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8 Attorneys for PLAINTIFFS, and all those similarly situated  
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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ROBERT J. ZAMMETTI, MICHAEL J.  
13 LOWRY, individually, and on behalf of all  
14 those similarly situated,

15 Plaintiffs,

16 vs.

17 SOUTHWEST AIRLINES, CO., and DOES  
18 1 through 50, inclusive,

19 Defendants.  
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Case No.: 8:14-cv-01792-CJC-AN

**PLAINTIFFS' FIRST AMENDED CLASS  
ACTION COMPLAINT FOR:**

1. **UNFAIR OR UNLAWFUL BUSINESS PRACTICES PURSUANT TO BUS. & PROF. CODE SECTION 17200 ET SEQ.;**
2. **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW PURSUANT TO BUS. & PROF. CODE SECTION 17500 ET SEQ.;**
3. **BREACH OF CONTRACT;**
4. **FRAUDULENT CONCEALMENT;**
5. **INTENTIONAL MISREPRESENTATION;**
6. **NEGLIGENT MISREPRESENTATION;**
7. **BREACH OF COVENANT OF FAIR DEALING;**
8. **WILLFUL MISCONDUCT;**
9. **UNJUST ENRICHMENT**

**JURY TRIAL DEMANDED**

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**I. JURISDICTION & VENUE**

1. This Court has diversity jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §1332, because the matter in controversy exceeds \$75,000, exclusive of interests and costs, Lead Plaintiffs are California residents, All remaining PLAINTIFFS are current and/or former United States citizens and/or legal residents, and Defendant is a Texas corporation with its principal place of business in Texas. In addition, the action is brought as a class action pursuant to *Federal Rules of Civil Procedure*, Rule 23 and 28 U.S.C. §1332 (d), the *Class Action Fairness Act*, on behalf of a class that exceeds 100 people, that involves more than \$5,000,000 in controversy, and where the citizenship of at least one member of the class is diverse from that of Defendants.

2. Plaintiffs, ROBERT J. ZAMMETTI, MICHAEL J. LOWRY, individually, and in a representative capacity and on behalf of all other similarly situated persons who were damaged by DEFENDANTS breach of contract, fraudulent concealment, intentional misrepresentations, negligent misrepresentations, breach of covenants of good faith and fair dealing, and its deceptive, and misleading business practices (the *California Business & Professions Code* Sections 17200 et seq. and 17500 claims only applies to State of California residents) (hereinafter collectively known as “PLAINTIFFS”), make the allegations contained herein.

3. Specifically, lead PLAINTIFFS ROBERT J. ZAMMETTI, MICHAEL J. LOWRY are residents of the State of California. All remaining PLAINTIFFS are current and/or former United States citizens and/or legal residents and customers of Defendant SOUTHWEST AIRLINES, CO., and DOES 1 through 50 (hereinafter collectively known and referred to as “SOUTHWEST” or “DEFENDANTS”).

4. Defendant SOUTHWEST is a publicly held company incorporated under the laws of the State of Texas. Defendant SOUTHWEST’S headquarters and principal place of business is Dallas, Texas.

5. Defendant SOUTHWEST is a company organized and existing under the laws of the State of California and doing business in counties throughout California, including Orange County. Defendant is a Commercial Airliner. Defendant currently operates in and out of the

1 following airports located within the State of California: Bob Hope Airport- Burbank, Los  
2 Angeles International Airport, Oakland International Airport, Ontario International Airport, John  
3 Wayne Airport- Orange County, Sacramento International Airport, Lindberg Field- San Diego  
4 International Airport, San Francisco International Airport, Mineta San Jose International Airport.

5 6. PLAINTIFFS lack sufficient information and belief to allege the true names and  
6 capacities of defendants sued herein as DOES 1 through 50, inclusive. For that reason,  
7 PLAINTIFFS sue said fictitiously named defendants by such fictitious names. When the true  
8 names, nature and capacity of said fictitiously named defendants are ascertained, PLAINTIFFS  
9 shall amend this Complaint accordingly. At all times herein mentioned, all DEFENDANTS  
10 herein, whether named or unnamed were and are responsible and liable to PLAINTIFFS for all  
11 of the PLAINTIFFS' damages and other relief prayed for herein. PLAINTIFFS allege on  
12 information and belief that at all times herein mentioned, each of the defendants herein, whether  
13 named or unnamed, was the agent, servant employee, co-conspirator, co-adventurer, and  
14 employee of each other defendant herein, whether named or unnamed. With respect to each  
15 action and inaction pled in the following paragraphs, each of the defendants, whether named or  
16 unnamed, was acting within the course and scope of their agency and employment and was  
17 acting with the full knowledge, consent, ratification and approval of each other defendant herein,  
18 whether named or unnamed.

19 7. Venue is proper in this Court and judicial district under 28 *U.S.C.* § 1391 because  
20 DEFENDANTS' conduct and conducted substantial business within this judicial district and  
21 maintain offices in this judicial district, (ii) the causes of action alleged herein arose in whole or  
22 in part in this judicial district, and (iii) DEFENDANTS committed wrongful conduct against  
23 members of the class in this district.

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25 **II. FACTUAL BACKGROUND FOR ALL CLASS CLAIMS**

26 8. On or about August 8, 2013, Plaintiff Robert ZAMMETTI purchased "Wanna Get  
27 Away" airline tickets on Defendant SOUTHWEST'S airline for roundtrip travel between San  
28 Diego, California, and Detroit, Michigan. At the time of purchase, Plaintiff ZAMMETTI

1 selected and purchased the add-on of “Early Bird Check-in” (Hereinafter referred to and/or  
2 identified as either “Early Bird Check in” or “Early Bird”) as to receive a priority boarding  
3 position. Plaintiff ZAMMETTI was deceptively, fraudulently, and intentionally/negligently  
4 enticed into “adding-on” “Early-Bird” priority boarding to his upcoming flight to his above-  
5 referenced roundtrip flight on Defendant SOUTHWEST’S Airline. The “Early Bird Check-in”  
6 add-on costs \$12.50 per flight segment, or \$25.00 for a roundtrip flight.

7 9. At the time of boarding, Plaintiff ZAMMETTI contacted and identified numerous  
8 individuals that received a higher boarding position than he had received at the time of check in.  
9 None of these individuals purchased Defendant SOUTHWEST’S deceptive, fraudulent, and  
10 misleading “Early Bird Check-in” add-on to receive priority boarding. Furthermore, these  
11 individuals had purchased either an “Anytime” or “Wanna Get Away” fares respectively.

12 10. On or about March 3, 2014, Plaintiff Michael LOWRY purchased “Wanna Get  
13 Away” airline tickets on Defendant SOUTHWEST’S airline for roundtrip travel between Los  
14 Angeles, California, and Indianapolis, Indiana. After completing travel on a previous  
15 SOUTHWEST flight, wherein, Plaintiff Michael LOWRY received “B” boarding group  
16 assignment, Plaintiff LOWRY was deceptively, fraudulently, and intentionally/negligently  
17 enticed into “adding-on” Early-Bird” priority boarding to his upcoming flight to Indianapolis,  
18 Indiana. The “Early Bird Check-in” add-on costs \$12.50 per flight segment, or \$25.00 for a  
19 roundtrip flight.

20 11. At the time of boarding, Plaintiff LOWRY contacted and identified numerous  
21 individuals that received a higher boarding position than he had received at the time of check in.  
22 None of these individuals purchased Defendant SOUTHWEST’S deceptive, fraudulent and  
23 misleading “Early Bird Check-in” add-on to receive priority boarding. Furthermore, these  
24 individuals had purchased either an “Anytime” or “Wanna Get Away” fares respectively.

25 12. Defendant SOUTHWEST’S boarding procedure assigns boarding positions based  
26 upon the time a customer checks in for their flight. Ticketed passengers are able to check in and  
27 receive their boarding assignment (Group and number) from twenty-four (24) hours before the  
28 flight’s time of departure up to and including the departure time of the flight. The earlier a

1 customer checks in, the higher the boarding position that customer receives- subject to  
2 DEFENDANT’S published (intentional/negligent and misleading) AND unpublished (deceptive  
3 and fraudulent) boarding policies and procedures.

4 13. Defendant SOUTHWEST divides customers into three boarding groups: A, B,  
5 and C. Each letter group contains approximately sixty (60) boarding positions, each of which is  
6 assigned to one customer. Defendant SOUTHWEST assigns customers to a boarding letter group  
7 and boarding number within that group based upon the time the customer checks in for the flight,  
8 for a boarding number such as (for example) “B10.” This denotes that the customer will be in the  
9 second boarding group, boarding after the A group, and will be the tenth person to board within  
10 the B group.

11 14. Defendant SOUTHWEST reserves boarding numbers A one through fifteen (1-  
12 15) on every flight for “Business Select” fares. Defendant SOUTHWEST claims on its website,  
13 under the “How do I get an A boarding pass,” question within the “Boarding Procedures  
14 Frequently Asked Questions,” that “Rapid Rewards A-List Preferred” members, “Rapid Rewards  
15 A-List” members, and customers who purchase “Early Bird Check-in” add-ons have their  
16 boarding positions reserved before general check-in begins, subject to DEFENDANT’S  
17 published (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent)  
18 boarding policies and procedures. Periodically and subject to availability, while at the gate,  
19 Defendant SOUTHWEST customers may upgrade their boarding position to an open position  
20 within A one through fifteen (1-15- Business Select for a \$40 upgrade fee. This upgrade fee  
21 guarantees a boarding position within A one through fifteen (1-15 - Business Select), but does  
22 not offer any other Business Select Fare benefits.

23 15. Defendant SOUTHWEST offers the “Early Bird Check-in” add-on to guarantee  
24 automatic check-in and assign a “priority” boarding position thirty-six (36) hours before the  
25 flight’s departure time, twelve (12) hours before general check-in begins, which occurs twenty-  
26 four (24) hours prior to departure. The “Early Bird Check-in” add-on costs \$25 for each round  
27 trip flight (\$12.50 each way).

1           16.     According to Defendant SOUTHWEST’S published (intentional/negligent and  
2 misleading) AND unpublished (deceptive and fraudulent) boarding policies and procedures,  
3 neither “Anytime” or “Wanna Get Away” fares have priority over one another in determining  
4 boarding position, with only “Business Select” fares receiving priority over all other fare types.

5           17.     The “Early Bird Check-in Frequently Asked Questions” section of Defendant  
6 SOUTHWEST’S website claims that customers who have purchased “Anytime” fares will  
7 receive priority over other fare types that are assigned their position based on the timestamp of  
8 the “Early Bird Check-in” purchase. This is in direct contradiction to the aforementioned  
9 published (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent)  
10 boarding policies and procedures, wherein neither “Anytime” or “Wanna Get Away” fares have  
11 “priority” over one another in determining boarding position, with only “Business Select” fares  
12 receiving priority over all other fare types.

13           18.     This is ambiguous and misleading as to whether or not an “Anytime” fare must  
14 have the “Early Bird Check-in” add-on to receive “priority” over “Wanna Get Away” fares, or if  
15 an “Anytime” fare on its own, without the “Early Bird Check-in” add-on, will receive “priority”  
16 over “Wanna Get Away” fares. Either of these interpretations gives customers who are  
17 fraudulently enticed into purchasing “Anytime” fares priority over customers who purchase  
18 “Wanna Get Away” fares, in direct contradiction with the aforementioned published  
19 (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent) boarding  
20 policies and procedures, wherein neither “Anytime” or “Wanna Get Away” fares have “priority”  
21 over one another in determining boarding position, with only “Business Select” fares receiving  
22 priority over all other fare types. Thus, the “Early Bird Check-in” add-on is misleading,  
23 fraudulent, and deceptive in nature.

24           19.     If these intentional misrepresentations, fraudulent concealments, and deceptive  
25 business practices were known to the public, then Defendant SOUTHWEST’S windfall of  
26 revenue would not exist. If customers were properly informed, as opposed to constructively  
27 and/or intentionally misled, they would NOT purchase the illusory “Early Bird” priority  
28 boarding add-on, and/or would NOT purchase a fare from Defendant SOUTHWEST.

1           20. Defendant SOUTHWEST entices customers who have purchased “Wanna Get  
2 Away” or “Anytime” fares to purchase the “Early Bird Check-in” add-on to receive “priority”  
3 boarding over other customers. However, based upon the aforementioned published  
4 (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent) boarding  
5 policies and procedures, “Anytime” fares receive priority boarding over “Wanna Get Away”  
6 fares outright, thus those with “Anytime” fares who purchase the “Early Bird Check-in” add-on  
7 only receive priority boarding over other “Anytime” fares, creating a fiction of “priority  
8 boarding.” Alternatively, based upon the aforementioned published (intentional/negligent and  
9 misleading) AND unpublished (deceptive and fraudulent) boarding policies and procedures,  
10 “Anytime” fares with the “Early Bird Check-in” add-on receive priority over all other fare types,  
11 thus making “Wanna Get Away” fares with the “Early Bird Check-in” add-on subordinate and  
12 creating a fiction of “priority boarding.” Therefore, Defendant SOUTHWEST’S “Early- Bird”  
13 priority boarding is not only fiction in nature, but completely illusory as advertised. If these  
14 intentional misrepresentations, fraudulent concealments, and deceptive business practices were  
15 known to the public, then Defendant SOUTHWEST’S windfall of revenue would not exist. If  
16 customers were properly informed, as opposed to constructively and/or intentionally misled, they  
17 would NOT purchase the illusory “Early Bird” priority boarding add-on, and/or would NOT  
18 purchase a fare from Defendant SOUTHWEST.

19           21. The “Early Bird Check-in Frequently Asked Questions” section of Defendant  
20 SOUTHWEST’S website states that the number of “Early Bird Check-in” add-ons will NOT be  
21 limited on each flight, allowing all eligible customers to purchase the “Early Bird Check-in” add-  
22 on. This means that all boarding positions on the plane (with the exception A one through fifteen  
23 (1-15) for “Business Select” fares), which included Group “A” sixteen through sixty (16-60),  
24 Group “B” one through sixty (1-60) and Group “C” one through sixty (1-60), may purchase the  
25 “Early Bird Check-in” add-on to receive “priority boarding.” Thus, a customer may purchase the  
26 “Early Bird Check-in” add-on and still receive a boarding position of C sixty (C60), the last  
27 boarding position of the flight, thus creating a fiction of “priority boarding,” and making the  
28 “Early Bird Check-in” add-on misleading, fraudulent, and deceptive in nature.

1           22.     If these intentional misrepresentations, fraudulent concealments, and deceptive  
2 business practices were known to the public, then Defendant SOUTHWEST’S windfall of  
3 revenue would not exist. If customers were properly informed, as opposed to constructively  
4 and/or intentionally misled, they would NOT purchase the illusory “Early Bird” priority  
5 boarding add-on, and/or would NOT purchase a fare from Defendant SOUTHWEST.

6           23.     In addition, Defendant SOUTHWEST’S fraudulent, intentional/negligent,  
7 misleading and deceptive boarding algorithm **further perpetuates** Defendant SOUTHWEST’S  
8 fiction of “priority boarding.” Based upon the aforementioned published (intentional/negligent  
9 and misleading) AND unpublished (deceptive and fraudulent) boarding policies and procedures,  
10 customers who purchase the “Early Bird Check-in” add-on are checked-in and have their  
11 boarding position reserved thirty-six (36) hours prior to flight departure. As stated previously,  
12 all non- “Early-Bird” “priority” boarding customers can receive their boarding position starting  
13 twenty-four (24) hours prior to flight departure. However, what the consumer does not know is  
14 that SOUTHWEST “reserves” a certain number of “A” boarding positions for “Rapid Rewards  
15 A-list preferred” and “Rapid Rewards A-list” members (not to be more thoroughly confused with  
16 SOUTHWEST’S “A” Boarding group identification). In addition, Defendant’s “Early Bird”  
17 priority program does not take into account for the passenger cancellations that occur from  
18 thirty-six (36) hours up until flight departure. Thus, a customer can check in at the airport thirty  
19 (30) minutes prior to the subject flight and receive a HIGHER/BETTER boarding position than  
20 ALL “Early-Bird” priority add-on customers, “Anytime” fare purchasers, and/or “Wanna Get  
21 Away” fare purchasers.

22           24.     This reverse algorithm, so to speak, does NOT reshuffle the pre-assigned  
23 boarding assignments upon a cancellation of ticketed passengers, thus creating even more  
24 deception to the enticed and illusory “Early Bird” add-on fee. If this fraudulent,  
25 intentional/negligent, misleading and deceptive algorithm deficiency was known to the public,  
26 Defendant SOUTHWEST’S windfall of revenue would not exist. If customers were properly  
27 informed, as opposed to constructively and/or intentionally misled, they would NOT purchase  
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1 the illusory “Early Bird” priority boarding add-on, and/or would NOT purchase a fare from  
2 Defendant SOUTHWEST.

3 25. Furthermore, Defendant SOUTHWEST’S major advertising and marketing  
4 campaign/slogan is that on SOUTHWEST “BAGS FLY FREE”. This “BAGS FLY FREE”  
5 marketing slogan is directly responsible for Defendant SOUTHWEST’S market share in the  
6 airline industry. This is deceptive, fraudulent, and misleading by the very nature of the definition  
7 and connotation of the words. The bags do NOT fly free. In fact, SOUTHWEST “hides” the  
8 baggage fee and recovers their fuel-cost offset revenue under the guise of the deceptive  
9 “priority” “Early Bird” boarding program. Therefore, if these intentional misrepresentations,  
10 fraudulent concealments, and deceptive business practices were known to the public, then  
11 Defendant SOUTHWEST’S windfall of revenue would not exist. If customers were properly  
12 informed, as opposed to constructively and/or intentionally misled, they would NOT purchase  
13 the illusory “Early Bird” priority boarding add-on, and/or would NOT purchase a fare from  
14 Defendant SOUTHWEST.

15 26. Defendant SOUTHWEST uses this marketing slogan to entice customers to  
16 purchase tickets on DEFENDANT’S Airline. The reason that they do not charge their customers  
17 for checked bags is because they offset the added fuel cost of the checked baggage by the  
18 windfall of revenue generated from their intentional/negligent, fraudulent, deceptive, and  
19 misleading “Early Bird Check-in” scam of \$25 per roundtrip flight. *These intentional/negligent,*  
20 *fraudulent, deceptive and misleading policies, procedures, and practices of Defendant*  
21 *SOUTHWEST allow them to increase revenues at the expense of the general public and their*  
22 *competitors.*

23 27. This action is brought as a representative class action to recover for ALL damages  
24 owed to PLAINTIFFS by Defendant SOUTHWEST, and DOES 1 through 50, as well as their  
25 subsidiaries, predecessors and affiliated companies (“DEFENDANTS” or “SOUTHWEST”),  
26 based on Defendant SOUTHWEST’S fraudulent, intentional/negligent, deceptive, and  
27 misleading, “Early-Bird” priority boarding scam, which clearly establishes Defendant  
28 SOUTHWEST’S liability for breach of contract, fraudulent concealment, intentional

1 misrepresentations, negligent misrepresentations, breach of covenants of good faith and fair  
2 dealing, as well as violates *California Business & Professions Code* sections 17200-17208  
3 ("UCL").

4 28. Plaintiffs Robert J. ZAMMETTI and Michael J. LOWRY (hereinafter collectively  
5 referred to as "PLAINTIFFS") bring this collective and class action individually, and in a  
6 representative capacity and on behalf of all other similarly situated current and former, customers  
7 of Defendant SOUTHWEST within the United States of America, who have purchased Airline  
8 tickets and/or "Early Bird" priority boarding from Defendant SOUTHWEST, from the time  
9 period of four (4) years prior to filing of the Complaint to present.

10 29. Defendant SOUTHWEST'S actions, as detailed above, were part of a statewide  
11 and/or nationwide corporate plan and scheme, which affected all customers who purchased  
12 Airline tickets and/or "Early Bird" priority boarding from Defendant SOUTHWEST. As a direct  
13 and proximate result of SOUTHWEST'S illegal, company-wide plan, practice and scheme, each  
14 of the PLAINTIFFS were: (1) deceived into buying airline tickets for travel from Defendants;  
15 (2) deceived into purchasing "Early-Bird" priority boarding under false and misleading  
16 pretenses; (3) victimized by SOUTHWEST'S policies and practices set forth herein.

17 PLAINTIFFS are entitled to recover all fees paid to Defendant SOUTHWEST, and DOES 1  
18 through 50, for breach of contract, fraudulent concealment, intentional misrepresentations,  
19 negligent misrepresentations, breach of covenants of good faith and fair dealing, as well as  
20 violations *California Business & Professions Code* sections 17200-17208 ("UCL"), civil  
21 penalties, punitive damages, attorneys' fees and costs, and interest as authorized by law.

22 30. PLAINTIFFS respectfully request that the Court order notice to all similarly  
23 situated current and former customers of Defendant SOUTHWEST within the United States of  
24 America, who have purchased Airline tickets and/or "Early Bird" priority boarding from  
25 Defendant SOUTHWEST, from the time period of four (4) years prior to filing of the Complaint  
26 to present, informing them of the pendency of this action. PLAINTIFFS will also seek class  
27 certification pursuant to *Federal Rules of Civil Procedure*, Rule 23, with Court approved notice.  
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1           31.     PLAINTIFFS allege, upon information and belief, that Defendant SOUTHWEST,  
2 a Texas corporation is, at all times referenced herein, a corporation and/or other business entity  
3 organized and existing under the laws of the State of California.

4           32.     PLAINTIFFS are/were customers of Defendant SOUTHWEST in the United  
5 States of America during the applicable statute of limitations period. PLAINTIFFS are/were  
6 customers of Defendant SOUTHWEST and/or its affiliates and PLAINTIFFS set forth the  
7 identity of such DEFENDANTS by virtue of Defendant SOUTHWEST'S corporate documents  
8 and other documents.

9           33.     The true names and capacities of Defendants, DOES 1 through 50, inclusive, are  
10 presently unknown to PLAINTIFFS, who therefore sue said Defendants by such fictitious names.  
11 PLAINTIFFS will seek leave of court to amend this Complaint to insert the true names and  
12 capacities of said fictitiously named Defendants when the same have been ascertained.

13           34.     PLAINTIFFS allege that Defendant SOUTHWEST and DOES 1 through 50,  
14 inclusive, acted together in committing the violations of the California *Business and Professions*  
15 *Code sections 17200, 17500, et seq.*, and other laws/regulations alleged herein.

16           35.     PLAINTIFFS are informed and believe, and thereon allege, that each of the  
17 Defendant DOES designated herein is contractually, vicariously, or legally responsible in some  
18 manner for the events and happenings hereinafter alleged, either through said Defendant DOES'  
19 own conduct or through the conduct of its agents, servants, consultants, joint ventures and  
20 employees, and each of them, or in some other manner.

21           36.     PLAINTIFFS are informed and believe, and thereon allege, that at all relevant  
22 times herein mentioned, each of the DEFENDANTS was the agent, representative, principal,  
23 servant, employee, partner, alter ego, joint venture, successor-in-interest, assistant and/or  
24 consultant of each and every remaining DEFENDANT, and as such, was at all times acting  
25 within the course, scope, purpose and authority of said agency, partnership and/or employment,  
26 and with the express or implied knowledge, permission, authority, approval, ratification, and  
27 consent of the remaining DEFENDANTS, and each DEFENDANT was responsible for the acts,  
28 alleged herein, and all DEFENDANTS herein were also negligent and reckless in the selection,

1 hiring and supervision of each and every other DEFENDANT as an agent, representative,  
2 principal, servant, employee, partner, alter ego, joint venture, successor-in-interest, assistant  
3 and/or consultant.

4  
5 **III. CLASS ACTION SUB-CLASS IDENTIFICATION**

6 37. **DEFINITION OF CLASS** - PLAINTIFFS bring this action as a class action  
7 pursuant to *Federal Rules of Civil Procedure*, Rules 23(a) and 23(b) (3) on behalf of themselves  
8 and the following class and subclasses of customers and former customers of Defendant  
9 SOUTHWEST within the United States of America who, within the Liability Period, have  
10 purchased Airline tickets and/or Early Bird boarding from Defendant SOUTHWEST. In  
11 addition, PLAINTIFFS seek class certification pursuant to *Federal Rules of Civil Procedure*,  
12 Rules 23(a) and 23(b) (3), unfair competition law, as well other as case and statutory law, on  
13 behalf of themselves and the following class or classes of customers and former customers of  
14 Defendant SOUTHWEST, who, within the Liability Period, have purchased Airline tickets  
15 and/or Early Bird boarding from Defendant SOUTHWEST:

16 38. **“EARLY BIRD” PRIORITY BOARDING CLASS** – Plaintiffs, Robert J.  
17 ZAMMETTI and Michael J. LOWRY, individually, and in a representative capacity and on  
18 behalf of all other similarly situated current and former SOUTHWEST customers, within the  
19 United States of America, who have purchased Early Bird Boarding from Defendant  
20 SOUTHWEST from the time period of four (4) years prior to filing of the Complaint to present,  
21 in reliance on Defendant SOUTHWEST’S fraudulent, intentional/negligent, deceptive and  
22 misleading business practices, in violation of federal and state, case and statutory law, including  
23 but not limited to unfair competition laws.

24 39. **WANNA GET AWAY FARE PURCHASE WITH “EARLY BIRD”**  
25 **PRIORITY BOARDING CLASS**

26 Plaintiffs, Robert J. ZAMMETTI and Michael J. LOWRY, individually, and in a  
27 representative capacity and on behalf of all other similarly situated current and former  
28 SOUTHWEST customers, within the United states of America, who have purchased “Early

1 Bird” Priority Boarding, in addition to purchasing Defendant SOUTHWEST’S Wanna Get Away  
2 fare from the time period of four (4) years prior to filing of the Complaint to present, in reliance  
3 on Defendant SOUTHWEST’S fraudulent, intentional/negligent, deceptive and misleading  
4 business practices, in violation of federal and state, case and statutory law, including but not  
5 limited to unfair competition laws.

6 40. **ANYTIME FARE PURCHASE WITH “EARLY BIRD” PRIORITY**  
**BOARDING CLASS**

7 Plaintiffs, Robert J. ZAMMETTI and Michael J. LOWRY, individually, and in a  
8 representative capacity and on behalf of all other similarly situated current and former  
9 SOUTHWEST customers, within the United States of America, who have purchased “Early  
10 Bird” Priority Boarding, in addition to purchasing Defendant SOUTHWEST’S Anytime fare  
11 from the time period of four (4) years prior to filing of the Complaint to present, in reliance on  
12 Defendant SOUTHWEST’S fraudulent, intentional/negligent, deceptive and misleading business  
13 practices, in violation of federal and state, case and statutory law, including but not limited to  
14 unfair competition laws.

15 41. **WANNA GET AWAY FARE PURCHASE CLASS** – Plaintiffs, Robert J.  
16 ZAMMETTI and Michael J. LOWRY, individually, and in a representative capacity and on  
17 behalf of all other similarly situated current and former SOUTHWEST customers, within the  
18 United States of America, who have purchased Defendant SOUTHWEST’S Wanna Get Away  
19 fare from the time period of four (4) years prior to filing of the Complaint to present, in reliance  
20 on Defendant SOUTHWEST’S fraudulent, intentional/negligent, deceptive and misleading  
21 business practices, in violation of federal and state, case and statutory law, including but not  
22 limited to unfair competition laws.

23 42. **ANYTIME FARE PURCHASE CLASS** - Plaintiffs, Robert J. ZAMMETTI and  
24 Michael J. LOWRY, individually, and in a representative capacity and on behalf of all other  
25 similarly situated current and former SOUTHWEST customers, within the United States of  
26 America, who have purchased Defendant SOUTHWEST’S Anytime fare from the time period of  
27 four (4) years prior to filing of the Complaint to present, in reliance on Defendant  
28 SOUTHWEST’S fraudulent, intentional/negligent, deceptive and misleading business practices,

1 in violation of federal and state, case and statutory law, including but not limited to unfair  
2 competition laws.

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4 **IV. FEDERAL RULES OF CIVIL PROCEDURE RULE 23**  
**CLASS ACTION REQUIREMENTS**

5 43. **NUMEROSITY** - Based on information and belief, the members of the putative  
6 class greatly exceeds 10,000 persons. This number may increase, depending upon the  
7 information obtained from Defendant SOUTHWEST over the applicable statutory period prior to  
8 the filing of this Complaint.

9 44. **COMMONALITY** - There are questions of law and fact common to the class  
10 which predominate over any questions affecting only individual members of the class including,  
11 but not limited to, the following: Common questions of fact and law exist as to all class and  
12 subclass members and predominate over any questions that affect only individual class members.  
13 The conduct at issue in this case affected all current and former SOUTHWEST customers who  
14 have purchased Airline tickets and/or Early Bird boarding from Defendant SOUTHWEST,  
15 within the United States of America, during the statutory time period. Specifically, common  
16 questions include, but are not limited to:

17 a. Whether Defendant SOUTHWEST violated *California Business & Professions*  
18 *Code* section 17200 et seq., with its false, deceptive, fraudulent, and misleading business  
19 practices;

20 b. Whether Defendant SOUTHWEST violated *California Business & Professions*  
21 *Code* section 17500 et seq., with its false, deceptive, fraudulent, and misleading business  
22 advertising practices;

23 c. Whether Defendant SOUTHWEST fraudulently concealed, omitted, and or failed  
24 to disclose material facts;

25 d. Whether Defendant SOUTHWEST intentionally misrepresented material facts to  
26 a substantial segment of its audience;

27 e. Whether Defendant SOUTHWEST negligently misrepresented material facts to a  
28 substantial segment of its audience;

1 f. Whether Defendant SOUTHWEST breached the covenant of good faith and fair  
2 dealing to a substantial segment of its audience;

3 g. Whether Defendant SOUTHWEST has been unjustly enriched through its false,  
4 deceptive, fraudulent, and misleading business practices;

5 h. Whether members of the Class are entitled to actual damages, entry of final  
6 judgment and injunctive relief compelling Defendant SOUTHWEST to cease its fraudulent and  
7 deceptive business practices;

8 i. Whether Defendant SOUTHWEST deliberately misrepresented or failed to  
9 disclose material facts to Plaintiffs and the Class; and

10 j. Whether Defendant SOUTHWEST'S conduct constitutes an unconscionable  
11 business practice.

12 45. **TYPICALITY** - The claims of the Named PLAINTIFFS are typical of the claims  
13 of the class members. The Named PLAINTIFFS were subject to the same violations of  
14 applicable rights under federal and state, case and statutory law, including but not limited to  
15 unfair competition laws and seek the same type of damages, restitution, and other relief on the  
16 same theories and legal grounds as those of the class members they seek to represent.

17 46. **ADEQUACY OF REPRESENTATION** – Pursuant to *Federal Rules of Civil*  
18 *Procedure* Rule 23 (a)(4), Members of a class may sue as representatives on behalf of the class  
19 only if they “will fairly and adequately protect the interests of the class”. The Representative  
20 PLAINTIFFS in the case at bar will fairly and adequately represent and protect the interests of  
21 the Class members, as they have intricate knowledge of Defendant SOUTHWEST'S  
22 wrongdoings, have suffered injury themselves, and will prosecute the action vigorously on behalf  
23 of the class. PLAINTIFFS' Counsel are competent and experienced in litigating consumer class  
24 actions, complex litigation matters, employment class actions, and other class actions involving  
25 violations of the unfair competition law similar to the present claims.

26 47. **SUPERIORITY** - This class action is superior to other available means for the fair  
27 and efficient adjudication of the claims of the Class Members. It would be virtually impossible  
28 for the Class Members to individually obtain redress for the wrongs done to them. Even if the

1 individual Class Members could afford such individual litigation, the court system could not.

2 Individualized litigation presents a potential for inconsistent or contrary judgments. By contrast,  
3 the class action device presents far fewer management difficulties, and provides the benefits of  
4 single adjudication, economy of scale, and comprehensive supervision by a single court.

5 48. Class certification is appropriate under *Federal Rules of Civil Procedure, Rule*  
6 *23(b)(3)* because questions of law and fact common to the class members predominate over any  
7 questions affecting only individual class members. Each class member has been damaged and is  
8 entitled to recovery by reason of Defendant SOUTHWEST’S fraudulent, intentional/negligent,  
9 unfair, deceptive, and misleading business policies and practices as alleged herein.

10  
11 **V. FIRST CAUSE OF ACTION FOR UNFAIR OR UNLAWFUL BUSINESS**  
12 **PRACTICES PURSUANT TO CALIFORNIA BUSINESS &**  
13 **PROFESSIONS CODE SECTION 17200 ET SEQ.**

14 (As against all DEFENDANTS)

15 49. As a FIRST, separate, and distinct cause of action, PLAINTIFFS complain  
16 against Defendant SOUTHWEST and DOES 1 through 50, inclusive, and re-alleges all the  
17 allegations contained in this complaint and incorporates them by reference into this cause of  
18 action as though fully set forth herein.

19 50. California *Business & Professions Code* Section 17200, et seq., prohibits acts of  
20 unfair competition, which means and includes any “fraudulent business act or practice . . .” and  
21 conduct which is “likely to deceive” and is “fraudulent” within the meaning of Section 17200.

22 51. Defendant SOUTHWEST offers the “Early Bird Check-in” add-on to guarantee  
23 automatic check-in and assign a “priority” boarding position thirty-six (36) hours before the  
24 flight’s departure time, twelve (12) hours before general check-in begins, which occurs twenty-  
25 four (24) hours prior to departure. The “Early Bird Check-in” add-on costs \$25 for each round  
26 trip flight (\$12.50 each way).

27 52. According to Defendant SOUTHWEST’S published (intentional/negligent and  
28 misleading) AND unpublished (deceptive and fraudulent) boarding policies and procedures,

1 neither “Anytime” or “Wanna Get Away” fares have priority over one another in determining  
2 boarding position, with only “Business Select” fares receiving priority over all other fare types.

3 53. The “Early Bird Check-in Frequently Asked Questions” section of Defendant  
4 SOUTHWEST’S website claims that customers who have purchased “Anytime” fares will  
5 receive priority over other fare types that are assigned their position based on the timestamp of  
6 the “Early Bird Check-in” purchase. This is in direct contradiction to the aforementioned  
7 published (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent)  
8 boarding policies and procedures, wherein neither “Anytime” or “Wanna Get Away” fares have  
9 “priority” over one another in determining boarding position, with only “Business Select” fares  
10 receiving priority over all other fare types.

11 54. This is ambiguous and misleading as to whether or not an “Anytime” fare must  
12 have the “Early Bird Check-in” add-on to receive “priority” over “Wanna Get Away” fares, or if  
13 an “Anytime” fare on its own, without the “Early Bird Check-in” add-on, will receive “priority”  
14 over “Wanna Get Away” fares. Either of these interpretations gives customers who are  
15 fraudulently enticed into purchasing “Anytime” fares priority over customers who purchase  
16 “Wanna Get Away” fares, in direct contradiction with the aforementioned published  
17 (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent) boarding  
18 policies and procedures, wherein neither “Anytime” or “Wanna Get Away” fares have “priority”  
19 over one another in determining boarding position, with only “Business Select” fares receiving  
20 priority over all other fare types. Thus, the “Early Bird Check-in” add-on is misleading,  
21 fraudulent, and deceptive in nature.

22 55. Therefore, if this deceptive business practice was known to the public, Defendant  
23 SOUTHWEST’S windfall of revenue based on misleading, deceptive, and fraudulent business  
24 practices would not exist because if customers were properly informed, as opposed to  
25 constructively and/or intentionally misled, they would NOT purchase the illusory “Early Bird”  
26 priority boarding add-on, and/or would NOT purchase a fare from Defendant SOUTHWEST.

27 56. Defendant SOUTHWEST entices customers who have purchased “Wanna Get  
28 Away” or “Anytime” fares to purchase the “Early Bird Check-in” add-on to receive “priority”

1 boarding over other customers. However, based upon the aforementioned published  
2 (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent) boarding  
3 policies and procedures, “Anytime” fares receive priority boarding over “Wanna Get Away”  
4 fares outright, thus those with “Anytime” fares who purchase the “Early Bird Check-in” add-on  
5 only receive priority boarding over other “Anytime” fares, creating a fiction of “priority  
6 boarding.” Alternatively, based upon the aforementioned published (misleading) AND  
7 unpublished (deceptive) boarding policies and procedures, “Anytime” fares with the “Early Bird  
8 Check-in” add-on receive priority over all other fare types, thus making “Wanna Get Away”  
9 fares with the “Early Bird Check-in” add-on subordinate and creating a fiction of “priority  
10 boarding.”

11 57. Thus, Defendant SOUTHWEST’S “Early- Bird” priority boarding is not only  
12 fiction in nature, but completely illusory as advertised. If this deceptive business practice was  
13 known to the public, Defendant SOUTHWEST’S windfall of revenue based on misleading,  
14 deceptive, and fraudulent business practices would not exist because if customers were properly  
15 informed, as opposed to constructively and/or intentionally misled, they would NOT purchase  
16 the illusory “Early Bird” priority boarding add-on, and/or would NOT purchase a fare from  
17 Defendant SOUTHWEST.

18 58. The “Early Bird Check-in Frequently Asked Questions” section of Defendant  
19 SOUTHWEST’S website states that the number of “Early Bird Check-in” add-ons will NOT be  
20 limited on each flight, allowing all eligible customers to purchase the “Early Bird Check-in” add-  
21 on. This means that all boarding positions on the plane, with the exception A one through fifteen  
22 (1-15) for “Business Select” fares and including A sixteen through sixty (16-60), B one through  
23 sixty (1-60) and C one through sixty (1-60), may purchase the “Early Bird Check-in” add-on to  
24 receive “priority boarding.” A customer may purchase the “Early Bird Check-in” add-on and still  
25 receive a boarding position of C sixty (C60), the last boarding position of the flight, thus creating  
26 a fiction of “priority boarding,” and making the “Early Bird Check-in” add-on misleading,  
27 fraudulent, and deceptive in nature. If this deceptive business practice was known to the public,  
28 Defendant SOUTHWEST’S windfall of revenue based on misleading, deceptive, and fraudulent

1 business practices would not exist because if customers were properly informed, as opposed to  
2 constructively and/or intentionally misled, they would NOT purchase the illusory “Early Bird”  
3 priority boarding add-on, and/or would NOT purchase a fare from Defendant SOUTHWEST.

4 59. In addition, Defendant SOUTHWEST’S misleading, fraudulent, and deceptive  
5 boarding algorithm further perpetuates DEFENDANT’S fiction of “priority boarding.” Based  
6 upon the aforementioned published (intentional/negligent and misleading) AND unpublished  
7 (deceptive and fraudulent) boarding policies and procedures, customers who purchase the “Early  
8 Bird Check-in” add-on are checked-in and have their boarding position reserved thirty-six (36)  
9 hours prior to flight departure. As stated previously, all non- “Early-Bird” “priority” boarding  
10 customers can receive their boarding position starting twenty-four (24) hours prior to flight  
11 departure. However, what the consumer does not know is that SOUTHWEST “reserves” a  
12 certain number of “A” boarding positions for “Rapid Rewards A-list preferred” and “Rapid  
13 Rewards A-list” members (not to be more thoroughly confused with SOUTHWEST’S “A”  
14 Boarding group identification).

15 60. Defendant SOUTHWEST’S “Early Bird” priority program does not take into  
16 account for the passenger cancellations that occur from thirty-six (36) hours up until flight  
17 departure. Thus, a customer can check in at the airport thirty (30) minutes prior to the subject  
18 flight and receive a HIGHER/BETTER boarding position than ALL “Early-Bird” priority add-on  
19 customers, “Anytime” fare purchasers, and/or “Wanna Get Away” fare purchasers. This reverse  
20 algorithm, so to speak, does NOT reshuffle the pre-assigned boarding assignments upon a  
21 cancellation of ticketed passengers, thus creating even more deception to the enticed and illusory  
22 “Early Bird” add-on fee.

23 61. If this algorithm deficiency was known to the public, Defendant SOUTHWEST’S  
24 windfall of revenue based on misleading, deceptive, and fraudulent business practices would not  
25 exist because if customers were properly informed, as opposed to constructively and/or  
26 intentionally misled, they would NOT purchase the illusory “Early Bird” priority boarding add-  
27 on, and/or would NOT purchase a fare from Defendant SOUTHWEST.

1           62.     Furthermore, DEFENDANT’S major advertising and marketing campaign/slogan  
2 is that on SOUTHWEST “BAGS FLY FREE”. This “BAGS FLY FREE” marketing slogan is  
3 directly responsible for Defendant SOUTHWEST’S market share in the airline industry. This is  
4 misleading by the very nature of the definition and connotation of the words. The bags do NOT  
5 fly free. In fact, Defendant SOUTHWEST “hides” the baggage fee and recovers their fuel-cost  
6 offset revenue under the guise of the deceptive “priority” “Early Bird” boarding program.

7           63.     Therefore, if this deceptive business practice was known to the public, Defendant  
8 SOUTHWEST’S windfall of revenue based on misleading, deceptive, and fraudulent business  
9 practices would not exist because if customers were properly informed, as opposed to  
10 constructively and/or intentionally misled, they would NOT purchase the illusory “Early Bird”  
11 priority boarding add-on, and/or would NOT purchase a fare from Defendant SOUTHWEST.

12           64.     Defendant SOUTHWEST uses this marketing slogan to entice customers to  
13 purchase tickets on DEFENDANT’S Airline. The reason that they do not charge their customers  
14 for checked bags is because they offset the added fuel cost of the checked baggage by the  
15 windfall of revenue generated from their deceptive, fraudulent, and misleading “Early Bird  
16 Check-in” scam of \$25 per roundtrip flight. These deceptive policies, procedures, and practices  
17 of DEFENDANT allow them to increase revenues at the expense of the general public and  
18 THEIR competitors, thereby violating California unfair competition law to the core.

19           65.     Defendant SOUTHWEST’ actions, as detailed above, are part of a statewide  
20 and/or nationwide corporate plan and scheme, which affected all customers who purchased  
21 Airline tickets and/or “Early Bird” priority boarding from Defendant SOUTHWEST. As a direct  
22 and proximate result of SOUTHWEST’S illegal, company-wide plan, practice and scheme, each  
23 of the PLAINTIFFS were: (1) deceived into buying airline tickets for travel from Defendants;  
24 (2) deceived into purchasing “Early-Bird” priority boarding under false and misleading  
25 pretenses; (3) victimized by SOUTHWEST’S policies and practices set forth herein.

26           66.     Defendant SOUTHWEST’S’ policy and practice constitutes unfair, unlawful, or  
27 fraudulent business activity prohibited by the *UCL, California Business & Professions Code*  
28 *Sections 17200-17208.*

1           67. Defendant SOUTHWEST’S employment and utilization of such business  
2 practices constitutes an unfair business practice, unfair competition, and provides an unfair  
3 advantage over SOUTHWEST’S competitors. PLAINTIFFS seek full restitution and  
4 disgorgement of said monies from SOUTHWEST, as necessary and according to proof, to  
5 restore any and all monies withheld, acquired, or converted by SOUTHWEST by means of the  
6 unfair practices complained of herein.

7           68. The unlawful business practices of SOUTHWEST are likely to continue to  
8 mislead the public and present a continuing threat to the public, and unfair business practice.  
9 These violations constitute a threat and unfair business policy. The Court is authorized to order  
10 an injunction, and/or disgorgement of fees to affected members of the public as a remedy for any  
11 violations of *Business & Professions Code* Sections 17200, et seq. In addition, PLAINTIFFS  
12 allege that SOUTHWEST violated numerous *California Penal Code* statutes.

13           69. Defendant SOUTHWEST has been unjustly enriched and must be required to  
14 make restitution to Plaintiffs and other California consumers, disgorge themselves of all ill-  
15 gotten gains, and/or be subject to other equitable relief pursuant to *California Business &*  
16 *Professions Code* Section 17203 & 17204. All such remedies are cumulative of relief under  
17 other laws, pursuant to *California Business & Professions Code* section 17205. Additionally,  
18 Plaintiffs are entitled to injunctive relief and attorney’s fees as available under California  
19 *Business and Professions Code* Section 17200 and related sections.

20       **VI. SECOND CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA’S FALSE**  
21                               **ADVERTISING LAW PURSUANT TO CALIFORNIA BUSINESS &**  
22                               **PROFESSIONS CODE SECTION 17500 ET SEQ.**

23           70. As a SECOND, separate, and distinct cause of action, PLAINTIFFS complain  
24 against Defendant SOUTHWEST and DOES 1 through 50, inclusive, and re-alleges all the  
25 allegations contained in this complaint and incorporates them by reference into this cause of  
26 action as though fully set forth herein.

27           71. *California Business & Professions Code* Section 17500, et seq., prohibits acts of  
28 deceptive and misleading advertising. Specifically, “It is unlawful for any person, firm,

1 corporation or association, or any employee thereof with intent directly or indirectly to..  
2 ....induce the public to enter into any obligation relating thereto, to make or disseminate or cause  
3 to be made or disseminated before the public in this state, or to make or disseminate or cause to  
4 be made or disseminated from this state before the public in any state, in any newspaper or other  
5 publication, or any advertising device, or by public outcry or proclamation, or in any other  
6 manner or means whatever, including over the Internet, any statement, concerning that real or  
7 personal property or those services, professional or otherwise, or concerning any circumstance or  
8 matter of fact connected with the proposed performance or disposition thereof, which is untrue or  
9 misleading, and which is known, or which by the exercise of reasonable care should be known,  
10 to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or  
11 cause to be so made or disseminated any such statement as part of a plan or scheme with the  
12 intent not to sell that personal property or those services, professional or otherwise, so advertised  
13 at the price stated therein, or as so advertised”.

14 72. Defendant SOUTHWEST’S illegal, deceptive, and misleading business practices  
15 as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to  
16 California *Business and Professions Code* §§ 17500, *et seq.* because Defendant SOUTHWEST  
17 has advertised their Products in a manner that is untrue or misleading, or that is known to  
18 Defendant to be untrue or misleading.

19 73. Specifically, SOUTHWEST has engaged in unfair business practices in California  
20 by Defendant SOUTHWEST advertising the “Early Bird Check-in” add-on to guarantee  
21 automatic check-in and assign a “priority” boarding position thirty-six (36) hours before the  
22 flight’s departure time, twelve (12) hours before general check-in begins, which occurs twenty-  
23 four (24) hours prior to departure. The “Early Bird Check-in” add-on costs \$25 for each round  
24 trip flight (\$12.50 each way).

25 74. According to Defendant SOUTHWEST’S published (intentional/negligent and  
26 misleading) AND unpublished (deceptive and fraudulent) boarding policies and procedures,  
27 neither “Anytime” or “Wanna Get Away” fares have priority over one another in determining  
28 boarding position, with only “Business Select” fares receiving priority over all other fare types.

1           75.     The “Early Bird Check-in Frequently Asked Questions” section of Defendant  
2 SOUTHWEST’S website advertises that customers who have purchased “Anytime” fares will  
3 receive priority over other fare types that are assigned their position based on the timestamp of  
4 the “Early Bird Check-in” purchase. This is in direct contradiction to the aforementioned  
5 published (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent)  
6 boarding policies and procedures, wherein neither “Anytime” or “Wanna Get Away” fares have  
7 “priority” over one another in determining boarding position, with only “Business Select” fares  
8 receiving priority over all other fare types.

9           76.     This advertising by Defendant SOUTHWEST is ambiguous and misleading as to  
10 whether or not an “Anytime” fare must have the “Early Bird Check-in” add-on to receive  
11 “priority” over “Wanna Get Away” fares, or if an “Anytime” fare on its own, without the “Early  
12 Bird Check-in” add-on, will receive “priority” over “Wanna Get Away” fares. Either of these  
13 interpretations gives customers who are fraudulently enticed into purchasing “Anytime” fares  
14 priority over customers who purchase “Wanna Get Away” fares, in direct contradiction with the  
15 aforementioned published (intentional/negligent and misleading) AND unpublished (deceptive  
16 and fraudulent) boarding policies and procedures, wherein neither “Anytime” or “Wanna Get  
17 Away” fares have “priority” over one another in determining boarding position, with only  
18 “Business Select” fares receiving priority over all other fare types. Thus, the “Early Bird Check-  
19 in” add-on is misleading, fraudulent, and deceptive in nature.

20           77.     If this deceptive advertising was known to the public, Defendant  
21 SOUTHWEST’S windfall of revenue based on misleading, deceptive, and fraudulent business  
22 practices would not exist because if customers were properly informed, as opposed to  
23 constructively and/or intentionally misled, they would NOT purchase the illusory “Early Bird”  
24 priority boarding add-on, and/or would NOT purchase a fare from Defendant SOUTHWEST.

25           78.     Defendant SOUTHWEST entices customers who have purchased “Wanna Get  
26 Away” or “Anytime” fares to purchase the “Early Bird Check-in” add-on to receive “priority”  
27 boarding over other customers. However, based upon the aforementioned published  
28 (intentional/negligent and misleading) AND unpublished (deceptive and fraudulent) boarding

1 policies and procedures, “Anytime” fares receive priority boarding over “Wanna Get Away”  
2 fares outright, thus those with “Anytime” fares who purchase the “Early Bird Check-in” add-on  
3 only receive priority boarding over other “Anytime” fares, creating a fiction of “priority  
4 boarding.” Alternatively, based upon the aforementioned published (misleading) AND  
5 unpublished (deceptive) boarding policies and procedures, “Anytime” fares with the “Early Bird  
6 Check-in” add-on receive priority over all other fare types, thus making “Wanna Get Away”  
7 fares with the “Early Bird Check-in” add-on subordinate and creating a fiction of “priority  
8 boarding.” Thus, Defendant SOUTHWEST’S “Early- Bird” priority boarding is not only fiction  
9 in nature, but completely illusory as advertised. Therefore, if this deceptive business practice was  
10 known to the public, Defendant SOUTHWEST’S windfall of revenue based on misleading,  
11 deceptive, and fraudulent business practices would not exist because if customers were properly  
12 informed, as opposed to constructively and/or intentionally misled, they would NOT purchase  
13 the illusory “Early Bird” priority boarding add-on, and/or would NOT purchase a fare from  
14 Defendant SOUTHWEST.

15 79. The “Early Bird Check-in Frequently Asked Questions” section of Defendant  
16 SOUTHWEST’S website states that the number of “Early Bird Check-in” add-ons will NOT be  
17 limited on each flight, allowing all eligible customers to purchase the “Early Bird Check-in” add-  
18 on. This means that all boarding positions on the plane, with the exception A one through fifteen  
19 (1-15) for “Business Select” fares and including A sixteen through sixty (16-60), B one through  
20 sixty (1-60) and C one through sixty (1-60), may purchase the “Early Bird Check-in” add-on to  
21 receive “priority boarding.” A customer may purchase the “Early Bird Check-in” add-on and still  
22 receive a boarding position of C sixty (C60), the last boarding position of the flight, thus creating  
23 a fiction of “priority boarding,” and making the “Early Bird Check-in” add-on misleading,  
24 fraudulent, and deceptive in nature. Therefore, if this deceptive business practice was known to  
25 the public, Defendant SOUTHWEST’S windfall of revenue based on misleading, deceptive, and  
26 fraudulent business practices would not exist because if customers were properly informed, as  
27 opposed to constructively and/or intentionally misled, they would NOT purchase the illusory  
28

1 “Early Bird” priority boarding add-on, and/or would NOT purchase a fare from Defendant  
2 SOUTHWEST.

3 80. Furthermore, DEFENDANT’S major advertising and marketing campaign/slogan  
4 is that on SOUTHWEST “BAGS FLY FREE”. This “BAGS FLY FREE” marketing slogan is  
5 directly responsible for Defendant SOUTHWEST’S market share in the airline industry. This is  
6 misleading by the very nature of the definition and connotation of the words. The bags do NOT  
7 fly free. In fact, DEFENDANT “hides” the baggage fee and recovers their fuel-cost offset  
8 revenue under the guise of the deceptive “priority” “Early Bird” boarding program. Therefore, if  
9 this deceptive business practice was known to the public, Defendant SOUTHWEST’S windfall  
10 of revenue based on misleading, deceptive, and fraudulent business practices would not exist  
11 because if customers were properly informed, as opposed to constructively and/or intentionally  
12 misled, they would NOT purchase the illusory “Early Bird” priority boarding add-on, and/or  
13 would NOT purchase a fare from Defendant SOUTHWEST.

14 81. Defendant SOUTHWEST uses this marketing slogan to entice customers to  
15 purchase tickets on their Airline. The reason that they do not charge their customers for checked  
16 bags is because they offset the added fuel cost of the checked baggage by the windfall of revenue  
17 generated from their deceptive, fraudulent, and misleading “Early Bird” priority boarding scam  
18 of \$25 per roundtrip flight. These deceptive policies, procedures, and practices of Defendant  
19 SOUTHWEST allow them to increase revenues at the expense of the general public and THEIR  
20 competitors, thereby violating California unfair competition law to the core.

21 82. Defendant SOUTHWEST’ actions, as detailed above, were part of a statewide  
22 and/or nationwide corporate plan and scheme, which affected all customers who purchased  
23 Airline tickets and/or “Early Bird” priority boarding from Defendant SOUTHWEST. As a direct  
24 and proximate result of SOUTHWEST’S illegal, company-wide plan, practice and scheme, each  
25 of the PLAINTIFFS were: (1) deceived into buying airline tickets for travel from Defendants;  
26 (2) deceived into purchasing “Early-Bird” priority boarding under false and misleading  
27 pretenses; (3) victimized by SOUTHWEST’S policies and practices set forth herein.

1           83. Defendant SOUTHWEST’S’ deceptive advertising policy and practice constitutes  
2 unfair, unlawful, or fraudulent business activity prohibited by the *UCL, California Business &*  
3 *Professions Code Sections 17500.*

4           84. Defendant SOUTHWEST’S employment and utilization of such business  
5 practices constitutes an unfair business practice, unfair competition, and provides an unfair  
6 advantage over SOUTHWEST’S competitors. PLAINTIFFS seek full restitution and  
7 disgorgement of said monies from SOUTHWEST, as necessary and according to proof, to  
8 restore any and all monies withheld, acquired, or converted by SOUTHWEST by means of the  
9 unfair practices complained of herein.

10           85. The unlawful business practices of Defendant SOUTHWEST are likely to  
11 continue to mislead the public and present a continuing threat to the public, and unfair business  
12 practice. These violations constitute a threat and unfair business policy. The Court is authorized  
13 to order an injunction, and/or disgorgement of fees to affected members of the public as a  
14 remedy for any violations of *Business & Professions Code* sections 17500, et seq. In addition,  
15 PLAINTIFFS allege that SOUTHWEST violated numerous California *Penal Code* statutes.

16  
17           **VII. THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT**

18           86. As a THIRD, separate, and distinct cause of action, PLAINTIFFS complain  
19 against Defendant SOUTHWEST and DOES 1 through 50, inclusive, and re-alleges all the  
20 allegations contained in this complaint and incorporates them by reference into this cause of  
21 action as though fully set forth herein.

22           87. Defendant SOUTHWEST was required to develop, create, and implement it's  
23 contract for “Early Bird” priority boarding and it's boarding procedures in a clear and  
24 understandable manner, not in a ambiguous, deceptive, fraudulent, intentional/negligent and  
25 evasive manner.

26           88. Defendant SOUTHWEST did not write the contract in a manner in which the  
27 PLAINTIFFS or the Class could possibly know that Defendant SOUTHWEST’S “Early Bird”  
28 priority boarding program, as specifically and intricately identified and stated in sections 8, 9, 10,

1 11, 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21, 22, 23, 24, 25 , and 26 above and incorporated by  
2 reference herein, were part of a deceptive statewide and/or nationwide corporate plan and  
3 scheme to fraudulently generate profits at the expense of their customers and competitors, which  
4 affected all customers who purchased Airline tickets and/or “Early Bird” priority boarding from  
5 Defendant SOUTHWEST.

6 89. As a direct and proximate result of SOUTHWEST’S illegal, company-wide plan,  
7 practice and scheme, each of the PLAINTIFFS were: (1) deceived into buying airline tickets for  
8 travel from Defendants; (2) deceived into purchasing “Early-Bird” priority boarding under false  
9 and misleading pretenses; (3) victimized by SOUTHWEST’S policies and practices set forth  
10 herein.

11 90. Defendant SOUTHWEST drafted their adhesion contract and entered into that  
12 same contract with PLAINTIFFS and the Class.

13 91. Defendant SOUTHWEST’S deceptive, fraudulent, misleading conduct breached  
14 that contract and caused an ascertainable loss to PLAINTIFFS and the Class.

15 92. PLAINTIFFS are entitled to recover all fees paid to Defendant SOUTHWEST,  
16 and DOES 1 through 50, under these fraudulent, intentional/negligent, deceptive and misleading  
17 business practices, in violation of federal and state, case and statutory law, including but not  
18 limited to unfair competition laws.

19 93. Because of the foregoing, PLAINTIFFS and the Class members are entitled to  
20 damages in an amount to be proven at trial  
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22  
23 **VIII. FOURTH CAUSE OF ACTION FOR FRAUDULENT CONCEALMENT**

24 94. As a FOURTH, separate, and distinct cause of action, PLAINTIFFS complain  
25 against Defendant SOUTHWEST and DOES 1 through 50, inclusive, and re-alleges all the  
26 allegations contained in this complaint and incorporates them by reference into this cause of  
27 action as though fully set forth herein.  
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1           95. Defendant SOUTHWEST, and DOES 1 through 50, inclusive, actively and  
2 fraudulently concealed from PLAINTIFFS and the Class, the illegal, company-wide plan,  
3 practice and scheme, of their deceptive “Early bird” priority boarding program, as specifically  
4 and intricately identified and stated in sections 8, 9, 10, 11, 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21,  
5 22, 23, 24, 25 , and 26 above and incorporated by reference herein, which affected all customers  
6 who purchased Airline tickets and/or “Early Bird” priority boarding from Defendant  
7 SOUTHWEST.

8           96. Specifically, Defendant SOUTHWEST took affirmative actions to conceal,  
9 suppress, hide and/or otherwise minimize the illegal company-wide practice and scheme of  
10 DEFENDANTS’ deceptive, misleading, and fraudulent “Early-Bird Check in” priority boarding  
11 scam/program as specifically and intricately identified and stated in sections 8, 9, 10, 11, 12, 13,  
12 14, 15, 16 ,17 ,18 ,19, 20, 21, 22, 23, 24, 25 , and 26 above and incorporated by reference herein,  
13 to fraudulently generate profits at the expense of their customers and competitors, which affected  
14 all customers who purchased Airline tickets and/or “Early Bird” priority boarding from  
15 Defendant SOUTHWEST.

16           97. As a direct and proximate result of Defendant SOUTHWEST’S fraudulent  
17 concealment, each of the PLAINTIFFS were: (1) deceived into buying airline tickets for travel  
18 from Defendants; (2) deceived into purchasing “Early-Bird” priority boarding under false and  
19 misleading pretenses; and (3) victimized by SOUTHWEST’S policies and practices set forth  
20 herein, specifically and intricately identified and stated in sections 8, 9, 10, 11, 12, 13, 14, 15, 16  
21 ,17 ,18 ,19, 20, 21, 22, 23, 24, 25 , and 26, as incorporated by reference herein.

22           98. PLAINTIFFS are informed and allege herein that Defendant SOUTHWEST’S  
23 concealment in this regard was done intentionally and fraudulently with the design to prevent  
24 PLAINTIFFS and the Class from becoming aware of the full nature and extent of the fraudulent,  
25 misleading, and deceptive nature of their “priority” “Early Bird” boarding program.  
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1           99. If these intentional misrepresentations, fraudulent concealments, and deceptive  
2 business practices were known to the public, then Defendant SOUTHWEST’S windfall of  
3 revenue would not exist. If customers were properly informed, as opposed to constructively  
4 and/or intentionally misled, they would NOT purchase the illusory “Early Bird” priority  
5 boarding add-on, and/or would NOT purchase a fare from Defendant SOUTHWEST.

6           100. Accordingly, PLAINTIFFS are entitled to punitive and exemplary damages in an  
7 amount sufficient to punish and deter the Defendant SOUTHWEST’S conduct pursuant to *Code*  
8 *of Civil Procedure* Section 337.15.

9  
10           **IX. FIFTH CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION**

11           101. As a FIFTH, separate, and distinct cause of action, PLAINTIFFS complain  
12 against Defendant SOUTHWEST and DOES 1 through 50, inclusive, and re-alleges all the  
13 allegations contained in this complaint and incorporates them by reference into this cause of  
14 action as though fully set forth herein.

15           102. PLAINTIFFS are informed and believes and thereon alleges that the Defendant  
16 SOUTHWEST, and DOES 1 through 50, inclusive, and each of them, knowingly, fraudulently,  
17 actively, and intentionally, misrepresented to PLAINTIFFS and the Class, the illegal company-  
18 wide practice and scheme of DEFENDANTS’ deceptive, misleading, and fraudulent “Early-Bird  
19 Check in” priority boarding scam/program.

20  
21           103. These intentional misrepresentations are specifically and intricately identified and  
22 stated in sections 8, 9, 10, 11, 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21, 22, 23, 24, 25 , and 26  
23 (incorporated by reference herein).

24           104. These aforementioned intentional representations made by Defendant  
25 SOUTHWEST, and DOES 1 through 50, and each of them, regarding SOUTHWEST’S illusory  
26 “Early Bird” priority boarding add-on were intentionally, knowingly, and actively false and  
27 inaccurate when made, and were made with reckless disregard for their truth and accuracy.  
28

1           105. PLAINTIFFS are informed and believes and thereon alleges that Defendant  
2 SOUTHWEST, and DOES 1 through 50, and each of them, knew or should have known that the  
3 representations made by them concerning the deceptive nature of the “Early Bird” priority add-  
4 on was not justified and accurate at the time they were made, in light of the information available  
5 to said DEFENDANTS at the time the representations and were made.

6           106. Said representations were made by Defendant SOUTHWEST, and DOES 1  
7 through 50, with reckless disregard for their accuracy and with no reasonable basis for believing  
8 them to be true and accurate.

9           107. PLAINTIFFS relied on the representations of said DEFENDANTS, and each of  
10 them, in causing to be paid the systematic “add-on” charge of \$25 per round trip flight paid by  
11 PLAINTIFFS to DEFENDANTS, all to PLAINTIFF’S detriment in reliance that the  
12 DEFENDANTS’ statements and material, intentional misrepresentations were in fact accurate  
13 when made by said DEFENDANTS.

14           108. In addition, because of the fraudulent intentional misrepresentations by Defendant  
15 SOUTHWEST, and DOES 1 through 50, PLAINTIFFS were lulled into a false sense of security  
16 and a reasonable assumption that they would receive “priority” boarding, as advertised and  
17 communicated by SOUTHWEST as agreed upon, and in a manner consistent from what was  
18 charged and paid for.

19           109. PLAINTIFFS were ignorant of the falsity and inaccuracies of the representations  
20 made by SOUTHWEST, until they discovered the extent and scope of Defendant  
21 SOUTHWEST’S fraudulent, intentional deceit as fully described in sections 8, 9, 10, 11, 12, 13,  
22 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, as incorporated by reference herein.

23           110. As a direct and proximate result of the intentional misrepresentations by  
24 Defendant SOUTHWEST, and DOES 1 through 50, and each of them, concerning the illegal and  
25 illusory “Early bird” priority boarding program, as alleged herein, PLAINTIFFS have suffered  
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1 and are continuing to suffer severe and permanent financial damage in an amount not yet  
2 ascertained, but in excess of the jurisdictional minimum of this Court.

3 111. As a result of the foregoing, PLAINTIFFS and the Class members are entitled to  
4 damages in an amount to be proven at the time of trial in this matter.

5  
6 **X. SIXTH CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION**

7 112. As a SIXTH, separate, and distinct cause of action, PLAINTIFFS complain  
8 against Defendant SOUTHWEST and DOES 1 through 50, inclusive, and re-alleges all the  
9 allegations contained in this complaint and incorporates them by reference into this cause of  
10 action as though fully set forth herein.

11 113. PLAINTIFFS are informed and believes and thereon alleges that the Defendant  
12 SOUTHWEST, and DOES 1 through 50, inclusive, and each of them, negligently misrepresented  
13 to PLAINTIFFS and the Class, the illegal company-wide practice and scheme of Defendant  
14 SOUTHWEST’S deceptive, misleading, and fraudulent “Early-Bird” priority boarding program.

15 114. These negligent misrepresentations are specifically and intricately identified and  
16 stated in sections 8, 9, 10, 11, 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21, 22, 23, 24, 25 , and 26  
17 (incorporated by reference herein).

18 115. These aforementioned negligent representations made by Defendant  
19 SOUTHWEST, and DOES 1 through 50, and each of them, regarding SOUTHWEST’S illusory  
20 “Early Bird” priority boarding add-on were negligently false and inaccurate when made, and  
21 were made with reckless disregard for their truth and accuracy.

22 116. PLAINTIFFS are informed and believes and thereon alleges that Defendant  
23 SOUTHWEST, and DOES 1 through 50, and each of them, knew or should have known that the  
24 representations and warranties made by them concerning the deceptive nature of the “Early Bird”  
25 priority add-on was not justified and accurate at the time they were made, in light of the  
26 information available to Defendant SOUTHWEST at the time the representations and were  
27 made.  
28

1           117. These representations were made by Defendant SOUTHWEST, and DOES 1  
2 through 50, with reckless disregard for their accuracy and with no reasonable basis for believing  
3 them to be true and accurate.

4           118. PLAINTIFFS relied on the negligent representations and of Defendant  
5 SOUTHWEST, and each of them, in causing to be paid the systematic “add-on” charge of \$25  
6 per round trip flight paid by PLAINTIFFS to Defendant SOUTHWEST, all to PLAINTIFFS’  
7 detriment in reliance that the SOUTHWEST’S statements and material, intentional  
8 misrepresentations were in fact accurate when made by Defendant SOUTHWEST.

9           119. In addition, because of the negligent misrepresentations by SOUTHWEST,  
10 PLAINTIFFS were lulled into a false sense of security and a reasonable assumption that they  
11 would receive “priority” boarding, as advertised and communicated by Defendant  
12 SOUTHWEST as agreed upon, and in a manner consistent from what was charged and paid for.

13           120. PLAINTIFFS were ignorant of the falsity and inaccuracies of the representations  
14 and warranties made by SOUTHWEST, until they discovered the extent and scope of Defendant  
15 SOUTHWEST’S negligent misrepresentations as specifically and intricately identified and stated  
16 sections 8, 9, 10, 11, 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21, 22, 23, 24, 25 , and 26, as  
17 incorporated by reference herein.

18           121. As a direct and proximate result of the negligent misrepresentations by Defendant  
19 SOUTHWEST, and DOES 1 through 50, and each of them, concerning the illegal and illusory  
20 “Early bird” priority boarding program, as alleged herein, PLAINTIFFS have suffered and are  
21 continuing to suffer severe and permanent financial damage in an amount not yet ascertained, but  
22 in excess of the jurisdictional minimum of this Court.

23           122. As a result of the foregoing, PLAINTIFFS and the Class members are entitled to  
24 damages in an amount to be proven at the time of trial in this matter.  
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1                   **XII. EIGHTH CAUSE OF ACTION FOR WILLFUL MISCONDUCT**

2           128. As a EIGHTH, separate, and distinct cause of action, PLAINTIFFS complain  
3 against Defendant SOUTHWEST and DOES 1 through 50, inclusive, and re-alleges all the  
4 allegations contained in this complaint and incorporates them by reference into this cause of  
5 action as though fully set forth herein.

6           129. PLAINTIFFS are informed and believes and thereon alleges that willful  
7 misconduct occurred in the design, creation, implementation, and dissemination of Defendant  
8 SOUTHWEST’S fraudulent “Early Bird” priority boarding program, as specifically and  
9 intricately identified and stated in sections 8, 9, 10, 11, 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21, 22,  
10 23, 24, 25 , and 26, as incorporated by reference herein .

11           130. The proximate result of Defendant SOUTHWEST’S intentional willful  
12 misconduct caused damage to PLAINTIFFS and the Class, in that each of the PLAINTIFFS  
13 were: (1) deceived into buying airline tickets for travel from Defendants; (2) deceived into  
14 purchasing “Early-Bird” priority boarding under false and misleading pretenses; (3) victimized  
15 by SOUTHWEST’S policies and practices set forth herein, in addition to the plethora of other  
16 concealed, misrepresented, and deceptive business practices, as stated in sections 8, 9, 10, 11,  
17 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21, 22, 23, 24, 25 , and 26, as incorporated by reference herein.

18           131. As a As a result of the foregoing, PLAINTIFFS and the Class members are  
19 entitled to damages in an amount to be proven at the time of trial in this matter.  
20

21                   **XIII. NINTH CAUSE OF ACTION FOR UNJUST ENRICHMENT**

22           132. As a NINTH, separate, and distinct cause of action, PLAINTIFFS complain  
23 against Defendant SOUTHWEST and DOES 1 through 50, inclusive, and re-alleges all the  
24 allegations contained in this complaint and incorporates them by reference into this cause of  
25 action as though fully set forth herein.  
26

27           133. Defendant SOUTHWEST engaged in the deceptive, fraudulent, and misleading  
28 “Early Bird” priority boarding program directly with PLAINTIFFS and the Class, as specifically

1 and intricately identified and stated in sections 8, 9, 10, 11, 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21,  
2 22, 23, 24, 25 , and 26, as incorporated by reference herein.

3 134. Such illegal, intentional, fraudulent, and deceptive business practices of  
4 Defendant SOUTHWEST caused damage to PLAINTIFFS and the Class each of the  
5 PLAINTIFFS were: (1) deceived into buying airline tickets for travel from Defendants; (2)  
6 deceived into purchasing “Early-Bird” priority boarding under false and misleading pretenses;  
7 (3) victimized by SOUTHWEST’S policies and practices set forth herein, as specifically and  
8 intricately identified and stated in sections 8, 9, 10, 11, 12, 13, 14, 15, 16 ,17 ,18 ,19, 20, 21, 22,  
9 23, 24, 25 , and 26, as incorporated by reference herein.

10 135. The enrichment of Defendant SOUTHWEST was at the direct expense of  
11 PLAINTIFFS and the Class.

12 136. The circumstances were such that equity and good conscience require Defendant  
13 SOUTHWEST to make full restitution to PLAINTIFFS and the Class.

14 137. Defendant SOUTHWEST has failed to make restitution.

15 138. As a result of Defendant SOUTHWEST’S actions, or lack thereof, PLAINTIFFS  
16 and the Class have been damaged in an exact amount to be proven at the time of trial in this  
17 matter.  
18

19  
20 **PRAYER FOR RELIEF**

21 **WHEREFORE, PLAINTIFFS**, on behalf of themselves, behalf of themselves and all  
22 customers and former customers of Defendant SOUTHWEST, and DOES 1 through 50, within  
23 the United States of America who, within the Liability Period, have purchased Airline tickets  
24 and/or “Early Bird” priority boarding from Defendant SOUTHWEST, and on behalf of the  
25 general public, request the following relief:

- 26 1. A determination that this action may proceed and be maintained by PLAINTIFFS  
27 as a class action pursuant to *Federal Rules of Civil Procedure*, Rules 23(a) and  
28

1 23(b)(3) on behalf of themselves and the class or classes of employees alleged  
2 herein;

- 3 2. The issuance of notice pursuant to *Federal Rules of Civil Procedure*, Rule 23 to  
4 all PLAINTIFF class members who have purchased Airline tickets and/or Early  
5 Bird boarding from Defendant SOUTHWEST within the four (4) year period  
6 preceding the filing of this Complaint in accordance with the statute of limitations  
7 of the *UCL, California Business & Professions Code Sections 17200 et. seq. and*  
8 *17500 et. seq.*;
- 9 3. A declaratory judgment that SOUTHWEST has violated the Unfair Competition  
10 provisions of the *California Business & Professions Code Sections 17200-17208*,  
11 with its false, deceptive, fraudulent, willful, and misleading business practices as  
12 to the PLAINTIFFS and all similarly situated class members;
- 13 4. A declaratory judgment that SOUTHWEST fraudulently concealed, omitted, and  
14 or failed to disclose material facts;
- 15 5. A declaratory judgment that SOUTHWEST negligently misrepresented material  
16 facts to a substantial segment of its audience;
- 17 6. A declaratory judgment that SOUTHWEST intentionally misrepresented material  
18 facts to a substantial segment of its audience;
- 19 7. A declaratory judgment that SOUTHWEST breached the covenant of good faith  
20 and fair dealing to a substantial segment of its audience;
- 21 8. A declaratory judgment that SOUTHWEST has been unjustly enriched through its  
22 false, deceptive, fraudulent, and misleading business practices;
- 23 9. A declaratory judgment that members of the Class are entitled to actual damages,  
24 entry of final judgment and injunctive relief compelling Defendant  
25 SOUTHWEST to cease its fraudulent and deceptive advertising practices;
- 26 10. A declaratory judgment that SOUTHWEST deliberately misrepresented or failed  
27 to disclose material facts to Plaintiffs and the Class;
- 28

- 1 11. A declaratory judgment that SOUTHWEST'S conduct constitutes an  
2 unconscionable business practice;
- 3 12. A declaratory judgment that, with regard to PLAINTIFFS' claims under  
4 *California Business & Professions Code Sections 17200 et. seq. and 17500 et.*  
5 *seq.*, PLAINTIFFS are entitled to a four (4) year statute of limitations;
- 6 13. A permanent injunction enjoining Defendant SOUTHWEST and any and all  
7 persons acting in concert or in participation with SOUTHWEST from directly or  
8 indirectly committing the unlawful, unfair, and deceptive business acts and  
9 practices as alleged above, pursuant to the Unfair Competition provisions of the  
10 *California Business & Professions Code Sections 17200 et. seq. and 17500 et.*  
11 *seq.*, as well as federal and state, case and statutory law;
- 12 14. An award to PLAINTIFFS of restitution and/or disgorgement of all amounts  
13 owed for SOUTHWEST'S violation of the Unfair Competition provisions of the  
14 *California Business & Professions Code Sections 17200 et. seq. and 17500 et.*  
15 *seq.*, as well as federal and state, case and statutory law with its false, deceptive,  
16 fraudulent, willful, and misleading business practices as to the PLAINTIFFS and  
17 all similarly situated class members, and interest subject to proof at the time of  
18 trial;
- 19 15. An award to PLAINTIFFS of reasonable attorneys' fees and costs pursuant to  
20 *California Civil Code Section 1021.5* and *California Business & Professions*  
21 *Code Sections 17200 et. seq. and 17500 et. seq.*, as well as federal and state, case  
22 and statutory law;
- 23 16. An award of pre and post judgment interest; and
- 24 17. An award of such other and further relief as this Court may deem just and  
25 appropriate.

26 **PLAINTIFFS' DEMAND FOR JURY TRIAL**

27 PLAINTIFFS, on behalf themselves and all other similarly situated customers and former  
28 customers of Defendant SOUTHWEST within the United States of America who, within the

1 Liability Period, have purchased Airline tickets and/or Early Bird boarding from SOUTHWEST,  
2 and on behalf of the general public, hereby demand trial of these claims by jury to the extent  
3 authorized by law.

4  
5 DATED: November *14th*, 2014

6 By: *Kristopher P. Badame*  
7 Kristopher P. Badame,  
8 **BADAME & ASSOCIATES, APC**  
9 Attorneys for PLAINTIFFS  
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