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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST**

13 JENNIFER AILEY; individually, and on behalf
of other members of the general public
14 similarly situated;

15 Plaintiff,

16 vs.

17 SPIRIT HALLOWEEN SUPERSTORES LLC,
a Delaware corporation; and DOES 1 through
18 100, inclusive,

19 Defendants.

Case No. BC5 13122

CLASS ACTION

**[REVISSED PROPOSED] ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

CONFIRMED COPY
ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

SEP 12 2014

Sherri R. Carter, Executive Officer/Clerk
By: Maribel Mata, Deputy

1 Plaintiff Jennifer Ailey (“Plaintiff”) and Defendant Spirit Halloween Superstores LLC
2 (“Defendant”) (together the “Parties”) have entered into a Stipulation of Settlement and Release
3 (“Stipulation of Settlement”) to settle the above-captioned class action subject to the Court’s
4 approval (the “Settlement”). The Settlement provides for the mailing of notices and claim forms
5 and the payment of compensation to each Class Member who timely submits a valid Claim Form
6 (a “Claimant”).

7 **I. BACKGROUND**

8 **A. Procedural History**

9 The Lawsuit was filed by Plaintiff on June 24, 2013 in Los Angeles County Superior
10 Court alleging ten causes of action: (1) Violation of California Labor Code §§ 510 and 1198
11 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal
12 Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period
13 Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum
14 Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
15 (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7)
16 Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of
17 California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of
18 California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation
19 of California Business & Professions Code §§ 17200 et seq. On January 14, 2014, Plaintiff filed
20 a First Amended Complaint, adding a claim for Violation of the Private Attorneys General Act
21 (“PAGA”). The Parties engaged in extensive informal discovery and exchange of information.
22 This has included a sampling of Class Members’ payroll data and punch records, the number of
23 weeks worked by Class Members, and the average and median rates of pay for Class Members.
24 The Parties then agreed to participate in a private mediation on December 18, 2013 before
25 respected neutral mediator (and plaintiffs’ counsel) Mark S. Rudy, Esquire to try and resolve the
26 claims. The parties reached a settlement at the mediation and entered into a Memorandum of
27 Understanding on that date. On or about February 28, 2014, Plaintiff and Defendant executed the
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1 Stipulation of Settlement and Release, setting forth the terms of the Settlement (“Stipulation of
2 Settlement”).

3 **B. Investigation in the Class Action**

4 The Parties have conducted significant investigation of the facts and law during the
5 prosecution of this Lawsuit. Such discovery and investigations have included the exchange of
6 information and documents pursuant to discovery, meetings and conferences, and interviews of
7 numerous potential witnesses and putative class members. Counsel for the Parties have further
8 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
9 the Class Members and potential defenses thereto and the damages claimed by Plaintiff.

10 **C. Benefits of the Settlement to Class Members**

11 Plaintiff recognizes the expense and length of continued proceedings necessary to
12 continue the litigation against Defendant through trial and through any possible appeals. Plaintiff
13 has also taken into account the uncertainty and risk of the outcome of further litigation, and the
14 difficulties and delays inherent in such litigation, including those involved in class certification.
15 Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims
16 asserted in the Lawsuit, Defendant’s defenses thereto, and the difficulties in establishing damages
17 for Class Members. Plaintiff has also considered the significant settlement negotiations
18 conducted by the Parties, and the advice of the neutral mediator. Based on the foregoing, Plaintiff
19 has determined that the Settlement set forth in the Stipulation of Settlement is a fair, adequate and
20 reasonable settlement, and is in the best interests of all Class Members.

21 **D. Class Members**

22 The “Class Members” are defined as “all hourly-paid or non-exempt individuals employed
23 at a Spirit store within the State of California during the Class Period,” with “Class Period”
24 defined as “the period beginning June 24, 2009 through the date of Preliminary Approval (i.e.,
25 April 24, 2014).”
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1 **E. Plaintiff's Claims**

2 Plaintiff has claimed and continues to claim that the Class Released Claims have merit
3 and give rise to Defendant's liability. Neither the Stipulation of Settlement nor any documents
4 referred to herein, or any action taken to carry out the Stipulation of Settlement is or may be
5 construed as or may be used as an admission by or against Plaintiff as to the merits or lack thereof
6 of the claims asserted by Plaintiff.

7 **F. Defendant's Denials of Wrongdoing**

8 Defendant contends that all of its employees have been compensated in compliance with
9 the law, and that its conduct was not willful with respect to any alleged failure to pay any wages
10 (including but not limited to minimum wage, straight-time or overtime wages, missed breaks,
11 final paychecks, or otherwise), provide certain breaks, provide accurate itemized wage
12 statements, reimburse necessary business expenses, or in any other respect. Defendant has denied
13 and continues to deny each of the claims and contentions alleged by Plaintiff in the Lawsuit.
14 Defendant denies any wrongdoing or legal liability arising out of any of the facts or conduct
15 alleged in the Lawsuit, and believes that it has valid defenses to Plaintiff's claims. Neither the
16 Stipulation of Settlement, nor any document referred to or contemplated herein, nor any action
17 taken to carry out the Stipulation of Settlement, may be construed as or may be used as an
18 admission, concession, or indication by or against Defendant of any fault, wrongdoing or liability
19 whatsoever, or of any concession that certification of a class other than for purposes of this
20 Settlement would be appropriate in this or any other case.

21 **G. Operation of the Settlement.**

22 Pursuant to the Order Granting Preliminary Approval of Class Action Settlement dated
23 April 24, 2014, this Court conditionally certified the Class and granted preliminary approval of
24 the Settlement (the "Preliminary Approval Order"). The Preliminary Approval Order also
25 approved the proposed forms of notice and notice plan. The Court entered the Preliminary
26 Approval Order after review and consideration of all of the pleadings filed in connection
27 therewith, and the oral presentations made by counsel at the hearing.
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1 In compliance with the Preliminary Approval Order, Notices and Claim Forms were sent
2 to all Class Members via first class mail. Furthermore, reminder postcards and follow-up
3 mailings were performed for returned mail, in addition to the distribution of any Claim Forms to
4 Class Members requesting copies. The notice program was timely completed.

5 This matter is now before the Court on Plaintiff's Motion for Final Approval of the Class
6 Action Settlement, including approval of a Service Payment for Class Representative Jennifer
7 Ailey and Class Counsel's Application for a Fee and Expense Award. The Court has read, heard,
8 and considered all the pleadings and documents submitted, and the presentations made in
9 connection with the Motion and Application which came on for hearing on September 8, 2014
10 and September 12, 2014.

11 This Court finds that the Settlement appears to be the product of serious, informed, non-
12 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
13 treatment to any individuals. The Court further finds that the Settlement is fair, reasonable and
14 adequate and that Plaintiff has satisfied the standards for final approval of a class action
15 settlement under California law. Under the provisions of California Code of Civil Procedure
16 section 382 and Federal Rule of Civil Procedure 23, as approved for use by the California state
17 court in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court has discretion to
18 certify a class where:

19 [Q]uestions of law or fact common to class members predominate
20 over any questions affecting only individual members, and that a
21 class action is superior to other available methods for fairly and
22 efficiently adjudicating the controversy....

23 Fed. R. Civ. Proc. 23.

24 Certification of a settlement class is the appropriate judicial device under these circumstances.

25 Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

- 26 1. This Court has jurisdiction over the claims of the Class Members asserted in this
27 proceeding and over all Parties to the Lawsuit.
- 28 2. For the reasons set forth in the Preliminary Approval Order and in the transcript of

1 the proceedings of the Preliminary Approval hearing, which are adopted and incorporated herein
2 by reference, this Court finds that the applicable requirements of the California Code of Civil
3 Procedure Section 382 and Rule 3.769 of the California Rules of Court have been satisfied with
4 respect to the Class and the proposed Settlement. The Court hereby makes final its earlier
5 provisional certification of the Class, as set forth in the Preliminary Approval Order.

6 3. The Notice given to the Class Members fully and accurately informed the Class
7 Members of all material elements of the proposed Settlement and of their opportunity to object to
8 or comment thereon; was the best notice practicable under the circumstances; was valid, due and
9 sufficient notice to all Class Members; and complied fully with the laws of the State of California,
10 the United States Constitution, due process and other applicable law. The Notice fairly and
11 adequately described the Settlement and provided Class Members adequate instructions and a
12 variety of means to obtain additional information. A full opportunity has been afforded to the
13 Class Members to participate in this hearing, and all Class Members and other persons wishing to
14 be heard have been heard. Accordingly, the Court determines that all Class Members who did not
15 timely and properly execute a request for exclusion are bound by this Final Approval Order.

16 4. Pursuant to California law, the Court hereby grants final approval to the Settlement
17 and finds it reasonable and adequate, and in the best interests of the Class as a whole. More
18 specifically, the Court finds that the Settlement was reached following meaningful discovery and
19 investigation conducted by Class Counsel; that the Settlement is the result of serious, informed,
20 adversarial, and arms-length negotiations between the Parties; and that the terms of the Settlement
21 are in all respects fair, adequate, and reasonable. In so finding, the Court has considered all of the
22 evidence presented, including evidence regarding the strength of the Plaintiff's case; the risk,
23 expense, and complexity of the claims presented; the likely duration of further litigation; the
24 amount offered in Settlement; the extent of investigation and discovery completed; and the
25 experience and views of Class Counsel. The Court further has considered the absence of
26 objection to the Settlement by Class Members, as well as the three Exclusion Letters submitted by
27 Ever J Guardado, Katelyn Catalano, and Jessica A Hoeschen. Accordingly, the Court hereby
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1 directs that the Settlement be affected in accordance with the Stipulation of Settlement and the
2 following terms and conditions.

3 5. It is hereby ordered that the Settlement Administrator shall pay the Individual
4 Settlement Payments to the Claimants according to the methodology as set forth in the Stipulation
5 of Settlement.

6 6. It is hereby ordered that the that the Settlement Administrator shall pay the Service
7 Payment of \$5,000.00 to Class Representative Jennifer Ailey because the Court finds the Service
8 Payment is fair and reasonable for the work she provided to the Class and Class Counsel and in
9 exchange for a general release.

10 7. It is hereby ordered that the Settlement Administrator shall pay the PAGA
11 Payment of \$7,500.00 to the Labor and Workforce Development Agency to pay all applicable
12 penalties under the California Labor Code's Private Attorney General Act of 2004, as amended,
13 California Labor Code sections 2699 *et seq.*

14 8. It is hereby ordered that the Settlement Administrator pay the PAGA Payment of
15 \$2,500.00 to Claimants on a pro rata basis according to the terms of the Stipulation of Settlement.

16 9. It is hereby ordered that the Settlement Administrator, Simpluris, Inc. shall pay
17 itself a payment of \$40,000.00 for the services performed in administering the Settlement.

18 10. It is hereby ordered that the Settlement Administrator shall pay the Fee and
19 Expense Award of \$354,750.00, plus \$11,144.94 in actual litigation costs/expenses, to Class
20 Counsel because Class Counsel's request falls within the range of reasonableness and the result
21 achieved justified the award. Class Counsel's actual litigation costs/expenses in prosecuting this
22 Lawsuit are hereby approved as reasonably incurred.

23 11. With this Final Approval of the proposed Settlement, it is hereby ordered that
24 Class Members (other than those who submit a timely and valid Exclusion Letter) and their
25 successors shall conclusively be deemed to have given a release, as set forth in the Stipulation of
26 Settlement and Notice, against the Released Parties, and all such participating Class Members and
27 their successors shall be permanently enjoined and forever barred from asserting any claim related
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1 to this Lawsuit against the Released Parties. The Class Released Claims include all claims,
2 demands, rights, liabilities, and causes of action that were or might have been asserted (whether in
3 tort, contract, or otherwise) for violation of the California Labor Code, the California Business
4 and Professions Code, the Private Attorneys General Act ("PAGA"), the applicable Industrial
5 Welfare Commission Wage Orders or any similar state or federal law, whether for economic
6 damages, non-economic damages, liquidated damages, punitive damages, restitution, penalties,
7 other monies, or other relief arising out of, relating to, or in connection with any facts,
8 transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to
9 act pled in the Complaint, which are or could be the basis of claims that Defendant failed to pay
10 all wages due, failed to pay overtime wages due, failed to pay the minimum wage, failed to
11 provide meal periods, failed to authorize and permit rest breaks, failed to provide timely or
12 accurate final paychecks, failed to keep proper records concerning time worked, failed to provide
13 accurate itemized wage statements, failed to reimburse necessary business expenses, and/or
14 engaged in unfair business practices, and for penalties under PAGA at any time on or before the
15 date of Preliminary Approval (and whether such claims are based on California or federal wage
16 and hour law, contract law, or other law). In addition, with this Final Approval of the proposed
17 Settlement, it is hereby ordered that Class Members (other than those who submit a timely and
18 valid Exclusion Letter and other than those who did not submit a timely and valid Claim Form)
19 and their successors shall conclusively be deemed to have given a release against the Released
20 Parties, and shall be permanently enjoined and forever barred from asserting any claims, demand,
21 rights, liabilities, and causes of action that were or might have been asserted (whether in tort,
22 contract, or otherwise) related to this Lawsuit against the Released Parties for violation of the Fair
23 Labor Standards Act,

24 12. No other costs or fees relief shall be awarded, either against Defendant or any
25 related persons or entities, as defined in the Stipulation of Settlement, or from the award to the
26 Settlement Class.

27 13. Neither the making of the Stipulation of Settlement nor the entry into the
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1 Stipulation of Settlement constitutes an admission by Defendant, nor is this Order a finding of the
2 validity of any claims in the Complaint or of any other wrongdoing. Further, the Stipulation of
3 Settlement is not a concession, and shall not be used as an admission of any wrongdoing, fault, or
4 omission of any entity or persons; nor may any action taken to carry out the terms of the
5 Stipulation of Settlement be construed as an admission or concession by or against Defendant or
6 any related person or entity.

7 14. The Settlement Administrator shall post this Order and the Judgment on its website
8 upon the Court's signature for a period of no less than thirty (30) days.

9 **IT IS SO ORDERED.**

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11 Dated: 9/12, 2014.

MARY STROBEL

Hon. Mary H. Strobel
Judge of the Superior Court of California

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