

1 GAY CROSTHWAIT GRUNFELD – 121944
JENNY S. YELIN – 273601
2 ROSEN BIEN GALVAN & GRUNFELD LLP
315 Montgomery Street, Tenth Floor
3 San Francisco, California 94104-1823
Telephone: (415) 433-6830
4 Facsimile: (415) 433-7104
5 Email: ggrunfeld@rbgg.com
jyelin@rbgg.com

6 JENNIFER LIU – 279370
THE LIU LAW FIRM, P.C.
7 324 Day Street
San Francisco, California 94131-2313
8 Telephone: (415) 896-4260
Facsimile: (415) 231-0011
9 Email: jliu@liulawpc.com

10 Attorneys for Plaintiffs and the Proposed Class

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 JAIMIE QUINBY, LINDA GOMES, and
ERIC FONTES, on behalf of themselves
16 and all others similarly situated,

17 Plaintiffs,

18 v.

19 ULTA SALON, COSMETICS &
FRAGRANCE, INC.,
20

21 Defendant.

Case No.

CLASS ACTION COMPLAINT

1 Plaintiffs Jaimie Quinby, Linda Gomes, and Eric Fontes (collectively, “Plaintiffs”),
2 individually and on behalf of all others similarly situated, by their attorneys, The Liu Law
3 Firm, P.C., and Rosen Bien Galvan & Grunfeld LLP, upon personal knowledge as to
4 themselves and belief as to other matters, allege as follows:

5 INTRODUCTION

6 1. Plaintiffs and Class Members are current and former General Managers
7 (“GMs”) who worked and work for ULTA Salon, Cosmetics & Fragrance, Inc. (“ULTA”
8 or “Defendant”) throughout its estimated 90 beauty superstores in California. ULTA uses
9 an excessively lean staffing model at its stores to extract long hours from salaried store
10 “managers,” even though the “managers” spend most of their days performing physically
11 demanding nonexempt work, such as stocking and cleaning shelves, working cash
12 registers, greeting and waiting on customers, and unloading merchandise from trucks.
13 Because Defendant allocates insufficient staff hours to each store, while simultaneously
14 requiring GMs to perform the full gamut of customer service, sales, stocking, and cleaning
15 tasks, Plaintiffs and Class Members are misclassified as “exempt” because they are forced
16 to spend the majority of their working time performing the same non-managerial tasks
17 being performed by nonexempt employees, such as Cashiers and Stock Associates. As a
18 result, GMs work long hours and often skip their meal and rest breaks, without receiving
19 any overtime compensation or compensation for missed meal and rest breaks from
20 Defendant. ULTA’s staffing model, which has contributed to ULTA’s rapid expansion,
21 high profits, and soaring stock price, relies on its understaffing of its stores, and the use of
22 the majority of GMs’ working time to complete non-managerial tasks. ULTA succeeds in
23 the market by failing to comply with the law, and failing to provide proper compensation
24 to the hard-working employees who make its success possible.

25 NATURE OF THE ACTION

26 2. This lawsuit seeks to recover overtime compensation for Plaintiffs and their
27 similarly situated co-workers who have worked as GMs for ULTA in the State of
28 California.

1 3. Upon information and belief, ULTA owns and operates approximately 90
2 retail stores in California, each of which employs a GM. Upon information and belief,
3 ULTA retail stores are large in size, generally spanning about 10,000 square feet on
4 average.

5 4. Because ULTA's stores structurally understaff hourly nonexempt employees,
6 GMs consistently spend the vast majority of their working time performing the same
7 stocking, cleaning, and customer service duties as nonexempt, hourly-paid Cashiers and
8 Stock Associates.

9 5. Throughout the relevant period, it has been ULTA's statewide policy to
10 uniformly classify GMs in California as exempt from state overtime provisions and not to
11 pay them any overtime wages.

12 6. ULTA regularly requires GMs to work in excess of 8 hours per workday and
13 40 hours per workweek. Further, on some occasions, ULTA requires its GMs to work in
14 excess of 12 hours per workday. However, because ULTA classifies GMs in California as
15 exempt, it fails to pay them any overtime compensation for hours worked over 8 in a
16 workday or 40 in a workweek. ULTA also fails to provide them with legally-mandated
17 meal and rest breaks, or to pay them an hour of compensation at their regular rate of pay
18 for each workday that a meal or rest break is not provided.

19 7. By the conduct described in this Class Action Complaint, ULTA has violated
20 California law, including California Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512,
21 1174 and 2698 et seq.; California Industrial Welfare Commission ("IWC") Order 7-2001;
22 and California Business and Professions Code §§ 17200 et seq., (collectively, the
23 "California Wage and Hour Laws").

24 8. Plaintiffs bring this action on behalf of themselves and all other similarly
25 situated current and former ULTA GMs who worked in California at any time within the
26 four years prior to the date of the filing of this initial Complaint through the final
27 disposition of this action (the "Class Period"), and who were, are, or will be improperly
28 classified as exempt from overtime premium pay under California law (the "Class

1 Members”).

2 9. In order to remedy ULTA’s violations of the California Wage and Hour
3 Laws, Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 (“Rule
4 23”).

5 **THE PARTIES**

6 **Plaintiffs**

7 ***Jaimie Quinby***

8 10. Plaintiff Jaimie Quinby is an adult individual who is a resident of La Selva,
9 California.

10 11. Quinby was employed by ULTA as a GM from approximately June 2012 to
11 August 2014 in Sand City, California, and Capitola, California.

12 12. At all relevant times, Quinby was a covered employee within the meaning of
13 the California Labor Code and all applicable IWC Orders.

14 13. Quinby regularly worked approximately 45 to 60 hours per week, and on
15 occasion worked in excess of 60 hours per week.

16 14. In August 2014, Plaintiff Jaimie Quinby’s employment as a GM for ULTA
17 was terminated. ULTA failed to pay Plaintiff Quinby for all of her accrued and unused
18 vacation pay immediately upon her termination.

19 ***Linda Gomes***

20 15. Plaintiff Linda Gomes is an adult individual who is a resident of Castro
21 Valley, California.

22 16. Gomes was employed by ULTA as a GM from approximately June 2012 to
23 July 2013 in Fremont, California.

24 17. At all relevant times, Gomes was a covered employee within the meaning of
25 the California Labor Code and all applicable IWC Orders.

26 18. Gomes regularly worked approximately 55 to 60 hours per week, and on
27 occasion worked in excess of 60 hours per week.

28

1 **Eric Fontes**

2 19. Plaintiff Eric Fontes is an adult individual who is a resident of Visalia,
3 California.

4 20. Fontes was employed by ULTA as a GM from approximately May 2013 to
5 September 2014 in Visalia, California.

6 21. At all relevant times, Fontes was a covered employee within the meaning of
7 the California Labor Code and all applicable IWC Orders.

8 22. Fontes regularly worked between 45 and 60 hours per week, and on occasion
9 worked in excess of 60 hours per week.

10 **Defendant ULTA**

11 23. ULTA is a publicly traded corporation, organized and existing under the
12 laws of Delaware with corporate headquarters in Bolingbrook, Illinois.

13 24. At all relevant times, ULTA has been an employer within the meaning of the
14 California Labor Code and all applicable IWC Orders.

15 25. ULTA sells cosmetics, haircare products, salon styling tools, skincare
16 products, fragrance, and nail care products, among other things, and provides in-store salon
17 services at most, if not all of its stores. According to its Form 10-K filed with the
18 Securities and Exchange Commission, it is the nation's largest beauty retailer, providing
19 one-stop shopping for beauty products and salon services in the same place.

20 26. As of August 1, 2015, the Company operated 817 stores in 48 states,
21 including 97 stores in California.

22 27. ULTA employed Plaintiff Quinby, Plaintiff Gomes, and Plaintiff Fontes, and
23 has employed, will employ, or continues to employ each Class Member, as described in
24 paragraph 8.

25 28. At all times relevant herein, ULTA maintained control, oversight, and
26 direction over Plaintiffs and Class Members, including over the timekeeping, payroll, and
27 other employment practices that applied to them.

28 29. ULTA is the entity listed on Plaintiffs' paystubs and W-2s.

JURISDICTION & VENUE

1
2 30. Jurisdiction: This Court has original jurisdiction over this action under 28
3 U.S.C. § 1332(a)(1), because the matter in controversy exceeds the sum or value of
4 \$75,000, exclusive of interest and costs, and is between Plaintiffs (all citizens of
5 California), and Defendant (a citizen of Delaware). This Court also has original
6 jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d),
7 because this is a class action in which: (1) there are 100 or more members in the proposed
8 class; (2) at least some members of the proposed class have a different citizenship from
9 Defendant; and (3) the claims of the proposed class members exceed \$5,000,000 in the
10 aggregate.

11 31. This Court is empowered to issue a declaratory judgment pursuant to 28
12 U.S.C. §§ 2201 and 2202.

13 32. The United States District Court for the Northern District of California has
14 personal jurisdiction over Defendant ULTA, because Defendant maintains stores in this
15 District, does business in California and in this District, and because many of the acts
16 complained of and giving rise to the claims alleged occurred in and emanated from this
17 District.

18 33. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
19 substantial part of the events giving rise to the claims occurred in this District.

20 34. Intradistrict assignment: Pursuant to N.D. Cal. Local Rule 3-2(c) and (d),
21 intradistrict assignment to the San Francisco or Oakland Division is proper because a
22 substantial part of the events that give rise to the claims asserted herein occurred in
23 Alameda County.

CLASS ACTION ALLEGATIONS

24
25 35. Pursuant to Rule 23, Plaintiff Quinby, Plaintiff Gomes, and Plaintiff Fontes
26 (collectively, “the Class Representatives”), bring claims for relief for violations of
27 California’s Wage and Hour Laws as a class action, pursuant to Rule 23(a) and (b)(3), on
28 behalf of all Class Members, as defined in paragraph 8.

1 36. The persons in the class identified above are so numerous that joinder of all
2 Class Members is impracticable.

3 37. Upon information and belief, there are at least 100 members in the class.
4 Although the precise number of such employees is unknown, the facts on which the
5 calculation of that number depends are presently within the sole control of ULTA.

6 38. Commonality/Predominance: Common questions of law and fact exist as to
7 the Class Members that predominate over any questions only affecting them individually
8 and include, but are not limited to, the following:

9 a. whether ULTA violated the California Labor Code, IWC Wage Order
10 7-2001, and the supporting California Department of Labor regulations;

11 b. whether ULTA failed to compensate the Class Representatives and
12 the Class Members for hours worked in excess of 8 hours per workday and 40 hours per
13 workweek;

14 c. whether ULTA failed to provide the Class Representatives and the
15 Class Members with meal and rest breaks in compliance with requirements of the
16 California Labor Code and applicable IWC Wage Orders;

17 d. whether ULTA misclassified the Class Representatives and Class
18 Members;

19 e. whether ULTA failed to keep true and accurate time and pay records
20 for all hours worked by the Class Representatives and the Class Members, and other
21 records required by the California Labor Code and applicable IWC Orders;

22 f. whether ULTA's policy of failing to pay workers was instituted
23 willfully or with reckless disregard of the law; and

24 g. the nature and extent of class-wide injury and the measure of damages
25 for those injuries.

26 39. Typicality: The claims of the Class Representatives are typical of the claims
27 of the Class Members they seek to represent. The Class Representatives and all Class
28 Members work, or have worked, for ULTA as GMs in California. The Class

1 Representatives and Class Members enjoy the same statutory rights under the California
2 Labor Code to be paid overtime wages. The Class Representatives and Class Members
3 have all sustained similar types of damages as a result of ULTA's failure to comply with
4 the California Labor Code. The Class Representatives and Class Members have all been
5 injured in that they have been uncompensated or under-compensated due to ULTA's
6 common policies, practices, and patterns of conduct.

7 40. Adequacy: The Class Representatives will fairly and adequately represent
8 and protect the interests of the Class Members. The Class Representatives understand that
9 they each individually assume a fiduciary responsibility to the class to represent its
10 interests fairly and adequately. The Class Representatives recognize that they must
11 represent and consider the interests of the class just as they would represent and consider
12 their own interests. The Class Representatives understand that when making decisions
13 regarding the conduct of the litigation and possible settlement, they must not favor their
14 own individual interests over the interests of the class as a whole. The Class
15 Representatives recognize that any resolution of a class action must be in the best interest
16 of the class. The Class Representatives understand that in order to provide adequate
17 representation, they must be informed of developments in litigation, cooperate with class
18 counsel, and testify at deposition and/or trial. The Class Representatives have retained
19 counsel competent and experienced in complex class actions and employment litigation.
20 There is no conflict between the Class Representatives and the Class Members.

21 41. Superiority: A class action is superior to other available methods for the fair
22 and efficient adjudication of this litigation. The Class Members have been damaged and
23 are entitled to recovery as a result of ULTA's violation of the California Labor Code as
24 well as its common and uniform policies, practices, and procedures. Although the relative
25 damages suffered by individual Class Members are not de minimis, such damages are
26 small compared to the expense and burden of individually prosecuting each case
27 encompassed by this class litigation. The individual Plaintiffs lack the financial resources
28 to conduct a thorough examination of ULTA's timekeeping and compensation practices,

1 and to vigorously prosecute a lawsuit against ULTA to recover such damages. In addition,
2 class litigation is superior because it will obviate the need for unduly duplicative litigation
3 that might result in inconsistent judgments about ULTA's practices.

4 42. This action is properly maintainable as a class action under Rule 23(b)(3).

5 43. Plaintiff intends to send notice to all Class Members consistent with the
6 requirements of Rule 23.

7 **COMMON FACTUAL ALLEGATIONS**

8 44. Throughout their employment with ULTA, Plaintiffs and Class Members
9 regularly work or worked more than 8 hours per workday and 40 hours per workweek. On
10 occasion, Plaintiffs and Class Members work or worked more than 12 hours per workday.

11 45. ULTA is aware that Plaintiffs and Class Members regularly work or worked
12 more than 8 hours per workday and 40 hours per workweek, yet ULTA has failed to pay
13 them any overtime compensation for any hours worked over 8 in a workday or 40 in a
14 workweek.

15 46. ULTA did not keep accurate records of hours worked by Plaintiffs. That is,
16 Plaintiffs' hours were not accurately recorded on pay stubs, and Plaintiffs were not
17 required to clock in or out, or otherwise record their time.

18 47. Plaintiffs and Class Members regularly work or worked in excess of five-
19 hour shifts for ULTA, without being afforded at least a half-hour meal break in which they
20 were relieved of all work duties, and work or worked ten-hour shifts for ULTA, without
21 being afforded a second half-hour meal break in which they were relieved of all duty.
22 Plaintiffs and Class Members regularly work or worked for ULTA without being afforded
23 at least one ten-minute rest break, in which they were relieved of all duty, per four hours of
24 work performed (or major fraction thereof). ULTA did not and does not pay Plaintiffs and
25 Class Members at least one hour of compensation at their regular rate of pay for each
26 workday for which a meal or rest period was not provided.

27 48. Plaintiffs and Class Members consistently spent and spend the majority of
28 their time performing non-managerial tasks, including but not limited to waiting on

1 customers, working the cash register, unloading inventory from trucks and storage
2 containers, stocking and rearranging shelves, and cleaning. These duties are the same as
3 the duties performed by nonexempt, hourly-paid Associate Managers, Cashiers, and Stock
4 Associates, who ULTA classifies as nonexempt.

5 49. ULTA’s business model depends on excessively lean staffing of its retail
6 stores, including by relying on GMs to spend the majority of their time performing the
7 same duties as nonexempt, hourly-paid Associate Managers, Cashiers, and Stock
8 Associates. On information and belief, each ULTA store has a set number of “labor
9 hours” to use each week, which must be divided among a variety of tasks and among a
10 staff of employees. Plaintiffs’ and Class Members’ hours are and were included in the
11 total number of labor hours for their stores, and their hours are considered largely
12 interchangeable with those of other, nonexempt, employees.

13 50. Plaintiffs and Class Members consistently spend far less than half of their
14 working time performing managerial and/or exempt duties.

15 **FIRST CAUSE OF ACTION**
16 ***Failure to Pay Overtime Wages***
17 **(Cal. Wage Order No. 7-2001; Cal. Labor Code §§ 510, 1194)**
18 **Brought by Plaintiffs on Behalf of Themselves and all Class Members**

19 51. Plaintiffs hereby incorporate by reference all preceding paragraphs as alleged
20 above as if fully set forth herein.

21 52. California law requires an employer, such as ULTA, to pay overtime
22 compensation to all nonexempt employees for all hours worked over 40 per workweek, or
23 over 8 per workday, at a rate of one and one-half times the regular rate of pay per hour.
24 California law also requires employers, including ULTA, to pay double time compensation
25 to all nonexempt employees for all hours worked over 12 in a workday.

26 53. Plaintiffs have been misclassified as exempt employees, when in fact they
27 are nonexempt employees, and are entitled to be paid overtime compensation for all
28 overtime hours worked.

54. Throughout the Class Period, and continuing through the present, Plaintiffs

1 and Class Members worked in excess of 8 hours per workday and/or 40 hours per
2 workweek. On some occasions, Plaintiffs and some Class Members also worked in excess
3 of 12 hours per workday.

4 55. During the Class Period, ULTA misclassified Plaintiffs and Class Members
5 as exempt from overtime pay premiums, and failed and refused to pay them overtime
6 premium pay for overtime hours worked.

7 56. Due to ULTA's unlawful conduct, as set forth herein, Plaintiffs and Class
8 Members have sustained damages, including loss of earnings for hours of overtime
9 worked. Plaintiffs and Class Members are entitled to damages, including overtime wages,
10 prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable
11 law.

12 **SECOND CAUSE OF ACTION**
13 *Waiting Time Penalties*
14 **(California Wage Payment Provisions, Cal. Labor Code §§ 201, 202, & 203)**
15 **Brought by Plaintiffs on Behalf of Themselves and**
16 **all Former Employee Class Members**

17 57. Plaintiffs hereby incorporate by reference all preceding paragraphs as alleged
18 above as if fully set forth herein.

19 58. California Labor Code sections 201 and 202 require ULTA to pay its
20 employees all wages due within time specified by law.

21 59. California Labor Code section 203 provides that if an employer willfully
22 fails to timely pay such wages, the employer must continue to pay the subject employees'
23 wages until the back wages are paid in full or an action is commenced, up to a maximum
24 of thirty days of wages.

25 60. Plaintiffs and Class Members who are no longer employed by ULTA
26 (“Former Employee Class Members”) are entitled to said unpaid compensation, but have
27 not yet received it.

28 61. More than thirty days have passed since Plaintiffs and Former Employee
Class Members have ceased employment with ULTA. As a consequence of ULTA’s
willful conduct not paying Plaintiffs and Class Members compensation for all hours

1 worked under the California Labor Code, Plaintiffs and Former Employee Class Members
2 are entitled to thirty days' wages under Labor Code section 203, including interest thereon,
3 attorneys' fees and costs.

4 **THIRD CAUSE OF ACTION**
5 *Failure to Provide Accurate Wage Statements*
6 **(Cal. Wage Order No. 7-2001; Cal. Labor Code §§ 226, 1174, & 1174.5)**
7 **Brought by Plaintiffs on Behalf of Themselves and all Class Members**

8 62. Plaintiffs hereby incorporate by reference all preceding paragraphs as alleged
9 above as if fully set forth herein.

10 63. ULTA knowingly and intentionally failed to provide timely, accurate,
11 itemized wage statements including, *inter alia*, all hours worked, to Plaintiffs and Class
12 Members in accordance with Labor Code section 226(a) and IWC Wage Order No.
13 7-2001. Such failure caused injury to Plaintiffs and Class Members, by, among other
14 things, impeding them from knowing the amount of wages to which they are and were
15 entitled.

16 64. At all times relevant herein, ULTA has failed to maintain accurate records of
17 all hours worked by Plaintiff and Class Members as required under California Labor Code
18 section 1174(d).

19 65. Plaintiffs and Class Members are entitled to the amount provided under
20 Labor Code sections 226(e) and 1174.5, including the greater of all actual damages or fifty
21 dollars (\$50) for the initial pay period in which a violation occurred and one hundred
22 dollars (\$100) per employee for each violation in a subsequent pay period.

23 66. Plaintiffs and Class Members are also entitled to an award of costs and
24 reasonable attorneys' fees under California Labor Code § 226(h).

25 **FOURTH CAUSE OF ACTION**
26 *California Meal and Rest Period Violations*
27 **(Cal. Wage Order No. 7-2001; Cal. Labor Code §§ 218.5, 226.7, & 512)**
28 **Brought by Plaintiffs on Behalf of Themselves and all Class Members**

67. Plaintiffs hereby incorporate by reference all preceding paragraphs as alleged
above as if fully set forth herein.

1 68. Plaintiffs and all Class Members regularly work and have worked in excess
2 of five-hour shifts for ULTA, without being afforded at least a half-hour meal break in
3 which they were relieved of all work duties, as required by California Labor Code sections
4 226.7 and 512 and IWC Wage Order No. 7-2001. Plaintiffs and all Class Members have
5 also worked ten-hour shifts for ULTA, without being afforded a second half-hour meal
6 break in which they were relieved of all duty, as required by California Labor Code
7 sections 226.7 and 512 and IWC Wage Order No. 7-2001.

8 69. Further, Plaintiffs and all Class Members regularly work for Defendant, and
9 have worked for Defendant, without being afforded at least one ten-minute rest break, in
10 which they were relieved of all duty, per four hours of work performed (or major fraction
11 thereof), as required by California Labor Code section 226.7 and IWC Wage Order No.
12 7-2001.

13 70. Because ULTA has failed to afford proper meal periods to Plaintiffs and
14 Class Members, it is liable to Plaintiff and Class Members for one hour of additional pay at
15 the regular rate of compensation for each workday that the proper meal periods were not
16 provided, pursuant to California Labor Code section 226.7 and IWC Wage Order No.
17 7-2001, plus interest, costs, and reasonable attorney’s fees.

18 71. Because ULTA has failed to afford proper rest periods to Plaintiffs and Class
19 Members, it is liable to Plaintiffs and Class Members for one hour of additional pay at the
20 regular rate of compensation for each workday that the proper rest periods were not
21 provided, pursuant to California Labor Code section 226.7 and IWC Wage Order No.
22 7-2001, plus interest, costs, and reasonable attorney’s fees.

23 **FIFTH CAUSE OF ACTION**
24 ***Unfair Business Practices***
25 **(California Business and Professions Code §§ 17200 et seq.)**
26 **Brought by Plaintiffs on Behalf of Themselves and All Class Members**

27 72. Plaintiffs hereby incorporate by reference all preceding paragraphs as alleged
28 above as if fully set forth herein.

73. Unfair practices prohibited by California’s Unfair Competition Law or

1 “UCL” include “any unlawful, unfair or fraudulent business act or practice.” Cal. Bus. &
2 Prof. Code § 17200.

3 74. Defendant committed unlawful and unfair business practices, including but
4 not limited to failing to pay Plaintiffs and Class Members overtime wages, failing to
5 provide them with proper meal and rest periods, and failing to furnish them with accurate
6 and itemized wage statements. Accordingly, Plaintiffs and Class Members have suffered
7 injury in fact.

8 75. Defendant’s conduct alleged herein occurred during the four years preceding
9 the filing of this Complaint.

10 76. Plaintiffs, on behalf of all Class Members, seek (1) restitution in the amount
11 of the respective unpaid wages earned and due at a rate not less than one and one-half
12 times the regular rate of pay for work performed in excess of 40 hours per workweek, or 8
13 hours per workday, and double the regular rate of pay for work performed in excess of 12
14 hours per workday, and (2) recovery of attorneys’ fees and costs of this action to be paid
15 by ULTA, as provided by the UCL and California Labor Code sections 218, 218.5, and
16 1194.

17 **SIXTH CAUSE OF ACTION**
18 ***PAGA Claim for Civil Penalties***
19 **(California Labor Code § 2698 et seq.)**
20 **Brought by Plaintiffs on Behalf of Themselves, Class Members,**
21 **and the General Public**

22 77. Plaintiffs hereby incorporate by reference all preceding paragraphs as alleged
23 above as if fully set forth herein.

24 78. Under the California Private Attorneys General Act of 2004, California
25 Labor Code §§ 2698-2699.5 (“PAGA”), an aggrieved employee, on behalf of himself or
26 herself and other current or former employees as well as the general public, may bring a
27 representative action as a private attorney general to recover penalties for an employer’s
28 violations of the California Labor Code and IWC Orders. These civil penalties are in
addition to any other relief available under the California Labor Code, and must be
allocated 75% to the California Labor and Workforce Development Agency (“LWDA”)

1 and 25% to the aggrieved employee, pursuant to California Labor Code § 2699.

2 79. As set forth above, Defendant has committed violations of the California
3 Labor Code and IWC Order No. 7-2001, for which Plaintiffs, as private attorney generals,
4 are entitled to recover applicable statutory civil penalties on his own behalf, on behalf of
5 Class Members, and on behalf of the general public, including but not limited to
6 Defendant’s failure to pay overtime wages to Plaintiffs and Class Members, failure to
7 provide them with meal and rest breaks, failure to furnish them with accurate wage
8 statements, all of which constitute violations of the California Labor Code and IWC Order
9 No. 7-2001, each of which is actionable under PAGA.

10 80. California Labor Code § 2699(a), which is part of PAGA, provides in
11 pertinent part:

12 Notwithstanding any other provision of law, any provision of
13 this code that provides for a civil penalty to be assessed and
14 collected by the Labor and Workforce Development Agency or
15 any of its departments, divisions, commissions, boards,
16 agencies, or employees, for a violation of this code, may, as an
alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other
current or former employees pursuant to the procedures
specified in Section 2699.3.

17 81. California Labor Code § 2699(f), which is part of PAGA, provides in
18 pertinent part:

19 For all provisions of this code except those for which a civil
20 penalty is specifically provided, there is established a civil
21 penalty for a violation of these provisions as follows: ... (2) If,
22 at the time of the alleged violation, the person employs one or
23 more employees, the civil penalty is one hundred dollars
(\$100) for each aggrieved employee per pay period for the
initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent
violation.

24 82. Plaintiffs are entitled to civil penalties, to be paid by Defendant and allocated
25 as PAGA requires, pursuant to California Labor Code § 2699(a) for Defendant’s violations
26 of the California Labor Code and IWC Orders for which violations a civil penalty is
27 already specifically provided by law. Further, Plaintiffs are entitled to civil penalties, to be
28 paid by Defendant and allocated as PAGA requires, pursuant to California Labor Code

1 § 2699(f) for Defendant’s violations of the California Labor Code and IWC Orders for
2 which violations a civil penalty is not already specifically provided by law.

3 83. On June 24, 2015, Plaintiffs provided written notice by certified mail to the
4 LWDA and to Defendant of the legal claims and theories in this case (attached as
5 **Exhibit A**). Thirty-three calendar days have passed since the postmark date of the notice
6 provided to the LWDA. Accordingly, Plaintiffs have exhausted their administrative
7 remedies pursuant to PAGA.

8 84. Under PAGA, Plaintiff and the State of California are entitled to recover the
9 maximum civil penalties permitted by law for violations of the California Labor Code and
10 violations of the IWC Order No. 7-2001 that are alleged in this Complaint.

11 **SEVENTH CAUSE OF ACTION**
12 *Failure to Pay Accrued and Unused Vacation Pay*
13 **(California Labor Code §§ 201, 227.3)**
14 **Brought by Plaintiff Jaimie Quinby**

15 85. Plaintiffs hereby incorporate by reference all preceding paragraphs as alleged
16 above as if fully set forth herein.

17 86. California Labor Code section 227.3 requires an employer that provides paid
18 vacation to an employee to pay to the employee all vested and unused vacation pay as
19 wages upon the employee’s termination. Pursuant to California Labor Code section 201,
20 such wages must be paid immediately at the time of discharge.

21 87. Defendant terminated Plaintiff Jaimie Quinby’s employment in August 2014.
22 At the time of her employment, Plaintiff Quinby had accrued significant vacation time,
23 which she had not yet used.

24 88. Defendant did not pay Plaintiff Quinby all of her vested and unused vacation
25 as wages immediately upon her termination.

26 89. Defendant is liable to Plaintiff Quinby for payment for all of her vested and
27 unused vacation time, paid at her regular rate of pay as of the date of her termination, plus
28 interest and waiting time penalties.

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

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DATED: September 9, 2015

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

THE LIU LAW FIRM, P.C.

By: /s/ Jennifer Liu
Jennifer Liu

Attorneys for Plaintiffs and the Proposed Class

EXHIBIT A

June 24, 2015

Via Certified U.S. Mail

California Labor & Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Re: PAGA Notice Pursuant to California Labor Code § 2699

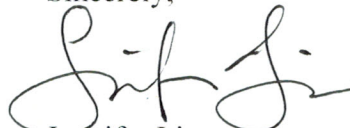
Dear Sir or Madam:

My firm represents Jaimie Quinby, Linda Gomes, and Eric Fontes (“Plaintiffs”) in connection with their wage and hour claims against ULTA Salon, Cosmetics & Fragrance, Inc. (“Defendant”). Plaintiffs previously worked for Defendant as General Managers. Based on the information provided by our clients, we believe Defendant violated a number of California wage and hour laws by misclassifying Plaintiffs and other General Managers as overtime-exempt employees. Specifically, Plaintiffs allege that Defendant: (1) failed to pay them and other General Managers overtime wages; (2) failed to provide them with meal and rest periods; (3) failed to furnish them with accurate wage statements; (4) failed to pay them earned wages upon discharge; and (5) engaged in unfair business practices in violation of California Business & Professions Code §§ 17200 *et seq.*

This letter serves as notice of Plaintiffs’ intent to seek civil penalties pursuant to the Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”). Plaintiffs request that the Labor & Workforce Development Agency (“LWDA”) notify Plaintiffs if it intends to investigate the above allegations pursuant to PAGA. Alternatively, Plaintiffs request that the LWDA inform them if it does not intend to investigate these violations so that they may file a lawsuit including PAGA claims.

Thank you for your attention to this matter.

Sincerely,



Jennifer Liu

cc: John C. Kloosterman (counsel for Defendant ULTA Salon, Cosmetics & Fragrance, Inc.)
Littler Mendelson, P.C.
650 California Street, 20th Floor
San Francisco, CA 94108