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SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

ROSEMARY GONZALES, EMERALD
MUNOZ, and LYNN TRIPP, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

M.A.C. COSMETICS INC.; MACY'S WEST
STORES, INC.; and DOES 1- 100, inclusive,

Defendants.

CASE NO.: 20CEG01452

[E-FILE]

CLASS ACTION

FIRST AMENDED COMPLAINT

1. Invasion of Privacy (Cal. Const., Art. 1, § 1);
2. Invasion of Privacy – Intrusion Into Private Affairs;
3. Unlawful Recording of Confidential Information (Pen. Code, §§ 632, 637.2);
4. Distribution of Private Sexually Explicit Materials (Civ. Code, § 1708.85);
5. Negligence;
6. Negligent Infliction of Emotional Distress; and
7. Violation of Private Attorney General Act (Lab. Code, § 2698 et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiffs Rosemary Gonzales, Emerald Munoz, and Lynn Tripp, on behalf of themselves and all
2 others similarly situated, alleges as follows:

3 **INTRODUCTION**

4 1. In the fall of 2016, managers of the M.A.C. Cosmetics Inc. store within the Macy's West
5 Stores Inc. (collectively "Defendants") department store in Fresno suspected that one of the M.A.C.
6 employees was stealing makeup samples from the back office. The back office served multiple purposes,
7 including a storage place for samples and makeup bags and a changing room for employees. Instead of
8 confronting any of the employees, however, Defendants' security team set up hidden cameras in the back
9 office in an attempted sting.

10 2. Security personnel watching the cameras caught more than stealing; they filmed women
11 changing their clothes before starting the shift. They mocked the women's naked bodies and humiliated
12 employees by commenting about the color of their underwear. The conduct was outrageous and
13 unreasonable and invaded the privacy of Plaintiffs and other Class Members.

14 3. Eventually, Defendants caught the suspected thief in the act of stealing makeup samples
15 (with no resale value). But rather than stop recording once the culprit had been identified, Defendants
16 continued unabated. Security personnel continued to mock and humiliate Plaintiffs and other Class
17 Members. Plaintiffs are informed and believe that Defendants may be continuing through the present
18 time to record women without their knowledge or consent.

19 4. Plaintiffs bring their claims individually and as a class action, under Code of Civil
20 Procedure section 382, on behalf of similarly situated employees working for Defendants. They seek
21 monetary damages as a result of Defendants' unlawful conduct that violated their privacy rights and the
22 rights of employees under the Labor Code.

23 **JURISDICTION AND VENUE**

24 5. The Superior Court of California for the County of Fresno has jurisdiction over this matter
25 because the allegations and claims herein arise under California common and statutory law.

26 6. Venue is proper in this Court under Code of Civil Procedure section 395, subdivision (a).
27 Defendants regularly conduct business throughout California, including Fresno County, and a substantial
28 the harm caused by Defendants to Plaintiffs and numerous other putative Class Members took place in

1 Fresno County.

2 **THE PARTIES**

3 7. Plaintiff Rosemary Gonzales resides in Madera County and is a former employee of
4 Defendants.

5 8. Plaintiff Emerald Munoz resides in Fresno County and is a former employee of
6 Defendants.

7 9. Plaintiff Lynn Tripp resides in Fresno County and is a former employee of Defendants.

8 10. More than two-thirds of the members of the proposed class are citizens of California.

9 11. Defendant M.AC. Cosmetics, Inc. is a Delaware corporation that maintains its principal
10 place of business at 7 Corporate Center Drive, Melville, New York 11747. Defendant M.A.C. regularly
11 conducts business in California and has retail locations throughout the state.

12 12. Defendant Macy's West Stores, Inc. is an Ohio Corporation that maintains its principal
13 place of business at 7 West 7th Street, Cincinnati, Ohio 45202. Defendant Macy's regularly conducts
14 business in California and has retail locations throughout the state.

15 13. Plaintiffs are informed and believe, and based thereon allege, that each and all of the acts
16 and omissions alleged herein were performed by, or are attributable to, Defendants and DOES 1-100,
17 each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and
18 all Defendants were in accordance with, and represent the official policies of Defendants.

19 14. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
20 mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein.
21 At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of
22 each and all the other Defendants in proximately causing the damages herein alleged.

23 15. Plaintiffs are informed and believe, and based thereon allege, that each of said Defendants
24 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
25 occurrences, and transactions alleged herein.

26 **GENERAL ALLEGATIONS**

27 16. M.A.C. Cosmetics has retail locations throughout the state of California, both as stand-
28 alone shops and shops located within larger stores, like the Macy's Shops at River Park in Fresno.

1 17. In the fall 2016, Defendants' River Park store managers suspected that one of the M.A.C.
2 employee was stealing makeup samples from the back office. As described above, the back office served
3 multiple purposes, including a storage place for samples and makeup bags and a changing room for
4 employees. Defendants frequently provided specific clothing for employees to wear for various product
5 launches and instructed employees to change in the back office. Employees also used the back office to
6 adjust their undergarments and pantyhose during the day.

7 18. It is common for employees to come to work an hour before a shift to get ready in the
8 back office. For example, Plaintiff Gonzales lived about an hour away from the store. She would
9 frequently travel to work in her gym clothes, including undergarments, to keep her work clothing pristine
10 for her shifts and for comfort on the commute. When she changed in the back office, she would
11 frequently change her undergarments with the rest of her clothing to comply with Defendants' dress code
12 and professional expectations. Many other Class Members also arrived at work in gym clothes and it was
13 common for Class Members to remove all of their clothing, including undergarments, while in the back
14 office preparing for their shifts.

15 19. The back office had a keypad entrance and the code was only known to MAC's all female
16 staff, management, and Macy's security team. The back office was locked at all times, including when
17 Plaintiffs and the other employees were changing. Defendants changed the code to the keypad entrance
18 on at least an annual basis after completing inventory. The code was kept secret from all other Macy's
19 employees, and if one of them needed to enter, a MAC employee would personally walk them in.
20 Because Defendants instructed Plaintiffs and the Class to change in the locked room, they had a
21 reasonable expectation of privacy in the back office. They also had a reasonable expectation that their
22 communications and bodies were not being viewed by anyone not present in the room.

23 20. Plaintiffs are informed and believe, and based thereon allege, the former head of store
24 security for Macy's decided to place hidden cameras in the back office in order to catch the purported
25 thief. Defendants' leadership from both M.A.C. and Macy's endorsed and approved of this policy,
26 including M.A.C.'s store manager, M.A.C.'s assistant store manager, Macy's head of the beauty
27 department, and Macy's store manager.

28 21. Plaintiff Gonzales was working at the M.A.C. River Park store in the fall of 2016 and had

1 a personal relationship with numerous members of Defendants' leadership, including head of security
2 and the assistant store manager. The assistant store manager informed Plaintiff Gonzales about the
3 cameras and advised her not to change her clothing in the back office.

4 22. Every morning, Plaintiff Gonzales would search for the hidden cameras but was unable to
5 find them. Eventually she learned that the camera was hidden inside of one of the many M.A.C. sample
6 bags located in the back office. Plaintiff Gonzales and assistant store manager would search the bags
7 looking for a hole for the hidden camera but were unable to find it. Plaintiff is informed and believed that
8 Defendants changed the way they hid the cameras after watching her and the assistant store manager look
9 through the bags.

10 23. A few weeks after setting up the hidden camera, Defendants caught the thief red-handed
11 stealing *makeup samples with no resale value* from the back office. The videos revealed the thief hiding
12 the makeup samples in her bra several nights after her closing shift. The makeup samples are freely given
13 to customers upon request. Plaintiffs are informed and believe, and based thereon allege, that Defendants
14 fired the thief on other grounds in order to avoid disclosing the existence of the hidden cameras.

15 24. Security personnel watching the cameras caught more than stealing; they filmed women
16 changing their clothes before starting the shift. Plaintiff Gonzales heard the head of security and another
17 security guard mock the women's naked bodies and humiliate employees with comments about the color
18 of their underwear. The conduct was outrageous and unreasonable and invaded the privacy of Plaintiffs
19 and other Class Members. It is especially outrageous given the very small amount of loss related to the
20 underlying theft.

21 25. Plaintiff Gonzales felt uncomfortable concealing the existence of the cameras from her
22 colleagues but she was afraid to speak out about the policy. And, once the thief was caught, Plaintiff
23 Gonzales assumed that Defendants removed the security camera and resumed changing her clothing in
24 the back office before starting her shift.

25 26. A few weeks after the thief had been caught, however, Plaintiff Gonzales was told by a
26 security guard that she spent too much time putting on makeup before her shift. The guard did not know
27 that Plaintiff Gonzales was aware of the hidden cameras, so through this disclosure, Plaintiff Gonzales
28 learned that Defendants were still recording employees in the back office. Security personnel continued

1 to mock and humiliate Plaintiffs and other Class Members. Plaintiff Gonzales is informed and believes,
2 and based thereon alleges, that Defendants recorded her while she changed her clothing and
3 undergarments in the back office.

4 27. Plaintiffs Munoz and Tripp were unaware of Defendants' actions until Plaintiff spoke with
5 them about the practice in the second half of 2019 and early 2020. Plaintiff Munoz also lived about an
6 hour away from the store and changed from gym clothes into her work attire, including undergarments,
7 in the back office. Similarly, Plaintiff Tripp took public transportation to work for the first nine months
8 of her employment and wore her gym clothes for comfort during her commute. She also changed into
9 work attire in the back office, including changing her undergarments. Plaintiffs Munoz and Tripp were
10 both horrified to learn about Defendants' practices, and they are informed and believe that Defendants
11 recorded them while changing their clothing and undergarments in the back office during this timeframe.

12 28. Plaintiffs are informed and believe that Defendants may be continuing to record women
13 without their knowledge or consent.

14 **CLASS ALLEGATIONS**

15 29. Plaintiff brings this action on behalf of herself, and on behalf of all other persons similarly
16 situated, and thus seeks certification under section 382 of the California Code of Civil Procedure.

17 30. The proposed class in this action consists of and is defined as:

18 All persons employed at Defendants' M.A.C. Cosmetics store located
19 inside of Macy's Shops at River Park from January 2016 to the present.

20 31. There is a well-defined community of interest in the litigation and the Class is easily
21 ascertainable:

22 a. Numerosity: The members of the Class are so numerous that joinder of all members
23 would be unfeasible and impractical. The membership of the entire Class is unknown
24 to Plaintiffs at this time, however, the Class is estimated to be greater than one
25 hundred (100) individuals and the identity of such membership is readily ascertainable
26 by inspection of Defendants' employee records.

27 b. Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the
28 interests of each Class Member with whom they has a well-defined community of

1 interest, and Plaintiffs' claims are typical of all Putative Class' claims as demonstrated
2 herein.

3 c. Adequacy: Plaintiffs are qualified to, and will, fairly and adequately, protect the
4 interests of each Class Member with whom she has a well-defined community of
5 interest and typicality of claims, as alleged herein. Plaintiffs acknowledges that they
6 has an obligation to make known to the Court any relationship, conflicts, or
7 differences with any Class Member. Plaintiffs' attorneys and class counsel are versed
8 in the rules governing class action discovery, certification, and settlement. Plaintiffs
9 have incurred, and throughout the duration of this action will continue to incur, costs
10 and attorney's fees that have been, are, and will be necessarily expended for the
11 prosecution of this action for the substantial benefit of each Class Member.

12 d. Superiority: The nature of Plaintiffs' claims makes the class action procedure superior
13 to other methods. A class action will achieve economies of time, effort and expense as
14 compared with separate lawsuits, and will avoid inconsistent outcomes because the
15 same issues can be adjudicated in the same manner and at the same time for the entire
16 class.

17 e. Public Policy Considerations: California health care providers have strict obligations
18 with respect to the privacy of their patients. This action seeks to redress Defendants'
19 breach of patient privacy. A class action here serves the important public policy
20 consideration of allowing patients a type of anonymity that allows for the vindication
21 of their rights while still protecting their privacy.

22 32. There are common questions of law and fact as to the Class that predominate over
23 questions affecting only individual members, including, but not limited to:

- 24 a. Whether Defendants' recording of employees through a hidden camera violated their
25 right to privacy;
- 26 b. Whether Defendants' viewing of these recording violated the employees' right to
27 privacy;
- 28 c. Whether Defendants obtained the written consent of any employee to this secret

1 recording;

- 2 d. Whether Defendants breached their duty of care in allowing cameras to be placed in a
3 room utilized for changing clothes;
- 4 e. Whether Defendants negligently hired, supervised, or retained employees responsible
5 for placing cameras in a room utilized for changing clothes;
- 6 f. Whether Defendants negligently hired, supervised, or retained employees who viewed
7 and/or circulated footage from the subject cameras;
- 8 g. Whether Defendants' conduct was sufficiently severe and pervasive to constitute
9 sexual harassment;
- 10 h. The appropriate amount of damages, restitution, putative damages, and/or monetary
11 penalties resulting from Defendants' conduct.

12 **FIRST CAUSE OF ACTION**

13 **Invasion of Privacy – Intrusion Into Private Affairs**
14 **Against All Defendants and on Behalf of Plaintiffs and the Putative Class**

15 33. Plaintiffs and the Putative Class incorporate by reference and re-allege as if fully stated
16 herein the material allegations set out in the preceding paragraphs.

17 34. Plaintiffs and the Putative Class had a reasonable expectation of privacy in the areas at
18 their workplace utilized to change their clothing. The back office had a keypad entrance and the code was
19 only known to MAC's all female staff, management, and Macy's security team. The back office was
20 locked at all times, including when Plaintiffs and the other Class Members were changing. Defendants
21 changed the code to the keypad entrance on at least an annual basis after completing inventory. The code
22 was kept secret from all other Macy's employees, and if one of them needed to enter, a MAC employee
23 would personally walk them in. Because Defendants instructed Plaintiffs and the Class to change in the
24 locked room, they had a reasonable expectation of privacy in the back office.

25 35. Plaintiffs and the Putative Class also had a reasonable expectation of privacy that their
26 conversations, their communications, and their likeness not being video recorded.

27 36. Plaintiffs and the Putative Class further had a reasonable expectation that their
28 conversations, their communications, and their likeness were not being viewed or heard by anyone not

1 physically present in room at the time of said conversations, communications, and changing their clothes.

2 37. Defendants intentionally intruded on Plaintiffs and the Putative Class' privacy by
3 installing recording devices in rooms utilized for changing clothes.

4 38. Defendants also intentionally intruded on Plaintiffs and the Putative Class' privacy by
5 recording Plaintiffs and the Putative Class' confidential communications and likeness while their breasts
6 and other intimate body parts were exposed as the employees changed their undergarments and clothes in
7 the back office.

8 39. Defendants additionally intentionally intruded on Plaintiffs and the Putative Class'
9 privacy by allowing other personnel to view the recordings of Plaintiffs and the Putative Class.

10 40. Defendants further intentionally intruded on Plaintiffs and the Putative Class' privacy by
11 disclosing certain recordings of Plaintiffs and the Putative Class to third parties.

12 41. In acting as alleged above, Defendants' violated Plaintiffs and the Putative Class' privacy
13 rights.

14 42. In acting as alleged above, Defendants' conduct was outrageous and motivated by a
15 commercial interest in disregard of Plaintiffs and the Putative Class' privacy rights.

16 43. Defendants' intrusion into Plaintiffs and the Putative Class' privacy would be highly
17 offensive to a reasonable person.

18 44. Plaintiffs and the Putative Class suffered harm, including, but not limited to, suffering,
19 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame,
20 mortification, hurt feelings, disappointment, depression, and feelings of powerlessness.

21 45. Defendants' conduct was a substantial factor in causing Plaintiffs and the Putative Class'
22 harm.

23 46. Plaintiffs and the Putative Class are informed and believe that Defendants' conduct is
24 ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive
25 relief.

26 47. Defendants, and each of them, have committed the acts herein alleged maliciously and
27 oppressively, with the wrongful intention of injuring Plaintiffs, with an improper and intentional motive
28 amounting to malice and in conscious disregard of Plaintiffs' rights and the rights of the Putative Class.

1 Accordingly, Plaintiffs request the assessment of punitive damages.

2 **SECOND CAUSE OF ACTION**

3 **Invasion of Privacy (Cal. Const., Art. 1, § 1)**

4 **Against All Defendants and on Behalf of Plaintiffs and the Putative Class**

5 48. Plaintiffs and the Putative Class incorporate by reference and re-allege as if fully stated
6 herein the material allegations set out in the preceding paragraphs.

7 49. Plaintiffs and the Putative Class had a reasonable expectation of privacy areas of the
8 workplace utilized to change clothing. The back office had a keypad entrance and the code was only
9 known to MAC's all female staff, management, and Macy's security team. The back office was locked at
10 all times, including when Plaintiffs and the other Class Members were changing. Defendants changed the
11 code to the keypad entrance on at least an annual basis after completing inventory. The code was kept
12 secret from all other Macy's employees, and if one of them needed to enter, a MAC employee would
13 personally walk them in. Because Defendants instructed Plaintiffs and the Class to change in the locked
14 room, they had a reasonable expectation of privacy in the back office.

15 50. Plaintiffs and the Putative Class also had a reasonable expectation of privacy that their
16 communications occurring in this area, and their likenesses, were not being recorded.

17 51. Plaintiffs and the Putative Class further had a reasonable expectation that their
18 communications and likeness were not being viewed or heard by anyone not physically present in room
19 at the time of said communications and changing their clothes.

20 52. Defendants intentionally intruded on Plaintiffs and the Putative Class' privacy by
21 installing recording devices in rooms utilized to changing their clothing.

22 53. Defendants also intentionally intruded on Plaintiffs and the Putative Class' privacy by
23 recording Plaintiffs and the Putative Class' confidential communications and likeness while their breasts
24 and other intimate body parts were exposed as the employees changed their undergarments and clothes in
25 the back office.

26 54. Defendants additionally intentionally intruded on Plaintiffs and the Putative Class'
27 privacy by allowing Defendants' other personnel to view the recordings of Plaintiffs and the Putative
28

1 Class.

2 55. Defendants further intentionally intruded on Plaintiffs and the Putative Class' privacy by
3 disclosing certain recordings of Plaintiffs and the Putative Class to third parties.

4 56. In acting as alleged above, Defendants violated Plaintiffs and the Putative Class' privacy
5 rights under Article I, section 1 of the California Constitution.

6 57. In acting as alleged above, Defendants' conduct was outrageous and motivated by a
7 commercial interest in disregard of Plaintiffs and the Putative Class' privacy rights.

8 58. Defendants' intrusion into Plaintiffs and the Putative Class' privacy would be highly
9 offensive to a reasonable person.

10 59. Plaintiffs and the Putative Class suffered harm, including, but not limited to, suffering,
11 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame,
12 mortification, hurt feelings, disappointment, depression, and feelings of powerlessness.

13 60. Defendants' conduct was a substantial factor in causing Plaintiffs and the Putative Class'
14 harm.

15 61. Plaintiffs and the Putative Class are informed and believe that Defendants' conduct is
16 ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive
17 relief.

18 62. Defendants, and each of them, have committed the acts herein alleged maliciously and
19 oppressively, with the wrongful intention of injuring Plaintiffs, with an improper and intentional motive
20 amounting to malice and in conscious disregard of Plaintiffs' rights and the rights of the Putative Class.
21 Accordingly, Plaintiffs request the assessment of punitive damages.

22 **THIRD CAUSE OF ACTION**

23 **Unlawful Recording of Confidential Information (Pen. Code, §§ 632 & 637.2)**

24 **Against All Defendants and on Behalf of Plaintiffs and the Putative Class**

25 63. Plaintiffs and the Putative Class incorporate by reference and re-allege as if fully stated
26 herein the material allegations set out in the preceding paragraphs.

27 64. Defendants intentionally video recorded and/or eavesdropped on Plaintiffs and the
28

1 Putative Class.

2 65. Plaintiffs and the Putative Class had a reasonable expectation that their communications
3 and likeness were not being viewed by anyone not present in the room. The back office had a keypad
4 entrance and the code was only known to MAC's all female staff, management, and Macy's security
5 team. Defendants changed the code to the keypad entrance on at least an annual basis after completing
6 inventory. The code was kept secret from all other Macy's employees, and if one of them needed to
7 enter, a MAC employee would personally walk them in. The back office was locked at all times,
8 including when Plaintiffs and the other Class Members were changing. Because Defendants instructed
9 Plaintiffs and the Class to change in the locked room, they had a reasonable expectation of privacy in the
10 back office.

11 66. Defendants, by acting as herein alleged, unlawfully recorded Plaintiffs and the Putative
12 Class' confidential information and infringed Plaintiffs and the Putative Class' privacy rights in violation
13 of Penal Code sections 632 and 637.2.

14 67. Defendants did not have the consent of all parties to said conversations and
15 communications to record or eavesdrop on them.

16 68. Plaintiffs and the Putative Class suffered harm, including, but not limited to, suffering,
17 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame,
18 mortification, hurt feelings, disappointment, depression, and feelings of powerlessness. Plaintiffs and the
19 Putative Class are entitled to treble damages for such harm.

20 69. Defendants' conduct was a substantial factor in causing Plaintiffs and the Putative Class'
21 harm.

22 70. As a result, and in addition to other available remedies at law, under Penal Code section
23 637.2, Plaintiffs and the Putative Class are entitled to recover a sum equal to the greater of treble their
24 actual damages or statutory penalties of five thousand dollars (\$5,000) per class member per violation.

25 71. Plaintiffs and the Putative Class, in accordance with Chapter 3 (commencing with Section
26 525) of Title 7 of Part 2 of the Code of Civil Procedure, also bring an action to enjoin and restrain the
27 Defendants from any violation of this chapter by continuing to secretly video record medical procedures
28 without the consent of all parties.

72. Defendants, and each of them, have committed the acts herein alleged maliciously and oppressively, with the wrongful intention of injuring Plaintiffs, with an improper and intentional motive amounting to malice and in conscious disregard of Plaintiffs' rights and the rights of the Putative Class. Accordingly, Plaintiffs request the assessment of punitive damages.

FOURTH CAUSE OF ACTION

Distribution of Private Sexually Explicit Materials (Civ. Code, § 1708.85) Against All Defendants and on Behalf of Plaintiffs and the Putative Class

73. Plaintiffs and the Putative Class incorporate by reference and re-allege as if fully stated herein the material allegations set out in the preceding paragraphs.

74. Plaintiffs and the Putative Class undressed and changed their clothing on Defendants' premises. While undressing and changing their clothes, Plaintiffs and the Putative Class' intimate body parts were exposed and visible.

75. Plaintiffs and the Putative Class had a reasonable expectation of privacy in areas at their workplace utilized to change their clothing. The back office had a keypad entrance and the code was only known to MAC's all female staff, management, and Macy's security team. The back office was locked at all times, including when Plaintiffs and the other Class Members were changing. Defendants changed the code to the keypad entrance on at least an annual basis after completing inventory. The code was kept secret from all other Macy's employees, and if one of them needed to enter, a MAC employee would personally walk them in. Because Defendants instructed Plaintiffs and the Class to change in the locked room, they had a reasonable expectation of privacy in the back office.

76. Plaintiffs and the Putative Class also had a reasonable expectation of privacy that their conversations, and their likeness while changing their clothing, were private and would remain private.

77. Defendants knew or should have known of Plaintiffs and the Putative Class' privacy expectations.

78. Defendants intentionally intruded on Plaintiffs and the Putative Class' privacy by recording Plaintiffs and the Putative Class while they were in various stages of undress while changing on the premises.

79. Plaintiffs are informed and believe, and based thereon allege, that Defendants distributed the secret video recordings of Plaintiffs and the Putative Class internally and to third parties.

80. Plaintiffs and the Putative Class are informed and believe that many of these secret recordings show Plaintiffs and the Putative Class' intimate body parts, including their breasts, which were exposed as the employees changed their undergarments and clothes in the back office

81. Plaintiff and the Putative Class did not consent to Defendants' distribution of these video recordings.

82. In acting as alleged above, Defendants violated Plaintiffs and the Putative Class' privacy rights and unlawfully distributed Plaintiffs and the Putative Class' private sexually explicit materials in violation of Civil Code section 1708.85.

83. Plaintiffs and the Putative Class suffered harm, including, but not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame, mortification, hurt feelings, disappointment, depression, and feelings of powerlessness.

84. Defendants' conduct was a substantial factor in causing Plaintiffs and the Putative Class' harm.

85. Plaintiffs and the Putative Class are informed and believe that Defendants' conduct is ongoing and will cause irreparable harm if an injunction does not issue, and therefore seek injunctive relief.

86. Defendants, and each of them, have committed the acts herein alleged maliciously and oppressively, with the wrongful intention of injuring Plaintiffs, with an improper and intentional motive amounting to malice and in conscious disregard of Plaintiffs' rights and the rights of the Putative Class. Accordingly, Plaintiffs request the assessment of punitive damages.

FIFTH CAUSE OF ACTION

NEGLIGENCE

Against All Defendants and on Behalf of Plaintiffs and the Putative Class

87. Plaintiffs incorporate by reference and re-allege as if fully stated herein the allegations set out in the preceding paragraphs.

1 88. Defendants negligently intruded on Plaintiffs and the Putative Class' privacy by installing
2 recording devices in rooms utilized for changing clothing.

3 89. At all times relevant and material hereto, Defendants had a duty to exercise reasonable
4 care in the protection of Plaintiffs and the Putative Class' reasonable expectation of privacy in the
5 workplace.

6 90. Defendants breached their duty and were negligent in their actions, misrepresentations,
7 and omissions in numerous ways including the following.

- 8 a. Installing or allowing hidden cameras to be installed in areas utilized by
9 employees to change their clothing;
- 10 b. Failing to inform employees that the room they were in was being recorded;
- 11 c. Failing to inform employees that their communications while in that room would
12 be recorded;
- 13 d. Failing to obtain consent from Plaintiffs and the Putative Class to record them
14 while in rooms utilized for changing their clothing, or while undressing;
- 15 e. Failing to log or track who accessed the recordings;
- 16 f. Failing to use reasonable methods to ensure that any recordings that were deleted
17 were not recoverable;
- 18 g. Hiring individuals Defendants knew or should have known were unfit and of
19 particular risk to Plaintiffs and the Putative Class; and
- 20 h. Failing to supervise, discipline, or terminate employees that Defendants knew or
21 should have known were unfit and of particular risk to Plaintiffs and the Putative
22 Class.

23 91. Defendants recorded Plaintiffs while in areas utilized to change their clothing, capturing
24 footage of Plaintiffs and the Putative Class dressing and undressing. Defendants knew or should have
25 known that the unconsented recordings were a violation of Plaintiffs and the Putative Class' reasonable
26 expectation of privacy.

27 92. As a direct and proximate consequence of Defendants' negligence, willful, wanton,
28 and/or intentional acts, omissions, misrepresentations, and/or otherwise culpable acts described herein,

1 Plaintiffs and the Putative Class sustained the injuries, damages, and harm as alleged herein.

2 93. Defendants' negligence was a substantial factor in causing Plaintiffs and the Putative
3 Class' harm.

4 94. Defendants, and each of them, have committed the acts herein alleged maliciously and
5 oppressively, with the wrongful intention of injuring Plaintiffs, with an improper and intentional motive
6 amounting to malice and in conscious disregard of Plaintiffs' rights and the rights of the Putative Class.
7 Accordingly, Plaintiffs request the assessment of punitive damages.

8 **SIXTH CAUSE OF ACTION**

9 **Negligent Infliction of Emotional Distress**

10 **Against All Defendants and on Behalf of Plaintiffs and the Putative Class**

11 95. Plaintiffs incorporate by reference and re-allege as if fully stated herein the allegations set
12 out in the preceding paragraphs.

13 96. Defendants negligently intruded on Plaintiffs and the Putative Class' privacy by installing
14 recording devices in rooms utilized for changing clothing, as well as negligent hiring, supervision, and
15 retention of its employees.

16 97. At all times relevant and material hereto, Defendants had a duty to exercise reasonable
17 care in the protection of Plaintiffs and the Putative Class' reasonable expectation of privacy in the
18 workplace.

19 98. Plaintiffs suffered serious emotional distress, including, but not limited to, suffering, anguish,
20 fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, embarrassment, shame, mortification,
21 hurt feelings, disappointment, depression, and feelings of powerlessness.

22 99. The emotional distress suffered by Plaintiffs and the Putative Class is such that an ordinary,
23 reasonable person would be unable to cope with it.

24 100. Defendants' conduct was a substantial factor in causing Plaintiffs and the Putative Class'
25 harm.

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1 **SEVENTH CAUSE OF ACTION**

2 **Violation of the Private Attorneys General Act (Lab. Code, § 2698 et seq.)**
3 **Against All Defendants and on Behalf of Plaintiffs and the Putative Class**

4 101. Plaintiffs incorporate by reference and re-allege as if fully stated herein the allegations set
5 out in the preceding paragraphs.

6 102. Plaintiffs are aggrieved employees with standing to bring an action under the Private
7 Attorneys General Act, Labor Code section 2689, et seq. ("PAGA"). Plaintiffs were each employed by
8 Defendants and subject to their unlawful policies, including but not limited to, (1) failing to provide
9 suitable space for employees to change their clothing in reasonable privacy and comfort under Industrial
10 Welfare Commission ("IWC") Wage Order No. 4, section 13(a); and (b) failing to employ Plaintiffs and
11 the Putative Class under standard, lawful conditions of labor in violation of Labor Code sections 1198,
12 1199, and 1199.5.

13 103. Plaintiffs have satisfied all prerequisites to serve as representatives of the general public to
14 enforce California's labor laws and the penalty provisions identified in Labor Code section 2699.5.
15 Plaintiffs, as representatives of the people of the State of California, seek any and all penalties otherwise
16 capable of being collected by the Labor Commission and/or the DLSE. Labor Code section 2699.5
17 provides that section 2699.3, subdivision (a), applies to any alleged violation of sections 1198, 1199, and
18 1199.5.

19 104. On May 7, 2020, Plaintiffs provided pre-lawsuit written notice of the Labor Code and
20 IWC Wage Order violations alleged herein by certified mail to ORS and the Labor and Workforce
21 Development Agency ("LWDA") under Labor Code section 2699.3, subdivision (a). Plaintiffs have not
22 received a response from the LWDA within sixty-five (65) calendar days from the postmark date of their
23 notice. Plaintiffs are thus authorized to commence a cause of action under Labor Code section 2699.
24 (Lab. Code, § 2699.3, subd. (a)(2)(A).)

25 105. Labor Code section 2699, subdivision (f), provides that, for all Labor Code violations for
26 which there is no established penalty, the employer is subject to a civil penalty of "one hundred dollars
27 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
28 (\$200) for each aggrieved employee per pay period for each subsequent violation."

106. Plaintiffs, as personal representative of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred under Labor Code sections 1198, 1199.5, and 1199 during the one-year period before Plaintiffs' notice to the LWDA on May 6, 2020. Plaintiffs also seek reasonable attorney's fees, costs, and expenses.

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants, jointly and severally as follows:

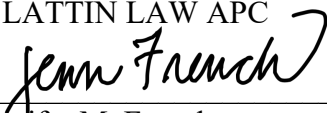
1. That this action be certified as a class action;
2. For general damages according to proof;
3. For special damages according to proof;
4. For nominal damages according to proof;
5. For treble damages according to proof;
6. For statutory penalties according to proof;
7. For punitive damages according to proof;
8. For reasonable attorney's fees under Code of Civil Procedure section 1021.5 and Labor Code section 2699, subd. (g);
9. For the costs of the litigation;
10. For an injunction ordering Defendants to cease and desist from the unlawful conduct described herein; and
11. And for such other and further relief as is just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: July 24, 2020

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JOHN LATTIN LAW APC

By: 
Jennifer M. French

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14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF FRESNO

17 ROSEMARY GONZALES, EMERALD
MUNOZ, and LYNN TRIPP, on behalf of
18 themselves and all others similarly situated,

19 Plaintiffs,

20 vs.

21 M.A.C. COSMETICS INC.; MACY'S WEST
STORES, INC.; and DOES 1- 100, inclusive,

22 Defendants.
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CASE NO.: 20CECG01452

[E-FILE]

CLASS ACTION

PROOF OF SERVICE

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PROOF OF SERVICE

I am over 18 years of age, employed in San Diego County, in which the within-mentioned service occurred. I am not a party to the subject cause. My business address is 1350 Columbia Street, Suite 603, San Diego, California 92101.

On July 24, 2020, I caused the following document(s) to be served:

FIRST AMENDED COMPLAINT

to each addressee named herein and addressed as follows:

Nicole M. Shaffer Jackson Lewis P.C. 200 Spectrum Center Dr., Suite 500 Irvine, CA 92618 Tel: (949) 885-1370 Nicole.Shaffer@jacksonlewis.com	Attorney for Defendant M.A.C. Cosmetics, Inc.
Jeffrey M. Lenkov Manning & Kass 801 South Figueroa Street, 15th Floor Los Angeles, CA 90017 Tel: (213) 430-2632 JML@manningllp.com	Attorney for Defendant Macy's West Stores, Inc.

(XX) BY MAIL. I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a.

(XX) BY ELECTRONIC MAIL TRANSMISSION: A PDF format copy of such document(s) was sent by via e-mail or electronic mail transmission via OneLegal.com to each such person at the e-mail address listed above. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 24, 2020.



Tupu O'Neill