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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MITCHEL GARNETT, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

DELTA AIR LINES, INC.; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. **24STCV01693**

**REPRESENTATIVE ACTION
COMPLAINT:**

1. Penalties Pursuant to Labor Code §2699,
et seq. for violations of Labor Code
§2802

1 Plaintiff MITCHEL GARNETT (“Plaintiff”), on behalf of himself and the people of the
2 State of California and as an “aggrieved employee” under the Labor Code Private Attorneys
3 General Act of 2004, §2699, et seq. (“PAGA”) complains against DELTA AIR LINES, INC.
4 (“Defendant”), a corporation, and DOES 1 to 50 (collectively “Defendants”), as follows:

5 **I.**

6 **GENERAL ALLEGATIONS**

7 1. This is a Representative Action, pursuant to Labor Code §2699 et seq., on behalf
8 of the following individuals:

9 All persons who are employed or have been employed as an hourly
10 employee by Delta Air Lines, Inc., in the State of California who
11 worked one or more pay periods since one (1) year prior to the date
12 of this letter and continuing to the present. (“Aggrieved
13 Employees”)

14 2. Any limitations period referenced in this complaint is tolled by any time a prior
15 class action lawsuit was pending and/or extended pursuant to Emergency Rule 9 (a) of the
16 “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted
17 effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil
18 actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the
19 statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from
20 April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of
21 limitations referenced in this complaint is extended into the past by the number of days in which
22 this tolling was in effect.

23 3. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
24 Development Agency and Defendant giving notice of this claim pursuant to PAGA and continuing
25 to the present, Defendant has failed to properly comply with Labor Code § 2802.

26 4. Labor Code §2802 provides that (a) An employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
even though unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful. Here, Defendant required that Plaintiff and the aggrieved employees use their

1 personal cell phones and personal computers in violation of Labor Code §2802. Thus, Plaintiff is
2 an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code
3 Labor Code §2802 with respect to Plaintiff and all aggrieved employees.

4 5. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly
5 employed by Defendant during the liability period, brings this representative action pursuant to
6 Labor Code §2699, et seq. seeking penalties for Defendant’s violation of Labor Code Sections
7 §§203, 204(d), 226, 245.5, 246, 510, 1194, 1198, 1199, and 2802.

8 **II.**

9 **JURISDICTION & VENUE**

10 6. This Court has subject matter jurisdiction over any and all causes of action asserted
11 herein pursuant to Article VI, §10 of the California Constitution and California Code of Civil
12 Procedure §410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
13 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
14 laws of the State of California or is subject to adjudication in the courts of the State of California.

15 7. This Court has personal jurisdiction over Defendant because Defendant has caused
16 injuries in Los Angeles County and the State of California through their acts, and by their violation
17 of the California Labor Code and California state common law.

18 8. At all times set forth herein, Defendant is and was, based upon information and
19 belief, a Delaware corporation doing business in Los Angeles County and in the State of California
20 with its California address at 11101 Aviation Blvd., Los Angeles, CA 90045. At all relevant times,
21 Defendant employed Plaintiff in the State of California.

22 9. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
23 Civil Procedure §395. Defendant operates within California and does business within the county
24 of Los Angeles, California. The unlawful acts alleged herein have a direct effect on Plaintiff and
25 all “aggrieved employees” within the State of California and Los Angeles County.

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1 **III.**

2 **PARTIES**

3 **A. Plaintiff**

4 10. Plaintiff MITCHEL GARNETT is a resident of State of California. Plaintiff was
5 employed by Defendant as a non-exempt employee in California.

6 11. Upon information and belief, Plaintiff and all aggrieved employees are covered by
7 California Industrial Welfare Commission Occupational Wage Order No. 9 -2001 (Title 8 Cal.
8 Code of Regs. § 11090.)

9 12. Plaintiff and all current and former employees are aggrieved employees within the
10 meaning of Labor Code §2699, et seq. (See Labor Code §2699(c).)

11 **B. Defendants**

12 13. Defendant DELTA AIR LINES, INC. is a California Corporation operating in
13 California including in the County of Los Angeles. The Defendant's California address is
14 11101 Aviation Blvd., Los Angeles, CA 90045. Defendant employed Plaintiff and the other
15 aggrieved employees within California. Some of the violations alleged herein arose in the
16 County of Los Angeles, California.

17 14. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to
19 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
20 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
21 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
22 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
23 capacities of the Defendants designated hereinafter as DOES when such identities become known.

24 15. Plaintiff is informed and believes, and based thereon alleges, that each of the
25 Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried
26 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each of
27 the Defendants are legally attributable to the other Defendants.

28 16. The Defendants named herein as DOE 1 through DOE 10 are and were persons

1 acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one
2 or more provisions of the California Labor Code and public policy as alleged herein.

3 17. Furthermore, Defendants acted in all respects as the employers or joint employers
4 of Aggrieved Employees. Defendants, and each of them, exercised control over the wages, hours
5 or working conditions of Aggrieved Employees, or suffered or permitted the Aggrieved Employees
6 to work, or engaged, thereby creating a common law employment relationship, with the Aggrieved
7 Employees. Therefore, Defendants, and each of them, employed or jointly employed the
8 Aggrieved Employees.

9 **IV.**

10 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

11 18. Plaintiff and the aggrieved employees are, and at all times pertinent hereto, have
12 been classified as non-exempt employees.

13 19. Upon information and belief, Plaintiff and the aggrieved employees are covered by
14 California Industrial Welfare Commission Occupational Wage Order No. 9-2001 (Title 8 Cal.
15 Code of Regs. § 11090).

16 20. On a regular and consistent basis, for all aggrieved employees employed by
17 Defendant, Defendant has failed to comply with Labor Code §2802.

18 **V.**

19 **CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **PLAINTIFF MITCHEL GARNETT AND ALL AGGRIEVED EMPLOYEES AGAINST**
22 **ALL DEFENDANTS FOR PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

23 **FOR VIOLATIONS OF LABOR CODE § 2802**

24 21. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
25 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
26 present, Defendant has violated Labor Code §2802 with respect to Plaintiff and all aggrieved
27 employees.

28 22. Labor Code §2802 provides that (a) An employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence
2 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
3 even though unlawful, unless the employee, at the time of obeying the directions, believed them
4 to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of
5 using their personal cell phones and computer for business related purposes.

6 23. Defendant required that Plaintiff and the aggrieved employees use their personal
7 cell phone to check the status of flights in order to deliver cargo and use their personal computers
8 to request days off, check vacation check balances, and respond to emails. These cell phones and
9 computers were necessary to perform job duties but they were not provided by Defendant, and
10 Defendant failed to reimburse Plaintiff and the Aggrieved Employees for the costs associated with
11 using these personal cell phones and computers in violation of Labor Code §2802. Thus, Plaintiff
12 is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code
13 §2802 with respect to Plaintiff and the Aggrieved Employees.

14 24. Defendant's violation of Labor Code Labor Code §2802 was all done on a regular
15 and consistent basis.

16 25. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
17 §2699, et seq. because of Defendant's violation of Labor Code § 2802.

18 26. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and
19 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
20 subject to the following formula:

- 21 a. \$100 for the initial violation per employee per pay period; and
- 22 b. \$200 for each subsequent violation per employee per pay period.

23 27. These penalties will be allocated 75% to the Labor & Workforce Development
24 Agency and 25% to the affected employees.

25 28. On November 16, 2023, Plaintiff electronically filed a PAGA Claim Notice to the
26 LWDA, via the State of California Labor and Workforce Development Agency / Department of
27 Industrial Relations website (<https://dir.tfaforms.net/308>) and mailed by certified mail, return
28 receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged

1 against Defendants, as prescribed by Labor Code §2698 et seq. (Exhibit “1”.) Defendant signed
2 certified mail return receipts verifying that it received Plaintiff’s letter. (Exhibit “2”.) Plaintiff
3 also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (Exhibit
4 “3”.) Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiff from the
5 LWDA evidencing its intention to investigate within 65 calendar days of the postmark date of the
6 notice. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen
7 not to investigate.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff seeks judgment against DELTA AIR LINES, INC. and Does 1 to
10 50, Inclusive, and each of them, as follows for Plaintiff and all aggrieved employees:

- 11 a. For penalties and other relief pursuant to Labor Code §2698 *et seq.* for Plaintiff and
12 all other aggrieved employees.
- 13 b. An award of prejudgment and post judgment interest;
- 14 c. An award providing for payment of costs of suit;
- 15 d. An award of attorneys’ fees; and
- 16 e. Such other and further relief as this Court may deem proper and just.

17 DATED: January 22, 2024

KINGSLEY & KINGSLEY, APC

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19 By: 

20 Kelsey M. Szamet
21 Attorneys for Plaintiff and the aggrieved employees
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Says Delta Air Lines Failed to Reimburse California Employees for Work-Related Cell Phone, Computer Use](#)
