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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KATHRYN OTICO, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

HAWAIIAN AIRLINES, INC. a Delaware
Corporation,

Defendant.

CASE NO.:

CLASS ACTION

COMPLAINT FOR:

1. FAILURE TO PAY MINIMUM WAGES (FLSA)
2. FAILURE TO OVERTIME (FLSA)
3. FAILURE TO PAY HOURLY WAGES (CAL. LABOR CODE)
4. FAILURE TO PAY OVERTIME (CAL. LABOR CODE)
5. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (CAL. LABOR CODE)
6. FAILURE TO PAY FINAL WAGES (CAL. LABOR CODE)
7. UNLAWFUL BUSINESS PRACTICES (CAL. BUS & PROF CODE)

[DEMAND FOR JURY TRIAL]

1 **I.**

2 **NATURE OF ACTION**

3 1. Otico brings this wage-and-hour collective and class action, individually and on
4 behalf of similarly situated individuals, to seek redress for Hawaiian Airline, Inc.'s ("HA")
5 failure to compensate individuals for the time they spent attending Airport Customer Service
6 Trainings, or any other training program, including training that HA refers to as "pre-
7 employment" training.

8 2. Because HA did not treat these individuals ("Trainees") as employees and pay
9 them for training time, it violated the Federal Fair Labor Standards Act ("FLSA"), the California
10 Labor Code, and applicable regulations by failing to pay minimum wages and overtime.

11 3. Thus, Otico seeks collective and class-wide unpaid wages, penalties, liquidated
12 damages, pre- and post-judgment interest, attorneys' fees and costs, as well as injunctive relief.

13 **II.**

14 **JURISDICTIONAL STATEMENT**

15 **Jurisdiction**

16 4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1332(d), 1453, and
17 1711-1715, the Class Action Fairness Act of 2005, because the amount in controversy exceeds
18 \$5 million and because minimum diversity is met since at least one party (Otico) is diverse from
19 HA. Otico is a California resident and HA is headquartered in Hawaii and incorporated in
20 Delaware.

21 5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
22 question) over Otico's FLSA claim.

23 6. This Court also has supplemental jurisdiction over Otico's state-law claims
24 pursuant to 28 U.S.C. § 1367.

25 **Venue**

26 7. Venue in this Court is proper because Otico regularly conducts business and
27 employs employees throughout the country, including San Francisco.

28

1 **Intradistrict Assignment**

2 **8.** A substantial part of the events giving rise to the claims asserted herein occurred
3 in Alameda County. This is a wage-and-hour collective and class action subject to district-wide
4 assignment pursuant to Civil Local Rule 3-2(c).

5 **III.**

6 **PARTIES**

7 **9.** Otico is an individual residing in Union City, California who attended a
8 mandatory HA training session held in Oakland, California.

9 **10.** HA is a large passenger airline carrier. HA is incorporated in Delaware and
10 headquartered in Honolulu, Hawaii corporation. HA does business and employs individuals
11 throughout California and the United States. HA's alleged acts were authorized, directed or
12 accomplished by its agents, officers employees or representatives, while actively engaged in the
13 operation and management of its business.

14 **IV.**

15 **FACTUAL BACKGROUND**

16 **11.** HA provides air travel from North America, Asia, and the South Pacific to
17 Hawaii. Otico applied for a customer service position with HA around October 2015 and was
18 interviewed for the position in December 2015.

19 **12.** After completing the interview process, HA informed Otico that she was required
20 to attend a mandatory training program, which was offered at various locations across the
21 country. Otico registered for the program held in December 2015 at Oakland Airport.

22 **13.** Before the program started, HA sent Otico a welcome packet. The packet stated
23 that the training program was approximately 10 days long, Monday through Saturday, from 8:30
24 a.m. to 5:00 p.m. It further stated that it was mandatory to attend all training days in their
25 entirety. The packet also stated that Trainees were required to review and study course material
26 outside of class to prepare for quizzes and tests. The packets also stated that the training program
27 covered, among other things, customer service functions and airport facilities.

28 **14.** Otico attended the training program. She spent time in class, as well as around 1

1 hour reviewing the Welcome Packet materials and another 3-4 hours studying after each class.

2 **15.** Otico terminated her employment at HA in March 2016.

3 **16.** At no time did HA compensate Otico for any of the time she spent studying for
4 and attending the program. Yet California and federal law requires HA to pay at least minimum
5 wage and overtime for the training and studying time — regardless if HA refers to it as pre-
6 employment training — because, among other things, attendance was mandatory, the course
7 material was related to the Trainee’s job, and attendance was during regular working hours.

8 **17.** Based on information, belief, and personal knowledge, all other Trainees were
9 similarly situated to Otico because they were required to attend a training program and not paid
10 for the training or study time.

11 **18.** As a result of the unpaid wages, HA failed to provide Trainees who attended
12 training in California or who otherwise worked in California, with accurate wage statements in
13 violation of Labor Code §226 and pay all final wages owed to terminated Trainees under the
14 Labor Code § 203.

15 **V.**

16 **COLLECTIVE AND CLASS ALLEGATIONS**

17 **19.** This lawsuit is brought on behalf of the following collective and class (together
18 referred to as classes):

19 **a. FLSA Collective**

20 All persons who Hawaiian Airlines, Inc. required to attend its Airport Customer
21 Service Training or any other type of training, including training referred to as
22 “pre-employment” training, at any time within three years of opting in to the
23 lawsuit, and were not compensated for that time.

24 **b. California Class**

25 All persons who Hawaiian Airlines, Inc. required to attend its Airport Customer
26 Service Training or any other type of training, including training referred to as
27 “pre-employment” training, at any time within four years from the date of filing
28 this lawsuit, and were not compensated for that time.

1 **c. California Subclass**

2 All California Class members formerly employed by Hawaiian Airlines, Inc.

3 **20. Numerosity:** The classes are so numerous that joinder of all members is
4 impracticable. Although the precise number is unknown, and the facts are presently within HA's
5 sole knowledge, there are at least several hundred Trainees thereby making the class sufficiently
6 numerous to warrant certification.

7 **21. Commonality:** There are questions of law or fact common to the classes that
8 predominate over any questions affecting individual members. Those questions include: whether
9 HA is required to compensate Otico and the classes minimum wages and overtime for training
10 and studying time under FLSA and the California Labor Code.

11 **22. Typicality:** Otico's claims are typical of the classes' claims because they all
12 attended HA Trainees and sustained damages, including underpayment of wages resulting from
13 HA's common compensation policies and practices. Any defenses that likely will be asserted
14 against Otico are typical of the defenses that likely will be asserted against the classes as well.

15 **23. Adequacy:** Otico will fairly and adequately protect the classes' interests because
16 he has no conflicts with the classes' interests and has retained counsel experienced in pursuing
17 complex class action litigation. Otico and her counsel will adequately and vigorously represent
18 the Classes' interests.

19 **24. Superiority:** First, collective action and class action treatments are superior to
20 other available methods because they will permit a large number of similarly situated persons to
21 prosecute their common claims in a single forum simultaneously, efficiently, and without the
22 duplication of effort and expense that numerous individual actions would entail. Second, absent
23 a collective or class action, there likely will be no lawsuits to recover the unpaid wages owed to
24 Otico and the classes because the amounts owed to each member are too small to warrant filing
25 individual lawsuits. Third, because members of the classes are likely to be reluctant to file an
26 individual lawsuit in fear of retaliation and so to not allow the classes to proceed would allow
27 HA to retain the benefit of its wrongdoing and continue its conduct. Fourth, the prosecution of
28 separate actions by individual class members would create the risk of inconsistent or varying

1 adjudications with respect to individual members and thus would result in incompatible
2 standards of conduct for HA. And fifth, no difficulties will likely to be encountered in managing
3 this case as a collective or class action, particularly since the members are readily identifiable
4 from records that HA is legally required to maintain.

5 **VI.**

6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**

8 **Failure To Pay Minimum Wages Under FLSA**

9 **(By FLSA Collective Against HA)**

10 **25.** Otico re-alleges and incorporates all preceding paragraphs.

11 **26.** Otico and the FLSA Collective were non-exempt employees of HA covered by
12 the Title 29 U.S.C. § 203(e)(1) of the FLSA, which states that an employee “means any
13 individual employed by an employer,” and that an employer “includes any person acting directly
14 or indirectly in the interest of an employer in relation to an employee.”

15 **27.** Under Title 29 U.S.C. § 206, Otico and the FLSA Collective are entitled to
16 receive at least a minimum wage for all hours worked. Under Title 29 U.S.C. § 203(g), “hours
17 worked” includes all hours employees are suffered or permitted to work.

18 **28.** HA required the FLSA Collective to attend training sessions, including Airport
19 Customer Service Training. The FLSA Collective was entitled to be compensated for the time
20 associated with attending training sessions. HA, however, failed to pay the FLSA Collective at
21 least minimum wage for all of the time spent in mandatory training sessions, as well as the time
22 spent studying for the training sessions, in violation of Title 29 U.S.C. § 206.

23 **29.** As a result Otico and the FLSA Collective suffered damages as they were not paid
24 minimum wages for all hours actually worked.

25 **30.** Otico seeks collective-wide compensation for HA’s unlawful conduct and will
26 take the appropriate steps to notify and join the FLSA Collective under 29 U.S.C. § 216(b) via
27 written joinder consents.

28 **31.** Under Title 29 U.S.C. §§ 206 and 216(b), Otico and the FLSA Collective are

1 entitled to recover the full amount of unpaid minimum wages, liquidated damages, interest
2 thereon, reasonable attorney's fees and the costs of suit.

3 **SECOND CLAIM FOR RELIEF**

4 **Failure To Pay Overtime Wages Under FLSA**

5 **(By FLSA Collective Against HA)**

6 **32.** Otico re-alleges and incorporates all preceding paragraphs.

7 **33.** Under Title 29 U.S.C. § 207, Otico and the FLSA Collective were entitled to
8 receive overtime at a rate of 1.5 times their regular rate for any hours worked in excess of 40
9 hours in a week. During their employment for HA, Otico and the FLSA Collective worked over
10 40 hours in a week.

11 **34.** HA had a policy and practice of willfully not paying Otico and FLSA Collective
12 overtime wages for overtime hours worked. HA required Otico and the FLSA Collective to
13 attend mandatory training sessions and studying for the training sessions. Performing those tasks
14 required Otico and the FLSA Collective to work more than 40 hours during the workweek.

15 **35.** As a result, Otico and FLSA Collective suffered damages as they were not paid a
16 proper overtime rate for all hours they worked in excess of 40 hours per week.

17 **36.** Otico seeks collective-wide compensation for HA's unlawful conduct and will
18 take the appropriate steps to notify and join the FLSA Collective under 29 U.S.C. § 216(b) via
19 written joinder consents.

20 **37.** Under Title 29 U.S.C. §§ 207 and 216(b), Otico and the FLSA Collective is
21 entitled to recover the full amount of unpaid overtime wages, interest thereon, liquidated
22 damages, reasonable attorney's fees and the costs of suit.

23 **THIRD CLAIM FOR RELIEF**

24 **Failure to Pay All Hourly Wages Owed**

25 **(By California Class Against HA)**

26 **38.** Otico re-alleges and incorporates all preceding paragraphs.

27 **39.** HA had a policy and practice of not paying Trainees for the time they spent
28 attending and studying for HA's mandatory training programs.

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and her counsel as Collective and Class counsel;

- b. That the Court preliminarily and permanently enjoin HA from engaging in the conduct alleged herein;
- c. Other injunctive and declaratory relief as may be appropriate;
- d. Restitution and disgorgement of any ill-gotten profits from HA to the extent permitted by applicable law, together with interest thereon from the date of payment;
- e. For statutory penalties;
- f. For liquidated damages;
- g. For statutory damages;
- h. For general damages;
- i. For special damages;
- j. For exemplary or punitive damages;
- k. A declaration that HA is financially responsible for notifying the classes about the pendency of this action;
- l. Reasonable costs and attorneys’ fees;
- m. Statutory pre-judgment interest; and
- n. For such other relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Otico demands a trial by jury trial of all claims asserted in this Complaint so triable.

Dated: May 11, 2016

Respectfully Submitted,

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