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**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

Honorable Daniel S. Murphy
Department 32

**DECLARATION OF JONATHAN M.
GENISH IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT, AWARD OF ATTORNEYS'
FEES AND COSTS, INCENTIVE AWARD,
AND SETTLEMENT ADMINISTRATION
COSTS**

Date: August 24, 2022
Time: 8:30
Dept.: 32

RESERVATION ID: 177760093036

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

DECLARATION OF JONATHAN M. GENISH

I, Jonathan M. Genish, declare and state as follows:

1. I am a shareholder and the founder of Blackstone Law, APC, attorneys of record for Plaintiff Sasha Aiono (“Plaintiff”). I am an attorney admitted to practice in all Courts of the State of California as well as this District Court. I submit this declaration in support of Plaintiff’s Motion for Approval of PAGA Settlement. I have personal knowledge of the facts contained herein, and, if called to testify I could and would competently do so.

Background and Experience

2. I received my law degree from Benjamin N. Cardozo School of Law and was admitted to the California State Bar in 2008. During law school, I clerked at the litigation firm Oved & Oved, LLP and was published several times in various small publications. Upon graduation, I was hired as an associate with Freedman & Taitelman, LLP where I remained employed through August 2015. During my tenure, I managed hundreds of complex litigation cases, ranging from employment, corporate, entertainment and general business litigation matters, though my primary area of expertise was employment litigation, both single plaintiff and representative actions.

3. In August 2015, I left Freedman & Taitelman to join The Kaufman Law Group as a shareholder. In that role, I ran the entire civil litigation department, again solely managing an array of complex multi-million-dollar and highly publicized litigation matters, with a primary focus on employment litigation, both single plaintiff and representative actions.

4. In February 2018, I started the law firm of Blackstone Law, APC, representing plaintiffs in individual and representative employment litigation. The firm has grown exponentially over the past four-plus years, now maintaining six highly pedigreed attorneys working on almost exclusively labor and employment class actions, Labor Code Private Attorney General Act of 2004 (“PAGA”) cases, and individual matters, with roughly 15% of the firm focused on other complex general litigation matters.

5. I have considerable experience in handling class and representative action lawsuits throughout my career and have been approved as counsel in a number of cases, including, most

1 recently:

- 2 • *DiRico v. Seek Capital, LLC*, Los Angeles Superior Court, Case No. BC698078, a
3 wage and hour class action brought on behalf of a class of hourly-paid employees
4 working the State of California.
- 5 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles Superior
6 Court, Case No. 19STCV29979, a private attorney general action for penalties
7 pursuant to Health and Safety Code section 25249.7.
- 8 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc. et al.*, Los Angeles
9 Superior Court, Case No. 19STCV30306, a private attorney general action for
10 penalties pursuant to Health and Safety Code section 25249.7.
- 11 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles Superior
12 Court, Case No. 19STCV30445, a private attorney general action for penalties
13 pursuant to Health and Safety Code section 25249.7.

14 6. I was counsel of record on several class action and PAGA actions that have since
15 been resolved, the most recent of which are as follows:

- 16 • *Maria Castillo-Rodriguez v. HR Outsourcing Associates, LLC*, Los Angeles Superior
17 Court, Case No. 20STCV44138, a wage and hour PAGA action.
- 18 • *Cruz v. LK Plumbing & Heating, Inc.*, Los Angeles Superior Court, Case No.
19 BC686825, a wage and hour PAGA action.
- 20 • *Savoy v. Collector's Universe, Inc., et al.*, Central District Court of California, Case
21 No.: 8:20-cv-00632-DOC-ADS (recently remanded to Orange County Superior
22 Court, Case No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

23 **Procedural History of the Action**

24 7. On August 10, 2021, Plaintiff complied with the requirements of Labor Code § 2699
25 et seq., by giving written notice to the Labor Workforce Development Agency via certified mail. A
26 true and correct copy of Plaintiff's letter is attached hereto as **Exhibit A**.

27 8. Plaintiff filed her complaint on September 13, 2021 in the Los Angeles County
28 Superior Court. She alleged one cause of action pursuant to PAGA. Plaintiff sought PAGA penalties

1 for Defendant's failure to pay overtime wages (Labor Code §§ 510 and 1198), failure to pay
2 minimum wages (Labor Code §§ 1194, 1197, and 1197.1), failure to provide meal periods (Labor
3 Code §§ 226.7 and 512(a)), failure to provide rest periods (Labor Code § 226.7), failure to timely
4 pay wages during employment (Labor Code § 204), failure to timely pay wages upon termination
5 (Labor Code §§ 201, 202, and 203), failure to provide accurate itemized wage statements (Labor
6 Code § 226(a)), failure to keep complete and accurate payroll records (Labor Code § 1174(d)), and
7 failure to reimburse business expenses (Labor Code §§ 2800 and 2802). Plaintiff sought these
8 penalties on behalf of all individuals who worked for Defendant as hourly-paid and/or non-exempt
9 employees in the State of California at any time during the period from August 10, 2020 to final
10 judgment (the "Representative Action Members").

11 9. Following the filing of the Complaint, the Parties met and conferred with respect to
12 the potential resolution of this action by means of a private mediation. Both parties propounded
13 initial sets of written discovery and noticed depositions. However, the parties agreed to informally
14 stay discovery pending mediation, and thus have not yet exchanged discovery responses nor have
15 appeared for deposition.

16 10. Pursuant to this agreement to mediate, Defendant produced a random sampling of
17 Representative Action Members' meal and rest records.

18 11. On March 16, 2022, after Plaintiff's counsel conducted a thorough analysis of the
19 records provided, the parties attended a formal mediation with the Hon. Lisa Cole (Ret.), a neutral
20 and respected mediator with extensive experience in complex wage and hour matters. At the
21 mediation, the Parties engaged in intensive settlement discussions during which they debated their
22 respective positions and exchanged views regarding the strengths and weaknesses of the alleged
23 claims. After a full day of mediation, and with the help of the mediator, the Parties were able to
24 reach an agreement to resolve this dispute on a representative basis and shortly thereafter executed
25 a memorandum of understanding memorializing the key settlement terms. Following mediation, the
26 parties worked diligently to negotiate and memorialize the terms in a long form settlement
27 agreement. On June 7, 2022, the Settlement Agreement was fully executed. Attached hereto as
28 **Exhibit B** is a true and correct copy of the PAGA Settlement Agreement ("Settlement" or

1 “Settlement Agreement”) entered into between Plaintiff Sasha Aiono, individually and on behalf of
2 other Representative Action Members, on one hand, and Defendant Benefit Cosmetics, LLC on the
3 other hand (collectively, the “Parties”).

4 12. Now, following substantial investigation and extensive settlement negotiations,
5 Plaintiff seeks approval of the proposed settlement, which will resolve all representative claims
6 alleged in the Complaint.

7 13. In accordance with Labor Code sections 2699 et. seq., Plaintiff’s counsel provided
8 notice of the proposed settlement to the LWDA concurrently with the filing of this Motion on July
9 29, 2022.

10 **Summary of the Terms of the Settlement Agreement**

11 14. For purposes of settlement only, the Parties have agreed that the “Representative
12 Action Members” shall be defined as “all individuals who worked for Defendant in the State of
13 California as hourly-paid, non-exempt employees at any time during the PAGA Period.” The PAGA
14 Period means the period commencing on August 10, 2020 and ending on the Court enters the
15 Settlement Approval Order. As of the date of mediation, there were 315 Representative Action
16 Members.

17 15. The parties have agreed to settle the PAGA claims at issue in the operative Complaint
18 for a non-reversionary Gross Settlement Payment of Four Hundred Thirty-Seven Thousand Five
19 Hundred Dollars and Zero Cents (\$437,500.00).

20 16. The Gross Settlement Payment is a common fund and therefore, includes all
21 requested costs, fees, and other allocations.

22 17. The Gross Settlement Payment includes: (1) Plaintiff’s Counsel’s fees in the amount
23 of one-third of the Gross Settlement Payment, equaling One Hundred Forty-Five Thousand Eight
24 Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$145,833.33); (2) Plaintiff’s Counsel’s
25 actual litigation costs of Eight Thousand, Four Hundred, Seven Dollars and Eighteen Cents
26 (\$8,407.18); (3) Settlement Administration Costs, capped at Six Thousand Dollars and Zero Cents
27 (\$6,000.00); and (4) PAGA Representative Incentive Payment in the amount of Five Thousand
28 Dollars and Zero Cents to Plaintiff. After the above-estimated amounts are deducted from the Gross

1 Settlement Payment, the Gross Settlement Payment will amount to approximately Two Hundred
2 Seventy-Two Thousand Two Hundred and Fifty-Nine Dollars and Forty-Nine Cents (\$272,259.49).

3 18. Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA.
4 Twenty-five percent (25%) of the Gross Settlement Payment will be distributed and paid to
5 Representative Action Members on a pro-rata basis based on the number of workweeks worked
6 during the PAGA Period.

7 19. Payments to the Representative Action Members will be allocated as 100% penalties.

8 20. The Settlement Agreement is a non-reversionary and non-claims made settlement.
9 All money from the Gross Settlement Payment will be distributed to the LWDA and to the
10 Representative Action Members. No money will revert to Defendant.

11 21. Any Individual Settlement Share checks remaining uncashed after 120 days will be
12 cancelled. For each PAGA Settlement Package that is returned as undeliverable, the Settlement
13 Administratro shall promptly attempt to to locate an alternate updated address for the Representative
14 Action Members at issue by using an address refresher database; the Settlement Administrators shall
15 then attempt one (1) re-mailing of the PAGA Settlement Package.

16 22. The Settlement Administrator will submit all funds associated with cancelled
17 Individual Settlement Share checks to the State of California's Unclaimed Property Fund to be held
18 in the name of each Representative Action Member. As such, no "unpaid residue" under California
19 Code of Civil Procedure section 384 will result from the Settlement.

20 **The Settlement is Fair and Reasonable**

21 23. Here, the Settlement is presumptively fair because: (1) it is the product of non-
22 collusive, arm's-length negotiations that were overseen by an independent mediator knowledgeable
23 in complex labor and employment matters; (2) it occurred after counsel for the Parties engaged in
24 significant investigation to evaluate the strength and potential value of the PAGA claims, and the
25 risks of litigating these claims through trial; and (3) it was negotiated by counsel with significant
26 experience in similar complex labor and employment matters.

27 **The Settlement Was Reached as a Result of Arm's-Length Bargaining**

28 24. On March 16, 2022, the Parties mediated with the Honorable Lisa Hart Cole (Ret.)

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

10 **Sufficient Investigation and Discovery**

11 25. The parties agreed to an informal stay of discovery pending mediation, but pursuant
12 to the agreement to mediate, Defendant produced a random sampling of Representative Action
13 Members' meal and rest records, which were subjected to rigorous analysis by Plaintiff's counsel.
14 This allowed Plaintiff's counsel to conduct an informed assessment of the potential PAGA penalties
15 at issue.

16 **The Settlement was Negotiated by Experienced Counsel**

17 26. Settlement negotiations were conducted by highly capable and experienced counsel.
18 Plaintiff's Counsel are respected members of the bar with strong records of vigorous and effective
19 advocacy, and are experienced in handling complex wage and hour class action litigation.
20 Accordingly, Plaintiff's Counsel had sufficient information and experience to act intelligently in
21 negotiating the Settlement.

22 **The Specific Risks Considered**

23 27. Plaintiff's core allegations are that Defendant systematically violated the Labor Code
24 by, *inter alia*, failing to properly pay wages for all hours worked, failure to pay overtime at the
25 correct rate, failure to provide compliant meal and rest periods, failure to pay premiums at the correct
26 rate of pay, failure to timely pay wages during employment and upon termination, failure to maintain
27 accurate payroll records, failure to provide accurate wage statements, and failure to reimburse
28 necessary business expenses.

1 28. Defendant also maintained several defenses to Plaintiff's theories of liability, which,
2 if successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
3 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
4 continues to have, compliant employment policies and practices throughout the time period at issue.
5 Defendant denies that it ever violated any provision of the Labor Code, including, but not limited
6 to, those sections for which Plaintiff seeks penalties under PAGA. Defendant further denied, and
7 continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other
8 than settlement. Defendant also challenged Plaintiff's standing as an aggrieved employee and
9 Representative Action Member and denied that any of Defendant's other employees whom Plaintiff
10 seeks to represent are aggrieved or Representative Action Members.

11 29. Defendant also argued that an important feature of PAGA is that the Court retains
12 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do
13 otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."

14 30. Even if violations of the Labor Code occurred, which Defendant denies, Defendant
15 contended that said violations would only be considered "initial violations" and thus heightened
16 "subsequent violation" penalties were not warranted.

17 31. Defendant also contended that, with respect to PAGA claims, the Court was unlikely
18 to assess cumulative penalties for the maximum number of possible, separate California Labor Code
19 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
20 certain conduct may be regulated by multiple provisions of the California Labor Code that are
21 interrelated and work in tandem. As such, Defendant contended that cumulative penalties and
22 heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

23 32. While Plaintiff maintains that her PAGA claims have merit, in reaching the
24 settlement, Plaintiff and her counsel took into account the strengths and weaknesses of each side's
25 position and the uncertainty of how the case might have concluded as litigation continued, at trial,
26 and/or upon appeal.

27 33. While Plaintiff believes that Defendant faced significant exposure, substantial
28 barriers to a recovery existed. Although California case law clearly states that PAGA actions need

1 not satisfy class action requirements, Plaintiff's Counsel remained mindful of the fact that some
2 courts have nevertheless held that PAGA claims must meet a threshold "manageability"
3 requirement. Defendant contended that Plaintiff's representative PAGA claims were not
4 manageable because individual issues and affirmative defenses would predominate should this case
5 go to trial. We disagreed with this assessment but had to consider the risk that the Court would find
6 validity in an individualized proof defense to a trial of the Representative Action Members' claims.

7 34. By way of example, a large portion of Defendant's overall liability lies in Plaintiff's
8 meal period claims. Plaintiff's theory of liability for meal period violations was based on allegations
9 that Defendant had failed to implement policies and practices that allowed Representative Action
10 Members to take meal breaks in the manner required under California law. In contrast, Defendant
11 argued that its practices at all times during the PAGA Period were lawful. Defendant argued that
12 the rate of purported meal period violations reflected in the data throughout the PAGA Period
13 reflected that meal breaks were authorized and not impeded, and that any purported meal period
14 violations would require individualized inquiry. Our analysis of Defendant's data revealed there
15 was a very low rate of meal break violations. Only slightly over 2% of shifts (i.e., 96 of the aggregate
16 shifts) that were over five hours in length failed to record a 30 minute meal period. Even fewer shifts
17 (0.33%) showed late meal breaks taken after the fifth hour of work, and 0.27% of shifts showed a
18 meal break of less than 30 minutes. In addition, the records showed that Defendant paid meal break
19 premiums. Therefore, the potential value of this claim was low.

20 35. Defendant's rest period allegations were based on a similar failure to provide
21 employees with timely, full, and uninterrupted rest periods. As with the meal period allegations,
22 Defendant contended that it provided rest breaks and relieved Representative Action Members of
23 all duties as required under California law. Additionally, this claim was even more uncertain given
24 the difficulties associated with proving the alleged rest period violations, as Defendant was not
25 required to record these breaks. Given the lack of records demonstrating rest period violations, there
26 were legitimate concerns Plaintiff would not be able to try these claims on a representative basis.

27 36. Plaintiff also faced challenges proving liability for his minimum wage and overtime
28 claims. These claims were largely based on unrecorded, off-the-clock work performed by the

1 Representative Action Members both before and after their shifts and during purported meal periods.
2 Plaintiff's off-the-clock claim was based on the time that she and other Representative Action
3 Members spent arriving before the start of their shift to put on required clothing and protective
4 equipment (masks, aprons, plastic capes), undergoing COVID-19 screenings, reviewing daily sales
5 goals, and securing personal items in lockers, so that they would be ready to begin working at the
6 start of their shift. Additionally, Plaintiff and others often had to wait outside their work location
7 when the Keyholder (the employees who were entrusted with keys to the store) for the opening shift
8 was not on time to unlock the door at the start of the work day. Plaintiff also claimed that she and
9 other employees would have to clock out and then perform closing tasks such as cleaning beauty
10 stations and counters, taking out the trash, shutting down the computers, turning off lights, setting
11 the alarm, and locking the doors. Last, Plaintiff claimed that she and others responded to calls and
12 text messages regarding work when they were not at work. However, the individualized nature of
13 when and why this work was performed, as well as the individualized nature of damages for
14 purposes of evaluating and assessing penalties, presented substantial concerns regarding the
15 manageability of the case and the risk the Court could find these issues prevented trial on a
16 representative basis. Based thereon, this claim was discounted for settlement purposes. As such, the
17 individualized nature of why this work was performed and the individualized nature of damages
18 presented substantial concerns regarding the manageability of the case and the risk the Court could
19 find these issues prevented trial on a representative basis.

20 37. Plaintiff further learned in analyzing the data provided by Defendant that her
21 overtime claim had a very low value. Defendant's alleged failure to properly blend bonuses into
22 employees' overtime rate, while appearing to be correct, amounted to almost no damages: only 3%
23 of the 2,351 aggregate pay periods analyzed had both overtime *and* bonus compensation. Based
24 thereon, the value of this claim was significantly discounted for settlement.

25 38. There are also substantial risks associated with Defendant's recordkeeping and wage
26 statement claims. First, these claims were wholly derivative of Plaintiff's claims for unpaid meal
27 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime
28 wages. If the Court were to find these claims to be unmanageable, the derivative claims for penalties

1 would also likely fail. Accordingly, these derivative claims, which comprised a substantial portion
2 of Defendant's estimated liability, were uncertain.

3 39. Plaintiff's Counsel also recognized that proving the amount of penalties due to
4 Representative Action Members would be an expensive, time-consuming, and uncertain
5 proposition. In order to prove liability and entitlement to penalties, Plaintiff's Counsel would need
6 to request and analyze thousands of pages of documents, obtain the Representative Action
7 Members' contact information, contact them, and obtain declarations at great expense. Obtaining
8 the cooperation of current employees would also be difficult, given the likely reluctance to aid
9 prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely be
10 able to obtain the cooperation of its employees. Moreover, even if Defendant prevailed at trial,
11 possible appeals would substantially delay any recovery by the Representative Action Members.

12 40. Finally, Plaintiff's Counsel was also mindful of the fact that PAGA is fundamentally
13 not intended to be compensatory in nature, but is instead intended to facilitate enforcement of
14 California's labor laws by financing state activities and educating and deterring non-compliance.

15 41. Based on the total aggregate number of pay periods at mediation (6,499), and
16 assuming only one penalty per pay period *without* stacking penalties for multiple violations within
17 the same pay period, the total penalties amounted to \$649,900. Therefore, after considering all of
18 the above factors, Plaintiff and Plaintiff's Counsel concluded that it was in the best interest of the
19 State of California and the Representative Action Members to enter into the Settlement. Moreover,
20 the overall relief obtained by the Settlement is significant, not only from a monetary perspective,
21 but also because it fulfills the public policy objectives of PAGA—to promote enforcement of
22 California's labor laws, provide funds to the state, and deter future non-compliance by the employer.

23 42. In light of the parties' respective legal positions and the risks of continued litigation,
24 the Gross Settlement Payment for resolution of the PAGA claims, is fair, adequate, and reasonable.

25 **The Amount Offered in Settlement**

26 43. The Net Settlement Amount is currently estimated to be \$272,259.49, of which an
27 estimated \$68,064.87 is to be distributed to Representative Action Members on a pro rata basis,
28 based on their number of Pay Periods during the PAGA Period, and \$204,194.62 is to be distributed

1 to the LWDA. There is no reason to doubt the fairness of the proposed plan of allocation of the Net
2 Settlement Amount as it fully complies with California Labor Code section 2699(i).

3 44. The Settlement is a compromise of highly disputed claims. Plaintiff and her counsel
4 recognize the expense and length of continued proceedings necessary to litigate the matter through
5 trial and any possible appeals. Plaintiff and her counsel have also taken into account the uncertainty
6 and risk of the outcome of further litigation, and the difficulties and delays inherent in such
7 litigation. Plaintiff and her counsel are also aware of the burdens of proof necessary to establish
8 liability, both generally and in response to Defendant's defenses thereto, and the difficulties in
9 establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the
10 State of California, and other Representative Action Members. Plaintiff and her counsel have also
11 taken into account Defendant's agreement to enter into a settlement that confers significant relief
12 upon the Representative Action Members and the State of California. Considering all of the facts in
13 this case, Plaintiff and her counsel have determined that the Settlement represents a fair, adequate,
14 and reasonable resolution of the PAGA claims, and that it is in the best interests of the Representative
15 Action Members and the State of California.

16 45. The result achieved in this case, and the monetary recovery provided by this
17 settlement, are well within the range of an acceptable settlement under the circumstances, especially
18 when compared to the settlement of PAGA claims in other cases.

19 46. Plaintiff's Counsel is experienced in complex representative and class action wage-
20 and-hour litigation. In the view of Plaintiff's Counsel, the benefits conferred by the settlement are
21 eminently fair and reasonable, and in the best interests of the State and the Representative Action
22 Members in light of the risk, delay, and uncertainty of continued litigation and the substantial
23 monetary benefits provided for by the Settlement.

24 **The Requested Attorneys' Fees Award is Fair and Reasonable**

25 47. Plaintiff's Counsel's application for attorneys' fees in light of the facts and
26 circumstances surrounding the case is well-within the range of reasonableness. Plaintiff's Counsel has
27 litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and
28 no fee recovery of any kind. Plaintiff's Counsel conducted informal discovery and exchanged a large

1 amount of data and documents with Defendant's counsel. The data and documents reviewed and
2 analyzed by Plaintiff's Counsel included a sampling of time and pay data, Defendant's employee
3 handbook, Defendant's travel and entertainment policy, information regarding the number of meal
4 period and rest period premiums paid, and information regarding the number of pay periods worked.
5 Counsel for the Parties undertook significant investigation, and also invested time reviewing and
6 analyzing relevant documents and data to evaluate Plaintiff's claims, including, but not limited to,
7 calculating the potential monetary recovery under PAGA. Other work performed by Plaintiff's Counsel
8 included, but was not limited to: meeting and conferring with Defendant's counsel regarding informal
9 discovery, mediation, and settlement, among other issues; participating in case strategy and analysis;
10 drafting, reviewing, and revising the mediation brief; and preparing for and attending mediation.

11 48. In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation
12 and will not receive any compensation until recovery is obtained. Plaintiff's Counsel is experienced in
13 complex wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiff, the
14 Representative Action Members, and the State of California. Considering the amount of fees requested,
15 work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling
16 similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be
17 awarded.

18 49. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated
19 into tangible monetary benefits for the Representative Action Members as follows: (1)
20 Representative Action Members will obtain monetary recovery over a relatively short period of
21 time, as opposed to waiting additional years for the same, or potentially worse, result; (2) a
22 guaranteed result that compares favorably with other representative PAGA actions of this type,
23 given the strengths and weaknesses of the case; and (3) significant savings in Plaintiff's Counsel's
24 fees and/or costs that would have only increased significantly had the case progress through trial
25 and/or appeals.

26 **The Requested Costs to be Reimbursed are Fair and Reasonable**

27 50. The Settlement provides for reimbursement of litigation costs and expenses of up to
28 \$30,000. As of the time this motion is being filed, my firm has presently incurred a total of

1 \$8,402.61 in litigation costs and expenses and anticipates expending \$4.57 more through the
2 approval process. A true and correct itemized list of my firm's litigation costs is attached hereto as
3 **Exhibit C**. This amount was reasonable and necessary in the prosecution of this matter, and is less
4 than the maximum amount allocated under the Settlement. Accordingly, Plaintiff's counsel
5 respectfully request that the Court reimburse them for litigation costs and expenses in the amount
6 of \$8,407.18.

7 **The Requested Incentive Payment is Fair and Reasonable**

8 51. Plaintiff initiated this litigation on behalf of her former co-workers who will now be
9 entitled to receive payment from the Settlement. Plaintiff invested substantial time and effort into
10 litigation including her own research, reviewing documents, and extensive discussions with
11 Plaintiff's Counsel. For these reasons, Plaintiff requests that an incentive payment of \$5,000.00.

12 **The Settlement Administration Costs are Fair and Reasonable**

13 52. As set forth in the Settlement Agreement, the Parties have agreed to retain, subject
14 to approval by the Court, Simpluris, Inc. to handle the administration of the Settlement. The fees
15 and expenses of the PAGA Settlement Administrator are estimated not to exceed \$6,000. These
16 costs include, but are not limited to, expenses for preparing, printing, and mailing the Notice of
17 Representative PAGA Action Settlement and Individual Settlement Share checks (i.e., PAGA
18 Settlement Package) to the Representative Action Members, re-mailing the returned PAGA
19 Settlement Packages to any new addresses obtained, and handling inquiries from Representative
20 Action Members regarding the Settlement, among other things. Accordingly, the Court should grant
21 approval of the Settlement Administration Costs in the amount of up to \$6,000 to Simpluris, Inc., a
22 necessary third-party for handling the settlement process.

23 **Notice to the Representative Action Members**

24 53. Although PAGA does not require notice to unnamed aggrieved employees of a
25 settlement, the parties have jointly drafted a Notice for the Court's approval which will be delivered
26 to the Representative Action Members along with their Individual Settlement Share Checks.
27 ([Proposed] Order Granting Motion for Approval of PAGA Settlement, Exhibit 1). The Notice
28 includes information regarding the nature of the lawsuit and a summary of the terms of the

1 Settlement. The Notice will be provided to Representative Action Members in English since they
2 speak and understand English as part of their employment requirements.

3 54. No later than thirty (30) calendar days after the Court grants approval of the
4 Settlement, Defendant will provide a list to the Settlement Administrator containing the following
5 information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last
6 known telephone number; (iv) social security number; and (v) Eligible Pay Periods (the
7 "Representative Members List"). The Settlement Administrator shall perform any searches
8 necessary to confirm the Representative Action Members' addresses, and no later than fourteen (14)
9 calendar days after receiving the Representative Action Members' List from Defendant, the
10 Settlement Administrator shall mail the Notice to all Representative Action Members via first class
11 mail.

12 **Notice to the LWDA**

13 55. In accordance with Labor Code sections 2699 et. seq., a copy of the proposed
14 Settlement, as well as information regarding the approval hearing in this matter, were submitted to
15 the LWDA via online submission concurrently with the filing of this motion.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed on July 29, 2022, at Beverly Hills, California.

19
20 

21 _____
Jonathan M. Genish

EXHIBIT A

August 10, 2021

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

RE: *Sasha Aiono v. Benefit Cosmetics, LLC*

Dear PAGA Administrator:

This office represents Sasha Aiono, née Lowe, (“Ms. Aiono”), who was employed by Benefit Cosmetics, LLC (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (“Benefit Cosmetics”) as an Aesthetician from approximately January 2018 to approximately June 29, 2021 in the State of California. This letter shall serve as Ms. Aiono’s notice pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (California Labor Code § 2699.3), of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

Ms. Aiono intends to bring a representative action seeking penalties for violations of the California Labor Code, which are recoverable under PAGA, and all other remedies available under PAGA, including an amount sufficient to recover underpaid wages pursuant to Labor Code section 558. Ms. Aiono seeks these remedies on behalf of the State of California and all aggrieved employees. The aggrieved employees on whose behalf Ms. Aiono will file a PAGA cause of action includes all current and former hourly paid and/or non-exempt employees who worked for Benefit Cosmetics in the State of California during the relevant statutory period.

As set forth below, Benefit Cosmetics has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders including *inter alia*, Wage Order 2-2001.

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Failure to Pay Minimum Wages and Failure to Pay Overtime Wages

Benefit Cosmetics violated California Labor Code sections 1194, 1197, and 1197.1 by failing to pay Ms. Aiono and other aggrieved employees at least minimum wages for all hours worked. Ms. Aiono and other aggrieved employees were required to perform work duties off-the-clock prior to clocking-in and after clocking-out. Such off-the-clock work included, but was not limited to, undergoing COVID-19 screenings, which included temperature checks and filling out questionnaires; providing customer service; employee trainings; and reviewing and responding to work-related phone calls, text messages, and e-mails. By failing to pay Ms. Aiono and other aggrieved employees any wages for off-the-clock work, Benefit Cosmetics violated Labor Code sections 1194, 1197, and 1197.1, which require employers to pay at least the legal minimum wage to their employees.

California Labor Code sections 510 and 1198 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Ms. Aiono and other aggrieved employees worked in excess of 8 hours in a day and/or 40 hours in a week without overtime compensation because Benefit Cosmetics failed to pay them for off-the-clock work as described above. On occasions when Ms. Aiono and other aggrieved employees had already worked eight hours in one day on-the-clock and also performed work off-the-clock, Benefit Cosmetics failed to pay them overtime compensation for this off-the-clock work. In addition, Benefit Cosmetics failed to correctly calculate the overtime rate of pay by failing to include non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay in the regular rate of pay for purposes of overtime compensation.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). Further, an uninterrupted rest period of no less than ten (10) minutes must be provided for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Benefit Cosmetics failed to provide Ms. Aiono and the other aggrieved employees with an opportunity to take timely, uninterrupted meal and rest periods of the requisite length. Benefit

Cosmetics failed to compensate Ms. Aiono and the other aggrieved employees properly for non-compliant meal and rest periods including, *inter alia*, missed, short, late, and/or interrupted meal and rest periods. Benefit Cosmetics failed to issue meal period and rest period premiums on each occasion that a meal period or rest period was not provided. On those occasions when Benefit Cosmetics did pay meal and/or rest period premiums, it failed to do so at the correct rate. On occasions when meal period and/or rest period premiums were paid, Benefit Cosmetics paid them at the base hourly rate of pay rather than at the regular rate of compensation. Benefit Cosmetics failed to include all non-discretionary payments for work performed by Ms. Aiono and the other aggrieved employees in the regular rate of compensation when issuing meal and/or rest period premiums, including but not limited to, non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay.

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Benefit Cosmetics failed to pay Ms. Aiono and other aggrieved employees all wages due to them, including minimum wages, overtime wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Benefit Cosmetics failed to pay Ms. Aiono and other aggrieved employees all wages due to them upon termination of their employment, including minimum wages, overtime wages, meal period premiums, and rest period premiums.

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records

showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Benefit Cosmetics failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid, to Ms. Aiono and other aggrieved employees.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Benefit Cosmetics failed to provide wage statements to Ms. Aiono and other aggrieved employees stating, *inter alia*, the total hours worked (including time spent working off-the-clock), the amount of meal period premium wages earned, and the amount of rest period premium wages earned.

Failure to Reimburse Necessary Business Expenses

Labor Code section 2802 requires employers to indemnify their employees for all necessary business expenses that they incur in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Ms. Aiono and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Benefit Cosmetics. These costs include, but are not limited to, the use of personal cell phones for work-related purposes.

Benefit Cosmetics is in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2699, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Benefit Cosmetics for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Labor

Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Labor Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Labor Code § 2699.3(a)(2)(A). It is the intention of this law firm to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 should your office not address these matters within this time. Should you require anything further or have questions, please do not hesitate to contact me.

BLACKSTONE LAW

A handwritten signature in black ink, appearing to read "Jill J. Parker".

Jill J. Parker, Esq.

Cc: By U.S. Certified Mail, Return Receipt Requested

Benefit Cosmetics, LLC
225 Bush Street, 20th Floor
San Francisco, California 94104

Corporation Service Company
Agent for Service of Process for Benefit Cosmetics, LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833

EXHIBIT B

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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.

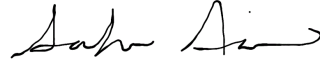
27 **HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL**
28 **THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE,**

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: _____

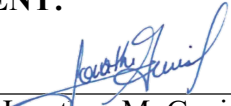
By: _____

13 Name:

14 Title:

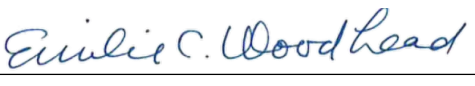
15 **APPROVED AS TO FORM AND CONTENT:**

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

EXHIBIT 1

NOTICE OF PAGA SETTLEMENT

Sasha Aiono v. Benefit Cosmetics, LLC et. al.

Los Angeles County Superior Court
Case No. 21STCV33719

Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799

You are receiving this Notice because of a lawsuit brought by Sasha Aiono (“Plaintiff”) against Benefit Cosmetics, LLC (“Defendant”) for civil penalties pursuant to the Private Attorneys General Act, California Labor Code sections 2698 *et seq.* (“PAGA”). Plaintiff claimed that Defendant violated California Labor Code sections: 201, 202, 203, 204, 226 (a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 2800, and 2802 and Industrial Wage Order 2-2001. In the lawsuit, Plaintiff sought to represent all hourly-paid non-exempt employees of Defendant in California who worked at any time during the period from August 10, 2020, to [date of settlement approval]. The term “Representative Action Members” means all individuals who worked for Defendant in the State of California as hourly-paid, non-exempt employees at any time during the period from August 10, 2020 to [date of settlement approval].

Defendant denies these claims and denies that Plaintiff and the Representative Action Members are owed overtime or any additional wages, missed meal and rest breaks, received inaccurate wage statements, had unreimbursed business expenses, or are otherwise entitled to any penalties. But to avoid further time and expense in litigation, Defendant and Plaintiff have agreed to settle the case. The settlement releases any and all claims or causes of action for penalties under PAGA, whether known or unknown, that Plaintiff or any Representative Action Member had, now has, has asserted, or may hereafter assert against Defendant or any Released Parties that are based on, or arise from, the factual allegations in the Complaint or the PAGA Notice during the period from August 10, 2020 through and including [date of settlement approval], including PAGA claims for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698, *et. seq.*, 2800, and 2802, Industrial Wage Order No. 2-2001, and all claims for attorneys’ fees and costs and statutory interest associated with the aforementioned claims.

According to Defendant’s records, you are a Representative Action Member and are therefore entitled to a share of the settlement. Enclosed with this Notice is your settlement check. The settlement check shall remain valid for one hundred eighty (180) days. Checks remaining un-cashed for more than 180 days after issuance will be tendered to the State of California’s Unclaimed Property Fund within fourteen (14) calendar days from the date on which Representative Action Members’ checks become void.

Any questions regarding the settlement can be directed to the Settlement Administrator:

Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799
Telephone : (888) 369-3780

EXHIBIT C

Sasha Aiono v. Benefit Cosmetics, LLC

8/10/21	PAGA Filing Fee	\$75.00
8/10/21	Service of PAGA Notice to Benefit Cosmetics	\$6.96
8/10/21	Service of PAGA Notice to Corporation Service Company	\$6.96
8/11/21	Mailing Cost-Records Request	\$6.96
8/17/21	Mailing Cost – PAGA Notice	\$10.37
8/23/21	Mailing Cost – Records Request	\$10.37
8/31/21	Mailing Cost – Records Request	\$7.33
9/13/21	Complaint Filing Fee	\$514.70
11/11/21	Filing Fee - NAR	\$36.20
12/10/21	Mailing Cost – First Legal Network LLC	\$0.53
1/4/22	Personal Service of Depo Notice	\$106.82
1/6/22	Filing Fee of CMC Statement	\$37.70
1/28/22	Mediation Fee – Signature Resolution	\$5,950.00
1/28/22	Mailing Cost – Signature Resolution	\$4.28
3/30/22	Berger Consulting Group, LLC	\$1,562.50
3/30/22	Mailing Cost - Berger Consulting Group, LLC	\$4.28
7/21/22	Motion Filing Fee	\$61.65
	Future Mailing Cost of Settlement Check	\$4.57
		Total: \$8,407.18

PROOF OF SERVICE

I, Paulette Proctor, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On July 29, 2022, I served a copy of the following document(s):

**DECLARATION OF JONATHAN M. GENISH IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA SETTLEMENT, AWARD OF ATTORNEYS'
FEES AND COSTS, INCENTIVE AWARD, AND SETTLEMENT ADMINISTRATION
COSTS**

on the interested parties as follows:

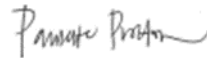
Emilie C. Woodhead
ewoodhead@winston.com
Jason S. Campbell
jscampbell@winston.com
Rachel A.D. Busch
RBusch@winston.com
Winston & Strawn LLP
333 S. Grand Avenue, 38th Floor
Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
Facsimile: (213) 615-1750

Attorneys for Defendant Benefit Cosmetics, LLC

☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to be delivered to the above referenced addressee(s) via email from email address pproctor@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.

☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 29, 2022 at Beverly Hills, California.



Paulette Proctor



Court Reservation Receipt

Reservation

Reservation ID: 177760093036	Status: RESERVED
Reservation Type: Motion re: (Approval of PAGA Settlement)	Number of Motions: 1
Case Number: 21STCV33719	Case Title: SASHA AIONO vs BENEFIT COSMETICS, LLC
Filing Party: Sasha Aiono (Plaintiff)	Location: Stanley Mosk Courthouse - Department 32
Date/Time: August 24th 2022, 8:30AM	Confirmation Code: CR-2NQEJBTQQDUNZVJZD

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: AmericanExpress
Account Number: XXXX1008	Authorization: 227691

[◀ Back to Main](#) [Print Page](#)