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individually and on behalf of all others similarly situated

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11 Attorneys for Defendant BEAUTY 21 COSMETICS,
12 INC.

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SAN BERNARDINO**

15 URSULA RAMIREZ, an individual, on behalf
16 of herself and others similarly situated,

17 Plaintiff,

18 vs.

19 BEAUTY 21 COSMETICS, INC.; and DOES 1
20 through 50, inclusive,

21 Defendants.
22 ,

Case No. CIVSB2101441

Assigned for All Purposes to:
Hon. David Cohn, Dept. S-26

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

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

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 It is stipulated and agreed by and between Plaintiff URSULA RAMIREZ (“Plaintiff”) and
3 Defendant BEAUTY 21 COSMETICS, INC. (“Defendant”) (collectively, the “Parties”), subject to
4 the approval of the Court pursuant to the California Rules of Court, that the Settlement of this Action
5 shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used
6 herein shall have the meanings set forth in Section I or as defined elsewhere in this Joint Stipulation
7 of Class Action Settlement (“Settlement” or “Agreement”).

8 This Settlement is made by and between the Parties following a mediation session on May 4,
9 2021 with mediator Lynne S. Bassis.

10 The Parties agree that the Action shall be, and is, ended, settled, resolved, and concluded by
11 agreement of Defendant to pay the settlement amount of Four Hundred Thousand Dollars
12 (\$400,000.00), as provided in Section III(D)(7)(a) below (“Gross Settlement Amount”) pursuant to
13 the terms and conditions of this Settlement and for the consideration set forth herein, including but
14 not limited to, a release of all claims by Plaintiff and the Class Members as set forth herein.

15 **I. DEFINITIONS**

16 Unless otherwise defined herein, the following terms used in this Settlement shall have the
17 meanings ascribed to them as set forth below:

18 A. “Action” means the civil Class Action Complaint filed on January 25, 2021 in the
19 San Bernardino County Superior Court, titled *Ramirez v. Beauty 21 Cosmetics, Inc.*, Case No. CIV
20 SB 2101441.

21 B. “Class” means all persons currently or formerly employed as non-exempt hourly
22 employees in California by Defendant at any time during the Class Period (defined below).

23 C. “Class Counsel” means the attorneys for the Class and the Class Members, as
24 follows:

25 Jose R. Garay
26 Daniel J. Hyun
27 **JOSE GARAY, APLC**
28 249 E. Ocean Blvd. #814
Long Beach, CA 90802
Telephone: (949) 208-3400
Facsimile: (562) 590-8400

- 1 D. "Class Member(s)" means all members of the Class.
- 2 E. "Class Notice" means the Notice of Proposed Class Action Settlement which includes
3 the Request for Exclusion in a form substantially similar to the notice attached hereto as **Exhibit A**,
4 subject to Court approval.
- 5 F. "Class Period" means January 25, 2017 through May 4, 2021.
- 6 G. "Court" means the San Bernardino County Superior Court, where the Action is
7 pending.
- 8 H. "Effective Date" means the later of the following: (1) the date the Final Approval
9 Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled,
10 and no appeal is taken of the Final Approval Order, sixty (60) days after the Final Approval Order is
11 signed; or (3) if an appeal is taken from the Court's overruling of objections to the Settlement, ten
12 (10) days after the appeal is withdrawn or after an appellate decision affirming the final approval
13 decision becomes final.
- 14 I. "Defendant" means BEAUTY 21 COSMETICS, INC.
- 15 J. "Defense Counsel" means counsel for Defendant, who are:
16
17 Arthur F. Silbergeld
18 **STRADLING YOCCA CARLSON & RAUTH LLP**
19 10100 Santa Monica Blvd, Suite 1400
20 Los Angeles, CA 90067
21 Telephone: (424) 214-7036
- 22 K. "Disposition" means the method by which the Court approves the terms of the
23 Settlement and retains jurisdiction over its enforcement, implementation, construction,
24 administration, and interpretation.
- 25 L. "Enhancement Award" means an amount of up to Ten Thousand Dollars
26 (\$10,000.00) for Plaintiff URSULA RAMIREZ, subject to Court approval.
- 27 M. "Final Approval Order" means the final formal court order signed by the Court and
28 entering a judgment approving this Settlement on substantially the terms provided herein or as the
same may be modified by subsequent written agreement of the Parties as approved by the Court
following the Final Approval Hearing in accordance with the terms herein.

1 N. "Gross Settlement Amount" means Four Hundred Thousand Dollars (\$400,000.00),
2 unless increased on a pro rata basis pursuant to Section III(D)(5) to be paid by Defendant pursuant to
3 the terms of this Settlement to settle this Action. All claims of the Settlement Class, including all
4 wages, damages, interest, penalties, and all administration costs, attorney's fees and costs,
5 Enhancement Award, and LWDA Payment (defined below) pursuant to Section III(D)(7) below,
6 shall be paid out of the Gross Settlement Amount. The Defendant's share of payroll taxes arising
7 from the payments made under this settlement shall be paid by Defendant separate from and in
8 addition to the Gross Settlement Amount. No part of the Gross Settlement amount shall revert to
9 Defendant.

10 O. "Individual Settlement Payments" means the amounts of money from the Net
11 Settlement Amount that shall be paid to Participating Class Members less the employee's portion of
12 required federal and state withholdings. Individual Settlement Payments will be each Participating
13 Class Member's proportional share of the Net Settlement Amount (which shall be determined by the
14 calculations provided in this Settlement).

15 P. "Judgment" refers to the judgment entered by the Court in conjunction with the Final
16 Approval Order.

17 Q. "LWDA Payment" means 75% of the \$5,000 allocated to settlement of Private
18 Attorneys General Act of 2004 ("PAGA") claims, which will be paid to the Labor and Workforce
19 Development Agency ("LWDA") pursuant to Section III(D)(7)(f) of this Settlement, subject to
20 Court approval.

21 R. "Net Settlement Amount" means the Gross Settlement Amount less the Court-
22 approved settlement administration costs, attorney's fees and costs, Enhancement Award, and
23 LWDA Payment pursuant to Section III(D)(7) below.

24 S. "Non-Participating Class Member(s)" means those Class Members who submit to the
25 Settlement Administrator a valid and timely Exclusion Form to be excluded from the Class pursuant
26 to Section III(D)(2) below and who will not be bound by the Settlement.

27 T. "Objection" means a signed written objection to the Settlement by a Class Member,
28 that is timely mailed to the Settlement Administrator, setting forth the grounds for the objection,

1 along with any supporting documents, the Class Member's address, telephone number, and reference
2 to the Action.

3 U. "PAGA Period" means January 22, 2020 through May 4, 2021.

4 V. "Participating Class Member(s)" is defined as a Class Member who does not timely
5 exclude himself or herself from the Settlement pursuant to the Exclusion Form procedures set forth
6 in this Settlement, and will therefore receive his or her share of the Settlement proceeds
7 automatically without the need to return a claim form. Each Participating Class Member will be
8 paid his/her Individual Settlement Payment.

9 W. "Plaintiff" means URSULA RAMIREZ.

10 X. "Preliminary Approval Date" means the date the Court preliminarily approves the
11 Settlement.

12 Y. "Qualifying Workweeks" means the days that Class Members worked for Defendant
13 in hourly non-exempt positions during the Class Period.

14 Z. "Request for Exclusion" means the Exclusion Form that will be enclosed with the
15 Class Notice that Class Members can use to opt out or exclude themselves from the Settlement. In
16 order for a Request for Exclusion to be valid, the Exclusion Form must be signed and postmarked by
17 the deadline provided for in Sections III(C) and III(D)(2) below, and mailed to the Settlement
18 Administrator at the address specified in the Class Notice.

19 AA. "Settlement" means this Joint Stipulation of Class Action Settlement, including the
20 attached **Exhibit A**.

21 BB. "Settlement Administration Costs" means an amount of up to \$7,000.00, subject to
22 Court approval, for all costs incurred by the Settlement Administrator in administration of the
23 Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual
24 Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting
25 forms, administration of unclaimed and/or uncashed checks to the Human Rights Watch, Los
26 Angeles, and distribution of checks to Class Counsel for attorneys' fees and costs, to Plaintiff for her
27 Enhancement Award, and to the LWDA. The Settlement Administration Costs shall be paid from
28 the Gross Settlement Amount.

1 CC. "Settlement Administrator" means Phoenix Class Action Administration Solutions,
2 which the Parties have agreed will be responsible for the administration of the Individual Settlement
3 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
4 this Settlement.

5 **II. CONTINGENT NATURE OF THE AGREEMENT**

6 Because the Parties have stipulated to the certification of the Class with respect to all causes
7 of action alleged in the Action for settlement purposes only, this Settlement requires preliminary and
8 final approval by the Court. Accordingly, the Parties enter into this Settlement on a conditional
9 basis. This Settlement is contingent upon the approval and certification of the Class by the Court. If
10 the Effective Date does not occur, the fact that the Parties were willing to stipulate for the purposes
11 of this Settlement shall have no bearing on, nor be admissible in connection with, the issue of
12 certification of the Class with respect to all causes of action alleged in the Action, and this
13 Settlement shall not be referred to or used for any purpose whatsoever. Defendant does not consent
14 to certification of the Class for any purpose other than to effectuate settlement of the Action. If the
15 Effective Date does not occur, or if disposition of this Action is not effectuated, any certification of
16 the Class as to Defendant will be vacated and Plaintiff, Defendant, and the Class will be returned to
17 their respective positions in the Action as if the Settlement had not been executed. In the event that
18 the Effective Date does not occur: (a) any Court orders preliminarily or finally approving
19 certification of any class contemplated by this Settlement shall be null, void, and vacated, and shall
20 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
21 this Settlement, the fact that Defendant did not oppose the certification of a Class under this
22 Settlement, or that the Court preliminarily approved the certification of the Class, shall not be used
23 or cited thereafter by any person or entity, including in any manner whatsoever, including without
24 limitation any contested proceeding relating to the certification of any class. If the Effective Date
25 does not occur, this Settlement shall be deemed null and void, shall be of no force or effect
26 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
27 reserves the right to challenge the propriety of class certification in the Action for any purpose if the
28 Effective Date does not occur.

1 The Parties and their respective counsel shall take all steps that may be requested by the
2 Court relating to the approval and implementation of this Settlement and shall otherwise use their
3 respective best efforts to obtain Court approval and implement this Settlement. If the Court does not
4 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to
5 meet and confer in good faith to address the Court's concerns. If the Parties are unable to agree
6 upon a resolution, the Parties agree to seek guidance from the Court to resolve the dispute.

7 **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

8 The procedure for obtaining Court approval of and implementing this Settlement shall be as
9 follows:

10 **A. Motion for Conditional Class Certification and Preliminary Approval**

11 Plaintiff will bring a motion before the Court for an order conditionally certifying the Class
12 to include all claims pled in the Action based on the preliminary approval of this Settlement. The
13 date that the Court grants preliminary approval of this Agreement will be the "Preliminary Approval
14 Date." Pursuant to California Labor Code § 2699(l)(1), Plaintiff shall submit to the LWDA a copy of
15 this Agreement and all supporting approval documents required by the LWDA at the same time that
16 Plaintiff submits them to the Court for approval.

17 **B. The Settlement Administrator**

18 The Parties have chosen Phoenix Class Action Administration Solutions to administer this
19 Settlement and to act as the Settlement Administrator, including but not limited to distributing and
20 responding to inquiries about the Class Notice, determining the validity of exclusions/opt-outs,
21 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the
22 Individual Settlement Payment checks and distributing them to Participating Class Members,
23 administering and making payment of unclaimed and/or uncashed checks to the Human Rights
24 Watch, Los Angeles, issuing the payment to Class Counsel for attorneys' fees and costs, the
25 Enhancement Award check to Plaintiff, the LWDA Payment, and the employer payroll taxes to the
26 appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms
27 and conditions of this Settlement.

28 All costs of administering the Settlement, including but not limited to all costs and fees

1 associated with preparing, issuing and mailing any and all notices to Class Members and/or
2 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
3 and mailing the Individual Settlement Payments, all costs and fees administering and making
4 payment of unclaimed and/or uncashed checks to the Human Rights Watch, Los Angeles, all costs
5 and fees associated with preparing any tax returns and any other filings required by any
6 governmental taxing authority or agency, all costs and fees associated with preparing any other
7 checks, notices, reports, or filings to be prepared in the course of administering disbursements from
8 the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement
9 Administrator in connection with the execution of its duties under this Settlement (“Settlement
10 Administration Costs”), shall be paid to the Settlement Administrator from the Gross Settlement
11 Amount.

12 **C. Notice to Class Members**

13 No later than ten (10) business days after the Preliminary Approval Date, Defendant will
14 provide the Settlement Administrator with a “Class List” based on its business records, identifying
15 the names of the Class Members, their last known home addresses, Social Security numbers or, as
16 applicable, other taxpayer identification number, their dates of employment and days worked during
17 the Class Period. This information shall be treated as confidential and shall not be disclosed to
18 Plaintiff, Class Counsel or any other person without prior approval from Defendant’s Counsel.

19 Within ten (10) business days of receiving the Class List from Defendant, the Settlement
20 Administrator will send Class Members, by first-class mail, at their last known address, the Court
21 approved Class Notice, including notice of this settlement and of the opportunity to opt out of the
22 Settlement Class or object to the Settlement. The Class Notice will include a calculation of the Class
23 Member’s share of the Net Settlement Amount. Class Members will have forty-five (45) days from
24 the date of mailing in which to postmark Requests for Exclusion or Objections. Prior to the initial
25 mailing, the Settlement Administrator will check all Class Member addresses against the National
26 Change of Address database and shall update any addresses before mailing. The Settlement
27 Administrator will skip trace and re-mail all returned, undelivered mail within five (5) days of
28 receiving notice that a notice was undeliverable. If a Class Member’s notice is re-mailed, the Class

1 Member shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the
2 initial mailing, whichever is later, in which to postmark a Request for Exclusion or Objection. Class
3 Members shall not be required to submit claim forms in order to receive their Individual Settlement
4 Payments.

5 If the Class Notice is returned with a forwarding address, the Settlement Administrator shall
6 re-mail the Class Notice to the forwarding address. With respect to those Class Members whose
7 Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement
8 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
9 mass search on LexisNexis databases based on set criteria and, if another address is identified, shall
10 mail the Class Notice to the newly identified address. It is the intent of the parties that reasonable
11 means be used to locate Class Members and that the Settlement Administrator be given discretion to
12 take steps in order to facilitate notice of this Settlement and delivery of the Individual Settlement
13 Payments to the Settlement Class. If no address can be determined by the Settlement Administrator
14 after these efforts, no further efforts to determine an address shall be required.

15 If the Class Notice is re-mailed, the Settlement Administrator will note for its own records
16 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a
17 weekly status report provided to the Parties by email.

18 In the event a Class Member's Class Notice remains undeliverable sixty (60) days after the
19 Class Notice was initially mailed, the Settlement Administrator will not mail the Class Member's
20 Individual Settlement Payment. The Settlement Administrator will hold the Class Member's
21 Individual Settlement Payment during the check cashing period on behalf of the Class Member. If at
22 the conclusion of the check cashing period the Class Member's Class Notice and Individual
23 Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
24 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
25 procedures set forth in Section III(D)(7)(e) below.

26 No later than twenty (20) business days prior to the Final Approval Hearing, the Settlement
27 Administrator shall provide Defense Counsel and Class Counsel with a declaration attesting to
28 completion of the notice process, including any attempts to obtain valid mailing addresses for and re-

1 sending of any returned Class Notices, as well as the number of valid Requests for Exclusion and
2 Objections that the Settlement Administrator received.

3 Compliance with the procedures described in this section shall constitute due and sufficient
4 notice to Class Members of this proposed Settlement and the Final Approval Hearing and shall
5 satisfy the requirements of due process. Nothing else shall be required of the Parties, Class Counsel,
6 Defense Counsel, or the Settlement Administrator to provide notice of the proposed Settlement and
7 the Final Approval Hearing. However, if any Class Member objects to the Settlement and the Final
8 Approval Hearing is continued as a result, the Settlement Administrator shall provide notice to the
9 objecting party of the continuance.

10 **D. Responses to Notice**

11 **1. Class Member Disputes**

12 If any Class Member disagrees with Defendant's records as to his or her Qualifying
13 Workweeks during the Class Period as reflected in the Class Notice, the Class Member shall set
14 forth the Qualifying Workweeks he or she claims to have worked during the Class Period and submit
15 to the Settlement Administrator along with any supporting documentation. The Notice will also
16 provide a method for the Class Member to challenge the employment data on which his or her
17 Individual Settlement Payment is based. The Settlement Administrator shall contact the Parties
18 regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are unable to
19 resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualifying
20 Workweeks for each Class Member during the Class Period based on the information provided to it.
21 Any dispute not otherwise resolved by the Administrator and the Parties shall be resolved by the
22 Court.

23 **2. Requests for Exclusion from the Class**

24 The Plaintiff may not request exclusion from the Class. In order for any Class Member to
25 validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), the
26 Exclusion Form must be completed and signed by the Class Member or his or her authorized
27 representative, and must be mailed to the Settlement Administrator, postmarked by no later than
28 forty-five (45) days after the date the Settlement Administrator initially mails the Class Notice to the

1 Class Members (or fifteen (15) days after the Settlement Administrator re-mails the Class Notice to
2 the Class Member, whichever is later). The Class Notice shall contain instructions that the
3 Exclusion Form must be mailed, the date by which it must be mailed, and state the name and address
4 of the Settlement Administrator. The date of the initial mailing of the Class Notice, and the date the
5 signed Exclusion Form was postmarked, shall be conclusively determined according to the records
6 of the Settlement Administrator. Any Class Member who timely and validly requests exclusion
7 from the Class and this Settlement will not be entitled to any Individual Settlement Payment arising
8 from the Class claims, will not be bound by the terms and conditions of this Settlement as to the
9 Class claims, and will not have any right to object, appeal, or comment thereon. A Request for
10 Exclusion will preserve the Class Member's right to individually pursue the Class claims.

11 Any Class Member who fails to timely submit a Request for Exclusion shall automatically be
12 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
13 determined by the Court's Final Approval Order, and by the other rulings in the Action. Such Class
14 Members shall be bound by the terms of the Final Approval Order.

15 **3. Objections to Settlement**

16 The Plaintiff may not object to the Settlement. For any Class Member to object to this
17 Settlement, or any term of it, the person making the objection must not submit a Request for
18 Exclusion (*i.e.*, must not opt out), and should complete, sign and send the Objection using the
19 instructions provided in the Class Notice to the Settlement Administrator, postmarked no later than
20 forty-five (45) days after the Class Notice was initially mailed to the Class Members (or fifteen (15)
21 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
22 along with all supporting papers. The date of the initial mailing of the Class Notice, and the date the
23 signed Objection was postmarked, shall be conclusively determined according to the records of the
24 Settlement Administrator. The Settlement Administrator shall send any Objections it receives to
25 Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members who
26 file an objection will be notified by the Settlement Administrator of their right to appear personally
27 or through an attorney, at their own expense, at the Final Approval Hearing to present their
28 objection(s) directly to the Court. The Court retains final authority with respect to the consideration

1 and admissibility of any Class Member objections.

2 **4. Encouragement of Class Members**

3 The Parties to this Settlement and the counsel representing such Parties shall not, directly or
4 indirectly, through any person, encourage or solicit any Class Member to exclude himself or herself
5 from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries
6 from Class Members.

7 **5. Escalator Clause**

8 It was estimated for purposes of mediation that there were approximately 184 Class Members
9 for the period January 25, 2017 to approximately May 4, 2021. The parties agree that if the actual
10 number of Class Members through the end of the Class Period exceeds 184 by more than 10% (i.e.,
11 more than 19 Class Members) as of the end of the Class Period, there will be a pro rata adjustment to
12 the Gross Settlement Amount equal to \$2,173.92 per additional Class Member.

13 **6. Final Approval Hearing**

14 On the date set forth in the Order for Preliminary Approval and Class Notice, a Final
15 Approval Hearing shall be held before the Court in order to (1) review this Settlement and determine
16 whether the Court should give it final approval, and (2) consider any objections made and all
17 responses by the Parties to such objections. At the Final Approval Hearing, the Parties shall ask the
18 Court to give final approval to this Settlement and shall submit to the Court a Proposed Final
19 Approval Order.

20 a. Waiver of Right to Appeal

21 Provided that the Final Approval Order is consistent with the terms and conditions of this
22 Settlement, all Class Members who do not submit timely written objections to the Settlement or
23 orally object at the Final Approval Hearing hereby waive any and all rights to appeal from the Final
24 Approval Order and Judgment, including all rights to any post-Final Approval Order proceeding and
25 appellate proceeding, such as a motion to vacate or set-aside the Final Approval Order and
26 Judgment, a motion for new trial, and any extraordinary writ, and the Final Approval Order and
27 Judgment therefore shall become final and non-appealable at the time it is entered. This waiver does
28 not include any waiver of the right to oppose any appeal, appellate proceedings, or post-Final Order

1 proceedings. A modification by the Court of the requested amount of the Enhancement or Class
2 Counsel's fees or costs shall not constitute a basis for appeal of the Final Approval Order within the
3 meaning of this paragraph.

4 b. Vacation, Reversal, or Material Modification of Final Order and
5 Judgment on Appeal or Review

6 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
7 or application, the reviewing court vacates, reverses, or modifies the Final Approval Order such that
8 there is a material modification to the Settlement and that court's decision is not completely
9 reversed, and the Final Approval Order is not fully affirmed on review by a higher court, then
10 Plaintiff and Defendant shall each have the right, but not the obligation, to void the Settlement,
11 which the Party must do by giving written notice to the other Party, the final reviewing court, and the
12 Court no later than thirty (30) days after the final reviewing court's decision vacating, reversing, or
13 materially modifying the Final Order becomes final and non-appealable. A vacation, reversal, or
14 modification of the Court's award of the Enhancement or Class Counsel's fees or costs shall not
15 constitute a vacation, reversal, or material modification of the Final Order and Judgment within the
16 meaning of this paragraph.

17 **7. Settlement Payment Procedures**

18 a. Settlement Amount

19 In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross
20 Settlement Amount in the amount of Four Hundred Thousand Dollars (\$400,000.00), subject to a pro
21 rata increase under the condition set forth in Section III(D)(5). The Gross Settlement Amount
22 includes all claims of the Settlement Class and all Settlement Administration costs, Class Counsel's
23 attorney's fees and costs, LWDA Payment, and Enhancement Award.

24 No later than ten (10) business days after the Court's final approval of the Settlement (i.e.,
25 the date the final approval order is signed), Defendant will transfer the Gross Settlement Amount
26 into an account established by the Settlement Administrator either directly or by sending the funds to
27 the Settlement Administer to be deposited and distributed. All of Defendant's obligations under this
28 Settlement are deemed to be satisfied upon Defendant's timely deposit of the entire Gross Settlement

1 Amount and acknowledgement of receipt of said funds and Defendant shall have no further
2 obligations to the Class including, without limitation, any further obligations to make any other
3 payments of any kind to, or on behalf of, the Class (except for the employer's share of payroll taxes).

4 The Settlement Administrator will use these funds to fund payment of the Individual
5 Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs,
6 LWDA Payment, the Enhancement Award, and employer and employee tax withholdings applicable
7 to the Net Settlement Amount allocated to wages. Five (5) business days after Defendant fully funds
8 the Settlement, the Settlement Administrator will pay the Class Members' Individual Settlement
9 Payments, Court-approved attorney's fees and costs, settlement administration costs, Enhancement
10 Award, and LWDA Payment.

11 b. Payment of Attorneys' Fees and Costs

12 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
13 of the Gross Settlement Amount (which may increase pursuant to Section III(D)(5), i.e., pro rata
14 increase provision), which, based on the current Gross Settlement Amount, is One Hundred Thirty
15 Three Thousand Three Hundred and Thirty Three Dollars and Thirty Four cents (\$133,333.34).
16 Class Counsel shall submit an application for an award of costs not to exceed \$25,000.00. Such
17 application for attorneys' fees and costs shall be heard by the Court at the Final Approval Hearing.
18 Defendant shall not object to or oppose any such application in these amounts.

19 Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount
20 and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class
21 Counsel approved by the Court shall encompass all work performed, costs, and expenses related to
22 the investigation, prosecution, and settlement of the Action incurred through the Effective Date. To
23 the extent that the Court approves less than the amount of attorney's fees and/or costs that Class
24 Counsel requests, the difference between the requested and awarded amounts will be reallocated to
25 the Net Settlement Amount.

26 Any award of attorneys' fees and costs shall include and satisfy all past and future attorneys'
27 fees and costs incurred to prosecute, settle, and participate in administering the Settlement, including
28 obtaining the Final Approval Order. Defendant shall have no obligation to Class Counsel for any

1 attorneys' fees and costs incurred in prosecuting this Action other than as stated herein, provided that
2 Defendant fully complies with the terms of this Settlement, including but not limited to timely
3 payment of the Gross Settlement Amount.

4 c. Payment of Settlement Administration Costs

5 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
6 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
7 Seven Thousand Dollars (\$7,000.00).

8 ///

9 d. Payment of Enhancement Award to Named Plaintiff

10 Subject to Court approval, Plaintiff shall receive an Enhancement Award of up to Ten
11 Thousand Dollars (\$10,000.00), the request for which Defendant will not object to or oppose. The
12 Enhancement Award shall be paid out of the Gross Settlement Amount and shall not constitute
13 payment to any Participating Class Member(s). To the extent that the Court approves less than the
14 amount of Enhancement Award that Class Counsel requests, the difference between the requested
15 and awarded amounts will be reallocated to the Net Settlement Amount.

16 Because it is the intent of the Parties that the Enhancement Award represents payment to
17 Plaintiff for her service to the Class Members, and not wages, the Settlement Administrator will not
18 withhold any taxes from the Enhancement Award. The Enhancement Award will be reported on a
19 Form 1099, which the Settlement Administrator will provide to Plaintiff and to the pertinent taxing
20 authorities as required by law.

21 Although it is the contemplation of the Parties that the Enhancement Award does not
22 represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other
23 taxing authority may take the position that some or all of the Enhancement Award constitutes wages
24 for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting
25 to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing
26 authority the amounts required by law, if any, to be withheld by Defendant from the Enhancement
27 Award paid under this Settlement. In addition, Plaintiff shall hold Defendant, Released Parties and
28 Class Counsel harmless and indemnify Defendant, Released Parties and Class Counsel for all taxes,

1 interest, penalties, other payments and costs, incurred by Defendant by reason of any valid claims by
2 taxing authorities relating to the non-withholding of taxes from the Enhancement Award.

3 e. Payment of Individual Settlement Payments to Participating Class
4 Members

5 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
6 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
7 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
8 each Class Member. To calculate the minimum amount each Class Member will receive based on
9 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
10 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
11 on a pro rata basis. Each Class Member's individual amount will be included in his or her Class
12 Notice. After final approval by the Court, the Net Settlement Amount will be distributed to
13 Participating Class Members on a pro rata basis based on the individual Qualifying Workweeks
14 worked during the Class Period by each Participating Class Member.

15 Each Individual Settlement Payment will represent wages and penalties allocated using the
16 following formula: 50% allocated to wages and 50% allocated to penalties and interest. The
17 amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's
18 wages and all other authorized and required withholdings and shall be reported by W-2 forms. The
19 employer-side taxes (including employer's portion of FICA, FUTA, SUTA, and all other applicable
20 payroll taxes) will be paid by Defendant separate from and in addition to the Gross Settlement
21 Amount. The amounts paid as penalties and interest shall be subject to all authorized and required
22 withholdings other than the tax withholdings customarily made from employees' wages and shall be
23 reported by IRS 1099 forms. Defendant shall not make as part of this Settlement, nor be required to
24 make, any deductions, nor pay any monthly contributions for any insurance, retirement, 401(k) or
25 profit-sharing plans, or any benefit plans related to monies paid as a result of this Settlement.

26 No later than ten (10) business days after the Preliminary Approval Date, Defendant will
27 provide the Settlement Administrator with a list of the Qualifying Workweeks for each Class
28 Member. Based on that information, the Settlement Administrator shall calculate: (a) the Net

1 Settlement Amount, (b) the Individual Settlement Payment for each Participating Class Member
2 based on the formula specified above, (c) the amount of the Individual Settlement Payments to be
3 allocated to wages and interest and penalties based on the formula specified above, (d) the employer
4 share of the payroll taxes applicable to the Net Settlement Amount allocated to wages, and (e) the
5 employee tax withholding amount based on the allocation of each Individual Settlement Payment to
6 wages.

7 No later than ten (10) business days after receiving the entire Gross Settlement Amount from
8 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
9 Settlement Payments to Participating Class Members. Defendant shall not bear any liability for lost
10 or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Individual
11 Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by
12 applicable employer and employee tax withholdings, and the Settlement Administrator will issue a
13 Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement
14 Administrator will issue a Form 1099 to the extent required by law for the interest and penalty
15 portions of the Individual Settlement Payments. Participating Class Members shall have 180 days
16 from the date their Individual Settlement Payment checks are dated to cash their settlement checks.
17 Any amounts from checks that remain unclaimed and/or uncashed after 180 days of issuance will be
18 disbursed to Human Rights Watch, Los Angeles, a non-profit organization that seeks to protect the
19 rights of domestic and international workers.

20 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
21 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
22 a mass search on LexisNexis databases based on set criteria and, if another address is identified,
23 shall mail the check to the newly identified address. If the Settlement Administrator is unable to
24 obtain a valid mailing address through this process, the Settlement Administrator will also transfer
25 the amount represented by the check to Human Rights Watch, Los Angeles, a non-profit
26 organization that seeks to protect the rights of domestic and international workers.

27 f. Payment to the Labor and Workforce Development Agency

28 In consideration of claims made under the California Private Attorneys General Act, Cal.

1 Labor Code §§ 2698 et seq., Class Counsel will request that the Court approve allocation of Five
2 Thousand Dollars (\$5,000.00) of the Gross Settlement Amount to these claims. Seventy-five percent
3 (75%) of this payment will be paid to the California Labor and Workforce Development Agency
4 (“LWDA Payment”) and twenty-five percent (25%) will be paid to the Net Settlement Amount for
5 distribution to Class Members. Defendant will not oppose this request. The LWDA will be paid out
6 of the Gross Settlement Amount. The Court’s adjustment, if any, of the amount allocated to
7 Plaintiff’s PAGA claim will not invalidate this Settlement.

8 g. No Credit Toward Benefit Plans

9 The Individual Settlement Payments made to Participating Class Members under this
10 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
11 calculate or escalate any additional benefits under any benefit plans to which any Class Members
12 may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
13 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is
14 the Parties’ intention that this Settlement will not affect any rights, contributions, or amounts to
15 which any Class Members may be entitled under any benefit plans.

16 h. No Effect on Regular Rate or Overtime Compensation

17 Participating Class Members will receive payment under the Settlement as determined by the
18 Settlement Administrator in accordance with this Agreement. The Parties agree that this payment is
19 not viewed as additional compensation for purposes of calculating a “regular rate” of pay under
20 California or federal law for the period during which it is received, and no additional overtime
21 compensation is required as a result of such payment.

22 i. Tax Liability

23 The Parties and counsel for the Parties make no representation as to the tax treatment or legal
24 effect of the payments called for hereunder. Plaintiff and Participating Class Members are not
25 relying on any statement, representation, or calculation by the Parties, counsel for the Parties, or the
26 Settlement Administrator in this regard. Plaintiff, Participating Class Members, and Plaintiff’s
27 Counsel understand and agree that they will be solely responsible for the payment of their own
28 portion of any taxes and penalties assessed on the payments that they receive.

j. No Additional Contribution by Defendant

Other than as set forth above, Defendant shall not be called upon or required to contribute additional monies above the Settlement under any circumstances whatsoever except as specifically set forth herein. In the event that this Settlement is canceled, rescinded, terminated, voided, or nullified, however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have any obligation to pay any portion of the Settlement to anyone under the terms of this Settlement, except for costs already incurred by the Settlement Administrator, and this action shall resume as though no Settlement had occurred with the Action proceeding in the San Bernardino County Superior Court.

IV. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Action, and that but for this Settlement a class should not be certified in this Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant. Defendant denies each of Plaintiff's allegations in their entirety.

B. Non-Evidentiary Use

Whether or not the Effective Date occurs, neither this Settlement nor any of its terms will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to the terms herein or for Defendant to establish that a Class Member has resolved any of his/her claims released through this Settlement.

C. Nullification

1 The Parties have agreed to the certification of the Class encompassing all claims alleged in
2 the Action for the sole purpose of effectuating this Settlement. If (a) the Court should for any reason
3 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
4 Settlement, or (c) the Court should for any reason fail to enter the Final Approval Order, or (d) the
5 Final Approval Order is reversed, or declared or rendered void, or (e) the Court should for any
6 reason fail to dispose of the action in its entirety, then (i) this Settlement shall be considered null and
7 void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any
8 force or effect; (iii) all Parties to this Settlement shall stand in the same position, without prejudice,
9 as if the Settlement had been neither entered into nor filed with the Court; and (iv) the fact that the
10 Parties were willing to stipulate to class certification of all causes of action pled in the Action as part
11 of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of
12 whether the Class should be certified by the Court in a non-settlement context in this Action or any
13 other action, and in any of those events, Defendant expressly reserves the right to oppose
14 certification of the Class.

15 Invalidity of any material portion of this Settlement shall invalidate this Settlement in its
16 entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
17 remain in full force and effect.

18 **V. RELEASES**

19 **A. Releases by Class Members**

20 Upon the Effective Date, Participating Class Members who do not opt out of the Settlement
21 will release Defendant, together with its each of its present and former parents, subsidiaries,
22 affiliated and related entities, present and former owners, board members, officers, directors,
23 trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives,
24 heirs, executors, administrators, successors and assigns (collectively, the "Released Parties") from
25 any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and
26 description that accrued during the Class Period, under the California Labor Code and the applicable
27 Wage Orders of the California Industrial Welfare Commission, that were alleged or which could
28 have been alleged based on the factual allegations in the Class Action Complaint in the Action,

1 including claims for unpaid wages, including but not limited to failure to pay minimum wages,
2 straight time compensation, overtime compensation, and interest; failure to timely pay regular and
3 final wages; wages related to time rounding and timekeeping; missed meal period and rest period
4 wages and premiums; meal period waivers and on-duty meal period waivers; payment for all hours
5 worked, including off-the-clock work and uncompensated work time; wage statements and paystubs,
6 including wage statements and paystubs furnished or available in physical, electronic, or other
7 forms; failure to keep accurate records; deductions; declaratory relief; unfair business practices;
8 penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties,
9 and waiting-time penalties; statutory penalties and civil penalties; and attorneys' fees and costs.
10 Without limiting the foregoing, the Released Claims include those claims arising under California
11 Labor Code Sections 201, 202, 203, 204, 206, 221, 218.6, 226, 226.7, 510, 512, 1182.12, 1194,
12 1194.2, 1197, 1198, 2698 et seq., and/or those arising under the Industrial Welfare Commission
13 Wage Orders; California Business and Professions Code section 17200 *et seq.*; California Code of
14 Regulations, title 8, Section 11050; the California Civil Code sections 3287, 3289, and 3294; and
15 California Code of Civil Procedure section 1021.5 ("Released Claims").

16 The above release language shall also be included in the Class Notice. Plaintiff and
17 Participating Class Members will release these Released Claims from January 25, 2017 to May 4,
18 2021.

19 Class Members who endorse their settlement checks waive and release any claims under the
20 Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") arising during the Class Period and
21 based on the factual allegations alleged or which could have been alleged in the Class Action
22 Complaint, including the claims noted above.

23 This release excludes the release of claims not permitted by law.

24 **B. Plaintiff's General Release**

25 Plaintiff does hereby, for herself, and for her heirs, successors, predecessors, attorneys,
26 agents, representatives and assigns, forever release the Released Parties from any and all charges,
27 complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions,
28 causes of action, injuries, suits, rights, demands, costs, losses, debts, judgments, accounts, attorneys'

1 fees, interest, expenses (including back wages, penalties, liquidated damages, and attorneys' fees
2 and costs actually incurred), and other legal responsibilities arising in law, equity or otherwise, of
3 any kind, nature, and character whatsoever, from the beginning of time through the date of her
4 signature on this Settlement, known or unknown, suspected or unsuspected, unforeseen, or
5 unanticipated including but not limited to all claims arising out of, based upon, or relating to her
6 employment with Defendant, the termination or resignation of her employment with Defendant, or
7 the remuneration for such employment. Without limiting the generality of the foregoing, Plaintiff
8 expressly releases all claims which were or could have been raised in the Action and all claims or
9 rights arising out of alleged violations of any contracts, express or implied (including but not limited
10 to any contract of employment); any contract or covenant of good faith or fair dealing (express or
11 implied); any tort, including negligence, fraud, misrepresentation under California Labor Code 970,
12 negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation;
13 any other common law claim; any "retaliation" claims; any claims relating to any breach of public
14 policy; any claim for costs, fees, interest, or other expenses including attorneys' fees; any legal
15 restrictions on Defendant's right to discharge employees or refuse to hire applicants; and any federal,
16 state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title
17 VII of the Civil Rights Act of 1964, as amended (race, color, religion, sex, and national origin
18 discrimination or harassment, including retaliation for reporting discrimination or harassment); (2)
19 The Civil Rights Act of 1991, as amended; (3) Sections 1981 through 1988 of Title 42 of the United
20 States Code, as amended; (4) The Age Discrimination in Employment Act of 1967, as amended; (5)
21 The Employee Retirement Income Security Act of 1974, as amended; (6) The Immigration Reform
22 and Control Act, as amended; (7) The Americans with Disability Act, as amended; (8) Sections 503
23 and 504 of the Rehabilitation Act of 1973 (disability discrimination); (9) The Workers Adjustment
24 and Retraining Notification Act, as amended; (10) The Occupational Safety and Health Act, as
25 amended; (11) California Equal Pay Law, as amended; (12) Equal Pay Act, 29 U.S.C. § 209(4)(1)
26 (equal pay); (13) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability
27 discrimination); (14) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical
28 leave); (15) California Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et seq.*

(discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex (including pregnancy), sexual orientation, genetic, or age, including retaliation for reporting discrimination or harassment); (16) California Family Rights Act, Cal. Gov't Code § 12945.1 *et seq.* (family/medical leave); (17) California Labor Code or any Industrial Welfare Commission Wage Order; (18) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (19) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (20) Executive Order 11141 (age discrimination); (21) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (22) The California Private Attorneys General Act, as amended; (23) California health and safety laws and regulations; and (24) Any other federal, state, or local law, regulation or ordinance, including those regulating compensation, and those prohibiting discrimination, harassment, or retaliation of any kind. This release excludes the release of claims not permitted by law.

C. Plaintiff's Release of Unknown Claims

Plaintiff, in her individual capacity, also expressly waives, as to the Released Claims any and all provisions, rights and benefits conferred by any law or principle of common law or equity, that is similar, comparable, or equivalent, in whole or in part, to California Civil Code § 1542. For the purpose of implementing a full and complete release, Plaintiff expressly acknowledges that the release given in this Settlement is intended to include in its effect, without limitation, claims that each did not know or suspect to exist in her favor at the time of the effective date of this Settlement, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and that the consideration given under the Settlement was also for the release of those claims and contemplates the extinguishment of any such unknown claims. Plaintiff expressly waives the provisions of section 1542 of the Civil Code of California, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Thus, subject to and in accordance with this Agreement, even if Plaintiff may hereafter discover

1 facts in addition to or different from those she now knows or believes to be true, Plaintiff, upon the
2 Effective Date, shall be deemed to have fully, finally, and forever settled and released any and all
3 claims against the Released Parties that were alleged or could have been alleged in the Action, as
4 well as any other claims, whether known or unknown, suspected or unsuspected, contingent or non-
5 contingent, that now exist, upon any theory of law or equity, including without limitation, conduct
6 which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without
7 regard to the subsequent discovery or existence of such different or additional facts.

8 **D. Waiver of Age Claims**

9 By signing this Agreement, Plaintiff acknowledges: she has carefully read and understood
10 this Agreement; she has been given at least twenty-one (21) days to consider this Agreement; she has
11 been and hereby is advised to consult with an attorney before signing this Agreement; she
12 understands this Agreement is legally binding and by signing it she is giving up certain rights; she
13 has voluntarily chosen to enter into this Agreement and has not been forced or pressured in any way
14 to sign it; she knowingly and voluntarily releases the Released Parties from any and all claims
15 Plaintiff may have, known or unknown, in exchange for the payments obtained by signing this
16 Agreement; she understands the Plaintiff's Released Claims in this Agreement include a waiver and
17 release of all claims she may have under the Age Discrimination in Employment Act ("ADEA") and
18 the Older Workers Benefit Protection Act ("OWBPA"); and she understands this Agreement does
19 not waive any rights or claims that may arise under either the ADEA or the OWBPA after this
20 Agreement is signed and becomes effective, which is the eighth day after Plaintiff signs it. Plaintiff
21 knowingly and voluntarily waives the remainder of the 21-day consideration period, if any,
22 following the date she signs this Agreement. Plaintiff has not been asked by the Released Parties to
23 shorten the time period to consider whether to sign this Agreement. The Released Parties have not
24 threatened to withdraw or alter the benefit due to Plaintiff prior to the expiration of the 21-day
25 period, nor have the Released Parties provided different terms to Plaintiff because she has decided to
26 sign this Agreement prior to the expiration of the 21-day consideration period. Plaintiff agrees with
27 Defendant that changes to this Agreement, whether material or immaterial, will not restart the
28 running of the 21-day consideration period. Plaintiff understands that if she signs this Agreement,

1 she can change her mind and revoke it as to her age claims within seven (7) calendar days after
2 signing it by returning it with written revocation notice to Arthur F. Silbergeld, Stradling Yocca
3 Carlson & Rauth LLP, 10100 Santa Monica Boulevard, Suite 1400, Los Angeles, California 90067;
4 email: asilbergeld@stradlinglaw.com.

5 **E. No Additional Attorneys' Fees or Costs**

6 Except for the attorneys' fees and costs set forth in this Settlement, the Parties agree to bear
7 their own attorneys' fees and costs related to this Action.

8 **F. Circular 230 Disclaimer**

9 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
10 "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN
11 THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES
12 THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION
13 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
14 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
15 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED
16 UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
17 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
18 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
19 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
20 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
21 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
22 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
23 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
24 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
25 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
26 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
27 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
28 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE

1 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
2 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
3 AGREEMENT.

4 **VI. MISCELLANEOUS PROVISIONS**

5 **A. Amendments or Modification**

6 The terms and provisions of this Settlement may be amended or modified only by an express
7 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

8 **B. Assignment**

9 None of the rights, commitments, or obligations recognized under this Settlement may be
10 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
11 written consent of each other Party and their respective counsel. The representations, warranties,
12 covenants, and agreements contained in this Settlement are for the sole benefit of the Parties under
13 this Settlement, and shall not be construed to confer any right or to avail any remedy to any other
14 person.

15 **C. Governing Law**

16 This Settlement shall be governed, construed, and interpreted, and the rights of the Parties
17 shall be determined, in accordance with the laws of the State of California, irrespective of the State
18 of California's choice of law principles.

19 **D. Entire Agreement**

20 This Settlement, including **Exhibit A** referred to herein, which form an integral part hereof,
21 contains the entire understanding of the Parties hereto with respect of the subject matter contained
22 herein. In case of any conflict between text contained in Sections I through VI of this Settlement
23 and text contained in **Exhibit A** to this Settlement, the former (*i.e.*, Sections I through VI) shall be
24 controlling, unless **Exhibit A** is changed by or in response to a Court order. There are no
25 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
26 matter of this Settlement other than those expressly set forth or referred to herein. This Settlement
27 supersedes all prior agreements and understandings among the Parties hereto with respect to the
28 settlement of the Action, including correspondence between Class Counsel and Defense Counsel and

1 drafts of prior agreements or proposals.

2 **E. Waiver of Compliance**

3 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
4 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
5 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
6 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
7 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
8 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9 **F. Counterparts and Fax/PDF Signatures**

10 This Settlement, and any amendments hereto, may be executed in any number of
11 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
12 each of which when executed and delivered shall be deemed to be an original and all of which
13 counterparts taken together shall constitute one instrument. A fax or PDF signature on this
14 Settlement shall be as valid as an original signature.

15 **G. Meet and Confer Regarding Disputes**

16 Should any dispute arise among the Parties or their respective counsel regarding the
17 implementation or interpretation of this Settlement, a representative of Class Counsel and a
18 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
19 to submitting such disputes to the Court.

20 **H. Agreement Binding on Successors**

21 This Agreement will be binding upon, and inure to the benefit of, the successors in interest of
22 each of the Parties.

23 **I. Cooperation in Drafting**

24 The Parties have cooperated in the negotiation and preparation of this Settlement. This
25 Settlement will not be construed against any Party on the basis that the Party, or the Party's counsel,
26 was the drafter or participated in the drafting of this Settlement.

27 **J. Fair Settlement**

28 Plaintiff, Defendant, Class Counsel, and Defense Counsel believe that this Settlement reflects

1 a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through
2 arm's-length negotiations, taking into account all relevant factors, current and potential, and is
3 consistent with public policy, and fully complies with applicable provisions of law.

4 **K. Headings**

5 The descriptive heading of any section or paragraph of this Settlement is inserted for
6 convenience of reference only and does not constitute a part of this Settlement and shall not be
7 considered in interpreting this Settlement.

8 **L. Notice**

9 All notices, demands, or other communications given under this Settlement must be in
10 writing and addressed as follows:

11 *To Plaintiff and the Class:*

12 Jose R. Garay
13 JOSE GARAY, APLC
249 E. Ocean Blvd. #814
14 Long Beach, CA 90802

15 And

16 *To Defendant:*

17 Arthur F. Silbergeld
18 STRADLING YOCCA CARLSON & RAUTH LLP
10100 Santa Monica Blvd, Suite 1400
19 Los Angeles, CA 90067

20 **M. Enforcement of Settlement and Continuing Court Jurisdiction**

21 To the extent consistent with class action procedure, this Settlement shall be enforceable by
22 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
23 3.769(h). The disposition entered by the Court will not adjudicate the merits of the Action or the
24 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
25 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
26 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
27 extent to enforce and effectuate the terms and intent of this Settlement.

28 **N. Mutual Full Cooperation**

The Parties agree fully to cooperate with each other to accomplish the terms of this

1 Settlement, including but not limited to execution of such documents, and to take such other action
2 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
3 Settlement shall use their best efforts, including all efforts contemplated by this Settlement, to
4 effectuate this Settlement and the terms set forth herein. In the event the Parties are unable to reach
5 agreement on the form or content of any document needed to implement the Settlement, or on any
6 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
7 Parties agree to seek the assistance of the Court.

8 **O. Authorization to Act**

9 Class Counsel warrants and represents that they are authorized by Plaintiff, and Defense
10 Counsel warrants that they are authorized by Defendant, to take all appropriate action required to
11 effectuate the terms of this Settlement, except for signing the documents, including but not limited to
12 this Settlement, that are required to be signed by the Parties.

13 ///

14 **P. No Reliance on Representations**

15 The Parties have made such investigation of the facts and the law pertaining to the matters
16 described herein and to this Settlement as they deem necessary, and have not relied, and do not rely,
17 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
18 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
19 rights, or with regard to the advisability of making and executing this Settlement, or with respect to
20 any other matters. No representations, warranties, or inducements have been made to any party
21 concerning this Settlement.

22 **Q. No Collateral Attack**

23 This Settlement shall not be subject to collateral attack by any Class Member or any recipient
24 of the Class Notice after the Effective Date. Such prohibited collateral attacks shall include but not
25 be limited to claims that the Class Member failed for any reason to receive timely notice of the
26 procedure for disputing the calculation of his or her Individual Settlement Payment.

27 **R. Interim Stay of Proceedings**

28 The Parties agree to stay all proceedings in the Action, except such proceedings necessary to

1 implement and complete the Settlement.

2 **S. Invalidity of Any Provision**

3 Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the
4 provision as valid to the fullest extent possible consistent with applicable precedents so as to define all
5 provisions of this Agreement valid and enforceable. If any provision of this Agreement or the application
6 thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which
7 can be given effect without the invalid provisions or application and, to this end, the provisions of this
8 Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained
9 herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the
10 applicable party.

11 ///

12 ///

13 ///

14 **EXECUTION BY PARTIES**

15 The Parties hereby execute this Settlement.

16
17 Dated: 12 / 30 / 2021

18 URSULA RAMIREZ

19 By: Ursula Ramirez
(Signature)

20
21 Dated: 12 / 17 / 2021

22 BEAUTY 21 COSMETICS, INC.

23 By: [Signature]
(Signature)

24 Chafe Yu Trinh
(Printed Name)

25 VP Finance & Operations
(Title)

26
27
28 Approved as to form:

Approved as to form:

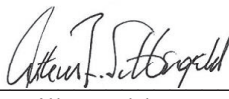
Dated: December 30, 2021

JOSE GARAY, APLC

By: 
Jose R. Garay
Attorneys for Plaintiff URSULA RAMIREZ

Dated: December 3, 2021

STRADLING YOCCA CARLSON & RAUTH LLP

By: 
Arthur F. Silbergeld
Attorneys for Defendant BEAUTY 21
COSMETICS, INC.

Signature Certificate

Document Ref.: JJRNQ-MWUKS-XKXCV-QAGYF

Document signed by:

	Ursula Ramirez Verified E-mail: ursularamirez1549@gmail.com	<i>Ursula Ramirez</i> 
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Page 1 of 1



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