

**LOYR, APC**

YOUNG W. RYU, ESQ. (SBN 266372)

young.ryu@loywr.com

ZACHARIAH E. MOURA, ESQ. (SBN 279508)

zach.moura@loywr.com

KEE SEOK MAH (SBN 345736)

kee.mah@loywr.com

1055 West 7th Street, Suite 2290

Los Angeles, California 90017

Tel: (213) 318-5323

Fax: (800) 576-1170

Attorneys for Plaintiff JUAN TORRES

**FILED**  
Superior Court of California  
County of Los Angeles

12/15/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Sanchez Deputy

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

JUAN TORRES, individually and on behalf  
of all individuals similarly situated,

Plaintiff,

vs.

SPIRIT CLOTHING COMPANY, a  
California corporation; JAKE PITASZINK,  
an individual; and DOES 1 through 50,  
inclusive,

Defendants.

**CASE NO. 23STCV17850**

**SECOND AMENDED COMPLAINT**

**1. VIOLATION OF LABOR CODE § 2698, *ET*  
*SEQ.* ("PAGA"); AND**

**DEMAND FOR JURY TRIAL**

Plaintiff JUAN TORRES, an individual and on behalf of all individuals similarly situated ("Plaintiff"), hereby brings this Second Amended PAGA-only Complaint for Civil Penalties against Defendants SPIRIT CLOTHING COMPANY ("SPIRIT"), a California corporation; JAKE PITASZINK ("PITASZINK"), an individual; and DOES 1 through 50, inclusive, (collectively, "Defendants") and states and alleges as follows:

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1 **THE PARTIES**

2 1. Plaintiff was, at all times relevant to this Complaint, an adult individual living and  
3 working in Los Angeles County, California.

4 2. At all times relevant to this Second Amended Complaint, Defendant SPIRIT is and was  
5 a California corporation operating a business within the State of California, specifically in the County  
6 of Los Angeles.

7 3. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the  
8 fictitious names DOES 1–50 but prays for leave to amend and serve such fictitiously named Defendants  
9 pursuant to California Code of Civil Procedure section 474 once their names and capacities become  
10 known.

11 4. Plaintiff is informed and believes, and thereon alleges, that DOES 1–50 are the partners,  
12 agents, owners, shareholders, managers, principals or employees of Defendants and/or were acting on  
13 behalf of Defendants.

14 5. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and  
15 omissions alleged herein was performed by or is attributable to Defendants and/or DOES 1–50, each  
16 acting as the agent for the other, with legal authority to act on the other’s behalf. The acts of any and  
17 all Defendants were in accordance with, and represent the policy of, all Defendants.

18 6. At all times herein mentioned, Defendants, and each of them, ratified each and every  
19 act or omission complained of herein. At all times herein mentioned, Defendants, and each of them,  
20 aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing  
21 the damages herein alleged.

22 7. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is  
23 in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences  
24 and transactions alleged herein.

25 **JURISDICTION**

26 8. This action is properly filed in Los Angeles County because the acts and omissions that  
27 give rise to Plaintiff’s claims took place in Los Angeles County, California, as Plaintiff was employed  
28 by Defendants in Los Angeles County, California, and Defendants transact business in this County.

1           9.       This Court has jurisdiction over Defendants because Defendants have sufficient  
2 minimum contacts with and regularly conduct business within the State of California, specifically in  
3 the County of Los Angeles.

4                               **ALTER EGO, AGENCY, AND JOINT EMPLOYER**

5           10.       PITASZINK owned and/or controlled the businesses operated by SPIRIT, and  
6 furthermore, PITASZINK exercised control over the labor practices of each and every one of the  
7 employees (inclusive of Plaintiff) of each and every one of their said interests, and caused the violations  
8 at issue in this Complaint.

9           11.       Based on the foregoing allegations, PITASZINK, in fact, caused violations at-issue in  
10 this Complaint, thereby creating individual liability under Labor Code § 558.1.

11           12.       Pursuant to the provisions of Labor Code § 558, the liability of PITASZINK would  
12 include any and all amounts sufficient to recover any and all missed meal and rest break premiums,  
13 unpaid wages, and failure to reimburse necessary business expenses to Plaintiff and the Aggrieved  
14 Employees.

15           13.       As further referenced hereinbelow, the viability of obtaining liability of individuals by  
16 this method was discussed by the California Supreme Court in *Reynolds v. Bement* (2005) 36 Cal.4th  
17 1075, 1089 where the court noted that individual liability against non-employers could be obtained  
18 through the use of § 558.

19           14.       PLAINTIFF is informed and believes, and based thereon alleges, that there exists such  
20 a unity of interest and ownership between SPIRIT, PITASZINK, and DOES 1-50 that the individuality  
21 and separateness of defendants has ceased to exist.

22           15.       PLAINTIFF is informed and believes, and based thereon alleges, that despite the  
23 formation of purported corporate existence, SPIRIT, PITASZINK, and DOES 1-50 are, in reality, one  
24 and the same, including, but not limited to because:

25                   a.       SPIRIT is or was completely dominated and controlled by PITASZINK and  
26 DOES 1-50, who personally committed the frauds and violated the laws as set forth in this  
27 complaint, and who have hidden and currently hide behind SPIRIT to perpetrate frauds,  
28 circumvent statutes, or accomplish some other wrongful or inequitable purpose.

1           b.       PITASZINK and DOES 1-50 have acted on behalf of SPIRIT, who violate, or  
2 cause to be violated, the provisions regulating minimum wages or hours and days of work in  
3 any order of the Industrial Welfare Commission, or violate, or cause to be violated, California  
4 Labor Code Sections 203, 226, 226.7, 510, 1194, 1197, or 2802.

5           c.       PITASZINK and DOES 1-50 have acted on behalf of SPIRIT, who violate, or  
6 cause to be violated, the provisions regulating meal and rest breaks in any order of the Industrial  
7 Welfare Commission, or violate, or cause to be violated, California Labor Code Sections 226.7,  
8 and 512.

9           d.       PITASZINK and DOES 1-50 have acted on behalf of SPIRIT, who violate, or  
10 cause to be violated, the provisions regulating reimbursement of necessary business expenses  
11 in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California  
12 Labor Code Sections 2802.

13          e.       PITASZINK and DOES 1-50 derive actual and significant monetary benefits by  
14 and through SPIRIT as the funding source for their own personal expenditures.

15          f.       Plaintiff is informed and believes that PITASZINK, SPIRIT, and DOES 1-50,  
16 while really one and the same, were segregated to appear as though separate and distinct for  
17 purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other  
18 wrongful or inequitable purpose.

19          g.       Plaintiff is informed and believes that SPIRIT does not or did not comply with  
20 all requisite corporate formalities to maintain a legal and separate corporate existence.

21          h.       Plaintiff is informed and believes, and based thereon alleges, that the business  
22 affairs of PITASZINK, SPIRIT, and DOES 1-50 are, and at all times relevant were, so mixed  
23 and intermingled that the same cannot reasonably be segregated, and the same are in  
24 inextricable confusion.

25          i.       SPIRIT is, and at all times relevant hereto was, used by PITASZINK and DOES  
26 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and  
27 was, the alter ego of PITASZINK and DOES 1-50. The recognition of the separate existence  
28 of SPIRIT, and/or PITASZINK would not promote justice, in that it would permit Defendants

1 to insulate themselves from liability to Plaintiffs for violations of the Labor Code. The  
2 corporate existence of PITASZINK, SPIRIT, and DOES 1-50 should be disregarded in equity  
3 and for the ends of justice because such disregard is necessary to avoid fraud and injustice to  
4 Plaintiff herein.

5 16. Accordingly, SPIRIT constitutes the alter egos of PITASZINK and DOES 1-50, and the  
6 fiction of their separate corporate existence must be disregarded.

7 17. As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
8 thereon alleges that SPIRIT, PITASZINK, and DOES 1-50 are Plaintiff's joint employers by virtue of  
9 a joint enterprise, and that Plaintiff was an employee of SPIRIT, PITASZINK, and DOES 1-50.  
10 Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all  
11 Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly,  
12 and the manner in which Defendants' business was and is conducted.

### 13 **FACTUAL ALLEGATIONS**

14 18. Plaintiff worked for Defendants as an hourly, non-exempt employee in the position of  
15 "Machine Operator" since in or around August 2013 until on or about May 26, 2023. Plaintiff worked  
16 at Defendants' workplace located at 2211 E. 37th Street, Vernon, CA 90058.

17 19. Plaintiff's job duties included designing and embroidering clothing for Defendants.  
18 Plaintiff regularly worked from 5 a.m. to 4:30 p.m., Monday through Friday, and occasionally on  
19 Saturdays as well.

20 20. Defendants have engaged in, and continue to engage in, unfair business practices in  
21 California by practicing, employing, and utilizing the employment practices and policies outlined  
22 below. Defendants' utilization of such unfair business practices constitutes unfair competition and  
23 provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair  
24 business practices deprives Plaintiff and the Aggrieved Employees of the general minimum working  
25 standards and entitlements due to them under California law and the Industrial Welfare Commission  
26 wage orders as described herein.

27 21. As a direct result of the wage and hour violations herein alleged, Plaintiff and the  
28 Aggrieved Employees have suffered, and continue to suffer, substantial losses related to the use and

1 enjoyment of wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel  
2 Defendants to fully perform their obligations under state law, all to their respective damage in amounts  
3 according to proof at the time of trial

4 **FIRST CAUSE OF ACTION**

5 **(Against All Defendants)**

6 **VIOLATION OF LABOR CODE §§ 2698, ET SEQ. ("PAGA")**

7 22. Plaintiffs reallege and incorporate by reference all of the allegations in the preceding  
8 paragraphs, as though set forth in full herein.

9 23. On June 26, 2023 Plaintiffs filed a notice with the Labor Workforce and Development  
10 Agency ("LWDA") at their website pursuant to the Private Attorney General Act, California Labor  
11 Code §§ 2698, *et seq.* ("PAGA") regarding Defendants. This notice was also sent to Defendants that  
12 same day via certified mail. On December 15, 2023, Plaintiff filed an amended notice with the LWDA  
13 to conform with the instant SAC.

14 24. PAGA permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code  
15 sections enumerated in Labor Code section 2699.5.

16 25. PAGA provides as follows: "[n]otwithstanding any other provision of law, a Plaintiff  
17 may as a matter of right amend an existing complaint to add a cause of action arising under this part at  
18 any time within 60 days of the time periods specified in this part."

19 26. Defendants' conduct, as alleged herein, violates numerous sections of the California  
20 Labor Code including, but not limited to, the following: failure to provide employment records in  
21 violation of Labor Code sections 226, 432, and 1198.5; failure to pay overtime and double time in  
22 violation of Labor Code sections 510, 558 and the applicable Wage Orders; failure to provide rest and  
23 meal periods in violation of Labor Code sections 226.7, 512(a), and the applicable Wage Orders; failure  
24 to pay minimum wage in violation of Labor Code sections 558, 1182.12, 1194, 1197, 1197.1, and the  
25 applicable Wage Orders, or as based on any possible off the clock theory; failure to keep accurate  
26 payroll records and provide itemized wage statements in violation of Labor Code sections 226(a),  
27 1174(d), 1198 and the applicable Wage Orders; failure to pay all wages earned on time in violation of  
28 Labor Code sections 201.3, and 204; failure to pay all wages earned upon discharge or resignation in

violation of Labor Code sections 201, 202, and 203; and failure to reimburse necessary, business-related expenses in violation of Labor Code sections 2800 and 2802.

27. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

28. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiffs' rights by violating various sections of the California Labor Code as set forth above.

29. As set forth above, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable order of the IWC. Accordingly, Plaintiffs seek the remedies set forth in Labor Code section 558 for themselves, the State of California, and all other aggrieved employees.

30. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, 2699.5, Plaintiffs, acting in the public interest as a private attorney general, seek assessment and collection of civil penalties for Plaintiffs, all other aggrieved employees, and the State of California against Defendant, in addition to other remedies, for violations of, including but not limited to, California Labor Code sections 200, 201, 201.3, 202, 203, 204, 210, 221, 224, 226(a), 226, 226.7, 432, 510, 512(a), 558, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 2800 and 2802.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

1. For civil penalties permitted by Labor Code §§ 200, 201, 202, 203, 210, 226, 226.7,

1 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and 2698 et seq. and all other applicable sections;

2 2. For costs of suit and expenses incurred herein pursuant to Labor Code § 2698 and all  
3 other applicable sections;

4 3. For reasonable attorneys' fees pursuant to Labor Code §§ 218.5, 218.6, 226, 226.7,  
5 1194, and 2698; and

6 4. For all such other and further relief that the Court may deem just and proper.  
7

8 DATED: December 15, 2023

**LOYR, APC**

9  
10 By: 

11 Young W. Ryu, Esq.  
12 Zachariah E. Moura, Esq.  
13 Kee Seok Mah, Esq.  
14 Attorneys for Plaintiff  
15 JUAN TORRES  
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**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury for themselves on all claims so triable.

DATED: December 15, 2023

**LOYR, APC**

By: 

Young W. Ryu, Esq.

Zachariah E. Moura, Esq.

Kee Seok Mah, Esq.

Attorneys for Plaintiff

JUAN TORRES

**PROOF OF SERVICE**

I am over 18 years old and not a party to this action. My business address is 1055 West 7<sup>th</sup> Street, Suite 2290, Los Angeles, California 90017.

On December 15, 2023, I served the following document on the interested parties as follows:

**SECOND AMENDED COMPLAINT**

Lonnie Giamela  
lgiamela@fisherphillips.com  
Areen Babajanian  
ababajanian@fisherphillips.com  
cc: nlarios@fisherphillips.com  
cakim@fisherphillips.com  
**FISHER PHILLIPS LLP**  
444 South Flower Street, Suite 1500  
Los Angeles, CA 90071  
Telephone: (213) 330-4500  
Facsimile: (213) 330-4501

*Attorney for defendants*  
***SPIRIT CLOTHING COMPANY and JAKE PITASZINK***

**BY ELECTRONIC SERVICE:**

My electronic service address is martha.gutierrez@loywr.com. Per the parties' agreement, through their respective counsel, to accept electronic service and pursuant to California Code of Civil Procedure section 1010.6, I served the foregoing document on the interested party at the electronic service addresses (e-mail addresses) listed above and did not receive Notice of Failure

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 15, 2023, in Los Angeles, California.

  
\_\_\_\_\_  
Martha Gutierrez