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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO**

16 **Elisa Hilaire**, individually and on behalf of all
17 similarly situated individuals,

18 Plaintiff,

19 vs.

20 **Spencer Gifts, LLC**, a Delaware Limited
21 Liability Company; **Spirit Halloween**
22 **Superstores, LLC**, a Delaware Limited
23 Liability Company; **Barry Susson**, an
24 individual; and **Does 1-10**, inclusive;

25 Defendants.

CASE NO. 37-2024-00019642-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Minimum Wages;
- 2) Failure to Pay Overtime Wages;
- 3) Failure to Provide Meal Periods;
- 4) Failure to Provide Rest Periods;
- 5) Failure to Provide and Maintain Complete and Accurate Wage Statements;
- 6) Failure to Reimburse Necessary Business Expenses;
- 7) PAGA Penalties; and
- 8) Violation of California Business & Professions Code §§ 17200, et seq.

Jury Trial Requested

1 Plaintiff hereby brings this action on behalf of herself and all other similarly situated current and
2 former employees, by and through her counsel of record, alleges as follows:

3 **PARTIES**

4 1. At all relevant times for this Complaint, Plaintiff **Elisa Hilaire**, (“Plaintiff”) is and was a
5 resident of the County of San Diego, California. Plaintiff was employed as an hourly, non-exempt
6 employee of Defendants from in or around July 2022 to on or around March 6, 2023. Plaintiff was subject
7 to the policies and practices described in this complaint at all times during her employment at Defendants.

8 2. Defendant **Spencer Gifts, LLC** (“Spencer’s”) is a Delaware Limited Liability Company
9 that is a part of an interrelated group of entities that owns and operates retails stores throughout California.
10 Upon information and belief, Spencer’s and Spirit Halloween are run as an integrated enterprise with
11 common officers, owners, executives, policies and practices, intermingling of funds, and human resources
12 departments. On information and belief, it employs at least 1,000 hourly, non-exempt employees.

13 3. Defendant **Spirit Halloween Superstores, LLC** (“Spirit Halloween”) is a Delaware
14 Limited Liability Company that is a part of an interrelated group of entities that owns and operates retails
15 stores throughout California. Upon information and belief, Spencer’s and Spirit Halloween are run as an
16 integrated enterprise with common officers, owners, executives, policies and practices, intermingling of
17 funds, and human resources departments. On information and belief, employs at least 1,000 hourly, non-
18 exempt employees.

19 4. Defendant **Barry Susson** (“Susson” or hereinafter “Defendants” with Defendant
20 Spencer’s and Spirit Halloween) is the Chief Executive Officer at Spencer’s and Spirit Halloween. Upon
21 information and belief, he is a resident of the County of Atlantic in the State of New Jersey. Upon
22 information and belief, as Mr. Susson is a managing agent, director, and/or officer of Defendants and
23 because he caused or directed the acts described herein, he is personally liable for the Labor Code
24 violations set forth in this Complaint under Labor Code section 558.1.

25 5. Plaintiff is not currently aware of the names and true identities of defendants Does 1-10.
26 Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this
27 information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of
28 the causes of action asserted, either through its own conduct, or vicariously through the conduct of others.

1 All further references in this complaint to any of the named Defendants includes the fictitiously named
2 defendants.

3 6. At all times alleged herein, each Defendant was an agent, servant, joint employer,
4 employee, partner, and/or joint venture of every other Defendant and was acting within the scope of the
5 Defendants' relationship. Moreover, the conduct of every Defendant was ratified by each other
6 Defendant.

7 VENUE AND JURISDICTION

8 7. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI,
9 § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California
10 statutes and law, including the Labor Code and the Business & Professions Code. Because putative class
11 members were employed by Defendants, the policies and practices complained of herein were
12 implemented in San Diego County, and Defendants transact business within San Diego County,
13 Defendant is within the jurisdiction of the court for service of process. Moreover, Business & Professions
14 Code § 17204 provides that any person acting on their own behalf may bring an action in any court of
15 competent jurisdiction.

16 8. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil
17 Procedure § 395. Defendants transact business and/or have offices in this county, employ putative class
18 members in this County, and the acts and omissions alleged herein took place in this county. Moreover,
19 this action is brought on behalf of the State of California as a private attorney general and has jurisdiction
20 in this venue.

21 CLASS ACTION ALLEGATIONS

22 9. Defendants have consistently denied their non-exempt employees the opportunities to take
23 compliant 30-minute meal periods in accordance with California's Labor Code. Upon information and
24 believe, Class Members, including Plaintiff, were required to skip or interrupt their meal and/or rest
25 periods to service customers, shorten their meal and/or rest periods to undergo security or bag checks,¹
26

27 ¹ Employees were required by company policy to leave the store during their meal periods and required to
28 undergo the security or bag checks each time they exited the store, including when they left on meal and
rest periods.

1 otherwise interrupt or cut short their meal and/or rest periods, or remain on duty and under Defendants'
2 control during their meal and/or rest periods to perform other tasks at Defendants' directions due to
3 Defendants' policies and practices, including their scheduling and staffing practices and policies.
4 Additionally, Defendants requires non-exempt employees to remain on-premises during their rest
5 periods—prohibited employees from using rest periods in the manner of their choosing, free from their
6 employer's dominion and control. Accordingly, Defendants failed to authorize and permit compliant meal
7 and rest periods as required by law.

8 10. In failing to authorize and/or permit meal and rest periods, Defendants have also
9 implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt
10 employees, notwithstanding its actual knowledge that such employees were uniformly denied compliant
11 meal and rest periods.

12 11. Defendants further failed to compensate employees for all time worked time when
13 employees were forced to interrupt and/or work through their meal periods but were clocked out under
14 Defendants' time keeping system (and therefore treated as not working). This resulted in employees being
15 denied both straight time and overtime pay, where applicable, for the time during which they were on call
16 or under Defendants' control despite being off the clock for payroll purposes.

17 12. Defendants further failed to compensate employees for all time worked time when
18 employees were forced to undergo security or bag checks while off the clock after they ended their shifts.
19 This resulted in employees being denied both straight time and overtime pay, where applicable, for the
20 time during which they were on call or under Defendants' control despite being off the clock for payroll
21 purposes.

22 13. Additionally, as a matter of uniform and systemic policy, Defendants required non-exempt
23 employees to utilize their personal cell phones for work-related purposes, including answering texts and
24 calls from their supervisors while at work or on a break and general administrative matters. Defendants
25 however failed to compensate their non-exempt employees for reasonable costs associated with utilizing
26 their personal cell phones for work-related purposes.

27 14. As a matter of uniform and systemic policy, Defendants required non-exempt employees
28 to use their personal vehicles for work-related purposes without receiving reimbursements for gas and/or

1 mileage.

2 15. As a matter of uniform and systemic policy, Defendants failed to provide its non-exempt
3 employees with accurate itemized wage statements in accordance with California's Labor Code. Upon
4 information and belief, Defendants failed to furnish Plaintiff, or Class Members, either semimonthly or at
5 the time of each payment of wages, either as a detachable part of the check or separately, an accurate,
6 itemized statement in writing showing pick pay, gross wages earned, all deductions, and the net wages
7 earned by Plaintiff for the inclusive dates for which the Plaintiff worked.

8 16. Plaintiff therefore brings this action on behalf of herself and as a class action on behalf of
9 the following defined Class:

10 **Non-Exempt Employee Class:**

11 *All persons who worked at least one 3.5-hour shift as a non-exempt employee of Defendants in the*
12 *State of California from the period four years prior to the filing of the Action and the date of trial*
("Class").

13 17. Common methods of proof exist for determining these issues on a class-wide basis,
14 including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and
15 disciplinary records.

16 18. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 100
17 Class Members have been employed as non-exempt employees by Defendants within the state of
18 California. The number of Class Members is sufficiently numerous such that joinder of all members is
19 impossible or impracticable.

20 19. **Typicality.** Plaintiff's claims are typical of all Class Members. Plaintiff, like all other Class
21 Members, was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of
22 Class Members in all relevant respects.

23 20. **Adequacy.** There are no material conflicts between the claims of the representative
24 Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands her
25 obligation to inform the Court of any relationship, conflicts, or differences with any Class Member.
26 Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in
27 redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained
28 competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the

proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff have incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

21. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of required minimum and overtime wages;
- b. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required minimum and overtime wages;
- c. Whether Defendants had a common policy and/or practice of requiring Plaintiffs and Class members to undergo security and/or bag checks while off the clock;
- d. Whether Defendants this policy resulted in the failure by Defendant to pay Plaintiffs and Class members required minimum and overtime wages;
- e. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- f. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- g. Whether Defendants have a common policy and/or practice of failing to maintain accurate payroll records in the State of California;
- h. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll records in the State of California;
- i. Whether Defendants have a common policy and/or practice of failing to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;
- j. Whether Defendants unlawfully and/or willfully failed to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class

Members;

- k. Whether Defendants have a common policy and/or practice of failing to reimburse Plaintiff and Class Members for reasonable business expenses;
- l. Whether Defendants unlawfully and/or willfully failed to reimburse Plaintiff and Class Members for reasonable business expenses;
- m. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief; and
- n. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq., by violating the above provisions of law.

22. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought redress. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates providing individual notice to members of the class defined above as identified through Defendants' records.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 ***California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

4 ***Failure to Pay Minimum Wages for All Hours Worked***

5 **(Plaintiff and Class Against Defendants)**

6 23. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
7 paragraphs as if fully set forth herein.

8 24. California law requires employers to compensate employees for all time that an employee
9 is “suffered or permitted to work,” which includes all time “when any employer ‘directs, commands or
10 restrains’ an employee.” *See, e.g., Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 583 (2000), as modified
11 (May 10, 2000); *see also* Code Regs. tit. 8, § 11070 (“‘Hours worked’ means the time during which an
12 employee is subject to the control of an employer and includes all the time the employee is suffered or
13 permitted to work, whether or not required to do so.”).

14 25. Defendants failed to compensate Plaintiff and the Class for all hours worked because
15 Defendants had a policy and/or practice whereby they required and/or pressured Class Members to work
16 under Defendants’ control while off-the-clock, including but not limited to forcing or requiring Class
17 Members to work while they were clocked out for their meal periods and/or to undergo security or bag
18 checks while clock out at the end of their shifts.

19 26. Defendants further failed to pay Plaintiff and Class Members any wages for time engaged
20 in this off-the-clock work.

21 27. As a result of Defendants’ failure and refusal to comply with California law, Plaintiff and
22 Class Members are entitled to recover actual and liquidated damages for the unpaid time, plus injunctive
23 relief and reasonable attorney’s fees and costs. Lab. Code §§ 1194, 1197.1.

24 **SECOND CAUSE OF ACTION**

25 ***California Labor Code §§ 510 and 1198***

26 ***Unpaid Overtime***

27 **(Plaintiff and Class Against Defendants)**

28 28. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth

herein.

29. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

30. Plaintiff and Class Members who work more than eight hours in a day or more than forty hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including commissions, non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573 (2018), as modified (Apr. 25, 2018).

31. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty hours in a week due to the off-the-clock work identified above.

32. However, due to the off the clock work described above, Class Members were not paid for all work worked in excess of 8 hours per day or 40 days per week because this time was not counted for payroll purposes. Because Plaintiff and Class Members sometimes worked shifts of more than eight hours a day or forty hours a week, they should have been adequately compensated at their appropriate overtime rate of pay for this work.

33. Defendants knew or should have known that Plaintiff and Class Members did not receive overtime compensation for this work.

34. Defendants' failure to pay overtime compensation resulted in Plaintiff and Class Members being deprived of earned overtime wages. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

1 **THIRD CAUSE OF ACTION**

2 ***California Labor Code §§ 226.7, 512(a), and 1198***

3 ***Meal Period Violations***

4 **(Plaintiff and Class Against Defendants)**

5 35. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
6 herein.

7 36. At all times relevant to this complaint, Defendants knew they were obligated to provide
8 legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7.
9 Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work
10 period of more than five hours per day without providing the employee with a meal period of not less than
11 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day
12 without providing the employee with a second meal period of not less than 30 minutes.”

13 37. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an
14 employee to work during any meal period mandated by an applicable order of the IWC. “An off-duty meal
15 period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . .
16 .an employer’s obligation is to provide an off-duty meal period: an uninterrupted 30-minute period during
17 which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035
18 (2012).

19 38. Defendants’ policies and practices served to deprive the Class of a full 30-minute break
20 period free of employer control or relieved of all duties. Upon information and belief, employees were
21 required to skip breaks, interrupt their breaks, cut them short, take them after the fifth hour of work, work
22 through them, or remain under Defendant’s control during breaks due to Defendants’ policies and
23 practices.

24 39. Accordingly, Plaintiff and Class Members were uniformly denied meal periods as a result
25 of Defendants’ formal policies and practices. By failing to consistently provide uninterrupted, off-duty 30-
26 minute meal periods, Defendants violated the Labor Code as to Plaintiff and Class Members.

27 40. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover
28 from Defendants an additional hour of pay at their regular rates of pay for each shift in which a required

meal period was not provided.

FOURTH CAUSE OF ACTION

Labor Code §§ 226.7 and 1198

Failure to Provide Rest Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendants)

41. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

42. At all times relevant to this complaint, Defendants knew they were obligated to provide compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

43. Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If any employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

44. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order No. 1. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: "A rest period, in short, must be a period of rest."² *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

45. Employees must also be free to leave the employer's premises during their rest period. See *id.* at 270 ("In the context of a 10-minute break that employers must provide during the work period, a broad and intrusive degree of control exists when an employer requires employees to remain on call and

² Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; see also Department of Industrial Relations, "Rest Periods/Lactation Accommodations," available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.")

1 respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes
2 back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly
3 cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time.”);
4 *see also* Department of Industrial Relations, “Rest Periods,” *available at*
5 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work
6 premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the
7 rest period requirement itself.”).

8 46. Defendants’ policies and practices served to deprive the Class of the requisite number of
9 compliant rest periods free of employer control based on their hours worked per shift. Upon information
10 and belief, employees were required to skip breaks, interrupt their breaks, cut them short, work through
11 them, or remain under Defendant’s control during breaks due to Defendants’ policies and practices.

12 47. Pursuant to Wage Order No. 7 and Labor Code § 226.7(b), Plaintiff and Class Members
13 are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift
14 that a compliant rest period was not provided. Defendants were aware that their actions were a violation
15 of applicable law but consistently refused to pay premium pay as required by law.

16 **FIFTH CAUSE OF ACTION**

17 ***Labor Code §§ 226. 226.3, and 1174***

18 ***Failure to Provide Complete and Accurate Wage Statements***

19 **(Plaintiff and Class Against Defendants)**

20 48. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
21 paragraphs as if fully set forth herein.

22 49. Labor Code § 226 requires employers to furnish employees with an accurate, itemized
23 statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the
24 employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the
25 inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four
26 digits of her or her social security number; (7) the name and address of the legal entity that is the employer;
27 and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate by the employee.

1 50. At all times relevant to this complaint, Defendants' failure to pay premium wages for
2 missed meal and/or rest periods further ensured that Class Members' wage statements inaccurately
3 reflected gross and net wages earned. Defendants' failure to correctly track all hours worked and/or pay
4 all required overtime rates further left the wage statements they provided to employees to be inaccurate.

5 51. Defendants' failure to keep and maintain accurate payroll records reflecting hours worked
6 and wages earned has impeded Plaintiff and Class Members' ability to calculate unpaid wages earned.

7 52. Injury. Defendants knowingly and intentionally failed to comply with Labor Code § 226,
8 causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were
9 injured by these failures because, among other things, they were confused about whether they were paid
10 properly and/or they were misinformed about how much compensation was owed. These damages
11 include, but are not limited to, costs incurred calculating the correct net wages for each pay period and the
12 amount of employment taxes that were not paid to state and federal tax authorities.

13 53. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not
14 being provided with an accurate itemized wage statement is entitled to recover the greater of all actual
15 damages suffered or fifty (\$50) dollars for the initial violation and one hundred (\$100) dollars for each
16 subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others
17 similarly situated are entitled to injunctive relief to ensure Defendant's compliance with Labor Code
18 § 226, as well as attorney's fees and costs of suit.

19 54. Labor Code § 226 additionally provides that employers "shall afford current and former
20 employees the right to inspect or receive a copy of records pertaining to their employment, upon
21 reasonable request to the employer" and that employers "shall comply with the request as soon as
22 practicable, but no later than 21 calendar days from the date of the request." Labor Code § 226 also
23 requires that Defendants provide

24 55. Labor Code § 1198.5 provides that "[u]pon a written request from a current or former
25 employee, or her or her representative, the employer shall also provide a copy of the personnel records, at
26 a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the
27 employer receives the request . . ."

28 56. Plaintiff, through counsel, requested copies of her records kept in accordance with Labor

Code §§ 226, 432, 1174, and 1198.5.

57. Defendants did not provide Plaintiff with all records required to be produced by these statutes by the 30-day deadline.

58. Upon information and belief, Defendants have a policy and practice of denying requests for employee records to their current and former employees in California that violates Labor Code §§ 226, 432, 1174, and 1198.5 and the Wage Orders.

59. Labor Code § 226(f) and (h) sets forth that if an employer fails to permit a current or former employee to inspect or copy records required to be kept under that section within 21 days of a request to inspect, that employer is liable to the employee for a penalty of \$750, and the employee is entitled to bring an action for injunctive relief to enforce compliance and shall be entitled to an award of costs and reasonable attorney's fees in doing so. Labor Code § 1198.5(k) sets forth that if an employer fails to permit a current or former employee to inspect or copy records relating to the employee's performance or to any grievance concerning the employee within 30 days of a request to inspect, that employer is liable to the employee for a penalty of \$750, and the employee is entitled to bring an action for injunctive relief to enforce compliance and shall be entitled to an award of costs and reasonable attorney's fees in doing so.

SIXTH CAUSE OF ACTION

California Labor Code § 2802

Failure to Reimburse Necessary Business Expenses

(Plaintiff and Class Against Defendants)

60. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all the allegations of this Complaint.

61. Labor Code section 2802 provides that "[a]n employer shall indemnify her or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her or her duties, or of her or her obedience to the directions of the employer." Lab. Code § 2802. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

62. Defendants required Plaintiff and Class Members to use their personnel vehicles, necessary

1 for performance of their work duties without reimbursing those employees for gas and/or mileage for their
2 vehicles. Defendants also required Class Members to utilize their personal cell phones for work-related
3 purposes, including answering texts and calls from their supervisors while at work or on a break, being
4 assigned tasks, and general administrative matters.

5 63. Defendants further failed to reimburse a reasonable portion of the Class Members'
6 cellphone related expenses despite requiring the use of the device and/or applications that required a data
7 plan. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 ("We hold that when
8 employees must use their personal cell phones for work related calls, Labor Code section 2802 requires
9 the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or
10 limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."). Defendant
11 further failed to reimburse Plaintiff and the Class Members for the purchase of work-related equipment.

12 64. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for a
13 reasonable portion of the incurred expenses, to be determined upon trial, plus reasonable attorneys' fees
14 and costs. Lab. Code § 2802.

15 **SEVENTH CAUSE OF ACTION**

16 ***Labor Code §§ 558, 2698, et seq.***

17 ***Private Attorneys General Act ("PAGA") Penalties***

18 **(Plaintiff and Class Against Defendants)**

19 65. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set
20 forth herein.

21 66. Entitlement to Penalties. Under the California Private Attorneys General Act ("PAGA"),
22 Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney
23 general, on behalf of herself and other current or former employees as well as the general public, to recover
24 penalties for an employer's violations of the Labor Code and IWC Wage Orders. These penalties are in
25 addition to any other relief available under the Labor Code and are allocated seventy-five percent to the
26 Labor and Workforce Development Agency and twenty-five percent to the affected employees.

27 67. These penalties may be "stacked" separately for each of Defendants' violations of the
28 Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77

(C.D. Cal. June 22, 2012) (“[F]ederal courts applying California law have concluded that stacking is appropriate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) (“Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers’ compensation.”).

68. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendants during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, she seeks to recover, on behalf of herself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, including civil penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 432, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198,³ 1401, and 2802 and Industrial Wage Order No. 1, plus reasonable attorneys’ fees and costs.

69. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

70. Labor Code § 2699(a), which is part of PAGA, provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or themselves and other current or former employees pursuant to the procedures specified in § 2699(a).

71. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or

³ Defendants also denied Aggrieved Employees the right to suitable seating. Wage Order No. 5 provides that “[a]ll working employees *shall* be provided with suitable seats when the nature of the work reasonably permits the use of seats.” *Id.* § 11050(14)(A) (emphasis added). “When the employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats *shall* be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.” *Id.* § 11050(14)(B).

more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

72. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendants and allocated as required by PAGA in the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay period, and \$200 for each subsequent violation per employee per pay period. Plaintiff, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Order No. 7 as alleged in this Complaint.

73. Plaintiff is also entitled to recover for herself, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from, any other penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely payment requirements of Labor Code § 240 (semimonthly payments) and \$200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld, and Labor Code § 558 in the amount \$50 per underpaid employee for each pay period for which the employee was underpaid and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.

74. Procedural Requirements Met. Plaintiff electronically filed a notice of claims with the LWDA contemporaneously with this Complaint and sent a copy to Defendants by certified mail. Plaintiff has not received notice from the LWDA that it was exercising jurisdiction over the allegations set forth in the notice. As of 65 days from date of electronic filing, all requirements for administrative exhaustion for bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2).

EIGHTH CAUSE OF ACTION

California Business & Professions Code §§ 17200, et seq.

Unlawful Business Practices

(Plaintiff and Class Against Defendants)

75. Plaintiff repeats and incorporate by reference every allegation in this complaint as if fully set forth herein.

76. Defendants Spencer's, Spirit Halloween, and Susson are "persons" as defined by

California Business & Professions Code § 17201, as they are a natural person, corporations, firms, partnerships, joint stock companies, and/or associations.

77. Unlawful Business Practices. Defendants' knowing violations of the Labor Code constitutes an unlawful business practice as set forth in Business & Professions Code § 17200, et seq.

78. Defendants' failure to abide by the laws discussed herein provided Defendants an unfair advantage over their competitors at the expense of their workers. Instead, Defendants cuts corners in the name of higher profits and at the expense of employee well-being. Defendants' actions thereby constitute an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200.

79. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop Defendant's willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff seeks an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

- A. For an Order:
 - a. Certifying the Class;
 - b. Appointing Plaintiff as representative of the Class;
 - c. Appointing Plaintiff's Counsel as Class Counsel;
- B. For actual and liquidated damages according to proof at trial;
- C. For statutory and civil penalties and special damages, according to proof at trial;
- D. For pre- and post-judgment interest on monetary damages;
- E. For preliminary and permanent injunctive relief;
- F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and
- G. For such other relief as this Court deems just and proper.

1 Dated: April 26, 2024

Respectfully submitted,

2 **KING & SIEGEL LLP**

3
4 By: *Elliot J. Siegel*
5 Elliot J. Siegel, Esq.
6 Attorneys for Plaintiffs

7 Dated: April 26, 2024

8 **BARAHMAND LAW GROUP**

9
10 By: */s/ Navid Barahmand*
11 Navid Barahmand, Esq.
12 Attorneys for Plaintiffs