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15 Attorneys for Lead Plaintiffs and  
16 Proposed Class and Subclasses

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA

19 RORESTE REFUERZO and SELINA  
20 CASHIN, on behalf of themselves and others  
21 similarly situated,

22 Plaintiff,

23 vs.

24 SOUTHWEST AIRLINES CO.,

25 Defendant.

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

**CLASS ACTION**

**SECOND AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF AND DAMAGES**

**DEMAND FOR JURY TRIAL**

26 Plaintiffs Roreste Refuerzo (Mr. Refuerzo) and Selina Cashin (Ms. Cashin) (collectively  
27 “Lead Plaintiffs”), on behalf of themselves and those similarly situated, complain against  
28 defendant Southwest Airlines Co. (Defendant or Southwest), demand a trial by jury of all issues,  
and allege:

1 **INTRODUCTION**

2 1. Southwest, a major international airline, instituted a policy in 2019 that effectively  
3 penalizes its flight attendants' exercise of family and medical leave. Under the policy, a flight  
4 attendant who would otherwise be entitled to a reduction in disciplinary points is not given the  
5 reduction if she took medical or family leave. This policy plainly violates The Family and Medical  
6 Leave Act (FMLA) and California state law.

7 2. Southwest has justified its FMLA violating policy change as an effort to make its  
8 intermittent FMLA match its continuous FMLA leave. Plaintiffs learned, through the discovery  
9 process, that Southwest's continuous FMLA policy also attaches a negative consequence to the  
10 exercise of protected rights and did so before the policy change in 2019.

11 3. As a result of Defendant's policy, Mr. Refuerzo was terminated. Lead Plaintiffs  
12 bring this class action seeking damages on behalf of other Southwest flight attendants who were  
13 terminated by Southwest as a consequence of Defendant's penalization of protected leave. Mr.  
14 Refuerzo also brings individual claims to redress his own unlawful termination.

15 4. As a result of Defendant's policy, Ms. Cashin's use of protected FMLA leave has  
16 caused disciplinary points to remain on her record that, if she had not exercised her protected  
17 rights, would have rolled off. Moreover, Southwest's policies have discouraged Ms. Cashin from  
18 exercising her right, under the FMLA, to take leave.

19  
20 **PARTIES**

21 5. Lead Plaintiffs believe and allege Southwest is a major airline and the world's  
22 leading low-cost carrier. While Southwest's headquarters is in Dallas, Texas, it has major  
23 operations in California, including bases in Oakland and Los Angeles. It also has major operations  
24 in San Francisco, San Jose, Sacramento, and San Diego. Southwest is the second largest airline by  
25 market share in the San Francisco Bay Area.

26 6. Southwest employs more than 50 people for each working day during each of 20 or  
27 more calendar workweeks during the applicable time period; is engaged in commerce or in an  
28 industry or activity affecting commerce; and is thus an employer under the FMLA, 29 U.S.C. §

1 2601. Southwest is also an employer as defined by California Government Code § 12945.2 (b) (3),  
2 the California Family Rights Act (CFRA).

3 7. Mr. Refuerzo was, at the times when the acts alleged herein occurred, an adult  
4 residing in San Mateo County within the State of California. At all times relevant to the complaint,  
5 Mr. Refuerzo was employed by Southwest and is an eligible employee as the term is defined by  
6 the FMLA, 29 U.S.C. § 2611 (2). Mr. Refuerzo is also an “employee” as that term is defined by  
7 California Government Code §12926 (c) and is also an employee employed by an air carrier as  
8 defined by section 12945.2 (r) (1) of the same statute.

9 8. Ms. Cashin is an adult residing in Los Angeles County within the state of California.  
10 Earlier in her career with Southwest, Ms. Cashin resided in Clark County, Nevada and Cook  
11 County, Illinois. Ms. Cashin is currently employed by Southwest and is an eligible employee as  
12 that term is defined by the FMLA, 29 U.S.C. § 2611 (2). Ms. Cashin is also an “employee” is  
13 defined by California Government Code §12926 (c) and is also an employee employed by an air  
14 carrier as defined by Section 12945.2 (r) (1).

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16

**JURISDICTION AND VENUE**

17 9. This Court has original jurisdiction over the “First Claim for Relief” under FMLA §  
18 105(a)(1), which is memorialized at 29 U.S.C. § 2615 (a) (1) and makes it illegal to restrain or  
19 interfere with a worker’s right to family and medical leave established by the statute. Such  
20 jurisdiction lies within 28 U.S.C. § 1331.

21 10. This Court has jurisdiction over the “Second Claim for Relief” under section 105(a)  
22 of the FMLA, which is memorialized at 29 U.S.C. § 105 (a) and makes it illegal to discharge or  
23 discriminate against any employee for exercising their rights under the statute. Such jurisdiction  
24 lies within 28 U.S.C. § 1331.

25 11. The remaining Claims for Relief arise under California law and relate to the First  
26 and Second Claims for Relief. Together they form part of the same case or controversy under  
27 Article III of the United States Constitution, as presented more fully below. Therefore, this Court  
28 has jurisdiction over such state claims pursuant to 28 U.S.C. § 1367.

1 12. Venue is proper in this Court as a substantial part of the allegations of unlawful  
2 employment practices and the events that gave rise to this action occurred in Alameda County,  
3 California and San Mateo County, California.

4 13. Assignment to the San Francisco Division or Oakland Division of this District is  
5 proper pursuant to Local Rule 3-2(c) and (d) because a substantial portion of the events, conduct  
6 and omissions giving rise to this action occurred within these divisions of the District.

7  
8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 14. On January 25, 2022, Mr. Refuerzo filed, prior to initiating this action, a Complaint  
10 of Discrimination with the Department of Fair Employment and Housing (DFEH). On January 25,  
11 2022, the DFEH issued a Notice of Case Closure and Right-to-Sue to Mr. Refuerzo, authorizing  
12 him to file a private lawsuit against Southwest to enforce his rights under CFRA to full and equal  
13 employment opportunities free from unlawful discrimination. Mr. Refuerzo has exhausted all  
14 administrative remedies required by the CFRA as a prerequisite to this action.

15  
16 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

17 15. Southwest assesses “points” for attendance and disciplinary violations. When a flight  
18 attendant accumulates 12 points for violating these policies, a committee can approve his or her  
19 termination.

20 16. Southwest offers flight attendants four “record-improvement” devices that allow for  
21 point reductions through good attendance hygiene: (1) No Chargeable Occurrences During a  
22 Quarter; (2) Perfect Attendance During a Quarter; (3) Fourth Quarter Record Improvement Bonus;  
23 (4) December Record Improvement.

24 17. Prior to 2019, Southwest was already attaching a negative consequence to flight  
25 attendants’ exercise FMLA rights by disqualifying attendants who take FMLA continuous leave  
26 for less 14 days from record-improvement mechanisms. However, prior to March 2019, Southwest  
27 did not attach a similar penalty to flight attendants exercising their right to intermittent FMLA  
28 leave.

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18. In February of 2019, Southwest announced changes to its Record Improvement and FMLA policies. Under the new rule, which went into effect on March 1, 2019, a flight attendant's use of intermittent FMLA leave disqualified the flight attendant from record improvement in a quarter. This policy functions to penalize flight attendants for taking leave protected under the FMLA and CFRA. That is, Southwest attaches a negative consequence to taking protected leave: Employees who exercise the right to protected leave lose the benefit of point reductions to which they would otherwise be entitled. Southwest effectively treats the taking of protected FMLA leave as a chargeable offense. Take, for example, an employee who has perfect timeliness and attendance for an entire three-month quarter. Since this employee has no chargeable offenses, she is entitled to a 2-point roll-off of disciplinary points at the end of the quarter under the No Chargeable Occurrences During a Quarter record improvement device. If, however, the employee took 1-day of protected intermittent FMLA leave at any point during those three months, she loses the right to the roll-off.

19. In short, the exercise of protected leave places employees in a materially worse position. For those employees who receive this penalty and who are subsequently terminated, it always plays a role in the termination decision. Given the lockstep and numerical nature of Southwest's disciplinary system, where a flight attendant is fired after reaching 12-points, the nullified roll-off is invariably a clear negative factor in the termination.

20. Through discovery, Plaintiffs learned that Southwest's long-running record improvement and continuous FMLA policy also violates the statute. Southwest attaches a negative consequence to flight attendants who exercise FMLA continuous leave for less than 14 days. This violation functions in the same way as Southwest's treatment of intermittent leave: Southwest denies the flight attendant access to point reductions that she would have otherwise been entitled if she had not taken protected leave.

21. For employees who remain with Southwest, the policy serves as a deterrent to the exercise of the right to intermittent family and medical leave.

**MR. REFUERZO'S EXPERIENCE**

1  
2 22. On August 25, 2006, Mr. Refuerzo began working for Southwest as a flight  
3 attendant. He was an excellent flight attendant for many years.

4 23. In May of 2019, Mr. Refuerzo applied for intermittent FMLA leave for a chronic  
5 knee injury. On June 4, 2019, Southwest approved Mr. Refuerzo's intermittent FMLA leave by a  
6 Qualification/Designation Notice. The notice provided that the start date of the approval was May  
7 15, 2019, and the end date was May 13, 2020. The frequency of the approved leave was 2 times  
8 per year and the duration was 5 days. In November and December of 2019, Mr. Refuerzo used his  
9 intermittent FMLA leave pursuant to Southwest's approval.

10 24. In Mr. Refuerzo's final full quarter with Southwest, which comprised October  
11 through December of 2019, he accrued no chargeable offenses or penalty points. Under  
12 Southwest's record improvement policy, this would typically have entitled Mr. Refuerzo to a 2-  
13 point deduction. However, as discussed above, Mr. Refuerzo properly invoked intermittent  
14 medical leave pursuant to Southwest's internal rules during the quarter. Under Southwest's  
15 alteration of the policy in March of 2019, Mr. Refuerzo did not receive a 2-point deduction.

16 25. As Southwest penalized Mr. Refuerzo for taking intermittent medical leave by  
17 barring him from the 2-point deduction to which he would otherwise have been entitled, Mr.  
18 Refuerzo ended 2019 with 9.5 disciplinary points instead of 7.5. This difference was determinative  
19 of his termination in February of 2020.

20 26. Under Southwest's internal procedures, flight attendants must arrive 1 hour prior to  
21 "the scheduled push of the aircraft" and sick calls must be made "at least two (2) hours prior to  
22 scheduled check-in of the pairing." If a sick call is not made 2 hours before the scheduled check-in,  
23 the flight attendant is assessed 2.5 disciplinary points.

24 27. On January 29, 2020, Mr. Refuerzo lost his voice due to illness. In conformance with  
25 Southwest's rules, Mr. Refuerzo called out sick for a scheduled training. On the following day,  
26 January 30, 2020, the cold persisted and Mr. Refuerzo remained without his voice. Mr. Refuerzo  
27 called in exactly 2 hours before his scheduled check-in to inform Southwest he would not be able  
28 to make a flight. Southwest's call logs, as well as Mr. Refuerzo's phone records, show that the call

1 came in exactly 2 hours before the scheduled check-in. However, Southwest incorrectly registered  
2 the call 1 hour and 59 minutes before the flight. If the flight had been properly registered, Mr.  
3 Refuerzo would not have been assessed any disciplinary points. However, Southwest assessed 2.5  
4 points to Mr. Refuerzo for reporting his illness less than 2 hours prior to the scheduled check-in.  
5 If Southwest had not penalized him for taking intermittent family leave, the sick call in January  
6 2020 would not, in any event, have resulted in Mr. Refuerzo reaching the 12-point termination  
7 threshold.

8 28. On February 11, 2020, Southwest issued Mr. Refuerzo a Termination Letter. The  
9 letter states that if a flight attendant reaches 12 disciplinary points, a committee can approve his  
10 termination. The letter then states: “(a)s a result of your recent Late Sick Call, your attendance  
11 points are at termination level. Accordingly, your employment is terminated effective February 13,  
12 2020.” This is the sole justification Southwest presented for Lead Plaintiff’s termination.

13 29. Mr. Refuerzo’s termination violated the FMLA, California’s Fair Employment and  
14 Housing Act (FEHA), and CFRA, as discussed below.

15  
16 **MS. CASHIN’S EXPERIENCE**

17 30. Ms. Cashin began working for Southwest as a flight attendant in March of 2015.

18 31. Ms. Cashin suffers from a chronic otitis media, a condition affecting the eardrum  
19 and middle ear. Initially, Ms. Cashin feared retaliation for exercising her rights under the FMLA.  
20 However, in May of 2018, the persistence of her condition required Ms. Cashin to apply for FMLA  
21 leave.

22 32. Southwest rules required that Ms. Cashin finish her FMLA intake before she  
23 returned from leave. Ms. Cashin’s condition qualified medically for intermittent FMLA leave.  
24 Moreover, Ms. Cashin followed Southwest’s directive on how to navigate the FMLA application  
25 process. However, she could not finish the process until she received an email from Southwest  
26 granting her access to Southwest’s portal. Southwest did not send the email until less than two  
27 hours before her next flight, at which time she had already checked-in for the flight pursuant to  
28

1 Southwest's attendance policy. Accordingly, Southwest assessed Ms. Cashin disciplinary points  
2 for the absence instead of characterizing it as FMLA leave.

3 33. As a result of the points assessed by Southwest relating to this incident, Ms. Cashin  
4 was terminated effective June 22, 2018. Ms. Cashin grieved her termination through the Transport  
5 Workers Union Local 556. On July 23, 2018, before the grievance process was concluded,  
6 Southwest reinstated Ms. Cashin to her position as a flight attendant.

7 34. In addition to her ear condition, Ms. Cashin has suffered other health conditions  
8 while employed by Southwest: a broken palm, carpal tunnel syndrome, and she recently had  
9 deviated septum surgery. When she was out from work with the broken palm, Southwest double -  
10 counted her time off as both paid medical leave and FMLA leave.

11 35. In March 2022, Ms. Cashin again applied for intermittent FMLA leave for her  
12 chronic otitis media. On or about April 7, 2022, Southwest approved Ms. Cashin's intermittent  
13 FMLA allowing two absences per month for 3 days per leave.

14 36. Southwest will not show flight attendants their disciplinary point status upon request.  
15 However, it sends out notifications when flight attendants reach certain point-levels. On May 6,  
16 2022, Southwest informed Ms. Cashin that her point total was 11, 1 shy of the 12-point threshold  
17 at which Southwest terminates flight attendants. A quarterly reduction of 2-points would have  
18 brought her point totals to a safer level and vouchsafed her a measure of job security. However,  
19 any use of protected FMLA leave would nullify her access to quarterly reduction. This  
20 circumstance is a dramatic illustration of the deterrent force that Southwest's policy wields over  
21 thousands of flight attendants who are made to choose between their federally protected rights  
22 under the FMLA and the security of their jobs.

23  
24 **CLASS ACTION ALLEGATIONS**

25 **A. The Classes**

26 Lead Plaintiffs bring claims on behalf of two major nationwide classes: one for terminated  
27 employees and one for current employees. The former seeks monetary damages and the latter  
28



1 seeks injunctive relief. Both nationwide classes contain a subclass made up of California  
2 employees.

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

4 37. Lead Plaintiffs bring the class action pursuant to FRCP 23(a), as well as subsections  
5 (b)(3), and (c)(4) on behalf of a Nationwide Class defined as follows:

6 All Southwest flight attendants based in the United States since March 1, 2019 to  
7 present who exercised their rights to family and medical leave and consequently lost  
8 access to a disciplinary points reduction and were subsequently terminated for an  
9 accumulation of disciplinary points (hereafter, **the Nationwide Class**).

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

11 38. Lead Plaintiffs bring this action pursuant FRCP 23(a), as well as subsections  
12 23(b)(3), 23(c)(4) and 23(c)(5) on behalf of a subclass of California employees defined as follows:

13 All Southwest flight attendants based in California since March 1, 2019 to present  
14 who exercised their rights to family and medical leave and consequently lost access  
15 to a disciplinary points reduction and were subsequently terminated for an  
16 accumulation of disciplinary points (hereafter, **the California Subclass**).

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

18 39. Alternatively, Lead Plaintiffs brings this action pursuant to Federal Rules of Civil  
19 Procedure (FRCP), Rule 23(a), and subsections (b)(2) and (c)(4) on behalf of Nationwide and  
20 California Classes defined as follows:

21 All Southwest flight attendants based in the United States since March 1, 2019 to  
22 present who exercised their rights to family and medical leave and consequently lost  
23 access to disciplinary points reduction (hereafter, **the (b)(2) Nationwide Class**); and

24  
25 All Southwest flight attendants based in California since March 1, 2019 to present  
26 who exercised their rights to family and medical leave and consequently lost access  
27 to disciplinary points reduction (hereafter, **the (b)(2) California Subclass**) (together,  
28 **the (b)(2) Classes**).

1 40. The Members of the (b)(2) Classes, the Nationwide Class, and the California Subclass are  
2 referred to collectively as “Class Members” or “The Class.”

3 41. Lead Plaintiffs bring this action, which may be properly maintained as a class action  
4 because there is a well-defined community of interest in the litigation.

5 42. The Nationwide Class, the California Subclass, and the (b)(2) Classes each meet the  
6 requirements of FRCP 23(a) and (c)(4). The Nationwide Class and California Subclass also meet  
7 the requirements of FRCP 23(b)(3) and seek damages accordingly.

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

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

10 43. **The Nationwide Class.** Due again to the common need for family and medical leave and  
11 the 16,000 flight attendants subject to the policy, the number of Defendant’s employees who were  
12 terminated subsequent to being penalized for taking leave protected by the FMLA is likely in the  
13 hundreds. Accordingly, the Nationwide Class meets the numerosity requirement. Moreover, Class  
14 members are readily identified from records maintained by Southwest and may be notified of the  
15 pendency of this action by mail or other form of notice customarily used in class actions.

16 44. **The California Subclass.** Southwest has bases in Oakland and Los Angeles. Additionally,  
17 it has major operations in San Diego, San Jose, San Francisco, and Sacramento. Southwest has over  
18 2,000 employees based out of Oakland alone. Given this volume, and the other factors discussed  
19 above, the total number of flight attendants based in California who were terminated by Southwest  
20 following their exercise of rights protected by federal and California law is also likely in the  
21 hundreds. Thus, the California Subclass meets the numerosity requirement.

22 45. **The (b)(2) Classes.** The number of flight attendants working for Southwest who took  
23 FMLA leave since March 1, 2019 are in the thousands. Southwest employs over 16,000 flight  
24 attendants, thousands of whom are based in California, and the need for family and medical leave is  
25 common. Thus, the number of members of the (b)(2) Class(es) are likely in the thousands.

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

27 46. **The Nationwide Class.** The Nationwide Class Members seek redress for their terminations  
28 following Southwest’s attachment of a negative consequence to the exercise of family and medical

1 leave. The First and Second Claims for Relief alleges that the subject March 2019 policy change  
2 violated 29 U.S.C. § 2615(a) as it effected intermittent leave, while Southwest's pretexting  
3 treatment of employee's taking continuous FMLA leave also violated the statute. Thus, the  
4 allegation that Southwest's policies violated the FMLA forms the common nucleus of each of the  
5 Class Members' claims. Answering the question of whether those policies violated the statute will  
6 provide a basis for resolving liability for the entire class. This common issue predominates over  
7 individual issues, including individual damages calculations in satisfaction of FRCP 23(b)(3).  
8 Accordingly, the Class meets the commonality and predominance requirements.

9 47. **The California Subclass.** For the same reasons that the commonality and predominance  
10 requirements are met for the Nationwide Class, they are also met for the California Subclass.

11 48. **The (b)(2) Classes.** Southwest's policy change in March of 2019 was a standardized  
12 practice that effected all members of the (b)(2) Classes. The sole question for each member of the  
13 (b)(2) Classes is whether the policies function as an impermissible penalty for an individual's  
14 exercise of family and medical leave such that the members of the (b)(2) Classes are entitled to an  
15 injunction obligating Southwest to discontinue the policy and reinstate points and/or their  
16 employment. The answer to this narrow question thus provides a basis for a class-wide resolution  
17 and relief. Accordingly, a common question exists and the requirements of FRCP(a)(2) are met.  
18 The (b)(2) Classes need not plead nor prove that common issues predominated pursuant to FRCP  
19 23(b)(3).

#### 20 **Typicality (FRCP 23(a)(3))**

21 49. **The Nationwide Class.** Following the nullified point reduction, Southwest terminated Mr.  
22 Refuerzo. As discussed above, the nullification caused Mr. Refuerzo's termination. If he had not  
23 exercised his FMLA rights, Mr. Refuerzo would not have been terminated in February of 2020, as  
24 he would have had less than 12 disciplinary points. As Southwest terminates flight attendant's  
25 automatically when they reach a 12 disciplinary-point threshold, the termination of each  
26 Nationwide Class Member following Southwest's denial of a point reduction was similarly causally  
27 related to the use of protected leave. Due to the simple math involved, in each case the penalty  
28

1 assessed to the exercise of protected rights was a but-for cause of termination. As Mr. Refuerzo  
2 experience exemplifies this dynamic, he meets the typicality requirement for the Nationwide Class.

3 50. **The California Subclass.** The California Subclass’s factual allegations are conterminous  
4 with the Nationwide Class’s factual allegations. The only difference is that the California Subclass,  
5 in addition to the FMLA, seeks redress under CFRA in the Third Claim for Relief, and, in the  
6 Fourth Claim for Relief, it seeks damages for wrongful termination under California law. As the  
7 factual allegations are essentially the same, Mr. Refuerzo meets the typicality requirements for the  
8 California Subclass for the same reason that he meets this requirement for the Nationwide Class.

9 51. **The (b)(2) Classes.** Lead Plaintiffs’ experience at Southwest illustrates the way in which the  
10 Southwest FMLA and leave policies impermissibly attach a negative consequence to an  
11 individual’s exercise of the right to family and medical leave. Southwest nullified point roll-offs to  
12 Lead Plaintiffs and all (b)(2) Classes members because of their exercise of protected FMLA rights.  
13 As this denial goes to the heart of why the subject policy violates the federal and California law and  
14 the injunctive relief sought, Lead Plaintiffs’ claims are therefore typical of the (b)(2) Classes’  
15 claims.

16  
17 **Adequacy of Representation (FRCP 23(a)(4))**

18 52. Lead Plaintiffs have no conflict with the Class, as their claims, like the Class’s, depend on a  
19 finding that Southwest’s FMLA policies violated the FMLA and CFRA. Moreover, Lead Plaintiffs’  
20 counsel is competent and experienced in employment class action litigation.

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

23 53. FRCP 23(b)(3) is satisfied as resolving the predominant and common question – i.e.,  
24 whether Southwest’s FMLA and discipline reduction policies violate federal and state law – is best  
25 resolved on a class-wide basis. Indeed, an answer to this question will resolve whether the  
26 Nationwide Class and the California Subclass are entitled to relief.

27 54. Here, the class action mechanism is far superior to other available methods for the fair and  
28 efficient adjudication of the claims asserted herein because joinder of all members is impracticable,

1 and the alternative would entail a multiplicity of separate actions potentially numbering in the  
2 thousands. Furthermore, because the damages suffered by certain individual members of the  
3 Nationwide Class may be relatively small, the expense and burden of individual litigation make it  
4 impracticable, if not virtually impossible, for Class members to pursue their claims separately. As a  
5 result, the likelihood of individual class members prosecuting separate claims is remote and class  
6 action treatment will allow those similarly situated persons to litigate their claims in the manner that  
7 is most efficient and economical for the parties and judicial system. It is also anticipated that  
8 certain defenses asserted by Southwest will be common to all Class members.

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

10 55. Southwest has acted or refused to act on grounds that apply generally to the (b)(2) Classes,  
11 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the (b)(2)  
12 Classes as a whole.

13 56. Southwest has acted on grounds generally applicable to the (b)(2) Classes by adopting and  
14 implementing a systemic and unlawful policy, practice, and procedure that penalizes members of  
15 the (b)(2) Classes for exercising protected family and medical leave.

16 57. Southwest's systemic policy of penalizing the (b)(2) Classes' exercise of the right to family  
17 and medical leave have made appropriate the requested final injunctive and declaratory relief with  
18 respect to the (b)(2) Classes as a whole.

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

20 58. Class-wide liability and the relief sought herein present common issues capable of class-  
21 wide resolution, which would advance the interest of the parties in an efficient manner.

22 **FIRST CLAIM FOR RELIEF**

23 **Interference in Violation of the FMLA**

24 **(29 U.S.C. § 2515 (a) (1))**

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

26 59. Lead Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

27 60. Lead Plaintiffs First Claim for Relief arises under 29 U.S.C. § 2615 (a)(1), which makes it  
28 illegal to restrain or interfere with workers' rights under the FMLA. Southwest's policies restrain

1 the use of leave under the FMLA by attaching a negative consequence to the exercise of rights  
2 guaranteed under the statute. That is, flight attendants taking leave are penalized by losing access to  
3 disciplinary point reductions under Southwest’s Record Improvement policy. Southwest employees  
4 are left to choose between utilizing their leave protected under the FMLA or losing the benefit of a  
5 point reduction.

6 61. When the Nationwide Class Members chose to use their protected leave, Southwest  
7 penalized them by barring the Nationwide Class from a disciplinary point reduction under the  
8 Record Improvement policy. Subsequently, Southwest terminated the Nationwide Class Members  
9 for reaching the 12-point threshold. Each member of the Nationwide Class would not have reached  
10 the threshold at the time of the termination if not for Southwest’s attachment of a negative  
11 consequence to the Class’s exercise of rights protected by the FMLA. Southwest’s interference  
12 with the Nationwide Class’s protected right to medical leave was a plain violation of the FMLA.

13 62. Similarly, the (b)(2) Nationwide Class has a right to be free of policies that interfere with  
14 their lawful use of FMLA benefits.

15 63. As a direct and proximate cause of Southwest’s FMLA violation, the Nationwide Class  
16 suffered damages as further detailed in the section below entitled “DAMAGES,” and the (b) (2)  
17 Nationwide Class is entitled to injunctive relief, including restoration of points, offers of  
18 reinstatement, and/or an order prohibiting Southwest from continuing the unlawful conduct alleged  
19 herein.

20  
21 **SECOND CLAIM FOR RELIEF**  
22 **Discrimination and Retaliation in Violation of the FMLA**  
23 **(29 U.S.C. 2615(a)(1) and (2))**  
24 **Brought by the Nationwide Classes Against Defendant Southwest**

25 64. Lead Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

26 65. Lead Plaintiffs bring the Second Claim for Relief under 29 U.S.C. § 105(a)(2), which makes  
27 it illegal to discharge or discriminate against any employee for exercising their rights under the  
28 FMLA. Southwest’s discrimination and retaliation also violates 29 U.S.C. 2615(a)(1), as 29 CFR §

1 825 (c) provides that the “prohibition against interference prohibits an employer from  
2 discriminating or retaliating against an employee.”

3 66. Southwest’s discriminate against Nationwide Class members who used leave under the  
4 FMLA by attaching a negative consequence to the exercise of rights guaranteed by the statute.  
5 When the Class members chose to use their protected leave, Southwest punished them by barring  
6 the Nationwide Class from a disciplinary point reduction under the Record Improvement policy.  
7 Subsequently, Southwest retaliated against the Nationwide Class members by terminating their  
8 employment when the members’ point-accumulations reached the 12-point threshold. Each member  
9 of the Nationwide Class would not have reached the threshold at the time of their termination if not  
10 for Southwest’s penalization of the Nationwide Class’s protected FMLA use. Southwest’s  
11 discrimination and retaliation against the Nationwide Class for exercising its protected right to  
12 medical leave was a plain violation of the FMLA.

13 67. Similarly, (b)(2) Nationwide Class has a right to be free of policies that impede on or  
14 discourage their lawful use of FMLA benefits.

15 68. As a direct and proximate cause of Southwest’s violation of the FMLA, the Nationwide  
16 Class suffered damages as further detailed in the section below entitled “DAMAGES,” which is  
17 incorporated here to the extent pertinent as if set forth in full, and the Nationwide Classes are  
18 entitled to injunctive relief, including restoration of points, offers of reinstatement, and/or an order  
19 prohibiting Southwest from continuing the unlawful conduct alleged herein.

20  
21 **THIRD CLAIM FOR RELIEF**  
22 **Discrimination and Retaliation in Violation of CFRA**  
**(Cal. Gov. Code § 12945.2(1))**  
23 **Brought by the California Subclasses Against Defendant Southwest**

24 69. Lead Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

25 70. Lead Plaintiffs bring the Third Claim for Relief as a class action pursuant to FRCP, Rule 23,  
26 on behalf of the California Subclasses.

27 71. California Government Code § 12945.2(1) makes it an unlawful employment practice for an  
28 “employer to ... discharge ... suspend ... or discriminate against any individual because of ... an  
individual’s exercise of the right to family and medical leave.”

1 72. Southwest discriminated and retaliated against the California Subclasses for taking medical  
2 leave by disqualifying them from receiving a two-point deduction following a quarter with no  
3 chargeable offenses. As a result of the penalty Southwest applied for taking medical leave,  
4 Southwest terminated members of California Subclass when they subsequently reached the 12  
5 disciplinary-point threshold and unfairly withheld points from members of the (b)(2) California  
6 Subclass. Thus, Southwest violated the CFRA by discriminating and retaliating against members of  
7 the California Subclass for exercising their rights to medical leave protected by CFRA.

8 73. As a direct and proximate cause of Southwest’s discrimination and retaliation in violation of  
9 Gov. Code § 12945.2(a), the California Subclass suffered damages as further detailed in the section  
10 below entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth in  
11 full, and the California Subclasses entitled to injunctive relief.

12 **FOURTH CLAIM FOR RELIEF**  
13 **Wrongful Termination in Violation of Public Policy**  
14 **Brought by the California Subclass Against Defendant Southwest**

15 74. Lead Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

16 75. It is fundamental public policy of the State of California as expressed in Gov. Code §§  
17 12940 *et seq.*, as well as the common law of this state, that an employer shall not discriminate or  
18 retaliate against an individual in any employment decision because of that person’s right to or use  
19 of medical leave as protected by the CFRA.

20 76. The California Subclass were fully qualified and competent to perform the essential duties  
21 to which they were assigned. Southwest wrongfully and unlawfully terminated each of the members  
22 of the California Subclass.

23 77. As a direct and proximate cause of Southwest’s unlawful termination of his employment,  
24 Plaintiff suffered damages, as stated below in the section entitled “DAMAGES,” which is  
25 incorporated here to the extent pertinent as if set forth in full, as well as injunctive relief.

26 **FIFTH CLAIM FOR RELIEF**  
27 **Unfair Competition**  
28 **Brought by the California Subclasses Against Defendant Southwest**



1 78. Lead Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

2 79. California Business and Professions Code §§ 17200 et seq. (UCL) prohibits any business  
3 from engaging in unfair competition which it defines as any unlawful, unfair or fraudulent business  
4 act or practice and unfair, deceptive, untrue or misleading advertising including any act prohibited  
5 by Business and Professions Code § 17500.

6 80. Southwest's discrimination, interference and retaliation against Nationwide Class Members,  
7 the California Subclasses as alleged herein, was an unfair, unlawful and/or fraudulent business  
8 practice.

9 81. Through its actions alleged herein, Southwest has engaged in unfair competition within the  
10 meaning of section 17200, because Southwest's conduct has violated federal and state employment  
11 and labor laws and the California common law as herein described.

12 82. The UCL empowers the Court to enjoin unlawful and unfair conduct.

13 83. As described above, Southwest's policy of penalizing its employees' exercise of protected  
14 CFRA and FMLA rights is a plain violation of the CFRA and FMLA, and, therefore, prohibited  
15 under the unlawful prong of the UCL.

16 84. Southwest's conduct also violates the fraudulent prong of the UCL in that it failed to  
17 adequately disclose aspects of its points system to Class members and the public. Class members  
18 could have sought other employment on better terms had Southwest fully informed them of their  
19 unlawful practices.

20 85. Southwest's conduct is also unfair under the UCL. The harm to Class members vastly  
21 outweighs any benefit to Southwest, and Southwest's conduct is also anticompetitive, as it  
22 disadvantages competitors who do follow the law. Moreover, the harm to Class members is  
23 precisely what the CFRA and FMLA are designed protect, and therefore tethered to the important  
24 legislative policies underlying those statutes.

25 86. The Court should enjoin Southwest's conduct, reinstate points owed to the California  
26 Subclasses, and reinstate employment for California Class members who were terminated as a  
27 result of the unlawful conduct alleged herein.

28

1 87. Absent injunctive relief enjoining Southwest from engaging in unlawful, unfair, and  
2 fraudulent business practices described above, Lead Plaintiff, members of the California  
3 Subclasses, and the general public will be irreparably injured, the extent, nature and amount of such  
4 injury being impossible to ascertain.

5 88. Lead Plaintiff and members of the California Subclasses have no plain, speedy and adequate  
6 remedy at law.

7 89. For these reasons, Lead Plaintiffs seek appropriate preliminary and permanent injunctive  
8 relief.

9  
10 **SIXTH CLAIM FOR RELIEF**  
11 **Discrimination and Retaliation in Violation of CFRA**  
12 **(Cal. Gov. Code § 12945.2(1))**  
13 **Brought by Lead Plaintiffs Individually Against Defendant Southwest**

14 90. Lead Plaintiffs incorporate the foregoing paragraphs as if fully restated herein.

15 91. Lead Plaintiffs bring the Sixth Claim for Relief individually.

16 92. California Government Code § 12945.2(1) makes it an unlawful employment practice for an  
17 employer to ... discharge ... suspend ... or discriminate against any individual because of ... an  
18 individual's exercise of the right to family and medical leave."

19 93. Southwest discriminated and retaliated against Mr. Refuerzo for taking medical leave by  
20 disqualifying him from receiving a two-point deduction following a quarter with no chargeable  
21 offenses. As a result of the penalty Southwest applied for taking medical leave, Southwest  
22 terminated Mr. Refuerzo when he subsequently reached the 12-point threshold. Thus, Southwest  
23 violated the CFRA by discriminating and retaliating against Mr. Refuerzo for exercising their rights  
24 to medical leave protected by CFRA.

25 94. Southwest discriminated and retaliated against Ms. Cashin for taking medical leave by  
26 disqualifying her from receiving a two-point deduction following a quarter with no chargeable  
27 offenses. As a result of the penalty Southwest applied for taking medical leave, Southwest  
28 continues to keep Ms. Cashin at 11 points, 1 point shy of the 12-point threshold for termination.

1 Thus, Southwest violated the CFRA by discriminating and retaliating against Ms. Cashin for  
2 exercising her rights to medical leave protected by CFRA

3 95. As a direct and proximate cause of Southwest’s discrimination and retaliation in violation of  
4 Gov. Code § 12945.2(a), Lead Plaintiffs suffered damages as further detailed in the section below  
5 entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth in full.

6 ///

7  
8 **SEVENTH CLAIM FOR RELIEF**  
9 **Wrongful Termination in Violation of Public Policy**  
10 **Brought by Mr. Refuerzo Against Defendant Southwest**

11 96. Mr. Refuerzo incorporates the foregoing paragraphs as if fully restated herein.

12 97. It is fundamental public policy of the State of California as expressed in Gov. Code §§  
13 12940 *et seq.*, as well as the common law of this state, that an employer shall not discriminate or  
14 retaliate against an individual in any employment decision because of that person’s right to or use  
15 of medical leave as protected by the CFRA.

16 98. Mr. Refuerzo was fully qualified and competent to perform the essential duties to which he  
17 was assigned. Southwest wrongfully and unlawfully terminated Mr. Refuerzo.

18 99. As a direct and proximate cause of Southwest’s unlawful termination of his employment,  
19 Plaintiff suffered damages, as stated below in the section entitled “DAMAGES,” which is  
20 incorporated here to the extent pertinent as if set forth in full.

21 **DAMAGES**

22 100. 29 U.S.C. § 2617 allow for the recovery of back pay, front pay, injunctive relief,  
23 compensatory damages, special damages, general damages, costs, and attorney’s fees for an  
24 employee who has suffered discrimination, retaliation or discharge in violation of the FMLA. 29  
25 CFR § 8225.220 (b) provides that equitable relief for violations of the statute may include  
26 reinstatement. As a result of Southwest’s wrongful and unlawful employment practices as set forth  
27 in the preceding paragraphs of this complaint, the Class is entitled to offers of reinstatement, as well  
28 as the damages permitted by 29 U.S.C. § 2617 and 29 CFR § 825.220.

1 101. Government Code section 12965 allows for reinstatement, as well as the recovery of back  
2 pay, front pay, injunctive relief, compensatory damages, special damages, general damages, costs,  
3 and attorney's fees for an employee who has suffered discrimination, retaliation or discharge in  
4 violation of sections 12940 *et seq.* As a result of Southwest's wrongful and unlawful employment  
5 practices as set forth in the preceding paragraphs of this complaint, the Class is entitled to offers of  
6 reinstatement, as well as the damages permitted by law.

7 102. As a result of Southwest's wrongful and unlawful employment practices as set forth in the  
8 preceding paragraphs of this complaint, the Class is entitled to receive an award of statutory  
9 attorneys' fees and costs under 29 U.S.C. § 2617, California Government Code § 12965, Code of  
10 Civil Procedure § 1021.5, or any other appropriate statute or law which Defendants have acted or  
11 refused to act on grounds generally applicable to the Class, thereby making appropriate final  
12 injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

13 103. As a direct and proximate cause of Southwest's unlawful acts as set forth in this complaint,  
14 the Class is entitled to injunctive and equitable relief, including an order prohibiting Southwest  
15 from engaging in practices described above.

16  
17 **PRAYER FOR RELIEF**

18 **Wherefore**, Lead Plaintiffs pray for judgment as follows:

19 (a) That the Court determine that this action may be maintained as a class action under  
20 Rule 23(b)(3), or alternatively Rule 23(b)(2) and/or (c)(4), of the Federal Rules of Civil  
21 Procedure;

22 (b) That Southwest's policy change effected on March 1, 2019 be adjudged to have  
23 been in violation of FMLA and/or the CFRA.

24 (c) That Southwest's policy, preexisting the March 1, 2019 policy change, of  
25 attaching a negative consequence to the exercise continuous FMLA leave to be in violation of  
26 the FMLA and/or the CFRA.

27 (d) That judgment be entered for the Class members against Defendants for the  
28 amount of damages sustained by Lead Plaintiff, the Nationwide Class, and California Subclass

1 as permitted by law, together with the costs and expenses of this action, including reasonable  
2 attorneys' fees;

3 (e) That Defendants, their affiliates, successors, transferees, assignees, and the  
4 officers, directors, partners, agents and employees thereof, and all other persons acting or  
5 claiming to act on their behalf, be permanently enjoined and restrained from, in any manner,  
6 continuing the conduct alleged herein, or from engaging in any other conduct having a similar  
7 purpose or effect, and from adopting or following any practice, plan, program or device having a  
8 similar purpose or effect.

9 (f) That Defendants grant Class members' the point reductions to which they were  
10 entitled absent the exercise of protected activity;

11 (g) That Defendants reinstate the employment of Mr. Refuerzo and other Class  
12 members who were terminated as a result of the unlawful policy;

13 (h) That Class Members be awarded any available prejudgment and post-judgment  
14 interest;

15 (i) That Class Members have such other, further, and different relief as the case may  
16 require and the Court may deem just and proper under the circumstances.

17  
18 **JURY TRIAL DEMAND**

19 Wherefore, Lead Plaintiffs demand trial by jury of all issues, except for attorneys' fees  
20 and costs.

21 Date: August 24, 2023

ERLICH LAW FIRM, P.C.

22 /S/ Jason Erlich

23 \_\_\_\_\_  
24 Jason M. Erlich, Esq.