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9 Attorneys for Defendant
10 ULTA BEAUTY, INC.

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

14 TARINI FERNANDO, an individual,
on behalf of herself and all others
15 similarly situated,,

16 Plaintiff,

17 v.

18 ULTA BEAUTY, INC. a Delaware
corporation, and DOES 1 through 100,
19 inclusive,,

20 Defendants.
21
22

Case No. '19CV1503 JM LL

(San Diego Superior Court, Case
No. 37-2019-00034485-CU-OE-CTL)

**DEFENDANT'S NOTICE TO
FEDERAL COURT OF REMOVAL
OF CIVIL ACTION**

Complaint filed: July 3, 29109

1 TO THE CLERK OF THE ABOVE ENTITLED COURT, AND TO PLAINTIFF AND
2 HER ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendant Ulta Beauty, Inc. (“Defendant”
4 or “Ulta”) hereby removes the above-entitled action from the Superior Court of the State
5 of California, County of San Diego, to the United States District Court for the Southern
6 District of California, pursuant to 28 U.S.C. sections 1332, 1441, 1446, and 1453
7 because this Court has original jurisdiction of federal questions and under the Class
8 Action Fairness Act of 2005 (“CAFA”).

9 **I. PROCEDURAL BACKGROUND**

10 1. On July 3, 2019, Plaintiff Tarini Fernando (“Plaintiff”), on behalf of
11 herself and all others similarly situated, filed her original Complaint for Damages in the
12 Superior Court of the State of California, County of San Diego, entitled *Tarini*
13 *Fernando, an individual, on behalf of herself and all others similarly situated v. Ulta*
14 *Beauty, Inc., a Delaware corporation, and Does 1 through 100, inclusive*, Case No. 37-
15 2019-00034485-CU-OE-CTL (the “State Court Action”).

16 2. A true and correct copy of the Summons and Complaint, along with
17 all pleadings and process in this matter that have been filed with the Superior Court of
18 San Diego County, to date, are attached hereto as **Exhibit A** to the Declaration of Lena
19 Sims (“Sims Dec.”).

20 3. On August 12, 2019, Defendant answered Plaintiff’s Complaint
21 pursuant to Code of Civil Procedure section 431.30 in the San Diego County Superior
22 Court. (Sims Decl., **Ex. B.**)

23 **II. REMOVAL PROCEDURE**

24 4. A notice of removal in a civil action must be filed within thirty (30)
25 days after service of the summons and complaint. 28 U.S.C. § 1446(b); *see also Murphy*
26 *Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (holding that the
27 30-day removal period begins to run upon service of the summons and complaint). Here,
28 although Plaintiff filed her Complaint in San Diego Superior Court on July 3, 2019,

1 Defendant has not been served with a copy of the Summons and Complaint.
2 Accordingly, this Notice of Removal is timely.

3 5. Venue in this Court is based on the fact that Plaintiff originally filed
4 this action in San Diego County Superior Court, located within the District and Division
5 of the Court. 28 U.S.C. section 1441(a).

6 **III. FEDERAL QUESTION JURISDICTION**

7 6. This is a civil action over which this Court has original jurisdiction
8 under 28 U.S.C. sections 1331 and 1441(a). Plaintiff alleges violations of the Fair Labor
9 Standards Act (“FLSA”), 29 U.S.C. section 201, *et seq.* in her First Cause of Action.
10 (Complaint, ¶¶ 39-43.) Defendant may remove this action because this Court has
11 original jurisdiction pursuant to 29 U.S.C. section 216(b). 28 U.S.C. § 1331; *Breuer v.*
12 *Jim’s Concrete of Brevard, Inc.*, 538 U.S. 691, 699-700 (2003) (holding subject matter
13 jurisdiction is specifically vested in federal courts for violations of the FLSA).

14 7. This Court has supplemental jurisdiction over Plaintiff’s state law
15 causes of action because they form part of the same case or controversy as Plaintiff’s
16 FLSA claim. *See* 28 U.S.C. § 1367(a). In this regard, Plaintiff’s state law claims for
17 overtime pay, meal and rest break violations, unpaid wages, inaccurate wage
18 statements, unreimbursed business expenses, and derivative penalties are based on the
19 same or similar factual allegations and will necessarily involve common issues of law
20 and fact as Plaintiff’s claims for unpaid overtime compensation under the FLSA.
21 Moreover, Plaintiff’s state law causes of action do not involve any novel or complex
22 issue of state law, do not substantially predominate over Plaintiff’s FLSA claims, and
23 do not present exceptional or compelling circumstances for this Court to decline
24 jurisdiction. *See* 28 U.S.C. § 1367(c). The entire action is appropriately removed to this
25 Court for this reason alone.

26 8. Because Plaintiff’s Complaint requires resolution of federal
27 questions, this action should be removed. Pursuant to 28 U.S.C. section 1367(a), this
28 Court has supplemental jurisdiction over Plaintiff’s remaining causes of action. Once a

1 federal court acquires removal jurisdiction over a case, it also acquires jurisdiction over
 2 pendent state claims. *Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766, 771 (9th Cir.
 3 1986).

4 **IV. DIVERSITY JURISDICTION PURSUANT TO CAFA**

5 **A. The Court Has Original Jurisdiction Over This Action Under CAFA**

6 9. Plaintiff brought this class action on behalf of all non-exempt
 7 employees who worked in a retail store and were paid on an hourly basis. (**Exhibit A**,
 8 Complaint (“Compl.”), ¶ 11.)¹ This Court has jurisdiction over this action under the
 9 Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because there is at least
 10 minimal diversity between the parties, the putative class includes more than 100
 11 individuals, and the aggregate amount in controversy for the purported class claims
 12 exceeds \$5 million. 28 U.S.C. § 1332(d).

13 **B. There Is Complete Diversity Between At Least One Class Member, 14 Plaintiff, And Ulta**

15 10. To establish jurisdiction under CAFA, there must be at least
 16 minimal diversity between the parties. 28 U.S.C. § 1332(d)(2). CAFA diversity
 17 jurisdiction exists if “any member of a class of plaintiffs is a citizen of a State different
 18 from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

19 11. Plaintiff is a citizen of the State of California. (**Exhibit A**, Compl.,
 20 ¶ 4.) *See State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)
 21 (place of residence is *prima facie* evidence of domicile for purposes of determining
 22 citizenship); *see also Smith v. Simmons*, 2008 WL 744709, at *7 (E.D. Cal. Mar. 18,
 23 2008) (place of residence provides “prima facie” case of domicile).

24 12. For diversity jurisdiction, a corporation “shall be deemed a citizen
 25 of any State . . . by which it has been incorporated and of the State . . . where it has its
 26 principal place of business.” 28 U.S.C. § 1332(c)(1). As acknowledged by Plaintiff,

27 _____
 28 ¹ **Exhibit A**, Complaint (“Compl.”), refers to the Declaration of Lena Sims, Exhibit A. (Sims Dec.,
Ex. A.)

1 Ulta was, and still is, a corporation organized under the laws of the State of Delaware
2 with its principal place of business in Illinois. (Exhibit A, Compl., ¶ 5; Declaration of
3 Holly Moorehouse (“Moorehouse Dec.”) ¶ 3.) Specifically, Ulta’s principal place of
4 business is in Bolingbrook, Illinois. (Moorehouse Dec. ¶ 3.)

5 13. The United States Supreme Court has established that the “nerve
6 center” test should be used to determine a corporation’s “principal place of business.”
7 *See Hertz Corp. v. Friend*, 559 U.S. 77, 92 (2010). A corporation’s “nerve center” is
8 normally located where the corporation maintains its corporate headquarters and where
9 the “corporation’s officers direct, control, and coordinate the corporation’s activities,”
10 including both the executive and administrative functions. *Id.* Ulta maintains its
11 corporate headquarters in Bolingbrook, Illinois. (Moorehouse Dec. ¶ 3.) Ulta’s
12 executives are domiciled at the Company’s Bolingbrook, Illinois headquarters, which
13 is where Ulta’s centralized administrative functions and operations are based. (*Id.*)
14 Bolingbrook, Illinois is the actual center of direction, control, and coordination for
15 Ulta’s operations. (*Id.*) Thus, for diversity purposes, Ulta is a citizen of Delaware and
16 Illinois, not California.

17 14. Defendants Does 1 through 100 do not destroy diversity of
18 citizenship because defendants who are sued under fictitious names are “nominal”
19 parties and their citizenship shall be disregarded for the purposes of determining
20 diversity jurisdiction. *See Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204
21 F.3d 867, 873 (9th Cir. 2000); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91
22 (9th Cir. 1998).

23 15. As a result, because the named Plaintiff is a citizen of California,
24 and Ulta is a citizen of Delaware and Illinois, the Parties meet the standard for minimal
25 diversity under CAFA. 28 U.S.C. § 1332(d)(2)(A).

26 C. The Proposed Class Contains More Than 100 Members

27 16. CAFA provides this Court with jurisdiction over a class action when
28 “the number of members of all proposed plaintiff classes in the aggregate is [not] less

1 than 100.” 28 U.S.C. § 1332(d)(5)(B). CAFA defines “class members” as those
 2 “persons (named or unnamed) who fall within the definition of the proposed or certified
 3 class in a class action.” 28 U.S.C. § 1332(d)(1)(D).

4 17. In this action Plaintiff seeks to represent a nationwide FLSA class
 5 and a California class defined as follows:

6 a. “The **FLSA class** is defined as all individuals who are or previously
 7 were employed by Defendants throughout the nation, who were
 8 classified as non-exempt employees, worked in a retail store, and
 9 were paid on an hourly basis (the “FLSA CLASS MEMBERS”) at
 10 any time during the period beginning three (3) years prior to the
 11 filing of this Complaint and ending on a date as determined by the
 12 Court.” (**Exhibit A**, Compl. ¶ 11.)

13 b. “The **California Class** is defined as all individuals who are or
 14 previously were classified as non-exempt employees, worked in a
 15 retail store in the state of California, and were paid on an hourly
 16 basis (the “CALIFORNIA CLASS MEMBERS”) at any time during
 17 the period beginning four (4) years prior to the filing of this
 18 Complaint and ending on the date as determined by the Court.” (*Id.*)

19 18. Plaintiff alleges that “the FLSA Class is comprised of at least 15,000
 20 individuals and that the California Class is composed of at least 5000 individuals.”
 21 (**Exh. A**, Compl., ¶ 14.) Thus, CAFA’s numerosity requirement is satisfied. *See* 28
 22 U.S.C. § 1332(d)(5)(B).

23 **D. The Total Amount In Controversy Exceeds \$5 Million**

24 **1. Applicable Standard**

25 19. The amount in controversy for all claims exceeds \$5 million. CAFA
 26 requires the “matter in controversy” to exceed “the sum or value of \$5,000,000
 27 exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). Where the plaintiff’s complaint
 28 does not state the amount in controversy, the defendant’s notice of removal may do so.

1 See *Dart Cherokee Basin Oper. Co. LLC v. Brandon W. Owens*, 135 S. Ct. 547, 551
2 (2014). All that is required is “a plausible allegation that the amount in controversy
3 exceeds the jurisdictional threshold.” *Id.* at 554; accord *Ibarra v. Manheim Inv., Inc.*,
4 775 F.3d 1193, 1195 (9th Cir. 2015). No evidence establishing the amount in
5 controversy is required because there is “no antiremoval presumption” in cases
6 invoking CAFA. *Dart Cherokee Basin Oper. Co. LLC*, 135 S. Ct. at 551-54.

7 20. “The claims of the individual class members shall be aggregated to
8 determine whether the matter in controversy exceeds” the jurisdictional minimum. 28
9 U.S.C. § 1332(d)(6). “In measuring the amount in controversy, a court must assume that
10 the allegations of the complaint are true and that a jury will return a verdict for the
11 plaintiff on all claims made in the complaint.” *Kenneth Rothschild Trust v. Morgan*
12 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002). The ultimate inquiry
13 is what amount is put “in controversy” by the plaintiff’s complaint, not what a defendant
14 will actually owe. See *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal.
15 2005); see also *Ibarra*, 775 F. 3d at 1198 n.1 (explaining that even when the court is
16 persuaded the amount in controversy exceeds \$5 million, defendants are still free to
17 challenge the actual amount of damages at trial because they are only estimating the
18 damages in controversy).

19 21. In the Complaint, Plaintiff brings claims for (1) violations of the Fair
20 Labor Standards Act; (2) failure to compensate for all hours worked; (3) rest break
21 violations; (4) meal period violations; (5) failure to reimburse business expenses (6)
22 failure to timely pay wages; (7) failure to provide accurate wage statements; and (8)
23 unfair business practices. (**Exhibit A**, Compl.) Based on these claims, Plaintiff seeks
24 compensatory damages, enhanced damages, liquidated damages, statutory and civil
25 penalties, waiting time penalties, restitution, injunctive relief, interest, and attorneys’
26 fees and costs. (**Exhibit A**, Compl., Prayer for Relief, ¶¶ 1-11.)

27 22. Although Ulta denies that Plaintiff’s claims have any merit, and
28 likewise denies that this matter should be certified as a class action, when all claims

1 arising under the California Labor Code are aggregated, the allegations in the Complaint
2 give rise to an amount in controversy that meets this Court’s jurisdictional minimum of
3 \$5 million under CAFA. 28 U.S.C. § 1332(d)(2).

4 23. The amount in controversy in this case is comprised of the potential
5 monetary recovery for Plaintiff’s seven non-equitable causes of action together with her
6 claim for statutory attorney’s fees. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-
7 56 (9th Cir. 1998) (“Where an underlying statute authorizes an award of attorneys’ fees,
8 either with mandatory or discretionary language, such fees may be included in the
9 amount in controversy.”).

10 24. As set forth below and in the accompanying declaration, Plaintiff’s
11 claims for waiting time penalties and wage statement penalties alone unquestionably
12 exceed the \$5 million jurisdictional threshold.

13 2. Key Statistics and Facts

14 25. Plaintiff defines the putative California class members as “all
15 individuals who are or previously were classified as non-exempt employees, worked in
16 a retail store in the state of California, and were paid on an hourly basis at any time
17 during the period beginning four (4) years prior to the filing of this Complaint and
18 ending on the date as determined by the Court.” (**Exhibit A**, Compl., ¶ 11.)

19 26. Using data for the abbreviated time period of December 30, 2016 to
20 August 9, 2019, there were approximately 9,275 terminated non-exempt employees in
21 California and their average hourly rate was \$12.57.² (Moorehouse Dec. ¶ 4.)

22 27. Throughout the putative class period, Ulta’s associates were paid on
23 a bi-weekly basis. (Moorehouse Dec. ¶ 6.)

24 3. Calculations of Amount in Controversy Related to Waiting 25 Time Penalties

26 28. Plaintiff’s Sixth Cause of Action alleges that Plaintiff and the

27 ² The settlement agreements in *Yvette Galvez v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Case No.
28 1-13-CV-257110 and *Sarah Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Case No. CV 12-
3224 FMO (AGRx) released claims through December 29, 2016.

1 putative class members were not paid their wages upon termination. (**Exhibit A**,
2 Compl., ¶ 70.) Specifically, Plaintiff alleges that Ulta has a “policy and practice of
3 mailing these final checks late, rather than simply providing them at
4 termination.” (**Exhibit A**, Compl., ¶ 27.) Additionally, Plaintiff alleges that all
5 employees worked off the clock every day they worked. (**Exhibit A**, Compl., ¶¶ 22,
6 25.) Based on that allegation, every employee’s final pay was not complete. (*See*
7 **Exhibit A**, Compl., ¶ 69.) Plaintiff therefore seeks waiting time penalties for each day
8 putative class members did not receive all wages upon termination. (**Exhibit A**, Compl.,
9 ¶ 72.)

10 29. Labor Code Section 203 provides that if an employer fails to pay
11 any wages of an employee who is discharged or who quits, the wages of the employee
12 shall continue as a penalty at the same rate for up to 30 days. Accordingly, former non-
13 exempt employees that worked 8 hours per day would be entitled to waiting time
14 penalties of 8 hours per day, multiplied by their final rate of pay, for 30 days. *See*
15 *Mamika v. Barca*, 68 Cal. App. 4th 487, 493 (1998) (where full time employee seeks
16 penalties under 203, the proper calculation is hourly rate, multiplied by 8 hours per day,
17 for 30 days).

18 30. From December 30, 2016 to August 9, 2019, approximately 9,275
19 non-exempt employees were terminated. (Moorehouse Dec. ¶ 4.) The average hourly
20 rate for non-exempt employees that were terminated during that period is \$12.57. (*Id.*)
21 Thus, relying on sampled pay data extrapolated to the alleged California class and
22 assuming non-exempt employees worked 4 hours per day, the approximate amount of
23 waiting time penalties is **\$13,990,410** ($\$12.57 \times 4 \text{ hours} \times 30 \text{ days} \times 9,275 \text{ former non-}$
24 exempt employees).

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4. Calculation of Amount In Controversy Related To Labor Code § 226 Claim

31. Plaintiff’s Seventh Cause of Action alleges that Ulta failed to provide and retain accurate itemized wage statements under California Labor Code section 226. (Exhibit A, Compl., ¶ 76.) Plaintiff alleges that Ulta required security checks at all locations before an employee could leave the store, which resulted in Ulta exercising control over all employees during off the clock hours “following each shift and during meal and rest breaks.” (Exhibit A, Compl., ¶¶ 22, 25 .) As a result, Plaintiff asserts that each wage statement is inaccurate because it fails to account for the off the clock hours worked and compensation due for every day worked. (Exhibit A, Compl., ¶ 26.)

32. Under California Labor Code section 226, Plaintiff and the putative class would be entitled to recover \$50 for the initial pay period in which a violation occurs and \$100 for each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000. Cal. Lab. Code § 226(e)(1). Based on sampled pay data, there were approximately 8,238 putative California class members from July 3, 2018 through August 9, 2019, each of whom received allegedly incorrect itemized wage statements every pay period. (Moorehouse Dec. ¶ 5.) Given that Defendant pays associates bi-weekly, and assuming that Ulta failed to provide an accurate wage statement for each pay period, by extrapolating the data to the alleged class there are approximately 162,805 total pay periods with an alleged wage statement violation from July 3, 2018 through August 9, 2019. (Moorehouse Dec. ¶ 5.)

33. Therefore, assuming that Ulta failed to provide an accurate wage statement for each the 162,805 pay periods at issue for all 8,238 non-exempt employees, the estimated amount in controversy related to Plaintiff’s Seventh Cause of Action is \$15,868,600 (((\$50 x the initial 8,238 pay periods is \$411,900) + (\$100 x 154,567 remaining pay periods is \$15,456,700)).

5. The Aggregate Amount At Issue Is Well In Excess Of The Jurisdictional Minimum

34. Based on the above calculations, a conservative estimate of the aggregate minimum amount of California labor code penalties in controversy is **\$29,859,010**, as summarized below:

Plaintiff's Alleged Claim	Minimum Amount In Controversy
Waiting Time Penalties	\$13,990,410
Penalties for Violation of 226	\$15,868,600
Total Amount in Controversy:	\$29,859,010

35. In addition to the penalties detailed above, the amount in controversy also includes all other alleged damages for unpaid wages, overtime, meal and rest break premiums, and business expenses. Thus, the amount in controversy calculate above significantly underestimates the full amount in controversy. Further, the calculations above only take into consideration the putative California class members. Accordingly, the amount in controversy is also underestimated as it fails to include the claims and damages asserted on behalf of Plaintiff's alleged nationwide FLSA class.

36. In light of the above, there is no question that the evidence shows that Plaintiff's claims exceed the jurisdictional minimum. Accordingly, the "amount in controversy" requirement under CAFA is satisfied in this case. *See* 28 U.S.C. § 1332(d)(2).

V. NOTICE TO PLAINTIFF AND STATE COURT

37. Contemporaneously with the filing of this Notice in this Court, written notice of such filing will be provided to Plaintiff's counsel of record, Roger R. Carter, The Carter Law Firm, 23 Corporate Plaza Drive, Suite 150, Newport Beach, CA 92660; Marc Phelps, The Phelps Law Group, 23 Corporate Plaza Drive, Suite 150, Newport Beach, CA 92660; and Noam Glick, Glick Law Group, 225 Broadway, Suite 2100, San Diego, CA 92101.

38. A copy of the Notice of Removal will also be filed with the Clerk of

1 the Superior Court of the County of San Diego, California.

2 WHEREFORE, having provided notice as required by law, the above-
3 entitled action should hereby be removed from the Superior Court of the County of San
4 Diego to this Court.

5

6 Dated: August 12, 2019

LITTLER MENDELSON, P.C.

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By: /s/ Lena K. Sims

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LENA K. SIMS
JULIE A. STOCKTON
Attorneys for Defendant
ULTA BEAUTY, INC.

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FIRMWIDE:165701887.2 059310.1173

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CIVIL COVER SHEET

JS 44 (Rev. 02/19)

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

TARINI FERNANDO, an individual, on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Roger C. Carter, SBN 140196
THE CARTER LAW FIRM
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Tel.: 949.629.2533; Fax: 949.629.2501

DEFENDANTS

ULTA BEAUTY, INC., a Delaware Corporation, and DOES 1 through 100 inclusive

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

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

Attorneys (If Known)

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'19CV1503 JM LL

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. 1332; 28 U.S.C. 1441; 28 U.S.C. 1446

VI. CAUSE OF ACTION

Brief description of cause:
 Wage and hour employment case, including allegations regarding failure to provide meal and rest periods, reimburse business expenses, pay overtime wage, pay all wages due to discharged employees, and furnish accurate wage statements.

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) (See instructions):

IF ANY

JUDGE Jon S. Tigar

DOCKET NUMBER 07683-JCS

DATE August 12, 2019

SIGNATURE OF ATTORNEY OF RECORD /s/ Lena K. Sims

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

1 LENA K. SIMS, Bar No. 212904
lsims@littler.com
2 LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
3 San Diego, California 92101.3577
Telephone: 619.232.0441
4 Facsimile: 619.232.4302

5 JULIE A. STOCKTON, Bar No. 286944
jstockton@littler.com
6 LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
7 San Francisco, CA 94104
Telephone: 415.433.1940
8 Facsimile: 415.399.8490

9 Attorneys for Defendant
10 ULTA BEAUTY, INC.

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

14 TARINI FERNANDO, an individual,
on behalf of herself and all others
15 similarly situated,,

16 Plaintiff,

17 v.

18 ULTA BEAUTY, INC. a Delaware
corporation, and DOES 1 through 100,
19 inclusive,,

20 Defendants.

Case No. '19CV1503 JM LL

(San Diego Superior Court, Case
No. 37-2019-00034485-CU-OE-CTL)

**DECLARATION OF HOLLY
MOOREHOUSE IN SUPPORT OF
DEFENDANT'S NOTICE TO
FEDERAL COURT OF REMOVAL
OF CIVIL ACTION**

Complaint filed: July 3, 29109

1 I, Holly Moorehouse, declare as follows:

2 1. I make this declaration in support of Defendant Ulta Beauty, Inc.'s Notice
3 of Removal of Action to Federal Court. The information set forth herein is true and
4 correct of my own personal knowledge (unless otherwise stated) and if asked to testify
5 thereto, I would do so competently.

6 2. I am currently employed as Director of Human Resources, Associate
7 Relations, Compliance & Employee Service Center for Ulta, and I have held this role
8 since 2018. As a Director of Human Resources, I have access to data concerning the
9 associates employed by Ulta Salon, Cosmetics & Fragrance, Inc. ("Ulta Salon"), a
10 wholly owned subsidiary of Ulta Beauty, Inc., who work in retail stores throughout the
11 country, including in California. Ulta Salon maintains retail associate data on various
12 databases in the normal course of business.

13 3. The corporate headquarters for Ulta Salon is in Bolingbrook, Illinois.
14 Executives primarily work out of offices at the Bolingbrook, Illinois headquarters,
15 which is where Ulta Salon centralizes administrative functions and operations. For
16 example, my office is located in Bolingbrook, Illinois. Bolingbrook, Illinois is the
17 actual center of direction, control and coordination for Ulta Salon's operations.

18 4. Based on my review of company records containing the start and end dates
19 of employment for California non-exempt associates, and extrapolating the data to the
20 alleged class, from December 30, 2016 to August 9, 2019, there were approximately
21 9,275 terminated non-exempt employees in California and their average hourly rate was
22 \$12.57. The information on these databases is maintained in the normal course of
23 business.

24 5. Based on my review of company records which are maintained in the
25 normal course of business, and relying on a sample of data from July 3, 2018 to August
26 9, 2019, there were 8,238 California non-exempt associates and 162,805 total pay
27 periods.

28 6. In California, Ulta's non-exempt associates are paid on a bi-weekly basis.

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

Executed at Bolingbrook, Illinois on the 12 day of August, 2019.


HOLLY MOOREHOUSE

FIRMWIDE:165705919.1 059310.1173

1 LENA K. SIMS, Bar No. 212904
lsims@littler.com
2 LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
3 San Diego, California 92101.3577
Telephone: 619.232.0441
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5 JULIE A. STOCKTON, Bar No. 286944
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333 Bush Street, 34th Floor
7 San Francisco, CA 94104
Telephone: 415.433.1940
8 Facsimile: 415.399.8490

9 Attorneys for Defendant
10 ULTA BEAUTY, INC.

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

14 TARINI FERNANDO, an individual,
on behalf of herself and all others
15 similarly situated,,

16 Plaintiff,

17 v.

18 ULTA BEAUTY, INC. a Delaware
corporation, and DOES 1 through 100,
19 inclusive,,

20 Defendants.
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Case No. '19CV1503 JM LL

(San Diego Superior Court, Case
No. 37-2019-00034485-CU-OE-CTL)

**DECLARATION OF LENA K. SIMS
IN SUPPORT OF NOTICE TO
FEDERAL COURT OF REMOVAL
OF CIVIL ACTION**

Complaint filed: July 3, 29109

1 I, Lena K. Sims, hereby declare and state as follows:

2 1. I am a shareholder with the law firm of Littler Mendelson, a Professional
3 Corporation, counsel for Defendant ULTA BEAUTY, INC. (“Defendant”) in the
4 above-entitled matter. I am duly licensed to practice law in the State of California and
5 before the United States District Court for the Southern District and am responsible for
6 representing Defendant in this action. Except where otherwise indicated, all of the
7 information contained herein is based upon my personal knowledge and if called and
8 sworn as a witness, I could and would competently testify thereto.

9 2. Attached hereto as **Exhibit A** is a true and correct copy of all documents
10 on file in the Superior Court of the State of California, County of San Diego, in the
11 litigation entitled *Tarini Fernando v. Ulta Beauty, Inc.*, Case No. 37-2019-00034485-
12 CU-OE-CTL, and includes a true and correct copy of the Summons and Complaint.

13 3. Attached hereto as **Exhibit B** is a true and correct copy of Defendant’s
14 Answer, filed on August 12, 2019.

15 I declare under penalty of perjury, under the laws of the United States and the
16 State of California that the foregoing is true and correct, and that this declaration was
17 executed on August 12, 2019, at San Diego, California.

18
19
20 Lena K. Sims
21 LENA K. SIMS

22
23
24
25 FIRMWIDE:165704284.1 059310.1173

EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Noam Glick, Esq. (SBN 251582) GLICK LAW GROUP, P.C. 225 Broadway, Suite 2100 San Diego, CA 92101 TELEPHONE NO.: 619.382.3400 FAX NO.: 619.615.2193 ATTORNEY FOR (Name): Plaintiff Tarini Fernando		ELECTRONICALLY FILED Superior Court of California, County of San Diego 07/03/2019 at 11:48:20 AM Clerk of the Superior Court By Melinda McClure , Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway, San Diego, CA 92101 MAILING ADDRESS: 330 West Broadway, San Diego, CA 92101 CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice		
CASE NAME: Tarini Fernando v. Ulta Beauty, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2019-00034485-CU-DE-CTL JUDGE: Judge John S. Meyer 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:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <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) Non-PI/PD/WD (Other) Tort <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) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <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) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <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)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <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 (4-1) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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 b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses 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 f. <input type="checkbox"/> Substantial postjudgment judicial supervision
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3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **Eight. 1) Violations of the Fair Labor Standards Act;**

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: 7/03/19
 Noam Glick _____
 (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.

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

**SUMMONS
(CITACION JUDICIAL)**

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

ULTA BEAUTY, INC., a Delaware corporation, and DOES 1 through 100, inclusive;

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

TARINI FERNANDO, an individual, on behalf of herself and all others similarly situated;

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/03/2019 at 11:46:20 AM

Clerk of the Superior Court
By Melinda McClure, 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), 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), the California Courts Online Self-Help Center (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), 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), en el Centro de Ayuda de las Cortes de California, (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): San Diego Superior Court
Hall of Justice
330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2019-00034485-CU-OE-CTL

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):
Noam Glick, 225 Broadway, Suite 2100, San Diego CA 92101 Tel: (858)342-9161

DATE: 07/05/2019
(Fecha)

Clerk, by M McClure, Deputy
(Secretario) M. McClure (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
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify):
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):
 - by personal delivery on (date):

1 **THE CARTER LAW FIRM**
 Roger R. Carter (SBN 140196)
 2 23 Corporate Plaza Drive, Suite 150
 Newport Beach, CA 92660
 3 Tel: (949) 629-2533
 Fax: (949) 629-2501
 4 Email: rcarter@carterlawfirm.net

5 **THE PHELPS LAW GROUP**
 Marc Phelps (SBN 237036)
 6 23 Corporate Plaza Drive, Suite 150
 Newport Beach, CA 92660
 7 Tel: (949) 629-2533
 Fax: (949) 629-2501
 8 Email: marc@phelpslawgroup.com

9 **GLICK LAW GROUP**
 Noam Glick (SBN 251582)
 10 225 Broadway, Suite 2100
 San Diego, California 92101
 11 Tel: (619) 382-3400
 Fax: (619) 615-2193
 12 Email: noam@glicklawgroup.com

13 Attorneys for Plaintiff
 Tarini Fernando
 14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 16 **IN AND FOR THE COUNTY OF SAN DIEGO**

17 TARINI FERNANDO, an individual, on behalf
 of herself and all others similarly situated;

18 Plaintiff,

19 vs.

20 ULTA BEAUTY, INC., a Delaware
 corporation, and DOES 1 through 100,
 21 inclusive;

22 Defendants.
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ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego
07/03/2019 at 11:48:20 AM
 Clerk of the Superior Court
 By Melinda McClure, Deputy Clerk

Case No. 37-2019-00034485-CU-0E-CTL

CLASS ACTION COMPLAINT FOR:

- (1) **VIOLATIONS OF THE FAIR LABOR STANDARDS ACT;**
- (2) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- (3) **FAILURE TO PROVIDE ADEQUATE REST PERIODS;**
- (4) **FAILURE TO PROVIDE ADEQUATE MEAL PERIODS;**
- (5) **FAILURE TO PROVIDE REIMBURSEMENT FOR BUSINESS EXPENSES;**
- (6) **FAILURE TO PROVIDE WAGES AND WAITING-TIME PENALTIES;**

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(7) **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;**

(8) **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

DEMAND FOR JURY TRIAL

1 Plaintiff, TARINI FERNANDO, an individual (“Plaintiff” or “Fernando”), brings this
2 action against Defendant Ulta Beauty, Inc., a Delaware corporation, and DOES 1 through 100,
3 inclusive, on behalf of herself and all others similarly situated, and alleges on information and
4 belief as follows:

5 **I. INTRODUCTION**

6 1. Defendant’s employment practices are unfair to their employees and competitors.
7 Plaintiff and the Class Members bring this complaint for recovery of wages, penalties, and unjust
8 gains realized by Defendant. On behalf of herself and the putative class, Plaintiff brings this action
9 for violation of The Fair Labor Standards Act, California’s Labor Code, California’s Code of
10 Regulations, the Industrial Wage Commission (“IWC”) Wage Orders, and the Unfair Competition
11 Law (“UCL”), Bus. & Prof. Code, §§ 17200, *et seq.*

12 **II. JURISDICTION AND VENUE**

13 2. The amount in controversy is sufficient to implicate the general jurisdiction of the
14 Superior Court of San Diego.

15 3. Based on information and belief, and records maintained pursuant to the California
16 Secretary of State, venue is proper in this judicial district, pursuant to the Code of Civil Procedure
17 Sections 395 and 395.5. This Complaint is based upon material acts which occurred in San Diego
18 County, as Defendant employs non-exempt employees and operates stores within San Diego
19 County.

20 **III. THE PARTIES**

21 **A. Plaintiff**

22 4. Plaintiff TARINI FERNANDO is a resident of California. At all relevant times
23 herein, she was employed by Defendant as a non-exempt employee within the state.

24 **B. Defendants**

25 5. Defendant ULTA BEAUTY, INC. is a Delaware Corporation. Defendant operates
26 a chain of beauty stores throughout California and the United States, offering cosmetics,
27 fragrance, skin and hair care products, and salon services. The entity has its corporate
28 headquarters in Bolingbrook, Illinois and is publically traded on the NASDAQ (symbol:

1 “ULTA”). Prior to January 2017, it operated under the name “Ulta Salon, Cosmetics &
2 Fragrance, Inc.” The unlawful acts alleged herein have a direct effect on Plaintiff, who worked in
3 California, and those similarly situated within the state of California and San Diego County –
4 where Defendant operates multiple stores. Venue as to each defendant is proper in this judicial
5 district, pursuant to California Code of Civil Procedure § 395.

6 6. The FLSA claims are also brought as a Class Action on behalf of the FLSA Class
7 Members, certification of which is proper under FRCP 23, as described in more detail herein.

8 7. The true names and capacities, whether individual, corporate, associate, or
9 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
10 Plaintiff, who therefore sues Defendants by such fictitious names under California Code of Civil
11 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
12 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
13 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
14 names and capacities of the Defendants designated hereinafter as DOES when such identities
15 become known.

16 8. Plaintiff is informed and believes, and based thereon alleges, that each defendant
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
19 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
20 employer and/or joint employer of Plaintiff and the Class Members.

21 **IV. CLASS ACTION ALLEGATIONS**

22 9. Pursuant to Code of Civil Procedure section 382, Plaintiff brings this lawsuit as a
23 class action on behalf of herself and all other similarly situated members of the Class, defined
24 below. This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy,
25 predominance, and superiority requirements of class actions.

26 10. **Class Period:** The Class Period shall be four years prior to the initiation of this
27 action through the date of final resolution.

28 11. **Class Definition:** PLAINTIFF brings this Class Action on behalf of a nationwide

1 FLSA class, a California class, and two California subclasses. The FLSA class is defined as all
2 individuals who are or previously were employed by Defendants throughout the nation, who were
3 classified as non-exempt employees, worked in a retail store, and were paid on an hourly basis
4 (the “FLSA CLASS MEMBERS”) at any time during the period beginning three (3) years prior to
5 the filing of this Complaint and ending on a date as determined by the Court (the “FLSA CLASS
6 PERIOD”). The California Class is defined as all individuals who are or previously were
7 classified as non-exempt employees, worked in a retail store in the state of California, and were
8 paid on an hourly basis (the “CALIFORNIA CLASS MEMBERS”) at any time during the period
9 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
10 by the Court (the “CALIFORNIA CLASS PERIOD”) (collectively, the FLSA CLASS
11 MEMBERS and the CALIFORNIA CLASS MEMBERS are referred to as the “CLASS
12 MEMBERS”). The Manager Sub-Class is defined as the CLASS MEMBERS who had the job
13 title of Store Manager, Assistant Manager, or their equivalents. The Waiting Time Sub-Class is
14 defined as the California Class, except only including workers whose employment with
15 DEFENDANTS terminated within three years prior to the commencement of this action through
16 the date of trial (the “WAITING TIME SUB-CLASS”).

17 12. Excluded from all of the classes are: (1) Defendant, entities in which Defendant
18 has a controlling interest, and their legal representatives, officers, directors, assigns, and
19 successors; and (2) the judge to whom this case is assigned and any member of the judge’s
20 immediate family.

21 13. Plaintiff reserves the right, under California Rules of Court, Rule 3.765(b), to
22 amend or modify the Class Definition. This includes, but is not limited to, providing greater
23 specificity or dividing it into further subclasses.

24 14. **Numerosity:** The potential members of the respective classes are so numerous
25 that joinder of all members is impracticable. Plaintiff does not know the identity of all Class
26 Members but is informed and believes and thereon alleges that the FLSA Class is comprised of at
27 least 15,000 individuals and that the California Class is comprised of at least 5000 individuals.
28 Records maintained and in the possession and control of Defendant or otherwise readily

1 obtainable from third parties will easily identify Class Members.

2 15. **Ascertainability:** The Class is comprised of an easily ascertainable set of persons
3 who work or worked for Defendant as non-exempt, retail store employees.

4 16. **Community of Interest:** There is a well-defined community of interest among
5 Class Members, and the disposition of the claims of the Class Members in a single action will
6 provide substantial benefits to all parties and to the Court.

7 17. **Typicality:** Plaintiff's claims are typical of the Class. Like all Class Members,
8 Plaintiff suffered the alleged violations of the FLSA, of California law, and experienced the
9 resulting damages.

10 18. **Commonality:** Defendant's misconduct is common to all Class Members.
11 Defendant failed to pay Class Members for all hours worked, failed to provide meal and rest
12 breaks, failed to provide all premium pay due and owing, failed to provide reimbursement for
13 business expenses, and failed to provide timely final paychecks, among other things. These
14 actions resulted in damages.

15 19. **Common Questions of Law and Fact:** The numerous questions of law and fact
16 common to all Class Members predominate over any questions affecting only individual Class
17 Members. These include, but are not limited to:

- 18 a. Whether Defendant failed to pay for all hours worked;
- 19 b. Whether Defendant failed to provide or adequately provide rest periods and
20 meal breaks;
- 21 c. Whether Defendants paid meal period and rest period premium pay at the
22 appropriate rates;
- 23 d. Whether Defendants provided adequate wage statements;
- 24 e. Whether Defendants provided adequate reimbursement for work related
25 expenses;
- 26 f. Whether Defendants timely provided all wages when due;
- 27 g. Whether Defendants' conduct violated the Business and Professional Code;
- 28 h. Whether the Class is entitled to equitable relief and to what extent; and

1 i. Whether compensatory and other types of damages should be awarded.

2 20. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and
3 protect the interests of the Class. Her counsel is experienced in prosecuting class actions. Plaintiff
4 and her counsel are committed to vigorously prosecuting this action on behalf of the Class and
5 have the resources to do so. Neither Plaintiff nor her counsel have any interests adverse to those of
6 the Class.

7 21. **Superiority of Class Action:** A class action is superior to all other available
8 methods for the fair and efficient adjudication of this controversy. Based on the relatively small
9 size of the individual claims, absent a class action, most Class Members would likely find the cost
10 of litigating their claims against Defendant to be prohibitive. The class treatment of common
11 questions of law and fact is also superior to multiple individual actions or piecemeal litigation in
12 that it conserves the resources of the courts and the litigants, and promotes consistency and
13 efficiency of adjudication. The consideration of common questions of fact and law will conserve
14 judicial resources and promote a fair and consistent resolution of these labor violations.

15 **V. GENERAL ALLEGATIONS**

16 22. Ulta Beauty imposes a uniform, mandatory “security check” policy at all of its
17 retail locations in the nation, including those locations in California. Under this policy, after Sales
18 Associates clock out, but before they can leave the store, they must wait to be subject to a bag
19 check and pat down. The manager looks for any type of device that may be used to conceal stolen
20 merchandise, such as a bag, a coat, or the like. Where there is such an item, a further check of the
21 item is conducted. If there is no such item, the manager clears the employee to leave. In either
22 case, the employee must await approval before leaving the worksite.

23 23. Only after the security check process is complete, does Ulta Beauty release control
24 over its Sales Associates. These security checks can take five or more minutes as the Sales
25 Associate waits for a manager to become available and clear the employee to leave. Moreover,
26 the bag check takes place at the front of the store and the Class Members clock in and out at the
27 cash register (on the Kronos system) at the back of the store.

28 24. This same security check policy and waiting period occurs any time a Sales

1 Associate wishes to leave the worksite, such as during meal and rest breaks.

2 25. As a result of Ulta Beauty's uniform security check policy, it exercises control over
3 Sales Associate employees during off-the-clock hours following each shift and during meal and
4 rest breaks. This results in uncompensated hours worked under California law as well as a
5 violation of Plaintiff and Class Members' rights to uninterrupted, uncontrolled meal and rest
6 breaks. Moreover, Ulta Beauty disciplines Class Members for taking meal periods over 30
7 minutes by placing an "occurrence" on their record. Incurring over 8 occurrences results in
8 termination of employment. As a result of this policy – in conjunction with the bag check policy
9 – Class Members were pressured to take meal periods that were under 30 minutes.

10 26. Ulta Beauty provides wage statements to Sales Associates that are inaccurate in
11 several respects. First, the wage statements fail to account for all hours worked and compensation
12 due, among other things. Second, the wage statements are inaccurate because overtime rates do
13 not include non-discretionary bonuses provided. Third, wage statements are inaccurate because
14 the rates at which meal and rest period violation penalties are paid are too low (as they do not
15 include non-discretionary bonuses provided).

16 27. Ulta Beauty fails to timely pay Sales Associates all wages due within 72 hours of
17 termination, as legally required. Defendant has a consistent policy and practice of mailing these
18 final checks late, rather than simply providing them at the time of termination – resulting in long
19 delays that should have necessitated the payment of waiting time penalties.

20 28. Ulta Beauty automatically pays meal period premiums when the Class Member
21 clocks out more than five hours after the start of the shift. In order to avoid meal period
22 violations, Class Members are instructed to clock out prior to the end of the fifth hour, continue
23 working, and then later take a meal period. This practice resulted in consistent off the clock work
24 being performed by Class Members (as well as in meal period violations).

25 29. While Ulta Beauty does provide meal and rest period penalty pay, it pays Class
26 Members at their base hourly rates – not the proper rate, which would take into account non-
27 discretionary bonuses paid to that Class Member.

28 30. Ulta Beauty engages in a uniform practice of understaffing its retail stores in order

1 to meet labor budgets. Managers are intensely pressured to keep under set threshold labor budget
2 amounts and therefore feel compelled to schedule insufficient staffing for their stores. As a result,
3 Class Members were frequently unable to take meal or rest breaks due to not having a “breaker”
4 available to take over their jobs. Moreover, on closing shifts, only a single manager is allowed to
5 be in the store for at least a four and one-half hour period handling closing duties. Accordingly,
6 this employee consistently misses both meal and rest breaks due to the lack of coverage.

7 31. Ulta Beauty requires its opening and closing managers to set the alarm, open and
8 close the doors of the store and go through various security steps before and after clocking out.
9 The reason these steps occur off the clock is that clocking in and out is done only via the
10 timekeeping system, Kronos, that is located at the store cash register.

11 32. In fact, Ulta Beauty’s obsession with labor budgets was so intense that managers
12 were required to “cut” sales associates from the schedule, often immediately before their shifts
13 began. This generally took place because the store had not met certain sales thresholds, and
14 therefore, per Ulta’s rules, would be limited in labor hours at later times. As a result of these cuts,
15 Class Members were told not to come in even after they had called in to a manager to determine
16 that their services were required, and as they were already on their way to work and had set aside
17 their day in order to work at their store. Accordingly, Ulta Beauty conscripted the time of these
18 Class Members, placing them under its control, but failed to compensate them for that time. Ulta
19 Beauty also failed to pay Class Members reporting time pay when they called in to verify that their
20 services were required, as it is the act of calling in that, per law, triggers the need for reporting
21 time pay – not physically showing up at the store.

22 33. Managers schedule store employees, and store employees check their schedules
23 and trade and cancel shifts, via an app called “WorkJam,” which is to be downloaded onto the
24 Class Members’ cell phone. While Class Members use this app every single day and are
25 consistently using their phones to control it, Ulta Beauty provides just a \$2 weekly reimbursement
26 for “data,” whereas, per law, it is required to reimburse its employees for their entire cellular
27 phone bill.

28

1 **VI. FLSA ALLEGATIONS**

2 34. Plaintiff brings the First Claim for Relief, for violations of the Fair Labor
3 Standards Act or the FLSA, as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. §
4 2016(b) on behalf of all persons who were, are or will be employed by Defendants or any of them,
5 on or after the date that is three years before the filing of the complaint in this case (the “FLSA
6 Class Period”) who were classified as non-exempt retail store employees paid on an hourly basis
7 (“FLSA Class Members”).

8 35. At all relevant times, Plaintiff and the other FLSA Class Members are and have
9 been similarly situated, have had substantially similar job requirements and pay provisions, and
10 have been subject to Defendants’ common practices, policies, programs, procedures, procedures,
11 protocols and plains of willfully failing and refusing to pay them for hours worked both regular
12 time and overtime, and willfully failing to keep records required by the FLSA. The claims of
13 Plaintiff stated herein are similar to those of these other covered employees. Consequently, class
14 certification is proper under Fed. R. Civ. P., Rules 23(b)(3) and 29 U.S.C. § 216(b).

15 36. The First Claim for Relief is properly brought and maintained as an opt-in
16 collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. 216(b). The FLSA Class
17 Members are readily ascertainable. For purposes of notice and other purposes related to this
18 action, their names and addresses are readily available from Defendant. Notice can be provided to
19 the FLSA Class Members via first class mail to the last address known to their employer.

20 37. Defendant fails to compensate Plaintiff and similarly situated employees as a result
21 of its security check policy. This policy results in time following each shift and time during meal
22 and rest breaks in which employees have clocked out but remain subject to Defendant’s control as
23 described above.

24 38. As a proximate result of Defendant’s unlawful conduct, Plaintiff and the FLSA
25 Class Members sustained damages and are entitled to recover unpaid wages, liquidated damages,
26 interest, applicable penalties, attorney’s fees, and costs.

27
28

1 **VII. FIRST CAUSE OF ACTION**

2 **(By Plaintiff On Behalf Of The FLSA Class Members Against Defendant For Failure**
3 **To Compensate For All Hours Worked)**

4 39. At all relevant times, each Defendant has been, and continues to be, an employer
5 engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant
6 times, each Defendant has employed, and continues to employ the FLSA CLASS MEMBERS as
7 employee[s] within the meaning of the FLSA. At all relevant times, each Defendant has had gross
8 operating revenues in excess of \$500,000.

9 40. Throughout the FLSA CLASS PERIOD, Plaintiff and the other FLSA CLASS
10 MEMBERS worked in excess of forty (40) hours per workweek, and continue to do so.

11 41. At all relevant times, each Defendant has had, and continues to have common
12 policies, programs, practices, procedures, protocols, routines, and rules of willfully failing and
13 refusing to pay the FLSA CLASS MEMBERS for hours worked during bag checks and during
14 opening and closing the stores, both at straight time and overtime rates.

15 42. At all relevant times, Defendants willfully, regularly and repeatedly failed, and
16 continue to fail to make, keep, and preserve accurate records by the FLSA with respect to Plaintiff
17 and the other FLSA CLASS MEMBERS, including records sufficient to accurately determine the
18 wages and hours of employment pertaining to plaintiffs and the other FLSA CLASS MEMBERS.

19 43. Plaintiff and the FLSA CLASS MEMBERS seek damages in the amount of their
20 respective unpaid overtime compensation and straight time compensation, liquidated (double)
21 damages as provided by the FLSA for overtime violations, attorneys' fees and costs of action,
22 injunctive relief requiring Defendants to cease and desist from their violations of the FLSA
23 described herein and to comply with the FLSA, and such other legal and equitable relief as the
24 Court deems just and proper.

25 **VIII. SECOND CAUSE OF ACTION**

26 **(By Plaintiff On Behalf Of The Class Members Against Defendant**
27 **For Failure To Compensate For All Hours Worked)**

28 44. Plaintiff incorporates by reference each and every allegation contained above.

45. Plaintiff brings this claim individually and on behalf of the Class Members.

46. Pursuant to Labor Code Sections 1194, 1197, and 1197.1, Defendant must

1 compensate Plaintiff and the Class Members for all hours worked. California defines hours
2 worked as the time during which an employee is subject to the control of an employer, and
3 includes all the time the employee is suffered or permitted to work.

4 47. Defendant fails to compensate Plaintiff and similarly situated employees as a result
5 of its security check policy. This policy results in time following each shift and time during meal
6 and rest breaks in which employees have clocked out but remain subject to Defendant's control as
7 described above. Likewise, Defendant fails to compensate the Manager Sub-Class members for
8 time spent opening and closing the store (before and after clocking out).

9 48. As a proximate result of Defendant's unlawful conduct, Plaintiff and the Class
10 Members sustained damages and are entitled to recover unpaid wages, liquidated damages,
11 interest, applicable penalties, attorney's fees, and costs.

12 **IX. THIRD CAUSE OF ACTION**
13 **(By Plaintiff On Behalf Of The Class Members Against Defendant**
14 **For Failure To Provide Adequate Rest Breaks)**

14 49. Plaintiff incorporates by reference each and every allegation contained above.

15 50. Plaintiff brings this claim individually and on behalf of the Class Members.

16 51. Pursuant to Labor Code Section 226.7 as well as applicable IWC Wage Orders,
17 employers must provide a 10 minute uninterrupted, off-duty rest break for each shift of 3.5 hours
18 or more. During these periods, an employer must relieve the employee of all duties and relinquish
19 all control over how an employee spends his/her time.

20 52. Plaintiff and the Class Members regularly worked shifts of qualifying duration.
21 However, Defendant failed to provide an adequate rest break in light of its security check policy,
22 subjecting Plaintiff and the Class to continued control during their off-duty rest periods.

23 53. Where a rest break is not provided, employees are entitled to one hour's
24 compensation at their regular rate of pay. Defendant provided no such compensation.

25 54. As a proximate result of Defendant's unlawful conduct, Plaintiff and the Class
26 Members sustained damages and are entitled to recover unpaid wages, liquidated damages,
27 interest, applicable penalties, attorney's fees, and costs.

28

1 **X. FOURTH CAUSE OF ACTION**
2 **(By Plaintiff On Behalf Of The Class Members Against Defendant**
3 **For Failure To Provide Meal Periods)**

3 55. Plaintiff incorporates by reference each and every allegation contained above.

4 56. Plaintiff brings this claim individually and on behalf of the Class Members.

5 57. Under Labor Code Sections 226.7 and 512, as well as applicable IWC Wage
6 Orders, employers must provide a 30-minute uninterrupted, off-duty meal period for each shift
7 five hours or more. During these periods, an employer must relieve the employee of all duties and
8 relinquish all control over how an employee spends his/her time. This includes permitting
9 employees to leave the worksite.

10 58. Plaintiff and Class Members regularly worked shifts of five hours or more. During
11 Plaintiff and Class Members' 30-minute meal period, if they wish to leave the worksite (as is their
12 right), they must undergo a security check. As such, they remain under Defendant's control during
13 this period in violation of the law.

14 59. Where an adequate meal period is not provided, employees are entitled to one
15 hour's compensation at their regular rate of pay. Defendant provided no such compensation
16 despite its continued control over its employees during their meal periods.

17 60. As a proximate result of Defendant's unlawful conduct, Plaintiff and the Class
18 Members sustained damages and are entitled to recover unpaid wages, liquidated damages,
19 interest, applicable penalties, attorney's fees, and costs.

20 **XI. FIFTH CAUSE OF ACTION**
21 **(By Plaintiff On Behalf of The Class Members Against Defendant For Failure to Provide**
22 **Reimbursement for Business Expenses)**

22 61. Plaintiff hereby incorporates all other paragraphs of this Complaint herein and is
23 set forth fully.

24 62. Pursuant to Labor Code § 2802, it is unlawful to require employees to expend
25 monies or indemnify their employer for losses in direct consequence of the discharge of their
26 duties.

27 63. At all times relevant hereto, Plaintiff was employed by Defendants, and each of
28 them, within the State of California. Defendants were required to indemnify and reimburse

1 Plaintiff for all expenditures or losses incurred in direct consequence of the discharge of Plaintiff
2 duties but failed to indemnify and reimburse as an employer is required to do under the laws and
3 regulations of the State of California.

4 64. At all times relevant hereto, Defendants have withheld indemnification from
5 Plaintiff, and other current and former employees similarly situated, for illegal purposes. Plaintiff,
6 by way of example, was required to drive and use his cell phone to perform his duties as an
7 employee. However, Defendants refused and/or failed to reimburse Plaintiff for mileage or cell
8 phone expenditures.

9 65. In violation of state law, Defendant has knowingly and willfully refused to perform
10 its obligations to indemnify Plaintiff and other current and former employees. As a direct result,
11 Plaintiff has suffered, and continues to suffer, substantial losses related to the use and enjoyment
12 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
13 Defendant to fully perform its obligation under state law, the Plaintiff and Class Members'
14 respective damage in amounts according to proof at time of trial, but in amounts in excess of the
15 jurisdiction of this Court. Defendants committed the acts alleged herein knowingly and willfully,
16 with the wrongful and deliberate intention of injuring Plaintiff, from improper motives amounting
17 to malice, and in conscious disregard of Plaintiff' rights. Plaintiff is thus entitled to recover
18 nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at
19 time of trial, but in amounts in excess of the jurisdiction of this Court.

20 66. Defendants' conduct described herein violates Labor Code § 2802. As a proximate
21 result of the aforementioned violations, Plaintiff has been damaged in an amount according to
22 proof at time of trial, but in an amount in excess of the jurisdiction of this Court. Therefore,
23 pursuant to Labor Code § 2802, Plaintiff is entitled to recover the unpaid balances of wages
24 Defendants owes Plaintiff, plus interest, statutory penalties, attorneys' fees, expenses, and costs of
25 suit.

26 **XII. SIXTH CAUSE OF ACTION**

27 **(By Plaintiff On Behalf Of The Waiting Time Sub-Class Members Against Defendant
For Failure To Timely Provide Wages and Waiting-Time Penalties)**

28 67. Plaintiff incorporates by reference each and every allegation contained above.

1 68. Plaintiff brings this claim individually and on behalf of the Waiting Time Sub-
2 Class Members.

3 69. By failing to compensate Plaintiff and the Waiting Time Sub-Class Members for
4 all hours worked and failing to adequately compensate for meal and rest breaks, Defendant has
5 and continues to violate California law which requires payment of full wages when due.

6 70. Defendant is required by law to compensate Plaintiff and the Waiting Time Sub-
7 Class Members for all hours worked and for business expenses incurred within 72 hours of the
8 termination of employment. Defendant failed to timely do so with respect to Plaintiff and the
9 Class Members.

10 71. Defendant's willful failure to make timely payment of full wages due is a violation
11 of Labor Code Sections 201, 202 and 203, entitling Plaintiff and the Class Members to recover
12 waiting time penalties.

13 72. Plaintiff and the Waiting Time Sub-Class Members are entitled to recover waiting
14 time penalties and unpaid wages along with interest, applicable penalties, attorney's fees, and
15 costs.

16 **XIII. SEVENTH CAUSE OF ACTION**
17 **(By Plaintiff On Behalf Of The Class Members Against Defendant**
For Failure to Provide Accurate Wage Statements)

18 73. Plaintiff incorporates each and every allegation contained above.

19 74. Plaintiff brings this claim individually and on behalf of the Class Members.

20 75. Under Labor Code Section 226, employers must furnish employees with accurate,
21 itemized wage statements at the time of payment of wages. These statements must show detailed
22 information, including but not limited to, each hour worked, each wage rate applied, total wages
23 earned, and hours of compensable rest and recovery periods. This ensures employees are able to
24 determine whether or not they are being paid wages in accordance with California law.

25 76. Defendant knowingly and intentionally violated its duty to provide accurate wage
26 statements by failing to provide earnings statements which accurately document hours worked,
27 compensation due, and hours of compensable rest and recovery periods, among other
28 shortcomings. Because Plaintiff and the Class Members were not aware of what their true wages

1 should have been and how such wages were calculated, they suffered economic loss in the form of
2 lower wages for their labor.

3 77. Plaintiff and the Class Members are entitled to and seek injunctive relief requiring
4 Defendant to comply with Labor Code Sections 226.2, 226, and 1174, among other provisions.
5 Plaintiff and the Class Members are also entitled to and seek actual and statutory damages
6 available for such violations under Labor Code Sections 226.2, 226, and 1174.5, as well as
7 interest, costs, and attorneys' fees.

8 **XIV. EIGHTH CAUSE OF ACTION**
9 **(By Plaintiff On Behalf Of The Class Members Against Defendant**
10 **For Violations of the UCL)**

11 78. Plaintiff incorporates each and every allegation contained above.

12 79. Plaintiff brings this claim individually and on behalf of the Class Members.

13 80. Business & Professions Code Sections 17200, *et seq.* ("UCL") prohibits unfair
14 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practice.

15 81. Defendant has committed ongoing business practices within the meaning of the
16 UCL, including, but not limited to:

- 17 a. Failing to pay the Class Members, including Plaintiff, for all hours worked;
- 18 b. Failing to provide meal and rest breaks or pay compensation in lieu to the
19 Class Members, including Plaintiff;
- 20 c. Failing to pay the Class Members, including Plaintiff, wages when due; and
- 21 d. Failing to provide accurate wage statements to the Class Members,
22 including Plaintiff.

23 82. The unlawful business practices described above have proximately caused
24 monetary damages to Plaintiff, Class Members, and the general public. Plaintiff and his fellow
25 Class Members have lost money or property as a result of Defendant's acts of unfair competition.

26 83. Pursuant to the UCL, Plaintiff and Class Members are entitled to restitution of
27 money or property acquired by Defendant by means of such unlawful business practices, in
28 amounts not yet known, but to be ascertained at trial.

84. Pursuant to the UCL, Plaintiff, Class Members, and the general public, are entitled

1 to injunctive relief against Defendant's ongoing continuation of such unlawful business practices.

2 85. If Defendant is not enjoined from engaging in the unlawful business practices
3 described above, Plaintiff, Class Members, and the general public will be irreparably injured. The
4 exact extent, nature, and amount of such injury is difficult to ascertain at this time.

5 86. The Class, including Plaintiff, has no plain, speedy, and adequate remedy at law.

6 87. Defendant, if not enjoined by this Court, will continue to engage in the unlawful
7 business practices described above in violation of the UCL, in derogation of the rights of Plaintiff,
8 Class Members, and of the general public.

9 88. The success of Plaintiff and Class Members in this action will result in the
10 enforcement of important rights affecting the public interest by conferring a significant benefit
11 upon the general public.

12 89. Private enforcement of these rights is necessary as no public agency has pursued
13 enforcement. There is a financial burden incurred in pursuing this action, and it would be against
14 the interests of justice to require the payment of attorneys' fees from any recovery in this action.

15 90. Plaintiff and Class Members are therefore entitled to an award of attorney's fees
16 and costs of suit pursuant to Code of Civil Procedure Section 1021.5.

17 **XV. REQUEST FOR JURY TRIAL**

18 Plaintiff hereby requests a Trial by Jury.

19 **XVI. PRAAYER FOR RELIEF**

20 Plaintiff prays for judgment against Defendant, as follows:

- 21 1. That the Court certify the First Cause of Action pursuant to FRCP 23;
- 22 2. For compensatory damages according to proof;
- 23 3. For enhanced damages, liquidated damages, and penalties as permitted under
24 California law;
- 25 4. For waiting-time penalties pursuant to Labor Code Section 203;
- 26 5. For disgorgement of all monies which Defendant has illegally gained;
- 27 6. For restitution according to proof at trial;
- 28 7. For an order enjoining Defendant from any further acts and practices which violate

- 1 the UCL;
- 2 8. For pre-judgment interest;
- 3 9. For costs of suit;
- 4 10. For reasonable attorneys' fees; and
- 5 11. For such other and further relief as this Court may deem just and proper.
- 6

7 Respectfully submitted:

8 Dated: July 3, 2019

9

10 By:

PHELPS LAW GROUP

s/ Marc Phelps

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
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) 450-7064	
PLAINTIFF(S) / PETITIONER(S): Tarini Fernando	
DEFENDANT(S) / RESPONDENT(S): Ulta Beauty Inc	
FERNANDO VS ULTA BEAUTY INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2019-00034485-CU-OE-CTL

CASE ASSIGNMENT

Judge: John S. Meyer

Department: C-64

COMPLAINT/PETITION FILED: 07/03/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	12/20/2019	09:30 am	C-64	John S. Meyer

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. 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.

*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).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7071	<i>FOR COURT USE ONLY</i>
PLAINTIFF: Tarini Fernando	CASE NUMBER: 37-2019-00034485-CU-OE-CTL
DEFENDANT: Ulta Beauty Inc	
Short Title: Fernando vs Ulta Beauty Inc [E-FILE]	
NOTICE OF CASE REASSIGNMENT	

Filed : 07/03/2019

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED FOR ALL PURPOSES:

to Judge Gregory W Pollack, in Department C-71

due to the following reason: 170.6

All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).

ANY NEW HEARINGS ON THIS CASE WILL BE SCHEDULED BEFORE THE NEW JUDICIAL OFFICER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Fernando vs Ulta Beauty Inc [E-FILE]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2019-00034485-CU-OE-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF CASE REASSIGNMENT was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 07/22/2019. The mailing occurred at Gardena, California on 07/23/2019.

Clerk of the Court, by: , Deputy

MARC H PHELPS
THE PHELPS LAW GROUP
23 CORPORATE PLAZA DRIVE # 150
NEWPORT BEACH, CA 92660

NOAM GLICK
GLICK LAW GROUP
225 BROADWAY, SUITE 2100
SAN DIEGO, CA 92101

ROGER R CARTER
THE CARTER LAW FIRM
23 CORPORATE PLAZA # 150
NEWPORT BEACH, CA 92660

CLERK'S CERTIFICATE OF SERVICE BY MAIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7071	
PLAINTIFF(S)/PETITIONER(S)/APPELLANT(S): Tarini Fernando	
DEFENDANT(S)/RESPONDENT(S): Ulta Beauty Inc	
Short Title: Fernando vs Ulta Beauty Inc [E-FILE]	
NOTICE OF HEARING	CASE NUMBER: 37-2019-00034485-CU-OE-CTL

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>DEPT</u>	<u>JUDGE</u>
Civil Case Management Conference	12/20/2019	01:30 pm	C-71	Gregory W Pollack

Counsel: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per 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.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO


Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Fernando vs Ulta Beauty Inc [E-FILE]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2019-00034485-CU-OE-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 07/22/2019. The mailing occurred at Gardena, California on 07/23/2019.

Clerk of the Court, by: , Deputy
E. Castaneda

MARC H PHELPS
THE PHELPS LAW GROUP
23 CORPORATE PLAZA DRIVE # 150
NEWPORT BEACH, CA 92660

NOAM GLICK
GLICK LAW GROUP
225 BROADWAY, SUITE 2100
SAN DIEGO, CA 92101

ROGER R CARTER
THE CARTER LAW FIRM
23 CORPORATE PLAZA # 150
NEWPORT BEACH, CA 92660

CLERK'S CERTIFICATE OF SERVICE BY MAIL

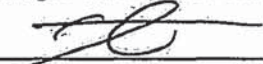
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Roger R. Carter, Esq. (SBN 140196) THE CARTER LAW FIRM 23 Corporate Plaza, Ste. 150 Newport Beach, CA 92660 TELEPHONE NO.: (949) 245-7500 FAX NO. (Optional): EMAIL ADDRESS (Optional): roger@carterlawfirm.net ATTORNEY FOR (Name): Plaintiff Tarini Fernando	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 07/11/2019 at 11:32:00 AM Clerk of the Superior Court By Jessica Pascual, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	
PLAINTIFF(S)/PETITIONER(S) Tarini Fernando	
DEFENDANT(S)/RESPONDENT(S) Ulta Beauty, Inc.	JUDGE John S. Meyer
IN THE MATTER OF: Tarini Fernando v. Ulta Beauty, Inc.	DEPT. C-64
PEREMPTORY CHALLENGE	CASE NUMBER 37-2019-00034485-CU-OE-CTL

Roger Carter is a party an attorney for a party in the above-entitled case and declares that John S. Meyer, the judicial officer to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such judicial officer.

WHEREFORE, pursuant to the provisions of Code Civ. Proc. §170.6, I respectfully request that this court issue its order reassigning said case to another, and different, judicial officer for further proceedings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 11, 2019



 Signature


ORDER

GRANTED – The court finds the challenge is timely filed and the party's/attorney's above statement meets the requirements of Code of Civ. Proc. §170.6 (a)(4). The case will be reassigned and a notice will be mailed to the parties and/or counsel.

DENIED

IT IS SO ORDERED.

Date: 7-11-19



 Judge/Commissioner of the Superior Court
John S. Meyer

Date: 7-22-19

Case is reassigned to Judge/Commissioner Gregory Pollack

1 **THE CARTER LAW FIRM**
Roger R. Carter (SBN 140196)
2 23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
3 Tel: (949) 629-2533
Fax: (949) 629-2501
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5 **THE PHELPS LAW GROUP**
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9 **GLICK LAW GROUP**
Noam Glick (SBN 251582)
10 225 Broadway, Suite 2100
San Diego, California 92101
11 Tel: (619) 382-3400
Fax: (619) 615-2193
12 Email: noam@glicklawgroup.com

13 Attorneys for Plaintiff
Tarini Fernando
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF SAN DIEGO**

17 TARINI FERNANDO, an individual, on behalf
of herself and all others similarly situated;

18 Plaintiff,

19 vs.

20 ULTA BEAUTY, INC., a Delaware
corporation, and DOES 1 through 100,
21 inclusive;

22 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/11/2019 at 11:32:00 AM
Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

Case No. 37-2019-00034485-CU-OE-CTL

**DECLARATION OF ROGER CARTER IN
SUPPORT OF PEREMPTORY
CHALLENGE PURSUANT TO CODE OF
CIVIL PROCEDURE SECTION 170.6**

Complaint filed: July 3, 2019

Department: C-64
Judge: John S. Meyer

1 I, Roger Carter, declare as follows:

2 1. I am an attorney admitted to practice before the courts of the State of California
3 and a partner with the law firm of The Carter Law Firm. My firm and I serve as counsel to Tarini
4 Fernando ("Fernando") in the above-captioned action.

5 2. I make this declaration in support of Fernando Motion for Peremptory Challenge of
6 the Honorable Judge John S. Meyer pursuant to Code of Civil Procedure § 170.6 ("Motion"). The
7 facts stated herein are based upon my personal knowledge, and if called upon to testify thereto, I
8 could and would competently do so.

9 3. On July 3, 2019, the Court issued a notice assigning the above-captioned action to
10 the Honorable Judge John S. Meyer for all purposes. Prior to this Motion, Fernando had not made
11 an appearance in this action.

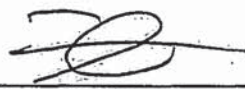
12 4. I declare that Judge John S. Meyer is prejudiced against me or my client, or my
13 client's interests, such that I believe that my clients cannot have a fair and impartial trial or
14 hearing before Judge John S. Meyer.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed this 11th day of July 2019, at Newport Beach, California.

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By:



Roger R. Carter, Esq.

EXHIBIT B

1 LENA K. SIMS, Bar No. 212904
lsims@littler.com
2 LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
3 San Diego, CA 92101.3577
Telephone: 619.232.0441
4 Fax No.: 619.232.4302

5 JULIE A. STOCKTON, Bar No. 286944
jstockton@littler.com
6 LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
7 San Francisco, CA 94104
Telephone: 415.433.1940
8 Facsimile: 415.399.8490

9 Attorneys for Defendant
ULTA BEAUTY, INC.
10

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF SAN DIEGO

13 TARINI FERNANDO, an individual, on
behalf of herself and all others similarly
14 situated,

15 Plaintiff,

16 v.

17 ULTA BEAUTY, INC. a Delaware
corporation, and DOES 1 through 100,
18 inclusive,

19 Defendants.
20

Case No. 37-2019-00034485-CU-OE-CTL

ASSIGNED FOR ALL PURPOSES TO JUDGE
GREGORY W. POLLACK, DEPT. C-71

**DEFENDANT'S ANSWER TO
PLAINTIFF'S CLASS ACTION
COMPLAINT**

Complaint Filed: July 3, 2019

1 Defendant ULTA BEAUTY, INC., (“Defendant”) hereby answers the Class Action
2 Complaint (“Complaint”) filed by Plaintiff TARINI FERNANDO (“Plaintiff”), as follows:

3
4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies
6 generally and specifically each and every allegation contained in the Complaint. Defendant further
7 denies that Plaintiff, or any alleged putative class member, has been injured or damaged in any way
8 or because of any conduct, action, error, or omission on the part of Defendant or any agent, employee
9 or other person acting under Defendant’s authority or control. Additionally, Defendant denies that
10 Plaintiff and/or any alleged putative class member is entitled to any legal or equitable relief in any
11 amount or manner whatsoever from Defendant.

12 **DEFENSES**

13 Defendant asserts the following affirmative and other defenses, which they have
14 designated, collectively, as “Defenses.” Defendant has not yet completed a thorough investigation or
15 completed discovery of all facts and circumstances of the subject matter of the Complaint, and
16 accordingly, reserves the right to amend, modify, revise, or supplement its Answer, and to plead such
17 further defenses and take such further actions as it may deem proper and necessary in its defense upon
18 the completion of said investigation and study. Without waiving or excusing Plaintiff’s burden of
19 proof or admitting that Defendant has any burden of proof whatsoever, Defendant asserts the following
20 separate and distinct defenses and affirmative defenses:

21 **FIRST AFFIRMATIVE DEFENSE**

22 **(Affirmative Defenses Asserted Against Each and Every Putative Class Member)**

23 As a separate and distinct affirmative defense, and to each purported cause of action
24 therein, without waiving its ability to oppose class certification and explicitly asserting its opposition
25 to the propriety of class treatment, if the Court does certify a class in this case over Defendant’s
26 objections, then Defendant asserts the affirmative defenses set forth below against each and every
27 member of the certified class.
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SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

As a separate and distinct affirmative defense, Defendant alleges that the Complaint and each claim set forth therein, or some of them, fail to state facts sufficient to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

(No Employment Relationship)

As a separate and distinct affirmative defense, Defendant alleges that there was no employment relationship between Plaintiff and Defendant Ulta Beauty, Inc., and therefore the Complaint and each of its purported causes of action fail to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

(Statutes of Limitation)

As a separate and distinct affirmative defense, and to each cause of action thereof, Defendant alleges that the applicable statute of limitation bars the purported causes of action asserted in the Complaint, in whole or in part, including but not limited to, 29 U.S.C. § 255, California Code of Civil Procedure sections 338, 339, 340, and Business and Professions Code section 17208.

FIFTH AFFIRMATIVE DEFENSE

(After Acquired Evidence)

As a separate and distinct affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal and, on that basis, alleges that the Complaint, and each cause of action set forth therein, or some of them, cannot be maintained against Defendant because after-acquired evidence bars and/or reduces any remedies or damages, which Defendant denies are appropriate or available.

SIXTH AFFIRMATIVE DEFENSE

(De Minimis)

As a separate and distinct affirmative defense, Defendant alleges that to the extent Plaintiff and/or any putative class members seek to recover for alleged violations concerning overtime, missed meal periods, and/or missed rest breaks, such claims cannot be maintained because even

1 assuming *arguendo* that Plaintiff and/or any putative class members are entitled to additional
2 compensation, such alleged violations, if any, are de *minimis*.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 **(Avoidable Consequences Doctrine)**

5 As a separate and distinct affirmative defense, Defendant alleges that any recovery by
6 Plaintiff and/or any putative class member(s) is barred in whole or in part by the avoidable
7 consequences doctrine.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 **(Waiver)**

10 As a separate and distinct affirmative defense, Defendant alleges that by virtue of
11 Plaintiff's conduct, actions and statements, Plaintiff has waived any and all causes of action against
12 Defendant asserted in the Complaint.

13 **NINTH AFFIRMATIVE DEFENSE**

14 **(Consent)**

15 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
16 and each cause of action set forth therein, or some of them, are barred, in whole or in part, by Plaintiff's
17 express or implied consent to the conduct attributed to Defendant.

18 **TENTH AFFIRMATIVE DEFENSE**

19 **(Estoppel)**

20 As a separate and distinct affirmative defense, Defendant alleges that, by virtue of
21 Plaintiff's conduct, actions and statements, upon which Defendant reasonably relied, Plaintiff is
22 estopped from asserting any right, claim or defense, if any, which she otherwise might assert against
23 Defendant.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 **(Unclean Hands)**

26 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claims
27 are barred, in whole or in part, by the doctrine of unclean hands. Defendant is informed, believes, and
28 thereon alleges that any of its conduct that is alleged to have been unlawful or improper was taken

1 because of Plaintiff's other wrongful conduct.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 **(Doctrine of Laches)**

4 As a separate and distinct affirmative defense, Defendant alleges that the Complaint is
5 barred in whole or in part by the doctrine of laches.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 **(Unjust Enrichment)**

8 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff and/or
9 the putative class members received all money owed to her and/or them and therefore any recovery by
10 Plaintiff or any putative class members would be unjust and inequitable under the circumstances of
11 the case, to the extent that Plaintiff and any of the putative class members have already received
12 compensation for the claims alleged in the Complaint.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 **(Failure to Exhaust Contractual/Administrative/Statutory Remedies)**

15 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff failed to
16 properly exhaust all of the contractual, administrative and/or statutorily required remedies prior to
17 filing suit, and that such failure bars this suit in whole or in part.

18 **FIFTEENTH AFFIRMATIVE DEFENSE**

19 **(Failure to Mitigate Damages)**

20 As a separate and distinct affirmative defense, Defendant is informed and believes that
21 a reasonable opportunity for investigation and discovery will reveal and, on that basis alleges, that
22 Plaintiff failed to exercise reasonable care to mitigate damages, if any, such as by reporting any
23 allegedly missed meal and rest periods, or failure to provide timely or accurate wage statements, and
24 that if it is determined that Plaintiff has the right to any recovery against Defendant, such recovery
25 should be reduced and/or eliminated by such failure.

26 **SIXTEENTH AFFIRMATIVE DEFENSE**

27 **(Offset)**

28 As a separate and distinct affirmative defense, Defendant alleges that any award to

1 Plaintiff, and/or putative class member must be offset by the value of monies and/or benefits Defendant
2 paid to Plaintiff that was not owed, and to the extent any sums are found due and owing to Plaintiff,
3 Defendant is entitled to an offset against said sum to the extent paid, tendered, waived, compromised,
4 and/or released prior to the adjudication herein, including but not limited to those amounts paid,
5 tendered, waived, compromised, and/or released through any other proceeding, either formal or
6 informal, or to the extent any additional compensation was paid to Plaintiff and/or the putative class
7 members over and above their wages.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 **(Accord and Satisfaction)**

10 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claims
11 fail because Plaintiff has been fully paid all amounts legally owed by Defendant, and by accepting the
12 payments made to her, Plaintiff has effectuated an accord and satisfaction of her claims.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**

14 **(Good Faith)**

15 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's FLSA
16 claims are barred, in whole or in part, because Defendant at all times acted in good faith to comply
17 with the FLSA and had reasonable grounds for believing it was in compliance with the FLSA. No act
18 or omission of Defendant which is alleged to violate the FLSA was willful, knowing, or in reckless
19 disregard for the provisions of the law, and Plaintiff therefore is not entitled to any extension of the
20 two-year non-willful statute of limitations period.

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 **(Substantial Compliance)**

23 As a separate and distinct affirmative defense, Defendant alleges that even assuming
24 *arguendo* Defendant failed to comply with any provision of the Labor Code or the FLSA, which
25 Defendant denies, Defendant substantially complied with the Labor Code and the FLSA, thus
26 rendering an award of civil penalties or liquidated damages inappropriate under the circumstances.
27 For the same reason, should the Court find a violation of the Labor Code or the FLSA occurred, and
28 such violation gives rise to potential penalties or liquidated damages, the Court must exercise its

1 discretion and significantly discount or eliminate any potential penalties or liquidated damages owed
2 by Defendant due to Defendant's good faith efforts to comply with both the Labor Code and the FLSA
3 or substantial compliance with the Labor Code and the FLSA.

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 **(Meal and Rest Breaks – No Hindrance)**

6 As a separate and distinct affirmative defense, Defendant alleges Plaintiff's claims for
7 meal and rest breaks are barred, in whole or in part, because Defendant did nothing to prevent Plaintiff
8 and putative class members from taking such breaks.

9 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

10 **(Bus. & Prof. Code § 17200 et seq. – No Injury)**

11 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff and the
12 putative class members were properly compensated, were provided with all legally required rest
13 breaks, were paid at least minimum wage for all hours worked, were paid overtime, and were provided
14 with legally compliant wage statements. For that reason, they never suffered any injury such as to
15 have standing to bring a cause of action pursuant to the Unfair Competition Law, Business &
16 Professions Code sections 17200, et seq.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 **(Waiver of Rights)**

19 As a separate and distinct affirmative defense, Defendant alleges that civil penalties
20 pursuant to Labor Code sections 226.7 and 512 are inappropriate because, to the extent, if any, that
21 Plaintiff or any class member did not take rest breaks because she/they: (1) voluntarily elected not to
22 take rest breaks; or (2) waived her/their right to rest breaks.

23 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

24 **(Failure to Comply with Policies)**

25 As a separate and distinct affirmative defense, Defendant alleges that any damages
26 suffered were the result of failure by Plaintiff and/or the putative class members to comply with the
27 reasonable expectations of Defendant and/or follow Defendant's reasonable instructions and/or
28 policies.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Injury)

As a separate and distinct affirmative defense to the Complaint, Defendant alleges that Plaintiff and/or the putative class members are not entitled to any penalties because they did not suffer injury as a result of a knowing and intentional failure by Defendant to comply with California Labor Code § 226(a).

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Intent or Knowledge)

As a separate and distinct affirmative defense to the Complaint, Defendant alleges that, even assuming *arguendo* that Plaintiff and/or the putative class were not provided with a proper itemized statement of wages and deductions, or that an electronic wage statement does not comply with the Labor Code, Plaintiff and/or the putative class are not entitled to recover damages or penalties because Defendant’s alleged failure to comply with California Labor Code section 226(a) was not a “knowing and intentional failure” under California Labor Code section 226(e).

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Bona Fide Dispute)

As a separate and distinct affirmative defense, Defendant alleges that, should any wages be found to be due Plaintiff and/or the putative class members, there is a bona fide dispute as to the obligation to pay such wages and, therefore, no waiting time penalty can be awarded under section 203 of the Labor Code.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Willful or Intentional Violation)

As a separate and distinct affirmative defense, Defendant alleges that, should any wages be found to be due Plaintiff and/or the putative class members, no waiting time penalty can be awarded under section 203 of the Labor Code because Defendant did not willfully or intentionally fail to pay any such wages.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Discontinued Violations)

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's prayer for penalties and relief under California Business and Professions Code sections 17200, *et seq.*, is barred with respect to any alleged violations that have discontinued, ceased, or are not likely to reoccur.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Violation of Due Process Rights)

As a separate and distinct affirmative defense, Defendant alleges that the prosecution of this action as a class action, or a representative action on behalf of the general public under California Business and Professions Code section 17200, *et seq.*, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due process rights, both substantive and procedural, in violation of the California Constitution and the Fourteenth Amendment to the United States Constitution.

THIRTIETH AFFIRMATIVE DEFENSE

(Adequate Remedies at Law)

As a separate and distinct affirmative defense, Defendant alleges that to the extent that Plaintiff is asserting claims for equitable relief, such claims are barred, in whole or in part, on the grounds that Plaintiff has adequate remedies at law.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(No Basis for Attorneys' Fees and Costs)

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff failed to state facts sufficient to constitute a claim for which attorneys' fees and costs may be awarded.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Inadequate Representative)

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff fails to satisfy the prerequisites to pursue a representative action, and cannot adequately represent the interests of the putative class members as to each purported cause of action and, therefore, lack standing as a

1 representative of the proposed class.

2 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

3 **(Class Treatment is Inappropriate)**

4 As a separate and distinct affirmative defense, Defendant alleges that that this suit may
5 not properly be maintained as a class action because: (a) Plaintiff has failed to plead and cannot
6 establish the necessary procedural elements for class treatment; (b) a class action is not an appropriate
7 method for the fair and efficient adjudication of the claims described in the Complaint; (c) individual
8 issues are predominant; (d) Plaintiff cannot satisfy the requirements for class action treatment, and
9 class action treatment is neither appropriate nor constitutional; (e) there is not a well-defined
10 community of interest in the questions of law or fact affecting Plaintiff and the members of the alleged
11 putative class; and (f) Plaintiff lacks standing to assert some or all claims

12 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

13 **(Class Action – No Damages)**

14 As a separate and distinct affirmative defense, Defendant alleges that this case cannot
15 be tried on a representative basis or with the use of statistical sampling consistent with due process
16 because the use of representative evidence or statistical sampling could/would result in damages being
17 awarded to those who have suffered no injury and have no legal right to damages.

18 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

19 **(Res Judicata)**

20 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's
21 Complaint and every cause of action therein is barred by the doctrines of collateral estoppel and/or res
22 judicata because of previous putative class action settlement agreements by Defendant Ulta Salon,
23 Cosmetics & Fragrance, Inc. in the actions respectively titled, *Sarah Moore v. Ulta Salon, Cosmetics*
24 *& Fragrance, Inc.*, Case No. CV 12-3224 FMO (AGRx), *Quinby et al v. Ulta Salon, Cosmetics &*
25 *Fragrance, Inc.*, Case no. CV-15-499 WHO, *Elizabeth Wise v. Ulta Salon, Cosmetics & Fragrance*
26 *Inc.*, Case No. CV 17-00853 DAD (EPG) (E.D. Cal., filed on June 23, 2017), consolidated with *Julie*
27 *Zepeda v. Ulta Salon, Cosmetics & Fragrance Inc.*, Case No. CV 18-00750 DAD (BAM) (C.D. Cal.,
28 filed on November 13, 2017), and the resolution of claims to be submitted for preliminary approval

1 before the court in *Raycheal Tellez v. Ulta Salon, Cosmetics & Fragrance, Inc.*, Case No. CV 18-2480
2 CAB (LL) (S.D. Cal., filed on October 5, 2018).

3 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

4 **(Work Performed Is Exempt)**

5 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claims
6 and those of the purported California class and collective are barred in whole or in part to the extent
7 that the work they performed falls within exemptions provided for in Section 13(b) of the FLSA, 29
8 U.S.C. § 213(b).

9 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

10 **(No Collective Action – Not Similarly Situated)**

11 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
12 fails to state a cognizable claim under 29 U.S.C. § 216 for the maintenance of a collective action,
13 including but not limited to Plaintiff's failure to establish that she is similarly situated to any other
14 member of her purported collective.

15 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

16 **(No Knowledge, Authorization, Ratification)**

17 As a separate and distinct affirmative defense, Defendant alleges that Defendant is not
18 liable for the alleged damages because, if any person or entity engaged in intentional, willful, or
19 unlawful conduct as alleged in the Complaint, such conduct was without the knowledge, authorization,
20 or ratification by Defendant.

21 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

22 **(Preliminary and Postliminary Activities Not Compensable)**

23 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claims
24 are barred in whole or in part by the provisions of Section 4 of the Portal-to-Portal Act, 29 U.S.C. §
25 254, as to all hours during which Plaintiff was engaged in activities that were preliminary or
26 postliminary to her principal activities, or otherwise deemed to be non-compensable by the Act.

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FORTIETH AFFIRMATIVE DEFENSE

(Good Faith Actions In Reliance On Department Of Labor)

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claims are barred in whole or in part by the provisions of Section 10 of the Portal-to-Portal Act, 29 U.S.C. § 259, because actions taken in connection with Plaintiff's compensation were done in good faith conformity with and reliance upon written administrative regulations, orders, rulings, approvals, interpretations, and/or written and unwritten administrative practices or enforcement policies of the Administrator of the Wage and Hour Division of the United States Department of Labor.

FORTY-FIRST AFFIRMATIVE DEFENSE

(Good Faith Actions Based On Reasonable Grounds)

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claims are barred in whole or in part by the provisions of Section 11 of the Portal-to-Portal Act, 29 U.S.C. § 260, because any acts or omissions giving rise to this action were done in good faith and with reasonable grounds for believing that the actions or omissions were not a violation of the FLSA.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Affirmative and Additional Defenses Apply to Alleged Class or Collective Action Members)

As a separate and distinct affirmative defense, Defendant alleges that any and/or all of Defendant's affirmative and additional defenses may also apply to any claims alleged by any member of Plaintiff's proposed collective and/or class

RESERVATION OF ADDITIONAL DEFENSES

Defendant alleges that because the Complaint is couched in conclusory terms, all defenses that may be applicable cannot be fully anticipated. Accordingly, the right to assert additional defenses, if and to the extent that such defenses are applicable, is reserved. In addition, Defendant reserves the right to amend this Answer should Defendant later discover facts demonstrating the existence of new and/or additional defenses, and/or should a change in the law support the inclusion of new and/or additional defenses.

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

- 1. That Plaintiff take nothing and that the Complaint be dismissed in its entirety with prejudice;
- 2. That judgment be entered in Defendant's favor;
- 3. That Defendant be awarded its attorneys' fees and costs of suit herein to the extent permitted under applicable law; and
- 4. That Defendant be awarded such other, further relief as the Court deems just and proper.

Dated: August 12, 2019



LENA K. SIMS
 JULIE A. STOCKTON
 LITTLER MENDELSON, P.C..
 Attorneys for Defendant
 ULTA BEAUTY, INC.

FIRMWIDE:165700540.1 059310.1173

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): LENA K. SIMS, SBN 212904; JULIE A. STOCKTON, SBN 286944 LITTLER MENDELSON, P.C. 501 W. Broadway, Suite 900 San Diego, CA 92101-3577 TELEPHONE NO.: (619) 232-0441 FAX NO. (Optional): (619) 232-4302 E-MAIL ADDRESS (Optional): lsims@littler.com ; jstockton@littler.com ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway, CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: Tarini Fernando DEFENDANT/RESPONDENT: Ulta Beauty, Inc.	CASE NUMBER: 37-2019-00034485-CU-OE-CTL
<p style="text-align: center;">PROOF OF SERVICE—CIVIL</p> Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service	JUDGE: Hon. Gregory W. Pollack DEPT.: C-71

(Do not use this proof of service to show service of a Summons and complaint.)

- At the time of service I was over 18 years of age and not a party to this action.
- My residence or business address is:
501 W. Broadway, Suite 900, San Diego, CA 92101-3577.
- The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service):
- On (date): August 12, 2019 I served the following documents (specify):

DEFENDANT'S ANSWER TO PLAINTIFF'S CLASS ACTION COMPLAINT

- The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).
- I served the documents on the person or persons below, as follows:
 - Name of person served: **SEE ATTACHED POS-040(P)**
 - (Complete if service was by personal service, mail, overnight delivery, or messenger service.)
Business or residential address where person was served:
SEE ATTACHED POS-040(P)
 - (Complete if service was by fax or electronic service.)
 - Fax number or electronic service address where person was served:
 - Time of service:
 - The documents were served by the following means (specify): **U.S. MAIL**
 - By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME Tarini Fernando v. Ulta Beauty, Inc.	CASE NUMBER: 37-2019-00034485-CU-OE-CTL
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6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*): San Diego, California
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 12, 2019

Maria Ruvalcaba

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

SHORT TITLE: Tarini Fernando v. Ultra Beauty, Inc.	CASE NUMBER: 37-2019-00034485-CU-OE-CTL
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ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)

(This attachment is for use with form POS-040.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

<u>Name of Person Served</u>	<u>Where Served</u>	<u>Time of Service</u>
<i>(If the person served is an attorney, the party or parties represented should also be stated.)</i>	<i>(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic service address, as applicable.)</i>	<i>(Complete for service by fax transmission or electronic service.)</i>
Roger R. Carter, Esq. <u>Attorney for Plaintiff</u> Tarini Fernando	Roger R. Carter, Esq. The Carter Law Firm 23 Corporate Plaza Dr., Suite 150 Newport Beach, CA 92660 Telephone: 949.629.2533 Facsimile: 949.629.2501 Email: rcarter@carterlawfirm.net	Time: _____
Marc Phelps, Esq. <u>Attorney for Plaintiff</u> Tarini Fernando	Marc Phelps, Esq. The Phelps Law Group 23 Corporate Plaza Dr., Suite 150 Newport Beach, CA 92660 Telephone: 949.629.2533 Facsimile: 949.629.2501 Email: marc@phelpslawgroup.com	Time: _____
Noam Glick, Esq. <u>Attorney for Plaintiff</u> Tarini Fernando	Noam Glick, Esq. Glick Law Group 225 Broadway, Suite 2100 San Diego, CA 92101 Telephone: 619.382.3400 Facsimile: 619.615.2193 Email: noam@glicklawgroup.com	Time: _____
		Time: _____
		Time: _____
		Time: _____
		Time: _____

1 LENA K. SIMS, Bar No. 212904
lsims@littler.com
2 LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
3 San Diego, California 92101.3577
Telephone: 619.232.0441
4 Facsimile: 619.232.4302

5 JULIE A. STOCKTON, Bar No. 286944
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6 LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
7 San Francisco, CA 94104
Telephone: 415.433.1940
8 Facsimile: 415.399.8490

9 Attorneys for Defendant
10 ULTA BEAUTY, INC.

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

14 TARINI FERNANDO, an individual,
on behalf of herself and all others
15 similarly situated,,

16 Plaintiff,

17 v.

18 ULTA BEAUTY, INC. a Delaware
corporation, and DOES 1 through 100,
19 inclusive,,

20 Defendants.

Case No. '19CV1503 JM LL

(San Diego Superior Court, Case
No. 37-2019-00034485-CU-OE-CTL)

PROOF OF SERVICE

Complaint filed: July 3, 29109

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 501 West Broadway, Suite 900, San Diego, California 92101. On **August 12, 2019**, I served the within document(s):

1. CIVIL CASE COVER SHEET
2. DEFENDANT’S NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION
3. DEFENDANT’S NOTICE OF PARTY WITH FINANCIAL INTEREST
4. DEFENDANT’S NOTICE OF RELATED CASES
5. DEFENDANT’S CORPORATE DISCLOSURE STATEMENT
6. DECLARATION OF LENA K. SIMS IN SUPPORT OF NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION
7. DECLARATION OF HOLLY MOOREHOUSE IN SUPPORT OF DEFENDANT’S NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION

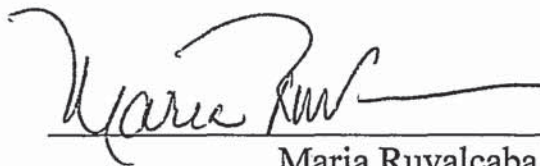
U.S. MAIL: by placing a true copy of the document(s) listed above for collection and mailing following the firm’s ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Diego, California addressed as set forth below.

Roger R. Carter, Esq. The Carter Law Firm 23 Corporate Plaza Dr., Suite 150 Newport Beach, CA 92660 Telephone: 949.629.2533 Facsimile: 949.629.2501 rcarter@carterlawfirm.net	Marc Phelps, Esq. The Phelps Law Group 23 Corporate Plaza Dr., Suite 150 Newport Beach, CA 92660 Telephone: 949.629.2533 Facsimile: 949.629.2501 marc@phelpslawgroup.com
Noam Glick, Esq. Glick Law Group 225 Broadway, Suite 2100 San Diego, CA 92101 Telephone: 619.382.3400 Facsimile: 619.615.2193 noam@glicklawgroup.com	

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 12, 2019, at San Diego, California.



Maria Ruvalcaba

FIRMWIDE:165710092.1 059310.1173

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Worker Sues Ulta Beauty in California Over Alleged Off-the-Clock Security Checks](#)
