

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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KIMBERLEY LAURA SMITH-BROWN, )  
QUINN ALLEN, ILENE ANCHELL, )  
BRITTANY CAFFREY, KRIS DANE, KAREN )  
EONTA, VALARIE HUTCHISON, KRISTEN )  
JACKSON, CRISTINA KOVACS, MICHELLE )  
MUSK, PAULA OGURKIEWICZ, ROBIN )  
OKMAN, JENNIFER SACKS, VERONICA )  
SANDERS, DEANNA SHAW, ALLISON SOT, )  
SHASTA SWANEY, COLLEEN THORNTON, )  
JESSICA TIFT, ALICE VITIELLO, TAMMY )  
WALKER, and DONNA WILLIAMS, )  
Individually and on Behalf of All Others )  
Similarly Situated, )

*Plaintiffs,*

v.

ULTA BEAUTY, INC. and ULTA SALON, )  
COSMETICS & FRAGRANCE, INC., )

*Defendants.*

Case No. 1:18-cv-00610

Judge Jorge L. Alonso

Mag. Judge M. David Weisman

**DECLARATION OF JODI J. CARO**

I, Jodi J. Caro, make this declaration pursuant to 28 U.S.C. § 1746. I hereby declare as follows:

1. My name is Jodi J. Caro. I have personal knowledge of the matters stated in this Declaration, which I submit in support of Defendants’ Opposition to Plaintiffs’ Motion to Compel Production of Interim Privilege Log Documents and Response to Interrogatory (the “Motion to Compel”). If called to testify, I would testify to the facts stated herein.

2. I am the General Counsel and Corporate Secretary of Ulta Salon, Cosmetics, & Fragrance, Inc. (“Ulta Salon”) and the General Counsel, Chief Compliance Officer, and Corporate Secretary of Ulta Beauty, Inc. (“Ulta Beauty”).

3. I have held this position for over three years, since August 2015.

4. I am an attorney licensed to practice in the state of Illinois.

5. In my role as General Counsel, I provide advice to the companies, Board of Directors, Executives, and associates on a wide range of legal issues. This includes managing claims brought against the company, and ensuring that company employees are complying with applicable laws, regulations, and the company’s policies. I am responsible for managing and overseeing the approximately thirteen employees in the company’s Legal Services group, as well as numerous outside law firms that the company retains for its legal needs.

**Initial Twitter Allegations**

6. On the evening of January 9, 2018, an alleged former employee of Ulta Salon (@fatinamxo) made allegations via Twitter (which were later removed) that one or more Ulta retail stores had resold products that had been returned and were previously used.

7. I learned of and reviewed the @fatinamxo Twitter allegations the following morning, on January 10, 2018. Upon review of the Twitter allegations, I recognized that the alleged practice of reselling returned, used products represented a clear violation of the company’s policy, and posed a legal risk to the company, including through possible litigation. The initial Twitter allegations by @fatinamxo were quickly followed by related social media allegations and media articles.

8. Recognizing the litigation risk posed to the company by the social media allegations, I decided Legal Services needed to lead the investigation into the social media

allegations in order to: gather information for Legal Services' use and benefit in providing informed legal advice to the company, ensure that the investigation proceeded in a way that was coordinated with the company's litigation strategy, and assess the company's position in anticipated litigation.

9. By January 11, 2018, I asked the Guest Services team to compile inquiries relating to the social media allegations as part of the investigation. On January 12 and 13, 2018, senior members of the Guest Services team informed me of alleged guests who had threatened litigation, including a class action lawsuit, against the company relating to the alleged practice of reselling returned, used products.

10. A Legal Services-led investigation is *not* the company's typical response to complaints or issues raised by customers or former employees. Such an investigation only occurs when Legal Services concludes that there is a potential legal issue that poses risk to the company, including the threat of, or likelihood of, litigation, and requires legal advice. That was, undoubtedly, the case here.

11. Given the relatively small size of the company's Legal Services group, which has only thirteen employees, eight of whom are attorneys, I relied upon employees in various business groups, including Store Operations, Loss Prevention, Human Resources, Public Relations, Executive Communication, Investor Relations, and Guest Services, to accomplish tasks in support of the investigation. I communicated directly and frequently with senior members of these business groups as part of the investigation. Legal Services' partnership with the company's business-oriented groups was necessary for Legal Services to serve the company as its legal advisor and counsel and to develop legal strategy for anticipated, and ultimately filed, litigation.

12. Legal Services led and directed how the company, including various business groups, investigated and responded to the social media allegations, and did so with the intention of providing Legal Services with information so that Legal Services could provide accurate legal advice, and prepare for anticipated litigation. Put another way, actions these business groups took in response to the social media allegations were done at Legal Services' direction, and within Legal Services' framework for the investigation, which was tailored toward mitigating the company's legal risk and litigation exposure. Those company business groups acted as an extension of Legal Services, performed tasks that differed from their day-to-day responsibilities, and reported to and relied upon Legal Services' direction and input.

**The Documents Challenged by Plaintiffs**

13. I have reviewed all twenty-seven documents challenged by Plaintiffs in their Motion to Compel.

*Communications Providing Instructions for the Investigation to the "Field"*

14. An initial step of Legal Services' investigation was putting in place a framework for how company employees were to gather information for Legal Services to review in assessing the veracity of the social media allegations, related media inquiries, and related complaints from customers and guests. That information gathering and assessment was necessary for Legal Services to provide tailored legal advice and to prepare for anticipated litigation.

15. To ensure that relevant employees gathered information in a manner aligned with Legal Services' framework for the investigation, I worked with senior members in Store Operations (including Ms. Kecia Steelman, Chief Store Operations Officer, Ms. [REDACTED], Senior Vice President, and Ms. [REDACTED], Senior Manager), Loss Prevention (including Ms. [REDACTED], Vice President), and Executive Communication (including

Ms. [REDACTED], Senior Director). I participated directly in the drafting of communications to leadership and managerial employees in Store Operations and Loss Prevention, ensuring that the communications correctly conveyed legal advice and guidance regarding the investigation.

16. Five of the challenged documents reflect draft and as-sent versions of the communications described above:

- a. **Entries 53, 235, and 581** reflect communications sent from leadership in Store Operations to their Regional Vice Presidents, District Managers, and General Managers. Entry 235 reflects an email from Ms. Steelman to Store Operations' Regional Vice Presidents on January 11, 2018, and a Regional Vice President forwarding that message along to certain District Managers. I communicated directly with Ms. Steelman and Ms. [REDACTED] regarding the contents of Ms. Steelman's email communication to Regional Vice Presidents, and provided revisions to a draft. Entry 235 is a January 15, 2018 communication from Ms. [REDACTED] to District Managers, with Store Operations' Regional Vice Presidents and Senior Vice Presidents copied. I communicated directly with Ms. [REDACTED] regarding the language used in Ms. [REDACTED] message to District Managers, and provided her my suggestions. I was also a blind copy recipient on the communication reflected in Entry 235. Ms. [REDACTED] sent a similar message to Store Operations' General Managers on January 15, 2018, which is contained in Ms. [REDACTED] response to a non-privileged communication from Ms. [REDACTED], Vice President of Investor Relations, on February 14, 2018 and reflected in Entry 581. Therefore, I participated directly in the drafting, revision, and approval of the

communications to Store Operations' teams reflected in Entries 53, 235, and 581. **Entry 218** reflects a draft of Entry 235 that Ms. [REDACTED] provided Ms. [REDACTED] on January 15, 2018. Ms. [REDACTED] provided the draft of Ms. [REDACTED] communication to District Managers to Ms. [REDACTED] at my direction, and I instructed Ms. [REDACTED] and Ms. [REDACTED] to coordinate with each other on Ms. [REDACTED] messaging to the Loss Prevention team.

- b. **Entry 238** reflects a draft of Ms. [REDACTED] communication to Regional Loss Prevention Managers. Ms. [REDACTED] and I had separate communications regarding her messaging to the Loss Prevention leadership and field teams regarding the investigation. In my conversations with Ms. [REDACTED], she sought my legal advice and I responded, providing revisions to the communication she provided for my review and approval.

*Communications Reflecting the Company's Investigatory and Information Gathering Efforts*

17. Because Legal Services was relying on different business groups to gather information, I directed Ms. [REDACTED] and Ms. [REDACTED] to create, maintain, and provide me with documents that compiled communications discussing the investigation, including the communications discussed above (¶ 16), the investigatory efforts, and information learned as a result of those efforts. Ms. [REDACTED] provided me, by email, versions of those documents over the course of the investigation, which I used to assess the company's legal risk, provide informed legal advice to the company, and prepare for litigation. This activity is reflected in two challenged documents:

- a. **Entry 143** is an early version of one of those documents from January 13, 2018 and has the words, "ATTORNEY-CLIENT PRIVILEGED CONFIDENTIAL"

in its title. Entry 143 is attached to a January 13, 2018 email also labeled “Attorney-Client Privileged and Confidential” reflected in **Entry 142** among Store Operations employees, including Ms. [REDACTED], Ms. [REDACTED], and Ms. Steelman, and contains details of the request I made to Ms. [REDACTED] and Ms. [REDACTED].

18. The documents that Ms. [REDACTED] and Ms. [REDACTED] maintained at my direction included information from the company’s investigatory efforts, which are reflected in other withheld documents. For example, Store Operations undertook fact gathering efforts in connection with stores identified in social media allegations. Activities by Store Operations are reflected in three challenged documents:

- a. **Entry 254** contains emails from Ms. [REDACTED] to certain Regional Vice Presidents and District Managers related to certain stores providing them with legal advice and instruction, given to Ms. [REDACTED] by Legal Services, on communicating with store teams and gathering compliance information. Ms. [REDACTED] emails, sent on January 11, 2018 and January 12, 2018, are both labeled “ATTORNEY-CLIENT PRIVILEGED/CONFIDENTIAL.” Entry 254 also includes a January 15, 2018 email among a Regional Vice President and District Manager following up on Ms. [REDACTED] emails. **Entries 412 and 511** reflect summaries dated January 25, 2018 and January 29, 2018, respectively, from field-level employees to their Regional Vice Presidents that reflect discussions that occurred because of and at the direction of Legal Services.

19. At the same time, Human Resources, most notably Ms. [REDACTED], Senior Director, and Ms. [REDACTED], Senior Manager, worked to gather other relevant information about current and former employees identified in the social media allegations. I communicated frequently and directly with Ms. [REDACTED] and Ms. [REDACTED] regarding their investigatory tasks. Human Resources' information gathering efforts are reflected in two challenged documents:

- a. **Entry 156** is a January 14, 2018 email from Ms. [REDACTED] to senior members of Store Operations (Ms. [REDACTED] and Ms. [REDACTED]) and Guest Services, all of whom I instructed to gather information for Legal Services' benefit and pursuant to Legal Services' investigation, with information about former employees relating to the social media allegations. Attached to Entry 156 is **Entry 157**, a January 13, 2018 email from Ms. [REDACTED], Guest Services Advocate, to Ms. [REDACTED] and Ms. [REDACTED], in which Ms. [REDACTED] selects and escalates specific social media allegations from a former employee and requests information from Ms. [REDACTED] and Ms. [REDACTED], who I had charged with conveying my legal advice.

20. Entries 156, 157, 254 and 412 are reflected in a later version of the document reflected in Entry 143, which Ms. [REDACTED] sent me and which I reviewed. The information-gathering actions taken by the Store Operations, Human Resources, and Loss Prevention, in response to the January 2018 Twitter allegations, were not the company's normal response to customer complaints. Those actions were taken pursuant to the investigation led by Legal Services and done to assist company counsel with the provision of legal advice and to minimize litigation exposure, while also preparing for a possible lawsuit against the company.

Communications Regarding Responses to Media Inquiries

21. To appropriately assess and mitigate the risk posed by the allegations, and to prepare for possible litigation, I directed Ms. [REDACTED], Director of Public Relations, to escalate all media inquiries related to the social media allegations to my attention for my review and to enable me to direct the company's responses to such inquiries in a way that minimized the company's litigation exposure. At my request, Ms. [REDACTED] provided me with periodic—oftentimes, daily—updates of social media and media activity. Ms. [REDACTED] also helped coordinate investigatory efforts—in conjunction with Store Operations and Human Resources, discussed above—that stemmed from media and social media inquiries. Investigating and appropriately responding to media and social media inquiries was a necessary part of Legal Services' investigation and preparation for potential litigation, and the legal advice and direction I provided to Ms. [REDACTED] regarding the company's external messaging was an important part of minimizing the company's litigation exposure.

22. Activity taken at my direction in response to media inquiries is reflected in three of the challenged documents:

- a. **Entry 353** reflects investigatory steps taken in response to media inquiries from reporters relating to stores in Florida on January 23 and 24, 2018. In accordance with her instruction from Legal Services, Ms. [REDACTED] sent an email, denoted as "Attorney client privileged" and "Confidential," to employees in Human Resources, to investigate and gather information in response to the media inquiry. Ms. [REDACTED] also copied Mr. [REDACTED], Senior Counsel in Legal Services, on an email reflected in Entry 353. Human Resources performed investigatory tasks and provided the information learned to Store Operations,

as discussed in Paragraphs 19 and 20 above, and reflected in **Entries 353 and 355**.

- b. **Entry 319** reflects a similar communication from Ms. [REDACTED] to employees in Store Operations and Human Resources on January 23, 2018, conveying information from a media inquiry for inclusion in the company's investigation.

23. Store Operations compiled information gathered in response to the media inquiries reflected in Entries 319, 353, and 355 at my request and into a later version of Entry 143.

24. To ensure that other company employees did not respond to media inquiries in a manner inconsistent with my direction, I requested that employees be provided guidance. On January 24, 2018, I communicated with Ms. [REDACTED] directly about the contents of a message from Ms. Steelman to Store Operations' Regional Vice Presidents, and provided Ms. [REDACTED] my edits. Later that evening and shortly after I reviewed and approved the message, Ms. Steelman sent the email to Store Operations' Regional Vice Presidents, which was, in turn, provided to certain District Managers. Those communications are reflected in **Entry 374** and **Entry 390**. I was also a blind carbon copy recipient of Entry 374, the content of which is also reflected in Entry 390.

*Communications Regarding Guest Complaints*

25. Following the social media allegations, it was my directive that customer inquiries and complaints related to those allegations be tracked and handled in a manner consistent with Legal Services' investigation and developing litigation strategy. I communicated with senior Guest Services personnel, instructed them to track customer or guest concerns relating to the alleged resale of returned, used products, and provided them legal advice on responding to such concerns. I further instructed Guest Services to provide that legal advice to employees in other

business groups, including Store Operations, that sought information on how to handle a customer inquiry or complaint related to the social media allegations.

26. Three of the communications challenged by Plaintiffs reflect field employees escalating customer concerns about the social media allegations and/or seeking advice about how to handle those concerns:

- a. **Entry 295** reflects a January 18, 2018 communication from a District Manager to Guest Services, copying a Regional Vice President, and asking how to handle a customer complaint. Only the communication that escalates the complaint and seeks advice is redacted.
- b. **Entry 532** reflects communications on January 30 and 31, 2018, among a Senior Vice President, a Regional Vice President, Guest Services, and Ms. [REDACTED] regarding the handling of a customer complaint. Only the communications escalating the complaint are redacted.
- c. **Entry 607** reflects a February 16, 2018 communication from a Regional Vice President to Guest Services, copying an Senior Vice President, regarding the handling of a customer complaint. Only the communication escalating the complaint and seeking advice is redacted.

27. Although it is normal for Guest Services to manage customer complaints, its activity responding to Store Operations employees who were escalating complaints related to the social media activity and seeking advice was done consistent with my supervision and direction for the investigation. Legal Services does not supervise the handling of guest complaints absent a specific legal risk, including the threat of litigation.

Interim Draft of Ms. Steelman's Script

28. Approximately two weeks after the @fatinamxo Tweets, the company decided to create internal and external videos acknowledging the social media allegations and emphasizing that the resale of returned, used products is a clear violation of company policy. Ms. Steelman recorded those videos on January 25, 2018, the day before this lawsuit was filed. By the time the company made the decision to record the videos, it was clear to me that the company faced a substantial risk of litigation.

29. **Entry 406** is an interim draft of Ms. Steelman's script for the customer-facing video. On January 24, 2018, Ms. [REDACTED] provided me by email an earlier draft of Ms. Steelman's script for my review and approval; I had instructed Ms. [REDACTED] that I needed to approve the communication. The interim draft reflected in Entry 406 incorporates the revisions I made with an eye toward minimizing the company's litigation exposure. My approval, as General Counsel, was necessary for the video to be recorded and posted on the company's website. I understand that Plaintiffs have already been provided the video that was recorded using the final script.

Communications Regarding Revisions to the Company's Damages Policy and Procedures

30. In the days immediately following the initial Twitter allegations, the company considered revisions to the damages policy and procedures in connection with the legal risk relating to the social media allegations. One of the challenged documents reflects legal advice in connection with a potential change:

- a. **Entry 539** reflects a January 31, 2018 communication from Mr. [REDACTED] [REDACTED] Senior Compliance Manager, to employees in Store Operations and Loss Prevention. That communication reflects a legal recommendation that

originated from Mr. [REDACTED], Senior Counsel in Legal Services about the company's damage bin labels.

Communications Regarding Post-Litigation Analysis

31. After the filing of this litigation, the company continued to consider changes to its damages policy and procedures and to assess its positions in the litigation. That activity by Legal Services, in conjunction with Store Operations, resulted in numerous requests for information. That activity is reflected in four of the challenged communications:

- a. **Entry 701** reflects a communication between Ms. [REDACTED] and Mr. [REDACTED], Vice President of Store Operations, dated February 26, 2018, that describes work being undertaken in connection with the allegations in the litigation and work product that had been prepared. I am referenced in the document, and the communication is titled "attorney-client priveleged [sic] & confidential."
- b. **Entries 702, 703, and 703(b)** are attachments to Entry 701. Those attachments reflect information compiled in connection with my requests and for company counsel's review in assessing the company's position in the litigation, as well as potential changes to damages policies and procedures.

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32. I affirm under penalty of perjury of the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 5, 2019



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Jodi J. Caro