

1 James P. Carter (SBN 150052)  
james.carter@jacksonlewis.com  
2 Nicole M. Shaffer (SBN 244366)  
nicole.shaffer@jacksonlewis.com  
3 Kathy A. Le (SBN 279690)  
kathy.le@jacksonlewis.com  
4 JACKSON LEWIS P.C.  
200 Spectrum Center Drive, Suite 500  
5 Irvine, CA 92618  
Tel: (949) 885-1360  
6 Fax: (949) 885-1380

7 Attorneys for Defendant M.A.C. COSMETICS INC.

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 MERCEDES DEGUCHY, as an  
12 individual and on behalf of all others  
13 similarly situated,

14 Plaintiffs,

15 vs.

16 M.A.C. COSMETICS, INC., a  
17 Delaware corporation; and DOES 1  
18 through 100,

19 Defendants.  
20  
21  
22  
23

CASE NO.: '18CV1210 BEN KSC

NOTICE OF REMOVAL OF ACTION TO  
THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA PURSUANT  
TO 28 U.S.C. §§ 1332, 1441, 1446, and  
1453

[Filed concurrently with the Civil Cover  
Sheet; Declaration of Nicole M. Shaffer;  
Declaration of Paloma Hurtado; Corporate  
Disclosure Statement; Notice of Related  
Cases; and Notice of Party with Financial  
Interest]

Action Filed: May 8, 2018

24 TO THE HONORABLE CLERK OF THE UNITED STATES DISTRICT  
25 COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFFS  
26 AND THEIR COUNSEL OF RECORD:

27 PLEASE TAKE NOTICE that M.A.C. COSMETICS INC. (“M.A.C.” or  
28 “Defendant”), a defendant in the above-titled action, hereby removes this matter to the

1 United States District Court for the Southern District of California pursuant to 28 U.S.C.  
2 §§ 1332(d), 1441, 1446 and 1453 to effect the removal of the above-captioned action,  
3 which was commenced in the Superior Court of the State of California in and for the  
4 County of San Diego, and states that the removal is proper for the reasons stated below.

5 **SERVICE AND PLEADINGS FILED IN STATE COURT**

6 1. On May 8, 2018, Plaintiff Mercedes Deguchy filed a putative class action  
7 complaint (“Complaint”) against M.A.C. Cosmetics, Inc., in the Superior Court of the  
8 State of California for the County of San Diego entitled, *Mercedes Deguchy v. M.A.C.*  
9 *Cosmetics, Inc., Does 1 through 100*, Case No. 37-2018-00022831-CU-OE-CTL,  
10 alleging eight causes of action for: (1) Failure to Pay Wages and Overtime; (2) Rest  
11 Period Violations; (3) Meal Period Violations; (4) Failure to Provide Complete and  
12 Accurate Itemized Wage Statements; (5) Waiting Time Penalties; (6) Failure to Provide  
13 Suitable Seating; (7) Coerced Purchases; and (8) Unfair Competition. The Complaint  
14 does not specify the dollar amount of damages being sought. A true and complete copy  
15 of the Summons, Complaint, and Civil Case Cover Sheet and related case documents  
16 filed in the San Diego County Superior Court and served on Defendant are attached as  
17 **Exhibit A** to the Declaration of Nicole M. Shaffer (“Shaffer Decl.”) filed concurrently  
18 with this Notice of Removal.

19 2. Plaintiff served Defendant pursuant to California Code of Civil Procedure  
20 (“CCP”) § 416.10, by personally delivering the Summons and Complaint on May 9,  
21 2018, to Defendant’s agent for service of process. (Shaffer Decl. ¶ 3.) **Exhibit A**  
22 constitutes all the pleadings that have been filed and/or served in this action as of the  
23 date of filing this Notice of Removal. (*Id.* at ¶ 4.)

24 **TIMELINESS OF REMOVAL**

25 3. Defendant’s removal is timely because it has been filed within thirty (30)  
26 days after Defendant first ascertained that the case was removable. See 28 U.S.C. §  
27 1446(b)(3); C.C.P. § 412.20(a)(3).

28 ///

**NOTICE TO ALL PARTIES AND STATE COURT**

4. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies that a copy of this Notice of Removal and all supporting pleadings will be served promptly on Plaintiff’s counsel and filed with the Clerk of the San Diego County Superior Court. Therefore, all procedural requirements under 28 U.S.C. § 1446 will be followed and satisfied.

**JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

5. Section 4 of the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2) has been amended to provide, in relevant part:

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which – (A) any member of a class of plaintiffs is a citizen of a State different from any defendant.

6. In addition, CAFA confers federal court jurisdiction only where the proposed class involves 100 or more members, or where the primary defendants are not States, State officials, or other governmental entities. 28 U.S.C. § 1332(d)(5).

7. As set forth below, this action satisfies all the requirements for federal jurisdiction under CAFA. This action (1) involves an amount in controversy greater than \$5,000,000; (2) involves a plaintiff and a defendant who are citizens of different states; (3) involves a putative class of 100 or more purported members; and (4) does not involve a defendant who is a governmental official or entity.

**The Purported Amount in Controversy Exceeds \$5,000,000**

8. CAFA authorizes the removal of class actions in which the amount in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d).

9. When measuring the amount in controversy, the court must assume that the allegations of the complaint are true and that a jury will return a verdict for the plaintiff on all claims made in the complaint. *Fong v. Regis Corp.*, 2014 U.S. Dist. LEXIS 275, \*5 (N.D. Cal. 2014), *citing Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*,

1 199 F.Supp.2d 992, 1001 (C.D. Cal. 2002).

2 10. In *Dart Cherokee Basin Operating Company, LLC v. Owens*, 135 S. Ct. 547  
3 (2014), the United States Supreme Court held that, where the complaint is silent as to  
4 whether the amount in controversy meets CAFA’s jurisdictional threshold of  
5 \$5,000,000, “a defendant’s notice of removal need include only a *plausible* allegation  
6 that the amount in controversy exceeds the jurisdictional threshold.” *Id.* at 554  
7 (emphasis added). For the following reasons, the Complaint places an amount in  
8 controversy exceeding \$5,000,000.

9 11. Although the Complaint is silent as to the amount in controversy, the  
10 amount in controversy exceeds \$5,000,000 as to the putative class’ second through fifth  
11 causes of action alone when the following allegations set forth by Plaintiff are  
12 considered:<sup>1</sup>

13 12. With respect to the putative class’ second through fifth causes of action, the  
14 putative class consists of “all of Defendants’ current and former non-exempt employees  
15 in California at any time within four years prior to the filing of the Complaint through  
16 the present.” (Complaint ¶14.) There are at least 1,253 persons that fit Plaintiff’s  
17 definition of the class, as of September 2017, when Defendant last ran its putative class  
18 data. (Declaration of Paloma Hurtado (“Hurtado Decl.”), ¶ 4.)

19 a. Using a limited time period of March 15, 2016<sup>2</sup> through May 11,  
20 2018, there are 115,296 workweeks, as of September 2017, when Defendant last ran its  
21 putative class data.

22 b. Under the second cause of action, the putative class seeks damages  
23 for alleged premium pay for noncompliant rest breaks. To compute the amount in  
24 controversy deriving from these claims, in the event Plaintiffs were able to prove only  
25 two noncompliant rest breaks per week per employee, using the above limited time  
26

27 <sup>1</sup> The assumptions set forth herein are based on the information provided by Defendant solely for the purposes of calculating  
28 various theories as alleged in the Complaint. No admission is being made by Defendant with respect to liability, damages,  
certification, or any other purpose.

<sup>2</sup> Defendant uses this limited time period due to a prior class action which settled class rest break claims through this date.

1 frame, and Plaintiff’s hourly rate of \$23.39 (Hurtado Decl., ¶ 5), this would total  
2 \$5,393,546.80.

3 c. Under the third cause of action, the putative class seeks damages for  
4 alleged premium pay for noncompliant meal breaks. To compute the amount in  
5 controversy deriving from these claims, in the event Plaintiffs were able to prove only  
6 two noncompliant meal breaks per week per employee, using the above limited time  
7 frame, and Plaintiff’s hourly rate of \$23.39, this would total \$5,393,546.80.

8 d. Under the fourth cause of action, the putative class seeks penalties  
9 under California Labor Code section 226. Section 226(e) provides that an employee  
10 suffering injury as a result of an employer’s failure to provide accurate wage statements  
11 may recover the greater of (a) actual damages; or (b) fifty dollars (\$50) for the initial pay  
12 period in which a violation occurs and one hundred dollars (\$100) per employee for each  
13 subsequent violation, not to exceed an aggregate penalty of four thousand dollars  
14 (\$4,000). Given the rates of turnover experienced by Defendant, each position could  
15 generate approximately \$4,000 in wage statement penalties. Nevertheless, in computing  
16 the amount in controversy, Defendant assumes that each position would generate no  
17 more than \$2,600 in penalties under section 226(e) regardless of the turnover rate. This  
18 amounts totals \$3,257,800.00.

19 d. Under the fifth cause of action, the putative class seeks waiting time  
20 penalties under California Labor Code § 203. According to § 203, an employee who is  
21 not timely paid all wages due upon termination may recover a penalty equal to the  
22 employee’s daily rate of pay for each day the wages are improperly withheld, for up to  
23 30 days. Given the number of employees whose employment was terminated since  
24 February 26, 2015 (280 formers, as of September 2017, when Defendant last ran its  
25 putative class data) (Hurtado Decl., ¶ 4), the potential exposure to waiting time penalties  
26 significantly increases the amount in controversy by \$1,571,808.00. Together with the  
27 amount in controversy from the second, third and fourth causes of action, the amount in  
28 controversy is sufficient to support removal even if it is assumed that the terminated

1 employees worked, on average, less than seven hours per work day.

2 e. Accordingly, the amount placed in controversy by Plaintiffs’  
3 Complaint exceeds \$5,000,000 even if evaluating the limited time period and the  
4 allegations as set forth above.

5 f. Based on the allegations in the Complaint, the amount in controversy  
6 arising from the second and third causes of action could be considerably greater if you  
7 assumed a higher violation rate for the alleged rest period and meal period claims.

8 13. The above estimates of the amount in controversy reach the jurisdictional  
9 threshold without including the unspecified amount of attorneys’ fees that Plaintiffs  
10 seek. In determining whether a complaint meets the amount in controversy threshold for  
11 a removal under 28 U.S.C. § 1332, a court may also consider the value of claims for  
12 attorney’s fees. *See Goldberg v. CPC Int’l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982)  
13 (attorney’s fees may be taken into account to determine jurisdictional amount); *see also*  
14 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998) (holding the  
15 amount in controversy may include attorney’s fees recoverable by statute).

16 14. For the foregoing reasons, the amount in controversy is sufficient to meet  
17 that requirement for removal under CAFA.

18 Plaintiffs and Defendant Are Citizens of Different States

19 15. CAFA’s diversity requirement is satisfied when any member of a class of  
20 plaintiffs is a citizen of a state different from any defendant, when at least one member  
21 of a class is a citizen of a foreign state and one defendant is a U.S. citizen, or when at  
22 least one member of a class of plaintiffs is a U.S. citizen and one defendant is a citizen  
23 of a foreign state. 28 U.S.C. § 1332(d)(2).

24 16. Diversity of citizenship is determined “as of the time the complaint is filed  
25 and removal is effected.” *Strotek Corp. v. Air Transp. Ass’n of America*, 300 F.3d 1129,  
26 1131 (9th Cir. 2002) (citations omitted).

27 17. A natural person’s citizenship is determined by that person’s state of  
28 “domicile.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). “A



1 person's domicile is her permanent home, where she resides with the intention to remain  
2 or to which she intends to return." *Id.* (citation omitted).

3 18. Here, Plaintiff alleges that at least one member of the class resides in  
4 California.

5 19. A corporation is a citizen of any state where it is incorporated and of the  
6 state where it has its principal place of business. *See* 28 U.S.C. § 1332(c); *Hertz Corp v.*  
7 *Friend*, 559 U.S. 77, 92-93 (2010).

8 20. Defendant is incorporated under the laws of the State of Delaware, with its  
9 principal place of business and headquarters located at 130 Prince Street, New York, NY  
10 02451. The State of New York is where Defendant's main office and management  
11 functions are concentrated and from where Defendant's high level officers direct,  
12 control, and coordinate Defendant's activities. (Hurtado Decl., ¶ 3.)

13 21. The only other defendants named in Plaintiff's Complaint merely are  
14 fictitious parties identified as "DOES 1 through 100," whose citizenship must be  
15 disregarded for the purpose of removal. 28 U.S.C. § 1441(a) ("For purposes of removal  
16 under this Chapter, the citizenship of defendants used under a fictitious name shall be  
17 disregarded.") Thus, there are no other defendants to join in the removal of this action to  
18 this Court and complete diversity of citizenship between the parties exists within the  
19 meaning of 28 U.S.C. § 1332.

20 22. Therefore, the diversity requirement of CAFA removal is satisfied because  
21 Plaintiffs are citizens of the State of California, and Defendant is not a citizen of  
22 California.

23 The Putative Class Consists of More Than 100 Members

24 23. Plaintiff alleges that the putative class is so large that joinder of all class  
25 members would be impracticable. (Complaint ¶ 15.) There are more than 100 members  
26 that fall within the definition of Plaintiff's putative class. (Hurtado Decl., ¶ 4.)

27 24. Therefore, based on the pleadings set forth by Plaintiff, the alleged putative  
28 class contains more than 100 members.

Defendant is Not a Governmental Official or Entity.

25. No defendant is a state, a state official or any other governmental entity.

VENUE

26. Venue of this action lies in the United States District Court for the Southern District of California pursuant to 28 U.S.C. §§ 1441, *et seq.* and 1391(a) because Plaintiff's state court action was filed in this district.

CONCLUSION

27. For the reasons set forth above, Defendant prays that this action be removed to this Court.

DATED: June 8, 2018

JACKSON LEWIS P.C.

By: /s/ Kathy A. Le  
James P. Carter  
Nicole M. Shaffer  
Kathy A. Le  
  
Attorneys for Defendant  
M.A.C. COSMETICS INC.



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Mercedes Deguchy, as an individual and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Orange
(c) Attorneys (Firm Name, Address, and Telephone Number) John E. Lattin, John Lattin Law, APC - 26056 Acero, Mission Viejo, CA 92691; 949-357-2544 | James R. Patterson, Patterson Law Group, APC - 2350 Columbia St., Suite 603, San Diego, CA 92101; 619-756-6990

DEFENDANTS M.A.C. Cosmetics Inc., a Delaware corporation
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) James P. Carter, Nicole M. Shaffer, Kathy A. Le, Jackson Lewis P.C. - 200 Spectrum Center Drive, Suite 500, Irvine, CA 92618; 949-885-1360

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Diversity Jurisdiction 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453
Brief description of cause: Class action alleging wage and hour violation.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE Hon. Dale S. Fischer DOCKET NUMBER 2:17-cv-06543-DSF-Ex

DATE 06/08/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Kathy A. Le

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Mercedes Deguchy, as an individual and on behalf of all others similarly situated

DEFENDANTS M.A.C. Cosmetics Inc., a Delaware corporation '18CV1210 BEN KSC

(b) County of Residence of First Listed Plaintiff Orange (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) John E. Lattin, John Lattin Law, APC - 26056 Acero, Mission Viejo, CA 92691; 949-357-2544 | James R. Patterson, Patterson Law Group, APC - 2350 Columbia St., Suite 603, San Diego, CA 92101; 619-756-6990

Attorneys (If Known) James P. Carter, Nicole M. Shaffer, Kathy A. Le, Jackson Lewis P.C. - 200 Spectrum Center Drive, Suite 500, Irvine, CA 92618; 949-885-1360

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Diversity Jurisdiction 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453. Brief description of cause: Class action alleging wage and hour violation.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Hon. Dale S. Fischer DOCKET NUMBER 2:17-cv-06543-DSF-Ex

DATE 06/08/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Kathy A. Le

FOR OFFICE USE ONLY: RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

M.A.C. COSMETICS, INC., a Delaware corporation; and DOES 1 through 100,

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MERCEDES DEGUCHY, as an individual and on behalf of all others similarly situated,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/08/2018 at 10:06:57 AM**  
Clerk of the Superior Court  
By Valeria Contreras, Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Superior Court of California  
County of San Diego  
330 West Broadway, San Diego CA 92101

CASE NUMBER:  
(Número del Caso): 37-2018-00022831-CU-OE-CTL

[E-FILE]

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JOHN LATTINLAW, APC - 26056 Acero, Mission Viejo CA 92691; Tel: (949) 357-2544  
Patterson Law Group APC - 1350 Columbia Street, Suite 603, San Diego CA 92101; Tel: (619) 756-6990

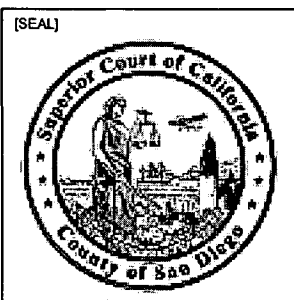
DATE: 05/09/2018  
(Fecha)

Clerk, by  
(Secretario)

V. Contreras  
V. Contreras

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): M.A.C. Cosmetics, Inc., a Delaware corporation  
 under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

1 John E. Lattin, State Bar No. 167876  
2 JOHNLATTINLAW, APC  
26056 Acero  
3 Mission Viejo, CA 92691  
Telephone: (949) 357-2544  
4 Facsimile: (949) 305-4591

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**05/08/2018** at 10:08:57 AM  
Clerk of the Superior Court  
By Valeria Contreras, Deputy Clerk

5 James R. Patterson, State Bar No. 211102  
6 Allison H. Goddard, State Bar No. 211098  
7 Jacquelyn E. Quinn, State Bar No. 314616  
8 PATTERSON LAW GROUP APC  
1350 Columbia St., Suite 603  
9 San Diego, CA 92101  
Telephone: (619) 756-6990  
Facsimile: (619) 756-6991

10 Attorneys for Plaintiff  
MERCEDES DEGUCHY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SAN DIEGO  
13

14 MERCEDES DEGUCHY, as an  
15 individual and on behalf of all others  
similarly situated,

16 Plaintiffs,

17 v.

18 M.A.C. COSMETICS, INC., a  
19 Delaware corporation; and DOES 1  
through 100,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

CASE NO.: 37-2018-00022831-CU-OE-CTL  
[E-FILE]

**CLASS ACTION COMPLAINT:**

- (1) FAILURE TO PAY WAGES AND OVERTIME (LABOR CODE §§ 200, 510, 1194, 1198);
- (2) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516);
- (3) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512);
- (4) FAILURE TO PROVIDE COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS (LABOR CODE § 226);
- (5) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
- (6) FAILURE TO PROVIDE SUITABLE SEATING (LABOR CODE §1198, CAL. CODE REGS. TIT. 8 §§ 11040, WAGE ORDER 7-2001(14)(A));
- (7) COERCED PURCHASES (LABOR CODE § 450); AND
- (8) UNFAIR COMPETITION (BUS & PROF CODE § 17200, *ET SEQ.*)

1 Plaintiff MERCEDES DEGUCHY (“Plaintiff”), on behalf of herself and all others  
2 similarly situated, hereby brings this Class Action Complaint against M.A.C. COSMETICS,  
3 INC., a Delaware corporation, and DOES 1 through 100, inclusive (collectively “Defendants”),  
4 and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this  
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions  
8 Code § 17200, *et seq.*, Labor Code §§ 201-203, 218 *et seq.*, 226 *et seq.*, 226.7, 512, 516, 1194,  
9 1197, 1198, and Industrial Welfare Commission Wage Order 7 (“Wage Order 7”), in addition to  
10 seeking declaratory relief and restitution. This Complaint is brought pursuant to California Code  
11 of Civil Procedure § 382. This Court has jurisdiction over Defendant’s violations of the  
12 California Labor Code because the amount in controversy exceeds this Court’s jurisdictional  
13 minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil  
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein  
17 occurred in the County of Orange. Defendants own, maintain offices and retail stores, transact  
18 business, have agents and employees within the County of Orange, and Defendants are within  
19 this jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times  
22 herein, Plaintiff was and currently is a California resident. During the four years immediately  
23 preceding the filing of the Complaint in this action and within the statute of limitations periods  
24 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-  
25 exempt employee. Plaintiff was and is a victim of Defendants’ policies and practices complained  
26 of herein, lost money and/or property, and has been deprived of the right guaranteed by California  
27 Business & Professions Code § 17200, *et seq.*, Labor Code §§ 200, 201-203, 218 *et seq.*, 226 *et*  
28 *seq.*, 226.7, 450, 512, 516, 1194, 1197, 1198, and Wage Order 7, which sets employment



1 standards for the mercantile industry and includes retail stores.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four  
3 (4) years preceding the filing of the Complaint and continuing to the present, Defendants did and  
4 continue to do business by operating retail stores for the sale of cosmetics, and employed Plaintiff  
5 and other similarly situated non-exempt employees within the State of California and the County  
6 of Orange, and therefore, were and are doing business in the State of California and the County  
7 of Orange.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,  
9 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason,  
10 said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court  
11 to amend this Complaint when such true names and capacities are discovered. Plaintiff is  
12 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether  
13 individual, partners, or corporate, were responsible in some manner for the acts and omissions  
14 alleged herein, and proximately caused Plaintiff and the Classes as defined in Paragraph 14 to be  
15 subject to the unlawful employment practices, wrongs, injuries and damages complained of  
16 herein.

17 6. Plaintiff is informed and believes, and based thereon alleges, that at all times  
18 mentioned herein, Defendants were and are the employers of Plaintiff all members of the Classes.

19 7. At all times mentioned herein, each of said Defendants participated in the doing  
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
21 Defendants, and each of them, were the agents, servants, and employees of each and every one  
22 of the other Defendants, as well as the agents of all Defendants, and at all time herein mentioned  
23 were acting within the course and scope of said agency and employment. Defendants, and each  
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or  
25 omissions complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of  
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course  
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all  
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff was employed by Defendants as a non-exempt employee from July 11,  
5 2010 through approximately February 16, 2018. When she started on July 11, 2010, Plaintiff  
6 was a part-time cashier at Defendants' store in Brea, California. In January 2012, Plaintiff was  
7 promoted to a part-time make-up artist. In approximately January 2016, Plaintiff was promoted  
8 to a full-time "third key" at Defendants' store in West Covina, California. As a "third key,"  
9 Plaintiff's duties and responsibilities included opening and closing the store, and supervising the  
10 store when a store manager or assistant store manager were not on the premises. In April 2017,  
11 Plaintiff continued to work as a full-time "third key," and was transferred to Defendants' store  
12 in Huntington Beach, California. Plaintiff was a dedicated employee and consistently received  
13 positive feedback and performance evaluations.

14 10. During Plaintiff's employment with Defendants, Plaintiff was not paid proper  
15 overtime. Plaintiff's compensation included service commissions and sales bonuses. Service  
16 commissions were paid on make-up applications. For example, Plaintiff would receive a \$10.00  
17 commission when she sold a customer a \$60.00 make-up application. Sales bonuses were paid  
18 on a formula when the retail store met its sales goals. Prior to July 1, 2017, sales bonuses were  
19 paid bi-annually. After July 1, 2017, sales bonuses were paid monthly. Defendants failed to pay  
20 overtime compensation on service commissions and sales bonuses. Defendants failed to pay  
21 Plaintiff earned service commissions and sales bonuses from approximately October 2017  
22 through February 2018.

23 11. During Plaintiff's employment, Plaintiff was not provided all required meal  
24 periods due to Defendants' meal period policies/practices which fail to provide uninterrupted,  
25 duty-free meal periods. Specifically, Defendant had a policy/practice of requiring employees to  
26 remain on the premises during meal periods to respond to customers. Moreover, Defendants'  
27 store were understaffed, and employees could not leave the store unattended during meal periods.  
28 Plaintiff's meal periods were frequently interrupted, and Plaintiff frequently worked during her



1 meal periods. When Plaintiff was not provided legally compliant meal periods, Defendant failed  
 2 to compensate Plaintiff with the required meal period premium as required by Labor Code §  
 3 226.7 for each workday in which Plaintiff experienced a meal period violation. Upon information  
 4 and belief during at least a portion of the class period, Defendants maintained no payroll code or  
 5 other mechanism for the payment of meal period premium payments under Labor Code § 226.7  
 6 if a legally compliant meal period was not provided to their non-exempt employees.

7 12. Plaintiff was not authorized and permitted to take all required rest periods due to  
 8 Defendants' rest period policies/practices, which fail to authorize and permit all rest periods for  
 9 every four hours worked, or major fraction thereof. As stated above, Plaintiff was constantly on-  
 10 call and was required to remain on the store's premises, and therefore, Defendants failed to  
 11 authorize and permit Plaintiff off-duty rest periods free of employer control. Moreover, during  
 12 Plaintiff's employment, Defendants maintained a facially unlawful written rest period policy.  
 13 Defendant's rest period policy/practice fails to relinquish control over how employees spend their  
 14 time during rest periods in violation of California law. *See Augustus v. ABM Security Services,*  
 15 *Inc.* (2016) 2 Cal.5th 257, 272 ("California law requires employers to relieve their employees of  
 16 all work-related duties and employer control during 10-minute rest periods.") (emphasis added).  
 17 One those occasions when Plaintiff was not authorized and permitted to take all legally-compliant  
 18 rest periods to which she was entitled, Defendants failed to compensate Plaintiff with the required  
 19 rest period premium as mandated by Labor Code § 226.7 for each workday in which she  
 20 experienced rest period violation. Further, upon information and belief during at least a portion  
 21 of the class period, Defendants maintained no payroll code or other mechanism for the payment  
 22 of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant  
 23 rest period was not provided to their non-exempt employees.

24 13. As a result of Defendants' failure to pay all wages, overtime, meal and rest period  
 25 premium wages, Defendant failed to pay all wages owed to Plaintiff upon her separation of  
 26 employment from Defendants.

27 **CLASS ACTION ALLEGATIONS**

28 14. **Class Allegations:** Plaintiff brings this action on behalf of herself and the follows

1 Classes pursuant to the Code of Civil Procedure §382:

- 2 a. The Overtime Class consists of all of Defendants' current and former non-exempt  
3 employees in California at any time within four years prior to the filing of the  
4 Complaint through the present who worked in excess of eight hours in a workday, 40  
5 hours in a workweek, or on a seventh consecutive day in a workweek and were only  
6 paid their regular rate of pay on service commissions or sales bonuses.
- 7 b. The Meal Period Class consists of all of Defendants' current and former non-exempt  
8 employees in California at any time within four years prior to the filing of the  
9 Complaint through the present who worked at least one shift in excess of five hours.
- 10 c. The Rest Period Class consists of all of Defendants' current and former non-exempt  
11 employees in California at any time within four years prior to the filing of the  
12 Complaint through the present who worked at least one shift of 3.5 hours or more.
- 13 d. The Wage Statement Class consists of all of Defendants current and former non-  
14 exempt employees in California at any time within four years prior to the filing of the  
15 Complaint through the present who received at least one incomplete or inaccurate  
16 wage statement.
- 17 e. The Waiting Time Class consists of all of Defendants' formerly employed members  
18 of the Overtime Class, the Meal Period Class and the Rest Period Class in California  
19 whose employment ended during the three years immediately prior to the filing of the  
20 Complaint.
- 21 f. The Suitable Seating Class consists of all of Defendants' current and former  
22 employees in California at any time within one year prior to filing of the Complaint  
23 through the present.
- 24 g. The Coerced Purchases Class consist of all of Defendants' current and former in  
25 California at any time within one year prior to filing of the Complaint through the  
26 present.

27 15. **Numerosity.** The members of the Classes are so numerous that joinder of all  
28 members would not be feasible or practicable. The membership of the Classes is unknown to

1 Plaintiff at this time; however, it is estimated that the members of the Classes is greater than 500  
2 individuals. The identity of such membership is readily ascertainable via inspection of  
3 Defendants' employment records.

4 **16. Common Questions of Law and Fact Predominate/Well Defined Community**  
5 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly  
6 situated employees, which predominate over questions affecting only individual members.  
7 Those questions include without limitation:

- 8 a. Whether Defendants paid overtime wages on service commissions and sales bonuses.
- 9 b. Whether Defendants properly calculated the regular rate of pay for determining  
10 proper overtime compensation.
- 11 c. Whether Defendants provided legally compliant meal periods to the members of the  
12 Meal Period Class pursuant to Labor Code §§ 226.7 and 512.
- 13 d. Whether Defendants authorized and permitted all legally compliant rest periods to the  
14 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516.
- 15 e. Whether Defendants provided complete and accurate wages statement to the members  
16 of the Wage Statement Class pursuant to Labor Code § 226.
- 17 f. Whether Defendants' policies/practices for the timing and amount of payment of final  
18 wages to members of the Waiting Time Class at the time of their separation of  
19 employment were lawful.

20 **17. Predominance of Common Questions.** Common questions of law and fact  
21 predominate over questions that affect only individual members of the Classes. The common  
22 questions of law set forth above are numerous and substantial and stem from Defendants' policies  
23 and/or practices applicable to each individual class member. As such, the common questions  
24 predominate over individual questions concerning each individual class member's showing as to  
25 their eligibility for recovery or as to the amount of their damages.

26 **18. Typicality.** The claims of Plaintiff are typical of the claims of the Classes because  
27 Plaintiff was employed by Defendants as a non-exempt employee in California during the  
28 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As

1 alleged herein, Plaintiff, like the members of the Classes, was not paid proper overtime wages,  
2 was not provided all required meal periods, was not authorized and permitted to take all required  
3 rest periods, did not receive meal and rest period premium wages when she was not provided  
4 compliant meal or rest periods, was not provided complete and accurate wage statements, and  
5 did not receive all final wages owed to her upon her termination of employment from Defendants.

6       19.     **Adequacy of Representation.** Plaintiff is prepared to take all necessary steps to  
7 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's  
8 attorneys are ready, willing and able to represent the members of the Classes and Plaintiff.  
9 Plaintiff's attorneys have litigated numerous wage-and-hour class actions in state and federal  
10 courts and are committed to vigorously prosecuting the action on behalf of the members of the  
11 Classes.

12       20.     **Superiority.** The California Labor Code is broadly remedial in nature and serves  
13 an important public interest in establishing minimum working conditions and standards in  
14 California. These laws and labor standards protect the average working employee from  
15 exploitation by employers who have the responsibility to follow the laws and who may seek to  
16 take advantage of superior economic and bargaining power in setting onerous terms and  
17 conditions of employment. The nature of this action and the format of laws available to Plaintiff  
18 and members of the Classes make the class action format an efficient and appropriate procedure  
19 to redress the violations alleged herein. If each employee were required to file an individual  
20 lawsuit, Defendants would gain an unconscionable advantage since they would be able to exploit  
21 and overwhelm the limited resources of each individual plaintiff with their vastly superior  
22 economic and legal resources. Moreover, requiring each individual member of the Classes to  
23 pursue an individual remedy would discourage the assertion of lawful claims by employees who  
24 would be disinclined to file an action against their former or current employer for real and  
25 justifiable fear of retaliation and damage to their careers. Further, the prosecution of separate  
26 actions by the individual class members, even if possible, would create a substantial risk of  
27 inconsistent or varying verdicts or adjudications with respect to the individual class members  
28 against Defendants; and which would establish potentially incompatible standards of conduct for

1 Defendants; and/or legal determinations with respect to individual class members which would,  
2 as a practical matter, be dispositive of the interests of other class members not parties to  
3 adjudications or which would substantially impair or impede the ability of the class members to  
4 protect their interests. Further, the claims of the individual members of the Classes are not  
5 sufficiently large to warrant vigorous individual prosecution considering all the concomitant  
6 costs and expenses attending thereto. As such, the Classes identified in paragraph 14 are  
7 maintainable as a Class under the Code of Civil Procedure § 382.

8  
9 **FIRST CAUSE OF ACTION**  
10 **FAILURE TO PAY WAGES AND OVERTIME**  
11 **(Against All Defendants)**

12 21. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 22. At all times relevant to this Complaint, Plaintiff and the members of the Overtime  
14 Class were non-exempt employees of Defendants in California and covered by Labor Code §§  
15 200, 510, 1194, 1198 and Wage Order 7.

16 23. Plaintiff and the members of the Overtime Class regularly worked overtime, but  
17 Defendants failed to properly calculate the regular rate of pay of Plaintiff and the members of the  
18 Overtime Class. Among other things, Defendants failed to include service commissions and  
19 sales bonuses in the calculation of the regular rate of pay of Plaintiff and the members of the  
20 Overtime Class. Because of Defendants' unlawful policies/practices, non-exempt employees  
21 who worked overtime, including Plaintiff and the members of the Overtime Class, were only  
22 paid straight time wages on service commissions and sales bonuses. Defendants' failure to pay  
23 proper overtime to non-exempt employees in violation of Labor Code §§ 510, 1194, 1198, and  
24 Wage Order 7.

25 24. Because of Defendants' unlawful policies/practices, Plaintiff and the members of  
26 the Overtime Class have suffered damages in an amount subject to proof.

27 25. Pursuant to Labor Code §§ 510 and 1194, Plaintiff and the Overtime Class are  
28 entitled to recover unpaid wages at the applicable overtime rate, interest and attorneys' fees and  
costs.

**SECOND CAUSE OF ACTION**  
**MEAL PERIOD VIOLATIONS**  
**(Against All Defendants)**

1  
2  
3       26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

4       27. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
5 failed in their affirmative obligation to provide all of their non-exempt employees in California,  
6 including Plaintiff and the members of the Meal Period Class, with all legally compliant meal  
7 periods in accordance with the mandates of the California Labor Code and Wage Order 7, §11.  
8 Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and  
9 members of the Meal Period Class at their respective regular rates of compensation, in  
10 accordance with California Labor Code §§ 226.7 and 512.

11       28. As a result, Defendants are responsible for paying premium compensation for  
12 meal period violations including interest thereon, as well as statutory penalties, civil penalties,  
13 and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 7, and Civil Code  
14 §§ 3287(b) and 3289.

15  
16       **THIRD CAUSE OF ACTION**  
17       **REST PERIOD VIOLATIONS**  
18       **(Against All Defendants)**

19       29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20       30. Wage Order 7, § 12 and California Labor Code §§ 226.7 and 516 establish the  
21 right employees to be authorized and permitted to take a rest period of at least ten minutes net  
22 rest time for each four-hour period worked, or major fraction thereof.

23       31. As alleged herein, Defendants failed to authorize and permit Plaintiff and the  
24 members of the Rest Period Class to take all required rest periods.

25       32. The foregoing violations create an entitlement to recovery by Plaintiff and the  
26 members of the Rest Period Class in a civil action for the unpaid amount of the rest period  
27 premiums, including interest, as well as statutory penalties, civil penalties, and costs of suit,  
28 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 7, and Civil Code §§ 3287(b) and  
3289.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FOURTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE COMPLETE AND**  
**ACCURATE ITEMIZED WAGE STATEMENTS**  
**(Against All Defendants)**

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. At all relevant times, Plaintiff and the members of the Wage Statement Class were non-exempt employees covered by Labor Code § 226.

35. Defendants failed to provide non-exempt employees complete and accurate wage statements in that Defendants failed to pay Plaintiff and the members of the Overtime Class proper overtime wages, and therefore, the wage statements were incomplete and inaccurate in those pay periods in which Plaintiff and/or similarly situated employees worked overtime. Further, Defendants failed to pay rest period premiums and meal period premiums, and therefore, the wage statements were incomplete and inaccurate in those pay periods in which Defendants failed to provide meal periods, or failed to authorize and permit rest periods, to Plaintiff and/or similarly situated employees. Therefore, among other things, Defendants provided wage statements which were incomplete and inaccurate in that the wage statements incorrectly stated the gross wages earned, the net wages earned, and the applicable hourly in effect in a pay period with the corresponding number of hours worked.

36. Defendants' failure to provide Plaintiff and the members of the Wage Statement Class with accurate and complete wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the members of the Wage Statement Class with accurate and complete wage statements. Defendants knowingly and intentionally adopted policies/practices that deprived Plaintiff and the Wage Statement Class of wages and information legally required to be on wage statements.

37. As a result, Plaintiff and the members of the Wage Statement Class have suffered injury in that the wage statements are inaccurate and incomplete, and Plaintiff and the members of the Wage Statement Class could not promptly and easily determine from the wage statement whether they were paid correctly and lawfully.

38. Plaintiff and the members of the Wage Statement Class are entitled to recover



1 penalties pursuant to Labor Code § 226(e).

2 39. Plaintiffs and the members of the Wage Statement Class are entitled to injunctive  
3 relief pursuant to Labor Code § 226(g) to ensure Defendants' compliance with section 226(a).  
4 Defendants continue to provide employed members of the Classes with incomplete and  
5 inaccurate wage statements, and there is no adequate legal remedy for the continuing injuries  
6 suffered by currently employed members of the Classes.

7 40. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and the members of the Wage  
8 Statement Class are entitled to recover the full amount of penalties due under section 226(e), as  
9 well as reasonable attorneys' fees and costs.

10 **FIFTH CAUSE OF ACTION**  
11 **WAITING TIME PENALTIES**  
12 **(Against All Defendants)**

13 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 42. This cause of action is brought pursuant to Labor Code §§ 201-203, which require  
15 an employer to pay all wages immediately at the time of separation of employment in the event  
16 the employer fires the employee or the employee provides at least 72 hours of notice of their  
17 intent to quit. In the event the employee provides less than 72 hours of notice of their intent to  
18 quit, the employee's final wages become due and payable not later than 72 hours of the  
19 employee's last date of employment.

20 43. Plaintiff is informed and believes, and based thereon alleges, that Defendant failed  
21 to pay timely Plaintiff and the members of the Waiting Time Class all final wages due to them at  
22 their separation from employment, including unpaid overtime, and unpaid rest and meal period  
23 premiums.

24 44. Further, Plaintiff is informed and believes, and based thereon alleges, that as a  
25 matter of policy/practice, Defendants continue to fail to pay Plaintiff and the members of the  
26 Waiting Time Class all earned wages at the end of employment in a timely manner.

27 45. Defendants' failure to pay final wages was willful within the meaning of Labor  
28 Code § 203. Defendants' willful failure to pay timely Plaintiff and the members of the Waiting  
Time Class their earned wages upon separation from employment results in a continued payment

1 of wages for up to thirty days from the time the wages were due.

2 46. Therefore, Plaintiff and the members of the Waiting Time Class are entitled to  
3 compensation pursuant to Labor Code § 203.

4 **SIXTH CAUSE OF ACTION**  
5 **FAILURE TO PROVIDE SUITABLE SEATING**  
6 **(Against All Defendants)**

7 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 48. Plaintiff alleges that, by Defendants failure to provide Plaintiff and Class  
9 Members suitable seating Defendant violated California law pursuant to the IWC Wage Orders  
10 at section 14. The applicable Wage Order provides:

11 (a) All working employees shall be provided with suitable seats when the  
12 nature of the work reasonable permits the use of

13 (b) When employees are not engaged in the active duties of their employment  
14 and the nature of the work requires standing, an adequate number of  
15 suitable seats shall be placed in reasonable proximity to the work area and  
16 employees shall be permitted to use such seats when it does not interfere  
17 with the performance of their duties.

18 49. Plaintiff alleges that she and similarly situated Class Members were employed in  
19 positions that required standing, such as cashiering and similar positions, and Defendant failed  
20 to make suitable seats available in reasonable proximity to Plaintiff's and Class Members'  
21 respective work areas. Defendant's policy of not providing suitable and adequate seating for  
22 standing positions was intentional and willful. Defendant unlawfully violation the provisions of  
23 section 14 of the applicable Wage Orders because provision of sating did not and would not  
interfere with the duties of Plaintiff and the Class she seeks to represent.

24 50. Plaintiff, on behalf of herself and similar situated employees, request relief as  
25 described below.

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SEVENTH CAUSE OF ACTION**  
**COERCED PURCHASES**  
**(Against All Defendants)**

51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

52. Defendants have compelled and/or coerced Plaintiff and Class Members to patronize Defendants by requiring Plaintiff and Class Members to purchase makeup, supplies, and other items directly from Defendants in violation of Cal. Labor Code § 450. The violation of Cal. Labor Code § 450 also provides the basis for a claim for penalties, attorneys’ fees, and costs under Cal. Labor Code §2699.

53. Plaintiff, on behalf of herself and similar situated employees, request relief as described below.

**EIGHTH CAUSE OF ACTION**  
**UNFAIR COMPETITION**  
**(Against All Defendants)**

54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

55. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business & Professions Code § 17200, *et seq.*, by failing to pay proper overtime wages, failing to provide all required meal periods and failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to provide complete and accurate wage statements, and failing to pay all wages due and owing to employees at the time of separation from employment with Defendants.

56. Defendants’ unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over their competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

57. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full

1 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,  
2 acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203  
3 and 17208.

4 58. The acts complained of herein occurred within the last four years immediately  
5 preceding to the filing of this Complaint.

6 59. Plaintiff was compelled to retain the services of counsel to file this court action to  
7 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf  
8 of Defendants' current non-exempt employees, and to enforce important rights affecting the  
9 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,  
10 which she is entitled to recover under Code of Civil Procedure § 1021.5.

11 **PRAYER**

12 WHEREFORE, Plaintiff prays for judgment herself and for all others on whose behalf  
13 this suit is brought against Defendants, as follows:


- 14 1. An order certifying the proposed Classes;
- 15 2. An order appointing Plaintiff as representative of the Classes;
- 16 3. An order appointing Counsel for Plaintiff as Counsel for the Classes;
- 17 4. Declaratory judgment that Defendants' practices alleged herein are unlawful;
- 18 5. Upon the First Cause of Action, for compensatory, consequential, general and  
19 special damages according to proof pursuant to Labor Code §§ 510, 558, 1194  
20 and 1198;
- 21 6. Upon the Second Cause of Action, for compensatory, consequential, general and  
22 special damages according to proof pursuant to Labor Code §§ 218.6, 226.7, 512,  
23 and 558;
- 24 7. Upon the Third Cause of Action, for compensatory, consequential, general and  
25 special damages according to proof pursuant to Labor Code §§ 218.6, 226.7, 516,  
26 and 558;
- 27 8. Upon the Fourth Cause of Action, for compensatory, consequential, general,  
28 special damages according to proof, and statutory penalties pursuant to Labor

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Code § 226(e);
- 9. Upon the Fifth Cause of Action, for statutory waiting penalties pursuant to Labor Code § 203;
- 10. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes for practices declared by this Court to be in violation of Business & Professions Code § 17200, *et seq.*;
- 11. Prejudgment interest on all due and unpaid wages pursuant to Labor Code §§ 218.6 and Civil Code §§ 3287 and 3289.
- 12. On all causes of action for attorneys' fees and costs as provided by Labor Code §§ 226, 1194, *et seq.*, and Code of Civil Procedure § 1021.5; and
- 13. For such other and further relief the Court deems just and proper.

DATE: May 8, 2018

JOHNLATTINLAW, APC  
PATTERSON LAW GROUP APC



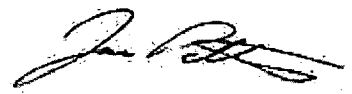
By: \_\_\_\_\_  
JAMES R. PATTERSON  
Attorneys for Plaintiff  
MERCEDES DEGUCHY

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

DATE: May 8, 2018

JOHNLATTINLAW, APC  
PATTERSON LAW GROUP APC



By: \_\_\_\_\_  
JAMES R. PATTERSON  
Attorneys for Plaintiff  
MERCEDES DEGUCHY

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James R. Patterson (211102) Allison H. Goddard (211098) Jacquelyn E. Quinn (314616) Patteron Law Group APC - 1350 Columbia Street, Suite 603, San Diego CA 92101 John E. Lattin (167876) - JOHNLATTINLAW, APC - 26056 Acero, Mission Viejo CA 92691 TELEPHONE NO.: (619) 756-6990 FAX NO.: (619) 756-6991 ATTORNEY FOR (Name): Plaintiff Mercedes Deguchy		FOR COURT USE ONLY  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Diego  <b>05/08/2018 at 10:06:57 AM</b> Clerk of the Superior Court By Valeria Contreras, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO [E-FILE] STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME:		
CASE NAME: Mercedes Deguchy v. M.A.C. Cosmetics, Inc.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2018-00022831-CU-DE-CTL  JUDGE: Judge Gregory W Pollack DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): 8
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 8, 2018  
 James R. Patterson  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse.  
Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition





## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

### ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2018-00022831-CU-OE-CTL CASE TITLE: Deguchy vs MAC Cosmetics Inc [E-FILE]

**NOTICE:** All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

#### **Potential Advantages and Disadvantages of ADR**

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

##### **Potential Advantages**

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

##### **Potential Disadvantages**

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

#### **Most Common Types of ADR**

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

**Mediation:** A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

**Settlement Conference:** A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

**Arbitration:** A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

**Other ADR Processes:** There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

### **Local ADR Programs for Civil Cases**

**Mediation:** The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

**On-line mediator search and selection:** Go to the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

**Settlement Conference:** The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

**Arbitration:** The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

**More information about court-connected ADR:** Visit the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) or contact the court's Mediation/Arbitration Office at (619) 450-7300.

**Dispute Resolution Programs Act (DRPA) funded ADR Programs:** The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at [www.ncrconline.com](http://www.ncrconline.com) or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at [www.nclifeline.org](http://www.nclifeline.org) or (760) 726-4900.

**Private ADR:** To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

### **Legal Representation and Advice**

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at [www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost).

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
PLAINTIFF(S): Mercedes Deguchy	
DEFENDANT(S): MAC Cosmetics Inc	
SHORT TITLE: DEGUCHY VS MAC COSMETICS INC [E-FILE]	
<b>STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>	CASE NUMBER: 37-2018-00022831-CU-OE-CTL

Judge: Gregory W Pollack

Department: C-71

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- |   |  |
|---|--|
| <input type="checkbox"/> Mediation (court-connected)  | <input type="checkbox"/> Non-binding private arbitration   |
| <input type="checkbox"/> Mediation (private)  | <input type="checkbox"/> Binding private arbitration   |
| <input type="checkbox"/> Voluntary settlement conference (private)                            | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private)   | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ |  |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_

Alternate neutral (for court Civil Mediation Program and arbitration only): \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Plaintiff

\_\_\_\_\_  
Name of Defendant

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Plaintiff's Attorney

\_\_\_\_\_  
Name of Defendant's Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

**IT IS SO ORDERED.**

Dated: 05/09/2018

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7071	
PLAINTIFF(S) / PETITIONER(S): Mercedes Deguchy	
DEFENDANT(S) / RESPONDENT(S): MAC Cosmetics Inc	
DEGUCHY VS MAC COSMETICS INC [E-FILE]	
<b>NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE</b>	CASE NUMBER: 37-2018-00022831-CU-OE-CTL

**CASE ASSIGNMENT**

Judge: Gregory W Pollack

Department: C-71

**COMPLAINT/PETITION FILED: 05/08/2018**

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	10/12/2018	01:30 pm	C-71	Gregory W Pollack

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR\* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

**COMPLAINTS:** Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

**JURY FEES:** In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

**MANDATORY eFILE:** Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at [www.onelegal.com](http://www.onelegal.com). Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

**COURT REPORTERS:** Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

\*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

1 James P. Carter (SBN 150052)  
james.carter@jacksonlewis.com  
2 Nicole M. Shaffer (SBN 244366)  
nicole.shaffer@jacksonlewis.com  
3 Kathy A. Le (SBN 279690)  
kathy.le@jacksonlewis.com  
4 JACKSON LEWIS P.C.  
200 Spectrum Center Drive, Suite 500  
5 Irvine, CA 92618  
Tel: (949) 885-1360  
6 Fax: (949) 885-1380

7 Attorneys for Defendant M.A.C. COSMETICS INC.

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 MERCEDES DEGUCHY, as an  
12 individual and on behalf of all others  
13 similarly situated,

14 Plaintiffs,

15 vs.

16 M.A.C. COSMETICS, INC., a  
17 Delaware corporation; and DOES 1  
18 through 100,

19 Defendants.  
20  
21  
22  
23  
24  
25  
26  
27  
28

CASE NO.: '18CV1210 BEN KSC

DECLARATION OF NICOLE M.  
SHAFFER IN SUPPORT OF REMOVAL  
OF ACTION TO THE UNITED STATES  
DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF  
CALIFORNIA PURSUANT TO 28 U.S.C.  
§§ 1332, 1441, 1446, and 1453

[Filed concurrently with the Civil Cover  
Sheet; Notice of Removal; Declaration of  
Paloma Hurtado; Corporate Disclosure  
Statement; Notice of Related Cases; and  
Notice of Party with Financial Interest]

Action Filed: May 8, 2018

1 I, Nicole M. Shaffer, declare and state as follows:

2 1. I am an attorney duly authorized to practice law before this Court and within  
3 the state of California. I am an attorney with the law firm Jackson Lewis P.C., counsel of  
4 record for Defendant M.A.C. COSMETICS INC. (“M.A.C.” or “Defendant”) in the  
5 above-entitled action. I make this declaration in support of M.A.C.’s Notice of Removal.

6 2. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiffs’  
7 Summons, Complaint, and Civil Case Cover Sheet that was served on Defendant and  
8 filed in the San Diego County Superior Court.

9 3. Plaintiffs served Defendant pursuant to California Code of Civil Procedure  
10 (“CCP”) § 416.10, by personally delivering the Summons and Complaint on May 9,  
11 2018, to Defendant’s agent for service of process.

12 4. To the best of my knowledge and based on information and belief, **Exhibit**  
13 **A** constitutes all pleadings that have been filed in the state court action to date.  
14 Additionally, to the best of my knowledge and based on information and belief, no court  
15 orders have been filed or served in the state court action to date.

16 I declare under penalty of perjury under the laws of the State of California and the  
17 United States of America that the foregoing is true and correct.

18 Executed this eighth day of June, 2018, at Irvine, California.

19 \_\_\_\_\_  
20 */s/ Nicole M. Shaffer*

Nicole M. Shaffer

21  
22  
23 4826-7419-8630, v. 1  
24  
25  
26  
27  
28



1 James P. Carter (SBN 150052)  
james.carter@jacksonlewis.com  
2 Nicole M. Shaffer (SBN 244366)  
nicole.shaffer@jacksonlewis.com  
3 Kathy A. Le (SBN 279690)  
kathy.le@jacksonlewis.com  
4 JACKSON LEWIS P.C.  
200 Spectrum Center Drive, Suite 500  
5 Irvine, CA 92618  
Tel: (949) 885-1360  
6 Fax: (949) 885-1380

7 Attorneys for Defendant M.A.C. COSMETICS INC.

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 MERCEDES DEGUCHY, as an  
12 individual and on behalf of all others  
13 similarly situated,

14 Plaintiffs,

15 vs.

16 M.A.C. COSMETICS, INC., a  
17 Delaware corporation; and DOES 1  
18 through 100,

19 Defendants.  
20  
21  
22  
23  
24  
25  
26  
27  
28

CASE NO.:

DECLARATION OF PALOMA  
HURTADO IN SUPPORT OF REMOVAL  
OF ACTION TO THE UNITED STATES  
DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF  
CALIFORNIA PURSUANT TO 28 U.S.C.  
§§ 1332, 1441, 1446, and 1453

[Filed concurrently with the Civil Cover  
Sheet; Notice of Removal; Declaration of  
Nicole M. Shaffer; Corporate Disclosure  
Statement; Notice of Related Cases; and  
Notice of Party with Financial Interest]

Action Filed: May 8, 2018



1 I, Paloma Hurtado, declare and state as follows:

2 1. I am employed by M.A.C. COSMETICS INC. (“M.A.C.”) as its Human  
3 Resources Manager. I have held this position since approximately October 2015 and am  
4 familiar with M.A.C.’s business operations. In my capacity as Human Resources  
5 Manager, I have access to information and data regarding M.A.C.’s operations in  
6 California.

7 2. The matters set forth in this declaration are based on my own personal  
8 knowledge and, if called upon as a witness, I could and would testify competently  
9 thereto. To the extent this declaration is based upon business records, those records are  
10 kept in the regular course of business, entries are made in those records in a timely  
11 manner by people with knowledge of the information being entered, and it is the regular  
12 practice of M.A.C. to maintain such records.

13 3. M.A.C. is incorporated under the laws of the State of Delaware, with its  
14 principal place of business and headquarters located at 130 Prince Street, New York, NY  
15 02451. The State of New York is where M.A.C.’s main office and management  
16 functions are concentrated and from where M.A.C.’s high level officers direct, control,  
17 and coordinate M.A.C.’s activities.

18 4. With respect to the second through fifth causes of action, the Complaint  
19 defines the putative class as “all of Defendants’ current and former non-exempt  
20 employees in California at any time within four years prior to the filing of the Complaint  
21 through the present.” As of September 2017, when Defendant last ran its putative class  
22 data, there were at least 1,253 persons that fit this definition of the class. Of the 1,253  
23 putative class members, 280 are former employees.

24 ///

25 ///

26 ///

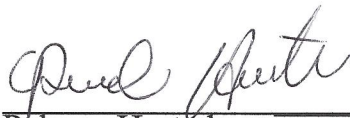
27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. Plaintiff Mercedes Deguchy’s final regular hourly rate of pay was \$23.39 per hour.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on June 8, 2018 at Chico, California.

  
\_\_\_\_\_  
Paloma Hurtado

4844-6929-5206, v. 1

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Against M.A.C. Cosmetics Claims Company's Pay Practices Need Makeover](#)

---