PAGA SETTLEMENT AGREEMENT

Juan Torres v. Spirit Clothing Company and Jake Ptasznik (PAGA)
San Diego Superior Court, Case No. 23STCV17850

This PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Juan Torres ("Plaintiff") and Defendants Spirit Clothing Company ("Spirit") and Jake Ptasznik ("Mr. Ptasznik") ("Defendants"). The Agreement refers to Plaintiff and Defendants collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against Defendants captioned *Juan Torres v. Spirit Clothing Company, et al.,* filed in the Superior Court of the State of California, County of Los Angeles, Case No. 23STCV17850, the operative First Amended Complaint, any other complaint filing as may become necessary in the post-settlement process, and any exhaustion letters filed with the LWDA.

1.2. "Administrator" means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.

1.4. "Aggrieved Employee" means as all current and former hourly-paid or non-exempt employees of Spirit in California employed between July 12, 2022 through December 31, 2023.

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Spirit's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. "Court" means the Superior Court of California, County of Los Angeles.

1.8. "Defense Counsel" means Lonnie D. Giamela and Areen Babajanian of Fisher & Phillips LLP.

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1.9. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

1.10. "Gross Settlement Amount" means $120,000.00 which is the total amount Spirit agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means Young Ryu and Zachariah Moura of LOYR, APC, the attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Spirit for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from July 12, 2022 to December 31, 2023.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. "PAGA Notice" means Plaintiff's June 26, 2023 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.22. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA, in settlement of PAGA claims.

1.23. “Plaintiff” means Juan Torres, the named plaintiff in the Action.

1.24. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. “Released Parties” means: Spirit and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, or affiliates. “Released Parties” also means Mr. Ptasznik, and each of his attorneys, insurers, agents, predecessors, successors, and assigns.

1.27. “Settlement” means the disposition of the Action affected by this Agreement and the Judgment.

1.28. “Spirit” means named Defendant Spirit Clothing Company.

1.29. “Mr. Ptasznik” means Defendant Jake Ptasznik.

2. **RECITALS**.

2.1. On July 28, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for failure to compensate all hours worked (Industrial Welfare Commission Order No. 1, Labor Code Section 200, 226, 500, 510, 1194, 1197 and 1198); failure to provide proper wage statements (Labor Code Section 226); missed meal breaks (Labor Code Sections 200, 226.7, 512, 516, 558 and 1198 and 8 California Code of Regulations Section 11010); failure to pay compensation upon separation of employment (Labor Code Sections 201-203); and violations of Bus. & Prof. Code, §§ 17200, *et seq*. On September 12, 2023, Plaintiff filed a First Amended Complaint adding a cause of action against Defendants for violation of Lab. Code, § 2698, et seq. The First Amended Complaint is the operative complaint in the Action (the “FAC.”). In the context of the settlement approval process, Plaintiff’s Counsel agrees to further amend the FAC to plead the further claims released in line with the Release in Section 5, *infra*, which is the Operative Complaint (“Operative Complaint” is attached as Exhibit A hereto.) Pursuant to the settlement leading to the instant Agreement, Plaintiff has obtained an order dismissing all class claims from the Action, and the Operative Complaint is a PAGA-only matter. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action and underlying Labor Code violations alleged. Defendants specifically deny that Mr. Ptasznik was an employer or joint-employer of Plaintiff or of the alleged Aggrieved Employees.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.

2.3. On November 15, 2023, the Parties participated in an all-day mediation presided over by mediator Todd Smith, Esq., which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, anonymized copies of the payroll register for all Aggrieved Employees for the PAGA Period. Plaintiff also obtained time entries for all Aggrieved Employees during the PAGA Period. These enabled Plaintiff to engage an expert to analyze the time and payroll records in support of a successful mediation.

2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Spirit promises to pay $120,000.00 and no more as the Gross Settlement Amount. Spirit has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Spirit.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be $40,000 and PAGA Counsel Litigation Expenses Payment of not more than $15,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed $3,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $3,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties to be paid from the Net Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Spirit estimates there are 164 Aggrieved Employees who worked a total of 3,750 PAGA Pay Periods from July 12, 2022 through December 31, 2023.

4.2. Aggrieved Employee Data. Within 30 calendar days, Spirit will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Spirit has a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Spirit must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Spirit shall fully fund the Gross Settlement

Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after Spirit funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are retuned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Spirit fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns, the LWDA and the State of California, generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to all claims for civil penalties under the California Labor Code's Private Attorneys General Act ("PAGA") that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"), as based upon all underlying wage and hour claims under state, federal, or local law, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been asserted based on the facts pleaded in the Operative Complaint for, but not limited to: failure to provide employment records in violation of Labor Code sections 226, 432, and 1198.5; failure to pay overtime and double time in violation of Labor Code sections 510, 558 and the applicable Wage Orders; failure to provide rest and meal periods in violation of Labor Code sections 226.7, 512(a), and the applicable Wage Orders; failure to pay minimum wage in violation of Labor Code sections 558, 1182.12, 1194, 1197, 1197.1, and the applicable Wage Orders, or as based on any possible off the clock theory; failure to keep accurate payroll records and provide itemized wage statements in violation of Labor Code sections 226(a), 1174(d), 1198 and the applicable Wage Orders; failure to pay all wages earned on time in violation of 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. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. In particular, and in line with the holding of *Arias v. Superior Court*, 46 Cal.4th 969 (2009), because

Plaintiff's action under PAGA functions as a substitute for an action by the government itself, any judgment will be binding not only on the Plaintiff but also on government agencies and any other Aggrieved Employee not a party to the proceeding. Thus, nonparty employees who are Aggrieved Employees cannot sue to recover additional civil penalties for the same Labor Code violations released (but may sue for damages or other remedies for the same violations).

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the Amended PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement by December 15, 2023, after the full execution of this Agreement and, in time for a properly noticed January 12, 2024 hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator. PAGA Counsel is also responsible for filing an updated Operative Complaint in line with the release in Paragraph 5, *supra.*

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions ("Phoenix") to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE

Based on its records, Spirit estimates that, as of the date of this Settlement Agreement, there are 164 Aggrieved Employees who worked 3,750 Pay Periods during the PAGA Period. Should the qualifying pay periods increase beyond 10% worked by the Aggrieved Employees during the aforementioned period (i.e., by more than 375 pay periods), Spirit shall increase the Total Settlement Amount on a pro-rata basis equivalent to the percentage increase in the number of pay periods worked by the Aggrieved Employees above the ten percent (10%) threshold, meaning Spirit will increase the Total Settlement Amount by the percentage amount above ten percent (10%) (e.g., if the number of pay periods increases by 11% to 4,163 pay periods, the Total Settlement Amount will increase by one percent (1%)).

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement). While the Agreement is entered into by Defendants, Defendants specifically deny that Mr. Ptasznik was an employer or joint-employer of Plaintiff or of the alleged Aggrieved Employees.

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Spirit unless, prior to the Administrator's payment of all

Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Young Ryu, Esq. (young.ryu@loywr.com)
Zachariah E. Moura, Esq. (zach.moura@loywr.com)
LOYR, APC
1055 West 7th Street, Suite 2290
Los Angeles, CA 90017

To Defendants:

Lonnie D. Giamela (lgiamela@fisherphillips.com)
Areen Babajanian (ababajanian@fisherphillips.com)
Fisher & Phillips LLP
444 South Flower Street, Suite 1500
Los Angeles, CA 90071

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310

for the entire period of this settlement process.

Juan Torres (Dec 14, 2023 18:10 PST)
__________________________ Juan Torres

__________________________For Spirit

__________________________Jake Ptasznik

for the entire period of this settlement process.

________________________ Juan Torres

________________________ For Spirit 12/15/23

________________________ Jake Ptasznik 12/15/23

EXHIBIT A

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Attorneys for Plaintiff JUAN TORRES

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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THE PARTIES

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

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

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

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

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

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

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

JURISDICTION

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

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

ALTER EGO, AGENCY, AND JOINT EMPLOYER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. SPIRIT is, and at all times relevant hereto was, used by PITASZINK and DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and was, the alter ego of PITASZINK and DOES 1-50. The recognition of the separate existence of SPIRIT, and/or PITASZINK would not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiffs for violations of the Labor Code. The corporate existence of PITASZINK, SPIRIT, and DOES 1-50 should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

FIRST CAUSE OF ACTION

(Against All Defendants)

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

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

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

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

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

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

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

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

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

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

DATED: December 15, 2023

LOYR, APC

By: ______________________

Young W. Ryu, Esq.
Zachariah E. Moura, Esq.
Kee Seok Mah, Esq.
Attorneys for Plaintiff
JUAN TORRES

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