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19 *Attorneys for Plaintiffs and the Putative Class*

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF SAN BERNARDINO**

22 **SARAH P. ESPINOZA,**

23 **Plaintiffs,**

24 **vs.**

25 **LOVE'S COUNTRY STORES OF**
26 **CALIFORNIA;**
27 **and DOES 1-100, inclusive,**

28 **Defendants.**

Case No.: CIVDS2016481

DECLARATION OF JENNY D.
BAYSINGER IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: November 16, 2021
Time: 9:00 a.m.
Dept.: S-26
Judge: Hon. David Cohn

1 I, Jenny D. Baysinger, declare:

2 1. I am an attorney duly licensed to practice before all the courts of this state and am a
3 shareholder of Mayall Hurley P.C., co-counsel for Plaintiffs and putative class representatives Sarah
4 Espinoza (“Espinoza”) and Estefania Renteria (“Renteria”), individually and on behalf of other
5 members of the general public similarly situated and on behalf of aggrieved employees pursuant to the
6 Private Attorneys General Act (“PAGA”) (collectively, “Plaintiffs”).

7 2. I have personal knowledge of the matters set forth herein and, if called upon to do so,
8 could and would competently testify thereto under oath.

9 **Procedural History**

10 3. My office began representing Plaintiff Espinoza in July 2020.

11 4. On July 29, 2020, my office provided written notice to the Labor and Workforce
12 Development Agency (“LWDA”) and Defendant Love’s Country Stores of California (“Defendant” or
13 “Love’s”) on behalf of Espinoza regarding specific provisions of the Labor Code alleged to have been
14 violated by Love’s as to Plaintiff Espinoza and Love’s other non-exempt California employees,
15 including the facts and theories to support those alleged violations.

16 5. On July 30, 2020, my office filed the instant Class Action Complaint in the Superior
17 Court of California, County of San Bernardino case number CIV-DS-2016481. Through the initial
18 complaint, Espinoza asserted claims for failure to pay overtime, failure to provide meal and rest
19 breaks, failure to pay wages on separation, failure to furnish accurate wage statements, and a claim for
20 unfair competition pursuant to the UCL.

21 6. On May 27, 2020, Plaintiff Renteria submitted written notice to Defendant and the
22 LWDA regarding specific provisions of the Labor Code alleged to have been violated by Love’s as to
23 Plaintiff Renteria and Love’s other non-exempt California employees, including the facts and theories
24 to support those alleged violations.

25 7. On May 28, 2020, Plaintiff Renteria filed a Class Action Complaint in the Superior
26 Court of California, County of Kern case number BCV-20-101260 (the “Kern County Action”).
27 Through the Kern County Action, Renteria asserted claims for failure to pay minimum wage, failure to

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1 pay overtime, failure to provide meal and rest periods, failure to pay final wages, failure to provide
2 accurate wage statements, and a claim for unfair competition under the UCL.

3 8. On August 3, 2020, after the 65-day notice period required by California Labor Code
4 section 2699.3 elapsed, Plaintiff Renteria filed a First Amended Class Action Complaint in order to
5 add a claim to assess and collect civil penalties pursuant to the PAGA in the Kern County Action.

6 9. On October 7, 2020, after the 65-day notice period required by California Labor Code
7 section 2699.3 elapsed, my office filed an amended Class Action Complaint in order to add a claim to
8 assess and collect civil penalties pursuant to the PAGA.

9 10. In early October 2020, my office was advised of the Kern County Action and began
10 communications with counsel in that action, Jean-Claude Lapuyade of the JCL Law Firm, APC and
11 Shani Zakay of the Zakay Law Firm (hereinafter “co-counsel”) regarding the prospect of joint
12 mediation and joint representation. At that time, my office and co-counsel were also made aware of
13 another pending wage and hour class action against Defendant in San Bernardino County titled
14 *Diamond v. Love’s Country Stores of Cal.* Case No. CIVDS2012915 (the “*Diamond Action*”). The
15 *Diamond Action* asserts wage and hour claims arising out of alleged misclassification of certain of
16 Defendant’s employees as exempt.

17 11. Also in early October 2020, my office, Defendant’s counsel, co-counsel, and counsel in
18 the *Diamond Action* began discussing the prospect of a joint/concurrent private mediation of this
19 matter, the Kern County Action, and the *Diamond Action*.

20 12. In September 2020 co-counsel propounded formal written discovery to Defendant in
21 the Kern County Action. Defendant provided responses consisting solely of objections in late-October
22 2020.

23 13. In October 2020 my office propounded formal written discovery to Defendant,
24 consisting of Form Interrogatories – General, Form Interrogatories – Employment, Special
25 Interrogatories, Requests for Production of Documents, and Requests for Admission. Defendant
26 provided responses on November 17, 2020 consisting solely of objections on the asserted basis of a
27 Court-imposed stay of all discovery until the initial case management conference.

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1 14. Rather than engage in motion practice, both my office and co-counsel made separate
2 agreements with Defendant to extend MTC deadlines in favor of informal information exchange for
3 the purposes of private mediation.

4 15. In December 2020, my office entered into a formal Joint Prosecution and Attorney Fee
5 Division Agreement with co-counsel. Through that agreement, it was agreed my office and co-
6 counsel would act as co-lead counsel in the two matters and would split fees, 40% to Mayall Hurley,
7 P.C., 30% to the JCL Law Firm, and 30% to the Zakay Law Firm. Mayall Hurley, JCL Law Firm, and
8 Zakay Law Firm will be collectively referred to herein as “Class Counsel.”

9 16. Initially, the Parties agreed to private mediation with David Rotman, Esq. and
10 scheduled a full-day session for March 4, 2021.

11 17. In advance of that scheduled mediation session, in February 2020 Defendant informally
12 provided time and wage records/data for its California non-exempt employees for the time period May
13 25, 2016 through December 31, 2020. These records comprised more than 170,000 line items of data
14 (each with multiple individual data points) consisting of time punch data for all individuals within the
15 putative class, as well as associated payroll records for those same individuals. Defendant also
16 provided relevant numerical data for the class, along with some policy documents.

17 18. Due to unforeseen weather circumstances, Defendant requested to postpone the March
18 4, 2021 mediation session.

19 19. The Parties in this matter and the Kern County Matter ultimately participated in a joint,
20 full-day mediation with Steve Rottman, Esq. on May 25, 2021. The *Diamond* Matter was not
21 discussed at the mediation and counsel in that matter did not participate due to the substantively
22 different claims proceeding in that case. At the conclusion of the mediation, an agreeable resolution
23 was not reached, but a mediator’s proposal was tendered to the Parties to consider.

24 20. After further informal discussion between the Parties, formal acceptance of the
25 mediator’s proposal was communicated June 4, 2021. The settlement resolves only the claims
26 asserted on behalf of “all person Defendant classified as non-exempt employees who are or were
27 previously employed by Defendant in California between May 15, 2019 and May 25, 2021.” Claims

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1 of allegedly misclassified employees pending in the *Diamond* Matter are not included in the
2 resolution.

3 **Investigation, Discovery**

4 21. Through independent inquiry, research, formal and informal discovery, Class Counsel
5 thoroughly and diligently investigated and pursued the claims asserted in both this action and the Kern
6 County Action. My office and co-counsel made a concerted effort to secure sufficient information to
7 allow us to intelligently evaluate potential claims on both a PAGA-representative and class-wide basis.
8 This process included, but was not limited to, (1) obtaining and reviewing personnel files, payroll
9 records, and time records of Plaintiff Espinoza and Plaintiff Renteria; (2) researching Defendant, its
10 organization and operations within California; (3) researching the existence of other pending actions;
11 (4) identifying, researching, and pleading the appropriate claims, including adding potential claims as
12 additional information has been discovered and/or claims have ripened; (5) exhausting administrative
13 remedies; (6) identifying, requesting, securing, and reviewing pertinent policies, practices, and
14 procedures; (7) identifying, requesting, and securing time and payroll records for putative class
15 members from May 25, 2016 through December 31, 2020; (8) retaining an expert to analyze the data
16 provided by Defendant and personally conducting spot checks to ensure the accuracy of the damages
17 calculations; (9) creating a reliable damages model; and (10) developing and implementing a strategy
18 for mediation and settlement.

19 22. Between September 2020 and the present, Class Counsel initiated formal discovery,
20 and engaged in informal data and information exchange with Defendant.

21 23. In advance of mediation, Love's provided more than 170,000 line items of data
22 covering the time period May 25, 2016 through December 30, 2020. In addition, the Parties spoke at
23 length about the strengths and weaknesses of each sides' claims and defenses, the certifiability of the
24 claims, and the scope of Defendant's potential liability.

25 24. Class Counsel and their retained expert were able to use the comprehensive data
26 provided to evaluate potential damages exposure over the entire Class Period for all Class Members.

27 25. Class Counsel retained EconOne, a qualified and experienced data analysis firm, to
28 analyze the data and create a damages model for use during the mediation. This included providing

1 full evaluation of all of the data provided, and extrapolation (and limitation) of that data as necessary
2 to determine Defendant's potential exposure.

3 26. Prior to the mediation, co-counsel and my office had multiple discussions with our
4 retained expert to ensure the parameters of the analysis were appropriate and accurate and the to
5 confirm the reliability of the damages model. I also personally spot-checked a number of calculations
6 to ensure their accuracy.

7 27. Prior to the mediation session, we became aware of a previous class action settlement in
8 the matter of *McGough & Elick v. Love's Travel Shops & Country Stores, Inc., et al.*, Kern County
9 Superior Court Case No. BCV-16-102286 (the "McGough Settlement"). The McGough Settlement
10 resolved claims on behalf of California all non-exempt employees of Love's Travel Shops and/or
11 Love's Country Stores of California between September 28, 2012 and May 14, 2019.

12 28. After we became aware of the McGough Settlement, the class period relevant to
13 settlement negotiations in the instant case was limited to incorporate *only* claims arising from May 15,
14 2019 (the date after preliminary approval of the prior settlement) through May 25, 2021 (the mediation
15 date in the instant case).

16 **Settlement Negotiations and Mediation**

17 29. The Parties attended a full-day mediation with Steve Rottman, Esq. on May 25, 2021.

18 30. At the conclusion of the negotiations, Mr. Rottman presented a mediator's proposal that
19 was ultimately accepted by all Parties. On August 4, 2021, the Parties executed a Memorandum of
20 Understanding.

21 31. In order to facilitate the negotiated resolution, the Parties submitted a stipulation to
22 afford Plaintiffs leave to file a Second Amended Class and Representative Action Complaint ("SAC")
23 in this case on September 24, 2020. As of the filing of the instant motion, that stipulation has not been
24 processed by the Court, but it is anticipated the stipulation will be granted and the SAC filed
25 accordingly in advance of the scheduled preliminary approval hearing.

26 32. Through the operative SAC, Plaintiff Renteria is added as an additional named plaintiff
27 and the factual allegations asserted in this action and the Kern County Action are consolidated. Seven
28 (7) causes of action are asserted on a class-wide basis in the SAC, including 1) failure to pay minimum

1 wage, 2) failure to calculate and pay overtime, 3) failure to provide meal periods, 4) failure to provide
2 rest periods, 5) final wages not timely paid, 6) non-compliant wage statements, and 7) unlawful
3 business practices in violation of California Business & Professions Code §§ 17200, et seq. (the “Class
4 Claims”). The SAC also contains a cause of action seeking to assess and collect civil penalties
5 pursuant to the Private Attorneys’ General Act of 2004 (the “PAGA Claims”) based on the alleged
6 violations of the Labor Code that underlie the Class Claims.

7 33. The Parties contemplate that the Kern County Action will be dismissed, with prejudice,
8 after final approval of the Settlement.

9 34. After months of additional negotiations regarding the terms of a long-form settlement
10 agreement, on October 20, 2021, the Parties agreed to and executed the Stipulation of Settlement of
11 Class Action and PAGA Action and Release of Claims (“Settlement Agreement” or “SA”), a true and
12 correct, fully executed copy of which is attached as **Exhibit 1** hereto.

13 35. Through the SA, Defendant has agreed to pay Two Million One Hundred Thousand
14 Dollars (\$2,100,000) (the “Gross Settlement Amount” or “GSA”) to resolve both Class Claims and
15 claims to assess and collect civil penalties pursuant to the PAGA. Eighty Thousand Dollars
16 (\$80,000.00) of the GSA has been allocated to resolve PAGA claims, with the remaining \$2,020,000
17 allocated to the resolution of Class Claims (the “Gross Class Settlement Amount” or “GCSA”).

18 36. Class claims are asserted/resolved on behalf of one (1) distinct and narrow Class
19 consisting of “all persons who Defendant classified as non-exempt who are or were previously
20 employed by Defendant in California during the Class Period”. SA ¶ I.G. The Class Period is limited
21 to the period between May 15, 2019 and May 25, 2021. SA ¶ I.H. This temporal limitation was the
22 result of a classwide settlement in the *McGough* Matter being approved in September 2019.

23 37. It is believed there are no more than 1,440 members of the Class and that they worked a
24 total of 50,296 workweeks during the Class Period. SA ¶ III.A.2. An escalator clause was expressly
25 negotiated in the Settlement to account for any unexpected increase in these numerical figures. SA ¶
26 III.A.2. The net settlement after deducting Class Counsel’s fees and costs, the enhancement awards
27 for both Plaintiffs the PAGA payment, and the payment to the settlement administrator, is estimated to

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1 be \$1,253,236.40. Therefore, the average payment to class members is estimated to be \$870.30, and
2 the expected payment per workweek worked is estimated to be \$24.91.

3 38. There was no fraud or collusion at the mediation with Mr. Rottman or the in the
4 protracted subsequent settlement negotiations, all of which were adversarial and conducted at arms'
5 length.

6 **Class Counsel's Damages Analysis and Valuation of the Class Claims**

7 39. The Settlement Agreement represents a compromise of highly disputed claims.
8 Defendant vigorously denies Plaintiffs' allegations in their entirety, denies that certification is
9 appropriate (except for settlement purposes), contends it has complied with the law, and asserts
10 numerous affirmative defenses, both legal and factual.

11 40. This litigation, including the Kern County Action and the instant Action, and the
12 Settlement have and will result in substantial benefits to all Class Members.

13 41. Reviewing and analyzing the time and payroll data in the sampling, my office, co-
14 counsel, and our retained expert developed a damages model, pre-mediation, illustrating Defendant's
15 maximum exposure. Class Counsel also evaluated the maximum damages against the defenses
16 asserted by Defendant, and the likelihood of success of some of Defendant's arguments to determine a
17 more realistic and reasonable anticipated damages exposure. This damages model informed the
18 litigation and the settlement negotiations.

19 **Maximum Class Damages**

20 42. The Class effectively has five (5) independent claims that comprise its potential
21 recovery, 1) a claim for failure to pay OT as a result of a the failure to include certain non-
22 discretionary payments in the calculation of "regular rate of pay" and thus miscalculation of the
23 applicable overtime rate, 2) failure to provide compliant meal/rest periods, primarily because of a
24 policy and practice requiring employees to carry walkie-talkies (and therefore never be off-duty)
25 during breaks, 3) failure to pay minimum wage because on-duty/on-call meal periods occurred "off-
26 the-clock", 4) failure to properly calculate and pay sick leave wages because the base hourly rate, as
27 opposed to the regular rate, was used, and 4) derivative wage statement and waiting time penalty
28 violations as a result.

1 43. The \$2,020,000 GCSA allocated to recovery for class claims represents a fair,
2 adequate, and reasonable resolution of those claims in light of the circumstances and balancing the
3 risks against the maximum and realistic recovery available.

4 **OT and Sick Pay Regular Rate Damages**

5 44. Reviewing and analyzing the data that was provided revealed, during the Class Period,
6 that just over 60% of the Class Members were provided non-discretionary payments in addition to
7 regular wages during workweeks when either 1) overtime hours were also worked or 2) paid sick leave
8 was redeemed. These non-discretionary payments consisted of items such as shift premiums paid
9 during Covid to incentivize employees to continue working and “Golden Hearts” benefits that afforded
10 employees with store credits, or other monetary valuable benefits. See Exh. 2 (p. 49-51 of Handbook)

11 45. Based on the time and payroll records/data provided, the regular rate claim exposure
12 was calculated to be **\$48,546.00** (\$45,679 in underpaid wages plus \$2,867 in accrued interest). This is
13 based on our expert’s identification of 16,809 underpaid hours within the data extrapolated through the
14 initial mediation date of March 4, 2021 (for an expected total of 18,583 underpaid hours or 20.5
15 underpaid hours per impacted employee [905]).

16 46. Defendant’s Handbook reflects a policy of only paying overtime for hours beyond 40 in
17 a workweek and also underscores the practice of only paying a rate of 1 ½ times the employee’s
18 normal hourly rate. See Exh. 3.

19 **Meal Period Damages**

20 47. Based on Defendant’s Handbook, there was no written meal or rest period policy
21 during the relevant period. In addition, both Plaintiffs were advised, directed, and required to carry
22 walkie-talkies at all times during their shifts. This specifically included time that was supposed to be
23 devoted to off-duty meal and rest periods. When meal/rest periods were interrupted, employees were
24 expected to immediately respond to pages over the walkie-talkie and return to work *without clocking*
25 *back in*. Plaintiff Espinoza estimates that her breaks were *actually* interrupted at least 40% of the time.

26 48. Using the records produced by Defendant, our retained expert identified presumptively
27 denied meal periods as any shift of more than five (5) hours where the first meal period was either 1)
28 not recorded at all, 2) recorded late, or 3) not at least 30 minutes long. Presumptively denied second

1 meal periods were identified on shifts over 10 hours where either 1) no second meal period was
2 recorded, 2) the second meal period was late, or 3) the second meal period short.

3 49. Based on the data provided, Plaintiff's expert determined there were 195,012 shifts
4 during the Class Period and that presumptive violations occurred during 22,114 (11.3%) of the meal
5 period eligible shifts—14,212 of the presumptively denied meal periods were not compensated with a
6 meal period premium. This results in \$211,127 in unpaid meal period premiums based solely on the
7 presumptive violations reflected in the time records.

8 50. In order to account for the suspected interrupted meal periods, which would not be
9 reflected in the time records themselves, we assumed a 50% meal period violation rate consistent with
10 Plaintiff Espinoza's estimation of the frequency with which her meal periods were actually interrupted
11 because she was required to carry the walkie-talkie and respond immediately when paged. Accounting
12 for expected meal period violations not reflected in the time records, Defendant's exposure for unpaid
13 meal period premiums¹ is **\$1,490,306** (\$1,402,350 + \$87,956 in interest).²

14 **Unpaid Minimum Wage**

15 51. Since Class Members were required to clock out for meal periods that were interrupted
16 and/or not actually "off-duty", they were not paid for that time which constituted "hours worked."

17 52. Again, assuming meal periods were interrupted (and thus constituted unpaid work time)
18 during 50% of the 195,012 meal period eligible shifts during the Class Period, Defendant's maximum
19 unpaid minimum wage exposure is **\$764,447.04** (195,012 30-minute meal periods x 0.5 = 97,506
20 interrupted meal periods = 48,753 unpaid hours x \$15.68 [avg. hourly rate]).³

21 **Rest Period Damages**

22 53. As a result of the walkie-talkie policy, the Class was also denied "off-duty" rest
23 periods. In addition, during a portion of the Class Period, rest periods were actually recorded in
24 Defendant's time records and thus presumptive violations could be identified.

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26 ¹ This was calculated at the "regular rate of pay" per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

27 ² With a 100% meal period violation rate, which is not reflective of the actual rate the Class could likely prevail on, the
meal period premium exposure is calculated to be \$2,942,989.

28 ³ If a 100% violation rate is assumed, the maximum minimum wage exposure is \$1,528,894.08.

1 54. The time records reflected 42,679 missed rest periods during 203,330 rest period
2 eligible shifts (21%). Just using the presumptive rest period violations, Defendant's exposure for
3 unpaid rest periods is \$566,775.

4 55. Again, in order to also account for suspected interrupted and "on-duty" rest periods, we
5 assumed a 50% rest period violation rate. This results in expected rest period premium exposure of
6 **\$1,588,530** (\$1,494,954.00 + \$93,576).

7 **Wage Statement Statutory Penalties**

8 56. The Class Claims assert both derivative wage statement violations and a stand-alone
9 wage statement violation because the wage statements Defendant issued identify multiple different
10 categories of earnings (regular pay, doubletime, daily overtime, COVIDPrm, Cur Addtl Pay OT Adj,
11 etc.) and either 1) do not have a separate line item for "total hours worked" and/or 2) do not specify
12 the number of hours worked in each specific earnings category. This results in violations of both
13 Labor Code section 226(a)(2) and 226(a)(9).

14 57. Based on the number of wage statements within the sampling with either a derivative or
15 direct violation, our expert calculated the maximum 226(e) statutory penalty exposure at **\$983,766**. If
16 only stand-alone violations are considered, the exposure is reduced to \$420,525.

17 **Waiting Time Penalties**

18 58. Based on the comprehensive data provided by Defendant 285 members of the Class had
19 their employment end during the Class Period were also subjected to wage deprivation (either because
20 of underpaid OT or because of unpaid meal/rest premiums). This exposes Defendant to statutory
21 waiting time penalties pursuant to Labor Code section 203 of **\$1,045,892**.

22 59. The SA affords each Class Member whose employment ended during the Class Period
23 with an additional four (4) workweeks in order to increase his/her proportional "Individual Settlement
24 Payment" to reflect/provide value for the additional potential monetary waiting time penalty those
25 individuals possess. SA ¶ I.AA.

26 60. In total, the maximum damages, statutory penalties, and interest the Class could recover
27 was calculated at **\$5,921,487.04**. The Settlement allocates \$2,020,000 to resolve the claims of the

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1 Class, which is nearly 35% (34.11%) of the *maximum* exposure.⁴ Considering all of the risks, as
2 outlined in more detail below, including the substantive challenges Defendant asserted to the claims
3 and the inherent delay and uncertainty with further litigation, the recovery is fair, adequate, and
4 reasonable.

5 61. Under the circumstances, and considering the legal and factual defenses asserted by
6 Defendant, 100% success is unlikely.

7 **Defendant's Defenses and Realistic Liability**

8 62. Because 100% success in litigation is unrealistic, Class Counsel also determined a
9 much more realistic estimate for the potential recovery of the Classes. Under this more measured
10 approach, Class Counsel (1) applied no discount to the regular rate claim because the written policies
11 plainly render the "other remuneration" provided non-discretionary, leaving \$48,546, (2) applied a
12 25% discount to the meal period claims because of the lack of a uniform written policy, general
13 challenges to certification that often plague meal period claims, leaving \$1,117,729.50, (3) applied a
14 25% discount to the minimum wage claim to account for Defendant's anticipated argument that and
15 expected testimony from Class Members that there were multiple occasions when they were able to
16 take off-duty meal periods and were not interrupted and thus that time was not properly within the
17 scope of "hours worked", leaving \$573,335.28, (4) applied a 25% discount to the rest period claims
18 because Plaintiffs both advised they were frequently able to take some uninterrupted rest periods,
19 leaving \$1,191,397.50, (5) applied a 50% reduction the wage statement exposure to reflect the Ninth
20 Circuit's opinion (reached almost simultaneously with the settlement negotiations) holding that
21 reconciled/retroaction overtime adjustments made *do not* have to specify the associated hourly rate of
22 pay or number of hours worked (*Magadia v. Wal-Mart Associates, Inc.* (2021) 999 F.3d 668), which
23 potentially threatens the stand-alone wage statement theories, and case law suggesting there is no
24 liability for derivative errors on wage statements (*Maldonado v. Epsilon Plastics, Inc.* (2018) 22
25 Cal.App.5th 1308), leaving \$491,883 and (6) applied a 25% discount to the claim for waiting time
26

27 ⁴ Even if a wholly unrealistic 100% meal and rest period violation rate is used (with associated minimum wage
28 exposure), the maximum damages, statutory penalties and interest the Class could recover is \$9,644,798.08. The GCSA
represents more than 20% (20.94%) of that absolute maximum exposure. Even if that number were reflective of the
actual maximum damages available based on the facts, which it is not, a 20% recovery is fair, adequate, and reasonable.

1 penalties in order to take into account the substantive challenges available to the unpaid wage claims
2 that would necessarily threaten a derivative 203 claim and Defendant's arguments against willfulness,
3 leaving \$784,419.

4 63. Under this more measured approach, I determined the Class' total realistic recoverable
5 damages to be \$4,207,310.28; \$2,931,058.28 of which results from allegedly unpaid/underpaid wages
6 (overtime, sick pay, minimum wage, meal/rest period premium wages).

7 64. The portion of the GSA allocated to Class claims, \$2,020,000 (\$2,100,000 - \$80,000
8 allocated to resolve PAGA Claims), represents a substantial 48% of this realistic recovery. The Class
9 is securing an expected net recovery (\$1,253,236.40, not including the amount attributable to
10 resolution of PAGA claims) of almost 30% (29.78%) of its realistic damages.⁵

11 65. Overall, Love's raised a number of potentially legitimate substantive arguments against
12 the Class Claims, which had the potential to substantially limit and potentially eviscerate the Class'
13 recovery. At the very least, the defenses would have resulted in substantial motion practice that would
14 have delayed any recovery on behalf of the Class substantially.

15 66. Foundationally, Defendant contends many of the bonuses/other remuneration it paid
16 were excludable from "regular rate" pursuant to 29 U.S.C. § 207, subdivisions (e)(1) or (e)(3) and
17 relevant California law. While the policy language, particularly for the Golden Hearts program,
18 outlines specific metrics for earning and calculating those awards and items like COVID premium
19 wages (which are really simply "shift differential"-type incentives paid during Covid to encourage
20 continued employment) appear non-discretionary, Defendant was still expected to engage in motion
21 practice and mount a defense to the regular rate claims.

22 67. There were also occasions when Defendant paid retroactive overtime it contends
23 reconciled underpaid wages to include non-discretionary bonuses, which may have (at least) offset and
24 reduced Defendant's underpaid regular rate exposure.

25 68. Defendant vehemently argued all of its employees were authorized and permitted to
26 take off-duty meal and rest periods. Love's contends employees were not required to carry walkie-
27 talkies during breaks and that, in fact, employees were allowed to leave the premises during breaks

28 ⁵ The net class recovery is 21.16% of the *maximum* damages the Class could expect to collect.

1 and thus be out of range for walkie-talkie transmission such that they could not possibly be considered
2 “on-call” or “on-duty.” Class Counsel believes *Augusts v. ABM Security Svcs. Inc.* (2016) 2 Cal.5th
3 257, 269-270 is directly on-point and makes clear that “tethering” an employee to a communication
4 device while on break renders that employee under the employer’s control and thus “on-duty”.
5 However, *if* there were occasions when Class Members did in fact travel “out of range” and were
6 unreachable, Defendant could reduce its exposure substantially. Securing and maintaining class
7 certification for meal and rest period claims is also inherently difficult. *Alcantar v. Hobart Serv.* (9th
8 Cir. 2015) 800 F.3d 1047, 1054; *Torres v. Wells Fargo Bank, N.A.* (2017) 2017 WL 1380505 * 5.
9 Even partial success in attacking the meal and rest period claims would reduce Defendant’s maximum
10 \$3,078,836 liability on those claims substantially.

11 69. Defendant strongly opposed any of-the-clock claims, contending its written policies
12 made it abundantly clear that *all* work time must be recorded and that falsification of time records or
13 fraudulent reporting of time worked was strictly prohibited. Exh. 3. To the extent Plaintiffs and the
14 Class could demonstrate off-the-clock work was performed, they faced the additional hurdle of
15 establishing Love’s knew or should have known about it, particularly considering its policies.
16 Challenges to certifying off-the-clock claims are particularly acute by nature due to the often case-by-
17 case manifestation of off-the-clock work. E.g. *Kilbourne v. Coca-Cola Co.* (S.D. Cal. 2015) 2015 WL
18 5117080 *8-9. Here, while the off-the-clock claim arises from Defendant’s walkie-talkie
19 policy/practice, to the extent it could demonstrate either 1) that employees were authorized to (and
20 often did) leave the premises and travel outside of communication range during breaks and/or 2) that
21 because travelling out of range was allowed, it did not know or expect employees would remain
22 “tethered” to communication devices and on-call during breaks. Defendant could reduce its exposure
23 by more than \$750,000 if it were able to avoid either class certification or ultimate liability on the off-
24 the-clock claim.

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1 70. Defendant contended it acted in good faith and that its conduct was not willful such that
2 waiting time penalties are unavailable to the Class under California Labor Code section 203.⁶
3 Defendant could reduce its liability by another almost \$750,000 if successful in this argument.

4 71. While I believe cases such as *Diaz v. Grill Concepts, Inc.* (2018) 23 Cal.App.5th 859
5 make it clear that the failure to “understand” an applicable law (i.e. ignorance of the law) will not
6 defeat willfulness in the context of a waiting time penalty claim, the argument is not frivolous and
7 could have some traction with a Court, particularly in light of the disparity between the actual
8 underpaid wages and the substantial value of the waiting time penalties. It is anticipated Love’s would
9 also raise an argument that the imposition of full waiting time penalties was unconstitutionally
10 excessive in the event the Class prevailed on that claim.

11 72. Defendant further argued Plaintiff could not establish the “injury” or “knowing and
12 intentional” elements of their Labor Code section 226(a)(1), (2), (5), (8) and (9) claims where (i) the
13 alleged inaccuracies did not themselves cause any distinct injury and are frowned upon by some
14 courts, (ii) Defendant had accurately listed the amounts actually paid to its non-exempt California
15 employees, and (iii) case law suggests that such does not create derivative wage statement violations⁷.

16 73. Absent the Settlement, it is also expected Defendant would rely upon the very recent
17 case of *General Atomics v. Sup. Ct.* (2021) 279 Cal.Rptr. 373 to attack Plaintiff’s 226(a)(2) claim on
18 the theory that an employee could simply add the total from the “regular pay” column and the total
19 from the “overtime” column to calculate the necessary total hours worked and thus the wage
20 statements do not violation section 226. While I do not believe *General Atomics* is relevant to the
21 factual circumstances of the stand-alone violation here, particularly because there is a number of “total
22 hours” identified that is necessarily inaccurate, this defense posed a threat to Plaintiffs’ theory of
23 recovery.

24 _____
25 ⁶ See e.g., *Gonzalez v. Downtown L.A. Motors, LP* (2013) 215 Cal. App. 4th 36, 54 (noting trial court’s refusal to award
26 liquidated damages on a challenge to a piece-rate compensation system, finding the employer’s actions were taken in
27 “good faith and with a reasonable basis for believing the actions were not in violation of the law.”); and *Harris v. Vector*
28 *Marketing Corp.* (N.D. Cal. 2009) 656 F.Supp.2d 1128, 1145-46 ; *Nordstrom Com’n Cases* (2010) 186 Cal. App. 4th 576,
584 (holding trial court did not abuse its discretion in discounting penalties on a § 203 claim because the defendant could
avoid the penalties by showing that a ‘good faith dispute’ existed regarding the claimed wages).

⁷ See e.g., *Naranjo v. Spectrum Security Svcs.* (2019) 40 Cal.App.5th 444, 474(review granted); *Maldonado, supra*, 22
Cal.App.5th 1308.

1 74. The recent Ninth Circuit decision in *Magadia v. Wal-Mart Associates, Inc.* (9th Cir.
2 2021) 999 F.3d 668, 682 potentially undermines the primary stand-alone wage statement violation
3 theory asserted by Plaintiffs; that “adjustment” payments made failed to identify the applicable rate or
4 hours worked and thus offended 226(a)(9). While California courts are not bound to apply the Ninth
5 Circuits ruling, it is feasible a Court could find the reasoning persuasive. If Defendant were successful
6 in attacking the wage statement claim, its potential liability would be reduced by almost \$1,000,000.

7 75. Finally, Defendant additionally attacked all derivative claims, including those for
8 inaccurate wage statements (under section 226(a)), waiting time penalties (under sections 201-203),
9 PAGA Penalties, and for restitution/injunctive relief under the UCL, as (a) dependent upon the
10 substantive claims (and thereby subject to the same attacks), (b) completely duplicative of damages
11 available under other theories, or (c) discretionary, and therefore not likely to be awarded by the
12 court.⁸

13 76. Considering all of the circumstances, and the inherent risks in further litigation that
14 would undoubtedly have included multi-pronged legal attacks on the Class Claims, and a necessarily
15 protracted litigation process of uncertain outcome, the Settlement, which is expected to provide an
16 average net recovery of \$870.30 (\$1,253,236.40/1440 Class Members) to each Class Member,
17 provides timely, guaranteed and cognizable monetary relief that is objectively fair, adequate, and
18 reasonable.

19 77. While I am confident that certification and success on the merits could have been
20 attained, continued litigation was guaranteed to be costly, time consuming, and uncertain in outcome.
21 Appellate proceedings would only further delay and jeopardize recovery by Class Members. Shifting
22 sentiment regarding wage statements claims add yet another layer of concern to continued litigation.
23 By contrast, the proposed Settlement ensures timely relief and substantial recovery for the Class and is
24 superior to other recently approved settlements raising similar claims.⁹

26
27 ⁸ See e.g., *General Atomics v. Sup. Ct.* (2021) 279 Cal.Rptr.3d 373; *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021)
999 F.3d 668.

28 ⁹ It is of note that the settlement amount in the *McGough* Matter, which covered a substantially longer Class Period
(September 2012 through May 2019—nearly 7 years) for a class of “all non-exempt California employees”, defined
almost identically to the Class here (except for temporal scope), was \$3,000,000. The Settlement here is certainly

1 78. The Released Claims, defined in Paragraphs I.AA and I.BB of the Settlement, were
2 narrowly tailored to track the factual allegations underlying the claims advanced on behalf of the Class
3 and do not include a Civil Code section 1542 waiver.

4 **PAGA Penalty Exposure Calculations**

5 79. Defendant also faces a maximum of \$10,173,448 in civil penalty exposure for alleged
6 Labor Code violations (only 25% of which could have gone to the aggrieved employees).¹⁰ Plaintiffs
7 could not impose civil penalties for the alleged underpayment of sick pay wages as the HWHFA
8 expressly precludes such. However, they could recover (and actually sought) civil penalties for
9 alleged failures to provide suitable seating within their stores.

10 80. While suitable seating penalties were sought, Defendant produced documentation (and
11 photographs) indicating chairs were available for staff at its California locations.

12 81. Because PAGA penalties are discretionary, often reduced significantly by courts, and
13 because imposition of penalties under Labor Code section 226.3 is debatable¹¹, a steep discount of
14 90% or more is appropriate, leaving \$1,017,344.80.

15 82. The Settlement allocates \$80,000 to resolution of claims for PAGA civil penalties.
16 This equates to 0.78% of the maximum and 7.8% of the realistic PAGA exposure, which is an
17 appropriate resolution under the circumstances because the punitive and deterrent purposes of the
18 PAGA are being served by the substantial damages and statutory penalties being paid to the Class in
19 resolution of substantive Class Claims. *Jennings v. Open Door Marketing, LLC* (N.D. Cal. 2018)

20 ///

21
22 comparable, and in fact proportionally more beneficial, than that in *McGough*. It is undeniably fair, adequate, and
23 reasonable.

24 ¹⁰ 75% of any civil penalties recovered shall be paid to the LWDA and 25% to the aggrieved employees. Section 2699(i).

25 ¹¹ In a recently published opinion, the Third District Court of Appeal—in the only published California case to date to
26 examine the issue—held that Labor Code section 226.3 establishes the civil penalty for all violations of Labor Code section
27 226(a). *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (Cal. 2018) (“Section 226.3 provides the
28 civil penalty for failure to comply. In our view, LWDA would not be prohibited from seeking civil penalties for a grossly
inadequate wage statement simply because the employer did provide a statement. Otherwise, the purpose of the statute
would be thwarted.”). Labor Code section 226.3 provides a civil penalty of “two hundred fifty dollars (\$250) per employee
per violation. Under *Raines*, Defendant would owe \$1,094,464 (\$250 x 4,377 deficient wage statements). Prior to the
Raines decision, conventional wisdom held that the penalty for furnishing inaccurate wage statements in violation of Labor
Code section 226(a) was the default penalty under Labor Code section 2699(f) of \$100 per wage statement. If the \$100
penalty is used, Allen’s total PAGA exposure for failing to provide accurate itemized wage statements would plummet to
only \$437,700 (4,377 deficient wage statements x \$100).

1 2018 WL 4773057 *8-9 (approving PAGA recovery of 0.6% of maximum); *Ahmed v. Beverly Health*
2 *& Rehabilitation Svcs., Inc.* (ED. Cal. 2018) 2018 WL 746393 *10.

3 83. It is expected that all of the Settlement Class Members will also be eligible to receive a
4 proportional share of the \$20,000 to be distributed to aggrieved employees, because the Class Period
5 commences less than one year and sixty-five days from when the instant action and the Kern County
6 Action were filed. There are some additional Aggrieved Employees who are not Class Members as
7 the PAGA Period begins on April 6, 2019 and is slightly longer than the Class Period commencing
8 May 15, 2019. SA ¶¶ I.A; I.U.

9 84. It is expected/estimated there are 1,469 Aggrieved Employees who worked a total of
10 48,995 pay periods between April 6, 2019 and May 25, 2021. Each aggrieved employee is expected to
11 receive an average of \$13.61.

12 85. This Settlement represents substantial and cognizable monetary recovery, particularly
13 considering the nature and inherent risks of further litigation and was negotiated in good faith to serve
14 the punitive and deterrent purposes of the PAGA.

15 86. I transmitted the Settlement Agreement to the LWDA on October 22, 2021 in
16 compliance with Labor Code § 2699(1)(2). See Exhibit 4.

17 **The Class Notice and Notice Plan Comply with Rule 23 and Satisfy Due Process**

18 87. Attached as **Exhibit A** to the Settlement Agreement is true and correct copy of the
19 proposed Notice of Pendency of Class Action Settlement and Final Hearing Date (the “Class Notice”)
20 which has been reviewed and approved by the Parties.

21 88. The Class Notice meets all of the requirements of procedural due process and Rule
22 23(e) by identifying the Plaintiff and Defendant and describing the claims and the Class Action in a
23 straightforward manner; succinctly describing the essential terms of the proposed Settlement,
24 including the Class Representative’s proposed Service Payment and the amount Class Counsel will
25 request for attorney’s fees and costs; identifying the claims that are being released by the Classes;
26 identifying all parties against whom claims are being released; providing Class Members with
27 information on how to participate in, exclude themselves from, or object to the Settlement; clearly
28 providing all applicable deadlines for such action; informing Class Members of the consequences if

1 they decide to exclude themselves from the Settlement; and advising them that, if they choose to
2 participate and the Settlement is approved, they will be bound by the resulting judgment, including
3 informing them that this may affect their ability to participate in other pending litigation. Further, the
4 Class Notice clearly explains the manner in which Class Members can obtain further information (e.g.,
5 through the Court’s website and the administrator’s website) and that the Final Approval Hearing may
6 be moved without further notice.

7 89. Because all Class Members are current or former employees of Defendant, for whom
8 Defendant has current or last known addresses as well as SSNs, notice here is simpler and more
9 reliable than in other types of class actions that require published notice to reach unidentifiable class
10 members.

11 **ILYM Group, Inc. Should be Approved as Claims Administrator**

12 90. Class Counsel solicited bids from several national settlement administrators. After
13 negotiating in an effort to obtain the most reliable and cost-effective service possible, the Parties have
14 selected ILYM Group, Inc. to serve as Administrator.

15 91. I have experience with ILYM Group, Inc. and have found their fees fair and
16 competitive amongst other administrators in the industry. I believe the bid of \$16,763.60, which was
17 comparable to the other bids received, is reasonable in relation to a class of this size, the work to be
18 performed, and as compared to estimates received from other administrators.

19 **Plaintiffs Have and Will Serve the Class Well**

20 92. Plaintiff Renteria and Plaintiff Espinoza’s interests in prosecuting this Class Action and
21 obtaining the most beneficial recovery possible fully comport with the collective best interests of the
22 Class Members. Plaintiffs understand the claims and theories that are being advanced, have been
23 involved through the litigation and have no conflicts with the other members of the Class they seek to
24 represent. Plaintiffs were each subjected to the same unlawful policies, practices, and procedures,
25 having been 1) underpaid because Defendant miscalculated the “regular rate of pay” and did not
26 include all remuneration, 2) denied meal and rest periods because of Defendant’s policies and
27 requirements to carry walkie-talkies and remain “on-call”, 3) underpaid minimum wages because they
28 were required to clock out during “on-call” meal periods that should have constituted time worked, 4)

1 furnished inaccurate itemized wage statements, and 5) not timely paid all wages due and owing upon
2 separation. Were each not serving as a Class Representative, each Plaintiff would be a Class Member.

3 93. Plaintiffs have and are prepared to continue adequately representing the interests of the
4 Class Members. Plaintiffs have demonstrated their commitment to prosecuting this Class Action on
5 behalf of the Class Members by, amongst other things, locating and retaining attorneys, participating
6 in discovery and investigation, filing their respective lawsuits and willingly exposing their names and
7 reputations to scrutiny from prospective and/or future employers, and helping to facilitate the
8 Settlement for which approval is now sought, including participating in and being available throughout
9 the entire mediation process.

10 94. Plaintiffs, who have worked diligently with Class Counsel throughout this entire
11 litigation, including taking numerous calls with Class Counsel, providing information regarding
12 potential witnesses in order to facilitate further investigation, participating in the Parties' formal and
13 informal information exchange, and participating in the mediation and settlement negotiations, should
14 be rewarded for taking the initiative to pursue these claims on behalf of their coworkers, and for their
15 role in reaching a substantial settlement providing for valuable monetary relief to the Class.

16 95. Plaintiffs will each apply for a Class Representative Service Award in the amount
17 \$10,000 (\$20,000 collectively), or 0.95% of the \$2,100,000 GSA (each Plaintiff is seeking a service
18 award of 0.47%), in consideration for their service as Class Representatives. I believe this to be fair,
19 reasonable and appropriate.

20 96. Class Members will be apprised of Plaintiffs' requests as well as their ability to review
21 the moving papers on the Court's website, and to object to the request if they so desire.

22 **Experience of Class Counsel**

23 97. In May, 2004, I received a B.A. from California State University, Sacramento. In May
24 2007, I received a J.D. with distinction from the University of the Pacific, McGeorge School of Law.
25 In November, 2007, I became a member of the State Bar of California. I have been an attorney with
26 Mayall Hurley P.C. since 2013. I became a Shareholder in March 2019 and have been serving on the
27 management team as the Director of Human Resources since July 2020. Prior to joining Mayall
28 Hurley, I spent two (2) years as a Deputy District Attorney, and an additional three (3) years as a

1 litigation associate for the Sacramento law firm of Downey Brand, LLP. I have been focusing my
2 practice almost exclusively on employment litigation, representing both employees and employers, for
3 the past eight (8) years.

4 98. My law firm, Mayall Hurley P.C., primarily through attorneys Robert J. Wasserman
5 and me, has pursued this action aggressively, and many other similar class, collective, and
6 representative actions. For instance, Mayall Hurley P.C. has recently been approved as class counsel
7 in *Botti v. SAFE Credit Union*, Sacramento County Superior Court Case No. 34-2019-00261736;
8 *Mediodia v. SoCal Jet Services, Inc.*, Los Angeles County Superior Court Case No. 18STCCV09751;
9 *Flores v. Dart Container Corp., et al*, Eastern District of California Case No. 2:19-cv-00083-WBS-
10 EFB; *Rodriguez v. J-M Manufacturing, Inc.*, San Joaquin County Superior Court Case No. STK-CV-
11 UOE-2019-6065; *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County Superior Court Case No.
12 STK-CV-UOE-2020-1774; *Modica v. Iron Mountain Information Management Svcs., Inc.*, United
13 States District Court, Eastern District of California Case No. 2:19-cv-00370-TLN-JDP; *Magee v.*
14 *Thyssenkrupp Materials, N.A., et al.*, Alameda County Superior Court Case No. RG19027231;
15 *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior Court Case No. 37-2018-
16 00004296-CU-OE-CTL; *Pacheco v. Bushfire Grill, Inc., et al*, United States District Court, Southern
17 District of California, Case No. 3:18-cv-01696-JAH-WVG; *Wise v. ULTA Salon, Cosmetics &*
18 *Fragrance, Inc.*, United States District Court, Eastern District of California, Case No. 1:17-cv-00853-
19 DAD-EPG; *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County Superior Court, Case No.
20 RG18906875; *Mansur v. Owens-Brockway Glass Container, Inc.*, San Joaquin County Superior Court,
21 Case No. STK-CV-UOW-2018-14631; *Alderson v. Alameda County Agricultural Fair Association*,
22 Alameda County Superior Court, Case No. RG18912654; *Terry v. Mare Island Dry Dock, LLC*,
23 Solano County Superior Court, Case No. FCS051650; *Mettler, Bender, and Rojas v. Les Schwab Tire*
24 *Centers of California, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476;
25 *Escalera v. La Tapatia Mexican Market, Inc.*, San Joaquin County Superior Court, Case No., ST-CV-
26 UOE-2017-5296; *Garcia, et al. v. HMS Host USA, Inc.*, United States District Court, Northern District
27 of California, Case No. 17-cv-03069-RS; *Ali v. Sutter Valley Medical Foundation, Inc.*, Sacramento
28 County Superior Court, Case No. 34-2017-00217486; *Grady, et al. v. People 2.0 dba The Hire Source*,

1 *et al.*, San Joaquin County Case No. STK-CV-UOE-2017-13867; *Kumar v. Forty Niners Stadium*
2 *Management Company*, Santa Clara County Superior Court, Case No. 17CV3121427; *Gast v. Flooring*
3 *Liquidators, Inc.*, Stanislaus County Superior Court, Case No. 2026223; *Russell v. KeHe Distributors,*
4 *Inc.*, United States District Court, Eastern District of California, Case No. 2:17-at-00592; *Smith v.*
5 *Wal-Mart Stores, Inc. et al.*, United States District Court, Northern District of California, Case No.
6 3:16-cv-02832-JD; *Titus v. The Martin-Brower, LLC*, United States District Court, Eastern District of
7 California, Case No. 2:17-cv-00558-JAM-GGH; *Hugues v. The Morning Star Trucking Company,*
8 *LLC, et al.*, Yolo County Superior Court Case No. CV16-1215; *Ahmed v. Beverly Health and*
9 *Rehabilitation Services, Inc., et al.*, United States District Court, Eastern District of California, Case
10 No. 2:16-cv-01747-WBS-KJN; *Guzman-Padilla, et al. v. Gerard Van De Pol, et al.*, United States
11 District Court, Eastern District of California, Case No. 2:17-cv-00196-JAM-KJN; *Jaime v. Walt*
12 *Disney Parks and Resorts U.S., Inc.*, United States District Court, Central District of California, Case
13 No. SACV 15-01618-CJC(DFMx); *Stevens v. Suncrest Solar, Inc.*, Fresno County Superior Court,
14 Case No. 16CECG03355; *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda County Superior
15 Court Case No. RG17866256; *Maasrani v. Waterton Hospitality Management*, San Mateo County
16 Superior Court, Case No. 17CIV05470; *Huynh v. Parker-Hannifin Corporation*, Stanislaus County
17 Superior Court, Case No. 2022325; *Moser v. O'Connor Woods Housing Corporation*, San Joaquin
18 County Superior Court, Case No. STK-CV-UOE-2014-0009861; *Bastami v. Semiconductor*
19 *Components Industries, LLC*, Santa Clara County Superior Court, Case No. 16cv297447; *Davis v.*
20 *Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court, Case No. BC592580; *Van*
21 *Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District Court, Eastern District of
22 California, Case No. 1-16-cv-00066-SKO; *Clark v. Arrow Sign Co.*, San Joaquin County Superior
23 Court, Case No. STK-CV-UOE-2016-6457, and *Moreno v. B.R. Funsten & Co.*, Solano County
24 Superior Court Case No. FCS046149, all wage-and-hour class actions with claims similar to the
25 instant matter. Not including this matter, we have several other wage-and-hour class actions currently
26 pending final approval in which we have been preliminarily approved as class counsel. My law firm
27 and I have also represented plaintiffs in numerous representative employment actions, settlements in
28 ///

1 which have been approved by multiple California and federal courts, and are currently prosecuting
2 dozens more.

3 99. Mayall Hurley, P.C. has also obtained class and/or conditional certification in a number
4 of cases, including *Liu v. QNAP, Inc.*, Los Angeles County Superior Court Case No. 19PSCV00668;
5 *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No. STK-CU-UOE-2016-
6 1264; *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin County Superior
7 Court, Case No. 39-2012-00288653-CU-OE-STK, *Wilk v. Skechers U.S.A., Inc.*, United States District
8 court, Central District of California, Case No. 5-18-CV-01921-JGB-SP; *Titus v. Paramount Equity*
9 *Mortgage, LLC*, United States District Court, Eastern District of California, Case No. 2:17-cv-00349-
10 MCE-KJN; and *Solati v. RPM Mortgage, LLC*, Solano County Superior Court Case No. FCS048401.

11 100. I am also currently lead counsel or co-lead counsel in at approximately thirteen (13)
12 employment class action cases and a handful of PAGA representative cases.

13 **Class Certification Issues**

14 101. Plaintiffs contend that the proposed settlement meets all the requirements for class
15 certification under the California Code of Civil Procedure §382 as demonstrated below, and
16 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
17 should conditionally certify the Classe for settlement purposes only, defined as follows:

18 “All persons Defendant classified as non-exempt employees who are or were previously were
19 employed by Defendant in California between May 15, 2019 and May 25, 2021.”

20 102. The Class Period is the period of time from May 15, 2019 and May 25, 2021. The
21 Parties estimate that there are 1,440 Class Members in the class, who collectively worked
22 approximately 50,296 workweeks.

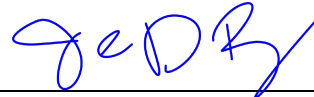
23 a. **Numerosity** – Here, the approximately 1,440 current and former employees that
24 comprise the Class can be identified based on Defendant’s records and are
25 sufficiently numerous for class certification.

26 b. **Common Issues Predominate** - Here, Plaintiffs contend that common questions
27 of law and fact are present, and specifically the common questions of whether
28 Defendant’s employment practices were lawful, whether Defendant failed to

1 properly provide and/or pay for meal and rest periods, whether Defendant
2 correctly calculated the regular rate for purposes of payment of overtime and sick
3 time, whether Defendant provided incomplete wage statements, and whether the
4 Class is entitled to compensation and related penalties. Plaintiffs further contend
5 these violations resulted from written policies and related practices commonly
6 applied to all Class Members. See Exhs. 2-3.

- 7 c. **Typicality** – In the instant case, Plaintiffs contend that the typicality requirement
8 is fully satisfied. The Plaintiffs, like every other member of the Class were
9 employed by Defendant and are members of the Class. Plaintiffs were employed
10 as non-exempt employees at various times during the Class Period. Plaintiffs
11 were subject to the same employment practices concerning the calculation of
12 overtime, the provisions meal and rest periods (and application of the walkie-
13 talkie policy), and received similar wage statements. Thus, the claims of the
14 Plaintiffs and the Class Members arise from the same course of conduct by the
15 Defendant, involve the same employment policies, and are based on the same
16 legal theories.
- 17 d. **Adequacy** – Plaintiffs contend that the Class Members are adequately represented
18 here because Plaintiffs and representing counsel (a) do not have any conflicts of
19 interest with other class members, and (b) will prosecute the case vigorously on
20 behalf of the class (See *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
21 1020). These requirements are met here. First Plaintiffs are well aware of their
22 duties as the representatives of the Class and have actively participated in the
23 prosecution of this case to date. They effectively communicated with counsel,
24 provided documents to counsel and participated in discovery, investigation and
25 negotiations in the Action. Second, Plaintiffs retained competent counsel who are
26 experienced in employment class actions. Third, there is no antagonism between
27 the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the
28 Class Members seek monetary relief under the same set of facts and legal theories.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America that the foregoing is true and correct. Executed on this 22nd day of October, 2021,
3 in Stockton, California.

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6 JENNY D. BAYSINGER
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EXHIBIT 1

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19 FAX: (619) 500-0501

20 **SUPERIOR COURT OF CALIFORNIA**
21 **COUNTY OF SAN BERNARDINO**

22 SARAH P. ESPINOZA; an individual, on
23 behalf of herself and on behalf of all persons
24 similarly situated,

25 PLAINTIFF,

26 vs.

27 LOVE'S COUNTRY STORES OF
28 CALIFORNIA; and DOES 1 through 50,
Inclusive;

DEFENDANTS.

Case No. CIV DS 2016481

[Action Filed 10/07/2020]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PAGA ACTION
AND RELEASE OF CLAIMS**

Judge: Honorable David Cohn.
Dept.: S-26

This Stipulation of Class Action Settlement and Release of Claims is entered into by and between Plaintiffs ESTEFANIA RENTERIA and SARAH P. ESPINOZA (hereinafter collectively “Plaintiffs”), individually and on behalf of the Settlement Class, and in their representative capacity on behalf of the State of California and the Aggrieved Employees, and Defendant LOVE’S COUNTRY STORES OF CALIFORNIA, a California Corporation. (hereinafter “Defendants”).

I. DEFINITIONS

- A. “Actions” shall mean the following collectively, *Renteria v. Love’s Country Stores of California*, Kern County Superior Court, Case No. BCV-20-101260, filed May 28, 2020 (hereinafter the “*Renteria* Action”) and *Espinoza v. Love’s Country Stores of California*, San Bernardino Superior Court, Case No. CIV-DS-2016481, filed October 7, 2020 (hereinafter the *Espinoza* Action”).
- B. “Aggrieved Employees” shall mean all non-exempt employees, who are or previously were employed by Defendant in California during the PAGA Period.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
- D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, Robert Wasserman, Esq and Jenny Baysinger, Esq. of Mayall Hurley, PC, and Shani Zakay of Zakay Law Group, APLC.
- E. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiffs and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-third of the Gross Settlement Amount currently estimated to be \$700,000 out of \$2,100,00.00, plus costs and expenses not to exceed \$30,000 and supported

1 by declaration as to the reasonableness of attorney's fees and costs. Class Counsel's
2 award for attorneys' fees will be allocated between Class Counsel as follows: Thirty
3 percent (30%) to the JCL Law Firm, APC; thirty percent (30%) to the Zakay Law
4 Group, APLC; and forty percent (40%) to Mayall Hurley, P.C.
5

6 F. "Class Data" means information regarding Class Members that Defendant will in
7 good faith compile from its records and provide to the Settlement Administrator. It
8 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
9 Member's full name; last known address; Social Security Number; start dates and end
10 dates of employment.
11

12 G. "Class Members" or the "Class" means all persons Defendant classified as non-
13 exempt employees who are or previously were employed by Defendant in California
14 during the Class Period.
15

16 H. "Class Period" means the period from May 15, 2019, through and including May 25,
17 2021.
18

19 I. "Class Representative Service Awards" means the amount that the Court authorizes
20 to be paid to the Class Representatives, in addition to their Individual Settlement
21 Payments and their pro-rata share of the PAGA Settlement, in recognition of their
22 efforts and risks in assisting with the prosecution of the Actions and in exchange for
23 executing a General Release of Defendant and waiver of Civil Code 1542 from the
24 named Plaintiffs. Defendant does not oppose service awards to Plaintiffs in the
25 amount of \$10,000 to each, in exchange for their releases identified above.
26
27
28

1 J. "Class Representatives" shall mean plaintiffs ESTEFANIA RENTERIA and SARAH
2 P. ESPINOZA.

3
4 K. "Court" means the Superior Court for the State of California, County of San
5 Bernardino presiding over the Espinoza Action.

6
7 L. "Defendant" shall mean Love's Country Stores of California, a California
8 Corporation.

9
10 M. "Effective Date" means the earliest date, following entry by the Court of an order and
11 judgment finally approving this Settlement, upon which one of the following have
12 occurred: (i) if no objection is filed to the settlement and no objector appears at the
13 hearing on final approval, the date of the Court's entry of the order granting final
14 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
15 hearing on final approval, then the earlier of the following: (a) the expiration of all
16 potential appeal periods without a filing of a notice of appeal of the final approval
17 order or judgment; (b) final affirmance of the final approval order and judgment by
18 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
19 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
20 the final approval order and judgment is no longer subject to further judicial review.

21
22
23 N. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and
24 is the date Defendant transfers the Gross Settlement Amount into the QSF in accord
25 with the terms of this Agreement.

26
27 O. "Gross Settlement Amount" means Two Million One Hundred Thousand Dollars
28 (\$2,100,000.00) that Defendant must pay into the QSF in connection with this

1 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
2 Representative Service Awards, the Class Counsel Award (inclusive of attorneys'
3 fees and costs), PAGA Settlement and the Settlement Administration Costs and
4 *exclusive* of the employer's share of payroll tax, if any, triggered by any payment
5 under this Settlement.
6

7 P. "Individual Settlement Payment" means the amount payable from the Net Settlement
8 Amount to each Settlement Class Member and excludes any amounts distributed to
9 Aggrieved Employees pursuant to PAGA.
10

11 Q. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class
12 Counsel Award (inclusive of attorneys' fees and costs), Class Representative Service
13 Award, PAGA Settlement, and Settlement Administration Costs.
14

15 R. "Notice Packet" means the Class Notice to be provided to the Class Members by the
16 Settlement Administrator, as approved by the Court, and in substantially the form set
17 forth as Exhibit A to this Agreement (other than formatting changes to facilitate
18 printing by the Settlement Administrator and/or other changes necessitated by the
19 Court).
20

21 S. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
22 Labor Code § 2698 *et seq.*
23

24 T. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
25 for each Aggrieved Employee divided by the sum total of the Workweeks for all
26 Aggrieved Employees during the PAGA Period.
27
28

- 1 U. "PAGA Period" means the period of April 6, 2019, through and including May 25,
2 2021 (the "PAGA Period").
3
- 4 V. "PAGA Settlement" shall mean Eighty Thousand Dollars (\$80,000.00) to be allocated
5 from the Gross Settlement Amount.
6
- 7 W. "Parties" means Plaintiffs and Defendant, collectively, and "Party" shall mean either
8 Plaintiffs or Defendant, individually.
9
- 10 X. "Payment Ratio" means the respective Workweeks for each Class Member divided
11 by the total Workweeks for all Class Members during the Class Period.
12
- 13 Y. "Plaintiffs" shall mean ESTEFANIA RENTERIA and SARAH P. ESPINOZA.
14
- 15 Z. "QSF" means the Qualified Settlement Fund established, designated and maintained
16 by the Settlement Administrator to fund the Total Settlement Amount.
17
- 18 AA. "Released Class Claims" means all class claims alleged in the operative complaint in
19 the Renteria Action and/or Espinoza Action, which occurred during the Class Period,
20 and expressly excluding all other claims, including claims for vested benefits,
21 wrongful termination, unemployment insurance, disability, social security, workers'
22 compensation, and class claims outside the Class Period, and excluding claims arising
23 from allegations of misclassification of employees as exempt.
24
- 25 BB. "Released PAGA Claims" means a release from the Aggrieved Employees of all
26 PAGA claims alleged in the operative complaint and Plaintiffs' PAGA notices to the
27 LWDA in the Renteria Action and/or the Espinoza Action, which occurred during the
28 PAGA period, and expressly excluding all other claims, including claims for vested

benefits, unpaid wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA class claims outside of the PAGA period, and excluding claims arising from allegations of misclassification of employees as exempt.

CC. "Plaintiffs Releases." Plaintiffs Espinoza and Renteria agree to enter into a general release of liability and waiver of Civil Code section 1542 and agree to participate in this settlement and not opt out of the settlement. Plaintiffs Espinoza and Renteria further agree that this settlement fully and finally resolves any and all claims that were pled or could have been pled based on the factual allegations contained in the operative complaint(s) and/or any amendment(s) thereto.

DD. "Released Parties" shall mean Defendant, and its present and former partners, shareholders, members, employees, agents, directors, officers, attorneys, insurers, reinsurers, predecessors, successors, assigns, heirs, executors, administrators, and related entities, and all other persons, firms, corporations, associations, partnerships or entities having any legal relationship to each other.

EE. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Class Members and the last date on which Class Members may submit requests for exclusion or objections to the Settlement.

FF. "Settlement" means the disposition of the Action pursuant to this Agreement.

GG. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue

Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant. *All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payment.*

HH. “Settlement Class Members” or “Settlement Class” means all Class Members who have not submitted a timely and valid request for exclusion as provided in this Agreement.

II. “Workweeks”, for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Class Member worked in California for Defendant, excluding any week of employment during which the Class Member did not perform any work for Defendant. For purpose of determining the Individual Settlement Payments and the Settlement Allocation, each Class Member who is a former employee no longer working for Defendant will be assigned four (4) additional Workweeks.

JJ. “PAGA Workweeks”, for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of weeks of employment during the PAGA Period that each Aggrieved Employee worked in California for Defendant, excluding any week of employment during which the Aggrieved Employee did not perform any work for Defendant. The Settlement Administrator will calculate the number of Workweeks by calculating the number of days each

1 Aggrieved Employee was employed during the PAGA Period, dividing by seven (7),
2 and rounding up to the nearest whole number.

3
4 **II. RECITALS**

5 A. On May 27, 2020, Plaintiff Renteria filed a Notice of Violations with the Labor and
6 Workforce Development Agency (LWDA) and served the same on Defendant.

7
8 B. On May 28, 2020, Plaintiff Renteria filed the Lawsuit for:

9 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;

10
11 2. Failure to pay overtime wages in violation of California Labor Code sections
12 510 *et seq*;

13
14 3. Failure to pay minimum wages in violation of California Labor Code sections
15 1194, 1197 and 1197.1

16
17 4. Failure to provide required meal periods in violation of California Labor Code
18 sections 226.7 and 512 and the applicable IWC wage order;

19
20 5. Failure to provide required rest periods in violation of California Labor Code
21 sections 226.7 and 512 and the applicable IWC wage order;

22
23 6. Failure to provide accurate itemized wage statements in violation of California
24 Labor Code section 226;

25
26 7. Failure to provide wages when due in violation of California Labor Code
27 sections 201, 202 and 203.
28

1 C. On August 3, 2020, Plaintiff Renteria filed the First Amended Complaint (“FAC”)
2 against Defendant adding an eighth cause of action for violations of PAGA.

3
4 D. On July 29, 2020, Plaintiff Espinoza filed a Notice of Violations with the Labor and
5 Workforce Development Agency (LWDA) and served the same on Defendant.

6
7 E. On July 30, 2020, Plaintiff Espinoza filed the Lawsuit for:

- 8 1. Failure to properly calculate and pay overtime;
9
10 2. Failure to provide meal break;
11
12 3. Failure to provide rest breaks;
13
14 4. Failure to pay all wages due at the end of employment;
15
16 5. Failure to furnish accurate itemized wage statements;
17
18 6. Unlawful business practices.

19 F. On October 7, 2020, Plaintiff Espinoza filed the First Amended Complaint (“FAC”)
20 against Defendant adding a seventh cause of action for violations of PAGA.

21 G. On May 25, 2021, the Parties participated in mediation presided over by Steven
22 Rottman, Esq., a well-respected wage and hour class action mediator. The mediation
23 concluded without a settlement. However, following the mediation, each side,
24 represented by its respective counsel, agreed to settle the Action based on a
25 Mediator’s proposal which was memorialized in the form of a Memorandum of
26 Understanding.
27
28

1 H. This Agreement replaces and supersedes the Memorandum of Understanding and any
2 other agreements, understandings, or representations between the Parties. This
3 Agreement represents a compromise and settlement of highly disputed claims.
4 Nothing in this Agreement is intended or will be construed as an admission by
5 Defendant that the claims in the Actions of Plaintiffs or the Class Members have merit
6 or that Defendant bears any liability to Plaintiffs or the Class on those claims or any
7 other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action
8 have merit. The Parties agree to certification for the Class for purposes of this
9 Settlement only. If for any reason the settlement does not become effective,
10 Defendant reserves the right to contest certification of any class for any reason and
11 reserves all available defenses to the claims in the Action.
12

13
14 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:
15

16 **III. TERMS OF AGREEMENT**

17 A. Settlement Consideration and Settlement Payments by Defendant.
18

- 19 1. Settlement Consideration. In full and complete settlement of the Actions, and
20 in exchange for the releases set forth below, Defendant and the Released
21 Parties will pay the sum of the Individual Settlement Payment, the Class
22 Representative Service Awards, the Class Counsel Award, PAGA Settlement,
23 and the Settlement Administration Costs, as specified in this Agreement, equal
24 to the Gross Settlement Amount of Two Million One Hundred Thousand
25 Dollars (\$2,100,000.00). The Parties agree that this is a non-reversionary
26 Settlement and that no portion of the Gross Settlement Amount shall revert to
27 Defendant. Other than the Defendant's share of employer payroll taxes, or as
28

1 otherwise specified in the Agreement, Defendant shall not be required to pay
2 more or less than the Gross Settlement Amount, except as provided for
3 hereinbelow, and specifically in paragraph III.A.2.
4

5 2. Class Size/Escalator. At the time of mediation, Defendant estimated that the
6 Settlement Class was comprised of 1,440 individuals that collectively worked
7 approximately 50,296 Workweeks (“Projected Workweeks”) during the Class
8 Period (additional workweeks allocated to Class Members whose employment
9 ended during the Class Period *shall not be included* in determining total
10 workweeks). In regard hereto, Defendant will provide a declaration under
11 penalty of perjury confirming the number of applicable Class Members and
12 Workweeks they worked during the applicable Class Period. The Settlement
13 Amount will increase proportionally with added class members or workweeks
14 if any of these are more than 10% of the estimate set forth herein. The largest
15 percentage increase will be controlling (i.e. if the workweeks increases by
16 11% and the number of class members increases by 15%, the Gross Settlement
17 Amount will increase by 5%). In the event this provision is triggered, the
18 Gross Settlement Amount will automatically increase accordingly, the Class
19 Counsel Award requested will increase proportionally, the Administration
20 costs will increase as necessary, and all such changes will be incorporated into
21 the Notice Packet without the need for further/additional approval of the
22 Court.
23
24

25
26 3. Settlement Payment. Defendant and the Released Parties, and each of them,
27 are jointly and severally liable for payment of the Gross Settlement Amount.
28

1 Defendant shall pay, via wire transfer, the Gross Settlement Amount to the
2 Settlement Administrator on the Funding Date:

3
4 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
5 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
6 together with the Gross Settlement Amount.

7
8 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
9 consideration set forth in this Agreement, Plaintiffs and the Settlement Class Members
10 release the Released Parties from the Released Class Claims for the Class Period.

11 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
12 consideration set forth in this Agreement, the Plaintiffs, the LWDA and the State of
13 California release the Released Parties from the PAGA Released Claims for the PAGA
14 Period.

15
16 D. General Release by Plaintiffs. As of the Funding Date, for the consideration set forth
17 in this Agreement, Plaintiffs waive, release, acquit and forever discharge the
18 Released Parties from any and all claims, whether known or unknown, which exist or
19 may exist on either Plaintiff's behalf as of the date of this Agreement, including but
20 not limited to any and all tort claims, contract claims, wage claims, wrongful
21 termination claims, disability claims, benefit claims, public policy claims, retaliation
22 claims, statutory claims, personal injury claims, emotional distress claims, invasion
23 of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any
24 and all claims arising under any federal, state or other governmental statute, law,
25 regulation or ordinance, including, but not limited to claims for violation of the Fair
26 Labor Standards Act, the California Labor Code, the Wage Orders of California's
27
28

1 Industrial Welfare Commission, other state wage and hour laws, the Americans with
2 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
3 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the
4 California Fair Employment and Housing Act, the California Family Rights Act, the
5 Family Medical Leave Act, California's Whistleblower Protection Act, California
6 Business & Professions Code Section 17200 et seq., and any and all claims arising
7 under any federal, state or other governmental statute, law, regulation or ordinance.
8 Plaintiffs also waive and relinquish any and all claims, rights or benefits that they
9 may have under California Civil Code § 1542, which provides as follows:
10

11
12 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
13 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
14 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
15 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
16 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
17 ***DEBTOR OR RELEASED PARTY.***
18

19 Thus, notwithstanding the provisions of section 1542, and to implement a full and
20 complete release and discharge of the Released Parties, Plaintiffs expressly
21 acknowledge this Settlement Agreement is intended to include in its effect, without
22 limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at
23 the time of signing this Settlement Agreement, and that this Settlement Agreement
24 contemplates the extinguishment of any such claims. Plaintiffs warrant that Plaintiffs
25 have read this Settlement Agreement, including this waiver of California Civil Code
26 section 1542, and that Plaintiffs have consulted with or had the opportunity to consult
27
28

1 with counsel of Plaintiffs' choosing about this Settlement Agreement and specifically
2 about the waiver of section 1542, and that Plaintiffs understand this Settlement
3 Agreement and the section 1542 waiver, and so Plaintiffs freely and knowingly enter
4 into this Settlement Agreement. Plaintiffs further acknowledge that Plaintiffs later
5 may discover facts different from or in addition to those Plaintiffs now know or
6 believe to be true regarding the matters released or described in this Settlement
7 Agreement, and even so Plaintiffs agree that the releases and agreements contained in
8 this Settlement Agreement shall remain effective in all respects notwithstanding any
9 later discovery of any different or additional facts. Plaintiffs expressly assume any and
10 all risk of any mistake in connection with the true facts involved in the matters,
11 disputes, or controversies released or described in this Settlement Agreement or with
12 regard to any facts now unknown to Plaintiffs relating thereto.
13
14

15 E. Amended Pleading: To facilitate the settlement, and review by the Court, the Parties
16 will stipulate to the filing of a Second Amended Class Action Complaint in the matter
17 of *Espinoza v. Love's Country Store of California*, San Bernardino County Case No.
18 COV DS 2016481 to incorporate the claims and factual allegations asserted in *Renteria*
19 *v. Love's Country Stores of California*, Kern County Case No. BCV-20-101260, as
20 well as add Estefania Renteria as a named plaintiff in the *Espinoza* action. The Second
21 Amended Complaint shall be in the format reflected as **Exhibit B** hereto.
22
23

24 F. Dismissal of the Renteria Action: Upon the Effective Date, and prior to the Funding
25 Date, Class Counsel will take all steps necessary to dismiss the *Renteria* Action with
26 prejudice.
27
28

1 G. Conditions Precedent: This Settlement will become final and effective only upon the
2 occurrence of all of the following events:

- 3
- 4 1. The Court enters an order granting preliminary approval of the Settlement;
- 5
- 6 2. The Court enters an order granting final approval of the Settlement and a Final
7 Judgment;
- 8
- 9 3. If an objector appears at the final approval hearing, the time for appeal of the
10 Final Judgment and Order Granting Final Approval of Class Action
11 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
12 any appeal from the Judgment and Order Granting Final Approval of Class
13 Action Settlement; and
- 14
- 15 4. Defendant fully funds the Gross Settlement Amount.

16 H. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
17 not preliminarily or finally approved by the Court, fails to become effective, or is
18 reversed, withdrawn or modified by the Court:

- 19
- 20 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
21 and shall not be admissible in any judicial, administrative or arbitral
22 proceeding for any purpose or with respect to any issue, substantive or
23 procedural;
- 24
- 25 2. The conditional class certification (obtained for any purpose) shall be void *ab*
26 *initio* and of no force or effect, and shall not be admissible in any judicial,
27

1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and

3
4 3. None of the Parties to this Settlement will be deemed to have waived any
5 claims, objections, defenses or arguments in the Action, including with respect
6 to the issue of class certification.

7
8 4. Defendant shall bear the sole responsibility for any cost to issue or reissue any
9 curative notice to the Settlement Class Members and all Settlement
10 Administration Costs incurred to the date of nullification.

11
12 I. Certification of the Settlement Class. The Parties stipulate to conditional class
13 certification of the Class for the Class Period for purposes of settlement only. In the
14 event that this Settlement is not approved by the Court, fails to become effective, or is
15 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
16 Defendant from obtaining a complete resolution of the Released Claims, the
17 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
18 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
19 proceeding for any purpose or with respect to any issue, substantive or procedural.
20

21 J. Tax Liability. The Parties make no representations as to the tax treatment or legal
22 effect of the payments called for, and Class Members and/or Aggrieved Employees are
23 not relying on any statement or representation by the Parties in this regard. Class
24 Members and/or Aggrieved Employees understand and agree that they will be
25 responsible for the payment of any taxes and penalties assessed on the Individual
26 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
27
28

1 Settlement described and will be solely responsible for any penalties or other
2 obligations resulting from their personal tax reporting of Individual Settlement
3 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.
4

5 K. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
6 the "acknowledging party" and each Party to this Agreement other than the
7 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
8 of this Agreement, and no written communication or disclosure between or among the
9 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
10 such communication or disclosure constitute or be construed or be relied upon as, tax
11 advice within the meaning of United States Treasury Department circular 230 (31 CFR
12 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
13 her or its own, independent legal and tax counsel for advice (including tax advice) in
14 connection with this Agreement, (b) has not entered into this Agreement based upon
15 the recommendation of any other Party or any attorney or advisor to any other Party,
16 and (c) is not entitled to rely upon any communication or disclosure by any attorney
17 or adviser to any other party to avoid any tax penalty that may be imposed on the
18 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
19 any limitation that protects the confidentiality of any such attorney's or adviser's tax
20 strategies (regardless of whether such limitation is legally binding) upon disclosure by
21 the acknowledging party of the tax treatment or tax structure of any transaction,
22 including any transaction contemplated by this Agreement.
23
24
25
26
27
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1 L. Preliminary Approval Motion. At the earliest practicable time, Plaintiffs shall file with
2 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
3 which shall include this Settlement Agreement.

4
5 M. Settlement Administrator. The Settlement Administrator shall be responsible for:
6 establishing and administering the QSF; calculating, processing and mailing payments
7 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
8 mailing the Notice Packets to the Class Members as directed by the Court; receiving
9 and reporting the objections and requests for exclusion; calculating, deducting and
10 remitting all legally required taxes from Individual Settlement Payments and
11 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
12 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
13 Settlement; processing and mailing tax payments to the appropriate state and federal
14 taxing authorities; providing declaration(s) as necessary in support of preliminary
15 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
16 or the Court orders the Settlement Administrator to perform. The Settlement
17 Administrator shall keep the Parties timely apprised of the performance of all
18 Settlement Administrator responsibilities by among other things, sending a weekly
19 status report to the Parties' counsel stating the date of the mailing, the of number of
20 Elections Not to Participate in Settlement it receives (including the numbers of valid
21 and deficient), and number of objections received.

22
23
24
25 N. Notice Procedure.

26
27 1. Class Data. No later than ten (10) business days after the Preliminary
28 Approval Date, Defendant shall provide the Settlement Administrator with the

1 Class Data for purposes of preparing and mailing Notice Packets to the Class
2 Members.

3
4 2. Notice Packets.

- 5 a) The Notice Packet shall contain the Notice of Class Action Settlement
6 in a form substantially similar to the form attached as Exhibit A. The
7 Notice of Class Action Settlement shall inform Class Members and
8 Aggrieved Employees that they need not do anything in order to
9 receive an Individual Settlement Payment and/or Aggrieved
10 Employees' individual shares of the PAGA Settlement and to keep the
11 Settlement Administrator apprised of their current mailing address, to
12 which the Individual Settlement Payments and/or Aggrieved
13 Employees' individual shares of the PAGA Settlement will be mailed
14 following the Funding Date. The Notice of Class Action Settlement
15 shall set forth the release to be given by all members of the Class who
16 do not request to be excluded from the Settlement Class and/or
17 Aggrieved Employees' in exchange for an Individual Settlement
18 Payment and/or Aggrieved Employees' individual shares of the PAGA
19 Settlement, the number of Workweeks worked by each Class Member
20 during the Class Period and PAGA Period, if any, and the estimated
21 amount of their Individual Settlement Payment if they do not request
22 to be excluded from the Settlement and each Aggrieved Employee's
23 share of the PAGA Settlement, if any. The Settlement Administrator
24
25
26
27
28

1 shall use the Class Data to determine Class Members' Workweeks and
2 PAGA Workweeks.

3
4 b) The Notice Packet's mailing envelope shall include the following
5 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
6 ENTITLED TO PARTICIPATE IN A CLASS ACTION
7 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
8 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
9 NOTICE."
10

11 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
12 the Settlement Administrator will perform a search based on the National
13 Change of Address Database to update and correct any known or identifiable
14 address changes. No later than fourteen (14) calendar days after receiving the
15 Class Data from Defendant, the Settlement Administrator shall mail and email
16 copies of the Notice Packet to all Class Members via regular First-Class U.S.
17 Mail and electronic mail. The Settlement Administrator shall exercise its best
18 judgment to determine the current mailing address for each Class Member.
19 The address identified by the Settlement Administrator as the current mailing
20 address shall be presumed to be the best mailing address for each Class
21 Member.
22

23
24 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
25 Administrator as non-delivered on or before the Response Deadline shall be
26 re-mailed to any forwarding address provided. If no forwarding address is
27 provided, the Settlement Administrator shall promptly attempt to determine a
28

1 correct address by lawful use of skip-tracing, or other search using the name,
2 address and/or Social Security number of the Class Member involved, and
3 shall then perform a re-mailing, if another mailing address is identified by the
4 Settlement Administrator. In addition, if any Notice Packets, which are
5 addressed to Class Members who are currently employed by Defendant, are
6 returned to the Settlement Administrator as non-delivered and no forwarding
7 address is provided, the Settlement Administrator shall notify Defendant.
8 Defendant will request that the currently employed Class Member provide a
9 corrected address, and transmit to the Administrator any corrected address
10 provided by the Class Member. Class Members who received a re-mailed
11 Notice Packet shall have their Response Deadline extended fifteen (15) days
12 from the original Response Deadline.
13
14

- 15 5. Disputes Regarding Individual Settlement Payments. Class Members will
16 have the opportunity, should they disagree with Defendant's records regarding
17 the start and end dates of employment to provide documentation and/or an
18 explanation to show contrary dates. If there is a dispute, the Settlement
19 Administrator will consult with the Parties to determine whether an
20 adjustment is warranted. The Settlement Administrator shall determine the
21 eligibility for, and the amounts of, any Individual Settlement Payments under
22 the terms of this Agreement. The Settlement Administrator's determination
23 of the eligibility for and amount of any Individual Settlement Payment shall
24 be binding upon the Class Member and the Parties.
25
26
27
28

1 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
2 by the Settlement Administrator concerning the administration of the
3 Settlement will be resolved by the Court under the laws of the State of
4 California. Before any such involvement of the Court, counsel for the Parties
5 will confer in good faith to resolve the disputes without the necessity of
6 involving the Court.
7

8 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
9 Packet shall state that Class Members who wish to exclude themselves from
10 the Settlement must submit a written request for exclusion by the Response
11 Deadline. The written request for exclusion must state that the Class Member
12 wishes to exclude himself or herself from the Settlement and (1) must contain
13 the name, address, and the last four digits of the Social Security number of the
14 person requesting exclusion; (2) must be signed by the Class Member;
15 (3) must be postmarked or fax stamped by the Response Deadline and
16 returned to the Settlement Administrator at the specified address or fax
17 telephone number; and (4) contain a typewritten or handwritten notice stating
18 in substance: "I wish to opt out of the settlement of the class action lawsuit
19 entitled *Espinoza v. Love's Country Stores of California*, currently pending
20 the San Bernardino Superior Court, Case No. CIV-DS-2016481. I understand
21 that by requesting to be excluded from the settlement, I will receive no money
22 from the Settlement described in this Notice." The request for exclusion will
23 not be valid if it is not timely submitted, if it is not signed by the Class
24 Member, or if it does not contain the name and address and last four digits of
25 the Social Security number of the Class Member. The date of the postmark
26
27
28

1 on the mailing envelope or fax stamp on the request for exclusion shall be the
2 exclusive means used to determine whether the request for exclusion was
3 timely submitted. Any Class Member who requests to be excluded from the
4 Settlement Class will not be entitled to an Individual Settlement Payment and
5 will not be otherwise bound by the terms of the Settlement or have any right
6 to object, appeal or comment thereon. However, any Class Member that
7 submits a timely request for exclusion that is also a member of the Aggrieved
8 Employees will still receive their pro rata share of the PAGA Settlement, as
9 specified below, and in consideration, will be bound by the Release by the
10 Aggrieved Employees as set forth herein. Settlement Class Members who fail
11 to submit a valid and timely written request for exclusion on or before the
12 Response Deadline shall be bound by all terms of the Settlement and any final
13 judgment entered in this Action if the Settlement is approved by the Court.
14 No later than fourteen (14) calendar days after the Response Deadline, the
15 Settlement Administrator shall provide counsel for the Parties with a final list
16 of the Class Members who have timely submitted written requests for
17 exclusion. At no time shall any of the Parties or their counsel seek to solicit
18 or otherwise encourage members of the Class to submit requests for exclusion
19 from the Settlement.
20
21
22

- 23 8. Objections. The Notice of Class Action Settlement contained in the Notice
24 Packet shall state that Class Members who wish to object to the Settlement
25 may submit to the Settlement Administrator a written statement of objection
26 (“Notice of Objection”) by the Response Deadline. The postmark date of
27 mailing shall be deemed the exclusive means for determining that a Notice of
28

1 Objection was served timely. The Notice of Objection must be signed by the
2 Settlement Class Member and state: (1) the case name and number; (2) the
3 name of the Settlement Class Member; (3) the address of the Settlement Class
4 Member; (4) the last four digits of the Settlement Class Member's Social
5 Security number; (4) the basis for the objection; and (5) if the Settlement Class
6 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
7 Class Members who fail to make objections in writing in the manner specified
8 above may still make their objections orally at the Final Approval/Settlement
9 Fairness Hearing with the Court's permission. Settlement Class Members will
10 have a right to appear at the Final Approval/Settlement Fairness Hearing to
11 have their objections heard by the Court. At no time shall any of the Parties
12 or their counsel seek to solicit or otherwise encourage Class Members to file
13 or serve written objections to the Settlement or appeal from the Order and
14 Final Judgment. Class Members who submit a written request for exclusion
15 may not object to the Settlement. Class Members may not object to the PAGA
16 Settlement.
17
18
19

20 O. Funding and Allocation of the Gross Settlement Amount. Defendant is required to pay
21 the Gross Settlement Amount on or before the Funding Date, plus any employer's
22 share of payroll taxes as mandated by law within the time specified herein.
23

24 1. Individual Settlement Payments. Individual Settlement Payments shall be
25 paid from the Net Settlement Amount and shall be paid pursuant to the
26 formula set forth herein. Using the Class Data, the Settlement Administrator
27 shall add up the total number of Workweeks for all Class Members. The
28

1 respective Workweeks for each Class Member will be divided by the total
2 Workweeks for all Class Members, resulting in the Payment Ratio for each
3 Class Member. Each Class Member's Payment Ratio will then be multiplied
4 by the Net Settlement Amount to calculate each Class Member's estimated
5 Individual Settlement Payments. Each Individual Settlement Payment will be
6 reduced by any legally mandated employee tax withholdings (e.g., employee
7 payroll taxes, etc.). Individual Settlement Payments for Class Members who
8 submit valid and timely requests for exclusion will be redistributed to
9 Settlement Class Members who do not submit valid and timely requests for
10 exclusion on a pro rata basis based on their respective Payment Ratios.

11
12
13 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
14 Class Data, the Settlement Administrator shall add up the total number of
15 PAGA Workweeks for all Aggrieved Employees during the PAGA Period.
16 The respective PAGA Workweeks for each Aggrieved Employee will be
17 divided by the total PAGA Workweeks for all Aggrieved Employees,
18 resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
19 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
20 Aggrieved Employee Payment to calculate each Aggrieved Employee's
21 estimated share of the PAGA Settlement.
22

23
24 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
25 Settlement Payments shall be allocated and treated as follows: 25% as wages
26 ("Wage Portion"); 75% as penalties and interest ("Non-Wage Portion"). The
27 Wage Portion is subject to wage withholdings and shall be reported on IRS
28

1 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
2 and shall be reported on IRS Form 1099.

3
4 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
5 Employee Settlement Payments shall be allocated and treated as 100%
6 penalties and shall be reported on IRS Form 1099.

7
8 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
9 individual shares of the PAGA Settlement made to Settlement Class Members
10 and/or Aggrieved Employees under this Settlement Agreement, as well as any
11 other payments made pursuant to this Settlement Agreement, will not be
12 utilized to calculate any additional benefits under any benefit plans to which
13 any Class Members may be eligible, including, but not limited to profit-
14 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
15 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
16 Parties' intention that this Settlement Agreement will not affect any rights,
17 contributions, or amounts to which any Class Members may be entitled under
18 any benefit plans.

19
20
21 6. All monies received by Settlement Class Members under the Settlement which
22 are attributable to wages shall constitute income to such Settlement Class
23 Members solely in the year in which such monies actually are received by the
24 Settlement Class Members. It is the intent of the Parties that Individual
25 Settlement Payments and individual shares of the PAGA Settlement provided
26 for in this Settlement agreement are the sole payments to be made by Defendant
27 to Settlement Class Members and/or Aggrieved Employees in connection with
28

1 this Settlement Agreement, with the exception of Plaintiffs, and that the
2 Settlement Class Members and/or Aggrieved Employees are not entitled to any
3 new or additional compensation or benefits as a result of having received the
4 Individual Settlement Payments and/or their shares of the PAGA Settlement.
5

6 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
7 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
8 and/or Aggrieved Employees last known mailing address no later than fifteen
9 (15) calendar days after the Funding Date.
10

11 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
12 Employees shall remain valid and negotiable for one hundred and eighty (180)
13 days from the date of their issuance. If a Settlement Class Member and/or
14 Aggrieved Employee does not cash his or her settlement check within 90 days,
15 the Settlement Administrator will send a letter to such persons, advising that
16 the check will expire after the 180th day, and invite that Settlement Class
17 Member and/or Aggrieved Employee to request reissuance in the event the
18 check was destroyed, lost or misplaced. In the event an Individual Settlement
19 Payment and/or Aggrieved Employee's individual share of the PAGA
20 Settlement check has not been cashed within one hundred and eighty (180)
21 days, all funds represented by such uncashed checks, plus any interest accrued
22 thereon, shall be distributed consistent with California Code of Civil
23 Procedure Section 384 as follows: to The Children's Advocacy Institute
24 (CAI), founded at the nonprofit University of San Diego School of Law in
25
26
27
28

1 1989. Class Counsel, Defendant's counsel, Plaintiffs and Defendant do not
2 have any interest, pecuniary or otherwise, in CAI.

3
4 9. Class Representative Service Award. In addition to the Individual Settlement
5 Payment and their individual share of the PAGA Settlement to be paid to
6 Plaintiffs, Plaintiffs will apply to the Court for an award of not more than
7 \$10,000 each, as the Class Representative Service Award. Defendant does
8 not presently intend to oppose a Class Representative Service Award of not
9 more than \$10,000 for each Plaintiff. In the event the Court reduces or does
10 not approve of the requested Service Award payments, Plaintiffs shall not
11 have the right to revoke the settlement and it will remain binding. Plaintiffs
12 each retain the right to appeal any denial of a requested Service Award. The
13 Settlement Administrator shall pay the Class Representative Service Award,
14 either in the amount stated herein if approved by the Court or some other
15 amount as approved by the Court, to Plaintiffs from the Total Settlement
16 Amount no later than ten (10) calendar days after the Funding Date. Any
17 portion of the requested Class Representative Service Awards that are not
18 awarded to the Class Representatives shall be part of the Net Settlement
19 Amount and shall be distributed to Settlement Class Members as provided in
20 this Agreement. The Settlement Administrator shall issue an IRS Form 1099
21 — MISC to Plaintiffs for their Class Representative Service Award. Plaintiffs
22 shall be solely and legally responsible to pay any and all applicable taxes on
23 their Class Representative Service Award and shall hold harmless the
24 Released Parties from any claim or liability for taxes, penalties, or interest
25 arising as a result of the Class Representative Service Awards. The Class
26
27
28

1 Representative Service Award shall be in addition to Plaintiffs' Individual
2 Settlement Payment as a Settlement Class Member. Approval of this
3 Settlement shall not be conditioned on Court approval of the requested amount
4 of the Class Representative Service Award. In the event that the Court reduces
5 or does not approve the requested Class Representative Service Award,
6 Plaintiffs shall not have the right to revoke the Settlement, and it will remain
7 binding.
8

- 9
10 10. Class Counsel Award. Defendant understands a motion by Class Counsel for
11 attorneys' fees not to exceed one-third of the Total Settlement Amount
12 currently estimated to be \$700,000.00 plus costs and expenses supported by
13 declaration not to exceed Dollars (\$30,000), from the Total Settlement
14 Amount will be filed. Any portion of the requested Class Counsel Award that
15 is not awarded to Class Counsel shall be part of the Net Settlement Amount
16 and shall be distributed to Settlement Class Members as provided in this
17 Agreement. The Settlement Administrator shall allocate and pay the Class
18 Counsel Award to Class Counsel from the Total Settlement Amount no later
19 than five (5) calendar days after the Funding Date. Class Counsel shall be
20 solely and legally responsible to pay all applicable taxes on the payment made
21 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
22 Form 1099 — MISC to Class Counsel for the payments made pursuant to this
23 paragraph. In the event the Court reduces or does not approve of the requested
24 Class Counsel Award payments, Class Counsel shall not have the right to
25 revoke the settlement and it will remain binding. Class Counsel each retain
26
27
28

1 the right to appeal any denial of any portion of a request for a Class Counsel
2 Award.

3
4 11. PAGA Settlement. Eighty Thousand Dollars (\$80,000) shall be allocated
5 from the Gross Settlement Amount for settlement of claims for civil penalties
6 under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
7 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
8 Settlement (\$60,000) to the California Labor and Workforce Development
9 Agency no later than twenty-five (25) calendar days after the Funding Date
10 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement
11 (\$20,000) will be distributed to the Aggrieved Employees as described in this
12 Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of
13 distributing the PAGA Settlement to the Aggrieved Employees, each
14 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
15 Employee Payment using the PAGA Payment Ratio as defined above.
16

17
18 12. Settlement Administration Costs. The Settlement Administrator shall be paid
19 for the costs of administration of the Settlement from the Total Settlement
20 Amount. The estimate of the Settlement Administration Costs is \$18,000.
21 The Settlement Administrator shall be paid the Settlement Administration
22 Costs no later than twenty-five (25) calendar days after the Funding Date.
23

24 P. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to file with
25 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
26 twenty-eight (28) days following the expiration of the Response Deadline, which
27 motion shall request final approval of the Settlement and a determination of the
28

1 amounts payable for the Class Representative Service Award, the Class Counsel
2 Award, the PAGA Settlement, and the Settlement Administration Costs.

3
4 1. Declaration by Settlement Administrator. No later than fourteen (14) days
5 after the Response Deadline, the Settlement Administrator shall submit a
6 declaration in support of Plaintiffs' motion for final approval of this
7 Settlement detailing the number of Notice Packets mailed and re-mailed to
8 Class Members, the number of undeliverable Notice Packets, the number of
9 timely requests for exclusion, the number of objections received, the amount
10 of the average Individual Settlement Payment and highest Individual
11 Settlement Payment, the Settlement Administration Costs, and any other
12 information as the Parties mutually agree or the Court orders the Settlement
13 Administrator to provide.
14

15
16 2. Final Approval Order and Judgment. Class Counsel shall present an Order
17 Granting Final Approval of Class Action Settlement to the Court for its
18 approval, and Judgment thereon, at the time Class Counsel files the Motion
19 for Final Approval.
20

21 N. Cooperation. The Parties and their counsel will cooperate with each other and use
22 their best efforts to implement the Settlement.
23

24 O. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
25 except such proceedings necessary to implement and complete the Settlement, pending
26 the Final Approval/Settlement Fairness Hearing to be conducted by the Court
27
28

1 P. Amendment or Modification. This Agreement may be amended or modified only by
2 a written instrument signed by counsel for all Parties or their successors-in-interest,
3 and ultimately approved by the Court.

4
5 Q. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
6 Agreement among these Parties, and no oral or written representations, warranties or
7 inducements have been made to any Party concerning this Agreement or its Exhibit
8 other than the representations, warranties and covenants contained and memorialized
9 in this Agreement and its Exhibit.

10
11 R. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate
13 this Agreement and to take all appropriate Action required or permitted to be taken by
14 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
15 documents required to effectuate the terms of this Agreement. The persons signing
16 this Agreement on behalf of Defendant represents and warrants that he/she is
17 authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and
18 warrant that they are authorized to sign this Agreement and that they have not assigned
19 any claim, or part of a claim, covered by this Settlement to a third-party.

20
21
22 S. No Public Comment: The Parties and their counsel agree that they will not issue any
23 press releases, initiate any contact with the press, respond to any press inquiry, or have
24 any communication with the press about the fact, amount or terms of the Settlement
25 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
26 of its terms for any marketing or promotional purposes. Nothing herein will restrict
27 Class Counsel from including publicly available information regarding this settlement
28

1 in future judicial submissions regarding Class Counsel's qualifications and experience.
2 Further, Class Counsel will not include, reference or use the Settlement Agreement for
3 any marketing or promotional purposes, or for attempting to influence business
4 relationships at Saver's locations, either before or after the Motion for Preliminary
5 Approval is filed.
6

7 T. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
8 to the benefit of, the successors or assigns of the Parties, as previously defined.
9

10 U. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
11 shall be governed by and interpreted according to the laws of the State of California.
12

13 V. Counterparts. This Agreement may be executed in one or more counterparts. All
14 executed counterparts and each of them shall be deemed to be one and the same
15 instrument provided that counsel for the Parties to this Agreement shall exchange
16 among themselves copies or originals of the signed counterparts.
17

18 W. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
19 is a fair, adequate and reasonable settlement of this Action and have arrived at this
20 Settlement after extensive arms-length negotiations, taking into account all relevant
21 factors, present and potential.
22

23 X. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
24 respect to the interpretation, implementation and enforcement of the terms of this
25 Agreement and all orders and judgments entered in connection therewith, and the
26 Parties and their counsel submit to the jurisdiction of the Court for purposes of
27
28

1 interpreting, implementing and enforcing the settlement and all orders and judgments
2 entered in connection with this Agreement.

3
4 Y. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
5 the Court shall first attempt to construe the provisions valid to the fullest extent
6 possible consistent with applicable precedents so as to define all provisions of this
7 Agreement valid and enforceable.

8
9 Z. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not currently
10 intend to pursue any claims against the Released Parties, including, but not limited to,
11 any and all claims relating to or arising from Plaintiffs' employment with Defendant,
12 regardless of whether Class Counsel is currently aware of any facts or legal theories
13 upon which any claims or causes of action could be brought against Released Parties,
14 including those facts or legal theories alleged in the operative complaint in this Action.
15 The Parties further acknowledge, understand and agree that this representation is
16 essential to the Agreement and that this Agreement would not have been entered into
17 were it not for this representation.
18

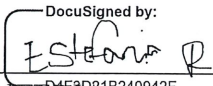
19
20 AA. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
21 certification for purposes of this settlement only.

22
23 BB. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
24 Released Claims have merit and give rise to liability on the part of Defendant.
25 Defendant claims that the Released Claims have no merit and do not give rise to
26 liability. This Agreement is a compromise of disputed claims. Nothing contained in
27 this Agreement and no documents referred to and no action taken to carry out this
28

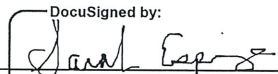
Agreement may be construed or used as an admission by or against the Defendant or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

DATED: 9/21/2021

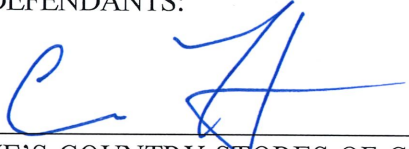
DocuSigned by:

 ESTEFANIA RENTERIA
D4F9D21B240942F...

DATED: 9/20/2021

DocuSigned by:

 SARAH ESPINOZA
1B94...

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: 10/20/21


 LOVE'S COUNTRY STORES OF CALIFORNIA, A
 CALIFORNIA CORPORATION

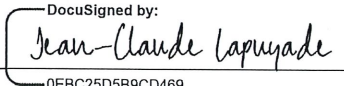
CHRIS FUNK
 Printed Name

MANAGER OF CLAIMS
 Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 9/20/2021

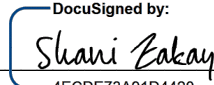
JCL LAW FIRM, A.P.C.

By: 
0EBC25D5B9CD469...

Attorneys for Plaintiffs and the Settlement Class
 Members

1
2
3 DATED: 9/20/2021
4 _____

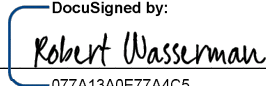
ZAKAY LAW GROUP, APLC

5 By: 
6 DocuSigned by:
7 4ECDE73A91D4420...

8 Attorneys for Plaintiffs and the Settlement Class
9 Members

10 DATED: 9/20/2021
11 _____

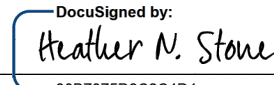
Mayall Hurley, PC

12 By: 
13 DocuSigned by:
14 077A13A0E77A4C5...

15 Attorneys for Plaintiffs and the Settlement Class
16 Members

17 DATED: 9/23/2021
18 _____

HEATHER N. STONE
DINSMORE & SCHOHL LLP

19 By: 
20 DocuSigned by:
21 30B7075D2C2C4D4...

Attorneys for Defendants

22 4828-2706-0977, v. 1
23
24
25
26
27
28

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Espinoza v. Love's country Stores of California, Case No. CIVDS2016481)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of this lawsuit pending in the Superior Court for the State of California, County of San Bernardino (the "Court") has been reached between Plaintiffs Estefania Renteria and Sarah P. Espinoza ("Plaintiffs") and Defendant Love's Country Stores of California ("Defendant"). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All persons Defendant classified as non-exempt employees who are or previously were employed by Defendant in California during the period of May 15, 2019 to May 25, 2021.

The "Class Period" is the period of time running from May 15, 2019, to May 25, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On May 28, 2020, Plaintiff Renteria filed a Complaint against Defendant in the Superior Court of the State of California, County of San Kern case number BCV-20-101260 (the “Kern County Action”). Plaintiff asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (c) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203. On August 3, 2020, Plaintiff Renteria filed a First Amended Complaint to include a Violation of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]

On July 30, 2020, Plaintiff Espinoza filed the Lawsuit for: (a) Failure to properly calculate and pay overtime; (b) Failure to provide meal break; (c) Failure to provide rest breaks; (d) Failure to pay all wages due at the end of employment; (e) Failure to furnish accurate itemized wage statements; (f) Unlawful business practices in this case, Superior Court of California, County of San Bernardino case number CIV-DS-2016481. On October 7, 2020, Plaintiff Espinoza filed the First Amended Complaint (“FAC”) against Defendant adding a seventh cause of action for violation of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]

Defendant denies and disputes all claims asserted in the Renteria Action and the Espinoza Action. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed.

On May 25, 2021, the Parties participated in an all-day mediation with Steven Rottman, Esq., an experienced mediator of wage and hour class actions. At the conclusion of the full-day mediation, the Parties failed to reach an agreement. However, following the mediation, each side, represented by its respective counsel, agreed to settle the Action based on a Mediator’s proposal. To facilitate the Settlement, a Second Amended Complaint has been filed in the case initiated by Plaintiff Espinoza and pending in the Superior Court of California, County of San Bernardino. This Second Amended Complaint adds Plaintiff Estefania Renteria and consolidates/incorporates the claims that were concurrently pending in the Kern County Action into the instant case. The San Bernardino County Superior Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of JCL Law Firm, APC, Zakay Law Group, APC, and Mayall Hurley P.C. to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Two Million One Hundred Thousand Dollars (\$2,100,000) (the “Gross Settlement Amount” or “GSA”) to fund the settlement. The GSA includes the payment of all Settlement Payments to participating Settlement Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Costs, the PAGA Settlement, and the Class Representative Service Awards to the Plaintiffs.

After the Judgment becomes Final, Defendant will pay the GSA by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the GSA, which will be subject to final Court approval, and which will be deducted from the GSA before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, ILYM Group, Inc., estimated not to exceed \$16,763.60, for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the GSA (currently \$700,000) and a Class Counsel Litigation Expenses Payment of not more than \$30,000 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Awards. Class Representative Service Awards of up to Ten Thousand Dollars (\$10,000.00) to each Plaintiff, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Payment. A payment of \$80,000 relating to Plaintiffs' claim under the Private Attorneys General Act ("PAGA"), \$60,000 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$20,000 will be distributed to Aggrieved Employees in proportional shares based on the number of workweeks worked between April 6, 2019 and May 25, 2021 (the "PAGA Period").
- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Class Counsel Award (including fees and costs), the Class Representative Service Award, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Class Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Class Settlement Amount by the total number of Workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's Workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek. Settlement Class Members whose employment with Defendant ended during the Class Period will be credited with an additional four (4) Workweeks in order to compensate for the potential additional claim for waiting time penalties those individuals may have.
- Calculation of PAGA Penalties Payments to Aggrieved Employees. The Net PAGA Amount shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out of the Settlement. The Net PAGA Amount will be divided by the total number of Workweeks worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of Workweeks worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employees" means all non-exempt employees who are or previously were employed by Defendant in California during the period of April 6, 2019 to May 25, 2021.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. One-Fourth of each Individual Settlement Payment is allocated to wages. Taxes will withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Three-Fourths of each Individual Settlement Payment is allocated to interest, penalties and other non-wage payments, no taxes will be withheld, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the Aggrieved Employee Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiffs and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims are defined as all class claims alleged in the operative complaint in the Renteria Action (Kern County Action) and/or Espinoza Action, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside the Class Period, and excluding claims arising from allegations of misclassification of employees as exempt..

Released PAGA Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiffs, the LWDA, and all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement. "Released PAGA Claims" are defined as all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notices to the LWDA in the Renteria Action and/or the Espinoza Action, which occurred during the PAGA period, and expressly excluding all other claims, including claims for vested benefits, unpaid wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA class claims outside of the PAGA period, and excluding claims arising from allegations of misclassification of employees as exempt.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant involved any of the Released Class Claims. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have <<____>> Workweeks worked during the Class Period (May 15, 2019, to May 25, 2021).

Based on this information, your estimated Individual Settlement Payment is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must

notify the Settlement Administrator. The Settlement Administrator is: ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin, CA 92780. (888) 250-6810.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Espinoza v. Love's Country Stores of California, San Bernardino Superior Court, Case No. CIV-DS-2016481*." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the releases described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which are *Espinoza v. Love's Country Stores of California, San Bernardino Superior Court, Case No. CIV-DS-2016481*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 826-6975
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com
Website : www.jcl-lawfirm.com

Counsel for Defendant:

Caroline Massey
Dinsmore & Schohl, LLP.
6555 West Broadway, Suite 800
San Diego, CA 92101
(619) 400-0500
Fax : (619) 400-0501
E-Mail: caroline.massey@dinsmore.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 892-7095
Email: shani@zakaylaw.com
Website: www.zakaylaw.com

Class Counsel:

Robert J. Wasserman, Esq.
Jenny D. Baysinger, Esq.
Mayall Hurley, P.C.
2453 Grand Canal Blvd.
Stockton, CA 95207
Tel: (209) 477-3833
Email: rwasserman@mayallaw.com
jbaysinger@mayallaw.com
Website: www.mayallaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the San Bernardino County Superior Court, located at 247 West 3rd St., San Bernardino, CA 92415 in Department S-26 before Judge David Cohn. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Espinoza v. Love's Country Stores of California, San Bernardino Superior Court, Case No. CIV-DS-2016481*, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 3990 Old Town Ave., Suite C204, San Diego, CA 92110.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Settlement Class Members who cashed his or her Individual Settlement Payment check using the same workweek formula

used for distribution of the Net Settlement Amount. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

via mobile or other remote devices such as the Company intranet. While such work from remote devices outside of normal working hours should rarely be required of an employee as part of their job duties, hourly employees are required to accurately report all time worked, regardless of when or where the work is performed. Upon completion of the work week, each Employee is responsible for verifying his/her own hours worked and signing the payroll signature sheet verifying accuracy.

Any violations or deviations from these procedures should be reported to the Human Resources Department.

Payroll Options

Love's does not offer options for payroll to be received by check or cash payment. The options and advantages for each option are;

- Direct deposit into an account of the employee's choice
- Skylight Pay Card

Additional information about the payroll options can be accessed on TheWave.

Bonus Programs

Employees must be active during time of payout to be considered eligible for payout on all bonus programs. (The Company reserves the right to revise or end any bonus plan at any time with or without notice.)

Golden Hearts

We want to catch you doing something good! Golden Hearts is Love's way of making sure hourly team members know that their great work is appreciated. We award you points for going above and beyond for our customers.

The points issued in this program are deposited into an individual online account. These points have no monetary value, but can be used to order items with a monetary value. Any items purchased with Golden Heart points will be subject to legally required taxes and withholdings. Additionally, any points unused at the time of separation from employment will expire after 60 days from the day of separation.

If you take care of your customers, we'll take care of you. Ask your manager for information on accessing your Golden Hearts account.

Love's is proud to offer many programs to our employees:

- **On-the-spot:** When someone like your District Manager or Divisional Director catches you going above and beyond you could be rewarded with an On-the-Spot award. These awards are earned when we see great behaviors that support Love's Customer Commitments.
- **Store team members** have the opportunity to earn a total quarterly bonus of 1500 points:
 - 500 points awarded if shower turn times average 10 minutes or less throughout the quarter.
 - 500 points awarded if greetings are achieved 80% of the time or more throughout the quarter.
 - 500 points awarded if there is acknowledgment on the sales floor 80% or more throughout the quarter.
- **Restaurant team members** have the opportunity to earn a total quarterly bonus of 1500 points if the concept's speed of service goals are being met 80% of the time or more throughout the quarter.
- **Tire Care team members** have the opportunity to earn a total quarterly bonus of 1500 points if if the time to depart goal is met 80% of the time or more throughout the quarter.

****Qualifying employees will have worked at the location that achieved the bonus for the entire quarter and must be employed at the time of payout.***

- **CBT Points:** Employees who watch the Golden Hearts computer based training are eligible for 100 Golden Heart points upon completion of the CBT.
- **Tire Care Safety bonus:** Tire Care employees*

will have the opportunity to earn a quarterly bonus of 500 points if the shop meets safe driving requirements for the entire quarter. Eligible employees must have completed the “Defensive Driving” CBT modules 1-5 and the “Tire Care Pre-Trip Inspection” CBT completed to receive this bonus.

- **Safety award (Country Stores only):** Every year each Country Store goes through in-depth safety inspection to ensure our locations are safe, clean and well maintained. If your Country Store receives less than 10 recommendations during the audit you could be awarded Golden Hearts points. After the inspection the points will be processed as a bonus to your pay if you qualify. Additional points will be awarded at the end of the year to the employees of the store that improves the fastest after the audit.
- **Children’s Miracle Networking Campaign (CMNH):** As an added incentive for our employees* to help raise funds for CMN hospitals, Golden Heart points are awarded base on the dollar amount raised. This is our way of saying “thank you!” for your dedication to a cause close to our hearts.

Referral and Training Bonus Programs

Policy

The following bonus programs are designed to encourage employee participation in building outstanding teams for Love’s. Employees are encouraged to contribute to the ongoing growth of Love’s through employee referrals, development and training. The Company will pay the applicable bonus to employees who qualify, as defined by the eligibility for each specific program and location detailed below. Please carefully read the following eligibility requirements.

NOTE: All bonuses are gross amounts and are subject to all legally required payroll deductions and withholding, including but not limited to income taxes.

General Eligibility Requirements For Referral Bonuses

Only Love’s employees are eligible to earn a Referral Bonus; independent contractors, leased or agency employees and temporary/seasonal Love’s employees are not eligible for the Referral Bonus Program.

- Both employees must be employed by the Company at the time the bonus is paid.
- The referring employee must submit his/her request for the referral bonus within 90 days of the new, referred Employee’s hire date.
- Referral bonuses will be paid in the next regular payroll after the date the bonus is approved.
- Referral awards will not be paid for:
 - Inter-company transfers, departmental moves or promotions or
 - Candidates that did not apply through the Love’s careers website (jobs.loves.com).
 - General Managers who refer individuals for management positions in their own store, directors/executives/officers of the Company and employees in the HR Department.

The specific bonus programs are listed below:

- **Hourly employee referral bonus:** All regular employees are eligible for the Hourly Field Employee Referral Bonus program. An eligible



employee may refer a qualified candidate for a position within the Company. Referrals of current or former employees are not eligible for the bonus. A referral must be hired as a regular employee, although not necessarily into the specific position for which he/she was recommended. The amount of the Hourly Field Employee Referral Bonus will be determined by the District Manager based on the store location and the relative difficulty of hiring a qualified workforce in said location.

- **Management referral bonus:** All regular employees are eligible for the Management Referral Bonus Program. An eligible employee may refer a qualified candidate for a management position within the Company. Upon completion of the referred employee's first 30 days as a member of management (restaurant, assistant manager or general manager), the first half of the bonus will be paid to the referring employee. After the referred employee's completion of a full 90 days in management, the remaining amount of the bonus will be paid to the referring employee.
- **Tire Care Diesel Mechanic referral bonus:** All regular employees are eligible for the Tire Care Diesel Mechanic Referral Bonus Program. An eligible employee may refer a qualified candidate for a Tire Care Diesel Mechanic within the Company. Referrals of current or former employees are not eligible for the bonus. After the person recommended is hired as a Diesel Mechanic and remains in the position for 60 days, the recommending employee will receive a referral bonus. The amount of the Tire Care Diesel Mechanic Referral Bonus will be determined by the District Manager based on the store location and the relative difficulty of hiring a qualified workforce in said location.
- **Tire Care Manager referral bonus:** Love's rewards managers who help develop future managers in Tire Care. Tire Care Managers are eligible to receive a bonus for developing a Tire Care Technician into a Tire Care Manager position. The promoted employee must meet all requirements. The bonus is paid out after the first 30 days for half of the eligible amounts. (i.e. \$500 after first 30 days and \$500 after an additional 60 days) and the remaining amount after 90 days in position.
- **New store training pay:** Love's Travel Stops & Country Stores policy is to pay managers and employees an incremental bonus for their support in the opening

of new stores. The training pay will be paid based on the following criteria:

- *If the support person is a manager they will be paid \$500; the trainer must be there for a minimum of 10 days.*
- *If the trainer is an hourly team member they will be paid an extra \$2 per hour worked at the training location; no minimum number of days required.*
- **Manager training bonus:** An eligible manager may obtain a bonus by providing training to a manager of a new store location or a Restaurant Manager or Tire Care Manager of a new or existing location. If a manager has to travel to an existing store location to provide training, they will receive bonus payout. Qualifying involvement as it pertains to the training will be determined by the District Manager.

For every day of training up to four weeks (20 days), the training manager will receive \$20 a day for a maximum potential bonus of \$400. Only managers are eligible for the Manager Training Bonus

Bonus amounts will be paid on closest payroll period after 30 days and 90 days' time frames after approval has been received in the Recruiting Department.

Benefits

All employees are eligible for certain benefits depending upon their status. The specific benefits and the level of benefits vary depending upon the status of the employee. Following are lists of benefits which are available based upon status.

Part-Time Employee Benefits

Part-time hourly employees are those employees who work an average of less than 30 hours per week.

Benefits include:

- Holiday pay (when working on a designated holiday)
- Meal discount
- 401(k) Plan (if qualifications met)

Full-Time Employee Benefits

To be considered full-time, an hourly employee must work a minimum of 30 hours or more per week.

EXHIBIT 3

vehicle while under the influence of alcohol, illegal drugs or legal drugs that are being used illegally. Any employee convicted of or pleading guilty to a charge of Driving Under the Influence (DUI) or Driving While Intoxicated (DWI) may be subject to disciplinary action up to and including termination.

Timekeeping

Paydays

Salaried management is paid every two weeks (bi-weekly). Hourly Employees are paid weekly. Employees are paid for their hours worked. The pay week starts on Wednesday and goes through Tuesday of the following week. Official payday for the stores is on Monday. This is the Monday, one week after the end of the pay period.

Salaried management is paid a straight salary in accordance with their annual salary paid bi-weekly, computed at 26 pay periods annually.

Overtime

Overtime compensation is paid to hourly employees in accordance with federal and state wage and hour restrictions. Overtime is payable for all hours worked over 40 per week at a rate of 1½ times the hourly employee's regular hourly rate. Time off on personal time, holidays or any leave of absence will not be considered hours worked when calculating overtime. In addition, vacation time does not constitute hours worked.

All overtime work performed by an hourly employee must receive the manager's prior authorization. Excessive overtime worked without prior authorization from the manager may result in disciplinary action. The manager's signature on a timesheet authorizes pay for overtime hours worked.

Some states have laws and regulations specific to that state. Employees should contact the Payroll Department if they have questions or need more information on their state.

Accurate Timekeeping

Accurately recording time worked is the responsibility of every hourly employee. Time worked is the time actually spent on the job performing assigned duties.

The Company does not pay for extended breaks or time spent on personal matters. If an employee leaves the premises during the workday, they must clock out.

The timekeeping system is a legal instrument. Altering, falsifying, tampering with time records or recording time on another employee's time record will result in disciplinary action, including termination of employment.

Authorized personnel will review time records each pay period. Managers must approve any changes to an employee's time record. Questions regarding the timekeeping system should be directed to the employee's manager.

Hourly employees will be trained on the timekeeping system on their first day of employment. The employee will be given thorough instructions on usage and instructions on what to do should a problem occur.

Workweek

Love's workweek is Wednesday through the following Tuesday and shall consist of a 40 hour workweek for hourly paid full-time employees. Part-time employees work less than 30 hours in the workweek. Salaried managers will work approximately 50-60 hours per week, which could be less or more depending on business circumstances.

All hourly employees will be compensated at the rate of 1½ times the regular hourly rate when working over 40 hours during the defined workweek. Other state laws may apply.

Working off the Clock

Working off the clock will not be tolerated, voluntarily or involuntarily. No member of management may request, require or permit employees to work without compensation. Hourly employees are individually responsible for clocking in at the start of the shift and for clocking out at the end of the shift. Employees are also individually responsible for clocking out and clocking in for breaks of 30 minutes or longer. In the event that an hourly employee performs work outside normal working hours or away from the office, the time must still be recorded. This includes work required to be performed

via mobile or other remote devices such as the Company intranet. While such work from remote devices outside of normal working hours should rarely be required of an employee as part of their job duties, hourly employees are required to accurately report all time worked, regardless of when or where the work is performed. Upon completion of the work week, each Employee is responsible for verifying his/her own hours worked and signing the payroll signature sheet verifying accuracy.

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- **Tire Care Safety bonus:** Tire Care employees*

EXHIBIT 4

Jenny Baysinger

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Friday, October 22, 2021 7:08 AM
To: Jenny Baysinger
Subject: Thank you for your Proposed Settlement Submission

10/22/2021 07:08:06 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7Cjaysinger%40mayallaw.com%7C9e014c31fb4b4013d9b108d9956566b4%7C05d52ced3a0f41ca99a7a9f9e83f079b%7C0%7C0%7C637705085022776970%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C1000&reserved=0