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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

10 HAORAN (JUSTIN) ZHU,  
11 Plaintiff,  
12 v.  
13 MURAT BICER, LEE WITTLINGER,  
SHARDUL SHAH, BRIAN ROSE,  
14 ITERABLE, INC., and DOES 1 through 50,  
inclusive,  
15 Defendants,  
16  
17

Case No. **CGC-22-602938**  
**COMPLAINT FOR:**  
**(1) DAMAGES FOR RETALIATION FOR EXERCISING LEGAL RIGHTS**  
**(2) DAMAGES FOR FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**  
**JURY TRIAL DEMANDED**

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**11/15/2022**  
Clerk of the Court  
BY: JACKIE LAPREVOTTE  
Deputy Clerk

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1 Asian Americans face both overt and coded racism that keeps them being the face of  
2 companies, even when they are the reason for their success. Justin Zhu co-founded Iterable, Inc.  
3 Under his leadership, the company became successful by every material metric, and it rose to a \$2  
4 billion valuation. But as the company approached the public offering stage, Iterable’s venture  
5 capital investors subtly and overtly tried to force him out as CEO, employing stereotypical and  
6 racist tropes about Asian American leadership.

7 The venture capital industry is famously dominated by “pattern matching.” The website  
8 *Venture Patterns* describes Pattern Matching as “when an investor uses patterns or experience  
9 from the past in order to make decisions about the current investment. You can think of it as  
10 reasoning by analogy or using the benefit of experience to recognize similar situations. It can be  
11 used for attributes of the business like seeking to serve a certain market which may or may not be  
12 desirable. It also can be used to recognize certain founder ‘types.’” Paul Graham, the founder of  
13 Y Combinator’s camp for start-up companies, was quoted in the *New York Times* as using a  
14 founder’s looks as a way of isolating negative patterns. “The cutoff in investors’ heads is 32,”  
15 Graham says. “After 32, they start to be a little skeptical.” “I can be tricked by anyone who  
16 looks like Mark Zuckerberg. There was a guy once who we funded who was terrible. I said:  
17 How could he be bad? He looks like Zuckerberg!” Those perceived as foreign face  
18 discrimination, particularly when the foreignness is not Caucasian. “You have to go far down the  
19 list to find a C.E.O. with a strong foreign accent.” “Alarmingly far down — like 100th place.”  
20 “You can sound like you’re from Russia,” he said, in the voice of an evil Soviet henchman. “It’s  
21 just fine, as long as everyone can understand you.”

22 Research shows that that ethnicity is a major determinant of how founders of U.S. startup  
23 companies match with partners of U.S. VC firms. A shared ethnicity increases the likelihood that  
24 a VC firm invests in a startup, strengthens the degree of the VC firm’s involvement, increases the  
25 size and scope of the investment, and makes the financial contract more entrepreneur-friendly.

26 Venture firms focus obsessively on maximizing shareholder value, but are not usually  
27 equally concerned with following the rules. This can express itself in venture-backed companies  
28 flouting regulations, breaking laws, and ignoring workers’ concerns, and fixing things later once

1 the company has gone public. Some have criticized venture capitalists who seem willing to  
2 overlook or even champion abuse, racism, or discrimination in the name of making a business  
3 successful.

4 Plaintiff Justin Zhu’s (“Justin’s”) vision for Iterable, Inc. (“Iterable”) was different. He  
5 asked, “How do we create a good culture? How do we make sure to act ethically? How can we  
6 be a force for good?” Justin believed that racism, sexism, and ableism should have no place in  
7 Silicon Valley. He believed that founders and employees alike should be able to find safe spaces  
8 to share their fears, mental health challenges, and seek help.

9 Iterable was incredibly successful under Justin’s leadership, but it took a toll on his health.  
10 As companies approach the initial public offering stage, their venture capitalist board members  
11 continue to pattern match: there is a certain face they seek to present—a face that is not East  
12 Asian. When his board members broached the topic of replacing Justin with a CEO who looked  
13 more like an enterprise company CEO, Justin called them out on their casual racism. When he  
14 did this, the tenor of his relationship with the investors changed dramatically. Tensions increased.  
15 This contributed to the health challenges he was already experiencing.

16 At the same time, anti-Asian sentiment was rising in the country, fueled by long  
17 simmering racism, inflammatory rhetoric by political leaders, and the COVID-19 pandemic.  
18 Record numbers of hate crimes and hate incidents victimized Asian Americans. For one of the  
19 first times, racism against Asians rose to public consciousness.

20 Justin became determined to be open about his experiences leading Iterable, including  
21 managing health conditions and challenging the racism and toxicity he faces in the industry,  
22 including from investors and even within the board. Justin joined with Asian Americans in  
23 coming forward to confront and challenge the racism they experience in their everyday lives.  
24 Anti-Asian discrimination exists even in the technology industry, where Asian Americans are  
25 well-represented among the rank and file, but face persistent discrimination at the leadership  
26 ranks.

27 Justin became vocal, and informed the board members that he intended to speak openly  
28 about the mental health toll he faced from experiencing and fighting against prejudice even within

1 his own company. When he did so, he was terminated. The pattern matching culture of Silicon  
2 Valley is racism by another name. Asian Americans like Justin have had enough with the  
3 everyday racism on the streets and in the workplace. This discrimination against Asian  
4 Americans, whether expressed openly or in dog-whistles, must stop.

## 5 **I. PARTIES**

6 1. Plaintiff Justin Zhu (“Justin” or “Plaintiff”) is an individual who resides in San  
7 Francisco, California.

8 2. Defendant Iterable, Inc. (“Iterable”) is a Delaware corporation with its principal  
9 place of business in San Francisco, California.

10 3. Defendants Murat Bicer and Lee Wittlinger (together with Iterable, “Defendants”)  
11 are individuals who reside in California and served on the Board of Directors of Iterable.

12 4. Plaintiff is ignorant of the true names and capacities and participation in  
13 Defendants’ wrongdoing of the defendants sued as DOE defendants, and therefore sues these  
14 defendants by such fictitious names. Plaintiff will amend this Complaint to allege their names  
15 and capacities when ascertained. Plaintiff is informed and believes that the DOE defendants are  
16 partners and/or joint venturers of Defendants, or controlled or acted with (aided and abetted and  
17 conspired with) Defendants, so that such DOE defendants are responsible in some manner for the  
18 occurrences alleged herein, and that Plaintiff’s allegations herein were proximately caused by  
19 their conduct.

## 20 **II. JURISDICTION AND VENUE**

21 5. This Court has jurisdiction over this action because more than \$25,000 is at issue,  
22 exclusive of attorneys’ fees and costs.

23 6. Venue is proper in this Court because the events relevant to this action occurred in  
24 the County of San Francisco.

## 25 **III. FACTUAL ALLEGATIONS**

### 26 **A. The Pattern Matching Culture in Silicon Valley**

27 7. There is a Pattern Matching Culture in Silicon Valley and its venture community.  
28 For the leadership of companies approaching the initial public offering stage, companies and their

1 boards pattern match: there is a certain look sought after to lead a company—a look that is not  
2 East Asian. Justin did everything he needed to do to make Iterable successful, and Iterable was  
3 successful under his leadership. As a result, he struggled with his mental health in 2019.

4 **B. Learning of the Therapeutic Uses of Lysergic Acid Diethylamide**

5 8. While Justin raised \$50 million in the Series C round (announced in March 2019),  
6 Iterable faced a difficult time. The company’s growth rate and revenue were on pace, but two  
7 executives left the company, and the largest customer was considering leaving. Fundraising for  
8 the company’s Series C round was challenging, and the company was running out of cash. Justin  
9 faced substantial stresses, and experienced mental health strains including depression and anxiety.  
10 But the prospect of laying off employees and not fulfilling the promise of Iterable made Justin  
11 resolve to be as strong as possible.

12 9. Justin attended an investor’s wedding in Lebanon in 2019. An entrepreneur there  
13 shared with Justin her experience being in a medical study in California to microdose lysergic  
14 acid diethylamide to prevent Alzheimer’s disease. Justin’s grandmother suffered from  
15 Alzheimer’s, so he listened attentively.

16 10. Over the past decade, there has been an increase in clinical trials testing lysergic  
17 acid diethylamide, psilocybin, and 3,4-methylenedioxy-methamphetamine for use in treating  
18 mental health conditions, including depression. Respected institutions such as Johns Hopkins  
19 University in Baltimore, Maryland, the University of California, Berkeley, and the Icahn School  
20 of Medicine at Mount Sinai in New York City have opened research centers devoted to studying  
21 psychedelics. Several studies suggest the drugs can be safely administered and may have benefits  
22 for people with depression and other psychological problems. Clinical trials have shown efficacy  
23 of psychedelic drugs in the treatment of mental health conditions like anxiety, depression,  
24 depressive symptoms, demoralization, hopelessness, major depressive disorder, and psychiatric  
25 distress. The Multidisciplinary Association for Psychedelic Studies (“MAPS”) have verified the  
26 positive effect that psychedelics can have on a person’s psyche.

1           **C.     Microdosing Lysergic Acid Diethylamide**

2           11.     Justin continued to face emotional strains since the challenging Series C  
3 fundraising round. He had trouble sleeping, and felt persistent chills in his body and heart  
4 palpitations that worsened whenever he heard his phone ring or saw a message from his investors.  
5 After learning about its healing effects, Justin took a micro-dose of lysergic acid diethylamide in  
6 2019. He believed he had no choice because he wanted to make sure that the company would be  
7 successful, and he needed to do what it took to make that happen.

8           12.     Justin’s body was more sensitive to the dose than he expected, and it impacted his  
9 vision during a meeting with a minor potential investor. He recovered shortly after the meeting.  
10 But overall, the experience brought a positive change to his work life. He reconnected with his  
11 passion for the company’s goal of improving lives. His experience with microdosing aided Justin  
12 in processing his emotions and the difficulties he faced as an Asian American, as a founder, and  
13 as a CEO. Justin redoubled his commitment to making Iterable successful, and that commitment  
14 enabled Iterable to have a highly successful Series D round, raising \$60 million, despite the  
15 challenges. He followed this up approximately a year later with a \$200 million Series E  
16 fundraising round, which valued Iterable at \$2 billion, four times its Series D valuation.

17           **D.     Discrimination**

18           13.     East Asians face a distinct type of discrimination in America. They have a strong  
19 presence in corporations, but they are virtually absent among top leadership in the executive  
20 suites. Asians represent 12% of the country’s professional workforce, yet less than 1% of S&P  
21 500 CEOs are of East Asian descent. They are the least likely group to be promoted to  
22 management — less likely than any other racial group, including African Americans and Latinos.

23           14.     This bamboo ceiling to advancement to the top ranks exists in education, law,  
24 financial services and the medical professions. Even in the technology sector, where Asian  
25 Americans have a large presence, the ceiling was consistently harder for Asian Americans to  
26 crack than for white employees at Silicon Valley companies. Analyzing employment data filed  
27 with the U.S. Equal Employment Opportunity Commission (EEOC) by five major Silicon Valley-  
28 based companies, one study revealed that the ceiling is 3.7x times harder for Asian Americans to

1 crack. At Google, Hewlett-Packard, Intel, LinkedIn and Yahoo, Asians make up 27% of the  
2 professional workers, but only 14% of executive positions; whites are 62% of the professionals  
3 yet hold 80% of the executive positions.

4 15. Another study showed that the work environment for Asian American  
5 professionals is uncomfortably challenging and strikingly different from that faced by their white  
6 counterparts. Eighty percent (80%) of Asian American respondents have personally experienced  
7 discrimination based on ethnicity or race; more than 60% feel they must work harder than non-  
8 Asian counterparts to succeed because of their identity; 74% of white respondents report feeling  
9 empowered and supported professionally, compared to just 40% of Asian Americans. In the  
10 study, nearly half of all respondents pointed specifically to discrimination by their employer  
11 against Asian Americans. The figure is even higher among the most senior Asian American  
12 executives.

13 16. Asian Americans and particularly Chinese Americans and East Asians have faced  
14 a rising intensity of hatred and discrimination during the COVID-19 pandemic. This rising hatred  
15 was in part stoked by political leaders, including former President Donald Trump, who used  
16 phrases like “kung flu” and “China plague.” The organization Stop AAPI Hate received 6,603  
17 reports of hate incidents and hate crimes from March 19, 2020 to March 31, 2021. Chinese  
18 individuals reported more hate incidents (43.7%) than any other racial or ethnic group.

19 **E. Justin Complains About Discrimination**

20 17. On November 8, 2019, after Justin successfully led a \$60 million Series D funding  
21 round, he was invited to a dinner by investor Murat Bicer. Justin believed this would be a  
22 moment to celebrate the successful round. Instead, he was surprised that the Series B investor  
23 Shardul Shah joined at the last minute. After having a drink, Shardul and Murat stated they  
24 wished to bring on a chairman of the board. Justin asked whether they were thinking of replacing  
25 him as CEO. He reiterated that Iterable’s ethos was based on who he was: an Asian American, an  
26 immigrant, and a technologist in Silicon Valley; someone who believed that the American Dream  
27 is for everyone, equally. Justin shared the story of how, pre-series A, an Asian growth investor  
28 advised him that when the company gets bigger, that success will require hiring a white CEO

1 because that's what it takes to succeed in America. Justin suggested that this was the investors'  
2 plan.

3 18. The investors did not deny the accusation. Instead they affirmed that they wanted  
4 to replace Justin as CEO. They stated that if he cared about Asian causes, he could invest in  
5 them, not serve the goal by being a role model as CEO. Shardul pointed to the statement by a  
6 potential investor who said that Justin did not look like an enterprise CEO. The potential investor  
7 stated that the company's Caucasian COO looked more like a CEO than Justin did.

8 19. Shardul and Murat stated that Justin would always be the founder; that if one of  
9 Justin's values is humility, he should be humble and say he may not be the best for CEO. Justin  
10 responded that the company was thriving under his leadership, and that to achieve the company's  
11 vision, he would need to be in the final decision-making position. The conversation became  
12 tense. The investors then sought an independent board member and Justin would search for a  
13 CRO.

14 20. After the dinner, the investors pushed for a Caucasian man to be the independent  
15 board member. Shardul pressed Justin strongly for a CRO candidate who was Caucasian. Justin  
16 met with the candidate for hours in Denver, but concluded that she did not fit the company's  
17 values, and he conveyed this to Shardul during their next one-on-one meeting.

#### 18 **F. Justin Discloses His Mental Health Conditions**

19 21. Several months later, Justin reached out to Shardul to have an open-hearted  
20 conversation. He shared personal details of his life and encouraged Shardul to do the same, so  
21 that there could be a greater understanding of their experiences. Justin openly shared his health  
22 conditions. The evening after this meeting, Shardul called Justin and stated that Justin should no  
23 longer be CEO.

24 22. The next day, Shardul, Murat, Andrew Boni, and Justin met in a park. Shardul  
25 again cited the incident with the investor who believed that Iterable's Caucasian COO looked  
26 more CEO-like than Justin. Justin defended why he was best qualified to serve as CEO. Iterable  
27 had successfully beaten out several startups that had better funding and more pedigreed CEOs.  
28 The company had become known as having both the best technology and the best people. Justin



1 shared his vision of scaling Iterable to millions of customers and creating policies and technology  
2 for ethical AI. The vision would be to ensure that the AI is optimized for human values.

3 23. Shardul stated that Justin should be removed as CEO and should step down to  
4 CTO. Justin responded that to demote him, despite Iterable performing at high levels, sends a  
5 message to every Asian American that they're not good enough to be CEO; that Asians will top  
6 out as tech people. When asked what he thought, Andrew Boni agreed that the demand was  
7 wrong; that Justin was responsible for getting the company to that point and that the company  
8 continued to do well under his leadership.

9 24. Justin shared again the story about a growth investor who stated that the company  
10 will want to hire a white CEO when it becomes bigger because that is what it takes in America.  
11 Shardul and Murat responded that they had to put the company first; that Justin could invest in  
12 Asian American founders and donate to their causes. Justin responded that he was putting the  
13 company first, and had done so for eight years at the cost of his health and life. He explained that  
14 a core drive of his was to show that an Asian American can succeed as CEO. He'd proven that,  
15 as the numbers were clear that the company was doing very well commercially and culturally in a  
16 highly competitive space.

17 25. Justin confronted the investors, accusing them of discriminating against an Asian  
18 CEO by pattern matching, and seeking to replace him with an older white man as CEO. He stated  
19 that the investors were seeking to replace him as CEO because they were pattern matching on  
20 data. Most of the enterprise CEOs who have taken companies public are Caucasian men. He  
21 stated that very few look like him or the East Asian founder of Zoom. That didn't mean Justin  
22 was not fit to take Iterable public. After the meeting ended, Shardul sent Justin an email stating  
23 that the COO, a Caucasian man, should be the CEO.

24 **G. Anti-Asian Hatred Reaches a Violent Crescendo & Justin Stands Up for**  
25 **Asian Americans**

26 26. In 2021, anti-Asian hate incidents skyrocketed across the United States. In  
27 January 2021, a local television station showed footage of a young man sprinting toward, then  
28

1 violently shoving to the ground, an 84 year-old Thai grandfather, who had been out for a morning  
2 walk in the Anza Vista neighborhood of San Francisco. He later died.

3 27. On February 3, 2021, Noel Quintana boarded the L train at Jefferson Station in  
4 Brooklyn. The 61-year-old was headed to Harlem, where he works as an administrative assistant  
5 at a non-profit that works with mentally challenged people. As he stood in the crowded car, a  
6 man standing next to him kicked the tote bag Quintana was holding. Quintana moved to the  
7 center of the crowded train car. The man advanced on him, and sliced his face from ear to ear  
8 with a box cutter. Quintana asked for help, but nobody responded.

9 28. In March 2021, a 75 year-old Chinese grandmother was attacked by a white man  
10 in broad daylight in San Francisco and fought back. The victim was left with several injuries,  
11 including two black eyes.

12 29. On March 16, 2021, a shooting spree occurred at three spas in the metropolitan  
13 area of Atlanta, Georgia. Eight people were killed, six of whom were Asian women. Following  
14 the shootings, mass protests against anti-Asian violence occurred in cities across the world.

15 30. Justin organized a group of Asian American business leaders across the country to  
16 call for change. The group Stand with Asian Americans (SwAA) called for a national awakening  
17 and a dialogue that involves leaders from every community to undo the generations of systemic  
18 bias and racism. SwAA committed to fight to end discrimination and violence against the Asian  
19 and all marginalized communities. It is committed to ensure representation by reporting out on  
20 diversity of all groups and to redefine Asian Americans as a group worth representation at all  
21 levels of an organization. It pledged to support Asian employees by making sure they have a safe  
22 space to tell their stories, receive support and report discrimination without fear of retaliation.

23 **H. Justin Shares His Past Microdosing Experience to Explain the Need for**  
24 **Accommodating Mental Health Conditions He Faced**

25 31. Justin believed that having a safe space to tell one's story, receive support and  
26 report discrimination without fear of retaliation is something that also applied to Iterable. Justin  
27 had sacrificed his health for the Company. He faced discrimination even as the CEO, and he  
28

1 believed that telling his story was in the best interests of the company and aligned with its  
2 mission.

3 32. Justin continued to achieve great success for the company. On March 16, 2021,  
4 under Justin’s leadership, Iterable closed the primary Series E round, raising \$100 million. On  
5 April 9, the company closed the Series E secondary round, raising \$98 million.

6 33. Asian Americans face significant barriers in receiving mental health support.  
7 According to the Substance Abuse and Mental Health Services Administration (SAMHSA),  
8 Asian Americans are the least likely of any racial/ethnic group to seek help for mental health  
9 issues. In 2020, an estimated 2.3 million AAPIs who meet the criteria for a mental health  
10 problem did not receive necessary treatment. The leading cause of death for Asian American  
11 young adults is suicide – a concerning pattern not found in any other racial group.

12 34. Stigma in dealing with mental health issues is a major barrier for Asian  
13 Americans. Asian cultures may shame individuals facing anxiety or depression, as those who are  
14 not living up to their familial and societal expectations. The stigma is exacerbated by the “model  
15 minority” myth, that portrays Asian Americans as high achieving, hard workers who do not  
16 complain, and who face no discrimination. The severity of mental health stigma led  
17 Congresswoman Judy Chu to introduce a bill to “End Mental Health Stigma in [the] AAPI  
18 community” in 2017 and again in 2021. The bill’s coauthor, Congresswoman Napolitano, said,  
19 “We must overcome this fear, shame, and stigma with outreach, education, and open dialogue,  
20 sending a clear message that it is always okay to ask for help.”

21 35. Justin had been working with a reporter from Bloomberg on what was to be a  
22 positive profile piece about the rise of the company, breaking the news of its fundraising and how  
23 it led to the \$2 billion valuation. As part of the story, he intended to give an accurate and nuanced  
24 look at the journey, including his experiences with discrimination as an Asian American founder  
25 and CEO, and the mental health impacts of leading a company, including facing discrimination  
26 from investors and even board members. The story would discuss overcoming obstacles and that  
27 change was needed in Silicon Valley and Wall Street. Justin sharing his vision for the industry –  
28 which involved updating the discriminatory model and sending the message that authentic,

1 empathetic leaders can create and lead highly successful companies. Justin intended to normalize  
2 discussing and treating mental health, in the technology industry, in leadership positions, and for  
3 Asian Americans, and how requiring mental health support does not preclude anyone from  
4 achieving the kind of success that he was achieving for Iterable. Justin believed the story would  
5 show Iterable's strengths as a forward looking tech company that put its people first.

6 **I. Termination**

7 36. Justin shared with his co-founder Andrew Boni details about the story, and that it  
8 would include examples of succeeding despite facing anti-Asian discrimination. Justin's co-  
9 founder expressed concern about him mentioning anti-Asian discrimination. On a walk with  
10 Justin, Boni questioned Justin's mental health. In response, Justin shared his struggles with  
11 trauma and depression. When Justin disclosed his experience with microdosing LSD, Boni  
12 expressed concern that Justin regularly continued to self-medicate. Justin assured Boni that this  
13 was not the case.

14 37. Justin explained to Boni that speaking up publicly will be a net positive for the  
15 company. Justin explained why as an Asian American, he had to stand up, speak out, and stand  
16 for justice. That evening, Justin texted Boni with a link to a book on mental health that he had  
17 read for his own mental health conditions.

18 38. Boni disclosed this information to the Company's board members, who confronted  
19 Justin. Justin hoped the Company and the board members would understand that he needed to  
20 seek treatment for his depression to bring the company to success and continue functioning at a  
21 high level, as he was not ashamed of his mental health problems and believed that overcoming  
22 challenges made Iterable a stronger place. He wanted to share his example, seek an  
23 accommodation for himself, and encourage empathy for himself and others struggling with  
24 mental health problems. His aim was to tell his story about the discrimination he faced as an  
25 Asian American, challenge the discriminatory status quo, and explain how discrimination  
26 contributed to his depression and trauma and impaired his major life activities. Instead, the  
27 Company and its board saw the trauma, depression and reports of discrimination as weaknesses;  
28 that there was something wrong with Justin.

1           39.     On April 26, Justin received a call from Boni, informing him of a surprise board  
2 meeting. Justin joined a Zoom call with Andrew Boni, Murat Bicer, Lee Whittlinger, Brian Rose,  
3 and Yokum Taku (*i.e.*, the Board of Directors of Iterable, Inc., together with a Board observer and  
4 company counsel). Boni stated that Justin was terminated for taking LSD two years prior because  
5 it was against the employee handbook. He also stated that in addition, Justin had been speaking  
6 with a reporter about “confidential” matters. Murat then said that Boni was the new CEO, and  
7 Brian Rose asked Justin to resign from the board.

8           40.     Immediately, Justin was locked out of his calendar, email, and Slack. When he  
9 arrived home, he found that his computer had been locked. That afternoon, the company sent out  
10 an email stating that “Justin will be leaving his position as CEO of Iterable, effective  
11 immediately, . . .” Boni stated that the “Iterable Board, which I sit on, made the difficult decision  
12 to remove Justin from his position after becoming aware of behavior and incidents that are in  
13 clear violation of Iterable's Employee Handbook, policies, and values. This behavior also  
14 undermined the Board’s confidence in Justin’s ability to lead the company going forward. Under  
15 these circumstances, the Board had no choice but to insist he step down from his role, as we  
16 would with any employee. His actions were not consistent with our values and are explicitly  
17 against our policies.”

18           41.     The Board’s stated reason for terminating Justin was pretextual and a subterfuge.  
19 Justin’s employment was terminated because he complained about what he perceived to be illegal  
20 discrimination on the basis of his race and national origin, because he requested reasonable  
21 accommodation for his disability, and because he is Chinese-American. Justin had proved in the  
22 two years since microdosing LSD that the microdosing had not adversely affected his ability to  
23 perform his duties. To the contrary, he performed successfully as CEO. In addition, LSD is  
24 ubiquitous in Silicon Valley and has been part of the culture for years. Justin had no qualms  
25 talking about this, as leaders from Steve Jobs to Bill Gates have talked about using LSD.  
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1 **FIRST CAUSE OF ACTION**

2 **(UNLAWFUL RETALIATION IN VIOLATION OF PUBLIC POLICY FOR**  
3 **PLAINTIFF'S EXERCISE OF HIS RIGHTS)**  
4 **(Violation of Cal. Labor Code §§ 98.6 & 1102.5 and California Common Law)**  
5 **(Against Defendant Iterable, Inc.)**

6 42. Justin incorporates in this cause of action each and every allegation of the  
7 preceding paragraphs, with the same force and effect as though fully set forth herein.

8 43. Defendant Iterable, Inc. retaliated against Justin because he requested a reasonable  
9 accommodation for his disability and because he pointed out what he reasonably believed to be  
10 Defendants' illegal and unethical conduct and requested that it be remedied.

11 44. Defendants lacked legitimate, independent reasons for their conduct on behalf of  
12 Defendant Iterable, Inc. and would not have subjected Justin to the adverse employment actions  
13 that they did had Justin not engaged in activities protected by California Labor Code section  
14 1102.5. A substantial motivating reason for Defendants' engaging in the foregoing adverse  
15 employment actions against Justin was to retaliate against him for engaging in the protected  
16 activities discussed above.

17 45. Defendants' retaliation is contrary to fundamental California public policy and is  
18 wrongful.

19 46. Justin suffered substantial economic and non-economic damages as a direct and  
20 proximate result of Defendants' unlawful retaliation against him on behalf of Iterable, Inc.  
21 because of his exercise of his right and duty to report legal violations to his superiors.

22 47. Defendants' acts were intentional, willful, malicious, and oppressive. Punitive  
23 damages should be assessed against each of the Defendants in an amount sufficient to punish each  
24 of the Defendants for that Defendant's wrongdoing and to deter Defendants and others from  
25 wrongdoing of this kind in the future.

26 48. Justin is also entitled to \$10,000 in statutory damages under California Labor Code  
27 section 1102.5(f) for each retaliatory act by Defendants on behalf of Iterable, Inc.  
28

1 **SECOND CAUSE OF ACTION**

2 **(UNLAWFUL FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**  
3 **IN GOOD FAITH)**

4 **(Violation of Government Code § 12940)**  
5 **(Against All Defendants)**

6 49. Justin incorporates in this cause of action each and every allegation of the  
7 preceding paragraphs, with the same force and effect as though fully set forth herein.

8 50. Iterable, and each of the individual Defendant Board members, failed to engage in  
9 good faith in the interactive process so as to reasonably accommodate a known disability of Justin  
10 in connection with his employment. This violated the California Government Code.

11 51. Justin suffered damages as a result of Defendants' failure to engage in good faith  
12 in the interactive process.

13 52. Defendants' acts were intentional, willful, malicious and oppressive. Punitive  
14 damages should be assessed against each of the Defendants in an amount sufficient to punish each  
15 of the Defendants for that Defendant's wrongdoing and to deter Defendants and others from  
16 wrongdoing of this kind in the future.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff Justin Zhu prays for judgment against Defendants as follows:

19 A. For an injunction prohibiting Defendants Bicer, Wittlinger, Iterable, Inc. and each  
20 of them from terminating any Iterable, Inc. employee because of race, national origin, or  
21 disability;

22 B. For a civil penalty of \$10,000 for each retaliatory act by any Defendant;

23 C. For compensatory damages according to proof;

24 D. For punitive and exemplary damages in an amount appropriate to punish  
25 Defendants and to make an example of each of them to the community;

26 E. For reasonable attorneys' fees and all costs of suit; and

27 F. For such other relief as this Court deems just and proper.  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all causes of action so triable.

DATED: November 15, 2022

Respectfully submitted,  
NASSIRI & JUNG LLP

By:  \_\_\_\_\_

Charles H. Jung  
Andrew R. Kislik  
Attorneys for Plaintiff  
JUSTIN ZHU