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*Attorneys for Defendant*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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ROBERT KATAVITCH *on behalf of* :  
*himself and those similarly situated* : Civ. Action No. \_\_\_\_\_  
 :  
Plaintiff, : *Document Electronically Filed*  
 :  
v. :  
 :  
ULTA BEAUTY INC., :  
Defendant. :  

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**NOTICE OF REMOVAL**

Defendant Ulta Inc. (“Ulta” or “Defendant”), by and through its counsel, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., hereby notices the removal of this action, pursuant to 28 U.S.C. §§ 1332, 1367, 1441, and 1446, to the United States District Court for the Middle District of Pennsylvania, and as grounds therefore show as follows:

**I. TIMELINESS OF REMOVAL**

1. On or about February 12, 2021, Named Plaintiff Robert Katavitch (“Plaintiff”), on behalf of himself and all others similarly situated, filed an

Individual and Class Action Complaint (“Complaint”) against Ulta Beauty Inc. in the Pennsylvania Court of Common Pleas, Franklin County, Docket No.: 2021-344, entitled *Robert Katavitch, individually and on behalf of those similarly situated v. Ulta Beauty, Inc.* A true and correct copy of the Complaint is attached hereto as Exhibit A as required under 28 U.S.C. § 1446.

2. On February 23, 2021, Defendant’s agent for service of process in Pennsylvania received a copy of the Complaint when it was served on Corporate Service Company (“CSC”). A true and correct copy of the Notice of Service of Process is attached hereto as Exhibit B.

3. On February 23, 2021, Defendant’s agent for service of process in Pennsylvania rejected the received service of process on the grounds that the Complaint named the wrong party, stating that “[a]ccording to the Secretary of State or other appropriate state agency, the party served is not qualified to do business in the jurisdiction served.” The Complaint named “Ulta Beauty Inc.” as the defendant in the matter, which is not an entity that is registered to do business in Pennsylvania. A true and correct copy of the Rejection of Service of Process is attached hereto as Exhibit C.

4. While the Complaint named an incorrect party and thus service was rejected accordingly, the incorrectly named party in the Complaint was merely a misnomer rather than a misidentification. A misnomer occurs when a party

misnames another party but the correct parties are involved nonetheless, thus courts acquire jurisdiction immediately following the service of the misnomer. Therefore, “Ulta Inc.” was put on notice as to the filed Complaint and is thus filing for removal within the required thirty-day period, which began to run when the misnomer party was served.

5. Pursuant to 28 U.S.C. § 1446(b), a Notice of Removal must be filed within 30 days after the receipt by a defendant, through service or otherwise, of the Complaint.

6. Accordingly, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal has been timely filed within 30 days after receipt by Ulta, through service or otherwise, of the Complaint.

## **II. VENUE**

7. The Pennsylvania Court of Common Pleas, Franklin County is located within the United States District Court for the Middle District of Pennsylvania. 28 U.S.C. § 118. Therefore, venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

## **III. BASIS FOR REMOVAL – DIVERSITY**

8. This action is properly removable under 28 U.S.C. § 1441(a), because the United States District Court has original jurisdiction pursuant to

28 U.S.C. § 1332(a), which provides, “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States. . . .”

9. In *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 549 (2005), the Supreme Court held that 28 U.S.C. § 1367 permits a federal court to exercise supplemental jurisdiction over the claims of all class members so long as the named plaintiff has a claim in excess of \$75,000.

**A. The Amount in Controversy Exceeds \$75,000**

10. This is an action to recover damages for alleged violations of the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.113, the Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 P.S. § 260.3 *et seq.*, and the common law of Pennsylvania. (Compl. at ¶ 1).

11. Plaintiff purports to bring his PMWA claim on behalf of himself, and a class consisting of “all persons presently and formerly employed as hourly employees of Defendant in Pennsylvania, who are/were subject to Defendant’s pay practices and policies described herein at any point during the period beginning three years prior to the date that the instant action was initiated through the present . . . .” (Compl. at ¶ 7). Plaintiff estimates the number of potential class members

to be more than forty (40) employees. (Compl. at ¶ 8). The statute of limitations governing Plaintiff's claim is three years. *See* 43 P.S. § 260.9a(g).

12. Similarly, Plaintiff purports to bring his claim under the WPCL on behalf of himself, and a class consisting of "all persons presently and formerly employed as hourly employees of Defendant in Pennsylvania, who are/were subject to Defendant's pay practices and policies described herein at any point during the period beginning three years prior to the date that the instant action was initiated through the present." (Compl. at ¶ 16). The statute of limitations governing Plaintiff's claim is three years. *See* 43 P.S. § 260.9a(g). Plaintiff estimates the number of potential class members to be more than forty (40) employees. (Compl. at ¶ 17).

13. Although Plaintiff does not identify an amount of damages sought in the Complaint, nor has Plaintiff indicated in the Civil Cover Sheet whether the "Dollar Amount Requested" is "outside arbitration limits," Defendant infers that the Complaint, on its face, requests damages outside of the arbitration limits<sup>1</sup>. Moreover, Plaintiff's purported class action complaint seeks recovery of damages on behalf of himself and the purported class (estimated to be more than 40 employees for each of the PMWA and WPCL claims) for compensation, liquidated

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<sup>1</sup> This inference is also supported by the fact it appears the case was assigned to the Honorable Mary Beth Shank. *See* Notice to Defend attached hereto as Exhibit D.

damages, costs and expenses of this action, and reasonable attorneys' fees. (Compl., *ad damnum* clause).

14. Plaintiff's demand for liquidated damages in a putative class action is a significant factor when calculating the amount in controversy. *See Packard v. Provident Nat. Bank*, 994 F.2d 1039, 1046 (3d Cir. 1993) (citing *Bell v. Preferred Life Assur. Soc'y*, 320 U.S. 238, 240 (1943)) ("When both actual and punitive damages are recoverable, punitive damages are properly considered in determining whether the jurisdictional amount has been satisfied."). In an action under the WPCL, liquidated damages can amount to twenty-five (25) percent of the total amount of wages due. 43 P.S. § 260.10.

15. When mandated or allowed by statute, reasonable attorney's fees may be included in the amount in controversy for purposes of diversity jurisdiction. *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007). In an action under the WPCL, a court shall, in addition to any judgment award to the plaintiff or plaintiffs, allow costs for reasonable attorneys' fees of any nature. 43 P.S. § 260.9a(f).

16. Plaintiff's costs and expenses and attorneys' fees are accruing and will likely contribute tens of thousands of additional dollars to the actual amount in controversy.

17. Accordingly, the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

**B. Complete Diversity of Citizenship Exists**

18. Plaintiff is a citizen of the Commonwealth of Pennsylvania. (Compl. ¶ 3).

19. A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). A corporation has its principal place of business where its high level officers direct, control, and coordinate the corporation's activities, *i.e.*, its "nerve center," which will typically be found at its corporate headquarters. *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010).

20. Defendant is a corporation organized or incorporated in Delaware, and having its principal places of business in Bolingbrook, IL, and therefore is a citizen of Delaware and Illinois within the meaning of 28 U.S.C. § 1332.

21. Complete diversity of citizenship therefore exists, and this case is removable under 28 U.S.C. § 1441(b).

**IV. CONCLUSION**

22. Ulta has not previously sought similar relief.

23. To date, Ulta has not filed a responsive pleading in Plaintiff's State court action, and no other proceedings have transpired in that action.

24. Pursuant to 28 U.S.C. § 1446, a copy of this Notice of Removal ("Notice") will be promptly filed with the Pennsylvania Court of Common Pleas of Franklin County and a copy of same served upon Plaintiff's counsel. A true and correct copy of Ulta's proposed Notice is attached hereto as Exhibit E.

25. By filing this Notice, Ulta does not waive or intend to waive any defense, including but not limited to, insufficiency of process and insufficiency of service of process.

**WHEREFORE**, Ulta respectfully requests that this Honorable Court take jurisdiction of this action and issue all necessary orders and process to remove said action from the Pennsylvania Court of Common Pleas of Franklin County, to the United States District Court for the Middle District of Pennsylvania.

Respectfully Submitted,

**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**  
*Attorneys for Defendant*

By: /s/ Brandon R. Sher  
Brandon R. Sher  
1735 Market Street, Suite 3000  
Philadelphia, PA 19103  
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brandon.sher@ogletree.com

Date: March 24, 2021



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT KATAVITCH <i>on behalf of</i> <i>himself and those similarly situated</i> <div style="text-align: right;">Plaintiff,</div>	:	Civ. Action No. _____
v.	:	<i>Document Electronically Filed</i>
ULTA BEAUTY INC., <div style="text-align: right;">Defendant.</div>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2021, I caused to be filed Defendant’s Notice of Removal and this Certificate of Service using the ECF system. A copy is being served via U.S. First-Class mail and e-mail to Plaintiff’s counsel at the address set forth below:

Matthew D. Miller, Esq.  
SWARTZ SWIDLER, LLC  
1101 Kings Highway North, Ste. 402  
Cherry Hill, NJ 08034  
mmiller@swartz-legal.com

**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**

By: /s/ Brandon R. Sher  
Brandon R. Sher  
1735 Market Street, Suite 3000  
Philadelphia, PA 19103  
Telephone: (215) 995-2840  
brandon.sher@ogletree.com

*Attorneys for Defendant*

46462364.1

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
Robert Katavitch
(b) County of Residence of First Listed Plaintiff Franklin County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Matthew D. Miller, Swartz Swidler, 1101 Kings Highway North, Suite 402, Cherry Hill, NJ 08034

DEFENDANTS
Ulta Inc.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Brandon R. Sher, Ogletree Deakins, 1735 Market Street, Suite 3000, Philadelphia, PA 19103

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

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

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

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
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 1332, 1367, 1441
Brief description of cause:
Plaintiff alleges Defendant failed to pay him overtime compensation for time spent in post-shift screenings.

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 3/24/2021 SIGNATURE OF ATTORNEY OF RECORD

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

# EXHIBITA

**SWARTZ SWIDLER LLC**  
Matthew D. Miller, Esq. (ID: 312387)  
Richard S. Swartz, Esq. (ID: 80850)  
Justin L. Swidler, Esq. (ID: 205954)  
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PROTHONOTARY  
FRANKLIN COUNTY PA  
2021 FEB 12 AM 11:36  
MATTHEW D. MILLER  
PROTHONOTARY  
DEPARTMENT

ROBERT KATAVITCH, *individually and on behalf of those similarly situated,*

Plaintiff,

v.

ULTA BEAUTY INC.

Defendant.

COURT OF COMMON PLEAS  
OF FRANKLIN COUNTY

No. *2021-344*

INDIVIDUAL AND CLASS ACTION FOR  
UNPAID OVERTIME WAGES UNDER THE  
PENNSYLVANIA MINIMUM WAGE ACT

INDIVIDUAL AND CLASS ACTION FOR  
UNPAID OVERTIME WAGES  
PENNSYLVANIA WAGE PAYMENT AND  
COLLECTION LAW

INDIVIDUAL AND CLASS ACTION FOR  
UNPAID WAGES UNDER  
PENNSYLVANIA COMMON LAW

**JURY TRIAL DEMANDED**

**INDIVIDUAL AND CLASS ACTION COMPLAINT**

Named Plaintiff Robert Katavitch (hereinafter referred to as "Named Plaintiff"), individually and on behalf of those similarly situated (hereinafter referred to as "Class Plaintiffs"), by and through undersigned counsel, hereby complains as follows against Defendant Ulta Beauty, Inc. (hereinafter referred to as "Defendant").

**INTRODUCTION**

1. Named Plaintiff has initiated the instant action to redress Defendant's violations of the Pennsylvania Minimum Wage Act ("PMWA"), Pennsylvania Wage Payment and

Collection Law (“PWPCCL”), and the common law of Pennsylvania (“Common Law”). Named Plaintiff asserts that Defendant failed to pay Named Plaintiff and those similarly situated overtime compensation due to Defendant’s policy of not including time spent in end-of-shift security screenings as hours worked in violation of the PMWA and a PWPCCL and non-overtime wages in violation of the Common Law due to the same policy. As a result of Defendant’s unlawful actions, Named Plaintiff and those similarly situated have suffered damages.

**PARTIES**

2. The foregoing paragraphs are incorporated herein as if set forth in full.
3. Named Plaintiff is an adult individual who resided in Pennsylvania and worked for Defendant in Chambersburg, Pennsylvania.
4. Defendant is a company operating in Pennsylvania.
5. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

**CLASS ACTION ALLEGATIONS**  
**(Pennsylvania Minimum Wage Act)**

6. The foregoing paragraphs are incorporated herein as if set forth in their entirety.
7. Named Plaintiff brings his claims asserting violations of the PMWA as a class action pursuant to Pennsylvania Rules of Rules of Civil Procedure 1701, et seq. individually and on behalf of all persons presently and formerly employed as hourly employees of Defendant in Pennsylvania, who are/were subject to Defendant’s pay practices and policies described herein at any point during the period beginning three years prior to the date that the instant action was initiated through the present (the members of this punitive class are referred to as “MWA Plaintiffs”).

8. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiff does not know the exact size of the class, as such information is in the exclusive control of Defendant; however, on information and belief, the number of potential class members is more than forty (40) employees.

9. Named Plaintiff's claims are typical of the claims of the putative class members, because Named Plaintiff, like all MWA Plaintiffs, was subject to the same wage and hour policies and practices of Defendant described herein.

10. Named Plaintiff will fairly and adequately protect the interests of the putative class because Named Plaintiff's interests are coincident with, and not antagonistic to, those of the class. Named Plaintiff has retained counsel with substantial experience in the prosecution of class claims involving employee wage disputes.

11. Defendant has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole insofar as Defendant has applied consistent unlawful wage policies to the entire class and have refused to end these policies.

12. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendant's records.

13. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to prosecute their common claims in a single forum simultaneously. Prosecution of separate actions by individual members of the putative class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible

standards of conduct for Defendant. Furthermore, the amount at stake for individual putative class members may not be great enough to enable all the individual putative class members to maintain separate actions against Defendant.

14. Questions of law and fact that are common to the members of the class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the class are whether Defendant's failure to pay Named Plaintiff and MWA Plaintiffs overtime wages for the time spent in mandatory post-shift screenings at the end of their shifts, after clocking out, violated the PMWA.

**CLASS ACTION ALLEGATIONS**  
**(Pennsylvania Wage Payment and Collection Law)**

15. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

16. Named Plaintiff brings his claims asserting violations of the PWPCCL as a class action pursuant to Pennsylvania Rules of Rules of Civil Procedure 1701, et seq. individually and on behalf of all persons presently and formerly employed as hourly employees of Defendant in Pennsylvania, who are/were subject to Defendant's pay practices and policies described herein at any point during the period beginning three years prior to the date that the instant action was initiated through the present (the members of this punitive class are referred to as "WPCL Plaintiffs").

17. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiff does not know the exact size of the class, as such information is in the exclusive control of Defendant; however, on information and belief, the number of potential class members is estimated to be more than forty (40) employees.



18. Named Plaintiff's claims are typical of the claims of the punitive class members, because Named Plaintiff, like all WPCL Plaintiffs, was subject to the same wage and hour policies and practices of Defendant described herein.

19. Named Plaintiff will fairly and adequately protect the interests of the punitive class because Named Plaintiff's interests are coincident with, and not antagonistic to, those of the class. Named Plaintiff has retained counsel with substantial experience in the prosecution of class claims involving employee wage disputes.

20. Defendant has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole insofar as Defendant has applied consistent unlawful wage policies to the entire class and has refused to end these policies.

21. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendant's records.

22. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to prosecute their common claims in a single forum simultaneously. Prosecution of separate actions by individual members of the putative class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible stands of conduct for Defendant. Furthermore, the amount at stake for individual putative class members may not be great enough to enable all the individual putative class members to maintain separate actions against Defendant.

23. Questions of law and fact that are common to the members of the class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the class are: 1) whether Defendant failed to pay Named Plaintiff and WPCL Plaintiffs overtime wages due under the PMWA for time spent in mandatory post-shift screenings after clocking out; and 2) whether Defendant's conduct in failing to pay Named Plaintiff and WPCL Plaintiffs wages due under the PMWA was/is willful and based upon any reasonable interpretation of the law.

**CLASS ACTION ALLEGATIONS**  
**(Pennsylvania Common Law)**

24. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

25. Named Plaintiff brings his claims asserting violations of the PWPCCL as a class action pursuant to Pennsylvania Rules of Rules of Civil Procedure 1701, *et seq.* individually and on behalf of all persons presently and formerly employed as hourly employees of Defendant in Pennsylvania, who are/were subject to Defendant's pay practices and policies described herein at any point during the period beginning four years prior to the date that the instant action was initiated through the present (hereinafter the members of this putative class are referred to as "Common Law Plaintiffs").

26. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiff does not know the exact size of the class, as such information is in the exclusive control of Defendant; however, upon information and belief, the number of potential class members is estimated to be more than forty (40) employees.

27. Named Plaintiff's claims are typical of the claims of the punitive class members, because Named Plaintiff, like all Common Law Plaintiffs, was subject to the same wage and hour policies and practices of Defendant described herein.

28. Named Plaintiff will fairly and adequately protect the interests of the putative class because Named Plaintiff's interests are coincident with, and not antagonistic to, those of the class. Named Plaintiff has retained counsel with substantial experience in the prosecution of class claims involving employee wage disputes.

29. Defendant has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole insofar as Defendant has applied consistent unlawful wage policies to the entire class and has refused to end these policies.

30. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendant's records.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to prosecute their common claims in a single forum simultaneously. Prosecution of separate actions by individual members of the putative class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible stands of conduct for Defendant. Furthermore, the amount at stake for individual putative class members may not be great enough to enable all the individual putative class members to maintain separate actions against Defendant.

32. Questions of law and fact that are common to the members of the class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the class are: 1) whether Defendant failed to pay Named Plaintiff and Common Law Plaintiff wages for time spent in security screenings after

clocking out; 2) whether Defendant is liable to Common Law Plaintiffs pursuant to quantum meruit; and 3) whether Defendant has been unjustly enriched by its failure to pay Common Law Plaintiffs for time spent by Named Plaintiff and Common Law Plaintiffs in security screenings after clocking out.

### **FACTUAL BACKGROUND**

33. The foregoing paragraphs are incorporated herein as if set forth in full.

34. (Hereinafter, MWA, PWL Plaintiffs and Common Law Plaintiffs collectively are referred to as "Class Plaintiffs").

35. From in or around October 13, 2015 until January 30, 2020, Named Plaintiff worked for Defendant as material handler at its distribution center at 2106 Lincoln Way East, Chambersburg, Pennsylvania.

36. Named Plaintiff earned \$17.00 per hour.

37. During Named Plaintiff's employment, Named Plaintiff often worked at least 40 hours excluding the unpaid hours spent in the post-shift security screenings described below.

38. Class Plaintiffs worked/work for Defendant in Defendant's Pennsylvania distribution centers.

39. Class Plaintiffs earned/earn an hourly wage.

40. During the time period beginning three years prior to the filing of the instant action through the present, each MWA and WPCL Plaintiff worked more than 40 hours during at least one workweek when the hours for which Defendant paid them and the hours they spent waiting to undergo and undergoing the post-shift security screenings described herein are aggregated.

41. During the time period beginning four years prior to the filing of the instant action through the present, each Common Law Plaintiff worked fewer than 40 hours as determined by Defendant and spent time waiting to undergo and undergoing in the post-shift security screenings described herein.

**Failure to Pay for Time Spent in Security Screenings.**

42. The foregoing paragraphs are incorporated herein as if set forth in full.

43. At the end of each workday, Defendant required/requires Named Plaintiff and Class Plaintiffs (hereinafter collectively referred to as "Plaintiffs") to clock out and then go through a security screening designed to prevent employee theft.

44. Specifically, a security guard employed or contracted by Defendant would screen each Plaintiff individually.

45. Defendant compensated/compensates Plaintiffs only for the hours recorded in its time clock system.

46. As Plaintiffs undergo/underwent the mandatory security screenings off-the-clock, Defendant did/does not compensate Plaintiffs for the time it took/takes them to wait to undergo and undergo the security screenings.

47. Defendant's failure to pay Named Plaintiff and MWA and WPCL Plaintiffs for the time waiting to undergo and undergoing the security screenings resulted/results in Defendant's failure to pay them at least one and one-half times their regular rates for hours worked more than 40 in a workweek.

48. Defendant's failure to pay Named Plaintiff and Common Law and WPCL Plaintiffs for the time spent waiting to undergo and undergoing the security screenings.

49. As a result of Defendant's conduct, Plaintiffs have suffered damages.

**COUNT I**

**Violations of the Pennsylvania Minimum Wage Act (“PMWA”)  
(Failure to pay Overtime Wages for Time Spent in Security Screenings)  
(Named Plaintiff and MWA Plaintiffs v. Defendant)**

50. The foregoing paragraphs are incorporated herein as if set forth in full.

51. At all times relevant herein, Defendant has and continued to be an “employer” within the meaning of the PMWA.

52. At all times relevant herein, Defendant is/was responsible for paying wages to Named Plaintiff and MWA Plaintiffs.

53. At all times relevant herein, Named Plaintiff and PWL Plaintiffs are/were employed with Defendant as “employees” within the meaning of the PMWA.

54. Under the PMWA, an employer must pay an employee at least one and one-half times his or her regular rate of pay for each hour worked more than forty hours in a workweek.

55. Defendant’s conduct in failing to pay Named Plaintiff and MWA Plaintiffs proper overtime compensation for all hours worked beyond forty hours in a workweek violated the PMWA.

56. Defendant’s conduct caused Named Plaintiff and MWA Plaintiffs to suffer damages.

**COUNT II**

**Violations of the Pennsylvania Wage Payment and Collection Law (“WPCL”)  
(Failure to Pay Owed Wages)  
(Named Plaintiff and PWL Plaintiffs v. Defendant)**

57. The foregoing paragraphs are incorporated herein as if set forth in full.

58. Defendant’s conduct in failing to pay Named Plaintiff and PWL Plaintiffs all wages earned violated the WPCL.

59. Defendant's conduct in failing to properly pay Named Plaintiff and WPCL Plaintiffs is/was willful and is/was not based upon any reasonable interpretation of the law.

60. Defendant's conduct caused Named Plaintiff and WPCL Plaintiffs to suffer damages.

**COUNT III**  
**Violations of Pennsylvania Common Law**  
**(Quantum Meruit / Unjust Enrichment)**  
**(Named Plaintiff and Common Law Plaintiffs v. Defendant)**

61. The foregoing paragraphs are incorporated herein as if set forth in full.

62. Defendant failed/fails to pay Named Plaintiff and Common Law Plaintiffs their hourly rates hours spent waiting to undergo and undergoing post-shift security screenings.

63. Named Plaintiff and Common Law Plaintiffs reasonably expected/expect Defendant to compensate them for time spent waiting to undergo and undergoing post-shift security screenings.

64. Defendant recognized/recognizes the benefits conferred upon it by Named Plaintiff and Common Law Plaintiffs undergoing the post-shift security screenings.

65. Defendant accepted/accepts and retained/retains the benefits under circumstances that would render such retention inequitable.

66. Defendant has thereby been unjustly enriched and/or Named Plaintiff and Common Law Plaintiffs have been damaged.

**WHEREFORE**, Named Plaintiff, MWA, WPCL Plaintiffs, and Common Law Plaintiffs pray that this Court enter an Order providing that:

A. Defendant is to be prohibited from continuing to maintain its illegal policy, practice or custom in violation of state law;

B. Defendant is to compensate, reimburse, and make Named Plaintiff and Class Plaintiffs whole for any and all pay and benefits they would have received had it not been for Defendant's illegal actions;

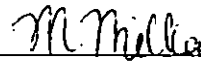
C. Named Plaintiff and WPCL Plaintiffs are to be awarded liquidated damages for Defendant's illegal actions, as provided under the Pennsylvania Wage Payment and Collection Law;

D. Named Plaintiff and Class Plaintiffs are to be awarded the costs and expenses of this action and reasonable legal fees as provided under applicable law;

E. Named Plaintiff and Class Plaintiffs are to be awarded any and all other equitable and legal relief as the Court deems appropriate;

F. Named Plaintiff's and Class Plaintiffs' claims are to receive a trial by jury.

Respectfully Submitted,



Matthew D. Miller, Esq.

Justin L. Swidler, Esq.

Richard S. Swartz, Esq.

**SWARTZ SWIDLER, LLC**

1101 Kings Highway North, Ste. 402

Cherry Hill, NJ 08034

Phone: (856) 685-7420

Fax: (856) 685-7417

Dated: February 9, 2021



**DEMAND TO PRESERVE EVIDENCE**

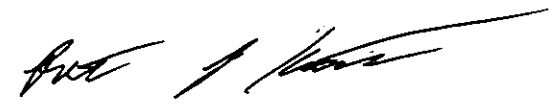
Defendant is hereby directed to preserve all physical and electronic information pertaining in any way to Named Plaintiff's and Class Plaintiffs' employment, to Named Plaintiff's and Class Plaintiffs' cause of action and/or prayers for relief, and to any defenses to same, including, but not limited to, electronic data storage, closed circuit TV footage, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages, any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, Twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

By way of example, but not limitation, Defendant is directed to preserve all video showing Named Plaintiff and/or Class Plaintiffs undergoing security screenings.

VERIFICATION

I, Robert Katavitch, Plaintiff in this matter, hereby state that the facts set forth in the Complaint are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Dated: 1/20/2021



Robert Katavitch

# EXHIBIT B

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## A Message from Your CSC Processor

**Transaction ID:** 32063500

CSC was served with a document directed to Ulta Beauty Inc. This entity name does not exactly match the name of an entity in our records or the records of the state. The closest match for this name in our records is Ulta Beauty Credit Services Corporation. We show you as the contact for that entity. Please advise whether CSC should receive or reject\* this document on your behalf. The case details are listed below:

\*PLEASE BE ADVISED that CSC only sends the rejection notices to the sending party and makes no representations regarding its effectiveness. Customer should consult with an attorney to ensure that its legal interests are adequately represented in this matter.

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<b>Entity Name As Served:</b>	Ulta Beauty Inc.
<b>Date Served:</b>	2/23/2021
<b>Jurisdiction Served:</b>	PA
<b>Title of Action:</b>	Robert Katavitch vs. Ulta Beauty Inc.
<b>Type of Document:</b>	Notice and Complaint

**Case/Reference No:** 2021-344  
**Court/Agency:** Franklin County Court of Common Pleas  
**Jurisdiction Filed:** PA  
**Nature of Case:** Class Action  
**Sender Name:** Matthew D. Miller  
**Answer Days:** 20

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**La Tonya Cook**  
**Customer Service Specialist | Litigation Management**  
850 558 1500 x 62905  
[cscglobal.com](http://cscglobal.com)

Many of the documents CSC receives contain personally identifiable information such as Social Security numbers, medical records, and individual account numbers. We cannot attach PDF images of these documents to email inquiries regarding receipt of process on a non-exact company name. If you would like to review a copy of the document, please notify us and we will forward an abridged or redacted copy to your attention.

**251 Little Falls Drive, Wilmington, Delaware 19808-1674**  
(888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

# EXHIBIT C



Transmittal Number: 22802700 null

## Rejection of Service of Process

### Return to Sender Information:

Matthew D. Miller null  
Swartz Swidler LLC  
1101 Kings Highway North  
Suite 402  
Cherry Hill, NJ 08034

<b>Date:</b>	02/23/2021
<b>Party Served:</b>	Ulta Beauty Inc.
<b>Title of Action:</b>	Robert Katavitch vs. Ulta Beauty Inc.
<b>Case/Reference No:</b>	2021-344

The service of process received for the party served, as listed above, cannot be forwarded to the intended party for the reason listed below:

According to the Secretary of State or other appropriate state agency, the party served is not qualified to do business in the jurisdiction served. CSC is only authorized to receive service of process on behalf of entities that specifically name it as registered/statutory agent within the jurisdiction where service of process occurs. Please review the records at the Secretary of State or other appropriate state agency to identify the proper name within the jurisdiction for the entity you are trying to serve.

Our customer records are confidential. We do not release any information related to our customers, agent representation or service of process received. Please contact the Secretary of State or other appropriate agency for more information.

For an electronic copy of the identified service, send your request by e-mail to [sop@cscglobal.com](mailto:sop@cscglobal.com). Please include the transmittal number located in the upper right-hand corner of this letter.

251 Little Falls Drive, Wilmington, Delaware 19808-1674  
(888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

# EXHIBIT D



2021-344

Docket Number

2021 FEB 12 AM 11:35

PROthonotary  
FRANKLIN COUNTY PA

TIMOTHY S. GOSSELER  
PROthonotary  
DEPARTMENT



ROBERT KATAVITCH

Plaintiff

vs.

ULTA BEAUTY INC.

Defendant

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY

NOTICE TO DEFEND

*Judge Mary Beth Shank*

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THESE PAPERS TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Franklin County Bar Association Find A Lawyer Service  
100 Lincoln Way East, Suite E  
Chamersburg, PA 17201  
717-660-2118

# EXHIBIT E

Brandon R. Sher, Esquire (PA ID No. 314192)  
**OGLETREE, DEAKINS, NASH,**  
**SMOAK & STEWART, P.C.**  
1735 Market Street, Suite 3000  
Philadelphia, PA 19103  
Telephone: (215) 995-2840  
Facsimile: (215) 995-2801  
*Attorneys for Defendant*

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ROBERT KATAVITCH, <i>on behalf of himself</i>	:	COURT OF COMMON PLEAS
<i>and those similarly situated,</i>	:	OF FRANKLIN COUNTY
	:	
	:	
Plaintiff,	:	
	:	No. 2021-344
v.	:	
	:	
ULTA BEAUTY INC.	:	
	:	
	:	
Defendant.	:	
	:	
	:	

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**DEFENDANT’S NOTICE OF FILING OF NOTICE OF REMOVAL**

Defendant Ulta Inc. (“Ulta” or “Defendant”) gives notice that, by the filing of a Notice of Removal (a copy of which is attached hereto as Exhibit A) in the United States District Court for the Middle District of Pennsylvania, this case has been removed from this Court to said District Court pursuant to 28 U.S.C. §§ 1332, 1367, 1441, and 1446.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
*Attorneys for Defendant*

Date: March 24, 2021

By: /s/ Brandon R. Sher  
Brandon R. Sher, Esquire

Brandon R. Sher, Esq. (PA No. 314192)  
**OGLETREE, DEAKINS, NASH,**  
**SMOAK & STEWART, P.C.**  
 1735 Market Street, Suite 3000  
 Philadelphia, PA 19103  
 Telephone: (215) 995-2840  
 Facsimile: (215) 995-2801  
*Attorneys for Defendant*

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ROBERT KATAVITCH, <i>on behalf of himself</i>	:	COURT OF COMMON PLEAS
<i>and those similarly situated,</i>	:	OF FRANKLIN COUNTY
	:	
Plaintiff,	:	
	:	No. 2021-344
v.	:	
	:	
ULTA BEAUTY INC.	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of March 2021, I caused a true and correct copy of the Notice of Filing of Notice of Removal, along with its Exhibit to be served by electronic mail upon all counsel of record as noted below:

Matthew D. Miller, Esq.  
 SWARTZ SWIDLER, LLC  
 1101 Kings Highway North, Ste. 402  
 Cherry Hill, NJ 08034.

Dated: March 24, 2021

/s/ Brandon R. Sher  
 Brandon R. She

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ulta Failed to Pay Workers for Time Spent in Post-Shift Security Screenings, Class Action Alleges](#)

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