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10 Attorneys for Defendant  
THE NEIMAN MARCUS GROUP LLC and  
11 NEIMAN MARCUS GROUP LTD LLC

12 UNITED STATES DISTRICT COURT

13  
14 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

15 ONDREA ROCES and SOPHIA AHMED,  
16 individually and on behalf of all others  
similarly situated,

17 Plaintiffs,

18 v.

19 THE NEIMAN MARCUS GROUP, LTD,  
20 LLC; and THE NEIMAN MARCUS  
GROUP, LLC,

21 Defendants.

**CASE NO. 18-cv-221**

Assigned for all purposes to:

**NEIMAN MARCUS GROUP LTD LLC  
AND THE NEIMAN MARCUS GROUP  
LLC'S NOTICE OF REMOVAL OF  
CIVIL ACTION FROM STATE  
COURT**

**[28 U.S.C. §§ 1332(b), 1332(d) 1441(b)  
AND 1446]**

1 **TO THE CLERK OF THE ABOVE ENTITLED COURT:**

2 PLEASE TAKE NOTICE THAT Defendants The Neiman Marcus Group LLC and  
3 Neiman Marcus Group LTD LLC (collectively, “Defendants”) hereby remove this matter to the  
4 United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§  
5 1332(d), 1441(b), and 1446. The grounds for removal are as follows:

6 **Compliance with Statutory Requirements**

7 1. On or about December 5, 2017, Plaintiffs Ondrea Roces and Sophia Ahmed,  
8 individually and on behalf of themselves and all others similarly situated (“Plaintiffs”), filed a  
9 Class Action Complaint (“Complaint”) in the Superior Court of the State of California for the  
10 County of San Francisco, Case No. CGC-17-562858, captioned *Ondrea Roces and Sophia*  
11 *Ahmed, on behalf of themselves and all others similarly situated, Plaintiffs, vs. The Neiman*  
12 *Marcus Group, LTD, LLC; and The Neiman Marcus Group LLC, Defendants.*

13 2. In the Complaint, Plaintiffs assert claims for (a) Failure to Pay Minimum and  
14 Hourly Wages; (b) Failure to Pay Wages at the Designated Rate; (c) Recordkeeping and Wage  
15 Statement Violations; (d) Failure to Timely Pay Wages on Discharge; (e) Violations of the Unfair  
16 Competition Law; and (f) Private Attorneys’ General Act of 2004, Labor Code 2698 *et seq.*

17 3. Plaintiffs bring the action “on behalf of themselves and all similarly situated  
18 current and former Sales Associates who worked for Neiman Marcus in California.” Complaint  
19 at ¶ 9.

20 4. Plaintiffs seek to certify a class comprised as follows: “all Sales Associates who  
21 were paid on a commission-only basis and who have worked for Neiman Marcus anywhere in  
22 California on or after four years before the filing of the original complaint.” *Id.* at ¶ 40.

23 5. Plaintiffs served Defendants on December 11, 2017. Defendants’ removal of this  
24 action is timely because Defendant is removing this matter within 30 days of completion of  
25 service of the Complaint. *See* 28 U.S.C. § 1446(b).

26 6. In accordance with 28 U.S.C. § 1446(a), attached hereto as Exhibit A are true and  
27 correct copies of all process, pleadings, and orders served on Defendants in this action, including  
28 Plaintiffs’ Summons and Complaint. Attached hereto as Exhibit B is a true and correct copy of

1 Defendants' Answer to the Complaint, filed in the California Superior Court, county of San  
2 Francisco on January 9, 2018.

3 7. Pursuant to 28 U.S.C. § 1446(d), Defendants promptly will provide written notice  
4 of removal of the Action to Plaintiffs, and promptly will file a copy of this Notice of Removal  
5 with the Clerk of the Superior Court of the State of California, County of San Francisco.

6 **Intradistrict Assignment**

7 8. Plaintiff filed this case in the Superior Court of California, County of San  
8 Francisco; therefore, this case may properly be removed to the San Francisco Division of the  
9 Northern District of California. 28 U.S.C. § 1441(a); Civil L. R. 3-2(c), (e), 3-5(b).

10 **Jurisdiction – CAFA Jurisdiction**

11 9. This Court has original jurisdiction over this matter under the Class Action  
12 Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2). Under CAFA, a claim is removable if the  
13 putative class has more than 100 members, the parties are minimally diverse, and the amount in  
14 controversy exceeds \$5 million. All three requirements are satisfied in this case.

15 **Plaintiffs and Defendants are Citizens of Different States**

16 10. In this matter, diversity of citizenship exists because Defendants are citizens of  
17 different states than at least one proposed class member. *See* 28 U.S.C. § 1332(d)(2).  
18 Specifically, Defendants are both Delaware limited liability companies with their principal place  
19 of business in Texas. Declaration of John Marazio (“Marazio Decl.”) ¶¶ 2-3. *See* 28 U.S.C.  
20 § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77 (2010).

21 11. Each of the named Plaintiffs is a citizen of California. Complaint at ¶¶ 15, 19.  
22 Moreover, Plaintiffs seek to represent “current and former Sales Associates who worked for  
23 Neiman Marcus in California.” *Id.* at ¶ 9. Accordingly, the first requirement is established.

24 **Plaintiff Alleges a Class of More than 100 Members**

25 12. Plaintiffs' Complaint alleges that “Neiman Marcus has employed at least 100  
26 persons who satisfy the definition of the California Class” Compl. ¶ 41; *see also* Marazio Decl.  
27 ¶ 4. Accordingly, the second requirement is established.

28

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

13. Though Defendant concedes neither liability on Plaintiffs' claims nor the propriety or breadth of any class (or representative action) as alleged by Plaintiffs, the Complaint places in controversy a sum greater than \$5,000,000. *See* Complaint; 28 U.S.C. § 1332(d). Plaintiffs seek unpaid minimum and hourly wages, unpaid earnings for hourly work at the designated rate, wage statement penalties, waiting time penalties, restitution, civil penalties, costs and attorneys' fees on behalf of each named plaintiff and each of the purported class members. Compl. at ¶¶ 56, 63, 68, 73, 81, 89, and Prayer for Relief. The aggregate amount in controversy based on these claims and Plaintiffs' allegations far exceeds \$5,000,000 for the reasons stated below.<sup>1</sup>

14. Specifically, the amount in controversy in this matter on only the first, third and fourth causes of action for minimum wages, inaccurate wage statements, and waiting time penalties exceeds \$5,000,000, and it is therefore unnecessary to address the amount placed in controversy by Plaintiffs' other class claims asserted in the Complaint. This sum is based on the following calculations, which are set forth in greater detail below:

Claim	Calculation	Amount in Controversy
Failure to Pay Minimum Wages (first cause of action):	\$ Σ (\$9.00 x 1 hour x weeks worked in the class period per employee) multiplied by 2 (pursuant to claim for liquidated damages)	\$ 2,163,564
Alleged Inaccurate Wage Statements (third cause of action):	\$ Σ (50 x 1 + 100 x one less than the number of pay periods in class period worked by the employee)	\$ 1,383,150
Waiting Time Penalties (fourth cause of action):	\$ Σ (average hourly rate of each individual that separated from Defendant during the relevant period x 8 hours per day x 30 days)	\$ 2,335,797
Attorneys' Fees	0.25 x \$ 5,882,511	\$ 1,470,628
<b>Total:</b>		\$ 7,353,139

<sup>1</sup> In establishing the amount in controversy for purposes of removal, Defendants do not concede or acknowledge in any way that the allegations in Plaintiffs' Complaint are accurate or that Plaintiffs or any proposed class member are entitled to any amount under any claim or cause of action. Nor do Defendants concede or acknowledge that any class or subclass may be certified, whether as alleged or otherwise, or that any or all of its current or former employees are entitled to any recovery in this case, or are appropriately included in the putative class.

1           15. Plaintiffs seek certification on behalf of “all Sales Associates who were paid on a  
2 commission-only basis and who have worked for Neiman Marcus anywhere in California on or  
3 after four years before the filing of the original complaint.” Compl. at ¶ 40.

4           16. First Claim for Relief: Failure to Pay Minimum and Hourly Wages for Alleged  
5 “Non-Sell Tasks”: Plaintiffs allege that putative class members were not compensated for all  
6 time worked because they were not separately compensated for time spent on activities that are  
7 “non-sales-commission-generating.” Compl. at ¶ 3. Plaintiffs allege that “Non-Sell Periods  
8 regularly amounted to multiple hours of work per week.” *Id.* at ¶ 3. Plaintiff Roces states that  
9 she “regularly performed Non-Sell Tasks for which she was not paid an hourly wage.” *Id.* at ¶  
10 17. Plaintiff Roces further states that “during the week of September 21 through September 27,  
11 2015, [she] worked approximately 4-5.5 hours of work performing Non-Sell Tasks for which she  
12 was not compensated.” *Id.* Likewise, Plaintiff Ahmed states that she “regularly performed Non-  
13 Sell Tasks for which she was not paid an hourly wage.” *Id.* at ¶ 21. Plaintiff Ahmed further  
14 states that “during the week of September 21 through September 27, 2015, [she] worked  
15 approximately 4.5 hours of work performing Non-Sell Tasks for which she was not  
16 compensated.” *Id.* Given the allegations of a regular practice of failing to compensate for all  
17 time worked, the amount in controversy for failure to pay all wages owed is at least \$ 1,081,782.<sup>2</sup>  
18 Plaintiffs also seek liquidated damages for failure to pay minimum wages in this claim. Compl.  
19 at p. 10 (First Cause of Action, citing California Labor Code §§ 1194, 1194.2) and Prayer for  
20 Relief ¶ E. Accordingly, the amount in controversy on the this claim is doubled, totaling  
21 \$ 2,163,564.

22           17. This figure is conservative for at least four reasons. First, the average applicable  
23 minimum wage is likely higher than \$9.00 per hour during the class period, based on state law  
24 and city ordinances. Second, this calculation assumes only one hour of uncompensated work per  
25

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26           <sup>2</sup> The amount in controversy on the claim for failure to pay all wages is calculated as  
27 follows: the summation of a \$9.00 average minimum wage over the class period x 1 hour of  
28 uncompensated work per week x number of weeks worked in the class period for each individual  
employed as a commission-only sales associate from December 5, 2013 to December 31, 2017.  
Marazio Decl. at ¶ 6.

1 employee per week. As stated above and in the Complaint, the allegations regarding “Non-Sell”  
2 activities are much broader. Defendants could properly assume that putative class members spent  
3 more than one hour per week on “Non-Sell” activities. See *Muniz v. Pilot Travel Centers LLC*,  
4 No. CIV. S-07-0325FCDEFB, 2007 WL 1302504, at \*4 (E.D. Cal. May 1, 2007) (“Plaintiff[s]  
5 [are] the ‘master of [their] claim[s],’ and if [they] wanted to avoid removal, [they] could have  
6 alleged facts specific to [their] claims which would narrow the scope of the putative class or the  
7 damages sought.”) (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)). Third,  
8 Plaintiffs assert that they “entitled to recover their individual hourly rates, or in the alternative, the  
9 applicable minimum wage” on this claim. Compl. at ¶ 56. Using the average hourly rates of the  
10 sales associates would further increase the amount in controversy on this claim. Marazio Decl. at  
11 ¶ 6. Fourth, the data used to calculate the amount in controversy excludes sales associates who  
12 were paid on a commission-only basis during part of the class period but are not currently paid on  
13 a commission-only basis and likewise excludes putative class members who previously worked in  
14 California but do not currently work in California. *Id.* at ¶ 5.

15 18. Third Claim for Relief: Failure to Provide Accurate Written Wage Statements:

16 Plaintiffs also seek statutory penalties pursuant to Labor Code Section 226(e) based on  
17 Defendants’ alleged failure to provide Plaintiffs and members of the putative class with accurate  
18 itemized wage statements. Compl. at ¶¶ 65-68. Plaintiffs allege that, “Neiman Marcus  
19 knowingly and intentionally failed to provide timely, accurate, itemized wage statements  
20 including, inter alia, all hours worked, to Plaintiffs and the California Class members in  
21 accordance with California Wage Order No. 4-2001 and California Labor Code § 226(a).” *Id.* at  
22 ¶ 66. Plaintiffs and members of the putative class seek penalties under California Labor Code  
23 section 226(e) “including the greater of all actual damages or fifty dollars (\$50) for the initial pay  
24 period in which a violation occurs and one hundred dollars (\$100) per employee for each  
25 violation in a subsequent pay period.” *Id.* at ¶ 68. Given the allegations of consistent  
26 inaccuracies in the wage statements and failure to pay all wages owed, the amount in controversy  
27  
28

1 for this claim is \$ 1,383,150.<sup>3</sup> See *Franke v. Anderson Merchandisers LLC*, No.  
 2 CV173241DSFAFMX, 2017 WL 3224656, at \*2 (C.D. Cal. July 28, 2017). This calculation is  
 3 conservative because the data used to calculate the amount in controversy excludes sales  
 4 associates who were paid on a commission-only basis during part of the class period but are not  
 5 currently paid on a commission-only basis and likewise excludes putative class members who  
 6 previously worked in California but do not currently work in California or did not work in  
 7 California at the time they separated from employment. Marazio Decl. at ¶ 5.

8 19. Fourth Claim for Relief: Failure to Timely Pay All Final Wages: Plaintiffs also  
 9 seek statutory penalties pursuant to Labor Code § 203 based on Defendants' alleged failure to pay  
 10 Plaintiffs and members of the putative class and/or subclasses all final wages in accordance with  
 11 Labor Code §§ 201 and 202. Compl. at ¶¶ 69-73. Plaintiffs allege that "Plaintiffs and the  
 12 California Class who ceased employment with Neiman Marcus are entitled to unpaid hourly  
 13 compensation, but to date have not received such compensation." *Id.* at ¶ 71. Plaintiffs further  
 14 allege that "[m]ore than 30 days have passed since Plaintiffs and certain California Class  
 15 Members have left Neiman Marcus's employ . . . ." *Id.* at ¶ 72. Plaintiffs and members of the  
 16 putative class seek "thirty days' wages under California Labor Code § 203, together with interest  
 17 thereon and attorneys' fees and costs." *Id.* at ¶ 73. Given the broad allegations of the Complaint,  
 18 including the claim for failure to pay wages for alleged "Non-Sell Tasks," the amount placed in  
 19 controversy by Plaintiffs' claim for waiting time penalties is \$ 2,335,797.<sup>4</sup> See *Gomez v.*  
 20 *Michaels Stores, Inc.*, No. EDCV152328JGBDTBX, 2016 WL 738196, at \*3 (C.D. Cal. Feb. 22,  
 21 2016). This calculation is conservative because the data used to calculate the amount in  
 22 controversy excludes sales associates that were paid on a commission-only basis during part of  
 23

24 <sup>3</sup> The amount in controversy on the inaccurate wage statement claim is calculated as  
 25 follows: summation of the following for each putative class member during the relevant period  
 26 (December 5, 2016 to December 31, 2017): one less than the number of wage statements received  
 during the class period, multiplied by \$100, plus an additional \$50 (for the first wage statement) =  
 \$ 1,383,150. Marazio Decl. at ¶ 7.

27 <sup>4</sup> The amount in controversy on the waiting time penalties claim is calculated as follows:  
 28 the summation of the individual average hourly rate of each former employee that separated their  
 employment during the relevant period (December 5, 2014 through December 5, 2017) x 8 hours  
 per day x 30 days = \$ 2,335,797. Marazio Decl. at ¶ 8.

1 the class period but are not currently paid on a commission-only basis and likewise excludes  
2 putative class members who previously worked in California but do not currently work in  
3 California or did not work in California at the time of their separation from employment.  
4 Marazio Decl. at ¶ 5. This calculation is further conservative because it does not include former  
5 sales associates who had not established an average hourly rate at the time of their separation  
6 from employment. Marazio Decl. at ¶ 8.

7           20. Plaintiffs also seek attorneys' fees. *E.g.*, Complaint at ¶¶ 57, 64, 73, and Prayer  
8 for Relief. In the Ninth Circuit, attorney's fees at the rate of 25 percent of the amount recovered  
9 are routinely awarded. *Barcia v. Contain-AWay, Inc.*, 2009 WL 587844, at \*5 (S.D. Cal. Mar. 6,  
10 2009) (in wage and hour cases, "[t]wenty-five percent is considered a benchmark for attorneys'  
11 fees in common fund cases.") (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.  
12 1998)). Accordingly, attorneys' fees are properly included in the amount in controversy. *See*,  
13 *e.g.*, *Salcido v. Evolution Fresh, Inc.*, No. 214CV09223SVWPLA, 2016 WL 79381, at \*8 (C.D.  
14 Cal. Jan. 6, 2016) (approving use of 25% of amount in controversy for attorneys' fees calculation  
15 on removal); *Dittmar v. Costco Wholesale Corp.*, No. 14-CV-1156-LAB-JLB, 2015 WL  
16 7106636, at \*5 (S.D. Cal. Nov. 13, 2015) (same). The amount of attorneys' fees put in  
17 controversy by the Complaint is at least \$ 1,470,628 (0.25 \* \$ 5,882,511). Adding these  
18 attorneys' fees to the previously established amount yields more than \$ 7.3 million in  
19 controversy.

20           21. The amount in controversy calculation does not include amounts put in  
21 controversy for the claim for failure to pay wages at the designated rate (second cause of action)  
22 and additional damages and penalties under the first and third causes of action. This dispute  
23 plainly exceeds the minimum amount-in-controversy requirement for jurisdiction pursuant to  
24 CAFA.



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WHEREFORE, the above-titled Action is hereby removed to this Court from the Superior Court of the State of California, County of San Francisco.

Dated: January 10, 2018

JONES DAY

By: /s/ Aaron L. Agenbroad  
Aaron L. Agenbroad  
Cindi L. Ritchey  
Koree Blyleven

Attorneys for Defendant  
THE NEIMAN MARCUS GROUP LLC and  
NEIMAN MARCUS GROUP LTD LLC

NAI-1503312690v4

**EXHIBIT A**



**Service of Process  
Transmittal**

12/11/2017

CT Log Number 532447798

**TO:** Michelle Morgan  
NEIMAN MARCUS GROUP, INC.  
1618 Main St  
Dallas, TX 75201-4748

**RE: Process Served in California**

**FOR:** The Neiman Marcus Group LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** ONDREA ROCES and SOPHIA AHMED, individually and on behalf of all others similarly situated, Pltfs. vs. The Neiman Marcus Group, Ltd, LLC and The Neiman Marcus Group LLC, Dfts.

**DOCUMENT(S) SERVED:** Summons, Complaint, Cover Sheet(s), Statement(s), Notice(s), Attachment(s), Stipulation(s)

**COURT/AGENCY:** San Francisco County - Superior Court - San Francisco, CA  
Case # CGC17562359

**NATURE OF ACTION:** Employee Litigation - Failed to pay the California Class members all hourly compensation owed for hours worked during Non-Sell Periods, in violation of the California Labor Code and related regulations Cal. Labor Code 1182.12, 1194, 1194.2, 1197 and 1198; and Cal. Wage Order No. 4-2001

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 12/11/2017 at 11:30

**JURISDICTION SERVED :** California

**APPEARANCE OR ANSWER DUE:** Within 30 days after service (Document(s) may contain additional answer dates)

**ATTORNEY(S) / SENDER(S):** Jahan C. Sagafi  
OUTTEN & GOLDEN LLP  
One Embarcadero Center  
38th Floor  
SAN FRANCISCO, CA 94111  
415-638-8800

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1Z0399EX0108003760  
Image SOP  
Email Notification, Kim Yee KIM\_YEE@NEIMANMARCUS.COM  
Email Notification, Linda Upton Linda\_Upton@neimanmarcus.com  
Email Notification, Tracy Preston Tracy\_Preston@neimanmarcus.com  
Email Notification, Michelle Morgan Michelle\_Morgan@neimanmarcus.com  
Email Notification, Bernard Reed Bernard\_Reed@neimanmarcus.com



**Service of Process  
Transmittal**

12/11/2017

CT Log Number 532447798

**TO:** Michelle Morgan  
NEIMAN MARCUS GROUP, INC.  
1618 Main St  
Dallas, TX 75201-4748

**RE: Process Served in California**

**FOR:** The Neiman Marcus Group LLC (Domestic State: DE)

**SIGNED:** C T Corporation System  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

12-11-17 @ // 30

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

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

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

The Neiman Marcus Group, LTD, LLC; and The Neiman Marcus Group, LLC

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

ONDREA ROCES and SOPHIA AHMED, individually and on behalf of all others similarly situated

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

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

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

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

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

The name and address of the court is:  
(El nombre y dirección de la corte es): San Francisco Superior Court  
400 McAllister Street  
San Francisco, CA 94102

CASE NUMBER  
(Número del Caso):  
**CGC-17-562350**

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):  
Oulten & Golden, LLP; One Embarcadero Center, 38th Floor, San Francisco, CA 94111; (415) 638-8800

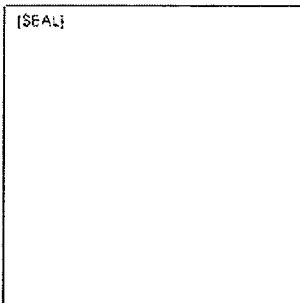
DATE: **DEC 05 2017**  
(Fecha)

Clerk of the Court Clerk, by  
(Secretario)

**NEYL WEBB**

Deputy  
(Adjunto)

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



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

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify): **The Neiman Marcus Group, LLC**

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other (specify):

4.  by personal delivery on (date):

1 Jahan C. Sagafi (Cal. Bar No. 224887)  
Relic Sun (Cal. Bar No. 306701)  
2 OUTTEN & GOLDEN LLP  
3 One Embarcadero Center, 38th Floor  
San Francisco, CA 94111  
4 Telephone: (415) 638-8800  
Facsimile: (415) 638-8810  
5 Email: [jsagafi@outtengolden.com](mailto:jsagafi@outtengolden.com)  
6 Email: [rsun@outtengolden.com](mailto:rsun@outtengolden.com)

7 *Attorneys for Plaintiffs and proposed*  
8 *Class Members*

ENDORSED  
FILED  
San Francisco County Superior Court

DEC 05 2017

CLERK OF THE COURT  
BY: NEYL WEBB  
Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO**  
**UNLIMITED CIVIL JURISDICTION**

11 ONDREA ROCES and SOPHIA AHMED,  
12 individually and on behalf of all others similarly  
situated,

13 Plaintiffs,

14 v.

15 The Neiman Marcus Group, LTD, LLC; and  
16 The Neiman Marcus Group, LLC,

17 Defendants.

Case No. CCC-17-562853

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS OF  
CALIFORNIA WAGE AND HOUR LAWS**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Ondrea Róces and Sophia Ahmed (“Plaintiffs”), individually and on behalf of all  
2 others similarly situated, by their attorneys at Outten & Golden LLP, allege, upon personal  
3 knowledge as to themselves and upon information and belief as to other matters, against  
4 Defendants The Neiman Marcus Group LTD, LLC and The Neiman Marcus Group, LLC  
5 (“Defendants” or “Neiman Marcus”) as follows:

6 **PRELIMINARY STATEMENT**

7 1. For four years prior to the filing of this Complaint, Neiman Marcus has  
8 systematically failed to compensate Plaintiffs and all other Sales Associates paid on a commission  
9 basis (“Sales Associates”) for the full amount of time they have worked at Neiman Marcus.  
10 Specifically, Neiman Marcus fails to pay Sales Associates for time performing non-commission-  
11 generating duties assigned by Neiman Marcus. This practice deprives Sales Associates of the  
12 wages to which they are rightfully entitled under the law and constitutes a violation of state law.

13 2. Plaintiffs are Sales Associates employed by Neiman Marcus, classified as exempt  
14 from the overtime requirements of state law. Plaintiffs bring this action on behalf of themselves  
15 and all other similarly situated Sales Associates who were paid on commission, and who work or  
16 worked for Neiman Marcus in the United States at any time during the applicable liability period  
17 (collectively, “Sales Associates”).

18 3. Although Plaintiffs and Sales Associates were paid exclusively by commission,  
19 they were routinely required to perform work that did not allow them to earn commission, and  
20 were not paid on an hourly basis for this work (“Non-Sell Tasks”). Specifically, Plaintiffs and  
21 Sales Associates spent these non-sales-commission-generating work periods (“Non-Sell Periods”)  
22 performing administrative or operational work duties unrelated to the direct earning of sales.  
23 These Non-Sell Periods regularly amounted to multiple hours of work each week. Because the  
24 store was not open, or because Plaintiffs and Sales Associates were unable to interact with clients  
25 or potential clients on the sales floor during Non-Sell Periods, Plaintiffs and other Sales  
26 Associates by definition could not have earned commission during Non-Sell Periods.

27 4. Neiman Marcus has unlawfully failed to pay Plaintiffs and Sales Associates an  
28 hourly wage for work performed during Non-Sell Periods. Plaintiffs and Sales Associates

1 performed unpaid hourly work, as defined by the applicable state laws, and are and have been  
2 entitled to hourly compensation at the appropriate rate for all hourly work performed.

3 5. Neiman Marcus has willfully refused to pay Plaintiffs and other Sales Associates  
4 the required hourly compensation for hourly work performed, and has failed to keep proper time  
5 records as required by the law.

6 6. Neiman Marcus operates dozens of luxury department stores across the country.

7 7. Neiman Marcus has employed Sales Associates at its retail locations nationwide.

8 8. By the conduct described herein, Neiman Marcus has willfully violated state law  
9 by failing to pay Sales Associates, including Plaintiffs, proper hourly wages as required by law.

10 9. **The California Class:** Plaintiffs also bring this action on behalf of themselves  
11 and all similarly situated current and former Sales Associates who worked for Neiman Marcus in  
12 California pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the California  
13 Labor Code §§ 201, 202, 203, 223, 226, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197 and 1198;  
14 California Wage Order 4-2001; and California Business and Professions Code §§ 17200 *et seq.*,  
15 and related regulations.

16 10. **The PAGA Group:** Plaintiff Roces also seeks to bring this action on behalf of  
17 herself and all similarly situated current and former Sales Associates who worked for Neiman  
18 Marcus in California to recover penalties pursuant to the Private Attorneys General Act of 2004  
19 (“PAGA”), Cal. Labor Code §§ 2698 *et seq.*, for violations of the California Labor Code §§ 201,  
20 202, 203, 223, 226, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197 and 1198, and California Wage  
21 Order No. 4-2001.

22 **JURISDICTION AND VENUE**

23 11. This Court has jurisdiction over Plaintiffs’ Labor Code claims under Cal. Civil  
24 Code 410.10 and the California Labor Code, Cal. Labor Code 200 *et seq.*

25 12. This Court has jurisdiction over Plaintiffs’ claims for civil penalties under the  
26 Private Attorney General Act, Cal. Labor Code § 2968 *et. seq.*

27 13. This Court has personal jurisdiction over this matter because Neiman Marcus  
28 maintains its headquarters in California, conducts substantial business activity in this state, and



1 engaged in the unlawful acts described herein in this state.

2 14. Venue is proper in this county under California Code of Civil Procedure § 395.5  
3 because a substantial part of the events and omissions giving rise to the claims alleged herein  
4 occurred in this county.

5 **THE PARTIES**

6 **Plaintiffs**

7 ***Plaintiff Ondrea Roces***

8 15. Plaintiff Ondrea Roces ("Roces") is a resident of Redwood City, California.

9 16. Roces worked for Neiman Marcus from approximately July 2014 to approximately  
10 December 2016 in Neiman Marcus's San Francisco, California location as a Sales Associate.

11 17. Roces regularly performed Non-Sell Tasks for which she was not paid an hourly  
12 wage. Specifically, during the week of September 21 through September 27, 2015, Roces worked  
13 approximately 4-5.5 hours of work performing Non-Sell Tasks for which she was not  
14 compensated.

15 18. Neiman Marcus failed to keep accurate, proper records of the hours that Roces  
16 worked as a Sales Associate.

17 ***Plaintiff Sophia Ahmed***

18 19. Plaintiff Sophia Ahmed ("Ahmed") is a resident of Inglewood, California.

19 20. Ahmed was employed by Neiman Marcus from approximately September 2015 to  
20 February 2016 in Neiman Marcus's San Francisco, California location as a Sales Associate.

21 21. Ahmed regularly performed Non-Sell Tasks for which she was not paid an hourly  
22 wage. Specifically, during the week of September 21 through September 27, 2015, Ahmed  
23 worked approximately 4.5 hours of work performing Non-Sell Tasks for which she was not  
24 compensated.

25 22. Neiman Marcus failed to keep accurate, proper records of the hours that Ahmed  
26 worked as a Sales Associate.

27 **Defendant The Neiman Marcus Group LTD, LLC**

28 23. The Neiman Marcus Group LTD, LLC is a Delaware corporation doing business

1 within San Francisco County in the State of California and maintains corporate headquarters in  
2 Dallas, Texas at One Marcus Square, 1618 Main Street.

3 24. The Neiman Marcus Group LTD, LLC operates dozens of luxury retail department  
4 stores across the country.

5 **Defendant The Neiman Marcus Group, LLC**

6 25. The Neiman Marcus Group, LLC is a Delaware corporation doing business within  
7 San Francisco County in the State of California and maintains corporate headquarters in Dallas,  
8 Texas at One Marcus Square, 1618 Main Street.

9 26. The Neiman Marcus Group, LLC operates dozens of luxury retail department  
10 stores across the country.

11 **GENERAL ALLEGATIONS**

12 27. Plaintiffs and Sales Associates are retail sales staff who work or worked for  
13 Neiman Marcus and are paid commission wages based on net sales. Plaintiffs and Sales  
14 Associates are required to clock in and out at the beginning and end of each work shift.

15 28. Plaintiffs' and Sales Associates' job duties involve selling retail products and  
16 services to clients, servicing client accounts, maintaining the cash register, cleaning and  
17 organizing their sales areas, and attending meetings, among other tasks.

18 29. Plaintiffs and Sales Associates are paid by commission. However, whenever their  
19 commissions fall below minimum wage, Neiman Marcus's policy and practice is to pay them an  
20 hourly rate.

21 30. Pursuant to a centralized, company-wide policy, pattern, and/or practice, Neiman  
22 Marcus has unlawfully failed to pay Plaintiffs and other Sales Associates hourly compensation for  
23 all work performed during Non-Sell Periods under federal and state laws, despite the fact that  
24 Plaintiffs and other Sales Associates were entitled to this compensation under federal and state  
25 laws.

26 31. As a result, Neiman Marcus has failed to pay Plaintiffs and other Sales Associates  
27 for all of their hours worked. Neiman Marcus has also failed to keep accurate and proper records  
28 of the hours that Plaintiffs and other Sales Associates worked.

1           32.     There are at least three categories of Non-Sell Periods for which Plaintiffs and  
2 Sales Associates are not compensated on an hourly basis. Plaintiffs and Sales Associates are only  
3 compensated on a commission basis for work performed during these Non-Sell Periods, despite  
4 the fact that they have no opportunity to earn commission during these periods:

5           a.     Plaintiffs and Sales Associates are routinely required to come into the store before  
6 the store opens in order to attend meetings, sign up for lunches, perform  
7 administrative work, and communicate with clients about product availability,  
8 pick-ups, and other logistical matters over text, email, or phone. Because the store  
9 remains closed during this time, Plaintiffs and Class Members are unable to earn  
10 commissions during this time. This period typically lasts approximately one hour  
11 per shift.

12           b.     When they are not working on a shift when the store opens for the day, Plaintiffs  
13 and Sales Associates are routinely required to spend time at the beginning of their  
14 shift in the backroom of the store, communicating with clients about product  
15 availability, pick-ups, and other logistical matters over text, email, or phone.  
16 Because, during this time, they are not allowed to work on the sales floor,  
17 Plaintiffs and Sales Associates are unable to earn commissions during this period.  
18 This period typically lasts approximately thirty minutes per shift.

19           c.     Plaintiffs and Sales Associates are routinely required to spend time after the store  
20 closes cleaning, performing administrative work, and organizing their sales areas.  
21 Because of the nature of the work and the fact that the store is closed, Plaintiffs  
22 and Sales Associates are unable to earn commissions during this time.

23           33.     Non-Sell Tasks cannot result in direct sales for Plaintiffs and Sales Associates,  
24 because Plaintiffs are logistically and/or physically restricted from working an active sales floor  
25 and thus from having any sales-generating contact with clients. Moreover, even the marketing  
26 activity that Plaintiffs and Sales Associates engage in and direct toward clients cannot result in  
27 direct sales because Plaintiffs and Sales Associates cannot consummate sales over the telephone  
28 or by text or email.

1 34. Because Non-Sell Tasks do not result in sales or earning commissions, Plaintiffs  
2 and Sales Associates are, in fact, not compensated for the time worked during Non-Sell Periods.

3 35. The hourly rates applicable to Plaintiffs ranged from \$12.50 per hour to \$13.00 per  
4 hour.

5 36. All Sales Associates have a set applicable hourly rate.

6 37. On information and belief, the policies and practices asserted herein apply to all  
7 Sales Associates throughout all of Neiman Marcus's stores across the United States.

8 38. All of the work that Plaintiffs and other Sales Associates have performed during  
9 Non-Sell Periods has been assigned by Neiman Marcus, and/or Neiman Marcus has been aware  
10 or should have been aware of all of the work that Plaintiffs and other Sales Associates have  
11 performed.

12 39. Neiman Marcus's policy and practice of failing to pay an hourly rate for work  
13 performed during Non-Sell Periods violates the California Labor Code, all of which require  
14 employers to compensate employees for all hours worked. Furthermore, the failure to pay full  
15 and accurate compensation to Plaintiffs and Sales Associates has created a benefit and windfall to  
16 Neiman Marcus to the detriment of Plaintiffs and Sales Associates, and constitutes an unlawful  
17 and unfair business practice in violation of the California Bus. & Prof. Code.

18 **CALIFORNIA CLASS ACTION ALLEGATIONS**

19 40. Plaintiffs bring the First through Sixth Causes of Action under Rule 23 of the  
20 Federal Rules of Civil Procedure on behalf of themselves and all Sales Associates who were paid  
21 on a commission-only basis and who have worked for Neiman Marcus anywhere in California on  
22 or after four years before the filing of the original complaint (the "California Class").

23 41. The persons in the California Class identified above are so numerous that joinder  
24 of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that  
25 Neiman Marcus has employed at least 100 persons who satisfy the definition of the California  
26 Class.

27 42. Neiman Marcus acted or refused to act on grounds generally applicable to the  
28 California Class, thereby making appropriate final injunctive relief or corresponding declaratory

1 relief with respect to the California Class as a whole.

2 43. There are questions of law and fact common to the California Class that  
3 predominate over any questions solely affecting individual members of the California Class,  
4 including but not limited to:

- 5 a. Whether Neiman Marcus has unlawfully failed to pay the California Class  
6 members all hourly compensation owed for hours worked during Non-Sell  
7 Periods, in violation of the California Labor Code and related regulations, Cal.  
8 Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1198; and Cal. Wage Order No.  
9 4-2001.;
- 10 b. Whether Neiman Marcus has unlawfully paid California Class members below  
11 the designated pay rate in violation of California Labor Code § 223;
- 12 c. Whether Neiman Marcus has unlawfully failed to keep and furnish the California  
13 Class members with accurate records of hours worked and compensation earned in  
14 violation of California Labor Code §§ 226 and 1174;
- 15 d. Whether Neiman Marcus has failed to timely pay certain California Class  
16 members all wages due upon discharge of those Class members in violation of  
17 California Labor Code §§ 201, 202, and 203;
- 18 e. Whether Neiman Marcus's employment of California Class members violates the  
19 California Unfair Competition Law, Cal. Bus & Prof. Code § 17200 *et seq.*;
- 20 f. The nature and extent of the California Class members' injuries and the  
21 appropriate measure of their damages.

22 44. Plaintiffs' claims are typical of the claims of the California Class members they  
23 seek to represent. Plaintiffs and the California Class members worked or work for Neiman  
24 Marcus as Sales Associates in California and have been subjected to Neiman Marcus's policy and  
25 pattern or practice of failing to pay hourly compensation for all hours worked during Non-Sell  
26 Periods. Neiman Marcus acted and refused to act on grounds generally applicable to the  
27 California Class, thereby making declaratory relief with respect to the California Class  
28 appropriate.

1           45.     Plaintiffs will fairly and adequately represent and protect the interests of the  
2 California Class. Plaintiffs understand that, as class representatives, they assume a fiduciary  
3 responsibility to the California Class members to represent their interests fairly and adequately.  
4 Plaintiffs recognize that as class representatives, they must represent and consider the interests of  
5 the California Class just as they would represent and consider their own interests. Plaintiffs  
6 understand that in decisions regarding the conduct of the litigation and its possible settlement,  
7 they must not favor their own interests over those of the California Class. Plaintiffs recognize  
8 that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must  
9 be in the best interests of the California Class. Plaintiffs understand that in order to provide  
10 adequate representation, they must remain informed of developments in the litigation, cooperate  
11 with class counsel by providing them with information and any relevant documentary material in  
12 their possession, and testify, if required, in a deposition and in trial.

13           46.     Plaintiffs have retained counsel competent and experienced in complex class  
14 action employment cases like this one.

15           47.     A class action is superior to other available methods for the fair and efficient  
16 adjudication of this litigation – particularly in the context of wage litigation like the present  
17 action, where the individual Plaintiffs may lack the financial resources to vigorously prosecute a  
18 lawsuit in federal court against a corporate defendant. The California Class members have been  
19 damaged and are entitled to recovery as a result of Neiman Marcus’s common and uniform  
20 policies, practices, and procedures. Although the relative damages suffered by individual  
21 members of the California Class are not *de minimis*, such damages are small compared to the  
22 expense and burden of individual prosecution of this litigation. In addition, class treatment is  
23 superior because it will obviate the need for unduly duplicative litigation that might result in  
24 inconsistent judgments about Neiman Marcus’s practices.

25           48.     This action is properly maintainable as a class action under Federal Rule of Civil  
26 Procedure 23(b)(3).

27                           **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

28           49.     Plaintiff Rocés intends to bring the Sixth Cause of Action on behalf of herself and

1 all Sales Associates who were paid on a commission-only basis and who have worked for Neiman  
2 Marcus in California on or after one year before the filing of the PAGA notice (the “PAGA  
3 Group”).

4 50. This action is suitable for adjudication as a PAGA claim on a representative basis,  
5 with or without the additional claims asserted herein.

6 **FIRST CAUSE OF ACTION**

7 **California Wage Order No. 4-2001; California Labor**  
8 **Code §§ 1182.12, 1194, 1194.2, 1197 and 1198: Nonpayment of Wages**  
9 **Brought by Plaintiffs Individually and on Behalf of the California Class**

10 51. Plaintiffs reallege and incorporate by reference all allegations in all preceding  
11 paragraphs.

12 52. California law, including the California Labor Code and the applicable Wage  
13 Order, requires employers, such as Neiman Marcus, to pay minimum wage to all non-exempt  
14 employees for all hourly work performed.

15 53. Plaintiffs and the California Class members are non-exempt employees entitled to  
16 be paid hourly compensation for all hours worked.

17 54. At all relevant times, Plaintiffs and the California Class members performed  
18 hourly work for which they were not compensated on an hourly basis.

19 55. At all relevant times, Neiman Marcus failed and refused to pay Plaintiffs and the  
20 California Class members hourly compensation for all of their hours worked.

21 56. Plaintiffs and California Class members are therefore entitled to recover their  
22 individual hourly rates, or in the alternative, the applicable minimum wage, to compensate  
23 Plaintiff and California Class members for all Non-Sell Periods worked, plus interest on the  
24 amount owing.

25 57. As a direct and proximate result of Neiman Marcus’s unlawful conduct, as set  
26 forth herein, Plaintiffs and the California Class members have sustained damages, including loss  
27 of earnings for hourly work performed for the benefit of Neiman Marcus in an amount to be  
28 established at trial, prejudgment interest, and costs and attorneys’ fees, pursuant to statute and  
other applicable law.

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**SECOND CAUSE OF ACTION**

**California Wage Order No. 4-2001; California Labor Code § 223;  
Payment of Wages Below Designated Rate  
Brought by Plaintiffs Individually and on Behalf of the California Class**

58. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

59. California Labor Code § 223 provides in relevant part: “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

60. Plaintiffs and the California Class members are non-exempt employees entitled to be paid hourly compensation for all hours worked.

61. At all relevant times, Plaintiffs and the California Class members performed hourly work for which they were not compensated on an hourly basis.

62. At all relevant times, Neiman Marcus failed and refused to pay Plaintiffs and the California Class members hourly compensation for all of their hours worked.

63. Thus, Neiman Marcus failed to maintain the designated wage scale required by California law, i.e., failed to pay Plaintiffs and the California Class members the hourly compensation to which they were entitled.

64. As a direct and proximate result of Neiman Marcus’s unlawful conduct, as set forth herein, Plaintiffs and the California Class members have sustained damages, including loss of earnings for hourly work performed for the benefit of Neiman Marcus in an amount to be established at trial, prejudgment interest, and costs and attorneys’ fees, pursuant to statute and other applicable law.

**THIRD CAUSE OF ACTION**

**California Wage Order No. 4-2001; California Labor Code §§ 226, 1174, & 1174.5:  
Record-Keeping and Wage Statement Violations  
Brought by Plaintiffs Individually and on Behalf of the California Class**

65. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.



1 66. Neiman Marcus knowingly and intentionally failed to provide timely, accurate,  
2 itemized wage statements including, inter alia, all hours worked, to Plaintiffs and the California  
3 Class members in accordance with California Wage Order No. 4-2001 and California Labor Code  
4 § 226(a). Such failure caused injury to Plaintiffs and the California Class members, by, among  
5 other things, impeding them from knowing the amount of wages to which they are and were  
6 entitled.

7 67. At all times relevant herein, Neiman Marcus has failed to maintain accurate  
8 records of hours worked by Plaintiffs and the California Class members as required under Labor  
9 Code § 1174(d).

10 68. Plaintiffs and the California Class members are entitled to and seek injunctive  
11 relief requiring Neiman Marcus to comply with California Labor Code §§ 226(a) and 1174(d),  
12 and further seek the amount provided under California Labor Code §§ 226(e) and 1174.5,  
13 including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which  
14 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent  
15 pay period.

16 **FOURTH CAUSE OF ACTION**

17 **California Wage Order No. 4-2001; California Labor Code §§ 201, 202, and 203:**  
18 **Failure to Timely Pay Wages Upon Discharge**  
19 **Brought by Plaintiffs Individually and on Behalf of the California Class**

20 69. Plaintiffs reallege and incorporate by reference all allegations in all preceding  
21 paragraphs.

22 70. California Labor Code §§ 201 and 202 require employers to pay their employees  
23 all wages due within the time specified by law. California Labor Code § 203 provides that if an  
24 employer willfully fails to timely pay such wages, the employee must, as a penalty, continue to  
25 pay the subject employees' wages until the back wages are paid in full or an action is  
26 commenced, up to a maximum of thirty days of wages.

27 71. Plaintiffs and the California Class who ceased employment with Neiman Marcus  
28 are entitled to unpaid hourly compensation, but to date have not received such compensation.

72. More than thirty days have passed since Plaintiffs and certain California Class

1 Members left Neiman Marcus's employ.

2 73. As a consequence of Neiman Marcus's willful conduct in not paying compensation  
3 for all hours worked, Plaintiffs and California Class Members whose employment ended during  
4 the class period are entitled to thirty days' wages under California Labor Code § 203, together  
5 with interest thereon and attorneys' fees and costs.

6 **FIFTH CAUSE OF ACTION**

7 **California Business & Professions Code §§ 17200 *et seq.*: Unfair Competition**  
8 **Brought by Plaintiffs Individually and on Behalf of the California Class**

9 74. Plaintiffs reallege and incorporate by reference all allegations in all preceding  
10 paragraphs.

11 75. The foregoing conduct, as alleged, violates the California Unfair Competition Law  
12 ("UCL"). The UCL prohibits unfair competition by prohibiting, inter alia, any unlawful or unfair  
13 business acts or practices.

14 76. Beginning at a date unknown to Plaintiffs, but at least as long ago as four years  
15 prior to the filing of the Complaint, Neiman Marcus committed, and continue to commit, acts of  
16 unfair competition, as defined by the UCL, by, among other things, engaging in the acts and  
17 practices described herein. Neiman Marcus's conduct as alleged herein has injured Plaintiffs and  
18 the California Class members by wrongfully denying them earned wages, and therefore was  
19 substantially injurious to them.

20 77. Neiman Marcus engaged in unfair competition in violation of the UCL by  
21 violating, inter alia, each of the following laws. Each of these violations constitutes an  
22 independent and separate violation of the UCL:

- 23 a. California Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1198;  
24 b. California Labor Code § 223;  
25 c. California Labor Code §§ 226, 1174, and 1174.5;  
26 d. California Labor Code §§ 201, 202, and 203.

27 78. Neiman Marcus's course of conduct, acts, and practices in violation of the  
28 California laws mentioned in the above paragraph constitute a separate and independent violation

1 of the UCL. Neiman Marcus's conduct described herein violates the policy or spirit of such laws  
2 or otherwise significantly threatens or harms competition.

3 79. The unlawful and unfair business practices and acts of Neiman Marcus, described  
4 above, have injured Plaintiffs and the California Class members in that they were wrongfully  
5 denied the payment of earned hourly compensation.

6 80. Plaintiffs, on behalf of themselves and the California Class, seek recovery of  
7 attorneys' fees and costs of this action to be paid by Neiman Marcus, as provided by the UCL and  
8 California Labor Code §§ 218, 218.5, and 1194.

9 81. Plaintiffs, on behalf of themselves and the California Class, seek restitution in the  
10 amount of the respective unpaid wages earned and due.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of California's Private Attorneys General Act;**  
13 **Cal. Labor Code §§ 2699 *et seq.***  
14 **Brought by Plaintiff Roces Individually and on Behalf of**  
15 **All Aggrieved Employees and the General Public**

16 82. Plaintiff Roces realleges and incorporates by reference all allegations in all  
17 preceding paragraphs.

18 83. California's Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.*  
19 ("PAGA"), provides that an aggrieved employee may bring a civil action on behalf of such  
20 employee and other current and former employees as well as the general public to recover for any  
21 violation of a provision of the California Labor Code, which provides for a civil penalty to be  
22 assessed and collected by the California Labor and Workforce Development Agency, or any of its  
23 departments, divisions, commissions, boards, agencies or employees (collectively, the "LWDA").  
24 The group of aggrieved employees on whose behalf this claim is asserted is referred to herein as  
25 the "PAGA Group."

26 84. Whenever the LWDA has discretion to assess a civil penalty, a court in a civil  
27 action is authorized pursuant to PAGA to exercise the same discretion to assess a civil penalty on  
28 behalf of aggrieved employees, subject to the same limitations and conditions.

85. Plaintiff Roces and the other members of the PAGA Group are "aggrieved

1 employees,” as defined by the California Labor Code, § 2699(c) in that they are all current or  
2 former employees of Neiman Marcus, and one or more of the alleged violations was committed  
3 against them.

4 86. Plaintiff Rocés, on behalf of the PAGA Group and the general public, in her  
5 capacity as a private attorney general, intends to seek penalties under the California Labor Code  
6 and PAGA for the violations alleged against Neiman Marcus in this complaint under California  
7 state law.

8 87. Specifically, in such capacity, Plaintiff Rocés alleges the following violations and  
9 associated penalties:

- 10 a. Failure to Pay Wages: Neiman Marcus failed to pay all hourly wages due to  
11 Plaintiff Rocés and the PAGA Group, in violation of California Wage Order No.  
12 4-2001 and Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198, as  
13 detailed herein.
- 14 b. Payment of Wages Below Designated Rate: Neiman Marcus unlawfully paid  
15 Plaintiff Rocés and the PAGA Group at below the designated rate in violation of  
16 California Wage Order No. 4-2001 and Cal. Labor Code § 223, as detailed herein.
- 17 c. Failure to Provide Complete and Accurate Wage Statements: Neiman Marcus  
18 failed to provide complete and accurate wage statements containing all wages due  
19 to Plaintiff Rocés and the PAGA Group, in violation of California Wage Order No.  
20 4-2001 and Cal. Labor Code § 226(a), as detailed herein.
- 21 d. Failure to Keep Accurate Payroll Records: Neiman Marcus failed to provide  
22 complete and accurate wage statements regarding all wages due to Plaintiff Rocés  
23 and the PAGA Group, in violation of California Wage Order No. 4-2001 and Cal.  
24 Labor Code § 1174 *et seq.*, as detailed herein.
- 25 e. Failure to Timely Pay Wages Due Upon Discharge: Neiman Marcus failed to  
26 timely pay all wages due to Plaintiff Rocés and certain members of the PAGA  
27 Group in violation of California Wage Order No. 4-2001 and Cal. Labor Code  
28 § 201-203, as detailed herein.

1           88.     These failures by Neiman Marcus were willful and constitute a violation of PAGA,  
2 thereby entitling Plaintiff Rocés to recover penalties under the California Labor Code §§ 558 and  
3 2599, *et seq.*

4           89.     Pursuant to the California Labor Code § 2699(a), (f) and (g) and related  
5 provisions, Plaintiff Rocés, as a private attorney general on behalf of the PAGA Group and the  
6 general public, intends to request and will be entitled to recover penalties against Neiman Marcus,  
7 jointly and severally, for each member of the PAGA Group per pay period for the initial violation  
8 and for each member of the PAGA Group per pay period for each subsequent violation, subject to  
9 any applicable cap.

10          90.     On July 18, 2017, Plaintiff Rocés provided notice of the legal claims and theories  
11 of this case to the LWDA online. Plaintiff Rocés also provided notice by certified mail to  
12 Neiman Marcus. At least sixty-five days have elapsed since Plaintiff Rocés provided notice to  
13 the LWDA of her legal claims and theories, and the LWDA has not provided notice of their intent  
14 to investigate Plaintiff Rocés' claims. Plaintiff Rocés is therefore empowered to commence a  
15 civil action at this time pursuant to California Labor Code 2699.3(a)(2)(A).

16          91.     Pursuant to the California Labor Code § 2699(i), civil penalties recovered by the  
17 PAGA Group shall be distributed as follows: seventy-five percent to the LWDA and twenty-five  
18 percent to the aggrieved employees.

19          92.     Furthermore, Plaintiff Rocés, as a private attorney general on behalf of all other  
20 aggrieved employees, intends to request and will be entitled to recover from Neiman Marcus,  
21 jointly and severally, interest, attorney's fees and costs pursuant to California Labor Code §§ 210,  
22 218.5, 1194(a), and 2699.

23                                 **PRAYER FOR RELIEF**

24           **WHEREFORE**, Plaintiffs, individually and on behalf of all other similarly situated  
25 persons, pray for the following relief:

- 26           A.     Certification of the California Class pursuant to Rule 23 of the Federal Rules of  
27                 Civil Procedure;
- 28           B.     Designation of this action as a PAGA action on behalf of the PAGA Group

1 pursuant to Cal. Labor Code §§ 2698 *et seq.*;

- 2 C. Designation of Plaintiffs as Class Representatives of the California Class;
- 3 D. Designation of Plaintiff Rocas as Representative of the PAGA Group;
- 4 E. A declaratory judgment that the practices complained of herein are unlawful under
- 5 California Labor Code, and UCL;
- 6 F. An award of damages, according to proof, including liquidated damages, to be
- 7 paid by Neiman Marcus;
- 8 G. Pre-judgment and post-judgment interest, as provided by law;
- 9 H. Service awards for the Class Representatives in recognition of the time, effort, and
- 10 risk they incurred in bringing this action and as compensation for the value they
- 11 have provided to the Class members;
- 12 I. Attorneys' fees and costs of action incurred herein, including expert fees; and
- 13 J. Such other relief as this Court deems just and proper.

14 **DEMAND FOR TRIAL BY JURY**

15 Plaintiffs demand a trial by jury on all questions of fact raised by the Class Action

16 Complaint.

17 Respectfully submitted,

18 Dated: December 5, 2017

/s/ Jahan C. Sagafi  
Jahan C. Sagafi

19  
20 Jahan C. Sagafi (Cal. Bar No. 224887)  
21 Relic Sun (Cal. Bar No. 306701)  
22 OUTTEN & GOLDEN LLP  
23 One Embarcadero Center, 38th Floor  
24 San Francisco, CA 94111  
25 Telephone: (415) 638-8800  
26 Facsimile: (415) 638-8810  
27 Email: [jsagafi@outtengolden.com](mailto:jsagafi@outtengolden.com)  
28 Email: [rsun@outtengolden.com](mailto:rsun@outtengolden.com)

*Attorneys for Plaintiffs and proposed Class  
Members*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jahan C. Sagafi (SBN 224887); Relic Sun (SBN 306701) OUTTEN & GOLDEN LLP One Embarcadero Center, 38th Floor San Francisco, CA 94111 TELEPHONE NO: (415) 638-8800 FAX NO: (415) 638-8810 ATTORNEY FOR (Name): Plaintiffs Ondrea Roces, Sophia Ahmed	FOR COURT USE ONLY  <b>ENDORSED FILED</b> San Francisco County Superior Court  DEC 05 2017  CLERK OF THE COURT BY: <u>NEYL WEBB</u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civil Complex Division	
CASE NAME: Ondrea Roces, Sophia Ahmed v. The Neiman Marcus Group, et al.	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: <b>CGC-17-562359</b>  JUDGE:  DEPT:

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

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

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

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive

4. Number of causes of action (specify): 6

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: December 5, 2017  
 Jahan C. Sagafi \_\_\_\_\_  
(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.





CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**  
 The party or parties request  a jury trial  a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**  
 a.  The trial has been set for (date):  
 b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**  
 The party or parties estimate that the trial will take (check one):  
 a.  days (specify number):  
 b.  hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**  
 The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:  
 a. Attorney:  
 b. Firm:  
 c. Address:  
 d. Telephone number: f. Fax number:  
 e. E-mail address: g. Party represented:  
 Additional representation is described in Attachment 8.

9. **Preference**  
 This case is entitled to preference (specify code section):

10. **Alternative dispute resolution (ADR)**  
 a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.  
 (1) For parties represented by counsel: Counsel  has  has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.  
 (2) For self-represented parties: Party  has  has not reviewed the ADR information package identified in rule 3.221.  
 b. **Referral to judicial arbitration or civil action mediation (if available).**  
 (1)  This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.  
 (2)  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
 (3)  This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10 c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form are willing to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled. <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (specify):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**11. Insurance**

- a.  Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (*explain*):

**12. Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

Bankruptcy:  Other (*specify*):

Status:

**13. Related cases, consolidation, and coordination**

- a.  There are companion, underlying, or related cases.
  - (1) Name of case:
  - (2) Name of court:
  - (3) Case number:
  - (4) Status:
- Additional cases are described in Attachment 13a.
- b.  A motion to  consolidate  coordinate will be filed by (*name party*):

**14. Bifurcation**

The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

**15. Other motions**

The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

**16. Discovery**

- a.  The party or parties have completed all discovery.
  - b.  The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

c.  The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. **Economic litigation**

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. **Other issues**

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. **Meet and confer**

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

CASE NUMBER: CGC-17-562858 ONDREA ROCES VS. THE NEIMAN MARCUS GROUP, LTD

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE: MAY-09-2018**  
**TIME: 10:30AM**  
**PLACE: Department 610**  
**400 McAllister Street**  
**San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org) under Online Services.**

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.  
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

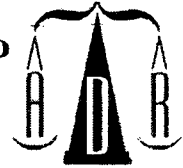
**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



## Superior Court of California, County of San Francisco Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

### WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

### WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

### HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or [www.sfbar.org/adr](http://www.sfbar.org/adr) for more information.

**For more information about ADR programs or dispute resolution alternatives, contact:**

Superior Court Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
415-551-3869

**Or, visit the court ADR website at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)**

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below:

## 1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

**(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP):** ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

**Operation:** Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: [www.sfbar.org/esp](http://www.sfbar.org/esp).

**Cost:** BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email [adr@sfbar.org](mailto:adr@sfbar.org) or see enclosed brochure.

**(B) MANDATORY SETTLEMENT CONFERENCES:** Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

## 2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

**(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO,** in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

**Operation:** Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at [www.sfbar.org/mediation](http://www.sfbar.org/mediation) or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management. Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

**Cost:** BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email [adr@sfbar.org](mailto:adr@sfbar.org) or see the enclosed brochure.

**(B) JUDICIAL MEDIATION** provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at anytime throughout the litigation process.

**Operation:** Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge for the Judicial Mediation program.

**(C) PRIVATE MEDIATION:** Although not currently a part of the court's ADR program, parties may elect any private mediator of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

### 3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

**(A) JUDICIAL ARBITRATION:** When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

**Operation:** Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. There is no cost to the parties for judicial arbitration.

**(B) PRIVATE ARBITRATION:** Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF.





# Superior Court of California County of San Francisco



**HON. TERI L. JACKSON**  
PRESIDING JUDGE

## Judicial Mediation Program

**JENIFFER B. ALCANTARA**  
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Suzanne R. Bolanos  
The Honorable Andrew Y.S. Cheng  
The Honorable Samuel K. Feng  
The Honorable Curtis E.A. Karnow  
The Honorable Charlene P. Kiesselbach  
The Honorable Stephen M. Murphy

The Honorable Joseph M. Quinn  
The Honorable James Robertson, II  
The Honorable John K. Stewart  
The Honorable Richard B. Ulmer, Jr.  
The Honorable Mary F. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed due to the judge's availability, every effort will be made to fulfill the parties' choice for a particular judge. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
(415) 551-3869

**EJT-001-INFO Expedited Jury Trial Information Sheet**

This information sheet is for anyone involved in a civil lawsuit who will be taking part in an **expedited jury trial**—a trial that is shorter and has a smaller jury than a traditional jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.29 and in rules 3.1545–3.1553 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. The rules are at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

**1 What is an expedited jury trial?**

An expedited jury trial is a short trial, generally lasting only one or two days. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- **The trial will be shorter.** Each side has 5 hours to pick a jury, put on all its witnesses, show the jury its evidence, and argue its case.
- **The jury will be smaller.** There will be 8 jurors instead of 12.
- **Choosing the jury will be faster.** The parties will exercise fewer challenges.

**2 What cases have expedited jury trials?**

- **Mandatory expedited jury trials.** All limited civil cases—cases where the demand for damages or the value of property at issue is \$25,000 or less—come within the *mandatory expedited jury trial* procedures. These can be found in the Code of Civil Procedure, starting at section 630.20. Unless your case is an unlawful detainer (eviction) action, or meets one of the exceptions set out in the statute, it will be within the expedited jury trial procedures. These exceptions are explained more in **7** below.
- **Voluntary expedited jury trials.** If your civil case is not a limited civil case, or even if it is, you can choose to take part in a *voluntary expedited jury trial*, if all the parties agree to do so. Voluntary expedited jury trials have the same shorter time frame and smaller jury that the

mandatory ones do, but have one other important aspect—**all parties must waive their rights to appeal**. In order to help keep down the costs of litigation, there are no appeals following a *voluntary* expedited jury trial except in very limited circumstances. These are explained more fully in **9**.

**3 Will the case be in front of a judge?**

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney that the court appoints to act as a judge) will handle the trial.

**4 Does the jury have to reach a unanimous decision?**

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

**5 Is the decision of the jury binding on the parties?**

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties in an expedited jury trial, like in other kinds of trials, are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as "high/low agreements." You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

**6 How else is an expedited jury trial different?**

The goal of the expedited jury trial process is to have shorter and less expensive trials.

- The cases that come within the mandatory expedited jury trial procedures are all limited civil actions, and they must proceed under the limited discovery and



**EJT-001-INFO Expedited Jury Trial Information Sheet**

pretrial rules that apply to those actions. See Code of Civil Procedure sections 90–100.

- The voluntary expedited jury trial rules set up some special procedures to help those cases have shorter and less expensive trials. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties in either kind of expedited jury trial can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need the jury to decide. The parties can agree to modify many of the rules that apply to trials generally or to any pretrial aspect of the expedited jury trials.

**7 Do I have to have an expedited jury trial if my case is for \$25,000 or less?**

Not always. There are some exceptions.

- The mandatory expedited jury trial procedures do not apply to any unlawful detainer or eviction case.
- Any party may ask to opt out of the procedures if the case meets any of the criteria set out in Code of Civil Procedure section 630.20(b), all of which are also described in item 2 of the *Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-003). Any request to opt out must be made on that form, and it must be made within a certain time period, as set out in Cal. Rules of Court, rule 3.1546(c). Any opposition must be filed within 15 days after the request has been served.

*The remainder of this information sheet applies only to voluntary expedited jury trials.*

**8 Who can take part in a voluntary expedited jury trial?**

The process can be used in any civil case that the parties agree may be tried in one or two days. To have a voluntary expedited jury trial, both sides must want one. Each side must agree to all the rules described in **1** and to waive most appeal rights. The agreements between the parties must be put into writing in a

document called *[Proposed] Consent Order for Voluntary Expedited Jury Trial*, which will be submitted to the court for approval. (Form EJT-020 may be used for this.) The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

**9 Why do I give up most of my rights to an appeal in a voluntary expedited jury trial?**

To keep costs down and provide a faster end to the case, all parties who agree to take part in a voluntary expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

**10 Can I change my mind after agreeing to a voluntary expedited jury trial?**

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in a voluntary expedited jury trial, that agreement is binding on both sides. It can be changed only if **both** sides want to change it or stop the process or if a court decides there are good reasons the voluntary expedited jury trial should not be used in the case. This is why it is important to talk to your attorney **before** agreeing to a voluntary expedited jury trial. This information sheet does not cover everything you may need to know about voluntary expedited jury trials. It only gives you an overview of the process and how it may affect your rights. **You should discuss all the points covered here and any questions you have about expedited jury trials with an attorney before agreeing to a voluntary expedited jury trial.**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address)	<b>FOR COURT USE ONLY</b>
TELEPHONE NO.: _____ ATTORNEY FOR (Name): _____	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER: _____  DEFENDANT/RESPONDENT: _____	
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>	CASE NUMBER: _____  DEPARTMENT 610

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- Early Settlement Program of the Bar Association of San Francisco (BASF)** - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$295 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. [www.sfbar.org/esp](http://www.sfbar.org/esp)
- Mediation Services of BASF** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. [www.sfbar.org/mediation](http://www.sfbar.org/mediation)
- Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)
- Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)

Judge Requested (see list of Judges currently participating in the program): \_\_\_\_\_

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

- 30-90 days     90-120 days     Other (please specify) \_\_\_\_\_

Other ADR process (describe) \_\_\_\_\_

2) The parties agree that the ADR Process shall be completed by (date): \_\_\_\_\_

3) Plaintiff(s) and Defendant(s) further agree as follows:

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

\_\_\_\_\_  
Signature of Party or Attorney

- Plaintiff     Defendant     Cross-defendant

- Plaintiff     Defendant     Cross-defendant

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Additional signature(s) attached

**EXHIBIT B**

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10 Attorneys for Defendants  
THE NEIMAN MARCUS GROUP LLC and  
11 NEIMAN MARCUS GROUP LTD LLC

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SAN FRANCISCO**  
15 **UNLIMITED CIVIL JURISDICTION**

16 ONDREA ROCES and SOPHIA AHMED,  
17 individually and on behalf of all others  
similarly situated,

18 Plaintiffs,

19 v.

20 THE NEIMAN MARCUS GROUP, LTD,  
21 LLC; and THE NEIMAN MARCUS  
GROUP, LLC,

22 Defendants.

**CASE NO. CGC-17-562858**

**CLASS ACTION**

**ANSWER OF DEFENDANTS NEIMAN  
MARCUS GROUP LTD LLC AND THE  
NEIMAN MARCUS GROUP LLC TO  
PLAINTIFFS' COMPLAINT**

1 Defendants The Neiman Marcus Group LLC and Neiman Marcus Group LTD LLC  
2 (“Defendants”), hereby answer the Complaint (“Complaint”) of Plaintiffs Ondrea Roces and  
3 Sophia Ahmed, on behalf of themselves and all others similarly situated (“Plaintiffs”) in the  
4 above-captioned case as follows:

5 **General Denial**

6 Pursuant to the provisions of California Code of Civil Procedure § 431.30(d), Defendants  
7 deny, generally and specifically, each and every allegation, statement, matter and each purported  
8 cause of action contained in the unverified Complaint filed by Plaintiffs and, without limiting the  
9 generality of the foregoing, denies, generally and specifically, that Plaintiffs, or any of those they  
10 seek to represent, have been damaged in the manner or sums alleged, or in any way at all, by  
11 reason of any acts or omissions of Defendants.

12 In further answer to the Complaint, Defendants assert the following affirmative and other  
13 defenses. Defendants reserve the right to amend or supplement its answer and/or defenses as may  
14 be warranted by the information developed through subsequent discovery. Nothing stated herein  
15 constitutes a concession as to whether or not Plaintiffs or Defendants bear the burden of proof on  
16 any issue.

17 **FIRST DEFENSE**

18 **(Arbitration Agreement – All Claims)**

19 Plaintiffs are bound by the terms of a valid, enforceable arbitration agreement that covers  
20 the claims asserted in the Complaint. Further, Plaintiffs’ arbitration agreements bar them from  
21 proceeding as a party or class member in any purported class proceeding, and Plaintiffs are thus  
22 required to individually arbitrate their class claims alleged in the Complaint.

23 **SECOND DEFENSE**

24 **(No Employment Relationship – All Claims –**  
25 **Defendant Neiman Marcus Group LTD LLC)**

26 Plaintiffs’ claims, and the claims of those they seek to represent, are barred, in whole or in  
27 part, because they were not employed by Defendant Neiman Marcus Group LTD LLC at any time  
28 relevant to the allegations in the Complaint.

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**THIRD DEFENSE**

**(Failure to State a Claim – All Claims)**

The Complaint fails to allege facts sufficient to state a cause of action against Defendants and further fails to allege facts sufficient to entitle Plaintiffs and/or those they seek to represent to the relief sought, or to any other relief whatsoever from Defendants.

**FOURTH DEFENSE**

**(Statute of Limitations – All Claims)**

Plaintiffs’ claims, and the claims of those they seek to represent, are barred, in whole or in part, by applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure §§ 338, 339 and 340, California Labor Code § 203, and California Business and Professions Code § 17208.

**FIFTH DEFENSE**

**(Release – All Claims)**

Plaintiffs’ claims, and the claims of those they seek to represent, are barred by the doctrine of release because Plaintiffs and/or some or all of those they seek to represent have released their claims.

**SIXTH DEFENSE**

**(Res Judicata/Collateral Estoppel – All Claims)**

Some or all of Plaintiffs’ claims are barred, in whole or in part, because Plaintiffs and/or some or all of those they seek to represent in this case are or may be members of a settlement class that covers the claims alleged in this Complaint.

**SEVENTH DEFENSE**

**(Accord and Satisfaction – All Claims)**

The claims of some of those Plaintiff seeks to represent, are barred in whole or part by reason of release, settlement, payment or accord and satisfaction.

**EIGHTH DEFENSE**

**(Laches, Waiver, Unclean Hands and Estoppel – All Claims)**

The Complaint, and each and every claim alleged therein, is barred by the doctrines of



1 laches, waiver, unclean hands and/or estoppel.

2 **NINTH DEFENSE**

3 **(No Penalties or Premium Pay – First, Second, Third, Fourth, and Sixth Claims)**

4 Plaintiffs are not entitled to any penalty award under Labor Code Section 203, Labor Code  
5 Section 226, California's Private Attorney General Act, or any penalty or premium under any  
6 other Section of the Labor Code since, at all times relevant and material herein, Defendants did  
7 not willfully fail to comply with the compensation provisions of California Labor Code § 200 *et*  
8 *seq.*, but rather acted in good faith and had reasonable grounds for believing that they did not  
9 violate the compensation provisions of the California Labor Code.

10 **TENTH DEFENSE**

11 **(Injunctive Relief Improper – All Claims)**

12 Plaintiffs' claims for injunctive relief are barred because Plaintiffs have an adequate and  
13 complete remedy at law, and/or Plaintiffs cannot make the requisite showing to obtain injunctive  
14 relief in a labor dispute under California Labor Code § 1138.1, *et seq.*

15 **ELEVENTH DEFENSE**

16 **(Failure to Follow Instructions/Policy Violations – All Claims)**

17 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs and some or all of  
18 those they seek to represent failed to follow Defendants' instructions and/or violated some or of  
19 all of Defendants' policies.

20 **TWELFTH DEFENSE**

21 **(No Willfulness – All Claims)**

22 Plaintiffs and those they seek to represent are not entitled to the relief requested in the  
23 Complaint because, even if unlawful actions occurred, which Defendants deny, such conduct was  
24 prohibited by Defendants' policies and was not committed, countenanced, or ratified or approved  
25 by Defendants' managing agents.

26 **THIRTEENTH DEFENSE**

27 **(*De Minimus* Time Periods – First, Second, Fifth, and Sixth Claims)**

28 Plaintiffs' causes of action are barred, in whole or in part, because the time periods for

1 which they are claiming entitlement fall within the *de minimus* exception.

2 **FOURTEENTH DEFENSE**

3 **(Good Faith Dispute – Fourth, Fifth, and Sixth Claims)**

4 The claim for failure to pay wages upon termination should be denied because a good  
5 faith dispute exists as to whether any wages are due.

6 **FIFTEENTH DEFENSE**

7 **(Payment – All Claims)**

8 Plaintiffs' claims are barred because Plaintiffs and those they seek to represent have been  
9 paid all wages due and owed.

10 **SIXTEENTH DEFENSE**

11 **(Standing – All Claims)**

12 Plaintiffs' claims are barred because Plaintiffs, and each of them, lack standing to assert  
13 them.

14 **SEVENTEENTH DEFENSE**

15 **(Violation of Due Process – All Claims)**

16 California Business and Professions Code §§ 17203 and 17204 and the Labor Code  
17 Private Attorney General Act violate the Due Process Clauses of the United States and California  
18 Constitutions to the extent that the standards of liability under those statutes are unduly vague and  
19 subjective, and permit retroactive, random, arbitrary and capricious punishment that serves no  
20 legitimate governmental interest.

21 **EIGHTEENTH DEFENSE**

22 **(Set Off – All Claims)**

23 Defendants are entitled to setoff, and/or to recoup, any monies paid to Plaintiffs and/or  
24 those they seek to represent that are in excess of amounts owed, if any.

25 **NINETEENTH DEFENSE**

26 **(Failure to Exhaust Administrative Remedies – Sixth Claim)**

27 Plaintiffs' claims are barred to the extent that they have failed to properly exhaust  
28 available administrative remedies, and/or have otherwise failed to take those steps that are

1 prerequisites to filing the Complaint.

2 **TWENTIETH DEFENSE**

3 **(Lack of a Competitive Injury – All Claims)**

4 Plaintiffs lack standing under Business and Professions Code Section 17200 *et seq.*,  
5 because neither they nor the alleged class have suffered a competitive injury.

6 **TWENTY-FIRST DEFENSE**

7 **(No Retroactivity – All Claims)**

8 To the extent that certain or all of Plaintiffs' claims rely in any part on statutory  
9 amendments or additions during the class or collective period, those amendments and additions  
10 are not retroactive and bar Plaintiffs' claims in whole or in part.

11 **TWENTY-SECOND DEFENSE**

12 **(No Civil Penalties – All Claims)**

13 Plaintiffs' claims for civil penalties are barred because recovery of civil penalties would  
14 result in an award that is unjust, arbitrary and oppressive, or confiscatory.

15 **TWENTY-THIRD DEFENSE**

16 **(Proceedings in the Form of a Class or Representative Action – All Claims)**

17 Plaintiffs are not entitled to class action certification because Plaintiffs cannot satisfy the  
18 requirements for bringing a class action and Plaintiffs cannot adequately represent the interests of  
19 potential class members.

20 **TWENTY-FOURTH DEFENSE**

21 **(Class or Representative Treatment Not Manageable – All Claims)**

22 This action is not appropriate for class, collective, or representative treatment because,  
23 among other things, it would not be manageable as a class or representative action.

24 **TWENTY-FIFTH DEFENSE**

25 **(Activities Done Before or After Principal Activities – First and Second Claims)**

26 The claims of Plaintiffs, and those they seek to represent, are barred as to all hours during  
27 which Plaintiff and those they seek to represent were engaged in activities that were preliminary  
28 to or after their principal activities.

**TWENTY-SIXTH DEFENSE**

**(Reservation of Rights – All Claims)**

Defendants have not knowingly or intentionally waived any applicable affirmative defenses and reserves the right to assert and rely on such other applicable affirmative defenses as may later become available or apparent. Defendants further reserve the right to amend their answer and/or affirmative defenses accordingly and/or to delete affirmative defenses that they determine are not applicable during the course of subsequent discovery. Nothing stated herein constitutes a concession as to whether or not Plaintiffs bear the burden of proof on any issue.


**PRAYER**

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by their Complaint;
2. That judgment be entered in favor of Defendants and against Plaintiffs;
3. That Defendants be awarded reasonable attorneys’ fees according to proof;
4. That Defendants be awarded its costs of suit incurred herein; and
5. That Defendants be awarded such other and further relief as the Court may deem appropriate.

Dated: January 9, 2018

JONES DAY

By:   
 \_\_\_\_\_  
 Aaron L. Agenbroad  
 Cindi L. Ritchey  
 Koree Blyleven

Attorneys for Defendants  
THE NEIMAN MARCUS GROUP LLC and  
NEIMAN MARCUS GROUP LTD LLC

NAI-1503312672

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10 Attorneys for Defendants  
THE NEIMAN MARCUS GROUP LLC and  
11 NEIMAN MARCUS GROUP LTD LLC

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SAN FRANCISCO**  
15 **UNLIMITED CIVIL JURISDICTION**

16 ONDREA ROCES and SOPHIA AHMED,  
17 individually and on behalf of all others  
similarly situated,

18 Plaintiffs,

19 v.

20 THE NEIMAN MARCUS GROUP, LTD,  
21 LLC; and THE NEIMAN MARCUS  
GROUP, LLC,

22 Defendants.

**CASE NO. CGC-17-562858**

**CLASS ACTION**

**PROOF OF SERVICE**

23  
24 I, Krishana Shukri, declare:

25 I am a citizen of the United States and employed in San Diego County, California. I am  
26 over the age of eighteen years and not a party to the within-entitled action. My business address  
27 is 4655 Executive Drive, Suite 1500, San Diego, California 92121. On January 9, 2018, I served  
28 a copy of the within document(s):

**ANSWER OF DEFENDANTS NEIMAN MARCUS GROUP LTD  
LLC AND THE NEIMAN MARCUS GROUP LLC TO  
PLAINTIFFS' COMPLAINT**


- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.
- by placing the document(s) listed above in a sealed UPS envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a UPS agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Jahan C. Sagafi, Esq.  
 Relic Sun, Esq.  
 OUTTEN & GOLDEN LLP  
 One Embarcadero Center, 38<sup>th</sup> Floor  
 San Francisco, CA 94111  
 Telephone: (415) 638-8800  
 Facsimile: (415) 638-8810  
 Email: jsagafi@outtengolden.com  
 Email: rsun@outtengolden.com

*Attorneys for Plaintiffs and Proposed  
 Class Members*

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 9, 2018, at San Diego, California.

  
 Krishana Shukri

NAI-1503324486v1

**File & ServeXpress Transaction Receipt**

**File & ServeXpress Transaction ID:** 61544863  
**Submitted by:** Krishana Shukri, Jones Day-San Diego  
**Authorized by:** Cindi Ritchey, Jones Day-San Diego  
**Authorize and file on:** Jan 9 2018 10:52AM PST ⓘ  
**Time received by San Francisco County:** Pending ⓘ

**Court:** CA Superior Court County of San Francisco-Civil  
**Division/Courtroom:** N/A  
**Case Class:** Civil-Complex Litigation  
**Case Type:** Complex Litigation  
**Case Number:** CGC-17-562858  
**Case Name:** Roces, Ondrea vs Neiman Marcus Group Ltd LLC et al

**Transaction Option:** File and Serve  
**Billing Reference:** 155964-600004  
**Read Status for e-service:** Not Purchased

**Courtesy Copies Sent To:** Teri Jackson  
400 McAllister St  
610  
San Francisco, CA 94102-4514

**Documents List****2 Document(s)****Attached Document, 7 Pages**

Document Type:	Access:	Statutory Fee:	Linked:
Answer (w/ Complex Litigation Fee)	Public	\$1,450.00	

**Document title:**  
ANSWER OF DEFENDANTS NEIMAN MARCUS GROUP LTD LLC AND THE NEIMAN MARCUS GROUP LLC TO PLAINTIFFS' COMPLAINT

**Attached Document, 2 Pages**

Document Type:	Access:	Statutory Fee:	Linked:
Proof of Service	Public	\$0.00	

**Document title:**  
Proof of Service

Expand All

 **Sending Parties (2)**

Party	Party Type	Attorney	Firm	Attorney Type
Neiman Marcus Group	Defendant	No Answer on File	Firm TBD	Attorney in Charge
Neiman Marcus Group Ltd LLC	Defendant	No Answer on File	Firm TBD	Attorney in Charge

 **Recipients (2)** Service List (2)

Delivery Option	Party	Party Type	Attorney	Firm	Attorney Type	Method
Service	Ahmed, Sophia	Plaintiff	Sagafi, Jahan	Outten & Golden LLP	Attorney in Charge	E-Service
Service	Roces, Ondrea	Plaintiff	Sagafi, Jahan	Outten & Golden LLP	Attorney in Charge	E-Service

 Additional Recipients (0) **Case Parties**

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10 Attorneys for Defendants  
THE NEIMAN MARCUS GROUP LLC and  
11 NEIMAN MARCUS GROUP LTD LLC

12 UNITED STATES DISTRICT COURT

13  
14 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

15 ONDREA ROCES and SOPHIA AHMED,  
individually and on behalf of all others  
16 similarly situated,

17 Plaintiffs,

18 v.

19 THE NEIMAN MARCUS GROUP, LTD,  
LLC; and THE NEIMAN MARCUS  
20 GROUP, LLC,

21 Defendants.

**CASE NO.**

**DECLARATION OF JOHN MARAZIO  
IN SUPPORT OF DEFENDANTS'  
REMOVAL OF CIVIL ACTION  
FROM STATE COURT**

**[28 U.S.C. §§ 1332((b), 1332(d) 1441(b)  
AND 1446]**

1 I, John Marazio, declare as follows:

2 1. I am a resident of the State of Texas and serve as the Vice President, Human  
3 Resources for The Neiman Marcus Group LLC (“Neiman Marcus”). In my position, I have  
4 personal knowledge of the personnel policies and practices of Neiman Marcus and the  
5 compensation of its California employees, including all California sales associates. The  
6 following is based on my personal knowledge or upon my review of records maintained in the  
7 ordinary course of business by Neiman Marcus. If called upon to do so, I could and would testify  
8 competently to the following.

9 2. Neiman Marcus is a Delaware limited liability company with its headquarters and  
10 principal place of business located in Texas.

11 3. Neiman Marcus Group LTD LLC is a Delaware limited liability company with its  
12 headquarters and principal place of business located in Texas.

13 4. Between December 5, 2013, and December 31, 2017, Neiman Marcus employed  
14 more than 100 sales associates in California paid on a commission-only basis.

15 5. My calculations in this declaration do not include sales associates who were paid  
16 on a commission-only basis during part of the class period but are not currently paid on a  
17 commission-only basis and likewise excludes sales associates who worked in California during  
18 part of the relevant period but do not currently work in California or did not work in California at  
19 the time of their separation from employment.

20 6. The amount in controversy stated in Neiman Marcus’s Notice of Removal for  
21 Plaintiffs’ class claim for failure to pay all wages for alleged “Non-Sell Tasks” is calculated as  
22 follows: using the Company’s payroll and personnel data, I calculated the amount that would be  
23 owed for one hour of work per week for each sales associate employed by Neiman Marcus in  
24 California and paid on a commission-only basis between December 5, 2013 and December 31,  
25 2017, based on a conservative estimate of the average applicable minimum wage during the  
26 relevant period of \$9.00 / hour, based on state and city ordinances. The amount in controversy  
27 figure for the claim for failure to pay all minimum wages is the summation of the following:  
28 \$9.00 / hour multiplied by one hour per week for each commission-only sales associate employed

1 during the relevant time period. This amount totaled \$1,081,782. If I used the sales associates'  
2 average hourly rates rather than \$9.00 figure, this amount would increase.

3 7. The amount in controversy figure stated in Neiman Marcus's Notice of Removal  
4 for the claim for failure to provide accurate written wage statements is based on the Company's  
5 payroll and personnel data, and is calculated as follows. For each sales associate paid on a  
6 commission-only basis in California, I made the following calculation: one less than the number  
7 of wage statements received between December 5, 2016 and December 31, 2017, multiplied by  
8 \$100, plus an additional \$50 (for the first wage statement). The amount in controversy figure for  
9 the claim for failure to provide accurate wage statements is the summation of these calculations.  
10 This amount totaled \$1,383,150.

11 8. The amount in controversy stated in Neiman Marcus's Notice of Removal for  
12 Plaintiffs' class claim for failure to pay all final wages at termination is calculated as follows:  
13 using the Company's payroll and personnel data, an average hourly rate of pay was calculated for  
14 each California sales associate employed by Neiman Marcus in California and paid on a  
15 commission-only basis who separated from employment between December 5, 2014 and  
16 December 5, 2017. The amount in controversy figure for the claim for failure to pay all final  
17 wages is the summation of the following: the average hourly rate of pay for each California sales  
18 associate employed during the relevant time period, multiplied by 8 hours per day multiplied by  
19 30 days. This amount totaled \$2,335,797. This amount is conservative because it does not  
20 include former sales associates who had not established an average hourly rate at the time of their  
21 termination.

22 I declare under penalty of perjury under the laws of the United States that the foregoing is  
23 true and correct and that this declaration was executed this 10<sup>th</sup> day of January, 2018.

24  
25   
26 JOHN MARAZIO  
27 VICE PRESIDENT, HUMAN RESOURCES  
28 THE NEIMAN MARCUS GROUP LLC

NAI-1503312708

MARAZIO DECL. ISO NOTICE OF  
REMOVAL OF CIVIL ACTION FROM  
STATE COURT

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ondrea Rocas and Sophia Ahmed, on behalf of themselves and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Outten & Golden LLP / Jahan C. Sagafi (SBN 224887) One Embarcadero Center, 38th Floor, San Francisco, CA 94111 Telephone: +1.415.638.8800

DEFENDANTS

Neiman Marcus Group LTD LLC; The Neiman Marcus Group LLC

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

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

Attorneys (If Known) JONES DAY / Aaron L. Agenbroad (State Bar No. 242613) 555 California Street, 26th Floor, San Francisco, CA 94104 Telephone: +1.415.626.3939

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options like 'Citizen of This State', 'Citizen of Another State', 'Citizen or Subject of a Foreign Country', 'Incorporated or Principal Place of Business In This State', etc.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category lists specific legal codes and descriptions.

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:

Class Action Fairness Act Jurisdiction - California Labor Code Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/10/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Aaron L. Agenbroad

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
  - c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. **Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

1 Aaron L. Agenbroad (State Bar No. 242613)  
2 Jones Day  
3 555 California Street, 26th Floor  
4 San Francisco, CA 94104  
5 Telephone: +1.415.626.3939  
6 Facsimile: +1.415.875.5700  
7 Email: alagenbroad@JonesDay.com

8 Cindi L. Ritchey (State Bar No. 216899)  
9 Koree Blyleven (State Bar No. 294489)  
10 Jones Day  
11 4655 Executive Drive, Suite 1500  
12 San Diego, CA 92121  
13 Telephone: +1.858.314.1200  
14 Facsimile: +1.858.314.1150  
15 Email: critchey@jonesday.com  
16 kblyleven@jonesday.com

17 Attorneys for Defendant  
18 THE NEIMAN MARCUS GROUP LLC and  
19 NEIMAN MARCUS GROUP LTD LLC

20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

22 ONDREA ROCES and SOPHIA AHMED,  
23 individually and on behalf of all others  
24 similarly situated,

25 Plaintiffs,

26 v.

27 THE NEIMAN MARCUS GROUP, LTD,  
28 LLC; and THE NEIMAN MARCUS  
GROUP, LLC,

Defendants.

**CASE NO.: 18-CV-221**

Assigned for all purposes to:

**PROOF OF SERVICE**

**PROOF OF SERVICE BY MAIL**

I, Koree Blyleven, declare:

I am a citizen of the United States and employed in San Diego, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 4655 Executive Drive Suite 1500, San Diego, California 92121. On January 10, 2018, I served on the interested parties a copy of the documents described as:

1. **NEIMAN MARCUS GROUP LTD LLC AND THE NEIMAN MARCUS GROUP LLC'S NOTICE OF REMOVAL OF CIVIL ACTION FROM STATE COURT [28 U.S.C. §§ 1332((b), 1332(d) 1441(b) AND 1446] (INCLUDING EXHIBITS AND ATTACHMENTS); AND**
2. **CIVIL COVER SHEET**

by placing the document(s) listed above in a sealed UPS envelope, addressed as set forth in the attached SERVICE LIST, and affixing a pre-paid air bill, and causing the envelope to be delivered to a UPS Delivery Service agent for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 10, 2018, at San Diego, California.

  
\_\_\_\_\_  
Koree Blyleven

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**SERVICE LIST**

Jahan C. Sagafi, Esq. *Attorneys for Plaintiffs and Proposed Class*  
Relic Sun, Esq. *Members*  
OUTTEN & GOLDEN LLP  
One Embarcadero Center, 38<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 638-8800  
Facsimile: (415) 638-8810  
Email: jsagafi@outtengolden.com  
Email: rsun@outtengolden.com

NAI-1503323920v1



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Neiman Marcus Sales Associates Sue Over Stores' Allegedly Illegal Pay Structure](#)

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