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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN THE COUNTY OF LOS ANGELES

JAIME GEHLY, CARRIE WILLIAMS, and
BILL LYONS

Plaintiff,

vs.

Defendants BIRD RIDES INC., a Delaware
Corporation; KATE GEREMIA, an
individual; SAM KERNAN-SCHOSS, an
individual; ADAM BLAU, an individual; and
DOES 1 through 20 inclusive,

Defendants.

CASE NO.: **21SMCV01499**

COMPLAINT FOR:

- 1. MISCLASSIFICATION**
- 2. MISREPRESENTATION**
- 3. DISABILITY DISCRIMINATION**
- 4. FAILURE TO ACCOMMODATE**
- 5. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**
- 6. RETALIATION**
- 7. WRONGFUL TERMINATION**
- 8. WRONGFUL DEDUCTION OF WAGES**
- 9. FAILURE TO PAY MINIMUM WAGES**
- 10. FAILURE TO PAY OVERTIME WAGES**
- 11. FAILURE TO PROVIDE MEAL AND REST PERIODS**
- 12. FAILURE TO ACCOUNT**
- 13. FAILURE TO REIMBURSE**
- 14. FAILURE TO PAY WAGES DUE AT SEPARATION**
- 15. PRIVATE ATTORNEYS GENERAL ACT**
- 16. UNFAIR COMPETITION**

(JURY TRIAL DEMANDED)

1 Plaintiffs JAIME GEHLY, CARRIE WILLIAMS, and BILL LYONS complain against
2 Defendants and each of them, demand a trial by jury of all issues and for all causes of action for
3 which they are entitled, and hereby allege as follows:

4 INTRODUCTION

5 1. This is an action for violations of California's laws prohibiting employer retaliation and
6 fraudulent business practices, and discrimination, violations of California's Labor Code, violations of
7 California laws prohibiting wrongful termination, and violations of California laws prohibiting unfair
8 and unethical business practices.

9 2. Defendants BIRD RIDES, INC., KATE GEREMIA, SAM KERNAN-SCHOSS,
10 ADAM BLAU, and/or DOES 1 through 20, inclusive: (1) misclassified Plaintiffs and other employees
11 as independent contractors (Lab. Code §§ 226.8, 558.1, 2698, *et seq.*); (2) defrauded Plaintiffs and
12 other employees; (3) discriminated against CARRIE WILLIAMS based on her disability/medical
13 condition and retaliated against her when she requested minimal accommodation (Gov. Code § 12940,
14 *et seq.*); (4) retaliated against Plaintiffs and other employees when they complained or attempted to
15 exercise their rights (Lab. Code §§ 98.6, 1102.5); (5) wrongfully deducted wages (Lab. Code § 221);
16 (6) failed to pay minimum and overtime wages (Lab. Code §§ 510, 1194, 1197); (6) failed to provide
17 meal and rest periods (Lab. Code §§ 226.7, 512); (7) failed to account (Lab. Code §§ 226(a), 1174,
18 1174.5, 1198.5, 558.1)); (8) failed to reimburse for business expenditures (Lab. Code §§ 558.1, 1198,
19 2802, 2804; Wage Order 4-2001); (9) failed to pay all wages due at separation (Labor Code §§ 201,
20 203, 558.1); (10) wrongfully terminated Plaintiffs; (11) are liable for civil penalties for the Labor Code
21 violations pursuant to California's Private Attorneys General Act. (Lab. Code §§ 203, 210, 226(c),
22 226.3, 226.8(b)(c), 558, 558.1, 1174.5, 1197.1, 1199, 2699, and 2753) and (12) engaged in unfair
23 business practices by violating numerous sections of the Labor Code, all while profiting from such
24 illegal activities (Bus. & Prof. Code § 17200, *et seq.*).

25 3. Through this action, Plaintiffs seek compensatory and punitive damages, statutory and
26 civil penalties, pre- and post-judgment interest, declaratory and injunctive relief, and costs and
27 attorneys' fees, as described below.

28 ////

PARTIES

4. Plaintiff JAIME GEHLY (“GEHLY” or, collectively, “Plaintiffs”) was at all times relevant hereto a California resident working in the City of Santa Monica and County of Los Angeles and employed as a Fleet Manager by BIRD RIDES, INC. and DOES 1 through 20. GEHLY was hired as Fleet Manager on March 9, 2020 and terminated on March 5, 2021.

5. Plaintiff CARRIE WILLIAMS (“WILLIAMS” or, collectively, “Plaintiffs”) was at all times relevant hereto a California resident working in the City of Santa Monica and County of Los Angeles and employed as a Fleet Manager by BIRD RIDES, INC. and DOES 1 through 20. WILLIAMS was hired as Fleet Manager on June 18, 2020 and terminated on September 1, 2020.

6. Plaintiff BILL LYONS (“LYONS” or, collectively, “Plaintiffs”) was at all times relevant hereto a California resident working in the City of Santa Monica and County of Los Angeles and employed as a Fleet Manager by BIRD RIDES, INC. and DOES 1 through 20. LYONS was hired as Fleet Manager on March 9, 2020 and terminated on February 3, 2021.

7. Defendant BIRD RIDES, INC. (“BIRD”) is a Delaware Corporation with its principal place of business in Santa Monica, California, which lies within the County of Los Angeles. BIRD regularly employs five (5) or more persons and is an employer within the meaning of Government Code § 12926.

8. Defendant KATE GEREMIA (“GEREMIA”) is the General Manager of BIRD, a supervisor, and an employer within the meaning of Labor Code § 558.1. GEREMIA engaged in the conduct described herein in the City of Santa Monica and County of Los Angeles.

9. Defendant SAM KERNAN-SCHOSS (“KERNAN-SCHOSS”) is a Director of BIRD, a supervisor, and an employer within the meaning of Labor Code § 558.1. KERNAN-SCHOSS engaged in the conduct described herein in the City of Santa Monica and County of Los Angeles.

10. Defendant ADAM BLAU (“BLAU”) is a Senior Associate at BIRD, a supervisor, and an employer within the meaning of Labor Code § 558.1. BLAU engaged in the conduct described herein in the City of Santa Monica and County of Los Angeles.

11. Plaintiffs are unaware of the identity of those defendants sued as DOES 1 through 20, inclusive, and they are therefore sued under those fictitious names. Plaintiffs are informed and believe, and thereon allege, that they are entitled to the relief requested in this complaint from these Doe

1 defendants and will seek leave of this Court to amend this complaint to reflect these defendants' true
2 names and identities when ascertained.

3 12. Plaintiffs are informed and believe and thereon allege that each of the defendants
4 named herein (collectively, "Defendants") was the agent, employee, or representative of each of the
5 remaining defendants and, in doing the things mentioned herein, was acting in the course and scope of
6 such agency and employment. Plaintiffs further allege that in doing the acts or omissions complained
7 of herein, Defendants, and each of them, acted or omitted to act in concert as agents of or on behalf of
8 the other Defendants named herein.

9 **JURISDICTION & VENUE**

10 13. This Court has personal jurisdiction over Defendants, and each of them, pursuant to
11 Article 6, § 10 of the California Constitution. The amount in controversy in this action exceeds the
12 minimal jurisdictional dollar amount for this Court of unlimited jurisdiction.

13 14. Jurisdiction is proper before the Superior Court of California because Plaintiffs and all
14 Defendants are citizens, reside, and/or maintain corporate headquarters in California, and the principal
15 injuries caused by Defendants' conduct all occurred in California.

16 15. Venue is proper in this Court pursuant to Code Civil Procedure § 395 because
17 Defendants' conduct and conducted substantial business, employed Plaintiffs, and committed the acts
18 and omissions alleged herein in the City of Santa Monica and County of Los Angeles.

19 **INCORPORATION OF ALLEGATIONS**

20 16. All of the allegations in this complaint are hereby incorporated into each cause of
21 action to the extent necessary or useful to clarify and complete each stated cause of action, to avoid
22 repetition and redundancy.

23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 17. As to his representative claims under the Private Attorneys General Act ("PAGA"),
25 GEHLY has exhausted his administrative remedies by notifying, through online submission, the Labor
26 and Workforce Development Agency ("LWDA") of Defendants' violations of the Labor Code and
27 mailing a copy of the notification by certified mail to Defendants on April 15, 2021. The LWDA did
28 not elect to investigate the claims, thereby allowing Plaintiff to pursue the PAGA claims in this Court

on behalf of himself and other current and former employees.

18. As to her claims under the Fair Employment and Housing Act (“FEHA”), WILLIAMS filed a complaint against BIRD with the California Department of Fair Employment and Housing (“DFEH”) pursuant to Gov. Code § 12900, *et seq.* on August 24, 2021 and received a Right to Sue notice the same day.

FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION

BIRD’s Evolving Business Model Has a Solitary Purpose – To Evade California Law

19. BIRD is a dockless scooter-share company based in Santa Monica, California. It operates through a mobile-phone application (the “Bird App”).

20. The Bird App allows BIRD’s customers to rent or reserve electric scooters and notifies them of the closest ones available for hire.

21. When BIRD was founded in 2017, it employed an army of gig workers called “chargers” who were paid \$5.00 for each scooter successfully recharged. Chargers would retrieve depleted scooters that they located through the Bird App, recharge them at home, and return them to the street to be rented. At that time, Bird conducted maintenance both in-house and through various mechanics with whom it contracted.

22. In March 2020, Bird created a new position, the “Fleet Manager.” With this new position, BIRD attempted to shift nearly every cost of BIRD’s business and every conceivable liability to this new classification of employee.

23. At BIRD’s complete control and direction, Fleet Managers (“FMs”) are responsible for a wide array of duties, including tracking, locating, capturing, and releasing BIRD’s scooters, conducting in-field repairs and maintenance, finding high-demand areas to optimize their assigned fleet, safely storing and charging BIRD’s scooters, preventing and repairing damage to the scooters, and ensuring compliance with city and local requirements.



1 24. BIRD closely monitors each FM’s performance through a measurement taken by the
2 Bird App. BIRD calls the measurement “Key Performance Indicators” (“KPIs”). It monitors, tracks,
3 and reports the times when each scooter is available and ready for rental.

4 25. BIRD scrutinizes each FM’s KPIs to ensure that that the FM is repairing, maintaining,
5 and deploying their scooter fleets so that the scooters are earning profits in excess of 19 hours a day.

6 26. During the summer of 2020, the City of Santa Monica and Los Angeles County were in
7 varying stages of lockdown due to COVID-19 as well as intermittent curfews imposed due to civil
8 unrest.

9 27. Although BIRD had promised its employees that the performance requirements were
10 suspended during “epidemics” or “civil unrest,” BIRD advised that “Bird is continuing operations
11 during the COVID-19 lockdowns...the contractual KPIs are not changing at this time.” BIRD
12 threatened discipline or termination if its stringent demands on productivity were not met.

13 28. If the extraordinary duties of the FM position could not be completed by the FM alone,
14 each FM was required to engage workers pre-cleared by BIRD and manage those workers as well – all
15 at the direction of BIRD but at the expense of the FM.

16 29. All of BIRD’s promises were and are subject to an ever-evolving employment
17 agreement, each iteration of which BIRD requires its employees to sign or else face punishment.

18 30. Each successive agreement more brazenly attempts to shift all costs of doing business
19 to the FMs while stripping them of the hard-fought protections afforded California employees.

20 31. BIRD attempts to shift all employer-related liability to its FMs and requires them to
21 insure all of its products, services, and losses.

22 32. BIRD requires its FMs to incur the following expenses without reimbursement: repairs,
23 maintenance, power supply units, electricity, storage, certified electrician review of the FM’s home,
24 structural modifications, transport of scooters, insurance, costs of theft, costs of vandalism, property
25 damage, removal of scooters from operation, uncollected rental fees, chargebacks, sales tax, user
26 refunds, city and permit fees, existing damage to the scooter at the time of assignment to the FM,
27 injury to the FM, injury to customers, depreciation of the scooter, non-rental use of the scooter, delays
28 in BIRD’s shipment of replacement parts, defective replacement parts, and marketing and promotions.

1 33. FMs are required to purchase replacement parts from BIRD through BIRD’s Shopify
2 account at above-market prices.

3 34. To avoid any doubt, BIRD reminds its employees that, “You are solely responsible for
4 all of your own tools, equipment, insurance and any expenses that you incur in connection” with the
5 FMs’ work for BIRD.

6 35. Because BIRD refuses to provide an accurate and complete accounting to its FMs for
7 the costs it deducts from their wages, employees are not able to track the exact amounts or
8 justifications for deductions from their wages.

9 36. In the rare event an FM is able to decipher and thus question the deductions from their
10 wages, BIRD states, in writing, that amounts deducted from the FM’s wages are “determined at Bird’s
11 sole discretion.”

12 37. BIRD requires FMs to give BIRD a cash deposit as security for the costs it decides (at
13 its discretion) to deduct from final wages.

14 38. BIRD promises to return such deposits. It does not.

15 39. BIRD, both openly and in secret, wrongfully siphons money from its FMs’ wages.

16 40. BIRD openly promises to deduct its cost of doing business. Specifically, BIRD states
17 that it will calculate wages by taking total fees paid by users and then deducting: (1) sales taxes, (2)
18 chargebacks, (3) user refunds, and (4) city and permit related fees – to arrive at total “Net Wages.”
19 From the Net Wages, BIRD stated it would deduct another \$1.00 per user ride plus 19 percent of Net
20 Wages as BIRD’s “Revenue Share,” as well as 30 percent of Net Wages to reflect the cost of the
21 scooters “designated upon delivery” until the value of the scooters is paid.

22 41. In reality, BIRD also deducts thousands of dollars each pay period for “Contra
23 Revenue, “Software Fees,” “Services Fees,” “Rider Fees,” and “Promotions” – deductions that are in
24 excess of the already exorbitant deductions BIRD represented it would take.

25 42. At times, the additional deductions are duplicated so the FM is charged twice for each
26 of the new category of deductions BIRD takes in defiance of its earlier promises.

27 43. One of the most expensive costs BIRD imposes on its FMs is the cost of the scooters
28 themselves. BIRD does not just charge the entire cost of the scooters to its FMs. It also uses the cost of
the scooter as a means of profiting off of the FMs.

1 44. In the first iteration of BIRD's employment agreement ("Agreement 1"), each FM was
2 required to purchase each scooter outright from BIRD at a price solely determined by BIRD. The FM
3 was then designated as the "owner" of each scooter assigned to him or her.

4 45. BIRD designates the value of the scooters it assigns to FMs on its "Fleet Manager
5 Vehicle Assignment Form."

6 46. The value BIRD assigns to the scooters is sometimes higher than their actual value.
7 BIRD's inflated value is then deducted from the FMs' wages.

8 47. In the second iteration of the employment agreement ("Agreement 2"), each FM was
9 required to pay BIRD the full value of the scooter, which was collected through a 30 percent deduction
10 from the FM's net wages each pay period until the full amount of the scooter was paid. Under
11 Agreement 2, BIRD assigns ownership of the scooters to BIRD itself rather than the FM.

12 48. The terms of Agreement 2 provide that the 30 percent deduction from each FM's wages
13 will cease when the full value of the FM's scooter fleet has been paid to BIRD.

14 49. In reality, after FMs pay off the amount owed on their fleet, they are terminated so that
15 the same scooter fleet can be assigned to another FM, who will, in turn, be required to again pay BIRD
16 in an amount equal to the retail value of the fleet.

17 50. Shortly after GEHLY paid off his scooter fleet, he was terminated.

18 51. When he was two weeks away from paying off his scooter fleet, LYONS was also
19 terminated.

20 52. WILLIAMS was terminated before she paid off her scooters but immediately after
21 asking for time off to get treatment for a mental health issue.

22 53. BIRD happily agrees to consider rehiring the FMs after terminating them, stating, "Bird
23 is open to allowing you to re-apply to become a Fleet Manager at a future date. Please connect with us
24 in 3 months to discuss." Of course, each FM's payments already made toward the scooters at the time
25 of termination are erased upon rehire, allowing BIRD to charge rehired FMs for the full value of the
26 assigned fleet again and again in cyclical fashion.

27 54. Despite BIRD's promise that Plaintiffs would be given at least a 30-day notice before
28 termination, BIRD did not give Plaintiffs any notice when it terminated their employment.

1 55. The abrupt nature of BIRD's termination left Plaintiffs to shoulder all of their
2 expenditures in parts and labor to maintain their scooters.

3 56. At the time of GEHLY's termination, BIRD specifically promised, in writing from
4 GEREMIA, that BIRD would reimburse GEHLY for all of the money he paid for labor on recent
5 repairs to his scooter fleet. It never did.

6 57. Because BIRD forbids FMs from selling BIRD parts to one another, FMs discharged
7 without notice are unable to mitigate the damages they suffer from having thousands of dollars in
8 inventory of BIRD replacement parts which they are unable to re-sell.

9 58. BIRD promises in its employment advertisements, its writings, and via email that the
10 FMs' security deposits will be returned at separation.

11 59. GEREMIA specifically promised, on behalf of BIRD, that "We will return the deposit
12 you paid on your vehicles, regardless of the condition in which vehicles are returned."

13 60. BIRD never returned any of Plaintiffs' security deposits.

14 61. Plaintiffs' attempts to appeal their terminations or mitigate the effects of the notice-free
15 termination were met by BIRD with obfuscation and baseless accusations.

16 **FIRST CAUSE OF ACTION**
17 **MISCLASSIFICATION**

18 (Lab. Code §§ 226.8, 558.1, 2753, 2698, *et seq.*)
19 (GEHLY in his representative capacity against all Defendants)

20 62. GEHLY was an employee of Defendants, as defined by California Labor Code §§
21 350(b), 2750.3, and 3351.5(c).

22 63. Pursuant to Labor Code § 226.8(a)(1), it is unlawful for an employer to willfully
23 misclassify an individual as an independent contractor.

24 64. Pursuant to Labor Code § 226.8(a)(2), it is unlawful for an employer to charge an
25 individual who has been willfully misclassified a fee, or to make any deductions from compensation,
26 for any purpose, including for goods, materials, space rental, services, government licenses, repairs,
27 equipment maintenance, or fines arising from the individual's employment.

28 65. Pursuant to Labor Code § 558.1, GEREMIA, KERNAN-SCHOSS, and BLAU as
directors, officers, or managing agents of Defendants, and DOES 11 – 20, are jointly and severally
liable with BIRD and DOES 1 – 10 for the misclassification of FMs and improper charges that

1 resulted in the violations described above and pled in this first cause of action.

2 66. Pursuant to Labor Code § 2753, GEREMIA, KERNAN-SCHOSS, and BLAU are
3 jointly and severally liable for knowingly advising an employer to treat an individual as an
4 independent contractor to avoid employee status for that individual.

5 67. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a
6 civil penalty to be assessed and collected by the LWDA may, as an alternative, be recovered through a
7 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
8 former employees pursuant to the procedures specified in Labor Code § 2699.3.

9 68. Throughout GEHLY's employment, Defendants purposefully misclassified GEHLY
10 and all other FMs as "independent contractors" because, by doing so, Defendants were able to shift the
11 cost of doing business to their employees.

12 69. BIRD directs and controls every aspect of each and every FM's work.

13 70. BIRD controls the quantity and model of scooters assigned to each and every FM.

14 71. BIRD controls the delivery location of the scooters and surveils the scooters through
15 constant geolocation.

16 72. BIRD controls the timing and manner of payment of wages of each and every FM.

17 73. BIRD controls the amount deducted from wages (at BIRD's "sole" discretion).

18 74. BIRD determines the purposes for which the scooters may be used.

19 75. BIRD specifies and directs the equipment that may be used to charge, maintain, and
20 repair scooters.

21 76. BIRD controls the territory in which each and every FM is allowed to operate.

22 77. BIRD requires FMs to adhere to its own maintenance, inspection, and repair protocols,
23 which are monitored at all times through the Bird App. Maintenance and repair are required to be
24 conducted at BIRD premises option and only with parts purchased through BIRD. The scooters are
25 "not be eligible for release until the protocols are complete."

26 78. BIRD must approve all those with whom FMs are permitted to work in discharging
27 their duties for BIRD.

28 79. BIRD controls all changes to the Bird App.

80. BIRD controls the prices charged to customers and all aspects of marketing.

1 81. BIRD can and does take the scooters assigned to its FMs and reassigns them to other
2 FMs at any time and without notice.

3 82. BIRD can also reassign each FM's territory to any other FM without notice to the FM.

4 83. BIRD decides the minimum hours each FM must make his or her fleet available to the
5 public. For example, in any 24-hour period, FMs are required to have all of their assigned vehicles
6 "charged, in good repair, and available for rental by a user" for a minimum of 19.2 hours.

7 84. BIRD sets the minimum number of rides per scooter each FM must achieve.

8 85. BIRD requires its FMs to "meet regularly" with BIRD to "discuss performance" as
9 measured by BIRD's collected data.

10 86. When the Bird App flags a scooter for potential repairs, the scooter is locked by BIRD
11 until the FM has paid for any needed repairs and submitted to a mandatory inspection by BIRD, which
12 is also paid for by the FM.

13 87. BIRD controls the business structure of its FMs by requiring each FM to form a
14 corporation or LLC within 30 days of employment with Bird, for the purpose of attempting to evade
15 misclassification laws.

16 88. BIRD controls the work FMs perform when not working for BIRD by prohibiting FMs
17 from performing any similar work with anyone other than BIRD or its affiliates.

18 89. BIRD's employment agreement can be unilaterally changed by BIRD with only "ten
19 (10) days prior written notice."

20 90. FMs perform work that is within BIRD's usual course of business because they manage
21 a fleet of scooters for a scooter-share company.

22 91. FMs are not engaged in a "independently established trade" and do not run
23 "independently established" businesses because the entities formed by FMs are formed at the explicit
24 demand of BIRD and for the sole purpose of working for BIRD.

25 92. In addition to depriving FMs of the protections of the Labor Code, Defendants did not
26 provide or pay for State Disability Insurance or Workers Compensation Insurance for FMs, did not
27 report or pay the proper employer's share of federal or state payroll taxes, and did not provide or pay
28 for any of the benefits required of employers.

 93. BIRD's misclassification of FMs was willful. In recognition that its own business

1 practices constitute misclassification, BIRD attempts to shift its liability for misclassifying its
2 employees to its misclassified FMs by providing that FMs will reimburse BIRD for “any claim
3 relating to employment or misclassification...”

4 94. Defendants’ failure to properly classify GEHLY and all other FMs as a “non-exempt
5 employee” was knowing and intentional. The decision to misclassify GEHLY and all other FMs as
6 “independent contractors” was made, maintained, ratified, and/or enforced by Defendants’ owners,
7 officers, directors, and/or managing agents and was done willfully, maliciously, oppressively, and
8 fraudulently, with the wrongful and deliberate intention of injuring GEHLY and all other FMs, and
9 with a conscious disregard of their rights.

10 95. Pursuant to Labor Code § 226.8, subdivs. (b) and (c) and Labor Code § 2699,
11 Defendants, and each of them, are jointly and severally liable for a civil penalty in the amount of no
12 less than \$5,000 and up to \$25,000 for each and every violation of Labor Code § 226.8(a), subdivs. (1)
13 and (2), as described above.

14 96. For bringing this action against Defendants on behalf of all current and former FMs,
15 Plaintiff is entitled to attorneys’ fees and costs of suit under Labor Code §2699(g) in amounts to be
16 determined by the Court.

17 WHEREFORE, Plaintiff prays for relief as set forth herein.

18 **SECOND CAUSE OF ACTION**
19 **MISREPRESENTATION**

(Plaintiffs individually against BIRD and DOES 1 - 10)

20 97. Under California law, it is unlawful for a party to intentionally or negligently fail to
21 disclose material facts that they are duty bound to disclose where another party reasonably relies on
22 such omissions to his, her, or their detriment.

23 98. BIRD does not tell FMs that they are likely to be terminated once the value of the
24 scooters as determined by BIRD are paid by them to BIRD.

25 99. FMs who have paid the full value of their scooters to BIRD are more likely to be
26 terminated after having done so.

27 100. The fact of the FMs’ likely termination is a material fact of which BIRD had special
28 information and knowledge that was not ascertainable by Plaintiffs.

1 101. BIRD was bound in good faith to disclose this material fact.

2 102. Plaintiffs reasonably relied on BIRD's omissions by expecting continued employment,
3 and based their decisions and conduct on this reliance and expectation.

4 103. Plaintiffs were harmed, and BIRD's omissions were a substantial factor in causing such
5 harm.

6 104. As a direct, foreseeable, and proximate result of Defendants' omissions, Plaintiffs have
7 suffered and continue to suffer actual damages including, but not limited to, loss of past earnings and
8 future earning capacity, attorneys' fees, costs of suit, and other losses not presently ascertained.

9 105. As a further direct and legal result of the acts and conduct of Defendants, as alleged
10 herein, Plaintiffs did suffer and continue to suffer severe emotional and mental distress, anguish,
11 humiliation, embarrassment, shock, pain, discomfort, and anxiety. Though the exact nature, extent,
12 and duration of said injuries are presently unknown to them, Plaintiffs are informed and believe and
13 thereon allege that these injuries are reasonably certain to be permanent in character.

14 106. Plaintiffs are informed and believe, and thereon allege, that Defendants by engaging in
15 the acts alleged herein or in authorizing or ratifying such acts, engaged in willful, malicious,
16 intentional, oppressive, and despicable conduct, and acted with willful and conscious disregard of their
17 rights, welfare, and safety, thereby justifying the award of punitive and exemplary damages in an
18 amount to be determined at trial.

19 WHEREFORE, Plaintiffs pray for relief as set forth herein.

20 **THIRD CAUSE OF ACTION**
21 **DISABILITY DISCRIMINATION**

22 (Gov. Code § 12940(a))
23 (WILLIAMS against BIRD and DOES 1 – 10)

24 107. Pursuant to the California Fair Employment and Housing Act ("FEHA") (Cal. Gov.
25 Code § 12900, *et seq.*) and its implementing regulations, it is unlawful for an employer to discharge or
26 discriminate against an employee in compensation or in the terms, conditions, or privileges of
27 employment on the basis of the employee's mental disability and/or medical condition, whether actual
28 or perceived.

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1 108. From June through August of 2020, WILLIAMS invested almost all of her own money
2 in the costly requirements of being employed as a BIRD FM and shouldering all of the expenses it
3 imposes on its employees.

4 109. The onerous requirements forced WILLIAMS to become home insecure and suffer
5 from extreme anxiety and depression.

6 110. In late August of 2020, WILLIAMS requested that she be able to take one (1) week off
7 of work in early September in order to get treatment for her increasingly urgent mental health issues
8 and to receive substance abuse treatment.

9 111. BIRD never responded to her request. Instead, BIRD terminated her on September 1,
10 2020.

11 112. As alleged herein and in violation of California Government Code § 12940(a),
12 Defendants discriminated against WILLIAMS and discharged her on the basis of her mental disability
13 and/or medical condition.

14 113. As a direct, foreseeable, and proximate result of Defendants' discrimination,
15 WILLIAMS has suffered and continues to suffer actual damages including, but not limited to, loss of
16 past earnings and future earning capacity, attorneys' fees, costs of suit, and other losses not presently
17 ascertained.

18 114. As a further direct and legal result of the acts and conduct of Defendants, as alleged
19 herein, WILLIAMS did suffer and continues to suffer severe emotional and mental distress, anguish,
20 humiliation, embarrassment, shock, pain, discomfort, and anxiety. Though the exact nature, extent,
21 and duration of said injuries are presently unknown to her, WILLIAMS is informed and believes and
22 thereon alleges that these injuries are reasonably certain to be permanent in character.

23 115. WILLIAMS is informed and believes, and thereon alleges, that Defendants by
24 engaging in the acts alleged herein or in authorizing or ratifying such acts, engaged in willful,
25 malicious, intentional, oppressive, and despicable conduct, and acted with willful and conscious
26
27
28

1 disregard of her rights, welfare, and safety, thereby justifying the award of punitive and exemplary
2 damages in an amount to be determined at trial.

3 116. As a result of Defendants' acts and conduct as alleged herein, WILLIAMS is entitled to
4 reasonable attorneys' fees and costs of suit as provided in § 2965(b) of the California Government
5 Code.

6 WHEREFORE, WILLIAMS prays for relief as set forth herein.

7
8 **FOURTH CAUSE OF ACTION**
FAILURE TO ACCOMMODATE

9 (Gov. Code § 12940(m)); Lab. Code § 1025)
10 (WILLIAMS against BIRD and DOES 1 – 10)

11 117. Pursuant to California Labor Code § 1025, California employers with 25 or more
12 employees must make reasonable accommodations by providing unpaid time off for any employee
13 who voluntarily enters and participates in a drug or alcohol rehabilitation program.

14 118. Pursuant to the FEHA and its implementing regulations, it is unlawful for an employer
15 to fail to provide reasonable accommodations for an employee with a known physical or mental
16 disability or medical condition, whether actual or perceived.

17 119. In late August of 2020, WILLIAMS requested from BIRD one week off to enter a
18 rehabilitation program to address her mental health issues.

19 120. BIRD did not respond to WILLIAMS or make any effort to engage in the interactive
20 process.

21 121. Instead, BIRD immediately terminated her.

22 122. In violation of California Government Code § 12940(m), Defendants failed to
23 reasonably accommodate WILLIAMS' mental disability and medical condition.

24 123. As a direct, foreseeable, and proximate result of Defendants' failure to accommodate
25 WILLIAMS' disability and condition, WILLIAMS has suffered and continues to suffer actual
26 damages including, but not limited to, loss of past earnings and future earning capacity, attorneys'
27 fees, costs of suit and other losses not presently ascertained.

28 124. As a further direct and legal result of the acts and conduct of Defendants, as alleged
herein, WILLIAMS suffered and continues to suffer severe emotional and mental distress, anguish,

1 humiliation, embarrassment, shock, pain, discomfort, and anxiety. Though the exact nature, extent,
2 and duration of said injuries are presently unknown to her, WILLIAMS is informed and believes and
3 thereon alleges that these injuries are reasonably certain to be permanent in character.

4 125. WILLIAMS is informed and believes, and thereon alleges, that Defendants, by
5 engaging in the acts alleged herein or in authorizing or ratifying such acts, engaged in willful,
6 malicious, intentional, oppressive, and despicable conduct, and acted with willful and conscious
7 disregard of WILLIAMS' rights, welfare and safety, thereby justifying the award of punitive and
8 exemplary damages in an amount to be determined at trial.

9 126. As a result of Defendants' acts and conduct as alleged herein, WILLIAMS is entitled to
10 reasonable attorneys' fees and costs of suit as provided in Gov. Code § 12965(b).

11 WHEREFORE, WILLIAMS prays for relief as set forth herein.

12 **FIFTH CAUSE OF ACTION**
13 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**
14 (Gov. Code § 12940(n))
(WILLIAMS against BIRD and DOES 1 – 10)

15 127. Pursuant to the FEHA and its implementing regulations, it is unlawful for an employer
16 to fail to engage in a timely, good-faith, interactive process with an employee to determine whether
17 effective reasonable accommodations exist in response to a request for reasonable accommodation by
18 an employee with a known mental disability or medical condition.

19 128. As described herein, WILLIAMS requested reasonable accommodations from
20 Defendants.

21 129. In violation of California Government Code § 12940(n), Defendants failed to engage
22 in a timely, good-faith, interactive process with WILLIAMS to determine whether the requested
23 accommodations were reasonable and effective.

24 130. As a direct, foreseeable, and proximate result of Defendants' failure to engage in a
25 timely, good-faith, interactive process with WILLIAMS, WILLIAMS has suffered and continues to
26 suffer actual damages including, but not limited to, loss of earnings and future earning capacity,
27 attorneys' fees, costs of suit, and other losses not presently ascertained.

28 131. As a further direct and legal result of the acts and conduct of BIRD, as alleged herein,
WILLIAMS has been caused to and did suffer and continues to suffer severe emotional and mental

1 distress, anguish, humiliation, embarrassment, shock, pain, discomfort, and anxiety. Though the exact
2 nature, extent, and duration of said injuries are presently unknown, WILLIAMS is informed and
3 believes and thereon alleges that these injuries are reasonably certain to be permanent in character.

4 132. WILLIAMS is informed and believes and thereon alleges that Defendants, by
5 engaging in the acts alleged herein or in authorizing or ratifying such acts, engaged in willful,
6 malicious, intentional, oppressive, and despicable conduct, and acted with willful and conscious
7 disregard of WILLIAMS' rights, welfare, and safety, thereby justifying the award of punitive and
8 exemplary damages in an amount to be determined at trial.

9 133. As a result of Defendants' acts and conduct as alleged herein, WILLIAMS is entitled
10 to reasonable attorneys' fees and costs of suit as provided in §12965(b) of the California Government
11 Code.

12 WHEREFORE, WILLIAMS prays for relief as set forth herein.

13 **SIXTH CAUSE OF ACTION**

14 **RETALIATION**

(Lab. Code § 98.6)

(GEHLY and LYONS individually against BIRD and DOES 1 – 10)

15 134. Pursuant to Labor Code § 98.6 it is unlawful for an employer to retaliate against an
16 employee because of the exercise by that employee of rights afforded him or her under the Labor
17 Code.

18 135. Before being terminated, GEHLY requested a more detailed accounting of his wages
19 and deductions therefrom. BIRD did not respond or provide the requested accounting to GEHLY.

20 136. In November 2020, GEHLY complained that another BIRD employee was harassing
21 him, endangering his fleet, and jeopardizing employee safety.

22 137. The same month, GEHLY complained that BIRD's recent practices were causing an
23 artificial deflation in Key Performance Indicators ("KPIs"), which would result in loss of wages.

24 138. BIRD did not take action to resolve or address either of the unlawful practices GEHLY
25 reported and, instead, leveled baseless accusations and veiled threats against GEHLY the following
26 month.

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1 139. Specifically, BIRD accused GEHLY of underperforming (despite being one of the
2 highest performers at BIRD), implied that he had stolen scooters, and offered that he could accept a
3 reduction in his fleet size and corresponding reduction in wages or quit.

4 140. On February 19, 2021, GEHLY submitted a further written complaint about the
5 unlawful conduct at BIRD. In response, BIRD terminated him.

6 141. In 2020, LYONS asked his supervisors why his wages were being deducted for an item
7 called “contra revenue.” The answers he received were never the same. One time he was told it was
8 for chargebacks. Another time he was told the deduction was for a promotion BIRD was running.
9 BIRD gave so many different answers and conflicting answers regarding this deduction that BIRD
10 FMs began referring to it as “contradiction revenue.”

11 142. In 2020, LYONS complained about a promotion BIRD was running that gave
12 customers a \$1.00 credit and charged FMs for the credit.

13 143. In late 2020, LYONS requested receipts for the scooters BIRD asked him to return.
14 BIRD only responded after his numerous complaints by reluctantly providing such receipts.

15 144. Within months of complaining to BIRD regarding its practices that were depriving FMs
16 of the ability to track their wages, LYONS was terminated.

17 145. GEHLY was engaged in the protected activity of questioning, complaining, and/or
18 inquiring about working conditions that amounted to harassment and BIRD’s faulty measures of
19 performance.

20 146. LYONS was engaged in the protected activity of attempting to secure his rights to
21 payment of wages through seeking an accounting of his wages and deductions therefrom.

22 147. BIRD subjected GEHLY and LYONS to adverse employment actions by threatening
23 and terminating each of them.

24 148. A causal link exists between GEHLY’s and LYONS’ protected activity and each of
25 their terminations.

26 149. As a direct and proximate result of the aforementioned violations of California law
27 committed by Defendants, GEHLY and LYONS suffered and continue to suffer humiliation and
28 emotional distress as well as substantial losses related to the of loss wages, unreimbursed expenses
paid towards BIRD’s business costs, the use and enjoyment of employee benefits, and expenses and

1 attorneys' fees in seeking to compel Defendants to conform its behavior to the law, and to their
2 damage in amounts according to proof at time of trial, but in amounts in excess of the minimum
3 jurisdiction of this Court.

4 150. GEHLY and LYONS are thus entitled to recover compensatory damages, including
5 past wages, future wages, and amounts sufficient to compensate each of them for emotional distress,
6 punitive damages, and attorneys' fees, the balance of unpaid wages and/or penalties owed, interest,
7 and costs of suit in amounts according to proof at time of trial.

8 WHEREFORE, GEHLY and LYONS pray for relief as set forth herein.

9 **SEVENTH CAUSE OF ACTION**

10 **RETALIATION**

(Lab. Code § 1102.5(b))

11 (GEHLY and LYONS individually against BIRD and DOES 1 – 10)

12 151. Pursuant to Labor Code § 1102.5, it is unlawful for an employer to retaliate against an
13 employee for disclosing a violation of a statute, rule, or regulation to a person with authority over the
14 employee or to another employee who has the authority to investigate, discover, or correct the
15 violation.

16 152. GEHLY alerted BIRD in November 2020 that another BIRD employee was harassing
17 him, endangering his fleet, and jeopardizing employee safety. GEHLY detailed to BIRD how BIRD's
18 practices was depriving FMs of accurate appraisals of their Key Performance Indicators, which could
19 result in baseless discipline or even termination if not corrected.

20 153. BIRD did not attempt to resolve either of the issues GEHLY disclosed and instead
21 leveled veiled threats and accusations against GEHLY the following month.

22 154. Specifically, BIRD accused GEHLY of underperforming (despite being one of the
23 highest performers at BIRD), implied that he had stolen scooters, and offered that he could accept a
24 reduction in his fleet size and corresponding reduction in wages or quit.

25 155. On February 19, 2021, GEHLY submitted a further written complaint about the
26 unlawful conduct at BIRD. In response, BIRD terminated him.

27 156. In 2020 LYONS requested from his supervisors a more detailed accounting of his
28 wages and the myriad and changing deductions therefrom.

157. GEHLY was engaged in the protected activity of disclosing working conditions that

1 amounted to harassment as well as problems with BIRD's methods of measuring performance.

2 158. LYONS was engaged in the protected activity of disclosing violations of the Labor
3 Code, including his right to an accurate accounting of his wages.

4 159. BIRD subjected GEHLY and LYONS to adverse employment actions by threatening
5 and terminating each of them.

6 160. A causal link exists between GEHLY's and LYONS' protected activity and the adverse
7 employment actions.

8 161. As a direct and proximate result of the aforementioned violations of California law
9 committed by Defendants, GEHLY and LYONS suffered and continue to suffer humiliation and
10 emotional distress as well as substantial losses related to the of loss wages, the unreimbursed expenses
11 paid towards BIRD's business costs, the use and enjoyment of employee benefits, and expenses and
12 attorneys' fees in seeking to compel Defendants to conform its behavior to the law, and to their
13 damage in amounts according to proof at time of trial, but in amounts in excess of the minimum
14 jurisdiction of this Court.

15 162. GEHLY and LYONS are thus entitled to recover compensatory damages, including
16 past wages, future wages, and amounts sufficient to compensate the employee for emotional distress,
17 punitive damages, and attorneys' fees, the balance of unpaid wages and/or penalties owed, interest,
18 and costs of suit in amounts according to proof at time of trial.

19 WHEREFORE, GEHLY and LYONS pray for relief as set forth herein.

20 **EIGHTH CAUSE OF ACTION**
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
21 (Plaintiffs Individually against BIRD and DOES 1 – 10)

22 163. The public policy of the State of California, as embodied in the California Constitution,
23 California statutes, including but not limited to Government Code § 12900, *et seq.* and Labor Code §§
24 98.6 and §1102.5 and implementing regulations, including but not limited to the California Code of
25 Regulations, prohibits employers from discharging employees in a discriminatory or retaliatory
26 manner.
27
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1 164. BIRD's termination of GEHLY was motivated at least in part by an intent to retaliate
2 against GEHLY for his protected activity of complaining about BIRD's unlawful conduct and
3 exercising his right to payment of all wages and reimbursements under the Labor Code.

4 165. BIRD's termination of LYONS was motivated at least in part by an intent to retaliate
5 against LYONS for his protected activity of complaining about BIRD's unlawful conduct and
6 exercising his right to payment of all wages and reimbursements under the Labor Code.

7 166. BIRD's termination of WILLIAMS was motivated at least in part by WILLIAMS'
8 temporary disability, need for mental health treatment, and/or her request for an accommodation under
9 the FEHA.

10 167. As a direct and proximate result of the aforementioned violations of California law
11 committed by Defendants, Plaintiffs, and each of them, suffered and continue to suffer actual damages
12 including, but not limited to, loss of earnings and future earning capacity, the use and enjoyment of
13 employee benefits, and other pecuniary losses not presently ascertained.

14 168. As a further direct and legal result of the acts and conduct of Defendants, as alleged
15 herein, Plaintiffs, and each of them, have been caused to and did suffer and continue to suffer
16 emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort,
17 and anxiety. Though the exact nature, extent, and duration of said injuries are presently unknown to
18 her, Plaintiffs are informed and believe and thereon allege that some if not all of the injuries are
19 reasonably certain to be permanent in character.

20 169. Defendants, by engaging in the acts alleged herein and/or in authorizing and/or
21 ratifying such acts, engaged in willful, malicious, intentional, oppressive, and despicable conduct, and
22 acted with willful and conscious disregard of the rights, welfare, and safety of Plaintiffs, and each of
23 them, thereby justifying the award of punitive and exemplary damages in an amount to be determined
24 at trial.

25 WHEREFORE, Plaintiffs pray for relief as set forth herein.

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NINTH CAUSE OF ACTION
WRONGFUL DEDUCTION OF WAGES

(Lab. Code § 221)

(Plaintiffs individually against BIRD and DOES 1 – 10)

170. Labor Code § 221 prohibits employers from collecting, receiving, or otherwise deducting any part of employees' wages.

171. An employee may directly seek payment of the amounts wrongfully deducted or withheld under Labor Code § 218 and is entitled to reasonable attorneys' fees and costs of suit under Labor Code § 218.5.

172. Throughout their employment and hidden by BIRD's failure to account, BIRD collected, received, or otherwise deducted wages from each and every one of Plaintiffs' paychecks, in violation of California Labor Code § 221.

173. As a direct, foreseeable, and proximate result of Defendants' wrongful collection and receipt of Plaintiffs' wages, Plaintiffs have suffered substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and have incurred and will incur expenses and attorneys' fees in seeking to compel Defendants to perform their obligations under state law, all to their damage in amounts according to proof at the time of trial.

174. Plaintiffs are thus entitled to payment and restitution of all wages wrongfully collected or received by Defendants in amounts to be proven at trial, interest, and attorneys' fees and costs of suit in amounts to be determined by the Court.

WHEREFORE, Plaintiffs pray for relief as set forth herein.

TENTH CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE

(Lab. Code §§ 1194, 1194.2, 1197, 1197.1; Wage Order 4-2001)

(Plaintiffs individually against BIRD and DOES 1 – 10)

175. Labor Code §§ 1194 and 1197 require payment of at least the minimum wage fixed by the IWC and prohibit payment of a wage less than the minimum wage fixed by the IWC. Labor Code § 1194.2 authorizes the recovery of liquidated damages for all unpaid minimum wages.

176. BIRD failed to pay FMs the minimum wage for each and every hour worked because BIRD failed to track or otherwise count all hours worked by FMs. As a result, FMs worked numerous hours without any pay.

1 177. Plaintiffs are thus entitled to recover compensatory damages, including the balance of
2 unpaid wages and/or penalties owed, interest, attorneys' fees, and costs of suit in amounts according to
3 proof at time of trial.

4 WHEREFORE, Plaintiffs pray for relief as set forth herein.

5 **ELEVENTH CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**
7 (Lab. Code §§ 510, 558.1; Wage Order 4-2001)
(Plaintiffs individually against all Defendants)

8 178. Labor Code § 510 requires that regular overtime must be paid at 1.5 times the
9 employee's regular hourly wage for all hours worked in excess of eight hours in a day or 40 hours in a
10 week and double time be paid for all hours in excess of 12 hours in a day.

11 179. BIRD failed to pay Plaintiffs the applicable overtime or double time rate for each hour
12 worked in excess of eight and twelve hours in a day, respectively.

13 180. Pursuant to Labor Code § 558.1, Defendants GEREMIA, KERNAN-SCHOSS, and
14 BLAU and DOES 11 – 20, as owners, directors, officers, or managing agents of BIRD and DOES 1 –
15 10, are jointly and severally liable with BIRD and DOES 1 – 10 for the violations described above and
16 pled in this seventh cause of action.

17 181. Plaintiffs are thus entitled to recover compensatory damages, including the balance of
18 unpaid wages and/or penalties owed, interest, attorneys' fees, and costs of suit in amounts according to
19 proof at time of trial.

20 WHEREFORE, Plaintiffs pray for relief as set forth herein.

21 **TWELFTH CAUSE OF ACTION**
22 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
23 (Lab. Code §§ 226.7, 512, 558.1, 1198; Wage Order 4-2001)
24 (Plaintiffs individually against all Defendants)

25 182. Pursuant to Labor Code §§ 226.7 and 512, an employer may not employ an employee
26 for a period of more than five hours without providing the employee with an uninterrupted meal period
27 of not less than 30 minutes.

28 183. Labor Code § 226.7 and Wage Order 4-2001 require that an employee be provided a
paid rest period of at least ten minutes for each four-hour shift worked, or the majority thereof.

1 184. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, if an employer fails to
2 provide an employee a meal or rest period in accordance with the wage order, the employer must pay
3 one additional hour of pay at the employee's regular rate of pay for each workday a meal period is not
4 provided and an additional hour of pay at the employee's regular rate of pay for each workday a rest
5 period is not provided.

6 185. Plaintiffs were non-exempt employees entitled to the protections of Labor Code §§
7 226.7, 512, and 1198 and Wage Order 4-2001.

8 186. Pursuant to Labor Code § 558.1, Defendants GEREMIA, KERNAN-SCHOSS, and
9 BLAU and DOES 11 – 20, as owners, directors, officers, or managing agents of BIRD and DOES 1 –
10 10, are jointly and severally liable with BIRD and DOES 1 – 10 for the violations described above and
11 pled in this eleventh cause of action.

12 187. During the course of Plaintiffs' employment, Defendants required, permitted, or
13 otherwise suffered Plaintiffs to take less than the required 30-minute meal periods or to work through
14 them and failed to otherwise provide the required meal periods to Plaintiffs as required under Labor
15 Code §§ 226.7 and 512 and Wage Order 4-2001.

16 188. During the course of Plaintiffs' employment, Defendants required Plaintiffs to work
17 through each of their 10-minute rest periods or otherwise failed to provide the required rest periods to
18 Plaintiffs as required under Labor Code § 226.7 and Wage Order 4-2001.

19 189. Defendants failed to provide Plaintiffs with an extra hour of compensation at Plaintiffs'
20 regular rate of pay for each day in which he or she was not provided with the opportunity to take a
21 meal period or rest period as required by Labor Code §§ 226.7 and 1198 and Wage Order 4-2001.

22 190. In violation of state law, Defendants have knowingly and willfully refused to perform
23 their obligations to provide required meal periods, rest periods, and pay premiums as required under
24 the law.

25 191. As a direct, foreseeable, and proximate result of Defendants' failure to provide meal
26 and rest periods and failure to compensate Plaintiffs for missed meal and rest periods, Plaintiffs have
27 suffered substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
28 and costs of suit incurred in seeking to compel Defendants to perform their obligations under state
law, all to their damage in amounts according to proof at the time of trial.

192. Plaintiffs are thus entitled to recover the balance of unpaid wages and premium pay, interest, attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and costs of suit in amounts to be determined at trial.

THIRTEENTH CAUSE OF ACTION **FAILURE TO ACCOUNT**

193. Pursuant to Labor Code § 226, an employer must furnish each employee with an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked for all non-exempt employees, (3) the number of piece-rate units earned and any applicable piece rates, (4) all deductions made from the employee's paycheck, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number, (8) the name and address of the legal entity of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

195. Though substantial amounts were deducted from each Plaintiff's paycheck and FMs were charged for items that were clearly the responsibility of BIRD, BIRD failed to identify the amounts charged to the FMs or the basis for the deductions.

197. BIRD did not maintain records showing the hours worked by and wages paid to all employees in violation of Labor Code § 1174.

violations pled in this thirteenth cause of action.

199. Plaintiffs are informed and believe and based thereon allege that Defendants willfully failed to provide Plaintiffs with accurate itemized wage statements and maintain employee records for each and every pay period over the entire course of their employment.

200. Plaintiffs are thus entitled to recover the greater of actual damages or statutory penalties under Labor Code § 226(e), attorneys' fees, and costs of suit in amounts according to proof at time of trial.

WHEREFORE, Plaintiffs pray for relief as set forth herein

FOURTEENTH CAUSE OF ACTION
FAILURE TO PROVIDE REIMBURSEMENTS
(Lab. Code §§ 558.1, 2802, 2804; Wage Order 4-2001)
(Plaintiffs individually against all Defendants)

201. Labor Code § 2802 requires employers to reimburse employees for all necessary expenditures incurred by the employee in direct consequence of their duties or of their obedience to the employer's directions.

202. Labor Code § 2804 nullifies and voids any contract or agreement, whether express or implied, that is entered into by any employee that attempts to waive the employee's right to reimbursement.

203. As described above, BIRD brazenly violated Labor Code § 2802, and its agreements are null and void pursuant to Labor Code § 2804.

204. BIRD pushes nearly all its costs of doing business to its FMs, as detailed herein.

205. BIRD did not reimburse Plaintiffs for the costs they were forced to bare on BIRD's behalf.

206. Substantial amounts were deducted from each of the FMs' paychecks, and FMs were charged for items that were the sole responsibility of Bird because they were expenses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

207. BIRD attempted – through an illegal contract – to force its employees to waive their rights to reimbursement despite Labor Code § 2804's clear language invalidating such agreements.

208. Pursuant to Labor Code § 558.1, GEREMIA, KERNAN-SCHOSS, and BLAU and

DOES 1 – 20, as directors, officers, or managing agents of BIRD and DOES 1 – 10, are jointly and severally liable with BIRD and DOES 1 – 10 for the failures to reimburse pled in this thirteenth cause of action.

209. Defendants willfully failed to reimburse Plaintiffs for necessary expenditures.

210. Plaintiffs are thus entitled to recover all unreimbursed amounts, interest, attorneys' fees, and costs of suit in amounts according to proof at time of trial.

WHEREFORE, Plaintiffs pray for relief as set forth herein.

FIFTEENTH CAUSE OF ACTION
FAILURE TO PAY WAGES DUE AT SEPARATION
(Lab. Code §§ 201, 203, 558.1; Wage Order 4-2001)
(Plaintiffs individually against all Defendants)

211. Pursuant to Labor Code § 201, an employer must pay an employee who is terminated all wages earned and due immediately upon termination.

212. Pursuant to Labor Code § 203, if an employer willfully fails to provide earned and due wages to an employee who is discharged, the wages of the employee shall continue as a penalty from the due date thereof for a period not to exceed 30 days.

213. Due to its failure to pay Plaintiffs all wages earned, premium payments due, and reimbursements owed, BIRD also failed to pay all wages due upon separation.

214. Because Defendants willfully failed to pay Plaintiffs' wages pursuant to the requirements of Labor Code § 201, Plaintiffs seek compensation for unpaid wages and statutory penalties pursuant to Labor Code § 203.

215. Pursuant to Labor Code § 558.1, Defendants GEREMIA, KERNAN-SCHOSS, BLAU and DOES 11 – 20 are jointly and severally liable with BIRD and DOES 1 – 10 for the failure-to-pay violations described above and pled in this fifteenth cause of action.

216. As a direct, foreseeable, and proximate result of Defendants' failure to pay wages in a timely manner, Plaintiffs have suffered substantial losses related to the use and enjoyment of such wages and penalties, lost interest on such wages and penalties, and costs and attorneys' fees in seeking to compel Defendants to perform their obligations under state law, all to their damage in amounts according to proof at time of trial.

217. Plaintiffs are thus entitled to recover the balance of unpaid wages and/or penalties

1 owed, interest, attorneys' fees, and costs of suit in amounts according to proof at time of trial.

2 WHEREFORE, Plaintiffs pray for relief as set forth herein.

3 **SIXTEENTH CAUSE OF ACTION**
4 **PRIVATE ATTORNEYS GENERAL ACT**

(Labor Code § 2698, *et seq.*)

5 (GEHLY in his representative capacity against BIRD and DOES 1 – 10)

6 218. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a
7 civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
8 commissions, boards, agencies, or employees for violation of the code may, as an alternative, be
9 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and
10 other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

11 219. GEHLY is aggrieved because he was employed by Defendants as an FM, and each of
12 the alleged violations stated herein were committed against him. GEHLY is therefore properly suited
13 to represent the interests of other current and former FMs of Defendants.

14 220. GEHLY has exhausted his administrative remedies under Labor Code § 2699.3 by
15 providing notice to the Labor and Workforce Development Agency of each of the violations
16 described herein and sending via certified mail a copy of said notice to Defendants.

17 221. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
18 pursuant to Labor Code §§ 203, 256, and 2699 for which Defendants are liable as a result of
19 Defendants' violations of Labor Code § 201, which requires that employers pay all wages earned and
20 unpaid at the time of separation when discharging an employee. The penalties owed for these
21 violations are in an amount equal to, for each aggrieved employee, the employee's regular daily wage
22 for each and every day from the due date thereof until paid, for a period not to exceed 30 days.

23 222. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
24 pursuant to Labor Code §§ 210 and 2699 for which Defendants are liable as a result of Defendants'
25 violations of Labor Code § 204, which requires that an employer must pay all wages earned and
26 unpaid on designated pay dates at least twice per month. The penalties owed for these violations are
27 \$100 for each initial failure to pay each employee and \$200 for each subsequent failure to pay each
28 employee plus 25 percent of the amount unlawfully withheld.

1 223. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
2 pursuant to Labor Code §§ 225.5 and 2699 for which Defendants are liable as a result of Defendants'
3 violations of Labor Code § 221, which prohibits employers from collecting any part of employees'
4 wages. The penalties owed for these violations are \$100 for each initial failure to pay each employee
5 and \$200 for each subsequent failure to pay each employee plus 25 percent of the amount unlawfully
6 withheld.

7 224. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
8 pursuant to Labor Code §§ 226(c), 226.3, and 2699 for which Defendants are liable as a result of
9 Defendants' violations of Labor Code § 226, which requires that employers provide an accurate
10 accounting, including a statement of all hours worked, gross wages earned, and net wages earned.
11 The penalties owed for these violations are \$250 per employee for each initial violation and \$1,000
12 per employee for each subsequent violation.

13 225. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
14 pursuant to Labor Code §§ 226.8 and 2699 for which Defendants are liable as a result of Defendants'
15 violations of Labor Code § 226.8(a), which makes it unlawful to willfully misclassify employees as
16 independent contractors. The penalties owed for these violations are between \$5,000 and \$15,000 for
17 each misclassified employee.

18 226. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
19 pursuant to Labor Code §§ 226.8 and 2699 for which Defendants are liable as a result of Defendants'
20 pattern and practice of violating Labor Code § 226.8(a), which makes it unlawful to willfully
21 misclassify employees as independent contractors. The penalties owed for these violations are
22 between \$10,000 and \$25,000 for each misclassified employee.

23 227. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
24 pursuant to Labor Code §§ 558 and 2699 for which Defendants are liable as a result of Defendants'
25 violations of Labor Code § 510, which requires that employers compensate their employees for all
26 overtime worked at the rate of one and one-half times the regular rate of pay for hours worked in
27 excess of eight hours per day and/or 40 hours per week. The penalties owed for these violations are
28

1 \$50 per employee for each initial violation and \$100 per employee for each subsequent violation plus
2 an amount sufficient to recover the underpaid wages of each employee.

3 228. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
4 pursuant to Labor Code §§ 558 and 2699 for which Defendants are liable as a result of Defendants'
5 violations of Labor Code § 512, which prohibits employers from employing an employee for a work
6 period of more than five hours without allowing the employee the opportunity to take a 30-minute,
7 uninterrupted meal period. The penalties owed for these violations are \$50 per employee for each
8 initial violation and \$100 per employee for each subsequent violation.

9 229. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
10 pursuant to Labor Code §§ 558 and 2699 for which Defendants are liable as a result of Defendants'
11 violations of provisions of Wage Order 4-2001, which requires that employers provide a meal period
12 of no less than 30 minutes for every five hours worked by the employee. The penalties owed for these
13 violations are \$50 per employee for each initial violation and \$100 per employee for each subsequent
14 violation plus an amount sufficient to recover the underpaid wages of each employee.

15 230. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
16 pursuant to Labor Code §§ 558 and 2699 for which Defendants are liable as a result of Defendants'
17 violations of provisions of Wage Order 4-2001, which requires that employers provide a rest period
18 of no less than 10 minutes for every four hours, or major fraction thereof, worked by the employee.
19 The penalties owed for these violations are \$50 per employee for each initial violation and \$100 per
20 employee for each subsequent violation plus an amount sufficient to recover the underpaid wages of
21 each employee.

22 231. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
23 pursuant to Labor Code §§ 558 and 2699 for which Defendants are liable as a result of Defendants'
24 violations of provisions of Wage Order 4-2001, which requires that employers compensate their
25 employees for all overtime worked at the rate of one and one-half times the regular rate of pay for
26 hours worked in excess of eight hours per day and/or 40 hours per week. The penalties owed for these
27 violations are \$50 per employee for each initial violation and \$100 per employee for each subsequent
28 violation plus an amount sufficient to recover the underpaid wages of each employee.

1 232. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
2 pursuant to Labor Code §§ 1174.5 and 2699 for which Defendants are liable as a result of
3 Defendants' violations of Labor Code § 1174, which requires employers to maintain payroll records
4 showing the hours worked by and wages paid to employees. The penalties owed for these violations
5 are \$500 per employee.

6 233. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
7 pursuant to Labor Code §§ 1197.1 and 2699 for which Defendants are liable as a result of Defendants'
8 violations of Labor Code §§ 1194 and 1197, which require payment of at least the minimum wage fixed
9 by the IWC and prohibits payment of a wage less than the minimum wage fixed by the IWC. The
10 penalty for any initial violation that is intentionally committed is \$100 for each underpaid employee
11 for each pay period for which the employee is underpaid. This amount is in addition to an amount
12 sufficient to recover underpaid wages and any applicable penalties imposed pursuant to § 203. For
13 each subsequent violation, a penalty of \$250 will be assessed for each underpaid employee for each
14 pay period for which the employee was underpaid regardless of whether the initial violation is
15 intentionally committed.

16 234. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
17 pursuant to Labor Code § 2699 for which Defendants are liable as a result of Defendants' violations
18 of Labor Code § 1198, which prohibits employers from requiring employees to work hours longer
19 than those fixed by or under conditions of labor prohibited by the IWC Wage Orders. The penalties
20 owed for these violations are \$100 per employee for each initial violation and \$200 per employee for
21 each subsequent violation plus an amount sufficient to recover the underpaid wages of each
22 employee.

23 235. GEHLY seeks to recover all civil penalties pursuant to Labor Code § 2699 for which
24 Defendants are liable as a result of Defendants' violation of Labor Code § 1198.5, which requires
25 employers to make employees' personnel files available for inspection. The penalty for each such
26 violation is \$750.

27 236. GEHLY seeks to recover all civil penalties pursuant to Labor Code § 2699 for which
28 Defendants are liable as a result of their violations of Labor Code § 2802, which requires

1 reimbursement for all necessary expenditures incurred as a direct consequence of performing duties
2 in addition to indemnification of the employee for all necessary expenditures or losses incurred by the
3 employee in direct consequence of the discharge of his or her duties. The penalties owed for these
4 violations are \$100 per employee for each initial violation and \$200 per employee for each
5 subsequent violation.

6 237. The amount of the civil penalties owed for the violations described herein will be
7 determined at the time of trial.

8 238. For bringing this action against Defendants on behalf of all current and former FMs,
9 GEHLY is entitled to attorneys' fees and costs of suit under Labor Code §2699(g) in amounts to be
10 determined by the Court.

11 WHEREFORE, GEHLY prays for relief as set forth herein.

12 **SEVENTEENTH CAUSE OF ACTION**
13 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

(Lab. Code §§ 558, 2753, 2698, *et seq.*)

14 (GEHLY in his representative capacity against GEREMIA, KERNAN-SCHOSS,
15 BLAU, and DOES 11 – 20)

16 239. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a
17 civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
18 commissions, boards, agencies, or employees for violation of the code may, as an alternative, be
19 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and
20 other current or former FMs pursuant to the procedures specified in Labor Code § 2699.3.

21 240. GEHLY is aggrieved because he was employed as an FM by Defendants, and each of
22 the alleged violations stated herein were committed against him. GEHLY is therefore properly suited
23 to represent the interests of other current and former FMs of Defendants.

24 241. GEHLY has exhausted his administrative remedies under Labor Code § 2699.3 by
25 providing notice to the Labor and Workforce Development Agency of each of the violations
26 described herein and sending via certified mail a copy of said notice to Defendants.

27 242. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
28 pursuant to Labor Code §§ 558 and 2699 for which GEREMIA, KERNAN-SCHOSS, BLAU and
DOES 11 – 20 are liable as a result of violations of Wage Order 4-2001(11)(A)-(E), which requires

1 employers to provide a 30-minute unpaid meal period for every five hours worked by the employee.
2 The penalties owed for these violations are \$50 per employee for each initial violation and \$100 per
3 employee for each subsequent violation.

4 243. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
5 pursuant to Labor Code §§ 558 and 2699 for which GEREMIA, KERNAN-SCHOSS, BLAU, and
6 DOES 11 – 20 are liable as a result of violations of Wage Order 4-2001(12)(A)-(C), which requires
7 employers to provide a 10-minute paid rest period for every four hours, or the majority thereof,
8 worked by the employee. The penalties owed for these violations are \$50 per employee for each initial
9 violation and \$100 per employee for each subsequent violation.

10 244. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
11 pursuant to Labor Code §§ 226.8, 2699, and 2753, for which GEREMIA, KERNAN-SCHOSS,
12 BLAU, and DOES 11 – 20 are liable as a result of violations of Labor Code § 226.8, which makes it
13 unlawful to willfully misclassify individuals as independent contractors. The penalties owed for these
14 violations range from \$5,000 to \$25,000 per employee.

15 245. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
16 pursuant to Labor Code §§ 558 and 2699 for which GEREMIA, KERNAN-SCHOSS, BLAU, and
17 DOES 11 – 20 are liable as a result of violations of Labor Code § 510, which requires that employers
18 compensate their employees for all overtime worked at the rate of one and one-half times the regular
19 rate of pay for hours worked in excess of eight hours per day and/or 40 hours per week, and for the
20 first eight hours of the seventh consecutive workday. The penalties owed for these violations are \$50
21 per employee for each initial violation and \$100 per employee for each subsequent violation plus an
22 amount sufficient to recover the underpaid wages

23 246. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
24 pursuant to Labor Code §§ 558 and 2699 for which GEREMIA, KERNAN-SCHOSS, BLAU, and
25 DOES 11 – 20 are liable as a result of violations of Labor Code § 512, which requires employers to
26 provide employees with an uninterrupted meal period of not less than 30 minutes for any period of
27 work more than five hours. The penalties owed for these violations are \$50 per employee for each
28 initial violation and \$100 per employee for each subsequent violation.

1 247. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
2 pursuant to Labor Code §§ 558 and 2699 for which GEREMIA, KERNAN-SCHOSS, BLAU, and
3 DOES 11 – 20 are liable as a result of violations of Wage Order 4-2001(8), which prohibits employers
4 from making any deductions from wages or requiring any reimbursement from an employee for any
5 breakage or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by
6 a dishonest or willful act, or by the gross negligence of the employee. The penalties owed for these
7 violations are \$50 per employee for each initial violation and \$100 per employee for each subsequent
8 violation plus an amount sufficient to recover the underpaid wages.

9 248. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
10 pursuant to Labor Code §§ 558 and 2699 for which GEREMIA, KERNAN-SCHOSS, BLAU, and
11 DOES 11 – 20 are liable as a result of violations of Wage Order 4-2001(9)(A)-(C), which requires that
12 tools or equipment that are required by the employer or are necessary to the performance of a job be
13 provided and maintained by the employer. The penalties owed for these violations are \$50 per
14 employee for each initial violation and \$100 per employee for each subsequent violation.

15 249. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
16 pursuant to Labor Code §§ 558 and 2699, for which GEREMIA, KERNAN-SCHOSS, BLAU, and
17 DOES 11 – 20 are liable as a result of violations of Wage Order 4-2001(7)(A)-(C), which requires
18 employers to keep accurate records containing information including time records, total wages, and
19 total hours as they pertain to each employee. The penalties owed for these violations are \$50 per
20 employee for each initial violation and \$100 per employee for each subsequent violation.

21 250. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
22 pursuant to Labor Code §§ 558 and 2699 for which GEREMIA, KERNAN-SCHOSS, BLAU, and
23 DOES 11 – 20 are liable as a result of violations of Wage Order 4-2001(4)(A)-(C), which requires
24 employers to pay employees, on established paydays, the applicable minimum wage. The penalties
25 owed for these violations are \$50 per employee for each initial violation and \$100 per employee for
26 each subsequent violation plus an amount sufficient to recover the underpaid wages.

27 251. GEHLY seeks to recover, on behalf of all current and former FMs, all civil penalties
28 pursuant to Labor Code §§ 558 and 2699 for which GEREMIA, KERNAN-SCHOSS, BLAU, and

DOES 11 – 20 are liable as a result of violations of Wage Order 4-2001(3)(A)-(C), which requires employers to pay one and one-half times the employee’s regular rate of pay for all hours worked in excess of eight hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek and Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight hours on the seventh consecutive day of work in a workweek. The penalties owed for these violations are \$50 per employee for each initial violation and \$100 per employee for each subsequent violation plus an amount sufficient to recover the underpaid wages.

252. The amount of the civil penalties owed for the violations described herein will be determined at the time of trial.

253. For bringing this action against Defendants on behalf of all current and former FMs, GEHLY is entitled to attorneys’ fees and costs of suit under Labor Code § 2699(g) in amounts to be determined by the Court.

WHEREFORE, GEHLY prays for relief as set forth herein.

EIGHTEENTH CAUSE OF ACTION
UNFAIR COMPETITION
(Bus. & Prof. Code § 17200)
(Plaintiffs Individually against all Defendants)

254. Pursuant to California’s Unfair Competition Law (Bus. & Prof. Code § 17000, *et seq.*), it is unlawful for an entity to engage in unlawful, unfair, or fraudulent business activities.

255. Defendants’ policy and practice of discriminating against employees, and of failing to prevent discrimination against employees, violates Government Code § 12940 and therefore constitutes an unlawful business act or practice within the meaning of Business and Professions Code § 17200.

256. Defendants’ policy and practice of retaliating against employees violates Labor Code §§ 98.6 and 1102.5 and therefore constitutes an unlawful business act or practice within the meaning of Business and Professions Code § 17200.

257. Defendants’ policy and practice of misclassifying employees, failing to make timely payments on regular paydays, failing to provide complete and accurate statements or maintain records, and failure to reimburse expenses violates Labor Code §§ 201(a), 204, 207, 226(a), 226.8 (a),

1 1174, 1198.5, and 2802 and therefore constitutes an unlawful business act or practice within the
2 meaning of Business and Professions Code § 17200.

3 258. The unlawful conduct described herein is continuing and will continue until
4 Defendants are ordered to cease such activity.

5 259. Plaintiffs are entitled to equitable and injunctive relief, including full restitution and/or
6 disgorgement of all moneys which have been unlawfully unpaid, withheld, or converted from each of
7 them as a result of the acts and practices described herein and enjoining Defendants from engaging in
8 the unlawful conduct described herein in the future.

9 WHEREFORE, Plaintiffs pray for relief as set forth herein.

10 **PRAYER**

11 WHEREFORE, Plaintiffs pray that judgment be entered against Defendants and each of them
12 as follows:

13 1. For actual and liquidated damages in amounts according to proof or as otherwise
14 required by statute;

15 2. For statutory fines, penalties, and interest as provided by law, including those pursuant
16 to the Labor Code and Orders of the Industrial Welfare Commission;

17 3. For civil penalties pursuant to Labor Code § 2698, *et seq.*;

18 4. For reasonable attorneys' fees pursuant to Labor Code §§ 218.5, 1194, 2699, and Code
19 of Civil Procedure § 1021.5;

20 5. For costs of suit incurred herein pursuant to Labor Code §§ 1194 and 2699, and Code
21 of Civil Procedure § 1032;

22 6. For statutory pre- and post-judgment interest;

23 7. For restitutionary relief as provided by the Labor Code and Business and Professions
24 Code § 17200, *et seq.*;

25 8. For an order requiring Defendants to comply with California laws requiring that
26 employees be compensated for all hours worked, that they be given, or otherwise compensated for,
27 mandated meal and rest periods, and that they be reimbursed for all expenses incurred in the
28 performance of their duties;

1 9. For injunctive relief enjoining Defendants from engaging in unfair business practices
2 including discriminating and retaliating against employees, misclassifying employees, failing to pay
3 wages in the manner prescribed by the code, failing to keep records, and failing to reimburse
4 employees for necessary expenditures.

5 10. For such other and further relief as the Court deems fair and just.

6 Dated: September 10, 2021

SEIBERT • BAUTISTA • MONTOYA

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Nina Montoya
9 Attorneys for Plaintiffs

10 **JURY TRIAL DEMANDED**

11 Plaintiffs hereby demand a jury trial as to all issues to which they are entitled.

12 Dated: September 10, 2021

SEIBERT • BAUTISTA • MONTOYA

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Nina Montoya
16 Attorneys for Plaintiffs
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