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13 SOUTHWEST AIRLINES CO.

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 RORESTE REFUERZO and SELINA  
17 CASHIN, on behalf of themselves and  
18 others similarly situated,

19 Plaintiffs,

20 v.

21 SOUTHWEST AIRLINES CO.,

22 Defendant.

Case No: 3:22-cv-00868-JSC

**DEFENDANT SOUTHWEST AIRLINES  
CO.’S ANSWER TO PLAINTIFFS’ SECOND  
AMENDED COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES**

**JURY TRIAL DEMANDED**

23 Defendant SOUTHWEST AIRLINES CO. (“Defendant”), by and through its undersigned  
24 counsel, respectfully submits the following Answer and Affirmative Defenses to the Second Amended  
25 Complaint [ECF No. 84] (hereinafter the “Complaint” or “SAC”) filed on August 24, 2023 by  
26 Plaintiffs RORESTE REFUERZO and SELINA CASHIN (“Plaintiffs”) in the above-captioned  
27 matter.

28 **PRELIMINARY STATEMENT**

Defendant’s Answer and Affirmative Defenses are based upon its investigation to date, which  
is ongoing, and Defendant reserves the right to supplement, clarify, or amend its Answer and  
Affirmative Defenses during the course of litigation, as additional information becomes available and  
as the investigation continues. For the sake of clarity and avoidance of doubt, to the extent an allegation

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1 in the Complaint is not expressly admitted, Defendant denies each and every such allegation.  
2 Relatedly, many of the Complaint’s allegations state legal conclusions that do not require a response  
3 or purport to characterize or selectively quote from documents out of context. To the extent responses  
4 are required to any such allegations, Defendant denies all such allegations. Defendant further denies  
5 any allegations contained in, or references that may be drawn from, the captions contained in the  
6 Complaint, or any other portion of the Complaint outside of its numbered paragraphs. Additionally,  
7 Defendant asserts that this action is without merit and that no relief is warranted.

8 The following numbered paragraphs numbered 1 through 103 correspond to the numbered  
9 paragraphs 1 through 103 in the Complaint, such that the following numbered paragraphs constitute  
10 Defendant’s answer to each such respective paragraph in the Complaint:

11 **AS TO THE INTRODUCTION**

12 1. Defendant admits that it is an international airline. Except as specifically admitted,  
13 Defendant denies the remaining allegations in this paragraph.

14 2. Defendant admits that the goal of its March 1, 2019 policy change was to treat  
15 intermittent Family and Medical Leave Act (“FMLA”) leave the same as continuous FMLA leave.  
16 Except as specifically admitted, Defendant denies the remaining allegations in this paragraph.

17 3. Defendant admits that Plaintiff Roreste Refuerzo was terminated. Except as  
18 specifically admitted, the allegations in this paragraph constitute a statement of relief sought by  
19 Plaintiffs that require no responsive pleading under the Federal Rules of Civil Procedure. To the extent  
20 a response is required, Defendant denies the allegations in this paragraph.

21 4. Defendant denies the allegations in this paragraph.

22 **AS TO THE PARTIES**

23 5. Defendant admits that it is an airline company headquartered in Dallas, Texas.  
24 Defendant also admits that it has operations in California, including in Oakland, Los Angeles, San  
25 Francisco, San Jose, Sacramento, and San Diego. Except as specifically admitted, Defendant denies  
26 the remaining allegations in this paragraph.

27 6. Defendant admits that it is engaged in activity affecting commerce. Except as  
28 specifically admitted, Defendant denies the remaining allegations in this paragraph.

1 7. Defendant admits that it employed Plaintiff Roreste Refuerzo. Defendant lacks  
2 sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph  
3 and on that basis denies the allegations in this paragraph.

4 8. Defendant admits that it employed Plaintiff Selina Cashin. Defendant lacks sufficient  
5 knowledge or information to form a belief as to the truth of the allegations in this paragraph and on  
6 that basis denies the allegations in this paragraph.

7 **AS TO JURISDICTION AND VENUE**

8 9. The allegations in this paragraph constitute statements or conclusions of law that  
9 require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response  
10 is required, Defendant denies the allegations in this paragraph.

11 10. The allegations in this paragraph constitute statements or conclusions of law that  
12 require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response  
13 is required, Defendant denies the allegations in this paragraph.

14 11. The allegations in this paragraph constitute statements or conclusions of law that  
15 require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response  
16 is required, Defendant denies the allegations in this paragraph.

17 12. The allegations in this paragraph constitute statements or conclusions of law that  
18 require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response  
19 is required, Defendant denies the allegations in this paragraph.

20 13. The allegations in this paragraph constitute statements or conclusions of law that  
21 require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response  
22 is required, Defendant denies the allegations in this paragraph.

23 **AS TO THE EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 14. Defendant lacks sufficient knowledge or information to form a belief as to the truth of  
25 the allegations in this paragraph and on that basis denies the allegations in this paragraph.

26 **AS TO THE ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27 15. Defendant admits that flight attendants who receive chargeable occurrences for  
28 absenteeism are assessed points and subject to disciplinary action based upon the amount of points

1 accumulated. Defendant also admits that flight attendants with 12 points are terminated. Except as  
2 specifically admitted, Defendant denies the remaining allegations in this paragraph.

3 16. Defendant admits that it has a provision in its collective bargaining agreement  
4 applicable to Flight Attendants entitled “Record Improvement,” which allows flight attendants to  
5 improve their record under four different attendance bonuses: (1) No Chargeable Occurrence During  
6 A Quarter; (2) Perfect Attendance During A Quarter; (3) Fourth Quarter Record Improvement Bonus;  
7 and (4) December Record Improvement Bonus. Except as specifically admitted, Defendant denies the  
8 remaining allegations in this paragraph.

9 17. Defendant denies the allegations in this paragraph.

10 18. Defendant admits that under its March 1, 2019 policy, a flight attendant’s use of  
11 intermittent FMLA leave disqualified the flight attendant from record improvement during that  
12 quarter. Except as specifically admitted, Defendant denies the remaining allegations in this paragraph.

13 19. Defendant denies the allegations in this paragraph.

14 20. Defendant denies the allegations in this paragraph..

15 21. Defendant denies the allegations in this paragraph.

16 **AS TO MR. REFUERZO’S EXPERIENCE**

17 22. Defendant admits that it hired Plaintiff Roreste Refuerzo as a flight attendant on August  
18 25, 2006. Except as specifically admitted, Defendant denies the remaining allegations in this  
19 paragraph.

20 23. Defendant admits that Plaintiff Roreste Refuerzo applied for intermittent FMLA leave  
21 in May 2019. Defendant also admits that it approved Plaintiff Roreste Refuerzo’s intermittent FMLA  
22 leave on June 4, 2019. Defendant further admits that it approved Plaintiff Roreste Refuerzo’s  
23 intermittent FMLA leave from May 15, 2019 to May 13, 2020. Defendant further admits that Plaintiff  
24 Roreste Refuerzo’s intermittent FMLA leave was approved for two times a year for a duration of five  
25 days. Defendant further admits that Plaintiff Roreste Refuerzo requested to use his intermittent FMLA  
26 leave in November 2019. Except as specifically admitted, Defendant denies the remaining allegations  
27 in this paragraph.

28 ///

1           24. Defendant admits that Plaintiff Roreste Refuerzo had no chargeable occurrences in the  
2 final quarter of 2019. Defendant also admits that Plaintiff Roreste Refuerzo used intermittent FMLA  
3 leave in November 2019. Defendant further admits that Plaintiff Roreste Refuerzo did not receive a  
4 2-point reduction in the final quarter of 2019. Except as specifically admitted, Defendant denies the  
5 remaining allegations in this paragraph.

6           25. Defendant admits that Plaintiff Roreste Refuerzo ended 2019 with 9.5 points.  
7 Defendant also admits that Plaintiff Roreste Refuerzo was terminated in February 2020. Except as  
8 specifically admitted, Defendant denies the remaining allegations in this paragraph.

9           26. Defendant admits that its Attendance Policy contained in the collective bargaining  
10 agreement provides that a flight attendant must check in with Crew Scheduling at least one hour prior  
11 to the scheduled push of the aircraft. Defendant also admits that its Attendance Policy contained in  
12 the collective bargaining agreement provides that sick calls must be made to Crew Scheduling at least  
13 two hours prior to scheduled check-in of the pairing. Except as specifically admitted, Defendant  
14 denies the remaining allegations in this paragraph.

15           27. Defendant acknowledges that this paragraph describes Plaintiff Roreste Refuerzo's  
16 allegations and for that reason no response is required under the Federal Rules of Civil Procedure. To  
17 the extent that a response is required, Defendant denies each and every allegation in this paragraph.

18           28. Defendant admits that it issued Plaintiff Roreste Refuerzo his termination letter on  
19 February 11, 2020. Defendant also admits that Plaintiff's termination letter stated "[a]s a result of  
20 your recent Late Sick Call, your attendance points are at termination level. Accordingly, your  
21 employment is terminated effective February 13, 2020." Except as specifically admitted, Defendant  
22 denies the remaining allegations in this paragraph.

23           29. Defendant denies the allegations in this paragraph.

24                                   **AS TO MS. CASHIN'S EXPERIENCE**

25           30. Defendant admits that it hired Plaintiff Selina Cashin as a flight attendant on March 6,  
26 2015. Except as specifically admitted, Defendant denies the remaining allegations in this paragraph.

27           31. Defendant acknowledges that this paragraph describes Plaintiff Selina Cashin's  
28 allegations and for that reason no response is required under the Federal Rules of Civil Procedure. To

1 the extent that a response is required, Defendant denies each and every allegation in this paragraph.

2 32. Defendant denies the allegations in this paragraph.

3 33. Defendant admits that Plaintiff Selina Cashin was terminated on June 22, 2018.  
4 Defendant also admits Plaintiff Selina Cashin's employment was reinstated in July 2018. Except as  
5 specifically admitted, Defendant denies the remaining allegations in this paragraph.

6 34. Defendant acknowledges that this paragraph describes Plaintiff Selina Cashin's  
7 allegations and for that reason no response is required under the Federal Rules of Civil Procedure. To  
8 the extent that a response is required, Defendant denies each and every allegation in this paragraph.

9 35. Defendant admits that Plaintiff Selina Cashin applied for intermittent FMLA leave in  
10 March 2022. Defendant also admits that it approved Plaintiff Selina Cashin's intermittent FMLA  
11 leave from March 18, 2022 to December 31, 2022. Defendant further admits that Plaintiff Selina  
12 Cashin's intermittent FMLA leave was approved for two times a month for a duration of three days.  
13 Except as specifically admitted, Defendant denies the remaining allegations in this paragraph.

14 36. Defendant admits that it provides flight attendants with a Letter of Counsel –  
15 Attendance when flight attendants accumulate a certain number of attendance points. Defendant  
16 admits that on May 6, 2022, Defendant sent Plaintiff Selina Cashin a letter stating that she had  
17 accumulated 11 points. Except as specifically admitted, Defendant denies the remaining allegations  
18 in this paragraph.

19 **AS TO THE CLASS ACTION ALLEGATIONS**

20 **A. The Classes**

21 **FMLA Claims Are Brought on Behalf of a Nationwide Class**

22 37. Defendant acknowledges that this paragraph describes who Plaintiffs seek to represent  
23 and for that reason no response is required under the Federal Rules of Civil Procedure. To the extent  
24 that a response is required, Defendant denies the allegations in this paragraph.

25 **California Claims Are Brought on Behalf of a California Subclass**

26 38. Defendant acknowledges that this paragraph describes who Plaintiffs seek to represent  
27 and for that reason no response is required under the Federal Rules of Civil Procedure. To the extent  
28 that a response is required, Defendant denies the allegations in this paragraph.

**Injunctive Relief is Sought on Behalf of Nationwide and California (b)(2) Classes**

39. Defendant acknowledges that this paragraph describes who Plaintiffs seek to represent and for that reason no response is required under the Federal Rules of Civil Procedure. To the extent that a response is required, Defendant denies the allegations in this paragraph.

40. Defendant acknowledges that this paragraph describes who Plaintiffs seek to represent and for that reason no response is required under the Federal Rules of Civil Procedure. To the extent that a response is required, Defendant denies the allegations in this paragraph.

41. Defendant acknowledges that this paragraph describes who Plaintiffs seek to represent and for that reason no response is required under the Federal Rules of Civil Procedure. To the extent that a response is required, Defendant denies the allegations in this paragraph.

42. The allegations in the paragraph constitute statements or conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is required, Defendant denies the allegations in this paragraph.

**B. The Classes Satisfy the Necessary Elements of Rule 23**

**Numerosity (FRCP 23(a)(1))**

43. The allegations in the paragraph constitute statements or conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is required, Defendant denies the allegations in this paragraph.

44. The allegations in the paragraph constitute statements or conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is required, Defendant denies the allegations in this paragraph.

45. The allegations in the paragraph constitute statements or conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is required, Defendant denies the allegations in this paragraph.

**Commonality and Predominance (FRCP 23(a)(2) and (b)(3))**

46. The allegations in the paragraph constitute statements or conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is required, Defendant denies the allegations in this paragraph.



1 47. The allegations in the paragraph constitute statements or conclusions of law that require  
2 no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is  
3 required, Defendant denies the allegations in this paragraph.

4 48. The allegations in the paragraph constitute statements or conclusions of law that require  
5 no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is  
6 required, Defendant denies the allegations in this paragraph.

7 **Typicality (FRCP 23(a)(3))**

8 49. The allegations in the paragraph constitute statements or conclusions of law that require  
9 no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is  
10 required, Defendant denies the allegations in this paragraph.

11 50. The allegations in the paragraph constitute statements or conclusions of law that require  
12 no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is  
13 required, Defendant denies the allegations in this paragraph.

14 51. The allegations in the paragraph constitute statements or conclusions of law that require  
15 no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is  
16 required, Defendant denies the allegations in this paragraph.

17 **Adequacy of Representation (FRCP 23(a)(4))**

18 52. The allegations in the paragraph constitute statements or conclusions of law that require  
19 no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is  
20 required, Defendant denies the allegations in this paragraph.

21 **Superiority of Class Action (FRCP 23(b)(3))**

22 53. The allegations in the paragraph constitute statements or conclusions of law that require  
23 no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is  
24 required, Defendant denies the allegations in this paragraph.

25 54. The allegations in the paragraph constitute statements or conclusions of law that require  
26 no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is  
27 required, Defendant denies the allegations in this paragraph.

28 ///



**Requirements of Rule 23(b)(2)**

55. Defendant denies the allegations in this paragraph.

56. Defendant denies the allegations in this paragraph.

57. Defendant denies the allegations in this paragraph.

**Requirement of Rule 23(c)(4)**

58. The allegations in the paragraph constitute statements or conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a response is required, Defendant denies the allegations in this paragraph.

**AS TO THE FIRST CLAIM FOR RELIEF**

**Interference in Violation of the FMLA**

**(29 U.S.C. § 2515 (a) (1))**

**Brought by the Nationwide Classes Against Defendant Southwest**

59. In response to Paragraph 59 of the Complaint, Defendant incorporates its responses to paragraphs 1-58 herein above.

60. Defendant denies the allegations in this paragraph.

61. Defendant denies the allegations in this paragraph.

62. Defendant denies the allegations in this paragraph.

63. Defendant denies the allegations in this paragraph.

**AS TO THE SECOND CLAIM FOR RELIEF**

**Discrimination and Retaliation in Violation of the FMLA**

**(29 U.S.C. § 2615(a)(1) and (2))**

**Brought by the Nationwide Classes Against Defendant Southwest**

64. In response to Paragraph 64 of the Complaint, Defendant incorporates its responses to paragraphs 1-63 herein above.

65. Defendant denies the allegations in this paragraph.

66. Defendant denies the allegations in this paragraph.

67. Defendant denies the allegations in this paragraph.

68. Defendant denies the allegations in this paragraph.

**AS TO THE THIRD CLAIM FOR RELIEF**

**Discrimination and Retaliation in Violation of CFRA**

**(Cal. Gov. Code § 12945.2(1))**

**Brought by the California Subclasses Against Defendant Southwest**

69. In response to Paragraph 69 of the Complaint, Defendant incorporates its responses to paragraphs 1-68 herein above.

70. Defendant acknowledges that this paragraph describes who Plaintiffs seek to represent and for that reason no response is required under the Federal Rules of Civil Procedure. To the extent that a response is required, Defendant denies the allegations in this paragraph.

71. The allegations in this paragraph state legal recitations to which no response is required. To the extent any response is required, Defendant denies the allegations in this paragraph.

72. Defendant denies the allegations in this paragraph.

73. Defendant denies the allegations in this paragraph.

**AS TO THE FOURTH CLAIM FOR RELIEF**

**Wrongful Termination in Violation of Public Policy**

**Brought by the California Subclasses Against Defendant Southwest**

74. In response to Paragraph 74 of the Complaint, Defendant incorporates its responses to paragraphs 1-73 herein above.

75. The allegations in this paragraph state legal recitations to which no response is required. To the extent any response is required, Defendant denies the allegations in this paragraph.

76. Defendant denies the allegations in this paragraph.

77. Defendant denies the allegations in this paragraph.

**AS TO THE FIFTH CLAIM FOR RELIEF**

**Unfair Competition**

**Brought by the California Subclasses Against Defendant Southwest**

78. In response to Paragraph 78 of the Complaint, Defendant incorporates its responses to paragraphs 1-77 herein above.

///

1 79. The allegations in this paragraph state legal recitations to which no response is required.  
2 To the extent any response is required, Defendant denies the allegations in this paragraph.

3 80. Defendant denies the allegations in this paragraph.

4 81. Defendant denies the allegations in this paragraph.

5 82. The allegations in this paragraph state legal recitations to which no response is required.  
6 To the extent any response is required, Defendant denies the allegations in this paragraph.

7 83. Defendant denies the allegations in this paragraph.

8 84. Defendant denies the allegations in this paragraph.

9 85. Defendant denies the allegations in this paragraph.

10 86. Defendant denies the allegations in this paragraph.

11 87. Defendant denies the allegations in this paragraph.

12 88. Defendant denies the allegations in this paragraph.

13 89. The allegations in this paragraph constitute a statement of relief sought by Plaintiffs  
14 that require no responsive pleading under the Federal Rules of Civil Procedure. To the extent a  
15 response is required, Defendant denies the allegations in this paragraph.

16 **AS TO THE SIXTH CLAIM FOR RELIEF**

17 **Discrimination and Retaliation in Violation of CFRA**

18 **(Cal. Gov. Code § 12945.2(1))**

19 **Brought by Lead Plaintiffs Individually Against Defendant Southwest**

20 90. In response to Paragraph 90 of the Complaint, Defendant incorporates its responses to  
21 paragraphs 1-89 herein above.

22 91. Defendant acknowledges that this paragraph states that Lead Plaintiffs bring the Sixth  
23 Claim for Relief individually and for that reason no response is required under the Federal Rules of  
24 Civil Procedure. To the extent that a response is required, Defendant denies the allegations in this  
25 paragraph.

26 92. The allegations in this paragraph state legal recitations to which no response is required.  
27 To the extent any response is required, Defendant denies the allegations in this paragraph.

28 ///

1 93. Defendant admits that Plaintiff Roreste Refuerzo was terminated after he accumulated  
2 12 points. Except as specifically admitted, Defendant denies the remaining allegations in this  
3 paragraph.

4 94. Defendant denies the allegations in this paragraph.

5 95. Defendant denies the allegations in this paragraph.

6 **AS TO THE SEVENTH CLAIM FOR RELIEF**

7 **Wrongful Termination in Violation of Public Policy**

8 **Brought by Mr. Refuerzo Against Defendant Southwest**

9 96. In response to Paragraph 96 of the Complaint, Defendant incorporates its responses to  
10 paragraphs 1-95 herein above.

11 97. The allegations in this paragraph state legal recitations to which no response is required.  
12 To the extent any response is required, Defendant denies the allegations in this paragraph.

13 98. Defendant denies the allegations in this paragraph.

14 99. Defendant denies the allegations in this paragraph.

15 **AS TO THE DAMAGES**

16 100. Defendant denies the allegations in this paragraph.

17 101. Defendant denies the allegations in this paragraph.

18 102. Defendant denies the allegations in this paragraph.

19 103. Defendant denies the allegations in this paragraph.

20 **AS TO THE PRAYER FOR RELIEF**

21 Defendant denies that Plaintiffs and putative class members are entitled to any relief sought in  
22 the SAC. On that basis, Defendant denies the allegations in the Prayer for Relief.

23 **AFFIRMATIVE DEFENSES**

24 Without waiving the right to assert that Plaintiffs bear the burden of proof, as separate and  
25 distinct defenses to Plaintiffs' SAC and the causes of action alleged therein, and to each of them,  
26 Defendant asserts as follows:

27 ///

28 ///

**FIRST AFFIRMATIVE DEFENSE**

1  
2 1. The SAC, and each and every claim therein, fails to set forth facts sufficient to  
3 constitute a claim and/or fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

4  
5 2. Plaintiffs’ SAC, and each and every cause of action therein, is barred by the applicable  
6 statute of limitations, including but not limited to: California Code of Civil Procedure § 335.1, 29  
7 U.S.C. § 2617(c), California Government Code sections 12940, 12960 and 12965, California Business  
8 & Professions Code § 17208, and any other applicable federal and state laws.

**THIRD AFFIRMATIVE DEFENSE**

9  
10 3. Plaintiffs’ claims are barred by Plaintiffs’ failure to exhaust their administrative  
11 remedies and/or internal grievance procedures.

**FOURTH AFFIRMATIVE DEFENSE**

12  
13 4. Plaintiffs’ SAC, and each cause of action contained therein, is barred by the doctrine  
14 of waiver.

**FIFTH AFFIRMATIVE DEFENSE**

15  
16 5. Plaintiffs’ SAC, and each cause of action therein, is barred by the doctrine of unclean  
17 hands.

**SIXTH AFFIRMATIVE DEFENSE**

18  
19 6. Any recovery on Plaintiffs’ SAC, or any cause of action contained therein, is barred in  
20 whole or in part by Plaintiffs’ and other similarly situated employees’ failure to mitigate their damages.

**SEVENTH AFFIRMATIVE DEFENSE**

21  
22 7. Plaintiffs are guilty of undue delay in filing and prosecuting this suit, and accordingly,  
23 this action is barred by laches.

**EIGHTH AFFIRMATIVE DEFENSE**

24  
25 8. Defendant alleges that the conduct Plaintiffs allege was engaged in by Defendant  
26 and/or its representatives (which Defendant denies) was undertaken for lawful business reasons and/or  
27 by reason of business necessity.

28 ///

**NINTH AFFIRMATIVE DEFENSE**

9. There existed legitimate, non-discriminatory and non-retaliatory reasons for the alleged acts of Defendant of which Plaintiffs complain.

**TENTH AFFIRMATIVE DEFENSE**

10. The alleged adverse employment action of which Plaintiffs complain was based on reasonable factors other than any other prohibited factor, including Plaintiffs’ alleged injuries and requests for protected leave.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Defendant is informed and believes, and on that basis alleges, that, without admitting that Defendant engaged in any of the acts, conduct or statements attributed to Defendant, that good cause exists for each and every action taken by Defendant with respect to Plaintiffs’ employment and that such actions were non-retaliatory, non-discriminatory, reasonable, justified, done in good faith and for legitimate business purposes based upon all relevant facts and circumstances known by Defendant at the time it acted.

**TWELFTH AFFIRMATIVE DEFENSE**

12. Defendant is informed and believes, and on that basis alleges, that Plaintiffs’ SAC and each cause of action set forth therein, or some of them, are barred because Plaintiffs’ alleged injuries were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. Defendant alleges that Plaintiff Roreste Refuerzo was not terminated in violation of any fundamental, well-established public policy embodied in law or statute.

**FOURTEENTH AFFIRMATIVE DEFENSE**

14. Defendant alleges that all or portions of Plaintiffs’ causes of action are barred because Defendant exercised reasonable care to prevent and promptly correct any allegedly discriminatory behavior.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 15. Plaintiffs unreasonably failed to take advantage of any preventive or corrective  
3 opportunities provided by Defendant or to avoid harm otherwise.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 16. Plaintiffs' reasonable use of Defendant's procedures to prevent and/or correct the  
6 allegedly discriminatory behavior would have prevented all or some of the alleged harm he claims to  
7 have suffered.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 17. Defendant is informed and believe, and on that basis alleges, that any recovery on  
10 Plaintiffs' SAC, or any purported cause of action alleged therein, is barred in whole or in part by after-  
11 acquired evidence.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 18. Defendant asserts that Plaintiffs' SAC fails to state a cause of action upon which  
14 prejudgment interest may be granted because the damages claimed are not sufficiently certain to allow  
15 an award of prejudgment interest.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 19. Defendant is informed and believes, and based on that information and belief alleges,  
18 that any finding of liability pursuant to California Business and Professions Code sections 17200, *et*  
19 *seq.*, would violate the Due Process and Equal Protection Clauses of the United States and California  
20 Constitutions because the standards of liability under those statutes are unduly vague and subjective.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 20. Defendant did not interfere with, restrain, or deny the exercise of or the attempt to  
23 exercise any right provided to Plaintiffs and/or the alleged putative class members under the FMLA,  
24 terminate or in any other manner discriminate or retaliate against Plaintiffs and/or the alleged putative  
25 class members for exercising Plaintiffs' rights under the FMLA, or deny Plaintiffs and/or the alleged  
26 putative class members any FMLA leave for which Plaintiffs and/or the alleged putative class  
27 members qualified and were entitled to under the FMLA.

28 ///



1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 21. Plaintiffs’ class allegations are barred as a matter of law because Plaintiffs cannot  
3 satisfy the prerequisites for class certification as required by Federal Rules of Civil Procedure Rule 23  
4 and current legal standards. The claims alleged by Plaintiffs on behalf of themselves and the alleged  
5 putative class, the existence of which is expressly denied, are not appropriate for class action treatment,  
6 as the claims are not common or typical and/or involve matters in which individual questions of law  
7 and/or fact predominate and/or are not the superior method of adjudication for Plaintiffs’ claims.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 22. Plaintiffs’ class allegations are barred as a matter of law because Plaintiffs lack  
10 standing, typicality, and adequacy, and thus, cannot represent the interests of the putative class  
11 members as to each purported cause of action therein.

12 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

13 23. The purported class is not certifiable because it would be unmanageable.

14 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

15 24. Permitting this action to proceed as a class action, as applied to the facts and  
16 circumstances of this case, would constitute a denial of Defendant’s due process rights, both  
17 substantive and procedural, in violation of the Fourteenth Amendment of the United States  
18 Constitution and under the Constitution and laws of the State of California.

19 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

20 25. Certain interests of the putative class are in conflict with the interests of all or certain  
21 sub-groups of the members of the alleged class of persons, which Plaintiffs purport to represent, the  
22 existence of which is expressly denied.

23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 26. The class of persons which the named Plaintiffs purport to represent, the existence of  
25 which is expressly denied, is not so numerous that joinder is impracticable, and therefore, fails to meet  
26 the prerequisites for class certification as required by Federal Rules of Civil Procedure Rule 23.

27 ///

28 ///

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 27. Proposed class counsel is not able to fairly and adequately represent the interests of the  
3 putative class.

4 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

5 28. Plaintiffs’ SAC, and each and every cause of action alleged therein, is barred to the  
6 extent Plaintiffs, and similarly situated employees, have executed a legally enforceable compromise  
7 and/or release of the claims asserted in the SAC.

8 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

9 29. The claims of Plaintiffs and each alleged putative class member of the purported class  
10 for equitable relief are barred because Plaintiffs and the alleged putative class members have not  
11 suffered and will not suffer irreparable harm due to any alleged conduct of Defendant.

12 **THIRTIETH AFFIRMATIVE DEFENSE**

13 30. Plaintiffs’ and the purported class members’ state law claims are preempted and barred  
14 by the Railway Labor Act, 45 U.S.C. §§ 151, *et seq.*, including (but not limited to) on the grounds that  
15 the outcome of the claims are substantially dependent upon an analysis, interpretation, and application  
16 of the terms of a collective bargaining agreement against an entity subject to RLA jurisdiction, as  
17 Defendant is a passenger air carrier.

18 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

19 31. Plaintiffs’ class allegations are barred as a matter of law because they are improperly  
20 pled as a class action rather than as a collective action.

21 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

22 32. Plaintiffs’ claim for interference with rights under the FMLA is barred because  
23 Plaintiffs did not exercise or attempt to exercise their rights under the FMLA and/or because Defendant  
24 took no action that interfered with Plaintiffs’ right to take FMLA leave. Alternatively, Plaintiffs’  
25 FMLA interference claims are nevertheless barred because any action by Defendant was not related  
26 in any way to Plaintiffs’ exercise or attempted exercise of their FMLA rights.

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**THIRTY-THIRD AFFIRMATIVE DEFENSE**

33. Plaintiffs' FMLA claims are barred to the extent that Defendant treated employees on FMLA leave the same as employees who were on an equivalent leave of absence.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

34. Defendant expressly reserves the right to amend, supplement, alter, or change its Answer and affirmative defenses upon revelation of more definitive facts by Plaintiffs and upon Defendant's undertaking of discovery and investigation of this matter. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

**PRAYER**

WHEREFORE, Defendant prays that this Court enter a judgment as follows:

1. That the SAC be dismissed with prejudice and that judgment be entered in favor of Defendant;
2. That Plaintiffs takes nothing by way of their SAC;
3. That Defendant be awarded its costs of suit incurred in defense of this action, including its reasonable attorney's fees; and
4. For such further and other relief as the Court may deem just and proper.

Dated: September 25, 2023

Respectfully submitted,

FISHER & PHILLIPS LLP

By: /s/ Annie Lau

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