable
- 21 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 22 (b) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
- 23 PLAINTIFF and the other members of the CALIFORNIA CLASS with
- 24 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
- 25 and the legally required rest breaks;
- 26 (c) Violating Cal. Lab. Code §§ 1194 & 1197 by incorrectly recording all
- 27 time worked and thereby failing to pay PLAINTIFF and the members of
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1 the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay  
2 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1197; and,  
3 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
4 members of the CALIFORNIA LABOR SUB-CLASS with an accurate  
5 itemized statement in writing showing all accurate and applicable  
6 overtime rates in effect during the pay period and the corresponding  
7 amount of time worked at each overtime rate by the employee.

8 39. This Class Action meets the statutory prerequisites for the maintenance of a Class  
9 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

10 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are  
11 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS  
12 Members is impracticable and the disposition of their claims as a class  
13 will benefit the parties and the Court;

14 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
15 that are raised in this Complaint are common to the CALIFORNIA  
16 LABOR SUB-CLASS and will apply uniformly to every member of the  
17 CALIFORNIA LABOR SUB-CLASS;

18 (c) The claims of the representative PLAINTIFF are typical of the claims of  
19 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,  
20 like all the other members of the CALIFORNIA LABOR SUB-CLASS,  
21 was a non-exempt employee paid on an hourly basis and paid additional  
22 non-discretionary incentive wages who was subjected to the  
23 DEFENDANT's practice and policy which failed to pay the correct rate  
24 of overtime wages due to the CALIFORNIA LABOR SUB-CLASS for  
25 all overtime worked. PLAINTIFF sustained economic injury as a result  
26 of DEFENDANT's employment practices. PLAINTIFF and the members  
27 of the CALIFORNIA LABOR SUB-CLASS are and are similarly or  
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1 identically harmed by the same unlawful, deceptive, unfair and pervasive  
2 pattern of misconduct engaged in by DEFENDANT; and,

- 3 (d) The representative PLAINTIFF will fairly and adequately represent and  
4 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has  
5 retained counsel who are competent and experienced in Class Action  
6 litigation. There are no material conflicts between the claims of the  
7 representative PLAINTIFF and the members of the CALIFORNIA  
8 LABOR SUB-CLASS that would make class certification inappropriate.  
9 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously  
10 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

11 40. In addition to meeting the statutory prerequisites to a Class Action, this action is  
12 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 13 (a) Without class certification and determination of declaratory, injunctive,  
14 statutory and other legal questions within the class format, prosecution of  
15 separate actions by individual members of the CALIFORNIA LABOR  
16 SUB-CLASS will create the risk of:

- 17 1) Inconsistent or varying adjudications with respect to individual  
18 members of the CALIFORNIA LABOR SUB-CLASS which  
19 would establish incompatible standards of conduct for the parties  
20 opposing the CALIFORNIA LABOR SUB-CLASS; or,  
21 2) Adjudication with respect to individual members of the  
22 CALIFORNIA LABOR SUB-CLASS which would as a practical  
23 matter be dispositive of interests of the other members not party to  
24 the adjudication or substantially impair or impede their ability to  
25 protect their interests.

- 26 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted  
27 or refused to act on grounds generally applicable to the CALIFORNIA  
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1 LABOR SUB-CLASS, making appropriate class-wide relief with respect  
2 to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
3 DEFENDANT uniformly failed to pay all wages due. Including the  
4 correct overtime rate, for all overtime worked by the members of the  
5 CALIFORNIA LABOR SUB-CLASS as required by law;

6 (c) Common questions of law and fact predominate as to the members of the  
7 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
8 violations of California Law as listed above, and predominate over any  
9 question affecting only individual CALIFORNIA LABOR SUB-CLASS  
10 Members, and a Class Action is superior to other available methods for  
11 the fair and efficient adjudication of the controversy, including  
12 consideration of:

13 1) The interests of the members of the CALIFORNIA LABOR SUB-  
14 CLASS in individually controlling the prosecution or defense of  
15 separate actions in that the substantial expense of individual  
16 actions will be avoided to recover the relatively small amount of  
17 economic losses sustained by the individual CALIFORNIA  
18 LABOR SUB-CLASS Members when compared to the substantial  
19 expense and burden of individual prosecution of this litigation;

20 2) Class certification will obviate the need for unduly duplicative  
21 litigation that would create the risk of:

22 A. Inconsistent or varying adjudications with respect to  
23 individual members of the CALIFORNIA LABOR SUB-  
24 CLASS, which would establish incompatible standards of  
25 conduct for the DEFENDANT; and/or,

26 B. Adjudications with respect to individual members of the  
27 CALIFORNIA LABOR SUB-CLASS would as a practical  
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matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

41. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so

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- numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
  - (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
  - (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
  - (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
  - (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
  - (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

5 42. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
7 Complaint.

8 43. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.  
9 Code § 17021.

10 44. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section  
12 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
13 competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair  
15 competition may be enjoined in any court of competent jurisdiction. The court  
16 may make such orders or judgments, including the appointment of a receiver, as  
17 may be necessary to prevent the use or employment by any person of any practice  
which constitutes unfair competition, as defined in this chapter, or as may be  
necessary to restore to any person in interest any money or property, real or  
personal, which may have been acquired by means of such unfair competition.

18 Cal. Bus. & Prof. Code § 17203.

19 45. By the conduct alleged herein, DEFENDANT has engaged and continues to  
20 engage in a business practice which violates California law, including but not limited to, the  
21 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
22 including Sections 204, 206.5, 226.7, 510, 558, 512, 558, 1194, 1197, 1197.1 and 1198, The  
23 Fair Labor Standards Act, for which this Court should issue declaratory and other equitable  
24 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy  
25 the conduct held to constitute unfair competition, including restitution of wages wrongfully  
26 withheld.

27 46. By the conduct alleged herein, DEFENDANT’s practices are unlawful and unfair  
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1 in that these practices violated public policy, are immoral, unethical, oppressive, unscrupulous  
2 or substantially injurious to employees, and are without valid justification or utility for which  
3 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the  
4 California Business & Professions Code, including restitution of wages wrongfully withheld.

5 47. By the conduct alleged herein, DEFENDANT's practices are deceptive and  
6 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and  
7 other members of the CALIFORNIA CLASS, minimum wages due and wages due for overtime  
8 worked, failed to accurately to record the applicable rate of all overtime worked, and failed to  
9 provide the required amount of overtime compensation due to a systematic miscalculation of  
10 the overtime rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and  
11 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,  
12 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &  
13 Prof. Code § 17203, including restitution of wages wrongfully withheld.

14 48. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair  
15 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other  
16 members of the CALIFORNIA CLASS to be underpaid during their employment with  
17 DEFENDANT.

18 49. By the conduct alleged herein, DEFENDANT's practices are also unfair and  
19 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
20 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

21 50. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each  
22 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty  
23 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
24 for each workday in which a second off-duty meal period was not timely provided for each ten  
25 (10) hours of work.

26 51. PLAINTIFF further demands on behalf of herself and on behalf of each  
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty  
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1 paid rest period was not timely provided as required by law.

2 52. By and through the unlawful and unfair business practices described herein,  
3 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
4 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,  
5 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
6 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
7 to unfairly compete against competitors who comply with the law.

8 53. All the acts described herein as violations of, among other things, the Industrial  
9 Welfare Commission Wage Orders, the California Code of Regulations, and the California  
10 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive  
11 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business  
12 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

13 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
14 and do, seek such relief as may be necessary to restore to them the money and property which  
15 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
16 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
17 unfair business practices, including earned but unpaid wages for all overtime worked.

18 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
19 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
20 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
21 engaging in any unlawful and unfair business practices in the future.

22 56. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
23 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
24 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.  
25 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the  
26 other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
27 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to  
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1 engage in these unlawful and unfair business practices.  
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3 **SECOND CAUSE OF ACTION**

4 **For Failure To Pay Minimum Wages**

5 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

7 **and Against All Defendants)**

8 57. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
9 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior  
10 paragraphs of this Complaint.

11 58. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
12 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
13 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
14 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS  
15 Members.

16 59. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and  
17 public policy, an employer must timely pay its employees for all hours worked.

18 60. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
20 the minimum so fixed is unlawful.

21 61. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
22 including minimum wage compensation and interest thereon, together with the costs of suit.

23 62. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and  
24 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
25 amount of time they worked, including off the clock time tasks that the CALIFORNIA CLASS  
26 Members engaged in for DEFENDANT. As set forth herein, DEFENDANT's uniform policy  
27 and practice was to unlawfully and intentionally deny timely payment of wages due to  
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1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

2 63. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
3 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a  
4 result of implementing a uniform policy and practice that denied accurate compensation to  
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to  
6 minimum wage pay.

7 64. In committing these violations of the California Labor Code, DEFENDANT  
8 inaccurately calculated the correct time worked and consequently underpaid the actual time  
9 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
10 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
11 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
12 requirements and other applicable laws and regulations.

13 65. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
15 receive the correct minimum wage compensation for their time worked for DEFENDANT.

16 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
17 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that  
18 they were entitled to, constituting a failure to pay all earned wages.

19 67. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
20 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
21 CLASS for the true time they worked, PLAINTIFF and the other members of the  
22 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
23 injury in amounts which are presently unknown to them and which will be ascertained  
24 according to proof at trial.

25 68. DEFENDANT knew or should have known that PLAINTIFF and the other  
26 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time  
27 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross  
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1 nonfeasance, to not pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
2 for their labor as a matter of uniform company policy, practice and procedure, and  
3 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other  
4 members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their  
5 time worked.

6         69. In performing the acts and practices herein alleged in violation of California labor  
7 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for  
8 all time worked and provide them with the requisite compensation, DEFENDANT acted and  
9 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other  
10 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard  
11 for their legal rights, or the consequences to them, and with the despicable intent of depriving  
12 them of their property and legal rights, and otherwise causing them injury in order to increase  
13 company profits at the expense of these employees.

14         70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
15 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as  
16 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided  
17 by the California Labor Code and/or other applicable statutes. To the extent minimum wage  
18 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members  
19 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§  
20 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties  
21 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
22 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein  
23 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA  
24 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

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**THIRD CAUSE OF ACTION**

**For Failure To Pay Overtime Compensation**

**[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

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71. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

73. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

74. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

75. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

76. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and

1 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
2 amount of overtime worked and correct applicable overtime rate for the amount of overtime  
3 they worked. As set forth herein, DEFENDANT's uniform policy and practice was to  
4 unlawfully and intentionally deny timely payment of wages due for the overtime worked by  
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
6 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for  
7 all overtime worked.

8 77. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
9 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a  
10 result of implementing a uniform policy and practice that denied accurate compensation to  
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for all  
12 overtime worked, including, the work performed in excess of eight (8) hours in a workday  
13 and/or forty (40) hours in any workweek.

14 78. In committing these violations of the California Labor Code, DEFENDANT  
15 inaccurately calculated the amount of overtime worked and the applicable overtime rates and  
16 consequently underpaid the actual time worked by PLAINTIFF and other members of the  
17 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the  
18 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
19 Industrial Welfare Commission requirements and other applicable laws and regulations.

20 79. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
22 receive full compensation for all overtime worked.

23 80. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
24 from the overtime requirements of the law. None of these exemptions are applicable to  
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,  
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject  
27 to a valid collective bargaining agreement that would preclude the causes of action contained  
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1 herein this Complaint. Rather, the PLAINTIFF brings this Action on behalf of herself and the  
2 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,  
3 non-waiveable rights provided by the State of California.

4 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
5 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that  
6 they are entitled to, constituting a failure to pay all earned wages.

7 82. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
8 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
9 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194  
10 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
11 CLASS are required to work, and did in fact work, overtime as to which DEFENDANT failed  
12 to accurately record and pay using the applicable overtime rate as evidenced by  
13 DEFENDANT's business records and witnessed by employees.

14 83. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
15 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
16 CLASS for the true time they worked, PLAINTIFF and the other members of the  
17 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
18 injury in amounts which are presently unknown to them and which will be ascertained  
19 according to proof at trial.

20 84. DEFENDANT knew or should have known that PLAINTIFF and the other  
21 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime  
22 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross  
23 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,  
24 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to  
25 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
26 applicable overtime rate.

27 85. In performing the acts and practices herein alleged in violation of California labor  
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1 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for  
2 all time worked and provide them with the requisite overtime compensation, DEFENDANT  
3 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and  
4 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter  
5 disregard for their legal rights, or the consequences to them, and with the despicable intent of  
6 depriving them of their property and legal rights, and otherwise causing them injury in order  
7 to increase company profits at the expense of these employees.

8 86. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
9 therefore request recovery of all unpaid wages, including overtime wages, according to proof,  
10 interest, statutory costs, as well as the assessment of any statutory penalties against  
11 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable  
12 statutes.

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14 **FOURTH CAUSE OF ACTION**

15 **For Failure to Provide Required Meal Periods**

16 **[Cal. Lab. Code §§ 226.7 & 512 ]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**  
18 **Defendants)**

19 87. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
20 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs  
21 of this Complaint.

22 88. During the CALIFORNIA CLASS PERIOD, from time to time, DEFENDANT  
23 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other  
24 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and  
25 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR  
26 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their  
27 duties for the legally required off-duty meal periods. As a result of their rigorous work  
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1 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are often not  
2 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's  
3 failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with  
4 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by  
5 DEFENDANT's business records. As a result, PLAINTIFF and other members of the  
6 CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional  
7 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

8 89. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
9 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-  
10 CLASS Members who are not provided a meal period, in accordance with the applicable Wage  
11 Order, one additional hour of compensation at each employee's regular rate of pay for each  
12 workday that a meal period was not provided.

13 90. As a proximate result of the aforementioned violations, PLAINTIFF and  
14 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according  
15 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of  
16 suit.

17  
18 **FIFTH CAUSE OF ACTION**

19 **For Failure to Provide Required Rest Periods**

20 **[Cal. Lab. Code §§ 226.7 & 512 ]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**  
22 **Defendants)**

23 91. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
24 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs  
25 of this Complaint.

26 92. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are from  
27 time to time required to work in excess of four (4) hours without being provided ten (10) minute  
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1 rest periods. Further, these employees are denied their first rest periods of at least ten (10)  
2 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest  
3 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,  
4 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of  
5 ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members  
6 are also not provided with one hour wages in lieu thereof. As a result of their rigorous work  
7 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are  
8 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

9 93. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
10 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-  
11 CLASS Members who are not provided a rest period, in accordance with the applicable Wage  
12 Order, one additional hour of compensation at each employee's regular rate of pay for each  
13 workday that rest period was not provided.

14 94. As a proximate result of the aforementioned violations, PLAINTIFF and  
15 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according  
16 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of  
17 suit.

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19 **SIXTH CAUSE OF ACTION**

20 **For Failure to Provide Accurate Itemized Statements**

21 **[Cal. Lab. Code § 226]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**  
23 **Defendants)**

24 95. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
25 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs  
26 of this Complaint.

27 96. Cal. Labor Code § 226 provides that an employer must furnish employees with  
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1 an “accurate itemized” statement in writing showing:

2 (1) gross wages earned,

3 (2) total hours worked by the employee, except for any employee whose compensation  
4 is solely based on a salary and who is exempt from payment of overtime under  
5 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
6 Commission,

7 (3) the number of piecerate units earned and any applicable piece rate if the employee  
8 is paid on a piece-rate basis,

9 (4) all deductions, provided that all deductions made on written orders of the employee  
10 may be aggregated and shown as one item,

11 (5) net wages earned,

12 (6) the inclusive dates of the period for which the employee is paid,

13 (7) the name of the employee and his or her social security number, except that by  
14 January 1, 2008, only the last four digits of his or her social security number or an  
15 employee identification number other than a social security number may be shown on  
16 the itemized statement,

17 (8) the name and address of the legal entity that is the employer, and

18 (9) all applicable hourly rates in effect during the pay period and the corresponding  
19 number of hours worked at each hourly rate by the employee.

20 97. When PLAINTIFF and other CALIFORNIA CLASS Members worked overtime  
21 in the same pay period they earned incentive wages and/or missed meal and rest breaks,  
22 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
23 CLASS with complete and accurate wage statements which failed to show, among other things,  
24 the correct overtime rate for overtime worked, including, work performed in excess of eight (8)  
25 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments  
26 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall  
27 furnish each of his or her employees with an accurate itemized wage statement in writing  
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1 showing, among other things, gross wages earned and all applicable hourly rates in effect during  
2 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from  
3 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an  
4 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*  
5 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of  
6 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

7 98. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor  
8 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the  
9 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
10 expended calculating the correct rates for the overtime worked and the amount of employment  
11 taxes which are not properly paid to state and federal tax authorities. These damages are  
12 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA  
13 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the  
14 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each  
15 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according  
16 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for  
17 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

18  
19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
21 severally, as follows:

- 22 1. On behalf of the CALIFORNIA CLASS:
- 23 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
24 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
  - 25 B) An order temporarily, preliminarily and permanently enjoining and restraining  
26 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
  - 27 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully  
28

1 withheld from compensation due to PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS; and,

3 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
4 for restitution of the sums incidental to DEFENDANT's violations due to  
5 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

6 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

7 A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of  
8 Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
9 pursuant to Cal. Code of Civ. Proc. § 382;

10 B) Compensatory damages, according to proof at trial, including compensatory  
11 damages for minimum wage and overtime compensation due PLAINTIFF and  
12 the other members of the CALIFORNIA LABOR SUB-CLASS, during the  
13 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon  
14 at the statutory rate;

15 C) Meal and rest period compensation pursuant to California Labor Code Section  
16 226.7 and the applicable IWC Wage Order; and,

17 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
18 in which a violation occurs and one hundred dollars (\$100) per each member of  
19 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay  
20 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
21 an award of costs for violation of Cal. Lab. Code § 226.

22 3. On all claims:

23 A) An award of interest, including prejudgment interest at the legal rate;

24 B) Such other and further relief as the Court deems just and equitable; and,

25 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,  
26 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

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1 Dated: February 14, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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By: /s/ Norman Blumenthal  
Norman B. Blumenthal  
Attorneys for Plaintiff

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**DEMAND FOR A JURY TRIAL**

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

Dated: February 14, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal  
Norman B. Blumenthal  
Attorneys for Plaintiff



# EXHIBIT B

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Facsimile: +1 415 984 8701

11 Attorneys for Defendant  
12 United Airlines, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF SAN DIEGO**

16 ELLA BROWN, an individual, on behalf of  
17 herself, and on behalf of all persons similarly  
18 situated,

19 Plaintiff,

20 v.

21 UNITED AIRLINES, INC., a Corporation; and  
Does 1 through 50, Inclusive

22 Defendants.

Case No. 37-2019-00008533-CU-OE-CTL

**DEFENDANT UNITED AIRLINES,  
INC.'S ANSWER TO PLAINTIFF'S  
UNVERIFIED CLASS ACTION  
COMPLAINT**

1 Defendant United Airlines, Inc. (“United” or “Defendant”), for itself alone and for no  
2 other defendant, hereby answers the unverified complaint herein, dated February 14, 2019, (the  
3 “Complaint”), as follows:

4 Pursuant to the provisions of Section 431.30 of the California Code of Civil Procedure,  
5 Defendant denies each and every, all and singular, allegations of the Complaint and also denies  
6 that Plaintiff Ella Brown (“Plaintiff”) or any putative member of any purported class set forth in  
7 the Complaint were damaged in the sum or sums alleged or in any sum at all. Defendant further  
8 specifically denies that any of the claims alleged by Plaintiff in the Complaint may properly be  
9 adjudicated on a class-action and/or representative basis.

10 **AS AND FOR ITS AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION**  
11 **PURPORTED TO BE SET FORTH AGAINST IT BY PLAINTIFF ON BEHALF OF**  
12 **HERSELF, AND ON BEHALF OF THE PUTATIVE MEMBERS OF EACH**  
13 **PURPORTED CLASS AS SET FORTH IN THE COMPLAINT, DEFENDANT ALLEGES**  
14 **AS FOLLOWS:**

15 **FIRST AFFIRMATIVE DEFENSE**

16 **Failure to State a Cause of Action**

17 Plaintiff’s claims, and each of them, brought on behalf of herself and the putative  
18 members of the purported class as set forth in the Complaint, or some of them, fail to state facts  
19 sufficient to constitute a cause of action against Defendant.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **Preemption**

22 Plaintiff’s claims, and each of them, brought on behalf of herself and the putative  
23 members of the purported class as set forth in the Complaint, or some of them, are barred in  
24 whole or in part because they are preempted by, *inter alia*, the Railway Labor Act, 29 U.S.C. §§  
25 151 *et seq.* and/or the Airline Deregulation Act, 49 U.S.C. §§ 40120 *et seq.*

26 **THIRD AFFIRMATIVE DEFENSE**

27 **Dormant Commerce Clause Preemption**

28 Plaintiff’s claims, and each of them, brought on behalf of herself and the putative

1 members of the purported class as set forth in the Complaint, or some of them, are barred in  
2 whole or in part because the application of California law to employment in other states or  
3 countries would violate the Dormant Commerce Clause of the United States and California  
4 Constitutions given that said laws, facially and as applied to this action, would impose a burden  
5 on interstate commerce that is clearly excessive in relation to the putative local benefits.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 Lawful Exemptions

8 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
9 members of each purported class as set forth in the Complaint, or some of them, are barred in  
10 whole or in part by California Labor Code § 514 and/or Industrial Welfare Commission Order  
11 No. 9-2001, § 1(E).

12 **FIFTH AFFIRMATIVE DEFENSE**

13 Statute of Limitations

14 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
15 members of the purported class as set forth in the Complaint, or some of them, are barred in  
16 whole or in part by the applicable statutes of limitations, including without limitation, the  
17 limitations periods prescribed in California Business and Professions Code § 17209, California  
18 Labor Code § 203, and California Code of Civil Procedure §§ 338, 340, and/or 340.

19 **SIXTH AFFIRMATIVE DEFENSE**

20 No Standing

21 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
22 members of the purported class as set forth in the Complaint, or some of them, are barred in  
23 whole or in part because Plaintiff lacks standing.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 No Class Action

26 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
27 members of the purported class as set forth in the Complaint, or some of them, fail to meet the  
28 necessary requirements for class certification, including, *inter alia*, class ascertainability,

1 typicality, commonality, numerosity, manageability, superiority, and adequacy of the class  
2 representative and/or counsel.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 Unconstitutional Action

5 Certification of a class or representative action under the circumstances of this case would  
6 violate Defendant's rights under the United States Constitution and California Constitution.

7 **NINTH AFFIRMATIVE DEFENSE**

8 Conduct Reasonable and In Good Faith/Not Willful

9 Plaintiff's claims and each of them, brought on behalf of herself and the putative  
10 members of the purported class as set forth in the Complaint, or some of them, are barred in  
11 whole or in part because Defendant has at all times acted in good faith, in conformity with and in  
12 reliance on written administrative regulations, orders, rulings, guidelines, approvals, and/or  
13 interpretations of federal and California agencies, and on the basis of a good-faith and reasonable  
14 belief that it had complied fully with California wage and hour laws.

15 **TENTH AFFIRMATIVE DEFENSE**

16 No "Knowing and Intentional" Violations and No Injury

17 Neither Plaintiff nor any putative class members are entitled to penalties under California  
18 Labor Code § 226 because Defendant's behavior was not "knowing and intentional" and/or  
19 because no injury was suffered.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 Waiver

22 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
23 members of the purported class as set forth in the Complaint, or some of them, are barred in  
24 whole or in part because such claims have been waived, discharged, and/or abandoned.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 Accord and Satisfaction, Payment

27 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
28 members of the purported class as set forth in the Complaint, or some of them, are barred in

1 whole or in part by the principles of accord and satisfaction and payment.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 Release

4 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
5 members of the purported class as set forth in the Complaint, or some of them, are barred in  
6 whole or in part because Plaintiff released the claims at issue.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 Res Judicata and/or Collateral Estoppel

9 Plaintiff's causes of action as set forth in the Complaint, or some of them, are barred in  
10 whole or in part by the doctrines of *res judicata* and/or collateral estoppel because they have  
11 already been adjudicated through the grievance procedures of the applicable collective bargaining  
12 agreement(s).

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 Setoff and Recoupment

15 If any damages have been sustained by Plaintiff, or by any putative member of the  
16 purported class as set forth in the Complaint, although such is not admitted hereby or herein and  
17 is specifically denied, Defendant is entitled under the equitable doctrine of setoff and recoupment  
18 to offset all obligations of the Plaintiff or putative class members owed to Defendant against any  
19 judgment that may be entered against Defendant.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 No Jury Trial

22 Plaintiff is not entitled to have equitable issues or matters of law tried to a jury, and  
23 Plaintiff's demand for a jury trial should be so limited.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 Adequate Remedy at Law

26 To the extent Plaintiff seeks such relief, any claim by Plaintiff for equitable relief is barred  
27 because, to the extent Plaintiff and/or the putative class members are entitled to any remedy,  
28 which is not admitted hereby or herein, Plaintiff and/or the putative class members have an

1 adequate remedy at law and/or other requirements for granting injunctive or other equitable relief  
2 cannot be satisfied.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 Restitution Only

5 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
6 members of the purported class as set forth in the Complaint, or some of them, are barred in  
7 whole or in part to the extent they seek to receive penalties or other non-restitutionary awards  
8 pursuant to California Business & Professions Code.

9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 Estoppel

11 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
12 members of the purported class as set forth in the Complaint, or some of them, are barred in  
13 whole or in part because Plaintiff is estopped by his own conduct to claim any right to damages or  
14 other monetary relief, or any additional damages or other monetary relief, from Defendant.

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 Unclean Hands

17 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
18 members of the purported class as set forth in the Complaint, or some of them, are barred in  
19 whole or in part by Plaintiff's unclean hands and/or inequitable or wrongful conduct.

20 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

21 Laches

22 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
23 members of the purported class as set forth in the Complaint, or some of them, are barred in  
24 whole or in part by the doctrine of laches.

25 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

26 Due Process

27 Any award of restitution under Plaintiff's first cause of action pursuant to the California  
28 Business & Professions Code §§ 17200 *et seq.* would violate the Excessive Fines and Due

1 Process Clauses of the United States and California Constitutions.

2 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3 No Unfair or Unlawful Practice

4 Plaintiff's cause of action under California Business & Professions Code §§ 17200 *et seq.*  
5 is barred, in whole or in part, because Defendant's alleged practices were not "unfair" or  
6 "unlawful," the public was not and would not likely have been deceived by any such alleged  
7 practices, Defendant would have gained no competitive advantage by engaging in such alleged  
8 practices, and the benefits of the alleged practices outweighed any harm or other impact they  
9 might have caused.

10 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

11 Unconstitutional Remedy - California Business & Professions Code

12 Any finding of liability pursuant to the California Business & Professions Code would  
13 violate the Due Process Clauses of the United States and California Constitutions because, *inter*  
14 *alia*, the standards of liability under the Business & Professions Code are unduly vague and  
15 ambiguous, and permit retroactive, random, arbitrary, and capricious punishment that serves no  
16 legitimate governmental interest.

17 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

18 Unjust, Arbitrary and Oppressive, or Confiscatory Penalties

19 Plaintiff, and the putative members of the purported class as set forth in the Complaint, are  
20 not entitled to recover any civil penalties and/or fines pursuant to Plaintiff's causes of action,  
21 because, under the circumstances of this case, any such recovery would be unjust, arbitrary and  
22 oppressive, or confiscatory.

23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 Proper Calculations and Documentation

25 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
26 members of the purported class as set forth in the Complaint, or some of them, are barred in  
27 whole or in part because at all relevant times at issue, Defendant properly tracked the hours  
28 worked by non-exempt employees, compensated them for hours worked at the appropriate rates



1 pursuant to California law, and documented such compensation in legally sufficient wage  
2 statements.

3 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

4 No Private Right of Action

5 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
6 members of the purported class as set forth in the Complaint, or some of them, are barred to the  
7 extent they are brought under California Labor Code Section 226.7, as there is no private right of  
8 action under said statute.

9 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

10 Frivolous Claims

11 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
12 members of the purported class as set forth in the Complaint, or some of them, are "frivolous,  
13 unreasonable, or groundless" within the meaning of *Christianburg v. Garment Co. v. EEOC*, 434  
14 U.S. 412 (1978) and *Cummings v. Benco Building Servs.*, 11 Cal. App. 4th 383 (1992), and,  
15 accordingly, Defendant should recover all costs and attorneys' fees incurred herein.

16 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

17 De Minimis Harm

18 Plaintiff's claims, and each of them, brought on behalf of herself and the putative  
19 members of the purported class as set forth in the Complaint, or some of them, are barred in  
20 whole or in part because any time Plaintiff or putative class members worked allegedly without  
21 compensation was *de minimis* and not compensable.

22 **THIRTIETH AFFIRMATIVE DEFENSE**

23 Attorneys' Fees

24 Defendant is entitled to recover all costs and attorneys' fees incurred herein under  
25 California Labor Code § 218.5.

26 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

27 Defendant is informed and believes and on that basis alleges that Defendant may have  
28 additional defenses available, which are not now fully known and of which it is not now aware.

1 Defendant reserves the right to raise and assert such additional defenses once such additional  
2 defenses have been ascertained.


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**WHEREFORE**, Defendant United Airlines, Inc. prays as follows:

1. That the Complaint and each cause of action therein be dismissed with prejudice;
2. That Plaintiff take nothing by way of the Complaint;
3. That Defendant be awarded costs of suit and attorneys' fees herein; and
4. That the Court order such other and further relief for Defendant as the Court may deem just and proper.

Dated: March 19, 2019

ADAM P. KOHSWEENEY  
SUSANNAH K. HOWARD  
KRISTIN M. MACDONNELL  
  
O'MELVENY & MYERS LLP

By:   
Adam P. Kohsweeney  
Attorneys for Defendant  
United Airlines, Inc.

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**PROOF OF SERVICE**

I, Maggie T. Vuong, declare:

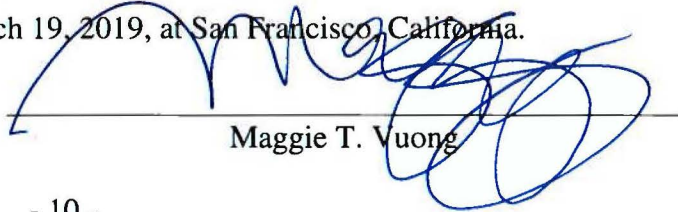
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Two Embarcadero Center, 28<sup>th</sup> Floor, San Francisco, California 94111-3823. On March 19, 2019, I served the within document(s):

**DEFENDANT UNITED AIRLINES, INC.'S ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT**

- by transmitting via facsimile machine the document(s) listed above to the fax number(s) set forth below on this date. The outgoing facsimile machine telephone number in this office is +1 415 984 8701.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by causing the document(s) to be emailed or electronically transmitted to the person(s) at the email addresses set forth below, pursuant to a court order or an agreement of the parties to accept service by email or electronic transmission. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP  
Norman B. Blumenthal, Esq.  
Kyle R. Nordrehaug  
Aparajit Bhowmik  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858) 551-1223  
Facsimile: (858) 551-1232  
Website: [www.bamlawca.com](http://www.bamlawca.com)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 19, 2019, at San Francisco, California.

  
Maggie T. Vuong

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ella Brown

(b) County of Residence of First Listed Plaintiff Unknown (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik Blumenthal Nordrehaug Bhowmik De Blouw LLP 2255 Calle Clara, La Jolla, CA 92037 / 858-551-1223

DEFENDANTS

United Airlines, Inc.

'19CV537 MMAJLB

County of Residence of First Listed Defendant Cook County, IL (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Robert A. Siegel, Adam P. KohSweeney, Susannah K. Howard O'Melveny & Myers LLP, Two Embarcadero Center San Francisco, CA 94111/ 415-984-8700

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes options for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes numerous checkboxes for specific legal claims.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Class Action Fairness Act, 28 U.S.C. § 1332(d) Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/21/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Adam P. KohSweeney

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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11 Attorneys for Defendant  
United Airlines, Inc.  
12  
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15 UNITED STATES DISTRICT COURT  
16 SOUTHERN DISTRICT OF CALIFORNIA  
17

18 ELLA BROWN, an individual, on  
behalf of herself and on behalf of all  
19 persons similarly situated

20 Plaintiff,

21 v.

22 UNITED AIRLINES, INC., a  
Corporation; and DOES 1 through  
23 50, inclusive,

24 Defendants.  
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Case No. CV '19CV537 MMAJLB

**DECLARATION OF DOROTA  
KARPIERZ IN SUPPORT OF  
NOTICE OF REMOVAL OF  
DEFENDANT UNITED AIRLINES,  
INC.**

(28 U.S.C. §§ 1332(d), 1441(a))

(San Diego County Superior Court Case  
No. 37-2019-00008533-CU-OE-CTL)

'19CV537 MMAJLB

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I, Dorota Karpierz, declare and state as follows:

1. I am currently employed by United Airlines, Inc. (“United”) in the capacity of Case Manager, Labor and Employment. I have worked for United in various capacities since August 10, 1998, and have held my current position since August 1, 2011. I have personal knowledge of the matters set forth in this declaration, and, if called as a witness, could and would competently testify thereto.

2. According to United’s records, Plaintiff Ella Brown is a resident of California.

3. United currently employs approximately 2,182 ramp agents in the State of California.

4. Under the current collective bargaining agreement, entered between United and the International Association of Machinists and Aerospace Workers, the union that represents United ramp agents, the lowest base hourly wage for a ramp agent is \$14.38 per hour.

5. United is a Delaware corporation and has its headquarters in Chicago, Illinois, with significant administrative functions centered in Houston, Texas.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of March, 2019, at Cook County, in the State of Illinois.

  
Dorota Karpierz

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15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17  
18 ELLA BROWN, an individual, on  
behalf of herself, and on behalf of all  
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21 v.

22 UNITED AIRLINES, INC., a  
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23 50, inclusive,

24 Defendants.

Case No. CV '19CV537 MMAJLB

**CORPORATE DISCLOSURE  
STATEMENT OF DEFENDANT  
UNITED AIRLINES, INC.  
PURSUANT TO FED. R. CIV. P. 7.1**

(28 U.S.C. §§ 1332(d), 1441(a))

(San Diego County Superior Court Case  
No. 37-2019-00008533-CU-OE-CTL)



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**FED R. CIV. P. 7.1 DISCLOSURE**

Pursuant to Federal Rule of Civil Procedure 7.1, Defendant United Airlines, Inc. identifies that United Continental Holdings, Inc., which is a publicly held corporation (NYSE: UAL), owns 100 percent of the stock of United Airlines, Inc. At this time, there is no known publicly held corporation that owns more than 10 percent of the stock of United Continental Holdings, Inc.

Dated: March 21, 2019

O'MELVENY & MYERS LLP  
ROBERT A. SIEGEL  
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SUSANNAH K. HOWARD  
KRISTIN M. MACDONNELL

By: /s/ Adam P. KohSweeney  
Adam P. KohSweeney  
Attorneys for Defendant United  
Airlines, Inc.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [United Airlines Employee Files Suit Alleging Labor Law Abuses](#)

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