

JEAN-CLAUDE LAPUYADE (SBN 248676)

JLAPUYADE@JCL-LAWFIRM.COM

JCL LAW FIRM, APC

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

TEL: (619) 599-8292

FAX: (619) 599-8291

SHANI O. ZAKAY (SBN 277924)

ZAKAY LAW GROUP, APLC

5850 OBERLIN DRIVE, SUITE 230A

SAN DIEGO, CA 92121

TEL: (619) 255-9047

FAX: (619) 404-9203

ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

ESTEFANIA RENTERIA, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

LOVE'S COUNTRY STORES OF
CALIFORNIA, a California corporation; and
DOES 1 through 50, Inclusive;

DEFENDANTS.

Case No. BCV-20-101260

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL.
LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE
§§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE
ORDER;
5. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE
ORDER;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE §
226;

7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203
8. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *ET SEQ*

DEMAND FOR JURY TRIAL

Plaintiff ESTEFANIA RENTERIA (“PLAINTIFF”) an individual, on behalf of herself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant LOVE’S COUNTRY STORES OF CALIFORNIA d.b.a. “Love’s Travel Stop and County Stores”® (“LOVE’S COUNTRY STORE”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of Kern, City of Lost Hills, owns, operates and/or manages at least nine “Love’s Travel Stop and Country Store”® branded gas stations, truck stops and convenient stores in California.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that LOVE’S COUNTRY STORE and DOES 1 through 50 (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of LOVE’S COUNTRY STORE acted within the course and scope of his, her or its authority as the parent, subsidiary, agent, servant and/or employee of LOVE’S COUNTRY STORE, and personally

1 participated in the conduct alleged herein on behalf of LOVE'S COUNTRY STORE with respect to
2 the conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally
3 attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF and
4 those similarly situated, for the loss sustained as a proximate result of the conduct of the
5 DEFENDANTS' agents, servants and/or employees.

6 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
7 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
8 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
9 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
10 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

11 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
12 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
13 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
14 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
15 for each underpaid employee.

16 6. Plaintiff ESTEFANIA RENTERIA is a former non-exempt employee of DEFENDANTS,
17 who, at all relevant times, worked as a cashier and shift leader at DEFENDANTS' "Love's Travel Stop
18 and Country Store" located at 21948 CA-46, Lost Hills, California, 93249 between April 2015 and
19 March 2020, paid on an hourly basis and entitled to certain non-discretionary flat-sum incentive awards,
20 minimum wages, overtime compensation, reporting time pay, bonuses and legally compliant meal and
21 rest periods.

22 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
23 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")
24 at any time between May 14, 2019 on a date determined by the Court (the "CLASS PERIOD"). The
25 amount in controversy for the aggregate claim of CALIFORNIA CLASS members is under five million
26 dollars (\$5,000,000.00).

27 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses

1 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
2 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
3 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
4 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
5 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
6 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
7 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
8 226.3.

9 9. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and
10 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
11 PLAINTIFF and the other members of the CALIFORNIA CLASS.

12 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
13 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
14 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past
15 and current unlawful conduct, and all other appropriate legal and equitable relief.

16 **JURISIDICITION AND VENUE**

17 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
19 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
20 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

21 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
22 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
23 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
24 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
25 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

26 **THE CONDUCT**

27 13. In violation of the applicable sections of the California Labor Code and the requirements
28 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company

1 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
2 compliant meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
3 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
4 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
5 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
6 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
7 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
8 purposefully avoid the accurate and full payment for all time worked as required by California law
9 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
10 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

12 **A. Meal Period Violations**

13 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
14 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
15 the time during which an employee is subject to the control of an employer, including all the time the
16 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
17 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying
18 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
19 PLAINTIFF's demanding work requirements and DEFENDANTS' under staffing and, being required
20 to carry cordless communication devices throughout her shifts and to remain at the ready to respond to
21 work related assignments, DEFENDANTS required PLAINTIFF to work while clocked out during
22 what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time
23 interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty
24 meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As
25 a result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and
26 overtime wages by regularly working without their time being accurately recorded and without
27 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy
28

1 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is
2 evidenced by DEFENDANTS' business records.

3 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
4 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA
5 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
6 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
7 members were required from time to time to perform work as ordered by DEFENDANTS for more
8 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
9 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
10 duty meal period for some workdays in which these employees were required by DEFENDANTS to
11 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
12 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
13 "on-duty" meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
14 therefore forfeited meal breaks without additional compensation and in accordance with
15 DEFENDANTS' strict corporate policy and practice. DEFENDANTS failed to maintain adequate
16 staffing levels while increasing the production levels for each employee at the busy airports they
17 provided services for.

18 **B. Rest Period Violations**

19 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
20 CLASS members were also required from time to time to work in excess of four (4) hours without
21 being provided ten (10) minute rest periods as a result of their rigorous work schedule and
22 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their
23 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
24 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
25 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
26 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
27 other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As
28 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and

1 other CALIFORNIA CLASS members were from time to time denied their proper rest periods by
2 DEFENDANTS and DEFENDANTS' managers.

3 **C. Overtime Regular Rate Violation**

4 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
5 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
6 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members
7 forfeited wages due them for working overtime without compensation at the correct overtime rates.
8 DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the
9 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
10 DEFENDANTS' business records.

11 18. State law provides that employees must be paid overtime at one-and-one-half times their
12 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
13 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's
14 performance.

15 19. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
16 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
17 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
18 DEFENDANTS. The flat-sum non-discretionary bonus program provided all employees paid on an
19 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
20 set by DEFENDANTS. These flat-sum incentive payments are identified as "Golden Hearts Tax" and
21 "Holiday Pay Premium" in the wage statements issued by DEFENDANTS to PLAINTIFF and the other
22 CALIFORNIA CLASS members.

23 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
24 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-
25 sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-
26 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all
27 hours worked rather than just all non-overtime hours worked. Management and supervisors described
28 the incentive/bonus program to potential and new employees as part of the compensation package. As

1 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
2 members must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic
3 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members
4 by DEFENDANTS.

5 21. From time-to-time during the CLASS PERIOD, PLAINTIFF earned “Holiday Pay
6 Premium” compensation and worked overtime compensation throughout her employment with
7 DEFENDANTS including, but not limited to the pay period beginning on November 27, 2019 to
8 December 3, 2019. Notwithstanding, DEFENDANTS failed to accurately calculate the non-
9 discretionary, flat-sum bonus entitled “Holiday Pay Premium” into the regular rate pay for purposes of
10 PLAINTIFF’s overtime compensation. The failure to do so has resulted in an underpayment of
11 overtime compensation to plaintiff PLAINITFF during this pay period.

12 22. From time-to-time during the CLASS PERIOD, PLAINTIFF earned “Golden Heart Tax”
13 compensation and worked overtime compensation throughout her employment with DEFENDANTS
14 including, but not limited to the pay period beginning on July 24, 2019 to July 30, 2019.
15 Notwithstanding, DEFENDANTS failed to accurately calculate the non-discretionary, flat-sum bonus
16 entitled “Golden Hearts Tax” into the regular rate pay for purposes of PLAINTIFF’s overtime
17 compensation. The failure to do so has resulted in an underpayment of overtime compensation to
18 plaintiff PLAINITFF during this pay period.

19 23. In violation of the applicable sections of the California Labor Code and the requirements
20 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
21 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
22 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This
23 uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the
24 correct overtime compensation as required by California law which allowed DEFENDANTS to
25 illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent
26 equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
27 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

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1 **D. Wage Statement Violations**

2 24. California Labor Code Section 226 requires an employer to furnish its employees an
3 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
4 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
5 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
6 employee and only the last four digits of the employee's social security number or an employee
7 identification number other than a social security number, (8) the name and address of the legal entity
8 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee.

10 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
12 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
13 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other
14 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
15 show, among other things, all applicable hourly rates in effect during the pay period and the
16 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
17 missed meal and rest periods.

18 26. For instance, for the pay period between November 27, 2019 and December 3, 2019,
19 PLAINTIFF received remuneration from DEFENDANTS described as "Cur Adtl Pay OT Adj" in the
20 gross amount of \$1.02. DEFENDANTS violated California Labor Code Section 226 by failing to list
21 the applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate
22 for this line item of remuneration described as "Cur Adtl Pay OT Adj". PLAINTIFF, and all those
23 similarly situated members of the CALIFORNIA CLASS, suffered damage as a result of
24 DEFENDANTS' aforementioned violation because he could not promptly and easily determine from
25 the wage statement alone the applicable hourly rate and the corresponding number of hours worked at
26 the applicable hourly rate for this line item of remuneration described as "Cur Adtl Pay OT Adj".

27 27. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,

DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

E. Suitable Seating Violations

28. PLAINTIFF further alleges that the station counters in DEFENDANTS' stores provide ample space behind each counter area to allow for the presence and use of a stool or seat by DEFENDANTS' employees' during the performance of their work duties. DEFENDANTS' employees' working at DEFENDANTS' stores spend a very substantial portion, and, in many workdays, the vast majority of their working time behind these counters. The nature of the position can reasonably be accomplished while using a seat/stool.

29. In violation of the applicable sections of the California Labor Code and the requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting.

30. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

CLASS ACTION ALLEGATIONS

31. PLAINTIFF brings the First through Sixth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-exempt California employees ("CALIFORNIA CLASS") between April 6, 2016 and a date determined by the Court ("CLASS PERIOD").

32. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal

and rest period policies, failure to separately compensate rest periods, failure to separately compensate for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

33. The members of the class are so numerous that joinder of all class members is impractical.

34. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;

b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;

c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed meal and rest periods;

d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate overtime wages.

e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked.

f. Whether DEFENDANTS issued legally compliant wage statements;

g. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

i. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods; and,

35. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

36. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

37. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

38. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

39. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS members.

40. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

41. The questions of law and fact common to the CALIFORNIA CLASS members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of

individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

43. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

45. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code § 17021.

46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The

1 court may make such orders or judgments, including the appointment of a
2 receiver, as may be necessary to prevent the use or employment by any
3 person of any practice which constitutes unfair competition, as defined in
4 this chapter, or as may be necessary to restore to any person in interest any
5 money or property, real or personal, which may have been acquired by
6 means of such unfair competition.

7 Cal. Bus. & Prof. Code § 17203.

8 47. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
9 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
10 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
11 “UCL”), by engaging and continuing to engage in business practices which violates California law,
12 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
13 and the California Labor Code including Sections 204, 210, 226, 226.7, 510, 512, 1194, 1197, 1197.1,
14 1198 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
16 unfair competition, including restitution of wages wrongfully withheld.

17 48. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
18 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
19 substantially injurious to employees, and were without valid justification or utility for which this Court
20 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
21 Professions Code, including restitution of wages wrongfully withheld.

22 49. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
23 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated
24 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
25 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
26 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
27 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
28 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including

1 restitution of wages wrongfully withheld.

2 50. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
3 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
4 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

5 51. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
6 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
7 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
8 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
9 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
10 Labor Code.

11 52. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period
13 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
14 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

15 53. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA
16 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
17 timely provided as required by law.

18 54. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
19 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
20 calculated overtime and missed meal and rest periods premiums.

21 55. By and through the unlawful and unfair business practices described herein,
22 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
23 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
24 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
25 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
26 compete against competitors who comply with the law.

27 56. All the acts described herein as violations of, among other things, the Industrial Welfare
28 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were

unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANTS has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all overtime worked.

58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and unfair business practices in the future.

59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

60. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

61. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all overtime
2 worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours
3 in a workday, and/or forty (40) hours in any workweek.

4 62. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
5 an employer must timely pay its employees for all hours worked.

6 63. Cal. Lab. Code § 510 further provides that employees in California shall not be employed
7 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they
8 receive additional compensation beyond their regular wages in amounts specified by law.

9 64. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
10 overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198
11 further states that the employment of an employee for longer hours than those fixed by the Industrial
12 Welfare Commission is unlawful.

13 65. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
14 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
15 worked or were not accurately compensated for all overtime hours worked.

16 66. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
17 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
18 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
19 CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other
20 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
21 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
22 in any workweek.

23 67. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
24 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
25 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
26 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
27 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
28 applicable laws and regulations.

68. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

69. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this First Amended Complaint. Rather, the PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of California.

70. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

71. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANTS' business records and witnessed by employees.

72. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

73. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and

1 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
2 members of the CALIFORNIA CLASS for overtime worked.

3 74. In performing the acts and practices herein alleged in violation of California labor laws,
4 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
5 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,
6 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
7 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
8 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
9 in order to increase company profits at the expense of these employees

10 75. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
11 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
12 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
13 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
14 determined to be owed to the CALIFORNIA CLASS members who have terminated their employment,
15 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
16 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
17 herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein
18 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
19 Members are entitled to seek and recover statutory costs.

20 **THIRD CAUSE OF ACTION**

21 **For Failure to Pay Minimum Wages**

22 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

23 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

24 76. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended
26 Complaint.

27 77. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
28 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
2 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
3 CLASS PERIOD.

4 78. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
5 an employer must timely pay its employees for all hours worked.

6 79. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
8 minimum so fixed is unlawful.

9 80. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
10 minimum wage compensation and interest thereon, together with the costs of suit.

11 81. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
12 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
13 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
14 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
15 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
16 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
17 of the CALIFORNIA CLASS.

18 82. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
20 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
21 of the CALIFORNIA CLASS in regard to minimum wage pay.

22 83. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
23 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
24 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
25 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
26 Industrial Welfare Commission requirements and other applicable laws and regulations.

27 84. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum

1 wage compensation for their time worked for DEFENDANTS.

2 85. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
3 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
4 wages.

5 86. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
6 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
7 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
8 suffer an economic injury in amounts which are presently unknown to them and which will be
9 ascertained according to proof at trial.

10 87. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
11 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
12 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
13 employees for their labor as a matter of uniform company policy, practice and procedure, and
14 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
15 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

16 88. In performing the acts and practices herein alleged in violation of California labor laws,
17 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
18 them with the requisite compensation, DEFENDANTS acted and continues to act intentionally,
19 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
20 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the
21 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
22 in order to increase company profits at the expense of these employees.

23 89. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
24 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
25 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
26 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
27 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'
28 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled

1 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
2 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,
3 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are
4 entitled to seek and recover statutory costs.

5
6 **FOURTH CAUSE OF ACTION**

7 **For Failure to Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

10 90. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended
12 Complaint.

13 91. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the
14 legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS members as
15 required by the applicable Wage Order and Labor Code. The nature of the work performed by
16 PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from being relieved
17 of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work
18 schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to time not fully
19 relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to
20 provide PLAINTIFF and the CALIFORNIA CLASS members with legally required meal breaks prior
21 to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time.
22 Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS members with a
23 second off-duty meal period in some workdays in which these employees were required by
24 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the
25 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
26 accordance with DEFENDANTS' strict corporate policy and practice.

27 92. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
28 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not

provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of compensation for each workday that a meal period was not provided.

93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

94. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

95. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

96. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of compensation for each workday that rest period was not provided.

1 97. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
2 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
3 and due, interest, penalties, expenses and costs of suit.

4
5
6 **SIXTH CAUSE OF ACTION**

7 **For Failure to Provide Accurate Itemized Statements**

8 **[Cal. Lab. Code §§ 226 and 226.2]**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

10 98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended
12 Complaint.

13 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 “accurate itemized” statement in writing showing:

- 15 1. Gross wages earned;
- 16 2. Total hours worked by the employee, except for any employee
17 whose compensation is solely based on a salary and who is exempt from
18 payment of overtime under subdivision (a) of Section 515 or any applicable
19 order of the Industrial Welfare Commission;
- 20 3. The number of piece-rate units earned and any applicable piece rate
21 if the employee is paid on a piece-rate basis;
- 22 4. All deductions, provided that all deductions made on written orders
23 of the employee may be aggregated and shown as one item;
- 24 5. Net wages earned;
- 25 6. The inclusive dates of the period for which the employee is paid,
- 26 7. The name of the employee and his or her social security number,
27 except that by January 1, 2008, only the last four digits of his or her social
28 security number or an employee identification number other than a social

security number may be shown on the itemized statement,

8. The name and address of the legal entity that is the employer, and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

100. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226.

101. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal Lab. Code §§201, 202, 203)

((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))

102. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

103. Cal. Lab. Code § 200 provides that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

104. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

105. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

106. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

107. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages

of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

108. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

109. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the LABOR CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFF against all Defendants)

110. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

111. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

112. PLAINTIFF, and such persons that may be added from time to time who satisfy the

requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT and classified as non-exempt employees in California during the time period of May 27, 2019 until the present (the "AGGRIEVED EMPLOYEES").

113. On May 27, 2020, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

114. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage statements, (d) failed to provide suitable seating, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804, and applicable wage orders, and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

115. Some or all of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 519; See

also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANTS’s ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS’s violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

E) That the Court certify the Second, Third, Fourth and Fifth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

1. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an

aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

3. Meal and rest period compensation pursuant to California Labor Code Section 226.7, 512 and the applicable IWC Wage Order;

4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004;

3. On all claims:

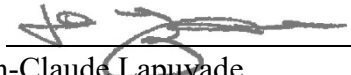
A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: August 3, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

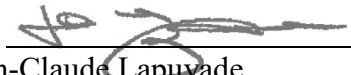
By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on all issues triable to a jury.

Dated: August 3, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

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EXHIBIT 1



3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

May 27, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

LOVE'S COUNTRY STORES OF CALIFORNIA

c/o C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Certified Mail with Return Receipt

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents ESTEFANIA RENTERIA ("Client") and other aggrieved employees in a class action against LOVE'S COUNTRY STORES OF CALIFORNIA ("Defendant"). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Client was employed by Defendant in California. Client was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during her employment, Defendant failed to, among other things, provide Client, and all those similarly situated, with all legally mandated off-duty meal and rest periods and overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Client contends that Defendant failed to fully compensate her, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Client contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,

1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Client, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Client, and (v) sets forth the illegal practices used by Defendant. Client therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

JEAN-CLAUDE LAPUYADE (SBN 248676)

JLAPUYADE@JCL-LAWFIRM.COM

JCL LAW FIRM, APC

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

TEL: (619) 599-8292

FAX: (619) 599-8291

SHANI O. ZAKAY (SBN 277924)

ZAKAY LAW GROUP, APLC

5850 OBERLIN DRIVE, SUITE 230A

SAN DIEGO, CA 92121

TEL: (619) 255-9047

FAX: (619) 404-9203

ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

ESTEFANIA RENTERIA, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

LOVE'S COUNTRY STORES OF
CALIFORNIA, a California corporation; and
DOES 1 through 50, Inclusive;

DEFENDANTS.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL.
LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE
§§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE
ORDER;
5. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF
CAL. LAB CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE
ORDER;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE §
226;

7. FAILURE TO PAY WAGES WHEN
DUE IN VIOLATION OF CAL. LABOR
CODE §§ 201, 202 AND 203

DEMAND FOR JURY TRIAL

Plaintiff ESTEFANIA RENTERIA (“PLAINTIFF”) an individual, on behalf of herself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant LOVE’S COUNTRY STORES OF CALIFORNIA d.b.a. “Love’s Travel Stop and County Stores”® (“LOVE’S COUNTRY STORE”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of Kern, City of Lost Hills, owns, operates and/or manages at least nine “Love’s Travel Stop and Country Store”® branded gas stations, truck stops and convenient stores in California.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that LOVE’S COUNTRY STORE and DOES 1 through 50 (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of LOVE’S COUNTRY STORE acted within the course and scope of his, her or its authority as the parent, subsidiary, agent, servant and/or employee of LOVE’S COUNTRY STORE, and personally participated in the conduct alleged herein on behalf of LOVE’S COUNTRY STORE with respect to

1 the conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally
2 attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF and
3 those similarly situated, for the loss sustained as a proximate result of the conduct of the
4 DEFENDANTS' agents, servants and/or employees.

5 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
6 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
7 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
8 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
9 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

10 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
11 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
13 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
14 for each underpaid employee.

15 6. Plaintiff ESTEFANIA RENTERIA is a former non-exempt employee of DEFENDANTS,
16 who, at all relevant times, worked as a cashier and shift leader at DEFENDANTS' "Love's Travel Stop
17 and Country Store" located at 21948 CA-46, Lost Hills, California, 93249 between April 2015 and
18 March 2020, paid on an hourly basis and entitled to certain non-discretionary flat-sum incentive awards,
19 minimum wages, overtime compensation, reporting time pay, bonuses and legally compliant meal and
20 rest periods.

21 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
22 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")
23 at any time between May 14, 2019 on a date determined by the Court (the "CLASS PERIOD"). The
24 amount in controversy for the aggregate claim of CALIFORNIA CLASS members is under five million
25 dollars (\$5,000,000.00).

26 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
27 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
28 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which

(1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally complaint meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to provide accurate itemized wage statements in violation of California Labor Code Sections 226 and 226.3.

9. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County, and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

13. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally

complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements and DEFENDANTS' under staffing and, being required to carry cordless communication devices throughout her shifts and to remain at the ready to respond to work related assignments, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced by DEFENDANTS' business records.

1 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
2 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA
3 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
4 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
5 members were required from time to time to perform work as ordered by DEFENDANTS for more
6 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
7 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
8 duty meal period for some workdays in which these employees were required by DEFENDANTS to
9 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
10 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
11 "on-duty" meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
12 therefore forfeited meal breaks without additional compensation and in accordance with
13 DEFENDANTS' strict corporate policy and practice. DEFENDANTS failed to maintain adequate
14 staffing levels while increasing the production levels for each employee at the busy airports they
15 provided services for.

16 **B. Rest Period Violations**

17 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
18 CLASS members were also required from time to time to work in excess of four (4) hours without
19 being provided ten (10) minute rest periods as a result of their rigorous work schedule and
20 DEFENDANTS' inadequate staffing . Further, for the same reasons these employees were denied their
21 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
22 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
24 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
25 other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As
26 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and
27 other CALIFORNIA CLASS members were from time to time denied their proper rest periods by
28 DEFENDANTS and DEFENDANTS' managers.

1 **C. Overtime Regular Rate Violation**

2 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
3 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
4 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members
5 forfeited wages due them for working overtime without compensation at the correct overtime rates.
6 DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the
7 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
8 DEFENDANTS' business records.

9 18. State law provides that employees must be paid overtime at one-and-one-half times their
10 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
11 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's
12 performance.

13 19. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
14 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
15 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
16 DEFENDANTS. The flat-sum non-discretionary bonus program provided all employees paid on an
17 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
18 set by DEFENDANTS. These flat-sum incentive payments are identified as "Golden Hearts Tax" and
19 "Holiday Pay Premium" in the wage statements issued by DEFENDANTS to PLAINTIFF and the other
20 CALIFORNIA CLASS members.

21 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
22 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-
23 sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-
24 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all
25 hours worked rather than just all non-overtime hours worked. Management and supervisors described
26 the incentive/bonus program to potential and new employees as part of the compensation package. As
27 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
28 members must be included in the "regular rate of pay." The failure to do so has resulted in a systematic

1 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members
2 by DEFENDANTS.

3 21. From time-to-time during the CLASS PERIOD, PLAINTIFF earned "Holiday Pay
4 Premium" compensation and worked overtime compensation throughout her employment with
5 DEFENDANTS including, but not limited to the pay period beginning on November 27, 2019 to
6 December 3, 2019. Notwithstanding, DEFENDANTS failed to accurately calculate the non-
7 discretionary, flat-sum bonus entitled "Holiday Pay Premium" into the regular rate pay for purposes of
8 PLAINTIFF's overtime compensation. The failure to do so has resulted in an underpayment of
9 overtime compensation to plaintiff PLAINTIFF during this pay period.

10 22. From time-to-time during the CLASS PERIOD, PLAINTIFF earned "Golden Heart Tax"
11 compensation and worked overtime compensation throughout her employment with DEFENDANTS
12 including, but not limited to the pay period beginning on July 24, 2019 to July 30, 2019.
13 Notwithstanding, DEFENDANTS failed to accurately calculate the non-discretionary, flat-sum bonus
14 entitled "Golden Hearts Tax" into the regular rate pay for purposes of PLAINTIFF's overtime
15 compensation. The failure to do so has resulted in an underpayment of overtime compensation to
16 plaintiff PLAINTIFF during this pay period.

17 23. In violation of the applicable sections of the California Labor Code and the requirements
18 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
19 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
20 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This
21 uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the
22 correct overtime compensation as required by California law which allowed DEFENDANTS to
23 illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent
24 equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
25 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

26 **D. Wage Statement Violations**

27 24. California Labor Code Section 226 requires an employer to furnish its employees an
28 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the

1 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
2 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and only the last four digits of the employee's social security number or an employee
4 identification number other than a social security number, (8) the name and address of the legal entity
5 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
8 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
9 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
10 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other
11 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
12 show, among other things, all applicable hourly rates in effect during the pay period and the
13 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
14 missed meal and rest periods.

15 26. For instance, for the pay period between November 27, 2019 and December 3, 2019,
16 PLAINTIFF received remuneration from DEFENDANTS described as "Cur Adtl Pay OT Adj" in the
17 gross amount of \$1.02. DEFENDANTS violated California Labor Code Section 226 by failing to list
18 the applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate
19 for this line item of remuneration described as "Cur Adtl Pay OT Adj". PLAINTIFF, and all those
20 similarly situated members of the CALIFORNIA CLASS, suffered damage as a result of
21 DEFENDANTS' aforementioned violation because he could not promptly and easily determine from
22 the wage statement alone the applicable hourly rate and the corresponding number of hours worked at
23 the applicable hourly rate for this line item of remuneration described as "Cur Adtl Pay OT Adj".

24 27. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
25 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
26 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
27 payroll error due to clerical or inadvertent mistake.

28 ////

1 **E. Suitable Seating Violations**

2 28. PLAINTIFF further alleges that the station counters in DEFENDANTS' stores provide
3 ample space behind each counter area to allow for the presence and use of a stool or seat by
4 DEFENDANTS' employees' during the performance of their work duties. DEFENDANTS'
5 employees' working at DEFENDANTS' stores spend a very substantial portion, and, in many
6 workdays, the vast majority of their working time behind these counters. The nature of the position
7 can reasonably be accomplished while using a seat/stool.

8 29. In violation of the applicable sections of the California Labor Code and the requirements
9 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of
10 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
11 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'
12 work reasonably permitted sitting.

13 30. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved
14 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the
15 performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not
16 allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct
17 applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor
18 Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

19 **CLASS ACTION ALLEGATIONS**

20 31. PLAINTIFF brings the First through Sixth Causes of Action as a class action pursuant to
21 California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-
22 exempt California employees ("CALIFORNIA CLASS") between April 6, 2016 and a date determined
23 by the Court ("CLASS PERIOD").

24 32. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
25 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
26 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
27 and rest period policies, failure to separately compensate rest periods, failure to separately compensate
28 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain

required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

33. The members of the class are so numerous that joinder of all class members is impractical.

34. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;

b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;

c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed meal and rest periods;

d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate overtime wages.

e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked.

f. Whether DEFENDANTS issued legally compliant wage statements;

g. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by

1 PLAINTIFF and other CALIFORNIA CLASS members, even though
2 DEFENDANTS enjoyed the benefit of this work, required employees to
3 perform this work and permits or suffers to permit this work;

4 i. Whether DEFENDANTS committed an act of unfair competition in
5 violation of the UCL, by failing to provide the PLAINTIFF and the other
6 members of the CALIFORNIA CLASS with the legally required meal and
7 rest periods; and,

8 35. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
9 of DEFENDANTS' conduct and actions alleged herein.

10 36. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
11 interests as the other members of the class.

12 37. PLAINTIFF will fairly and adequately represent and protect the interests of the
13 CALIFORNIA CLASS members.

14 38. PLAINTIFF retained able class counsel with extensive experience in class action
15 litigation.

16 39. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
17 of the other CALIFORNIA CLASS members.

18 40. There is a strong community of interest among PLAINTIFF and the members of the
19 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
20 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

21 41. The questions of law and fact common to the CALIFORNIA CLASS members
22 predominate over any questions affecting only individual members, including legal and factual issues
23 relating to liability and damages.

24 42. A class action is superior to other available methods for the fair and efficient adjudication
25 of this controversy because joinder of all class members is impractical. Moreover, since the damages
26 suffered by individual members of the class may be relatively small, the expense and burden of
27 individual litigation makes it practically impossible for the members of the class individually to redress
28 the wrongs done to them. Without class certification and determination of declaratory, injunctive,

1 statutory and other legal questions within the class format, prosecution of separate actions by individual
2 members of the CALIFORNIA CLASS will create the risk of:

3 a. Inconsistent or varying adjudications with respect to individual members of the
4 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
5 parties opposing the CALIFORNIA CLASS; and/or,

6 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
7 which would as a practical matter be dispositive of the interests of the other members not
8 party to the adjudication or substantially impair or impeded their ability to protect their
9 interests.

10 43. Class treatment provides manageable judicial treatment calculated to bring an efficient
11 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
12 DEFENDANTS.

13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

15 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

19 45. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
20 17021.

21 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
22 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
23 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The
26 court may make such orders or judgments, including the appointment of a
27 receiver, as may be necessary to prevent the use or employment by any
28 person of any practice which constitutes unfair competition, as defined in

this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

47. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by engaging and continuing to engage in business practices which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 226, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

48. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

49. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

50. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the other members of

the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

51. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Labor Code.

52. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

53. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not timely provided as required by law.

54. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately calculated overtime and missed meal and rest periods premiums.

55. By and through the unlawful and unfair business practices described herein, DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

56. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANTS has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all overtime worked.

58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and unfair business practices in the future.

59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

60. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

61. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

62. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,

an employer must timely pay its employees for all hours worked.

63. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

64. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

65. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked or were not accurately compensated for all overtime hours worked.

66. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

67. In committing these violations of the California Labor Code, DEFENDANTS inaccurately calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

68. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

69. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the

overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of California.

70. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

71. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANTS' business records and witnessed by employees.

72. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

73. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

74. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide

1 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,
2 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
3 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
4 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
5 in order to increase company profits at the expense of these employees

6 75. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
7 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
8 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
9 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
10 determined to be owed to the CALIFORNIA CLASS members who have terminated their employment,
11 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
12 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
13 herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein
14 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
15 Members are entitled to seek and recover statutory costs.

16 **THIRD CAUSE OF ACTION**

17 **For Failure to Pay Minimum Wages**

18 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

19 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

20 76. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

22 77. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
23 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
24 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
25 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
26 CLASS PERIOD.

27 78. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
28 an employer must timely pay its employees for all hours worked.

1 79. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
3 minimum so fixed is unlawful.

4 80. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
5 minimum wage compensation and interest thereon, together with the costs of suit.

6 81. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
7 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
8 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
9 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
10 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
11 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
12 of the CALIFORNIA CLASS.

13 82. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
15 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
16 of the CALIFORNIA CLASS in regard to minimum wage pay.

17 83. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
18 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
19 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
20 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
21 Industrial Welfare Commission requirements and other applicable laws and regulations.

22 84. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
23 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
24 wage compensation for their time worked for DEFENDANTS.

25 85. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
26 CLASS were paid less for time worked than they were entitled to, constituting a failure to pay all earned
27 wages.

28 86. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation

1 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
2 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
3 suffer an economic injury in amounts which are presently unknown to them and which will be
4 ascertained according to proof at trial.

5 87. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
6 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
7 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
8 employees for their labor as a matter of uniform company policy, practice and procedure, and
9 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
10 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

11 88. In performing the acts and practices herein alleged in violation of California labor laws,
12 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
13 them with the requisite compensation, DEFENDANTS acted and continues to act intentionally,
14 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
15 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the
16 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
17 in order to increase company profits at the expense of these employees.

18 89. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
19 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
20 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
21 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
22 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'
23 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled
24 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
25 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,
26 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are
27 entitled to seek and recover statutory costs.
28

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

90. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

91. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

92. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of compensation for each workday that a meal period was not provided.

93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 94. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 95. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members
8 were from time to time required to work in excess of four (4) hours without being provided ten (10)
9 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
10 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
11 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
12 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
13 time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-
14 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
15 CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS
16 and DEFENDANTS' managers.

17 96. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC
18 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
19 provided a rest period, in accordance with the applicable Wage Order, one additional hour of
20 compensation at each employee's regular rate of compensation for each workday that rest period was
21 not provided.

22 97. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
23 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
24 and due, interest, penalties, expenses and costs of suit.

1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code §§ 226 and 226.2]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
8 “accurate itemized” statement in writing showing:

- 9 1. Gross wages earned;
- 10 2. Total hours worked by the employee, except for any employee
11 whose compensation is solely based on a salary and who is exempt from
12 payment of overtime under subdivision (a) of Section 515 or any applicable
13 order of the Industrial Welfare Commission;
- 14 3. The number of piece-rate units earned and any applicable piece rate
15 if the employee is paid on a piece-rate basis;
- 16 4. All deductions, provided that all deductions made on written orders
17 of the employee may be aggregated and shown as one item;
- 18 5. Net wages earned;
- 19 6. The inclusive dates of the period for which the employee is paid,
- 20 7. The name of the employee and his or her social security number,
21 except that by January 1, 2008, only the last four digits of his or her social
22 security number or an employee identification number other than a social
23 security number may be shown on the itemized statement,
- 24 8. The name and address of the legal entity that is the employer, and
- 25 9. All applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee.

27 100. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the
28 other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed

to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226.

101. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal Lab. Code §§201, 202, 203)

((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))

102. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

103. Cal. Lab. Code § 200 provides that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other

1 agreement if the labor to be paid for is performed personally by the
2 person demanding payment.

3 104. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an
4 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

5 105. Cal. Lab. Code § 202 provides, in relevant part, that:

6 If an employee not having a written contract for a definite period
7 quits his or her employment, his or her wages shall become due and
8 payable not later than 72 hours thereafter, unless the employee has
9 given 72 hours previous notice of his or her intention to quit, in
10 which case the employee is entitled to his or her wages at the time
11 of quitting. Notwithstanding any other provision of law, an
12 employee who quits without providing a 72-hour notice shall be
13 entitled to receive payment by mail if he or she so requests and
14 designates a mailing address. The date of the mailing shall constitute
15 the date of payment for purposes of the requirement to provide
16 payment within 72 hours of the notice of quitting.

17 106. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS Members’
18 employment contract.

19 107. Cal. Lab. Code § 203 provides:

20 If an employer willfully fails to pay, without abatement or reduction,
21 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
22 of an employee who is discharged or who quits, the wages of the
23 employee shall continue as a penalty from the due date thereof at the
24 same rate until paid or until an action therefor is commenced; but
25 the wages shall not continue for more than 30 days.

26 108. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
27 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
28 breaks, as required by law.

109. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the LABOR CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

E) That the Court certify the Second, Third, Fourth and Fifth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

1. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an

1 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
2 of Cal. Lab. Code § 226;

3 3. Meal and rest period compensation pursuant to California Labor Code Section
4 226.7, 512 and the applicable IWC Wage Order;

5 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
6 1197; and,

7 2. On all claims:

8 A) An award of interest, including prejudgment interest at the legal rate;

9 B) Such other and further relief as the Court deems just and equitable; and,

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
11 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

12
13 Dated: May 27, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

14
15 By: 
16 Jean-Claude Lapuyade
17 Attorneys for PLAINTIFF

18 **DEMAND FOR JURY TRIAL**

19 PLAINTIFF demands a jury trial on all issues triable to a jury.
20

21 Dated: May 27, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

22
23 By: 
24 Jean-Claude Lapuyade
25 Attorneys for PLAINTIFF
26
27
28

1 JEAN-CLAUDE LAPUYADE (BAR NO. 248676)

2 JCL LAW FIRM, APC

3 3990 OLD TOWN AVENUE, SUITE C204

4 SAN DIEGO, CA 92110

5 TEL: (619) 599-8292

6 FAX: (619) 599-8291

7 JLAPUYADE@JCL-LAWFIRM.COM

8 ATTORNEY FOR PLAINTIFF

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN**

CASE NAME : *Estefania Renteria v. Love's Country Stores of California, et al.*

CASE NO. : BCV-20-101260

JUDGE : Hon. Stephen D. Schuett

PROOF OF SERVICE

I, the undersigned, employee of the JCL Law Firm, certify and declare that I am over the age of 18 years and not a party to this action. My business address is JCL Law Firm, located at 3990 Old Town Avenue, Suite C204, San Diego, CA 92131.

I declare that on August 4, 2020, I served the following document(s) on all interested parties in this action as stated on the attached service list:

CONFORMED FIRST AMENDED COMPLAINT

☐ **BY MAIL** - I deposited such envelope in the mail at San Diego, California. The envelope was mailed with sufficient postage thereon. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with sufficient postage thereon at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing affidavit.

☐ **BY PERSONAL SERVICE** - I caused such envelope to be delivered by a process server employed by _____.

☐ **VIA FACSIMILE** - I faxed said document, to the office(s) of the address(s) shown on the attached Service List and the transmission was reported as complete and without error.

☒ **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this document by way of e-mail to the parties identified on the attached Service List.

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SERVICE LIST

Estefania Renteria v. Love's Country Stores of California, et al.
Kern Superior Court Case No. BCV-20-101260

Jean-Claude Lapuyade, Esq. JCL Law Firm, APC 3990 Old Town Avenue, Suite C204 San Diego, CA 92110 T: 619-599-8292 F: 619-599-8291 jalpuyade@jcl-lawfirm.com Handling Paralegal: Tesla Stone tstone@jcl-lawfirm.com Co-Counsel for PLAINTIFF	Shani O. Zakay, Esq. Zakay Law Group 5850 Oberlin Drive, Suite 230A San Diego, CA 92121 T: 619-892-7095 F: 858-404-9203 shani@zakaylaw.com Co-Counsel for PLAINTIFF
Heather Stone, Esq. Dinsmore & Shohl LLP 655 W. Broadway, Suite 800 San Diego, CA 92101 T: 619-400-0481 F: 619-615-2082 heather.stone@dinsmore.com Counsel for Defendant LOVE'S COUNTRY STORES OF CALIFORNIA	