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ULTA SALON, COSMETICS & FRAGRANCE, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DORCAS-COTHY KABASELE, an individual

Plaintiff,

v.

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

Defendants.

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

CLASS ACTION

Honorable William B. Shubb

**CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint Filed: Sept. 10, 2021

FAC Filed: Sept. 29, 2021

SAC Filed: Nov. 23, 2021

TAC Filed: Feb. 15, 2022

Trial: None Set

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CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class and Representative Action Settlement Agreement and Release (“Settlement” or “Agreement”) is made and entered into by and between Defendant Ulta Salon, Cosmetics & Fragrance, Inc. (“Defendant”), and Plaintiffs Dorcas-Cothy Kabasele, Angel Gonzalez, Mindy Miranda, Saryna De Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Elizabeth Faaborg, Vincent Hall, Jerrica Labian, Lauren Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, Debbie Harrison, and Katia Arellano (“Plaintiffs,” and collectively with Defendant, “the Parties”), as individuals and on behalf of the Class.

1. DEFINITIONS

As used herein, for the purposes of this Agreement only, the following terms shall be defined as set forth below:

1.1 “**Actions**” means all operative and the most recent complaints filed in the following cases:

1.1.1 *Dorcas-Cothy Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Eastern District of California, Case No. 2:21-cv-01639-WBS-CKD, filed on September 10, 2021 (“*Kabasele Class and PAGA Action*”);

1.1.2 *Angel Gonzalez, et al., v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Central District of California, Case No. 2:22-cv-00363-AB-RAO, filed on November 19, 2021 (“*Gonzalez Class and PAGA Action*”);

1.1.3 *Katia Arellano v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Central District of California, Case No. 5:22-cv-00639-JGB-KKx, filed on February 1, 2022 (“*Arellano Class Action*”); and

1.1.4 *Katia Arellano v. Ulta Salon, Cosmetics & Fragrance, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2209151, filed on May 4, 2022 (“*Arellano PAGA Action*”).

1.2 “**Aggrieved Employees**” means all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from

1 August 24, 2020, through November 8, 2022, or the date Plaintiffs file their motion for preliminary
2 approval of the class action settlement, whichever comes first (“PAGA Period”).

3 1.3 “**Agreement**” refers to this Class and Representative Action Settlement Agreement and
4 Release entered into by Plaintiffs and Defendant for the resolution of these Actions.

5 1.4 “**Class Counsel**” refers to Mayall Hurley P.C., SW Employment Law Group, APC, and
6 Lavi & Ebrahimian, LLP.

7 1.5 “**Class Counsel Fees and Costs**” means payment to Class Counsel from the Gross
8 Settlement Amount and approved by the Federal Court for recoverable attorneys’ fees and
9 reimbursement of litigation costs and expenses related to the Actions, which include reasonable fees,
10 costs, expenses incurred to date, as well as all such reasonable fees, costs, and expenses incurred in
11 documenting the Settlement, securing approval of the Settlement, and administering and obtaining a
12 judgment and/or dismissal of the Actions. Subject to the Federal Court’s approval, it is agreed by the
13 Parties that the Class Counsel Fees are not to exceed 33.33% of the Gross Settlement Amount of
14 \$1,500,000.00 (or \$500,000.00), as supported by declaration and any additional documentation or
15 information as required by the Federal Court. Defendant agrees not to contest the amount of Class
16 Counsel Fees and Costs, provided that they are consistent with the terms of this Agreement. The Class
17 Counsel Fees and Cost are not a material term of the Agreement. If the Court reduces the amount of
18 Class Counsel Fee and Cost, all other terms of this Agreement shall remain in effect.

19 1.6 “**Class Members**” refers to all current and former hourly-paid or non-exempt employees
20 who worked for Defendant within the State of California during the time period from October 12, 2019
21 through November 8, 2022, or the date Plaintiffs file their motion for preliminary approval of the class
22 action settlement, whichever comes first (“Class Period”).

23 1.7 “**Class Payment(s)**” means each Participating Class Member’s respective share of the
24 Net Settlement Amount.

25 1.8 “**Class Period**” means the time period from October 12, 2019 through November 8,
26 2022, or the date Plaintiffs file their motion for preliminary approval of the class action settlement,
27 whichever comes first.

28 1.9 “**Courts**” refers to the Federal Courts and the State Court overseeing the Actions.

1 1.10 “**Data List**” means a complete list of all Class Members that Defendant will diligently
2 and in good faith compile from their records and provide to the Settlement Administrator within
3 30 calendar days after Preliminary Approval of this Settlement by the Federal Court. The Data List will
4 be formatted in Microsoft Office Excel and will include each individual’s full name, last known mailing
5 address and telephone number (if available), Social Security number, number of workweeks or pay
6 periods, and all necessary information to prepare and calculate the Class Payments. For purposes of this
7 Agreement, the Data List in Defendant’s records shall be considered the official information to be used
8 for this Settlement.

9 1.11 “**Defense Counsel**” refers to Jon D. Meer, Leo Q. Li, Sofya Perelshteyn, and Justin
10 Jackson of Seyfarth Shaw LLP.

11 1.12 “**Effective Date**” means the date upon which all of the following have occurred: (i) the
12 Federal Court has granted final approval of the Settlement and entered judgment thereof; and (ii) the
13 Federal Court’s judgment approving the Settlement becomes Final. “Final” shall mean the latest of: (i) if
14 there is an appeal of the Court’s Judgment, the date on which the Judgment is affirmed on appeal, the
15 date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the
16 U.S. Supreme Court, or (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for
17 writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is
18 filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

19 1.13 “**Enhancement Awards**” means the amounts to be paid to Primary Class Representatives
20 (as defined in this Agreement) in recognition of their effort and work in prosecuting the Actions on
21 behalf of Class Members, and for their general release of claims. Subject to the Federal Court’s
22 approval, the Enhancement Awards shall not exceed \$5,000.00 each for Plaintiffs Dorcas-Cothy
23 Kabasele, Angel Gonzalez, and Katia Arellano, and shall not exceed \$500.00 each for Plaintiffs Mindy
24 Miranda, Saryna De Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia
25 Benitez, Brittney Hughes, George Maddox, Victoria Henkes, Alex Alexandra Tan, Danielle Quaid, Elizabeth
26 Faaborg, Vincent Hall, Jerrica Labian, Lauren Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet
27 Sanchez, Brittany Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, and
28 Debbie Harrison (for a combined amount of \$28,500).

1.14 “**Federal Court**” refers to the United States District Court, Eastern District of California, presiding over the *Kabasele* Class and PAGA Action.

1.15 “**Final Approval Hearing**” refers to the hearing at which the Federal Court will make a final determination whether the terms of the Agreement are fair, reasonable, and adequate and meet all applicable requirements for final approval.

1.16 “**Gross Settlement Amount**” means the amount that is allocated towards the resolution of the Actions, in an amount not to exceed \$1,500,000.00. The Gross Settlement Amount shall be inclusive of (i) Class Counsel Fees and Costs; (ii) Enhancement Awards; (iii) PAGA Payment; (iv) Settlement Administration Costs, and (iv) Net Settlement Amount. The Gross Settlement Amount does not include the employer’s share of the payroll taxes on the wages portion of Class Payments. The Gross Settlement Amount is a material term of the Agreement and shall not be increased for any reason. If the Federal Court requires an increase to the Gross Settlement Amount, Defendant shall have the right to void the Agreement.

1.17 “**LWDA**” refers to the California Labor and Workforce Development Agency.

1.18 “**Net Settlement Amount**” means the portion of the Gross Settlement Amount remaining after deducting (i) the Class Counsel Fees and Costs, (ii) the Enhancement Awards, (iii) the PAGA Payment, and (iv) the Settlement Administration Costs, as approved by the Federal Court. The entire Net Settlement Amount shall be distributed to the Participating Class Members.

1.19 “**Notice**” refers to the document substantially in the form attached as **Exhibit A**, which will be distributed to all Class Members. The notice will explain the terms of the Agreement, including (i) information regarding the nature of the Actions; (ii) a summary of the principal terms of the Agreement; (iii) the Class Member and Aggrieved Employee definitions; (iv) the total number of Pay Periods each respective Class Member worked for Defendant during the Class Period; (v) the estimated Class Payment (if applicable) from the Net Settlement Amount to each Class Member; (vi) the formula for calculating the settlement payments; (vii) instructions on how to submit Requests for Exclusion, Notices of Objection, and Pay Periods disputes; (viii) the Response Deadline; and (ix) the claims to be released under the Class Settlement. The Notice will be printed in English only, because Class Members can speak, write, and understand English.

1 1.20 **“PAGA”** refers to the California Private Attorneys General Act of 2004, Cal. Lab. Code
2 §§ 2699, *et seq.*

3 1.21 **“PAGA Payment”** shall be \$50,000, as civil penalties, to be paid from the Gross
4 Settlement Amount. The PAGA Payment shall be allocated as follows: 75% of the PAGA Payment will
5 be paid to the LWDA, and 25% of the PAGA Payment will be paid to the Aggrieved Employees
6 pursuant to Labor Code § 2699(i).

7 1.22 **“PAGA Period”** shall mean the time period from August 24, 2020, through November 8,
8 2022, or the date Plaintiffs file their motion for preliminary approval of the class action settlement,
9 whichever comes first.

10 1.23 **“Pay Periods”** will be determined using the dates of active employment by Defendant
11 (i.e., exclusive of leaves of absences) in California during the Class Period. Defendant’s employment
12 records will be determinative for purposes of calculating the Pay Periods and any payments under the
13 Settlement. If an individual worked during any day of the Pay Period, the Pay Period shall be included
14 in their pro rata share of the Net Settlement Amount.

15 1.24 **“Participating Class Members”** are all Class Members who do not submit a timely and
16 valid Request for Exclusion.

17 1.25 **“Primary Class Representatives”** shall refer to those Plaintiffs who are receiving an
18 Enhancement Award per this Agreement.

19 1.26 **“Released Class Claims”** shall mean any and all claims that were pled or could have
20 been pled based on the factual allegations in the operative or prior complaints in the Actions, arising
21 during the Class Period, including, but not limited to, any claim for failure to provide meal or rest
22 periods, any claim for failure to pay premiums for non-compliant meal or rest periods, or to pay such
23 premiums at the regular rate, failure to pay minimum wage, failure to pay overtime wages or overtime
24 wages at the regular rate of pay, regular rate violations, failure to reimburse business expenses, failure to
25 pay timely wages during employment, failure to pay accrued wages upon termination of employment,
26 failure to furnish accurate and itemized wage statements, failure to provide any required form of sick
27 leave or sick pay, and failure to maintain accurate records arising under California Labor Code §§ 201,
28 202, 203, 204, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194,

1 1194.2, 1197, 1197.1, 1197.5, 1198, 2802 and the California Unfair Competition Law, Business and
2 Professions Code §§ 17200 *et seq.*, and California Industrial Welfare Commission Wage Order No. 7-
3 2001. The Released Class Claims as described above shall include any remedies for any of the claims
4 described herein, including, damages, penalties of any nature, restitution, declaratory relief, equitable or
5 injunctive relief, interest, attorneys' fees and costs.

6 1.27 **"Released PAGA Claims"** shall mean any and all PAGA claims for civil penalties that
7 are premised upon the California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 233, 246,
8 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 2802, or claims
9 covered by the Released Class Claims. The Released PAGA Claims shall be released by Plaintiff, the
10 LWDA, and all Aggrieved Employees, without any option to submit any Request for Exclusion.

11 1.28 **"Released Parties"** shall mean Defendant, its former, present and future owners, parents,
12 subsidiaries and affiliates, and all of its current, former and future officers, directors, members,
13 shareholders, managers, human resources representatives, employees, agents, principals, heirs,
14 representatives, accountants, auditors, consultants, insurers and reinsurers, and attorneys of the entities
15 listed in this paragraph.

16 1.29 **"Response Deadline"** means the deadline by which Class Members must postmark or fax
17 to the Settlement Administrator the Requests for Exclusion, Notices of Objection, and/or Pay Periods
18 disputes. The Response Deadline will be 45 calendar days from the initial mailing of the Notice by the
19 Settlement Administrator, unless the 45th calendar day falls on a Sunday or State holiday, in which case
20 the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. Those
21 Class Members who receive a re-mailed Notice, whether by skip-trace or otherwise, will have an
22 additional 21 calendar days to submit Requests for Exclusion, Notices of Objection, and/or Pay Periods
23 disputes.

24 1.30 **"Settlement Administrator"** refers to Simpluris, Inc.

25 1.31 **"Settlement Administration Cost"** refers to the costs payable from the Gross Settlement
26 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
27 printing, distributing, and tracking documents for this Agreement, tax reporting, distributing the Gross
28

Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs are currently estimated to be \$65,000.00.

2. RECITALS

2.1 The *Kabasele* Class and PAGA Action.

2.1.1 On September 10, 2021, Plaintiff Dorcas-Cothy Kabasele filed a wage and hour class and representative action against Defendant in the United States District Court, Eastern District of California, entitled *Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Case No. 2:21-CV-01639-WBS-CKD.

2.1.2 On February 15, 2022, Plaintiff Dorcas-Cothy Kabasele filed the operative Third Amended Complaint, alleging the following causes of action against Defendant: (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; and (5) Violation of Private Attorneys General Act (i.e., *Kabasele* Class and PAGA Action).

2.2 The *Gonzalez* Class and PAGA Action.

2.2.1 On November 19, 2021, the *Gonzalez* Plaintiffs¹ filed a wage and hour class and representative action against Defendant in Los Angeles Superior Court, entitled *Gonzalez, et al., v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Case No. 21STCV42843. On January 18, 2022, Defendant removed this action to the United States District Court for the Central District of California, Case No. 2:22-CV-00363-AB (RAOx) (i.e., *Gonzalez* Class and PAGA Action).

2.2.2 The *Gonzalez* Class and PAGA Action asserts the following causes of action against Defendant: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Overtime; (4) Failure to Maintain Accurate Records; (5) Failure to Pay All Wages When Due; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Reimburse Work Expenses; (8)

¹ The *Gonzalez* Plaintiffs include 28 individuals: Angel Gonzalez, Mindy Miranda, Saryna De Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Elizabeth Faaborg, Vincent Hall, Jerrica Labian, Lauren Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, and Debbie Harrison.

1 Failure to Timely Pay Wages Upon Termination; (9) Violation of the Private Attorney Generals Act of
2 2004; and (10) Unfair Business Practices.

3 2.2.3 On March 29, 2022, Defendant filed a Motion to Stay Proceedings pursuant to
4 the first-to-file rule, as well as the Court's inherent power to manage its docket and stay proceedings.
5 On June 2, 2022, the Court granted Defendant's motion, and stayed the *Gonzalez* Class and PAGA
6 Action until the Court ruled on class certification in the *Kabasele* Class and PAGA Action.

7 2.3 **The Arellano Class Action.**

8 2.3.1 On February 1, 2022, Plaintiff Katia Arellano filed a wage and hour class action
9 against Defendant in San Bernardino County Superior Court, entitled *Arellano v. Ulta Salon, Cosmetics*
10 *& Fragrance, Inc.*, Case No. CIVSB2202356. On April 13, 2022, Defendant removed this action to the
11 United States District Court for the Central District of California, Case No. 5:22-cv-00639-JGB-KK
12 (i.e., *Arellano* Class Action).

13 2.3.2 The *Arellano* Class Action asserts the following causes of action against
14 Defendant: (1) Failure to Pay Wages for All Hours Worked at Minimum Wage; (2) Failure to Pay
15 Overtime Wages; (3) Failure to Authorize or Permit Meal Periods; (4) Failure to Authorize or Permit
16 Rest Periods; (5) Failure to Reimburse Business Expenses; (6) Failure to Timely Pay Wages During
17 Employment; (7) Failure to Provide Complete and Accurate Wage Statements; (8) Failure to Timely Pay
18 All Wages at the Separation of Employment; and (9) Unfair Business Practices.

19 2.3.3 On June 3, 2022, Defendant filed a Motion to Stay Proceedings in the *Arellano*
20 Class Action, pursuant to the first-to-file rule, as well as the Court's inherent power to manage its docket
21 and stay proceedings. On July 15, 2022, the Court granted Defendant's motion, and stayed the *Arellano*
22 Class Action until the Court ruled on class certification in the *Kabasele* Class and PAGA Action.

23 2.4 **The Arellano PAGA Action.**

24 2.4.1 On May 4, 2022, Plaintiff Katia Arellano filed a wage and hour representative
25 action against Defendant in San Bernardino County Superior Court, entitled *Arellano v. Ulta Salon,*
26 *Cosmetics & Fragrance, Inc.*, Case No. CIVSB2209151 (i.e., *Arellano* PAGA Action). The *Arellano*
27 PAGA Action is based on the same Labor Code violations as the *Arellano* Class Action.
28

2.4.2 At the Initial Case Management Conference on October 4, 2022, the Parties informed the Court that they had reached a global settlement. The Court set a Further Case Management Conference for April 3, 2023.

2.5 The Parties Conducted Extensive Amount Of Formal And Informal Discovery.

2.5.1 Plaintiff Dorcas-Cothy Kabasele and Defendant engaged in written discovery. Defendant completed Plaintiff Dorcas-Cothy Kabasele's deposition, and Plaintiffs deposed Defendant's person most knowledgeable under Fed. R. Civ. P. 30(b)(6).

2.5.2 The Parties also engaged in extensive informal discovery after agreeing to attend private mediation. As part of the informal discovery process, Defendant provided Plaintiffs with all of the relevant written policies and procedures, including written policies on timekeeping, meal and rest periods, scheduling and recordkeeping.

2.5.3 Defendant also provided Plaintiffs with a random sample of employment data for approximately 10% of the proposed class, or approximately 1,500 employees. The sample included daily time records showing the start and stop time for each shift based on employee time punches, the start and stop time for meal periods based on employee time punches, and payroll records showing the hours worked, regular earnings, overtime earnings, and bonuses (if any). Defendant also furnished Plaintiffs with the proposed class census data, showing the number of current and former non-exempt employees. Defendant also provided information on the total amount of meal and rest period premiums paid, expense reimbursement payments made, and waiting time penalties paid to the Class Members.

2.5.4 Through both formal and informal discovery, Defendant has produced over 26,217 pages of documents to Plaintiffs.

2.5.5 Class Counsel represent they have thoroughly investigated Plaintiffs' claims against Defendant and interviewed several Class Members. Class Counsel further represent they have conducted their own investigation into the underlying facts, events, and issues related to the subject matter of the Actions, including the review of the time and payroll records produced by Defendant. In addition, Class Counsel represent that they have further undertaken an extensive analysis of the legal principles applicable to the claims asserted against Defendant, and the potential defenses thereto. All

Parties have had ample opportunity to evaluate their respective positions on the merits of the claims asserted.

2.6 Private Mediation

2.6.1 On September 8, 2022, the Parties attended a full-day mediation with Mr. Joel Grossman, a highly-respected and experienced mediator in wage-and-hour class action cases.

2.6.2 After a full-day mediation, the Parties reached an impasse, but continued settlement negotiations with the assistance from the mediator. The Parties ultimately accepted the mediator's proposal on September 22, 2022.

2.6.3 The Parties have agreed to settle the Actions for an amount not to exceed \$1,500,000 (i.e., the Gross Settlement Amount). In no event will Defendant be liable for more than the Gross Settlement Amount, except Defendant shall pay the employer's share of payroll taxes on the Class Payments separately and in addition to the Gross Settlement Amount. The entire Gross Settlement Amount will be disbursed pursuant to the terms and conditions of this Agreement and the PAGA Settlement, and none of it will revert to Defendant.

2.7 **The Settlement Is The Result Of Arms' Length Negotiations.** Based on the foregoing investigation and evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable, adequate, and in the best interests of the Class Members. The terms of the Settlement also reflect extensive exchange of information and data between the Parties, which allowed Class Counsel to fully evaluate the potential risks in pursuing the underlying claims on the merits. This Agreement was reached after extensive arm's-length negotiations, and it was negotiated in light of all known facts and circumstances, including the risks of significant delay and uncertainty associated with litigation, the risk that the Actions would not be permitted to proceed on a class or representative basis, various defenses asserted by Defendant, and numerous potential appellate issues.

2.8 **The Parties' Intent.** It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge any and all claims, rights, demands, charges, complaints, obligations or liability of any and every kind that were or could have been pled based on the factual allegations in the operative or prior complaints in the Actions arising during the Class Period, including, but not limited to, the Released Class Claims and Released PAGA Claims.

3. NON-ADMISSIONS OF LIABILITY

3.1 Defendant denies and continues to deny all of the allegations made by Plaintiffs in the Actions, and denies and continues to deny that it is liable or owes any damages, penalties or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Actions. Defendant denies any liability or wrongdoing of any kind in connection with Plaintiffs' claims, and contends that, during all relevant times, it complied with all applicable California and federal law. Nonetheless, without admitting or conceding any liability or damages whatsoever, and without admitting that a class and/or representative action is appropriate except for settlement purposes alone, Defendant has agreed to settle the Actions on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing with litigation.

3.2 The Parties understand and agree that this Agreement and any exhibits thereto are settlement documents and shall be inadmissible for the purpose of showing liability against Defendant or the Released Parties. However, the Parties agree that, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement.

4. FINANCIAL TERMS OF THE SETTLEMENT

4.1 **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, Defendant shall pay the Gross Settlement Amount not to exceed \$1,500,000.00, which includes Class Counsel Fees and Costs to Class Counsel, Enhancement Awards to Plaintiffs, PAGA Payment, Settlement Administration Costs to Settlement Administrator, and Net Settlement Amount for distribution to Participating Class Members. The Gross Settlement Amount is a material term of the Agreement and shall not be increased for any reason. If the Federal Court requires an increase to the Gross Settlement Amount, Defendant shall have the right to void the Agreement.

4.2 **Class Counsel Fees And Costs.** Class Counsel will apply to the Federal Court for an award of Class Counsel Fees not to exceed 33.33% of the Gross Settlement Amount, or \$500,000.00, and reasonable documented costs directly incurred for purposes of the Actions, as supported by

1 declarations. Except as provided in this Agreement, Defendant shall have no liability for any other
2 attorneys' fees, costs or expenses in connection with the Actions.

3 4.2.1 Class Counsel will be responsible for submitting all documents to support their
4 request for attorneys' fees, costs, and expenses in connection with the Actions. Defendant agrees not to
5 oppose or object to Class Counsel's request for Class Counsel Fees And Costs if they are made in
6 accordance with the terms of this Agreement.

7 4.2.2 The Federal Court's approval of the Class Counsel Fees And Cost is not a
8 material term of the Agreement. If the Federal Court does not approve or approves only a lesser amount
9 than that requested by Class Counsel for Class Counsel Fees And Costs, the other terms of the
10 Agreement shall still apply. The Federal Court's refusal to approve the Class Counsel Fees And Costs
11 requested by Class Counsel does not give the Plaintiffs, Class Members, or Class Counsel any basis to
12 abrogate the Agreement. Any amount of Class Counsel Fees And Costs requested by Class Counsel but
13 unapproved by the Federal Court shall be part of the Net Settlement Amount.

14 4.3 **Enhancement Awards.** Subject to the Federal Court's approval, Defendant agrees to pay
15 Enhancement Awards as follows: (1) up to \$5,000 each to Plaintiffs Dorcas-Cothy Kabasele, Katia
16 Arellano, and Angel Gonzalez, and (2) up to \$500.00 each for Plaintiffs Mindy Miranda, Saryna De
17 Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney
18 Hughes, George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Elizabeth Faaborg, Vincent
19 Hall, Jerrica Labian, Lauren Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez,
20 Brittany Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, and Debbie
21 Harrison (for a combined amount of \$28,500). The Enhancement Awards shall be paid from the Gross
22 Settlement Amount, as an enhancement for their services as the representative of the Class and
23 additional claims released by Plaintiffs. The Enhancement Awards shall be in addition to any pro rata
24 share of the Net Settlement Amount that Plaintiffs may otherwise receive under the Agreement.

25 4.3.1 Defendant will not oppose Plaintiffs' request for the Enhancement Awards.
26 Defendant will not deduct any payroll taxes from the Enhancement Awards because it is not considered
27 to be payment of wages. Plaintiffs will be responsible for correctly characterizing this compensation for
28 tax purposes and for paying any taxes owing on said amount. Plaintiffs shall indemnify and hold

harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payment of the Enhancement Awards.

4.3.2 The Federal Court's approval of the Enhancement Awards is not a material term of the Agreement. The Parties agree that a denial or reduction by the Federal Court of the requested Enhancement Awards is not a basis for rendering the entire Agreement voidable or unenforceable. Any reductions by the Federal Court of the Enhancement Awards shall be part of the Net Settlement Amount.

4.4 **Settlement Administration Cost.** Subject to the Federal Court's approval, Defendant agrees to pay the Settlement Administrator the Settlement Administration Cost, currently estimated at \$65,000, for the administration of this Settlement. The Settlement Administration Cost shall be paid from the Gross Settlement Amount. Any reduction by the Federal Court or any unused amount shall revert to the Net Settlement Amount. The Settlement Administrator shall assist in all aspects of the settlement process for the Actions, including, but not limited to:

4.4.1 Printing, distributing, and tracking Notices and resending Notices pursuant to the terms of this Agreement;

4.4.2 Establishing a separate employer identification number and a Qualified Settlement Fund, tax reporting, making tax payments, providing required 1099 and W-2 forms;

4.4.3 Calculating and distributing the Class Counsel Fees And Costs, Enhancement Awards, Class Payments, PAGA Payment, and Settlement Administration Cost.

4.4.4 Documenting and determining which Class Members have submitted a timely and valid Request for Exclusion, Notice of Objection, and/or Pay Period disputes;

4.4.5 Depositing the funds from uncashed or undelivered checks to the appropriate non-profit organization or agency under this Agreement; and

4.4.6 Providing necessary reports and declarations, as requested by the Parties or the Federal Court, including weekly reports on the number of Class Members who have timely submitted Requests for Exclusion, Notices of Objection, and/or Pay Period disputes.

4.5 **Net Settlement Amount.** After deducting (i) the court-approved Class Counsel Fees And Costs, (ii) the court-approved Enhancement Awards, (iii) the court-approved PAGA payment, and

(iv) the court-approved Settlement Administration Costs, the remainder of the Gross Settlement Amount is the Net Settlement Amount.

5. RELEASES

5.1 Release By Participating Class Members. Upon the Effective Date, the Participating Class Members, Plaintiffs and their heirs, executors, administrators, attorneys, agents and assigns, fully and finally release and forever discharge the Released Parties from any and all Released Class Claims during the Class Period. As a result of this release, the Participating Class Members will be unable to bring a claim or seek recovery for any alleged violations of the Released Class Claims that took place during the Class Period.

5.2 Release By The State Of California And The Aggrieved Employees. Upon the Effective Date, Plaintiffs, on behalf of themselves, the State of California, and the Aggrieved Employees fully and finally release and forever discharge the Released Parties from any and all Released PAGA Claims during the PAGA Period. As a result of this release, Plaintiffs, the State of California, and the Aggrieved Employees will not be able to bring a claim or seek civil penalties based on the Released PAGA Claims that took place during the PAGA Period.

5.3 Additional Release By Plaintiffs. In addition to the Released Class Claims and the Released PAGA Claims, upon the Effective Date, Plaintiffs will generally release and forever discharge the Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not asserted, which Plaintiffs have or may have against the Released Parties as of the date of execution of this Agreement. For the purpose of implementing a full and complete release and discharge of the Released Parties, Plaintiffs expressly waive all rights provided by California Civil Code § 1542, or any other similar provisions of applicable law, which are as follows: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

5.4 Injunction From Pursuing Released Claims. Upon final approval of the Settlement, Plaintiffs, Participating Class Members, the State of California, and the Aggrieved Employees shall be enjoined from filing, initiating, or continuing to prosecute any actions, claims, complaints, or

proceedings in any court, or with the California Divisions of Labor Standards Enforcement (“DLSE”), or with the LWDA, or the United States Department of Labor (“DOL”), or with any other entity regarding the claims released in the Agreement. This Settlement is conditioned upon the release by Plaintiffs, the Participating Class Members and Aggrieved Employees as described herein, and upon covenants by these individuals that they will not participate in any actions, lawsuits, proceedings, complaints, or charges brought by the DLSE, LWDA, DOL, or by any other agency, persons, or entity in any court or before any administrative body related to the claims released in this Agreement. In the event that any court or administrative agency does not order injunctive relief, Defendant shall have the right to file a motion for summary judgment or any other pleading or paper to enforce the terms of this Agreement. The Class Members and Class Counsel will not oppose, contest or interfere with efforts by Defendant to oppose any attempt to bring such released claims against Defendant.

5.5 Class Members’ Acknowledgment. The Participating Class Members acknowledge that they may hereafter discover facts or law different from, or in addition to, the facts or law they know or believe to exist with respect to the Released Class Claims. The Participating Class Members nonetheless agree that this Settlement, including the Released Class Claims, contained herein shall be and remain effective in all respects notwithstanding such different or additional facts or law regarding such Released Class Claims. These releases do not include any claims that cannot be waived as a matter of law, but the Participating Class Members agree that they will not accept any monetary recovery or benefit from any proceedings relating to any such claims.

6. COMPUTATION OF SETTLEMENT PAYMENTS TO PARTICIPATING IN CLASS MEMBERS AND AGGRIEVED EMPLOYEES

6.1 Payments Based On Pay Periods. The Net Settlement Amount will be distributed to eligible Participating Class Members based on their number of Pay Periods during the Class Period. Defendant shall provide records (*i.e.*, the Data List) showing the total Pay Periods of Class Members during the Class Period. Defendant’s records shall be determinative for purposes of calculating the number of Pay Periods worked and any payments to the Participating Class Members.

6.2 Distribution Of Net Settlement Amount. The Class Payments to Participating Class Members will be determined by dividing the value of Net Settlement Amount by the total number of Pay

1 Periods of all Participating Class Members during the Class Period, and then multiplying the resulting
2 figure by the number of Pay Periods of each Participating Class Member during the Class Period.

3 **6.3 Distribution Of PAGA Payments.** PAGA Payments to Aggrieved Employees will be
4 determined by dividing \$12,500 (25% of the PAGA Payment, which is allocated to Aggrieved
5 Employees) by the total number of Pay Periods of all Aggrieved Employees during the PAGA Period,
6 and then multiplying the resulting figure by the number of Pay Periods of each Aggrieved Employee
7 during the PAGA Period.

8 **6.4 No Impact On Employee Benefit Plans.** None of the payments made pursuant to the
9 Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or
10 contributions to any benefit plan, including, without limitation, all plans subject to the Employee
11 Retirement and Income Security Act of 1974 ("ERISA"). Any distribution of payments to Plaintiffs and
12 Participating Class Members shall not be considered as a payment of wages or compensation under the
13 terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the
14 amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any
15 amounts paid will not impact or modify any previously credited hours of service or compensation taken
16 into account under any benefit plan sponsored or contributed to by Defendant or any jointly-trusted
17 benefit plan. For purposes of this Agreement, "benefit plan" means each and every "employee benefit
18 plan," as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any 401(k) plan, bonus,
19 pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability,
20 vacation, sick time or pay, severance, hospitalization, insurance, incentive, deferred compensation, or
21 any other similar benefit plan, practice, program, or policy.

22 **7. NOTICE TO CLASS MEMBERS AND AGGRIEVED EMPLOYEES**

23 **7.1 Data List.** Defendant shall provide the Settlement Administrator with the Data List
24 within 30 calendar days after the Federal Court grants preliminary approval of the proposed Settlement.
25 The Data List is being provided confidentially to the Settlement Administrator only, and the Settlement
26 Administrator shall treat the information as private and confidential and take all necessary precautions to
27 maintain the confidentiality of Data List. This information is to be used only to carry out the Settlement
28 Administrator's duties as specified in this Settlement.

1 **7.2 Mailing Of Notice.** The Settlement Administrator shall mail the Notice to Class
2 Members within 15 calendar days of the receipt of the Data List via First Class U.S. Mail, using the
3 most current, known mailing address for each Class Member based on information provided by
4 Defendant.

5 **7.3 Non-Delivered Notices Or Checks.** Any mailing returned to the Settlement
6 Administrator as undeliverable shall be re-mailed within five calendar days via First Class U.S. Mail to
7 the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
8 Administrator shall attempt to determine the correct address using a computer-based skip-trace search,
9 and it shall then perform a single re-mailing via First Class U.S. Mail within five calendar days. If the
10 computer-based skip-trace search does not provide a correct address, the Settlement Administrator shall
11 attempt to determine the correct address using the Class Member's Social Security number and any
12 available information provided by Defendant. If the Settlement Administrator is unable to determine the
13 correct address using the Class Member's Social Security number and/or any information provided by
14 Defendant, the Settlement Administrator shall perform a search based on the National Change of
15 Address Database maintained by the United States Postal Service to update and correct any known or
16 identifiable address changes.

17 **8. OPTIONS TO RESPOND**

18 **8.1 Consideration Period.** Class Members shall be provided 45 calendar days to submit a
19 Request for Exclusion, Notice of Objection, and/or Pay Periods dispute, following the postmark date of
20 the initial mailing of the Notice. Except as specifically provided herein, no Requests for Exclusion or
21 Notices of Objection that are postmarked or faxed more than 45 calendar days after the initial mailing of
22 the Notice or, with respect to a re-mailed Notice, an additional 21 calendar days from the date of re-
23 mailing, shall be considered.

24 **8.2 Request For Exclusion And Opt Out Rights.** Class Members shall be given the
25 opportunity to opt out of the Class Settlement.

26 **8.2.1 Opt Out Procedures.** Class Members may opt out of the Class Settlement by
27 mailing to the Settlement Administrator a Request for Exclusion. Any such Request for Exclusion must
28 be postmarked or faxed by the Response Deadline. A valid Request for Exclusion must: (a) state the

case name and number of the *Kabasele* Class and PAGA Action; (b) provide the Class Member's name (and former names, if any), current address, current telephone number, and last four digits of his or her Social Security number; and (c) clearly state that the Class Member wishes to be excluded from the Class Settlement. Any Request for Exclusion that does not include all of the required information or that is not submitted in a timely manner will be deemed null, void, and ineffective. If there is a dispute regarding the timeliness or validity of a Request for Exclusion, the Settlement Administrator shall make the determination, after consultation with Class Counsel and Defense Counsel.

8.2.2 Effect Of Opt Out. Any Class Member who opts out of the Class Settlement may not object to the Class Settlement, shall not receive any share of the Net Settlement Amount, and shall not be bound by the applicable Released Class Claims provisions in this Agreement. If a Class Member submits both a Request for Exclusion and a Notice of Objection, the Settlement Administrator will attempt to contact the Class Member to inquire regarding his or her intention to opt out of or object to the Class Settlement. If the Settlement Administrator is unable to confirm the Class Member's intention, the Class Member's Request for Exclusion will be valid and be deemed to invalidate the Notice of Objection.

8.3 Objection Rights. Because the Class will be certified by the Federal Court for purposes of settlement, only Class Members who do not opt out of the Class Settlement shall be entitled to object to the terms of the Class Settlement.

8.3.1 Objection Procedures. Objections to the Settlement must be made using the procedures set forth in the Notice. A timely and valid written objection to the Settlement (i.e., Notice of Objection) must be sent to the Settlement Administrator and postmarked by the Response Deadline. A Notice of Objection shall be deemed to be submitted as of the postmarked or fax date. To be a valid objection, the Notice of Objection must include the following: (i) the case name and number of the *Kabasele* Class and PAGA Action; (ii) the objector's full name, signature, address, telephone number, and last four digits of the Social Security Number of the Class Member submitting the Notice of Objection; (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based; and (v) a statement whether the objector intends to appear at the Final Approval Hearing. If the objector

1 is represented by counsel, statement shall include the name, address, and telephone number of their
2 counsel.

3 8.3.2 Participating Class Members who submit an objection remain bound by this
4 Agreement. Class Members who submit a timely and valid Notice of Objection may be subject to appear
5 for a deposition, if requested by Plaintiffs or Defendant.

6 8.3.3 **Waiver Of Objection Rights.** Class Members who fail to make objections in
7 the manner specified in the Notice shall be deemed to have waived any objections and shall be
8 foreclosed from making any objection, whether by appeal or otherwise, to this Agreement.

9 8.4 **Disputed Pay Periods On Notice.** Class Members will have an opportunity to dispute
10 the number of Pay Periods indicated on their Notice. To do so, Class Members must produce evidence to
11 the Settlement Administrator showing that such information is inaccurate on or before the Response
12 Deadline. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate
13 the evidence submitted by the individual and will make the final decision as to the merits of the dispute.
14 All disputes will be decided within 10 business days after the Response Deadline. The Settlement
15 Administrator shall have the right to contact Defense Counsel and/or Class Counsel if it determines
16 more information is needed to resolve any issue of disputed Pay Periods.

17 8.5 **Defendant's Rights To Withdraw Based On The Number Of Request For Exclusion.**
18 Defendant has the right, at its sole option, to withdraw from this Agreement if 100 or more Class
19 Members submit a timely and valid Request for Exclusion. Defendant must exercise this right of
20 rescission in writing within 14 calendar days after the Settlement Administrator notifies the Parties in
21 writing that at least 100 Class Members have opted out of the Class Settlement. These rights to withdraw
22 are material terms of the Agreement and Defendant has the right, at its sole option, to withdraw from
23 this Agreement if either of these material terms are not approved by the Court. If Defendant exercises
24 this right to withdraw, Defendant will be responsible for all Settlement Administration Costs incurred by
25 the Settlement Administrator.

26 8.6 **Proof Of Class Members' Responses.** No later than 75 calendar days after the initial
27 mailing of the Notice, the Settlement Administrator will prepare and submit a declaration attesting to its
28 mailing of the Notice, its inability to deliver any mailing due to invalid addresses, its receipt of valid

Requests for Exclusion and Notices of Objection, and any other information that the Parties request be included. At least 10 calendar days prior to the Final Approval Hearing, the Settlement Administrator will prepare a supplemental declaration (at the request of Class Counsel or Defense Counsel) to submit to the Court.

9. SETTLEMENT APPROVAL PROCEDURE

9.1 Amendment Of *Kabasele* Complaint. Prior to or concurrently with the filing of the motion for preliminary approval of the class action settlement, Plaintiff Dorcas-Cothy Kabasele and her counsel shall seek leave of Court to file an amended Complaint substantially in the form attached as **Exhibit B** in the United States District Court of the Eastern District of California in the *Kabasele* Class and PAGA Action. This amendment will seek to join the Plaintiffs in the *Gonzalez* Class and PAGA Action, *Arellano* PAGA action, and *Arellano* Class Action as parties, and seek to include the Released Class Claims and Released PAGA Claims to the pending *Kabasele* Class and PAGA Action for the sole purpose of seeking preliminary approval of this Settlement. Defense Counsel shall have reasonable time to review the draft of Exhibit B and suggest revisions to the draft. Defense Counsel and Class Counsel shall ensure that the amended complaint contains adequate factual and legal bases to effectuate the Released Class Claims and Released PAGA Claims in this Agreement. Plaintiffs agree to take all reasonable steps to satisfy any and all procedural requirements set forth by the Federal Court to effectuate the terms of the Settlement, including timely seeking preliminary approval of the Settlement.

9.2 Preliminary Approval Of Class/Representative Settlement. Upon execution of this Agreement, Plaintiffs and Class Counsel shall promptly prepare the Motion For Preliminary Approval of Class/Representative Settlement to be filed in the *Kabasele* Class and PAGA Action. Class Counsel and Defense Counsel shall use their best efforts to ensure that the Motion and amended complaint are filed with the Federal Court within 60 days of execution of this Agreement. This Motion shall seek an order to conditionally certify the Class for the sole purpose of settlement and preliminarily approve the proposed settlement according to the terms in this Agreement. The Motion also shall seek an order that provides for the Notice to be sent to Class Members as specified in this Agreement. This Motion shall include the bases for the Class/Representative Settlement Amount and why the amount is reasonable in light of the facts and controlling authorities pertaining to the claims alleged in the Actions. The Motion

1 shall also be accompanied by signed declarations by Class Counsel, discussing the risks of continued
2 litigation and that the best interests of both Parties and the Class Members are served by the terms of this
3 Agreement.

4 **9.3 Final Approval.** Plaintiffs shall submit to the Federal Court a Motion for Final Approval
5 of the Class and Representative Settlement as soon as practicable after the Response Deadline or
6 pursuant to order by the Federal Court. The Motion shall request the entry of a Final Approval Order,
7 which shall include findings and orders: (a) approving the Agreement; (b) adjudging the terms to be fair,
8 reasonable, and adequate; (c) reciting the release terms in full; (d) directing that the settlement terms and
9 provisions be carried out; and (e) retaining jurisdiction to oversee administration and enforcement of the
10 terms of this Agreement and the Federal Court's orders.

11 **9.4 Motion For Class Counsel Fees And Costs And Enhancement Awards.** Class Counsel
12 shall file a motion or application for the Federal Court's approval of Class Counsel Fees and Costs and
13 Enhancement Awards under the terms of the Agreement. Defendant will not oppose the motion,
14 provided it is consistent with this Agreement.

15 **9.5 Settlement Is Conditioned On Approval Of The Agreement.** Parties acknowledge and
16 agree that the global settlement will be memorialized in one written agreement for the Class and
17 Representative Settlement, and requires approval in Federal Court. It is the Parties' intention that the
18 Agreement is valid if the approval of the proposed Settlement by the Federal Court becomes Final.
19 Accordingly, the Effective Date of this Agreement is contingent upon the order approving the
20 Settlement in the *Kabasele* Class and PAGA Action.

21 **9.6 Effect Of Failure To Obtain Preliminary Or Final Approval.** If the proposed
22 settlement or a substantially similar settlement mutually agreed to by the Parties is not preliminarily or
23 finally approved by the Federal Court, the Actions shall proceed as if no settlement had been attempted,
24 unless the Parties jointly agree to seek reconsideration of the ruling or Federal Court's approval of a
25 renegotiated settlement. Defendant retains the right to contest whether any aspect of the Actions should
26 be maintained as a class or representative action, or to contest the merits of the claims being asserted by
27 the Plaintiffs or Class Members in the Actions. Defendant also retains the right to seek to enforce the
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Memorandum of Understanding (“MOU”) executed by the Parties and their respective counsel on September 26, 2022.

9.7 Entry Of Judgment. The Parties shall request that the Federal Court issue Judgment in accordance with this Agreement and without further fees or costs to any party except as expressly set forth in this Agreement. In the event either the Federal Court fails to enter final judgment in accordance with this Agreement, or such final judgment is vacated or reversed, the Actions shall proceed as if no settlement had been attempted, unless the Parties jointly agree to seek reconsideration or appellate review of the ruling or approval of a renegotiated settlement.

9.8 Dismissal Of Related Actions. Upon final approval of the Settlement, Plaintiffs in the *Gonzalez* Class and PAGA Action, the *Arellano* Class Action, and the *Arellano* PAGA Action shall promptly seek dismissal of their respective lawsuit based on the Settlement, with prejudice. The Settlement Administrator shall not distribute any Enhancement Awards or Class Counsel Fees and Costs until these related actions have been dismissed by the Courts.

9.9 Notice To The LWDA. Class Counsel shall give written notice of the Settlement to the LWDA simultaneously with the filing of the Motion For Preliminary Approval of Class/Representative Settlement in the *Kabasele* Class and PAGA Action, to provide the LWDA to comment and/or object to the terms of the Settlement Class Counsel moves for final approval.

10. FUNDING AND DISTRIBUTION OF THE CLASS/REPRESENTATIVE SETTLEMENT AMOUNT

10.1 Funding Of Class/Representative Settlement Amount. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID Number and calculate all settlement checks and payroll deductions and withholdings required under law based on information that will be confidentially furnished by Defendant. Within 30 calendar days after the Effective Date, Defendant shall deposit the Class/Representative Settlement Amount into an interest bearing escrow account with the Settlement Administrator.

1 **10.2 Timing Of Disbursement Of Class/Representative Settlement Amount.**

2 **10.2.1 Class Counsel Fees And Costs.** Subject to the terms of the Agreement, the
3 Settlement Administrator shall distribute payment of any approved Class Counsel Fees And Costs
4 within 20 calendar days after the funding of the Gross Settlement Amount. This is the same date that the
5 Net Settlement Amount will be distributed to Participating Class Members. Class Counsel agree that
6 they are responsible for allocating this payment among themselves and any other counsel for Plaintiffs
7 settling claims through this Agreement. The Settlement Administrator shall issue an Internal Revenue
8 Service Form 1099 to Class Counsel for any Class Counsel Fees And Costs payment, based on the
9 allocation communicated by Class Counsel. Class Counsel shall be solely and legally responsible for
10 paying all applicable taxes on any Class Counsel Fees And Costs and shall indemnify and hold harmless
11 Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

12 **10.2.2 Enhancement Awards.** Subject to the terms of the Agreement, the Settlement
13 Administrator shall pay to Plaintiffs any approved Enhancement Awards within 20 calendar days after
14 the funding of the Gross Settlement Amount. The Settlement Administrator shall issue an IRS Form
15 1099 to Plaintiffs for any Enhancement Awards. Plaintiffs shall be solely and legally responsible for
16 paying all applicable taxes on any Enhancement Awards and shall indemnify and hold harmless
17 Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

18 **10.2.3 Settlement Administration Cost.** The Settlement Administrator shall pay itself
19 any approved Settlement Administration Cost within 20 calendar days after the funding of the Gross
20 Settlement Amount. The Settlement Administrator shall be solely and legally responsible for paying all
21 applicable taxes on any Settlement Administration Cost and shall indemnify and hold harmless
22 Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

23 **10.2.4 Distribution Of PAGA Payment.** The Settlement Administrator shall distribute
24 PAGA Payments to Aggrieved Employees within 20 days after the funding of the Gross Settlement
25 Amount. PAGA Payments to Aggrieved Employees will be determined by dividing \$12,500 (25% of
26 the PAGA Payment, which is allocated to Aggrieved Employees) by the total number of Pay Periods of
27 all Aggrieved Employees during the PAGA Period, and then multiplying the resulting figure by the
28 number of Pay Periods of each Aggrieved Employee during the PAGA Period.

10.2.5 **Distribution Of Net Settlement Amount.** The Settlement Administrator shall distribute Net Settlement Amount to Participating Class Members within 20 calendar days after the funding of the Gross Settlement Amount. Class Payments made under this Settlement will be attributed 90% as penalties and interest, to be reported on IRS Form 1099 (if applicable), and 10% as unpaid wages, to be reported on IRS Form W-2 and subject to payroll deductions. In accordance with applicable tax laws, Net Settlement Amount are subject to reduction for the employee's share of required tax withholdings and payroll deductions on the wage portion of the Class Payments. The employer's share of payroll taxes on the wages portion of Net Settlement Amount shall be paid by Defendant separately and in addition to the Gross Settlement Amount. The Settlement Administrator shall issue any necessary IRS Form 1099 and Form W-2 statements to Participating Class Members for their respective share of the Net Settlement Amount. Participating Class Members shall be solely and legally responsible for paying all other applicable taxes on their respective share of the Net Settlement Amount and shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

10.2.6 The Parties warrant and represent that the allocation of the Net Settlement Amount as 90% to non-wage payments (*e.g.*, business expenses, interest, and statutory penalties) and 10% to wage-related payments is reasonably within the parameters of liability for the Actions, given that the vast of majority of recovery, if any, in the Actions would be comprised of statutory penalties.

10.3 Undeliverable Or Uncashed Checks.

10.3.1 The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Class Payment checks, if any, to the Participating Class Members, the postmark date of any subsequent mailing to any Participating Class Members, and a list of any individuals who did not receive the settlement checks due to the inability to locate a valid address using the procedures described herein above in Section 7.3 or who otherwise could not be located within two attempts at mailing.

10.3.2 All Class Payment checks will remain valid and negotiable for 180 days from the date of their mailing by the Settlement Administrator. After 180 calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account

1 shall be distributed by the Settlement Administrator to the California State Controller's Office pursuant
2 to California's Unclaimed Property Law. No part of the Net Settlement Amount shall be returned to
3 Defendant.

4 10.3.3 For any Participating Class Members for whom the settlement checks were
5 deemed undeliverable, the funds associated with the settlement payment will be distributed to the
6 California State Controller's Office pursuant to California's Unclaimed Property Law.

7 **11. MISCELLANEOUS PROVISIONS**

8 11.1 **Interim Stay Of Proceedings.** The Parties agree to refrain from further litigation in the
9 Actions, except such proceedings necessary to implement and to obtain preliminary and final approval
10 of the terms of the Agreement. If the Settlement is not finally approved, the Parties agree that they will
11 revert to their positions in the lawsuit prior to the time the Agreement was reached, and no terms set
12 forth in this Agreement will be admissible in any future proceedings in this case or any other action.

13 11.2 **Certification Of Class Action And Representative Action For Settlement Purposes**
14 **Only.** The Parties agree to stipulate to class action and representative action certification for purposes of
15 the settlement only. If, for any reason, the settlement is not approved, the stipulation to certification will
16 be void, and Defendant shall have the full opportunity to file any motion to challenge class certification
17 or any motion to challenge the manageability of PAGA claims. The Parties further agree that
18 certification for purposes of the settlement is not an admission that class action or representative action
19 certification is proper under the standards applied to contested certification motions and that this
20 Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class or
21 representative action should be certified or (ii) Defendant is liable to Plaintiffs or any Class Member,
22 other than according to the terms of the Agreement.

23 11.3 **Mutual Cooperation.** Plaintiffs, Defendant, Class Counsel, and Defense Counsel agree
24 to fully cooperate with each other to accomplish the terms of this Agreement, including, but not limited
25 to, execution of such documents and taking such other action as may reasonably be necessary to
26 implement the terms herein. The Parties agree to use their best efforts and any other efforts that may
27 become necessary by order of the Courts, or otherwise, to effectuate this Agreement.
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1 **11.4 Class Counsel's Representation.** Class Counsel agree and represent that they will not
2 engage in any conduct to undermine the terms of the Agreement, including any solicitation efforts to
3 persuade any Class Member from opting out of or objecting to the Settlement. Class Counsel further
4 agree and represent that they do not represent any Class Members other than Plaintiffs and will not
5 actively solicit any other Class Members to pursue claims that have been released in this Settlement on
6 an individual, collective, class or representative basis. Class Counsel also warrant and represent that they
7 have access to any of the Plaintiffs who will be executing this Agreement, and that they will obtain their
8 signatures within 15 days after Class Counsel and Defense Counsel sign this Agreement. The Parties
9 agree that verifiable electronic signatures are sufficient. However, if the Court orders wet signatures, the
10 Parties will follow the Court's Order.

11 **11.5 Parties' Authority.** The signatories hereto represent that they are fully authorized to
12 enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein. It is
13 agreed that Participating Class Members are so numerous that it is impossible or impractical to have
14 each Participating Class Member execute this Agreement. It is agreed that this Agreement may be
15 executed on behalf of Participating Class Members and by Plaintiffs and Class Counsel.

16 **11.6 Binding Effect Of Settlement.** Although some Class Members might not receive the
17 Notice as provided under this Agreement, due to inability to locate their current address following the
18 procedures set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of
19 this Agreement and the order approving the Settlement.

20 **11.7 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties
21 with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and
22 understandings between the Parties shall be deemed merged into this Agreement. However, if the
23 Federal Court does not issue an Order for Preliminary Approval or Final Approval of this Agreement,
24 and the Parties are unable to reach an understanding that satisfies the Federal Court's concerns, then
25 Defendant shall have the right to seek enforcement of the MOU.

26 **11.8 Arms' Length Transaction; Materiality Of Terms.** The Parties have arrived at this
27 Agreement as a result of arm's length negotiations. Except as otherwise stated in this Agreement, all
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terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

11.9 **Counterparts.** This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one signed Agreement, which shall be binding upon and effective as to all Parties.

11.10 **Facsimile Or Scanned Signatures.** Any party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via facsimile or as an attachment to an e-mail to counsel for the other party. Any signature made and transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party who transmits the signature page.

11.11 **Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Plaintiffs, Participating Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.

11.12 **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

11.13 **Severability Clause For Invalidity Of Any Provision.** Before declaring any provision of this Agreement invalid, the Federal Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to render all provisions of this Agreement valid and enforceable.

11.14 **No Prior Assignments Or Undisclosed Liens.** Plaintiffs represent and warrant that they have not assigned, transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or otherwise dispose of, any Released Claims or the attorneys' fees and costs to be paid pursuant to this Agreement. Plaintiffs further represent and warrant that there are not any liens or claims against any of the amounts to be paid by Defendant pursuant to this Agreement. Plaintiffs agree to

1 defend, to indemnify, and to hold Defendant harmless from any liability, losses, claims, damages, costs,
2 or expenses, including reasonable attorneys' fees, resulting from a breach of these representations or
3 from any lien or assignment.

4 **11.15 No Initiated Publicity.** Class Counsel shall not take any action or initiate to publicize, or
5 cause to be publicized, directly or indirectly, the discussions resulting in or the existence of this
6 settlement or its terms, in any type of mass media, including, but not limited to, speeches, press
7 conferences, press releases, interviews, television or radio broadcasts, blogs, websites, newspapers,
8 Internet posting, Facebook, Instagram, Twitter or any other social media, or information furnished to
9 legal news media, including but not limited to *Bloomberg Law*, *Law 360*, and the *Daily Journal*. Class
10 Counsel shall not refer to Defendant by name in its public marketing materials, law firm websites, or
11 posting with any other organizations, such as the California Employment Lawyers Association
12 ("CELA"). Class Counsel further agrees and warrants that if they were contacted by media outlets
13 regarding this case, they will simply state that the lawsuit exists and has been resolved. Nothing in this
14 section shall prevent Class Counsel from referencing this settlement to a court as evidence of their
15 experience in connection with motions for class certification, approval of settlements, fee motions, and
16 the like. Further, nothing in this section shall prevent the Settlement Administrators from posting the
17 Class Notice approved by the Court on their website for Class Members' reference.

18 **11.16 Continuing Jurisdiction.** The Federal Court shall retain jurisdiction over the
19 implementation of this Agreement as well as any and all matters arising out of, or related to, the
20 implementation of this Agreement and settlement. The Federal Court shall not have jurisdiction to
21 modify the terms of the Agreement without the consent of all of the Parties.

22 **11.17 Modification.** The Agreement may not be changed, altered, or modified, except in
23 writing and signed by the Parties hereto or their counsel of record. After preliminary approval of the
24 Settlement has been granted, the Settlement may not be modified except by a writing signed by the
25 Parties hereto or their counsel of record, and approved by the Federal Court.

26 **11.18 Disputes.** If the Parties have a dispute with regard to the language of this Agreement,
27 they agree to first attempt to resolve the dispute informally through good faith negotiations, but if those
28 efforts are unsuccessful, they agree to mediate any such dispute, with Joel Grossman, the mediator that

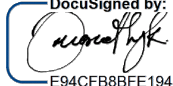
helped the Parties reach the Settlement. The Parties will split the costs of the mediator, and all parties will bear their own fees and costs.

11.19 Governing Law. This Agreement was made and entered into in the State of California. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of the State of California and the procedural laws of the United States of America.

11.20 Papers To Be Filed With The Courts. All papers to be filed with the Federal Court by Defense Counsel or Class Counsel in connection with this Agreement shall be submitted to the other party at least three business days prior to filing. The other party shall have no right to object to the papers unless they do not conform to the terms and conditions of this Agreement.

SO AGREED AND STIPULATED.

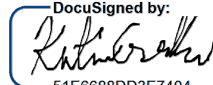
DATED: 12/19/2022

By: 
E94CFB8BFE1941C...
DORCAS-COTHY KABASELE,
Plaintiff

DATED: 12/28/2022

By: Angel Gonzalez
ANGEL GONZALEZ,
Plaintiff

DATED: December 20, 2022

By: 
51E6688DD3F7404...
KATIA ARELLANO,
Plaintiff

DATED: 12/28/2022

By: Mindy Miranda
MINDY MIRANDA,
Plaintiff

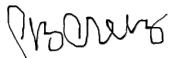
DATED: 1/4/2023

By: Saryna De Jesus
SARYNA DE JESUS,
Plaintiff

1 DATED: 12/28/2022
2 _____

By: 
TATIANA BRENAL,
Plaintiff

4 DATED: 12/28/2022
5 _____

By: 
FLOR CRUZ,
Plaintiff

8 DATED: 1/4/2023
9 _____

By: 
JULISSA PEREZ,
Plaintiff

11 DATED: 1/2/2023
12 _____

By: 
ELISSA PADILLA,
Plaintiff

14 DATED: 12/31/2022
15 _____

By: 
IAN LAMAR,
Plaintiff

18 DATED: 12/31/2022
19 _____

By: 
CLAUDIA BENITEZ,
Plaintiff

21 DATED: 1/6/2023
22 _____

By: 
BRITTNEY HUGHES,
Plaintiff

24 DATED: 12/28/2022
25 _____

By: 
GEORGE MADDOX,
Plaintiff

1 DATED: 1/10/2023
2 _____

By: 
3 VICTORIA HENKES,
4 Plaintiff

5 DATED: _____

By: _____
6 ALLEXANDRA TAN,
7 Plaintiff

8 DATED: 1/2/2023
9 _____

By: 
10 DANIELLE QUAID,
11 Plaintiff

12 DATED: _____

By: _____
13 ELIZABETH FAABORG,
14 Plaintiff

15 DATED: _____

By: _____
16 VINCENT HALL,
17 Plaintiff

18 DATED: 1/4/2023
19 _____

By: 
20 JERRICA LABIAN,
21 Plaintiff

22 DATED: _____

By: _____
23 LAUREN HALL,
24 Plaintiff

25 DATED: 12/29/2022
26 _____

By: 
27 RYAN GUFFEY,
28 Plaintiff

1 DATED: 12/28/2022
2 _____

By: 
KIERSTEN WONG,
Plaintiff

4 DATED: 12/28/2022
5 _____

By: 
BRITTANI HERENA,
Plaintiff

7 DATED: _____
8 _____

By: _____
JANET SANCHEZ,
Plaintiff

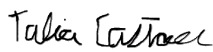
10 DATED: 1/2/2023
11 _____

By: 
BRITTANY SOMMERS,
Plaintiff

13 DATED: 12/29/2022
14 _____

By: 
CHEYENNE LOPEZ,
Plaintiff

16 DATED: 12/29/2022
17 _____

By: 
TALIA CASTENEDA,
Plaintiff

19 DATED: 12/31/2022
20 _____

By: 
NOHELY LLAMAS,
Plaintiff

22 DATED: 12/30/2022
23 _____

By: 
RHONDA PRICKETT,
Plaintiff

1 DATED: 1/2/2023

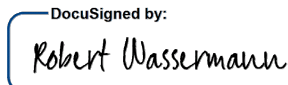
2 By: *Debbie Harrison*
3 DEBBIE HARRISON,
4 Plaintiff

5
6 DATED: 1/18/2023

7 By: *Jodi Caro*
8 ULTA SALON, COSMETICS &
9 FRAGRANCE, INC.,
10 Defendant
11 Jodi Caro
12 General Counsel, Chief Risk & Compliance
13 Officer
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:DATED: 12/19/2022

MAYALL HURLEY P.C.

By: 
DocuSigned by:
Robert Wasserman
077A13A0E77A4C5...
 Robert Wasserman
Attorneys for Plaintiff
 DORCAS-COTHY KABASELE

DATED: 01/17/2023

SASOONESS LAW GROUP

By: 
 Shawn Sasooness
Attorneys for the Gonzalez Plaintiffs

DATED: December 21, 2022

LAVI & EBRAHIMIAN, LLP

By: 
DocuSigned by:
Joseph Lavi
871E0169FCF244D...
 Joseph Lavi
 Vincent C. Granberry
Attorneys for Plaintiff
 KATIA ARELLANO

DATED: 1/18/2023

SEYFARTH SHAW LLP

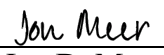
By: 
 Jon D. Meer
 Leo Q. Li
Attorneys for Defendant
 ULTA SALON, COSMETICS &
 FRAGRANCE, INC.

Exhibit A

NOTICE OF CLASS ACTION SETTLEMENT

Dorcas-Cothy Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.
Eastern District of California, Case No. 2:21-cv-01639-WBS-CKD

Angel Gonzalez, et al., v. Ulta Salon, Cosmetics & Fragrance, Inc.
Central District of California, Case No. 2:22-cv-00363-AB-RAO

Katia Arellano v. Ulta Salon, Cosmetics & Fragrance, Inc.
Central District of California, Case No. 5:22-cv-00639-JGB-KKx

Katia Arellano v. Ulta Salon, Cosmetics & Fragrance, Inc.
San Bernardino County Superior Court, Case No. CIVSB2209151

Attention to all current and former hourly-paid or non-exempt employees who worked for Ulta Salon, Cosmetics & Fragrance, Inc. (“Defendant”) in the State of California at any time between October 12, 2019 through November 8, 2022 (“Class Period”).

THIS NOTICE is to inform you of a proposed settlement of four class action lawsuits (“Settlement”), in which you may be entitled to receive money. The Settlement involves a settlement and resolution of the Released Class Claims (as defined in Section VII) (“Class Settlement”). Your rights may be affected by the legal proceedings in this matter. Please review this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you take no further action and do not opt out of the Class Settlement (as described in Section IX), you will automatically be eligible to receive payment in connection with the Class Settlement (“Class Payment”), which will be based on your total number of pay periods worked in California during the Class Period. In exchange for receiving the Class Payment, you will be bound to the Class Settlement, including the Released Class Claims (as defined in Section VII).
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	You may request to be excluded from or “opt out” of the Class Settlement by submitting a timely and valid Request for Exclusion to the Settlement Administrator no later than [Response Deadline] in accordance with the instructions set forth below in Section IX. If you submit a timely and valid Request for Exclusion, you will not receive the Class Payment and you will not be bound by the release provisions in connection with the Class Settlement (see Section VII).
OBJECT TO THE SETTLEMENT	You may object to the Settlement by timely submitting a written objection to the Settlement Administrator no later than [Response Deadline], in accordance with the instructions set forth below in section X. If the Court grants final approval of the Settlement despite your objection, you will be eligible to receive Class Payment and will be bound by the Class Settlement, including the Class Released Claims (as defined in Section VII below).

I. Why should I read this Notice?

Defendant’s records indicate that you may be eligible to take part in the class action settlement that has been reached between Plaintiffs Dorcas-Cothy Kabasele, Angel Gonzalez, Mindy Miranda, Saryna De Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Elizabeth Faaborg, Vincent Hall, Jerrica Labian, Lauren Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers, Cheyenne Lopez, Talia

Casteneda, Nohely Llamas, Rhonda Prickett, Debbie Harrison, and Katia Arellano (“Plaintiffs”) and Defendant (collectively, the “Parties”). If the Court approves the proposed Settlement, your legal rights may be affected. This Notice, which has been authorized by the Court, is only a summary. A more detailed Class Action Settlement Agreement and Release (“Settlement Agreement”) is on file with the Court, where it is available for your review.

II. What are these lawsuits about?

The following four class action lawsuits (“the Lawsuits”) are the subject of this settlement:

1. *Dorcas-Cothy Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Eastern District of California, Case No. 2:21-cv-01639-WBS-CKD;
2. *Angel Gonzalez, et al., v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Central District of California, Case No. 2:22-cv-00363-AB-RAO;
3. *Katia Arellano v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Central District of California, Case No. 5:22-cv-00639-JGB-KKx; and
4. *Katia Arellano v. Ulta Salon, Cosmetics & Fragrance, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2209151.

Plaintiffs, on behalf of themselves and other similarly situated employees, claim that Defendant violated the California Labor Code, California Industrial Welfare Commission Wage Orders, and California and Business and Professions Code, including, but not limited to, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay minimum wages, failure to pay wages at the correct rate of pay, failure to pay all wages timely during employment, failure to pay all wages due to discharged and quitting employees, failure to maintain accurate records, failure to provide accurate wage statements, failure to provide required sick leave or sick pay, and failure to reimburse employees for business expenses. Plaintiffs seek a monetary recovery on your behalf for the alleged violations, including damages, penalties, interest, restitution, attorneys’ fees, and costs, as well as injunctive and declaratory relief.

Defendant denies all of the allegations in the Lawsuits and contends that it has, at all times, complied with all state, local, and federal laws. The Court has not issued any opinions concerning the merits of the Lawsuits and has not ruled on any of the claims. The Court also has not ruled that the Lawsuits are appropriate to proceed as a class action.

To avoid additional expense, inconvenience, and risks of continued litigation, Defendant and Plaintiffs have concluded that it is in their respective best interests and the interests of the Class to settle the Lawsuits on the terms summarized in this Notice. After providing extensive information to Class Counsel (listed in Section IV below), the Settlement was reached following an arm’s length mediation with a respected and experienced mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the proposed Settlement was a good option to resolve the disputed claims. By agreeing to settle the Lawsuits, Defendant is not admitting that it violated any state, local, or federal law.

Plaintiffs and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Defendant, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

III. Who is covered by the class action lawsuits and the proposed Settlement?

The proposed Settlement seeks to cover all Participating Class Members, which include all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California at any time between

October 12, 2019 through November 8, 2022 (*i.e.*, the “Class”), who do not submit a timely and valid Request for Exclusion. “**Class Member**” is an individual member of the Class.

The Effect of Membership as a Class Member. If you come within the definition of a Class Member, you are eligible to receive the benefits created by the proposed Settlement if it is approved by the Court. Class Members who exclude themselves from the Class Settlement by submitting a Request for Exclusion will not be bound by the Class Settlement and will not receive a Class Payment.

IV. Who represents the Class?

The Court has designated Plaintiffs as class representatives in the Lawsuits. The Court also has designated the attorneys who represent Plaintiffs as Class Counsel for the Class:

Robert Wassermann
Mayall Hurley,
P.C.
2453 Grand Canal
Blvd.
Stockton, CA 95207
Tel: (209) 477-3833

Shawn Sasooness
Maria Burciaga
SW Employment
Law Group, APC
700 Irvine Center
Drive, Suite 930
Irvine, California
92618
Tel: (888) 492-0633

Joseph Lavi
Vincent Granberry
Lavi & Embrahimian,
LLP
8889 W. Olympic Blvd.,
Suite 200
Beverly Hills, California
90211
Tel: (310) 432-0000

V. What are the terms of the Settlement?

The proposed Settlement was negotiated between the attorneys for the Parties. Class Counsel believe that this Settlement is fair and reasonable, and is in the best interest of the Class Members.

In connection with this Settlement, Defendant will pay a total settlement amount of \$1,500,000.00 (the “Gross Settlement Amount”). The Gross Settlement Amount includes amounts awarded by the Court for (i) Class Counsel Fees and Costs, (ii) Enhancement Awards, (iii) PAGA Payment; (iv) Settlement Administration Costs, and (v) Net Settlement Amount.

- **Class Counsel Fees and Costs:** Class Counsel will apply to the Court for an award of attorneys’ fees and costs in an amount up 33.33% of the Gross Settlement Amount of \$1,500,000.00, or \$500,000.00, for their work in connection with the Lawsuit (“Class Counsel Fees and Costs”). The Class Counsel Fees and Costs awarded by the Court will be paid from the Gross Settlement Amount. Class Counsel have been prosecuting the Lawsuit on behalf of Plaintiffs the and Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- **Enhancement Awards:** Plaintiffs will apply to the Court for enhancement awards as follows: an amount not exceeding \$5,000.00 each for Dorcas-Cothy Kabasele, Angel Gonzalez, and Katia Arellano, and an amount not exceeding \$500.00 each for Mindy Miranda, Saryna De Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Elizabeth Faaborg, Vincent Hall, Jerrica Labian, Lauren Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, and Debbie Harrison (for a combined amount of \$28,500), for their services in the Lawsuits as class representatives and for their general release of claims (“Enhancement Awards”). The Enhancement Awards will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiffs, in addition to their Class Payments that they are entitled to under the Settlement.

- **PAGA Payment:** \$50,000 shall be paid to the Labor and Workforce Development Agency (“LWDA”) and the Aggrieved Employees as civil penalties in accordance with the Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et. seq.* Pursuant to Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% of the PAGA Payment will be paid to the LWDA, and 25% of the PAGA Payment will be paid to the Aggrieved Employees, *i.e.*, all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from August 24, 2020, through November 8, 2022.
- **Settlement Administration Costs:** Class Counsel will apply to the Court for an award of Settlement Administration Costs of up to \$65,000.00 for the third-party Settlement Administrator, Simpluris, Inc., for the administrative services in connection with this Settlement, including and not limited to, notifying the Class Members of the Settlement, processing Requests for Exclusion and Objections, calculating Class Payments, and distributing payments and tax forms under the Settlement.
- **Net Settlement Amount:** The Net Settlement Amount is the portion of the Gross Settlement Amount remaining after deducting the amount approved by the Court for Class Counsel Fees and Costs, Settlement Administration Costs, PAGA Payment, and Enhancement Awards. The entire Net Settlement Amount shall be distributed to the Participating Class Members. As discussed below, the wage-portion of the Net Settlement Amount will be subject to payroll withholdings.

Subject to the Court’s final approval of the Settlement, each Participating Class Member will receive an individual settlement payment (*i.e.*, Class Payment) reflecting his or her *pro rata* share of the Net Settlement Amount, based on the number of pay periods that he or she worked for Defendant in California during the Class Period. Class Payments to Participating Class Members will be determined by dividing the value of Net Settlement Amount by the total number of pay periods of all Participating Class Members worked in California during the Class Period, and then multiplying the resulting figure by the number of pay periods of each Participating Class Member worked in California during the Class Period.

The amount you may be eligible to receive under the Settlement is listed in Section VI below. Each Class Payment will be allocated 90% as penalties and interest, to be reported on IRS Form 1099 (if applicable), and 10% as unpaid wages, to be reported on IRS Form W-2 and subject to payroll deductions. The wages portion of each Class Payment will be subject to reduction for the employee’s share of required tax withholdings and payroll deductions, and the employer’s share of taxes will be paid by Defendant separately and in addition to the Gross Settlement Amount. The Settlement Administrator shall issue any necessary IRS Form 1099 and Form W-2 statements to Participating Class Members for their respective share of the Net Settlement Amount.

If the Court grants final approval of the Settlement, Class Payments will be made by way of physical check and mailed to 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.**

VI. What is my estimated settlement payment?

While the precise amount of your share of the Class Payment with respect to the Net Settlement Amount are not known at this time, based upon the number of pay periods you worked for Defendant as a non-exempt or hourly-paid employee in the State of California at any time during the Class Period, your share of the Net Settlement Amount (*i.e.*, Class Payment) is estimated to be \$, based on pay periods from October 12, 2019 through November 8, 2022.

If you wish to dispute the pay periods credited to you, you must submit your dispute by way of written letter that is sent to the Settlement Administrator. The written letter must: (a) contain the case name and number of the *Kabasele* class action (*Dorcas-Cothy Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Case No. 2:21-cv-

01639-WBS-CKD); (b) be signed by you; (c) contain your full name, address, telephone number, and the last four digits of your Social Security Number; (d) clearly state that you dispute the number of pay periods credited to you and what you contend is the correct number to be credited to you; (e) include information and/or attach documentation demonstrating that the number of pay periods that you contend should be credited to you is correct; and (f) be returned to the Settlement Administrator at the address specified in Section IX below, postmarked **no later than [the Response Deadline]**.

VII. What claims am I giving up under the Settlement?

Upon the Court's final approval of the Settlement, judgment will be entered fully and finally settling the Lawsuit as to all Participating Class Members.

As a result of the Settlement and judgment to be entered, Plaintiffs and Participating Class Members will have released and discharged Defendant and any of their former, present and future owners, parents, subsidiaries and affiliates, and all of their current, former and future officers, directors, members, shareholders, managers, human resources representatives, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and attorneys of the entities listed in this paragraph (collectively, the "Released Parties") of and from any and all claims that were pled or could have been pled based on the factual allegations in the operative or prior complaints in the Lawsuits, arising during the Class Period, including, but not limited to, any claim for failure to provide meal or rest periods, any claim for failure to pay premiums for non-compliant meal or rest periods, or to pay such premiums at the regular rate, failure to pay minimum wage, failure to pay overtime wages or overtime wages at the regular rate of pay, regular rate violations, failure to reimburse business expenses, failure to pay timely wages during employment, failure to pay accrued wages upon termination of employment, failure to furnish accurate and itemized wage statements, failure to provide any required form of sick leave or sick pay, and failure to maintain accurate records arising under California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 2802 and the California Unfair Competition Law, Business and Professions Code §§ 17200 *et seq.*, and California Industrial Welfare Commission Wage Order No. 7-2001, and any remedies for any of the claims described herein, including, damages, penalties of any nature, restitution, declaratory relief, equitable or injunctive relief, interest, attorneys' fees and costs ("Released Class Claims").

VIII. How do I receive a payment?

Any Class Member who wishes to be considered for the Class Payment under this Settlement must not submit a Request for Exclusion. If you submit a timely and valid Request for Exclusion, you will not receive a Class Payment.

IX. How do I opt out of the Class Settlement?

In order to exclude yourself from the Class Settlement, you must submit a timely and valid written request to be excluded from the Class Settlement ("Request for Exclusion") to the Settlement Administrator, Simpluris, Inc., postmarked no later than **[INSERT DATE]**, at the following address:

Simpluris, Inc.

[ADDRESS]

[PHONE NUMBER]

A valid Request for Exclusion must: (i) state the case name and number of the *Kabasele* class action (*Dorcas-Cothy Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Case No. 2:21-cv-01639-WBS-CKD); (ii) provide your name (and former names, if any), current address, current telephone number, and last four digits of your Social Security number; and (iii) clearly state that you wish to be excluded from the Class Settlement.

Any Class Member who opts out of the Class Settlement may not object to the Class Settlement, will not receive a Class Payment, and will not be bound by the Class Settlement or Released Class Claims (as defined in Section VII above).

If you do not comply with these procedures and the deadline to submit a Request for Exclusion, you will lose any opportunity to exclude yourself from the Class Settlement, and your rights will be determined in this Lawsuit by the Settlement Agreement if it is approved by the Court.

X. How do I object to the Settlement?

In order to make a timely and valid objection, you must submit a written objection (“Notice of Objection”) to the Settlement Administrator, Simpluris, Inc., at the address listed above in Section IX, **postmarked** no later than **[INSERT DATE]**. To be valid, the Notice of Objection must include the following: (i) the case name and number of the *Kabasele* class action (*Dorcas-Cothy Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Case No. 2:21-cv-01639-WBS-CKD); (ii) your full name, signature, address, telephone number, and last four digits of your Social Security Number; (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based; and (v) a statement whether you intend to appear at the Final Approval Hearing.

If you do not comply with the procedures set forth above and the deadline for objections, you will lose any opportunity to have your objection considered by the Court or otherwise to contest the approval of the Settlement or to appeal from any orders or judgments entered by the Court in connection with the Settlement.

PLEASE NOTE: If you do not wish to be represented by Class Counsel, you may hire your own attorney at your own expense. Your attorney must send a Notice of Appearance to the Settlement Administrator, Simpluris, Inc., at **[THE SETTLEMENT ADMINISTRATOR ADDRESS]**, so that it is **postmarked** on or before **[INSERT DATE]**. You will be responsible for any attorneys’ fees and costs charged by your attorney.

XI. When is the Court hearing and what is it for?

On **[INSERT COURT HEARING DATE]**, the Hon. William B. Shubb will hold a public hearing in Courtroom 5 of the United States District Court, Eastern District of California, located at 501 I Street, Sacramento, California 95814, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel Fees and Costs, and whether to approve the Enhancement Awards.

Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval.

XII. Where can I get more information?

If you have questions about this Notice, the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a Class Member, you should contact the Settlement Administrator, Simpluris, Inc., for more information or to request that a copy of this Notice be sent to you in the mail. You may also request a copy of the full Settlement Agreement. The Settlement Administrator may be contacted at **[Insert Settlement Administrator name, address and telephone number]**.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

QUESTIONS? CALL **[INSERT TOLL-FREE NUMBER]**

Exhibit B

MAYALL HURLEY P.C.
ROBERT J. WASSERMANN (SBN: 258538)
rwassermann@mavallaw.com
NICHOLAS F. SCARDIGLI (SBN: 249947)
nscardigli@mavallaw.com
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Stockton, California 95207-8253
Telephone: (209) 477-3833

SW EMPLOYMENT LAW GROUP, APC
Shawn Sasooness (SBN: 300768)
shawn@swemploymentlaw.com
Maria Burciaga (SBN: 334545)
maria@swemploymentlaw.com
7700 Irvine Center Drive, Suite 930
Irvine, CA 92618
Telephone: (949) 674-4922

LAVI & EBRAHIMIAN, LLP
Joseph Lavi (SBN: 209776)
jlavi@lelawfirm.com
Vincent Granberry (SBN: 276483)
vgranberry@lelawfirm.com
8889 W. Olympic Blvd., Suite 200
Beverly Hills, CA 90211
Telephone: (310) 432-0000

Attorneys for Plaintiffs and the Putative Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Dorcas-Cothy Kabasele, Katia Arrellano,
Angel Gonzalez, Mindy Miranda, Saryna De
Jesus, Tatiana Brenal, Flor Cruz, Julissa
Perez, Elissa Padilla, Ian Lamar, Claudia
Benitez, Brittney Hughes, George Maddox,
Victoria Henkes, Allexandra Tan, Danielle
Quaid, Elizabeth Faaborg, Vincent Hall,
Jerrica Labian, Lauren Hall, Ryan Guffey,
Kiersten Wong, Brittani Herena, Janet
Sanchez, Brittany Sommers, Cheyenne
Lopez, Talia Casteneda, Nohely Llamas,
Rhonda Prickett, Debbie Harrison,

Plaintiff,

vs.

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

Defendants.

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

FOURTH AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR

1. FAILURE TO PAY MINIMUM WAGE
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PROVIDE MEAL BREAKS
4. FAILURE TO PROVIDE REST BREAKS
5. FAILURE TO PAY SICK PAY
6. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS
7. FAILURE TO PAY ALL WAGES DUE AT
END OF EMPLOYMENT
8. FAILURE TO PAY BUSINESS EXPENSES
9. VIOLATION OF BUSINESS AND
PROFESSIONS CODE SECTION 17200
10. VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT

JURY TRIAL DEMANDED

1
2 Plaintiffs Dorcas-Cothy Kabasele, Angel Gonzalez, Mindy Miranda, Saryna De Jesus, Tatiana
3 Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George
4 Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Elizabeth Faaborg, Vincent Hall, Jerrica
5 Labian, Lauren Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers,
6 Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, Debbie Harrison, and Katia
7 Arellano bring this class and collective action against ULTA Salon, Cosmetics & Fragrance, Inc., and
8 Does 1 through 100, for violations of the California Labor Code, the California Business and
9 Professions Code, and the IWC Wage Orders.

10 **PARTIES**

11 1. Plaintiffs Dorcas-Cothy Kabasele, Angel Gonzalez, Mindy Miranda, Saryna De Jesus,
12 Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes,
13 George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Elizabeth Faaborg, Vincent Hall,
14 Jerrica Labian, Lauren Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany
15 Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, Debbie Harrison, and
16 Katia Arellano (collectively “Plaintiffs”) were, at all times relevant herein, employed in California and
17 were “employees” as defined by the Fair Labor Standards Act, the California Labor Code, and the
18 applicable California Industrial Wage Commission (“IWC”) Order(s).

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

22 3. ULTA and Does 1-100 are collectively referred to as “Defendants.”

23 4. Plaintiffs are not aware of the true names and capacities of the Defendants sued herein
24 as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
25 Defendants by these fictitious names. Plaintiffs will amend this Complaint to allege their true names
26 and capacities when ascertained. Plaintiffs are informed and believes, and on that basis alleges, that
27 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
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1 alleged and that Plaintiffs' injuries and damages herein alleged were legally caused by such
2 Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of
3 said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

4 5. Plaintiffs are informed and believes and thereupon alleges that at all times mentioned
5 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
6 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
7 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
8 within the course and scope of such agency, service, employment partnership, joint venture and/or
9 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
10 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
11 the remaining Defendants.

12 **JURISDICTION AND VENUE**

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

16 **CLASS ACTION ALLEGATIONS**

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

19 8. Plaintiffs worked for ULTA at various ULTA locations throughout Northern and
20 Southern California between 2016 and 2022.

21 9. Throughout their employment, Plaintiffs were hourly, non-exempt employees, but did
22 not receive all wages owed, including but not limited to, minimum wages and premium wages,
23 overtime wages, meal period premiums, rest period premiums, paid sick leave, and reporting time pay.

24 10. Plaintiffs were eligible to be paid for every hour worked. Plaintiffs were also eligible to
25 receive overtime and other forms of compensation, as required by California law.

26 11. However, Plaintiffs were at times not paid for every hour worked. Specifically,
27 Plaintiffs were not always paid for off-the-clock pre-shift or post-shift duties, including setting the
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1 alarm and approving timesheets, as well as time spent working during their off-the-clock meal periods.

2 Plaintiffs also were not always paid for bag checks and for COVID-related screenings.

3 12. Plaintiffs and ULTA's other non-exempt employees were eligible for and at times
4 received non-discretionary bonuses, commissions, and other items of compensation.

5 13. However, ULTA failed to properly include the non-discretionary bonuses,
6 commissions, and other items of compensation when calculating and paying wages owed to
7 Plaintiffs and its other non-exempt employees. These include, but are not limited to, overtime pay,
8 paid sick leave, meal period premiums, and rest period premiums.

9 14. For example, ULTA failed to include commissions, shift differential pay, non-
10 discretionary bonuses, and other items of compensation when determining the regular rate of pay of
11 Plaintiffs and its other non-exempt employees for purposes of overtime, paid sick leave, meal period
12 premiums, and rest period premiums.

13 15. Plaintiffs and ULTA's other non-exempt California employees were also entitled to
14 various forms of sick pay and paid sick leave.

15 16. Pursuant to its uniform policy and practice, ULTA failed to include commissions, non-
16 discretionary bonuses and other items of compensation when determining Plaintiffs' and its other non-
17 exempt California employees' regular rate of pay for purposes of sick pay.

18 17. Plaintiffs and ULTA's other non-exempt California employees were not consistently
19 authorized or permitted to take meal and rest breaks as required by California law.

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

22 19. Further, ULTA frequently failed to relieve Plaintiffs and its other non-exempt
23 California employees of employer control during their meal and rest breaks.

24 20. When Plaintiffs and ULTA's other non-exempt California employees were able to take
25 their meal breaks, they routinely occurred after 5 hours of work.

26 21. Specifically, Plaintiffs and ULTA's other non-exempt California employees' meal and
27 rest breaks were often interrupted by managers and they were required to return to work early due to
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1 understaffing and work demands. To the extent ULTA's written policies permitted non-exempt
2 employees, including Plaintiffs, to take a 30-minute meal period during their work shifts, ULTA's
3 actual policy and practice was to regularly deny employees, including Plaintiffs, a reasonable
4 opportunity to take legally-compliant meal breaks.

5 22. Similarly, Plaintiffs and ULTA's other non-exempt California employees were
6 regularly prevented by ULTA from taking rest breaks as required by California law.

7 23. ULTA required employees, when entering their time for the day, to state whether they
8 had received all of their meal and rest breaks. However, due to the pressures that ULTA placed on its
9 managerial staff to ensure that its records appeared legally compliant, supervisors discouraged
10 employees from reporting missed meal and rest periods.

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

16 25. At least 26 named Plaintiffs' employment with ULTA have all ended as of November
17 2021. However, to date Plaintiffs have not been paid all wages due and owing, including but not
18 limited to premium pay for all missed meal and rest periods.

19 26. Because ULTA's non-exempt California employees are not always paid for every hour
20 worked, overtime as appropriate and at the correct rate, provided compliant meal and rest breaks, or
21 the premiums associated with missing the same, they are not timely paid all wages due and owing to
22 them during each pay period and at the end of their employment.

23 27. Because of the violations set forth above, the wage statements furnished by ULTA
24 to Plaintiffs and its non-exempt California employees violated California Labor Code section
25 226(a) insofar as they failed to accurately show:

- 26 a. The gross wages earned, in violation of section 226(a)(1);
- 27 b. The total number of hours worked by the employee, in violation of section
28 226(a)(2);

- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

28. Plaintiffs and ULTA's non-exempt California employees also incurred and were not reimbursed for certain business expenses. Specifically, Plaintiffs and ULTA's non-exempt California employees were required to use their personal cell phones for work, including but not limited to, calling and texting managers and colleagues, scanning products, training, and using ULTA's "WorkJam" application. Plaintiffs and ULTA's non-exempt California employees were not reimbursed for this cell phone use or were insufficiently reimbursed. Plaintiffs and ULTA's non-exempt California employees were required to use their personal vehicles to perform their job duties, including but not limited to commuting to different store locations, but ULTA did not reimburse them. Plaintiffs and ULTA's nonexempt California employees were also required to use or purchase their own tools and/or resources to perform their job duties, but ULTA did not reimburse them.

29. From at least four years prior to the filing of this action, ULTA has adopted and employed unfair business practices. These unfair business practices include, but are not limited to, pay minimum wage and overtime, and failing provide compliant to pay premiums for missed meal and rest breaks when due.

CLASS ACTION ALLEGATIONS

30. Plaintiffs seek to maintain this action as a class action as to the First through Ninth Causes of Action. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The putative class which Plaintiffs seek to represent consists of the following:

- a. All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California during the time period from October 12, 2019 through November 8, 2022 (the "Class").

31. The class of persons is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiffs are

1 informed and believes, and based thereon alleges, that Defendants employ more than 13,000
2 employees who satisfy the class definition. Although the exact number and identity of class members
3 is not presently known, they can be identified in Defendants' records through coordinated discovery
4 pursuant to this class action.

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

9 33. There are numerous common questions of law and fact arising out of Defendants'
10 conduct. This class action focuses on Defendants' uniform: (a) failure to pay minimum wage, (b)
11 failure to pay overtime, (c) failure to pay sick pay at the correct rate, (d) failure to provide compliant
12 meal and rest breaks or to properly pay the premiums associated therewith, (e) failure to reimburse
13 business expenses, and (f) failure to pay all wages due and owing at the end of its employees'
14 employment.

15 34. 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 failed to pay for all hours worked and all wages owed,
19 including minimum wages and any premium wages;
- 20 b. Whether Defendants failure to pay overtime and to do so at the correct rate;
- 21 c. Whether Defendants provided compliant meal and rest breaks to the non-
22 exempt California employees;
- 23 d. Whether Defendants paid all premiums owed to their non-exempt California
24 employees for noncompliant meal and rest periods;
- 25 e. Whether Defendants issued accurate itemized wage statements;
- 26 f. Whether Defendants timely paid all wages during employment, in accordance
27 with Labor Code section 204;
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- g. Whether Defendants failed to maintain accurate records, in accordance with Labor Code section 1174.
- h. Whether Defendants properly paid their non-exempt California employees all wages due and owing upon separation of employment, in accordance with Labor Code section 203;
- i. Whether Defendants reimbursed for business expenses incurred;
- j. Whether the alleged violations constitute unfair business practices;
- k. Whether the Class is entitled to injunctive relief; and
- l. Whether the Class is entitled to unpaid wages, statutory penalties, civil penalties, and/or restitutionary relief, and the amount of the same.

35. Plaintiffs' claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants, because Defendants subjected Plaintiffs and each member of the Class to the same violations alleged herein.

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

37. Plaintiffs will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiffs have no interests that conflict with those of the Class. Plaintiffs are able to fairly and adequately protect the interests of all members of the class because it is in her best interest to prosecute the claims alleged herein in order to obtain the full compensation due herself and the other class members.

38. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for

1 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
2 bring individual claims, 5) class members would be discouraged from pursuing individual claims
3 because the damages available to them are relatively small, and 6) public policy encourages the use of
4 the class actions to enforce employment laws and protect individuals who, by virtue of their
5 subordinate position, are particularly vulnerable.

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

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

15 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

16 41. The Private Attorney General Act (“PAGA”), as set forth at California Labor Code §
17 2698 et seq., is and at all times relevant herein was applicable to Plaintiff Kabasele’s employment,
18 Plaintiff Arellano’s employment, and Plaintiff Gonzalez’s employment by ULTA.

19 42. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
20 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
21 (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil action
22 brought by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
24 2699(a).

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

1 44. Plaintiffs were employed by ULTA and several of the violations alleged herein were
2 committed against them during their time of employment. Plaintiffs are therefore Aggrieved
3 Employee as defined by Labor Code § 2699(c).

4 45. ULTA's other current and former non-exempt employees are also Aggrieved
5 Employees in that one or more of the alleged violations were also committed against them during their
6 time of employment with ULTA.

7 46. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
8 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
9 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action
10 brought by an aggrieved employee on behalf of himself or herself and other current or former
11 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
12 2699(a).

13 47. As is outlined herein, ULTA violated the Labor Code as to Plaintiffs and other
14 Aggrieved Employees it employed and/or employs within California. Specifically, ULTA violated
15 Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 248.2, 248.5, 510,
16 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 2802, as well as the California
17 Industrial Welfare Commission Wage Order No. 7-2001.

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

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

26 50. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Plaintiffs, may
27 pursue a civil action arising under PAGA after the following requirements have been met:
28

1 a. The aggrieved employee shall give written notice by certified mail to the
2 LWDA and the employer (hereinafter “Employee’s Notice”) of the specific provisions of
3 California Labor Code alleged to have been violated, including the facts and theories to support
4 the alleged violations;

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

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

17 52. On August 24, 2021, August 30, 2021, September 2, 2021, and February 1, 2022,
18 Plaintiffs Kabasele, Gonzalez, and Arellano provided written notice by certified mail to ULTA and by
19 online filing to the LWDA of the specific provisions of the Labor Code alleged to have been violated,
20 including the facts and theories to support the alleged violations.

21 53. As of the filing of this Fourth Amended Class and Representative Action Complaint,
22 which is more 65 days after Plaintiffs Kabasele, Gonzalez, and Arellano provided written notices, the
23 LWDA has not responded to their notification or otherwise indicated an intention to investigate their
24 claims.

25 54. Accordingly, Plaintiffs have satisfied the administrative prerequisites under Labor Code
26 § 2699.3 to bring a civil action to recover penalties against ULTA, in addition to other remedies, for
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violations of California Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 2802.

FIRST CAUSE OF ACTION
Failure to Pay Minimum Wage
[Cal. Lab. Code §§ 1182 et sec.]
Against Defendants

55. Plaintiffs hereby reallege 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.

56. California Labor Code section 1182.12 establishes the minimum wage for California employees from July 1, 2014, to present.

57. Labor Code Section 1194 provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ... including interest thereon, reasonable attorney's fees, and costs of suit.

58. Labor Code section 1194.2 provides, in relevant part:

In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

59. Labor Code section 1197 provides that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is unlawful

60. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

61. Here, Defendants failed to pay Plaintiffs and the other members of the Class for every hour worked.

1 62. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth
2 above and request relief as hereafter provided.

3 **SECOND CAUSE OF ACTION**
4 **Failure to Pay Overtime**
5 **[Cal. Lab. Code §§ 510 and 1198]**
6 **Against Defendants**

7 63. Plaintiffs hereby reallege and incorporates by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 64. Pursuant to California Labor Code section 510, any work in excess of eight hours in one
11 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on
12 the seventh day of work in any one workweek shall be compensated at the rate of no less than one and
13 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall
14 be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
15 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate
16 of no less than twice the regular rate of pay of an employee.

17 65. Pursuant to California Labor Code section 1198, the maximum hours of work and
18 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
19 standard conditions of labor for employees and the employment of any employee for longer hours than
20 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

21 66. The “regular rate of pay” includes all remuneration for employment paid to the
22 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
23 commissions, non-discretionary bonuses, and the value of meals and lodging. *See* 29 U.S.C. § 207(e);
24 DLSE Enforcement Policies and Interpretations Manual Section 49.

25 67. During the relevant time period, Plaintiffs and Defendants’ other non-exempt employees
26 regularly worked overtime.
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68. During the relevant time period, Defendants intentionally and willfully failed to pay all overtime owed and failed to properly calculate and pay overtime wages due to Plaintiffs and its other non-exempt employees

69. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth above and request relief as hereafter provided.

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

70. Plaintiffs hereby reallege 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.

71. 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.

72. 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

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

6 74. As set forth above, Plaintiffs and the other members of the Class were not provided
7 complaint meal breaks and did not receive all meal period premiums owed for said violations.

8 75. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth
9 above and request relief as hereafter provided.

10
11 **FOURTH CAUSE OF ACTION**
12 **Failure to Provide Rest Breaks**
 [Cal. Lab. Code §§ 226.7 and the IWC Orders]
 Against Defendants

13 76. Plaintiffs hereby reallege and incorporates by reference each and every allegation set
14 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
15 allegations of this cause of action.

16 77. Labor Code § 226.7 requires employers to provide employees rest breaks as mandated
17 by Order of the Industrial Welfare Commission. It states:

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

25 78. The applicable Wage Order(s) provides that every “employer shall authorize and permit
26 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
27 period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten
28 (10) minutes net rest time per four (4) hours or major fraction thereof...” The applicable Wage Order

1 further provides that “[i]f an employer fails to provide an employee rest period in accordance with the
2 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
3 employee’s regular rate of compensation for each workday that the rest period is not provided.”

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

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

15 81. As set forth above, Plaintiffs and the other members of the Class were not provided
16 complaint rest breaks.

17 82. When Plaintiffs and the other members of the Class were not provided compliant rest
18 breaks, ULTA did not pay premiums as required by California law.

19 83. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth
20 above and request relief as hereafter provided.

21 **FIFTH CAUSE OF ACTION**
22 **Failure to Provide Paid Sick Leave or Sick Pay**
23 **[Cal. Lab. Code § 218, 233, 246, 248.2, et seq.]**
24 **Against Defendants**

25 84. Plaintiffs hereby reallege and incorporates by reference each and every allegation set
26 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
27 allegations of this cause of action.
28

1 85. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
2 employees at that employee's "regular rate of pay."

3 86. The "regular rate of pay" includes all remuneration for employment paid to the
4 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift
5 differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29
6 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

7 87. During the relevant time period, Defendants failed to include commissions,
8 incentive payments, non-discretionary bonuses, and/or other items of compensation when
9 determining the "regular rate of pay" for Smith and their other non-exempt California employees
10 for purposes of sick time pay.

11 88. According to the California Supreme Court, sick pay is a form of wages. *Murphy v.*
12 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

13 89. Labor Code section 233 provides that "any employer who provides sick leave for
14 employees shall permit an employee to use in any calendar year the employee's accrued and
15 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
16 during six months at the employee's then current rate of entitlement, for the reasons specified in
17 subdivision (a) of Section 246.5."

18 90. During the relevant time period, Defendants also intentionally and willfully failed to
19 provide required sick leave or pay Plaintiffs and the other members of Class their sick pay at the
20 rate of pay required by law.

21 91. Accordingly, Plaintiffs and the other members of the Class did not receive the full
22 amount of paid sick time that they were entitled to receive by law, and were therefore denied the
23 right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

24 92. Any employer who violates Labor Code section 233 is liable to employees for the
25 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
26 fees and costs. Labor Code §233(d), (e).

1 93. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
2 wages.

3 94. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth
4 above and request relief as hereafter provided.

5 **SIXTH CAUSE OF ACTION**
6 **Failure to Pay Provide Accurate Itemized Wage Statements**
7 **[Cal. Lab. Code § 226]**
8 **Against Defendants**

9 95. Plaintiffs hereby reallege and incorporates by reference each and every allegation set
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 96. Pursuant to California Labor Code section 226(a) “every employer shall,
13 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
14 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately
15 when the wages are paid by personal check or cash, an accurate itemized statement in writing
16 showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of
17 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
18 (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the
19 employee is paid, (7) the name of the employee and only the last four digits of his or her social
20 security number or an employee identification number, (8) the name and address of the legal entity
21 that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and
22 corresponding number of hours worked at each hourly rate by the employee and, if the employer is
23 a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary
24 services assignment.”

25 97. An employee suffering injury as a result of the knowing and intentional failure by
26 an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all
27 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
28 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed

1 the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
2 reasonable attorney's fees. Labor Code § 226(e)(1).

3 98. An employee is deemed to suffer injury if the employer fails to provide a wage
4 statement or if the employer fails to provide accurate and complete information as required by any
5 one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
6 and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the
7 employee during the pay period or any of the other information required to be provided pursuant to
8 Labor Code section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the
9 employer, iii) the name and address of the employer and iv) the name of the employee and the last
10 four digits of his or her social security number or employee identification number. Labor Code §
11 226(e)(2)(A) and (B)(i)-(iv). "Promptly and easily determine" means a reasonable person would
12 be able to readily ascertain the information without reference to other documents or information.
13 Labor Code § 226(e)(2)(C).

14 99. As set forth above, Defendants intentionally and willfully failed to furnish accurate
15 itemized wage statements which complied with Labor Code section 226.

16 100. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth
17 above and request relief as hereafter provided.

18
19 **SEVENTH CAUSE OF ACTION**
20 **Failure to Pay All Wages Due Upon Cessation of Employment**
[Cal. Lab. Code § 201, *et seq.*]
Against Defendants

21 101. Plaintiffs hereby reallege and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 102. Labor Code section 201 requires an employer to pay an employee all wages earned and
25 unpaid at the employer discharges the employee.

26 103. Labor Code section 202 requires an employer to pay the employee all wages due no
27 later than 72 hours after the employee quits his or her employment.
28

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

6 105. During the relevant time period, Defendants failed to pay Plaintiffs and the other
7 members of the Class all earned but unpaid wages at discharge.

8 106. Wherefore, Plaintiffs and the other members of the Class have been injured as set forth
9 above and request relief as hereafter provided.

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

13 107. Plaintiffs hereby reallege and incorporates by reference each and every allegation set
14 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
15 allegations of this cause of action.

16 108. The statutory violations, as alleged above, are unfair business practices within the
17 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et. seq.*), and
18 include, but are not limited to, failing to pay minimum wage, failing to pay overtime and sick pay, and
19 at the correct rate, and failing provide compliant meal breaks and rest breaks and to pay all premiums
20 owed for the same. Moreover, ULTA has engaged in unfair business practices by violating California
21 law, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7,
22 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
23 2802, and the California Industrial Welfare Commission Wage Order No. 7-2001.

24 109. Wherefore, Plaintiffs and the other members of the Class have been damaged as set
25 forth above and request relief as hereafter provided.

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

1
2 110. Plaintiffs hereby reallege and incorporates by reference each and every allegation set
3 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
4 allegations of this cause of action.

5 111. Plaintiffs are “aggrieved employee” under the PAGA as they were employed by ULTA
6 during the applicable statutory period and suffered one or more of the Labor Code violations outlined
7 herein. Other current and former employees are also aggrieved employees in that one or more of the
8 alleged violations were also committed against them during their time of employment with ULTA.

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

13 113. Plaintiffs seeks to enforce the California Labor Code on behalf of the LWDA and
14 pursuant to the PAGA for violations of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7,
15 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
16 2802, and California Industrial Welfare Commission Wage Order No. 7-2001.

17 114. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action
18 is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one
19 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
20 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

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

25 116. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set
26 forth above, Plaintiffs seek recovery of civil penalties, attorneys’ fees and costs pursuant to the PAGA
27 as set forth below
28

117. Wherefore, Plaintiffs and the other Aggrieved employees have been damaged as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

As to the First through Ninth Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Plaintiffs as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C., SW Employment Law Group, APC, and Lavi & Ebrahimian, LLP as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiff and the members of the Class;
5. That this Court award injunctive relief, including that available under Business and Professions Code Section 17203;
6. That this Court award penalties including, but not limited to, those available under Labor Code sections 203, 226, 226.7, and 1194.2;
7. That this Court award statutory attorneys' fees and costs, including those available under Labor Code section 218.5, 226(e)(1), 248.5(e), 1194, and 2802 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 Ninth 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);

