

Electronically FILED by Superior Court of California, County of Los Angeles on 11/19/2021 05:23 PM Sherri R. Carter, Executive Officer/Clerk of Court, by R. Lozano, Deputy Clerk

SW EMPLOYMENT LAW GROUP, APC

Jacob N. Whitehead, Esq. SBN 266123

Shawn Sasooness, Esq. SBN 300768

Maria Burciaga, Esq. SBN 334545

mburciaga@swemploymentlaw.com

7700 Irvine Center Drive, Suite 930

Irvine, California 92618

Tel. (949) 674-4922

Attorneys for Plaintiffs and All Others Similarly Situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**

ANGEL GONZALEZ, an individual; MINDY)	Case No.: 21STCV42843
MIRANDA, an individual; SARYNA DE)	CLASS AND REPRESENTATIVE
JESUS, an individual; TATIANA BERNAL, an)	ACTION FOR:
individual; FLOR CRUZ, an individual;)	
JULISSA PEREZ, an individual; ELISSA)	1) FAILURE TO PROVIDE MEAL
PADILLA, an individual; IAN LAMAR, an)	PERIODS (Labor Code §§ 226.7, 512, and
individual; CLAUDIA BENITEZ, an individual;)	1198);
BRITTNEY HUGHES, an individual; GEORGE)	2) FAILURE TO PROVIDE REST PERIODS
MADDOX, an individual; VICTORIA)	(Labor Code §§ 226.7, 1198, IWC No.
HENKES, an individual; ALEXANDRA TAN,)	9-2001);
an individual; DANIELLE QUAID, an)	3) FAILURE TO PAY OVERTIME (Labor
individual; ELIZABETH FAABORG, an)	Code § 510);
individual; VINCENT HALL, an individual;)	4) FAILURE TO MAINTAIN ACCURATE
JERRICA LABIAN, an individual; LAUREN)	RECORDS (Labor Code §1174(d));
HALL, an individual; RYAN GUFFEY, an)	5) FAILURE TO PAY ALL WAGES WHEN
individual; KIERSTEN WONG, an individual;)	DUE (Labor Code § 204);
BRITTANI HERENA, an individual; JANET)	6) FAILURE TO PROVIDE ACCURATE
SANCHEZ, an individual; BRITTANY)	ITEMIZED WAGE STATEMENTS (Labor
SOMMERS, an individual; CHEYENNE)	Code § 226 (a), 226.3);
LOPEZ, an individual; TALIA CASTANEDA,)	7) FAILURE TO REIMBURSE WORK
an individual; NOHELY LLAMAS, an)	EXPENSES (Labor Code § 2802);
individual; RHONDA PRICKETT, an)	8) FAILURE TO TIMELY PAY WAGES
individual; DEBBIE HARRISON, an individual;)	UPON TERMINATION (Labor Code §§
each as an individual and on behalf of all others)	201-203);
similarly situated)	
Plaintiffs,)	

1 v.) 9) VIOLATION OF THE PRIVATE
2) ATTORNEY GENERALS ACT OF 2004,
3) Labor Code §2698 et seq.
4 ULTA SALON, COSMETICS & FRAGRANCE,) 10) UNFAIR BUSINESS PRACTICES (In
INC., DBA ULTA BEAUTY a Delaware) Violation of Bus. & Prof. Code § 17200);
5 corporation, and DOES 1-50, inclusive,)
6 Defendants) {JURY TRIAL DEMANDED}
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

1 Plaintiffs Angel Gonzalez, Mindy Miranda, Saryna De Jesus, Tatiana Bernal, Flor Cruz,
2 Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George Maddox, Victoria
3 Henkes, Allexandra Tan, Danielle Quaid, Elizabeth Faaborg, Vincent Hall, Jerrica Labian, Lauren
4 Hall, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers, Cheyenne
5 Lopez, Talia Castaneda, Nohely Llamas, Rhonda Prickett, Debbie Harrison each as an individual, on
6 behalf of themselves, and on behalf of all others similarly situated (collectively “Plaintiffs”), hereby
7 brings this Complaint (“Complaint”) against Defendant ULTA SALON, COSMETICS &
8 FRAGRANCE, INC. DBA ULTA BEAUTY (“Defendant”), and DOES 1-50, inclusive,
9 (collectively, “Defendants”). Plaintiffs hereby state and allege as follows:
10

11 INTRODUCTION

12 1. Plaintiffs bring this class action pursuant to California Code of Civil Procedure § 382
13 against Defendants for, among other things: failure to provide complaint rest and meal breaks;
14 failure to pay overtime wages; failure to maintain accurate records of hours worked and wages
15 earned; failure to pay wages when due; failure to furnish accurate wage statement; failure to
16 reimburse work-related expenses incurred in the discharge of job duties; and failure to pay all wages
17 due upon termination.
18

19 2. Plaintiffs thus bring this action on behalf of themselves, and other individuals
20 similarly situated pursuant to Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174(d),
21 1194(a), 2802 and Industrial Wage Commission (“IWC”) Wage Order No. 4-2001 (“IWC No. 4”) for
22 unpaid premiums for rest-and-meal break violations, unpaid overtime compensation, applicable
23 penalties, injunctive and other relief and reasonable attorneys’ fees and costs.
24

25 THE PARTIES

26 Plaintiff ANGEL GONZALEZ
27
28

1 3. Plaintiff ANGEL GONZALEZ is and was, at all times relevant to this Complaint, an
2 adult individual who lived in Valley Village, California and worked for Defendant in the City of Los
3 Angeles in the County of Los Angeles, California. Defendant employed Plaintiff as a Counter
4 Manager from in or about January 27, 2019, to on or about August 7, 2021.

5
6 **Plaintiff MINDY MIRANDA**

7 4. Plaintiff MINDY MIRANDA is and was, at all times relevant to this Complaint, an
8 adult individual who lived in Victorville, California and worked for Defendant in the City of Rancho
9 Cucamonga in the County of San Bernardino, California. Defendant employed Plaintiff as an Arch
10 Expert from in or about June 18, 2018, to on or about November 15, 2020.

11 **Plaintiff SARYNA DE JESUS**

12 5. Plaintiff SARYNA DE JESUS is and was, at all times relevant to this Complaint, an
13 adult individual who lived in Fullerton, California and worked for Defendant in the City of Buena
14 Park in the County of Orange, California. Defendant employed Plaintiff as a Merchandise and
15 Service Coordinator from in or about May 26, 2019, to on or about June 20, 2021.

16
17 **Plaintiff TATIANA BERNAL**

18 6. Plaintiff TATIANA BERNAL is and was, at all times relevant to this Complaint, an
19 adult individual who lived in San Marcos, California and worked for Defendant in the City of San
20 Diego and City of Oceanside in the County of San Diego, California. Defendant employed Plaintiff
21 as a Beauty Advisor from in or about September 1, 2020, to on or about September 4, 2021.

22
23 **Plaintiff FLOR CRUZ**

24 7. Plaintiff FLOR CRUZ is and was, at all times relevant to this Complaint, an adult
25 individual who lived in Long Beach, California and worked for Defendant in the City of Long Beach
26
27
28

1 in the County of Los Angeles, California. Defendant employed Plaintiff as a Master Stylist from in
2 or about November 2, 2020, to on or about June 15, 2021.

3 **Plaintiff JULISSA PEREZ**

4 8. Plaintiff JULISSA PEREZ is and was, at all times relevant to this Complaint, an adult
5 individual who lives in San Francisco, California. She has been working for Defendant in the County
6 of San Francisco, California. Defendant hired Plaintiff as a Benefit Arch Expert in or about January
7 27, 2019 and is still presently employed.
8

9 **Plaintiff ELISSA PADILLA**

10 9. Plaintiff ELISSA PADILLA is and was, at all times relevant to this Complaint, an
11 adult
12 individual who lived in Riverbank, California. She has been working for Defendant in the City of
13 Hayward in the County of Alameda, California and in the City of Riverbank in the County of
14 Stanislaus, California. Defendant hired Plaintiff as a Prestige Beauty Advisor in or about May 28,
15 2019 and is still presently employed.
16

17 **Plaintiff IAN LAMAR**

18 10. Plaintiff IAN LAMAR is and was, at all times relevant to this Complaint, an adult
19 individual who lived in San Diego, California and worked for Defendant in the City of San Diego in
20 the County of San Diego, California. Defendant employed Plaintiff as a Beauty Advisor from in or
21 about August 6, 2018, to on or about September 22, 2021.
22

23 **Plaintiff CLAUDIA BENITEZ**

24 11. Plaintiff CLAUDIA BENITEZ is and was, at all times relevant to this Complaint, an
25 adult individual who lived in Rialto, California and worked for Defendant in the City of Rialto and
26
27
28

1 in the City of Rancho Cucamonga in the County of San Bernardino, California. Defendant employed
2 Plaintiff as a Beauty Advisor from in or about September 16, 2018, to on or about July 17, 2021.

3 **Plaintiff BRITTNEY HUGHES**

4 12. Plaintiff BRITTNEY HUGHES is and was, at all times relevant to this Complaint, an
5 adult individual who lived in Visalia, California and worked for Defendant in the City of Visalia in
6 the County of Tulare, California. Defendant employed Plaintiff as a Stylist from in or about April 28,
7 2021, to on or about October 8, 2021.

8 **Plaintiff GEORGE MADDOX**

9 13. Plaintiff GEORGE MADDOX is and was, at all times relevant to this Complaint, an
10 adult individual who lived in San Francisco, California and worked for Defendant in the City of San
11 Francisco in the County of San Francisco, California. Defendant employed Plaintiff as a Hair Stylist
12 from in or about October 20, 2019, to on or about June 15, 2021.

13 **Plaintiff VICTORIA HENKES**

14 14. Plaintiff VICTORIA HENKES is and was, at all times relevant to this Complaint, an
15 adult individual who lived in Escondido, California and worked for Defendant in the City of San
16 Diego in the County of San Diego, California. Defendant employed Plaintiff as a Beauty Advisor
17 from in or about August 1, 2019, to on or about January 14, 2021.

18 **Plaintiff ALEXANDRA TAN**

19 15. Plaintiff ALEXANDRA TAN is and was, at all times relevant to this Complaint, an
20 adult
21 individual who lived in Poway, California. She has been working for Defendant in the City of Poway
22 in the County of San Diego, California. Defendant employed Plaintiff as a Beauty Advisor from in
23 or about August 8, 2018 and is still presently employed.

1 **Plaintiff DANIELLE QUAID**

2 16. Plaintiff DANIELLE QUAID is and was, at all times relevant to this Complaint, an
3 adult individual who lived in Hemet, California. She has been working for Defendant in the City of
4 Menifee and in the City of Hemet in the County of Riverside, California. Defendant hired Plaintiff as
5 a Hair Stylist in or about April 27, 2018 and is still presently employed.
6

7 **Plaintiff ELIZABETH FAABORG**

8 17. Plaintiff ELIZABETH FAABORG is and was, at all times relevant to this Complaint,
9 an adult individual who lived in Poway, California. She has been working for Defendant in the City
10 of San Diego in the County of San Diego, California. Defendant hired Plaintiff as a Stylist from in or
11 about August 16, 2018 and is presently still employed.
12

13 **Plaintiff VINCENT HALL**

14 18. Plaintiff VINCENT HALL is and was, at all times relevant to this Complaint, an adult
15 individual who lived in Big Bear Lake, California and worked for Defendant in the City of
16 Huntington Beach in the County of Orange, California. Defendant employed Plaintiff as a Cashier
17 from in or about October 26, 2018, to on or about February 26, 2019.
18

19 **Plaintiff JERRICA LABIAN**

20 19. Plaintiff JERRICA LABIAN is and was, at all times relevant to this Complaint, an
21 adult individual who lived in Pacifica, California and worked for Defendant in the City of Colma in
22 the County of San Mateo, California. Defendant employed Plaintiff as a
23 Designer Hair Stylist from in or about March 1, 2016, to on or about December 1, 2020.

24 **Plaintiff LAUREN HALL**

25 20. Plaintiff LAUREN HALL is and was, at all times relevant to this Complaint, an adult
26 individual who lived in San Pedro, California and worked for Defendant in the City of Pico Riviera
27
28

1 in the County of Los Angeles, California. Defendant employed Plaintiff as a Beauty Advisor from in
2 or about July 12, 2018, to on or about August 8, 2021.

3 **Plaintiff RYAN GUFFEY**

4 21. Plaintiff RYAN GUFFEY is and was, at all times relevant to this Complaint, an adult
5 individual who lived in Chico, California and worked for Defendant in the City of Redding in the
6 County of Shasta, California. Defendant employed Plaintiff as a Beauty Advisor from in or about
7 November 20, 2020, to on or about July 18, 2021.

8 **Plaintiff KIERSTEN WONG**

9 22. Plaintiff KIERSTEN WONG is and was, at all times relevant to this Complaint, an
10 adult individual who lived in Daly City, California. She has been working for Defendant in the City
11 of Colma in the County of San Mateo, California. Defendant hired Plaintiff as a Master Stylist in or
12 about September 1, 2012, and is still presently employed.

13 **Plaintiff BRITTANI HERENA**

14 23. Plaintiff BRITTANI HERENA is and was, at all times relevant to this Complaint, an
15 adult individual who lived in Clovis, California and worked for Defendant in the City of Hanford in
16 the County of Kings, California. Defendant employed Plaintiff as a Prestige Sales Manager from in
17 or about June 1, 2017, to on or about October 31, 2020.

18 **Plaintiff JANET SANCHEZ**

19 24. Plaintiff JANET SANCHEZ is and was, at all times relevant to this Complaint, an
20 adult individual who lived in Weaverville, California and worked for Defendant in the City of Chico
21 in the County of Butte, California and in the City of San Diego in the County of San Diego.
22 Defendant employed Plaintiff as a Beauty Advisor from in or about August 1, 2018, to on or about
23 November 1, 2020.

1 **Plaintiff BRITTANY SOMMERS**

2 25. Plaintiff BRITTANY SOMMERS is and was, at all times relevant to this Complaint,
3 an adult individual who lived in Sacramento, California and worked for Defendant in the City of
4 Sacramento in the County of Sacramento, California. Defendant employed Plaintiff as a
5 Merchandise Service Coordinator from in or about April 9, 2019, to on or about August 17, 2021.
6

7 **Plaintiff CHEYENNE LOPEZ**

8 26. Plaintiff CHEYENNE LOPEZ is and was, at all times relevant to this Complaint, an
9 adult individual who lived in West Sacramento, California and worked for Defendant in the City of
10 Sacramento in the County of Sacramento, California. Defendant employed Plaintiff as a Retail
11 Operations Manager from in or about November 22, 2018, to on or about April 20, 2021.
12

13 **Plaintiff TALIA CASTANEDA**

14 27. Plaintiff TALIA CASTANEDA is and was, at all times relevant to this Complaint, an
15 adult individual who lived in Santa Clara, California and worked for Defendant in the City of
16 Cupertino in the County of Santa Clara, California. Defendant employed Plaintiff as a Lead Cashier
17 from in or about February 1, 2017, to on or about August 31, 2019.

18 **Plaintiff NOHELY LLAMAS**

19 28. Plaintiff NOHELY LLAMAS is and was, at all times relevant to this Complaint, an
20 adult individual who lived in Murrieta, California and worked for Defendant in the City of Temecula
21 in the County of Riverside, California. Defendant employed Plaintiff as a Lancome Boutique
22 Counter Manager from in or about March 1, 2019, to on or about June 30, 2021.
23

24 **Plaintiff RHONDA PRICKETT**

25 29. Plaintiff RHONDA PRICKETT is and was, at all times relevant to this Complaint, an
26
27
28

1 adult individual who lived in Pleasant Hill, California and worked for Defendant in the City
2 of Pleasant Hill in the County of Contra Costa, California. Defendant employed Plaintiff as a Retail
3 Sales Manager from in or about August 23, 2018, to on or about November 1, 2021.

4 **Plaintiff DEBBIE HARRISON**

5 **30.** Plaintiff DEBBIE HARRISON is and was, at all times relevant to this Complaint, an
6 adult individual who lived in Chino Hills, California and worked for Defendant in the City of Chino
7 in the County of San Bernardino, California. Defendant employed Plaintiff as a Clinique Counter
8 Manager from in or about October 18, 2010, to on or about March 18, 2020.

9 **Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC.**

10
11 31. At all times relevant to this Complaint, Defendant was a Delaware corporation, duly
12 registered to conduct business and employ persons throughout California, where it employed
13 Plaintiffs.

14
15 32. Defendant is a retail beauty products and service company. Defendant maintains over
16 150 locations throughout the State of California.

17 33. At all relevant time to this Complaint, Defendant employed Plaintiffs at their
18 respective Ulta locations in the State of California.

19 34. At all times mentioned in this Complaint, Defendant was Plaintiffs “employer,” and
20 Plaintiffs were its “employee” as defined by California law.

21 35. Plaintiffs are unaware of the true names or capacities of Defendants sued herein under
22 the fictitious names DOES 1–50, inclusive, but prays for leave to amend and serve such
23 fictitiously-named Defendants pursuant to California Code of Civil Procedure § 474 once their
24 names and capacities become known.
25
26
27
28

1 36. Plaintiffs are informed and believes, and thereon alleges, that DOES 1–50, inclusive,
2 are the partners, agents, owners, shareholders, managers, principals or employees of Defendant
3 and/or and were acting on behalf of Defendant.

4 37. Plaintiffs are informed and believes, and thereon alleges, that each and all of the acts
5 and omissions alleged herein was performed by or is attributable to Defendant, each acting as the
6 agent for the other, with legal authority to act on the other’s behalf. The acts of any and all
7 Defendant was in accordance with, and represent the policy of, Defendant.

8 38. At all times herein mentioned, Defendant, ratified each and every act or omission
9 complained of herein. At all times herein mentioned, Defendant, aided and abetted the acts and
10 omissions of each and all of the other Defendant in proximately causing the damages herein alleged.

11 39. Plaintiffs are informed and believes, and thereon alleges, that Defendant is in some
12 manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and
13 transactions alleged herein.

14
15
16 **JURISDICTION AND VENUE**

17 40. The civil penalties sought by Plaintiffs exceed the minimum jurisdiction limits of the
18 Los Angeles County Superior Court and will be established according to proof at trial.

19 41. This Court has jurisdiction of this action pursuant to the California Constitution,
20 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
21 those given by statute to other courts. The statutes under which this action of brought do not specify
22 any other basis
23 for jurisdiction.

24 42. This Court has jurisdiction over the violations alleged herein and over Defendant and
25 Does 1 – 50, inclusive, because upon information and belief, each party has sufficient minimum
26
27
28

1 contacts in California or otherwise intentionally avails itself of California law so as to render the
2 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
3 and substantial justice. Defendant at all times relevant employed certain Plaintiffs while theses
4 Plaintiffs were domiciled in and performing their work duties in the State of California, in the
5 County of Los Angeles. Certain Plaintiffs maintained and worked out of the City of Los Angeles,
6 Long Beach, and Pico Riviera, in the County of Los Angeles.
7

8 43. Venue is proper in this Court because, upon information and belief, the named
9 Defendant employed certain Plaintiffs, who are residents of this county and the acts and omissions
10 alleged herein took place in this county.
11

12 **GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

13 44. Plaintiffs allege that they and the Class/Subclass Members are individuals who
14 currently work or formerly worked for Defendant in the State of California as non-exempt, hourly,
15 full time and part time employees, at any given time during the four years prior to the filing of this
16 complaint (the "Class Period") who are/were entitled to labor code compliant rest and meal breaks,
17 overtime compensation, accurate wage statements, timely payment of wages when due, and
18 reimbursement of work related expenses incurred in the discharge of their job duties. Plaintiffs and
19 such Class/Subclass Members work/worked in non-exempt, hourly-paid cashiers, stylists, beauty
20 advisors, counter managers, operations managers, and other similar positions for Defendant, which is
21 a beauty retail company. Plaintiffs and those who were employed by Defendant in California during
22 the Class Period's primary job duties were including, but not limited to, cashier, sales, training,
23 cleaning the workstations, customer service, handling inventory and updating fixtures.
24

25 45. The duties of stylist, beauty advisor, counter manager, and cashier are virtually
26 identical. Any differences in the job activities between the different individuals in these positions
27
28

1 were and are legally insignificant to the issues presented by this action. The same policies,
2 procedures, employee handbooks, manuals, compensation plans, and training modules were
3 uniformly applied to the nonexempt Plaintiffs and Class/Subclass Members, which means individual
4 issues will not predominate, and in fact, all issues are systematically linked, related and common,
5 both in terms of facts and law for Plaintiffs and each of the members of the Class/Subclasses during
6 the Class Period.
7

8 46. *Labor Code* § 1194 provides that employees must be separately paid an hourly wage
9 for each and every hour worked.

10 47. Plaintiffs and the Class/Subclass Members are/were at all times subject to California's
11 laws and regulations protecting the employees' entitlement to be paid and presumption to be paid all
12 wages earned for labor performed, including an hourly wage for each and every hour worked.
13

14 48. *Labor Code* §§ 218, 1194(a) and 1194.2(a) provide that an employee who has not
15 been paid the legal wage may recover the unpaid balance and together with attorney's fees and costs
16 of suit, as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

17 49. *Labor Code* § 1198 states: "The maximum hours of work and the standard conditions
18 of labor fixed by the commission shall be the maximum hours of work and the standard conditions
19 of labor for employees. The employment of any employee for longer hours than those fixed by the
20 order or under conditions of labor prohibited by the order is unlawful."
21

22 50. *Labor Code* § 510 states in pertinent part, "Any work in excess of eight hours in one
23 workday or in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less
24 than one and one-half times the regular rate of pay for any employee." In addition, "any work in
25 excess of 12 hours in one day shall be compensated at a rate of no less than twice the regular rate of
26 pay for an employee." As a matter of course during all or a substantial portion of the Class Period,
27
28

1 Plaintiffs and certain member of the Class were regularly, uniformly and systematically required by
2 Defendant to work in excess of eight hours per day, and/or required to work in excess of 40 hours
3 per week without being paid the requisite overtime wages required by *Labor Code* §§ 510, 1194 and
4 Wage Order No. 4.

5
6 51. Due to Plaintiffs and certain Class Members/Subclass Members working off the clock
7 during lunch breaks, in many instances because of the unrecorded hours worked, their shifts
8 exceeded eight hours a day or over 40 hours in a week. Further, Defendants required Plaintiff to
9 undergo daily “bag checks” prior to leaving Defendants store location at the end of their shift.
10 However, Plaintiffs were required to clock out before waiting to have their personal bag/belongings
11 checked by a manager. Defendant also routinely altered Plaintiffs and the Class Members/Subclass
12 Members timesheets to avoid paying any overtime owed.

13
14 52. *Labor Code* § 512 provides in relevant part: “An employer shall not employ an
15 employee for a work period of more than five hours per day without providing the employee with a
16 meal period of not less than 30 minutes An employer shall not employ an employee for a work
17 period of more than 10 hours per day without providing the employee with a second meal period of
18 not less than 30 minutes”

19
20 53. IWC Order No. 4-2001, which applies to Defendant’s industry, likewise requires
21 employers to provide meal periods to employees. Section 11(C) of IWC Order No 4-2001 provides
22 in relevant part: “Unless the employee is relieved of all duty during a 30-minute meal period, the
23 meal period shall be considered an “on duty” meal period and counted as time worked.”

24
25 54. Throughout the Class Period, Defendant fails/failed to provide meal periods and rest
26 periods to certain Plaintiffs. The nature of Plaintiffs’ and Class Members/Subclass Members work,
27 providing in person customer service, was rigorous and nonstop. Plaintiffs and certain Class
28

1 Members/Subclass Members are/were frequently prevented from timely taking meal breaks and rest
2 breaks due to constant work demands and staffing shortages, they were not timely relieved of all
3 duties to take such breaks. Defendant required for Plaintiffs and certain of Class Members/Subclass
4 Members to take care of the customers and assist other employees during their meal break and rest
5 breaks. On multiple occasions, Defendant required for Plaintiffs and certain of Class
6 Members/Subclass Members to watch training videos on “WorkJam” app during their meal break
7 and rest breaks. Thus, as a matter of course during all or a substantial portion of the Class Period,
8 Plaintiffs and each member of the Class were regularly, uniformly and systematically prohibited by
9 Defendant from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods for every
10 five hours worked as required by *Labor Code* § 512 and Wage Order no. 4, nor were Plaintiffs or
11 members of the Class paid a one hour premium wage at their regular rate of pay for each missed,
12 short, late or interrupted meal period.
13
14

15 55. Section 12(A) of IWC Order No. 4-2001 provides in relevant part: “Every employer
16 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
17 the middle of each work period. The authorized rest period time shall be based on the total hours
18 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
19 Authorized rest period time shall be counted as hours worked for which there shall be no deduction
20 from wages.”
21

22 56. The nature of Plaintiffs’ and Class Members/Subclass Members work, providing in
23 person customer service, was rigorous and nonstop. Plaintiffs and certain Class Members/Subclass
24 Members were frequently prevented from timely taking rest breaks because, due to their constant
25 work demands and staffing shortages. As such, Plaintiffs, were not timely relieved of all duties to
26 take such breaks. Defendant mandated Plaintiffs and certain Class Members/Subclass Members to
27
28

1 take care of customer's inquiries and needs as they come, leaving them no time for rest breaks or
2 shortening the time of their rest breaks. On multiple occasions, Defendant required for Plaintiffs and
3 certain of Class Members/Subclass Members to watch training videos on "WorkJam" app during
4 their rest breaks. Thus, as a matter of course, during all or a substantial portion of the Class Period,
5 Plaintiffs and certain Class Members/Subclass Members were regularly, uniformly, and
6 systematically prohibited by Defendant from taking, timely, compliant, uninterrupted paid 10-minute
7 rest periods for every four hours worked (or major fraction thereof) as required by Labor Code §§
8 226.7, 512 and Wage Order 4, nor were Plaintiffs or members of the Class paid a one-hour premium
9 wage at their regular rate of pay for each missed, short, late or interrupted rest period.
10

11 57. *Labor Code* § 226.7(c) provides in relevant part: "If an employer fails to provide an
12 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
13 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
14 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee's
15 regular rate of compensation for each workday that the meal or rest or recovery period is not
16 provided.
17

18 58. Defendant knew or reasonably should have known that Plaintiffs and certain Class
19 Members/Subclass Members were not timely relieved of all duties and were impeded or prevented
20 from taking timely all meal periods and rest breaks.
21

22 59. Plaintiffs and Class Members/Subclass Members were not paid "premium pay
23 penalties" pursuant to *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to
24 provide
25 them timely, uninterrupted meal and rest breaks.
26
27
28

1 60. *Labor Code* § 226(a) requires employers to provide employees itemized wage
2 statements that accurately report, among other things, the total hours worked and total wages earned
3 in each pay period.

4 61. Pursuant to Section 11(C) of IWC Order No. 4-2001, Defendant should have
5 correctly counted all purported “meal periods” for which Defendant failed to relieve Plaintiffs and
6 Class Members/Subclass Members of all duty as “on duty” meal periods, and Defendant should have
7 counted those purported “meal periods” as time worked. Defendant should have reported that
8 additional time worked on the itemized wage statements that Defendant provided to Plaintiffs and
9 Class Members/Subclass Members, but Defendant failed to do so, in violation of *Labor Code* §
10 226(a).
11

12 62. From the outset and throughout the Class Period, Defendant has failed to comply with
13 *Labor Code* § 226(a). As a matter of common policy and practice, Defendant did not include
14 Plaintiffs and certain Class Members’ proper and correct number of hours worked at each correct
15 hourly rate of pay. The wage statements that were distributed by Defendant to Plaintiffs and the
16 certain Class Members did not contain all wages earned. Defendant’s policies and practices and the
17 omissions on the wage statements were intention and knowing, causing Plaintiffs and certain
18 members of the Class to suffer “injury” by, among other things, impeding them from knowing the
19 amount of wages to which they are and were entitled.
20
21

22 63. Defendant’s failure to accurately record and maintain records of all hours worked and
23 wages earned further constitutes a violation of *Labor Code* §1174(d), which requires employers to
24 maintain accurate payroll records of hours worked and wages earned for a period of three years.

25 64. *Labor Code* § 201(a) provides in relevant part: “If an employer discharges an
26 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”
27
28

1 65. *Labor Code* § 202(a) provides in relevant part: “If an employee not having a written
2 contract for a definite period quits his or her employment, his or her wages shall become due and
3 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
5 quitting.”
6

7 66. As a further result of Defendant’s manipulation of Plaintiffs’ and certain Class
8 Members/Subclass Members’ time records, Defendant violated *Labor Code* §§ 201 and 202 by
9 failing to timely pay all wages due upon Plaintiffs’ and such Class Members who separated from
10 Defendant’s employment during the Class Period, at their time of discharge or quitting.
11

12 67. *Labor Code* § 203(a) provides in relevant part: “If an employer willfully fails to pay,
13 without abatement or reduction, in accordance with §§ 201 . . . 202 . . . any wages of an employee
14 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
15 date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
16 not continue for more than 30 days.”
17

18 68. Despite Defendant’s violations of *Labor Code* §§ 201 and 202 by failing to timely
19 pay all wages due upon such Plaintiffs’ and certain Class Members who separated from Defendant’s
20 employment during the Class Period, discharge or quitting, Defendant has failed to pay such
21 individuals “waiting time” penalties pursuant to *Labor Code* § 203(a).
22

23 69. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses
24 they incur in direct consequence of the discharge of their duties or obedience to their employers’
25 instructions.
26

27 70. During the Class Period, Defendant required Plaintiffs and certain Class Members to
28 use their personal cell phones to perform their job duties each workday throughout their

1 employment. Defendant required them to contact supervisors, to communicate with other employees
2 on shift, to text supervisors, to contact customers, to scan products, to look for inventories, to
3 download the app “WorkJam”, to watch training videos on “WorkJam” app.

4 71. During the Class Period, Defendant required Plaintiffs and certain Class Members to
5 use their personal vehicles to commute to different Ulta locations for training.
6

7 72. Despite Defendant’s requirement that Plaintiffs and certain Class Members/Subclass
8 Members incur expenses using their personal cell phones and personal vehicles to perform their job
9 duties, Defendant did not reimbursed them.. Defendant’s failure to reimburse Plaintiffs and Class
10 Members constitutes a violation of *Labor Code* §2802(a).

11 73. Defendant willfully refused to pay Plaintiffs and members of the Class/Subclasses the
12 required compensation for all hours worked and failed to keep time records as required by law.
13

14 74. Defendant’s company-wide policies and practices violate California law as pled
15 herein. Plaintiffs seek declaratory relief, reporting time pay, regular and overtime compensation,
16 premium pay for rest and meal break violations, reimbursement of business expenses, liquidated
17 damages and other damages and penalties as permitted by California Law, interest and attorneys’
18 fees and costs.

19
20 **CLASS ACTION ALLEGATIONS**

21 75. Plaintiffs bring causes of action for violation of California’s wage-and-hour laws as
22 a class action on behalf of all members of the Class and Subclasses which are defined and composed
23 as follows:

24 **THE CLASS:**

25 All individuals (a) who are currently or formerly employed by Defendant and
26 performed work in California as courier and/or delivery drivers and similar job
27
28

positions, job titles, job codes, job classifications, job duties or job descriptions, and
(b) who were subject to Defendant's illegal policies and practices as alleged herein
during the Class Period.

76. In the alternative, and for the convenience of the Court and the parties, Plaintiffs may
seek to certify the following Subclasses at the time the motion for class certification is filed:

UNTIMELY PAYMENT OF WAGES SUBCLASS:

All members of the Class who Defendant failed to timely pay all wages earned when
due, as defined by Labor Code § 204 for all hours worked during the Class Period.

OVERTIME SUBCLASS:

All members of the Class who (a) worked in excess of 8 hours per day and/or 40
hours per week; and (2) who Defendant failed to pay wages at the requisite overtime
rates of pay for overtime hours worked during the Class Period.

MEAL PERIOD SUBCLASS:

All members of the Class that Defendant did not provide 30-minute, uninterrupted
and duty-free meal periods for shifts over 5 and 10 hours of work, and who were not
paid an additional hour of pay in lieu thereof during the Class Period.

REST PERIOD SUBCLASS:

All members of the Class that Defendant did not authorize or permit uninterrupted
and duty-free 10-minute paid rest periods for every four hours worked, or major
fraction thereof, and who were not paid an additional hour of pay in lieu thereof
during the Class Period.

WAGE STATEMENT SUBCLASS:

1 All members of the Class that Defendant did not provide accurate, itemized wage
2 statements showing all hours actually worked, all wages earned, and the applicable
3 rates of pay for each hour worked during the Class Period.
4

5 **WAITING TIME SUBCLASS:**

6 All members of the Class who (a) from three years prior to the filing of this complaint
7 separated from Defendant's employment, and (2) who Defendant knowingly and
8 willfully failed to pay all wages due within 72 hours of the time such employees
9 voluntarily or involuntarily ended their employment with Defendant during the Class
10 Period.
11

12 **REIMBURSEMENT OF BUSINESS EXPENSES SUBCLASS:**

13 All members of the Class that Defendant did not reimburse expenses necessarily
14 incurred in the discharge of performing their work-related duties during the Class
15 Period.
16

17 77. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
18 necessary to amend the definition of the Subclasses. In any event, Plaintiffs will formally define and
19 designate a class definition at such time when Plaintiffs seek to certify the Class or Subclasses
20 defined herein.

21 **COMMON CLASS ACTION ALLEGATIONS FOR THE PROPOSED CLASS**

22 **AND SUBCLASSES**

23 78. **Numerosity**: The potential quantity of members of the Class and Subclasses as
24 defined are so numerous that joinder of all members would be unfeasible and impractical. Plaintiffs
25 are informed and believe that the total number of current and formerly employed members of the
26
27
28

1 Class exceeds 100. The quantity and identity of such membership is readily ascertainable via
2 inspection of Defendant's records.

3 79. **Superiority**: The nature of this action and the nature of the laws available to
4 Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure
5 to afford relief to Plaintiffs and the members of the Class and Subclasses for the wrongs alleged
6 herein, for the following reasons:
7

- 8 a) The State of California, for which there is a named representative, has a public
9 policy which encourages the use of the class action device.
- 10 b) By establishing a technique whereby, the claims of many individuals can be
11 resolved at the same time, the class suit both eliminates the possibility of repetitious
12 litigation and provides small claimants with a method of obtaining redress for
13 claims which would otherwise be too small to warrant individual litigation.
- 14 c) This case involves large corporate Defendant and a large number of individual class
15 members with many relatively small claims and common issues of law and fact.
- 16 d) If each individual member of the Class was required to file an individual lawsuit,
17 the large corporate Defendant would necessarily gain an unconscionable advantage
18 because Defendant would be able to exploit and overwhelm the limited resources of
19 each individual member of the Class with Defendant's vastly superior financial and
20 legal resources.
- 21 e) Requiring each individual member of the Class to pursue an individual remedy
22 would also discourage the assertion of lawful claims by the members of the Class
23 who would be disinclined to pursue action against Defendant because of an
24
25
26
27
28

1 appreciable and justifiable fear of retaliation and permanent damage to their lives,
2 careers and well-being.

3 f) Proof of a common policy and practice or factual pattern, of which the members of
4 the Class experienced, is representative of the Class herein and will establish the
5 right of each of the members of the Class to recover on the causes of action alleged
6 herein.
7

8 g) Absent class treatment, the prosecution of separate actions by the individual
9 members of the Class, even if possible, would likely create:

10 i. a substantial risk of each individual plaintiff presenting in separate,
11 duplicative proceedings the same or essentially similar arguments and
12 evidence, including expert testimony;

13 ii. a multiplicity of trials conducted at enormous expense to both the judicial
14 system and the litigants;
15

16 iii. inconsistent or varying verdicts or adjudications with respect to the
17 individual members of the Class against Defendant;

18 iv. potentially incompatible standards of conduct for Defendant; and
19

20 v. potentially incompatible legal determinations with respect to individual
21 members of the Class which would, as a practical matter, be dispositive of
22 the interests of the other members of the Class who are not parties to the
23 adjudications or which would substantially impair or impede the ability of
24 the members of the Class to protect their interests.
25
26
27
28

- 1 h) The claims of the individual members of the Class are not sufficiently large to
2 warrant vigorous individual prosecution, considering all of the concomitant costs
3 and expenses attendant thereto.
4
5 i) Courts seeking to preserve efficiency and other benefits of class actions routinely
6 fashion methods to manage any individual questions.
7
8 j) Judicial precedent urges trial courts, which have an obligation to consider the use of
9 innovative procedural tools to certify a manageable class, to be procedurally
10 innovative
11 in managing class actions.

12 80. **Well-defined Community of Interest:** Plaintiffs also meet the established standards
13 for class certification as follows:

- 14 a) **Typicality**: The claims of Plaintiffs are typical of the claims of all members of the
15 Class and Subclasses they seek to represent because all members of the Class
16 sustained injuries and damages arising out of Defendant's common course of
17 conduct in violation of California law, and the injuries and damages of all members
18 of the Class were caused by Defendant's wrongful conduct in violation of
19 California law, as alleged herein.
20
21 b) **Adequacy**: Plaintiffs are adequate representatives of the Class and/or Subclasses
22 they seek to represent, will fairly protect the interests of the members of the Class,
23 have no interests antagonistic to the members of the Class, and will vigorously
24 pursue this suit via attorneys who are competent, skilled and experienced in
25 litigating matters of this type.
26
27
28

1 c) **Predominant Common Questions of Law or Fact:** There are common questions
2 of law and/or fact as to the members of the Class which predominate over questions
3 affecting only individual members of the Class, including, without limitation:

- 4 i. Whether Defendant failed and continues to fail to have a policy to provide
5 members of the Class timely, duty-free, uninterrupted meal periods of at
6 least 30-minutes for shifts over 5 and 10 hours of work;
7
8 ii. Whether Defendant failed and continues to fail to have a policy to provide
9 members of the Class timely, duty-free, uninterrupted rest periods of at least
10 10-minutes for every four hours worked or major fraction thereof;
11
12 iii. Whether Defendant unlawfully failed to pay Plaintiffs and the members of
13 the Class overtime compensation in violation of Labor Code §§ 218, 510,
14 1194, and Wage Order 4;
15
16 iv. Whether Defendant unlawfully failed to maintain accurate records in
17 violation of Labor Code § 1174(d);
18
19 v. Whether Defendant unlawfully failed to pay all wages to Plaintiffs and
20 members of the Class when due in violation of Labor Code § 204;
21
22 vi. Whether Defendant unlawfully failed to furnish accurate itemized
23 statements to members of the Class in violation of Labor Code §§ 226,
24 226.3;
25
26 vii. Whether Defendant failed to reimburse Plaintiffs and members of the Class
27 for all expenses incurred in discharge of their duties in violation of Labor
28 Code § 2802;

- 1 viii. Whether Defendant’s policies and practices of failing to pay their employees
2 all wages due within the time required by California law after their
3 employment ended with Defendant violate Labor Code §§ 201-203;
4
5 ix. Whether the members of the Class are entitled to compensatory damages,
6 and if so, the means of measuring such damages;
7
8 x. Whether the members of the Class are entitled to injunctive relief;
9
10 xi. Whether the members of the Class are entitled to restitution; and
11
12 xii. Whether Defendant is liable for attorneys’ fees and costs to the extent
13 permitted by California law.

14
15 d) **Manageability of Class and Common Proof**: The nature of this action and the
16 nature of laws available to Plaintiffs make use of the class action format and
17 procedure a particularly efficient and appropriate procedure to afford relief to
18 Plaintiffs and members of the Class for the wrongs alleged herein. Specifically,
19 liability will turn on Defendant’s own uniform, systematic practices of failing to pay
20 their employees for all wages they earned in violation of California law during the
21 Class Period. Therefore, the wage violations are predominant questions of fact that
22 are easily capable of being determined through manageable devices of common
23 proof, such as statistical random sampling, survey evidence based on scientific
24 principles, representative testimony, documentary evidence and common
25 practices/procedures of Defendant in treating each of the members of the Class as a
26 homogeneous group. Once the predominant issues of wage compliance are
27 determined, then each of the derivative subclass claims and damages suffered by
28 each member of the Class will be capable of being shown by several means of

1 common proof, and limited by individual showings of entitlement to recovery that
2 can be professionally administered and tailored to the facts and circumstances of the
3 case.

4 81. Class certification of the First through the Eighth causes of action is appropriate
5 under *Cal. Code Civ. Proc.* § 382 because questions of law and fact common to the Class and
6 Subclasses predominate over any questions affecting only individual members of the Class and
7 Subclasses of this litigation. Defendant's policies and practices unlawfully treated members of the
8 Class and Subclasses in a uniform fashion. The damages suffered by individual members of the
9 Class and Subclasses are small compared to the expense and burden of individual prosecution of this
10 litigation. In addition, class certification is superior because it will obviate the need for unduly
11 duplicative litigation that might result in inconsistent judgments about Defendant's practices.
12

13 82. Class certification of the First through Eighth causes of action is also appropriate
14 pursuant to *Cal. Code Civ. Proc.* § 382 because Defendant has acted or refused to act on grounds
15 generally applicable to the Class, making appropriate declaratory relief with respect to and the Class
16 and Subclasses as a whole.
17

18 83. Plaintiffs intend to send notice to all members of the Class and Subclasses to the
19 extent required by law and each will be given an opportunity to opt out of the proceedings.
20

21 FIRST CAUSE OF ACTION

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **In Violation of Labor Code §§ 226.7(c), 512(a), 1198 and IWC Order No. 9-2001**
24 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**
25 **Alternative, Meal Break Subclass Against Defendant and Does 1 – 50, inclusive)**
26
27
28

1 84. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
2 fully set forth herein.

3 85. *Labor Code* § 512 provides in relevant part: “An employer shall not employ an
4 employee for a work period of more than five hours per day without providing the employee with a
5 meal period of not less than 30 minutes An employer shall not employ an employee for a work
6 period of more than 10 hours per day without providing the employee with a second meal period of
7 not less than 30 minutes”

8
9 86. IWC Order No. 4-2001, which applies to Defendant’s industry, likewise requires
10 employers to provide meal periods to employees. Section 11(C) of IWC Order No 4-2001 provides
11 in relevant part: “Unless the employee is relieved of all duty during a 30-minute meal period, the
12 meal period shall be considered an “on duty” meal period and counted as time worked.” An ‘on
13 duty’ meal period shall be permitted only when the nature of the work prevents an employee from
14 being relieved of all duty and when by written agreement between the parties, an on-the-job paid
15 meal period is agreed to. The written agreement shall state that the employee may in writing, revoke
16 the agreement at any time.

17
18 87. *Labor Code* §1198 states: “The maximum hours of work and the standard conditions
19 of labor fixed by the commission shall be the maximum hours of work and the standard conditions
20 of labor for employees. The employment of any employee for longer hours than those fixed by the
21 order or under conditions of labor prohibited by the order is unlawful.”

22
23 88. Labor Code § 226.7(c) provides in relevant part: “If an employer fails to provide an
24 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
25 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
26 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
27

1 regular rate of compensation for each workday that the meal or rest or recovery period is not
2 provided.

3 89. Throughout the Class Period, Plaintiffs and certain members of the Class are/were
4 required to assist customers and other employees during their lunch breaks, which would force them
5 to work during their lunch breaks. This made it impossible for Plaintiffs and certain members of the
6 Class to have a duty-free uninterrupted meal break. Defendant did not pay Plaintiffs and members of
7 the Class for the time they worked during their breaks nor the premium pay to which they are/were
8 entitled for the missed and non-compliant rest and meal breaks.
9

10 90. Plaintiffs and members of the Class did not waive their meal periods by mutual
11 consent with Defendant or otherwise.
12

13 91. The nature of Plaintiffs and Class Members' work, providing in person customer
14 service, was rigorous and nonstop. Plaintiffs and certain Class Members were frequently prevented
15 from timely taking meal breaks because, due to their constant work demands and staffing shortages,
16 they were not timely relieved of all duties to take such breaks. Also, Plaintiffs and certain Class
17 Members are/were required to use their personal cellphone to watch training videos on the app
18 "WorkJam" during their meal breaks.
19

20 92. Plaintiffs and the Class Members did not consent to missing their meal and rest
21 breaks, nor did they waive their right to timely, uninterrupted meal and rest breaks.
22

23 93. Defendant discouraged, impeded and through threats and intimidation prevented and
24 dissuaded Plaintiffs and members of the Class from taking compliant 30-minute meal periods, nor
25 did Defendant pay Plaintiffs or Members of the Class with an additional hour of pay for these meal
26 period violations, nor did Defendant pay Plaintiffs and Class Members a premium pay penalty for
27 missed, short, late or interrupted meal breaks pursuant to *Labor Code* § 226.7(c).
28

1 94. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 512(a), 1198, and
2 IWC Order No. 4-2001, Plaintiffs seek recovery of "premium pay" pursuant to the DLSE's Policy
3 Manual Guidelines and *Labor Code* § 226.7.

4 95. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the members of the
5 Rest Period Subclass seek recovery of prejudgment interest on all amounts recovered herein.

6
7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REST PERIODS**

9 **In Violation of Labor Code §§ 226.7(c), 1198 and IWC Order No. 9-2001**

10 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

11 **Alternative, Rest Break Subclass Against Defendant and Does 1 – 50, inclusive)**

12 96. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
13 fully set forth herein.

14 97. Section 12(A) of IWC Order No. 4-2001 provides in relevant part: "Every employer
15 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
16 the middle of each work period. The authorized rest period time shall be based on the total hours
17 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
18 . . . Authorized rest period time shall be counted as hours worked for which there shall be no
19 deduction from wages."

20 98. *Labor Code* §1198 states: "The maximum hours of work and the standard conditions
21 of labor fixed by the commission shall be the maximum hours of work and the standard conditions
22 of labor for employees. The employment of any employee for longer hours than those fixed by the
23 order or under conditions of labor prohibited by the order is unlawful."

1 99. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
2 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
3 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
4 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
5 regular rate of compensation for each workday that the meal or rest or recovery period is not
6 provided.
7

8 100. Throughout the Class Period, Defendant fails/failed to provide rest periods to
9 Plaintiffs and certain of the Class Members. The nature of Plaintiffs and Class Members’ work,
10 required them to provide in person customer service, which rigorous and nonstop. Plaintiffs and
11 Class Members are/were frequently prevented from timely taking rest breaks due to constant work
12 demands and staffing shortages. Defendant also requires/required Plaintiffs and certain Class
13 Members to watch training videos on the “WorkJam” app via their personal cell phone on multiple
14 occasions during their rest breaks.
15

16 101. Defendant knew or reasonably should have known that Plaintiffs and the certain Class
17 Members were not timely relieved of all duties and were impeded or prevented from timely taking
18 timely all rest breaks after every fourth hour of work (or major fraction thereof).
19

20 102. Plaintiffs and the Class Members were not paid premium pay penalties pursuant to
21 *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to provide them timely,
22 uninterrupted rest breaks.

23 103. As a result of Defendant’s violations of *Labor Code* §§ 226.7(c), 1198, and IWC
24 Order No. 9-2001, Plaintiffs on their own behalf and on behalf of the Class Members they seek to
25 represent, seek “premium pay penalties” pursuant to *Labor Code* § 226.7.
26
27
28

1 104. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the members of the
2 Rest Period Subclass seek recovery of prejudgment interest on all amounts recovered herein.

3 //

4 //

5
6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME WAGES**

8 **In Violation of Labor Code §§ 510, 1194**

9 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

10 **Alternative, Overtime Subclass Against Defendant and Does 1 – 50, inclusive)**

11 105. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
12 fully set forth herein.

13
14 106. Plaintiffs seek to represent the proposed Class or in the alternative the proposed
15 Overtime Subclass as a basis to enforce equal or greater protections for wages owed that are offered
16 by California law. Because the practices alleged herein are uniform, systematic and continuous and
17 affect each proposed member of the Class in a legally identical way, Plaintiffs, at the appropriate
18 time will move to certify the Class or Overtime Subclass to the extent permitted by *Cal. Code Civ.*
19 *Proc.* § 382.

20
21 107. Plaintiffs and the Class, were at all times subject to California's laws and regulations
22 protecting the employees' entitlement to be paid and presumption to be paid overtime wages for
23 requisite hours worked beyond a normal work day or a normal work week, as specified, without
24 limitation, by *Labor Code* §§ 510, 1194 and Wage Order No. 4.

25 108. California law requires employers, such as Defendant to pay overtime compensation
26 to all nonexempt employees for all hours worked over 40 hours per week, or over 8 hours per day.
27
28

1 *Labor Code* § 204 establishes the fundamental right of all employees in the State of California to be
2 paid wages, including straight time and overtime, in a timely fashion for their work.

3 109. *Labor Code* § 510(a) states in pertinent part: “Any work in excess of eight hours in
4 one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at
5 the rate of no less than one and one-half times the regular rate of pay for any employee.” In addition,
6 *Labor Code* § 510(a) provides that “[a]ny work in excess of 12 hours in one day shall be
7 compensated at the rate of no less than twice the regular rate of pay for an employee.”
8

9 110. Pursuant to *Labor Code* § 1198 it is unlawful to employ persons for longer than the
10 hours set by the IWC.

11 111. Pursuant to *Labor Code* § 1194, “...any employee receiving less than the legal
12 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
13 in a civil action the unpaid balance of the full amount of this minimum wage or overtime
14 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”
15

16 112. As set forth above, Plaintiffs and the members of the Class were entitled to be paid
17 overtime compensation for all overtime hours worked. Plaintiffs, and certain members of the Class,
18 were regularly and consistently required to work overtime during the Class Period but were not paid
19 for all overtime hours worked and were not paid at the correct overtime rate of pay.
20

21 113. Throughout the Class Period, Plaintiffs and certain members of the Class worked in
22 excess of 8 hours in a workday and/or 40 hours in a workweek. Whenever Plaintiffs and Class
23 Members exceeded eight hours per day or forty hours per week, Defendant’s managers would often
24 pressure them to clock out while they are/were still required to complete tasks assigned by
25 Defendant.
26
27
28

114. Plaintiffs and the certain Class Members would also routinely work off the clock during their meal breaks, as was required by Defendant. Due to this time worked off the clock, Plaintiffs and the certain Class Members would routinely exceed eight hour shifts and forty-hour workweeks and would not be paid the required overtime pay.

115. During the Class Period, Defendant did not pay Plaintiffs and members of the Class overtime pay for all of the overtime hours worked, included hours worked while off the clock and Defendant did not pay Plaintiffs and members of the Class at the correct overtime rate of pay.

116. As a direct and proximate result of Defendant's unlawful conduct as set forth herein, Plaintiffs and members of the Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant in an amount to be established according to proof at trial, prejudgment interest, and costs and attorneys' fees, pursuant to *Labor Code* § 1194.2 and applicable California law.

//

//

//

FOURTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

In Violation of Labor Code § 1174(d)

(Brought by Plaintiffs on Behalf of Themselves and

Members of the Class Against Defendant and Does 1 – 50, inclusive)

117. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

1 118. *California Labor Code* § 1174(d), which was in force and effect at all relevant times,
2 herein, provides in pertinent part, that “Every person employing labor in this state shall keep... at a
3 central location in the state or at the plants or establishments at which employees are employed,
4 payroll records showing the hours worked daily by and the wages paid to, and the number of
5 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
6 respective plants or establishments. These records shall be kept in accordance with rules established
7 for this purpose by the commission, but in any case shall be kept on file for not less than three years.
8 An employer shall not prohibit an employee from maintaining a personal record of hours worked, or,
9 if paid on a piece-rate basis, piece-rate units earned.”
10

11 119. During the Class Period, Defendant knowingly and intentionally failed to accurately
12 record, track, maintain and keep accurate records of each and every hour worked and wages earned
13 for Plaintiffs and the Class Members.
14

15 120. Upon information and belief and thereon, Plaintiffs have alleged herein that in an
16 effort to fabricate the appearance of compliance with the provisions of the Labor Code,
17 (simultaneously motivated by Defendant’s effort to unlawfully avoid payment of premium pay
18 penalties owed for missed or non-compliant rest and meal breaks, and overtime pay) Defendant’s
19 routinely prohibited Plaintiffs and members of the Class from receiving proper, timely, and compliant
20 meal and rest breaks and altered timesheets to get rid of any owed overtime pay.
21

22 121. Thus, at all times relevant, Defendant failed to maintain accurate records of all hours
23 Plaintiffs and Class Members worked, including hours they were working during rest and meal break
24 period, and for the days they worked in excess of eight hours, or workweeks in excess of forty hours.
25 As a result of Defendant’s failure to maintain proper accurate records, premium penalties to which
26
27
28

1 Plaintiffs and Class Members were entitled for rest and meal break violations was not properly
2 recorded either.

3 122. Accordingly, Plaintiffs as a direct and proximate result of Defendant's unlawful
4 conduct as set forth herein, Plaintiffs and members of the Class have sustained damages, for
5 Defendant's violation of *Labor Code* § 1174(d), including loss of earnings for all hours worked, and
6 loss of receipt of premium pay penalties, in amounts to be established at time.
7

8 123. Plaintiffs and Class members are therefore entitled to and do seek to recover
9 penalties, pursuant to § 1174.5, which provides that an employer who fails to properly maintain
10 records pursuant to 1174(d) shall be subject to a civil penalty of five hundred dollars (\$500).
11

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES EARNED WHEN DUE**

14 **In Violation of Labor Code § 204**

15 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

16 **Alternative, the Untimely Payment of Wages Subclass**

17 **Against Defendant and Does 1 – 50, inclusive)**

18 124. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
19 fully set forth herein.
20

21 125. The California Labor Code requires employers to pay all wages due within the time
22 specified by law. *California Labor Code* § 204 was in full force and effect at all relevant times
23 herein.

24 126. Pursuant to § 204, for employees entitled to pay twice per month, two periods of pay
25 are required. Labor performed between the 1st and 15th of the month must be paid between the 16th
26 and 26th of the same month and labor performed on the 16th and the end of the month must be paid
27
28

on pay days between the 1st and 10th of the following month. *Labor Code* § 210 provides that “ ...
(a) In addition to, and entirely independent and apart from, any other penalty provided in this article,
every person who fails to pay the wages of each employee as provided in §§ 201.3, 204, 204b, 204.1,
204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred
dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

127. Plaintiffs and the Class Members were entitled to be paid twice monthly for labor
performed. Although Plaintiffs and the class members are and/or were paid twice monthly,
Defendant failed and intentionally refused to pay Plaintiffs and the Class Members all wages they
were entitled to, twice monthly, including overtime pay during each and every pay period of their
employment.

128. As alleged herein, Plaintiffs and the Class Members were not paid for all of their
wages, for each and every hour worked, including inter alia time worked during rest and meal
breaks, time worked off the clock and overtime hours, as alleged herein, during every single pay
period during the term(s) of their employment.

129. Accordingly, as a result of the unlawful acts of Defendant, Plaintiffs and the Class
Members have been deprived of wages in amounts to be determined according to proof at trial, and
are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
costs of suit, pursuant to *Labor Code* § s 210, 218 and 1194.

SIXTH CAUSE OF ACTION

1 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

2 **In Violation of Labor Code § 226(a)**

3 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

4 **Alternative, the Wage Statement Subclass**

5 **Against Defendant and Does 1 – 50, inclusive)**

6
7 130. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
8 fully set forth herein.

9 131. *Labor Code* § 226(a) requires employers to provide employees itemized wage
10 statements that accurately report, among other things, the total hours worked and total wages earned
11 in each pay period. Section 226(a) states in pertinent part, that “[e]very employer shall, semimonthly
12 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
13 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid
14 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
15 earned, (2) total hours worked by the employee ..., (5) net wages earned, (6) the inclusive dates of
16 the period for which the employee is paid ..., and (9) all applicable hourly rates in effect during the
17 pay period and the corresponding number of hours worked at each hourly rate by the employee ...”

18
19 132. *Labor Code* § 226 (e)(1) states that “[a]n employee suffering injury as a result of a
20 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
21 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
22 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
23 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
24 costs and reasonable attorney’s fees.”
25
26
27
28

1 133. *Labor Code* § 226(e)(1) provides: “An employee suffering injury as a result of a
2 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
3 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
5 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
6 costs and reasonable attorney’s fees.”
7

8 134. *Labor Code* § 226(e)(2)(C) defines “promptly and easily determine” to mean “a
9 reasonable person would be able to readily ascertain the information without reference to other
10 documents or information.”
11

12 135. *Labor Code* § 226(e)(3) states that the phrase “knowing and intentional failure” “does
13 not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”
14

15 136. *Labor Code* § 226(h) provides: “An employee may also bring an action for injunctive
16 relief to ensure compliance with this section, and is entitled to an award of costs and reasonable
17 attorney’s fees.”
18

19 137. As alleged supra, during the Class Period, Defendant failed to maintain accurate
20 records, including records of time worked through rest and meal break periods, resulting in failure
21 pay them overtime wages they were owed when they worked shifts in excess of eight hours or in
22 excess of forty hours per week.
23

24 138. In addition, because of Defendant’s intentional and knowing failure to maintain
25 proper and accurate records, overtime hours and wages earned were also not recorded, and did not
26 appear on the Plaintiffs’ and Class Members’ wage statements.
27

28 139. During the Class Period Defendant knowingly and willingly failed to comply with
Labor Code § 226. As a common policy and practice Defendant did not include all hours worked,

1 including hours worked during on-duty rest and meal breaks, overtime hours worked and wage
2 statements failed to include premium pay penalties for Plaintiffs and Class Members' regularly
3 missed or otherwise, non-compliant, rest and meal breaks. The wage statements issued to the
4 Plaintiffs and Class Members were not accurate, did not reflect or include all wages earned during
5 each and every pay period of the Class Period. Defendant's knowing, and intentional omissions
6 caused the Plaintiffs and Class Members to suffer "injury" by, among other things, impeding them
7 from knowing the amount of wages to which they are/were lawfully entitled.
8

9 140. As a result of Defendant's violations of *Labor Code* § 226(a), Plaintiffs seek an award
10 of penalties pursuant to *Labor Code* § 226(e)(1), and injunctive relief, attorneys' fees, and costs
11 pursuant to *Labor Code* § 226(h).
12

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE WORK EXPENSES**

15 **In Violation of Labor Code § 2802**

16 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

17 **Alternative, the Reimbursement of Business Expense Subclass**

18 **Against Defendant and Does 1 – 50, inclusive)**

19 141. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
20 fully set forth herein.
21

22 142. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses
23 they
24 incur in direct consequence of the discharge of their duties or obedience to their employers'
25 instructions.
26
27
28

1 143. As alleged, during the Class Period, Defendant required Plaintiffs and certain Class
2 Members to use their personal cell phones to perform their job duties each workday throughout their
3 employment. Defendant required them to contact supervisors, to communicate with other employees
4 on shift, to text supervisors, to contact customers, to scan products, to look for inventories, to
5 download the app “WorkJam”, to watch training videos on “WorkJam” app.
6

7 144. During the Class Period, Defendant required Plaintiffs and certain Class Members to
8 use their personal vehicles to commute to different Ulta locations for training.

9 145. Despite Defendant’s requirement that Plaintiffs and Class Members incur expenses
10 using their personal cell phones and their personal vehicles to perform their job duties, Defendant
11 failed to reimburse Plaintiffs and the Class Members violated *Labor Code* § 2802(a).
12

13 146. As a result of Defendant’s failure to indemnify and reimburse Plaintiffs and Class
14 Members for the expenses they necessarily incurred in the performance and discharge of their
15 work-related duties, Plaintiffs and the Class Members have sustained economic damages in amount
16 to be proven at trial.

17 147. As a result of Defendant’s violation of *Labor Code* § 2802, Plaintiffs seek
18 reimbursement for all business-related expenses they have incurred working for Defendant, in
19 amounts to be determined at trial, with interest thereon as well as attorney’s fees and costs of suit
20 pursuant to *Labor Code* § 2802(c).
21

22 **EIGHTH CAUSE OF ACTION**

23 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION**

24 **In Violation of Labor Code §§ 201-203**

25 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

26 **Alternative, Waiting Time Subclass Against Defendant and Does 1 – 50, inclusive)**
27
28

1 148. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
2 fully set forth herein.

3 149. *Labor Code* § 201(a) provides in relevant part: “If an employer discharges an
4 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

5 150. *Labor Code* § 202(a) provides in relevant part: “If an employee not having a written
6 contract for a definite period quits his or her employment, his or her wages shall become due and
7 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
8 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
9 quitting.”
10

11 151. As a further result of Defendant’s manipulation of Plaintiffs and Class Members time
12 records, and Defendant’s requirement and practice of having Plaintiffs and certain Class Members to
13 handle customers and watch training videos during their meal breaks, Defendant violated Labor
14 Codes § 201 and 202 by failing to timely pay all wages due for each and every hour worked,
15 including overtime wages, upon Plaintiffs’ and such Class Members who separated from
16 Defendant’s employment during the Class Period, at the time of discharge or quitting.
17

18 152. *Labor Code* § 203(a) provides in relevant part: “If an employer willfully fails to pay,
19 without abatement or reduction, in accordance with § § 201 . . . 202 . . . any wages of an employee
20 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
21 date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
22 not continue for more than 30 days.”
23

24 153. Despite Defendant’s willful violations of *Labor Code* §§ 201 and 202 by failing to
25 timely pay all wages due upon Plaintiffs’ and such Class Members who separated from Defendant’s
26
27
28

1 employment during the Class Period upon their discharge or quitting, Defendant failed to pay
2 Plaintiffs and such Class Members “waiting time” penalties pursuant to Labor Code § 203(a).

3 154. As alleged supra, Defendant failed to lawfully compensate Plaintiffs and the Class
4 Members as required by law. Therefore, Defendant has willfully failed to make timely payment of
5 the full wages due to Plaintiffs and such Class Member employees who have resigned or been
6 discharged during the Class Period.
7

8 155. Labor Code § 218.5(a) states in relevant part: “In any action brought for the
9 nonpayment of wages . . . the court shall award reasonable attorney’s fees and costs to the prevailing
10 party if any party to the action requests attorney’s fees and costs upon the initiation of the action.”

11 156. As a result of Defendant’s violations of Labor Code §§ 201 and 202, Plaintiffs seek
12 an
13 award of “waiting time penalties” pursuant to Labor Code § 203, and attorney’s fees and costs
14 pursuant to *Labor Code* § 218.5.
15

16 **NINETH CAUSE OF ACTION**

17 **VIOLATION OF THE PRIVATE ATTORNEY GENERALS ACT OF 2004**

18 **Labor Code §2698 et seq.**

19 **(Against Defendant and Does 1-50, Inclusive)**

20
21 157. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
22 fully set forth herein.

23 158. The PAGA expressly establishes that any provision of the California Labor Code
24 which provides for a civil penalty to be assessed and collected by the Labor and Workforce
25 Development Agency (the “LWDA”), or any of its departments, divisions, commissions, boards,
26 agencies or employees for a violation of the California Labor Code may be recovered through a civil
27
28

1 action brought by an aggrieved employee on behalf of himself or herself, and other current or former
2 employees.

3 159. Plaintiffs, by their employment with Defendants and Defendant's violations of the
4 Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under the
5 PAGA.
6

7 160. Plaintiffs, by virtue of **Exhibit A** have satisfied all prerequisites to serve as a
8 representative of the general public to enforce California's labor laws including, without limitation,
9 the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the
10 time period required to intervene and because Defendant took no corrective action to remedy the
11 allegations set forth above, Plaintiffs, as a representative of the people of the State of California, will
12 seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the
13 DLSE. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:
14

15 "The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the
16 following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3,
17 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5,
18 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222,
19 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3,
20 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section
21 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403,
22 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511,
23 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921,
24 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,
25 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and
26 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293,
27 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7,
28 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47,
paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section
1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12,
1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of
Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision
(b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7."

1 161. Plaintiffs are informed and believes that Defendant has violated and continues to
2 violate the provisions of the Labor Code and applicable Wage Order No. 4-2001.

3 162. Pursuant to Labor Code section 2699, any provision of the Labor Code that already
4 provides a civil penalty to be assessed and collected by the Labor and Workforce Development
5 Agency, or any of its departments, divisions, commissions, boards, agencies or employees for
6 violation of the code or does not provide a civil penalty may be recovered through a civil action
7 brought by an aggrieved employee on behalf of himself or herself, and other current or former
8 employees pursuant to the procedures set forth in Labor Code, section 2699.3.

9
10 163. Plaintiffs, on their own behalf, and on behalf of the other similarly situated Aggrieved
11 Employees is an “aggrieved employees” because they were employed by the violators (the named
12 Defendant herein and its related Doe affiliates and subsidiaries), during the one-year statutory time
13 period and during such time period, was subjected to one or more violations, including Labor Code
14 sections 201-203, 204, 226(a), 226.7, 510, 512, 1174, 1194(a), 2802 and IWC No. 4, and are
15 therefore properly suited to represent the interests of a PAGA person.

16
17 164. Plaintiffs are informed and believes that Defendant have violated and continue to
18 violate provisions of the Labor Code and applicable Wage Order No. 4. Despite mailing of **Exhibit**
19 **A** at least 65-days prior to the filing of the filing of this Complaint, the LWDA has not notified
20 Plaintiffs that it intends to investigate the alleged Labor Code violations identified in **Exhibit A**,
21 such that, by operation of law Plaintiffs are entitled to commence this cause of action as a
22 representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

23 **Failure to Provide Meal Periods and Rest Periods**

24
25 165. In accordance with the mandates of Labor Code §226.7 and 512, Defendant were
26 required to authorize and relinquish control to permit their non-exempt employees to take a
27 ten-minute, uninterrupted, duty-free rest break for every four (4) hours worked or a major fraction
28

1 thereof and were further required to provide their non-exempt employees with a full, uninterrupted
2 30-minute meal period for every five (5) hours of labor performed.

3 166. As alleged, as a pattern and practice, Defendant failed to provide Plaintiffs and the
4 Aggrieved Employees with legally mandated rest break period and uninterrupted meal break periods
5 and failed to pay proper premium pay compensation for such failures in violation of Labor Code §§
6 226.7, 512 and IWC No. 4.
7

8 **Failure to Pay Overtime Wages**

9 167. At all times relevant herein, Defendant were required to compensate their non-exempt
10 employees overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40)
11 hours in a workweek, pursuant to the mandates of Labor Code §§ 510, 1194, and 1198.
12

13 168. As a pattern and practice, Defendant routinely failed to pay Plaintiffs and the
14 Aggrieved Employees for hours worked off the clock, including the 10-15 minutes of labor
15 performed each workday prior to clocking in and for labor performed during rest and meal break
16 periods. Such off-the-clock work performed caused Plaintiffs and the Aggrieved Employees to work
17 overtime hours for which they were not paid by Defendant.

18 169. Thus, during the relevant statutory period, Defendant failed to compensate Plaintiffs
19 and the Aggrieved Employees for all hours worked, resulting in a failure to pay all overtime wages
20 they were due in amounts to be proven at trial.
21

22 **Failure to Provide Maintain Accurate Records**

23 170. At all times relevant herein, Defendant were required to keep accurate records
24 showing the names and addresses of all employees employed and showing the hours worked daily
25 and wages earned and paid, pursuant to the mandates of Labor Code §1174.
26
27
28

1 171. As a result of and in addition to Defendant's various Labor Code violations, including
2 Defendant's failure to records all hours worked, including overtime hours worked and time worked
3 during rest and meal break periods, Defendant failed in their affirmative obligation to maintain
4 accurate records regarding Plaintiffs and the Aggrieved Employees including accurate records of all
5 hours actually worked and wages paid at their applicable respective corresponding rates of pay in
6 violation of Labor Code §1174.
7

8 **Failure to All Wages When Due**

9 172. Pursuant to Labor Code §204, all wages earned by Plaintiffs and the Aggrieved
10 Employees were and/or are "due and payable twice during each calendar month, on days designated
11 in advance by the employer as regular paydays." For [l]abor performed between the 1st and 15th
12 days, inclusive of any calendar month" payment is due no later than the 26th day of the month. "...
13 for labor performed between the 16th and the last day, inclusive, of any calendar month, payment is
14 due no later than the 10th day of the following month..." By failing to pay Plaintiffs and the
15 Aggrieved Employees properly for all hours worked at the proper corresponding rates of pay,
16 including overtime hour and overtime rates of pay, Defendant deprived them of timely payment of
17 all wages earned, when due and owing at these regularly scheduled intervals throughout the relevant
18 time period in violation of Labor Code §204.
19
20

21 **Failure to Timely Pay All Wages Earned Twice Monthly**

22 173. At all times relevant, Labor Code § 200 was in force and effect. Subdivision (a) of §
23 200 defines "wages" as "all amounts for labor performed by employees of every description,
24 whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or
25 other method of calculation." Subdivision (b) of Section 200 defines "labor" as all work or service
26
27
28

whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

174. At all times relevant, Labor Code § 204 was in force and effect. Subdivision (a) of § 204 requires employers to pay employees all wages earned no less than twice monthly. As a result of Defendant's failure to pay Plaintiffs and the Aggrieved Employees all wages they earned, Defendant likewise violated Labor Code section 204 by failing to pay them all wages earned no less than twice monthly.

175. At all times relevant, Labor Code § 210 was in force and effect. Labor Code § 210 provides in relevant part that an employer that violates Labor Code § 204 is subject to a penalty of one hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld.

176. Due to the aforementioned failure by Defendant to pay all wages owed to Plaintiffs and the Aggrieved Employees, a result of Defendant's willful and intentional violations of Labor Code § 204, Defendant is liable to the Plaintiffs and Aggrieved Employees for the penalties described above.

Failure to Provide Complete and Accurate Wage Statements

177. Pursuant to Labor Code §§ 226 "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employees' wages or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..."

1 178. As a result of the alleged and various Labor Code violations, Defendant failed to keep
2 maintain accurate records of all hours actually worked/wages earned and thus, consequently failed in
3 their affirmative obligation to provide Plaintiffs and the Aggrieved Employees with accurately
4 itemized wage statements regarding the true total number of hours each of them actually worked
5 during each and every pay period, their gross wages earned, all deductions, and net wages earned,
6 along with their applicable corresponding hourly rates, including premium pay for missed rest and/or
7 meal breaks and including overtime rates for each respective hourly rate of overtime worked. The
8 inaccurate wage statements were not caused by inadvertent and occasional clerical mistakes, but
9 rather were the result of a pre-determined, deliberate and uniform deliberate operational policies and
10 practices of Defendant.
11

12 **Failure to Reimburse Expenses**

13
14 179. California Labor Code § 2802 provides that an employer shall indemnify his or her
15 employees for all necessary expenditures or losses incurred by the employee in direct consequence
16 of
17
18 the discharge of his or her duties.
19

20 180. As alleged supra, Defendant required or requires as a condition of employment that
21 Plaintiffs and the Aggrieved Employees utilize their personal cell phones in the daily and routine
22 discharge of their duties to communicate with Defendant's managers, supervisors, and colleagues.
23 Defendant does not and has not reimbursed Plaintiff and the Aggrieved Employees for expenses they
24 incurred in the routine and daily use of their personal cell phone for work related duties and
25 communications. Defendants also required certain Plaintiffs to utilize their personal vehicles to
26 commute to different Ulta locations for training.
27
28

1 181. As a direct result of Defendant's failure to reimburse Plaintiffs and the Aggrieved
2 Employees for their personal cell phone expenses and mileage which they necessarily incurred in the
3 discharge of their work-related duties, Defendant has violated Labor Code Section 2802.

4 **Damages**

5 182. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by
6 the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.
7

8 183. Pursuant to California Labor Code § 2699, Plaintiffs requests and is entitled to
9 recover from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved
10 employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved
11 employee per pay period for each subsequent violation; and

12 184. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
13 statute.
14

15 185. As alleged supra, notice of these violations was provided pursuant to Labor Code
16 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days have
17 passed since notice was provided and Plaintiffs have not received any notification from the LWDA
18 that it intends to investigate the alleged violations. Therefore, the representative Plaintiffs are entitled
19 to prosecute their PAGA claims under Labor Code §2699, et seq.
20

21 186. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
22 Employees, whether a part of this action or not. Further this claim needs no certification to proceed
23 with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

24 187. Accordingly, Plaintiffs respectfully requests that the Court award judgment and relief
25 in their favor including an award of civil penalties under California Labor Code §2699 in the amount
26 of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
27
28

1 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent
2 violation during the relevant period, according to proof.

3 188. Plaintiffs as the personal representatives of the Aggrieved Employees, will and does
4 seek to recover any and all penalties for each and every violation shown to exist or to have occurred
5 during the liability period, in an amount according to proof, as to those penalties that are otherwise
6 only available to public agencies. Said funds recovered will be distributed in accordance with the
7 PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California
8 and the LWDA.
9

10 **TENTH CAUSE OF ACTION**

11 **UNFAIR BUSINESS PRACTICES**

12 **In Violation of Bus. & Prof. Code § 17200 et seq.**

13 **(Brought by Plaintiffs on Behalf of Themselves and Members of the Class or, in the**

14 **Alternative, the UCL Subclass Against Defendant and Does 1 – 50, inclusive)**

15 189. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
16 fully
17 set forth herein.
18

19 190. California Business and Professions Code § 17200, et seq. prohibits unfair
20 competition in the form of any unlawful, unfair or fraudulent business act or practice.
21

22 191. California Business and Professions Code § 17202 provides: “Notwithstanding §
23 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture,
24 or penal law in case of unfair competition.”
25
26
27
28

1 192. California Business and Professions Code § 17203 provides in relevant part that the
2 court may “restore to any person in interest any money or property, real or person, which may have
3 been acquired by means of such unfair competition.”

4 193. California Business and Professions Code § 17203 also provides that any person who
5 meets the standing requirements of § 17204 and complies with *California Code of Civil Procedure* §
6 382 may pursue representative claims for relief on behalf of others.

7 194. California Business and Professions Code § 17204 allows any “person who has
8 suffered injury in fact and has lost money or property as a result of such unfair competition” to
9 prosecute a civil action for violation of the Unfair Business Practices Act.
10

11 195. Pursuant to § 17204, Plaintiffs and all similarly situated employees are entitled to
12 enforce all applicable provisions of the Labor Code.
13

14 196. Beginning at an exact date unknown, but at least since the date four years prior to the
15 filing of this Complaint, Defendant has committed acts of unfair competition as defined by the
16 Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and acts
17 described in the Complaint, including, but not limited to violations of Labor Codes §§ 201-203, 204,
18 226 (a), 226.7, 510, 512, 1194, 1198, 2802 and the provisions of IWC No. 9-2001.
19

20 197. The violations of these laws and regulations, as well as of fundamental California
21 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
22 Business and Professions Code § 17200 et seq.

23 198. The acts and practices described above constitute unfair, unlawful and fraudulent
24 business practices, and unfair competition, within the meaning of Business and Professions Code §
25 17200, et seq. Among other things, Defendant’s acts and practices have forced Plaintiffs and Class
26
27
28

Members to labor without receiving appropriate wages and/or to incur personal cell phone expenses in the discharge of their duties.

199. The acts and practices described above have allowed Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

200. As a result of the acts and practices described herein, Plaintiffs and Class Members have been denied compensation in an amount to be proven at trial.

201. Plaintiffs and Class Members are therefore, entitled to restitution pursuant to Business and Professions Code § 17203 and 17208 for all wages and other compensation unlawfully withheld from them during the Class Period.

202. As a result of the aforementioned acts and practices, Defendant has received and continues to receive ill-gotten gains belonging to Plaintiffs and Class Members.

203. Injunctive relief is necessary and appropriate to prevent Defendant from repeating and continuing their unlawful, unfair and fraudulent business acts and practices described herein.

204. Pursuant to § 17203 and/or any other applicable law, Plaintiffs seek an order preventing Defendant from engaging in unlawful, unfair and fraudulent conduct and preventing Defendant from profiting and benefiting from their illegal and wrongful acts.

205. Plaintiffs' success in this action will enforce important rights affecting the public interest.

206. An award of attorneys' fees is appropriate pursuant to California Civil Code § 1021.5 because 1) this action will confer a significant benefit upon a large class of persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would be against the interest of justice to force Plaintiffs to pay attorneys' fees from any amount recovered in this action.

PRAYER FOR RELIEF

1 WHEREFORE, PLAINTIFFS ON BEHALF OF THEMSELVES AND ALL
2 MEMBERS OF THE CLASS AND/OR SUBCLASSES THEY SEEK TO REPRESENT,
3 PRAYS FOR RELIEF AS FOLLOWS:

4 ON THE FIRST THROUGH EIGHTH AND TENTH CAUSES OF ACTION

- 5
- 6 1. For an order certifying the First through Tenth causes of action and maintaining said
- 7 causes of action as a class action pursuant to Cal. Code Civ. Proc. § 382 on behalf of
- 8 the members of the Class and/or Subclasses who were either employed or who
- 9 performed work here in the State of California within the Class Period and that notice
- 10 of the pendency of this action be provided to members of the Class;
- 11
- 12 2. Designation of Plaintiffs as the Class Representatives for the Class and/or Subclasses
- 13 and Plaintiffs' attorneys as Class Counsel for the Class and/or Subclasses;
- 14
- 15 3. A declaratory judgment that the practices complained of herein are unlawful under
- 16 California law;
- 17
- 18 4. Appropriate equitable relief to remedy Defendant's violations of California law
- 19 including, but not necessarily limited to, an order enjoining Defendant from continuing
- 20 their unlawful practices;
- 21
- 22 5. For an award of unpaid wages for all labor performed and liquidated damages in an
- 23 amount equal to the amount unlawfully unpaid pursuant to Labor Code §§ 200, 218,
- 24 1194 and 1194.2;
- 25
- 26 6. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
- 27
- 28 7. All appropriate California statutory penalties;
8. An award of unpaid reporting time pay pursuant to IWC No. 4;

9. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class was not provided a first or second meal period;
10. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class worked through a rest break or was not provided a proper rest break for every four hours worked or major fraction thereof;
11. Labor Code § 203 penalties;
12. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3 and 210;
13. Reimbursement of the necessary expenses incurred by the Class in the discharge of their duties;
14. Pre-judgment and post-judgment interest, as provided by law;
15. Such other equitable relief as the Court may deem just and proper;
16. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws; and

ON THE NINETH CAUSE OF ACTION

1. Upon the PAGA Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code §2698 et seq., for Defendant' violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194(a), 2802 and applicable Wage Order No. 4;
2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699 and any other applicable statute; and
3. For such other and further relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands trial of all issues by jury.

1
2
3 DATED 2021/11/19
4

SW EMPLOYMENT LAW GROUP, APC

5
6 By: 
7 Jacob N. Whitehead, Esq.
8 Shawn Sasooness, Esq.
9 Maria Burciaga, Esq.
10 Attorneys for Plaintiffs and All Others Similarly
11 Situated
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28