

1 Matthew C. Helland, CA State Bar No. 250451
helland@nka.com
2 Daniel S. Brome, CA State Bar No. 278915
dbrome@nka.com
3 NICHOLS KASTER, LLP
One Embarcadero Center, Suite 720
4 San Francisco, CA 94111
Telephone: (415) 277-7235
5 Facsimile: (415) 277-7238

6 Attorneys for the Plaintiff and the putative class
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8
9 **IN THE UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

10 Christopher Booher and Patricia Reid,
11 individually, on behalf of others similarly
12 situated, and on behalf of the general public,

13 Plaintiffs,

14 v.

15 JetBlue Airways Corporation,

16 Defendant.

Case No. 4:15-cv-01203-JSW

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE
RELIEF**

(1) **Failure to Pay Minimum Wage in
Violation of California Law (Cal. Lab.
Code §§ 1182.12, 1194, and 1194.2, and
IWC Wage Order(s))**

(2) **Failure to Pay Overtime in
Violation of California Law (Cal. Lab.
Code §§ 510, 1194, 1198, and IWC Wage
Order(s))**

(3) **Failure to Pay Minimum Wage in
Violation of San Francisco Minimum
Wage Ordinance (San Francisco Admin.
Code § 12R)**

(4) **Waiting Time Penalties (Cal. Lab.
Code §§ 201-203)**

(5) **Wage Statement Penalties (Cal.
Lab. Code § 226)**

(6) **Violation of California Business
and Professions Code §§ 17200 et seq.**

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1
2 1. JetBlue Airways Corporation (“JetBlue”), according to its own policies, does not
3 pay its flight attendants for all hours worked. Plaintiffs Christopher Booher and Patricia Reid
4 bring this putative class action on behalf of similarly situated JetBlue flight attendants to recover
5 wages for unpaid for work performed for JetBlue.

6 2. This is a class action brought by Individual and Representative Plaintiffs
7 Christopher Booher (“Booher”) and Patricia Reid (“Reid”) (collectively “Plaintiffs”) on their own
8 behalf and on behalf of the proposed classes. Plaintiffs and the putative Class Members are or
9 were employed as flight attendants by Defendant JetBlue Airways Corporation, (“JetBlue” or
10 “Defendant”), or its predecessors-in-interest, and were denied proper compensation as required by
11 state wage and hour laws. Plaintiffs bring claims on behalf of a class of Defendant’s flight
12 attendants pursuant to Federal Rule of Civil Procedure 23.

13 3. The Class is made up of all persons who have been employed by Defendant as
14 flight attendants who have performed work for Defendant within the State of California at any
15 time within the four years prior to this action’s filing date through the trial of this action (the
16 “Class Period”). Plaintiffs also seek to represent subclasses of flight attendants who performed
17 work for JetBlue within the City of San Francisco, and a subclass of flight attendants who worked
18 over eight (8) hours in a day within the state of California without receiving overtime premium
19 pay.

20 4. During the Class Period, Defendant failed to pay minimum wages to Plaintiffs and
21 each member of the putative classes as required by state and local law. Plaintiffs seek relief for
22 the classes under state and local wage and hour laws to remedy Defendant’s failure to pay all
23 wages due, including appropriate minimum wages and overtime wages. Plaintiffs seek restitution
24 of unpaid wages, payment of waiting time penalties and wage statement penalties, civil penalties,
25 and injunctive relief.

26 **THE PARTIES**

27 5. Individual and representative Plaintiff Christopher Booher is an individual residing
28

1 in West Hollywood, California. He was employed by Defendant from 2003 through October
2 2012 as a flight attendant. Throughout his employment with JetBlue, and within the last three
3 years, Plaintiff Booher regularly worked on flights arriving into and departing from San Francisco
4 International Airport, San Jose International Airport, Oakland International Airport, Sacramento
5 International Airport, Los Angeles International Airport, Burbank Bob Hope Airport, Long Beach
6 Airport, and San Diego International Airport.

7 6. Within the last three years, Plaintiff Booher has worked at least two hours for
8 Defendant within the City of San Francisco on more than one occasion.

9 7. Individual and representative Plaintiff Patricia Reid is an individual residing in
10 Huntington Beach, California. She was employed by Defendant from 2011 through August 2015
11 as a flight attendant. Throughout her employment with JetBlue, and within the last three years,
12 Plaintiff Reid regularly worked on flights arriving into and departing from San Francisco
13 International Airport, Oakland International Airport, Sacramento International Airport, Los
14 Angeles International Airport, Burbank Bob Hope Airport, and Long Beach Airport.

15 8. Within the last three years, Plaintiff Reid has worked at least two hours for
16 Defendant within the City of San Francisco on more than one occasion.

17 9. Upon information and belief, Defendant JetBlue Airlines Corporation is a
18 Delaware corporation headquartered in Long Island City, New York. JetBlue operates out of
19 numerous airports throughout the country, including San Francisco International Airport, San
20 Jose International Airport, Oakland International Airport, Sacramento International Airport, Los
21 Angeles International Airport, Burbank Bob Hope Airport, Long Beach Airport, and San Diego
22 International Airport. Defendant operates flights throughout the country.

23 **JURISDICTION AND VENUE**

24 10. This Court has jurisdiction over Plaintiffs' and the Class Members' causes of
25 actions alleged herein under section 28 U.S.C. § 1332(d), because this is a class action in which
26 the amount in controversy exceeds \$5,000,000 and the named Plaintiffs, and some class members,
27 are citizens of a different state than Defendant.

28

1 11. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial
2 portion of the events which are the subject of this action were performed in the County of San
3 Francisco, in the State of California.

4 12. Pursuant to L.R. 3-2(c) and (d), this action is properly assigned to the San
5 Francisco Division of the Northern District of California because a substantial portion of the
6 events giving rise to the dispute occurred in San Francisco County, California.

7 **FACTUAL ALLEGATIONS**

8 13. During the applicable statutory periods, Plaintiffs and Class Members worked as
9 flight attendants for Defendant. Defendant, through its policies, practices, and supervisors,
10 directed the work activity of Plaintiffs and other flight attendants.

11 14. Defendant paid Plaintiffs and Class Members as hourly employees. Defendant
12 established hourly pay rates for all flight attendants based on seniority.

13 15. Defendant's pay structures are set out in Defendant's Flight Attendant Manual,
14 which Defendant applied when paying its flight attendants, including Plaintiffs. Defendant
15 compensates flight attendants according to their flight time, meaning that, Defendant pays flight
16 attendants for the hours between the time the forward entry door is closed at the departure gate
17 and the pilot releases the brake, until the time the pilot engages the brake and the gate agent opens
18 the forward entry door at the destination gate. Flight attendants paid based on flight time are not
19 paid for hours worked before or after this time.

20 16. Plaintiffs and Class Members were and are required to be present at the airport for
21 at least one hour prior to their flight's scheduled departure time. During this time, flight
22 attendants are required to attend a pre-flight briefing meeting, inspect the airplane and perform
23 safety checks, and board passengers onto the plane.

24 17. Similarly, once a flight lands, flight attendants were and are required to facilitate
25 deplaning, including checking aircraft doors, communicating with flight leaders, and cleaning the
26 aircraft. Deplaning at California airports regularly takes 30 minutes or more.

27 18. JetBlue often schedules flight attendants to take multiple trips in the same duty
28 period. JetBlue does not allow flight attendants to leave the airport in between their scheduled

1 flights, except for at the end of their duty period. JetBlue instructs its flight attendants that they
2 are still on duty between scheduled flights in the same duty period, and that they may be called
3 upon to depart early on a different flight.

4 19. JetBlue schedules flight attendants to work “airport standby,” but does not pay
5 flight attendants for all time worked on airport standby. On multiple occasions, Plaintiff Reid was
6 assigned to work airport standby but was not paid for all hours worked. For example, according to
7 JetBlue’s policies, a flight attendant who is available on airport standby between five and six
8 hours will only be paid four hours and twelve minutes. If a flight attendant is assigned to a trip
9 while on airport standby, she may only be paid for half the time worked on standby.

10 20. On multiple instances, Plaintiffs and other flight attendants worked for more than 8
11 hours in a day within the state of California. For example, Plaintiffs sometimes flew from Long
12 Beach to Oakland and back twice in the same day. Depending on scheduling, weather, and
13 various delays, this itinerary could take eight to twelve hours, or more. Plaintiffs and Class
14 Members were not paid at 1.5 times their regular rate when they worked more than 8 hours within
15 a day.

16 21. Defendant’s pay structure entails paying Plaintiffs and Class Members a set hourly
17 rate for some of the hours worked onboard the aircraft. Under this structure, Plaintiffs and Class
18 Members are paid a set hourly rate from the time the aircraft “blocks out” (when the forward
19 entry door is closed and the brake is released at the departure gate), until it “blocks in” at the
20 destination. Under this pay scheme, Plaintiffs and Class Members are not paid for, among other
21 things, work performed at the airport before or after their flight, for time spent onboard the
22 aircraft before the doors are closed, or for time spent at the airport between flights. Additionally,
23 if a flight is delayed prior to boarding, flight attendants are not paid for time spent waiting.

24 22. Under this pay structure, JetBlue regularly fails to pay its flight attendants for all
25 hours worked.

26 23. Defendant’s wage statements did not accurately reflect all hours worked.

27 24. Plaintiff Reid was not provided with her final pay at the time of her termination.
28 Additionally, because Defendant did not pay Plaintiffs and other flight attendants for all hours

1 worked, Defendant did not provide Plaintiffs and other flight attendants all wages owed at the
2 time they were no longer employed by Defendant.

3 25. Defendant's unlawful conduct has been widespread, repeated, and consistent.

4 26. Defendant's conduct, as set forth in this Complaint, was willful and in bad faith.
5 Defendant operated under a scheme that has caused significant damages to Plaintiffs and Class
6 Members.

7 **CLASS ALLEGATIONS**

8 27. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal
9 Rules of Civil Procedure on behalf of the following defined class and subclasses:

10 **California Class:** All Persons who are or have been employed by Defendant
11 as flight attendants and who performed work for Defendant in the State of
12 California at any time within the four years prior to this action's filing date
through the trial of this action.

13 **San Francisco Subclass:** All Persons who are or have been employed by
14 Defendant as flight attendants and who performed work for Defendant in the City
and County of San Francisco for at least two hours in any day at any time within
the four years prior to this action's filing date through the trial of this action.

15 **Overtime Subclass:** All Persons who are or have been employed by Defendant
16 as flight attendants who worked for Defendant for more than eight hours in a day
entirely within the State of California at any time within the four years prior to
17 this action's filing date through the trial of this action.

18 28. Plaintiffs seek certification of this lawsuit as a class action, in order that their
19 rights and the rights of the Class Members, relating to failure to pay minimum wages, failure to
20 timely pay wages owed, failure to provide accurate wage statements, prejudgment interest,
21 attorneys' fees and any other damages due, be resolved fairly, efficiently, and consistently.

22 29. This action is brought pursuant to Fed. R. Civ. P. 23 because the class is so
23 numerous that joinder of all members is impracticable. There are thousands of flight attendants in
24 the proposed class. A class action is appropriate because there exists ascertainable and
25 sufficiently numerous classes, there is a well-defined community of interest, and proceeding on a
26 class-wide basis will have substantial benefits and is superior to the alternatives.

27 30. *Numerosity.* The size of the classes makes a class action both necessary and
28 efficient. The classes consist of thousands of current and former employees. Members of the

1 classes are ascertainable through Defendant's records, and are so numerous that joinder is
2 impracticable.

3 31. *Predominant Common Questions of Law and Fact.* The issues surrounding this
4 lawsuit present common questions of law and fact, and these common questions predominate
5 over the variations, if any, which may exist between members of the class. These common
6 questions of law and fact include, without limitation:

- 7 a. Whether Defendant had a policy and practice of ever paying Plaintiffs and Class
8 Members based on flight time instead of all time worked;
- 9 b. Whether Defendant's pay policies violate California's minimum wage
10 requirements;
- 11 c. Whether Defendant's pay policies violate San Francisco's minimum wage
12 requirements;
- 13 d. Whether Defendant's pay policies violate California's overtime pay requirements;
- 14 e. Whether Defendant failed to pay Class Members their full wages when due as
15 required by California Labor Code §§ 201 and 202;
- 16 f. Whether Defendant failed to provide accurate itemized wage statements to Class
17 Members and maintain adequate records as required by Labor Code § 226;
- 18 g. Whether Defendant's conduct violated the California Unfair Practices Act set forth
19 in the Business and Professions Code § 17200 *et seq.* by violating state laws as set
20 forth herein; and
- 21 h. The proper measure of damages sustained by Plaintiffs and Class Members.

22 32. *Typicality.* Plaintiffs' interests in the subject matter and remedy sought are typical
23 of those of the other putative class members. Plaintiffs, like other members of the class, were
24 employed during the Class Period, and were subjected to Defendant's uniform pay practices that
25 failed to pay at least the applicable minimum wage for all hours worked. Plaintiffs and Class
26 Members sustained injuries arising out of and caused by Defendant's common course of conduct
27 in violation of law as alleged herein.
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1 that employer's failure to pay auto mechanics for time between piece rate work violates
 2 California's minimum wage requirements). California law does not allow an employer to
 3 establish compliance with minimum wage requirements by averaging rates earned by an
 4 employee over an entire shift. Under Defendant's compensation plan, Plaintiffs and Class
 5 Members are paid for hours worked between "block out" and "block in," but not for any of the
 6 time worked prior to departure or after arrival. Defendant's compensation scheme violates
 7 California's minimum wage requirements because it fails to pay Plaintiffs and Class Members for
 8 all hours worked.

9 41. Defendant has committed and continues to commit the acts alleged herein
 10 knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs and
 11 Wage Class members, in conscious disregard of Plaintiffs' and Class Members' rights.

12 42. During the applicable statute of limitations, Defendant has failed to pay Plaintiffs
 13 and Class Members the applicable minimum wage for all hours worked, in violation of Cal. Labor
 14 Code § 1182.12 and relevant wage orders.

15 43. Pursuant to Cal. Labor Code § 1194, Plaintiffs and Class Members are entitled to
 16 recover their unpaid wages in an amount to be established at trial, plus prejudgment interest, and
 17 costs and attorneys' fees. Further, Plaintiffs and Class Members are entitled to recover liquidated
 18 damages pursuant to Cal. Labor Code § 1194.2.

19 **SECOND CLAIM FOR RELIEF**

20 **FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF SAN FRANCISCO**

21 **MINIMUM WAGE ORDINANCE**

22 **San Francisco Admin. Code § 12R**

23 (On Behalf of Plaintiffs and the San Francisco Subclass)

24 44. Plaintiffs and San Francisco Subclass Members allege and incorporate by
 25 reference the allegations in the preceding paragraphs.

26 45. At all times relevant to this action, Plaintiffs and San Francisco Subclass Members
 27 were employed by Defendant within the meaning of San Francisco's Minimum Wage Ordinance,
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1 were covered by the provisions of San Francisco’s Minimum Wage Ordinance, and were not
2 exempt from the minimum wage requirements of that ordinance.

3 46. The San Francisco minimum wage was \$9.79 per hour in 2010, \$9.92 per hour in
4 2011, \$10.24 per hour in 2012, \$10.55 per hour in 2013, and \$10.74 per hour in 2014. Since
5 January 1, 2015, San Francisco’s minimum wage has been \$11.05 per hour.

6 47. San Francisco International Airport is part of the City and County of San
7 Francisco, and is covered by San Francisco’s Minimum Wage Ordinance.

8 48. The San Francisco Minimum Wage Ordinance requires employers to pay at least
9 the minimum wage for all hours worked. It does not allow an employer to establish compliance
10 with minimum wage requirements by averaging rates earned by an employee over an entire shift.
11 Under Defendant’s compensation plan, Plaintiffs and Class Members are paid for hours worked
12 between “block out” and “block in,” but not for any of the time worked prior to departure or after
13 arrival. Defendant’s compensation scheme violates San Francisco’s minimum wage requirements
14 because it fails to pay Plaintiffs and San Francisco Subclass Members for all hours worked.

15 49. Defendant has committed and continues to commit the acts alleged herein
16 knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs and San
17 Francisco Subclass Members, in conscious disregard of Plaintiffs’ and Class Members’ rights.

18 50. During the applicable statute of limitations, Defendant has failed to pay Plaintiffs
19 and San Francisco Subclass Members the applicable minimum wage for all hours worked, in
20 violation of San Francisco Admin. Code § 12R.

21 51. Pursuant to San Francisco Admin. Code § 12R.7(c), Plaintiffs and San Francisco
22 Subclass Members are entitled to recover their unpaid wages in an amount to be established at
23 trial, plus prejudgment interest, and costs and attorneys’ fees. Further, Plaintiffs and San
24 Francisco Subclass Members are entitled to recover liquidated damages in the amount of \$50 per
25 violation per day.

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THIRD CLAIM FOR RELIEF

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CALIFORNIA LAW

Cal. Wage Order No. 9; Cal. Labor Code §§ 510, 1194

(On Behalf of Plaintiffs and the Overtime Subclass)

52. Plaintiffs and Class Members allege and incorporate by reference the allegations in the preceding paragraphs.

53. At all times relevant to this action, Plaintiffs and the Overtime Subclass were employed by Defendant within the meaning of the California Labor Code.

54. By the Course of conduct set forth above, Defendant violated Cal. Labor Code §§ 510 and 1194.

55. The California Labor Code requires employers, such as Defendant, to pay overtime compensation to all non-exempt employees.

56. Plaintiffs and the Overtime Subclass were non-exempt employees entitled to be paid proper overtime compensation.

57. During the relevant statutory period, Plaintiffs and the Overtime Subclass worked in excess of eight hours in a work day and/or forty hours in a work week for Defendant.

58. During the relevant statutory period, Defendant failed and refused to pay Plaintiffs and the Overtime Subclass proper overtime compensation for overtime hours worked.

59. Defendant had a policy and practice of failing and refusing to pay proper overtime pay to Plaintiffs and Members of the Overtime Subclass for their hours worked.

60. As a result of Defendant's failure to pay wages earned and due, Defendant violated the California Labor Code.

61. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and the Overtime Subclass have sustained damages which they are entitled to recover, including loss of earnings for hours of overtime worked on behalf of Defendant, interest, and attorneys' fees and costs.

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1 **FOURTH CLAIM FOR RELIEF**

2 **WAITING TIME PENALTIES**

3 Cal. Labor Code §§ 201, 202 & 203

4 (On Behalf of Plaintiffs and the Classes)

5 62. Plaintiffs and Class Members allege and incorporate by reference the allegations in
6 the preceding paragraphs.

7 63. California Labor Code §§ 201 and 202 require Defendant to pay employees who
8 quit or are discharged all wages due within specified times. California Labor Code § 203 provides
9 that if an employer willfully fails to timely pay such wages, the employer must continue to pay
10 the subject employees' wages until the back wages are paid in full or an action is commenced, up
11 to a maximum of thirty days of wages.

12 64. Plaintiffs and Class Members are entitled to unpaid minimum wages, but to date
13 have not received all such compensation. Defendant has committed and continues to commit the
14 acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring
15 Plaintiffs and Class Members, in conscious disregard of Plaintiffs' and Class Members' rights.

16 65. As a consequence of Defendant's willful conduct in not paying proper
17 compensation for all hours worked, Plaintiffs and Class Members are entitled to up to thirty days'
18 wages under Labor Code § 203, together with interest thereon, and attorneys' fees and costs.

19 **FIFTH CLAIM FOR RELIEF**

20 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

21 (Labor Code § 226)

22 (On Behalf of Plaintiffs and the Classes)

23 66. Plaintiffs and Class Members allege and incorporate by reference the allegations in
24 the preceding paragraphs.

25 67. Pursuant to Labor Code § 226, employers, including Defendant, must provide their
26 employees an accurate, written, itemized wage statement with each paycheck. The wage
27 statement must show all applicable pay rates in effect during the pay period, and the
28 corresponding number of hours worked at each hourly rate by the employee.

- 1 E. Appropriate equitable relief to remedy Defendant's violations of state law;
- 2 F. Appropriate statutory penalties;
- 3 G. An award of damages and restitution to be paid by Defendant according to
- 4 proof;
- 5 H. Attorneys' fees and costs of suit, including expert fees, pursuant to Cal.
- 6 Labor § 1194, California Code of Civil Procedure § 1021.5, and San
- 7 Francisco Admin. Code § 12R.7(c);
- 8 I. Pre-judgment and post-judgment interest, as provided by law; and
- 9 J. Such other equitable relief as the Court may deem just and proper.

10 **DEMAND FOR JURY TRIAL**

11 80. Plaintiffs and Class Members hereby demand a jury trial with respect to all causes
12 of actions and claims for which they have a right to a jury trial.

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14 Dated: August 31, 2015

NICHOLS KASTER, LLP

15 By: s/Matthew C. Helland
16 Matthew C. Helland

17 Attorneys for Plaintiffs and Others Similarly
18 Situated

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