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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 29 2021

Sandra Ortega
Sandra Ortega

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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO**

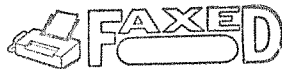
11 URSULA RAMIREZ, an individual, on behalf
12 of herself and others similarly situated,

13 Plaintiff,

14 vs.

15 BEAUTY 21 COSMETICS, INC.; and DOES
16 1 through 50, inclusive,

17 Defendants.
18
19
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Case No. CIVSB2101441

Assigned for All Purposes to:
Hon. David Cohn, Dept. S26

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay All Wages;
2. Meal Period Violations;
3. Rest Period Violations;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay Wages Due Upon Separation of Employment; and
6. Unfair Business Practices; and
7. Violation of the Private Attorneys General Act of 2004.

DEMAND FOR JURY TRIAL

Action Filed: January 25, 2021
Trial Date: None Set

1 Plaintiff URSULA RAMIREZ (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Defendants BEAUTY 21 COSMETICS, INC. and DOES 1 through 50, inclusive (collectively,
4 “Defendants”), and alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action brought on behalf of Plaintiff and the class she seeks to represent
7 (“Class” or “Class Members”). The Class consists of all current and former non-exempt employees
8 employed by Defendants in the State of California during the Class Period. The term “Class Period”
9 is defined as four (4) years prior to the filing of this class action until class certification. Plaintiff
10 reserves the right to amend this FAC to reflect a different “Class Period” as further discovery is
11 conducted.

12 2. Plaintiff, individually, and on behalf of Class, seeks relief against Defendants, for their
13 practices of violating the applicable Industrial Welfare Commission (“IWC”) Wage Orders, Code of
14 Regulations, and California Labor Code, including: (1) failure to pay all wages (including minimum,
15 regular, and overtime compensation); (2) failure to provide meal periods or compensation in lieu
16 thereof; (3) failure to authorize or permit rest breaks or provide compensation in lieu thereof; (4) failure
17 to provide accurate itemized wage statements; and (5) failure to pay all wages due upon separation of
18 employment. These violations concern current and past non-exempt employees of Defendants.

19 3. Plaintiff also brings this representative action pursuant to the Private Attorneys General
20 Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”), against Defendants, on behalf of herself
21 individually and other aggrieved employees who are and were employed by Defendants as non-exempt
22 employees throughout California during the PAGA Period. The term PAGA Period is defined as one
23 year prior to Plaintiff’s notice of Labor Code violations to the Labor and Workforce Development
24 Agency (“LWDA”) and Defendants until judgment.

25 4. At all relevant times herein, Defendants have consistently maintained and enforced
26 against Plaintiff and Class the unlawful practices and policies set forth herein.

27 5. Plaintiff seeks monetary relief against Defendants on behalf of herself and the putative
28 class to recover, among other things, unpaid wages, liquidated damages, restitution, interest, attorneys’

1 fees, costs, and penalties pursuant to Labor Code sections 201-204, 206, 210, 221, 226, 226.3, 226.7,
2 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, and 1198, and California Code of
3 Civil Procedure section 1021.5.

4 **JURISDICTION AND VENUE**

5 6. This is a class action pursuant to California Code of Civil Procedure section 382 and
6 representative action under PAGA. The monetary damages, restitution, penalties, and other amounts
7 sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be
8 established according to proof at trial.

9 7. This Court has jurisdiction over this action pursuant to the California Constitution,
10 Article VI, section 10, which grants the Superior Court original jurisdiction in all causes, except those
11 given by statutes to other courts. The statutes under which this action is brought do not specify any
12 other basis for jurisdiction. All claims alleged herein arise under California law for which Plaintiff
13 seeks relief authorized by California law.

14 8. This Court has jurisdiction over all Defendants because, upon information and belief,
15 they have sufficient minimum contacts in California, or otherwise intentionally avail themselves of
16 the California market so as to render the exercise of jurisdiction over them by the California courts
17 consistent with traditional notions of fair play and substantial justice.

18 9. Venue is proper in this Court under Code of Civil Procedure sections 395(a) and 395.5
19 because, upon information and belief, Defendants reside, transact business, maintain offices, and/or
20 have an agent or agents in this county, and the acts and omissions alleged herein took place in this
21 county.

22 **PARTIES**

23 10. Plaintiff is a California citizen and resides in San Bernardino County, California.
24 Defendants employed Plaintiff as a non-exempt hourly employee during the Class Period. Plaintiff's
25 employment with Defendant ended within one year of the filing of this action. Plaintiff's job duties
26 included, but were not limited to, labeling, packaging, and wrapping bulk orders on pallets, taking and
27 fulfilling orders, etc.

28 11. Defendant BEAUTY 21 COSMETICS, INC. ("BEAUTY 21") was and is a California

1 corporation with its principal place of business located in San Bernardino, County. BEAUTY 21
2 manufactures and sells cosmetics throughout the State of California. BEAUTY 21 has and continues
3 to employ non-exempt employees throughout the Class Period.

4 12. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter
5 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers,
6 whose employees were and are engaged throughout this county and the State of California.

7 13. Defendant DOES 1 through 50, are sued under fictitious names pursuant to Code of
8 Civil Procedure section 474 because Plaintiff does not know their true names or capacities. Plaintiff
9 will seek leave of court to amend this FAC and serve such fictitiously named Defendants when their
10 names and capacities are ascertained.

11 14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 50 are or
12 were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant
13 times.

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

18 16. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or
19 indirectly, through agents or other persons or entities, employed or otherwise exercised control over
20 the wages, hours, and working conditions of Plaintiff. Furthermore, each Defendant in all respects
21 acted as the employer and/or joint employer of Plaintiff and the Class Members.

22 17. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
23 omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through
24 50, acting as the agent, alter ego, agent, servant, joint venturer, co-conspirator, and/or partner for the
25 other, within a common enterprise and legal authority to act on the other's behalf. The acts of any and
26 all Defendants were in accordance with, and represent, the official policy of Defendants.

27 18. At all relevant times, Defendants, and each of them, acted within the scope of such
28 agency or employment, or ratified each and every act or omission complained of herein. At all relevant

1 times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other
2 Defendants in proximately causing the damages herein alleged.

3 19. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is
4 in some manner intentionally, negligently, and/or otherwise responsible for the acts, omissions,
5 occurrences, and transactions alleged herein.

6 **CLASS ALLEGATIONS**

7 20. Plaintiff brings this class action pursuant to Code of Civil Procedure section 382 on
8 behalf of herself and all others similarly situated who were injured by Defendants' violations of the
9 Labor Code, Business and Professions Code sections 17200, *et seq.*, and IWC Wage Orders during
10 the Class Period.

11 21. Plaintiff's proposed Class consists of and is defined as follows:

12 Class

13 All current and former non-exempt employees employed by Defendants in the State of
14 California within four years prior to the filing of this action to the date of class
15 certification.

16 22. Plaintiff also seeks to certify the following Subclass:

17 Waiting Time Subclass

18 All Class Members who separated from their employment with Defendants at any time
19 within three years prior to the filing of this action to the date of class certification
20 ("Subclass" or "Waiting Time Subclass").

21 23. Members of the Class and Subclass described above will be collectively referred to as
22 "Class Members."

23 24. Plaintiff reserves the right to modify or re-define the Class or Subclass, establish
24 additional subclasses, or modify or re-define any class or subclass definition as appropriate based on
25 investigation, discovery, and specific theories of liability.

26 25. There is a well-defined community of interest in this litigation and the proposed Class
27 and Subclass are readily ascertainable.

28 26. **Commonality:** This action has been brought and may properly be maintained as a class

1 action under the California Code of Civil Procedure section 382 because there are common questions
2 of law and fact as to the Class Members that predominate over any questions affecting only individual
3 members including, but not limited to, the following:

- 4 (a) Whether Defendants paid Plaintiff and Class Members all wages (including minimum,
5 regular, and overtime wages) for all hours worked;
- 6 (b) Whether Defendants' rounding policy and practice favored Defendants by
7 systematically undercompensating Plaintiff and Class Members;
- 8 (c) Whether Defendants unlawfully collected or received wages from Plaintiff and Class
9 Members;
- 10 (d) Whether Defendants required Plaintiff and Class Members to work off-the-clock
11 without compensation;
- 12 (e) Whether Defendants provided Plaintiff and Class Members with compliant meal
13 periods or paid compensation in lieu thereof;
- 14 (f) Whether Defendants authorized and permitted compliant rest breaks to Plaintiff and
15 Class Members or paid compensation in lieu thereof;
- 16 (g) Whether Defendants failed to provide Plaintiff and Class Members with accurate
17 itemized wage statements;
- 18 (h) Whether Defendants failed to timely pay the Plaintiff and Class Members all wages
19 due immediately upon termination or within 72 hours of resignation;
- 20 (i) Whether Defendants' conduct was willful or reckless; and
- 21 (j) Whether Defendants engaged in unfair business practices in violation of Business and
22 Professions Code sections 17200, *et seq.*

23 27. There is a well-defined community of interest. Further, Plaintiff and Class Members
24 have suffered common injuries as a result of Defendants' systemic employment policies and practices.
25 Looking to Defendants' employment policies and practices, the Court can adjudicate the lawfulness
26 of those policies and practices on a class-wide basis, according to proof, and issue an award to Plaintiff
27 and Class Members accordingly. In addition, answers to common questions raised in this FAC will
28 advance resolution of each individual Class Member's claims.

1 28. **Numerosity:** The Class Members are so numerous that joinder of all members is
2 impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this
3 time, on information and belief, the class is estimated to be greater than 100 individuals.

4 29. **Ascertainability:** The identities of the Class Members are readily ascertainable by
5 inspection of Defendants' employment and payroll records.

6 30. **Typicality:** The claims (or defenses, if any) of Plaintiff are typical of the claims of the
7 Class Members because Defendants' failure to comply with the provisions of California's wage and
8 hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained
9 by Plaintiff are also typical of the injuries sustained by Class Members because they arise out of and
10 are caused by Defendants' common course of conduct as alleged herein.

11 31. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of all
12 Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain
13 full compensation and penalties due to Plaintiff and the Class Members. Plaintiff's attorneys, as
14 proposed class counsel, are competent and experienced in litigating large employment class actions
15 and versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
16 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs
17 that have been and will be necessarily expended for the prosecution of this action for the substantial
18 benefit of the Class Members.

19 32. **Superiority:** The nature of this action makes use of class action adjudication superior
20 to other methods. A class action will achieve economies of time, effort, and expense as compared with
21 separate lawsuits and will avoid inconsistent outcomes because the same issues can be adjudicated in
22 the same manner for the entire Class and Subclass at the same time. If appropriate, this Court can, and
23 is empowered to, fashion methods to efficiently manage this case as a class action.

24 33. **Public Policy Considerations:** Employers in the State of California violate
25 employment and labor laws every day. Current employees are often afraid to assert their rights out of
26 fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they
27 believe their former employers might damage their future endeavors through negative references
28 and/or other means. Class actions provide class members who are not named in the FAC with a type

1 of anonymity that allows for the vindication of their rights while affording them privacy protections.

2 **GENERAL ALLEGATIONS**

3 34. **Background:** At all relevant times mentioned herein, Defendants employed Plaintiff
4 and other persons as non-exempt employees at Defendants' locations within California. Defendants
5 employed Plaintiff in a non-exempt position during her employment and continue to employ non-
6 exempt employees within California.

7 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were
9 knowledgeable about California's wage and hour laws, employment and personnel practices, and the
10 requirements of California law.

11 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
12 have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the
13 financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so
14 all in order to increase Defendants' profits.

15 37. **Unpaid Wages:** Plaintiff is informed and believes, and thereon alleges, that Defendants
16 knew or should have known that Plaintiff and Class Members were entitled to receive at least
17 minimum, regular, and overtime wages and that they were not receiving minimum, regular, and
18 overtime wages for all work that was required to be performed. During the Class Period, Plaintiff and
19 Class Members worked in excess of eight (8) hours in a workday and/or 40 hours in a workweek. In
20 violation of the Labor Code and applicable IWC Wage Orders, Defendants rounded Plaintiff's and the
21 Class Members' hours worked thereby depriving them of work performed before and after their
22 scheduled shifts, including time spent waiting in line to clock in and out for shifts and meal periods.
23 Defendants' rounding policy and practice systematically undercompensated the Class Members and
24 favored the employer rather than the employee. In addition, Defendants unlawfully deducted time
25 worked, and therefore wages, when Class Members were late, e.g., being five (5) minutes late would
26 result in time being disproportionately deducted.

27 38. **Meal Period Violations:** Plaintiff is informed and believes, and thereon alleges, that
28 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive

1 timely, off-duty, uninterrupted 30-minute meal periods for every five hours of work, or payment of
2 one additional hour of pay at their regular rate of pay when they did not receive a compliant meal
3 period. Plaintiff is informed and believes, and thereon alleges that Defendants failed to provide
4 compliant timely, uninterrupted, and off-duty 30-minute meal periods at the appropriate time intervals
5 despite having worked over five (5) hours per workday. Specifically, Plaintiff and Class Members
6 were required to clock in and out for meal periods and waited for several minutes in line per meal
7 period, thereby depriving them of full 30-minute meal periods, i.e., Plaintiff and Class Members
8 received short meal periods. Despite these meal period violations, Defendants failed to provide
9 Plaintiff and Class Members with premium pay for every non-compliant meal period.

10 **39. Rest Period Violations:** Plaintiff is informed and believes, and thereon alleges, that
11 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive a
12 10-minute, off-duty, uninterrupted rest period for every four (4) hours worked, or major fraction
13 thereof, or payment of one (1) additional hour of pay at their regular rate of pay when they were not
14 permitted to take a compliant rest period. During the Class Period, Plaintiff and Class Members
15 regularly worked in excess of four (4) hours or major fraction thereof. In violation of the Labor Code
16 and IWC Wage Orders, Defendants failed to provide uninterrupted, off-duty, 10-minute rest periods
17 due to its unlawful policies and practices. In addition, Defendants failed to pay Plaintiff and Class
18 Members one additional hour of pay at their regular rate of pay when they did not receive a compliant
19 rest break.

20 **40. Waiting Time Penalties:** Plaintiff is informed and believes, and thereon alleges, that
21 Defendants knew or should have known that Plaintiff and Waiting Time Subclass Members who
22 separated from their employment with Defendants during the statutory period were entitled to timely
23 payment of all wages due. In violation of the Labor Code, Plaintiff and Waiting Time Class Members
24 did not receive payment of all wages owed upon separation within the permissible time period due to,
25 *inter alia*, Defendants' failure to pay all wages and meal and rest period premiums to Plaintiff and
26 Class Members.

27 **41. Wage Statement Violations:** Plaintiff is informed and believes, and thereon alleges
28 that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive

1 complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders,
2 Plaintiff and Class Members were not furnished with complete and accurate wage statements that show
3 all of the information required by Labor Code section 226, including, but not limited to, the gross and
4 net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period,
5 and the corresponding number of hours worked at each hourly rate.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES**

8 **(AGAINST ALL DEFENDANTS)**

9 42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
10 fully set forth herein.

11 43. At all times herein relevant, Defendants had a duty to comply with Labor Code sections
12 204, 206, 221, 510, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all
13 applicable local minimum wage ordinances in effect throughout California.

14 44. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages
15 owed on regularly scheduled paydays at least twice during each calendar month, on days designated
16 in advance by the employer as the regular paydays. All wages earned in excess of the normal work
17 period must be paid no later than the payday for the next regular payroll period.

18 45. Labor Code section 206 provides that in case of a dispute over wages, the employer
19 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to
20 the employee all remedies he/she is otherwise entitled to as to any balance claimed.

21 46. The IWC Wage Orders define “hours worked” as “the time during which an employee
22 is subject to the control of an employer and includes all time the employee is suffered or permitted to
23 work, whether or not required to do so.”

24 47. Labor Code section 221 provides that “[i]t shall be unlawful for any employer to collect
25 or receive from an employee any part of wages theretofore paid by said employer to said employee.”

26 48. Labor Code section 510 and the IWC Wage Orders require that employers pay
27 employees for all overtime hours at a rate of one and one-half times the employee’s regular rate of pay
28 for hours worked in excess of eight hours in one workday, 40 hours in one workweek, and after the

1 first eight hours on the seventh consecutive workday in one work week. Labor Code section 510 and
2 the IWC Wage Orders further require that employers pay employees double their regular rate of pay
3 for hours work in excess of 12 hours in a workday and after eight hours on the seventh consecutive
4 workday in one workweek. Labor Code section 510 requires payment of overtime wages at one and
5 one half times the “regular rate of pay,” which includes all forms of remuneration earned by the
6 employee.

7 49. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to
8 all employees in California for all hours worked. Local minimum wage ordinances, may provide for
9 higher minimum wage rates that must be paid to employees for all hours worked in those locales where
10 each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay less than
11 the state or local minimum wage, whichever is higher, for any hour of work.

12 50. Labor Code section 1194 requires that employers pay employees at least the legal
13 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.
14 Labor Code section 1194 further authorizes any employee receiving less than the legal minimum wage
15 applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages,
16 along with interest thereon, reasonable attorneys’ fees and costs of suit.

17 51. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount
18 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

19 52. Labor Code section 1198 prohibits employers from employing for longer hours or less
20 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
21 the Labor Commissioner.

22 53. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
23 all wages due, including minimum, regular, and overtime wages due to Defendants’ unlawful rounding
24 policy and practice, unlawful deduction of wages, and failure to provide compensation for off-the-
25 clock work, among other things.

26 54. In violation of California law, Defendants have knowingly and willfully refused to
27 perform their obligations and compensate Plaintiff and Class Members for all wages earned as alleged
28 above.

55. Defendants' failure to pay Plaintiff and Class Members all earned minimum and regular wages in accordance with Labor Code sections 204, 206, 221, 510, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout California, Plaintiff and Class Members are entitled to recover the full amount of unpaid wages, liquidated damages, prejudgment interest, and statutory penalties, along with attorneys' fees and costs in amounts that will be established at trial.

SECOND CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

57. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders.

58. Labor Code section 512 and the IWC Wage Orders prohibit an employer from employing any person for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes (commencing before the employee's fifth hour of work), except that if the total work period per day is no more than 6 hours, the meal period may be waived by mutual consent of the employer and employee. A second meal period of not less than 30 minutes is required if an employee works more than 10 hours per day and must begin before the employee's tenth hour of work, except if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. An employer must relieve an employee of all duties during meal periods.

59. The applicable IWC Wage Orders state that “[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

60. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from requiring any employee to work during a meal period mandated by any California statute, regulation, standard or order. If an employer fails to provide an employee with a meal period in accordance with

1 state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
2 employee one additional hour of pay at the employee's regular rate of compensation for each workday
3 that the meal period is noncompliant.

4 61. During the Class Period, Plaintiff and Class Members did not receive compliant meal
5 periods when working more than five (5) and/or 10 hours per day because Plaintiff had to wait in line
6 to clock in and out for meal periods, consequently resulting in short meal periods (i.e., less than 30
7 minutes).

8 62. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
9 meal period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and
10 the applicable IWC Wage Order.

11 63. As a result of Defendants' failure to provide compliant meal periods and pay meal
12 period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor
13 Code sections 226.7 and 512, Plaintiff and Class Members suffered and continue to suffer a loss of
14 wages and compensation.

15 64. Because Plaintiff and Class Members were and/or are entitled to such meal periods or
16 "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to
17 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
18 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

19 65. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys'
20 fees and costs from Defendants in an amount subject to proof and approved by the Court.

21 **THIRD CAUSE OF ACTION**

22 **REST PERIOD VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

24 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
25 fully set forth herein.

26 67. At all relevant times, Defendants had a duty to comply with Labor Code section 226.7
27 and the applicable IWC Wage Orders.

28 68. The IWC Wage Orders require employers to authorize and permit all employees to take

1 10-minute duty-free rest periods for each four hours worked, or major fraction thereof.

2 69. If an employer fails to provide an employee with a rest period in accordance with
3 California law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay
4 the employee one additional hour of pay at the employee's regular rate of compensation for each
5 workday that the rest period is noncompliant.

6 70. During the relevant time period, Defendants did not implement a compliant rest break
7 policy or practice. As such, Plaintiff and Class Members' rest breaks were interrupted, short, and/or
8 restricted to the worksite.

9 71. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
10 rest period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
11 applicable IWC Wage Order.

12 72. As a result of Defendants' failure to provide compliant rest periods and pay rest period
13 premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code
14 sections 226.7 and 516, Plaintiff and Class Members suffered and continue to suffer a loss of wages
15 and compensation.

16 73. Because Plaintiff and Class Members were and/or are entitled to such rest periods or
17 "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to
18 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
19 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

20 74. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys'
21 fees and costs from Defendants in an amount subject to proof and approved by the Court.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **(AGAINST ALL DEFENDANTS)**

25 75. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
26 fully set forth herein.

27 76. At all relevant times, Defendants had a duty to comply with Labor Code section 226.

28 77. Labor Code section 226(a) requires that, semimonthly or at the time of each payment

1 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
2 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
3 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net
4 wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
5 identification number of the employee, (8) the name and address of the legal entity that is the
6 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked
7 at each hourly rate.

8 78. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a
9 knowing and intentional failure by an employer to provide an accurate itemized wage statement to
10 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
11 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
12 an award of costs and attorneys' fees.

13 79. During the relevant time period, Defendants have knowingly and intentionally failed
14 to comply with Labor Code section 226(a) on wage statements that were provided to Plaintiff and
15 Class Members. The deficiencies include, among other things, Defendants' failure to correctly state
16 the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the
17 pay period, and the corresponding number of hours worked at each hourly rate.

18 80. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
19 and Class Members have suffered injury and damage to their statutorily protected rights. Specifically,
20 Plaintiff and Class Members have been injured by Defendants' intentional violation of California
21 Labor Code section 226(a) because they were denied both their legal right to receive, and their
22 protected interest in receiving, accurate itemized wage statements under California Labor Code section
23 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the underpayment of
24 wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage
25 in these efforts and incur these costs had Defendants provided the accurate wages earned. This has
26 also delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

27 81. Defendants' violations of California Labor Code section 226(a) prevented Plaintiff and
28 Class Members from knowing, understanding and disputing the wages paid to them, and resulted in

1 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional
2 failure to comply with California Labor Code section 226(a), Plaintiff and Class Members have
3 suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown
4 according to proof at trial.

5 82. Plaintiff and Class Members are also entitled to injunctive relief under California Labor
6 Code section 226(h), compelling Defendants to comply with California Labor Code section 226, and
7 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

8 **FIFTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(AGAINST ALL DEFENDANTS)**

11 83. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
12 fully set forth herein.

13 84. At all relevant times, Defendants had a duty to comply with Labor Code sections 201,
14 202, and 203. Defendants failed to comply with these final paycheck requirements with respect to
15 Plaintiff and Waiting Time Subclass Members.

16 85. Labor Code section 201 requires that if an employer discharges an employee, the wages
17 earned and unpaid at the time of discharge are due and payable immediately.

18 86. Labor Code section 202 requires that if "an employee not having a written contract for
19 a definite period" quits, the employee's wages shall become due and payable no later than 72 hours
20 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in
21 which case the employee is entitled to his or her wages at the time of quitting.

22 87. Labor Code section 203 provides that if an employer willfully fails to pay, without
23 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
24 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
25 action therefor is commenced, but that the wages shall not continue for more than 30 days per
26 employee.

27 88. During the relevant time period, Defendants willfully failed to pay Waiting Time
28 Subclass Members all their earned wages upon termination including, but not limited to, minimum,

1 regular, and overtime compensation, and premium compensation either at the time of discharge or
2 within 72 hours of leaving Defendants' employ.

3 89. As a result of Defendants' failure to timely pay all wages owed to Plaintiff and Waiting
4 Time Subclass Members in accordance with Labor Code sections 201, 202 and 203, Plaintiff and
5 Waiting Time Subclass Members are entitled to recover waiting time penalties, prejudgment interest,
6 attorneys' fees, and costs in amounts that will be established at trial.

7 **SIXTH CAUSE OF ACTION**
8 **UNFAIR BUSINESS PRACTICES**
9 **(AGAINST ALL DEFENDANTS)**

10 90. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
11 fully set forth herein.

12 91. Plaintiff brings this claim individually and on behalf of Class Members.

13 92. Business & Professions Code section 17200 ("UCL") prohibits unfair competition in
14 the form of any unlawful, unfair, or fraudulent business act or practice.

15 93. Business and Professions Code section 17204 allows "any person who has suffered
16 injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil
17 action for violation of the UCL.

18 94. Labor Code section 90.5, subdivision (a) states it is the public policy of California to
19 vigorously enforce minimum labor standards in order to ensure employees are not required to work
20 under substandard and unlawful conditions, and to protect employers who comply with the law from
21 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
22 with minimum labor standards.

23 95. Beginning at an exact date unknown to Plaintiff, but at least since the date four years
24 prior to the filing of this action, Defendants have committed acts of unfair competition as defined by
25 the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business
26 practices and acts described in this FAC, including, but not limited to, violations of Labor Code
27 sections 201-204, 206, 221, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, and 1198 as well as
28 other statutes.

1 96. The violations of these laws and regulations, as well as of fundamental California
2 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
3 Business and Professions Code sections 17200 et seq.

4 97. As a result of these actions, Plaintiff, on information and belief, alleges that Defendants
5 are able to unfairly compete with other comparable companies in the State of California in violation
6 of Business & Professions Code sections 17000 et. seq. and sections 17200 et. seq. Due to these
7 unlawful, unfair, and/or fraudulent business practices, Defendants have gained a competitive
8 advantage over other comparable companies doing business in the State of California.

9 98. The victims of these unlawful, unfair, and/or fraudulent business practices include, but
10 are not limited to, Plaintiff, putative class members, competing cannabis manufacturers in the State of
11 California, and the general public. Plaintiff is informed and believes, and thereon alleges, that
12 Defendants performed the above-mentioned acts with the intent of gaining an unfair competitive
13 advantage and thereby injuring Plaintiff, putative class members, other competitors, and the general
14 public.

15 99. Plaintiff's success in this action will enforce important rights affecting the public
16 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf of
17 herself.

18 100. Business and Professions Code sections 17203 provides that a court may make such
19 orders or judgments as may be necessary to prevent the use or employment by any person of any
20 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
21 Defendants from repeating their unlawful, unfair, and fraudulent business acts and business practices
22 alleged above.

23 101. Business and Professions Code section 17203 provides that the Court may restore to
24 any person in interest, any money or property that may have been acquired by means of such unfair
25 competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions
26 Code section 17203 for wages and payments unlawfully withheld from employees, including the fair
27 value of the meal and rest periods and other losses alleged herein, during the four-year period prior to
28 the filing of this action. All remedies are cumulative pursuant to Business & Professions Code section

1 17205.

2 102. Business and Professions Code section 17202 provides: “Notwithstanding section 3369
3 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or
4 penal law in a case of unfair competition.” Plaintiff and Class are entitled to enforce all applicable
5 penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

6 103. Plaintiff requests injunctive relief pursuant to Business & Professions Code section
7 17203 to enjoin Defendants from continuing the unfair/unlawful business practices alleged herein.

8 104. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is a
9 financial burden involved in pursuing this action. The action is seeking to vindicate a public right, and
10 it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to pay attorneys’
11 fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to Code of Civil
12 Procedure section 1021.5 and others.

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

15 **(AGAINST ALL DEFENDANTS)**

16 105. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
17 fully set forth herein.

18 106. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
19 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to
20 have been violated, and after receiving notice from the LWDA of its intention not to investigate or
21 after 65 days have passed without notice from the LWDA.

22 107. On January 22, 2021, Plaintiff gave written notice of the specified provisions alleged
23 to have been violated by Defendant BEAUTY 21, including the facts and theories to support the
24 alleged violations, as required by Labor Code section 2699.3. This written notice was provided via
25 certified mail to BEAUTY 21 and to the LWDA by electronically filing the notice via the Department
26 of Industrial Relations’ website. More than 65 days have passed since Plaintiff submitted her PAGA
27 notice to the LWDA without a response from the LWDA. Accordingly, Plaintiff may amend her
28 Complaint to add a PAGA cause of action against BEAUTY 21.

1 108. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
3 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
4 recovered through a civil action brought by an aggrieved employee on behalf of herself and other
5 current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

6 109. For all provisions of the Labor Code except those for which a civil penalty is
7 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred
8 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred
9 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which
10 Defendants violated these provisions of the Labor Code.

11 110. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil penalties
12 for any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201,
13 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5,
14 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs
15 (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230,
16 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of
17 Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2,
18 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851,
19 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,
20 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision
21 (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296,
22 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,
23 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
24 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771,
25 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,
26 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
27 and 6399.7.

28 111. Defendants' conduct violates numerous Labor Code sections, including, but not limited

1 to, the following:

2 (a) Violation of Labor Code sections 201-204, 206, 210, 510, 558, 1194, 1197,
3 1197.1, and 1198 for failure to timely pay all earned wages (including minimum, regular, and overtime
4 wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of
5 employment as herein alleged;

6 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal
7 periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal
8 periods as herein alleged;

9 (c) Violation of Labor Code sections 226.7 for failure to permit rest breaks to
10 Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as
11 herein alleged;

12 (d) Violation of Labor Code sections 226 and 226.3 for failure to provide accurate
13 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged; and

14 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain
15 accurate records regarding the employment of Plaintiff and other aggrieved employees as herein
16 alleged.

17 112. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a) of
18 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
19 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
20 violation in a subsequent citation, for which the employer fails to provide the employee a wage
21 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil
22 penalties provided for in this section are in addition to any other penalty provided by law.”

23 113. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf
24 of an employer who violates, or causes to be violated, a section of this chapter or any provision
25 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
26 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid . . . (2) For each subsequent
28 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

1 employee was underpaid.”

2 114. Labor Code section 558.1 provides that any “employer or other person acting on behalf
3 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
4 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to
5 be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor Code], may be held liable
6 as the employer for such violation.”

7 115. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
8 maintain accurate and complete payroll records showing the hours worked daily by and the wages paid
9 to employees.

10 116. Labor Code section 1197.1 also provides “[a]ny employer or other person acting either
11 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
12 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
13 of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is
14 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period
15 for which the employee is underpaid . . . (2) For each subsequent violation for the same specific
16 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which
17 the employee is underpaid regardless of whether the initial violation is intentionally committed.

18 117. As set forth above, Defendants have violated numerous provisions of the Labor Code
19 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff also seeks
20 the civil penalties set forth in Labor Code sections 558 and 1197.1 for herself, the underpaid
21 employees, and the State of California.

22 118. Plaintiff is an “aggrieved employee” because she was employed by the alleged violators
23 and had one or more of the alleged violations committed against her, and therefore is properly suited
24 to represent the interests of all other aggrieved employees.

25 119. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3
26 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other
27 aggrieved employees under the PAGA.

28 120. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to

1 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
2 above.

3 121. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

4 **PRAYER FOR RELIEF**

5 Plaintiff, individually and on behalf of all others similarly situated and other aggrieved
6 employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

- 7 1. For certification of this action as a class action, including certifying the Class and
8 Subclass alleged by Plaintiff;
- 9 2. For appointment of Plaintiff URSULA RAMIREZ as the class representative;
- 10 3. For appointment of Jose Garay, APLC as class counsel for all purposes;
- 11 4. For compensatory damages in an amount according to proof with interest thereon;
- 12 5. For economic and/or special damages in an amount according to proof with interest
13 thereon;
- 14 6. For damages, monetary relief, wages, premiums, benefits and penalties, including
15 interest thereon;
- 16 7. For waiting time penalties pursuant to Labor Code section 203;
- 17 8. For liquidated damages pursuant to Labor Code section 1194.2;
- 18 9. For statutory penalties to the extent permitted by law, including those pursuant to the
19 Labor Code and IWC Wage Orders;
- 20 10. For restitution to Plaintiff and Class Members of all money and property unlawfully
21 acquired by Defendants through unfair or unlawful business practices pursuant to
22 Business and Professions Code sections 17200 *et seq.*;
- 23 11. For an order requiring Defendants to restore and disgorge all funds to each employee
24 acquired by means of any act or practice declared by this Court to be unlawful, unfair
25 or fraudulent and, therefore, constituting unfair competition under Business and
26 Professions Code sections 17200, *et seq.*;
- 27 12. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6
28 and Civil Code sections 3287 and 3289;

PROOF OF SERVICE
Code of Civ. Proc. § 1013a, subd. (3)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **October 29, 2021**, I served true and correct copies of the following document(s):

- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

I served the document(s) on the person(s) below as follows:

STRADLING YOCCA CARLSON & RAUTH LLP
ARTHUR F. SILBERGELD
asilbergeld@stradlinglaw.com

Attorneys for Defendant BEAUTY 21 COSMETICS, INC.

The document(s) were served by the following means:

☒ **By e-mail:** Based upon the agreement between the parties or the COVID-19 judicial council and/or other court orders in effect during the pandemic requiring attorneys to electronically serve and receive notices and documents, I caused the document(s) to be sent to the persons at the electronic service addresses listed above. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **October 29, 2021**, at Long Beach, California.



Jose R. Garay