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13 Attorneys for Plaintiff Howard Fan

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17 HOWARD FAN, individually and on behalf of
 18 all others similarly situated,

19 Plaintiffs,

20 vs.

21 DELTA AIR LINES, INC., a Delaware
 22 corporation; and DOES 1-50, inclusive,

23 Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1) FAILURE TO PAY OVERTIME WAGES
[Cal. Labor Code §§ 510, 1194]
- 2) FAILURE TO PAY TIMELY WAGES
[Cal. Labor Code § 204]
- 3) FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS
[Cal. Labor Code § 226]
- 4) FAILURE TO MAINTAIN REQUIRED
RECORDS
[Cal. Labor Code §§ 226, 1174]
- 5) FAILURE TO PAY ALL WAGES DUE
TO DISCHARGED AND QUITTING
EMPLOYEES
[Cal. Labor Code § 203]
- 6) UNFAIR AND UNLAWFUL BUSINESS
PRACTICES
[Cal. Bus. & Prof. Code § 17200 *et seq.*]

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7) REPRESENTATIVE ACTION FOR
CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
[Cal. Labor Code § 2698 *et seq.*]

DEMAND FOR JURY TRIAL

PRELIMINARY ALLEGATIONS

1. Plaintiff Howard Fan brings this California class action against Delta Air Lines, Inc. (“Delta”). As explained below, Delta systematically denies its employees the overtime compensation to which they are entitled under California law. In particular, Delta fails to take into account all required forms of compensation when calculating the “regular rate” upon which employees’ overtime compensation is to be determined under California law.

2. Under California law, overtime hours worked must be compensated with premium pay that is calculated as a multiple of the employee’s “regular rate” of pay. California mirrors the federal Fair Labor Standards Act (“FLSA”) with respect to the calculation of the “regular rate” for overtime purposes. The FLSA defines the “regular rate” of pay to include “all remuneration for employment paid to, or on behalf of, an employee,” with certain exceptions not relevant here. 29 U.S.C. § 207(e); *see also* 29 C.F.R. §§ 778.108, 778.109, 778.208. Accordingly, the “regular rate” of pay for purposes of calculating overtime premiums due under California law includes the total remuneration for the employee’s employment, including but not limited to wages or salary, non-discretionary bonuses based on productivity, efficiency, performance or attendance; profit-sharing payments; premium payments, such as shift differentials for less desirable shifts; and payments other than cash, such as the fair market value of goods provided to employees by the employer.

3. Delta’s overtime violations are clear on the face of the company’s own payroll records. The wage statements issued to Plaintiff Howard Fan and other similarly situated employees reflect several forms of compensation – shift differential pay, Shared Rewards payments (a non-discretionary bonus), profit-sharing payments, and the fair market value of pass travel privileges and Travel Companion Passes (in-kind compensation that Delta treats as taxable

1 income to the employee) – that Delta does not include in calculating its employees’ regular rate of
2 pay for purposes of determining overtime compensation due to them. By excluding these forms of
3 remuneration from its calculations of employees’ overtime premiums, Delta has systematically
4 underpaid its employees for their overtime hours worked.

5 4. Determining which employees’ overtime pay was miscalculated, and by how much,
6 can be done solely from Delta’s payroll records because those records show the (1) total hours
7 worked at both the straight-time rate of pay and any applicable overtime rate paid by Delta, (2) all
8 forms of additional compensation earned during the pay period (including shift differentials,
9 bonuses, and other benefits), and (3) rates of pay at both the straight-time rate and overtime rates
10 actually paid.

11 5. In addition to overtime claims arising from Delta’s failure to pay the full amounts
12 of overtime premiums that are due, Plaintiff Fan also brings several derivative state law claims
13 arising from Delta’s overtime violations. Because Delta has systematically failed to pay the full
14 amounts of overtime premiums that are due under California law, the company has also failed to
15 pay wages due on a timely basis, Cal. Labor Code § 204; failed to provide accurate wage
16 statements to its employees, *id.* § 226; failed to keep required records, *id.* §§226, 1174; willfully
17 failed to pay all wages due to employees whose employment with Delta has terminated, *id.* §203;
18 and committed unlawful and unfair business practices, Cal. Bus. & Prof. Code § 17200. Plaintiff
19 Fan seeks class certification of these California state law claims under Fed. R. Civ. P. 23. Plaintiff
20 also seeks to recover civil penalties for these and other Labor Code violations pursuant to the
21 Labor Code Private Attorneys’ General Act, Cal. Labor Code §§2698-2699 *et seq.*

22 **THE PARTIES**

23 6. Plaintiff Howard Fan is an individual residing in Temple City, California.

24 7. Upon information and belief, defendant Delta Air Lines, Inc. (“Delta”) is a
25 Delaware corporation whose principal place of business is in Georgia. Defendant Delta does
26 business in the State of California.

27 8. Plaintiff does not know the names of the Defendants sued as Does 1 through 50,
28 but will amend this complaint when that information becomes known. Plaintiff alleges on

1 information and belief that each of the Doe Defendants is affiliated with the named Defendant in
2 some respect and is in some manner responsible for the wrongdoing alleged herein, either as a
3 direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of Delta.
4 Herein, Plaintiff refers to Delta and the Doe defendants collectively as “Defendants.”

5 9. At all relevant times herein, Plaintiff and putative class members were employed by
6 Defendants under employment agreements that were partly written, partly oral, and partly implied.
7 In perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted
8 pursuant to, and in furtherance of, their policies and practices of not paying Plaintiff and putative
9 class members all wages earned and due, through methods and schemes which include, but are not
10 limited to, failing to pay overtime premiums due, failing to pay wages due on a timely basis, and
11 failing to provide accurate itemized statements for each pay period, in violation of the California
12 Labor Code and applicable California Industrial Welfare Commission (“IWC”) Orders.

13 **JURISDICTION AND VENUE**

14 10. This Court has original jurisdiction over the claims in this case under the Class
15 Action Fairness Act, 28 U.S.C. §1332(d). Plaintiff is a resident of California, and Defendant Delta
16 is a resident of Delaware and Georgia. The amount in controversy exceeds \$5,000,000 in the
17 aggregate.

18 11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because
19 Defendant Delta does business and resides in this district within the meaning of 28 U.S.C. § 1391,
20 and a substantial part of the events or omissions giving rise to the class claims arose in this district
21 within the meaning of 28 U.S.C. § 1391.

22 **FACTUAL ALLEGATIONS**

23 12. Plaintiff Howard Fan was employed by Defendant Delta as a customer service
24 agent at Los Angeles International Airport from September 2010 until August 2018.

25 13. Throughout Plaintiff Fan’s employment with Delta, Delta had a uniform policy and
26 practice of failing to include, in its calculation of employees’ “regular rate of pay” for
27 determination of overtime premiums, multiple forms of employee compensation, including shift
28 differential payments, “Shared Rewards” bonuses, profit-sharing payments, and the fair market

1 value of airline travel using pass travel privileges and Travel Companion Passes provided to Delta
2 employees.

3 14. On information and belief, throughout the class period, Delta has had a policy and
4 practice of paying shift differentials to class members for each hour worked on afternoon and
5 night shifts. These shift differentials are supplements to the employee's straight-time hourly rate
6 of pay, which are paid for each hour worked by the employee on the afternoon or night shifts.

7 15. On information and belief, throughout the class period, Delta has had a policy and
8 practice of providing class members additional compensation through the Shared Rewards
9 program. Pursuant to the Shared Rewards program, class members earned a cash bonus if Delta's
10 company-wide operations met or exceeded pre-determined standards in three areas: baggage
11 handling, completion factor (defined as the number of flights flown as compared to flights
12 scheduled for the month), and on-time arrivals. Shared Rewards bonuses were paid on a monthly
13 basis and were also reflected on an employee's wage statement for the pay period in which they
14 were paid. Under the written terms of the Program, Delta employees were automatically entitled
15 to the bonuses in specified amounts if certain operational metrics were met or exceeded. Shared
16 Rewards payments were made on a company-wide basis, with all eligible employees receiving the
17 same amount.

18 16. On information and belief, throughout the class period, Delta also provided
19 additional compensation to class members pursuant to Delta's profit-sharing plan. Under Delta's
20 profit-sharing plan, employees were paid additional compensation according to a predetermined
21 formula based on Delta's profits and the hours an employee worked during the year. Additional
22 compensation under the profit-sharing plan was paid to class members on a yearly basis.
23 Additional compensation under the profit-sharing plan also appears on an employee's wage
24 statement for the pay period in which it is paid.

25 17. On information and belief, throughout the class period, Delta has had a policy and
26 practice of providing additional compensation to class members in the form of pass travel
27 privileges and Travel Companion Passes. These Passes are made available to Delta employees,
28 who may use them themselves, or provide them to friends or family, for free or reduced-fare travel

1 on Delta Air Lines flights. On information and belief, Delta treats the fair market value of these
2 travel benefits as taxable compensation to the employee, which is subject to payroll tax
3 deductions. On information and belief, Delta does not include the fair market value of this in-kind
4 compensation in the employee's remuneration for purposes of calculating the employee's regular
5 rate of pay for determining overtime premiums.

6 18. As a result of Delta's uniform policies and practices set forth herein, Plaintiff Fan
7 suffered systematic underpayment for overtime hours that he worked.

8 19. On numerous occasions during the class period, Plaintiff Fan worked overtime
9 hours and also earned shift differentials, but his regular rate of pay was calculated based solely on
10 his straight-time wage rate. For example, during the pay period ending February 23, 2018, Fan
11 worked 1 hour of overtime, but was underpaid because Delta did not include afternoon shift
12 differential pay that he earned during that pay period in its calculation of his regular rate for
13 purposes of determining his overtime premium. For the pay period ending April 6, 2018, Fan
14 worked 1 hour of overtime, but was underpaid because Delta did not include Shared Rewards
15 payments in the calculation of his overtime pay. For the pay period ending May 11, 2018, Fan
16 worked .90 hours of overtime, but was underpaid because Delta did not include afternoon and
17 night shift differential pay in the calculation of his overtime pay. Similarly, during the pay period
18 ending August 14, 2018, Fan worked 1.25 hours of overtime, but was underpaid because Delta did
19 not include afternoon and night shift differential pay that he earned during that pay period in its
20 calculation of his regular rate for purposes of determining his overtime premium. Instead, in each
21 instance, Delta calculated Fan's overtime pay premium during that period based solely on his
22 straight-time hourly rate.

23 20. Delta also did not include Shared Rewards bonuses and profit-sharing payments in
24 its calculation of Plaintiff Fan's overtime pay in any pay period. For example, during his
25 employment with Delta in 2018, Plaintiff Fan earned \$500.00 in Shared Rewards bonuses and
26 \$3,363.04 in profit-sharing payments. However, Delta never recalculated Fan's overtime
27 compensation earned in 2018 to account for those payments, which were part of the overall
28 remuneration paid to Plaintiff Fan.

1 24. This action is appropriately suited for class treatment because:

2 a. The proposed class is a significant number. Plaintiff is informed and
3 believes, and thereon alleges, that the proposed class numbers well over 100 members. Joinder of
4 all current and former employees individually would be impractical.

5 b. This action involves questions of law and fact common to the potential class
6 because the action focuses on Defendants' systematic course of illegal payroll practices and
7 policies, which was applied to all non-exempt California employees in violation of the California
8 Labor Code, the applicable IWC wage order, and the California Business and Professions Code.
9 In particular, common questions include, but are not limited to whether shift differentials, non-
10 discretionary bonuses, and other forms of compensation must be included in the regular rate of pay
11 for purposes of calculating overtime due under the California Labor Code; whether the fair market
12 value of airline travel using Delta's pass travel privileges and Travel Companion Passes must be
13 included in the regular rate of pay for purposes of calculating overtime due under the California
14 Labor Code; whether Defendants' failure to pay overtime wages due resulted in a failure to pay
15 wages on a timely basis; whether Defendants' failure to accurately calculate employees "regular
16 rate" resulted in a failure to provide employees accurate wage statements; whether Defendants'
17 failure to accurately calculate employees "regular rate" resulted in a failure to keep required
18 records; whether Defendants' failure to accurately calculate employees "regular rate" resulted in a
19 failure to pay employees whose employment with Delta terminated all wages owed upon
20 termination; whether Defendants' conduct constitutes an unlawful, unfair, or fraudulent business
21 act or practice; and the appropriate remedies for Defendants' conduct.

22 c. Plaintiff's claims are typical of the class because Defendants subjected all
23 class members to identical violations of the California Labor Code, the applicable IWC wage
24 order, and the California Business and Professions Code.

25 d. Plaintiff is able to fairly and adequately protect the interests of all members
26 of the class because it is in his best interests to prosecute the claims alleged herein to obtain full
27 compensation due to the class for all services rendered and hours worked. Plaintiff has no
28 interests that are adverse to those of the proposed class members.

1 efficiency, performance or attendance; profit-sharing payments; premium payments, such as shift
2 pay differentials; and the fair market value of goods provided by the employer to employees as
3 part of employees' compensation. Defendants failed to include shift differential pay, non-
4 discretionary bonuses, such as profit-sharing and Shared Rewards, and the fair market value of
5 airline travel using pass travel privileges and Travel Companion Passes, in the calculation of the
6 regular rate, and, thus, failed to accurately calculate and pay Plaintiff and class members for all
7 overtime.

8 31. Plaintiff and class members are current and former non-exempt employees entitled
9 to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001.
10 During the class period, Defendants failed to compensate Plaintiff and class members for all
11 overtime hours worked as required under the foregoing provisions of the California Labor Code
12 and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1.5) or
13 double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC Wage
14 Order No. 9-2001, § 3; failing to provide accurate itemized wage statements to Plaintiff and class
15 members for each pay period; and other methods to be discovered.

16 32. In violation of California law, Defendants have knowingly and intentionally
17 refused to perform their obligations to compensate Plaintiff and class members for all wages
18 earned and all hours worked. As a proximate result, class members have suffered, and continue to
19 suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such
20 wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their
21 obligations under state law, all to their respective damages in amounts according to proof at time
22 of trial, and within the jurisdiction of this Court.

23 33. Defendants' conduct described herein violates California Labor Code §§ 510, 1194,
24 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor Code §§ 200, 203,
25 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC
26 Wage Orders, Plaintiff and class members are entitled to recover the unpaid balance of wages
27 owed to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

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SECOND CAUSE OF ACTION

(Failure to Pay Timely Wages – Cal. Labor Code § 204)

34. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

35. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, Defendants are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, Defendants are required to pay their nonexempt employees between the 1st and 10th day of the following calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

36. During the class period, Defendants knowingly and willfully failed to pay Plaintiff and class members all the wages they earned when due as required by California Labor Code § 204.

37. Pursuant to California Labor Code § 210, failure to pay the wages of each employee as provided in California Labor Code § 204 will subject Defendants to a civil penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five percent (25%) of the amount unlawfully withheld, for each subsequent violation.

38. Defendants’ conduct described herein violates California Labor Code § 204. As a proximate result of the aforementioned violations, Plaintiff and class members have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 210, 226, 558, 1194, 1197.1, 2699, and other applicable provisions under the Labor Code and IWC Wage Orders, Plaintiff and class members are entitled to recover the unpaid balance of wages owed to them by Defendants, plus interest, penalties, attorneys’ fees, expenses, and costs of suit.

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THIRD CAUSE OF ACTION

(Failure to Furnish Accurate Itemized Wage Statements – Cal. Labor Code § 226;
IWC Wage Order No. 9-2001, § 7)

39. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

40. During the class period, Defendants routinely failed to provide Plaintiff and class members with timely, accurate, and itemized wage statements in writing showing each employee’s gross wages earned, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order No. 9-2001, § 7.

41. During the class period, Defendants knowingly and intentionally failed to provide Plaintiff and class members with timely, accurate, and itemized wage statements in accordance with California Labor Code § 226(a).

42. As a proximate result of Defendants’ unlawful actions and omissions, Plaintiff and class members have been damaged in an amount according to proof at trial, and seek all wages earned and due, plus interest thereon. Additionally, Plaintiff and class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys’ fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

FOURTH CAUSE OF ACTION

(Failure to Maintain Required Records --

Cal. Labor Code §§ 226, 1174; IWC Wage Order 9-2001 § 7)

43. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

44. During the class period, as part of Defendants’ illegal payroll policies and practices set forth herein, Defendants knowingly and intentionally failed to maintain records as required by California Labor Code §§ 226 and 1174, and IWC Wage Order 9-2001 § 7, including but not limited to applicable rates of pay for all hours worked, and accurate itemized wage statements.

45. As a proximate result of Defendants’ unlawful actions and omissions, Plaintiff and

1 class members have been damaged in an amount according to proof at trial, and are entitled to all
2 wages due and interest thereon. Additionally, Plaintiff and class members are entitled to all
3 available statutory penalties, including but not limited to civil penalties pursuant to California
4 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
5 attorneys' fees, including but not limited to those provided by California Labor Code § 226(e), as
6 well as other available remedies.

7 **FIFTH CAUSE OF ACTION**

8 (Willful Failure to Pay All Wages Due to Discharged or Quitting Employees --
9 Cal. Labor Code § 203)

10 46. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

11 47. Pursuant to California Labor Code §§ 201, 202, and 203, Defendants are required
12 to pay all earned and unpaid wages to an employee whose employment is terminated for any
13 reason.

14 48. California Labor Code § 201 mandates that if an employer discharges an employee,
15 the employee's wages accrued and unpaid at the time of discharge are due and payable
16 immediately.

17 49. California Labor Code § 202 mandates that if an employee quits his employment,
18 the employer must pay all wages accrued and unpaid at the time the employee quits within 72
19 hours after the employee quits, unless the employee provided at least 72 hours notice of his
20 intention to quit, in which case the employee is entitled to his wages at the time of quitting.

21 50. California Labor Code § 203 provides that if an employer willfully fails to pay any
22 wages owed to an employee in accordance with Labor Code §§ 201 and 202, the employer is
23 liable for waiting time penalties in the form of continued compensation to the employee at the
24 same rate for up to 30 workdays.

25 51. During the class period, Defendants have willfully failed to pay accrued and unpaid
26 wages owed to Plaintiff and class members whose employment has terminated, in accordance with
27 California Labor Code §§ 201 and 202.

28 52. As a result, Plaintiff and class members are entitled to all statutory penalties,

1 including the waiting time penalties set forth in California Labor Code § 203, together with
2 interest thereon, as well as other available remedies.

3 **SIXTH CAUSE OF ACTION**

4 (Unfair and Unlawful Business Practices – Cal. Bus. & Prof. Code § 17200 et seq.)

5 53. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

6 54. Each and every one of Defendants’ acts and omissions in violation of the California
7 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
8 Defendants’ failure and refusal to pay overtime compensation; Defendants’ failure and refusal to
9 pay timely wages; and Defendants’ failure and refusal to furnish accurate itemized wage
10 statements, constitutes an unfair and unlawful business practice under California Business and
11 Professions Code § 17200 *et seq.*

12 55. Defendants’ violations of California wage and hour laws constitute a business
13 practice because Defendants’ aforementioned acts and omissions were done repeatedly over a
14 significant period of time, and in a systematic manner, to the detriment of Plaintiff and class
15 members.

16 56. Defendants have avoided payment of overtime wages and other benefits as required
17 by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage
18 Order. Further, Defendants have failed to record, report, and pay the correct sums of assessment
19 to the state authorities under the California Labor Code and other applicable regulations.

20 57. As a result of Defendants’ unfair and unlawful business practices, Defendants have
21 reaped unfair and illegal profits during the class period at the expense of Plaintiff, class members,
22 and members of the public. Defendants should be made to disgorge their ill-gotten gains and to
23 restore them to Plaintiff and class members.

24 58. Defendants’ unfair and unlawful business practices entitle Plaintiff and class
25 members to seek preliminary and permanent injunctive relief, including but not limited to orders
26 that Defendants account for, disgorge, and restore to Plaintiff and class members the wages
27 unlawfully withheld from them. Plaintiff and class members are entitled to restitution of all
28 monies to be disgorged from Defendants in an amount according to proof at the time of trial, but

1 in excess of the jurisdiction of this Court.

2 **SEVENTH CAUSE OF ACTION**

3 (Representative Action for Civil Penalties Under the California Labor Code Private Attorneys
4 General Act of 2004 – Cal. Labor Code § 2698 *et seq.*)

5 59. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein, with
6 the exception of the allegations in paragraphs 23-27.

7 60. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
8 § 2699(c) and a proper representative to bring a civil action on behalf of himself and other current
9 and former non-exempt employees of Delta in California pursuant to the procedures specified in
10 California Labor Code § 2699.3, because Plaintiff was employed by Delta and the alleged
11 violations of the California Labor Code were committed against Plaintiff and other aggrieved
12 employees of Delta during the relevant period.

13 61. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
14 Code §§ 2698–2699.5, Plaintiff, on behalf of himself and all other similarly aggrieved employees,
15 seeks to recover civil penalties, including but not limited to penalties under California Labor Code
16 §§ 2699, 210, 226.3, 558, 1174.5, 1197.1, 1199, and IWC Wage Order 9-2001, § 20, from Delta in
17 a representative action for the violations set forth above, including but not limited to violations of
18 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.
19 Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant to California
20 Labor Code § 2699(g)(1).

21 62. Pursuant to California Labor Code §§ 2699.3, on January 16, 2019, Plaintiff gave
22 written notice by online submission to the California Labor and Workforce Development Agency
23 (“LWDA”) and by certified mail to Delta of the specific provisions of the California Labor Code
24 and IWC Wage Order alleged to have been violated, including the facts and theories to support the
25 alleged violations. Within sixty-five (65) calendar days of the postmark date of Plaintiff’s notice
26 letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged
27 violations

28 63. Therefore, Plaintiff has complied with all of the requirements set forth in California

1 Labor Code § 2699.3 to commence a representative action under PAGA.

2 **PRAYER**

3 WHEREFORE, Plaintiff, individually, and on behalf of all other persons similarly situated,
4 respectfully prays for relief against Defendant Delta and Does 1 through 50, inclusive, and each of
5 them, as follows:

6 1. For compensatory damages in an amount to be ascertained at trial;

7 2. For restitution of all monies due to Plaintiff and class members, as well as
8 disgorged profits from the unfair and unlawful business practices of Defendants;

9 3. For preliminary and permanent injunctive relief enjoining Defendants from
10 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
11 from engaging in the unlawful business practices complained of herein;

12 4. For statutory and civil penalties according to proof, including but not limited to all
13 penalties authorized by the California Labor Code §§ 226(e) and 2698 *et seq.*;

14 5. For interest on the unpaid wages at 10% per annum pursuant to California Labor
15 Code §§ 218.6, 1194, California Civil Code §§ 3287, 3288, and/or any other applicable provision
16 providing for pre-judgment interest;

17 6. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
18 218.5, 1194, 2699(g)(1), California Civil Code § 1021.5, and/or any other applicable provisions
19 providing for attorneys' fees and costs;

20 7. For declaratory relief;

21 8. For an order certifying the First, Second, Third, Fourth, Fifth, and Sixth Causes of
22 Action as a class action;

23 9. For an order appointing Plaintiff as class representative and Plaintiff's counsel as
24 class counsel; and

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1 10. For such further relief that the Court may deem just and proper.

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DATED: March 22, 2019

Respectfully submitted,

MATERN LAW GROUP, PC
Matthew J. Matern
Scott A. Brooks
Matthew W. Gordon

ALTSHULER BERZON LLP
James M. Finberg
Eileen B. Goldsmith
Eric P. Brown

By: /s/ Matthew J. Matern
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: March 22, 2019

Respectfully submitted,

MATERN LAW GROUP, PC
Matthew J. Matern
Scott A. Brooks
Matthew W. Gordon

ALTSHULER BERZON LLP
James M. Finberg
Eileen B. Goldsmith
Eric P. Brown

By: /s/ Matthew J. Matern
Attorneys for Plaintiff

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS HOWARD FAN, individually and on behalf of all others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff LOS ANGELES <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) (See attachment)</p>	<p>DEFENDANTS DELTA AIR LINES, INC., a Delaware corporation; and DOES 1-50, inclusive, County of Residence of First Listed Defendant SAN FRANCISCO <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p>1 U.S. Government Plaintiff 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p>2 U.S. Government Defendant x4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td style="text-align: center;">x 1</td> <td style="text-align: center;">1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;">4 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;">5 x 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6 6</td> </tr> </tbody> </table>		PTF	DEF	PTF	DEF	Citizen of This State	x 1	1	Incorporated or Principal Place of Business In This State	4 4	Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5 x 5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	LABOR	PROPERTY RIGHTS	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	x 790 Other Labor Litigation	SOCIAL SECURITY	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	IMMIGRATION	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	CIVIL RIGHTS	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
REAL PROPERTY	PRISONER PETITIONS		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	HABEAS CORPUS		FEDERAL TAX SUITS	893 Environmental Matters
220 Foreclosure	463 Alien Detainee		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	510 Motions to Vacate Sentence		871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	530 General			899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	535 Death Penalty			950 Constitutionality of State Statutes
290 All Other Real Property	OTHER			
	440 Other Civil Rights			
	441 Voting			
	442 Employment			
	443 Housing/Accommodations			
	445 Amer. w/Disabilities—Employment			
	446 Amer. w/Disabilities—Other			
	448 Education			
	540 Mandamus & Other			
	550 Civil Rights			
	555 Prison Condition			
	560 Civil Detainee—Conditions of Confinement			

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

x 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
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VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
 28 U.S.C. § 1332(d)
 Brief description of cause:
 Failure to Pay Overtime Wages, Failure to Pay Timely Wages, Failure to Furnish Accurate Wage Statements, Failure to Maintain Required Records, Failure to Pay All Wages Due to Discharged and Quitting Employees, Unfair and Unlawful Business Practices

VII. REQUESTED IN COMPLAINT: x CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: x Yes No

VIII. RELATED CASE(S), IF ANY *(See instructions):* JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) x SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

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ATTACHMENT

I. (c) Plaintiff's Attorneys (*Firm Name, Address, and Telephone Numbers*)

MATERN LAW GROUP, PC
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, California 90266
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Facsimile: (310) 531-1901

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Facsimile: (415) 362-8064

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wage and Hour Class Action Against Delta Air Lines Bumped to California's Central District](#)
