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7 Attorneys for Defendant
8 ULTA SALON, COSMETICS & FRAGRANCE,
9 INC.

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 SHERRI A. MEDEIROS on behalf of
herself and all others similarly situated,

13 Plaintiff,

14 v.

15 ULTA SALON, COSMETICS &
16 FRAGRANCE, INC., a Delaware
corporation, and DOES 1 through 50,
17 inclusive,

18 Defendants.

Case No.

**DEFENDANT ULTA SALON, COSMETIC
& FRAGRANCE, INC.'S NOTICE OF
REMOVAL**

[28 U.S.C. §§ 1332, 1441 and 1446]

Complaint Filed: September 25, 2018
Removal Filed: November 9, 2018
Trial Date: None Set

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

3 **PLEASE TAKE NOTICE** that Defendant Ulta Salon, Cosmetics & Fragrance, Inc.
4 (“Defendant” or “Ulta Salon”), hereby removes the above-entitled action from the Superior Court of
5 the State of California, County of Solano, to the United States District Court for the Eastern District
6 of California pursuant to 28 U.S.C. sections 1332, 1441(a) and (b), and 1446 because this Court has
7 original jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”).

8 **I. INTRODUCTION**

9 1. On September 25, 2018, Plaintiff Sherri A. Medeiros (“Plaintiff”), on behalf
10 of herself and all others similarly situated, filed her original Complaint for Damages in the Superior
11 Court of the State of California, County of Solano, entitled *Sherri A. Medeiros, on behalf of herself*
12 *and all others similarly situated v. Ulta Salon, Cosmetics & Fragrance, Inc.; and Does 1 through*
13 *50, inclusive*, Case No. FCS051572 (the “State Court Action”).

14 2. On November 8, 2018, Defendant answered Plaintiff’s Complaint pursuant to
15 Code of Civil Procedure section 431.30 in the Solano County Superior Court.

16 3. A true and correct copy of the Complaint, along with along with all pleadings
17 and process in this matter that have been filed with the Superior Court of Solano County, to date, are
18 attached hereto as Exhibits A-F to the Declaration of Kai-Ching Cha (“Cha Dec.”).

19 **II. REMOVAL IS TIMELY**

20 4. This Notice of Removal is timely because Ulta Salon is filing the Notice of
21 Removal within 30 days from the date on which the Summons was deemed effectively served. *See*
22 *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999). Plaintiff served
23 Ulta Salon by personal service on October 10, 2018, which included copies of the Summons and
24 Complaint. (Cha Dec., Ex. B.) Thus, in accordance with 28 U.S.C. § 1446(b), Ulta Salon’s Notice of
25 Removal is timely.

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1 **III. REMOVAL JURISDICTION**

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

3 5. Plaintiff brought the class action on behalf of current and former non-exempt
4 employees in manager positions in California. (Exhibit A, Complaint (“Compl.”), ¶¶ 1, 19, 20.)¹
5 This Court has jurisdiction over this action under the Class Action Fairness Act (“CAFA”), 28
6 U.S.C. § 1332(d), because there is at least minimal diversity between the parties, the putative class
7 includes more than 100 individuals, and the aggregate amount in controversy for the purported class
8 claims exceeds \$5 million. 28 U.S.C. § 1332(d).

9 **B. There Is Complete Diversity Between At Least One Class Member, Plaintiff,
10 And Ulta Salon**

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

14 7. Plaintiff is a citizen of the State of California. Plaintiff is a resident of Solano
15 County, California, and is therefore a citizen of the State of California for diversity purposes. *See*
16 *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (place of residence is
17 *prima facie* evidence of domicile for purposes of determining citizenship); *see also Smith v.*
18 *Simmons*, 2008 WL 744709, at *7 (E.D. Cal. Mar. 18, 2008) (place of residence provides “*prima*
19 *facie*” case of domicile).

20 8. For diversity jurisdiction, a corporation “shall be deemed a citizen of any
21 State . . . by which it has been incorporated and of the State . . . where it has its principal place of
22 business.” 28 U.S.C. § 1332(c)(1).

23 9. Ulta Salon was, and still is, a corporation organized under the laws of the
24 State of Delaware. (Declaration of Devon Byrne (“Byrne Dec.” ¶ 3.) Moreover, Ulta Salon’s
25 principal place of business is in Bolingbrook, Illinois. (*Id.*) The United States Supreme Court has
26 established that the “nerve center” test should be used to determine a corporation’s “principal place

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28 ¹ Exhibit A, Complaint (“Compl.”), refers to the Declaration of Kai-Ching Cha, Exhibit A. (Cha
Dec., Ex. A.)

1 of business.” *See Hertz Corp. v. Friend*, 559 U.S. 77, 92 (2010). A corporation’s “nerve center” is
2 normally located where the corporation maintains its corporate headquarters and where the
3 “corporation’s officers direct, control, and coordinate the corporation’s activities,” including both the
4 executive and administrative functions. *Id.* Ulta Salon maintains its corporate headquarters in
5 Bolingbrook, Illinois. (Byrne Dec. ¶ 3.) Ulta Salon’s executives are domiciled at the Company’s
6 Bolingbrook, Illinois headquarters, which is where Ulta Salon’s centralized administrative functions
7 and operations are based. (*Id.*) Bolingbrook, Illinois is the actual center of direction, control, and
8 coordination for Ulta Salon’s operations. (*Id.*) Thus, for diversity purposes, Ulta Salon is a citizen of
9 Delaware and Illinois, not California.

10 10. Defendants Does 1 through 50 do not destroy diversity of citizenship because
11 defendants sued under fictitious names are “nominal” parties and their citizenship shall be
12 disregarded for the purposes of determining diversity jurisdiction. *See Prudential Real Estate*
13 *Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 873 (9th Cir. 2000); *Newcombe v. Adolf Coors Co.*,
14 157 F.3d 686, 690-91 (9th Cir. 1998).

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

18 **C. The Proposed Class Contains More Than 100 Members**

19 12. CAFA provides this Court with jurisdiction over a class action when “the
20 number of members of all proposed plaintiff classes in the aggregate is [not] less than 100.” 28
21 U.S.C. § 1332(d)(5)(B). CAFA defines “class members” as those “persons (named or unnamed)
22 who fall within the definition of the proposed or certified class in a class action.” 28 U.S.C. §
23 1332(d)(1)(D).

24 13. Here, in this action Plaintiff seeks to represent a class consisting of “all
25 current and/or former employees not classified as ‘Exempt’ or primarily employed in executive,
26 professional, or administrative capacities, who occupied manager positions in Defendant’s stores
27 throughout California.” (Exhibit A, Compl., ¶ 1.) This putative class includes approximately 1,209
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1 individuals for the relevant class period. (Byrne Dec., ¶ 5, Ex. 1.) Thus, CAFA’s numerosity
2 requirement is satisfied. *See* 28 U.S.C. § 1332(d)(5)(B).

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

4 **1. Applicable Standard**

5 14. The amount in controversy for all claims exceeds \$5 million. CAFA requires
6 the “matter in controversy” to exceed “the sum or value of \$5,000,000 exclusive of interest and
7 costs.” 28 U.S.C. § 1332(d)(2). Where the plaintiff’s complaint does not state the amount in
8 controversy, the defendant’s notice of removal may do so. *See Dart Cherokee Basin Oper. Co. LLC*
9 *v. Brandon W. Owens*, 135 S. Ct. 547, 551 (2014). All that is required is “a plausible allegation that
10 the amount in controversy exceeds the jurisdictional threshold.” *Id.* at 554; *accord Ibarra v.*
11 *Manheim Inv., Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015). No evidence establishing the amount in
12 controversy is required because there is “no antiremoval presumption” in cases invoking CAFA.
13 *Dart Cherokee Basin Oper. Co. LLC*, 135 S. Ct. at 551-54.

14 15. “The claims of the individual class members shall be aggregated to determine
15 whether the matter in controversy exceeds” the jurisdictional minimum. 28 U.S.C. § 1332(d)(6). “In
16 measuring the amount in controversy, a court must assume that the allegations of the complaint are
17 true and that a jury will return a verdict for the plaintiff on all claims made in the complaint.”
18 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal.
19 2002). The ultimate inquiry is what amount is put “in controversy” by the plaintiff’s complaint, not
20 what a defendant will actually owe. *See Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D.
21 Cal. 2005); *see also Ibarra*, 775 F. 3d at 1198 n.1 (explaining that even when the court is persuaded
22 the amount in controversy exceeds \$5 million, defendants are still free to challenge the actual
23 amount of damages at trial because they are only estimating the damages in controversy).

24 16. In the Complaint, Plaintiff brings claims for (1) failure to pay overtime wages
25 (2) failure to provide required rest periods; (3) failure to timely pay wages at termination; (4) failure
26 to furnish accurate itemized wage statements; and (5) unfair and unlawful business practices.
27 (Exhibit A, Compl.) Based on these claims, Plaintiff seeks compensatory damages, economic
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1 damages, special damages, rest period compensation, waiting time penalties, statutory and civil
2 penalties, interest, and attorneys' fees. (Exhibit A, Compl., Prayer for Relief, ¶¶ 1-7.)

3 17. Although Ulta Salon denies that Plaintiff's claims have any merit, and
4 likewise denies that this matter should be certified as a class action, when all claims arising under the
5 California Labor Code are aggregated, the allegations in the Complaint give rise to an amount in
6 controversy that meets this Court's jurisdictional minimum of \$5 million under CAFA. 28 U.S.C. §
7 1332(d)(2).

8 18. The amount in controversy in this case is comprised of the potential monetary
9 recovery for Plaintiff's five non-equitable causes of action together with her claim for statutory
10 attorney's fees. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998) ("Where an
11 underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary
12 language, such fees may be included in the amount in controversy."). As set forth below and in the
13 accompanying declarations, Plaintiff's claims unquestionably exceed the \$5 million jurisdictional
14 threshold.

15 **2. Key Statistics and Facts**

16 19. The class period in this matter is subject to two previous settlement
17 agreements that Ulta Salon executed. First, in *Sarah Moore v. Ulta Salon, Cosmetics & Fragrance,*
18 *Inc.*, Case No. CV 12-3224 FMO (AGRx), the Settlement Class precludes California Labor Code
19 claims for failure to provide rest periods, failure to pay overtime, failure to timely pay wages at
20 termination, and failure to provide accurate wage statements for "[all] persons employed in
21 California by Ulta Salon, Cosmetics & Fragrance, Inc. on a nonexempt basis . . . through the date of
22 preliminary Court approval []." (Request for Judicial Notice ("RJN"), Ex. 1 at 2:1-9, 3:25-4:1.)
23 Preliminary approval was granted on December 29, 2016. The Central District of California
24 approved this settlement agreement on July 25, 2017. (RJN, Ex. 1 at 19:2.) Therefore, the class
25 period in this litigation is from December 30, 2016 to the present.

26 20. Second, in *Jaime Quinby, et al. v. Ulta Salon, Cosmetics & Fragrance, Inc.*,
27 Case No. CV-15-4099 WHO, the Settlement Class precludes California Labor Code claims for
28 failure to provide rest periods, failure to pay overtime, waiting time penalties, and failure to provide

1 accurate wage statements for “[a]ll current and former General Managers employed by Defendant in
2 its California retail store locations at any time from September 9, 2011 to September 19, 2016.”
3 (RJN, Ex. 2 at 4:7-9.)

4 21. Here, Plaintiff defines the putative class members as:

5 All persons who are or were employed by Ulta in nonexempt, hourly
6 positions as managers and/or assistant managers within four (4) years
7 prior to the date this lawsuit is filed (“liability period”) until resolution
of this lawsuit (collectively referred to as the “Class” and/or Class
Members”).

8 (Exhibit A, Compl., ¶ 19.) From December 30, 2016 to September 24, 2018, there were 1,209
9 current and former non-exempt managers and assistant managers in California and their average
10 hourly rate was \$22.66. (Byrne Dec., ¶ 5, Ex. 1.)

11 22. Associates employed by Ulta Salon as store managers in California currently
12 hold the following positions: General Manager; Prestige Sales Manager; Retail Operations Manager;
13 Retail Sales Manager; Salon Assistant Manager; Salon Assistant Manager Elite; Salon Assistant
14 Manager Master; Salon Manager; Salon Manager Elite; Salon Manager Master; and CoSales
15 Manager. (Byrne Dec. ¶ 4.) From December 30, 2016 to September 24, 2018, Ulta Salon employed
16 1,209 associates in manager positions, and their average hourly rate of pay was \$22.66. (Byrne Dec.
17 ¶ 5.) During this same time period, there were 441 former associates in manager positions. (*Id.*)

18 23. Ulta Salon requires associates in store manager positions to work full-time, in
19 other words, eight hours a day, and forty hours per workweek. (Byrne Dec. ¶ 6.) Consequently, for
20 purposes of removal calculations, Defendant assumed that associates in manager positions worked
21 on average eight hours per day, five days per week. (*Id.*)

22 24. From December 30, 2016 through September 24, 2018, associates in manager
23 positions worked an average of 267 days. (Byrne Dec. ¶ 7.)

24 25. Throughout the putative class period, Ulta Salon’s associates were paid on a
25 biweekly basis. (Byrne Dec. ¶ 8.)

26 **3. Calculations Of Amount In Controversy Related To Rest Breaks**

27 26. Plaintiff’s Second Cause of Action for Failure to Provide Rest Breaks seeks to
28 recover the statutory penalty for missed rest breaks on behalf of the putative class. (Exhibit A,

1 Compl., ¶¶ 33-36.) Plaintiff alleges that Ulta Salon failed to provide rest periods as required by
2 California Labor Code section 226.7 and IWC Wage Orders to Plaintiff and the putative class
3 members, and that Ulta Salon allegedly did not pay Plaintiff or other putative class members the one
4 hour premium pay for missed rest periods. (Exhibit A, Compl., ¶ 14.) The Complaint does not
5 specify the frequency of missed rest periods. (Exhibit A, Compl., ¶ 14.)

6 27. IWC Wage Order no. 5-2001, § 12 requires employers to authorize and permit
7 employees to take a 10 minute rest period per four hours worked, or major fraction thereof.

8 28. California Labor Code section 226.7(c) provides that employees are entitled to
9 premium payments of one additional hour of pay at each employee's regular rate for each work day
10 that a timely compliant rest break was not provided. Under section 226.7, the most an employee can
11 recover is one hour of missed break pay per workday (i.e. one hour for a missed rest break).

12 29. There are 1,209 associates employed in manager positions. (Byrne Dec. ¶ 5.)
13 Managers worked an average of 267 days during the class period (267 days divided by 5 equals 53.4
14 workweeks). (Byrne Dec. ¶ 8.) The average hourly rate for managers during the class period is
15 \$22.66. (Byrne Dec. ¶ 5.) Assuming that managers missed their 10-minute rest period one day per
16 week for each of the 53 workweeks, from December 30, 2016 through September 24, 2018, the
17 estimated rest break premium at issue totals **\$1,451,985** (1,209 non-exempt employees x \$22.66 x 53
18 missed rest breaks).

19 **4. Calculations Of Amount In Controversy Related To Waiting Time**
20 **Penalties**

21 30. Plaintiff's Third Cause of Action alleges that Plaintiff and the putative class
22 members were not timely paid their wages upon termination. (Exhibit A, Compl., ¶¶ 37-41.) Plaintiff
23 seeks waiting time penalties for each day putative class members did not receive all wages upon
24 termination, not to exceed 30 days of pay in accordance with Labor Code Section 203. (Exhibit A,
25 Compl., ¶¶ 37-41.)

26 31. Labor Code Section 203 provides that if an employer fails to pay any wages of
27 an employee who is discharged or who quits, the wages of the employee shall continue as a penalty
28 at the same rate for up to 30 days. Accordingly, for former associates in store manager positions,

1 where Ulta Salon requires that they worked 8 hours per day, these employees would be entitled to
2 waiting time penalties of 8 hours per day, multiplied by their final hourly rate of pay, for 30 days.
3 *See Mamika v. Barca*, 68 Cal. App. 4th 487, 493 (1998) (where full time employee seeks penalties
4 under 203, the proper calculation is hourly rate, multiplied by 8 hours per day, for 30 days).

5 32. From December 30, 2016 to September 24, 2018, there are 441 formerly
6 employed associates in manager positions. (Byrne Dec. ¶ 5.) The average hourly rate for managers
7 during the class period is \$22.66. (*Id.*) For managers, who were required to work full time and,
8 therefore, worked 8 hours per day, the amount of waiting time penalties in controversy is **\$2,398,334**
9 (\$22.66 x 8 hours x 30 days x 441 managers).

10 **5. Calculation of Amount In Controversy Related To Labor Code § 226**
11 **Claim**

12 33. Plaintiff's Fourth Cause of Action alleges that Ulta Salon failed to provide
13 accurate itemized wage statements under California Labor Code section 226. (Exhibit A, Compl., ¶
14 43.)

15 34. Under California Labor Code section 226, Plaintiff and the putative class
16 would be entitled to recover \$50 for the initial pay period in which a violation occurs and \$100 for
17 each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000. Cal. Lab.
18 Code § 226(e)(1). There were approximately 1,209 putative class members from December 30, 2016
19 through September 24, 2018, each of whom received an allegedly incorrect itemized wage statement
20 per pay period. (Byrne Dec. ¶ 5.) On average, the 1,209 putative class members worked 267 days.
21 (Byrne Dec. ¶ 7.) Given that Defendant pays associates bi-weekly, the average number of wage
22 statements that putative class members received was 19 wage statements (267 days divided by 14
23 days per wage statement equals 19 wage statements).

24 35. Assuming that Ulta Salon failed to provide an accurate wage statement for
25 each of the 19 pay periods at issue, the estimated amount in controversy related to Plaintiff's Fourth
26 Causes of Action is **\$2,236,650** (1,209 putative class members x ((\$50 x the initial pay period is
27 \$60,450) + (\$100 x 18 remaining pay periods is \$2,176,200))).

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

36. Based on the above calculations, a conservative estimate of the aggregate amount in controversy is **\$6,086,969**,² as summarized below:

<u>Plaintiff's Alleged Claim</u>	<u>Minimum Amount In Controversy</u>
Rest Periods	\$1,451,985
Waiting Time Penalties	\$2,398,334
Penalties for Violation of 226	\$2,236,650
Total Amount in Controversy:	\$6,086,969

37. 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).

IV. VENUE IS PROPER

38. Venue is proper in the United States District Court for the Eastern District of California because this action was filed in the Superior Court of California for the County of Solano. *See* 28 U.S.C. §§ 84(c)(1) and 1441(a). Venue in this action is also proper because Ulta Salon does business in California, including Solano County, where a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. §1391(a); (Exhibit A, Compl., ¶¶ 7, 8.)

39. Counsel for Ulta Salon has signed this Notice of Removal in compliance with the requirements of 28 U.S.C. § 1446(a) and Rule 11 of the Federal Rules of Civil Procedure.

V. NOTICE TO PLAINTIFF AND STATE COURT

40. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Eastern District of California, written notice of such filing will be given by the undersigned to Plaintiff's Counsel of Record and a copy of the Notice of Removal will be filed with the Clerk of the Solano County Superior Court.

² This amount does not include any awardable attorneys' fees, which can be part of calculating the amount in controversy. *See e.g., Bell v. Preferred Life*, 320 U.S. 238 (1943); *Goldberg v. C.P.C. Int'l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982) (attorneys' fees may be taken into account to determine jurisdictional amounts).

PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 333 Bush Street, 34th Floor, San Francisco, California 94104. On November 9, 2018, I deposited with FedEx, a true and correct copy of the within documents:

CIVIL COVER SHEET;

DEFENDANT ULTA SALON, COSMETIC & FRAGRANCE, INC.'S NOTICE OF REMOVAL;

DECLARATION OF KAI-CHING CHA IN SUPPORT OF DEFENDANT ULTA SALON, COSMETIC & FRAGRANCE, INC.'S NOTICE OF REMOVAL

DECLARATION OF DEVON BYRNE IN SUPPORT OF DEFENDANT ULTA SALON, COSMETIC & FRAGRANCE, INC.'S NOTICE OF REMOVAL;

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT ULTA SALON, COSMETIC & FRAGRANCE, INC.'S NOTICE OF REMOVAL; and

DEFENDANT ULTA SALON, COSMETICS & FRAGRANCE, INC.'S DISCLOSURE STATEMENT.

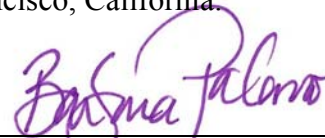
in a sealed envelope, addressed as follows:

James R. Hawkins	<i>Attorneys for Plaintiff</i>
Isandra Fernandez	<i>Sherri A. Medeiros</i>
JAMES HAWKINS APLC	
9880 Research Drive, Suite 200	
Irvine, CA 92618	

Following ordinary business practices, the envelope was sealed and placed for collection by FedEx on this date, and would, in the ordinary course of business, be retrieved by FedEx for overnight delivery on this date.

I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and the State of California that the above is true and correct.

Executed on November 9, 2018, at San Francisco, California.



BARBARA PALOMO

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7 Attorneys for Defendant
ULTA SALON, COSMETICS & FRAGRANCE,
INC.
8

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 SHERRI A. MEDEIROS on behalf of
herself and all others similarly situated,

13 Plaintiff,

14 v.

15 ULTA SALON, COSMETICS &
16 FRAGRANCE, INC., a Delaware
corporation, and DOES 1 through 50,
17 inclusive,

18 Defendants.
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Case No.

**DECLARATION OF KAI-CHING CHA IN
SUPPORT OF DEFENDANT ULTA
SALON, COSMETIC & FRAGRANCE,
INC.'S NOTICE OF REMOVAL**

[28 U.S.C. §§ 1332, 1441 and 1446]

Complaint Filed: September 25, 2018
Removal Filed: November 9, 2018
Trial Date: None Set

1 I, Kai-Ching Cha, declare as follows:

2 1. I am an attorney at law duly licensed to practice and associated with the law
3 firm of Littler Mendelson, P. C., attorneys of record for Defendant Ulta Salon, Cosmetics &
4 Fragrance, Inc. (“Defendant”). As such I am intimately familiar with the matters in this case and if
5 called as a witness, could and would testify competently thereto.

6 2. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint,
7 filed on September 25, 2018.

8 3. Attached hereto as **Exhibit B** is a true and correct copy of the Summons, filed
9 on September 25, 2018.

10 4. Attached hereto as **Exhibit C** is a true and correct copy of the Civil Cover
11 Sheet, filed on September 25, 2018.

12 5. Attached hereto as **Exhibit D** is a true and correct copy of the Notice of Case
13 Management Conference and Notice of Assignment of Judge For All Purposes, filed on September
14 25, 2018.

15 6. Attached hereto as **Exhibit E** is a true and correct copy of the Notice of
16 Service of Process, served on October 11, 2018.

17 7. Attached hereto as **Exhibit F** is a true and correct copy of Defendant’s
18 Answer, filed on November 8, 2018.

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

21 Executed in San Francisco, California on the 9th day of November, 2018.

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/s/ Kai-Ching Cha
KAI-CHING CHA

FIRMWIDE:159794866.1 059310.1149

Exhibit A

1 James R. Hawkins, Esq. SBN 192925
2 Isandra Fernandez, Esq. SBN 220482
3 **JAMES HAWKINS APLC**
4 9880 Research Drive, Suite 200
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TEL: (949) 387-7200
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FILED
Clerk of the Superior Court

SEP 25 2018

By 
DEPUTY CLERK

5 Attorneys for Plaintiff SHERRI A. MEDEIROS
6 on behalf of herself and all others similarly situated

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SOLANO

CMFF 350234
#435
FCSD051572

FAXED

10 SHERRI A. MEDEIROS on behalf of herself
11 and all others similarly situated

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

12 Plaintiff,

CLASS ACTION COMPLAINT

13 vs.

14 ULTA SALON, COSMETICS &
15 FRAGRANCE, INC. a Delaware corporation,
16 and DOES 1 through 50, inclusive,

- 1) Failure to Pay Lawful Wages
- 2) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof
- 3) Failure to Timely Pay Wages
- 4) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions
- 5) Violations of the Unfair Competition Law

17 Defendants.

JURY TRIAL DEMANDED

22 Plaintiff SHERRI A. MEDEIROS (hereinafter "Plaintiff") on behalf of herself and all
23 others similarly situated asserts claims against Defendant ULTA SALON, COSMETICS &
24 FRAGRANCE, INC. and DOES 1-50 inclusively (hereinafter collectively referred to as
25 "Defendants") as follows:
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I.

INTRODUCTION

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3 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought
4 against Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC. a California
5 corporation, (hereinafter “ULTA ” or “Defendants”) on behalf of Plaintiff SHERRI A.
6 MEDEIROS and all current and/or former employees not classified as “Exempt” or primarily
7 employed in executive, professional, or administrative capacities, who occupied manager and
8 assistant manager positions in Defendants’ stores throughout California.(hereinafter referred to as
9 “Non-Exempt Employees” and/or “Class Members”).

10 2. During the liability period, defined as the applicable statute of limitations for each
11 and every cause of action contained herein, Defendants enforced shift schedules, employment
12 policies and practices, and workload requirements wherein Plaintiff and Class Members: (1) were
13 not paid proper wages they earned for all hours worked including overtime compensation; (2)
14 were not permitted to take their full statutorily authorized rest periods, or had their rest break
15 shortened to the scheduling and work load and time requirements placed upon them by
16 Defendants. Defendants failed to pay such employees one (1) hour of pay at the employees
17 regular rate of compensation for each workday that the rest period that was not properly
18 provided.

19 3. During the liability period, Defendants have also failed to maintain accurate
20 itemized records reflecting total hours worked and have failed to provide Non Exempt
21 Employees with accurate, itemized wage statements reflecting total hours worked and
22 appropriate rates of pay for those hours worked.

23 4. During the liability period, Defendants have also failed to pay all wages owed to
24 discharged or resigned employees in a timely manner.

25 5. Plaintiff, on behalf of herself and all Class Members, bring this action pursuant to
26 Labor Code sections 201, 202, 203, 204, 226, 226.7, 1194 California Code of Regulations, Title
27 8, section 11070 *et seq.* and any other applicable Industrial Welfare Commission (“IWC”) Wage
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1 Orders, seeking unpaid wages, unpaid rest and meal period compensation, penalties and other
2 equitable relief, and reasonable attorneys' fees and costs.

3 6. Plaintiff, on behalf of herself and others similarly situated, pursuant to Business and
4 Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure
5 to pay all lawful wages owed and rest and meal period premiums to each of their Non-Exempt
6 Employees.

7 **II.**

8 **VENUE**

9 7. Venue as to each Defendant is proper in this judicial district pursuant to Code of
10 Civil Procedure section 395. Defendant conducts substantial and continuous commercial
11 activities in Solano County, California and each Defendant is within the jurisdiction of this Court
12 for service of process purposes. Defendants employ numerous Class Members in Solano County,
13 California.

14 **III.**

15 **PARTIES**

16 8. Plaintiff was employed by ULTA from in or about July 2016 through in or about
17 June 2018, and occupied a non exempt, hourly position as a manager for Defendant's retail store
18 in Fairfield, California.

19 9. On information and belief, Defendants were at all times mentioned herein licensed
20 and qualified to do business in California. On information and belief, Plaintiff alleges that at all
21 relevant times referenced herein Defendants did and continue to transact business throughout
22 California.

23 10. The true names and capacities of Defendants, whether individual, corporate,
24 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
25 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
26 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
27 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
28 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the

1 true names and capacities of the Defendants designated hereinafter as DOES when such identities
2 become known.

3 11. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
5 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
6 Defendant are legally attributable to the other Defendants.

7 **IV.**

8 **FACTUAL BACKGROUND**

9 12. During the liability period, Defendant had a bonus policy in which Plaintiff and
10 Class Members received a non discretionary bonus that was based on attaining a set sales quota
11 by the salon. Defendant unlawfully failed to include bonus payments in the calculation of
12 overtime wages during the times Plaintiff worked in excess of eight (8) hours in a day and/or
13 more than forty (40) hours in a workweek.

14 13. As Non Exempt Employees, Plaintiff and Class Members were frequently
15 required to work in excess of ten hours (10) hours without being provided a second thirty (30)
16 minute meal period within the first ten hours of their work shift. Plaintiff and Class Members
17 were paid a meal break penalty consisting of one (1) hour of pay at their regular rate of
18 compensation for each workday that a compliant meal period was not provided.

19 14. As Non Exempt Employees, Plaintiff and Class Members were frequently
20 required to work without being permitted or authorized a minimum ten (10) minute rest period
21 for every four hours or major fraction thereof worked. Plaintiff and Class Members were also not
22 authorized or permitted to take a third 10 minute rest period when they worked in excess of 10
23 hours in a work shift. Plaintiff and Class Members were not compensated one (1) hour of pay at
24 their regular rate of compensation for each workday that a rest period was not provided, in
25 violation of California labor laws, regulations, and IWC Wage Orders.

26 15. During the liability period, Defendants have also failed to maintain accurate
27 itemized records reflecting total hours worked and have failed to provide Non Exempt
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1 Employees with accurate, itemized wage statements reflecting total hours worked and
2 appropriate rates of pay for those hours worked.

3 16. During the liability period, Defendants have also failed to pay all wages owed to
4 discharged or resigned Class Members in a timely manner.

5 17. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 currently employ and/or during the relevant period have employed over one hundred (100) Class
7 Members in the state of California.

8 18. Plaintiff and Class Members employed by ULTA , at all times pertinent hereto,
9 have been non-exempt employees within the meaning of the California Labor Code, and the
10 implementing rules and regulations of the IWC California Wage Orders

11 **V.**

12 **CLASS ACTION ALLEGATIONS**

13 19. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
14 are or were employed by ULTA in non exempt, hourly positions as managers and/or assistant
15 managers within four (4) years prior to the date this lawsuit is filed (“liability period”) until
16 resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

17 20. Plaintiff also seeks to represent Subclasses which are composed of persons
18 satisfying the following definitions:

19 a. All persons who are or were employed by ULTA in non exempt, hourly
20 positions as managers and/or assistant managers in the State of California who, within the
21 liability period, have worked as non exempt employees and were not accurately and fully paid all
22 wages owed to them for all their hours worked;

23 b. All persons who are or were employed by ULTA in non exempt, hourly
24 positions as managers and/or assistant managers in the State of California who, within the
25 liability period, have worked as non exempt employees and have not been provided a minimum
26 ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day and
27 were not provided compensation in lieu thereof;

28

1 c. All persons who are or were employed by ULTA in non exempt, hourly positions
2 as managers and/or assistant managers in the State of California who, within the liability period,
3 have worked as non exempt employees and who were not timely paid all wages due and owed to
4 them upon the termination of their employment with Defendants; and

5 d. All persons who are or were employed by ULTA in non exempt, hourly positions
6 as managers and/or assistant managers in the State of California who, within the liability period,
7 have worked as non exempt employees and who were not provided with accurate and complete
8 itemized wage statements.

9 21. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
10 or modify the class description with greater specificity or further division into subclasses or
11 limitation to particular issues.

12 22. This action has been brought and may properly be maintained as a class action
13 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
14 defined community of interest in the litigation and the proposed Class is easily ascertainable.

15 **A. Numerosity**

16 23. The potential members of the Class as defined are so numerous that joinder of all
17 the members of the Class is impracticable. While the precise number of Class Members has not
18 been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
19 and/or during the relevant time period employed, approximately over 100 Non-Exempt
20 Employees in California who are or have been affected by Defendant's unlawful practices as
21 alleged herein.

22 **B. Commonality**

23 24. There are questions of law and fact common to the Class predominating over any
24 questions affecting only individual Class Members. These common questions of law and fact
25 include, without limitation:

- 26 i. Whether Defendants violated Labor Code §§ 510, 1194 and applicable IWC
27 Wage Orders by failing to pay all earned wages including proper overtime compensation
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1 to Non-Exempt Employees who worked in excess of eight (8) hours in a day or more than
2 forty (40) hours in a workweek;

3 ii. Whether Defendants violated Labor Code sections 226.7 and applicable IWC
4 Wage Orders by failing to provide minimum 10 minute rest periods to Non-Exempt
5 Employees for every four hours or major fraction thereof worked and failing to
6 compensate said employees one hours wages in lieu of rest periods;

7 iii. Whether Defendants violated sections 201-203 of the Labor Code by failing to
8 pay all earned wages and/or premium wages due and owing at the time that any Non-
9 Exempt Employees' employment with Defendants terminated;

10 iv. Whether Defendants violated sections 226 of the Labor Code and applicable IWC
11 Wage Orders by failing to, among other violations, maintain accurate records of Non-
12 Exempt Employees' earned wages, work periods, meal periods and deductions;

13 v. Whether Defendants violated section 17200 *et seq.* of the Business and
14 Professions Code by failing to pay proper wages to Non-Exempt Employees for all hours
15 worked; failing to provide proper rest and/or meal periods and failing to pay
16 compensation in lieu thereof; failing to pay wages due and owing at the time the
17 employee's employment with Defendants terminated failing to keep accurate records all in
18 violation of Labor Code §§ 201, 202, 203, 226, 226.7, 1194, and applicable IWC Wage
19 Orders.

20 vi. Whether Defendants violated section 17200 *et seq.* of the Business and
21 Professions Code and Labor Code sections 201, 202, 203, 226, 226.7, 1194 and
22 applicable IWC Wage Orders which violation constitutes a violation of fundamental
23 public policy;

24 **C. Typicality**

25 25. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
26 and all members of the Class sustained injuries and damages arising out of and caused by
27 Defendants' common course of conduct in violation of California laws, regulations, and statutes
28 as alleged herein.

1 **D. Adequacy of Representation**

2 26. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the Class. Counsel who represents Plaintiff is competent and experienced in
4 litigating large employment class actions

5 **E. Superiority of Class Action**

6 27. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
8 questions of law and fact common to the Class predominate over any questions affecting only
9 individual members of the Class. Each member of the Class has been damaged and is entitled to
10 recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

11 28. Class action treatment will allow those similarly situated persons to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
14 action that would preclude its maintenance as a class action.

15 **VI.**

16 **CAUSES OF ACTION**

17 **First Cause of Action**

18 Failure to Pay Wages
(Lab. Code § 1194)
19 (Against All Defendants)

20 29. Plaintiff incorporates by reference and realleges each and every allegation
21 contained above, as though fully set forth herein.

22 30. During the liability period, Defendants have had a policy and practice of providing
23 a non discretionary bonus to Plaintiff and Class Members. At all relevant times herein,
24 Defendants did not include bonus payments in the calculation of overtime wages during shifts in
25 which Plaintiff and Class members worked over 8 hours in a day and/or 40 hours in a week.

26 31. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
27 represent have been deprived of payment of all legally earned overtime wages in amounts to be
28

1 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
2 thereon, attorneys' fees, and costs, pursuant to Labor Code sections 1194

3 32. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
4 described herein and below.

5
6 **Second Cause of Action**
7 Failure to Provide Rest Periods
8 Or Compensation in Lieu Thereof
9 (Lab. Code §§226.7, IWC Wage Orders)
10 (Against All Defendants)

11 33. Plaintiff incorporates by reference and realleges each and every allegation
12 contained above, as though fully set forth herein.

13 34. By their failure to provide a minimum ten (10) minute rest period for every four
14 hours or major fraction thereof worked per day by Class Members, and failing to provide
15 compensation for such non-provided rest periods, as alleged above, Defendants willfully violated
16 the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

17 35. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
18 represent have been deprived of premium wages in amounts to be determined at trial, and are
19 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
20 §226.7.

21 36. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
22 described herein and below.

23 **Third Cause of Action**
24 Failure to Timely Pay Wages Due At Termination
25 Lab. Code §§ 201-203, 227.3)
26 (Against All Defendants)

27 37. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

1 accurately report total hours worked by Plaintiff and the members of the proposed class. On
2 information and belief, Defendants have failed to record all or some of the items delineated in
3 Industrial Wage Orders and Labor Code §226

4 44. Plaintiff and Class Members have been injured by Defendants' actions by
5 rendering them unaware of the full compensation to which they were entitled under applicable
6 provisions of the California Labor Code and applicable IWC Wage Orders.

7 45. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
8 maximum of \$4,000.00 each for record-keeping violations.

9 46. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
10 described herein and below.

11
12 **Fifth Cause of Action**
13 Violation of Unfair Competition Law
14 (Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

15 47. Plaintiff incorporates by reference and realleges each and every allegation
16 contained above, as though fully set forth herein.

17 48. On information and belief, Defendants engaged in unlawful activity prohibited by
18 Business and Professions Code section 17200 et seq. by their policy of:

19 i. failing to pay Non- Exempt Employees proper compensation for all hours worked
20 during a work shift;

21 ii. failing to provide proper rest periods to its Non Exempt Employees or provide
22 compensation in lieu thereof;

23 iii. failing to pay earned and accumulated unused vested vacation leave to its Non
24 Exempt Employees

25 iv. failing to provide all earned wages due to its non exempt employees upon their
26 termination and/or resignation;

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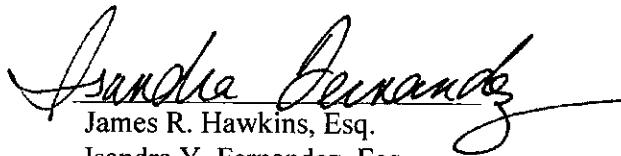
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Date: September 24, 2018

JAMES HAWKINS, APLC



James R. Hawkins, Esq.
Isandra Y. Fernandez, Esq.
Attorneys for Plaintiff
SHERRI A. MEDEIROS

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Manager Sues Ulta Over Alleged Overtime and Rest Break Infractions](#)
