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Attorneys for Defendant BENEFIT COSMETICS, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SASHA AIONO, individually, and on behalf of
Aggrieved Employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

vs.

BENEFIT COSMETICS, LLC, a Delaware
limited liability company; and DOES 1 through
25, inclusive,

Defendants.

Case No. 21STCV33719

PAGA SETTLEMENT AGREEMENT

Complaint Filed: September 13, 2021
Trial Date: June 6, 2023

1 This PAGA Settlement Agreement is made and entered into between Plaintiff Sasha Aiono
2 ("Plaintiff"), on her own behalf, on behalf of the State of California, and on behalf of other
3 Representative Action Members as defined below, and Defendant Benefit Cosmetics, LLC
4 ("Defendant").

5 **I. DEFINITIONS**

6 1. "Action" means the civil action filed on September 13, 2021 in the Superior Court for
7 the County of Los Angeles in the State of California, entitled *Sasha Aiono, individually, and on*
8 *behalf of other aggrieved employees pursuant to the California Private Attorneys General Act v.*
9 *Benefit Cosmetics, LLC, a California limited liability company; and DOES 1 through 25, inclusive,*
10 Case Number 21STCV33719.

11 2. "Attorneys' Fees and Costs" means attorneys' fees for Plaintiff's Counsel's litigation
12 and resolution of this Action and their expenses and costs incurred in connection with the Action,
13 which shall be paid from the Gross Settlement Payment.

14 3. "Complaint" means the Complaint for Enforcement Action Under the Private
15 Attorneys General Act, California Labor Code §§ 2698 et seq. that was filed in this Action on
16 September 13, 2021.

17 4. "Court" means the Superior Court for the County of Los Angeles.

18 5. "Effective Date" means: (a) if no appeal of the Settlement Approval Order and
19 Judgment, 60 days after the Court enters an order granting final approval of the Settlement and
20 enters judgment, (b) if any timely appeals are filed, the date on which the Court of Appeal or
21 Supreme Court renders a final judgment affirming the Settlement Approval Order and Judgment.

22 6. "Eligible Pay Periods" means the number of biweekly pay periods during the PAGA
23 Period in which each Representative Action Member was employed by, and actively worked for,
24 Defendant in an hourly-paid, non-exempt position in the State of California.

25 7. "Gross Settlement Payment" means the settlement amount of Four Hundred Thirty
26 Seven Thousand Five Hundred Dollars and Zero Cents (\$437,500.00) to be paid by Defendant in full
27 satisfaction of all Released Claims, which includes Individual Settlement Shares to be paid to
28 Representative Action Members, Incentive Payment to Plaintiff, Payment to the LWDA, Attorneys'

1 Fees and Costs to Plaintiff's Counsel, and Settlement Administration Costs.

2 8. "Incentive Payment" means the payment to Plaintiff, separate from and in addition to
3 her Individual Settlement Share, and subject to approval by the Court, for her participation in
4 representing the State of California and the Representative Action Members in the Action.

5 9. "Individual Settlement Share" means the portion of the Net Settlement Amount to be
6 allocated and paid to each Representative Action Member as provided in this Agreement. Each
7 Individual Settlement Share shall be calculated by multiplying the Representative Action Member's
8 number of total Eligible Pay Periods by the Pay Period Value.

9 10. "LWDA Payment" means seventy-five percent (75%) of the Net Settlement Amount.

10 11. "LWDA" means the California Labor and Workforce Development Agency.

11 12. "Net Settlement Amount" means the sum remaining after the Court-approved
12 deductions from the Gross Settlement Payment for: (1) Incentive Payment to Plaintiff, (2) Attorneys'
13 Fees and Costs to Plaintiff's Counsel, and (3) Settlement Administration Costs.

14 13. "PAGA Notice" means the August 10, 2021 written notice submitted by Plaintiff's
15 Counsel on behalf of Plaintiff and the Representative Action Members to the LWDA, with a copy
16 sent to Defendant via U.S. Certified Mail, pursuant to California Labor Code section 2699.3, in
17 which she provided notice of the specific provisions of the California Labor Code alleged to have
18 been violated by Defendant, including the facts and theories to support the alleged violations.

19 14. "PAGA Period" means the period commencing on August 10, 2020 and ending on the
20 date the Court enters the Settlement Approval Order.

21 15. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California
22 Labor Code sections 2698, et seq.

23 16. "Parties" means the parties to the Agreement, specifically, Plaintiff and Defendant.

24 17. "Pay Period Value" means the amount of the Representative Action Members'
25 Payment divided by the Total Eligible Pay Periods. The Pay Period Value shall be calculated by the
26 Settlement Administrator.

27 18. "Plaintiff's Counsel" means Jonathan M. Genish, Jill J. Parker, and S. Emi Minne of
28 Blackstone Law, APC.

1 19. "Released Claims" means any and all claims or causes of action for penalties under
2 PAGA, whether known or unknown, that Plaintiff or any Representative Action Member had, now
3 has, has asserted, or may hereafter assert against Defendant or any Released Parties that are based
4 on, or arise from, the factual allegations in the Complaint or the PAGA Notice, during the PAGA
5 Period, including PAGA claims for violation of California Labor Code sections 201, 202, 203, 204,
6 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802,
7 Industrial Wage Order No. 2-2001, and all claims for attorneys' fees and costs and statutory interest
8 associated with the aforementioned claims.

9 20. "Released Parties" means Defendant Benefit Cosmetics, LLC, its parent or subsidiary
10 corporations; each of its present, former, or future owners, officers, directors, shareholders, partners,
11 employees, insurers, successors, predecessors, contractors, assigns, and managing agents; any and all
12 agents, legal representatives and/or attorneys of all of the foregoing entities and individuals; and any
13 entities that Plaintiff, and/ or any Representative Action Member may assert are joint employers with
14 Benefit Cosmetics, LLC.

15 21. "Representative Action Members' Payment" means twenty-five percent (25%) of the
16 Net Settlement Amount.

17 22. "Representative Action Members" means all individuals who worked for Defendant
18 in the State of California as hourly-paid, non-exempt employees at any time during the PAGA
19 Period.

20 23. "Settlement" or "Settlement Agreement" means the agreement to settle the claims as
21 set forth and embodied in this Agreement.

22 24. "Settlement Administration Costs" means the reasonable fees and costs payable from
23 the Gross Settlement Payment to the Settlement Administrator for performing the settlement
24 administration functions expressly required by this Agreement to administer the Settlement.

25 25. "Settlement Administrator" means Simpluris, Inc. The Parties each represent that
26 they do not have any financial interest in the Settlement Administrator or otherwise have a
27 relationship with the Settlement Administrator that could create a conflict of interest.

28 26. "Settlement Approval Order and Judgment" means an order from the Court granting

1 approval of the Settlement and entering judgment.

2 27. "Settlement Cover Letter" means the cover letter to be mailed by the Settlement
3 Administrator to each Representative Action Member along with Individual Settlement Share
4 checks, a copy of which is attached hereto as Exhibit A.

5 28. "Settlement Funding Due Date" means fourteen (14) calendar days after the
6 Effective Date.

7 29. "Total Eligible Pay Periods" means the cumulative total of all Eligible Pay Periods.

8 **II. RECITALS**

9 30. On August 10, 2021, Plaintiff submitted the PAGA Notice to the LWDA and to
10 Defendant. The PAGA Notice alleged that Defendant violated California Labor Code sections 201,
11 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and
12 Industrial Welfare Commission Wage Order No. 2-2001. The PAGA Notice alleged, *inter alia*, that
13 Defendant failed to pay minimum and overtime wages, failed to provide meal and rest periods, failed
14 to timely pay wages during employment, failed to timely pay wages upon termination, failed to keep
15 accurate payroll records, failed to furnish accurate itemized wage statements, and failed to reimburse
16 necessary business expenses.

17 31. Plaintiff filed the Complaint against Defendant on September 13, 2021 in the
18 Superior Court for the County of Los Angeles. The Complaint alleged one cause of action pursuant
19 to PAGA for: (1) Violation of California Labor Code sections 510 and 1198 (Unpaid Overtime
20 Wages); (2) Violation of California Labor Code sections 1194, 1197, and 1197.1 (Unpaid Minimum
21 Wages); (3) Violation of California Labor Code sections 226.7 and 512(a) (Failure to Provide Meal
22 Periods); (4) Violation of California Labor Code section 226.7 (Failure to Provide Rest Periods); (5)
23 Violation of California Labor Code section 204 (Failure to Timely Pay Wages During Employment);
24 (6) Violation of California Labor Code sections 201, 202, 203; (Failure to Timely Pay Wages Upon
25 Termination); (7) Violation of California Labor Code section 226(a) (Failure to Issue Accurate
26 Itemized Wage Statements); (8) Violation of California Labor Code section 1174(d) (Failure to Keep
27 Complete and Accurate Payroll Records); and (9) Violation of California Labor Code sections 2800
28 and 2802 (Unreimbursed Business Expenses).

1 32. On March 16, 2022, the Parties mediated with the Honorable Lisa Hart Cole (Ret.)
2 and reached the Settlement that is memorialized herein. The Parties' settlement discussions were
3 conducted at arms' length, and the Settlement was only reached as the result of a mediator's
4 proposal. The Settlement is the result of an informed and detailed analysis of Defendant's potential
5 liability and exposure in relation to the costs and risks associated with continued litigation. Based on
6 Plaintiff's Counsel's investigation, Plaintiff's Counsel believes that the Settlement for the
7 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
8 adequate and is in the best interest of Plaintiff, the Representative Action Members, and the State of
9 California in light of all known facts and circumstances, including the risk of significant delay and
10 uncertainty associated with litigation and various defenses asserted by Defendant.

11 33. There has been no determination on the merits of the Action or Defendant's defenses
12 thereto. However, in order to avoid additional cost and the uncertainty of litigation, the Parties
13 desire to resolve the Released Claims as of the date of execution of this Settlement Agreement.

14 **III. SETTLEMENT CONSIDERATION**

15 34. In consideration for Plaintiff signing this Settlement Agreement and complying with
16 its terms, Defendant shall pay the maximum non-reversionary gross sum of Four Hundred Thirty
17 Seven Thousand Five Hundred Dollars and Zero Cents (\$437,500.00) to resolve the Action and
18 Released Claims, which shall be distributed as follows:

- 19 a. Attorneys' fees of up to one third of the Gross Settlement Payment, i.e., One
20 Hundred Forty Five Thousand Eight Hundred Thirty Three Dollars and Thirty
21 Three Cents (\$145,833.33), and reimbursement of litigation costs and expenses up
22 to the amount of Thirty Thousand Dollars (\$30,000) to Plaintiff's counsel,
23 Blackstone Law, APC, which Defendant will not contest.
- 24 b. Incentive Payment of up to the amount of Five Thousand Dollars (\$5,000) to
25 Plaintiff, which Defendant will not contest.
- 26 c. Settlement Administration Costs up to the amount of Six Thousand Dollars and
27 Zero Cents (\$6,000.00) to Simpluris, Inc. (the "Settlement Administrator").
- 28 d. LWDA Payment consisting of seventy-five percent (75%) of the Net Settlement

1 Amount shall be distributed to the LWDA, and the remaining twenty-five percent
2 (25%) of which is the Representative Action Members' Payment shall be
3 distributed to the Representative Action Members.

4 35. Because this is a settlement of PAGA claims for civil penalties only, no portion of the
5 Settlement is allocated to unpaid wages. One hundred percent (100%) of the payments for
6 Attorneys' Fees and Costs, Incentive Payment, and the Net Settlement Amount to be paid to the
7 LWDA and Representative Action Members will be treated and reported for tax purposes as non-
8 wage payments and will not be subject to local, state or federal payroll tax withholdings. The
9 Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

10 36. Plaintiff understands and agrees that the State of California and Representative
11 Action Members, including Plaintiff, would not receive the consideration set forth herein, except for
12 Plaintiff's execution of this Settlement Agreement, and the fulfillment of the promises contained
13 herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by
14 the Court, it shall be null and void.

15 **IV. SETTLEMENT DISBURSEMENT AND DISMISSAL OF ACTION**

16 37. Defendant shall remit to the Settlement Administrator the Gross Settlement Payment
17 on or before the Effective Date.

18 38. Upon complete distribution of the Gross Settlement Payment by the Settlement
19 Administrator in accordance with this Settlement Agreement, the Settlement Administrator will
20 promptly notify the Parties of such.

21 **V. COURT APPROVAL OF THE SETTLEMENT AGREEMENT**

22 39. The Parties will cooperate in obtaining an order from the Court approving this
23 Settlement Agreement and dismissal of the Action based thereon, as described herein. The Parties
24 further agree to cooperate in the drafting and/or filing of any further documents and/or filings
25 reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the
26 Court in order to obtain approval and implementation of this Settlement Agreement, and the
27 payments described in Paragraph 34.

28 40. The Parties expressly acknowledge that the Court's approval of the Settlement

1 Agreement is a condition precedent to any payments described in this Settlement Agreement.
2 Therefore, the Parties further acknowledge that, should the Court not enter the Settlement Approval
3 Order and Judgment, the entirety of this Settlement Agreement shall be null and void.

4 **VI. DISTRIBUTION OF THE GROSS SETTLEMENT PAYMENT AND NOTICE TO**
5 **REPRESENTATIVE ACTION MEMBERS**

6 41. By the Settlement Funding Due Date, Defendant shall transfer the Gross Settlement
7 Payment to a qualified settlement account established by the Settlement Administrator for
8 administration of this Settlement. If the date by which payment by Defendant is due falls on a
9 Saturday, Sunday, or legal holiday in the State of California, then the due date shall be extended the
10 next following day which is not a Saturday, Sunday, or legal holiday in the State of California.

11 42. Each Representative Action Member will be entitled to a *pro rata* share of the
12 Representative Action Members' Payment based upon the number of Total Eligible Pay Periods.
13 Each Representative Action Member will be credited with at least one (1) Eligible Pay Period.

14 a. The Settlement Administrator will calculate the Pay Period Value and the
15 Individual Settlement Shares payable to each Representative Action Member.

16 b. To calculate each Representative Action Member's Individual Settlement
17 Share, the Settlement Administrator shall divide the Representative Action Members'
18 Payment by the number of Total Eligible Pay Periods, and then multiply result by each
19 Representative Action Members' Eligible Pay Periods to arrive at each Representative
20 Action Member's Individual Settlement Share.

21 c. Representative Action Members will not be required to submit any claim form
22 or other documentation to receive their Individual Settlement Share.

23 d. One hundred percent (100%) of all Individual Settlement Shares are to be
24 considered penalties because the lawsuit only sought penalties on behalf of Representative
25 Action Members.

26 e. Representative Action Members may not opt out of or object to the Settlement.

27 43. The Settlement Administrator shall distribute each Individual Settlement Share by
28 way of check, along with the Settlement Cover Letter in the following manner:

1 a. No later than thirty (30) calendar days after the Court's order granting
2 approval of the Settlement, Defendant shall provide the Settlement Administrator with a
3 confidential list of all Representative Action Members (the "Representative Action
4 Members List"), containing the following information for each Representative Action
5 Member: (i) first and last name; (ii) last known address; (iii) last known telephone
6 number; (iv) social security number; and (v) Eligible Pay Periods.

7 b. The Settlement Administrator shall conduct one (1) National Change of
8 Address ("NCOA") search for all individuals identified on the Representative Action
9 Members' List.

10 c. No later than fourteen (14) calendar days after the Settlement Administrator's
11 receipt of the Gross Settlement Payment, the Settlement Administrator shall mail the
12 agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA
13 Settlement Package") to all Representative Action Members by first-class United States
14 mail. The Individual Settlement Share checks issued to Representative Action Members
15 shall remain valid for one hundred twenty (120) calendar days, and, thereafter, shall be
16 cancelled.

17 d. For each PAGA Settlement Package that is returned as undeliverable, the
18 Settlement Administrator shall promptly attempt to locate an alternate updated address for
19 the Representative Action Members at issue by using an address refresher database; the
20 Settlement Administrator shall then attempt one (1) re-mailing of the PAGA Settlement
21 Package.

22 e. The Settlement Administrator will submit all funds associated with cancelled
23 Individual Settlement Share checks to the State of California's Unclaimed Property Fund.

24 44. No later than fourteen (14) calendar days after the Settlement Administrator receives
25 the Gross Settlement Payment, the Settlement Administrator shall distribute payments for Attorneys'
26 Fees and Costs to Plaintiff's Counsel, Incentive Payment to Plaintiff, Settlement Administration
27 Costs to the Settlement Administrator, and the LWDA Payment to the LWDA.

1 **VII. RELEASE OF CLAIMS BY PLAINTIFF, REPRESENTATIVE ACTION**
2 **MEMBERS, AND THE STATE OF CALIFORNIA**

3 45. Upon the date the Gross Settlement Payment is remitted to the Settlement
4 Administrator, and except as to the rights and obligations created by this Settlement Agreement,
5 Plaintiff and Representative Action Members, individually and on behalf of their heirs, executors,
6 administrators, representatives, attorneys, successors and assigns, and the State of California, on
7 behalf of itself and its administrators, representatives, and assigns, will be deemed to have
8 knowingly and voluntarily released and forever discharged Defendant and the Released Parties from
9 the Released Claims during the PAGA Period.

10 46. Plaintiff warrants and represents that Plaintiff has not assigned or transferred or
11 purported to assign or transfer to any person or entity all or any part of or any interest in any claim
12 released under this Settlement Agreement. Plaintiff is solely responsible for the satisfaction of any
13 assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless
14 against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be
15 imposed against or incurred by any of the Released Parties as a result of the Action of any lien
16 holder or any lien claimant or any court in relation to any interest which any third party may have in
17 any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the
18 proceeds paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

19 **VIII. GOVERNING LAW**

20 47. This Settlement Agreement shall be governed and conformed in accordance with the
21 laws of the State of California provided, however, that parole evidence shall not be admissible to
22 alter, vary or supplement the term of this Settlement Agreement.

23 48. In the event of a breach of any provision of this Settlement Agreement, any Party
24 reserves the right to institute an action specifically to enforce any term or terms of this Settlement
25 Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement
26 Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that
27 action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.
28

1 **IX. MISCELLANEOUS**

2 49. Defendant agrees that it will adopt a neutral reporting policy regarding any future
3 employment references related to Plaintiff. In the event that any potential or future employers of
4 Plaintiff request a reference regarding Defendant's employment of Plaintiff, Defendant shall only
5 provide Plaintiff's dates of employment and job titles during employment. Defendant shall not refer
6 to the Action or this Settlement.

7 50. Plaintiff agrees that she will not, either orally or in writing, make defamatory or
8 otherwise injurious statements concerning Defendant or any of the Released Parties.

9 51. This Settlement Agreement may not be modified, altered, or changed except through
10 a written modification signed by both Parties or their counsel wherein specific reference is made to
11 this Settlement Agreement, subject to approval by the Court.

12 52. The Settlement Agreement may be executed in one or more counterparts. All
13 executed counterparts and each of them shall be deemed an original, and each of them, taken
14 together, shall constitute the same instrument. A signature made on a faxed or electronically mailed
15 copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall
16 have the same effect as the original signature.

17 53. The section headings used in this Settlement Agreement are intended solely for
18 convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in
19 the interpretation of any of the provisions hereof.

20 54. This Settlement Agreement was the result of negotiations between the Parties and
21 their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement
22 Agreement shall not be construed against the Party preparing it but shall be construed as if both
23 Parties prepared it jointly.

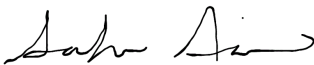
24 55. If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on
25 performance of any term, that failure does not mean a waiver of that term or of the Settlement
26 Agreement. The Settlement Agreement remains in full force and effect anyway.

27 **HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL**
28 **THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE,**

1 **PLAINTIFF AND DEENDANT, FREELY AND KNOWINGLY, AND AFTER DUE**
2 **CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.**

3 **IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this**
4 **Settlement Agreement as of the date(s) set forth below:**

5
6
7 Dated: 6/7/2022 | 1:44:37 AM PDT

By: 
Sasha Aiono
Individually and on Behalf of the State of California and
Representative Action Members

BENEFIT COSMETICS, LLC

11
12 Dated: _____

By: _____
Name:
Title:

14
15 **APPROVED AS TO FORM AND CONTENT:**

16 Dated: _____

By: _____
Jonathan M. Genish, Esq.
BLACKSTONE LAW, APC
Attorneys for Plaintiff Sasha Aiono

19
20 Dated: _____

By: _____
Emilie C. Woodhead, Esq.
WINSTON & STRAWN LLP
Attorneys for Defendant Benefit Cosmetics, LLC

1 **PLAINTIFF AND DEENDANT, FREELY AND KNOWINGLY, AND AFTER DUE**
2 **CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.**

3 **IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this**
4 **Settlement Agreement as of the date(s) set forth below:**

5
6
7 Dated: _____

By: _____

Sasha Aiono

Individually and on Behalf of the State of California and
Representative Action Members

BENEFIT COSMETICS, LLC

11
12 Dated: May 24, 2022

By: J. Cho

Name: Jillian Cho

Title: VP, Legal Counsel

13
14
15 **APPROVED AS TO FORM AND CONTENT:**

16 Dated: _____

By: _____

Jonathan M. Genish, Esq.

BLACKSTONE LAW, APC

Attorneys for Plaintiff Sasha Aiono

17
18
19
20 Dated: _____

By: _____

Emilie C. Woodhead, Esq.

WINSTON & STRAWN LLP

Attorneys for Defendant Benefit Cosmetics, LLC

1 PLAINTIFF AND DEENDANT, FREELY AND KNOWINGLY, AND AFTER DUE
2 CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

3 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
4 Settlement Agreement as of the date(s) set forth below:

5
6
7 Dated: _____

By: _____

8 Sasha Aiono
9 Individually and on Behalf of the State of California and
Representative Action Members

10 BENEFIT COSMETICS, LLC

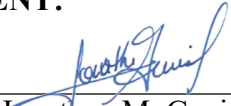
11
12 Dated: _____

By: _____

13 Name:
14 Title:

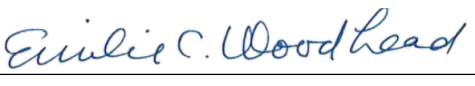
15 **APPROVED AS TO FORM AND CONTENT:**

16 Dated: June 7, 2022

By:  _____

17 Jonathan M. Genish, Esq.
18 **BLACKSTONE LAW, APC**
Attorneys for Plaintiff Sasha Aiono

19
20 Dated: June 7, 2022

By:  _____

21 Emilie C. Woodhead, Esq.
22 **WINSTON & STRAWN LLP**
23 Attorneys for Defendant Benefit Cosmetics, LLC
24
25
26
27
28