

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley, SBN 174156
Kiley L. Grombacher, SBN 245960
Lirit A. King, SBN 252521
31365 Oak Crest Drive, Suite 240
Westlake Village, CA 91361
Telephone: 805.270.7100
Facsimile: 805.270.7589
E-Mail: *mbradley@bradleygrombacher.com*
kgrombacher@bradleygrombacher.com
lking@bradleygrombacher.com

Attorneys for Plaintiff
NANG CHAN

BAKER & HOSTETLER LLP

Matthew C. Kane, SBN 171829
Amy E. Beverlin, SBN 284745
Kerri H. Sakaue, SBN 301043
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Telephone: 310.820.8800
Facsimile: 310.820.8859
Email: *mkane@bakerlaw.com*
abeverlin@bakerlaw.com
ksakaue@bakerlaw.com

Attorneys for Defendant
ULTA INC.

BAKER & HOSTETLER LLP

Sylvia J. Kim, SBN 258363
Transamerica Pyramid
600 Montgomery Street, Suite 3100
San Francisco, CA 94111-2806
Telephone: 415.659.2600
Facsimile: 415.659.2601
Email: *sjkim@bakerlaw.com*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NANG CHAN, on behalf of himself, all
others similarly situated, and on behalf of
the general public,

Plaintiff,

vs.

ULTA INC., a Delaware corporation,
Defendant.

CASE NO. 2:23-cv-00650-AB-PLA

**STIPULATION FOR LEAVE TO
FILE FIRST AMENDED
COMPLAINT AND FOR
SETTLEMENT AND RELEASE OF
CLASS ACTION AND PAGA
CLAIMS**

1 **STIPULATION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**
2 **AND FOR SETTLEMENT AND RELEASE OF CLASS ACTION AND PAGA**
3 **CLAIMS**

4 This Stipulation for Leave to File First Amended Complaint and for
5 Settlement and Release of Class Action and PAGA Claims (the “**Settlement**
6 **Agreement**” or “**Agreement**”) is made and entered into by and between Plaintiff
7 NANG CHAN (“**Chan**”) (“**Plaintiff**” or “**Class Representative**”), on his own
8 behalf and as a proposed representative on behalf of the Class to be certified
9 pursuant to this Settlement Agreement (as described in Paragraph 6, below) and each
10 of the members of the Class (each, individually, a “**Class Member**” and,
11 collectively, “**Class Members**”), as well as on behalf of the California Labor and
12 Workforce Development Agency (“**LWDA**”), on the one hand, and Defendant
13 ULTA INC. (“**Defendant**”), on the other hand, in *Chan v. Ulta Inc.*, United States
14 District Court for the Central District of California (the “**Court**”), Case No. 2:23-cv-
15 00650-AB-PLA (the “**Action**”).

16 This Settlement Agreement is subject to the terms and conditions herein and
17 the approval of the Court. For purposes of this Settlement Agreement, Plaintiff and
18 Defendant are each referred to individually as a “**Party**” and collectively as the
19 “**Parties.**”

20 **SETTLEMENT AMOUNT**

21 As described in detail hereafter, and pursuant to all of the terms and
22 conditions set forth in this Settlement Agreement, Defendant shall pay the total
23 amount of Three Hundred Thousand Dollars (\$300,000.00) (the “**Gross Settlement**
24 **Fund,**” “**GSF,**” or “**Settlement Fund**”), to resolve all of the claims being released
25 herein, as set forth in detail hereafter. This Settlement Agreement is not subject to
26 any reversion of funds to Defendant, such that the entire settlement amount will be
27 payable if the settlement becomes Final as defined herein, and any amounts not
28 received via mail by any Class Members will be transmitted by the Settlement

1 Administrator pursuant to governing law to the California Unclaimed Property fund
2 to be held there for the benefit of such Class Members under California's
3 escheatment laws.

4 **BACKGROUND AND RECITALS**

5 1. On August 11, 2020, Chan filed with the LWDA and thereafter served
6 on Defendant a notice under California Labor Code § 2699.3 stating he intended to
7 serve as a proxy of the LWDA to recover civil penalties on behalf of "Aggrieved
8 Employees" (as described in Paragraph 18 below) for various alleged violations of
9 the California Labor Code and applicable California Industrial Welfare Commission
10 ("IWC") Wage Orders (the "**PAGA Notice**").

11 2. On January 27, 2023, Plaintiff filed a putative class action Complaint
12 against Defendant in the United States District Court for the Central District of
13 California, Case No. 2:23-cv-00650-AB-PLA (the "**Proposed Class Complaint**").
14 The Proposed Class Complaint alleges six (6) causes of action for alleged violations
15 of the California Labor Code and applicable IWC Wage Orders on behalf of Plaintiff
16 and other current and former non-exempt "warehouse" employees of Defendant.

17 3. The claims alleged in the PAGA Notice and/or the Complaint include,
18 but are not limited to, claims for (1) failure to pay all minimum and/or straight time
19 wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4)
20 failure to authorize and permit rest periods; (5) inaccurate wage statements; (6)
21 failure to pay all wages due during and at the time of termination of employment; (7)
22 inadequate ventilation; (8) unfair business practices in violation of California
23 Business and Professions Code, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and (9)
24 civil penalties under PAGA pursuant to California Labor Code §§ 2699 and 2699.3
25 for alleged violations of California Labor Code §§ 201-203, 204, 212, 218, 218.5,
26 222, 223, 224, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.3,
27 1194.5, 1195, 1195.5, 1197, 1197.1, 1198, 1199; and the applicable IWC Wage
28

1 Orders, including but not limited to sections pertaining to “Rest Periods,” “Change
2 Rooms and Resting Facilities,” “Elevators,” “Meal Periods,” and “Temperature.”

3 4. Prior to negotiating the Settlement, Plaintiff obtained, through informal
4 discovery, documents and information, including, *inter alia*, timekeeping and
5 payroll data regarding Aggrieved Employees and Class Members.

6 5. On September 28, 2023, the Parties participated in a private mediation
7 with mediator Judge Margaret Nagle (Ret.), the result of which was an agreement to
8 prepare and enter into this Agreement, subject to the Court’s approval.

9 6. For purposes of this Settlement Agreement only, “**Class**” or
10 “**Settlement Class**” consists of: All of Defendant’s non-exempt current and former
11 employees working or who worked in the State of California in Defendant’s
12 distribution center(s) from January 27, 2019 through and including the date the
13 Court grants preliminary approval of this Settlement Agreement. The time period
14 applicable to Class Members’ release of claims under this Agreement is January 27,
15 2019 through the date the Court grants Final Approval (as defined below) of this
16 Settlement Agreement (the “**Settlement Period**”). To the extent any applicable
17 statute(s) of limitations would otherwise limit the Settlement Period in whole or in
18 part, Defendant waives its application solely for purposes of effectuating this
19 settlement. Expressly excluded from the Class are any individuals who, as of the
20 date the Court grants preliminary approval of this settlement, have filed a pending,
21 separate lawsuit as a named plaintiff, individually and/or as a putative class or
22 representative action, asserting claims based on violations of any of the same
23 statutes and/or regulations as those alleged to have been violated in the Action
24 and/or have released such claims.

25 7. No Admission of Liability by Defendant. Defendant denies any
26 liability or wrongdoing of any kind associated with the Action and the claims being
27 released herein, and Defendant contends that it has complied at all times with all
28 applicable California laws. A statement to this effect will be included in the notice

1 sent to Class Members. Neither this Settlement Agreement nor any exhibit hereto,
2 nor any other document pertaining to the settlement contemplated herein, may be
3 offered in any other case or proceeding as evidence of any admission by Defendant
4 of any liability on any claims for damages or other relief. Any stipulation or
5 admission by Defendant contained herein is made for settlement purposes only.

6 8. Nevertheless, in the interest of avoiding the costs and disruption of
7 ongoing litigation and resolving the claims asserted in the Action, the Parties believe
8 that the settlement negotiated between them and set forth in this Settlement
9 Agreement is fair, reasonable, and adequate.

10 9. It is the desire of Plaintiff, on his own behalf and on behalf of the Class
11 Members, as well as on behalf of the LWDA with respect to those claims asserted
12 under PAGA, to fully, finally, and forever settle, compromise, release and discharge
13 the claims set forth in Paragraphs 38 and 39 of this Settlement Agreement, as
14 applicable.

15 **TERMS OF THE SETTLEMENT**

16 10. Conditional Leave to File First Amended Class Action Complaint.
17 Solely for purposes of this settlement only, and the Court granting preliminary and
18 final approval thereof, the Parties hereby stipulate and agree, subject to the Court's
19 entry of such approval orders, that leave to file the proposed First Amended Class
20 Action Complaint ("FAC" or "**Operative Complaint**") attached hereto as **Exhibit**
21 **A** be granted, which pleads the claims in the Complaint and asserts additional direct
22 claims for any type of unpaid wages or break violations and derivative claims based
23 thereon, including for any type of claim for inaccurate wage statements and for civil
24 penalties under the California Labor Code Private Attorneys General Act, Cal. Lab.
25 Code § 2699, *et seq.* ("**PAGA**") pursuant to the California Labor Code and/or
26 applicable IWC Wage Order provisions underlying the claims asserted in the PAGA
27 Notice, Amended PAGA Notice (as defined below) and/or Complaint, all of which
28 were investigated, litigated, mediated, and resolved in the Action. Plaintiff's motion

1 for preliminary approval of the settlement will request conditional leave to file the
2 FAC solely for purposes of this settlement, and all allegations therein shall be
3 deemed to relate back to the date of the filing of Plaintiff's Proposed Class
4 Complaint solely for purposes of this settlement, with Defendant being relieved from
5 having to file any response to the FAC and being deemed to have generally and
6 specifically denied all allegations contained in the FAC. Should, for whatever
7 reason, the Court require Defendant to file an answer to the FAC, then Defendant
8 will cooperate in doing so. Further, should, for whatever reason, the settlement set
9 forth in this Settlement Agreement not become final, the FAC shall be deemed
10 stricken, null, and void *ab initio*, with the previously filed Complaint remaining the
11 operative pleading in this action, and Defendant shall have 30 days from the date
12 that this Agreement does not become final to serve and file its response to Plaintiff's
13 Complaint, by answer, motion to dismiss and/or strike, or otherwise.

14 11. Conditional Amended PAGA Notice. For the purposes of this
15 Settlement Agreement only, Plaintiff shall submit the amended notice letter attached
16 hereto as **Exhibit B** to the LWDA and Defendant pursuant to PAGA with respect to
17 the clarified and/or additional claims in the FAC (the "**Amended PAGA Notice**"),
18 which shall be submitted and sent not later than two (2) court days after the Parties
19 have fully signed this Settlement Agreement. For purposes of this settlement only,
20 Defendant waives all defenses and challenges it may have to the PAGA claims and
21 the Amended PAGA Notice, including based on the statute of limitations and/or
22 timely and proper exhaustion of administrative notice requirements. Further, should,
23 for whatever reason, the settlement set forth in this Settlement Agreement not
24 become final, the Amended PAGA Notice shall be deemed withdrawn with
25 prejudice, null, and void *ab initio*.

26 12. Stipulation for Conditional Class Certification: The Parties stipulate
27 and agree to the conditional certification of the Settlement Class for purposes of this
28 Settlement Agreement only. Should, for whatever reason, the settlement set forth in

1 this Settlement Agreement not become final, the Parties' stipulation to such class
2 certification as part of this settlement shall become null and void *ab initio* and shall
3 have no bearing on, and shall not be admissible in connection with, the issue of
4 whether or not certification would be appropriate in a non-settlement context.
5 Defendant expressly reserves its rights and declares that, to the extent Plaintiff may
6 otherwise be permitted to seek class certification, Defendant intends to oppose class
7 certification vigorously should this settlement not become final and putative class
8 action claims are allowed to be pursued in the Action or any other action or
9 proceeding.

10 13. Establishment of the Settlement Fund: This settlement is being made
11 on a non-reversionary basis, such that Defendant will pay the entirety of the agreed
12 upon total Gross Settlement Fund.

13 14. The payment by Defendant of the total Gross Settlement Fund pursuant
14 to this Settlement Agreement shall settle and forever resolve all of the Released
15 Claims (as defined below), and will include all payments to Participating Class
16 Members (as defined below), Aggrieved Employees (as defined below), and
17 government taxing authorities (to the extent applicable), as well as (a) the costs of
18 administration of the settlement, (b) all claimed and/or awarded attorneys' fees and
19 costs, (c) the claimed and/or awarded enhancement award to the Class
20 Representative, and (d) all payments to be made to the LWDA pursuant to PAGA.
21 Specifically included in the Gross Settlement Fund are both employee-side and
22 employer-side payroll taxes and withholdings associated with the payments to
23 Participating Class Members and Aggrieved Employees (as applicable), and no
24 additional funding or payment by Defendant will be required for any such
25 obligations. The settlement payments are not being made for any other purpose and
26 will not be construed as "compensation" for purposes of determining eligibility for
27 any health and welfare benefits, unemployment compensation, or other
28 compensation or benefits provided by Defendant. In addition, no individual

1 receiving a payment based on this Settlement shall be entitled to any additional or
2 increased health, welfare, retirement, or other benefits as a result of their
3 participation in the Settlement and/or receipt of payment under this Settlement.

4 15. Calculation of Net Settlement Fund: The total sum from which
5 Participating Class Members will be paid (the “**Net Settlement Fund**” or “**NSF**”)
6 shall be the Gross Settlement Fund less the following: Settlement Administration
7 Costs, the PAGA Amount (as defined below), Attorneys’ Fees and Costs, the
8 Enhancement Award and any payroll taxes not otherwise deducted from the wages
9 portion of Participating Class Members’ Individual Settlement Share(s). The
10 remaining sum after all these deductions shall be the NSF, which will be used to
11 calculate the settlement share that each Participating Class Member will receive if
12 this settlement becomes Final (as defined below).

13 16. Effective Date: This Settlement Agreement shall become effective
14 when the settlement is considered to be Final. For purposes of this Settlement
15 Agreement, “**Final Approval**” means the Court’s determination that the Settlement
16 is fair, reasonable, and adequate, granting of final approval of the Settlement, and
17 entry of judgment based thereon, and “**Final Approval Order**” means the Court’s
18 order determining the Settlement to be fair, reasonable, and adequate and granting
19 final approval of the Settlement and judgment based thereon. For purposes of this
20 Settlement Agreement, “**Effective Date**” and “**Final**” mean the following after the
21 Court grants Final Approval of the settlement: (i) 35 days after notice of entry of the
22 Court’s Final Approval Order without a timely appeal being filed, and a judgment of
23 dismissal with prejudice of the Action being effectuated, regardless of whether any
24 timely objections to the granting of Final Approval have been filed or withdrawn; or,
25 (ii) if a timely appeal of the Court’s Final Approval Order has been filed, 35 days
26 after the final disposition of all appellate proceedings and the exhaustion of any
27 applicable time period to seek further appellate review without doing so, and a
28 judgment of dismissal with prejudice of the Action has been effectuated. In the

1 event that the Court fails to approve the settlement, or if the appropriate appellate
2 court fails to approve the settlement, and/or Plaintiff fails to effectuate the dismissal
3 of the Action as specified: (1) this Settlement Agreement shall have no force and
4 effect and the Parties shall be restored to their respective positions prior to entering
5 into it, and no Party shall be bound by any of the terms of the Settlement Agreement;
6 (2) Defendant shall have no obligation to make any payments to the LWDA,
7 Aggrieved Employees, Class Members, Plaintiff, or Plaintiff's Counsel; and (3) any
8 preliminary approval order and/or Final Approval Order shall be vacated.

9 17. Mediation and Settlement Communications: This Settlement
10 Agreement and all negotiations, statements, proceedings, and data relating thereto
11 shall be deemed confidential mediation settlement communications and not subject
12 to disclosure for any purpose in any proceeding, except only as required to obtain
13 approval of and implement this Settlement and/or to enforce this Settlement after
14 Final Approval thereof is granted by the Court.

15 18. PAGA Settlement: Fifteen Thousand Dollars (\$15,000.00) of the GSF
16 shall be allocated to civil penalties under PAGA (the "**PAGA Amount**"), subject to
17 the Court's final approval, 75% of that PAGA Amount will be paid to the LWDA
18 out of the GSF (the "**LWDA Payment**"), and the remaining 25% will be distributed
19 to the "Aggrieved Employees" (the "**Aggrieved Employee Payment(s)**"), subject to
20 the further terms of this Agreement, below. For purposes of this Settlement,
21 "**Aggrieved Employee(s)**" shall mean and include all of Defendant's non-exempt
22 current and former employees working or who worked in the State of California in
23 Defendant's distribution center(s) from August 11, 2019 through the date of
24 preliminary approval of the settlement by the Court. The time period applicable to
25 Aggrieved Employees' and the LWDA's release under PAGA is August 11, 2019
26 through the date the Court grants Final Approval of this Settlement Agreement (the
27 "**PAGA Period**").

1 19. Attorneys' Fees and Costs: “**Class Counsel**” or “**Plaintiff's Counsel**”
2 means Marcus J. Bradley, Esq., Kiley L. Grombacher, Esq., and Lirit A. King, Esq.
3 of Bradley/Grombacher, LLP. Subject to approval of the Court, Plaintiff's Counsel
4 shall be appointed as counsel for the Class for purposes of this settlement, and may
5 apply for an award of attorneys' fees and costs and expenses incurred in connection
6 with the prosecution of this matter, and all of the work remaining to be performed by
7 Class Counsel in documenting the Settlement, securing Court approval of the
8 Settlement (including all related appellate work), carrying out their duties to see that
9 the Settlement is fairly administered and implemented, and obtaining entry of the
10 final judgment approving this Settlement, judgment of dismissal of the Action with
11 prejudice, in an amount of up to one-third (1/3) of the GSF for attorneys' fees and in
12 an amount of up to \$20,000.00 for reimbursement of reasonable costs and expenses
13 (together, “**Attorneys' Fees and Costs**”). Amounts awarded by the Court for
14 Attorneys' Fees and Costs shall be paid from the GSF.

15 20. Enhancement Award: Subject to approval by the Court, Plaintiff shall
16 be appointed as representative of the Class, and he may seek an award in the amount
17 of up to Five Thousand Dollars (\$5,000.00), in consideration for serving as a
18 representative of the Class (the “**Enhancement Award**”). The Enhancement Award
19 is in addition to the Individual Settlement Share to which Plaintiff is otherwise
20 entitled as a Settlement Class Member and the Aggrieved Employee Payment to
21 which Plaintiff is otherwise entitled as an Aggrieved Employee.

22 21. Plaintiff acknowledges and understands that the Court might only
23 approve an Enhancement Award to him in an amount that is only a fraction of that
24 set forth above, which will not be known until the Court decides whether to grant
25 Final Approval of the settlement and even if the Court otherwise grants preliminary
26 approval of the settlement. In the event lesser sums are awarded for Attorneys' Fees
27 and Costs than those referenced in Paragraph 19 or for the Enhancement Award
28 referenced in Paragraph 20, the approval by the Court of any such lesser sum(s) shall

1 not be grounds for Plaintiff and/or Class Counsel to terminate the Settlement, but
2 such an order shall be appealable by him. In the event that such an appeal is filed,
3 administration of the Settlement shall be stayed pending resolution of the appeal.
4 Thereafter, if after the exhaustion of such appellate review, any additional amounts
5 remain that are distributable to the Participating Class Members, the cost of
6 administration of such additional payments will be paid out of such additional
7 amounts and will not be chargeable to or payable by Defendant. Any amount not
8 awarded for Attorneys' Fees and Costs or the Enhancement Award, but which is not
9 challenged via appeal by Plaintiff and/or Class Counsel, shall be added to the NSF
10 and distributed to the Participating Class Members in accordance with the terms of
11 this Settlement Agreement.

12 22. Costs of Administration: Subject to Court approval, the Parties
13 designate Simpluris to administer the Settlement (the "**Settlement Administrator**"),
14 with a preliminary budget to administer the settlement for fees and costs of up to
15 \$30,000.00 (the "**Settlement Administration Costs**"). The Settlement
16 Administrator's duties of administration shall include, without limitation, receiving
17 the Class List to be produced by Defendant and updating it prior to the Notice being
18 mailed, printing and mailing the Notice, performing necessary additional skip traces
19 on Notices and/or checks returned as undeliverable, calculating Class Members'
20 estimated and final shares of the NSF, preparing and mailing of settlement checks,
21 establishing a settlement website as described hereafter, responding to Class
22 Member inquiries as appropriate, preparing any appropriate tax forms in connection
23 with the settlement payments and remitting those forms and any required payments
24 to the appropriate governmental agencies, and generally performing all normal and
25 customary duties associated with the administration of such settlements. All fees
26 and costs for the Settlement Administrator's services will be paid out of the GSF.
27 The Settlement Administrator will coordinate the calculations of any necessary
28 payroll taxes and deductions with Defendant to ensure that, to the extent such taxes

1 and deductions are or could be deemed to have been made by the Settlement
2 Administrator on behalf of Defendant by government taxing authorities, they are
3 made in compliance with Defendant's tax withholding and remittance obligations for
4 such payments.

5 23. No Claim Form Required: Only Participating Class Members shall
6 share in the NSF referred to in Paragraph 15, as set forth in more detail in Paragraph
7 25 hereafter. Participating Class Members shall not be required to complete a claim
8 form. Class Members will be mailed a Notice of Class Action Settlement (the
9 "**Notice**"), in substantially the form attached hereto as Exhibit C, subject to
10 approval by the Court, informing them of the terms of the Settlement and providing
11 them with an estimate of their share of the NSF. Class Members who do not timely
12 and properly elect to opt out of the Settlement ("**Participating Class Member(s)**")
13 will be mailed a check representing their payment under the Settlement, in
14 accordance with the terms of this Settlement Agreement.

15 24. Class Composition: Plaintiff and Class Counsel have engaged the
16 services of a data analytics consulting firm to apprise themselves of the estimated
17 size and membership of the Class. The final Class composition will be determined as
18 of the time of preliminary approval, and no additional funding or payment by
19 Defendant will be required based thereon.

20 25. Calculation of Participating Class Members' Shares of the Net
21 Settlement Fund: Defendant shall calculate and provide to the Settlement
22 Administrator, from Defendant's records as reflected on the Class List (as defined
23 below), the number of workweeks that a Class Member actually worked for
24 Defendant as a non-exempt employee in Defendant's distribution center(s) in
25 California during the Settlement Period through the date the Court grants
26 preliminary approval of this Settlement Agreement, based on payroll and time
27 records, hire dates, re-hire dates (as applicable), leave of absence dates, and
28 termination dates (as applicable) ("**Workweeks**"). Each Class Member's share of

1 the NSF (the “**Individual Settlement Share(s)**”) will be calculated initially for
2 purposes of mailing the Notice by a pro rata share of the NSF based on the number
3 of Workweeks that he or she performed work for Defendant during the Settlement
4 Period. Each Participating Class Member’s final Individual Settlement Share for
5 purposes of payment will be calculated by a pro rata share of the NSF based on the
6 number of Workweeks that he or she performed work for Defendant during the
7 Settlement Period through the date the Court grants preliminary approval of this
8 Settlement Agreement. The dollar amount of any Individual Settlement Shares of
9 Class Members who timely and properly opt-out of participating in the settlement
10 will be added to the NSF and distributed to the Participating Class Members in
11 accordance with the terms of this Settlement Agreement.

12 26. Calculation of Aggrieved Employees’ Shares of the Aggrieved
13 Employee Payment: Defendant shall calculate and provide to the Settlement
14 Administrator, from Defendant’s records as reflected on the Class List (as defined
15 below), the number of pay periods that an Aggrieved Employee actually worked for
16 Defendant as a non-exempt employee in Defendant’s distribution center(s) in
17 California during the PAGA Period through the date the Court grants preliminary
18 approval of this Settlement Agreement, based on payroll and time records, hire
19 dates, re-hire dates (as applicable), leave of absence dates, and termination dates (as
20 applicable) (“**PAGA Pay Periods**”). Aggrieved Employees will receive their pro
21 rata share of the Aggrieved Employee Payment of the PAGA Amount based on the
22 number of PAGA Pay Periods he or she worked during the PAGA Period, regardless
23 of whether he or she submits a timely and valid Request for Exclusion from the
24 Settlement Agreement.

25 27. Right to Opt Out, Object, and/or Dispute Workweeks: The Notice will
26 be mailed to all Class Members and will advise each Class Member of their right to
27 opt out of the Settlement Agreement, object to all or any part of the Settlement
28 Agreement, and/or dispute the number of Workweeks credited to them. Any Class

1 Member who wishes to opt out of the Settlement Agreement as to the proposed class
2 action settlement, object to the Settlement Agreement as to the proposed class action
3 settlement, and/or dispute the number of Workweeks credited to them for purposes
4 of the proposed class action settlement, must do so in writing to the Settlement
5 Administrator postmarked no later than forty-five (45) calendar days from the date
6 of mailing of the Notice to the Class Members (the “**Response Deadline**”).
7 However, there is no right to opt out of or object to the PAGA settlement under this
8 Settlement Agreement, and any Class Member who opts out of the Settlement
9 Agreement for purposes of the proposed class action settlement will still be bound
10 by the release of PAGA claims set forth in Paragraph 39, below.

11 28. Opting Out of the Proposed Class Action Settlement: A request to opt
12 out of and be excluded from the proposed class action settlement under this
13 Settlement Agreement (a “**Request for Exclusion**”) must include: (i) the full name,
14 current mailing address, signature, and last four digits of the Social Security number
15 of the Class Member seeking exclusion; (ii) the case name and number of the
16 Action; and (iii) a statement that the Class Member seeks to be excluded from the
17 Settlement Agreement which is the same or substantially similar to the following
18 language: “I elect to opt-out of the *Chan v. Ulta Inc.* class action settlement. I
19 understand that by doing so, I will not participate in the settlement, and will not
20 receive any money from it.” In the event that five percent (5%) or more of the Class
21 Members submit a timely and valid Request for Exclusion, Defendant will have the
22 option to rescind and terminate the Settlement either in whole or as to the class
23 action claims only, resulting in the Parties otherwise returning to their pre-settlement
24 positions in the Action. Should the 5% threshold for opt outs be exceeded, the
25 Settlement Administrator shall notify lead counsel for all Parties via email
26 immediately, and Defendant shall have fifteen (15) calendar days from the date of
27 the Settlement Administrator’s email to exercise its option to rescind and terminate
28 the Settlement as referenced in this Paragraph. Defendant, however, shall pay all

1 Settlement Administration Costs incurred by the Settlement Administrator up to the
2 date of Defendant's notice to rescind.

3 29. Objecting to the Proposed Class Action Settlement: An objection to the
4 proposed class action settlement under this Settlement Agreement (an "**Objection**")
5 must include: (i) the full name, current mailing address, signature, and last four
6 digits of the Social Security number of the objecting Class Member; (ii) the case
7 name and number of the Action; (iii) a statement indicating the legal and factual
8 grounds for the objection; (iv) a statement indicating whether the objecting Class
9 Member is represented by counsel and identifying any such counsel; and (v) a
10 statement indicating whether the objecting Class Member intends to appear for and
11 wishes to be heard at the Final Approval Hearing.

12 30. Disputing Workweeks: A Class Member's dispute of the number of
13 Workweeks credited to them and used to calculate the Class Member's Individual
14 Settlement Share for purposes of the proposed class action settlement under this
15 Settlement Agreement (a "**Workweeks Dispute**") must include: (i) the full name,
16 current mailing address, telephone number, signature, and last four digits of the
17 Social Security number of the disputing Class Member; (ii) the case name and
18 number of the Action; (iii) a statement indicating that the Class Member seeks to
19 dispute the number of Workweeks credited to them, the time period(s) the Class
20 Member performed work for Defendant in Defendant's distribution center(s) as a
21 non-exempt employee in California during the Settlement Period, and the number of
22 Workweeks that the Class Member contends should be credited to them; and (iv)
23 documentation and/or other facts supporting the Class Member's position. In
24 response to any timely Workweeks Dispute, Defendant will first verify the
25 information contained in the disputing Class Member's personnel file and
26 Defendant's payroll records. Unless the Class Member can establish that the
27 number of Workweeks credited to them is incorrect, by providing documentation in
28 support thereof or other details to substantiate their position, the total number of

1 Workweeks established by Defendant's records will control. Class Counsel and
2 Defendant's Counsel will then make a good faith effort to resolve the dispute
3 informally before the Final Approval Hearing. If counsel for the Parties cannot
4 agree, the dispute shall be resolved by the Settlement Administrator before the Final
5 Approval Hearing, who shall examine the records provided by the Defendant and the
6 Class Member and shall be the final arbiter of disputes relating to a Class Member's
7 Workweeks for purposes of administering notice of the Settlement, subject to final
8 review, determination, and approval by the Court.

9 31. Funding of Settlement: Within fifteen (15) court days following the
10 occurrence of both the Effective Date of the Settlement as defined above and
11 Defendant's receipt of wire transfer instructions from the Settlement Administrator
12 to fund the GSF, Defendant shall transfer the amount of the GSF to a Qualified
13 Settlement Fund account (the "**Settlement Account**") established by the Settlement
14 Administrator. Thereafter, the Settlement Administrator shall distribute the funds as
15 soon as is practical in accordance with the terms of this Settlement Agreement and
16 as ordered by the Court. No funds will be payable by Defendant prior to that time.

17 32. Payment Procedures: Within ten (10) business days after Defendant
18 deposits the GSF into the Settlement Account created by the Settlement
19 Administrator, the Settlement Administrator shall distribute payment of the
20 approved Individual Settlement Shares to Participating Class Members (as provided
21 in Paragraph 25, the Aggrieved Employee PAGA Payments to Aggrieved
22 Employees (as provided in Paragraphs 18 and 26), Attorneys' Fees and Costs to
23 Class Counsel, the Enhancement Award to the Class Representative, the LWDA
24 Payment to the LWDA, and the Settlement Administration Costs to the Settlement
25 Administrator, in accordance with this Settlement Agreement and as ordered by the
26 Court.

27 33. Tax Treatment of Settlement Payments: Each Individual Settlement
28 Share will be allocated 25% for wages inclusive of all types of applicable employer-

1 paid and employee-paid payroll withholdings and taxes (the “**Wages Portion**”),
2 50% for non-wage statutory or other non-wage damages or penalties, and 25% for
3 interest. The penalties, statutory and other non-wage damages, and interest portions
4 are collectively referred to as “**Non-Wage Portions.**” Each Aggrieved Employee
5 Payment (as defined in Paragraph 18, above) will be allocated 100% as civil
6 penalties, which will be reported on IRS Form 1099 (if applicable).

7 a. Prior to distribution, Individual Settlement Shares will be subject
8 to adjustment and/or reduction for required payroll taxes, contributions, and
9 withholdings with respect to the Wages Portion, resulting in a net payment which is
10 referred to as the “**Individual Settlement Payment.**” The Settlement Administrator
11 will be responsible for appropriate payroll tax deductions.

12 b. Each recipient of any monies paid in accordance with this
13 Settlement Agreement is responsible for any taxes associated with the monies
14 received by each recipient.

15 c. The Settlement Administrator (and not Defendant) will prepare
16 and issue an IRS Form W-2 to Participating Class Members with respect to the
17 Wages Portion of each Individual Settlement Payment. Where otherwise required
18 by state or federal tax requirements, the Settlement Administrator (and not
19 Defendant) will prepare a Form 1099 for Participating Class Members for the Non-
20 Wage Portions of their Individual Settlement Shares and/or Aggrieved Employees
21 for their Aggrieved Employee Payments. The Settlement Administrator will be
22 responsible for preparing and issuing these forms timely and correctly. Participating
23 Class Members and Aggrieved Employees will be responsible for correctly
24 characterizing the compensation that they receive pursuant to this Settlement
25 Agreement, including as set forth on any IRS Form W-2 or IRS Form 1099 they
26 receive from the Settlement Administrator, and for payment of any taxes owing on
27 said amounts.

d. The Parties acknowledge and agree that neither they nor their attorneys have made any representations regarding the tax consequences of any and all payments made under this Settlement Agreement. Participating Class Members and Aggrieved Employees will be required to pay all federal, state, or local taxes, if any, which are required by law to be paid with respect to any and all payments made to them under the Settlement. The Parties further agree that Defendant shall have no legal obligation to pay, on behalf of Participating Class Members or Aggrieved Employees, any taxes, deficiencies, levies, assessments, fines, penalties, interest or costs, which may be required to be paid with respect to the settlement payments.

34. Tax Treatment of Enhancement Award and Class Counsel's Award of Attorneys' Fees and Costs: The Class Representative and Class Counsel will receive an IRS Form 1099 for the Class Representative's Enhancement Award and Class Counsel's award of Attorneys' Fees and Costs, which will be prepared by the Settlement Administrator. The Class Representative and Class Counsel will be solely responsible for correctly characterizing this compensation for tax purposes and for payment of any taxes owing on said amounts. Prior to receiving the payments specified herein, the Class Representative and Class Counsel each shall deliver to the Settlement Administrator any necessary tax forms requested by the Settlement Administrator.

35. Undistributed Funds: Individual Settlement Payment checks will remain valid and negotiable for one hundred and eighty (180) days after the date of issuance. If an Individual Settlement Payment check is returned before the expiration of the 180-day period ("**Returned Check**"), then within five (5) days of receipt of the Returned Check, the Settlement Administrator shall undertake a skip-trace search for an alternate mailing address and re-mail the Returned Check to an alternate mailing address (if one is located), under a cover letter indicating that the Returned Check will continue to be valid and negotiable for thirty (30) days after the date of re-mailing. In the event that any checks mailed to Settlement Class Members

1 are not cashed, deposited, or otherwise negotiated within the 180-day period, no
2 forwarding address can be located for a Returned Check, or a Returned Check is re-
3 mailed but not cashed, deposited, or otherwise negotiated within the 30-day period
4 from the re-mailing of the Returned Check, then the checks shall be cancelled by the
5 Settlement Administrator, and the funds associated with such cancelled checks shall
6 be transmitted by the Settlement Administrator pursuant to governing law to the
7 California State Controller Unclaimed Property fund to be held there for the benefit
8 of such Class Members under California's escheatment laws, and such Class
9 Members shall nevertheless be bound to the Settlement Agreement and the Final
10 Approval Order. The Parties agree this disposition results in no "unpaid residue"
11 under California Civil Procedure Code § 384(b), as the entire NSF shall be paid to
12 Participating Class Members, whether or not their Individual Settlement Payment
13 checks are cashed.

14 **NOTICE TO THE CLASS**

15 36. Compilation of Class List: The Parties agree that within forty-five (45)
16 calendar days after preliminary approval of this Settlement Agreement by the Court,
17 Defendant will provide a final "**Class List**" to the Settlement Administrator, which
18 list shall include the following most up to date information about each Class
19 Member in an electronic format: (a) full name; (b) most current mailing address and
20 phone number as reflected in Defendant's personnel records; (c) Social Security
21 Number; (d) hire date(s) of record with Defendant and termination date(s) of record
22 if applicable; (e) number of Workweeks for each Class Member during the
23 Settlement Period; and (f) number of PAGA Pay Periods for each Aggrieved
24 Employee during the PAGA Period. The Class List provided to, updated and
25 maintained by the Settlement Administrator shall be used only by the Settlement
26 Administrator and only for purposes of administering the settlement as provided for
27 in this Agreement, and the Settlement Administrator shall not disclose the contents
28 thereof with Plaintiff and/or Class Counsel or any other third party except as

1 expressly permitted under this Agreement. The restrictions on the use and
2 disclosure of the Class List and the Class Data List (as defined below) shall be
3 deemed, upon entry of the Court's Order granting preliminary approval of this
4 Settlement, to be a protective order entered by the Court subject to full enforcement
5 by the Parties to this Agreement and the Court, and by taking on the administration
6 of the Settlement, the Settlement Administrator agrees that it and its employees,
7 agents and representatives are bound by such protective order. The Settlement
8 Administrator will update addresses contained in the Class List prior to the mailing
9 of the Notice to the Class, by using the U.S. Postal Service's National Change of
10 Address Database. Once the final Class List has been received from Defendant, and
11 updated as stated herein, the list shall then be referred to as the "**Class Data List.**"
12 In response to any contention by an individual that they are a Class Member who
13 was omitted from the Class Data List, made on or before the Response Deadline,
14 Defendant will first verify the information contained in the personnel file of the
15 individual at issue and Defendant's payroll records. Unless the individual at issue
16 can establish that he or she should have been included in the Class Data List, by way
17 of supporting documentation, Defendant's records will control. Class Counsel and
18 Defendant's Counsel will then make a good faith effort to determine whether or not
19 the individual at issue is a Class Member. If counsel for the Parties cannot agree,
20 then the Settlement Administrator shall determine whether the individual at issue is a
21 Class Member, who shall examine the records provided by the Defendant and the
22 individual at issue, and shall be the final arbiter of whether or not the individual at
23 issue is a Class Member, subject to final review, determination, and approval by the
24 Court. Nothing herein limits the provisions or applicability of Paragraph 24, above.

25 37. Dissemination of Notice of Class Action Settlement: Within ten (10)
26 business days of its receipt of the Class List, the Settlement Administrator will send
27 the Notice to the Class Members, by first-class mail, at their most current address of
28 record or such other address as located by the Settlement Administrator in

1 conformity with Paragraph 36, in the form attached hereto as **Exhibit C** or as
2 otherwise approved by the Court.

3 **RELEASE BY PARTICIPATING CLASS MEMBERS,**

4 **THE LWDA AND AGGRIEVED EMPLOYEES**

5 38. **Release by Participating Class Members:**

6 a. The “**Released Parties**” shall collectively include Ulta Inc., Ulta
7 Beauty, Inc., Ulta Beauty Cosmetics, LLC, Ulta Beauty Distribution, LLC, and their
8 respective parent companies, subsidiaries, shareholders, officers, partners, directors,
9 members, administrators, owners, servants, employees, employers, agents,
10 contractors, attorneys, insurers, predecessors, representatives, accountants,
11 executors, successors, and assigns, past, present, and future, and each and all of their
12 respective shareholders, officers, partners, directors, members, administrators,
13 owners, servants, employees, employers, agents, contractors, attorneys, insurers,
14 predecessors, representatives, accountants, executors, successors, assigns, and
15 pension, profit sharing, retirement savings, health and welfare, and any other
16 employee benefit plans of any nature and the respective trustees, administrators,
17 sponsors, fiduciaries, successors, agents, and employees of all such plans, past,
18 present, and future, and all persons acting under, by, through, or in concert with any
19 of them.

20 b. The “**Released Claims**” shall include any and all allegations,
21 claims, debts, rights, demands, charges, complaints, actions, causes of action,
22 guarantees, costs, expenses, attorneys’ fees, economic damages, non-economic
23 damages, restitution, civil penalties, statutory penalties, liquidated damages, punitive
24 damages, interest, obligations, liabilities, or other monies and remedies, of any and
25 every kind, contingent or accrued, that have been or reasonably could have been
26 alleged or asserted in the FAC and/or any of the other pleadings filed in the Action
27 based on the factual and/or legal violations allegations contained therein, including,
28 without limitation, claims for any type of unpaid wages, any type of meal or rest

1 break violations, any type of wage statement violations, any type of inadequate
2 ventilation claims, any type of wage payment frequency violations, any waiting time
3 penalties claims, any type of derivative UCL and PAGA claims based on the
4 foregoing, and parallel claims that may be brought under the Fair Labor Standards
5 Act based on the foregoing, and in any notice Plaintiff submitted to the LWDA
6 pursuant to PAGA based on the factual and/or legal violations allegations contained
7 therein, including, without limitation, any alleged violations of California Labor
8 Code §§ 201-203, 204, 212, 218, 218.5, 222, 223, 224, 226, 226.7, 510, 512, 558,
9 1174, 1174.5, 1194, 1194.2, 1194.3, 1194.5, 1195, 1195.5, 1197, 1197.1, 1198,
10 1199, and/or civil penalties pursuant to PAGA, based in whole or in part on any
11 direct or imputed violation of any federal, state, local or administrative constitution,
12 charter, law, rule, regulation or ordinance.

13 c. Upon the Settlement Administrator's receipt of the GSF from
14 Defendant, Plaintiff and the Participating Class Members shall be deemed to have
15 released the Released Parties of and from all Released Claims that arose, accrued,
16 and/or have been asserted during the Settlement Period.

17 39. Release by the LWDA and the Aggrieved Employees:

18 a. Upon the Settlement Administrator's receipt of the GSF from
19 Defendant, Plaintiff, the LWDA, and the Aggrieved Employees shall be deemed to
20 have released the Released Parties of and from all claims for any civil penalties
21 recoverable under the California Labor Code, including PAGA, arising out of or
22 related to the Released Claims, as well as costs and attorneys' fees related thereto,
23 that arose, accrued, and/or have been asserted during the PAGA Period.

24 **ADDITIONAL RELEASE BY CLASS REPRESENTATIVE**

25 40. In addition to the releases set forth in Paragraphs 38 and 39, Plaintiff,
26 for himself alone as an individual, releases the Released Parties of and from any and
27 all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,
28 attorneys' fees, damages, actions or causes of action of every kind or nature,

1 contingent or accrued, known or unknown, which do or may exist as of the date on
2 which this Settlement Agreement is executed and through and including the date of
3 Final Approval of this Settlement Agreement, including without limitation any
4 claimed violations of California Labor Code §§ 201-203, 204, 212, 218, 218.5, 222,
5 223, 224, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.3, 1194.5,
6 1195, 1195.5, 1197, 1197.1, 1198, 1199, 2699, and 2699.3. In connection therewith,
7 Plaintiff waives the provisions of Cal. Civ. Code § 1542, which states:

8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
9 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
10 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
11 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
12 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
13 **AFFECTED HIS OR HER SETTLEMENT WITH THE**
14 **DEBTOR OR RELEASED PARTY.**

15 **INJUNCTION BARRING PURSUIT OF RELEASED CLAIMS**

16 41. As part of the Final Approval of the Settlement, Plaintiff, Participating
17 Class Members, the LWDA, and Aggrieved Employees shall be enjoined from
18 filing, initiating, or continuing to prosecute any actions, claims, complaints, or
19 proceedings in court, arbitration, with the California Division of Labor Standards
20 Enforcement (“DLSE”), with the LWDA, or with any other entity, with respect to
21 the claims released as described in Paragraphs 38 and 39, above. This settlement is
22 conditioned upon the release by Participating Class Members, Plaintiff, Aggrieved
23 Employees, and the LWDA as described in Paragraphs 38 and 39, above, and upon
24 covenants by each of them that they will not and cannot bring or participate in any
25 actions, lawsuits, proceedings, complaints, or charges brought individually, by the
26 DLSE, the LWDA, or by any other agency, persons or entity in any court, arbitration
27 or before any administrative body with respect to the claims released as described in
28 Paragraphs 38 and 39, above, nor will any of them contest or interfere with efforts
by Defendant or by any other Released Parties to oppose any attempt to bring such
released claims against any of them. Additionally, it is agreed herein that neither

1 injunctive nor declaratory relief, nor any equitable relief, will be ordered by the
2 Court against Defendant in Final Approval of the Settlement, which will otherwise
3 be grounds for Defendant rescinding and terminating this Settlement Agreement.

4 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

5 42. The Parties shall promptly seek the Court's approval of this Settlement.
6 Plaintiff's counsel will prepare Plaintiff's motion for preliminary approval. Not later
7 than 10 calendar days prior to the submission of the motion for preliminary approval
8 of this Settlement Agreement to the Court, Class Counsel will submit a near-final
9 draft thereof (including all supporting papers and proposed order) to counsel for
10 Defendant for their review and comment. As soon as practicable after execution of
11 this Settlement Agreement, the Class Representative and Class Counsel shall apply
12 to the Court for the entry of a preliminary approval order which would accomplish
13 the following:

14 a. Schedule a hearing (the "**Final Approval Hearing**") on the
15 question of whether the Settlement, including, *inter alia*, the payment of Attorneys'
16 Fees and Costs, Enhancement Award, and PAGA Amount should be finally
17 approved as fair, reasonable, and adequate, and finally resolving any outstanding
18 issues or disputes remaining from the administration of the notice of the settlement;

19 b. Provide that Plaintiff has conditional leave to file the FAC on the
20 terms set forth in this Agreement;

21 c. Conditionally certify the Class for purposes of the Settlement
22 only;

23 d. Approve, as to form and content, the proposed Notice;

24 e. Direct the mailing of the Notice by first class mail to the Class
25 Members;

26 f. Preliminarily approve the Settlement and monetary allocations
27 for awards/payments of Attorneys' Fees and Costs, Settlement Administration Costs,
28

1 Enhancement Award, and PAGA Amount, subject to the final review and approval
2 by the Court;

3 g. Preliminarily approve Simpluris as the Settlement Administrator;

4 h. Preliminarily approve and appoint Plaintiff as representative of
5 the Class; and

6 i. Preliminarily approve and appoint Plaintiff's Counsel as counsel
7 for the Class.

8 43. Plaintiff's Counsel shall be responsible for ensuring that all required
9 submittals and notifications to the LWDA under PAGA regarding this Settlement
10 are made by Plaintiff, and evidence thereof is submitted by Plaintiff to the Court
11 when seeking preliminary approval of this Settlement Agreement.

12 **DUTIES OF THE PARTIES FOLLOWING PRELIMINARY APPROVAL**

13 44. Plaintiff's counsel will prepare Plaintiff's motion for final approval.
14 Not later than 10 calendar days prior to the submission of the motion seeking Final
15 Approval, Class Counsel will submit a near-final draft thereof (including all
16 supporting papers and proposed order) to counsel for Defendant for their review and
17 comment. In conjunction with the request for Final Approval of the Settlement
18 provided for in this Settlement Agreement, Class Counsel will submit a proposed
19 Final Approval Order and Judgment that provides for the following:

20 a. Granting final approval of the Settlement, adjudging the terms
21 thereof to be fair, reasonable, and adequate, and directing consummation of its terms
22 and provisions;

23 b. Approving and awarding Attorneys' Fees and Costs to Class
24 Counsel;

25 c. Approving and awarding the Enhancement Award to the Class
26 Representative;

27 d. Approving and awarding all payments specified in this
28 Settlement Agreement to the LWDA, Aggrieved Employees, and Participating Class

1 Members;

2 e. Permanently enjoining and restraining Plaintiff, Participating
3 Class Members, Aggrieved Employees, and the LWDA from and against initiating
4 or pursuing any claims settled herein and released by this Settlement Agreement;
5 and

6 f. Entering judgment in accordance with the terms of this
7 Settlement Agreement, including without limitation the permanent injunction
8 provisions.

9 **PARTIES' AUTHORITY**

10 45. The signatories hereto hereby represent that they are fully authorized to
11 enter into this Settlement Agreement and bind the Parties hereto to the terms and
12 conditions hereof.

13 **MUTUAL FULL COOPERATION**

14 46. The Parties agree to fully cooperate with each other to accomplish the
15 terms of this Settlement Agreement, including but not limited to execution of such
16 documents and other actions as may reasonably be necessary to implement the terms
17 of this Settlement Agreement. The Parties shall use their best efforts, including all
18 efforts contemplated by this Settlement Agreement and any other efforts that may
19 become necessary by order of the Court, or otherwise, to effectuate this Settlement
20 Agreement and the terms set forth herein. As soon as practicable after execution of
21 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation
22 of Defendant and its counsel, take all necessary steps to secure the Court's
23 preliminary approval and final approval of this Settlement Agreement.

24 **NO PRIOR ASSIGNMENTS**

25 47. The Parties hereto represent, covenant, and warrant that they have not,
26 directly or indirectly, assigned, transferred, encumbered, or purported to assign,
27 transfer, or encumber to any person or entity any portion of any liability, claim,
28 demand, action, cause of action, or rights herein released and discharged except as

1 set forth herein.

2 **CONSTRUCTION**

3 48. The Parties hereto agree that the terms and conditions of this Settlement
4 Agreement are the result of lengthy, intensive, arms-length negotiations between the
5 Parties, conducted under the auspices of Judge Margaret Nagle (Ret.), a respected
6 and experienced class action mediator. The Parties further agree that they have each
7 had a full opportunity to negotiate the terms and conditions of this Agreement.
8 Accordingly, the Parties expressly waive the common law and statutory rules of
9 construction that ambiguities should be construed against the drafter of an
10 agreement, and agree, covenant, and represent that the language in all parts of this
11 Agreement shall be in all cases construed as a whole, according to its fair meaning.

12 **CAPTIONS AND INTERPRETATIONS**

13 49. Paragraph titles or captions contained herein are inserted as a matter of
14 convenience and for reference, and in no way define, limit, extend, or describe the
15 scope of this Settlement Agreement or any provision hereof. Each term of this
16 Settlement Agreement is contractual and not merely a recital.

17 **MODIFICATION**

18 50. This Settlement Agreement may not be changed, altered, or modified,
19 except in writing and signed by the Parties hereto, and approved by the Court. This
20 Settlement Agreement may not be discharged except by performance in accordance
21 with its terms or by a writing signed by the Parties hereto.

22 **INTEGRATION CLAUSE**

23 51. This Settlement Agreement contains the entire agreement between the
24 Parties relating to the settlement and the transaction contemplated hereby, and all
25 prior or contemporaneous agreements, understandings, representations, and
26 statements, whether oral or written and whether by a Party or such Party's legal
27 counsel, are merged herein. No rights hereunder may be waived except in writing.

1 **BINDING ON ASSIGNS**

2 52. This Settlement Agreement shall be binding upon and inure to the
3 benefit of the Parties hereto and their respective heirs, trustees, executors,
4 administrators, successors, and assigns.

5 **SIGNATORIES**

6 53. It is agreed that because of the large number of Participating Class
7 Members, it is impossible or impractical to have each Participating Class Member
8 execute this Settlement Agreement. As such, Plaintiff is signing on behalf of the
9 Participating Class Members. In addition, the Notice will advise all Participating
10 Class Members of the binding nature of the release of claims under the Settlement
11 and that such shall have the same force and effect as if this Settlement Agreement
12 were executed by each Participating Class Member.

13 **CONFIDENTIALITY**

14 54. Plaintiff and Class Counsel will maintain the proposed settlement and
15 this Settlement Agreement as confidential and not publicly disclose the same except
16 as set forth herein and in Paragraph 55, below. Except as set forth in Paragraph 55,
17 below, or as otherwise agreed in writing between the Parties, both before and
18 following the execution of this Settlement Agreement by the Parties and their
19 counsel, Class Counsel shall not take any action or initiate to publicize, or cause to
20 be publicized, directly or indirectly, the discussions resulting in or the existence of
21 this settlement or its terms, in any type of mass media, including, but not limited to,
22 speeches, press conferences, press releases, interviews, television or radio
23 broadcasts, blog postings, website content, newspapers, any other Internet postings,
24 Facebook, Instagram, Twitter or any other social media, information furnished to
25 legal news media, including but not limited to *Bloomberg Law*, *Law 360*, and the
26 *Daily Journal*, subscribed email messages, newsletters, disseminated updates, mass
27 mailings, or any other comment or publication to the press, media or public at large.
28 Class Counsel shall not refer to Defendant by name in its public marketing materials,

1 law firm websites, or postings with any other organizations, including but not
2 limited to the California Employment Lawyers Association (“CELA”). Class
3 Counsel further agrees and warrants that if they are contacted by media outlets
4 regarding this case, they will simply state that the lawsuit exists and has been
5 resolved. Nothing in this paragraph shall prevent Class Counsel from referencing
6 this settlement to a court as evidence of their experience in connection with motions
7 for class certification, approval of settlements, fee motions, and similar proceedings.
8 Further, nothing in this paragraph shall prevent the Settlement Administrators from
9 posting the Class Notice approved by the Court on their website for Class Members’
10 reference. Additionally, nothing in this paragraph shall prevent communications
11 between Class Counsel, Plaintiff, and/or Class Members in the Action, except that
12 prior to the filing of the motion for preliminary approval of the Settlement in the
13 Action, Class Counsel shall not discuss the Settlement with Class Members other
14 than the named Plaintiff. Class Counsel may otherwise state only that the Action
15 has been settled on terms mutually agreeable to the Parties. The Parties understand
16 and agree that there may be media coverage of the settlement of the Action not
17 initiated by Plaintiff, directly or indirectly. It is also agreed and understood that the
18 Parties may disclose the settlement to their families, plus their legal, tax, or
19 accounting advisors, insurance companies, or as required by law, regulatory rules or
20 regulatory requirements.

21 WEBSITE

22 55. The Parties agree that the Settlement Administrator may use U.S. Mail
23 and an information-only website (the “**Settlement Website**”) to provide notice and
24 information about the Settlement to Class Members. The Settlement Website is to
25 be established by the Settlement Administrator solely for purposes of the
26 administration of the Settlement, and the domain name used for the website will be
27 subject to Defendant’s reasonable approval. Not later than the date that the
28 Settlement Administrator must remit any funds associated with cancelled Individual

1 Settlement Share checks, as set forth in Paragraph 35, the Settlement Website will be
2 taken down. No information about the Action or the settlement may be posted on
3 any of Class Counsel's websites except as expressly set forth herein without
4 Defendant's prior written consent.

5 **COUNTERPARTS**

6 56. This Settlement Agreement may be executed in counterparts, and when
7 each Party has signed and delivered at least one such counterpart, each counterpart
8 shall be deemed an original, and, when taken together with other signed
9 counterparts, shall constitute one Settlement Agreement, which shall be binding
10 upon and effective as to all Parties.

11 **GOVERNING LAW**

12 57. The Parties agree that California law governs the interpretation and
13 application of this Settlement Agreement, except to the extent governed by federal
14 law in which case federal law will apply.

15 **MISCELLANEOUS PROVISIONS**

16 58. Each Party to Bear Own Costs. Except as specifically provided herein,
17 the Parties hereto will bear responsibility for their own attorneys' fees and costs,
18 taxable or otherwise, incurred by them or arising out of or related to this Action, and
19 will not seek reimbursement thereof from any Party to this Agreement.

20 59. Severability. If any of the above provisions are found null, void, or
21 inoperative, in part or in full, for any reason, the remaining provisions will remain in
22 full force and effect. Notwithstanding, the invalidation in whole or in part of any
23 material term of this Agreement, including but not limited to all the terms and
24 provisions specified in the releases of claims, will invalidate this Agreement in its
25 entirety unless the Parties subsequently agree in writing that the remaining
26 provisions will remain in force and effect.

27 60. Non-Evidentiary Use. Neither the fact of this Agreement, the existence
28 of this Agreement, the terms of this Agreement, nor any order or action pursuant

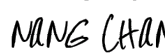
thereto may be referred to, relied upon, cited, or used as evidence by any of the Parties, Class Members, or their respective counsel in the Action or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

61. Advice of Counsel. The Parties to this Agreement are represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties to this Agreement agree that it reflects their good faith compromise of the claims raised in this action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

EACH OF THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IT IS SO STIPULATED AND AGREED:

DATED: 5/7/2024

DocuSigned by:

38AD1AB8120C481
NANG CHAN

DATED: March 2, 2024

ULTA INC.

Bv: 

Print Name: Jodi J. Caro

Title: Vice President & Secretary

APPROVED AND AGREED AS TO FORM AND CONTENT:

DATED: May 8, 2024

BRADLEY/GROMBACHER, LLP

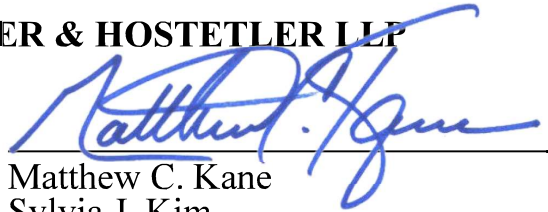
By: 

Marcus J. Bradley
Kiley L. Grombacher
Lirit A. King

Attorneys for Plaintiff
NANG CHAN

DATED: March 2, 2024

BAKER & HOSTETLER LLP

Bv: 

Matthew C. Kane
Sylvia J. Kim
Amy E. Beverlin
Kerri H. Sakaue

Attorneys for Defendant
ULTA INC.

Marcus J. Bradley, Esq. (SBN 174156)
Kiley L. Grombacher, Esq. (SBN 245960)
Lirit A. King, Esq. (252521)
BRADLEY/GROMBACHER, LLP
31365 Oak Crest Drive, Suite 240
Westlake Village, California 91361
Telephone: (805) 270-7100
Facsimile: (805) 270-7589

Attorneys for NANG CHAN, on behalf of himself, all others
similarly situated, and on behalf of the general public.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NANG CHAN, on behalf of himself,
all others similarly situated, and on
behalf of the general public,

Plaintiff,

v.

ULTA INC., a Delaware corporation

Defendant.

Case No. 2:23-cv-00650-AB-PLA

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 7-2001(11); Cal. Code Regs., tit. 8 § 11090);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 7-2001(12); Cal. Code Regs. Title 8 § 11090);
- 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 6) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203);
- 7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and

8) Penalties Pursuant to Labor Code §§
2698 et seq. ("PAGA").

DEMAND FOR JURY TRIAL

Plaintiff NANG CHAN ("Plaintiff") on behalf of himself, all others similarly situated, and on behalf of the general public, by and through his undersigned attorneys, hereby brings this Class Action Complaint against Defendant ULTA INC. ("Defendant" or "Ulta") and alleges as follows:

I. NATURE OF THE CASE

1. This is a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure brought by Plaintiff Nang Chan against Defendant Ulta on behalf of individuals who have worked for Ulta in its warehouse/distribution facilities within the State of California. Within four years preceding the filing of this Complaint ("Relevant Time Period"), Ulta has engaged in a common scheme of routinely requiring and/or suffering and permitting its warehouse workers to work off the clock without compensation; failing to provide them with meal periods in compliance with the applicable Wage Order; failing to authorize and permit them rest periods in compliance with the applicable Wage Order; and failing to pay them all wages owed upon termination of employment.

2. Defendant employs hundreds of warehouse workers at its distribution facility in California to handle shipping, receiving, stocking, and fulfilling orders of the products Ulta carries and sells. Defendant's warehouse facility includes over 300,000 square feet of facility space and thousands of products that are entering and leaving on a daily basis.

3. Plaintiff worked for Defendant as a Material Handler at its warehouse and distribution center in Fresno, California. His job duties included picking and packing orders; sorting and counting boxes of merchandise; and building pallets of cartons for shipment.

4. As a matter of policy and practice, Defendant required Plaintiff and its

1 other warehouse workers like him, to wait in line and undergo security screening
2 and temperature/health assessment checks when entering and exiting its warehouse
3 facility. These required security inspections and temperature/health assessment
4 checks involve waiting in line, inspection of pockets and bags, taking employees'
5 temperatures/health assessments, and occur before Defendant's warehouse workers
6 clock-in for their work shifts and after they clock out for their meal break or the end
7 of their shift. Although Defendant's warehouse workers are under Defendant's
8 control while waiting in line for and undergoing these security inspections and
9 temperature/health assessment checks, such time is, as a matter of policy and
10 practice, not compensated by Defendant.

11 5. Plaintiff, on behalf of himself and Defendant's other non-exempt, hourly
12 warehouse workers in California, brings this action pursuant to California Labor
13 Code sections 201, 203, 204, 210, 218, 218.5, 223, 224, 226.7, 510, 512, 515, 558,
14 1194, 1197, 6720, and California Code of Regulations, Title 8, section 11090,
15 seeking unpaid wages, overtime, meal and rest period compensation, interest,
16 penalties, and reasonable attorneys' fees and costs.

17 6. Plaintiff, on behalf of himself and Defendant's other non-exempt, hourly
18 warehouse workers in California, pursuant to California Business and Professions
19 Code sections 17200-17208, also seeks restitution, and disgorgement of all benefits
20 Defendant enjoyed from its failure to pay all straight time wages, overtime wages,
21 and meal and rest period compensation.

22 7. Plaintiff brings Cause of Action Seven as a proxy of the State of California
23 on behalf of other aggrieved employees for penalties under the Labor Code Private
24 Attorneys General Act (PAGA). PAGA provides that any civil penalty assessed and
25 collected by the Labor and Workforce Development Agency (LWDA) for
26 violations of applicable provisions of the California Labor Code may, as an
27 alternative, be recovered through a civil action brought by an aggrieved employee
28

1 on behalf of himself and other current or former employees pursuant to procedures
2 outlined in California Labor Code § 2699.3. PAGA also provides that an aggrieved
3 employee can bring a civil action on behalf of other aggrieved employees for
4 violation of any other Labor Code provision that does not itself contain a civil
5 penalty, in which case the civil penalties are assessed at \$100 for each aggrieved
6 employee per pay period for the initial violation and \$200 for each aggrieved
7 employee per pay period for each subsequent violation.

8 8. On August 11, 2020, Plaintiff provided written notice to the LWDA and
9 by certified mail to Defendant of the specific provisions of the California Labor
10 Code alleged to have been violated, including the facts and theories to support the
11 alleged violations. More than 65 calendar days have passed since the date notice
12 was provided to the LWDA and Defendant. Accordingly, Plaintiff has satisfied the
13 administrative prerequisites under California Labor Code Section 2699.3(a) to
14 recover civil penalties against Defendant for violations of California Labor Code
15 identified in this First Amended Complaint. In or about January 2024, Plaintiff
16 amended his notice of violations.

17 9. Plaintiff is informed and believes, and based thereon alleges, that
18 Defendant has engaged in, among other things a system of willful violations of the
19 Labor Code and the applicable IWC wage orders by creating and maintaining
20 policies, practices and customs that knowingly deny employees the above stated
21 rights and benefits.

22 II. JURISDICTION AND VENUE

23 10. The Court has jurisdiction pursuant to the Class Action Fairness Act, 28
24 U.S.C. Section 1332(d)(2)(A) (CAFA), because this case is a class action, there are
25 more than 100 members of the putative class, and the aggregated claims of the
26 individual class members exceed the sum value of \$5,000,000, exclusive of interests
27 and costs.

11. Venue is proper in this judicial district, pursuant to under 28 U.S.C. §1391 because Defendant employs class members and transacts business in this Judicial District.

III. PARTIES

A. Plaintiff.

12. Plaintiff Nang Chan is an individual over the age of eighteen and at all times relevant to this action has been a resident of Fresno, California. Plaintiff was employed by Ulta at its warehouse facility/distribution center in Fresno, California as an hourly-paid non-exempt employee from approximately March 19, 2018, through July 2, 2020, with the title of, "Material Handler." Mr. Chan regularly worked four days per week and more than 10 hours per day for Defendant.

13. The members of the proposed class, as defined below, are also all individuals who are or have been employed by Defendant as hourly non-exempt employees at its warehouse facilities in California within the four years preceding the filing of this Complaint.

B. Defendant.

14. Plaintiff is informed and believes Defendant Ulta Inc. is a Delaware Corporation with its headquarters and principal place of business Bolingbrook, Illinois and is registered to do business in California.

15. At all relevant times herein, Defendant has engaged in the ownership and operation of warehouse facilities and distribution centers, which are used to provide cosmetics and beauty products to Defendant's customers in the State of California and elsewhere.

IV. FACTUAL ALLEGATIONS

16. Defendant employs hundreds of warehouse workers at its distribution facilities to handle shipping, receiving, stocking, and fulfilling orders of the products Ulta carries and sells. Defendant's warehouse facilities include over

1 300,000 square feet of facility space and thousands of products that are entering and
2 leaving on a daily basis.

3 17. Plaintiff worked for Defendant as a Material Handler at its warehouse and
4 distribution center in Fresno, California. His job duties included picking and
5 packing orders; sorting and counting boxes of merchandise; and building pallets
6 cartons for shipment.

7 18. At all times mentioned herein, the common policies and practices of
8 Defendant were a direct cause of Defendant's failure to comply with the California
9 Labor Code, Wage Orders, and/or California's wage and hours laws, as set forth
10 more fully within.

11 **A. Defendant's Failure to Pay for all Hours Worked**

12 19. For at least four (4) years prior to the filing of this Complaint, Defendant
13 has had a continuous and widespread policy of not paying Plaintiff and those
14 similarly situated for all hours they worked, including before clocking in for their
15 work shift and after clocking out during unpaid meal periods.

16 20. Specifically, at all times relevant to this action, Defendant has had a
17 continuous and consistent policy of mandating workers to wait in lines to get
18 through security before they are clocked in for the day. For example, throughout
19 the statutory period, in every workweek during the relevant statute of limitations—
20 which, on information and belief, includes the workweeks of January 27 – February
21 2, 2019; February 3-9, 2019; February 10-16, 2019; February 17-23, 2019;
22 February 24 – March 2, 2019; March 3-9, 2019; March 10-16, 2019; March 17-23,
23 2019; March 24-30, 2019; March 31 – April 6, 2019; April 7-13, 2019; April 14-
24 20, 2019; April 21-27, 2019; April 28 – May 4, 2019; May 5-11, 2019; May 12-18,
25 2019; May 19-25, 2019; May 26 – June 1, 2019; June 2-8, 2019; June 9-15, 2019;
26 June 16-22, 2019; June 23-29, 2019; July 7-13, 2019; July 14-20, 2019; July 21-27,
27 2019; July 28 – August 3, 2019; August 4-10, 2019; August 11-17, 2019; August
28

1 18-24, 2019; August 25-31, 2019; September 1-7, 2019; September 8-14, 2019;
2 September 15-21, 2019; September 22-28, 2019; September 29 – October 5, 2019;
3 October 6-12, 2019; October 13-19, 2019; October 20-26, 2019; October 27 –
4 November 2, 2019; November 3-9, 2019; November 10-16, 2019; November 17-
5 23, 2019; December 1-7, 2019; December 8-14, 2019; December 9-21, 2019;
6 January 5-11, 2020; January 12-18, 2020; January 19-25, 2020; January 26 –
7 February 1, 2020; February 2-8, 2020; February 9-15, 2020; February 16-22, 2020;
8 February 23-29, 2020; March 1-7, 2020; March 8-14, 2020; March 15-21, 2020;
9 March 22-28, 2020; March 29 – April 4, 2020; April 5-11, 2020; April 12-18, 2020;
10 April 19-25, 2020; April 26 – May 2, 2020; May 3-9, 2020; May 10-16, 2020; May
11 17-23, 2020; May 24-30, 2020; May 31 – June 6, 2020; June 7-13, 2020; June 14-
12 20, 2020; and June 21-27, 2020—it took Mr. Chan approximately 15 minutes to
13 undergo the security inspection and temperature/health assessment check
14 procedures mandated by Defendant during meal and rest periods and at the
15 beginning and termination of his shift.

16 21. Pursuant to Defendant's uniform policies—as explained to Mr. Chan
17 during his training with his supervisors, Laura Valequez, Adrian Olivares, and
18 Alma (last name unknown), while working for Ulta — Mr. Chan and Defendant's
19 other non-exempt, hourly warehouse workers were not permitted to skip the
20 security line and or security and temperature/health assessment checks procedures
21 where all the non-exempt, hourly workers had to wait to enter and exit the facility.
22 Pursuant to Ulta's uniform policies and procedures, Mr. Chan and Defendant's
23 other non-exempt, hourly warehouse workers were instructed to clock in for work
24 only after waiting in line and going through the security and temperature/health
25 assessment checks.

26 22. Additionally, Defendant's non-exempt, hourly warehouse workers are not
27 free of control and duty for the entire time they are clocked out for meal breaks. As
28

1 a matter of policy and practice Defendant requires workers exiting the facility to
2 wait in line and go through security after clocking out and to wait in line go through
3 security upon their return prior to clocking back in. Thus, part of the time
4 Defendant's non-exempt, hourly warehouse workers are clocked out for their meal
5 periods is time they are under the compensable control of Defendant.

6 23. Additionally, Ulta engaged in non-neutral rounding of Mr. Chan's time
7 records, and failed to compensate him for pre- and post-shift work tasks and other
8 time in the day when he performed tasks while subject to the control of Ulta. This
9 included without limitation having to badge into access points and walk distances
10 to work stations to clock in for work, and Ulta entering meal periods in his time
11 records while he was still working.

12 24. As a result of Defendant's uniform security and temperature/health
13 assessment checks policy, its non-neutral rounding, and other uncompensated time
14 while under Defendant's control, Plaintiff and Defendant's other non-exempt,
15 hourly warehouse workers were systematically denied straight-time wages for all
16 time worked, as well as required overtime pay. For example, Plaintiff Chan was
17 regularly scheduled to work and often worked 10.5 hours per day, 4 days per week.
18 Plaintiff Chan was required to wait in security and temperature/health assessment
19 checks lines for approximately 15 minutes at the while off the clock. As a result,
20 each week that Mr. Chan worked for Defendant, he worked off the clock *at least* 60
21 minutes per week. Because those weekly twenty minutes or more of time spent in
22 security and temperature/health assessment checks were all in excess of ten hours
23 in a day and forty hours in a week, Mr. Chan was denied at least 60 minutes of
24 overtime pay each week identified in paragraph 20 above.

25 25. As a result, Mr. Chan and Defendant's other non-exempt, hourly
26 warehouse workers never received the wages for the time they had to spend going
27 through Ulta's mandatory security and temperature/health assessment checks
28

1 procedures or other off the clock work. This waiting and inspection time and off the
2 clock work was not counted as compensable time worked even though Mr. Chan
3 and the non-exempt, hourly workers remain subject to the control of their employer,
4 thereby denying them of compensation at their regular rates of pay for all hours
5 worked, as well as required overtime pay.

6 **B. Defendant's Failure to Provide Meal Periods**

7 26. For at least four (4) years prior to the filing of this Complaint,
8 Defendant has had a consistent policy of requiring non-exempt, hourly workers
9 within the State of California, including Plaintiff, to work through meal periods and
10 work at least five (5) hours without a meal period and failing to pay such employees
11 one (1) hour of pay at the employees' regular rate of compensation for each
12 workday that the meal period is not provided and automatically deducting a half
13 hour of pay from their wages.

14 27. Mr. Chan was a full-time employee for Defendant and regularly worked
15 approximately four days per week and more than ten hours in a day. As Mr. Chan
16 regularly worked more than five hours in a day, Mr. Chan was regularly entitled to
17 a meal period during his shift. Yet, Defendant failed to provide Mr. Chan with a
18 duty-free, thirty-minute meal period as described below.

19 28. Specifically, Defendant's non-exempt, hourly warehouse workers, like
20 Mr. Chan, do not get an entire 30-minutes for meal periods during which they are
21 free of employer control and duties, because part of their time after clocking out
22 must be spent waiting in line to get through security and undergoing security
23 inspections when exiting the facility and waiting in line to get through security and
24 undergoing security inspections and temperature/health assessment checks when
25 returning to the facility before they are able to clock back in, and had to badge in to
26 get to time clocks before the 30 minutes were expended. Thus, pursuant to
27 Defendant's uniformly applicable policies of only providing 30-minute meal
28

1 periods, workers do not receive or are not provided with full and complete 30-
2 minute meal periods wherein they are free from employer mandated controls and
3 duties.

4 29. Accordingly, throughout the statutory period, in every workweek during
5 the relevant statute of limitations—which, on information and belief, includes the
6 workweeks of January 27 – February 2, 2019; February 3-9, 2019; February 10-16,
7 2019; February 17-23, 2019; February 24 – March 2, 2019; March 3-9, 2019; March
8 10-16, 2019; March 17-23, 2019; March 24-30, 2019; March 31 – April 6, 2019;
9 April 7-13, 2019; April 14-20, 2019; April 21-27, 2019; April 28 – May 4, 2019;
10 May 5-11, 2019; May 12-18, 2019; May 19-25, 2019; May 26 – June 1, 2019; June
11 2-8, 2019; June 9-15, 2019; June 16-22, 2019; June 23-29, 2019; July 7-13, 2019;
12 July 14-20, 2019; July 21-27, 2019; July 28 – August 3, 2019; August 4-10, 2019;
13 August 11-17, 2019; August 18-24, 2019; August 25-31, 2019; September 1-7,
14 2019; September 8-14, 2019; September 15-21, 2019; September 22-28, 2019;
15 September 29 – October 5, 2019; October 6-12, 2019; October 13-19, 2019;
16 October 20-26, 2019; October 27 – November 2, 2019; November 3-9, 2019;
17 November 10-16, 2019; November 17-23, 2019; December 1-7, 2019; December
18 8-14, 2019; December 9-21, 2019; January 5-11, 2020; January 12-18, 2020;
19 January 19-25, 2020; January 26 – February 1, 2020; February 2-8, 2020; February
20 9-15, 2020; February 16-22, 2020; February 23-29, 2020; March 1-7, 2020; March
21 8-14, 2020; March 15-21, 2020; March 22-28, 2020; March 29 – April 4, 2020;
22 April 5-11, 2020; April 12-18, 2020; April 19-25, 2020; April 26 – May 2, 2020;
23 May 3-9, 2020; May 10-16, 2020; May 17-23, 2020; May 24-30, 2020; May 31 –
24 June 6, 2020; June 7-13, 2020; June 14-20, 2020; and June 21-27, 2020—
25 Defendant did not provide Mr. Chan and its other non-exempt, hourly warehouse
26 workers with duty-free meal periods of at least thirty minutes in length.

27 30. Pursuant to Defendant's uniform policy—as explained to Mr. Chan
28

1 during Defendant's training with his supervisors, Laura Valequez, Adrian Olivares,
2 and Alma (last name unknown) — Mr. Chan and Defendant's other non-exempt,
3 hourly warehouse workers were only permitted to take thirty minutes for a meal
4 period starting from when they left their workstations and ending when they
5 returned to their workstations and, if they wanted to leave the facility, were not
6 permitted to skip the security line and temperature/health assessment checks
7 procedures to enter and exit the facility during meal periods.

8 31. Thus, if Mr. Chan or Defendant's other non-exempt, hourly warehouse
9 workers wanted to take the full 30 minutes to enjoy their lunch, they would be
10 forced stayed inside the facility. If Mr. Chan or Defendant's other non-exempt,
11 hourly warehouse workers wanted to avail themselves of being free to enjoy their
12 lunch outside of Defendant's premises, they could only do so if they sacrificed part
13 of their time to be subject to Defendant's security protocols to exit the facility after
14 clocking out and to reenter the facility before clocking back in. As a result, Mr.
15 Chan and Defendant's non-exempt, hourly warehouse workers uniformly and
16 routinely did not receive full thirty-minute meal periods in which they were free to
17 leave the premises and spend entirely outside of Defendant's control.

18 32. Additionally, and for at least four (4) years prior to the filing of this
19 Complaint, Defendant has had a consistent policy of requiring its non-exempt,
20 hourly warehouse workers within the State of California, including Plaintiff, to
21 work over ten (10) hours without providing an additional, uninterrupted meal period
22 of thirty (30) minutes and failing to pay such employees one (1) hour of pay at the
23 employees' regular rate of compensation for each workday that the second meal
24 period is not provided.

25 33. As noted above, Mr. Chan was a full-time employee for Defendant and
26 regularly worked approximately four days per week and more than ten hours in a
27 day. He was therefore entitled to a second meal break of not less than thirty (30)
28

1 minutes. Yet, as a matter of policy and practice, Defendant did not provide Plaintiff
2 or those similarly situated with a second meal period before the end of the tenth hour
3 or work, or compensation in lieu thereof.

4 **C. Defendant's Failure to Authorize and Permit or Pay for Rest Periods**

5 34. For at least four (4) years prior to the filing of this Complaint,
6 Defendant has had a consistent policy and/or practice of requiring its non-exempt,
7 hourly workers within the State of California, including Plaintiff, to work for over
8 four hours, or a major fraction thereof, without a 10 minute rest period, and failing
9 to pay such employees one (1) hour of pay at the employees' regular rate of
10 compensation for each workday that the rest period is not provide, or other
11 compensation, as required by California's state wage and hour laws.

12 35. Specifically, Defendant's business model was such that its non-
13 exempt, hourly warehouse workers were assigned too much work with insufficient
14 help due to chronic understaffing whereby they were unable to take rest periods and
15 were forced to work through their rest periods.

16 36. Additionally, as discussed above, Defendant maintained security and
17 temperature/health assessment checks policies and practices, whereby Plaintiff and
18 its other non-exempt, hourly warehouse workers were not provided control-free,
19 off-premises rest periods and/or were incentivized to forego control-free, off-
20 premises rest periods. Plaintiff and Defendant's other non exempt, hourly
21 warehouse workers were required to walk 3-4 minutes each way to get to break
22 areas, and Ulta did not provide third rest periods when required to do so. Ulta also
23 did not permit Plaintiff and Defendant's other non exempt, hourly warehouse
24 workers to leave the work premises during rest periods.

25 37. Throughout the statutory period, in every workweek during the
26 relevant statute of limitations—which, on information and belief, includes the
27 workweeks of January 27 – February 2, 2019; February 3-9, 2019; February 10-16,
28

1 2019; February 17-23, 2019; February 24 – March 2, 2019; March 3-9, 2019; March
2 10-16, 2019; March 17-23, 2019; March 24-30, 2019; March 31 – April 6, 2019;
3 April 7-13, 2019; April 14-20, 2019; April 21-27, 2019; April 28 – May 4, 2019;
4 May 5-11, 2019; May 12-18, 2019; May 19-25, 2019; May 26 – June 1, 2019; June
5 2-8, 2019; June 9-15, 2019; June 16-22, 2019; June 23-29, 2019; July 7-13, 2019;
6 July 14-20, 2019; July 21-27, 2019; July 28 – August 3, 2019; August 4-10, 2019;
7 August 11-17, 2019; August 18-24, 2019; August 25-31, 2019; September 1-7,
8 2019; September 8-14, 2019; September 15-21, 2019; September 22-28, 2019;
9 September 29 – October 5, 2019; October 6-12, 2019; October 13-19, 2019;
10 October 20-26, 2019; October 27 – November 2, 2019; November 3-9, 2019;
11 November 10-16, 2019; November 17-23, 2019; December 1-7, 2019; December
12 8-14, 2019; December 9-21, 2019; January 5-11, 2020; January 12-18, 2020;
13 January 19-25, 2020; January 26 – February 1, 2020; February 2-8, 2020; February
14 9-15, 2020; February 16-22, 2020; February 23-29, 2020; March 1-7, 2020; March
15 8-14, 2020; March 15-21, 2020; March 22-28, 2020; March 29 – April 4, 2020;
16 April 5-11, 2020; April 12-18, 2020; April 19-25, 2020; April 26 – May 2, 2020;
17 May 3-9, 2020; May 10-16, 2020; May 17-23, 2020; May 24-30, 2020; May 31 –
18 June 6, 2020; June 7-13, 2020; June 14-20, 2020; and June 21-27, 2020—
19 Defendant did not provide Mr. Chan and its other non-exempt, hourly warehouse
20 workers with duty-free net ten minute paid rest periods for every four hours worked,
21 or a major fraction thereof.

22 38. Pursuant to Defendant’s uniform policy—as explained to Mr. Chan
23 during Defendant’s training with his supervisors, Laura Valequez, Adrian Olivares,
24 and Alma (last name unknown) — Mr. Chan and Defendant’s other non-exempt,
25 hourly warehouse workers were only permitted to take ten minutes for a rest period
26 starting from when they left their workstations and ending when they returned to
27 their workstations and, if they wanted to leave the facility, were not permitted to
28

1 skip the security line and procedures to enter and exit the facility during rest periods.

2 39. Thus, if Mr. Chan or Defendant's other non-exempt, hourly warehouse
3 workers wanted to take the full 10 minutes to rest, they would be forced stayed
4 inside the facility. If Mr. Chan or Defendant's other non-exempt, hourly warehouse
5 workers wanted to avail themselves of being free to enjoy their rest period outside
6 of Defendant's premises, they could only do so if they sacrificed part of their time
7 to be subject to Defendant's security protocols to exit the facility and to reenter the
8 facility. This did not leave Mr. Chan or Defendant's other non-exempt, hourly
9 warehouse workers with any time to go to their cars, run errands, or conduct any
10 personal business during their rest periods. As a result, Mr. Chan and Defendant's
11 non-exempt, hourly warehouse workers uniformly and routinely did not receive full
12 ten-minute rest periods in which they were free to leave the premises and spend
13 entirely outside of Defendant's control.

14 **D. Defendant's Knowing and Intentional Failure to Comply with Itemized**
15 **Employee Wage Statement Provisions**

16 40. For at least four (4) years prior to the filing of this Complaint, Defendant
17 and/or its officers and/or managing agents have had a consistent policy and/or
18 practice of knowingly and intentionally failing to provide Plaintiff and those non-
19 exempt, hourly warehouse workers with compliant and itemized wage statements.
20 Additionally, during the statutory period Defendant also knowingly and
21 intentionally failed to maintain and preserve, in a centralized location, records
22 showing the daily hours worked by and the wages paid to its employees and
23 maintain accurate time records showing, among other things, when the employee
24 begins and ends each work period, the total daily hours worked in itemized wage
25 statements, total wages, bonuses and/or incentives earned, and all deductions made.

26 41. Throughout the statutory period, in every pay period during the relevant
27 statute of limitations—which, on information and belief, includes the pay periods
28

1 which encompassed the workweeks of March 25-31, 2018; April 1-7, 2018; April
2 8-14, 2018; April 15-21, 2018; April 22-28, 2018; April 29 – May 5, 2018; May 6-
3 12, 2018; May 13-19, 2018; May 20-26, 2018; May 27 – June 2, 2018; June 3-9,
4 2018; June 10-16, 2018; June 17-23, 2018; June 24-30, 2018; July 8-14, 2018; July
5 15-21, 2018; July 22-28, 2018; July 29 – August 4, 2018; August 5-11, 2018;
6 August 12-18, 2018; August 19-25, 2018; August 26 – September 1, 2018;
7 September 2-8, 2018; September 9-15, 2018; September 16-22, 2018; September
8 23-29, 2018; September 30 – October 6, 2018; October 7-13, 2018; October 14-20,
9 2018; October 21-27, 2018; October 28 – November 3, 2018; November 4-10,
10 2018; November 11-17, 2018; November 25 – December 1, 2018; December 2-8,
11 2018; December 9-15, 2018; December 16-22, 2018; January 6-12, 2019; January
12 13-19, 2019; January 20-26, 2019; January 27 – February 2, 2019; February 3-9,
13 2019; February 10-16, 2019; February 17-23, 2019; February 24 – March 2, 2019;
14 March 3-9, 2019; March 10-16, 2019; March 17-23, 2019; March 24-30, 2019;
15 March 31 – April 6, 2019; April 7-13, 2019; April 14-20, 2019; April 21-27, 2019;
16 April 28 – May 4, 2019; May 5-11, 2019; May 12-18, 2019; May 19-25, 2019; May
17 26 – June 1, 2019; June 2-8, 2019; June 9-15, 2019; June 16-22, 2019; June 23-29,
18 2019; July 7-13, 2019; July 14-20, 2019; July 21-27, 2019; July 28 – August 3,
19 2019; August 4-10, 2019; August 11-17, 2019; August 18-24, 2019; August 25-31,
20 2019; September 1-7, 2019; September 8-14, 2019; September 15-21, 2019;
21 September 22-28, 2019; September 29 – October 5, 2019; October 6-12, 2019;
22 October 13-19, 2019; October 20-26, 2019; October 27 – November 2, 2019;
23 November 3-9, 2019; November 10-16, 2019; November 17-23, 2019; December
24 1-7, 2019; December 8-14, 2019; December 15-21, 2019; January 5-11, 2020;
25 January 12-18, 2020; January 19-25, 2020; January 26 – February 1, 2020; February
26 2-8, 2020; February 9-15, 2020; February 16-22, 2020; February 23-29, 2020;
27 March 1-7, 2020; March 8-14, 2020; March 15-21, 2020; March 22-28, 2020;
28

1 March 29 – April 4, 2020; April 5-11, 2020; April 12-18, 2020; April 19-25, 2020;
2 April 26 – May 2, 2020; May 3-9, 2020; May 10-16, 2020; May 17-23, 2020; May
3 24-30, 2020; May 31 – June 6, 2020; June 7-13, 2020; June 14-20, 2020; and June
4 21-27, 2020—Defendant Ulta intentionally and willfully failed to provide Mr. Chan
5 and non-exempt, hourly workers with complete and accurate wage statements by
6 failing to include the correct total number of hours worked by Mr. Chan and non-
7 exempt, hourly workers, failing to include the correct hourly rate, their gross wages
8 earned, and meal and rest period violations premium pay on their wage statements.
9 As a result, Ulta never provided Mr. Chan and non-exempt, hourly workers with
10 accurate itemized wage statements in compliance with California law.

11 42. Defendant's failure to provide accurate itemized wage statements to
12 Plaintiff and the other non-exempt, hourly warehouse workers, was knowingly and
13 intentional in that Defendant knew it needed to include the correct total number of
14 hours worked by Mr. Chan and non-exempt, hourly workers, and include the correct
15 hourly rate, their gross wages earned, and meal and rest period violations premium
16 pay on their wage statements, but Defendant failed to do so.

17 **E. Defendant's Failure to Pay All Wages Due During And Upon**
18 **Termination of Employment**

19 43. For at least four (4) years prior to the filing of this Complaint, Defendant
20 and/or its officers and/or managing agents have had a consistent policy and/or
21 practice of willfully failing to timely pay wages owed to Plaintiff and non-exempt,
22 hourly warehouse workers during their employment and/or upon the termination of
23 their employment with Defendant.

24 44. For example, Mr. Chan's employment with Defendant ended on
25 approximately July 2, 2020. Throughout the statutory period, in every workweek
26 during the relevant statute of limitations—which, on information and belief,
27 includes the workweeks of January 27 – February 2, 2019; February 3-9, 2019;
28

February 10-16, 2019; February 17-23, 2019; February 24 – March 2, 2019; March 3-9, 2019; March 10-16, 2019; March 17-23, 2019; March 24-30, 2019; March 31 – April 6, 2019; April 7-13, 2019; April 14-20, 2019; April 21-27, 2019; April 28 – May 4, 2019; May 5-11, 2019; May 12-18, 2019; May 19-25, 2019; May 26 – June 1, 2019; June 2-8, 2019; June 9-15, 2019; June 16-22, 2019; June 23-29, 2019; July 7-13, 2019; July 14-20, 2019; July 21-27, 2019; July 28 – August 3, 2019; August 4-10, 2019; August 11-17, 2019; August 18-24, 2019; August 25-31, 2019; September 1-7, 2019; September 8-14, 2019; September 15-21, 2019; September 22-28, 2019; September 29 – October 5, 2019; October 6-12, 2019; October 13-19, 2019; October 20-26, 2019; October 27 – November 2, 2019; November 3-9, 2019; November 10-16, 2019; November 17-23, 2019; December 1-7, 2019; December 8-14, 2019; December 9-21, 2019; January 5-11, 2020; January 12-18, 2020; January 19-25, 2020; January 26 – February 1, 2020; February 2-8, 2020; February 9-15, 2020; February 16-22, 2020; February 23-29, 2020; March 1-7, 2020; March 8-14, 2020; March 15-21, 2020; March 22-28, 2020; March 29 – April 4, 2020; April 5-11, 2020; April 12-18, 2020; April 19-25, 2020; April 26 – May 2, 2020; May 3-9, 2020; May 10-16, 2020; May 17-23, 2020; May 24-30, 2020; May 31 – June 6, 2020; June 7-13, 2020; June 14-20, 2020; and June 21-27, 2020—Defendant failed to pay Plaintiff all regular and overtime wages and meal and rest period compensation owed and did not pay these amounts to Plaintiff at the time of termination of his employment.

45. Similarly, numerous other non-exempt, hourly warehouse workers were either fired or quit Defendant's employ within four years preceding the filing of this Complaint. Yet Defendant, as a matter of policy and practice, did not timely pay them all straight time, overtime and premium wages owed at the time of their termination.

46. Defendant's failure to pay these wages to Plaintiff and the other non-

1 exempt, hourly warehouse workers during their employment and/or upon the
2 termination of their employment with Defendant, was willful in that Defendant
3 knew the wages to be due but failed and refused to pay them.

4 **F. Defendant's Unlawful and Unfair Business Acts and Practices**

5 47. For at least four (4) years prior to the filing of this Complaint and through
6 to the present, Defendant, by failing to lawfully pay Plaintiff and those similarly
7 situated all the wages they are owed, engaged in false, unfair, fraudulent and
8 deceptive business practices within the meaning of the Business and Professions
9 Code section 17200, *et seq.*

10 48. Defendant's unlawful, unfair, and/or fraudulent conduct has also enabled
11 Defendant to gain an unfair competitive advantage over law-abiding employers and
12 competitors.

13 **G. Facts Regarding Willfulness**

14 49. For at least four (4) years prior to the filing of this Complaint, Defendant's
15 non-exempt, hourly warehouse workers, including Plaintiff, were not provided all
16 straight time and overtime wages owed, meal periods and rest periods, or
17 compensation in lieu thereof, and all wages owed to them at the time of termination
18 of employment as mandated under the California Labor Code, and the
19 implementing rules and regulations of the Industrial Welfare Commissions
20 ("IWC") California Wage Orders.

21 50. Defendant is and was aware that its non-exempt, hourly warehouse
22 workers, including Plaintiff, were entitled to but were not paid all straight time and
23 overtime wages owed, provided meal and rest periods and all wages owed to them
24 at the time of termination of employment. Defendant's denial of wages and other
25 compensation due to Plaintiff and members of the proposed class was willful and
26 deliberate.

H. Plaintiff's Exhaustion of Administrative Remedies

51. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3.

52. By letter dated August 11, 2020, and subsequent amended letter(s), required notice was provided to the Labor and Workforce Development Agency ("LWDA") and Defendant, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

53. More than sixty-five (65) days have passed since the date the notice was mailed to Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that it plans to investigate. In or about January and February 2024, Plaintiff amended his notice of violations.

54. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code identified in this First Amended Complaint.

V. CLASS ACTION ALLEGATIONS

55. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and/or (b)(3). Plaintiff seeks to represent a Class composed of and defined as follows:

All non-exempt, hourly workers who were employed by Defendant in Defendant's warehouse/distribution facilities within the State of California within four years prior to the filing of this Complaint. ("Class Members").

56. Plaintiff also seeks to represent subclasses composed of and defined as follows:

1 All Class Members who worked one (1) or more shifts in
2 excess of five (5) hours.

3 All Class Members who worked one (1) or more shifts in
4 excess of six (6) hours.

5 All Class Members who worked one (1) or more shifts in
6 excess of ten (10) hours.

7 All Class Members who worked one (1) or more shifts in
8 excess of twelve (12) hours.

9 All Class Members who worked one (1) or more shifts in
10 excess of three (3) hour and one-half hours, but less than
11 or equal to six (6) hours.

12 All Class Members who worked one (1) or more shifts in
13 excess of six (6) hours, but less than or equal to ten (10)
14 hours.

15 All Class Members who separated their employment from
16 Defendant.

17 All Class Members who were deducted wages for meal
18 periods.

19
20
21 57. Plaintiff reserves the right to amend or modify the Class description with
22 greater specificity or further division into subclasses or limitation to particular
23 issues.

24 **A. Numerosity.**

25 58. The potential Class Members and subclasses members as defined are so
26 numerous that joinder of all the Class Members is impracticable. While the precise
27 number of Class Members and subclass members has not been determined at this
28

1 time, Plaintiff is informed and believes that Defendant currently employs, and
2 during the Relevant Time Period has employed, well over one hundred (100)
3 employees, all in the State of California, in positions as hourly non-exempt workers.

4 59. Accounting for employee turnover during the relevant periods increases
5 this number substantially. Upon information and belief, Plaintiff alleges
6 Defendant's employment records will provide information as to the number and
7 location of all Class Members. Class Members are therefore far too numerous to be
8 individually joined in this lawsuit.

9 **B. Commonality.**

10 60. Common questions of law and/or fact exist as to the Class Members and,
11 in addition, common questions of law and/or fact predominate over questions
12 affecting only individual members of the Class. The common questions include the
13 following:

- 14 i. Whether Defendant violated the Labor Code and/or applicable IWC
15 Wage Orders in failing to pay its non-exempt workers all earned
16 wages at the regular rate for all hours worked;
- 17 ii. Whether Defendant violated the Labor Code and/or applicable IWC
18 Wage Orders in failing to pay its non-exempt workers all earned
19 wages at the overtime rate for all overtime hours worked;
- 20 iii. Whether Defendant violated the Labor Code and/or applicable IWC
21 Wage Orders in failing to pay its non-exempt workers all earned
22 wages at the double-time rate for hours worked in excess of 12 in a
23 day;
- 24 iv. Whether Defendant failed to provide the Class Members with
25 uninterrupted meal periods of 30 minutes during which they were
26 completely relieved of duty, by the end of the fifth hour of work and
27 again by the end of the tenth hour of work;

- 1 v. Whether Defendant failed to authorize and permit the Class Members
2 with rest breaks of at least 10 minutes by the end of every fourth hour
3 of work or major fraction thereof;
- 4 vi. Whether Class Members who had their employment relationship with
5 Defendant terminated are entitled to penalty wages for Defendant's
6 failure to timely pay all outstanding amounts of compensation owed
7 upon termination of the employment relationship;
- 8 vii. Whether Defendant's policies and practices have resulted in violation
9 of one or more of the Labor Code Provisions cited herein;
- 10 viii. Whether Defendant's policies and practices are unlawful, unfair and/or
11 fraudulent business practices in violation of California Business &
12 Professions Code §§17200, *et seq.*; and
- 13 ix. The monetary relief to which Plaintiff and the Class Members may be
14 entitled as a result of the violations alleged herein.

15 **C. Typicality.**

16 61. The claims of the named Plaintiff are typical of the claims of the proposed
17 class. Defendant's common course of conduct in failing to compensate the Class
18 Members at all for time spent performing discrete tasks they are required and/or
19 suffered and permitted to perform at their regular rates and at the statutorily
20 mandated overtime and/or double time rate; failing to provide them with meal and
21 rest periods in compliance with the applicable Wage Order; and failing to pay them
22 all wages owed upon termination of employment has caused Plaintiff and the
23 proposed Class to sustain the same or similar injuries and damages.

24 62. Plaintiff was subjected to the same uniform policies and/or practices
25 complained of herein that affected all such employees. Thus, as Plaintiff was
26 subjected to the same unlawful policies and practices as all hourly non-exempt
27 workers, his claims are typical of the class he seeks to represent.
28

D. Adequacy of Representation.

63. Plaintiff is an adequate representative of the proposed classes because he is a member of the Class and subclasses, and his interests do not conflict with the interests of the class members he seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the class. The interests of the Class Members will fairly and adequately be protected by Plaintiff and his attorneys.

E. Superiority of Class Action.

64. The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each member of the Class, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendant economically feasible. Furthermore, individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court, and avoids the problem of inconsistent judgments.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Pay All Straight Time Wages

California Labor Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1

65. Plaintiff hereby realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

66. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code sections 1182.12 and 1197

1 prohibits the payment of less than the minimum wage. Labor Code section 1194
2 states that an employee receiving less than the legal minimum wage is entitled to
3 recover in a civil action the unpaid balance of the full amount of this minimum
4 wage. Labor Code section 224 only permits deductions from wages when the
5 employer is required or empowered to do so by state or federal law or when the
6 deduction is expressly authorized in writing by the employee for specified purposes
7 that do not have the effect of reducing the agreed upon wage.

8 67. Plaintiff and those similarly situated Class members were employed and
9 performed services for Defendant at all relevant times. Defendant was required to
10 compensate Plaintiff for all hours worked and were prohibited from making
11 deductions that had the effect of reducing the agreed upon wage.

12 68. Throughout the Relevant Time Period, Defendant has maintained policies
13 and procedures which create a working environment where its non-exempt, hourly
14 employees are routinely compensated at a rate that is less than the statutory
15 minimum wage. As described above, Plaintiff and Class Members frequently work
16 time off-the-clock during time spent in security and temperature/health assessment
17 checks lines, which is time worked that is uncompensated.

18 69. Additionally, workers are not free of control and duty for the entire time
19 they are clocked out for lunch. Necessarily, workers exiting the facility will have to
20 go through security and wait in line to clock in upon their return. Thus, part of the
21 time they are clocked out is time they are under the compensable control of
22 Defendant.

23 70. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and other
24 Class Members are entitled to recover pre-judgment interest on wages earned, but
25 not paid every pay period.

26 71. As a direct and proximate result of the unlawful acts and/or omissions of
27 Defendant, Plaintiff and Class Members have been deprived of minimum wages
28

1 and wages at the regular rate in amounts to be determined at trial, and are entitled
2 to a recovery of such amount, plus liquidated damages, plus interest thereon,
3 attorneys' fees, costs of suit pursuant to Labor Code §§ 218.5 1194, 1194.2 and
4 1197.1.

5 72. Wherefore, Plaintiff and the Class he seeks to represent request relief as
6 described below.

7 **SECOND CAUSE OF ACTION**

8 **Failure to Pay All Overtime Wages**

9 **California Labor Code §§ 510, 515.5, 1194, and 1198 *et seq.***

10 73. Plaintiff hereby realleges and incorporates by reference the foregoing
11 paragraphs as though fully set forth herein.

12 74. California Labor Code §§ 510 and 1198, and IWC Wage Order No. 7, §3,
13 provides that employees in California shall not be employed more than eight (8)
14 hours in any workday or forty (40) hours in any workweek unless they receive
15 additional compensation beyond their regular wages in amounts specified by law.

16 75. Defendant requires and/or suffers and permits Plaintiff and other members
17 of the Class to work hours in excess of 8 in a day and 12 in a day.

18 76. Defendant has failed to pay Plaintiff, and other Class Members, overtime
19 compensation for the hours they worked in excess of the maximum hours
20 permissible by law under California Labor Code §§ 510 and 1198, and IWC Wage
21 Order No. 7, §3.

22 77. Defendant has a continuous and consistent policy of mandating workers
23 to wait in lines and go through security and temperature/health assessment checks
24 before employees are clocked in for the day and after clocking out for meal breaks,
25 but while under the compensable control of Defendant. Plaintiff and Class and
26 subclass members frequently work over eight daily/forty weekly hours and twelve
27 hours daily and, therefore, this compensable time is owed at the overtime and/or
28 double time rates of Plaintiff and Class Members.

1 78. Defendant's failure to pay additional, premium rate compensation to
2 Plaintiff and the Class Members for their overtime and double time hours worked
3 has caused Plaintiff and Class Members and continues to cause many Class
4 Members to suffer damages in amounts which are presently unknown to them, but
5 which exceed the jurisdictional threshold of this Court and which will be
6 ascertained according to proof at trial.

7 79. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and other
8 Class Members are entitled to recover pre-judgment interest on wages earned, but
9 not paid every pay period.

10 80. As a direct and proximate result of the unlawful acts and/or omissions of
11 Defendant, Plaintiff and the Class Members have been deprived of overtime and
12 double time compensation in an amount to be determined at trial. Plaintiff and the
13 Class Members request recovery of overtime and double time compensation
14 according to proof, interest, attorney's fees and costs of suit pursuant to California
15 Labor Code §§ 218.5, 1194(a), 554, 1194.3 and 1197.1, as well as the assessment
16 of any statutory penalties against Defendant, in a sum as provided by the California
17 Labor Code and/or other statutes.

18 81. Wherefore, Plaintiff and the Class he seeks to represent request relief as
19 described below.

20 **THIRD CAUSE OF ACTION**

21 **Failure to Provide Meal Periods, or Compensation in Lieu Thereof** 22 **California Labor Code §§ 226.7, 512, and Cal. Code Regs., tit. 8, § 11090 ¶ 11**

23 82. Plaintiff hereby realleges and incorporates by reference the foregoing
24 paragraphs as though fully set forth herein.

25 83. California Labor Code §§ 226.7 and 512, and Title 8 of the California
26 Code of Regulations § 11050, ¶ 11 require Defendant to provide meal periods to
27 Plaintiff and Class Members. California Labor Code §§ 226.7 and 512, and Title 8
28 of the California Code of Regulations § 11050, § 11 prohibit employers from

1 employing an employee for more than five hours without a meal period no less than
2 thirty (30) minutes and for more than ten (10) hours without a second meal period.
3 Unless the employee is relieved of all duty during the thirty (30) minute meal
4 period, the employee is considered “on-duty” and the meal or rest period is counted
5 as time worked.

6 84. Defendant does not provide the Class Members with meal periods during
7 which they are completely relieved of duty for at least thirty (30) minutes by the
8 fifth hour of work and again by the tenth hour of work.

9 85. As discussed above at paragraphs 22-29, throughout the Relevant Time
10 Period, Defendant maintained security policies and practices, whereby Plaintiff and
11 the other Class Members were not provided control-free, off-premises meal periods
12 and/or were incentivized to forego control-free, off-premises meal periods.

13 86. Additionally, throughout the Relevant Time Period, Defendant did not
14 have a policy of providing a second meal period before the end of the tenth hour to
15 Plaintiff and the other Class Members.

16 87. Under California Labor Code section 226.7 and Title 8 of the California
17 Code of Regulations §1150, ¶ 11, if the employer does not provide an employee a
18 meal period in accordance with the above requirements, the employer shall pay the
19 employee one (1) hour of pay at the employee’s regular rate of compensation for
20 each workday that the meal period is not provided.

21 88. Defendant failed to perform its obligations to provide Plaintiff and the
22 Class Members off-duty meal periods by the end of the fifth hour of work and a
23 second meal period by the end of the tenth hour of work. Defendant also failed to
24 pay Plaintiff and the Class Members one (1) hour of pay for each shift during which
25 an off-duty meal period was not provided. Defendant’s conduct described herein
26 violates California Labor Code §§226.7 and 512 and Title 8 of the California Code
27 of Regulations §11090. Therefore, Plaintiff and the Class Members are entitled to
28

1 compensation for Defendant's failure to provide meal periods, plus interest,
2 expenses, and costs of suit pursuant to California Labor Code §§226.7(b) and Title
3 8 of the California Code of Regulations §11090.

4 89. Wherefore, Plaintiff and the Class he seeks to represent request relief as
5 described below.

6 **FOURTH CAUSE OF ACTION**

7 **Failure to Authorize and Permit Rest Periods**

8 **California Labor Code § 226.7 and Cal. Code Regs. Title 8 § 11090 ¶ 12**

9 90. Plaintiff hereby realleges and incorporates by reference the foregoing
10 paragraphs as though fully set forth herein.

11 91. California Labor Code §226.7 and Title 8 of the California Code of
12 Regulations § 11050, ¶ 12 requires Defendant to authorize and permit rest periods
13 to Plaintiff and the Class Members at the rate of ten minutes net rest time per four
14 hours or major fraction thereof.

15 92. Defendant regularly fails to make rest periods available to Plaintiff and
16 the Class Members. Plaintiff's and Class members' schedules regularly prevent
17 them from taking rest periods throughout the day. When available, if ever, they are
18 often not compliant. Instead, they are generally untimely, interrupted, on-duty or
19 short.

20 93. As discussed at paragraphs 30-35 above, throughout the Relevant
21 Time Period, Defendant's business model was such that its non-exempt, hourly
22 warehouse workers were assigned too much work with insufficient help due to
23 chronic understaffing whereby they were able to take rest periods and were forced
24 to work through their rest periods. Additionally, Defendant maintained security
25 policies and practices, whereby Plaintiff and its other non-exempt, hourly
26 warehouse workers were not provided control-free, off-premises rest periods and/or
27 were incentivized to forego control-free, off-premises rest periods.

28 94. Under California Labor Code section 226.7 and Title 8 of the California

1 Code of Regulations §1150, ¶ 12, if the employer does not provide an employee a
2 rest period in accordance with the above requirements, the employer shall pay the
3 employee one (1) hour of pay at the employee's regular rate of compensation for
4 each workday that the rest period is not provided.

5 95. Throughout the Relevant Time Period, Defendant has failed to perform
6 its obligations to authorize and permit Plaintiff and the Class Members to take rest
7 periods as set forth above. Defendant also failed to pay Plaintiff and the Class
8 Members one (1) hour of pay for each shift where a rest period was denied.
9 Defendant's conduct described herein violates California Labor Code §§ 226.7 and
10 Title 8 of the California Code of Regulations §11050. Therefore, Plaintiff and the
11 Class Members are entitled to compensation for Defendant's failure to authorize
12 and permit rest periods, plus interest, and costs of suit pursuant to California Labor
13 Code §§ 226.7(b), and Title 8 of the California Code of Regulations § 11050.

14 96. Wherefore, Plaintiff and the Class he seeks to represent request relief as
15 described below.

16 **FIFTH CAUSE OF ACTION**

17 **Knowing and Intentional Failure to Comply with Itemized Employee**
18 **Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage**
19 **Order No. 4; Cal. Code Regs., Title 8, § 11040)**

20 97. Plaintiff hereby realleges and incorporates by reference the foregoing
21 paragraphs as though fully set forth herein.

22 98. Labor Code section 226 subdivision (a) requires Defendant to, inter alia,
23 itemize in wage statements and accurately report the total hours worked and total
24 wages earned. Defendant has knowingly and intentionally failed to comply with
25 Labor Code section 226, subdivision (a), on each and every wage statement
26 provided to Plaintiff and members of the proposed Class.

27 99. Labor Code section 1174 requires Defendant to maintain and preserve, in
28

1 a centralized location, records showing the daily hours worked by and the wages
2 paid to its employees. Defendant has knowingly and intentionally failed to comply
3 with Labor Code section 1174. The failure of Defendant to comply with Labor Code
4 section 1174 is unlawful pursuant to Labor Code section 1175.

5 100. Defendant failed to maintain accurate time records - as required by IWC
6 Wage Order No. 7, and Cal. Code Regs., Title 8 section 11090 - showing, among
7 other things, when the employee begins and ends each work period, the total daily
8 hours worked in itemized wage statements, total wages, bonuses and/or incentives
9 earned, and all deductions made.

10 101. Defendant has knowingly and intentionally failed to provide Plaintiff and
11 the Class Members with accurate itemized wage statements which show: “(1) gross
12 wages earned, (2) total hours worked by the employee, . . . (4) all deductions,
13 provided that all deductions made on written orders of the employee may be
14 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
15 the period for which the employee is paid, (7) the name of the employee and only
16 the last four digits of his or her social security number or an employee identification
17 number other than a social security number, (8) the name and address of the legal
18 entity that is the employer and, if the employer is a farm labor contractor, as defined
19 in subdivision (b) of Section 1682, the name and address of the legal entity that
20 secured the services of the employer, and (9) all applicable hourly rates in effect
21 during the pay period and the corresponding number of hours worked at each hourly
22 rate by the employee[.]” Labor Code section 226(a).

23 102. Defendant Ulta has a continuous and consistent policy and/or practice of
24 not providing Plaintiff and non-exempt, hourly workers with accurate, itemized
25 wage statements in compliance with California law. Throughout the statutory
26 period, in every pay period during the relevant statute of limitations—which, on
27 information and belief, includes the pay periods which encompassed the workweeks
28

1 of March 25-31, 2018; April 1-7, 2018; April 8-14, 2018; April 15-21, 2018; April
 2 22-28, 2018; April 29 – May 5, 2018; May 6-12, 2018; May 13-19, 2018; May 20-
 3 26, 2018; May 27 – June 2, 2018; June 3-9, 2018; June 10-16, 2018; June 17-23,
 4 2018; June 24-30, 2018; July 8-14, 2018; July 15-21, 2018; July 22-28, 2018; July
 5 29 – August 4, 2018; August 5-11, 2018; August 12-18, 2018; August 19-25, 2018;
 6 August 26 – September 1, 2018; September 2-8, 2018; September 9-15, 2018;
 7 September 16-22, 2018; September 23-29, 2018; September 30 – October 6, 2018;
 8 October 7-13, 2018; October 14-20, 2018; October 21-27, 2018; October 28 –
 9 November 3, 2018; November 4-10, 2018; November 11-17, 2018; November 25
 10 – December 1, 2018; December 2-8, 2018; December 9-15, 2018; December 16-22,
 11 2018; January 6-12, 2019; January 13-19, 2019; January 20-26, 2019; January 27 –
 12 February 2, 2019; February 3-9, 2019; February 10-16, 2019; February 17-23,
 13 2019; February 24 – March 2, 2019; March 3-9, 2019; March 10-16, 2019; March
 14 17-23, 2019; March 24-30, 2019; March 31 – April 6, 2019; April 7-13, 2019; April
 15 14-20, 2019; April 21-27, 2019; April 28 – May 4, 2019; May 5-11, 2019; May 12-
 16 18, 2019; May 19-25, 2019; May 26 – June 1, 2019; June 2-8, 2019; June 9-15,
 17 2019; June 16-22, 2019; June 23-29, 2019; July 7-13, 2019; July 14-20, 2019; July
 18 21-27, 2019; July 28 – August 3, 2019; August 4-10, 2019; August 11-17, 2019;
 19 August 18-24, 2019; August 25-31, 2019; September 1-7, 2019; September 8-14,
 20 2019; September 15-21, 2019; September 22-28, 2019; September 29 – October 5,
 21 2019; October 6-12, 2019; October 13-19, 2019; October 20-26, 2019; October 27
 22 – November 2, 2019; November 3-9, 2019; November 10-16, 2019; November 17-
 23 23, 2019; December 1-7, 2019; December 8-14, 2019; December 9-21, 2019;
 24 January 5-11, 2020; January 12-18, 2020; January 19-25, 2020; January 26 –
 25 February 1, 2020; February 2-8, 2020; February 9-15, 2020; February 16-22, 2020;
 26 February 23-29, 2020; March 1-7, 2020; March 8-14, 2020; March 15-21, 2020;
 27 March 22-28, 2020; March 29 – April 4, 2020; April 5-11, 2020; April 12-18, 2020;
 28

1 April 19-25, 2020; April 26 – May 2, 2020; May 3-9, 2020; May 10-16, 2020; May
2 17-23, 2020; May 24-30, 2020; May 31 – June 6, 2020; June 7-13, 2020; June 14-
3 20, 2020; and June 21-27, 2020—Defendant Ulta intentionally and willfully failed
4 to provide Mr. Chan and non-exempt, hourly workers with complete and accurate
5 wage statements by failing to include the correct total number of hours worked by
6 Mr. Chan and non-exempt, hourly workers, failing to include the correct hourly rate
7 and their gross wages earned on their wage statements as required under Labor Code
8 § 226(a)(2) and (a)(9), which is entitled to a presumption of injury under Labor
9 Code § 226(e)(2)(B)(i). As a result, Ulta never provided Mr. Chan and non-exempt,
10 hourly workers with wage statements in compliance with California law

11 103. Mr. Chan has alleged that pursuant to Defendant Ulta’s policy— as
12 explained to Mr. Chan during Ulta’s training with his supervisors, Laura Valequez,
13 Adrian Olivares, and Alma (last name unknown) — Mr. Chan was required to wait
14 in line and go through Defendant Ulta’s security and temperature/health assessment
15 checks procedures every day he worked before clocking in to start his shift and was
16 required to spend time traveling through Defendant Ulta’s massive facility to and
17 from the breakroom while off the clock during his unpaid meal periods. In addition,
18 Defendant Ulta failed to compensate him for pre- and post-shift work tasks and
19 other time in the day when he performed tasks while subject to the control of Ulta.
20 This included without limitation having to badge into access point and walk
21 distances to work stations to clock in for work, and Defendant Ulta entering meal
22 periods in his time records while he was still working. Mr. Chan alleges that this
23 time qualifies as “hours worked” under California law that were required to be listed
24 on his wage statements, but despite working this additional time every day he
25 worked, it was never present on his wage statements. Additionally, Mr. Chan has
26 alleged that as a result of Defendant Ulta’s unlawful meal and rest period policies
27 — as explained to Mr. Chan during Defendant Ulta’s training with his supervisors,
28

1 Laura Valequez, Adrian Olivares, and Alma (last name unknown) — Mr. Chan was
2 never provided a fully thirty-minute meal period or a net ten-minute rest period in
3 which he was free to leave the premises and spend entirely outside of Defendant
4 Ulta's control. In addition, Defendant Ulta does not provide second meal periods
5 and does not permit aggrieved employees to leave the premises for meal periods.
6 Under Labor Code § 226.7, Mr. Chan is entitled to premium wages for each shift
7 he was not provided a complaint meal or rest period. Section 226.7 premiums
8 constitute wages and are therefore required to be included in wage statements under
9 Labor Code § 226. However, Defendant Ulta failed to include any such premiums
10 on his wage statements. As a result, Defendant Ulta never provided Mr. Chan and
11 non-exempt, hourly workers with wage statements in compliance with California
12 law.

13 104. As a direct result of Defendant and/or DOES unlawful acts, Plaintiff and
14 the Class he intends to represent has been damaged and are entitled to recovery of
15 such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor
16 Code section 226.

17 105. WHEREFORE, Plaintiff and the Class seek to represent request relief as
18 described below.

19 **SIXTH CAUSE OF ACTION**

20 **Failure to Pay All Wages Due at the Time of Termination from Employment**
21 **California Labor Code §§ 201-203**

22 106. Plaintiff hereby realleges and incorporates by reference the foregoing
23 paragraphs as though fully set forth herein.

24 107. California Labor Code §201 requires an employer who discharges an
25 employee to pay all compensation due and owing to said employee immediately
26 upon discharge. California Labor Code §202 requires an employer to promptly pay
27 compensation due and owing to said employee within seventy-two (72) hours of
28 that employee's termination of employment by resignation. California Labor Code

1 §203 provides that if an employer willfully fails to pay compensation promptly
2 upon discharge or resignation, as required under California Labor Code §§201-202,
3 then the employer is liable for waiting time penalties in the form of continued
4 compensation for up to thirty (30) workdays.

5 108. Plaintiff and other formerly employed Class Members have left their
6 employment with Defendant during the Relevant Time Period.

7 109. Defendant willfully failed and refused, and continues to willfully fail and
8 refuse, to timely pay all straight time wages, overtime wages, meal period
9 premiums, and/or rest period premiums owed to Plaintiff and other formerly
10 employed Class Members whose employment with Defendant has ended or been
11 terminated at any point during the Relevant Time Period.

12 110. As a result, Defendant is liable to Plaintiff and other formerly employed
13 Class Members for waiting time penalties, together with interest thereon, attorneys'
14 fees, and costs of suit, under California Labor Code §203.

15 111. Accordingly, Plaintiff, on behalf of himself and other formerly employed
16 Class Members, request waiting time penalties pursuant to California Labor Code
17 §203, plus attorneys' fees and costs, as described below.

18 112. Wherefore, Plaintiff and the Class he seeks to represent request relief as
19 described below.

20 **SEVENTH CAUSE OF ACTION**
21 **Violation of Unfair Competition Law**
22 **California Bus. & Prof. Code, § 17200, *et seq.***

23 113. Plaintiff hereby realleges and incorporates by reference the foregoing
24 paragraphs as though fully set forth herein.

25 114. California Business and Professions Code §17200 defines unfair
26 competition to include, "unlawful, unfair or fraudulent business practices."

27 115. Plaintiff and all proposed Class Members are "persons" within the
28 meaning of Business and Professions Code §17204, who have suffered injury in

1 fact and have lost money or property as a result of Defendant's unfair competition.

2 116. Defendant has been committing, and continues to commit, acts of unfair
3 competition by engaging in the unlawful, unfair and fraudulent business practices
4 and acts described in this Complaint, including, but not limited to failing to pay all
5 straight time and overtime wages earned and failing to provide compliant meal
6 and/or rest breaks and/or compensation in lieu thereof.

7 117. As a result of its unlawful, unfair, and/or fraudulent business acts and
8 practices, Defendant has reaped and continues to reap unfair benefits and illegal
9 profits at the expense of Plaintiff and proposed Class Members. Defendant's
10 unlawful, unfair, and/or fraudulent conduct has also enabled Defendant to gain an
11 unfair competitive advantage over law-abiding employers and competitors.

12 118. Business and Professions Code §17203 provides that the Court may
13 restore to an aggrieved party any money or property acquired by means of the
14 unlawful, unfair, and/or fraudulent business acts or practices.

15 119. Pursuant to Civil Code §3287(a), Plaintiff and the other members of the
16 Class are entitled to recover pre-judgment interest on wages earned, but not paid.

17 120. As a direct and proximate result of the unfair business practices of
18 Defendant, and each of them, Plaintiff, as an individual and on behalf of all workers
19 similarly situated, are entitled to equitable relief, including full restitution and/or
20 disgorgement of all wages and premium pay which have been unlawfully withheld
21 from Plaintiff and the Class Members as a result of the business acts and practices
22 described herein.

23 121. Plaintiff seeks restitution to himself, and all others similarly situated of
24 these amounts, including all earned and unpaid wages and attorneys' fees and costs
25 pursuant to Cal. Code Civ. Proc. §1021.5.

26 122. Wherefore, Plaintiff and the Class he seeks to represent request relief as
27 described below.
28

EIGHT CAUSE OF ACTION**Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)**

123. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

124. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA, California Labor Code §§ 2698-99) applied to Defendant's employment of Plaintiff and the proposed Class Members.

125. At all times set forth herein, California Labor Code § 2699(a) has provided that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA) for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code § 2699.3.

126. At all times set forth herein, the PAGA has also provided that for the violation of any Labor Code provision that does not itself contain a civil penalty, there are established civil penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

127. A civil action under PAGA may be brought by an "aggrieved employee," any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

128. Defendant has been committing, and continues to commit, violations of the California Labor Code, including, but not limited to violations of Labor Code sections: 200 through 204, 212, 218, 218.5, 222, 223, 224, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and 6720, as well as the applicable provisions of the Industrial Welfare Commission Wage Order(s).

129. Plaintiff was employed by Defendant and the alleged violations have been

1 committed against him during his time of employment and she is, therefore, an
2 aggrieved employee. Plaintiff and other employees are “aggrieved employees” as
3 defined by California Labor Code §2699(c) in that they are all current or former
4 employees of Defendant, and one or more of the alleged violations were committed
5 against them.

6 130. Plaintiff, by virtue of his employment with Defendant and Defendant’s
7 failure to provide meal and rest periods, overtime compensation, all wages for all
8 work performed at the statutory minimum agreed upon rate, and all wages due at
9 termination, is an aggrieved employees with standing to bring an action under the
10 PAGA.

11 131. Pursuant to California Labor Code § 2699.3, aggrieved employees,
12 including Plaintiff, may pursue a civil action arising under the PAGA after the
13 following requirements have been met:

- 14 a. The aggrieved employee shall give written notice (hereinafter
15 “Employee’s Notice”) to the LWDA and the employer of the specific
16 provisions of the California Labor Code alleged to have been violated,
17 including the facts and theories to support the alleged violations;
- 18 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
19 employer and the aggrieved employee by certified mail that it does not
20 intend to investigate the alleged violations sixty (60) calendar days of
21 the postmark date of the Employee’s Notice. Upon receipt of the
22 LWDA Notice, or if the LWDA Notice is not provided within sixty-
23 five (65) calendar days of the postmark date of the Employee’s Notice,
24 the aggrieved employee may commence a civil action pursuant to
25 California Labor Code §2699 to recover civil penalties in addition to
26 any other penalties to which the employee may be entitled.

27 132. By letter dated August 11, 2020, and in amended letters thereafter,
28

1 required notice was provided to the Labor and Workforce Development Agency
2 (“LWDA”) and Defendant, of the specific provisions of the Labor Code alleged to
3 have been violated, including the facts and theories to support the alleged violations.
4 In or about January and February 2024, Plaintiff amended his notice of violations.

5 133. More than sixty-five (65) days have passed since the date the notice was
6 mailed to Defendant and the LWDA, and Plaintiff has received no response from
7 the LWDA indicating that it plans to investigate. Thus, Plaintiff has satisfied the
8 administrative prerequisites under California Labor Code Section 2699.3(a) to
9 recover civil penalties against Defendant for violations of California Labor Code
10 identified in this First Amended Complaint.

11 134. Accordingly, Plaintiff and the other aggrieved employees are entitled to
12 and seek to recover civil penalties for Defendant’s violations of the Labor Code
13 during the applicable limitations period.

14 135. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of
15 himself and the other aggrieved employees, is entitled to an award of reasonable
16 attorneys’ fees and costs.

17 VII. PRAYER FOR RELIEF

18 WHEREFORE, Plaintiff prays for judgment as follows:

- 19 a) That the Court determine that this action may be maintained as a class
20 action under Rules 23(a) and (b)(2) and/or (b)(3);
- 21 b) For an order appointing Plaintiff as representative of the Class;
- 22 c) For an order appointing Plaintiff’s attorneys as Class Counsel;
- 23 d) That the Court find that Defendant has been in violation of applicable
24 provisions of the California Labor Code and IWC Wage Order No. 7
25 by failing to pay each member of the proposed Class for all hours
26 worked, and failing to pay them their statutorily mandated overtime
27 and double time wages despite requiring and/or suffering and
28

- 1 permitting them to work in excess of 8 hours per day/40 hours per
2 week and/or 12 hours per day;
- 3 e) That the Court find that Defendant has been in violation of California
4 Labor Code §§226.7 and 512 by failing to provide Plaintiff and the
5 Class Members with meal periods and therefore owe compensation
6 under California Labor Code §226.7(b) with respect to violations of
7 California Code of Regulations, Title 8 §11050, ¶ 11;
- 8 f) That the Court find that Defendant has been in violation of California
9 Labor Code §226.7 by failing to authorize and permit rest periods for
10 Plaintiff and the Class Members, and therefore owe compensation
11 under California Labor Code §226.7(b) with respect to violations of
12 California Code of Regulations, Title 8 §11040, ¶ 12;
- 13 g) That the Court find that Defendant has been in violation of California
14 Labor Code §§201 and 202 and therefore owe waiting time penalties
15 under California Labor Code §203 for willful failure to pay all
16 compensation owed at the time of termination of employment to
17 Plaintiff and other formerly employed members of the Class;
- 18 h) That the Court find that Defendant has committed unfair and unlawful
19 business practices, in violation of California Business and Professions
20 Code §17200, *et seq.*, by their violations of the Labor Code and Wage
21 Order as described above;
- 22 i) That the Court award to Plaintiff and the proposed Class members
23 compensation and restitution for all wages owed;
- 24 j) That the Court award to Plaintiff and the proposed Class Members
25 statutory penalties as provided herein, including but not limited to
26 Labor Code § 203;
- 27 k) For penalties pursuant to Labor Code sections 2699 (a), 2699(f);
- 28

- 1) For pre- and post-judgment interest;
- m) That Plaintiff and the Class be awarded reasonable attorneys' fees and costs pursuant to Labor Code §§ 203, 218.5, 225.5, 226, 2699(g)(1), Code of Civil Procedure § 1021.5, and/or other applicable law; and
- n) For such other and further relief as this Court deems just and proper.

Dated: February 19, 2024 **BRADLEY/GROMBACHER LLP**

/s/ Marcus J. Bradley

Marcus J. Bradley, Esq.

Attorneys for NANG CHAN, on behalf of
himself, all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable as a matter of right.

Dated: February 19, 2024 **BRADLEY/GROMBACHER LLP**

/s/ Marcus J. Bradley

Marcus J. Bradley, Esq.

Attorneys for NANG CHAN, on behalf of
himself, all others similarly situated.

BRADLEY/GROMBACHER LLP
CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

Marcus J. Bradley
Kiley L. Grombacher
Lirit A. King
Robert N. Fischer

February 19, 2024

Labor and Workforce Development Agency

Attn: PAGA Administrator

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

*Filed Online and Courtesy Copy Delivered
via Certified Mail with \$75 Check*

**Re: Second Amended Written Notice – Private Attorney General Act (“PAGA”) –
California Labor Code § 2699 Penalties for Labor Code §§ 200, 201-203, 204,
212, 218, 218.5, 222, 224, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
1197, 1197.1, 1198, 1199
Ulta Beauty Cosmetics, LLC**

PAGA Administrator:

This amended letter serves to further comply with the exhaustion requirement of California’s Private Attorneys General Act, California *Labor Code* section 2698, *et seq.* (“PAGA”). My client Nang “Tony” Chan (hereinafter “Mr. Chan”) is an aggrieved employee of ULTA.

Mr. Chan, on behalf of himself and other current and former non-exempt employees of Ulta Beauty Cosmetics, LLC, Ulta Beauty, Inc., Ulta Inc. and/or Ulta Beauty Distribution, LLC (collectively “ULTA”) working in the State of California during the statutory period, alleges that ULTA and its agents routinely, systematically, and willfully violated and continue to violate the following Labor Code sections, all of which are actionable under PAGA. *Labor Code* § 2699.5.

A. General Facts

ULTA is a Beauty supply store that sells cosmetics, fragrances, and skin and hair care products. ULTA maintains and operates a distribution center in Fresno, California.

www.bradleygrombacher.com

Bradley/Grombacher LLP
31365 Oak Crest Drive
Suite 240
Westlake Village CA 91361
T: (805) 270-7100
F: (805) 270-7589

Ulta Amended PAGA Notice
February 19, 2024
Page 2

Mr. Chan worked for Ulta from approximately March 19, 2020 through July 2, 2020. Plaintiff was employed as a “Material Handler” and an “Equipment Operator”. Plaintiff worked at ULTA’s Fresno, California distribution center.

B. Uncompensated Time

During his employment at ULTA, employees were required to undergo mandatory security checks and temperature/health assessment checks. Mr. Chan estimates he would have to spend a combined additional fifteen (15) minutes not paid for these checks time during meal and rest periods and at the beginning and termination of his shift. In addition, ULTA engaged in non-neutral rounding of Mr. Chan’s time records, and failed to compensate him for pre- and post-shift work tasks and other time in the day when he performed tasks while subject to the control of ULTA. This included without limitation having to badge into access point and walk distances to work stations to clock in for work, and ULTA entering meal periods in his time records while he was still working. Under *Labor Code* §§ 222-223, 510, 1194-1197.1, 1198 and/or the other statutes referenced on the first page of this letter, this was a violation and Mr. Chan and aggrieved employees were not paid for this time.

Labor Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the pay of less than a statutory or contractual wage scale.

Labor Code § 1194 provides that, “[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” *Labor Code* section 1197 provides that, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Labor Code § 1197.1 provides that, “(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee, as follows:

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages.
- (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

Ulta Amended PAGA Notice
February 19, 2024
Page 3

Mr. Chan alleges that ULTA regularly failed to pay all wages due, which resulted in minimum wage violations, failure to pay wages for all hours worked, and overtime violations for work performed over eight (8) hours per day and/or forty (40) hours per week. Specifically, Mr. Chan and other aggrieved employees were required to undergo a fifteen-minute security and temperature/health assessment checks that were not compensated.

C. Meal & Rest Periods – Labor Code §§ 226.7, 512, and IWC Wage Order 9-2001 sections 11, 12

Labor Code § 512 and IWC Wage Order 9 mandate that employers provide their employees with thirty minutes off duty meal periods for any shift exceeding five (5) hours. IWC Wage Order 9-2001, section 12(a) requires employers to “authorize and permit” all non-exempt employees to take rest periods of a net ten (10) minutes per four hours (4) worked or major fraction thereof. For any violation of an employees’ right to be provided with meal periods or authorized and permitted to take rest periods, *Labor Code* § 226.7 provides payment of a premium wage equal to one hour of the employees’ regular hourly wage. *See also*, IWC Wage Order sections 4(B), 12(C).

Mr. Chan alleges on behalf of themselves and other employees, that ULTA failed to provide employees with legally compliant meal breaks, in violation of the Labor Code and applicable Wage Order. Mr. Chan contends that when they and other aggrieved employees worked shifts over (5) hours or more in duration, meal breaks were cut short if they wished to leave the premises. Mr. Chan and other aggrieved employees were subject to security and temperature and/or health assessment checks every time they re-entered the premises, which took fifteen minutes before they clocked back in, and had to badge in to get to time clocks before the 30 minutes were expended. As a result, they were not able to take full 30-minute meal periods. In addition, ULTA does not provide second meal periods and does not permit aggrieved employees to leave the premises for meal periods. When meal periods were not provided, Mr. Chan and other aggrieved employees were not provided premium pay. Moreover, Ulta had an unlawful auto deduct policy for meal periods, whereby the company would deduct thirty minutes from each shift regardless of whether the employee received a full thirty-minute meal period or not, including while they were still working to perform their work duties.

In regards to rest periods, Mr. Chan alleges that, at all relevant times, aggrieved employees were unable to take timely rest periods due to work-related duties, they were required to walk 3-4 minutes each way to get to break areas, and ULTA did not provide third rest periods when required to do so. ULTA also did not permit aggrieved employees to leave the work premises during rest periods. Moreover, ULTA did not provide rest period premium pay to compensate when Mr. Chan and aggrieved employees were unable to take rest periods.

D. Wage Statement Violations

Mr. Chan was not able to see the actual hours or days he worked to check for errors. The pay stubs merely showed a calculation of total hours per pay period. *Labor Code* § 226 requires

Ulta Amended PAGA Notice
February 19, 2024
Page 4

that employers provide their employees with (1) gross wages earned; (2) total hours worked by the employee; (3) the rates of pay; (4) the inclusive dates of the period for which the employee is paid, (5) the last four digits of the employees' social security number or employee identification number; and (6) the name and address of the legal entity that is the employer. Upon information and belief, ULTA has knowingly and intentionally failed to comply with Labor Code §226(a) on each and every wage statement that should have been provided to Mr. Chan and other aggrieved employees. Specifically, ULTA failed to provide accurate wage statements that stated the number of regular and overtime hours actually worked by Mr. Chan and other aggrieved employees, their gross wages earned, their total hours worked, and meal and rest period violations premium pay. As a result, ULTA has also failed to accurately state the gross wages earned. The unlawful seizure of earned wages from Mr. Chan and other aggrieved employees had an impact on their paychecks, and makes it difficult to determine how much Mr. Chan and other aggrieved employees are currently owed.

E. Inadequate Ventilation

ULTA has a pattern and practice of violating California *Labor Code* § 6720 by providing employees with a working environment with excessive temperature variances. The warehouse employees worked in had no air conditioning, no heating, windows, or fans for ventilation. Due to poor ventilation the warehouse would become excessively hot, raising up to ninety (90) degrees or dropping below thirty (30) degrees. IWC 9, Section 15 specifically sets forth:

TEMPERATURE (A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°. (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

Mr. Chan and other aggrieved employees were subject to drastic climates including temperatures below 30 degrees inside or over 90 degrees without an attempt by his employer to properly vent the warehouse. Coupled with dusty air and poor ventilation, these conditions were in violation of the wage order.

F. Timely Payment of Wages During Employment and Final Wages at Termination

As a result of these improper withholdings and failure to compensate explained in detail above, ULTA failed to timely and properly pay for all wages due during employment and at termination which constitutes violations of California Labor Code §§ 201-204.

Ultra Amended PAGA Notice
February 19, 2024
Page 5

Labor Code sections 201, *et seq.* mandate a timeframe by which all earned wages must be paid. It also creates a penalty equal to the employee's daily wages for each day that the employee's final wages are not paid for a period not to exceed thirty (30) days. ULTA has failed to pay Mr. Chan and other employees' all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. ULTA's failure to provide wages for all hours worked at the proper rate of compensation, itemized wage statements, and wages upon termination/resignation was all done on a regular and consistent basis and is willful.

G. Conclusion

Please advise by certified mail within sixty (60) days of the Labor Workforce Development Agency's ("LWDA") receipt of this letter whether the LWDA intends to investigate and prosecute these claims on behalf of the aggrieved employees.

If not, my client intends to pursue these claims on behalf of current and former employees and the State of California in a civil action. An attached proposed complaint discusses the issues set forth in this letter with more detail.

Very truly yours,

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Lirit A. King, Esq.

cc:

ULTA BEAUTY COSMETICS, LLC
1000 Remington Blvd, Suite 120
Bolingbrook, IL 60440

AGENT FOR SERVICE OF PROCESS FOR:
ULTA BEAUTY COSMETICS
Corporation Service Company-CSC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Enclosures

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT***NANG CHAN, et al. v. ULTA INC.*****United States District Court, Central District of California, Case No. 2:23-cv-00650-AB-PLA****PLEASE READ THIS NOTICE CAREFULLY.**

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Nang Chan ("Plaintiff") and Defendant Ulta Inc. ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Nang Chan, et al. v. Ulta Inc.*, United States District Court for the Central District of California, Case No. 2:23-cv-00650-AB-PLA (the "Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" means all of Defendant's non-exempt current and former employees working or who worked in the State of California in Defendant's distribution center(s) from January 27, 2019 through and including [date of Preliminary Approval], and expressly excluding therefrom any individual, who as of [date of Preliminary Approval], has filed a separate lawsuit of any type as a named plaintiff against Defendant, alleging the same or similar claims being released by the Settlement and/or who has previously released such claims.

"Class Member" means a member of the Class.

"Class Period" means the period from January 27, 2019 through and including the date the Court grants final approval of the Settlement Agreement.

"Class Settlement" means the settlement and resolution of all Released Class Claims (described in Section III.D. below).

"Aggrieved Employees" means all of Defendant's non-exempt current and former employees working or who worked in the State of California in Defendant's distribution center(s) from August 11, 2019 through and including [date of Preliminary Approval].

"PAGA Period" means the period from August 11, 2019 through and including through the date the Court grants final approval of the Settlement Agreement.

"PAGA Settlement" means the settlement and resolution of all Released PAGA Claims (described in Section III.D. below).

II. BACKGROUND OF THE LAWSUIT

On January 27, 2023, Plaintiff commenced a putative class action lawsuit by filing a Complaint (the "Complaint") in the United States District Court for the Central District of California, Case No. 2:23-cv-00650-AB-PLA. The Complaint alleges six (6) causes of action for alleged violations of the California Labor Code and applicable California Industrial Welfare ("IWC") Wage Orders on behalf of Plaintiff and other current and former non-exempt "warehouse" employees of Defendant.

On [date of Preliminary Approval], Plaintiff was granted leave to file (and has now filed) a First Amended Complaint for purposes of the Parties' settlement asserting putative class and representative action claims for wages, statutory and other

EXHIBIT C

non-wage damages or penalties, and civil penalties under the California Labor Code and applicable IWC Wage Orders (the “Operative Complaint”). The Operative Complaint added claims seeking statutory damages and/or civil penalties under the California Labor Code for inaccurate wage statement violations and under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (“PAGA”), pursuant to written notices Plaintiff provided to the California Labor and Workforce Development Agency (the “LWDA”) and Defendant of the violations of the California Labor Code that Plaintiff contends Defendant committed (the “LWDA Notices”), and alleges that the Class was not paid regular, minimum, or overtime wages for purported off-the-clock work and/or related to meal or rest break violations or final wages upon separation from employment, as required by California law; was not provided compliant meal and rest periods under the California Labor Code and Wage Orders; and was not provided wage statements with information specified in the California Labor Code. The Operative Complaint also alleges violations under the California Business and Professions Code §§ 17200 *et seq.* and seeks civil penalties pursuant to PAGA based on the foregoing state law claims. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, penalties, interest, and attorneys’ fees and costs.

Defendant denies all of the allegations in the Action or that it violated any law and nothing in the settlement described in this notice is intended or will be construed as an admission of any of the claims or allegations made in the Action.

The Parties participated in a mediation with a highly-respected and experienced class action mediator, and as a result of the mediator’s efforts, the Parties reached a settlement. The Parties have since entered into the Stipulation for Leave to File First Amended Complaint and for Settlement and Release of Class Action and PAGA Claims (the “Settlement” or “Settlement Agreement”).

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed <NAME> as the administrator of the Settlement (the “Settlement Administrator”), Plaintiff Nang Chan as representative of the Class (the “Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley [mbradley@bradleygrombacher.com] Kiley L. Grombacher
[kgrombacher@bradleygrombacher.com]
Lirit A. King [lking@bradleygrombacher.com]
31365 Oak Crest Drive, Suite 240
Westlake Village, CA 91361
Tel: (805) 270-7100

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are an Aggrieved Employee, you do not need to take any action to receive an Individual PAGA Payment.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff, Class Members, or Aggrieved Employees. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members and Aggrieved Employees. The Court has made no ruling on the merits of the claims asserted in the Action and has determined only that certification of the Class for settlement purposes is appropriate under California law.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Three Hundred Thousand Dollars (\$300,000) (the “Gross Settlement Fund”). The portion of the Gross Settlement Fund that is available for payment to Class Members is referred to as the “Net Settlement

EXHIBIT C

Fund.” The Net Settlement Fund will be the Gross Settlement Fund less the following payments which are subject to approval by the Court: (1) attorneys’ fees, in an amount up to 33-1/3% of the Gross Settlement Fund (i.e., up to \$100,000) and reimbursement of reasonable litigation costs and expenses in an amount up to Twenty Thousand Dollars (\$20,000) (collectively, the “Attorneys’ Fees and Costs”) to Class Counsel; (2) an Enhancement Award in an amount up to Five Thousand Dollars (\$5,000) to Plaintiff for his services in the Action; (3) the amount of Fifteen Thousand Dollars (\$15,000) allocated toward civil penalties under PAGA (the “PAGA Amount”); (4) Settlement Administration Costs in an amount presently projected not to exceed Thirty Thousand Dollars (\$30,000) to the Settlement Administrator; and (5) employer-side payroll taxes and withholdings associated with payments made to Class Members. The PAGA Amount will be distributed 75% to the LWDA (i.e., \$11,250) (the “LWDA Payment”) and the remaining 25% (i.e., \$3,750) will be distributed to Aggrieved Employees (the “Aggrieved Employees Payment”).

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Fund (“Individual Settlement Share”) based on the number of workweeks actually worked by each Class Member for Defendant in Defendant’s distribution center(s) as a non-exempt employee in California during the Class Period (the “Workweeks”).

The Settlement Administrator has multiplied the Net Settlement Fund by a fraction, the numerator of which is the Class Member’s individual number of Workweeks actually worked during the Class Period, and the denominator of which is the total number of Workweeks actually worked by all Class Members, to yield the Class Member’s estimated Individual Settlement Share he or she may be eligible to receive under the Class Settlement (which is listed in Section III.C. below). Class Members who do not submit a timely and valid Request for Exclusion (the “Participating Class Members”) will be issued payment of their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as twenty percent 25% wages (the “Wages Portion”), 50% for non-wage statutory or other non-wage damages or penalties, and 25% interest. The penalties, statutory and other non-wage damages, and interest portions are collectively referred to as the “Non-Wage Portions.” The Wages Portion will be reported on an IRS Form W-2 and the Non-Wage Portions will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the Wages Portion of the Individual Settlement Share (the net payment is referred to as “Individual Settlement Payment”). The employer’s share of payroll taxes and contributions with respect to the Wages Portion of Individual Settlement Shares shall be paid from the Gross Settlement Fund.

Aggrieved Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the Aggrieved Employees Payment (“Individual PAGA Payment”) based on the number of pay periods worked by each Aggrieved Employee for Defendant in Defendant’s distribution center(s) as a non-exempt employee in California during the PAGA Period (the “PAGA Pay Periods”).

The Settlement Administrator has multiplied the Aggrieved Employees Payment by a fraction, the numerator of which is the Aggrieved Employee’s individual number of PAGA Pay Periods, and the denominator of which is the total number of PAGA Pay Periods of all Aggrieved Employees, to yield the Aggrieved Employee’s estimated Individual PAGA Payment he or she may be eligible to receive under the PAGA Settlement (which is listed in Section III.C. below).

Each Individual PAGA Payment will be allocated as 100% penalties, which will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Participating Class Members and Individual PAGA Payments will be mailed to Aggrieved Employees at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendant’s Records

According to Defendant’s records, you are credited as having actually worked [] Workweeks.

If you wish to dispute the Workweeks credited to you, you must submit a written dispute (a “Workweeks Dispute”) to the Settlement Administrator, which must: (i) include your full name, current mailing address, telephone number, signature, and last four digits of your Social Security number; (ii) include the case name and number of the Action (*Nang Chan, et al. v. Ulta Inc.*, United States District Court, Central District of California, Case No. 2:23-cv-00650-AB-PLA); (iii) include a statement indicating that you seek to dispute the number of Workweeks credited to you, the time period(s) you worked for Defendant in Defendant’s distribution center(s) as a non-exempt employee in California during the Class Period, and the number of Workweeks that you contend should be credited to you; (iv) include documentation and/or other facts supporting your position; and (v) be submitted by mail to the Settlement Administrator at the specified address listed in Section IV.B. below, postmarked on or before **[Response Deadline]**.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment

As explained above, your estimated Individual Settlement Share is based on the number of Workweeks credited to you and your estimated Individual PAGA Payment is based on the number of PAGA Pay Periods credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for taxes and withholdings with respect to the Wages Portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED].

The settlement approval process may take multiple months. Your Individual Settlement Share and/or Individual PAGA Payment (if applicable) reflected in this Notice is only an estimate. Your actual Individual Settlement Share and Individual PAGA Payment (if applicable) may be higher or lower.

D. Release of Claims

Upon occurrence of the Effective Date and full funding of the Gross Settlement Fund, Plaintiff and the Participating Class Members will release the Released Parties of and from the Released Class Claims. To the extent required under applicable law, Participating Class Members who cash, deposit, or otherwise negotiate their Individual Settlement Payment will be deemed to have opted-in to the Action for purposes of the release of Released Class Claims arising under the federal Fair Labor Standards Act (“FLSA”).

Upon the occurrence of the Effective Date and full funding of the Gross Settlement Fund, the LWDA and the Aggrieved Employees will release the Released Parties of and from the Released PAGA Claims.

“Released Class Claims” means any and all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys’ fees, economic damages, non-economic damages, restitution, civil penalties, statutory penalties, liquidated damages, punitive damages, interest, obligations, liabilities, or other monies and remedies, of any and every kind, contingent or accrued, that have been or reasonably could have been alleged or asserted in any of the pleadings filed in the Action based on the factual and/or legal violations alleged therein, including the Operative Complaint, arising during the period from January 27, 2019 through the date the Court grants final approval of the Settlement Agreement, including, without limitation, failure to pay minimum, overtime or other wages related to any purported off-the-clock work and/or related to any purported meal or rest period violations, failure to provide and/or record meal periods and/or pay associated premiums, failure to authorize and permit rest periods and/or pay associated premiums, failure to timely pay wages during and/or upon termination of employment, failure to provide accurate itemized wage statements as alleged in the Operative Complaint, violation of the California Unfair Competition Law (California Business and Professions Code §§ 17200 *et seq.*), and/or violation of the FLSA, based in whole or in part on any direct or imputed violation of any federal, state, local or administrative constitution, charter, law, rule, regulation or ordinance.

“Released PAGA Claims” any and all allegations, claims, debts, rights, demands, charges, complaints, actions, and causes of action for civil penalties of any and every kind, contingent or accrued, that have been or reasonably could have been alleged or asserted in any of the pleadings filed in the Action and in any notice sent to the LWDA pursuant to PAGA based on the factual and/or legal violations allegations contained therein, including the Operative Complaint and the LWDA Notices, arising during the period from August 11, 2019 through the date the Court grants final approval of the Settlement Agreement, including, without limitation, for failure to pay minimum, overtime or other wages related to purported off-the-clock work and/or related to any purported meal or rest period violations, failure to provide and/or record meal periods

and/or pay associated premiums, failure to authorize and permit rest periods and/or pay associated premiums, failure to timely pay wages during and/or upon termination of employment, failure to provide accurate itemized wage statements, and failure to maintain adequate ventilation, as alleged in the Operative Complaint.

“Released Parties” means Defendant, Ulta Beauty, Inc., Ulta Beauty Cosmetics, LLC, Ulta Beauty Distribution, LLC, and their respective employees, officers, directors, shareholders, members, administrators, parent and subsidiary entities, trustees, sponsors, fiduciaries, agents, contractors, representatives, attorneys, accountants, insurers, predecessors, successors and assigns, past, present, and future (collectively, the “Affiliated Releasees”), and each and all of their respective Affiliated Releasees, past, present, and future, and all persons acting under, by, through, or in concert with any of them..

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount up to one-third (1/3) of the Gross Settlement Fund (i.e., up to \$100,000) and reimbursement of reasonable litigation costs and expenses in an amount up to Twenty Thousand Dollars (\$20,000) (collectively, the “Attorneys’ Fees and Costs”), subject to approval by the Court. The Attorneys’ Fees and Costs granted by the Court will be paid from the Gross Settlement Fund. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and Aggrieved Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Award to Plaintiff

Plaintiff will seek the amount of Five Thousand Dollars (\$5,000) (“Enhancement Award”), in recognition of his services in connection with the Action. The Enhancement Award will be paid from the Gross Settlement Fund, subject to approval by the Court, and if awarded, will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is presently estimated not to exceed Thirty Thousand Dollars (\$30,000) (the “Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Objections, and Workweeks Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Fund, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Settlement and receive money from the Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims described in Section III.D. above. Even if you do not cash or deposit your Individual Settlement Payment check, you will still be bound by those Released Class Claims other than those under the FLSA.

If you are an Aggrieved Employee, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims described in Section III.D. above.

Class Members and Aggrieved Employees will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless they retain their own counsel, in which event they will be responsible for their own attorney’s fees and expenses.

B. Request Exclusion from the Class Settlement

A Class Member may request to opt out of and be excluded from the Class Settlement by submitting a written request (“Request for Exclusion”) to the Settlement Administrator, which must: (i) include the full name, current mailing address, telephone number, signature, and last four digits of the Social Security number of the Class Member seeking exclusion; (ii) include the case name and number of the Action (*Nang Chan, et al. v. Ulta Inc.*, United States District Court for the Central District of California, Case No. 2:23-cv-00650-AB-PLA); (iii) include a statement that the Class Member seeks to be excluded from the Class Settlement which is the same or substantially similar to the following language: **“I elect to opt-out of the *Chan, et al. v. Ulta Inc.* class action settlement. I understand that by doing so, I will not participate in the class settlement, and will not receive any money from it”**; and (iv) be submitted by mail to the Settlement Administrator at the specified address below, postmarked on or before **[Response Deadline]**.

[Settlement Administrator]

[Mailing Address]

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be entitled to receive an Individual Settlement Payment, will not be bound by the release of Released Class Claims (described in Section III.D. above), and will not have any right to object to, appeal, or comment on the Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Participating Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of claims described in Section III.D. above, as well as any judgment that may be entered by the Court based thereon. Aggrieved Employees will be bound to the PAGA Settlement and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

C. Object to the Class Settlement

A Class Member may object to the Class Settlement, as long as he or she had not submitted a Request for Exclusion (i.e., he or she is a Participating Class Member), by submitting a written objection (“Objection”) to the Settlement Administrator, which must: (i) include the full name, current mailing address, telephone number, signature, and last four digits of the Social Security number of the objecting Class Member; (ii) include the case name and number of the Action (*Nang Chan, et al. v. Ulta Inc.*, United States District Court, Central District of California, Case No. 2:23-cv-00650-AB-PLA); (iii) include a statement indicating the legal and factual grounds for the objection; (iv) include a statement indicating whether the objecting Class Member is represented by counsel and identifying any such counsel; (v) include a statement indicating whether the objecting Class Member intends to appear for and wishes to be heard at the Final Approval Hearing; and (vi) be submitted by mail to the Settlement Administrator at the specified address listed in Section IV.B. above, postmarked on or before **[Response Deadline]**.

Participating Class Members will also have the right to appear at the Final Approval Hearing in order to orally present objections to the Court, whether or not they have submitted a written objection.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Courtroom 7B of the United States District Court, Central District of California, located at the First Street Courthouse, 350 West First Street, Los Angeles, CA 90012, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys’ Fees and Costs to Class Counsel, Enhancement Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to. Personal appearances and telephonic appearances are an option.

Please visit the Court’s website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities: <https://www.cacd.uscourts.gov/>.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Action by visiting the Office of the Clerk of the United States District Court, Central District of California, located at 255 East Temple Street, Suite 180, Los Angeles, CA 90012 during business hours, or by online by visiting the following website: <http://pacer.psc.uscourts.gov/>. Fees and other charges may apply in order to obtain copies of court records.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.