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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Dorcas-Cothy Kabasele, an individual,

Plaintiff,

vs.

ULTA SALON, COSMETICS &
FRAGRANCE, INC.; and DOES 1-100,
inclusive,

Defendants.

Case No.: 2:21-cv-01639-WBS-CKD

SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR

1. FAILURE TO PROVIDE MEAL BREAKS
2. FAILURE TO PROVIDE REST BREAKS
3. FAILURE TO PAY ALL WAGES DUE AT
END OF EMPLOYMENT
4. VIOLATION OF BUSINESS AND
PROFESSIONS CODE SECTION 17200
5. VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT

JURY TRIAL DEMANDED

Plaintiff Dorcas-Cothy Kabasele brings this class and collective action against ULTA Salon, Cosmetics & Fragrance, Inc., and Does 1 through 100, for violations of the California Labor Code, the California Business and Professions Code, and the IWC Wage Orders.

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PARTIES

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2 1. Dorcas-Cothy Kabasele (“Ms. Kabasele” or “Plaintiff”) was, at all times relevant
3 herein, employed in Contra Costa County, California, and was an “employee” as defined by the Fair
4 Labor Standards Act, the California Labor Code, and the applicable California Industrial Wage
5 Commission (“IWC”) Order(s).

6 2. ULTA Salon, Cosmetics & Fragrance, Inc. (“ULTA”) is a Delaware corporation with
7 its principal place of business in Illinois and, at all times relevant herein, was an “employer” as defined
8 by the Fair Labor Standards Act, the California Labor Code, and the applicable IWC Order(s).

9 3. ULTA and Does 1-100 are collectively referred to as Defendants.

10 4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
11 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
12 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
13 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
14 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
15 alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such
16 Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of
17 said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

18 5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
19 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
20 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
21 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
22 within the course and scope of such agency, service, employment partnership, joint venture and/or
23 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
24 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
25 the remaining Defendants.

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JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because ULTA resides in the numerous cities throughout the Eastern District California. Plaintiffs hereby demand a jury trial.

CLASS ACTION ALLEGATIONS

7. ULTA is one of largest beauty retailers in the United States. Besides selling beauty products, ULTA stores also offer a full-service salon.

8. Ms. Kabasele worked for ULTA from around June 2019 through March 2021 in San Ramon, California.

9. Throughout her employment, Ms. Kabasele was an hourly, non-exempt employee.

10. Ms. Kabasele and ULTA's other non-exempt California employees were not consistently authorized or permitted to take meal and rest breaks as required by California law.

11. At times, Ms. Kabasele and ULTA's other non-exempt California employees were unable to take meal and rest breaks at all because their store was too busy or understaffed.

12. Further, ULTA frequently failed to relieve Ms. Kabasele and its other non-exempt California of employer control during their meal and rest breaks.

13. Specifically, Ms. Kabasele and ULTA's other non-exempt California employees' meal and rest breaks were often interrupted and they were required to return to work early due to understaffing and work demands.

14. When Ms. Kabasele and ULTA's other non-exempt California were able to take their meal breaks, they routinely occurred after 5 hours of work.

15. When Ms. Kabasele and ULTA's other non-exempt California were not provided compliant meal and rest breaks, ULTA did not pay premiums as required by California law. Specifically, ULTA either (a) failed to pay the premiums in their entirety or (b) paid the premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without accounting for non-discretionary bonuses, commissions, and/or other items of compensation.

1 16. Ms. Kabasele’s employment with ULTA ended on or around March 2021. However, to
2 date she has not been paid all wages due and owing, including but not limited to premium pay for all
3 missed meal and rest periods (at the correct “regular rate of pay”), *supra*.

4 17. Because ULTA non-exempt California employees are not provided compliant meal and
5 rest breaks, or the premiums associated with missing the same, they are not timely paid all wages due
6 and owing to them during each pay period and at the end of their employment.

7 18. From at least four years prior to the filing of this action, ULTA has adopted and
8 employed unfair business practices. These unfair business practices include, but are not limited to,
9 failing provide compliant to pay premiums for missed meal and rest breaks when due and at the
10 “regular rate of compensation”.

11 19. Ms. Kabasele seeks to maintain this action as a class action as to the First through
12 Fourth Causes of Action. Ms. Kabasele brings this action, on behalf of herself and all others similarly
13 situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The putative
14 class which Ms. Kabasele seeks to represent consists of the following:

- 15 a. All current and former non-exempt California employees of ULTA who worked
16 one or more shift of longer than five hours from October 12, 2019 through the
17 date of final judgment (the “Meal Break Class”);
- 18 b. All current and former non-exempt California employees of ULTA who worked
19 one or more shift of longer than three and one-half hours rom October 12, 2019
20 through the date of final judgment (the “Rest Break Class”); and
- 21 c. All members of Meal Break Class and Rest Break Class whose employment
22 with ULTA ended, at any time from October 12, 2019 through the date of final
23 judgment (the “Waiting Time Penalty Class”).

24 The Meal Break Class, Rest Break Class, and the Waiting Time Penalty Class are collectively referred
25 to as the Class.

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1 20. The class of persons is so numerous that joinder of all members is impracticable, and
2 the disposition of their claims in a class action is a benefit to the parties and to the Court. Ms.
3 Kabasele is informed and believes, and based thereon alleges, that Defendants employ more than
4 1,000 employees who satisfy the class definition. Although the exact number and identity of class
5 members is not presently known, they can be identified in Defendants' records through coordinated
6 discovery pursuant to this class action.

7 21. This action may be maintained as a class pursuant to Rule 23 of the Federal Rules of
8 Civil Procedure because the questions of law and fact which are common to class members clearly
9 predominate over any questions affecting only individual members and because a class action is
10 superior to other available methods for adjudicating the controversy.

11 22. There are numerous common questions of law and fact arising out of Defendants'
12 conduct. This class action focuses on Defendants' uniform: (a) failure to provide compliant meal and
13 rest breaks or to properly pay the premiums associated therewith and (b) failure to pay all wages due
14 and owing at the end of its employees' employment.

15 23. Furthermore, common questions of fact and law predominate over any questions
16 affecting only individual members of the class. The predominating common or class-wide questions
17 of law and fact include the following:

- 18 a. Whether Defendants provided compliant meal and rest breaks to the non-
19 exempt California employees;
- 20 b. Whether Defendants paid all premiums owed to their non-exempt California
21 employees for noncompliant meal and rest periods;
- 22 c. Whether any premiums paid by Defendants to their non-exempt California
23 employees for noncompliant meal and rest periods, were paid at incorrect rates;
- 24 d. Whether Defendants properly paid their non-exempt California employees all
25 wages due and owing upon separation of employment, in accordance with
26 Labor Code section 203;
- 27 e. Whether the alleged violations constitute unfair business practices;

1 f. Whether the Class is entitled to injunctive relief; and

2 g. Whether the Class is entitled to unpaid wages, statutory penalties, civil
3 penalties, and/or restitutionary relief, and the amount of the same.

4 24. Ms. Kabasele's claims are typical of the claims of the members of the Class as a whole,
5 all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of
6 the alleged violations of Defendants, because Defendants subjected Plaintiff and each member of the
7 Class to the same violations alleged herein.

8 25. The defenses of Defendants, to the extent that such defenses apply, are applicable
9 generally to the whole Class and are not distinguishable as to the proposed class members.

10 26. Ms. Kabasele will fairly and adequately protect the interests of all members of the
11 Class, and has retained attorneys with extensive experience in litigation, including class and
12 representative actions. Ms. Kabasele has no interests that conflict with those of the Class. Ms.
13 Kabasele is able to fairly and adequately protect the interests of all members of the class because it is
14 in her best interest to prosecute the claims alleged herein in order to obtain the full compensation due
15 herself and the other class members.

16 27. A class action is superior to any other method available for fairly and efficiently
17 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
18 litigating the claims of individual class members would be unnecessarily costly and burdensome and
19 would deter individual claims, 3) litigating the claims of individual class members would create a risk
20 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
21 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
22 bring individual claims, 5) class members would be discouraged from pursuing individual claims
23 because the damages available to them are relatively small, and 6) public policy encourages the use of
24 the class actions to enforce employment laws and protect individuals who, by virtue of their
25 subordinate position, are particularly vulnerable.

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1 28. Judicial economy will be served by maintenance of this lawsuit as a class action. To
2 process numerous virtually identical individual cases will significantly increase the expense on the
3 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
4 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action
5 by this Court and doing so will provide multiple benefits to the litigating parties including, but not
6 limited to, efficiency, economy, and uniform adjudication with consistent results.

7 29. Notice of a certified class action and any result or resolution of the litigation can be
8 provided to class members by mail, email, publication, or such other methods of notice as deemed
9 appropriate by the Court.

10 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

11 30. The Private Attorney General Act (“PAGA”), as set forth at California Labor Code §
12 2698 et seq., is and at all times relevant herein was applicable to Ms. Kabasele’s employment by
13 ULTA.

14 31. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
15 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
16 (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil action
17 brought by an aggrieved employee on behalf of himself or herself and other current or former
18 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
19 2699(a).

20 32. Pursuant to PAGA, an “Aggrieved Employee” is “any person who was employed by
21 the alleged violator and against whom one or more of the alleged violations was committed.” Labor
22 Code § 2699(c).

23 33. Ms. Kabasele was employed by ULTA and several of the violations alleged herein were
24 committed against her during her time of employment. Ms. Kabasele is therefore an Aggrieved
25 Employee as defined by Labor Code § 2699(c).

1 34. ULTA's other current and former non-exempt employees of are also Aggrieved
2 Employee in that one or more of the alleged violations were also committed against them during their
3 time of employment with ULTA.

4 35. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
5 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
6 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action
7 brought by an aggrieved employee on behalf of himself or herself and other current or former
8 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
9 2699(a).

10 36. Ms. Kabasele hereby realleges and incorporates by reference each and every allegation
11 set forth above as though fully set forth herein.

12 37. The Aggrieved Employees were eligible for and at times received non-discretionary
13 bonuses, commissions, and other items of compensation.

14 38. Pursuant to its uniform policy and practice, ULTA failed to include commissions, non-
15 discretionary bonuses and other items of compensation when determining the Aggrieved Employees'
16 regular rate of pay for purposes of overtime, meal and rest break premiums, and sick pay.

17 39. Specifically, ULTA failed to properly calculate the Aggrieved Employees' regular rate
18 of pay for purposes of overtime, and instead paid them at 1.5 or 2.0 times their base rate of pay.

19 40. ULTA also failed to properly calculate the Aggrieved Employees' regular rate of pay
20 for purposes of meal and rest break premiums, and instead paid them meal and rest break premiums at
21 their base rate of pay.

22 41. ULTA further failed to properly calculate the Aggrieved Employees' regular rate of pay
23 for purposes of sick pay, and instead paid them sick pay at their base rate of pay

24 42. ULTA was, at all times relevant herein, aware of the requirement to factor these non-
25 discretionary bonuses, commissions, and other items of compensation into the Aggrieved Employees'
26 regular rate of pay for purposes of overtime, meal and rest break premiums, and sick pay.

1 43. Because of the violations set forth above, the wage statements furnished by ULTA to
2 the Aggrieved Employees violated California Labor Code section 226(a) insofar as they failed to
3 accurately show:

- 4 a. The gross wages earned, in violation of section 226(a)(1);
- 5 b. The total number of hours worked by the employee, in violation of section
6 226(a)(2);
- 7 c. The net wages earned, in violation of section 226(a)(5); and
- 8 d. All applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate in violation of section 226(a)(9).

10 44. ULTA has, at all times relevant herein, furnished wage statements to the Aggrieved
11 Employees pursuant to an established set of policies, procedures and practices.

12 45. As is outlined herein, ULTA violated the Labor Code as to Ms. Kabasele and other
13 Aggrieved Employees it employed and/or employs within California. Specifically, ULTA violated
14 Labor Code sections 201, 202, 203, 226, 226.7, 233, 246, 510, and 512, as well as the applicable IWC
15 Wage Orders.

16 46. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is
17 that which is provided for by the by the Labor Code. When the Labor Code does not provide a civil
18 penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay period and
19 \$200 for each subsequent violation per employee per pay period.

20 47. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee may
21 recover the civil penalty on behalf of himself or herself and other current or former employees against
22 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
23 in any action shall be entitled to an award of reasonable attorney's fees and costs.

24 48. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Ms. Kabasele, may
25 pursue a civil action arising under PAGA after the following requirements have been met:

- 26 a. The aggrieved employee shall give written notice by certified mail to the
27 LWDA and the employer (hereinafter "Employee's Notice") of the specific provisions of
28 California Labor Code alleged to have been violated, including the facts and theories to support
the alleged violations;

1 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
2 employer and the aggrieved employee by certified mail that it does not intend to investigate the
3 alleged violation within 60 days of the postmark date of the Employee’s Notice. Upon receipt
4 of the LWDA’s Notice, or if the LWDA does not provide notice with 65 calendar days of the
5 postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action
6 pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other
7 penalties to which the employee may be entitled.

8 49. For all alleged violations not enumerated in Labor Code § 2699.5, the employer is
9 given thirty-three (33) days to cure and notify the aggrieved employee by certified mail that the
10 violation has been cured. If the violation is not cured, the aggrieved employee may commence a civil
11 action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other
12 penalties to which the employee may be entitled.

13 50. On August 24, 2021 and September 2, 2021, Ms. Kabasele provided written notice by
14 certified mail to ULTA and by online filing to the LWDA of the specific provisions of the Labor Code
15 alleged to have been violated, including the facts and theories to support the alleged violations.

16 51. As of the filing of this Second Amended Class and Representative Action Complaint,
17 which is more 65 days after Ms. Kabasele provided written notice, the LWDA has not responded to
18 her notification or otherwise indicated an intention to investigate her claims.

19 52. Accordingly, Ms. Kabasele has satisfied the administrative prerequisites under Labor
20 Code § 2699.3 to bring a civil action to recover penalties against ULTA, in addition to other remedies,
21 for violations of California Labor Code sections 201, 202, 203, 226, 226.7, 233, 246, 510, and 512, as
22 well as the applicable IWC Wage Orders.

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FIRST CAUSE OF ACTION
Failure to Provide Meal Breaks
[Cal. Lab. Code §§ 226.7, 512 and the IWC Wage Orders]
Against Defendants

53. Ms. Kabasele hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

54. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

55. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ a person for a work period of more than 10 hours per day without providing an employee with a second meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived

56. Per the California Labor Code and applicable Wage Order(s) of the Industrial Welfare Commission ("IWC"), if an employer fails to provide a meal or rest or recovery period in accordance with an order of the IWC, the employer shall pay the employee one additional hour of "premium" pay

1 at the employee's regular rate of compensation for each workday that the meal or rest or recovery
2 period is not provided. Labor Code § 226.7, Cal. Code Regs., tit. 8, § 11020, subds. 11(D), 12(B).

3 57. "Regular rate of compensation", for purposes of premium pay for missed or otherwise
4 noncompliant meal and rest periods, includes not only the employee's regular hourly rate, but also all
5 other items of remuneration, including commissions. See *Studley v. Alliance Healthcare Services, Inc.*
6 (C.D. Cal. 2012) 201 WL 12286522, * 1 (holding that "regular rate of pay" [for overtime calculation
7 purposes] and "regular rate of compensation" [for premium pay calculation purposes] are
8 interchangeable).

9 58. As set forth above, Ms. Kabasele and the other members of the Meal Break Class were
10 not provided complaint meal breaks.

11 59. When Ms. Kabasele and the other members of the Meal Break Class were not provided
12 compliant meal breaks, ULTA did not pay premiums as required by California law. Specifically,
13 ULTA either (a) failed to pay the premiums in their entirety or (b) paid the premium(s) only at its
14 employees' base rate of pay rather than their regular rate of pay, without accounting for non-
15 discretionary bonuses, commissions, and/or other items of compensation.

16 60. Wherefore, Ms. Kabasele and the other members of the Meal Break Class have been
17 injured as set forth above and request relief as hereafter provided.

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19 **SECOND CAUSE OF ACTION**
20 **Failure to Provide Rest Breaks**
21 **[Cal. Lab. Code §§ 226.7, 512 and the IWC Orders]**
22 **Against Defendants**

23 61. Ms. Kabasele hereby realleges and incorporates by reference each and every allegation
24 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
25 allegations of this cause of action.

26 62. Labor Code § 226.7 requires employers to provide employees rest breaks as mandated
27 by Order of the Industrial Welfare Commission. It states:
28

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

63. The applicable Wage Order(s) provides that every “employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...” The applicable Wage Order further provides that “[i]f an employer fails to provide an employee rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.”

64. Per the California Labor Code and applicable Wage Order(s) of the Industrial Welfare Commission (“IWC”), if an employer fails to provide a meal or rest or recovery period in accordance with an order of the IWC, the employer shall pay the employee one additional hour of “premium” pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided. Labor Code § 226.7, Cal. Code Regs., tit. 8, § 11020, subds. 11(D), 12(B).

65. “Regular rate of compensation”, for purposes of premium pay for missed or otherwise noncompliant meal and rest periods, includes not only the employee's regular hourly rate, but also all other items of remuneration, including commissions. See *Studley v. Alliance Healthcare Services, Inc.* (C.D. Cal. 2012) 201 WL 12286522, * 1 (holding that “regular rate of pay” [for overtime calculation purposes] and “regular rate of compensation” [for premium pay calculation purposes] are interchangeable).

66. As set forth above, Ms. Kabasele and the other members of the Rest Break Class were not provided complaint rest breaks.

1 67. When Ms. Kabasele and the other members of the Rest Break Class were not provided
2 compliant rest breaks, ULTA did not pay premiums as required by California law. Specifically,
3 ULTA either (a) failed to pay the premiums in their entirety or (b) paid the premium(s) only at its
4 employees' base rate of pay rather than their regular rate of pay, without accounting for non-
5 discretionary bonuses, commissions, and/or other items of compensation.

6 68. Wherefore, Ms. Kabalese and the other members of the Rest Break Class have been
7 injured as set forth above and request relief as hereafter provided.

8 **THIRD CAUSE OF ACTION**
9 **Failure to Pay All Wages Due Upon Cessation of Employment**
 [Cal. Lab. Code § 201, *et seq.*]
10 **Against Defendants**

11 69. Ms. Kabalese hereby realleges and incorporates by reference each and every allegation
12 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
13 allegations of this cause of action.

14 70. Labor Code section 201 requires an employer to pay an employee all wages earned and
15 unpaid at the employer discharges the employee.

16 71. Labor Code section 202 requires an employer to pay the employee all wages due no
17 later than 72 hours after the employee quits his or her employment.

18 72. Labor Code section 203 provides: "If an employer willfully fails to pay, without
19 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
20 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
21 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
22 shall not continue for more than 30 days."

23 73. During the relevant time period, Defendants failed to pay Ms. Kabalese and the other
24 members of the Waiting Time Penalty Class all earned but unpaid wages at discharge.

25 74. Wherefore, Ms. Kabalese and the other members of the Waiting Time Penalty Class
26 have been injured as set forth above and request relief as hereafter provided.

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FOURTH CAUSE OF ACTION
Unfair Business Practices
[Cal. Bus. & Prof. Code § 17200 *et seq.*]
Against Defendants

75. Ms. Kabalese hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

76. The statutory violations, as alleged above, are unfair business practices within the meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et. seq.*), and include, but are not limited to, failing provide compliant meal breaks and rest breaks and to pay all premiums owed for the same.

77. Wherefore, Ms. Kabalese and the other members of the Meal Break Class and the Rest Break Class have been damaged as set forth above and request relief as hereafter provided.

FIFTH CAUSE OF ACTION
VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT
[Cal. Labor § 2698, *et seq.*]
Against Defendants

78. Ms. Kabalese hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

79. Ms. Kabalese is an “aggrieved employee” under the PAGA as he was employed by ULTA during the applicable statutory period, and suffered one or more of the Labor Code violations outlined herein. Other current and former employees are also aggrieved employees in that one or more of the alleged violations were also committed against them during their time of employment with ULTA.

80. Ms. Kabalese seeks to recover, on behalf of and as a proxy for the Labor and Workforce Development Agency (the “LWDA”), the civil penalties provided by the PAGA through a representative action permitted by the PAGA and *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969. Class certification of the PAGA claims is not required.

6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code sections 203 and 226.7;
7. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5 and 248.5(e) as well as Code of Civil Procedure section 1021.5;
8. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
9. That this Court award such other and further relief as the court deems just and proper.

As to the Fifth Cause of Action

1. For civil penalties, including but not limited to those available under Labor Code §§, 226.3, 256, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper

DATED: November 23, 2021

MAYALL HURLEY P.C.

By /s/ Robert J. Wasserman
WILLIAM J. GORHAM, III
NICHOLAS J. SCARDIGLI
ROBERT J. WASSERMAN
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